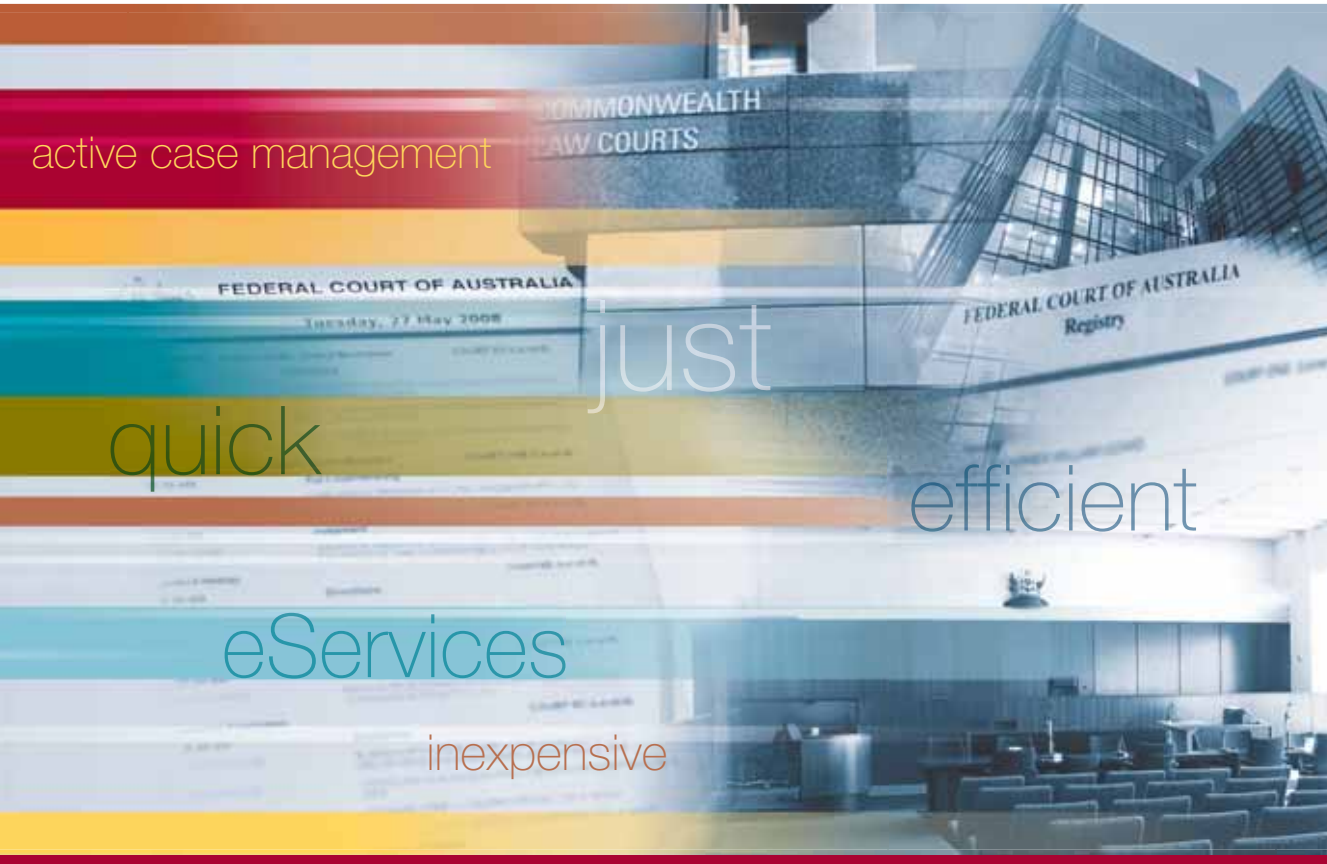
FEDERAL COURT OF AUSTRALIA

ANNUAL REPORT 2007–2008





FEDERAL COURT OF AUSTRALIA

ANNUAL REPORT 2007–2008

Annual Report: Federal Court of Australia

ISSN 1035–5863 (print version)
ISSN 1835–1565 (online version)

This work is copyright. Apart from any use as permitted by the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth available from AusInfo. Requests and inquiries concerning reproduction and rights should be directed to the Manager, Legislative Services, AusInfo, GPO Box 1920, Canberra ACT 2601.

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

15 September 2008

The Honourable Robert McClelland MP
Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Attorney-General

I have the pleasure in submitting, in accordance with section 18S of the *Federal Court of Australia Act 1976*, a report of the management of the administrative affairs of the Court during the financial year 2007-2008 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 nineteenth annual report.

Yours sincerely

M E J BLACK
Chief Justice

FEDERAL COURT REGISTRIES

Principal Registry

Law Courts Building
Queens Square Sydney NSW 2000
Phone: (02) 9230 8542 Fax: (02) 9223 7706
Email: query@fedcourt.gov.au
http://www.fedcourt.gov.au
Contact hours: 8.30am–5.30pm

Australian Capital Territory District Registry

Nigel Bowen Commonwealth Law Courts Building
Childers Street
Canberra City ACT 2601
Phone: (02) 6267 0566 Fax: (02) 6267 0625
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 17 Law Courts Building
Queens Square
Sydney NSW 2000
Phone: (02) 9230 8567 Fax: (02) 9230 8535
TTY: (02) 9230 8270
Email: nswdr@fedcourt.gov.au
Counter hours: 9.00am–4.00pm
Contact hours: 8.30am–5.00pm

Northern Territory District Registry

Level 17 Supreme Court Building
State Square
Darwin NT 0800
Phone: (08) 8941 2333 Fax: (08) 8941 4941
TTY: (08) 8982 0838
Email: ntreg@fedcourt.gov.au
Counter hours: 9.00am–4.00pm
Contact hours: 8.30am–4.30pm

Queensland District Registry

Level 6 Harry Gibbs Commonwealth
Law Courts Building
119 North Quay
Brisbane QLD 4000
Phone: (07) 3248 1100 Fax: (07) 3248 1260
TTY: (07) 3248 1272
Email: qldreg@fedcourt.gov.au
Counter hours: 9.00am–4.00pm
Contact hours: 8.30am–5.00pm

South Australia District Registry

Level 5 Roma Mitchell Commonwealth
Law Courts Building
3 Angas Street
Adelaide SA 5000
Phone: (08) 8219 1000 Fax: (08) 8219 1001
TTY: (08) 8219 1011
Email: sareg@fedcourt.gov.au
Counter hours: 9.00am–4.30pm
Contact hours: 8.30am–5.00pm

Tasmania District Registry

Edward Braddon Commonwealth
Law Courts Building
39–41 Davey St
Hobart TAS 7000
Phone: (03) 6232 1715 Fax: (03) 6232 1701
TTY: (03) 6232 1865
Email: tasreg@fedcourt.gov.au
Counter hours: 9.00am–4.30pm
Contact hours: 8.30am–5.00pm

Victoria District Registry

Level 7 Owen Dixon Commonwealth
Law Courts Building
305 William Street
Melbourne VIC 3000
Phone: (03) 8600 3333 Fax: (03) 8600 3281
TTY: (03) 9670 0320
Email: vicreg@fedcourt.gov.au
Counter hours: 9am–4.30pm
Contact hours: 8.30am–5.15pm

Western Australia District Registry

Level 6 Peter Durack Commonwealth
Law Courts Building
1 Victoria Avenue
Perth WA 6000
Phone: (08) 9268 7100 Fax: (08) 9221 3261
TTY: (08) 9325 7053
Email: waregistry@fedcourt.gov.au
Counter hours: 8.30am–4.00pm
Contact hours: 8.30am–5.15pm

Contact officer for Annual Report

Anna Pagel
Principal Registry
Phone: (02) 9230 8895 Fax: (02) 9223 1906

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

CONTENTS

1 OVERVIEW OF THE FEDERAL COURT OF AUSTRALIA

Establishment 2
Functions and powers 2
Objectives 2
The Court's outcome and output structure 2
Judges of the Court 3
Appointments and Retirements during 2007–08 7
Federal Court Registries 8

2 THE YEAR IN REVIEW

Significant issues and developments 12
The Court's performance 14

3 THE WORK OF THE COURT IN 2007–2008

Management of cases and deciding disputes 16
The Court's jurisdiction 16
Workload of the Federal Court and Federal Magistrates Court 19
The workload of the Court in its original jurisdiction 21
The Court's appellate jurisdiction 23
Managing migration appeals 25
The Court's native title jurisdiction 25
Assisted dispute resolution 28
Management of cases and deciding disputes by Tribunals 29
Improving access to the Court and contributing to the Australian legal system 29
Practice and procedure reforms 30
Community relations 33
Complaints about the Court's processes 35
Involvement in legal education programs and legal reform activities 35
Work with international jurisdictions 35

4 MANAGEMENT OF THE COURT

Federal Court Governance
Judges' committees 40
Corporate services 40
Financial management 40
Audit and risk management 41
External scrutiny 42
Purchasing 42
Consultants 42
Human resources 43
Occupational health and safety 47
Property management 49
Library and information services 51

APPENDICES

appendix 1 Financial statements 54
appendix 2 Management structure 88
appendix 3 Registrars of the Court 89
appendix 4 Statutes of the Court 92
appendix 5 Workload statistics 95
appendix 6 Work of tribunals 113
appendix 7 Summary of decisions of interest 117
appendix 8 Judges' participation in legal reform activities and international committees and conferences in 2007–08 140
appendix 9 Equal employment opportunity statistics 150
appendix 10 Expenditure on consultants 151
appendix 11 Statement under Section 8 of the *Freedom of Information Act 1982* 153
index 155
glossary 157

CHAPTER 1
Overview of Federal Court of Australia



1.1 ESTABLISHMENT

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

The Court is a superior court of record and a court of law and equity. It sits in all capital cities and elsewhere in Australia from time to time.

1.2 FUNCTIONS AND POWERS

The Court's original jurisdiction is conferred by over 150 statutes of the Parliament. A list of these Acts appears in Appendix 4 on page 92.

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 41.

This report uses the outcome and output structure to outline the Court's work and performance during 2007–08. Chapter 3 reports on these issues in detail.

1.5 JUDGES OF THE COURT

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. Most judges hold other commissions and appointments.

At 30 June 2008 there were 48 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 48 judges, there were four whose work as members of other courts or tribunals occupied all, or most, of their time.

Judges of the Court

(as at 30 June 2008)

Judge	Location	Other Commissions/Appointments
Chief Justice The Hon Michael Eric John BLACK AC	Melbourne	
The Hon Jeffrey Ernest John SPENDER	Brisbane	Industrial Relations Court of Australia – Judge Supreme Court of 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 Australian Law Reform Commission – Part-time Commissioner Supreme Court of Fiji – non-resident, semi-permanent Judge Supreme Court of the ACT – Additional Judge
The Hon Terence John HIGGINS AO	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	Civil and Commercial Court of Qatar – Judge Supreme Court of Fiji – non-resident, semi-permanent Judge
The Hon Paul Desmond FINN	Adelaide	
The Hon Ross Alan SUNDBERG	Melbourne	
The Hon Shane Raymond MARSHALL	Melbourne	Industrial Relations Court of Australia – Judge Supreme Court of the ACT – Additional Judge
The Hon Anthony Max NORTH	Melbourne	Industrial Relations Court of Australia – Judge Supreme Court of the ACT – Additional Judge
The Hon John Ronald MANSFIELD	Adelaide	
The Hon Alan Henry GOLDBERG AO	Melbourne	Australian Competition Tribunal – President
The Hon Arthur Robert EMMETT	Sydney	Copyright Tribunal – President
The Hon Raymond Antony FINKELSTEIN	Melbourne	Australian Competition Tribunal – Deputy President
The Hon Geoffrey Michael GIUDICE	Melbourne	Australian Industrial Relations Commission – President

Judge	Location	Other Commissions/Appointments
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 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 Margaret Ackary STONE	Sydney	Supreme Court of the ACT – Additional Judge
The Hon Garry Keith DOWNES AM	Sydney	Administrative Appeals Tribunal – President Supreme Court of Norfolk Island – Judge
The Hon Peter Michael JACOBSON	Sydney	Supreme Court of Norfolk Island – Judge
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 Supreme Court of South Australia – Auxiliary Judge Administrative Appeals Tribunal – Presidential Member
The Hon Antony Nicholas SIOPIS	Perth	Administrative Appeals Tribunal – Presidential Member
The Hon Richard Francis EDMONDS	Sydney	Supreme Court of the ACT – Additional Judge Administrative Appeals Tribunal – Presidential Member
The Hon Peter Ross GRAHAM	Sydney	Supreme Court of the ACT – Additional Judge
The Hon Andrew Peter GREENWOOD	Brisbane	Administrative Appeals Tribunal – Presidential Member
The Hon Steven David RARES	Sydney	Supreme Court of the ACT – Additional Judge

Judge	Location	Other Commissions/Appointments
The Hon Berna COLLIER	Brisbane	Australian Law Reform Commission – Part-time Commissioner
The Hon Dennis Antill COWDROY OAM	Sydney	Supreme Court of the ACT – Additional Judge
The Hon Anthony James BESANKO	Adelaide	Supreme Court of the ACT – Additional Judge
The Hon Christopher Neil JESSUP	Melbourne	
The Hon Richard Ross Sinclair TRACEY RFD	Melbourne	Judge Advocate General of the Australian Defence Force – Part-time
The Hon John Eric MIDDLETON	Melbourne	
The Hon Robert John BUCHANAN	Sydney	
The Hon John GILMOUR	Perth	
The Hon Michelle Marjorie GORDON	Melbourne	
The Hon John Alexander LOGAN RFD	Brisbane	
The Hon Geoffrey Alan FLICK	Sydney	
The Hon Neil Walter McKERRACHER	Perth	
The Hon John Edward REEVES	Darwin	

The Chief Justice was absent on the following dates during the year. Acting Chief Justice arrangements during these periods were as follows:

6 – 10 August 2007	The Hon Justice Spender
10 September – 8 October 2007	The Hon Justice Gray
6 – 8 November 2007	The Hon Justice Gray
20 – 25 November 2007	The Hon Justice Spender
6 – 18 May 2008	The Hon Justice Gray
19 May – 15 June 2008	The Hon Justice Spender
16 – 30 June 2008	The Hon Justice Gray

Most of the judges of the Court devote some time to other courts and tribunals on which they hold commissions or appointments. Judges of the Court also spend a lot of time on 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 2007–08

During the year four judges were appointed to the Court:

- **The Honourable Justice John Alexander Logan RFD** (resident in Brisbane) was appointed on 27 September 2007.
- **The Honourable Justice Geoffrey Alan Flick** (resident in Sydney) was appointed on 15 October 2007.
- **The Honourable Justice Neil Walter McKerracher** (resident in Perth) was appointed on 15 October 2007.
- **The Honourable Justice John Reeves** (resident in Darwin) was appointed on 19 November 2007.

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

- **The Honourable Justice Robert David Nicholson AO** retired upon reaching the compulsory retirement age for federal judges on 7 August 2007.
- **The Honourable Justice Richard Alan Conti** retired upon reaching the compulsory retirement age for federal judges on 19 August 2007.
- **The Honourable Justice Susan Mary Kiefel** resigned her commission as a judge of the Court on 3 September 2007.
- **The Honourable Justice Rodney Neville Madgwick** resigned his commission as a judge of the Court on 21 April 2008.
- **The Honourable Justice James Leslie Bain Allsop** resigned his commission as a judge of the Court on 2 June 2008.

Other appointments, resignations and retirements during the year included:

- **The Honourable Justice Higgins** was appointed an Officer in the Order of Australia on the Queen's Birthday 2008.
- **The Honourable Justice Kiefel** resigned her commission as a judge of the Supreme Court of Norfolk Island and her appointment as a part-time member of the Australian Law Reform Commission, with effect from 3 September 2007.
- **The Honourable Justice Madgwick** resigned his commissions as a judge of the Industrial Relations Court of Australia and Additional Judge of the Supreme Court of the Australian Capital Territory, with effect from 21 April 2008.
- **The Honourable Justice Emmett** was appointed President of the Copyright Tribunal of Australia for a period of three years, with effect from 11 October 2007.
- **The Honourable Justice Allsop** was appointed a Deputy President of the Copyright Tribunal of Australia for a three year period, with effect from 11 October 2007.
- **The Honourable Justice Allsop** resigned his commissions as an Additional Judge of the Supreme Court of the Australian Capital Territory and a Deputy President of the Australian Copyright Tribunal, with effect from 7 April 2008.
- **The Honourable Justice Downes AM** was appointed a judge of the Supreme Court of Norfolk Island, with effect from 10 April 2008.

- **The Honourable Justice Lander** was appointed an Auxiliary Judge of the Supreme Court of South Australia for the period 10 April 2008 to 9 April 2009.
- **The Honourable Justice Collier** was appointed a part-time member of the Australian Law Reform Commission for a three year period, with effect from 2 October 2007.
- **The Honourable Justice Tracey RFD** was appointed Judge Advocate General of the Australian Defence Force, on a part-time basis, with effect from 26 September 2007 until the expiration of 31 December 2008.

1.6 FEDERAL COURT 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, human resources, financial management, information technology 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 and the Defence Force Discipline Appeal Tribunal. The Queensland, South Australian 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, Federal Court Bankruptcy 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 89 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 2008 there were 422 staff employed under the Public Service Act. Generally, judges have two personal staff members. More details on Court staff are set out in Tables 4.2 to 4.4 in Chapter 4 on pages 44 to 46.

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. The Court's innovative approach to managing its work, and the way it operates as an organisation, brought continuing recognition of its leading role.

During 2007–08 the Court maintained its commitment to achieving performance goals for the Court's core work, while also developing and implementing a number of key strategic and operational projects. These are discussed separately below.

2.2 SIGNIFICANT ISSUES AND DEVELOPMENTS

eServices Strategy

MyFiles – the Commonwealth Courts Portal

A key element of the Court's eServices strategy is to ensure that the Court is relevant and responsive to the needs of the Australian community in the 21st century. The Court's eService initiatives involve the use of contemporary technology designed to improve efficiency and increase access to the Court's processes.

The Court has already made significant achievements in this area through the development and implementation of the Commonwealth Court's Portal (*MyFiles*) which was launched with the Family Court of Australia and the Federal Magistrates Court in June 2008. A number of other on-line services, including eSearch and eCourt, are available through the Court's internet site at www.fedcourt.gov.au.

During the year, the Court's has focussed on further improvements to its suite of integrated eServices, with the intention of delivering the following enhancements in 2008–09:

- increased hours of registry access through on-line availability of services;
- real time receipt and delivery of documentation and information between external clients and the Court;
- broader automation of case management processes;
- use of virtual hearings to replace physical court attendances, where appropriate;
- single point data entry 'at the source'; and
- reduction of error due to enforced data consistency.

The delivery of these improvements will realise the Court's strategy of fully integrating eServices into its core business. This will be achieved through *MyFiles*, which incorporates:

- eLodgment of documents;
- eSearching of Court files;
- eCourtroom – interactive collaborative forums for interlocutory proceedings;
- On-line Orders – parties can submit drafts and the judge can post final orders;
- Judgments – integrated links to judgments from within the registry file;
- eTranscript – integrated links to transcript from within the registry file; and
- eTrials (integration of the official court record with large scale collections of electronic evidence).

More detail on these initiatives is included in Chapter 4 of the report.

Case Management Strategies

During the year, the Court continued to actively pursue greater efficiency in its case management. The emphasis in this work has been to improve the overall management of litigation in the Court in order to resolve disputes as quickly, inexpensively and efficiently as possible.

As reported in 2006–07, the Victorian Registry of the Court launched a 'Fast Track List' in May 2007. The principal objective of the Fast Track List is to streamline court procedures in order to significantly reduce both the time and costs of litigation. The key elements of the List are the replacement of pleadings with a case summary, compulsory attendance at a scheduling conference held approximately six weeks after filing to identify the issues in dispute, dealing with most interlocutory applications on the papers, reducing the volume of discovery, closely monitoring trial times and, where possible, delivering judgment within six weeks. An extensive consultation program was undertaken with the legal profession, with Fast Track List presentations given to over 50 law firms.

The List continues to operate effectively. The average time to finalisation is four months and litigants costs have been substantially reduced. After a trial period of 12–18 months, and further consultation with judges and the profession, an assessment will be made about whether the List should be introduced nationally.

More generally, during the reporting year the Court's National Practice Committee oversaw a comprehensive examination of the legislative and procedural framework for the management of proceedings. This included hosting (with the Law Council of Australia) a two day Case Management Workshop in March 2008 which examined a range of issues associated with active case management, discovery and experts and expert evidence in proceedings before the Court. Discussions at the Workshop informed the preparation of the Notice to Practitioners and Litigants on Case Management and the Individual Docket System issued by the Chief Justice in May 2008 and the development of a paper on legislative reforms that will support active case management of civil proceedings before the Court.

The Court is also developing other procedures and protocols that will help strengthen the active case management of proceedings. These include the introduction of guidelines for the conduct of matters in particular areas of the Court's jurisdiction, such as taxation and intellectual property matters, and for the more effective use of technology in relation to pre-trial procedures (such as discovery) and hearings. Work will continue in relation to such matters as the early identification and refining of the real issues in dispute, the use of specialist panels and lists and the conduct of mega-litigation.

The Court has undertaken an extensive review of its Practice Note which deals with the use of technology in litigation. The new Practice Note will more clearly inform the parties and their representatives about the Court's expectations on how technology should be used in proceedings and recommends a framework or procedures and protocols for managing electronic documents in both the discovery process and in the conduct of electronic trials. The procedures and protocols are designed to help ensure that the use of technology contributes to the quick, inexpensive and efficient resolution of proceedings.

Court-annexed Mediation

A cornerstone of the Court's case management is its court-annexed mediation scheme which commenced in 1987. Under the scheme a judge of the Court makes an order that the parties attend mediation before a registrar, or someone agreed upon by the parties. This may happen with, or without, the consent of the parties. The mediation scheme assists case management as disputes can be settled without reference to a judge. Even where matters are not settled at mediation they proceed to trial with the issues in dispute more clearly defined. In the reporting year 375 matters were referred to mediation. This represents a 13% increase in the number of matters referred during 2006–07 and a higher than average referral rate based on an average yearly referral rate of 338 for the last five years.

During the reporting year, the Court has focussed on improving its mediation scheme to ensure that it meets the increasing demand for, and complexity of, mediation within the Court. On 29 January 2008 the Court adopted the Australian National Mediator Accreditation System. This means that the Court is a Recognised Mediator Accreditation Body for the purposes of the System and relevant staff undertook training to ensure that mediators meet the standards required for accreditation under the System. On 4 June, a Notice to Practitioners and Litigants was issued informing them of the changes to the Court's mediation services.

More details on the Court's mediation scheme, including mediation statistics are at pages 28 to 29 in Chapter 3.

2.3 THE COURT'S PERFORMANCE

Workload

During the year there were 4,579 actions commenced in the Court and 11,585 in the general federal law jurisdiction – the combined workload of the Federal Court and the Federal Magistrates Court. 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 filings in the Federal Magistrates Court and the original jurisdiction (ie not including appeals) of the Federal Court were 5,885, compared with 10,082 this year.

Migration appeals

Migration Act matters form a substantial and increasing proportion of the Court's appellate jurisdiction. In 2007–08, 67.9% of appeals and related actions concerned decisions under the Migration Act. This has increased from 56.4% in 2000–01. The Court has introduced a number of procedures to streamline the preparation and conduct of these appeals and applications, most of which are heard by a single judge rather than a Full Court. This is discussed in more detail in Chapter 3. 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.

Performance against time standards

The Court has two time goals for the performance of its work: 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 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 90.1% of cases in less than 18 months, compared with 92.2% in the previous year. As shown in Figure 5.5 in Appendix 5 on page 101, over the last four years the Court has consistently exceeded its benchmark of 85%.

Time goal 2: Judgments to be delivered within three months

The Court has a goal of delivering reserved judgments 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. During 2007–08 the Court handed down 2,347 judgments. While the Court's reporting system for these statistics is still being refined, initial data indicates that 94% of appeals (both full court and single judge) were delivered within three months and 83.6% of judgments at first instance were delivered within three months of the date of being reserved.

CHAPTER 3
The work of the Court in 2007–2008



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

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

As reported in previous annual reports, the Court fully implemented a new case management system, Casetrack, during 2004–05, which replaced the Court's existing FEDCAMS system. Casetrack records matters differently to FEDCAMS with matters in the Court classified according to eleven main categories, described as 'causes of action' (COA). FEDCAMS categorised according to the legislation a matter was filed under (more than 150 different pieces of legislation make up the Court's jurisdiction). The effect of the different counting method is that the Court's annual reports since 2004–05 have reported different figures for earlier years from those recorded in those years.

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 104 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 later in this Chapter on page 25.

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. Figure 5.13 on page 109 shows the taxation matters filed over the last five years.

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.

Figure 5.14 on page 110 shows the intellectual property matters filed over the last five years.

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 25. Figure 5.11 on page 107 shows native title matters filed over the last five years.

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 four arrests. See Figure 5.10 on page 106 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 103 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 102 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 23. Figure 5.15 on page 111 shows the appeals filed in the Court since 2003–04.

Workplace relations matters filed over the last five years are also included in Appendix 5 on page 108.

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 92.

Changes to the Court's jurisdiction in 2007–08

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

- *Corporations Amendment (Insolvency) Act 2007*
- *Cross-Border Insolvency Act 2008*
- *First Home Saver Account Act 2008*
- *National Greenhouse and Energy Reporting Act 2007*
- *National Health Security Act 2007*
- *Native Title Amendment (Technical Amendments) Act 2007*
- *Northern Territory National Emergency Response Act 2007*
- *Water Act 2007*

Amendments to the Federal Court of Australia Act

During the reporting year there were no amendments to the Federal Court of Australia Act. The Attorney-General's Department continues to consider 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;
- allow a single judge to make any interlocutory order in the appellate jurisdiction 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

During the reporting year there were no amendments to the Federal Court of Australia Regulations.

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:

- amend the rules in Order 14 dealing with the jurat in affidavits made by a deponent who is visually impaired;
- update Order 20 to clarify the rules for summary disposal and stay of proceedings in light of section 31A of the Federal Court of Australia Act;
- insert a new Order 46 rule 7AA and Schedule 3 to specifically enumerate the powers that a Registrar may exercise pursuant to a delegation under section 35A(1)(h) of the Federal Court of Australia Act;
- replace Order 52 rule 10A to allow a judge determining an appeal from the Federal Magistrates Court to have the same powers as the Full Court in relation to revoking or amending the grant of leave to appeal;
- amend Orders 52 and 53 to implement a new procedure for preparing appeal books, based on the concept of primary appeal papers and supplementary appeal papers;
- amend Order 62 rule 40B and insert new Order 62 rules 40C and 40D to provide for a short form bill of costs in migration appeals and clarify that the rule does not limit a party's right to make an application under Order 62 paragraph 4(2)(c) for an immediate lump sum costs order;
- amend Order 78 concerning the Native Title Rules consequential upon amendments to the *Native Title Act 1993* made by the *Native Title Amendment Act 2007* and *Native Title Amendment (Technical Amendments) Act 2007*; and
- amend the prescribed form of affidavit to require a table of contents where the affidavit is longer than 30 pages.

During the reporting year the judges also adopted amendment rules in relation to the *Federal Court (Corporations) Rules 2000* and the *Federal Court (Bankruptcy) Rules 2005*.

Practice Notes supplement the procedures set out in the Rules of Court. During the reporting year the Chief Justice issued the following practice notes:

- a revised Practice Note No 1 – Appeals to a Full Court
- a revised Practice Note No 19 – List of authorities and legislation – proceedings generally
- a new Practice Note No 27 – Gross sum costs under Order 62 paragraph 4(2)(c) Federal Court Rules.

In April 2008 the Chief Justice revoked Practice Note No 20 – Guidelines – Disclosure by insolvency practitioners of fees to be charged in light of the changes made to the *Corporations Act 2001* and *Federal Court (Corporations) Rules 2000* as a result of the *Corporations Amendment (Insolvency) Act 2007*.

In May 2008 the Chief Justice issued a revised Practice Direction – Guidelines for Expert Witnesses in Proceedings before the Federal Court. The revised Practice Direction addresses concerns that the previous version, expressly or impliedly, prevented a practitioner from using an expert to assist that practitioner to understand the field of expertise relevant to the issues in the proceeding and then calling that expert as a witness in the proceeding.

The Chief Justice also issued the following Notices to Practitioners and Litigants:

- Tax List Directions, which sets out revised arrangements for the management of tax cases to promote the just and efficient determination of tax disputes in a timely manner.
- Case Management and the Individual Docket System, which sets out a short, clear set of overarching purposes and principles concerning the conduct of litigation in the Court.

The Registrar issued Notices to Practitioners and Litigants in relation to the return of documents and things produced in response to a subpoena, and the use of accredited mediators 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.

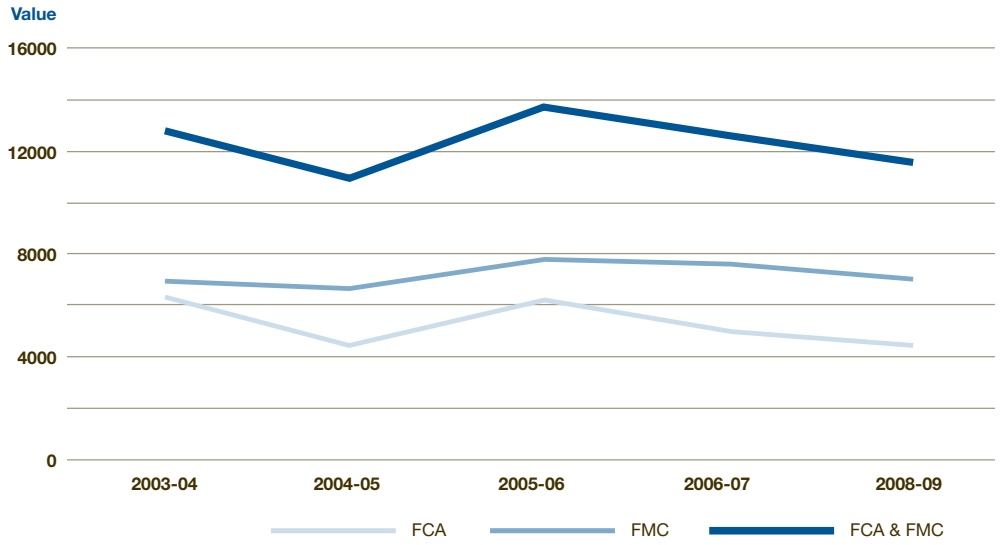
Workload of the Federal Court and Federal Magistrates Court

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 overleaf, the combined number of filings in the two courts has been growing since the establishment of the Federal Magistrates Court in mid-2000. In 2007–08, a total of 11,585 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 2008
Federal Court of 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 of quickly after commencement. The Court's practice and procedure facilitates early disposition when necessary.

During the five year period from 1 July 2003 to 30 June 2008, 90.6% of cases (excluding native title matters) were completed in less than 18 months, 84.8% in less than 12 months and 70.6% in less than six months (see Figure 5.4 on page 100). Figure 5.5 on page 101 shows the percentage of cases (excluding native title matters) completed within 18 months over the last five reporting years. The figure shows that in 2007–08, 90.1% of cases were completed within 18 months. This compares to 92.2% in 2006–07.

Special issues arise in relation to the disposition of native title matters. This is discussed on page 27.

Delivery of judgments

In the reporting period, 2,487 judgments were delivered. Of these, 232 were delivered in Full Court appeals and 1,177 in single judge appeals. There were 1,078 judgments in first instance 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.

Appendix 7 on page 117 includes a summary of decisions of interest published during the year and illustrates the Court's varied jurisdiction.

The workload of the Court in its original jurisdiction

Incoming work

In the reporting year, 4,579 cases were commenced in, or transferred to, the Court's original jurisdiction. See Table 5.1 on page 96.

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 2007–08, 24 matters were remitted or transferred to the Court:

- 15 from the Federal Magistrates Court
- 9 from the Supreme 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 2007–08, 54 matters were transferred from the Court:

- 49 to the Federal Magistrates Court
- 5 to other courts

Matters completed

Table 5.2 on page 97 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 3,278 against 3,808 in the previous reporting year.

Current matters

The total number of current matters in the Court's original jurisdiction at the end of the reporting year was 2,470 (see Table 5.2), compared with 2,672 in 2006–07.

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) at 30 June 2008 is set out in Table 3.1 below.

Native title matters are not included in Table 3.1 because of their complexity, the role of the National Native Title Tribunal and the need to acknowledge regional priorities. The age of pending native title matters is set out in Table 3.4 on page 27.

Table 3.1 – Age of current matters

(excluding appeals and related actions and native title matters)

Age at 30 June 2007	Under 6 months	6–12 months	12–18 months	18–24 months	Over 24 months	Sub–Total
Cause of Action						
Administrative Law	77	29	12	8	10	136
Admiralty	7	13	7	4	8	39
Bankruptcy	44	23	18	2	3	90
Competition Law	19	7	3	3	5	37
Trade Practices	66	58	27	41	51	243
Corporations	354	61	31	14	46	506
Human Rights	13	9	3	0	1	26
Workplace Relations	39	23	18	5	8	93
Intellectual Property	88	42	36	27	39	232
Migration	6	3	2	0	5	16
Miscellaneous	17	11	2	2	11	43
Taxation	50	141	86	43	149	469
Total	**780**	**420**	**245**	**149**	**336**	**1,930**
% of Total	40.4%	21.8%	12.7%	7.7%	17.4%	100.0%
Running Total	**780**	**1,200**	**1,445**	**1,594**	**1,930**	
Running %	40.4%	62.2%	74.9%	82.6%	100.0%	

Table 3.1 shows that as at 30 June 2008 there were 485 matters over 18 months old compared with 607 in 2007 (not including native title matters). 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 95.

The Court's 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.

In 2005, the *Migration Litigation Reform Act 2005* (Cth) (the Act) amended legislation affecting the Court's original and appellate jurisdiction. The Act provided 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, if a judge considers that it is appropriate for the appellate jurisdiction of the Court to be exercised by a Full Court, the appeal will be heard by a Full Court.

Subject to s25(1A), (1AA) and (5) of the Federal Court Act, appeals from the Federal Magistrates Court, and courts of summary jurisdiction exercising federal jurisdiction, may be heard by a Full Court of the Federal Court or by a single judge in certain circumstances. 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 appellate hearings adds to the workload of the Court. Thus judges who sit on appeals during the four scheduled Full Court sitting periods each year 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 appellate work may result in a proportionate reduction in the Court's ability to do trial work.

The Court monitors the effects on its workload of increases in the number of appeals 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 details of the four scheduled Full Court sitting periods to be held in February, May, August and November of the following year. Each sitting period is four weeks in duration. In the 2008 calendar year, Full Court sitting periods have been scheduled 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 sittings 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, 17 special hearings of the Full Court (totalling 19.5 hearing days) were held to enable the early disposition of urgent appeals.

The appellate workload

In 2007–08, 1,503 appeals and related actions were filed in the Court (see Table 5.3 on page 98). 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 and security for costs in relation to an appeal or a stay of an appeal.

The Federal Magistrates Court continues to be the most significant source of appeals and related actions accounting for 74.92% (1,126) of the total number of appeals and related actions filed in the Court in 2007–08. Further information on the source of appeals and related actions is set out in Figure 5.16 on page 112.

In the reporting year 1,635 appeals and related actions were completed including 1,124 appeals and related actions that were filed and finalised during the reporting year. This number is attributable to the large 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, 49 migration appeals and six non-migration appeals from the Federal Magistrates Court were fixed for hearing before a Full Court, comprising three judges.

At 30 June 2008 there were 407 pending appeals and related actions. The comparative age of matters pending in the Court's appellate jurisdiction (including native title appeals) at 30 June 2008 is set out in Table 3.2 below.

At 30 June 2008 there were 16 appeals and related actions over 18 months old – five of these involve associated appeals and related actions that arise out of the same or related proceedings at first instance and have been awaiting resolution of proceedings in a tribunal. Other matters involve ongoing settlement negotiations, a stay of proceedings or they are nearing resolution and finalisation. The age of these appeals and related actions generally reflects the nature and complexity of these cases.

