

FEDERAL COURT
OF AUSTRALIA

ANNUAL REPORT
2020-2021



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Alternative format

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Acknowledgments

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Letter of transmittal



CHIEF JUSTICE'S CHAMBERS
FEDERAL COURT OF AUSTRALIA
Law Courts Building
Queens Square, Sydney NSW 2000

10 September 2021

Senator the Hon Michaelia Cash
Attorney-General
Parliament House
Canberra ACT 2600

Dear Attorney-General

We have pleasure in submitting the annual report on the operations of the Federal Court of Australia for the financial year ending 30 June 2021.

The report is submitted in accordance with:

- section 18S of the *Federal Court of Australia Act 1976*
- section 17AI of the Public Governance, Performance and Accountability Rule 2014, and
- section 46 of the *Public Governance, Performance and Accountability Act 2013*.

This report has been prepared in accordance with the Department of Finance's *Resource Management Guide No. 135: annual reports for non-corporate Commonwealth entities* (April 2021).

This is the Court's 32nd annual report.

Yours sincerely

Handwritten signature of James Allsop in blue ink.

The Honourable James Allsop AO
Chief Justice

Handwritten signature of Sia Lagos in blue ink.

Sia Lagos
Chief Executive Officer and Principal Registrar

**FEDERAL
COURT OF
AUSTRALIA
ANNUAL
REPORT**
2020-21

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Acronyms and abbreviations

AAL	Australian Academy of Law
AASB	Australian Accounting Standards Board
AAT	Administrative Appeals Tribunal
ABA	Australian Bar Association
ACCC	Australian Competition and Consumer Commission
ACICA	Australian Centre for International Commercial Arbitration
ADJR	<i>Administrative Decisions (Judicial Review) Act 1977</i>
ADR	assisted dispute resolution
AIAL	Australian Institute of Administrative Law
AIJA	Australasian Institute of Judicial Administration
AILA	Australian Insurance Law Association
ALRC	Australian Law Reform Commission
AM	Member of the Order of Australia
AMTAC	Australian Maritime and Transport Arbitration Commission
ANAO	Australian National Audit Office
AO	Officer of the Order of Australia
APS	Australian Public Service
ASEAN	Association of Southeast Asian Nations
AustLII	Australasian Legal Information Institute
CC	Creative Commons
CEO	Chief Executive Officer
CIArb	Chartered Institute of Arbitrators Australia
CMJA	Commonwealth for Magistrates and Judges Association
CoA	cause of action
CPN	Central Practice Note
DCF	Digital Court File
DCP	Digital Court Program
DMJC	David Malcolm Justice Centre
DPI	Director Public Information
FCMAS	Federal Court Mediator Accreditation Scheme
FOI	freedom of information
GPN	General Practice Note
IAJ	International Association of Judges
IATJ	International Association of Tax Judges
ICJV	International Commission of Jurists Victoria
IFA	International Fiscal Association
ILUA	Indigenous Land Use Agreement
IP	Intellectual Property
IT	Information Technology
J	Justice

JJ	Justices
LSS	Law Students' Society
MOU	Memorandum of Understanding
NPA	National Practice Area
NRS	National Relay Service
NTV	Native Title Vision
OAM	Medal of the Order of Australia
PC	Personal computer
PGPA	Public Governance, Performance and Accountability
PJSI	Pacific Judicial Strengthening Initiative
PNG	Papua New Guinea
QC	Queen's Counsel
QUT	Queensland University of Technology
RFD	Reserve Force Decoration
RNTBC	Registered Native Title Bodies Corporate
SC	Senior Counsel
SES	Senior Executive Service
SIFoCC	Standing International Forum of Commercial Courts
SME	small and medium enterprise
SRL	self-represented litigant
SSCI	Sherman Centre for Culture and Ideas
UNCCA	UNCITRAL National Coordination Committee for Australia
UNSW	University of New South Wales
UTS	University of Technology Sydney
UWA	University of Western Australia
WHS	Work, Health and Safety

Glossary

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Administrative notices

See practice notes.

Alternative procedure agreement

A type of Indigenous land use agreement.

Appeal

An application to a higher court to review a decision of a lower court or tribunal. For example, an appeal from a decision of a Federal Circuit Court judge may be made to the Federal Court, and a decision of a single judge of the Federal Court may be the subject of an appeal to the Full Court of the Federal Court.

Appellate jurisdiction

The power given to a court to hear appeals in certain matters.

Applicant

The individual, organisation or corporation who/which applies to the Court to start legal proceedings against another person or persons. Also known as 'plaintiff' in admiralty and corporations matters and in some other courts. In the National Native Title Tribunal, the applicant is the person or persons who make an application for a determination of native title or a future act determination.

Application

The document that starts most proceedings in the Federal Court.

Area agreement

A type of Indigenous land use agreement.

Body corporate agreement

A type of Indigenous land use agreement.

Cause of action

A term used in the Federal Court's case management system to classify proceedings commenced with the Court.

Compensation application

An application made by Indigenous Australians seeking compensation for loss or impairment of their native title.

Cross appeal

An application by a respondent in an appeal also seeking a review of the lower court or tribunal decision and made in response to the appeal. A cross appeal is not required if the respondent is simply seeking that the decision of the lower court or tribunal be upheld.

Cross claim

A claim made in a proceeding by one party against a co-party, such as the first respondent (or defendant) against the second respondent (or defendant). However, if the claim in the proceeding is by one party against an opposing party, such as the respondent (or defendant) against the applicant (plaintiff), it is called a counter claim. A cross claim has to be closely connected to what is in dispute in the original claim or a counter claim.

Directions

Orders made by the Court or a judge in relation to the conduct of a proceeding. Before the trial or hearing of a matter a judge may give directions so that the parties involved will be properly ready. The directions usually set down a list of steps to be taken by the parties and the deadline for those steps. The steps usually involve filing of material and defining the issues that require a decision by the Court.

Discovery

A process by which the parties involved in a legal proceeding must inform each other of documents they have in their possession and which relate to the matters in dispute between the parties.

Docket system

A system by which each case is allocated to a particular judge who will then see the case through to completion. In the Federal Court the system is called the Individual Docket System.

Electronic court file

An electronic court file is a digital version of the Court file including all documents filed with the Court or created by the Court.

Exhibit

A document or item produced in court for the purpose of becoming part of the evidence in a proceeding.

Filing of documents

The process of the Court accepting a document or documents lodged by a party to a proceeding.

First instance

A proceeding heard in the Court's original jurisdiction.

Full Court

Three or more judges sitting together to hear a proceeding.

Future act

A proposed activity on land and/or waters that may affect native title.

Future act determination application

An application requesting the National Native Title Tribunal to determine whether a future act can be done (with or without conditions).

Future act determination

A decision by the National Native Title Tribunal either that a future act cannot be done, or can be done with or without conditions. In making the determination, the Tribunal takes into account (among other things) the effect of the future act on the enjoyment by the native title party of their registered rights and interests and the economic or other significant impacts of the future act and any public interest in the act being done.

Good faith negotiations (native title)

All negotiation parties must negotiate in good faith in relation to the doing of future acts to which the right to negotiate applies (*Native Title Act 1993* s 31(1) (b)). See the list of indicia put forward by the National Native Title Tribunal of what may constitute good faith in its guide to future act decisions made under the right to negotiate scheme at www.nntt.gov.au. Each party and each person representing a party must act in good faith in relation to the conduct of the mediation of a native title application (s 136B(4)).

Hearing

That part of a proceeding where the parties present evidence and submissions to the Court.

Indigenous Land Use Agreement (ILUA)

A voluntary, legally binding agreement about the use and management of land or waters, made between one or more native title groups and others (such as miners, pastoralists, governments).

Interlocutory application

Interlocutory proceedings are for dealing with a specific issue in a matter – usually between the filing of the application and the giving of the final hearing and decision. An interlocutory application may be for interim relief (such as an injunction) or in relation to a procedural step (such as discovery).

Judgment

The final order or set of orders made by the Court after a hearing, often accompanied by reasons, which set out the facts and law applied in the case. A judgment is said to be 'reserved' when the Court postpones the delivery of the judgment to a later date to allow time to consider the evidence and submissions. A judgment is said to be 'ex tempore' when the Court gives the judgment orally at the hearing or soon after.

Jurisdiction

The extent of legal authority or power of the Court to apply the law.

Litigants

Individuals, organisations or companies who/ which are the parties to a proceeding before the Court.

Mediation (or Assisted Dispute Resolution)

A process in which an impartial third party (the mediator) assists the parties in an attempt to bring about an agreed settlement or compromise, without requiring a decision of the Court.

Milestone agreement

An agreement on issues, such as a process or framework agreement, that leads towards the resolution of a native title matter but does not fully resolve it.

National Court Framework

The National Court Framework is a number of reforms to the Court's case management approach.

National Native Title Register

The record of native title determinations.

National Native Title Tribunal Member

A person who has been appointed by the Governor-General as a member of the Tribunal under the Native Title Act. Members are classified as presidential and non-presidential. Some members are full-time and others are part-time appointees.

National Practice Area

Subject matter areas in which the Court's work is organised and managed.

Native title determination

A decision by an Australian court or other recognised body that native title does or does not exist. A determination is made either when parties have reached an agreement after mediation (consent determination) or following a trial process (litigated determination).

Native title claimant application/claim

An application made for the legal recognition of native title rights and interests held by Indigenous Australians.

Native title representative body

Representative Aboriginal/Torres Strait Islander Body also known as native title representative bodies are recognised and funded by the Australian Government to provide a variety of functions under the *Native Title Act 1993*. These functions include assisting and facilitating native title holders to access and exercise their rights under the Act, certifying applications for determinations of native title and area agreements, resolving intra-Indigenous disputes, agreement-making and ensuring that notices given under the Native Title Act are brought to the attention of the relevant people.

Non-claimant application

An application made by a person who does not claim to have native title but who seeks a determination that native title does or does not exist.

Notification

The process by which people, organisations and/or the general public are advised by the relevant government of their intention to do certain acts or by the National Native Title Tribunal that certain applications under the Act have been made.

On-country

Description applied to activities that take place on the relevant area of land, for example mediation conferences or Federal Court hearings taking place on or near the area covered by a native title application.

Original jurisdiction

The authority or legal power of the Court to hear a case in the first instance.

Parties

People involved in a court case. Applicants, appellants, respondents and defendants are generally called 'parties'.

Practice notes and administrative notices

The Court publishes practice notes and administrative notices. Practice notes are issued by the Chief Justice on advice of the judges of the Court. Administrative notices are issued by each District Registrar at the request, or with the agreement, of the judges in the District Registry to which the notice relates.

Prescribed body corporate

Prescribed body corporate, a body nominated by native title holders which will represent them and manage their native title rights and interests once a determination that native title exists has been made.

Proceeding

The regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the judgment.

Register of Indigenous Land Use Agreements

A record of all Indigenous land use agreements that have been registered. An ILUA can only be registered when there are no obstacles to registration or when those obstacles have been resolved.

Register of Native Title Claims

The record of native title claimant applications that have been filed with the Federal Court, referred to the Native Title Registrar and generally have met the requirements of the registration test.

Registered native title claimant

A person or persons whose names(s) appear as 'the applicant' in relation to a claim that has met the conditions of the registration test and is on the Register of Native Title Claims.

Registration test

A set of conditions under the *Native Title Act 1993* that is applied to native title claimant applications. If an application meets all the conditions, it is included in the Register of Native Title Claims, and the claimants then gain the right to negotiate, together with certain other rights, while their application is under way.

Regulations

The Federal Court of Australia Regulations 2004 which prescribe the filing and other fees that must be paid in relation to proceedings in the Federal Court.

Respondent

The individual, organisation or corporation against whom/which legal proceedings are commenced. Also known as a 'defendant' in admiralty and corporations matters and in some courts. In an appeal it is the party who/which did not commence the appeal.

Rules

Rules made by the judges which set out the procedures for conducting a proceeding. The current rules of the Federal Court are the Federal Court Rules 2011, Federal Court (Corporations) Rules 2000 (for proceedings under the *Corporations Act 2001*) and Federal Court (Bankruptcy) Rules 2016 (for proceedings under the *Bankruptcy Act 1966*).

Self-represented litigant

A party to a proceeding who does not have legal representation and who is conducting the proceeding on his or her own behalf.

Setting down fee

A fee that must be paid when a date is set for hearing a matter. It includes the first day's hearing fee and, usually, has to be paid at least 28 days before the hearing.

PART 1

Overview of the Court

Objectives

The objectives of the Federal Court of Australia (Federal Court) are to:

- decide disputes according to law – promptly, courteously and effectively and, in so doing, to interpret the statutory law and develop the general law of the Commonwealth, so as to fulfil the role of a court exercising the judicial power of the Commonwealth under the Constitution
- provide an effective registry service to the community, and
- manage the resources allotted by Parliament efficiently.

Establishment

The Federal Court was created by the *Federal Court of Australia Act 1976* (Cth) and began to exercise its jurisdiction on 1 February 1977. It assumed jurisdiction formerly exercised in part by the High Court of Australia and the whole jurisdiction of the Australian Industrial Court and the Federal Court of Bankruptcy. The Court is a superior court of record and a court of law and equity. It sits in all capital cities and elsewhere in Australia from time to time.

Purpose

As outlined in the Court's Corporate Plan, the purpose of the Federal Court as an independent court of law is to decide disputes according to the law as quickly, inexpensively and efficiently as possible.

The purpose of the Federal Court entity is to provide corporate services in support of the operations of the Federal Court, Family Court of Australia (Family Court), Federal Circuit Court of Australia (Federal Circuit Court) and the National Native Title Tribunal.

Functions and powers

The Court's jurisdiction is broad, covering almost all civil matters arising under Australian federal law and some summary and indictable criminal matters. Central to the Court's civil jurisdiction is section 39B(1A) of the *Judiciary Act 1903* (Cth). This jurisdiction includes cases created by a 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 state.

The Court has a substantial and diverse appellate jurisdiction. It hears appeals from decisions of single judges of the Court and from the Federal Circuit Court in non-family law matters. The Court also exercises general appellate jurisdiction in criminal and civil matters on appeal from the Supreme Court of Norfolk Island. The Court's jurisdiction is described more fully in Part 3 (*Report on Court performance*).

The Court's Outcome and Program Structure

Table 1.1: Outcome 1: Federal Court of Australia

OUTCOME 1: Apply and uphold the rule of law for litigants in the Federal Court of Australia and parties in the National Native Title Tribunal through the resolution of matters according to law and through the effective management of the administrative affairs of the Court and Tribunal.	BUDGET 2020-21 (\$'000)	ACTUAL 2021-21 (\$'000)	VARIATION (\$'000)
Program 1.1 – Federal Court of Australia			
Administered Expenses			
Special appropriations	600	299	301
Departmental Expenses			
Departmental appropriation ¹	66,870	59,888	6,982
Expenses not requiring appropriation in the budget year	17,413	21,619	-4,206
Total for program 1.1	84,883	81,806	3,077
Total expenses for outcome 1	84,883	81,806	3,077
Average staffing level (number)	274	254	

¹ Departmental appropriation combines ordinary annual services (Appropriation Act Nos 1 and 3) and retained revenue receipts under section 74 of the *Public Governance, Performance and Accountability Act 2013* (Cth).

Table 1.2: Outcome 2: Family Court of Australia

OUTCOME 2: Apply and uphold the rule of law for litigants in the Family Court of Australia through the resolution of family law matters according to law, particularly more complex family law matters and through the effective management of the administrative affairs of the Court.	BUDGET 2020-21 (\$'000)	ACTUAL 2021-21 (\$'000)	VARIATION (\$'000)
Program 2.1 – Family Court of Australia			
Administered Expenses			
Special appropriations	100	25	75
Departmental Expenses			
Departmental appropriation ¹	33,313	31,427	1,886
Expenses not requiring appropriation in the budget year	11,906	13,620	-1,714
Total for Program 2.1	45,319	45,072	247
Total expenses for outcome 2	45,319	45,072	247
Average staffing level	90	87	

¹ Departmental appropriation combines ordinary annual services (Appropriation Act Nos 1 and 3) and retained revenue receipts under section 74 of the *Public Governance, Performance and Accountability Act 2013* (Cth).

Table 1.3: Outcome 3: Federal Circuit Court of Australia

OUTCOME 3: Apply and uphold the rule of law for litigants in the Federal Circuit Court of Australia through more informal and streamlined resolution of family law and general federal law matters according to law, through the encouragement of appropriate dispute resolution processes and through the effective management of the administrative affairs of the Court.	BUDGET 2020–21 (\$'000)	ACTUAL 2021–21 (\$'000)	VARIATION (\$'000)
Program 3.1 – Federal Circuit Court of Australia			
Administered Expenses			
Ordinary annual services (Appropriation Act No. 1)	884	612	272
Special appropriations	200	99	101
Departmental Expenses			
Departmental appropriation ¹	76,376	71,435	4,941
Expenses not requiring appropriation in the budget year	2,367	2,741	-374
Total for Program 3.1	79,827	74,887	4,940
Total expenses for outcome 3	79,827	74,887	4,940
Average staffing level (number)	304	275	

¹ Departmental appropriation combines ordinary annual services (Appropriation Act Nos 1 and 3) and retained revenue receipts under section 74 of the *Public Governance, Performance and Accountability Act 2013* (Cth).

Table 1.4: Outcome 4: Commonwealth Courts Corporate Services

OUTCOME 4: Improved administration and support for the resolution of matters according to law for litigants in the Federal Court of Australia, the Family Court of Australia and the Federal Circuit Court of Australia and parties in the National Native Title Tribunal through efficient and effective provision of shared corporate services.	BUDGET 2020–21 (\$'000)	ACTUAL 2021–21 (\$'000)	VARIATION (\$'000)
Program 4.1 – Commonwealth Courts Corporate Services			
Departmental Expenses			
Departmental appropriation ¹	74,089	73,610	479
Expenses not requiring appropriation in the budget year	59,102	59,038	64
Total for Program 4.1	133,191	132,648	543
Program 4.2 – Commonwealth Courts Registry Services			
Departmental Expenses			
Departmental appropriation	31,107	29,238	1,869
Total for Program 4.2	31,107	29,238	1,869
Total expenses for outcome 4	164,298	161,886	2,412
Average staffing level (number)	472	455	

¹ Departmental appropriation combines ordinary annual services (Appropriation Act Nos 1 and 3) and retained revenue receipts under section 74 of the *Public Governance, Performance and Accountability Act 2013* (Cth).

About the Federal Court

Judges of the Court

At 30 June 2021, there were 52 judges of the Court. They are listed below in order of seniority with details about any other commissions or appointments held on courts or tribunals. Of the 52 judges, there were three whose work as members of other courts or tribunals occupied all, or most, of their time.

Table 1.5: Judges of the Federal Court (as at 30 June 2021)

JUDGE	LOCATION	OTHER COMMISSIONS/APPOINTMENTS
Chief Justice The Hon James Leslie Bain ALLSOP AO	Sydney	
The Hon Susan Coralie KENNY AM	Melbourne	Administrative Appeals Tribunal – Deputy President Australian Electoral Commission – Chairperson
The Hon Andrew Peter GREENWOOD	Brisbane	Administrative Appeals Tribunal – Deputy President Copyright Tribunal – President Australian Competition Tribunal – Deputy President
The Hon Steven David RARES	Sydney	Supreme Court of the Australian Capital Territory – Additional Judge Supreme Court of Norfolk Island – Judge
The Hon Berna Joan COLLIER	Brisbane	National and Supreme Courts of Papua New Guinea – Judge Administrative Appeals Tribunal – Deputy President Supreme Court of the Australian Capital Territory – Additional Judge
The Hon Anthony James BESANKO	Adelaide	Supreme Court of Norfolk Island – Chief Justice Supreme Court of the Australian Capital Territory – Additional Judge
The Hon John Eric MIDDLETON	Melbourne	Australian Competition Tribunal – President Administrative Appeals Tribunal – Deputy President Australian Law Reform Commission – Part-time Commissioner

JUDGE	LOCATION	OTHER COMMISSIONS/APPOINTMENTS
The Hon John Alexander LOGAN RFD	Brisbane	Defence Force Discipline Appeal Tribunal – President National and Supreme Courts of Papua New Guinea – Judge
The Hon Geoffrey Alan FLICK	Sydney	
The Hon Neil Walter McKERRACHER	Perth	Administrative Appeals Tribunal – Deputy President
The Hon John Edward REEVES	Brisbane	Supreme Court of the Northern Territory – Additional Judge
The Hon Nye PERRAM	Sydney	Copyright Tribunal – Deputy President
The Hon Jayne Margaret JAGOT	Sydney	Supreme Court of the Australian Capital Territory – Additional Judge Copyright Tribunal – Deputy President
The Hon John Victor NICHOLAS	Sydney	
The Hon David Markey YATES	Sydney	Australian Competition Tribunal – Deputy President
The Hon Mordecai BROMBERG	Melbourne	
The Hon Anna Judith KATZMANN	Sydney	Supreme Court of the Australian Capital Territory – Additional Judge
The Hon Bernard Michael MURPHY	Melbourne	
The Hon Iain James Kerr ROSS AO	Melbourne	Fair Work Australia – President Supreme Court of the Australian Capital Territory – Additional Judge
The Hon John Edward GRIFFITHS	Sydney	
The Hon Duncan James Colquhoun KERR Chev LH	Hobart	
The Hon Kathleen FARRELL	Sydney	Australian Competition Tribunal – Deputy President
The Hon Jennifer DAVIES	Melbourne	Australian Competition Tribunal – Deputy President
The Hon Debra Sue MORTIMER	Melbourne	
The Hon Darryl Cameron RANGIAH	Brisbane	Supreme Court of the Australian Capital Territory – Additional Judge
The Hon Richard Conway WHITE	Adelaide	Administrative Appeals Tribunal – Deputy President
The Hon Michael Andrew WIGNEY	Sydney	Supreme Court of the Australian Capital Territory – Additional Judge Supreme Court of Norfolk Island – Judge

JUDGE	LOCATION	OTHER COMMISSIONS/APPOINTMENTS
The Hon Melissa Anne PERRY	Sydney	Supreme Court of the Australian Capital Territory – Additional Judge Defence Force Discipline Appeal Tribunal – Member Administrative Appeals Tribunal – Deputy President
The Hon Jonathan Barry Rashleigh BEACH	Melbourne	
The Hon Brigitte Sandra MARKOVIC	Sydney	
The Hon Mark Kranz MOSHINSKY	Melbourne	
The Hon Robert James BROMWICH	Sydney	Supreme Court of the Australian Capital Territory – Additional Judge Supreme Court of Norfolk Island – Additional Judge
The Hon Natalie CHARLESWORTH	Adelaide	Supreme Court of the Australian Capital Territory – Additional Judge
The Hon Stephen Carey George BURLEY	Sydney	
The Hon David John O'CALLAGHAN	Melbourne	
The Hon Michael Bryan Joshua LEE	Sydney	Supreme Court of the Australian Capital Territory – Additional Judge
The Hon Roger Marc DERRINGTON	Brisbane	
The Hon David Graham THOMAS	Brisbane	Administrative Appeals Tribunal – President
The Hon Sarah Catherine DERRINGTON	Brisbane	Australian Law Reform Commission – President
The Hon Katrina Frances BANKS-SMITH	Perth	Supreme Court of the Australian Capital Territory – Additional Judge
The Hon Craig Grierson COLVIN	Perth	Administrative Appeals Tribunal – Deputy President Australian Law Reform Commission – Part-time Commissioner
The Hon Thomas Michael THAWLEY	Sydney	Administrative Appeals Tribunal – Deputy President Supreme Court of the Australian Capital Territory – Additional Judge
The Hon Michael Francis WHEELAHAN	Melbourne	Supreme Court of the Australian Capital Territory – Additional Judge
The Hon Paul Elias ANASTASSIOU	Melbourne	Supreme Court of the Australian Capital Territory – Additional Judge

JUDGE	LOCATION	OTHER COMMISSIONS/APPOINTMENTS
The Hon Angus Morkel STEWART	Sydney	Supreme Court of the Australian Capital Territory – Additional Judge
The Hon Michael Hugh O'BRYAN	Melbourne	Supreme Court of the Australian Capital Territory – Additional Judge Australian Competition Tribunal – Deputy President
The Hon Darren John JACKSON	Perth	
The Hon John Leslie SNADEN	Melbourne	
The Hon Stewart Maxwell ANDERSON	Melbourne	Supreme Court of the Australian Capital Territory – Additional Judge
The Hon Wendy Jane ABRAHAM	Sydney	Supreme Court of the Australian Capital Territory – Additional Judge Supreme Court of Norfolk Island – Judge
The Hon John HALLEY	Sydney	
The Hon Elizabeth CHEESEMAN	Sydney	

The Chief Justice was absent on the following dates during the year. Acting Chief Justice arrangements during these periods were as follows:

- 20 October to 30 October 2020 – Justice Greenwood.
- 6 April to 9 April 2021 – Justice Kenny.

Most of the judges of the Court devote some time to other courts and tribunals on which they hold commissions or appointments. Judges of the Court also spend a lot of time on activities related to legal education and the justice system. More information about these activities is set out in Part 3 (*Report on Court performance*) and Appendix 8 (*Judges' activities*).

Appointments and retirements during 2020–21

During the year, two judges were appointed to the Court:

- The Honourable John Allaster Halley was appointed on 19 March 2021.
- The Honourable Elizabeth Anne Cheeseman was appointed on 12 April 2021.

During the year, three judges retired or resigned from the Court:

- The Honourable Justice Lindsay Foster retired with effect on 30 September 2020.
- The Honourable Justice Simon Harry Peter Steward resigned his commission as a judge of the Court with effect from 30 November 2020.
- The Honourable Justice Jacqueline Sarah Gleeson resigned her commission as a judge of the Court with effect from 28 February 2021.

Other appointments during the year are as follows:

- Justice Bromwich was appointed as a Judge of the Supreme Court of Norfolk Island on 13 May 2021.
- Justice Abraham was appointed as a Judge of the Supreme Court of Norfolk Island on 13 May 2021.
- Justice Kenny was appointed as Chairperson of the Australian Electoral Commission on 23 September 2020.
- Justice Colvin was appointed as a part-time member of the Australian Law Reform Commission on 18 February 2021.
- Justice Collier was re-appointed as a Judge of the Supreme and National Courts of Justice of Papua New Guinea on 16 November 2020.
- Justice Logan was re-appointed as a Judge of the Supreme and National Courts of Justice of Papua New Guinea on 16 November 2020.
- Justice Kenny was re-appointed as a part-time Deputy President of the Administrative Appeals Tribunal on 10 December 2020.
- Justice Greenwood was re-appointed as a part-time Deputy President of the Administrative Appeals Tribunal on 10 December 2020.
- Justice Collier was re-appointed as a part-time Deputy President of the Administrative Appeals Tribunal on 10 December 2020.
- Justice Middleton was re-appointed as a part-time Deputy President of the Administrative Appeals Tribunal on 10 December 2020.
- Justice White was re-appointed as a part-time Deputy President of the Administrative Appeals Tribunal on 10 December 2020.

Executive

Chief Executive Officer and Principal Registrar

The CEO and Principal Registrar is appointed by the Governor-General on the nomination of the Chief Justice and has the same powers as the Head of a statutory agency of the Australian Public Service in respect of the officers and staff of the Court employed under the *Public Service Act 1999* (section 18ZE of the Federal Court of Australia Act).

Ms Sia Lagos was appointed the CEO and Principal Registrar on 15 May 2020.

Officers of the Court

Officers of the Court are appointed by the CEO and Principal Registrar under section 18N of the *Federal Court of Australia Act 1976* and are:

- a District Registrar for each District Registry
- Registrars and Deputy District Registrars as necessary
- a Sheriff and Deputy Sheriffs as necessary, and
- Marshals under the *Admiralty Act 1988* as necessary.

The registrars must take an oath, or make an affirmation, of office before undertaking their duties (s 18Y of the *Federal Court of Australia Act 1976*). Registrars perform statutory functions pursuant to the *Federal Court of Australia Act 1976*, Federal Court Rules 2011, Federal Court (Bankruptcy) Rules 2016, Federal Court (Corporations) Rules 2000, Federal Court (Criminal Proceedings) Rules 2016, and the Admiralty Act and Admiralty Rules 1988. These include issuing process, taxing costs and settling appeal indexes. They also exercise various powers delegated by judges under the *Federal Court of Australia Act 1976*, *Bankruptcy Act 1966*, *Corporations Act 2001* and *Native Title Act 1993*. A number of staff in each registry also perform functions and exercise delegated powers under the *Federal Circuit Court of Australia Act 1999*. More information can be found in Appendix 4 (*Registrars of the Court*).

Staff of the Court

The officers and staff of the Court (other than the Registrar and some Deputy Sheriffs and Marshals) are appointed or employed under the *Public Service Act 1999*.

At 30 June 2021, the Federal Court entity engaged 1,157 employees under the *Public Service Act 1999*. This figure includes 781 ongoing and 376 non-ongoing employees. More details on court staff can be found in Part 4 (*Management and accountability*) and Appendix 9 (*Staffing profile*).

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

Chief Executive Officer and Principal Registrar
Federal Court of Australia

PART 3

Report on Court
performance

The work of the Court in 2020–21

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*.

Central to the Court's civil jurisdiction is section 39B (1A)(c) of the *Judiciary Act 1903*. 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* 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* 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*. This jurisdiction falls under the Administrative and Constitutional Law

and Human Rights National Practice Area (NPA), which also includes complaints about unlawful discrimination and matters concerning the Australian Constitution. Figure A5.9.1 in Appendix 5 (*Workload statistics*) shows the matters filed in this practice area over the last five years.

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

The Court shares first instance jurisdiction with the Supreme Courts of the states and territories in the complex area of intellectual property (copyright, patents, trademarks, designs and circuit layouts). All appeals in these cases, including appeals from the Supreme Courts, are to a Full Court of the Federal Court. Figure A5.9.5 shows the number of intellectual property matters filed over the last five years.

The Court also has jurisdiction under the *Native Title Act 1993*. The Court has jurisdiction to hear and determine native title determination applications and is responsible for their mediation. It also hears and determines revised native title determination applications, compensation applications, claim registration applications, applications to remove agreements from the Register of Indigenous Land Use Agreements and applications about the transfer of records. In addition, the Court also hears appeals from the National Native Title Tribunal and matters filed under the *Administrative Decisions (Judicial Review) Act 1977* involving native title. The Court's native title jurisdiction is discussed in this part. Figure A5.9.6 in Appendix 5 (*Workload statistics*) shows the number of native title matters filed over the last five years.

A further important area of jurisdiction for the Court derives from the *Admiralty Act 1988*. The Court has concurrent jurisdiction with the Supreme Courts of the states and territories to hear maritime claims under this Act. Ships coming into Australian waters may be arrested for the purpose of providing security for money claimed from ship owners and operators. If security is not provided, a judge may order the sale of the ship to provide funds to pay the claims. During the reporting year, the Court's Admiralty Marshals made five arrests. See

Figure A5.9.2 in Appendix 5 (*Workload statistics*) for the number of Admiralty and Maritime Law matters filed in the past five years.

The Court has jurisdiction under the *Fair Work Act 2009*, *Fair Work (Registered Organisations) Act 2009* and related industrial legislation. Workplace relations and fair work matters filed over the last five years are shown in Figure A5.9.4 in Appendix 5 (*Workload statistics*).

The Court's jurisdiction under the *Corporations Act 2001* and the *Australian Securities and Investments Commission Act 2001* covers a diverse range of matters, from the appointment of registered liquidators and the winding up of companies, to applications for orders in relation to fundraising, corporate management and misconduct by company officers. The jurisdiction is exercised concurrently with the Supreme Courts of the states and territories.

The Court exercises jurisdiction under the *Bankruptcy Act 1966*. It has power to make sequestration (bankruptcy) orders against persons who have committed acts of bankruptcy and to grant bankruptcy discharges and annulments. The Court's jurisdiction includes matters arising from the administration of bankrupt estates.

Cases arising under Part IV (restrictive trade practices) and Schedule 2 (the Australian Consumer Law) of the *Competition and Consumer Act 2010* constitute a significant part of the workload of the Court. These cases often raise important public interest issues involving such matters as mergers, misuse of market power, exclusive dealings or false advertising. These areas fall under the Commercial and Corporations NPA. Figure A5.9.3 in Appendix 5 (*Workload statistics*) 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 NPA.

Since late 2009, the Court has also had jurisdiction in relation to indictable offences for serious cartel conduct. This jurisdiction falls under the Federal Crime and Related Proceedings NPA together with summary prosecutions and criminal appeals and other related matters.

The Court has a substantial and diverse appellate jurisdiction. It hears appeals from decisions of single judges of the Court and from the Federal Circuit Court in non-family law matters and from other courts exercising certain federal jurisdiction.

In recent years, a significant component of its appellate work has involved appeals from the Federal Circuit Court concerning decisions under the *Migration Act 1958*. The Court's migration jurisdiction is discussed 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*, are listed on the Court's website at www.fedcourt.gov.au.

Changes to the Court's jurisdiction in 2020–21

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

- *New Tax System (Family Assistance) (Administration) Act 1999*
- *Australia's Foreign Relations (State and Territory Arrangements) Act 2020*
- *Australian Immunisation Register Act 2015*
- *Coronavirus Economic Response Package Omnibus (Measures No. 2) Act 2020*
- *Export Control Act 2020*
- *Export Control (Consequential Amendments and Transitional Provisions) Act 2020*
- *Industrial Chemicals Environmental Management (Register) Act 2021*
- *Intellectual Property Laws Amendment (Productivity Commission Response Part 2 and Other Measures) Act 2020*
- *Payment Times Reporting Act 2020*
- *Recycling and Waste Reduction Act 2020*

- *Student Identifiers Act 2014*
- *Aged Care Quality and Safety Commission Act 2018*
- *Export Control Act 2020*
- *Industrial Chemicals Act 2019*
- *Insurance Contracts Act 1984*
- *Inspector-General of Live Animal Exports Act 2019*
- *National Sports Tribunal Act 2019*
- *Student Identifiers Act 2014*, and
- *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

Amendments to the Federal Court of Australia Act

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

Fee regulation

The operation of the Federal Court and Federal Circuit Court Regulation 2012 remained unchanged in the reporting year insofar as Federal Court proceedings are concerned.

The fee for filing applications under section 539 of the *Fair Work Act 2009* 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 Act. The Rules provide the procedural framework within which matters are commenced and conducted in the Court. The Rules of Court are made as Commonwealth Statutory Legislative Instruments.

The Rules are kept under review. New and amending rules are made to ensure that the Court's procedures are responsive to the needs of modern litigation. A review of the Rules is often undertaken as a consequence of changes to the Court's practice and procedure described elsewhere in this report. Proposed amendments are discussed with the Law Council of Australia and other relevant organisations, as considered appropriate.

There were no amendments made to the Federal Court Rules 2011 during the reporting year.

Other rules

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

The Federal Court (Corporations) Rules 2000 govern proceedings in the Federal Court under the *Corporations Act 2001* and the *Australian Securities and Investments Commission Act 2001*, as well as proceedings under the *Cross-Border Insolvency Act 2008* which involve a debtor other than an individual. There were no changes to the Federal Court (Corporations) Rules 2000 in the reporting year.

The Federal Court (Bankruptcy) Rules 2016 govern proceedings in the Federal Court under the *Bankruptcy Act 1966*, as well as proceedings under the *Cross-Border Insolvency Act 2008* involving a debtor who is an individual. There were no changes to the Federal Court (Bankruptcy) Rules 2016 in the reporting year.

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

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

Approved forms

Approved forms are available on the Court's website. Any document that is filed in a proceeding in the Court must be in accordance with 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 6 November 2020, the Chief Justice approved the revocation and reissuance of Form 26: *Summary of the document to be served*, with effect from 6 November 2021, for the purposes of the Federal Court Rules 2011.

On 20 January 2021, the Chief Justice approved the revocation and reissuance of Form CP20: *Summons to attend for jury service*, with effect from 20 January 2021, for the purposes of the Federal Court (Criminal Proceedings) Rules 2016.

On 1 April 2021, the Chief Justice approved the revocation and reissuance of the following forms, with effect from 1 April 2021, for the purposes of the Federal Court (Bankruptcy) Rules 2016:

- Form B2: *Application*
- Form B3: *Interim application*, and
- Form B6: *Creditor's petition*.

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 20 November 2020, the Court introduced *Practice Information Note APP 1: Case Management of Full Court and Appellate Matters*, the purpose of which is to acquaint parties and the profession with the Court's practice and procedure for the case management of its Full Court and appellate workload so that they can better prepare and assist the Court.

The Court has developed a draft Commercial Arbitration Practice Note which outlines the arrangements for the management within the National Court Framework of applications in the Court that concern commercial arbitration. The draft practice note has been sent to the profession for consultation and feedback from the profession is currently being considered by the Court.

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.

In its response to the COVID-19 pandemic, the Federal Court developed a series of guides to support the practices developed for online hearings and the use of Microsoft Teams, including a *National Practitioners and Litigants Guide* intended to provide guidance for the legal profession and litigants-in-person appearing in online hearings.

All guides are available on the Court's website.

Workload of the Federal Court and Federal Circuit Court

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

In 2020–21, a total of 10,191 matters were filed in the two courts. The number of filings has an impact on the Federal Court's registries, as the staff members of the Federal Court's registries process the documents filed for both the Federal Court and Federal Circuit Court (in its general federal law jurisdictions). The registries also provide the administrative support for each matter to be heard and determined by the relevant court.

Case flow management of the Court's jurisdiction

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

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

Disposition of matters other than native title

In 1999–2000, the Court set a goal of 18 months from commencement as the period within which it should dispose of at least 85 per cent of its cases (excluding native title cases). The time goal was set having regard to the growing number of long, complex and difficult cases, the impact of native title cases on the Court's workload and a decrease in the number of less complex matters. The time goal is reviewed regularly by the Court in relation to workload and available resources. The Court's ability to continue to meet its disposition targets is dependent upon the timely replacement of judges.

Notwithstanding the time goal, the Court expects that most cases will be disposed of well within the 18 month period, with only particularly large and/or difficult cases requiring more time.

Indeed, many cases are urgent and need to be disposed of quickly after commencement. The Court's practice and procedure facilitates early disposition when necessary.

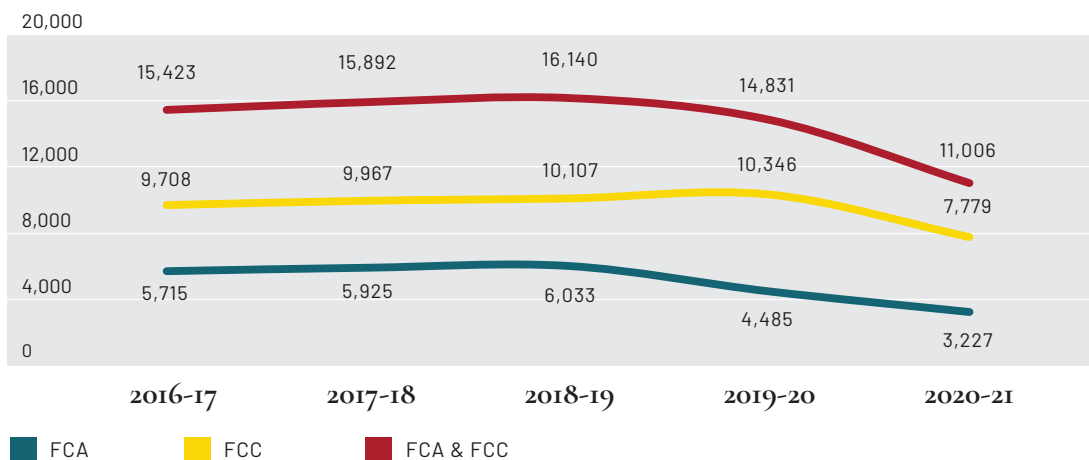
During the five-year period from 1 July 2016 to 30 June 2021, 91 per cent of cases (excluding native title matters) were completed in 18 months or less; 84 per cent in 12 months or less; and 67 per cent in six months or less. See Figure A5.4 in Appendix 5 (*Workload statistics*). Figure A5.5 shows the 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 1,906 judgments for 1,656 court files. Of these, 486 judgments were delivered in appeals (both single judge and Full Court) and 1,420 in first instance cases. These figures include both written judgments and judgments delivered orally on the day of the hearing, immediately after the completion of evidence and submissions. There was a decrease in the total number of judgments delivered in 2020–21 compared to the number of judgments delivered in 2019–20.

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

Figure 3.1: Filings to 30 June 2021 – Federal Court and Federal Circuit Court



The judgment is delivered at a later date and is often referred to as a 'reserved judgment'. The nature of the Court's appellate work also means a substantial proportion of appeals require reserved judgments.

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

Workload of the Court in its original jurisdiction

Incoming work

In the reporting year, 2,412 cases were commenced in, or transferred to, the Court's original jurisdiction. See Table A5.1.

Matters transferred to and from the court

Matters may be remitted or transferred to the Court under:

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

During the reporting year, 163 matters were remitted or transferred to the Court:

- 16 from the High Court
- 33 from the Federal Circuit Court
- 46 from the Supreme Courts, and
- 68 from other courts.

Matters may be transferred from the Court under:

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

During 2020–21, 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 2,916.

Current matters

The total number of current matters in the Court's original jurisdiction at the end of the reporting year was 3,736 (see Table A5.1).

Age of pending workload

The comparative age of matters pending in the Court's original jurisdiction (against all major causes of action, other than native title matters) at 30 June 2021 is set out in Table 3.1.

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

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

CAUSE OF ACTION	UNDER 6 MONTHS	6–12 MONTHS	12–18 MONTHS	18–24 MONTHS	OVER 24 MONTHS	SUB-TOTAL
Administrative law	37	31	4	6	10	88
Admiralty	9	8	5	1	8	31
Bankruptcy	100	17	20	15	18	170
Competition law	5	6	0	3	7	21
Trade practices	45	55	33	33	64	230
Corporations	234	138	69	75	92	608
Human rights	37	17	7	8	18	87
Workplace relations	0	2	0	0	0	2

CAUSE OF ACTION	UNDER 6 MONTHS	6–12 MONTHS	12–18 MONTHS	18–24 MONTHS	OVER 24 MONTHS	SUB-TOTAL
Intellectual property	53	34	10	19	59	175
Migration	122	59	18	5	51	255
Miscellaneous	141	72	42	41	74	370
Taxation	42	25	36	4	46	153
Fair work	76	69	31	21	54	251
Criminal	2	0	0	3	6	11
Total	903	533	275	234	507	2,452
Percentage of total	36.8%	21.7%	11.2%	9.5%	20.7%	100.0%

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

CAUSE OF ACTION	UNDER 6 MONTHS	6–12 MONTHS	12–18 MONTHS	18–24 MONTHS	OVER 24 MONTHS	SUB-TOTAL
Native title action	17	25	9	16	196	263
Percentage of total	6.5%	9.5%	3.4%	6.1%	74.5%	100.0%
Running total	17	42	51	67	263	

The number of native title matters over 18 months old decreased slightly compared with figures recorded in the 2019–20 annual report. The number of native title matters between 12–18 months decreased significantly and between 18–24 months old also increased. 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 Court, some are in relation to decisions by state and territory courts exercising certain federal jurisdiction. For reporting purposes, matters filed in the original jurisdiction of the Court but referred to a Full Court for hearing are treated as appellate matters.

The number of appellate proceedings commenced in the Court is dependent on many factors, including the number of first instance matters disposed of in a reporting year, the nature and complexity of such matters, the nature and complexity of issues raised on appeal, legislative changes increasing or reducing the jurisdiction of the Court and decisions of the Full Court or High Court (for example, regarding the interpretation or constitutionality of legislative provisions).

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

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

remote access technology, as part of the Court's special measures in response to the COVID-19 pandemic. There was also an increase in the number of matters listed outside of the four scheduled sitting periods, with the Chief Justice specially convening 51 Full Courts outside of the four scheduled sitting periods, involving 62 sitting days or part thereof.

The appellate workload

During the reporting year, 1,057 appellate proceedings were filed in the Court. They include 871 appeals and related actions (815 filed in the appellate jurisdiction and 56 matters filed in the original jurisdiction), 23 cross appeals and 163 interlocutory applications such as applications for security for costs in relation to an appeal, a stay, an injunction, expedition or various other applications.

The Federal Circuit Court is a significant source of appellate work accounting for over 60 per cent (541 of the 871) of the appeals and related actions filed in 2020–21. The majority of these proceedings continue to be heard and determined by single judges exercising the Court's appellate jurisdiction.

Further information on the source of appeals and related actions is set out in Table A5.3 in Appendix 5 (*Workload statistics*). There was an overall decrease in the total number of appeals and related actions filed in 2020–21, from 1,031 in 2019–20 to 815 for the current reporting year. This decrease was largely attributable to a 27 per cent decrease in migration appeals and related actions, as well as decreases in the areas of taxation and administrative and constitutional law and human rights. However, these decreases were offset by increases in the areas of intellectual property, native title, federal crime and other federal jurisdiction.

In the reporting year, 654 appeals and related actions were finalised. Of these, 207 matters were filed and finalised in the reporting year. At 30 June 2021, there were 1,021 appeals currently before the Court, with 779 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 2021 is set out in Table 3.3.

Of the appellate and related matters pending at present, 33 per cent are less than six months old and 63 per cent are less than 12 months old. At 30 June 2021, there were 378 matters that were over 12 months old (see Table 3.3).

Managing migration appeals

In 2020–21, 57 migration appeals were filed in the Court's appellate jurisdiction related to judgments of single judges of the Court exercising the Court's original jurisdiction. A further 485 migration matters were filed in relation to judgments of the Federal Circuit Court and five from another source.

Table 3.4 shows the number of appellate proceedings involving the Migration Act as a proportion of the Court's overall appellate workload since 2016–17.

Although the number of migration appellate filings has decreased by 27 per cent since the last reporting year, 67 per cent of the Court's total appellate workload concerned decisions made under the *Migration Act 1958*.

The Court continues to apply a number of procedures to streamline the preparation and conduct of these appeals and applications and to facilitate the expeditious management of the migration workload.

Table 3.3: Age of current appeals, cross appeals and interlocutory appellate applications at 30 June 2021

CAUSE OF ACTION	UNDER 6 MONTHS	6–12 MONTHS	12–18 MONTHS	18–24 MONTHS	OVER 24 MONTHS	SUB-TOTAL
Appeals and related actions	338	305	214	131	33	1,021
Percentage of total	33.1%	29.9%	21.0%	12.8%	3.2%	100.0%
Running total	338	643	857	988	1,021	

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	2016–17	2017–18	2018–19	2019–20	2020–21
Migration jurisdiction	764	1,021	1,139	749	547
Percentage	73.0%	80.8%	80.5%	72.6%	67.1%
Total appeals and related actions	1,046	1,263	1,415	1,031	815

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 a judge's commitments preclude a listing during the sitting period, a matter may be referred to a specially convened Full Court. In the 2020–21 reporting year, the Chief Justice specially convening 27 Migration Full Courts outside of the four scheduled sitting periods.

Migration appellate matters heard by single judges were listed for hearing throughout the reporting year, predominately by remote access technology, due to restrictions on in-person attendance at Court premises in response to the COVID-19 pandemic. The Court continues to apply a number of procedures to streamline the preparation and conduct of these appeals and applications and to facilitate the expeditious management of the migration workload. The Court reviews all migration matters to identify cases raising similar issues and where there is a history of previous litigation. This process allows for similar cases to be managed together resulting in more timely and efficient disposal of matters. Then, all migration-related appellate proceedings (whether to be heard by a single judge or by a Full Court) are listed for hearing in the next scheduled Full Court and appellate sitting period. The exceptions to this are where expedition of an appeal may be necessary or where a judge's commitments preclude listing allocated matters during the sitting period. Where any migration-related appellate proceeding requires an expedited hearing, the matter is allocated to a single judge or referred to a specially convened Full Court.

Fixing migration-related appellate proceedings for hearing in the four scheduled sitting periods has provided greater certainty and consistency for litigants. It has also resulted in a significant number of cases being heard and determined within the same sitting period.

The Court's native title jurisdiction

Statistics and trends

In 2020–21, the Court resolved 75 native title applications (commenced under section 61 of the *Native Title Act 1993* (Cth)), consisting of 50 native title applications, 12 non-claimant applications, three compensation applications, and 10 revision applications. There were 10 additional applications managed by the native title practice area that were also finalised.

Of the finalised applications, 52 were resolved by consent of the parties or were unopposed, three were finalised following litigation, and 30 applications were either discontinued or dismissed. There are several other matters in which a consent determination was made, however the file remains on foot due to the determination being conditional on a subsequent event or further issues such as costs which remain to be disposed of.

Thirty-nine new applications were filed under section 61 of the *Native Title Act 1993* during the reporting period. Of these, 19 are native title determination applications, 12 are non-claimant applications, six are compensation applications, and two were applications to revise existing determinations. In addition, six new applications were filed which were not commenced under section 61 of the *Native Title Act 1993*, but relate to native title matters and are case managed in the native title NPA. None of the above figures include appeals from native title decisions.

At the commencement of the reporting year, there were nine compensation applications before the Court: one in the Northern Territory, two in Queensland and six in Western Australia.

During the reporting year:

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

At the end of the reporting year, there were 192 current native title applications, comprising 150 determination applications, 29 non-claimant applications, 12 compensation applications, and one variation applications. This is a downward trend from the 237 extant at the end of the previous financial year and reflects some intensive case management by the Court to resolve ageing claims and a reduced number of new filings during the reporting year.

Subject to the constraints imposed by the COVID-19 pandemic, there are 68 consent determinations or hearings of either the substantive matter or separate questions currently forecast for the 2021–22 financial year. Many of those hearings will include an on-country component if travel is feasible. There are also approximately 25 matters that will require some aspects to be mediated on-country by the case-managing registrar.

The Court continues to focus on targeted case management by specialist registrars and judges and on mediation, predominantly conducted by registrars. The Court also maintains a panel of specialist accredited mediators who can be called upon to mediate from time to time, including by way of co-mediation. Registry based, on-country and remote mediation by way of

various technology platforms have been used to progress matters during the reporting period.

The objective of both mediation and case-management processes is to identify the genuine issues in dispute between the parties and the most effective means of resolving those disputes. This process accords with the Court's responsibilities under the *Native Title Act 1993* and its overarching purpose under sections 37M and 37N of the *Federal Court of Australia Act 1976* to facilitate the just resolution of disputes according to the law as quickly, inexpensively and efficiently as possible.

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

The trend of increasing court facilitation is demonstrated by the listings data over the past three years. There were 316 mediations and 983 case management hearings in 2018–19; and 263 mediations and 633 case management hearings and 35 regional case management conferences held during 2019–20. During 2020–21 and despite the abrupt halt to many scheduled events during some periods and the need to manage more matters remotely and administratively, the native title practice area still conducted 331 mediation listings, 617 case management hearings and substantive hearing listings, 671 administrative listings and 16 regional case management hearings.

Access requests are being made more frequently in all states and are becoming more onerous in nature. It remains a sensitive issue having regard to the nature of the material sought and as the instigation for the request is often to prepare a compensation application. The Court has been partnering with AIATSIS to enter into a memorandum of understanding around various areas of common interest, including consideration of access protocols within the framework of the Federal Court Rules.

Stakeholder engagement

The Court continues to regularly engage with stakeholders in a manner and at a regularity appropriate to the activity level and local processes in each jurisdiction. The ability to convene in-person forums has unfortunately been limited by COVID-19 restrictions during the reporting year.

A forum and workshop were held on consecutive days in April 2021 at the Federal Court in Sydney for practitioners working in NSW.

The forum was convened both in-person and online, with approximately 80 people attending. The forum addressed topical matters in the practice area including compensation claims, evidentiary standards for connection in consent determination proceedings, the role of expert anthropologists and access to court documents in native title matters. The workshop was a smaller event for practitioners representing the state and the native title representative body in NSW to work pragmatically on developing best practice models for recurring issues which arise in practice.

A smaller hybrid working group was convened in Darwin in March 2021, with some participants linking in by phone. The Queensland user group has continued meeting bi-annually by video conference and it is hoped an in-person forum can occur in early 2022 for both Queensland and Western Australia.

Significant litigation and developments

Queensland

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

- In the Cape York, Torres Strait and Carpentaria Region, the 'Torres Strait cluster' of overlapping claims and the Cape York United claim comprising many local groups have both been the subject of intensive case management and mediation. The Cape York United matter is to be resolved by a series of local determinations under section 87A of the Native Title Act 1993 with the first three determinations scheduled for November 2021.
- In the Northern Region, the 'Cairns cluster' of overlapping claims continues to be the subject of intensive case management and mediation. This cluster was referred by the Court under section 54A of the *Federal Court Act 1976* and

rule 28.61 of the Federal Court Rules 2011 to two independent referees. Implementation of the referees report has been subject of court case management and interlocutory hearings during the reporting year. Also in the Northern region, the on-country hearing in the Wakaman People cluster of matters, which comprises three claimant applications and three non-claimant applications, was held during the reporting year.

- In the Southern Region, the 'GNP or Gangulu cluster' has been the subject of a separate questions hearing about connection during the reporting year, with final submissions due in late 2021. The Wongkumara People matter, together with the overlapping Yandruwandha Yawarrawarrka People matter and the Malyangapa People Part B matter, have also variously been the subject of extensive case management and mediation during the reporting year.

The hearing in the Clermont-Belyando Area application (formerly called the Wangan and Jagalingou People matter) was finalised late in the reporting year and is now reserved for judgment. The decision in the Kurtjar matter, over an area on the Gulf of Carpentaria remains reserved, which will determine the extent of a consent determination in this matter.

South Australia

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

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

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

Trials in respect of native title claimant applications filed by the Wirangu and Nauo people were also listed to commence on a five week on-country hearing on 19 July 2021. At the end of the reporting period, these matters were successfully mediated and are now proceeding down a consent determination path.

New South Wales

In March 2020, Justice Jagot convened a hearing on-country in the non-claimant matter Wagonga Local Aboriginal Land Council, which covers a small area entirely overlapped by the South Coast People claim application. Due to the COVID-19 pandemic, the on-country portion of the hearing was reduced and the hearing was finalised remotely through Microsoft Teams. Justice Jagot delivered her judgment on 5 August 2020, finding that native title was extinguished on the relevant lot. The decision was subject to an appeal and cross appeal which was heard by the Full Court on 24 and 25 May 2021, with judgment reserved.

In July 2020, a separate question hearing concerning nine suites of tenure categories and 49 specific tenures proceeded before Justice Griffiths by Microsoft Teams in the matter *Elaine Ohlsen & Ors on behalf of the Ngemba/Ngiyampaa People* (NSD38/2019). Judgment was delivered on 5 March 2021 and has since been appealed by the Attorney General of New South Wales. The appeal will be heard by the Full Court from 17 to 20 August 2021.

On 21 August 2020, the first compensation application in NSW was filed by Patricia Johnson & Anor on behalf of the Barkandji Malyangapa People over the area of the determined application NSD6084/1998. The matter has been actively case managed by Justice Jagot to address preliminary issues raised in the proceeding including whether the claim has been properly authorised. Notification of the claim has been deferred until such matters are resolved.

There was one consent determination proceeding in NSW in the 2020–21 reporting year. On 30 April 2021, Justice Rares convened a consent determination hearing at Evans Head in the matter *Veronica Wilson & Ors on behalf of the Bandjalang People*. The Widjabul Wia-bal matter is now in intensive case-management and mediation before the Court working towards a consent determination in early 2022.

Western Australia

Pilbara

On 23 October 2020, the Yamatji Nation ILUA was conclusively registered enabling the Yamatji Nation native title consent determination made by Justice Mortimer on 7 February 2020 to come into effect and finalising four underlying claims. This provides for long term financial, social and land benefits to the native title holders and future generations.

Lawson on behalf of the Badimaya Barna Guda People v State of Western Australia (No 2) [2021] FCA 468 was delivered by Justice Mortimer on 7 May 2021, dismissing a native title application made by various Badimaya people for failing the registration test on multiple grounds including substantive merits grounds.

Following an on-country hearing in July 2019 for the Yinhawangka Gobawarra, Jurruru and Jurruru #2 matters, Mortimer J delivered judgment on 2 December 2020 and Smirke on behalf of the *Jurruru People v State of Western Australia (No. 2)* [2020] FCA 1728, the matter was referred back to mediation for finalisation.

Goldfields

A separate question connection hearing in Maduwongga commenced in December 2020 with on-country evidence and judgment is reserved. Justice Bromberg delivered *Champion on behalf of the Marlinyu Ghoorlie Claim Group v State of Western Australia* [2020] FCA 1175 on 14 August 2020, relating to an interlocutory application to inspect anthropological reports from a litigated native title determination in the region. His Honour having considered the principle of open justice and the interest in preserving confidentiality of sensitive information, granted leave to inspect and copy the documents on various conditions including that the documents cannot be communicated to any other person and cannot be used for any other purpose other than the proceeding. Additionally, Justice Colvin made negative determination orders by consent in the final part of the Mirning application consisting of nine blocks of land, on 18 January 2021, subject to registration of an ILUA.

Kimberley

Outstanding issues regarding nomination of a prescribed body corporate (PBC) in the Birrimangan application, have been referred to mediation. It is likely that the Indigenous Land and Sea Corporation which has been made a party to the proceeding, will be determined as the agent PBC in the absence of a nominated body. Also in the Kimberley region, following an on-country hearing August 2019 in respect of a separate question in the Gajangana Jaru, Purnululu and Purnululu #2 matters, Justice Mortimer delivered judgement on 22 October 2020 in *Drill on behalf of the Purnululu Native Title Claim Group v State of Western Australia* [2020] FCA 1510 was referred back to mediation for finalisation. There are currently eleven matters in the Kimberley in mediation. There have been three consent determinations in the Kimberley in the period, two were on-country determinations in late November and early December 2020 and one was delivered on the papers, being a subsequent determination following a prior determination of native title for the group.

Central Desert

Following the filing of two related compensation applications in the Central Desert region by a registered native title body corporate and the Tjiwarl common law holders on 17 June 2020, a third related compensation application was filed on 26 November 2020. All three applications have been the subject of intensive case management to timetable the applications towards hearing on-country commencing in August 2022, with concurrent mediation being convened between the applicant and State of Western Australia. Also in the region, on 27 July 2020, Justice Griffiths delivered a consent determination of native title in favour of the Untiri Pulka claimants. The determination includes recognition of both exclusive and non-exclusive native title rights and interests in the south east area of the Central Desert region.

