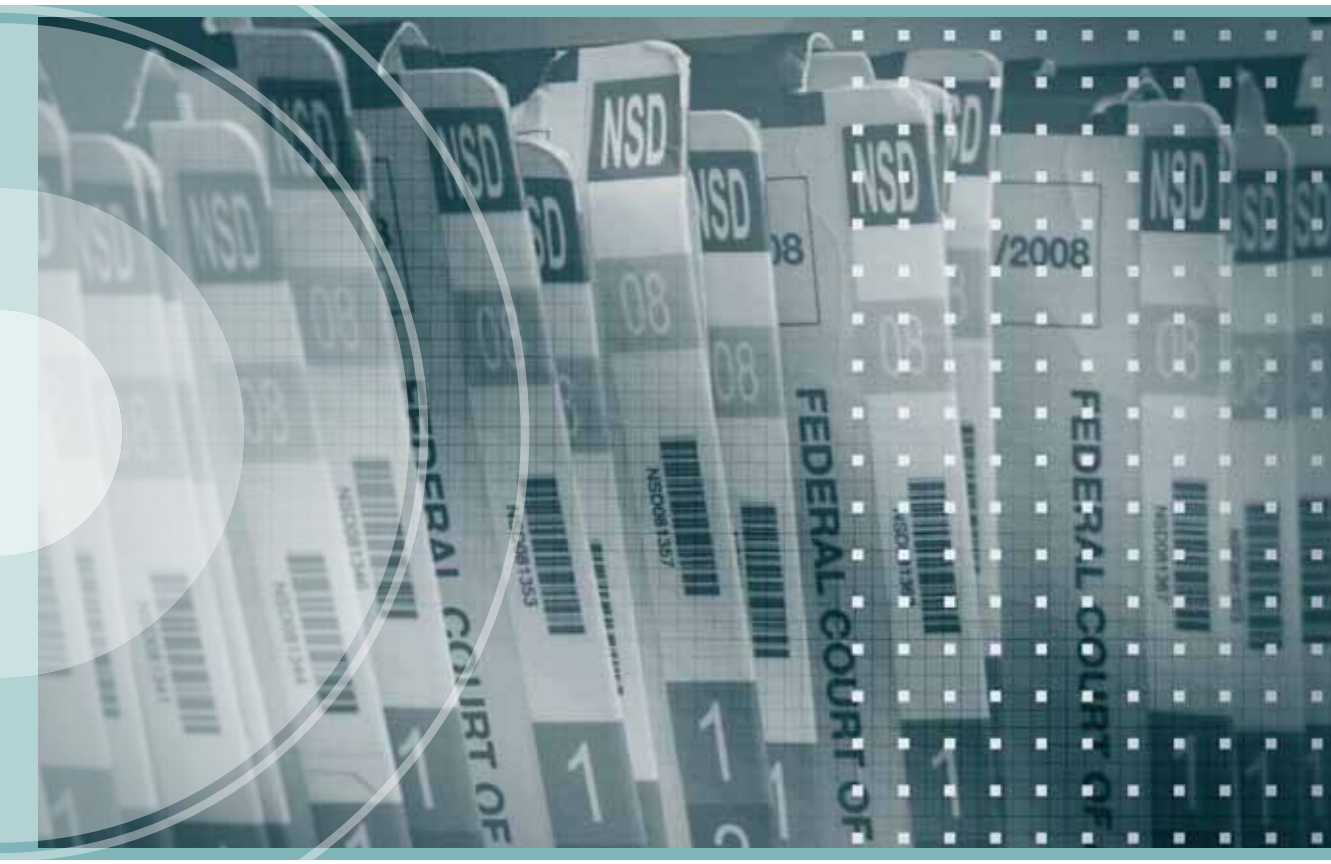
CHAPTER 3
The work of the Court in 2009–2010



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 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.

The Court's jurisdiction

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

Central to the Court's civil jurisdiction is s 39B(1A)(c) of the *Judiciary Act 1903*. This jurisdiction includes cases created by federal statute, and extends to matters in which a federal issue is properly raised as part of a claim or of a defence and to matters where the subject matter in dispute owes its existence to a federal statute.

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 125 for comparative statistics regarding consumer protection matters. In late 2009 the Court was given jurisdiction in relation to the new indictable offences for serious cartel conduct.

The Court also has jurisdiction under the Judiciary Act to hear applications for judicial review of decisions by officers of the Commonwealth. 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. The Court also hears appeals on questions of law from the Administrative Appeals Tribunal.

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 130 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 131 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 31. Figure 6.11 on page128 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 fourteen arrests. See Figure 6.10 on page 127 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 124 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 123 for a comparison of bankruptcy matters filed in the last five years.

The Court has jurisdiction under the *Fair Work Act 2009, Fair Work (Registered Organisations) Act 2009* and related industrial legislation (including matters to be determined under the *Workplace Relations Act 1996* in accordance with the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*). Workplace relations and Fair Work matters filed over the last five years are shown in Figure 6.12 on page 129.

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. In recent years a significant component of its appellate work has involved appeals from the Federal Magistrates Court concerning decisions under the *Migration Act 1958*. The Court's migration jurisdiction is discussed later in this Chapter on page 30. 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 29. Figure 6.15 on page 132 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 111.

Changes to the Court's jurisdiction in 2009–10

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

- *Federal Justice System Amendment (Efficiency Measures) Act (No 1) 2009* (which included amendments to expand the Court's jurisdiction under the *International Arbitration Act 1974*)
- *National Consumer Credit Protection Act 2009*
- *Personal Property Securities Act 2009*

- *Freedom of Information (Removal of Conclusion Certificates and Other Measures) Act 2009*
- *Resale Royalty Rights for Visual Artists Act 2009*

The *Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2009* amended the *Trade Practices Act 1974* to create new indictable offences for cartel conduct that may be dealt with in the Federal Court or the Supreme Court of a State and Territory.

Amendments to the Federal Court of Australia Act

During the reporting year the Federal Court of Australia Act was amended by several statutes.

The *Federal Court of Australia Amendment (Criminal Jurisdiction) Act 2009* amended the Federal Court of Australia Act, Judiciary Act and other legislation to facilitate the exercise of the new indictable jurisdiction by the Court. The amendments to the Federal Court of Australia Act included the insertion of new provisions in relation to indictments, pre-trial issues, bail, juries, pleas, trials, verdicts and criminal appeals.

The *Access to Justice (Civil Litigation Reforms) Amendment Act 2009* inserted new provisions to:

- enhance the Court's capacity to actively manage the conduct of proceedings, including appeals, that come before it
- streamline the appeals process by removing inconsistencies that existed in the provisions dealing with how appeals may be brought to and from the Federal Court
- explain that the overarching purpose of the civil practice and procedure provisions in the Act are to facilitate the just resolution of disputes:

  (a) according to law

  (b) as quickly, inexpensively and efficiently as possible.