Table 3.2 – Age of current appeals and related actions

Current Age	Less than 6 months	6–12 months	12–18 months	18–24 months	Over 24 months	Total
Appeals & Related Actions	318	61	12	7	9	407
% of total	78.13%	14.99%	2.95%	1.72%	2.21%	100.0%
Running total	**318**	**379**	**391**	**398**	**407**	
Running %	78.13%	93.12%	96.07%	97.79%	100%	

Managing migration appeals

Migration Act matters are a substantial proportion of the Court's appellate jurisdiction. In 2007-08, 67.86% (1,020) of appeals and related actions concerned decisions under the Migration Act. 22 migration appeals and related actions were from judgments of single judges of the Court exercising the Court's original jurisdiction and 998 migration appeals and related actions were from judgments of the Federal Magistrates Court. Table 3.3 below shows the number of appeals involving the Migration Act as a proportion of the Court's overall appellate workload since 2002–03. The Court continues to apply a number of procedures introduced to streamline the preparation and conduct of these appeals and applications, 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.

Initially, the Court applies systems to assist with identifying matters raising similar issues and where there is a history of previous litigation. This process allows for similar cases to be managed together resulting in more timely and efficient disposal of matters. Then, all migration appeals and related applications (whether to be heard by a single judge or by a Full Court) are listed for hearing in the next scheduled Full Court sitting period. Fixing appeals and applications for hearing in the four, four-week, scheduled Full Court sitting periods has, to date, 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, in accordance with local practice, or referred to a specially convened Full Court.

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

Appeals & Related Actions	2002–03	2003–04	2004–05	2005–06	2006–07	2007–08
Migration Jurisdiction	437	663	1,050	1,052	1,092	1,020
%	61.8%	73.4%	75.8%	78.9%	71.8%	67.86%
Total appeals & related actions	**707**	**903**	**1,385**	**1,334**	**1,520**	**1,503**

The Court's native title jurisdiction

The *Native Title Act 1993* (Cth) (NTA) confers jurisdiction on the Court to decide applications for the recognition of native title and various other proceedings in relation to native title. The original legislation enacted in 1993 provided for applications to be lodged with the National Native Title Tribunal (referred to as 'the Tribunal' below) and then be referred to the Court only in relation to particular questions of law or in the event that mediation failed to produce a result. The NTA was substantially amended in 1998.

The 1998 amendments substantially increased the Court's jurisdiction. In effect, all native title applications are filed in the Court and the Court has a wide range of powers under the Act in relation to the management and resolution of native title applications.

Further amendments to the NTA were made in 2007 through the *Native Title Amendment Act 2007*. These amendments were essentially designed to promote better communication and coordination and remove duplication of functions between the Court and the Tribunal. The Tribunal was recognised as having the primary role in mediating native title cases.

In general, the Court continues to adopt an active approach to the management of native title cases within the existing legislative framework, which aims to create and support a culture of activity and progress. The Court uses a range of strategies to assist with the management of native title cases. These are discussed below, as is the native title workload for the year and native title decisions of particular interest made during the year.

National allocation

In 2007 the Court instituted a revised approach to the national system of case allocation whereby cases upon filing are allocated to the relevant Native Title List Judge for a particular region. All matters in mediation are generally allocated to a Native Title List Judge who reviews them from time to time and receives reports from the Tribunal about the progress of mediation. Where the case requires closer case management or the hearing of a substantive issue, or where mediation has been terminated and the matter requires a hearing, it may be allocated to a trial judge to manage the matter through to hearing.

At 30 June 2008, 379 native title matters had been substantively allocated, of which 59 remain active and are managed by judges of the Court.

Case management strategies

As with other litigation in the Court, native title cases are subject to intensive case management and there is extensive judicial involvement in the supervision and monitoring of a case in progress. The Court encourages innovative approaches to settling a native title claim and uses a number of different mechanisms to progress matters, including:

- making orders requiring a high level of specificity in the timetabling of mediation;
- the use of case management and regional case management conferences;
- referral of a matter or specific issue to mediation by an officer of the Court if mediation in the Tribunal has ceased;
- the appointment of Court experts and/or the convening of conferences of experts;
- early evidence hearings to inform future mediation.

Case management conferences with the Tribunal and the parties to applications within a particular region may be arranged by the Court to identify cases that should proceed to trial with priority. Cases may be given priority if they can function as lead cases within a group of claims or for a region. By resolving legal or factual questions of general application, such matters may provide a basis for consent determinations or negotiated agreements in other matters within the region. As a general rule, a case will be allocated to a trial judge only once it is actively progressing towards trial.

Regional case conferences

The Court has developed a practice for the regional management of claims which allows claims from the same region in a State or Territory to be reviewed at the same time in the light of work plans and priorities proposed by the applicants, their representative body and the State or Territory Government.

Through convening regional case conferences, the judge or judges (sometimes sitting together) examine priorities and timeframes for mediation, negotiation and litigation on a regional basis, with 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 case-by-case basis. In support of this process the Tribunal produces regional reports so that the judge/s may order appropriate timetables if necessary.

This approach is used consistently and most effectively in Queensland, Western Australia and the Northern Territory and is now reflected to a lesser or greater degree in all States and Territories, with some variation in the approach taken.

Court-annexed Mediation

Cases in mediation will generally be managed by a Native Title List Judge assigned to a particular region. These judges are assisted by Native Title Registrars in each registry. The Native Title List Judge ensures that a specific and credible mediation timetable on a case specific/and or regional basis is prepared and complied with. The objective of the Native Title List Judge is to pursue the timely resolution of cases in mediation.

In the event that mediation before the Tribunal has ceased, a judge may consider various case management measures to assist in the progress of the case. These may include the appointment of an expert to assist the Court, the referral of a case to a form of assisted dispute resolution such as mediation or a compulsory conference of experts.

The native title workload

During the reporting year, the Court made nine determinations in respect of the existence of native title. One of these was made after contested hearings and eight were achieved through mediation and negotiation.

At 30 June 2008 there were 537 current native title cases. Table 3.4 below shows the age of these cases.

Table 3.4 – Age of current native title matters

Age at 30 June 2008	Under 6 months	6–12 months	12–18 months	18–24 months	Over 24 months	Total
Native Title Action	8	14	10	20	485	537
% of Total	1.5	2.6	1.9	3.7	90.3	100
Running Total	**8**	**22**	**32**	**52**	**537**	
Running %	1.5	4.1	5.9	9.6	100	

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 Casetrack. However, a large number of cases have been effectively closed as a result of being combined or consolidated with one or more cases, but remain open on Casetrack. 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 2008 there were, in practical terms, 499 active native title claimant applications of which the Tribunal is mediating 267. There were also nine compensation claims and 29 non–claimant applications.

Of the 499 active claimant applications before the Court, 464 have been notified. The notifications that occurred in 2007–08 resulted in the Court processing and finalising 135 joinder of party applications.

Figure 5.11 on page 107 provides more information on native title act filings.

Native title decisions of interest

During the reporting year, two Full Court appeal judgments were delivered:

- *Bennell and Ors v The State of Western Australia (Perth Metro portion of Single Noongar Claim #1) and*
- *Sebastian and Ors v The State of Western Australia (Rubibi)*

A summary of these decisions is included in Appendix 7 on page 138.

Assisted Dispute Resolution (ADR)

In 1987 the Court commenced its court-annexed mediation scheme. Under the scheme a judge of the Court makes an order that the parties attend mediation before a registrar, or someone agreed upon by the parties and then formally appointed by the District Registrar. Since amendment to the *Federal Court of Australia Act 1976* (Cth) in 1997, a matter may be referred to mediation with or without the consent of the parties.

Mediation by Court registrars is an important aspect of the Court's case management system, as disputes can be settled without reference to a judge. Even where matters are not settled at mediation they proceed to trial with the issues in dispute more clearly defined.

On 29 January 2008 the Court adopted the Australian National Mediator Accreditation System. The Court's objective in adopting the System is to develop the abilities and knowledge of registrars to ensure that they are well placed to provide mediation services to meet the increasing demand for, and complexity of, mediation within the Court.

The Court is a Recognised Mediator Accreditation Body for the purposes of the System. As an Accrediting Body the Federal Court will assume a number of roles including accrediting its registrar mediators, monitoring practice standards and providing and arranging access to continuing professional development. In May and June 2008 the Court undertook a training and assessment process to ensure that its registrar mediators meet the standards required for accreditation under the System.

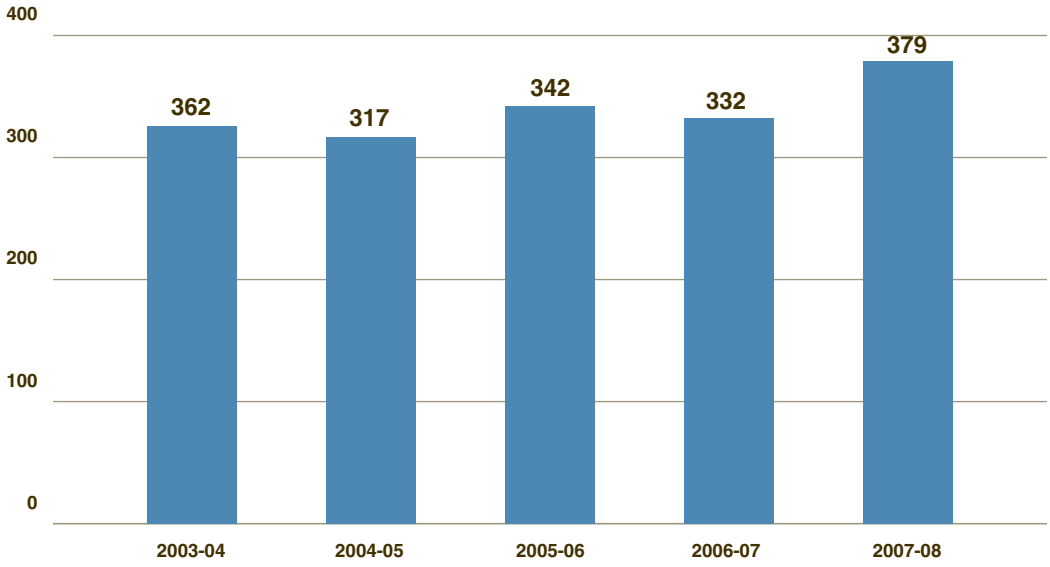
From 1 July 2008 the Federal Court will, unless there are exceptional circumstances, use registrars who are accredited mediators under the Australian National Mediator Accreditation System when the Court refers all or part of a matter to a registrar for mediation under section 53A of the *Federal Court of Australia Act 1976* (Cth). The Registrar issued a Notice to Practitioners and Litigants on 4 June 2008 informing them of the changes to the Court's mediation services.

Figure 3.2 on page 29 sets out the number of matters referred to mediators during the five years 2003–04 to 2007–08. Since its commencement in 1987 a total of 4,737 matters have been referred to mediation. In the reporting year 379 matters were referred to mediation. This represents a 13% increase in the number of matters referred from 2006–07 and a higher than average referral rate based on an average yearly referral rate of 338 for the last five years. During the reporting period there were 339 mediated outcomes.

The types of matters referred to mediation can relate to most matters in the Court's jurisdiction. However, the majority of referrals have been in matters concerning trade practices, intellectual property, taxation, workplace relations and bankruptcy.

The settlement rate of cases referred to mediation in the reporting year was 58%. This represents an increased average settlement rate which has averaged 55% since the commencement of the scheme in 1987. Settlement rates at mediation should not, however, be the sole criterion by which the program is evaluated. Many matters which do not settle proceed to trial with issues better defined, or on the basis of agreed facts settled by the parties with the assistance of the mediator. In some instances the parties agree that the Court should only be asked to determine liability or quantum resulting in significant savings to the parties and the Court.

Figure 3.2 – Assisted Dispute Resolution (ADR) 2002–03 to 2007–08
Matters referred for mediation



Management of cases and deciding disputes by Tribunals

The Court provides operational support to the Australian Competition Tribunal, the Copyright Tribunal and the Defence Force Discipline Appeal 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 113.

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 organisation of a workshop with the Law Council of Australia on case management in the Federal Court;
- the development of the Notice to Practitioners and Litigants concerning the management of taxation cases in the Court;
- the development of the Notice to Practitioners and Litigants – Case Management and the Individual Docket System;
- the development of a detailed submission to the Government on possible legislative changes to support active case management of civil proceedings before the Court;
- the continued examination of practical approaches to the early identification of issues and refining of disputes in proceedings;
- the allocation of work within the Court and the mechanisms for ensuring the timely disposition of matters;
- the use of technology in the management and conduct of cases;
- 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;
- the establishment by the High Court, Federal Court, Family Court and Federal Magistrates Court of the Joint Costs Advisory Committee to replace the Federal Costs Advisory Committee which was abolished by the federal Attorney-General in September 2007;
- the establishment of a secure electronic forum on which judges may exchange comments on case management and other issues;
- the development of a new protocol to assist judges, registry, lawyers, litigants and the media with the management of media requests for court documents;
- consideration of a proposal that the Court establish and maintain a public register of suppression orders made under section 50 of the Federal Court of Australia Act;
- a review of the Practice Note dealing with the list of authorities and legislation; and
- consideration of a proposal that the Court adopt a policy on the anonymisation of personal information that is recorded in transcripts and judgments.

Liaison with the Law Council of Australia

Members of the Committees 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 rules revision project;
- the Law Council's paper on case management issues and the organisation of a joint case management workshop;
- the Court's review of how party and party costs should be determined;
- abolition of the Federal Costs Advisory Committee; and
- electronic trials, discovery of electronic records and related issues.

In March 2008 the Court and the Law Council hosted a two day Case Management Workshop which examined a range of issues associated with active case management, discovery and experts and expert evidence in proceedings before the Court. The Workshop was attended by judges, registrars and legal practitioners from around Australia. Discussions at the Workshop have informed the preparation of the Notice to Practitioners and Litigants on Case Management and the Individual Docket System and the development of a submission on legislative reforms that will support active case management of civil proceedings before the Court.

Assistance for self represented litigants

The Court delivers a wide range of services to self represented litigants. These services have been developed to meet the needs of self represented litigants for information and assistance concerning the Court's practice and procedure. The Court is now able to extract some broad statistics about the number of self represented litigants appearing in the Court as applicants in a matter (respondents are not recorded). In the reporting year, 1,568 applicants were identified as self represented. The majority of these were applicants in Migration Act matters.

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. During the reporting year the Court's interpreter guidelines were amended to include information about access to interpreter services for the hearing impaired. 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 (see below).

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 increased 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, Housing, 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 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 86.

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.

Internet website

The website 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, and information for litigants and legal practitioners. It also provides access to electronic filing, eCourt online forum and eSearch for selected case information.

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 appeals, bankruptcy, native title and human rights cases; and information on the Court's use of mediation. These brochures are available from any of the Court's registries and are downloadable from the Court's website, www.fedcourt.gov.au.

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') site. A link to this site is provided on the Court's website. High profile judgments usually are 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 provided a range of assistance to journalists covering cases before the Court 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 2007–08 this included the following cases.

- *The Wilderness Society Inc v Minister for Environment*: the applicant sought judicial review of administrative decisions made by the first respondent. The decisions concerned the construction and operation of a pulp mill at Bell Bay, Tasmania. Justice Marshall's judgment summary was recorded and made available to all television outlets.
- *Australian Competition and Consumer Commission v Visy Industry Holdings*: Justice Heerey permitted pool television cover of his judgment that resulted in a $36 million dollar fine for the respondent.

- *Haneef v Minister for Immigration*: Chief Justice Black, on behalf of the Full Court, delivered a summary recorded by television. The decision, which upheld Justice Spender's decision to reinstate the work visa of Doctor Mohammed Haneef, received national and international coverage.
- *Blue Wedges Inc v Minister for the Environment, Heritage and the Arts*: Justice North's decision to dismiss a challenge to the Minister's decision to allow channel deepening in Victoria's Port Philip Bay was recorded for television and given widespread coverage.
- *State of Western Australian and others v Anthony Bennell and others*: Justice Finn, on behalf of the Full Court, allowed television coverage of an appeal judgment concerning a native title claim in the Perth area.
- *Lansen v Minister for Environment and Heritage*: Justice Mansfield permitted ABC television news to record a judgment summary. The applicants – seven native title claim groups – objected to the Minister's decision to allow a significant diversion of the McArthur River in the Northern Territory to facilitate mining operations.

A number of educational and training DVDs were also produced – one for witnesses involved in native title hearings and another based upon the reflections of experienced lawyers in 'on country' hearings. Some of these are available on the Court's website.

Community relations

The Court engages in a wide range of activities with the legal profession, including regular user group meetings, as well as seminars and workshops on issues of practice and procedure in general, and, in particular, areas of the Court's jurisdiction. The aim of user groups is to provide a forum for Court representatives and the legal profession to discuss existing and emerging issues, provide feedback to the Court and act as a reference group. The committees comprise representatives from the Federal Court, judges and staff, and practitioners. The Court also engages in a range of strategies to enhance public understanding of the Court and its work, and the Court's registries are involved in educational activities with schools and universities, and, on occasion, with community organisations which have an interest in the Court's work. The following highlights some of these activities during the year.

During April 2008, the Court held a program of nationwide seminars for the legal profession in all states and territories on two topical issues: *Current Issues and Developments in Corporate Insolvency Law and Practice* and on the *New Tax List Directions*. The new Directions were issued by the Chief Justice on 4 April 2008. In addition to these seminars, the registries undertook the following activities.

The NSW Registry gave a presentation to students from the College of Law on the Court's procedure. During the year, nine user group meetings were also held with practitioners on areas including corporations law, intellectual property, copyright, taxation, class actions and the Court's pro bono scheme. The Registry also hosted two school students undertaking work experience placements during the year.

The Victorian Registry held regular meetings of the Federal Court Users Committee and also established a Class Action Users' Group Committee. On 2 April 2008, 115 members of the profession attended the Registry's seminar on corporate insolvency and 78 members attended the taxation seminar. The Registry also held a forum on patents matters to seek feedback from the profession on proposals to review its practices and procedures in this area. The Forum was hosted by Justice Middleton, Convenor of the Court's Intellectual Property Panel. Fifty members of the profession attended the Forum.

On 26 September 2007, the Victorian District Registry held a seminar for the legal profession on *eServices and the eCourt Integration Project* to increase awareness of the Court's eServices initiatives. Following this seminar a number of eServices presentations have been given to various law firms. The Registry also continued its consultation with the legal profession on the Fast Track List which came into effect from 1 May 2007 in the Victorian Registry.

The Registry also engaged in a number of educational activities with various institutions. It hosted a number of Moot courts for the LaTrobe, Deakin and Monash Universities and the District Registrar gave two addresses at the Victorian Bar Readers Welcome during the year. In April 2008, registrars also attended the University of Melbourne as guest lecturers in the Juris Doctor subject *Litigation and Dispute Management*. Feedback from the course coordinators indicated that the presentation was warmly received and the Court will be asked to participate in the course again next year. In May 2008 there was also a presentation to the Leo Cussen Institute on a paper titled *Taxation of Costs – Ten Top Tips*.

The Victorian Registry hosted five work experience students.

The Queensland Registry hosted visits by students of the Legal Practice Courses of the Queensland University of Technology and Bond University. It also hosted visits by work experience students from two Brisbane high schools.

The West Australian Registry provided two comprehensive information sessions on Court and Registry processes for junior solicitors and paralegals. A handbook covering information provided during the session was provided on a CD. Information sessions and tours of Court facilities were also provided for various groups, including Summer Clerks and articled clerks. Training on the Court and courtroom etiquette was provided to members of the Australian Tax Office. Registry staff undertook a program of tours of other courts and tribunals in the CBD, and the Registry will be providing reciprocal tours to staff members of other courts and tribunals on request.

The Court hosted the International Maritime Arbitration Moot Court competition Grand Final, with Justice French chairing the adjudicating panel and the Grand Final of the Murdoch Student Law Society Trial Advocacy competition, adjudicated by Justice Gilmour. Justice Gilmour also adjudicated a demonstration moot at Murdoch University Law School. User group meetings were held with practitioners specialising in the admiralty jurisdiction. Justice French chaired an Intellectual Property Seminar organised by the Court.

The South Australian Registry conducted information sessions for practitioners on the following topics:

- Overview of Practice and Procedure (designed for newly admitted practitioners);
- Fact/Law Distinction: Appeals from the AAT; and
- Evaluating Expert Evidence – presented to the Council of Australasian Tribunals

The Registry also gave presentations to law firms and other agencies on the Court's eServices program. The Registry also held user groups meetings with the Bankruptcy User Group and Federal Court Liaison Committee.

The Registry ran Bar Readers courses on various topics during the year and hosted the University of Adelaide Jessup Mooting Team in January and June 2008 and another moot court for the Flinders Law School Students Association. The Registry also gave educational presentations on the work of the Court to secondary school children during Law Week and to various community groups.

In the ACT, in addition to the nationwide seminars, on 17 November 2007, the Registry also presented a program on the Court's eServices and the eCourt Integration Project.

In the Northern Territory, the Registry took part in the nationwide corporations and tax law seminars. In addition, on 19 April 2008 Justice Reeves addressed the Northern Territory Bar Association on the workings of the Court and on 26 May 2008 Justice Reeves also presented the opening address for Law Week's Hypothetical entitled *Indigenous Legal Issues in the Top End*. On 16 June 2008 Justice Reeves also presented an address on *Aspects of Damages* to the Australian Lawyers Alliance NT Seminar on 16 June 2008.

Complaints about the Court's processes

During the reporting year, 20 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 and university law schools; and
- participated in Bar reading courses, Law Society meetings and other public meetings.

An outline of the judges' work in this area is included in Appendix 8 on page 140.

3.4 WORK WITH INTERNATIONAL JURISDICTIONS

Introduction

Through its International Programs section, the Court provides development assistance to neighbouring judiciaries across the Asia-Pacific region. In 2007–08 the Court coordinated a number of assistance programs with judiciaries from the region and hosted a number of official visits to the Court by judicial and senior administrative staff from other countries.

Supreme Court of Indonesia

The Court has continued to work with the Supreme Court of Indonesia in programs facilitated through the Indonesian-Australian Legal Development Facility (IALDF) which is funded by the Australian Agency for International Development (AusAID). The two courts enjoy a strong working relationship and will reaffirm their commitment to collaborate and work together on judicial development activities in 2008 through signing a new Memorandum of Understanding. Under this Memorandum the Court will continue to provide technical advice and assistance in the Supreme Court's reform priority areas of case management and judicial transparency budgeting and, financial management, and leadership and change management.

Supreme People's Court of China

The Court has been collaborating with the Supreme People's Court of China in discussions about the interpretation of law and management of cases in several areas of common jurisdiction including maritime, intellectual property/competition and labour law. The final phase of this first year-long program will comprise a visit of a delegation of several judges of the Court to the Supreme People's Court later in 2008. The program is funded by the AusAID.

Supreme People's Court of Vietnam

The Court is working with the Supreme People's Court of Vietnam to revise and update its benchbook to incorporate important legislative changes made since the benchbook was launched in 2006. The project, which is funded by the AusAID, will also assist the Vietnamese judiciary to establish mechanisms to ensure the sustainability of the benchbook. Justice Moore and two international consultants are working with the Supreme People's Court to revise the benchbook and visited Vietnam in April 2008 to undertake the first of four missions over the two year project.

Pacific Judicial Development Programme

The Court is co-managing the implementation of the Pacific Judicial Development Programme, a five year, $10 million programme funded by the Australian and New Zealand Agencies for International Development. The Programme is designed to build governance and adherence to the rule of law across the region by working with Pacific jurisdictions to build the capacity of judicial and court officers and strengthen the systems and processes they use. The Programme provides support to Pacific jurisdictions in four key areas:

- Access to justice: including establishing court-annexed mediation, developing policies and procedures to better respond to the needs of women, children, victims and witnesses in family law related areas, and developing inter-agency groups to promote sectoral communication and coordination;
- Governance: including developing codes of judicial conduct, and building leadership skills and capacity including strategic planning;
- Court systems and administration: including improving court registry and data collection processes, and developing financial and human resource management systems; and
- Professional development: including the provision of training in criminal, civil, land and family law and procedure, decision-making and judgment writing, training trainers and developing/revising benchbooks.

Mediation in the Pacific

The Federal Court has continued its work with the Supreme Court of Tonga in the area of court-annexed mediation. Through funding from the AusAID, the Court has supported mediation training, a revision of the court rules and an awareness-raising campaign to promote mediation amongst the public and legal profession. The improvements in the management of cases within the Supreme Court have resulted in the Court being recognised by the World Bank as the world's top reforming court in the timeliness of contract enforcement.

The World Bank, through the International Finance Corporation, is also providing similar support to other jurisdictions in the Pacific and will work with the Court to harmonise the provision of support and to maximise the outcomes achievable through a collegial approach.

Asia Pacific Judicial Reform Forum

The Court is a member of the Secretariat of the Asia Pacific Judicial Reform Forum, which comprises of a network of superior courts and justice sector agencies from across 49 countries in the region. The Forum is currently developing a publication comprising the judicial reform experiences of several Forum countries in key areas of regional interest to assist member countries implement judicial reform programs. The publication will be finalised and launched in early 2009. The project is funded by the United Nations Democracy Fund and assisted by the United Nations Development Programme.

Visitors to the Court

The Court has facilitated visits from international delegations interested in learning about the role of the Federal Court and its systems and processes. In 2007–08, there were more than 95 visitors to the Court, including from:

- Beijing High People's Court, China
- Chinese Ministry of Justice
- Malaysian judiciary
- Supreme Court of Korea
- Guandong Provincial Judiciary, China
- Supreme Court of Vanuatu
- Supreme Court of Tonga
- Court of Appeal of Canada.

CHAPTER 4
Management of the Court



4.1 FEDERAL COURT GOVERNANCE

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.

In practice, the Court's governance involves two distinct structures: the management of the Court through its registry structure, and the judges' committee structure which facilitates the collegiate involvement of the judges of the Court. Judges also participate in the management of the Court through formal meetings of all judges. The registries and the judges' committees are discussed in more detail below.

Federal Court Registry management structure

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 88.

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 bi-annual judges' meetings.

During the reporting year the Court finalised a review of the committee structure and adopted a smaller number of committees organised along functional lines. An overarching National Practice Committee was established to provide advice on practice and procedure to the Chief Justice and judges. There are also a small number of standing committees that focus on specific issues within the framework of the Court's practice and procedure. An overarching Policy and Planning Committee provides advice to the Chief Justice on policy aspects of the administration of the Court. It is assisted by standing committees that focus on a number of specific issues in this area. In addition, other ad hoc committees and working parties are established from time to time to deal with particular issues. All of 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, which is made up of judges from each of the registries, as well as the Registrar, oversees the financial management of the Court. The Corporate Services Branch supports the Committee. During 2007–08 the Committee met on four occasions.

Financial accounts

The net operating result from ordinary activities for 2007–08 was an operating deficit of $3.351m. The operating deficit is a result of increases in salaries, a large downward revaluation of the Court's library assets, special IT projects including the eServices initiative and a reduction in the Court's revenue. Equity decreased from $40.228m in 2006–07 to $36.654m in 2007–08.

During 2007–08 revenues from ordinary activities totalled $104.448m. Total revenue, in the main, comprised:

- an appropriation from Government of $78.462m;
- $6.181m resources received free of charge, including for accommodation occupied by the Court in Sydney;
- $8.903m of liabilities assumed by other government agencies, representing the notional value of employer superannuation payments for the Court's judges; and
- $10.902m from the sale of goods and services. Included in this figure is $8.683m received from the Federal Magistrates Court for registry services provided by the Federal Court on behalf of the Federal Magistrates Court. These resources were previously provide free of charge, but in 2007–08 funding for registry services was transferred from the Federal Court to the Federal Magistrates Court. The Court now charges the Federal Magistrates Court for the provision of registry services on their behalf.

Total expenses of $107.799m in 2007–08 comprised: $56.463m in judges' and employees' salaries and related expenses, $28.748m in property related expenses, $18.568m in other administrative expenses, $3.182m in depreciation expenses and $0.838m downward revaluation of the Court's non-current assets.

The Court also received an equity injection of $0.102m in 2007–08 for anti-terrorism capital works.

The total price of the Court's outputs for 2007–08 is $104.448m as detailed in Table 4.1.

Table 4.1 – Outcome and output statement

		Budget 07–08 $'000	Actual 07–08 $'000
Output 1.1 Federal Court business	Revenue from Government (Appropriations)	78.278	78.462
	Total revenue from other sources	24.503	25.986
	Total price of departmental outputs	**102.781**	**104.448**

Audit and risk management

The Audit Committee met four times during 2007–08, including a special meeting to examine the Court's annual financial statements. The Committee usually comprises an independent chairperson, two judges, the Registrar, and the NSW District Registrar, however, the independent chairperson resigned from the committee early in the financial year and the chair has been temporarily filled by Justice Mansfield. The Court's Executive Director, Corporate Services and Chief Financial Officer and representatives from the internal audit service provider and the Australian National Audit Office (ANAO) attend committee meetings as observers.

The Audit Committee aims to enhance the Court's control framework, assist the Court to comply with legislative and other obligations, and improve the objectivity and reliability of externally published financial information.

The Court appointed new internal auditor providers, Deloitte Touche Tohmatsu, following a competitive tender process and an interview by the Audit Committee. The retiring internal auditors completed two internal audits during the year: a review of information technology and an audit of the Admiralty Marshal's function. Deloitte commenced a program of audit reviews during 2007–08, including a risk review as part of developing a new internal audit plan. The internal auditors also conducted an audit of the processes in relation to fees and litigants funds and are in the process of developing a new Fraud Control Plan.

Staff of the Australian National Audit Office inspected the Court's 2007–08 financial statements and provided an unqualified audit certificate.

The Chief Executive Officer is satisfied that:

- fraud control plans and fraud risk assessments have been prepared that comply with the Commonwealth Fraud Control Guidelines;
- appropriate fraud prevention, detection, investigation and reporting procedures and practices are in place; and
- that there have been no cases of fraud during 2007–08 to be reported to the Australian Institute of Criminology.

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 Court's procurement policies and procedures, expressed in the Court's Chief Executive Instructions, are based on the Commonwealth Procurement Guidelines and best practice guidance documents published by the Department of Finance and Deregulation. 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.

Consultants

During 2007–08, 14 new consultancy contracts were entered into involving total actual expenditure of $420,092, including GST. In addition, five ongoing consultancy contracts were active during the year, involving total actual expenditure of $137,083, including GST. Information on expenditure on contracts and consultancies is also available on the AusTender website www.tenders.gov.au. In 2007–08 there were no contracts or standing offers exempt by the Chief Executive from publication in the contract reporting section on AusTender.

Table 10.1 on page 151 provides more detailed information on consultancy service contracts entered into during 2007–08.

Competitive tendering and contracting

During 2007–08, there were no contracts let to the value of $100,000 or more for the delivery of activities previously performed by the Federal Court of Australia that did not provide for the Auditor General to have access to the contractor's premises.

Advertising and marketing services

A total of $139,183 was paid for recruitment advertising services throughout the reporting period.

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

Human resources

Workplace relations

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

Workplace bargaining

The Court's 2005–08 Certified Agreement continued to operate during the year, with negotiations for the Court's new 2008–10 Agreement undertaken during the first half of 2008. The new Agreement is an extension and variation of the Court's 2005 Agreement, as provided for under the *Workplace Relations Act 1996*, with new provisions including a number of environmental initiatives and 'family friendly' initiatives, including more generous parental and adoption leave. It is expected that the new agreement would be finalised and effective later in 2008.

Consistent with government policy, and subsequent legislative changes, the Court stopped offering Australian Workplace Agreements (AWAs) in December 2007, although the majority of the Court's SES (Senior Executive Service) staff and a number of non-SES staff currently remain on AWAs.

Since the beginning of 2008, the Court has relied on determinations under section 24 of the *Public Service Act 1999* and common law contracts for SES staff and other employment conditions not covered by the Court's Certified Agreement.

Staffing overview

At 30 June 2008 the Court employed 422 employees under the Public Service Act, comprising 237 ongoing full-time employees, 23 ongoing part-time employees and 162 non-ongoing employees. The high number of non-ongoing employees is due to the nature of the employment of judges' associates (who are generally employed for 12 months) and casual court officers. The Court had an average staffing level of 366.07 during the reporting period.

Tables 4.2 and 4.3 overleaf contain an overview of the Court's staffing by location at 30 June 2008 and details of the Court's SES staff. Table 4.4 outlines the Court's salary ranges by classification. Equal emloyment opportunity (EEO) statistics are at Appendix 9 on page 150.

Table 4.2 – Staffing overview by location

(actual occupancy at 30 June 2008 – 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	2	1	1	1	1	1				1	8
FCL2	6	6	5	3	1	2	1		1	2	27
FCL1	1	1	1	1		1		1		1	7
FCM2	13	2	2	1	1	2				1	22
FCM1	16		3	2	1	1		1		5	29
FCS6	11	26	17	7	5	6	1		2	3	78
FCS5	19	33	22	8	6	9	1	1	2	8	109
FCS4	4	4	8	1	7	5			2	3	34
FCS3	3	14	7	12		2	5	2			45
FCS2		26	14	6	4	5	1	2	1		59
FCS1		0	1								1
Total	**76**	**114**	**82**	**42**	**26**	**34**	**9**	**7**	**8**	**24**	**422**

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 2008 – 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
eServices Manager	Louise Anderson	Senior Executive Band 1
National		
National Native Title Registrar	June Eaton (Acting)	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	Daniel Caporale	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
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 2008)

Court Designation	Australian Public Service (APS) Classification	Salary
Clerical Administrative Positions		
Federal Court Staff Level 1	APS Level 1	$35,412
		$39,135
Federal Court Staff Level 2	APS Level 2	$40,076
		$44,440
Federal Court Staff Level 3	APS Level 3	$45,647
		$49,266
Federal Court Staff Level 4	APS Level 4	$50,878
		$55,240
Federal Court Staff Level 5	APS Level 5	$56,746
		$60,171
Federal Court Staff Level 6	APS Level 6	$61,288
		$70,403
Federal Court Manager Level 1	Executive Level 1	$78,444
		$84,718
Federal Court Manager Level 2	Executive Level 2	$90,433
		$102,549
		$105,983
Legal Positions		
Federal Court Legal 1	From APS Level 3	$51,250
	To Executive Level 1	$99,629
Federal Court Legal 2	Executive Level 2	$115,418
		$119,940
Senior Executive Positions		
Senior Executive Service Band 1	SES Band 1	$149,865
Senior Executive Service Band 2	SES Band 2	$193,223

Performance management

The Court's performance management program continued to operate effectively through the reporting period. The program will be reviewed in 2008–09, in consultation with the Court's National Consultative Committee.

Performance pay

There were no performance pay arrangements in 2007–08.

Training and development

During the year the Court's National Training Unit and National Training Network finalised the second stage of the Court's National Training Program. A National Certificate Ceremony was held in February 2008 to present awards to staff who had completed all four sessions of the program. This event was planned to coincide with the Court's Foundation Day.

Other areas of national focus of the training program were:

- A leadership program, 'Leading Change', which was delivered for senior management in July 2007.
- An information package and program about the Federal Court was designed. The program, for school students, was piloted with a group of students in September 2007. The package has been circulated to all registries for local delivery.

More generally, training was carefully targeted towards the development of essential core skills and the Court spent $269,188 on external training during the period.

The Court's Studybank policy also continued to operate and provided staff with leave and financial assistance to pursue approved tertiary studies. During the reporting period $35,405 was reimbursed to staff undertaking studies under the policy.

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 within the Court. The Court entered into a new Occupational Health and Safety Agreement during the reporting period.

Information sessions were also arranged for all members of the Court's national Occupational Health and Safety (OHS) Committee on the recent significant amendments to the Occupational Health and Safety Act and the Safety, Rehabilitation and Compensation Act.

The program of optional annual health checks and flu shots for all staff, provided for in the Certified Agreement, was again conducted with around 35% of all staff taking advantage of the free health checks and immunisations. The Court continued to provide staff with funds to purchase annual gym memberships under the Court's health and fitness arrangements which are repaid over a 12 month period. All registries are encouraged to develop their own health and fitness initiatives in consultation with their staff.

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 53 working weeks were lost due to work related injuries compared to 56 weeks for the previous reporting period. One staff member was absent for the whole reporting period. The Court's Comcare premium reduced significantly to 0.72% of the wages and salary bill down from 1.12% in the previous year.

The Commonwealth Rehabilitation Services (CRS) continued to provide free, confidential counselling services to all staff of the Court.

The Court will be developing a new Health and Safety Management Agreement in consultation with the National Consultative Committee, with the aim of implementation before the end of September 2008.

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 Indigenous Research Assistant Program employed one assistant during the year. The program commenced in 2001 and has attracted a steady response to subsequent programs. Participants, and those in the Court associated with the program, report that considerable benefits are derived from the program.
- The Court's Victorian Registry offered a four month internship to an overseas law student.

In addition, the Court's new Certified Agreement contains a range of family-friendly initiatives including improved parental and adoption leave and homework rooms for school aged children of staff in registries (which will be provided where practicable).

