



FEDERAL COURT OF AUSTRALIA

ANNUAL REPORT
2008–2009





FEDERAL COURT
OF AUSTRALIA
ANNUAL REPORT 2008–2009

© Commonwealth of Australia 2009

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

7 September 2009

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 2008-2009 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 twentieth annual report.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M E J Black'.

M E J Black
Chief Justice

FEDERAL COURT REGISTRIES

Principal Registry

Law Courts Building
Queens Square Sydney NSW 2000
Phone: (02) 9230 8473 Fax: (02) 9223 1906
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 2600
Phone: (02) 6267 0566 Fax: (02) 6267 0625
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
Email: nswdr@fedcourt.gov.au
Counter hours: 9.00am–4.00pm
Contact hours: 8.30am–5.00pm

Northern Territory District Registry

Level 3 Supreme Court Building
State Square
Darwin NT 0800
Phone: (08) 8941 2333 Fax: (08) 8941 4941
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
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
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
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
Email: vicreg@fedcourt.gov.au
Counter hours: 9am–4.30pm
Contact hours: 8.30am–5.00pm

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
Email: waregistry@fedcourt.gov.au
Counter hours: 8.30am–4.00pm
Contact hours: 8.30am–5.00pm

Contact officer for Annual Report

Elizabeth Connolly
Principal Registry
Phone: (02) 9230 8720 Fax: (02) 9223 1906
Email: Elizabeth.Connolly@fedcourt.gov.au

If you have a hearing or speech impairment, contact us through the National Relay Service:

- TTY users phone 133 677 then ask for your local registry's phone number as listed above
- Speak and Listen users phone 1300 555 727 then ask for your local registry's phone number as listed above
- Internet relay users connect to the NRS (www.relayservice.com.au) and then ask for your local registry's phone number as listed above

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 2008–09	6
Federal Court Registries	8

2 THE YEAR IN REVIEW

Significant issues and developments	12
The Court's performance	15

3 THE WORK OF THE COURT IN 2008–2009

Management of cases and deciding disputes	18
The Court's jurisdiction	18
Workload of the Federal Court and Federal Magistrates Court	23
The workload of the Court in its original jurisdiction	24
The Court's appellate jurisdiction	26
Managing migration appeals	28
The Court's native title jurisdiction	29
Assisted dispute resolution	31
Management of cases and deciding disputes by Tribunals	34
Improving access to the Court and contributing to the Australian legal system	34
Practice and procedure reforms	34
Community relations	37
Complaints about the Court's processes	40
Involvement in legal education programs and legal reform activities	40
Work with international jurisdictions	40

4 MANAGEMENT OF THE COURT

Federal Court governance	46
Judges' committees	46
Corporate services	46
Financial management	46
Audit and risk management	48
External scrutiny	48
Purchasing	48
Consultants	48
Human resources	49
Occupational health and safety	54
Property management	56
Technology services	57
Library and information services	59

APPENDICES

appendix 1 Financial statements	62
appendix 2 Agency Resource Statement	96
appendix 3 Management structure	97
appendix 4 Registrars of the Court	98
appendix 5 Statutes of the Court	101
appendix 6 Workload statistics	104
appendix 7 Work of tribunals	124
appendix 8 Decisions of interest	129
appendix 9 Judges' participation in legal reform activities and international committees and conferences in 2008–09	154
appendix 10 Equal employment opportunity statistics	166
appendix 11 Expenditure on consultants	167
appendix 12 Statement under Section 8 of the <i>Freedom of Information Act 1982</i>	168
index	170
glossary	173



CHAPTER 1

Overview of the 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 5 on page 101.

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 47.

This report uses the outcome and output structure to outline the Court's work and performance during 2008–09. 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 2009 there were 45 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 45 judges, there were three whose work as members of other courts or tribunals occupied all, or most, of their time.

Judges of the Court

(as at 30 June 2009)

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 the ACT – Additional Judge Administrative Appeals Tribunal – Presidential Member
The Hon Peter Ross Awdry GRAY	Melbourne	Industrial Relations Court of Australia – Judge Administrative Appeals Tribunal – Presidential Member
The Hon Donnell Michael RYAN	Melbourne	Industrial Relations Court of Australia – Judge Supreme Court of the ACT – Additional Judge
The Hon Terence John HIGGINS AO	Canberra	Supreme Court of the ACT – Chief Justice
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 Kevin Edmund LINDGREN	Sydney	
The Hon Paul Desmond FINN	Adelaide	

Judge	Location	Other Commissions/Appointments
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 AM	Adelaide	Supreme Court of the ACT – Additional Judge Supreme Court of the NT – Additional Judge Australian Competition Tribunal – Part-time Deputy President
The Hon Alan Henry GOLDBERG AO	Melbourne	
The Hon Arthur Robert EMMETT	Sydney	Copyright Tribunal – President
The Hon Raymond Antony FINKELSTEIN	Melbourne	Australian Competition Tribunal – Part-time President
The Hon Geoffrey Michael GIUDICE	Melbourne	Australian Industrial Relations Commission – President
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 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 – Chief Justice Australian Competition Tribunal – Part-time Deputy President
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 Norfolk Island – Judge Administrative Appeals Tribunal – Presidential Member

Judge	Location	Other Commissions/Appointments
The Hon Antony Nicholas SIOPIIS	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
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	Acting Judge Advocate General of the Australian Defence Force – Part-time Defence Force Discipline Appeal Tribunal - President
The Hon John Eric MIDDLETON	Melbourne	Australian Competition Tribunal – Part-time Deputy President
The Hon Robert John BUCHANAN	Sydney	Supreme Court of the ACT – Additional Judge Administrative Appeals Tribunal – Presidential Member
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	Supreme Court of the NT – Additional Judge
The Hon Nye PERRAM	Sydney	Copyright Tribunal – Deputy President

Judge	Location	Other Commissions/Appointments
The Hon Jayne Margaret JAGOT	Sydney	
The Hon Lindsay Graeme FOSTER	Sydney	
The Hon Michael Laurence BARKER	Perth	

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

1-11 July 2008	The Hon Justice French
8 September – 12 October 2008	The Hon Justice Spender
25 April – 17 May 2009	The Hon Justice Spender
15-21 June 2009	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 9.

Appointments and retirements during 2008–09

During the year four judges were appointed to the Court:

- **The Honourable Justice Nye Perram** (resident in Sydney) was appointed on 8 August 2008.
- **The Honourable Justice Jayne Margaret Jagot** (resident in Sydney) was appointed on 3 September 2008.
- **The Honourable Justice Lindsay Graeme Foster** (resident in Sydney) was appointed on 4 September 2008.
- **The Honourable Justice Michael Laurence Barker** (resident in Perth) was appointed on 9 February 2009.

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

- **The Honourable Justice Mark Samuel Weinberg** resigned his commission as a judge of the Court on 19 July 2008.
- **The Honourable Justice Roger Vincent Gyles AO** retired upon reaching the compulsory retirement age for federal judges on 22 August 2008.
- **The Honourable Justice Ronald Sackville** resigned his commission as a judge of the Court on 25 August 2008.
- **The Honourable Justice Robert Shenton French** resigned his commission as a judge of the Court on 1 September 2008.
- **The Honourable Justice Catherine Margaret Branson** resigned her commission as a judge of the Court on 14 October 2008.

- **The Honourable Justice Peter Cadden Heerey** retired upon reaching the compulsory retirement age for federal judges on 15 February 2009.
- **The Honourable Justice Brian John Michael Tamberlin** retired upon reaching the compulsory retirement age for federal judges on 29 March 2009.

Other appointments, resignations and retirements during the year included:

- **The Honourable Justice Weinberg** resigned his commissions as Chief Justice of the Supreme Court of Norfolk Island and as an Additional Judge of the Supreme Court of the Australian Capital Territory, with effect from 19 July 2008.
- **The Honourable Justice French** was appointed part-time President of the Australian Competition Tribunal for a period of five years, with effect from 30 July 2008.
- **The Honourable Justice Mansfield** was appointed a part-time Deputy President of the Australian Competition Tribunal for a period of five years, with effect from 30 July 2008.
- **The Honourable Justice Jacobson** was appointed a part-time Deputy President of the Australian Competition Tribunal for a period of five years, with effect from 30 July 2008.
- **The Honourable Justice French** resigned his commissions as an Additional Judge of the Supreme Court of the Australian Capital Territory, a Presidential Member of the Administrative Appeals Tribunal, Part-time President of the Australian Competition Tribunal and as a part-time Member of the Australian Law Reform Commission, with effect from 1 September 2008.
- **The Honourable Justice Finkelstein** was appointed the part-time acting President of the Australian Competition Tribunal for a period of three months, with effect from 10 September 2008.
- **The Honourable Justice Mansfield** was appointed an Additional Judge of the Supreme Court of the Australian Capital Territory, with effect from 11 September 2008.
- **The Honourable Justice Buchanan** was appointed an Additional Judge of the Supreme Court of the Australian Capital Territory, with effect from 11 September 2008.
- **The Honourable Justice Finkelstein** was appointed the part-time President of the Australian Competition Tribunal for a period of five years, with effect from 12 December 2008.
- **The Honourable Justice Jacobson** was appointed Chief Justice of the Supreme Court of Norfolk Island, with effect from 12 December 2008.
- **The Honourable Justice Lander** was appointed a Judge of the Supreme Court of Norfolk Island, with effect from 12 December 2008.
- **The Honourable Justice Middleton** was appointed a part-time Deputy President of the Australian Competition Tribunal for five years, with effect from 16 February 2009.
- **The Honourable Justice Tracey RFD** was appointed President of the Defence Force Discipline Appeal Tribunal for a period of five years, with effect from 16 February 2009.
- **The Honourable Justice Tracey RFD** was appointed as the Acting Judge Advocate General of the Australian Defence Force for the period 16 February to 31 December 2009.
- **The Honourable Justice Buchanan** was appointed a Presidential Member of the Administrative Appeals Tribunal and Acting President during any period or during all periods when the President is absent from duty or from Australia or during a vacancy in the office of President, for the period 30 March 2009 until 30 September 2012.
- **The Honourable Justice Reeves** was appointed an Additional Judge of the Supreme Court of the Northern Territory of Australia, with effect from 1 May 2009.
- **The Honourable Justice Mansfield** was appointed an Additional Judge of the Supreme Court of the Northern Territory of Australia, with effect from 1 June 2009.

- **The Honourable Justice Mansfield** was appointed a Member of the Order of Australia on the Queen's Birthday 2009.
- **The Honourable Justice Perram** was appointed a Deputy President of the Copyright Tribunal for three years, with effect from 8 June 2009.

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, Western Australian and Northern Territory 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 District Registrar for each District Registry;
- Deputy Registrars and Deputy District Registrars;
- a Sheriff and Deputy Sheriffs; and
- 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 4 on page 98 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 2009 there were 372 staff employed under the Public Service Act. Generally, judges have two personal staff members. More details on Court staff are set out in Tables 4.3 to 4.5 in Chapter 4 on pages 51 to 53.



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 2008–09 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

National Fast Track Procedures

On 24 April 2009 Chief Justice Black issued Practice Note No 30 – Fast Track Directions (the Fast Track Directions). The Directions were developed following the highly successful pilot of a Fast Track List in the Victorian Registry. The pilot commenced in May 2007 and involved extensive consultation with the legal profession.

The aim of the Fast Track Directions is to provide a framework in which cases may be heard and finalised within five to eight months from the date of filing (depending on their complexity), and to reduce costs by limiting discovery and avoiding lengthy interlocutory disputes. Urgent cases may be finalised sooner.

In its present form, Fast Track is usually limited to cases with an expected trial duration of no more than five days (after the process of intensive issue management). Fast Track is also presently limited to cases that arise out of, or relate to: commercial transactions, an issue of importance in trade or commerce, the construction of commercial documents, an issue of importance in personal insolvency, an issue that involves intellectual property rights (apart from patents).

The key features of the Fast Track Directions include:

- The substitution of Fast Track Statements, Responses and Cross-claims for pleadings.
- The introduction of Scheduling Conferences and Pre-trial Conferences to ensure active case management of the proceeding.
- A statement of the Court's expectation that parties and their representatives will cooperate with, and assist the Court to ensure proceedings are conducted in accordance with the Fast Track Directions.
- Limiting the scope of discovery obligations.
- Requiring the parties to attempt to resolve any interlocutory dispute before they may apply to the Court for a determination of the dispute.
- Resolving most interlocutory disputes on the papers.

Many important features of Fast Track, including an insistence upon strict observance of time limits and the early identification of the issues, are reflected in other case management innovations in the Court in taxation appeals, patent cases and admiralty and maritime cases. A substantial reduction in the time for the disposition of tax appeals in the Court is attributable to the adoption of a Fast Track approach and many of the Fast Track procedures.

Case Management Reforms

On 22 June 2009 the Access to Justice (Civil Litigation Reforms) Amendment Bill 2009 was introduced into Parliament. This Bill incorporates a range of case management reforms proposed by the Court, many of which had their genesis at a seminar on Case Management and the Individual Docket System which the Federal Court held in conjunction with the Law Council of Australia in the previous reporting year. Initiatives in the Bill that were proposed by the Court will help reduce the cost of litigation, minimise unnecessary delays and support fast track procedures.

Using technology to improve the efficiency of litigation

On 29 January 2009 Chief Justice Black issued Practice Note No 17 – the use of technology in the management of discovery and the conduct of litigation. The aim of the Practice Note is to encourage and facilitate the effective use of technology by setting out the Court’s expectations as to how technology should be used in the conduct of proceedings before the Court and recommending a framework for the management of documents electronically in the discovery process and the conduct of trials.

The Practice Note has been developed having regard to:

- The Court’s experiences in recent electronic trials and developments in other domestic and international jurisdictions.
- The fact that most original evidence is now in electronic form.
- The need to encourage the use of technology to improve document management for all cases – not just large cases and large firms.

The Practice Note seeks to maximise the efficiencies and economies that can be obtained by managing electronic documents as searchable images or in their original formats. It discourages the current practice whereby electronic documents are converted into non-searchable images (often by printing the document and having it scanned) and manually classified into the relevant databases. This approach has proven to be expensive and inefficient. Importantly, the Practice Note applies active case management principles such as limiting discovery issues, before orders are made to use technology to manage discovery.

Courts of the Future for Sydney

Work is continuing on the major refurbishment of the Law Courts Building in Sydney. The Court’s floors are being substantially rebuilt and reconfigured within the existing space. During the year work was completed on two of the Federal Court floors, level 17 which houses the Court’s NSW Registry and level 18 which includes four new court rooms. The new Registry includes an efficient and comfortable public waiting area and the court rooms have been designed as courts of the future, with a particular focus on the needs of court users. In an interview published in the NSW Bar News the Chief Justice said:

“The philosophy that’s informed this part of the renovations is that it’s the best courtroom site in the world and we should make use of it to give a shared access to the public, profession, judges and staff to the view, to the natural light and to the general ambience of this part of Sydney. If you have a look at Level 18, which is the first of the refurbished floors, you’ll see that’s exactly what we do...There are interview rooms which are both private and allow access to the light and the views. Courtroom 18B is one of the two medium sized courtrooms...It has two rows of bar tables, plenty of room for the public, high quality electronic facilities and a magnificent use of the site.” (*Bar News: the Journal of the NSW Bar Association, Winter 2009, p67*)

The refurbishment is continuing with Levels 21 and 22 to be completed during the next reporting year and levels 19 and 20 at the end of 2010.

eServices strategy

The Federal Court's eServices strategy centres on the use of current technology to improve efficiency and increase accessibility to the Court and to assist judges in their task of deciding cases quickly, inexpensively and as efficiently as possible.

The Court remains committed to delivering an integrated eServices strategy that anticipates and meets the needs of judges, makes use of technological opportunities as they continue to emerge, and fulfils the expectations of the community, in particular the business community, and the Court's own expectations of being an efficient and effective commercial court in the contemporary environment.

Over the past ten years the Court, through the Chief Justice and the Registrar, has supported innovation and taken advantage of technological changes in the interests of justice. This innovation, referred to as eServices, followed an incremental path to design and implementation so that concepts could be tested through a pilot process and once their effectiveness established, then fully implemented. Following this approach the Court has a number of eServices in place – an electronic case management system (Casetrack), eFiling, eSearch, eCourtroom and eCase Administration.

A key outcome of the Court's eServices strategy is to create an environment where actions are commenced by filing documents electronically. These documents are then integrated with the Court's Case Management System which enables judges to manage cases through the eCourt if the matter is not resolved before trial. Judges will be able to manage cases by way of eDocuments and, when completed, the Court file is maintained in electronic form for the purpose of the record.

Much will be accomplished as a result of the implementation of this approach:

- Improved access to court services through on-line delivery;
- Reduced need to attend at court or registry counter;
- Increased service availability (24 x 7); and
- Reduced costs of litigation through reducing reliance on printing and photocopying of documents.

During the reporting period work continued on the development of an eLodgment application to replace eFiling which will enable an internal or external user to seamlessly access all information they require in relation to relevant Court files from within the one environment. This functionality is represented by a concept called *'My Files'*. eLodgment is scheduled to be released in two stages. The first release, which will be limited to some users of the Court and will provide an opportunity to assess the functionality and intuitiveness of the system, will take place in the first quarter of 2009–10. The second release will replace eFiling in the first quarter of 2010. Information regarding the various components of the Court's eServices Strategy can be found in Chapter 4 at page 58.

2.3 THE COURT'S PERFORMANCE

Workload

During the year there were 3,864 actions commenced in the Court and 10,407 in the general federal law jurisdiction – the combined workload of the Federal Court and the Federal Magistrates Court (FMC). This represents a 10% reduction on the combined workload in 2007–08. More information about the Federal Court's workload is outlined below.

The Federal Court's registries provide registry services for the Federal Magistrates Court. Notwithstanding the reduction in filings in 2008–09, the workload 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 (i.e. not including appeals) of the Federal Court were 5,885 compared with 9,534 this year.

It should be noted that Federal Court Registrars hear and determine a substantial number of cases in the Federal Magistrates Court, particularly in the Bankruptcy jurisdiction. During the year Federal Court Registrars dealt with and disposed of 4,320 Federal Magistrates Court bankruptcy matters which equates to 87% of the FMC's bankruptcy caseload.

In 2008–09 the total number of filings in the Federal Court decreased by just under 13% to 3,864. The majority of the decrease was in the Court's appellate jurisdiction, primarily migration appeals. In 2008–09, appellate proceedings filed in the Court concerning decisions under the Migration Act fell by 48% and now comprise 50% of appeals and related actions, compared with 67% in 2007–08. While the reasons for the sharp drop in migration appeals are not clear, it is likely that the Court's procedures to streamline the preparation and conduct of these appeals and applications which has resulted in reduced timeframes for the disposition of migration appeals has had an impact. Further information about the management of migration appeals can be found in Chapter 3 on page 28. The workload in the Court's original jurisdiction decreased by just under 3% in 2008–09.

Review of case counting information

The Court presently reports on filings by major Cause of Action (COA). This is an under representation of the workload as it does not include filings of supplementary COA's (cross appeals and cross claims), interlocutory applications (initiated by the filing of a notice of motion) or native title joinder of party applications. In 2007–08 the Court started to count and report on notices of motion in appellate proceedings in order to provide the most accurate possible picture of the Court's appellate workload. From 2008–09 the Court will count all forms of this additional workload in both its original and appellate jurisdictions. All of these additional applications require a high degree of judicial or registrar time. Table 6.4 on page 108 provides a breakdown of these matters and shows that in 2008–09 there were an additional 194 actions in appeals and 1,913 in first instance matters. At this stage it is not possible to obtain information about finalisations of notices of motion (because they are recorded in the Court's case management system as a document filed rather than a specific COA). Because of this, detailed reporting on finalisations of supplementary COAs has been restricted to information about appeals in Chapter 3 and Table 6.4 in Appendix 6.

In order to ensure greater transparency and accountability in the reporting of the Court's workload, a project will commence in 2009–10 to restructure the Court's statistical systems to ensure, in keeping with other jurisdictions, that the components of individual cases are counted, not just the initial COA.

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 90.2% of cases in less than 18 months, compared with ninety point three per cent in the previous year. As shown in Figure 6.5 and Table 6.5 in Appendix 6 on page 112, over the last five 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 2008–09 the Court handed down 1,889 judgments for 2,030 court files (in some instances one judgment will cover multiple files). While the Court's reporting system for these statistics is still being refined, the data indicates that 86% of appeals (both full court and single judge) were delivered within three months and 80% of judgments at first instance were delivered within three months of the date of being reserved.

Assisted Dispute Resolution (ADR)

The Court's use of ADR, particularly mediation, continued during the reporting year with 522 matters referred to mediation, an increase of 38% on 2007–08. This is also substantially higher (54%) than the average annual referral rate of 339 matters for the previous five years. Fifty-seven per cent of cases referred to mediation resolved at mediation.

As part of the individual docket system and the Court's active case management approach, the use of ADR is considered when determining the most appropriate case management method for individual matters. Due to the nature of the Court's work, other case management tools may be more appropriate in some instances.

CHAPTER 3

The work of the Court in 2008–2009



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 6.8 on page 115 for comparative statistics regarding consumer protection 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 28.

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 6.13 on page 120 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 6.14 on page 121 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 29. Figure 6.11 on page 118 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 Marshals made 23 arrests. See Figure 6.10 on page 117 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* 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 6.7 on page 114 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 6.6 on page 113 for a comparison of bankruptcy matters filed in the last five years.

The Court has jurisdiction under the *Workplace Relations Act 1996* and related industrial legislation. Workplace relations matters filed over the last five years are shown in Figure 6.12 on page 119.

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 26. Figure 6.15 on page 122 shows the appeals filed in the Court since 2004–05.

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 5 on page 101.

Changes to the Court's jurisdiction in 2008–09

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

- *Fair Work Act 2009*
- *National Rental Affordability Scheme Act 2008*
- *Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Act 2008*
- *Tax Agent Services Act 2009*

In addition to its jurisdiction under the *Fair Work Act 2009*, from 1 July 2009 the Court will have jurisdiction under the *Fair Work (Registered Organisations) Act 2009* and the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

During the reporting year the following Bills that will confer new jurisdiction on the Court were introduced in the Parliament:

- Federal Justice Amendment (Efficiency Measures) Bill (No 1) 2008 (which includes amendments that will expand the Court's jurisdiction under the International Arbitration Act 1974).
- Trade Practices Amendment (Cartel Conduct and Other Measures) Bill 2008.
- Personal Property Securities Bill 2009.
- National Consumer Credit Protection Bill 2009.

Amendments to the Federal Court of Australia Act

During the reporting year the Federal Court of Australia Act was amended by the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* to create a General Division and a Fair Work Division. The new Divisions commenced on 1 July 2009.

The Fair Work Division will exercise jurisdiction that is required by any other Act to be exercised in that Division and jurisdiction that is incidental to such jurisdiction. At this stage the Fair Work Division's jurisdiction will include proceedings (including appeals) in relation to:

- Any matter (whether civil or criminal) arising under the Fair Work Act.
- Any matter arising under the Fair Work (Registered Organisations) Act.
- Any matter (whether civil or criminal) arising under the Fair Work (Transitional Provisions and Consequential Amendments) Act.
- Any matter arising under the *Workplace Relations Act 1996* that is pending before the Court as at 1 July 2009.
- Any matter (whether civil or criminal) arising under the Workplace Relations Act as it continues to apply because of the Fair Work (Transitional Provisions and Consequential Amendments) Act.

The jurisdiction of the Court to be exercised in the General Division will be jurisdiction that is not required by any other Act to be exercised in the Fair Work Division.

During the year the following Bills that include amendments to the Federal Court of Australia Act were introduced into Parliament:

- Federal Court of Australia Amendment (Criminal Jurisdiction) Bill 2008.
- Federal Justice System Amendment (Efficiency Measures) Bill (No 1).
- Access to Justice (Civil Litigation Reforms) Amendment Bill 2009.

The Federal Court of Australia Amendment (Criminal Jurisdiction) Bill contains amendments to the Federal Court of Australia Act to facilitate the exercise of the new indictable jurisdiction by the Court. The amendments include provisions in relation to indictments, pre-trial issues, juries, pleas, trials and verdicts.

The Federal Justice System Amendment (Efficiency Measures) Bill includes amendments to allow:

- The Court to refer all or part of a proceeding to a referee for inquiry and report.
- A single judge to make any interlocutory order in the appellate jurisdiction pending the determination of an appeal to the Full Court.
- A single judge to make any interlocutory order in the original jurisdiction of the Court in any proceeding that must be heard and determined by a Full Court.

The Access to Justice (Civil Litigation Reforms) Amendment Bill includes amendments that will streamline the appeals process and enhance the Court's capacity to actively manage the conduct of proceedings that come before it.

Amendments to the Federal Court of Australia Regulations

On 1 July 2008 the filing and other fees set out in Schedule 1 to the Federal Court of Australia Regulations 2004 were adjusted in accordance with the biennial increase formula set out in Schedule 2 to those Regulations.

In June 2009 the Regulations were amended to introduce a reduced fee for certain applications under the *Fair Work Act 2009*. These amendments commence on 1 July 2009.

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 Order 21 to allow an application under Order 21 rule 1 in relation to a vexatious proceeding to be made by a person who has sufficient interest in the matter, and to provide that an application by a person who is subject to an order under Order 21 rule 1 or rule 2 (which deal with vexatious litigants) may be determined by the Court without an oral hearing.
- Insert a new Order 23 subrule 11 (6) that sets out how costs are to be borne if an offer is made by the respondent and not accepted by the applicant and the judgment on the claim is as favourable to the respondent, or is more favourable to the respondent, than the terms of the offer.
- Amend Order 27 to allow a party who has issued a subpoena to notify the addressee of a later date or time as the date or time for attendance or for production or both.
- Insert a new Order 35 rule 7A to prescribe a rate of pre-judgment interest for the purposes of section 51A of the Federal Court of Australia Act.
- Amend Order 41 to provide that a document filed in a proceeding may be printed single-sided or double-sided.
- Amend the rules in Order 52 and Order 53 dealing with the requirements for primary and supplementary appeal papers.

- Insert a note at the foot of Order 63 subrule 5(2) that refers to Practice Note No 28 which deals with investment accounts established by the Court.
- Insert a new Order 71A to provide that proceedings under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* must, to the extent possible, be conducted in accordance with the Federal Court (Corporations) Rules 2000.
- Amend Schedule 2 to adjust the quantum of prescribed costs.

The Federal Court (Corporations) Rules 2000 and the Federal Court (Bankruptcy) Rules 2005 were amended to facilitate applications to the Court under the *Cross-Border Insolvency Act 2008* (Cth), the substantive provisions of which commenced on 1 July 2008. The Cross-Border Insolvency Act gives effect to the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law (the Model Law). The Model Law outlines a system of insolvency procedures to be used in cases where the insolvent party has assets in more than one country, or when there are foreign creditors present in a domestic insolvency proceeding.

During the reporting year the judges also made Amendment Rules that will:

- Adopt the rules developed by the Council of Chief Justices' Harmonised Rules Committee in relation to the service of documents under the *Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* done at the Hague on 15 November 1965 – these rules will commence on the date that Australia accedes to the Hague Convention.
- Amend the Federal Court Rules and Federal Court (Bankruptcy) Rules 2005 in light of the Court's jurisdiction under the *Fair Work Act 2009* and the *Fair Work (Registered Organisations) Act 2009* and the creation of the General Division and Fair Work Division – these amendments commence on 1 July 2009.

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 13 – Service of documents outside Australia.
- A revised Practice Note No 17 – The use of technology in the management of discovery and the conduct of litigation.
- A new Practice Note No 28 – Investment accounts under Order 63 rule 5 Federal Court Rules.
- A new Practice Note No 29 – Cross-Border Insolvency – Co-operation with foreign courts or foreign representatives.
- A new Practice Note No 30 – Fast Track Directions.

In December 2008 the Chief Justice issued a revised Notice to Practitioners and Litigants – Conduct of Admiralty and Maritime Work in the Federal Court of Australia.

During the reporting year the Registrar issued a revised National Guide to Counsel Fees and a new National Guide to Discretionary Items in Bills of Costs.

Practice Notes, Notices to Practitioners and National Guides 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

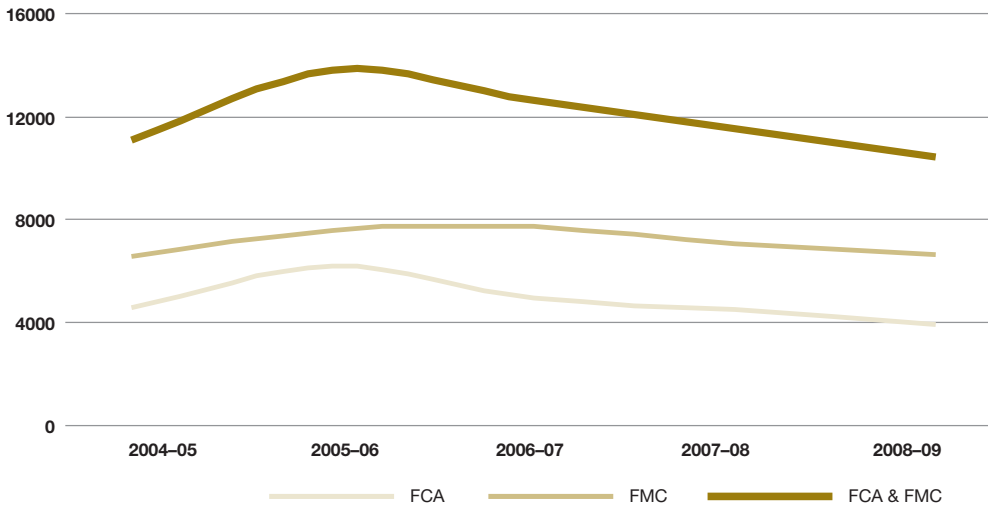
The Court has concurrent jurisdiction with the Federal Magistrates Court in a number of areas of general federal law including bankruptcy, human rights, workplace relations and migration matters. The registries of the Federal Court provide registry services for the Federal Magistrates Court in its general 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 2008–09, a total of 10,407 matters were filed in the two courts. In 1999–2000 there were 6,276 filings in the two courts.

As noted in Chapter 2, the combined workload of the two Courts decreased by 10% in the last financial year. Notwithstanding this decrease, the overall growth in the number of filings since 2000 has had a considerable impact on the Federal Court's registries, which process the documents filed 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 2009

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 2004 to 30 June 2009, 91% of cases (excluding native title matters) were completed in less than 18 months, 85% in less than 12 months and 71% in less than six months (see Figure 6.4 on page 111). Figure 6.5 on page 112 shows the percentage of cases (excluding native title matters) completed within 18 months over the last five reporting years. The figure shows that in 2008–09, 90.2% of cases were completed within 18 months.

Delivery of judgments

In the reporting period, 1,889 judgments were delivered. Of these, 162 judgments were delivered in Full Court appeals and 1,727 in cases heard by single judges (both appeals and first instance cases). 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 8 on page 129 includes a summary of decisions of interest delivered 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, 2,991 cases were commenced in, or transferred to, the Court's original jurisdiction. See Table 6.2 on page 106.

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 2008–09, 28 matters were remitted or transferred to the Court:

- 18 from the Federal Magistrates Court
- 10 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 2008–09, 43 matters were transferred from the Court:

- 28 to the Federal Magistrates Court
- 15 to other courts

Matters completed

Table 6.2 on page 106 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 3,195 against 3,268 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 2,259 (see Table 6.2), compared with 2,463 in 2007–08.

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 2009 is set out in Table 3.1 on page 26.

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 31.

Table 3.1 – Age of current matters

(excluding appeals and related actions and native title matters)

Age at 30 June 2009	Under 6 months	6–12 months	12–18 months	18–24 months	Over 24 months	Sub-Total
Cause of Action						
Administrative Law	63	33	8	7	7	118
Admiralty	24	18	4	4	9	59
Bankruptcy	31	15	6	1	9	62
Competition Law	8	7	14	4	8	41
Trade Practices	75	61	22	21	53	232
Corporations	235	69	47	22	47	420
Human Rights	23	11	1	4	2	41
Workplace Relations	64	22	10	5	5	106
Intellectual Property	78	39	29	22	56	224
Migration	12	4	1	0	4	21
Miscellaneous	22	21	2	4	7	56
Taxation	51	23	21	115	180	390
Total	686	323	165	209	387	1770
% of Total	38.8%	18.2%	9.3%	11.8%	21.9%	100.0%
Running Total	686	1009	1174	1383	1770	
Running %	38.8%	57.0%	66.3%	78.1%	100.0%	

Table 3.1 shows that as at 30 June 2009 there were 596 matters over 18 months old compared with 485 in 2008 (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 6 to this report commencing on page 104.

The Court's appellate jurisdiction

The appellate workload of the Court constitutes a significant part of the Court's overall workload. 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 appellate proceedings commenced in the Court 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.

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.

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 up to four weeks in duration. In the 2009 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, use video conferencing facilities or hear the appeal in a capital city other than that in which the case was originally heard. During the reporting year, eight special hearings of the Full Court were held to enable the early disposition of urgent appeals.

The appellate workload

In 2008–09, 1,067 appellate proceedings were filed in the Court. Appellate proceedings include appeals and related actions (873), cross-appeals (21) or interlocutory applications made by notice of motion such as applications for security for costs in relation to an appeal, for a stay of an appeal, to vary or set aside orders or various other applications (173).

The Federal Magistrates Court continues to be a significant source of appellate work accounting for 62% (659) of the total number of appeals and related actions, cross-appeals and other appellate motions filed in the Court in 2008–09. The majority of these proceedings continue to be heard and determined by single judges exercising the appellate jurisdiction of the Court. Further information on the source of appeals and related actions is set out in Figure 6.16 on page 123.

The figures above indicate an overall decrease of 30% in the Court's appellate workload in 2008–09 (1,067) compared with 2007–08 (1,526). This change in workload is attributable to a fall in migration matters.

The Court's non-migration appellate workload, the majority of which is heard by a Full Court constituted by three judges, has increased by 11% in 2008–09 to 537 compared with 483 in 2007–08. Migration appeals are discussed further on page 28.

In the reporting year 930 substantive appeals and related actions were finalised.

At 30 June 2009, 336 substantive appeals and related actions were current. The comparative age of matters pending in the Court's appellate jurisdiction (including native title appeals) at 30 June 2009 is set out in Table 3.2 below.

At 30 June 2009 there were 12 appeals and related actions that are 18 months or older. These matters involve: native title proceedings that may be resolved by negotiated outcomes, discontinuances to be filed following successful settlement negotiations, proceedings that have been stayed or remitted back to, or are presently under consideration by, a Full Court or pending the outcome of a decision in the High Court of Australia. 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	Under 6 months	6–12 months	12–18 months	18–24 months	Over 24 months	Total
Appeals & Related Actions	241	69	14	3	9	336
% of total	71.7%	20.5%	4.2%	0.9%	2.7%	100.0%
Running total	241	310	324	327	336	
Running %	71.7%	92.3%	96.4%	97.3%	100.0%	

Managing migration appeals

In 2008–09, appellate proceedings filed in the Court concerning decisions under the Migration Act fell by 48% to 530 (including 515 substantive appeals and related actions) compared with 1,020 in 2007–08. Therefore, migration matters in the current reporting year accounted for only 50% (530) of the Court's overall appellate workload (1,067) compared with 67% (1,020) in 2007–08.

In 2008–09 only 15 migration cases filed in the Court's appellate jurisdiction related to judgments of single judges of the Court exercising the Court's original jurisdiction and 515 migration cases related to 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 2004–05. The Court continues to apply a number of procedures introduced to streamline the preparation and conduct of these appeals and applications and 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 related appellate proceedings (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 migration related appellate proceedings for hearing in the four scheduled Full Court sitting periods has provided greater certainty and consistency for litigants. It has also resulted in a significant number of cases being heard and determined within the same sitting period.

Where any migration related appellate proceeding 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 – Appellate proceedings concerning decisions under the Migration Act as a proportion of all appellate proceedings

Appellate Proceedings	2004–05	2005–06	2006–07	2007–08	2008–09
Migration Jurisdiction	1,053	1,053	1,092	1,020	530
%	76%	79%	72%	67%	50%
Total Appellate Proceedings	1,380	1,331	1,520	1,526	1,067

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 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.

Throughout the reporting period the Court continued 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. It also continued to use 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.

