

PART 3

Report on Court performance



Report on Court performance

The work of the Court in 2019–20

This chapter of the annual report details the Federal Court's performance and workload during the financial 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 practice and procedure, 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 and matters concerning the Australian Constitution. Figure A5.9.1 in Appendix 5 (*Workload statistics*) shows the matters filed in this practice area over the last five years.

In addition to hearing appeals in taxation matters from the Administrative Appeals Tribunal, the Court also exercises a first instance jurisdiction to hear objections to decisions made by the Commissioner of Taxation. Figure A5.9.7 in Appendix 5 (*Workload statistics*) shows the number of 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 Court of the Federal Court. Figure A5.9.5 on page 140 shows the number of intellectual property matters filed over the last five years.

The Court also has jurisdiction under the *Native Title Act 1993*. The Court has jurisdiction to hear and determine native title determination applications and is responsible for their mediation. It also hears and determines 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. In addition, the Court also hears appeals from the National Native Title Tribunal and matters filed under the ADJR Act involving native title. The Court's native title jurisdiction is discussed on page 140. Figure A5.9.6 in Appendix 5 (*Workload statistics*) shows the number of 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 five arrests. See Figure A5.9.2 in Appendix 5 (*Workload statistics*) on page 139 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. Workplace relations and fair work matters filed over the last five years are shown in Figure A5.9.4 in Appendix 5 (*Workload statistics*) on page 139.

The Court's jurisdiction under the *Corporations Act 2001* and the *Australian Securities and Investments Commission Act 2001* covers a diverse range of matters, from the appointment of registered 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.

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. These areas fall under the Commercial and Corporations NPA. Figure A5.9.3 in Appendix 5 (*Workload statistics*) on page 139 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.

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 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 Federal Circuit Court concerning decisions under the *Migration Act 1958*. The Court's migration jurisdiction is discussed on page 23.

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 22.

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.

Changes to the Court's jurisdiction in 2019–20

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

- *Aged Care Quality and Safety Commission Act 2018*
- *Broadcasting Legislation Amendment (Broadcasting Reform) Act 2017*
- *Export Control Act 2020*
- *Industrial Chemicals Act 2019*
- *Insurance Contracts Act 1984*
- *Inspector-General of Live Animal Exports Act 2019*
- *National Sports Tribunal Act 2019*
- *Student Identifiers Act 2014*
- *Superannuation (Unclaimed Money and Lost Members) Act 1999*
- *Timor Sea Maritime Boundaries Treaty Consequential Amendments Act 2019*.

Amendments to the Federal Court of Australia Act

There were no amendments made to the Federal Court of Australia Act during the reporting year.

Fee regulation

The operation of the Federal Court and Federal Circuit Court Regulation 2012 remained unchanged in the reporting year.

The fee for filing applications under s 539 of the *Fair Work Act 2009* in certain circumstances is fixed at the same rate as prescribed under subsection 395(2) of the *Fair Work Act 2009*. That 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*.

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 responsive to the needs of modern litigation. 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 amendments made to the *Federal Court Rules 2011* during the reporting year.

Other rules

In some specialised areas of the Federal Court's jurisdiction, the judges have made rules that 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 the *Australian Securities and Investments Commission Act 2001*, as well as proceedings under the

Cross-Border Insolvency Act 2008 which involve a corporate debtor. There were no changes to the *Federal Court (Corporations) Rules 2000* in the reporting year.

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. There were no changes to the *Federal Court (Bankruptcy) Rules 2016* in the reporting year.

The *Federal Court (Criminal Proceedings) Rules 2016* govern all criminal proceedings in the Federal Court, including summary criminal proceedings, indictable primary proceedings and criminal appeal proceedings. There were no changes to the *Federal Court (Criminal Proceedings) Rules 2016* in the reporting year.

The *Admiralty Rules 1988* govern proceedings in the Federal Court under the *Admiralty Act 1988*. There were no changes to the *Admiralty Rules 1988* in the reporting year.

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 2011*, the *Federal Court (Bankruptcy) Rules 2016* and the *Federal Court (Criminal Proceedings) Rules 2016*.

No new forms were approved by the Chief Justice for the purposes of the *Federal Court Rules 2011*, the *Federal Court (Criminal Proceedings) Rules 2016* or the *Federal Court (Bankruptcy) Rules 2016* during the reporting year.

Practice notes

Practice notes are used to provide information to parties and their lawyers involved in proceedings in the Court on particular aspects of the Court's practice and procedure.

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 and the Court's inherent power to control its own processes. All practice notes are available on the Court's website.

The Court is moving away from process driven litigation that can be overly costly and slow and can limit access to the legal system. The Court is encouraging parties to consider the use of the Concise Statement Method where the key issues and facts at the heart of the dispute, and the primary legal grounds and relief sought, are required to be plainly and clearly identified at an early stage, so that the docket judge can make tailored case management orders that deal with the real issues in dispute in a reasonable, proportionate and cost effect way: *Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited* [2019] FCA 1284 (Allsop CJ).

Following the success of the Concise Statement Method in the Commercial and Corporations NPA, where it was first introduced, in 2019–20 the Court expanded the adoption of the Concise Statement Method into other NPAs of the Court, by revising the following practice notes:

- *Central Practice Note: National Court Framework and Case Management* (CPN-1) issued 25 October 2016
- *Administrative and Constitutional Law and Human Rights National Practice Note* (ACLHR-1) issued 25 October 2016
- *Admiralty and Maritime Practice Note* (A&M-1) issued 25 October 2016
- *Employment and Industrial Relations Practice Note* (E&IR-1) issued 25 October 2016, and
- *Intellectual Property Practice Note* (IP-1) issued 25 October 2016.

The Court also issued a new *Defamation Practice Note* (DEF-1) and revised the following practice notes in 2019–20:

- *Class Actions General Practice Note* (GPN-CA) issued 20 December 2019
- *Cross-Border Insolvency Practice Note: Cooperation with Foreign Courts or Foreign Representatives* (GPN-XBDR) issued 31 January 2020
- *Taxation Practice Note* (TAX-1) issued 25 October 2016, and
- *Lists of Authorities and Citations Practice Note* (GPN-AUTH) issued 25 October 2016.

Guides

The Federal Court also issues national guides. These guides cover a variety of subject areas, such as appeals, migration, human rights and insolvency matters. Other guides cover a range of practical and procedural matters, such as communicating with chambers and registry staff, clarifying the role and duties of expert witnesses, and providing guidance on the preparation of costs summaries and bills of costs.

