



Part 3: Report on Court performance

The work of the Court in 2022–23

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 section 39B of the *Judiciary Act 1903* (Cth).

Central to the Court's civil jurisdiction is section 39B (1A)(c) of the *Judiciary Act 1903* (Cth). 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 1903* (Cth) 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* (Cth) 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 has jurisdiction to hear and determine a question of law referred to it by the Administrative Appeals Tribunal pursuant to section 45(2) of the *Administrative Appeals Tribunal Act 1975* (Cth).

This jurisdiction falls under the Administrative and Constitutional Law and Human Rights National Practice Area, 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 shows the number of intellectual property matters filed over the last five years.

The Court also has jurisdiction under the *Native Title Act 1993* (Cth). 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 *Administrative Decisions (Judicial Review) Act 1977* (Cth) involving native title. The Court's native title jurisdiction is discussed in this part. Figure A5.11 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* (Cth).

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 four arrests. See Figure A5.10 in Appendix 5 (*Workload statistics*) 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* (Cth), *Fair Work (Registered Organisations) Act 2009* (Cth) and related industrial legislation. Workplace relations and fair work matters filed over the last five years are shown in Figure A5.12 in Appendix 5 (*Workload statistics*).

The Court's jurisdiction under the *Corporations Act 2001* (Cth) and the *Australian Securities and Investments Commission Act 2001* (Cth) 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* (Cth). 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* (Cth) 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 National Practice Area. Figure A5.7 in Appendix 5 (*Workload statistics*) provides statistics on this practice area.

The Court has jurisdiction to hear defamation matters, civil aviation, negligence and election-related disputes. These cases fall under the Other Federal Jurisdiction National 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 National Practice Area 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 and Family Court of Australia (Division 2) 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 and Family Court of Australia (Division 2) concerning decisions under the *Migration Act 1958* (Cth). The Court's migration jurisdiction is discussed in this part.

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 also discussed in this part.

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 section 39B of the *Judiciary Act 1903* (Cth), are listed on the Court's website at www.fedcourt.gov.au.

Changes to the Court's jurisdiction in 2022–23

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

- *National Anti-Corruption Commission Act 2022* (Cth)
- *Home Affairs Act 2023* (Cth), and
- *Creative Australia Act 2023* (Cth).

Amendments to the Federal Court of Australia Act

During the reporting year the *Federal Court of Australia Act 1976* (Cth) was amended by the *Courts and Tribunals Legislation Amendment (2021 Measures No.1) Act 2022* (Cth). These amendments provided clarification on the exercise of the Court's jurisdiction through remote hearings by way of video link, audio link or other appropriate means.

Fee regulation

The Federal Court and Federal Circuit and Family Court Regulations 2022 commenced on 1 April 2023 and were subsequently amended by the Fair Work and Other Legislation Amendment (Secure Jobs, Better Pay) Regulations 2023.

The fee for filing applications under section 539 of the *Fair Work Act 2009* (Cth) in certain circumstances is fixed at the same rate as prescribed under subsection 395(2) of that Act. 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 of Australia Act 1976* (Cth). 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.

The *Federal Court Legislation Amendment Rules 2022* came into effect on 13 January 2023 and were repealed on 30 March 2023. The amendments provided updates to references to rules, regulations and the Federal Circuit and Family Court of Australia. They also clarified the transfer of proceedings to and from the Federal Circuit and Family Court of Australia (Division 2). Schedule 1 amended the *Federal Court Rules 2011*.

The rule amendments reflected harmonisation consistent with recommendations from the Council of Chief Justices and improved the rules relating to examinations by a medical expert and limiting non-party access to documents.

The rule amendments also made changes to the access regime for non-parties prior to the first directions hearing or hearing (whichever is earlier).

The amendments also provided for an increase in the Costs Allowable for Work Done and Services Performed as set out in Schedule 3 of the *Federal Court Rules 2011*, consistent with recommendations from the Joint Costs Advisory Committee.

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* (Cth) which involve a debtor other than an individual. Schedule 4 of the *Federal Court Legislation Amendment Rules 2022* amended the *Federal Court (Corporations) Rules 2000*.

The *Federal Court (Bankruptcy) Rules 2016* govern proceedings in the Federal Court under the *Bankruptcy Act 1966* (Cth), as well as proceedings under the *Cross-Border Insolvency Act 2008* (Cth) involving a debtor who is an individual. Schedule 3 of the *Federal Court Legislation Amendment Rules 2022* amended the *Federal Court (Bankruptcy) Rules 2016*.

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. Schedule 2 of the Federal Court

Legislation Amendment Rules 2022 amended the *Federal Court (Criminal Proceedings) Rules 2016*.

The *Admiralty Rules 1988* govern proceedings in the Federal Court under the *Admiralty Act 1988* (Cth). 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 an 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*.

On 11 January 2023, Chief Justice Allsop approved three forms: one new form, Form 26A – *Notice to person served outside Australia*; and approved two updated forms, Form 43B – *Subpoena to produce documents* and Form 43C – *Subpoena to give evidence and produce documents*. Both updated forms were issued on 11 January 2023 and reflect the amendments introduced by the *Federal Court Legislation Amendment Rules 2022*.

On 18 January 2023, Chief Justice Allsop approved two forms: one new form, Form 14A – *Originating application by prospective applicant to ascertain description of respondent*, which is a form for the purposes of rule 7.24(1) of the *Federal Court Rules 2011*, and an amended form, Form 14 – *Originating application by prospective applicant for order for discovery*, which reflects the amendments introduced by the *Federal Court Legislation Amendment Rules 2022*. Both forms were issued on 18 January 2023.

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.

On 5 July 2022, the Court published the General and Personal Insolvency Sub-area Practice Note (GPI-1) which sets out arrangements for the management of matters under the *Bankruptcy Act 1966* (Cth) within the National Court Framework.

On 10 August 2022, the Court published the Central Practice Note: National Court Framework and Case Management (CPN-1) which sets out the fundamental principles concerning the National Court Framework of the Federal Court, together with key principles of case management procedure.

On 17 August 2022, the Court published the eBooks Practice Note (GPN-eBOOKS). This practice note identifies the Court's requirements in respect of court books, appeal books and books of authorities, and other documents such as affidavits, which are proposed to be provided in electronic format.

On 17 August 2022, the Court re-issued the Content of appeal books and preparation for hearing (APP 2) Practice Note.

On 21 September 2022, the Court published the List of Authorities and Citations Practice Note (GPN-AUTH) which provides guidance for the use of Lists and eBooks of Authorities in all hearings (including appeals), unless or to the extent that the Court otherwise orders. It applies to all parties providing Lists and eBooks of Authorities as ordered or otherwise, including those parties that are not represented by a lawyer.