The *Federal Justice System Amendment (Efficiency Measures) Act (No 1) 2009* included amendments to:

- empower the Court to make rules to refer matters to a referee for report
- allow a single judge to make any interlocutory order in the appellate jurisdiction pending the determination of an appeal to the Full Court
- allow 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 *Trans-Tasman Proceedings Act 2010* and the *Trans-Tasman Proceedings (Transitional and Consequential Provisions) Act 2010* will implement the *Agreement between the Government of Australia and the Government of New Zealand on Trans-Tasman Court Proceedings and Regulatory Enforcement* signed on 24 July 2008. Part IIIA of the Federal Court of Australia Act, which deals with the conduct of Trans Tasman proceedings brought under the Trade Practice Act, will be omitted once the substantive provisions of the new Acts commence.

As mentioned in last year's annual report, the Fair Work (Transitional Provisions and Consequential Amendments) Act, which amended the Federal Court of Australia Act to create a General Division and a Fair Work Division, commenced on 1 July 2009.

Amendments to the Federal Court of Australia Regulations

On 1 July 2009 the Regulations were amended to introduce a reduced fee for certain applications under the Fair Work Act.

In August 2009 the Regulations were amended to replace references to the Human Rights and Equal Opportunity Commission and the *Human Rights and Equal Opportunity Commission Act 1986* with references to the Australian Human Rights Commission and the *Australian Human Rights Commission Act 1986* respectively.

In December 2009 the Regulations were amended to provide for the payment of an allowance to those who are summonsed for jury service and to those who are selected as jurors.

In June 2010 the Regulations were amended to increase the quantum of the filing and other fees set out in Schedule 1 of the Regulations, insert a new fee for commencing a proceeding under the *Bankruptcy Act 1966* and introduce a system of tiered hearing fees whereby the daily fee increases depending on the length of the trial. These amendments commenced on 1 July 2010.

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:

- Order 1 rule 5AC to provide that a party who has filed an affidavit by electronic communication by sending an image of the affidavit pursuant to Order 1 subrules 5AC(2) and (5) must produce the original of the affidavit to the Court if directed to do so, and to omit subrule (5A) so that subpoenas lodged electronically are dealt with in the same manner as other court documents lodged electronically.
- Orders 1, 4, 15, 22, 42 and 49 to clarify that a reference to a 'directions hearing' for the purposes of the computation of time within which acts must be done is a reference to the hearing date appointed in a document commencing a proceeding in the Court's original jurisdiction.
- Order 7 subrule 11(3) to provide for how service may be effected on a party who, having originally appeared by a solicitor, parts company with the solicitor and fails to file a new address for service, and to insert a new Order 45 rule 7A setting out the information to be included in a new address for service.
- Order 13 rules 2 and 3 that deal with the amendment of court documents and pleadings.
- Order 35 subrule 7(2) to make it clear that the Court may set aside an order that an application in the appellate jurisdiction be dismissed for failure of the applicant to attend a hearing relating to the application.

- Order 35 rules 7A and 8 to adopt the harmonised rules on interest rates on judgment as recommended by the Discount and Interest Rate Harmonisation Committee of the Council of Chief Justices.
- Order 37 rule 9 and Schedule 1 to prescribe a form for a warrant of committal in relation to a contempt and a form for a warrant of committal for an offence.
- Order 46 rule 7A to allow a Registrar, when determining whether a document appears to be an abuse of process of the Court or to be frivolous or vexatious, to have regard to the document and to any documents submitted for filing with the document or referred to in the document or any accompanying documents.
- Order 52 to prescribe the procedure and forms by which an appeal or related application (such as an application for leave to appeal or an application for an extension of time to appeal) may be discontinued.
- Order 80 rules 9 and 10 to provide that the Court may make a costs order entitling a pro bono practitioner representing a successful party to recover from the losing party the practitioner's fees and disbursements reasonably incurred.
- Schedule 2 to adjust the quantum of prescribed costs.

Amendments were also made:

- to insert a new Order 68, which deals with applications under the *International Arbitration Act 1974*, and a new Order 72A, which deals with the referral of all, or part, of a proceeding to a referee for report, consequential upon the enactment of the *Federal Justice System Amendment (Efficiency Measures) Act (No 1) 2009*
- to replace each reference to the Human Rights and Equal Opportunity Commission and the *Human Rights and Equal Opportunity Commission Act 1986* with a reference to the Australian Human Rights Commission and the *Australian Human Rights Commission Act 1986* respectively
- consequential upon changes made to the Migration Act by the *Migration Legislation Amendment Act (No 2) 2008*
- consequential upon the amendments made to the Federal Court of Australia Act by the *Access to Justice (Civil Litigation Reforms) Amendment Act 2009.*

Rule 15A.5 and Form 19 of the Federal Court (Corporations) Rules 2000 were amended in light of articles 19 and 21 of the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law which operates in Australia pursuant to the *Cross-Border Insolvency Act 2009* (Cth). These amendments were in accordance with the recommendations of the Council of Chief Justices' Harmonised Corporations Rules Monitoring Committee.

Practice Notes supplement the procedures set out in the Rules of Court. The Judges' National Practice Committee reviewed the use of Practice Notes, Practice Directions and national and local Notices to Litigants and Practitioners in the Court during the reporting period and recommended that only two forms of practice documents be issued by the Court:

(a) Practice Notes issued by the Chief Justice upon the advice of the judges of the Court and

(b) Local Administrative Notices issued by each District Registrar at the request, or with the agreement, of the judges in the District Registry to which the notices relate.

Pursuant to this decision, on 25 September 2009 the Chief Justice replaced the existing practice notes, practice directions and national notices to litigants and practitioners with new Practice Notes. On the same date, the District Registrars replaced their local notices to litigants and practitioners with new Administrative Notices.

The Chief Justice subsequently issued the following new or revised practice notes:

- A revised Practice Note CM 9 - Freezing orders aka 'Mareva Orders'
- A revised Practice Note CM 11 - Search orders aka 'Anton Pillar Orders'
- A revised Practice Note IP 1 - Proceedings under the *Patents Act 1990* (Cth) [commenced on 1 July 2010]
- A new Practice Note ARB 1 - Proceedings under the *International Arbitration Act 1974*
- A new Practice Note CM 16 - Pre-judgment Interest [commenced on 5 July 2010]
- A new Practice Note CM 17 - Representative Proceedings Commenced under Part IVA of the Federal Court of Australia Act [commenced on 5 July 2010].

Practice Notes and Administrative Notices are available through District Registries and on the Court's website. They are also available in loose-leaf legal services.