Commonwealth Disability Strategy

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

- The Court's orientation and induction programs continued to reinforce the Court's commitment to the principles of workplace diversity, a harassment-free workplace and reasonable adjustment. The focus of these programs is on both the Court's own staff and its clients. For instance, training focuses on understanding and meeting the needs of a diverse range of clients, including unrepresented litigants.
- The Court national staff networks, such as the Client Services Network, continued to focus on meeting the needs of all clients, including those with disabilities and other special needs. To this end a draft Court Officer manual has been developed which will be launched in 2008–09.
- The Court's Staff Induction Program addresses issues such as client service and access and equity with a view to raising the awareness of staff of the need to be flexible and understanding in meeting the needs of all Court users.
- The Court continued to implement initiatives from its Workplace Diversity Plan, the aim of which is to accommodate the personal circumstances of all staff as far as this is practicable, including staff with disabilities. This principle is carried through into the Court's Certified Agreement and human resource policies.
- The Court's OHS Committee has developed and implemented a check-list to ensure the physical needs of all staff and clients are being met, for example, that thoroughfares are kept clear and fire drills take into account the physical needs of all staff and clients.
- The Court's recruitment and selection practices continue to provide information to prospective applicants via as many means as practicable, including a TTY phone (telephone-typewriter) for the hearing impaired. During the reporting period the Court received no requests for information in alternative formats.
- An informal program for the employment of lawyers with a disability commenced during the year with appointments in both the Court's Victorian and Queensland registries.

The Court is committed to ensuring that its facilities are accessible to all members of the community and that people with a disability do not face access problems in their contact with the Court. Building works on existing and proposed buildings continue to take into account the needs of people with disabilities. Examples include:

- ensuring any new enquiry counters are appropriately designed for use by people in wheelchairs;
- ensuring integrated hearing assistance systems have been installed in courtrooms for those with hearing difficulties;
- ensuring signage is appropriate; and
- continuing improvements to access and facilities as buildings are refurbished and updated.

The upgrade of the Court's accommodation in Sydney (outlined below) provides an opportunity to improve facilities for the disabled at the Court's busiest location. The completed building will include the latest features including ramps, lifts, signage and audio systems.

Property management

The Court's facilities are located in Commonwealth–owned buildings in Adelaide, Brisbane, Canberra, Melbourne, Hobart and Perth. The Court occupies premises 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 the management of the Commonwealth–owned buildings through the 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 the following.

- Work commenced on the upgrading of Court 1 in Hobart. This project was near completion by year end.
- The first stage of a major upgrade of the Court's facilities in Perth commenced, with the judicial conference room receiving the first upgrade since the building was occupied in the 1980s.
- In Sydney, work continued on the upgrade of the Queens Square building, with works commencing on two floors occupied by the Court. This necessitated leasing additional temporary court, judicial and public facilities in the Australia Industrial Registry's premises at nearby 80 William St. The Queens Square project is managed by the building owner, Law Courts Limited, however the Court is heavily involved with the design and construction team to ensure the new facilities meet the Court's requirements.
- In Brisbane, a design study of existing facilities has highlighted opportunities to upgrade courtrooms and other facilities. Further planning will be undertaken in 2008–09.
- In Melbourne, planning for new mediation facilities was completed and a contract for these works is expected to be let early in 2008–09.

Security

A program has been underway throughout the year to ensure the appropriate storage and handing of classified material, including material which may be brought before the Court in matters where the *National Security Information (Criminal and Civil Proceedings) Act 2004* has been invoked.

The Court has also continued to prepare for the introduction of the criminal jurisdiction in cartel matters, including developing appropriate jury management processes.

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 under the Kyoto Protocol; and
- Environmental Management Systems are being implemented in all buildings, which focus on further reducing energy consumption, water and waste.

Technology services

Printer replacement

During the year, there was considerable planning for a survey to determine the Court's requirements for printing equipment. It is proposed that printers will be replaced over the next two years.

Email migration

During the year the Court migrated its email system from GroupWise to Microsoft Exchange and phased out the Novell platform. The migration will provide a more stable platform for the Court to provide Microsoft based smart phones during 2008–09.

Network connectivity

The Court has progressively increased the bandwidth on all the major network links in order to ensure that the Wide Area Network (WAN) has the status required to support the Court's electronic services provided via the Internet. During the year, network connections were also provided to three new Sydney sites.

Case management system – Casetrack

The Court has continued to make enhancements to improve the functionality and usability of the system for staff across the Court.

eServices strategy

In addition to the information provided in Chapter 2 of the report, the following outlines the progress during the year on the various components of the Court's eServices Strategy.

eSearch

The Court implemented eSearch in 2002, allowing external and internal users to access limited case related information drawn from Casetrack, including orders and listing dates. Approximately 16,000 'eSearches' are executed in federal law matters each month, 75% of these being by external users. eSearch became available via the Commonwealth Courts Portal in April 2008.

eCourtroom

In May 2007 the Court introduced eCourtroom to replace the eCourt Forum, the virtual courtroom that assists in the management of pre-trial matters by allowing directions and other orders to be made online by the judge hearing the case.

The eCourtroom includes the ability to post a single hearing entry to multiple linked cases and advanced search functions and reporting facilities. There is also a service for judges' staff to communicate with practitioners on case management issues. It also includes a feature which allows the public to view matters that have been managed using eCourtroom, as well as an electronic record of all relevant messages posted by the presiding judge and parties. An online tutorial is available.

eCourtroom is currently an independent application, which will, in accordance with the eServices Strategy, be integrated with Casetrack and accessible via the Portal.

eFiling

The Court's eFiling facility enables Court users to file documents electronically through the Court's website. The number of firms and practitioners using eFiling continues to increase. During the year the total number of documents filed increased significantly, by nearly doubling from 7,427 in 2006–07 to 14,906 in 2007–08. Average monthly electronic filings this year were 1,242.

eLodgment

eLodgment is scheduled to replace eFiling in the first quarter of 2009 which will enable the lodgement of documents, associated supporting information and fee payments by legal practitioners to be seamlessly uploaded directly into the Court's case management system and any other relevant court applications.

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 and Perth, library access is also available to the legal profession and self represented litigants. The Judges' Library Committee oversees the provision of library and information services. During 2007–08, the key projects of the work undertaken in this area are as follows.

- The Court joined the NSW Attorney General's purchasing consortium for online services to enable a wider range of electronic legal publications to be accessible to judges in a cost effective manner.
- Library services provided to judges and magistrates of the Federal Court, Family Court and Federal Magistrates Court in the Adelaide registry have now been merged. Work has begun on a plan to co-locate library services in the Melbourne Registry.
- The Court's intranet has been further enhanced with the development of new web services including a courtroom booking module and panel allocation tool for assigning new cases to judges.
- Further revisions were made to the judgment template to enhance consistency and access, and the comprehensive Judgment Style Guide was added to the intranet with its own customised search.
- The Court continued to work with National Archives of Australia to transfer material donated by judges and to complete a Records Authority for case management, which will determine which files are retained by the Court and which are transferred to Archives.

APPENDICES


figures
statistics
financial statements
time spans
performance
accountability

APPENDIX 1 – Financial Statements

Australian National Audit Office

INDEPENDENT AUDITOR'S REPORT

To the Attorney-General

Scope

We have audited the accompanying financial statements of the Federal Court of Australia for the year ended 30 June 2008. The financial statements comprise: a Statement by the Registrar and Chief Finance Officer; Income Statement; Balance Sheet; Statement of Changes in Equity; Cash Flow Statement; Schedules of Commitments, Contingencies and Administered Items; and Notes to and Forming Part of the Financial Statements.

The Responsibility of the Registrar for the Financial Statements

The Federal Court of Australia's Registrar is responsible for the preparation and fair presentation of the financial statements in accordance with Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, and Australian Accounting Standards including Australian Accounting Interpretations. This responsibility includes establishing and maintaining internal controls relevant to the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor's Responsibility

My responsibility is to express an opinion on the financial statements based on our audit. Our audit has been conducted in accordance with Australian National Audit Office Auditing Standards, which incorporate Australian Auditing Standards. The Auditing Standards require that we comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Federal Court of Australia's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Federal Court of Australia's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Registrar, as well as evaluating the overall presentation of the financial statements.

PO Box A456 Sydney South NSW 1235
130 Elizabeth Street
SYDNEY NSW
Phone (02) 9367 7100 Fax (02) 9367 7102

I believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Independence

In conducting the audit, we have followed the independence requirements of the Australian National Audit Office, which incorporate the requirements of the Australian accounting profession.

Auditor's Opinion

In my opinion, the financial statements of the Federal Court of Australia:

(a) have been prepared in accordance with Finance Minister's Orders made under the *Financial Management and Accountability Act 1997,* and Australian Accounting Standards; and

(b) give a true and fair view of the matters required by the Finance Minister's Orders including the Federal Court of Australia's financial position as at 30 June 2008 and of its financial performance and cash flows for the year then ended.

Australian National Audit Office



P Hinchey
Senior Director
Delegate of the Auditor-General

Sydney
5 September 2008

FEDERAL COURT OF AUSTRALIA

STATEMENT BY THE REGISTRAR AND CHIEF FINANCE OFFICER

In our opinion, the attached financial statements for the year ended 30 June 2008 are based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, as amended.



Signed .....

Warwick Soden
Registrar and Chief Executive Officer

5 September 2008



Signed .....

Peter Bowen
Chief Finance Officer

5 September 2008

FEDERAL COURT OF AUSTRALIA

INCOME STATEMENT

for the period ended 30 June 2008

	Notes	2008 $'000	2007 $'000
INCOME			
Revenue			
Revenue from government	2A	**78,462**	85,333
Sale of goods and rendering of services	2B	**10,902**	1,898
Interest	2C	**-**	16
Total revenue		**89,364**	87,247
Gains			
Sale of assets	2D	**-**	4
Other gains	2E	**15,084**	14,351
Total gains		**15,084**	14,355
Total Income		**104,448**	101,602
EXPENSES			
Judge benefits	3A	**26,196**	25,203
Employee benefits	3A	**30,267**	28,341
Suppliers	3B	**47,250**	44,518
Depreciation and amortisation	3C	**3,182**	2,989
Finance costs	3D	**52**	69
Loss on sale of assets	2D	**14**	-
Write-down and impairment of assets	3E	**838**	25
Total Expenses		**107,799**	101,145
Surplus (Deficit) attributable to the Australian Government		**(3,351)**	457

FEDERAL COURT OF AUSTRALIA

BALANCE SHEET

as at 30 June 2008

	Notes	2008 $'000	2007 $'000
ASSETS			
Financial Assets			
Cash	4A	**3,330**	516
Trade and other receivables	4B	**31,975**	37,534
Total financial assets		**35,305**	38,050
Non-Financial Assets			
Land and buildings	5A	**8,208**	7,420
Infrastructure, plant and equipment	5B	**9,432**	10,495
Intangibles	5C	**842**	432
Other non-financial assets	5E	**1,763**	2,183
Total non-financial assets		**20,245**	20,530
Total Assets		**55,550**	58,580
LIABILITIES			
Payables			
Suppliers	6	**1,122**	508
Total payables		**1,122**	508
Interest Bearing Liabilities			
Leases	7	**633**	986
Total interest bearing liabilities		**633**	986
Provisions			
Judges and employee provisions	8	**17,141**	16,858
Total provisions		**17,141**	16,858
Total Liabilities		**18,896**	18,352
Net Assets		**36,654**	40,228
EQUITY			
Contributed equity		**9,719**	9,617
Reserves		**1,289**	1,614
Retained surplus		**25,646**	28,997
Total Equity		**36,654**	40,228
Current Assets		**37,068**	40,234
Non-Current Assets		**18,482**	18,346
Current Liabilities		**17,125**	16,835
Non-Current Liabilities		**1,771**	1,517

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

FEDERAL COURT OF AUSTRALIA

STATEMENT of CHANGES in EQUITY

for the period ended 30 June 2008

	Retained Earnings		Asset Revaluation Reserves		Contributed Equity/Capital		Total Equity	
	2008	2007	**2008**	2007	**2008**	2007	**2008**	2007
	$'000	$'000	**$'000**	$'000	**$'000**	$'000	**$'000**	$'000
Opening balance	**28,997**	28,540	**1,614**	1,614	**9,617**	7,914	**40,228**	38,068
Income and expense								
Revaluation adjustment	**-**	-	**(325)**	-	**-**	-	**(325)**	-
Sub-total income and expenses recognised Directly in Equity	**28,997**	28,540	**1,289**	1,614	**9,617**	7,914	**39,903**	38,068
Surplus (Deficit) for period	**(3,351)**	457	**-**	-	**-**	-	**(3,351)**	457
Total income and expenses	**25,646**	28,997	**1,289**	1,614	**9,617**	7,914	**36,552**	38,525
Transactions with owners								
Appropriation (equity injection)	**-**	-	**-**	-	**102**	1,703	**102**	1,703
Closing balance at 30 June	**25,646**	28,997	**1,289**	1,614	**9,719**	9,617	**36,654**	40,228

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

FEDERAL COURT OF AUSTRALIA

CASH FLOW STATEMENT

for the period ended 30 June 2008

	Notes	2008 $'000	2007 $'000
OPERATING ACTIVITIES			
Cash received			
Goods and services		**10,501**	1,916
Appropriations		**83,733**	81,630
Refunds credited		**131**	4,416
Net GST received		**212**	36
Total cash received		**94,577**	87,998
Cash used			
Judges and employees		**47,371**	44,937
Suppliers		**40,274**	40,141
Borrowing costs		**52**	69
Total cash used		**87,697**	85,147
Net cash from or (used by) operating activities	9	**6,880**	2,851
INVESTING ACTIVITIES			
Cash received			
Proceeds from sales of property, plant and equipment		**19**	6
Total cash received		**19**	6
Cash used			
Purchase of property, plant and equipment		**3,708**	2,858
Purchase of intangibles		**367**	64
Total cash used		**4,075**	2,922
Net cash flows from or (used by) investing activities		**(4,506)**	(2,916)
FINANCING ACTIVITIES			
Cash received			
Appropriations – contributed equity		**601**	233
Total cash received		**601**	233
Cash Used			
Payment of finance lease liabilities		**611**	-
Total cash used		**611**	-
Net cash from or (used by) financing activities		**(10)**	233
Net increase or (decrease) in cash held		**2,814**	168
Cash at the beginning of the reporting period		**516**	348
Cash at the end of the reporting period	4A	**3,330**	516

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

FEDERAL COURT OF AUSTRALIA

SCHEDULE OF COMMITMENTS

as at 30 June 2008

	2008 $'000	2007 $'000
BY TYPE		
Capital commitments		
Infrastructure, plant and equipment[1]	**608**	621
Total capital commitments	**608**	621
Other commitments		
Operating leases[2]	**176,397**	176,519
Other[3]	**887**	7,844
Total other commitments	**177,284**	184,363
Commitments receivable	**(16,875)**	(16,817)
Net commitments by type	**161,017**	168,167
BY MATURITY		
Capital commitments		
One year or less	**608**	621
Total capital commitments	**608**	621
Operating lease commitments		
One year or less	**16,608**	20,379
From one to five years	**67,605**	70,796
Over five years	**92,184**	93,188
Total operating lease commitments	**176,397**	184,363
Commitments receivable	**(16,875)**	(16,817)
Net Commitments by Maturity	**161,017**	168,167

NB: Commitments are GST inclusive where relevant.

Nature of leases/General description

1. Plant and equipment commitments are primarily contracts for the purchase of furniture and fittings.

2. Operating leases included are effectively non-cancellable and comprise:

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.

Agreements for the 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. These vehicles are leased under individual operating leases.

3. Other commitments - The Court has entered into commitments for the provision of information technology and library goods and services.

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

FEDERAL COURT OF AUSTRALIA

SCHEDULE OF CONTINGENCIES

as at 30 June 2008

There were no contingent losses or gains as at 30 June 2008 (2007 nil).

FEDERAL COURT OF AUSTRALIA

SCHEDULE OF ADMINISTERED ITEMS

	Notes	2008 $'000	2007 $'000
Income administered on behalf of Government			
for the period ended 30 June 2008			
Revenue			
Fees (filing and hearing fees)	14	**6,592**	6,372
Fines	14	**568**	47
Other	14	**113**	105
Total revenue administered on behalf of Government		**7,273**	6,524
Expenses administered on behalf of Government			
for the period ended 30 June 2008			
Refund of fees and fines	15	**145**	87
Fees and fines – provision for doubtful debts	15	**-**	66
Total expenses administered on behalf of Government		**145**	153
Assets administered on behalf of Government			
as at 30 June 2008			
Financial assets			
Cash and cash equivalents	16A	**45**	38
Receivables	16B	**297**	326
Total assets administered on behalf of Government		**342**	364

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

FEDERAL COURT OF AUSTRALIA

SCHEDULE OF ADMINISTERED ITEMS (Continued)

	Notes	2008 $'000	2007 $'000
Administered cash flows			
for the period ended 30 June 2008			
OPERATING ACTIVITIES			
Cash received			
Fees and Fines		**7,188**	6,399
Other		**113**	105
Total cash received		**7,301**	6,504
Cash used			
Refund of court fees and fines		**(144)**	(87)
Total cash used		**(144)**	(87)
Net cash flows from or (used by) operating activities		**7,157**	6,417
Net Increase (Decrease) in cash held		**7,157**	6,417
Cash at the beginning of the reporting period		**38**	19
Cash from Official Public Account for:			
- Appropriations		**145**	90
		145	90
Cash to Official Public Account		**(7,296)**	(6,488)
		(7,296)	(6,488)
Cash at the end of the reporting period	16A	**44**	38

Administered commitments
as at 30 June 2008

There were no Administered commitments as at 30 June 2008. (2007: nil)

Administered Contingencies
as at 30 June 2008

There were no Administered contingent losses or gains as at 30 June 2008. (2007: nil)

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

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

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

FEDERAL COURT OF AUSTRALIA

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:

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.

The Court's activities contributing toward this outcome are classified as either departmental or administered. Departmental activities involve the use of assets, liabilities, revenue and expenses controlled or incurred by the Court in its own right. Administered activities involve the management or oversight by the Court, on behalf of the Government, of items controlled or incurred by the Government.

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

The financial statements and notes have been prepared in accordance with:

- Finance Minister's Orders (or FMOs, for reporting periods ending on or after 1 July 2007); and
- Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial statements 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 statements are presented in Australian dollars and values are rounded to the nearest thousand dollars unless otherwise specified.

Unless alternative treatment is specifically required by an Accounting Standard or the FMOs, assets and liabilities are recognised in the balance sheet when and only when it is probable that future economic benefits will flow to the Court and the amounts of assets or liabilities can be reliably measured. However, 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 departmental items.

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

Adoption of new Australian Accounting Standard requirements

No accounting standard has been adopted earlier than the application date as stated in the standards. The following new standards are applicable to the current reporting period:

Financial instrument disclosure

AASB 7 Financial Instruments: Disclosure is effective for reporting periods beginning on or after 1 January 2007 (the 2007-08 financial year) and amends the disclosure requirements for financial instruments. In general, AASB 7 requires greater disclosure than that previously required. Associated with the introduction of AASB 7 a number of accounting standards were amended to reference the new standard or remove the present disclosure requirements through 2005-10 Amendments to Australian Accounting Standards [AASB 133, AASB 139, AASB 1, AASB 4, AASB 1023 & AASB 1038]. These changes have no financial impact but will affect the disclosure presented in future financial reports.

The following new standards, amendments to standards or interpretations for the current financial year have no material financial impact on the Court.

> 2007-4 *Amendments to Australian Accounting Standards arising from ED 151 and Other Amendments and Erratum: Proportionate Consolidation*
>
> 2007-7 *Amendments to Australian Accounting Standards*
>
> UIG Interpretation 11 AASB 2 – *Group and Treasury Share Transactions and 2007-1 Amendments to Australian Accounting Standards arising from AASB Interpretation 11*

Future Australian Accounting Standard requirements

The following new standards, amendments to standards or interpretations have been issued by the Australian Accounting Standards Board but are effective for future reporting periods. It is estimated that the impact of adopting these pronouncements when effective will have no material financial impact on future reporting periods.

> AASB Interpretation 12 *Service Concession Arrangements and 2007-2 Amendments to Australian Accounting Standards arising from AASB Interpretation 12*
>
> AASB 8 *Operating Segments and 2007-3 Amendments to Australian Accounting Standards arising from AASB 8*
>
> 2007-6 *Amendments to Australian Accounting Standards arising from AASB 123*
>
> AASB Interpretation 13 *Customer Loyalty Programmes*
>
> AASB Interpretation 14 *AASB 119 – The Limit on a Defined Benefit Asset, Minimum Funding Requirements and their Interaction*

Other

The following standards and interpretations have been issued but are not applicable to the operations of the Court.

AASB 1049 Financial Reporting of General Government Sectors by Governments

AASB 1049 specifies the reporting requirements for the General Government Sector, and therefore, has no effect on the Court's financial statements.

1.5 Revenue

The revenues described in this note and Note 1.20 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 2 and Note 13.

Revenue from Government

Amounts appropriated for departmental outputs appropriations for the year (adjusted for any formal additions and reductions) are recognised as revenue when the Court gains control of the appropriation, 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 Types of Revenue

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:

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

Receivables for services are recognised at the nominal amounts due less any provision for bad and doubtful debts. Collectability of debts is reviewed at balance date. Provisions are made when collectability 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

Resources received free of charge are recognised as gains 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 as gains at their fair value when the asset qualifies for recognition, unless received from another Government Agency or Authority as a consequence of a restructure of administrative arrangements.

Sale of Assets

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 formal reductions) are recognised directly in Contributed Equity in that year.

1.8 Judges and Employee Benefits

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 judges and employee benefit liabilities are measured as the present value of the estimated future cash outflows to be made in respect of services provided by judges and 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 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.

The leave liabilities are based on the judges' and 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.

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 Court accounts for the contributions as if they were contributions to defined contribution plans.

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

Judges' Pension

Under the Judges' Pension 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 Pension 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 $8,903,109 (2006-07: $8,422,562). 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 Assets

Financial assets are recognised and derecognised upon 'trade date'.

Loans and receivables

Trade receivables, loans and other receivables that have fixed or determinable payments that are not quoted in an active market are classified as 'loans and receivables'. They are included in current assets, except for maturities greater than 12 months after the balance sheet date. These are classified as non-current assets.

Impairment of financial assets

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 been incurred for loans and receivables or held to maturity investments held at amortised cost, the amount of the loss is measured as the difference between the asset's carrying amount and the present value of future net cash flows discounted at the asset's original effective interest rate. The carrying amount is reduced by way of an allowance account. The loss is recognised in the income statement.

1.13 Financial Liabilities

Supplier and other payables

Supplier and other payables are recognised at amortised cost. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).

1.14 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.

1.15 Property, Plant and Equipment

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.

Revaluations

Basis

Fair values for each class of asset are determined as shown below:

Asset Class	*Fair value measured at:*
Buildings	Market selling price
Leasehold improvements	Depreciated replacement cost
Plant & Equipment	Market selling price

Following initial recognition, buildings, infrastructure, plant and equipment are carried at fair value less accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency such that the carrying amount of each asset class is not materially different, at reporting date, from its fair value. The regularity of independent valuations depends upon the volatility of movements in market values for the relevant assets. Valuations are done as at 30 June.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the asset revaluation reserve except to the extent that it reverses a previous revaluation decrement of the same asset class previously recognised through the Income Statement. Revaluation decrements for a class of assets are recognised directly through the Income Statement except to the extent that they reverse a previous revaluation 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 (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

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

	2008	2007
Leasehold improvements	**10 years or Lease term**	10 years or Lease term
Plant and equipment – excluding library materials	**3 to 10 years**	3 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 2008. Where indications of impairment exist, the asset's recoverable amount is estimated and an adjustment made if the asset's recoverable amount is less that 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.

1.16 Intangibles

The Court's intangibles comprise externally and internally developed software for internal use. These assets are carried at cost less accumulated amortisation and accumulated impairment loss.

Software is amortised on a straight line basis over its anticipated useful life of 5 years (2006-07: 5 years).

All software assets were assessed for indications of impairment at 30 June 2008.

1.17 Taxation

The Court is exempt from all forms of taxation except fringe benefits tax (FBT) 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.

1.18 Resources provided free of charge

Federal Magistrates Court

Prior to this financial year the Court provided 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 included:

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

From 1 July 2007 the funding related to the provision of these services was appropriated directly to the Federal Magistrates Court. The Court then invoiced the Federal Magistrates Court for services provided on a cost recovery basis.

The estimated cost of resources provided free of charge by the Court to the FMC during 2007-08 was therefore Nil. (2006-07: $7,959,551).

1.19 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, including the application of Australian Accounting Standards.

Administered Cash Transfers to and from Official Public Account

Revenue collected by the Court for use by 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 Deregulation. 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 Administered Cash Flows in the Schedule of Administered Items and in the Administered Reconciliation Table in Note 16. 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. Debts are 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.

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

	2008 $'000	2007 $'000
Note 2: Income		
Revenue		
Note 2A: Revenue from Government		
Appropriation:		
Departmental outputs	**78,462**	85,333
Total revenue from Government	**78,462**	85,333
Note 2B: Sale of goods and rendering of services		
Rendering of services – related entities	**10,419**	1,441
Rendering of services – external entities	**483**	457
Total rendering of services	**10,902**	1,898
Total sale of goods and rendering of services	**10,902**	1,898
Note 2C: Interest		
Deposits	**-**	16
Total interest	**-**	16
Gains		
Note 2D: Sale of Assets		
Infrastructure, plant and equipment:		
Proceeds from sale	**3**	6
Carrying value of assets sold	**(17)**	(2)
Net gain from sale of assets	**(14)**	4
Note 2E: Other gains		
Liabilities assumed by other agencies	**8,903**	8,423
Resources received free of charge	**6,181**	5,928
Total other gains	**15,084**	14,351

Resources received free of charge includes an amount of $5,547,582 (2006-07: $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 3: Expenses

Note 3A: Judges and Employee benefits		
Judges remuneration	**17,293**	16,780
Judges notional superannuation	**8,903**	8,423
	26,196	25,203
Employee wage & salaries	**26,965**	24,621
Employee superannuation	**3,218**	3,548
Employee separation and redundancies	**84**	172
	30,267	28,341
Total judges and employee benefits	**56,463**	53,544

FEDERAL COURT OF AUSTRALIA
Notes to and forming part of the Financial Statements

	2008 $'000	2007 $'000
Note 3B: Suppliers		
Provision of goods - external entities	**3,053**	3,127
Rendering of services - related entities	**1,721**	1,668
Rendering of services - external entities	**20,354**	19,076
Operating lease rentals:		
Minimum Lease Payments	**21,908**	20,430
Workers compensation premiums	**214**	217
Total supplier expenses	**47,250**	44,518
Note 3C: Depreciation and Amortisation		
Depreciation:		
Buildings	**1,594**	1,114
Infrastructure, plant and equipment	**853**	1,028
Total depreciation	**2,447**	2,142
Amortisation:		
Intangibles:		
Computer Software	**134**	181
Leased plant and equipment	**601**	666
Total amortisation	**735**	847
Total depreciation and amortisation	**3,182**	2,989
Note 3D: Finance costs		
Finance leases	**52**	69
Total finance costs	**52**	69
Note 3E Write-down and impairment of assets		
Financial assets		
Bad & doubtful debt	**31**	21
Non-financial assets		
Plant & equipment	**807**	4
Total write-down and impairment of assets	**838**	25

Note 4: Financial Assets

Note 4A: Cash and cash equivalents		
Cash at bank and at hand	**3,330**	516
Total cash and cash equivalents	**3,330**	516

	2008 $'000	2007 $'000
Note 4B: Trade and other receivables		
Goods and services	**556**	99
Appropriations receivable:		
for existing outputs	**31,104**	36,874
GST receivable from the Australian Taxation Office	**366**	582
Total trade and other receivables (gross)	**32,026**	37,555
Less Allowance for doubtful debts:		
Goods and Services	**(51)**	(21)
Total trade and other receivables (net)	**31,975**	37,534
Receivables are aged as follows:		
Not overdue	**31,919**	37,490
Overdue by:		
Less than 30 days	**6**	11
30 to 60 days	**33**	-
61 to 90 days	**-**	1
More than 90 days	**68**	53
	107	65
Total receivables (gross)	**32,026**	37,555
The allowance for doubtful debts is aged as follows:		
Overdue by:		
More than 90 days	**(51)**	(21)
Total allowance for doubtful debts	**(51)**	(21)

All receivables are current. Credit terms are net 30 days (2006: 30 days).

Note 5: Non-Financial Assets

Note 5A: Land and buildings		
Leasehold improvements		
fair value	**9,783**	10,179
accumulated depreciation	**(1,575)**	(2,759)
Total leasehold improvements	**8,208**	7,420
Total land and buildings (non-current)	**8,208**	7,420

No indications of impairment were found for land and buildings

Note 5B: Infrastucture, plant and equipment		
Infrastructure, plant and equipment		
gross carrying value (at fair value)	**12,204**	14,280
accumulated depreciation	**(2,772)**	(3,785)
	9,432	10,495
Total infrastructure, plant and equipment (non-current)	**9,432**	10,495

All revaluations are conducted in accordance with the valuation policy stated in Note 1. In 2007-08, formal valuations were conducted by an independent valuer, the Australian Valuation Office.

Revaluation decrements of $56,938.37 for buildings and $295,711.55 for infrastructure, plant and equipment were debited to the asset revaluation reserve by class and included in the equity section of the balance sheet. Decrements of $748,312.69 for classes of infrastructure plant and equipment that had no revaluation reserve are shown as an expense in the operating statement. Of this, $654,853.48 related to the Court's library collection.

No further indications of impairment were found for infrastructure, plant and equipment.

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

Note 5C: Intangible Assets

Computer software at cost		
Internally developed – in progress	**620**	98
Purchased – in use	**1,917**	2,206
Total Computer Software	**2,537**	2,304
Accumulated amortisation	**(1,695)**	(1,872)
Total intangibles (non-current)	**842**	432

No indication of impairment was found for intangibles.

Note 5D: Analysis of infrastructure property, plant, and equipment

TABLE A - Reconciliation of the opening and closing balances of property, plant, and equipment (2007-08)

Item	Leasehold improvement – Total land and buildings $'000	Infrastructure, plant and equipment $'000	Computer Software – Intangibles $'000	Total $'000
As at 1 July 2007				
Gross book value	**10,179**	**14,280**	**2,304**	**26,763**
Accumulated depreciation/amortisation	**(2,759)**	**(3,785)**	**(1,872)**	**(8,416)**
Net book value 1 July 2007	**7,420**	**10,495**	**432**	**18,347**
Additions:				
by purchase	**2,497**	**1,165**	**544**	**4,206**
by finance lease	-	**259**	**-**	**259**
Revaluations and impairments through equity	**(57)**	**(1,015)**	-	**(1,072)**
			-	
Depreciation/amortisation expense	**(1,594)**	**(1,454)**	**(134)**	**(3,182)**
Disposals:				
Other disposals	**(58)**	**(18)**	**-**	**(76)**
Net book value 30 June 2008	**8,208**	**9,432**	**842**	**18,482**
Net book value as of 30 June 2008 represented by:				
Gross book value	**9,783**	**12,204**	**2,537**	**24,524**
Accumulated depreciation/amortisation	**(1,575)**	**(2,772)**	**(1,695)**	**(6,042)**
	8,208	**9,432**	**842**	**18,482**

TABLE A - Reconciliation of the opening and closing balances of property, plant, and equipment (2006-07)

Item	Leasehold improvement – Total land and buildings $'000	Infrastructure, plant and equipment $'000	Computer Software – Intangibles $'000	Total $'000
As at 1 July 2006				
Gross book value	7,265	13,015	2,135	22,415
Accumulated depreciation/ amortisation	(1,645)	(2,108)	(1,691)	(5,444)
Net book value 1 July 2006	5,620	10,907	444	16,971
Additions:				
by purchase	2,914	1,057	169	4,372
by finance lease		232		232
Depreciation/amortisation expense	(1,114)	(1,694)	(181)	(2,989)
Disposals:				
Other disposals	-	(7)	-	(7)
Net book value 30 June 2007	7,420	10,495	432	18,347
Net book value as of 30 June 2007 represented by:				
Gross book value	10,179	14,280	2,304	26,763
Accumulated depreciation amortisation	(2,759)	(3,785)	(1,872)	(8,416)
	7,420	10,495	432	18,347

	2008 $'000	2007 $'000
Note 5E: Other Non-financial assets		
Prepayments	**1,763**	2,183
Total other non-financial assets	**1,763**	2,183

All other non-financial assets are current assets.

Note 6: Payables

Trade creditors	**1,122**	508
Total supplier payables	**1,122**	508

Supplier payables are all current.
Settlement is usually made net 30 days.

Note 7: Interest Bearing Liabilities

Note 7: Leases		
Finance leases	**633**	986
Total finance leases	**633**	986
Payable		
Within one year		
Minimum lease payments	**421**	623
Less future finance charges	**(31)**	(44)
Total leases payable within one year	**390**	579
In one to five years		
Minimum lease payments	**260**	429
Less future finance charges	**(17)**	(22)
Total leases payable within one year to five years	**243**	407
Finance lease recognised on the balance sheet	**633**	986

Finance leases are for 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 5.70% (2007: 5.61%). The leased assets secure the lease liabilities. The Court guarantees the residual values of all assets leased. There are no contingent rentals.

Note 8: Provisions

	2008 $'000	2007 $'000
Note 8A: Judges & Employee provisions		
Salaries and wages	**326**	222
Long Leave (Judges)	**9,989**	9,707
Leave	**6,529**	6,085
Superannuation	**297**	844
Total judge and employee provisions	**17,141**	16,858
Employee provisions are represented by:		
Current	**15,613**	15,748
Non-current	**1,528**	1,110
Total judges and employee provisions	**17,141**	16,858

The classification of current employee provisions includes amounts for which there is not an unconditional right to defer settlement by one year, hence in the case of employee provisions the above classification does not represent the amount expected to be settled within one year of reporting date. Judge and employee provisions expected to be settled in twelve months from the reporting date are $5,590,261 (2007 $4,810,491), in excess of one year $11,550,900 (2007: $12,047,926).

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

Note 9: Cash flow reconciliation

Reconciliation of cash and cash equivalents as per Balance Sheet to Cash Flow Statement	2008 $'000	2007 $'000
Report cash and cash equivalents as per:		
Cash Flow Statement	**3,330**	516
Balance Sheet	**3,330**	516
Reconciliation of operating result to net cash from operating activities:		
Operating result	**(3,351)**	457
Depreciation/amortisation	**3,182**	2,989
Net write down of non-financial assets	**807**	25
(Gain)/Loss on disposal of assets	**(6)**	(4)
Assets not previously recognised	**(18)**	-
(Increase)/decrease in net receivables	**5,559**	(4,734)
(Increase)/decrease in prepayments	**420**	3,309
Increase/(decrease) in suppliers payables	**615**	104
Increase/(decrease) in judge and employee provisions	**283**	1,130
Increase/(decrease) in other liabilities	**(611)**	(425)
Net cash from/(used by) operating activities	**6,880**	2,851

Note 10: Executive Remuneration

The number of senior executives who received or were due to receive total remuneration of $130,000 or more:	2008	2007
$175,000 to $189,999	**1**	1
$190,000 to $204,999	**2**	1
$205,000 to $219,999	**-**	3
$220,000 to $234,999	**-**	3
$235,000 to $249,999	**3**	-
$250,000 to $264,999	**3**	1
$280,000 to $294,999	**1**	1
$295,000 to $309,999	**1**	-
Total	**11**	10
The aggregate amount of total remuneration of executives shown above:	**2,643,734**	2,254,730
The aggregate amount of separation and redundancy/termination benefit payments during the year to executives shown above:	**-**	-

Note 11: Remuneration of Auditors

Financial statement audit services are provided free of charge to the Court.		
The fair value of the services provided was:	**90,000**	82,000

No other services were provided by the Auditor-General.

