



MAGISTRATES COURT

OF THE AUSTRALIAN CAPITAL TERRITORY

ANNUAL REVIEW
2016–17



Year at a glance

ACT MAGISTRATES COURT 2016–17

CRIMINAL
MATTERS FINALISED

 **5861**

CIVIL
CLAIMS FINALISED

 **1732**



PROTECTION
APPLICATIONS

1830

INTERIM ORDER
APPLICATIONS

1646

INDUSTRIAL COURT
MATTERS FINALISED

 **486**

CHILDRENS COURT

CARE MATTERS
FINALISED

208

CRIMINAL
MATTERS FINALISED

 **238**

MATTERS
SENTENCED IN
GALAMBANY COURT

 **45**

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Foreword

BY CHIEF MAGISTRATE OF THE ACT

The 2016–17 year has in many ways been a difficult one for the ACT Magistrates Court.

This year saw the introduction of the new *Family Violence Act 2016* and *Personal Violence Act 2016* which required a significant overhaul in registry processes to support its implementation. I am pleased to report that registry met that challenge and the legislation was introduced smoothly with little to no impact on the public as a result of the changeover. In order to facilitate efficient resolution of interim applications before the court, I delegated further responsibility under the legislation to the registrar and senior deputy registrars. I am pleased to say that applications may be made any week day and applications for interim orders will generally be heard and determined by the court on the morning the application is made. On occasions, matters are delayed until the afternoon when there are numerous applications or where an application is required to go before a magistrate for review but such cases are few and are still almost invariably dealt with on the day the application is made.

The court has also contended with the significant disruption associated with construction of the new law courts precinct. Registry staff in particular have had to accommodate numerous relocations, as well as experiencing noise and functional disruption. I am delighted to say that despite this, staff have rarely missed a beat in their support of court operations. There has been some direct disruption of court proceedings although the project managers have been required to keep this to an absolute minimum. The profession and public have also been inconvenienced to some extent by the impact on court facilities and unfortunately this will continue well into the next year. On a more positive note, the court has had the benefit of improved audio-visual facilities which have increased access to justice, including by allowing bail applications to be made from the ACT prison without remandees being produced to court and better availability of court rooms for proceedings requiring audio-visual facilities.

The court has continued to struggle with resourcing in both registry and the judiciary. Staff have been taken off-line from the day-to-day work in order to support implementation of the ICMS data system placing considerable strain on remaining staff. Further, despite independent modelling supporting the need for nine magistrates in the court, the government has to this point refused to commit to the appointment of even an eighth. The government has also failed to respond to calls from both the community and the court for the appointment of a dedicated coroner. The court was left in the invidious position of not knowing whether special magistrates would be reappointed until nearly the end of the 2016–17 financial year which placed a significant stress on listing processes.

Despite this, the court has managed to continue to list relatively efficiently utilising block listing and over listing processes to meet demand. Unfortunately, matters, both criminal and civil, continue to resolve at a very late stage, creating some inefficiency in the use of court time.

In furtherance of the aim of early resolution, a new alternative dispute resolution manager position was created and filled in the court this year. This reflects the court's commitment to improving and increasing access to timely resolution of matters. The team was nominated for an Australia Disputes Centre award for its work in conferencing protection order matters.

The magistrates continue to engage in judicial development programs and activities to enhance delivery of justice to the approximately 95% of the community whose legal disputes are resolved in this court.

The majority of ACT magistrates attended a specialist family violence education program run by the Victorian Judicial College in February 2017 and were well informed in relation to the psychology of family violence and its treatment and particular difficulties experienced by indigenous women and women of culturally and linguistically diverse backgrounds in relation to reporting and seeking support in relation to family violence.

As part of a continuing commitment to improving understanding of indigenous culture and barriers to justice, the majority of magistrates attended a cultural exposure tour to the Tidbinbilla nature reserve which they found informative. A highlight of this year was a full day conference initiated by the joint Courts Cultural Diversity Committee entitled "Access to Courts for Aboriginal and Torres Strait Islander People" which was held at the Aboriginal and Torres Strait Islander Cultural Centre at Yarramundi Reach in May 2017. The outcomes of that conference will inform the Court's access to justice initiatives in 2017–18.

The judiciary reflected this year on its priorities; the outcomes and the administration's planned measures in support have been incorporated into the 2017–20 corporate plan which is available on the Magistrates Court website. I encourage readers to consider the priorities and values detailed there to which this court is committed.

Foreword

BY PRINCIPAL REGISTRAR OF THE ACT COURTS AND TRIBUNAL

During 2016–17 the courts administration continued to focus on the new courts facility, the new case management system (ICMS), courts governance and how the organisational structures and processes best support the business of the Magistrates Court.

The design and construction of the new courts facility has included significant upgrades to the Magistrates Court courtrooms, including the installation of new audio-visual facilities and related technologies, and chambers. The refurbishment of the combined courts registry commenced in early 2017 and I would like to thank staff for their patience as this work progresses while we maintain business as usual.

The civil release for the ICMS was successfully implemented in September 2016. Work continued on the programming for the criminal release of the ICMS that is due to be completed in mid-2018. The implementation of major changes arising from the new family violence legislation that commenced in May 2017 has impacted on the timetable for the criminal release. The criminal release is the most complex of the releases and will also include interfaces with a number of justice agencies and the first tranche of online services.

During the reporting year the administration worked with the Court to develop an implementation plan based on the assessment carried out by Michael Vallance from the Supreme Court of Victoria and Anne O’Hehir from Court Services Victoria of the Court’s current performance, customs and practices against the criteria of the International Framework for Court Excellence. The implementation plan will guide a range of initiatives to be undertaken during 2017–18.

During 2017 the Magistrates Court published its first strategic statement as part of the ACT Courts and Tribunal’s corporate plan. The strategic priorities identified in the statement will help ensure the administration is focused on those matters of most importance to the Court and will guide initiatives to strengthen staff and financial management within the administration and improving customer services.

During the reporting year the administration updated the emergency management and business continuity policies and related arrangements for the Court. This included negotiating arrangements with other courts to use their facilities in the event that the ACT facilities become unavailable.

The last 12 months have again been a particularly busy and productive period for the administration as major projects and other activities have made significant progress while staff also provided a range of high quality registry and corporate services to the Court. I would like to acknowledge the hard work and commitment of staff that has made this to occur.

I look forward to working with the Chief Magistrate, Magistrates, Special Magistrates and staff over the next 12 months as we continue to progress a number of important projects and initiatives that will enhance the Court’s operations.

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— Magistrates Court: Our People —

THE MAGISTRATES

The full-time judicial officers of the Magistrates Court are appointed by the Executive pursuant to s. 7 of the *Magistrates Court Act 1930*. Each magistrate is also a coroner pursuant to s. 5 of the *Coroner's Act 1997*.

Special Magistrates are appointed by the Executive pursuant to s. 8 of the *Magistrates Court Act*.

In the ACT, Special Magistrates hear the same kinds of matters as the full-time magistrates.



In 2016–17 the judicial officers of the court are as follows:

CHIEF MAGISTRATE



WALKER, Lorraine Anne

Magistrate
19 July 2010 – 12 October 2011
Chief Magistrate
13 October 2011

MAGISTRATES

DINGWALL, Peter Geoffrey

Appointed 26 April 1990 retired 17 August 2016



FRYAR, Karen Margaret, AM

Appointed 6 September 1993



CAMPBELL, Lisbeth Ellen

Appointed 5 August 1998



MORRISON, Peter John

Appointed 14 February 2012



BOSS, Bernadette Carmel, CSC

Appointed 8 May 2012



COOK, Robert Matthew

Appointed 11 September 2013



Theakston, Glenn Sacha

Appointed 30 May 2016

SPECIAL MAGISTRATES



DOOGAN, Maria Krystyna

Magistrate

5 August 1998 – 30 March 2012

Special Magistrate

24 May 2013 – 6 May 2017



CUSH, Kenneth Michael

Appointed September 2008 – September 2010

and reappointed on 24 May 2013

and 7 May 2017



HUNTER, Margaret Ann OAM

Appointed 21 May 2014 and

reappointed on 7 May 2017



MULLIGAN, Dominic Hugh

Appointed 21 May 2014 – 6 May 2017

THE REGISTRAR



The Registrar of the Magistrates Court is appointed by the Minister pursuant to s. 9 of the *Magistrates Court Act*. The jurisdiction of the Magistrates Court, exercisable by the Registrar, is set out in part 6.5 of the *Court Procedures Rules 2006*. Ms Amanda Nuttall is the Registrar of the Magistrates Court. She has also been appointed as Deputy Coroner of the Coroners Court. The Registrar is supported by the Legal Manager, a legal officer, Counsel Assisting Coroners, ADR Manager, a conferencing team and registry staff.