Workload of the Federal Court and Federal Magistrates Court

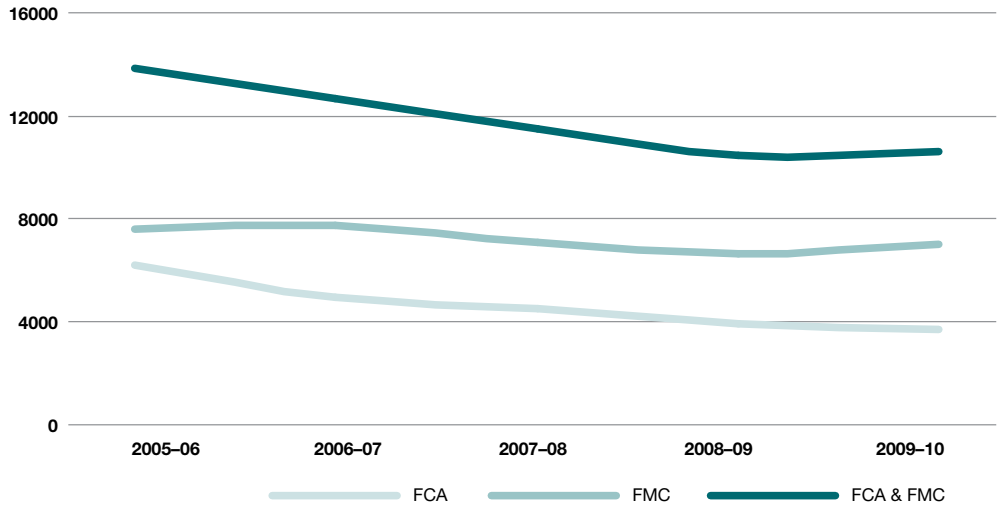
The Court has concurrent jurisdiction with the Federal Magistrates Court in a number of areas of general federal law including bankruptcy, human rights, workplace relations and migration matters. The registries of the Federal Court provide registry services for the Federal Magistrates Court in its general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

Figure 3.1 below shows a decline in the combined filings of the two courts between 2005–06 and 2008–09. As noted in Chapter 2, and evident from figure 3.1, the combined workload increased slightly in the last financial year. The 2010 calendar year filings to date indicate that this increase is continuing.

In 2009–10, a total of 10,550 matters were filed in the two courts. In 1999–2000 there were 6,276 filings in the two courts. 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 2010

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 eighteen months from commencement as the period within which it should dispose of at least eighty-five per cent 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. 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 eighteen 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 2005 to 30 June 2010, ninety-one per cent of cases (excluding native title matters) were completed in less than eighteen months, eighty-five per cent in less than twelve months and seventy-one per cent in less than six months (see Figure 6.4 on page 121). Figure 6.5 on page 122 shows the percentage of cases (excluding native title matters) completed within eighteen months over the last five reporting years. The figure shows that in 2009–10, eighty-eight per cent of cases were completed within eighteen months.

Delivery of judgments

In the reporting period, 1,748 judgments were delivered. Of these, 184 judgments were delivered in Full Court appeals and 1,564 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 138 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, 2,949 cases were commenced in, or transferred to, the Court's original jurisdiction. See Table 6.2 on page 116.

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 the reporting year, twenty nine matters were remitted or transferred to the Court:

- two from the High Court
- nine from the Federal Magistrates Court
- seven from the Supreme Courts
- eleven from other courts

Matters may be transferred from the Court under:

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

During 2009–10, twenty three matters were transferred from the Court:

- nineteen to the Federal Magistrates Court
- three to the Supreme Courts
- one to the Administrative Appeals Tribunal

Matters completed

Table 6.2 on page 116 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 2,758 against 3,197 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 2,494 (see Table 6.2), compared with 2,303 in 2008–09.

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 2010 is set out in Table 3.1 below.

Native title matters are not included in Table 3.1 because of their complexity, the role of the National Native Title Tribunal and the need to acknowledge regional priorities. The age of pending native title matters is set out in Table 3.4 on page 33.

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

Age at 30 June 2010	Under 6 months	6–12 months	12–18 months	18–24 months	Over 24 months	Sub-Total
Cause of Action						
Administrative Law	62	32	3	5	10	112
Admiralty	18	19	10	10	11	68
Bankruptcy	22	30	7	2	10	71
Competition Law	12	8	5	5	5	35
Trade Practices	97	72	23	28	49	269
Corporations	492	98	37	31	66	724
Human Rights	23	12	4	5	2	46
Workplace Relations	9	16	17	3	6	51
Intellectual Property	75	40	32	14	57	218
Migration	5	1	0	0	4	10
Miscellaneous	24	12	8	7	4	55
Taxation	39	92	25	4	145	305
Fair Work	50	20	0	0	0	70
Total	**928**	**452**	**171**	**114**	**369**	**2034**
% of Total	45.6%	22.2%	8.4%	5.6%	18.1%	100.0%
Running Total	**928**	**1380**	**1551**	**1665**	**2034**	
Running %	45.6%	67.8%	76.3%	81.9%	100.0%	

Table 3.1 shows that at 30 June 2010 there were 483 matters over 18 months old compared with 596 in 2009 (not including native title matters). Taxation and corporations make up a high proportion of the matters over twenty-four 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 114.

The Court's appellate jurisdiction

The *Access to Justice (Civil Litigation Reforms) Amendment Act 2009* (Cth) ('the Act') amended the Federal Court of Australia Act in relation to the Court's original and appellate jurisdiction. The amendments will streamline and clarify appeal pathways and provide the Court with greater flexibility in dealing with appeals and related applications and some other Full Court matters. The Act also inserted provisions into the Federal Court Act that specified the types of appeals that may be heard by the High Court of Australia from judgments of the Federal Court. The amendments commenced on 1 January 2010.

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 is 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(1), (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 2010 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 there was an increase in the need to convene a Full Court to enable the early disposition of urgent appeals. Special sittings of the Full Court were arranged on fifteen occasions in 2009–10 compared with eight occasions in the previous year.

The appellate workload

During the reporting year 860 appellate proceedings were filed in the Court. They include appeals and related actions (693), cross-appeals (15) 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 (152).

The Federal Magistrates Court is a significant source of appellate work accounting for sixty one per cent (527) of the total number of appeals and related actions, cross-appeals and other appellate motions filed in 2009–10. The majority of these proceedings continue to be heard and determined by single judges exercising the Court's appellate jurisdiction. Further information on the source of appeals and related actions is set out in Figure 6.16 on page 133.

The above figures indicate a decrease of nineteen per cent in the Court's appellate workload in 2009–10 (860) compared with 2008–09 (1,067). The majority of the decrease reflects a further decline in migration appeals.

In the reporting year 927 appeals, cross-appeals and related actions were finalised, including 157 interlocutory applications made by notice of motion.

At 30 June 2010, 369 appeals, cross-appeals and related actions were current including sixty-nine interlocutory applications made by notice of motion. The comparative age of matters pending in the Court's appellate jurisdiction (including native title appeals) at 30 June 2010 is set out in Table 3.2 below.