On 3 November 2022, the Court published the Referee and Assessor Practice Note (GPN-REF). This practice note provides guidance on the Court's practice and procedure relating to orders of referral and orders for the appointment of an assessor, including the standard terms of such orders.

On 9 November 2022, the Court published the Commercial and Corporations Practice Note (C&C-1) which sets out the arrangements for the management of commercial and corporations' cases within the National Court Framework.

On 10 February 2023, the Court published the Access to Documents and Transcripts Practice Note (GPN-ACCS) which provides guidance in respect of requests for access to documents contained in the court file relating to a proceeding in the Court, and in respect of access to transcripts of a proceeding.

On 24 March 2023, the Court published Working with Interpreters Practice Note (GPN-INTERP). This practice note applies to all civil and criminal proceedings commenced after its commencement and to any existing proceedings which the Court directs should be subject to this Practice Note in whole or in part.

As at 19 June 2023, the Case Management of Full Court and Appellate Matters (APP 1) Practice Note is under review by Chief Justice Mortimer.

Guides

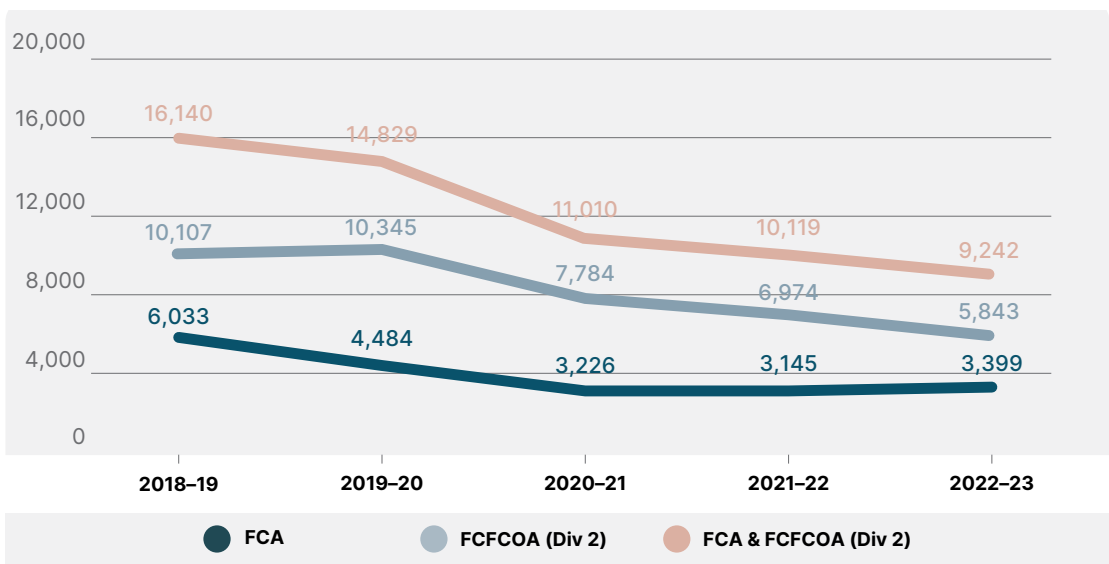
The Federal Court issues national guides. These guides cover a variety of subject areas, such as appeals, migration, human rights and insolvency matters. Other guides cover a range of practical and procedural matters, such as communicating with chambers and registry staff, clarifying the role and duties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

Workload of the Federal Court and Federal Circuit and Family Court of Australia (Division 2)

The Federal Court has concurrent jurisdiction with the Federal Circuit and Family Court of Australia (Division 2) 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 and Family Court of Australia (Division 2) in its general federal law jurisdiction.

In 2022–23, a total of 9,242 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 and Family Court (Division 2). The registries also provide the administrative support for each matter to be heard and determined by the relevant court.

FIGURE 3.1: FILINGS TO 30 JUNE 2023 – FEDERAL COURT OF AUSTRALIA AND FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA (DIVISION 2)



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 2018 to 30 June 2023, 86 per cent of cases (excluding native title matters) were completed in 18 months or less; 77 per cent in 12 months or less; and 56 per cent in six months or less. See Figure A5.4 in Appendix 5 (*Workload statistics*). Figure A5.5 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 1,723 judgments for 1,541 court files. Of these, 492 judgments were delivered in appeals (both single judge and Full Court) and 1,231 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.

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.

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, 3,399 cases were commenced in, or transferred to, the Court's original jurisdiction – an increase of eight per cent from last financial year. See Table A5.1.

Matters transferred to and from the Court

Matters may be remitted or transferred to the Court under:

- *Judiciary Act 1903* (Cth), section 44
- Cross-vesting Scheme Acts
- *Corporations Act 2001* (Cth), and
- *Federal Circuit and Family Court of Australia Act 2021* (Cth).

During the reporting year, 134 matters were remitted or transferred to the Court:

- 5 from the High Court
- 4 from the Federal Circuit and Family Court of Australia (Division 2)
- 27 from the Supreme Courts, and
- 98 from other courts.

Matters may be transferred from the Court under:

- *Federal Court of Australia Act 1976* (Cth)
- *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cth)
- *Administrative Decisions (Judicial Review) Act 1977* (Cth)
- *Bankruptcy Act 1966* (Cth)
- *Corporations Act 2001* (Cth), and
- *Administrative Appeals Tribunal Act 1975* (Cth).

During 2022–23, 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 3,230.

Current matters

The total number of current matters in the Court's original jurisdiction at the end of the reporting year was 3,984 (see Table A5.1).

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	39	27	10	5	16	97
Admiralty	9	11	5	2	11	38
Bankruptcy	108	37	30	22	21	218
Competition law	6	7	4	3	14	34
Trade practices	42	44	20	24	94	224
Corporations	420	131	68	71	182	872
Human rights	12	47	7	9	29	104
Workplace relations	0	0	0	0	1	1
Intellectual property	55	40	13	30	71	209
Migration	75	57	13	44	64	253
Miscellaneous	103	94	49	56	123	425
Taxation	21	32	27	35	65	180
Fair work	67	84	38	35	58	282
Criminal	1	3	0	0	9	13
TOTAL	958	614	284	336	758	2,950
Percentage of total	32.5%	20.8%	9.6%	11.4%	25.7%	100%

TABLE 3.2: AGE OF CURRENT 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	25	21	15	9	171	241
Percentage of total	10.4%	8.7%	6.2%	3.7%	71.0%	100%
RUNNING TOTAL	10.4%	19.1%	25.3%	29.0%	100%	

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 2023 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.

