

PART 2

Year in review

The year in review

It has been another extraordinary year, full of challenges and unpredictability, but also innovation, adaptability, resilience and achievement. In a challenging environment, the Court has continued to deliver its core business seamlessly while taking the opportunity to capitalise on the digital, practice and cultural initiatives that were implemented to address the pandemic, and also support the delivery of the Government's COVID-19 recovery agenda.

During the year we implemented significant and transformational changes to the Court's operations particularly in relation to digital practice, consolidating the national approach to the Court's work and judicial and staff wellbeing. The Court will continue to transform its operations while responding rapidly and flexibly to the ongoing challenges of managing our work environment in a pandemic.

During the year, we also welcomed two judges to the Court. Justice Halley was appointed on 19 March 2021 and Justice Cheeseman was appointed on 12 April 2021. We also farewelled a number of judges. Justice Foster retired on 30 September 2020 and Justices Steward and Gleeson were appointed to the High Court of Australia in December 2020 and March 2021, respectively.

Once again, I am delighted to share our initiatives, successes and learnings over the past year.

Significant issues and developments

Embracing a digital future

Online hearings – Microsoft Teams

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

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

The Court has consulted, and continues to consult, with judges, registrars, the legal profession and other legal-related bodies to help capture key learnings, understand the appropriateness and usage of online hearings moving forward and refocus the Court's priorities to better support litigants and stakeholders.

Cisco platform and live streaming

In 2021, the Court further enhanced its online hearing presence through the use of the Cisco platform together with a live streaming channel, both of which leverage off the existing court room video conferencing infrastructure. The live streaming allows participants to watch the court proceeding by accessing the link on the Daily Court Lists. The introduction of the live streaming has assisted with the management of courtroom capacities and social distancing.

The Court has established a Broadcasting Working Group to develop a sustainable long-term model aimed at achieving the optimal broadcasting experience. The model will focus on technology, cinematography, training and development and developing streamlined processes.

The Court will continue to utilise remote access technology including live streaming to support its response to the pandemic and to ensure the work of the Court is accessible and transparent.

Digital hearings (or eTrials)

Prior to the pandemic, the Court had developed a framework to support digital hearings (or eTrials as they are often referred to) as an alternative to traditional, paper-based hearings. During the year eight digital hearings were conducted nationally, which used or leveraged off the Court's digital hearing infrastructure.

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

Digital litigation support

A dedicated digital litigation support team is being established to support judges and staff with the Court's new digital practices. The Digital Practice Team will provide judges and staff with enhanced support and training for in-court technology, digital hearings and online hearings. The Court is continuing to develop a digitally savvy workforce to support its ongoing digitisation of services and practices.

iPad initiative

The Court commenced its iPad Initiative in March 2020 as part of its Working Digitally strategy and to support individual judges' work preferences. The iPad Initiative was an opt-in program for judges who were interested in opportunities to trial other means by which technology could assist them in performing their judicial duties.

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

Cyber security

2020–21 highlighted significant changes in business as usual practices due to the COVID-19 pandemic, but also an ever increasing sophistication of cyber threats and targeted attacks on business and government organisations.

As a consequence, the Court continues to commit itself to strengthening its cyber security maturity in line with the Australian Cyber Security Centre recommendations and Protective Security Policy Framework requirements. In early 2021, the Chief Information Security Officer was appointed to lead capability uplift across people, processes and technology through the implementation of a strategic cyber security improvement program for 2021–22.

The program includes the improvement of risk management practices, ongoing learning and development for staff, strengthening current policies and processes to improve the Court's ability to prevent and respond to cyber incidents, and the enhancement of abilities to detect and respond to cyber threats which will improve the protection of the Court's information, systems and services.

The introduction of these initiatives across key areas of the Court's cyber capabilities will support the Court's ability to continue delivering digital services in a productive and secure manner.

Criminal jury trial

The Court conducted its inaugural criminal jury trial in a case involving cartel charges under the *Competition and Consumer Act 2010* (Cth). The trial commenced in Melbourne before Justice Bromwich and an initial jury of fourteen on 15 March 2021 and concluded on 2 June 2021. It is a significant achievement given the Court had to navigate the many and varied challenges presented by recruiting and managing juries and hearing the jury trial during a pandemic.

