

PART 2

The year in review



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The year 2020 will be long remembered as nothing short of extraordinary. In my first year as the Chief Executive Officer (CEO) and Principal Registrar of the Federal Court of Australia, it has been my privilege to assist the Chief Justice, the Hon James Allsop AO, during a time of profound change to the Court's operations and environment. I am delighted to share our initiatives, successes and learnings in this part and throughout the Court's 2019–20 annual report.

The COVID-19 pandemic has affected almost every aspect of the Court's affairs and will continue to do so for many years to come. While the year has presented many challenges, it has also highlighted our forward-thinking approach to managing our work and our commitment to the relentless improvement of practices and digital innovation. The Court was positioned to respond rapidly and flexibly to COVID-19 and we have been able to showcase what a truly modern and progressive Court we have become.

The opportunity over the next 12 months will be to capitalise on the digital, practice and cultural initiatives that have been implemented to address COVID-19. We will continue to build a culture of innovation, consolidate the Court's national operations and deliver digital transformation to support the delivery of Court and Tribunal services. The Court is also committed to supporting the delivery of the Government's COVID-19 recovery agenda.

Significant issues and developments

Special measures relating to COVID-19

In March 2020, in response to the COVID-19 pandemic, the Court modified its practices in order to minimise in-person attendance on Court premises, with the Court's priority being the health and safety of the community, including parties, practitioners, judges and staff, and the families of all of these groups. The Court issued four special measures information notes (see page 30 for more information).

The Court quickly transitioned to hearings using remote access technology such as Microsoft Teams. The Court upgraded its information technology infrastructure, internet bandwidth and video conference enabled courtrooms in

order to hold online hearings with the necessary transcript support. Judges of the Court shared knowledge, identified issues, and developed and documented new practices as they trialled online hearings. Various guides and communications were also developed to provide support to litigants and the profession.

From mid-April 2020, the Court was operating at 80 per cent of its courtroom capacity – a remarkable achievement in such a short timeframe. The Court's practices and procedures in relation to online hearings and related processes, such as the viewing of subpoenaed material without the requirement for in-person attendance, continue to develop in response to the COVID-19 pandemic.

Embracing a digital future

Digital hearings

The Court has developed a framework to support digital hearings. In basic terms, the digital hearing framework uses existing courtroom cabling to broadcast from a PC operated by a court-appointed digital hearing operator to monitors set up on the bench, bar tables, witness box and a projector screen for the public gallery.

The digital hearing framework is focused on being cost effective and easily accessible to all litigants. It is available to any judges (and/or parties) who wish to use it for hearings, other than for mega trials (which continue to rely on the use of external digital hearing providers). The framework is based on a pilot conducted in June 2019 and addresses:

- the IT infrastructure, software and hardware required to run a digital hearing
- the recommended courtroom setup
- personnel and resourcing needed to operate and support a digital hearing

- recommended case management practices, including orders to facilitate a digital hearing, and
- details and format for preparing a digital court book.

Certain learnings from the Court's experience with the digital hearing framework, including the management of digital evidence, document exchange using digital mechanisms and the format and preparation of digital court books have been instrumental in the Court's development and support of online hearings (see below) during the COVID-19 pandemic.

Online hearings

In response to the COVID-19 pandemic, the Court modified its practices in order to minimise in-person attendance on court premises. This included a complete acceleration of components of the Court's digital strategy including the introduction of hearings by remote access technology. Microsoft Teams was the remote access technology rolled out in March 2020 to facilitate remote hearings and alternative dispute resolution by digital means. This has allowed the Court to maintain the continuity of its services and adhere to the Australian government restrictions whilst preserving access to justice.

In addition to the Special Measures Information Notes, the Court also published a National Practitioners and Litigants Guide to Online Hearings and Microsoft Teams to provide guidance for the legal profession and litigants-in-person appearing in online hearings.

Moving forward, the Court will capture key learnings, refocus its priorities to better support litigants and stakeholders and reinvigorate alternatives for the delivery of its services.

Digital litigation support

With its growing digital practices, the Court recognises the need to provide enhanced support and training for in-court technology, digital hearings and online hearings by way of dedicated digital litigation support staff. The Court has created a digitally savvy workforce through its ongoing digitisation of its services and practices. In order to accommodate the growing demands on its staff and technology, the Court is exploring an approach for the development and implementation of a digital litigation support team.

iPad initiative

The Court commenced its iPad Initiative in March 2020 in order to promote alternatives for its Working Digitally strategy by maximising flexibility to meet individual judges' work preferences. The iPad Initiative was an opt-in program for judges who were interested in opportunities to trial other means by which technology could assist them in performing their judicial duties.