Further information about the Court's native title workload can be found later in this part.

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 (*Workload statistics*).

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 and Family Court of Australia (Division 2), 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 sections 25(1), 25(1AA) and 25(5) of the *Federal Court of Australia Act 1976* (Cth), appeals from the Federal Circuit and Family Court of Australia (Division 2) 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

and matters will generally be listed in the next available sitting in the capital city where the matter was heard at first instance. After a period of hearings by remote access technology due to the COVID-19 pandemic, most appellate matters returned to in-person hearings during the reporting year. There were also 14 Full Courts that the Chief Justice convened to be heard as special fixtures outside of the four scheduled sittings periods.

The appellate workload

During the reporting year, 750 appellate proceedings were filed in the Court. They include 560 appeals and related actions (522 filed in the appellate jurisdiction and 38 matters filed in the original jurisdiction), 11 cross appeals and 179 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 and Family Court of Australia (Division 2) continues to be a significant source of appellate work accounting for approximately 50 per cent of the appeals and related actions filed in 2022–23. The majority of these proceedings are 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 filed in 2022–23 (522), from 649 in 2021–22. This decrease was attributable to a 24 per cent decrease in migration appeals, as well as decreases in the areas of commercial and corporations and native title. These decreases were partially offset by increases in the areas of administrative and constitutional law, admiralty and maritime and employment and industrial relations.

In the reporting year, 691 appeals and related actions were finalised. Of these, 172 matters were filed and finalised in the reporting year. At 30 June 2023, there were 793 appeals currently before the Court, with 557 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 2023 is set out in Table 3.3.

Of the appellate and related matters pending at present, just over 25 per cent are less than six months old and just under 50 per cent are less than 12 months old. At 30 June 2023, there were 411 matters that were over 12 months old (see Table 3.3).

Managing migration appeals

In 2022–23, 47 migration appeals and applications 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 232 migration matters were filed in relation to judgments of the Federal Circuit and Family Court of Australia (Division 2).

Table 3.4 shows the number of appellate proceedings involving the *Migration Act 1958* (Cth) as a proportion of the Court's overall appellate workload since 2018–19.

Although the number of migration appellate filings has decreased by 24 per cent since the last reporting year, 54 per cent of the Court's total appellate workload concerned decisions made under the *Migration Act 1958* (Cth).

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.

Migration appellate proceedings that are to be heard by a Full Court are generally listed for hearing in the next scheduled Full Court and appellate sitting period. In circumstances where a matter requires an expedited hearing or where judicial commitments preclude a listing during the sitting period, a matter may be referred to a specially convened Full Court. In the 2022–23 reporting year, the Chief Justice specially convened four Migration Full Courts outside of the four scheduled sitting periods.

The majority of migration appellate matters are heard by single judges and these were listed for hearing throughout the reporting year.

TABLE 3.3: AGE OF CURRENT APPEALS, CROSS APPEALS AND INTERLOCUTORY APPELLATE APPLICATIONS AT 30 JUNE 2023

CAUSE OF ACTION	UNDER 6 MONTHS	6–12 MONTHS	12–18 MONTHS	18–24 MONTHS	OVER 24 MONTHS	SUB-TOTAL
Appeals and related actions	200	182	107	88	216	793
Percentage of total	25.2%	23.0%	13.5%	11.1%	27.2%	100%
RUNNING TOTAL	200	382	489	577	793	

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	2018–19	2019–20	2020–21	2021–22	2022–23
Migration jurisdiction	1,140	749	547	367	279
Percentage	80.6%	72.6%	67.1%	56.5%	53.4%
TOTAL APPEALS AND RELATED ACTIONS	1,415	1,031	815	649	522

The Court's native title jurisdiction

Statistics

In 2022–23, the Court resolved 49 native title applications. Of these applications, 36 were claimant applications, nine were non-claimant applications, and four were compensation applications. Two further applications to review the decision by the Native Title Registrar to refuse to accept a claimant application for registration were also received.

Of the total finalised applications, 27 were resolved by consent of the parties or were unopposed, four were finalised following litigation and 18 were discontinued or dismissed. At the end of the reporting period, there were 188 current applications. A breakdown of these figures is at Table 3.5.

TABLE 3.5: NATIVE TITLE APPLICATIONS FILED AND RESOLVED, 2022–23

	Total	Native title applications	Non-claimant applications	Compensation applications	Revised determination applications	Other
Filed within the period	45	26	15	1	3	4
Resolved within the period	49	36	9	4	0	2
Method of resolution	Resolved by consent or unopposed	27	26	1	0	1
	Finalised following litigation	4	3	1	0	0
	Discontinued or dismissed	18	7	7	4	1
Active matters at end of period	188	134	37	12	5	2

Mediation and case management

The Court continues to focus on targeted case management by specialist judges and registrars, 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. The Court continues to employ co-mediation or facilitation with an Indigenous facilitator.

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* (Cth) and its overarching purpose under sections 37M and 37N of the *Federal Court of Australia Act 1976* (Cth) to facilitate the just resolution of disputes according to the law as quickly, inexpensively and efficiently as possible.

During the reporting period, the Court conducted over 200 mediations and over 400 case management hearings.

Applications involving Indigenous parties

Native title registrars and legal case managers are becoming increasingly involved in applications with Indigenous parties that are outside the native title practice area. This involvement includes in case management to assist in progressing matters quickly, inexpensively and efficiently, mediations and logistics support with hearings that occur in remote locations.

Matters in which such assistance was provided include the following:

- a class action filed by persons in the Torres Strait asserting the Commonwealth has failed to act on climate change and cut emissions, which will force their communities to migrate to new areas (*Pabai Pabai v Commonwealth* (VID622/2021))
- an action brought by several Tiwi Islanders over the approval of plans by Santos to drill in the Barossa gas field (*Dennis Murphy Tipakalippa v National Offshore Petroleum Safety and Environmental Management Authority & Anor* (VID306/2022))
- a class action for compensation of unpaid wages brought against the State of Western Australia (*Street v State of Western Australia* (WAD237/2020))
- various matters brought under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (CATSI Act) (*Whaleboat v Mer Gedkem Le* (QUD38/2022); *Jim Golden-Brown & Anor v National Aboriginal and Torres Strait Islander Corporation – Transport and Community Services (NATSIC) & Ors* (QUD193/2021)), and
- an action brought by the Robe River Kuruma People against Citic Pacific Mining for an alleged breach of a compensation deed (*Gloria Lockyer on behalf of the Robe River Kuruma People & Anor v Citic Pacific Mining Management Pty Ltd & Ors* (WAD116/2022)).

