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THE WORK OF THE COURT IN 2016-17

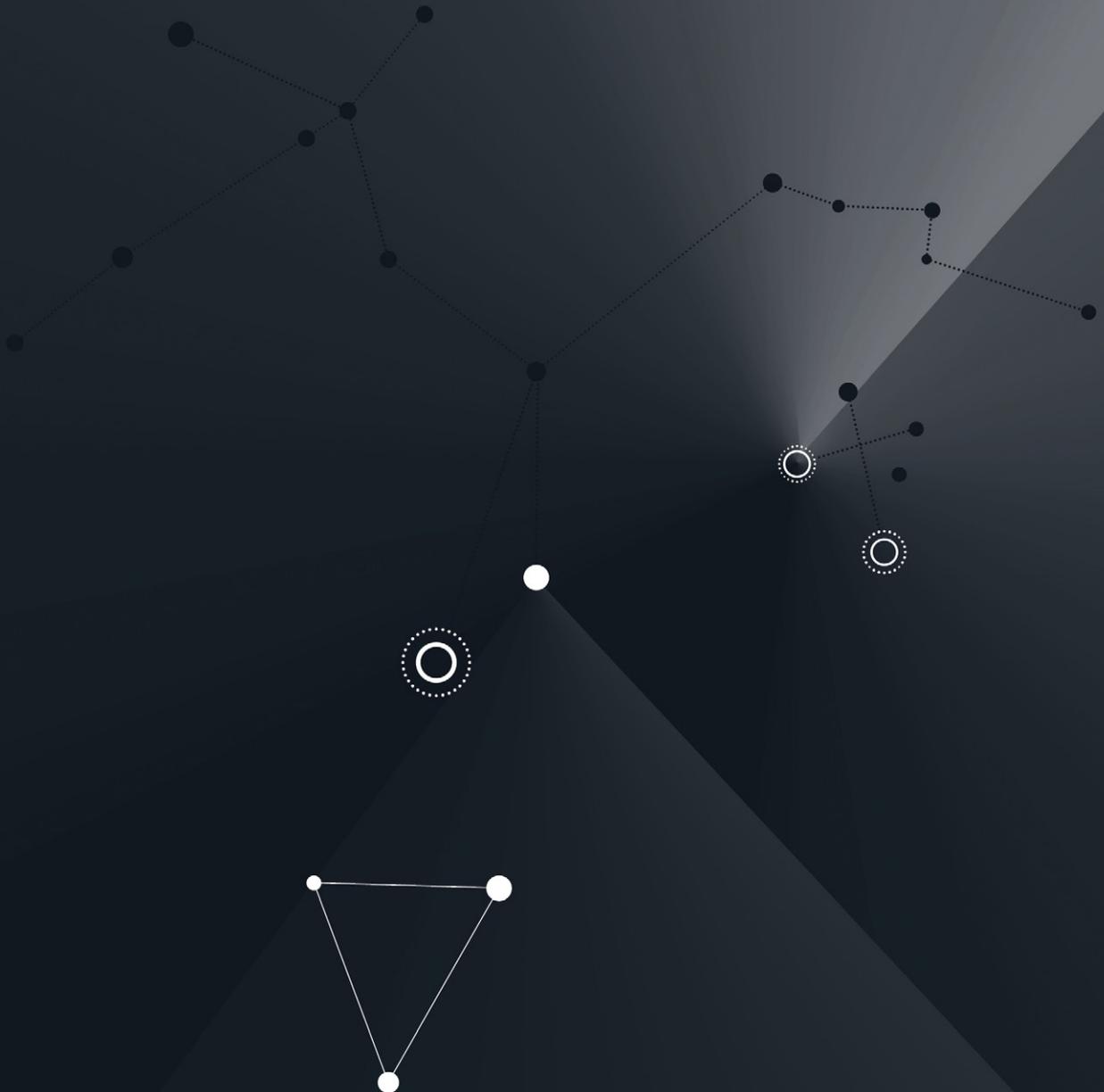


PART 3



This section of Iritjinga highlights the star groupings. Star groups detail important models of how the world works. The particular importance of this section is the Luritja and Aranda camps and how these two groups are located or interact. Stars to the East (Aranda) are seen as one camp and stars to the West (Luritja) are another. The Milky Way is a long celestial river that divides the camps, but there are stars within the Milky Way which are a mixture of the two camps.

Dr R Bhathal: *Astronomy in Aboriginal Culture; Bhathal: Aboriginal Skies. A&G October 2006, Vol.47 (pg. 5.28).*





THE WORK OF THE COURT IN 2016–17

INTRODUCTION

The Federal Court has one key outcome identified for its work, which is, through its jurisdiction, apply and uphold the rule of law for litigants in the Federal Court of Australia and parties in the National Native Title Tribunal (NNTT) through the resolution of matters according to law and through the effective management of the administrative affairs of the Court and the NNTT.

This part of the Annual Report covers 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. Aspects of the work undertaken by the Court to improve access to the Court for its users, including changes to its practices and procedures, are discussed. Information about the Court's work with overseas courts is also covered.

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 through the operation of s 39B of the *Judiciary Act 1903*.

Central to the Court's civil jurisdiction is s 39B (1A) (c) of the *Judiciary Act*. 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.

The Court 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* (ADJR Act) 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. This jurisdiction falls under the Administrative and Constitutional Law and Human Rights National Practice Area (NPA) which also includes complaints about unlawful discrimination no longer being dealt with by the Australian Human Rights Commission and matters concerning the Australian Constitution. Figure A5.9.1 on page 147 shows the matters filed in this practice area over the last five years.

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 A5.9.7 on page 150 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, designs and circuit layouts). All appeals in these cases, including appeals from the Supreme Courts, are to a full Federal Court. Figure A5.9.5 on page 149 shows the intellectual property matters filed over the last five years.

Another significant part of the Court's jurisdiction derives from the *Native Title Act 1993* (Cth) (NTA). The Court has jurisdiction to hear and determine native title determination applications and to be responsible for their mediation, to hear and determine 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 NNTT and matters filed under the ADJR Act involving native title. The Court's native title jurisdiction is discussed on page 29. Figure A5.9.6 on page 150 shows native title matters filed over the last five years.

A further important area of jurisdiction for the Court 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 six arrests. See Figure A5.9.2 on page 148 for the number of Admiralty and Maritime Law matters filed in the past 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 A5.9.4 on page 149.

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.

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.

CHANGES TO THE COURT'S JURISDICTION IN 2016–17

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

Cases arising under Part IV (restrictive trade practices) and Schedule 2 (the Australian Consumer Law) of the *Competition and Consumer Act 2010* 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 dealings or false advertising.

The above areas fall under the Commercial and Corporations NPA. Figure A5.9.3 on page 148 provides statistics on this practice area.

Since late 2009, the Court has also had jurisdiction in relation to indictable offences for serious cartel conduct. This jurisdiction falls under the Federal Crime and Related Proceedings NPA together with summary prosecutions and criminal appeals and other related matters. During the reporting year the Court's first criminal cartel matter was filed, guilty pleas to all charges were subsequently entered and a sentence hearing was held. Judgment on sentence remained reserved at the end of the year.

The Court has a substantial and diverse appellate jurisdiction. It hears appeals from decisions of single judges of the Court, and from the Federal Circuit Court (FCC) in non-family law matters and from other courts exercising certain federal jurisdiction. In recent years, a significant component of its appellate work has involved appeals from the FCC concerning decisions under the *Migration Act 1958*. The Court's migration jurisdiction is discussed later in this part on page 28. 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 27. Table A5.3 on page 140 shows the appeals filed in the Court since 2012–13.