The Nyamal Palyku Proceedings is now the subject of programming orders, with on country lay evidence commencing in September 2021. The Nyamal Palyku Proceedings is now comprised of three applications. A portion of WAD23/2019 Palyku and WAD483/2018 Palyku #2 were determined by consent on the papers as was WAD439/2019 Budina #2 also from the Pilbara region.

Revision applications

Two revised native title determinations were decided on the papers: *Karlka Nyiyaparli Aboriginal Corporation RNTBC v State of Western Australia* [2021] FCA 9 and *Robe River Kuruma Aboriginal Corporation RNTBC v State of Western Australia* [2021] FCA 20 following applications made by the RNTBC's to alter the terms of the consent determination.

South west

Following the decision of the High Court in *Northern Land Council v Quall* [2020] HCA 33 and the subsequent steps to resolution being met in the South West Settlement ILUA, the South West regional claimant and compensation applications are now under intensive case management before the Court to resolve the claims. This has included the dismissal of *AC (deceased) v State of Western Australia* [2021] FCA 735 following a strike out application made by the State of Western Australia. The compensation claim *Smith on behalf of the Single Noongar Claim Group v the State of Western Australia* [2021] FCA 252 was discontinued.

Northern Territory

In the Northern region, a further compensation application was filed on 14 December 2020, the McArthur River Project Compensation Claim (NTD25/2020). The compensation application area is within the outer boundaries of the area covered by the earlier native title determination in *Ngajapa v Northern Territory* [2015] FCA 1249 (McArthur River Pastoral Lease), which was made by Justice Mansfield on 26 November 2015. An application to vary this determination has been filed, and both this and the compensation application are progressing together. 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 Territory, the second being the Gove Peninsula claim which was filed in 2019 and remains in case management.

On 23 December 2020, an application was filed by seven native title holders to replace the PBC in nine different determinations of native title, *Mark Raymond & Ors v Top End (Default PBC/CLA) Aboriginal Corporation RNTBC*. The area covered

by the application includes the Newcastle Waters determination and surrounding pastoral leases in the Beetaloo Basin. The application sought to replace the Top End (Default PBC/CLA) Aboriginal Corporation with the Nurrdalinjji Native Title Aboriginal Corporation (ICN 9392). Orders granting leave to discontinue the matter were made by consent on 4 March 2021 and the matter was discontinued on 5 March 2021.

On 23 April 2021, Mr Kevin Quall filed an application for judicial review seeking review of the Kenbi ILUA registration decision. The Northern Land Council and the Northern Territory of Australia have been joined as respondents and the matter is ongoing.

Since July 2020, 14 consent determinations have been made in the Northern Territory, 11 of those were in the Northern region and three in the Central region. All seven revised determination applications in the Central region have now been finalised by consent.

Victoria

In Victoria, *Margaret Gardiner & Ors v Taungurung Land and Waters Council & Ors* [2021] FCA 80 was delivered on 9 February 2021, setting aside the decision of the Registrar of the National Native Title Tribunal to register an ILUA negotiated between the State of Victoria and Taungurung Traditional Owner Group negotiated under the *Traditional Owner Settlement Act 2010* (Vic). Mediation is currently progressing in the First Peoples of the Millewa Mallee native title application seeking to resolve outstanding connection issues. Mediation is also continuing in the Eastern Maar People application seeking to resolve a number of interests asserts by Indigenous respondent parties with expert conferences to take place if the issues are not resolved, in September 2021. The Boonwurrung People claim which was filed on 29 May 2020 over land and waters in greater metropolitan Melbourne and the south east coast encompassing Wilson's Promontory, is awaiting notification following the discontinuance on 30 June 2021 of an application to the Court for a review of the delegate of the Registrar not to accept the claim for registration.

Assisted dispute resolution

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

In recognition of the Court's unique model of mediation and commitment to a quality professional development program, the Court became a Recognised Mediator Accreditation Body in September 2015 and implemented the Federal Court Mediator Accreditation Scheme (FCMAS). The FCMAS incorporates the National Mediator Accreditation Standards and the majority of court-ordered mediations are conducted by registrars who are trained and accredited by the Court under the FCMAS.

In the native title jurisdiction, while native title registrars now conduct most mediations of native title matters, the Court maintains a list on its website of appropriately qualified professionals if there is a need to engage an external mediator or co-facilitate mediation.

Since the 2010–11 reporting period, the Court has maintained comprehensive statistical information about referrals to ADR and the outcomes of ADR processes held during the relevant reporting period. Mediation referrals are summarised in Table 3.5. As in previous years, the data should be considered in light of various factors. Firstly, referrals to mediation or other types of ADR may occur in a different reporting period to the conduct of that mediation or ADR process. Secondly, not all referrals to mediation or the conduct of mediation occur in the same reporting period as a matter was filed. This means that comparisons of mediation referrals or mediations conducted as a proportion of the number of matters filed in the Court during the reporting period are indicative only. Thirdly, the data presented on referrals to ADR during the reporting period does not include information about ADR processes that may have been engaged in by parties before the matter is filed in the Court, or where a private mediator is used during the course of the litigation. Similarly, the statistics provided in Table 3.5 do not include instances where judges of the Court order

experts to confer with each other to identify areas where their opinions are in agreement and disagreement without the supervision of a registrar.

In response to the COVID-19 pandemic, since 17 March 2020 the Court has modified its practice in conducting mediations. A large number of mediations are now conducted by remote access technology or by a hybrid of in-person and remote access technology.

In 2020–21, there was an 11 per cent increase in the number of matters referred to mediation compared with the 2019–20 reporting period, with increases in particular in the administrative and constitutional and human rights, native title and other federal jurisdiction NPAs.

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

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

The following section reports on the Court's work during the year to improve the operation and accessibility of the Court, including reforms to its practice and procedure. This section also reports on the Court's work during the year to contribute more broadly to enhancing the quality and accessibility of the Australian justice system, including the participation of judges in bodies such as the Australian Law Reform Commission and the Australian Institute of Judicial Administration, and in other law reform, community and educational activities.

An outline of the judges' work in this area is included in Appendix 8 (*Judges' activities*).

Table 3.5: Mediation referrals in 2020–21 by NPA and registry

NPA	NSW	VIC	QLD	WA	SA	NT	TAS	ACT	TOTAL
Administrative and constitutional law and human rights	17	15	13	2	1	1	0	1	50
Admiralty and maritime	1	0	1	0	0	0	0	0	2
Commercial and corporations	58	64	28	10	12	0	16	9	197
Employment and industrial relations	53	42	19	12	7	1	3	2	139
Federal crime and related proceedings	0	0	0	0	0	0	0	0	0
Intellectual property	21	29	5	2	3	0	0	0	60
Migration	1	1	1	0	0	0	0	0	3
Native title	4	0	15	8	2	1	0	0	30
Other federal jurisdiction	32	10	2	0	1	0	0	0	45
Taxation	2	0	1	1	0	0	0	0	4
Total	189	161	85	35	26	3	19	12	530

Special measures relating to COVID-19

The Court continued, where necessary, to operate under practices designed to minimise in-person attendance on court premises, with the Court's priority being the health and safety of the community, including parties, practitioners, judges and staff, and the families of all of these groups.

Online hearings continued to be utilised using remote access technology such as Microsoft Teams. Upgrades to the Court's information technology infrastructure initiated last year which included increased internet bandwidth and video conference enabled courtrooms allowed for increased online hearings with the necessary transcript support.

The Court continued to utilise the following special measures information notes:

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

A new Special Measures Information Note was introduced on 29 April 2021 for Appeals and Full Court Hearings (SMIN-5). SMIN-5 sets out arrangements for the conduct and management of appeals and Full Court hearings during the ongoing COVID-19 outbreak.

The Court has continued to operate at 80 per cent of its courtroom capacity, though at any given time this can depend upon the applicable restrictions across the different states and territories. The Court continues to monitor and adjust its practices and procedures to maximise its responsiveness to the ongoing challenges presented by 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. The Court continues to work with national and state Bar Associations to arrange pro bono referrals to counsel where a litigant does not already have representation.

eLodgment process improvements

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

Practice and procedure reforms

The National Practice Committee is responsible for developing and refining policy and significant principles regarding the Court's practice and procedure. It is comprised of the Chief Justice, NPA coordinating judges and the national appeals coordinating judges, and is supported by a number of registrars of the Court.

During the reporting year, the committee dealt with a range of matters including:

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

Liaison with the Law Council of Australia

The Court maintained a liaison with the Law Council of Australia, with discussions focused on the re-initiation of the Federal Court/Law Council of Australia Liaison Committee meeting following a break during the initial stages of the COVID-19 pandemic. The Federal Court/Law Council of Australia liaison meeting is held twice a year, with liaison on specific issues between representatives of the Law Council of Australia and leading judges from relevant NPAs 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 Court.

These services involved providing assistance to draft or amend pleadings or prepare affidavits, giving advice on how to prepare for a hearing,

advising on how to enforce a court order and dissuading parties from commencing or continuing unmeritorious proceedings. While the services are independent of the courts, facilities are provided within court buildings to enable meetings to be held with clients.

Tables 3.6, 3.7 and 3.8 provide broad statistics about the number of SRLs appearing in the Court as applicants in a matter (respondents are not recorded). As the recording of SRLs is not a mandatory field in the Court's case management system, and the representation status of a party during the course of a proceeding may vary from time to time, statistics shown in the tables are indicative only. In the reporting year, 570 people who commenced proceedings in the Court were identified as self-represented. The majority were appellants in migration appeals.

Table 3.6: Actions commenced by SRLs during 2020-21 by registry

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	TOTAL
SRLs	4	308	4	59	27	2	65	101	570
Percentage of total	1%	54%	1%	10%	5%	0%	11%	18%	100%

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

Table 3.7: Proceedings commenced by SRLs in 2020-21 by cause of action

CAUSE OF ACTION	TOTAL ACTIONS	% OF TOTAL
Administrative law	22	4%
Admiralty	0	0%
Appeals and related actions	395	73%
Bankruptcy	8	1%
Bill of Costs	0	0%
Competition law	2	0%
Consumer protection	2	0%
Corporations	4	1%
Cross claim	0	0%
Fair work	7	1%
Human rights	13	2%
Industrial	0	0%
Intellectual property	0	0%
Migration	64	12%
Miscellaneous	19	4%
Native title	0	0%
Taxation	5	1%
Total	541	100%

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

Table 3.8: Appeals commenced by SRLs in 2020–21 by cause of action

CAUSE OF ACTION	TOTAL ACTIONS	% OF TOTAL
Administrative law	7	2%
Admiralty	0	0%
Bankruptcy	14	4%
Competition law	0	0%
Consumer protection	1	0%
Corporations	0	0%
Fair work	6	2%
Human rights	0	0%
Industrial	0	0%
Intellectual property	0	0%
Migration	359	91%
Miscellaneous	7	2%
Native title	0	0%
Taxation	1	0%
Total	395	100%

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

Direct financial counselling project in bankruptcy proceedings

With the assistance of Consumer Action in Melbourne and Uniting Communities in Adelaide, the Court has, in conjunction with the Federal Circuit Court, been able to maintain a program of targeted financial counselling assistance to SRLs in bankruptcy proceedings. Since the latter part of 2014 in Melbourne and 2018 in Adelaide, a financial counsellor attends the courtroom in every bankruptcy list. During the COVID-19 pandemic, a financial counsellor has been available either by telephone or via Microsoft Teams. The registrar presiding 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 the Melbourne registry, SRLs are also now provided with the details of financial counselling services ahead of the first court return date.

In the Adelaide registry, referrals may also be made by registry staff when assisting an SRL by telephone or over the counter, and creditor's solicitors have also provided the financial counsellor's details to SRLs. The latter has facilitated the settlement of several matters before the filing of a creditor's petition or before the first return date before the Court.

During the reporting year, both Melbourne and Adelaide experienced reduced numbers of filings due to changes to the Bankruptcy Act because of COVID-19. Numbers are beginning to increase in both registries.

Registrars in Melbourne and Adelaide have reported favourably about the program, and view it 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 Court fees regulation (see below).

Court fees and exemption

Fees are charged under the Federal Court and Federal Circuit Court Regulation 2012 for filing documents; setting a matter down for hearing; hearings and mediations; taxation of bills of costs; and for some other services in proceedings in the Court.

During the reporting year, the rate of the fee that was payable depended on whether the party liable to pay was a publicly listed company (for bankruptcy filing and examination fees only); a corporation; a public authority (for bankruptcy filing and examination fees only); a person; a small business; or a not-for-profit association.

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

- human rights applications (other than an initial filing fee of \$55)
- some fair work applications (other than an initial filing fee of \$74.50)
- appeals from a single judge to a Full Court in human rights and some fair work applications
- an application by a person to set aside a subpoena
- an application under section 23 of the *International Arbitration Act 1974* for the issue of a subpoena requiring the attendance before or production of documents to an arbitrator (or both)
- an application for an extension of time
- a proceeding in relation to a case stated or a question reserved for the consideration or opinion of the Court
- a proceeding in relation to a criminal matter
- setting-down fees for an interlocutory application
- a proceeding in relation to a matter remitted to the Federal Court by the High Court under section 44 of the *Judiciary Act 1903*, 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* 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* has the same entitlements.

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

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

Freedom of information

Information Publication Scheme

As required by subsection 8(2) of the *Freedom of Information Act 1982*, 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* 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) is responsible for dealing with all media inquiries which usually relate to accessing files and requests for judgments. Duties also involve issues that can require high-level contact and coordination.

Critical to the DPI's effectiveness is the close cooperation and support of registries, judges' chambers, web team and those responsible for external broadcasting via streaming and Microsoft Teams. The role also involves briefing associates about how the Court deals with the media, arranging camera access in cases of public interest, and contacting journalists when mistakes have been made.

The pandemic has dramatically changed the way the Court operates – most significantly, through the use of Microsoft Teams and streaming so the public can follow individual cases. This has made cases much more accessible and easier for media. It facilitates the open justice principle, allowing many more to monitor proceedings than would otherwise be possible. Streaming – in particular – has been well-received, especially given the quality of the picture and

sound. The Federal Court was the first Court to ever live stream a hearing in 1999 and the commencement of a pilot program in February 2021 has given the use of this technology a massive boost.

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

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

- NSD206/2021: Christian Porter v ABC
- NSD426/2021: Joanne Dyer v Sue Chrysanthou
- NSD1485, 1486, 1487, 1826, 1440/2018: Ben Roberts-Smith v Fairfax Media; The Age; The Federal Capital Press; Jonathan Pearlman
- NSD1220/2020: Australian Securities & Investments Commission v Melissa Caddick & Anor
- NSD388/2021: Gary Newman v Minister for Health and Aged Care.

At the end of the reporting year, the combined number of page views for the Porter and related Dyer matters was 73,341, eclipsing the previous highest number of 47,224 for *Rush v Nationwide News*.

Community relations

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

Working with the Bar

Registries across the country hosted advocacy sessions and a number of bar moot courts and moot competitions and assisted with readers' courses. The Western Australian registry hosted a silks ceremony in March 2021 and the Victorian registry hosted the Monash General Moot (junior and senior division) in March 2021 and the JD Moot Competition Grand Final in May 2021.

User groups

User groups have been formed along NPA lines to discuss issues related to the operation of the Court, its practice and procedure, to act as a reference group for discussion of developments and proposals, and as a channel to provide feedback to the Court on particular areas of shared interest. During the reporting year, user groups met both nationally and locally in a number of practice areas.

Legal community

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

- **Adelaide** – the Essential Trial Advocacy Course.
- **Brisbane** – the Professor Michael Whincop Memorial Lecture.
- **Canberra** – the biannual Courts and Legal professionals meeting in November 2020 and April 2021.
- **Darwin** – a Native Title User Group.
- **Hobart** – the UN Day Lecture.
- **Melbourne** – National Commercial Law webinars, a migration seminar, insolvency user group meeting, Monash General Moot and the JD Moot Competition Grand Final.
- **Perth** – a pro bono lawyers function, the Summer Clerks Program Seminar on 'Judicial Registrar work at the Federal Court' and 'The Workings of the Federal Court', a WA Silks Ceremony, and an Australian Academy of Law presentation.
- **Sydney** – the Whitmore Lecture, the Australian Law Reform Commission seminars, the Judicial Conference of Australia, a Consultative Council of Australian Law Reporting Forum, and events for the Australian Judicial Officers Association and the Australasian Institute of Judicial Administration.

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.

The judges' meetings scheduled for November 2020 and March 2021 in Sydney did not proceed, in light of the COVID-19 pandemic.

During 2020–21 the Court offered the following education sessions:

- Cyber security presented by panellists from CyberCX
- Judicial wellbeing

- Working with registrars
- National Practice Area sessions on:
 - Administrative and Constitutional Law and Human Rights
 - Commercial and Corporations
 - Employment and Industrial Relations
 - Intellectual Property.

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 2020–21, due to the COVID-19 pandemic, the Federal Court was unable to provide five days of professional development activities for its judicial officers.

Work with international jurisdictions

Despite a number of projects and activities being postponed or cancelled as a result of the COVID-19 pandemic, the Federal Court continued to collaborate with a number of courts across the Asia-Pacific supporting regional local reform and development objectives.

The Court was able to re-engineer its major project, the Pacific Judicial Strengthening Initiative to be delivered remotely and to focus on the most pressing needs resulting from the pandemic. The Court's efforts to promote justice and the rule of law during this time of crisis were recognised by the 2021 World Justice Challenge, with the Initiative being selected as one of its global finalists.

As a particular response to the pandemic, Justices Collier and Logan assisted the Papua New Guinea judiciary to develop a practice note in relation to the hearing on the papers of appeals and other Supreme Court proceedings and later participated in the determination of appeals so heard.

Regional collaborations

Through the New Zealand government-funded Pacific Judicial Strengthening Initiative, the Court continued to conduct activities contributing to building fairer societies by enabling the provision of more accessible, just, efficient

and responsive justice services. The Initiative supports improvements among 15 participating Pacific Island Courts, across five thematic areas:

1. Leading and managing change locally.
2. Enabling marginalised and vulnerable groups to access justice in and through courts.
3. Professionalism.
4. Protection of human rights, including those who have suffered gender and family violence.
5. Efficiency, accountability and transparency.

The Court delivered 44 activities across all Partner Courts, engaging with 681 participants (44 per cent female). Twenty locally led grant activities were approved enabling Partner Courts to develop, implement and report on key priorities for their Courts. Since its commencement in 2016, the Initiative has delivered 200 activities and supported the delivery of 77 locally-led activities. These activities have contributed to building the capacity of 3,000 people (47 per cent female) and engaged a similar number of people in community consultations to promote awareness about their rights and how to access them through court.

To support Partner Courts to continue to operate during the COVID-19 pandemic, the Court delivered a series of webinars to discuss approaches and provide tools to ensure that Pacific Courts remained open. In addition, the Court developed and circulated weekly COVID-related resources as a way to support Partner Courts in the challenges they faced due to the pandemic. Regional online learning webinars were delivered and a range of materials and resources to support Partner Courts were made available on the PJSI website.

A collection of 20 toolkits, on a range of topics, have been designed in recent years to support change through the promotion of local use, management, ownership and sustainability of judicial development in Partner Courts. By developing and making available these resources, the Initiative aims to build local capacity to enable Partner Courts to address local needs and reduce reliance on external support.

World Intellectual Property Organisation

The Court has actively engaged with the World Intellectual Property Organisation (WIPO) in a number of projects. In 2020 it entered into a Memorandum of Understanding with WIPO in order to facilitate the Court's participation in 'WIPO Lex', a database hosted by WIPO of legislation and significant intellectual property cases from around the world. The database was launched in November 2020 and Australia was one of the 10 inaugural participants. Australia's contribution was uploaded and is maintained with the assistance of Justice Burley.

Justice Burley has also been appointed editor of a WIPO 'Intellectual Property Benchbook' for judges in the Philippines, Vietnam and Indonesia, with contributions from judges from each of those countries. This is an ongoing project and a first edition of the book is expected to be published in 2022. The Court is also contributing to a chapter on Patent procedure organised by WIPO.

Australian Competition and Consumer Commission

The Court and the Australian Competition and Consumer Commission entered into an MOU in June 2020, to add to a series of 'Judicial Primers' on competition law. The Primers have been published by the Organisation for Economic Co-operation and Development (OECD) for the benefit of competition law judges across Association of South Asian Nations (ASEAN) member states. In the past year, Justice O'Bryan supervised the drafting of the 5th primer concerning 'market definition' and the 6th primer concerning 'vertical effects' and participated in their launch at OECD/Korea Policy Centre Competition Seminars for Asia-Pacific judges in February and June respectively. The Judicial Primers are considered to be an important aspect of supporting effective implementation of competition policy and law in ASEAN countries.

PART 4

Management and
accountability

Management and accountability

Governance

Since 1990, the Federal Court has been self-administering, with a separate budget appropriation and reporting arrangement to the Parliament.

Under the *Federal Court of Australia Act 1976*, the Chief Justice is responsible for managing the Court's administrative affairs. The Chief Justice is assisted by the CEO and Principal Registrar.

The Act also provides that the Chief Justice may delegate any of his or her administrative powers to judges, and that the CEO and Principal Registrar may exercise powers on behalf of the Chief Justice in relation to the Court's administrative affairs.

In practice, the Court's governance involves two distinct structures: the management of the Court through its registry structure, and the judges' committee structure that facilitates the collegiate involvement of the judges of the Court. Judges also participate in the management of the Court through formal meetings of all judges. The registries and the judges' committees are discussed in more detail in this part.

Judges' committees

There are a number of committees of judges of the Court. These committees assist with the administration of the Court and play an integral role in managing issues related to the Court's administration, as well as its rules and practice.

An overarching Operations and Finance Committee, chaired by the Chief Justice, assists the Chief Justice with the management of the administration of the Court. The Chief Justice is also assisted by standing committees that focus on a number of specific issues. In addition, other ad hoc committees and working parties are established from time to time to deal with particular issues.

An overarching National Practice Committee assists the Chief Justice in the management of the business of the Court and on practice and procedure reform and improvement. There are also a small number of standing committees that focus on specific issues within the framework of the Court's practice and procedure.

All of the committees are supported by senior court staff. The committees report to all judges at the biannual judges' meetings.

For more information about committees, see Appendix 14.

Judges' meetings

National meetings of all judges are held on a biannual basis. A national judges' meeting was held by video conference in November 2020 and March 2021, which dealt with matters such as reforms of the Court's practice and procedure, amendments to the Rules of the Court, management of the Court's finances and updates on the Court's digital initiatives, including the progress of digital hearings.

External scrutiny

The Court was not the subject of any reports by a Parliamentary committee or the Commonwealth Ombudsman. The Court was not the subject of any judicial decisions or decisions of administrative tribunals regarding its operations as a statutory agency for the purposes of the *Public Service Act 1999* or as a non-corporate entity under the *Public Governance, Performance and Accountability Act 2013*.

Commonwealth Courts Corporate Services

Overview

The Commonwealth Courts Corporate Services (Corporate Services) includes communications, finance, human resources, library, information technology (IT), procurement and contract management, property, judgment publishing, risk oversight and management, and statistics.

Corporate Services is managed by the Federal Court CEO and Principal Registrar who consults with heads of jurisdiction and the other CEOs in relation to the performance of this function. Details relating to corporate services and consultation requirements are set out in an MOU.

Corporate Services generates efficiencies by consolidating resources, streamlining processes and reducing duplication. The savings gained from reducing the administrative burden on each of the courts are reinvested to support the core functions of the Courts.

Objectives

The objectives of Corporate Services are to:

- provide accurate, accessible and up-to-date information and advice
- standardise systems and processes to increase efficiency
- build an agile and skilled workforce ready to meet challenges and changes, and
- create a national technology framework capable of meeting the needs of the Courts into the future.

Purpose

Corporate Services is responsible for supporting the corporate functions of the Federal Court, Family Court, Federal Circuit Court and the National Native Title Tribunal.

During 2020–21, the work of Corporate Services focused on supporting the evolving needs of judges and staff across all the courts and tribunals, while delivering on required efficiencies to meet reduced appropriations.

The following outlines the work of Corporate Services, including major projects and achievements, during 2020–21.

The work of Corporate Services in 2020–21

Financial management

The Federal Court, Family Court and Federal Circuit Court have a Finance Committee which is made up of judges from the courts as well as the CEO and Principal Registrar.

These committees meet periodically and oversee the financial management of their respective courts, with Corporate Services supporting each of these committees.

As the Accountable Authority, the CEO and Principal Registrar of the Federal Court has overarching responsibility for the financial management of the three courts and Corporate Services, together forming the Federal Court of Australia entity.

Financial accounts

During 2020–21, revenue from ordinary activities totalled \$358.181 million.

Total revenue, in the main, comprised:

- an appropriation from government of \$275.748 million
- \$43.335 million of resources received free of charge, predominantly for accommodation occupied by the Court in Commonwealth Law Courts buildings and the Law Courts Building in Sydney
- \$34.545 million of liabilities assumed by other government agencies, representing the notional value of employer superannuation payments for the Courts' Judges, and
- \$4.209 million from the sale of goods and services and other revenue.

Total expenses as per the financial statements are \$359.182 million. This comprises \$105.751 million in judges' salaries and related expenses, \$123.972 million in employees' salaries and related expenses, \$42.424 million in property-related lease expenses, \$49.605 million in other administrative expenses, \$35.705 million in depreciation expenses and \$1.725 million for the write-down and impairment of assets and financial instruments and financing costs.

The net operating result from ordinary activities for 2020–21, as reported in the financial statements, is a deficit of \$1.001 million including depreciation expenses and the accounting impacts of AASB 16 Leases. Depreciation expenses in 2020–21 of \$35.705 million includes depreciation on right of use assets recognised under AASB 16 Leases. To reflect the underlying operating surplus of the Federal Court of Australia entity, in line with Department of Finance guidelines, depreciation expenses of \$35.705 million are excluded and principal payments of lease liabilities of \$18.217 million are included. This effectively reverses the impact of AASB 16 Leases on the underlying result and shows a net surplus from ordinary activities of \$16.487 million for 2020–21.

The surplus is an improvement on the budgeted break-even position due to judicial vacancies, the continued impact of COVID-19 on a number of operational expense areas, and the slower than expected appointment of a number of newly funded positions as a result of new government initiatives.

The Federal Court has no other comprehensive income to report in 2020–21.

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.

Equity increased from \$105.556 million in 2019–20 to \$116.356 million in 2020–21.

Program statements for each of the Court's programs can be found in Part 1.

Advertising and marketing services

As required under section 311A of the *Commonwealth Electoral Act 1918*, the Court must provide details of all amounts paid for advertising and marketing services. A total of \$155,583 was paid for recruitment advertising services in 2020–21. Payments for advertising the notification of native title applications, as required under the *Native Title Act 1993*, totalled \$68,080 over the reporting year.

The Court did not conduct any advertising campaigns in the reporting period.

Grant programs

The Federal Court made no grant payments in 2020–21.

Corporate governance

Audit and risk management

The CEO and Principal Registrar of the Federal Court certifies that:

- fraud control plans and fraud risk assessments have been prepared that comply with the Commonwealth Fraud Control Guidelines
- appropriate fraud prevention, detection, investigation and reporting procedures and practices that comply with the Commonwealth Fraud Control Guidelines are in place, and
- the entity has taken all reasonable measures to appropriately deal with fraud relating to the entity. There were no instances of fraud reported during 2020–21.

The entity had the following structures and processes in place to implement the principles and objectives of corporate governance:

- a single Audit Committee overseeing the entity that met five times during 2020–21. The committee comprises an independent chairperson, three judges from the Federal Court, three judges from the Family Court, two judges from the Federal Circuit Court and one additional external member. The CEO and Principal Registrars for each of the Courts, the Executive Director Corporate Services, the Chief Financial Officer and representatives from the internal audit service provider and the Australian National Audit Office (ANAO) attend committee meetings as observers
- internal auditors, O'Connor Marsden and Associates, conducted four internal audits during the year to test the entity's systems of internal control
- a risk management framework including a Risk Management Policy, a Risk Management Plan and a Fraud Control Plan
- internal compliance certificates completed by senior managers, and
- annual audit performed by the ANAO who issued an unmodified audit certificate attached to the annual financial statements.

Table 4.1: Audit committee, 30 June 2021

MEMBER NAME	QUALIFICATIONS, KNOWLEDGE, SKILLS OR EXPERIENCE (INCLUDE FORMAL AND INFORMAL AS RELEVANT)	NUMBER OF MEETINGS ATTENDED/ TOTAL NUMBER OF MEETINGS	TOTAL ANNUAL REMUNERATION
Ian Govey AM	<ul style="list-style-type: none"> ■ Bachelor of Laws (Hons), Bachelor of Economics. ■ Fellow, Australian Academy of Law. ■ Chair, Banking Code Compliance Committee. ■ Chair, Federal Court of Australia Audit Committee. ■ Deputy Chair, Commonwealth Director of Public Prosecutions Audit Committee. ■ Director, Australian Centre for International Commercial Arbitration. ■ Director, Australasian Legal Information Institute (AustLII). ■ Acting Independent Reviewer, ACT Government Campaign Advertising. ■ Member, ACT Community Services Directorate Audit Committee. <p>Previously:</p> <ul style="list-style-type: none"> ■ Head, Australian Government Solicitor. ■ SES positions in the Australian Public Service, including Deputy Secretary of the Commonwealth Attorney-General's Department. 	4/4	\$21,150
Justice Nicholas	<ul style="list-style-type: none"> ■ Bachelor of Laws, Bachelor of Arts. ■ Previously a barrister practising in the areas of commercial law, intellectual property law and trade practices law. ■ Appointed Senior Counsel in 2001. ■ Appointed as a Judge to the Federal Court of Australia in 2009. 	3/4	\$0
Justice Murphy	<ul style="list-style-type: none"> ■ LLB, B Juris. ■ Senior Partner of law firm (1990–95). ■ Chairman of national law firm (2005–11) with responsibilities including financial forecasts, budgeting and risk management. ■ Board Member, Vice President and President, KidsFirst (formerly Children's Protection Society) (2005–present) with responsibilities including financial forecasts, budgeting and risk management. 	4/4	\$0

MEMBER NAME	QUALIFICATIONS, KNOWLEDGE, SKILLS OR EXPERIENCE (INCLUDE FORMAL AND INFORMAL AS RELEVANT)	NUMBER OF MEETINGS ATTENDED/ TOTAL NUMBER OF MEETINGS	TOTAL ANNUAL REMUNERATION
Justice Farrell	<ul style="list-style-type: none"> ■ BA LLB (Hons) University of Sydney. ■ Deputy President, Australian Competition Tribunal. ■ Fellow, Australian Academy of Law. ■ Honorary life member, Business Law Section, Law Council of Australia. <p>Previously:</p> <ul style="list-style-type: none"> ■ President, Takeovers Panel (2010–12). ■ Member, Takeovers Panel (2001–10). ■ Chairman, Business Law Section, Law Council of Australia (2008–09). ■ Member, Executive, Business Law Section (2004–13). ■ Chair, Corporations Committee (2000–03). ■ Representative, Law Council, ASX Corporate Governance Council (2001–12). ■ Partner, Freehill Hollingdale and Page (1984–1992, 1994–2000). ■ Consultant, Freehills (2000–12). ■ National Coordinator, Enforcement, Australian Securities Commission (1992–93). ■ Acting member, Australian Securities Commission (1993). ■ Non-executive director and member of the audit committee for profit companies and government entities in the electricity generation, international banking, clothing manufacture and retail sectors (over periods between 1995–2010). ■ Non-executive director and member of the audit committee of not-for-profit entities the Securities Institute of Australia, the Australian Institute of Management, the National Institute of Dramatic Art and the Fred Hollows Foundation (over periods 1995–2017). ■ Fellow, Australian Institute of Management. ■ Fellow, Australian Institute of Company Directors. 	4/4	\$0

MEMBER NAME	QUALIFICATIONS, KNOWLEDGE, SKILLS OR EXPERIENCE (INCLUDE FORMAL AND INFORMAL AS RELEVANT)	NUMBER OF MEETINGS ATTENDED/ TOTAL NUMBER OF MEETINGS	TOTAL ANNUAL REMUNERATION
Justice Benjamin (Retired Sept 2020)	<ul style="list-style-type: none"> ■ Diploma of Laws (SAB). Master of Laws (University of Technology) with a major in Dispute Resolution. Honorary Master of Laws (Applied Law) and Fellow of the College of Law. ■ Presidential Member, Administrative Appeals Tribunal. ■ Chair, Family Court Finance Committee. ■ Deputy Chair, Academic Board, College of Law. <p>Previously:</p> <ul style="list-style-type: none"> ■ Chair, Federal Courts' Costs Committee. ■ President, NSW Law Society. ■ Chair and Director, College of Law. ■ Trustee, Public Purpose Fund under the <i>Legal Profession Act 1987</i>. ■ Director, Solicitors Superannuation Pty Ltd. ■ Director, Purvis Van Eyk & Company Pty Ltd (an actuarial and financial research company). ■ Executive Member, Management Committee, Rose Consulting Group (Consulting Civil Engineers). ■ Legal Representative, South-Eastern Sydney Regional Area Health Board, Institutional Ethics Committee. 	1/1	\$0
Justice Harper	<ul style="list-style-type: none"> ■ BA (Hons), LLB, PhD (Uni Syd). ■ Member, Family Court Finance Committee. ■ Member, Family Court Conduct Committee. 	4/4	\$0
Justice McEvoy	<ul style="list-style-type: none"> ■ B.A; LL.B. (Hons); LL.M (Melb); S.J.D. (Virginia). ■ Visiting Professor, University of Virginia School of Law. ■ Finance Committee, Family Court of Australia. ■ Board member; member of audit committee; Parenting Research Centre, 2010–16. ■ Queen's Counsel, Victoria, 2016–19. ■ Barrister, Victorian Bar, 2002–19. ■ Senior Associate, Freehills 1999–2002. 	3/4	\$0

MEMBER NAME	QUALIFICATIONS, KNOWLEDGE, SKILLS OR EXPERIENCE (INCLUDE FORMAL AND INFORMAL AS RELEVANT)	NUMBER OF MEETINGS ATTENDED/ TOTAL NUMBER OF MEETINGS	TOTAL ANNUAL REMUNERATION
Judge Driver	<ul style="list-style-type: none"> ■ Bachelor of Arts/Law ANU. ■ Chair, Federal Circuit Court Legal Committee. ■ Member, Federal Circuit Court Finance Committee. ■ Judge, Federal Magistrates Court and Federal Circuit Court since 31 July 2000. ■ Member, Australian Institute of Judicial Administration. ■ Member, Law Council of Australia, Federal Litigation Section. ■ Member, Judicial Conference of Australia. ■ Previously held a number of Senior Executive Service positions in the Australian Public Service, Office of the Australian Government Solicitor. 	2/4	\$0
Justice Howard	<ul style="list-style-type: none"> ■ Bachelor of Laws. ■ Fulbright Scholar. ■ Member, Fulbright Scholarship Legal Assessment panel. ■ Visiting Foreign Judicial Fellowship, Federal Judicial Center, Washington DC (2018). ■ LAWASIA, Judicial Section Coordinating Committee. ■ President, QUT Law Alumni Chapter (2014-18). ■ Chair, LAWASIA Family Law Section (2011-14). ■ Board Member, Centacare, Queensland (2004-12). ■ Member, Advisory Board, St Vincent de Paul Society, Queensland (1992-94). 	1/4	\$0
Frances Cawthra (Retired Dec 2020)	<ul style="list-style-type: none"> ■ Frances Cawthra is the Chief Executive Officer of Cenitex, the Victorian Government's IT shared service provider. Cenitex provides essential ICT services including identity and network management, cyber security, user workspace and cloud services to more than 30 Victorian Government departments, portfolio agencies, associated agencies and government entities. ■ Prior to joining Cenitex, Frances was Chief Finance Officer with the Australian Taxation Office and has held senior roles in a variety of organisations including the National Australia Bank, United Energy and Coles Myer. ■ She has been recognised for her leadership in the areas of financial and resource management, investment strategy, procurement and contract management. 	2/2	\$0

MEMBER NAME	QUALIFICATIONS, KNOWLEDGE, SKILLS OR EXPERIENCE (INCLUDE FORMAL AND INFORMAL AS RELEVANT)	NUMBER OF MEETINGS ATTENDED/ TOTAL NUMBER OF MEETINGS	TOTAL ANNUAL REMUNERATION
David Donovan (Appointed Jan 2021)	CPA. Masters of Commerce; Graduate Certificate Professional Accounting. Fellow of the Institute of Public Accountants (FIPA). David Donovan is the Chief Finance Officer of the Commonwealth government Digital Transformation Agency (DTA). Prior to joining DTA, David was the Chief Financial Officer of the Administrative Appeals Tribunal where he led a team of finance professions in all aspects of the financial management of the Tribunal. Prior to the AAT David was employed across financial roles at the CSIRO, Department of Human Services and National Health Performance Authority	2/2	\$0

The direct electronic address of the charter determining the functions of the audit committee for the entity can be found at https://www.fedcourt.gov.au/about/corporate-information/audit-committee-charter/_nocache.

Compliance report

There were no significant issues reported under paragraph 19(1)(e) of the *Public Governance, Performance and Accountability Act 2013* that relate to non-compliance with the finance law in relation to the entity.

Correction of errors in the 2019–20 annual report

On page 54 of the 2019–20 annual report, there was an error in the performance pay information. There was a third employee who received a \$5,000 retention bonus. The information should have read as follows: 'The Court's employment arrangements do not provide for performance pay for all employees. However, one employee's employment arrangement provided for a bonus, subject to their completion of a project. The bonus paid was \$27,480. Another two employees are eligible for a retention bonus each year (\$5,000 and \$2,000 respectively per annum).'

Security

The safety and security of all people who attend or work in the Courts and the Tribunal is a high priority.

During 2020–21, \$6.2 million was expended for court security services, including the presence of security officers, weapons screening, staff training and other security measures. This figure includes funding spent on security equipment maintenance and equipment upgrades.

Other achievements during the reporting year include:

- Implementation of the project to upgrade security equipment and systems which will ensure Court facilities continue to provide effective physical security.
- Replacing the ageing security incident recording system with an integrated risk and security incident management system.

The Marshal and Sheriff continues to work very closely with the Australian Federal Police and the police services of the states and territories on a range of matters including executing orders emanating from family law matters such as the recovery of children, the arrest of persons and the prevention of parties leaving Australia when ordered not to do so, as well as a range of information exchange arrangements. These arrangements improve our understanding of risks associated with individuals coming to court.

Over the next 12 months, the Court will complete the roll-out of upgraded security infrastructure commenced in 2020–21. The development of a security risk culture emphasising the integrated nature of personal, physical and information security continues through a targeted communications plan. The Court will continue to develop its cyber security capacity and culture.

Purchasing

The Court's procurement policies and procedures, expressed in the Court's Resource Management Instructions, are based on the requirements of the *Public Governance, Performance and Accountability Act 2013*, the Commonwealth Procurement Rules and best practice guidance documents published by the Department of Finance. The Court achieves a high level of performance against the core principles of achieving value for money through efficient, effective and appropriately competitive procurement processes.

Information on consultancy services

The Court's policy on the selection and engagement of all consultants is based on the Australian Government's procurement policy framework as expressed in the Commonwealth Procurement Policy and guideline documentation published by the Department of Finance.

The main function for which consultants were engaged related to the delivery of specialist and expert services, primarily in connection with the Court's IT infrastructure, international programs, finance, property, security and business elements of the Court's corporate services delivery.

Depending on the particular needs, value and risks (as set out in the Court's Procurement Information), the Court uses open tender and limited tender for its consultancies. The Court is a relatively small user of consultants. As such, the Court has no specific policy by which consultants are engaged, other than within the broad frameworks above, related to skills unavailability within the Court or when there is need for specialised and/or independent research or assessment.

Information on expenditure on all court contracts and consultancies is available on the AusTender website at www.tenders.gov.au.

Consultants

During 2020–21, two new consultancy contracts were entered into, involving total actual expenditure of \$35,200. In addition, 11 ongoing consultancy contracts were active during 2020–21, which involved total actual expenditure of \$780,968.

Table 4.2 outlines expenditure trends for consultancy contracts for 2020–21.

Competitive tendering and contracting

During 2020–21, there were no contracts let to the value of \$100,000 or more that did not provide for the Auditor-General to have access to the contractor's premises.

During 2020–21, there were no contracts or standing offers exempted by the CEO and Principal Registrar from publication in the contract reporting section on AusTender.

Exempt contracts

During the reporting period, no contracts or standing offers were exempt from publication on AusTender in terms of the *Freedom of Information Act 1982*.

Procurement initiatives to support small business

The Court supports small business participation in the Commonwealth Government procurement market. Small and medium enterprises (SMEs) and small business participation statistics are available on the Department of Finance's website at <https://www.finance.gov.au/procurement/statistics-on-commonwealth-purchasing-contracts/>

In compliance with its obligations under the Commonwealth Procurement Rules, to achieve value for money in its purchase of goods and services, and reflecting the scale, scope and risk of a particular procurement, the Court applies procurement practices that provide SMEs the appropriate opportunity to compete for its business.

Table 4.2: Expenditure on reportable consultancy contracts, current reporting period (2020–21)

	NUMBER	EXPENDITURE \$ (GST INC.)
New contracts entered into during the reporting period	2	\$35,200
Ongoing contracts entered into during a previous reporting period	11	\$780,968
Total	13	\$816,168

Table 4.3: Expenditure on reportable non-consultancy contracts, current reporting period (2020–21)

	NUMBER	EXPENDITURE \$ (GST INC.)
New contracts entered into during the reporting period	182	\$22,342,228
Ongoing contracts entered into during a previous reporting period	229	\$47,424,080
Total	411	\$69,766,308

Table 4.4: Organisations receiving a share of reportable consultancy contract expenditure, current reporting period (2020–21)

NAME OF ORGANISATION	EXPENDITURE \$ (GST INC)
Centre for Judicial Studies Pty Ltd (ABN 77 088 423 394)	\$201,823
Diacher Pty Limited (ABN 44 006 170 958)	\$115,653
Law and Development Partners Pty Ltd (ABN 66 116 168 695)	\$104,280
Carolyn Graydon (ABN 42 912 172 668)	\$90,580
Yarrendale Enterprises Pty Ltd (ABN 68 092 581 078)	\$89,100

Table 4.5: Organisations receiving a share of reportable non-consultancy contract expenditure current reporting period (2020–21)

NAME OF ORGANISATION	EXPENDITURE \$ (GST INC)
MSS Security Pty Ltd	\$6,690,677
NTT Australia Pty Ltd	\$5,889,244
Evolve FM Pty Ltd (ABN 52 605 472 580)	\$5,471,333
Fredon Security Pty Limited (ABN 55 600 423 836)	\$3,251,305
Engie AV Technologies Pty Limited (ABN 61 007 012 544)	\$2,942,868

Asset management

Commonwealth Law Court buildings

The Court occupies Commonwealth Law Court buildings in every Australian capital city (eight in total). With the exception of two Commonwealth Law Courts in Sydney, the purpose-built facilities within these Commonwealth-owned buildings are shared with other largely Commonwealth Court jurisdictions.

From 1 July 2012, the Commonwealth Law Court buildings have been managed in collaboration with the building 'owners', the Department of Finance, under revised 'Special Purpose Property' principles. Leasing and management arrangements are governed by whether the space is designated as special purpose accommodation (courtrooms, chambers, public areas) or usable office accommodation (registry areas).

An interim MOU was signed by the Court with Department of Finance for 2018–19 and this MOU will roll over monthly while the Court and Department of Finance negotiate a long-term agreement. The longer-term lease agreement MOU is expected to come into effect early in the 2021–22 financial year.

Registries – leased

Corporate Services also manages some 13 registry buildings across the nation, located in leased premises. Leased premises locations include Albury, Cairns, Dandenong, Dubbo, Launceston, Lismore, Newcastle, Rockhampton, Sydney, Townsville and Wollongong. There are also arrangements for the use of ad hoc accommodation for circuiting in 25 other regional locations throughout Australia.

Regional registries – co-located

The Courts co-locate with a number of state court jurisdictions, leasing accommodation from their state counterparts. The Court has Federal Court, Family Court and Federal Circuit Court registries in Darwin. The registries are co-located in the Northern Territory Supreme Court building under the terms of a Licence to Occupy between the Court and the Northern Territory Government.

Queens Square, Sydney

The Federal Court in Sydney is located in the Law Courts Building in Queens Square, co-tenanting with the New South Wales Supreme Court. This building is owned by a private company (Law Courts Limited), a joint collaboration between the Commonwealth and New South Wales governments. The Court pays no rent, outgoings or utility costs for its space in this building.

Projects and capital works delivered in 2020–21

The majority of capital works delivered in 2020–21 were projects addressing the urgent and essential business needs of the Courts. Projects undertaken or commenced included the following:

- Completed fitout of a new dedicated court building in Rockhampton in a Queensland Government building within the legal precinct.
- Completed upgrade to all security backend systems, access controls, alarms and CAPS CCTV through the Courts' premises.
- Completed design works for the construction of additional jury courtrooms and judges' chambers in the Queens Square Law Courts building in Sydney. Construction works are scheduled to occur during the 2021–22 financial year.
- Worked with the building owner, the Department of Finance, to complete the upgrade of Child Dispute Services facilities, lifts, and bathroom and kitchen facilities throughout a number of Commonwealth Law Courts buildings.
- Worked with the building owner, the Department of Finance, for the upgrade and carpet replacement throughout a number of Commonwealth Law Courts building. The upgrades will continue through the 2021–22 financial year.

Environmental management

The Court provides the following information as required under section 516A of the *Environment Protection and Biodiversity Conservation Act 1999*.

The Court, together with other jurisdictions in shared premises, ensures all activities are undertaken in an environmentally sustainable way, and has embedded ecologically sustainable development principles through the following:

- an Environmental Policy, which articulates the Court's commitment to raising environmental awareness and minimising the consumption of energy, water and waste in all accommodation, and
- a National Environmental Initiative Policy, which is intended to encourage staff to adopt water and energy savings practices. It provides clear recycling opportunities and guidance, encourages public transport and active travel to and from the workplace.

Monitoring of actual impacts on the environment

The Court has an impact on the environment in a number of areas, primarily in the consumption of resources. Table 4.6 lists environmental impact/usage data where available. The data is for all the Federal Court jurisdictions over the last five financial years. Before the amalgamation, all Courts reported separately, and only Family Court and Federal Circuit Court figures were reported previous to the 2016–17 financial year).

Measures to minimise the Court's environmental impact: Environmental management system

The Court's environmental management system has many of the planned key elements now in place. They include:

- an environmental policy and environmental initiatives outlining the Court's broad commitment to environmental management, and
- an environmental risk register identifying significant environmental aspects and impacts for the Court and treatment strategies to mitigate them.

Other measures

During 2020–21, the Court worked within its environmental management system to minimise its environmental impact through a number of specific measures, either new or continuing.

Energy

- Replacement of conventional florescent and halogen lighting with energy saving LED lighting.
- Replacement of appliances with energy efficient models.
- Review of electricity contracts to ensure value for money.

Information technology

- E-waste was recycled or reused where possible, including auctioning redundant but still operational equipment.
- Fully recyclable packaging was used where possible.

Table 4.6: The Court's environmental impact/usage data, 2016–17 to 2020–21

		2016–17	2017–18	2018–19	2019–20	2020–21
Energy usage – privately leased sites (stationary) ¹		5,315 GJ	5,483 GJ	4,353 GJ	3,615 GJ	3,349 GJ
Transport vehicles – energy usage ²	Petrol	112,721 L/ 970,500 km	146,216 L/ 1,251,442 km	119,476 L/ 1,058,735 km	123,787 L/ 1,231,264 km	134,781 L/ 1,303,959 km
	Diesel	+ 59,776 L/ 650,750 km	+ 54,250 L/ 553,917 km	+ 58,233 L/ 613,562 km	43,519 L/ 450,433 km	52,521 L/ 548,504 km
	Dual fuel	+ 4,749 L/ 83,420 km	+ 6,099 L/ 61,559 km	+ 4,976 L/ 84,872 km	10,652 L/ 106,918 km	
	CO₂	6535 GJ or 436.3 tonnes	7095 GJ or 502.9 tonnes	6593 GJ or 461 tonnes	443 tonnes	470 tonnes
Paper usage – office paper (Reams)	FCFCC	29,576	27,192	27,049	28,651	21,917
	FCA	6403	7825	8,787	5,866	4,734
	TOTAL	35,979	35,017	35,836	33,812	26,651

FCFCC (Family Court and Federal Circuit Court).

¹ The Department of Finance reports for the Commonwealth Law Courts; these figures are for the leased sites only.

² The Courts utilise 9 hybrid vehicles previously reported under Dual Fuel. For the reporting year 2020–21, hybrid vehicles are reported under Petrol Vehicles. The Courts also utilised one electric vehicle (EV) for the period. Data for the km travelled was not available at the time of this report.

Paper

- An electronic court file was introduced for the Federal Court and the Federal Circuit Court (general federal law) in 2014. Matters commencing with the Courts are now handled entirely electronically. Over 96,506 electronic court files have been created, comprising almost 1,282,461 electronic documents, effectively replacing the use of paper in court files. This is an increase of 10,992 electronic court files and 240,864 electronic court documents from 2019–20.
- Family law eFiling also continues to be expanded, with over 93 per cent of divorce applications now being electronically filed. This is an increase of 6 per cent from 2019–20.
- Clients are encouraged to use the online Portal, and staff are encouraged to send emails rather than letters where feasible.
- Secure paper (e.g. confidential) continued to be shredded and recycled for all court locations.
- Non-secure paper recycling was available at all sites.
- Printers are initially set to default double-sided printing and monochrome.
- Recycled paper (7,337 reams) comprises 28 per cent of total paper usage. The overall reams total 2020–21 has decreased by 1,437 reams. This is due to the increased use of electronic filing and communication were feasible, as well as working from home during COVID-19 restrictions. The entity will remind officials on their return to work of the electronic protocols and highlight the benefits of our learned practices working from home without a printer.

Waste/cleaning

- Provision for waste co-mingled recycling (e.g. non-secure paper, cardboard, recyclable plastics, metals and glass) forms a part of cleaning contracts, with regular waste reporting included in the contract requirements for the privately leased sites.
- Printer toner cartridges continued to be recycled at the majority of sites.
- Recycling facilities for staff personal mobile phones were permanently available at key sites.

- Secure paper and e-waste recycling was available at all sites.

Property

Fit-outs and refurbishments continued to be conducted in an environmentally responsible manner including:

- recycling demolished materials where possible
- maximising reuse of existing furniture and fittings
- engaging consultants with experience in sustainable development where possible and including environmental performance requirements in relevant contracts (design and construction)
- maximising the use of environmentally friendly products such as recycled content in furniture and fittings, low VOC (volatile organic compound) paint and adhesives, and energy efficient appliances, lighting and air conditioning
- installing water and energy efficient appliances, and
- the Court's project planning applies ecologically sustainable development principles from 'cradle to grave' – taking a sustainable focus from initial planning through to operation, and on to end-of-life disposal. Risk planning includes consideration of environment risks, and mitigations are put in place to address environmental issues.

Travel

During COVID-19 restrictions, less travel was undertaken by officials and electronic meeting platforms were relied upon as an alternative. Although some staff travel is unavoidable, the entity will continue to support the use of video conferencing and other lessons learned on the practice of remote communications where feasible and practicable.

Additional ecologically sustainable development implications

In 2020–21, the Court did not administer any legislation with ecologically sustainable development implications, nor did it have outcomes specified in an Appropriations Act with such implications.

Management of human resources

Staffing

At 30 June 2021, the Court engaged 1,157 employees under the *Public Service Act 1999*. This figure includes 781 ongoing and 376 non-ongoing employees.

The engagement of a large number of non-ongoing employees is due to the nature of engagement of judges' associates, who are typically employed for a specific term of 12 months. This arrangement is reflected in the Courts' retention figures, as those engaged for a specific term transition to other employment once their non-ongoing employment ends.

The *Courts Administration Legislation Amendment Act 2016* designated all employees of the Federal Court, the Family Court and the Federal Circuit Court to be employees of the Federal Court of Australia. Employees are also engaged by the Federal Court to support the operation of the National Native Title Tribunal.

More information is provided in Appendix 9 (*Staffing profile*).

COVID-19

A key focus throughout 2020–21 has been on providing employees with a safe workplace throughout the pandemic. The Court has followed the health advice provided by state and federal government bodies at each of our registries, as well as commissioning further expert advice as required.

Employees have been consulted on our safety processes via employee representative bodies such as our National Consultative Committee and our Health and Safety Committee to ensure the COVIDSafe practices we implemented were appropriately tailored to our workplaces.

One of the ongoing changes we will be making to our workplace following on from the pandemic is providing employees, where their role allows it, with the option of a hybrid work model where employees spend a proportion of each week working from our premises and from their homes. Consistent feedback from employees and people leaders is that employees have enjoyed the flexibility and improved work-life balance of working from home and there has been no trade off in productivity or performance.

Employee wellbeing

The Court has focused on supporting employee wellbeing and has implemented a number of initiatives to support employees through the challenges they may be facing, whether they are professional or personal in nature. Ongoing initiatives include ensuring all employees can access a free and confidential counselling service via our Employee Assistance Provider as well as the option of attending seminars on important topics such as building resilience.

Where employees have faced significant events such as extended lockdowns, we have engaged professional wellbeing providers to lead wellbeing and mindfulness sessions for employees. The focus of these sessions has been varied, extending to topics such as home schooling, with employees also having the option to invite family and friends to certain sessions.

Respectful workplace behaviours

The Court is committed to providing its employees a workplace environment where they are treated with dignity, courtesy and respect and it has adopted a zero tolerance approach to inappropriate workplace behaviours. The Court reviewed its anti-discrimination, bullying and harassment policies in 2020–21 to ensure they remained current and at best practice standards and engaged professional legal advisors to assist with this review. All Court employees were provided with the opportunity to attend consultation sessions and provide input on these important policies. One of the important outcomes of this policy review is that the Court now has formal processes in place for employees to raise concerns if they feel they have experienced any inappropriate behaviour by a judge.

Disability reporting mechanism

The *National disability strategy 2010–2020* is Australia's overarching framework for disability reform. It acts to ensure the principles underpinning the United Nations Convention on the Rights of Persons with Disabilities are incorporated into Australia's policies and programs that affect people with disability, their families and carers.

All levels of government will continue to be held accountable for the implementation of the strategy through biennial progress reporting to the Council of Australian Governments. Progress reports can be found at www.dss.gov.au.

Disability reporting is included in the Australian Public Service Commission's *State of the service* reports and the *APS Statistical bulletin*. These reports are available at www.apsc.gov.au.

Employment arrangements

The remuneration of the CEO and Principal Registrars for the Federal Court, the Family Court and the Federal Circuit Court, and the Registrar of the National Native Title Tribunal, who are holders of statutory offices, is determined by the Remuneration Tribunal.

The Courts' Senior Executive Service (SES) employees are covered by separate determinations made under section 24(1) of the *Public Service Act 1999*.

The *Federal Court of Australia Enterprise Agreement 2018–2021* covers most non-SES employees and commenced on 7 August 2018.

One undertaking was made in relation to the enterprise agreement in respect to the minimum number of hours that part-time workers must be paid per occasion.

Individual flexibility arrangements are provided for in the enterprise agreement and are used to negotiate employment arrangements that appropriately reflect individual circumstances. Employees and the Court may come to an agreement to vary such things as salary and other benefits.

Some transitional employment arrangements remain, including those described in Australian Workplace Arrangements and common law contracts.

At 30 June 2021, there were:

- five employees on Australian workplace agreements
- one hundred and ninety five employees on individual flexibility arrangements
- twenty employees on s 24 determinations, and
- one thousand two hundred and fifty employees (including casual employees) covered by an enterprise agreement.

In addition to salary, certain employees have access to a range of entitlements including leave, study assistance, salary packaging, guaranteed minimum superannuation payments, membership of professional associations and other allowances.

The Court's employment arrangements do not provide for performance pay for all employees. However, one employee's employment arrangement provided for a bonus, contingent on agreed KPIs being met. The bonus paid was \$10,000. Another employee is eligible for a retention bonus each year (\$2,000 per annum).

The Court has a range of strategies in place to attract, develop, recognise and retain key staff, including flexible work conditions and individual flexibility agreements available under the enterprise agreement.

Work health and safety

The Court has maintained its focus on providing employees with a safe and hazard free workplace. The Court reviewed and updated its workplace health and safety policies in 2020–21 to ensure they remained current and appropriate.

The Court consults with employees broadly on workplace health and safety matters and has a formal Health and Safety Committee in place. The committee met at least once every three months to discuss measures to assure health and safety in the workplace.

In line with the Court's focus on employee wellbeing, the Court recognises the importance of early intervention strategies and supporting staff to achieve a timely return to work following injury or illness. The Court's commitment to rehabilitation is reflected in Court employees being able to return to work around 23 per cent sooner than the average for Commonwealth agencies. The Court's improved safety performance is similarly reflected in overall workers compensation claim costs decreasing by 25 per cent between 2017–18 and 2020–21.

Reconciliation Action Plan

The inaugural Federal Court entity Reconciliation Action Plan (RAP) for 2020–21 was launched in September 2020. 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. For more information on the initiatives implemented to date, see Part 2 (*Year in review*).

Information technology

The work of the Information Technology (IT) section is focused on creating a technology environment that is simple, follows contemporary industry standards and meets the evolving needs of judges and staff across all of the Courts and Tribunals.

Achievements for 2020–21 follow.

IT security

Investment in IT security continues to be critical, in an environment increasingly reliant on technology to operate. Various measures were implemented to enhance the protection of Court information and assets by reducing IT security risks and improving general IT security maturity levels.

The Court has committed itself to the continued strengthening of its cyber security maturity in line with the Australian Cyber Security Centre recommendations and Protective Security Policy Framework requirements. This included the appointment of a new Chief Information Security Officer in early 2021, to lead capability uplift across people, processes and technology through a strategic cyber security improvement program for 2021–22.