The Registrar may appoint deputy registrars of the court, bailiffs and other officers that are required for the operation of the court. Subject to the *Magistrates Court Act* and to any directions of the Registrar, a deputy registrar may exercise the functions of the Registrar.

The work of the Registrar involves a range of civil matters and in-chambers work to support the court, including issuing search warrants, issuing summons for breach of good behaviour orders, determining various civil applications and motions, enforcement hearings, and determining applications for interim family violence, personal protection, and workplace protection orders.

COURT STAFF

Staff members of the Court Registry provide administrative support to allow for the efficient operation of the court. Responsibilities of staff members include processing, filing and preparing court documents, settling court orders and maintaining accurate court records. Registry staff members possess sound operational knowledge of the Magistrates Court jurisdiction, practices and procedures, and support court users by providing procedural advice and assistance.

LONG-SERVING STAFF

The Magistrates Court has been privileged to have a number of long-serving staff members who are acknowledged for their contributions and dedication. Their assistance has been integral to the functioning and development of the court. We give particular mention to a recently retired staff member, Denise Spratt who commenced work with the ACT Courts on 16 August 1978 and retired on 28 September 2016.

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Overview

HISTORY

The Magistrates Court commenced as the Court of Petty Sessions and was established on 25 November 1930 as the Territory's first court. Prior to its establishment, Territorians were required to travel interstate to Queanbeyan, Goulburn or Cooma to have their legal matters heard. Appeals from the court were heard in the High Court until the Supreme Court commenced on 1 January 1934.

In 1929 Attorney-General Latham accepted Acton House as a suitable building for court proceedings. Later that year the building was refurbished and converted for court use.

Visiting magistrates presided over the court until 1949 when Francis Keane was appointed as the first resident magistrate. However, it was not until 1974 that Charles Kilduff became the inaugural Chief Magistrate, holding office until 1980. In 1977, under the *Court of Petty Sessions Amendment Act*, magistrates became independent judicial officers rather than public servants.

On 8 May 1963 the Court of Petty Sessions was relocated to the Law Courts building in Knowles Place which was opened by Sir Robert Menzies. By the 1980s the workload of both the Court of Petty Sessions and the Supreme Court had significantly increased. As such, additional facilities were organised in order to accommodate the growing workload of the courts. On 1 February 1986 the Court of Petty Sessions was renamed as the Magistrates Court. The current Magistrates Court building was completed in 1996. The courts precinct is to be renovated, with work having commenced in 2016.

FUNCTIONS

The Magistrates Court operates under the *Magistrates Court Act*. It has jurisdiction to hear a wide range of matters across both the civil and criminal jurisdictions. The *Magistrates Court Act* also established the Childrens Court, the Family Violence Court, the Galambany Court, and most recently, the Industrial Court. The Coroners Court operates in the same building. Each magistrate is also a coroner and the Registrar is appointed as a Deputy Coroner.

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Work of the Court

CRIMINAL JURISDICTION

The majority of the Magistrates Court's work is in the criminal jurisdiction. The Magistrates Court has jurisdiction to hear all summary offence matters. Summary offences are ACT offences that carry a maximum sentence of two years imprisonment or less, and Commonwealth offences with a maximum penalty of one year imprisonment.

The Magistrates Court's jurisdiction is expanded in certain circumstances to hear more serious offences (indictable offences) where either the prosecution elects to have the offence heard summarily, or the defendant consents to the jurisdiction of the Magistrates Court. Where the prosecution elects, the maximum penalty that can be imposed for that offence is a fine of \$5 000 and/or two years imprisonment. Where there is consent of the defendant, the maximum penalty that can be imposed for that offence is a \$15 000 fine and/or five years imprisonment for each offence. With this expanded jurisdiction, the court hears many serious matters including aggravated robbery and aggravated burglary and serious offences of a violent or sexual nature.

All criminal matters commence in the Magistrates Court and approximately 97% are finalised in this Court.

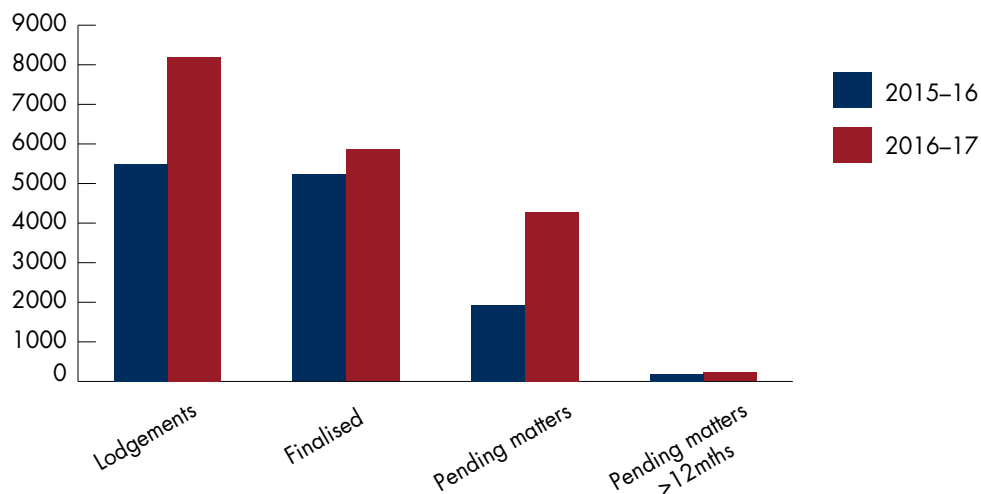
There are a number of diversionary and specialist aspects to the court's criminal jurisdiction, some of which are detailed below, including restorative justice and the Galambany Court.

Additionally, the court has an important diversionary role in identifying where there are mental health illnesses that impact on a defendant's level of moral culpability, or the need for a response that is directed towards their health needs rather than a criminal justice response.

In the reporting year, the court referred 133 defendants to a health facility under s. 309 of the *Crimes Act 1900* for an assessment of the defendant's requirement for immediate treatment or care for mental health reasons. Nineteen defendants were referred to the ACT Civil and Administrative Tribunal for assessment as to whether a treatment order was required under the *Mental Health (Treatment and Care) Act 1994*. The court determined pursuant to s. 335 of the *Crimes Act 1900*, that there were 43 defendants who were unfit to enter a plea.

Between 1 July 2016 and 30 June 2017

	2015-16	2016-17	% variance	% variance exclusive of fail to vote
Lodgements	5504	8202	+49%	+15%
Finalised	5227	5861		+12%
Pending matters	1936	4278	+120%	+23%
Pending matters >12mths	197	227		+15%



The increased lodgements are a result of the 1880 lodgements by the Australian Electoral Commission for fail to vote, these matters will be finalised in the next reporting year. Without these, lodgements would have increased to 6322 and pending matter would be 2398.

This will also be represented by an increase in the overall pending figure as these matters await finalisation.

CIVIL JURISDICTION

The court has a broad jurisdiction to hear and determine applications in its civil jurisdiction. These include claims for damages, such as personal injury, breach of contract, and debt and applications under the *Family Violence Act 2016* and the *Personal Violence Act 2016*.

On 15 November 2016, section 266A of the *Magistrates Court Act 1930* was amended to prohibit the filing of claims for civil disputes if an amount of not more than \$25 000 is claimed, or sought to be declared as a debt. This results in the jurisdiction of the Magistrates Court now being between \$25 000 and \$250 000, those matters up to \$25 000 are now lodged in the ACT Civil and Administrative Tribunal.

Other matters that are determined by the court are matters under the *Leases (Commercial and Retail) Act 2001* in which there is not a financial limit, claims for criminal injuries compensation under the *Victims of Crime (Financial Assistance) Act 1983 (the 1983 Act)*, and workers compensation claims under the *Workers Compensation Act 1951*. Workers compensation matters are now heard by a specialist Industrial Court Magistrate. Further details are provided later in this report. On 1 July 2016, the *Victims of Crime (Financial Assistance) Act 2016* commenced and the 1983 Act was repealed. Applications for financial assistance are no longer lodged with the ACT Magistrates Court and are now administered through the Victims of Crime Commissioner. Transitional provisions provided for lodgements in the Magistrates Court for incidents that occurred up to 30 June 2016 to be lodged with the Court until 30 June 2017. Any matters that occurred from 1 July 2016 are to be lodged with the Commissioner.