In its response to the COVID-19 pandemic, the Federal Court developed a series of guides to support the practices developed for online hearings and the use of Microsoft Teams, including a *National Practitioners and Litigants Guide* intended to provide guidance for the legal profession and litigants-in-person appearing in online hearings. That guide provided information on how to join an online hearing, the expectations of the Court, the participants and members of the public, and sample orders to facilitate an online hearing.

All guides are available on the Court's website.

Workload of the Federal Court and Federal Circuit Court

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

In 2019–20, a total of 14,802 matters were filed in the two courts. The number of filings has an impact on the Federal Court's registries, as the staff members of the Federal Court's registries process the documents filed for both the Federal Court and Federal Circuit Court (in its general federal law jurisdictions). The registries also provide the administrative support for each matter to be heard and determined by the relevant court.

Case flow management of the Court's jurisdiction

The Court has adopted, as one of its key case flow management principles, the establishment of time goals for the disposition of cases and the delivery of reserved judgments. The time goals are supported by the careful management of cases through the Court's individual docket system and the implementation of practice and procedure designed to assist with the efficient disposition of cases according to law. This is further enhanced by the reforms of the National Court Framework.

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. The time goal 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.

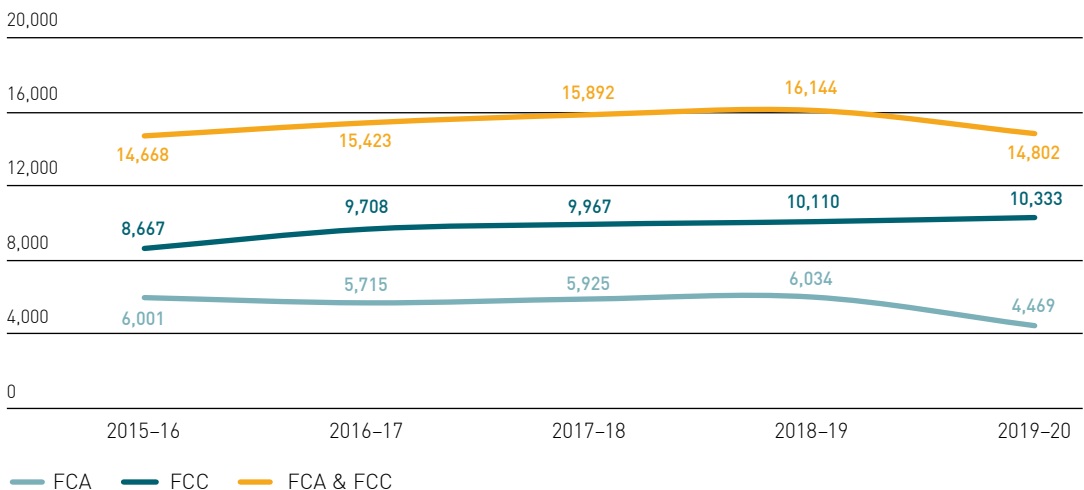
During the five-year period from 1 July 2015 to 30 June 2020, 92.9 per cent of cases (excluding native title matters) were completed in 18 months or less; 87 per cent in 12 months or less; and 72.3 per cent in six months or less. See Figure A5.4 in Appendix 5 (*Workload statistics*). Figure A5.5 on page 135 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, the Court handed down 2,313 judgments for 2,158 court files. Of these, 886 judgments were delivered in appeals (both single judge and Full Court) and 1,427 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. There was a slight increase in the total number of judgments delivered in 2019–20 compared to the number of judgments delivered in 2018–19.

The nature of the Court's workload means that a substantial proportion of the decisions in the matters that proceed to trial in the Court will be reserved by the trial judge at the conclusion of the trial.

Figure 3.1: Filings to 30 June 2020 – Federal Court and Federal Circuit Court



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, 4,469 cases were commenced in, or transferred to, the Court's original jurisdiction. See Table A5.1 on page 130.

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, 171 matters were remitted or transferred to the Court:

- 15 from the High Court
- 31 from the Federal Circuit Court
- 40 from the Supreme Courts, and
- 85 from other courts.

Matters may be transferred from the Court under:

- *Federal Court of Australia 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 2019–20, no matters were transferred from the Court.

Matters completed

Figure A5.2 in Appendix 5 (*Workload statistics*) 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 4,871.

Current matters

The total number of current matters in the Court's original jurisdiction at the end of the reporting year was 3,425 (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 2020 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 National Native Title Tribunal 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 6 MONTHS	6–12 MONTHS	12–18 MONTHS	18–24 MONTHS	OVER 24 MONTHS	SUB-TOTAL
Administrative law	37	20	10	8	6	81
Admiralty	9	4	5	5	8	31
Bankruptcy	113	42	21	8	14	198
Competition law	2	7	3	1	4	17
Trade practices	64	60	34	18	48	224
Corporations	272	125	47	40	89	573
Human rights	16	14	10	13	13	66

CAUSE OF ACTION	UNDER 6 MONTHS	6–12 MONTHS	12–18 MONTHS	18–24 MONTHS	OVER 24 MONTHS	SUB-TOTAL
Workplace relations	2	0	1	0	1	4
Intellectual property	38	34	31	21	47	171
Migration	98	24	17	35	9	183
Miscellaneous	138	83	33	27	46	327
Taxation	53	21	13	31	41	159
Fair work	94	41	40	25	38	238
Total	936	475	265	232	364	2,272
Percentage of total	41.2%	20.9%	11.7%	10.2%	16.0%	100.0%

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

CAUSE OF ACTION	UNDER 6 MONTHS	6–12 MONTHS	12–18 MONTHS	18–24 MONTHS	OVER 24 MONTHS	SUB-TOTAL
Native title action	24	26	51	32	173	306
Percentage of total	7.8%	8.5%	16.7%	10.5%	56.5%	100.0%
Running total	24	50	101	133	306	

The number of native title matters over 18 months old increased slightly compared with figures recorded in the 2018–19 annual report. The number of native title matters between 12–18 months and 18–24 months old also increased. Further information about the Court’s native title workload can be found on page 24.

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 Federal Circuit Court, some are in relation to decisions by state and territory courts exercising certain federal jurisdiction. For reporting purposes, matters filed in the original jurisdiction of the Court but referred to a Full Court for hearing are treated as appellate matters.

