ANNUAL REVIEW 2020–21

SUPREME COURT

OF THE AUSTRALIAN CAPITAL TERRITORY

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CHIEF JUSTICE MURRELL'S INTRODUCTION

From July 2020 to June 2021

2020/2021 was the year of the pandemic, although the operations of the Court were not affected to the extent seen in some other jurisdictions.

We were able to continue to sit in all matters although, for a short period, we did not conduct jury trials or admissions ceremonies. For a short but logistically significant period, the legislature supported the continued delivery of justice by broadening the scope of matters eligible for trial by judge alone.

On 1 February 2021, the Court held the ceremonial sitting for the opening of the legal year. To permit safe spacing, judges and attendees were accommodated in two courtrooms connected by audio–visual link. Speeches were given from both courtrooms, and everyone who was present was able to see and hear without difficulty. The event provided yet another example of the capacity of our modern building to support the needs of the Court.

However, it was a hard year.

Like everyone else in the community, Court staff, practitioners and judges found it a challenging year. For significant periods, we were separated from family and friends. At work, we had to observe precautions that limited interaction, restricting the degree to which we could support each other. Our Court room technology – and our associates – were put to the test, with many practitioners and litigants appearing remotely. Flexibility and creativity were required throughout the year.

Mid 2020 saw the return of Associate Justice Verity McWilliam following her maternity leave. We were most grateful that Acting Justice Robert Crowe was able to continue to sit for significant periods; as Justice Crowe is the only locally resident acting judge, we remained heavily dependent upon him as the pandemic continued.

With the return of Acting Justice Lorraine Walker to the position of Chief Magistrate of the Magistrates Court in April 2020, Justice Chrissa Loukas–Karlsson kindly undertook DASL duties until Acting Justice Refshauge took control of the Drug and Alcohol Sentencing List in July 2020. He brought his legendary patience and compassion to the role. The number of DASL participants increased from six to 30. As an Acting Justice, Associate Justice McWilliam assumed the role of backup DASL judge.

Philip Kellow, the first Principal Registrar to the Courts, retired. Among other achievements, during his time as Principal Registrar, Mr Kellow played an integral role in the development and construction of the new Supreme Court building, oversaw the introduction of the integrated case management system, successfully pursued cases for a fifth resident judge and an eighth magistrate, and was instrumental in the introduction of strong and independent governance for the Courts, including budget definition and accountability. He was always a friendly face.

Having been Supreme Court Registrar for less than a year, Amanda Nuttall became Principal Registrar. Jayne Reece, formerly the Magistrates Court Registrar, replaced Amanda as Supreme Court Registrar. The ACT Courts can boast that both heads of jurisdiction, both registrars and the principal registrar are women!

The 2021/2022 year started unpromisingly, with a COVID–19 outbreak in Sydney that, as most people anticipated, would eventually reach Canberra. However, with increasing vaccination numbers on the horizon, the Court is hoping for a more stable and peaceful 2021/2022.

PRINCIPAL REGISTRAR'S INTRODUCTION

I am pleased to provide my first introduction for the ACT Supreme Court annual review as the Principal Registrar and Chief Executive Officer. I would first like to acknowledge the service of Philip Kellow who has led the Courts Administration for over five years and who retired in February 2021. Philip has left a lasting legacy and placed the Supreme Court in a very strong position to continue delivering high quality services to the ACT community in the decades to come. Some of these include:

- the procurement, design, construction and commissioning of the new ACT Law Courts Building;
- the rollout of the case management functionality of the Integrated Courts Management System and implementation of the first tranche of online services;
- securing ongoing funding for a fifth Supreme Court judge;
- supporting the implementation of pilot initiatives such as the Supreme Court's Drug and Alcohol Sentencing List and criminal case conferencing;
- procuring a new library information management system; and
- strengthening the ACT Sheriff's Office including the creation of a security coordination unit and the publication of a new jurors' handbook and new juror videos.

It has been another trying year for the judiciary, the profession, Court staff and Court users as the COVID pandemic continued. Much of the work undertaken in this reporting year focussed on supporting the remote operations of the Court and consolidating the processes that were put in place to respond to the pandemic.