Note 12: Financial Instruments

Note 12A: Categories of financial instruments

	2008 $'000	2007 $'000
Loans and receivables		
Loans and receivables		
Cash and cash equivalents	**3,330**	516
Trade receivables	**556**	99
Carrying amount of financial assets	**3,886**	615
Financial Liabilities		
Other Liabilities		
Finance leases	**633**	986
Payables - suppliers	**1,123**	508
Carrying amount of financial liabilities	**1,756**	1,494

Note 12B: Fair value of financial instruments

	Carrying amount 2008 $'000	Fair value 2008 $'000	Carrying amount 2007 $'000	Fair value 2007 $'000
FINANCIAL LIABILITIES				
Other Liabilities				
Finance leases	**633**	**633**	986	986
Total	**633**	**633**	986	986

Note 12C: Credit Risk

The Court is exposed to minimal credit risk as loans and receivables are cash and trade receivables. The maximum exposure to credit risk is the risk that arises from potential default of a debtor. This amount is equal to the total amount of trade receivables (2008: $556,213 and 2007: $99,000). The Court has assessed the risk of default on payment and has allocated $51,571 in 2008 (2007: $21,000) to an allowance for doubtful debts account.

The Court manages its credit risk by undertaking background and credit checks prior to allowing a debtor relationship. In addition, the Court has policies and procedures that are to be applied by employees who perform debt recovery duties.

The Court holds no collateral to mitigate credit risk.

Credit quality of financial instruments not past due or individually determined as impaired.

	Not Past Due Nor Impaired 2008 $'000	Not Past Due Nor Impaired 2007 $'000	Past due or impaired 2008 $'000	Past due or impaired 2007 $'000
Loans and receivables				
Cash	**3,330**	516	**-**	
Trade receivables	**449**	34	**107**	65
Total	**3,779**	550	**107**	65

FEDERAL COURT OF AUSTRALIA
Notes to and forming part of the Financial Statements

Ageing of financial assets that are past due but not impaired for 2008.

	0 to 30 days $'000	31 to 60 days $'000	60 to 90 days $'000	90+ days $'000	Total $'000
Loans and receivables					
Trade receivables	**6**	**33**	**-**	**17**	**56**
Total	**6**	**33**	**-**	**17**	**56**

Ageing of financial assets that are past due but not impaired for 2007.

	0 to 30 days $'000	31 to 60 days $'000	60 to 90 days $'000	90+ days $'000	Total $'000
Loans and receivables					
Trade receivables	11	-	1	32	44
Total	11	-	1	32	44

Note 12D: Liquidity Risk

The Court's financial liabilities are payables, loans from government, finance leases and other interest bearing liabilities. The exposure to liquidity risk is based on the notion that the Court will encounter difficulty in meeting its obligations associated with financial liabilities. This is highly unlikely due to appropriation funding and mechanisms available to the Court and internal policies and procedures put in place to ensure there are appropriate resources to meet its financial obligations.

The following tables illustrate the maturities for financial liabilities

	On demand 2008 $'000	Within 1 year 2008 $'000	1 to 5 years 2008 $'000	Total 2008 $'000
Other liabilities				
Payables - Suppliers	**-**	**1,123**	**-**	**1,123**
Finance leases	**-**	**390**	**243**	**633**
Total	**-**	**1,513**	**243**	**1,756**

	On demand 2007 $'000	Within 1 year 2007 $'000	1 to 5 years 2007 $'000	Total 2007 $'000
Other liabilities				
Payables - Suppliers	-	508	-	508
Finance leases	-	579	407	986
Total	-	1,087	407	1,494

The Court is appropriated funding from the Australian Government. The Court manages its budgeted funds to ensure it has adequate funds to meet payments as they fall due.

This note also applies to the Court's administered financial instruments and is therefore not reproduced at Note 17.

Note 12E: Market risk

The Court holds basic financial instruments that do not expose the Agency to certain market risks. The Court is not exposed to currency risk.

Interest Rate Risk

The only interest-bearing items on the balance sheet are the 'Finance leases'. All bear interest at a fixed interest rate and will not fluctuate due to changes in the market interest rate.

FEDERAL COURT OF AUSTRALIA
Notes to and forming part of the Financial Statements

Note 13: Income Administered on Behalf of Government

	2008 $'000	2007 $'000
Fees (filing and hearing fees)	**6,592**	6,372
Fines	**568**	47
Other	**113**	105
Total revenue administered on behalf of government	**7,273**	6,524

Note 14: Expenses Administered on Behalf of Government

Expenses

Refund of fees and fines	**145**	87
Fees and fines – provision for doubtful debts	**0**	66
Total expenses administered on behalf of government	**145**	153

Note 15: Assets Administered on Behalf of Government

Financial Assets

Note 15A: Cash and cash equivalents

Cash on hand or on deposit	**44**	38

Note 15B: Receivables

Fees (filing and hearing fees)	**342**	436
Less: Allowance for doubtful debts	**(45)**	(110)
Total receivables (net)	**297**	326
Receivables are aged as follows:		
Not overdue	**75**	66
Overdue by:		
- Less than 30 days	**79**	136
- 30 to 60 days	**86**	79
- 60 to 90 days	**25**	39
- More than 90 days	**77**	116
Total receivables (gross)	**342**	436

All doubtful debts are for receivables more than 90 days overdue
Receivables are with entities external to the Australian Government.
Credit terms are net 30 days (2007: 30 days)

Note 16: Administered Reconciliation Table

Opening administered assets less administered liabilities as at 1 July	**364**	391
Plus: Administered income	**7,273**	6,524
Less: Administered expenses	**(145)**	(153)
Appropriation transfers from OPA	**145**	90
Transfers to OPA	**(7,296)**	(6,488)
Closing administered assets less administered liabilities as at 30 June	**342**	364

	2008 $'000	2007 $'000

Note 17: Administered Financial Instruments

Note 17A Categories of financial instruments

Financial Assets

Loans and receivables		
Cash	**44**	38
Trade receivables	**342**	436
	386	474
Carrying amount of financial assets	**386**	474

Note 17B Credit Risk

The administered activities of the Court are not exposed to a high level of credit risk as the majority of financial assets are receivables. The Court has policies and procedures that guide employees who perform debt recovery functions.

The maximum exposure to credit risk is outlined in the table below.

	2008 $'000	2007 $'000
Financial Assets		
Loans and Receivables	**-**	-
Receivables	**342**	436
Total	**342**	436

The Court has assessed the risk of default on payment and has allocated the following amounts to an allowance for doubtful debts account:

Receivables **$44,689** in 2008 (2007: $110,000)

Credit quality of financial instruments not past due or individually determined as impaired

	Not Past Due Nor Impaired 2008 $'000	Not Past Due Nor Impaired 2007 $'000	**Past due or impaired 2008 $'000**	Past due or impaired 2007 $'000
Loans and receivables				
Cash	**44**	38	**-**	-
Trade receivables	**75**	66	**267**	370
Total	**119**	104	**267**	370

Ageing of financial assets that are past due but not impaired for 2008

	0 to 30 days $'000	**31 to 60 days $'000**	**60 to 90 days $'000**	**90+ days $'000**	**Total $'000**
Loans and receivables					
Receivables	**79**	**86**	**25**	**32**	**222**
Total	**79**	**86**	**25**	**32**	**222**

Ageing of financial assets that are past due but not impaired for 2007

	0 to 30 days $'000	**31 to 60 days $'000**	**60 to 90 days $'000**	**90+ days $'000**	**Total $'000**
Loans and receivables					
Receivables	136	79	39	6	260
Total	136	79	39	6	260

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

Note 18: Appropriations

TABLE A - Acquittal of authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations

Particulars	Departmental Outputs	
	2008 $'000	2007 $'000
Balance carried from previous period	**34,549**	30,678
Appropriation Act:		
Appropriation Act (No.1)	**78,176**	84,655
Appropriation Act (No.3)	**286**	678
Departmental adjustments by the Finance Minister (Appropriation Acts)	**-**	-
Comcover receipts (Appropriation Act s13)	**-**	65
Refunds credited (FMA s30)	**131**	4,351
FMA Act:		
Appropriations to take account of recoverable GST (FMA s30A)	**3,502**	4,085
Annotations to 'net appropriations' (FMA s31)	**10,520**	1,916
Total appropriations available for payments	**127,164**	126,428
Cash payments made during the year (GST inclusive)	**95,072**	91,879
Appropriations credited to special Accounts (excluding GST)	**-**	-
Balance of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations	**32,092**	34,549
Represented by:		
Cash at bank and on hand	**3,330**	516
Departmental appropriations receivable	**28,762**	34,033
Total	**32,092**	34,549

TABLE B - 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			
	2008 $'000	2007 $'000	**2008 $'000**	2007 $'000	**2008 $'000**	2007 $'000
Balance carried forward from previous period	**2,841**	1,371	**-**	-	**2,841**	1,371
Appropriation Act (No.2)	**102**	1,703	**-**	-	**102**	1,703
Total appropriations available for payments	**2,943**	3,074	**-**	-	**2,943**	3,074
Cash payments made during the year (GST inclusive)	**601**	233	**-**	-	**601**	233
Balance of Authority to Draw Cash from the Consolidated Revenue Fund for Other Than Ordinary Annual Services Appropriations	**2,342**	2,841	**-**	-	**2,342**	2,841
Represented by:						
Cash at bank and on hand	**-**	-	**-**	-	**-**	-
Departmental appropriations receivable	**2,342**	2,841	**-**	-	**2,342**	2,841
Total	**2,342**	2,841	**-**	-	**2,342**	2,841

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

Note 19: Special Accounts

Other Trust Moneys Account	2008	2007
	$	$
Legal authority: *Financial Management and Accountability Act, 1997, s 20* *Purpose:* for expenditure of moneys temporarily held on trust or otherwise for the benefit of a person other than the Commonwealth. This account is non-interest bearing.		
Balance carried from previous period	**38,332**	47,623
Other receipts	**25,235**	69,865
Total credits	**63,567**	117,488
Payments made	**31,577**	79,156
Balance carried to next period	**31,990**	38,332
Represented by:		
Cash – held by the Court	**31,990**	38,332
Total	**31,990**	38,332

Services for other Governments & Non-agency bodies	2008	2007
	$	$
Legal authority: *Financial Management and Accountability Act, 1997, s 20* *Purpose:* 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 period	**10,398**	10,398
Other receipts	**-**	-
Total credits	**10,398**	10,398
Payments made	-	-
Balance carried to next period	**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	2008	2007
	$	$
Legal Authority: *Financial Management and Accountability Act, 1997, s20* *Purpose:* 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 period	**2,028,626**	1,671,643
Other receipts	**2,891,013**	3,070,498
Total credits	**4,919,639**	4,742,141
Payments made	**3,313,034**	2,713,515
Balance carried to next period	**1,606,605**	2,028,626
Represented by:		
Cash – held by the Court	**1,606,605**	2,028,626
Total	**1,606,605**	2,028,626

Federal Court of Australia Litigant's Fund	2008	2007
	$	$
Legal authority: *Financial Management and Accountability Act, 1997, s39* *Purpose*: to invest private moneys paid by litigants pursuant to an order of a Federal Court Judge, pending an order for payment out by a Federal Court Judge. This account is interest bearing.		
Balance carried from previous period	**8,598,517**	12,399,712
Other receipts	**24,774,872**	5,830,614
Total credits	**33,373,389**	18,230,326
Payments made	**9,879,913**	9,631,809
Balance carried to next period	**23,493,476**	8,598,517
Represented by:		
Cash – held by the Court	**23,493,476**	8,598,517
Total	**23,493,476**	8,598,517

Note 20: Comcare Account

Comcare account	2008	2007
	$	$
This account holds monies advanced to the Court by COMCARE to distribute compensation payments made in accordance with the *Safety Rehabilitation and Compensation Act 1998*. 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 period	**-**	782
Other receipts	**-**	64,673
Total credits	**-**	**65,455**
Payments made	**-**	65,455
Balance carried to next period	**-**	-
Represented by:		
Cash – held by the Court	**-**	-
Total	**-**	-

Note 21: Compensation and Debt Relief

Administered	2008 $	2007 $
No Act of Grace expenses were incurred during the reporting period under sub-section 33(1) of the Financial Management and Accountability Act 1997. (2007: No Act of Grace Expenses)	**-**	**-**
No payments were waived during the reporting period under subsection 34(1) of the Financial Management and Accountability Act 1997. (2007: No Waivers).	**-**	**-**
2,957 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 Federal Court of Australia Regulations 2004. (2007: 3,246)	**3,125,260**	3,418,307

Departmental
No payments were made under the 'Defective Administration Scheme' during 2007-08 (2006-07 nil).

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

Note 22: Reporting of Outcomes

The Court has one Output and Outcome:

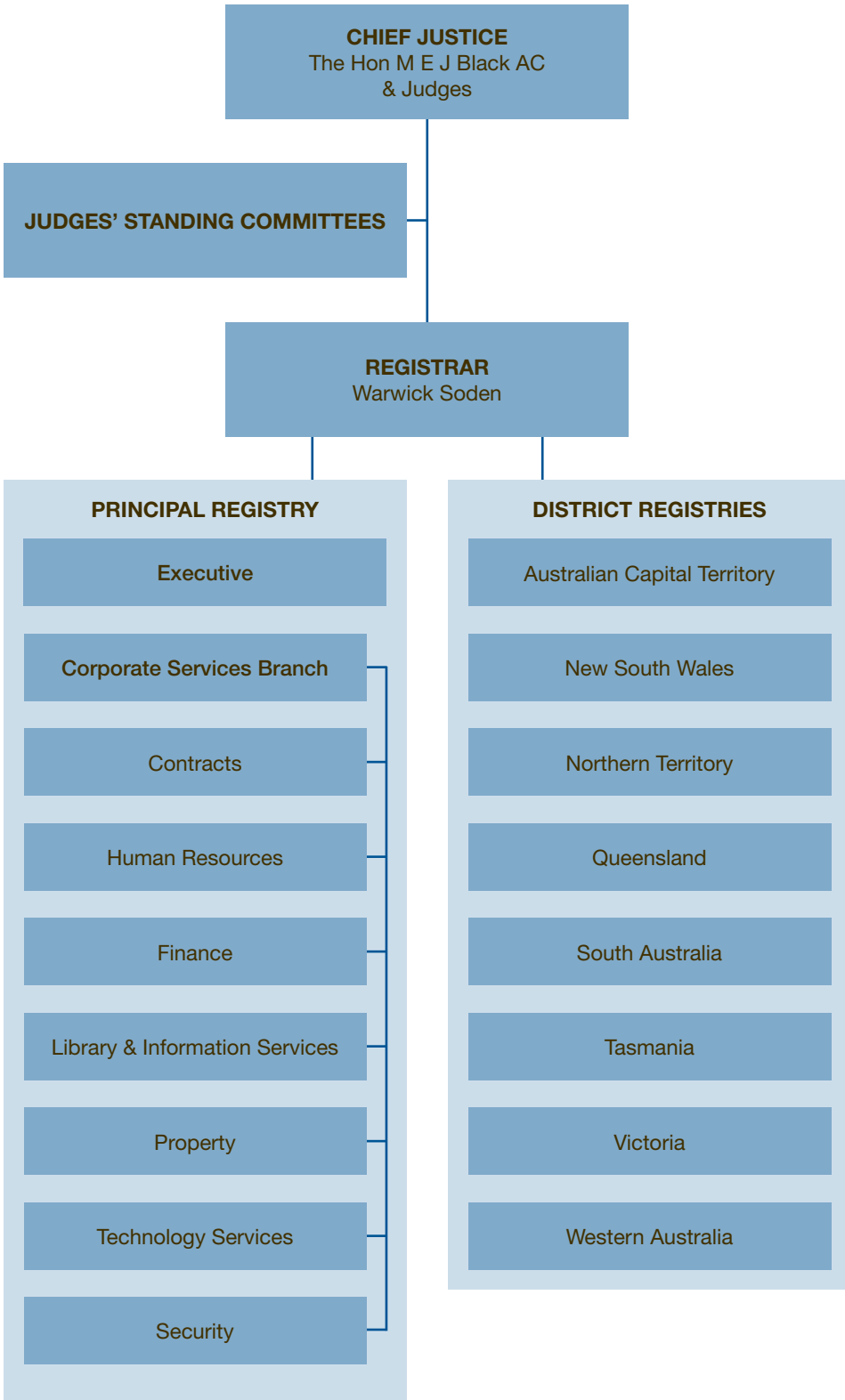
To apply and uphold the rule of law to deliver remedies and enforce rights and in so doing, contribute to the social and economic development and well-being of all Australians.

Outcome 1	Outcome 1	
	2008 $'000	2007 $'000
Expenses		
Administered	**145**	153
Departmental	**107,799**	101,145
Total expenses	**107,944**	101,298
Costs recovered from provision of goods and services to the non-government sector		
Administered	**-**	-
Departmental	**-**	-
Total costs recovered	**-**	-
Other external revenues		
Administered	**7,273**	6,524
Departmental	**10,902**	1,918
Total other external revenues	**18,175**	8,442
Net cost/(contribution) of outcome	**89,769**	92,856

Note 22B: Major Classes of Departmental Revenues and Expenses by Outputs

Outcome 1	Outcome 1	
	2008 $'000	2007 $'000
Departmental expenses		
Judges and Employees	**56,463**	53,544
Suppliers	**47,250**	44,518
Depreciation and Amortisation	**3,182**	2,989
Finance costs	**52**	69
Other Expenses	**852**	25
Total departmental expenses	**107,799**	101,145
Funded by:		
Revenues from government	**93,546**	99,684
Sale of goods and services	**10,902**	1,902
Other non-taxation revenues	**-**	16
Total departmental revenues	**104,448**	101,602

APPENDIX 2 – MANAGEMENT STRUCTURE



APPENDIX 3 – REGISTRARS OF THE COURT

(as at 30 June 2008)

Registry	Name	Appointments under other Acts
Principal Registry		
Registrar	Warwick Soden	
Deputy Registrar	Philip Kellow	Marshal in Admiralty (under Admiralty Act) A Registrar, Federal Magistrates Court
	Louise Anderson	Deputy Registrar
	Lance Grant	A Registrar, Federal Magistrates Court Deputy Sheriff, Admiralty Marshal
	Anna Quilter	
New South Wales		
District Registrar	Michael Wall	A Registrar, Federal Magistrates Court
Deputy District Registrars	Jennifer Hedge	A Registrar, Federal Magistrates Court Deputy Registrar, Defence Force Discipline Appeal Tribunal
	Geoffrey Segal	A Registrar, Federal Magistrates Court Deputy Registrar, Australian Competition Tribunal
	Anthony Tesoriero	Registrar, Copyright Tribunal A Registrar, Federal Magistrates Court
	Stephanie Kavallaris	A Registrar, Federal Magistrates Court
	Kim Lackenby	Deputy Registrar, Australian Competition Tribunal A Registrar, Federal Magistrates Court
	Paddy Hannigan	A Registrar, Federal Magistrates Court
	Chuan Ng	A Registrar, Federal Magistrates Court
	Thomas Morgan	A Registrar, Federal Magistrates Court
Victoria		
District Registrar	Sia Lagos	Registrar, Defence Force Discipline Appeal Tribunal Registrar, Australian Competition Tribunal A Registrar, Federal Magistrates Court
	Daniel Caporale	A Registrar, Federal Magistrates Court Deputy Registrar, Supreme Court of Norfolk Island

Registry	Name	Appointments under other Acts
	Timothy Luxton	A Registrar, Federal Magistrates Court Deputy Registrar, Defence Force Discipline Appeal Tribunal
	Adam Moore	A Registrar, Federal Magistrates Court
	Ian Irving	A Registrar, Federal Magistrates Court Deputy Registrar, Australian Competition Tribunal Deputy Registrar, Native Title
	Julian Hetyey	A Registrar, Federal Magistrates Court
	Rupert Burns	A Registrar, Federal Magistrates Court
	Phillip Allaway	A Registrar, Federal Magistrates Court
Sheriff of the Federal Court of Australia	Laurence Keynon	
Queensland		
District Registrar	Graham Ramsey	Deputy Registrar, Australian Competition Tribunal Deputy Registrar, Defence Force Discipline Appeal Tribunal A Registrar, Federal Magistrates Court
Deputy District Registrars	David Robson	A Registrar, Federal Magistrates Court
	Kenneth Berry	A Registrar, Federal Magistrates Court
	Christine Fewings	A Registrar, Federal Magistrates Court
	Murray Belcher	A Registrar, Federal Magistrates Court
	Heather Baldwin	A Registrar, Federal Magistrates Court
Western Australia		
District Registrar	Martin Jan PSM	Deputy Registrar, Australian Competition Tribunal Deputy Registrar, Defence Force Discipline Appeal Tribunal A Registrar, Federal Magistrates Court
Deputy District Registrars	Elizabeth Stanley	A Registrar, Federal Magistrates Court
	June Eaton	A Registrar, Federal Magistrates Court
	Rainer Gilich	A Registrar, Federal Magistrates Court
	David Blades	A Registrar, Federal Magistrates Court

Registry	Name	Appointments under other Acts
South Australia		
District Registrar	Patricia Christie	Deputy Registrar, Australian Competition Tribunal Deputy Registrar, Defence Force Discipline Appeal Tribunal A Registrar, Federal Magistrates Court
Deputy District Registrar	Lynette Duncan	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
Australian Capital Territory		
District Registrar	Michael Wall (based in Sydney)	
Deputy District Registrars	Jennifer Hedge	Deputy Registrar, Defence Force Discipline Appeal Tribunal A Registrar, Federal Magistrates Court
	Geoffrey Segal (based in Sydney)	A Registrar, Federal Magistrates Court Deputy Registrar, Australian Competition Tribunal
	Anthony Tesoriero (based in Sydney)	Registrar, Copyright Tribunal A Registrar, Federal Magistrates Court
	Stephanie Kavallaris (based in Sydney)	A Registrar, Federal Magistrates Court
	Kim Lackenby (based in Sydney)	Deputy Registrar, Australian Competition Tribunal A Registrar, Federal Magistrates Court
	Natalie Cujes (based in Canberra)	A Registrar, Federal Magistrates Court
	Chuan Ng	A Registrar, Federal Magistrates Court
Northern Territory		
District Registrar	James Brohier	A Registrar, Federal Magistrates Court

APPENDIX 4 – STATUTES OF THE COURT

(as at 30 June 2008)
[Only Principal Acts are included]

Aboriginal and Torres Strait Islander Act 2005

Aboriginal and Torres Strait Islander Heritage Protection Act 1984

Aboriginal Councils and Associations Act 1976

Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987

Aboriginal Land Rights (Northern Territory) Act 1976

ACIS Administration Act 1999

Administrative Appeals Tribunal Act 1975

Administrative Decisions (Judicial Review) Act 1977

Admiralty Act 1988

Advance Australia Logo Protection Act 1984

Age Discrimination Act 2004

Aged Care Act 1997

Agricultural and Veterinary Chemicals Act 1994

Air Navigation Act 1920

Airports Act 1996

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

Anti-Personnel Mines Convention Act 1998

Australian Crime Commission Act 2002

Australian Energy Market Act 2004

Australian Federal Police Act 1979

Australian Industry Development Corporation Act 1970

Australian National Railways Commission Sale Act 1997

Australian Postal Corporation Act 1989

Australian Radiation Protection and Nuclear Safety Act 1998

Australian Securities and Investments Commission Act 2001

Australian Sports Anti-Doping Authority Act 2006

Australian Wine and Brandy Corporation Act 1980

Aviation Transport Security Act 2004

Banking Act 1959

Bankruptcy Act 1966

Broadcasting Services Act 1992

Building and Construction Industry Improvement Act 2005

Building Industry Act 1985

Charter of the United Nations Act 1945

Child Support (Registration and Collection) Act 1988

Circuit Layouts Act 1989

Civil Aviation (Carriers' Liability) Act 1959

Coal Industry Repeal Act 2001

Commonwealth Authorities and Companies Act 1997

Commonwealth Electoral Act 1918

Commonwealth Places (Mirror Taxes) Act 1998

Commonwealth Serum Laboratories Act 1961

Copyright Act 1968

Corporations Act 2001

Crimes Act 1914

Criminal Code Act 1995

Cross-Border Insolvency Act 2007

CSL Sale Act 1993

Customs Act 1901

Dairy Industry Service Reform Act 2003

Dairy Produce Act 1986

Debits Tax Administration Act 1982

Defence Act 1903

Defence Force Discipline Appeals Act 1955

Defence Reserve Service (Protection) Act 2001

Designs Act 2003

Diplomatic and Consular Missions Act 1978

Disability Discrimination Act 1992

Education Services for Overseas Students Act 2000

Egg Industry Service Provision Act 2002

Environment Protection and Biodiversity Conservation Act 1999

Evidence Act 1995

Evidence and Procedure (New Zealand) Act 1994

Excise Act 1901

Export Markets Development Grants Act 1997

Extradition Act 1988

Federal Court of Australia Act 1976

Federal Court of Australia (Consequential Provisions) Act 1976

Federal Proceedings (Costs) Act 1981

Financial Sector (Collection of Data) Act 2001

Financial Sector (Shareholdings) Act 1998

Financial Sector (Transfer of Business) Act 1999

Financial Transaction Reports Act 1988

First Home Saver Account Act 2008

Fisheries Management Act 1991

Foreign Acquisitions and Takeovers Act 1975

Foreign Evidence Act 1994

Foreign Judgments Act 1991

Foreign Proceedings (Excess of Jurisdiction) Act 1984

Foreign States Immunities Act 1985

Fringe Benefits Tax Assessment Act 1986

Fuel Quality Standards Act 2000

Gas Pipelines Access (Commonwealth) Act 1998

Gene Technology Act 2000

Great Barrier Reef Marine Park Act 1975

Hazardous Waste (Regulation of Exports and Imports) Act 1989

Health Insurance Act 1973

Health Insurance Commission (Reform and Separation of Functions) Act 1997

Hearing Services Administration Act 1997

Hearing Services and AGHS Reform Act 1997

Horticulture Marketing and Research and Development Services Act 2000

Human Rights and Equal Opportunity Commission Act 1986

Income Tax Assessment Act 1936

Independent Contractors Act 2006

Industrial Chemicals (Notification and Assessment) Act 1989

Industrial Relations Reform Act 1993

Insurance Acquisition and Takeovers Act 1991

Insurance Act 1973

Interactive Gambling Act 2001

International Criminal Court Act 2002

International War Crimes Tribunals Act 1995

Judiciary Act 1903

Jurisdiction of Courts (Cross-vesting) Act 1987

Lands Acquisition Act 1989

Law Enforcement Integrity Commissioner Act 2006

Life Insurance Act 1995

Liquid Fuel Emergency Act 1984

Maritime Transport and Offshore Facilities Security Act 2003

Medibank Private Sale Act 2006

Medical Indemnity (Prudential Supervision and Product Standards) Act 2003

Members of Parliament (Life Gold Pass) Act 2002

Migration Act 1958

Military Rehabilitation and Compensation Act 2004

Moomba-Sydney Pipeline System Sale Act 1994

Motor Vehicle Standards Act 1989

National Greenhouse and Energy Reporting Act 2007

National Environment Protection Measures (Implementation) Act 1998

National Health Act 1953

National Health Security Act 2007

National Measurement Act 1960

National Security Information (Criminal Proceedings) Act 2004

National Transmission Network Sale Act 1998

Native Title Act 1993

Navigation Act 1912

Northern Territory National Emergency Response Act 2007

Nuclear Non-Proliferation (Safeguards) Act 1987

Offshore Petroleum Act 2006

Olympic Insignia Protection Act 1987

Ombudsman Act 1976

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

Parliamentary Privileges Act 1987

Patents Act 1990

Payments Systems (Regulations) Act 1998

Petroleum (Australia-Indonesia Zone of Cooperation) (Consequential Provisions) Act 1990

Petroleum Resource Rent Tax Assessment Act 1987

Petroleum Retail Marketing Franchise Act 1980

Petroleum Retail Marketing Sites Act 1980

Petroleum (Submerged Lands) Amendment Act 1991

Pig Industry Act 2001

Plant Breeder's Rights Act 1994

Privacy Act 1988

Private Health Insurance Act 2007

Private Health Insurance Incentives Act 1998

Proceeds of Crime Act 2002

Protection of the Sea (Harmful Anti-fouling Systems) Act 2006

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 Act 2007

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 the figures reported in this report 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.

Casetrack also records matters differently to the Court's previous system, FEDCAMS, with the effect that the Court's reports since 2004-05 have reported different figures for earlier years from those reported in those years. Casetrack records matters in the Court classified according to eleven main categories, described as 'causes of action' (COA).

Table 5.1 – Summary of workload statistics – Original and appellate jurisdiction

Filings of Major COAs (including Appeals & Related Actions)					
Cause of Action	2003-04	2004-05	2005-06	2006-07	2007-08
Total COAs (inc. Appeals & Related Actions)					
Filed	6,017	4,494	6,158	5,063	4,579
Finalised	6,084	4,496	6,253	5,338	4,913
Current	3,584	3,582	3,487	3,211	2,877
Corporations (inc. Appeals & Related Actions)					
Filed	645	1,003	2,912	1,926	1,700
Finalised	558	792	2,729	2,083	1,698
Current	274	485	668	512	514
Bankruptcy (inc. Appeals & Related Actions)					
Filed	495	417	392	281	278
Finalised	525	393	419	343	292
Current	193	217	190	128	108
Native Title (inc. Appeals & Related Actions)					
Filed	78	61	68	66	34
Finalised	68	101	96	89	83
Current	685	645	617	591	542
Total COAs (inc. Appeals & Related Actions & excluding Corporations, Bankruptcy & Native Title)					
Filed	4,799	3,013	2,786	2,790	2,567
Finalised	4,933	3,210	3,009	2,823	2,840
Current	2,432	2,235	2,012	1,986	1,713

Table 5.2 – Summary of workload statistics – Excluding appeals and related actions

Filings of Major COAs (excluding Appeals & Related Actions)					
Cause of Action	2003-04	2004-05	2005-06	2006-07	2007-08
Total COAs (ex. Appeals & Related Actions)					
Filed	5,114	3,114	4,827	3,543	3,076
Finalised	5,248	3,255	4,887	3,808	3,278
Current	3,144	3,003	2,943	2,672	2,470
Corporations (ex. Appeals & Related Actions)					
Filed	635	984	2,898	1,903	1,678
Finalised	549	779	2,719	2,058	1,666
Current	265	470	649	494	506
Bankruptcy (ex. Appeals & Related Actions)					
Filed	448	348	332	223	201
Finalised	470	333	354	289	194
Current	158	173	151	83	90
Native Title (ex. Appeals & Related Actions)					
Filed	54	51	60	50	27
Finalised	61	79	81	76	64
Current	655	627	606	577	540
Total COAs (ex. Appeals & Related Actions & excluding Corporations, Bankruptcy & Native Title)					
Filed	3,977	1,731	1,537	1,367	1,170
Finalised	4,168	2,064	1,733	1,408	1,354
Current	2,066	1,733	1,537	1,518	1,334

Table 5.3 – Summary of workload statistics – Appeals and related actions only

Filings of Appeals & Related Actions					
Cause of Action	2003-04	2004-05	2005-06	2006-07	2007-08
Total Appeals & Related Actions					
Filed	903	1,380	1,331	1,520	1,503
Finalised	836	1,241	1,366	1,530	1,645
Current	440	579	544	549	407
Corporations Appeals & Related Actions					
Filed	10	19	14	37	22
Finalised	9	13	10	37	32
Current	7	13	17	18	8
Migration Appeals & Related Actions					
Filed	375	971	1,050	1,092	1,020
Finalised	435	659	1,051	1,124	1,120
Current	52	364	363	332	232
Native Title Appeals & Related Actions					
Filed	24	10	8	25	7
Finalised	7	22	15	20	19
Current	30	18	11	15	3
Total Appeals & Related Actions – (ex. Corporations, Migration & Native Title Appeals & Related Actions)					
Filed	494	380	259	366	454
Finalised	385	547	290	349	482
Current	351	184	153	192	164

Figure 5.1 – Matters filed 2003-04 to 2007-08

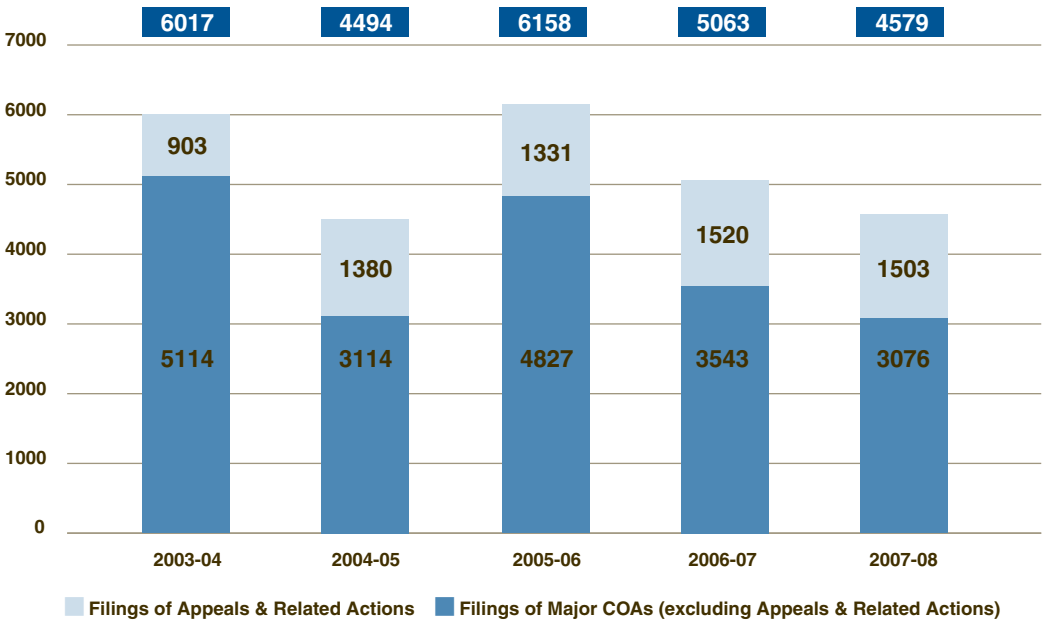
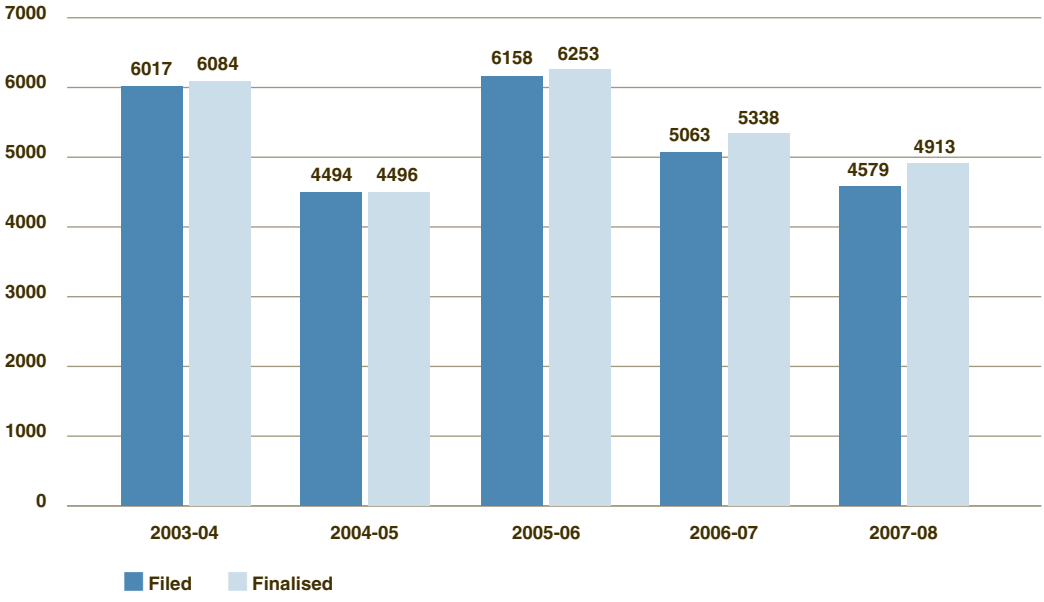
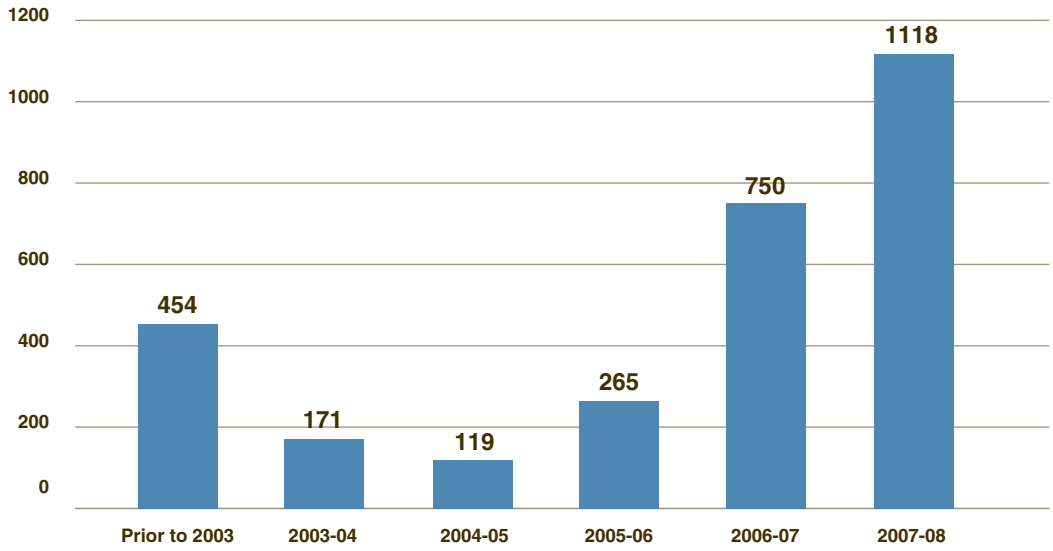


Figure 5.2 – Matters filed and finalised 2003-04 to 2007-08



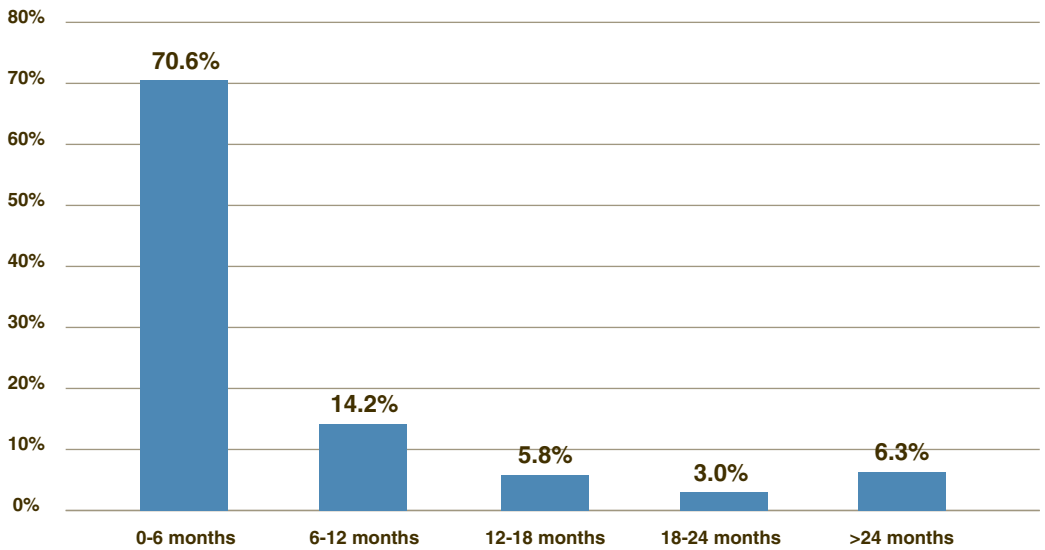
The number finalised refers to those matters finalised in the relevant financial year, regardless of when they were originally filed.