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 and complexity of such matters, the nature and complexity of issues raised on appeal, legislative changes increasing or reducing the jurisdiction of the Court and decisions of the Full Court or High Court (for example, regarding the interpretation or constitutionality of legislative provisions).

Subject to ss 25(1), (1AA) and (5) of the Federal Court Act, appeals from the Federal Circuit Court and courts of summary jurisdiction exercising federal jurisdiction, may be heard by a Full Court of the Federal Court or by a single judge in certain circumstances. All other appeals must be heard by a Full Court, which is usually constituted by three, and sometimes five, judges.

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 Chief Justice will convene a special sitting of a Full Court outside of the four scheduled sitting periods.

In 2019–20, the Chief Justice specially fixed 20 Full Court or appellate matters for hearing outside of the four scheduled sitting periods, involving 20 sitting days or part thereof.

The appellate workload

During the reporting year, 1,263 appellate proceedings were filed in the Court. They include 1,071 appeals and related actions (1,026 filed in the appellate jurisdiction and 45 matters filed in the original jurisdiction), 15 cross appeals and 177 interlocutory applications such as applications for security for costs in relation to an appeal, a stay, an injunction, expedition or various other applications.

The Federal Circuit Court is a significant source of appellate work accounting for 70 per cent (725 of the 1,071) of the appeals and related actions filed in 2019–20. 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 in Appendix 5 (*Workload statistics*). There was an overall decrease in the total number of appeals and related actions filed in 2019–20, from 1,415 in 2018–19 to 1,026 for the current reporting year. This decrease can be largely attributed to a 35 per cent decrease in the number of migration appeals and related actions filed, from 1,139 in 2018–19, to 742 for the current reporting year.

However, there has been an increase in the Court's non-migration appeals and related actions since the 2018–19 fiscal year, particularly in the areas of taxation, administrative and constitutional law and human rights, and commercial and corporations (commercial contracts, banking, finance and insurance and regulator and consumer protection).

In the reporting year, 1,168 appeals and related actions were finalised. Of these, 335 matters were filed and finalised in the reporting year. At 30 June 2020, there were 834 appeals currently before the Court, with 571 of these being migration appeals and related actions.

The comparative age of matters pending in the Court's appellate jurisdiction (including native title appeals) at 30 June 2020 is set out in Table 3.3.

Of the appellate and related matters pending at present, 54 per cent are less than six months old and 87 per cent are less than 12 months old. At 30 June 2020, there were 103 matters that were over 12 months old (see Table 3.3).

Managing migration appeals

In 2019–20, 66 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 680 migration matters were filed in relation to judgments of the Federal Circuit Court and four from another source.

Table 3.4 shows the number of appellate proceedings involving the Migration Act as a proportion of the Court's overall appellate workload since 2015–16.

Although the number of migration appellate filings has decreased by 35 per cent since the last reporting year, approximately 70 per cent of the Court's total appellate workload concerned decisions made under the *Migration Act 1958*.

Table 3.3: Age of current appeals, cross appeals and interlocutory appellate applications at 30 June 2020

CAUSE OF ACTION	UNDER 6 MONTHS	6–12 MONTHS	12–18 MONTHS	18–24 MONTHS	OVER 24 MONTHS	TOTAL
Appeals and related actions	510	221	55	22	26	834
Percentage of total	61.2%	26.5%	6.6%	2.6%	3.1%	100.0%
Running total	510	731	786	808	834	
	54%	87%	94%	97%	100.0%	

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. The exceptions to this are where expedition of an appeal may be necessary or where a judge's commitments preclude listing allocated matters during the 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. 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.

The Court's native title jurisdiction

Statistics and trends

In 2019–20, the Court resolved a total of 65 native title applications (commenced under s 61 of the *Native Title Act 1993*), consisting of 42 native title applications, 19 non-claimant applications, three compensation applications, and one revision application. There were 17 additional applications managed by the native title practice area that were also finalised.

Of the finalised applications, 27 were resolved by consent of the parties or were unopposed, four were finalised following litigation, and 51 applications were either discontinued or dismissed. There are several other matters in which a consent determination was made, however the file remains on foot due to the determination being conditional on a subsequent event or further issues such as costs which remain to be disposed of.

Forty-two new applications were filed under s 61 of the *Native Title Act 1993* during the reporting period. Of these, 26 are native title determination applications, seven are non-claimant applications, six are compensation applications, and three were applications to revise existing determinations. In addition, eight new applications were filed which were not commenced under s 61 of the *Native Title Act 1993*, but relate to native title matters and are case managed in the native title NPA. None of the above figures include appeals from native title decisions.

At the commencement of the reporting year, there were six compensation applications before the Court: three in Queensland and three in Western Australia.

During the reporting year:

- the three extant Queensland compensation applications were withdrawn
- the three extant Western Australian compensation applications continued to await the resolution of the appeals against the registration of the South-West Noongar ILUAs
- two further compensation applications were filed in Queensland
- three further compensation applications were filed in Western Australia, and
- one compensation application was filed in the Northern Territory.

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	2015–16	2016–17	2017–18	2018–19	2019–20
Migration jurisdiction	653	764	1,022	1,139	742
Percentage	65.8%	73.0%	80.9%	80.5%	72.3%
Total appeals and related actions	993	1,046	1,263	1,415	1,026

At the end of the reporting year, there were 237 current native title applications, comprising 193 determination applications, 26 non-claimant applications, nine compensation applications, and nine variation applications. This is a downward trend from the 267 extant at the end of the previous financial year and reflects some intensive case management by the Court to resolve aging claims and a reduced number of new filings during the reporting year.

Subject to the constraints imposed by the COVID-19 pandemic, there are some 55 consent determinations or hearings of either the substantive matter or separate questions currently forecast for the 2020–21 financial year. Many of those hearings will include an on-country component if travel is feasible. There are also approximately 10 matters that will require some aspects to be mediated on-country by the case-managing registrar.

The Court continues to focus on targeted case management by specialist registrars and judges and on mediation, predominantly conducted by registrars. The Court also maintains a panel of specialist accredited mediators who can be called upon to mediate from time to time, including by way of co-mediation. Registry based, on-country and remote mediation by way of various technology platforms have been used to progress matters during the reporting period.

The objective of both mediation and case-management processes is to identify the genuine issues in dispute between the parties and the most effective means of resolving those disputes. This process accords with the Court's responsibilities under the *Native Title Act 1993* and its overarching purpose under sections 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 efficiently as possible.