This summary refers only to some of the principal areas of the Court's work. Statutes under which the Court exercises jurisdiction in addition to the jurisdiction vested under the Constitution through s 39B of the Judiciary Act are listed on the Court's website at www.fedcourt.gov.au

- *Budget Savings (Omnibus) Act 2016*
- *Building and Construction Industry (Improving Productivity) Act 2016*
- *Comcare and Seacare Legislation Amendment (Pension Age and Catastrophic Injury) Act 2017*
- *Copyright Amendment (Disability Access and Other Measures) Act 2017*
- *Corporations Amendment (Auditor Registration) Act 2016*
- *Corporations Amendment (Crowd-sourced Funding) Act 2017*
- *Counter Terrorism Legislation Amendment Act (No 1) 2016*
- *Education and Other Legislation Amendment Act (No. 1) 2017*
- *Fair Work (Registered Organisations) Amendment Act 2016*
- *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017*
- *Human Rights Legislation Amendment Act 2017*
- *Insolvency Law Reform Act 2016*
- *National Cancer Screening Register Act 2016*
- *National Vocational Education and Training Regulator Amendment (Annual Registration Charge) Act 2017*
- *Native Title Amendment (Indigenous Land Use Agreements) Act 2017*
- *Parliamentary Business Resources Act 2017*
- *Parliamentary Entitlements Legislation Amendment Act 2017*
- *Therapeutic Goods Amendment (2016 Measures No 1) Act 2017*
- *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016*
- *Treasury Laws Amendment (Combating Multinational Tax Avoidance) Act 2017*
- *VET Student Loans Act 2016*

AMENDMENTS TO THE FEDERAL COURT OF AUSTRALIA ACT

During the reporting year, some significant amendments to the Federal Court Act, made by the *Courts Administration Legislation Amendment Act 2016* (Amendment Act), took effect from 1 July 2016.

The Amendment Act implemented a measure announced as part of the Federal Government's 2015–16 Budget to merge the corporate services functions of the Federal Court with those of the Family Court (FCoA) and FCC by bringing the three courts (along with the NNTT which was already within the Federal Court) into a single administrative entity and making legislative provisions for the courts and the NNTT to share corporate services. These changes were aimed at generating efficiencies in the delivery of shared corporate services by reducing unnecessary duplication with the savings gained being reinvested to support the core functions of the courts.

As a result of the amendments to the Federal Court Act (along with complementary amendments to the *Family Law Act 1975*, *Federal Circuit Court of Australia Act 1999* and *Native Title Act 1993* (NTA) and relatively minor consequential amendments to a range of other enactments), the Federal Court's Chief Executive Officer and Principal Registrar (Federal Court CEO) is responsible for managing the corporate services functions and for providing these services to the three courts and the NNTT.

The Federal Court CEO is the accountable authority for the administrative entity (known as the 'Federal Court of Australia') under the *Public Governance, Performance and Accountability Act 2013* and the agency head for the purposes of the *Public Service Act 1999*.

The Chief Justice of the Federal Court remains responsible for the business of the Federal Court and the management of the administrative affairs of the Federal Court (now defined to exclude corporate services which are also now defined). The Federal Court's Chief Justice continues to be assisted in the management of the Court's administrative affairs by the Federal Court CEO. The Federal Court CEO must consult with each of the Chief Justices of the Federal Court and Family Court, Chief Judge of the Federal Circuit Court and the Chief Executive Officers and Principal Registrars of the Family Court and the Federal Circuit Court and the President of the NNTT as required in relation to the provision of shared corporate services.

FEE REGULATION

As noted in the 2015–16 Annual Report, by virtue of the biennial adjustment provisions (section 2.20) of the Federal Court and Federal Circuit Court Regulation 2012, most filing and other fees were increased from 1 July 2016 by 5.5 per cent. This increase was calculated under a formula based on the change in the Consumer Price Index for the March quarter 2016 compared to that index for the March quarter 2014 and was applied to each fee mentioned in Schedule 1 of the Regulation save for the fees for filing human rights and some Fair Work applications and for service and execution of process.

The fees for filing some Fair Work applications increased from 1 July 2016 and will again increase from 1 July 2017. Under the Regulation, that fee is fixed as the fee prescribed under subsection 395(2) of the *Fair Work Act 2009* for the filing of an application in the Fair Work Commission. That latter fee is adjusted on 1 July of each year for changes in the Consumer Price Index by regulation 3.07 of the Fair Work Regulations 2009.

Otherwise the operation of the Regulation remained unchanged during the reporting period.

FEDERAL COURT RULES

The judges are responsible for making the Rules of Court under the Federal Court 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 Legislative Instruments.

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. Proposed amendments are discussed with the Law Council of Australia and other relevant organisations as considered appropriate.

There were no changes to the Federal Court Rules during the reporting year, save and except for some consequential amendments on the making of the Federal Court (Criminal Proceedings) Rules 2016 noting that those new rules govern criminal proceeding in the Federal Court, noting that some powers that may be exercised by a Registrar are contained in those new rules, repealing a Division and a Part which was replaced in the new rules and omitting a reference to repealed rule.

OTHER RULES

In some specialised areas of the Federal Court's jurisdiction, the judges have made rules which govern relevant proceedings in the Court; however, in each of those areas, the Federal Court Rules continue to apply where they are relevant and not inconsistent with the specialised rules.

The Federal Court (Corporations) Rules 2000 govern proceedings in the Federal Court under the *Corporations Act 2001* and *Australian Securities and Investments Commission Act 2001*, as well as proceedings under the *Cross-Border Insolvency Act 2008* which involve a corporate debtor.

The Federal Court (Bankruptcy) Rules 2016 govern proceedings in the Federal Court under the *Bankruptcy Act 1966*, as well as proceedings under the *Cross-Border Insolvency Act 2008* involving a debtor who is an individual.

With effect from 10 November 2016, the Federal Court (Criminal Proceedings) Rules 2016 were made to govern all criminal proceedings in the Federal Court, including summary criminal proceedings, indictable primary proceedings and criminal appeal proceedings.

Those rules were designed, as far as practicable, to provide a single set of rules for the conduct of criminal proceeding in the Court and to address most of the issues which are likely to arise on a day-to-day basis in any such proceeding. For that reason, the rules for the conduct of summary prosecutions and criminal appeals from the Supreme Court of a Territory were removed from the Federal Court Rules and included in the Federal Court (Criminal Proceedings) Rules.

The Admiralty Rules 1988 govern proceedings in the Federal Court under the *Admiralty Act 1988*.

APPROVED FORMS

Approved forms are available on the Court's website. Any document that is filed in a proceeding in the Court must be in accordance with any approved form. The Chief Justice may approve a form for the purposes of the Federal Court Rules, *Federal Court (Bankruptcy) Rules 2016* and, since 10 November 2016, Federal Court (Criminal Proceedings) Rules.

No new forms were approved by the Chief Justice for the purposes of the Federal Court Rules during the reporting year. On 25 October 2016, the Chief Justice approved a new Bill of Costs form for use for all bills which were prepared after that date.

On 10 November 2016 the Chief Justice approved, with immediate effect, the following forms for the purposes of the Federal Court (Criminal Proceedings) Rules:

- CP1 General form: indictable primary proceedings
- CP2 General form: summary criminal proceedings
- CP3 General form: criminal appeal proceedings
- CP4 Notice of acting: appointment of lawyer
- CP5 Notice of termination of lawyer's retainer
- CP6 Notice of ceasing to act
- CP7 Notice of acting: change of lawyer

CP8	Notice of intention of ceasing to act	CP31	Bail application
CP9	Affidavit	CP32	Application to vary or revoke bail order
CP10	Notice of address for service	CP33	Bail undertaking
CP11	Notice of change of address for service	CP34	Third party security undertaking
CP12	Summons: summary criminal proceedings	CP35	Application for direction to issue notice of proposed forfeiture
CP13	Information: summary criminal proceedings	CP36	Direction to issue notice of proposed forfeiture
CP14	Indictment	CP37	Notice of proposed forfeiture
CP15	Indictment information notice	CP38	Notice of objection to forfeiture
CP16	Application for extension of time to file indictment	CP39	Request for service in a foreign country
CP17	Application for an order discharging the accused	CP40	Request for transmission to a foreign country
CP18	Notice of particulars of alibi	CP41	Subpoena to attend to give evidence
CP19	Notice of particulars of mental impairment	CP42	Subpoena to produce a document or thing
CP20	Summons to attend for jury service	CP43	Subpoena to attend to give evidence and to produce a document or thing
CP21	Application for leave to appeal	CP44	Subpoena – Notice and declaration by addressee
CP22	Application for extension of time and for leave to appeal	CP45	Interlocutory application
CP23	Notice withdrawing appeal or application for leave to appeal or application for an extension of time	CP46	Summons to appear before the Court
CP24	Notice of appeal	CP47	Order to produce a prisoner
CP25	Application for extension of time to file notice of appeal	CP48	Warrant for arrest
CP26	Application for an order to allow inspection of report	CP49	Warrant for imprisonment
CP27	Application for leave to refer a question of law	CP50	Notice of intention to adduce evidence of previous representation
CP28	Notice of referral of a question of law	CP51	Notice of intention to adduce tendency evidence
CP29	Notice of intended appearance at hearing of an application	CP52	Notice of intention to adduce coincidence evidence
CP30	Notice of intended appearance at hearing of a question of law		

4 C&C-1	Commercial and Corporations Practice Note
5 E&IR-1	Employment and Industrial Relations Practice Note
6 IP-1	Intellectual Property Practice Note
7 NT-1	Native Title Practice Note
8 TAX-1	Taxation Practice Note

PRACTICE NOTES

Practice Notes supplement the procedures set out in the Rules of Court and are issued by the Chief Justice upon the advice of the judges of the Court under rules 2.11, 2.12 and 2.21 of the Federal Court Rules, rule 1.07 of the Federal Court (Bankruptcy) Rules, rule 1.14, 1.15 and 4.20 of the Federal Court (Criminal Proceedings) Rules and the Court's inherent power to control its own processes. All Practice Notes are available on the Court's website.

