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THE WORK OF THE COURT IN 2016–17

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The Court's performance

Portfolio Budget Statements Outcome and Program

In the 2015–16 Budget, the Australian Government announced that it would amalgamate the corporate services of the Family Court and Federal Circuit Court with the Federal Court of Australia into a single administrative body with a single appropriation.

The *Courts Administration Legislation Amendment Act 2016* establishes the amalgamated body, which, from 1 July 2016, is known as the Federal Court of Australia. This approach preserves the courts' functional and judicial independence while improving their financial sustainability.

The amalgamated corporate services body will generate efficiencies through the establishment of shared corporate services functions by consolidating resources, streamlining processes and reducing duplication.

Outcome 3

Apply and uphold the rule of law for litigants in the Federal Circuit Court of Australia through more informal and streamlined resolution of family law and general federal law matters according to law, through the encouragement of appropriate dispute resolution processes and through the effective management of the administrative affairs of the Court.

Program 3.1

Federal Circuit Court of Australia

Delivery

- Exercising the jurisdiction of the Federal Circuit Court of Australia.
- Providing an efficient and effective registry service to the public.

Purpose

The FCC provides a simpler and more accessible alternative to litigation in the FCoA and the FCA and helps to relieve the workload of the superior federal courts.

The provisions of the *Federal Circuit Court of Australia Act 1999* (Cth) enable the FCC to operate as informally as possible in the exercise of judicial powers, use streamlined procedures and make use of a range of dispute resolution processes to resolve matters without judicial decisions.

Report on court performance

The Federal Circuit Court has a new outcome that replaces Outcome 1 of the Family Court and Federal Circuit Court due to the effect of the *Courts Administration Legislation Amendment Act 2016*.

The Court's new outcome is to:

Apply and uphold the rule of law for litigants in the Federal Circuit Court of Australia through more informal and streamlined resolution of family law and general federal law matters according to law, through the encouragement of appropriate dispute resolution processes and through the effective management of the administrative affairs of the Court.

The Court has the following targets under performance measures of timely completion of cases and timely registry services:

Timely completion of cases

- 90 per cent of final order applications disposed of within 12 months
- 90 per cent of all other applications disposed of within six months
- 70 per cent of matters resolved prior to trial.

Timely registry services

- 75 per cent of counter enquiries served within 20 minutes
- 80 per cent of National Enquiry Centre telephone enquiries answered within 90 seconds
- 80 per cent of email enquiries responded to within two working days
- 75 per cent of applications lodged processed within two working days.

Snapshot of performance

Timely completion of cases		
Target	Result 2016–17	Target status
90 per cent of final order applications disposed of within 12 months	68 per cent of final order applications were disposed of within 12 months	Not met
90 per cent of all other applications disposed of within six months	78 per cent of all other applications were disposed of within six months	Not met
70 per cent of matters resolved prior to trial	72 per cent of matters were resolved prior to trial	Met

Timely registry services		
Target	Result 2016–17	Target status
75 per cent of counter enquiries served within 20 minutes	93 per cent of counter enquiries were served within 20 minutes	Met
80 per cent of National Enquiry Centre telephone enquiries answered within 90 seconds	20 per cent of National Enquiry Centre telephone enquiries were answered within 90 seconds	Not met
80 per cent of email enquiries responded to within two working days	100 per cent of email enquiries were responded to within two working days	Met
75 per cent of applications lodged processed within two working days	98 per cent of applications lodged were processed within two working days	Met

In 2016–17, the Federal Circuit Court achieved one target under timely completion of cases and was unable to achieve two. Under timely registry services, the Court achieved three targets and was unable to achieve one. The annual performance statement for the Federal Circuit Court of Australia is included as part of the Federal Court of Australia's 2016–17 annual report.

Workload in 2016–17

Table 3.1 shows the summary workload during 2016–17.

Table 3.1: Family law and general federal law applications filed, 2016–17

Family law	Total	% of total
Final orders	17,791	19%
Interim orders	22,050	23%
Divorce	43,846	46%
Other	1790	2%
Total family law	**85,477**	**90%**
General federal law		
Bankruptcy	3277	3.4%
Migration	4978	5%
Industrial	1191	1.3%
Other	258	0.3%
Total general federal law	**9704**	**10%**
Grand Total	95,181	100%

Figure 3.1: Family law and general federal law applications filed, 2016–17

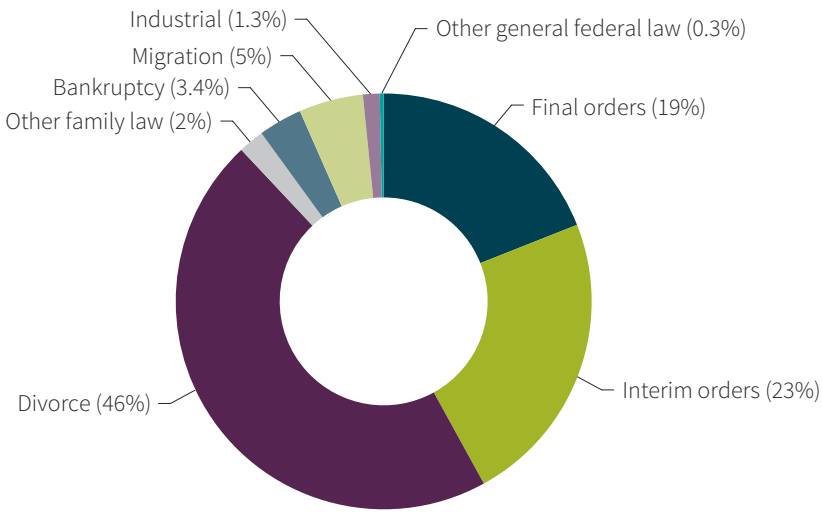
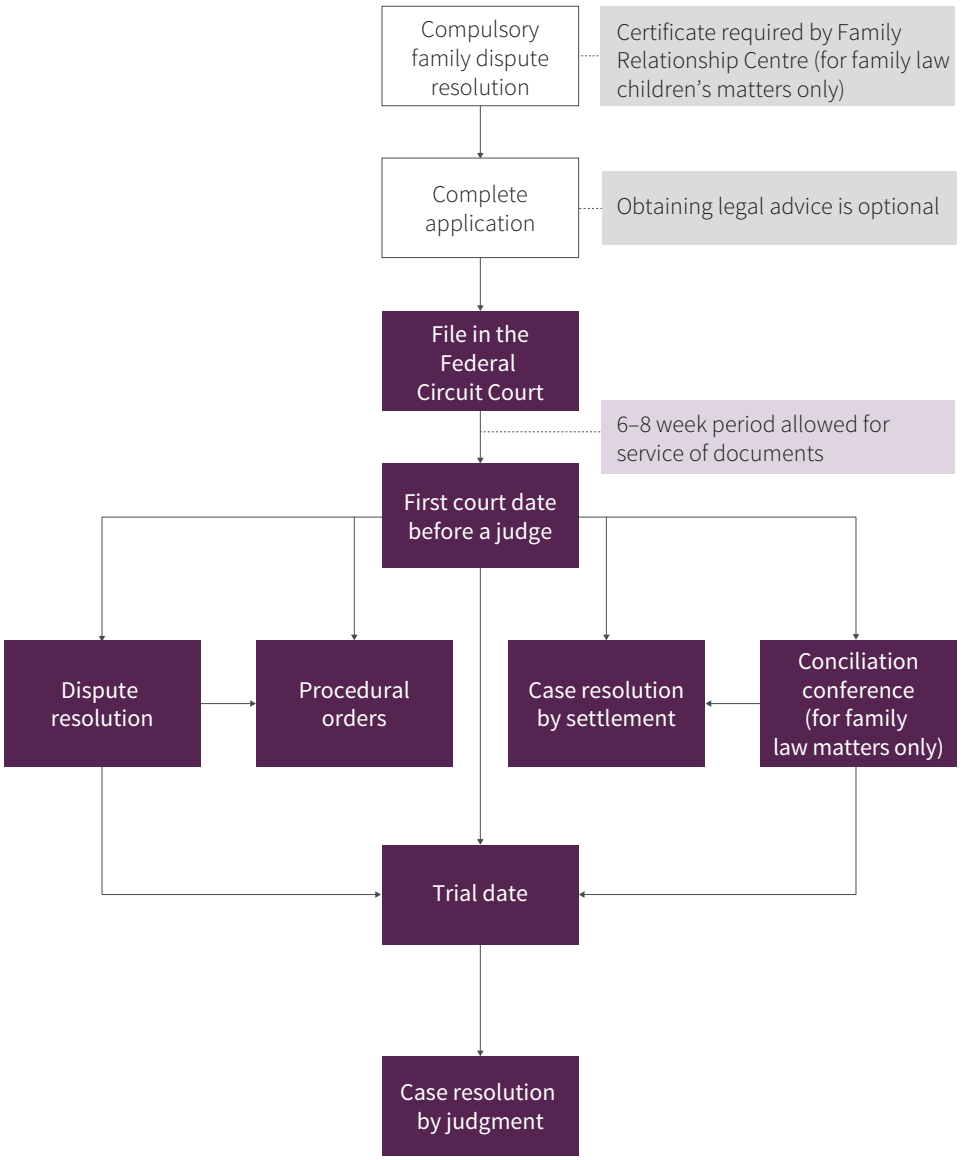


Figure 3.2: Case management approach (docket system)



Case management

The Court uses a docket case management process designed to deal with applications in a flexible and timely way. The docket case management process has the following principles:

- matters are randomly allocated to a judge who generally manages the matter from commencement to disposition, this includes making orders about the way in which the matter should be managed or prepared for hearing, and
- matters in areas of law requiring expertise in a particular area of jurisdiction are allocated to a judge who is a member of the relevant specialist panel.

The docket case management system provides the following benefits:

- consistency of approach throughout the matter's history
- the judge's familiarity with the matter results in more efficient management of the matter
- fewer formal directions and a reduction in the number of court appearances
- timely identification of matters suitable for dispute resolution, and
- allows issues to be identified quickly and promotes earlier settlement of matters.

Specialist panel arrangements

The Court has specialist panels in areas of general federal law and child support which ensure that matters of a specialist legal nature are allocated to judges with expertise in that particular area of the Court's jurisdiction. Specialist panel members meet regularly with user groups and judicial colleagues from other courts to respond to issues of practice and procedure in these specialist jurisdictions.

The following panels support the work of the Court:

- Commercial (including consumer, intellectual property and bankruptcy)
- Migration and administrative law
- Human rights
- Industrial law
- National security
- Admiralty law, and
- Child support.

The panel arrangements equip the Court with the ability to effectively utilise judicial resources in specialist areas of family and general federal law. They are an essential element of continuing judicial education within the Court.

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Report on work in family law

Family law constitutes the largest proportion of the overall workload of the Court, representing 87 per cent of all family law work filed at the federal level. This compares with 86 per cent during 2015–16.

As highlighted in last year's annual report, the parenting matters that proceed to the Court often involve complex issues such as family violence, substance abuse, mental ill health and safety concerns for parties and/or their children. The judicial docket system adopted by the Court facilitates the early identification and triaging of cases but is reliant upon adequate judicial resources and enhanced collaboration and information sharing between the family law system and other relevant support services.

