

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL
AFFAIRS INQUIRY INTO ACCESS TO JUSTICE (CIVIL LITIGATION REFORMS)
AMENDMENT BILL 2009

Senator Fisher asked the following question at the hearing on 27 August 2009:

Can you inform the committee of the extent to which the existing legislative requirements or other underpinning requirements on the boss of the court would (a) compel and/or (b) encourage reporting on progress of the case management measures implemented by the bill?

The answer to the honourable senator's question is as follows:

Section 18S of the *Federal Court of Australia Act 1976* requires the Chief Justice to provide the Attorney-General with a 'report of the management of the administrative affairs of the Court' annually, which the Attorney-General tables in Parliament. The Department of the Prime Minister and Cabinet provides further guidance in a document titled *Requirements for Annual Reports*. The Court's annual report for 2007-08 included information about case management strategies.

The Court's annual report includes detailed information about case management strategies along with comprehensive statistics on the numbers and types of matters that are filed, pending and finalised during each reporting year.

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL
AFFAIRS INQUIRY INTO ACCESS TO JUSTICE (CIVIL LITIGATION
REFORMS) AMENDMENT BILL 2009

Senator Barnett asked the following question at the hearing on 27 August 2009:

Can you provide evidence to the committee with respect to the current status of the caseload and backlog in the Family Court and the Federal Magistrates Court?

The answer to the honourable senator's question is as follows:

The figures for workload and backlog in the Family Court and FMC are set out in the Productivity Commission's annual *Report on Government Services* (reproduced below). The courts have also provided indicative figures for the 2008-09 report (as at 10 September 2009):

Family Court Caseload (filings including appeals)

2008-09 – approx 19,000

2007-08 – 20,600

2006-07 – 27,700

Family Court Backlog

As at 30 June 2009:

Appeals – 230 (29% > 12 months, 19.6% > 24 months)

Non-Appeal – 5,381 (23.1% > 12 months, 8.4% > 24 months)

As at 30 June 2008:

Appeals – 216 (24.54% > 12 months, 18.5% > 24 months)

Non-Appeal – 6,160 (27.8% > 12 months, 9.9% > 24 months)

As at 30 June 2007

Appeals – 223 (31.4% > 12 months, 14.3% > 24 months)

Non-Appeal – 11,002 (37.9% > 12 months, 20.2% > 24 months)

FMC Caseload (filings)

2008-09 – Approx 79,000 (excludes Federal Law filings)

2007-08 – 84,200 (includes Federal Law filings)

2006-07 – 84,500 (includes Federal Law filings)

FMC Family Law Backlog (excludes Federal Law cases)

As at 30 June 2009:

Non-Appeal – 24,826 (25.3% > 6 months, 9.4% > 12 months)

FMC Backlog (includes Federal Law cases)

As at 30 June 2008:

Non-Appeal – 26,545 (33.5% > 6 months, 17.2% > 12 months)

As at 30 June 2007

Non-Appeal – 28,041 (30.3% > 6 months, 16% > 12 months)

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL
AFFAIRS INQUIRY INTO ACCESS TO JUSTICE (CIVIL LITIGATION
REFORMS) AMENDMENT BILL 2009

Senator Barnett asked the following question to the Federal Court at the hearing on 27 August 2009:

Is there currently a backlog? What is the extent of the backlog? Can you outline for the committee the extent of the backlog? Do you have the current status regarding the average duration of a case? Has that gone up or down in the last three years?

The answer to the honourable senator's question is as follows:

As foreshadowed at the Committee hearing, the Federal Court has provided the attached collection of statistics that will soon be published in the Court's Annual Report for 2008-09.

APPENDIX 6 – 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 be slightly different from figures reported in previous years. The variations have occurred through refinements or enhancements to the Casetrack database which necessitated the checking or verification and possible variation of data previously entered.

Casetrack also records matters differently to the Court's previous system, FEDCAMS, with the effect that the Court's reports since 2004–05 have reported different figures for earlier years from those reported in those years. Casetrack records matters in the Court classified according to eleven main categories, described as 'causes of action' (COA).

As noted in Chapter 2, the Court presently reports on filings by major COA. This is an under representation of the workload as it does not include filings of supplementary COAs (cross appeals and cross claims), interlocutory applications (initiated by the filing of a notice of motion) or native title (order of party applications. In 2007–08 the Court started to count and report on notices of motion in appellate proceedings in order to provide the most accurate possible picture of the Court's appellate workload. From 2008–09 the Court will count all forms of this additional workload in both its original and appellate jurisdictions.

Table 6.4 on page 108 provides a breakdown of these matters. At this stage it is not possible to obtain information about finalisations of notices of motion (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 Chapter 3 and Table 6.4. All other tables and figures in this Appendix and through the Report are based on major COA.

In order to ensure greater transparency and accountability in the reporting of the Court's workload, a project will commence in 2009–10 to restructure the Court's statistical systems to ensure, in keeping with other jurisdictions, that the components of individual cases are counted not just the initial COA.

Table 6.1 – Summary of Workload Statistics – Original and Appellate Jurisdiction

Filings of Major COAs (including Appeals and Related Actions)						
Cause of Action	2004-05	2005-06	2006-07	2007-08	2008-09	
Total COAs						
Filed	4,495	6,157	4,925	4,430	3,864	
Finalised	4,495	6,243	5,230	4,750	4,125	
Current	3,567	3,481	3,176	2,856	2,595	
Corporations						
Filed	1,002	2,911	1,932	1,701	1,671	
Finalised	792	2,723	2,093	1,690	1,743	
Current	471	659	498	509	437	
Bankruptcy						
Filed	418	392	286	261	209	
Finalised	391	420	349	276	236	
Current	211	183	120	105	78	
Native Title						
Filed	61	68	69	34	42	
Finalised	103	93	96	76	91	
Current	638	613	586	544	495	
Total COAs (excluding Corporations, Bankruptcy & Native Title)						
Filed	3,014	2,786	2,638	2,434	1,942	
Finalised	3,209	3,007	2,692	2,708	2,055	
Current	2,247	2,026	1,972	1,698	1,585	

