

# County Court Criminal Division

**Her Honour Judge Lisa Hannan – Head of Criminal Division**

## Retirement of Her Honour Judge Carolyn Douglas

On 13 October 2017, Her Honour Judge Carolyn Douglas retired as a Judge of the County Court, after a career on the bench spanning 20 years, having been appointed on 7 October 1997.

Her Honour was admitted to practice in November 1977 and signed the Bar Roll in February 1978. Initially she had a general junior practice at the Bar, practicing in the civil and criminal jurisdictions at the Magistrates' Court and County Court, as well as the relatively new Family Court. In a short time, Her Honour found her niche in criminal work on both sides of the bar table and quickly earned a reputation as one of the best young prosecutors at the Bar. Her Honour appeared in the Magistrates' Court, County Court, Federal Court, Supreme Court and as a junior in the High Court.



**Her Honour Judge Carolyn Douglas**

In January 1986, Her Honour was appointed as a Prosecutor for the Queen; one of the first women to be appointed to that office.

At the time of her appointment as a Judge of the County Court, Her Honour had been a Crown Prosecutor for 11 years; the longest serving female Crown Prosecutor in Victoria. As a Crown Prosecutor, Her Honour appeared in many appeals, excelling in the appellate work, which was a reflection of her undoubted legal ability. As Her Honour said herself on the occasion of her welcome to the Court, it was work "I grew to love", and Her Honour's

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reputation for hard work and scrupulous fairness also grew and followed her upon her appointment to the County Court.

With a life in the law spanning over 40 years, Her Honour's sense of integrity has been paramount, making a significant contribution to the legal community and the work of the Criminal Division of the County Court.

The Division will miss Her Honour, and her wicked sense of humour. We wish her well on her retirement.

### Family Violence in the County Court

The Criminal Division recognised the need to gain a better understanding of the prevalence of family violence in the work of the Court, so it undertook a comprehensive analysis of this issue. An analysis of every case initiated in the County Court over an 18 month period was performed. The results were informative and revealed that:

- 14 per cent of all cases involve family violence;
- Family violence occurs by way of sexual offending in two thirds of cases, by assaults and related offences in one quarter of cases and by way of property offences in just under 10 per cent of cases;
- In relation to family violence cases, almost 60 per cent of accused plead guilty;
- Family violence features in 42 per cent of sexual offence cases, in 25 per cent of assault and related cases, and four per cent of property offence cases; and
- Family violence features in a slightly higher proportion of regional cases as compared with Melbourne cases.

This up-to-date and accurate data assists the Court to make informed decisions in relation to the management of this important area of work as well as the allocation of resources. Practitioners are reminded to utilise the Family Violence Checklist found in the [Criminal Division Practice Note](#) and to bring any issues in relation to particular cases to the attention of the Court.

The graphics on the following page provide a summary of the findings of the analysis of family violence cases.



### Key Dates:

#### October

**20:** Criminal Division non-sitting day

#### November

**7:** Melbourne Cup public holiday

#### December

**21:** Last day of sittings



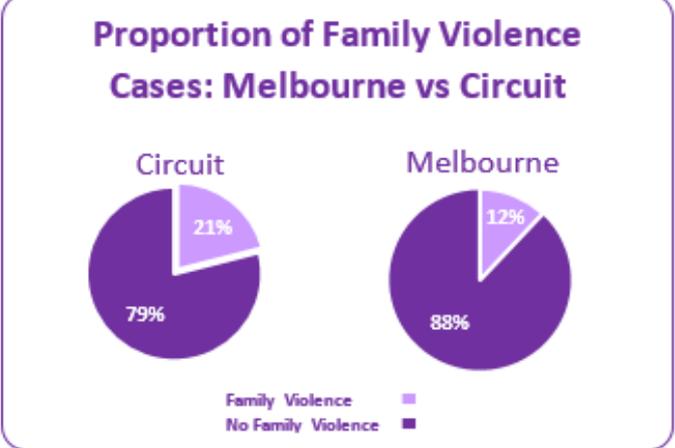
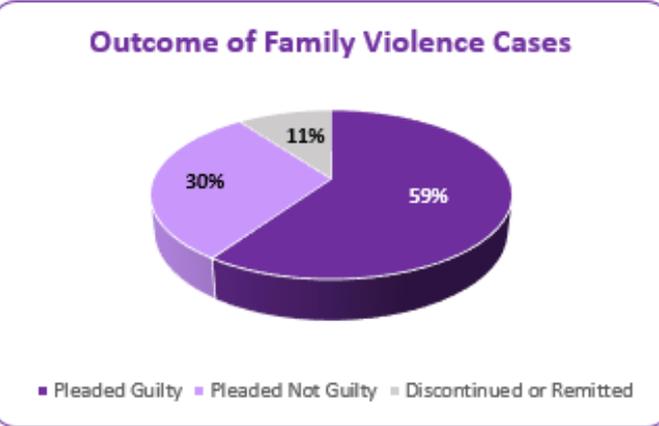
# Family Violence in the County Court