A key component of the National Court Framework (NCF), a fundamental reform of the Court and the way it operates, was the review of the Court's practice documents to ensure nationally consistent and simplified practice.

Under the NCF, there are no longer administrative state-based notices and practice documents have been integrated and reduced to less than half the number that existed. After extensive internal and external consultation, on 25 October 2016, the Chief Justice revoked all existing Practice Notes and issued the following Practice Notes:

Central Practice Note

The Central Practice Note is the core practice note for court users and addresses the guiding NCF case management principles applicable to all NPAs.

1 CPN-1	Practice Note: National Court Framework and Case Management
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National Practice Area Practice Notes

Interlocking with the Central Practice Note are the practice notes in each NPA. These practice notes raise NPA-specific case management principles and may offer expedited or truncated hearing processes and tailored or concise pleading processes. Parties may also adopt the processes set out in one NPA practice note for use in a different NPA.

2 ACLHR-1	Administrative and Constitutional Law and Human Rights Practice Note
3 A&M-1	Admiralty and Maritime Practice Note

General Practice Notes

The General Practice Notes (GPNs) apply to all or many cases across NPAs, or otherwise address important administrative matters. The GPNs were issued on a '12-month review' basis and the review period ends in October 2017. This allows the GPNs to be fully considered by the profession, allow further feedback to be received, and allow for any appropriate amendments to be made during or following the review period.

9 GPN-CA	Class Actions Practice Note
10 GPN-EXPT	Expert Evidence Practice Note
11 GPN-SURV	Survey Evidence Practice Note
12 GPN-COSTS	Costs Practice Note
13 GPN-FRZG	Freezing Orders Practice Note
14 GPN-SRCH	Search Orders Practice Note
15 GPN-UNDR	Usual undertaking as to damages Practice Note
16 GPN-SUBP	Subpoenas and Notices to Produce Practice Note
17 GPN-ENF	Enforcement, Endorsement and Contempt Practice Note
18 GPN-XBDR	Cross-border Insolvency: Cooperation with Foreign Courts or Foreign Representatives Practice Note
19 GPN-OSE	Overseas Service and Evidence Practice Note
20 GPN-FRGN	Foreign Judgments Practice Note
21 GPN-AUTH	Lists of Authorities and Citations Practice Note
22 GPN-ACCS	Access to Documents and Transcripts Practice Note
23 GPN-TECH	Technology and the Court Practice Note
24 GPN-INT	Interest on Judgments Practice Note
25 GPN-TRIB	Consent Orders Involving a Federal Tribunal Practice Note

Appeals Practice Note

26

Practice Note

Content of Appeal Books and Preparation for Hearing

Following consultation with the Law Council of Australia and the Commonwealth Director of Public Prosecutions, on 2 May 2017 the Chief Justice issued a further NPA Practice Note, which took effect from 15 May 2017, in relation to Federal Crime and Related Proceedings (CRIME-1).

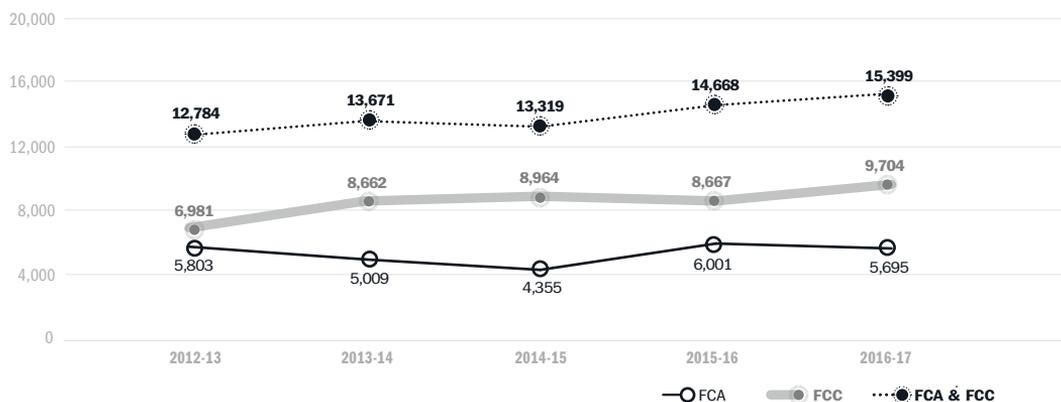
GUIDES

The Federal Court has also issued guides on a range of practical and procedural matters, such as communicating with chambers and registry staff, how different types of matters are likely to progress, the role and duties of expert witnesses and on the preparation of costs summaries and bills of costs. All guides are available on the Court's website.

WORKLOAD OF THE FEDERAL COURT AND FEDERAL CIRCUIT COURT

The Court has concurrent jurisdiction with the FCC 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 FCC in its general federal law jurisdiction.

Figure 3.1: Filings to 30 June 2017 – Federal Court of Australia (FCA) and Federal Circuit Court (FCC)



In 2016–17, a total of 15,399 matters were filed in the two courts. Any growth in filings has an impact on the Federal Court's registries, as they process the documents filed for both courts. The registries also provide the administrative support for each matter to be heard and determined by the relevant court. The Court was able to accommodate this increase easily due to the technology and systems it has set up, most notably electronic court files for all files (ECFs) and lodgment, to aid efficient case processing.

CASE FLOW MANAGEMENT OF THE COURT'S JURISDICTION

As noted in Part 2, 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. This is further enhanced by the reforms of the NCF.

Under the Individual Docket System, a matter will usually stay with the same judge from commencement until disposition. This means a judge has greater familiarity with each case and leads to the more efficient management of the proceeding.

Disposition of matters other than native title

In 1999–2000, the Court set a goal of 18 months from commencement as the period within which it should dispose of at least 85 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 18 month period, with only particularly large and/or difficult cases requiring more time. Indeed, many cases are urgent and need to be disposed of quickly after commencement. The Court's practice and procedure facilitates early disposition when necessary.

During the five-year period from 1 July 2012 to 30 June 2017, 93 per cent of cases (excluding native title matters) were completed in less than 18 months, 89 per cent in less than 12 months and 78 per cent in less than six months (see Figure A5.4 on page 143). Figure A5.5 on page 143 shows the percentage of cases (excluding native title matters) completed within 18 months over the last five reporting years.

Delivery of judgments

In the reporting period, 1712 judgments were delivered. Of these, 679 judgments were delivered in appeals (both single judge and full court) and 1033 in 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. This was a slight reduction from the number of judgments delivered in 2015–16.

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 7 includes a summary of decisions of interest delivered during the reporting year and illustrates the Court's varied jurisdiction.

WORKLOAD OF THE COURT IN ITS ORIGINAL JURISDICTION

Incoming work

In the reporting year, 4650 cases were commenced in, or transferred to, the Court's original jurisdiction. See Table A5.2 on page 139.

Matters transferred to and from the Court

Matters may be remitted or transferred to the Court under:

- *Judiciary Act 1903, s 44*
- Cross-vesting Scheme Acts
- *Corporations Act 2001*, and
- *Federal Circuit Court of Australia Act 1999*.

During the reporting year, 132 matters were remitted or transferred to the Court:

- four from the High Court
- 61 from the Federal Circuit Court
- 19 from the Supreme Courts, and
- 48 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*
- *Corporations Act 2001*, and
- *Administrative Appeals Tribunal Act 1975*.

During 2016–17, two matters were transferred from the Court:

- one to the Federal Circuit Court
- one to Supreme Courts, and
- none to other courts.

Matters completed

Figure A5.2 on page 141 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 5627.