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 regularly and receives reports from the Tribunal about the progress of mediation. Where the case requires 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 2009, 389 native title matters had been substantively allocated, of which 41 remain active and are managed by 12 judges of the Court.

In October 2008 the Commonwealth Attorney-General announced that the Government had approved changes to the NTA to further improve the operation of the native title system.

Legislation to implement the change was introduced into Parliament in March 2009.

The Attorney-General spoke about the proposed amendments to the NTA in these terms *"In March this year I introduced the Native Title Amendment Bill to give the Federal Court the central role in managing all native title claims. A nationally consistent, coordinated approach to the resolution of native title will give the impetus to broader, quicker and more flexible negotiated outcomes and that includes deciding who mediates the claim. Having the court actively control the direction of each case will mean that opportunities for resolution can be more readily identified. I am confident these amendments will result in better and faster results in native title claims."* (Attorney-General the Hon Robert McClelland MP 'Creating a Just and Secure Society: 18 Months in Office', 29 June 2009).

User Group Meetings

In response to concerns regarding the length of time taken to resolve native title claims and the many apparent obstacles to progressing claims within the native title system, the Court convened a National Native Title User Group during the reporting period. The meeting discussed the means, including possible law reform, to achieve the effective, efficient and expeditious resolution of claims within the Court. The meeting was attended by over 80 guests and was used to:

1. Identify how to more effectively meet the requirements for determining native title claims and the powers and procedures available to the Court to achieve that end in case management and claims resolution.
2. Inform stakeholders that the Court is able to apply a variety of mechanisms to expedite resolutions.
3. Elicit a more flexible approach from those involved in the assessment of ‘connection evidence’ as to the extent of evidence or material necessary to advance consent determinations.

The overall aim of the meeting was for the judges of the Court to inform Court users of the available mechanisms which can lead to a more efficient and effective resolution of claims. This was achieved.

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 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 according to the case load.

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 12 determinations in respect of the existence of native title. Three (1 litigated and 2 unopposed) of these were made after hearings and nine were achieved through mediation and negotiation.

At 30 June 2009 there were 489 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 2009	Under 6 months	6–12 months	12–18 months	18–24 months	Over 24 months	Sub-Total
Native Title Action	13	21	5	7	443	489
% of Total	2.7%	4.3%	1.0%	1.4%	90.6%	100.0%
Running Total	13	34	39	46	489	
Running %	2.7%	7.0%	8.0%	9.4%	100.0%	

Figure 6.11 on page 118 provides more information on native title act filings.

Assisted Dispute Resolution (ADR)

The Court's ADR practices and procedures are a key component of its case management system. In managing proceedings, judges have recourse to many ADR options provided in the Federal Court of Australia Act and the Federal Court Rules. This includes refining issues in dispute and identifying which issues, if decided or resolved early, might bring the matter either to resolution or readiness for trial. ADR also assists in managing the Court's more complex litigation.

In the 22 years since its introduction, the Court's ADR program has evolved and expanded considerably both in the ADR options available to the Court and the number of matters referred to an ADR process. During the reporting year mediation continued to be the most frequently used ADR process within the Court with 522 orders made referring matters to mediation. Since its commencement in 1987 a total of 5,253 matters have been referred to mediation.

Figure 3.2 below sets out the number of matters referred to mediation during the five years to 2008–09 and demonstrates the significant increase in mediation referrals in the Court particularly since 2006–07. This increase reflects the increasing recognition both within the Court and the legal profession of the benefits of ADR and its role in the effective management of cases to resolution.

The Court may refer all or part of a matter to mediation under section 53A of the Federal Court of Australia Act (the Act) before a registrar, or someone agreed upon by the parties and then formally appointed by the District Registrar. Since amendment to the Act in 1997, a matter may be referred to mediation with or without the consent of the parties. Notwithstanding the existence of this power, the vast majority of mediations are ordered either at the request, or with the consent, of the parties. Each of the Court's registrar mediators is accredited to the Australian National Mediator Standards.

While 522 referrals to mediation were ordered by the Court in the reporting year, this figure does not represent all matters in which mediation may have been undertaken. Parties may make their own arrangements for private mediation without the need for a formal order referring a matter to mediation.

During the reporting year 411 mediations were conducted by nationally accredited registrar mediators in areas covering most of the Court's jurisdiction. The majority of mediations are conducted in corporations law, trade practices, industrial, intellectual property and human rights matters. Table 3.5 on page 33 sets out the outcomes of mediation by cause of action.

Fifty-seven per cent of cases were resolved at mediation during the reporting year. While settlement rates assist the Court to assess the effectiveness of its mediation program, they are not the only criteria used. Many matters settle after mediation but before hearing and those matters that proceed to hearing often do so with the issues narrowed or some of the facts agreed as a result of the mediation.

Figure 3.2 – Assisted Dispute Resolution (ADR) 2004–05 to 2008–09

Matters referred for mediation

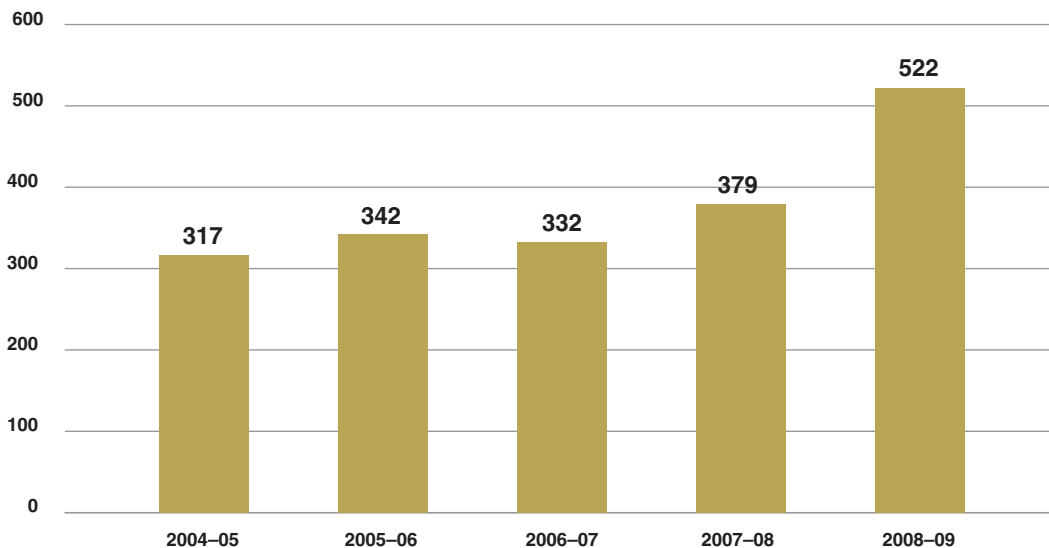


Table 3.5 – Mediations conducted during 2008–09 by Cause of Action

	Resolved & Resolved in part	Not resolved	Total
Admiralty	8	3	11
Competition	5	1	6
Corporations	48	27	75
Costs	4	3	7
Human Rights	20	10	30
Industrial	35	26	61
Intellectual	36	40	76
Migration	0	0	0
Tax	8	3	11
Trade Practices	45	42	87
Full Court	11	8	19
Other	14	14	28
TOTAL	234	177	411

During the reporting year the Court contributed to the development and improvement of mediation practice in a number of areas.

In collaboration with the National Alternative Dispute Resolution Advisory Council (NADRAC) and the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), the Court carried out the Indigenous Dispute Resolution & Conflict Management Case Study Project.

The case study project was conducted to identify ‘best practices’ in indigenous dispute resolution and conflict management, with a view to improving processes for managing conflict involving indigenous people. Preparation for and research on three case studies was undertaken during 2008. In each of these, research was conducted by a principal researcher engaged by the Court, together with an indigenous co-researcher from the local area or service provider relevant to the study. The final report, including all of the case studies, with findings and recommendations was delivered to NADRAC in January 2009. NADRAC’s consideration of the report has led to a series of recommendations being made to the Commonwealth Attorney-General.

The Court continued to contribute to the implementation of the Australian National Mediator Standards as a member of the National Mediator Accreditation Committee (NMAC), a body set up with the assistance of NADRAC to implement and further develop the national standards. Within NMAC the Court has particularly contributed to the development of a complaints policy for the proposed national mediator accreditation standards body which is due to be established in 2010.

The Court’s registrar mediators continued to assist in the delivery of the Court’s mediation programs for courts in the Pacific. More information on this project is contained in the section on Work with International Jurisdictions at page 40.

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 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 7 on page 124.

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 National 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 development of Practice Note No 30 – Fast Track Directions that was issued by the Chief Justice in April 2009.
- The development and implementation of guidelines on the use of Practice Notes in the Court, and an associated review of all existing 'practice documents'.
- The development of the updated Practice Note No 17 on the use of technology in the management of discovery and the conduct of litigation that was issued by the Chief Justice in January 2009.
- The implementation of a Notice to Practitioners and Litigants concerning proceedings under the *Patents Act 1990*.
- The development of detailed proposals for legislative reforms to support active case management, many of which have been included in the Access to Justice (Civil Litigation Reform) Bill that was introduced in Parliament in June 2009.
- Rules relating to discovery.
- A review of filing and other fees prescribed by the Federal Court of Australia Regulations.
- The development of a public register of suppression orders made under section 50 of the Federal Court of Australia Act.
- A review of the structure of the costs scales in Schedule 2 to the Federal Court Rules.

Liaison with the Law Council of Australia

Members of the National Practice Committee met twice during the reporting year with the Law Council's Federal Court Liaison Committee to discuss matters concerning the Court's practice and procedure, these included:

- Case management reforms – including the national implementation of fast track procedures and legislative reforms to support active case management.
- The rules revision project.
- The review of Practice Note No 17 on the use of technology in discovery and the conduct of litigation, and related issues concerning electronic initiatives as part of the management of proceedings.
- Mediation in the Federal Court.
- The possible impact of the indictable criminal jurisdiction under the Trade Practices Act, the fair work reforms and the proposed national laws concerning personal property securities and consumer credit.

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, 1,686 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. 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 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 94.

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, information for litigants and legal practitioners. It also provides access to electronic filing, eCourt online forum and eSearch for selected case information. During the year 28 Practice News updates were issued to 1,383 subscribers alerting them to changes in the practice and procedure of the Court.

A project is under way to redevelop the website to include an archive of the Court's judgments and target information to particular user groups. A user survey was undertaken in June 2009 to assist with planning and many useful suggestions were received. There were 275 responses of which 73% indicated they found the information they were seeking on the website. Judgments, eServices and court lists were most commonly sought.

The website was also used to advertise several seminars held by the Court during the year.

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 made immediately 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 are usually made available at the AustLII site within a few hours of publication and other judgments within a few days. The way information about a judgment is displayed is being changed to make it more relevant to website browsing, including adding a link to any judgment related to an appeal.

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 other 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 2008–09 these included:

- *Lansen v Minister for Environment and Heritage*: Justice Mansfield permitted ABC news to record the delivery of a judgment summary. The applicants were seven native title claim groups with claims under the *Native Title Act 1993* (Cth) over land in the vicinity of the McArthur River Mine near Borroloola in the Gulf Region of the Northern Territory.
- *Comcare v Commonwealth*: Justice North allowed cover of a judgment summary of a judgment that arose after the death (on a school camp) of a boy, who suffered from a severe peanut allergy.

A number of educational and training DVDs are also produced by the Court, some of which can be viewed via the Court’s website. During the reporting year, three DVDs were produced that helped promote and explain the operation of the Commonwealth Courts Portal, a joint initiative of the Federal, Family and Federal Magistrates Courts. The portal is a single web-based interface that allows any authorised user to immediately see a list of their files or files of interest to them. The DVDs can be viewed by visiting www.comcourts.gov.au.

At the close of the reporting year the Court was well advanced in the production of a DVD concerning the ‘Fast Track’ procedures. The DVD is aimed at assisting litigants, lawyers and Court staff following the successful piloting of the project in Victoria.

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 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. Seminars conducted by the Court during 2008–09 included:

- 2 December 2008: Corporations law: nation-wide seminar on Cross Border Insolvency chaired by Justice Lindgren. The key focus of the seminar was to provide an overview of the new *Cross-Border Insolvency Act 2008* (Cth), which gave effect to the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law (‘the Model Law’), and to discuss how the Act and Model Law would operate.
- 10 March 2009: Investor Class Actions Conference held via video conference between the Court’s Victorian and NSW Registries. Guest speakers included Professor Geoffrey P Miller from New York University, Professor Tyrone Carlin and Dr Peter Cashman (Adjunct Professor) Sydney University.

- 21 May 2009: Admiralty and Maritime Law Seminar on Ship Arrests and Insolvency. The seminar was held simultaneously in all registries of the Court via video conference. Guest speakers and commentators included Professor Sarah Derrington, University of Queensland, Dr Andrew Bell SC, Mr Gregory Nell SC, Mr Alexander Street SC, Mr John Levingston and Mr Frazer Hunt, President Maritime Law Association of Australia and New Zealand.

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.

In 2008–09 the NSW Registry held six user group meetings or seminars with practitioners on areas such as corporations law, copyright, class actions and native title. On 10 and 15 June 2009 the District Registrar gave a presentation about Practice Note No 17 – to two separate eDiscovery conferences.

Judges and registrars from NSW undertook two orientation sessions for lawyers new to practice in the Court, hosted interns from the Australian Law Reform Commission and made presentations to students from the College of Law.

The Victorian Registry held regular meetings of its Class Action Users Group and Federal Court Users Committee and also established an Insolvency Users Committee. The Registry held a forum on patents matters hosted by Justice Middleton which 52 members of the profession attended. The keynote speaker was Professor Christine Haight Farley of the American University Washington College of Law, who gave a presentation on Trademark Bullying. The feedback from the profession was very positive. They advised that the forum was extremely beneficial and informative.

The Registry also engaged in a number of educational activities with various institutions. On 24 April and 1 June 2009, Deputy District Registrar Moore gave a presentation to the Victorian Bar readers and members of the Victorian Bar on the Court's eServices strategy. The Victorian registry hosted a number of Moot courts for the LaTrobe, Deakin and Monash Universities and Justice Gray and District Registrar Lagos gave two addresses to the Victorian Bar Readers welcome during the year.

Throughout the year Victorian judges and registrars gave a number of presentations about Assisted Dispute Resolution (ADR). These included the Australian Taxation Office Conference on Alternate Dispute Resolution in July 2008, a presentation to 100 law students from the University of Melbourne and Deputy District Registrar Burns attending the University of Melbourne as guest lecturer in the Juris Doctor subject Dispute Management.

On 27 November 2008 over 80 solicitors attended an information session for recently admitted solicitors who practice in the Federal Court and the Federal Magistrates Court. The Victorian Registry hosted five work experience students during the reporting year.

Queensland judges and registry staff hosted 15 judges and court officials from the South Pacific for a three day Pacific Regional Mediation Forum from 9 to 11 March 2009. The Queensland Registry also hosted visits by students and lecturers of the Legal Practice Courses of the Queensland University of Technology and Bond University along with three work experience students from two Brisbane high schools.

The West Australian Registry delivered two comprehensive information sessions on Court and Registry processes for junior solicitors and paralegals. A handbook covering information presented during the session was provided on a CD. Information sessions and tours of Court facilities for various groups, including summer clerks and articled clerks were also provided.

User group meetings were held with practitioners specialising in the admiralty jurisdiction and the intellectual property jurisdiction. The grand final of the University of Western Australia's International Humanitarian Law Mooting Competition was held in the Court and was adjudicated by Justice Gilmour. The grand final of the Murdoch Student Law Society Trial Advocacy competition was held in the Court and was adjudicated by Justice Barker. The Court also hosted the grand final of a high school moot competition coordinated by Murdoch University, and provided a venue for a function for the Jessup Moot Cup team from the University of Western Australia. The Registry hosted a meeting of the Western Australian Dispute Resolution Association, and coordinated and hosted an intellectual property seminar. Deputy District Registrar Gilich spoke at the Court's National Admiralty Seminar, and was also a panel member at presentations on mediation to law students at the University of Western Australia.

The South Australian Registry conducted the following information seminars for practitioners:

- Overview of Practice & Procedure (designed for newly admitted practitioners).
- ADR in the Federal Court of Australia (presented to a Government law group).
- Federal Jurisdiction (presented by Justice Finn to practitioners).
- *The Brave New World of Litigation "Fast Track"* (presented by Justice Mansfield to practitioners).

The SA Registry also hosted a National Native Title User Group, a Federal Court of Australia/Law Council of Australia Seminar on Criminalisation of Cartel Conduct, held meetings with the Bankruptcy User Group and Federal Court Liaison Committee and participated in the nation-wide seminars on Cross-Border Insolvency and Admiralty. Registry staff delivered a presentation about the Court during Law Week, participated in the Bar Readers Course and undertook presentations and building tours for schools and other community groups throughout the year.

On 12 July 2008 the Tasmanian Registry hosted the national final of the Australian Law Students' Association Moot. The Chief Justice officially opened the re-furnished Courtroom One at a function on 6 August 2008. The Tasmanian Registry also hosted two work experience students during the reporting year.

Staff and practitioners from the ACT participated in the corporations law national seminar on cross border insolvency and the national admiralty and maritime seminar on Ship Arrests and Insolvency.

On 18 February 2009 Justice Reeves delivered a presentation to the Law Society of the Northern Territory on Consent Determination under the Native Title Act. On 4 March 2009, during the Full Court sittings in Darwin, the Chief Justice hosted a reception with guests including the Administrator of the Northern Territory, judges of both the Federal Court and Supreme Court of the Northern Territory and numerous members of the local legal profession. On 24 June 2009 Justice Mansfield presented a seminar to the Law Society of the Northern Territory on the Court's Fast Track procedures.

Complaints about the Court's processes

During the reporting year, 14 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, 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.
- 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 9 on page 154.

3.4 WORK WITH INTERNATIONAL JURISDICTIONS

Introduction

Through its International Programs section, the Court collaborates with neighbouring judiciaries across the Asia-Pacific region interested in reform. In 2008–09, the Court coordinated a number of programs and hosted a number of official visits from judicial and senior administrative staff from other countries.

Supreme Court of Indonesia

Through the Indonesia-Australia Legal Development Facility funded by the Australian Agency for International Development (AusAID), the Court has continued to collaborate with the Supreme Court of Indonesia as it progresses towards its objectives of increasing accountability, transparency and efficiency.

In July 2008, a second Memorandum of Understanding between the Courts was signed. The Memorandum reaffirms the important connection between the Courts and delineates the priority areas the Supreme Court wishes to focus on over the coming years.

During the course of the year, the Court was able to support the development and implementation of policies aimed at building public trust and confidence in the Indonesian Courts through greater access to judgments and performance data. The Court has also assisted with the ongoing implementation of the Supreme Court's backlog reduction and case management program. As a result of the significant dedication demonstrated by the Supreme Court and its reform team, levels of judicial and administrative transparency have increased while the number of backlogged cases has continued to decline.

Supreme People's Court of China

The Court's China-Australia Governance Program (CAGP) funded by AusAID came to a close in January 2009. The program, which ran over two and half years, established strong institutional linkages between the Supreme People's Court and the Federal Court, providing the foundation for ongoing strategic engagement to progress priority governance issues in China.

The final phase of the program, conducted during the reporting year, involved a senior delegation from the Court visiting China to share the Court's experience in interpreting and applying maritime, competition, intellectual property and labour law. The developing jurisprudence in maritime law in the Asian region, and the desirability of consistent judicial decision-making across jurisdictions in the region, led to fruitful discussions between the Courts. The People's Republic of China has also recently enacted its competition law and that topic too led to fruitful discussions about significant issues which may arise and the means of addressing them. In areas of intellectual property and labour law, the two courts had productive discussions on their respective approaches to issues and the further development of the law.

Supreme People's Court of Vietnam

Through funding provided by AusAID, the Court continues to work with the Supreme People's Court of Vietnam as it progresses towards publishing the first revision of its Benchbook. The project is led by Justice Moore and involves a number of senior Vietnamese judicial officers who are drafting the revisions based on a series of important legislative amendments since the Benchbook was originally launched in 2006.

The original Benchbook significantly improved access to legal information by judges and lawyers across Vietnam and its next edition is designed to build on those improvements. An important component of the revision project is to ensure that its web-based version is integrated with the Supreme People's Court's new website and, that it is made broadly available to all courts on CD-ROM. The project also includes the composition of an editorial board that will be responsible for future revisions along with training on the content and use of the Benchbook for judicial representatives from all courts across Vietnam. The new Benchbook will be launched in September 2009.

Separately funded by the Danish International Development Agency (DANIDA), Justice Moore and Justice Mansfield visited Vietnam this year to conduct judicial training on the assessment of evidence in international trade disputes in several locations across the country.

Supreme Court of India

In collaboration with the Supreme Court of India and the National Judicial Academy of India, the Court commenced its first project with the Indian judiciary this year. Funded by AusAID, the aim of the project is to promote efficiency in the management of cases and will focus on the judiciary's philosophical approach to case management, as well as procedural reforms including the use of technology.

The first phase of the project will involve a delegation of judicial officers from all courts within the judicial hierarchy visiting the Federal Court to observe and discuss the approaches and procedures to case management taken by courts in Australia. The second phase will involve a delegation of Australian judicial officers visiting several locations in India to observe local approaches and procedures related to the management of cases, and to participate in seminars at the National Judicial Academy.

Supreme and National Court of Justice, Papua New Guinea

In early 2009 the Court was asked by the International Finance Corporation (IFC), a member of the World Bank Group, to provide advice about the status of court-annexed mediation in Papua New Guinea (PNG), and to make a series of recommendations for how the IFC might assist its further implementation. Following this report, the IFC asked the Court to design a mediation and case management project focusing on the establishment of court-annexed mediation within the National Court and District Courts of PNG, increasing the number of case management tools available to the National Court, as well as implementing strategies to build the capacity of its judges to handle commercial cases.

It is anticipated that the scope of this project will increase efficiencies and provide a more conciliatory approach in the dispute resolution process and simplify litigation, reduce the backlog of cases and increase settlement rates.

High Court of the Solomon Islands

This year the Court was also asked by the IFC to review case management systems within the High Court of the Solomon Islands and to make a series of recommendations for how the IFC might assist the Court to increase procedural efficiency. Meetings were held with senior members of the Solomon Islands judiciary and other stakeholders culminating in a high level action plan for improvements to the case management model and the implementation of mediation procedures under the civil procedure rule reforms.

Supreme Court of Vanuatu

The IFC also asked the Court to consult with the Supreme Court of Vanuatu to review its progress with the implementation of court-annexed mediation. During the visit, meetings were held with the Chief Justice and strategies were designed to facilitate mediation in the Court. The Chief Justice of Vanuatu has since taken a number of steps to bring mediation to fruition.

Magistrates Court of Tonga

With funding from the Commonwealth Secretariat, the Court supported the Magistrates Court in Tonga to develop its Civil Law Benchbook. The Benchbook was chiefly written by one of the magistrates with the support of a local researcher and oversight by a resident judge. An important ancillary aim of the project was the development of local skills and experience to enable the Magistrates Court to revise the Benchbook in future. It is hoped that with the success of this experience, other judicial officers in the Pacific will be encouraged and confident to develop their own benchbooks.

District Court of Samoa

Funded by the Commonwealth Secretariat and in conjunction with the AusAID funded Volunteering for International Development from Australia Program (VIDA), the Court has assisted the District Court of Samoa to develop its Benchbook. In addition to coordinating the VIDA volunteer position, the Court has provided logistical and research support to Samoa. It is anticipated that the project will be completed at the end of 2009.

Pacific Mediation Forum

With funding from AusAID, the Court has been able to maintain its support to several Pacific islands as they continue to implement their systems of court-annexed mediation. In February 2009, the Brisbane Registry hosted the first Regional Pacific Mediation Forum which was designed to bring together all participating countries to share progress, experiences and the challenges they each face. Led by two experienced mediators from the Court, and involving several judges, the Forum also provided practical workshops to the participants who came from: Papua New Guinea, the Solomon Islands, Vanuatu, Samoa, Tonga, the Marshall Islands and Kosrae State in the Federated States of Micronesia.

The second phase of the project is currently being implemented and involves mediators from the Court visiting participating countries to conduct workshops, co-mediations and mentoring sessions for mediators and others who are involved or interested in court-annexed mediation. The project will end with the second Regional Pacific Mediation Forum which will assess progress since the first meeting, address ongoing challenges and consider the way forward.

Asia Pacific Judicial Reform Forum

The Court continues to be a member of the Secretariat of the Asia Pacific Judicial Reform Forum (APJRF), a network of senior courts and justice sector agencies across 49 countries in the region. During the first half of the reporting period the Court played a key role in organising the Forum's Roundtable Meeting held in Singapore and provided ongoing support to the development of the Forum's first publication. *'Searching for Success in Judicial Reform: Voices from the Asia Pacific Experience'*, a collection of reform experiences by judicial officers, lawyers, reform practitioners, educators and academics involved in reform projects across the Asia Pacific. Published by Oxford University Press, the book was launched at the Roundtable Meeting and is designed to assist member countries implement judicial reform programs by reference to the experience of others. The project was funded by the United Nations Democracy Fund and managed by the United Nations Development Programme in conjunction with the APJRF Secretariat.

Library services to the South Pacific and Thailand

The Court receives annual funding from AusAID to support court libraries in Kiribati, Tonga and Vanuatu through bi-annual shipments of law reports, textbooks and other legal materials to update their collections. Librarians also visit periodically to provide professional library services and undertake training. The Court also contributes from its own budget to provide relevant legal material to an intellectual property court in Thailand.

Visitors to the Court

The Court has facilitated a number of visits from international delegations or individuals interested in learning about the role of the Federal Court and its systems and processes. In 2008–09, the Court welcomed visitors from:

- Supreme Court of Indonesia (July 2008)
- High Court, New Zealand (September 2008)
- Supreme People's Court and other Provincial Courts of Vietnam (October 2008)
- China National Judges' College (November 2008)
- Thailand Administrative Appeals Tribunal (December 2008)
- Court of Appeal Tanzania (February 2009)
- Supreme People's Court of China (February 2009)
- Constitutional Court of Indonesia (February 2009)
- Chuo Law School, Japan (February 2009)
- Central Administrative Court Thailand (February 2009)
- Chinese lawyers participating in the Australia-China Legal Profession Development (March 2009)
- Supreme Court of Papua New Guinea (April 2009)
- Court officers from various courts across Thailand (May 2009).



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 3 on page 97.

Judges' committees

There are a number of 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.

An overarching National Practice Committee provides 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. The committees provide advice to the Chief Justice and to all judges at the bi-annual judges' meetings.

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 2008–09 the Committee met on five occasions.

Financial Accounts

The Court received approval from the Minister for Finance and Deregulation to incur a \$3.8m deficit in 2008–09. As a result of implementing a number of cost saving measures the net operating result from ordinary activities for 2008–09 was a smaller operating deficit of \$1.838m. The operating deficit is a result of increases in salaries, voluntary redundancy payments and a reduction in the Court's revenue. Equity decreased from \$36.654m in 2007–08 to \$34.816m in 2008–09.

During 2008–09 revenues from ordinary activities totalled \$103.716m. Total revenue, in the main, comprised:

- an appropriation from Government of \$78.206m;
- \$6.189m resources received free of charge, including for accommodation occupied by the Court in Sydney;
- \$9.069m of liabilities assumed by other government agencies, representing the notional value of employer superannuation payments for the Court's judges; and
- \$10.251m from the sale of goods and services. Included in this figure is \$8.028m received from the Federal Magistrates Court (FMC) for registry services provided by the Court on behalf of the FMC. These resources were previously provide free of charge, but in 2007–08 funding for registry services was transferred from the Court to the FMC. The Court now charges the FMC for the provision of registry services on their behalf.

Total expenses of \$105.554m in 2008–09 comprised: \$58.291m in judges' and employees' salaries and related expenses; \$28.367m in property related expenses; \$15.787m in other administrative expenses; \$2.799m in depreciation expenses; and \$0.279m downward revaluation of the Court's non-current assets.

Table 4.1 – Outcome and Output Statement

		Budget 08–09 (\$'000)	Actual Expenses 08–09 (\$'000)	Variation (\$'000)
Outcome 1: Through its jurisdiction, the Court will 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				
Output 1 - Federal Court Business	Departmental outputs	78,206	79,995	-1,789
	Revenues from other sources (s. 31) for Federal Court	9,911	10,251	-340
	Subtotal for Output 1	88,117	90,246	-2,129
	Total for Outcome 1	88,117	90,246	-2,129
	Average staffing level (number)		332	

The Court's agency resource statement can be found at Appendix 2 on page 96.

Audit and risk management

The Audit Committee met twice during 2008–09, 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 during the 2007–08 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.

Deloitte, the Court’s internal auditors, have developed a new three year Fraud Control Plan for the Court and also conducted a travel expenses audit, payroll audit and an eServices project review during 2008–09.

Staff of the ANAO inspected the Court’s 2008–09 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.
- There have been no cases of fraud during 2008–09 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 2008–09, seven new consultancy contracts were entered into involving total actual expenditure of \$232,253. In addition, three ongoing consultancy contracts were active in 2008–09, involving total actual expenditure of \$129,328.

Table 4.2 on the following page outlines the expenditure trend for consultancy contracts over the three most recent financial years.

Table 4.2 – Expenditure trend: Consultancy contracts

Financial Year	New Contracts Actual Expenditure	Ongoing Contracts Actual Expenditure
2008–09	\$232,253	\$129,328
2007–08	\$420,092	\$137,083
2006–07	\$437,000	\$49,000

Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website www.tenders.gov.au.

Table 11.1 at Appendix 11 provides more detailed information on consultancy contracts entered into during 2008–09.

Competitive tendering and contracting

During 2008–09, there were no contracts let to the value of \$100,000 or more that did not provide for the Auditor General to have access to the contractor's premises.

Advertising and marketing services

A total of \$38,585 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.

The Court also established a national committee and local committees to oversight implementation of its Environmental Initiatives policy.

Workplace bargaining

The Court's 2008–2010 Certified Agreement commenced operation in October 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 'family friendly' initiatives, consisting of more generous parental and adoption leave. The Court was the first Australian Public Service agency to have an extension and variation of its agreement and provided assistance to a number of other agencies which later opted for extension and variation agreements.

Since the beginning of 2008, the Court has relied on determinations under section 24 of the *Public Service Act 1999* for SES staff and other employment conditions not covered by the Court's Certified Agreement. The Court has 18 employees who remain on AWAs (10 SES and eight non SES) and five employees on individual s 24 determinations (all non SES).

Staffing overview

At 30 June 2009 the Court employed 372 employees under the Public Service Act, comprising 232 ongoing full-time employees, 24 ongoing part-time employees and 116 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 332 during the reporting period.

Tables 4.3 and 4.4 overleaf contain an overview of the Court's staffing by location at 30 June 2009 and details of the Court's SES staff. Table 4.5 outlines the Court's salary ranges by classification. Equal employment opportunity (EEO) statistics are at Appendix 10 on page 166.

Table 4.3 – Staffing overview by location
(actual occupancy at 30 June 2009 – 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					7
FCL2	3	5	5	3	1	3	1			2	23
FCL1		1						1			2
FCM2	11	1	2	1	1	1				1	18
FCM1	16		1	1	1	1		1		5	26
FCS6	11	24	18	7	5	6	2		3	2	78
FCS5	10	29	16	8	5	9		1	2	7	87
FCS4	4	8	9	1	7	3			3	1	36
FCS3	3	15	5	9		3	4	2			41
FCS2		19	14	4	4	5		3	1		50
FCS1			1								1
Total	61	104	73	35	25	32	7	8	9	18	372

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
- Appeals
- Research Assistants/Indigenous Research Assistants

Table 4.4 – Senior Executive Service
(at 30 June 2009 – includes full-time and part-time staff)

Principal Registry		Senior Executive Service Grading Occupied
Executive Director, Corporate Services Branch	Gordon Foster	Senior Executive Band 2
Deputy Registrar	Philip Kellow	Senior Executive Band 1
Deputy Registrar	Louise Anderson	Senior Executive Band 1
New South Wales District Registry		
District Registrar	Michael Wall	Senior Executive Band 2
Deputy District Registrar	Jennifer Hedge (part-time)	Senior Executive Band 1 (Specialist)
Victoria District Registry		
District Registrar	Sia Lagos	Senior Executive Band 2
Deputy District Registrar	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 4.5 – Salary ranges by classification level under Certified Agreement or AWA

(at 30 June 2009)

Court Designation	Australian Public Service (APS) Classification	Salary
Clerical Administrative Positions		
Federal Court Staff Level 1	APS Level 1	\$36,828
		\$40,700
Federal Court Staff Level 2	APS Level 2	\$41,679
		\$46,218
Federal Court Staff Level 3	APS Level 3	\$47,473
		\$51,237
Federal Court Staff Level 4	APS Level 4	\$52,913
		\$57,450
Federal Court Staff Level 5	APS Level 5	\$59,016
		\$62,578
Federal Court Staff Level 6	APS Level 6	\$63,740
		\$73,219
Federal Court Manager Level 1	Executive Level 1	\$81,582
		\$88,107
Federal Court Manager Level 2	Executive Level 2	\$94,050
		\$106,651
		\$110,222
Legal Positions		
Federal Court Legal 1	From APS Level 3	\$53,300
	To Executive Level 1	\$103,614
Federal Court Legal 2	Executive Level 2	\$120,035
		\$124,738
Senior Executive Positions		
Senior Executive Service Band 1	SES Band 1	\$155,860
Senior Executive Service Band 2	SES Band 2	\$221,966

Performance management

The Court's performance management program continued to operate effectively through the reporting period. A review of the program commenced in May 2009 following the formation of a working party made up of both staff and management representatives. The review is also being developed in consultation with the Court's NCC.

Performance pay

There were no performance pay or bonus arrangements in 2008–09.

Training and development

During the year the second stage of the Court's National Training Program was consolidated and the third stage launched. The second stage focuses on the Court's caseflow management while the third stage focuses on jurisdiction, policies and practices.

The Program seeks to provide all staff with the core skills and knowledge necessary to work effectively in the Court. The first stage of the program now forms the core of the Court's National Induction Program. Training is conducted by local registry staff who have completed an accredited Train the Trainer course.

Other areas of national focus were the *In-house Legal Continuing Professional Development (CPD) Program*, a series of seminars that are open to all staff and form part of the professional development activities for registrars of the Court. These seminars have been presented by judges, registrars and guest speakers. The seminars, being offered every month, began in May 2009 with *Aspects of Practice and Procedure* and were linked via video and telephone to registries around the country. Staff from other courts and tribunals were invited to attend seminars that were not Court specific.

More generally, training was carefully targeted towards the development of essential core skills and the Court spent \$152,562 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 \$30,010 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. New health and safety management arrangements were developed in consultation with the NCC and were implemented at the beginning of September 2008.

Information sessions were also arranged for all members of the Court's national OHS Committee on the recent significant amendments to the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (OHS Act) and the *Safety, Rehabilitation and Compensation Act 1988*. Training was also provided to managers and supervisors in relation to their responsibilities under OHS legislation.

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 amended its gym membership policy to include other fitness activities such as yoga and Pilates classes. All registries are encouraged to develop local health and fitness initiatives in consultation with their staff and these include fun runs/walks and participation in lunchtime sport teams.

No provisional improvement notices were issued under section 29 of the 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 22 working weeks were lost due to work related injuries compared to 56 weeks for the previous reporting period. The Court's Comcare premium reduced slightly during the reporting period to 0.67% of the wages and salary bill.

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 Court's Indigenous Research Assistant Program continued. 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 it. The Court will review the program during the next reporting year to ensure it continues to meet the needs of the participants and the Court.
- The Court joined the Employers Disability Network and will engage up to three disabled law interns in 2009.

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 self represented litigants.
- The Court's 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.
- 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 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.
- The Court became a member of the Australian Employers' Network on Disability to enable participation in the *Stepping into Law Program*. This program provides work placements for final year law students with a disability. Each placement runs from four to six weeks and at this stage the Court plans to offer one placement in its Perth, Melbourne and Sydney 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 and court rooms 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.
- 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, Hobart, Melbourne and Perth. In Sydney, they are located within the Queens Square Law Courts building, which is owned by Law Courts Limited and in Darwin they are located in the Northern Territory Supreme Court building. These buildings are all shared with other jurisdictions.