While full native title trials are reducing in number, there remains a significant number of litigated separate questions and interlocutory proceedings that can be extremely complex and lengthy in nature.

The trend of increasing court facilitation is demonstrated by the listings data over the past three years. There were 148 mediations and 789 case management hearings in 2017–18; 316 mediations and 983 case management hearings and a further 90 regional case management conferences held during 2018–19 (many of the regional conferences during

this year related to the Geraldton Settlement agreement). During 2019–20 and despite the abrupt halt to many scheduled events from March to June, the native title practice area still conducted 292 mediation listings, 995 case management hearings and substantive hearing listings, 656 administrative listings and a further 35 regional case management hearings.

Access requests are being made more frequently in all states, and are becoming more onerous in nature. It remains a sensitive issue having regard to the nature of the material sought and as the instigation for the request is often to prepare a compensation application. This year, Mortimer J provided detailed reasons and conditions on her approval for access to materials in *Hughes on behalf of the Eastern Guruma People v State of Western Australia (no 3)* [2019] FCA 2127.

Stakeholder engagement

The Court continues to regularly engage with stakeholders in a manner and at a regularity appropriate to the activity level and local processes in each jurisdiction.

In Queensland, the standing user group met with the Queensland native title registrars on 9 September 2019 and a forum involving practice area judges and registrars was convened on 31 January 2020, attended by some 80 people.

A similar forum involving practice area judges and registrars was convened in Western Australia in June 2019 adopting a workshop model. A user group was established following that forum and convened for the first time on 24 February 2020.

Significant litigation and developments

Queensland

Regional call overs continue to be a key feature of the Court's approach to the management and progression of native title claims in Queensland. Call overs have been convened in Cairns with regard to the Cape York and Torres Strait matters and the Northern Region, and in Brisbane with regard to the Southern Region. The case management landscape in Queensland has also involved regional approaches in a number of instances. Notably:

- In the Cape York, Torres Strait and Carpentaria Region, the 'Torres Strait cluster' of overlapping claims and the Cape York United claim comprising many local groups have both been the subject of intensive case management and mediation.

- In the Northern Region, the ‘Cairns cluster’ of overlapping claims continues to be the subject of intensive case management and mediation. This cluster was referred by the Court under s 54A of the *Federal Court Act 1976* (Cth) and rule 28.61 of the *Federal Court Rules 2011* (Cth) to two independent referees – the President of the National Native Title Tribunal, the Honourable John Dowsett AM QC, and the anthropologist Dr Paul Burke for inquiry and report. The final report of the referees was provided to the Court in March 2020.
- In the Southern Region, the ‘GNP or Gangulu cluster’ has been the subject of intensive joint case management, expert conferencing and mediation before reverting to three separately managed proceedings all programmed for hearing. The Southern Region has also seen the filing of two compensation applications, namely *Saunders on behalf of the Bigambul People v State of Queensland* and *Wharton on behalf of the Kooma People v State of Queensland*. These applications have been the subject of extensive case management by the Court and have otherwise seen a high level of interlocutory activity.

On-country hearings were held during the reporting period in the Kurtijar People matter and the Clermont-Belyando Area Native Title Claim matter (formerly called the Wangan and Jagalingou People matter). Both remain part-heard at the end of the reporting period.

Notable consent determinations were heard by Rangiah J for the Quandamooka (Minjerrabah) People in Brisbane, Robertson J for the Yuwibara People at Mackay and O’Byrne J for the Butchulla People at Hervey Bay.

Two non-claimant matters from Queensland and New South Wales were heard by the Full Federal Court in its original jurisdiction in November 2019, to determine whether they could be resolved by way of a negative determination. The Court considered the nature of evidence required to discharge the burden of proof in non-claimant applications and whether the applicants were able to prove on the balance of probabilities, that native title did not exist in the land and waters the subject of the claims. The Applications were granted. [See *Mace v State of Queensland* [2019] FCAFC 233].

South Australia

The Oodnadatta Common Overlap Proceeding hearing (SAD38/2013) commenced before White J in September 2019, with expert evidence to be heard in October 2020. The proceedings concern a small area of land around Oodnadatta in the far north of South Australia, covered by three overlapping claims: being Arabana No 2 (Part 2) application and the applications made in Walka Wani No 1 and Walka Wani No 2. The decision in an interlocutory matter regarding the giving and publication of male restricted evidence was appealed to the Full Federal Court, which dismissed the appeal.

Trials in the following matters are scheduled to commence in the first half of 2021, each for several weeks’ duration:

- The Ngadjuri Wilyakali overlap proceedings, and
- The Ngarrindjeri and First Nations of the South East Overlap proceedings.

Trials in respect of native title claimant applications filed by the Wirangu and Nauo people are also listed to commence on a five week estimate on 19 July 2021. It will be necessary for the Court to take evidence on-country during the trial in each of these applications.

New South Wales

Separate questions regarding the effect of New South Wales tenures on native title have been heard by the Court in the Widjabul Wia-bal matter during the reporting period. The decision of the primary judge was appealed to the Full Federal Court in February 2020, which concluded that the matters subject of the separate question hearing were hypothetical in nature (as connection had not been definitively agreed) and set aside the findings of the primary judge.

A Full Court, sitting in its original jurisdiction, was also asked to hear and determine an interlocutory issue regarding the state’s conduct during good faith negotiations to reach a consent determination in the Widjabul proceedings. The applicant was unsuccessful in making out its case due to insufficient factual evidence being put before the plurality. However, useful obiter was provided regarding the appropriate conduct of the state as model litigant and possible relief available from the Court if the standard was not met.

In March 2020, Jagot J convened a hearing on-country in the non-claimant matter Wagonga Local Aboriginal Land, which covers a small area entirely overlapped by the South Coast People claim application. Due to the COVID-19 pandemic, the on-country portion of the hearing was reduced and the hearing was finalised remotely through Microsoft Teams. Judgment is reserved.

Western Australia

In the Kimberley region (following eight additional consent determinations this year), 93.5 per cent of the Kimberley is now the subject of native title determination. Additionally, an on-country hearing took place in August 2019 in the Gajangana Jaru, Purnululu and Purnululu #2 matters. Judgment is currently reserved. There are currently four matters in the Kimberley in mediation and preservation of evidence for future compensation proceedings is currently a matter of focus.