In 2017, the ACT Courts hosted a workshop with key agencies to identify measures that would improve accessibility to the Courts for Aboriginal and Torres Strait Islander People. Several of the recommendations identified during that consultation have been achieved during this year with the support of the ACT Courts Aboriginal and Torres Strait Islander working group.

Aunty Matilda House and Mr Paul House facilitated a workshop with the judges, associates, and registrars to better inform the judiciary of the experiences of Aboriginal and Torres Strait Islander people within the justice system and how judges and the Courts administration can work towards addressing the disadvantage experienced by first nations people.

Ongoing liaison with the ACT Aboriginal and Torres Strait Islander community has identified the need for a dedicated safe space at the ACT Courts for Aboriginal and Torres Strait Islander persons and their families. A culturally sensitive space will make the experience of attending Court less stressful, and provide an opportunity for family, friends and support persons to have a space to come together. I expect that the safe space will be opened later in 2021, COVID restrictions permitting. I would like to thank the members of the community, including Mr Paul House, Mr Eddie Longford and the Galambany Court and Warrumbul Court Elders for their contributions to designing and creating this space.

The ACT Courts and Tribunal have been focussed on a range of activities to provide better access to the Courts for vulnerable and disadvantaged Court users over the reporting period. A procurement process was conducted to continue the Canine Therapy Support Program. Guide Dogs NSW/ACT was selected as the provider to continue the service for another 3 years with an option to extend. Information about the program is also available on the Guide Dogs NSW/ACT website.

Throughout the year the ACT Courts and Tribunal continued to develop videos to improve access to justice. This includes videos titled 'Coming to Court' and 'Do you need assistance whilst at the ACT Courts or Tribunal?' The videos provide simple information to support people coming to the ACT Courts and Tribunal.

Complimenting the video is a factsheet explaining key information for persons 'coming to Court'. The factsheet explains the essential things people might need to know when 'coming to Court' like opening hours, security screening, facilities and Court etiquette. The factsheet was translated into 20 languages being Cantonese, Mandarin, Spanish, Arabic, Korean, Vietnamese, Turkish, Thai, Filipino, Indonesian, Hindi, Punjabi Tamil (Sir Lanka), Karen (Myanmar), Dinka (Sudanese), Dari (Afghanistan), Farsi (Persian).

As part of the ACT Government's Disability Justice Strategy, the ACT Courts and Tribunal has engaged a Disability Liaison Officer who has been reviewing our capability to provide reasonable adjustments for people with disability when attending the Courts or tribunal. A list of improvements has been identified which the DLO is working across the organisation on to improve accessibility and access to justice.

I am looking forward to the year ahead and continuing to work with the Chief Justice, Judges, Associate Judge and Registrar to deliver high quality justice services to the ACT.

ABOUT THE COURT

Judges of the Court

Chief Justice Helen Murrell

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

Her Honour was admitted as a solicitor of the Supreme Court of New South Wales in 1977. From 1977 to 1981 her Honour practised at the Commonwealth Crown Solicitor's Office and NSW Legal Aid Commission. From 1981 to 1996 her Honour practised as a barrister in criminal law, administrative law, environmental law, common law, and equity. In 1994 her Honour was appointed the first Environmental Counsel to the NSW Environment Protection Authority. In 1995 her Honour was appointed Senior Counsel in New South Wales.

From 1996 to 2013 her Honour was a Judge of the District Court of New South Wales. In 1996 her Honour was also an Acting Judge in the Land and Environment Court of New South Wales. From 1997 to 1999 her Honour was President of the Equal Opportunity Tribunal of New South Wales. Her Honour became Deputy President of the Administrative Decisions Tribunal of New South Wales (Head of the Equal Opportunity Division). From 2005 to 2013 her Honour was a Deputy Chairperson of the New South Wales Medical Tribunal.

From 1998 to 2003, her Honour was the first Senior Judge of the Drug Court of New South Wales. Her Honour maintains interest in therapeutic jurisprudence.

Her Honour has a longstanding involvement in the professional development of judges. Currently, her Honour chairs the Council of the National Judicial College of Australia (NJCA) and contributes to a number of NJCA programs.