An iPad Reference Guide and an ongoing training program has been developed to keep judges and chambers staff informed about how to effectively use the iPad and keep up to date with its benefits for digital litigation and judgment writing.

Digital Court Program

The Digital Court Program continues to be a priority for the Federal Court, the Family Court and the Federal Circuit Court, to streamline core business systems and create flexibility and operational efficiency across the three federal courts and the Tribunal.

In 2019–20, there were two key areas of focus. The first was the implementation of a digital court file in family law and the second was a proof of concept for implementation of a commercial off the shelf application to replace the Courts' aged case management system.

The Federal Court and the Federal Circuit Court judges conducting general federal law matters, have enjoyed the benefits of a digital court file for some years. The digital court file for family law was originally scheduled for release at the end of June 2020, however this was brought forward to April 2020 as a response to the COVID-19 pandemic. A digital court file can be accessed remotely by anyone on the Court network and is critical where multiple people require simultaneous access, for example, when working from home. Two applications were developed to support the transition to a digital family law court file. The 'Judicial Dashboard' was developed to provide judges with an overview of their docket, including links to those files in their docket that are digital, along with other statistics and data. The 'List Assist' tool was designed to help better manage hearings, with a large number of matters listed.

A proof of concept for implementation of a commercial off the shelf application to replace the Courts' aged case management system was the final stage in the evaluation of a tender for this application that was commenced in 2019. The proof of concept focused on establishing one area of general federal law in a test system. Special needs and considerations of family law were also discussed during the design phase. Completion of this proof of concept has been delayed by the impacts of the COVID-19 pandemic, however it will remain a critical project into 2020–21.

Extension of the National Court Framework

Since inception, the National Court Framework reforms have focused on the Court operating as a truly national Court through the national allocation of the Court's work, development of a nationally consistent approach to practice and organising the Court's work along national practice areas. The reforms also focused on reinvigorating the Court's approach to case management and utilising the specialised knowledge and skills of judges on a national basis.

The reforms initially focused on matters relevant to the work undertaken by the judges of the Court, including the allocation of case work to judges on a national basis, the implementation of a national duty system, introduction of nine National Practice Areas and a suite of new practice notes. The national principles are now being applied to the work undertaken by judicial registrars with the majority of that work now being allocated on a national basis, a review of judicial registrar practice and development of practice guides currently in progress, and judicial registrars enhancing the mediation and case management support for judges on a national basis. The Court will continue to progress and embed these national principles and reforms.

Workload

In 2019–20, the total number of filings (including appeals) in the Court decreased by 26 per cent to 4,469. Filings in the Court's original jurisdiction (excluding appeals) were also down 25 per cent at 3,443.

Significant decreases in filings in 2019–20 were experienced in company winding up applications dealt with by registrars of the Court and appeals from the Federal Circuit Court.

On 25 March 2020, the Commonwealth government introduced changes to corporate insolvency and bankruptcy legislation to provide relief to companies and individuals affected by the COVID-19 pandemic, with the introduction of the *Coronavirus Economic Response Package Omnibus Act 2020* (Cth).

The six months relief provided by these amendments included changes to the threshold amounts for the issue of statutory demands and bankruptcy notices to \$20,000 up from \$2,000 and \$5,000 respectively, and an increase in the time to respond to a statutory demand or a bankruptcy notice from 21 days to six months. These amendments have had a direct impact on filings in corporate insolvency and bankruptcy and specifically the workload of registrars through this period.

While filings decreased gradually during the first three quarters of the 2019–20 financial year, as a result of the COVID-19 pandemic there was a more significant decrease in overall filings during the final quarter.

Combined filings in the Federal Court and the Federal Circuit Court in general federal law decreased by 8 per cent to 13,776.

The Court's registries also provide registry services for the Federal Circuit Court. The workload of the Federal Circuit Court has continued to grow over the last five years.

The Court's registrars continue to hear and determine a substantial number of cases commenced in the Federal Circuit Court. Federal Court registrars dealt with, and disposed of, 1,891 Federal Circuit Court bankruptcy matters, which equates to 90 per cent of the Federal Circuit Court's bankruptcy caseload.

When considering total disposals (7,779), 44 per cent of the Federal Circuit Court's general federal law workload is dealt with by registrars, and 56 per cent is dealt with by judges.

Further information about the Court's workload, including the management of appeals, is included in Part 3 (*Report on Court performance*) and Appendix 5 (*Workload statistics*).