Between 1 July 2016 and 30 June 2017¹

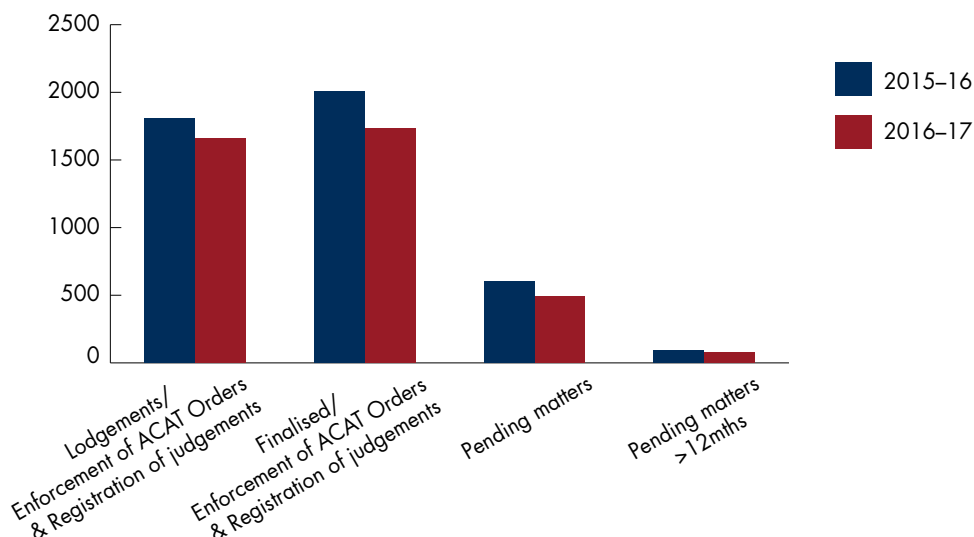
	2015–16	2016–17	% variance
Lodgements	1811*	1177**	
Enforcement of ACAT Orders & Registration of judgements		482	
Total	1811	1659	-8%
Finalised	2006*	1250**	
Enforcement of ACAT Orders & Registration of judgements		482	
Total	2006	1732	-8%
Pending matters	603***	495	-17%
Pending matters >12mths	89	76	-15%

* inclusive of ACAT enforcement matters and registration of interstate judgments

** exclusive of ACAT enforcement matters and registration of interstate judgments

*** last year this figure was reported inclusive of pending matters in the domestic violence and protection orders jurisdiction, this has been adjusted this year to be consistent with the separate counting of these matters below.

¹ These figures exclude lodgements, pending and finalisations for domestic violence, family violence and personal violence orders



There has been a decrease in civil lodgements in the reporting year from the previous reporting year. A proportion of this reduction follows the repeal of the *Victims of Crime (Financial Assistance) Act 1983* and the increase in jurisdiction of civil claims to the ACT Administrative and Civil Tribunal. However, there is still an overall reduction in lodgements of civil matters in the reporting year.

With the transition to the new Integrated Court Management System, civil figures have been granulated. In the reporting year, applications to enforce ACAT orders and registration of interstate judgments have been separated from general civil lodgements.

DOMESTIC VIOLENCE, FAMILY VIOLENCE AND PROTECTION ORDERS

Approximately 50% of the matters lodged in the court's civil jurisdiction are focused on the important social issue of family and personal violence. This requires a unique approach within the legal system.

The court lists applications for interim family violence and protection orders on a daily basis.

The *Family Violence Act 2016* and the *Personal Violence Act 2016* commenced on 1 May 2017 and the *Domestic Violence and Personal Orders Act 2008* was repealed. Legislation previously provided for the making of domestic violence orders; the newly commenced legislation provides for the making of family violence orders. The definition of family violence was broadened and strengthens the focus on a range of behaviours that constitute family violence.

The court can issue orders prohibiting a person from engaging in family violence. Family violence includes:

- (a) any of the following behaviour by a person in relation to a family member of the person:
 - (i) physical violence or abuse;
 - (ii) sexual violence or abuse;
 - (iii) emotional or psychological abuse;
 - (iv) economic abuse;
 - (v) threatening behaviour;
 - (vi) coercion or any other behaviour that—
 - (A) controls or dominates the family member; and
 - (B) causes the family member to feel fear for the safety or wellbeing of the family member or another person; or
- (b) behaviour that causes a child to hear, witness or otherwise be exposed to behaviour mentioned in paragraph (a), or the effects of the behaviour.

Personal violence orders prohibit personal violence which includes conduct such as physical violence or abuse, sexual violence or abuse, threatening behaviour, stalking, harassing, intimidating or offensive behaviour, and/or property damage. Orders may also prohibit a respondent from having contact with the applicant and other named persons or from being within a certain distance of the applicant and other named persons.

The court is supported in this area of work by the Protection Unit. The team is engaged in processing applications for interim and final orders. Upon the making of an order, the Protection Unit processes the order on the same day and provides it to ACT Policing for service of documents upon the respondent. The team also assists in directing parties to support services within the court precinct, such as Legal Aid and the Domestic Violence Crisis Service.

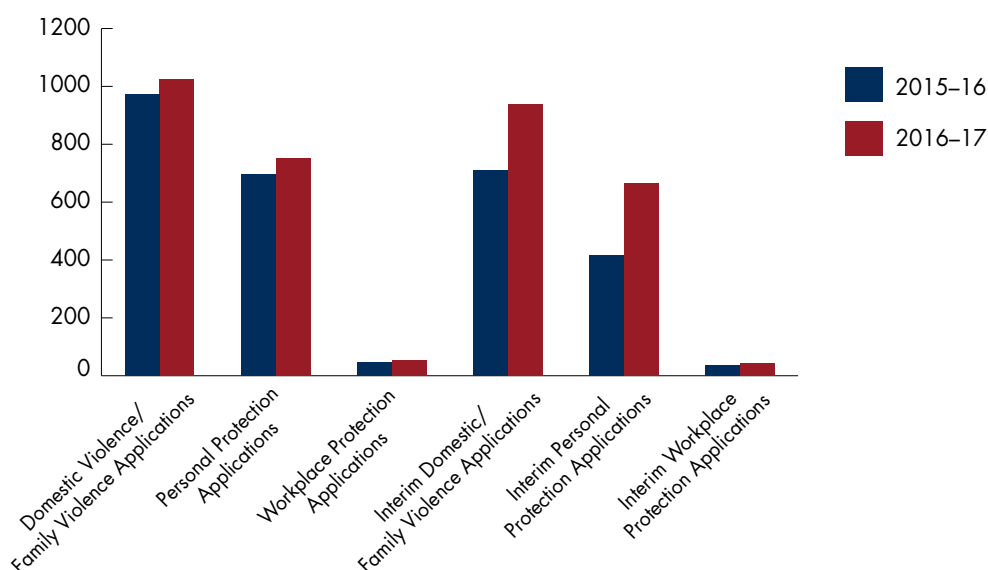
All applications for family violence and personal violence orders are set down for a conference before a deputy registrar to explore an agreed outcome between the parties. Matters are usually scheduled for conference within four weeks of an interim order being made and within 10 days where there is no application for an interim order or where an interim order has been refused.

In order to ensure the optimum service to members of the public seeking protection from family violence and personal violence, the jurisdiction of the Registrar has been expanded to ensure parties are heard quickly. The Registrar hears applications for interim orders and applications for final orders when a respondent has been served with relevant documents but has not attended at Court.

Where a matter is unable to be resolved at conference, it will proceed to a hearing before a magistrate. Hearings are listed on a weekly basis and are generally heard within 10–12 weeks of the conference.

Between 1 July 2016 and 30 June 2017

	2015-16	2016-17	% variance
Applications for final orders			
Domestic Violence Applications	972	843	
Family Violence Applications		181	
Total	972	1024	+5%
Personal Protection Applications	695	752	+8%
Workplace Protection Applications	45	54	+2%
Applications that included an application for Interim orders			
Interim Domestic Violence Applications	711	777	
Interim Family Violence Applications		163	
Total	711	940	+32%
Interim Personal Protection Applications	415	664	+60%
Interim Workplace Protection Applications	36	42	+17%



The commencement of the new legislation coincides with an increase in applications for final orders and a disproportionate increase in applications for interim orders. It is likely that the increase in applications for interim orders is a result of the design of a comprehensive application form with the commencement of the legislation. The application form provides parties with significantly more information to allow them to consider whether to make an application for interim orders.

DUTY MAGISTRATE AND SATURDAY/ PUBLIC HOLIDAY COURT

Where a person is taken into custody and charged with an offence and the person is not released on bail by the police, they must be brought before a court as soon as practicable and within 48 hours at the latest. As a result of this statutory requirement, a Duty Magistrate sits in court on Saturdays and public holidays.

The Duty Magistrate is also responsible for issuing various forms of warrants, receiving notification of deaths referred under the *Coroners Act 1997*, and dealing with urgent domestic violence and personal protection matters. All full-time magistrates, including the Chief Magistrate, share this roster 365 days per year.



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The specialist courts

CHILDRENS COURT

The Magistrates Court sits as the Childrens Court when exercising jurisdiction under Chapter 4A of the *Magistrates Court Act*. Chief Magistrate, Lorraine Walker, is currently the Childrens Court Magistrate, having commenced in the role on 29 February 2016.