Table 6.2 – Summary of Workload Statistics – Excluding Appeals and related actions

Cause of Action	2004-05	2005-06	2006-07	2007-08	2008-09
Total COAs (ex. Appeals & Related Actions)					
Filed	3,129	4,826	3,543	3,076	2,991
Finalised	3,257	4,877	3,845	3,268	3,195
Current	3,008	2,957	2,655	2,463	2,259
Corporations (ex. Appeals & Related Actions)					
Filed	948	2,897	1,903	1,678	1,637
Finalised	779	2,713	2,066	1,665	1,716
Current	465	649	486	499	420
Bankruptcy (ex. Appeals & Related Actions)					
Filed	349	332	223	201	148
Finalised	333	355	290	205	168
Current	176	153	86	82	62
Native Title (ex. Appeals & Related Actions)					
Filed	51	60	50	27	37
Finalised	81	78	80	64	86
Current	623	605	575	538	489
Total COAs (excl. Appeals & Related Actions & excluding Corporations, Bankruptcy & Native Title)					
Filed	1,745	1,537	1,367	1,170	1,169
Finalised	2,064	1,731	1,409	1,334	1,225
Current	1,744	1,550	1,508	1,334	1,288

Table 6.3 – Summary of Workload Statistics – Appeals and Related Actions only

Cause of Action	2004-05	2005-06	2006-07	2007-08	2008-09
Total Appeals & Related Actions					
Filed	1,366	1,331	1,382	1,354	873
Finalised	1,238	1,366	1,385	1,482	930
Current	559	524	521	393	336
Corporations Appeals & Related Actions					
Filed	18	14	29	23	34
Finalised	13	10	27	25	27
Current	6	10	12	10	17
Migration Appeals & Related Actions					
Filed	1,053	1,053	1,061	997	515
Finalised	951	1,049	1,094	1,105	617
Current	371	375	342	234	132
Native Title Appeals & Related Actions					
Filed	10	8	19	7	5
Finalised	22	15	16	12	5
Current	15	8	11	6	6
Total Appeals & Related Actions – (excl. Corporations, Migration & Native Title Appeals & Related Actions)					
Filed	285	256	273	327	319
Finalised	252	292	248	340	281
Current	167	131	156	143	181

Table 6.4 – Summary of supplementary workload statistics

Filings of supplementary causes of action						
	2004-05	2005-06	2006-07	2007-08	2008-09	
Total actions (excluding Appeals & Related Actions)						
Cross Appeals (original jurisdiction)	1	5	12	4	5	
Cross Claims	167	216	198	177	89	
Notices of Motion	1,163	1,404	1,451	1,292	1,237	
NT Joinder of party applications	–	377	89	135	482	
Appeals & Related Actions						
Cross Appeals	16	20	14	16	21	
Notices of Motion	140	166	146	156	173	
Total actions (including Appeals & Related Actions)						
Cross Appeals	17	25	26	20	26	
Cross Claims	167	216	198	177	189	
Notices of Motion	1,303	1,570	1,597	1,448	1,410	
NT Joinder of party applications	–	377	89	135	482	
Totals	1,487	2,188	1,910	1,780	2,107	

Finalisations of supplementary causes of action						
	2004-05	2005-06	2006-07	2007-08	2008-09	
Total Actions (excluding Appeals & Related Actions)						
Cross Appeals (original jurisdiction)	0	0	5	8	1	
Cross Claims	28	106	208	185	77	
NT Joinder of party applications		377	89	135	482	
Appeals & Related Actions						
Cross Appeals	3	18	15	20	17	
Total actions (including Appeals & Related Actions)						
Cross Appeals	3	18	20	28	18	
Cross Claims	28	106	208	185	77	
		377	89	135	482	
Totals	31	501	317	348	577	

Current Cross Appeals & Cross Claims as at 30 June 2009	
Appeals & Related Actions	
Cross Appeals	16
Total Supplementary COAs (excluding Appeals & Related Actions)	
Cross Appeals (original jurisdiction)	9
Cross Claims	254
Total Supplementary COAs (including Appeals & Related Actions)	
Cross Appeals	25
Cross Claims	254
Totals	279