Figure 5.3 – Age and number of current matters at 30 June 2008



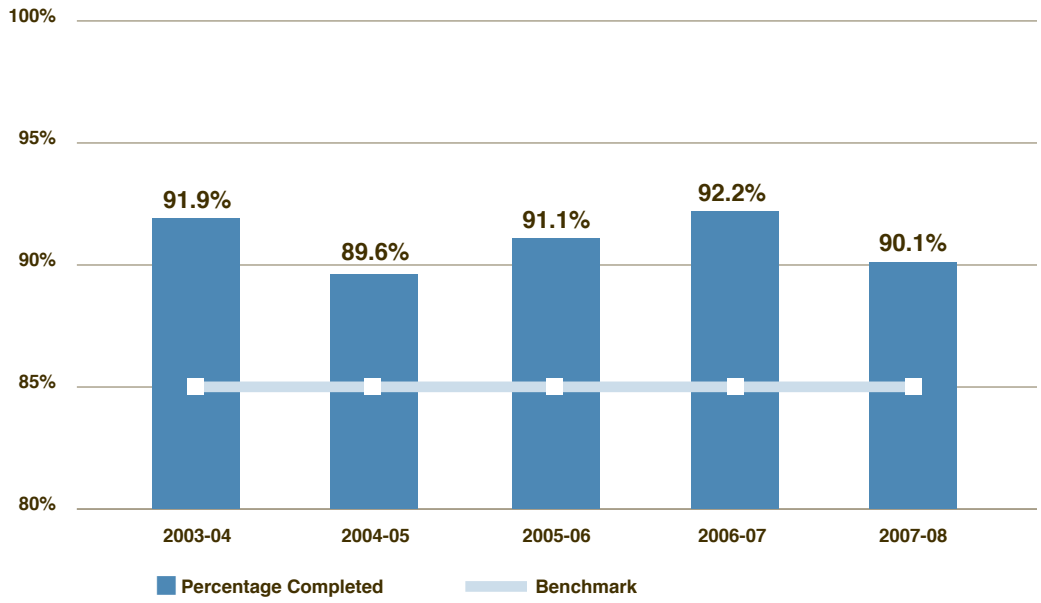
A total of 2,877 matters remain current at 30 June 2008. There were 454 applications still current relating to periods before those shown in the graph. Over 90% of cases prior to 2003 are native title matters.

Figure 5.4 – Time span to complete matters completed in the period 1 July 2003 to 30 June 2008



A total of 27,084 matters were completed during the five year period ending 30 June 2008, 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 2003-04 to 2007-08



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.

Table 5.4 – Finalisations of major COAs in accordance with 85% benchmark

(Incl. appeals and related actions and ex. native title matters)

Percentage completed		2003-04	2004-05	2005-06	2006-07	2007-08
Under 18 months		5,536	3,956	5,622	4,851	4,371
	% of Total	91.9%	89.6%	91.1%	92.2%	90.1%
Over 18 months		487	461	550	487	478
	% of Total	8.1%	10.4%	8.9%	9.3%	9.9%
Total COAs		**6,023**	**4,417**	**6,172**	**5,262**	**4,849**

Figure 5.6 – Bankruptcy Act matters filed 2003-04 to 2007-08

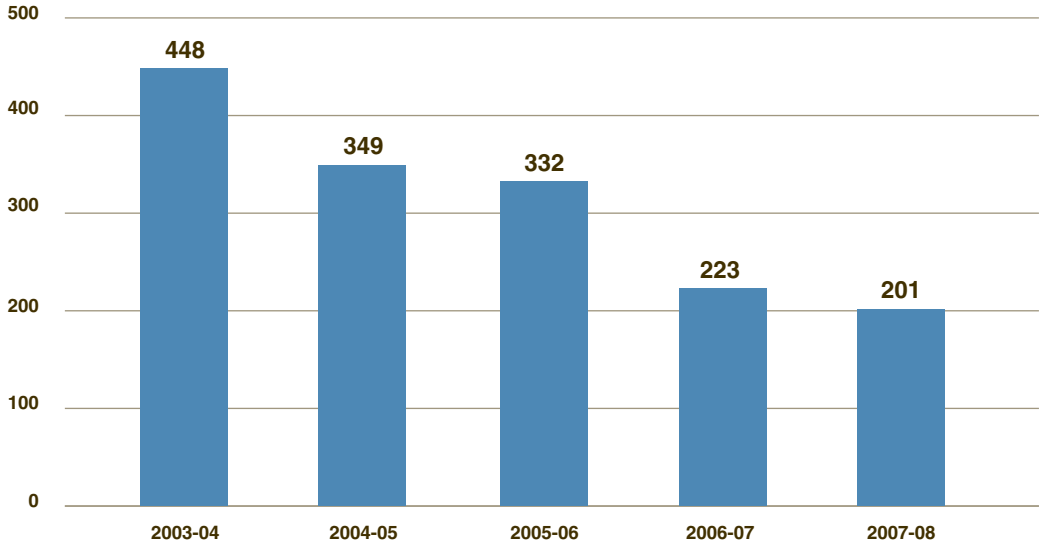
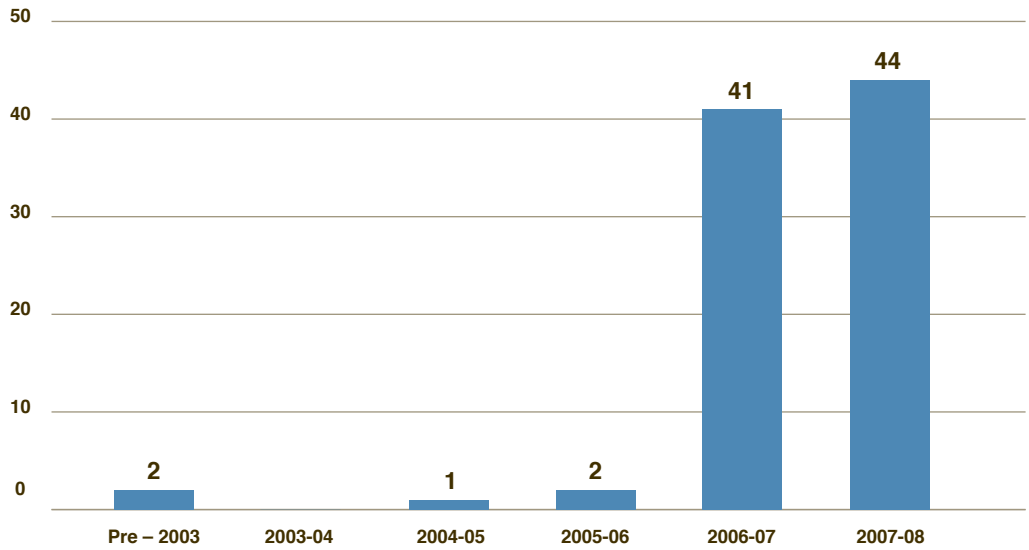


Figure 5.6.1 – Age of current Bankruptcy matters prior to 30 June 2008



A total of 90 Bankruptcy Act matters remain current at 30 June 2008.

Figure 5.7 – Corporations Act matters filed 2003-04 to 2007-08

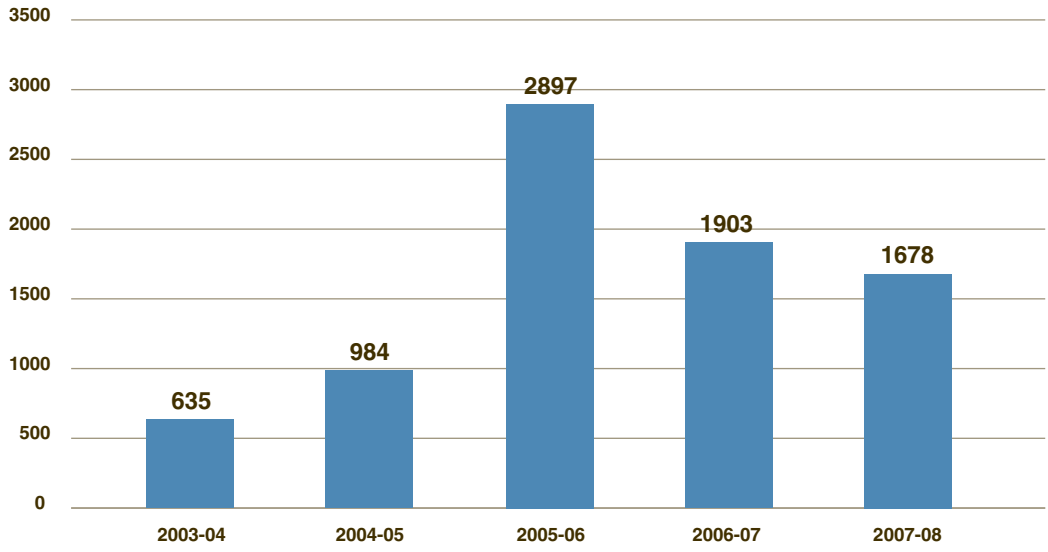
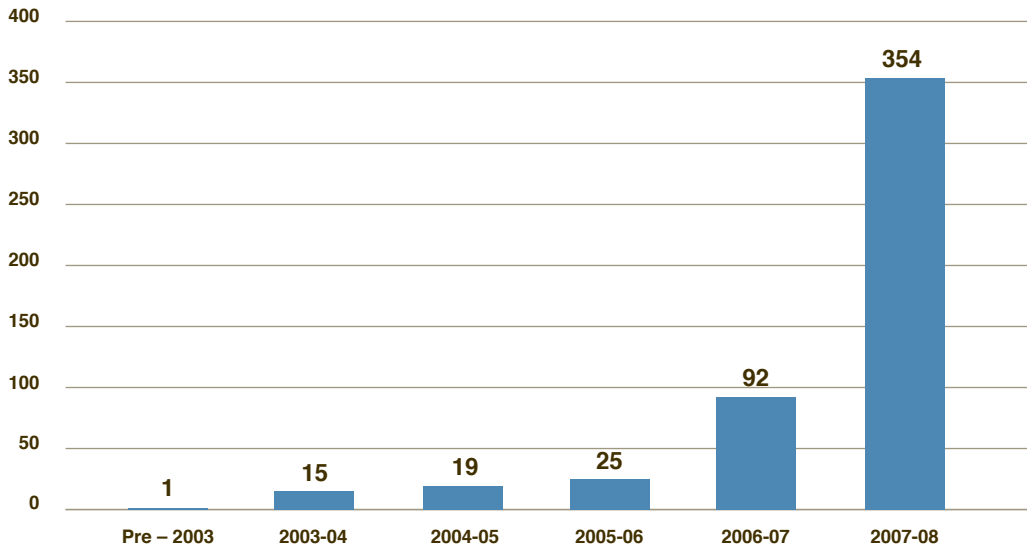


Figure 5.7.1 – Age of current Corporations matters filed prior to 30 June 2008



A total of 506 Corporations Act matters remain current at 30 June 2008.

Figure 5.8 – Trade Practices Act matters filed 2003-04 to 2007-08

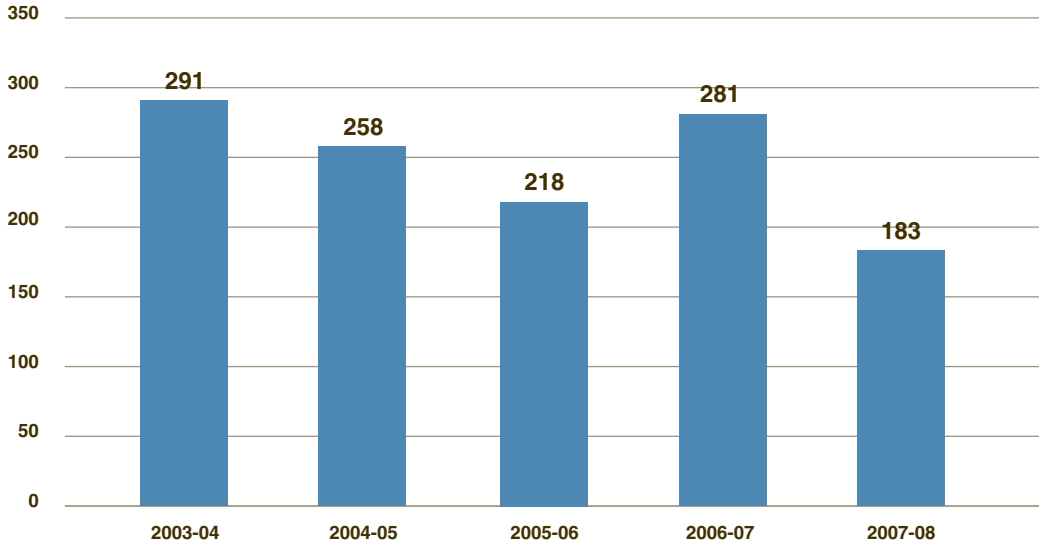
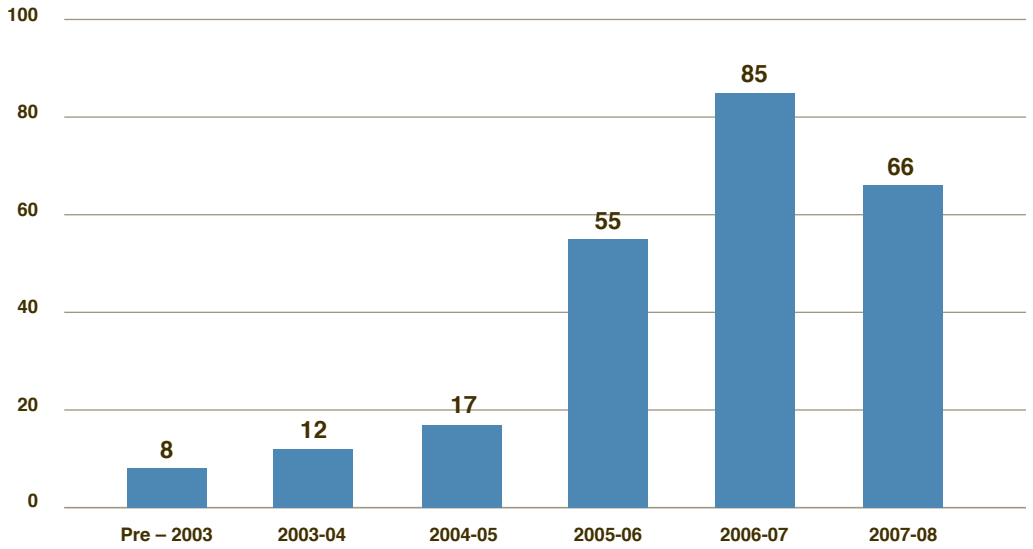
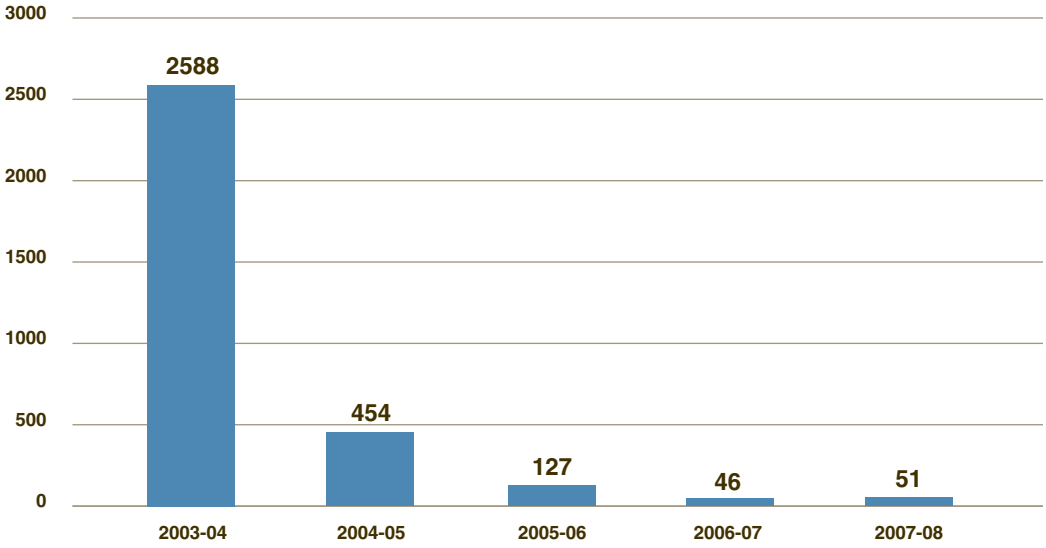


Figure 5.8.1 – Age of current Trade Practices matters filed prior to 30 June 2008



A total of 243 Trade Practices Act matters remain current at 30 June 2008.

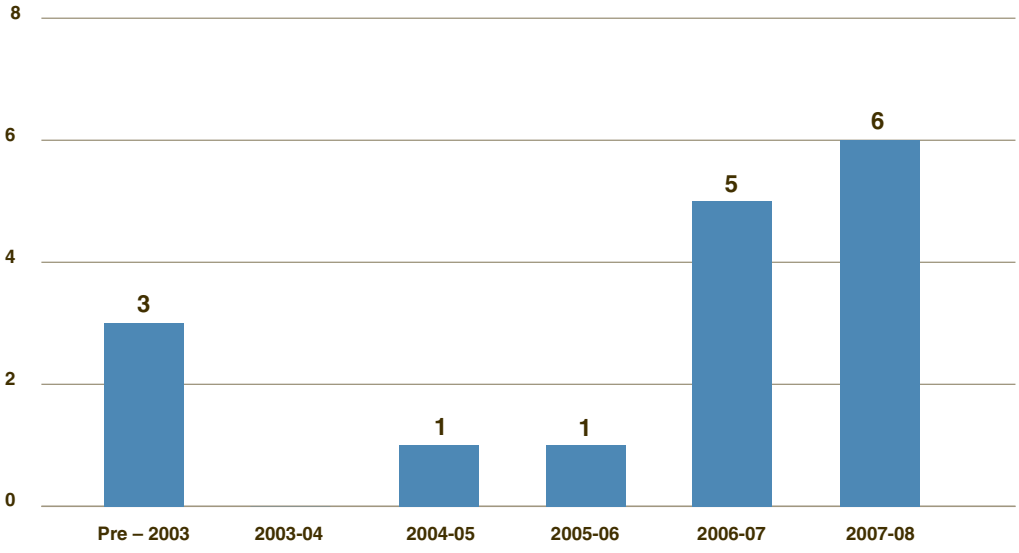
Figure 5.9 – Migration Act matters filed 2003-04 to 2007-08



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

The increase shown for 2003-04 is largely attributed to migration applications remitted from the High Court of Australia. A total of 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.

Figure 5.9.1 – Age of current Migration matters filed prior to 30 June 2008



A total of 16 Migration Act matters remain current at 30 June 2008.

Figure 5.10 – Admiralty Act matters filed 2003-04 to 2007-08

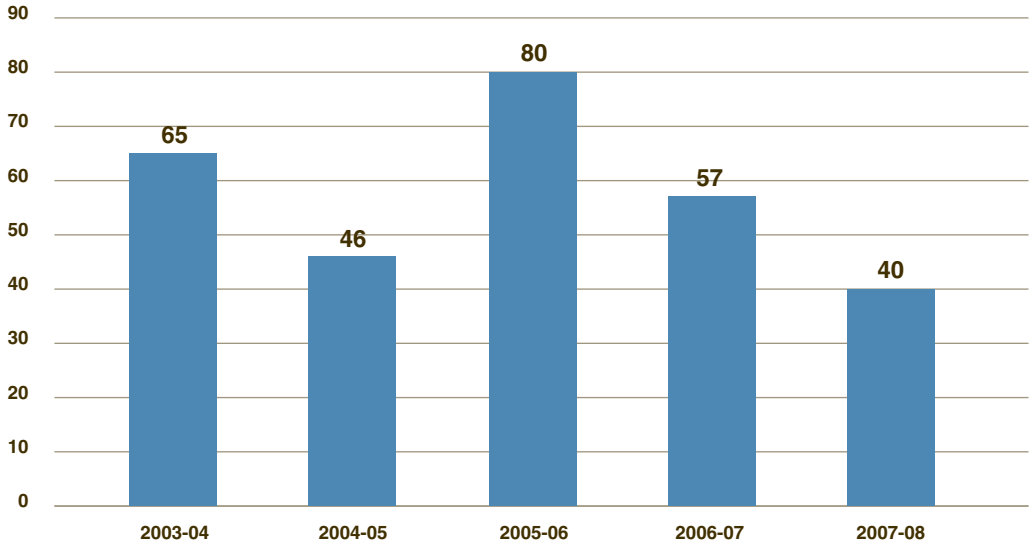
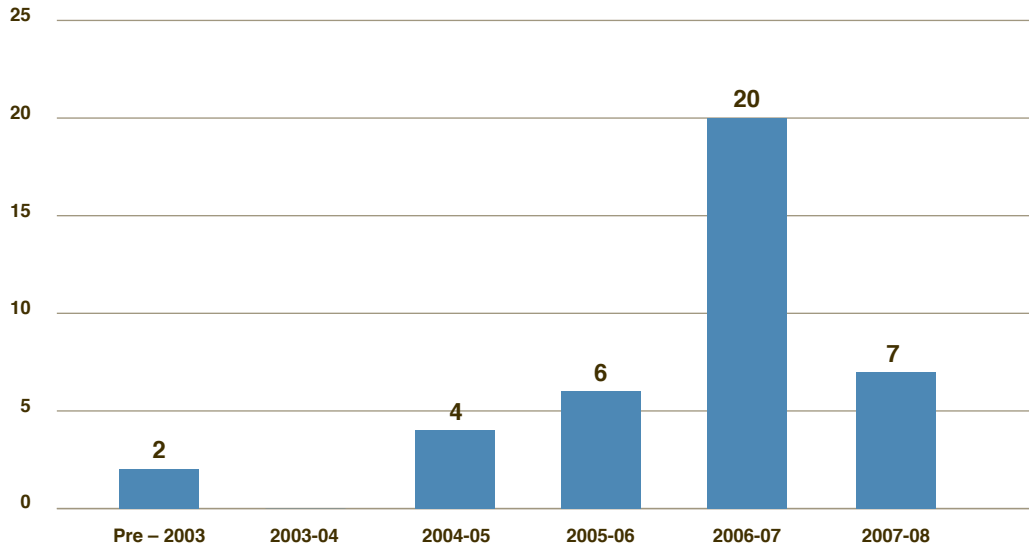


Figure 5.10.1 – Age of current Admiralty matters filed prior to 30 June 2008



A total of 39 Admiralty Act matters remain current at 30 June 2008.

Figure 5.11 – Native Title Act matters filed 2003-04 to 2007-08

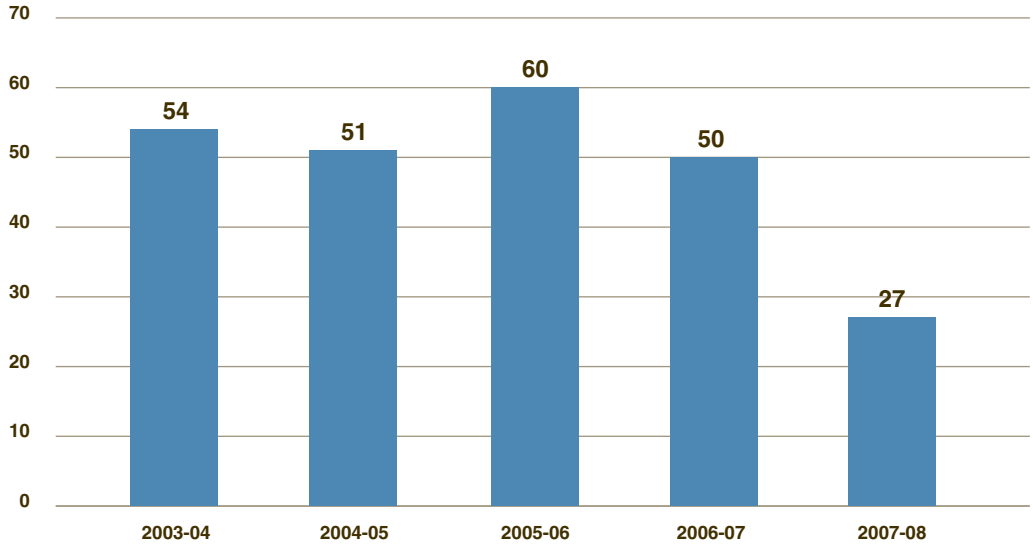
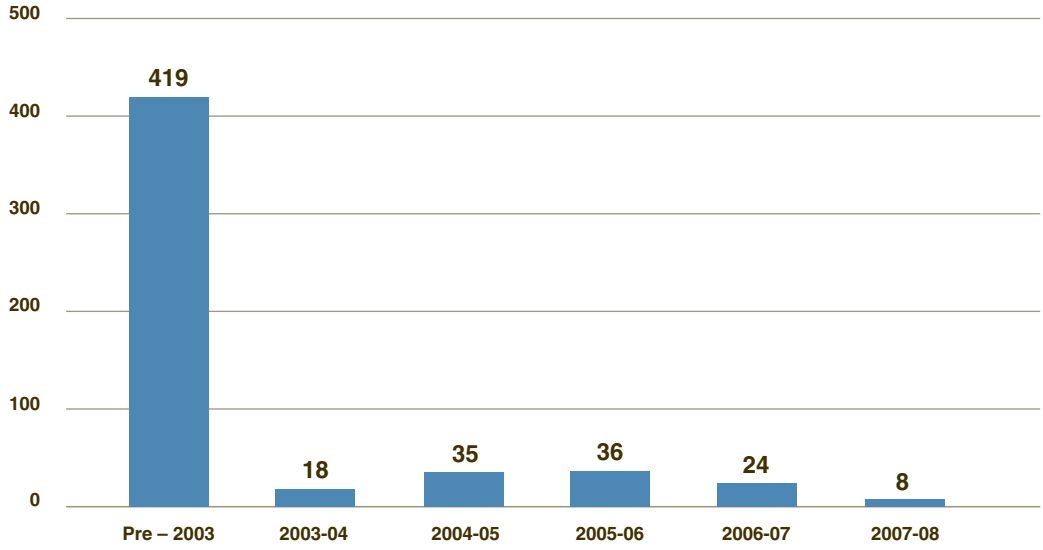


Figure 5.11.1 – Age of current Native Title matters filed prior to 30 June 2008



A total of 540 Native Title Act matters remain current at 30 June 2008.

Figure 5.12 – Workplace relations matters filed 2003-04 to 2007-08

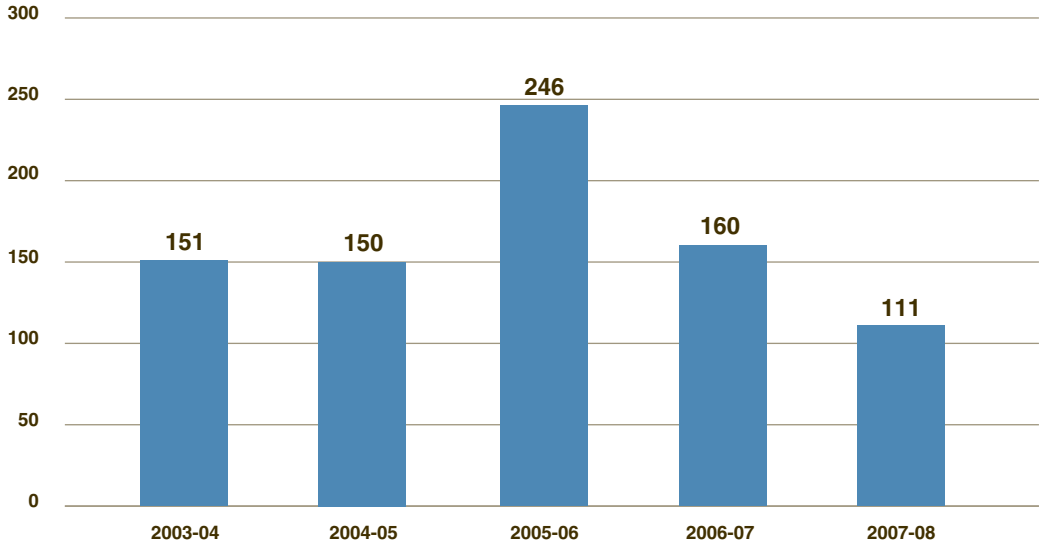
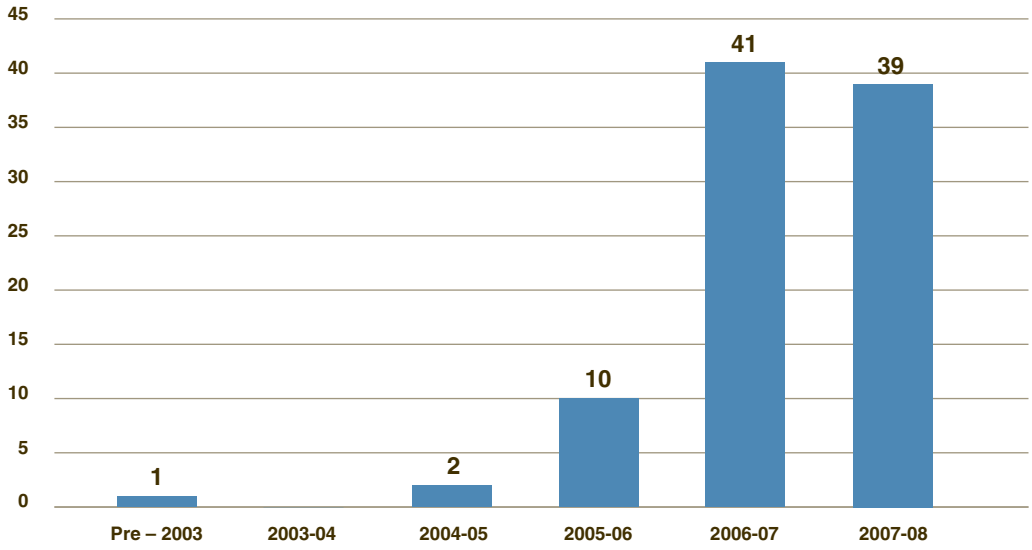


Figure 5.12.1 – Age of current workplace relations matters filed prior to 30 June 2008



A total of 93 workplace relations cases remain current at 30 June 2008.

Figure 5.13 – Taxation matters filed 2003-04 to 2007-08

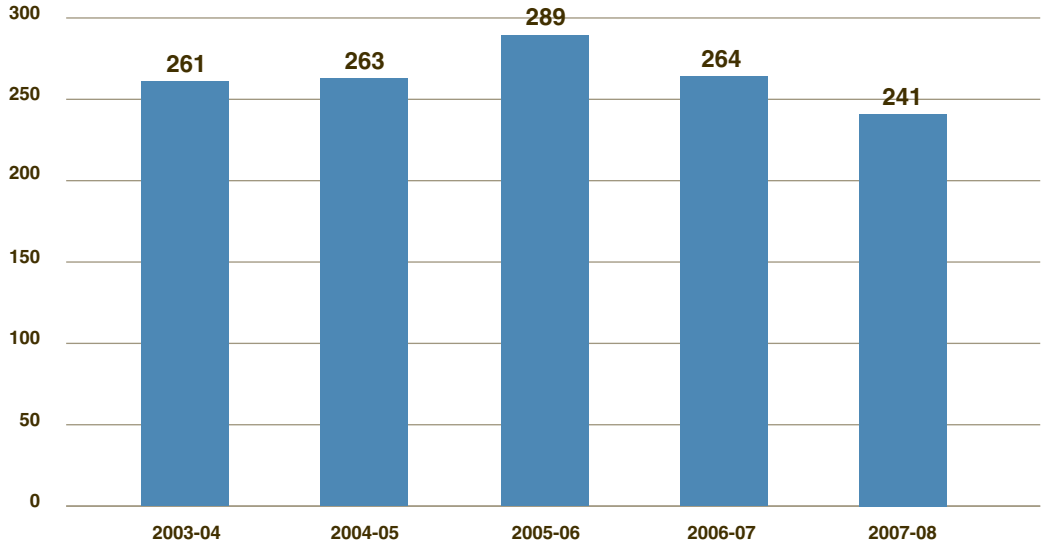
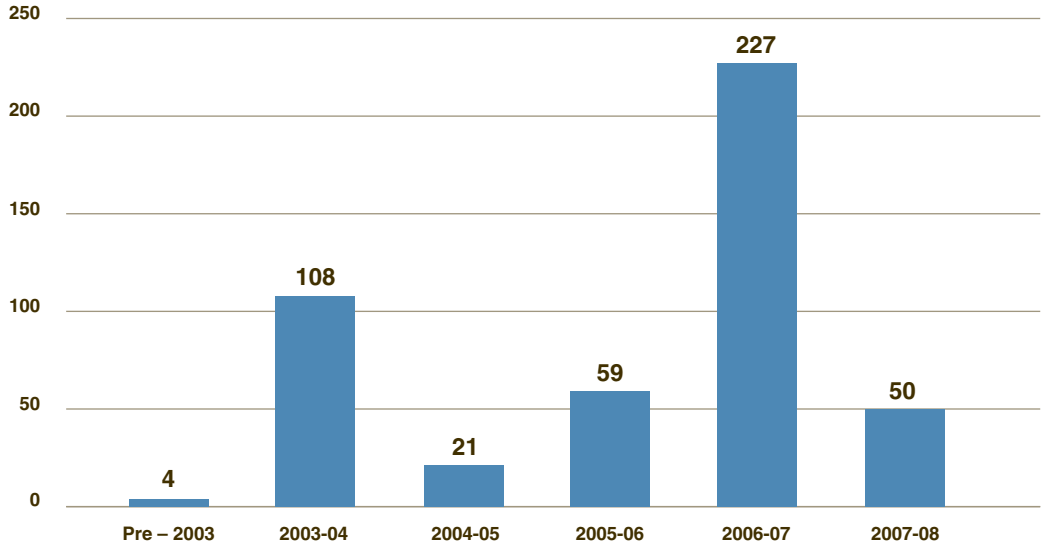


Figure 5.13.1 – Age of current taxation matters filed prior to 30 June 2008



A total of 469 taxation cases remain current at 30 June 2008.

