



Justice Collage (Collaborative Entry John Curtin College of Arts in the Federal Court of Australia Art of Delivering Justice School Art Competition 2002. Western Australia State Winner Year 9-11. Chief Justice's Award)

PART 1: CHIEF JUSTICE'S YEAR IN REVIEW



It is my pleasure to present the Federal Court of Australia's 2023–24 annual report.

The Federal Court is a cornerstone of Australia's justice system at the federal level, with jurisdictions that continue to grow and develop.

The work of the Federal Court touches the lives of most Australians. Year upon year, across the Court's jurisdictions, it makes many tens of thousands of orders and decisions which have significant impacts on business, government and the Australian community. It is therefore important that people can clearly see and understand what has been undertaken and achieved by the Court in the service of the Australian community.

To this end, this year the Court's annual report is presented differently, with the specific aim of providing greater clarity and showcasing the areas of excellence of the Federal Court.

The report reflects the National Court Framework and the Court's National Practice Areas (NPAs), so that the work undertaken in its various jurisdictions can be understood in its proper context.

Like the Federal Circuit and Family Court of Australia (Division 1) and (Division 2), and the National Native Title Tribunal, the Federal Court is supported by a corporate services agency known as the Federal Court of Australia Listed Entity (Listed Entity). The Listed Entity provides a range of vital support services to each of the Courts and the Native Title Tribunal. This year, the Listed Entity has produced its own report in accordance with its statutory obligations.

PART 1

I invite readers to look through each of the NPA reports in Part 3, to gain a better understanding of the work of the Court and the impact of that work. These include:

- the deterrent effect of penalties and other orders made in the areas of Regulator and Consumer Protection and Employment and Industrial Relations, and the consequent revenue received by the Federal Government where pecuniary penalties are imposed
- protecting consumers from misleading and unconscionable conduct
- adjudicating the employment rights of hundreds of thousands of Australians and the regulation of industrial activities
- resolving disputes over a wide variety of intellectual property rights in areas such as the pharmaceutical industry and the rapidly changing world of science and technology
- adjudication and resolution of a wide range of major commercial disputes
- adjudication on a wide range of taxation disputes, with direct consequences for federal revenue, as well as personal financial circumstances
- playing an active role in the proper functioning of the commercial shipping industry through its admiralty and maritime jurisdiction
- determining proceedings related to recognition of the ownership of land and waters by Australia's First Nations Peoples, and the making of orders to protect a range of other proprietary interests affected by that recognition
- deciding on human rights disputes in the areas of racial discrimination, disability discrimination, age discrimination and sex discrimination, and
- supervising of the lawful exercise of government decision making under hundreds of federal statutes.

Further, the Court has jurisdiction to deal with summary criminal offences under a number of Commonwealth Acts, as well as recently conferred indictable jurisdiction in relation to corporate crime. It has a growing defamation jurisdiction, in which the Australian public take a keen interest.

In a number of its jurisdictions, but especially in the area of environmental law, the Federal Court is increasingly required to address issues relating to climate change.

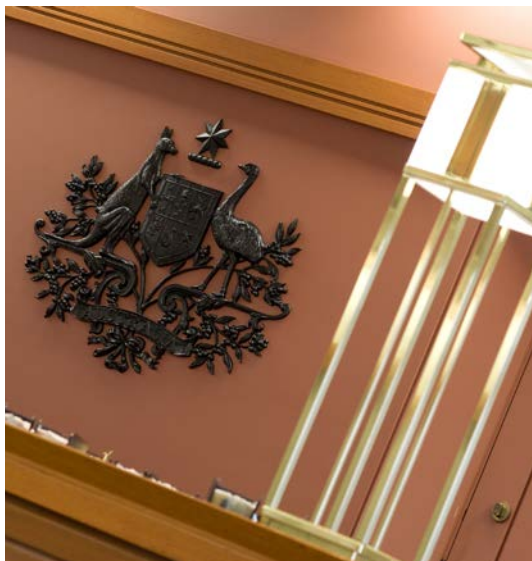
The Federal Court is and must remain contemporary and relevant, open to adaptation, and have capacity to meet the future needs of the justice system and the Australian community. It remains faithful to the fair and accessible administration of justice in ways which are proportionate to the interests at stake. In fulfilling these responsibilities, the Federal Court of Australia and its experienced and dedicated judges will continue to rise to the challenges facing the justice system in Australia, and to provide the very best service we can to the Australian community.