Figure 6.1 – Matters filed 2004–05 to 2008–09

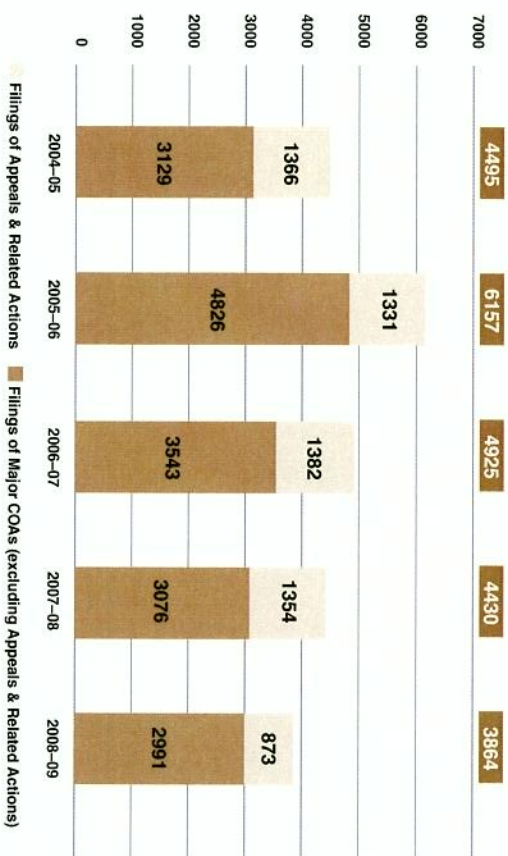
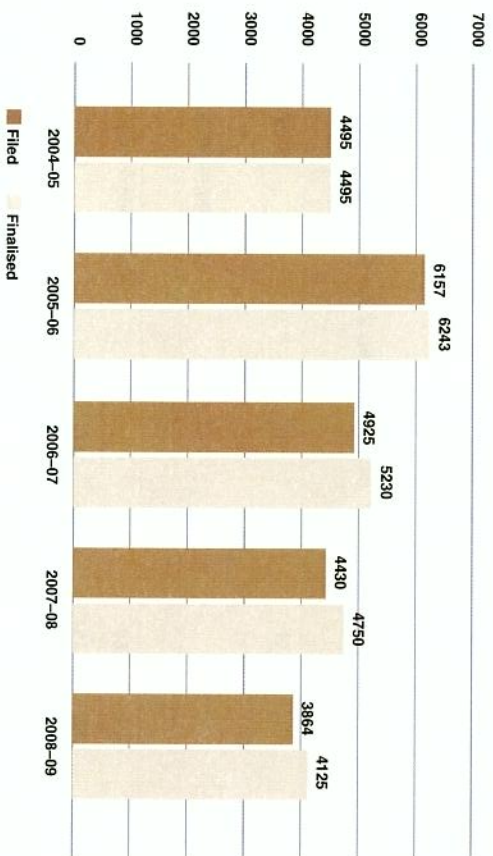
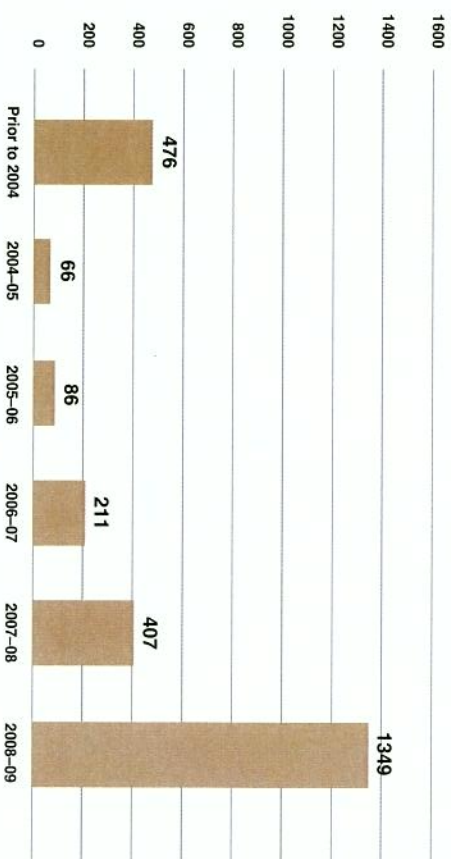


Figure 6.2 – Matters filed and finalised 2004–05 to 2008–09



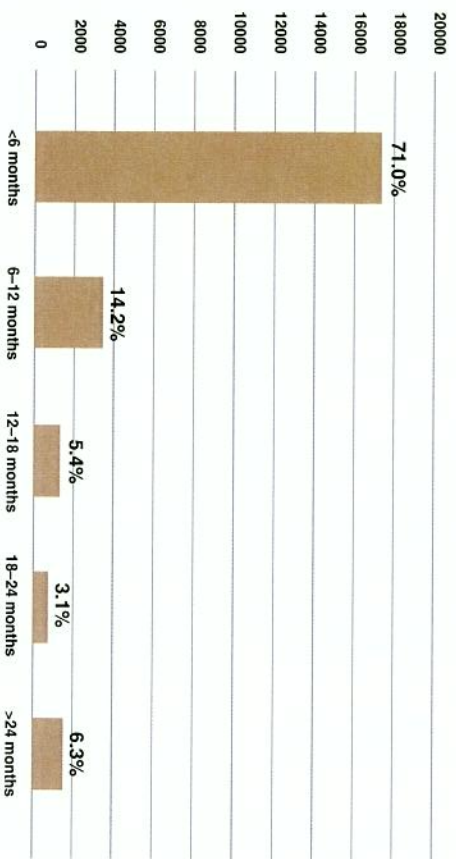
The number finalised refers to those matters finalised in the relevant financial year, regardless of when they were originally filed.

Figure 6.3 – Age and number of current matters at 30 June 2009



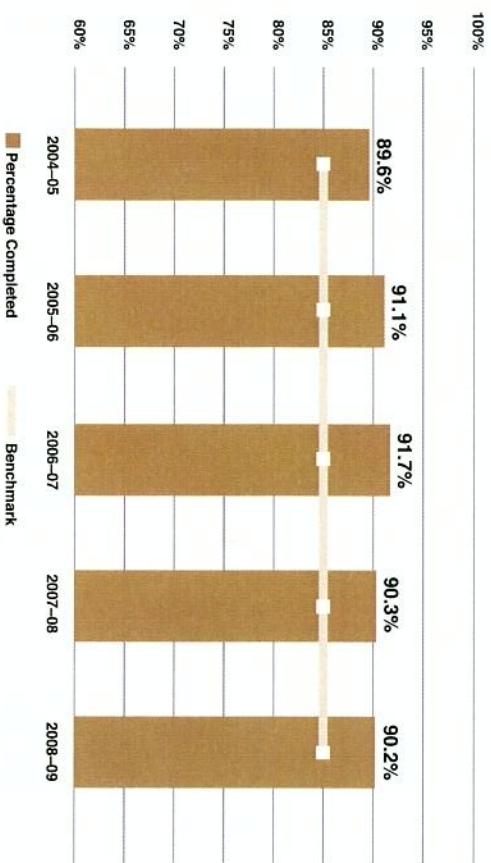
A total of 2,595 matters remain current at 30 June 2009. There were 476 applications still current relating to periods before those shown in the graph. Over 79% of cases prior to 2004 are native title matters.

Figure 6.4 – Time span to complete matters completed in the period 1 July 2004 to 30 June 2009



A total of 24,454 matters were completed during the 5 year period ending 30 June 2009, excluding native title matters. The time span, from filing to disposition of these matters, is shown in the graph above.

