



**CHIEF JUSTICE'S CHAMBERS  
SUPREME COURT OF THE ACT  
GPO BOX 1548  
CANBERRA ACT 2601**

17 October 2017

Ms Anne Cahill Lambert AM  
Chair  
ACT Remuneration Tribunal  
PO Box 964  
CIVIC SQUARE ACT 2608

By Email: [remtrib@act.gov.au](mailto:remtrib@act.gov.au)

Dear Ms Cahill Lambert

Thank you for the opportunity to make a late submission to the Tribunal in relation to the Tribunal's annual review of the remuneration and allowances to be paid, and the other entitlements to be granted to the judges of the Supreme Court of the ACT.

As you know, under the *Supreme Court Act 1933* (ACT), resident judges of the Supreme Court are entitled to the same remuneration, allowances and entitlements as are paid to judges of the Federal Court. The Commonwealth Remuneration Tribunal's Determination 2017/09 is the most recent determination of the remuneration of Federal Court judges, including the Chief Justice of Federal Court. It will affect the remuneration of all resident judges.

The ACT Tribunal determines the additional allowance payable to the Chief Justice and the remuneration and travelling allowance that is paid to the Associate Judge (Master) of the Supreme Court.

In the past, the Tribunal has accepted that the established practice in other Australian jurisdictions (both large and small) of paying the Chief Justice an additional allowance of 10% of the remuneration otherwise payable should apply in the ACT. The allowance recognises the additional time and responsibilities associated with the office, including the responsibilities of administering the business of a court, setting policy and strategy, providing judicial leadership to courts and the legal profession, fulfilling quasi-judicial public roles (e.g. in my case, as Chair of the National Judicial College of Australia) and endeavouring to ensure that the public enjoys access to the Court.

The Tribunal has accepted that the role of the Associate Judge is such that she should receive 90% of the salary of a resident judge. As stated in previous submissions, her role is akin to that of an Associate Judge of the NSW Supreme Court and those judges of the District Court of NSW, who receive remuneration that is approximately 90% of that paid to a judge of the Supreme Court of NSW (in addition to the benefit of a judicial pension). The Tribunal has also accepted that the Associate Judge should receive the same travelling allowance as a resident judge.

I submit that the Tribunal should again determine the additional allowance of the Chief Justice to be 10% of the remuneration payable to a resident judge, set the remuneration of the Associate Judge at 90% of that payable to a resident judge and fix her travelling allowance at the rate applicable to a resident judge.

I am happy to meet with the Tribunal for the purpose of providing any further information that may assist.

For your information, I enclose a copy of the Commonwealth Remuneration Tribunal's Determination 2017/09 and the Court's Annual Review for 2016.

Yours sincerely,

Helen Murrell  
Chief Justice



## REMUNERATION TRIBUNAL

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# Determination 2017/09: Judicial and Related Offices – Remuneration and Allowances

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### As amended

Made under sub-section 7(3), 7(4) and 7(4B) of the *Remuneration Tribunal Act 1973*.

Consolidated by the Remuneration Tribunal Secretariat as at 4 October 2017 and incorporates amending determinations up to and including 2017/18 – Remuneration and Allowances for Holders of Public Office and Judicial and Related Offices.

### Compilation No. 3

This compilation includes retrospective amendments made by F2017L01321.

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This Determination governs remuneration and allowances for the offices specified in Tables 1, 2A, 2B, 3 and 4.

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### PART 1 – GENERAL, RELATING TO OFFICES IN ALL TABLES

- 1.1 Authority:** This Determination is issued pursuant to the *Remuneration Tribunal Act 1973*, sub-sections 7(3), 7(4) and 7(4B).
- 1.2 Effect of this determination:** This Determination commences on 1 July 2017 except where specified otherwise. It supersedes and revokes in full Determination 2016/17 (as amended) – *Judicial and Related Offices – Remuneration and Allowances*.
- 1.2.1** Subject to Clause 1.2.2, this Determination sets a base level of remuneration and benefits for office holders. Other authorities may prescribe additional remuneration and/or benefits under, for example:
- (i) general Commonwealth laws concerned with employment;
  - (ii) the specific Commonwealth Act that establishes an office (if any); and/or
  - (iii) the Constitution, which grants certain executive powers to the Governor-General and to Ministers of State.

**1.2.2** Clause 1.2.1 does not apply to office holders paid under Part 5 (see Clause 5.2), whose offices are listed in Table 3. This clause does not affect the application of the remainder of Parts 1-4 of this Determination to all office holders.

**1.3 Administration:** In administering this Determination, authorities:

- (i) shall pay the annual benefits specified in proportion (*pro rata*) to the office holder's period of service during that year;
- (ii) may issue procedural instructions to assist in the implementation of this Determination;
- (iii) may elect to apply the same instructions as they do for employees, except where those instructions are not in accordance with this Determination. This includes the utilisation of agency policies or procedures in relation to the administration of recreation leave.

## **PART 2 – REMUNERATION AND RELATED MATTERS**

**2.1 Base Salary:** A person who holds a full-time office specified in Table 1 or Table 2A shall be paid the Base Salary specified in Table 1 or Table 2A.

**2.2 Additional Allowances:** A Judge who also holds any of the following part-time offices shall be provided with an additional expense allowance of \$2,326 a year commencing on 1 July 2017:

- (i) Aboriginal Land Commissioner;
- (ii) Chairman of the Australian Electoral Commission;
- (iii) Chief Judge of the Supreme Court of Norfolk Island; and
- (iv) other offices as specified in Table 1.

**2.3 Remuneration of part-time office:** Notwithstanding any other provision of this Determination, a person who holds office on a part-time basis, other than a member of the National Native Title Tribunal or the Administrative Appeals Tribunal (AAT):

- (i) may not be paid more than the base salary of the equivalent full-time office (if any) in respect of any financial year; and
- (ii) is deemed to hold a full-time office in that year for the purposes of entitlements, other than separation benefits and salary packaging, if paid an amount equal to the base salary of the equivalent full-time office in any given financial year.

**2.3.1 Remuneration of Part-Time NNTT Members:** Notwithstanding any other provision of this Determination, a person who holds office as a member of the National Native Title Tribunal on a part-time basis:

- (i) may not be paid more than the amount calculated as the Total Remuneration of the equivalent full-time office less 15.4 per cent of the full-time office's Base Salary, in respect of any financial year; and
- (ii) is deemed to hold a full-time office in that year for the purposes of entitlements, other than separation benefits and salary packaging, if paid an amount equal to the amount calculated under 2.3.1 (i) in any given financial year.

**2.4 Use of specified rates for part-time office:** The appropriate authority may elect to pay a person who holds office on a part-time basis a proportion of the base salary of the equivalent full-time office specified in Table 2A (if any), in accordance with the hours worked, subject to a cap of 12 hours pay in any one day. Otherwise, the office holder shall be paid the daily fee specified in Table 2A. The proportion of base salary of the equivalent full-time office (hourly rate) will be ascertained by applying the following formula:

$$\frac{\text{Base Salary}}{313} \times \frac{6}{36.75} = \text{Hourly Rate.}$$

- 2.5 Payment of daily fees:** A person who holds a part-time office specified in Table 2A is entitled to be paid the daily fee specified in Table 2A (unless paid under clause 2.4 or 2.6). A person who is eligible to receive a daily fee may not be paid more than one daily fee in respect of any one calendar day.
- 2.5.1** Where a day includes a formal meeting of the authority and official business (including reasonable preparation time and reasonable travel time other than travel between the person's home and principal place of work) and is of:
- (i) three or more hours duration – the full daily fee is payable;
  - (ii) two or more (but less than three) hours duration – three-fifths of the daily fee is payable;
  - (iii) less than two hours duration – two-fifths of the daily fee is payable.
- 2.5.2** On another day or days, where official business is of at least five hours duration in aggregate – a daily fee is payable.
- 2.5.3** The appropriate authority must certify the nature and duration of work undertaken prior to any payment of fees to a person who holds office on a part-time basis.
- 2.5.4 Payment of daily fees to Part-Time AAT Members:** The provisions of this clause apply, (and clauses 2.5.1-2.5.3 do not apply) in relation to a person who holds office as a member of the AAT on a part-time basis, other than those members to whom clause 2.6 applies.
- (i) A daily fee is payable once such a person has undertaken official business of seven hours duration in aggregate, regardless of the day or days on which that work is done.
  - (ii) The nature, reasonableness and duration of official business shall be reviewed prior to payment of fees, according to governance arrangements established by the President of the AAT.
  - (iii) Official business may include a hearing, preparation for a hearing, reading submissions, decision writing and travel time other than for travel between the person's home and principal place of work.
- 2.5.5 Australian Competition Tribunal:** Clause 2.5.2 does not apply to Members of the Australian Competition Tribunal who are paid by way of daily fees. Such Members are entitled to payment for the period for which they undertake official business of the Tribunal on non-sitting days on the following basis:
- (i) where an office holder is engaged on "business of the authority", a full daily fee is paid where the member is engaged for at least 5 hours. A Member is not paid any higher fee for more than 5 hours and any extra time cannot be carried over;
  - (ii) where an office holder is engaged on "business of the authority" for less than 5 hours on a day, subject to (i) above that period may be aggregated with other periods of less than 5 hours on other days. For each multiple of 5 aggregated hours a daily fee is payable.
- 2.6 Payment of annual fees to AAT members:** AAT members identified in clause 2.6.1 or 2.6.2 will, for the period that the provisions of clause 2.6.1 or 2.6.2 apply to them, be paid an annual fee in accordance with Table 2B. Neither clause 2.4 nor 2.5 applies to a member for the period that clause 2.6 applies. The annual fee payable to a member, as specified in the cell of Table 2B relevant to the member's office and work pattern, is payable on a periodic basis throughout each year and covers all activities undertaken by the member in performing the duties of their office. Part years are paid on a proportionate basis.

- 2.6.1** A person who holds office as a member of the AAT on a part-time basis and who is subject to a direction under section 18A of the *Administrative Appeals Tribunal Act 1975* by the President of the AAT to work a specified number of days each week for a continuous period of 12 months or more; or
- 2.6.2** A person who holds office as a member of the AAT on a part-time basis and who is subject to a direction under section 18A of the *Administrative Appeals Tribunal Act 1975* by the President of the AAT to work a specified number of days each week for a period of less than 12 months if that period ends on the day that the person's appointment as a part-time member expires.
- 2.7** **Leave:** A person who holds an office other than that of a Judge shall be entitled to the following types and amounts of leave of absence:
- (i) any unused leave credits accrued previously, including under Determination 2012/11 – *Recreation Leave for Full-Time Holders of Relevant Offices*;
  - (ii) if a full-time office holder:
    - (a) the public holidays observed by the Australian Public Service in the location in which the office is based;
    - (b) paid recreation leave of four weeks per year of service, accruing on a pro rata basis;
  - (iii) other paid and unpaid leave, including sick and carers' leave, at the discretion of the Commonwealth.
- 2.7.1** A person who holds an office other than that of a Judge:
- (i) may elect to take recreation leave on a half-pay basis and/or to cash out up to one week's recreation leave per financial year; and
  - (ii) shall be paid the balance of their recreation leave on leaving office calculated using the office holder's base salary, or, in the case of office holders included in Part 5 of this Determination, in accordance with clause 5.8.
- 2.8** **Separation benefits:** The separation benefits of an office holder other than a Judge are to be determined in accordance with the following sub-clauses.
- 2.8.1** There is no entitlement to separation benefits under Clause 2.8.3 where:
- (i) the person served the full term of appointment;
  - (ii) the person was appointed on a part-time basis and is paid in accordance with clause 2.4, 2.5 or 2.6;
  - (iii) the appointment was terminated prematurely for reasons of misbehaviour or unsatisfactory performance; or
  - (iv) the appointment was terminated prematurely on account of mental or physical incapacity; or
  - (v) the person resigns or retires; or
  - (vi) the person's appointment was terminated prematurely because the person became bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his or her creditors, or made an assignment of his or her remuneration for the benefit of his or her creditors.
- 2.8.2** Subject to Clause 2.8.1, where a person's appointment to a public office is terminated prematurely, the Commonwealth may elect to offer suitable alternative employment (including in a Commonwealth company or authority).

**2.8.2.1** For the purposes of Clause 2.8.2 an offer of suitable alternative employment is taken to have been made to the person if the person is on leave without pay or some other form of authorised absence from APS employment and is able to resume that employment following the termination of their appointment.

**2.8.3** Where the Commonwealth does not offer alternative employment under Clause 2.8.2, the Commonwealth will pay the office holder one-third of one month's base salary, or Reference Salary in the case of an office holder remunerated under Part 5, per month of service remaining, in lieu of obligations such as provision of notice or payment instead of notice or redundancy pay and subject to:

- (i) a minimum payment of four month's base salary or Reference Salary; and
- (ii) a maximum payment of one year's base salary or Reference Salary.