In light of the high prevalence of allegations of risk, the Court requires all parties to parenting applications to file a *Notice of Risk*. In 2016–17, 43 per cent of all parenting applications filed were referred to the child protection authorities when allegations of risk were identified as attracting the mandatory notification requirement under the Family Law Act. Although the *Notice of Risk* is the prescribed form for these risks it also acts as a general risk identification tool.

In addition, in those matters where parties have been ordered to undertake a section 11F intervention with a family consultant, a structured family violence screening questionnaire has been developed to enable family consultants to better target risk factors in such interviews.

The interaction of family law, child protection and family violence systems, and the support services available when there are alleged risks raised in parenting proceedings, has been the focus of various reports and enquiries, particularly in the context of domestic violence.

The Final Report of the Family Law Council in response to the third, fourth and fifth terms of reference on *Family with Complex Needs and the Intersection of the Family Law and Child Protection System* was delivered on 30 June 2016 and can be found at **https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Pages/FamilyLawCouncilpublishedreports.aspx**

This report provided a response to a reference from the Attorney-General, Senator Brandis, who asked the Family Law Council to consider a range of matters in relation to families with complex needs. The Report made a number of recommendations to enhance collaboration and information sharing within the family law system as well as other support services in relation to child protection, mental health and family violence.

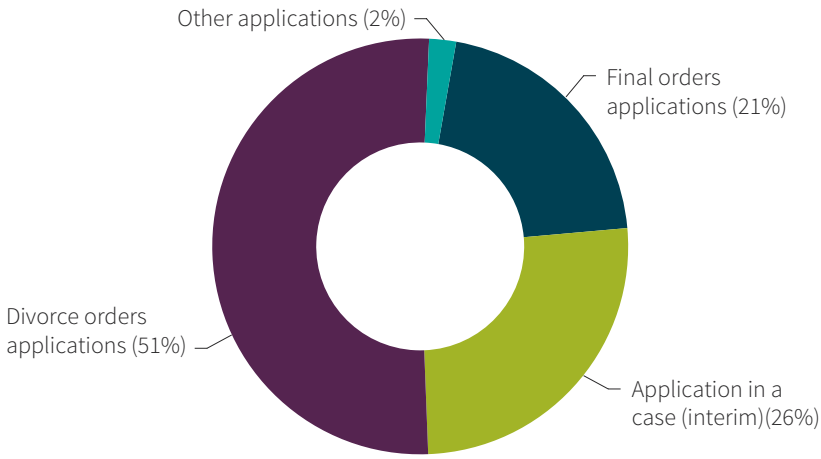
A useful model of collaboration between the family courts and the child protection sector is the one that operates in the Melbourne and Dandenong family law registries. Arrangements are in place for the Department of Health and Human Services (DHHS) to have child protection workers co-located in these registries to facilitate the exchange of timely information in matters where families in parenting proceedings have been involved with the child protection system.

The AIFS evaluated the Victorian model and found that the presence of co-located practitioners in the family courts had a significant impact on fostering collaborative relationships and practices as well as on improving information sharing between the systems.

Table 3.2: Family law applications filed by type, 2016–17

Application	Filed	%
Final orders applications	17,791	21%
Interim applications	22,050	26%
Divorce applications	43,846	51%
Other applications	1790	2%
Total	85,477	100%

Figure 3.3: Family law applications filed by type, 2016–17



Final orders applications are filed when litigants seek to obtain final parenting and/or financial orders. Applications in a Case (interim) seek interim or procedural orders pending the determination of final orders.

Figure 3.4: Final orders applications, 2012–13 to 2016–17

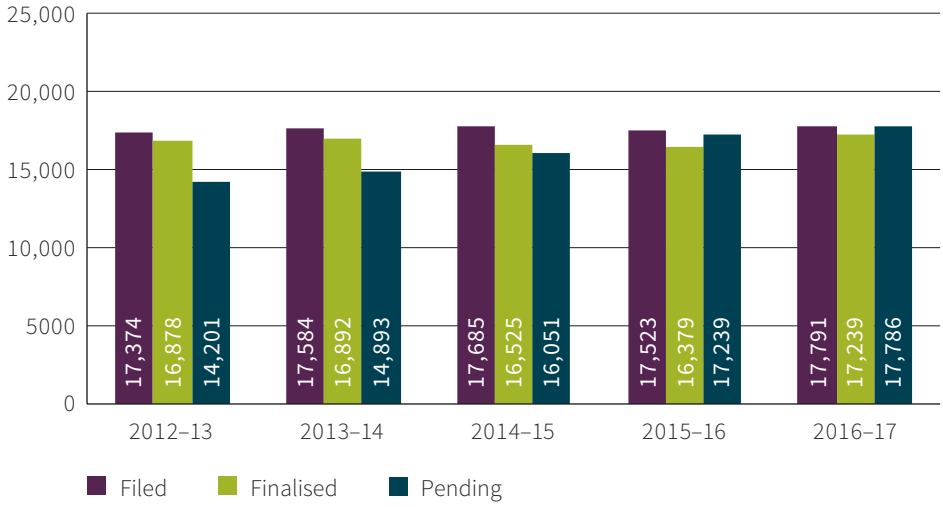
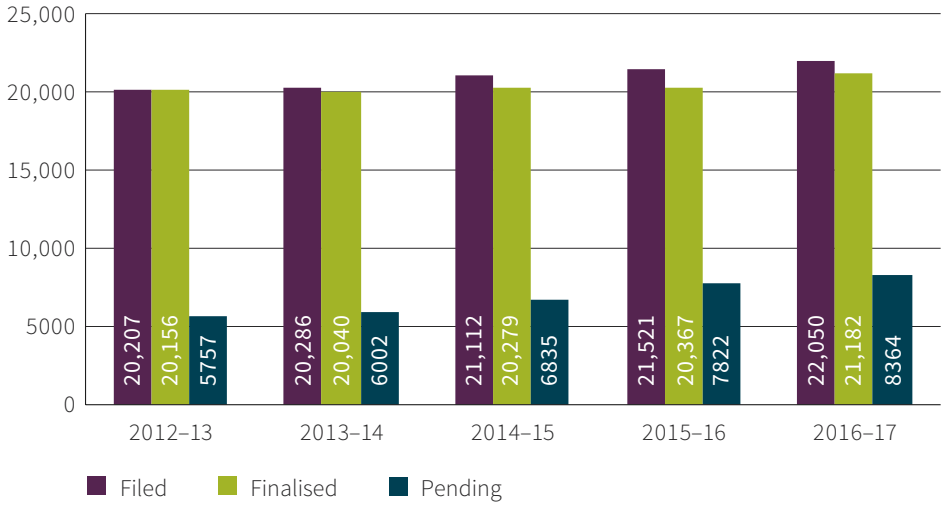
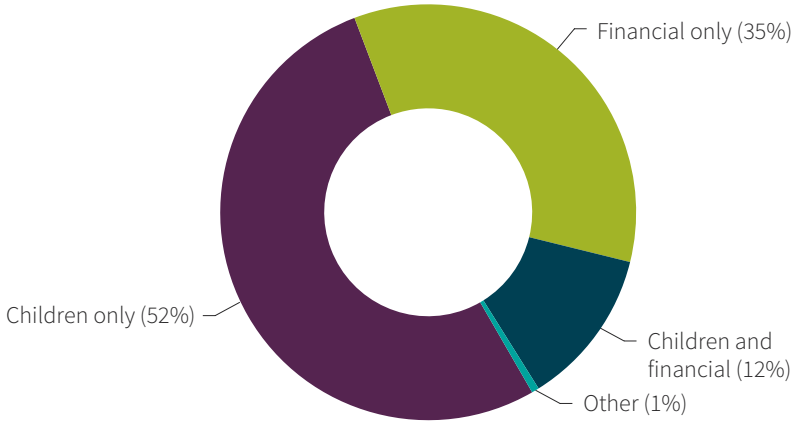


Figure 3.5: Interim orders applications, 2012–13 to 2016–17



The family law workload (excluding divorce) can be broken into three main categories. In 2016–17, 52 per cent of family law applications related specifically to matters concerning children, a further 12 per cent involved both children and property, and 35 per cent involved discrete property applications.

Figure 3.6: Issues sought in final orders applications, 2016–17



Reporting of risks

From 12 January 2015, the Court commenced a national roll out of the *Notice of Risk* as a requirement for filing with all parenting applications. As highlighted in previous Annual Reports, the *Notice of Risk* was originally piloted in South Australia from February 2013. It represents a departure from the previously prescribed *Form 4 – Notice of Child Abuse, Family Violence or Risk of Child Abuse* as it is required to be filed with **all** parenting applications and responses rather than only in those instances where allegations attract the statutory notification requirement.

The 2015–16 financial year was the first full year the filing of a *Notice of Risk* in parenting proceedings has been a requirement. In 2016–17, 20,618 Notices of Risk were filed. Of these, 8883 (or 43 per cent) were referred to the relevant child welfare agency pursuant to s.67Z(3) alleging a child has been abused or is at risk of abuse. There are regional differences with some locations reporting a much higher percentage of Notices being referred to child welfare agencies.

This is a considerable increase from the 5811 Notices of Child Abuse, Family Violence or Risk of Child Abuse that were filed in the 2013–14 financial year (being the financial year prior to the introduction of the Notice of Risk). Is it noted that the Notice of Child Abuse, Family Violence or Risk of Child Abuse is referred to the child welfare agency when the party alleges a child has been abused or is at risk of abuse. Thus not all of the 5811 notices would have been referred.

In addition the s.67Z(3) notifications, pursuant to s.67ZA where member of the Court personnel such as a family counsellor or registrar has reasonable grounds for suspecting that a child has been abused, or is at risk of being abused, the person **must**, as soon as practicable, notify a prescribed child welfare authority of his or her suspicion and the basis for the suspicion. Further, if such person has reasonable grounds for suspecting that a child has been ill-treated, or is at risk of being ill-treated or has been exposed or subjected, or is at risk of being exposed or subjected, to behaviour which psychologically harms the child, the person **may** notify a prescribed child welfare authority of his or her suspicion and the basis for the suspicion.

Divorce

During the year 43,846 divorce applications were filed in the Court. This compares with 44,098 in 2015–16. The Federal Circuit Court deals with all divorce applications filed (other than in Western Australia) and the work is largely undertaken by registrars. Contested divorce matters proceed to a judge for determination. Many applications are made by litigants without legal assistance and information in the form of online guides assist litigants through the procedural requirements. In addition, in some localities, staff from the Court Network are available to assist litigants as it is appreciated that for many litigants a court appearance can be stressful and unfamiliar.