Figure 6.5 – Time span to complete benchmark 2004–05 to 2008–09



The total number of matters (including appeals but excluding Native Title) completed for each of the last five years and the time span for completion are shown below.

Table 6.5 - Finalisation of major COAs in accordance with 85% benchmark (incl appeals and related actions and excluding native title matters)

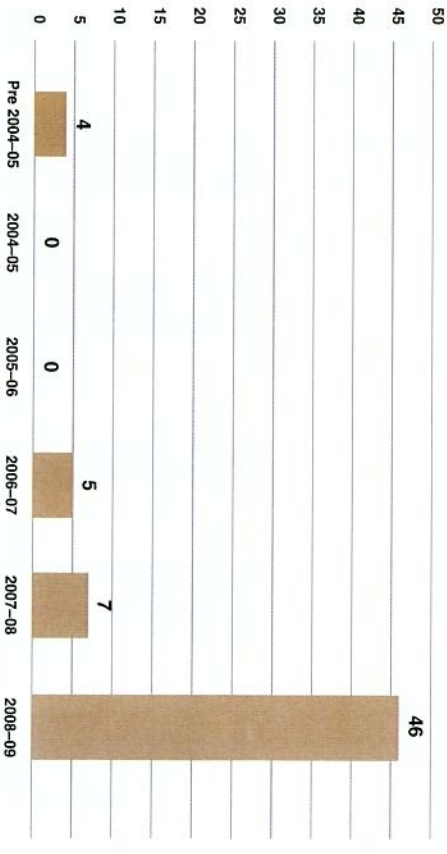
Percentage completed	2004-05	2005-06	2006-07	2007-08	2008-09
Under 18 months	3954	5616	4722	4232	3644
% of Total	89.6%	91.1%	91.7%	90.3%	90.2%
Over 18 months	460	549	428	454	395
% of Total	10.4%	8.9%	8.3%	9.7%	9.8%
Total COAs	4414	6165	5150	4686	4039

NOTE: This table covers major COAs. It cannot be compared with Table 5.5 in the 2007–08 Annual Report which included supplementary COAs in appeals for the 2006–07 and 2007–08 financial years. This information is now separately reported in Table 6.4.

Figure 6.6 – Bankruptcy Act matters filed 2004–05 to 2008–09



Figure 6.6.1 – Current Bankruptcy matters by year of filing



A total of 62 Bankruptcy Act matters remain current at 30 June 2009.

Figure 6.7 – Corporations Act matters filed 2004–05 to 2008–09

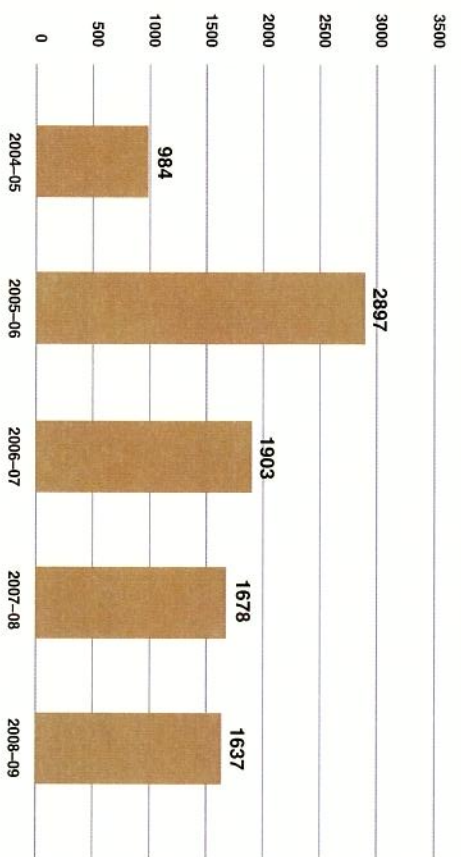
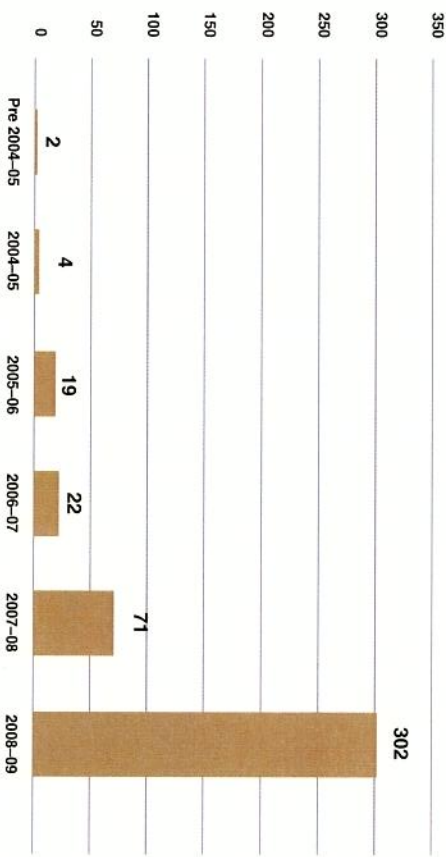


Figure 6.7.1 – Current Corporations Act matters by year of filing



A total of 420 Corporations Act matters remain current at 30 June 2009.