**2.8.4** Under Clause 2.8.3, the Commonwealth may calculate service remaining by excluding any period of Commonwealth service in alternative employment to be performed during the remaining term of the appointment where the alternative employment commenced immediately after the termination. The Commonwealth may require an office holder to sign a release in return for the payment.

**2.8.5** For the purposes of calculating a separation benefit under Clause 2.8.3 in respect of a part-time office holder:

- (i) the reference in Clause 2.8.3 to base salary shall be understood as a reference only to the applicable annual base salary, or Reference Salary in the case of an office holder remunerated under Part 5, and not to include daily fees;
- (ii) the applicable annual base salary, or Reference Salary in the case of an office holder remunerated under Part 5, shall be notionally converted to a monthly figure by dividing it by 12; and
- (iii) no account shall be taken of any period of potential future service in respect of which the office holder has already been, or is to be, paid the applicable base salary or Reference Salary in the case of an office holder remunerated under Part 5.

**2.9 Cashing out and purchasing of recreation leave for Judges of the Federal Circuit Court:** Judges of the Federal Circuit Court shall:

- (i) be entitled to paid recreation leave of four weeks per year of service accruing on 1 January each year;
- (ii) be paid on leaving office as though they were then to take the balance of their recreation leave;
- (iii) be eligible to cash out part of their recreation leave credits providing they:
  - (a) have accrued in excess of four weeks' recreation leave;
  - (b) take an amount of leave equal to or greater than that cashed out; and
  - (c) cash out a maximum of two weeks' recreation leave in any year;
- (iv) be eligible to elect to purchase one, two, three or four weeks' additional leave per year. Judges of the Federal Circuit Court will have an amount deducted from their annual salary, dependent on the amount of leave purchased and their salary, which will be reflected in their regular salary payments. Purchased leave counts as service for all purposes.

**2.10 Salary packaging:** A full-time office holder, including a Judge of the Federal Circuit Court, but otherwise excluding Judges, may elect to take benefits in lieu of base salary but must take at least 50 per cent of their base salary as salary except where policies and procedures on salary packaging of the administering agency provide otherwise.

- 2.10.1** A part-time office holder, other than a Judge, may elect to take benefits in lieu of her or his part-time office fee or a combination of part-time office fee and benefits, where this is in accordance with agency policies and procedures on salary packaging.
- 2.10.2** Any election to salary package in accordance with this section must be consistent with relevant taxation laws and rulings or guidelines applicable to salary packaging schemes issued by the Australian Taxation Office.
- 2.10.3** Any election to salary package in accordance with this section must not result in cost to the Commonwealth (including in relation to any fringe benefits taxation) additional to the cost which would be incurred if benefits able to be taken as salary were taken as salary.

**Table 1 RATES OF REMUNERATION – JUDICIAL OFFICES**

**Commencing on 1 July 2017**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>	<b>Column 5</b>
<b>Authority</b>	<b>Office</b>	<b>Full-Time Office Base Salary</b>	<b>Part-Time Office Daily Fee</b>	<b>Travel Tier</b>
High Court of Australia	Chief Justice	\$584,520	-	1
	Justice	\$530,440	-	1
Federal Court of Australia	Chief Justice	\$494,980	-	1
	Judge	\$449,840	-	1
Family Court of Australia	Chief Justice	\$494,980	-	1
	Deputy Chief Justice	\$463,130	-	1
	Judge (including Judges assigned to the appeal division, Judge administrators and senior Judges)	\$449,840	-	1
Federal Circuit Court of Australia	Chief Judge	\$449,840	-	1
	Judge	\$379,630	-	1
Copyright Tribunal	President <sup>(1)</sup>	\$449,840	-	1
	Deputy President (Judicial)	-	-	1
Australian Competition Tribunal	President <sup>(1)</sup>	\$449,840	-	1
Australian Law Reform Commission	President (Judicial)	\$449,840	-	1
Administrative Appeals Tribunal	President <sup>(1)</sup>	\$449,840	-	1
National Native Title Tribunal	President (Judicial)	\$449,840	-	1
Defence Force Discipline Appeal Tribunal	President	-	-	-

<sup>(1)</sup> An expense of office allowance of \$2,326 a year is payable to a sitting Judge who also holds this office on a part-time basis.

Table 2A

## Full-Time Salary and Part-Time Daily Fees – Non-Judicial Offices

Commencing on 1 July 2017

Column 1	Column 2	Column 3	Column 4	Column 5
Authority	Office	Full-Time Office Base Salary	Part-Time Office Daily Fee	Travel Tier
Federal Court of Australia	Assessor (Part-time)	-	\$983	1
Copyright Tribunal	Deputy President (non-Judicial) <sup>(1)</sup>	-	\$1,059	1
	Member <sup>(1)</sup>	-	\$1,059	1
Australian Competition Tribunal	Member <sup>(2)</sup>	-	\$983	1
Australian Law Reform Commission	Member (Part-time)	-	\$983	1
Administrative Appeals Tribunal	Deputy President <sup>(4) (5)</sup>	(see table 3)	\$1,873	1
	Senior member (level 1) <sup>(4) (5)</sup>	(see table 3)	\$1,561	2
	Senior member (level 2) <sup>(4) (5)</sup>	(see table 3)	\$1,328	2
	Member (level 1) <sup>(4) (5)</sup>	(see table 3)	\$1,041	2
	Member (level 2) <sup>(4) (5)</sup>	(see table 3)	\$911	2
	Member (level 3) <sup>(4) (5)</sup>	(see table 3)	\$781	2
National Native Title Tribunal	Deputy President <sup>(1)</sup>	(see table 3)	\$1,393	1
	Member <sup>(1)</sup>	(see table 3)	\$1,022	1
Defence Force Discipline Appeal Tribunal	Member	-	\$841	1
Australian Security Intelligence Organisation	Prescribed Authority	-	\$1,484	1

- (1) For part-time office holders a minimum annual payment of ten times the daily fee applies, whether the office holder receives a fee based on daily rates or on hourly rates (under 2.4).
- (2) For part-time office holders an additional annual payment of \$23,520 a year applies.
- (3) For part-time office holders an additional annual payment of \$23,520 a year applies.
- (4) In addition to fees specified a part-time member shall be paid a cancellation fee equivalent to 50 per cent of one day's fee where all of a day's work is cancelled with fewer than 5 working days' notice (this includes the circumstance where a hearing does not proceed on a day on which a member has attended).
- (5) For part-time office holders a minimum annual payment of five times the daily fee applies, whether the office holder receives a fee based on daily rates or hourly rates (under 2.4), subject to certification by the President that work was not available.

Table 2B

## ANNUAL FEES – PART-TIME NON –JUDICIAL OFFICES

Commencing on 1 July 2017

Column 1	Column 2	Column 3	Column 4	Column 5
<b>Office in Administrative Appeals Tribunal</b>	<b>1 day per week</b>	<b>2 days per week</b>	<b>3 days per week</b>	<b>4 days per week</b>
Deputy President	\$81,140	\$162,280	\$243,420	\$324,560
Senior member (level 1)	\$64,050	\$128,100	\$192,150	\$256,200
Senior member (level 2)	\$53,910	\$107,820	\$161,730	\$215,640
Member (level 1)	\$40,760	\$81,520	\$122,280	\$163,040
Member (level 2)	\$36,230	\$72,460	\$108,690	\$144,920
Member (level 3)	\$31,700	\$63,400	\$95,100	\$126,800

**PART 3 – OFFICIAL TRAVEL AND RELATED MATTERS**

- 3.1** The provisions of Determination 2016/07 – *Official Travel by Office Holders*, (or any Determination that supersedes Determination 2016/07), apply to offices covered by this Determination, subject to any exclusions or limitations in this Determination. In establishing entitlements, the Travel Tier identified in this Determination for an office will apply under Determination 2016/07 (or any Determination that supersedes Determination 2016/07).
- 3.2** Justices of the High Court of Australia (including the Chief Justice) who do not establish their place of residence in Canberra shall be paid \$34,160 a year in lieu of the travelling allowance that would otherwise be payable.
- 3.3** **Military Justice System:** The employer may approve housing, relocation and medical assistance in accordance with agency policy and practices for the offices of Chief Judge Advocate and the Registrar of Military Justice.
- 3.4** **President, Fair Work Commission:** The President has the same travel entitlements when travelling within Australia as the Chief Justice of the Federal Court.

**PART 4 – COMMONWEALTH PROVIDED VEHICLES AND REIMBURSEMENT OF PRIVATE VEHICLE RUNNING COSTS FOR JUDGES**

- 4.1** **Definitions:** For the purposes of this part of the Determination, the following definitions apply:
- 4.1.1** **'Judge'** refers to a Judge other than a Federal Circuit Court Judge, unless the contrary intention appears;
- 4.1.2** **'Fleet Vehicle Selection (FVS) Policy'**, means Commonwealth Department of Finance policy on selection of passenger vehicles for the Australian Government Fleet;
- 4.1.3** **'Commonwealth car-with-driver service'** means the arrangements for the use of a Commonwealth car-with-driver established from time to time by the Attorney-General with the Chief Justice of the High Court of Australia, the Chief Justice of the Federal Court of Australia and the Chief Justice of the Family Court of Australia for Judges of those Courts;
- 4.1.4** **'principal registry'** means –
- (i) in the case of the High Court of Australia, the Registry of the Court;
  - (ii) in the case of the Federal Court of Australia, the Principal Registry;
  - (iii) in the case of the Family Court of Australia, the Principal Registry;

- 4.1.5 'private vehicle running costs'** include costs of a kind described in guidelines issued by the relevant Chief Justice or Chief Judge, but does not include expenditure relating to the acquisition, leasing or hire of any vehicle;
- 4.2 Guidelines:** The Chief Justice of the High Court of Australia, the Chief Justice of the Federal Court of Australia, the Chief Justice of the Family Court of Australia and the Chief Judge of the Federal Circuit Court of Australia may issue guidelines for the purposes of this part.
- 4.2.1** Guidelines issued under this section must take account of established Commonwealth standards for the efficient, effective and ethical use of Commonwealth resources. The FVS Policy applies, except as specified in 4.2.2.
- 4.2.2** Guidelines must provide for choice of an Australian-made vehicle from the FVS Policy list. Where guidelines in place at the date of this determination allowed for choice of an imported vehicle of 2000cc or less from Holden, Ford, Toyota or Nissan, in accordance with the Australian Public Service Executive Vehicle Scheme, that option can continue to be offered.
- 4.3 Arrangements for the Chief Justice of the High Court:** In addition to a Commonwealth car-with-driver service, the Chief Justice of the High Court of Australia is allowed annually:
- (i) a Commonwealth-provided privately plated vehicle leased in accordance with the FVS Policy, and subject to any guidelines issued in accordance with 4.2; or
  - (ii) reimbursement of private vehicle running costs incurred by the Chief Justice up to \$10,850.
- 4.4 Access to privately plated vehicles or reimbursement of private vehicle running costs for Judges:** A Judge, other than the Chief Justice of the High Court of Australia, who has elected for the time being to forgo the entitlement, either in the Judge's city of residence or in the city in which the principal registry of the Court is situated, to a regular Commonwealth car-with-driver service, is allowed annually in that city and as the alternatives to that service:
- (i) a Commonwealth-provided privately plated vehicle leased in accordance with the FVS Policy, and subject to any guidelines issued in accordance with 4.2; or
  - (ii) reimbursement of private vehicle running costs incurred by the Judge up to \$10,850.
- 4.5 Access to privately plated vehicles or reimbursement of private vehicle running costs for Judges of the Federal Circuit Court:** A Federal Circuit Court Judge is allowed annually:
- (i) a Commonwealth-provided privately plated vehicle leased in accordance with the FVS Policy, and subject to any guidelines issued in accordance with 4.2; or
  - (ii) reimbursement of private vehicle running costs incurred by the Federal Circuit Court Judge up to \$10,850.
- 4.6 No cashing out:** The value of the entitlement allowed under clauses 4.3, 4.4 or 4.5 may not be taken as cash, except to the extent that reimbursement is claimed for expenditure in accordance with paragraphs 4.3(ii), 4.4(ii) or 4.5(ii).
- 4.7 Election to vary allowance:** During a year, the Chief Justice of the High Court of Australia, a Judge or a Federal Circuit Court Judge may elect to vary his or her election under clause 4.3, 4.4 or 4.5 to, or from, a privately plated vehicle provided by the Commonwealth from, or to, obtaining reimbursement of private vehicle running costs, provided that no additional administrative or other expenses are incurred by the Commonwealth as a result of the election to so vary this allowance.

## PART 5 – PROVISIONS FOR OFFICES ON TOTAL REMUNERATION

**5.1 Coverage and definitions:** The provisions in this part of the Determination apply only to the offices listed in Table 3. For the purposes of this part of the Determination, the following definitions apply.