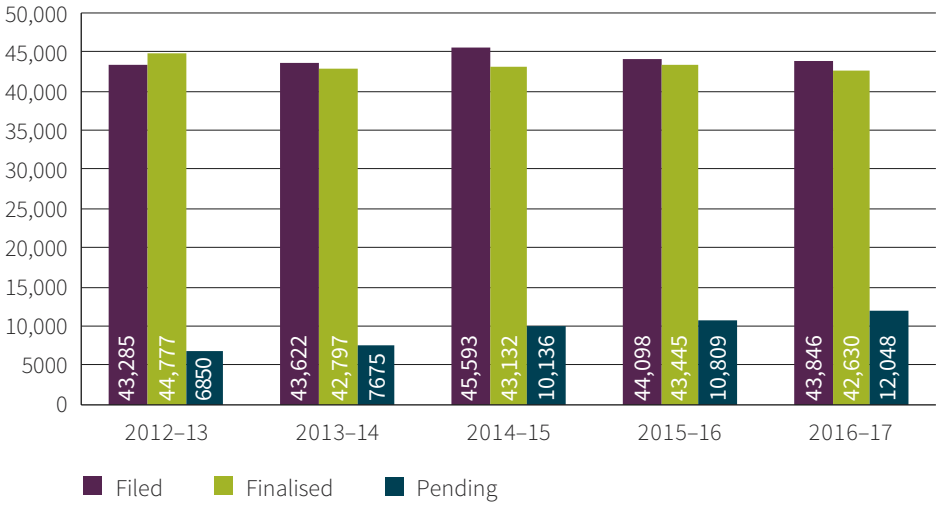
A significant number of calls to the National Enquiry Centre (NEC) relate to divorce proceedings, in particular providing information to assist eFiling on the Commonwealth Courts Portal and directing litigants to the website to complete the divorce checklist at the "*How do I apply for a divorce?*" http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/how-do-i/divorce/apply-for-a-divorce/apply-for-divorce

The dynamic interactive checklist was created to assist litigants when applying for a divorce so there is less chance of errors in applications. The NEC also provides general divorce support in relation to applying, service and information about court events, as well as administrative support for Commonwealth Courts Portal users and assisting litigants and lawyers when they register and eFile applications for divorce.

The Court has also developed a fully electronic divorce file which permits the management of divorce applications in electronic format from filing to disposition. These initiatives meet a range of objectives including aligning with Commonwealth Government strategies for digital administration and records management, and offering litigants and the legal profession streamlined services. Until the Court transitions to a complete electronic environment, it is still accepting hard copy applications from litigants, lawyers and others which are being converted to a digital record. During the year, considerable progress was made on the implementation of a fully electronic divorce file, with the aim of simplifying the administrative processes (see page 20 for more information).

In 2016–17 approximately 66 per cent of all divorce applications were eFiled, with this percentage expected to grow as enhancements are made to the process. Litigants and practitioners are being encouraged to eFile divorce applications in view of the benefit to litigants. One such benefit is the ability to select from a list of available hearing dates. There are also administrative benefits for registries not only in the reduction of hard copy files and accompanying storage, but also greater flexibility in the management of the divorce workload. Brochures have been developed to assist those who may not be able to eFile their applications seek assistance through a community legal centre. Public access computers are available in all registries and have been equipped with access to the Portal so that litigants can upload documents at registry locations. In addition, the website information has been revised to better assist litigants applying for a divorce. New features include interactive steps to assist applicants to better understand the legal requirements.

Figure 3.7: Divorce applications, 2012–13 to 2016–17



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Child support

The Court exercises some limited first instance and appellate child support jurisdiction. The child support review framework has proceeded from a court-based process to one that is now predominantly administrative. Following the merger of the Social Security Appeals Tribunal, the Administrative Appeals Tribunal now hears appeals from most decisions of the Child Support Registrar. Appeals to the courts are accordingly limited to appeals on a question of law from decisions of the Administrative Appeals Tribunal. While the Court shares this review jurisdiction with the Federal Court, most appeals proceed before the Federal Circuit Court and are few in number. This is reflected in the number of child support appeals for the year which was 22 and is less than the numbers of appeals filed in the previous year (32).

The law in relation to variation of overseas liabilities requires an understanding of Australia's international obligations arising from family relationship, parentage or marriage with responsibilities devolved to the Registrar and supported by an administrative framework.

A significant proportion of the enforcement workload of the Court is in relation to applications for enforcement of child support arrears. To facilitate this, discrete child support enforcement lists have been set up in the larger registries as an effective means of dealing with this workload.

In *Child Support Registrar & Vladimir and Anor* [2017] FamCAFC 56 the Family Court Full Court considered the jurisdiction of the Court to make a stay in the context of an application to vary an overseas maintenance liability. In upholding the appeal and setting aside the stay, the Full Court found that there was no jurisdiction to grant a stay pursuant to section 111C of the *Child Support (Registration and Collection) Act* 1988 as no proceedings had been instituted within the meaning of the section and the orders were not made pending the hearing and final determination of the proceedings as required by the Section. The Court found that the proper construction of s 111C(1)(a) requires that there be proceedings on foot under that Act and because the proceedings on foot were proceedings pursuant to the Regulations, the Court had no jurisdiction to order a stay. While not necessary for the outcome of the appeal, the Court also noted that there was no other express or implied power to grant the stay order. The Court went on to observe that an order could be made altering the amount payable under the liability, but such an order could only take effect if it is confirmed by the overseas jurisdiction.

Report on work in general federal law

Administrative

The Court has original jurisdiction under the *Administrative Decisions (Judicial Review) Act 1977* (the ADJR Act).

The Court's Administrative Appeals Tribunal (AAT) review jurisdiction is generally confined to matters remitted from the Federal Court and excludes those appeals from decisions of the AAT constituted by a presidential member. However, in respect of judicial review of migration and child support first review, the jurisdiction of the Court is not subject to remittal. As noted in previous annual reports, the Court considers there is scope for expanding the jurisdiction of the Court to encompass some review rights under section 39B of the *Judiciary Act 1903*.

Excluding those judicial review applications filed in respect of migration, the number of administrative review matters which proceed before the Court are few in number (37).

Some of the administrative law decisions which came before the Court during the year are illustrated by the following:

- In *Henley v Australian Human Rights Commission & Anor* [2017] FCCA 677, the applicant claimed that a decision of the President of the Australian Human Rights Commission to decide not to further inquire into a complaint of discrimination to the Commission, involved an error of law under the ADJR Act. In dismissing the Application, the Court noted that in an administrative law context, the task of statutory interpretation must begin with a consideration of the text itself, in its context which includes the general statutory purpose and policy under consideration. In the circumstances the Court considered the relevant statutory scheme in its context and made the observation that the power exercised by the President ... *has the statutory purpose in an administrative law context somewhat analogous to the summary judgment procedure made available in proceedings commenced in courts of law. It empowers the President, pursuant to defined conditions, to decide not to inquire at all into an act or practice or at any time after the commencement of an inquiry, to decide not to continue to inquire into the relevant act or practice* [32].
- In *Dennis v Minister for Finance* [2017] FCCA 45, the applicant sought judicial review of a decision made by a decision maker who was not satisfied that special circumstances existed for the authorisation of an 'act of grace' payment under the *Public Governance Commonwealth Performance and Accountability Act 2013.* In considering the statutory framework, the Court noted that the Minister's discretion to authorise a payment is only enlivened by a determination that it is appropriate because of special circumstances. The Court also noted that the discretion conferred is unfettered and a finding of special circumstances is a matter for the determination of the decision. The Minister's delegate made a determination that there were no special circumstances. The Application was dismissed and the Court found that in the circumstances, the applicant did not establish that the Minister's delegate did not take into account a relevant consideration or took account of an irrelevant consideration, the Court also found that in the absence of the decision maker being satisfied that special circumstances existed for the exercise of the discretion, it could not be said that the delegate's decision was unreasonable in a legal sense.

Table 3.3: General federal law applications filed by type, 2016–17

General federal law	Total	% of total
Administrative law	37	0.38%
Admiralty law	9	0.09%
Bankruptcy	3277	33.77%
Intellectual property	35	0.36%
Human rights	58	0.60%
Industrial	1191	12.27%
Migration	4978	51.30%
Consumer law	119	1.23%
Total	**9704**	**100%**

Admiralty

Although the number of applications *in person* filed under this head of jurisdiction is small (nine), it is an important jurisdiction conferred under s.76 (iii) of the Constitution. The admiralty and maritime jurisdiction conferred on this Court is dispute subject matter that requires an appreciation and understanding of the United Nations Law of the Sea Conventions and the domestic legislation giving effect to maritime-related international treaties and conventions.

The work is undertaken by a discrete panel of judges who are required to maintain appropriate breadth of knowledge in admiralty and maritime law.

http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/rules-and-legislation/information-notices/admiralty-law/admiralty_notice

The jurisdiction of this Court is governed by the *Admiralty Act 1988*. Section 9 of that Act confers in *personam* jurisdiction on this court for matters falling within the meaning of a maritime claim as defined in section 4. While confined to *in personam* disputes, the Court can also hear *in rem* matters referred to it by the Federal Court of Australia. As proceedings commenced *in personam* in the Court can be transferred to the Federal Court of Australia, the Federal Circuit Court is a convenient forum for preserving time limitations in disputes concerning carriage of goods, charter parties, collisions, general average and salvage. The jurisdiction so conferred is not limited by quantum.

The Act applies to all ships irrespective of domicile or residence of owners and to all maritime claims wherever arising. The Admiralty Rules set out standard procedures supplemented by the Rules of Court, *Admiralty Rule 6*

In previous annual reports the issues of enforcement of foreign judgments has been highlighted as an issue of concern to the Court as much depends upon general principles of reciprocity. Not being a superior court, the ability of the Court to transfer where issues of enforcement arise, is a useful power.

Bankruptcy

While the Court shares bankruptcy jurisdiction with the Federal Court, most personal bankruptcy matters proceed in the Federal Circuit Court. The Court appreciates the significant work undertaken by registrars who exercise extensive delegations in respect of the bankruptcy jurisdiction.

The Court received 3277 bankruptcy applications in 2016–17, and finalised 3392. This represents a decrease in bankruptcy filings of 12 per cent, compared with 3879 filings in 2015–16.

In light of the shared personal bankruptcy jurisdiction, the Federal Court and the Federal Circuit Court have adopted harmonised bankruptcy rules:

- *Federal Circuit Court (Bankruptcy) Rules 2016,* and
- *Federal Court (Bankruptcy) Rules 2016.*

Representatives from the courts meet regularly with officers from the Australian Financial Security Authority on current issues and trends in relation to personal insolvency law and procedures.

Some minor changes to these harmonised rules may be made as a consequence of amendments to the Bankruptcy Act following the passage of the *Insolvency Law Reform Act 2016.*

The focus of the legislative changes is the better alignment of bankruptcy law and process with corporate insolvency. Some aspects these amendments commenced on 1 March 2017 and other parts will commence on 1 September 2017.

Although the Court undertakes most of the personal insolvency workload, it does not currently have any jurisdiction in respect of corporate insolvency. As highlighted in last year's annual report, the Senate Economics Reference Committee in its Report into *Insolvency in the Australian Construction industry* included a recommendation that the Government give serious consideration to extending the jurisdiction of the Court to include corporate insolvency:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Insolvency_construction/Report

A significant number of litigants who appear before the registrars in the bankruptcy lists are self-represented. From late 2014, the Victorian registry of the Court has been involved in a financial counselling pilot for self-represented debtors in the Bankruptcy Lists. This pilot is a useful collaborative project involving the registrars of the Federal Circuit Court, officers of the Federal Court, the Consumer Action Law Centre and the Melbourne Law School.