Current matters

The total number of current matters in the Court's original jurisdiction at the end of the reporting year was 3173 (see Table A5.1).

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 2017 is set out in Table 3.1.

Native title matters are not included in Table 3.1 because of their complexity, the role of the NNTT and the need to acknowledge regional priorities.

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

CAUSE OF ACTION	UNDER SIX MONTHS	6-12 MONTHS	12-18 MONTHS	18-24 MONTHS	OVER 24 MONTHS	SUB TOTAL
Administrative law	90	1	1	0	0	92
Admiralty	28	0	0	0	0	28
Bankruptcy	139	2	3	3	6	153
Competition law	7	1	0	1	3	12
Trade practices	166	6	7	5	14	198
Corporations	831	34	9	15	32	921
Human rights	44	0	0	2	0	46
Workplace relations	7	0	0	0	2	9
Intellectual property	154	7	10	6	18	195
Migration	113	0	0	0	0	113
Miscellaneous	162	8	3	2	4	179
Taxation	52	1	16	4	5	78
Fair Work	146	5	1	0	3	155
Total	1939	65	50	38	87	2179
Percentage of total	89.0%	3.0%	2.3%	1.7%	4.0%	100.00%
Running total	1939	2004	2054	2092	2179	
Running percentage	89.0%	92.0%	94.3%	96.0%	100.0%	

Table 3.2: Age of current native title matters (excluding appeals)

	UNDER SIX MONTHS	6-12 MONTHS	12-18 MONTHS	18-24 MONTHS	OVER 24 MONTHS	SUB TOTAL
Native Title Action	108	9	4	12	162	295
Percentage of total	36.6%	3.1%	1.4%	4.1%	54.9%	100.0%
Running total	108	117	121	133	295	
Running percentage	36.6%	39.7%	41.0%	45.1%	100.0%	

The number of native title matters over 18 months old decreased. The number of native title matters between 12–18 months and 18–24 months old increased. Further information about the Court’s native title workload can be found on page 33.

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 5.

THE COURT'S APPELLATE JURISDICTION

The appellate workload of the Court constitutes a significant part of its overall workload. While most appellate matters arise from decisions of single judges of the Court or the FCC, some are in relation to decisions by state and territory courts exercising certain federal jurisdiction. Appellate matters may also include matters filed in the original jurisdiction of the Court but referred to a Full Court for hearing.

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 ss 25(1), (1AA) and (5) of the Federal Court Act, appeals from the FCC, 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.

The Court publishes details of the four scheduled Full Court and appellate sitting periods to be held in February, May, August and November of each year. Each sitting period is up to four weeks in duration. Appellate matters will generally be listed in the next available Full Court and appellate sitting in the capital city where the matter was heard at first instance.

In the reporting year, Full Court and appellate matters were scheduled for hearing in all eight capital cities. When appeals are considered to be sufficiently urgent, the Court will convene a special sitting of a Full Court outside of the four scheduled sitting periods. In 2016–17 the Court specially fixed 37 Full Court or appellate matters, involving 23 sets of proceedings, for hearing outside of the four scheduled sitting periods. Hearing these matters involved a total of 28 sitting days or part thereof compared with 34 special hearing fixtures involving 41 sitting days in 2015–16.

THE APPELLATE WORKLOAD

During the reporting year, 1345 appellate proceedings were filed in the Court. They include 1106 appeals and related actions (1045 filed in the appellate jurisdiction and 61 matters filed in the original jurisdiction), 20 cross appeals and 219 interlocutory applications such as applications for security for costs in relation to an appeal, a stay, an injunction, expedition or various other applications.

The FCC is a significant source of appellate work accounting for approximately 75 per cent (836 of the 1106) of the appeals and related actions filed in 2016–17. 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 Table A5.3 on page 140.

Although there was an overall increase of more than four per cent in the Court's appellate workload in 2016–17, the Court's migration appeals and related actions increased markedly by almost 18 per cent from 653 in Table A5.3 in 2015–16 to 763 in Table A5.3 in 2016–17.

In the reporting year, 885 appeals and related actions were finalised. Of these, 457 matters were filed and finalised in the reporting year. At 30 June 2017, there were 749 appeals (comprising 699 filed in the appellate jurisdiction and 50 matters filed in the original jurisdiction) currently before the Court.

The comparative age of matters pending in the Court's appellate jurisdiction (including native title appeals) at 30 June 2017 is set out in Table 3.3.

At 30 June 2017 there were six matters that are 18 months or older, two filed in the appellate jurisdiction and four matters filed in the original jurisdiction. Almost 95 per cent of appellate matters pending at present are less than six months old. It is also noted that a large number of migration appeals and applications have been held in abeyance pending the outcomes of decisions of the Full Federal Court and the High Court.

Table 3.3: Age of current appeals, cross appeals and interlocutory appellate applications at 30 June 2017

CURRENT AGE	UNDER 6 MONTHS	6-12 MONTHS	12-18 MONTHS	18-24 MONTHS	OVER 24 MONTHS	TOTAL
Appeals and related actions	687	7	3	0	2	699
% of total	98.3%	1.0%	0.4%	0.0%	0.3%	100.0%
Running total	687	694	697	697	699	
Running %	98.3%	99.3%	99.7%	99.7%	100.0%	

MANAGING MIGRATION APPEALS

In 2016–17, 23 migration appeals were filed in the Court’s appellate jurisdiction related to judgments of single judges of the Court exercising the Court’s original jurisdiction. A further 740 migration matters were filed in relation to judgments of the FCC.

Table 3.4 shows the number of appellate proceedings involving the Migration Act as a proportion of the Court’s overall appellate workload since 2012–13. Over the last four years, approximately 70 per cent of the Court’s appellate workload concerned decisions made under the *Migration Act 1958*. 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.

The Court reviews all migration matters to identify cases 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 and appellate sitting period. Fixing migration related appellate proceedings for hearing in the four scheduled 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 single judge or referred to a specially convened Full Court.

Table 3.4: Appellate proceedings concerning decisions under the Migration Act as a proportion of all appellate proceedings (including cross appeals and interlocutory applications)

APPEALS AND RELATED ACTIONS	2012-13	2013-14	2014-15	2015-16	2016-17
Migration jurisdiction	278	370	648	653	763
%	43.8%	50.8%	71.2%	65.8%	73.0%
Total appeals and related actions	634	728	910	993	1045

THE COURT'S NATIVE TITLE JURISDICTION

In the reporting year 2016–17, the Court resolved a total of 64 native title applications (commenced under s 61 of the NTA), consisting of 57 native title applications, five non-claimant applications, one compensation application and one application to vary the orders made in one earlier determination.

Of the finalised applications, 15 were resolved by consent of the parties, three were finalised following litigation and 46 applications were either discontinued or dismissed. Where applications have been partitioned into separate parts to facilitate early agreement, there have been seven partial consent determinations that may not have finalised the application.

Forty-six new applications under s 61 of the NTA were filed during the reporting period. Of these new matters, 27 are native title determination applications, 15 are non-claimant applications, one is a variation application and three are compensation applications.

At the end of the reporting year, there were 285 applications remaining on the native title docket comprising 236 determination applications, 41 non-claimant applications, seven compensation applications and one variation application.

These statistics do not include appeals from native title decisions or other types of related matters managed by the native title practice area but which are not s 61 applications. Some of the graphs in this report that record native title workload include these additional matters.

The Court's priority list identifies, after consultation with the parties, those applications that may be resolved either by consent or in litigation, in the coming 12 to 18 months. There are currently 94 matters on the priority list. Of these, it is anticipated that 63 matters will be resolved by consent determination, eight will be litigated outcomes and 12 are expected to be discontinued in 2017–18. The priority list is intended to allow the parties to allocate their financial and human resources with the primary intention of resolving the matters by negotiation.

The focus of the Court continues to be on directed case management by native title registrars and on mediation conducted by the registrars and specialist native title mediators from the Court's published list of mediators to achieve a resolution of the whole of a matter or to identify any separate question that is holding up final resolution. Intensive case management by both judges and registrars continues to be used to identify the genuine issues in dispute between the parties and the most effective means of resolving those disputes. This process accords with the overarching purpose of the NTA and ss 37M and 37N of the *Federal Court of Australia Act 1976* to facilitate the just resolution of disputes according to the law as quickly, inexpensively and effectively as possible. Mediation is ordered, as required, and may be conducted by a registrar or external mediator. In some instances, particular issues or separate questions in an application are referred to a judge for hearing and adjudication.