**5.1.1 'Authority'** means the court, tribunal or other body to which the Office Holder is attached.

**5.1.2 'Base Salary'** means the amount specified in column 3 of Table 3 of this Determination.

**5.1.3 'Benefits'** means all non-monetary benefits provided at the Commonwealth's expense to or on behalf of an Office Holder as a personal benefit including a vehicle (where provided), the value attributed by the Remuneration Tribunal to the Commonwealth's superannuation contributions or Superannuation Support (refer clause 5.5) and any other benefits received by way of remuneration packaging (refer clause 5.4).

**5.1.4 'Employer's Superannuation Contribution'** means:

- in respect of a member of a Commonwealth defined benefit scheme (including the Commonwealth Superannuation Scheme or the Public Sector Superannuation Scheme), the value attributed to the Employer's Superannuation Contribution in accordance with sub-clauses 5.5.1, 5.5.2, 5.5.4 or 5.5.5; or
- in respect of a member of the Public Sector Superannuation Accumulation Plan, 15.4% of ordinary time earnings (OTE) for the office holder; or
- in respect of a member of any other fund, the minimum level of employer superannuation contribution that would reduce to zero the charge percentage for that office holder under section 23 of the *Superannuation Guarantee (Administration) Act 1992*.

Contributions made on a salary sacrifice basis do not form part of the Employer's Superannuation Contribution; these are covered by clause 5.4 (Remuneration packaging).

**5.1.5 'Office Holder'** means a person appointed to an office listed in Table 3 of this Determination.

**5.1.6 'Reference Salary'** means the Office Holder's Total Remuneration, less the amount of the Employer's Superannuation Contribution for the office holder.

**5.1.7 'Total Remuneration'** is the amount shown in Columns 4 of Table 3 representing the value, calculated at the total cost to the Commonwealth (including Fringe Benefits Tax where applicable), of:

- salary (including Base Salary), allowances or lump sum payments;
- benefits; and
- the Employer's Superannuation Contribution

but does not include:

- the value of Business Support referred to in clause 5.7;
- reimbursement of expenses incurred on geographic relocation following appointment as an Office Holder, in accordance with the authority's policies and practices where approved by the appropriate authority;
- travelling allowances and expenditure referred to in Part 3;
- any payment in lieu of recreation leave; and
- any separation benefits in accordance with clauses 2.8 – 2.8.6.

- 5.2 Total Remuneration should not be supplemented:** The intention of this Determination is that the Total Remuneration amount payable to an office holder under Table 3 represents an exhaustive statement of the office holder's remuneration and significantly-related benefits, to the extent that the Tribunal is empowered to determine them. In other words, the intention is that the Total Remuneration amount to which an office holder is entitled under this part should not be supplemented by any other authority where that may be inconsistent with this Determination.
- 5.3** An office holder listed in Table 3 is eligible to receive the annual amount of Total Remuneration set out in Table 3 for the relevant office.
- 5.4 Remuneration packaging:** Subject to this part, an Office Holder may elect to receive the benefit of Total Remuneration as salary or a combination of salary and Benefits, in accordance with the authority's policies and procedures on salary packaging. The Office Holder must take at least 50 per cent of Total Remuneration as salary except where agency policies and procedures on salary packaging allow otherwise. Any election must be consistent with relevant taxation laws and rulings or guidelines applicable to salary packaging schemes issued by the Australian Taxation Office (ATO).
- 5.5 Superannuation Salary**
- 5.5.1** For an Office Holder who is a member of the Commonwealth Superannuation Scheme:
- (a) the Officer Holder's annual rate of salary for the purposes of the scheme is the Officer Holder's Base Salary; and
  - (b) the value attributed to the Employer's Superannuation Contribution is taken to be 15.4% of the Office Holder's Base Salary.
- 5.5.2** For an Office Holder who is a member of the Public Sector Superannuation Scheme:
- (a) the Office Holder's basic salary for the purposes of the scheme is the Office Holder's Base Salary; and
  - (b) the amount of the Officer Holder's recognised allowances for the purposes of the scheme is zero; and
  - (c) the value attributed to the Employer's Superannuation Contribution is taken to be 15.4% of the Officer Holder's Base Salary.
- 5.5.3** For an Office Holder who is a member of the Public Sector Superannuation Accumulation Plan, the Office Holder's superannuation salary for the purposes of the scheme is the Office Holder's ordinary time earnings (OTE).
- 5.5.4** For an Office Holder who is a member of the Defence Force Retirement and Death Benefits Scheme:
- (a) the Office Holder's annual rate of salary for the purposes of the scheme is the Office Holder's Base Salary; and
  - (b) the value attributed to the Employer's Superannuation Contribution is taken to be 15.4% of the Office Holder's Base Salary.
- 5.5.5** For an Office Holder who is a member of the Military Superannuation and Benefits Scheme:
- (a) the Office Holder's annual rate of salary for the purposes of the scheme is the Office Holder's Base Salary; and
  - (b) the value attributed to the Employer's Superannuation Contribution is taken to be 15.4% of the Office Holder's Base Salary.

- 5.5.6** For an Office Holder who is a member of any other superannuation fund, the Employer's Superannuation Contribution is to be made at the rate elected by the Office Holder, which must not be less than a rate that would, under section 23 of the *Superannuation Guarantee (Administration) Act 1992*, reduce the charge percentage in relation to that Office Holder to zero.
- 5.6** **Vehicles:** Where an Office Holder accepts an offer of an authority owned or leased vehicle for private use, the office holder's Total Remuneration will be reduced by the actual cost of the vehicle to the authority plus parking and fringe benefits taxation, less a reasonable amount (if any) reflecting business usage patterns. Where an Office Holder has access to an authority owned or leased vehicle for private use, the Office Holder will be considered to have accepted an offer of a vehicle for the purposes of this provision.
- 5.6.1** Any business usage amount is to be assessed on log book records for a 12 week representative period. Where the annual business kilometres are less than 5,000 it will be based on the 'cents per kilometre' method. Where business kilometres are 5,000 kilometres or more, the percentage of business use to total kilometres travelled per annum will be applied to the total cost of the vehicle.
- 5.6.2** Where an Office Holder accepts an offer of a car park at Commonwealth expense, the actual cost (including fringe benefits tax) of the car park to the agency will be a Benefit for Total Remuneration purposes.
- 5.7** **Business Support:** Where an Office Holder is provided with communications, information technology and other office facilities necessary for the efficient conduct of his or her office, incidental private use of those facilities by the Office Holder does not necessitate the value of the facilities being included in Total Remuneration.
- 5.8** **Payments on Separation:** The rate of payment to an office holder whose remuneration is determined in accordance with this Part in respect of
- payment in lieu of Recreation Leave as specified in clause 2.7 (ii); and
  - loss of office benefits as specified in clause 2.8.3
- shall be the office holder's Reference Salary.

**Table 3 RATES OF REMUNERATION – OFFICES ON TOTAL REMUNERATION****Commences on 1 July 2017**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>	<b>Column 5</b>
<b>Authority</b>	<b>Office</b>	<b>Base Salary</b>	<b>Total Remuneration</b>	<b>Travel Tier</b>
High Court of Australia <i>Effective 3 April 2017, refer Det 2017/18</i>	Chief Executive and Principal Registrar	\$335,610	\$479,430	1
Federal Court of Australia	Chief Executive Officer	\$335,610	\$479,430	1
	Assessor (Full-time)	\$197,480	\$270,520	2
Family Court of Australia	Chief Executive Officer (2)	\$252,770	\$346,250	1
Federal Circuit Court of Australia	Chief Executive Officer	\$272,210	\$372,890	1
Australian Law Reform Commission	President (non-judicial)	\$325,360	\$445,690	1
	Commissioner (non-judicial)	\$197,290	\$270,250	2
Administrative Appeals Tribunal	Deputy President (non-judicial) (1)	\$334,090	\$477,270	1
	Senior member (level 1)	\$275,000	\$376,710	2
	Senior member (level 2)	\$231,500	\$317,110	2
	Member (level 1)	\$175,000	\$239,720	2
	Member (level 2)	\$155,550	\$213,080	2
	Member (level 3)	\$136,110	\$186,450	2
	Registrar	\$291,650	\$399,520	1
National Native Title Tribunal	President (non-judicial)	\$319,880	\$441,390	1
	Deputy President	\$301,360	\$401,000	1
	Member	\$224,780	\$307,910	1
	Registrar	\$212,470	\$291,050	2
Military Justice System	Chief Judge Advocate (3)	\$305,290	\$418,200	2
	Registrar of Military Justice	\$228,080	\$265,200	2

- (1) A Deputy President of the AAT,
- i) to whom the transitional provisions of Item 4 of Schedule 9 to the *Tribunals Amalgamation Act 2015* apply on 1 July 2015, and
  - ii) who has an existing superannuation salary higher than the Base Salary set out in this Table, and
  - iii) who is a member of a Commonwealth defined benefits superannuation scheme,
- will maintain the higher Base Salary of 73% of Total Remuneration for the remainder of the member's current appointment as Deputy President and for the duration of all future appointments to that office, and the higher rate will be applied in calculating the attributed value of employer contributions in Clause 5.5 of this determination.
- (2) Ms Patricia Christie, Chief Executive Officer of the Family Court of Australia, will receive \$372,890 Total Remuneration with \$272,210 Base Salary from 1 July 2017 to 31 December 2017.
- (3) A Base Salary of \$305,920 will apply to Major-General Ian Westwood AM, Chief Judge Advocate, from 1 July 2017.

**PART 6 – TRANSITIONAL ARRANGEMENTS FOR AAT MEMBERS COVERED BY SCHEDULE 9 OF THE TRIBUNALS AMALGAMATION ACT 2015 (the Amending Act)**

**6.1 AAT members** (with a term of appointment commencing prior to 1 July 2015): The provisions of Remuneration Tribunal Determination 2015/05 – *Judicial and Related Offices – Remuneration and Allowances* will continue to apply to members of the AAT who are subject to Item 4 of Schedule 9 to the Amending Act (i.e. for the remaining balance of the AAT member’s term of appointment that commenced before 1 July 2015), with the following exceptions:

6.1.1 Clause 2.5.4 (ii) of this determination will apply in lieu of clause 2.5.4 (ii) of Determination 2015/05; and

6.1.2 Remuneration as set out in Table 4 applies in lieu of the remuneration included in Tables 2A, 2B and 3 of Determination 2015/05:

**Table 4 Full-Time Salary and Part-Time Daily Fees – Transitional AAT Offices**

**Commences on 1 July 2017**

<b>Full-Time Office</b>	<b>Base Salary</b>		<b>Total Remuneration</b>	<b>Travel Tier</b>
Deputy President	\$348,410		\$477,270	1
Senior Member	\$275,000		\$376,710	1
Member	\$231,360		\$317,110	1
<b>Part-Time Office – Annual Fees</b>	<b>1 day per week</b>	<b>2 days per week</b>	<b>3 days per week</b>	<b>4 days per week</b>
Deputy President	\$81,140	\$162,280	\$243,420	\$324,560
Senior Member	\$64,050	\$128,100	\$192,150	\$256,200
Member	\$53,910	\$107,820	\$161,730	\$215,640
<b>Part-Time Office – Daily Fees</b>	<b>Daily fee</b>		<b>Travel Tier</b>	
Deputy President <sup>(1) (2)</sup>	\$1,609		1	
Senior Member <sup>(1) (2)</sup>	\$1,273		1	
Member <sup>(1) (2)</sup>	\$1,069		1	
<p>(1) For part-time office holders a minimum annual payment of ten times the daily fee applies, whether the office holder receives a fee based on daily rates or on hourly rates (under 2.4).</p> <p>(2) In addition to fees specified a part-time member shall be paid a cancellation fee equivalent to 50 per cent of one day’s fee where all of a day’s work is cancelled with fewer than 5 working days’ notice (this includes the circumstance where a hearing does not proceed on a day on which a member has attended).</p>				

**6.2 Former Migration Review Tribunal and Refugee Review Tribunal (MRT/RRT) members:** The provisions of Remuneration Tribunal Determinations *2017/11 – Remuneration and Allowances for Holders of Full-Time Public Office* (as amended) and *2017/10 – Remuneration and Allowances for Holders of Part-Time Public Office* (as amended) will continue to apply to former members of the MRT/RRT, who are now members of the AAT subject to Item 5 of Schedule 9 to the Amending Act (i.e. for the remaining balance of the former MRT/RRT member’s term of appointment that commenced before 1 July 2015), with the following exceptions:

6.2.1 Clause 2.5.4 (ii) of this determination will apply in lieu of equivalent arrangements under Determination 2017/10.

**6.3 Former Social Security Appeals Tribunal (SSAT) members:** The provisions of Remuneration Tribunal Determinations *2017/11 – Remuneration and Allowances for Holders of Full-Time Public Office* (as amended) and *2017/10 – Remuneration and Allowances for Holders of Part-Time Public Office* (as amended) will continue to apply to former members of the SSAT, who are now members of the AAT subject to Item 5 of Schedule 9 to the Amending Act (i.e. for the remaining balance of the former SSAT member’s term of appointment that commenced before 1 July 2015), with the following exceptions:

**6.3.1** Clause 2.5.4 (ii) of this determination will apply in lieu of clause B3.6 (b) of Determination 2017/10.

## Notes to Remuneration Tribunal Determination 2017/09 Judicial and Related Offices – Remuneration and Allowances

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This determination as shown in this compilation is amended as indicated in the tables below. Under the *Legislation Act 2003*, which came into force on 1 January 2005, it is a requirement for all non-exempt legislative instruments to be registered on the Federal Register of Legislation.