The Childrens Court has jurisdiction to hear criminal cases where the alleged offender is a child (under 12 years of age) or young person (between the ages of 12 and 18 years). Pursuant to the *Criminal Code 2002 (ACT)* the current age of criminal responsibility is 10. There is a rebuttable presumption that a child is unable to know the wrongfulness of her or his conduct between 10 and 14 years of age.

The Childrens Court also has jurisdiction for care and protection orders under the *Children and Young People Act 2008*. The court is tasked with determining whether a child or young person is at risk of abuse or neglect and in need of care and protection, and whether there is a person with parental responsibility willing or able to provide that protection.

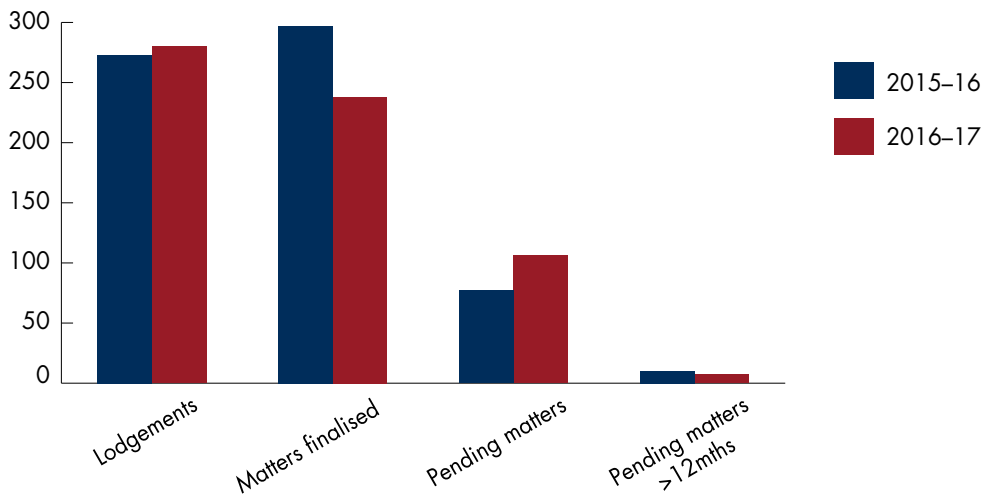
Childrens Court proceedings are not open to the public. The court must consider on each occasion whether people who wish to be present have a legitimate interest warranting their attendance.

The court has a unique task in both its care and criminal jurisdiction. In the care jurisdiction, when making a decision regarding a child or young person the court must consider the best interests of the child or young person. In the court's criminal jurisdiction, upon a young person being convicted or found guilty of an offence, the court in sentencing of the young offender must consider their rehabilitation and may give more weight to that purpose than to any other sentencing purpose.

Children criminal matter statistics

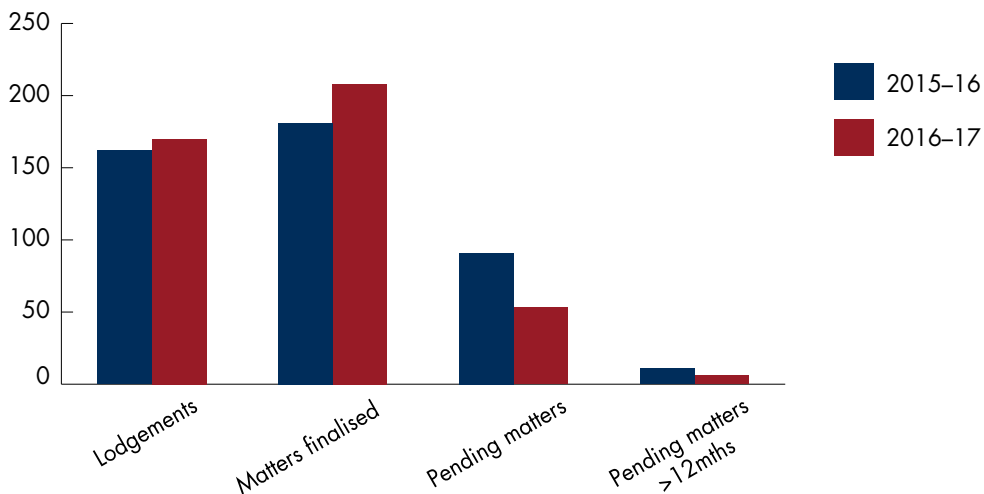
	2015–16	2016–17	% variance
Lodgements	273	280	+3%
Matters finalised	297*	238*	-20%
Pending matters	77	106	+38%
Pending matters >12 months	10	7	-30%

*Note: Finalisation data excludes matters transferred to the ACT Supreme Court.



Care and protection matter statistics

	2015-16	2016-17	% variance
Lodgements	162	170	+5%
Matters finalised	181	208	+15%
Pending matters	91	53	-42%
Pending matters >12 months	11	6	-45%



The Court implemented a new Practice Direction in the Care jurisdiction which commenced on 14 June 2016. The principles of the practice direction however commenced operation in February 2016 with a closer focus on case management in this jurisdiction. The Practice Direction has now been in place for over 12 months with considerably positive results.

The past two years have seen considerable in-roads made into finalising matters in a more timely manner. In the 2014/15 year 70 matters were finalised within six months; in 2015–16 year the finalisations within six months increased to 96 and in the current reporting year that has increased to 140. This is a significant improvement in the jurisdiction and ensures that the Court is meeting the principles of section 9 of the *Children and Young People Act 2008*.

GALAMBANY COURT

The Galambany Court is a specialised court with the purpose of assessing and sentencing Aboriginal and Torres Strait Islander people. Aboriginal and Torres Strait Islander offenders may be referred to the Galambany Court for sentencing following a plea of guilty.

Magistrate Bernadette Boss is currently the Galambany Court Magistrate.

The Galambany Court has the same sentencing powers as the Magistrates Court.

There are three distinct stages in the Galambany Court sentencing process. These are: referral by a magistrate on the defendant's application following a plea of guilty; assessment for suitability undertaken by the Galambany co-ordinator within the Justice and Community Safety Directorate; and the sentence hearing and sentencing.

A panel of Elders and community members preside over the court and recommends culturally appropriate sentences to effectively address the underlying cause of offending behaviour. Panel members contribute to the process in a variety of ways and have a role in explaining culturally relevant details to the court, while also expressing to the defendant that criminal behaviour will not be accepted or tolerated in the Aboriginal and Torres Strait Islander communities. The Elders and community members also have an opportunity to explore with the defendant how he or she may avoid further criminal behaviour. Recommendations of the panel are considered by the Galambany Court Magistrate when imposing sentences.

Relationships Australia and Community Corrections attend these proceedings to provide advice to the panel on their decision making and the practicalities of implementing recommended outcomes.

Culturally appropriate programs are provided to the court for referrals upon sentencing. At this stage, young adult offenders (18–25 years) may be referred to an Outward Bound program which allows the offender to engage in reconnecting with country.

HISTORY

The predecessor to the Galambany Court was the Ngambra Circle Sentencing Court which was established through a practice direction of the Magistrates Court. The inaugural circle sentencing magistrate was Shane Madden.

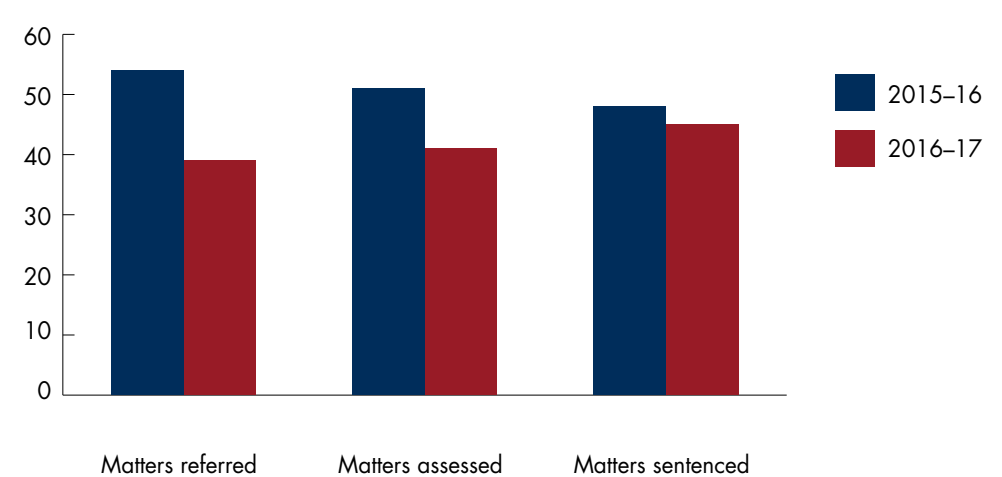
The change of name from ‘Ngambra’ to ‘Galambany’ was recommended by participants in the Circle Court and agreed to by the ACT Elected Body and Ngunnawal Council of Elders in 2010. Galambany means ‘we all, including you’. It is an inclusive word that recognises the various origins of people of Aboriginal and Torres Strait Islander descent living on Ngunnawal country today.