In the Pilbara region, an on-country hearing was convened before Mortimer J in July 2019 for the Yinhawangka Gobawarra, Jurruru and Jurruru #2 matters. Expert conferences and evidence were held in Perth during December 2019 and the final submissions in February 2020. Judgment is reserved. During the course of the substantive hearing, a subpoena was sought to be served. To decide the issue, a hearing was convened canvassing issues of legal professional privilege and provides guidance on issues of privilege as they relate to connection materials: *Tommy on behalf of the Yinhawangka Gobawarra v State of Western Australia (No 2)* [2019] FCA1551.

The Nyamal Palyku Proceedings is currently comprised of five native title applications. A sixth application, WAD26/2019 Nyamal #10, was finalised at an on-country determination on 24 September 2019 at Shaw River. There have been two interlocutory hearings in these proceedings before Reeves J, *Nyamal Palyku Proceeding* [2020] FCA 428 and *Nyamal Palyku Proceeding (No 2)* [2020] FCA 788, including hearing of an application to strike out the Palyku proceeding as an abuse of process. The strike out application was dismissed and the substantive matter has now returned to intensive mediation before the judicial registrar.

Two revised determination applications have been filed in this region during the reporting period, both of which are in notification until 16 September 2020.

In the Geraldton region, a native title consent determination recognising the Yamatji Nation people was made on 7 February 2020. The orders made by the Court represent a unique and innovative settlement of native title facilitated by court mediation. The mediation was convened over approximately four years for the purpose of resolving six overlaps between the underlying five separate claims. The mediated agreement resulting in the filing of the overarching Yamatji Nation claim in mid-2019, supported by a comprehensive native title settlement ILUA entered into by the claim group and the State of Western Australia. The determination orders include positive determination of non-exclusive native title rights and interests over limited parcels and a negative determination over the rest of the area premised on the surrender of native title in the ILUA.

On 17 December 2019, a significant native title consent determination in favour of the Gnulli native title claim group was made recognising both exclusive and non-exclusive native title rights and interests over approximately 71,354 square kilometres in the Upper West Gascoyne and Murchison regions of Western Australia. The consent determination finalises claims for native title made by Gnulli people first lodged in 1997.

Drury on behalf of the Nanda People v State of Western Australia [2020] FCAFC 69 was delivered on 21 April 2020 by the Full Federal Court in its original jurisdiction. The decision confirmed the power of the Court under the *Native Title Act 1993* [Cth] to determine two separate prescribed body corporates over a shared area where the non-exclusive native title rights of two separate groups was determined.

Mediation has commenced in the Goldfields region to resolve various overlaps. A connection hearing is scheduled before Bromberg J in the longstanding Maduwongga claim (Kalgoorlie and surrounds) to commence in December 2020. On 30 October 2019, at Turtle Creek in the Central Desert region, Colvin J delivered a consent determination in favour of the Kultju native title claim group.

Two native title compensation applications were filed in the Central Desert region on 17 June 2020. The first application is made by a registered native title body corporate, which holds native title rights and interests in trust on behalf of the Tjiwarl common law holders. The application claims compensation over areas subject to the Tjiwarl determination made on 27 April 2020, for various acts which affected but did not wholly extinguish native title rights and interests. The second application is made by a compensation claim group, comprising the same persons as those determined as native title holders in the Tjiwarl determination. The application is over areas excluded from the Tjiwarl determination and where compensation is claimed for acts that wholly extinguished native title.

In the South West region, there is one compensation claim currently filed in the South West region which is subject of an application to strike out brought by the State of Western Australia. This matter, along with seven South West native title applications, await consideration of the High Court special leave applications P1/2020 – P7/2020. The appellants wish to appeal the decision of the Full Federal Court to dismiss the applications for judicial review of the registration decision of the Native Title Registrar in relation to the Southern Noongar ILUA.

Northern Territory

For many years in the Northern Territory, the determination of native title over a pastoral lease has reflected the form of the determination in *King v Northern Territory* [2007] FCA 1498 (the ‘Newcastle Waters’ case). More recently, the Northern Land Council and the Central Land Council have sought to amend the form of the determination, particularly to reflect the right to take resources for any purpose (including commercial purposes).

In the Northern Region, parties in the Minyerri and Banka Banka groups of matters were unable to agree on the form of determination and sought rulings from the Court in regard to four unresolved provisions. The Central Land Council and the Northern Territory Cattleman’s Association, among others, intervened in the proceeding. On 19 December 2019, Justice White handed down his rulings in *Fulton on behalf of the Mambali Amaling-Gan v Northern Territory*

of Australia (the Minyerri and Banka Banka Matters) [2019] FCA 2156. These rulings have led to a reformulation of pastoral lease determinations in the Northern region. It is expected that the Minyerri and Banka Banka matters will proceed to determination by consent in September and October 2020.

On 28 November 2019, Galarrwuy Yunupingu (on behalf of the Gumatj clan or estate group) filed applications for native title and compensation in respect of land and waters on the Gove Peninsula in the Northern region. The applications will come out of notification on 22 July 2020. This is the second compensation claim in the Territory, after Timber Creek.

Victoria

In Victoria, following three expert conferences convened in the previous year in VID737/2014 Gunaikurnai People, leave was granted for the applicant to discontinue the proceeding over Wilsons Promontory without adjudication on the merits. The two remaining native title applications in Victoria, VID21/2019 Eastern Maar People and VID630/2015 First Peoples of the Millewa-Mallee, both completed the notification process which had previously been delayed due to negotiations under the State of Victoria’s *Traditional Owner Settlement Act 2010* (Vic), resulting in various Indigenous interests being joined as respondent parties and orders made in March 2020 for mediation seeking to resolve any issues between the parties by the end of the second half of 2020.

On 2 June 2020, a new native title application, VID363/2020, was filed by the Boonwurrung People, over areas surrounding Port Phillip Bay including parts of Melbourne and to the east, Wilsons Promontory.

Assisted dispute resolution

Assisted dispute resolution (ADR) is 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 maintained comprehensive statistical information about referrals to ADR and the outcomes of ADR processes held during the relevant reporting period. Mediation referrals are summarised in Table 3.5. As in previous years, the data should be considered in light of various 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 in Table 3.5 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.

On 17 March 2020, in response to the COVID-19 pandemic, the Chief Justice determined that all listings, including mediations, be conducted by remote access technology. In the three month period since 1 April 2020, the Court has conducted 156 mediations: 86 by video conference and 70 by telephone.

During the reporting period, there was a 16 per cent reduction in the number of matters referred to mediation compared with the 2018–19 reporting period, although referrals by matter type is broadly consistent with past years.