A number of significant decisions were made by the Court in the reporting year. These decisions have provided guidance on how valuation of compensation will be addressed in the future, on how Indigenous Land Use Agreements are validly made and what is necessary for the variation of an earlier order of the Court.

Alan Griffiths and Lorraine Jones on behalf of the Ngaliwurru and Nungali Peoples v Northern Territory of Australia 2016 FCA 900 (the Timber Creek case) is the first litigated determination on quantum of native title compensation. The decision establishes a framework for the calculation of compensation for the extinguishment or impairment of native title rights and interests.

Compensation was awarded for 'economic loss', which was in essence calculated by reference to 80 per cent of the land value of the areas subject to the extinguishing acts; interest on that economic loss (reflecting the extinguishment of native title had occurred many years ago); and 'non-economic/intangible loss', or 'solatium', in recognition of the loss or diminution of connection or traditional attachment to the land. The decision has been appealed to the Full Court of the Federal Court and judgment is reserved.

Four applications to the High Court that were commenced to prevent the Native Title Registrar from registering four of the six agreements which form part of the South West Native Title Settlement Agreement, were remitted to the Full Court of the Federal Court. The Full Court found that the Native Title Registrar does not have the jurisdiction to register an agreement on the Register of Indigenous Land Use Agreements unless the agreement is signed by all registered native title claimants. Where a named applicant does not sign an agreement, there must be an application under s 66B of the NTA to remove that named applicant (*McGlade v Native Title Registrar (No 2)* 2017 FCAFC 84). The decision prompted the introduction of the Native Title Amendment (Indigenous Land Use Agreements) Bill 2017 to effect amendments to the NTA.

Tarlka Matuwa Piarku (Aboriginal Corporation) RNTBC v State of Western Australia 2017 FCA 40: This application is the first variation to an approved native title determination pursuant to s 13(1)(b) of the NTA. The application was made by the registered native title body corporate determined by the Court to hold the native title rights and interests in trust for the Wiluna, Tarlpa and Wiluna #3 native title holders following a consent determination made on 29 July 2013. The basis of the variation application related to an agreement reached between the parties to the consent determination that the parties may seek to vary the determination of native title following judgment of the High Court regarding pastoral improvements in *Western Australia v Brown* 2014 HCA 8. Following judgment of the High Court, the registered native title body corporate with the consent of all parties sought a variation to the determination due to the incorrect determination of areas of pastoral improvements as areas where native title does not exist.

This year (2017) is the 25th anniversary of the High Court's Mabo decision. In February, the Court, in conjunction with the NNTT and the Centre for Native Title Anthropology at the Australian National University, convened a conference in Perth to explore the role of native title anthropology in the development of the jurisprudence. In September 2016, a User Forum was held in the Court in Sydney which focussed on the significant issues impeding the resolution of native title applications in New South Wales.

To celebrate NAIDOC week, Dr Ragbir Bhathal, an astrophysicist, was invited to deliver a lecture on Cook, Mabo and the Stars of Tagai to judges and staff in the Federal Court registries around the country. The lecture explored how Aboriginal and Torres Strait Islander peoples view the night sky and their views on the formation of the universe.

ASSISTED DISPUTE RESOLUTION

Assisted dispute resolution (ADR) has become an important part of the efficient resolution of litigation in the Court context, with cases now almost routinely referred to some form of ADR. In addition to providing a forum for potential settlement, mediation is an integral part of the Court's case management.

In recognition of the Court's unique model of mediation and commitment to a quality professional development program, the Court became a Recognised Mediator Accreditation Body in September 2015 and implemented the Federal Court Mediator Accreditation Scheme (FCMAS). The FCMAS incorporates the National Mediator Accreditation Standards and the majority of court ordered mediations are conducted by registrars who are trained and accredited by the Court under the FCMAS. In the native title jurisdiction, while native title registrars now conduct most mediations of native title matters, the Court maintains a list on its website of appropriately qualified professionals if there is a need to engage an external mediator or co-facilitate mediation.

Since the 2010–11 reporting period, the Court has provided comprehensive statistical information about referrals to ADR and the outcomes of ADR processes held during the relevant reporting period. In doing so, the Court is best able to assess the performance of its ADR program across years and to provide academics and policy makers with data upon which they may base their work.

As in previous years, the data below should be considered in light of a number of factors. Firstly, referrals to mediation or other types of ADR may occur in a different reporting period to the conduct of that mediation or ADR process. Secondly, not all referrals to mediation or the conduct of mediation occur in the same reporting period as a matter was filed. This means that comparisons of mediation referrals or mediations conducted as a proportion of the number of matters filed in the Court during the reporting period are indicative only. Thirdly, the data presented on referrals to ADR during the reporting period does not include information about ADR processes that may have been engaged in by parties before the matter is filed in the Court, or where a private mediator is used during the course of the litigation. Similarly, the statistics provided below do not include instances where judges of the Court order experts to confer with each other to identify areas where their opinions are in agreement and disagreement without the supervision of a registrar.

As shown in Table 3.5, the main practice areas where mediation referrals are made are commercial and corporations and employment and industrial relations. Although the reporting of these statistics is by reference to NPA rather than cause of action, as in past years, the mediation referrals by matter type is broadly consistent with past years.

Table 3.5: Mediation referrals in 2016–17 by NPA and registry

NPA	NSW	VIC	QLD	WA	SA	NT	TAS	ACT	TOTAL
Administrative and constitutional law and human rights	6	24	3	1	0	0	0	3	37
Admiralty and maritime	4	0	0	3	0	0	0	0	7
Commercial and corporations	44	64	11	32	13	0	3	8	175
Employment and industrial relations	32	41	18	16	2	2	3	9	123
Intellectual property	35	34	12	2	4	1	0	0	88
Migration	1	0	0	0	0	0	0	0	1
Native title	5	0	1	5	0	0	0	0	11
Other federal jurisdiction	4	0	1	0	0	0	1	0	6
Taxation	1	2	2	3	0	0	0	0	8
Total	132	165	48	62	19	3	7	20	456

A collection of statistics concerning the workload of the Court by NPA is contained in Appendix 5 commencing on page 147.

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 6.

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. 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 Australian Institute of Judicial Administration and in other law reform, community and educational activities.

An outline of the judges' work in this area is included in Appendix 8 commencing on page 167.

PRACTICE AND PROCEDURE REFORMS

The National Practice Committee is responsible for developing and refining policy and significant principles regarding the Court's practice and procedure. It is comprised of the Chief Justice, National NPA Coordinating Judges and the National Appeals Coordinating Judges, and is supported by a number of registrars of the Court. During the reporting year, the Committee dealt with a range of matters including:

- finalisation and implementation of Practice Notes, including consultation with the profession
- consideration of the arrangements for practice and procedure in appeals
- redevelopment of the Court's website in support of the NCF reforms and new practice notes
- adjustments to the scope of the Federal Crime and Related Proceedings NPA and the development of the Other Federal Jurisdiction NPA, and
- management responsibilities and support for each NPA, including considering the development of national arrangements for liaison with the profession.

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:

- the NCF
- practice notes (including consultation with the profession)
- the redevelopment of the Court's website
- updates to the Case Management Handbook
- Criminal Proceedings Rules
- migration appeals, and
- digital hearings.

ASSISTANCE FOR SELF-REPRESENTED LITIGANTS

The Court delivers a wide range of services to self-represented litigants (SRLs). These services have been developed to meet the needs of SRLs for information and assistance concerning the Court's practice and procedure.

During the reporting year, the Attorney-General's Department (AGD) continued to provide funding to LawRight (formerly the Queensland Public Interest Law Clearing House (QPILCH) – the name change occurred on 15 February 2017), Justice Connect, JusticeNet SA and Legal Aid Western Australia to provide basic legal information and advice to SRLs in the Federal Court and Federal Circuit Court.

These services involved dissuading parties from commencing or continuing unmeritorious proceedings, providing assistance to draft or amend pleadings or prepare affidavits, giving advice on how to prepare for a hearing and advising on how to enforce a court order. While the service is independent of the courts, facilities are provided within court buildings to enable meetings to be held with clients. The service is also assisted by volunteer lawyers from participating law firms.

Each of the organisations delivering this service provides the Court with quarterly and annual reports setting out statistics and case studies of SRLs they have been able to assist. The reports reveal that, nationally, there were a significant number of referrals made by the Court. The organisations also provide the Court with information on the NPAs SRLs sought assistance on and examples of the issues where help was provided.