The aim of the pilot is to assist vulnerable debtors and to facilitate the efficient operation of bankruptcy proceedings in the Court. The pilot was the subject of an evaluation by researchers from Melbourne University as part of their Personal Insolvency Project. This evaluation concluded that the service provided valuable assistance to debtors while also improving the efficiency of the Bankruptcy List. Further information on this evaluation and the ongoing work of the project can be found at the following website:

http://law.unimelb.edu.au/centres/cclsr/research/major-research-projects/personal-insolvency-project

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Some of the types of matters which came before the Court for determination under this head of jurisdiction included the following:

- ***Commissioner of State Revenue (Cth) v Kimiora*** **[2016] FCCA 1229; (2016) 309 FLR 277**

  BANKRUPTCY – Application for a sequestration order referred to Federal Circuit Court of Australia for determination – issue in relation to the affirmation of the affidavit in support of the creditor's petition – affidavit not properly sworn when witnessed – whether regular – s.306 of the Bankruptcy Act 1966 (Cth) – issue of relevant legislation for the calculation of interest applicable – consideration of Taxation Administration Act 1997 – consideration of the Magistrates Court Act 1989 – sequestration order made.
  http://www.austlii.edu.au/au/cases/cth/FCCA/2016/1229.html

- ***Lion Finance Pty Ltd v Nasr*** **[2016] FCCA 1595; (2016) 310 FLR 52**

  BANKRUPTCY – Application to review a Registrar's decision to make a sequestration order – preliminary argument about whether s.104(2) of the Bankruptcy Act creates a discretion on the Court as to whether to review as a preliminary issue – statutory interpretation.

  The principal issue was whether s 104(3) required the Court to exercise discretion as to whether it should review a decision of the Registrar, as a preliminary issue, before it could actually go ahead and engage in such a review. This required the Court to ascribe meaning to the word "may" as it was used in s 104(3).
  http://www.austlii.edu.au/au/cases/cth/FCCA/2016/1595.html

- ***Morris Finance Ltd v Hodges*** **[2016] FCCA 1402; (2016) 310 FLR 42**

  BANKRUPTCY – Bankrupt's right to be heard – where lessor under a chattel lease seeks declaratory relief – where chattel lease creates no proprietary interest in goods leased – where no property has passed to bankrupt's trustee in bankruptcy – bankrupt entitled to be heard.

  In the primary proceedings, the applicant sought a declaration permitting them to re-possess property that was the subject of a lease under which the first respondent had defaulted. The first respondent subsequently filed an interlocutory application arguing that he should be heard in the primary proceedings.

  The applicant countered that any interest the first respondent had in the lease agreement had vested in the second respondent upon bankruptcy, and so the first respondent did not have a right to appear at, or to be heard in respect of, the primary proceedings.

  The issue for the Court was whether the first respondent had the right to be heard in the primary proceedings. This required the Court to decide whether the first respondent's right of possession gave him a right to be heard in the primary proceedings.
  http://www.austlii.edu.au/au/cases/cth/FCCA/2016/1402.html

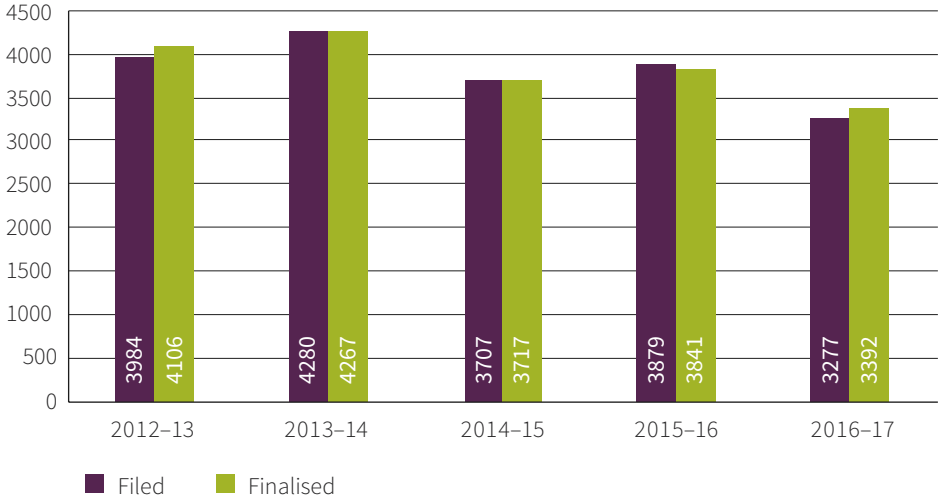
> ***Banks-Walker v Vince*** **[2016] FCCA 2750; (2016) 14 ABC(NS) 275**

BANKRUPTCY – Application for annulment of debtor's petition on the grounds that it ought not to have been presented – credibility of bankrupt – bankrupt admitting extended involvement in fraud and forgery – whether bankrupt solvent at time debtor's petition filed.

The applicant applied for an annulment pursuant to s 153B of the *Bankruptcy Act 1966* (Cth) (the Act) on grounds the debtor's petition was an abuse of process and he was solvent. The applicant contended he received poor advice and could have defended the claims of creditors; part of the debt related to a contract of guarantee that bore his forged signature; and there was a conflict of interest between the first respondent because he advised the bankrupt to file a debtor's petition with a view to earning fees as a trustee in bankruptcy. http://www.austlii.edu.au/au/cases/cth/FCCA/2016/2750.html

> Of some jurisprudential significance is a matter currently pending in the High Court in the matter of *Ramsay Health Care Australia Pty Ltd v Compton* [2017] HCATrans 55. During the year, the High Court granted special leave in this matter and will consider whether the Full Federal Court applied the wrong test for 'going behind judgment' and whether a court may go behind a judgment in any circumstance where the debtor adduces evidence which shows 'substantial reason to believe' that the debt was not owed. http://www.austlii.edu.au/au/cases/cth/HCATrans/2017/55.html

Figure 3.8: Bankruptcy applications, 2012–13 to 2016–17



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Consumer

The number of filings under this head of jurisdiction is small (119).

The consumer law jurisdiction of the Court is confined and there is a monetary limit on the grant of injunctive relief and damages up to $750,000

Consumer law now has a national framework following the commencement on 1 January 2011 of the Australian Consumer Law (ACL). This cooperative framework is administered and enforced jointly by the ACCC and the State and Territory consumer protection agencies. A review of the ACL commenced in 2016 and concluded in March 2017.

The review considered the effectiveness of the ACL and whether it was sufficiently flexible to address new and emerging issues. As part of the review the unconscionable conduct provisions were considered and it was noted that despite differing court interpretations, the broad-based law is working as intended with the courts continuing to develop the law on a case-by-case basis in line with society's changing norms and values. It was noted however that there was stakeholder interest in the possible introduction of a general prohibition against unfair trading and a proposal to explore how such a prohibition could be adopted within the Australian context.

Some of the types of disputes which came before the Court under this head of jurisdiction is illustrated in the following cases:

- In *Sola Tube Australia Pty Ltd v Solar Bright International Pty Ltd* [2017] FCCA 657, the Court considered whether the unauthorised use of an energy efficiency logo amounted to misleading or deceptive conduct; whether the use of diagrams on websites and marketing brochures would mislead or deceive the ordinary and reasonable class of consumers into believing that the product worked as illustrated on those diagrams and whether the use of advertising language on website and marketing brochures would mislead or deceive the ordinary and reasonable class of consumers into believing the product worked as described. The Court found that the use of diagrams and advertising language on the websites and the marketing brochures would not be likely to so mislead or deceive consumers.
- Injunctive relief can sometimes be sought in the context of such proceedings as in *Due Flowers Pty Ltd v Villa Verona Pty Ltd* [2016] FCCA 3163, where an interlocutory application was made to grant a freezing order in the context of proceedings alleging misleading conduct concerning the sale of a café business. In dismissing the application, the Court noted that freezing orders are not granted for the purpose of an applicant securing an outcome in relation to their proceedings but in circumstances where the Court is satisfied that there is a prima facie case of an abuse of process whereby assets will be dissipated with the intention of defeating the successful outcome by a party. Such an intention is generally inferred where a prima facie case of fraud is made out. In the particular circumstances of the case, the Court was not satisfied, on the material before the Court at that stage, that there was any prima facie case of fraud.

Human rights

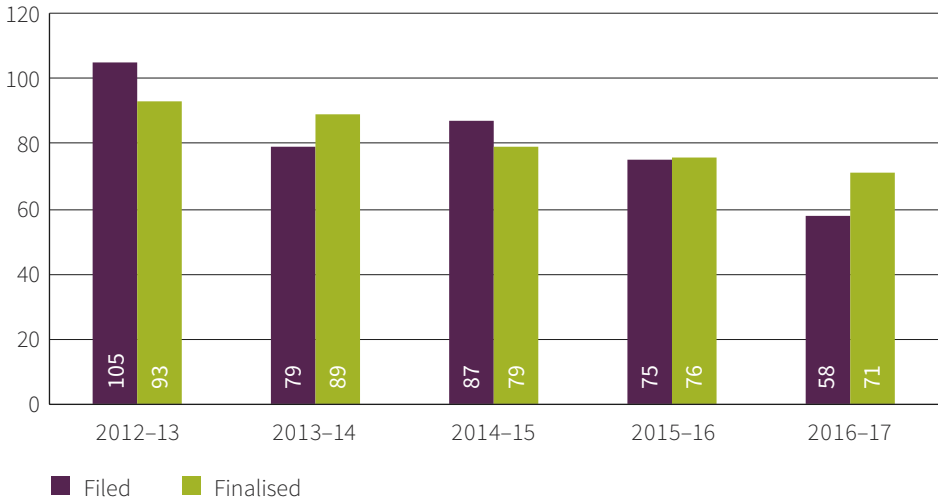
The Australian Human Rights Commission has statutory responsibilities under the following laws to investigate and conciliate complaints of alleged discrimination:

- *Australian Human Rights Commission Act 1986*
- *Age Discrimination Act 2004*
- *Disability Discrimination Act 1992*
- *Racial Discrimination Act 1975*
- *Sex Discrimination Act 1984.*

The *Australian Human Rights Commission Act 1986,* formerly the *Human Rights and Equal Opportunity Commission Act 1986,* establishes the statutory framework for making complaints of unlawful discrimination.

Once a complaint of unlawful discrimination is terminated, a person affected may make an application to the Federal Court or Federal Circuit Court alleging unlawful discrimination by one or more respondents to the terminated complaint. The number of matters which proceed to the Court is relatively small. In 2016–17 there were 58 applications filed under this head of jurisdiction.

Figure 3.9: Human rights applications filed and finalised 2012–13 to 2016–17



Proposed amendments to section 18C of the *Racial Discrimination Act 1975* and to the *Australian Human Rights Commission Act 1986* by way of the *Human Rights Legislation Amendment Bill 2017* were the subject of considerable parliamentary and public debate. While the amendments proposed to section 18C were not progressed, those relating to the Australian Human Rights Commission and the complaint processes were passed and took effect on 13 April 2017.

These amendments included the introduction of new grounds on which the commission or President may or must close inquiries or terminate complaints; an increase to the threshold for lodging complaints; a requirement for inclusion of a note about the costs jurisdiction of the courts in a notice of termination and provide that applications may be made to the courts in relation to complaints terminated on certain grounds.

There were also amendments to broaden the discretion for the courts to consider rejected settlement officers. In certain circumstances, an application to the Court must not be made by the complainant unless the Court has granted leave to make the application.