New developments

During the reporting period, the Court welcomed budget announcements for additional funding to support two key areas of the Court's work. The Federal Court of Australia and Native Title Tribunal will be funded a total of \$20.2 million over four years to support the digitisation of culturally and historically significant records in the native title practice area, especially proceeding records from the Court's early years in its native title work. This funding will also support the Court's dedicated objective of increasing traditional owner led agreement making in native title claims and compensation applications. The Court will receive additional funding during the 2024–25 and 2025–26 financial years to support an expected significant increase in its caseload of migration work, and to enable the Court to provide important support services to vulnerable litigants in this jurisdiction – including cultural liaison, increased interpreter services and pro bono and litigants-in-person coordinators. I look forward to reporting on the initiatives that the Court is able to undertake with this additional funding.

On 12 June 2024,¹ the Court's criminal jurisdiction was expanded to enable it to hear and determine a range of summary and indictable offences relating to conduct within the regulatory remit of the Australian Securities and Investments Commission (ASIC), such as dishonest conduct as a director of a corporation and dishonest conduct of financial services. The Court also has jurisdiction in relation to various indictable offences including money laundering and accounting record offences. For indictable offences, this will involve the conduct of jury trials.

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¹ Following Royal Assent to the *Attorney-General's Portfolio Miscellaneous Measures Act 2024*.



Changes to Full Court and Appellate sittings

I have continued my commitment to working closely with my judicial colleagues, and with the Court's registrars, to assist them to better manage their workloads. In support of the Court's commitment to efficiently administering its trial and appellate workload, in February 2024, following consultation with the judges of the Court and the profession, the Court announced changes to the Full Court and Appellate sitting periods in 2025 by moving to three sitting periods in March (four weeks), August (five weeks) and November (four weeks). This change will assist members of the profession, as well as judges and court staff, in managing family commitments over the January period and enabling people to take sufficient leave to return energised for the start of the next legal year. The change will also allow more time during the year for the listing of trials.

Changes in the composition of the Court

In recent years, there has been significant change in terms of the composition of the Court. At 30 June 2024, there were 53 judges in the Court including three judges holding other full time commissions: Justice Hatcher – President, Fair Work Commission, Justice Kyrou – President, Administrative Appeals Tribunal and Justice Bromberg – President, Australian Law Reform Commission.

From 1 January 2021 until 30 June 2024, 21 new judges commenced on the Court, with an average age of 55 years at appointment. During that same period, there were 18 judges who retired from the Court.

This year, the Court farewelled Justices Kathleen Farrell and Steven Rares (New South Wales Registry), Susan Kenny (Victorian Registry), David Thomas (Queensland Registry) and Anthony Besanko (South Australian Registry). Some had served the Court for long periods of time – Justice Kenny for 25 years, Justice Rares for almost 18 years and Justice Besanko for 18 years. Each retiring judge has provided dedicated service to the Australian community. I wish each of them well in their retirement.

During the reporting year, the Court also warmly welcomed the appointments of Justices Christopher Horan, Penelope Neskovicin and Craig Dowling (Victorian Registry) and Justice Yaseen Shariff (New South Wales Registry). At the time of writing, but outside the reporting year, there have been further judicial and registrar appointments which I will note in next year's foreword.

As at 30 June 2024, 17 judges (including the Chief Justice) were women and 36 were men. Thus, women comprised 32 per cent of the Federal Court bench.

At 30 June 2024, 49 registrars held office with the Federal Court. Of the total number of registrars, 29 were female (including the CEO and Principal Registrar) and 20 were male. Thus, 59 per cent of registrars holding office were female. Many of these registrars also performed work for the Federal Circuit and Family Court of Australia (Division 2), especially in that Court's migration, bankruptcy and fair work jurisdiction.