A collection of statistics concerning the workload of the Court by NPA is contained in Appendix 5 (*Workload statistics*).

Table 3.5: Mediation referrals in 2019–20 by NPA and registry

NPA	NSW	VIC	QLD	WA	SA	NT	TAS	ACT	TOTAL
Administrative and constitutional law and human rights	4	20	8	3	1	0	1	0	37
Admiralty and maritime	6	0	0	0	0	0	0	0	6
Commercial and corporations	62	82	18	14	7	1	2	5	191
Employment and industrial relations	32	61	12	13	3	0	3	4	128
Federal crime and related proceedings	0	0	0	0	0	0	0	0	0
Intellectual property	23	28	11	4	0	0	0	0	66
Migration	0	2	0	0	0	0	0	0	2
Native title	4	2	6	5	0	0	0	0	17
Other federal jurisdiction	16	5	4	2	1	2	1	1	32
Taxation	0	2	1	0	0	0	0	0	3
Total	147	202	60	41	12	3	7	10	482

Improving access to the Court and contributing to the Australian legal system

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 practice and procedure. 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 and 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 (*Judges' activities*).

Support for litigants impacted by bushfires

The Court acknowledges the devastating impact of the bushfires on communities and families across Australia, and offered support to those who had been affected and had a current or prospective matter before the Court. A national bushfire relief coordinator was appointed as a contact point for affected litigants to coordinate any requests for assistance.

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 quickly transitioned to online hearings by use of 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. Knowledge, issues and practices were shared by the judges of the Court, as they trialled online hearings, and guidance was given to litigants and the profession through various guides and communications.

The Court issued the following special measures information notes:

- *Special measures in response to COVID-19* (SMIN-1)
- *Special measures in Admiralty and Maritime: Warrants for the arrest of ships* (SMIN-2)
- *Special measures in Appeals and Full Court hearings* (SMIN-3), and
- *Special measures in relation to Court Attendance* (SMIN-4).

From mid-April 2020, the Court was operating at 80 per cent of its courtroom capacity. The Court's practice and procedure in relation to online hearings and its various processes, such as viewing subpoena material without the requirement for in-person attendance, continues to develop during the COVID-19 pandemic.

Hearings for detainees

For litigants in immigration detention, the prospect of conducting online hearings by remote access technology presented particular challenges. The Court worked with national and state Bar Associations to arrange pro bono referrals to counsel where a litigant did not already have representation.

eLodgment process improvements

The Court has implemented improvements to its lodgment process for the application of pseudonyms to certain protection visa proceedings. Legal representatives are encouraged to contact Registry to obtain a pseudonym before filing, which can then be used in the eLodgment system. Similar measures are being developed in relation to self-represented litigants seeking to register as a user of eLodgment in order to file proceedings.

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, 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 met and dealt with a range of matters including:

- considering feedback received in respect of its national practice notes, and
- managing responsibilities and support for each NPA, including enhancing and developing national arrangements for liaison with the profession (including through court user-groups and forums in key practice areas), and developing a framework for skilled and experienced Judicial Registrar support for each NPA (including in class actions, migration and intellectual property).

Liaison with the Law Council of Australia

Members of the National Practice Committee meet with the Law Council's Federal Court Liaison Committee to discuss matters concerning the Court's practice and procedure, as required. The available members of the two committees met on 25 September 2019 to discuss a range of matters, including information regarding the workload of the Court and the disposition of proceedings, case management procedure, the national court framework, digital hearings, representative proceedings and policy and practice (including practice notes).

Representatives of the Court and representatives of the Law Council's Federal Court Liaison Committee also discussed updates to the Case Management Handbook and the possible extension of the Court's criminal jurisdiction.

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 continued to provide funding to LawRight, Justice Connect, JusticeNet SA and Legal Aid Western Australia to provide basic legal information and advice to SRLs in the Federal Court and the Federal Circuit Court.

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

Tables 3.6, 3.7 and 3.8 provide 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, and the representation status of a party during the course of a proceeding may vary from time to time, statistics shown in the tables are indicative only. In the reporting year, 587 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 2019–20 by registry

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	TOTAL
SRLs	2	415	2	53	10	0	9	96	587
Percentage of total	0%	71%	0%	9%	2%	0%	2%	16%	100%

Due to rounding, percentages may not always appear to add up to 100 per cent.

Table 3.7: Proceedings commenced by SRLs in 2019–20 by cause of action

CAUSE OF ACTION	TOTAL ACTIONS	% OF TOTAL
Administrative law	19	3%
Admiralty	0	0%
Appeals and related actions	438	77%
Bankruptcy	19	3%
Competition law	0	0%
Consumer protection	1	0%
Corporations	8	1%
Fair work	9	2%
Human rights	7	1%
Industrial	0	0%
Intellectual property	1	0%
Migration	47	8%
Miscellaneous	20	3%
Native title	0	0%
Taxation	3	1%
Total	572	~100%

Due to rounding, percentages may not always appear to add up to 100 per cent.

Table 3.8: Appeals commenced by self-represented litigants in 2019–20 by cause of action

CAUSE OF ACTION	TOTAL ACTIONS	% OF TOTAL
Administrative law	8	2%
Admiralty	0	0%
Bankruptcy	18	4%
Competition law	0	0%
Consumer protection	5	1%
Corporations	2	0%
Fair work	7	2%
Human rights	9	2%
Industrial	0	0%
Intellectual property	1	0%
Migration	384	88%
Miscellaneous	4	1%
Native title	0	0%
Taxation	0	0%
Total	438	100%

Due to rounding, percentages may not always appear to add up to 100 per cent.

Direct financial counselling project in bankruptcy proceedings

With the assistance of Consumer Action in Melbourne and Uniting Communities in Adelaide, the Court has, in conjunction with the Federal Circuit Court, been able to maintain a program of targeted financial counselling assistance to SRLs in bankruptcy proceedings. Since the latter part of 2014 in Melbourne and 2018 in Adelaide, a financial counsellor sits in the courtroom in every bankruptcy list. During the COVID-19 pandemic, a financial counsellor has been available over the telephone. The registrar presiding is able to refer a SRL to the financial counsellor for an immediate confidential discussion so that the SRL better understands his or her options when faced with the prospect and consequences of bankruptcy.

In Melbourne, during the reporting year, there were 41 referrals of debtors in proceedings to financial counsellors, 38 of which have been determined. In 24 of those proceedings (63 per cent), they were resolved by consent either with the dismissal of the petition or with the making of a sequestration order. While statistics are not available from Adelaide, registrars have reported favourably about the program.