### Table of Instruments

Title	Date of FRLI registration	Date of commencement	Application, saving or transitional provisions
Determination 2017/09 – Judicial and Related Offices – Remuneration and Allowances	29/06/2017 F2017L00815	1/07/2017	-
Determination 2017/14 – Remuneration and Allowances for Holders of Public Office and Judicial and Related Offices	1/08/2017 F2017L00978	CI 3.1, 3.2 – 2/08/2017	-
Determination 2017/17 – Remuneration and Allowances for Holders of Public Office and Judicial and Related Offices	30/08/2017 F2017L01108	CI 3.2 – 27/08/2017 CI 3.1, 3.3 – 31/08/2017	
Determination 2017/18 – Remuneration and Allowances for Holders of Public Office and Judicial and Related Offices	04/10/2017 F2017L01321	CI 3.2 – 3/04/2017	

Notes to Remuneration Tribunal Determination 2017/09:  
Judicial and Related - Remuneration and Allowances

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Table of Amendments

ad = added or inserted    am = amended    LIA = *Legislative Instruments Act 2003*    rep = repealed    rs = repealed and substituted

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**Provision affected**

**How affected**

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**Part 3**

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Clause 3.2

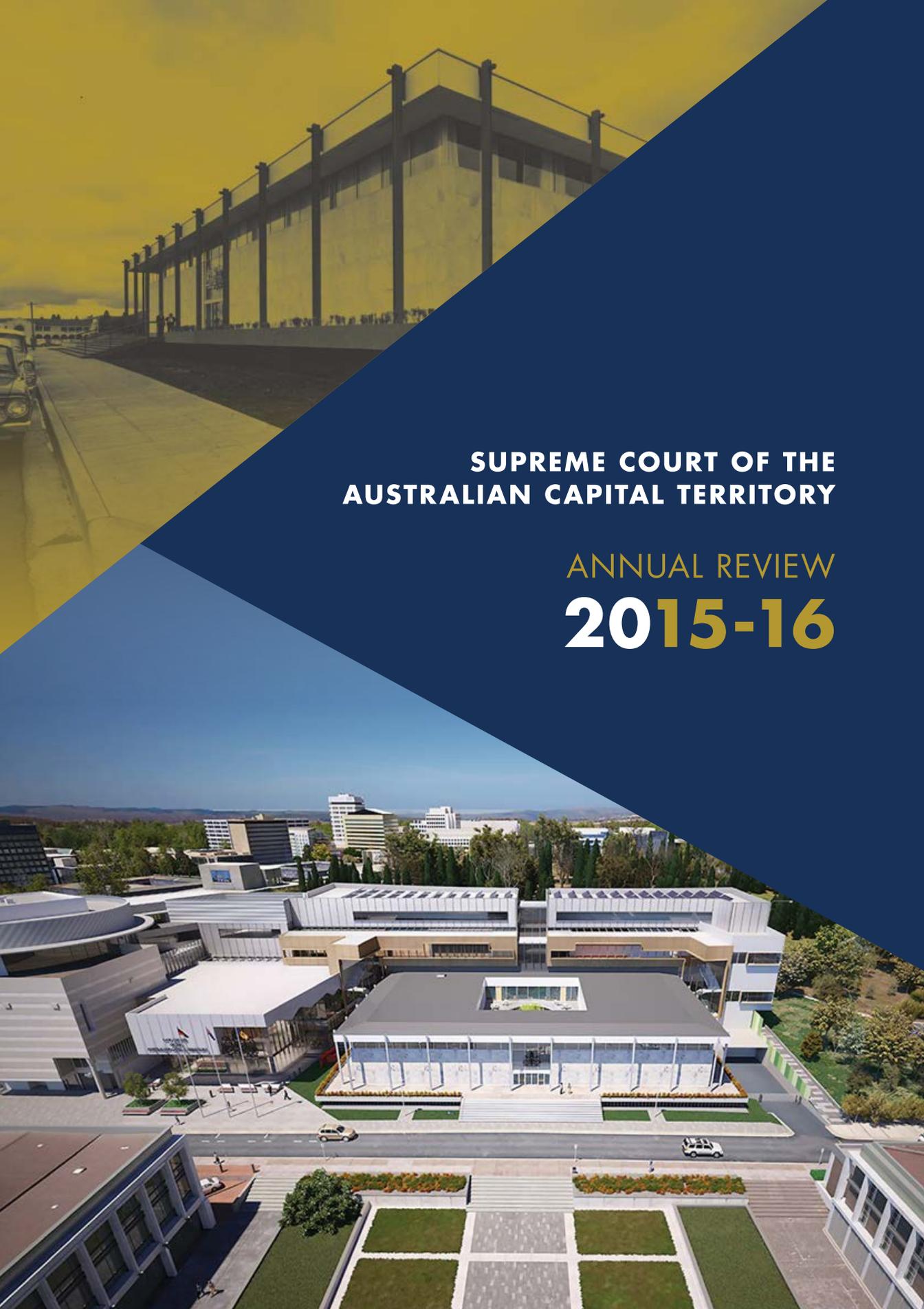
am 2017/17

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**Table 3**

am 2017/18

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**SUPREME COURT OF THE  
AUSTRALIAN CAPITAL TERRITORY**

ANNUAL REVIEW  
**2015-16**



**SUPREME COURT OF THE  
AUSTRALIAN CAPITAL TERRITORY**

ANNUAL REVIEW

**2015-16**

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**THE NEW BUILDING "...MAKES A STATEMENT ABOUT THE SIGNIFICANCE THAT THE COMMUNITY PLACES ON THE RULE OF LAW, AND ON THE SUPREME COURT AS THE COURT THAT SITS AT THE APEX OF OUR INDEPENDENT JUDICIARY." [THE HON. CHIEF JUSTICE HELEN MURRELL, 11 APRIL 2016]**



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*The Hon Chief Justice Murrell and Principal Registrar Philip Kellow*

# WELCOME

## **CHIEF JUSTICE HELEN MURRELL**

2015–16 was another busy year of activity and change for the Court, which saw many highlights.

As usual, in 2015–16 the activities of our judges were not confined to deciding cases. Among other things, we contributed to the professional development of the judiciary and the broader legal profession by participating in professional development bodies and presenting at conferences.

On 3 September 2015, the Court hosted the Tristan Jepson Memorial Foundation ACT lecture. With the support of the ACT Law Society and event sponsors, Marie Jepson, Executive Director and Co-founder of the Foundation, presented a moving lecture promoting awareness of mental health in the legal community.

On 20 February 2016, the Court hosted the Women Lawyers Association ACT Family Day. The Saturday morning was an informative and fun event for the families of practitioners. Children familiarised themselves with what goes on inside a Court, sat on the bench, visited the cells and dressed up.

On 9 March 2016, Aldalaan Mansour Saleh and a delegation from the Narif Arab University for Security Sciences in Saudi Arabia toured the Courts. We had a lively and interesting discussion about the differences between our legal systems.

On 11 April 2016, I joined the Attorney-General at a sod-turning ceremony on the site of the new Supreme Court. The construction of the new Supreme Court and joint Courts facilities is proceeding efficiently, with a minimum of disruption and within budget. The Judges have been closely involved in the design process. We are confident the new Supreme Court will be an outstanding public building that meets the needs of all who use it.

On 15 April 2016 at the Supreme Court, I launched the ACT Chapter of the Hellenic Lawyers Association as Patron. The launch was well attended by the substantial Canberra Greek legal community.

On 6 May 2016, Judges and Magistrates were taken on a guided tour of the Tidbinbilla Nature Reserve by Park Ranger Brett McNamara. Judicial officers gained a better understanding of local Aboriginal culture and local wildlife. We look forward to a planned tour in the Namadgi National Park at the end of the year.

The Court received some additional funding for Acting Judges, which enabled us to deal with the general caseload while waiting for our fifth resident judge to commence in July 2016.

## WELCOME

This year there was a slight increase in civil lodgements and a slight decrease in criminal lodgements. However, the time occupied by the average criminal trial increased to 5.5 days. There were several lengthy trials, including murder and fraud trials.

There is scope to improve the percentage of cases that is completed within 12 months of lodgement, and this is an area of focus in 2016–17. Another priority is streamlining Court of Appeal procedures.

The Court-based mediation process that occurs in most civil matters continues to yield success. Statistically, about half the matters that are listed for mediation settle at the mediation. However, the true success rate is much higher because, in the weeks following mediation, matters that have not settled at the mediation are very likely to settle based on the mediation discussions. We are fortunate to have the services of experienced mediators (retired judges and senior counsel) who are willing to mediate cases back to back for a modest fee.

The Supreme Court and the Magistrates Court are committed to introducing the International Framework for Court Excellence (IFCE), a framework for courts governance that has been adopted by a number of Australian and international courts, including the Singapore courts. Through its IFCE Manager, this year the Supreme Court of Victoria supported us with advice about how we might introduce the IFCE.

I thank the Principal Registrar, Registrar and Deputy Registrar, the Sheriff and her officers, the Russell Fox Library, Chambers staff and Criminal and Civil Registry staff for their support and dedication during 2015–16.

## PRINCIPAL REGISTRAR PHILIP KELLOW



During the reporting year 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 Supreme Court and Magistrates Court.

The contract for the new courts facility was finalised at the end of 2015 and the first half of 2016 involved a range of activities to settle the final design of the new facility (including the creation of a mock courtroom in Hume), relocate two judicial chambers and move several staff in anticipation of construction work, make interim upgrades to the technology in a number of courtrooms, start the transition of facilities management to the

consortium and commence excavation work.

The programming of the civil release for the ICMS was completed in mid-2016 with a view to implementation in the September quarter. This release also deals with the ACT Court of Appeal and the probate jurisdiction. Work commenced on refining the requirements for the criminal release of the ICMS that is due in the first half 2018. This is the most complex of the releases and will also include a number of online services.

During the year an independent review of the Sheriff's Office was undertaken by the Sheriff of Queensland. The review examined the current arrangements and made a number of recommendations to ensure the Office is able to perform its statutory and other functions in a timely, professional, efficient and effective manner. A number of the recommendations were implemented including a revision of the Sheriff's Handbook and related guidelines, publication of an updated Jury Manual and jury videos and the provision of training to Sheriff's Officers. Negotiations for the procurement of a new jury management system commenced.

In April and May the Court worked with Michael Vallance from the Supreme Court of Victoria and Anne O'Hehir from Court Services Victoria to assess its current performance, customs and practices against the criteria of the International Framework for Court Excellence. The outcomes from that assessment will inform a range of initiatives to be undertaken during 2016-17.

The last 12 months have 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, Sheriff 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 Justice, Judges, Associate Judge 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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## STRATEGIC STATEMENT

### *The Court's Purpose*

1. To maintain and promote the rule of law
2. To provide leadership within the justice system

### *The Court achieves its purpose :*

1. By delivering impartial, high quality and timely decisions
2. By resolving each case by the process most suited to achieving a just, quick and effective outcome
3. By ensuring transparent, easy and cost-effective access to the Court for all
4. By communicating openly, clearly and respectfully
5. By being accountable for the use of public resources
6. By developing and applying best practice

### *Judicial Priorities for 2016/2017*

1. To enhance the efficiency and cost-effectiveness of Court of Appeal processes
2. To enhance mediation processes
3. To develop and implement an International Framework for Court Excellence plan
4. To work closely with the ACT Government and Juris Partners to ensure that the new Supreme Court building meets the Court's needs and is of world standard
5. To prepare for a smooth transition to the new Supreme Court building in 2017/2018
6. To fully integrate technological innovations into the Court's processes
7. To explore the potential for a Drug and Alcohol Court

## HISTORY

The Supreme Court of the Australian Capital Territory was established as a superior court of record on 1 January 1934 by the *Seat of Government Supreme Court Act 1933* (Cth). The principal reasons behind the establishment of the Supreme Court were to relieve the High Court of Australia of its original jurisdiction in relation to the Australian Capital Territory and to provide an intermediate court of appeal from what was then the Court of Petty Sessions.