Access requests

Requests to access native title documents held by the Court continue to be made by Indigenous persons and organisations, researchers and legal practitioners. These requests are time consuming and involve the consideration of release of sensitive material. To assist in facilitating responses to these requests (and for the purpose of archiving), the Court has continued to progress the digitisation of files (including retained audio-visual material) as well as the detailed indexing of the remaining paper files.

Stakeholder engagement

The Native Title Unit has continued to engage with various third party stakeholders, including by hosting a Native Title Forum for Queensland practitioners, presenting as speakers at conferences, sitting on advisory groups, such as the Expert Technical Advisory Group on native title legislative amendments, and continuing to be part of the Native Title Coordination Committee, hosted by the National Native Title Council.

Overview of significant litigation and outcomes

Claimant and non-claimant applications

New South Wales

In December 2022, a consent determination was delivered in Lismore recognising the Widjabul Wialbal people as the native title holders for areas in the Northern Rivers.

In June 2023, a separate question was heard in a non-claimant application brought by Dungog Shire Council. The separate question asked whether the applicant has power under the *Local Government Act 1993* (NSW) and/or *Crown Land Management Act 2016* (NSW) to bring the application. Judgment is reserved.

Five new non-claimant applications were filed, namely the Birubi Operations Pty Ltd (NSD1033/2022), Armidale LALC (NSD1011/2022), Attorney General NSW (Allambie Heights) (NSD319/2023), Lormine Pty Ltd (NSD493/2023), and Dungog Land Manager (NSD613/2023).

Northern Territory

Two on-country consent determinations were held in the reporting period, the first being the Rocklands Consent Determination on 8 September 2022 in Camooweal and the second being the Karinga Lakes Consent Determination on 5 April 2023 in Imanpa.

Mediation remains ongoing in the claims that overlap the town of Katherine.

Queensland

Cape York, Torres Strait and Carpentaria Region

In the Torres Strait, judgment was delivered in the Warral and Ului matter in February 2023 (*Nona on behalf of the Badulgal, Mualgal and Kaurareg Peoples (Warral & Ului) v State of Queensland (No 5)* [2023] FCA 135) finding that native title exists in all of the claim area.

On 30 November 2022, a consent determination was delivered in *David on behalf of the Torres Strait Regional Seas Claim v State of Queensland* [2022] FCA 1430. This determination recognises the native title of the Kulkalgal, the Kemer Kemer Meriam, the Kaurareg People, the Gudang Yadhaykenu People and the Ankamuthi People in various waters and islands of the Torres Strait and northern Cape York in the context of the Northern Cape and Torres Strait proceedings.

In Cape York, the Cape York United matter will be resolved by a series of local determinations under section 87A of the *Native Title Act 1993* (Cth). In the reporting period, eight consent determinations were made through July–October 2022. It is estimated that the matter will not be fully disposed of until 2024–25.

Northern Region

Connection in the Wakaman People cluster of matters, which comprises three claimant applications and three non-claimant applications, was accepted by the State of Queensland following Court facilitated mediation. This claim is expected to proceed to a consent determination by the end of 2023.

Southern Region

A hearing on connection was held in November 2022 on country in the Barada Kabalbara Yetimarala native title applications (QUD13/2019 and QUD15/2019), followed by subsequent Court facilitated mediation. The applicants are now progressing towards a consent determination.

Following mediation and a conference of experts, the application for native title by the Wongkumara People, which is partially overlapped by a claim by the Yandruwandha Yawarrawarrka People (QUD133/2021), is now progressing towards a determination by consent, which is anticipated to occur in April 2024.

An appeal was filed by the Clermont Belyando and Jangga #3 applicants in relation to the judgment in *Malone v State of Queensland (The Clermont-Belyando Area Native Title Claim) (No 5)* [2021] FCA 1639 finding that there is no native title in the claim area. The appeal was heard by the Full Court in May 2023. Judgment is reserved.

The overlapped portion of the Danggan Balun (Five Rivers) People claim (QUD331/2017) and the neighbouring Tweed River Bundjalung People claim (NSD876/2020) has resolved by agreement following case management and mediation. The remaining portions remain in mediation.

A consent determination of native title was listed for the Gamilaraay People (QUD290/2017) in September 2022, however, an overlapping claim was brought by the Bigambul People in August 2022 (QUD281/2022). Following several mediations and an interlocutory hearing for summary dismissal, on 11 May 2023, judgment was handed down in *Mann on behalf of the Bigambul People #2 v State of Queensland* [2023] FCA 450 dismissing the Bigambul People #2 proceeding.

Six non-claimant applications have been filed by Russel Estates Pty Ltd (QUD307/2022), Davies (QUD303/2022), Gunther Family Holdings (QUD53/2023), Cornford (QUD131/2023), Propsting (QUD153/2023), and Moonyanco Pty Ltd (QUD290/2023) and there were five determinations of non-claimant applications: Appleton (QUD29/2022), Stanbroke Pty Ltd (QUD22/2021), Magowra Pastoral Company (QUD407/2021), Moller (QUD146/2022), and South Terrick Pty Ltd (QUD117/2022).

South Australia

Seven matters were finalised by consent determination hearings during the reporting period.

On 8 December 2022, Justice Charlesworth delivered consent determinations for three claims made on behalf of the Wirangu people in Streaky Bay (Wirangu Part A claims (SAD64/2022, SAD228/2019, SAD84/2021). The first of the Wirangu claims was lodged in 1997 (and renamed SAD64/2022 as part of the Court's digitisation project). The determination area covered by these claims is more than 5,000 square kilometres of the Western Eyre Peninsula.

Part B of claims made on behalf of the Wirangu people (SAD64/2022, SAD228/2019, SAD84/2021) and on behalf of the Nauo people (SAD63/2018) were resolved by consent in a decision delivered by Justice O'Bryan in Elliston on 10 February 2022. This determination recognised native title rights and interests held by both the Wirangu and Nauo people on the Western Eyre Peninsula.

On 14 March 2023, Justice Charlesworth handed down a consent determination at the Point Pearce Aboriginal School on the Yorke Peninsula in South Australia (SAD88/2022). This determination recognises the Narungga People as native title holders for an area which encompasses the entire Yorke Peninsula, covering approximately 11,938 square kilometres.

Further claims made on behalf of the Nauo people (SAD65/2022 and SAD185/2021) were resolved by consent determinations delivered by Justice O'Bryan on 15 May 2023 at Coffin Bay. The area the subject of these determinations covers almost 8000 square kilometres on the Eyre Peninsula. The determinations include the towns of Sheringa, Palkagee, Kiana, Coffin Bay, along with the Coffin Bay and Lincoln national parks. The Nauo claim the subject of SAD65/2022 was originally lodged 28 years ago, but was renamed as part of the Court's digitisation project.