In 2012 the Galambany Court Practice Direction came into effect. The *Courts Legislation Amendment Act 2011* gave formal recognition to the circle sentencing process, introducing chapter 4C into the *Magistrates Court Act* which provides that when the Magistrates Court is sitting for the purposes of circle sentencing it operates as the Galambany Court.

Galambany Court statistics—adults

	2015–16	2016–17
Matters referred	54	39
Matters assessed	51	41
Matters sentenced	48	45

The court is keen to see the circle approach extended to sentencing of children and young people. Legislative amendment is required before this can progress.



FAMILY VIOLENCE COURT

In 2011 the *Magistrates Court Act* was amended to give statutory recognition to the family violence list. This created a specialised criminal court responsible for hearing family violence offences.

Giving the Family Violence Court a legislative basis provided a more integrated approach to dealing with domestic violence. Family violence takes place in the context of specified relationships between people and may result in considerable harm to the victim and all other individuals exposed to it. The purpose of establishing the specialised Family Violence Court was to recognise the complex nature of family violence and the need to protect victims and the community as a whole.

Chapter 4B of the *Magistrates Court Act* provides that the Magistrates Court can also operate as the Family Violence Court when exercising the following jurisdiction:

- any criminal proceeding against an adult in relation to a family violence offence;
- a proceeding in relation to bail for an adult charged with a family violence offence; and
- a proceeding in relation to a breach of a sentence imposed by the Magistrates Court or the Family Violence Court on a person for a family violence offence.

Family violence offences are characterised as such based on the nature of the relationship between the offender and the victim and the type of offence. 'Relevant' relationships include those between alleged offenders and victims who are or were married, are or were in a domestic partnership, are in an intimate relationship or are in a parent/child relationship.

Offences include murder, manslaughter, assault, acts endangering life, stalking, property damage, sexual assault, acts of indecency and reckless driving. The full range of relationships and offences are detailed in the *Family Violence Act 2016*.



INDUSTRIAL COURT

The Industrial Court commenced operation on 8 November 2013 following the recommendations of the 'Getting Home Safely' report. The court has a wide jurisdiction to deal with industrial and work safety matters.

Section 291P of the *Magistrates Court Act* sets out the circumstances in which the Magistrates Court sits as the Industrial Court. Industrial Court matters must be heard by an appointed Industrial Court Magistrate. Chief Magistrate Lorraine Walker is the current Industrial Court Magistrate.

The Industrial Court has jurisdiction to deal with proceedings under the:

- *Workers Compensation Act 1951*
- *Work Health and Safety Act 2011*
- *Scaffolding and Lifts Act 1912*
- *Dangerous Substances Act 2004*
- *Machinery Act 1949*.

The bulk of matters in the Industrial Court are workers compensation arbitrations. The court also has jurisdiction to hear and determine personal injury matters arising from the same facts that form the basis for proceedings under any of the above Acts, up to a limit of \$250 000.

The Industrial Court exercises the Magistrates Court's jurisdiction in criminal prosecutions against adult offenders where they relate to industrial or work safety offences, bail proceedings and proceedings for breach of sentences imposed for those offences.

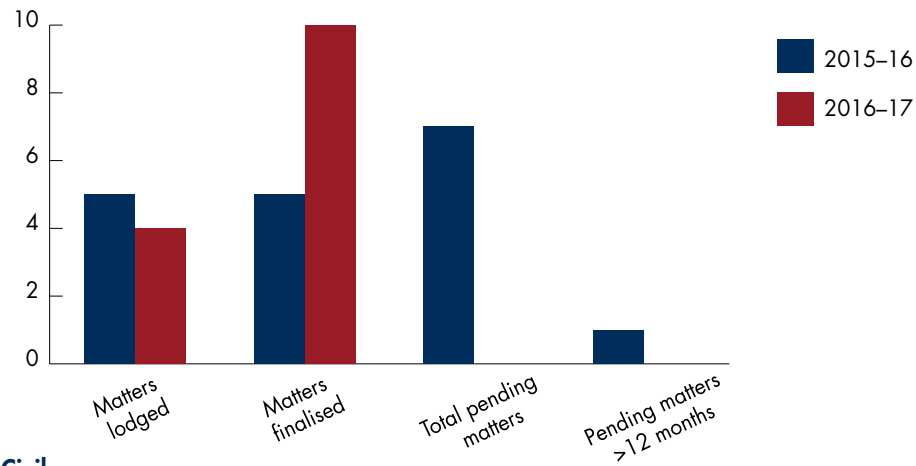
The Court absorbed the cost of the establishment of the Industrial Court with no additional funding being provided. Other areas of government were provided with additional funding, however, this has not resulted in a flood of prosecutions being lodged with the Court.

Of the ten matters finalised in the reporting year there were two convictions; one matter the prosecution had no evidence to offer; two matters were withdrawn by the prosecution and charges were dismissed in five matters.

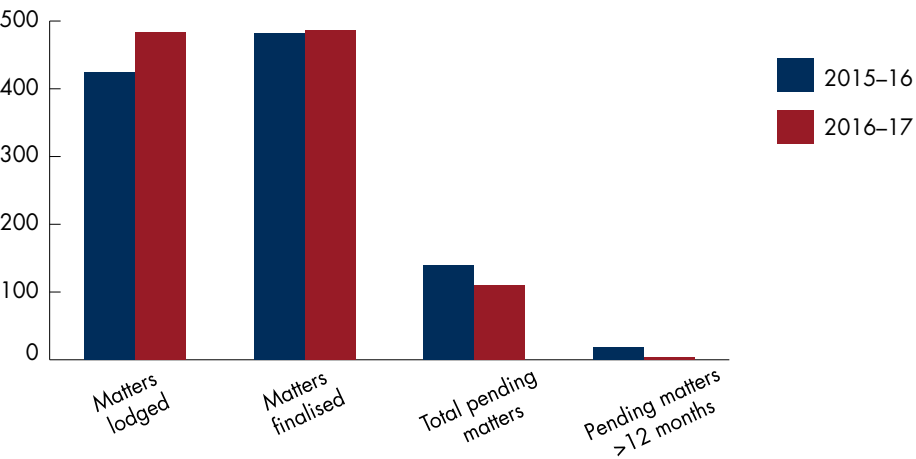
Industrial Court statistics

Industrial Court	2015-16	2016-17
<i>Criminal Charges (not cases)</i>		
Matters lodged	5	4
Matters finalised	5	10
Total pending matters	7	
Pending matters >12 months	1	
<i>Civil</i>		
Matters lodged	424	484
Matters finalised	482	486
Total pending matters	139	110
Pending matters >12 months	18	4

Criminal Charges (not cases)



Civil



EXTERNAL TERRITORIES

The Jervis Bay Territory and the Australian Antarctic Territory are territories of the Commonwealth of Australia.

With respect to the Jervis Bay Territory, the laws of the Australian Capital Territory apply in that territory in accordance with section 4A of the *Jervis Bay Acceptance Act 1915* (Cth). Subsection 4D of the *Jervis Bay Acceptance Act 1915* (Cth) also provides that each court of the Australian Capital Territory has jurisdiction in the Jervis Bay Territory. It follows that the ACT Magistrates Court has jurisdiction to hear and determine matters in the Jervis Bay Territory.