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 Federal Circuit Court fees regulation (see below).

Court fees and exemption

Fees are charged under the Federal Court and Federal Circuit Court Regulation 2012 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 \$74.50)
- 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 s 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, and
- 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 *Native Title Act 1993* or has been granted funding to perform some functions of a representative body under s 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, or
- is receiving youth allowance, Austudy or ABSTUDY benefits.

A person who has a general exemption from paying a fee 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 that had been granted Legal Aid or funding under the *Native Title Act 1993* has 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 e.g. '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 (*Financial statements*).

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 www.fedcourt.gov.au/ips, materials relating to the Information Publication Scheme.

This includes the Court's current Information Publication Scheme plan as well as information about the Court's organisational structure, functions, appointments, annual reports, consultation arrangements and FOI contact officer as well as information routinely provided to the Australian Parliament.

The availability of some documents under the FOI Act will be affected by section 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; they may, however, be accessible by way of an

application for inspection of court documents under the Federal Court Rules.

Information for the media and televised judgments

The Director, Public Information (DPI) is responsible for dealing with all media inquiries. These mainly relate to how to access files and requests for judgments, however duties also involve dealing with issues that can require high-level contact and coordination.

The DPI's work requires close liaison with, and the support of, registries and judges' chambers. The role also entails briefing associates about how the Court deals with the media, arranging camera access in cases of public interest, and contacting journalists when mistakes have been made.

In matters of extensive public interest, the Court has established online files where all documents deemed accessible are placed. This removes the need for individual applications to registry and makes it easier for journalists and court staff.

In the reporting year, such files were created for the following:

- *ABC v Kane and others*, and
- *Application in the matter of Virgin Australia Holdings (Administrators Appointed)*.

Early in the reporting year it was revealed the *Geoffrey Rush v Nationwide News online* file had resulted in just under 37,000 hits from around the world, making it the most accessed online file to date.

Mainstream television coverage was permitted in the following matters:

- *Gill v Ethicon Sarl*
- *Application in the matter of Virgin Australia Holdings (Administrators Appointed)*, and
- *Brett Cattle v Minister for Agriculture*.

The DPI was also responsible for the production of an instructional video in anticipation of the Court's first jury trial.

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 2019–20, members of the Court were involved in seminars relating to arbitration, employment and industrial relations, commercial law, admiralty and maritime, tax, and class actions.

The Canberra registry hosted a biannual stakeholder meeting for legal stakeholders, including the ACT Bar Association, ACT Law Society, Canberra region legal practitioners, Legal Aid ACT, ACT Women's Legal Services and Child Youth Protection Services. Weekly meetings with this stakeholder group (moving to fortnightly throughout the COVID-19 period) continued.

Working with the Bar

Registries across the country hosted advocacy sessions and a number of bar moot courts and moot competitions and assisted with readers' courses during the year. The South Australian registry hosted Bar Readers courses in October, November and December 2019. The New South Wales registry hosted a silks ceremony on 28 October 2019. The Queensland registry hosted a silks ceremony in December 2019.

User groups

User groups have been formed along NPA lines to discuss issues related to the operation of the Court, its practice and procedure, to 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 both nationally and locally in a number of practice areas.

Legal community

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

- **Canberra** – co-location of Child and Youth Protection Services and the AFP commenced, however was postponed due to COVID-19. Employees have been appointed and inducted and will commence as soon as face-to-face services re-commence.
- **Darwin** – a Federal Court mediation suite was utilised for a Family Court pilot program (July 2019 until March 2020) for parties to attempt to negotiate orders rather than a child being placed in care in the Youth Court.
- **Hobart** – the UN Day Lecture.
- **Melbourne** – the Australian Academy of Law seminar, the UNCCA UN Day Lecture, a National Commercial Seminar '*Recent Developments in Misleading and Unconscionable Conduct*', National Seminar '*The Boundaries of Refugee Protection: A Comparative View*', and Judges in Conversation '*Limitations on Judicial Review: Where To From Here?*'.
- **Perth** – the national AMTAC address, the Richard Cooper Memorial Lecture, the John Emerson AM oration, an online web conference '*Cruise ships, COVID-19 and Consumers*', CI Arb Australia seminars, a national VCF seminar on *parentage, parenthood and parental responsibility* and UN Day, which was chaired by McKerracher J.
- **Sydney** – the Richard Cooper Memorial Lecture, CI Arb seminar, the Australian Law Reform Commission Corporate Crime Seminar, the University of Sydney Jessup Team Moots, Minds Count Lecture, the Australian Association of Constitutional Law lecture, the AMTAC address, and the Australian Academy of Law joint symposium.

Complaints

During the reporting year, complaints in relation to registry services were made to the Court regarding its procedures, rules, forms, timeliness or courtesy to users. For the purpose of collecting data about complaints, several discrete reports made by a complainant about a single issue or a set of related issues were recorded as a single complaint.

There were five complaints in the reporting year. This figure is down from 12 complaints recorded 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,

or complaints about the merits of a decision of a registrar, which may only be dealt with by way of review.

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

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 (*Judges' activities*).

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 2019–20 the Court offered the following activities:

- eleven education sessions were scheduled at the judges' meeting on 27–29 November 2019 (in Melbourne)
- judges were offered the opportunity to attend the Supreme Court and Federal Court judges' conference.

The judges' meeting scheduled for April–May 2020 in Adelaide did not proceed, in light of the COVID-19 pandemic.

Education sessions offered at the judges' meetings in 2019–20 included:

- workshop with the profession on case management of regulatory civil litigation
- session for judges under three years
- introduction to judicial registrars
- the Federal Court's work in the Pacific: the Court's international programs
- judicial management of emotion
- sleep: the new health frontier
- recent developments in constitutional law
- Federal Court and Law Council of Australia joint conference on competition law, including sessions on:
 - Current perspective on the role of patent law in stimulating innovation
 - What does an IP regime need to be useful? Legal and economic perspectives from Europe, the United States and the Asia Pacific region
 - Trade marks, designs and patent oppositions: new technologies and areas of emerging interest
 - Copyright authorisation, safe harbour regimes; Hot topics in trade marks; Enforcement of foreign IP rights in Australia.

In addition to the above, judges undertook other education activities through participation in seminars and conferences. Some of these are set out in Appendix 8 (*Judges' activities*).