Victoria

The first consent determination in Victoria in 12 years was made in the Eastern Maar proceedings on 28 March 2023 over the majority of the area claimed. Settlement was also reached over all remaining areas of the Eastern Maar claim, except an area identified as 'Area C'. A hearing commenced in May 2023 in regard to Area C to determine whether the Gunditjmarra people, who filed a new claim over the area in October 2022, also hold native title rights and interests over the area.

A preservation of evidence hearing was conducted in the Boonwurrung matter in December 2022.

The first non-claimant application in Victoria was filed on 13 April 2023 (VID247/2023) by Tom Groggin Station Pty Ltd in relation to an area around the Alpine National Park (Parish of Kosciusko).

Western Australia

Pilbara

On 6 August 2022, a consent determination was delivered in the Yinhawangka Gobawarra, Jurruru and Jurruru #2 matters following an on-country hearing in July 2019, judgment in 2020 and further mediation.

In October 2022, trial programming orders were made over an area with overlapping claims made by Mullewa Wadjari, Nanda and Wajarri Yamatji. Hearing of lay evidence is expected to commence in early 2024.

On 29 May 2023, judgment was handed down in *The Nyamal Palyku Proceeding (No 7)* [2023] FCA 528. This judgment considered two competing interlocutory applications. The first was an application by the Nyamal applicants that asserted no legally binding agreement was reached through the mediation process the parties had engaged in. The second was by the Palyku applicants that there was a binding agreement and the Palyku applicants sought to proceed with its claim on the basis of the agreed terms. The Court found that there was a binding and enforceable agreement reached that committed the parties to seek a consent determination in the terms agreed. The parties are to file a minute of consent determination by 16 October 2023.

Goldfields

On 5 July 2022, a consent determination was delivered in *Harrington-Smith on behalf of the Darlot Native Title Claim Group v State of Western Australia (No 2)* [2022] FCA 764 over an area bounded by the Tjiwarl and Kultju determinations of native title to the north-west and north.

On 27 March 2023, judgment was handed down on a separate question in *Strickland on behalf of the Maduwongga Claim Group v State of Western Australia* [2023] FCA 270. The native title application was subsequently dismissed on 28 April 2023.

A preservation of evidence hearing was conducted on 21–23 February 2023 in Kalgoorlie in the Marlinyu Ghoorlie (WAD647/2017) and Karratjibbin (WAD382/2017) matters.

Central Desert

An eight-day hearing of lay evidence was conducted in relation to the overlap of the Part B of Yugunganya and Gingirana #4 claim areas in August 2022.

An overlap between Nharnuwangga, Wajarri and Ngarla People #2 and Gingirana #3 proceedings was resolved through mediation, with the proceedings to go to a consent determination in the next reporting year.

A minute of consent determination was filed on 16 May 2023 in Martu #3 (WAD170/2021) and will be determined on the papers on a date to be fixed after 16 May 2023.

Kimberley

A determination of native title was made on 19 December 2022 in the Purnululu, Purnululu #2 and Gajangana Jaru matters (*Drill on behalf of the Purnululu Native Title Claim Group v State of Western Australia (No 2)* [2022] FCA 1538). An on-country celebration was held in May 2023.

On 1 July 2022, the Indigenous Land and Sea Corporation was determined as an agent Prescribed Body Corporate for the Birriman-gan common law holders for an initial five-year period or until the common law holders nominate a Prescribed Body Corporate.

Preservation evidence was heard on country in November 2022 in the Koongie Elvire claim (WAD45/2019).

Southwest

There are no active applications in this area.

Compensation applications

The McArthur River Project Compensation Claim (NTD25/2020) was heard in Borroloola and Darwin over three weeks from 5–23 June 2023. The compensation application focuses in particular on the entitlement to compensation for the grant, validation and re-grant of mineral titles and the authorisation of mining activities. This is the third compensation claim in the Northern Territory, the second being the Gove Peninsula claim (NTD43/2019) which was heard by the Full Federal Court in Darwin from 24–28 October 2022. The Full Federal Court handed down its judgment finding in favour of the Applicant in relation to all questions posed in the demurrer. The Commonwealth has since filed a special leave application seeking to appeal the decision to the High Court.

On 13 April 2022, the application brought by the State of Queensland and the Pitta Pitta Aboriginal Corporation RNTBC seeking to have a compensation claim brought by Florence Melville and Others on behalf of the Pitta Pitta People (*Melville on behalf of the Pitta Pitta People v State of Queensland* [2022] FCA 387) was dismissed. The appeal by the Pitta Pitta Aboriginal Corporation RNTBC was heard by the Full Court in August 2022 and dismissed. The application has now been referred to Registrar mediation and case management.

The Antakirinja Matu-Yankunytjatjara Aboriginal Corporation Registered Native Title Bodies Corporate filed a compensation application on 22 April 2022. The applicant seeks compensation for the effects of specified compensable acts on the continued existence, enjoyment and exercise of native title rights and interests in land and waters located in and around Coober Pedy, South Australia – the claim area was the subject of the Antakirinja Matu- Yankunytjatjara native title determination on 11 May 2011 (SAD6007/1998). This matter remains in mediation.

In December 2022, the Yindjibarndi Ngurra Aboriginal Corporation Registered Native Title Bodies Corporate compensation application (WAD37/2022) was programmed for hearing and concurrently referred to mediation. Preservation evidence was taken on country in March 2023. Lay evidence is listed for hearing on country, in August 2023 for two weeks. The matter remains in mediation.

The hearing of the Malarngowem Aboriginal Corporation Registered Native Title Bodies Corporate compensation application (WAD203/2021) has been vacated and mediation continues. The application is over an area of land in the Halls Creek

area, more particularly the portion of an exploration licence that falls within the external boundary of the native title determination WAD43/2019 Malarngowem. The parties are due to report to the Court in late 2023.

The applicants and State reached an agreement in-principle to settle the three Tjiwarl native title compensation proceedings in May 2022. In December 2022, a Body Corporate Indigenous Land Use Agreement known as the Tjiwarl Palyakuwa (Agreement) was authorised, and on 21 February 2023 the agreement was registered by the National Native Title Tribunal. On 22 May 2023, conclusive registration of the agreement was completed, which settles all liability of the State in the proceedings. In June 2023, leave was granted for the applicants to discontinue two of the proceedings. Negotiations and mediation between the applicant and mining respondents continues and full and final settlement of the proceedings is expected by the end of 2023.