Tables 3.6, 3.7 and 3.8 provide some broad statistics about the number of SRLs appearing in the Court as applicants in a matter (respondents are not recorded). As the recording of SRLs is not a mandatory field in the Court's case management system, statistics shown in the tables are indicative only. In the reporting year, 642 people who commenced proceedings in the Court were identified as self-represented. The majority were appellants in migration appeals.

Table 3.6: Actions commenced by SRLs during 2016–17 by registry

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	TOTAL
SRLs	6	383	15	47	24	0	105	62	642
% total	1%	60%	2%	7%	4%	0%	16%	10%	100%

Table 3.7: Proceedings commenced by SRLs in 2016–17 by CoA

COA	TOTAL ACTIONS	% OF TOTAL
Administrative law	40	6%
Admiralty	0	0%
Appeals and related actions	486	77%
Bankruptcy	18	3%
Bills of costs	0	0%
Competition law	0	0%
Consumer protection	6	1%
Corporations	8	1%
Cross claim	0	0%
Fair work	6	1%
Human rights	4	1%
Industrial	1	0%
Intellectual property	1	0%
Migration	46	7%
Miscellaneous	13	2%
Native title	1	0%
Taxation	2	0%
Total	632	100%

Table 3.8: Appeals commenced by SRLs in 2016–17 by CoA

COA	TOTAL ACTIONS	% OF TOTAL
Administrative law	11	2%
Admiralty	0	0%
Bankruptcy	14	3%
Competition law	0	0%
Consumer protection	3	1%
Corporations	3	1%
Fair work	15	3%
Human rights	5	1%
Industrial	2	0%
Intellectual property	2	0%
Migration	424	87%
Miscellaneous	2	0%
Native title	0	0%
Taxation	5	1%
Total	486	100%

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 self-represented and who do not have the financial means to purchase the services, and for litigants who are represented but are entitled to an exemption from payment of court fees, under the Federal Court and FCC Regulation (see below).

COURT FEES AND EXEMPTION

Fees are charged under the Federal Court and FCC Regulation for filing documents; setting a matter down for hearing; hearings and mediations; taxation of bills of costs; and for some other services in proceedings in the Court. During the reporting year the rate of the fee that was payable depended on whether the party liable to pay was a publicly listed company (for bankruptcy filing and examination fees only); a corporation; a public authority (for bankruptcy filing and examination fees only); a person; a small business; or a not-for-profit association.

Some specific proceedings are exempt from all or some fees. These include:

- Human Rights applications (other than an initial filing fee of \$55)
- some Fair Work applications (other than an initial filing fee of \$69.60)
- appeals from a single judge to a Full Court in Human Rights and some Fair Work applications
- an application by a person to set aside a subpoena

- an application under section 23 of the *International Arbitration Act 1974* for the issue of a subpoena requiring the attendance before or production of documents to an arbitrator (or both)
- an application for an extension of time
- a proceeding in relation to a case stated or a question reserved for the consideration or opinion of the Court
- a proceeding in relation to a criminal matter
- setting-down fees for an interlocutory application

A person is entitled to apply for a general exemption from paying court fees in a proceeding if that person:

- has been granted Legal Aid
- has been granted assistance by a registered body to bring proceedings in the Federal Court under Part 11 of the NTA or has been granted funding to perform some functions of a representative body under section 203FE of that Act
- is the holder of a health care card, a pensioner concession card, a Commonwealth seniors health card or another card certifying entitlement to Commonwealth health concessions
- is serving a sentence of imprisonment or is otherwise detained in a public institution
- is younger than 18 years
- is receiving youth allowance, Austudy or ABSTUDY benefits.

Such a person can also receive, without paying a fee, the first copy of any document in the Court file or a copy required for the preparation of appeal papers.

A corporation which had been granted Legal Aid or funding under the NTA had the same entitlements.

A person (but not a corporation) is exempt from paying a court fee that otherwise is payable if a Registrar or an authorised officer is satisfied that payment of that fee at that time would cause the person financial hardship. In deciding this, the Registrar or authorised officer must consider the person's income, day-to-day living expenses, liabilities and assets. Even if an earlier fee has been exempted, eligibility for this exemption must be considered afresh on each occasion a fee is payable in any proceeding.

More comprehensive information about filing and other fees that are payable, how these are calculated (including definitions used, for example ‘not-for-profit association’, ‘public authority’, ‘publicly listed company’ and ‘small business’) and the operation of the exemption from paying the fee is available on the Court’s website. Details of the fee exemptions during the reporting year are set out in Appendix 1.

FREEDOM OF INFORMATION

Information Publication Scheme

As required by subsection 8(2) of the *Freedom of Information Act 1982* (FOI Act), the Federal Court has published on its website at <http://www.fedcourt.gov.au/ips> Information Publication Scheme (IPS) information. This includes the Court’s current IPS plan as well as information about the Court’s organisational structure, functions, appointments, annual reports, consultation arrangements, FOI contact officer and information routinely provided to the Australian Parliament.

The availability of some documents under the FOI Act will be affected by s 5 of that Act, which states that the Act does not apply to any request for access to a document of the Court unless the document relates to matters of an administrative nature. Documents filed in Court proceedings are not of an administrative nature; however, they may be accessible by way of the Federal Court Rules.

ACCESS TO JUDGMENTS

When a decision of the Court is delivered, a copy is made available to the parties and published on the Federal Court and a number of online free-access legal information websites for access by the media and the public. Judgments of public interest are published by the Court within an hour of delivery and other judgments within a few days. The Court also provides copies of judgments to legal publishers and other subscribers. Online free-access legal information websites providing access to Federal Court judgments include AustLII and Jade.

INFORMATION FOR THE MEDIA AND TELEVISED JUDGMENTS

The Director Public Information (DPI) deals with media enquiries about cases and issues relating to the Court’s work from throughout Australia and internationally. These predominantly relate to accessing judgments and guidance on how to search court files and involves close liaison with chambers and registries.

The DPI also arranges camera access in some cases of public interest, briefs associates on media matters and contacts outlets when mistakes are made and corrections are required.

The reporting year was notable for a number of high profile native title determinations requiring the provision of background information and maps to local and mainstream media. The DPI was also responsible for the production of a video commemorating the Court’s 40th anniversary for court archives and a new video to assist associates in fulfilling their role.

COMMUNITY RELATIONS

The Court engages in a wide range of activities with the legal profession, including regular user group meetings. The aim of user groups is to provide a forum for court representatives and the legal profession to discuss existing and emerging issues, provide feedback to the Court and act as a reference group. Seminars and workshops on issues of practice and procedure in particular areas of the Court’s jurisdiction are also regularly held.

In 2016–17 members of the Court were involved in seminars relating to GST, arbitration, commercial law, tax, maritime and migration.

Working with the Bar

The NSW registry hosted the NSW Silks ceremony on 25 October 2016. The Victorian registry hosted the Victorian Bar ICC Advocacy assessment and course throughout the year. Registries across the country hosted advocacy sessions as well as a number of bar moot courts, moot competitions and assisted with readers’ courses during the year.

User groups

User groups have been formed along NPA lines to discuss issues related to the operation of the Court, its practice and procedure, act as a reference group for discussion of developments and proposals and as a channel to provide feedback to the Court on particular areas of shared interest.

During the reporting year, user groups met in NSW for class action, admiralty, corporations and bankruptcy. In Victoria, bankruptcy, migration and class action user group meetings were held. In Queensland, a specialist Native Title user forum was held. In NT and SA user group meetings were held for bankruptcy and corporations.

Legal community

During the year the Court's facilities were made available for many events for the legal community including:

- **Sydney** – the Whitmore Lecture, Australian Association of Constitutional Law Lectures, Tony Blackshield Lecture, Tristan Jepson Memorial Foundation Lecture, Law Council of Australia Arbitration conference, International Arbitration Lecture, AMTAC address and the Mahla Pearlman Oration.
- **Brisbane** – the Australasian Institute of Judicial Administration's media forum in August 2016; the Australian Maritime Commission's addresses on personal law insolvency in September 2016; the Hellenic Australia Lawyer's Association Seminar in March 2017; and the Richard Cooper Memorial Lecture.
- **Perth** – the registry hosted three intellectual property seminars, the Annual Australian Maritime and Transport Arbitration Commission address, and an Admiralty and Maritime Law Seminar organised by the Maritime Lawyers Association of Australia and New Zealand. The Australian Women's Lawyers also held a welcome to their national conference at the registry.
- **Melbourne** – the Richard Cooper Memorial lecture and AMTAC address.