At 30 June 2010 there were twenty-five appeals, cross-appeals, related actions or applications that are eighteen months or older. These matters involve a number of related native title proceedings that require further consideration of the final orders to be made or where a negotiated outcome is being pursued and proceedings in other jurisdictions that have been stayed or are presently under consideration by the Court. The age of these cases generally reflects the nature and complexity.

Table 3.2 – Age of current appeals and related actions
(including notices of motion and cross appeals)

Current Age	Under 6 months	6–12 months	12–18 months	18–24 months	Over 24 months	Total
Appeals & Related Actions	251	58	35	15	10	369
% of Total	66.6%	15.4%	9.3%	4.5%	4.2%	100.0%

Managing migration appeals

In 2009–10, 392 appellate proceedings were commenced in the Court concerning decisions under the Migration Act compared with 530 in 2008–09. Migration matters in the current reporting year accounted for forty six per cent of the Court's overall appellate workload.

In 2009–10 fourteen 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 378 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 2005–06. The Court continues to apply a number of procedures 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 (including notices of motion and cross appeals)

Appellate Proceedings	2005-06	2006-07	2007-08	2008-09	2009-10
Migration Jurisdiction	1,053	1,092	1,020	530	392
%	79%	72%	67%	50%	46%
Total Appellate Proceedings	1,331	1,520	1,526	1,067	859

Information about the Court's time goal for the disposition of migration appeals can be found in Chapter 2 at page 16.

The Court's native title jurisdiction

The *Native Title Act 1993* (Cth) (NTA), which confers jurisdiction on the Court to decide applications for the recognition of native title and various other proceedings in relation to native title, has been subject to various amendments since 1998. During the reporting year it was further amended when the *Native Title Amendment Act 2009* (Cth) came into force on 18 September 2009. As noted in Chapter 2, the amendments were significant in a number of respects. Amongst other things they empowered the Court to:

- refer a matter to a mediator, other than the National Native Title Tribunal or Court registrar
- make orders to give effect to the terms of an agreement between the parties that are about matters other than native title, whether or not a determination of native title is made
- make such orders where only some of the parties are in agreement as to the orders which are sought.

The Court recognises the significance of the amendments along with the challenges and opportunities they present. The amendments to the Act give clear responsibility to the Court for managing all aspects of native title proceedings, including, as noted, the opportunity to refer a matter to mediation before a person or body other than the National Native Title Tribunal (NNTT) or a Registrar of the Court. The Court's Native Title Practice Committee met on many occasions throughout the reporting period to focus on the amendments and put in place a number of improvements to practice to ensure – to the extent that it can - that resolution of native title cases can be achieved more easily and delivered in a more timely, effective and efficient fashion.

An important area of focus was the process to be used to identify, select and appoint appropriate mediators. Expressions of interest were sought from suitably qualified mediators so that a list of names could be compiled and made available to the Court and the parties to refer to when considering the reference of a matter or part of a matter to a mediator (other than a member of the Tribunal or a Registrar).

A list of over seventy mediators has been developed and published on the Court's website. The mediators have been advised that their inclusion on the list does not amount to an endorsement of their skills and capacity as a mediator, nor does it create a contract between the mediator and the Court. Rather the list is to be used by the Court and the parties as a resource and appointments will be made on a case by case basis.

Information about the Court's work to review all current native title matters and develop a priority list of cases can be found in Chapter 2 at page 14.

National allocation

Upon filing native title matters are allocated to the relevant Native Title List Judge for a particular region. All matters in mediation with the NNTT are generally allocated to a Native Title List Judge who reviews them from time to time and receives reports from the Tribunal about the progress of mediation. Where the case requires 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.

Between 1999 and 30 June 2010, a total of 402 native title matters have been substantively allocated. The majority of these have been resolved or dismissed. Some matters were re-allocated to the relevant Native Title List Judge for the region when it became clear they were not ready for hearing. Forty four matters remain in the substantive list and are allocated to twelve judges with the majority of these proceeding to a hearing.

User group meetings

The Court continues to meet with its users and to be informed and assisted by their feedback. Many user group meetings were held during the reporting period to consider the 2009 amendments. In particular various local committees were formed to identify improvements to practice. These forums and committees were convened under the leadership of the respective Native Title List Judges.

In summary, the forums have assisted the Court to:

- consider the powers and procedures available to the Court to ensure the resolution of native title matters in as timely, effective and efficient a manner as possible
- inform 'stakeholders' that the Court is able to apply a variety of mechanisms to expedite resolutions
- elicit a more flexible approach from those involved in the assessment of connection evidence to the extent of evidence or material necessary to advance consent determinations.

Case management strategies

As with other litigation in the Court, native title cases continue to be 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
- the appointment of Court experts and/or the convening of conferences of experts
- early evidence hearings to inform future mediation.

The native title workload

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

At 30 June 2010 there were 460 current native title 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	18	14	6	17	405	460
% of Total	3.9%	3.0%	1.3%	3.7%	88.0%	100.0%
Running Total	**18**	**32**	**38**	**55**	**460**	
Running %	3.9%	7.0%	8.3%	12.0%	100.0%	

Figure 6.11 on page128 provides more information on native title act filings.

Assisted Dispute Resolution (ADR)

New ADR statistics

The Court has a longstanding commitment to deliver effective and responsive ADR services. During the reporting year the Court expanded its collection of ADR statistics with a view to developing a comprehensive and comparative collection of statistics concerning ADR connected with Court proceedings.

The statistics have been compiled in the Court's registries directly from manual records and depend on the accuracy of the records kept by the individual registry. For the purpose of this reporting period the following statistics cover both judge referrals to mediation and the mediations actually undertaken by the Court's registrars. In order to give a sense of the volume of mediation referrals and mediation conferences as a proportion of the Court's workload, a comparison to the filings in the Court has been used. This comparison can only be a guide because matters may not be referred to mediation in the same reporting period as the actions were filed. As well, the number of matters referred to mediation will generally not equal the number of mediations completed as matters may be referred and mediated in different reporting periods.

Referrals to ADR and mediation

The ADR options currently available to the Court under the Federal Court of Australia Act (the Act) and Federal Court Rules (the Rules), supplemented by established case management practices of the Court include:

- mediation
- arbitration
- Early Neutral Evaluation (ENE)
- experts conferences
- Court appointed experts
- case management conferences

Mediation continues to be the most frequently used ADR referral made by judges. During the reporting period the data collected by the Court generally only includes referrals to a registrar of the Court rather than referrals to external mediators. In addition, the data collected does not always record the number of ADR activities undertaken as part of the Court's general case management for some of the reasons which follow. For example, some judges regularly order that the parties' experts confer to attempt to maximise agreement on the issues, material to be

considered, or the method to be followed, but may not order that process to occur under the supervision of a Registrar i.e. as a conference of experts. Other judges may regularly refer matters to mediation, leaving it for the parties to agree the mediator. These external referrals might not always be recorded and counted in the Court's statistics. Further, parties may undertake ADR processes in matters before the Court without seeking an order in relation to those processes, e.g. the parties may attend private mediation. In these circumstances the Court does not record the fact that the matter has been mediated or the outcome of the mediation.