In 2019–20, due to the COVID-19 pandemic, the Federal Court was unable to provide five days of professional development activities for its judicial officers.

Work with international jurisdictions

The Federal Court has continued to collaborate with a number of courts in Asia and the Pacific this year. We have been able to support local reform and development objectives through a number of activities involving courts in the Asia–Pacific region.

As a result of COVID-19, a number of projects and activities to support governance, access to justice and the rule of law within neighbouring judiciaries have been postponed. However, by collaborating with courts, across the Asia–Pacific region, the Court was able to contribute to a number of our partners' important reform and development priorities.

National and Supreme Courts of Papua New Guinea

In December 2019, the Chief Justices of Papua New Guinea and the Federal Court signed a third, five-year Memorandum of Understanding (MOU). The MOU aims to facilitate further understanding of each nation's laws and commonalities of international legal standards, as well enhancing the capacity of the Supreme and National Courts of Papua New Guinea to fulfil their mandate.

The Court's Executive Director of Service Reform visited Port Moresby in July 2019 to conduct training to assist senior managers to understand the complexities of organisational change, to prepare for, and to lead that change. The leadership group is now in the process of implementing the changes they have responsibility for, with follow-up support anticipated in the second half of the calendar year.

In October 2019, Papua New Guinea's Efficiency Task Force visited Sydney. The Task Force discussed the findings of a Judicial Workload Survey against their current case management system and capacity. The visit closed with an interim report and recommendations for case management and efficiency reforms.

High Court of the Solomon Islands

In March, the National Judicial and District Registrar visited Munda in the Western Province of the Solomon Islands. The visit was part of the Court's Australian Government-funded project (Department of Foreign Affairs and Trade) to support the Magistracy. Based on the priority

needs identified by the Chief Magistrate, the activities for the remainder of the project were agreed. They will be implemented in the second half of the calendar year.

Regional collaborations

The Court has continued to manage the New Zealand government-funded Pacific Judicial Strengthening Initiative (PJSI). The program aims to build fairer societies by enabling the provision of more accessible, just, efficient and responsive justice services across 15 Pacific Island Courts. PJSI supports five thematic areas:

1. improved capacity of judicial leadership
2. marginalised and vulnerable groups are better able to access justice in and through courts
3. partner courts operate with a higher level of professionalism
4. partner courts exhibit more responsive, just behaviour and treatment that is fair and reasonable, and
5. cases are disposed of more efficiently.

PJSI has this year delivered the following activities:

- assessment and Support Design Visit, Fiji
- 7th, 8th and 9th Initiative Executive Committee Meetings
- human rights visit, Solomon Islands
- regional court data management workshop, Vanuatu
- ICT visit, Nauru
- gender and family violence visit, Vanuatu
- career pathway visit, Papua New Guinea (PNG)
- court data management follow-up webinar
- access to justice visit, Kiribati
- local efficiency visit, Nauru
- lay judicial officers webinar
- COVID-19 webinar, and
- opening the Courts' safely webinar.

PJSI has also approved 28 Leadership Incentive Fund grants for locally led activities, and commenced several remote engagements.

This brings the total of activities delivered since its commencement in 2017 to 77, plus 61 locally delivered activities supported by PJSI. Activities have involved and benefited over 3,000 people.

To ensure PJSI remains responsive to partner courts' priority needs, particularly those emerging as a result of the pandemic, the Court re-designed the remaining year of PJSI. With the re-design approved by PJSI's governance committee, a number of remote support activities have commenced.

Australian Competition and Consumer Commission

The Court and the ACCC entered into an MOU in June 2020, to add to a series of 'Judicial Primers'. The Primers will be published by the Organisation for Economic Co-operation and Development for the benefit of competition law judges across Association of South Asian Nations (ASEAN) member states.

Seminars and visitors to the Court

During the year, the Court hosted the following seminar and visitors:

- The Court arranged for Dr Livingston Armytage AM (Centre for Judicial Studies) and Dr Anna Dziedzic (University of Hong Kong) to attend the 2019 Federal Court Judges' Meeting in November to speak at a session entitled 'The Federal Court's Work in the Pacific: the Court's International Programs'.
- In July 2019, the Court hosted a delegation of judges from Thailand with focus on intellectual property law. The judges had been attending a workshop on intellectual property law at the University of Melbourne Law School. The delegation included the Hon Mr Nopporn Bhotirung-Siyakorn, Vice-President of the Supreme Court; the Hon Mr Nipan Chuysakul, Presiding Justice of the Supreme Court; the Hon Mr Chalit Katinasmit, Justice of the Supreme Court; the Hon Ms Sicha Nagavajra, Chief Justice of the Central Intellectual Property and International Trade Court; the Hon Mr Rukgiat Wattanapong, Justice of the Supreme Court; the Hon Ms Benjamas Punyadilok, Justice of the Supreme Court; the Hon Mr Sophon Rojanonth, Senior Justice of the Supreme Court; and a number of other senior Thai judges. The delegation discussed the Court's conduct of intellectual property cases with Justices Kenny and Moshinsky and District Registrar Luxton and Registrar Gitsham.
- In August 2019, the Court hosted 33 delegates from Thailand. The delegation comprised three justices of the Constitutional Court, including HE Mr Nurak Marpraneet, President, along with high-ranking executives from the Office of the Constitutional Court and other Thai institutions and companies. This visit was part of Thailand's 'Rule of Law Democracy Class No 7'. The delegation discussed the Court's roles and responsibilities and met with Justice Robertson.
- On 12 September 2019, the Court hosted a 35-person delegation of Thai judges, which included two judges from the Supreme Court of the Kingdom of Thailand. The delegation was hosted by Judicial Registrar Ryan and the Melbourne Law School and was given an overview of bankruptcy by Judicial Registrar Ryan and a demonstration of the Digital Court File.
- In September 2019, the Court hosted a visiting Austrian judge through the International Association of Supreme Administrative Jurisdiction's Judicial Exchange Program. Dr Markus Thoma of the Supreme Administrative Court visited the Court in Sydney from 9 to 13 September. Dr Thoma met with Justice Griffiths and Justice Driver for an overview of jurisdiction and court process.
- In February 2020, a Japanese delegation comprising Justice Yuko Myazaki and two other judges of the Supreme Court, visited the Court. The purpose of the visit was to gain a deeper understanding of Australia's judicial system and build relationships with Australian courts. The delegation met with Chief Justice Allsop and Justice Rares and were shown and discussed the operation of an electronic courtroom.