Work also continued on consolidating IT systems and amalgamating projects targeted at simplifying the combined court environment to deliver more contemporary practices and efficiency improvements to reduce the cost of delivery.

Courtroom video conferencing

Courtroom video conferencing infrastructure has been a critical element to the Courts' COVID-19 response. A further 22 courtrooms were fitted out with fixed video conferencing infrastructure. This increases the penetration of courtrooms with fixed video conference capability from 45 per cent to 58 per cent.

Leveraging the investments made in the 2019–20 year to modernise and consolidate the video conference network, a pilot was conducted in February 2020 in the Federal Court of Australia to stream the video of a hearing to the Internet. The pilot was well received and provided a mechanism by which members of the public and the media were able to observe the hearing without the need to physically travel to the courtroom. This allows social distancing within the courtroom to be more easily managed.

Since the pilot, more than 60 hearings have been streamed using this facility. Furthermore, recent ceremonial sittings have been streamed allowing relatives and colleagues of Judges who would otherwise not be able to observe the sitting due to travel restrictions to do so. Seminars conducted by the Court have also been streamed allowing the work of the Court to continue in all its forms while complying with the health orders.

The new video conference network allows participants to connect directly the courtroom video using a standard web browser. When conducting hearings in hybrid courtrooms, in which some participants are physically in the room and others remote, this has a number of advantages over Microsoft Teams, including control of the screen layout and digital evidence display.

The video conference network has been established on a unified communications platform that allows it to replace the Courts' aged telephony network. The migration to this new arrangement has commenced, but various state lockdowns in the fourth quarter of 2020–21 delayed the retirement of the old systems which were targeted for completion in the second half of 2020.

Online hearings and live streaming have also helped to manage courtroom capacities and social distancing with the constant pivot required by the Court to adhere to government restrictions.

The platform provides statistics of viewers (but not who viewed) that tuned into watch the live stream. The Court found interesting viewer statistics in some of its high profile matters. These include:

Table 4.7: Unique views in online high profile matters

MATTER	LISTING	UNIQUE VIEWS
NSD426/202 <i>Joanne Elizabeth Dyer v Sue Chrysanthou & Anor</i>	24 May 2021	2,244
NSD206/2021 <i>Charles Christian Porter v Australian Broadcasting Corporation ACN 429 278 345 & Anor</i>	7 May 2021	2,182
NSD1485/2018 <i>Ben Roberts-Smith v Fairfax Media Publications Pty Ltd ACN 003 357 720 (and related matters)</i>	28 June 2021	908
VID1252/2019 <i>Katherine Prygodicz & Ors v Commonwealth Of Australia (the 'Robodebt' matter)</i>	6 May 2021	437
NSD246/2020 <i>Australian Information Commissioner v Facebook Inc & Anor</i>	14 May 2021	184
NSD388/2021 <i>Gary Newman v Minister For Health and Aged Care</i>	12 May 2021	161
NSD1220/2020 <i>Australian Securities & Investments Commission v Melissa Louise Caddick & Anor</i>	29 June 2021	104

Remote access technologies

As part of the implementation of the Courts' work from home policy, a decision was taken to expand the number of laptops in the PC fleet so that every staff member who could work from home would be provided with a Court laptop. The use of remote access technologies has remained high and further investments have been made to make the remote access virtual private network technology more robust and performant for judges and staff working from home.

Microsoft Teams

Microsoft Teams remains a critical tool in the delivery of virtual and hybrid courtrooms. Practitioners and parties have shown considerable agility in adopting the use of this technology. Feedback has shown that virtual courtrooms are preferred for some case management hearings.

The speed at which the Courts and practitioners were able to pivot between in-person hearings and virtual courtrooms during the various lockdowns this year has very impressive.

A key focus for 2021–22 will be to determine how Teams and other web or video conferencing technologies fit into the work of the Courts into the future.

Digital Court Program

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

In 2020–21, there were two key areas of focus. The first was the implementation of changes required to support the Court structural reform legislation that brings the Family Court and Federal Circuit Court together into a unified administrative structure. The second was investigations into options for an application to replace the Courts' aged case management system.

The Court structural reform has a major impact on Court systems. This is partially a branding consideration due to changes in names of the Courts, seals, and the like, however more substantial is the change to case management

pathways, court rules and single point of entry. This work is on schedule for implementation in line with the legislation commencement date of 1 September 2021.

A proof of concept for the implementation of a commercial off-the-shelf application to replace the Courts' aged case management system was the final stage in the evaluation of a tender for this application that was commenced in 2019, however the proof of concept was terminated. While the tender process did not result in the awarding of a contract, it identified that there is currently no suitable commercial off-the-shelf software to replace the Courts' case management system. Based on this experience, the project team pivoted to a new strategy of redeveloping existing applications to reduce technical risks and improve user interface and experience. To this end, several possible user interface technologies were trialled to test viability. This evaluation identified the Microsoft .NET framework as the preferred development platform. The project team has moved from prototyping to commencing the development of a replacement case management system that leverages existing databases. This approach has the advantage of being able to be rolled out in a phased manner, either by geography or work group, thereby avoiding the risks of a big bang deployment. This work will continue into 2021–22.

Websites

The Court and Tribunal websites are the main sources of public information and a gateway to a range of online services such as eLodgment, eCourtroom, eFiling and the Commonwealth Courts Portal.

Corporate Services staff are responsible for managing and maintaining the following Court and Tribunal websites:

- Federal Court of Australia:
www.fedcourt.gov.au
- Family Court of Australia:
www.familycourt.gov.au
- Federal Circuit Court of Australia:
www.federalcircuitcourt.gov.au
- National Native Title Tribunal:
www.nntt.gov.au
- Australian Competition Tribunal:
www.competitiontribunal.gov.au

- Defence Force Discipline Appeal Tribunal:
www.defenceappeals.gov.au
- Copyright Tribunal:
www.copyrighttribunal.gov.au

The websites provide access to a range of information including court forms and fees, publications, practice notes, guides for court users, daily court lists and judgments.

In the reporting year, over 15,804,994 total hits to the sites were registered:

- Federal Court website: 4,750,045
- Family Court website: 4,714,758
- Federal Circuit Court website: 5,491,663
- National Native Title Tribunal website: 848,528

There was a substantial amount of work invested in maintaining up-to-date dedicated COVID-19 pages on all websites. These pages include information about digital hearings, legislative changes, FAQs, information for the media, information for the profession, information for families and the latest news on Court and Tribunal operations.

In the interests of maintaining open justice during the COVID-19 pandemic, the Daily Court Lists continue to include procedures for members of the public to join online hearings as observers.

In addition, other improvements and project work undertaken for the websites during the reporting year include:

- the creation of high profile online files including *Christian Porter v ABC*, *Joanne Dyer v Sue Chrysanthou*, *Ben Roberts-Smith v Fairfax Media*; The Age; The Federal Capital Press; Jonathon Pearlman, Australian Securities & Investments Commission v Melissa Caddick & Anor, and Gary Newman v Minister for Health and Aged Care
- a continued focus on accessibility and providing more documents in accessible formats
- a new section for the Lighthouse family violence project that commenced in the Federal Circuit Court in 2020
- research and preparation for the commencement of a major website redevelopment project

- the introduction of Live Chat for general federal law
- ongoing improvements to court location pages to assist litigants with filing information and links to court lists, and
- enhancement of the jury recruitment and support pages for the Federal Court's first criminal jury trial.

Access to judgments

When a judgment of the Federal Court, Family Court and the Federal Circuit Court is delivered, a copy is made available to the parties and published on Court websites. The Federal Court also publishes decisions of the Australian Competition Tribunal, the Copyright Tribunal and the Defence Force Discipline Appeal Tribunal.

The Courts also provide copies of judgments to a number of free legal information websites including AustLII and JADE, legal publishers, media and other subscribers. Judgments of public interest are published within an hour of delivery and other judgments within a few days, with the exception of family law and child support decisions which must first be anonymised. The Federal Court provides email notifications of judgments via a subscription service on the Court website.

A new standardised Judgment Template introduced for all three courts has been successfully implemented. Other significant projects include the scanning of a large number of hardcopy family law judgments for inclusion in the judgments database to provide a more complete online record of family law judgments since 1976.

Recordkeeping and information management

Corporate coverage

Information management is a corporate service function supporting the Federal Court, Family Court, Federal Circuit Court, National Native Title Tribunal, Australian Competition Tribunal, Copyright Tribunal of Australia and Defence Force Discipline Appeal Tribunal. The Information Management team consists of four staff, one in Sydney, two in Perth and the Assistant Director in Canberra.

Information governance

Information framework

The information framework for the entity will be implemented in 2021–22. The information framework incorporates information governance and sets out the principles, requirements and components for best practice information management. The framework provides a robust approach to information management across the entity, recognising that the individual sections of the Courts and Tribunals have different information needs.

The information framework is supported by policies and standards that ensure the information that is collected, stored and made accessible is tailored to those differing needs, and meets the entity's regulatory, legal, risk and operational requirements. A short information management training module to support the information framework was developed and rolled out.

Records authorities

The review of the combined draft Courts Records Authority by the National Archives of Australia commenced in 2020–21.

Committees

The Information Governance Committee met quarterly during the reporting year to monitor information governance obligations that effect the entity. The committee focused on revising its terms of reference to be representative of the sections of the entity, and ensuring the responsibilities of the committee are appropriate. The committee continued to work on meeting the ongoing government targets for working digitally, as well as reviewing the information framework and related policies and standards; and information management training to support the framework.

Information management projects

Information management system

A new information management system is being implemented to replace the entity's three current records management systems. The new information management system has been designed to capture, manage and provide access to information and records assets across the entity. The design and configuration

of the information management system was approved in October 2020 and is currently in user acceptance testing. Migration of the three records management systems will commence in September 2021.

Contract management

A new contract was negotiated to provide the entity with records and information management services. The contract is a single contract covering the entity commencing June 2021. It has replaced previous agreements with the entity's other storage services.

The new arrangement ensures ongoing business continuity, and efficiencies through the consolidation of holdings, invoicing, account payments and administration.

Working digitally

The Court continues to progress towards working digitally by default. This is a reportable target set by the National Archives of Australia. Progress towards this target was demonstrated by:

- continuing digitisation of physical files across the Courts
- development of the information management system that will enable staff to save and retrieve their documents from within MS Office applications and to save their emails directly from MS Outlook
- the rollout of the digital court file system across the Family Court and Federal Circuit Court, and
- approval of the digitisation standard to enable consistent digitisation of physical items and the digital preservation standard for the preservation of born digital records and the conversion of obsolete media and formats.

National Archives reporting

The National Archives annual check-up, reporting on digital benchmark targets, saw an improvement of 0.24 per cent on the entity's 2020 results. Improvements continued to be made in the areas of creating, interoperability and digital operations. This continued steady progress will enable the entity to achieve the whole-of-government targets.

Transfers to National Archives

No transfers to National Archives were undertaken in 2020–21.

Library and information services

The library provides a comprehensive library and information service to judges, registrars and staff of the Federal Court, Family Court and Federal Circuit Court, and members and staff of the National Native Title Tribunal.

The library collection consists of print and electronic materials and is distributed nationally, with qualified librarians in each state capital except Hobart, Canberra and Darwin. Services to Tasmania, the Australian Capital Territory and the Northern Territory are provided by staff in the Victorian, New South Wales and South Australian libraries, respectively.

In Sydney, Federal Court judges and staff are supported by the New South Wales Law Courts library under a Heads of Agreement between the Federal Court and the New South Wales Department of Justice. The terms of this Agreement are renegotiated each year to reflect changing circumstances.

Although primarily legal in nature, the library collection includes material on Indigenous history and anthropology to support the native title practice areas, and material on children and families to support the family consultants. Details of items held in the collection are publicly available through the Library Catalogue and Native Title Infobase, which are accessible from the Federal Court website. The library's holdings are also added to Libraries Australia and Trove making them available for inter-library loan nationally and internationally.

The library is a foundation member of the Australian Courts Consortium for a shared library management system using SirsiDynix software. The Consortium allows for the sharing of resources, collections, knowledge and expertise between libraries. The SirsiDynix software provides the infrastructure for the Library website, catalogue, and library management system.

Services have continued to be provided remotely during the ongoing COVID-19 pandemic, and protocols remain in place to ensure hardcopy collections remain accessible. Changes to COVID-19 related legislation from all Australian states and territories has been tracked by a team of librarians each day from the beginning of the pandemic and details published on the Federal Court website.

Assistance to the Asia Pacific region

The Brisbane library continues to provide advice and assistance to the National and Supreme Courts of Papua New Guinea to develop their library collections and services.

Commonwealth Courts Registry Services

Overview of Registry Services

In 2019–20, the registry services functions for the Federal Court, Family Court and the Federal Circuit Court were amalgamated into a new program under Outcome 4 (Program 4.2) known as the Commonwealth Courts Registry Services (also known as Court and Tribunal Services).

This provides the Courts with the opportunity to shape the delivery of administrative services and stakeholder support across the entity in a more innovative and efficient manner. A focus on maximising registry operational effectiveness through streamlined structures and digital innovations will significantly contribute to the future financial sustainability of the Courts.

This national approach ensures that the quality and productivity of registry services is the very best it can be, through building consistency in registry practice across all Court locations and expert knowledge to support the National Court Framework and the important work of the judges and registrars.

Objectives

The objectives of Registry Services are to:

- provide a high level of support for the judiciary and court users through a national practice-based framework
- maximise operational effectiveness through streamlined structures and digital innovations
- develop an organisational structure that promotes flexibility and responsiveness to new opportunities and demands, and
- support the Courts to take full advantage of the benefits of the Digital Court Program.

Purpose

The purpose of Registry Services is to provide efficient and effective services to the Commonwealth courts and tribunals and its users.

Registry services management structure

The **Executive Director, Court and Tribunal Services** has overarching responsibility for the delivery of registry services and leads the design and delivery of improved case management and administrative services across the Courts and the Tribunal. The Executive Director, Court and Tribunal Services reports to the CEO and Principal Registrar of the Federal Court.

Directors of Court Services report to the Executive Director, Court and Tribunal Services. They lead and manage the Courts' registry operations and resources in their respective regions, as well as contribute to continuous business improvement across three national streams: client services, digital services and court operations. Directors of Court Services work collaboratively with national service managers and other directors to lead and manage multi-disciplinary teams delivering a range of customer-driven professional and business support services to ensure national service excellence. The development and maintenance of key relationships with Aboriginal and Torres Strait Islander peoples, culturally diverse community groups and support services is an important responsibility of the role and ensures that all Court services recognise the needs of our client groups.

Managers of Court Services report to the Director of Court Services in their respective region and are responsible for leading and managing the Courts' registry operations and resources in their location in accordance with the Courts' strategic and operational plans and national service standards. Liaising with the judiciary of all Courts in their location, they ensure that the judiciary are well supported in chambers and in court, and that the delivery of court services are consistent, responsive to client needs and provided in a courteous, timely and efficient manner.

Judicial and Registry Services Team Leaders report to the Director of Court Services in their respective region and are responsible for delivering high quality case management, courtroom and chambers support to judicial officers (including training and development of associates) and registry services to clients, legal practitioners, registrars, family consultants and community groups that support court users. They have oversight of judicial and

registry services in their location, and provide information on appropriate avenues for addressing client needs, and recommending appropriate options for effective resourcing and services for the Courts.

The **Manager National Enquiry Centre (NEC)** reports to the Executive Director, Court and Tribunal Services and is responsible for the strategic and operational management of the Courts' National Enquiry Centre based in Parramatta. This position has responsibility for managing the team handling first-level enquiries related to family law matters received via phone, email and live chat. In collaboration with national and local managers, the NEC manager is an important driver and contributor to the identification of business and process enhancements linked to the delivery of improved customer interactions with the Courts and meeting service level standards associated with enquiries handling.

The **Director Digital Services** reports to the Executive Director, Court and Tribunal Services. The role has responsibility for the delivery of digital service innovation and excellence in Court and Tribunal Services and the NEC. The Director Digital Services implements change that maintains the confidence of Judges in the administration of the Courts and motivates others to cooperate in the achievement of service objectives.

The **Director Digital Practice** reports to the Executive Director, Court and Tribunal Services. The role is responsible for the management of digital practices in the Courts and the development of service transformation, including leveraging technology to drive effective and efficient practices in the Courts.

Court and Tribunal registries

The key functions of Court and Tribunal registries are to:

- provide information and advice about court procedures, services and forms, as well as referral options to community organisations that enable clients to take informed and appropriate action
- ensure that available information is accurate and provided in a timely fashion to support the best outcome for clients

- encourage and promote the filing of documents and management of cases online through the Portal
- enhance community confidence and respect by responding to clients' needs and assisting with making the court experience a more positive one
- monitor and control the flow of cases through file management and quality assurance
- schedule and prioritise matters for court events to achieve the earliest resolution or determination, and
- manage external relationships to assist with the resolution of cases.

The service delivery principles of Registry Services are to provide services that are:

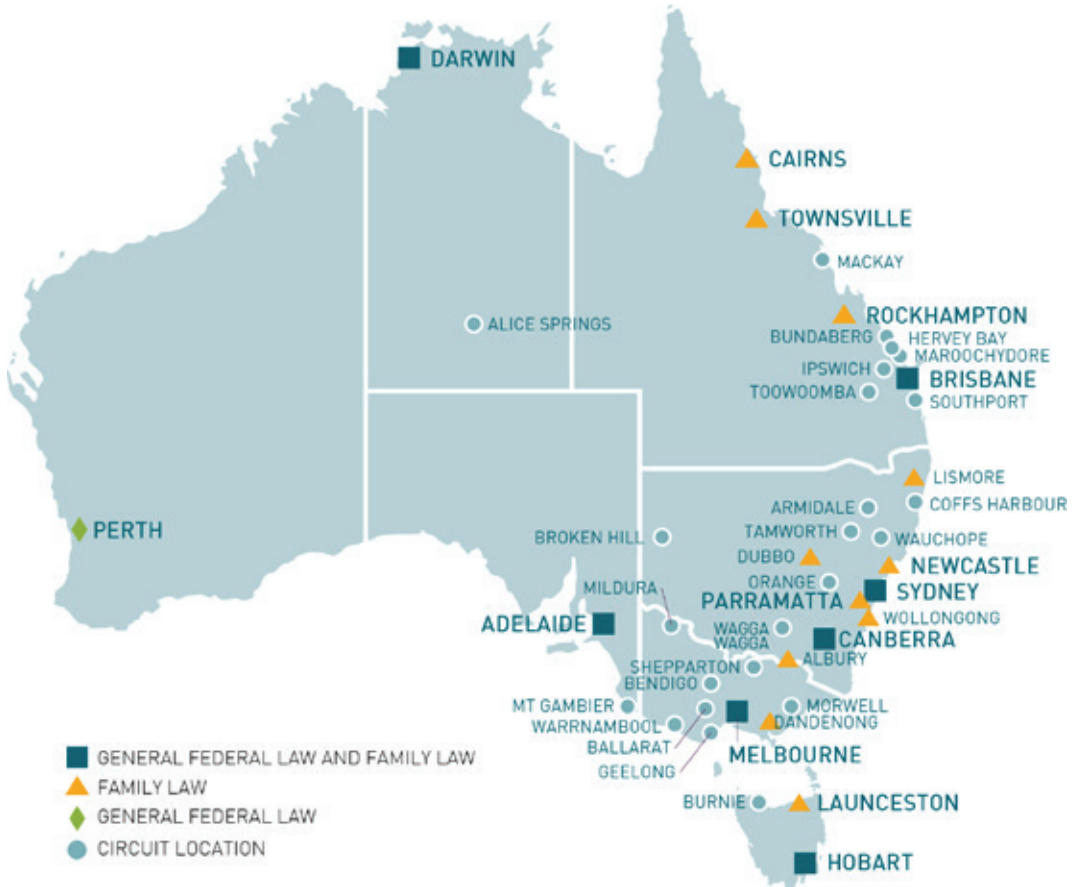
- *Safe and easy to access*: all processes and services are streamlined so that they prioritise user safety and ease of access.
- *Consistent and equitable*: the level of service available to users is consistent irrespective of the location.
- *Timely and responsive*: services should meet the needs of each user and be delivered in a timeframe considered to be reasonable.
- *Reliable and accurate*: Courts and tribunals must have full confidence that the information provided by staff can be relied upon by the user.

Registry Services locations

Family law services are provided in 18 registries located in every state and territory (except Western Australia). There are eight general federal law registries located in every state and territory. Three sites – Canberra, Darwin and Hobart – provide cross-jurisdictional services for general federal law and family law registry services.

In 2020, funding was announced for the leasing and fit out of a new Court building in Rockhampton. The new premises was handed over to the Courts in February 2021 and includes a registry area and front counter space, a courtroom with associated break out and mediation rooms, judicial chambers and associates space, and administrative areas for Court staff.

Figure 4.1: Registry Services location map



The work of Registry Services in 2020–21

Registry Services has three main performance criteria:

1. Correct information

- Less than 1 per cent of enquiries result in a complaint about registry services.

2. Timely processing of documents

- 75 per cent of documents processed within three working days.

3. Efficient registry services

- All registry services provided within the agreed funding and staffing level.

Snapshot of 2020–21 performance against targets

Table 4.8: Snapshot of Registry Services performance against targets, 2020–21

TARGET	RESULT 2020–21	TARGET STATUS
CORRECT INFORMATION		
Less than 1 per cent of enquiries result in a complaint about registry services.	0.01 per cent of enquiries resulted in a complaint about registry services	Target met
TIMELY PROCESSING OF DOCUMENTS		
75 per cent of documents processed within three working days.	98.2 per cent of documents were processed within three working days	Target met
EFFICIENT REGISTRY SERVICES		
All registry services provided within the agreed funding and staffing level.	All registry services were provided within the agreed funding and staffing levels.	Target met

Registry Services staff manage enquiries, document lodgments, subpoenas and safety plans. The number of safety plans activated in 2020–21 was 1,380 across all registry locations. Safety plans decreased by approximately 75 per cent in 2020–21 due to the suspension of face-to-face services in some registries and a heavy reliance on electronic hearings for that period. Supporting the electronic hearings and additional registrar resources however, became a significant additional workload for Registry Services.

Throughout the year, although there were disruptions to in-person services due to state-based COVID-19 restrictions, Registry Services staff continued to process urgent enquiries and applications and provided support for difficult issues for a diverse range of clients with different needs both professionally and courteously. This included supporting vulnerable clients and ensuring people from non-English speaking backgrounds are suitably supported.

Financial management

In 2020–21, the Registry Services budget allocation was \$30,842,000, with an under spend of 5 per cent. These savings were achieved due to ongoing judicial and staff vacancies and the impact of the COVID-19 pandemic.

Document processing

Registry Services has one performance target relating to the timely processing of family law documents.

- 75 per cent of documents processed within three working days.

The COVID-19 pandemic has caused some significant shifts in workload. Overall, family law filings remained relatively consistent in volume for 2020–21, however high volume, resource demanding applications such as applications for consent orders and divorce applications increased for a second year in a row – consent orders increased by 7.4 per cent to 16,008, and divorce applications increased by 8 per cent to 49,625. Major causes of action in general federal law decreased overall by 25 per cent in 2020–21.

The reporting year also saw a significant (26 per cent) increase in subpoena management, including the filing of subpoenas, notices of request to inspect and notices of objection (103,075).

Enquiries

Family law enquiries

Registry Services staff manage counter enquiries in 18 locations across the country. Court users, and sometimes the NEC, also send enquiries directly to family law court locations via email. These enquiries are usually case-specific or require some form of local knowledge or decision.

In 2020–21, Registry Services continued to have a lower than usual attendance at counters due to restrictions imposed as a result of the COVID-19 pandemic.

General federal law enquiries

Enquiries relating to general federal law matters are managed by Registry Services staff at each general federal law location separately.

From June 2021, general federal law enquiries are received via a central phone number, with previous individual registry phone numbers due to be decommissioned from July 2021. Each general federal law registry has their own email and fax contact details.

Some registries also provide additional services to support other Courts and Tribunals:

- The New South Wales District Registry provides registry services to the Copyright Tribunal, the Defence Force Discipline Appeal Tribunal, the Australian Competition Tribunal, the National Native Title Tribunal and the Court of Norfolk Island.
- The Northern Territory registry provides registry services to the High Court of Australia.
- The Queensland registry provides registry services to the High Court of Australia, the Copyright Tribunal and the Defence Force Discipline Appeal Tribunal.
- The South Australian registry provides registry services to the High Court of Australia, Australian Competition Tribunal, Copyright Tribunal of Australia, and the Defence Force Discipline Appeal Tribunal.
- The Victorian registry provides registry services to the Australian Competition Tribunal and the Defence Force Discipline Appeal Tribunal.
- The Western Australian registry provides registry services to the High Court of Australia, the Australian Competition Tribunal and the Defence Force Discipline Appeal Tribunal.

Complaints

During 2020-21, there were 19 complaints against Registry Services. This represents 0.01 per cent of the total number of enquiries, which meets the performance measure of 'Less than 1 per cent of enquiries resulting in a complaint about registry services'. Enquiries include phone, email and live chat actioned enquiries to the NEC.

Table 4.9: Registry Services complaints, 2020-21

LOCATION	NUMBER OF COMPLAINTS
New South Wales	
Lionel Bowen Building	8
Queens Square	1
Newcastle	3
Parramatta	2
Queensland	
Brisbane	3
Victoria	
Melbourne	2
TOTAL	19

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

Local registry consultation

Registry Services staff continue to regularly engage with numerous external groups such as local family law pathways networks, legal aid, bar associations and law societies, local practitioners and practitioners' associations, community legal centres, family relationship centres, community organisations and support groups, child protection agencies, family violence committees and organisations, state courts, universities and police services. Registries also continued to work with the Family Advocacy and Support Services program, with the aim of enhancing their presence in the registries. In addition to those providers of legal advice already listed, registry services staff also regularly engage with organisations who provide information to litigants requiring assistance with general federal law, such as the Consumer Action Law Centre, Justice Connect, LawRight, and providers of financial counselling and advice on migration matters.

During 2020-21, the COVID-19 pandemic impacted the ability for external groups to either provide in-person services to Court clients or maintain in-person engagement with the registry when registries were impacted by state-based operational restrictions. However where this was feasible, services and engagement transitioned to a virtual environment to ensure court clients were not further disadvantaged.

Public education and engagement

COVID-19 impacted the Court's engagement in educational activities with schools and universities. During 2020–21, the Court was unable to host work experience students or tours, and the support for work with schools and universities significantly reduced.

Although there was an inability for the registries maintain their involvement in educational activities, the Victorian registry did host two moot courts for Monash University – the Monash General Moot (Junior and Senior Division) and JD Moot Competition Grand Final.

In May 2021, the Victorian registry hosted the Victorian Bar Pro Bono awards. The awards constituted an important occasion in the calendar for the Victorian Bar and were the first awards since 2019. Justice Debra Mortimer was a guest speaker for the event.

Overseas delegations

In previous years, Court registries have hosted numerous visiting delegations from overseas courts, but this did not occur during 2020–21, due to the COVID-19 pandemic. In December 2020, there was a Zoom meeting to mark the occasion of the signing of an MOU between the Federal Court of Australia, Family Court of Australia and the Supreme Court of Indonesia. Other activities in relation to liaison with overseas Courts and stakeholders can be found in Appendix 8 (*Judge Activities*).

National Enquiry Centre

The NEC provides a single point of entry for phone, email and live chat enquiries to the Family Court, Federal Circuit Court and now Federal Court. While the majority of the NEC's work in 2020–21 was focused on family law, during the first half of 2021 the NEC also transitioned to managing general federal law enquiries received by phone and live chat. The Courts now advertise two 1300 numbers split between general federal and family law jurisdictions.

Live chat enquiries to the NEC can be initiated via the Federal Court, Family Court, Federal Circuit Court and Commonwealth Court's Portal websites. All of these enquiries channels are triaged and are handled by NEC staff. Additionally, the NEC manages email enquiries received via the 'enquiries', 'portal support' and 'portal registration' email addresses as well as undertaking portal support for the Family Court of Western Australia across phone, email and chat.

In family law, the NEC has responsibility for the triage and delivery of requests for historic divorce orders, as well as managing calls to the Courts' family law after hours service.

During 2020–21, the NEC undertook two significant projects:

- the implementation of new contact centre technology, and
- the transition and consolidation of General Federal Law phone and chat enquiries from registry to the NEC.

These changes involved a significant amount of planning, management and process improvements at the NEC to work towards providing an improved and streamlined service to clients across both family and general federal law.

As the new contact centre and reporting software was only implemented on 19 January 2021, the performance measures reported below only represent approximately half of the year.

The numbers below represent the actual numbers/measures for work undertaken by the NEC for both family law and general federal law enquiries for the almost 6 month time period during which the new contact centre technology was in operation and performance data is available.

The transition of general federal law enquiries to the NEC as a progressive staged roll out also resulted in additional general federal law enquiries being handled by registries during the same period that were not managed by the NEC or the new contact centre software and accordingly are not reported below.

Table 4.10: NEC performance, 19 January 2021 to 30 June 2021

TYPE OF COMMUNICATION	VOLUME
Total calls presented	98,492
Total calls actioned	56,004
Calls (average wait time)*	14 minutes and 24 seconds
Calls (average handle time)	7 minutes and 36 seconds
Total live Chats presented	53,475
Total live chats actioned	39,284
Live chats (average queue time)*	2 minutes and 45 seconds
Live chats (average handle time)	10 minutes and 37 seconds
Total emails received	34,137
Total emails sent	25,487

*based on calls/chats presented, includes calls/chats that may have abandoned prior to connecting to an NEC staff member.

Phone calls

Performance measures for phone calls available across the two contact centre technologies used throughout the year are not directly comparable, however the approximations available indicate that phone calls to the NEC continue to decrease in line with the five-year downward trend.

Waiting times to connect with an NEC agent remain an issue, with 14 minutes and 24 seconds average queue time exceeding internal NEC targets and driving a high abandonment rate for queued calls to the NEC, particularly in family law.

Live chat

The data reported above, taken with approximations for the period July to December 2020, confirms the trend over the previous two years of live chats increasing from approximately 75,192 in 2019–20 to approximately 100,945 in 2020–21.

Live chat remains the most efficient channel for enquiries to the NEC, with staff able to manage several chats simultaneously. Average queue times for chat enquiries across family and general federal law are significantly less (by over 11 minutes) than those for phone queries, with the average handle time only three minutes longer than that of calls.

Email

Emails received by the NEC in 2020–21 remained stable compared to 2019–20, with a marginal rise by approximately 1000 emails to approximately 72,613. As with the other performance measures, given the difficulties directly comparing data across new technologies, these numbers are approximate only. Emails remain one of the NEC's higher performing channels, with the majority of emails responded to within two working days and meeting internal NEC targets.

Registry Services initiatives in 2020–21

NEC contact centre software

In January 2021, the Court implemented new contact centre technology into the NEC to modernise enquiries handling processes and support staff in providing the best possible service to Court users.

The technology has many great features:

- Telephone, email and live chat enquiries are managed through a single system, reducing the number of applications used by staff.
- Real-time dashboards and historic reporting on enquiry volumes and performance metrics, as well as customer survey capability, leading to better support for managers and team leaders in making decisions about handling enquiries workflow.
- Better business continuity solutions, allowing for remote handling of workload. This has been particularly important during the COVID-19 pandemic, and the need to have flexibility in working locations.
- A quality management capability to obtain insight into enquiries trends and provide ongoing development for staff.

General federal law enquiries

During 2021, the Court implemented a new initiative to consolidate the handling of general federal law phone enquiries on a national basis. The handling of these enquiries is now managed through the NEC and the new contact centre technology platform. This initiative has provided the following benefits:

- capability to capture and report on enquiries volumes and trends, enabling better decision making with regard to resourcing
- development of nationally consistent guidelines on enquiries handling
- establishment of a national knowledge base for general federal law collateral to support staff and provide consistent enquiries outcomes for court users, and
- flexibility in staffing on a national basis, in order to better meet demand and enable knowledge sharing

Document processing dashboard and reporting

A new reporting and dashboard solution was introduced for Team Leaders and Managers to provide an overview of both the completed and outstanding work relating to the processing of filed applications and documents by Registry Services staff. The dashboard will assist with the management of this work through understanding volumes of document processing and highlighting any delays.

The dashboard streamlines the collection of existing information on document processing and provides a single view for managers of:

- the volume and types of documents and lodgements processed by specific staff
- the volume of documents processed on specific dates
- the volume and age of any outstanding/unprocessed documents, and
- the number of outstanding urgent documents.

National migration team

In October 2020, in response to the independent review and subsequent report surrounding potential non-compliance with section 91X of the *Migration Act 1958* (Cth), and to complement the ongoing move towards achieving national consistency in the Court's practice areas, the Court established a National Migration Team.

The team sits across both the Federal Court and Federal Circuit Court, and supports the migration Judges, Registrars, lawyers and legal case managers. The team is made up of select individuals with migration expertise, who are responsible for gaining national consistency by managing migration matters from filing-to-finalisation, including:

- processing lodgments
- managing fees
- allocating pseudonyms/managing the pseudonym register
- booking and coordinating interpreters
- escalating migration enquiries
- supporting the in-court Registrar list
- listings and orders, and
- general case administration and ad hoc migration work.

The Court is grateful for the work that the Team has accomplished and has received positive feedback from the migration litigants, migration practitioners and the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs. The Team will continue its important work in the future.

Recording and transcription services tender

In September 2019, the Court released a tender for Recording and transcription services, and AV support and maintenance services as an optional but additional component, and after a long and competitive tender, Auscript Australasia Pty Ltd was selected as the preferred tenderer for all service components. Commencing 1 July 2020, the Federal Court entity entered into a single contract with Auscript for services to be delivered to the Federal Court, the Family Court and the Federal Circuit Court for an initial term of four years.

Document management

Due to the COVID-19 pandemic and the need to limit in-person attendance in the registries, special measures were introduced whereby digital processes were employed to manage subpoenaed documents (including storage and viewing). The processes were implemented in family law locations in October 2020 and general federal law locations in March 2021. In addition, email filing was introduced to accommodate the limited number of documents and forms that were not available to be eFiled.

Registry Services training

- Family violence training preparation is underway and will be finalised for a national roll out next financial year. To date, the training has been tested with select Registry Services staff.
- Registry Services Directors, Managers and Team Leaders received finance and procurement training in December 2020.
- Regular education sessions on specific areas of general federal law commenced for Registry Services staff in 2021.
- *WorkDynamic* conducted consultative sessions on a safe and respectful workplace in July and August 2020.
- A two-day planning meeting (via Microsoft Teams) was held in February 2021 for Directors of Court Services. Meeting objectives were to reflect on 2020, discuss lessons learnt and develop a prioritised project list of registry services initiatives for the next 12 months.

PART 5

Report of the National
Native Title Tribunal

Report of the National Native Title Tribunal

Overview

Establishment

The *Native Title Act 1993* (Cth) (the Act) establishes the Tribunal as an independent body with a wide range of functions. The Act is, itself, a ‘special measure’ for the advancement and protection of Aboriginal peoples and Torres Strait Islanders (Indigenous Australian peoples). The Act is intended to advance the process of reconciliation among all Australians.

The Act creates an Australia-wide native title scheme, the objectives of which include:

- providing for the recognition and protection of native title
- establishing a mechanism for determining claims to native title, and
- establishing ways in which future dealings affecting native title (future acts) may proceed.

The Act provides that the Tribunal must carry out its functions in a fair, just, economical, informal and prompt way. In carrying out those functions, the Tribunal may take account of the cultural and customary concerns of Indigenous Australian peoples.

The President, Members and the Native Title Registrar

The President, other Members of the Tribunal and the Native Title Registrar are appointed by the Governor-General for specific terms of no longer than five years. The Act sets out the qualifications for appointment to, and respective responsibilities of, these offices.

Table 5.1 outlines Tribunal statutory office holders at 30 June 2021.

A new Member, Mr Glen Kelly, a Noongar man with more than 25 years of experience in native title and Aboriginal affairs, was initially appointed in September 2020 to act temporarily as a Member. In March 2021, Mr Kelly was appointed for a five year term.

Office locations

The Tribunal maintains offices in Brisbane, Cairns, Melbourne, Perth and Sydney.

Functions and powers

Under the Act, the Tribunal, comprising the President and Members, has specific functions in relation to:

- mediating in native title proceedings, upon referral by the Federal Court
- determining objections to the expedited procedure in the future act scheme

Table 5.1: Tribunal statutory office holders, 30 June 2021

NAME	TITLE	APPOINTED	TERM	LOCATION
The Hon. JA Dowsett AM QC	President	27 April 2018	Five years	Brisbane
Helen Shurven	Member	Reappointed 29 November 2017	Five years	Perth
Nerida Cooley	Member	11 February 2019	Five years	Brisbane
Glen Kelly	Member	17 September 2020 10 March 2021	Five months Five years	Perth
Christine Fewings	Native Title Registrar	14 March 2018	Five years	Brisbane

- mediating in relation to certain proposed future acts on areas where native title exists, or might exist
- determining applications concerning proposed future acts
- assisting people to negotiate Indigenous Land Use Agreements (ILUAs), and helping to resolve any objections to registration of ILUAs
- assisting with negotiations for the settlement of applications that relate to native title
- providing assistance to representative bodies in performing their dispute resolution functions
- providing assistance to common law holders and prescribed bodies corporate;⁽¹⁾
- reconsidering decisions of the Native Title Registrar not to accept a native title determination application (claimant application) for registration
- conducting reviews concerning native title rights and interests (upon referral by the Federal Court)
- conducting native title application inquiries as directed by the Federal Court
- conducting special inquiries under Ministerial direction, and
- presiding at conferences in connection with inquiries.

⁽¹⁾ The Tribunal's assistance function under section 60AAA commenced on 25 March 2021 and in the first three months of operation, the Tribunal received 19 enquiries and requests for assistance from common law holders and PBCs. No request for assistance has yet resulted in substantive mediation.

The President

The President is responsible for the management of the business of the Tribunal, including its administrative affairs, and the allocation of duties, powers and functions. The President is assisted by the CEO and Principal Registrar of the Federal Court. The CEO and Principal Registrar may delegate his or her responsibilities under the Act to the Native Title Registrar, or staff assisting the Tribunal. Staff assisting the Tribunal are made available for that purpose by the Federal Court.

The Members

The President and Members perform the functions of the Tribunal, with the support of the Native Title Registrar and staff. The Members also perform educational functions and assist the President in communicating with stakeholders.

The Native Title Registrar

The Native Title Registrar:

- assists people to prepare applications and to help them, and other persons in matters relating to proceedings in the Tribunal
- considers whether claimant applications should be registered on the Register of Native Title Claims
- gives notice of applications to individuals, organisations, governments and the public in accordance with the Act
- registers ILUAs that meet the registration requirements of the Act
- maintains the Register of Native Title Claims, the National Native Title Register and the Register of ILUAs, and
- maintains a publicly available record of section 31 agreements.

The Native Title Registrar is also actively involved in the mediation and educational functions of the Tribunal.

Staff capacity

The Tribunal will continue to manage and monitor its workloads in the next reporting period to ensure that it is appropriately resourced in future years. Strategic planning and review will underpin this process, including the significance of the 30th anniversary of the Mabo decision and the start of the next decade of native title.

The continued social distancing and travel restrictions imposed by COVID-19 led the Tribunal further to consider how it could best build staff capacity, in order to strengthen staff capacity to respond to increased, and more direct contact with common law native title holders and prescribed bodies corporate. Given the success of the online mediation accreditation training delivered in the previous year, a hybrid delivery of online and in person training was run out of the Tribunal's Brisbane office. The staff participated in online training which was delivered over a

number of days. Staff completed the training and provided positive feedback. Other online training and attendance at online seminars has been particularly encouraged.

Cultural acknowledgement

The Tribunal has continued to foster understanding and respect for Indigenous culture. The new Reconciliation Action Plan for the Federal Court of Australia entity was completed and implemented during the reporting period. The Reflect Reconciliation Action Plan 2019–20 was developed by the Court with support from the Tribunal.

As with last year, the Tribunal collaborated with other components of the Federal Court entity to acknowledge and share information about NAIDOC and Reconciliation week. This engagement was achieved through a dedicated online environment.

The Tribunal's year in review

COVID-19

At the end of the last reporting period, we expressed the hope that the substantial changes made as the result of the COVID-19 pandemic, would prove to be of long-term value. This hope has been realised.

During the course of the year, the Tribunal continued to operate effectively through the swinging doors of state lockdowns. It acknowledges the resilience of members and staff who have adjusted to working at home on little or minimal notice. For some, this was a single event lasting less than a week. For others, there were multiple events lasting many weeks. The ability to work successfully in this rapidly changing environment was possible because of structural and technical changes in response to COVID-19 and implemented in the last reporting period. In the second half of the reporting period, the Tribunal reviewed and repositioned its resources to meet the challenge of increased and new workloads. This included a significant increase in future act work, additional compensation applications, and the start-up of a new role in a post-determination environment.

The Tribunal's future act work was uneven over the course of the reporting period, influenced by biosecurity measures introduced in the previous year to prevent the spread of

COVID-19. In Western Australia, where a large part of the Tribunal's future act work arises, the State government suspended notification of future acts in light of restrictions on access to Aboriginal communities. Since June 2020, the State has gradually resumed notifications. As a result between April and September 2020, 490 notices were issued by the State of Western Australia under section 29 of the Native Title Act, compared with 1,544 notices issued in the prior six months.

Despite the resumption of notifications at the beginning of the reporting period, the number of objections declined through the first quarter. However, between October 2020 and June 2021, the backlog of tenement applications resulted in a surge of notifications, with an additional 2,591 notices issued over this nine-month period. Consequently, the Tribunal's future act work increased significantly, with 1,358 expedited procedure objections lodged with the Tribunal over the same period, the majority of which were received in the first four months of 2021. This increase in objections imposed a significant administrative burden on the Tribunal and the parties, and has delayed notification of new applications.

The Tribunal responded to the biosecurity measures by excusing native title parties from compliance with directions and applying active case management measures, increasing the administrative burden on Members and staff. These temporary arrangements were phased out in July, at which point the Tribunal resumed its ordinary case management procedures. The Tribunal also took the opportunity to engage in stakeholder consultation to improve the effectiveness of its future act procedures. A stakeholders' forum, originally scheduled to be held in March 2020, was replaced by a series of round table discussions with representatives of key organisations via video conference. The Tribunal also conducted broader stakeholder consultation by seeking submissions in response to a series of discussion papers. In other respects, the Tribunal's future act functions continued, relatively uninterrupted, by utilising teleconferencing and videoconferencing technology. As restrictions eased, the Tribunal resumed in-person mediations and hearings, although tele- and video-conferencing remain a key part of the Tribunal's practices.

Recent developments

Six compensation applications have been referred to the Native Title Registrar in the reporting period, making a total of 12 since the High Court's March 2019 decision in *Northern Territory v Mr A. Griffiths (deceased) and Lorraine Jones on behalf of the Ngaliwurru and Nungali Peoples* [2019] HCA 7. Significant time has been spent in establishing relevant and appropriate practices to meet the statutory obligations imposed upon the Native Title Registrar. The compensation applications have contained varying degrees of information. The Native Title Registrar's statutory function to notify certain applications has proven to be complex and more resource-intensive than that of notifying other native title determination applications.

Two judicial decisions made in the latter part of the reporting period will assist the Native Title Registrar to notify compensation applications in the future. In *Saunders on behalf of the Bigambul People v State of Queensland (No 2)* [2021] FCA 190 and *Wharton on behalf of the Kooma People v State of Queensland (No 2)* [2021] FCA 191, the Federal Court held that a compensation application (Form 4) must include information to identify compensable act/s and the area covered by an application, in order to allow the Native Title Registrar to notify the persons and entities who have relevant interests in the area covered by each application.

The *Native Title Legislation Amendment Act 2021* (Cth) received Royal Assent on 16 February 2021, with the amendments commencing at differing times. These long awaited amendments reflected the Government's intention to improve the native title system for all parties by:

- streamlining claims resolution and agreement making processes
- supporting native title holders in developing greater flexibility in internal decision making
- increasing the transparency and accountability of prescribed bodies corporate (the corporations set up to manage native title) to the native title holders
- improving pathways for dispute resolution following a determination of native title, and
- ensuring the validity of section 31 agreements in light of the Full Federal Court's decision in *McGlade v Native Title Registrar & Ors* [2017] FCAFC 10.

The major change for the Tribunal is the new function of providing post-determination assistance to common law holders and their corporations. As reported in the last reporting period, the Tribunal, anticipating this new function, undertook mediation accreditation training for relevant staff. In the reporting period training has focused upon the development of culturally appropriate methods in dispute resolution and mediation.

The Tribunal has established an operational framework to support the delivery of the function, including:

- the President issuing an internal directive to guide the assistance function
- development of administrative processes to manage requests for assistance
- setting up a small team to administer and manage requests
- updating the Tribunal's website to make available to stakeholders, information about post determination assistance, and
- working collaboratively with the Office of Registrar Indigenous Corporations (ORIC) to develop integrated assistance, where required.

In relation to other amendments, the Tribunal undertook a number activities, including:

- establishment of the publicly available record of section 31 agreements
- updates to the Tribunal website, including publishing new content, factsheets and future act forms
- updating the case management system for new register extracts
- staff training, and
- information sessions for stakeholders.

The Tribunal's educational and information activities have been significantly limited as a result of COVID-19, largely because of travel restrictions. Despite these limitations, the Tribunal has seized any appropriate opportunity to deliver education training at externally focused forums, such as Lexis Nexus native title training, and presentations at interest-based conferences such as the AIASTIS summit held in Adelaide. The Tribunal delivered a session on the geospatial assistance it can provide to applicants and native title holders, including

a live demonstration of the Tribunal's online mapping and spatial data services. The Tribunal's spatial data is freely available for third parties to use in their own systems, either by downloading the data, or by taking advantage of web map services. More information is available on the Tribunal's website.

The Tribunal's work in 2020–21

Future Acts

A primary function of the Tribunal is the resolution, by mediation or arbitration, of issues involving proposed future acts (generally, in practice, the grant of exploration and mining tenements) on land over which native title has been determined to exist, or over which there is a claim by a native title party as defined in sections 29 and 30 of the Native Title Act.

Expedited procedure

Under section 29(7) of the Act, the Commonwealth government or a state or territory government may assert that the proposed future act is an act that attracts the expedited procedure (i.e. that it is an act which will have minimal impact on native title) and, as such, does not give rise to procedural rights to negotiate which would otherwise vest in native title parties. If a native title party considers that the expedited procedure should not apply to the proposed future act, it may lodge an expedited procedure objection application (objection application) with the Tribunal.

A total of 1,565 objection applications were lodged during the reporting period, 295 more than in the previous year. This was an exceptional increase, almost 30 per cent, in comparison to previous years. The number of active applications, at the end of the reporting period was 779, an approximate 30 per cent increase when compared to the previous year. This is consistent with the high volume of objections lodged in the latter half of the reporting period. More than 600 objections were withdrawn after agreement was reached between the native title party and the relevant proponent. A further 144 objection applications were finalised by withdrawal of the tenement applications by the proponents.

There were 40 objection applications determined during the reporting period, a third of the number in the previous year. The expedited procedure was determined to apply on 20 occasions, and on 20 occasions, the expedited procedure was determined not to apply. The decrease in determinations reflects the flow on effect from the temporary measures implemented as a result of the COVID-19 situation, which measures were only eased in July 2020.

An application to the Federal Court seeking judicial review of a Tribunal decision concerning an objection application, was made during the reporting period. That application was dismissed (*State of Western Australia v Allen on behalf of Nyamal #1 [2021] FCA 574*).

As demonstrated in Table 5.2, Western Australia produces many more objection applications than does Queensland. This is due, at least in part, to policies adopted by the relevant state departments concerning the use of the expedited procedure.

Future act determinations

If the expedited procedure does not apply, or is not asserted by the State, the parties must negotiate in good faith about the proposed future act. Any party may request Tribunal assistance in mediating among the parties in order to reach agreement. There were 61 requests made in the reporting period, a 50 per cent increase over the previous year.

The Act prescribes a minimum six-month negotiation period. After that time, any party to the negotiation may lodge a future act determination application. During the reporting period, 17 applications were lodged, in line with the number in the previous year. If there has been a failure to negotiate in good faith by a party, other than a native title party, the Tribunal has no power to determine the application. If any party asserts that negotiations in good faith have not occurred, the Tribunal will hold an inquiry to establish whether or not that is the case.

During the reporting period, there were 10 'good faith' determinations. In nine of these, the Tribunal was not satisfied that the relevant parties had not negotiated in good faith and proceeded to determine the application. In the tenth, the Tribunal determined that good faith negotiations had not occurred. In that case, the

Table 5.2: Number of applications lodged with the Tribunal in 2020–21

FUTURE ACT	NSW	NT	QLD	WA	TOTAL
Objections to expedited procedure	0	1	63	1,501	1,565
Future act determination applications	6	0	2	9	17
Total	6	1	65	1,510	1,582

parties were required to negotiate further before the matter could be brought back to the Tribunal for arbitration. Eleven future act determination applications were finalised during the reporting period. In three cases, the Tribunal determined that the future act may be done. In four cases, the Tribunal determined that the act may be done, subject to conditions. The remaining future act determination applications were either withdrawn or dismissed, following agreement between the parties.

Referral from the Federal Court of Australia

As previously reported during 2019 and early 2020, the President conducted an inquiry into the traditional ownership of land in and around the City of Cairns. This inquiry was conducted at the request of the Federal Court. The Tribunal considers that the inquiry exemplifies the advantages of co-operation between the Court and the Tribunal. In April 2021, the Court made a further request for the Tribunal's assistance, involving a long-running dispute arising under an indigenous land use agreement. The ILUA provided for the payment of funds to a number of identified families. However the mechanism for making the relevant payments was frustrated. The party liable to make the payments took the relatively unusual course of commencing interpleader proceedings in the Federal Court. Representatives of some of the families became parties to those proceedings.

The trial Judge (Rares J) made findings with respect to certain matters but, before making final orders, sought the assistance of the Tribunal and Queensland South Native Title Services (QSNTS) in formulating a process by which each family might determine how it wished to hold such funds as it might receive

pursuant to the ILUA. The Tribunal's involvement is primarily pursuant to section 203BK of the Act, assisting QSNTS in the performance of its dispute resolution function under section 203BF of the Act. The primary function to be performed by QSNTS and the Tribunal is to facilitate family meetings for the purpose of reaching agreement within each family as to the way in which funds should be held.

During the reporting period, the President convened three meetings of the parties to the Federal Court proceedings.

The Registers

The Native Title Registrar maintains three registers as follows:

The Register of Native Title Claims

Under section 185(2) of the Act, the Native Title Registrar has responsibility for establishing and keeping a Register of Native Title Claims. This register records the details of claimant applications that have met the statutory conditions for registration prescribed by sections 190A–190C of the Act. As at 30 June 2021, there were 127 claimant applications on this register.

The National Native Title Register

Under section 192(2) of the Act, the Native Title Registrar must establish and keep a National Native Title Register, recording approved determinations of native title.

As at 30 June 2021, a total of 517 determinations had been registered, including 93 determinations that native title does not exist.

Map 1 *Determinations Map* (page 78) shows native title determinations as at 30 June 2021, including those registered and those not yet in effect.

The Register of Indigenous Land Use Agreements

Under section 199A(2) of the Act, the Native Title Registrar must establish and keep a Register of Indigenous Land Use Agreements, in which area agreement, body corporate and alternative procedure ILUAs are registered. At 30 June 2021, there were 1,382 ILUAs registered on the Register of Indigenous Land Use Agreements.

Map 2 *Indigenous Land Use Agreement Map* (page 79) shows registered Indigenous Land Use Agreements as at 30 June 2021.

Claimant and amended applications

Sections 190A–190C of the Act require the Native Title Registrar to decide whether native title determination applications (claimant applications) and applications for certain amendments to claimant applications, should be accepted for registration on the Register of Native Title Claims. To that end, the CEO and Principal Registrar of the Federal Court provides the Native Title Registrar with a copy of each new or amended claimant application and accompanying documents that have been filed in the Federal Court.

The Native Title Registrar considers each application against the relevant requirements of the Act. The Native Title Registrar may also undertake preliminary assessments of such applications, and draft applications, by way of assistance provided pursuant to section 78(1)(a) of the Act. Where the Registrar does not accept a claim for registration, the relevant applicant may seek reconsideration by the Tribunal. Alternatively, the applicant may seek judicial review in the Federal Court.

During the reporting period, the Native Title Registrar received 19 new claimant applications, seven fewer than in the previous year. In addition to new claims, the Native Title Registrar received 17 amended claimant applications, eight fewer than in the previous year.

There was a decreased volume of registration testing in the reporting period, a direct consequence of the reduced numbers of new and amended claims referred to the Registrar. There were 37 applications considered for registration, 22 fewer than the previous year. Of the 37 decisions, 23 were accepted for registration and 14 were not accepted. Four of these decisions were made by Tribunal members in response to requests to reconsider a registration decision. During the reporting period, four applications were subjected to preliminary assessment before filing with the Federal Court. An application to the Federal Court, seeking judicial review of a decision to accept an application for registration was made during the reporting period. That application was dismissed (*Bell v Native Title Registrar* [2021] FCA 229).

Non-claimant, compensation and revised determination applications

There was a small but notable increase in the number of non-claimant applications with seven New South Wales applications and six Queensland applications filed. Two revised determination applications were referred to the Native Title Registrar in the reporting period. Both applications were made in the Northern Territory. The Native Title Registrar received six compensation applications, a similar number to that in the previous year.

Table 5.3: Number of applications referred to or lodged with the Native Title Registrar in 2020–21

NATIVE TITLE DETERMINATION APPLICATIONS	NSW	NT	QLD	SA	VIC	WA	TOTAL
Claimant (new)	3	4	3	3	0	6	19
Non-claimant	7	0	6	0	0	0	13
Compensation	1	1	1	0	0	3	6
Revised native title determination	0	2	0	0	0	0	2
Total	11	7	10	3	0	9	40

During the reporting period, 32 native title determination applications were notified, compared with 47 in the previous year. Of the 32 applications, 13 were claimant applications.

The remainder of the notifications were 12 non-claimant applications, one revised determination applications and six compensation applications.

Indigenous land use agreements

Under the Act, parties to an ILUA (whether a body corporate agreement, area agreement or alternative procedure agreement) may apply to the Native Title Registrar for inclusion on the Register of ILUAs. Each registered ILUA, in addition to taking effect as a contract among the parties, binds all persons who hold, or may hold, native title in relation to any of the land or waters in the area covered by the ILUA.

A total of 1382 ILUAs are currently on the Register of ILUAs, the majority of which are in Queensland. Broadly, the ILUAs deal with a wide range of matters including the exercise of native title rights and interests over pastoral leases, local government activity, mining, state-protected areas and community infrastructure such as social housing.

During the reporting period, the Native Title Registrar received 49 ILUAs, four fewer than in the previous year. Thirty-one body corporate and 18 area agreement ILUAs were accepted for registration and entered in the Register.

A notable registration made during the reporting period was the Yamatji Settlement ILUA, which provides for the full and final settlement of all native title matters between the State of Western Australia and the Yamatji Nation. The ILUA

makes provision for native title compensation over the 48,000 square kilometres of Yamatji country, including Geraldton.

Another was the Taungurung Settlement Indigenous Land Use Agreement. However, in *Gardiner v Taungurung Land and Waters Council (No 2) [2021] FCA 253*, the Registrar of the National Native Title Tribunal was directed to remove the details of the Taungurung Settlement Indigenous Land Use Agreement from the Register of Indigenous Land Use Agreements and the application for registration of the Taungurung Settlement Indigenous Land Use Agreement was remitted to the Native Title Registrar for consideration in accordance with the law. This was ongoing at the end of the reporting period.

Assistance

Section 78(1) of the Act authorises the Native Title Registrar to give such assistance as he or she thinks reasonable to people preparing applications and at any stage in subsequent proceedings. That section also provides that the Native Title Registrar may help other people in relation to those proceedings. During the reporting period, such assistance was provided on 208 occasions. As in previous years, many of the requests were for the provision of geospatial products and review of draft native title determination applications.

Under sections 24BG(3), 24CG(4) and 24DH(3) of the Act, the Native Title Registrar may provide assistance in the preparation of ILUA registration applications. Often, this assistance takes the form of pre-lodgement comments upon the draft ILUA and the application for registration. During the reporting period, assistance was provided on 67 occasions, generally in the form of mapping

Table 5.4: Number of applications lodged with the Native Title Registrar in 2020–21

INDIGENOUS LAND USE AGREEMENTS	NSW	NT	QLD	SA	VIC	WA	TOTAL
Area agreements	1	2	8	0	0	1	12
Body corporate agreements	0	2	9	1	0	21	33
Total	1	4	17	1	0	22	45

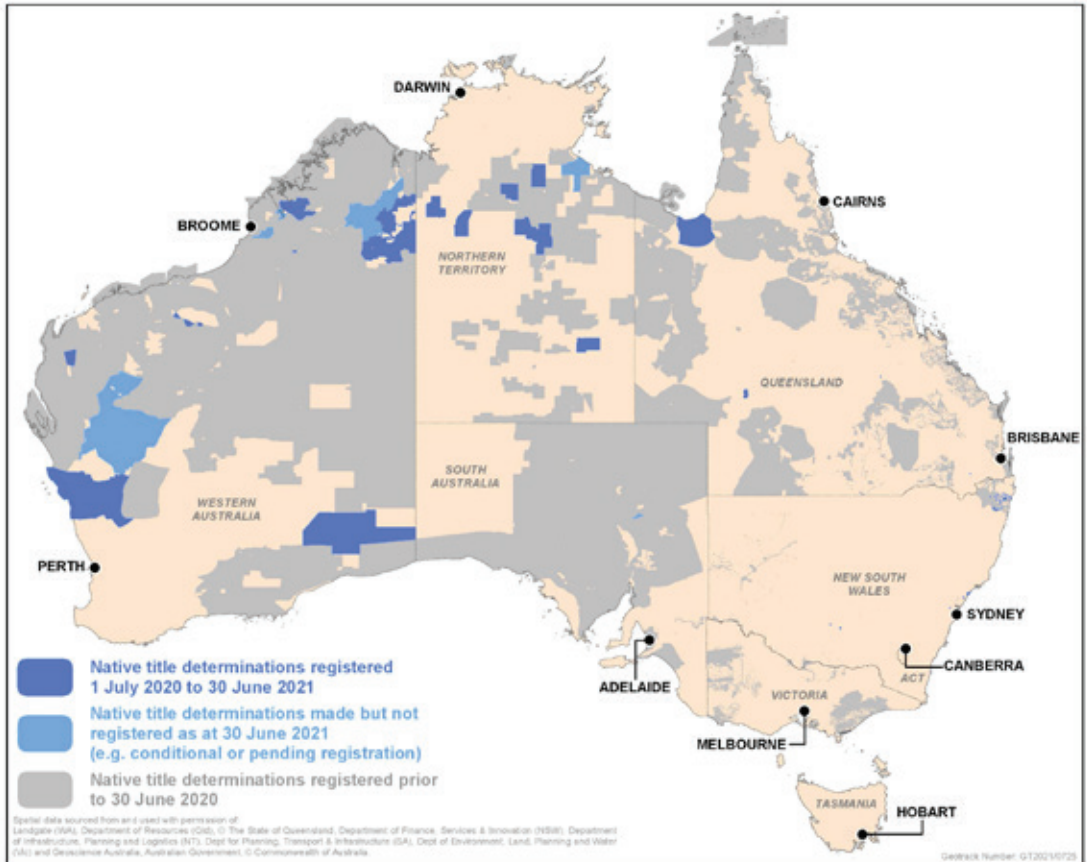
assistance, pre-lodgement comments and the provision of related information. Such assistance must be distinguished from the assistance given by the Tribunal in the negotiation of such agreements. See sections 24BF, 24CF and 24DG of the Act.