**A 'Case' is a Trial or a Plea Hearing**

**14% of all cases involve Family Violence**

**A greater proportion of circuit cases involve Family Violence**

**Just over half of Family Violence cases resolve to a plea of guilty**



### Definitions

A 'Case' is a trial or a plea hearing

The above data relates to:

- The period of 1 January 2016 to 30 June 2017;
- Trials and plea hearings;
- Melbourne and Circuit trials and plea hearings;
- 3,173 trials and plea hearings.

The definition of Family Violence as per s.5 of the *Family Violence Protection Act 2008* was applied.

To determine whether Family Violence was a feature of a case, every Prosecution Opening was reviewed.



## Working in the Criminal Justice System

On 3 October 2017 Reserve Judge Geoffrey Chettle appeared with others on SBS's *Insight* program, in an episode titled *On Trial*, to discuss the impact of working on criminal trials. Judge Chettle was joined by other judges, barristers, solicitors, a court transcriber and others from around Australia.

The discussion focused on the life of a criminal practitioner and provided a range of perspectives. One aspect discussed was the intimate and often confronting nature of the work and the risks of vicarious trauma. Judge Chettle spoke about the work of the County Court in relation to peer support and counselling to prevent and best manage these issues for judges and other staff that are exposed to this type of work.



**Judge Chettle appears on SBS's *Insight* program. Image courtesy of SBS Australia**

## World Day Against the Death Penalty

Tuesday 10 October 2017 marked the 15<sup>th</sup> World Day Against the Death Penalty. In order to commemorate the event, Reprive Australia, who work to end the death penalty in Asia and the USA, together with



**Former Chief Judge Michael Rozenes launches Reprive Australia's World Day Against the Death Penalty**

judges, members of the legal profession and others gathered in the forecourt of the County Court to raise awareness of their cause.

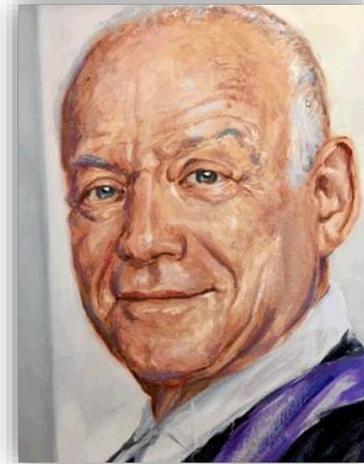
Former Chief Judge Michael Rozenes AO launched the event and unveiled Reprive Australia's new artwork, as seen in the accompanying picture. The message on the artwork "if you can't get behind this, get behind us" is a stark reminder of the reality of

the death penalty. Also speaking at the event about their work in this area were Parvais Jabbar MBE and Saul Lehrfreund MBE, directors of the Death Penalty Project in London. Lord Mayor of Melbourne, Robert Doyle AC shared his personal reflections and closed the event.



## Portrait Unveiling

On Wednesday 11 October 2017 a portrait of former Chief Judge Michael Rozenes AO was unveiled at a special event, attended by the Governor of Victoria, the Solicitor-General of Victoria, former and current County and Supreme Court judges, as well as practitioners, family and friends.