Senior representatives of all federal jurisdictions co-manage the Commonwealth-owned buildings through the National Law Courts Building Management Committee. The Committee meets quarterly and establishes budgets, approves works and life cycle programmes and sets policy. Local Building Management Committees manage the day-to-day operations of each building.

Major property services achievements during the year included:

- In Sydney, work continued on the upgrade of the Queen's Square Building with completion of Level 18. The floor features a new jury court and deliberation room; a large commercial courtroom and two additional new courts. All are equipped for electronic trials, are fully accessible and have access to natural light. The NSW Registry moved into their refurbished accommodation in August 2008.
- In the Melbourne Registry, purpose-built mediation spaces were designed and constructed so that mediation parties ranging in sizes from eight to 30 participants could be accommodated with suitable break-out rooms and facilities.
- Property Services has also worked with colleagues and consultants in the Brisbane, Melbourne and Perth Registries to design the upgrade of several courtrooms which will enable them to conduct electronic trials. By installing or improving the infrastructure outlined below evidence and other material will be displayed for all parties to view:
 - A courtroom sound system, including sound reinforcement.
 - Provision of assistance for the hearing impaired.
 - Permanent videoconferencing.
 - Permanent teleconferencing.
 - Provision of audio for court reporting purposes.
 - Provision of infrastructure for the use of real-time transcript services in the courtroom.
 - Provision of infrastructure to conduct an electronic trial (i.e. the display of electronic evidence).

- Adjustable lighting and automated blinds (if and where required).
- A single-control touch-panel for the management of the courtroom's technology.

Security

In order to better co-ordinate the provision of security services within Commonwealth Law Court buildings, the Court has entered into an agreement with the Family Court of Australia. Since January 2009 the Family Court's Director of Security and staff have been providing assistance to the Court's District Registrars in the management of security issues.

During the reporting period the Court's program to provide secure store facilities to enable the appropriate storage and handling of classified material was completed with secure stores being constructed in the Brisbane, Darwin and Hobart Registries.

The Court's Information Technology (IT) Security policy was reviewed with the aim of ensuring that appropriate procedures are in place to protect the Court's information holdings, IT resources and assets.

Environmental management

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

In order to minimise the impact of the Court's core business on the environment, the Court (together with the other jurisdictions in shared premises) seeks to minimise its impact on the environment through the following measures:

- Conducting all tests and procedures (e.g. testing of cooling towers and water features, etc.) in the Commonwealth Law Courts buildings in accordance with the statutory requirements of the Commonwealth, State and Local authorities.
- The management of energy consumption and the provision of this data to the Australian Greenhouse Office which are part of the Court's obligations under the Kyoto Protocol.
- Environmental and Building Management systems are in place which aim to reduce the consumption of energy, water and waste in all buildings.
- The Court has established a National Environment Committee with sub committees set up in most registries. The Committee seeks to raise staff awareness of workplace environment issues in the context of the wider global and national issues.
- In June 2009 the Environment Committee developed and launched a National Environment policy. It will continue to encourage and consider environmental proposals from all staff, and incorporate these into the Court's strategic environmental initiatives.

Technology Services

IT Infrastructure Review

During the reporting period the Court undertook a comprehensive review of its IT Infrastructure to identify efficiencies and ways of simplifying a complex environment. The review was conducted by Deloitte and made 12 major recommendations that have been accepted by the Court and will be implemented over the next two years.

Information Technology Infrastructure (ITIL) Service Management

ITIL is a best practice framework for managing IT infrastructure, operations and development. The Court's Technology Services Section is implementing the Infra ITIL Service Management System. The Incident Management and Change Management components were completed in early 2009, Configuration Management, Release Management and a Service Management Portal are to be introduced in 2009–10.

Disaster Recovery

The ComVault Backup system was deployed in the Court's Data Centre during 2008–09 and will form a major component of the Disaster Recovery System due to be implemented in 2009–10.

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. As mentioned in Chapter 2, a review of the Court's statistical systems will commence in 2009–10.

eServices Strategy

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

eSearch

eSearch became available via the Commonwealth Courts Portal in April 2008. Use of this facility has grown during the reporting period with approximately 19,300 eSearches conducted in federal law matters each month with over 70% of these being by external users.

eCourtroom

In 2008 Court Registrars piloted eCourtroom for the management of *ex parte* insolvency matters. Previously such matters were dealt with in chambers. As at 30 June 2009 there were 254 matters being actively managed via eCourtroom.

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 Commonwealth Courts 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 reporting period 16,977 documents were filed via eFiling, with the average monthly electronic filings being 1,415.

eLodgment

During the reporting period work continued on the development of an eLodgment application to replace eFiling which will enable an internal or external user to seamlessly access all information they require in relation to relevant Court files from within the one environment. This functionality is represented by a concept called *My Files*.

MyFiles is now conceptually encompassed by the Commonwealth Courts Portal with the Portal providing access to case related information drawn from the Court's underlying case management system, Casetrack, and other sources.

eLodgment is scheduled to be released in two stages. The first release will be limited to some users of the Court and will provide an opportunity to assess the functionality and intuitiveness of the system, mainly from a lawyer's or litigant's perspective, in a live environment.

The second stage of eLodgment will replace eFiling in the first quarter of 2010. The application will then enable the electronic lodgment of documents, associated supporting information and fee payments as well as provide registered users with electronic access to the information they are authorised to see on Court files.

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 was also available to the legal profession and self represented litigants. The Judges' Library Committee oversees the provision of library and information services. During 2008–09, the key projects in this area included:

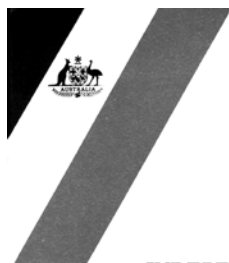
- A major review of library subscriptions was undertaken in consultation with judges which resulted in cost savings to the Court.
- A co-location of library services project for the Federal Court, Family Court and Federal Magistrates Court in the Melbourne Registry was progressed with the development of a proposed accommodation realignment.
- A new purchasing procedure was implemented to coordinate national purchasing of all textbooks to ensure that a wide spread of texts are purchased but unnecessary duplication eliminated.
- A project was commenced to move the Court's intranet and website under the management of the same content management and search engine software. This will enhance the ability of staff to change design and functionality and share data across both websites.
- A new look for published judgments was developed which arranges information about the judgment for easier electronic browsing. The Judgment Style Guide was regularly updated during the year in response to feedback about improvements.
- Recfind, the Court's records management software, was upgraded to a version that supports document management functionality. To assist staff to follow best practice in records and document management a webpage was recently launched on the intranet.



APPENDICES



APPENDIX 1 – Financial Statements



INDEPENDENT AUDITOR'S REPORT

To the Attorney-General

Scope

I have audited the accompanying financial statements of the Federal Court of Australia (the Court) for the year ended 30 June 2009. 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; Schedule of Commitments; Schedule of Contingencies; Schedule of Administered Items and Notes to and forming part of the Financial Statements, including a Summary of Significant Accounting Policies.

The Responsibility of the Registrar for the Financial Statements

The Court'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*, including Australian Accounting Standards, which include Australian Accounting Interpretations. This includes establishing and maintaining internal controls relevant to the preparation and fair presentation of 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 my audit. I have conducted my audit in accordance with Australian National Audit Office Auditing Standards, which incorporate Australian Auditing Standards. These auditing standards require that I 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 obtaining audit evidence about the amounts and disclosures in the financial statements. The audit 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 these risk assessments, the auditor considers internal controls relevant to the Court's preparation and fair presentation of the financial statements to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Court's internal controls. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Court's Registrar, as well as evaluating the overall presentation of the financial statements.

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



Independence

In conducting the audit, I 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*, including Australian Accounting Standards; and
- (b) give a true and fair view of the matters required by the Finance Minister's Orders including the Court's financial position as at 30 June 2009 and its financial performance and cash flows for the year then ended.

Australian National Audit Office



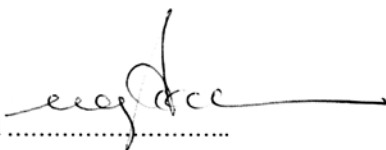
P Hinchey
Senior Director
Delegate of the Auditor-General

Sydney
27 August 2009

FEDERAL COURT OF AUSTRALIA

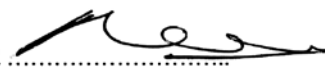
STATEMENT BY THE REGISTRAR AND CHIEF FINANCE OFFICER

In our opinion, the attached financial statements for the year ended 30 June 2009 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

26 August 2009

Signed 

Peter Bowen
Chief Finance Officer

26 August 2009

FEDERAL COURT OF AUSTRALIA

INCOME STATEMENT

for the year ended 30 June 2009

	Notes	2009 \$'000	2008 \$'000
INCOME			
Revenue			
Revenue from government	2A	78,206	78,462
Sale of goods and rendering of services	2B	<u>10,251</u>	<u>10,902</u>
Total revenue		<u>88,457</u>	<u>89,364</u>
Gains			
Sale of assets	2C	1	-
Other gains	2D	<u>15,258</u>	<u>15,084</u>
Total gains		<u>15,259</u>	<u>15,084</u>
Total Income		<u>103,716</u>	<u>104,448</u>
EXPENSES			
Judge benefits	3A	26,217	26,196
Employee benefits	3A	32,074	30,267
Suppliers	3B	44,154	47,250
Depreciation and amortisation	3C	2,799	3,182
Finance costs	3D	31	52
Loss on sale of assets	2C	-	14
Write-down and impairment of assets	3E	<u>279</u>	<u>838</u>
Total Expenses		<u>105,554</u>	<u>107,799</u>
(Deficit)		<u>(1,838)</u>	<u>(3,351)</u>

FEDERAL COURT OF AUSTRALIA

BALANCE SHEET*as at 30 June 2009*

	Notes	2009 \$'000	2008 \$'000
ASSETS			
Financial Assets			
Cash	4A	1,435	3,330
Trade and other receivables	4B	<u>32,308</u>	<u>31,975</u>
Total financial assets		<u>33,743</u>	<u>35,305</u>
Non-Financial Assets			
Land and buildings	5A	7,948	8,208
Infrastructure, plant and equipment	5B	9,269	9,432
Intangibles	5C	1,534	842
Other non-financial assets	5E	<u>1,406</u>	<u>1,763</u>
Total non-financial assets		<u>20,157</u>	<u>20,245</u>
Total Assets		<u>53,900</u>	<u>55,550</u>
LIABILITIES			
Payables			
Suppliers	6A	1,185	1,122
Other Payables	6B	<u>810</u>	<u>623</u>
Total payables		<u>2,795</u>	<u>1,745</u>
Interest Bearing Liabilities			
Leases	7	<u>243</u>	<u>633</u>
Total interest bearing liabilities		<u>243</u>	<u>633</u>
Provisions			
Judges and employee provisions	8	<u>16,046</u>	<u>16,518</u>
Total provisions		<u>16,046</u>	<u>16,518</u>
Total Liabilities		<u>19,084</u>	<u>18,896</u>
Net Assets		<u>34,816</u>	<u>36,654</u>
EQUITY			
Contributed equity		9,719	9,719
Reserves		1,289	1,289
Retained surplus		<u>23,808</u>	<u>25,646</u>
Total Equity		<u>34,816</u>	<u>36,654</u>
Current Assets		35,149	37,068
Non-Current Assets		18,751	18,482
Current Liabilities		17,029	17,125
Non-Current Liabilities		2,055	1,771

FEDERAL COURT OF AUSTRALIA

STATEMENT of CHANGES in EQUITY

for the year ended 30 June 2009

	Retained Earnings		Asset Revaluation Reserves		Contributed Equity/Capital		Total Equity	
	2009	2008	2009	2008	2009	2008	2009	2008
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
Opening balance	25,646	28,997	1,289	1,614	9,719	9,617	36,654	40,228
Income and expense								
Revaluation adjustment	-	-		(325)	-	-	-	(325)
Sub-total income and expenses recognised Directly in Equity	-	-	-	(325)	-	-	-	(325)
Surplus (Deficit) for period	(1,838)	(3,351)	-	-	-	-	(1,838)	(3,351)
Total income and expenses	(1,838)	(3,351)	-	-	-	-	(1,838)	(3,676)
Transactions with owners								
Appropriation (equity injection)	-	-	-	-	-	102	-	102
Closing balance at 30 June	23,808	25,646	1,289	1,289	9,719	9,719	34,816	36,654

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

FEDERAL COURT OF AUSTRALIA

CASH FLOW STATEMENT

for the year ended 30 June 2009

	Notes	2009 \$'000	2008 \$'000
OPERATING ACTIVITIES			
Cash received			
Goods and services		10,753	10,501
Appropriations		77,762	83,733
Refunds credited		31	131
Net GST received		-	212
Total cash received		<u>88,546</u>	<u>94,577</u>
Cash used			
Judges and employees		49,598	47,371
Suppliers		37,543	40,274
Net GST paid		15	-
Borrowing costs		31	52
Total cash used		<u>87,187</u>	<u>87,697</u>
Net cash from operating activities	9	<u>1,359</u>	<u>6,880</u>
INVESTING ACTIVITIES			
Cash received			
Proceeds from sales of property, plant and equipment		22	19
Total cash received		<u>22</u>	<u>19</u>
Cash used			
Purchase of property, plant and equipment		2,373	3,708
Purchase of intangibles		701	367
Total cash used		<u>3,074</u>	<u>4,075</u>
Net cash (used by) investing activities		<u>(3,052)</u>	<u>(4,056)</u>
FINANCING ACTIVITIES			
Cash received			
Appropriations – contributed equity		187	601
Total cash received		<u>187</u>	<u>601</u>
Cash used			
Payment of finance lease liabilities		389	611
		<u>389</u>	<u>611</u>
Net cash (used by) financing activities		<u>(202)</u>	<u>(10)</u>
Net increase (decrease) in cash held		<u>(1,895)</u>	<u>2,814</u>
Cash at the beginning of the reporting period		<u>3,330</u>	<u>516</u>
Cash at the end of the reporting period	4A	<u>1,435</u>	<u>3,330</u>

FEDERAL COURT OF AUSTRALIA

SCHEDULE OF COMMITMENTS

as at 30 June 2009

	2009 \$'000	2008 \$'000
BY TYPE		
Capital commitments		
Infrastructure, plant and equipment ¹	209	608
Total capital commitments	209	608
Other commitments		
Operating leases ²	162,510	176,397
Other ³	450	887
Total other commitments	162,960	177,284
Commitments receivable	(14,833)	(16,875)
Net commitments by type	148,336	161,017
BY MATURITY		
Capital commitments		
One year or less	209	608
Total capital commitments	209	608
Operating lease commitments		
One year or less	15,784	17,495
From one to five years	62,285	67,605
Over five years	84,891	92,184
Total operating lease commitments	162,960	177,284
Commitments receivable	(14,833)	(16,875)
Net Commitments by Maturity	148,336	161,017

NB: Commitments are GST inclusive where relevant.

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

Nature of leases/General description

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.

FEDERAL COURT OF AUSTRALIA

SCHEDULE OF CONTINGENCIES

as at 30 June 2009

There were no contingent losses or gains as at 30 June 2009 (2008: nil).

FEDERAL COURT OF AUSTRALIA

SCHEDULE OF ADMINISTERED ITEMS

	Notes	2009 \$'000	2008 \$'000
Income administered on behalf of Government			
<i>for the year ended 30 June 2009</i>			
Revenue			
Non Taxation Revenue			
Fees (filing and hearing fees)	13	6,712	6,447
Fines	13	142	568
Other revenue	13	135	113
Total revenue administered on behalf of Government		6,989	7,128
Total income administered on behalf of Government		6,989	7,128
Expenses administered on behalf of Government			
<i>for the year ended 30 June 2009</i>			
Fees and fines – provision for doubtful debts	14	14	-
Total expenses administered on behalf of Government		14	-
Assets administered on behalf of Government			
<i>as at 30 June 2009</i>			
Financial assets			
Cash and cash equivalents	15A	55	45
Receivables	15B	248	297
Total assets administered on behalf of Government		303	342

FEDERAL COURT OF AUSTRALIA

SCHEDULE OF ADMINISTERED ITEMS (Continued)

	Notes	2009 \$'000	2008 \$'000
Administered cash flows			
<i>for the year ended 30 June 2009</i>			
OPERATING ACTIVITIES			
Cash received			
Fees		6,856	6,620
Fines		142	568
Other		135	113
Total cash received		<u>7,133</u>	<u>7,301</u>
Cash used			
Refund of court fees and fines		(109)	(144)
Total cash used		<u>(109)</u>	<u>(144)</u>
Net cash flows from operating activities		<u>7,024</u>	<u>7,157</u>
Net Increase in cash held		<u>7,024</u>	<u>7,157</u>
Cash at the beginning of the reporting period		44	38
Cash from Official Public Account for:			
- Appropriations		115	145
		<u>115</u>	<u>145</u>
Cash to Official Public Account		(7,128)	(7,296)
		<u>(7,128)</u>	<u>(7,296)</u>
Cash at the end of the reporting period	17A	<u>55</u>	<u>44</u>

Administered commitments*as at 30 June 2009*

There were no Administered commitments as at 30 June 2009. (2008: nil)

Administered Contingencies*as at 30 June 2009*

There were no Administered contingent losses or gains as at 30 June 2009. (2008: nil)

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: Compensation and Debt Relief
- Note 21: Reporting of Outcomes

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

Note 1: Summary of Significant Accounting Policies

1.1 Objectives of the Court

The Federal Court of Australia is an Australian Government controlled entity. 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 is structured to meet 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.

Departmental activities are identified under one Output. This output is identified for the Court's outcome.

The Court conducts the following administered activity: The collection of fees and fines on behalf of 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 2008; and
- Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial report has been prepared on an accrual basis and is in accordance with the historical cost convention, except for certain assets at fair value. 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.

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

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 departmental items.

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 Changes in Australian Accounting Standards

Adoption of new Australian Accounting Standard requirements

No accounting standard has been adopted earlier than the application date as stated in the standard. No new accounting standards, amendments to standards and interpretations issued by the Australian accounting standards Board that are applicable in the current period have had a material financial effect on the Court.

Future Australian Accounting Standard requirements

New standards, amendments to standards, and interpretations that are applicable to future periods have been issued by the Australian Accounting Standards Board. It is estimated that adopting these pronouncements, when effective, will have no material impact on future reporting periods.

1.5 Revenue

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, which have 30 day terms, are recognised at the nominal amounts due less any impairment allowance account. Collection of debts is reviewed at balance date. Allowances are made when collection of the debt is no longer probable.

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.

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

Resources received free of charge are recognised as either revenue or gains depending on their nature.

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

Equity Injections

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 Judge 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 *Employee Benefits*) and termination benefits due within twelve months of balance date are measured at their nominal amounts.

The nominal amount is calculated with regard to the rates expected to be paid on settlement of the liability.

All other judge 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 up to the reporting date.

Leave

The liability for employee benefits includes provision for 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 calculated on the basis of employees' remuneration at the estimated salary rates that applied at the time the leave is taken. 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. This liability is reported by the Department of Finance and Deregulation as an administered item.

The Court makes employer contributions to the employee superannuation scheme at rates determined by an actuary to be sufficient to meet the current 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.

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

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 \$9,069,070 (2007-08: \$8,903,109). 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. An operating lease is a lease that is not a finance lease. 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 either the fair value of the lease property or, if lower, the present value of minimum lease payments at the inception of the contract 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 which is representative of the pattern of benefits derived from the leased assets.

1.10 Cash

Cash means notes and coins held and any deposits in bank accounts with an original maturity of 3 months or less that are readily convertible to known amounts of cash and subject to insignificant risk of changes in value. Cash is recognised at its nominal amount.

1.11 Financial Assets

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. The Court does not have any loans at the balance sheet date.

Impairment of financial assets

Financial assets are assessed for impairment at each balance date.

- *Financial assets held at nominal cost* – If there is objective evidence that an impairment loss has been incurred for receivables, the carrying amount is reduced by way of an allowance account. The loss is recognised in the income statement.

1.12 Financial Liabilities

Supplier and other payables

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

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

1.13 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.

1.14 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

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

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

Following initial recognition at cost, buildings, infrastructure, plant and equipment are carried at fair value less accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets do not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depends upon the volatility of movements in market values for the relevant assets.

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 eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

Depreciation

Depreciable property plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the Court using, in all cases, 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.

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

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

	2009	2008
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 are assessed for impairment at 30 June. Where indications of impairment exist, the asset's recoverable amount is estimated and an adjustment made if the asset's recoverable amount is less than its carrying amount.

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

1.15 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 (2007-08: 5 years).

All software assets were assessed for indications of impairment at 30 June 2009.

1.16 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.

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

1.17 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 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: Administered Reconciliation Table. Thus, the Schedule of Administered Items reflects the Government's transactions, through the Court, with parties outside the Government.

Revenue

All administered revenues are revenues relating to the course of ordinary activities performed by the Court on behalf of the Australian Government.

Fees are charged for services provided by the Court to litigants under the Federal Court Regulations.

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

	2009 \$'000	2008 \$'000
Note 2: Income		
Revenue		
Note 2A: Revenue from Government		
Appropriation:		
Departmental outputs	78,206	78,462
Total revenue from Government	78,206	78,462
Note 2B: Sale of goods and rendering of services		
Rendering of services – related entities	9,681	10,419
Rendering of services – external entities	570	483
Total sale of goods and rendering of services	10,251	10,902
Gains		
Note 2C: Sale of Assets		
Infrastructure, plant and equipment:		
Proceeds from sale	2	3
Carrying value of assets sold	(1)	(17)
Net gain (loss) from sale of assets	1	(14)
Note 2D: Other gains		
Liabilities assumed by other agencies	9,069	8,903
Resources received free of charge	6,189	6,181
	15,258	15,084

Resources received free of charge includes an amount of \$5,547,582 (2007-08: \$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.

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

	2009 \$'000	2008 \$'000
Note 3: Expenses		
Note 3A: Judge and Employee benefits		
Judge remuneration	17,148	17,293
Judge notional superannuation	9,069	8,903
	<u>26,217</u>	<u>26,196</u>
Employee wage & salaries	27,494	26,965
Employee superannuation	3,986	3,218
Employee separation and redundancies	594	84
	<u>32,074</u>	<u>30,267</u>
Total judge and employee benefits	<u>58,291</u>	<u>56,463</u>
Note 3B: Suppliers		
Provision of goods - external parties	2,602	3,053
Rendering of services - related entities	1,874	1,721
Rendering of services - external parties	17,253	20,354
Operating lease rentals:		
Minimum Lease Payments	22,235	21,908
Workers compensation premiums	190	214
Total supplier expenses	<u>44,154</u>	<u>47,250</u>
Note 3C: Depreciation and Amortisation		
Depreciation:		
Buildings	1,384	1,594
Infrastructure, plant and equipment	913	853
Total depreciation	<u>2,297</u>	<u>2,447</u>
Assets held under finance leases		
Amortisation:		
Intangibles:		
Computer Software	130	134
Leased plant and equipment	372	601
Total amortisation	<u>502</u>	<u>735</u>
Total depreciation and amortisation	<u>2,799</u>	<u>3,182</u>
Note 3D: Finance costs		
Finance leases	31	52
Total finance costs	<u>31</u>	<u>52</u>
Note 3E Write-down and impairment of assets		
Financial assets		
Bad & doubtful debt	-	31
Non-financial assets		
Impairment of plant & equipment	279	807
Total write-down and impairment of assets	<u>279</u>	<u>838</u>

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

	2009 \$'000	2008 \$'000
Note 4: Financial Assets		
Note 4A: Cash and cash equivalents		
Cash on hand or on deposit	1,435	3,330
Total cash and cash equivalents	1,435	3,330
Note 4B: Trade and other receivables		
Goods and services	600	556
Appropriations receivable:		
for existing outputs	31,361	31,104
GST receivable from the Australian Taxation Office	347	366
Total trade and other receivables (gross)	32,308	32,026
Less impairment allowance account		
Goods and Services	-	(51)
Total trade and other receivables (net)	32,308	31,975
Receivables are aged as follows:		
Not overdue	32,290	31,919
Overdue by:		
Less than 30 days	1	6
30 to 60 days	3	33
61 to 90 days	5	-
More than 90 days	9	68
	18	107
Total receivables (gross)	32,308	32,026
The allowance for doubtful debts is aged as follows:		
Overdue by:		
More than 90 days	-	(51)
Total allowance for doubtful debts	-	(51)
All receivables are current. Credit terms are net 30 days (2008: 30 days).		
Reconciliation of the impairment allowance account:		
Opening balance	(51)	(21)
Amounts written off	51	-
Increase/decrease recognised in net surplus	-	(30)
Closing balance	-	(51)

Note 5: Non-Financial Assets**Note 5A: Land and buildings**

Leasehold improvements		
fair value	10,449	9,783
accumulated depreciation	(2,501)	(1,575)
Total leasehold improvements	7,948	8,208
Total land and buildings (non-current)	7,948	8,208

No indications of impairment were found for land and buildings

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

	2009 \$'000	2008 \$'000
Note 5B: Infrastructure, plant and equipment		
Infrastructure, plant and equipment		
gross carrying value (at fair value)	12,837	12,204
accumulated depreciation	<u>(3,568)</u>	<u>(2,772)</u>
	<u>9,269</u>	<u>9,432</u>
Total infrastructure, plant and equipment (non-current)	<u><u>9,269</u></u>	<u><u>9,432</u></u>

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.

As a result of this valuation process, 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 indications of impairment were found for infrastructure, plant and equipment.

Note 5C: Intangible Assets

Computer software at cost		
Internally developed – in progress	1,285	620
Purchased – in use	<u>2,073</u>	<u>1,917</u>
Total Computer Software	<u>3,358</u>	<u>2,537</u>
Accumulated amortisation	<u>(1,824)</u>	<u>(1,695)</u>
Total intangibles (non-current)	<u><u>1,534</u></u>	<u><u>842</u></u>

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 (2008-09)**

Item	Leasehold improvement – Total land and buildings \$'000	Infrastructure, plant and equipment \$'000	Computer Software – Intangibles \$'000	Total \$'000
As at 1 July 2008				
Gross book value	9,783	12,204	2,537	24,524
Accumulated depreciation/amortisation	(1,575)	(2,772)	(1,695)	(6,042)
Net book value 1 July 2008	8,208	9,432	842	18,482
Additions:				
by purchase	1,384	1,049	822	3,255
Reclassification	-	92	-	92
Depreciation/amortisation expense	(1,384)	(1,285)	(130)	(2,799)
Disposals:				
Other disposals	(260)	(19)	-	(279)
Net book value 30 June 2009	7,948	9,269	1,534	18,751
Net book value as of 30 June 2009 represented by:				
Gross book value	10,449	12,837	3,358	26,644
Accumulated depreciation/amortisation	(2,501)	(3,568)	(1,824)	(7,893)
	<u>7,948</u>	<u>9,269</u>	<u>1,534</u>	<u>18,751</u>

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

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

Note 5E: Other Non-financial assets

Prepayments	<u>1,406</u>	<u>1,763</u>
Total other non-financial assets	<u>1,406</u>	<u>1,763</u>

All other non-financial assets are current assets.

Note 6: Payables**Note 6A: Suppliers**

Trade creditors	1,028	1,122
Deferred Revenue	957	-
Total supplier payables	<u>1,985</u>	<u>1,122</u>

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

Note 6B: Other Payables

Salaries and wages	418	326
Superannuation	319	297
Separations and redundancies	73	-
Total other payables	<u>810</u>	<u>623</u>

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

Note 7: Interest Bearing Liabilities**Note 7: Leases**

Finance leases	243	633
Total finance leases	243	633
Payable		
Within one year:		
Minimum lease payments	173	421
Less future finance charges	(13)	(31)
In one to five years:		
Minimum lease payments	87	260
Less future finance charges	(4)	(17)
Finance lease recognised on the balance sheet	243	633

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 5.80% (2008: 5.70%). The leased assets secure the lease liabilities. The Court guarantees the residual values of all assets leased. There are no contingent rentals.

2009	2008
\$'000	\$'000

Note 8: Provisions**Note 8A: Judges & Employee provisions**

Long Leave (Judges)	9,111	9,989
Leave	6,935	6,529
Total judge and employee provisions	16,046	16,518
Employee provisions are represented by:		
Current	14,074	14,990
Non-current	1,972	1,528
Total judges and employee provisions	16,046	16,518

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 \$4,143,081 (2008 \$4,971,162), in excess of one year \$11,902,487 (2008: \$11,550,900).

Note 9: Cash flow reconciliation

Reconciliation of cash and cash equivalents as per Balance Sheet to Cash Flow Statement	2009	2008
	\$'000	\$'000
Report cash and cash equivalents as per:		
Cash Flow Statement	1,435	3,330
Balance Sheet	1,435	3,330

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

	2009 \$'000	2008 \$'000
Reconciliation of operating result to net cash from operating activities:		
Operating result	(1,838)	(3,351)
Depreciation/amortisation	2,799	3,182
Net write down of non-financial assets	279	807
(Gain)/Loss on disposal of assets	(1)	(6)
Assets not previously recognised	(10)	(18)
Other asset adjustments	(82)	-
(Increase)/decrease in net receivables	(333)	5,559
(Increase)/decrease in prepayments	357	420
Increase/(decrease) in suppliers payables	863	615
Increase/(decrease) in judge and employee provisions	(285)	283
Increase/(decrease) in other liabilities	(390)	(611)
Net cash from/(used by) operating activities	1,359	6,880

Note 10: Senior Executive Remuneration

The number of senior executives who received or were due to receive total remuneration of \$130,000 or more:

	2009	2008
\$175,000 to \$189,999	-	1
\$190,000 to \$204,999	1	2
\$205,000 to \$219,999	2	-
\$220,000 to \$234,999	1	-
\$235,000 to \$249,999	4	3
\$250,000 to \$264,999	1	3
\$265,000 to \$279,999	1	-
\$280,000 to \$294,999	-	1
\$295,000 to \$309,999	-	1
\$310,000 to \$324,999	1	-
Total	11	11

	2009 \$	2008 \$
The aggregate amount of total remuneration of executives shown above:	2,660,833	2,643,734

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:

	2009 \$	2008 \$
The fair value of the services provided was:	100,000	90,000

No other services were provided by the Auditor-General.

Note 12: Financial Instruments

	2009 \$'000	2008 \$'000
Note 12A Categories of financial instruments		
Loans and receivables		
Loans and receivables		
Cash and cash equivalents	1,435	3,330
Trade receivables	600	556
Carrying amount of financial assets	2,035	3,886

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

	2009	2008
	\$'000	\$'000
Financial Liabilities		
Other Liabilities		
Finance leases	243	633
Payables - suppliers	1,985	1,123
Carrying amount of financial liabilities	2,228	1,756

Note 12B: Fair value of financial instruments

	Carrying amount 2009 \$'000	Fair value 2009 \$'000	Carrying amount 2008 \$'000	Fair value 2008 \$'000
FINANCIAL LIABILITIES				
Other Liabilities				
Finance leases	243	243	633	633
Total	243	243	633	633

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 (2009: \$599,996 and 2008: \$556,213). The Court has assessed the risk of default on payment and has allocated nil in 2009 (2008: \$51,571) 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 2009 \$'000	Not Past Due Nor Impaired 2008 \$'000	Past due or impaired 2009 \$'000	Past due or impaired 2008 \$'000
Loans and receivables				
Cash	1,435	3,330	-	-
Trade receivables	582	449	18	107
Total	2,017	3,779	18	107

Ageing of financial assets that are past due but not impaired for 2009

	0 to 30 days \$'000	31 to 60 days \$'000	61 to 90 days \$'000	90+ days \$'000	Total \$'000
Loans and receivables					
Trade receivables	1	3	5	9	18
Total	1	3	5	9	18

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

	0 to 30 days \$'000	31 to 60 days \$'000	61 to 90 days \$'000	90+ days \$'000	Total \$'000
Loans and receivables					
Trade receivables	6	33	-	17	56
Total	6	33	-	17	56

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

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 2009 \$'000	Within 1 year 2009 \$'000	1 to 5 years 2009 \$'000	Total 2009 \$'000
Other liabilities				
Payables - Suppliers	-	1,985	-	1,985
Finance leases	-	160	83	243
Total	-	2,145	83	2,228

	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

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 lease'. All bear interest at a fixed interest rate and will not fluctuate due to changes in the market interest rate.

Note 13: Income Administered on Behalf of Government

	2009 \$'000	2008 \$'000
Fees (filing and hearing fees)	6,712	6,447
Fines	142	568
Other	135	113
Total revenue administered on behalf of government	6,989	7,128

Note 14: Expenses Administered on Behalf of Government

Expenses

Fees and fines – provision for doubtful debts	14	-
Total expenses administered on behalf of government	14	-

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

	2009 \$'000	2008 \$'000
Note 15: Assets Administered on Behalf of Government		
<u>Financial Assets</u>		
Note 15A: Cash and cash equivalents		
Cash on hand or on deposit	55	45
Note 15B: Receivables		
Fees (filing and hearing fees)	307	342
Less: Allowance for doubtful debts	(59)	(45)
Total receivables (net)	248	297
Receivables are aged as follows:		
Not overdue	41	75
Overdue by:		
- Less than 30 days	99	79
- 30 to 60 days	40	86
- 60 to 90 days	24	25
- More than 90 days	103	77
Total receivables (gross)	307	342
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 (2008: 30 days).		
Reconciliation of the impairment allowance accounts:		
Opening balance	45	110
Increase/decrease recognised in net surplus	14	-
Amounts written off	-	(46)
Amounts recovered and reversed	-	(19)
Closing balance	59	45
Note 16: Administered Reconciliation Table		
Opening administered assets less administered liabilities as at 1 July	341	364
Plus: Administered income	6,989	7,128
Less: Administered expenses	(14)	-
Appropriation transfers from OPA	115	145
Transfers to OPA	(7,128)	(7,296)
Closing administered assets less administered liabilities as at 30 June	303	341
Note 17: Administered Financial Instruments		
Note 17A Categories of financial instruments		
Financial Assets		
Loans and receivables		
Cash	55	44
Trade receivables	307	342
	362	386
Carrying amount of financial assets	362	386

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

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.