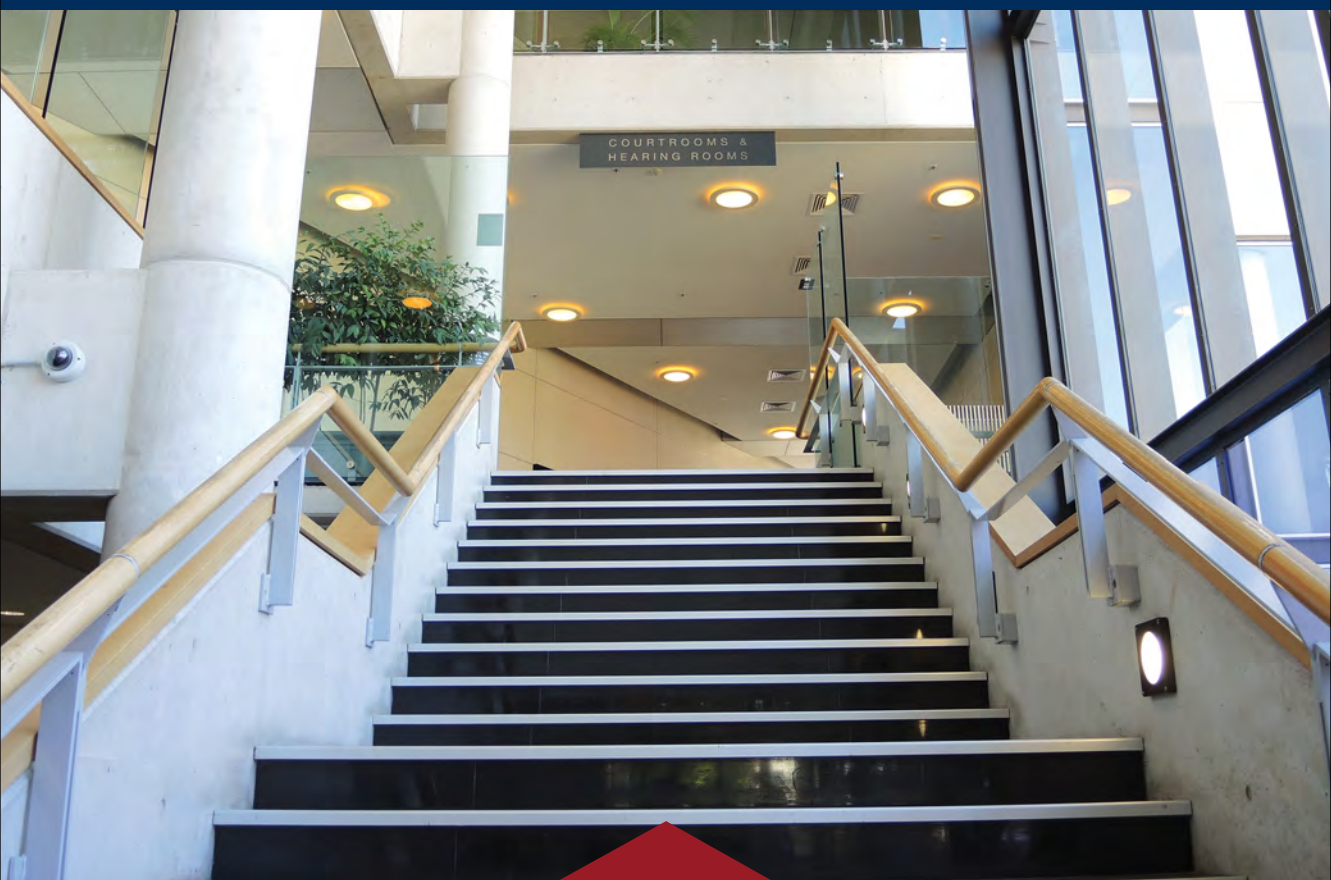
The ACT Magistrates Court provides judicial and administrative resourcing to the Jervis Bay Territory. The Magistrates of the ACT Court sit in the Magistrates Court of Jervis Bay every second month.

With respect to the Australian Antarctic Territory, the laws of the Australian Capital Territory apply in that territory in accordance with section 6 of the *Australian Antarctic Territory Act 1954* (Cth). Section 10 also provides that the courts of the Australian Capital Territory, including the ACT Magistrates Court, have jurisdiction to hear and determine matters in the Australian Antarctic Territory. These matters are attended to by the ACT Magistrates on an as needs basis.



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Highlights and developments

ACT LAW COURTS PRECINCT PROJECT

Construction has commenced on the ACT Courts project. The Magistrates Court has been working closely with the Attorney-General, the Justice and Community Safety Directorate and the Private Industry Partner (Juris Partnership) to finalise the design and manage the staged construction process.

The new building will reflect and support a progressive and independent judiciary. Apart from providing technology upgrades to existing magistrates courtrooms, and a number of shared spaces in an integrated facility, the building will also provide the court with the opportunity to accommodate a number of assessment and support services, including the Domestic Violence Crisis Service, ACT Legal Aid, and ACT Health agencies including Court Alcohol and Drug Assessment Service (CADAS) and the Forensic Mental Health Court Liaison Team and Child and Youth Protection Services.

Works commenced on the new building in 2016 and are progressing well. Externally the structure of the building is well advanced with the installation of the roof having commenced by 30 June. Internally upgrades to technology have been completed in all Magistrates courtrooms and works have commenced on the refurbishment of registry spaces.

The first stage of works are due for completion in early 2018 with the second stage (the refurbishment of the existing Supreme Court) to be completed in the second half of 2018.



INTEGRATED COURTS MANAGEMENT SYSTEM

The 2012–13 ACT Budget provided \$9.5 million over four years for the acquisition and development of a new electronic case management system to improve the operation of the ACT Courts and Tribunal. In the 2014–15 Budget an additional \$2.44 million in capital funding was provided over four years to further develop the new ICT courts case management system.

In November 2014, the ACT Government entered an agreement with the Western Australian Department of the Attorney-General for the acquisition and implementation of a new case management system known as the Integrated Courts Management System (ICMS). The ICMS system is a more efficient, next generation business system, which will improve service delivery to Court users and will provide a platform for e-lodgement after full implementation. It will save court users' time and resources through better control of, and access to, case information and will facilitate better information flow between criminal justice agencies. Improved data collection will also strengthen the capability for evidence-based policy analysis in areas such as recidivism rates in the ACT.

The ICMS system has been rolled out in three stages – the first stage was successfully implemented in the ACT Civil and Administrative Tribunal (ACAT) in December 2015. Stage 2 was successfully implemented into the civil jurisdiction in September 2016. In addition the project team interposed the implementation of the family violence reforms which commenced in May 2017. The third and final stage for the criminal jurisdiction is due to be rolled out in the fourth quarter of 2017–18.

CHILDRENS COURT PRACTICE DIRECTION

The ACT Children's Court implemented a new practice direction on 14 June 2016. The Practice Direction outlines new listing procedures in the case management of care and protection proceedings brought under the *Children and Young People Act 2008*. These procedures are being implemented with the objective of reducing the number of adjournments and delays in such proceedings in the best interests of children and young people, and will introduce court ordered meetings for the purpose of enabling parties to resolve matters, if possible, as early as possible.

The Court is very pleased with the success of the implementation of the Practice Direction. Over a period of two years, lodgements have increased by 22, the matters finalised has increased from 107 (2014/15) to 208 in the reporting year. Furthermore, pending matters have reduced from 110 (2014/15) to 53 in the reporting year, a decrease of over 50%.

CHILDREN'S COURT: THERAPEUTIC COURT

The Children's Court is preparing to implement a pilot of applied therapeutic jurisprudence in the care and protection jurisdiction. The Chief Magistrate has identified this jurisdiction as an area where outcomes for children and families can be improved by a less adversarial approach and through increased collaboration between families, service providers, government agencies and the Court.

The pilot program is modelled on a number of successful family drug treatment courts in the UK and Australia. Eligible parents whose children are subject to applications for care and protection orders pursuant to the *Children and Young People Act 2008* will be able to opt in to the court-controlled review process. Parents will work with a multi-disciplinary team consisting of workers from key service providers within the ACT to address issues such as substance abuse, mental health and family violence. The parents will engage in regular reviews with the Children's Court Magistrate.

The Court has engaged academics from the University of Canberra and the Australian Catholic University to prepare a report to assist with the design and implementation of this approach in the ACT Children's Court. The report was prepared in consultation with representatives of key stakeholder organisations working with families involved with care and protection, mental health, drug and alcohol services.

The Court will continue to work with stakeholders and government to implement a pilot of the program.

We are grateful to the valuable input from stakeholders across the government and non-government sectors.

IMPACTS OF FAMILY VIOLENCE REFORMS

The *Family Violence Act 2016* and *Personal Violence Act 2016* commenced on 1 May 2017. 'Family violence' is defined broadly to include economic as well as physical, sexual, emotional and psychological abuse and certain other types of coercive behaviour. The *Family Violence Act* preserves 2016 reforms requiring interim orders granted under it to be made so as to take account of related criminal charges. The two Acts preserve earlier protection orders made under the repealed *Domestic Violence and Protection Orders Act 2008*.

Introduction of the new legislation required detailed changes to court forms, delegations, business and ICT processes and outputs, and necessitated staff training on use of these, as well as on the legislation itself. This work in relation to the new protection order legislation was undertaken by dedicated additional legal and registry staff and the ICMS team between October 2016 and May 2017. Thank you to the team of staff for ensuring that the court was ready to 'go live' with the new legislation on its commencement date.

Commencement of the new legislation has provided the court with an opportunity to structure its protection jurisdiction more efficiently by delegating a wider range of *ex parte* and procedural decisions to the Registrar or her deputies. The Registrar is now vested with jurisdiction to make final orders in the absence of a respondent who has been served with the relevant court documents and notice of a court date.

The *Family Violence Act* introduced a prohibition in contested hearings on self-represented respondents cross-examining affected or protected persons directly. As in family violence cases in the court's criminal jurisdiction, a court officer may be appointed to ask questions on the respondent's behalf. A deputy registrar is made available for this purpose on hearing days.