Portrait of former Chief Judge Rozenes

Artist Danelle Bergstrom was commissioned to paint the portrait.

Danelle is an award-winning portrait painter, having been a finalist in the Archibald Prize, winner of the Archibald Packing Room Prize in 2007 and other major portrait prizes.

Former Chief Judge Rozenes said he hopes that the portrait shows a man who was able to see the humanity in the work of the court, the humour in a situation and a man who is grounded by his family.

The portrait will join previous Chief Judges Whelan and Waldron's portraits on display in Waldron Hall.

## Legislation Update

### ***Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017***

The *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017* received Royal Assent on 26 September 2017. The Act amends various pieces of legislation in relation to:

- the uplifting of serious youth offences to the higher courts;
- sentencing for serious youth offences;
- serious youth offences in the dual track system;

- the creation of the new offence of recruiting a child to engage in criminal activity;
- an increase in the maximum periods of youth justice detention;
- the creation of the Youth Control Order; and
- aggregate sentences.



### ***Uplifting of serious youth offences to higher courts***

The Act creates a new definition of **Category A** and **Category B** serious youth offences. The offences in Category A include murder, attempted murder, manslaughter, child homicide, intentionally causing serious injury with gross violence, aggravated home invasion, aggravated carjacking, arson causing death, culpable driving causing death and terrorist act offences.

Death related offences must still be heard in the higher courts, however the new s.356(6) of the *Children, Youth and Families Act 2005* creates a presumption of uplift to a higher court for the other Category A offences where the child was aged 16 or over at the time of the commission of the offence. The presumption of uplift may be rebutted in some circumstances such as where:

- the child or prosecution request a summary hearing; and
- the Children's Court is satisfied it has adequate sentencing options; and
- any of the following apply:
  - it is in the victim's interests to have the charge determined summarily;
  - the accused is vulnerable because of cognitive impairment or mental illness;
  - there is a substantial and compelling reason to determine the charge summarily.

Category B offences include recklessly causing serious injury with gross violence, rape, rape by compelling sexual penetration, home invasion and carjacking. The new s.356(8) requires the Children's Court to consider whether a Category B offence should be determined summarily where the offence is committed when the child was 16 years or over.

### ***Sentencing for serious youth offences***

An amendment also requires the Court to take into account the need to protect the community or any person from the violent or wrongful acts of the child when sentencing a child in all Category A and B serious youth offences, and in any other case if it is appropriate to do so.

## **Serious youth offences in the dual track system**

The Act also amends the *Sentencing Act* by limiting the availability of the dual track system for young offenders charged with a Category A offence, or Category B offence with a relevant prior conviction.

## **New offence of recruiting a child to engage in criminal activity**

The Act inserts a new Division 11A into the *Crimes Act 1958* and creates a new offence of recruiting a child to engage in criminal activity. The offence applies to adults aged 21 or over who recruit children to engage in criminal activity with the knowledge that they are recruiting a child. The offence has a maximum penalty of 10 years' imprisonment.

## **Increased maximum period of youth justice detention**

A Youth Justice Centre Order may now be imposed:

- for three years instead of two years for a single offence; and
- for an aggregate period of four years instead of three years if the child is convicted of more than one offence on the same day or in the same proceeding.

## **Youth Control Order**

A new sentencing order, the Youth Control Order, was introduced. The Youth Control Order provides a judicially supervised, intensive supervision regime for the child and penalises the child by imposing restrictions on his or her liberty. It is also designed to assist the child to engage in work, training or education.

A Youth Control Order may be imposed where the Court convicts the child of an offence punishable by imprisonment and the Court considers that the child would otherwise be sentenced to a Youth Justice Centre or Youth Residential Centre.

## **Aggregate sentences**

The new s.362B of the *Children, Youth and Families Act 2005* was introduced to allow an aggregate sentence of detention if a child is convicted of two or more offences founded on the same facts as part of a series of offences.

The amendments introduced by the Act will commence on 1 June 2018 unless proclaimed earlier.



## **Next Edition**

The next edition of the County Court Criminal Division Update will be published in November 2017.

Any suggestions can be sent to Ryan Mallia or Nancy Molloy:

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