The compensation applications filed by Bruce Smith on behalf of the Wati Tjilpi Ku on behalf of the Yilka Sullivan Edwards People (WAD266/2020) and Archie Tucker on behalf of Wirrilimarra (WAD157/2020) were dismissed in August 2022 and November 2022 respectively.

Assisted dispute resolution

Assisted dispute resolution (ADR) is an important part of the efficient resolution of litigation in the Court context, with cases 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 has been a Recognised Mediator Accreditation Body since September 2015 and has 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 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 3.6. 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 3.6 do not include instances where judges of the Court order areas where their opinions are in agreement and disagreement without the supervision of a registrar.

During the COVID 19 period, the Court significantly increased the number of mediations conducted

by remote technology due to travel and other restrictions. Since then, the Court has reverted to conducting mediations in-person, but continues to convene mediations using remote technology where appropriate.

Although first instance filings in the Court decreased during the reporting period, there was a 19 per cent increase in the number of matters referred to mediation when compared to the previous reporting period. Increases have been in native title (169 per cent), administrative and constitutional law and human rights (69 per cent), other federal jurisdiction NPA (defamation) (39 per cent) and employment and industrial relations (35 per cent). Commercial and corporations and intellectual property mediation referrals remained consistent with the figures reported during the 2021–22 reporting period.

All registries recorded an increase in mediation referrals with Queensland increasing by 44 per cent, Western Australia by 35 per cent, South Australia by 26 per cent and Victoria by 23 per cent when compared with the 2021–22 figures.

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

TABLE 3.6: MEDIATION REFERRALS IN 2022–23 BY NATIONAL PRACTICE AREA AND REGISTRY

NATIONAL PRACTICE AREA	NSW	VIC	QLD	WA	SA	NT	TAS	ACT	TOTAL
Administrative and constitutional law and human rights	19	12	10	6	1	0	0	6	54
Admiralty and maritime	1	3	0	0	0	0	0	0	4
Commercial and corporations	79	62	35	16	8	0	7	7	214
Employment and industrial relations	60	47	20	22	3	2	0	3	157
Federal crime and related proceedings	0	0	0	0	0	0	0	0	0
Intellectual property	22	29	4	2	2	0	0	0	59
Migration	1	0	0	1	0	0	0	0	2
Native title	2	1	21	9	2	0	0	0	35
Other federal jurisdiction	15	13	0	2	1	0	1	0	32
Taxation	2	3	1	0	0	0	0	1	7
TOTAL	201	170	91	58	17	2	8	17	564

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 Australasian 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*).

Special measures relating to COVID-19

The Court discontinued its special measures relating to COVID-19 in 2023 reflecting the winding down of government restrictions in response to the COVID-19 pandemic.

Hearings for detainees

For litigants in immigration detention, the prospect of conducting online hearings by remote access technology can present particular challenges. It is the Court's policy that detainees who are unrepresented will be referred for pro bono legal assistance and the Court continues to work with national and state Bar Associations to facilitate this. Where legal representation is not available, hearings involving detainees may be conducted by remote access technology by link to the relevant detention facility, or in-person if the Judge hearing the matter or the Court otherwise considers it is in the interests of the administration of justice to do so. In such a case, a judge may order the attendance of the detainee in Court.

eLodgment process in protecting visa proceedings

The Court has implemented a process for the application of pseudonyms to certain protection visa proceedings. Litigants and legal representatives are encouraged to contact the registry to obtain a pseudonym before filing, which can then be used in the eLodgment system.

Liaison with the Law Council of Australia

The Court maintained a liaison with the Law Council of Australia, through the Federal Court/ Law Council of Australia Liaison Committee.

This meeting is held twice a year, with liaison on specific issues between representatives of the Law Council of Australia and the Chief Justice, leading judges from relevant National Practice Areas and senior staff occurring between those meetings.

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 and Family 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 3.7, 3.8 and 3.9 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, 413 proceedings were commenced in the Court by litigants identified as self-represented. A significant proportion were appellants in migration appeals.

TABLE 3.7: ACTIONS COMMENCED BY SRLS DURING 2022–23 BY REGISTRY

ACTIONS COMMENCED	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	TOTAL
SRLs	5	133	4	67	34	2	119	49	413
PERCENTAGE OF TOTAL	1%	32%	1%	16%	8%	<1%	29%	12%	100%

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

TABLE 3.8: PROCEEDINGS COMMENCED BY SRLS IN 2022–23 BY CAUSE OF ACTION

CAUSE OF ACTION	TOTAL ACTIONS	PERCENTAGE OF TOTAL
Administrative law	42	10%
Admiralty	0	0%
Appeals and related actions	229	55%
Bankruptcy	38	9%
Bills of costs	0	0%
Competition law	0	0%
Consumer protection	0	0%
Corporations	8	2%
Cross claims	0	0%
Fair work	17	4%
Human rights	0	0%
Industrial	0	0%
Intellectual property	0	0%
First instance Migration	75	18%
Miscellaneous	4	1%
Native title	0	0%
Taxation	0	0%
TOTAL	413	100%

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

TABLE 3.9: APPEALS COMMENCED BY SRLS IN 2022–23 BY TYPE OF APPEAL

CAUSE OF ACTION	TOTAL ACTIONS	PERCENTAGE OF TOTAL
Administrative law	32	14%
Admiralty	0	0%
Bankruptcy	12	5%
Competition law	1	<1%
Consumer protection	1	<1%
Corporations	2	1%
Fair work	11	5%

CAUSE OF ACTION	TOTAL ACTIONS	PERCENTAGE OF TOTAL
Human rights	0	0%
Industrial	0	0%
Intellectual property	0	0%
Migration	167	72%
Miscellaneous	2	1%
Taxation	0	0%
Native title	1	<1%
TOTAL	229	100%

Direct financial counselling project in bankruptcy proceedings

For some time the Court has, in conjunction with the Federal Circuit and Family Court of Australia (Division 2), been able to maintain a program of targeted financial counselling assistance to SRLs in bankruptcy proceedings. With the assistance of Consumer Action in Melbourne (since 2014), Uniting Communities in Adelaide (2018) and Financial Rights Legal Service in Sydney (March 2022) a financial counsellor attends the courtroom in every bankruptcy list.

During the COVID-19 pandemic, a financial counsellor was made available either by telephone or via Microsoft Teams. Since the return to in-person bankruptcy lists the financial counsellors are present in the courtroom. The presiding registrar is able to refer an 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 all three registries, SRLs may also be provided with the details of financial counselling services ahead of the first court return date and referrals can be made by registry staff when assisting an SRL by telephone or over the counter.