Figure 6.8 – Trade Practices Act matters (excluding competition law) filed 2004–05 to 2008–09

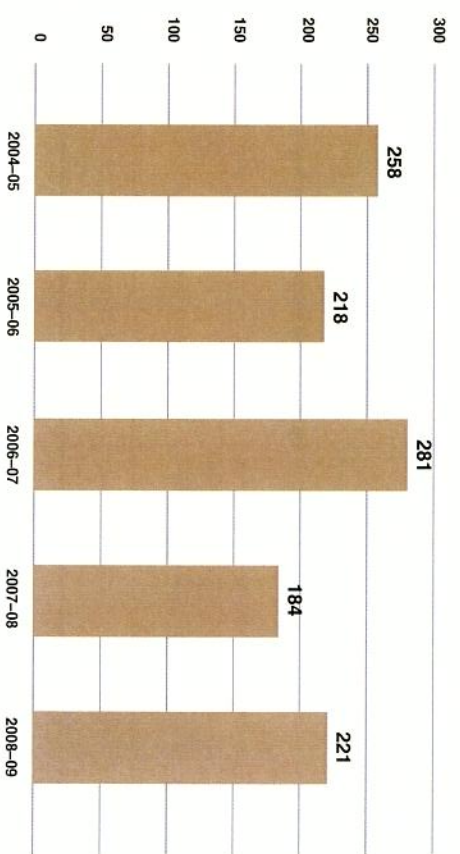
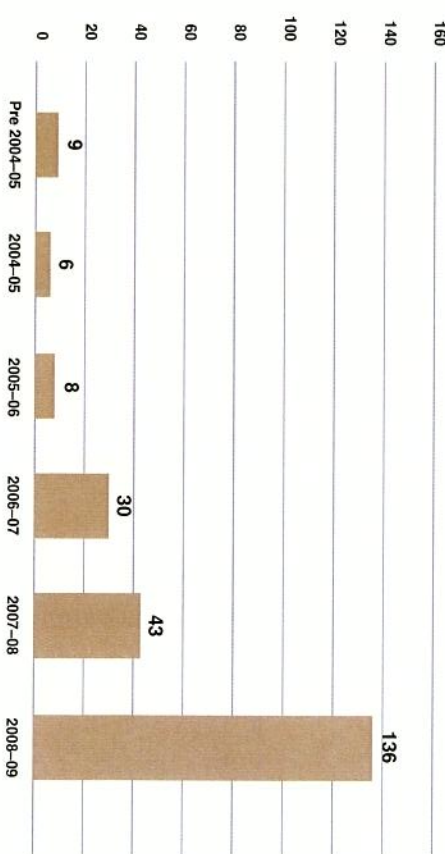
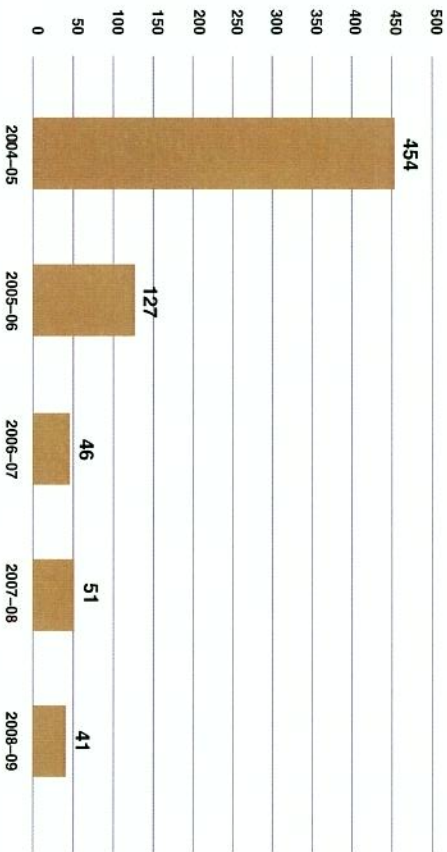


Figure 6.8.1 – Current Trade Practices Act matters (excluding competition law) by year of filing



A total of 232 non-competition law Trade Practices Act matters remain current as at 30 June 2009.

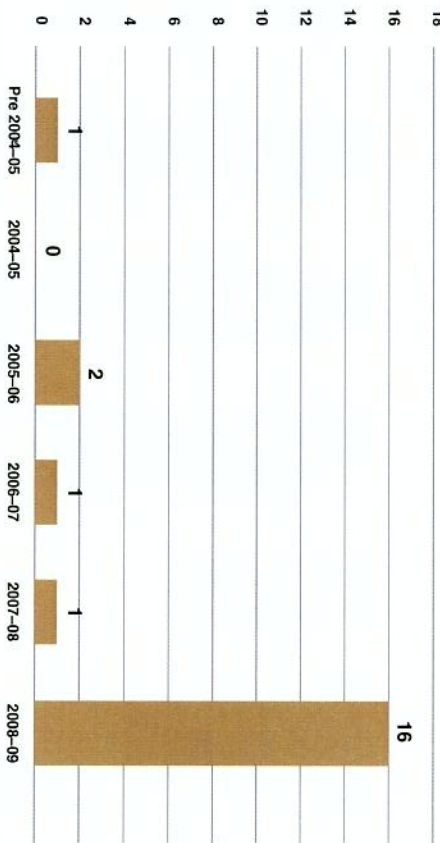
Figure 6.9 – Migration Act matters filed 2004–05 to 2008–09



These figures include migration applications filed under the Judiciary Act, Administrative Decisions (Judicial Review) Act and Migration Act.

Since 1 December 2005, when the Migration Litigation Reform Act commenced, almost all first instance migration cases have been filed in the Federal Magistrates Court.

Figure 6.9.1 – Current Migration Act matters by year of filing



A total of 21 Migration Act matters remain current at 30 June 2009.