Pursuant to section 78(2) of the Act, 1324 searches of registers and other records were conducted during the reporting period.

National progress

The 517 registered determinations as at 30 June 2021 cover a total area of about 3,319,725 square kilometres or 43.2 per cent of the land mass of Australia and approximately 143,059 square kilometres of sea (below the high water mark).

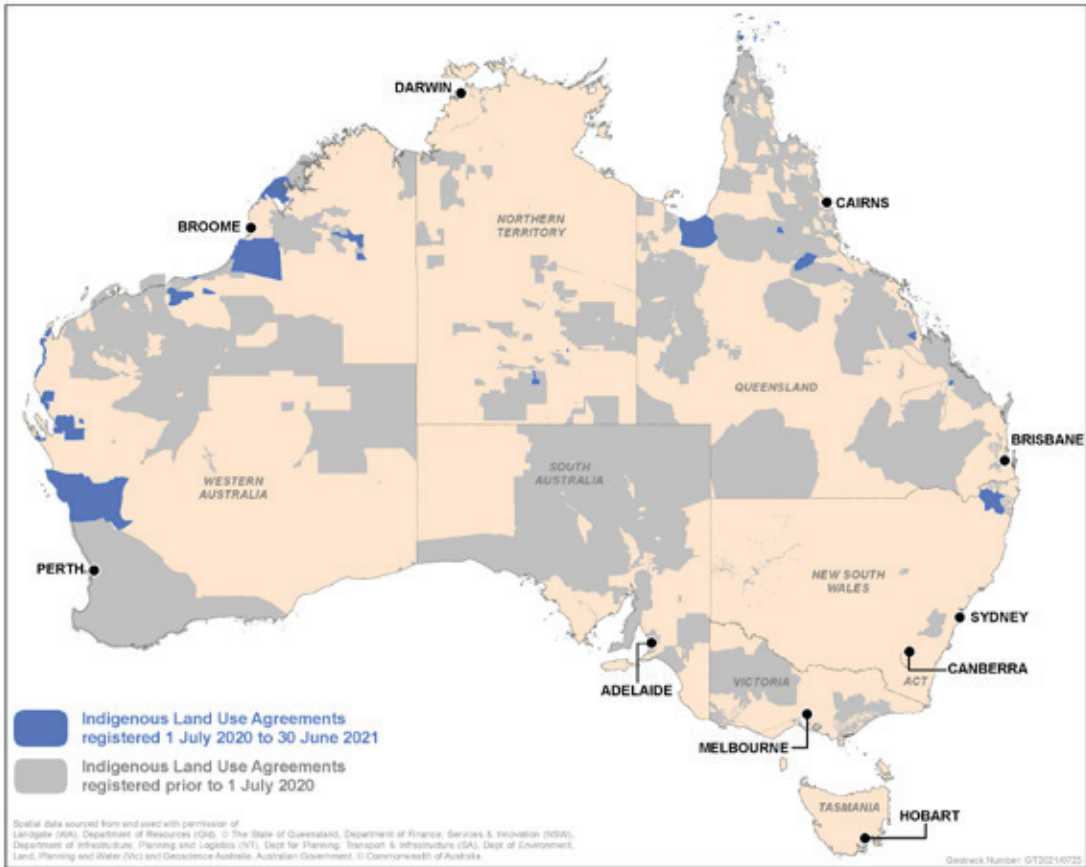
Map 1: Determinations Map



At the end of the reporting period, 13 determinations were pending registration which would increase the areas determined to about 3,442,076 sq km or 44.8 per cent of the land mass of Australia and approximately 143,435 sq km of sea (see Map 1).

Registered ILUAs cover about 2,670,158 square kilometres or 34.7 per cent of the land mass of Australia and approximately 51,275 square kilometres of sea (see Map 2).

Map 2: Indigenous Land Use Agreements Map



Management of the Tribunal

The President, in consultation with the Members, the Native Title Registrar and Team Managers, sets the strategic direction for the Tribunal. The relatively small size of the Tribunal militates in favour of informal, rather than formal consultation. On the other hand, its geographical dispersal increases reliance on the use of electronic means of communication.

Financial review

The Federal Court's appropriation includes funding for the operation of the Tribunal. This funding is set out as sub-program 1.1.2 in the Court's Portfolio Budget Statements. \$8,164 million was allocated for the Tribunal's operations in 2020–21.

Appendix 1 shows the consolidated financial results for both the Court and the Tribunal.

Table 5.4 presents the financial operating statement, summarising the Tribunal's revenue and expenditure for 2020–21.

Table 5.5: Financial operating statement

YEAR ENDING 30 JUNE 2021	BUDGET (\$'000)	ACTUAL (\$'000)	VARIANCE (\$'000)
Appropriation	8,164	8,164	0
Total Revenue	8,164	8,164	0
Total Expenses	8,164	6,953	1,211
Surplus/Deficit	0	1,211	1,211

External scrutiny

Freedom of Information

During the reporting period, eight requests were received under the *Freedom of Information Act 1982* (Cth) (FOI Act) for access to documents. The Tribunal publishes a disclosure log on its website, as required by the FOI Act. The disclosure log lists the documents that have been released in response to FOI access requests. Five entries were made consisting of 12 documents in total.

Accountability to clients

The Tribunal maintains a Client Service Charter (Commitment to Service Excellence) to ensure that service standards meet client needs. During the reporting period there were no complaints requiring action under the Charter.

Statutory office holders

The Native Title Act deals, in a general way, with issues concerning the behaviour and capacity of Members. While the Native Title Registrar is subject to the Australian Public Service Code of Conduct, this does not apply to Tribunal Members, except where they may be, directly or indirectly, involved in the supervision of staff.

There is a voluntarily code of conduct for Members. However it may be in need of review. This process will be undertaken in the course of 2021-22. During the reporting period, there were no complaints concerning Members.

Online services

The Tribunal maintains a website at www.nntt.gov.au. The website enables online searching of the National Native Title Register, the Register of Native Claims, and Register of Indigenous Land Use Agreements. Native title spatial information and data can also be accessed online through NTV.

Australian Human Rights Commission

Under section 209 of the Act, the Commonwealth Minister may, by written notice, direct the Aboriginal and Torres Strait Islander Social Justice Commissioner to report to the Commonwealth Minister about the operation of the Act or its effect on the exercise and enjoyment of human rights by Aboriginal peoples and Torres Strait Islanders.

The Tribunal continues to assist the Commissioner as requested.

PART 6

Appendices

Appendix 1: Financial Statements



INDEPENDENT AUDITOR'S REPORT

To the Attorney-General

Opinion

In my opinion, the financial statements of the Federal Court of Australia (the Entity) for the year ended 30 June 2021:

- (a) comply with Australian Accounting Standards – Reduced Disclosure Requirements and the *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015*; and
- (b) present fairly the financial position of the Entity as at 30 June 2021 and its financial performance and cash flows for the year then ended.

The financial statements of the Entity, which I have audited, comprise the following as at 30 June 2021 and for the year then ended:

- Statement by the Chief Executive Officer and Chief Finance Officer of the Federal Court of Australia;
- Statement of Comprehensive Income;
- Statement of Financial Position;
- Statement of Changes in Equity;
- Cash Flow Statement;
- Administered Schedule of Comprehensive Income;
- Administered Schedule of Assets and Liabilities;
- Administered Reconciliation Schedule;
- Administered Cash Flow Statement; and
- Notes to the financial statements, comprising a summary of significant accounting policies and other explanatory information.

Basis for opinion

I conducted my audit in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. My responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Statements* section of my report. I am independent of the Entity in accordance with the relevant ethical requirements for financial statement audits conducted by the Auditor-General and his delegates. These include the relevant independence requirements of the Accounting Professional and Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (the Code) to the extent that they are not in conflict with the *Auditor-General Act 1997*. I have also fulfilled my other responsibilities in accordance with the Code. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

Accountable Authority's responsibility for the financial statements

As the Accountable Authority of the Entity, the Chief Executive Officer is responsible under the *Public Governance, Performance and Accountability Act 2013* (the Act) for the preparation and fair presentation of annual financial statements that comply with Australian Accounting Standards – Reduced Disclosure Requirements and the rules made under the Act. The Chief Executive Officer is also responsible for such internal control as the Chief Executive Officer determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Chief Executive Officer is responsible for assessing the ability of the Entity to continue as a going concern, taking into account whether the Entity's operations will cease as a result

of an administrative restructure or for any other reason. The Chief Executive Officer is also responsible for disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the assessment indicates that it is not appropriate.

Auditor's responsibilities for the audit of the financial statements

My objective is to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the Australian National Audit Office Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements.

As part of an audit in accordance with the Australian National Audit Office Auditing Standards, I exercise professional judgement and maintain professional scepticism throughout the audit. I also:

- identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control;
- obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Entity's internal control;
- evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Accountable Authority;
- conclude on the appropriateness of the Accountable Authority's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Entity's ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my auditor's report. However, future events or conditions may cause the Entity to cease to continue as a going concern; and
- evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

I communicate with the Accountable Authority regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.

Australian National Audit Office



Racheal Kris

Senior Director

Delegate of the Auditor-General

Canberra

2 September 2021

Federal Court of Australia

Statement by the Chief Executive Officer and Chief Finance Officer of the Federal Court of Australia

In our opinion, the attached financial statements for the period ended 30 June 2021 comply with subsection 42(2) of the Public Governance, Performance and Accountability Act 2013 (PGPA Act), and are based on properly maintained financial records as per subsection 41(2) of the PGPA Act.

In our opinion, at the date of this statement, there are reasonable grounds to believe that the Federal Court of Australia will be able to pay its debts as and when they fall due.



Signed

Ms Sia Lagos

Chief Executive Officer/Principal Registrar

2 September 2021



Signed

Mr David Llewelyn

Acting Chief Finance Officer

2 September 2021

Statement of Comprehensive Income
for the period ended 30 June 2021

		2021	2020	Original
	Notes	\$'000	\$'000	Budget \$'000
NET COST OF SERVICES				
Expenses				
Judicial benefits	1.1A	105,751	110,159	109,822
Employee benefits	1.1A	123,972	118,666	120,081
Suppliers	1.1B	92,029	92,470	105,136
Depreciation and amortisation	3.2A	35,705	29,955	31,325
Finance costs	1.1C	1,528	2,195	2,979
Impairment loss / reversal on financial instruments	1.1D	(22)	22	-
Write-Down and impairment of assets	1.1E	219	14	-
Total expenses		359,182	353,481	369,343
Own-Source income				
Own-source revenue				
Revenue from contracts with customers	1.2A	2,630	2,904	3,971
Resources received free of charge	1.2B	43,335	43,340	42,765
Other revenue	1.2B	1,579	267	-
Total own-source revenue		47,544	46,511	46,736
Other gains				
Liabilities assumed by other agencies		34,545	35,450	28,486
Other gains		344	1	-
Total gains	1.2C	34,889	35,451	28,486
Total own-source income		82,433	81,962	75,222
Net (cost of)/contribution by services		(276,749)	(271,519)	(294,121)
Revenue from Government	1.2D	275,748	273,973	277,784
Surplus/(Deficit) on continuing operations		(1,001)	2,454	(16,337)
OTHER COMPREHENSIVE INCOME				
Items not subject to subsequent reclassification to net cost of services				
Changes in asset revaluation reserve		-	4,107	-
Total other comprehensive income		-	4,107	-
Total comprehensive income / (loss)		(1,001)	6,561	(16,337)

The above statement should be read in conjunction with the accompanying notes.

Statement of Comprehensive Income for the period ended 30 June 2021

Budget Variances Commentary

Statement of Comprehensive Income

Judicial benefits

Judicial benefits are lower than budgeted due to significant judicial vacancies throughout 2020-21.

Employee benefits

Employee benefits are higher than budgeted due to misallocation made of the cost of additional positions during the budget process.

Suppliers

Supplier expenses are lower than budgeted due to savings made following from judicial vacancies and reduced travel costs for 2020-21.

Depreciation and amortisation

Depreciation expenses are higher than budgeted as a result of changes to asset values and useful lives made pursuant to an independent revaluation of the Court's assets in June 2020.

Finance costs

Finance costs are lower than budgeted due the impact of the bond rate on make good finance costs that were not known at the time of the budget.

Revenue from contracts with customers

The Federal Court Entity (The Entity) recognised lower revenue than was anticipated in relation to its International Programs work. This work was curtailed following the COVID-19 outbreak.

Liabilities assumed by other agencies

The gain received in relation to notional judicial superannuation costs was higher than budgeted due to an increase in the actuarial assessment of the value of these benefits.

Revenue from Government

This is lower than budgeted following a s51 reduction in the Court's appropriation related to an unlegislated measure.

Statement of Financial Position
as at 30 June 2021

	Notes	2021 \$'000	2020 \$'000	Original Budget \$'000
ASSETS				
Financial assets				
Cash and cash equivalents	3.1A	1,234	1,239	1,239
Trade and other receivables	3.1B	<u>134,173</u>	<u>116,393</u>	<u>106,716</u>
Total financial assets		<u>135,407</u>	<u>117,632</u>	<u>107,955</u>
Non-financial assets¹				
Buildings	3.2A	164,301	182,130	183,039
Plant and equipment	3.2A	29,916	23,103	31,542
Computer software	3.2A	9,474	11,832	11,711
Inventories	3.2B	31	36	36
Prepayments		<u>3,763</u>	<u>1,939</u>	<u>1,939</u>
Total non-financial assets		<u>207,485</u>	<u>219,040</u>	<u>228,267</u>
Total assets		<u>342,892</u>	<u>336,672</u>	<u>336,222</u>
LIABILITIES				
Payables				
Suppliers	3.3A	9,075	4,681	3,278
Other payables	3.3B	<u>4,100</u>	<u>3,733</u>	<u>3,665</u>
Total payables		<u>13,175</u>	<u>8,414</u>	<u>6,943</u>
Interest bearing liabilities				
Leases	3.4A	<u>141,720</u>	<u>151,019</u>	<u>154,169</u>
Total interest bearing liabilities		<u>141,720</u>	<u>151,019</u>	<u>154,169</u>
Provisions				
Employee provisions	6.1A	67,388	66,903	67,069
Other provisions	3.5A	<u>4,253</u>	<u>4,780</u>	<u>3,960</u>
Total provisions		<u>71,641</u>	<u>71,683</u>	<u>71,029</u>
Total liabilities		<u>226,536</u>	<u>231,116</u>	<u>232,141</u>
Net assets		<u>116,356</u>	<u>105,556</u>	<u>104,081</u>
EQUITY				
Contributed equity		131,770	119,508	134,370
Reserves		12,844	12,844	12,844
Accumulated deficit		<u>(28,258)</u>	<u>(26,796)</u>	<u>(43,133)</u>
Total equity		<u>116,356</u>	<u>105,556</u>	<u>104,081</u>

The above statement should be read in conjunction with the accompanying notes.

1. Right-of-use assets are included in Buildings, Plant and Equipment.

Statement of Financial Position as at 30 June 2021

Budget Variances Commentary

Statement of Financial Position

Trade and other receivables

Appropriation receivable is higher than budgeted. This reflects the surplus achieved in 2020-21. There was also an underspend of capital appropriation in 2020-21 due to delays in building and software development projects.

Non-Financial Assets

Non financial assets are lower than budgeted as a result of a delay in the completion of capital projects.

Payables

Payables are higher than budgeted due to a high amount of accrued expenses for equipment purchased at the end of the financial year that has not yet been paid for.

Leases

Lease liabilities are lower than budgeted due to a delay in entering into a new lease that was expected during 2020-21.

Statement of Changes in Equity
for the period ended 30 June 2021

	Notes	2021 \$'000	2020 \$'000	Original Budget \$'000
CONTRIBUTED EQUITY				
Opening balance				
Balance carried forward from previous period		119,508	95,527	119,508
Adjusted opening balance		119,508	95,527	119,508
Comprehensive income				
Other comprehensive income		-	-	-
Total comprehensive income/(loss)		-	-	-
Transactions with owners				
Distributions to owners				
Expired 2017-18 appropriations		(262)	-	-
s51 Withdrawal Criminal Jurisdiction 2019-20		(2,338)	-	-
Contributions by owners				
Equity injection - appropriation		2,717	-	2,717
Departmental capital budget		12,145	23,981	12,145
Total transactions with owners		12,262	23,981	14,862
Closing balance as at 30 June		131,770	119,508	134,370
RETAINED EARNINGS/(ACCUMULATED DEFICIT)				
Opening balance				
Balance carried forward from previous period		(26,796)	(30,542)	(26,796)
Adjustment on initial application of AASB 16		-	1,292	-
Adjusted opening balance		(26,796)	(29,250)	(26,796)
Comprehensive income				
Surplus/(Deficit) for the period		(1,001)	2,454	(16,337)
Other comprehensive income		-	-	-
Total comprehensive income/(loss)		(1,001)	2,454	(16,337)
Transactions with owners				
Distributions to owners				
Expired 2017-18 appropriations		(461)	-	-
Closing balance as at 30 June		(28,258)	(26,796)	(43,133)
ASSET REVALUATION RESERVE				
Opening balance				
Balance carried forward from previous period		12,844	8,737	12,844
Adjusted opening balance		12,844	8,737	12,844
Comprehensive income				
Other comprehensive income		-	4,107	-
Total comprehensive income/(loss)		-	4,107	-
Closing balance as at 30 June		12,844	12,844	12,844

Statement of Changes in Equity

for the period ended 30 June 2021

	Notes	2021 \$'000	2020 \$'000	Original Budget \$'000
TOTAL EQUITY				
Opening balance				
Balance carried forward from previous period		105,556	73,722	105,556
Adjustment for errors		-	-	-
Adjustment on initial application of AASB 16		-	1,292	-
Adjusted opening balance		105,556	75,014	105,556
Comprehensive income				
Surplus/(Deficit) for the period		(1,001)	2,454	(16,337)
Other comprehensive income		-	4,107	-
Total comprehensive income/(loss)		(1,001)	6,561	(16,337)
Transactions with owners				
Distributions to owners				
Quarantined funds		(3,061)	-	-
Contributions by owners				
Equity injection - appropriation		2,717	-	2,717
Departmental capital budget		12,145	23,981	12,145
Total transactions with owners		11,801	23,981	14,862
Closing balance as at 30 June		116,356	105,556	104,081

The above statement should be read in conjunction with the accompanying notes.

Accounting Policy

Equity Injections

Amounts appropriated which are designated as 'equity injections' for a year (less any formal reductions) and Departmental Capital Budgets (DCBs) are recognised directly in contributed equity in that year.

Budget Variances Commentary

Statement of Changes in Equity

Accumulated deficit

The deficit in 2020-21 was lower than budgeted, resulting in an improved equity position compared with the budgeted position.

Cash Flow Statement
for the period ended 30 June 2021

	2021	2020	Original Budget
Notes	\$'000	\$'000	\$'000
OPERATING ACTIVITIES			
Cash received			
Appropriations	260,471	258,262	287,836
Sales of goods and rendering of services	2,861	3,806	3,596
GST received	7,558	8,448	-
Other	1,580	266	-
Total cash received	272,470	270,782	291,432
Cash used			
Employees	193,472	188,727	201,417
Suppliers	52,761	59,655	61,996
Interest payments on lease liabilities	1,715	1,883	2,979
Section 74 receipts transferred to OPA	3,805	3,434	-
Total cash used	251,753	253,699	266,392
Net cash from/(used by) operating activities	20,717	17,083	25,040
INVESTING ACTIVITIES			
Cash received			
Proceeds from sales of property, plant and equipment	4	1	-
Total cash received	4	1	-
Cash used			
Purchase of property, plant and equipment	13,843	11,581	23,922
Purchase of intangibles	893	3,496	-
Total cash used	14,736	15,077	23,922
Net cash from/(used by) investing activities	(14,732)	(15,076)	(23,922)
FINANCING ACTIVITIES			
Cash received			
Contributed equity	13,034	15,926	14,862
Total cash received	13,034	15,926	14,862
Cash used			
Repayment of borrowings	807	849	992
Principal payments of lease liabilities	18,217	17,082	14,988
Total cash used	19,024	17,931	15,980
Net Cash from/(used by) financing activities	(5,990)	(2,005)	(1,118)
Net increase / (decrease) in cash held	(5)	2	-
Cash and cash equivalents at the beginning of the reporting period	1,239	1,237	1,239
Cash and cash equivalents at the end of the reporting period	1,234	1,239	1,239
	3.1A		

The above statement should be read in conjunction with the accompanying notes.

Cash Flow Statement

for the period ended 30 June 2021

Budget Variances Commentary

Statement of Cash Flow Statement

Cash used for investing activities and Contributed equity

Asset purchases were lower than expected due to a delay in the completion of building and software development projects.

Principal payments of lease liabilities

Principal payments of lease liabilities are higher than budgeted for due to underestimation of these liabilities during the budget process.

Administered Schedule of Comprehensive Income
for the period ended 30 June 2021

		2021	2020	Original
	Notes	\$'000	\$'000	Budget
				\$'000
NET COST OF SERVICES				
Expenses				
Suppliers	2.1A	612	726	884
Impairment Loss on Financial Instruments	2.1B	3,437	3,802	3,200
Other Expenses - Refunds of Fees	2.1C	422	346	900
Total expenses		4,471	4,874	4,984
Income				
Revenue				
Non-taxation revenue				
Fees and Fines	2.2A	83,264	118,842	89,268
Total non-taxation revenue		83,264	118,842	89,268
Total revenue		83,264	118,842	89,268
Total income		83,264	118,842	89,268
Net contribution by services		78,793	113,968	84,284
Total comprehensive income		78,793	113,968	84,284

The above schedule should be read in conjunction with the accompanying notes.

Budget Variances Commentary

Administered Schedule of Comprehensive Income

Fees and fines

Administered revenues relate to activities performed by the Entity on behalf of the Australian Government. The variance to budget is due to the uncertainty in estimating fee revenue and fines, with the Entity on occasion receipting fines on behalf of the Government. A single large fine was received in 2019-20 causing fine revenue to be higher in that year.

Other expenses

Other expenses relates to the refund of fees. The variance to budget is due to the uncertainty in estimating the amount of fees that may require refund during the period.

Administered Schedule of Assets and Liabilities as at 30 June 2021

	Notes	2021 \$'000	2020 \$'000	Original Budget \$'000
ASSETS				
Financial Assets				
Cash and Cash Equivalents	4.1A	106	103	103
Trade and Other Receivables	4.1B	1,102	1,039	1,039
Total assets administered on behalf of Government		1,208	1,142	1,142
LIABILITIES				
Payables				
Suppliers	4.2A	58	31	32
Other Payables	4.2B	417	543	542
Total liabilities administered on behalf of Government		475	574	574
Net assets/(liabilities)		733	568	568

The above schedule should be read in conjunction with the accompanying notes.

Budget Variances Commentary

Administered Schedule of Assets and Liabilities

Cash and cash equivalents

There is inherent uncertainty in estimating the cash balance on any particular day.

Suppliers

The variance to budget is a timing difference due to invoices received after 30th June.

Administered Reconciliation Schedule
for the period ended 30 June 2020

	2021	2020
	\$'000	\$'000
Opening assets less liabilities as at 1 July	568	1,693
Adjustment for change in accounting policies		-
Adjusted opening assets less liabilities	568	1,693
Net contribution by services		
Income	83,264	118,842
Expenses		
Payments to entities other than corporate Commonwealth entities	(4,471)	(4,874)
Transfers (to)/from the Australian Government		
Appropriation transfers from Official Public Account		
Annual appropriations		
Payments to entities other than corporate Commonwealth entities	585	784
Special appropriations (unlimited) s77 PGPA Act repayments		
Payments to entities other than corporate Commonwealth entities	424	353
GST increase to appropriations s74 PGPA Act		
Payments to entities other than corporate Commonwealth entities	59	78
Appropriation transfers to OPA		
Transfers to OPA	(79,696)	(116,308)
Restructuring	-	-
Closing assets less liabilities as at 30 June	733	568

The above schedule should be read in conjunction with the accompanying notes.

Accounting Policy

Administered cash transfers to and from the Official Public Account

Revenue collected by the entity for use by the Government rather than the entity is administered revenue. Collections are transferred to the Official Public Account (OPA) maintained by the Department of Finance. Conversely, cash is drawn from the OPA to make payments under Parliamentary appropriation on behalf of Government. These transfers to and from the OPA are adjustments to the administered cash held by the entity on behalf of the Government and reported as such in the schedule of administered cashflows and in the administered reconciliation schedule.

Administered Cash Flow Statement

for the period ended 30 June 2021

	Notes	2021 \$'000	2020 \$'000
OPERATING ACTIVITIES			
Cash received			
Fees		79,395	77,862
Fines		242	38,329
GST received		62	78
Total cash received		79,699	116,269
Cash used			
Suppliers		644	862
Refunds of fees		422	346
Other		2	7
Total cash used		1,068	1,215
Net cash from operating activities		78,631	115,054
Net increase in cash held		78,631	115,054
Cash from Official Public Account for:			
Appropriations		1,068	1,215
Total cash from official public account		1,068	1,215
Cash to Official Public Account for:			
Transfer to OPA		(79,696)	(116,308)
Total cash to official public account		(79,696)	(116,308)
Cash and cash equivalents at the beginning of the reporting period		103	142
Cash and cash equivalents at the end of the reporting period	4.1A	106	103
The above statement should be read in conjunction with the accompanying notes.			

Overview

Objectives of the Federal Court of Australia

The Federal Court of Australia listed entity (the Entity) is a non-corporate Commonwealth listed entity for the purposes of the *Public Governance and Accountability Act 2013* (PGPA Act). It is established under section 18ZB of the *Federal Court of Australia Act 1976* (Cth).

Appropriations made by the Federal Parliament for the purposes of the Federal Court of Australia, the Family Court of Australia and the Federal Circuit Court of Australia (all of which are courts established pursuant to Chapter III of the Commonwealth Constitution), as well as the National Native Title Tribunal, are made to the Entity, which is accountable for the financial management of those appropriations.

The objectives of the Entity include the provision of corporate services in support of the operations of the Federal Court, Family Court, Federal Circuit Court and the National Native Title Tribunal.

The Basis of Preparation

The financial statements are general purpose financial statements and are required by section 42 of the *Public Governance, Performance and Accountability Act 2013*.

The Financial Statements have been prepared in accordance with:

- a) *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015* (FRR); and
- b) Australian Accounting Standards and Interpretations – Reduced Disclosure Requirements issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial statements have been prepared on an accrual basis and in accordance with the historical cost convention, except for certain assets and liabilities at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position. The financial statements are presented in Australian dollars and values are rounded to the nearest thousand dollars unless otherwise specified.

New Accounting Standards

No accounting standards have been adopted earlier than the application date as stated in the standard.

All new/revised/amending accounting standards and or interpretations that were issued prior to the sign-off date and are applicable to the current reporting period did not have a material effect on the Entity's financial statements.

Taxation

The Federal Court of Australia is exempt from all forms of taxation except Fringe Benefits Tax (FBT) and the Goods and Services Tax (GST).

Reporting of Administered activities

Administered revenues, expenses, assets, liabilities and cash flows are disclosed in the administered schedules and related notes.

Except where otherwise stated, administered items are accounted for on the same basis and using the same policies as for departmental items, including the application of Australian Accounting Standards.

Events after the Reporting Period

Departmental and Administered

Federal Circuit and Family Court of Australia Act 2021 and the *Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Arrangements) Act 2021* passed through Parliament on 18 February 2021 and received Royal Assent on 1 March 2021. The Federal Circuit and Family Court of Australia (FCFCOA) commenced operations on 1 September 2021, 6 months from Royal Assent. The legislation established two divisions of the FCFCOA with the Family Court of Australia now forming Division 1 and the Federal Circuit Court Division 2 of the FCFCOA. The establishment of the FCFCOA creates a single entry point for all first instance family law proceedings. In support of the establishment of the FCFCOA, harmonised rules, forms and case management processes have been implemented to provide a streamlined approach to family law proceedings. The Federal Court of Australia (FCA) Outcomes 2 (FCFCOA Div. 1) and 3 (FCFCOA Div. 2) will remain in place for the Entity to receive appropriation with respect to each FCFCOA Division with Outcome Statements being updated during the transition period to reflect the new Court structure. Administered fee regulations (*Family Law (Fees) Regulation 2012* and *Federal Court and Federal Circuit and Family Court Regulations 2012*) are made under the *FCFCOA Act 2021* with appropriate legislated transition arrangements established. Staff of the FCFCOA will continue to be employed by the FCA under its Enterprise Agreement.

1. Financial Performance

This section analyses the financial performance of the Federal Court of Australia for the year ended 30 June 2021.

1.1 Expenses

	2021	2020
	\$'000	\$'000
Note 1.1A: Judicial and Employee Benefits		
Judges remuneration	67,291	70,585
Judicial superannuation defined contribution	3,916	4,124
Judges notional superannuation	34,544	35,450
Total judge benefits	105,751	110,159
Wages and salaries	93,384	88,004
Superannuation		
Defined contribution plans	11,222	10,375
Defined benefit plans	4,869	5,580
Leave and other entitlements	13,366	14,113
Separation and redundancies	1,131	594
Total employee benefits	123,972	118,666
Total judge and employee benefits	229,723	228,825

Accounting Policy

Accounting policies for employee related expenses are contained in the People and Relationships section.

	2021	2020
	\$'000	\$'000
Note 1.1B: Suppliers		
Goods and services supplied or rendered		
IT services	10,012	6,883
Consultants	540	795
Contractors	1,131	1,031
Property operating costs	10,844	9,635
Courts operation and administration	11,257	12,980
Travel	2,684	5,625
Library purchases	4,414	4,357
Other	7,432	6,463
Total goods and services supplied or rendered	48,314	47,770
Goods supplied	7,326	2,941
Services rendered	40,988	44,829
Total goods and services supplied or rendered	48,314	47,770
Other suppliers		
Short-term leases	(786)	632
Property resources received free of charge	43,210	43,210
Workers compensation expenses	1,291	858
Total other suppliers	43,715	44,700
Total suppliers	92,029	92,470

The Entity has short-term lease commitments of \$15,855 as at 30 June 2021.

The above lease disclosures should be read in conjunction with the accompanying notes 1.1C, 3.2A and 3.4A.

Accounting Policy**Short-term leases and leases of low-value assets**

The Entity has elected not to recognise right-of-use assets and lease liabilities for short-term leases of assets that have a lease term of 12 months or less and leases of low-value assets (less than \$10,000).

	2021	2020
	\$'000	\$'000
<u>Note 1.1C: Finance Costs</u>		
Interest on lease liabilities - buildings	1,686	1,828
Interest on lease liabilities - plant and equipment	29	55
Unwinding of discount - make good	<u>(187)</u>	<u>312</u>
Total finance costs	<u>1,528</u>	<u>2,195</u>

The above lease disclosures should be read in conjunction with the accompanying notes 1.1B, 3.2A and 3.4A.

Accounting Policy

All borrowing costs are expensed as incurred.

	2021	2020
	\$'000	\$'000
<u>Note 1.1D: Impairment Loss on Financial Instruments</u>		
Impairment on financial instruments	<u>(22)</u>	<u>22</u>
Total impairment loss on financial instruments	<u>(22)</u>	<u>22</u>
<u>Note 1.1E: Write-Down and Impairment of Other Assets</u>		
Impairment of inventories	23	10
Impairment of plant and equipment	4	4
Impairment on buildings	<u>192</u>	<u>-</u>
Total write-down and impairment of other assets	<u>219</u>	<u>14</u>

1.2 Own-Source Revenue and Gains

	2021	2020
	\$'000	\$'000
Own-Source Revenue		
<u>Note 1.2A: Revenue from contracts with customers</u>		
Sale of goods	1	1
Rendering of services	<u>2,629</u>	<u>2,903</u>
Total revenue from contracts with customers	<u>2,630</u>	<u>2,904</u>
Disaggregation of revenue from contracts with customers		
Court administration services	466	772
NZ Aid funded program revenue	1,373	1,337
Government related services	790	794
Others	<u>1</u>	<u>1</u>
Total	<u>2,630</u>	<u>2,904</u>

	\$'000	\$'000
Note 1.2B: Other Revenue		
Resources received free of charge		
Rent in Commonwealth Law Courts buildings	43,210	43,210
Audit services provided by ANAO	125	130
Other	<u>1,579</u>	<u>267</u>
Total other revenue	<u>44,914</u>	<u>43,607</u>

Accounting Policy

Revenue from the sale of goods is recognised when control has been transferred to the buyer. Revenue is recognised by the Entity under *AASB 15* when the following occurs:

- a contract is identified and each party is committed to perform its obligations;
- the rights and payment terms can be identified; and
- it is probable that the Entity will collect the consideration under the contract when goods or services have been provided.

The Entity identifies its performance obligations in each contract and determines when they have been satisfied. Revenue is recognised at the time performance obligations have been met.

The following is a description of the principal activities from which the Entity generates its revenue:

Court administration services. Revenue is recognised when the goods or services are provided to the customer.

Government related services. Revenue is recognised at the time the service is provided.

Services provided to the New Zealand Government. The Entity has defined performance obligations under the contract with New Zealand, with clearly identified milestones identified in the contract. Revenue is recognised when those performance obligations have been reached.

The transaction price is the total amount of consideration to which the Entity expects to be entitled in exchange for transferring promised goods or services to a customer. The consideration promised in a contract with a customer may include fixed amounts, variable amounts or both. The Entity has not been required to apply the practical expedient on AASB 15.121. There is no consideration from contracts with customers that is not included in the transaction price.

Receivables for goods and services, which have 30 day terms, are recognised at the nominal amounts due less any impairment allowance account. Collectability of debts is reviewed at the end of the reporting period. Allowances are made when the collection of the debt is no longer probable.

Resources Received Free of Charge

Resources received free of charge are recognised as revenue when, and only when, a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense.

Resources received free of charge have been reclassified from Other Gains to Other Revenue in 2020-21 to more accurately reflect the substance of the transaction.

	2021	2020
	\$'000	\$'000
Note 1.2C: Other Gains		
Liabilities assumed by other agencies	34,545	35,450
Other	<u>344</u>	<u>1</u>
Total other gains	<u>34,889</u>	<u>35,451</u>

Accounting PolicyLiabilities assumed by other agencies

Liabilities assumed by other agencies refers to the notional cost of judicial pensions as calculated by actuaries on behalf of the Department of Finance.

	2021	2020
	\$'000	\$'000
Note 1.2D: Revenue from Government		
Appropriations		
Departmental appropriation	<u>275,748</u>	<u>273,973</u>
Total revenue from Government	<u>275,748</u>	<u>273,973</u>

Accounting Policy*Revenue from Government*

Amounts appropriated for departmental appropriations for the year (adjusted for any formal additions and reductions) are recognised as Revenue from Government when the entity gains control of the appropriation except for certain amounts that related to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned. Appropriations receivable are recognised at their nominal amounts.

2. Income and Expenses Administered on Behalf of Government

This section analyses the activities that the Federal Court of Australia does not control but administers on behalf of the Government. Unless otherwise noted, the accounting policies adopted are consistent with those applied for departmental reporting.

2.1 Administered – Expenses

	2021	2020
	\$'000	\$'000
Note 2.1A: Suppliers		
Services rendered		
Supply of primary dispute resolution services	612	726
Total suppliers	612	726
Note 2.1B: Impairment Loss on Financial Instruments		
Impairment of financial instruments	3,437	3,802
Total impairment loss on financial instruments	3,437	3,802
Note 2.1C: Other Expenses		
Refunds of fees	422	346
Total other expenses	422	346

2.2 Administered – Income

	2021	2020
	\$'000	\$'000
Note 2.2A: Fees and Fines		
Revenue		
Non-Taxation Revenue		
Hearing Fees	7,681	5,664
Filing and Setting Down Fees	75,341	74,849
<i>Fines</i>	242	38,329
Total fees and fines	83,264	118,842

Accounting Policy

All administered revenues are revenues relating to the course of ordinary activities performed by the Federal Court of Australia, the Federal Circuit Court and the Family Court of Australia on behalf of the Australian Government. As such administered revenues are not revenues of the Entity. Fees are charged for access to the Entity's services. Administered fee revenue is recognised when the service occurs. The services are performed at the same time as or within two days of the fees becoming due and payable. Revenue from hearing fees is recognised under AASB15 *Revenue from contracts with customers*. Filing and setting down fee revenue is recognised under AASB1058 *Income of not for profit entities*.

Revenue from fines is recognised when a fine is paid to the Entity on behalf of the Government. Fees and Fines are recognised at their nominal amount due less any impairment allowance. Collectability of debts is reviewed at the end of the reporting period. Impairment allowances are made based on historical rates of default.

3. Financial Position

This section analyses the Federal Court of Australia assets used to conduct its operations and the operating liabilities incurred as a result. Employee related information is disclosed in the People and Relationships section.

3.1 Financial Assets

	2021	2020
	\$'000	\$'000
Note 3.1A: Cash and Cash Equivalents		
Cash at bank	1,219	1,222
Cash on hand	15	17
Total cash and cash equivalents	1,234	1,239
	2021	2020
	\$'000	\$'000
Note 3.1B: Trade and Other Receivables		
Goods and services receivables		
Goods and services	182	105
Total goods and services receivables	182	105
Appropriation receivables		
Appropriation receivables - operating	111,212	92,421
Appropriation receivables - departmental capital budget	21,980	22,923
Total appropriation receivables	133,192	115,344
Other receivables		
Statutory receivables (GST)	800	966
Total other receivables	800	966
Total trade and other receivables (gross)	134,174	116,415
Less impairment loss allowance	(1)	(22)
Total trade and other receivables (net)	134,173	116,393

Credit terms for goods and services were within 30 days (2020: 30 days)

Reconciliation of the Impairment Allowance Account:

Movements in relation to 2021

	Goods and services \$'000	Other receivables \$'000	Total \$'000
As at 1 July 2020	22	-	22
Amounts written off	-	-	-
Amounts recovered and reversed	(21)	-	(21)
Total as at 30 June 2021	1	-	1

Movements in relation to 2020

	Goods and services \$'000	Other receivables \$'000	Total \$'000
As at 1 July 2019	-	-	-
Amounts written off	-	-	-
Increase/decrease recognised in net surplus	22	-	22
Total as at 30 June 2020	22	-	22

Accounting Policy**Financial assets**

Trade receivables, loans and other receivables that are held for the purpose of collecting the contractual cash flows where the cash flows are solely payments of principal and interest, that are not provided at below-market interest rates, are subsequently measured at amortised cost using the effective interest method adjusted for any loss allowance.

Impairment loss allowance

Financial assets are assessed for impairment at the end of each reporting period.

3.2 Non-Financial Assets

Note 3.2A: Reconciliation of the Opening and Closing Balances of Property, Plant and Equipment and Intangibles

	Buildings -			Total \$'000
	Leasehold Improvements \$'000	Plant and equipment \$'000	Computer software ¹ \$'000	
As at 1 July 2020				
Gross book value	202,699	25,430	34,029	262,158
Accumulated depreciation, amortisation and impairment	(20,569)	(2,327)	(22,197)	(45,093)
Total as at 1 July 2020	182,130	23,103	11,832	217,065
Additions				
Purchase	2,753	11,090	893	14,736
Right-of-use assets	5,741	2,142	-	7,883
Depreciation and amortisation	(7,513)	(4,403)	(3,251)	(15,167)
Depreciation on right-of-use assets	(18,618)	(1,920)	-	(20,538)
Disposals on right-of-use assets	-	(92)	-	(92)
Disposals - other	(192)	(4)	-	(196)
Total as at 30 June 2021	164,301	29,916	9,474	203,691
Total as at 30 June 2021 represented by				
Gross book value	210,760	37,251	34,922	283,036
Accumulated depreciation and impairment	(46,459)	(7,335)	(25,448)	(79,345)
Total as at 30 June 2021	164,301	29,916	9,474	203,691
Carrying amount of right-of-use assets	133,559	2,877	-	136,436

1. The carrying amount of computer software includes \$3.24 million of purchased software and \$6.23 million of internally generated software.

No indicators of impairment were found for property, plant and equipment and intangibles.

No property, plant and equipment and intangibles are expected to be sold or disposed of within the next 12 months.

Revaluations of non-financial assets

All revaluations were conducted in accordance with the revaluation policy. On 30 June 2020, an independent valuer conducted the revaluations and management conducted a review of the underlying drivers of the independent valuation. A desktop assurance review was undertaken during June 2021 by an external provider to provide assurance on the appropriateness of current non-financial asset carrying amounts.

Contractual commitments for the acquisition of property, plant, equipment and intangible assets

Capital commitments for property, plant and equipment are \$0.236 million (2020: \$1.2 million). Plant and equipment commitments were primarily contracts for purchases of furniture and IT equipment.

Accounting Policy

Property, plant and equipment

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in and liabilities undertaken.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and income at their fair value at the date of acquisition, unless acquired as a consequence of restructuring of administrative arrangements. In the latter case, assets are initially recognised as contributions by owners at the amounts at which they were recognised in the transferor's accounts immediately prior to the restructuring.

Asset Recognition Threshold

Purchases of property, plant and equipment are recognised initially at cost in the statement of financial position, except for purchases of:

- assets other than information technology equipment costing less than \$2,000; and
- information technology equipment costing less than \$1,500.

which are expensed in the year of acquisition.

The initial cost of an asset includes an estimate of the cost of dismantling and removing the item and restoring the site on which it is located. This is particularly relevant to 'make good' provisions in property leases taken up by the Entity where there exists an obligation to restore the property to its original condition. These costs are included in the value of the Entity's leasehold improvements with a corresponding provision for the 'make good' recognised.

Lease Right of Use (ROU) Assets

Leased ROU assets are capitalised at the commencement date of the lease and comprise of the initial lease liability amount, initial direct costs incurred when entering into the lease less any lease incentives received. These assets are accounted for by Commonwealth lessees as separate asset classes to corresponding assets owned outright, but included in the same column as where the corresponding underlying assets would be presented if they were owned.

On initial adoption of AASB 16 the Entity has adjusted the ROU assets at the date of initial application by the amount of any provision for onerous leases recognised immediately before the date of initial application. Following initial application, an impairment review is undertaken for any right of use lease asset that shows indicators of impairment and an impairment loss is recognised against any right of use lease asset that is impaired. Lease ROU assets continue to be measured at cost after initial recognition in Commonwealth agency, General Government Services and Whole of Government financial statements.

Revaluations

Following initial recognition at cost, property plant and equipment are carried at fair value less subsequent accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets do not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depends upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reverses a previous revaluation decrement of the same asset class previously recognised in the surplus/deficit. Revaluation decrements for a class of assets are recognised directly through the Income Statement except to the extent that they reverse a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date is eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

The Entity's assets were independently valued during 2019-20. The valuer has stated in their report that the impact of COVID-19 has introduced significant valuation uncertainty due to rapidly changing economic conditions and a noted reduction in transactional evidence on which to base valuation advice.

Depreciation

Depreciable property, plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the Entity using, in all cases, the straight-line method of depreciation.

Depreciation rates (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

Depreciation and amortisation rates for each class of depreciable asset are based on the following useful lives:

	2021	2020
Leasehold improvements	10 to 20 years or lease term	10 to 20 years or lease term
Plant and equipment – excluding library materials	3 to 100 years	3 to 100 years
Plant and equipment – library materials	5 to 10 years	5 to 10 years

The depreciation rates for ROU assets are based on the commencement date to the earlier of the end of the useful life of the ROU asset or the end of the lease term.

Impairment

All assets were assessed for impairment at 30 June 2021. Where indications of impairment exist, the asset's recoverable amount is estimated and an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.

The recoverable amount of an asset is the higher of its fair value less costs to sell and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if the Entity were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

Derecognition

An item of property, plant and equipment is derecognised upon disposal or when no further future economic benefits are expected from its use or disposal.

Intangibles

The Entity's intangibles comprise externally and internally developed software for internal use. These assets are carried at cost less accumulated amortisation and accumulated impairment losses. Software is amortised on a straight-line basis over its anticipated useful life of 5 years (2020: 5 years).

	2021	2020
	\$'000	\$'000
Note 3.2B: Inventories		
Inventories held for distribution	<u>31</u>	<u>36</u>
Total inventories	<u>31</u>	<u>36</u>

During 2020-21, \$22,700 of inventory held for distribution was recognised as an expense (2020: \$9,989).

Accounting Policy

Inventories held for sale are valued at the lower of cost and net realisable value.

Inventories held for distribution are valued at cost, adjusted for any loss of service potential.

Costs incurred in bringing each item of inventory to its present location and condition are assigned as follows:

- a) raw materials and stores - purchase cost on a first-in-first-out basis; and
- b) finished goods and work in progress - cost of direct materials and labour plus attributable costs that can be allocated on a reasonable basis.

Inventories acquired at no cost or nominal consideration are initially measured at current replacement cost at the date of acquisition.

3.3 Payables

	2021	2020
	\$'000	\$'000
Note 3.3A: Suppliers		
Trade creditors and accruals	<u>9,075</u>	<u>4,681</u>
Total suppliers	<u>9,075</u>	<u>4,681</u>

Settlement was usually made within 30 days.

Note 3.3B: Other Payables

Salaries and wages	1,925	1,440
Superannuation	320	238
Separations and redundancies	764	68
Unearned income	217	1,262
Other	<u>874</u>	<u>725</u>
Total other payables	<u>4,100</u>	<u>3,733</u>

3.4 Interest Bearing Liabilities

	2021	2020
	\$'000	\$'000

Note 3.4A: Leases

Lease Liabilities

Buildings	138,842	147,960
Plant and equipment	2,878	3,059
Total leases	141,720	151,019

Maturity analysis - contractual undiscounted cash flows

Within 1 year	1,093	290
Between 1 to 5 years	39,049	38,503
More than 5 years	101,578	112,226
Total leases	141,720	151,019

The Entity in its capacity as lessee has leases in the nature of office buildings and motor vehicles leases. All buildings, for both commercial and special purpose Court building leases, include annual fixed rent increases and CPI rent revises where applicable. 5 of those leases have an option to renew at the end of the lease period. Leases for the provision of motor vehicles to Judges and Senior Executive Officers. There are no renewal options available to the Entity.

The above lease disclosures should be read in conjunction with the accompanying notes 1.1B, 1.1D and 3.2A.

Accounting Policy

For all new contracts entered into, the Entity considers whether the contract is, or contains a lease. A lease is defined as 'a contract, or part of a contract, that conveys the right to use an asset (the underlying asset) for a period of time in exchange for consideration'.

Once it has been determined that a contract is, or contains a lease, the lease liability is initially measured at the present value of the lease payments unpaid at the commencement date, discounted using the interest rate implicit in the lease, if that rate is readily determinable, or the department's incremental borrowing rate.

Subsequent to initial measurement, the liability will be reduced for payments made and increased for interest. It is remeasured to reflect any reassessment or modification to the lease. When the lease liability is remeasured, the corresponding adjustment is reflected in the right-of-use asset or profit and loss depending on the nature of the reassessment or modification.

3.5 Other Provisions

	2021	2020
	\$'000	\$'000
Note 3.5A: Other Provisions		
Provision for restoration obligations	4,253	4,780
Total other provisions	4,253	4,780
	Provision for restoration	Total
	\$'000	\$'000
As at 1 July 2020	4,780	4,780
Amounts adjusted	(340)	(340)
Unwindings of discount or change in discount rate	(187)	(187)
Total as at 30 June 2021	4,253	4,253

The Entity currently has 12 agreements for the leasing of premises which have provisions requiring the Entity to restore the premises to their original condition at the conclusion of the lease. The Entity has made a provision to reflect the present value of this obligation.

4. Assets and Liabilities Administered on Behalf of Government

This section analyses assets used to generate financial performance and the operating liabilities incurred as a result. The Federal Court of Australia does not control but administers these assets on behalf of the Government. Unless otherwise noted, the accounting policies adopted are consistent with those applied for departmental reporting.

4.1 Administered – Financial Assets

	2021	2020
	\$'000	\$'000
Note 4.1A: Cash and Cash Equivalents		
Cash on hand or on deposit	106	103
Total cash and cash equivalents	106	103
Credit terms for goods and services receivable were in accordance with the Federal Courts Legislation Amendment (Fees) Regulation 2015 and the Family Law (Fees) Regulation 2012.		
Note 4.1B: Trade and Other Receivables		
Goods and services receivables	6,884	6,190
Total goods and services receivables	6,884	6,190
Other receivables		
Statutory receivable (GST)	6	10
Total other receivables	6	10
Total trade and other receivables (gross)	6,890	6,200
Less impairment loss allowance account:		
Goods and services	(5,788)	(5,161)
Total impairment loss allowance	(5,788)	(5,161)
Total trade and other receivables (net)	1,102	1,039

Accounting Policy

Trade and other receivables

Collectability of debts is reviewed at the end of the reporting period. The impairment loss allowance is calculated based on the Entity's historical rate of debt collection. Credit terms for services were within 30 days (2020: 30 days).

4.2 Administered – Payables

	2021	2020
	\$'000	\$'000
Note 4.2A: Suppliers		
Trade creditors and accruals	58	31
Total supplier payables	58	31
The contract liabilities are associated with family dispute resolution services.		
Note 4.2B: Other Payables		
Unearned income	417	543
Total other payables	417	543

5. Funding

This section identifies the Federal Court of Australia funding structure.

5.1 Appropriations

Note 5.1A: Annual Appropriations ('Recoverable GST exclusive')

Annual Appropriations for 2021

	Annual Appropriation ¹ \$'000	Adjustments to Appropriation ² \$'000	Total appropriation \$'000	Appropriation applied in 2021 (current and prior years) \$'000	Variance ³ \$'000
Departmental					
Ordinary annual services	277,784	3,805	281,589	262,968	18,621
Capital Budget	12,145	-	12,145	15,543	(3,398)
Other services					
Equity Injections	2,717	-	2,717	-	2,717
Total departmental	292,646	3,805	296,451	278,511	17,940
Administered					
Ordinary annual services	885	-	885	586	299
Administered items					
Total administered	885	-	885	586	299

1. Departmental Capital Budgets are appropriated through Appropriation Acts (No. 1, 3). They form part of ordinary annual services, and are not separately identified in the Appropriation Acts.

Section 51 of the *PGPA Act* quarantined funds of \$2,338k for withdrawal criminal jurisdiction 2019-20 and \$723k of expired appropriation from the 2017-18 year.

2. Adjustments to appropriation have included receipts collected under Section 74 of the *PGPA Act* and Section 51 quarantined funds.

3. The variance in the expenditure for ordinary annual services is due to timing differences of payments.

Annual Appropriations for 2020

	Annual Appropriation ¹ \$'000	Adjustments to Appropriation \$'000	Total appropriation \$'000	Appropriation applied in 2020 (current and prior years) \$'000	Variance ² \$'000
Departmental					
Ordinary annual services	274,519	3,434	277,953	259,623	18,330
Capital Budget	23,981	-	23,981	15,926	8,055
Total departmental	298,500	3,434	301,934	275,549	26,385
Administered					
Ordinary annual services	881	-	881	784	97
Administered items	881	-	881	784	97
Total administered					

1. Departmental Capital Budgets are appropriated through Appropriation Acts (No. 1, 3). They form part of ordinary annual services, and are not separately identified in the Appropriation Acts.
2. The Court has received appropriation related to new Government measures. These measures have not yet been fully implemented. The Court has therefore not spent appropriation related to these measures, causing an underspend of annual appropriation.
3. Receipts collected under Section 74 of the *PGFA Act*.

Note 5.1B: Unspent Annual Appropriations ('Recoverable GST exclusive')

	2021	2020
	\$'000	\$'000
Departmental		
Appropriation Act (No. 1) 2017-18 - Capital budget	-	262
Appropriation Act (No. 1) 2017-18	-	461
Appropriation Act (No. 1) 2018-19	2,827	4,372
Appropriation Act (No. 1) 2018-19 - Capital budget	-	9,500
Appropriation Act (No. 3) 2018-19	-	3,055
Appropriation Act (No. 1) 2019-20	-	51,405
Appropriation Act (No. 1) 2019-20 - Capital Budget	11,555	11,555
Appropriation Act (No. 3) 2019-20	-	2,670
Supply Act (No. 1) 2019-20	-	30,459
Supply Act (No. 1) 2019-20 - Capital Budget	1,136	1,605
Appropriation Act (No. 1) 2020-21	79,080	-
Appropriation Act (No. 1) 2020-21 Capital Budget	5,060	-
Supply Act (No. 1) 2020-21	29,305	-
Supply Act (No. 1) 2020-21 Capital Budget	1,512	-
Appropriation Act (No. 2) 2020-21 - Equity Injection	2,717	-
Cash at bank	1,234	1,239
Total departmental	134,426	116,583
Administered		
Appropriation Act (No 1) 2020-2021	299	97
Total administered	299	97

Note 5.1C: Special Appropriations ('Recoverable GST exclusive')

	Appropriation applied	
	2021	2020
	\$'000	\$'000
Authority		
Public Governance, Performance and Accountability Act 2013, Section 77, Administered	424	353
Total special appropriations applied	424	353

5.2 Special Accounts

Note 5.2A: Special Accounts ('Recoverable GST exclusive')

	Departmental		Administered			
	Services for other entities and Trust Moneys Special Account ¹		Federal Court Of Australia Litigants Fund Special Account ²		Family Court and Federal Circuit Court Litigants Fund Special Account ³	
	2021	2020	2021	2020	2021	2020
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
Balance brought forward from previous period	8	244	32,415	38,725	2,946	744
Increases	292	127	49,079	19,102	3,131	3,161
Total increases	292	127	49,079	19,102	3,131	3,161
Available for payments	300	371	81,494	57,827	6,077	3,905
Decreases						
Departmental	290	363	-	-	-	-
Administered	-	-	36,514	25,412	728	959
Total decreases	290	363	36,514	25,412	728	959
Total balance carried to the next period	10	8	44,980	32,415	5,349	2,946
Balance represented by:						
Cash held in entity bank accounts	10	8	44,980	32,415	5,349	2,946
Cash held in the Official Public Account	-	-	-	-	-	-
Total balance carried to the next period	10	8	44,980	32,415	5,349	2,946

1. Appropriation: *Public Governance Performance and Accountability Act* section 78. Establishing Instrument: *FMA Determination 2012/11*. Purpose: To disburse amounts held in trust or otherwise for the benefit of a person other than the Commonwealth.

2. Appropriation: *Public Governance Performance and Accountability Act* section 78. Establishing Instrument: *PGPA Act Determination (Establishment of FCA Litigants' Fund Special Account 2017)*. Purpose: The purpose of the Federal Court of Australia Litigants' Fund Special Account in relation to which amounts may be debited from the Special Account are:

a) In accordance with:

- (i) An order of the Federal Court of Australia or a Judge of that Court under Rule 2.43 of the Federal Court Rules; or
- (ii) A direction of a Registrar under that Order; and
- b) In any other case in accordance with the order of the Federal Court of Australia or a Judge of that Court.

3. Appropriation: *Public Governance Performance and Accountability Act* section 78. Establishing Instrument: *Determination 2013/06*.

The Finance Minister has issued a determination under Subsection 20(1) of the FMA ACT 1997 (repealed) establishing the Federal Court of Australia Litigants' Fund Special Account when the Federal Circuit Court of Australia and Family Court of Australia merged on 1 July 2014.

Purpose: Litigants Fund Special Account

- (a) for amounts received in respect of proceedings of the Family Court of Australia or the Federal Circuit Court of Australia (formerly the Federal Magistrates Court of Australia);
- (b) for amounts received in respect of proceedings that have been transferred from another court to the Family Court of Australia or to the Federal Circuit Court of Australia (formerly the Federal Magistrates Court of Australia);
- (c) for amounts received from the Family Court of Australia Litigants' Fund Special Account or the Federal Magistrates Court Litigants' Fund Special Account;
- (d) to make payments in accordance with an order (however described) made by a court under the Family Law Act 1975, the Family Court of Australia, or a Judge of that Court;
- (e) to make payments in accordance with an order (however described) made by a court under the Federal Circuit Court of Australia Act 1999 (formerly the Federal Magistrates Act 1999), the Federal Circuit Court of Australia (formerly the Federal Magistrates Court of Australia), or a Judge (formerly Federal Magistrate) of that Court;
- (f) to repay amounts received by the Commonwealth and credited to this Special Account where an Act of Parliament or other law requires or permits the amount to be repaid; and
- g) to reduce the balance of this Special Account without making a real or notional payment.