CONSULTATION ON ACCESS TO ACT COURTS FOR ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE

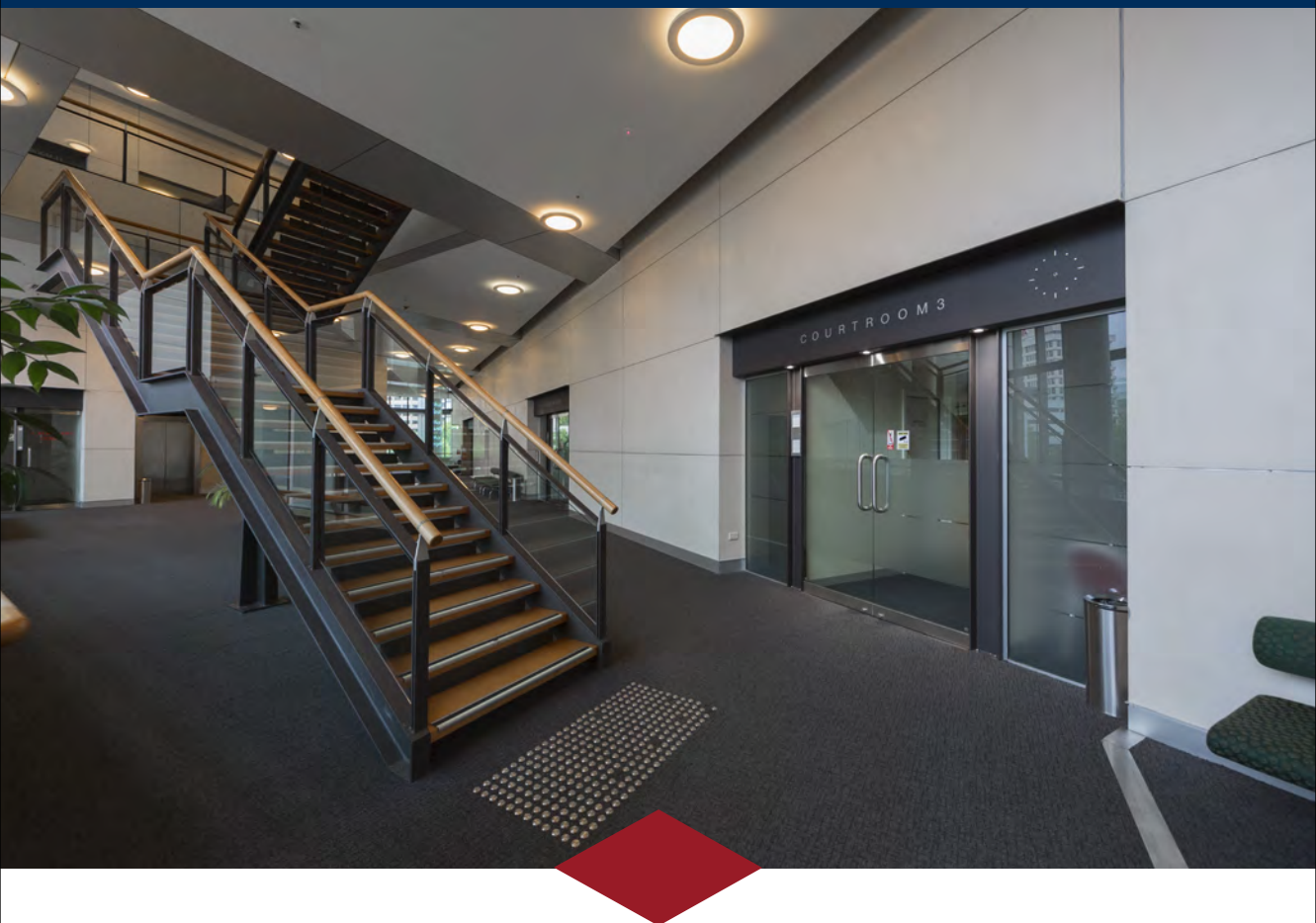
The ACT Courts Cultural Diversity Committee (CCDC) is comprised of representatives from the Judiciary and Registrars of the Courts. The CCDC is chaired by Magistrate Boss and is currently comprised of Justice Burns, Chief Magistrate Walker, Principal Registrar Kellow, Registrar Glover and Registrar Nuttall. The Committee was established in response to the National Framework developed by the Judicial Council on Cultural Diversity to improve accessibility to Australian courts for Aboriginal and Torres Strait Islander women and migrant and refugee women.

The CCDC recognised the importance of engaging with the community including government and non-government sectors to identify key and practical measures that would improve accessibility to the ACT's Courts for Aboriginal and Torres Strait Islander people. On 9 May 2017 a Workshop was held with a range of stakeholders which provided for a broad range of discussion to identify opportunities for improved accessibility to the Courts. A number of recommendations were put forward for improving access for defendants in criminal matters, victims of crime and persons seeking protection orders and in the child protection and civil jurisdictions of the Courts. The Courts are currently considering progressing those matters and working with government to provide assistance in funding some of the key priorities.



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Court Support Services

SENTENCING DATABASE

The ACT Sentencing Database (ACTSD) is hosted by and mirrors the NSW Judicial Information Retrieval System (JIRS). Like JIRS, the ACTSD is designed to facilitate consistency in sentencing and to enhance judicial, practitioner and public access to ACT Supreme Court and Magistrates Court sentencing data.

The ACTSD captures sentencing outcomes and includes general statistical information, as well as enabling users to 'drill down' for the purpose of obtaining more detailed information. The database also provides an access point to ACT and Commonwealth legislation. Full-text searching of recent and historic ACT Supreme Court judgments and sentencing remarks, including Magistrates Court decisions, is also available.

The next few years will see database content gradually increase to a level where information regarding particular offences is statistically significant.



JUSTICES OF THE PEACE

A Justice of the Peace is present in the Magistrates Court building each day. The Justices of the Peace provide a valuable volunteer service to the court and community, and are available between 9:30am and 12:30pm to witness and certify documents such as statutory declarations. Justices of the Peace also administer oaths and affirmations relating to evidence in affidavit form. The ACT Justices of the Peace Association co-ordinates the roster to ensure that a Justice of the Peace (JP) is present in the Magistrates Court at these times.

In the reporting year there were 29 Justices of the Peace on the roster team. They provided services to 2 651 people with a total of 9 799 documents.

This is a rare voluntary service and greatly assists day to day operations of the court. The court is very grateful for the support of the Association and its dedicated members.

LEGAL AID ACT

CRIMINAL MATTERS

Legal Aid ACT offers court-based duty lawyer services in criminal matters for adults in the Magistrates Court and for children in the Childrens Court. Legal Aid lawyers provide preliminary legal advice to people who are in custody or who are otherwise appearing in court. When providing this type of duty assistance at court Legal Aid lawyers also identify matters that may be eligible for a grant of legal assistance to provide ongoing legal representation. Legal Aid lawyers try to encourage as many people as possible who may be eligible for aid be assessed for a grant of aid and receive ongoing advice and representation. Legal Aid ACT supports the work of the court by providing on-site duty lawyers available to provide advice and representation to people who need assistance with any court appearance including on Saturday and public holiday Courts. In addition Legal Aid has administrative para-legal staff on-site in the Court precincts to support their lawyers. Para-legal staff can assist people seeking assistance to apply for a grant of Legal Assistance for ongoing assistance and direct them to the Legal Aid ACT premises in Allsop Street, Canberra. The assistance of a duty lawyer is available throughout the day to complement court sitting hours.

FAMILY VIOLENCE AND PROTECTION ORDERS UNIT

Legal Aid lawyers assist members of the community who are applying for, or responding to, family violence and personal protection orders. Increased demand means the unit is now staffed with three solicitors each day with drop-in appointments available throughout the day. Legal Aid is representing an increased number of primary victims when their family violence order matters return to court for a conference or hearing. Whilst the unit focuses specifically on family violence and personal protection orders, Legal Aid is also working to ensure that clients receive information, advice and referrals about related matters such as arrangements for children or property settlement following relationship breakdown which may include a direct referral for a client to Legal Aid Family Law service for advice and representation.

COURT ALCOHOL AND DRUG ASSESSMENT SERVICE

The Court Alcohol and Drug Assessment Service (CADAS) provides two services to the court.

Where a defendant is found guilty, or pleads guilty, to a drink driving offence and is an habitual offender (three drink driving offences within five years) or has committed a high range (level 4) offence, the court is required to obtain a report from CADAS. This report summarises CADAS' assessment on whether any form of therapeutic treatment or program might assist the person and, if so, CADAS makes recommendations about an appropriate treatment or program. In sentencing, the court must consider the report and may order the person to accept treatment or undergo a program recommended by the assessor.

CADAS may also be engaged to provide a report to the court for the purposes of a bail application or sentencing, for offenders who have been charged with an alcohol or drug related offence. The report may recommend a treatment plan either during court proceedings or as part of a sentencing order.