Her Honour is an Honorary Air Commodore of No 28 (City of Canberra) Squadron, Patron of the Hellenic Australian Lawyers Association (ACT Chapter), Patron of the ACT Justices of the Peace Association, committee member of the Australian Association of Women Judges and a Fellow of the Australian Academy of Law.

Justice John Burns

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

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

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

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

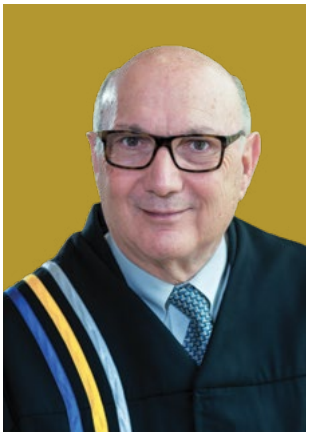
In December 2009 his Honour was appointed Chief Magistrate and Chief Coroner of the Australian Capital Territory. He held those positions until he took up his appointment as a Judge of the Supreme Court on 1 August 2011. From 2012 to 2018, his Honour was a member of the ACT Law Reform Advisory Committee. From 2016 to 2018 his Honour was the Section Editor of the Australian Law Journal for the Australian Capital Territory.

As of 2020–2021, Justice Burns continued to chair the Supreme Court's Criminal Procedure Committee. His Honour also led the Drug and Alcohol Court Supreme Court Working Group which was successful in establishing the Drug and Alcohol Sentencing List.

In May 2020, his Honour was appointed as an Additional Judge of the Northern Territory Supreme Court and presided over a high–profile jury trial of R v Bravos in Darwin from July–August 2020.

In April 2021, his Honour announced his retirement from the ACT Supreme Court, effective from 31 August 2021. From September 2021, his Honour will be returning to Darwin to continue in his role as an Additional Judge of the Northern Territory Supreme Court.

Justice Michael Elkaim



Justice Elkaim grew up in Northern Rhodesia (now Zambia) and was educated from secondary school level in Rhodesia (now Zimbabwe).

His Honour completed a Bachelor of Laws degree at the University of Rhodesia in 1974 and then moved to England, where he completed a Master of Laws degree at the University of London in 1976 specialising in international law. His Honour also obtained a Diploma in Air and Space Law from the London Institute of World Affairs.

His Honour was admitted to the Bar of England and Wales in 1978 and began practising in London Chambers, 2 Kings Bench Walk in the Temple.

In 1980 his Honour came to Australia and was admitted to the bar in New South Wales in June 1980. During this time Justice Elkaim had a wide–ranging practice, mostly dealing in Common Law.

His Honour was appointed Senior Counsel in October 2002. In May 2008 his Honour become a District Court judge of NSW and on 4 July 2016 was sworn in as the ACT Supreme Court's fifth judge.

Justice David Mossop

David Mossop was sworn in as a Judge of the Court on 13 February 2017.

At the time of his appointment he was the Associate Judge of the Court, a position which he had held since 2013, first as Master and then as Associate Judge after the title of that office was changed when the Courts Legislation Amendment Act 2015 (ACT) came into effect on 21 April 2015.

His Honour holds a Bachelor of Science and Bachelor of Laws from the University of New South Wales and a Master of Laws (Public Law) from the Australian National University.

His Honour was admitted to practice as a solicitor in 1992. He practised as a barrister for 14 years from 1998 to 2011.

His Honour served as a Magistrate and Coroner from 2012 to 2013.

Justice Chrissa Loukas–Karlsson

On 26 March 2018, Chrissa Loukas–Karlsson was sworn in as a judge of the Supreme Court of the Australian Capital Territory.

Her Honour attended the University of Sydney, where she graduated in 1985 with a Bachelor of Laws and a Bachelor of Arts. Her Honour was admitted as a solicitor in July of the same year and worked for the Aboriginal Legal Service and the Legal Aid Commission prior to being called to the New South Wales Bar in December 1989. Her Honour was appointed a Barrister with the Public Defenders in 1995 and was appointed as Senior Counsel (SC) in 2012. In addition, her Honour was appointed as Acting Crown Prosecutor in 1996.

Her Honour held part time positions as Acting District Court Judge in 1996 and as a Judicial Member of the Administrative Decisions Tribunal between 1997 and 2003. From 2003 to 2006, her Honour was counsel before the UN International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague.