Figure 6.10 – Admiralty Act matters filed 2004–05 to 2008–09

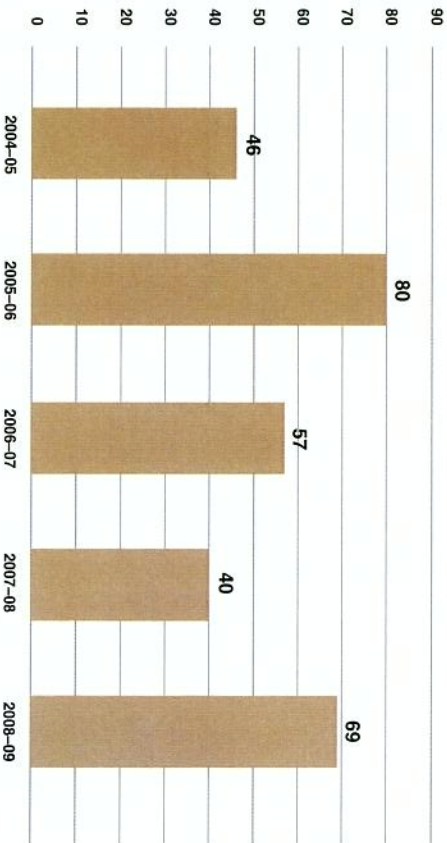
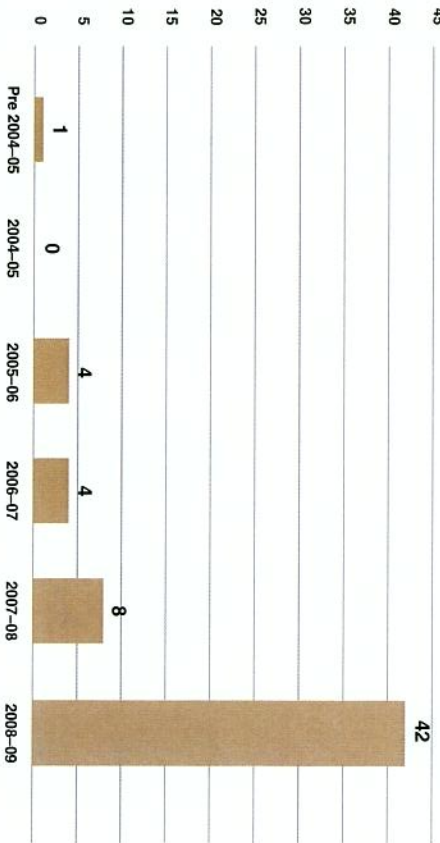


Figure 6.10.1 – Current Admiralty matters by year of filing



A total of 59 Admiralty Act matters remain current as at 30 June 2009.

Figure 6.11 – Native Title Act matters filed 2004-05 to 2008-09

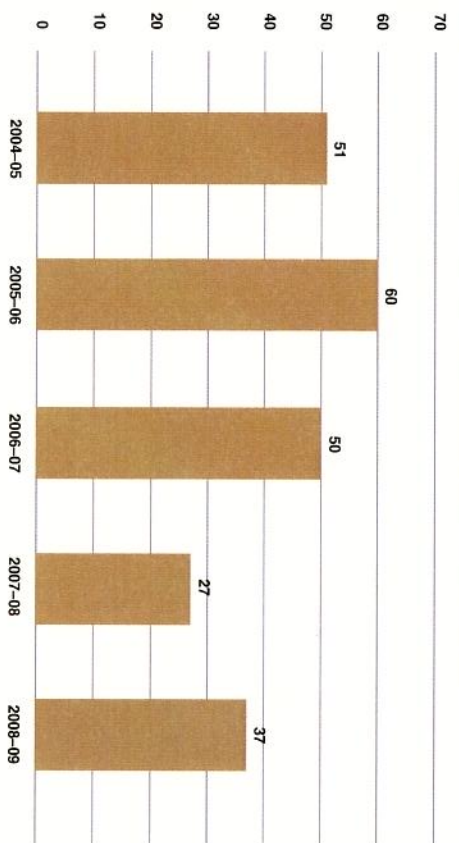
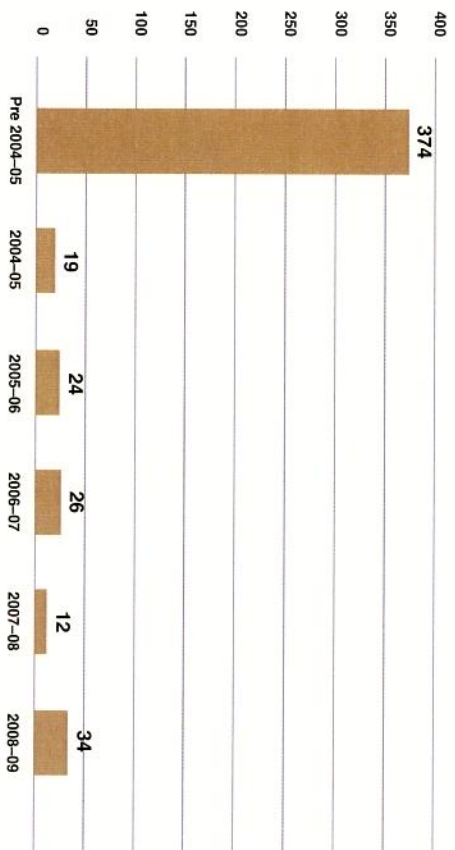


Figure 6.11.1 – Current Native Title matters by year of filing



A total of 489 Native Title matters remain current as at 30 June 2009.

