



# NSW dominates corporate cases

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Legal editor

The NSW Supreme Court has become the dominant court in Australia for dealing with commercial disputes. Its judges handed down nearly half of all corporate law judgements in Australia this year.

The figures, from the Centre for Corporate Law and Securities Regulation (CCLSR) at the University of Melbourne, confirm the private fears of judges and senior lawyers outside NSW that their courts are losing out when companies and their lawyers decide where to litigate.

Though the study is evidence of the move by many companies to establish headquarters in Sydney, the sheer dominance of the NSW Supreme Court is likely to surprise many.

Twenty-seven per cent of all corporate law judgements this year were handed down in the Federal Court. In NSW, the Supreme Court's share of corporate judgements was almost double that of its federal equivalent, at 47 per cent.

And while the NSW Federal Court registry dominates its interstate counterparts, with 43.3 per cent of all Federal Court judgements – 91 out of 210 judgements nationally – the NSW Supreme Court delivered five times that many in the same period.

The quality of NSW Supreme

Court judges such as Robert Austin (formerly of Minter Ellison), Kim Santow (from Freehills) and Reg Barrett (from Mallesons Stephen Jaques), has been credited for the dominance of the court.

"I have no doubt in my mind that numerous practitioners choose the Supreme Court of NSW to litigate corporation matters because of the high quality of the judges," NSW Chief Justice Jim Spigelman told *The Australian Financial Review*.

"The breadth of experience brought to the court by justices

**"Only 7.6pc were handed down in Victoria."**

Santow, Barrett and Austin has enhanced the court in numerous ways, including in their detailed knowledge of the practical application of corporations law."

CCLSR director Ian Ramsay said one reason for the NSW Supreme Court's dominance was that it drew judges from a wider pool. But the Australian Securities and Investments Commission also preferred to use the court when it had the option.

"It is interesting that much of the big litigation, including the big corporate collapses and important cases defining directors' duties, has occurred in NSW," he said.

Last week, two senior judges

from the Victorian Supreme Court held a session for the Victorian Bar highlighting the success of changes to its rules and procedures in achieving greater efficiencies. This was widely interpreted as an attempt to raise the court's profile. Federal Court Chief Justice Michael Black told members at a Victorian Commercial Bar function they could no longer rely on getting local work just because they were based in Melbourne.

The figures from CCLSR confirm those concerns – only 7.6 per cent of this year's corporate law judgements were handed down in Victoria.

Professor Ramsay said the figures also showed how strongly the Federal Court had emerged after the decision in *Re Wakim*, which struck down the cross-vesting legislation, under which the Federal Court was given the power to hear matters arising under state corporations laws.

The effect of this judgement was to eliminate virtually all the Federal Court's jurisdiction to hear matters arising under those acts.

From July 1999 to March 2000, corporations law cases filed in the Federal Court averaged less than one a month. So the Federal Court has clearly come back strongly since the states referred their powers to the commonwealth in 2001 and the Corporations Act was enacted, allowing the Federal Court to once again hear corporate law matters.



**COURT IN THE ACT**



**Corporate law judgements in the past year** Total 773

Fed Court	High Court	AAT	SC NSW	SC Vic	SC Qld	SC SA	SC WA	SC Tas	SC ACT	SC NT
210	8	9	348	59	58	45	32	2	2	0
27.1%	1.0%	1.2%	45.0%	7.6%	7.5%	5.8%	4.1%	0.3%	0.3%	0%

**Federal court judgements by state registry** Total 210

NSW	Vic	Qld	SA	WA	Tas	ACT	NT
91	57	12	11	34	0	3	2
43.3%	27.1%	5.7%	5.2%	16.2%	0%	1.4%	0.9%