4. The closing balance of the Services for Other Entities and Trust Moneys Special Account includes amounts held in trust of \$10,000 in 2021 and \$8,000 in 2020. The closing balance of the Federal Court Of Australia Litigants Fund Special Account² includes amounts held in trust of \$44.979m in 2021 and \$32.415m in 2020. The closing balance of the Family Court and Federal Circuit Court Litigants Fund Special Account³ includes amounts held in trust of \$5.34m in 2021 and \$2.95m in 2020.

Note 5.2B: Trust Money Special Accounts

The Court holds funds in bank accounts on behalf of parties to Court matters. These amounts are held for the benefit of litigants and are only payable by order of the Court.

	2021 \$'000	2020 \$'000
Litigants Fund Accounts		
	-	-
As at 1 July	35,369	39,713
Receipts	52,501	22,390
Payments	37,532	26,734
Total as at 30 June	50,338	35,369
Total monetary assets held in trust	50,338	35,369

5.3 Net Cash Appropriation Arrangements

	2021 \$'000	2020 \$'000
Total comprehensive income - as per the Statement of Comprehensive Income	(1,001)	6,561
Plus: depreciation/amortisation of assets funded through appropriations (departmental capital budget funding and/or equity injections)	15,167	10,852
Plus: depreciation of right-of-use assets	20,538	19,103
Less: lease principal repayments	(18,217)	(17,082)
Net Cash Operating Surplus	16,487	19,434

6. People and Relationships

This section describes a range of employment and post-employment benefits provided to our people and our relationships with other key people.

6.1 Employee Provisions

	2021	2020
	\$'000	\$'000
Note 6.1A: Employee Provisions		
Leave	32,471	31,280
Judges leave	34,917	35,623
Total employee provisions	67,388	66,903

Accounting Policy

Liabilities for 'short-term employee benefits' (as defined in AASB 119 *Employee Benefits*) and termination benefits expected within twelve months of the end of the reporting period are measured at their nominal amounts.

Other long-term judge and employee benefits are measured as net total of the present value of the defined benefit obligation at the end of the reporting period minus the fair value at the end of the reporting period of plan assets (if any) out of which the obligations are to be settled directly.

Leave

The liability for employee benefits includes provision for annual leave and long service leave.

The leave liabilities are calculated on the basis of employees' remuneration at the estimated salary rates that will be applied at the time the leave is taken, including the Entity's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

The liability for annual leave and long service leave has been determined by reference to the work of an actuary as at 30 June 2020. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

Separation and redundancy

Provision is made for separation and redundancy benefit payments. The Entity recognises a provision for termination when it has developed a detailed formal plan for the terminations and has informed those employees affected that it will carry out the terminations.

Superannuation

The Entity's staff are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS) or the PSS accumulation plan (PSSap), or other superannuation funds held outside the Australian government.

The CSS and PSS are defined benefit schemes for the Australian Government. The PSSap is a defined contribution scheme.

The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course. This liability is reported in the Department of Finance's administered schedules and notes.

The Entity makes employer contributions to the employees' superannuation scheme at rates determined by an actuary to be sufficient to meet the current cost to the Government. The Entity accounts for the contributions as if they were contributions to defined contribution plans.

The liability for superannuation recognised as at 30 June represents outstanding contributions.

Judges' pension

Under the *Judges' Pension Act 1968*, Federal Court and Family Court Judges are entitled to a non-contributory pension upon retirement after at least 10 years service (Federal Court and Family Court Judges). As the liability for these pension payments is assumed by the Australian Government, the entity has not recognised a liability for unfunded superannuation liability. The Federal Court of Australia does, however, recognise a revenue and corresponding expense item, "Liabilities assumed by other agencies", in respect of the notional amount of the employer contributions to Judges' pensions for the reporting period amounting to \$34.54 million (2020: \$35.45 million). The contribution rate has been provided by the Department of Finance following an actuarial review.

6.2 Key Management Personnel Remuneration

Key management personnel are those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity. The entity has determined the key management personnel to be the Chief Justices and the Chief Executive Officers of the Federal Court of Australia, the Family Court of Australia and the Federal Circuit Court of Australia, the President and Registrar of the National Native Title Tribunal, the Executive Director of Corporate Services.

Note 6.2A: Key Management Personnel Remuneration

	2021 \$'000	2020 \$'000
Short-term employee benefits	3,123	3,131
Post-employment benefits	1,083	1,127
Other long-term employee benefits	150	156
Total key management personnel remuneration expenses	4,356	4,414

The total number of key management personnel that are included in the above table are 8 (2020: 9).

- The above key management personnel remuneration excludes the remuneration and other benefits of the Portfolio Minister. The Portfolio Minister's remuneration and other benefits are set by the Remuneration Tribunal and are not paid by the Entity.

6.3 Related Party Disclosures

Related party relationships:

The entity is an Australian Government controlled entity within the Attorney-General's portfolio. Related parties to the Entity are Key Management Personnel including the Portfolio Minister and Executive and other Australian Government entities.

Transactions with related parties:

Given the breadth of Government activities, related parties may transact with the government sector in the same capacity as ordinary citizens. Such transactions include the payment or refund of taxes, receipt of a Medicare rebate or higher educational loans. These transactions have not been separately disclosed in this note. Significant transactions with related parties can include:

- the payments of grants or loans;
- purchases of goods and services;
- asset purchases, sales transfers or leases;
- debts forgiven; and
- guarantees.

Giving consideration to relationships with related entities, and transactions entered into during the reporting period by the entity, it has been determined that there are no related party transactions to be separately disclosed.

The Entity has no transactions with related parties to disclose as at 30 June 2021 (2020: none).

7. Managing Uncertainties

This section analyses how the Federal Court of Australia manages financial risks within its operating environment.

7.1 Contingent Liabilities and Assets

Note 7.1A: Contingent Liabilities and Assets

Quantifiable Contingencies

The Federal Court of Australia has no quantifiable contingent assets or liabilities as at 30 June 2021 (2020: none).

Unquantifiable Contingencies

The Federal Court of Australia has no unquantifiable contingent assets or liabilities as at 30 June 2021 (2020: none).

Accounting Policy

Contingent liabilities and contingent assets are not recognised in the statement of financial position but are reported in the notes. They may arise from uncertainty as to the existence of a liability or asset or represent an asset or liability in respect of which the amount cannot be reliably measured. Contingent assets are disclosed when settlement is probable but not virtually certain and contingent liabilities are disclosed when settlement is greater than remote.

Note 7.1B: Administered Contingent Assets and Liabilities

The Courts have no quantifiable or unquantifiable administered contingent liabilities or assets as at 30 June 2021 (2020: none).

7.2 Financial Instruments

	2021	2020
	\$'000	\$'000

Note 7.2A: Categories of Financial Instruments

Financial assets

Financial assets at amortised cost

Cash and cash equivalents	1,234	1,239
Trade and other receivables	181	83
Total financial assets at amortised cost	1,415	1,322
Total financial assets	1,415	1,322

Financial Liabilities

Financial liabilities measured at amortised cost

Trade creditors	9,075	4,681
Total financial liabilities	9,075	4,681

Accounting Policy

With the implementation of AASB 9 Financial Instruments for the first time in 2019, the Entity classifies its financial assets in the following categories:

- financial assets at fair value through profit or loss;
- financial assets at fair value through other comprehensive income; and
- financial assets measured at amortised cost.

The classification depends on both the Entity's business model for managing the financial assets and contractual cash flow characteristics at the time of initial recognition.

Financial assets are recognised when the Entity becomes a party to the contract and, as a consequence, has a legal right to receive or a legal obligation to pay cash and derecognised when the contractual rights to the cash flows from the financial asset expire or are transferred upon trade date.

Comparatives have not been restated on initial application.

Financial Assets at Amortised Cost

Financial assets included in this category need to meet two criteria:

- the financial asset is held in order to collect the contractual cash flows; and
- the cash flows are solely payments of principal and interest (SPPI) on the principal outstanding amount.

Amortised cost is determined using the effective interest method.

Financial Assets

Trade receivables, loans and other receivables that are held for the purpose of collecting the contractual cash flows where the cash flows are solely payments of principal and interest that are not provided at below-market interest rates are subsequently measured at amortised cost using the effective interest method adjusted for any loss allowance.

Impairment of financial assets

Financial assets are assessed for impairment at the end of each reporting period based on Expected Credit Losses, using the general approach which measures the loss allowance based on an amount equal to lifetime expected credit losses where risk has significantly increased, or an amount equal to 12-month expected credit losses if risk has not increased.

The simplified approach for trade, contract and lease receivables is used. This approach always measures the loss allowance as the amount equal to the lifetime expected credit losses.

A write-off constitutes a derecognition event where the write-off directly reduces the gross carrying amount of the financial asset.

Financial Liabilities

Financial liabilities are classified as either financial liabilities 'at fair value through profit or loss' or other financial liabilities. Financial liabilities are recognised and derecognised upon 'trade date'.

Other Financial Liabilities

Other financial liabilities are initially measured at fair value, net of transaction costs. These liabilities are subsequently measured at amortised cost using the effective interest method, with interest expense recognised on an effective interest basis.

Supplier and other payables are recognised at amortised cost. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).

The fair value of financial instruments approximates its carrying value.

7.3 Administered – Financial Instruments

	2021	2020
	\$'000	\$'000
<u>Note 7.3A: Categories of Financial Instruments</u>		
Financial assets at amortised cost		
Cash and cash equivalents	106	103
Other receivables	1,102	1,039
Total financial assets at amortised cost	1,208	1,142
Total financial assets	1,208	1,142
	2021	2020
	\$'000	\$'000

Note 7.3B: Net Gains or Losses on Financial Liabilities**Financial liabilities measured at amortised cost**

Interest expense	1,715	1,883
Net gains/(losses) on financial liabilities measured at amortised cost	1,715	1,883

7.4 Fair Value Measurement**Accounting Policy**

AASB 2015-7 provides relief for not-for-profit public sector entities from making certain specified disclosures about the fair value measurement of assets measured at fair value and categorised within Level 3 of the fair value hierarchy.

Valuations are performed regularly so as to ensure that the carrying amount does not materially differ from fair value at the reporting date. A valuation was made by an external valuer in 2020. The Federal Court of Australia reviews the method used by the valuer annually.

Note 7.4A: Fair Value Measurement

	Fair value measurements at the end of the reporting period	
	2021	2020
	\$'000	\$'000
Non-financial assets		
Leasehold improvements	30,741	35,693
Plant and equipment	27,070	20,014

The Court's assets are held for operational purposes and not held for the purposes of deriving a profit. The current use of these assets is considered to be the highest and best use.

There have been no transfers between the levels of the hierarchy during the year. The Court deems transfers between levels of the fair value hierarchy to have occurred when advised by an independent valuer or a change in the market for particular items.

8. Other Information

This section provides other disclosures relevant to the Federal Court of Australia financial information environment for the year.

8.1 Current/ non-current distinction for assets and liabilities

	2021	2020
	\$'000	\$'000
Note 8.1A: Current/non-current distinction for assets and liabilities		
Assets expected to be recovered in:		
No more than 12 months		
Cash and cash equivalents	1,234	1,239
Trade and other receivables	134,131	116,384
Prepayments	3,763	1,939
Inventories	-	21
Total no more than 12 months	139,128	119,583
More than 12 months		
Trade and other receivables	42	9
Buildings	164,301	182,130
Plant and equipment	29,916	23,103
Computer software	9,474	11,832
Inventories	31	15
Total more than 12 months	203,764	217,089
Total assets	342,892	336,672
Liabilities expected to be settled in:		
No more than 12 months		
Suppliers	9,075	4,681
Other payables	3,980	3,632
Leases	1,092	290
Employee provisions	16,831	15,362
Other provisions	917	487
Total no more than 12 months	31,895	24,452
More than 12 months		
Other payables	120	100
Leases	140,628	150,729
Employee provisions	50,557	51,542
Other provisions	3,336	4,293
Total more than 12 months	194,641	206,664
Total liabilities	226,536	231,116

	2021	2020
	\$'000	\$'000
<u>Note 8.1B: Administered - Current/non-current distinction for assets and liabilities</u>		
Assets expected to be recovered in:		
No more than 12 months		
Cash and cash equivalents	106	103
Taxation receivables		
Trade and other receivables	1,102	1,039
Asset held for sale	-	-
[Disclose by asset disclosure]	-	-
Total no more than 12 months	1,208	1,142
More than 12 months		
Trade and other receivables	-	-
Land and buildings	-	-
Heritage and cultural	-	-
Plant and equipment	-	-
Computer software	-	-
Other intangibles	-	-
[Disclose by asset disclosure]	-	-
Total more than 12 months	-	-
Total assets	1,208	1,142
Liabilities expected to be settled in:		
No more than 12 months		
Suppliers	58	31
Subsidies	-	-
Grants	-	-
Personal benefits	-	-
Other payables	417	543
Loans	-	-
Leases	-	-
Employee provisions	-	-
Other provisions	-	-
[Disclose by liability disclosure]	-	-
Total no more than 12 months	475	574
More than 12 months		
Suppliers	-	-
Loans	-	-
Leases	-	-
Employee provisions	-	-
Other provisions	-	-
[Disclose by liability disclosure]	-	-
Total more than 12 months	-	-
Total liabilities	475	574

Appendix 2

Entity Resource Statement

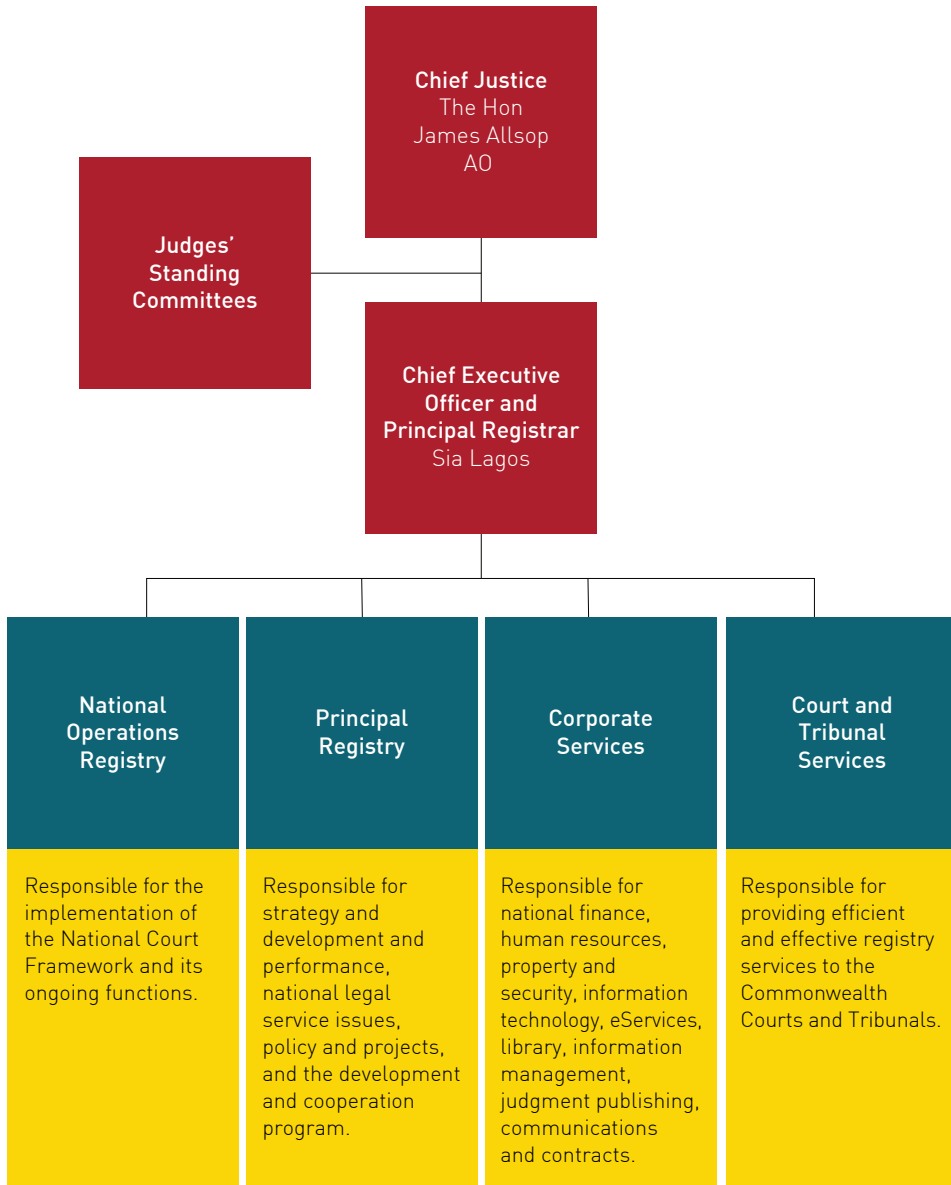
	ACTUAL AVAILABLE APPROPRIATIONS FOR 2020-21 \$'000	PAYMENTS MADE 2020-21 \$'000	BALANCE REMAINING \$'000
ORDINARY ANNUAL SERVICES¹			
Departmental appropriation			
Departmental appropriation ¹	407 193	272 767	134 426
Total	407 193	272 767	134 426
Administered expenses			
Outcome 3	885	586	299
Total	885	586	299
Total ordinary annual services	408 078	273 353	134 725
Special appropriations limited by criteria / entitlement			
<i>Public Governance, Performance and Accountability Act 2013, s77</i>	900	424	476
Total	900	424	476
Total net resourcing and payments for court	408 978	273 777	135 201

¹ Includes a Departmental Capital Budget of \$12.145m and an equity injection of \$2.717m

Appendix 3

Organisational chart

Federal Court management structure as at 30 June 2021



Appendix 4

Registrars of the Court, 30 June 2021

Executive

NAME	TITLE	LOCATION	APPOINTMENTS
Sia Lagos	Chief Executive Officer and Principal Registrar	Melbourne, VIC	Chief Executive Officer and Principal Registrar, Federal Court of Australia
Scott Tredwell	Acting Deputy Principal Registrar	Brisbane, Qld	Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia Deputy Sheriff, Federal Court of Australia Deputy Sheriff, Federal Circuit Court of Australia Deputy Marshal, Federal Circuit Court of Australia

Principal Judicial Registrars

NAME	TITLE	LOCATION	APPOINTMENTS
Paul Farrell	A/g Principal Judicial Registrar and National Operations Registrar	Sydney, NSW	District Registrar (NSW District Registry), Federal Court of Australia District Registrar (ACT District Registry), Federal Court of Australia Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia

Senior National Judicial Registrars

NAME	TITLE	LOCATION	APPOINTMENTS
Rowan Davis	Senior National Judicial Registrar – Federal Criminal Jurisdiction	Melbourne, VIC	Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia
Jennifer Priestley	Senior National Judicial Registrar	Sydney, NSW	Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia
Alison Legge	Senior National Judicial Registrar and National Operations Registrar	Melbourne, VIC	Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia

National Judicial Registrars and District Registrars

NAME	TITLE	LOCATION	APPOINTMENTS
Peter Schmidt	National Judicial Registrar and District Registrar	Brisbane, Qld	District Registrar (Qld District Registry), Federal Court of Australia Registrar, Federal Circuit Court of Australia
Nicola Colbran	National Judicial Registrar and District Registrar	Adelaide, SA	District Registrar (SA District Registry), Federal Court of Australia District Registrar (NT District Registry), Federal Court of Australia Registrar, Federal Circuit Court of Australia Deputy Registrar, Australian Competition Tribunal Deputy Registrar, Defence Force Discipline Appeal Tribunal
Tim Luxton	National Judicial Registrar and District Registrar	Melbourne, VIC	District Registrar (VIC District Registry), Federal Court of Australia Registrar, Federal Circuit Court of Australia Registrar, Australian Competition Tribunal Registrar, Defence Force Discipline Appeal Tribunal
Russell Trott	National Judicial Registrar and District Registrar	Perth, WA	District Registrar (WA District Registry), Federal Court of Australia Registrar, Federal Circuit Court of Australia Deputy Registrar, Australian Competition Tribunal Deputy Registrar, Defence Force Discipline Appeal Tribunal
Susie Stone	Judicial Registrar and District Registrar	Hobart, TAS	District Registrar (TAS District Registry), Federal Court of Australia Registrar, Federal Circuit Court of Australia Deputy Registrar, Defence Force Discipline Appeal Tribunal

National Judicial Registrars

NAME	TITLE	LOCATION	APPOINTMENTS
Phillip Allaway	National Judicial Registrar	Melbourne, VIC	Deputy District Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia Deputy Registrar, Defence Force Discipline Appeal Tribunal
Matthew Benter	National Judicial Registrar	Perth, WA	Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia
Rupert Burns	National Judicial Registrar	Melbourne, VIC	Deputy District Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia
Catherine Forbes	National Judicial Registrar	Melbourne, VIC	Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia
Claire Gitsham	National Judicial Registrar	Melbourne, VIC	Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia
Susan O'Connor	National Judicial Registrar	Sydney, NSW	Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia
Katie Stride	National Judicial Registrar – Native Title	Brisbane, Qld	Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia
David Ryan	National Judicial Registrar	Melbourne, VIC	Deputy District Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia
Tuan Van Le	National Judicial Registrar	Melbourne, VIC	Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia

Judicial Registrars

NAME	TITLE	LOCATION	APPOINTMENTS
Michael Buckingham	Judicial Registrar	Brisbane, Qld	Deputy District Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia
Jodie Burns	Judicial Registrar – Federal Criminal Jurisdiction	Melbourne, VIC	Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia
Suzanne Carlton	Judicial Registrar – Migration	Adelaide, SA	Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia
Christian Carney	Judicial Registrar – Migration	Melbourne, VIC	Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia

NAME	TITLE	LOCATION	APPOINTMENTS
James Cho	Judicial Registrar	Sydney, NSW	Deputy District Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia
Alissa Crittenden	Judicial Registrar	Melbourne, VIC	Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia
Ann Daniel	Judicial Registrar – Native Title	Perth, WA	Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia
Alicia Ditton	Judicial Registrar – Federal Criminal Jurisdiction	Sydney, NSW	Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia
Amelia Edwards	Judicial Registrar	Melbourne, VIC	Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia
Simon Grant	Judicial Registrar – Native Title	Brisbane, Qld	Registrar, Federal Court of Australia
Simon Haag	Judicial Registrar – Migration	Melbourne, VIC	Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia
Kim Lackenby	Judicial Registrar	Canberra, ACT	Deputy District Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia Deputy Registrar, Defence Force Discipline Appeal Tribunal
Katie Lynch	Judicial Registrar	Brisbane, Qld	Deputy District Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia Deputy Registrar, Australian Competition Tribunal
Laurelea McGregor	Judicial Registrar – Native Title	Perth, WA	Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia
Thomas Morgan	Judicial Registrar	Sydney, NSW	Deputy District Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia
Chuan Ng	Judicial Registrar	Sydney, NSW	Deputy District Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia Deputy Registrar, Supreme Court of Norfolk Island Deputy Sheriff, Federal Court of Australia
Nicholas Parkyn	Judicial Registrar	Adelaide, SA	Deputy District Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia

NAME	TITLE	LOCATION	APPOINTMENTS
Geoffrey Segal	Judicial Registrar	Sydney, NSW	Deputy District Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia Deputy Registrar, Australian Competition Tribunal
Coenraad van der Westhuizen	Judicial Registrar – Migration	Melbourne, VIC	Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia

National Registrars

NAME	TITLE	LOCATION	APPOINTMENTS
Sophie Bird	National Registrar	Melbourne, VIC	Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia
Adam Bundy	National Registrar	Melbourne, VIC	Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia
Meredith Cridland	National Registrar	Sydney, NSW	Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia
Alison Hird	National Registrar	Melbourne, VIC	Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia
Lauren McCormick	National Registrar	Melbourne, VIC	Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia
Rohan Muscat	National Registrar	Sydney, NSW	Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia
David Priddle	National Registrar	Melbourne, VIC	Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia
Stephanie Sanders	National Registrar	Melbourne, VIC	Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia

Registrars

NAME	TITLE	LOCATION	APPOINTMENTS
Jessica Der Matossian	Registrar – Digital Practice	Sydney, NSW	Registrar, Federal Court of Australia
Claire Hammerton Cole	Registrar – General Law and Practice	Sydney, NSW	Registrar, Federal Court of Australia Registrar, Federal Circuit Court of Australia

Appendix 5

Workload statistics

Workload statistics

The statistics in this appendix provide comparative historical information on the work of the Court, including in certain areas of the Court's jurisdiction.

When considering the statistics it is important to note that matters vary according to the nature and complexity of the issues in dispute.

It should also be noted that the figures reported in this report may differ from figures reported in previous years. The variations have occurred through refinements or enhancements to the Casetrack database which required the checking or verification and possible variation of data previously entered.

Casetrack records matters in the Court classified according to 16 main categories, described as 'causes of action' (CoAs). The classification of matters in this way causes an under representation of the workload because it does not include filings of supplementary CoAs (cross appeals and cross claims), interlocutory applications or native title joinder of party applications.

In 2007–08 the Court started to count and report on interlocutory applications (including interim applications and notices of motion) in appellate proceedings in order to provide the most accurate picture possible of the Court's appellate workload. From 2008–09 the Court has counted all forms of this additional workload in both its original and appellate jurisdictions.

Table A5.4 provides a breakdown of these matters. At this stage it is not possible to obtain information about finalisations of interlocutory applications (because they are recorded in the Court's case management system as a document filed rather than a specific CoA). Because of this, detailed reporting of these matters has been restricted to the information about appeals in Part 3 and Table A5.4.

The Court began reporting on matters by National Practice Areas (NPAs) in 2015–16. This information can be found in Figure A5.9.1 onwards.

Table A5.1: Summary of workload statistics – original and appellate jurisdictions – filings of major CoAs (including appellate and related actions)

CAUSE OF ACTION	2016–17	2017–18	2018–19	2019–20	2020–21
Total CoAs (including appeals and related actions)					
Filed	5,715	5,925	6,033	4,485	3,227
Finalised	5,629	5,575	5,716	4,898	2,916
Current	3,171	3,521	3,838	3,425	3,736
Corporations (including appeals and related actions)					
Filed	3,224	3,024	2,804	1,812	740
Finalised	3,389	2,995	2,855	2,117	693
Current	913	942	891	586	633
Bankruptcy (including appeals and related actions)					
Filed	353	332	376	385	287
Finalised	327	317	359	375	313
Current	189	204	221	231	205
Native title (including appeals and related actions)					
Filed	71	91	115	57	57
Finalised	95	99	80	97	83
Current	308	300	335	295	269
Total CoAs (including appeals and related actions excluding corporations, bankruptcy and native title)					
Filed	2,067	2,478	2,738	2,231	2,143
Finalised	1,818	2,164	2,422	2,309	1,827
Current	1,761	2,075	2,391	2,313	2,629

Table A5.2: Summary of workload statistics – excluding appeals and related actions – filings of major CoAs (excluding appeals and related actions)

CAUSE OF ACTION	2016–17	2017–18	2018–19	2019–20	2020–21
Total CoAs (excluding appeals and related actions)					
Filed	4,669	4,662	4,618	3,454	2,412
Finalised	4,762	4,434	4,390	3,790	2,262
Current	2,445	2,673	2,901	2,565	2,715
Corporations (excluding appeals and related actions)					
Filed	3,202	2,989	2,768	1,791	705
Finalised	3,364	2,966	2,827	2,076	664
Current	888	911	852	567	608
Bankruptcy (excluding appeals and related actions)					
Filed	289	304	342	343	255
Finalised	274	277	324	339	271
Current	137	164	182	186	170
Native title (excluding appeals and related actions)					
Filed	54	78	112	54	50
Finalised	84	81	70	94	80
Current	294	291	333	293	263
Total CoAs (excluding appeals and related actions and excluding bankruptcy and native title)					
Filed	1,124	1,291	1,396	1,266	1,402
Finalised	1,040	1,110	1,169	1,281	1,247
Current	1,126	1,307	1,534	1,519	1,674

Table A5.3: Summary of workload statistics – appeals and related actions only – filings of appeals and related actions

CAUSE OF ACTION	2016–17	2017–18	2018–19	2019–20	2020–21
Total appeals and related actions					
Filed	1,046	1,263	1,415	1,031	815
Finalised	867	1,141	1,326	1,108	654
Current	726	848	937	860	1,021
Corporations appeals and related actions					
Filed	22	35	36	21	35
Finalised	25	29	28	41	29
Current	25	31	39	19	25
Migration appeals and related actions					
Filed	764	1,021	1,139	749	547
Finalised	583	839	1,091	850	359
Current	462	644	692	591	779
Native title appeals and related actions					
Filed	17	13	3	3	7
Finalised	11	18	10	3	3
Current	14	9	2	2	6
Total appeals and related actions (excluding corporations, migration and native title appeals and related actions)					
Filed	243	194	237	258	226
Finalised	248	255	197	214	263
Current	225	164	204	248	211

Table A5.4: Summary of supplementary workload statistics – filings of supplementary causes of action

CAUSE OF ACTION	2016-17	2017-18	2018-19	2019-20	2020-21
Total CoAs (excluding appeals and related actions)					
Cross appeals (original jurisdiction)	20	17	26	15	23
Cross claims	146	116	148	133	154
Interlocutory applications	1,517	1,628	1,778	1,722	1,749
Native title joinder of party applications	628	405	982	781	346
Appeals and related actions					
Cross appeals	20	17	26	15	23
Interlocutory applications	221	162	166	177	163
Total actions (including appeals and related actions)					
Cross appeals	20	17	26	15	23
Cross claims	146	116	148	133	154
Interlocutory applications	1,738	1,790	1,944	1,899	1,912
Native title joinder of party applications	628	405	982	781	346
Totals	2,532	2,328	3,100	2,828	2,435

Figure A5.1: Matters filed over the last five years

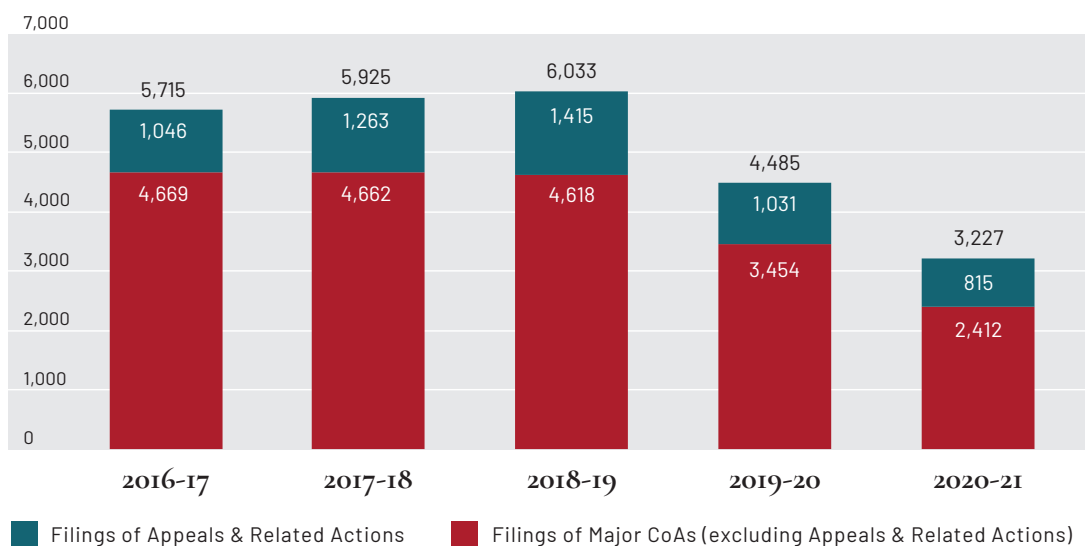
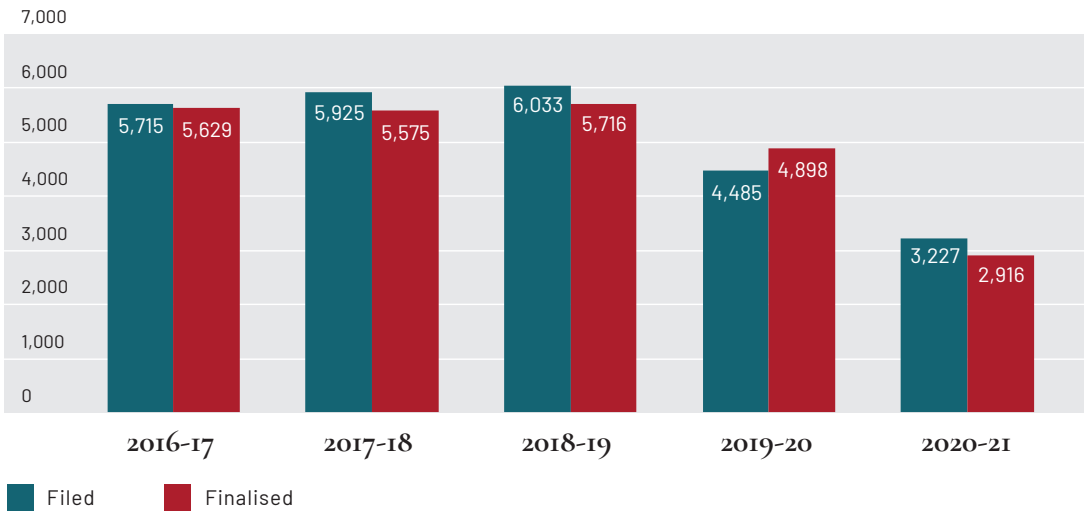
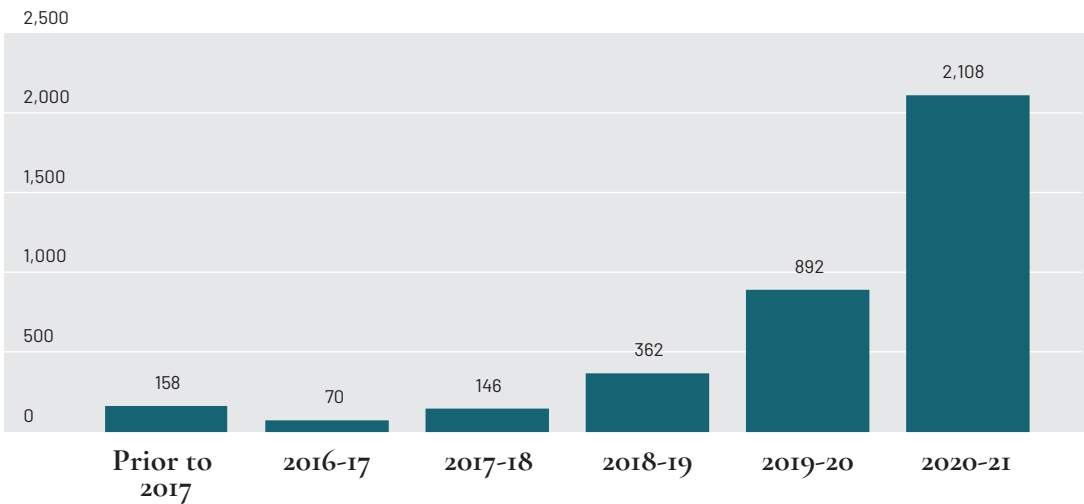


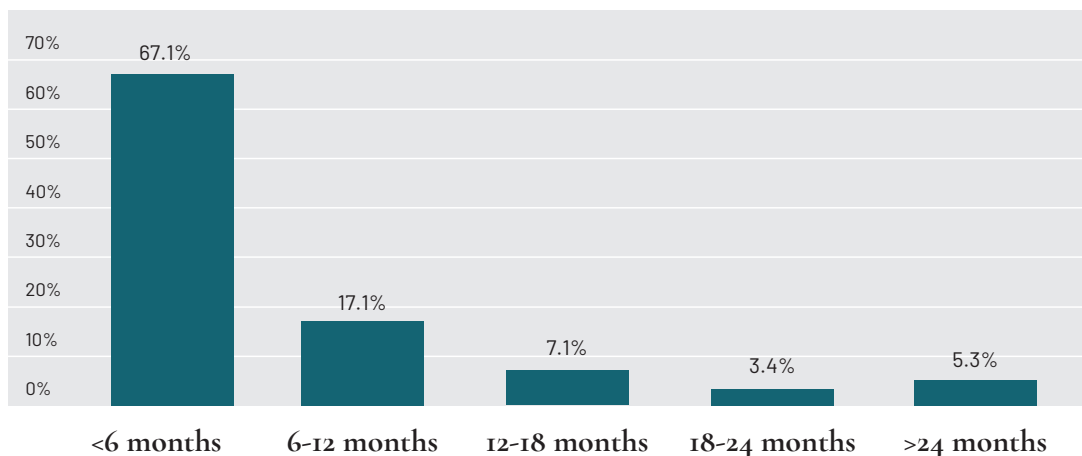
Figure A5.2: Matters filed and finalised over the last five years

The number finalised refers to those matters finalised in the relevant financial year, regardless of when they were originally filed.

Figure A5.3: Age and number of current matters at 30 June 2021

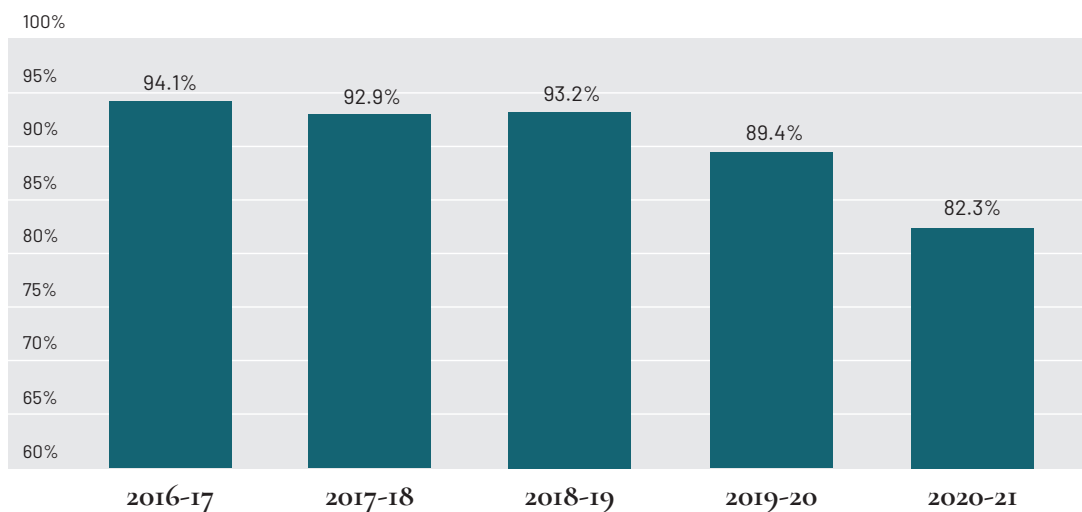
A total of 3,736 matters remain current at 30 June 2021. There were 158 applications still current relating to periods before 2016, of which 93 matters are native title matters (59 per cent).

Figure A5.4: Time span to complete – matters completed (excluding native title) over the last five years



A total of 24,325 matters were completed during the five-year period ending 30 June 2021, excluding native title matters. The time span, from filing to disposition of these matters, is shown in Figure A5.4.

Figure A5.5: Time span to complete against the 85 per cent benchmark (excluding native title) over the last five years



The Court has a benchmark of 85 per cent of cases (excluding native title) being completed within 18 months of commencement. Figure A5.5 sets out the Court’s performance against this time goal over the last five years. The total number of matters (including appeals but excluding native title) completed for each of the last five years and the time spans for completion are shown in Table A5.5.

Table A5.5: Finalisation of major CoAs in accordance with 85 per cent benchmark (including appeals and related actions and excluding native title matters) over the last five years

PERCENTAGE COMPLETED	2016-17	2017-18	2018-19	2019-20	2020-21
Under 18 months	5,219	5,103	5,263	4,296	2,334
Percentage of total	94.1%	92.9%	93.2%	89.4%	82.3%
Over 18 months	326	391	383	508	502
Percentage of total	5.9%	7.1%	6.8%	10.6%	17.7%
Total CoAs	5,545	5,494	5,646	4,804	2,836

Figure A5.6: Bankruptcy Act matters (excluding appeals) filed over the last five years

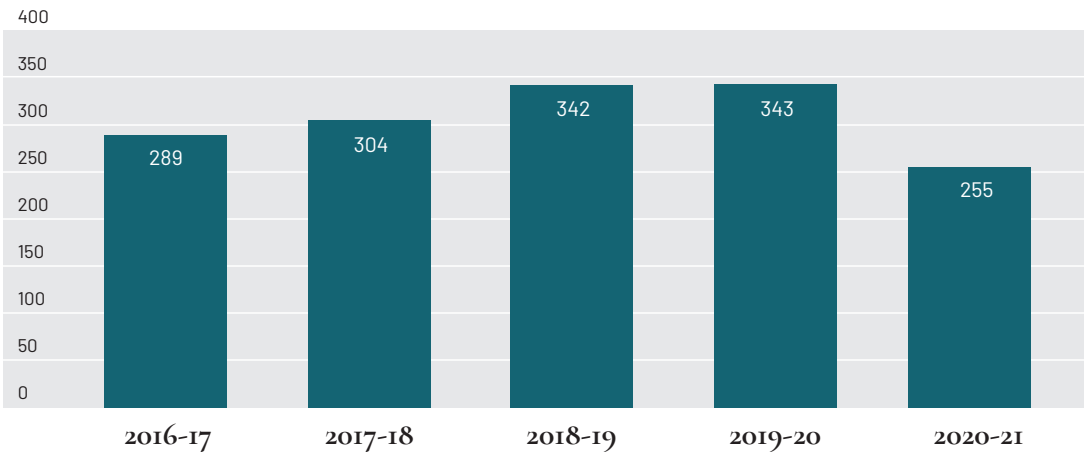


Figure A5.6.1: Current Bankruptcy Act matters (excluding appeals) by year of filing

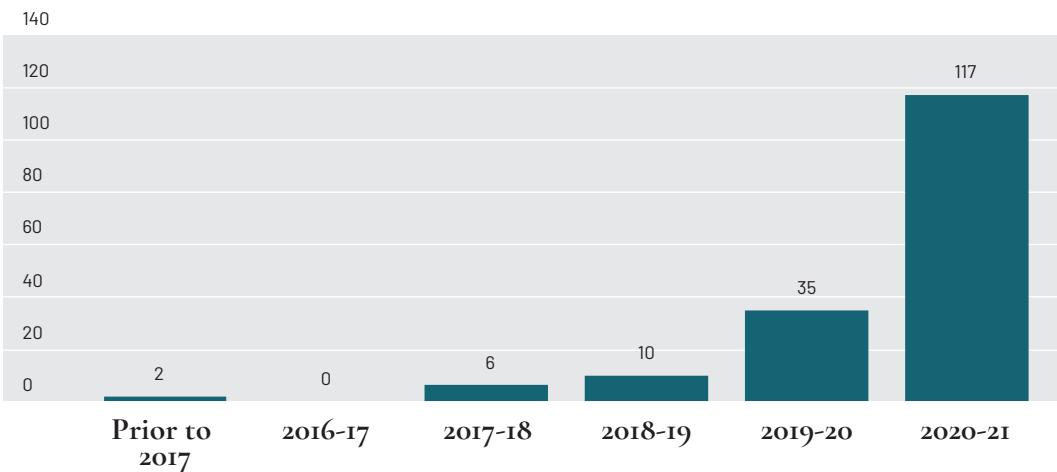


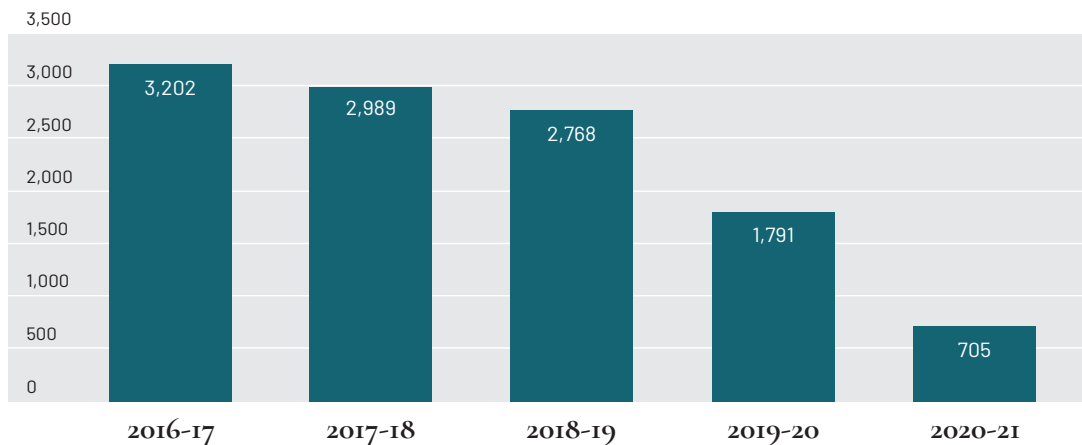
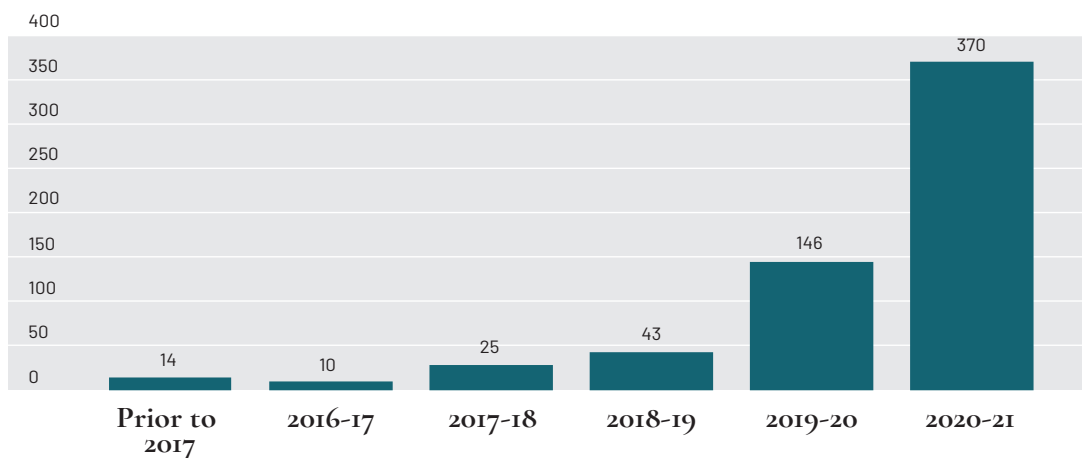
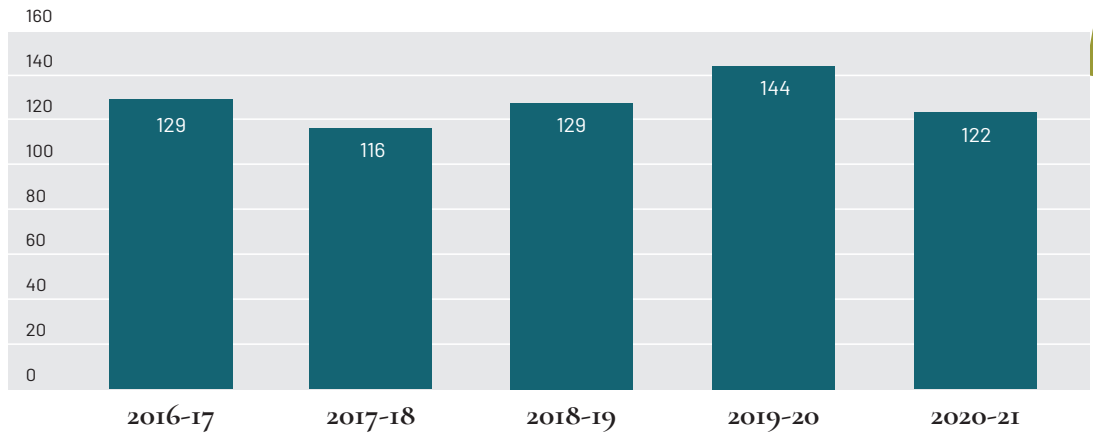
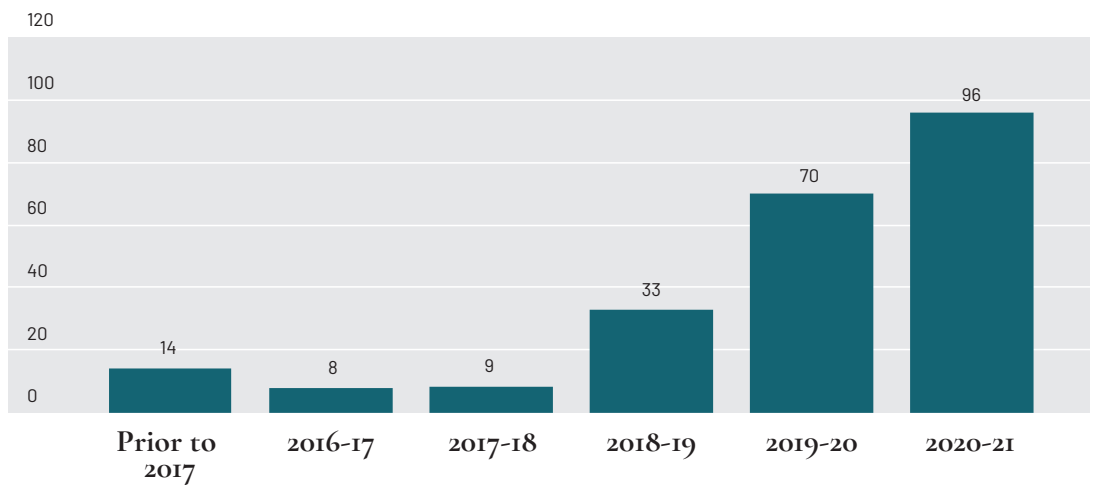
Figure A5.7: Corporation Act matters (excluding appeals) filed over the last five years**Figure A5.7.1:** Current corporation matters (excluding appeals) by year of filing

Figure A5.8: Consumer law matters (excluding competition law and appeals) filed over the last five years**Figure A5.8.1:** Current consumer law matters (excluding competition law and appeals) by year of filing

National Court framework

Figure A5.9.1: All filings, finalisations and pending by Administrative and Constitutional Law and Human Rights National Practice Areas (NPA)

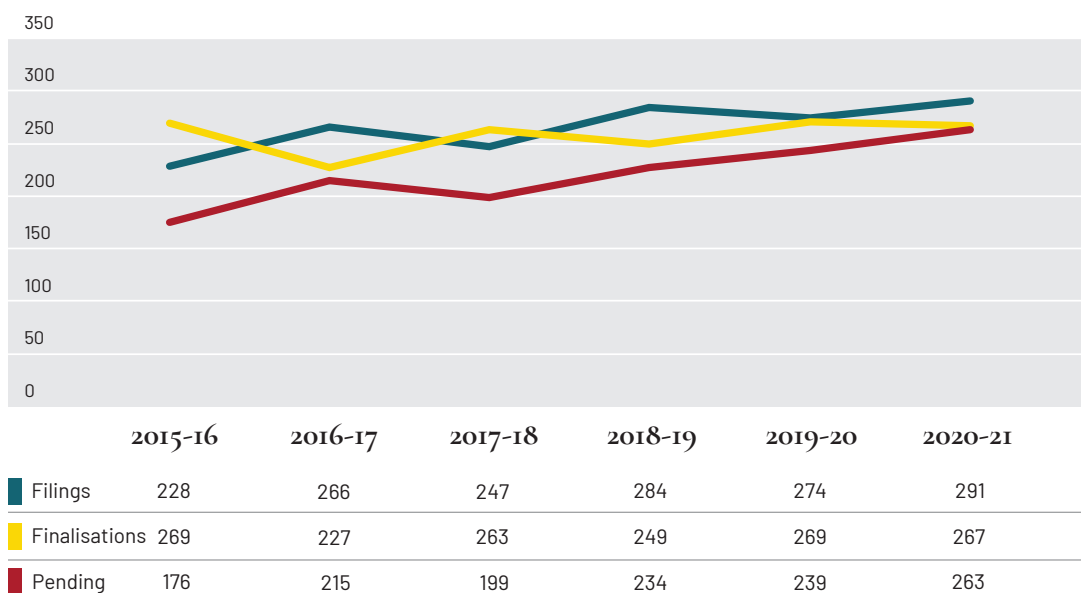


Figure A5.9.2: All filings, finalisation and pending by Admiralty and Maritime NPA

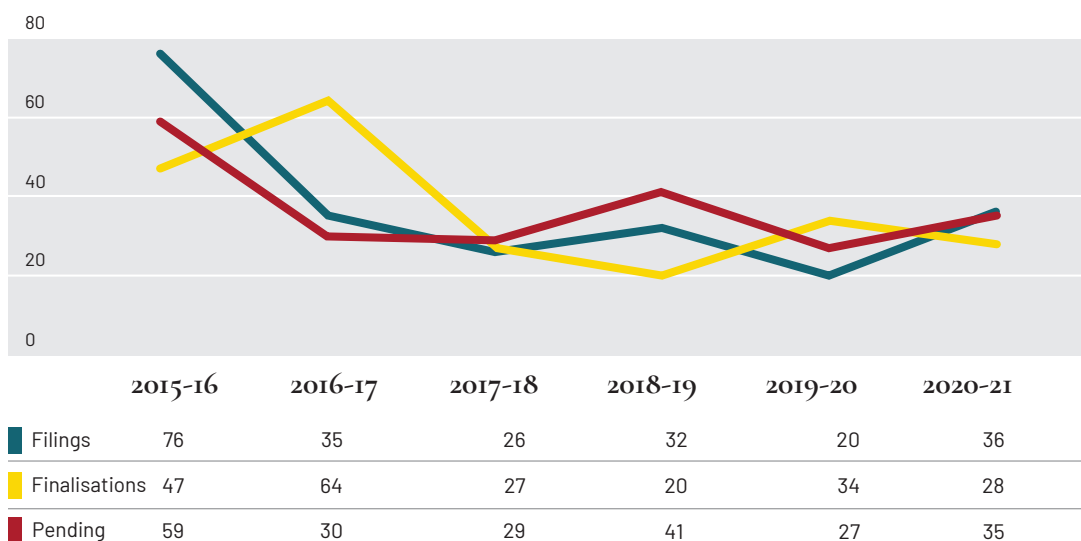


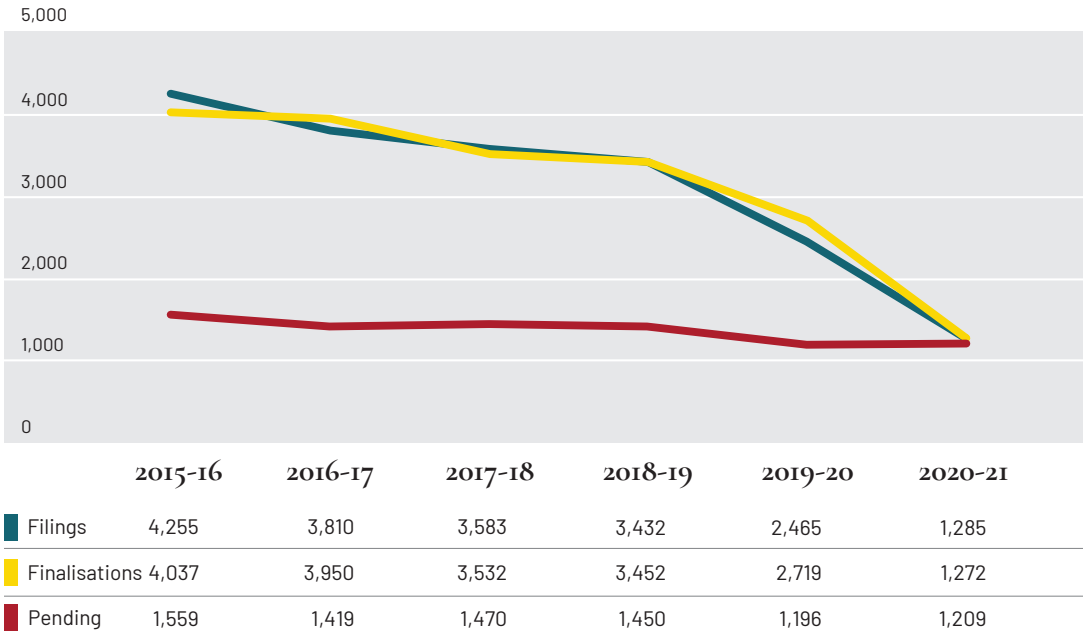
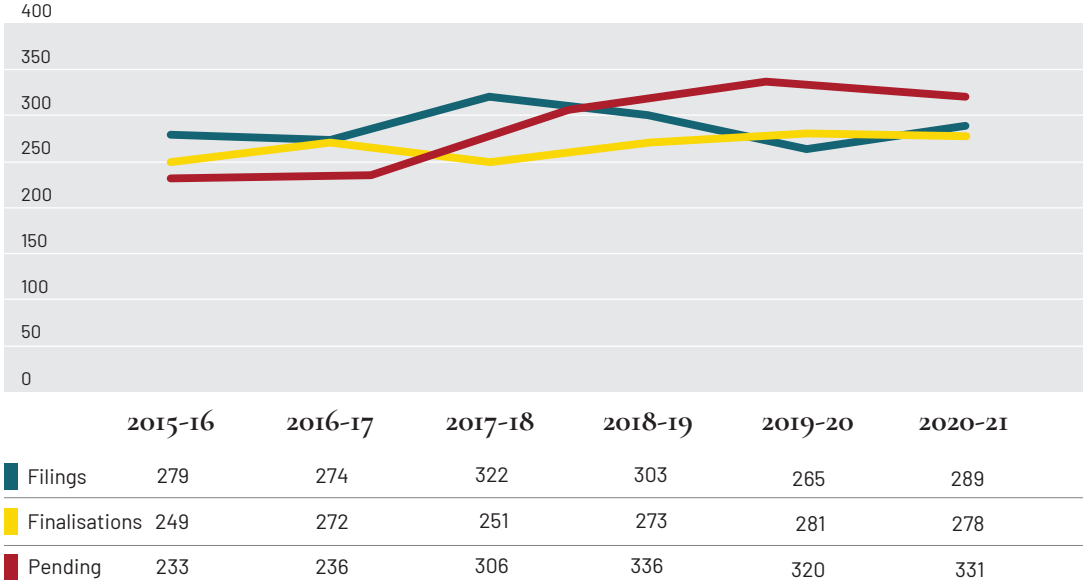
Figure A5.9.3: All filings, finalisation and pending by Commercial and Corporations NPA**Figure A5.9.4: All filings, finalisation and pending by Employment and Industrial Relations NPA**

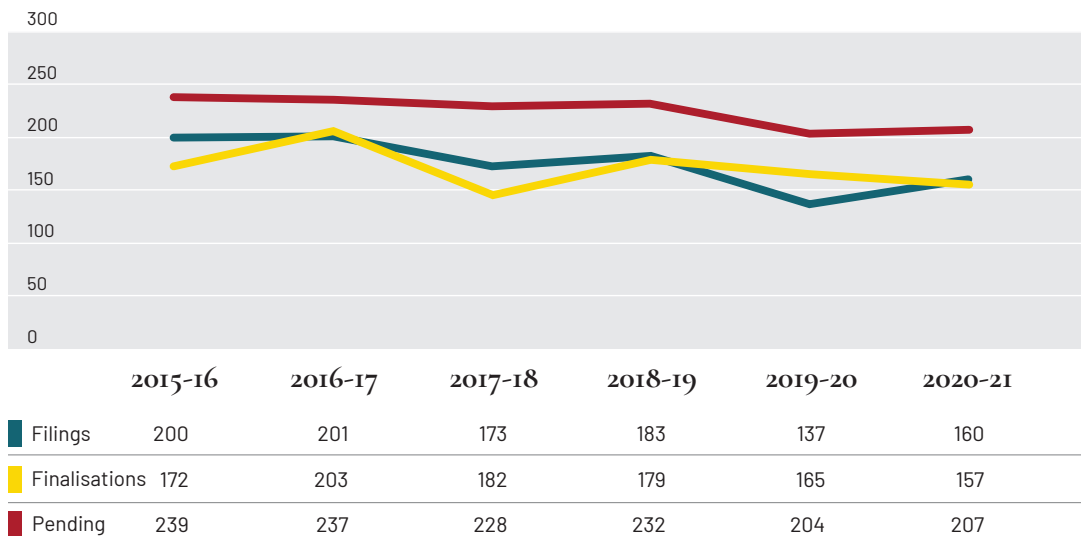
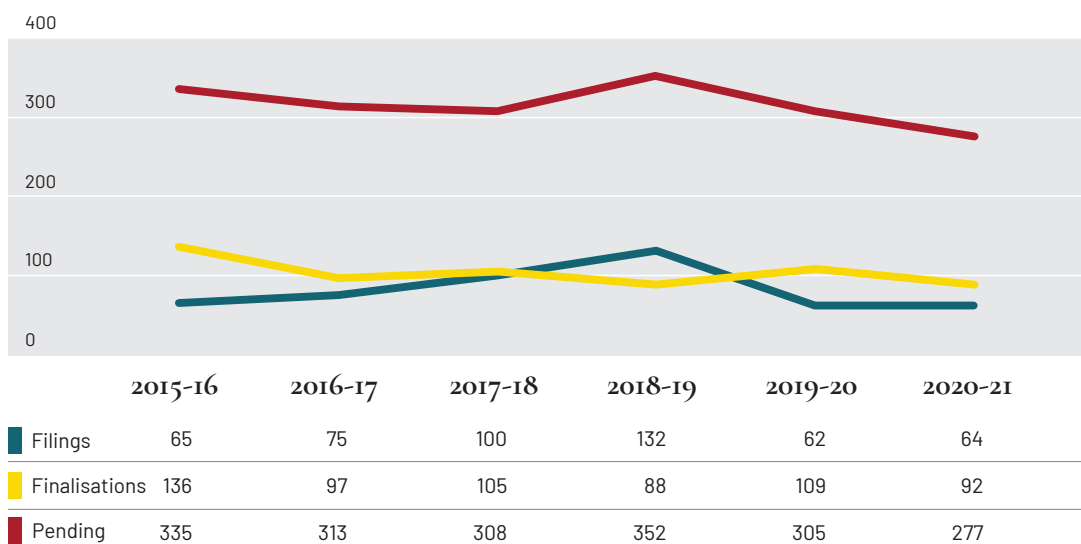
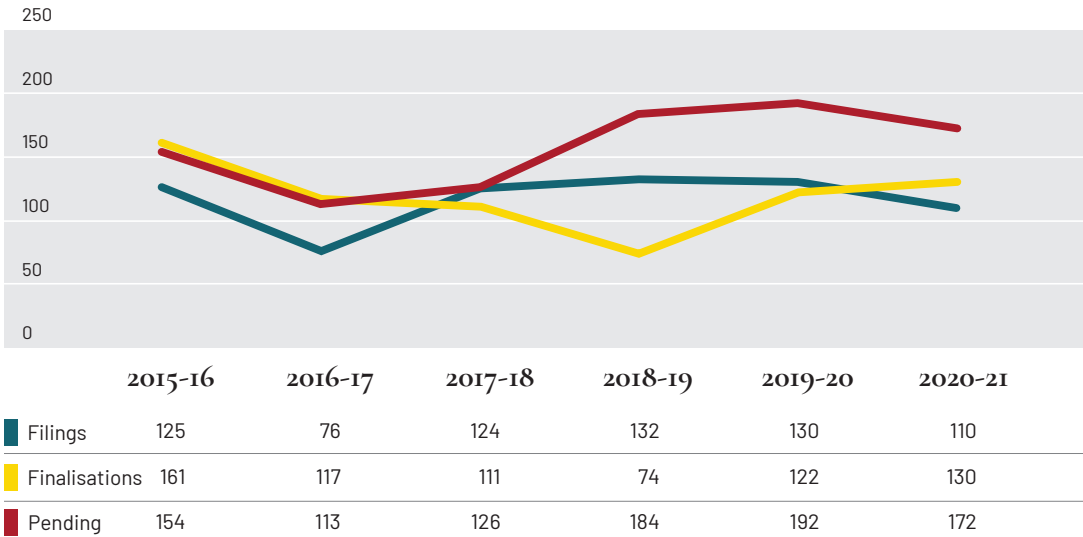
Figure A5.9.5: All filings, finalisation and pending by Intellectual Property NPA**Figure A5.9.6: All filings, finalisation and pending by Native Title NPA**

Figure A5.9.7: All filings, finalisation and pending by Taxation NPA

In 2016-17 the Court introduced two new NPAs: Other Federal Jurisdiction NPA and Federal Crime and Related Proceedings NPA.