Figure 6.12 – Workplace Relations matters filed 2004-05 to 2008-09

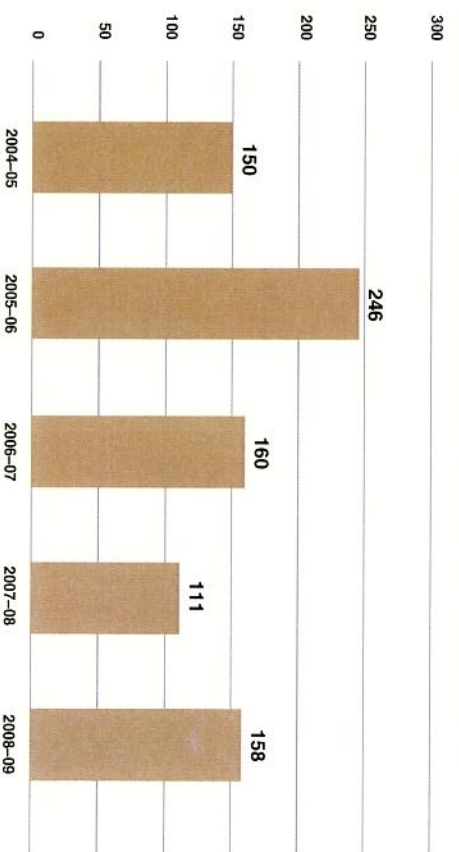
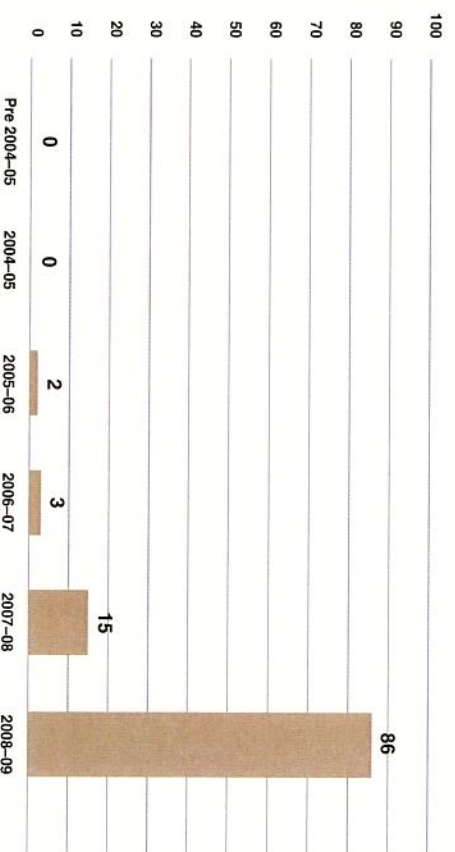


Figure 6.12.1 – Current Workplace relations matters by year of filing



A total of 106 workplace relations cases remain current at 30 June 2009.

Figure 6.13 – Taxation Matters filed 2004–05 to 2008–09

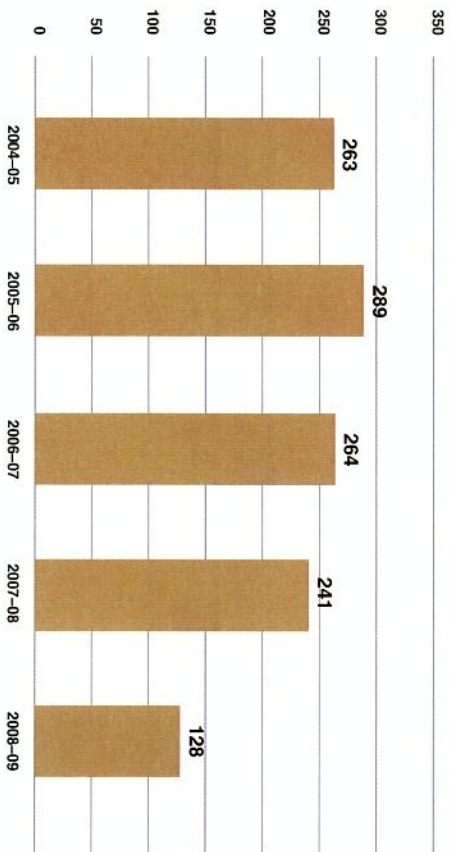
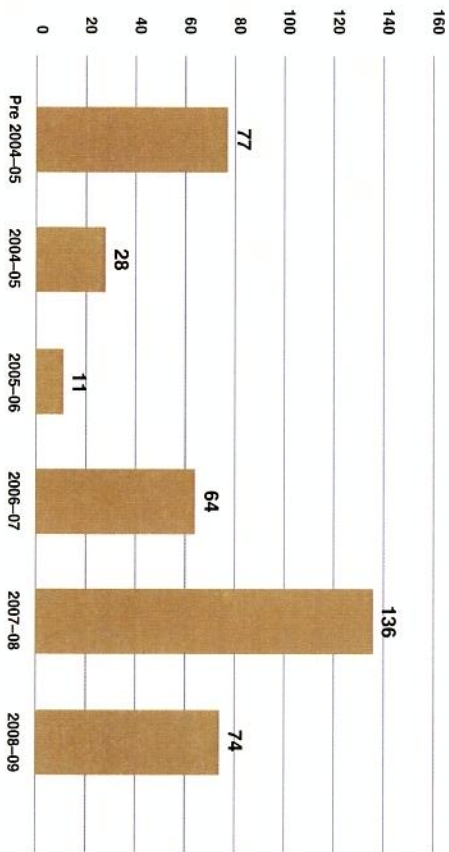


Figure 6.13.1 – Current taxation matters by year of filing



A total of 390 taxation cases remain current at 30 June 2009.

Figure 6.14 – Intellectual Property matters filed 2004–05 to 2008–09

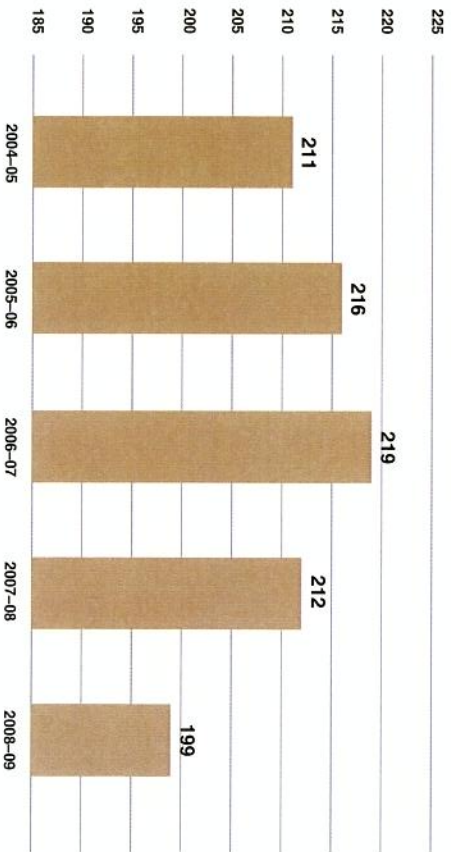
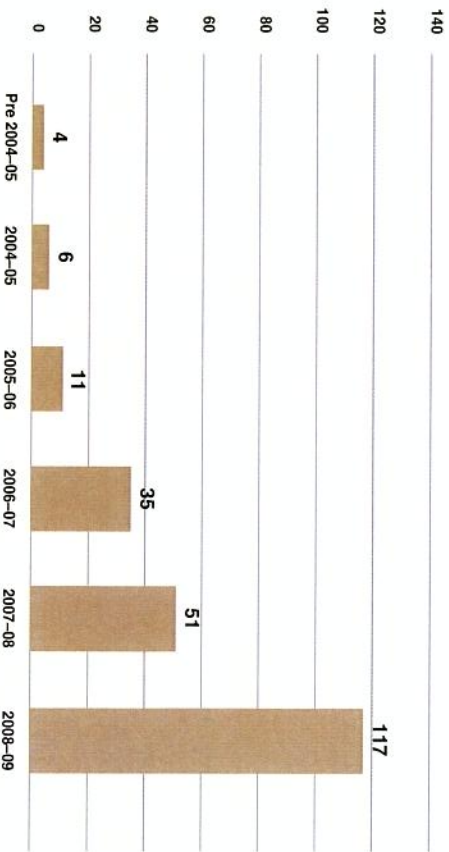