The first sitting of the Supreme Court was held at the Acton House Courthouse on 12 February 1934 and was presided over by Justice Lionel Oscar Lukin. From January 1941 the Court sat at the then new Patents Office in Parkes. The Court has occupied its present accommodation in Knowles Place on the western side of City Hill, since the Law Courts Building was opened by the Prime Minister, Sir Robert Menzies, in 1963.

When the Law Courts Building was opened, the Australian Capital Territory had a population of less than 80,000 people and the Supreme Court had no resident judge. Instead, the Court was principally constituted by additional judges, judges whose primary commission was as a judge of another Commonwealth Court. In 2015–16, the 390,000 people of the Territory were served by four resident Judges and the Associate Judge. To deal with the Territory's growing population and the Court's growing workload, the Executive announced that the Court's first fifth resident judge will be appointed in July 2016.



*Courtroom 1*

*Existing Supreme Court building*

## JURISDICTION

The Supreme Court of the Australian Capital Territory is a superior court of record and it is invested with the original and appellate jurisdiction necessary to administer justice in the Territory.

In 2014–15, the Court consisted of the Chief Justice, three other resident Judges, a resident Associate Judge, Additional Judges (Federal Court Judges who have an additional appointment to the ACT Supreme Court) and Acting Judges (Judges who have short term appointments of up to twelve months).

The judiciary was supported in interlocutory case management directions, by a Registrar (Ms Annie Glover) and Deputy Registrar (Mr Grant Kennealy) and by combined Registry staff who assist by maintaining records, processing orders, listing cases and performing other functions. The Sheriff's Office provides security and administers the jury system. The Russell Fox Library is the main legal reference resource for the ACT Law Courts.

The original and appellate jurisdiction of the Supreme Court is usually exercised by a single Judge. The Associate Judge manages most civil matters and hears many of the civil trials. Criminal trials are heard before a Judge and jury, or (in a limited range of cases) by a Judge alone, at the election of the accused.

In civil matters the Supreme Court has an unlimited monetary jurisdiction. Claims for less than \$250,000 are usually brought in the Magistrates Court. The Supreme Court hears appeals from the Magistrates Court, the Childrens Court and the ACT Civil and Administrative Tribunal.

In most cases, an appeal from the Associate Judge or from a single Judge is heard by the Court sitting as a Court of Appeal which is constituted by three Judges, at least one of whom is a resident Judge.

## JUDGES OF THE COURT

### Resident Judges



#### **CHIEF JUSTICE HELEN GAY MURRELL**

On 28 October 2013, Helen Murrell was sworn in as the Chief Justice of the Australian Capital Territory.

Chief Justice Murrell attended the University of New South Wales, from which she graduated in 1976 with a BA/LLB degree. In 1981 her Honour obtained a Diploma of Criminology from the University of Sydney.

Her Honour was admitted as a solicitor of the Supreme Court of New South Wales in 1977. From 1977 to 1981 her Honour practised at the Commonwealth Crown Solicitor's Office and NSW Legal Aid Commission. From 1981 to 1996 her Honour practised as a barrister in the areas of criminal law, administrative law, environmental law, common law and equity. From 1994 to 1996 her Honour was the first Environmental Counsel to the NSW Environment Protection Authority. In 1995 her Honour was appointed Senior Counsel in New South Wales. From 1996 to 2013 her Honour was a Judge of the District Court of New South Wales. In 1996 her Honour was also an Acting Judge in the Land and Environment Court of New South Wales. From 1997 to 1999 her Honour was President of the Equal Opportunity Tribunal of New South Wales. Her Honour then became Deputy President of the Administrative Decisions Tribunal of New South Wales (Head of the Equal Opportunity Division). Her Honour assisted to establish the Drug Court of New South Wales and, from 1998 to 2003, was the first Senior Judge of that Court. In 1999 her Honour was a member of the United Nations Expert Working Group on Drug Courts, Vienna. From 2005 to 2013 her Honour was Deputy Chairperson of the New South Wales Medical Tribunal.

Her Honour has a continuing interest in therapeutic jurisprudence. Her Honour has had a strong involvement with judicial education, particularly through the National Judicial College of Australia (NJCA). Her Honour was appointed Honorary Air Commodore of No 28 (City of Canberra) Squadron in April 2014 and her Honour became the Patron of the Hellenic Australian Lawyers Association (ACT Chapter) in April 2016.



## **JUSTICE RICHARD CHRISTOPHER REFSHAUGE**

Justice Richard Refshaug was sworn in as a judge of the Supreme Court of the Australian Capital Territory on 1 February 2008.

He commenced legal practice in 1976 in the ACT with the then-leading law firm of Macphillamy Cummins and Gibson. He became a partner in 1981 and senior partner in 1992. The firm merged with Sly and Weigall and his Honour became Chairman of Canberra partners. The firm changed its name later to Deacons Graham and James.

In practice, his Honour specialised in commercial litigation, administrative and constitutional law, reconstruction and insolvency industrial law and criminal law.

In 1998 his Honour was appointed the ACT's third Director of Public Prosecutions, a position he held until his appointment to the Court. His Honour was appointed Senior Counsel in 2000.

In 2001 his Honour was appointed as a Distinguished Honorary Professor in the ANU College of Law and an Adjunct Professor in the School of Law of the University of Canberra.

His Honour has a wide involvement in community activities. He chairs the Ministerial Advisory Council on Sexual Health, HIV/AIDS, Hepatitis C and Related Diseases and is on the Board of QL2 Dance. His Honour was, until recently, the Chair of the Board of Australian Volunteers International and the Anglican Board of Mission Australia. His Honour is Chancellor of the Anglican Diocese of Canberra and Goulburn and a member of the Appellate Tribunal of the Anglican Church of Australia.

In the Court, his Honour chairs the Joint Rules Advisory Committee and the Criminal Procedure Committee. His Honour is also editor and an author of the standard text on court procedure and practice in the ACT, *Civil Procedure ACT*. His Honour is also a member of the Council of the Australasian Institute of Judicial Administration Inc and its Project and Research Committee.

## **JUSTICE HILARY RUTH PENFOLD**

On 1 February 2008, Hilary Penfold PSM QC was sworn in as a judge of the Supreme Court of the Australian Capital Territory.

Born in 1953 in Dunedin, her Honour was educated at Ascham School and the Australian National University, from which she graduated BA in 1975 and LLB (Hons) in 1977.

After completing the Legal Workshop at the Australian National University, her Honour was admitted as a barrister and solicitor of the Supreme Court of the Australian Capital Territory in 1977.

In 1977 her Honour joined the Commonwealth Office of Parliamentary Counsel, where she worked as a legislative drafter, and in due course as First Parliamentary Counsel for ten years until 2004. In 2001, she was appointed a Commonwealth Queen's Counsel on the recommendation of the then Attorney-General, the Hon Daryl Williams QC MP.

During her career as a legislative drafter, her Honour drafted legislation covering many subject areas, including taxation, corporations law, defamation, industrial relations, human rights, sex discrimination, and forensic procedures, as well as the constitutional amendments proposed to create an Australian republic in 1999. Her Honour was also actively involved in the work of the Parliamentary Counsel's Committee (covering Australia and New Zealand), and was the President of the Commonwealth Association of Legislative Counsel, representing all legislative drafters in the [British] Commonwealth, from 1999 until 2003. Her Honour was a member of the Board of Taxation from 2000 until 2004, and headed the Migration Litigation Review commissioned by the then Attorney-General, the Hon Philip Ruddock MP, in 2003.

In 2004 her Honour was appointed Secretary of the newly-formed Department of Parliamentary Services.



## ***JUSTICE JOHN DOMINIC BURNS***

Justice John Burns was first admitted to practice as a solicitor of the Supreme Court of New South Wales in 1981. He practised as a Legal Aid solicitor in the Legal Services Commission of NSW, specialising in criminal law, until January 1983 when he joined the Deputy Crown Solicitors office in Canberra as a Prosecutor.

In 1984 he joined the newly created office of the Australian Government Solicitor in Canberra as a senior solicitor. In August 1985 he resigned from the Australian Government Solicitor's office to take up a position in the firm of Gallens Barristers and Solicitors. He subsequently became a partner in the firm of Gallens Barristers and Solicitors. When Gallens merged with the firm of Crowley and Chamberlain, he became a partner in the new firm of Gallens Crowley and Chamberlain. During this period, his Honour practised predominately in the field of criminal law and civil litigation.

In April 1989 his Honour commenced practice at the bar at Blackburn Chambers. His Honour practised in criminal law and general civil litigation.

His Honour was appointed as a Magistrate and Coroner of the Australian Capital Territory in April 1990. At the same time his Honour was also appointed as a Magistrate of the Norfolk Island Territory. During his time as a Magistrate his Honour spent three years as the Childrens Court Magistrate. His Honour also took over responsibility for managing the lists of the Magistrates Court as List Co-Coordinating Magistrate in 2007.

In December 2009 his Honour was appointed Chief Magistrate and Chief Coroner of the Australian Capital Territory. He held those positions until he took up his appointment as a Judge of the Supreme Court on 1 August 2011. Since 2012 his Honour has been a member of the ACT Law Reform Advisory Committee. Since 2016 his Honour has been the Section Editor of the Australian Law Journal for the Australian Capital Territory.



## **ASSOCIATE JUSTICE DAVID MOSSOP**

David Mossop was appointed as Master of the Supreme Court of the Australian Capital Territory on 22 May 2013. At the time of his appointment he was a Magistrate and a Coroner of the Australian Capital Territory. He holds a Bachelor of Science and Bachelor of Laws from the University of New South Wales and a Master of Laws (Public Law) from the Australian National University. He was admitted to practice as a solicitor in 1992. He was a solicitor at the Environmental Defenders Office (NSW) in 1993 and 1994 and the Environmental Defenders Office (ACT) in 1996–1997. He was associate to McHugh J of the High Court in 1995. He practised as a barrister for 14 years from 1998 to 2011. His principal areas of practice were administrative and commercial law. On 21 April 2015, the office of the ‘Master’ was re-titled to ‘Associate Judge’.

## **Additional Judges**

### ***During 2015–16 the following additional judges sat:***

The Honourable Justice Anthony Max North  
 The Honourable Justice Steven David Rares  
 The Honourable Justice Jayne Margaret Jagot  
 The Honourable Justice Lindsay Graeme Foster  
 The Honourable Justice Anna Judith Katzmann  
 The Honourable Justice John Gilmour  
 The Honourable Justice Michael Andrew Wigney  
 The Honourable Justice Iain James Kerr Ross AO  
 The Honourable Justice Melissa Anne Perry  
 The Honourable Justice Darryl Cameron Rangiah

## **Acting Judges**

### ***During 2015–16 the following acting judges sat:***

The Honourable Acting Justice Linda Margaret Ashford  
 The Honourable Acting Justice Stephen Lewis Walmsley  
 The Honourable Acting Justice Dennis Antill Cowdroy OAM  
 The Honourable Acting Justice David Peter Robinson  
 The Honourable Acting Justice David Ashley  
 The Honourable Acting Justice John Roscoe Nield

## RUSSELL FOX LIBRARY

### *About the Russell Fox Library*

The key function of the Russell Fox Library – named after the Territory’s first Chief Judge, the late Honourable Russell Walter Fox AC QC – is to provide and maintain legal resources that are used by the Supreme Court of the Australian Capital Territory, the Magistrates Court of the ACT and tribunal members of the ACT Civil and Administrative Tribunal. In addition to ensuring that legal resources remain relevant and up-to-date, the Library also assists with the provision of reference material and research to the judiciary, and whenever possible, legal practitioners, self-represented litigants and members of the public.

The Library is also responsible for the online publication of Supreme Court judgments, Magistrates Court decisions, Coroner’s Court findings as well as Practice Directions and Notices to Practitioners. Judgments and decisions are found on the ACT Law Courts and Tribunal website at [www.courts.act.gov.au](http://www.courts.act.gov.au)

As with most other superior court libraries, resources of the Russell Fox Library are available to members of the general public. Although members of the public are welcome to visit the Library, they are unable to borrow legal texts or law reports – only legal practitioners who are registered Library clients are conferred with borrowing privileges.

### *Other tasks carried out by the Library*

Supplementing the above routine functions, during the 2015–2016 financial year the Library was responsible in carrying out the following tasks:

#### ***Art Register for Supreme Court and Magistrates Court***

In preparation for the eventual move to the new ACT Supreme Court, Library staff along with officers from the Capital Works and Infrastructure team, Corporate, were involved in compiling an Art Register. The Register lists all art works held in both the Supreme and Magistrates Courts. The location of the art work, the medium used along with the name of the artist and brief description are all included in the Register, which also displays an image of the item listed.

A total of 221 artworks were identified and catalogued, providing a useful means of keeping track of the various paintings, photographs and sculptures on display throughout the public and closed areas of the courts.

#### ***ACT Magistrates Court Decision***

After discussions between the Russell Fox Library and the Australasian Legal Information Institute (AustLII), early October 2015 saw the first Magistrates Court decision, *Daniels v Boardman* [2015] ACTMC 3, being sent by the Library to AustLII.