Section 18C of the *Racial Discrimination Act 1975* was the subject of judicial consideration in *Prior v Queensland University of Technology* [2016] FCCA 2853. These proceedings attracted considerable media and public attention. The case involved a claim by the applicant who was at the time an employee of the Queensland University of Technology in respect of alleged infringements of the section as a result of Facebook posts by the respondents who were at the time students at the university. Judge Jarrett summarily dismissed the application as having no reasonable prospect of success having found that the Facebook posts were not reasonably likely, in all the circumstances, to offend, insult, humility or intimate a person in the position of the applicant or a hypothetical representative of the group. An application for extension of time to apply for leave to appeal this decision was dismissed by Dowsett J in *Prior v Wood* [2017] FCA 193.

Industrial

The workload of the Court in this area has gradually increased since the original conferral of jurisdiction in 2006. The Court has jurisdiction to deal with a broad range of matters under the *Fair Work Act* 2009 (Cth) (the "FW Act") and the last year has seen a further increase in the number of applications for *inter alia* penalties and compensation as a result of alleged breaches of the FW Act.

During the reporting year, a number of legislative amendments impacted on the Court's industrial law jurisdiction. Following passage of the *Building and Construction Industry (Improving Productivity) Act 2016* and the *Building and Construction Industry (Consequential and Transitional Provisions) Act 2016,* the Court now has jurisdiction to deal with proscribed conduct in the building industry.

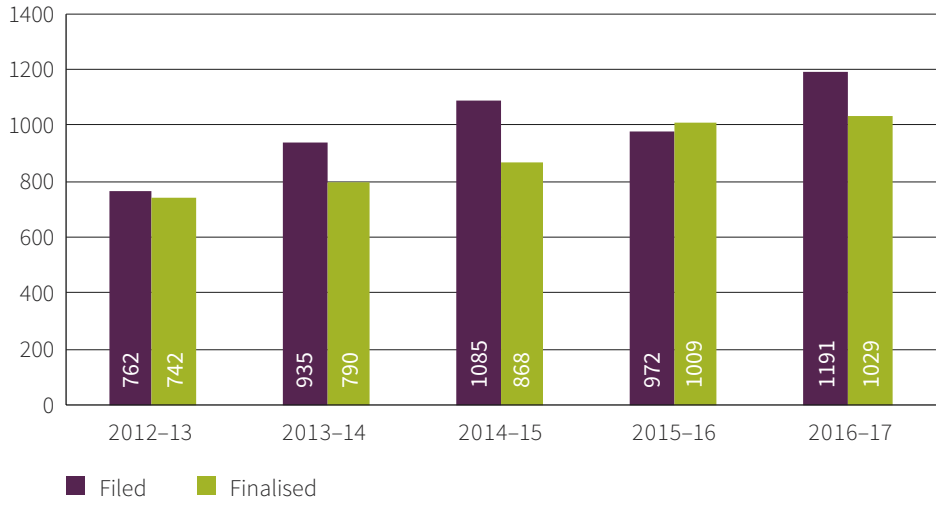
There were also amendments to the *Fair Work (Registered Organisations) Act 2009* by way of the *Fair Work (Registered Organisations) Amendment Act 2016*. These amendments included the conferral of jurisdiction on the Court to impose civil remedies arising in from reprisal action.

The following are examples of the types of industrial law matters coming before the Court during the past year:

> In *Heraud v Roy Morgan Research Ltd* [2016] FCCA 185, the Court dealt with a claim for inter alia alleged adverse action whilst the applicant was absent on maternity leave. The Court found action taken by the respondent employer amounted to adverse action as the former employee had been injured in their employment or had their position altered to their prejudice.

- A further example of the sort of applications that are now routinely made to the Court is the decision in *Adcock v Blackmores* [2016] FCCA 265, where the Court was required to determine whether the redundancy in question necessarily amounted to a termination of the applicant's employment.
- The decision in the matter of *CFMEU v Glendell Mining Pty Ltd* [2015] FCCA 3152, is illustrative of a number of cases that regularly come before the Court for determination. In this case, the Court was required to determine the interaction between provisions in the FW Act and an enterprise agreement dealing with personal, carers leave and public holidays.
- As well as an increasing number of applications for the imposition of civil penalties brought by the Fair Work Ombudsman during 2016, the issue of accessorial liability under s.550 of the FW Act was addressed in a number of notable decisions, including *FWO v Oz Staff Career Services Pty Ltd & Ors* [2016] FCCA 105 where a HR manager was ordered to pay a penalty of $9920. In that case, the employer had been unlawfully deducting meal allowances and administration fees from employees' wages. The employer admitted to contravening the FW Act by doing so, however the HR manager denied any involvement. The Court found that the HR manager was aware of the deductions and knew that they were unlawful. This was sufficient to show that the HR manager was "involved in" the contravention and subject to a penalty.
- Finally of note was that special leave was granted by the High Court from a decision of the Full Court of the Federal Court in *Regional Express Holdings Ltd v Australian Federation of Air Pilots* [2016] FCAFC 147. In that decision, the Full Court dismissed an appeal from the decision of Riethmuller J at first instance in *Australian Federation of Air Pilots v Regional Express Holdings Ltd* [2016] FCCA 316. It is expected the High Court will consider the meaning of "entitled to represent industrial interests" under the FW Act.

Figure 3.10: Industrial applications filed and finalised, 2012–13 to 2016–17



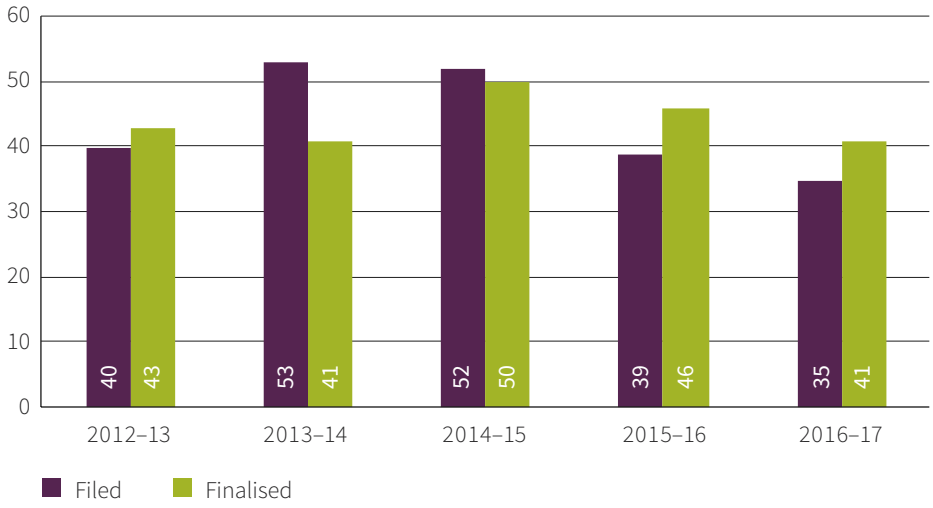
Intellectual property

As highlighted in Figure 3.11, intellectual property (IP) comprises a very small component of the general federal law workload. While the Court's intellectually property jurisdiction includes copyright, trade mark and design, it does not include patent law disputes.

Included in Recommendation 19.2 of the Report released by the Productivity Commission into Intellectual Property Arrangements in Australia, was the extension of this jurisdiction to IP '*...hear all IP matters…*' which would include patent disputes. This Recommendation went on to state*: The Federal Circuit Court should be adequately resourced to ensure that any increase in its workload arising from these reforms does not result in longer resolution times.*'

http://www.pc.gov.au/inquiries/completed/intellectual-property#report.

Figure 3.11: Intellectual property applications filed and finalised 2012–13 to 2016–17



Establishing an effective framework for enforcement of intellectual property rights was the subject of consideration by the Productivity Commission enquiry and recommendation 19.2 highlighted the Federal Circuit Court as a possible forum for enforcement where intellectual property rights are being infringed or are threatened:

https://www.communications.gov.au/departmental-news/release-productivity-commissions-intellectual-property-report

From 30 June 2017, the Federal Circuit Court commenced a pilot in its Melbourne registry to streamline the management of intellectual property matters (Melbourne IP Pilot). The arrangements for the Melbourne IP Pilot are set out in a Practice Direction:

http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/gfl/intellectual-property/pd/

In planning the Melbourne IP Pilot, the Court consulted with IP professionals and considered the practices and procedures adopted by the UK Intellectual Property Enterprise Court. It has also built on its own experience in establishing lists in other areas of the law. The Court will use its existing powers to resolve such matters in a flexible manner that is proportionate to the issue in dispute.

Three judges are docketed to hear IP matters with the aim of hearing matters within eight months of filing. The Court will take an active party in controlling the trial of IP matters and it is expected that most matters will be confined to a maximum of two hearing days.

A case management conference will be conducted in every IP proceeding unless the judge otherwise directs or unless the application indicates upon filing that a case management conference is not required. Mediation will be conducted by registrars of the Court or the parties may utilise private mediators.

Where matters proceed to trial, parties are expected to reduce openings and final addresses to written form. Cross examination will be controlled. Save in exceptional circumstances, the Court will not permit significant time to be devoted to the hearing and determination of evidentiary objections. Discovery is not permitted unless the Court has declared it is appropriate in the circumstances of the case. There will be provision for telephone attendances in appropriate circumstances.

The Court has the power to specify the maximum costs that may be recovered pursuant to rule 21.03. The Court has an events-based cost regime which is set out in Schedule 1 of the Rules. Unless there is an order to depart from this regime in a particular case, costs awarded will be on the basis of the amount set out in the Schedule.

IP Australia is proposing a number of reforms to intellectual property legislation to improve and streamline the administration of the IP system. To this end, draft legislative amendments were released for public comment in the form of the Intellectual Property Laws Amendment Bill 2017 and the Intellectual Property Laws Amendment Regulation 2017. An exposure draft of the Bill and the Regulation and accompanying explanatory material were made available for the purpose of consultation. IP Australia has indicated these legislative proposals are on hold, until after the Government has finalised its response to the Productivity Commission's report into Australia's intellectual property arrangements.

Migration

In previous annual reports it was noted that the Court was expecting a significant upward trend in the migration workload flowing as a result of increasing numbers of reviews by the Independent Assessment Authority of the so called 'asylum legacy caseload' which comprises those who arrived unauthorised by boat between August 2012 and December 2013 and were not transferred to offshore processing centres.

As is apparent from Figure 3.12, there has been a significant increase (40%) in the migration workload during the reporting period. Migration now represents the largest jurisdiction in the Court's general federal law defended hearing list.

The increase is placing pressure on judicial resources. The early identification of matters which may have implications for a wider cohort, particularly in relation to the 'Fast Track caseload' could assist the Court and efforts are being made for the early identification of such matters. Matters where litigants are in detention are similarly identified. It is unfortunate that early dates for listing are not otherwise available.

Although the Court is able to utilise the assistance of registrars at the direction stage, the nature of the jurisdiction is such that most applications require the allocation of judicial hearing and writing time. The Court is mindful of the impact delays may have on matters proceeding expeditiously where there are substantive issues of law to be resolved. During the year the Court undertook consultation with stakeholders to explore ways in which to facilitate the timely disposition of the migration workload.

The feedback highlighted the need for provision of adequate judicial and other resources as being essential to the timely resolution of the migration caseload. In addition, the feedback highlighted the utility of greater consistency in listing practices with some suggestions for streamlining procedures and standardising directions and orders.