Figure 6.14.1 – Current Intellectual Property matters by year of filing



A total of 224 intellectual property cases remain current at 30 June 2009.

Figure 6.15 – Appeals and Related Actions filed 2004-05 to 2008-09

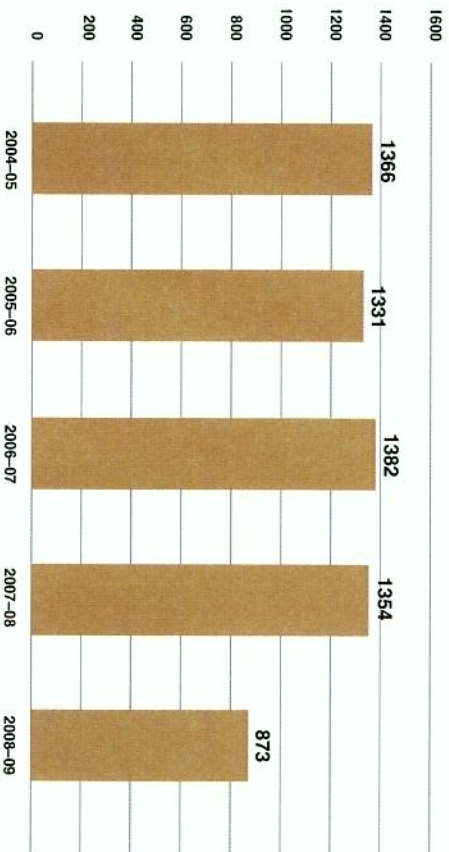
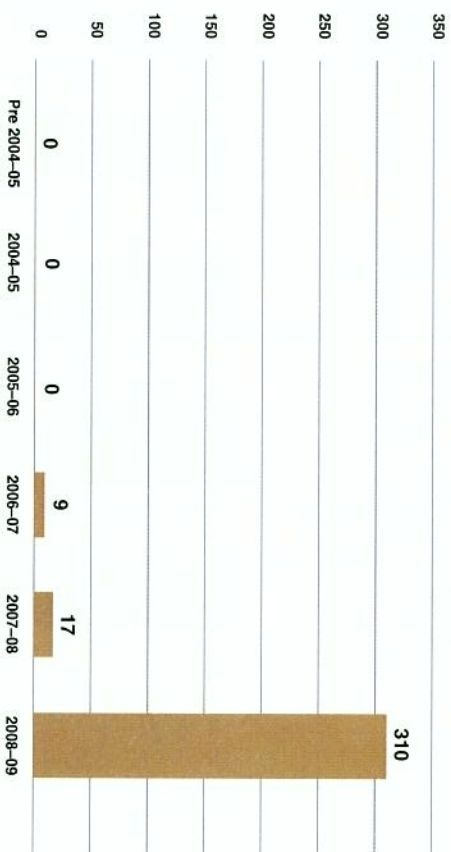


Figure 6.15.1 – Current Appeals and Related Actions by date filed



A total of 336 appeals remain current as at 30 June 2009.

Figure 6.16 – Source of appeals and related actions 2004-05 to 2008-09

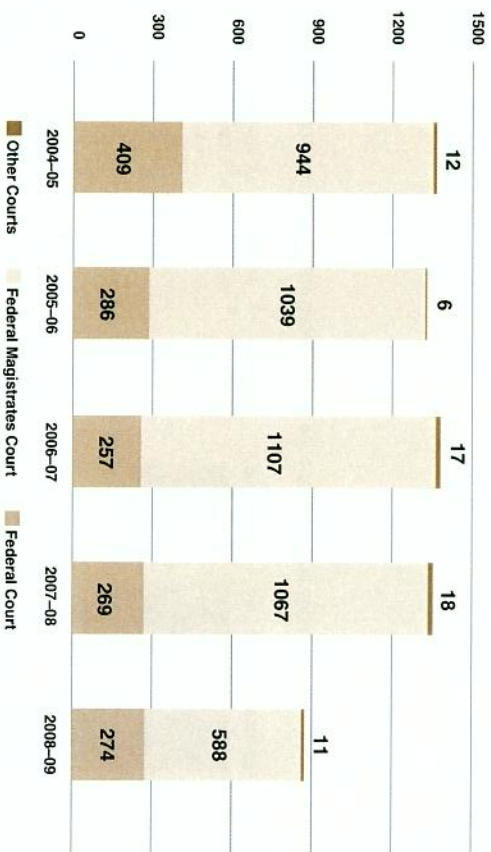


Table 6.6 – Appeals and related actions

Source	2004-05	2005-06	2006-07	2007-08	2007-08
Federal Court	409	286	257	269	274
Federal Magistrates Court	944	1,039	1,107	1,067	588
Other Courts	12	6	17	18	11
Total by Period	1,365	1,331	1,381	1,354	873