*Russell Fox Library*

*The Russell Fox Library is ideally situated on the first floor of the Supreme Court building. Its collections contain Australian as well as overseas legal publications such as law reports, with some reports dating back to the 18th century.*

By the end of October all medium neutral citation decisions from 2012 onwards were uploaded onto AustLII, including decisions of the Industrial Court of the ACT. In addition to AustLII, an arrangement was put in place for Magistrates Court and Industrial Court decisions, as well as Coroner's Court findings, to be supplied by the Library to BarNet Jade.

The move by the Magistrates Court towards a medium neutral citation helped facilitate the idea of supplying decisions to AustLII and BarNet Jade. The provision of lower court decisions to these websites assists in both strengthening the public right of free access to legal material as well as assisting in the dissemination of often hard-to-find decisions to the public and legal profession.

Presently only Magistrate Court decisions that have a medium neutral citation are made available to AustLII and BarNet Jade. A more complete range of Magistrates Court decisions is available on the Court's website at [www.courts.act.gov.au/magistrates/judgment](http://www.courts.act.gov.au/magistrates/judgment)

### **Development of the new Courts and Tribunal Website**

During 2015–16 the Library assisted in work concerning the future replacement of the Courts and Tribunal websites with a Squiz Matrix platform. Various limitations of the existing website will be overcome by the new platform. Preliminary findings indicate that the new website will help clients to better search for and identify relevant judgments and decisions. The upgrade also means that a more robust search engine will now be available, resulting in better full-text searching. Another benefit of the new platform lies in its ability to expand future search requirements by incorporating additional search fields and display features, as requested by the Library.

### **Digitisation**

Conversion of hardcopy documents into electronic format continued in this financial year with the digitisation of the following items:

- Supreme and Federal Court Judges Conference papers from 1976 through to 1996. As conference papers have now been scanned into text searchable PDF files, it is now easier to locate papers delivered by various judges including a number presented by ACT Supreme Court judges.
- Sentence and Court of Appeal Cause Books. Digitisation of these documents, commenced in the previous financial year, was completed early in the first quarter. The Cause Books provide a unique insight into the crimes and punishment in the ACT in the last century and record, amongst other matters, file numbers, names of the accused, pleas, verdicts and offences. Access to these resources is restricted, with permission required before the Books can be viewed. Other sentence records have been identified with the intention of future digitisation.
- ACT Acts and Ordinances. It was discovered that key pieces of legislation dealing with the Courts were unavailable online. As a safeguard to possible loss or damage of these rare items, the Library undertook to digitally store the following legislative material:
  - *Court of Petty Sessions Ordinances 1930–1974* (reprinted as at 31 December 1978)
  - *Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982, no. 54 of 1982*
  - *Crimes Act 1900* (as at 28 February 1999)
  - *Coroners Act 1956* (reprinted as at 1 September 1995)
  - *Supreme Court Act 1933*
  - *Supreme Court Act 1933–971 and Rules of the Supreme Court 1938–1971*
  - *Supreme Court Act and Rules 1933–1974*
  - *Magistrates Court Ordinance 1930*

## Collection Development

In order to maintain the integrity of Library's collection of primary source material dealing with Court and Tribunal judgments and decisions, efforts were made to back capture the following documents:

- ACT Supreme Court Registrar decisions from 1982–2007. The decisions have now been catalogued, scanned and linked to their respective catalogue records;
- Federal Court Judgments on appeal from the ACT Supreme Court from 1998 to 2002 are being digitised;
- Various tribunal decisions have been scanned and linked to the catalogue to provide Library clients with access to full-text tribunal decisions – see table:

Tribunal	Date Range
ACT Discrimination Tribunal	1988–2009
Consumer and Trader Tribunal	2004–2007
ACT Legal Practitioners Disciplinary Tribunal	2007–2008
Essential Services Consumer Council Hardship	2001–2006
ACT Health Professionals Tribunal	2006–2009
ACT Administrative Appeals	1989–1992

## Statistics

The following table displays the number of judgements, decisions and findings uploaded onto the ACT Law Courts and Tribunal website during 2015–2016:

Jurisdiction	Number of Items Published
Supreme Court of the Australian Capital Territory Court of Appeal	53
Supreme Court of the Australian Capital Territory Full Court judgments	2
Supreme Court of the Australian Capital Territory judgments	221
Sentencing remarks	155
Magistrates Court of the Australian Capital Territory	16
Industrial Court of the Australian Capital Territory	3
Childrens Court of the Australian Capital Territory	1
Coroner's Court of the Australian Capital Territory	3

In addition to the above, 69 books were purchased for the Library's collection.

## ***Uber/Pets at Work Campaign***

In February the Library was host to two puppies organised by one of the associates as part of the Uber and Pets at Work Campaign.

Uber delivered the puppies to a number of workplaces around Canberra. For 15 minutes the puppies explored the Library collection and enjoyed the attention of associates and Library staff. The aim of the campaign was to support the local animal shelter, Best Friends Pet Rescue, as well as to highlight the importance of pet adoptions.

## **SHERIFF'S OFFICE**

The Sheriff's Office is responsible for the service and execution of process, the enforcement of civil judgments, the provision of juries, the provision of court attendants and security within the Supreme Court precinct.

During 2015–16, the Sheriff's Office continued to provide support to the Supreme Court, particularly during the criminal listing periods.

In 2015–16, the Office sought to streamline the jury empanelment process. The Office has also implemented the following improvements to performing our statutory functions in a professional and effective manner:

- Updated the procedural handbook for Sheriff's Officers and reviewed policies and procedures relevant to the functions of the Office;
- Developed a handbook and videos to inform jurors about jury service; these videos are now available on the Supreme Court website at [www.courts.act.gov.au/supreme/public/jury\\_service\\_in\\_the\\_australian\\_capital\\_territory](http://www.courts.act.gov.au/supreme/public/jury_service_in_the_australian_capital_territory);
- Reviewed and improved information sent to persons summonsed for Jury duty.

Negotiations are currently underway with New South Wales to acquire and configure their jury management system for the ACT. The New South Wales system would allow more efficient processes in relation to jury service.

Construction of the new courts facility will have some impacts on the operations of the Sheriff's Office. Planning in relation to work practice changes will continue as the building works progress in consultation with the judiciary and Registrar of the Supreme Court. Improvements to the Sheriff's Office are expected to continue throughout the 2016–17 financial year, including further work to improve the policies and procedures of the Office and the capability of Sheriff's Officers.



*Sheriff's Officers*

*Back row, L-R: Tim Lorraway, Terry Armstrong, Andrew Currie, Kerry CarMichael, Cheryl Angel, Alice Skaines.  
Front row, L-R: Judith Thompson, Nicola Baker, Caitlinn O'Brien, Rose Oliver, Toni Broekhuysen*





## HIGHLIGHTS

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## EVENTS

### ***Hellenic Australian Lawyers Association (ACT Chapter) Launch***

As Patron for the ACT Chapter of the Hellenic Australian Lawyers Association, Chief Justice Murrell attended the launch of the Chapter which was held in the foyer of the Supreme Court of the Australian Capital Territory on 15 April 2016. The event was well attended by the legal community.



*L-R: The Hon Justice E Kyrou (Patron, Hellenic Australian Lawyers (Victorian Branch) & Justice of Appeal, Supreme Court of Victoria), Her Excellency Mrs E Kagorari (Greek Ambassador to Australia), the Hon Chief Justice Murrell and Mr A Panna QC (President, Hellenic Australian Lawyers).*

## *Tristan Jepson Memorial Lecture*

On 3 September 2015, the Court was delighted to join with the Law Society of the ACT in hosting the first Tristan Jepson Memorial Lecture to be presented in Canberra. The Tristan Jepson Memorial Foundation, named for a young practitioner who took his own life due to depression, aims to highlight awareness for mental health in the legal community. Marie Jepson, a co-founder of the Foundation and Tristan's mother, presented a moving and informative lecture that reminded those in attendance that mental health continues to be an important issue in the legal community.



*The Hon Chief Justice Murrell and Marie Jepson, Co-founder of the Tristan Jepson Memorial Foundation.*



*Marie Jepson delivers the Tristan Jepson Memorial Lecture in Courtroom 1*

### ***Women Lawyers Association Family Day***

In February 2016, Prue Bindon and the Woman Lawyers Association held a Family Day at the Supreme Court to enable the families of practitioners and the wider legal community to see what goes on in a courtroom. Children had the opportunity to have photos taken as members of the Court.

### ***Tidbinbilla Nature Reserve Tour***

To foster better working relationships across the jurisdiction and with a view to further indigenous awareness training, the Judges and Magistrates took a tour of Tidbinbilla Nature Reserve with Ranger Brett McNamara on 6 May 2016. The judicial officers received a welcome to country and a guided tour of the reserve and its animal enclosures.

### ***Saudi-Arabian Delegation***

Prosecutor Aldalaan Mansour Saleh and his delegation from the Narif Arab University for Security Sciences in Saudi-Arabia took a tour of the Magistrates and Supreme Courts in March 2016. The delegation met with the Chief Justice for a discussion about the operation of the legal system in the Australian Capital Territory and Australia more generally. The delegation also took the opportunity to witness cases in progress.



*Chief Justice Murrell and members of the delegation from the Narif Arab University for Security Sciences, Saudi-Arabia.*

## PRESERVING THE HERITAGE VALUE OF THE SUPREME COURT

Former CJ Miles<sup>1</sup> in his book comments that the Supreme Court building has ‘architectural quality and heritage value...in particular ... the woodwork and furnishings that had been donated by the States’.

The wood for the panelling and furniture in each of the six courtrooms was provided by the States. A wooden carved plaque at the entrance of each courtroom explains where the timber came from.<sup>2</sup>

State Name	Wood Type	Courtroom Number
New South Wales	Red Cedar	1
Victoria	Mountain Ash	2
Western Australia	Jarrah	3
Queensland	Silky Oak	4
South Australia	Red Gum	5
Tasmania	Blackwood	6

The Heritage report recommended that if the building is refurbished then as much of the timber as possible should be saved and reused in a way that reflects the unique value of the States’ contribution.<sup>3</sup>



Mountain Ash panelling in Courtroom 2



Courtroom 2

<sup>1</sup> J. Miles, *A History of The Supreme Court of the Australian Capital Territory The First 75 years* (Lawbook Co., 2009) 46

<sup>2</sup> *Cultural Heritage Management The A.C.T. Law Court Building Heritage Study*, Lorinda Neave 943378 Lecturer: Brian Egloff 1998 pg 48 and Table 1 pg 25

<sup>3</sup> *Ibid* pg 48

## Sod Turning Ceremony

On 11 April 2016, the Attorney-General and Chief Justice took part in a ceremonial sod turning to celebrate the commencement of construction on the new Courts complex.

### Chief Justice Murrell's Speech at the Sod Turning Ceremony

*Mr Attorney, judicial officers, members of the legal profession, members of the Juris Partnership, friends of the Courts.*

*I acknowledge the traditional and continuing custodians of this land, and I pay my respects to their elders, past and present.*

*Today we stand where a new Supreme Court building will rise. It is a day that some thought would never dawn.*

*The new building will be significant in many ways.*

#### **Griffin vision**

*First, it will support the Griffin vision for Canberra. It will be on the site identified by Griffin as the site for the "municipal courts". It will sit on an important axis, aligning with Constitution Avenue through City Hill.*

#### **Judicial and architectural heritage**

*Second, the new building will maintain a strong link to our judicial and architectural heritage.*

*The "old Supreme Court" building was opened in May 1963, almost 53 years ago. At first, the building housed both the inferior and the superior courts of those days, as well as other services. The building was designed to cater for a population of 100,000.*

*The "old Supreme Court" is one of the few buildings in Civic with architectural heritage value. Its marble facade made it quite a tourist attraction in its day. An innovative feature of the "old Supreme Court" was the internal atrium, which was open to the sky. Unfortunately, the court rooms themselves were created as dark and austere caverns.*

*It is pleasing that not only will the "old Supreme Court" be retained but it will be incorporated into the new complex, and will contain two refurbished Supreme Court courtrooms.*

#### **Role of the Supreme Court**

*The community's investment in this new building acknowledges the importance of the judiciary as the third arm of government.*

*It makes a statement about the significance that the community places on the rule of law, and on the Supreme Court as the court that sits at the apex of our independent judiciary.*

*The new Supreme Court building will be linked to the Magistrates Court through a shared public foyer and Registry, referencing the comity between the inferior and superior courts of the Territory.*

*Unlike the old building, light and landscape will permeate all areas of the new building. It will be visually connected to the magnificent natural environment in which Canberra sits, as well as the built environment. This will speak of the transparency of justice and its interconnectivity with the social and natural landscape.*

*Finally, the new building will make a statement about Territorians. It will say that our community values the past but looks confidently to the future.*

*The Supreme Court anticipates working closely with the executive and with the Juris Partnership as the construction of our new home proceeds.*



*L-R: David Lovell, General Manager of Juris Partnership, Attorney-General Simon Corbell MLA, The Hon Chief Justice Murrell.*

## SELECTED CASES

### ***Tully v The Queen [2016] ACTCA 4***

In June 2014 the appellant was found guilty by a jury of 18 sexual offences committed against 8 child complainants over an 11 year period. He appealed those findings of guilt on a number of grounds, including a contention that several of the verdicts were unsafe and unsatisfactory.