	2009 \$'000	2008 \$'000
Financial Assets		
Loans and receivables		
Receivables	307	342
Total	307	342

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

Receivables: **\$58,990** in 2009 (2008: \$44,689)

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

	Not Past Due Nor Impaired 2009 \$'000	Not Past Due Nor Impaired 2008 \$'000	Past due or impaired 2009 \$'000	Past due or impaired 2008 \$'000
Loans and receivables				
Cash	55	44	-	-
Trade receivables	41	75	266	267
Total	96	119	266	267

Ageing of financial assets that are past due but not impaired for 2009

	0 to 30 days \$'000	31 to 60 days \$'000	61 to 90 days \$'000	90+ days \$'000	Total \$'000
Loans and receivables					
Receivables	99	40	24	44	207
Total	99	40	24	44	207

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

	0 to 30 days \$'000	31 to 60 days \$'000	61 to 90 days \$'000	90+ days \$'000	Total \$'000
Loans and receivables					
Receivables	79	86	25	32	222
Total	79	86	25	32	222

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	
	2009 \$'000	2008 \$'000
Balance carried from previous period	32,092	34,549
<i>Appropriation Act:</i>		
<i>Appropriation Act (No.1) 2008-09 as passed</i>	77,478	78,176
<i>Appropriation Act (No.3) 2008-09 as passed</i>	728	286
Departmental adjustments by the Finance Minister (<i>Appropriation Acts</i>)	-	-
Comcover receipts (<i>Appropriation Act s13</i>)	-	-
<i>FMA Act:</i>		
Appropriations to take account of recoverable GST (<i>FMA Act s30A</i>)	2,944	3,502
Repayments to the Commonwealth (<i>FMA Act s30</i>)	31	131
Relevant agency receipts (<i>FMA Act s31</i>)	10,775	10,520
Total appropriations available for payments	124,048	127,164
Cash payments made during the year (GST inclusive)	93,407	95,072
Appropriations credited to special Accounts (excluding GST)	-	-
Balance of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations	30,641	32,092
<i>Represented by:</i>		
Cash at bank and on hand	1,435	3,330
Departmental appropriations receivable	29,206	28,762
Total	30,641	32,092

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

	Non-operating		Total	
	Equity			
	2009 \$'000	2008 \$'000	2009 \$'000	2008 \$'000
Balance carried forward from previous period	2,342	2,841	2,342	2,841
Appropriation Act (No.2)	-	102	-	102
Total appropriations available for payments	2,342	2,943	2,342	2,943
Cash payments made during the year (GST inclusive)	187	601	187	601
Balance of Authority to Draw Cash from the Consolidated Revenue Fund for Other Than Ordinary Annual Services Appropriations	2,155	2,342	2,155	2,342
<i>Represented by:</i>				
Cash at bank and on hand	-	-	-	-
Departmental appropriations receivable	2,155	2,342	2,155	2,342
Total	2,155	2,342	2,155	2,342

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

Note 19: Special Accounts

Other Trust Moneys Account	2009	2008
	\$	\$
Legal authority: <i>Financial Management and Accountability Act, 1997, section 20</i>		
<i>Purpose:</i> for expenditure of moneys temporarily held on trust or otherwise for the benefit of a person other than the Commonwealth. This account is non-interest bearing.		
Balance carried from previous period	31,990	38,332
Other receipts	1,260,011	25,235
Total credits	1,292,001	63,567
Payments made	1,222,295	31,577
Balance carried to next period	69,706	31,990
Represented by:		
Cash – held by the Court	69,706	31,990
Total	69,706	31,990

Services for other Governments & Non-agency bodies	2009	2008
	\$	\$
Legal authority: <i>Financial Management and Accountability Act, 1997, section 20</i>		
<i>Purpose:</i> for expenditure in connection with services performed on behalf of other Governments and bodies that are not FMA agencies. This account is non-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	2009	2008
	\$	\$
Legal Authority: <i>Financial Management and Accountability Act, 1997, section 20</i>		
<i>Purpose:</i> to hold private moneys for litigants pending acceptance of moneys paid into Court by litigants; security for costs or pursuant to an order of a Federal Court Judge. This account is non-interest bearing.		
Balance carried from previous period	1,606,605	2,028,626
Other receipts	7,178,090	2,891,013
Total credits	8,784,695	4,919,639
Payments made	6,472,775	3,313,034
Balance carried to next period	2,311,920	1,606,605
Represented by:		
Cash – held by the Court	2,311,920	1,606,605
Total	2,311,920	1,606,605

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

Federal Court of Australia Litigant's Fund	2009	2008
	\$	\$
Legal authority: <i>Financial Management and Accountability Act, 1997, section 39</i>		
<i>Purpose:</i> to invest private moneys paid by litigants pursuant to an order of a Federal Court Judge, pending an order for payment out by a Federal Court Judge. This account is interest bearing.		
Balance carried from previous period	23,493,476	8,598,517
Other receipts	47,618,484	24,774,872
Total credits	71,111,960	33,373,389
Payments made	16,153,560	9,879,913
Balance carried to next period	54,958,400	23,493,476
Represented by:		
Cash – held by the Court	54,958,400	23,493,476
Total	54,958,400	23,493,476

Note 20: Compensation and Debt Relief

	2009	2008
Administered	\$	\$
No Act of Grace expenses were incurred during the reporting period under sub-section 33(1) of the <i>Financial Management and Accountability Act 1997</i> . (2008: No Act of Grace Expenses)	-	-
No payments were waived during the reporting period under subsection 34(1) of the <i>Financial Management and Accountability Act 1997</i> . (2008: No Waivers).	-	-
2,724 exemptions and waivers of amounts owing to the Commonwealth were made pursuant to sub-regulations 2(4)(a-c), 2A(2)(e-g), 2AA(2)(f-h) of the <i>Federal Court of Australia Regulations 2004</i> . (2008: 2,957)	2,343,398	3,125,260

Departmental

No payments were made under the 'Defective Administration Scheme' during 2008-09 (2007-08 nil).

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

Note 21: Reporting of Outcomes

Note 21A: Net Cost of Outcome Delivery

The Court has one Output and Outcome:

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

Outcome 1	Outcome 1	
	2009 \$'000	2008 \$'000
Expenses		
Administered	14	-
Departmental	105,554	107,799
Total expenses	105,568	107,799
Costs recovered from provision of goods and services to the non-government sector		
Administered	-	-
Departmental	-	-
Total costs recovered	-	-
Other external revenues		
Administered	6,989	7,128
Departmental	10,251	10,902
Total other external revenues	17,240	18,030
Net cost/(contribution) of outcome	88,328	89,769

Note 21B: Major Classes of Departmental Revenues and Expenses by Outputs

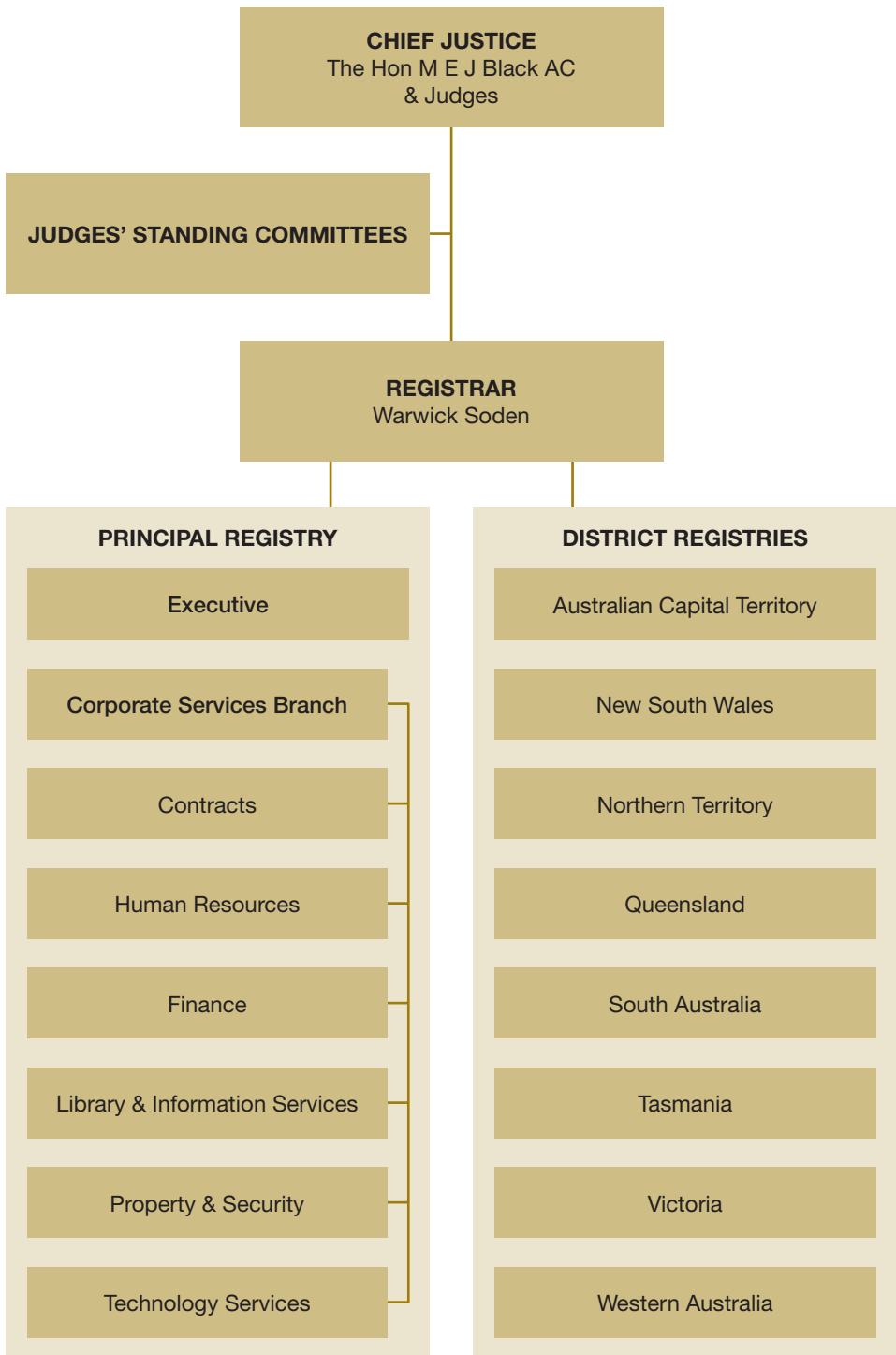
Outcome 1	Outcome 1/Output 1.1	
	2009 \$'000	2008 \$'000
Departmental expenses		
Judges and Employees	58,291	56,463
Suppliers	44,154	47,250
Depreciation and Amortisation	2,799	3,182
Finance costs	31	52
Other Expenses	279	852
Total departmental expenses	105,554	107,799
Funded by:		
Revenues from government	93,464	93,546
Sale of goods and services	10,252	10,902
Total departmental revenues	103,716	104,448

APPENDIX 2 – AGENCY RESOURCE STATEMENT

	Actual Available Appropriations for 2008–09 \$'000	Payments Made 2008–09 \$'000	Balance Remaining \$'000
ORDINARY ANNUAL SERVICES¹			
Departmental			
Prior year departmental appropriation	32,092	32,092	–
Departmental appropriation	78,206	47,565	30,641
S 31 relevant agency receipts	10,251	10,251	–
Total	120,549	89,908	30,641
Total ordinary annual services	120,549	89,908	30,641
OTHER SERVICES			
Departmental non-operating			
Equity injections	2,342	187	2,155
Previous years' outputs			
Total	2,342	187	2,155
Total other services	2,342	187	2,155
Total Resourcing and Payments	122,891	90,095	32,796

¹ Appropriation Bill (No. 1) 2008–09 and Appropriation Bill (No. 3) 2008–09

APPENDIX 3 – FEDERAL COURT MANAGEMENT STRUCTURE



APPENDIX 4 – REGISTRARS OF THE COURT

(as at 30 June 2009)

Registry	Name	Appointments under other Acts
Principal Registry		
Registrar	Warwick Soden	
Deputy Registrars	Philip Kellow	A Registrar, Federal Magistrates Court
	Louise Anderson	
	Anna Quilter	
Sheriff of the Federal Court of Australia	David Priddle	
New South Wales		
District Registrar	Michael Wall	Registrar, Copyright Tribunal
		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	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

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
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	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
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

Registry	Name	Appointments under other Acts
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
Australian Capital Territory		
District Registrar	Michael Wall (Based in Sydney)	Registrar, Copyright Tribunal A Registrar, Federal Magistrates Court
Deputy District Registrars	Jennifer Hedge (Based in Sydney)	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)	A Registrar, Federal Magistrates Court
	Stephanie Kavallaris (Based in Sydney)	A Registrar, Federal Magistrates Court
	Kim Lackenby (Based in Sydney and Canberra)	Deputy Registrar, Australian Competition Tribunal A Registrar, Federal Magistrates Court
	Natalie Cujes (Based in Canberra)	A Registrar, Federal Magistrates Court
	Chuan Ng (Based in Sydney)	A Registrar, Federal Magistrates Court
Northern Territory		
District Registrar	Patricia Christie (Based in Adelaide)	Deputy Registrar, Australian Competition Tribunal Deputy Registrar, Defence Force Discipline Appeal Tribunal A Registrar, Federal Magistrates Court

APPENDIX 5 – STATUTES OF THE COURT

(as at 30 June 2009)

[Only Principal Acts are included]

- Aboriginal and Torres Strait Islander Act 2005*
- Aboriginal and Torres Strait Islander Heritage Protection Act 1984*
- 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 (Aboriginal and Torres Strait Islander) Act 2006*
- Corporations Act 2001*
- Crimes Act 1914*
- Criminal Code Act 1995*
- Cross-Border Insolvency Act 2008*
- CSL Sale Act 1993*
- Customs Act 1901*
- Dairy Industry Service Reform Act 2003*
- Dairy Produce Act 1986*
- 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 (Business Transfer and Group Restructure) 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*
- 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 Rental Affordability Scheme Act 2008*
- 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 and Greenhouse Gas Storage 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 Resource Rent Tax Assessment Act 1987
Pig Industry Act 2001
Plant Breeder's Rights Act 1994
Privacy Act 1988
Private Health Insurance Act 2007
Proceeds of Crime Act 2002
Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Act 2008
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
Tax Agent Services Act 2009
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 6 – 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 slightly 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).

As noted in Chapter 2, the Court presently reports on filings by major COA. This is an under representation of the workload as it does not include filings of supplementary COAs (cross appeals and cross claims), interlocutory applications (initiated by the filing of a notice of motion) or native title joinder of party applications. In 2007–08 the Court started to count and report on notices of motion in appellate proceedings in order to provide the most accurate possible picture of the Court’s appellate workload. From 2008–09 the Court will count all forms of this additional workload in both its original and appellate jurisdictions.

Table 6.4 on page 108 provides a breakdown of these matters. At this stage it is not possible to obtain information about finalisations of notices of motion (because they are recorded in the Court’s case management system as a document filed rather than a specific COA). Because of this, detailed reporting of these matters has been restricted to the information about appeals in Chapter 3 and Table 6.4. All other tables and figures in this Appendix and through the Report are based on major COA.

In order to ensure greater transparency and accountability in the reporting of the Court’s workload, a project will commence in 2009–10 to restructure the Court’s statistical systems to ensure, in keeping with other jurisdictions, that the components of individual cases are counted not just the initial COA.

Table 6.1 – Summary of Workload Statistics – Original and Appellate Jurisdiction

Filings of Major COAs (including Appeals and Related Actions)					
Cause of Action	2004-05	2005-06	2006-07	2007-08	2008-09
Total COAs					
Filed	4,495	6,157	4,925	4,430	3,864
Finalised	4,495	6,243	5,230	4,750	4,125
Current	3,567	3,481	3,176	2,856	2,595
Corporations					
Filed	1,002	2,911	1,932	1,701	1,671
Finalised	792	2,723	2,093	1,690	1,743
Current	471	659	498	509	437
Bankruptcy					
Filed	418	392	286	261	209
Finalised	391	420	349	276	236
Current	211	183	120	105	78
Native Title					
Filed	61	68	69	34	42
Finalised	103	93	96	76	91
Current	638	613	586	544	495
Total CoAs (excluding Corporations, Bankruptcy & Native Title)					
Filed	3,014	2,786	2,638	2,434	1,942
Finalised	3,209	3,007	2,692	2,708	2,055
Current	2,247	2,026	1,972	1,698	1,585

Table 6.2 – Summary of Workload Statistics – Excluding Appeals and related actions

Cause of Action	2004-05	2005-06	2006-07	2007-08	2008-09
Total COAs (ex. Appeals & Related Actions)					
Filed	3,129	4,826	3,543	3,076	2,991
Finalised	3,257	4,877	3,845	3,268	3,195
Current	3,008	2,957	2,655	2,463	2,259
Corporations (ex. Appeals & Related Actions)					
Filed	948	2,897	1,903	1,678	1,637
Finalised	779	2,713	2,066	1,665	1,716
Current	465	649	486	499	420
Bankruptcy (ex. Appeals & Related Actions)					
Filed	349	332	223	201	148
Finalised	333	355	290	205	168
Current	176	153	86	82	62
Native Title (ex. Appeals & Related Actions)					
Filed	51	60	50	27	37
Finalised	81	78	80	64	86
Current	623	605	575	538	489
Total COAs (excl. Appeals & Related Actions & excluding Corporations, Bankruptcy & Native Title)					
Filed	1,745	1,537	1,367	1,170	1,169
Finalised	2,064	1,731	1,409	1,334	1,225
Current	1,744	1,550	1,508	1,334	1,288

Table 6.3 – Summary of Workload Statistics – Appeals and Related Actions only

Cause of Action	2004-05	2005-06	2006-07	2007-08	2008-09
Total Appeals & Related Actions					
Filed	1,366	1,331	1,382	1,354	873
Finalised	1,238	1,366	1,385	1,482	930
Current	559	524	521	393	336
Corporations Appeals & Related Actions					
Filed	18	14	29	23	34
Finalised	13	10	27	25	27
Current	6	10	12	10	17
Migration Appeals & Related Actions					
Filed	1,053	1,053	1,061	997	515
Finalised	951	1,049	1,094	1,105	617
Current	371	375	342	234	132
Native Title Appeals & Related Actions					
Filed	10	8	19	7	5
Finalised	22	15	16	12	5
Current	15	8	11	6	6
Total Appeals & Related Actions – (excl. Corporations, Migration & Native Title Appeals & Related Actions)					
Filed	285	256	273	327	319
Finalised	252	292	248	340	281
Current	167	131	156	143	181

Table 6.4 – Summary of supplementary workload statistics

Filings of supplementary causes of action					
	2004-05	2005-06	2006-07	2007-08	2008-09
Total actions (excluding Appeals & Related Actions)					
Cross Appeals (original jurisdiction)	1	5	12	4	5
Cross Claims	167	216	198	177	189
Notices of Motion	1,163	1,404	1,451	1,292	1,237
NT Joinder of party applications	–	377	89	135	482
Appeals & Related Actions					
Cross Appeals	16	20	14	16	21
Notices of Motion	140	166	146	156	173
Total actions (including Appeals & Related Actions)					
Cross Appeals	17	25	26	20	26
Cross Claims	167	216	198	177	189
Notices of Motion	1,303	1,570	1,597	1,448	1,410
NT Joinder of party applications	–	377	89	135	482
Totals	1,487	2,188	1,910	1,780	2,107

Finalisations of supplementary causes of action

	2004-05	2005-06	2006-07	2007-08	2008-09
Total Actions (excluding Appeals & Related Actions)					
Cross Appeals (original jurisdiction)	0	0	5	8	1
Cross Claims	28	106	208	185	77
NT Joinder of party applications		377	89	135	482
Appeals & Related Actions					
Cross Appeals	3	18	15	20	17
Total actions (including Appeals & Related Actions)					
Cross Appeals	3	18	20	28	18
Cross Claims	28	106	208	185	77
		377	89	135	482
Totals	31	501	317	348	577

Current Cross Appeals & Cross Claims as at 30 June 2009

Appeals & Related Actions	
Cross Appeals	16
Total Supplementary COAs (excluding Appeals & Related Actions)	
Cross Appeals (original jurisdiction)	9
Cross Claims	254
Total Supplementary COAs (including Appeals & Related Actions)	
Cross Appeals	25
Cross Claims	254
Totals	279

Figure 6.1 – Matters filed 2004-05 to 2008-09

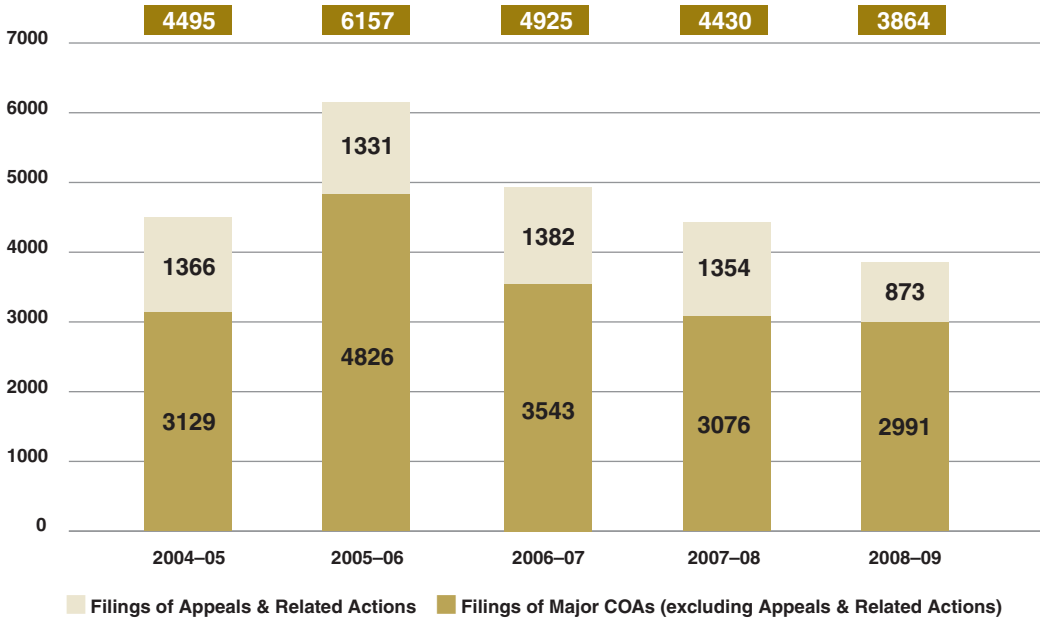
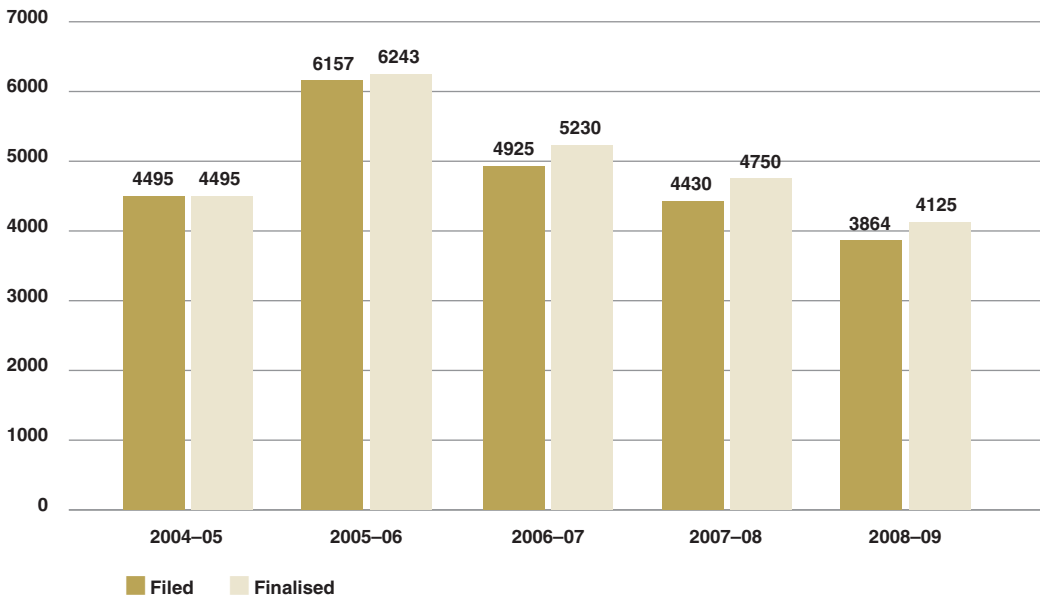
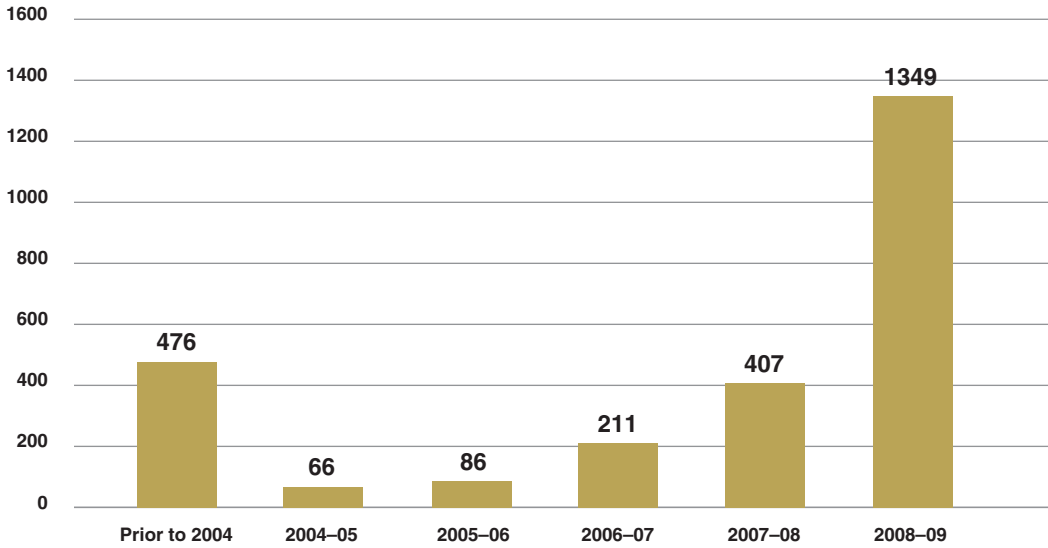


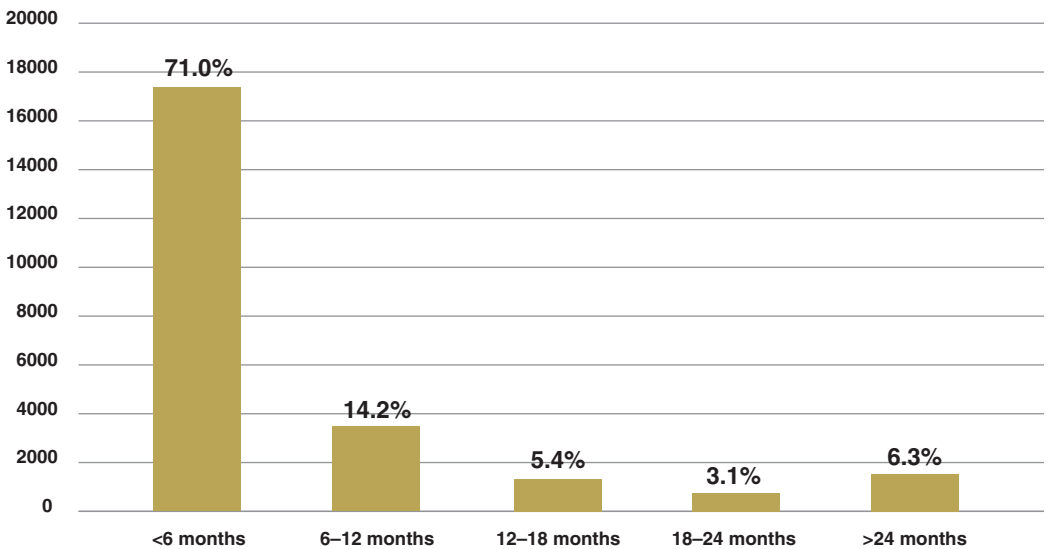
Figure 6.2 – Matters filed and finalised 2004-05 to 2008-09



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

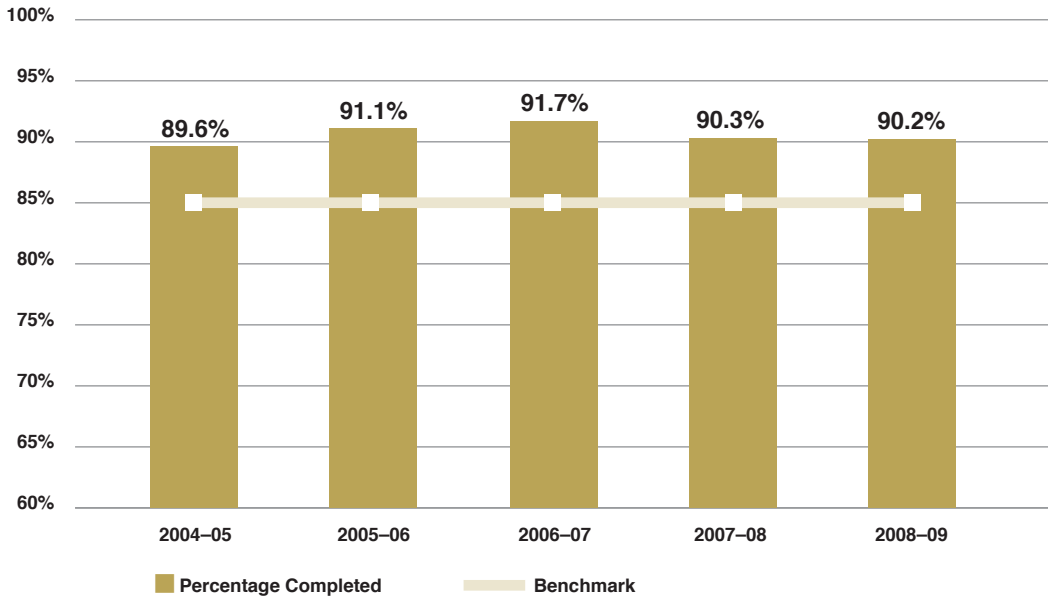
Figure 6.3 – Age and number of current matters at 30 June 2009

A total of 2,595 matters remain current at 30 June 2009. There were 476 applications still current relating to periods before those shown in the graph. Over 79% of cases prior to 2004 are native title matters.

Figure 6.4 – Time span to complete matters completed in the period 1 July 2004 to 30 June 2009

A total of 24,454 matters were completed during the 5 year period ending 30 June 2009, excluding native title matters. The time span, from filing to disposition of these matters, is shown in the graph above.

Figure 6.5 – Time span to complete benchmark 2004–05 to 2008–09

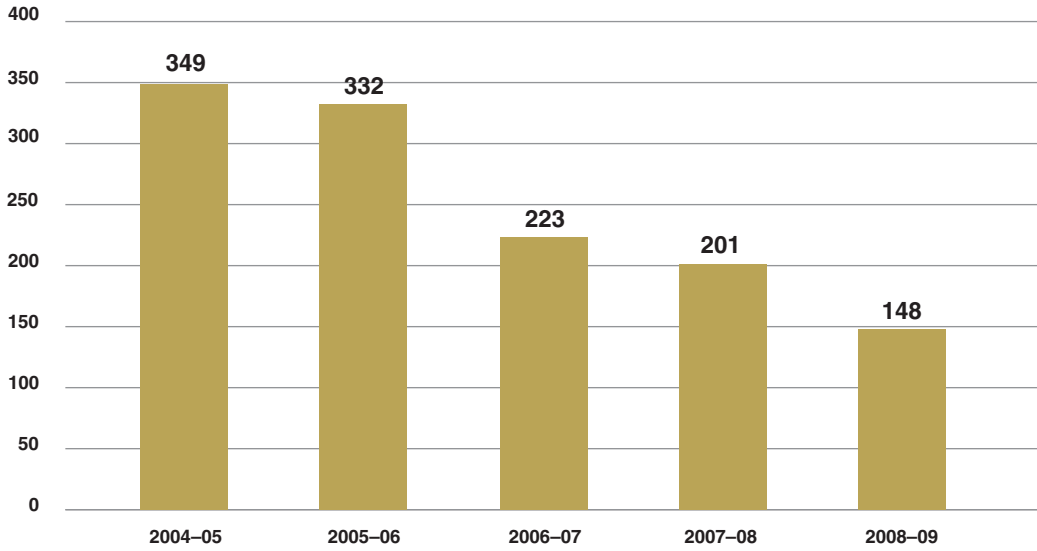
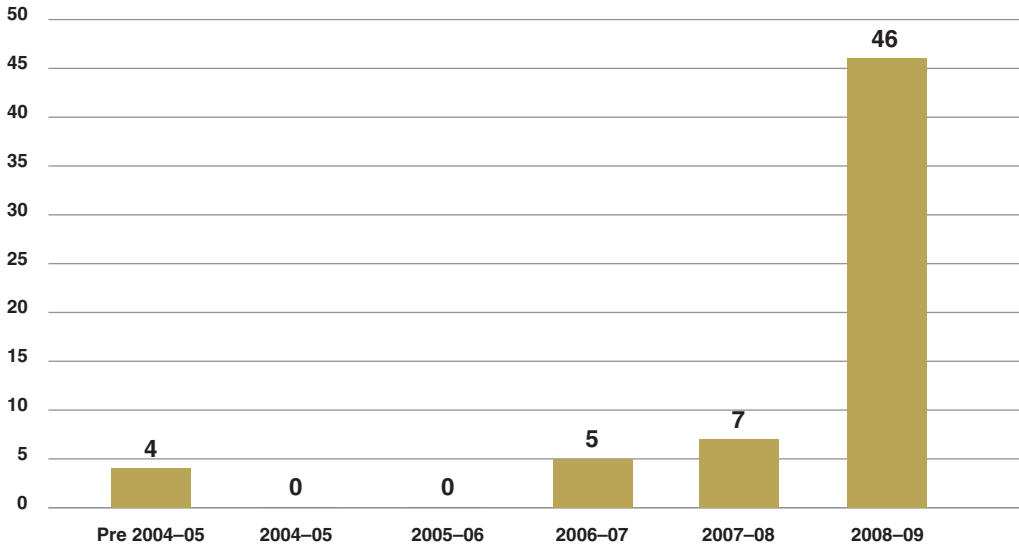


The total number of matters (including appeals but excluding Native Title) completed for each of the last five years and the time span for completion are shown below.

Table 6.5 - Finalisation of major COAs in accordance with 85% benchmark
(incl appeals and related actions and excluding native title matters)

Percentage completed	2004–05	2005–06	2006–07	2007–08	2008–09
Under 18 months	3954	5616	4722	4232	3644
% of Total	89.6%	91.1%	91.7%	90.3%	90.2%
Over 18 months	460	549	428	454	395
% of Total	10.4%	8.9%	8.3%	9.7%	9.8%
Total COAs	4414	6165	5150	4686	4039

NOTE: This table covers major COAs. It cannot be compared with Table 5.5 in the 2007–08 Annual Report which included supplementary COAs in appeals for the 2006–07 and 2007–08 financial years. This information is now separately reported in Table 6.4.

Figure 6.6 – Bankruptcy Act matters filed 2004–05 to 2008–09**Figure 6.6.1 – Current Bankruptcy matters by year of filing**

A total of 62 Bankruptcy Act matters remain current at 30 June 2009.

Figure 6.7 – Corporations Act matters filed 2004-05 to 2008-09

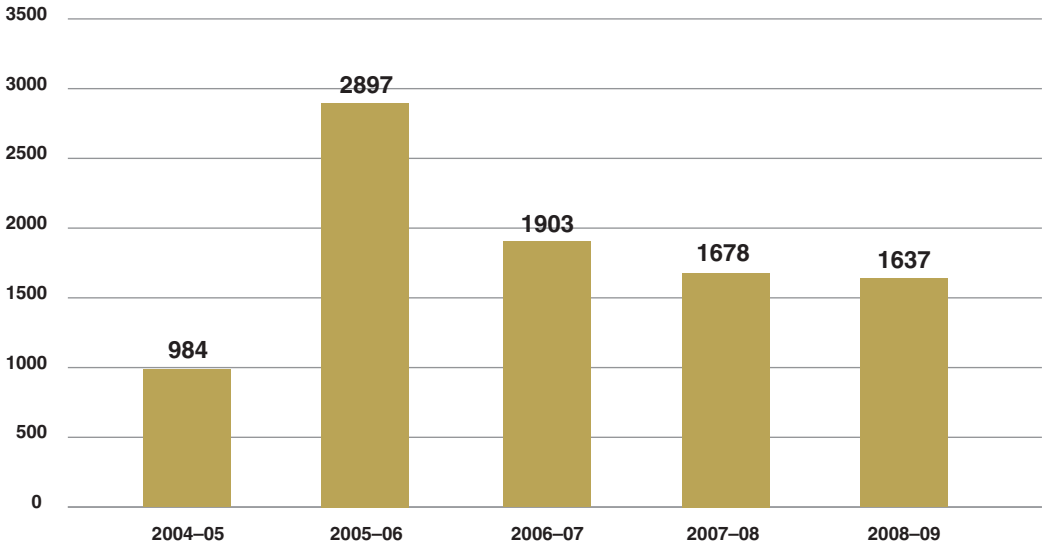
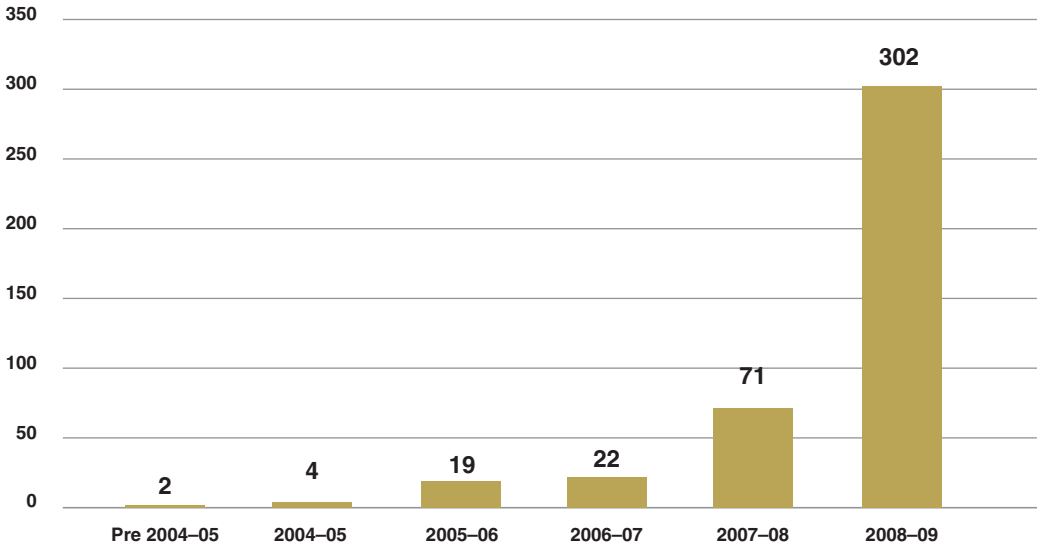


Figure 6.7.1 – Current Corporations Act matters by year of filing



A total of 420 Corporations Act matters remain current at 30 June 2009.