Migration law can be seen as a specialist area of administrative law which is often the subject of constitutional challenge. The jurisdiction exercised by the Court is judicial review based on statutory interpretation and case law.

The following amendment to the *Migration Act 1958* during the year was of some significance to the Court's jurisdiction:

- ***Migration Amendment (Character Cancellation Consequential Provisions) Act 2016***

  The Act came into full effect on 23 February 2017 and amends the Migration Act so that any decisions made by the Minister under sections 501BA, 501C or 501CA are reviewable by the Federal Court and not by the Federal Circuit Court, consistent with other character decisions made personally by the Minister.

During the year the following High Court decisions of relevance to the migration jurisdiction were delivered:

- ***Minister for Immigration and Border Protection & Anor v SZSSJ & Anor and Minister for Immigration and Border Protection & Ors v SZTZI*** **[2016] HCA 29**

  In a unanimous decision allowing two appeals, the High Court held that asylum seekers are owed procedural fairness in the processing of their applications and that the Federal Circuit Court can hear a challenge to an officer's preparatory act, such as holding an inquiry to inform the Minister prior to the Minister making a substantive decision.

- ***The Maritime Union of Australia & Anor v Minister for Immigration and Border Protection & Anor*** **[2016] HCA 34**

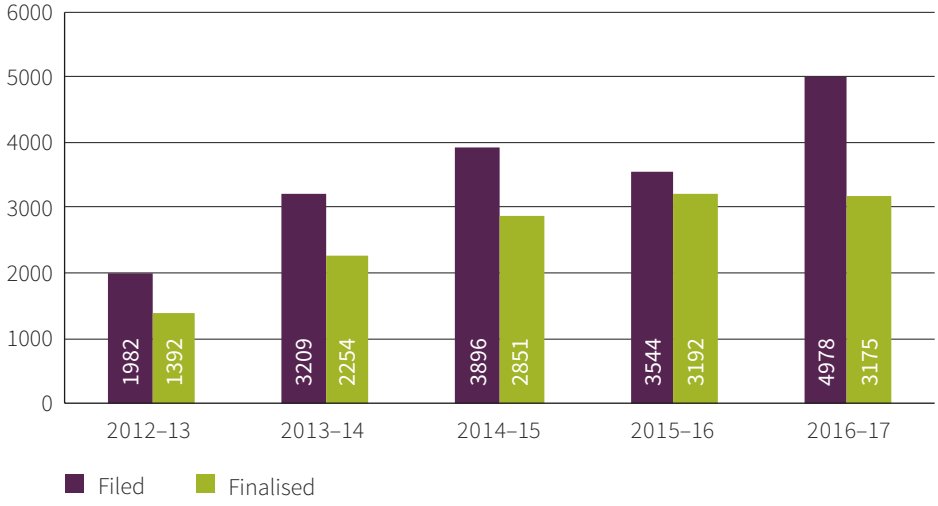
  A unanimous Court held that the Minister had made a determination under s 9A(6) of the *Migration Act* that exceeded the limits of his statutory power and was invalid. The determination had been aimed at negating some visa requirements for those working in the offshore resource industry.

- ***Minister for Immigration and Border Protection v Kumar & Ors* [2017] HCA 11**

  The High Court by majority held that the Federal Court erred in holding that s 36(2) of the *Acts Interpretation Act 1901* operated to allow an application for a Subclass 572 visa to be assessed as if it had been made before the expiry of his Subclass 485 visa.

- Also of significance is the Full Federal Court decision in ***Minister for Immigration and Border Protection v Singh* [2016] FCAFC 183**. The Full Federal Court discussed the tension between s.359A and s.375A of the Migration Act and approved the approach taken in *MZAFZ v Minister for Immigration and Border Protection* [2016] FCA 1081. It overruled the finding in *Davis v Minister for Immigration & Multicultural & Indigenous Affairs* [2004] FCA 686, that the Tribunal does not ordinarily need to disclose a certificate to an applicant. The High Court refused special leave in this case. There are a significant number of cases in the Federal Circuit Court that were adjourned pending the outcome of the special leave application. Finding court resources to address these cases in a timely manner will be a challenge.

Figure 3.12: Migration applications filed and finalised, 2012–13 to 2016–17



3

Initiatives in general federal law

Pro Bono Scheme – Federal Circuit Court Rules 2001 – Part 12

A court-based pro bono scheme is in operation similar to that which operates in the Federal Court. Part 12 of the Rules sets out rules in relation to the Court-administered scheme. Referrals for pro bono have generally been confined to general federal law matters. With a significant proportion of migration related matters involving self-represented litigants, the Court has been able to facilitate assistance to litigants. Assistance is also provided in various states by way of organisations such as JusticeNet. The Court appreciates the generosity of those members of the profession who agree to give their valuable time voluntarily to assist in such referrals.

Small claims lists – Melbourne, Brisbane and Sydney

Background

The Fair Work Act 2009 makes provision for certain proceedings to be dealt with as small claims proceedings. An application may request that an application for compensation be dealt with under this Division if the compensation is not more than $20,000 and the compensation is for an entitlement mentioned in the *Fair Work Act 2009*. When dealing with a small claim application, the Court is not bound by the rules of evidence but may inform itself of any matter in any manner as it thinks fit.

A party to a small claims application may not be represented by a lawyer without the leave of the Court. Rules in relation to the conduct of proceedings in the Fair Work Division are found in Chapter 7 of the Federal Circuit Court Rules 2001.

Objective

The Court aims to minimise the number of events needed to dispose of such applications. Ideally the Court aims to finalise these matters on the first hearing date. In Melbourne, Sydney and Brisbane the Court has dedicated lists with panel judges assigned, with the aim of disposing of such matters on the first date. Staff from the Fair Work Ombudsman are available to provide assistance on an amicus basis.

The main aims are:

- ensuring that both parties attend court at the first hearing with all relevant material. This is facilitated by:
  - having a notice with the listing that indicates the matter may be dealt with and determined on the first return date
  - providing information to applicants that advises them of the type of material they may need to provide in support of their claim, and
  - accepting documents such as Fair Work Ombudsman Inspector's Report as evidence of the applicant.

- having a registrar with some knowledge of the area available for mediation where the judges consider this to be helpful, and
- keeping it simple – with an application form with instructions which guides the applicant through what they need to provide on a step by step basis, and a pro forma affidavit of service.

Support

Litigants are provided with a fact sheet along with other resources to assist them in the process.

The Fair Work Ombudsman provides staff to assist at the lists on an amicus basis and various information material is available if additional claims are raised. Registrars are also available for mediation.

Migration duty lawyer scheme – Melbourne

The Federal Circuit Court migration workload, particularly its hearing workload, has steadily increased since October 2001 when migration jurisdiction was conferred on the Court. Migration now represents the largest jurisdiction in the Court's general federal law defended hearing list, with most first instance judicial review applications being filed in the Federal Circuit Court.

Migration work presents additional demands on the Court and its administration that do not arise in other areas of the Court's jurisdiction. As many litigants in migration matters are self-represented, particularly those seeking review of protection visa decisions, there is a greater need for pro bono representation or other legal representation, particularly as legal aid is not available to protection visa applicants who are in migration detention. The Court has found it essential to set up a pro bono scheme (similar to that which operates in the Federal Court).

There is a Legal Aid duty lawyer scheme in respect of the Federal Circuit Court directions lists in Melbourne.

Skilled Victorian Legal Aid migration duty lawyers are present at the directions hearings and give legal advice, refer eligible clients for legal aid, and may earmark some matters for pro bono referral. The Court is very grateful for this service as it facilitates the conduct of the migration matters.

Pro bono migration scheme – Brisbane

The Federal Circuit Court in Brisbane has, in conjunction with HopgoodGanim Lawyers and the Bar Association of Queensland, established a Pro bono scheme to assist SRLs in migration proceedings. Initial legal assistance is provided a well as referrals to a panel of barristers to undertake the legal work, including research, legal advice and court appearances.

Pilot to assist self-represented litigants – bankruptcy lists – Melbourne

In September 2014, the Federal Circuit Court in Melbourne began a pilot to provide direct financial counselling services to self-represented debtors in the Court's Bankruptcy lists. This pilot was developed and implemented by the Court in collaboration with the Federal Court of Australia, the Consumer Action Law Centre and the Melbourne Law School to assist vulnerable debtors and to promote the efficient operation of bankruptcy proceedings in the Court.

The pilot involves having on-site financial counselling available every Tuesday and Thursday morning, in conjunction with hearings in the Bankruptcy list. The location of the service at the Court makes it possible for registrars to refer debtors for immediate financial counselling assistance, without the need for an adjournment. An evaluation of the pilot indicated the project has been successful in meetings its objectives and the project has been extended and further consideration will be given to options for its continuance and any further expansion.

Self-represented service

On 25 July 2013, the then Attorney-General announced new funding of $4 million over four years to support SRLs in areas of general federal law. The funding allows LawRight (formerly Queensland Public Interest Law Clearing House), Justice Connect, JusticeNet SA and Legal Aid Western Australia to provide greater access to the Federal Court and Federal Circuit Court in each state and territory.

This funding allows these services to provide basic legal information and advice to these people. The services include a focus on early resolution and mediation of disputes and discourage or divert unnecessary legal action. The four organisations providing this service have a strong history of providing frontline legal assistance services and dedication to improving access to justice for disadvantaged Australians. The service is based on a successful pilot conducted by LawRight in the Federal Court and former Federal Magistrates Court.

Access to the service is through the following providers:

- LawRight, Queensland
- Justice Connect: New South Wales, Victoria, Tasmania and the Australian Capital Territory
- JusticeNet SA: South Australia and the Northern Territory, and
- Legal Aid Western Australia, Western Australia.

Appeals

Family law appeals

An appeal lies to the Family Court from the Federal Circuit Court exercising jurisdiction under the Family Law Act and with leave, the Child Support Acts. An appeal in relation to such matters is exercised by a Full Court unless the Chief Justice considers it appropriate for a single judge to exercise the jurisdiction. There was a five per cent decrease in the number of appeals going to the Family Court from the Federal Circuit Court during the year as seen on the next page.

Table 3.4: Notice of appeals filed, finalised and pending by jurisdiction, 2012–13 to 2016–17

Filed	2012–13	2013–14	2014–15	2015–16	2016-17	% change from 2015–16 to 2016–17
Family Court of Australia	146	141	153	161	145	-10%
Federal Circuit Court of Australia	172	189	236	210	199	-5%
Appeals filed	**318**	**330**	**389**	**371**	**344**	**-7%**
Per cent from Family Court of Australia	46%	43%	39%	43%	42%	-2%
Per cent from Federal Circuit Court of Australia	54%	57%	61%	57%	58%	2%
Finalised	**2012–13**	**2013–14**	**2014–15**	**2015–16**	**2016–17**	**% change from 2015–16 to 2016–17**
Family Court of Australia	142	141	124	157	161	3%
Federal Circuit Court of Australia	192	196	232	197	216	10%
Appeals finalised	**334**	**337**	**356**	**354**	**377**	**6%**
Per cent from Family Court of Australia	43%	42%	35%	44%	43%	-2%
Per cent from Federal Circuit Court of Australia	57%	58%	65%	56%	57%	2%
Pending	**2012–13**	**2013–14**	**2014–15**	**2015–16**	**2016–17**	**% change from 2015–16 to 2016–17**
Family Court of Australia	137	137	166	139	107	-23%
Federal Circuit Court of Australia	126	119	123	131	101	-23%
Appeals pending	**263**	**256**	**289**	**270**	**208**	**-23%**
Per cent from Family Court of Australia	52%	54%	57%	51%	51%	0%
Per cent from Federal Circuit Court of Australia	48%	46%	43%	49%	49%	0%

General federal law appeals

The majority of appeals and appellate-related applications in respect of general federal law proceedings are heard and determined by single judges of the Federal Court exercising the Court's appellate jurisdiction.