Figure 5.14 – Intellectual property matters filed 2003-04 to 2007-08

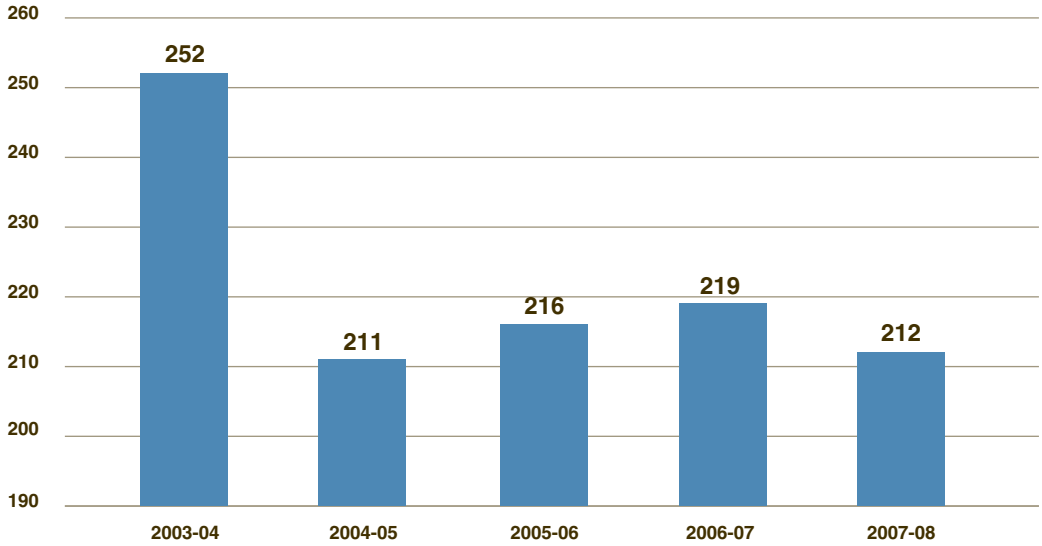
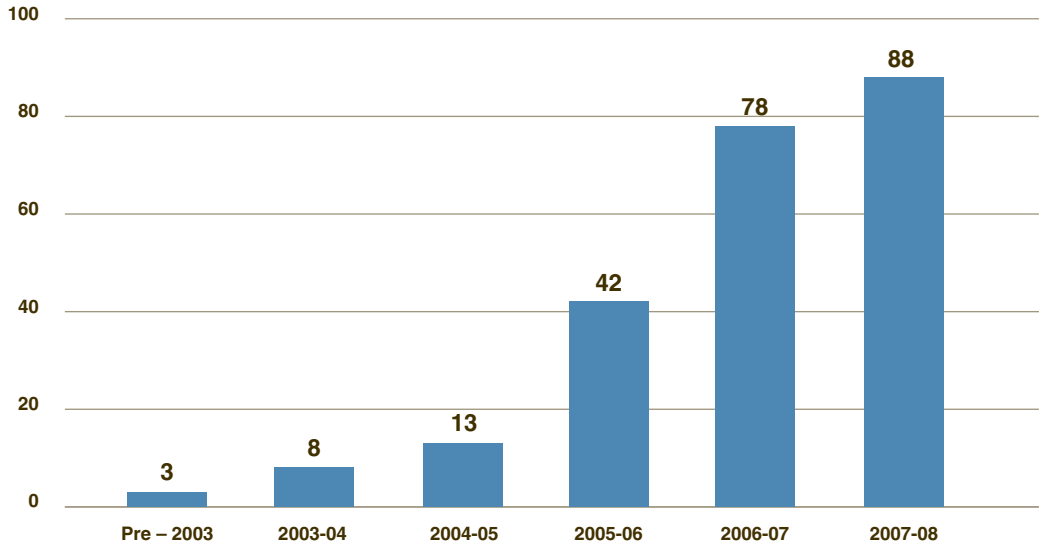


Figure 5.14.1 – Age of current intellectual property matters filed prior to 30 June 2008



A total of 232 intellectual property matters remain current at 30 June 2008.

Figure 5.15 – Appeals & related actions filed 2003-04 to 2007-08

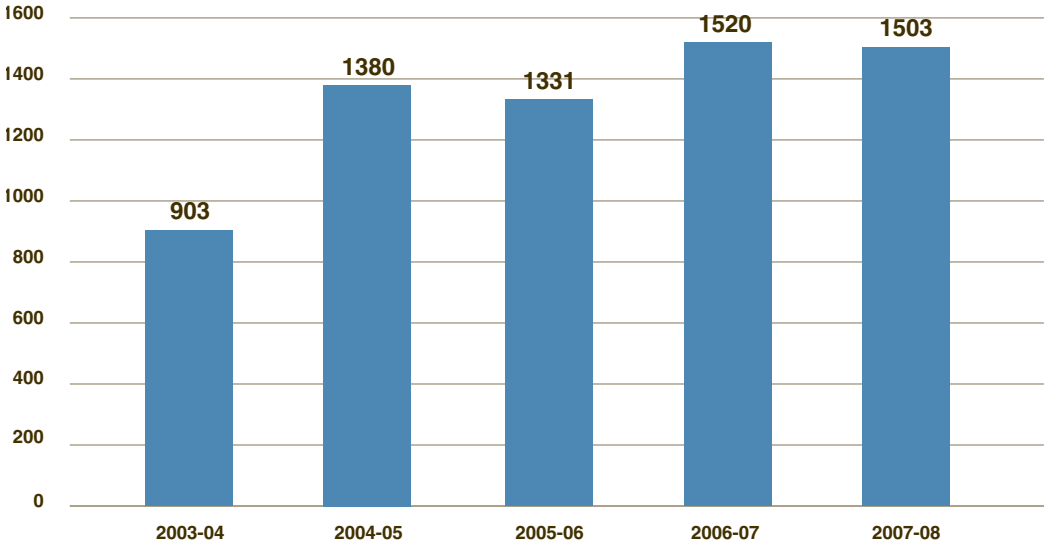
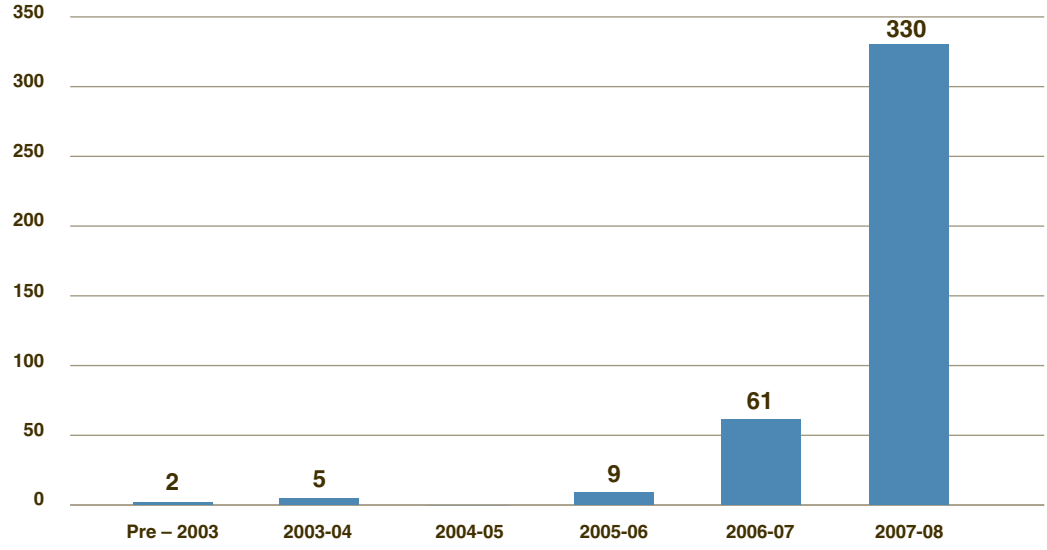


Figure 5.15.1 – Age of current appeals & related actions filed prior to 30 June 2008



A total of 407 appeals remain current at 30 June 2008.

Figure 5.16 – Source of appeals & related actions 2003-04 to 2007-08

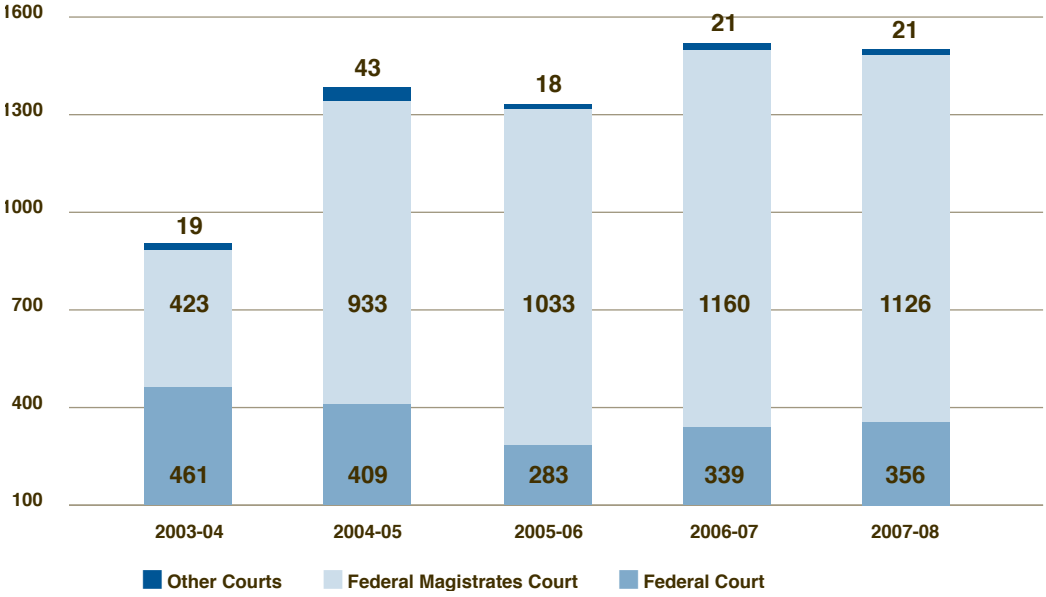


Table 5.5 – Appeals & related actions

Source	2003-04		2004-05		2005-06		2006-07		2007-08	
Federal Court	461	33.3%	409	30.7%	283	18.6%	339	22.3%	356	23.7%
Federal Magistrates Court	423	30.5%	933	69.9%	1,033	68.0%	1,160	76.3%	1,126	74.9%
Other Courts	19	1.4%	43	3.2%	18	1.2%	21	1.4%	21	1.4%
Total by Period	**903**		**1,385**		**1,334**		**1,520**		**1,503**	

APPENDIX 6 – WORK OF TRIBUNALS

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

Australian Competition Tribunal

Functions and powers

The Australian Competition Tribunal was established under the Trade Practices Act 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 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. The *Trade Practices Legislation Amendment Act (No 1) 2006* came into effect, granting the Tribunal the authority to decide merger authorisations and to review the ACCC decisions in relation to merger clearance applications.

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 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.

The Tribunal has been given additional jurisdiction to review 'reviewable regulatory decisions' of the Australian Energy Regulator (AER): National Electricity Law, s 71B(1), and 71A (definitions). These 'reviewable regulatory decisions' include:

- a network revenue or pricing determination that sets a regulatory period; or
- any other determination (including a distribution determination or transmission determination) or decision of the AER under the National Electricity Rules that is prescribed by the Regulations.

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.

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 89.

Activities

One review proceeding was current at the start of the reporting year. During the year, two proceedings were commenced and one matter was finalised. Two matters are pending. One application was filed in relation to access to services under part 44ZP of the *Trade Practices Act 1974* (Cth) and another for leave to review a decision of the Australian Energy Regulator under the National Electricity Law.

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

Decisions of interest

Application by ElectraNet Pty Ltd [2008] ACompT 1 (23 June 2008)

Workload trends

There was no significant change in the Tribunal's workload. Three of the applications were to review telecommunications decisions under part XIC of the Act.

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.

The Copyright Amendment Act 2006, assented to on 11 December 2006, has given the Tribunal more jurisdiction, including to hear disputes between collecting societies and their members.

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 and is also within the discretion of the Tribunal. The *Copyright Tribunal (Procedure) Regulations 1969* set out procedural requirements for the making and hearing of applications.

Proceedings are conducted with as little formality and technicality and as quickly 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. During 2007-08 there were the following changes to the membership:

- Justice Lindgren's appointment as President expired on 10 October 2007.
- Justice Emmett was appointed President on 11 October 2007.
- Justice Allsop was appointed as Deputy President on 11 October 2007, but resigned effective 7 April 2008.

The Registrar of the Tribunal is an officer of the Federal Court. Details are set out in Appendix 3 on page 89.

Activities

Three matters were current at the start of the reporting year. During the year, three matters were commenced, and one matter was finalised. Five 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/workload trends

There was one significant decision of interest which received considerable press coverage when it was handed down. It was:

- Full Tribunal decision in the Reference by PPCA (the Nightclubs Matter) CT2/2004 [2007] ACopy1

Otherwise, there were no significant workload changes during the year.

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* (DFDA).

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.

The DFDA, as amended by the *Defence Legislation Amendment Act 2006*, has established an Australian Military Court, which is intended to replace the current system of trials by Courts Martial and Defence Force Magistrates under the DFDA. As a result of the new amendments, workload is likely to increase substantially as an appeal will now lie to the Tribunal on penalty as well as conviction.

Practice and procedure

Formal determination of sitting dates has been now been introduced. Under s 14(1) of the *Defence Force Discipline Appeals Act 1955* (Cth) the sittings of the Tribunal, will be held at places to be further determined on the following dates, subject to the availability of business: 30 June 2007, 1 and 2 July 2008, 9 and 10 October 2008 and 29 and 30 January 2009.

Otherwise, 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. Chief Justice Underwood's appointment as Deputy President concluded at the end of 2007.

The Registrar and Deputy Registrars of the Tribunal are officers of the Federal Court. Their details are set out in Appendix 3 on page 89.

Activities

One matter was current at the start of the reporting year. During the year, five matters were commenced and four finalised. Two matters are pending.

Complaints

An application was received which sought the removal from the DFDAT website of the record of a 1968 Courts-Martial Appeal Tribunal proceeding. The application was made on privacy grounds. The record found on the DFDAT website was amended on an administrative basis.

Decisions of interest

Wethling v Chief of Army (No 2) [2007] ADFDAT 3

McCabe v Chief of Army [2007] ADFDAT 4

Z v Chief of Navy [2008] ADFDAT 1

Hardy v Chief of Air Force [2008] ADFDAT 2

Workload trends

The *Defence Force Discipline Act 1982* (DFDA), as amended by the *Defence Legislation Amendment Act 2006*, has established an Australian Military Court, which is intended to replace the current system of trials by Courts Martial (CM) and Defence Force Magistrates (DFM) under the DFDA. As a result of the changes, there may be an increase in DFDAT workload as more matters may be bought before the Tribunal on the basis that there is an ability to appeal sentencing. The workload of the Tribunal remains unpredictable.

APPENDIX 7 – SUMMARY OF DECISIONS OF INTEREST

DISCRIMINATION LAW – sexual harassment – whether Federal Magistrate erred in his determination that the alleged acts against the appellant by the first respondent could not amount to sexual harassment

Gauci v Kennedy
(13 July 2007, Justice Collier)

This was an appeal against a decision of a Federal Magistrate summarily dismissing (pursuant to the *Federal Magistrates Court Rules* r 13.10) the claim of the appellant against the second respondent under Part II Division 3 of the *Sex Discrimination Act 1984* (Cth) (the Act). The appellant claimed that he had been sexually harassed by the first respondent within the meaning of section 28A of the Act, and that the second respondent, the employer of both the appellant and the first respondent, was vicariously liable for the first respondent's conduct. The Federal Magistrate had held that the conduct of the first respondent, while constituting harassment of the appellant, was not "sexual harassment", and accordingly there could be no liability of the first respondent, or accordingly the second respondent, under the Act.

The appellant was employed by the second respondent, a university, as a tutor. The first respondent was employed by the second respondent on a casual basis as a tutor, but was also a student at the university and had contact with the appellant in that capacity. The first respondent had invited the appellant to meals and to attend films with her. Following several communications the appellant requested the first respondent by email to stop contacting him. The first respondent replied by email, demanding that the appellant provide reasons why he did not wish to have a relationship with her, and claiming that she could "make his life hell", and that he was a coward and afraid of intelligent women. The first respondent then complained to the second respondent that the appellant had sexually harassed her. After investigation by the second respondent of the first respondent's conduct this complaint was dropped. The appellant then lodged a complaint with the Human Rights and Equal Opportunity Commission claiming sexual harassment. The complaint was terminated by the Commission because there was no reasonable prospect of it being settled by conciliation.

Justice Collier allowed the appeal and remitted the matter to the Federal Magistrates Court on the basis that there was a real question to be determined between the parties. Her Honour considered that it was not clear, in the absence of a hearing where relevant evidence and legal principles could be considered, that the conduct of the first respondent was not "unwelcome conduct of a sexual nature" within the meaning of the Act. Her Honour also noted that aggressive conduct following a rejection could constitute harassment of a sexual nature.

TRADE PRACTICES – whether Foxtel, by refusing to accept offers by C7 to supply sports channels took advantage of its substantial power in the retail pay television market, in contravention of s 46(1) of the *Trade Practices Act 1974* (Cth) ("TP Act") – whether Master Agreement between consortium providing for bids for pay television rights contained a provision ('*Master Agreement Provision*') having the purpose, effect or likely effect of substantially lessening competition, in contravention of s 45(2)(a)(ii) of the TP Act – whether giving effect to the Master Agreement Provision contravened s 45(2)(b)(ii) of the Trade Practices Act

Seven Network Ltd v News Ltd
(27 July 2007, Justice Sackville)

These proceedings involved a complaint by Seven Networks Ltd (Seven) that in May 2002 it was forced to shut down the business of C7 Pty Ltd ("C7"), a producer and distributor of sports channels for Australian pay television platforms. Seven's main contention was that the closure of C7's business was forced upon it because certain parties, notably News Ltd, Publishing and Broadcasting Ltd and Telstra Corporation Ltd, engaged in anti-competitive conduct in contravention of ss 45 and 46 of the *Trade Practices Act 1974* (Cth) during the period from 1999 and 2001.

The case was one of the biggest in the history of the Federal Court and was described by the trial judge as an example of '*mega-litigation*'. The trial lasted for 120 hearing days and took place in an electronic courtroom. The electronic database created for the proceedings contained 85,653 separate documents comprising 589,392 pages. Ultimately 12,849 documents, comprising 115,586 pages, were admitted into evidence. The written submissions of the various parties totalled over 5,000 pages. The trial judge estimated that the total costs incurred by all the parties were in the order of $200 million.

The hearing concluded on 5 October 2006 and judgment was delivered on 27 July 2007. The judgment, in hard copy, runs for 1,120 pages.

The judgment addresses many issues, including whether:

- Seven had established the existence of the market in which the respondents' conduct was said to have had the effect of substantially lessening competition;
- various agreements entered into by the respondents had the purpose or effect of substantially lessening competition in the retail pay television market, the only market alleged by Seven that was found to have been in existence at the relevant time; and
- Foxtel, a competitor of C7 in the retail pay television market, had taken advantage of its power in that market in any of the ways alleged by Seven.

Although Seven succeeded in obtaining findings in its favour on certain issues, it failed to establish that any of the respondents were liable to it in relation to the closure of C7. Accordingly, the proceedings were dismissed and Seven was ordered to pay the respondents' costs.

SHIPPING – salvage – appeal from award of salvage reward

United Salvage Pty Ltd v Louis Dreyfus Armateurs SNC
(1 August 2007, Justices Ryan, Kiefel and Dowsett)

The first appellant was an international salvage operator. The second appellant was the owner of the tug the *Tom Tough* and the third appellant was the owner of the tugs the *Wistari* and the *Kuttabul*. The three tugs were involved in the provision of salvage services to the ship *La Pampa* at Gladstone Harbour, Queensland on 27 March 2002.

Section 315 of the *Navigation Act 1912* (Cth) provides that certain Articles of the *International Convention on Salvage*, which entered into force on 14 July 1996 (the Convention), have the force of law in Australia. Article 12 of the Convention provides that only salvage operations which have had a useful result give a right to reward. Article 13 provides the criteria for fixing the reward.

The respondents did not dispute the appellants' entitlement to a reward. The issue on appeal was whether the reward was inadequate as a result of errors as to facts and as to the criteria to be applied in assessing a reward.

The appellants submitted that the trial judge had erred in finding that there was no real probability of global or local failure and in failing to give enough weight to several factors, including the skill and efforts of the appellants in preventing damage to the environment and the possible exposure of the *La Pampa* and her owners to third party liability. The appellants argued that the trial judge had wrongly used the cost of the salvage services, as opposed to the value of the vessel, as a starting point in determining the award and should have fixed the total award at a level that would encourage the provision of salvage services. They also contended that judgment should have been entered against the third respondent as the beneficial owner of the vessel.

The Full Court, in dismissing the appeal, observed that the trial judge's findings of fact were sound and justified the conclusion that there was little risk of the vessel swinging across the channel and grounding, and causing damage to the environment. The Full Court held that the trial judge had given adequate consideration to the potential liability to third parties and the time used, and expenses and losses incurred, by the appellants. Contrary to the appellants' submissions, the Full Court also held that the trial judge had taken into account that the salved value was substantial, and was clearly cognisant of the public policy behind the award of salvage rewards. Finally, the Full Court held that judgment should not be entered against the third respondent as its relationship with the *La Pampa* was at best equivocal.

EXTRADITION – application to restrain State Magistrate from proceeding under s 19 of *Extradition Act 1988* (Cth)

Williams v United States of America
(3 August 2007, Justices Branson, Tamberlin and Allsop)

Mr Williams, a citizen of the United States of America, was arrested upon the request of the United States shortly after his arrival at Sydney Airport. He was granted conditional bail and Australia subsequently received an extradition request from the United States.

After a first notice that was the subject of a successful application for judicial review, the Minister issued a new Notice of Receipt of Extradition Request, and as a consequence proceedings under s 19 of the *Extradition Act 1988* (Cth) (the Extradition Act) were commenced before a New South Wales Magistrate.

Williams brought an application seeking orders to restrain the respondents from taking any further steps under s 19 of the Extradition Act to determine whether he was eligible for surrender to the United States of America, and a declaration that ss 19(1) and 46(1)(a) of the Extradition Act did not authorise or permit the conduct of such proceedings.

The application was made in the original jurisdiction of the Court. However, that jurisdiction was exercised by a Full Court pursuant to a direction of the Chief Justice. The magistrates of New South Wales were joined as respondents to the proceeding. The Attorneys-General of the Commonwealth and New South Wales both intervened in the proceedings pursuant to s 78A(1) of the *Judiciary Act 1903* (Cth).

Branson and Allsop JJ (Tamberlin J not deciding), on the basis of established authority and the proper interpretation of s 19, rejected the submission of the applicant that by s 19(1) and s 46(1)(a) of the *Extradition Act* the Commonwealth Parliament had exceeded its legislative power by, without the approval of New South Wales, imposing a burden on, or interfering with or impeding, the activities of that State by imposing duties on magistrates as holders of a State statutory office. Their Honours concluded that the functions exercised by a State Magistrate under the Extradition Act were exercised by the magistrate as a *persona designata*.

The applicant also submitted that the reference to "another office or appointment" in s 23(2) of the *Local Courts Act 1982* (NSW) (the *NSW Act*) meant another office in and for New South Wales or another appointment in and of New South Wales. That is, a person holding the office of Magistrate could not be granted approval under s 23(2) to hold another office or appointment if the office was not in and for New South Wales or the appointment was not in and of New South Wales. The Court, pointing to several legislative indications in the *NSW Act* to the contrary and noting the relevance of the historical context of the arrangements for co-operation between the States and the Commonwealth about extradition, unanimously rejected the submission.

An appeal to the High Court from the above judgment was dismissed with costs (see *Williams v United States of America* [2008] HCA 14).

PRIMARY INDUSTRY – wine regions – determination of geographical indication

Baxendale's Vineyard Pty Ltd v The Geographical Indications Committee
(10 August 2007, Justices Emmett, Dowsett and Siopis)

This decision dismissed an appeal brought against a decision of the Administrative Appeals Tribunal (the Tribunal) made under the *Australian Wine and Brandy Corporation Act 1980* (Cth) (the Act) and associated regulations. The Tribunal decision was a review of a determination of the Geographical Indications Committee (the Committee) to determine a *region* under the Act.

The Act provides for the determination of geographic indications related to regions, sub-regions and localities of wine and vinicultural production. The Act provides for offences where those geographical indications are used otherwise than in specified circumstances in relation to the sale of wine and vinicultural products. For example, an offence may exist where wine is sold using a label containing a geographic indication that relates to a region other than the one from where the grapes used to produce the wine were grown. A Geographical Indications Committee is established by the Act to make determinations of, amongst other things, geographical indications and the regions to which they relate.

The Committee made a determination of the "King Valley" region in Victoria. Two appeals were heard by the Tribunal. The first sought a determination that the King Valley region be expanded to include additional land. The second sought an order that a separate region, the Whitlands High Plateaux, should be determined to exist over part of the land instead of the King Valley region. The Tribunal made a decision varying the final determination of the Committee by expanding the region to include the additional land as sought by the first application.

The appeal to the Court was dismissed because it failed to disclose an error made by the Tribunal on a question of law.

The decision will be of some persuasive significance in relation to the, arguably obiter, observations made by Justice Dowsett, with whom Justices Emmett and Siopis agreed.

Justice Dowsett considered the interpretation of the Act and the significance of the *Agreement between Australia and the European Community on Trade in Wine* [1994] ATS 6 (the Agreement). One of the stated objects of the Act is "to enable Australia to fulfil its obligations under proscribed wine-trading agreements" which include the Agreement. The Agreement provides for the mutual recognition of geographical indications protected under the domestic law of the party to which the geographic indication pertains.

His Honour noted that this was only one of the objects of the Act and that there would be an element of circularity in using the Agreement to determine which geographic indications were to be recognised when the Agreement provides only for the protection of geographic indications recognised under domestic law. His Honour adopted the reasoning of the High Court in *NBGM v Minister for Immigration and Multicultural Affairs* (2006) 81 ALJR 337 that where a treaty "does not provide any of the framework" for the operation of a statute, the normal principles of statutory construction that apply in Australian law are determinative of the meaning of the statutory provision; the meaning in Australian law should be clearly ascertained before attention is turned to the meaning of the convention's provisions in international law.

SEX DISCRIMINATION – Registrar's refusal to alter birth certificate of transsexual person – claim of unlawful discrimination on the ground of marital status – whether inconsistency between State and Commonwealth legislation

AB v Registrar of Births, Deaths and Marriages
(29 August 2007, Chief Justice Black and Justices Kenny and Gyles)

Section 30A of the *Births, Deaths and Marriages Registration Act 1996* (Vic) (the Victorian Act) provided that an unmarried person over the age of 18 years who had undergone sex affirmation surgery could apply to the Registrar of Births, Deaths and Marriages for the record of the person's sex to be altered in the person's birth registration. Section 30C(3) of the Victorian Act prohibited the Registrar from making the alteration if the applicant was married.

In the present case, the Registrar refused the appellant's application on the basis that she was married. The appellant sought a declaration that the Registrar had unlawfully discriminated against her in the provision of goods and services on the ground of her marital status, contrary to s 22 of the *Sex Discrimination Act 1984* (Cth) (the Commonwealth Act). She submitted that ss 30A and 30C of the Victorian Act were inconsistent with s 22 of the Commonwealth Act and, by reason of s 109 of the Constitution, invalid to the extent of the inconsistency.

Kenny J, with whose reasons Gyles J agreed (Black CJ dissenting), held that the appeal should be dismissed. Their Honours held that ss 9(4) and (10) of the Commonwealth Act operate to give effect to the obligations imposed by the *Convention on the Elimination of All Forms of Discrimination Against Women 1979* (the Convention), and define and limit the scope of the Commonwealth Act to reflect the scope of the Convention. In their Honours' view, the Convention requires States Parties to eliminate discrimination against women by placing the rights of women on an equal footing with the rights of men, and to remove discrimination on the ground of marital status where it entails the less favourable treatment of women as compared to men. Kenny and Gyles JJ held that s 22 of the Commonwealth Act is therefore limited to prohibiting discrimination on the grounds of marital status where that discrimination involves discrimination against women as compared to men. Since ss 30A and 30C(3) of the Victorian Act discriminated against all persons (female or male) on the basis of marital status, no inconsistency arose with respect to s 22 of the Commonwealth Act. Accordingly, s 109 of the Constitution did not operate to render any part of the Victorian Act invalid.

TRADE PRACTICES – cartel conduct

Australian Competition and Consumer Commission v Visy Industries Holdings Pty Ltd (No 3)
(2 November 2007, Justice Heerey)

Companies in the Visy and Amcor groups held 90 per cent of the corrugated fibreboard packaging market in Australia. Between January 2000 and October 2004 Visy and Amcor engaged in price-fixing and market sharing contrary to s 45 of the *Trade Practices Act 1974* (Cth) (the Act).

Amcor approached the ACCC with an admission of liability in late 2004 and consequently received conditional immunity from action by the ACCC.

The ACCC brought action against Visy and three of its senior officers in regard to four categories of contraventions: an Over-arching Understanding to maintain market share and increase prices; Annual Price Increase Understandings in each year for 2000 to 2003 inclusive, whereby increases in prices were agreed; Customer Price Understandings whereby prices were agreed in respect of particular customers; and Compensation Understandings whereby, in respect of particular customers who had changed from one supplier to the other, that supplier would provide another customer or customers in exchange.

It was found, on the basis of an agreed statement of facts, that Visy had committed 69 contraventions of s 45 of the Act.

His Honour pointed out that the cartel in the present case had the potential to have "the widest possible effect" because "every day every man, woman and child in Australia would use or consume something that at some stage has been transported in a cardboard box". Further, the conduct was carefully and deliberately concealed and operated by men who were "fully aware of its seriously unlawful nature". His Honour found that although the respondents admitted liability, their expression of contrition "probably (had) a substantial element of regret at being found out".

His Honour noted that although the Treasurer had stated in February 2005 that the Act would be amended to provide for five years imprisonment for serious cartel conduct, the Government "hasn't yet got around to introducing criminalisation".

A pecuniary penalty of $36 million was imposed on Visy under s 76(1)(e) of the Act for 37 of the contraventions. Each of the respondent senior officers were held to have been knowingly concerned in Visy's contraventions and pecuniary penalties were imposed on Visy's Chief Executive Officer and General Manager. No pecuniary penalty was imposed on Mr Richard Pratt, a director, because as owner of Visy he would bear the burden of the corporate penalty.

INDUSTRIAL RELATIONS – jurisdiction of the Industrial Commission of New South Wales to hear application for award prescribing long service leave for employees of constitutional corporations in coal industry – where s 16 of *Workplace Relations Act 1966* (Cth) limits the role of States in prescribing employment conditions for employees of constitutional corporations

Endeavour Coal Pty Ltd v Construction, Forestry, Mining and Energy Union
(22 November 2007, Justices Ryan, Moore and Mansfield)

This was an appeal by various corporations and employers in the coal industry under s 853(1) of the *Workplace Relations Act 1996* (Cth) (the Commonwealth Act) from a judgment of the Industrial Court of New South Wales (the Industrial Court). The appellants sought declarations that the Industrial Commission of New South Wales (the NSW Commission) did not have jurisdiction under ss 10 and 11 of the *Industrial Relations Act 1996* (NSW) (the State Act) to hear an application for an award prescribing long service leave conditions for employees of constitutional corporations.

Sections 10 and 11 of the State Act provide upon an application to the NSW Commission, on the NSW Commission's own initiative or in the course of arbitration by the NSW Commission, that the NSW Commission may make an award setting fair and reasonable conditions of employment for employees. Section 16 of the Commonwealth Act limits the role of States in prescribing or indirectly regulating terms and conditions of employment of employees of constitutional corporations.

The appellants argued that ss 10 and 11 of the State Act deal with award-making and do not deal with long service leave, and that therefore the NSW Commission did not have jurisdiction to hear the application or power to make the proposed award in so far as it affected them because the Commonwealth Act removed constitutional corporations from the scope of the NSW Commission's jurisdiction.

The respondent submitted that, to the extent that s 10 allows the NSW Commission to make award provisions relating to long service leave, it falls within the exceptions in ss 16(2) and 16(3)(f) so that s 16(1) does not operate to preclude the NSW Commission from making award provisions relating to long service leave matters. The respondent submitted that the exceptions in s 16 should be read broadly and beneficially in light of their social purpose of providing long service leave to reward employees of long standing.

The Full Court upheld the appeal and made a declaration that the NSW Commission did not have power to make an award binding a constitutional corporation in relation to long service leave. After considering the historical background and overall scheme of industrial regulation, the Full Court held that s 16 is intended to preserve only the operation of State Acts which deal directly with the matters enumerated in s 16(3) including long service leave, and that ss 10 and 11 do not deal with long service leave at all.

TAXATION – income tax – deductibility of legal expenses – issue estoppel

Commissioner of Taxation v Day
(21 December 2007, Justices Spender, Dowsett and Edmonds)

The respondent taxpayer was a public service officer against whom disciplinary proceedings had been brought. Three sets of charges were brought, each alleging that he had failed to fulfil his duty as an officer under the *Public Service Act 1922* (Cth). If proven, the charges put the respondent at risk of having his income reduced or lost. The respondent incurred legal expenses defending the proceedings, and claimed that those expenses were deductible pursuant to section 8-1 of the Income *Tax Assessment Act 1997* (Cth).

The primary judge held that legal expenses in relation to the first charges were not deductible, but that the expenses in relation to the second charges were. In relation to the third charges, the respondent had paid expenses in the 2001 and 2002 financial years. In earlier proceedings there had been judgment by consent that the expenses for the 2001 financial year were deductible. The primary judge held that that consent judgment estopped the Commissioner from denying the deductibility of the 2002 financial year expenses.

On appeal, the Court unanimously held that no estoppel arose. A consent judgment may give rise to issue estoppel, but only in respect of the fundamental issue or issues that were clearly decided by the judgment. In this case, in the earlier proceedings, the deductibility of the 2002 financial year expenses had not been raised in any court document; rather, material filed and relied upon was directed solely towards the deductibility of expenses in the 2001 financial year. It was, therefore, that issue alone which had been decided by the consent judgment, and no estoppel arose in relation to the 2002 financial year expenses.

In relation to the deductibility of the respondent's legal expenses, the respondent had to show that the outgoings were "incurred in gaining or producing assessable income". Spender and Edmonds JJ held (Dowsett J dissenting) that it was not relevant to deductibility whether the charges resulted from conduct undertaken in the discharge of employment duties, or conduct extraneous to activities of the respondent's employment. Rather, the determinative point was whether, having regard to the objective purpose of the person making the expenditure, the expenditure was incurred in the course of gaining or producing the assessable income, in the sense that the occasion of the incurrence of legal expenses is to be found in what is productive of assessable income. In this case, as the respondent was defending proceedings which directly threatened his assessable income, the legal expenses were deductible.

MIGRATION – cancellation of visa – character test – suspected association with persons suspected of being or having been involved in criminal conduct – nature of association necessary to enliven ministerial discretion to cancel visa

Minister for Immigration and Citizenship v Haneef
(21 December 2007, Chief Justice Black and Justices French and Weinberg)

This was an appeal from orders made by Justice Spender setting aside a decision of the Minister for Immigration and Citizenship to cancel a visa issued to Dr Haneef.

Dr Haneef and his wife arrived in Australia from India in September 2006. Following attempted terrorist bombings in London and Glasgow, two suspects, Dr Sabeel Ahmed and Dr Kafeel Ahmed, were arrested. Both were second cousins of Dr Haneef.

On 2 July 2007 Dr Haneef was arrested by the Australian Federal Police and later charged with having intentionally provided resources, namely a SIM card, to a terrorist organisation consisting of persons including his two second cousins. On 16 July 2007 he was granted bail by a Magistrate in Queensland. Immediately upon the grant of his bail, the Minister cancelled his visa under s 501(3) of the *Migration Act 1958* (Cth) (the Act) on the grounds that Dr Haneef did not pass the "character test" and because the Minister was satisfied that the cancellation was in the national interest. Section 501(6)(b) provides that a person does not pass the character test if the person has or has had "an association with someone else, or with a group or organisation, whom the Minister reasonably suspects has been or is involved in criminal conduct".