Due to the COVID-19 pandemic and associated public health directions, a trial-specific COVIDSafe Plan was implemented by the Court. Implementation required substantial and complex technical planning and support prior to the commencement of the jury trial, during the jury empanelment process and throughout the 11-week duration of the trial.

As part of the trial-specific COVIDSafe Plan, for each day of the trial, the trial courtroom was connected to a second courtroom for access by the media and observers. To achieve physical distancing in the trial courtroom and recognising travel restrictions, several active and passive trial participants were permitted to participate in the trial via video conference. In a first for the court, remote trial participants were able to join from not only a video conferencing system but also their own desktop device using the court's newly launched – join.federalcourts website – a feature of the Court's upgraded video conferencing system.

Extension of the National Court Framework

The Court continues to implement the National Court Framework reforms and is now applying the reform principles to the work undertaken by judicial registrars. These reforms have involved the allocation of judicial registrar work on a national basis, introduction of a national duty registrar system and the development of national practice guides to support and enhance the work undertaken by judicial registrars. The Court continues to draw on the skills and expertise of its judicial registrars in each of the national practice areas by providing mediation and case management support to judges on a national basis. The Court continues to progress and embed the reforms.

Workload

In 2020–21, the total number of overall filings in the Court, comprising first instance, appellate and registrar matters decreased by 28 per cent to 3,227. However, the volume of first instance filings which forms a significant component of judicial workload increased by 6 per cent in 2021. There were increases in filings in a number of National Practice Areas, including Intellectual Property (particularly Patents), Employment and Industrial Relations, Administrative and Constitutional Law and Human Rights and Admiralty.

The continuing impact of the COVID-19 pandemic caused a significant decrease in registrar filings. A key factor contributing to the reduction in filings was the changes introduced by the

Government to bankruptcy and insolvency laws in March 2020 as part of a wider economic response to the COVID-19 pandemic. The changes continued until 1 January 2021.

In bankruptcy, the temporary changes included:

- an increase in the debt threshold, which enabled creditors to apply for a bankruptcy notice, (increased to \$20,000)
- an increase to the timeframe for a debtor to respond to a bankruptcy notice (six months), and
- an increase to the temporary debt protection available to debtors (six months).

In insolvency, the temporary changes included:

- the COVID-19 safe harbour defence for directors from liability for insolvent trading
- an increase in the debt threshold for a statutory demand (\$20,000), and
- an increase to the time for compliance with a statutory demand (six months).

Appeal filings were also down, driven largely by a decrease in Federal Court appellate migration filings.

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

Performance

The Court has two targets for timely completion of cases:

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

During the reporting year, the Court completed 82.3 per cent of cases in less than 18 months. As shown in Figure A5.5 and Table A5.5 in Appendix 5, in the previous four years, the Court consistently exceeded its benchmark of 85 per cent, with the average over the five years being 90.38 per cent. A key factor contributing to the Court not achieving the benchmark this year was that a number of complex matters required face-to-face hearings that could not be conducted as a result of significant periods of restrictions imposed by Government in response to COVID-19.

- Judgments to be delivered within three months

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

During 2020–21, the Court handed down 1,906 judgments for 1,656 court matters (some matters involve more than one judgment being delivered – e.g. interlocutory decisions – and sometimes one judgment will cover multiple matters). The data indicates that 73.5 per cent of appeals (both Full Court and single judge) were delivered within three months and 84.3 per cent of judgments at first instance were delivered within three months of the matter being reserved.

Financial management and organisational performance

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

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

The financial statements for 2020–21 include changes to the accounting treatment of operating leases as a result of the impact of changes to the Australian Accounting Standards Board (AASB) 16 Leases. The financial statements show an operating surplus of \$16.487 million before depreciation costs of \$35.705 million and taking into account principal repayments of lease liabilities of \$18.217 million. The entity was budgeting a break-even position for the year, with the surplus stemming from significant judicial vacancies, the impact of COVID-19 on a number of operational expense areas and lower employee expenses as a result of the judicial vacancies and newly funded positions being appointed across the financial year. The Courts operate under strict budgetary controls ensuring that the entity operates within the appropriation.