The Court of Appeal, comprising Murrell CJ, Penfold and North JJ, upheld the appeal and entered verdicts of not guilty in relation to three counts of sexual intercourse with a child aged under 10, and one count of committing an act of indecency on a child aged under 10; the charges involved the same complainant. The Court found that the findings of guilt had been unsafe and unsatisfactory because of the form in which the *Crimes Act 1900* created offences involving sexual intercourse and acts of indecency against children that occurred before June 1995. The Act created distinct offences involving complainants aged under 10 and those aged at least 10 but under 16. The appellant had been charged with both versions of each offence in the alternative. Accordingly, the prosecution was required to prove beyond reasonable doubt that a complainant fell within one or the other of these distinct age brackets at the time of an alleged offence. The appellant was alleged to have committed the relevant offences during a period in the 1990s, during which the complainant turned 10. The Court held that the jury was entitled to accept the complainant's evidence that the conduct itself occurred, but the evidence was insufficient for the jury to be satisfied in relation to any of the offences that the complainant was either aged under 10, or had turned 10, at the time of the offence.

The Court otherwise dismissed the appeal; the findings of guilt in relation to the other 14 offences remained in place.

Since June 1995, the equivalent offences apply in relation to children under 10 and children under 16 – the latter offence is charged where there is doubt about whether the complainant was under 10 at the time of the alleged offence.

### ***Parkinson v Alexander [2016] ACTSCFC 1***

On 26 August 2015, Leesa Alexander stood charged of 3 counts public mischief and 2 counts of making a false accusation of an offence to police. The Chief Magistrate found that each offence was "proved". In determining whether Ms Alexander could appeal against her "conviction", it became necessary to determine whether a finding of guilt amounted to a conviction. The matter was referred to the Full Court.

Relying in part on the Human Rights Act, the Full Court, comprised of Murrell CJ, Refshauge and Wigney JJ, found that a finding that an offence had been proved (a finding of guilt) was a conviction for the purposes of s 208(1)(b) of the *Magistrates Court Act 1933* (ACT). This means that an appeal to the Supreme Court is enlivened as soon as an offence is "proved" in the Magistrates Court.

## ***TI v The Queen [2015] ACTCA 62***

The appellant was convicted, following a trial by jury, of committing one act of incest and two counts of indecency on a person under 16 years of age, being his step-daughter. At trial, the appellant admitted that the alleged acts occurred, however, argued that his actions were not voluntary as he suffered from sexsomnia.

The appellant complained on appeal that the findings of guilt were unsafe and unsatisfactory having regard to all of the evidence. He also appealed on two further grounds in relation to the trial judge's directions: that his Honour should have given a warning to the jury regarding the complainant's evidence as to the words spoken by the appellant during the incident; and that no direction had been given about the complainant's opinion that the appellant was awake during the incident.

In relation to the first two grounds of appeal, leave was required under r 5531 of the *Court Procedure Rules 2006* (ACT) as neither direction was sought by counsel for the appellant at trial. After going through the evidence in great detail, the Court of Appeal, comprising Penfold, Burns and North JJ, refused leave under r 5531 and subsequently dismissed the appeal. The Court considered that the trial judge had made it clear that the significant issue for the jury was whether they were satisfied beyond reasonable doubt that the actions of the appellant were voluntary. The Court of Appeal was also of the opinion that there was sufficient evidence before the jury to convict the appellant. Special leave to appeal to the High Court of Australia was also refused.

## ***R v TI (No 2) [2015] ACTSC 208***

TI was charged with acts of indecency against several complainants, one of whom had since moved to Singapore. Staff of the Office of the Director of Public Prosecutions (ACT) (DPP) had prepared a subpoena requiring the witness to give evidence, but the Australian Federal Police had not been able to serve her. Staff of the DPP discovered this shortly before the trial was due to commence.

The prosecutor applied for the complainant's evidence to be given by audio-visual link from Singapore or, alternatively, for her to be declared "unavailable" for the purpose of s 65 of the *Evidence Act 2011*; this might have permitted her police statement to become evidence in the trial.

The Crown relied on the *Court Procedures Rules 2006* and the Vienna Convention on Consular Relations in its first application. Penfold J considered that the Rules did not confer an independent power to take audiovisual evidence from overseas in criminal proceedings, and that if taking evidence for Australian court proceedings was a consular function contemplated in the Convention, evidence would need to be taken having regard to Singaporean law and agreements between the two countries. However, the Crown withdrew its application before her Honour made a ruling, because compliance with requests made by Singaporean authorities would have delayed the trial.

To declare the complainant unavailable, her Honour had to be satisfied that the Crown had taken all reasonable steps to secure her attendance. Penfold J noted that because of the importance of the complainant's evidence, the burden imposed on the Crown was relatively substantial and it had not been discharged.

### ***Construction, Forestry, Mining and Energy Union v Commissioner, Australian Federal Police [2015] ACTSC 362***

Following certain findings of the Royal Commission into Trade Union Governance and Corruption, officers of the Australian Federal Police (AFP) established a Joint Task Force to work in conjunction with the Royal Commission. Officers of the AFP who were members of that Joint Task Force obtained a search warrant for the premises of the Construction, Forestry, Mining and Energy Union which they and other police officers executed at the Union's premises on 25 August 2015, seizing a large number of items. The search could not be completed by the time the warrant expired and, before that time, police sought a new warrant.

The Union sought judicial review of the decision of the Magistrate to issue the second search warrant and the decision of the officers to copy certain data and to remove it from the premises. The Union also sought declarations that part of the search was not authorised by the first warrant and that the police should be restrained from examining the unlawfully seized material.

The Court initially granted an injunction restraining the AFP from having access to the seized documents, pending the final hearing of the application. Following the final hearing, the Court held that some of the challenged procedures were improper and that the documents seized arising from those procedures should not be inspected and should be destroyed.

### ***R v Costa (No 2) [2015] ACTSC 375***

On 14 April 2015, a jury found Luigi Costa guilty of the murder of 89-year-old Terrence Freebody. The deceased and his wife attended the offender's residence for dinner on the evening of 22 July 2012. After the offender and the deceased had consumed several bottles of wine, the offender used language that the deceased's wife found objectionable. She was asked to leave and did so, returning to her residence next door. Shortly thereafter, the offender called the police alleging that the deceased had attacked him. In the minutes following the phone call, the offender attacked the deceased with a 30cm knife, inflicting multiple stab wounds including one to the deceased's carotid artery. The deceased passed away before police arrived.

The offender pleaded not guilty by reason of mental impairment. At both the trial and sentencing hearing, considerable evidence was put before the Court regarding the offender's dementia. The jury's verdict established that, notwithstanding the dementia, the jury was satisfied beyond reasonable doubt that the offender performed a deliberate act that caused the death of the deceased and that at the time the offender recognised that what he was doing was wrong and that the offender specifically intended to cause the death of the deceased.

Murrell CJ sentenced Luigi Costa to 16 years' imprisonment with a non-parole period of eight years.

## ***R v Klobucar (No 2) [2016] ACTS 53***

Danny Klobucar was charged with murder. At his trial, the defence said that he had not killed the victim, but that if the jury found he had done so, they should find him not guilty by reason of mental impairment. The jury heard evidence that Mr Klobucar had been psychologically disturbed in the period before the killing. Three psychiatrists gave evidence; each said that Mr Klobucar had experienced a psychotic episode arising from paranoid schizophrenia at the time of the killing. On 24 March 2016 the jury found Mr Klobucar not guilty by reason of mental impairment. Justice Penfold ordered that he be detained in custody for review by ACAT.

Justice Penfold then had to estimate the appropriate sentence had Mr Klobucar been found guilty of murder. This estimate limits the detention of the person as a result of the verdict. This required her Honour to indicate a sentence for the hypothetical case in which Mr Klobucar's mental condition had not been sufficiently severe to exclude a verdict of guilty of murder. Her Honour considered, however, that the evidence of Mr Klobucar's mental impairment could still be considered in assessing his moral culpability.

Her Honour concluded that 20 years imprisonment would have been an appropriate sentence had Mr Klobucar been found guilty of murder.

## ***Kaye v Woods (No 2) [2016] ACTSC 87***

This case involved a medical negligence claim against a doctor and hospital. The first defendant's solicitors failed to serve a supplementary medical report until the day before the trial commenced. The first defendant filed an application for leave to rely on the report. As a result of a subpoena issued to its solicitors, the first defendant was required to produce documents relating to the decision to serve the report. It made a claim for privilege over some of those documents pursuant to s 118 of the *Evidence Act 2011* (ACT). The claim was referred to Mossop AsJ for hearing.

The plaintiff submitted that privilege had been lost by operation of s 125 of the *Evidence Act* which involves "the commission of an act that renders a person liable to a civil penalty". Mossop AsJ found that each of the relevant solicitors was an authorised agent of the first defendant for the purposes of the conduct of the proceedings and the conduct of a solicitor acting for a party, which exposes the solicitor to a civil penalty, can be an act which results in loss of the client's privilege under s 125. In assessing the acts said to render the solicitors liable to a civil penalty, his Honour found that a number of duties owed by the solicitors were breached, including a duty not to make misleading statements to other parties and a duty not to mislead the Court. His Honour found that conduct is capable of being misleading even where no false statement is made and that the duty will be breached even where the Court is misled only temporarily. As a result of the solicitors' conduct, privilege over certain documents was lost pursuant to s 125 and the plaintiff was granted access to those documents.

### **Stoehr v Meyer [2016] ACTSC 144**

On 21 January 2015, Hans Stoehr was convicted by the Magistrates Court of drink driving offences. Mr Stoehr was a repeat offender and therefore some period of disqualification applied to him under the *Road Transport (Alcohol and Drugs) Act 1977* (ACT). The Chief Magistrate ordered a disqualification period of 3 years. The appellant appealed against the disqualification period. Murrell CJ heard the appeal.

It emerged that there was a split in the caselaw between the decision of Burns J in *Tindall v Spalding* (2014) ACTLR 198 (applying *Newham v Cogle* [2012] ACTSC 76) and the later decision of Refshauge J in *Burow v Hoyer* (2015) 292 FLR 325. For the reasons articulated by Refshauge J in *Burow v Hoyer*, Murrell CJ agreed that the New South Wales guideline judgement of *Re Attorney General (NSW) (No 3 of 2002)* [2004] 61 NSWLR 305 is of very little assistance in the ACT. It is necessary for sentencing judges and magistrates to consider what disqualification period would fulfil the relevant sentencing purposes, rather than asking whether there is any good reason to lower a default disqualification period.

### **Jones v University of Canberra [2016] ACTSC 78; Jones v University of Canberra (No 2) [2016] ACTSC 99; Jones v University of Canberra (No 3) [2016] ACTSC 186**

Mr Jones was appointed the Chief Executive Officer of the ACT and Southern New South Wales Rugby Union Ltd which is responsible for the ACT Team “The Brumbies”. On assuming office, he discovered information which he considered showed that some inappropriate conduct had occurred which may have shown that certain persons had engaged in disclosable conduct under the *Public Interest Disclosure Act 2012* (ACT). He made disclosures which he said were protected under that Act and when he was the subject of what he saw as detrimental conduct which he thought was taken against him because of the disclosures he applied for an injunction to restrain a number of persons repeating the conduct or engaging in further detrimental conduct against him, including his employer terminating his employment.

The Court granted him an ex parte injunction and declined to dissolve it. After Mr Jones settled the proceedings against his employer, the proceedings continued with Mr Jones seeking damages.

## ***Astell v Australian Capital Territory [2016] ACTSC 238***

The plaintiff was a victim of identity theft when her rental property was sold upon the instructions of a fraudster. The fraudster, who had provided instructions to the plaintiff's real estate agent and solicitors via email, absconded with the proceeds of sale. The plaintiff only learnt of the sale several months later, by which time the purchasers had been registered as the proprietors of the land and knew nothing of the fraud. An Australian Federal Police investigation concluded that the fraudster was unable to be identified.

The plaintiff brought a claim for damages against the ACT pursuant to s 155 of the *Land Titles Act 1925* (ACT). The provision formed part of a model of compensation in the Torrens title legislation and, more specifically, permitted recovery of damages from the Territory in cases in which the action for recovery of damages provided for in Pt 16 of the Act was inapplicable.