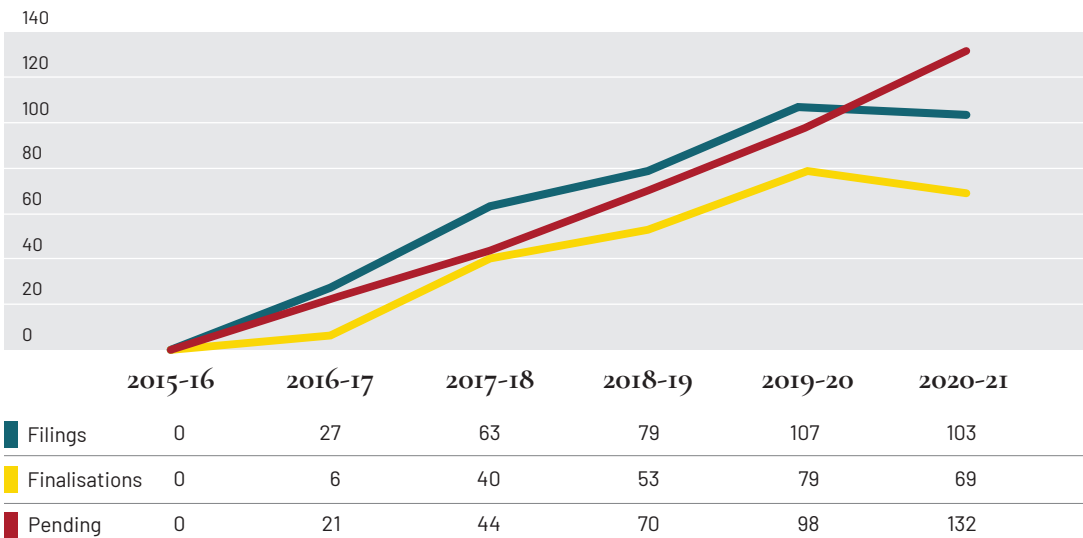
Figure A5.9.8: All filings, finalisations and pending, Other Federal Jurisdiction NPA

Figure A5.9.9: All filings, finalisations and pending, Federal Crime and Related Proceeding NPA

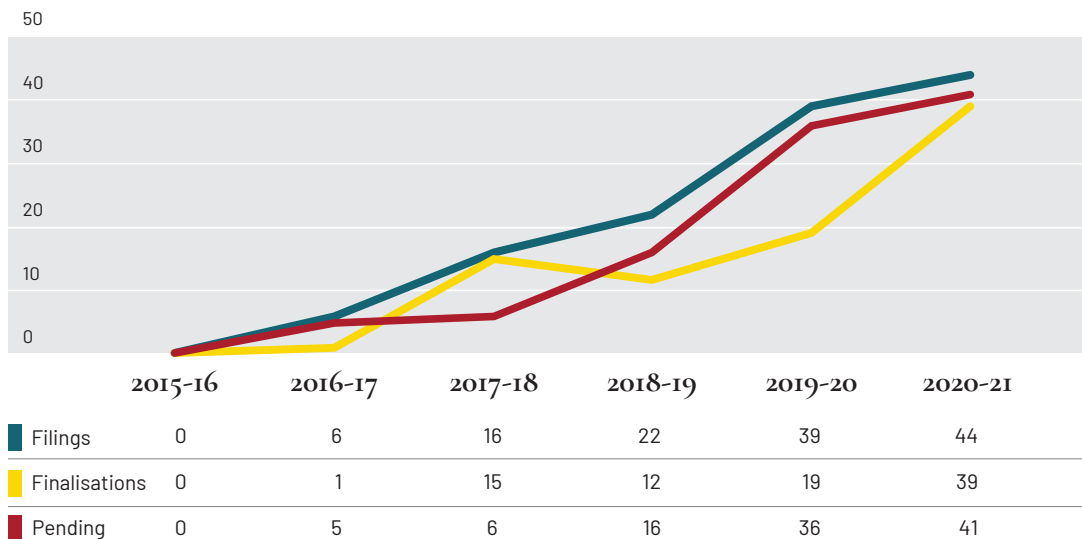
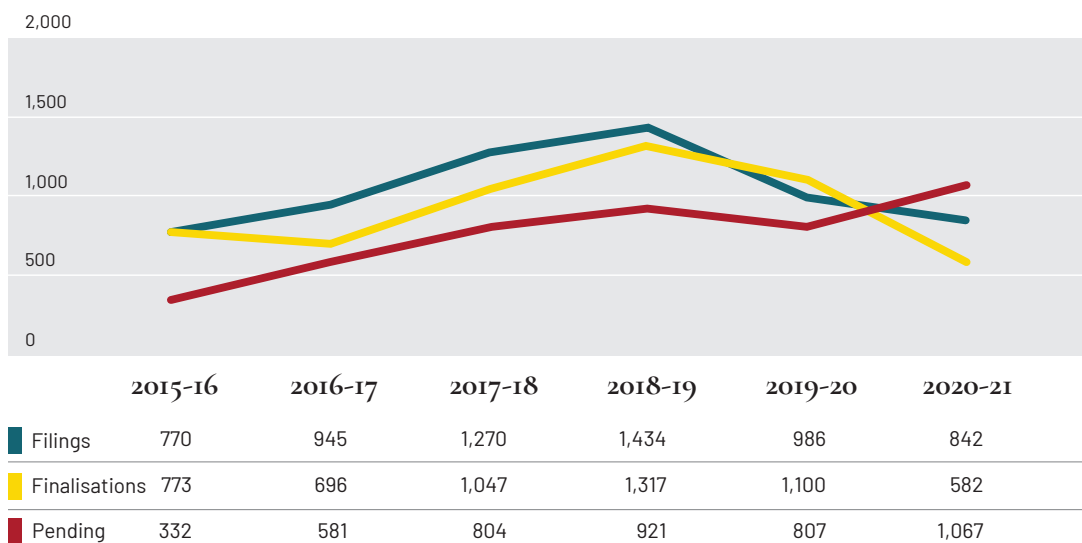


Figure A5.9.10: All filings, finalisation and pending, Migration NPA



Appendix 6

Work of tribunals

Australian Competition Tribunal

Functions and powers

The Australian Competition Tribunal was established under the *Trade Practices Act 1965* (Cth) and continues under the *Competition and Consumer Act 2010* (Cth) (the Act).

The Tribunal is a review body. A review by the Tribunal is a re-hearing or a re-consideration of a matter. The Tribunal may perform all the functions and exercise all the powers of the original decision-maker for the purposes of review. It can affirm, set aside or vary the original decision.

The Tribunal has jurisdiction under the Act to hear a variety of applications, most notably:

- review of determinations by the Australian Competition and Consumer Commission (ACCC) granting or refusing clearances for company mergers and acquisitions
- review of determinations by the ACCC in relation to the grant or revocation of authorisations that permit conduct and arrangements that would otherwise be prohibited under the Act for being anti-competitive
- review of decisions by the Minister or the ACCC in relation to allowing third parties to have access to the services of essential facilities of national significance
- review of determinations by the ACCC in relation to notices issued under section 93 of the Act in relation to exclusive dealing, and
- review of certain decisions of the ACCC and the Minister in relation to international liner cargo shipping.

The Tribunal can also hear a range of other, less common, applications arising under the Act.

The Tribunal can affirm, set aside or vary the decision under review.

Practice and procedure

A review by the Tribunal is usually conducted by way of a public hearing, but may in some instances be conducted on the papers. Parties may be represented by a lawyer. The procedure of the Tribunal is, subject to the Act and the Competition and Consumer Regulations 2010 (the Regulations), within the discretion of the Tribunal. The Regulations set out some procedural requirements in relation to the making and hearing of review applications. Other procedural requirements are set out in the Tribunal's Practice Direction.

Proceedings are conducted with as little formality and technicality and with as much expedition as the requirements of the Act and a proper consideration of the matters before the Tribunal permit. The Tribunal is not bound by the rules of evidence.

Membership and staff

The Tribunal is comprised of presidential members and lay members who are qualified by virtue of their knowledge of, or experience in, industry, commerce, economics, law or public administration. Pursuant to section 31 of the Act, a presidential member must be a judge of a Federal Court, other than the High Court or a court of an external territory.

Justice John Middleton is the President of the Tribunal. Justice Andrew Greenwood, Justice David Yates, Justice Kathleen Farrell, Justice Jennifer Davies and Justice Michael O'Bryan are the Deputy Presidents of the Tribunal. Justice Lindsay Foster retired as a Deputy President of the Tribunal during the reporting year.

Dr Darryn Abraham, Professor Kevin Davis, Professor Caron Beaton-Wells, Ms Diana Eilert and Dr Jill Walker are the Members of the Tribunal.

The Tribunal is supported by a Registrar (Tim Luxton) and Deputy Registrars (Nicola Colbran, Katie Lynch, Geoffrey Segal and Russell Trott).

Activities

One matter was current at the start of the reporting year. During the year, four new matters were commenced, two matters were remitted by the Full Federal Court of Australia, one matter was determined and one matter was withdrawn.

No complaints were made to the Tribunal about its procedures, rules, forms, timeliness or courtesy to users during the reporting year.

Decisions of interest

- Application by Flexigroup Limited [2020] ACompT 2 (15 September 2020)
- Application by Port of Newcastle Operations Pty Ltd (No 2) [2020] ACompT 3 (14 December 2020)
- Application by Port of Newcastle Operations Pty Ltd [2021] ACompT 1 (9 March 2021)
- Application by New South Wales Minerals Council [2021] ACompT 2 (20 May 2021)
- Application by New South Wales Minerals Council (No 2) [2021] ACompT 3 (16 June 2021)

Copyright Tribunal

Functions and powers

The Copyright Tribunal was established under the *Copyright Act 1968* (Cth) to hear applications dealing with four main types of matters:

1. to determine the amounts of equitable remuneration payable under statutory licensing schemes
2. to determine a wide range of ancillary issues with respect to the operation of statutory licensing schemes, such as the determination of sampling systems
3. to declare that the applicant (a company limited by guarantee) be a collecting society in relation to copying for the services of the Commonwealth or a state, and
4. to determine a wide range of issues in relation to the statutory licensing scheme in favour of government.

By virtue of the *Copyright Amendment Act 2006* (Cth), assented to on 11 December 2006, the Tribunal also has jurisdiction to hear disputes between collecting societies and their members.

Practice and procedure

Hearings before the Tribunal normally take place in public. Parties may be represented by a lawyer. The procedure of the Tribunal is subject to the Copyright Act and regulations and is within the discretion of the Tribunal. The Copyright Regulations 2017 came into effect in December 2017 (replacing the Copyright Tribunal (Procedure) Regulations 1969). Part 11 of the regulations relates to the Copyright Tribunal and includes provisions concerning its practice and procedure.

Proceedings are conducted with as little formality and technicality, and as quickly as the requirements of the Act, and a proper consideration of the matters before the Tribunal, permit. The Tribunal is not bound by the rules of evidence.

Membership and staff

The Tribunal consists of a President and such number of Deputy Presidents and other members as appointed by the Governor-General.

Justice Andrew Greenwood is the President of the Tribunal. Justice Nye Perram and Justice Jayne Jagot are Deputy Presidents.

The current members of the Tribunal are Dr Rhonda Smith (reappointed on 12 December 2017), Mr Charles Alexander (appointed from 30 November 2017), Ms Sarah Leslie (appointed from 1 March 2018) and Ms Michelle Groves (appointed from 16 April 2018). Appointments are usually for a period of five years.

The Registrar of the Tribunal is an officer of the Federal Court. Katie Lynch was appointed Registrar of the Tribunal on 25 March 2021. Before this, the Registrar was Murray Belcher.

Activities and cases of interest

Three matters were commenced in the Tribunal during the reporting period:

- CT1 of 2020 – Audio-Visual Copyright Society Limited ACN 003 912 310 v Foxtel Management Pty Limited ACN 068 671 938, being an application brought under section 135ZZM of the *Copyright Act 1968*, filed on 22 July 2020.

- T1 of 2021 – Australasian Performing Right Association Limited ABN 42 000 016 099 and Australasian Mechanical Copyright Owners' Society Limited ABN 78 001 678 851, being a reference under section 154 of the *Copyright Act 1968*, filed 26 March 2021.
- CT2 of 2021 – Copyright Agency Limited ABN 53 001 228 799 v Department of Education (Queensland) and the bodies listed in Schedule A, being an application brought under section 113P and section 153A of the *Copyright Act 1968*, filed 18 May 2021.

The following matters were commenced in the Tribunal before the reporting period and remain ongoing:

- CT2 of 2017* – *Meltwater Australia Pty Ltd v Copyright Agency Limited* ABN 53 001 228 799, being an application brought under section 157(3) of the *Copyright Act 1968*, filed on 28 November 2017.
- CT2 of 2018* – *Isentia Pty Ltd v Copyright Agency Limited* ABN 53 001 228 799, being a further application brought under s 157(3) of the *Copyright Act 1968*, filed on 20 June 2018.
- CT4 of 2018 – Copyright Agency Limited ABN 53 001 228 799 on its own behalf and as agent for the parties listed in *Schedule A v The Universities listed in Schedule B*, being an application brought under section 113P and section 153A of the *Copyright Act 1968*, filed on 12 November 2018.

*These matters are being heard together.

The following matter was finalised during the reporting period:

- CT1 of 2018 – *Stroom Pty Ltd v Copyright Agency Limited* ABN 53 001 228 799 (withdrawn on 12 October 2020).

Defence Force Discipline Appeal Tribunal

Functions and powers

The Defence Force Discipline Appeal Tribunal was established as a civilian tribunal under the *Defence Force Discipline Appeals Act 1955* (Cth) (the Act). Pursuant to section 20 of the Act,

a convicted person or a prescribed acquitted person may bring an appeal to the Tribunal against his or her conviction or prescribed acquittal. Such appeals to the Tribunal lie from decisions of courts martial and of Defence Force magistrates.

Practice and procedure

Subject to the Act, the procedure of the Tribunal is within its discretion. In practice, appeals are conducted in a similar way to an appeal before a state or territory Court of Appeal/Court of Criminal Appeal or the United Kingdom's Court Martial Appeal Court. Counsel robe on the hearing of an appeal but, because the Tribunal does not exercise the judicial power of the Commonwealth, the members of the Tribunal do not.

Membership and staff

The Tribunal is comprised of the President, the Deputy President and other members.

The President of the Tribunal is Justice John Logan RFD. The Deputy President is Justice Paul Brereton AM RFD. The other members of the Tribunal are Justice Melissa Perry and Justice Peter Barr. There was no change to the composition of the Tribunal during the reporting year. One vacancy in the Tribunal's establishment remains unfilled.

The Tribunal is supported by a Registrar (Tim Luxton) and Deputy Registrars (Phillip Allaway, Nicola Colbran, Kim Lackenby, Geoffrey Segal, Susie Stone and Russell Trott).

Activities

Three matters were filed during the reporting year. One of those matters was determined during the year.

No complaints were made to the Tribunal about its procedures, rules, forms, timeliness or courtesy to users during the reporting year.

Decisions of interest

- *Mikus v Chief of Army* [2020] ADFDAT 1 (22 December 2020)

Appendix 7

Decisions of interest

Administrative and Constitutional Law and Human Rights NPA

**Sharma by her litigation representative
Sister Marie Brigid Arthur v Minister for the
Environment [2021] FCA 560**

(27 May 2021, BROMBERG J)

The applicants commenced this proceeding on behalf of themselves, and as a representative proceeding on behalf of other children who ordinarily reside in Australia. The applicants' claim, premised on the law of negligence, was that the first respondent, the Minister responsible for administering the *Environment Protection and Biodiversity Conservation Act 1999* (the Act), owes a novel duty to the applicants to take reasonable care to not cause the applicants harm in the course of exercising her powers, including in the course of administering the Act.

The applicants claimed that if the Minister exercised her powers to approve the second respondent's proposal to extend its coal mining operations that it was reasonably foreseeable that they would be exposed to harm as a result of global warming contributed to by the combustion of coal extracted by the second respondent's mining operations. The applicants sought a declaration as to the existence of the duty of care, and injunctive relief restraining the Minister from making a decision under the Act that would breach the said duty of care.

Applying a multi-factorial approach involving the weighing of considerations relevant to whether a legal duty will be found to exist, Justice Bromberg found that the Minister owed the applicants a novel duty of care in exercising her powers pursuant to sections 130 and 133 of the Act (Relevant Provisions) to approve, or not to approve, the extension of the second respondent's coal mining operations. In the course of weighing relevant considerations, Justice Bromberg emphasised the importance of considering 'control', which was supplemented by consideration of 'knowledge', in assessing

whether a duty of care is owed by a statutory authority, and found that in the circumstances of the case, the Minister's control over potential harm to the applicants by the making of a decision under the Relevant Provisions favoured the recognition of a novel duty of care.

In considering the coherence of the postulated duty of care with the exercise of power under the Relevant Provisions, Justice Bromberg found that the duty of care was limited to avoiding personal injury, and did not extend to avoiding damage to property, or pure economic loss. Justice Bromberg found that the duty of care would be incoherent with the Relevant Provisions if the scope of the duty extended to avoiding damage to property, or pure economic loss. Further concluding on his Honour's consideration of coherence of the postulated duty with the Relevant Provisions, Justice Bromberg stated that incoherence may arise between a postulated duty of care and administrative law principles in circumstances where the postulated duty is concerned with the making of a valid decision, but that was not the case in the circumstances in the case before the Court. Justice Bromberg concluded that the duty of care claimed to exist by the applicants was coherent with the Relevant Provisions because the subject of the postulated duty was not concerned with the validity of any decision made under the Relevant Provisions.

Justice Bromberg assessed whether a *quia timet* injunction to restrain the Minister from an apprehended breach of the duty of care ought to be granted by considering what the Minister might do in the knowledge that a duty of care was owed to the applicants, and in the knowledge of the large amounts of information giving rise to that finding. The Court considered it undesirable to pre-empt whether the Minister would or would not approve the second respondent's proposed extension to its mining operations, and refused to grant the injunctive relief sought. Justice Bromberg concluded that any assessment of whether injunctive relief should be granted would be more appropriate in circumstances where the Minister had made a decision on the second respondent's proposal to extend its mining operations.

The appeal from Justice Bromberg's decision has been listed before the Full Court on an expedited basis.

LibertyWorks Inc v Commonwealth of Australia
[2021] FCAFC 90

(1 June 2021, KATZMANN, WIGNEY AND THAWLEY JJ)

In March 2020, the Health Minister made a determination under section 477 of the *Biosecurity Act 2015* (the Act) as a result of the COVID-19 pandemic. The determination prevents any Australian citizen, permanent resident, or operator of an outgoing aircraft or vessel from leaving Australian territory unless an exemption applies to the person, or is granted to the operator (Determination). The applicant, a private think-tank, challenged the validity of the Determination to impose restrictions on overseas travel, arguing that such a measure is *ultra vires*. The applicant claimed that section 477 of the Act empowered the Health Minister to make a determination that subjected an individual to a prescribed biosecurity measure, but that the Minister could not subject a *group* of individuals to such a biosecurity measure.

The Full Court considered the proper construction of section 477 of the Act, and found that the power conferred on the Minister was not limited to imposing restrictions on individuals. The Full Court rejected the applicant's argument that if section 477 conferred powers on the Minister to impose restrictions on individuals, then section 96 of the Act, which provides for the imposition of a human biosecurity order on individuals, was rendered nugatory. The Full Court found that Parliament's intention that the powers be sufficiently broad to impose appropriate restrictions on travellers to prevent or control the spread of communicable diseases would be frustrated in the context of an emergency if section 477 did not allow the Minister to make a determination that applied to persons to whom an order under section 96 of the Act could be made.

Administrative and Constitutional Law and Human Rights NPA | Migration

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v BFW20 by his Litigation Representative BFW20A [2020] FCAFC 121

(24 June 2020, ALLSOP CJ, KENNY, BESANKO, MORTIMER AND MOSHINSKY JJ)

In two proceedings, heard together, the Full Court considered whether the power under

section 501(1) *Migration Act 1958* (the Act) is available to refuse a protection visa. The first was an appeal by the Minister against a first instance decision which followed *BAL19 v Minister for Home Affairs* [2019] FCA 2189 in finding that the section 501(1) powers were not available to refuse a protection visa due to an identified inconsistency with the character criteria specific to protection visas in section 36 of the Act. The second was an application brought in the Court's original jurisdiction in which a question was reserved for consideration: 'Where an applicant for a safe haven enterprise visa satisfies the criteria in section 36 of the Act, can the grant of the visa be prevented by the exercise of the power conferred by section 501(1) to refuse to grant a visa to a person?'

Unanimously, the Full Court upheld the appeal in the first proceeding and answered the question in the second proceeding in the affirmative. In finding that the power in section 501(1) can apply to an application for a protection visa, the Full Court placed emphasis on the unqualified terms of section 501, expressed as a general provision applicable to all visas. Note 1, under section 501, provided that the definition of 'visa' includes a protection visa, and therefore strongly suggested that the section applies to protection visas. Further, the reference to section 501 in section 65(1) (which provides for the granting or refusing of visa applications generally) suggested that the power in section 501(1) was applicable to visas generally, including protection visas. Additionally, the statement in section 501H that the power in section 501(1) to refuse to grant a visa is 'in addition to' any other power under the Act to refuse to grant a visa supported the Full Court's conclusion. Finally, nothing in the text of section 36 expressly excluded the application of section 501 to protection visas.

The Full Court found that an examination of the legislative history buttressed this conclusion: the creation of what the second reading speech described as 'new, independent and self-contained statutory refugee framework' referred to an independence from *international law*, as opposed to independence from the other provisions of the Act. It was not correct to consider, as the judge in *BAL19* had, that the 2014 amendments sought to codify Australia's obligations under the *Convention Relating to the Status of Refugees*: the provisions in fact depart from the Convention in certain respects.

The Full Court went on to find that while section 501 and the protection visa character criteria in section 36 overlap, they operate in different ways and are not inconsistent. The Full Court found that if an applicant fails to satisfy the character provisions in section 36, the visa *must* be refused, whereas a visa *may* be refused if an applicant fails the character test in section 501. This formed an intelligible basis for the presence of the (narrower) character criteria in the protection visa provisions. It was not to be assumed that, simply due to failure to satisfy the Minister that the applicant passes the character test, their application would be refused under section 501(1). The Full Court held that Parliament having expressly dealt with protection visas differently from other visas in certain respects weighed against any conclusion that such visas are to be treated differently in any other, unexpressed respect.

In dismissing the Special Leave Application in KDSP [2021] HCATrans 020, an analogous case, Gordon J stated ‘There is no reason to doubt the correctness of the conclusion reached by the Full Court of the Federal Court of Australia in *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v BFW20*’.

Taxation NPA

Commissioner of Taxation v Fortunatow [2020] FCAFC 139

(17 August 2020, McKerracher, Davies and Thawley JJ)

In the 2012 and 2013 income years, Mr Fortunatow, a business analyst, provided personal services to eight different end clients through his company. Each of the engagements was arranged by a recruiter or intermediary, like Hays. Mr Fortunatow claimed that he was not required to include the personal services income generated through his company in his assessable income because his company satisfied the ‘unrelated clients test’ for a personal services business. The test required the services to have been provided ‘as a direct result’ of the individual or personal services entity making offers or invitations (for example, by advertising), to the public at large or to a section of the public, to provide the services’. The facts found by the Tribunal were that some of the intermediaries contacted Mr Fortunatow as a result of his advertising on LinkedIn, but that none of the clients relied upon any form of advertising by Mr Fortunatow or his company.

Although the primary judge agreed with the Tribunal in relation to the causal connection required by the phrase ‘as a direct result’, the primary judge considered that the Tribunal applied the ‘unrelated clients test’ in a way which was otherwise affected by error and set aside the Tribunal’s decision. The Commissioner accepted that the Tribunal erred in the way identified, but contended that the error was immaterial because, on the Tribunal’s findings, Mr Fortunatow had not established that the services had been provided ‘as a direct result’ of offers or invitations made to the public to provide the services. The Commissioner contended the matter should therefore not have been set aside.

As to the meaning of ‘as a direct result’, the primary judge concluded that the phrase creates a requirement for a causal connection between the services provided and the offer or invitation to the public but did not denote the type of causal connection. The Full Court concluded that meaning had to be given to the word ‘direct’ in the phrase ‘as a direct result’ and concluded that a direct causal connection was required between a client’s decision to obtain the services and the individual or personal services entity making offers or invitations to provide them. A direct causal effect might be shown where it was established that an invitation or offer was comprehended by the client, in the sense of received and digested, and that it had at least some influence on the client’s decision to obtain the services. Contrary to the view of the Tribunal and the primary judge, the Full Court found that it was offers or invitations which operated directly on the client which were relevant, not those which operated on an intermediary.

On the facts as found by the Tribunal, none of the clients made their decisions to engage the services of Mr Fortunatow ‘as a direct result’ of any offer or invitation constituted by Mr Fortunatow’s LinkedIn profile. The Full Court found that the application of the correct construction of the ‘unrelated clients test’ to the facts as found by the Tribunal could lead to only one conclusion, namely that the test was not met. This was the conclusion which the Tribunal reached, albeit in a way which was affected by error. The Full Court concluded that the Tribunal’s error was immaterial as, on a correct application of the law, the Tribunal would necessarily have concluded that the ‘unrelated clients test’ was not satisfied. The Full Court allowed the appeal from the decision of the

primary judge and in lieu of the orders made by the primary judge, ordered that the appeal from the Tribunal be dismissed. The Full Court also rejected Mr Fortunatow's contention that the Commissioner's appeal was incompetent.

The High Court of Australia has refused an application for special leave to appeal.

Employment and Industrial Relations

***WorkPac Pty Ltd v Rossato* [2020] FCAFC 84**

(20 May 2020, BROMBERG, WHITE AND WHEELAHAN JJ)

This proceeding concerns whether the respondent (Mr Rossato) was employed by the applicant (WorkPac), a labour hire company, as a casual employee. The proceeding follows the decision in *WorkPac Pty Ltd v Skene* [2018] FCAFC 131, in which the Full Court had found that the respondent was not a casual employee within the meaning of section 86 of the *Fair Work Act 2009* (FW Act). The Full Court had also determined in *Skene* that employees will be found to be casuals if their employer has made no firm advance commitment to provide continuing and indefinite work according to an agreed pattern of work.

WorkPac commenced proceedings against Mr Rossato, who it had treated as a casual employee, after he had, in reliance on the decision in *Skene*, written to it claiming that he was owed outstanding paid leave entitlements because he had not been a casual employee. WorkPac sought various declarations that Mr Rossato was a casual employee at common law, and within the meaning of sections 86, 95 and 106 of the FW Act. In the alternative, WorkPac argued it was entitled to a 'set-off' of any amount owed to Mr Rossato with respect to the entitlements claimed as a result of the Mr Rossato's pay incorporating a casual loading of 25 per cent of the minimum rate of pay payable under the relevant enterprise agreement. Further, and in the alternative, WorkPac argued that it was entitled to restitution of the amount of casual loading incorporated into Mr Rossato's pay above the flat rate under the relevant enterprise agreement.

The Full Court found that Mr Rossato was not a casual employee, and therefore that he was entitled to be paid the National Employment Standards (NES) entitlements he claimed from WorkPac. In making that finding, the

Full Court considered the correct approach to the assessment of whether a firm advance commitment had been made was to assess, as a whole, each of the six employment contracts entered into by the parties. WorkPac's contention that post contractual conduct of the parties is irrelevant for the purpose of such an assessment was rejected by the Full Court.

The Full Court rejected WorkPac's claim that it was entitled to restitution of the casual loading incorporated into the Mr Rossato's hourly rate, on the basis that there had been no failure of consideration or mistake which would support that claim. Further, the Full Court rejected WorkPac's claim that it was entitled to set off of amounts paid to the Mr Rossato above the flat rate of pay, because there was no close correlation between the payments made, and the entitlements claimed. The Court further held that regulations on which WorkPac relied to effect a setoff were not engaged, and alternatively, did not have the substantive effect for which WorkPac contended.

An appeal from the Full Court decision was heard by the High Court of Australia in May 2021, and judgment is currently reserved.

***Berkeley Challenge Pty Ltd v United Voice* [2020] FCAFC 113**

(1 July 2020, RARES, COLLIER AND RANGIAH JJ)

The Full Court in this proceeding determined two separate appeals together concerning the proper construction of section 119(1)(a) of the *Fair Work Act 2009* (FW Act). That provision provides an employee is entitled to redundancy pay when the employment is terminated at the employer's initiative because the employer no longer requires the job done by the employee to be done by anyone, except where this is due to the ordinary and customary turnover of labour. Each of the appellants, Berkeley Challenge Pty Ltd (Berkeley) and Spotless Services Australia Pty Ltd (Spotless), employed staff who then provided services to a third party entity pursuant to a contract entered into between each appellant and the respective third party entity. For different reasons, the term of the contract between each appellant and the third parties concluded, and each appellant terminated the employment of a number of staff whom it had employed for lengthy periods of time.

Proceedings were commenced on behalf of the staff whose employment had been terminated (affected employees), claiming that each of the appellants had failed to pay those employees redundancy pay entitlements pursuant to section 119 of the FW Act. The primary judges found that each of Berkeley and Spotless had contravened section 119 of the FW Act by failing to pay the affected employees' redundancy entitlements. In the proceeding against Berkeley, the primary judge also found that Berkeley had contravened section 44 of the FW Act and that the affected employees were entitled to compensation. Berkeley and Spotless relied on broadly the same grounds of appeal, namely that each of the primary judges erred in the construction and application of the exception to the requirement to pay redundancy entitlements under section 119(1)(a) of the FW Act. Both Berkeley and Spotless asserted that the affected employees' employment was terminated as part of the ordinary and customary turnover of labour, and thus the exception under section 119 applied, the effect of which was that the affected employees were not entitled to redundancy pay.

The Full Court found that, contrary to the contentions of the appellants, for the exception in section 119(1)(a) of the FW Act to be enlivened, a causal link must be established between the termination by an employer of an employee's employment, and the termination must be due to the ordinary and customary turnover of labour. The Full Court dismissed contentions by both appellants that the primary judges in each proceeding took irrelevant considerations into account in their construction of s 119(1)(a). The Full Court found that various considerations, including the reasonable expectations of employees with respect to ongoing employment, are relevant to the Court's assessment of whether the exception in section 119 applies, and that such a consideration was also relevant in determining what constitutes the 'ordinary and customary turnover of labour'. The Full Court found that the primary judge in the Berkeley primary proceeding erred in framing the test for the application of the exception under section 119, and by failing to take a number of considerations into account in determining whether the exception applied, but that such errors did not change the conclusion that the primary judge had reached. The Full Court dismissed both appeals.

***Knowles v BlueScope Steel Limited* [2021]
FCAFC 32**

(12 March 2021, LOGAN, FLICK AND KERR JJ)

The applicant was employed by the first respondent, BlueScope Steel Limited (BlueScope), until his employment was terminated following an investigation into breaches of safety procedures by the applicant in relation to his operation of a crane used to move steel coils. The applicant made a successful unfair dismissal application to the Fair Work Commission (FWC). The Commissioner made orders including that the applicant be reinstated. BlueScope was granted permission by the Full Bench of the FWC to appeal the Commissioner's decision, and subsequently upheld the appeal. The Full Bench ordered that the unfair dismissal application be dismissed.

The applicant applied to the Federal Court seeking relief, pursuant to section 39B of the *Judiciary Act 1903*, from the Full Bench's decision. The applicant claimed that the Commissioner's decision contained no 'error of fact', or 'significant error of fact', and that the Full Bench erred by disturbing the findings made by the Commissioner. Alternatively, the applicant claimed the findings of fact made by the Full Bench were not open to it by reason of irrationality, illogicality or unreasonableness.

The Full Court majority considered the appeal rights to the Full Bench under section 604 of the *Fair Work Act 2009* (FW Act), and the jurisdiction of the Full Bench to consider appeals only if it is considered to 'be in the public interest to do so' (FW Act section 400(1)), and if permission is granted, the constraints on the Full Bench to resolve an appeal involving a significant error of fact under section 400(2) of the FWA. The Full Court majority juxtaposed what the Full Bench's task is in considering an application for permission to appeal under section 400, and the task of the Court in judicial review proceedings, confirming the requirement of the Full Bench to make a 'broad value judgment', which the Court should only disturb upon judicial review if the Court considers that the Full Bench misunderstood its role, or its jurisdiction, or failed to apply itself to the relevant question.

The Full Court majority rejected the applicant's argument that identification of a significant error of fact is a jurisdictional fact to be determined by the Court, finding that it was within the

Full Bench's jurisdiction, and open to the Full Bench, to find four significant errors of fact in the Commissioner's finding, and to thereafter re-hear the matter within the constraints of section 400(2). The Full Court majority went on to reject the applicant's contention that the Full Bench's conclusions on the re-hearing of the matter were affected by irrationality, illogicality or unreasonableness, and thus constituted a jurisdictional error. The Full Court majority emphasised that it is not the Court's task to prefer one finding of fact over another, rather the Court's task was to ensure the Full Bench had performed its task within the constraints of section 400(2).

The Full Court minority found that the Full Bench fell into jurisdictional error by failing to make a requisite finding of significant error of fact in the Commissioner's decision that would enliven the Full Bench's jurisdiction to re-hear the matter.

Intellectual Property NPA | Patents and Associated Statutes sub-area

Mylan Health Pty Ltd v Sun Pharma ANZ Pty Ltd [2020] FCAFC 116

(3 July 2020, Middleton, Jagot, Yates, Beach and Moshinsky JJ)

Diabetic retinopathy is a progressive long-term complication associated with diabetes. The disease affects the retina and can cause permanent vision loss. The appellants' (Mylan) patents in this case concerned the medical use of fenofibrate (a fibrate class medication) for preventing diabetic retinopathy. Some of the patent claims were Swiss type claims, being claims directed to methods or processes of manufacture whose products were for second or later therapeutic use. Before the priority date of the claims in suit, a clinical trial protocol (the Protocol) was made publicly available which had as one of its hypotheses that 'fibrate therapy... will reduce the risk of diabetic retinopathy'. Mylan marketed and sold the only fenofibrate product on the Australian market. In 2016, the first respondent (Sun Pharma) obtained entry on the Australian Register of Therapeutic Goods of certain fenofibrate film-coated tablets which it intended to market and supply in Australia. Mylan unsuccessfully sued Sun Pharma for threatened patent infringement.

The primary judge dismissed the threatened infringement case finding that the main patent in suit was invalid on the grounds that the invention was not novel in light of the publication of the Protocol as an earlier documentary disclosure. In any event, the primary judge also found that Mylan had not established that there was a threatened infringement of the Swiss type claims. To find infringement of the Swiss type claims required proof of the manufacturer's intention that the medication be used for the prevention or treatment of diabetic retinopathy when making the medicine. The primary judge was not satisfied that Mylan had proved that Sun Pharma intended to use its products in this way.

In issue in the appeal was whether the Protocol anticipated the invention as claimed and deprived it of novelty when it advanced no more than a reasoned hypothesis for treatment, not a method of treatment as such. Mylan also appealed against the finding that the manufacturer's intention is an essential element of infringement for Swiss type claims.

The Full Court found that while the context of a documentary disclosure may inform the interpretation of a document's content, if the document nonetheless discloses what is later claimed as an invention it will anticipate the invention and deprive it of its novelty. It is not a requirement for a patentable invention that the invention, as claimed, be based on scientific proof or substantiation and so no such requirement was imposed on the earlier documentary disclosure. Because the Protocol had described the method of treatment and disclosed all the essential integers of the patent claim that was enough to deny its novelty.

Regarding the Swiss type claims, the Full Court disagreed with the primary judge's construction that the manufacturer's intention in making the medicament is an essential feature of the invention. Infringement of Swiss type claims is concerned with whether in the circumstances of the case the product of the claimed method or process is the medicament for the specified therapeutic process. Evidence of manufacturer's intention, physical characteristics of the product, reasonably foreseeable uses and suitability for use may all be relevant, but none will be determinative. In this case it was critical that Sun Pharma's product information did not state that the product was registered for indications including diabetic retinopathy.

The Full Court dismissed the appeal and the first respondent's notice of contention. An application for special leave to appeal was refused by the High Court of Australia.

Intellectual Property NPA | Trade Marks

Hashtag Burgers Pty Ltd v In-N-Out Burgers, Inc [2020] FCAFC 235

(23 December 2020, NICHOLAS, YATES AND BURLEY JJ)

The respondent operates a business, founded in 1948, selling fast food, including burgers, under the name IN-N-OUT Burger. The respondent predominately trades in the United States of America, however regularly hosts pop-up restaurant events outside of the USA, including in Australia. The second and third appellant incorporated the first appellant to operate a business selling fast food, including burgers, under the name DOWN-N-OUT Burgers.

At first instance the primary judge found that the second and third appellants were jointly and severally liable for trade mark infringement, passing off, and contravening section 18 of the Australian Consumer Law (ACL). The primary judge found that from 23 June 2017, the first appellant was liable for trade mark infringement and passing off, but not the second or third appellant from that date. The second and third appellants were however found to be personally liable for the first appellant's contraventions of the ACL.

The Full Court rejected the appellants' two grounds of appeal challenging the primary judge's findings concerning trade mark infringement, and found that the primary judge's conclusion that consumers with an imperfect recollection may be caused to wonder whether the first appellant's business was associated with the respondent's business by reason of the trade marks used by the appellant to promote the business was correct. The Full Court did conclude that the primary judge's reasoning concerning whether the second and third appellant acted dishonestly in their use of the impugned trade marks to promote their business involved error, but that the error did not materially affect the primary judge's conclusions as to the impugned trade marks being deceptively similar to the respondent's registered trade marks.

The Full Court found that the primary judge correctly determined that the appellants had contravened section 18 of the ACL because a significant portion the identified class of prospective consumers would think that the first appellant's business was associated with the respondent's business. The Full Court rejected that appellants' contention that for passing off conduct to be made out the respondent needed to have a business connection in Australia.

The Full Court allowed the respondent's cross-appeal and found that the second and third appellants, who were directors of the first appellant at the relevant times, were knowingly involved in the first appellant's conduct constituting passing off and trade mark infringement, and as such were personally liable as joint tortfeasors.

Commercial and Corporations NPA | Commercial Contracts, Banking, Finance and Insurance sub-area

Rockment Pty Ltd t/a Vanilla Lounge v AAI Limited t/a Vero Insurance [2020] FCAFC 228

(18 December 2020, BESANKO, DERRINGTON AND COLVIN JJ)

In this decision, the Full Court determined a separate question concerning the construction of an exclusion under a policy of insurance (Policy) held by Rockment Pty Ltd (Rockment) with AAI Limited t/a Vero Insurance (Vero). Rockment operated a café in Victoria, and the Policy relevantly insured Rockment against business interruptions resulting in loss of profit. The exclusion in question excluded claims being made under the Policy for business interruptions caused 'directly or indirectly by cleaning, repairing or checking the cafe premises, or interruptions caused by highly pathogenic Avian Influenza or any biosecurity emergency or human biosecurity emergency declared under the *Biosecurity Act 2015*... irrespective of whether discovered at the premises or the breakout is elsewhere.' Rockment made a claim under the Policy for losses caused by the requirement to close the café during a lockdown ordered by the Victorian Government as a result of the COVID-19 pandemic, and Vero denied the claim by reason of the Policy exclusion clause. Of relevance is that in January 2020, a determination was made under section 42(1) of the *Biosecurity Act 2015* (Act) in respect of COVID-19, and in March 2020, the Commonwealth Governor-General declared

that a 'human biosecurity emergency' existed in Australia, pursuant to section 475 of the Act. That declaration empowered the Federal Health Minister to impose human activity restrictions under the Act. Also in March 2020, the Victorian Government declared a state of emergency in Victoria under the *Public Health and Wellbeing Act 2008* (Vic).

As to the exclusion causation trigger, Rockment argued that the exclusion was not triggered because the declaration made by the Commonwealth Governor-General did not trigger the lockdown resulting in its loss. Rockment argued that the exclusion would be triggered if the Federal Health Minister had imposed restrictions subsequent to the making of the declaration, but the Minister had not done so. Vero on the other hand, claimed that the exclusion was triggered by the existence of the listed human disease which formed the basis of a declaration of a human biosecurity emergency under the Act. Alternatively, that the exclusion applied to a claim caused by the state of affairs upon which a human biosecurity emergency was declared under the Act.

The separate question related to the circumstances which are sufficient to exclude coverage under the Policy and, in particular, whether the loss or damage was relevantly caused by or arose from a listed human disease specified in a declaration of a human biosecurity emergency under the Act. Although the Full Court answered the question in the negative, it did not do so for the reason advanced by Rockment. The exclusion clause was not restricted to cases where the loss or damage was the consequence of closures resulting from the exercise of power by the Federal Minister for Health under the Act. At the same time, the question must be answered 'no' because it is not sufficient to exclude cover under the exclusion that the claim is somehow causally connected to the human disease specified in a declaration of a human biosecurity emergency. The required causal link must exist between the claim on the one hand and the human biosecurity emergency which has been declared under the Act on the other.

Commercial and Corporations NPA / Corporations and Corporate Insolvency sub-area

***Cassimatis v Australian Securities and Investments Commission* [2020] FCAFC 52; 275 FCR 533**

[27 March 2020, Greenwood, Rares and Thawley JJ]

The appellants were the former directors of a financial services provider (Storm) which held an Australian Financial Services Licence (AFSL) enabling it to provide advice to retail investors. The former directors were found by the primary judge to have exercised 'an extraordinary degree of control' of Storm's affairs and governance including by causing Storm to give advice to 11 financially 'vulnerable investors' based on the Storm investment 'model' which utilised high levels of debt.

The primary judge found that a reasonable director in the position of the former directors, exercising the degree of care and diligence such a reasonable person would exercise in Storm's circumstances, would not have permitted the investment advice in issue to have been given to the 11 vulnerable investors. Thus, the former directors had contravened the care and diligence duty in section 180 of the *Corporations Act 2001* (Cth) (the Act). The primary judge found that any reasonable director in the position of the appellants would have known that if they did not take steps to prevent the giving of inappropriate advice, it was likely that Storm would contravene the Act with a foreseeable risk of harm to Storm due to a likely loss of its AFSL and other consequences.

The contraventions by the appellants had the effect of causing or permitting Storm to contravene sections 945A(1)(b) and (c), 912A(1)(a) and (c) of the Act.

The appellants contended that as they held *all* of the issued shares in Storm which was a solvent company when the advice was given and they owed their duties to Storm, Storm's 'interests' were coincidental with or predominantly informed by the wishes of the shareholders enabling the appellants to determine the level of risk to which Storm could properly be exposed given Storm's historical success. The majority of the Full Court, Greenwood J and Thawley J (in separate judgments), held that the primary judge did not err in finding contraventions

of section 180 by the former directors. The important aspect of the majority judgments is that liability arose directly under section 180 as a matter of conduct in contravention of the section rather than as a matter of accessorial liability for contraventions by Storm. The contravening conduct of the former directors ultimately gave rise to the contraventions by Storm. The majority judgments reject the contentions of the former directors of 'identity of interest' with Storm as the *sole* shareholders in Storm. The majority judgments discuss the 'normative' character of section 180 of the Act and the concept and utility of the 'stepping stones' approach to liability under section 180.

In the minority judgment, Rares J, considered that, at the time Storm contravened section 945A of the Act, a reasonable director in the position of the appellants would not have perceived a risk requiring the director to act so as to prevent action being taken by the Regulator that would result in Storm's AFSL being cancelled and, as such, the appellants did not contravene their duties under section 180 of the Act.

Gageler and Keane JJ refused special leave to appeal on the papers..

***GetSwift Limited v Webb* [2021] FCAFC 26**

(5 March 2021, MIDDLETON, MCKERRACHER AND JAGOT JJ)

This appeal was from the decision of the primary judge to refuse to disqualify himself from hearing a class action proceeding in circumstances where the primary judge had heard a related proceeding commenced by the Australian Securities and Investments Commission (ASIC) which involved consideration of the same underlying facts (regulatory proceeding). In the class action proceeding it was claimed that the first appellant, Get Swift Ltd (Get Swift), and its managing director had engaged in misleading and deceptive conduct, and that Get Swift had failed to meet its continuous disclosure obligations. Relevantly: (a) the primary judge had not yet delivered judgment in the regulatory proceeding, (b) it was agreed that there were common issues in the two sets of proceedings, and (c) there was evidence in the regulatory proceeding relevant to the common issues which would not be before the primary judge in the class action proceeding.

By way of interlocutory application Get Swift moved for the primary judge to refer the class action proceeding to the registry to be reallocated to a different judge. Webb did not oppose Get Swift's application. The primary judge dismissed that application but granted leave to appeal from his decision. On appeal, ASIC intervened but sought an alternative form of relief to the effect that the primary judge should first deliver judgment in the regulatory proceeding which the parties could then consider to decide if they wished to pursue a disqualification application. The Court appointed a contradictor to assist the Court.

The appellants' grounds of appeal relevantly included that the primary judge erred in not disqualifying himself from hearing the class action proceeding by reason of the existence of a reasonable apprehension of bias. The appellants contended that in the circumstances of the two proceedings a fair-minded lay observer might reasonably apprehend that the primary judge might not bring an impartial mind to the resolution of the class action proceeding given that the primary judge had heard but not yet delivered judgment in the regulatory proceeding. It was common ground that it was highly likely that the issues in the two proceedings included common issues, and the evidence in the regulatory proceeding included evidence that would not be before the primary judge in the class action proceeding. It was contended that these circumstances gave rise to a reasonable apprehension of both the risk of pre-judgment and misuse of the additional evidence from the regulatory proceeding (referred to as the extraneous information ground).

The Full Court considered the critical question to be whether a reasonable observer might apprehend a risk that the primary judge might sub-consciously misuse the extraneous information from the regulatory proceeding in the class action proceeding. The Full Court noted there was no real dispute as to the applicable law, and restated that the test to be applied is whether a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to determining the question before them. The Full Court made some observations on the knowledge attributable to the hypothetical observer for the purpose of the test, confirming that such knowledge includes that judges are taken to have the ability to disregard irrelevant and immaterial matters.

The Full Court had regard to the nature and extent of material to be considered by the primary judge in both proceedings, including the nature and extent of the extraneous information. The Full Court considered that this material could in no way be considered by a hypothetical observer as insignificant which the primary judge could easily put to one side or compartmentalise when hearing and determining each proceeding. The Full Court allowed the appeal, concluding that the hypothetical observer might reasonably apprehend the primary judge might be subconsciously influenced by the extraneous material from the regulatory proceeding if he were to hear and determine the class action proceeding. In so finding, the Full Court noted that the primary judge's decision not to disqualify himself was selflessly motivated by a desire to achieve case management efficiency. The Full Court considered the contradictor's submission that sufficient legal protections such as a judge's obligation to accord procedural fairness and the duty to give reasons for a decision guarded against the risk of a reasonable apprehension of bias in concurrent trials, but held that such protections were not sufficient to avoid the risk of a reasonable apprehension of bias, or the risk of parties being left with the cost and inconvenience of instituting an appeal to cure what would otherwise be an avoidable error.

The appeal was allowed by the Full Court, and an order was made that the class action proceeding be referred to the National Operations Registrar to be reallocated to a different judge.

Commercial and Corporations NPA | Economic Regulator, Competition and Access sub-area

Glencore Coal Assets Australia Pty Ltd v Australian Competition Tribunal [2020] FCAFC 145; 382 ALR 331

[24 August 2020 Allsop CJ, Beach and Colvin JJ]

The Port of Newcastle (the Port) is the largest coal exporting port in the world and enables yearly overall trade of 164 million tonnes of cargo worth approximately AU\$26 billion. In 2014 the operation of the Port was privatised and sold to the Port of Newcastle Operation (PNO). As the only commercially viable means of exporting coal from the Hunter Valley, the shipping channels of the Port are a natural 'bottleneck' monopoly. Glencore and PNO disagreed

regarding the terms and conditions of access to the shipping channels, a declared service under the *Competition and Consumer Act 2010* (the Act). The dispute was the subject of arbitration by the Australian Competition and Consumer Commission (ACCC) and of re-arbitration by the respondent (Tribunal). Both Glencore and the ACCC sought applications for review of the Tribunal's decision.

In the re-arbitration the Tribunal agreed with the submissions of PNO regarding the scope of the determination and the access price. As to the scope, the Tribunal found that the determination only applied when Glencore owned or chartered the ship that entered the Port precinct through the shipping channels and loaded Glencore coal. The Tribunal went on to calculate the access price without regard to previous user contributions (some AU\$912 million) to develop the infrastructure of the Port, on the basis that such contributions could not be relevant to what an appropriate level of efficient costs would be under the methodology used. The access price for the service the Tribunal decided upon was \$1.0058 per vessel gross tonnage, while the ACCC had set \$0.6075 per gross tonnage.

In particular, the Tribunal was obliged to take into account the present value to PNO of extensions being borne by others by reason of past user contributions (s 44X(1)(e)). In circumstances where some costs were being borne by others, the user contributions were not irrelevant in meeting the concept of efficient costs (s 44ZZCA(a)(i)). Further, the Tribunal was required to determine an appropriate return on investment after evaluating the relevant risks, which included consideration of the concept of economic efficiency (s 44ZZCA(a)(ii)).

The applications for review raised two issues concerning the re-arbitration. The first issue concerned the scope of the declaration and the extent to which Glencore was a party seeking access to the service. The second issue concerned the manner in which the Tribunal had calculated the price to be paid by Glencore for the service, and the relevance of past contributions by users of the Port facilities in reaching the price terms within the determination. The Full Court also considered whether the ACCC's application should be entertained and what the appropriate relief was if an error of law was demonstrated.

The Full Court found that the proper construction of the terms of the determination of the service was wider than simply governing physical access or use by the control and navigation of a vessel in the shipping channels of the Port. The specific contractual arrangements of who controlled the vessel while in the shipping lanes did not affect the conclusion that an exporter, by its sales agreement, relevantly caused a vessel to enter the Port. The Full Court found that Tribunal was in legal error when it confined the terms of the determination to instances where Glencore was the party in control of the ship. That finding was set aside and remitted to the Tribunal, which the Full Court noted was responsible for fashioning the scope of the terms.

The Full Court also found that the Tribunal erred in law by failing to have regard to the user contributions on the basis that such contributions could not be relevant to the determination of an appropriate level of efficient costs. Past user contributions should have been deducted from the asset base upon which the relevant charge for the service was calculated. This was required under various provisions of the Act and so not doing so was an error of law by the Tribunal.

As to the involvement of the ACCC in separate proceedings, the Full Court found that it was inconsistent with the statutory scheme for the ACCC to be arguing for the correctness of its own view in its own proceeding against the Tribunal. Accordingly, its application was dismissed.

The Full Court allowed Glencore's application and the matter was remitted to the Tribunal to determine the questions of scope, user contribution and any consequences for the access price arising from a determination of the user contribution issue.

An appeal is currently pending in the High Court of Australia, special leave having been granted on 12 March 2021.

Commercial and Corporations NPA / Regulator and Consumer Protection sub-area

Volkswagen Aktiengesellschaft v Australian Competition and Consumer Commission [2021] FCAFC 49

(9 April 2021, Wigney, Beach, and O'Bryan JJ)

The Full Court found that the record AU\$125 million penalty set by the primary judge against the appellant (Volkswagen) for having made false or misleading representations on multiple occasions with regard to the compliance of their vehicles with Australian diesel emissions standards was not manifestly excessive.

Volkswagen admitted that over the period of 2011–2015 it had engaged in a course of conduct involving deliberate and dishonest deception regarding the exhaust emissions of certain Volkswagen-branded motor vehicles. Volkswagen had developed software known as 'two mode software' which allowed their vehicles to operate in a mode which minimised nitrogen oxide emissions during a standard test and in a second mode which was activated any other time the vehicles were driven and resulted in higher nitrogen oxide emissions. Volkswagen submitted documents to obtain approvals to import or supply over 57,000 vehicles as well as for their vehicles to be published on a 'Green Vehicle Guide' website on the basis of these false test results. In 2015, the two mode software was discovered by the Environmental Protection Agency in the United States of America resulting in a worldwide scandal for Volkswagen.