Table 3.5 below shows the total ADR referrals for 2009–10 by type.

Table 3.5 - ADR referrals in 2009–10 by Type

Referral type	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	Total
Mediation	98	274	61	18	3	13	6	3	476
Arbitration	0	0	0	0	0	0	0	0	0
ENE	0	0	0	0	0	0	0	0	0
Conference of experts	0	1	0	0	0	0	0	0	1
Court appointed expert	0	0	0	0	0	0	0	0	0
Referee	0	0	0	0	0	0	0	0	0
Total	**98**	**275**	**61**	**18**	**3**	**13**	**6**	**3**	**477**

Table 3.6 shows the referrals to mediation by registry and matter type. The figures suggest that intellectual property and consumer protection matters are the most frequently referred matter types nationally (although this is not necessarily replicated in every state/territory – see corporations matters in South Australia).

Table 3.6 - Mediation referrals in 2009–10 by Cause of Action (COA) and State

Referral type	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	Total
Admiralty	7	2	5	0	0	0	0	0	14
Corporations	8	40	13	2	3	6	3	0	75
Costs	4	7	0	0	0	0	0	0	11
Full Court Appeals	0	0	3	0	0	0	0	0	3
Human Rights	2	30	2	1	0	0	0	0	35
Industrial	3	73	2	0	0	0	0	0	78
Intellectual Property	24	59	2	4	0	1	0	0	90
Migration	0	0	0	0	0	0	0	0	0
Native Title	1	2	6	3	0	1	0	0	13
Non Panel	8	4	28	2	0	2	3	3	50
Trade Practices (Competition)	2	0	0	0	0	0	0	0	2
Tax	1	3	0	0	0	3	0	0	7
Trade Practices (consumer protection)	38	54	0	6	0	0	0	0	98
Total	**98**	**274**	**61**	**18**	**3**	**13**	**6**	**3**	**476**

Table 3.7 below shows referrals to mediation as a percentage of total filings for each of the last ten reporting years. The percentage of referrals has almost tripled over that period. Total filings may not, however, give the clearest representation of the rate of referral to mediation. It is generally considered that within the scope of the Court's jurisdiction there is no limit to the type of cases that may be referred to ADR. However, there are categories of cases where it could be said that as a general rule, ADR may not be appropriate. These include migration appeals, administrative law matters and company winding up applications dealt with by registrars.

Table 3.7 - Mediation referrals as a proportion of total filings by financial year

	2000–01	2001–02	2002–03	2003–04	2004–05	2005–06	2006–07	2007–08	2008–09	2009–10
Referrals	286	279	270	326	321	342	332	379	522	476
Total filings	5394	4528	4846	6020	4517	6157	4925	4430	3864	3642
Proportion (%)	5%	6%	6%	5%	7%	6%	7%	9%	14%	13%

Table 3.8 shows both the total matters filed and the number of filings once matters not commonly referred to mediation are excluded. While figures vary, filings of matter types commonly considered for referral make up fifty-five per cent of total filings nationally.

Table 3.8 - Total filings and suitable filings (excluding non-mediation COAs, e.g. migration)

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	Total
Suitable filings	995	528	173	165	5	119	7	26	2018
Total filings	1637	976	314	411	11	202	37	54	3642
Proportion (%)	61%	54%	55%	40%	45%	59%	19%	48%	55%

When the filings commonly considered for referral are used to ascertain the rate of referral to mediation, the percentage of matters referred by judges to mediation nationally in the reporting year was twenty-four per cent (see Table 3.9). The real figure may be even higher as some registries only record referrals to mediation when the parties request that the mediation be conducted by a registrar. Further, not all parties seek a referral to mediation if they intend to use a private mediator, which means that the percentage of applicable matters that have some form of ADR process applied is likely to be considerably higher than twenty-four per cent. In the following tables the term 'suitable filings' is used to refer to matters commonly considered for referral.

Table 3.9 - Mediation referrals as a proportion of suitable filings, by State

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	Total
Total referrals	98	274	61	18	3	13	6	3	476
Proportion (%)	10%	52%	35%	11%	60%	11%	86%	12%	24%

Table 3.10 shows a breakdown of mediation referrals to Federal Court registrars (internal referrals) and external mediators (external referrals) by matter type. Internal and external referrals to mediation are presented as percentages of suitable matters in Table 3.11.

Table 3.10 - Internal and external mediation referrals by COA

	Internal	External
Admiralty	14	0
Corporations	75	0
Costs	11	0
Full Court appeals	3	0
Human Rights	35	0
Industrial	78	0
Intellectual Property	87	3
Migration	0	0
Native Title	13	0
Non Panel	50	0
Trade Practices (Competition)	0	2
Tax	7	0
Trade Practices (Consumer protection)	95	3
Total	**468**	**8**

Table 3.11 - Internal and external mediation referrals as a proportion of suitable filings

	Internal	External
Total referrals	468	8
Suitable filings	2018	2018
Percentage	23%	1%

Mediations held in the reporting period

Table 3.12 shows the outcomes of mediations conducted by Federal Court registrars by matter type. The percentage of these matters that are resolved either in full, or in part, is also shown. The overall percentage of matters referred to mediation by a registrar that are resolved either in full, or in part, is fifty-seven per cent.

It should be noted that the number of matters referred by judges to mediation in the reporting year (476) differs from the number of mediations convened by registrars of the Court. This reflects the fact that matters referred to mediation in one reporting year may not be mediated until the following reporting year. It may also differ because some referrals to mediation are conducted by private mediators and may not be recorded.

Table 3.12 - Mediation outcomes by COA in 2009-10

OUTCOMES BY COA	Resolved	Resolved in part	Not Resolved	Total	Proportion resolved/ in part (%)
Admiralty	11	1	2	14	86%
Corporations	32	3	25	60	58%
Costs	8	3	2	13	85%
Full Court Appeals	2	2	1	5	80%
Human Rights	12	0	17	29	41%
Industrial	33	3	35	71	51%
Intellectual	43	4	29	76	62%
Migration	0	0	0	0	0%
Native Title	0	0	0	0	0%
Non Panel	19	1	8	28	71%
Trade Practices (Competition)	0	0	0	0	0%
Tax	3	0	2	5	60%
Trade Practices (Consumer protection)	30	5	38	73	48%
Total	**193**	**22**	**159**	**374**	**57%**

Table 3.13 shows the outcome of mediated matters by state and the percentage of mediated matters resolved either in full or partially.