Mossop AsJ held that "inapplicable" in this context meant "not able to be used in a particular situation". So long as a remedy was practically impossible to enforce it would be inapplicable. The relevant actions for recovery of damages were provided for in ss 154 and 143 of the Act. While in theory it would have been possible to bring and prosecute an action for the recovery of damages against the fraudster pursuant to s 154, in reality he or she was unlikely to ever be identified. This meant that s 143 was also inapplicable, as recourse to that provision was restricted by a requirement that proceedings first must have been taken under s 154. As a result the plaintiff was entitled to damages under s 155 and those were to be assessed according to the current market value of the property.



*Supreme Court Atrium*

*A unique architectural feature of the Supreme Court is its atrium situated in the centre of the building*





## **TECHNOLOGY AND ONGOING PROJECTS**

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Court Technology 41

## NEW COURT BUILDING

Construction has commenced on the ACT Courts project. The Supreme 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 project will create a combined Law Courts facility for the ACT which will maximise operational efficiencies while still respecting the jurisdictional separation between the Supreme Court and the Magistrates Court.

The new Supreme Court will be located within a four-storey building to be constructed along Vernon Circle and will also occupy parts of the existing Supreme Court building, following its reconfiguration.

A new public entrance and registry area will be built in the open space between the two existing buildings to connect the Supreme Court and Magistrates Court and provide access to common facilities for members of the public and the legal community. The existing Supreme Court building will be fully refurbished to accommodate judicial and other functions and will be fully integrated into the completed facility in a way that respects and retains its unique heritage value.

The new Supreme Court will include eight courtrooms – five of which will be jury courtrooms – and has been designed to accommodate a total of ten courtrooms (including eight jury courtrooms) in the future. The ACT Law Courts project will also deliver a new and expanded custodial facility, dedicated vulnerable witness suite, new mediation suite, dedicated parole board hearing room, a combined and centralised registry area, new jury facilities and accommodation for a range of judicial and community support functions such as domestic violence and mental health support and assessment agencies.

Works commenced on site in April 2016. The new portion of the building (including the provision of 6 new courtrooms) is on target for completion in November 2017. The refurbishment of the existing heritage building (including the remaining two courtrooms) will commence after that and is due for handover in August 2018.

## COURT TECHNOLOGY

### *Courts and Tribunal Website*

Work has now been completed on the updated Courts and Tribunal website. A number of limitations with the current website were identified and enhancements sought.

One key improvement was to provide clients with better search functions for locating judgments and decisions. The number of search fields was expanded and more sophisticated search commands made available. The layout of the website was also redeveloped, allowing for better navigation of the site, display of content, better accessibility and ability to view the website via a mobile device.

### *ACT 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.

### *In Court Technology*

The new building project is delivering substantial improvements to technology within the Courtroom. This is being done in stages across the Supreme and Magistrate Courts.

Each Courtroom will have the ability to present evidence electronically, annotate that evidence from either inside the Courtroom or at the remote witness location, conduct audio and video conferences as well as transmit and record digital audio and video. The Courtroom Technology System uses contemporary technologies with proven reliability and performance to provide a best practice, cohesive and integrated system across the Courts Facility.

Responses have been positive, with other jurisdiction starting to explore the work we have undertaken in this space with a view to improving their systems along similar lines.





## **CASE MANAGEMENT**

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## CRIMINAL LISTINGS

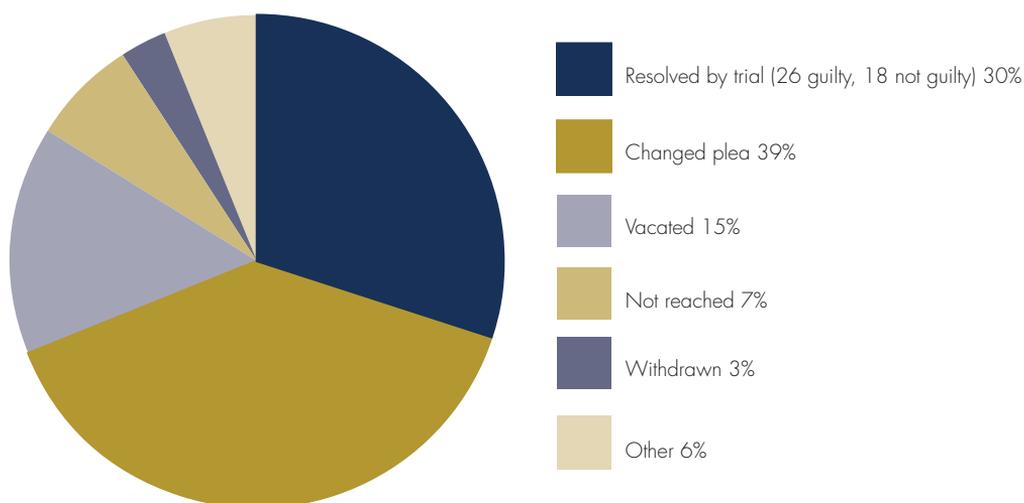
The Supreme Court is committed to the efficient listing of criminal matters. Expedious resolution of these cases is in the interests of accused persons, victims, witnesses and the community-at-large.

During 2015–16, 145 matters were listed for trial during central criminal listing periods. Of those matters, 44 proceeded to trial and in 26 cases a verdict of guilty was returned. In the matters that did not proceed to trial, 56 accused changed their plea prior to trial, 22 cases were vacated, 10 were not reached and the prosecution withdrew in another 4 cases.

At the end of the reporting year, nine cases either had not concluded or reached an irregular outcome. These included: judgments being reserved (2), adjourned part-heard (1), trials ending with a hung jury (1), trials having to be aborted (4) or with the death of the accused (1). For statistical purposes, these cases are included together as ‘other’.

The Court’s statistics are set out on the following pages. In 2015–16 there was a slight increase in the total number of cases pending. The criminal clearance rate returned to 94% in 2015–16 though the criminal appeal clearance rate fell slightly to 94%. Criminal lodgements and finalisations both fell. This may be able to be attributed to the slightly longer length of criminal trials.

### Criminal Listings by finalisation



## CIVIL CASE MANAGEMENT

The Supreme Court remains committed to reducing the number of pending civil cases and finding new ways to facilitate efficiencies in the disposal of civil cases.

During 2015–16 the Supreme Court held 4 mediation blocks. Parties to these mediations knew that the matter would proceed to hearing a few weeks after the mediation should the mediation be unsuccessful. The mediations were conducted by experienced practitioners and former judicial officers including Mr Bryan Meagher SC, Mr Graeme Lunney SC, Mr Russell McIlwaine SC, Ms Margaret Sidis and Mr David Harper OAM.

The statistics for 2015–16 reveal that there has been a decrease in the number of matters that settled at or before mediation. However, focusing on that figure undervalues the benefit of mediation because many cases settle in the weeks following the mediation, based on the discussions that took place. The Court expects that amendments that will take effect in the second half of the 2016–17 reporting year may encourage more cases to settle at or before mediation.

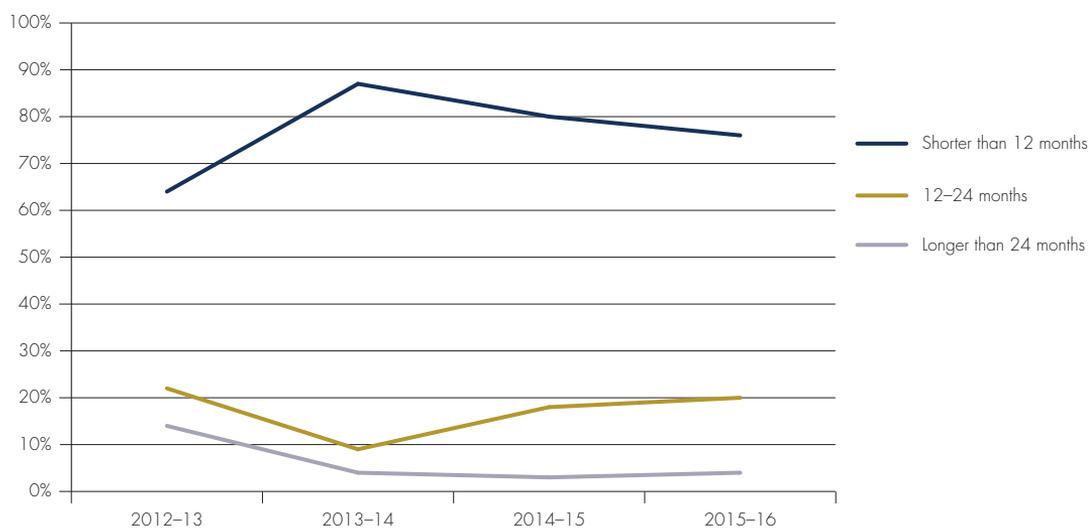
	2014/15	2015/16
Number of mediation blocks	4	4
Total number of matters referred	99	125
Percentage of matters finalised at or before mediation hearing	50%	47%
Vacated	4%	14%
Not settled at mediation	46%	38%

## STATISTICS

### Outstanding Matters

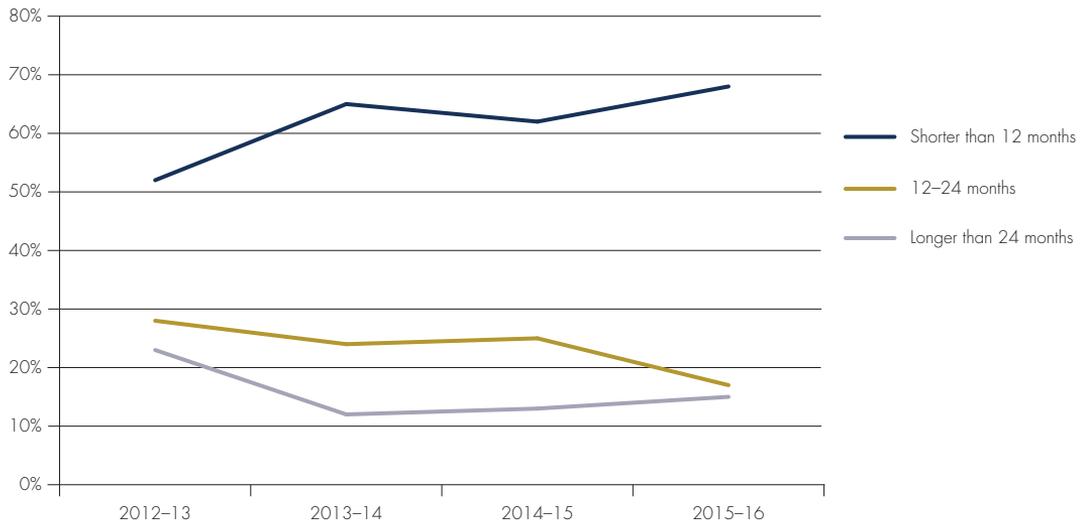
Court Time	2014/15 Criminal	2014/15 Civil	2014/15 Criminal	2014/15 Civil	2015/16 Criminal	2015/16 Civil	2015/16 Criminal	2015/16 Civil
< 12 months	214	402	80%	62%	206	430	76%	68%
12–24 months	47	160	18%	25%	54	106	20%	17%
>24 months	7	86	3%	13%	10	98	4%	15%
Total	268	648			270	634		

### Outstanding criminal matters (in percentages)



	2012-13	2013-14	2014-15	2015-16
Shorter than 12 months	64%	87%	80%	76%
12–24 months	22%	9%	18%	20%
Longer than 24 months	14%	4%	3%	4%

## Outstanding civil matters (in percentages)



	2012-13	2013-14	2014-15	2015-16
Shorter than 12 months	52%	65%	62%	68%
12-24 months	28%	24%	25%	17%
Longer than 24 months	23%	12%	13%	15%

*Summary data 2015/16*

<b>Supreme Court – Civil matters (includes Magistrates Court appeals)</b>	<b>2014–15</b>	<b>2015–16</b>
Lodgments	580	614
Finalisations	624	619
Clearance Rate	108%	101%
Pending Total	648	634
Pending < 12 months	402	430
Pending > 12 months	246	204
Pending > 24 months	86	98

<b>Supreme Court – Criminal matters (includes Magistrates Court appeals)</b>	<b>2014–15</b>	<b>2015–16</b>
Lodgments	335	279
Finalisations	309	262
Clearance Rate	92%	94%
Pending Total	268	270
Pending < 12 months	214	206
Pending > 12 months	54	64
Pending > 24 months	7	10

<b>Court of Appeal</b>	<b>2014–15 civil</b>	<b>2014–15 criminal</b>	<b>2015–16 civil</b>	<b>2015–16 criminal</b>
Lodgements	29	35	22	33
Finalisations	31	36	24	26
Clearance Rate	107%	103%	109%	79%
Pending Total	53	37	48	38
Pending < 12 months	22	13	15	28
Pending > 12 months	13	24	10	7
Pending > 24 months	18	0	23	3