Performance

The Court has two targets for timely completion of cases:

- *Eighty-five per cent of cases completed within 18 months of commencement*

During the reporting year, the Court completed 93 per cent of cases in less than 18 months. As shown in Figure A5.5 and Table A5.5 in Appendix 5, over the last five years, the Court has consistently exceeded its benchmark of 85 per cent, with the average over the five years being 93.1 per cent.

- *Judgments to be delivered within three months*

The Court has a goal of delivering reserved judgments within a period of three months. Success in meeting this goal depends upon the complexity of the case and other issues affecting the Court.

During 2019–20, the Court handed down 2,313 judgments for 2,158 court files (some files involve more than one judgment being delivered – e.g. interlocutory decisions – and sometimes one judgment will cover multiple files). This is an increase from last year of 46 judgments. The data indicates that 77 per cent of appeals (both Full Court and single judge) were delivered within three months and 79 per cent of judgments at first instance were delivered within three months of the date of being reserved.

Financial management and organisational performance

From 1 July 2016, the *Courts Administration Legislation Amendment Act 2016* established the amalgamated entity, known as the Federal Court of Australia (the entity).

The financial figures outlined in this report are for the consolidated results of the Federal Court, the National Native Title Tribunal, the Family Court, the Federal Circuit Court, the Commonwealth Courts Corporate Services and the Commonwealth Courts Registry Services.

The financial statements for 2019–20 include changes to the accounting treatment of operating leases as a result of the impact of changes to the Australian Accounting Standards Board (AASB) 16 Leases. The financial

statements show an operating surplus of \$15.327 million before depreciation costs of \$29.955 million and taking into account principal repayments of lease liabilities of \$17.082 million. The entity was budgeting a break-even position for the year, with the surplus stemming from projects that have been delayed to future years following uncertainty surrounding the passage of legislation. The Courts operate under strict budgetary controls ensuring that the entity operates within the appropriation.

The next three-year budget cycle continues to challenge the entity to make further savings. With over 60 per cent of the entity's costs relating to property and judicial costs, which are largely fixed, the ability to reduce overarching costs is limited.

In 2017–18, the entity received \$14 million in additional funding under the Modernisation Fund over a three-year period. This funding enabled the entity to deliver a digital court file for family law and supported the Courts' ongoing digital transformation. With funding ceasing in 2020–21, the entity will continue the digital transformation project through reallocation of internal resources.

Corporate services

During 2019–20, the work of corporate services focused on supporting the evolving needs of judges and staff across all the Courts and Tribunal, while delivering on required efficiencies to meet reduced appropriations.

As expected, a key focus in the second half of 2019–20 was in the delivery of solutions to support the work of the Courts and Tribunal in response to the COVID-19 pandemic.

IT moved quickly to effectively shift the business of the Courts to an online model. A number of technical solutions were deployed providing options for judges to attend from the courtroom, from chambers or from their home, providing solutions that enabled the Courts to continue operating during the lockdown period. This involved an upgrade to the Courts' existing video conferencing platform to provide assurance around its capacity to continue to deliver the majority of its hearings online for the foreseeable future.

During this period, COVID Safe plans were developed and implemented across all Court buildings. Measures were undertaken to ensure that appropriate social distancing protocols were in place across all locations to mitigate the risk of infection to staff and the public.

The People and Culture team moved rapidly to implement a number of support programs to assist staff during this period of increased stress and uncertainty. A significant undertaking was the delivery of resilience training offered to all staff. This training has been extremely important in underpinning our response to the COVID-19 pandemic. The provision of Microsoft Teams-based sessions, utilising the services of an external facilitator, provided the platform to reinforce the key resilience principles with staff. Various mediums for increased staff engagement and interaction were also developed focusing on staff wellbeing.

Investment in IT security, which is seen as particularly critical in an environment increasingly reliant on technology to operate, was increased. Various measures were implemented to enhance the protection of Court information and assets by reducing IT security risks and improving general IT security maturity levels.

There has been a concerted effort during this period to deliver innovative technological solutions to support the work of the Courts and Tribunal. A key achievement has been the delivery of the digital court file in family law, allowing the Court to create and access all court files electronically from any location around the country. Work also continued on consolidating IT systems and amalgamating projects targeted at simplifying the combined court environment to deliver more contemporary practices and efficiency improvements to reduce the cost of delivery.

Several property projects were delivered during the year with a number of other prominent accommodation projects underway.

A detailed report on the delivery of corporate services in 2019–20 is in Part 4 (*Management and accountability*).



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