Table 3.13 - Mediation outcomes by State

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	Total
Resolved	36	119	22	5	1	6	4	0	193
Resolved in part	7	11	2	1	1	0	0	0	22
Not resolved	35	101	12	2	1	1	6	1	159
Total	**78**	**231**	**36**	**8**	**3**	**7**	**10**	**1**	**374**
Proportion resolved/ in part (%)	55%	56%	67%	75%	67%	86%	40%	0%	57%

The Court's case management system, Casetrack, separately records each time a matter is listed for mediation. So, if mediation in a matter occurs over a number of days, each day will be recorded in Casetrack. For the purposes of reporting, the Court's registries record only the number of concluded mediations, regardless of whether a matter is mediated over one, or a number of days. Table 3.14 compares the Casetrack statistics of 583 mediation events with the 374 mediations recorded by the registries. The difference indicates that in many matters mediations occurred over more than one day.

Table 3.14 - Casetrack and Registry recorded mediation events, by matter type

	Registry	Casetrack
Admiralty	14	16
Corporations	60	96
Costs	13	0
Full Court Appeals	5	6
Human Rights	29	29
Industrial	71	105
Intellectual Property	76	106
Migration	0	0
Native Title	0	0
Non Panel	28	110
Trade Practices (Competition)	0	0
Tax	5	4
Trade Practices (Consumer protection)	73	111
Total	**374**	**583**

While the Court will continue to look at how it could provide more statistics concerning ADR (particularly external referrals), there are limits on the capacity of Casetrack to be modified to collect these statistics at this time. Processes to collect new statistics will be considered in any future reviews of Casetrack. More detailed collection at this stage would require manual processes and would be very time consuming and expensive to implement.

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 48.

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 98.

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 dealt with a range of matters including:

- the development of new Practice Notes and Administrative Notices that replaced the existing practice notes, practice directions and national and local notices to litigants and practitioners and were issued on 25 September 2009
- the development of a new scale that will allow the amount of party costs to be determined on the basis of what is fair and reasonable, prepared in light of detailed consultations with the Law Council of Australia. Adoption of the new scale will be considered by the judges of the Court in the second half of 2010
- consideration of the report of the Access to Justice Taskforce that was released by the Australian Government in September 2009, and of the report by the National Alternative Dispute Resolution Advisory Council titled *The Resolve to Resolve: Embracing ADR to Improve Access to Justice in the Federal Jurisdiction* (NADRAC Report)
- the development of a guide setting out procedures for facilitating media access to court documents
- the development of a policy on the anonymisation of personal information that may be recorded in transcripts and judgments to prevent the publication of information that might facilitate identity theft in relation to litigants and witnesses involved in court proceedings
- the implementation of changes to the Court's case management system that will facilitate the creation of a publicly accessible electronic register of suppression orders made under section 50 of the Federal Court of Australia Act
- the development of Practice Note ARB 1 which sets out the arrangements for the conduct of proceedings under the *International Arbitration Act 1974* (Cth) and was issued by the Chief Justice on 8 December 2009
- the development of Practice Note CM 16 which sets out the procedures and arrangements for the conduct of representative proceedings under Part IVA of the Federal Court of Australia Act, issued by the Chief Justice on 28 June 2010.

The Civil Dispute Resolution Bill 2010 was introduced in the Parliament in June 2010. The Bill implements one of the recommendations in the NADRAC Report and will, if enacted, require prospective litigants and their representatives to take genuine steps to resolve disputes before commencing certain types of proceedings in the Court.

Liaison with the Law Council of Australia

Members of the National Practice Committee met 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 development and implementation of the legislative reforms to support active case management
- the rules revision project
- the interaction between the national and local arrangements whereby the Court liaises with the legal profession
- the possible use of panels of judges to hear and determine long and complex cases in the Court's original jurisdiction
- the impact of possible changes to the structure of the federal courts and the creation of a new Military Court
- the review of the costs scales in Schedule 2 to the Federal Court Rules.

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). As the recording of self represented litigants is not a mandatory field in the Court's case management system the following statistics are indicative only. In the reporting year, 572 people who commenced proceedings in the Federal Court were identified as self represented. The majority were appellants in migration appeals.

The following tables provide some further information.

Table 3.15 - Actions commenced by Self Represented Litigants (SRLs) during 2009-10 by Registry

	ACT	NSW	NT	QLD	SA	VIC	WA	Total
Actions commenced by SRLs 2009–10	12	325	1	34	54	109	37	572
% of Total	2%	57%	0%	6%	9%	19%	6%	

Table 3.16 - Actions commenced by SRLs in 2009-10 by Cause of Action (COA)

COA	Total actions	% of Total
Administrative law	55	10%
Admiralty	5	1%
Appeals and related action	391	68%
Assisted dispute resolution	1	0%
Bankruptcy	19	3%
Bill of costs	2	0%
Competition law	3	1%
Consumer protection	11	2%
Corporations	20	3%
Cross claim	2	0%
Fair work	11	2%
Human rights	12	2%
Industrial	1	0%
Intellectual property	4	1%
Migration	8	1%
Miscellaneous	4	1%
Native title	19	3%
Taxation	4	1%
Total	**572**	**100%**

Table 3.17 - Appeals commenced by SRLs in 2009–10 by type of appeal

Type of Appeals	Total actions	% of Total
Administrative Law	25	6%
Bankruptcy	39	10%
Consumer Protection	8	2%
Corporations	8	2%
Human Rights	3	1%
Industrial	5	1%
Intellectual Property	4	1%
Migration	297	76%
Taxation	2	1%
Total	**391**	

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
- is the holder of a health care card, a pensioner concession card or a Commonwealth seniors health card
- 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
- is an inmate of a prison or is otherwise lawfully detained in a public institution
- is a child under the age of 18 years
- is in receipt of a youth ABSTUDY or AUSTUDY 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 103.

In May 2010 the Government announced changes to Federal Court fees (including waivers and exemptions). A new flat fee of $100 will be introduced to replace certain applications (and other items) that were previously eligible for fee waivers and exemptions.

Remote hearings

Where appropriate, the Court will conduct native title hearings 'on country' in remote locations which are the subject of the claim.The preparedness for the Court to hear from native title claimants 'on country' recognises that for many claimants their relationship to country is not able to be explained in the abstract and that it is necessary to be 'on country' to gain a true appreciation and understanding of that relationship and the claimants' evidence about it. It is also an acknowledgment that, under traditional law, some evidence can only be given 'on country', and there will be many cases in which it would be quite onerous to expect claimants to talk about and explain their relationship to country by reference solely to maps, which may have no meaning to the claimants and cannot begin to reflect their relationship to the country in question.

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. Usage of the Court's eServices has increased to the extent that eighteen per cent of website visits are to access these services. During the year thirteen Practice News updates were issued to 1,502 subscribers alerting them to changes in the practice and procedure of the Court.

As noted above, the Court's Practice Notes were reviewed In September 2009 and a new series created with all previous notices being revoked. This necessitated a reworking and redesign of these website pages and to improve access a direct sidebar link was incorporated.