Of the 1106 appeals and related actions filed in the Federal Court, 836 were from decisions of the Federal Circuit Court (accounting for approximately 75 per cent of the overall appeals and related actions filed) of which 746 were in relation to the migration jurisdiction of the Court.

This compares with a total of 849 appeals and appellate related applications from the Court as reported in the 2015–16 Annual Report (accounting for approximately 70 per cent of the appellate work of the Federal Court) of which 639 involved the migration jurisdiction.

The large proportion of migration related appellate proceedings is reflective of the general upward trend of the migration workload, with a large proportion of these matters proceeding to a defended hearing.

Child Dispute Services

The 2016–17 year was yet another very busy one for the Child Dispute Services (CDS) team. The CDS Family Consultants provide expert and independent forensic, social science advice and evidence to judicial officers to assist them in making decisions in regards to disputes about children. To achieve this, family consultants generally conduct preliminary family assessments at the interim stage of a matter, provided to the Court in the form of a Memorandum, or comprehensive family assessments for a final hearing, provided to the Court in the form of a Family Report. CDS makes information available about the different types of assessments it undertakes through fact sheets on the courts' websites.

Early in 2017, the CDS leadership team reviewed the CDS principles and clinical governance framework. The revised principles underpinning the work of CDS are:

- *Being child-centred*— CDS focuses on the physical, developmental, emotional and relationship needs of children within the context of their unique family circumstances
- *Prioritising safety*—recognising that the need for protection from harm is paramount.
- *Delivering best practice*—practices are research informed and consistent with contemporary, evidence-based practice models.
- *Operating respectfully*— treating parties, officers of the Court and all people with sensitivity and respect and recognising the importance of equity and diversity.
- *Acting with professionalism and integrity*—utilising a qualified and experienced workforce with a commitment to high quality, ethical service delivery and ongoing professional development.

Consolidation and continuous improvement were the themes for CDS across 2016–17. The revised directions and guidelines for undertaking family assessments and preparing family reports were rolled out across the country, with associated training delivered to family consultants in all registries. The purpose of these revised documents is to provide greater clarity for clinical staff about how assessments are to be conducted and to enhance the effectiveness of family reports in relation to highlighting key issues, including family violence and other risk and safety concerns and their potential impact on children's needs.

In line with the Court's prioritisation of the issue of family violence through its Family Violence Action Plan, CDS developed a comprehensive set of guidelines for screening and assessment, focussed on identifying the different types of violence that can present in families accessing the Court. These guidelines are aligned with the *Guidelines for Intimate Partner Violence: A Supplement to the AFCC Model Standards of Practice for Child Custody Evaluation* that was released by the Association of Family and Conciliation Courts in 2016. These guidelines also complement the continuous training in family violence undertaken by family consultants.

The ongoing CDS professional seminar series covered the following topics across the year:

- methamphetamine and parenting
- inexplicable filicide: less overt indicators of homicidal risk for separating families
- the psychological impact of separation on adults
- surrogacy and Australian family law
- international trends in family law
- conducting parent-child observations
- mental health e-tools
- preparing for cross-examination, and
- opiate use and parenting.

In addition to the work undertaken by way of family assessments, CDS continues to participate in sharing its knowledge and collaborating with other service providers within the family law and broader service sectors. Examples of this include presentations given by CDS staff in such forums as:

- Family Law Pathways Network events
- The Association of Family and Conciliation Courts (Australian Chapter) conference
- International Conference on Identifying the Children's Views in Judicial Proceedings held in the Czech Republic
- Law Society events
- Australasian Drug and Alcohol Strategy conference
- National Family Law Conference, Melbourne
- Independent Children's Lawyer Conferences, and
- Australasian Institute of Judicial Administration Conference.

3

Dispute resolution

The Federal Circuit Court has grown to become Australia's principal federal trial court. The Federal Circuit Court's jurisdiction and less formal legislative mandate is such that a significant number of parties present as self-represented litigants. In family law the Court is assisted by legal aid duty lawyer schemes. To address the needs of such litigants in the general federal law jurisdiction a number of initiatives have been established.

The general federal law dispute resolution provisions are contained in Part 4 of the *Federal Circuit Court of Australia Act 1999*. The Court operates a docket management system and referrals by judges are the most frequently used procedure in general federal law proceedings. Most mediation is undertaken by registrars of the Court however some matters are referred to external providers.

Not all matters are equally likely to be referred to mediation. In practice particular characteristics of some matters mean that referrals to mediation may occur infrequently if at all. Such matters include Migration applications.

The number of matters referred to mediation in 2016–17 increased from 581 referrals in 2015–16 to 611.

Table 3.5: Number of matters referred to mediation, 2013–14 to 2016–17

	2013–14	2014–15	2015–16	2016–17
Referrals	511	661	581	611

Table 3.6 shows the number of referrals to mediation by cause of action both as a number and as a percentage of filings. Overall six per cent of filings were referred to mediation. As a percentage of matters, the cause of action most referred to mediation was Human Rights at 48 per cent of matters referred and Industrial matters with 44 per cent referred.

Table 3.6: Filings and mediation referrals to a registrar as a percentage of filings, 2016–17

	Filings	Referrals	Referrals as % of Filings
Administrative	37	2	5%
Admiralty	9	0	0%
Bankruptcy	3277	28	1%
Human rights	58	28	48%
Industrial	1191	524	44%

	Filings	Referrals	Referrals as % of Filings
Intellectual property	35	5	14%
Consumer	119	24	20%
Migration	4978	0	0%
All Filings	**9704**	**611**	**6%**

The Court continues to engage a sessional registrar in Sydney and Melbourne to assist with mediation in the growing Industrial small claims jurisdiction.

Table 3.7 shows the outcome of mediations conducted in the reporting period. Not all matters mediated in the reporting period will have been filed or even referred to mediation in the reporting period. Matters that are referred to mediation at the end of the reporting period may be mediated in the following reporting period.

Table 3.7: Mediation referral outcomes, 2016–17

	Resolved	Part resolved	Not resolved
Administrative	0	0	0
Admiralty	1	0	1
Bankruptcy	19	2	6
Human Rights and Equal Opportunities Commission	16	0	14
Industrial	246	8	202
Intellectual property	8	0	4
Consumer	12	0	68
Migration	1	0	0
Total	**303**	**10**	**235**

In the reporting period, registrars conducted 548 mediations and partially or fully resolved 313 matters or 57 per cent of matters. This is slightly up on the 52 per cent of matters resolved in 2015–16.

Family law financial

In financial matters the Court:

- offers privileged conciliation conferences conducted by registrars of the Court
- offers privileged mediation in appropriate matters via the administered appropriation, and
- refers appropriate matters to privately funded mediation.

In 2016–17, registrars held 3984 privileged conciliation conferences and settled approximately 39 per cent of these matters.

Administered fund

The Federal Circuit Court receives an administered appropriation to source dispute resolution services such as counselling, mediation and conciliation from community-based organisations. The Court is seeking to enhance the services provided to litigants and allow for greater flexibility in the provision of those services by utilising the fund to allow providers:

- to undertake property mediation where the external provider will be located within the same location as the litigants and in a position to offer more timely interventions, and
- to provide counselling and mediation services to litigants locally in appropriate circumstances.

The major focus of the administered fund is to provide mediation services to litigants in property matters particularly in rural and regional areas in support of its circuit work. These services are currently provided by Relationships Australia (Victoria).

The use of the administered fund continues to grow as services are extended to more regional locations. This reduces the need for registrars to travel from registry locations which impacts on the delays and services in the principal registries. It allows regional litigants to access mediation services in a timely fashion rather than waiting for registrar circuits.

In 2016–17, 374 matters were referred to mediation through the administered fund. During the period 340 mediations were completed, with 229 matters settling and a further 25 matters being partially settled. This is a settlement rate of 74.71%.

The use of the administered fund is an innovative way of providing timely access to justice to litigants, particularly those in rural and regional Australia where services are limited.

Circuit program

The Federal Circuit Court is committed to providing services to the rural and regional areas of Australia. Judges of the Court currently sit in rural and regional locations to assist in meeting this commitment. These sittings are known as circuits.

In 2016–17 the Court sat in 30 rural and regional locations as part of its extensive circuit program. Details of the circuit locations are included at page 38.

When on circuit the Court sits in leased premises and state and territory court facilities. Reliance on state facilities attracts a number of challenges for the Court including limited availability of courtrooms, limited hours of access, access to technology and resources such as telephone and video-link facilities, and security arrangements. The Court is aware of these challenges, not only for litigants and legal practitioners, but also staff, and continues to look for opportunities to improve facilities and resources and, therefore, the efficiency and value of circuits.

Judges of the Court travelled to circuit locations on 158 occasions throughout 2016–17. The length of these circuits varied from single days to whole weeks depending on the demands of the circuit and the distance to parent registries. It is estimated that the work undertaken in the rural and regional locations equates to approximately 20 per cent of the Court's family law workload. The Court is working towards capturing better data in respect to the work undertaken on circuit.

In addition to attending circuit locations, judges of the Court conduct some procedural and urgent hearings by video-link and telephone link in between circuits. The technology provides litigants with greater access to the Court and assists in maximising the value of time spent at the circuit locations. eFiling provides litigants and legal practitioner's greater access to the Court by enabling them to file documents from rural and regional locations as opposed to attending registry locations or using standard post.

The Court continues to look at ways to improve the efficiency of circuits and access to justice for litigants and legal practitioners. The Court meets with and consults with legal practitioners representing the Family Law Council Regional Committee to discuss various issues in relation to circuits and the Court.

Complaints

The Court is committed to acknowledging complaints as soon as practicable and managing responses in an effective and timely manner. The Court's complaint policy and judicial complaints procedure is available on the website at **www.federalcircuitcourt.gov.au**

During 2016–17, 213 complaints were received which is marginally higher than the previous year (208).

The following is a breakdown of these complaints by category:

- Overdue judgment: 54
- Conduct – judge: 45
- Dispute resolution: 44
- Family law registry: 11
- Legal process: 11
- Conduct – registrar: 8
- Divorce: 8

- Judicial decision: 8
- Conduct – legal practitioner: 5
- National Enquiry Centre: 5
- Electronic filing: 3
- General Federal Law registry: 2
- Delays in proceedings: 2
- Pending proceedings: 2
- Court facilities: 1
- Transcript/audio recording: 1
- Security/court policy: 1
- Transfer of proceedings: 1
- Provision of judgment: 1

The number of complaints is relatively small and it is of concern that the largest number of complaints are in relation to outstanding decisions. However it is pleasing that this number is down from the previous year.

The Court has a protocol which sets a benchmark of three months and matters that are outside this benchmark are actively monitored by the Chief Judge's chambers.