Community and professional engagement

During the reporting period, there was intense public interest in some of the high-profile proceedings of the Court. The Court has continued to use and develop online files in proceedings of public interest. The use of online files avoids the need for third party access requests for court documents, thus assisting in reducing the workload for registry staff in proceedings where there is a great deal of community or media interest. The use of online files is consistent with the Court's commitment to administering justice in as open a way as possible, while balancing the genuine

requirements for confidentiality provided for under the *Federal Court of Australia Act 1976* (Cth) (FCA Act) and the *Federal Court Rules 2011* (Cth). Parties and their legal representatives have worked cooperatively with judges of the Court to enable online files to contain as many court documents as possible, and those files have been well accessed by members of the public and the media.

Similarly, the Federal Court's YouTube presence continues to grow as proceedings are livestreamed to the public. Livestreaming not only enhances public access to court proceedings, but also enables wider access in proceedings such as class actions and native title proceedings, where there may be hundreds of individuals, located in various parts of Australia, who have a direct stake in the proceeding. During the reporting period, the Court's YouTube follower count more than doubled the previous years, with approximately three million views across all livestreamed and uploaded content. As at 30 June 2024, the Court's YouTube channel had 40,394 subscribers.

During the reporting period, the Court's LinkedIn account gained 21,206 followers, representing a 121 per cent increase in 12 months. There were 213 posts published which attracted 1,510,289 impressions, representing a growth of 256.1 per cent. The account has seen an increase of 26.8 per cent in engagement per impression and in overall company page views. The majority of the Court's followers view LinkedIn from a mobile device. The top industry demographic of the Court's LinkedIn followers is largely dominated by legal practice, followed by IT and IT consulting, legal services, government administration, non-profit organisations, higher education and individuals involved in the administration of justice. This spread of industries is much the same as it was in the previous reporting period.

The Court has engaged with the legal profession through various user group activities, and a range of professional development events either hosted by the Court or involving judges and registrars.

It is important this active engagement continues and that the Court listens to the concerns and feedback of the profession. In 2024, I have enjoyed continuing a practice I commenced last year of meeting with local members of the Law Societies, Bar Associations and some university law faculties annually, as well as spending time in each of the Court's registries, seeing judges, registrars and other court staff. I have also held meetings with

peak bodies such as the Law Council of Australia and the Australian Bar Association. I very much value the productive discussions and ideas presented on behalf of the profession, and the Court has benefited from the feedback provided. I thank all those members of the legal profession with whom the Court has engaged this year.

The Court's premises and courtrooms continue to be used for various events for the profession, for law students (such as mooted competitions) and for speaking events also open to members of the community. The fine public spaces and buildings of the Federal Court are able to provide a modern and valuable forum for such activities.

Discharge of the Court's judicial caseload

In 2023–24, there has been an overall 29 per cent increase in filings in the Federal Court compared to the same time last year. The Court has seen an increase in filings in both the original jurisdiction work of the Court (six per cent) and the appellate work of the Court (nine per cent). In the same period, the Court has seen a significant increase in registrar filings (corporations and bankruptcy filings), noting that these filings saw a dramatic decrease over the COVID-19 years (2019–20; 2020–21) and are steadily increasing each year, with a 69 per cent increase (+800 filings) in 2023–24 from the previous year.

Overall, the Federal Court has continued to finalise proceedings in an effective and efficient manner. In 2023–24, 74 per cent of proceedings finalised were finalised within 12 months of filing, an improvement from 68 per cent in the previous year, with a finalisation rate of 99 per cent (the number of proceedings finalised compared to the number filed in the fiscal year).

In 2023–24, the Court recorded a significant improvement in the delivery of outstanding reserved judgments. At the end of this reporting period, 14 judgments had been reserved for 12 months or longer, which is down from 38 judgments at the same time the previous year (30 June 2023).