Education

The Court engages in a range of strategies to enhance public understanding of its work and the Court's registries are involved in educational activities with schools and universities and, on occasion, with other organisations that have an interest in the Court's work. The following highlights some of these activities during the year.

The Court hosted many work experience students across multiple registries including New South Wales, Queensland and Victoria. Students are given a program that exposes them to all areas of the Court's operations over the course of one week.

The Court hosted a number of school visits and educational tours across its registries. The Western Australia registry hosted two school visits organised by the WA Law Society. The Victorian registry participated in the Indigenous Clerkship Program run by the Victorian Bar. Three clerks participated in the program and each clerk spent one week with each of the participating institutions: the Federal Court of Australia, the Supreme Court of Victoria and the Victorian Bar. The South Australia registry hosted a visit from students and teachers from Salisbury High School.

The Court's support for and work with universities continued through the year: in the Western Australia registry, the Murdoch Student Law Society held the grand final of their Junior Trial Advocacy Program competition; and the Jones-Day inter-law school trial advocacy championship was held at the registry involving four law schools in Perth. The Queensland registry hosted five university moot competitions and had visits from school groups from Damascus School, Southern Cross College, the University of Queensland and TAFE Queensland. The Victorian registry hosted a number of moot courts for Monash, Melbourne, New England, La Trobe, Victoria and Deakin universities. The ACT registry hosted the 2017 quarter finals of the Jessup Moot Competition.

Overseas delegations

Registries regularly host visiting delegations from overseas courts who are interested in learning more about the Court's operations.

- **Victoria** – in November 2016, the Victorian registry hosted a delegation of judges from the Supreme Court of Indonesia and officials from the Indonesian Ministry of Law and Human Services; the Ministry of National Planning; the Coordinating Ministry of Economic Affairs; and the local government of the province of Jakarta.
- **New South Wales** – in March 2017 the NSW registry hosted a visit from the Sendai District Court of Japan. In June 2017 the NSW registry hosted a delegation from the Korean Ministry of Justice. In February 2017 the NSW registry hosted a delegation from the American Judicial (Insolvency).

COMPLAINTS ABOUT THE COURT'S PROCESSES

During the reporting year, five complaints were made to the Court in relation to its procedures, rules, forms, timeliness or courtesy to users. This figure is down from seven last year. 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.

Information about the Court's feedback and complaints processes can be found at www.fedcourt.gov.au/feedback-and-complaints.

CORRECTION OF ERRORS IN 2015–16 REPORT

The compliance index used in the 2015–16 annual report was a condensed version of the required list. The annual performance statement did not meet the Department of Finance recommendations for presentation, although it did meet the requirements of the PGPA Act and PGPA Rule. The compliance index (review by accountable authority) should have referred to page 11 not page 195.

INVOLVEMENT IN LEGAL EDUCATION PROGRAMS AND LEGAL REFORM ACTIVITIES (CONTRIBUTION TO THE LEGAL SYSTEM)

The Court is an active supporter of legal education programs, both in Australia and overseas. During the reporting year, the Chief Justice and many judges:

- presented papers, gave lectures and chaired sessions at judicial and other conferences, judicial administration meetings, continuing legal education courses and university law schools
- participated in Bar reading courses, Law Society meetings and other public meetings, and
- held positions on advisory boards or councils or committees.

An outline of the judges' work in this area is included in Appendix 8 commencing on page 167.

NATIONAL STANDARD ON JUDICIAL EDUCATION

In 2010 a report entitled 'Review of the National Standard for Professional Development for Australian Judicial Officers' was prepared for the National Judicial College of Australia. The Court was invited and agreed to adopt a recommendation from that Report to include information in the Court's Annual Report about:

- participation by members of the Court in judicial professional development activities
- whether the proposed Standard for Professional Development was met during the year by the Court, and
- if applicable, what prevented the Court meeting the standard (such as judicial officers being unable to be released from court, lack of funding, etc.).

The standard provides that judicial officers identify up to five days a year on which they could participate in professional development activities.

During 2016–17 the Court offered the following activities:

- a Corporations Workshop, in conjunction with the Law Council of Australia
- a number of seminars in Commercial Law, as part of the National Commercial Law seminar series
- seven education sessions were scheduled at the judges' meeting in August 2016
- five education sessions were scheduled at the judges' meeting in February 2017, and
- judges were also offered the opportunity to attend the Supreme Court and Federal Court judges' conference held in Perth on 23–25 January 2017.

Education sessions offered at the judges' meetings in 2016–17 included:

- workshops on the following national practice areas:
 - native title
 - administrative law, constitutional law and human rights law
 - industrial relations, and
 - intellectual property.
- courts and the media
- class actions
- early detection of dementia
- mental health performance and personal asset management
- Islam, the nature of the faith, and
- developments in the legal profession concerning artificial intelligence.

In addition to the above, judges undertook other education activities through participation in seminars and conferences, details of which can be found in Appendix 8 on page 167. In the period 1 July 2016 to 30 June 2017, the Federal Court of Australia met the National Standard for Professional Development for Australian Judicial Officers.

WORK WITH INTERNATIONAL JURISDICTIONS

Introduction

The Court's International Programs Unit collaborates with neighbouring judiciaries, predominantly across the Asia Pacific Region, to promote governance, access to justice, and the rule of law. In 2016–17, the Court coordinated a number of activities and hosted several international visits.

Memorandum of Understanding with the Supreme Court of Indonesia

Under the existing Annex to the Memorandum of Understanding signed between the Federal Court and Supreme Court of Indonesia in June 2014, cooperation with Indonesia continued in 2016.

In November 2016, the Victorian registry hosted an Indonesian delegation comprising of Supreme Court judges and officials from various government departments. The visit supported the delegation's ability to make recommendations on the enforcement of commercial disputes upon their return to Indonesia. The visit involved numerous meetings, including one with Chief Justice Allsop, Justice Murphy and Registrar Sia Lagos. Meetings were also held with the Judicial Registrar for the Commercial Court of the Supreme Court of Victoria, the President and members of the Victorian Civil and Administrative Tribunal and the Sheriff for Victoria. District Registrar Daniel Caporale and Registrar Tim Luxton led a presentation entitled 'From Judgment Debt to Insolvency', and Registrar Rupert Burns convened a discussion regarding the Financial Counsellors Program.

Memorandum of Understanding with the National & Supreme Courts of Papua New Guinea

In July 2016, the Federal Court's NSW registry hosted a visit by five registry staff from the Supreme and National Courts of Papua New Guinea. The visitors participated in activities aimed at strengthening the capacity of the Supreme Court to utilise technology in the management of cases.

The Chief Justices of the Federal Court of Australia and the Supreme Court of Papua New Guinea signed a further Annex to the existing Memorandum of Understanding between their courts on 15 September. The Annex was signed during the Pacific Judicial Conference, which took place in Papua New Guinea. The Memorandum continues to serve as a public statement of both courts' commitment to continued collaboration. The recently signed Annex expands on previous collaborations, to encompass court-supported mediation, electronic case management, leadership and change management, and support for the Papua New Guinea Centre for Judicial Excellence.

Memorandum of Understanding with the Supreme Court of Vanuatu

On 26 September 2016, a further Annex to the existing Memorandum of Understanding was signed by Chief Justice Lunabek of the Supreme Court of Vanuatu, and the Federal Court CEO, Warwick Soden. The signing took place at the Federal Court of Australia in Sydney. The Annex provides for three areas of judicial assistance, which will focus on case management, judicial administration and Vanuatu's Magistrates' Court.

Pursuant to the Memorandum, a visit to Vanuatu's Magistrates' Court took place in November. An assessment of the Court's priority needs was conducted, which focused on court procedures and processes, delay, domestic violence proceedings, and outstanding reserve judgments, among other things. The visit resulted in a prioritised work plan, supported by the Chief Magistrate, which is designed to be implemented in 2017, and will assist the Court in achieving its goals.

Memorandum of Understanding with the Supreme Court of the Union of Myanmar

Further to the Memorandum signed between the courts in June 2016, the Federal Court collaborated on several activities with the Supreme Court of the Union of Myanmar.