Her Honour was a Bar Council Member in the New South Wales Bar Association from 1991 to 2003, 2007 to 2012, 2014 and 2016 to 2018. Her Honour was elected to the executive of the New South Wales Bar Council in 2015 and elected Junior Vice President of the New South Wales Bar in 2017. Additionally, in 2015 her Honour was appointed a Director of the Law Council of Australia. Her Honour was also a Member of the International Bar Association's Criminal Law Committee Taskforce on Extra Territorial Jurisdiction in 2007.

Her Honour was awarded the Woman Lawyer of Achievement Award in 2002 by the Women Lawyers Association of New South Wales, the Senior Barrister Award in 2013 at the Lawyers Weekly Women in Law Awards in Melbourne and Barrister of the Year in 2017 by the Women Lawyers Association of New South Wales.

Associate Justice Verity McWilliam

Verity McWilliam was sworn in as the Associate Judge of the Supreme Court of the Australian Capital Territory on 26 June 2017. Her Honour has been appointed Acting Justice until 20 December 2021.

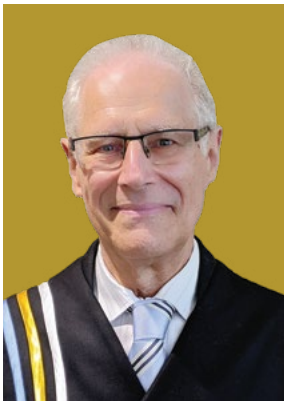
Her Honour holds a Bachelor of Arts (Hons I) and a Bachelor of Laws degree from the Australian National University, as well as a Masters of International Law from the University of Sydney.

In 2002, her Honour was admitted to the Roll of Solicitors in the Supreme Court of New South Wales and to the High Court of Australia. Her Honour has worked for DLA in London, for PricewaterhouseCoopers Legal and at the Crown Solicitor's Office.

Interspersed with her employment as a solicitor, McWilliam AJ has undertaken associateships with the Hon. Justice Mary Finn in the Appeal Division of the Family Court of Australia, and later with the Hon. Justice Beaumont and the Hon. Justice Madgwick in the Federal Court of Australia.

In 2006, her Honour was called to the NSW Bar, developing a general practice over 11 years. Before her appointment to the Supreme Court, her Honour lectured in public law, federal constitutional law and litigation at the University of New South Wales and the University of Sydney. Her Honour is currently a committee member on the Judicial Council on Cultural Diversity.

Acting Justice Richard Refshauge



On 1 February 2008, Richard Refshauge was sworn in as a Judge of the ACT Supreme Court. On 11 May 2017 his Honour retired, until he returned on 1 July 2020 as the Acting Judge of the Court to manage the Drug and Alcohol Sentencing List of the Court.

His Honour attended the Australian National University and was awarded an Honours Degree in Philosophy in 1973 and a Bachelor of Laws in 1975.

His Honour was admitted to practice as a barrister and solicitor in 1976 and practiced in the ACT, specialising in litigation, including commercial litigation, criminal law, administrative and constitutional law, employment law, insolvency and commercial law. He appeared in all Courts and Tribunals in the ACT, including several appearances in the High Court.

In 1998 his Honour was appointed to the position of Director of Public Prosecutions in the ACT, a position he held until his appointment as a Judge in 2008. His Honour took silk in 2000.

His Honour has lectured in civil litigation at the Australian National University since 1986 and is an Adjunct Professor at the Australian National University College of Law and at the Faculty of Law of the University of Canberra. His Honour chaired the Joint Rules Advisory Committee of the ACT Courts, the Supreme Court's Criminal Procedure Committee and was so editor and co–author of the standard text on Court practice in the ACT, Civil Procedure ACT.

His Honour has wide interests outside the law, especially in the arts in Canberra, chairing a number of Boards, and has been actively involved welfare matters, especially concerning drugs, HIV/Aids and poverty. His Honour is the Chancellor of the Anglican Diocese of Canberra and Goulburn and Deputy President of the Anglican Church Appellate Tribunal.