In the Adelaide registry, some creditor's solicitors have also directly provided the financial counselling contact details to SRLs. This has facilitated the settlement of several matters before the filing of a creditor's petition or before the first return date before the Court.

The financial counselling services in Sydney have been enabled by a generous grant from the Financial Counselling Foundation.

In the previous reporting years, all registries experienced reduced numbers of filings due to changes to the *Bankruptcy Act 1966* (Cth) because of COVID-19. As a result, there were proportionally less referrals to financial counsellors. Filings have since increased in all registries, though not yet to pre-pandemic numbers.

Registrars in Sydney, Melbourne and Adelaide have reported favourably on the financial counselling program, and view it as having significant advantages for SRLs, creditors and the presiding registrars.

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 and Family Court fees regulation (see below).

Court fees and exemption

Fees are charged under the Federal Court and Federal Circuit and Family Court Regulations 2022 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 \$83.30)
- appeals from a single judge to a Full Court in human rights and some fair work applications
- an application by a person to set aside a subpoena
- an application under section 23 of the *International Arbitration Act 1974* (Cth) for the issue of a subpoena requiring the attendance before or production of documents to an arbitrator (or both)
- an application for an extension of time
- a proceeding in relation to a case stated or a question reserved for the consideration or opinion of the Court
- a proceeding in relation to a criminal matter
- setting-down fees for an interlocutory application
- a proceeding in relation to a matter remitted to the Federal Court by the High Court under section 44 of the *Judiciary Act 1903* (Cth), and
- a proceeding in relation to a referral to the Court of a question of law by a tribunal or body.

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 representative body to bring proceedings in the Federal Court under Part 11 of the *Native Title Act 1993* (Cth) or has been granted funding to perform some functions of a representative body under section 203FE of that Act
- is the holder of a health care card, a pensioner concession card, a Commonwealth seniors health card or another card certifying entitlement to Commonwealth health concessions

- is serving a sentence of imprisonment or is otherwise detained in a public institution
- is younger than 18 years, 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, or other body, that had been granted Legal Aid or funding under the *Native Title Act 1993* (Cth) 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

Entities subject to the *Freedom of Information Act 1982* (Cth) are required to publish information to the public as part of the Information Publication Scheme (IPS). This requirement is in Part II of the *Freedom of Information Act 1982* (Cth) and has replaced the former requirement to publish a section 8 statement in an annual report. Each agency must display on its website a plan showing what information it publishes in accordance with the IPS requirements.

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

freedom of information contact officer as well as information routinely provided to the Australian Parliament.

The availability of some documents under the *Freedom of Information Act 1982* (Cth) 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 do not relate to matters 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) handles media inquiries which usually involve access to court files and requests for judgments. The role also includes dealing with issues that can require high-level contact and coordination.

The DPI is dependent on the close cooperation and support of registries, judges' chambers, web team and those responsible for external webcasting.

In some cases of public interest, the Court establishes online files on to which material is placed once approved. In the reporting year, the following cases are some for which online files were created:

- NSD103/2023 *Lehrmann v Network Ten*, NSD 104/2023 *Lehrmann v News Life*, NSD316/2023 *Lehrmann v ABC*: page views 13,453
- NSD673/2023 *Murdoch v Private Media*: page views 8,189
- VID44/2023 *Rugg v Commonwealth*: page views 10,098

As reported last year, the Roberts-Smith case was one of the longest running in the Court's history, lasting 110 hearing (trial) days. Judgment was delivered on 1 June 2023 and broadcast on the Court's YouTube channel. This attracted almost 12,000 peak views but this does not account for third-party media streams permitted to carry the broadcast.

A summary of the judgment – attracting 11,052 page views – was published shortly after delivery while the judgment attracted 10,626 page views. The total number of page views for the Roberts-Smith online file was 22,956.

Community relations

The Court engages in a wide range of activities with the legal profession. Seminars and workshops on issues of practice and procedure in particular areas of the Court's jurisdiction are also regularly held. Registries host advocacy sessions and bar moot courts and moot competitions and assist with readers' courses.

User groups

User groups have been formed along National Practice Area 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, including Admiralty, Defamation, Employment and Industrial Relations, Commercial and Corporations, Native Title, Human Rights and Class Actions.

Legal community

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

- Western Australia – three Federal Court jurisdiction seminars on the topics of Commercial and Corporations, Human Rights and Class Actions. The registry also hosted the Western Australia Courts Summer Clerkship Program, a Silks Ceremony, a court welfare service professional development day and a meeting with Chief Justice Mortimer and the local bar and law society.
- Victoria – the Melbourne Law School mooting competition in August and September 2022; the Monash Law Student's Society Women's moot competition in October 2022; the University of New England law school courts in September 2022 and May 2023; the Federal Court/ Australian Law Reform Commission seminar in December 2022; and a Commercial Bar Association event in March 2023.
- South Australia – the Essential Trial Advocacy course from 27 June 2022 until 1 July 2022 and the Bar Readers' course on 24–25, 28 October 2022, and 5–8 December 2022.

- New South Wales – Mahla Pearlman Oration, Whitmore Lecture, Australasian Institute of Judicial Administration, the Australian Academy of Law, the Standing International Forum of Commercial Courts, UNCCA, and the Francis Forbes Society for Australian Legal History.
- Queensland – an Employment and Industrial Relations seminar; an Australian Law Reform Commission webinar; an Australian Institute of Administrative Law presentation; Griffith Law School visiting committee meeting; a Native Title stakeholder forum; a Full Court sitting to mark the appointment of new Kings Counsel; and the William Ah Ket Scholarship Award Ceremony.

More information about the Court's public engagement activities can be found in Part 4 (*Commonwealth Courts Registry Services*).

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 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 2022–23 the Court offered the following activities:

- four education sessions were scheduled at the Judges' meeting held on 1–2 December 2022 (in Sydney)
- four education sessions were scheduled at the Judges' meeting held on 29–31 March 2023 (in Sydney), and
- a stand-alone session on trade marks legislation and recent trade marks case law was provided on 16 May 2023.

Education sessions offered at the Judges' meetings in 2022–23 included:

- Workshops on the following national practice areas:
 - Employment and industrial relations
 - Intellectual property
- 'On Listening' – the art of listening to the stories of witnesses
- Voice, Treaty, Truth – Developments and Perspectives
- Self-represented litigants in our Courts
- Judges' forum – open discussion on practical issues confronting judges in their judicial role
- Guest speaker session with the Hon Mary Gaudron, and
- Simplifying complex litigation.

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 the period from 1 July 2022 to 30 June 2023, the Federal Court of Australia met the National Standard for Professional Development for Australian Judicial Officers.