The Australian Competition and Consumer Commission (ACCC) brought the primary proceeding in 2016, following five representative proceedings having been commenced against Volkswagen and its subsidiaries. A joint first stage hearing of separate questions relevant to the ACCC proceeding and the representative proceedings was heard by the primary judge over 13 days in 2018. Two weeks before the longer second stage hearing was scheduled to begin, the ACCC and Volkswagen came to a settlement, and jointly submitted to the primary judge that a penalty of AU\$75 million was appropriate. The primary judge found that the penalty proposed was 'manifestly inadequate' and imposed the

AU\$125 million penalty, which was almost five times higher than any penalty previously imposed for a contravention of the Australian Consumer Law (ACL). The potential maximum aggregate penalty in the case was at least AU\$500 million. The primary judge reasoned that the contraventions were an example of particularly egregious consumer fraud and that the agreed penalty reflected an 'overly pragmatic approach' on the behalf of the ACCC. Volkswagen appealed on seven grounds against the primary judge's decision, with support from the ACCC although not as to all of the contentions raised. An amicus curiae was appointed by the Full Court as a contradictor.

The Full Court dismissed all of the grounds of appeal. The Full Court agreed with Volkswagen that the primary judge had erred in not considering whether Volkswagen's absence of prior contraventions under the ACL was capable of constituting a mitigating factor. The primary judge only had regard to that fact in the limited sense of it amounting to the absence of an aggravating feature, where neither party had submitted that the absence of prior contraventions was a mitigating circumstance. However, the Full Court found that the absence of prior contraventions was not a material consideration in all the circumstances in any event and so did not warrant appellate intervention. Otherwise, the Full Court found that the primary judge was not shown to have acted upon any wrong principle, or to have taken into account any extraneous or irrelevant matters, or to have failed to take into account any material matters. The penalty imposed was not shown to be manifestly excessive, the Full Court not being persuaded that any penalty below that imposed by the primary judge would have been appropriate in the circumstances.

An application for special leave to appeal is currently pending in the High Court of Australia.

Commercial and Corporations NPA | General and Personal Insolvency sub-area

Dimitriou v Pineview Property Holdings Pty Ltd [2020] FCAFC 218

[8 December 2020, MARKOVIC, ANASTASSIOU AND STEWART JJ]

The appellant in this matter, Mr Dimitriou, and the respondent, Pineview Property Holdings Pty Ltd (Pineview), were both defendants in proceedings commenced in the Equity Division of the New South Wales Supreme Court (NSWSC proceedings). The NSWSC proceedings were commenced by two individuals against Mr Dimitriou, Pineview and a number of other defendants, relevantly including the Australia and New Zealand Bank (ANZ), and concerned a property refinancing arrangement administered by Mr Dimitriou.

The plaintiffs, the ANZ, and another party entered into an agreement to settle the NSWSC proceedings prior to trial, and the trial judge in those proceedings ultimately upheld cross claims by Pineview and its director against Mr Dimitriou, making findings adverse to Mr Dimitriou, inter alia, that his conduct was unconscionable and fraudulent. Judgment was entered for Pineview and its director against Mr Dimitriou, and various orders were made concerning Mr Dimitriou's liability to indemnify Pineview and its director, and that Mr Dimitriou pay to Pineview and its director over \$1.8 million in costs and damages plus interest. Mr Dimitriou failed to pay the judgment debt. After the judgment on liability was entered in the NSWSC proceedings, all parties to those proceedings, except Mr Dimitriou, entered into a deed of release (DOR) to settle those proceedings.

Mr Dimitriou failed to comply with a bankruptcy notice issued to him by Pineview in April 2018, and in July 2018 Pineview filed a creditor's petition in the Federal Court seeking a sequestration order. At first instance an issue arose concerning production by the respondent of the DOR, which Mr Dimitriou sought to rely upon in his claim that indemnities given by him were rendered inoperative because the primary liability to the ANZ was extinguished when the DOR was executed.

Before the primary judge, counsel for Pineview gave an assurance that the DOR did not exist, resulting in Mr Dimitriou abandoning attempts to obtain a copy of the DOR. Mr Dimitriou was successful in obtaining an unexecuted copy of the DOR from one of the plaintiffs in the NSWSC proceedings, and successfully applied for leave to reopen the first instance proceedings. Mr Dimitriou obtained an executed copy of the DOR after judgment had been reserved in the primary proceedings. In the primary proceedings judgment was entered in favour of Pineview, and a sequestration order was made against the estate of Mr Dimitriou.

On appeal Mr Dimitriou relied on two grounds of appeal (seeking leave to rely on a third) to the effect that he owed no debt to Pineview for the purpose of section 52 of the *Bankruptcy Act 1966* because the judgment debt was a contingent liability to indemnify Pineview for its indebtedness to the ANZ, and upon execution of the DOR such liabilities between the NSWSC proceedings plaintiffs, the ANZ and Pineview had resolved. The Full Court rejected this contention on the basis that the debt was not contingent upon any obligation to indemnify Pineview against its liability to the ANZ. Rather, the judgment debt, being damages payable to Pineview, was the subject of a separate and distinct order to that of the declaration that Mr Dimitriou indemnify Pineview.

Mr Dimitriou's contention that the primary judge should have been satisfied that there was some 'other sufficient cause' for a sequestration order not to be made was rejected by the Full Court on the basis that the DOR had no bearing on Mr Dimitriou's indebtedness, and by extension, the DOR would have no bearing on Pineview calling for payment of that debt, thus the Full Court could not be satisfied the DOR constituted a sufficient reason for a sequestration order not to be made.

The Full Court dismissed the appeal, but concluded that the DOR ought to have been produced by Pineview in the primary proceedings, despite it being of no relevance to whether Mr Dimitriou owed a debt to Pineview. The Full Court noted that considerable time had been spent, both in the primary and appeal proceedings, contesting the existence of the DOR and its admissibility, with Pineview ultimately

making a concession in the appeal proceedings that leave to tender the document was no longer opposed. The Full Court remarked that Pineview's conduct in relation to the DOR was inconsistent with a party's duty to conduct the proceedings upon the real issues in contest, and on that basis Pineview was to bear its own costs in the appeal proceedings.

Native Title NPA

***Roberts on behalf of the Widjabul Wia-Bal People v Attorney-General of New South Wales* [2020] FCAFC 103**

(17 June 2020, REEVES, MURPHY AND GRIFFITHS JJ)

This matter concerns section 47B of the *Native Title Act 1993* (the Act), which provides exceptions to the principle that extinguishment of native title rights and interests is permanent. The appellants filed a native title determination application on 24 June 2013 claiming native title rights and interests over an area of land located in northern New South Wales, east of Casino. Within the claim area existed five identifiable areas of land. Four of the five areas of land were the subject of an appeal considered by the Full Court. Those areas are identified as Areas 572, 115, 460 and 624. Area 572 is covered by a reservation from sale, and 115 is covered by a reservation from sale and lease, both reservations being for public purposes. Areas 460 and 624 are each covered by a reservation and a permissive occupancy licence for grazing. Separate questions in relation to the Areas of land were determined by the primary judge, namely whether section 47B of the Act is excluded in relation to those Areas by reason of section 47B(1)(b)(ii) of the Act. The primary judge determined the separate questions in favour of the respondents.

On appeal the appellants contended that the primary judge erred in the construction of section 47B(1)(b)(ii) of the Act, arguing that the phrase 'is to be used' should be construed as 'is required to be used'. The effect of the appellants' contention being that no such 'reservation, proclamation, dedication, condition, permission or authority' existed that attracted the operation of section 47B(1)(b)(ii).

The Full Court questioned whether the use of the separate question procedure to determine the issues in dispute between the parties was appropriate, or whether the parties were instead seeking advisory opinions from the Court. Subsequent to judgment being reserved, the Full Court requested the parties provide further submissions concerning factual issues that remained uncertain giving rise to the concern about the use of the separate question procedure. The Full Court requested that the parties address a number of factual issues around the extinguishment of native title rights in the land Areas, creation of prior interests bringing about any extinguishment of native title rights, and the occupation of members of the native title claim group with respect to the Areas. The parties submitted a joint note in response to the Full Court's request (Joint Note), which contained a number of additional agreed facts and other matters, which relevantly included that instruments concerning the Areas had extinguished exclusive native title rights, and created a prior interest in those Areas, but reserving each parties' position in relation to non-exclusive native title rights to be determined at a future trial.

The Full Court found that, whilst stating a 'prior interest' had been created in each of the Areas, the parties had failed to identify or explain what that 'prior interest' was that would extinguish native title rights by reference to the relevant applicable statutory provisions upon which the purportedly extinguishing acts were occasioned. The Full Court considered the legislative provisions pursuant to which the instruments said to extinguish native title rights were executed, and stated that because of the general terms in which the provisions were expressed, and because the provisions appeared to have no immediate effect, it was not clear that any native title rights had in fact been extinguished. The Full Court considered it was unlikely native title was extinguished in relation to two of the four Areas, and that no factual foundation existed upon which the Court could confidently say that native title rights had been extinguished in relation to the other two Areas of land.

The Full Court considered that the separate question procedure was inappropriate to be used in the circumstances because a consideration of the exception under s 47B(1)(b)(ii) was hypothetical if no extinguishment of native title in any of the four Areas had occurred, meaning that there would be no extinguishment to be disregarded under s 47B(2). Further, the Full Court found that even if a factual basis existed upon which the dispute concerning the proper construction of section 47B(1)(b)(ii) could be properly considered, such a dispute was minor in comparison to the extensive issues concerning the holding of native title rights, full or partial extinguishment of any rights, and connection, remaining unresolved in the proceeding.

The Full Court considered the authorities relied upon in support of the parties' contention that the separate question procedure was appropriate, and found that none of those cases supported the parties' contention as to the appropriate use of the procedure. The Full Court emphasised that the separate question procedure in native title litigation does have utility, however the procedure is most appropriately employed at a point in the proceeding when issues of whether native title exists in a claim area, and the nature of those rights, are settled, prior to any issues of extinguishment being heard and determined.

The Full Court dismissed the appeal, and set aside the primary judge's answers to the separate questions.

Other Federal Jurisdiction NPA / Defamation

Leyonhjelm v Hanson-Young [2021] FCAFC 22

[3 March 2021, RARES, WIGNEY and ABRAHAM JJ]

The appellant is a former senator, and the respondent is a current senator in the Australian Parliament. In the course of a debate, in June 2018 the appellant said to the respondent 'you should stop shagging men, Sarah'. The appellant claimed that he made that comment in response to comments made by the respondent that were 'tantamount to a claim that all men are responsible for sexual assault or that all men are rapists'. The respondent commenced proceedings against the appellant claiming that he had made or published four statements

subsequent to the debate in Parliament in June that were defamatory of the respondent. The primary judge found that the statements or publications did convey imputations defamatory of the respondent, rejected the appellant's defences of justification and qualified privilege, and awarded the respondent damages for non-economic loss.

The appellant challenged the primary judge's decision on seven grounds, which broadly fell into two categories, namely the application of section 16(3) of the *Parliamentary Privileges Act 1987* (the PP Act), and the defence of qualified privilege.

The first two grounds of appeal concerned parliamentary privilege. Under section 16(3) of the PP Act, no evidence can be 'tendered or received, questions asked or statements, submissions or comments made, concerning proceedings in Parliament' in a court or tribunal for the purposes identified in that provision.

The appellant's grounds of appeal claiming that the primary judge erred by receiving evidence in the primary proceeding relating to what the respondent purportedly said during the Parliamentary debate were rejected by all the members of the Full Court on the basis that the appellant could not identify any evidence or submissions which were used in the primary proceeding for any purpose prohibited under section 16(3) of the PP Act.

The Full Court majority dismissed the grounds advanced by the appellant challenging the primary judge's consideration and findings in relation to the appellant's qualified privilege defence. The appellant's contention that it was not open to the primary judge to make a finding that the appellant acted unreasonably in publishing the impugned statements concerning the respondent was rejected by the Full Court. The Full Court majority concluded that the primary judge's finding that the appellant was actuated by malice in publishing the statements was open on the evidence at first instance, and that the appellant's qualified privilege claims failed because the preconditions to raising that defence required under section 30(3) of the *Defamation Act 1974* (the Act) were not satisfied.

The Full Court majority found that none of the appellant's grounds of appeal were made out, and the appeal was dismissed.

The Full Court minority found that the appellant's grounds of appeal concerning qualified privilege were made out under section 30(1) of the Act. The Full Court minority found that the appellant's conduct in not making further inquiries as to the correctness of his honest belief about the respondent's comments made in Parliament was not unreasonable, and that his comments were published on an occasion of qualified privilege. The Full Court minority further found that the appellant's qualified privilege claim was made out because the appellant was not actuated by malice in publishing the statements.

An application for special leave to appeal to the High Court of Australia was dismissed.

Federal Crime and Related Proceedings *NPA*

Commonwealth Director of Public Prosecutions v Citigroup Global Markets Australia Pty Ltd [2021] FCA 511

(14 May 2021, White J)

Following an investigation by the Australian Competition and Consumer Commission (ACCC), the prosecutor (CDPP) charged ANZ, Deutsche Bank and Citigroup along with six individual employees of one or another of these entities (the accused) with having participated in criminal cartel conduct. The alleged conduct arose from an institutional share placement undertaken by ANZ for which JPMorgan, Deutsche Bank and Citigroup were the joint lead managers and underwriters. It is alleged that an understanding to limit the supply of the ANZ shares received as underwriters and to control the price of those shares was reached. As part of an internal investigation regarding the share placement JPMorgan's legal representatives prepared notes of interviews with employees and outlines of evidence. Subsequently JPMorgan self-reported the share placement transactions to the ACCC. On the basis of this reporting JPMorgan was granted conditional and derivative immunity from civil and criminal prosecution, subject to it agreeing to continue to provide full, frank and truthful disclosure and cooperation to the ACCC. During later meetings between the CDPP and JPMorgan's legal representatives, parts of the witnesses' outlines of evidence were read out to address concerns regarding the consistency of evidence which had been provided. JPMorgan

submitted that it had been effectively compelled to disclose these parts of the evidence by the CDPP's insistence, so as not to jeopardise the conditional immunity.

The CDPP served subpoenas on JPMorgan requiring production of the notes of interviews and outlines of evidence from the internal investigation. JPMorgan objected to the production of all but 13 (of which portions were redacted) of the 147 documents answering the subpoena on the basis of legal professional privilege.

The principle issues to be determined by the Court were whether the documents had been prepared for a privileged purpose and whether the subsequent conduct of JPMorgan had waived any privilege which existed.

Justice White accepted the evidence of a JPMorgan employee that the documents were prepared for the purpose of obtaining legal advice. On the waiver point Justice White disagreed that JPMorgan had been compelled to make the partial disclosures, finding it did so voluntarily in pursuit of its commercial and strategic interests. Further JPMorgan was aware

that the CDPP would not be maintaining the confidentiality of the partial disclosures. Justice White found that the subject matter of the partial disclosures was similar to the undisclosed matters and that, without full disclosure of the documents, the perceptions of the disclosed material were likely to be incomplete and inaccurate. In those circumstances there was an inconsistency in the conduct of JPMorgan making the partial disclosures and the maintenance of legal professional privilege.

Accordingly the main category of objection underlying most redacted portions of the subpoenaed documents was overruled and the CDPP and accused were granted leave to inspect those portions of the documents.

The matter is listed for a trial by jury before Justice Wigney from April – September 2022.

Appendix 8

Judges' activities 2020–21

Chief Justice Allsop AO

- Honorary Bencher, Middle Temple
- Member, American Law Institute
- Fellow, Australian Academy of Law
- President, Francis Forbes Society for Australian Legal History
- Patron, Australian Insurance Law Association
- Chair, ACICA Judicial Liaison Committee 2019
- Member, Asian Business Law Institute Board of Governors representing the Australian Judiciary
- Member, Commonwealth Magistrates' and Judges' Association

DATE	ACTIVITY
7 July 2020	Presented at Australian Academy of Law event: 'COVID-19: What effect has the pandemic had on legal practice, on the courts and on the law schools and how are they each responding?' via Microsoft Teams.
15 July 2020	Participated as a member of the panel at the CIArb Webinar entitled 'International Arbitration in the COVID-19 Environment: Virtual Hearings and Beyond' via webinar.
27 August 2020	Participated in a panel discussion online webinar hosted as part of the event to celebrate the 75th anniversary of the Supreme Court of the Republic of Indonesia entitled 'The Judicial Dialogue on the challenges and role of the Judiciary in promoting post-crisis economic growth'.
23 September 2020	Chaired the AAL online event entitled 'World in a Box – 50 years of containerisation in Australia' via Microsoft Teams.
29 September 2020	Attended virtually Chief Justices Commonwealth Roundtable event 'Justice systems response to the pandemic – learning lessons and future opportunities' via Microsoft Teams.
30 September 2020	Presented at AIJA and The Law Society of NSW online conference series: Session 5 – 'The future for the administration of justice – how best to manage easing of the restrictions – is a return to the past practices feasible or desirable? What lessons have we learnt?' via webcast.
12 October 2020	Chaired CIArb 2020 International Arbitration Conference: Session 6 – 'Enhancing Efficiencies in the Arbitral Process' via Zoom.
19 October 2020	Attended Chief Justices Meeting virtually via video conferencing.
5 November 2020	Chaired Francis Forbes and Ngara Yura Program webinar entitled 'Making the Past Visible: The Colonial Frontier Massacre Map Project and the Legacies of Frontier massacres'.
20 November 2020	Participated in ACICA Judicial Liaison Committee – Dispute Resolution Virtual Forum 2020 – 'Taking advantage of technology – Dispute resolution best practice' via Microsoft Teams.
24 November 2020	Attended in person Forbes Society 2020 Plunkett Lecture presented by Dr John McLaughlin in Banco Court, Supreme Court of New South Wales.
15 December 2020	Attended AAL virtual Book launch event entitled 'The Tuning Cymbal: Selected Papers and Speeches of Robert French'.

DATE	ACTIVITY
COVID-19	Conferences and speaking engagements arranged all postponed due to COVID-19 in 2020: Sir Harry Gibbs Memorial Oration, Sydney International Commercial Law Conference Penang 2020 JCA Colloquium 2020, Auckland
1 February 2021	Attended the ceremonial sitting of the High Court of Australia to welcome the Honourable Justice Simon Steward, Canberra.
3 February 2021	Attended the 2021 Opening of Law Term Dinner at Hyatt Regency, Sydney.
17 February 2021	Attended Supreme Court of the Republic of Indonesia Annual Report Ceremony virtually via Zoom.
17 February 2021	Participated in the PJSI video submission to the World Justice Challenge via Zoom.
1 March 2021	Attended the ceremonial sitting of the High Court of Australia to welcome the Honourable Justice Jacqueline Gleeson, Canberra.
10 March 2021	Presented virtually at Singapore International Commercial Court Symposium 2021 – Session 1: ‘International commercial courts – the next frontier in international dispute resolution or the latest trend’.
11 March 2021	Presented virtually at Third Meeting of the SIFoCC – Report of First SIFoCC International Working Group – Day 1 via meeting portal.
12 March 2021	Presented virtually at third meeting of the SIFoCC – Judicial roundtable discussion: Meeting the needs of court users – Day 2 via meeting portal.
15 March 2021	Attended the Law Society Credential Visit with executive members in Law Courts building.
17 March 2021	Presented virtually at the 3rd South Pacific International Arbitration Conference, Sydney Opera House. Special session: Implementation of the New York Convention – Judicial Perspective.
26 March 2021	Attended swearing in of the Honourable Justice Halley, Sydney.
31 March 2021	Chaired the Commercial Law Section Insurance Panel seminar entitled ‘Recent Issues in Insurance Law’ held at New Chambers.
12 April 2021	Attended swearing in of the Honourable Justice Cheeseman, Sydney.
15 April 2021	Presented virtually at Victorian Bar Readers’ Course: Judicial views on written and oral advocacy. Panel discussion with Justice Middleton and Justice O’Callaghan and moderated by Helen Rofe QC.
20 April 2021	Presided over the ceremonial welcome of the Full Court for Justice Halley held at the Federal Court of Australia, Sydney.
28 April 2021	Hosted and attended International Arbitration Forum meeting focusing on development of international arbitration in Australia, Sydney.
13 May 2021	Presented virtually from Melbourne to New South Wales Bar Readers, the welcome and introduction to practice in the Federal Court of Australia, via Microsoft Teams .
21 May 2021	Presided over the ceremonial welcome of the Full Court for Justice Cheeseman held at the Federal Court of Australia, Sydney.
4 June 2021	Attended the unveiling of a portrait by Joshua McPherson of the Hon M H McHugh AC QC, NSW Bar Association.
17 June 2021	Launched Dr Luke Nottage’s book entitled ‘International Commercial and Investor-State Arbitration – Australia and Japan in Regional and Global Contexts’ at University of Sydney Law School.

DATE	ACTIVITY
21 June 2021	Attended virtually Council of Chief Justices meeting.

Justice Kenny AM

- Chairperson, Australian Electoral Commission
- Presidential Member, Administrative Appeals Tribunal
- Member, Council of the Australian Institute of Judicial Administration
- Foundation Fellow, Australian Academy of Law
- Senior Fellow, Melbourne Law School, University of Melbourne
- College Fellow, St Hilda's College, University of Melbourne
- Chair, Asian Law Centre Advisory Board, Melbourne Law School, University of Melbourne
- Member, Editorial Board, Journal of the Intellectual Property Society of Australia and New Zealand
- Member, Ninian Stephen Cyber Law Program Steering Committee, Menzies Foundation and Australian National University

DATE	ACTIVITY
10 December 2020– 22 January 2021	Acting President of the Administrative Appeals Tribunal.
10 December 2020– 22 January 2021	Acting Chief Justice of the Federal Court of Australia.

Justice Rares

- President, Australasian Institute of Judicial Administration
- Member, Comité Maritime International Working Group of Offshore Activities
- Fellow, Australian Academy of Law

DATE	ACTIVITY
7 July 2020	Chaired Australasian Institute of Judicial Administration Board meeting.
11 July 2020	Chaired Australasian Institute of Judicial Administration Council meeting.
4 August 2020	Chaired Australasian Institute of Judicial Administration Board meeting.
18 August 2020	Judged the Sydney University Law Society Public International Law Moot Grand Final.
26 August 2020	Panel member in the AIJA Online Conference Series discussion on technological responses to the pandemic.
1 September 2020	Chaired Australasian Institute of Judicial Administration Board meeting.
9 September 2020	Chaired the Australasian Institute of Judicial Administration Online Conference Series briefing session at the Government Solicitors Week.
10 September 2020	Judged mock interlocutory hearings for the NSW Bar Association Bar Readers Course.
26 September 2020	Chaired Australasian Institute of Judicial Administration Council meeting.
6 October 2020	Chaired Australasian Institute of Judicial Administration Board meeting.
24 October 2020	Chaired Australasian Institute of Judicial Administration Council meeting.
12 November 2020	Chaired Australasian Institute of Judicial Administration Annual General Meeting.
12 November 2020	Chaired Australasian Institute of Judicial Administration Council meeting.
17 November 2020	Chaired Australasian Institute of Judicial Administration Board meeting.

DATE	ACTIVITY
11 December 2020	Sat as a judge of the Norfolk Island Supreme Court.
11 February 2021	Chaired Australasian Institute of Judicial Administration Board meeting.
27 February 2021	Chaired Australasian Institute of Judicial Administration Council meeting.
11 March 2021	Chaired Australasian Institute of Judicial Administration Board meeting.
12 March 2021	Attended dinner hosted by the Australian Judicial Officers Association in honour of the retirement of Chris Roper AM.
8 April 2021	Chaired Australasian Institute of Judicial Administration Board meeting.
29 April 2021	Visited significant cultural sites of the Bandjalang people at and around Coraki, NSW, and delivered consent determination judgment on country (Bandjalang People No 3 v Attorney-General of New South Wales [2021] FCA 386).
13 May 2021	Chaired Australasian Institute of Judicial Administration Board meeting.
13 May 2021	Judged mock interlocutory hearings for the NSW Bar Association Bar Readers Course.
18 May 2021	Judged the Sydney University Law Society Public International Law Moot Grand Final.
31 May 2021–6 June 2021	Sat as judge of the Norfolk Island Supreme Court.
11 June 2021	Sat as judge of the Norfolk Island Supreme Court.
19 June 2021	Chaired AIJA Council meeting.

Justice Middleton

- Member, American Law Institute
- Member, Australian Centre for International Commercial Arbitration, Advisory Board
- Member, Australian Centre for International Commercial Arbitration, Judicial Liaison Committee
- Fellow, Australian Academy of Law
- Member, Editorial Board, Journal of the Intellectual Property Society of Australia and New Zealand
- President, Oxford Society in Victoria

DATE	ACTIVITY
2 October 2020	Presented with Justice O'Callaghan at the Victorian Bar Readers' Course on 'Judicial Views on Written Advocacy' in Melbourne.
20 November 2020	Presented at the Australian Centre for International Commercial Arbitration Judicial Liaison Committee Roundtable Forum on 'Taking Advantage of Technology: Dispute Resolution Best Practice', in collaboration with Chief Justice Allsop AO, in Melbourne.
3 March 2021	Chaired the National Commercial Law Seminar Series on 'Reflections on the 10th Anniversary of the <i>Competition and Consumer Act 2010</i> ' in Melbourne.
10 March 2021	Attended the Singapore International Commercial Court Symposium 2021, 'Trends & Developments in International Commercial Litigation'.
11 March 2021	Presented at Judicial Roundtable Discussion on 'Commercial (third party) litigation funding' at the Standing International Forum of Commercial Courts Third Meeting, hosted virtually by the Supreme Court of Singapore.
15 April 2021	Presented with Chief Justice Allsop AO and the Hon Justice O'Callaghan to the Victorian Bar Readers' Course on 'Judicial Views on Written and Oral Advocacy' in Melbourne.

DATE	ACTIVITY
29 April 2021	Presented at the Tax Bar Association Annual Dinner on the topic of “Has and will COVID really worry a Tax Barrister” in Melbourne
1 May 2021	Spoke at the Oxford Society in Victoria’s Annual Dinner in Melbourne on ‘Reflections on the role of a Judge’.
17 May 2021	Presented at the Australian Law Reform Commission on ‘The Regulatory Ecosystem for Financial Services in Australia’ in Melbourne.
22 May 2021	Attended the 2021 Competition Law Conference in Melbourne.
24 May 2021	Attended the Australian Law Reform Commission webinar on ‘Comparative Perspectives on Financial Services Regulation’.

Justice Logan RFD

- Member, Board of Governors, Cromwell College, University of Queensland

DATE	ACTIVITY
11 August 2020	In conjunction with Justice Collier, drafted for the consideration of the Chief Justice of Papua New Guinea and other resident judges, a Practice Note and related explanatory memorandum in relation to dealing with appeals on the papers. The Practice Note was subsequently adopted by the Supreme Court.
17 September 2020	Published an article ‘Pandemic Justice’ in the Australian Law Journal, which examined the impact on the administration of justice and the law of the Spanish Influenza pandemic of 1918–1920.
8 March 2021	Chaired the judging panel for the finals of the Queensland University of Technology Law School’s Jessup Moot Competition.
23 April 2021	Delivered a guest lecture on “Administrative Law in a Nutshell” at the University of Queensland Law School.
25 April 2021	Delivered the ANZAC Day Address at the Darra RSL ANZAC Day Service.

Justice McKerracher

- Chair, UNCITRAL Coordination Committee for Australia until December 2020
- Board member, UNCITRAL Coordination Committee for Australia
- Representative, Governing Council and Executive, Australian Judicial Officers Association (formerly Judicial Conference of Australia)

DATE	ACTIVITY
15 July 2020	Participated in Chartered Institute of Arbitrators Australia and Federal Court International Arbitration Seminar Series 2020 via webinar.
6 August 2020	Addressed the Asia Pacific Centre for Arbitration and Mediation launch via Zoom.
26 October 2020	Presented at the annual UNCITRAL Coordination Committee for Australia United Nations Day Lecture via Zoom on ‘40 Years of Global Harmonisation of International Trade Law’.
20 November 2020	Participated in the ‘Singapore-Australia Inter-Court Shipping Roundtable Dialogue’ via Zoom.
4 December 2020	Presented at the Tax Institute’s CPD Day on ‘Tax Treaties: Double Taxation and Discrimination’.
11 December 2020	Presented a CPD Seminar to the Busselton-Margaret River Legal Practitioners.

DATE	ACTIVITY
14–17 December 2020	Participated as the UNCITRAL Coordination Committee for Australia and International Association of Judges' representative at the 37th session of UNCITRAL Working Group VI on Judicial Sales of Ships (Vienna) via a virtual platform.
19–23 April 2021	Participated as the UNCITRAL Coordination Committee for Australia and the International Association of Judges representative at the 38th session of UNCITRAL Working Group VI (Judicial Sale of Ships) (Vienna) via a virtual platform.
20 April 2021	Participated in an Australian Law Reform Commission Judicial Impartiality discussion via Teams; drafted a submission for the Australian Judicial Officers Association .
2 June 2021	Delivered an annual address on Federal Jurisdiction to the Western Australian Bar Association Bar Readers' Course in Perth.

Justice Perram

- Chair, Court Digital Practice Committee
- Fellow, Australian Academy of Law

DATE	ACTIVITY
2 November 2020	Contributed a profile to the Intellectual Property Forum, the official journal of the Intellectual Property Society of Australia and New Zealand.
10 December 2020	Contributed the foreword to Australian Consumer Law – The Comprehensive Guide by Adrian Coorey.
12 February 2021	Presented at the Gilbert + Tobin Centre for Public Law Constitutional Conference on 'The Federal and State Courts on Constitutional Law: The 2020 Term'.
18 March 2021	Delivered a guest lecture at UTS on the topic of contempt of court and the media.
June 2021	Contributed the Foreword to the forthcoming text: Current Issues in Competition Law: Practice and Perspectives, edited by Michael Gvozdenovic and Stephen Puttick.

Justice Jagot

- Director, Minds Count Foundation
- Convenor, Rules Committee
- Convenor, Rules Harmonisation Committee
- Member, Australian Judicial Officers Association, Post-Retirement Income and Restrictions on Practice Sub-Committee
- Member, Library Committee
- Member, Operations and Finance Committee

DATE	ACTIVITY
18 August 2020	Judge of the Sydney University Law Society Federal Constitutional Law Moot Grand Final.
12 November 2020	Panellist at Women Lawyers Association Panel Presentation.
23 November 2020	Speaker for COAT Advanced Decision Writing.
17 March 2021	Chaired the NSW Native Title Forum Panel 'Connection – meeting evidentiary standards for a consent determination'.

Justice Yates

- Deputy President, Australian Competition Tribunal
- Member, Editorial Board, *The Journal of the Intellectual Property Society of Australia and New Zealand*

Justice Bromberg

- National Coordinating Judge, Federal Court Employment and Industrial Relations National Practice Area
- Registry Coordinating Judge (Victoria), Federal Court Employment and Industrial Relations National Practice Area
- Coordinator, Federal Court, Victorian Supreme Court and the Victorian Bar's Indigenous Clerkship Program
- Chair, Federal Court Employment and Industrial Relations NPA User Group
- Chair, Advisory Board, Centre for Employment and Labour Relations Law (Melbourne University)

DATE	ACTIVITY
28 July 2020	Spoke at a Seminar as part of a panel on pro bono work for commercial barristers, presented by the Commercial Bar Association and the Victorian Bar Pro Bono Committee.
4 August 2020	Spoke and presented at the Law Council of Australia, Industrial Law Committee Meeting.
3 December 2020	Chaired and presented at the Federal Court's Employment and Industrial Relations NPA Seminar on Current Issues in the Practice of Employment and Industrial Law.

Justice Katzmann

- Chair, Governing Council of Neuroscience Research Australia
- Member, Advisory Committee, Gilbert + Tobin Centre of Public Law
- Committee Member, Australian Association of Women Judges
- Fellow, Australian Academy of Law
- Representative, organising committee, Supreme and Federal Court Judges' Conference

DATE	ACTIVITY
19 August 2020	Attended the Australian Academy of Science and Australian Academy of Law Joint Symposium on 'The Reception, Quality and Evaluation of Scientific Evidence in Australian Courts' chaired by Justice Virginia Bell.
23 September 2020	Attended the Australian Academy of Law's webinar presentation of 'World in a Box – 50 years of containerisation in Australia' chaired by Chief Justice Allsop.
27 October 2020	Attended the NSW Bar Association's Women Barristers Forum webinar entitled 'How I (Finally) Overcame Perfectionism And Ditched Anxiety: Breaking Badly Author Georgie Dent in conversation Kate Richardson SC and Claire Palmer'.
27 October 2020	Attended the Maurice Byers Annual Lecture by Professor Anne Twomey entitled 'Maurice Byers – Legal advice in the constitutional maelstrom of the Whitlam era'.
12 November 2020	Attended the 2020 Spigelman Oration by Hon Alan Robertson SC entitled 'Supervising the Legal Boundaries of Executive Powers'.

Justice Murphy

- Board Member, Kids First Australia (until January 2021)
- Member, Law School Advisory Council, University of Melbourne

DATE	ACTIVITY
3 September 2020	Panel member, 'Where to next? The Class Actions Landscape in 2020', Herbert Smith Freehills.
30 October 2020	Lectured on 'Global Class Action Litigation' at the Stanford University, USA.
21 April 2021	Panel member, 'Class Actions: the reform landscape', Herbert Smith Freehills.

Justice Griffiths

- Visiting Judicial Fellow, Australian National University
- Member, AIJA Indigenous Justice Committee, to December 2020
- Member, Law Society of NSW Judicial Working Party – Improving Indigenous Justice Outcomes

DATE	ACTIVITY
23 November 2020	Presented for COAT on writing decisions.
11 June 2021	Delivered paper on 'Apprehended Bias and Administrative Tribunals' for COAT Annual Conference.

Justice Kerr Chev LH

- Fellow, Australian Academy of Law
- Member, Council, Australasian Institute of Judicial Administration
- Member, Research Committee, Australasian Institute of Judicial Administration

DATE	ACTIVITY
10 September 2020	Attended Tasmanian Bar/Law Foundation of Tasmania launch of Diversity Support Fund.
23 September 2020	Judged the grand final of the Tasmanian Legal Practice Moot Competition.
8 May 2021	Judged the final of Tasmanian Law School Mooting Competition.
10 June 2021	Attended Australian Academy of Law event: Speech by Professor Michael Stuckey.
17 June 2021	Author Foreword for The Automated State Federation Press, Edited by Janina Boughey and Katie Miller https://www.federationpress.com.au/bookstore/book.asp?isbn=9781760022952

Justice Davies

- Fellow, Australian Academy of Law
- Board Member, International Association of Tax Judges
- Member, Australian Association of Women Judges
- Senior Fellow, Melbourne Law School, Melbourne University

DATE	ACTIVITY
17 November 2020	Presented at the Women Barristers Association Breakfast with the Stars.
17 December 2020	Judged the Forsyth/Pose Scholarship offered by the Business Law Section of the Law Council of Australia.

Justice Mortimer

- Senior Fellow, Melbourne Law School
- Member, Advisory Board of the Centre for Comparative Constitutional Studies
- Member, Australian Academy of Law
- Member, International Association of Refugee Law Judges
- Member, Monash University Faculty of Law 'External Professional Advisory Committee'
- Member, Board of Advisors of the Public Law Review
- Faculty Member, Pacific Judicial Strengthening Initiative

DATE	ACTIVITY
22 July 2021	Delivered a Government CLE Webinar to Clayton Utz 'Current issues in administrative law'.
6 August 2020	Presented a Pacific Judicial Strengthening Initiative webinar session 'The Pacific Courts and the COVID-19 Pandemic'.
20 August 2020	Attended a virtual workshop 'Making Constitutions Work Post-War: Insights from Myanmar, Nepal and Sri Lanka'.
22 September 2020	Attended an online CCCS Brown Bag Seminar 'Is there a Right of Return to Australia'.
15 October 2020	Attended an online Koori Twilight Program session 'Speaking up for Budj Bim Cultural Landscape'.
21 & 23 October 2020	Presented an online session 'Judicial Leadership & Bar Relations' and participated as a panel member for the session 'Administering Justice during COVID-19' at the Solomon Islands National Judicial Workshop.
22 October 2020	Hosted students from Melbourne Law School as part of their Refugee Law Class studies, and provided a briefing to the students.
5 November 2020	Attended a New South Wales Judicial Committee, Ngara Yura Committee webinar 'Making the Past Visible: The Colonial Frontier Map Project and the Legacies of Frontier Massacres'.
4 February 2021	Gave the Keynote Address 'Re-evaluating the role of expert reports in native title proceedings' virtually for the CNTA Annual Conference.
29 March 2021	Participated in an interview with Margaret Barron entitled 'Transitioning to the Bench', as a training resource for new judges in the Pacific for the Pacific Judicial Strengthening Initiative.
17 March 2021	Presented to the NSW Native Title Forum presentation on expert evidence.
22 April 2021	Presented the Keynote Address 'The public interest' online to the Victorian Coroners Court Conference.
5 May 2021	Delivered an address 'Pro bono work in Tribunals' and presented an award at the Victorian Bar Pro Bono Awards Ceremony.
7 May 2021	Presented at the IWFA Victorian Breakfast 'Taking the Court to Country'.
20 May 2021	Gave a guest lecture to the Melbourne Law School Refugee Law Class.

Justice Rangiah

- Visiting Committee, Griffith University Law School
- Pro Bono Centre Committee, University of Queensland

DATE	ACTIVITY
3 October 2020	Presented to Asian Australian Lawyers Association.
12 March 2021	Presented to the Bar Association of Queensland 'Advocacy – A National Perspective'.

Justice Wigney

DATE	ACTIVITY
17 March 2021	Attended the NSW Native Title Forum.
22 May 2021	Delivered the keynote address at the 2021 Competition Law Conference and presented a paper providing a review and overview of practice and procedure in the criminal jurisdiction of the Federal Court of Australia, namely criminal cartel trials in the Federal Court.

Justice Perry

- Additional judge, Supreme Court, Australian Capital Territory
- Deputy President, Administrative Appeals Tribunal
- Member, Defence Force Discipline Appeals Tribunal
- Commissioned Officer, Royal Australian Air Force, Legal Specialist Reserves
- Member, Judicial Council on Cultural Diversity established by the Council of Chief Justices and associated Cultural Diversity Justice Network
- Member, ARC Linkage Project Committee
- Chair, Recommended National Standards Specialist Committee
- Member, Modern Slavery Guide Committee
- Fellow, Australian Academy of Law.
- Member, Advisory Committee to the Gilbert + Tobin Centre of Public Law, University of New South Wales
- Member, Law School Advisory Board, University of Adelaide
- Member, Advisory Council, Centre for International and Public Law, Australian National University
- Member, Board of Advisors, Research Unit on Military Law and Ethics, University of Adelaide
- Section Editor (Administrative Law), *Australian Law Journal*
- Patron, NSW Chapter, Hellenic Australian Lawyers Association
- Honorary Member, Special Joint Data and Policy Subcommittee, Asian Australian Lawyers Association (NSW Branch)
- Honorary Member, Women Lawyers Association of NSW (Diversity Subcommittee)

DATE	ACTIVITY
10 September 2020	Judged Bar Readers Course Moot Practice Round.
13 October 2020	Member of the Judging Panel, Final of the inaugural Intersarsity Gender Identity + Sexuality Law Moot, hosted by the ANU College of Law.
23 November 2020	Interviewed by Mark Dean, En Masse, for the Leading through Change podcast series commissioned by the Victorian Workplace Mental Wellbeing Collaboration.
28 October 2020	Attended launch of the Judicial Council on Cultural Diversity Legal Literate app containing plain English definitions of common legal terms to assist interpreters working in Australian courts and tribunals.

DATE	ACTIVITY
29 October 2020	Panellist, Judicial Q&A, hosted by the NSW Bar Association New Barristers' Committee.
17 December 2020	Appointed as an Honorary Member of the Special Joint Data and Policy Subcommittee of the Asian Australian Lawyers Association (NSW Branch) and Women Lawyers Association of NSW (Diversity Subcommittee).
20 February 2021	Member of the Judging Panel with the Hon Justice Pepper and the Hon Dr Lowndes, Plate Final of the Philip C. Jessup International Law Moot (Australian Round).
17 March 2021	Introduced the NSW Native Title Forum held by the Federal Court and Chair of the session on 'Re-evaluating the role of anthropologists in native title proceedings'.
1 April 2021	Contributed an article entitled 'Statements of Reasons: Issues of Legality and Best Practice' to the Law Society of Western Australia's Brief publication (April 2021), which was based on a seminar presented to the Administrative Appeals Tribunal on 10 June 2020.
17 June 2021	Participated in a consultation discussion with the South Australian Law Reform Institute regarding a multidisciplinary project examining the role and operation of communication partners or intermediaries.
17 June 2021	Contributed a chapter entitled 'iDecide: Digital Pathways to Decision' published in Boughey, J, and Miller, K, (eds), <i>The Automated State: Implications, Challenges and Opportunities for Public Law</i> (Federation Press, 2021).
28 June 2021	Australian Academy of Law Newsletter [2021] No. 6, Tribute to His Excellency Judge James Crawford AC, SC, FBA, FAAL.

Justice Markovic

- Chair, UNCITRAL National Coordination Committee for Australia (from 1 January 2021)
- Member, Steering Committee, National Orientation Program (from 1 March 2021)
- Member, Program Advisory Committee, National Judicial College of Australia
- Member, Advisory Committee, Asian Business Law Institute – International Insolvency Institute joint project on the Asian Principles of Business Restructuring

DATE	ACTIVITY
4 August 2020	Panel member for NSW Bar Association Female Students Open Day via Zoom.
31 July, 6 August 2020	Panel member and presented on the topic 'Managing caseload during and post the pandemic' at INSOL Judicial Forum Asia Pacific Region.
11 November 2020	Presented at ARITA online event at session titled 'Views from the bench'.
23 March 2021	Joint presentation with Wheelahan J at the training program for Admiralty Marshalls on 'Powers of the Marshal in Relation to Sale of an Arrested Vessel'.
8 June 2021	INSOL Virtual Conference 2021 – participated in panel presentation 'Not just Brexit as usual – New 2021 dilemmas in cross-border recognition'.
10–12 May	INSOL Virtual Conference 2021 – participated in panel presentation on mediation and alternate dispute resolution.
20 May 2021	Attended and gave welcome address at UNCITRAL Coordination Committee for Australia May Seminar 2021 titled 'Electronic commerce: past present and Future'.

Justice Moshinsky

- Alternate Director, National Judicial College of Australia
- Director, Australian Academy of Law
- Member, Advisory Board, Centre for Comparative Constitutional Studies, Melbourne Law School

DATE	ACTIVITY
20 August 2020	Presented 'Effective Virtual Advocacy' to junior barristers via Zoom.
9 September 2020	Panellist: A Changing View of Judging and Justice Government Solicitors Week – AIJA via Zoom
10 October 2020	Adjudicator of Melbourne University Law Students' Society – Sir Harry Gibbs Constitutional Law Moot via Zoom.
3 November 2020	Attended CMJA and Standing International Forum of Commercial Courts – 'Commonwealth Commercial Courts – Establishing the new normal'. Presented 'At court – What new normal procedures are being explored with respect to technology and Public Acceptance' via Zoom.
29 April 2021	Attended the Tax Bar Association Annual Dinner.

Justice Bromwich

DATE	ACTIVITY
22 January 2021	Panellist and speaker via Microsoft Teams from Melbourne at a Sydney in-person AAL Event 'Regulatory Enforcement of Directors' Obligations' on the topic of 'Reducing the overlap between proceedings for criminal offences and for civil penalties'.

Justice Burley

- Member, Advisory Board, Allens Hub for Technology, Law and Innovation
- Member, Editorial Board, Journal of the Intellectual Property Society of Australia and New Zealand

DATE	ACTIVITY
1 July 2020	Presented at the World Intellectual Property Organisation webinar for Judges, on 'Laying the Boundaries of Patentability in Computer-Implemented Inventions'.
2 July 2020	Participated in an 'In Conversation' webinar for the Young Institute of Patent and Trade Mark Attorneys.
22 July 2020	Presented at the K & L Gates Virtual Retreat, on 'Virtual Trials'.
27 August 2020	Presented at the Institute of Patent and Trade Mark Attorneys webinar, on 'Final injunctions in patent cases'.
7 October 2020	Adjudicated and presented the award of the winners of the 2020 John McLaren Emmerson QC Essay Prize.
5 November 2020	Participated in an 'In Conversation' webinar with the Right Honourable Lord Justice Colin Birss for the Intellectual Property Society of Australia and New Zealand.
19 November 2020	Presented at the World Intellectual Property Organisation Judges Forum, on 'Influence of Technology in Judicial Case Management'.
26 February 2021	Sixth Wentworth Annex junior barristers lunchtime presentation.
9–10 April 2021	Presented at the 28th annual Fordham IP Conference on 'Patent Litigation' and 'Views from the Judiciary'.
15 June 2021	Panel member at the Copyright Society of Australia symposium on 'Oracle vs Google – United States Supreme Court: Analysis from an Australian Perspective'.

Justice O'Callaghan

DATE	ACTIVITY
26 August 2020	Adjudicated the Monash LSS Grand Final General Moot 2020, Federal Court, Melbourne.
2 October 2020	Presented at the March 2020 Victorian Readers' Course on 'Judicial Views on Written and Oral Advocacy.'
16 October 2020	Spoke at the September 2021 Victorian Readers' Course on 'Federal Court'.
15 April 2021	Spoke at the March 2021 Victorian Readers' Course on 'Judicial Views on Written and Oral Advocacy.'
16 April 2021	Spoke at the March 2021 Victorian Readers' Course on 'Federal Court'.

Justice R M Derrington

- Adjunct Professor, TC Beirne School of Law, University of Queensland

DATE	ACTIVITY
7 July 2020	Published 'Migrating Towards a Principled Approach to Reviewing Jurisdictional Facts' in Australian Journal of Administrative Law [(2020) 27 AJ Admin L 70].
24 September 2020	Chaired the Federal Court (Queensland Registry) Commercial and Corporations Consultation Committee Meeting.
8 October 2020	Chaired the Federal Court (Queensland Registry) Insolvency Law Consultation Committee Meeting.
29 October 2020	Panel Member at the Law Council of Australia, Insolvency & Restructuring Committee Annual Workshop.
29 October 2020	Keynote Speaker at the IPSANZ Annual Judges' Dinner.
7 March 2021	Presented at the University of Queensland's LLM – LAWS7709 Interpretation of Statutes and Instruments – 'Statutes and Administrative Law: The Interpretation of Executive Power'.
15 April 2021	Spoke at the Moreton Club on the Court's Response to COVID.
1 May 2021	Presented at the University of Queensland's LLM – LAWS7709 Interpretation of Statutes and Instruments – 'The Interpretation of Contracts: Context and Coherency'.

Justice Thomas

- Board Member, International Association of Supreme Administrative Jurisdictions/Association Internationale Des Hautes Juridictions Administratives
- Treasurer, Council of Australasian Tribunals

DATE	ACTIVITY
21 August 2020	Hosted the Law Council of Australia liaison meeting regarding the Administrative Appeals Tribunal.
1 September 2020	Attended the Council of Australasian Tribunals National Executive Meeting.
9 September 2020	Chaired and provided opening remarks in online seminar presented by Justice Mark Weinberg AO QC, Victorian Court of Appeal to Administrative Appeals Tribunal members titled: 'Weighing Up Different Forms of Evidence – A View from the Court'.
28 September 2020	Attended the International Association of Supreme Administrative Jurisdictions/Association Internationale Des Hautes Juridictions Administratives Board Meeting.

DATE	ACTIVITY
14 October 2020	Attended the Council of Australasian Tribunals Executive Planning Day.
28 October 2020	Chaired the judging panel for the Administrative Appeals Tribunal Moot Competition 2020 Grand Final.
4 December 2020	Chaired the Law Council of Australia's Hot Topics in Commonwealth Compensation Seminar.
17 February 2021	Attended the Council of Australasian Tribunals National Executive Meeting.
19 February 2021	Hosted the Law Council of Australia liaison meeting regarding the Administrative Appeals Tribunal.
2 March 2021	Attended seminar hosted by the Australian Academy of Law and the Australian Law Reform Commission titled 'Public Confidence, Apprehended Bias, and the Modern Judiciary'.
7 April 2021	Attended the Council of Australasian Tribunals National Executive Meeting.
9 June 2021	Attended the Council of Australasian Tribunals National Executive Meeting.
10 June 2021	Chaired the Council of Australasian Tribunals Heads of Tribunals Meeting.
10–11 June 2021	Attended the Council of Australasian Tribunals 2021 National Conference.

Justice Banks-Smith

- Chair, Law Advisory Board, University of Notre Dame Law School (Fremantle)
- Chair, Human Research Ethics Committee, Perth Children's Hospital
- Member, Australian Centre for International Commercial Arbitration, WA State Committee
- Fellow, Australian Academy of Law

DATE	ACTIVITY
2 September 2020	Attended the Ceremonial Welcome for Her Honour Judge Karen Shepherd to the District Court of Western Australia.
7 September 2020	Hosted and delivered a talk for students of Hale School involved in its Year 11 Leadership program.
24 September 2020	Judges of the Perth Registry hosted WA Supreme Court Judges for function.
31 Oct & 1 Nov 2020	Speaker and coach at Piddington Society young lawyers' Margaret River weekend.
4 November 2020	Attended Pro Bono Counsel Drinks Function hosted by the Perth Registry Federal Court Judges.
13 November 2020	Attend the Western Australian Bar Association's Bar and Bench Dinner.
17 December 2020	Attended the Ceremonial Welcome for Her Honour Judge Sarah Russell to the District Court of Western Australia.
18–22 January 2021	Advocacy coach for Australian Bar Association Essential Trial Advocacy Course.
29 January 2021	Attended the Western Australian 2020 Silk's Announcement function at invitation of WA Chief Justice.
18 February 2021	Commentator at the 'Journal of Equity Conference 'Corporations and Equity' organised by University of Western Australia Law School and hosted by Herbert Smith Freehills.
27 February 2021	Attended the District Court of Western Australia's 50th Anniversary Gala Dinner.
4 March 2021	Delivered the Annual Quayside Chambers Oration 'Courts, Confidences and Change in Challenging Circumstances'.
5–7 March 2021	Advocacy Coach at the Piddington Society annual 2021 weekend conference.

DATE	ACTIVITY
11 March 2021	Guest at function to honour Early Women of Francis Burt Chambers (Francis Burt Chambers).
23 March 2021	Attended Special Sitting of the Federal Court for Western Australia's 2018 Senior Counsel appointees.
23 March 2021	Attended Function hosted by the Perth Registry Federal Court Judges for Counsel and Senior Lawyers in the Profession.
19 April 2021	Attended Australian Academy of Law Roundtable Seminar: Recent Legal Developments (Federal Court Conference Room)
20 May 2021	Chaired the UNCITRAL Coordination Committee for Australia May Seminar 2021 via Zoom.
25 May 2021	Presented seminar on 'Conflicts of Interest & Confidentiality' in the Ethics and Practice Module of the WA Bar Association's Bar Readers' Course.

Justice Colvin

- Part-time Commissioner, Australian Law Reform Commission
- Deputy President, Administrative Appeals Tribunal
- Committee Member, National Judicial College of Australia, Writing Better Judgments Committee
- Committee Member, Judicial Officers with Leadership Responsibility Program
- Fellow, Australian Academy of Law

DATE	ACTIVITY
14 October 2020	Chaired Australian Academy of Law Speaker Series Event 'Justice in the Hood: The Potential of the Community Justice Model for Western Australia', Supreme Court.
20 October 2020	Presented paper 'Virtue, Honour and Ethics: Problems with a Deontological Perspective on the Ethical Responsibilities of Lawyers' for the Western Australian Bar Association's CPD Program.
4 November 2020	Chaired session on the Role of the Australian Bar Association for the Western Australian Bar Association's CPD Program.
22 January 2021	Judged Mock Trial for the Australian Bar Association Essential Trial Advocacy Course.
22 January 2021	Speaker at Essential Trial Advocacy Course Dinner.
24-26 March 2021	Facilitator and presenter for the National Judicial College of Australia's Writing Better Judgments Program.

Justice Wheelahan

DATE	ACTIVITY
11 November 2020	Chaired Monash Defamation Seminar.

Justice Stewart

DATE	ACTIVITY
14 August 2020	Attended online seminar entitled 'Fairness in Virtual Courtrooms' presented by the Gilbert + Tobin Centre of Public Law, University of NSW and the Australian Institute of Administrative Law.
21 August 2020	Presented keynote address alongside Judge Owen Rogers at annual Maritime Law Association of South Africa conference, Cape Town, held online.

DATE	ACTIVITY
26 August 2020	Panellist for Session 1 of the Australasian Institute of Judicial Administration Online Conference Series Webcast, entitled 'The Advantages/Disadvantages of Technological Responses to the Current Restrictions; Including Cyber Security Issues. What Have We Learnt That Can Improve the Use of Technology to Meet Court and Tribunal Needs?'
23 September 2020	Presented paper 'World in a Box: Impact of Containerisation on Shipping Transactions' at the Australian Academy of Law 'World in a Box' online seminar.
13–14 October 2020	Attended a special sitting of the Federal Court and reception to welcome and congratulate new Senior Counsel in New South Wales.
16 October 2020	Attended the New Chambers annual reception for the legal profession.
27 October 2020	Attended Sir Maurice Byers Lecture 2020 entitled 'Maurice Byers – Legal advice in the constitutional maelstrom of the Whitlam era' presented by Prof Anne Twomey in Banco Court, Supreme Court, Sydney.
5 November 2020	Attended the New South Wales Judicial Commission, Ngara Yura Committee webinar entitled 'Making the Past Visible: The Colonial Frontier Map Project and the Legacies of Frontier Massacres' presented by Prof Lyndall Ryan.
11 November 2020	Attended inter-court discussions on shipping with admiralty judges of the Supreme Court of Singapore via virtual conference.
12 November 2020	Attended the 2020 Spigelman Oration presented by the Hon Alan Robertson SC on the topic 'Supervising the Legal Boundaries of Executive Powers' in Banco Court, Supreme Court, Sydney.
8 December 2020	Attended the signing of Memorandum of Understanding on Judicial Cooperation between the Federal Court of Australia, the Family Court of Australia and the Supreme Court of Indonesia 2021–2023, held online.
12 February 2021	Attended the 2021 Constitutional Law Conference presented by the Gilbert + Tobin Centre of Public Law, held online.
17 February 2021	Attended seminar entitled 'International Arbitration in the South Pacific' presented by the Australian Centre for International Commercial Arbitration at 12 Wentworth Selborne Chambers, Sydney.
18 February 2021	Presented alongside Dimity Brown in a seminar entitled 'Avoiding Burnout in the Legal Profession: Law and Mental Health' for BenchTV, held online.
1 March 2021	Attended the swearing in ceremony appointing Justice Jacqueline Gleeson as a Judge of the High Court of Australia, Canberra.
2 March 2021	Attended seminar entitled 'Public Confidence, Apprehended Bias, and the Modern Judiciary' hosted by the Australian Academy of Law and the Australian Law Reform Commission in Ceremonial Court 1, Sydney.
2 March 2021	Attended webinar entitled 'Humble Good Faith '3 x 4' – Asia and Australia Meet the Dean' hosted by Prof Mindy Chen-Wishart, Oxford Law, held online.
16 March 2021	Presented alongside Justice Andrew Bell, Justice David Hammerschlag, Justice James Stevenson and Karen Petch in a seminar entitled 'Illuminating Arbitration Practice in the Courts' presented by the Australian Centre for International Commercial Arbitration in Ceremonial Court 1, Federal Court of Australia, Sydney.
22 March 2021	Attended the ceremonial sitting to welcome Justice Kate Williams to the Supreme Court of New South Wales in Banco Court, Supreme Court, Sydney.
22 April 2021	Attended judicial education seminar entitled 'Sexual Harassment: Issues of Process and Culture' by Prof Catharine MacKinnon, held online.

DATE	ACTIVITY
27 April 2021	Attended consultation with and tour of the Australian Institute of Torres Strait Islander Studies with Chief Justice Allsop, Canberra.
6 May 2021	Attended seminar entitled 'Lying for the Admiralty' presented by Margaret Cameron-Ash, Colin Biggers & Paisley, Sydney.
1 June 2021	Chaired discussion panel for NSW Bar Association Human Rights Committee webinar entitled 'Ways That Human Rights Can Assist in Your Practice at the Bar', held online.

Justice O'Bryan

- Deputy President, Australian Competition Tribunal
- Federal Court representative, Victorian Judicial Officers Aboriginal Cultural Awareness Committee
- Federal Court representative, joint initiative with the Organisation for Economic Co-operation and Development and the Australian Competition and Consumer Commission to produce Primers for ASEAN Judges on Competition Law

DATE	ACTIVITY
15 October 2020	Attended the Judicial College of Victoria Koori Twilight webinar 'Speaking up for Budj Bim'.
6 November 2020	Attended the 2020 Competition and Consumer Law Virtual Workshop organised by the Law Council of Australia.
4 February 2021	Delivered an online presentation at the 10th OECD/KPC Competition Law Seminar for Asia-Pacific Judges and launch of the Primer on Market Definition for ASEAN Judges.
25 February 2021	Attended the Judicial College of Victoria Koori Twilight webinar '30 Years and Counting – the 30-year anniversary of the Royal Commission into Aboriginal deaths in custody 1987–1991'.
22 March 2021	Judged the Monash Law Students' Society General Moot Competition Grand Final 2021, Federal Court, Melbourne.