In November 2016, Federal Court CEO Warwick Soden led a workshop on leadership and change management in Naypyidaw. The event was attended by 21 judges from the Supreme Court, along with several High Court and District Court judges. The workshop identified the pressing issues facing the judiciary and provided strategies, tools, and skills, to lead and manage change to address them. Participants devised detailed plans which are being considered as part of the Supreme Court's strategic planning process.

In November 2016, three judicial officers from the Supreme Court completed an internship program with the Federal Court, to gain knowledge and develop skills to produce the Court's first annual report. During the two-week program, the judicial officers participated in sessions on data collection, disaggregation, and analysis, along with skills-based sessions in drafting and structuring an annual report. The sessions were hosted in the Federal Court's Principal Registry in Sydney. Following the internship, the Federal Court has continued to provide remote support to the Supreme Court, as it develops its annual report.

In May 2017, a senior business intelligence analyst from the Federal Court visited Myanmar to continue supporting the Supreme Court's Annual Reporting Team and to supply technical guidance and advice related to attendant case management systems and processes required to systematically gather and analyse the data included in the annual report.

Pacific Judicial Strengthening Initiative

On behalf of the New Zealand Government, the Federal Court continues to manage the Pacific Judicial Strengthening Initiative (PJSI). The initiative includes 14 Pacific island countries and aims to build fairer societies by supporting their courts to develop more accessible, just, efficient, and responsive justice services. Participating countries include the Cook Islands, Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu.

PJSI is addressing numerous and diverse needs of the courts that relate to three major development challenges. These are: (i) expanding access to justice to and through the courts; (ii) building competent provision of substantive justice outcomes; and (iii) increasing efficient delivery of procedural justice services.

The following activities were delivered during the period July 2016 to June 2017:

- Twelve participating Chief Justices, or their representatives, met at the first Chief Justices' Leadership Forum, held in September 2016 in Port Moresby, Papua New Guinea. Discussions focussed on approving PJSI's goals and plans, and included regional assessments of court file management, access to justice, gender and family violence, human rights, accountability, and court professionalisation. This was followed by the first Initiative Executive Committee (IEC) Meeting. IEC members discussed PJSI progress and budget reports.
- PJSI has embarked on a project to create Certificates and Diplomas in Justice to enable the provision of entry level and ongoing professional development within the Pacific region, as well as to institutionalise professional development. Further to the visit to Port Moresby, Papua New Guinea, in November 2016, discussions took place with the University of the South Pacific in January, and in June 2017 in Port Vila, Vanuatu. Collaborations with the Supreme and National Courts of Justice in Papua New Guinea are advancing to ensure that the infrastructural, organisational, pedagogical, and capacity foundations are in place.
- The regional Project Management and Evaluation workshop took place in Port Vila, Vanuatu, in February 2017. The aim of the workshop was to strengthen participants' capacity to produce results through the delivery of projects. The workshop had a practical focus, and participants were able to: reflect and build on prior experiences implementing or managing projects; gain new knowledge and skills to manage projects effectively; apply the project management tools discussed at the workshop to locally relevant projects and activities; and share approaches that maximise positive and sustainable project results.
- The second Chief Justices' Leadership Forum took place in Apia, Samoa, from 3 to 5 April 2017. Thirteen Pacific Island Countries (PICs) were represented. The purpose of the meeting was to review the planning of PJSI activities, provide feedback and direction on these activities, and supply a forum for leadership dialogue and networking on judicial development. This was followed by the second Initiative Executive Committee Meeting. IEC members discussed PJSI progress and budget reports, as well as reviewing and approving the Chief Justices' recommendations.
- Pursuant to PJSI's focus on the protection of human rights in the region, the Human Rights Toolkit was piloted in Honiara, Solomon Islands, from 24 April to 5 May 2017. The visit aimed to introduce and elicit feedback on the Human Rights Toolkit from as many judges, court staff, and other justice actors as possible.

- The first Local Project Management and Planning Visit for Tokelau took place in Apia, Samoa from 29 April to 14 May 2017. The objective of this visit was to strengthen Tokelau's capacity to competently manage and achieve results through local judicial development activities.
- The first Access to Justice Local Visit took place in Pohnpei, Federated States of Micronesia, from 15 to 26 May 2017. The objectives were to: improve the quality of justice administered by courts to the community; provide a process for court outreach and community engagement; identify and address the needs of unrepresented litigants; identify and address unmet legal needs; and use the 'Enabling Rights and Unrepresented Litigants' Toolkit.
- The Regional Certificate-level Training-of-Trainers Workshop took place in the Cook Islands, from 12–23 June 2017. The Workshop aimed to provide participants with a program that equips participants with confidence and competence, to build capacity within their own country and/or region.
- The Gender and Family Violence Toolkit was piloted in Nuku'alofa, Tonga, from 12 to 23 June 2017. The pilot and introductory gender sensitisation program (one day) was well received by the magistrates. The activity also resulted in the production of a draft 12 month Magistrates Court Family Violence Action Plan, that requires limited investment to implement. Opportunities for collaboration and harmonisation with other donor initiatives were also identified.
- The first Local Visit as part of the Efficiency Output took place in Koror, Palau, from 12–23 June 2017. The purpose of the visit was to assist the courts to implement management and administrative actions, and to use technological tools to improve efficiency in the disposal of cases. The overall aim was to promote efficiency in the delivery of justice.

Visitors to the Court

During the year, the court hosted visitors from the following countries:

China: In November 2016, Justice Collier met with a delegation from the Chinese Government. The delegation was led by Mr Wang Xin, Deputy Director-General of the Remedy and Investigation Bureau at the Chinese Ministry of Commerce, and comprised 27 other visitors from the Ministry of Commerce, provincial commerce departments, chambers of commerce and the China Council for the Promotion of International Trade. Meeting with the delegation at the Federal Court's Canberra registry, Justice Collier delivered a presentation on trade remedies and investigations in Australia, with a particular focus on 'Anti-Dumping' procedures.

Portugal: The Federal Court's Principal Registry hosted Judge Ana Lobo of Portugal from 12 to 16 December 2016 as part of an exchange programme run through the International Association of Supreme Administrative Jurisdictions. Judge Lobo spent her time at the Federal Court observing hearings, and meeting with senior court staff, and was particularly interested in the way in which the judges work in the Federal Court, how they undertake decision-making, and maintain a work-life balance.

Nepal: In December 2016, Chief Justice Allsop and Federal Court CEO Warwick Soden met with a delegation from the Supreme Court of Nepal, and other Nepal-based entities, as part of a wider study tour to learn about the Australian juvenile justice system. The delegation visited the Federal Court of Australia to learn about case management efficiency, court process transparency and the Federal Court's programme of international judicial cooperation and court-to-court engagement.

Canada: In February 2017, Federal Court CEO Warwick Soden hosted a visit in the Sydney registry from the Honourable Richard G Mosley of the Federal Court of Canada. The visit focused on electronic case file management (ECF). The visit involved a demonstration of eLodgment and the Commonwealth Courts Portal, and discussions on how rules have been changed to accommodate ECF. The visit also included a tour of the NSW registry, and a demonstration of how ECF, video conferencing and other technologies are used in the courtroom.

China: On 5 April 2017, the Principal Registry hosted a visit from seven judges of the Supreme People’s Court of China led by the Presiding Judge, Mr MA Yongxin. The visit was part of a wider study tour, coordinated by the Australian Human Rights Commission, to enhance the capacity of China’s leading judicial body to protect and promote the right of citizens to access government information. The delegation was received by Justice Rares, who provided an overview of the jurisdiction and structure of the Federal Court and discussed the Court’s role in reviewing freedom of information decisions.

India: In May 2017, the Victorian registry hosted a delegation which included the Chairman of the Indian Law Commission, and eight judges from the Supreme Court of India and various High Courts. The visit provided a technological overview of the Federal Court from various perspectives. The visit began with the judicial perspective delivered by the Honourable Christopher N Jessup, followed by the technical perspective from the Court’s Chief Information Officer, Craig Reilly. The delegation then received presentations about registrar and administrative perspectives from District Registrar, Daniel Caporale, and Deputy Director of Court Services, Thomas Stewart, respectively.

Turkey: In June 2017, the Federal Court’s Principal Registry hosted Judge Nilufer Sulku from Turkey, as part of an exchange programme run by the International Association of Supreme Administrative Jurisdictions. Judge Sulku spent her time meeting with the Court’s judges and senior staff, observing hearings and had a particular interest in administrative law, constitutional law and human rights.