Figure 6.8 – Trade Practices Act matters (excluding competition law) filed 2004–05 to 2008–09

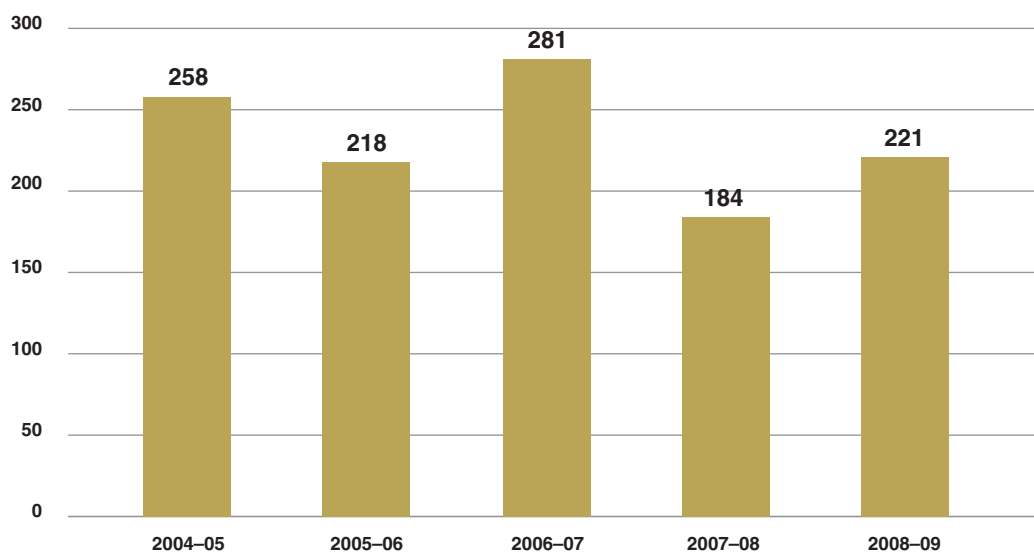
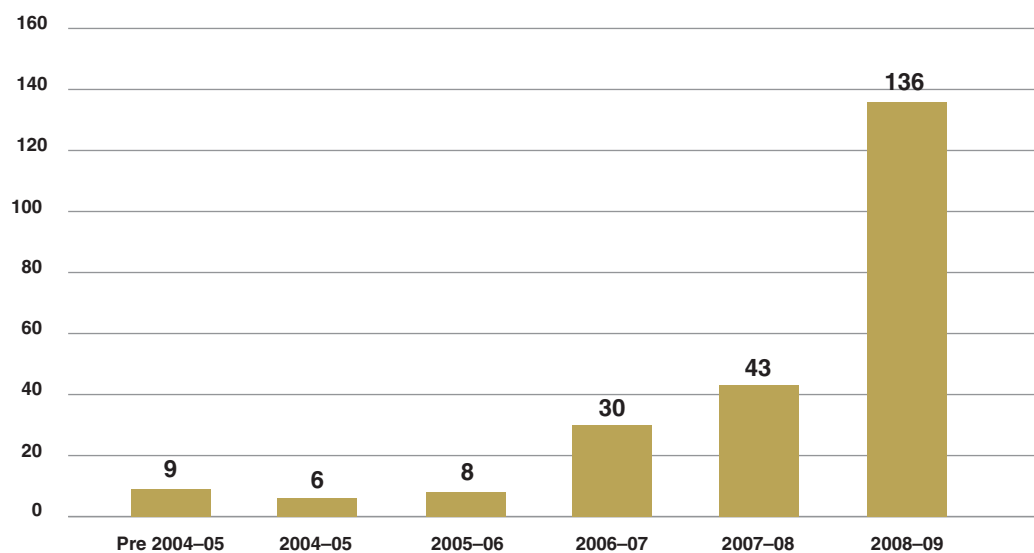
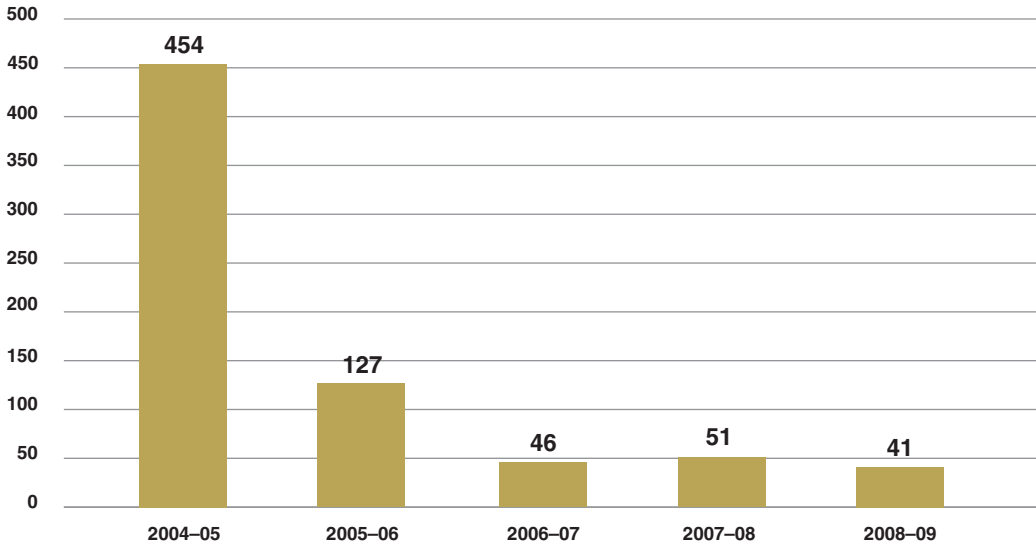


Figure 6.8.1 – Current Trade Practices Act matters (excluding competition law) by year of filing



A total of 232 non-competition law Trade Practices Act matters remain current as at 30 June 2009.

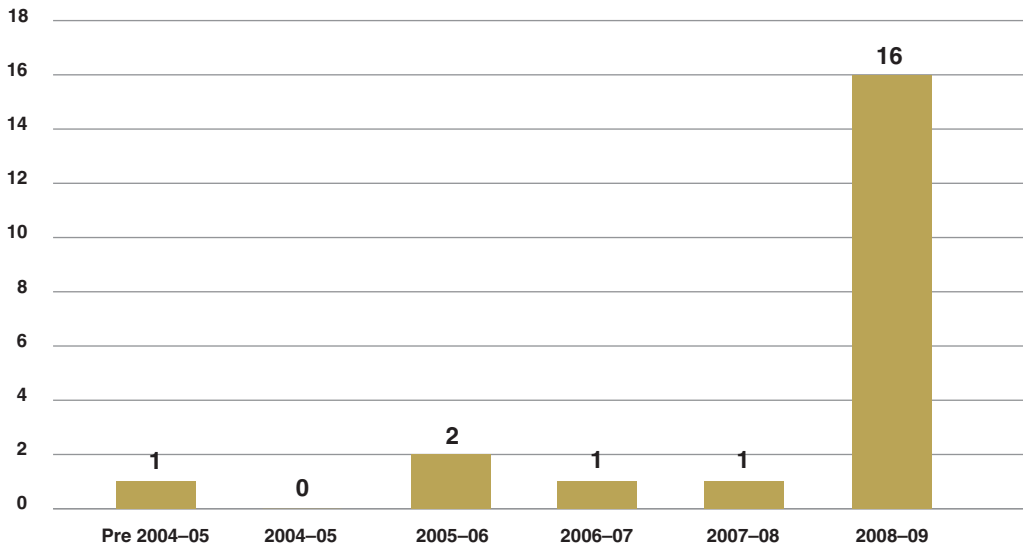
Figure 6.9 – Migration Act matters filed 2004-05 to 2008-09



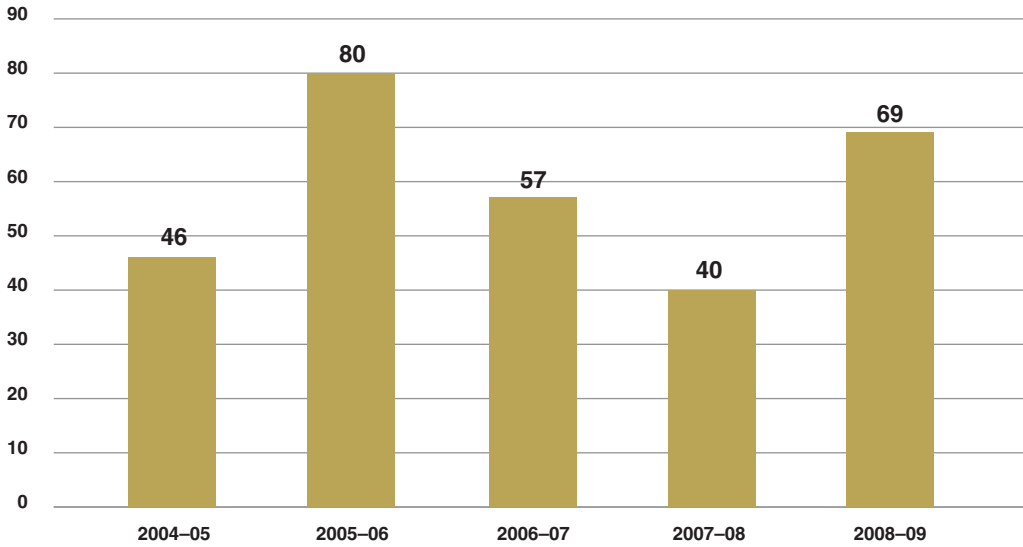
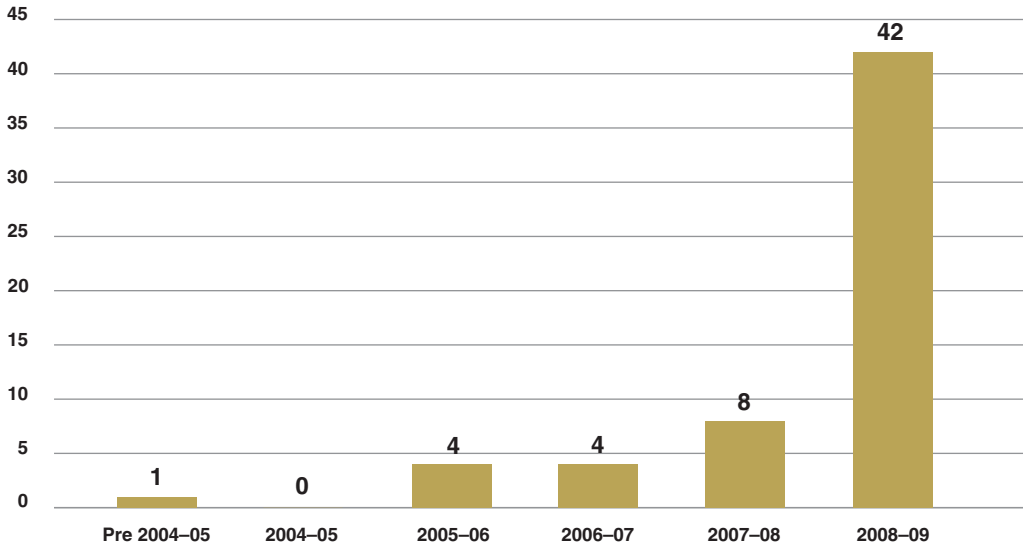
These figures include migration applications filed under the Judiciary Act, Administrative Decisions (Judicial Review) Act and Migration Act.

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 6.9.1 – Current Migration Act matters by year of filing



A total of 21 Migration Act matters remain current at 30 June 2009.

Figure 6.10 – Admiralty Act matters filed 2004–05 to 2008–09**Figure 6.10.1 – Current Admiralty matters by year of filing**

A total of 59 Admiralty Act matters remain current as at 30 June 2009.

Figure 6.11 – Native Title Act matters filed 2004–05 to 2008–09

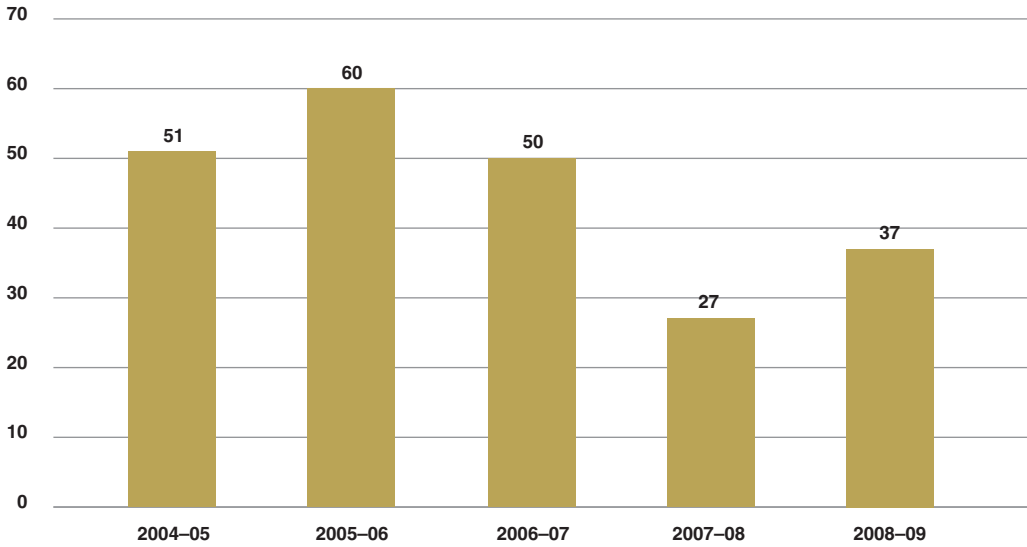
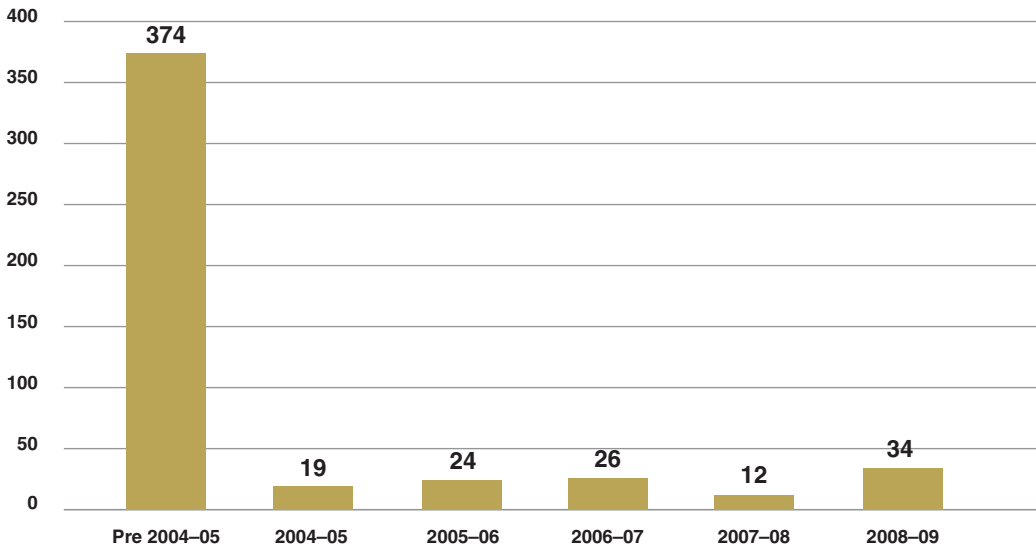
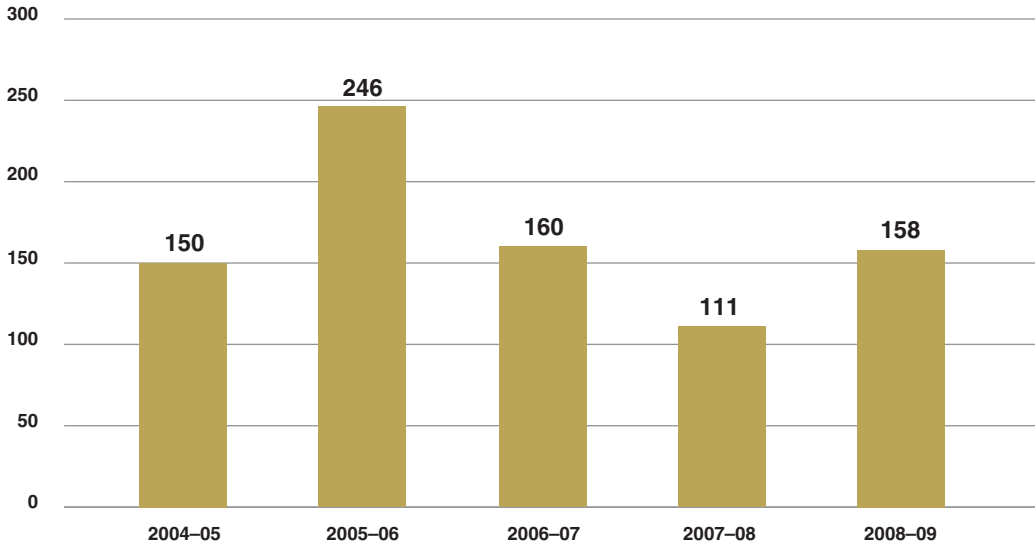
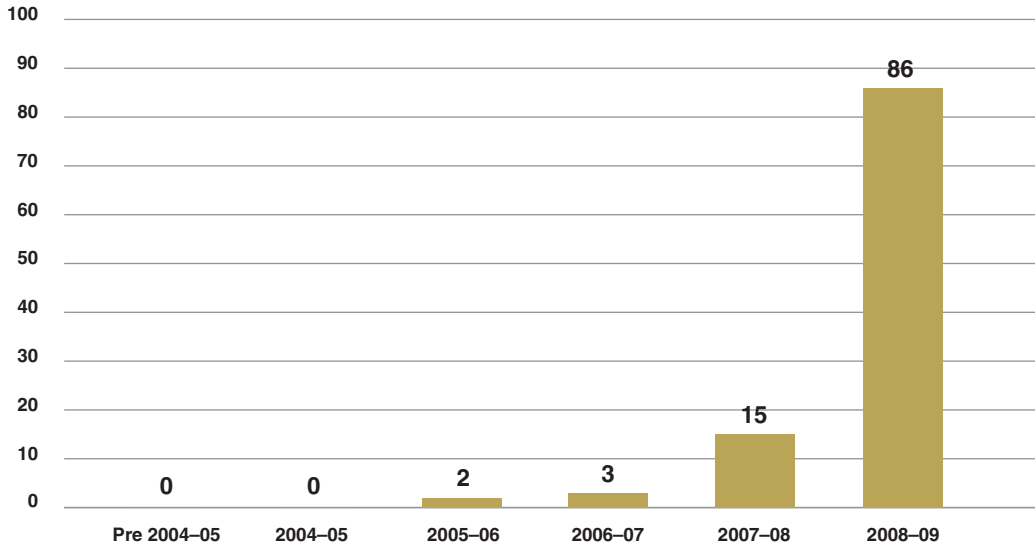


Figure 6.11.1 – Current Native Title matters by year of filing



A total of 489 Native Title matters remain current as at 30 June 2009.

Figure 6.12 – Workplace Relations matters filed 2004–05 to 2008–09**Figure 6.12.1 – Current Workplace relations matters by year of filing**

A total of 106 workplace relations cases remain current at 30 June 2009.

Figure 6.13 - Taxation Matters filed 2004-05 to 2008-09

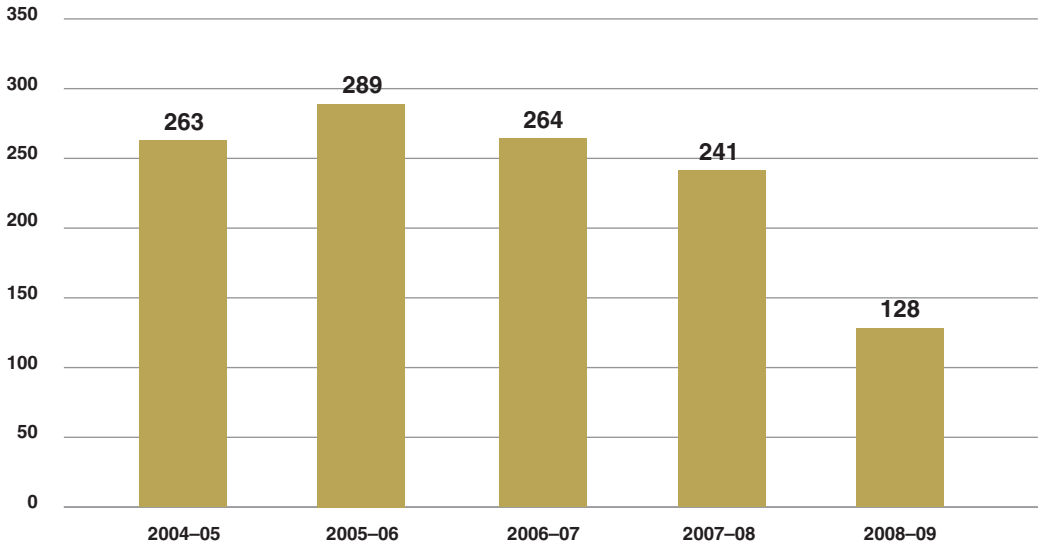
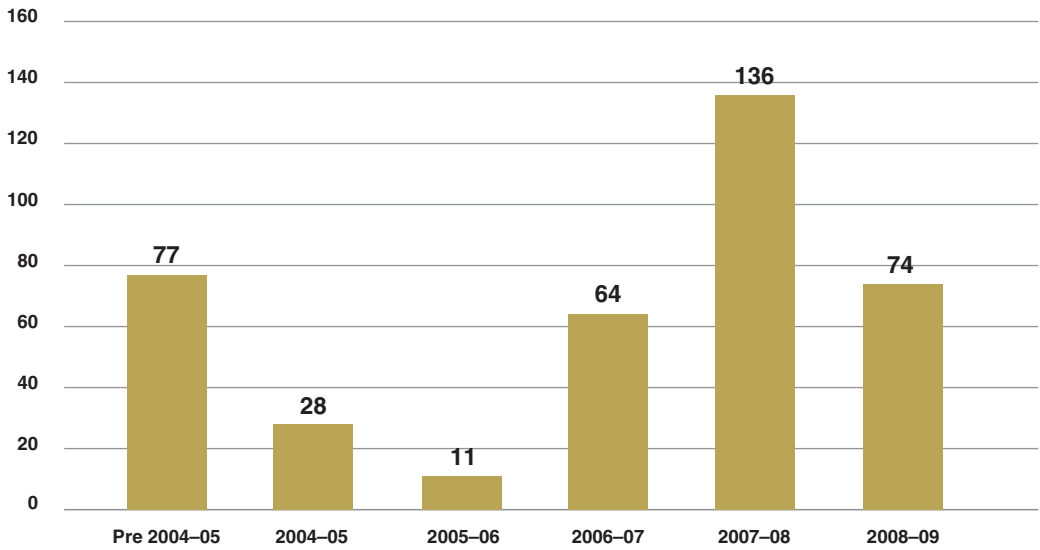
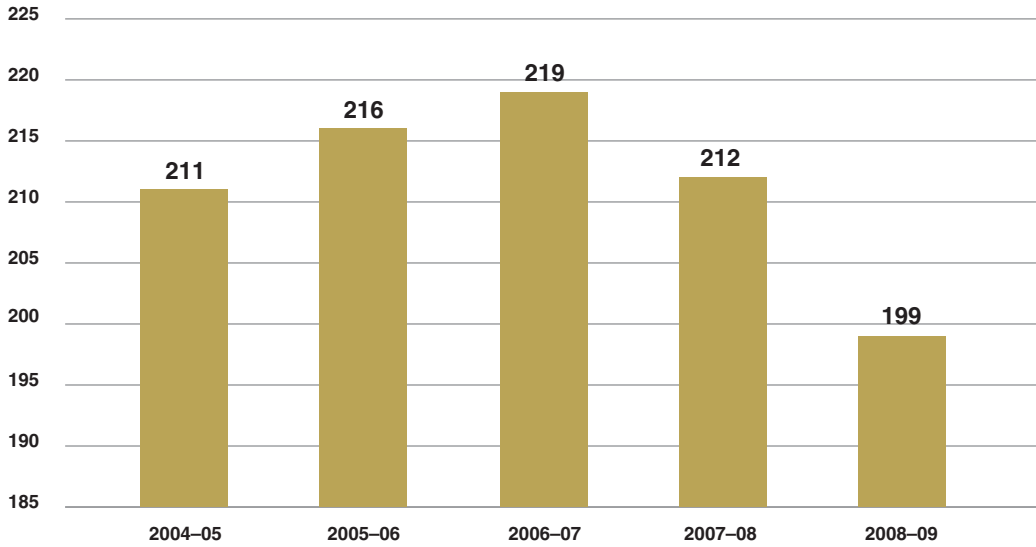
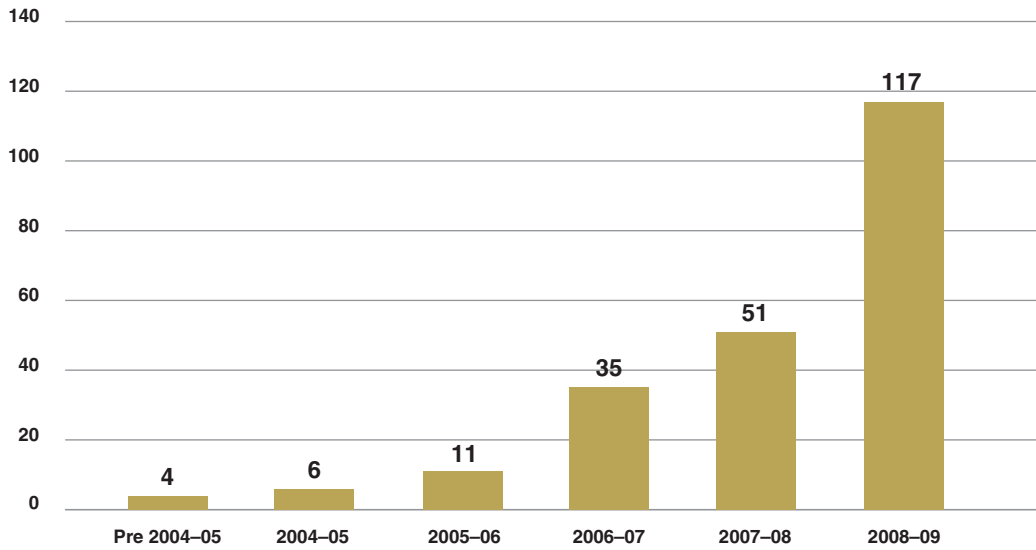


Figure 6.13.1 - Current taxation matters by year of filing



A total of 390 taxation cases remain current at 30 June 2009.

Figure 6.14 – Intellectual Property matters filed 2004–05 to 2008–09**Figure 6.14.1 – Current Intellectual Property matters by year of filing**

A total of 224 intellectual property cases remain current at 30 June 2009.

Figure 6.15 – Appeals and Related Actions filed 2004-05 to 2008-09

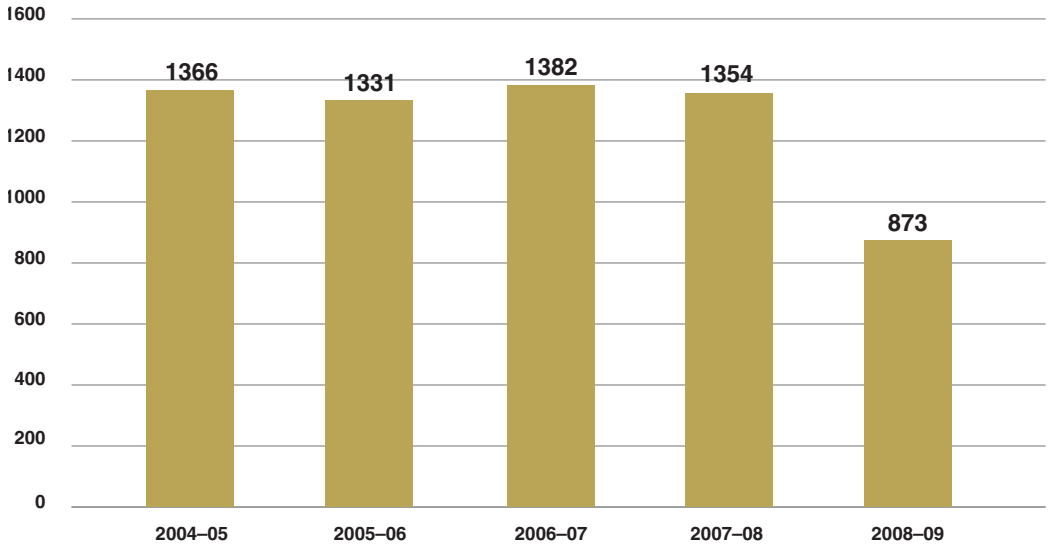
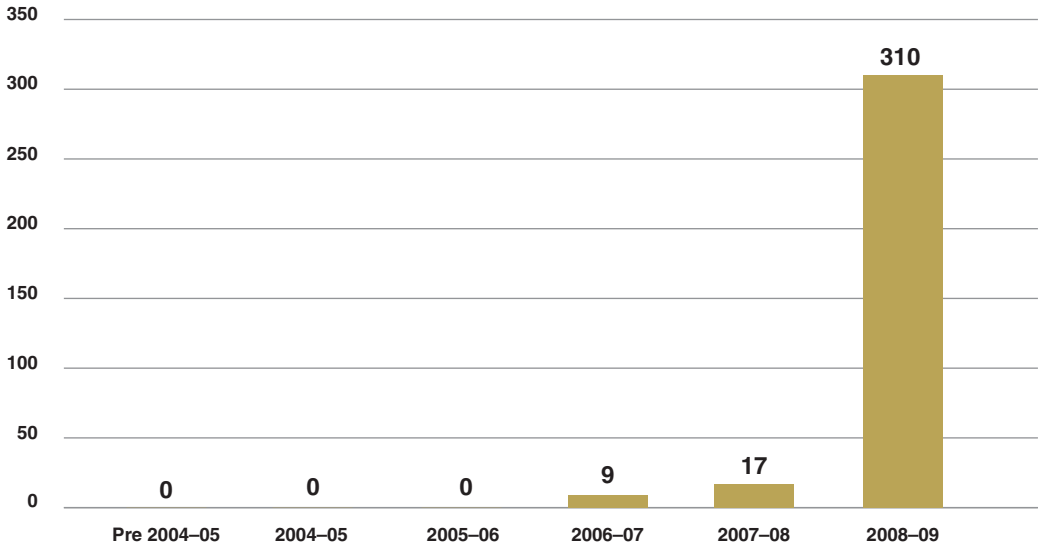


Figure 6.15.1 – Current Appeals and Related Actions by date filed



A total of 336 appeals remain current as at 30 June 2009.

Figure 6.16 – Source of appeals and related actions 2004–05 to 2008–09

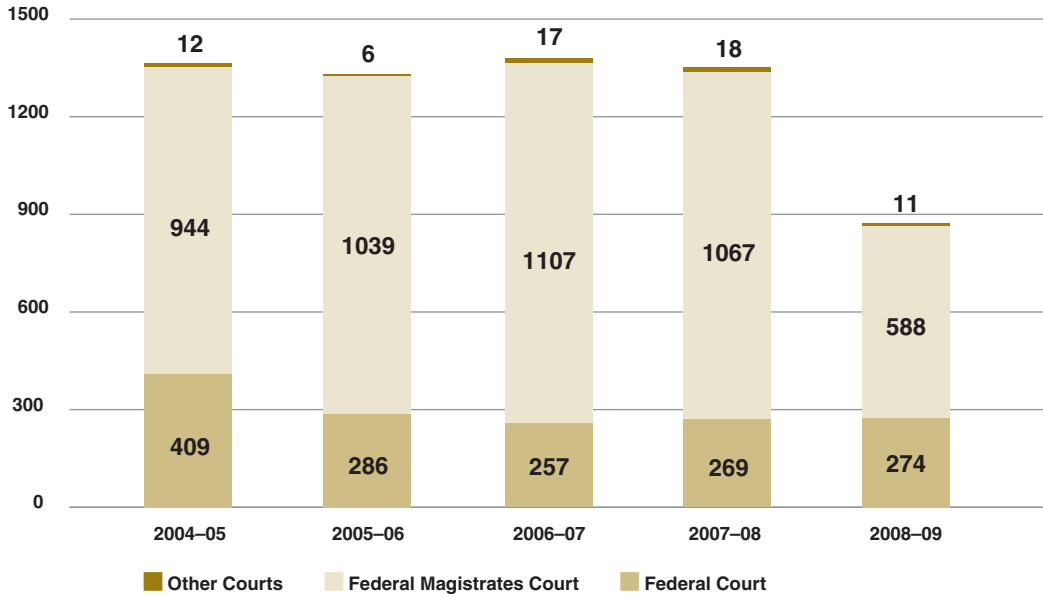


Table 6.6 – Appeals and related actions

Source	2004–05		2005–06		2006–07		2007–08		2008–09	
Federal Court	409	30.0%	286	21.5%	257	18.6%	269	19.9%	274	31.4%
Federal Magistrates Court	944	69.2%	1,039	78.1%	1,107	80.2%	1,067	78.8%	588	67.4%
Other Courts	12	0.9%	6	0.5%	17	1.2%	18	1.3%	11	1.3%
Total by Period	1,365		1,331		1,381		1,354		873	

APPENDIX 7 – 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 1974* to hear applications for the review of:

- Determinations by the Australian Competition and Consumer Commission ('ACCC') in relation to the grant or revocation of authorisations which permit conduct or arrangements that would otherwise be prohibited under the Trade Practices Act for being anti-competitive.
- Decisions by the Minister or the ACCC in relation to allowing third parties to have access to the services of essential facilities of national significance, such as electricity grids or gas pipelines.
- 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. During 2008–09 there were the following changes to the membership:

President

Justice Alan Goldberg – 5 year full-time term ended 29 July 2008

Justice Robert French – part-time from 30 July 2008 to 31 August 2008 (5 year term ended with appointment as Chief Justice of the High Court of Australia from 1 September 2008)

Justice Raymond Finkelstein (Acting President) – part-time from 10 September 2008 for three months

Justice Raymond Finkelstein – 5 year term commenced 12 December 2008

Deputy Presidents: (all appointed part-time)

Justice Robert French – Term ended 29 July 2008

Justice John Mansfield – 5 year term commenced 30 July 2008

Justice Roger Gyles – Term ended 21 August 2008

Justice Peter Jacobson – 5 year term commenced 22 August 2008

Justice Raymond Finkelstein – Term ended 9 September 2008

Justice Peter Heerey – Term ended 15 February 2009

Justice John Middleton – 5 year term commenced 16 February 2009

Members: (all appointed part-time)

Mr Robin Davey – Reappointed for 5 years from 17 July 2008

Mr Grant Latta – Reappointed for 5 years from 17 July 2008

Dr John Marsden – Term expired 30 July 2008; Reappointed for 5 years from 12 December 2008

Professor David Round – Reappointed for 5 years from 17 July 2008

Mr Rodney Shogren - Term expired 30 July 2008; Reappointed for 5 years from 12 December 2008

Miss Margaret Starrs – Term expired 30 July 2008; Reappointed for 5 years from 12 December 2008

Mr Ray Steinwall- Appointed for 5 years from 12 December 2008

The Registrar and Deputy Registrars of the Tribunal are all officers of the Federal Court. Their details are set out in Appendix 4 on page 98.