RUSSELL FOX LIBRARY

About the Russell Fox Library

The Russell Fox Library – named after the Territory's first Chief Judge, the late Honourable Russell Walter Fox AC QC – primarily provides and maintains legal resources for use by judicial officers of the ACT Supreme Court, the Magistrates Court and members of the ACT Civil and Administrative Tribunal.

In addition to ensuring that legal resources remain updated and relevant, the Library also provides research services to judicial officers and their associates and assists them with locating reference material. Library staff also serve, in a limited capacity, legal practitioners, self–represented litigants and members of the public.

Furthermore, the Library is responsible for the publishing of judgments and decisions on the ACT Courts website, assisting with web page updating and with the Court's social media presence on Twitter. Judgments and decisions appear on the Court's website at **http://courts.act.gov.au/supreme/judgment**

Library premises

Since the Library moved into the new ACT Law Courts building in 2018, physical access to the Library's collections has been restricted to judicial officers and Courts and Tribunal employees. However, both print and online collections are available to external clients and members of the public within the main reading area.

Specific COVID–19 measures

The Russell Fox Library was closed to the public between April and October 2020. It meant the physical access to the Library premises was restricted but the Library staff provided online services upon request. Legal practitioners could use the Library by requesting required sources via email or could arrange an appointment for accessing both print and online resources at the Library premises.

Since October 2020, the Library premises has been opened to the public with the following restrictions:

- Number of persons within the Library limited to 4;
- Time spent at the Library limited to 1 hour;
- All clients must use hand sanitizer before and after using Library computers/materials;
- The Library should be contacted in advance to arrange a visit; and
- Online services preferable where possible.

The Library is also been regularly cleaned during the day, a practice that has been in place since the opening in October 2020.

Library Review

In 2018, the ACTCT commissioned the Russell Fox Library review. The Review made 45 recommendations covering governance, marketing and outreach, technology, staffing and operational matters. A management committee was established in 2019 overseeing the implementation of key recommendations. Based on the Review, the Library prepared an Action Plan which set up actions, priority, responsibilities and timeframe for each of the recommendations.

The following recommendations have been actioned in 2020–21:

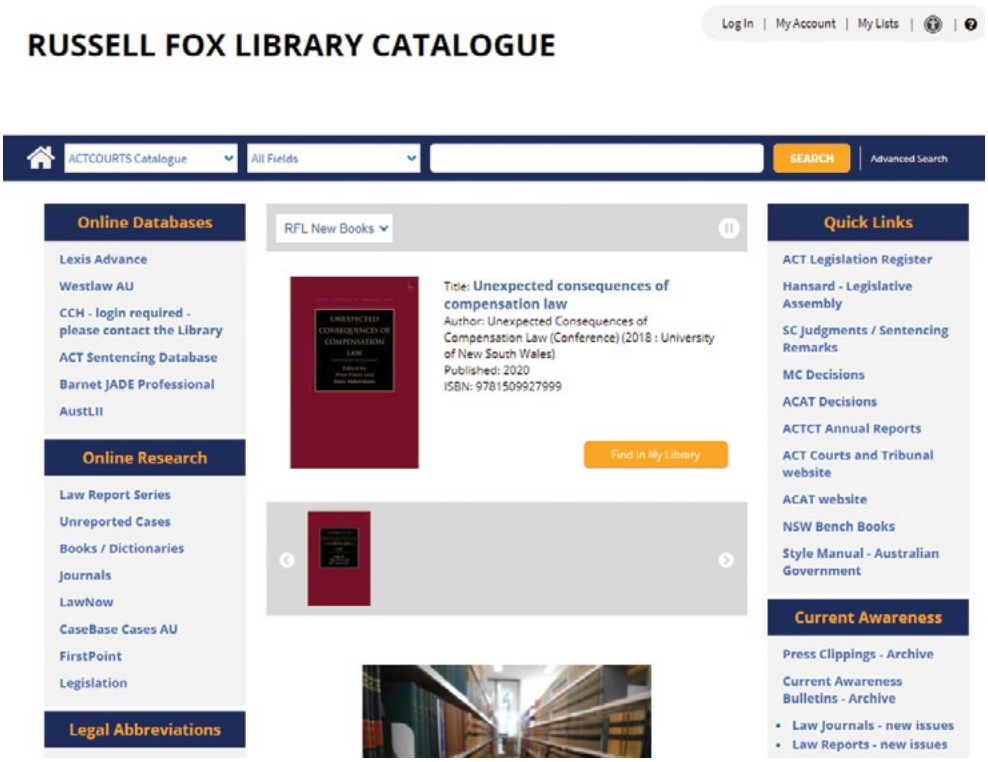
- Key Performance Indicators;
- Communication Policy;
- Implementation of a library management system; and
- Enhancement of Library presentation of the ACTCT website.

