

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 SIOPIs	Perth	Administrative Appeals Tribunal – Presidential Member
The Hon Richard Francis EDMONDS	Sydney	Supreme Court of the ACT – Additional Judge Administrative Appeals Tribunal – Presidential Member
The Hon Peter Ross GRAHAM	Sydney	Supreme Court of the ACT – Additional Judge
The Hon Andrew Peter GREENWOOD	Brisbane	Administrative Appeals Tribunal – Presidential Member
The Hon Steven David RARES	Sydney	Supreme Court of the ACT – Additional Judge
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.