Activities

Two review proceedings were current at the start of the reporting year. During the year, 14 proceedings were commenced and four matters were finalised, 12 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

Application by ElectraNet Pty Ltd (No 3) [2008] ACompT 3 (30 September 2008)

Application by Chime Communications Pty Ltd [2008] ACompT 4 (22 December 2008)

Application by Telstra Corporation Limited [2009] ACompT 1 (22 May 2009)

Application by Chime Communications Pty Ltd [2009] ACompT 2 (27 May 2009)

Workload Trends

There has been a significant increase in the Competition Tribunal's workload from the previous financial year. In the 2007–08 period there were two new applications filed. In this reporting period there have been 14 new applications filed. The reasons for the increase are not known to the Tribunal.

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.
- To determine a wide range of issues in relation to the statutory licensing scheme in favour 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 2008–09 there were the following changes to the membership:

Justice Perram was appointed as Deputy President from 8 June 2009 for three years.

The Registrar of the Tribunal is an officer of the Federal Court. Details are set out in Appendix 4 on page 98.

Activities

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

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

Defence Force Discipline Appeal Tribunal

Functions and powers

The Defence Force Discipline Appeal Tribunal was established under the *Defence Force Discipline Appeals Act 1955* (Cth) (Act). Pursuant to s 20 of the Act, a convicted person (being a person convicted by the Australian Military Court) may bring an appeal to the Tribunal against his or her conviction and/or against a punishment imposed or court order made in respect of that conviction. The Director of Military Prosecutions may also bring an appeal against a punishment imposed or court order made in respect of a conviction. Further, a prescribed acquitted person (being a person acquitted by the Australian Military Court on the ground of unsoundness of mind) may appeal to the Tribunal in respect of his/her prescribed acquittal.

Pursuant to s 19A of the Act, the Director of Military Prosecutions may refer to the Tribunal a question of law which arose in a completed trial in the Australian Military Court.

The Tribunal has the power to hear and determine appeals and questions of law.

Practice and procedure

Formal determination of sitting dates has now been introduced. Under s 14(1) of the Act, the sittings of the Tribunal will be held at places to be further determined on the following dates, subject to the availability of business: 10 & 11 September 2009; 29 & 30 October 2009; 10 & 11 December 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 following changes to the Tribunal's membership took place:

- Justice Peter Heerey's appointment as President of the Tribunal concluded on 15 February 2009.
- Justice Richard Tracey was appointed President of the Tribunal on 16 February 2009.
- Justice Margaret White was appointed Deputy President of the Tribunal on 28 November 2008.

The Registrar and Deputy Registrars of the Tribunal are officers of the Federal Court. Their details are set out in Appendix 4 on page 98.

Activities

Two matters were current at the start of the reporting year. During the year, six matters were commenced and eight finalised. No matters are pending.

Complaints

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

Decisions of Interest

- *Chapman v Chief of Army* [2008] ADFDAT 3
- *Vitler v Chief of Army* [2008] ADFDAT 4
- *Pook v Chief of Army* [2009] ADFDAT 1
- *Stapleton v Chief of Army* [2009] ADFDAT 2
- *Carmichael v Chief of Navy* [2009] ADFAT 3

APPENDIX 8 – SUMMARY OF DECISIONS OF INTEREST

DISCRIMINATION LAW – disability discrimination – respondent suffering psychiatric disability refused entry into health facility and hospital while accompanied by an “assistance animal”

The State of Queensland (Queensland Health) v Che Forest
(6 June 2008, Chief Justice Black and Justices Spender and Emmett)

This appeal concerned the application of the indirect discrimination provisions under the *Disability Discrimination Act 1992* (Cth) (the Act). The State of Queensland (Queensland Health) had refused to allow Mr Forest’s dogs into the Cairns Base Hospital and the Smithfield Community Health Centre. Mr Forest claimed that his dogs, Buddy and Knuckles, were trained to alleviate the effect of a psychiatric disability. Queensland Health maintained that the refusal was based on the fact that the dogs were ill-behaved and potentially unsafe.

Mr Forest commenced proceedings in the Federal Magistrates Court, which were then transferred to the Federal Court. The trial judge made orders that Queensland Health had unlawfully discriminated against Mr Forest and ordered it to pay \$5000 in damages in one proceeding and \$3000 in the other.

Sections 23 and 24 of the Act provide that it is unlawful to discriminate against a person on the ground of his or her disability by refusing, or imposing terms and conditions on, access to premises or the provision of goods, services and facilities. Section 6 provides that a person discriminates against another person on the ground of disability if the discriminator requires the person to comply with a condition with which a substantially higher proportion of people without the disability could comply. Section 9(1)(f) provides that a person discriminates against another person if the discriminator treats the person less favourably because of the fact that he or she is accompanied by an animal trained to alleviate the effect of the disability.

As to s 6, the Court found that there was insufficient evidence to make the necessary comparison between the base group (that is, those who do not have the disability) and the comparator group (that is, those who do have the disability). As to s 9, however, the Court was divided. Spender and Emmett JJ held that conduct that falls within s 9 will not contravene ss 23 or 24 unless the discrimination was on the ground of the person’s disability. There was no material upon which the primary judge could have made such a finding. In dissent, Black CJ found that there was no additional gloss upon s 9: if the conduct falls within s 9 then it is, by definition, on the ground of the person’s disability. His Honour was of the view that this interpretation gave effect to the policy behind the Act.

ADMINISTRATIVE LAW – delegated legislation – whether ultra vires – Act and Regulation providing for control of conduct of public in connection with major public event – presumption against interference with fundamental rights and freedoms

Evans v New South Wales

(15 July 2008, Justices French, Branson and Stone)

World Youth Day was scheduled to be held in Sydney from 15 July 2008 to 20 July 2008. In preparation, the New South Wales Government had passed the *World Youth Day Act 2006* (NSW) (the Act) and the *World Youth Day Regulation 2008* (NSW) (the Regulation). Under s 46 of the Act persons were prohibited from selling or distributing prescribed articles in areas controlled by the World Youth Day Coordination Authority between 1 July 2008 and 31 July 2008. Clause 4 of the Regulation also prescribed various items which could not be sold or distributed without approval, while cl 7 gave police officers and authorised persons the power to direct people in World Youth Day declared areas to cease engaging in conduct that caused annoyance or inconvenience to participants in a World Youth Day event.

The applicants in this proceeding were two student activists who planned to communicate to the participants of World Youth Day and the community generally their views about sexual tolerance, contraception and reproductive freedom. They planned to hand out items including t-shirts, leaflets, flyers, stickers, condoms and coat-hangers (intended to draw attention to the dangers to women of ‘backyard’ abortions).

The applicants claimed that s 46 of the Act as well as clauses 4 and 7 of the Regulation impermissibly infringed their implied constitutional freedom of political communication.

Due to the importance of the subject matter the Acting Chief Justice made a determination under s 20(1A) of the Federal Court Act that the matter be heard by a Full Court. In doing so, his Honour took into account the urgent nature of the application and the concomitant likelihood that appellate review of the first instance judgment of the Court might not be a practical possibility.

The Court held that the provisions relating to control of the sale and distribution of prescribed items did not infringe the applicants’ implied freedom. Section 46 of the Act and cl 4 of the Regulation were therefore held to be valid. In relation to cl 7, however, the Court held that the provision was invalid to the extent that it sought to prevent merely annoying conduct. The Court applied the High Court’s reasoning in *Davis v Commonwealth* (1988) 166 CLR 79 in concluding that the cl 7(1)(b) was invalid in so far as it related to annoyance because it impermissibly reached beyond the legitimate objects sought to be achieved by the legislation and impinged on freedom of expression.

CONTRACT - nature and construction of performance guarantees – whether unconscionable conduct

Clough Engineering Limited v Oil and Natural Gas Corporation Limited
(22 July 2008, Justices French, Jacobson and Graham)

The appellant, Clough Engineering Ltd, and the first respondent, Oil and Natural Gas Corporation Limited (ONGC), were parties to a construction contract dated January 2005 that related to the development of oil and gas fields off the coast of the State of Andhra Pradesh in India and the construction of associated onshore facilities.

It was a term of the contract that Clough would furnish ONGC, within two weeks of signing, an unconditional and irrevocable performance bank guarantee. The performance guarantees were provided by three banks: the Commonwealth Bank of Australia, the HSBC Bank Australia Ltd and BNP Paribas. Under each guarantee, in the event that Clough failed to honour any of its contractual obligations, ONGC was entitled to invoke the guarantee.

Disputes arose between Clough and ONGC over extensions of time for the performance of the contract and, associated with those disputes, issues relating to the extension of the guarantees and of insurance cover for Clough. On 4 June 2007, the contract was terminated by ONGC and ONGC made a demand upon the banks under the guarantees. Clough sought an injunction against ONGC and the banks, to restrain ONGC from making its demand and the banks from making payment to ONGC. On 7 June 2007, an ex parte interim injunction was granted against ONGC restraining it from taking further steps to demand or obtain payment from the banks under the performance guarantees.

Clough contended before the primary judge that, on the terms of the contract, ONGC was not entitled to make the demand by merely asserting a breach of contract. The principal issue was whether the words “failing to honour” required that it be established as a fact that Clough had failed in some respect to honour its contractual commitments or whether it was sufficient that ONGC claimed that Clough had so failed. Clough also claimed that ONGC had contributed to the circumstances leading to the breaches, that ONGC’s conduct in calling on the guarantees was unconscionable, and that the demand made by ONGC did not satisfy the conditions of a valid demand under the bank performance guarantees.

The primary judge made orders that the amended application be set aside and that the interlocutory injunction granted against ONGC be discharged. Clough appealed from those orders to the Full Federal Court.

The Full Federal Court dismissed the appeal. The Full Court found that upon the proper construction of contract, ONGC was entitled to invoke the guarantee notwithstanding the existence of a dispute between Clough and ONGC as to whether Clough had failed to honour any of its commitments under the contract. The Full Court also found that the demands made under the guarantees were valid. Moreover, Clough was in breach of its obligations under the contract in respect of the extension of the bank performance guarantees and the provision of insurance cover. In addition, given the commercial purpose of such guarantees, assuming the absence of fraud, there would seem to be very little, if any, scope for the application of equitable doctrines of unconscionable conduct to restrain the exercise by a party of its legal rights under such guarantees. The wide purpose of the performance guarantees and their character as reflecting an allocation of risk and a provision of security to their holder militate against any argument as to disproportion in their exercise.

TRADE PRACTICES – section 46 – tendering for supply of sterile fluids and PD fluids to State Purchasing Authorities – whether tenderer has substantial degree of market power in sterile fluids market – whether “alternative offer strategy” by item-by-item pricing and much cheaper bundled tender for sole supply of sterile fluids and PD fluids taking advantage of market power

Australian Competition and Consumer Commission v Baxter Healthcare Pty Ltd
(11 August 2008, Justices Mansfield, Dowsett and Gyles)

The Australian Competition and Consumer Commission (ACCC) alleged that Baxter, a manufacturer and supplier of sterile fluids and PD products and fluids, contravened ss 46 and 47 of the *Trade Practices Act 1974* (Cth) (TPA) by negotiating, tendering for and entering into five long-term contracts between 1998 and 2001 with New South Wales, South Australia, Western Australia, Queensland and the Australian Capital Territory. The ACCC alleged that Baxter had an effective monopoly as the only manufacturer in Australia of sterile fluids other than PD fluids, and that although Baxter was the main manufacturer in Australia of PD fluids, it was exposed to real import competition. The ACCC alleged that by “bundling” in its tenders its PD fluid products with its sterile fluids (in which it had an effective monopoly), Baxter eliminated from effective competition the rival PD fluid suppliers as they either did not wish to, or could not, compete with Baxter in the supply of sterile fluids. The ACCC alleged that Baxter had contravened s 46 of the TPA by taking advantage of its substantial market power in the sterile fluids market for the purpose of harming competitors or preventing competition in the PD fluids market, by requiring the States and the ACT to acquire sterile fluids exclusively from Baxter and between 90 and 100% of its PD fluids from Baxter, and offering comparatively prohibitively high item-by-item prices, so as to compel the States to agree to exclusive supply contracts for the supply of sterile fluids “bundled” with PD fluid products.

Allsop J held at first instance that, but for the State immunity, Baxter would have contravened s 47, but not s 46, of the TPA: [2005] FCA 581. The Full Court (Mansfield, Gyles and Dowsett JJ) dismissed an appeal on a limited issue as to State immunity: [2006] FCAFC 138. The High Court reversed that decision, remitted the matter to the Full Court for consideration of the merits: (2007) 81 ALJR 1622.

Mansfield J delivered the primary reasons of the Full Court, and Gyles J generally agreed with his findings, adding supplementary reasons. Mansfield J found that Baxter had a substantial degree of power in the Australia-wide sterile fluids market, and that it took advantage of that market power by engaging in its alternative offer strategy, including in particular by its pricing level for sterile fluids on item-by-item bids and the comparative pricing of its bundled exclusive supply bids. His Honour further found that the primary judge’s conclusion that Baxter took advantage of its power in that market by the making of a particular offer to South Australia was correct. Mansfield J agreed with the primary judge that the purpose of Baxter was not within s 46(1)(a) of the TPA, but found that it was within s 46(1)(c), so that it contravened s 46(1) of the TPA. His Honour also agreed with the primary judge that Baxter contravened s 47 of the TPA by its alternative offer strategy in relation to the dealings with New South Wales, South Australia, Western Australia and Queensland.

Dowsett J generally agreed with Mansfield and Gyles JJ, but differed in respect of Baxter’s purpose in exercising its market power, and the meaning of s 46(1)(c) of the TPA, finding that the evidence did not establish that Baxter had a purpose within the meaning of that section.

PRACTICE AND PROCEDURE – Anton Piller order – grant of leave to applicants to inspect documents – no discretion to permit inspection to facilitate discovery or provision of particulars – adverse exercise of discretion – general discovery

Metso Minerals (Australia) Ltd v Kalra (No 3)
(13 August 2008, Justice Flick)

This decision concerned a search order issued under Order 25B of the Federal Court Rules in December 2007 and relevantly varied, by consent, in April 2008. The order was made in an ongoing proceeding in which the Applicants alleged breaches of fiduciary duty, employment contract, duties of confidence and copyright by the Respondents.

Pursuant to the search order, certain documents were seized from the Respondents. The Applicants sought access to the seized documents as an aid to the provision of particulars, arguing that this would facilitate case management and further the administration of justice. The question before Flick J was whether documents seized pursuant to a search order might be accessed for the purpose of facilitating discovery notwithstanding that the order was granted for the purpose of preserving evidence.

In his decision, Flick J referred to the extraordinary nature of an Order 25B search order. However, his Honour noted the confined purpose for which the power to grant such an order exists, namely, the preservation of evidence pending the final determination of a proceeding. Accordingly, a party may access seized documents for reasons such as assessing compliance with the order and identifying privileged material.

However, his Honour held that the Court has no power under the Federal Court Rules, or in the exercise of its discretion, to allow an applicant access to seized documents to facilitate discovery or aid in the provision of particulars. To hold otherwise would be inconsistent with the terms of Order 25B and the relevant Practice Note.

In construing Order 25B, His Honour noted the common law's reluctance to interfere with an individual's privacy absent express statutory language. Further, His Honour noted the general trend towards limiting discovery evident in amendments to the Rules. Order 25B should not be used to circumvent the limits on discovery imposed by Orders 15 and 15A notwithstanding that an applicant might derive considerable utility from accessing the seized documents.

Accordingly, Flick J limited any further inspection of the seized documents to that necessary to ensure compliance with the search order. Had occasion arisen for the exercise of discretion, his Honour would have refused inspection given that the parties had formulated a general discovery regime. The Applicant again sought access to the seized documents by way of motion before his Honour in December 2008 but this motion was dismissed. The Full Court refused leave to appeal this subsequent decision.

TRADE PRACTICES – *Trade Practices Act 1974* (Cth), s 45DB(1) boycotts affecting trade or commerce – concerted interference with trade or commerce involving the movement of goods between Australia and places outside Australia – exemption from liability where dominant purpose substantially related to environmental protection – deliberate contamination of feed for sheep intended for live export

Rural Export & Trading (WA) Pty Ltd v Hahnheuser
(22 August 2008, Justices French, Rares and Besanko)

The respondent to this appeal was a member of Animal Liberation SA Inc and he had, with others, entered into a paddock of a sheep feed lot in Portland, Victoria, and placed ham and water into two feed troughs from which about 1,700 sheep fed. The sheep were being held in the feed lot pending live export overseas by ship. The destination of the sheep was the Middle East and the respondent's action prevented the sheep from being exported. The exporter brought a claim for declaratory and injunctive relief and sought damages from the respondent.

The primary judge found that the respondent had engaged in conduct in concert with another person or persons which had the purpose of preventing or substantially hindering the exporter from exporting its consignment of sheep to the Middle East. There was therefore a contravention of s 45DB of the *Trade Practices Act 1974* (Cth) unless the dominant purpose of the respondent in engaging in the conduct was substantially related to environmental protection s 45DD(3)(a). The primary judge found in favour of the respondent on that issue and dismissed the claim.

Two issues were before the Full Court on the exporter's appeal. The first issue was the meaning of environmental protection in s 45DD(3)(a) of the Act, and the second issue was whether the onus of proving that the respondent's purpose was, or was not, within s 45DD(3)(a) was on the person denying the contravention or on the person alleging the contravention.

The Full Court held that the respondent's dominant purpose was not substantially related to environmental protection within s 45DD(3)(a). The Court said that to acknowledge that sheep may be part of the environment on board a vessel did not result in the conclusion that prevention of the sheep from being placed in that environment is environmental protection. The Court said that a desire to protect an existing environment by preventing the habitat of flora or fauna living there from being altered or, perhaps, encouraging its restoration was one thing. It was quite another to contend that environmental protection can involve preventing sheep being loaded on board a ship, not to preserve or protect the environment of the holding pens on board, but to protect the sheep from being in that environment.

The Court said that in the circumstances it was not necessary for it to express a view on the second issue. However, the Court expressed the tentative view that the onus fell on the respondent to prove that he had the dominant purpose identified in s 45DD(3)(a).

INCOME TAX – Part 3-1 of the *Income Tax Assessment Act 1997 (Cth)* – capital gain on sale by Swiss resident company of shares in an Australian company – whether Australia denied the right to tax gain by Swiss-Australia double taxation agreement

Virgin Holdings SA v Commissioner of Taxation
(10 October 2008, Justice Edmonds)

Generally speaking, the issue ventilated in this appeal was concerned with whether Australia's double taxation agreements, concluded prior to the time that Australia taxed capital gains on a comprehensive basis, 20 September 1985, deny Australia the right to tax the capital gains of enterprises of the other State under Australia's capital gains regime in circumstances where Australia is denied the right to tax the business profits of such enterprises.

This case involved the application of the Agreement between Australia and Switzerland for the Avoidance of Double Taxation with respect to Taxes on Income ('the Swiss Agreement') and the Court concluded that the Swiss Agreement did deny Australia the right to tax the capital gains in question in the circumstances of the facts of the case. A similar conclusion was reached by the Court differently constituted a few months later in the case of *Undershaft (No. 1) Limited and Undershaft (No. 2) BV v Commissioner of Taxation* [2009] FCA 41 where the United Kingdom Agreement and the Netherlands Agreement were applicable.

Shortly stated, Virgin Holdings SA, a company incorporated in Switzerland, sold shares in Virgin Blue Holdings Limited ('VBHL'), a company incorporated in Australia, for a net capital gain of about A\$192 million. It was agreed, as between the parties, that:

- (1) The activities of Virgin Holdings were at all material times an enterprise for the purposes of the Swiss Agreement.
- (2) Virgin Holdings did not at any material time have or carry on business through a permanent establishment in Australia (within the meaning of the Swiss Agreement).
- (3) The gain made by Virgin Holdings on the disposal of shares in VBHL was:
 - (a) not income according to ordinary concepts;
 - (b) a net capital gain for the purposes of s 102-5 of the *Income Tax Assessment Act 1997 (Cth)* ('the ITAA 97');
 - (c) apart from the operation of s 102-5, not statutory income of Virgin Holdings for the purposes of the ITAA 97.

The Court held that:

- (1) Tax on the net capital gain is within the term 'the Australian income tax' in Art 2(1)(a) of the Swiss Agreement.
- (2) If tax on the net capital gain is not within the term 'the Australian income tax' in Art 2(1)(a) of the Swiss Agreement, it is substantially similar to 'the Australian income tax' within Art 2(2).
- (3) Art 7(1) (Business Profits) of the Swiss Agreement denied Australia the right to tax the net capital gain.
- (4) If Art 7(1) did not deny Australia the right to tax the net capital gain, then Art 13(3) (Alienation of Property) did.

TRADE PRACTICES – TORT – misleading and deceptive conduct – passing off – appellant sells and promotes energy drink overseas using a mark – respondents commence using that mark in Australia without licence

Hansen Beverage Company v Bickfords (Australia) Pty Ltd
(14 November 2008, Justices Tamberlin, Finkelstein and Siopis)

Hansen is a beverage company based in the US. In 2002, Hansen launched a new energy drink under the brand name, MONSTER ENERGY.

Bickfords is an Adelaide-based company that manufactures and distributes beverages. The managing director of Bickfords travelled to the US in early 2005 and became aware of the MONSTER ENERGY brand. Bickfords saw that there were no trade mark registrations in Australia for MONSTER or MONSTER ENERGY and lodged its own trade mark application in September 2005. From April 2006, Bickfords produced and distributed in Australia a MONSTER ENERGY drink, substantially similar to Hansen's product.

Hansen commenced an application against Bickfords in the Federal Court seeking declarations and consequential relief for passing off and contravention of s 52 of the *Trade Practice Act 1974* (Cth) (TPA). The main issue in dispute was whether Hansen, in April-May 2006, had a sufficient reputation in the mark MONSTER ENERGY in Australia so that the use by Bickfords of that mark conveyed a misrepresentation that Bickfords' product was in some way associated with Hansen's product. The primary judge dismissed the application, finding that Hansen had not established a sufficient reputation in Australia amongst its target market of males aged between 18-30 years.

Hansen had not sold its product in Australia and had not engaged in any direct advertising in Australia. Hansen, however, adopted an indirect advertising strategy which included, amongst other things, sponsorship of extreme sports athletes and events. This strategy of sponsorship meant that there was some, albeit limited, exposure of the MONSTER ENERGY mark to extreme sports enthusiasts in Australia by means of the circulation in Australia of US extreme sports magazines containing photographs of the athletes wearing clothing and using equipment bearing the mark; and through the broadcast on pay television of extreme sports events, in which MONSTER ENERGY sponsored athletes competed. The primary judge referred to Hansen's indirect advertising strategy, but said that he was unable to determine the impact it would have on people in Australia exposed to it. His Honour noted that the target market of Hansen was not just extreme sports followers, but the wider group of males aged 18-30 years. His Honour concluded that Hansen's indirect advertising would not, in itself, give rise to the necessary level of awareness to create a reputation in Australia amongst its target market.

Hansen appealed to the Full Court. The Full Court upheld the appeal and remitted the matter to the primary judge. The Full Court held that the primary judge erred by selecting 18-30 year old males as a class of person by reference to which the reputation of Hansen's product was to be assessed. Tamberlin J (with whom Siopis J agreed) held that under s 52 of the TPA, there is no requirement that a reputation be established amongst a particular class of persons. Rather, the question to be asked is whether a not insignificant number of persons in the Australian community have been misled or are likely to be misled. His Honour noted that the reputation required for a TPA action may be less than that required for a passing off action. Finkelstein J agreed that the matter should be remitted to the primary judge, but said that in assessing whether there had been a contravention of s 52 of the TPA, the number of people likely to be misled by a misrepresentation was not significant. The real question was whether the conduct is misleading or deceptive. His Honour also said that in a passing off claim, the cases show that a significant number of persons in the relevant market must be misled for the claim to succeed. In this case, the primary judge erred by considering the number of people in the target market who were misled. The relevant market may be narrower than the *target* market and in this case, extreme sports enthusiasts constitute a relevant market.

ADMINISTRATIVE LAW – application for order for review and application under s 39B Judiciary Act 1903 (Cth) – review of purported decision by Minister under s 74B Environmental Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act)

Waratah Coal Inc v Minister for the Environment Heritage and the Arts
(10 December 2008, Justice Collier)

The applicant in this case held exploration permits for coal in the Galilee Basin of central Queensland. The applicant proposed a project establishing a new coal mine, railway and port, at an estimated cost of AU\$5.3billion. The proposed project required Federal government approval pursuant to the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) (the Act).

On 29 July 2008 the applicant provided a referral to the Minister for the Environment, Heritage and the Arts for the Minister's decision as to whether the proposed project constituted a 'controlled action' within the meaning of the Act. Section 75(5) of the Act required the Minister to make a decision within 20 business days of receiving the referral.

More than 20 business days after the Minister received the referral the applicant was advised that the Minister had decided that the proposal would have clearly unacceptable impacts on the environment, and accordingly approval was denied.

The applicant claimed that, because the Minister's decision was made outside the 20 business days prescribed by the Act, it was invalid and of no effect.

The Judge held that the Minister's decision was valid. A plain reading of ss 156(3) and 518(1) of the Act demonstrated that any decision of the Minister made beyond the 20 business days prescribed by the legislation was, nonetheless, valid. The legislative construction submitted by the applicant, namely that ss 156(3) and 518(1) only applied to decisions which the Minister had an obligation to make, was not supported by the terms of the Act.

Further, applying the principles articulated in *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355, the Judge held that the legislative purpose of the Act was that any decision made by the Minister with respect to a referral would be valid notwithstanding that the decision was made more than 20 business days after receipt of the referral. The purpose of the period of time stipulated by the legislation was to spur the Minister to action, not to limit the scope of his authority.

Accordingly, the application was dismissed with costs.

COPYRIGHT – copyright in Polo/Lauren logo – whether logo is a “non-infringing accessory” – whether logo is a label – whether the logo can be both a label and a trade mark

Polo/Lauren Company v Ziliani Holdings Pty Ltd

(18 December 2008, Chief Justice Black and Justices Jacobson and Perram)

The first respondent, Ziliani Holdings Pty Limited, imported into Australia from the USA genuine Polo Ralph Lauren garments for the purpose of sale. Most, but not all, bore the well-known polo player logo (Logo). The respondent acquired the garments at various trade fairs in the United States of America where, apparently, last season’s fashions could be purchased at a substantial discount.

The appellant claimed that the importation of the garments infringed its copyright in the Logo under ss 37 and 38 of the *Copyright Act 1968* (Cth). Those sections provided that, subject to Div 3, the importation into or offering for sale in Australia of a copyright work without the permission of the copyright owner was an infringement of that copyright (“secondary infringement”).

The first issue on appeal was whether the Logo was a “label” incorporated into the surface of the garments. If the copyright work is a label which is incorporated into the surface of an article, then s 44C of the Copyright Act deems there to be no infringement by importation and sale. Under s 10(1) of the Copyright Act, an “accessory” included a label incorporated into the surface of the article.

The appellant argued that the Logo was not an accessory for the purposes of s 44C because an accessory needed to be conceptually distinct from an article, and the Logo was so integral to the garments in question that neither meaningfully maintained its identity without the other. The appellant also argued that a label had to have a function that usually, but not invariably, was one of identification, but in this case, the Logo was purely decorative. It was submitted that the Logo could only have the practical effect of identifying the garments as being associated with Polo/Lauren if a consumer knew that the Logo connoted a connection with Polo/Lauren. Finally, the appellant argued that a trade mark could not constitute a label because a trade mark was an intangible property right and a label was intended to connote something physical.

The Full Court dismissed this ground of appeal. The Full Court accepted that the definition of “accessory” assumes that a label has a separate existence from the article with which it is associated. While it is not necessary for the label to be physically separate, the label and the article must be conceptually distinct. While in this case, the Logo was very closely associated with the garments, they were not so inextricably bound up in each other’s identity that they had ceased to be distinct. It was not sufficient to demonstrate that the Logo was an important element in, or an integral aspect of, the garments. It was clear that the Logo, which also may have been accepted as decorative, at least served the function of identifying those clothes with Polo/Lauren. In addition, the Full Court found that there was no reason why a label within the meaning of the definition of “accessory” cannot be or contain a trade mark where that trade mark has been physically manifested and incorporated into an article.

The second issue on appeal was an alternative defence by the respondent under the *Design Act 2003* (Cth). Ziliani argued that the Logo was capable of being registered under the Designs Act and hence was a “corresponding design” under Div 8 of Part III the Copyright Act. If this were so, a defence to infringement was made out. Against this submission, Polo/Lauren argued that the defence could only be made out if the design was “embodied in” the garments and that it could not be said that a garment with the Logo on it “embodied” the Logo.

Polo/Lauren also argued that ss 37 and 38 of the Copyright Act, the secondary infringement provisions, were expressed to be subject only to “Division 3” of the Copyright Act and that the “corresponding design” provisions were not contained in that Division. The consequence was said to be that even if the corresponding design defence was made out, it could not operate as a defence to secondary infringement.

In obiter, the Full Court rejected Ziliani’s defence under Div 8 of Part III of the Copyright Act. The Full Court acknowledged that the defences contained in Div 8 of the Copyright Act are available in response to a claim for infringement by importation or sale under ss 37 and 38. However, the Court found that in the context of Div 8, to “embody” a design means to give a material or discernible form to the design, rather than to include the design as a constituent element. In this case, the defences contained in Div 8 of the Act were not available to the respondents because the Logo was not embodied in the garments in the requisite sense.

CORPORATIONS – insolvency – winding up – litigation funding agreement – agreement providing that a proportion of any settlement or judgment received by company be paid to funder in addition to repaying it all moneys it had outlaid – competing claims and priorities to funds – priority between remuneration payable to litigation funder and moneys owing to secured creditors of company

IMF (Australia) Ltd v Meadow Springs Fairway Resort Ltd (in Liquidation)
(6 February 2009, Justices North, Emmett and Rares)

Shortly before the expiry of the limitation period the liquidator of Meadow Springs Fairway Resort Limited (in Liquidation) (Meadow Springs) entered into a funding agreement with a litigation funder, IMF (Australia) Limited (IMF), to enable Meadow Springs to pursue proceedings for professional negligence against a valuer. Meadow Springs' two secured creditors were aware that its cause of action could become statute barred if the proceedings were not taken and pursued and did not support the liquidator financially in the proceedings. The proceedings were settled for about \$8.5 million and, under the litigation funding agreement, IMF was entitled to \$115,000 for fees pursuant to the funding agreement as well as 35% of any settlement sum. One of the secured creditors, Balanced Securities Ltd (Balanced), argued it had priority over the amounts claimed by IMF. The primary Judge found that IMF was only entitled to priority for the fees of \$115,000, and that the secured creditors were entitled to be paid in priority to IMF's claim for a 35% share of the settlement sum.

IMF and Meadow Springs appealed against the result. The principal question in the appeal was whether the 35% sum payable to IMF under the funding agreement was a cost or expense of the winding up reasonably incurred by the liquidator in realising the settlement sum. Balanced had not used its rights, as a secured creditor, under its securities to realise Meadow Springs' chose in action against the valuer in order to pay its secured debt. Rather, Balanced had allowed the liquidator to realise that asset in the winding up.

The Full Court held that this attracted the principle in *Re Universal Distributing Company Limited (in Liquidation)* (1993) 48 CLR 171, that where assets are realised in the winding up and a secured creditor is a party to the winding up (as Balanced was) then the proceeds received from the asset must bear the costs of their realisation, just as if the secured creditor had taken steps or proceedings itself to realise the asset and incurred costs in doing so.

The Full Court allowed IMF's appeal and found it to be entitled to its 35% share of the settlement in priority to the secured creditors. That percentage share was a part of the consideration to be given to IMF for the provision of its litigation funding services, even though the funding agreement drew a distinction between legal costs and fees payable to IMF, as sums of money, and the obligation of the liquidator to transfer to IMF an interest in an identified fund (the proceeds of settlement), as a percentage share of any settlement amount. The liquidator had not been able to pursue and preserve the benefit of the cause of action against the valuer himself. IMF assumed an obligation to the liquidator to fund the whole of the litigation, including taking on the risks of adverse costs orders, security for costs and suffering a commercial loss if the proceedings were lost. Without the funding agreement between IMF and the liquidator, the fund would not have been realised.

ADMIRALTY – treatment or holding of livestock sewage onboard ship – Maritime Authority refused foreign flagged ship permission to load livestock

Australian Maritime Safety Authority v Livestock Transport & Trading
(10 February 2009, Justices Dowsett, Rares and Gilmour)

The respondent owned and operated the ship “*MV Al Messilah*”, a Kuwaiti registered vessel used to transport livestock. Upon its arrival at the port of Fremantle the appellant Authority issued a notice directing that the ship’s cargo, live sheep, not be loaded until a sewage treatment system was installed on board.

The Authority issued the notice under cl 12.2 of item 43 of the Marine Orders, a legislative instrument created under the *Navigation Act 1912* (Cth) (the Act). Division 12C of the Act (titled “Sewage”) gave effect to certain parts of Optional Annex IV to the *International Convention for the Prevention of Pollution from Ships 1973* (MARPOL 73/78). MARPOL 73/78 effected a system of pollution control that gave the State in which a ship was registered (the ‘flag State’) the primary responsibility for ensuring it complied with its terms.

The shipowner challenged the validity of the notice on the ground that the relevant Marine Orders were inconsistent with the Navigation Act, and were of no effect. It argued that in giving effect to MARPOL 73/78 the Act did not authorise the making of regulations that would undermine the system of flag state regulation established by MARPOL 73/78. The shipowner succeeded before the primary judge ([2008] FCA 1544).

The Full Court allowed the appeal. It held that the power in the Act to make regulations authorised cl 12.2. Those powers included regulations specifying requirements for the construction, equipment and machinery of a ship (s 190B(1)), and the loading, stowing, carriage and unloading of cargo (s 257(1)). The Full Court held that cl 12.2 prescribed a standard for carriage of livestock and the treatment and disposal of sewage they generate while on board. Thus, cl 12.2 was a regulation concerning both equipping a ship and the stowing and carriage of its cargo (namely, sheep). The regulation making powers under each of ss 190B(1) and 257(1) were not limited by the system of flag State regulation envisaged by MARPOL 73/78. The Full Court rejected the argument that those sections should be read down as general provisions that ought to yield to the specific provisions in Div 12C, including s 267ZQ, that gave partial effect to MARPOL73/78 in relation to responsibilities of Australia as a flag State.

The shipowner also argued that the Act should be given an interpretation that did not undermine comity between trading nations, and the principle that the law of the flag governs the internal discipline and activities of a ship in a way not affecting the interests of the port State. In dismissing this argument, the Full Court gave effect to the important additional principle of maritime law that when entering local ports for the purposes of trade, a foreign ship subjects herself to the law of the place to which she goes. The Full Court also held that the principles relied on by the shipowner could not override the clear purpose of the regulation making power in the Act. Those words were intended to recognise Australia’s interests in regulating international trading ships using its waters.

APPEAL – written request to Switzerland for assistance in a criminal matter under the *Mutual Assistance in Criminal Matters Act 1987 (Cth)* – whether subsequent correspondence between the Swiss Federal Office of Justice and the Criminal Division of the Commonwealth Attorney-General’s Department constituted part of the request or alternatively a new request – whether the failure of the Commonwealth Attorney-General or his delegate to sign the subsequent correspondence render the original request or alternatively the new request invalid – whether Request, however constituted, was invalid by reason that it contained material which was misleading and/or because it failed to contain material relevant to some of the allegations therein

Dunn v The Australian Crime Commission
(24 February 2009, Justices Moore, Jessup and Gilmour)

A delegate of the Commonwealth Attorney-General made a written request (Request) to Switzerland seeking to obtain business records from an accountancy services firm in Geneva and from a private banking institution in Lugano. The Request was made under the *Mutual Assistance in Criminal Matters Act 1987 (Cth)* and in the course of criminal investigations undertaken by the Australian Crime Commission commonly referred to as “Operation Wickenby”. A request for such assistance may be made only by the Attorney-General or his delegate.

The Request named certain persons, including Dunn, suspected of having committed serious offences against Commonwealth law. The Swiss authorities wrote seeking clarification of the Request. Correspondence in response emanated from Australia, none of which was signed by the Attorney General or his delegate.

The appellants contended that the subsequent correspondence formed either part of the Request or constituted a new request and were invalid because they were not signed by the Attorney-General or his delegate and further because the Request and subsequent correspondence were misleading by reason of factual inaccuracies, mis-descriptions and lack of full disclosure of relevant material.