Justice Jackson

- Committee Member, Inter-jurisdictional Judicial Education Committee, WA

DATE	ACTIVITY
19 August 2020	Attended Judicial Education Committee Seminar, David Malcolm Justice Centre.
24 September 2020	Judges of the Perth Registry hosted function for the WA Supreme Court Judges.
4 November 2020	Attended pro bono counsel function hosted by the Perth Registry Federal Court Judges to recognise their contribution.
5 November 2020	Attended the Sir Francis Burt Oration 2020 delivered by the Hon Carmel McLure AC QC: 'The Rule of Law Under Pressure in an Age of Disruption'.
13 November 2020	Attended the Western Australian Bar Association's Bar and Bench Dinner.
14–15 November 2020	Coached at the Law Society's Annual Practical Advocacy Weekend, Children's Court of Western Australia.
30 Nov–4 Dec 2020	Hosted and supervised a summer clerk from Murdoch University Law School for the WA Courts' Summer Clerkship Program.
18 December 2020	Attended the Western Australian Supreme and Federal Court Christmas Lunch.

DATE	ACTIVITY
29 January 2021	Attended the Western Australian 2020 Silk's Announcement Celebration Drinks, Supreme Court of WA.
27 February 2021	Attended the District Court of Western Australia's 50th Anniversary Gala Dinner.
4 March 2021	Attended the Annual Quayside Oration, Perth.
23 March 2021	Attended Special Sitting of the Federal Court for Western Australia's 2018 Senior Counsel appointees.
23 March 2021	Attended function hosted by the Perth Registry Federal Court Judges for Counsel and Senior Lawyers in the Profession.
8 June 2021	Judges of the Perth registry hosted function for the Attorney General and Senior Counsel.
16 June 2021	Presented seminar on 'Trial Preparation and Presentation' in the Jurisdiction and Procedure Module of the WA Bar Association's Bar Readers' Course.

Justice Abraham

DATE	ACTIVITY
13 March 2021	Presented at the New South Wales Bar Association 2021 Sydney Conference, session entitled 'Appellate Advocacy'.
31 March 2021	Attended the Women Lawyers Association of NSW event 'Silks Celebration Drinks'.
12 May 2021	Attended the Women Barristers Forum Event 'Celebrating 100 years since Ada Evans was admitted to the NSW Bar'.
19 May 2021	Attended the '40th Anniversary of the High Court Building' at the High Court of Australia.

Appendix 9

Staffing profile

From 1 July 2016, the *Courts Administration Legislation Amendment Act 2016* merged the corporate service functions of the Family Court and the Federal Circuit Court with the Federal Court into a single administrative entity – known as the Federal Court of Australia.

Heads of jurisdiction continue to be responsible for managing the administrative affairs of their respective courts (excluding corporate services), with assistance from a CEO and Principal Registrar.

All staff are employed by the Federal Court under the *Public Service Act 1999*, regardless of which court or tribunal they work for or provide services to. The total staffing number for the combined entity as at 30 June 2021 is 1,157 employees. This includes 781 ongoing and 376 non-ongoing employees.

The following tables provide more information. The CEO and Principal Registrars and the National Native Title Tribunal Registrar are holders of public office and are not included in this appendix. Judges are also not included in any staffing numbers.

Table A9.1: All ongoing employees, current reporting period (2020–21)

	MALE			FEMALE			INDETERMINATE			TOTAL
	FULL-TIME	PART-TIME	TOTAL	FULL-TIME	PART-TIME	TOTAL	FULL-TIME	PART-TIME	TOTAL	
NSW	60	6	66	153	57	210	0	0	0	276
Qld	37	1	38	83	26	109	0	0	0	147
SA	12	2	14	42	8	50	0	0	0	64
Tas	3	0	3	12	5	17	0	0	0	20
Vic	44	3	47	103	28	131	0	0	0	178
WA	14	0	14	32	8	40	0	0	0	54
ACT	4	1	5	29	2	31	0	0	0	36
NT	0	0	0	3	2	5	0	0	0	5
External Territories	0	0	0	0	0	0	0	0	0	0
Overseas	0	0	0	0	1	1	0	0	0	1
Total	174	13	187	457	137	594	0	0	0	781

Table A9.2: All non-ongoing employees, current reporting period (2020–21)

	MALE			FEMALE			INDETERMINATE			TOTAL
	FULL-TIME	PART-TIME	TOTAL	FULL-TIME	PART-TIME	TOTAL	FULL-TIME	PART-TIME	TOTAL	
NSW	39	3	42	86	15	101	0	0	0	143
Qld	20	2	22	43	9	52	0	0	0	74
SA	10	0	10	14	4	18	0	0	0	28
Tas	2	0	2	3	2	5	0	0	0	7
Vic	24	3	27	66	2	68	1	0	1	96
WA	8	0	8	6	0	6	0	0	0	14
ACT	2	2	4	8	1	9	0	0	0	13
NT	1	0	1	0	0	0	0	0	0	1
External Territories	0	0	0	0	0	0	0	0	0	0
Overseas	0	0	0	0	0	0	0	0	0	0
Total	106	10	116	226	33	259	1	0	1	376

Table A9.3: All ongoing employees, previous reporting period (2019-20)

	MALE			FEMALE			INDETERMINATE			TOTAL
	FULL-TIME	PART-TIME	TOTAL	FULL-TIME	PART-TIME	TOTAL	FULL-TIME	PART-TIME	TOTAL	
NSW	63	5	68	145	55	200	0	0	0	268
Qld	30	2	32	84	27	111	0	0	0	143
SA	11	3	14	39	6	45	0	0	0	59
Tas	3	0	3	13	4	17	0	0	0	20
Vic	38	4	42	87	34	121	0	0	0	163
WA	16	0	16	33	7	40	0	0	0	56
ACT	6	1	7	32	3	35	0	0	0	42
NT	0	0	0	5	1	6	0	0	0	6
External Territories	0	0	0	0	0	0	0	0	0	0
Overseas	0	0	0	0	1	1	0	0	0	1
Total	167	15	182	438	138	576	0	0	0	758

Table A9.4: All non-ongoing employees previous report period (2019-20)

	MALE			FEMALE			INDETERMINATE			TOTAL
	FULL-TIME	PART-TIME	TOTAL	FULL-TIME	PART-TIME	TOTAL	FULL-TIME	PART-TIME	TOTAL	
NSW	41	1	42	88	14	102	0	0	0	144
Qld	19	2	21	23	3	26	0	0	0	47
SA	6	0	6	12	2	14	0	0	0	20
Tas	1	0	1	5	2	7	0	0	0	8
Vic	24	3	27	59	4	63	1	0	1	91
WA	5	1	6	4	2	6	0	0	0	12
ACT	0	1	1	5	2	7	0	0	0	8
NT	1	0	1	1	1	2	0	0	0	3
External Territories	0	0	0	0	0	0	0	0	0	0
Overseas	0	0	0	0	0	0	0	0	0	0
Total	97	8	105	197	30	227	1	0	1	333

Table A9.5: Australian Public Service Act ongoing employees, current reporting period (2020–21)

	MALE		FEMALE		INDETERMINATE		TOTAL
	FULL-TIME	PART-TIME	FULL-TIME	PART-TIME	FULL-TIME	PART-TIME	
SES 3	0	0	0	0	0	0	0
SES 2	3	0	3	0	3	0	6
SES 1	6	0	6	1	6	0	12
EL 2	38	1	39	14	66	0	105
EL 1	33	3	36	75	115	0	151
APS 6	27	1	28	95	110	0	138
APS 5	29	0	29	103	118	0	147
APS 4	19	3	22	74	96	0	118
APS 3	14	3	17	42	68	0	85
APS 2	5	1	6	8	12	0	18
APS 1	0	1	1	0	0	0	1
Other	0	0	0	0	0	0	0
Total	174	13	187	457	594	0	781

Table A9.6: Australian Public Service Act non-ongoing employees, current reporting period (2020–21)

	MALE		FEMALE		INDETERMINATE		TOTAL
	FULL-TIME	PART-TIME	FULL-TIME	PART-TIME	FULL-TIME	PART-TIME	
SES 3	0	0	0	0	0	0	0
SES 2	0	0	0	1	1	0	1
SES 1	0	0	0	0	0	0	0
EL 2	5	1	6	7	9	0	15
EL 1	5	2	7	22	34	0	41
APS 6	8	0	8	10	12	0	20
APS 5	23	1	24	48	49	0	73
APS 4	53	4	57	101	107	1	165
APS 3	8	1	9	30	38	0	47
APS 2	4	1	5	7	9	0	14
APS 1	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0
TOTAL	106	10	116	226	259	1	376

Table A9.7: Australian Public Service Act ongoing employees, previous reporting period (2019-20)

	MALE		FEMALE		INDETERMINATE		TOTAL
	FULL-TIME	PART-TIME	FULL-TIME	PART-TIME	FULL-TIME	PART-TIME	
SES 3	0	0	0	0	0	0	0
SES 2	3	0	3	1	0	1	4
SES 1	5	0	5	5	1	6	11
EL 2	32	2	34	44	9	53	87
EL 1	32	3	35	75	39	114	149
APS 6	26	2	28	88	19	107	135
APS 5	22	1	23	96	13	109	132
APS 4	24	2	26	68	20	88	114
APS 3	17	3	20	53	32	85	105
APS 2	6	1	7	8	5	13	20
APS 1	0	1	1	0	0	0	1
Other	0	0	0	0	0	0	0
Total	167	15	182	438	138	576	758

Table A9.8: Australian Public Service Act non-ongoing employees, previous reporting period (2019-20)

	MALE		FEMALE		INDETERMINATE		TOTAL
	FULL-TIME	PART-TIME	FULL-TIME	PART-TIME	FULL-TIME	PART-TIME	
SES 3	0	0	0	0	0	0	0
SES 2	0	0	0	1	0	1	1
SES 1	0	0	0	0	0	0	0
EL 2	4	1	5	3	3	6	11
EL 1	5	2	7	4	3	7	14
APS 6	7	0	7	13	3	16	23
APS 5	18	3	21	41	1	42	63
APS 4	50	1	51	105	12	117	169
APS 3	6	1	7	21	7	28	35
APS 2	7	0	7	9	1	10	17
APS 1	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0
TOTAL	97	8	105	197	30	227	333

Table A9.9: Australian Public Service Act employees by full-time and part-time status, current reporting period (2020–21)

	ONGOING			NON-ONGOING			TOTAL
	FULL-TIME	PART-TIME	TOTAL	FULL-TIME	PART-TIME	TOTAL	
SES 3	0	0	0	0	0	0	0
SES 2	6	0	6	1	0	1	7
SES 1	11	1	12	0	0	0	12
EL 2	90	15	105	12	3	15	120
EL 1	108	43	151	27	14	41	192
APS 6	122	16	138	18	2	20	158
APS 5	132	15	147	71	2	73	220
APS 4	93	25	118	155	10	165	283
APS 3	56	29	85	38	9	47	132
APS 2	13	5	18	11	3	14	32
APS 1	0	1	1	0	0	0	1
Other	0	0	0	0	0	0	0
Total	631	150	781	333	43	376	1,091

Table A9.10: Australian Public Service Act employees by full-time and part-time status, previous reporting period (2019–20)

	ONGOING			NON-ONGOING			TOTAL
	FULL-TIME	PART-TIME	TOTAL	FULL-TIME	PART-TIME	TOTAL	
SES 3	0	0	0	0	0	0	0
SES 2	4	0	4	1	0	1	5
SES 1	10	1	11	0	0	0	11
EL 2	76	11	87	7	4	11	98
EL 1	107	42	149	9	5	14	163
APS 6	114	21	135	20	3	23	158
APS 5	118	14	132	59	4	63	195
APS 4	92	22	114	156	13	169	283
APS 3	70	35	105	27	8	35	140
APS 2	14	6	20	16	1	17	37
APS 1	0	1	1	0	0	0	1
Other	0	0	0	0	0	0	0
Total	605	153	758	295	38	333	1,091

Table A9.11: Australian Public Service Act employment type by location, current reporting period (2020-21)

	ONGOING	NON-ONGOING	TOTAL
NSW	276	143	419
Qld	147	74	221
SA	64	28	92
Tas	20	7	27
Vic	178	96	274
WA	54	14	68
ACT	36	13	49
NT	5	1	6
External Territories	0	0	0
Overseas	1	0	1
Total	781	376	1,157

Table A9.12: Australian Public Service Act employment type by location, previous employment period (2019-20)

	ONGOING	NON-ONGOING	TOTAL
NSW	268	144	412
Qld	143	47	190
SA	59	20	79
Tas	20	8	28
Vic	163	91	254
WA	56	12	68
ACT	42	8	50
NT	6	3	9
External Territories	0	0	0
Overseas	1	0	1
Total	758	333	1,091

Table A9.13: Australian Public Service Act Indigenous employment, current reporting period (2020-21)

	TOTAL
Ongoing	18
Non-Ongoing	4
Total	22

Table A9.14: Australian Public Service Act Indigenous employment, previous reporting period (2019-20)

	TOTAL
Ongoing	19
Non-Ongoing	6
Total	25

Table A9.15: Australian Public Service Act employment arrangements, current reporting period (2020–21)

	SES	NON-SES	TOTAL
Enterprise agreement	0	1,133	1,133
Determination	19	1	20
Australian Workplace Agreement	0	5	5
Individual Flexibility Agreement	0	195	195
Total	19	1,334	1,353

Table A9.16: Australian Public Service Act employment salary ranges by classification level (minimum/maximum), current reporting period (2020–21)

	MINIMUM SALARY	MAXIMUM SALARY
SES 3	0	0
SES 2	\$270,000	\$300,918
SES 1	\$180,900	\$241,399
EL 2	\$116,236	\$295,000
EL 1	\$100,827	\$245,803
APS 6	\$78,777	\$122,640
APS 5	\$72,938	\$89,488
APS 4	\$65,395	\$90,492
APS 3	\$58,672	\$63,325
APS 2	\$51,511	\$57,122
APS 1	\$45,516	\$50,302
Other	0	0
Minimum/Maximum range	0	0

Table A9.17: Australian Public Service Act employment performance pay by classification level, current reporting period (2020–21)

	NUMBER OF EMPLOYEES RECEIVING PERFORMANCE PAY	AGGREGATED (SUM TOTAL) OF ALL PAYMENTS MADE	AVERAGE OF ALL PAYMENTS MADE	MINIMUM PAYMENT MADE TO EMPLOYEES	MAXIMUM PAYMENT MADE TO EMPLOYEES
SES 3	0	0	0	0	0
SES 2	0	0	0	0	0
SES 1	0	0	0	0	0
EL 2	1	\$10,000	\$10,000	\$10,000	\$10,000
EL 1	0	0	0	0	0
APS 6	0	0	0	0	0
APS 5	0	0	0	0	0
APS 4	0	0	0	0	0
APS 3	0	0	0	0	0
APS 2	0	0	0	0	0
APS 1	0	0	0	0	0
Other	0	0	0	0	0
TOTAL	1	\$10,000	\$10,000	\$10,000	\$10,000

Table A9.18: Details of Accountable Authority during 2020–21

NAME	POSITION TITLE/ POSITION HELD	PERIOD AS THE ACCOUNTABLE AUTHORITY OR MEMBER WITHIN THE REPORTING PERIOD	
		DATE OF COMMENCEMENT	DATE OF CESSATION
Sia Lagos	CEO and Principal Registrar	1 July 2020	30 June 2021

Appendix 10

Annual Performance Statement

I, Sia Lagos, as the accountable authority of the Federal Court of Australia, present the 2020–21 annual performance statements for the entity, as required under paragraph 39(1)(a) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

In my opinion, these annual performance statements are based on properly maintained records, accurately reflect the performance of the entity, and comply with subsection 39(2) of the PGPA Act.



Sia Lagos

Chief Executive Officer and Principal Registrar
Federal Court of Australia

Outcome 1

Program 1.1: Federal Court of Australia

Apply and uphold the rule of law for litigants in the Federal Court of Australia and parties in the National Native Title Tribunal through the resolution of matters according to law and through the effective management of the administrative affairs of the Court and Tribunal.

Outcome 2

Program 2.1: Family Court of Australia

Apply and uphold the rule of law for litigants in the Family Court of Australia through the resolution of family law matters according to law, particularly more complex family law matters, and through the effective management of the administrative affairs of the Court.

Outcome 3

Program 3.1: Federal Circuit Court of Australia

Apply and uphold the rule of law for litigants in the Federal Circuit Court of Australia through more informal and streamlined resolution of family law and general federal law matters according to law, through the encouragement of appropriate dispute resolution processes and through the effective management of the administrative affairs of the Court.

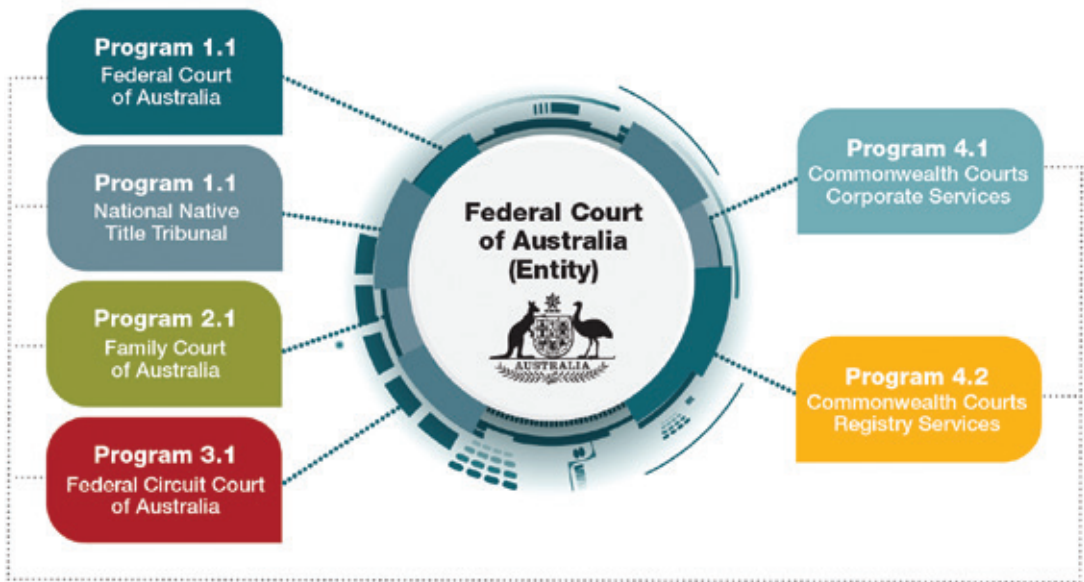
Outcome 4

Program 4.1: Commonwealth Courts Corporate Services

Improved administration and support of the resolution of matters according to law for litigants in the Federal Court of Australia, the Family Court of Australia and the Federal Circuit Court of Australia and parties in the National Native Title Tribunal through efficient and effective provision of shared corporate services.

Program 4.2: Commonwealth Courts Registry Services

Improved administration and support of the resolution of matters according to law for litigants in the Federal Court of Australia, the Family Court of Australia and the Federal Circuit Court of Australia and parties in the National Native Title Tribunal through efficient and effective provision of shared corporate and registry services.



Federal Court of Australia

The relationship between the Federal Court's Portfolio Budget Statements, corporate plan and annual performance statement

	OUTCOME 1	OUTCOME 2	OUTCOME 3	OUTCOME 4
Portfolio Budget Statements	Apply and uphold the rule of law for litigants in the Federal Court of Australia and parties in the National Native Title Tribunal through the resolution of matters according to law and through the effective management of the administrative affairs of the Court and Tribunal.	Apply and uphold the rule of law for litigants in the Family Court of Australia through the resolution of family law matters according to law, particularly more complex family law matters, and through the effective management of the administrative affairs of the Court.	Apply and uphold the rule of law for litigants in the Federal Circuit Court of Australia through more informal and streamlined resolution of family law and general federal law matters according to law, through the encouragement of appropriate dispute resolution processes and through the effective management of the administrative affairs of the Court.	Improved administration and support of the resolution of matters according to law for litigants in the Federal Court of Australia, the Family Court of Australia and the Federal Circuit Court of Australia and parties in the National Native Title Tribunal through efficient and effective provision of shared corporate and registry services
	↓	↓	↓	↓
	Program 1.1 Federal Court of Australia	Program 2.1 Family Court of Australia	Program 3.1 Federal Circuit Court of Australia	Program 4.1 Commonwealth Courts Corporate Services
	↓	↓	↓	↓
	Timely completion of cases 85% of cases completed within 18 months of commencement Judgments to be delivered within three months	Timely completion of cases Clearance rate of 100% 75% of judgments to be delivered within three months 75% of cases pending conclusion to be less than 12 months old	Timely completion of cases 90% of final order applications disposed of within 12 months 90% of all other applications disposed of within six months 70% of matters resolved prior to trial	Correct information Less than 1% of enquiries result in a complaint about registry services. Timely processing of documents 75% of documents processed within three working days. Efficient registry services All registry services provided within the agreed funding and staffing level.
				Program 4.2 Commonwealth Courts Registry Services

	OUTCOME 1	OUTCOME 2	OUTCOME 3	OUTCOME 4
Corporate Plan purpose	Decide disputes according to the law as quickly, inexpensively and efficiently as possible	Help Australians resolve their most complex family disputes by deciding matters according to the law, promptly, courteously and effectively	Provide a simple and accessible alternative to litigation in the Family Court and Federal Court	Provide efficient and effective corporate services to the Commonwealth courts and the National Native Title Tribunal
Annual performance statement	Analysis of performance Federal Court annual report: Chapter 3; Chapter 4 and Appendix 10	Analysis of performance Federal Court annual report: Appendix 10 Family Court annual report: Chapter 3	Analysis of performance Federal Court annual report: Appendix 10 Federal Circuit Court annual report: Chapter 3	Analysis of performance Federal Court annual report: Chapter 4 and Appendix 10

Outcome 1 Program 1.1: Federal Court of Australia

Purpose

Decide disputes according to the law as quickly, inexpensively and efficiently as possible.

Delivery

- Exercising the jurisdiction of the Federal Court of Australia.
- Supporting the operations of the National Native Title Tribunal.

Performance criterion

Timely completion of cases

- 85 per cent of cases completed within 18 months of commencement.
- Judgments to be delivered within three months.

Criterion source

- Table 2.1.3: Performance criteria for Outcome 1, *Federal Court of Australia Portfolio Budget Statements 2020–21*.
- *Federal Court of Australia Corporate Plan 2020–21*.

Results

TIMELY COMPLETION OF CASES		
TARGET	RESULT 2020–21	TARGET STATUS
85% of cases completed within 18 months of commencement	82.3 per cent of cases were completed within 18 months of commencement	Not met
Judgments to be delivered within three months	84.3 per cent of judgments were delivered within three months	Met

Analysis

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.

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.

Outcome 2 Program 2.1: Family Court of Australia

Purpose

To help Australians resolve their most complex family disputes by deciding matters according to the law, promptly, courteously and effectively.

Delivery

- Exercising the jurisdiction of the Family Court of Australia.

The Family Court of Australia is a separate Chapter III court under the Australian Constitution and the performance criteria applicable to the Court is identified in the 2019–20 Federal Court of Australia Portfolio Budget Statements and in the Federal Court of Australia Corporate Plan 2020–2021.

Performance criterion

Timely completion of cases

- Clearance rate of 100%.
- 75% of judgments to be delivered within three months.
- 75% of cases pending conclusion to be less than 12 months old.

Criterion source

- Table 2.2.2: Performance criteria for Outcome 2, *Federal Court of Australia Portfolio Budget Statements 2020–21*.
- *Federal Court of Australia Corporate Plan 2020–2021*.

Results

TIMELY COMPLETION OF CASES

TARGET	RESULT 2020–21	TARGET STATUS
Clearance rate of 100 per cent	The clearance rate was 96 per cent	Not met
75 per cent of judgments to be delivered within three months	83 per cent of judgments were delivered within three months	Met
75 per cent of cases pending conclusion to be less than 12 months old	65 per cent of cases pending conclusion were less than 12 months old	Not met

Analysis

While the COVID-19 pandemic evolved largely in the last quarter of the 2019–20 financial year, it continued to have a significant impact on the operations of the Family Court as recorded in this Annual Report for the entirety of the 2020–21 financial year.

The Court has used its best endeavours to continue finalising as many cases as possible, and, to the credit of judges and staff, has maintained a clearance rate of 96 per cent across all applications.

Despite this, there are certain hearings, such as final hearings in particularly complicated matters that have not been able to proceed. This is due to the inherent nature of conducting proceedings electronically, including the unpredictability of the technology and internet connection of the parties and witnesses, the added difficulties for some unrepresented litigants or those parties requiring interpreters, the impact of stay at home restrictions and the additional time consumed to conduct an electronic hearing compared to a face-to-face hearing.

In 2020–21, the Family Court achieved one target under timely completion of cases and was unable to achieve two. However it is noted that, but for the impacts of the COVID-19 pandemic, the Court is likely to have met the 100 per cent clearance rate target.

The Court received a 1.2 per cent increase in the number of Applications for Final Orders filed, a 4.6 per cent increase in the number of Applications in a Case filed and a 7.4 per cent increase in the number of Applications for Consent Orders filed during 2020–21 compared to 2019–20.

Outcome 3 Program 3.1 Federal Circuit Court of Australia

Purpose

To assist with the effective resolution of disputes using streamlined procedures and appropriate dispute resolution processes to resolve matters as efficiently and cost effectively as possible.

Delivery

- Exercising the jurisdiction of the Federal Circuit Court of Australia.

The Federal Circuit Court of Australia remains a separate Chapter III court under the Australian Constitution and the performance criteria applicable to the Court is identified in the 2020–21 Federal Court of Australia Portfolio Budget Statements and in the Federal Court Corporate Plan 2020–2021.

Performance criterion

Timely completion of cases

- 90% of final order applications to be disposed of within 12 months.
- 90% of all other applications to be disposed of within six months.
- 70% of matters to be resolved prior to trial.

Criterion source

- Table 2.3.2: Performance criteria for Outcome 3, *Federal Court of Australia Portfolio Budget Statements 2020–21*.
- *Federal Court of Australia Corporate Plan 2020–2021*.

Results

TIMELY COMPLETION OF CASES		
TARGET	RESULT 2020–21	TARGET STATUS
90 per cent of final orders applications disposed of within 12 months	59 per cent of final orders applications were disposed of within 12 months	Not met
90 per cent of all other applications disposed of within six months	96 per cent of all other applications were disposed of within six months	Met
70 per cent of matters resolved prior to trial	80 per cent of matters were resolved prior to trial	Met

Analysis

The Court was responding to the COVID-19 pandemic and associated changes to public health directions and restrictions for the entirety of the 2020–21 financial year. This has had a significant impact on the Court's ability to plan ahead and efficiently manage the work of the Court, and has required judges and staff to be flexible and adapt to changes to the way all aspects of the Court's work are conducted in very short periods of time. Despite this, the Court maintained an impressive clearance rate for applications for final orders in family law of 96 per cent.

While the Court has been able to continue with the majority of its workload during the pandemic and has maintained a high clearance rate, there are certain categories of work that have not been able to be conducted electronically at the usual rate they would be undertaken, for example trials for final orders applications. Some trials have needed to be temporarily adjourned if parties do not have access to technology or a satisfactory internet connection, or where there are difficulties arising from access to an interpreter or other procedural fairness issues. It is also accepted that conducting high volume lists and hearings electronically can be more time consuming, so while judges, registrars and

staff have been working diligently, the volume of matters undertaken has been slightly lower than it otherwise would have been.

The first target includes disposals of final order applications filed in family law, as well as applications filed in general federal law and migration. The second target only includes disposals of other applications filed in family law, and does not include other applications filed in migration or general federal law, such as interlocutory applications.

High migration filings continues to have a substantial impact on the Court. The pending migration caseload has increased from 12,158 applications in 2019–20 to 14,445 applications in 2020–21. At 30 June 2021, the clearance rate for final order applications in family law was 96 per cent. For migration applications, it was 58 per cent. To put that in perspective, without further resources, on current filing rates, the pending migration caseload will surpass the pending family law caseload in less than two years.

Outcome 4 Program 4.1: Commonwealth Courts Corporate Services

Purpose

To provide efficient and effective corporate services to the Commonwealth Courts and the National Native Title Tribunal.

Delivery

Providing efficient and effective corporate services for the Commonwealth Courts and the National Native Title Tribunal.

Performance criterion

Efficient and effective corporate services

- Corporate services to be provided within the agreed funding.

Criterion source

- Table 2.4.2: Performance criteria for Outcome 4, *Federal Court of Australia Portfolio Budget Statements 2020–21*.
- *Federal Court of Australia Corporate Plan 2020–2021*.

Results

EFFICIENT AND EFFECTIVE CORPORATE SERVICES

TARGET	RESULTS 2020–21	TARGET STATUS
Corporate services to be provided within the agreed funding	This target has been achieved	Met

Analysis

During 2020–21, the work of corporate services focused on supporting the evolving needs of judges and staff across all the Courts and Tribunal, while delivering on required efficiencies to meet reduced appropriations.

As expected, a key focus in 2020–21 was to continue the delivery of solutions to support the work of the Courts and Tribunal in response to the COVID-19 pandemic.

There was a continued focus on supporting the Courts to operate online. Further upgrades to video conferencing equipment supported the increased use of hybrid hearings undertaken throughout the year where a combination of in-court and remote technology was used to support court operations. Infrastructure and security upgrades were deployed to enhance the stability and security of the remote technology solutions to support judges' and staffs' capacity to work from home when required.

During this period, COVIDSafe plans were updated to ensure consistency with changing requirements across the country. Measures were undertaken to ensure compliance with required hygiene protocols across all locations to mitigate the risk of infection to staff and the public.

The People and Culture team developed additional support programs to assist staff over the year, particularly staff impacted by ongoing lockdowns. Resilience, mindfulness and wellbeing sessions have been offered to all staff and delivered regularly. This training has been extremely important in underpinning our response to the COVID-19 pandemic. The provision of Microsoft Teams-based sessions, utilising the services of an external facilitator, provided the platform to staff support and reinforced engagement.

Several significant property projects were commenced during the year, with completion expected in 2021–22.

Outcome 4: Program 4.2: Commonwealth Courts Registry Services

Purpose

To provide efficient and effective corporate services to the Commonwealth Courts and the National Native Title Tribunal.

Delivery

Providing efficient and effective corporate services for the Commonwealth Courts and the National Native Title Tribunal.

Performance criterion

Correct information

- Less than 1 per cent of enquiries result in a complaint about registry services.

Timely processing of documents

- 75 per cent of documents processed within three working days.

Efficient registry services

- All registry services provided within the agreed funding and staffing level.

Criterion source

- Table 2.4.2: Performance criteria for Outcome 4, *Federal Court of Australia Portfolio Budget Statements 2020–21*.
- *Federal Court of Australia Corporate Plan 2020–2021*.

Results

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CORRECT INFORMATION		
TARGET	RESULT 2020-21	TARGET STATUS
Less than 1 per cent of enquiries result in a complaint about registry services	0.01 per cent of enquiries resulted in a complaint about registry services	Met
TIMELY PROCESSING OF DOCUMENTS		
75 per cent of documents processed within three working days	98.2 per cent of documents were processed within three working days	Met
EFFICIENT REGISTRY SERVICES		
All registry services provided within the agreed funding and staffing level	All registry services were provided within the agreed funding and staffing levels	Met

Analysis

Registry Services staff manage enquiries, document lodgments, subpoenas and safety plans. The number of safety plans activated in 2020-21 was 1,380 across all registry locations. Safety plans decreased by approximately 75 per cent in 2020-21 due to the suspension of face-to-face services in some registries affected by COVID-19 lockdowns and the subsequent move to a heavy reliance on electronic hearings for that period. Supporting the electronic hearings and additional registrar resources however, became a significant additional workload for registry services.

Throughout the year, although there were interruptions to in-person services due to state-based COVID-19 restrictions, Registry Services staff continued to process urgent enquiries and applications and provided support for difficult issues for a diverse range of clients with different needs both professionally and courteously. This included supporting vulnerable clients and ensuring people from non-English speaking backgrounds are suitably supported.

The COVID-19 pandemic has caused some significant shifts in workload. Overall, family law filings have remained relatively consistent in volume for 2020-21, however, high volume, resource demanding applications such as applications for consent orders and divorce applications have increased for a second year in a row, by 7.4 per cent (16,008) and 8 per cent (49,625) respectively. Major causes of action in federal law have decreased overall by 25 per cent in 2020-21.

After a 6 per cent decrease in 2019-20, the 2020-21 reporting year has seen a significant 26 per cent increase in subpoena management, including the filing of subpoenas, notices of request to inspect and notices of objection (103,075).

There were a total of 19 complaints in relation to Registry Services during 2019-20. The number of complaints is relatively small, being less than .001 per cent of the total number of enquiries and significantly less than the performance target of 1 per cent. Enquiries include phone, email and live chat actioned enquiries to the NEC.

Executive remuneration

During the reporting period ending 30 June 2021, the Federal Court of Australia had eight executives who meet the definition of key management personnel.

Table A11.1: Information for remuneration for key management personnel

NAME	POSITION TITLE	SHORT-TERM BENEFITS			POST-EMPLOYMENT BENEFITS	OTHER LONG-TERM BENEFITS			TERMINATION BENEFITS	TOTAL REMUNERATION
		BASE SALARY	BONUSES	OTHER BENEFITS AND ALLOWANCES		SUPERANNUATION CONTRIBUTIONS	LONG SERVICE LEAVE	OTHER LONG-TERM BENEFITS		
CJ Allsop	Chief Justice, Federal Court	515,000	0	26,842	466,572	51,495	0	0	1,059,909	
CJ Alstergren	Chief Justice, Family Court and Chief Judge, Federal Circuit Court	515,000	0	29,940	466,572	51,495	0	0	1,063,007	
Sia Lagos	CEO and Principal Registrar, Federal Court	499,468	0	0	35,324	11,590	0	0	546,382	
David Pringle	CEO and Principal Registrar, Family Court and Federal Circuit Court	394,548	0	0	21,814	9,156	0	0	425,518	
Virginia Wilson	CEO and Principal Registrar, Family Court and Federal Circuit Court	22,118	0	0	2,871	485	0	0	25,474	
John Dowsett	President, National Native Title Tribunal	471,329	0	0	21,814	10,938	0	0	504,081	
Chris Fewings	Native Title Registrar	302,825	0	0	21,814	7,028	0	0	331,667	
Catherine Sullivan	Executive Director Corporate Services	324,184	0	22,436	46,371	7,523	0	0	400,514	
Grand total		3,044,472	0	79,218	1,083,152	149,710	0	0	4,356,552	

Appendix 11

Table A11.3: Information about remuneration for other highly paid staff

TOTAL REMUNERATION BANDS	NUMBER OF OTHER HIGHLY PAID STAFF	SHORT-TERM BENEFITS			POST-EMPLOYMENT BENEFITS	OTHER LONG-TERM BENEFITS			TERMINATION BENEFITS	TOTAL REMUNERATION
		AVERAGE BASE SALARY	AVERAGE BONUS	AVERAGE OTHER BENEFITS AND ALLOWANCES		AVERAGE LONG SERVICE LEAVE	AVERAGE OTHER LONG-TERM BENEFITS	AVERAGE TERMINATION BENEFITS		
\$230,001 - \$245,000	1	\$200,568	0	\$615	\$37,479	\$4,855	0	0	\$243,517	
\$245,001 - \$270,000	6	\$194,031	0	\$9,477	\$34,836	\$4,874	\$15,810	0	\$259,028	
\$270,001 - \$295,000	2	\$228,779	0	\$15,741	\$33,343	\$5,473	0	0	\$283,336	
\$295,001 - \$320,000	1	\$248,598	0	0	\$44,252	\$5,753	0	0	\$298,603	
\$320,001 - \$345,000	0	0	0	0	0	0	0	0	0	
\$345,001 - \$370,000	0	0	0	0	0	0	0	0	0	
\$370,001 - \$395,000	0	0	0	0	0	0	0	0	0	
\$395,001 - \$420,000	0	0	0	0	0	0	0	0	0	
\$420,001 - \$445,000	0	0	0	0	0	0	0	0	0	
\$445,001 - \$470,000	0	0	0	0	0	0	0	0	0	
\$470,001 - \$495,000	0	0	0	0	0	0	0	0	0	
\$495,001 - ...	0	0	0	0	0	0	0	0	0	

Appendix 12

Information required by other legislation

Table A12.1: Information required by other legislation

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<i>Commonwealth Electoral Act 1918</i>	42
<i>Courts Administration Legislation Amendment Act 2016</i>	13, 53, 182
<i>Environment Protection and Biodiversity Conservation Act 1999</i>	50, 148
<i>Federal Court of Australia Act 1976</i>	1, 8, 21, 25, 40, 97
<i>Freedom of Information Act 1982</i>	35, 48, 80
<i>Native Title Act 1993</i>	ix, x, xi, 8, 16, 24, 25, 26, 34, 42, 70, 160,
<i>Public Governance, Performance and Accountability Act 2013</i>	2, 3, 40, 47, 48, 82, 84, 97, 113, 123, 191
<i>Public Service Act 1999</i>	8, 40, 53, 54, 182,
<i>Work Health and Safety Act 2011</i>	54

Appendix 13

Court and registry locations

*General Federal Law Registries (Federal Court and Federal Circuit Court). *These registries share counter services with the family law jurisdiction.*

Principal Registry

Law Courts Building

Queens Square
Sydney NSW 2000
Phone: (02) 9230 8567
Fax: (02) 9230 8824
Email: query@fedcourt.gov.au
Web: www.fedcourt.gov.au
Contact hours: 8.30am–5.00pm

Australian Capital Territory*

Nigel Bowen Commonwealth Law Courts

Cnr University Avenue and Childers Street
Canberra City ACT 2600
Phone: 1300 720 980
Fax: (02) 6267 0625
Email: actman@fedcourt.gov.au
Counter hours: 9.00am–4.30pm
Contact hours: 8.30am–5.00pm

New South Wales

Law Courts Building

Level 17, Queens Square
Sydney NSW 2000
Phone: 1300 720 980
Fax: (02) 9230 8535
Email: nswdr@fedcourt.gov.au
Counter hours: 9.00am–4.30pm
Contact hours: 8.30am–5.00pm

Northern Territory*

Supreme Court Building

Level 3, State Square
Darwin NT 0800
Phone: 1300 720 980
Fax: (08) 8941 4941
Email: ntreg@fedcourt.gov.au
Counter hours: 9.00am–4.00pm
Contact hours: 8.45am–4.30pm

Queensland*

Harry Gibbs Commonwealth Law Courts

Level 6, 119 North Quay
Brisbane Qld 4000
Phone: 1300 720 980
Fax: (07) 3248 1260
Email: qldreg@fedcourt.gov.au
Counter hours: 9.00am–4.00pm
Contact hours: 8.30am–5.00pm

South Australia

Roma Mitchell Commonwealth Law Courts

Level 5, 3 Angas Street
Adelaide SA 5000
Phone: 1300 720 980
Fax: (08) 8219 1001
Email: sareg@fedcourt.gov.au
Counter hours: 9.00am–4.30pm
Contact hours: 8.30am–5.00pm

Tasmania*

Edward Braddon Commonwealth Law Courts

39–41 Davey St
Hobart TAS 7000
Phone: 1300 720 980
Fax: (03) 6232 1601
Email: tasreg@fedcourt.gov.au
Counter hours: 9.00am–4.30pm
Contact hours: 8.30am–5.00pm

Victoria

Owen Dixon Commonwealth Law Courts

Level 7, 305 William Street
Melbourne VIC 3000
Phone: 1300 720 980
Fax: (03) 8600 3351
Email: vicreg@fedcourt.gov.au
Counter hours: 9.00am–4.30pm
Contact hours: 8.30am–5.00pm

Western Australia

Peter Durack Commonwealth Law Courts

Level 6, 1 Victoria Avenue
Perth WA 6000
Phone: 1300 720 980
Fax: (08) 9221 3261
Email: perth.registry@fedcourt.gov.au
Counter hours: 8.30am–4.00pm
Contact hours: 8.30am–5.00pm
International callers: +612 7809 1037

Family law registries (Family Court and Federal Circuit Court)

Australian Capital Territory

Canberra*

Nigel Bowen Commonwealth Law Courts

Cnr University Avenue and Childers Street
Canberra ACT 2600

New South Wales

Albury

Level 1, 463 Kiewa Street
Albury NSW 2640

Dubbo

Cnr Macquarie and
Wingewarra Streets
Dubbo NSW 2830

Lismore

Westlawn Building
Level 2, 29–31 Molesworth Street
Lismore NSW 2480

Newcastle

61 Bolton Street
Newcastle NSW 2300

Parramatta

Garfield Barwick Commonwealth Law Courts

1–3 George Street
Parramatta NSW 2123

Sydney

Lionel Bowen Commonwealth Law Courts

97–99 Goulburn Street
Sydney NSW 2000

Wollongong

Level 1, 43 Burelli Street
Wollongong NSW 2500
Northern Territory

Darwin*

Supreme Court Building

State Square
Darwin NT 0800

Queensland

Brisbane

Harry Gibbs Commonwealth Law Courts

119 North Quay,
Cnr North Quay and Tank Streets
Brisbane Qld 4000

Cairns

Commonwealth Government Centre

Levels 3 and 4
104 Grafton Street

Cairns Qld 4870

Rockhampton

48 East Street
Rockhampton Qld 4700

Townsville

Level 2, Commonwealth Centre
143 Walker Street
Townsville Qld 4810

South Australia

Adelaide

Roma Mitchell Commonwealth Law Courts

3 Angas Street
Adelaide SA 5000

Tasmania

Hobart*

Edward Braddon Commonwealth Law Courts

39–41 Davey Street
Hobart TAS 7000

Launceston

ANZ Building

Level 3
Cnr Brisbane and George Streets
Launceston TAS 7250

Victoria

Dandenong

53–55 Robinson Street
Dandenong VIC 3175

Melbourne

Owen Dixon Commonwealth Law Courts

305 William Street
Melbourne VIC 3000

Appendix 14

Committees

FEDERAL COURT COMMITTEES, 30 JUNE 2021	
COMMITTEE	MEMBERSHIP
National Practice Committee	Chief Justice Allsop (Chair) All National Coordinating and National Appeals Judges Sia Lagos Scott Tredwell Tuan Van Le (Secretariat)
Operations and Finance Committee	Chief Justice Allsop (Chair) Justice Greenwood Justice Rares Justice Besanko Justice Middleton Justice McKerracher Justice Reeves Justice Jagot Justice Nicholas Justice Murphy Justice Mortimer Justice White Justice Markovic Sia Lagos Catherine Sullivan (Secretariat) Kathryn Hunter
Finance sub-committee	Chief Justice Allsop (Chair) Justice Besanko Justice Middleton Justice Reeves Justice Nicholas Justice Murphy Sia Lagos Catherine Sullivan (Secretariat) Kathryn Hunter
International Development and Cooperation Committee	Justice Kenny (Chair) Justice Collier Justice Logan Justice Bromberg Justice Yates Justice Mortimer Justice White Justice Burley Justice O'Callaghan Sia Lagos Helen Burrows (Secretariat)
Remuneration Committee	Justice Murphy Justice White Sia Lagos

FEDERAL COURT COMMITTEES, 30 JUNE 2021

COMMITTEE	MEMBERSHIP
Digital Practice Committee	Justice Perram (Chair) Justice Jagot Justice Mortimer Justice Rangiah Justice Markovic Justice Bromwich Justice Charlesworth Justice Burley Justice S Derrington Justice Banks-Smith Justice Wheelahan Sia Lagos Jessica Der Matossian (Secretariat)
Criminal Procedure Committee	Justice Rares Justice Besanko Justice Reeves Justice Rangiah Justice Wigney (Chair) Justice Bromwich Justice Abraham Sia Lagos Rowan Davis (Secretariat) Alicia Ditton Jodie Burns
Library Committee	Justice Kenny (Chair) Justice Collier Justice Besanko Justice Jagot Justice Burley Justice Jackson Georgia Livissianos (Secretariat)
Judicial Education Committee	Justice Kenny Justice Collier Justice Besanko Justice Middleton Justice McKerracher Justice Perram Justice Katzmann Justice Farrell Justice Davies Justice Mortimer Justice Moshinsky Justice Burley Justice Lee Justice Banks-Smith J (Chair) Sia Lagos Caitlin Wu (Secretariat) Andrea Jarratt Melissa Charles

FEDERAL COURT COMMITTEES, 30 JUNE 2021

COMMITTEE	MEMBERSHIP
Judicial Education Conference sub-committee	Justice McKerracher Justice Farrell (Chair) Justice Banks-Smith Caitlin Wu (Secretariat) Andrea Jarratt Melissa Charles
Rules Committee	Justice Besanko Justice McKerracher Justice Jagot (Chair) Justice Yates Justice Rangiah Justice White Scott Tredwell (Secretariat)
Judicial Wellbeing Committee	Justice Katzmann (Chair) Justice Murphy Justice Charlesworth Justice Banks-Smith Justice Collier Justice Kerr Sia Lagos Darrin Moy (Secretariat)
Judicial Workplace Conduct Committee	Justice Collier Justice Mortimer Justice Rangiah Justice Markovic Justice Moshinsky Justice Bromwich Justice Charlesworth Justice Banks-Smith Sia Lagos Darrin Moy Jenni Priestley Scott Tredwell Andrea Jarratt
Audit and Risk Committee	Justice Nicholas Justice Murphy Justice Farrell Justice Harper (FCoA) Justice McEvoy (FCoA) Judge Driver (FCC) Judge Howard (FCC) Ian Govey (Independent Chair) Frances Cawthra (External member) Sia Lagos David Pringle (FCoA/FCC) Christine Fewings (NNTT) Catherine Sullivan (Secretariat) Kathryn Hunter

FEDERAL COURT COMMITTEES, 30 JUNE 2021

COMMITTEE

MEMBERSHIP

Security Committee

Justice Logan (Chair)

Justice McKerracher

Justice Perry

Justice Lee

Deputy Chief Justice McClelland (FCoA)

Judge Vasta (FCC)

Catherine Sullivan (Secretariat)

Steve Fewster

David Llewelyn

Craig Reilly

Sami Dagher

PART 7

Indexes

List of Requirements

Non-corporate Commonwealth entities

PGPA RULE REFERENCE	DESCRIPTION	REQUIREMENT	PAGE OF THIS REPORT
17AD(g)	Letter of transmittal		
17AI	A copy of the letter of transmittal signed and dated by accountable authority on date final text approved, with statement that the report has been prepared in accordance with section 46 of the Act and any enabling legislation that specifies additional requirements in relation to the annual report.	Mandatory	i
17AD(h)	Aids to access		
17AJ(a)	Table of contents.	Mandatory	iii
17AJ(b)	Alphabetical index.	Mandatory	218
17AJ(c)	Glossary of abbreviations and acronyms.	Mandatory	vi-xi
17AJ(d)	List of requirements.	Mandatory	212
17AJ(e)	Details of contact officer.	Mandatory	Inside front cover
17AJ(f)	Entity's website address.	Mandatory	Inside front cover
17AJ(g)	Electronic address of report.	Mandatory	Inside front cover
17AD(a)	Review by accountable authority		
17AD(a)	A review by the accountable authority of the entity.	Mandatory	9-14
17AD(b)	Overview of the entity		
17AE(1)(a)(i)	A description of the role and functions of the entity.	Mandatory	1
17AE(1)(a)(ii)	A description of the organisational structure of the entity.	Mandatory	124
17AE(1)(a)(iii)	A description of the outcomes and programmes administered by the entity.	Mandatory	2-3
17AE(1)(a)(iv)	A description of the purposes of the entity as included in corporate plan.	Mandatory	1
17AE(1)(aa)(i)	Name of the accountable authority or each member of the accountable authority	Mandatory	190
17AE(1)(aa)(iii)	Position title of the accountable authority or each member of the accountable authority	Mandatory	190
17AE(1)(aa)(iii)	Period as the accountable authority or member of the accountable authority within the reporting period	Mandatory	190
17AE(1)(b)	An outline of the structure of the portfolio of the entity.	Portfolio departments mandatory	191-192

PGPA RULE REFERENCE	DESCRIPTION	REQUIREMENT	PAGE OF THIS REPORT
17AE(2)	Where the outcomes and programs administered by the entity differ from any Portfolio Budget Statement, Portfolio Additional Estimates Statement or other portfolio estimates statement that was prepared for the entity for the period, include details of variation and reasons for change.	If applicable, Mandatory	N/A
17AD(c)	Report on the Performance of the entity		
	Annual performance Statements		
17AD(c)(i); 16F	Annual performance statement in accordance with paragraph 39(1)(b) of the Act and section 16F of the Rule.	Mandatory	191-200
17AD(c)(ii)	Report on Financial Performance		
17AF(1)(a)	A discussion and analysis of the entity's financial performance.	Mandatory	13; 41
17AF(1)(b)	A table summarising the total resources and total payments of the entity.	Mandatory	123
17AF(2)	If there may be significant changes in the financial results during or after the previous or current reporting period, information on those changes, including: the cause of any operating loss of the entity; how the entity has responded to the loss and the actions that have been taken in relation to the loss; and any matter or circumstances that it can reasonably be anticipated will have a significant impact on the entity's future operation or financial results.	If applicable, Mandatory.	N/A
17AD(d)	Management and Accountability		
	Corporate Governance		
17AG(2)(a)	Information on compliance with section 10 (fraud systems)	Mandatory	42
17AG(2)(b)(i)	A certification by accountable authority that fraud risk assessments and fraud control plans have been prepared.	Mandatory	42
17AG(2)(b)(ii)	A certification by accountable authority that appropriate mechanisms for preventing, detecting incidents of, investigating or otherwise dealing with, and recording or reporting fraud that meet the specific needs of the entity are in place.	Mandatory	42
17AG(2)(b)(iii)	A certification by accountable authority that all reasonable measures have been taken to deal appropriately with fraud relating to the entity.	Mandatory	42
17AG(2)(c)	An outline of structures and processes in place for the entity to implement principles and objectives of corporate governance.	Mandatory	42
17AG(2)(d) – (e)	A statement of significant issues reported to Minister under paragraph 19(1)(e) of the Act that relates to non compliance with Finance law and action taken to remedy non compliance.	If applicable, Mandatory	42; 47

PGPA RULE REFERENCE	DESCRIPTION	REQUIREMENT	PAGE OF THIS REPORT
Audit Committee			
17AG(2A)(a)	A direct electronic address of the charter determining the functions of the entity's audit committee.	Mandatory	47
17AG(2A)(b)	The name of each member of the entity's audit committee.	Mandatory	43-47
17AG(2A)(c)	The qualifications, knowledge, skills or experience of each member of the entity's audit committee.	Mandatory	43-47
17AG(2A)(d)	Information about the attendance of each member of the entity's audit committee at committee meetings.	Mandatory	43-47
17AG(2A)(e)	The remuneration of each member of the entity's audit committee.	Mandatory	43-47
External Scrutiny			
17AG(3)	Information on the most significant developments in external scrutiny and the entity's response to the scrutiny.	Mandatory	40
17AG(3)(a)	Information on judicial decisions and decisions of administrative tribunals and by the Australian Information Commissioner that may have a significant effect on the operations of the entity.	If applicable, Mandatory	40
17AG(3)(b)	Information on any reports on operations of the entity by the Auditor General (other than report under section 43 of the Act), a Parliamentary Committee, or the Commonwealth Ombudsman.	If applicable, Mandatory	40
17AG(3)(c)	Information on any capability reviews on the entity that were released during the period.	If applicable, Mandatory	42
Management of Human Resources			
17AG(4)(a)	An assessment of the entity's effectiveness in managing and developing employees to achieve entity objectives.	Mandatory	53
17AG(4)(aa)	Statistics on the entity's APS employees on an ongoing and non-ongoing basis; including the following: (a) statistics on full time employees; (b) statistics on part time employees; (c) statistics on gender; (d) Statistics on staff location	Mandatory	182-189
17AG(4)(b)	Statistics on the entity's APS employees on an ongoing and non ongoing basis; including the following: • Statistics on staffing classification level; • Statistics on full time employees; • Statistics on part time employees; • Statistics on gender; • Statistics on staff location; • Statistics on employees who identify as Indigenous.	Mandatory	182-189

PGPA RULE REFERENCE	DESCRIPTION	REQUIREMENT	PAGE OF THIS REPORT
17AG(4)(c)	Information on any enterprise agreements, individual flexibility arrangements, Australian workplace agreements, common law contracts and determinations under subsection 24(1) of the <i>Public Service Act 1999</i>	Mandatory	54; 189
17AG(4)(c)(i)	Information on the number of SES and non SES employees covered by agreements etc identified in paragraph 17AG(4)(c).	If applicable, Mandatory	182-189
17AG(4)(c)(ii)	The salary ranges available for APS employees by classification level.	Mandatory	189
17AG(4)(c)(iii)	A description of non salary benefits provided to employees.	Mandatory	54
17AG(4)(d)(i)	Information on the number of employees at each classification level who received performance pay.	Mandatory	54; 189
17AG(4)(d)(ii)	Information on aggregate amounts of performance pay at each classification level.	If applicable, Mandatory	189
17AG(4)(d)(iii)	Information on the average amount of performance payment, and range of such payments, at each classification level.	If applicable, Mandatory	189
17AG(4)(d)(iv)	Information on aggregate amount of performance payments.	If applicable, Mandatory	189
Assets Management			
17AG(5)	An assessment of effectiveness of assets management where asset management is a significant part of the entity's activities	If applicable, mandatory	49
Purchasing			
17AG(6)	An assessment of entity performance against the <i>Commonwealth Procurement Rules</i> .	Mandatory	48
Reportable consultancy contracts			
17AG(7)(a)	A summary statement detailing the number of new reportable consultancy contracts entered into during the period; the total actual expenditure on all such contracts (inclusive of GST); the number of ongoing reportable consultancy contracts that were entered into during a previous reporting period; and the total actual expenditure in the reporting period on those ongoing contracts (inclusive of GST).	Mandatory	48-49
17AG(7)(b)	A statement that " <i>During [reporting period], [specified number] new reportable consultancy contracts were entered into involving total actual expenditure of \$[specified million]. In addition, [specified number] ongoing reportable consultancy contracts were active during the period, involving total actual expenditure of \$[specified million]</i> ".	Mandatory	48

PGPA RULE REFERENCE	DESCRIPTION	REQUIREMENT	PAGE OF THIS REPORT
17AG(7)(c)	A summary of the policies and procedures for selecting and engaging consultants and the main categories of purposes for which consultants were selected and engaged.	Mandatory	48
17AG(7)(d)	A statement that <i>“Annual reports contain information about actual expenditure on reportable consultancy contracts. Information on the value of reportable consultancy contracts is available on the AusTender website.”</i>	Mandatory	48
Reportable non-consultancy contracts			
17AG(7A)(a)	A summary statement detailing the number of new reportable non-consultancy contracts entered into during the period; the total actual expenditure on such contracts (inclusive of GST); the number of ongoing reportable non-consultancy contracts that were entered into during a previous reporting period; and the total actual expenditure in the reporting period on those ongoing contracts (inclusive of GST).	Mandatory	49
17AG(7A)(b)	A statement that <i>“Annual reports contain information about actual expenditure on reportable non-consultancy contracts. Information on the value of reportable non-consultancy contracts is available on the AusTender website.”</i>	Mandatory	48
17AD(daa)	Additional information about organisations receiving amounts under reportable consultancy contracts or reportable non-consultancy contracts		
17AGA	Additional information, in accordance with section 17AGA, about organisations receiving amounts under reportable consultancy contracts or reportable non-consultancy contracts.	Mandatory	49
Australian National Audit Office Access Clauses			
17AG(8)	If an entity entered into a contract with a value of more than \$100 000 (inclusive of GST) and the contract did not provide the Auditor General with access to the contractor’s premises, the report must include the name of the contractor, purpose and value of the contract, and the reason why a clause allowing access was not included in the contract.	If applicable, Mandatory	48
Exempt contracts			
17AG(9)	If an entity entered into a contract or there is a standing offer with a value greater than \$10 000 (inclusive of GST) which has been exempted from being published in AusTender because it would disclose exempt matters under the FOI Act, the annual report must include a statement that the contract or standing offer has been exempted, and the value of the contract or standing offer, to the extent that doing so does not disclose the exempt matters.	If applicable, Mandatory	48

PGPA RULE REFERENCE	DESCRIPTION	REQUIREMENT	PAGE OF THIS REPORT
Small business			
17AG(10)(a)	A statement that “[Name of entity] supports small business participation in the Commonwealth Government procurement market. Small and Medium Enterprises (SME) and Small Enterprise participation statistics are available on the Department of Finance’s website.”	Mandatory	48
17AG(10)(b)	An outline of the ways in which the procurement practices of the entity support small and medium enterprises.	Mandatory	48
17AG(10)(c)	If the entity is considered by the Department administered by the Finance Minister as material in nature—a statement that “[Name of entity] recognises the importance of ensuring that small businesses are paid on time. The results of the Survey of Australian Government Payments to Small Business are available on the Treasury’s website.”	If applicable, Mandatory	48
Financial Statements			
17AD(e)	Inclusion of the annual financial statements in accordance with subsection 43(4) of the Act.	Mandatory	82-122
Executive Remuneration			
17AD(da)	Information about executive remuneration in accordance with Subdivision C of Division 3A of Part 2 3 of the Rule.	Mandatory	201-203
17AD(f)	Other Mandatory Information		
17AH(1)(a)(i)	If the entity conducted advertising campaigns, a statement that “During [reporting period], the [name of entity] conducted the following advertising campaigns: [name of advertising campaigns undertaken]. Further information on those advertising campaigns is available at [address of entity’s website] and in the reports on Australian Government advertising prepared by the Department of Finance. Those reports are available on the Department of Finance’s website.”	If applicable, Mandatory	N/A
17AH(1)(a)(ii)	If the entity did not conduct advertising campaigns, a statement to that effect.	If applicable, Mandatory	42
17AH(1)(b)	A statement that “Information on grants awarded by [name of entity] during [reporting period] is available at [address of entity’s website].”	If applicable, Mandatory	42
17AH(1)(c)	Outline of mechanisms of disability reporting, including reference to website for further information.	Mandatory	53
17AH(1)(d)	Website reference to where the entity’s Information Publication Scheme statement pursuant to Part II of FOI Act can be found.	Mandatory	35
17AH(1)(e)	Correction of material errors in previous annual report	If applicable, mandatory	47
17AH(2)	Information required by other legislation	Mandatory	204

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