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. From the beginning of the 2010 law term the way information about

a judgment is displayed changed to make it more relevant to website browsing, including the automated addition of 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 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. For example Justice Reeves gave permission to ABC television to film him delivering his judgment in *Wilson v Northern Territory* [2009] FCA 800 at Elliott in the Northern Territory.

High profile judgments that required extensive media coordination included:

- *Larrikin Music v EMI Songs* [2010] FCA 29 in which Justice Jacobson found the song 'Downunder' infringed Larrikin's copyright of the song 'Kookaburra'
- *Roadshow Films Pty Ltd v iiNet Limited (No. 3)* [2010] FCA 24 where Justice Cowdroy concluded the internet service provider did not authorise the infringement of copyright of its users or subscribers when they downloaded cinematograph films in a manner which infringed copyright. (In Australian copyright law, a person who authorises the infringement of copyright is treated as if they themselves infringed copyright directly.)
- *CSR Limited, in the matter of CSR Limited* [2010] FCA 33 in which Justice Stone ruled that splitting CSR's sugar and building materials operations could disadvantage victims of asbestos poisoning.

In 2009–10 a meeting was held between regular media users and Court staff in NSW in order to exchange information and gain a better understanding of how each works. This led to a more streamlined national process regarding access to the Court's records.

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 a DVD was produced on the Fast Track case management procedures and another regarding the opening of the new ceremonial court room, Court 1, in Sydney. This DVD focussed on the artists responsible for the bench and coat of arms.

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.

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 2009–10 judges and registrars in the NSW Registry hosted ten user group meetings or seminars with practitioners on areas such as admiralty, native title, patents and copyright. On 2 July 2009 Deputy District Registrar Hannigan presented a seminar to officers from the Australian Taxation Office about litigation in the Court and on 25 November 2009 Deputy District Registrar Lackenby gave a presentation to the ACT Law Society about mediation and ADR rules and practice in the Court. During the reporting year two orientation sessions were held for lawyers new to practice in the Court.

The Victorian Registry held quarterly meetings of its Class Action Users Group, Federal Court Users Committee and Insolvency Users Committee.

On 7th August 2009, the Victorian Registry hosted a group of Year 10 students from the Mill Park

Secondary School. The Registry also hosted several work experience students at different times through the year. On 12 March 2010, law students from the University of Melbourne undertaking a Masters Program attended a presentation at the Victorian Registry. Justice Finkelstein spoke about the Fast Track List while the District Registrar gave an overview of Assisted Dispute Resolution (ADR) in the Court.

The Victorian Registry hosted a number of Moot Courts for the Melbourne, LaTrobe, Deakin, Monash and Victoria Universities. It also hosted Moot Court Competitions for the Victorian Bar Readers. On two occasions, Justice Gray and Deputy District Registrar Burns addressed the Victorian Bar Readers Welcome. The address provided an overview of the Court, the Victorian Registry and federal jurisdiction.

The Victorian Registry participated in the Indigenous Clerkship Program run by the Victorian Bar. Three clerks participated in the program with each clerk spending one week with each of the participating institutions: The Federal Court of Australia, The Supreme Court of Victoria and the Victorian Bar. The Registry also hosted three law students as part of the 'Stepping into Law' program between 16 November 2009 and 18 December 2009. Two library students also undertook industrial placements in the Registry's library.

The Queensland Registry held user group meetings and forums with practitioners in the Native Title, Bankruptcy and Corporations jurisdictions. Queensland judges and registry staff hosted twelve judges and court officials from the South Pacific for a three day Pacific Regional Mediation Forum from 15 - 17 February 2010. The Queensland Registry also hosted visits by students from Bond University and Forest Lake State High School and participated in moot courts for the Queensland University of Technology and University of Queensland.

The West Australia Registry hosted a Native Title Forum which provided an opportunity for stakeholders to consider the management of Native Title cases in Western Australia in the context of the 2009 amendments to the Native Title Act. The Registry also hosted a series of working groups involving a wide range of participants to further canvass some of the ideas from the Forum. In addition, user group meetings were held with practitioners specialising in the Admiralty jurisdiction and seminars were run about intellectual property and bankruptcy.

The Registry delivered four comprehensive information sessions on the Court's processes for junior solicitors and paralegals. A handbook covering information delivered during the session was provided on a compact disc. 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 McKerracher. Registry staff gave presentations on admiralty law and mediation to university students and participated in a meeting of the Association of Litigation Support Managers (Perth) to discuss Practice Note CM6 on Electronic Technology in Litigation.

Judges and staff from South Australia presented information sessions to practitioners on a range of topics including statutory interpretation, eLodgment, insolvent trading, and public examinations. The District Registrar spoke about insolvency to the International Womens Insolvency and Reconstruction Confederation. She also addressed staff from the Insolvency and Trustee Service Australia (ITSA) about the Court's processes in bankruptcy matters. Meetings were held with the Bankruptcy User Group and Federal Court Liaison Committee. A native title forum was held to discuss the management of native title cases in South Australia.

Registry staff delivered a presentation about the Court during Law Week, undertook presentations and building tours for schools and other community groups throughout the year and, with judges, participated in the South Australian Bar Readers Course.

In September 2009 the Northern Territory Registry held a native title forum to discuss the management of native title cases. The Registry also ran eLodgment presentations in May 2010 to demonstrate and promote the service to the local profession and, in early June, the Registry Manager spoke with a class of local secondary school students about the role of the Court in the Australian Legal System.

Staff from the ACT and Tasmanian Registries held demonstrations of the Court's eLodgment

system for practitioners from local legal firms. On 31 May 2010 the Tasmanian Registry held its first user group meeting which was attended by Chief Justice Keane, Justice Marshall, Justice Middleton and members of the local legal profession.

Complaints about the Court's processes

During the reporting year, eighteen 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, members of the Court were involved in organising two major international conferences as detailed below:

- 27 - 28 November 2009: 'International Commercial Litigation and Dispute Resolution Conference'. Sponsored by the Court, the Business Law Section of the Law Council of Australia and the Ross Parsons Centre of Commercial Corporate and Taxation Law, the conference was primarily concerned with international aspects of commercial litigation and dispute resolution. It also included a session on case management, particularly the management of complex commercial litigation. Over 150 people attended the Conference which was held in the Court's premises in Sydney. The Conference papers were compiled into a book which was launched by Chief Justice Keane in Sydney in April 2010.
- 7 - 11 March 2010: Chief Justice Black and Justice Downes, the President of the Administrative Appeals Tribunal, (as joint-presidents of the International Association of Supreme and Administrative Jurisdictions (IASAJ)) co-hosted the 10th IASAJ Congress. The Congress examined aspects of administrative law in civil and common law systems.

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 160.

