

# General law litigation in the Federal Circuit Court – insights from the bench and the bar

Doug Shirrefs, Barrister Greens List (Chair)

His Honour Judge JD Wilson QC, Judge in charge of general federal law Federal Circuit Court of Australia

Andrew Yuile, Barrister Greens List

Carolyn Symons, Barrister Greens List

**GREENS LIST**  
BARRISTERS



# Overview


- Background and scope of the jurisdiction
- Insights from the Bench, current practice and future developments
- Insights from the Bar
- Panel - questions



# Federal Circuit Court - background

- Origins and establishment
  - Has been operating since 1999
  - Court of law and equity
  - Federal Court of record
  - Marked a change in direction
    - No prior lower level Federal – previously a lot of federal law work was done in state and territory courts of summary jurisdiction under provisions of the Judiciary Act
- Objectives
  - Simpler and more readily accessible alternative to Federal Court and Family Court
  - FCC Act directs Court to operate informally and streamline procedure
  - Commitment to regional circuits
  - Prompt and efficient – vast majority of matters dealt with in 12 months

\*Source: Federal Circuit Court of Australia



# Federal Circuit Court

## - scope

- The two divisions of the Court
  - Since 2009 Fair Work division and general division
  - Anything not required to go to Fair Work division is heard by general division
- Jurisdiction
  - Vast and growing
    - The primary trial Court of the Federal system
    - Overlap between jurisdictions and, of course, non federal law
  - Shared with jurisdictions of Family and Federal Courts
  - Broadly family, administrative, admiralty, bankruptcy, copyright, human rights, migration, privacy, consumer law, consumer credit
  - Historically, about 95 % of bankruptcy and migration applications filed in federal courts

\*Source: Federal Circuit Court of Australia





# Federal Circuit Court

## - insights from the Judge in Charge (1)

- Current operations
  - Workload – breadth of work, volume of work, average duration of matters
  - Staffing – allocation of work between registrars and judges
  - Objectives for hearing and determining matters
  - Hot spots and identified areas for change/development



# Federal Circuit Court - insights from the Judge in Charge (2)

- Future developments
  - Recent changes, including the role of the Honourable Justice Alstergren QC, chief judge of the Federal Circuit Court, and his Honour Judge Wilson QC
    - Recent judicial appointments to the Victorian Registry
  - Challenges the Court is facing and plans to meet those challenges
    - Procedures for listing and considering new matters
    - Changed roles for Registrars



# Federal Circuit Court - insights from the Judge in Charge (3)

- When/Why you should consider litigating in the General Federal Law List ?
  - Overlapping areas of law
    - ie) contract and misleading conduct
  - Overlapping claims
    - ie) third party property claims in family matters
    - ie) the rights and obligations of bankrupts in family matters
  - Exclusive jurisdiction of the Court
  - Enforcement issues – interstate judgements or arguments regarding forum



# Federal Circuit Court - insights from the bar (1)

- Unique aspects of Federal Circuit Court practice
  - The use of technology in remote circumstances
    - Case management conferences by telephone
    - The use of telephone or video requires some informality
  - The need to develop a different skills set
  - The use of written evidence
    - The need for preparation of material
    - The limits on cross examination
  - The skills of written advocacy





# Federal Circuit Court - insights from the bar (2)

- Some common issues in bankruptcy matters
- Top tips for practice
  - Filing fees compared to Federal Court
    - In many matters it's the economical solution
  - Streamlined process and quick turnarounds
  - Costs certainty
    - The general practice is to fix costs
  - Court offered financial counselling
    - Benefits if matters involve self-represented respondent debtors
  - High volume of work means highly experienced judicial officers



# Federal Circuit Court - insights from the bar (3)

- Some common issues in migration matters
- General observations
  - Know your judge and what they expect
  - Get the paperwork right early
  - Know the Rules and the Court's powers
- Specific observations
  - Time limits, extensions of time and section 39B applications
  - Applications and Amended Applications
  - Non-appearances
  - Tips on preparation in a complex field



# Federal Circuit Court

- your opportunity to ask the panel

- Questions????



# Contact details

- Doug Shirrefs - [dshirrefs@vicbar.com.au](mailto:dshirrefs@vicbar.com.au)
- Tel: 0422 372 404
- Andrew Yuile – [ayuile@vicbar.com.au](mailto:ayuile@vicbar.com.au)
- Tel: 0421 352 754
- Carolyn Symons – [symons@vicbar.com.au](mailto:symons@vicbar.com.au)
- Tel: 0410 660 434