The Full Court, in dismissing the appeal, held that the substance of the suspected offences included in the Request was sufficiently clear to enable the Swiss authorities to make an assessment whether to refuse assistance. The subsequent correspondence from Australia did no more than help the Swiss authorities to decide whether they would provide the assistance sought in March 2005 in the Request.

Accordingly, the subsequent correspondence was neither part of the Request nor a new Request under the Mutual Assistance Act.

Dealing with the alleged factual inaccuracies and mis-descriptions in the contents of the Request, their Honours concluded that s 14 of the Mutual Assistance Act contemplated the making of the Request irrespective of the truth or accuracy of the allegations that were under investigation because there can be an ‘investigation into a criminal matter’ even if it is ultimately established that no crime has been committed.

Further, even assuming that the Request had contained errors of the kind about which the appellants’ complain, the Court concluded that it would be irrelevant to the validity of the Request, because the power to make the Request did not depend upon the accuracy of the statement of the factual matters that were under investigation.

The Court rejected the submission by the appellants that there was a general duty of disclosure of all material facts upon the Attorney-General when making a request. Their Honours emphasised that any duty of disclosure depends for its existence upon the legislative scheme of the relevant statute.

PRIVILEGE – Legal professional privilege – Litigation privilege – Finalised proofs of evidence – Whether litigation privilege exists where documents created for purpose of providing to opposing party and in fact so provided

Australian Competition and Consumer Commission v Cadbury Schweppes Pty Ltd
(20 March 2009, Justices Mansfield, Kenny and Middleton)

The Australian Competition and Consumer Commission (ACCC) served 111 finalised proofs of evidence on the opposing parties (Visy) in earlier separate proceedings, pursuant to Court order, to the intent that those proofs were to give notice to Visy of the content of the oral evidence to be led at trial, and could be admitted into evidence instead of calling the witnesses if the parties agreed. None of the proofs were, in their entirety, expressly claimed to be confidential. In the event, judgment was delivered by Heerey J in the earlier separate proceedings without a trial having been conducted, and the makers of the proofs were not called to give evidence, nor were the proofs introduced into evidence. In later proceedings, Visy was ordered to file and serve witness statements (including proofs) served on it by the ACCC in the earlier separate proceedings.

The ACCC claimed legal professional privilege in the proofs in the hands of Visy. Gordon J decided that the privilege held by the ACCC in its finalised proofs of evidence was lost when the ACCC filed and served the proofs on Visy in the earlier separate proceedings in compliance with Heerey J's orders.

The main issue in the appeal was whether or not the proofs prepared, filed and served by the ACCC (prepared for the purpose of ACCC using them in the earlier separate proceedings and served on Visy in accordance with the orders of Heerey J) were subject to legal professional privilege (more specifically, litigation privilege), and whether or not the filing and service of those proofs constituted a waiver (implied or otherwise) of legal professional privilege in the proofs, and if so, to what extent.

The Full Court considered the scope of and rationale for litigation privilege, noting that the fundamental purpose for litigation privilege is to protect communications made or materials which are made confidentially between the client and the legal representative or which otherwise come into existence for the dominant purpose of litigation, which are not disclosed to the opposing party.

The Full Court considered the inconsistency between the disclosure of the proofs to Visy, with the maintenance of litigation privilege. It held that the purpose of the proofs was to tell Visy what the ACCC in any event wanted to disclose to Visy (and to the Court). The disclosure of the proofs was not made on a relevantly confidential basis, albeit made expressly with the protection of an "implied undertaking". On principle, the Full Court held that there was no litigation privilege in the proofs, but that if litigation privilege did exist, there was a complete waiver of any privilege by the service of the proofs on Visy, being a deliberate act of disclosure inconsistent with the maintenance of privilege. The appeal was dismissed.

TRADE MARKS – what constitutes “use” by the registered owner of a trademark – removal from the Register for non-use – prospective operation of an order to remove a trade mark from the Register – infringement – goods of the same description

E & J Gallo Winery v Lion Nathan Australia Pty Ltd
(24 March 2009, Justices Moore, Edmonds and Gilmour)

This appeal involved a contest between a large American wine producer, E & J Gallo Winery, and a large Australian company, Lion Nathan Australia Pty Ltd over the use of the word BAREFOOT as or as part of a trade mark associated with alcoholic beverages. Gallo’s trade mark was registered in class 33 for “wines”. Gallo acquired the trade mark in January 2005. Lion Nathan is selling a speciality beer, using the trade mark BAREFOOT RADLER, in the Australian market. Wine bearing the trade mark BAREFOOT was exported to Germany in 2001 by a US company that then owned the Gallo mark. In 2002 less than two dozen bottles of wine from the German stock was imported into Australia and sold between 7 May 2004 and 8 May 2007 (the non-use period for the purposes of s 92(4)(b) of the Trade Marks Act 1995 (Cth)). Neither Gallo nor the US company which earlier owned the mark had set about selling wine with its mark during the non-use period in Australia.

What constitutes use in Australia of a trade mark by the registered owner was a central issue in the appeal.

The Full Court agreed with the primary judge that there had been non-use of the trade mark between 7 May 2004 and 8 May 2007 and the trade mark should be removed from the Register. The Full Court held that the use of a trade mark under s 17 of the Trade Marks Act, was not “use” in a vacuum but use “in the course of trade by a person”. No existing authority addressed the question of whether inadvertent, unknown and unintended use in Australia was use of the trade mark for the purposes of Australian law. There was no course of trade between Gallo and any party in Australia. There was, as the primary judge found, no “projection” of the BAREFOOT wine by the proprietor of the BAREFOOT trade mark into the Australian market but only into the German market.

CONSTITUTIONAL LAW – s 51(xxxi) Constitution – acquisition of property on just terms – validity of Commonwealth laws and agreements made pursuant to those laws providing for grants of financial assistance to States under s 96 Constitution – whether Commonwealth laws and agreements effect or authorise the acquisition of property

Spencer v Commonwealth of Australia
(24 March 2009, Chief Justice Black and Justices Jacobson and Jagot)

This case concerned the constitutional validity of Commonwealth laws and inter-governmental agreements providing for grants of financial assistance to States under s 96 Constitution. The appellant claimed that those laws infringed s 51(xxxi) of Constitution.

The appellant was the owner of a property subject to the *Native Vegetation Act 2003* (NSW) and its predecessor, the *Native Vegetation Conservation Act 1997* (NSW). These statutes imposed restrictions on the clearing of native vegetation on the property. The appellant claimed that these restrictions effected the acquisition or expropriation of certain interests in the property and that they did so by effect or authority of the *Natural Resources Management (Financial Assistance) Act 1992* (Cth) and the *Natural Heritage Trust of Australia Act 1997* (Cth). It was therefore claimed that those Commonwealth Acts were laws with respect to the acquisition of property which did not provide for just terms as required by s 51(xxxi) of the Constitution.

The primary judge dismissed the proceeding summarily pursuant to s 31A of the *Federal Court of Australia Act 1976* (Cth). His Honour concluded that neither the Commonwealth laws nor the inter-governmental agreements required NSW to acquire property or impose the restrictions the appellant complained of. Therefore any acquisition of the property was only effected or authorised by the State statutes. Therefore the Commonwealth statutes could not be characterised as laws with respect to the acquisition of property.

Jagot J (Black CJ and Jacobson J agreeing) dismissed the appeal. Following *Pye v Renshaw* (1951) 84 CLR 58, and distinguishing *PJ Magennis Pty Ltd v Commonwealth* (1949) 80 CLR 382, a distinction was drawn between a s 96 grant made on the basis that a State may use the grant to assist in the financing of the acquisitions of property otherwise than on just terms, (which is not a law with respect to the acquisition of property) and a grant made on a condition that a State acquire property on terms that are unjust. The Commonwealth statutes in question fell into the former category and accordingly were not capable of being characterised as laws with respect to the acquisition of property.

In any case, it was held that the appellant did not have standing. He had no relevant interest in any declaration of constitutional invalidity because such a declaration would not affect the operation of the State statutes in imposing the restrictions complained of.

EXTRADITION - application for review of magistrate’s determination on eligibility for surrender to an extradition country pursuant to s 19 of the *Extradition Act 1988* (Cth) - function of magistrate - whether Extradition Treaty with Hungary affects the determination of eligibility for surrender - whether Treaty modifies the meaning of “extradition offence” in s 5 of the Extradition Act - whether Treaty modifies s 19 so as to require magistrate to consider whether the offence in respect of which extradition is requested was an extradition offence

Zentai v Republic of Hungary
(31 March 2009, Justice Gilmour)

Zentai is alleged to have committed a war crime in Budapest on 8 November 1944 and applied for review of a magistrate’s determination that he was eligible for surrender to the Republic of Hungary pursuant to s 19 of the *Extradition Act 1988* (Cth) (the Act).

Notice under s 16(1) had been given by the Attorney-General to a magistrate setting out the ‘extradition offence’ in terms of the alleged war crime. Such notice must not be given unless the Attorney-General is of the opinion that the person is an extraditable person in relation to the extradition country.

The alleged war crime was not an offence in November 1944, such crime only being established by Hungary in 1945 although the relevant decree deemed the acts, which the applicant is alleged to have carried out at a prior time, to be an offence. Art 2, para 5 of the Extradition Treaty between Australia and Hungary provides that extradition may be granted irrespective of when the offence in relation to which extradition is sought was committed provided that it was an offence in the requesting State at the time of the acts or omissions constituting the offence. The treaty imports the terms of the Treaty into the Act subject to s 11(6).

Section 11(6) of the Act provides that, for the purpose of determining whether a person is eligible for surrender under s 19(1), no limitation, condition, qualification or exception otherwise applicable under this section has the effect of requiring or permitting a magistrate to be satisfied of any matter other than matters set out in paragraph 19(2)(a),(b),(c) or (d).

The magistrate held that she was confined to matters specified in s 19(1) and (2), and could not examine the Notice so long as it appeared on its face to comply with the requirements in s 16 – which it did. The Attorney-General had already determined that the applicant was an extraditable person.

Mr Zentai submitted that Art 2 para 5 of the Treaty altered the definition of ‘extradition offence’ in s 5 of the Act so as to exclude the alleged war crime and thereby the operation of s 19. The applicant contended that for the purposes of ss 12 and 16 of the Act, the magistrate, must consider whether the relevant offence is an “extradition offence”.

Gilmour J applied *Director of Public Prosecutions v Kainhofer* (1995) 185 CLR 528 analogously and concluded that the opinion of the Attorney-General formed pursuant to s 6(b) of the Act, that the offence articulated in the extradition request was an extraditable offence, was not open to be considered afresh by the magistrate.

Gilmour J also considered that the provisions of s 10(4) of the Act precluded any review as to whether the alleged war crime was an extradition offence. Further his Honour applied *Papzoglou v Republic of Philippines* (1997) 74 FCR 108 by extension to s 19(1) of the Act as not including restrictions or limitations arising under a treaty.

The applicant’s eligibility for surrender was affirmed nonetheless it was held that Art 2 para 5 of the Treaty may have some work to do in the future, for example when the Attorney-General comes to determine under s 22(2) of the Act whether Zentai ought be surrendered to Hungary. The matter is on appeal.

DEFAMATION – credit reporting agency’s reports to credit providers – reports allegedly defamatory of applicants in respect of their creditworthiness – allegation that they were refused credit by credit providers who relied on erroneous credit reports – respondent’s computerised database – credit providers who subscribe (respondent’s customers) enter information in the database electronically and extract information from it electronically, in each case without respondent’s intervention – whether respondent credit reporting agency communicated to subscribing credit provider the information that that credit provider extracted electronically – in some cases credit provider’s computer rejects application for credit automatically upon receipt of adverse credit report – essential to cause of action in defamation that the defamatory publication be published to a human mind –qualified privilege

Dale v Veda Advantage Information Services and Solutions Ltd
(1 April 2009, Justice Lindgren)

The respondent (Veda) was a “credit reporting agency” and carried on a “credit reporting business” within the meaning of the *Privacy Act 1988* (Cth). Nine individuals sued Veda for damages for defamation and negligence. The nine proceedings were heard together.

The applicants’ claims were that Veda had misrepresented their creditworthiness in credit reports that it had issued to credit providers to whom they had applied for credit.

Veda’s business centred on a computerised database that recorded information concerning the creditworthiness of individuals. The source of the information was the credit providers who subscribed to Veda’s system. Subscribers entered data electronically into the system and accessed the system electronically to obtain credit reports from it. Veda’s role was limited to maintaining the system, providing training and instruction to its subscribers, and so on. Veda had no role in checking the correctness of the data entered and obtained by its subscribers, such as information that an individual had defaulted in meeting his or her obligations to a credit provider.

In relation to the defamation claim, the Court held that Veda published the credit reports on an occasion of qualified privilege. In so holding, the Court distinguished a much criticised but longstanding case of *Macintosh v Dun* (1908) 6 CLR 303; [1908] AC 390, in which the Privy Council had decided that a credit report provided by a mercantile agent in Sydney in 1903 did not enjoy qualified privilege.

In the case of most of the alleged instances of defamation, the credit provider’s system of interrogating Veda’s database, receiving the adverse credit report and acting on it to reject an application for credit was all electronic. Therefore it was not proved that the matter complained of was published to any human mind within the office of the inquiring credit provider. This was a further reason why the defamation claim failed in those instances.

In relation to the negligence claim, the Court held that Veda did not owe the applicants a duty of care to ensure that data in the database was correct, and therefore that credit reports obtained by subscribers from it were correct, having regard to the limited nature of its role and the applicability of the law of defamation to the circumstances.

The nine proceedings were dismissed with costs.

CORPORATIONS – application under *Cross-Border Insolvency Act 2008 (Cth)* – Korean insolvency proceeding recognised as a foreign proceeding and a foreign main proceeding pursuant to the Model Law on Cross-Border Insolvency contained in Schedule 1 to the *Cross-Border Insolvency Act*

Hur v Samsun Logix Corporation
(17 April 2009, Justice Jacobson)

This case involved the first application before the Federal Court under the *Cross-Border Insolvency Act 2008 (Cth)* (the Act). The applicant sought orders under articles 15, 17 and 21 of Schedule 1 of the Act for a foreign proceeding to be recognised in Australia and for final orders to preserve the defendant's property in this jurisdiction.

The defendant was a company incorporated in South Korea. The Seoul Central District Court, 3rd Bankruptcy Division, Korea made an order in March 2009, on the application of Samsun, that its petition to commence rehabilitation proceedings be granted. The Korean court appointed the plaintiff as the receiver of Samsun.

Under article 17 of Schedule 1 of the Act, the Korean proceeding was to be recognised by the Court if it was a foreign proceeding in accordance with the definition contained in article 2 of Schedule 1 and if the plaintiff was a person who was appointed in the Korean proceeding to administer the re-organisation of Samsun's assets or affairs or to act as a representative in a foreign proceeding.

Jacobson J was satisfied that the Korean proceeding was a proceeding relating to insolvency in which the assets and affairs of Samsun were subject to the supervision of the Korean Court for the purpose of the re-organisation of that company. His Honour was also satisfied that the plaintiff was a foreign representative who was entitled to make the application.

In addition, Jacobson J was satisfied that the Korean proceedings should be recognised as a foreign main proceeding because it was taking place in the State where Samsun had the centre of its main interests.

Accordingly, his Honour allowed the application and made orders under articles 17 and 21 of Schedule 1 of the Act.

NATIVE TITLE – future act – proposed mining lease – review of Tribunal finding that grantee party did not fulfil its obligation to ‘negotiate in good faith’ – scope of obligation to negotiate in good faith – whether stage of negotiations relevant – whether requirement to negotiate specifically about the future act – Tribunal’s power to make a determination under s 38 of the *Native Title Act 1993* (Cth)

FMG Pilbara Pty Ltd v Cox

(30 April 2009, Justices Spender, Sundberg and McKerracher)

The applicant (FMG) commenced negotiations with the first respondent (PKKP) and the second respondent (WGAC) in relation to proposed Land Access Agreements (LAAs) over part of PKKP’s native title claim area and the area the subject of a determination in favour of WGAC. The LAAs encompassed the relevant ‘future act’, being the proposed grant of a mining lease in favour of FMG.

In April 2007, the third respondent (the State) gave notice pursuant to s 29 of the *Native Title Act 1993* (Cth) (the Act) of the future act. It followed that FMG, PKKP, WGAC and the State were required to negotiate in good faith with a view to obtaining the agreement of PKKP and WGAC to the doing of the act (s 31(1)(b)).

The parties agreed to negotiate on a ‘whole of claim’ basis and developed a negotiation protocol to ensure the negotiation of the LAAs would proceed pursuant to that protocol. Negotiations ensued. After a period of six-months had passed since the s 29 notification day, FMG applied to the Tribunal for an arbitral determination pursuant to s 38 of the Act.

The Tribunal found that FMG had not fulfilled its obligation to negotiate in ‘good faith’ in accordance with s 31(1)(b) of the Act. The Tribunal concluded that by reason of this failure, it did not have jurisdiction to make an arbitral determination under s 38 of the Act. The Tribunal found that although FMG had approached negotiations in a manner which was reasonable and honest, it had not advanced negotiations to a stage where it could be said that it had discharged its duty to negotiate in good faith.

FMG appealed against the decision of the Tribunal. On appeal to this Court, it was held that the fact the negotiations between the parties had only reached a preliminary stage before expiry of the mandatory six-month period, did not constitute a failure to negotiate in good faith for the purposes of s 31(1)(b) of the Act. The Court found that there are two obligations spelt out in the statutory scheme. The first is that the negotiations, which are directed to reaching an agreement, are to be carried out in good faith and the second is that a period of not less than six months has passed since the date on which the s 29 notice is given. Both of these requirements were satisfied.

The Court also found that FMG was entitled to negotiate on a ‘whole of claim’ basis as the Act does not dictate the content and manner of negotiations by compelling parties to negotiate in a particular way or over specific matters.

CONTRACTS – construction of contract – principal agreement – garnet supply agreement – construction of branding obligation – whether garnet supplied as loose bulk subject to branding obligation – whether obligation to develop North American market – rectification of contract

GMA Garnet Pty Ltd v Barton International Inc
(5 May 2009, Justice Barker)

This case involved the interpretation, in a complex commercial setting, of a Garnet Supply Agreement (GSA) between the Australian operator and owner of a significant alluvial garnet mine in Western Australia - GMA Garnet Pty Ltd and its parent Garnet International Resources Pty Ltd (GIRL) – and Barton International Inc (BI), part of the Barton Group of Companies, a well-established distributor of industrial grade garnet in the USA.

Prior to 2005, GIRL and BI were equal shareholders in GMA Garnet and together owned the mine. Fundamental differences between them arose and were settled in early 2005 by a Principle Agreement and the GSA. The GSA guaranteed the supply of garnet to BI for 12 years and imposed branding and the distribution obligations on BI.

In the proceeding the applicants' central complaint concerned the practice adopted by BI and a related Barton Group entity, BMC, in blending GMA garnet with other garnet, which they alleged breached both BI's branding and distribution obligations and was contrary to representations made during the GSA negotiations.

When dealing with these issues, the Court applied ordinary principles of construction and took account of the circumstances in which the GSA was made. It held that the obligation to brand product created by cl 2.5 only arose at the point of distribution of 100% GMA garnet by BI in packaged form; that the on-sale by BI to BMC of loose bulk garnet, which was not branded with the GMA Garnet name and logo, did not breach cl 2.5; and that no express distribution or marketing obligations were undertaken by BI under cl 4.2. The Court found the GSA was drafted on the understanding that blending may occur and BI would not wish to be subject to an obligation that required it to brand all GMA garnet. The court ordered that the GSA be rectified to reflect the agreed role of BMC in the sales and distribution of 100% GMA garnet. The Court also rejected the applicants' argument that misleading and deceptive representations were made by BI regarding the development of the North American market.

The applicants' application for declarations that it had given valid notices concerning breach of the GSA such that it was entitled to terminate the GSA, and claim damages was dismissed.

INDUSTRIAL LAW – award – allowable award matter – “redundancy pay” – “incentive-based payments” – whether entitlement under award could be characterised as an “incentive-based payment” – whether Industrial Relations Court of South Australia erred in characterising entitlement as an “incentive-based payment”

Yirra Pty Ltd v Summerton

(5 May 2009, Acting Chief Justice Spender and Justices Graham and Tracey)

In *Yirra*, there were two issues to be decided. The first issue was whether a payment pursuant to cl 16 of the *National Building and Construction Industry Award 2000* (‘the Award’) could properly be characterised as an ‘incentive-based payment’ within the meaning of s 513(1)(b) of the *Workplace Relations Act 1996* (Cth) (‘the Act’). The second was whether the Construction, Forestry, Mining & Energy Union (‘CFMEU’) could, in applying pursuant to s 855(1) of the Act for leave to be heard in the matter, be treated as a party to the proceeding for the purposes of s 824(1) of the Act. Graham and Tracey JJ delivered the majority judgment. Spender ACJ dissented.

The Majority Judgment

Clause 16 of the Award was headed “Redundancy”. It defined redundancy to mean “a situation where an employee ceases to be employed by an employer ... other than for reasons of misconduct or refusal of duty.” It provided for the payment of benefits to a redundant employee. The Act was amended in 2006. Thereafter it provided that “Redundancy” was not “an allowable award matter” if the relevant employer had fewer than 15 employees, the employment had not been terminated at the initiative of the employer and the employer was not insolvent. None of these criteria applied to *Yirra*. The Act provided that any award provision relating to redundancy ceased to have effect in respect of respondent employers such as *Yirra*.

The Respondent abandoned his employment after an argument with his supervisor. An Industrial Magistrate held that he was entitled to payments prescribed by cl 16. The Magistrate accepted that a payment was not required if the clause provided for a redundancy payment. He held that, despite its title, the clause could be characterised as providing for an “incentive-based payment” which was an allowable award matter under s 513(1)(b) of the Act.

The majority disagreed. They held that it was clearly the intention of the legislature to ensure that award provisions such as cl 16 ceased to have effect in circumstances such as those which obtained. Clause 16 did not provide for an incentive-based payment because, although it rewarded longevity in employment, it was not designed to induce employees to work “better” or to “achieve a particular goal or target”.

The majority also held that the CFMEU became a party to the proceeding for the purposes of s 824(1) of the Act once it had been successful in seeking leave to intervene, as ‘once a person or body has become an intervener, that person or body becomes a party to the proceeding and assumes the rights and responsibilities of a party’. It was not, however, a party until its application for intervention had been granted. It was, therefore, liable to a costs order in respect of its application.

Spender ACJ’s Judgment

Spender ACJ found that a redundancy payment could be characterised as an ‘incentive-based payment’. He also held that the terms of s 513(4) did not narrow the meaning of ‘redundancy’, as Parliament should not be taken to have removed rights in the absence of clear words.

Spender ACJ also held that an applicant for leave to intervene should be treated as a party to the proceeding in which the application was made.

CORPORATIONS – application for review of declaration of unacceptable circumstances and orders made by Takeovers Panel – whether Panel bound to consider whether conduct amounted to a contravention of the *Corporations Act 2001* (Cth) – whether Panel erred in construction of bidder’s statement and later documents – whether there was evidence before the Panel to justify a finding that the market was misinformed – whether Panel could make orders affecting group of shareholders in absence of evidence as to individual loss by shareholders – whether orders involved an impermissible delegation of power to the Australian Securities and Investment Commission (ASIC) – appeal dismissed.

CEMEX Australia Pty Ltd v Takeovers Panel
(30 June 2009, Justices Ryan, Jacobson and Foster)

On 12 August 2007, the Takeovers Panel made a declaration of unacceptable circumstances under s 657A of the *Corporations Act 2001* (Cth) (the Act) in relation to a takeover bid made by the appellant for the whole of the issued shares in Rinker Group Limited. CEMEX sought a review of that decision before the primary judge, who dismissed the application. CEMEX subsequently appealed to the Full Court.

The offer price stated in CEMEX’s bidder’s statement was US\$13.00 in cash for each Rinker share. CEMEX subsequently increased its offer price to US\$15.85 per share. The announcement of CEMEX’s increased offer included a statement that “the offer is CEMEX’s best and final offer, in the absence of a superior proposal”. The bidder’s statement also provided that the cash consideration was subject to reduction by the amount of any dividend declared and paid to an accepting Rinker shareholder during the offer period.

Approximately one month after CEMEX announced its “best and final offer”, it issued a further announcement which included a statement that Rinker shareholders who were entitled to a final dividend of A\$0.25 per share (which had been announced by Rinker after the increase in the offer price) would retain that dividend. CEMEX’s announcement included a statement that “CEMEX has confirmed it will not exercise its right to deduct that dividend from its Offer price of US\$15.85 per share”.

The unacceptable circumstances found by the Panel were that in making its “best and final” statement, CEMEX was telling the market that it would not improve its offer price (in the absence of a superior proposal) and that allowing shareholders to retain the dividend was an improvement in the offer consideration. The Panel expressly declined to consider whether CEMEX’s conduct amounted to unacceptable circumstances under s 657A(2)(c) on the ground that it gave rise to a contravention of Chapters 6, 6A, 6B or 6C of the Act.

Before the Full Court, CEMEX argued the following five grounds of appeal:

- (1) That the obligation of the Panel under s 657A(3)(a) to have regard to the purpose, amongst others, of ensuring that takeovers take place in an informed market, necessarily imports a requirement that the Panel have regard to whether misleading statements have been made in contravention of ss 670A and 1041H.
- (2) That the Panel erred in law within the meaning of s 5(1)(f) of the *Administrative Decisions (Judicial Review) Act 1977* (Cth) in its construction of the bidder’s statement and certain later documents, including the “best and final offer”.
- (3) That there was no evidence or other material from which the Panel could have been satisfied that the market was misinformed in any relevant way.
- (4) In making orders that CEMEX pay to each shareholder who sold Rinker shares during a specified period the sum of A\$0.25 per share, that the Panel failed to satisfy itself that the Rinker shareholders’ rights or interests were affected by the circumstances which the Panel had found to be unacceptable.

- (5) In making orders that conferred power on ASIC to determine whether or not Rinker shareholders who submitted claim forms were entitled to be paid the sum of A\$0.25 per share, that there was an impermissible delegation of power.

The Full Court dismissed all five grounds of appeal. In regards to the first ground, the Full Court held that upon the proper construction of s 657A, the Panel was not bound to consider whether CEMEX's conduct contravened s 670A or s 1041H of the Act. Second, the Panel had adopted the correct construction of the bidder's statement and certain later documents, as those documents made it clear that the contractual entitlement to further dividends remained with CEMEX. Third, bearing in mind the commercial expertise of the Panel and the material before the Panel, there was sufficient evidentiary basis for the Panel to make the conclusions that it did. Fourth, the proper construction of s 657D(2) of the Act which refers to the rights or the interests of a "group of persons" makes clear that the Panel could make any order it thought appropriate to protect the rights or interests of a person or group of persons affected by the unacceptable circumstances. The Panel was not required by s 657D(2)(a) to make an evaluation of each shareholder's reliance, or to determine the value of each individual's lost chance. Fifth, having regard to the constitution of the Panel, and to the fact that ASIC's functions include the provision of staff and support facilities to the Panel, there was no error in the Panel's orders that conferred specific powers on ASIC. This was not a case in which ASIC was a judge in its own cause, nor was ASIC asked to step into the shoes of the Panel to exercise the power conferred.

APPENDIX 9 – JUDGES’ PARTICIPATION IN LEGAL REFORM ACTIVITIES AND INTERNATIONAL COMMITTEES AND CONFERENCES IN 2008–09

On 21 July 2008 in Court One, Melbourne, the Chief Justice and the Chief Justice of Indonesia, The Hon Prof Dr Bagir Manan, SH, MCL signed an Annex to the Memorandum of Understanding on Judicial Cooperation between the Federal Court of Australia and the Supreme Court of Indonesia. The signing took place in the presence of members of the Judicial Reform Team of the Supreme Court of Indonesia and judges of the Federal Court. Each Chief Justice delivered a short address.

On 6 August, the Chief Justice presided at a ceremonial sitting of a Full Court in Hobart to mark the opening of the refurbished Court One of the Commonwealth Law Courts, Hobart. Those present included H E the Governor of Tasmania, the Chief Justice of Tasmania, former Governors and Chief Justices of Tasmania, members of the Supreme Court and leaders of the legal profession.

On 18 August, in Sydney, the Chief Justice presided at a lecture delivered by Judge Mary Schroeder of the United States Court of Appeals for the Ninth Circuit.

The Chief Justice and Mrs Black attended a dinner in honour of Chief Justice Gleeson and Mrs Gleeson at Government House, Canberra, on 27 August.

The Chief Justice attended the bi-annual meeting of the Council of Chief Justices at the High Court, Canberra, on 28 August. The following day, also in Canberra, the Chief Justice was a guest on the bench at a sitting of the High Court of Australia on the occasion of the retirement of the Chief Justice of Australia, the Hon Murray Gleeson AC. On 1 September the Chief Justice was again a guest on the bench at a sitting of the High Court in Canberra for the swearing-in of the Hon Robert French as Chief Justice of Australia.

On 31 October, in Melbourne, the Chief Justice attended a Reception given by the Ambassador of the United States of America and Mrs Robert D McCallum Jr.

On 13 November at Monash University Law Chambers, Melbourne, the Chief Justice attended the 16th Lucinda Lecture delivered by the Hon Sir Gerard Brennan AC KBE and entitled *The Parameters of Constitutional Change*. Later that evening, the Chief Justice was the special guest speaker at the Annual Dinner of the Industrial Bar Association in Melbourne.

On 1 December, the Federal Court in Melbourne hosted a symposium for the Australian Academy of Law. On 2 December, the Chief Justice opened a nation-wide seminar on Cross-Border Insolvency by video-link from Court One of the Court in Melbourne.

On 4 December, the Chief Justice hosted the National Archives of Australia Constitution Founders’ Lecture Series in Court One, Melbourne. The proceeding was opened by the Chief Justice who delivered a short address. The lecture, *Andrew Inglis Clark: The Man and his Legacy*, was delivered by the Hon Justice Peter Heerey.

On 9 December, Lord Bingham of Cornhill met with the Chief Justice and the Melbourne judges of the Federal Court. Lord Bingham delivered a short talk entitled: *The effect of the Human Rights Act on judging in the United Kingdom*.

On 30 January 2009, the Chief Justice attended, as a guest on the bench, a ceremonial sitting of the Supreme Court of the Australian Capital Territory in Canberra to mark the Court’s 75th Anniversary.

On 2 February, the Chief Justice attended services in Sydney to mark the Opening of the 2009 Law Term and a dinner hosted by the Law Society of New South Wales.

On 3 February, in Canberra, the Chief Justice was present at a sitting of the High Court of Australia for the swearing-in of the Hon Justice Virginia Bell.

On 9 February, the Chief Justice conducted a national video-link to the Court's staff to announce the winner of the Federal Court's National Excellent Service Awards.

On 4 March 2009, whilst in Darwin for the sittings of the Full Court, the Chief Justice hosted a Reception for the members of the judiciary and the legal profession of the Northern Territory.

On 10 March, the Chief Justice opened a national video-linked seminar on Investor Class Actions.

On 13 March, at the Melbourne Law School, the Chief Justice took part with a panel of judges which included Chief Justice French, Justice Hayne and Justice Jimly Asshiddiqie of the Constitutional Court of Indonesia, in a judicial round-table on the topic *Transnational Judging: A Judicial Conversation on Foreign and International Law in Domestic Courts*.

On 20 March, the Chief Justice and the Melbourne judges hosted a Reception for the members of the Victorian Bar Council.

On 27 March, in Melbourne, the Chief Justice attended the 150th Anniversary Gala Dinner of the Law Institute of Victoria.

On 30 March, in Melbourne, the Chief Justice and Justices Finkelstein and Gordon met with the Rt Hon Lord Justice Jackson for discussions with him and members of the Civil Justice Council regarding the preparation of their Costs Review.

The Chief Justice attended the launch, by the Attorney-General, the Hon Robert McClelland MP, of the ALRC's special issue of its journal Reform on '*Native Title*' and *Inaugural Reconciliation Action Plan*. The launch took place in Glebe, New South Wales on 8 April.

On 26, 27 and 28 April, in Ottawa, the Chief Justice chaired a meeting of the Board of the International Association of Supreme Administrative Jurisdictions and attended functions associated with the presence of the Board in Ottawa. The Chief Justice and Justice Downes are co-presidents of the Association. On 30 April, also in Ottawa, the Chief Justice took part in the annual meeting between the Intellectual Property Section of the Canadian Bar Association and the judges of the Federal Court of Canada and spoke about the Federal Court of Australia's recent Fast Track procedural reforms. He later attended a dinner hosted by the Canadian Bar Association for the Federal Court of Canada. On Friday, 1 May, in Montreal, the Chief Justice joined members of the McGill Law School for dinner as a guest of Professor Stephen Scott and on Saturday, 2 May, he visited the Law School as the guest of Professor William Tetley.

The Chief Justice opened a video-linked nation-wide Admiralty and Maritime law seminar on Ship Arrests and Insolvency from Court One of the Court in Melbourne on 21 May.

On 2, 3 and 4 June the Chief Justice attended the Second Indo-Australian Legal Forum Meet at the High Court in Canberra. The first Meet was held in Delhi in October 2007.

On 15, 16, 17 and 18 June the Chief Justice represented the Court at the 18th Pacific Judicial Conference and presented a paper entitled: *The Role of the Judge in attacking Endemic Delays – some lessons from Fast Track*.

On 25 June, the Chief Justice delivered the keynote address *Why Tribunals?* at a seminar conducted in Melbourne by the Administrative Appeals Tribunal and the Law Council of Australia.

Justice RYAN presented the 2008 F. S. Dethridge Memorial Address entitled *Protection of the Environment; a new Focus in the Convention on Salvage 1989* to the Maritime Law Association of Australia and New Zealand Conference held in Perth between 12–14 November 2008.

His Honour also chaired the video-linked nation-wide Admiralty and Maritime law seminar on Ship Arrests and Insolvency on 21 May 2009. The Seminar was both well attended and well received nationwide. Contributions were made by a number of eminent presenters, including Greg Nell SC, Sandy Street SC, Professor Sarah Derrington and Andrew Bell SC. Frazer Hunt, President of the Maritime Law Association of Australia and New Zealand, and John Levingston of the Sydney Bar facilitated a Problem Session on The Res, Arrest and Insolvency. Rainer Gilich and Tony Tesoriero from the Federal Court, both of whom have experience in assisting Admiralty Marshals, also offered valuable insights.

In July 2008, Justice MOORE sat on the Court of Appeal in Tonga for a fortnight. In September his Honour continued work on the program to assist the Supreme People's Court of Vietnam to update the Judges' Benchbook. During the period 27–31 October 2008, his Honour travelled to Beijing and Shanghai, as leader of a delegation of Federal Court judges for the third and final phase of a judicial exchange program with the Chinese judiciary focusing on the areas of maritime, competition and labour law. In December 2008 his Honour and Justice Mansfield conducted workshops in evidence assessment in resolution of international commercial disputes for judges of the Supreme People's Court of Vietnam and also continued work on the Benchbook. In January 2009 Justice Moore attended the Supreme and Federal Court Judges' Conference in Hobart. On 7 March 2009 at Parramatta, 21 March 2009 at Orange and on 28 March 2009 in Sydney, his Honour gave presentations on advocacy in the Federal Court to members of the NSW Bar Association.

Justice LINDGREN continues to chair the various committees of the Council of Chief Justices concerned with the harmonisation of rules of court. The committees are concerned with court rules in such areas as corporations, subpoenas, freezing and search orders, and service outside the jurisdiction. These committees draft and finalise model rules of court that are then made by the Federal Court and all State and Territory Supreme Courts.

His Honour is a member of the Council of the Australian Institute of Judicial Administration, the College of Law Commercial Litigation Practice Advisory Committee, the Law Executive Council of the Faculty of Law, University of Technology, Sydney, and the Membership Committee of the Australian Academy of Law.

Within the Court Justice Lindgren is convenor of the Court's Rules Committee (a position he has held since 1996) and a member of the Court's Rules Revision Committee and Library Committee. As well, his Honour is one of the Court's representatives on the Joint Law Courts Library Advisory Committee. All of these bodies, both outside and within the Court, have involved his Honour in participating in numerous regular meetings throughout the period under review.

The following summary of activities covers the two years from 1 July 2007 to 30 June 2009.