At first instance, Justice Spender considered that the Minister had misinterpreted the character test and had applied a test that was too wide and could encompass links that could not, in his Honour's view, conceivably have had any bearing on the visa holder's character.

Applying the principles of the common law concerning the interpretation of statutes in circumstances where the rights of individuals might be adversely affected, the Full Court agreed with Justice Spender that a narrower interpretation of "association" than that applied by the Minister should be taken to reflect the intention of the Parliament when it enacted the character test. In a unanimous judgment, the Full Court concluded that the "association" to which s 501(6)(b) of the Act refers is one involving some sympathy with, or support for, or involvement in, the criminal conduct of the person, group or organisation with whom the visa holder is said to have associated. The association must be such as to have *some* bearing upon the person's character.

The Court held that the Minister applied an incorrect test and thus fell into jurisdictional error. The Court dismissed the Minister's appeal, with costs.

CONSTITUTIONAL LAW – power under s 51(xxiiiA) Constitution to make laws with respect to the provision of medical and dental services (but not so as to authorise any form of civil conscription)

Selim v Lele
(27 February 2008, Chief Justice Black and Justices Finn and Lander)

This was an appeal from *Selim v Lele* (2006) 150 FCR 83, heard together with a similar reference question remitted by the High Court of Australia in *Dimian v The Commonwealth*. Both cases challenged the validity of the Professional Services Review (PSR) Scheme in Pt VAA of the *Health Insurance Act 1973* (Cth) (the Act). Pt VAA of the Act identified various categories of conduct as "inappropriate practice", including: high number of services per patient, unusual incidence of specific types of services, inappropriate prescribing, inappropriate ordering of diagnostic and imaging pathology and inappropriate use of Medicare item numbers when making claims.

The appellant Dr Selim, and the applicants Dr Dimian and Dr Wong, were medical practitioners found by a PSR Committee to have engaged in inappropriate practice under the Act by a PSR Tribunal. The appellant and applicants submitted that the Act offended the prohibition on civil conscription in s 51(xxiiiA) of the Constitution by imposing standards on medical practitioners and prohibiting inappropriate practice.

The appellant and applicants also submitted that s 106U of the Act was invalid as it purported to confer part of the judicial power of the Commonwealth on persons who had not been appointed as judges pursuant to s 72 of the Constitution. Section 106U of the Act conferred functions on the PSR Tribunal which involved the making of findings that medical practitioners had engaged in inappropriate practice.

The appeal was dismissed, and the applications denied. In a joint judgment the Full Court held that the Act does not authorise civil conscription within the meaning of s 51(xxiiiA) of the Constitution. The extent to which the Act "compelled" practitioners was not to render any professional service to any person but rather to require a medical practitioner whose patient is entitled to seek payment of a Medicare benefit to render any professional service appropriately.

Moreover, the Full Court, following earlier decisions of *Tankey v Adams* (2000) 104 FCR 152 and *Health Insurance Commission v Grey* (2002) 120 FCR 470, affirmed that s 106U of the Act is a valid provision that does not confer the judicial power of the Commonwealth on persons who have not been appointed under s 72 of the Constitution. However, the Full Court noted that the distinction between protective and punitive powers – one of the reasons for the Full Court's decision in *Tankey* – may not be a relevant consideration in determining whether a person is exercising judicial power.

CRIMINAL LAW – sentencing – various breaches of s 155 of *Trade Practices Act 1974* (Cth)

Australian Competition and Consumer Commission v Rana
(20 March 2008, Justice North)

The defendant, Paul Rana, was a director of a number of NuEra companies that offered alternative treatments for cancer victims. In civil proceedings against Paul Rana and the NuEra companies, Ryan J described the conduct as "revealing a consistently cynical and heartless exploitation of cancer victims and their relatives". The Australian Competition and Consumer Commission (ACCC) had issued notices under s 155 of the *Trade Practices Act 1974* (Cth) (the Act) to Paul Rana, his son Michael and various NuEra companies, seeking information and documents in relation to possible breaches of the Act.

In these proceedings, Paul Rana was charged with four offences under s 155(1) of the Act. Paul Rana pleaded guilty to two of the offences and was found guilty of the remaining two offences. The judgment concerned the sentence to be imposed on Paul Rana.

Throughout the proceedings, Paul Rana filed documents and material that were absurd and illogical in content and language. Many documents suggested that Paul Rana was outside the jurisdiction of the Court. Other documents related to the validity of the Australian currency and questioned the existence of relevant actors as human beings. One particular document was addressed to 40 people or entities, including the ACCC, Channel 9, Eddie McGuire and cancer sufferers or their family members who frequented the NuEra clinics. This document purported to invoice those people $294 million in settlement for wrongdoing against Paul Rana and his sons by the bringing of the proceedings.

When the hearing of the matter commenced on 19 November 2007, Paul Rana and his son Michael refused to identify themselves. As a result, warrants for their arrest were issued. Further incomprehensible documents were then filed by Paul Rana. On 19 December Paul Rana appeared at the Court and was taken into custody. Paul Rana pleaded guilty to a number of the charges, and was found guilty of the remaining charges on 22 December.

Paul Rana's behaviour during the proceedings, through the filing of nonsensical documents and his conduct before the Court, demonstrated a lack of contrition for his action. His conduct represented a failure to take responsibility and was aimed at thwarting the legal process. This refusal to take responsibility continued while Paul Rana was in custody and during his plea hearing. In this context, and considering the sentencing factors listed in s 16A(2) of the *Crimes Act 1914* (Cth), Paul Rana was sentenced to a term of imprisonment of six months.

INTELLECTUAL PROPERTY – patents – inventions – inventions made by employees

University of Western Australia v Gray (No 20)
(17 April 2008, Justice French)

Since the early 1980s Dr Gray was involved in the research and development of "targeted microsphere technology" for the treatment of cancer. He began his work in the area at St Vincent's Hospital in Victoria, and continued while employed as Professor of Surgery at the University of Western Australia (UWA) 1985-97. He was employed part-time by UWA 1997-99.

Patents were filed for three types of microsphere technology – "DOX-spheres", which attack tumour-tissue by the controlled release of the drug doxorubicin; "SIR-spheres", which selectively irradiate tumour-tissue; and "THERMO-spheres", which selectively heat the tumour-tissue by means of magnetic hysteresis.

Several organisations were created to facilitate funding and commercialisation of the technologies, including Sirtex Ltd (Sirtex). Gray assigned rights in the SIR-spheres and THERMO-spheres to Sirtex, and rights in the DOX-spheres to the Cancer Research Institute Inc (CRI).

UWA brought proceedings against Gray for breach of contract and of fiduciary duties, and against Sirtex for knowing involvement in the alleged fiduciary breaches. Various cross-claims were brought.

The court held that any of the relevant breaches of contract or fiduciary duty were contingent on UWA having held or acquired legal rights or interests in the relevant inventions. Such acquisition could be by legislation or pursuant to contractual terms (whether express, implied or incorporated by reference).

French J held that UWA was not empowered by the *University of Western Australia Act 1911 (WA)* to make regulations that would appropriate a person's property rights, and the Patents Regulations and IP Regulations made under that Act were therefore not competent to do so. Further, UWA had effectively abandoned the system established by its Patents Regulations from about 1988, and its IP Regulations did not take effect until 30 November 1997.

Gray's contract of employment contained no express term affecting intellectual property rights, and although it incorporated by reference the UWA regulations from time to time, a regulation beyond power could not change contractual arrangements so as to affect an employee's proprietary rights.

The implication of a term that would grant rights in an employee-invention to an employer was held to depend on a contractual duty to invent. French J held that Gray had a duty to conduct research but not to invent anything – it would not be a breach of contract for Gray to produce no inventions at all. Further militating against the implication of such a term in these circumstances was Gray's freedom to publish the results of his research notwithstanding that such publication might destroy the patentability of any invention, the extent to which researchers were expected to solicit external funding, and the necessity of entering into collaborative arrangements with external organisations such as CSIRO.

French J also held that if, contrary to the primary finding, there was an implied contract conferring on UWA property rights in Gray's inventions, it would be necessary to determine which inventions were caught by that term.

After considering the authorities, French J adopted the approach proposed by Sirtex, namely to first identify the "inventive concept" (or concepts) of each relevant invention, and then determine the person(s) responsible for the inventive concept and the time of its conception (as distinct from its verification or reduction into practice). UWA's proposed approach was rejected, namely a claim-by-claim analysis of the patent, the narrowest claim disclosing the relevant invention. The "inventive concept" is conceived when the idea is sufficiently clearly defined in the inventor's mind that ordinary skill would be necessary to reduce the invention to practice without extensive research or experimentation.

On the adopted approach, only one of the inventions' inventive concepts was conceived by Gray during the course of his employment at UWA – the DOX-spheres invention. The inventive concept of the DOX–Spheres was the use of metal ions to suppress burst release of doxorubicin from the micro sphere carrier which was developed during employment at UWA.

UWA's claim against Sirtex depended on a finding of Gray's breach of fiduciary duty, and therefore failed. The cross-claims were dismissed except for Sirtex's claim against Gray for breaches of directors' duties and for misleading or deceptive conduct in breach of the *Fair Trading Act 1987 (WA)* arising from his non-disclosure of correspondence between himself and UWA in 1999.

PRACTICE AND PROCEDURE – security for costs – impecunious applicant – public interest litigation

Lawyers for Forests Inc v Minister for the Environment, Heritage and the Arts
(30 April 2008, Justice Marshall)

This judgment concerned an application for security for costs by Gunns Limited, the proponent of the construction of a pulp mill in Tasmania, against Lawyers for Forests Inc, an incorporated association whose purposes include the promotion of conservation of Australia's native forests.

In the substantive proceeding, Lawyers for Forests had challenged the government's decision to approve the construction of the pulp mill on the basis that the impugned decision was unlawful. Gunns was made a respondent because of its interest in the construction of the mill.

Section 56 of the *Federal Court of Australia Act 1976* allows the Court to order that an applicant in a proceeding give security for costs that may be ordered against it. The *Federal Court Rules* provide that when considering such an application the Court may take into account whether the applicant is suing for its own benefit or for the benefit of some other person and the Court has reason to believe the applicant will be unable to pay the respondent's costs. If security is not provided the Court may order that the proceeding be dismissed.

Gunns submitted that Lawyers for Forests was impecunious and could not meet its expected $100,000 in costs should the challenge to the government's decision fail. Lawyers for Forests submitted it was funded by voluntary contributions and conceded it could not meet a security for costs order. If Gunns obtained security for costs the proceeding could not continue.

The judge said there is a relevant difference between a non-profit voluntary association formed for some public policy purpose and a company owned by share-holders. Members of Lawyers for Forests did not stand to gain financially from the proceeding. In those circumstances, a security for costs order would stifle the litigation when Lawyers for Forests had brought the proceeding bona fide and raised arguable questions of law. Gunns' application for security for costs was dismissed.

CONTRACT – securities lending agreement – contract to lend shares – ownership of shares – whether securities lending agreement constitutes secured loan or purchase-and-sale

Beconwood Securities Pty Ltd v ANZ Banking Group Ltd
(2 May 2008, Justice Finkelstein)

This case arose out of the collapse of Opes Prime Stockbroking Ltd. It concerned the construction of a Securities Lending Agreement (SLA) that was entered into between Beconwood Securities Pty Ltd and Opes Prime. Under the SLA, Beconwood transferred shares to a company related to Opes Prime in return for funds. The funds advanced to Beconwood were obtained from ANZ Banking Group Ltd and, in due course, the shares were transferred by the Opes Prime company to a nominee of ANZ. Once it became apparent that Opes Prime was insolvent, ANZ appointed a receiver to take control of Opes Prime's assets. Beconwood then commenced proceedings to recover the lent shares on the basis that it had an equitable estate in the shares that had priority over ANZ's legal estate. In issue was whether the SLA on its true construction provided an equitable interest to Beconwood or whether absolute ownership of the shares passed to ANZ along with the legal interest.

The argument advanced by Beconwood that it had an equitable estate in the shares was based on two grounds. First Beconwood said that the SLA created a mortgage of the shares in favour of Opes Prime with the result that the shares could be redeemed on repayment of the money received from Opes Prime. Justice Finkelstein held that the SLA could not be characterised as a mortgage because its express terms provided that unencumbered title in the lent securities passed on delivery. Further, when the transaction came to an end there was no obligation on Opes Prime to hand back to Beconwood the shares that were initially lent. Rather the SLA provided for the delivery to Beconwood of "equivalent securities" – that is, the same number and type of securities that were lent.

The second ground relied upon by Beconwood was that the SLA created a charge in its favour that was enforceable in equity. This argument proceeded on the basis that Opes Prime had an implied obligation under the SLA to retain an interest in any shares that met the definition of "equivalent securities" as soon as it received such securities (which inevitably occurred immediately as Beconwood delivered title in the shares to Opes Prime). Justice Finkelstein rejected this argument because the putative implied obligation did not satisfy the requirements for an implied term (i.e. that the term was "so obvious that it went without saying", was reasonable or equitable, and was necessary to make the contract work). Beconwood sought to invoke the term to transform the SLA into a mortgage or charge, which was not a proper foundation for implying a term. This is particularly the case since the SLA contemplated that Opes Prime could deal with the lent securities as it saw fit and could also obtain "equivalent securities" by any means, whether from its own holdings or in the open market.

Beconwood thereby failed to establish that it had an equitable interest in the shares under the SLA. His Honour did, however, order that Beconwood's costs be costs in the administration of Opes Prime ([2008] FCA 974). The reason costs did not follow the event was in substance because the meaning of the SLA would have been raised for determination by the administrators of Opes Prime for the benefit of creditors if it had not been raised by Beconwood in this test case.

Justice Finkelstein also observed that in other jurisdictions there is a regulatory and statutory framework that provides a measure of protection to investors in securities that is lacking in Australia.

COPYRIGHT – weekly schedule of television programs prepared by broadcaster whether publisher of an electronic program indirectly copied a '*substantial part*' of the weekly schedule

Nine Network Australia Pty Ltd v IceTV Pty Ltd
(8 May 2008, Chief Justice Black and Justices Lindgren and Sackville)

This was an appeal from a decision in *Nine Network Australia Pty Ltd v IceTV* [2007] FCA 1172 in which the Full Bench of the Federal Court, overturning the judge at first instance, found that IceTV had infringed compilation copyright in the weekly television schedules (the weekly schedules) produced by Nine when reproducing program titles and times in its subscription-based electronic program guide (the IceGuide).

The principal questions on appeal were: first, whether IceTV had reproduced a substantial part of the weekly schedules by incorporating time and title information in the IceGuide, thereby infringing Nine's copyright in the weekly schedules; and secondly, whether Nine had established a causal link between the time and title information in the IceGuides and the weekly schedules.

Both questions were answered in favour of Nine and the appeal was allowed.

In determining whether a substantial part of the work had been copied, the Full Court observed that 'substantiality' depends more on the quality rather than quantity of what is alleged to have been taken. In this case, the time and title information, derived ultimately from the weekly schedules, involved the reproduction of more than a slight or immaterial portion of Nine's copyright work. Without this information, the IceGuide would have been commercially useless and therefore the Court concluded that IceTV had taken a substantial part of Nine's copyright work.

The Full Court rejected IceTV's argument that the requisite causal connection was not present in this case because the information in the weekly schedules was not obtained directly from the weekly schedules, but derived from a secondary source (other aggregate guides produced by third parties after obtaining Nine's permission to use the copyright work contained in the weekly schedules). Their Honours held that the time and title information reproduced in the aggregate guides was not materially different from that in Nine's television program schedules. It was irrelevant that the aggregate guides were significantly different in look, feel and content to Nine's weekly schedules, as what was relevant was that IceTV used the information reproduced in the aggregate guides as an important resource for producing the IceGuide. This was a case of indirect copying of a substantial part of a copyright work.

Despite the primary judgment and the submissions of the parties devoting close attention to an earlier decision of the Full Court of the Federal Court (constituted by the same bench) in *Desktop Marketing Systems Pty Ltd v Telstra Corporation Ltd* (2002) 119 FCR 491, the Full Court distinguished this case from *Desktop* – the latter going to a question of originality, not substantiality.

TRADE PRACTICES – College of medical specialists having procedures for admission to membership – representations by College as to characteristics of procedures – whether made "in trade or commerce"

Shahid v Australian College of Dermatologists
(9 May 2008, Justices Branson, Stone and Jessup)

The appellant, a medical practitioner in Perth, wished to be recognised as a dermatology specialist which required fellowship of The Australasian College of Dermatologists. One requirement of fellowship was that practitioners first undertake a period of supervised training in an accredited post. In four successive years the appellant applied for employment in the one accredited post of trainee registrar in dermatology at the Royal Perth Hospital. Such employment was obtainable only on the recommendation of the College. In each of those years, the appellant was unsuccessful in securing that recommendation. In each of the last three years the appellant lodged an internal appeal against the rejection of her application yet none of those appeals were heard.

The appellant commenced proceedings seeking declarations, injunctions and other remedies in relation to the process by which the College selected a practitioner other than herself to be recommended for the position. In particular the appellant alleged that the College had contravened ss 52, 53 and 55A of the *Trade Practices Act 1974* (Cth) (the *Trade Practices Act*) and the corresponding Western Australian fair trading provisions and had breached contracts into which it had entered with her in relation to the appeals. The application was dismissed primarily on the ground that the representations relied upon were not representations made by the College "in trade or commerce" within the meaning of the *Trade Practices Act* and that there was no intention to create legal relations. The appellant appealed from the judgment at first instance.

Branson and Stone JJ (Jessup J dissenting) held that the evidence of the relationship between the College and practitioners such as the appellant, including as to the examinations and appeals and the fees charged therefore, supported the conclusion that the College had a commercial relationship with practitioners. Their Honours therefore concluded that the relevant representations for the purposes of the appeal were representations made by the College "in trade or commerce" within the meaning of the *Trade Practices Act*. Jessup J however held that the relevant representations would have been caught by the fair trading Act including its notion of "in trade or commerce" as expanded by the phrase "in any professional activity". The Court unanimously held that if the representations were "in trade or commerce" then the *Trade Practice Act* had been breached and liability to pay damages arose.

Jessup J (Branson and Stone JJ agreeing) also held that it was quite improbable that the parties to an agreement made in such a setting would not intend their agreement to be binding in law, taking the view that the transaction by which the appellant lodged her appeal in each of the relevant years was accompanied by a mutual intention to create legal relations.

CRIMINAL LAW – appeal against conviction

McNeill v The Queen
(23 May 2008, Chief Justice Black and Justices Lander and Besanko)

On 9 March 2007 the appellant was convicted of the murder of Janelle Louise Patton after trial by judge and jury in the Supreme Court of Norfolk Island. On 25 July 2007 the appellant was sentenced to imprisonment for a term of 24 years to commence from his arrest and incarceration on 1 February 2006. This appeal to the Full Federal Court was against conviction only.

When arrested and interviewed by police the appellant made certain confessional statements, including that he had covered Ms Patton's body with black plastic he had obtained from a building site. It was common ground between the parties that these confessional statements were not wholly truthful. It was the Crown's case that the fact of the black plastic's source was not in the public domain. On appeal, the appellant sought to adduce further evidence pursuant to s 27 of the *Federal Court of Australia Act 1976* (Cth) to prove that this information was in the public domain at the time of his arrest. The evidence consisted of several pages from a book about the death of Ms Patton published in 2005.

The Full Court discussed the powers of the Federal Court and the principles governing an application to adduce further evidence in criminal appeals. The Court, in a unanimous judgment, refused the application to adduce further evidence. It held that even if the further evidence had been put before the Crown at the time of the trial – to prevent it from leading evidence that the relevant fact was not in the public domain, or if the further evidence had been adduced at the trial to contradict the Crown case – there was no possibility that the jury, acting reasonably, would have acquitted the appellant. There was thus no miscarriage of justice demonstrated.

The Full Court also dismissed the remaining grounds of appeal, including:

- whether the appellant's record of interview and handwritten statement were induced by untrue representations and thus inadmissible pursuant to s 410 *Criminal Law Act 1960* (NI);
- whether the record of interview and the handwritten statement were inadmissible pursuant to ss 85, 90 or 138 of the *Evidence Act 2004* (NI) by reason of the officer's failure to inform the appellant of his rights under the New Zealand Bill of Rights;
- whether the trial judge erred by ordering the trial to continue with less than 12 jurors (where one juror had been discharged by reason of illness);
- whether the trial judge's exclusion of certain expert evidence required his Honour to revisit an earlier ruling regarding the admissibility of the confession;
- whether the trial judge erred in failing to mention some pieces of evidence in summing up to the jury;
- whether the trial judge commented impermissibly on the appellant's unsworn statement, thereby infringing s 407 *Criminal Law Act 1960* (NI);
- whether the conviction should be set aside on ground that the verdict was unsafe and unsatisfactory.

INCOME TAX – lump sum paid to life tenant for a release by her of a claim of breach of fiduciary duty by trustees – claim that trustees had pursued investment policy that favoured remainderman who was also a trustee – allegation of great increase in value of corpus of trust without any exceptional increase in income, although risk to life tenant – claim by life tenant that remainderman was liable to account for profit he had made – whether lump sum paid to life tenant in settlement of her claim was income derived by her according to ordinary concepts

Murdoch v Commissioner of Taxation
(28 May 2008, Justices Lindgren, Stone and Jacobson)

This was an appeal by Dame Elizabeth Murdoch from a decision of the Administrative Appeals Tribunal which had decided that a payment of $85,087,176 paid to her in the year ended 30 June 1995 constituted income within s 5(1) of the *Income Tax Assessment Act 1936* (Cth) so as to form part of her assessable income for that year. The payment was made pursuant to a Deed of Release and Agreement dated 28 November 1994.

The payment was made in settlement of claims made by Dame Elizabeth against trustees of settlements established by Dame Elisabeth's late husband Sir Keith Murdoch. The trustees included her son, Rupert Murdoch.

Dame Elisabeth had a life estate and her son, Rupert Murdoch, had an estate in remainder. In substance, Dame Elisabeth's complaint was that the trust funds had been invested in a way that favoured capital, and therefore Rupert Murdoch, rather than income. If Dame Elisabeth's claim had not been settled, she would have contended at any hearing that Rupert Murdoch was liable to account for the capital profit made by him on the basis that as a trustee he was subject to a fiduciary obligation not to make any profit out of that position.

The appeal from the Tribunal was heard by a Full Court of Lindgren, Stone and Jacobson JJ. Their Honours held that the proper characterisation of the settlement sum of $85,087,176 depended on the character of the amount that Dame Elisabeth would have claimed in the notional proceeding. The Court held that if the proceeding had been instituted, gone ahead and been successful, Mr Murdoch would have been required to account to his mother for the capital gain made by him out of his position as trustee. It followed, according to the Court, that the settlement sum was likewise on capital rather than revenue account.

The Court allowed Dame Elisabeth's appeal, set aside the decision of the Tribunal and directed that Dame Elisabeth's objection to the Commissioner's assessment for the year ended 1995 be remitted to the Commissioner for amendment be accordance in the Court's reasons. As well, the Commissioner was ordered to pay Dame Elisabeth's costs.

CONTRACT – fraud – when each party is in breach of an essential term or has conducted itself in a manner amounting to a repudiation – whether one party may terminate based on other's breach or repudiation

Hoy Mobile Pty Ltd v Allphones Retail Pty Ltd
(30 May 2008, Justice Rares)

This case raised a novel question of law: i.e. where each party in an ongoing contractual relationship is in breach of an essential term, or has otherwise evinced an intention not to be bound so as to amount to a repudiation of its obligations; can one of them exercise its contractual right to terminate the contract?

Allphones Retail Pty Ltd, a telecommunications retail franchisor, sought to exercise its contractual right to terminate a franchise agreement for the fraud of its franchisee, Hoy Mobile Pty Ltd, in connection with the franchise business. However, Allphones had committed dishonest breaches of its own essential obligations to pay commissions under the franchise agreement.

Rares J decided the novel issue on two grounds. First, he held that a party had to be ready and willing to perform its obligations under a contract before it was entitled to exercise its contractual right to terminate. He drew on observations by Mason CJ, Brennan and Dawson JJ in *Foran v Wight* (1989) 168 CLR 385. Because Allphones had committed serious and dishonest breaches of the franchise agreement, it was not ready and willing. Secondly, Rares J applied the common law principle that no party may take advantage of its own wrong. He found that each party acted dishonestly in respect of its financial accountability to the other and was in repudiatory breach of the franchise agreement. Thus, neither party could rely upon a contractual or common law right to terminate the franchise agreement.

Allphones also argued that the franchise agreement was void because, at the time it was made, Allphones had failed to comply with clause 11 of the Franchising Code of Conduct. That prohibited a franchisor from entering into a franchise agreement unless it had received particular signed statements from the prospective franchisee. Rares J dismissed that argument. He held that a principal purpose of the Code was to protect franchisees. This would be defeated if any mere non-compliance by a franchisor with any requirement of the Code resulted in the franchise agreement being invalidated. Rares J declined to follow a contrary decision of the NSW Court of Appeal in *Ketchell v Master of Education Services Pty Ltd* [2007] NSWCA 161. On 10 June 2008, the High Court reserved judgment on an appeal in *Ketchell*.

Rares J also held that Allphones had engaged in unconscionable conduct in contravention of s 51AC of the *Trade Practices Act 1974* (Cth). Ultimately, he granted an injunction restraining Allphones from terminating the franchise agreement, and ordered it to pay Hoy Mobile damages for unpaid commissions, less the amount gained by Hoy Mobile through its fraud.

Allphones has filed a notice of appeal against the decision.

Native title appeal decisions

Bennell and Ors v The State of Western Australia (Perth Metro portion of Single Noongar Claim #1)

In 2003 eighty Aboriginal persons made an application to the Court for a determination of native title, which came to be called "the Single Noongar application". The applicants alleged that in 1829 (the date of European settlement in Western Australia) there was a single Aboriginal community throughout the whole of the south-west of Western Australia. The applicants called this the "Noongar community" and claimed the 1829 rules governing the occupation and use of land, throughout the south-west, were the laws and customs of that community.

The applicants said the Noongar community continues to exist, and they are part of it; and that its members continue to observe some of the community's traditional laws and customs (including in relation to land), although with changes flowing from the existence and actions of the white community. The applicants seek a Determination of native title, in favour of all members of the present Noongar community, over a substantial portion of Western Australia.

The Court decided to break up the trial of the Single Noongar application by first dealing with an area, in and around Perth, that had been the subject of several earlier, smaller claims later aggregated together as the "Combined Metro claim". The Court created a separate proceeding in relation to the Perth area. With the assistance of the parties, the Court framed a separate question in that proceeding, asking whether native title existed in the Perth area and, if so, who were the persons who held the native title and what rights and interests it included.

The application was heard by Justice Wilcox and on 19 September 2006 the judge answered the separate question as follows: "But for any question of extinguishment of native title by inconsistent legislative or executive acts carried out pursuant to the authority of the legislature under Divisions 2, 2A, 2B or Part 2 of the *Native Title Act 1993* (Cth) or under the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA), native title exists in relation to the whole of the land and waters in the area of the separate proceeding, other than off-shore islands and land and waters below low-water mark."

The State, the Commonwealth and Western Australian Fishing Industry Council (WAFIC) obtained leave to appeal to the Full Court against Justice Wilcox's decision.

The Full Court assumed, without deciding, that in 1829 the laws and customs governing land throughout the claim area were those of a single community. However, it held that Justice Wilcox had failed to consider two matters the claimants were required by s 223 of the *Native Title Act* to establish in order for their application to be successful. The first was that there has been continuous acknowledgment and observance of the traditional laws and customs by the Single Noongar Society from sovereignty until recent times. The second matter was that the claimants have a connection with the area of the separate question, that is the Perth Metropolitan Area. Justice Wilcox had taken the view, wrongly in the Full Court's opinion, that it was enough that the claimants had established a connection with the claim area of the Single Noongar claim, and that since the Perth Metropolitan Area was part of that larger area, the connection requirement was satisfied in relation to the Perth Metropolitan Area.

The Full Court set aside Justice Wilcox's answer to the separate question, and remitted that question to the relevant Native Title List judge in WA for determination, Justice Wilcox having retired from the Court shortly after handing down the judgment under appeal.

Sebastian and Ors v The State of Western Australia (Rubibi)

There were two competing claims for a determination of native title in respect of land and waters in and around Broome, Western Australia. The primary judge, Merkel J, decided that the Yawuru claimants (the Rubibi people) possessed communal native title rights and interests in the whole of their claim area, and made a determination in their favour in respect of the whole of their claim area, subject to particular areas in the Broome township where native title had been extinguished. His Honour found that the competing claimants, the Walmun Yawuru, who claimed an area within the larger claim area of the Yawuru, were a sub-group of the Yawuru claimants and so did not separately possess native title rights and interests, although they held special attachments to and responsibilities for certain areas or sites within the Yawuru claim area.

On the appeal, the State argued that the northern portion of the Yawuru claim area was traditionally held by the Djugun people who were separate from the Yawuru people. The State also argued that the Yawuru claimants, because they have a cognative descent system, no longer had an interest in relation to the claim area under traditional laws and customs because traditionally they operated under a patrilineal descent system. The Full Court rejected both those contentions. On the basis of the evidence accepted by the trial judge, the Full Court concluded that the findings of the trial judge should be sustained, so the determination of native title rights and interests in favour of the Yawuru claimants will stand.

The Full Court also rejected the appeal of the Walman Yawuru. On the basis of the evidence accepted by the trial judge, the Full Court upheld the findings about the status of the Walmun Yawuru claimants and about the nature and extent of their attachment to and interest in certain sites and areas within the claim area.

There were seven separate issues raised by appeal or cross-appeal covering findings of the trial judge about the extent of extinguishment of native title rights and interests in part of the Yawuru claim area.

Two issues are of general significance. One is whether s 47B of the *Native Title Act 1993* (Cth) could be applied to the area of the Broome town site so as to be available to save any native title rights and interests within the Broome town site from being extinguished simply by the proclamation of the township of Broome. The Full Court affirmed the decision of the trial judge that s 47B was capable of applying to areas within the proclaimed township. Secondly, the Yawuru claimants cross-appealed against the finding that any native title rights and interests in that part of the intertidal zone of the determination area as vested in The Minister for Transport pursuant to s 9 of the *Marine and Harbours Act 1981* (WA) were thereby extinguished. The Full Court agreed with the conclusion of the trial judge.

The remaining issues concerning extinguishment concerned findings of fact by the trial judge upon which native title rights and interests were extinguished in certain parts of the Broome town site. The findings were upheld by the Full Court save for conclusions that Reserve 631 had been validly declared, that native title had been wholly extinguished over the whole of the area reserved for the Broome Cemetery, and that the Yawuru claimants did not occupy areas 2735, 2736 and 2738 at Kennedy Hill when this application was made.

APPENDIX 8 – JUDGES' PARTICIPATION IN LEGAL REFORM ACTIVITIES AND INTERNATIONAL COMMITTEES AND CONFERENCES IN 2007-08

On 17 July 2007, the Chief Justice attended the launch, by Chief Justice Gleeson, of the Australian Academy of Law at Government House, Brisbane.

On 6 August the Chief Justice travelled to Jakarta, Indonesia, for discussions with the Chief Justice of Indonesia, The Hon Prof Dr Bagir Manan, SH, MCL, and members of the Judicial Reform Team of the Supreme Court. The discussions concerned continuing judicial cooperation between the Federal Court and the Supreme Court within the framework of the Memorandum of Understanding between the two Courts. The Chief Justice was accompanied by Justice Moore and the Registrar and together they gave a presentation to the Supreme Court about the Federal Court's experience of the reform process. There were also discussions with judges of the Supreme Court about judicial transparency, backlog reduction, case management, financial management and information technology. On 9 August, the Chief Justice, Justice Moore and the Registrar visited the District Court at Bogor and the new National Leadership Training Centre for the Indonesian judiciary.

On 22 August, in Brisbane, the Chief Justice chaired the Third Richard Cooper Memorial Lecture delivered by Professor Garth Nettheim of the University of New South Wales on *International law and native title in Australia*.

At the invitation of the Canadian Judicial Council and the Hon J. Ernest Drapeau, the Chief Justice of New Brunswick, the Chief Justice and the Registrar travelled to Moncton, New Brunswick, for discussions on 11, 12 and 13 September 2008 about the Federal Court of Australia's model of governance and self-administration.

The Chief Justice gave the closing address at a conference for scientists and superior court judges hosted by the Federal Court, in Sydney, on the topic *Genes to Proteins: Proteomics in the Court*. The conference was held from 8 to 10 October 2007.

On 11 October 2007, the Chief Justice attended a dinner to celebrate the 50th Anniversary of the Melbourne University Law Review. He also wrote an article for the Review entitled *The Federal Court of Australia: The First 30 Years – A survey on the occasion of two anniversaries*, to mark the coincidence of its 50th Anniversary and the 30th Anniversary of the establishment of the Federal Court of Australia.

From 6 to 8 November, the Chief Justice attended the 17th Pacific Judicial Conference in Nuku'Alofa, Tonga where he delivered, at the opening session, the Keynote Address entitled *Maintaining the Independence of the Judiciary – much more than structures*.

On 13 November, at the Federal Court in Melbourne, the Chief Justice launched a book by Professor H P Lee and Dr Matthew Groves entitled *Australian Administrative Law, Fundamentals, Principles and Doctrines*.

On 14 November 2007, the Chief Justice gave an address to the Victorian Bar Readers and later that day delivered an address at the Graduation Ceremony of the College of Law Victoria.

On 20 November the Chief Justice travelled from Darwin, where he had presided at the swearing-in of Justice Reeves, to Bangkok, Thailand, to attend the 9th Congress of the International Association of Supreme Administrative Jurisdictions. The Chief Justice and Justice Downes assumed Co-presidency of the Association at its Congress in Bangkok. Australia will host the 10th Congress in Sydney in March 2010.

On 29 November the Chief Justice presided at a function at the Federal Court in Sydney for the presentation of the Second Graham Hill Annual Award.

On Wednesday, 19 March, at the Federal Court in Melbourne, the Chief Justice opened an information session for the Admiralty and maritime law profession in Victoria.

On 2 April 2008 the Chief Justice opened a national Corporations Law Seminar at which members of the Court and the legal profession were joined by video-link for a national discussion at the Court's registries. Approximately 700 people attended the seminar nationally.

On 17 April 2008 the Chief Justice opened a national User Group Forum on 'New Tax Directions'. This Forum was conducted by video-link to each of the Court's registries and it was attended by some 200 practitioners nationally.

On 5 May, in his capacity as Patron of the Fiat Justitia Lectures, the Chief Justice presided at the 2008 Fiat Justitia Lecture, delivered by The Hon Justice Michael Kirby on the topic *Australia's Growing Debt to the European Court of Human Rights*.

During the year, the Chief Justice met with office holders of the bar associations and law societies. The Chief Justice attended, in Sydney and Hobart, services and other events to mark the opening of the 2008 Law Term.

RYAN J participated in the sessions conducted by the Maritime and Transport Law Section of the International Bar Associations Conference held in Singapore, in October 2007.

Ryan J was also a panel member for the "hypothetical' on management of a vessel under arrest conducted as part of the Admiralty Workshop in Melbourne on 22 May 2008. On behalf of the Court, his Honour also welcomed participants in the workshop.

In June 2007, Justice MOORE travelled to China, as leader of a delegation of Federal Court judges, to conduct a program of judicial exchanges with the Chinese judiciary focusing on the areas of maritime, competition and labour law. In August 2007 his Honour visited Indonesia to continue the provision of advice and support for the Indonesian Supreme Court in Jakarta, assisting the backlog reduction program. His Honour attended the Pacific Judicial Conference held in Nuku'alofa, Tonga 7-9 November 2007. In December 2007 his Honour co-hosted a delegation of Chinese judges from the Supreme Peoples' Court to the Federal Court of Australia in Sydney. In April his Honour commenced a program to assist the Supreme Peoples Court of Vietnam to update the Judges' Benchbook. In June 2008 his Honour attended meetings at the Indonesian Supreme Court to continue the Federal Court's program of assistance.

In August 2007 Justice BRANSON attended the Insolvency Law Workshop in Adelaide. In September 2007 her Honour gave the occasional address at the graduation ceremony for the Faculties of Business and Law at the University of New South Wales. In September 2007 her Honour attended the conference, 'Protecting Human Rights' at the Melbourne University Law School. In October 2007 Justice Branson attended the Judicial Conference of Australia Colloquium 2007. In October 2007 her Honour also attended the *Genes to Proteins – Proteomics in the Courts Conference* hosted by the Federal Court with representatives from the University of Sydney and the Royal Prince Alfred Hospital and assisted in developing the conference program.