Judicial complaints policy

The *Judicial Misbehavior and Incapacity (Parliamentary Commissions) Act 2012* and the courts *Legislation Amendment (Judicial Complaints) Act 2012* commenced on 12 April 2013.

The Judicial Complaints Act amended the *Federal Circuit Court of Australia Act 1999*, *Family Law Act 1975*, the *Federal Court of Australia Act 1976*, and the *Freedom of Information Act 1982* to:

- provide a statutory basis for the Chief Justice of the Federal Court, the Chief Justice of the Family Court and the Chief Judge of the Federal Circuit Court to deal with complaints about judicial officers
- provide protection from civil proceedings that could arise from a complaints handling process for a Chief Justice or the Chief Judge as well as participants assisting them in the complaints handling process, and
- exclude from the operation of the *Freedom of Information Act 1982* documents arising in the context of consideration and handling of a complaint about a judicial officer.

The Parliamentary Commissions Act provides a standard mechanism for parliamentary consideration of removal of a judge from office under of the Australian Constitution paragraph 72(ii). Details of the Judicial Complaint Procedure of the Court are found on the website under Contact us > Feedback and Complaints at:

http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/contact-us/feedback-complaints/judicial-complaints

Judgments

In 2016–17, a total of 3188 judgments were settled into written format.

A breakdown by jurisdictional category is as follows:

- Administrative: 46
- Bankruptcy: 140
- Child support (incl. AAT): 59
- Consumer law: 10
- Family law: 1349
- Human rights: 28
- Industrial law: 155
- Intellectual Property (includes Copyright and Trademarks): 9
- Admiralty: 2
- Migration: 1365
- Practice and procedure: 24

The publication of decisions is part of the Courts' commitment to open access to justice and is seen to fulfil an important public interest. In an effort to improve this function, the Court makes every effort to disseminate its decisions as widely as possible and in a timely manner. All judgments that are suitable for external distribution are published to AustLII (the primary free-access resource for Australian legal information). Members of the public can subscribe via the Court's website to receive regular updates of decisions posted on AustLII. Copies of unreported judgments are also distributed to commercial legal publishers for inclusion in their case citation databases.

In 2016–17, 127 decisions of the Court were published in commercial law report series, including the Federal Law Reports, Family Law Reports, Australian Industrial Law Reports and Australian Bankruptcy Cases. The Court also publishes a link to the AustLII version of the judgment on its own website. For the latest judgments see **www.federalcircuitcourt.gov.au**

A significant number of the Court's decisions are delivered orally at the conclusion of the hearing or soon after. In view of the additional time that is required for this task, not all oral decisions are settled in writing. Efforts are made to increase the number of family law decisions which are externally published on AustLII and commercial databases. The anonymising of family law decisions, however, imposes an additional requirement on the Court. Section 121 of the *Family Law Act 1975* stipulates that published judgments in family law matters must not reveal, among other details, the identity of parties or associated persons to the proceedings. The judgments office devotes a significant amount of time sanitising family law and child support decisions so that they are suitable to be published. In 2016–17, approximately 665, out of the total 1349 family law decisions, were published externally.

3

Analysis of performance – registry services

Family law registries

There are 18 family law registries. These are in every state and territory (except Western Australia). Family law registries are managed by the Federal Circuit Court but provide services to both the Family Court and the Federal Circuit Court. The Federal Circuit Court has run and managed the family law registries since 1 July 2016.

The key functions of the registries are to:

- provide information and advice about court procedures, services and forms and referrals options to community organisations that enable clients to take informed and appropriate action
- ensure that available information is provided in an accurate and timely fashion to support the best outcome for clients
- encourage and promote the filing of documents and management of cases online through the Commonwealth Courts Portal
- enhance community confidence and respect by responding to clients' needs and assisting with making the court experience a more positive one
- monitor and control the flow of cases through file management and quality assurance
- schedule and prioritise matters for court events to achieve the earliest resolution or determination
- manage external relationships to assist with the resolution of cases, and
- assist in the evaluation of caseloads by reporting on trends and exceptions to facilitate improvements in processes and allocation of resources.

Counter enquiries

Staff working on the counters in family law registries handle general enquiries, lodge documents relating to proceedings, provide copies of documents and/or orders and facilitate the viewing of court files and subpoenas. Registry service staff provide an efficient and effective service when dealing with litigants in person and the legal profession face-to-face at registry counters across Australia.

It is estimated that the registries dealt with 199,696 counter enquiries in 2016–17 from clients or other people seeking information face-to-face. This compared to 217,628 counter enquiries in 2015–16. The decrease in the number of people visiting court registries can be attributed to eDivorce, the successful online proof of divorce and general improvements to website information.

In 2016–17, an estimated 93 per cent of clients were served within 20 minutes, against a target of 75 per cent, compared to 92 per cent in 2015–16.

Document processing

Family law registries receive and process applications lodged at registry counters and in the mail. The service target of 75 per cent being processed within two working days of receipt was significantly exceeded (98 per cent of applications were processed within that timeframe).

National Enquiry Centre

The National Enquiry Centre (NEC) continued to provide family law telephone, email and Live Chat support services to the Family Court and Federal Circuit Court in 2016–17.

The NEC's responsibilities include:

- first telephone contact to the courts via the 1300 number
- first email contact to the courts via **enquiries@familylawcourts.gov.au** and **support@comcourts.gov.au**
- first contact to the courts via Live Chat
- a large proportion of telephone and email contacts from existing parties, lawyers and other court stakeholders
- support for users of the Commonwealth Courts Portal including the Family Court of Western Australia and the Federal Court of Australia
- after hours service
- printing of divorce orders
- printing of event-based fee statements
- processing of proof of divorce requests, and
- Twitter notifications of procedural and registry information.

Enquiries are received via three public channels: telephone via the 1300 number; emails; and via Live Chat. The NEC's focus is to provide parties and stakeholders with appropriate information as efficiently and simply as possible through these channels.

Callers to the 1300 number are provided with general background and support information in a welcome message before being placed in a queue for the next available operator to pick up. Emails and live chats are monitored by staff trained in responding to written requests. With the growth of portal registrations, portal support was a major factor contributing to the work of the NEC in 2016–17.

The NEC regularly refers parties to various stakeholders including 1800 Respect, Family Relationships Advice Line (FRAL), legal aid, government agencies and community legal centres. The NEC maintains a close relationship with FRAL and legal aids and regularly consults with them.

The NEC continued its commitment to support staff in their work and encourages a collaborative work place by:

- providing ongoing coaching and training
- enhancing wellbeing by providing ergonomic training assessment to all staff
- providing peer support and mentoring
- ensuring information knowledge management systems are up-to-date, and
- holding regular meetings with staff to provide a two-way process of information flow.

Summary of NEC performance

Phone calls

- the NEC received a total of 288,276 calls (up from 286,476 in 2015–16).
- The NEC did not meet the KPI for the percentage of calls answered within 90 seconds. The NEC achieved a service level of 20 per cent, which is down compared to 24 per cent in 2015–16.
- Callers waited an average of eight minutes and 56 seconds for their call to be answered, compared to seven minutes and 30 seconds in 2015–16.
- The average time for a call was five minutes and 14 seconds, compared to five minutes and two seconds in 2015–16.
- 30,180 calls were received for Portal support. This is an increase of 1596 calls from 2015–16.
- 1080 calls were transferred to a family law registry. NEC staff are aware of the importance of completing transactions at the first point of contact and only transfer calls when absolutely necessary.
- There were 156 calls to the After Hours Service.
- 35 per cent of calls abandoned while queued. Note that this number is now calculated differently and reflects a call abandoned immediately after queuing for a more accurate perspective.

Live chat

- 95,424 live chats were received in 2016–17, or an average of 370 per day.

Divorce

- 86,025 divorce orders were printed and posted to clients. This has reduced slightly from 86,880 from 2015–16.
- 13,344 proof of divorce requests processed.

Emails

- 71,184 emails were sent in response to a telephone enquiry.

Table 3.8: National Enquiry Centre performance, 2012–13 to 2016–17

KPIs and internal targets	2012–13	2013–14	2014–15	2015–16	2016–17
80% of calls answered within 90 seconds	21%	28%	34%	24%	20%
Less than 10% of calls transferred to a registry*	1%	1%	1%	1%	1%
80% of emails answered within two days	100%	100%	100%	100%	100%

*Internal NEC target

Family Advocacy and Support Services

IN FOCUS
Family Advocacy and Support Services

The Australian Government is funding legal aid commissions to establish front-line family violence support services in family law court registries and other locations across Australia.

The key components of this initiative are:

- Increasing the capacity of existing duty lawyer services in family law court registries.
- Introducing integrated family violence support services to help families affected by family violence with matters before the family law courts.

The Australian Government will provide $18.5 million over three years from 2016–19 for the Family Advocacy and Support Services (FASS). This funding is part of the Government's $100 million funding package to support the Third Action Plan of the *National Plan to Reduce Violence against Women and their Children 2010–2022*.

The sorts of services that will be offered by the FASS are summarised on the next page.

Legal services

Legal services will focus on supporting clients and assisting the courts to make evidence-based and safe decisions. Services may include:

- Screening and risk assessment for legally-assisted family dispute resolution in legal aid commission programs.
- Drafting urgent applications and representing in court for such matters, such as where there is a need for recovery of children, airport watch list orders to prevent children from being removed from Australia, and forced marriage matters.
- Gathering information and evidence about family violence, such as by issuing subpoenas or drafting applications for family and/or expert reports.
- Drafting notices of risk and supporting affidavit material where there are allegations of family violence.
- Drafting third party applications by grandparents or other family members where children are at ongoing risk of family violence and providing representation before the court where necessary.
- Drafting applications for the use of legislative provisions by the court for the protection of vulnerable witnesses giving evidence, and representing parties before the court where necessary.
- Providing advice and advocacy in relation to state family violence orders and state child protection orders and their interaction with family law proceedings and family law orders.

Family violence support workers

Family violence support workers will provide trauma-informed and high quality social support services to families affected by family violence so that non-legal issues (that elevate the risk of family violence, such as drug and alcohol use, mental health, and homelessness) are identified and addressed alongside their legal issues.

Support workers will also conduct safety planning and coordinate and advocate for additional referrals and services. They will ideally be co-located at the courts in line with the specialist Family Violence Court Division model in the Victorian context, recognised as best practice by the Victorian Royal Commission into Family Violence.

Unless it is not possible, the Commonwealth is requiring legal aid commissions to partner with established providers of domestic violence services, including outsourcing the family violence support worker roles to these organisations (rather than employing these workers in-house). This may include organisations already providing domestic violence support services in state courts. The aim here is to provide continuity of support to families affected by family violence as they move between the state and territory courts and the family law system.

Joint roles

The lawyers and support workers will work together to provide services that help to bridge the gap between state and Commonwealth legal systems and processes, including Commonwealth family law, state domestic violence and state child protection jurisdictions.

Lawyers should have relevant experience across these various areas of law to provide advice and assistance to victims of family violence about child protection matters, as well as advocacy with police and private applications to obtain domestic violence orders in the state courts if needed.

Support workers will screen victims for diverse social needs and provide effective referrals to other specialist family violence, family support and services that can assist with child protection issues.

The Family Advocacy and Support Services will be independently evaluated to inform future Government decisions, prior to the expiry of the Project Agreement on 30 June 2019.