The magistrates may take into account the information provided in the CADAS report and may require high risk offenders, in particular, to participate in appropriate therapeutic programs or treatments to address their substance abuse. CADAS clinicians will monitor attendance with any programs ordered by the court and report all outcomes to the court.

This is a very valuable service and the court thanks CADAS staff for their dedication and responsiveness.

FORENSIC MENTAL HEALTH SERVICE

The Forensic Mental Health Service provides a Court Assessment and Liaison Service within the ACT court system. The service aims to provide a range of high quality and timely supports to individuals who appear before the courts and present with mental health issues.

The Court Liaison Service is available during business hours to provide assessment services to defendants who have been identified as having mental health concerns. These assessments generally occur prior to the defendant's court appearance. The assessing clinician provides advice to the court with regards to any identified mental health concerns and current treatments which may be relevant to either community or custody treatment options. The assessing clinician is also able to provide advice as to whether it is necessary for an order pursuant to s. 309 of the *Crimes Act 1900* be made for an assessment of the defendant's requirement for immediate treatment or care for mental health reasons.

The Court Assessment Service is also able to provide expert forensic mental health reports at the direction of the court. These reports may include assessment of mental impairment and fitness to plead.

The court appreciates the difficult work undertaken by clinicians in this area, often with significant time constraints, and records its appreciation for the invaluable service provided.

PRISONERS AID

The Court Assistance and Referral Service (CARS) is run by Prisoners Aid and operates out of the Magistrates Court each day between 9:00am and 12:30pm.

It offers a support and referral service to people charged with offences in the ACT courts, their families and prisoners. The referral service provides pre-release and post-release assistance to detainees to help them reintegrate into the community.

Prisoners Aid volunteers visit detainees and assist families of ACT prisoners to visit their loved ones who are incarcerated interstate.

This is another volunteer service providing practical and low level financial support to vulnerable people; their work is greatly appreciated.

CHILD AND YOUTH PROTECTION SERVICES

In the ACT the Community Services Directorate is responsible for providing Child and Youth Protection Services (CYPS) within both the care and protection and youth justice arenas. These two areas often intersect and the combined service is proving a valuable asset in assisting the court across its jurisdictions. CYPS focuses on reducing youth crime by addressing the underlying causes of crime through early intervention, prevention and diversion strategies.

The Court Liaison Officer is the Director-General's representative in the Childrens Court. The officer also supports the young person and his or her family through the court process. The Court Liaison Officer is responsible for advising the court of the young person's progress, compliance with orders and may also communicate concerns to the court.

RESTORATIVE JUSTICE UNIT

The objects of the *Crimes (Restorative Justice) Act 2004* are detailed at s. 6:

The objects of this Act are as follows:

- (a) to enhance the rights of victims of offences by providing restorative justice as a way of empowering victims to make decisions about how to repair the harm done by offences;
- (b) to set up a system of restorative justice that brings together victims, offenders and their personal supporters in a carefully managed, safe environment;
- (c) to ensure that the interests of victims of offences are given high priority in the administration of restorative justice under this Act;
- (d) to enable access to restorative justice at every stage of the criminal justice process without substituting for the criminal justice system or changing the normal process of criminal justice;
- (e) to enable agencies that have a role in the criminal justice system to refer offences for restorative justice.

The ACT Restorative Justice Unit's (RJU) primary objective is to facilitate an opportunity for the people affected by an offence to:

- talk about how the offence has affected them and others close to them;
- hear the responsible person accept responsibility for their actions;
- discuss what needs to be done to repair the harm.

Phase two of the restorative justice scheme began on 25 February 2016. This allows for adult offenders and for serious offences by both adults and young people to be referred by the courts.

Referrals may be made at all points along the criminal justice system process. The DPP can refer a less serious matter prior to the beginning of the second mention. The Court can refer a less serious offence after the beginning of the second mention and before the end of the pre hearing mentions. This requires a special Court Referral Order and the agreement of both defence and prosecution.

The Court may refer an offence following a plea or finding of guilt and before the end of the proceeding, without needing the agreement of defence and prosecution.

In 2016–17 there were 260 referrals made to the RJU, including: 181 by ACT Policing, 31 by the Childrens Court, 61 by the Magistrates Court, six by the Galambany Court and nine by the Supreme Court, involving a total of 573 offences.

128 adults and 169 young offenders were referred to RJ in 2016–17. There were 551 less serious offences and 22 serious offences referred.

The court may take into account an offender's participation in the restorative justice process when sentencing. The Court cannot take into account the fact that an offender chooses not to participate.

The court welcomes expansion of the availability of restorative justice and recognises the transformative role it can play for both victims and perpetrators of crime. Attendance of RJU staff at court and their cooperation with the court process is appreciated.

DOMESTIC VIOLENCE CRISIS SERVICE – COURT ADVOCACY

The Domestic Violence Crisis Service (DVCS) has two full-time court advocates based at the Court Monday to Friday between 9:00am and 4:00pm.

Court advocates provide procedural advice and information, advocacy, support and safety planning to people experiencing domestic violence. This support may include linking clients to other supports such as legal advice or representation, public advocacy and emergency childcare.

The bulk of court advocacy takes place in the civil section, with advocates assisting people through the protection order process. In addition to this, advocates support DVCS clients giving evidence during criminal hearings. The program works in cooperation with the Legal Aid ACT Domestic Violence and Protection Orders unit, ACT Policing Order Liaison Officers, Office of the Director of Public Prosecutions and Magistrates Court registry staff in order to support those experiencing domestic violence.

The court appreciates the assistance provided to those involved in court processes by the DVCS. That assistance goes some way to empowering the vulnerable and supports more effective proceedings in court.

DVCS may be accessed at the Court or via the DVCS Crisis Line on 6280 0900.

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Judicial education and Community and professional engagement

JUDICIAL EDUCATION

Chief Magistrate Walker

16–17 February	Judicial College of Victoria: Domestic Violence Conference
27–28 March 2017	AJJA Conference

Magistrate Fryar

11 November 2016	Tidbinbilla Indigenous Exposure Seminar
16–17 February	Judicial College of Victoria: Domestic Violence Conference

Magistrate Campbell

11 November 2016	Tidbinbilla Indigenous Exposure Seminar
16–17 February	Judicial College of Victoria: Domestic Violence Conference

Magistrate Morrison

11 November 2016	Tidbinbilla Indigenous Exposure Seminar
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Magistrate Boss

11 November 2016	Tidbinbilla Indigenous Exposure Seminar
16–17 February	Judicial College of Victoria: Domestic Violence Conference

Magistrate Cook

11 November 2016	Tidbinbilla Indigenous Exposure Seminar
16–17 February	Judicial College of Victoria: Domestic Violence Conference

Magistrate Theakston

7–9 October 2016	Judicial Conference of Australia Colloquium – Canberra
11 November 2016	Tidbinbilla Indigenous Exposure Seminar
16–17 February 2017	Judicial College of Victoria: Domestic Violence Conference
3–5 April 2017	Writing Better Judgements – Sydney

COMMUNITY AND PROFESSIONAL ENGAGEMENT

Chief Magistrate Walker

	Law Reform Advisory Council member
	Cultural Diversity Committee
	ACT Bar Association member
	Board Member of Australian Association of Women Judges
	Justice of the Peace engagements
	Member of Judicial Council
	Member of Council of Chief Magistrates
	Member of Council of State & Territory Coroners
	National Judicial College of Australia – alternate representative of Council of Chief Magistrate
	Judicial Mentoring Forum for Women Lawyers Association
	Dhulwa Mental Health Unit Guided Tour
	Launch of the Justice and Community Safety Reconciliation Plan
	ACT Women's Awards
2 August 2016	Sexual Offences and Restorative Justice Consultation – Project Restore Information Forum
1 September 2016	Education for General Practitioners on the Coroners Act
23 March 2017	Presenter at the Sixth National Access to Justice and Pro Bono Conference
25 March 2017	ACT Bar Association mini conference for participant on panel discussions
6 April 2017	Presenter – Restorative Justice in Adult Courts
10 April 2017	School of Law and Justice Prize Ceremony – University of Canberra
9 May 2017	Access to the Courts for Aboriginal and Torres Strait Islander people: Community Workshop
17–20 May 2017	National Judicial College of Australia: Presentation to the Judiciary of Papua New Guinea
2 June 2017	Re-establishing Youth Referrals for Circle Sentencing
19 June 2017	Domestic Violence: Investigations for Australian Federal Police – Forensic Medical Centre

Magistrate Boss

Community Consultation Project for Indigenous Access to Justice

Deliver Judicial Education to the Solomon Islands Magistrates

Chair Courts Cultural Diversity Committee

Represent the ACT on the Judicial Council for Cultural Diversity

Magistrate Theakston

8 May 2017

Presentation to Legal Aid, ACT DPP and other practitioners