In November 2007 Justice Branson attended the closing ceremony and presented certificates to trade officials, negotiators and lawyers from the Asia Pacific Region who attended the Public International Trade Law Course at the Asia Pacific Training Centre of the International Development Law Organisation, an organisation with which her Honour had been a Board Member for a number of years.

In February 2008 Justice Branson delivered a guest lecture to the Foundations of Law (Graduate) students of the Faculty of Law, University of NSW. In March 2008, her Honour participated in a conference with the Law Council on the operation of the docket system and case management in the Court.

In May 2008 her Honour gave the keynote address at the 5th annual conference of the New South Wales Chapter of the Council of Australian Tribunals. The theme of the conference was 'The Appropriate Management of Difficult Situations in Tribunal Hearings'.

Justice TAMBERLIN participated in the 9th Congress of the International Association for Supreme Administrative Jurisdictions (IASAJ) in Bangkok in November 2007. At that Congress his Honour was appointed special rapporteur to the upcoming 10th IASAJ Congress, to be hosted by the Federal Court and the Administrative Appeals Tribunal in Sydney in 2010.

Justice Tamberlin has prepared, presented and published several articles on a variety of topics, such as Australia's involvement in the World Trade Organization, the electronic discovery of metadata in proceedings before the Court, the role of legal professional privilege for in-house counsel, and the story of David Hicks' litigation in Australian courts. The last topic was the subject of a presentation given to the Sydney Centre of International Law at the University of Sydney.

Justice Tamberlin judged several significant moots. He sat with Justice Kirby of the High Court of Australia and Professor Gillian Triggs of The University of Sydney Law School in a practice moot for the Sydney University Jessup team, and adjudicated the final of the International Maritime Law Arbitration Moot between the University of Queensland and the Queensland University of Technology in Brisbane.

On 12 June 2007, Justice Tamberlin with others gave a presentation to Sydney legal profession on the Court's eServices. Justice Tamberlin was also part of the delegation of Federal Court judges who participated in the visit of a delegation of judges from the Chinese Supreme People's Court in late 2007 to discuss Australian and Chinese approaches to admiralty law, competition law, intellectual property and labour law.

Justice Tamberlin was Presidential Member of the Administrative Appeals Tribunal, and was active in that jurisdiction, handing down several judgments, sitting in several cities, and attending the National AAT Conference in October 2007.

Justice SACKVILLE attended meetings of the Civil and Commercial Court of Qatar, of which he is a member, on 23-27 November 2007 and on 3-5 May 2008. Justice Sackville also delivered the following addresses during the year:

- On 18 August 2007, a paper entitled *Mega-Litigation: Towards a New Approach* to the Annual Conference of the Supreme Court of New South Wales, Central Coast, New South Wales (subsequently published in (2008) 27 *Civil Justice Quarterly* 244-259).
- On 18 October 2007, a paper entitled *Three Issues Facing the Australian Judiciary* to the Anglo-Australasian Lawyers Society in Sydney (subsequently published in (2008) 20 *Judicial Officers' Bulletin* n17-22).
- On 27 October 2007, a paper entitled *Techniques of Constitutional Adjudication: Five Recent Cases* to the Constitutional Law Forum, Canberra (subsequently published in (2008) 20 *Constitutional Law and Policy Review* 22-30).
- On 14 March 2008 the keynote address entitled *Expert Evidence in the Managerial Age* to the Forensic Accounting Conference, Sydney.
- On 24 June 2008, the *Welcome Address* to the Building an Australasian Commons Conference, Brisbane.

Justice Sackville also delivered commentaries:

- On 15 March 2008, at the Federal Judges' Workshop, Canberra on *Discovery Reform*.
- On 18 March 2008, at the Anglo-Australasian Lawyers Society on *Long and Complex Trials*.

Justice Sackville remained a member of the Supreme Court of Fiji to which he was appointed in April 2006.

In July 2007, Justice FINN presented a paper on *Federal Administrative Jurisdiction* to a seminar at the Australian Institute of Administrative Law . He also presented a session on *The Unidroit Principles* and *Party Autonomy* for the Diploma in International Commercial Arbitration, Sydney. In September 2007 he presented to the South Australian Bar Readers course on *Discovery and Non-Party Discovery*. In October 2007 he opened the 2007 Admin Law Students Forum, Law School, University of Adelaide.

In February 2008 he chaired a seminar at the Law Society of SA on *Litigation under the EPBC Act 1999 (Cth)*. In April 2008 he chaired a session on *The role of international conventions in international business transactions*, at the 2008 International Trade Law Symposium, Canberra.

In May 2008 he was a member of Third Working Group on UNIDROIT's Principles on International Commercial Contract – attending the meeting in Rome, Italy. He then delivered, with Prof Joachim Bonell of UNIDROIT (on his visit to Australia), a series of lectures and seminars in Sydney, Melbourne and Canberra on the UNIDROIT Principles of International Commercial Contract and UNIDROIT's contribution to international commercial law and international dispute resolution.

In September 2007, Justice MARSHALL travelled to USA and Canada where he was the guest of various US Federal Courts in California, Portland, Illinois and New York as well as the Federal Court of Canada. On 6 September Justice Marshall gave an address at the Lewis and Clark Law School at Portland in Oregon on the topic 'Civil Liberties in the Age of Terrorism'. In late September 2007 the judge attended the conference of the International Association of Judges at Trondheim Norway as one of four Australian delegates. In October 2007 his Honour visited various courts and tribunals in London and later that month was a guest of the Subordinate Courts of Singapore.

In April 2008, Justice Marshall judged the Senior Final of the Deakin Law School Senior Moot (*with Goldberg and Jessup JJ*).

Justice NORTH is a member of the International Humanitarian Law Advisory Committee of the Victorian Branch of the Red Cross. He is also a member of the Monash University Workplace and Employment Law Advisory Panel.

On 19 July 2007 Justice North launched 'International Refugee Law and Socio-economic Rights' by Michelle Foster at the University of Melbourne Law School.

On 26 October 2007 Justice North attended a consultation seminar with the United Nations High Commissioner for Refugees in Canberra.

On 6 April 2008 Justice North spoke at the workshop entitled 'Designing an asylum system in Israel' at the Tel Aviv University on the subject of the Australian refugee determination system and the balance between asylum and state security. On 9 April 2008 Justice North addressed a training seminar of Israeli judges in Jerusalem on the subject of the operation of a developed refugee status determination system.

On 28 April 2008 Justice North met the Chairperson and Deputy-Chairperson of the Canadian Immigration and Refugee Board in Toronto and was introduced to the workings of the Board. On 30 April 2008 Justice North spoke at a function celebrating the work of the Atkinson Research Centre at York University in Toronto on the subject of a partnership between the research centre and the International Association of Refugee Law Judges. On 1 and 2 May 2008 Justice North chaired the research workshop on 'Critical Issues in International Refugee Law' conducted at York University, Toronto.

On 12 May 2008 Justice North spoke to the judges of the UK Asylum and Immigration Tribunal at Taylor House in London on the work of the International Association of Refugee Law Judges. On 13 May 2008 Justice North met the President of the UK Asylum and Immigration Tribunal, Justice Henry Hodge, and his Deputy Judge Mark Ockelton, and was introduced to the work of Tribunal. Justice North was also invited to sit on a case before the Tribunal, and later addressed more judges of the Tribunal at Field House in London.

On 15 May 2008 Justice North visited the head of the French Refugee Court, M. Francois Bernard and was introduced to the work of the court.

On 22 May 2008 Justice North addressed judges from the Dutch Administrative Court handling asylum cases on the Australian system of refugee determination and on the work of the International Association of Refugee Law Judges.

On 26 May 2008 Justice North met with officials from the United Nations High Commissioner for Refugees in Geneva to discuss the work of the International Association of Refugee Law Judges.

On 30 May 2008 Justice North chaired a session of the conference on refugee law conducted by Monash University at the Prato campus in Italy.

On 2-14 June 2008 Justice North visited South Africa as part of the preparation for the 8th World Conference of the International Association of Refugee Law Judges and met with the Judge President of the Transvaal High Court, Justice Ngoepe, and addressed a group of judges from his court, and in the next week met the Deputy Judge President of the Cape High Court and some of the judges of that court. In each case Justice North addressed the judges on the work of the International Association of Refugee Law Judges, and discussed the planning of the 8th World Conference to be held in Cape Town in January 2009.

Justice EMMETT is the Challis Lecturer in Roman Law at the University of Sydney and was appointed President of the Copyright Tribunal on 11 October 2007. He is also Consultant Editor and Contributor to Butterworths Australian Legal Dictionary and is on the Editorial Board of the Journal of Banking and Finance Law and Practice produced by Thomson Lawbook Co.

On 5 June 2007, Justice Emmett introduced to a paper on Cicero's *De Oratore* presented by J.T. Gleeson SC to the NSW Bar Association's series on Rediscovering Rhetoric. On 18 October 2007 Justice Emmett assisted the New South Wales Bar Association with their Bar Readers' Course. On 20 November 2007, Justice Emmett provided opening commentary to the Continuing Legal Education seminar on Roman Law conducted by the New South Wales Bar Association.

From 8 to 10 October 2007 Justice Emmett attended an international conference in Sydney entitled *Genes to Proteins – Proteomics in the Courts Conference*.

Justice Emmett also attended the biennial Copyright Law and Practice Symposium held at Darling Harbour, Sydney on 22 and 23 November 2007.

On 13 February 2008 he presented a paper on affidavit evidence at the Judges' Series on Practical Litigation conducted by the College of Law.

On 18 April 2008 Justice Emmett chaired a session on the jurisdiction of the Copyright Tribunal at an intellectual property conference to celebrate World Intellectual Property Day.

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 'Review of Australian Privacy Law' and 'Privilege in Perspective: Client Legal Privilege in Federal Investigations'. Her Honour's article 'Intercountry Adoption in Australia' appears in Reform Issue 92, Winter 2008.

Justice Kenny is a member of the Centre for International and Public Law Advisory Board, The Australian National University, a member of the Board of Governors of the International Organization for Judicial Training (IOJT), an alternate member of the Council of the National Judicial College of Australia, a Council member, Australian Institute of Judicial Administration, a Foundation Fellow of the Australian Academy of Law, and a member of the Advisory Board, Institute of Legal Studies, Australian Catholic University.

On 17 July 2007, Justice Kenny attended the Launch of the Australian Academy of Law. In October 2007, her Honour participated in the deliberations of the Australian Selection Committee for Menzies Scholarships in Law for the 2008 academic year. In March 2008, Justice Kenny, Professor William AW Neilson and Professor Richard Garnett formed a panel to conduct a major review of the Asian Law Centre at the University of Melbourne. In June 2008, Justice Kenny spoke at the Australian Women Lawyers Second National Conference, 'Creating Justice'.

Justice GYLES, on 21 February 2008, gave a commentary on a paper presented by Mr Brent Fisse and Dr Caron Beaton-Wells on The Cartel Criminalisation Exposure Draft Bill, Discussion Paper and the Draft ACC-DPP MOU: Key Points and Critical Legal and Policy Questions, at a seminar hosted by the Ross Parsons Centre of Commercial, Corporate and Taxation Law, Sydney Law School.

Justice Gyles accepted an invitation to speak at the University of New South Wales Faculty of Law's Taxation school's 20th annual GST and indirect tax weekend workshop in Noosa in April 2008. On 12 and 13 June 2008 Justice Gyles spoke at a residential course in international commercial arbitration conducted by the University of New South Wales Faculty of Law in conjunction with the Australian and Malaysian branches of the Chartered Institute of Arbitrators in Kuala Lumpur, Malaysia.

On 7 July 2007 Justice STONE attended the Julius Stone Centenary Conference at the Faculty of Law, University of Sydney to mark the centenary of the birth of Julius Stone. Justice Stone was also invited to the Restitution in Commercial Law which was hosted by the University of New South Wales and convened by Dr Simone Degeling (UNSW) and Dr James Edelman (University of Oxford)

In October her Honour attended the Colloquium 2007 and also participated in the NSW Bar Association's reader's course. On 6 December Justice Stone addressed the Australian Government Lawyers on Jurisdictional Fact at the National Library of Australia. In April 2008 Justice Stone attended the Sir Maurice Byers Lecture delivered by the Chief Justice of New Zealand, Dame Sian Elias, and the Corporations Law Seminar organised by the Court.

In February 2008 the 8th edition of *Sackville and Neave Australian Property Law*, of which Justice Stone is a co-author, was published.

Her Honour continues as a member of the Editorial Board of the *Journal of Equity*. Justice Stone is also a Member of the Governing Council of the Judicial College of Australia and a Foundation Fellow of the Australian Academy of Law.

In October 2007 Justice BENNETT assisted with the development of, and, attended the *Genes to Proteins – Proteomics in the Courts* Conference, held in Sydney.

Justice Bennett was a speaker at the International Bar Association Annual Conference, held at the National University of Singapore from 14 to 19 October 2007. Her Honour also chaired a session on *Best Practice in IP Litigation in the Courts for the Resolution of Local and Cross-border Disputes* which provided a unique forum for discussion and exchange of ideas on current issues related to the IP enforcement landscape, with a particular focus on the Asia Pacific region, and strategies for more effective enforcement of IP rights and measures to strengthen cross border enforcement.

In October 2007 at the Chief Justice's Inaugural Lecture commemorating the 60th year of India's Independence, Justice Bennett presented a paper to the barristers and judges of the Madras High Court entitled *Legislative Developments relating to the Empowerment of Women in Australia.*

During the week of 30 October 2007, her Honour participated in a program for the judges of the Beijing High Court by presenting a discussion on jurisdiction and structure of the Federal Court including Australia's legal system and the role of the Federal Court within the judicial system. In December 2007, Justice Bennett, together with other Federal Court judges, hosted a delegation from the Supreme People's Court of China and participated in discussions on recent developments, identified needs of the SPC, strategies, as well as future projects under the China Australia Governance Program. Her Honour also discussed intellectual property issues with those judges of the SPC who had particular interest in that area.

Justice Bennett moderated the IWIRC Great Debate on 14 November 2007.

As Pro-Chancellor of the ANU, Justice Bennett was part of the Inaugural Australian Women Business Leaders' Mission to India which took place from 28 January to 2 February 2008. This was arranged under the umbrella of Austrade's UTSAV Australia initiative and its Women in Export program. This Mission was also the first of its kind and comprised Australian businesswomen representing a diverse range of industry sectors.

On 8 February 2008 Justice Bennett chaired a session at the Gilbert+Tobin Constitutional Law Conference.

In May 2008, her Honour led Australia's delegation to the 13th APEC Women Leaders' Network meeting in Arequipa, Peru.

Justice Bennett continues to be involved in a number of other judicial and extra-judicial commitments including Presidential Member of the Administrative Appeals Tribunal, Pro-Chancellor of the Australian National University, Trustee of the Board of the Centennial Park and Moore Park Trust, Arbitrator of the Court of Arbitration for Sport, member of the Law Academic Advisory Committee for the School of Law of The Chinese University of Hong Kong, and member of Chief Executive Women. Her Honour was also a member of the judging panel for the Australian Veuve Clicquot Award for Business Woman of the Year.

Justice LANDER attended the Law Council of Australia Trade Practices Workshop in Surfers Paradise on 10-12 August 2007. On 23 October 2007 he presented a paper to the South Australian legal profession on *Some Aspects of Federal Procedure*. Justice Lander is the Federal Court's representative on the Steering Committee of the Supreme Court and Federal Court of Australia Judges' Conference and he attended this year's Conference which was held in Sydney on 19-23 January 2008. On 21 February 2008 he presented a paper to the South Australian Chapter of the Council of Australasian Tribunals on *Evaluating Expert Evidence*. Justice Lander is the Patron of the Flinders Law Students' Association. On 27 March 2008 he was invited to open the Flinders University Law Careers Fair and on 7 April 2008 he attended the Prize Giving Ceremony at Flinders University. On 2 June 2008 Justice Lander participated in judging the grand final of the Flinders University Law School Moot. On 5-6 June 2008 Justice Lander attended the 11th Annual AIJA Tribunals Conference in association with the Council of Australasian Tribunals held in Surfers Paradise.

On 26 February 2008 Justice GRAHAM presented a paper entitled *Establishing and Maintaining a Claim for Legal Professional Privilege in the light of* Telstra Corporation Limited v Minister for Communications, Information Technology and The Arts (No. 2) [2007] FCA 1445: *The Quandary facing In – House Counse*l at the Twelfth Annual In-House Counsel Forum. On 27 February 2008 his Honour presented a paper on *Contractor Performance Reports and Eden Construction* at the Sixth Annual Contract Law Conference. On 9 April 2008 his Honour presented a further paper on *Legal professional privilege for in-house counsel: establishing and maintaining a claim for privilege in the light of* Telstra Corporation Limited v Minister for Communications, Information Technology and The Arts (No. 2) [2007] FCA 1445. His Honour also participated in the Bar Reading Programme organised by the New South Wales Bar Association.

Justice GREENWOOD presented a paper on 31 March 2008 to a company law conference at the Marriott Hotel in Brisbane on the topic *Is there a need for a separate Corporations Court?*. His Honour chaired an intellectual property workshop and seminar of the Intellectual Property Society of Australia and New Zealand on 28 April 2008 and presented a commentary addressing practical aspects of intellectual property litigation. Justice Greenwood chaired a session of the Competition Law Conference in Sydney on 24 May 2008 and presented introductory remarks addressing considerations to be borne in mind when framing a cartel offence. His Honour attended the 2007 Annual Ausbiotech Conference Dinner on 22 October 2007 in conjunction with the National Ausbiotech Conference. Justice Greenwood participated in and chaired workshop sessions of the jointly sponsored Federal Court Conference *Genes to Proteins* on 8 to 10 October 2007. His Honour attended the Annual Insolvency Law Workshop from 31 August 2007 to 1 September 2007. His Honour attended the Socratic Forum on 29 August 2007. On 9 August 2007, Justice Greenwood attended the Annual Judges Address of the Intellectual Property Society of Australia and New Zealand. On 20 July 2007, Justice Greenwood attended the Annual Corporations Law Workshop of the Law Council of Australia, in Adelaide. His Honour also attended the Annual Trade Practices Workshop of the Business Law Section of the Law Council of Australia. His Honour participated in the adjudication of the annual Maritime Arbitration Law Moot 2008 hosted by the Federal Court, in Brisbane.

His Honour is also a member of the Key Centre for Ethics, Law, Justice and Governance at Griffith University and of the Scholarship Endowment Fund Committee of the T.C. Beirne School of Law at the University of Queensland. His Honour is an Adjunct Professor in the T.C. Beirne School of Law. His Honour is the Federal Court representative on the Acquisitions Sub-Committee of the Library of the Supreme Court of Queensland. His Honour is a member of the Supreme Court History Sub-Committee. His Honour is a member of the School Council of Brisbane Boys College.

On 22 August 2007 Justice RARES presented a paper on *The Onus of Proof in a Cargo Claim and the Relationship between Articles III and IV of the Hague-Visby Rules* in Brisbane at a meeting of judges in the Court's national admiralty and maritime arrangement. On 7 October 2007 he presented a paper at the Judicial Conference of Australia on *How the Implied Constitutional Freedom of Communication on Government and Political Matter may require the Development of the Principles of Open Justice*. On Friday 19 October 2007 he also presented a paper at the International Bar Association Conference in Singapore entitled *Australia's Sea Change: Towards Developing a Comprehensive System of Admiralty and Maritime Dispute Resolution for 21st Century Trade in the Asia-Pacific Region*. This paper was published in the April 2008 edition of the Australian Bar Review ((2008) 30 *Aust Bar Rev* 242).

On 11 and 18 December 2008 Justice Rares participated in a workshop for the China Australia Governance Program (CAGP).

On 15 May 2008 Justice Rares participated in the NSW Bar Association's reader's course and welcomed the readers to the Court on behalf of the Chief Justice. On 21-22 May 2008 his Honour participated in the Admiralty Marshals' Workshop in Melbourne where he delivered a presentation based on a paper written by Tamberlin J on 'The Role of the Admiralty Marshal' [1]. On 24 May 2008 Justice Rares participated in the Competition Law Conference in Sydney and chaired a session on 'Commercial Implications of the Birdsville Amendments – Issues for Clients and Practitioners'. On 30 May 2008 he represented the Court at the 28th annual meeting of the Consultative Council of Australian Law Reporting (CCALR) meeting in Sydney.

Justice COLLIER is a part-time member of the Australian Law Reform Commission and a member of the State Advisory Committee on Indigenous Justice Issues. On 2 April 2008, her Honour presented a paper, *Bankrupt husbands and the application of the doctrine of exoneration in Australian law – moving into the 21st Century*, to the Property Law Conference, Queens' College, Cambridge University. On 17 April 2008, her Honour presented a paper entitled, *Scrutinising Privacy – Australian Law Reform Commission Discussion Paper Review of Australian Privacy Law*, to the Government Lawyers Conference in Brisbane.

Justice BESANKO has been a member of the Legal Practitioners' Education and Admissions Council of South Australia since February 2002. In September 2007, and in previous years, he led a session of the South Australia Bar Association's Bar Readers' Course and Reading Program on *Legal Argument and Appellate Advocacy*. In October 2007, Justice Besanko attended the 5th Annual University of SA Trade Practices Workshop held over two days, and chaired a debate at that workshop. In April 2008, he delivered a paper entitled *Confidentiality of Documents and Information in Australian Courts* at the IPSANZ meeting in Adelaide. He chaired sessions at the Trade Practices Conference held by the Law Society of South Australia in May 2008 (*Major Provisions of Part IV – A Progress Report; Economics for the TPA Lawyers*). Justice Besanko also has an ongoing involvement in the Law Society's continuing legal education programme and in judging student mooting competitions.

1 The paper was originally written by Tamberlin J in 2001 and updated in 2005, with the most recent update undertaken by Rares J with the assistance of Deputy Registrar Lance Grant.

From 1 July 2007 to 25 September 2007 Justice TRACEY served as Deputy Judge Advocate General – Army and Acting Judge Advocate General of the Australian Defence Force. On 26 September 2007 he was appointed as the Judge Advocate General of the Australian Defence Force. He was sworn in by the Chief Justice at a ceremony conducted in the Court on 11 October 2007. On 15 November 2007 Justice Tracey was the guest speaker at the annual general meeting of the Victorian Chapter of the Australian Institute of Administrative Law. His address entitled *Reflections on Administrative Law* was subsequently published in the *Australian Journal of Administrative Law*. On 10 January 2008 he delivered a paper on *The Conduct of Terrorism Trials in Australia* at the SAIS/RAND Terrorism Trials Colloquium at Johns Hopkins University in Washington. He later visited the United States District Court of the Eastern District of Virginia in Alexandria to observe the work of the Court and confer with the presiding judge. Between 12 April and 17 April 2008 he attended the 21st Annual United States Pacific Command International Military Operations and Law Conference in Singapore.

On 20 October 2007 Justice MIDDLETON presented a paper entitled *Economic Expert Evidence* at the 5th Annual University of South Australia Trade Practices Workshop held by the University of South Australia. In October – November 2007 and April – May 2008 Justice Middleton delivered a paper in conjunction with Mr David O'Callaghan SC to the Victorian Bar Readers' Course on Written Advocacy. On 28 and 29 April 2008 Justice Middleton chaired the 4th Annual Trade Practices and Corporate Compliance Summit held in Sydney. On 30 and 31 May 2008 he attended the North Queensland Law Association Annual Conference 2008 in Mackay (QLD) and delivered a paper entitled *The Attainment of Justice – with Particular Emphasis on the Federal Court*.

Justice GORDON is the Chair of the Deakin University School of Law Academic Advisory Board and the Senior Fellow (Graduate Program) of the Melbourne University Law School, teaching the Melbourne Law Masters, Taxation Litigation.

Justice Gordon also gave the following speeches during the year:

- Tax Office Legal Services Forum – Speech – 'Tax Directions' (8 May 2008).
- Federal Court Law Council Practice Seminar – Adelaide – Speech – 'Evaluation of the Docket System with particular emphasis on case preparation and early identification of issues' (14 March 2008).
- Declaratory Relief Conference at the University of WA – Perth – Speech – 'Declaratory Relief – The Same Yesterday, Today and Tomorrow' (30 November 2007).

Justice LOGAN delivered a paper entitled *Judicial Reviews versus Tribunal Reviews* to the Queensland Law Society's 2008 Government Lawyers' Conference in April 2008. Between 16 and 18 May 2008 he attended the International Bar Association's 14th Annual Global Insolvency and Restructuring conference in Stockholm. He acted as honorary secretary for the organising committee for the inaugural The Honourable Jack Lawrence Kelly CBE, RFD Memorial Lecture on Military Law delivered in Brisbane on 30 June 2008. Throughout the year, Justice Logan served as a judicial consultant member of the Queensland Bar Association's Continuing Professional Development Committee.

In November 2007, Justice McKERRACHER delivered a paper commentating at the University of Western Australia's *Perspectives on Declaratory Relief Conference*. The Conference focussed on the diverse public and private law aspects of declaratory relief. Australian judges, practitioners and academics contributed papers. Justice McKerracher's commentary is to be published with the papers of that Conference as an edited collection of essays with Federation Press.

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	377	242	16	35	2	4
Professional	34	14	1	2		
TOTAL	**422**	**261**	**18**	**38**	**2**	**4**

Representation of EEO Groups within salary levels

Salary	Total staff	Women	NESB1	NESB2	ATSI	PWD
$35,412-$39,135 FCS1	1					
$40,076-$44,440 FCS2	59	37	3	5		
$45,647-$49,266 FCS3	45	31	1	4		1
$50,878-$55,240 FCS4	34	25	3	5		1
$56,746-$60,171 FCS5	109	61	7	17	2	1
$61,288-$70,403 FCS6	78	66		2		
$78,444-$99,629 FCM1/FCL1	36	17	2	2		1
$90,433-$119,940 FCM2/FCL2	49	19	1	2		
SES	11	5	1	1		
TOTAL	**422**	**261**	**18**	**38**	**2**	**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 2008)

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 Finance Circulars and guidance documentation published by the Department of Finance and Deregulation.

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. Table 10.1 below lists all consultancy contracts let during 2007-08 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 2007–08

Consultant Name	Description	Contract Price (incl GST) $'000	Selection Process (1)	Justification (2)
Ernst and Young	Internal audit services	$39,130	Direct Source	(C)
Deloitte Touche Tohmatsu	Audit and audit related services	$231,000	Select Tender	(C)
Hudson	Web development	$45,822	Direct Source	(B)
Hudson	Web content analysis and design	$21,694	Direct Source	(B)
Dimension Data	Mobile telecommunications requirements specification and risk assessment	$82,825	Select Tender	(B)
Lucid IT	Integrated service management system requirements analysis and specification	$39,270	Select Tender	(B)
Housley Consulting	Assessment and development of strategy for replacement of PABX facilities	$21,366	Direct Source	(C)
Housley Consulting	Voice telecommunications switching requirements analysis and specification	$17,094	Direct Source	(B)
Rhian Williams	Indigenous dispute resolution and conflict management case study	$57,577	Direct Source	(C)
David Allen	Indigenous dispute resolution and conflict management case study	$48,802	Direct Source	(C)

Consultant Name	Description	Contract Price (incl GST) $'000	Selection Process (1)	Justification (2)
Lewis Troutman	Indonesian legal development leadership project design and profiling	$28,321	Direct Source	(B)
Law and Development Partners	Vietnamese judicial bench book design	$129,250	Direct Source	(B)
Kien Nguyen	Vietnamese judicial bench book design	$73,800	Direct Source	(B)
Total consultancy contracts let 2007-08 $10K or more		**$835,950**		

(1) Explanation of selection process terms referred to above is drawn from the *Commonwealth Procurement Guidelines* (January 2005):

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.

(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.

APPENDIX 11 – STATEMENT UNDER SECTION 8 OF THE FREEDOM OF INFORMATION ACT 1982

Information on 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 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 (inquiries 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.

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

INDEX

A

Administration of the Court 40
- Advertising and marketing services 43
- Audit and Risk Management 41
- Commonwealth Disability Strategy 48
- Consultants 42
- Consultants list for 2007-08 151
- Corporate Services 40
- Environmental management 50
- External Scrutiny 42
- Financial Accounts 41
- Financial Management 40
- Information Technology 50
- Judges' Meetings 40
- Library and information services 51
- Procurement 42
- Security 49

Administrative Appeals Tribunal
- President 5
- Presidential Member 3, 4, 5
- Review of refusal to waive fees 32

Administrative Decisions (Judicial Review) Act 16, 21

Admiralty
- Act 17
- Workload 106

Appeals
- Full Court sittings 23
- Migration 25
- Workload 24

Australian Competition Tribunal 7, 29, 113
- Deputy Presidents 4
- President 4

Australian Industrial Relations Commission
- President 4

Australian Law Reform Commission
- Part-time Commissioners 3, 5, 6

Australian Workplace Agreements 43

B

Bankruptcy
- Act 17
- Workload 102

C

Case Management
- Disposition of matters other than native title 20
- Strategies 13
- Workshop 13, 30, 31

Casetrack 16, 50

Chief Justice 3, 6, 40, 90, 140

Community relations 33

Complaints about the Court's processes 35

Copyright Tribunal 29, 114
- Deputy President 7
- President 7
- Registry 8

Corporations
- Act 17
- Workload 103

D

Decisions of interest 119

Defence Force Discipline Appeal Tribunal 29, 115
- President 4
- Registry 8

E

eServices 12, 50, 51
- eSearch 12, 50
- eCourtroom 12, 51
- eFiling 12, 51
- eLodgment 12, 51
- Commonwealth Courts Portal 12

Equal employment opportunity statistics 150

F

Federal Court of Australia
- Establishment 2
- Judges 3
- Jurisdiction 16
- Management Structure 40, 88
- Objectives 2
- Officers of the Court 9
- Outcome and Output Structure 2, 41
- Registries 7
- Staff 43
- Staff delegated powers 9

Federal Court of Australia Act 1976 2, 3, 8, 9, 18, 21, 40
- Amendments 18

Federal Court of Australia Regulations 18, 31
- Remission or waiver of fees 31

Federal Court Rules 9, 18

Federal Court User groups 33

Federal Magistrates 23

Federal Magistrates Court 2, 8, 12, 14, 17, 19, 23, 24, 25, 30

Freedom of Information Statement 153

G

Glossary 157

H

High Court of Australia 8, 21, 30

Human Resources 43 - 48
- Occupational Health and Safety 47
- Performance Pay 47
- Training and development 47

I

Individual Docket System 13, 20, 30
Industrial Relations Court of Australia
  Judge 3, 4
Information about the Court
  Brochures 32
  Internet 32
Intellectual property 16
  Workload 110
International Work of the Court 35
  Visitors to the Court 37

J

Judiciary Act 16
Judges
  Appointment 3
  Commissions and appointments 3, 7, 8
  Legal education and reform activities 35
  Removal 3
  Retirement 3, 7
Judgments
  Access to 32
  Decisions of Interest 117
  Delivery 14, 21
Jurisdiction
  Changes in 2007-08 17
  List of statutes 92

M

Media
  Information for 32
Mediation 13, 28
  Settlement rates 28
Migration Act 14, 23
  Matters filed 105
  Appeals 14, 23 - 25
Migration Review Tribunal
  Jurisdiction of Court to Review 16

N

National Native Title Tribunal 17, 22, 23
Native Title
  Act 17, 18, 25, 26
  Case management 26
  Decisions of interest 28, 138
  Jurisdiction 25
  Mediation 27
  National allocation protocol 26
  Regional case management 26
  Workload 27, 107
Notice to Practitioners 13, 19, 30, 31

P

Performance indicators 14
Practice and procedure
  Reforms in 2007-08 30
Practice Notes 13, 19, 30

R

Refugee Review Tribunal
  Jurisdiction of Court to Review 16
Registrars of the Court
  List 89
  Powers 9
Registries iv, 8, 40

S

Self -Represented Litigants
  Assistance 31
Supreme Court of Fiji
  Judge 3, 4, 5
Supreme Court of Norfolk Island 2, 17
  Chief Justice 5
  Judge 5, 7
Supreme Court of the ACT
  Additional Judge 3-6
  Chief Justice 3

T

Taxation
  Jurisdiction 16
  Workload 16, 109
Time Standards
  Delivery of judgments 14
  Disposal of matters 14
  Disposal of matters other than native title 20
Tonga Court of Appeal
  Judge 4
Trade Practices
  Act 16, 113, 114
  Workload 104
Tribunals
  Management of cases 29
  Registries 8
  Workload 113

W

Workload
  Impact of Federal Magistrates Court 19
  Incoming work 21, 96
  Issues and developments 12 - 14
  Management of cases by tribunals 29
  Migration appeals 25
  Statistics 95
Workload in appellate jurisdiction 23, 24, 112
Workload in original jurisdiction 21, 22
  Age of pending workload 22
  Matters completed 22, 97
  Matters transferred or remitted 21

GLOSSARY

Appeal	An application to a higher court to review a decision of a lower court or tribunal. For example, an appeal from a decision of a Federal Magistrate may be made to the Federal Court, and a decision of a single judge of the Federal Court may be the subject of an appeal to the Full Court of the Federal Court.
Appellate jurisdiction	The power given to a court to hear appeals in certain matters.
Applicant	The individual, organisation or corporation who/which applies to the Court to start legal proceedings against another person or persons. Also known as 'plaintiff' in admiralty and corporations matters and in some other courts.
Application	The document that starts most proceedings in the Federal Court.
Directions	Orders made by the Court or a judge in relation to the conduct of a proceeding. Before the trial or hearing of a matter a judge may give directions so that the parties involved will be properly ready. The directions usually set down a list of steps to be taken by the parties and the deadline for those steps. The steps usually involve filing of material and defining the issues that require a decision by the Court.
Discovery	A process by which the parties involved in a legal proceeding must inform each other of documents they have in their possession and which relate to the matters in dispute between the parties.
Docket system	A system by which each case is allocated to a particular judge who will then see the case through to completion. In the Federal Court the system is called the Individual Docket System (IDS).
Exhibit	A document or item produced in court for the purpose of becoming part of the evidence in a proceeding.
Filing of documents	The process of the Court accepting a document or documents lodged by a party to a proceeding.
First instance	A proceeding heard in the Court's original jurisdiction.
Hearing	That part of a proceeding where the parties present evidence and submissions to the Court.
Interlocutory application	Interlocutory proceedings are for dealing with a specific issue in a matter – usually between the filing of the application and the giving of the final hearing and decision. In the Federal Court interlocutory issues are usually brought before the Court by a 'notice of motion' or an 'interlocutory process'. An interlocutory application may be for interim relief (such as an injunction) or in relation to a procedural step (such as discovery).

Judgment	The final order or set of orders made by the Court after a hearing, often accompanied by reasons which set out the facts and law applied in the case. A judgment is said to be 'reserved' when the Court postpones the delivery of the judgment to a later date to allow time to consider the evidence and submissions. A judgment is said to be 'ex tempore' when the Court gives the judgment orally at the hearing or soon after.
Jurisdiction	The extent of legal authority or power of the Court to apply the law. The Federal Court has jurisdiction under more than 150 Acts of the Commonwealth Parliament and has original and appellate jurisdiction.
Litigants	Individuals, organisations or companies who/which are the parties to a proceeding before the Court.
Mediation or (Assisted Dispute Resolution)	A process in which an impartial third party (the mediator) assists the parties in an attempt to bring about an agreed settlement or compromise, without requiring a decision of the Court.
Notice of Motion	The document filed by a party to an existing proceeding which asks the Court to make orders that were not included in the original application.
Original jurisdiction	The authority or legal power of the Court to hear a case in the first instance.
Parties	People involved in a court case. Applicants, appellants, respondents and defendants are generally called 'parties'.
Proceeding	The regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the judgment.
Regulations	The Federal Court of Australia Regulations 2004 which prescribe the filing and other fees that must be paid in relation to proceedings in the Federal Court.
Rules	Rules made by the judges which set out the procedures for conducting a proceeding. The current rules of the Federal Court are the Federal Court Rules, *Federal Court (Corporations) Rules 2000* (for proceedings under the *Corporations Act 2001*) and *Federal Court (Bankruptcy) Rules 2005* (for proceedings under the *Bankruptcy Act 1966*).
Self represented litigant	A party to a proceeding who does not have legal representation and who is conducting the proceeding on his or her own behalf.


directions
dockets
fast tracking
effective