The next three-year budget cycle continues to challenge the entity to make further savings. With over 60 per cent of the entity's costs

relating to property and judicial costs, which are largely fixed, the ability to reduce overarching costs is limited.

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

A number of new Government measures appropriated additional funding to the entity for 2020–21 and forward years. \$5.9 million was received in 2020–21 (\$36.1 million over budget and forward years) for expediting Family Court and Federal Circuit Court matters. This funding was supported by increases to administered receipts of an equivalent amount. New funding of \$1 million was also provided in 2020–21 (\$2.5 million over budget and first forward year) as part of the COVID-19 response package, which provided funding for family law courts to establish specialised court lists for urgent matters. \$2.7 million (\$7.4 million over budget and first forward year) of equity injection was provided in 2020–21 to fund new court registries premises in Rockhampton and Launceston.

Wellbeing

The health and wellbeing of judges and staff is of paramount importance to the Court, and is particularly important given the COVID-19 pandemic. A program of resilience, mindfulness and wellbeing sessions, utilising the services of an external facilitator, is being delivered on an ongoing basis. These sessions have been extremely important in underpinning our response to the COVID-19 pandemic and ensuring judges and staff feel supported and engaged. In addition, staff have been provided with various resources designed to support them in their personal and work life.

The Court also introduced a regular home-based work policy that facilitates regular home-based work arrangements. The Court now has 231 employees working regularly from home and accessing flexible work arrangements.

Safe and respectful workplace

The Court is committed to providing a safe and respectful workplace for staff and has implemented a number of initiatives to support staff. The Court's commitment was emphasised through a public statement made by Chief Justice Allsop, together with other heads of jurisdiction of Commonwealth courts and tribunals, on 26 June 2020, and a further public statement made by Chief Justice Allsop on 6 July 2020 reiterating the contents of the public notice and outlining the next steps the Court was taking to evaluate its practices and procedures.

The Court reviewed all of its existing policies, procedures, support networks, training material and induction programs and engaged an external organisation to assist with the review. In addition, a Judicial Advisory Committee, comprising judges and senior staff, was established with the key purpose to review the Courts' policies and educational strategies and to make recommendations to ensure a safe working environment for all staff. As part of the review, the Court held numerous consultative sessions with staff and conducted a survey to seek their feedback and input. The Court's staff policy on Workplace Discrimination, Harassment and Bullying has been updated taking into account feedback from staff. The Court's Induction Programs have also been reviewed to include further information on the Court's policies, procedures and support networks. In addition, a Federal Court Judicial Workplace Conduct Procedure has been developed and information sessions will be held for judges, on an ongoing basis, that focus on judicial workplace conduct.

Reconciliation Action Plan

The inaugural Federal Court entity Reconciliation Action Plan (RAP) for 2020–21 has been launched. There are four levels of RAP, *Reflect*, *Innovate*, *Stretch* and *Elevate*, which suit organisations at the different stages of their reconciliation journey. The entity's reconciliation journey begins with a *Reflect* RAP. Our commitment to a *Reflect* RAP allows us to continue to develop relationships

with Aboriginal and Torres Strait Islander stakeholders, while creating and aligning our vision for reconciliation and ensuring our future RAPs are both meaningful and sustainable. The RAP focuses on our respect for, and commitment to, reconciliation with Aboriginal and Torres Strait Islander peoples and their cultures, current and future.

We have implemented a number of initiatives as part of the RAP, including the appointment of four RAP champions who will guide the RAP's implementation; the establishment of a RAP working group who meet quarterly to discuss the implementation progress; establishment of a new Aboriginal and Torres Strait Islander employee network; expansion of the Court's network of Aboriginal and Torres Strait Islander educational providers to partner with us on our reconciliation journey; a channel on the Court's internal collaboration site dedicated to the RAP and its initiatives which has involved six cameos being published, featuring our Aboriginal and Torres Strait Islander staff; special events to celebrate NAIDOC and Reconciliation Week, including Fireside (online) chats to recognise Indigenous history, culture and achievement; a review of educational programs; the drafting of a traineeship program and establishing a list of Aboriginal companies used in procurement. The Court is also focusing on Indigenous recruitment including advertising for a registration delegate and Human Resources adviser.



Sia Lagos

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