3.4 WORK WITH INTERNATIONAL JURISDICTIONS

Introduction

Through its International Programs Unit, the Court collaborates with neighbouring judiciaries across the Asia-Pacific region interested in reform. In 2009–10, 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 2009, a further Annex to the Memorandum of Understanding between the Courts was signed. The Annex sets out the priority areas the Supreme Court wishes to focus on over the coming year. In early December 2009, a number of Indonesian Supreme Court judges and senior registry officials visited the Court in Sydney to discuss and review the activities underway, pursuant to the Annex. Of particular focus was discussion about how the Supreme Court can effectively implement its new policies of all cases being decided within twelve months and reduce the amount of time permitted for judgments to be published.

In April 2010, the Registrar of the Court visited Indonesia to discuss further the case management reforms within the Supreme Court. The program included a visit to the Semarang High Court where discussions focused on strategic planning, transparency, case management reform and court modernisation.

Supreme People's Court of the Republic of China

Following the successful completion in January 2009 of the Court's first substantive program with the Supreme People's Court of the Republic of China, a second program commenced in November 2009 and ended in June 2010. The Maritime Law and Strategic Planning Program comprised three phases, with the judges of each Court spending time in both China and Australia to exchange experiences and knowledge to promote the capacity of the Chinese judiciary to manage pollution of inland rivers and waterways. The programmed visits, which took place in January, April and June 2010 were also used to discuss each Court's respective approach to the arrest (or maritime attachment) of ships in each jurisdiction, and to develop a medium-term plan for ongoing collaboration between the courts in areas identified as mutual priorities.

Supreme People's Court of Vietnam

The Court concluded its support to the Supreme People's Court of Vietnam under the Benchbook Revision Project. The project was completed in March 2010 with 6500 hard copies of the Benchbook distributed across the country, 9000 CDROM copies of the Benchbook prepared and the Benchbook uploaded onto the Supreme People's Court website. To ensure that judges are able to use the Benchbook in its different formats and are aware of what it contains, a judge from each of the 682 District Courts and 63 Provincial Courts received training. Representatives from the key national judicial training centres in Vietnam were also trained to enable them to use the Benchbook as a central training tool for new and existing judges.

Coinciding with the launch of the Benchbook, the Chief Justices of the Federal Court and the Supreme People's Court of Vietnam signed a Memorandum of Understanding to facilitate continuing cooperation and collaboration between the Courts. The Memorandum is designed to promote further understanding of each country's laws and judicial cultures, common international legal standards, regional developments, and relevant emerging issues while enhancing the capacity of the Supreme People's Court of Vietnam to fulfill its functions and duties in accordance with the Constitution and other legislation of Vietnam.

In December 2009 an Annex to the memorandum was signed at the Federal Court in Victoria. The Annex articulates a program that provides assistance with the development of strategic policies on education and training and identifies areas requiring specialist training. A series of activities will take place over the coming year.

Supreme Court of India

In collaboration with the Supreme Court of India and the National Judicial Academy of India, the Court completed its first project with the Indian judiciary this year. Funded by AusAID, the aim of the project was 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 involved the Federal Court in Sydney hosting a high level judicial delegation from India. Led by Chief Justice Balakrishnan, the delegation comprised judges from the Supreme Court, several High Courts and District Courts and was facilitated by Dr Mohan Gopal, Director of the National Judicial Academy.

The broad ranging discussions included in the programme allowed judges from India and Australia to share their unique perspectives and learn about each other's approaches to judicial administration. To provide as broad an experience of the Australian legal system as possible the visit included meetings with the High Court of Australia, Supreme Court of New South Wales, District Court of New South Wales, Federal Attorney-General's Department and the Australian Human Rights Commission.

In November 2009, the Registrar of the Court travelled to Bhopal, India to present a paper on the Court's management systems at the National Judicial Academy's National Conference of Registrars General.

The final phase of the project took place in February 2010 and involved a delegation of judicial officers from the Federal Court, the Family Court, the District Court of New South Wales and a professor from Melbourne University visiting five locations across India to observe and discuss the approaches and procedures to case management taken by courts in both countries.

Supreme and National Court of Justice, Papua New Guinea (PNG)

In late August 2009, Justice Kandakasi of Papua New Guinea visited the Federal Court in Melbourne to review developments made by the Supreme and National Courts of PNG towards implementing a system of court-annexed mediation. The visit involved reviewing the draft Court Rules and devising a system of accreditation, standards and a code of conduct for mediators. Since the visit, the Court Rules and associated documentation have been finalised, promulgated and introduced.

Recognising the long-term relationship between the courts, a formal structure for facilitating judicial co operation was established in November 2009, when the courts signed a Memorandum of Understanding. The key reform and development priorities under the Memorandum include establishing a system of court-annexed mediation, strengthening the capacity of judges to efficiently manage cases, improving the ability to handle commercial cases and building leadership and change management capacity. The initial suite of activities associated with these priorities were finalised in early 2010.

The first activity to be implemented is the Court-Annexed Mediation Programme. A roundtable discussion was convened at the Court in Victoria in late June 2010 which clarified the requirements for and content of a locally tailored mediation training programme. In addition to several judicial and mediation experts from PNG and the Court, the roundtable brought together a number of leading mediation training experts from Australia and beyond.

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 provided logistical and research support to Samoa. The Benchbook was launched by the Chief Justice in late 2009 with the Australian Government Solicitor providing training on the content and use of the Benchbook in early 2010.

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 2010, the Court in Brisbane hosted the second Regional Pacific Mediation Forum which was designed to bring together all seven 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 along with discussion about the way forward 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 forum brought to a close a successful project, which has seen expert mediators from the Court visit participating countries to conduct workshops, co-mediations and mentoring sessions for mediators and others who are involved or interested in court-annexed mediation.

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 Court and its systems and processes. In addition to any visits mentioned above, in 2009–10 the Court welcomed the following:

- Judges, Shenzhen Intermediate Court, People's Republic of China (July 2009)
- The Hon Yvonne Mokgoro, South African Constitutional Court (July 2009)
- The Hon Arthur Chaskalson, former Chief Justice of South Africa (August 2009)
- The Hon Justice Buergenthal, International Court of Justice, Netherlands (August 2009)
- The Hon Lord David Neuberger, Master of the Rolls, United Kingdom (August 2009)
- Japan Federation Bar Association (September 2009)
- Legal Aid Lawyers, People's Republic of China (November 2009)
- Mr Ian Mackintosh, Chairman, Accounting Standards Board United Kingdom and Europe (November 2009)
- Law Reform Commission, Kenya (December 2009)
- Constitutional Court, Russia (February 2010)
- Lawyers, People's Republic of China, participating in the Australia-China Legal Profession Development Program (March 2010)
- Mr Zhiyon Wang, former judge of the Supreme People's Court of China (May 2010)
- Master Steven Whitaker, Senior Master, Senior Courts of England and Wales Queen's Bench Division, The Queen's Remembrancer, United Kingdom (June 2010)