On 27 July 2007 Justice Lindgren chaired a session on *Termination of Part of a Contract* at a Conference on Current Issues in Contract Law organised by the Commercial Law Association of Australia. On 13 August 2007, his Honour organised and chaired a seminar held by the Court for the legal profession on Litigation Funding. On 25 August 2007 his Honour delivered the keynote address at the International Class Actions Conference Class Actions and Access to Justice organised by Maurice Blackburn Lawyers.

On 30 October 2007 Justice Lindgren spoke on expert evidence at the Judicial Orientation Program held at Manly for newly appointed judges by the Judicial College of Australia.

Justice Lindgren organises for the College of Law a biennial series of five seminars on *Practice and procedure in the Federal Court and the Supreme Court of New South Wales*. This “Judges’ Series” involves one Federal Court Judge and one Supreme Court Judge speaking at each seminar. On 27 February 2008, Justice Lindgren and Justice Brereton of the Supreme Court of NSW spoke on *Subpoenas*.

Justice Lindgren organised two nation-wide seminars held “live” in the NSW Registry of the Court and relayed simultaneously to all other Registries by videoconference. The first, held on 2 April 2008, was on *Current Issues and Developments in Corporate Insolvency Law and Practice*. Some 700 legal practitioners attended nation-wide. The second, held on 2 December 2008, was on *Cross-Border Insolvency – the Cross-Border Insolvency Act 2008*. In this case, the videoconference facility was extended to include a speaker in Vienna and participation by New Zealand Judges. Some 450 practitioners attended nation-wide. The papers and proceedings of both seminars were subsequently made available to the profession and others on the Court’s website.

On 7 April 2008 Justice Lindgren presented a paper *Private Equity and section 411 of the Corporations Act 2001* (Cth) at a conference on Private Equity: the Sub Prime Crisis and Beyond organised by the International Bar Association and the Law Council of Australia. Subsequently, on 11 December 2008, his Honour presented the paper to the Court’s judges by videoconference as part of the Court’s judicial education program.

On 6 June 2008 Justice Lindgren spoke at a meeting of the Commercial Law Association of Australia on *Investor Class Actions*. On 16 June 2008 Justice Lindgren spoke to the NSW Bar Association on *Presenting Legal Argument*.

With David McGovern SC, Justice Lindgren addressed a Continuing Legal Education Seminar on *A Day in the Federal Court* on 2 July 2008 at the College of Law. On 31 October 2008 his Honour chaired a session on *Issues in Commercial Construction* at the 20th Anniversary of the Journal of Contract Law Contract Law Conference. Later, on 31 October 2008, together with Federal Magistrate Riley, Justice Lindgren spoke at the ITSA Bankruptcy Congress, *Unravelling the Complexities*, at a session on *Current Case Law – important cases under the microscope*.

Justice Lindgren continues to give two lectures in the annual Equity Finance Course in the LL.M degree program of the Law School at the University of Sydney, at which he is an Adjunct Professor.

On 14 February 2009 Justice Lindgren spoke at the NSW Bar Association Continuing Professional Development Regional Conference in Newcastle, on *Aspects of Practice and Procedure in the Federal Court of Australia with particular reference to the NSW District Registry*.

Justice Lindgren organised a conference held on 10 March 2009 on *Investor Class Actions* in the New South Wales District Registry of the Court and by videoconference in the Victorian District Registry. Co-sponsors with the Court were the Business Law Section of the Law Council of Australia and the Ross Parsons Centre of Commercial, Corporate and Taxation Law. The Centre published the papers and proceedings in a book *Investor Class Actions*, which is to be launched on 3 August 2009.

In the period covered by this report, the following works by his Honour were published:

- “The Jurisdiction of the Copyright Tribunal of Australia: the 2006 Amendments” (2007) Issue 70 *Intellectual Property Forum*, 6-15; (2007) 25 Copy Rptr 84;
- “Private Equity and Section 411 of the *Corporations Act 2001* (Cth)” (2008) 26 C&SLJ 281;
- Foreword to the second edition of PM Biscoe, *Mareva and Anton Piller Orders: Freezing and Search Orders* (LexisNexis, Butterworths, 2008);
- Review of John E Stannard’s book, *Delay in the Performance of Contractual Obligations* (2008) 24 JCL 287.
- K E Lindgren (ed), *Investor Class Actions* (papers and proceedings of a conference on Investor Class Actions held at the Federal Court of Australia on 10 March 2009);
- Foreword to Professor J O’Donovan’s book, *Personal Property Securities Law in Australia* (Thomson Reuters, 2009).
- “Harmonisation of Court Rules and Forms” (2009) 83 (6) *Australian Law Journal* 359-361.

In July 2008 Justice FINN presented a paper entitled *Knowing Receipt and Knowing Assistance: Balkanising Equity* to the 25th Annual Banking and Financial Services Law and Practice Conference – Queenstown, New Zealand.

In September 2008 Justice Finn addressed the South Australian Bar Readers’ Course on *Discovery and Non-Party Discovery*. In March 2009 he addressed the Australian Government Solicitor/University of Sydney Faculty of Law Course in Canberra on *Federal Administrative Law*. In May 2009 he spoke about *Federal Jurisdiction* to students at Flinders University. He presented an in house lunch seminar for members of the legal profession on *Federal Jurisdiction* in June 2009. Also in June 2009, he participated in a Bond University Symposium - The Internationalisation of Law: Legislating, Decision-Making, Legal Practice and Legal Education presenting a paper titled *Internationalisation or Isolation: The Australian Cul de Sac?*.

Throughout the year Justice Finn was an Advisory Board Member of the Australian Law Reform Commission’s Secrecy Inquiry. He was a member of the Third Working Group on UNIDROIT’s Principles on International Commercial Contract attending a meeting in Rome, Italy in May 2009.

On 21 August 2008, Justice MARSHALL presented a guest lecture on employment law to an undergraduate class at Monash University, Clayton Campus. On 5 September 2008 Justice Marshall presented a guest lecture on industrial law to a post-graduate class at Monash University, City Campus.

On 14 May 2009, Justice Marshall participated in judging the Victorian Bar Reader Moots. On 18 May 2009, Justice Marshall (sitting alone) presided over the final of the Deakin University Senior Moot.

Justice NORTH is a member of the Monash University Law Faculty’s Postgraduate Advisory Panel and Workplace and Employment Law Advisory Panel. On 12 September 2008 Justice North spoke at the 3rd Annual National Indigenous Legal Conference in Melbourne on the native title law reform.

Justice North was the President of the International Association of Refugee Law Judges until January 2009. Between 27 and 30 January 2009 Justice North attended and addressed the Association’s 8th World Conference in Cape Town. Justice North met with the Deputy President of South Africa, Baleka Mbete, the Chief Justice of South Africa, Pius Langa, and the United Nations High Commissioner for Human Rights, Navanethem Pillay. On 26 – 27 January 2009 Justice North addressed the Pre-Conference Workshop for New Refugee Law Judges in Cape Town, South Africa. On 30 January 2009 Justice North presided over the Council Meeting of the Association

and presented his final President's report. From January 2009, Justice North was appointed Patron of the Africa Chapter of the Association and Special Advisor to the Australasian Chapter.

On 13 March 2009 Justice North attended Melbourne University's Judicial Roundtable with Justice Jimly Asshiddiqie of the Indonesian Constitutional Court.

On 4 June 2009 Justice North addressed and presented a paper at the 10th National Native Title Conference organised by the Australian Institute for Aboriginal and Torres Strait Islander Studies at the Melbourne Cricket Ground on *Reform of s 223 of the Native Title Act 1993* (Cth).

Justice MANSFIELD continues as Chair of the Graduate Diploma and Legal Practice Course Committee of the Law Society of South Australia as well as Chair of the SA Bar Association CPD Committee. Justice Mansfield is a member of the University of South Australia Law School Advisory Board and also Chair of the Centre for Regulation and Management at the University of South Australia.

During this financial year, Justice Mansfield presented a paper to the Northern Territory Law Society entitled *Corporations, Consumers and Competition – The Law and The Market*. He also presented the keynote address to the Competition Law & Policy Institute of New Zealand's 19th Annual Workshop on 1-3 August entitled *Competition Law for the Professions* and he was also the keynote speaker at the Law Society of South Australia Conference on 18 September presenting *The 'Compleat' Director – A Bridge Too Far*.

Justice Mansfield also attended the Law Council of Australia Trade Practices Workshop in Fremantle on 5-7 September and the 6th Annual University of South Australia Trade Practices Workshop at the Barossa Valley on 17-18 October 2008 and has presented sessions to the SA Bar Association.

In October 2008 Justice Mansfield participated in the final phase of the China Australia Governance Program run by the Court. Justice Mansfield also participated in the Business Sector Program Support Workshop for judges of the Supreme People's Court of Vietnam from 4-12 December 2008.

The International Workshop on Forensic Law 2009 Conference held in Adelaide on 19 January 2009 was opened by Justice Mansfield. He also presented a paper on 3 March 2009 for the Northern Territory Law Society and on 26 March in Adelaide was involved with a presentation on the Federal Court to new practitioners. Justice Mansfield was involved in a panel presentation to the 10th Annual AIATSIS Native Title Conference 2009 held in Melbourne to discuss the implications of the *Native Title Amendment Bill 2009*.

On 11 June 2009, Justice Mansfield participated in Committee Meetings on Oral History and the Role of Elders organised by the Federal Court of Canada which included representatives of the Federal Court of Canada, the Canadian Indigenous Bar Association, the Federal Department of Justice and the Canadian Bar Association with the aim of developing formal practice guidelines for Aboriginal litigation held in Victoria, Canada; and on 12-13 June 2009 Justice Mansfield presented a paper to the Canadian Bar Association entitled *Overlapping Aboriginal Native Title Claims: The Australian Experience*.

Justice EMMETT is the Challis Lecturer in Roman Law at the University of Sydney. His Honour is a 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. Justice Emmett contributed a chapter to the book called "Rediscovering Rhetoric" entitled *Hermogenes of Tarsus – Rhetorical Bridge from the Ancient World to the Modern*, which was launched on 14 November 2008.

On 26 March 2009 Justice Emmett presented a paper at a seminar on Directors Duties and Corporations Law conducted by the Centre for Continuing Legal Education of the University of New South Wales. From 30 August to 27 September 2008, his Honour attended the annual conference in London of the Society of Legal Scholars.

On 22 May 2009 Justice Emmett was awarded the honorary title of Doctor of Laws (*honoris causa*) at a ceremony at the University of Sydney in recognition of exceptional achievement and outstanding service.

On 11 June 2009 Justice Emmett (in conjunction with Justice Barrett of the Supreme Court of NSW) presented a Continuing Professional Development Seminar on *Practice in the Corporations Lists*.

Justice DOWSETT continues to be a member of the Programs Advisory Committee of the National Judicial College of Australia. His Honour also remains the chair of the Continuing Professional Development Committee of the Bar Association of Queensland. On 9 July 2008 Justice Dowsett attended the National Native Title User Group Meeting in Adelaide. On 5 September 2008 his Honour attended the New South Wales Bar Association Federal Criminal Law Conference in Sydney. On 6 and 7 September 2008 his Honour attended the Law Council of Australia Trade Practices Workshop in Fremantle. On 28 and 29 September 2008 his Honour attended the Attorney General's Department's Federal Criminal Justice Forum. On 7 February 2009 Justice Dowsett presented a paper entitled *Prejudice – The Judicial Virus* at the Judicial Reasoning Conference in Canberra. On 24 February 2009 Justice Dowsett spoke to the Bar Association of Queensland on the topic of the *Corporations List Practice in the Federal Court*.

Justice KENNY is a part-time Commissioner of the Australian Law Reform Commission. In this capacity she was a Member of the Division constituted under the *Australian Law Reform Commission Act 1996* (Cth) for the purposes of the references that resulted in ALRC Report 107, "Privilege in Perspective: Client Legal Privilege in Federal Investigations" and ALRC Report 108, "For Your Information: Australian Privacy Law and Practice", as well as references for the review of the Royal Commissions Act and Australian Secrecy Laws.

Justice Kenny is a member of the Council of the National Judicial College of Australia, member of the Council of the Australian Institute of Judicial Administration, member of the Executive of the International Organization for Judicial Training, member of the International Law Advisory Board, Law School, Monash University, Chair of the Advisory Board of the Institute of Legal Studies, Australian Catholic University, member of the Advisory Board of the Centre for International and Public Law and a Foundation Fellow of the Australian Academy of Law.

In October 2008, Justice Kenny participated in the deliberations of the Australian Selection Committee for Menzies Scholarships in Law for the 2009 academic year. In February 2009, Justice Kenny facilitated a discussion on *Governance* and joined with the Court's Director of International Programs in a presentation on *International Development* at the Consultative Committee Meeting of the National Judicial College of Australia held in Canberra.

In March 2009, at the University of Melbourne Law School, Justice Kenny presided at the WTO Exhibition Moot and attended a Judicial Roundtable entitled *Transnational Judging: A Judicial Conversation on Foreign and International Law in Domestic Courts* organised by the Centre for Comparative Constitutional Studies and the Asian Law Centre. Later the same month, also at the University of Melbourne, Justice Kenny was privileged to launch *Examining Practice, Interrogating Theory: Comparative Legal Studies in Asia* edited by Pip Nicholson and Sarah Biddulph. On 30 March 2009, at the invitation of the Australian Institute of Judicial Administration, Justice Kenny attended a Roundtable with Lord Justice Jackson and his team to discuss the rules and principles governing the costs of civil litigation.

Justice GYLES presented a paper entitled *Federal Court Practice and Procedure* at the NSW Young Lawyers CLE Seminar on 9 July 2008 in Sydney. He also spoke on international commercial arbitration at the New Zealand Bar Association Annual Conference in Sydney on 16 August 2008.

On 10 July 2008 Justice STONE addressed the Lyceum Club on *The Federal Court and its Judges: Challenges and Opportunities*.

Her Honour attended a number of lectures during the year:

- Law Symposium 2008 Annual Meeting of the Australian Academy of Law.
- Annual Tax Lecture at the University of Melbourne.
- Copyright, Trade Marks and Designs seminar presented by the Federal Court.
- Geoff Sawer Lecture at the Australian National University.

During 2009 Justice Stone also attended the following conferences:

- Supreme and Federal Courts Judges' Conference in Hobart.
- Constitutional Law Conference held at the Australian Maritime Museum, Darling Harbour.
- Investor Class Actions Conference in the Federal Court, Sydney.
- Competition Law Conference held at the Shangri-La Hotel in Sydney.

As part of a regional education program Justice Stone gave a presentation to members of the profession in Ballina on *Advocacy Principles*. Justice Stone also gave her time to a Practice Course Session for the NSW Bar Association as part of the Bar Readers Course.

Throughout 2009 Justice Stone was a member of the Judicial Conference of Australia (JCA) Governing Council, the JCA Executive and the Complaints Against Judicial Officers Committee.

On 21 June 2009 Justice Stone presented a paper on the *United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency* at the Eighth World International Association of Restructuring, Insolvency and Bankruptcy Professionals (INSOL) Quadrennial Congress in Vancouver.

On 23 July 2008 at the Intellectual Property Society of Australia and New Zealand (IPSANZ) Victorian dinner meeting, Justice BENNETT spoke on arrangements with the Court for the "Patents List". The topic was *The acceptable way to run a patent case today: what will the Judge expect?*

Her Honour attended the 22nd Annual IPSANZ Conference from 19 to 21 September 2008, in Adelaide, where she presented, in the "Judge's Session", *Maximising Patent Rights Globally and Best Practice in IP Litigation in the Courts*.

Justice Bennett moderated the Insolvency Professionals' Network (IWIRC) Great Debate in Sydney on 23 October 2008.

During the week 27 to 30 October 2008, Justice Bennett, together with other Federal Court Judges, met with Judges of the Supreme People's Court of the People's Republic of China in Beijing to share the Court's knowledge and experience in the area of, inter alia, competition law.

On 21 February 2009, Justice Bennett spoke at the Canberra Continuing Professional Development (CPD) Conference, for the NSW Bar Association, on *Advocacy principles in the Federal Court*.

In April 2009, Her Honour attended the 5th International Judges Conference on Intellectual Property Law in Washington, DC. This educational conference brought together more than 85 internationally recognised judges who decide patent cases.

An article entitled *In Conversation with The Honourable Justice Annabelle Bennett AO* was published in the Intellectual Property Forum in September 2008; another article entitled *A Top Honour* was published in Management Today magazine issued in January/February 2009.

Justice Bennett continues to be involved in a number of other judicial and extra-judicial commitments including 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 and member of Chief Executive Women. Her Honour was also a member of the judging panel for the Australian Veve Clicquot Award for Business Woman of the Year.

In addition, her Honour attended the Davos Forum, Australian Leadership Retreat, on 23-24 August 2008 held on Hayman Island; and the West Coast Leadership Dialogue conference at Stanford University, California on 15 and 16 January 2009.

In August 2008 Justice SIOPIS was a judge of a mooting contest for Dean's List students from each of the universities in Western Australia. In September 2008, Justice Siopis was a tutor for the National Judicial College of Australia Judgment Writing Program in Adelaide.

In December 2008, Justice Siopis chaired a Law Society of Western Australia seminar on *Recent Developments for Commercial Litigation*. In January 2009, Justice Siopis chaired a session at the 8th International Association of Refugee Law Judges' World Conference in Cape Town, South Africa.

Justice EDMONDS spoke at a seminar organised by Allens Arthur Robinson on 24 July 2008 on the subject of *The Court's new practice directions in tax cases*. His Honour delivered a talk on the same subject at a seminar organised by the Law Council of Australia in Sydney on 18 October 2008. On 28 August 2008 Justice Edmonds delivered the keynote address to the 2008 WA State Conference of the Taxation Institute of Australia at Busselton, Western Australia, entitled: *The Australian Tax System – A View from the Bench*.

On 30 September 2008 his Honour led and participated in an inter-active seminar organised by the Taxation Institute of Australia in Sydney on the subject of the taxation of trusts. On 31 March 2009 his Honour presented the third Graham Hill Annual Award at a function held in the Court in Sydney to Ms Catherine Leslie, a senior solicitor in the office of the Australia Government Solicitor.

On 12 May 2009 his Honour participated in and spoke on the subject: *Transfer Pricing Litigation: Analysis of Recent Court Decisions on Transfer Pricing* at an international seminar for tax judges organised under the auspices of the OECD in Paris, France.

During October 2008 Justice GREENWOOD was the Flinders University Law School Judicial Fellow. The program involves participation in the affairs of the Law School for one week as a Judicial Fellow in residence. Justice Greenwood delivered a public address on aspects of judicial review of administrative decision-making, lunch time seminars and judged the Flinders University Law School Mooting Competition. On 8 January 2009, Justice Greenwood addressed the Global Forum on Intellectual Property in Singapore, on the topic of *Recent Developments in Intellectual Property* and secondly, *Aspects of Design Protection and its Overlap with Copyright*. On 28 March 2009, Justice Greenwood addressed the Annual Queensland Law Society Symposium at the Brisbane Convention Centre on the topic of *Federal Jurisdiction and Aspects of Commercial Litigation in the Federal Court of Australia*.

Justice Greenwood attended, from 8 June to 11 June 2009, the APEC-ASEAN-United States Patent and Trade Mark Office Regional Forum for Judges and Prosecutors in Kuala Lumpur and delivered an address on three topics, namely, *Calculating Damages in Civil Infringement Litigation*, *Recent Decisions on Intellectual Property Rights Issues* and *Civil Litigation of Intellectual Property Disputes*. Justice Greenwood also presided at the APEC Forum over a simulated hearing on an ex parte motion for a search and seizure order. The session sought to illustrate the practical aspects of such an application in the United States as compared with Australia and other participating jurisdictions. Justice Greenwood also presided in a simulated trial, before the APEC Forum, of an infringement proceeding involving intellectual property works. The participating Judges were Judges Donald (US), Layug (Philippines), Jayin Sunthornsingkarn (Thailand), Damich (US) and Greenwood (Australia).

On 13 May 2009, Justice Greenwood delivered an address to a forum on the occasion of the 10th Anniversary of Frontier Economics. Justice Greenwood presided on a moot as part of the International Maritime Law Arbitration Mooting Competition and moots forming part of the Jessup Mooting Competition. On 19 June 2009, Justice Greenwood delivered a lecture to the Post-Graduate Class of the Queensland University of Technology on the topic of *Practical Aspects of the Conduct of Intellectual Property Litigation*. Justice Greenwood also attended the Law Council of Australia's Annual Trade Practices Conference and the Law Council's Annual Corporations Law Conference.

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

On 23 July 2008 Justice RARES presented a paper on *The onus of proof in cargo claims and the proposed Rotterdam Rules* to the monthly lecture series of the Maritime Interest Group, Universities of Newcastle, Canberra and the Maritime Law Association of Australia and New Zealand. On 5 September 2008 and 26 November 2008 he gave addresses to the Commercial Law Association and the New South Wales Bar Association respectively on *The significance of the commercial jurisdiction of the Federal Court*.

In October 2008 his Honour travelled to China as part of the Federal Court delegation of the China-Australia Judicial Exchange Program, working with the Supreme People's Court of the People's Republic of China in Beijing and the Shanghai Intermediate People's Court and Maritime Court. On 7 November 2008 Justice Rares gave a paper on *the role of intermediate appellate courts* at the Appellate Judge's Conference, organised by the Australian Institute of Judicial Administration.

On 17 March 2009 Justice Rares presented a paper on *The media safe harbour exception (s 65A) to s 52 of the Trade Practice Act 1974 (Cth)* to the Defamation and Media Law Conference of the University of New South Wales. On 14 May 2009 he gave a paper on *Federal Jurisdiction and Practice and Procedure in the Federal Court of Australia*, to the New South Wales Bar Association Bar Readers Course, as well as participating in the Court's contribution to that program.

On 21 May 2009 he participated in the Court's National Admiralty and Maritime Seminar on Ship Arrests and Insolvency. On 23 May 2009 his Honour addressed and chaired a session on Cartel Litigation at the 2009 Competition Law Conference in Sydney. On 5 June Justice Rares represented the Federal Court at the meeting of the Consultative Council of Australian Law Reporting in Hobart. On 19 June his Honour chaired the Commercial Law Association's seminar on Trade Practices Law. Justice Rares is the convenor of the Court's Alternative Dispute Resolution (ADR) Working Group.

Justice COLLIER presented a paper entitled *Remuneration – the impact of recent case law and how the rules have changed* at the 7th ITSA Bankruptcy Congress in Sydney on 30 October 2008. In March 2009, her Honour delivered a paper at the Insolvency Law Workshop on *Bankrupt husbands and the application of the doctrine of exoneration in Australian law – moving into the 21st Century*.

Justice TRACEY continued to serve as Judge Advocate General of the Australian Defence Force. He is a member of the Advisory Board of the Centre for Comparative Constitutional Studies in the Faculty of Law in the University of Melbourne. He acted as a commentator on papers delivered at the State and Federal Court Judges' Conference in Hobart in January 2009 and at the Joint Federal Court/Law Council of Australia Workshop in Adelaide in April 2009.

In July 2008 Justice MIDDLETON, at the invitation of the government of East Timor, visited East Timor to assist in setting up legislation to cover anti-corruption and assist in strengthening East Timor's anti-corruption capacity. On 11 September 2008 Justice Middleton delivered a paper to the Oxford Society in Victoria about his visit to East Timor.

In October 2008 Justice Middleton attended the 6th Annual University of South Australia Trade Practices Workshop. In November 2008 and April/May 2009 Justice Middleton delivered a paper in conjunction with Mr David O'Callaghan SC to the Victorian Bar Readers' Course on *Written Advocacy*.

On 7 November 2008 Justice Middleton attended the 4th Australasian Institute of Judicial Administration, Appellate Judges' Conference. On 20 March 2009 Justice Middleton presented a session on case management as part of the National Judicial Orientation Programme. On 4 April 2009 Justice Middleton presented a commentary on the paper *The Cartel Offences: An Elemental Pathology* at a workshop of the Law Council of Australia in Adelaide.

On 20–21 April 2009 Justice Middleton attended, along with Justice Bennett, the 5th International Judges Conference on Intellectual Property Law in Washington DC.

On 17 October 2008 Justice Middleton was elected a member of the American Law Institute.

Justice BUCHANAN attended a National Judicial College of Australia Conference on "The Australian Justice System in 2020" on 25 October 2008, the Australian Institute of Judicial Administration Appellate Judges' Conference on 6 – 7 November 2008, the Maritime Law Association of Australia and New Zealand 35th Annual Conference on 12 – 14 November 2008 and the National Judicial College of Australia Conference on "Judicial Reasoning: Art or Science" on 7 – 8 February 2009.

His Honour is a French speaker. During the course of a private visit to France he met with the Secretary-General of the Conseil d'Etat on 12 May 2009 and gave a talk to the teaching staff at L'Ecole Nationale de la Magistrature in Bordeaux on 28 May 2009.

Justice GILMOUR attended the International Association of Refugee Law Judges (IARLJ) in Cape Town from 28–30 January 2009.

Justice GORDON is the Chair of the Academic Advisory Board, Faculty of Business and Law, Deakin University. During the year she attended the International Seminar for Tax Judges (11 – 12 May 2009) and also gave the following speeches:

- 26 August 2008: The Victorian Bar - Submissions, Appeal Statements & Procedure
- 12 November 2008: The Victorian Bar - Ethics Series - The Advocate's Duty to the Court
- 20 February 2009: 2009 Constitutional Law Conference - {Chaired a Session}
- 6-8 March 2009: Annual Conference Queensland Bar Association - Fast Track
- 9 April 2009: University of Melbourne - Alternative Dispute Resolution
- 1 June 2009: 2009 Younger Tax Practitioners Series - Women in Tax

Justice Gordon participated in the Law Institute of Victoria's Life in the Law Discussion Program, (August 2008 to May 2009) and taught along with Mr Simon Steward of the Victorian Bar at the University of Melbourne in 2008 - Melbourne Law Masters Program - Tax Litigation.

JUSTICE LOGAN continued to serve throughout the reporting period as a member of the Queensland Bar's Continuing Professional Development Committee the responsibilities of which included the organisation of that Bar's annual conference in March 2009. He was appointed to the Board of Governors of Cromwell College within the University of Queensland in February 2009.

Justice Logan delivered the following addresses or papers:

- 1 July 2008 - guest speaker at the Reserve Forces Day Recognition Ceremony at ANZAC Square, Brisbane
- 4 September 2008 - as keynote speaker, a paper entitled *Where are we with GST – Black Letter or the Practical Business Tax?* at the Taxation Institute of Australia's National GST Intensive in Sydney;
- 4 October 2008 - guest speaker at that Institute's Brisbane Breakfast Club Meeting, addressing the topic *Resolving a GST Dispute*;
- 30 April 2009 - paper on the subject of privative clauses to the Queensland Law Society's Government Lawyers' Conference in Brisbane.

In addition, Justice Logan attended the following conferences:

- Queensland Bar Association Annual Conference, Gold Coast, 6 to 8 March 2009
- Australasian Hi Tech Crime Conference, Sydney, 9 to 11 June 2009

On 30 October 2008, Justice FOSTER, together with Justice Perram, co-hosted a delegation of judges from the Supreme People's Court and Provincial Courts of Vietnam. Their Honours presented sessions to the delegation on how the Federal Court prepares for and determines cases of an international commercial law nature and the role of the Court and its judges in facilitating out-of-court settlements.

On 21 November 2008, Justice Foster attended the International Commercial Arbitration: Making it Work for Business Conference in Sydney. On 3 and 4 April 2009, Justice Foster attended the Joint Federal Court of Australia/Law Council of Australia (Business Law Section) Workshop on Criminalisation of Cartel Conduct in Adelaide. On 23 May 2009, Justice Foster attended the 2009 Competition Law Conference in Sydney and chaired the session *The ACCC's Merger Guidelines – Practical Issues in Australia having regard to the Global Economic Crisis*.

APPENDIX 10 – EQUAL EMPLOYMENT OPPORTUNITY STATISTICS

Representation of EEO Groups within Occupational Groups

Occupational Group	Total staff	Women	NESB1	NESB2	ATSI	PWD
SES	10	4	1	1		
FCS and related	337	220	13	35	2	3
Professional	25	13	2	2		
TOTAL	372	237	16	38	2	3

Representation of EEO Groups within salary levels

Salary	Total staff	Women	NESB1	NESB2	ATSI	PWD
\$38301 – \$42328 FCS1	1					
\$43346 – \$48067 FCS2	50	31	3	9		
\$49372– \$53286 FCS3	41	27	1	3		
\$55030 – \$59748 FCS4	36	28	2	7	1	
\$61377 – \$65081 FCS5	87	50	5	10	1	1
\$66290 – \$76148 FCS6	78	65	1	4		1
\$84845 – \$91631 FCM1/ FCL1	28	15	2	2		1
\$97812 – \$124738 FCM2/FCL2	41	17	1	2		
SES	10	4	1	1		
TOTAL	372	237	16	38	2	3

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 11 – EXPENDITURE ON CONSULTANTS

(at 30 June 2009)

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 (December 2008) 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 11.1 below lists all consultancy contracts let during 2008–09 with a value of \$10,000 or more, and provides details for each individual consultancy including the total value over the life of the contract.

Table 11.1 – Consultancy Services Contracts let during 2008–09

Consultant Name	Description	Contract Price	Selection Process (1)	Justification (2)
Deloitte Touche Tohmatsu	IT Infrastructure Review and Report	\$79,200	Direct Source	(C)
Deloitte Touche Tohmatsu	Market Analysis of SAN Storage Solutions and Report	\$22,440	Direct Source	(C)
Beyond Technology	Specification for a Storage Area Network	\$29,700	Direct Source	(B)
Azure Innovations	eServices Governance and Protocol Advisory Services	\$55,000	Direct Source	(B)
Oakton Services	eLodgment System Health Check and Report	\$33,000	Direct Source	(C)
Stratsec	eLodgment System Vulnerability assessment and Report	\$30,800	Direct Source	(C)
Total		\$250,140		

(1) Explanation of selection process terms drawn from the Commonwealth Procurement Guidelines (December 2008):

Direct Sourcing: - refers to a procurement process, in which an agency may invite a potential supplier or suppliers of choice to make submissions under defined circumstances.

(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 12 – 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.
- 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 local contact details of the Transcript service provider).
- 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).
- 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 self represented litigants);
 - 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.
- 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	46
Advertising and marketing services	49
Agency Resource Statement	47, 96
Audit and risk management	48
Commonwealth Disability Strategy	55
Consultants	48, 49
Consultants list for 2008-09	167
Corporate Services	46
Environmental management	57
External scrutiny	48
Financial accounts	47
Financial management	46
Human resources	49
Information technology	13, 57
Judges' meetings	46
Library and information services	59
Procurement	48
Property management	13, 56
Security	57
Administrative Appeals Tribunal	8, 18, 36
Appeals	18
President	4, 7
Presidential Member	3, 4, 5, 7
Registry	8
Administrative Decisions (Judicial Review) Act	18, 19
Admiralty	19
Act	19
Workload	117
Agency resource statement	47, 96
Appeals	
Full Court sittings	27
Migration	15, 27, 28
Statistics	112, 113
Workload	15, 19, 26, 27
Assisted Dispute Resolution, <i>See</i> Mediation	
Australian Competition Tribunal	7, 8, 34, 124
Part-time Deputy President	4, 5, 125
Part-time Members	125
Part-time President	4, 7, 124, 125
Australian Industrial Relations Commission	
President	4

Australian Law Reform Commission	
Part-time Commissioner	4, 5
Australian Workplace Agreements	5

B

Bankruptcy	19
Act	9, 19
Workload	15, 113

C

Case Management	
Disposition of matters other than native title	25
Strategies	24
Workload	24
Fast Track Procedures	12, 35
Reforms	13
Casetrack	14, 18, 58, 104
Supplementary Cause of Action	15, 18, 104
Chief Justice	3, 6, 12, 13, 15, 22, 34, 154
Commonwealth Courts Portal	58
Community Relations	37-39
Complaints about the Court's processes	40
Copyright Tribunal	34, 126
Deputy President	5, 126
President	4, 126
Registry	8
Corporations	
Act	19
Rules	22
Workload	114

D

Decisions of interest	129
Defence Force Discipline Appeal Tribunal	34, 127
Deputy President	127
President	5, 7, 127
Registries	8

E		I	
Equal employment opportunity		Individual Docket System	24
statistics	166	Industrial Relations Court of Australia	
eServices	14, 58	Judge	3, 4
eCourtroom	14, 36, 58	Information about the Court	22, 36, 37
eFiling	14, 58	Brochures	36
eLodgment	14, 59	Internet website	36
eSearch	14, 36, 58	Intellectual property	18
Commonwealth Courts Portal	58	Workload	121
F		International Work of the Court	34
Federal Court of Australia		Visitors to the Court	43
Establishment	2	Interpreters	35
Judges	3, 6	J	
Jurisdiction	18, 19	Judiciary Act	18
Management Structure	46, 97	Judge Advocate General of the	
Objectives	2	Australian Defence Force	
Officers of the Court	8, 98	Part-time	5
Outcome and Output Structure	18, 47	Judges	
Registrar	8	Appointment	3, 6
Registries	8, 13, 23, 46	Commissions and appointments	3, 6
Staff	9, 50-53	Legal education and reform	
Federal Court of		activities	40, 154
Australia Act	2, 3, 8, 9, 20, 27, 32, 34	Removal	3
Amendments	20	Retirement	3, 6
Federal Court of Australia Regulations	21, 34	Judgments	16, 36, 37
Remission or waiver of court and		Access to	36, 37
registry fees	35, 36	Decisions of Interest	129
Federal Court Rules	9, 21, 22, 34, 35	Delivery	16, 24
Federal Court user groups	35, 37, 38	Jurisdiction	18
Federal Magistrates Court	2, 8, 15, 19,	Changes in 2008-09	19, 20
	23, 25, 26, 27	Fair Work Division	20
Freedom of Information	168	List of statutes	19, 101
G		M	
Glossary	173	Media	
H		Information for	37
High Court of Australia	8, 26, 27	Mediation	16, 31-33
Registries	8	Settlement rates	32
Human Resources	49	Migration Act	18, 35
Occupational Health and Safety	54	Appeals	18, 27, 28
Performance pay	54	Migration Review Tribunal	18
Training and development	54	Jurisdiction of Court to Review	18
Workplace bargaining	49		
Workplace diversity	55		

N

National Native Title Tribunal	19, 25, 29, 30
Native Title	
Act	9, 19, 29
Case management	25, 30
Determinations	31
Jurisdiction	19, 29
Mediation	31
National allocation protocol	29
User group	30
Workload	19, 31, 118
Notice to Practitioners	22

O

Outcome and Output Statement	47
------------------------------	----

P

Performance Indicators	16
Practice and procedure reforms in 2008–09	13, 34
Practice Notes	13, 21, 22, 34

R

Refugee Review Tribunal	18
Jurisdiction of Court to Review	18
Registrars of the Court	
List	98
Powers	8, 9
Registries	iv, 8, 46

S

Self-Represented Litigants	
Assistance	35
Supreme Court of the ACT	
Additional Judge	3, 4, 5
Chief Justice	3
Supreme Court of Norfolk Island	
Chief Justice	4
Judge	4
Supreme Court of the Northern Territory	
Additional Judge	4,5

T

Taxation	
Jurisdiction	18
Workload	120
Technology in litigation, <i>See also</i> eServices	13
Time standards	16
Delivery of judgments	16
Disposal of matters	16
Disposal of matters other than native title	24
Tonga Court of Appeal	
Judge	3
Trade Practices	
Act	18
Workload	115
Tribunals	8, 34, 124
Management of cases	34
Registries	8
Workload	124-128

W

Website	36
Workload	
Impact of Federal Magistrates Court	23
Incoming work	24, 106
Issues and developments	13-16
Management of cases by tribunals	34, 124
Migration appeals	28
Review of case counting	15, 104
Statistics	104
Workload in appellate jurisdiction	15, 26, 27, 122, 123
Workload in original jurisdiction	24
Age of current matters	26
Age of pending workload	25, 31
Matters completed	25, 106
Matters transferred or remitted	25
Workplace Relations	
Act	19
Workload	119

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 <i>Corporations Act 2001</i>) and Federal Court (Bankruptcy) Rules 2005 (for proceedings under the <i>Bankruptcy Act 1966</i>).
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.