Work with international jurisdictions

With international travel recommencing, the Federal Court welcomed the opportunity to reconnect in-person with judges and officers from our partner courts across Asia and the Pacific.

Pacific

In partnership with the Papua New Guinea Centre for Judicial Excellence (PNG CJE), the Court conducted a number of activities under its Pacific Judicial Integrity Program (2022–2025). Funded by the Department of Foreign Affairs and Trade, the Program offers training, mentoring and other professional development activities to support judicial and court officers to respectively, preside over and manage fraud and corruption-related cases.

Twelve Pacific island judiciaries are participating in the Program including Fiji, the Federated States of Micronesia, Kiribati, Nauru, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tokelau, Tonga and Vanuatu.

Over the past year, the Program has benefited from the generous assistance of a number of judges and registrars from Australia and across the Pacific with particular expertise in the most prevalent types of fraud and corruption cases. The groups of experts informed the design of a specialist training program for judges on hearing fraud and corruption-related cases and for registry officers to manage and report on them.

The pilot training program was conducted for 29 judges from nine countries in Port Moresby in November 2022. The three-day workshop focused on the interpretation and application of substantive law, along with related practices and procedures. While many fundamental tenets and general principles of law and practice were found to be universally applicable, the comparative analysis of the region's norms and approaches offered a wealth of insight and experience that participants found useful.

The pilot training program for registry staff was delivered to 27 people in Brisbane in March 2023. Focusing on how these complex types of cases can be managed efficiently while following due process, the workshop also included how case management systems and processes can be strengthened to promote further transparency and accountability.

Both programs have since been refined and converted into multi-module online courses. The course for judges was delivered to 18 judges from nine countries over five weeks during May and June. The weekly sessions included presentations from and discussions with several of the expert judges who delivered the in-person workshop. A four-part live online course will soon be conducted for registry staff and both courses will be further converted into self-paced, asynchronous courses and available online.

Given the breadth of skills and knowledge required to preside over fraud and corruption cases, a mentoring program was also launched this year. Matching specific challenges and levels of expertise with appropriate judicial expertise from Australia and the Pacific, the six month pilot will soon be reviewed. Thereafter, the mentoring program will be launched more broadly across the region.

Supreme and National Courts of Papua New Guinea

Justices Logan and Collier continued their judicial appointments in-person in Papua New Guinea (PNG), sitting in the Supreme Court. This is pursuant to a longstanding arrangement with the PNG Judiciary which complements the Memorandum. At the request of the PNG Chief Justice, the tempo of their visits to PNG for this purpose increased over the reporting year, following a sad series of deaths in office of PNG resident judges in 2021. When on duty in PNG in March 2023, Justice Logan also delivered, at the University of PNG, on behalf of the PNG CJE and as part of the Sir Buri Kidu Lecture series, a lecture entitled, *'Revenue Law and Practice in Papua New Guinea'* and participated in a related panel discussion on that topic with Justice Gavara-Nanu of the PNG judiciary and PNG's Commissioner of Taxation. In September 2022, as he has done since 2013, Justice Logan undertook, using personal leave, volunteer duty at the PNG Legal Training Institute in support of a week-long commercial litigation workshop delivered by a volunteer training team from the Queensland Bar.

Justice Collier has also sat in the National Court of Justice in PNG in civil matters in provincial areas. Justice Collier assisted in hosting Chief Justice Kiefel of the High Court of Australia, Chief Justice Bowskill of the Supreme Court of Queensland, and Justice Jarrett of the Federal Circuit and Family Court of Australia (Division 1) in their visits to PNG in 2022 and 2023.

The Court's Queensland Manager, Library and Information Services, Angela Allen continued to support counterparts in the National and Supreme Court. This includes conducting and supporting legal research, providing resources and assisting with plans and preparation for their upcoming move to the new Courts' Complex.

Supreme Court of Indonesia

Continuing to share judicial knowledge and experience has further strengthened and reinforced the long-standing cooperation between the Supreme Court of Indonesia and Federal Court which enters its 19th year since the signing of its first Memorandum of Understanding. During the past year the Court has supported the Supreme Court's Commercial Judges Certification Training Program. The following presentations were given as part of the Certification Training Program:

- 14 July: Justice Burley gave a presentation on the *'International Treaties concerning Intellectual Property'*.
- 22 July: Justice Markovic gave a presentation on *'Personal and Corporate Insolvency in Australia'*.
- 28 September: Justice Burley gave a presentation on *'Philosophy and History of the IPR Protection'*.

The Court also hosted a visit by a delegation from the Supreme Court from 24 to 26 October 2022. The delegation was led by Justice Syamsul Maarif SH and Dr. Aria Suyudi SH, with a number of judges also participating virtually. During the visit, a number of presentations were given, including Justice O'Bryan on Competition Law, Former Chief Justice Allsop and Justice Stewart on Enforcement of Arbitration Orders, Justice Burley on Intellectual Property Law and Justice Markovic on Bankruptcy Law.

World Intellectual Property Organization

Through Justice Burley, the Court is collaborating with the World Intellectual Property Organization (WIPO) to develop resources for the conduct of Intellectual Property trials around the world. With the assistance of two judicial registrars, Justice Burley edited an *'Intellectual Property Bench Book'* for judges hearing related cases in the Philippines and Viet Nam. Judges from each of those countries were contributing authors.

The Bench Book was released in Geneva in November 2022 as part of the WIPO Intellectual Property Judges' Forum. Justice Burley gave a presentation at the Forum as part of a panel discussing *'Patents and New Technologies'* and moderated a panel on *'Intellectual Property Case Management Strategies'*. His Honour also gave a presentation to authors from the African Regional Intellectual Property Organization (ARIPO) for the commencement of their work on an ARIPO bench book. Justice Burley continues to work on the development of a parallel Bench Book for Indonesia.

The Court also assisted in the preparation of the Australian chapter in a further WIPO publication directed to patent procedure in various countries around the world.

Visits from international delegations

The Court welcomed several delegations discussing a broad range of substantive law, practice and procedure. The Court remains grateful for these opportunities to foster and build mutually beneficial relationships with existing and new partners. Visiting delegations included:

- Chief Justice Gesmundo, Supreme Court of the Philippines and a delegation of judges, senior court staff and executive officers
- Judges from the Supreme People's Court of Vietnam
- Competition Court Judges from ASEAN member states
- Senior officers from the Supreme Court of Singapore
- Executive Officers from the Ministry of Justice, Cambodia, and
- Senior Officers from the Anti-Corruption and Civil Rights Commission of the Republic of South Korea.