The judges of the Court delivered 1,841 published judgments in 2023–24 (both Single Judge and Full Court judgments), being an increase from 1,787 in 2022–23. Of these delivered judgments, 79 per cent were delivered within three months of being reserved, with 86 per cent delivered within six months. The Court continues to deliver all judgments at an average of two months from the date they were reserved.

The Court's judges holding other commissions also delivered judgments in other courts and tribunals during the reporting period as follows – in the Supreme Court of Norfolk Island (10), the Australian Competition Tribunal (two), the Copyright Tribunal of Australia (two) and the Defence Force Discipline Appeal Tribunal (one).

The Court's registrars were allocated 501 mediations in the 2023–24 period, an 11 per cent decrease from the last financial year. In 2023–24 the registrars resolved 54 per cent of mediations, an increase from 51 per cent in 2022–23. This equates to approximately 270 proceedings being resolved through mediation conducted by registrars of the Court, delivering more timely final outcomes to the parties, helping to reduce the trial workload of the Court, and reducing both the potential costs and delays associated with trial processes, for all parties. In addition to mediation, the Court's registrars managed over 880 referrals from judges and other registrars which included activities such as expert conferrals, discovery disputes and claims of privilege, general case management and costs-related issues in proceedings. This is vital work performed to a high standard by the Court's registrars.

The Court continues to work through reviewing and maintaining its practice notes, which are a critical method of communication with litigants and the profession about how the Court will deal with matters of practice and procedure, as well as trial and appellate case management, in all or some of its NPAs. During the reporting period, on 13 October 2023, a practice note was issued in relation to schemes of arrangement after consultation with ASIC, the profession and the Harmonisation of Rules Committee. The practice note aims to promote uniform procedures across Australian courts and has been well received by the profession and regulators.

During this reporting period, one of my priorities has been judicial wellbeing. The Court has implemented a longer, more structured and rounded induction program for new judges with an emphasis on the transition from legal practice to the Court and developing a collegiate judicial environment. There are now regular opportunities for judges to discuss matters that affect their wellbeing and to consider strategies to assist them. The Court strives to ensure that all judges understand and have access to support services they may need. Judges,

registrars and all staff comprise a modern, energetic and engaged workplace, committed to serving the Australian community in a way that upholds the workplace values the Australian community expects of a modern institution. Workplace conduct sessions with experienced professionals have been formalised and conducted, including with all judges, and separate sessions for chambers staff.

Judge-led projects

Judges, assisted by the Court's registrars and staff, have worked on a number of projects designed to assist in the management of judicial workload, and assist the profession and parties in the effective and efficient conduct of litigation. These are projects designed by judges, with judges and registrars driving their implementation. They have given rise to a strong sense of collegiality, commitment to improvement and involvement in the future direction of the Court. In due course, litigants and the profession will be consulted and will begin to see the benefits of these projects. The appeals project, which resulted in a change to three appeals periods (see *Changes to Full Court and Appellate sittings* above), is one of the first of these projects to be completed and implemented. I thank my colleagues for their dedication to participating in these projects, above and beyond their already demanding judicial workloads.



Use of technology

The Court's ongoing drive toward improved online and digital facilities is continuing through the work of the Digital Court Program. The program is delivering facilities to the Court and to Court users that are secure, efficient and reliable, and uphold the Court's reputation of being at the forefront of digital case management, with electronic filing and document management in place for over ten years. Judges are also increasingly working online and conducting trials digitally, a positive environmental measure which saves resources and leads to other efficiencies, including the ability to enhance online files available to the public.

CourtPath, a flagship initiative of the program, has been progressively and carefully implemented to replace older but critical technical systems. Since March 2024, CourtPath is now the primary tool used by Federal Court judges and registrars for managing files and documents and is working well. With its third and final phase of development now underway, 2025 will see the system fully replace remaining case management tools, providing a simple, flexible solution that can continue to adapt to the needs of the Court.

The transition to CourtPath provides the foundations for the next significant focus for the Digital Court Program – replacement of the Commonwealth Courts Portal (CCP). Similarly to CourtPath, the CCP replacement will provide a flexible and accessible tool designed to meet the direct needs of litigants engaging with the Court, and the Australian public.

Consistent with the Federal Government's Strategic Commissioning Framework, the Digital Court Program is being undertaken by technical specialists employed directly by the Court. This includes a mix of employees from across the Court who bring insights and an understanding of its operations, along with technical staff with relevant industry experience recruited specifically to deliver program objectives. This approach prioritises the development of sustainable and efficient services that connect to a deep understanding of the evolving needs of the Court. The Digital Court Program is proving to be an important initiative and is generating considerable interest from a range of other Australian and overseas courts.

Regional judicial relationships

The Federal Court has a longstanding and proud commitment to international cooperation and to supporting the rule of law and the independence of the judiciary. The Court is committed to assisting and cooperating in the development of judicial processes and practices designed to suit the communities and culture of the nations of our regional judicial colleagues. We have been able to involve a wider cross-section of judges, working across a number of NPAs. Cooperation has involved visits to our registries by foreign judicial delegations, visits by some of our judges to regional courts or regional workshops and a significant use of online delivery for cooperation programs. Practice areas have included fraud and corruption prevention measures and proceedings, intellectual property litigation, competition law and class actions law.

In May 2024, the Federal Court of Australia and the Supreme Court of the Philippines signed a Memorandum of Understanding (MOU). In June 2024, a Federal Court delegation travelled to Indonesia to celebrate 20 years of working with the Supreme Court of Indonesia under our MOU. A new MOU for the next five years was also signed.

In addition to these Memoranda of Understanding, the judges on this Court have continued to develop and strengthen international relationships including with the National and Supreme Court of Papua New Guinea and the National High Court of Brazil. In February 2024, I attended, as an observer, the Pacific Chief Justices' Leadership Forum in Samoa, this year organised by the New Zealand based Pacific Justice Sector Program.

The Court looks forward to increasing and developing its cooperation work with regional judiciaries.

Gratitude

Having concluded my first full year as Chief Justice of this Court, I take this opportunity to express my sincere appreciation to the judges of this Court for their ongoing support. The judges of the Court continue to work exceptionally hard for the Australian community, and to approach their judicial work always mindful of how proceedings might be conducted more effectively and efficiently. My sincere thanks also go to the Court's excellent cohort of registrars, working in all our eight registries across the country, for their important contributions to the administration of justice. The registrars provide a great deal of support to

the judges, but they also perform a tremendous range of functions under the FCA Act and the Rules in their own right.

I acknowledge the hard work and dedication of Sia Lagos, CEO and Principal Registrar, and thank her for her ongoing assistance to me over what has been a tremendously busy and productive year, in which much has been achieved and implemented to improve the operations and efficiency of the Court.

As Chief Justice, I have worked constructively with the federal Attorney-General, the Hon Mark Dreyfus KC MP, his office and the officers of the Attorney-General's Department, led by Ms Katherine Jones PSM. I thank them all for the cooperative and effective working relationship we have had, so as to advance the interests of justice.

By no means least, aside from judges and registrars, the more than 220 staff who work for the Federal Court of Australia and the more than 1,462 staff who work for the Listed Entity deserve particular gratitude. Their work is sometimes less visible than the work of judges and registrars, but we could not perform our roles without them. Whether it is the exceptionally dedicated judgment publication staff, the court officers, lawyers and legal case managers, court services staff, building services staff, information technology staff, the busy team in People and Culture, the teams in the Court's National Operations Registry, or the security and cleaning staff, every single person contributes to ensuring the Court runs as efficiently as it can, often under a great deal of pressure and sometimes in the spotlight. The chambers staff of judges (executive assistants and associates) work as tirelessly as their judges to get through the trial and appellate work and do so with energy and good humour.

Our collective work is not easy, but it is a vital part of Australia's robust democratic governance system and I know all those working in the Federal Court and in the Listed Entity are committed to the public service we perform.

DS Mortimer

Chief Justice of the Federal Court of Australia