The ACTCT Library Management Committee will continue to govern Library activities and oversight the implementation of the recommendations based on the Action plan time frame set up to 2022.

Library Management System

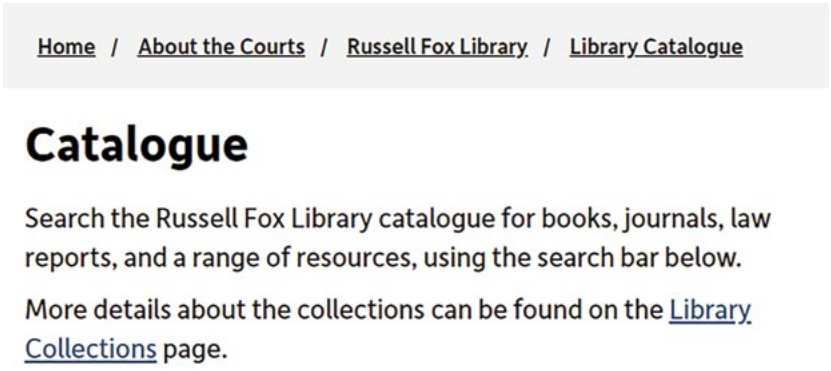
In November 2019, the Library Management Committee endorsed joining the Australian Court Libraries Consortium to improve accessibility of the collections and to enhance interoperability.

The new library catalogue was implemented and offered to judicial officers and ACTCT staff in August 2020. The new catalogue interface combines print and online collections and offers easy access to them via a catalogue search, deep links and single sign–on (SSO) settings. The main page also links current awareness archives for both daily press clippings and current awareness bulletins; and provides the access to other legal portals and quick links.



Furthermore, the Library developed a publicly available interface of its catalogue which was added into the Library's section of the ACTCT website in October 2020 **https://www.courts.act.gov.au/supreme/about–the–courts/russell–fox–library/catalogue**

Practitioners and the public can search the Library's print collections (such as textbooks, law reports, journals and loose–leaf services) prior to their visit.


Home / About the Courts / Russell Fox Library / Library Catalogue

Catalogue

Search the Russell Fox Library catalogue for books, journals, law reports, and a range of resources, using the search bar below.

More details about the collections can be found on the Library Collections page.

Online resources

The Library continues to provide access to the main legal online databases – Lexis Advance, Westlaw and CCH for judicial officers and for external clients on a computer located at the Library public area.

More details about Library online resources can be found on the Library website, Collections page at **https://courts.act.gov.au/about-the-courts/russell-fox-library/library-collection**

ACTCT Education project

Between March and June 2021, the Library provided assistance to the ACTCT educational project. This project aimed to develop:

- Materials for school tours at the Courts (a script for Court tours, a short roleplay for students to perform in a courtroom, teacher resource for Court tour);
- Video materials to support classroom learning (interviews with key Court personnel);
- In-depth information about the Courts (fact sheets about the work of the Courts, linked to Year 7–12 curriculum); and
- Classroom materials (mock trial scripts, engaging lead up activities for students coming to the Courts, curriculum-aligned lessons).

All documents completed during the project will be implemented in the next financial year and relevant material will be uploaded on the ACTCT website.

Donations

The Library cooperated with the Office of the Director of Public Prosecutions (ACT) by donating spare copies of legal textbooks to the Solomon Islands Office of the Director of Public Prosecutions in December 2020.

The Library also has a reciprocal interlibrary loan relationship with the Law Library of the Fijian Office of the Attorney–General and the Office of the Director of Public Prosecutions, Fiji. Case law is provided upon request.

Statistics

The following table displays the number of judgements and sentencing remarks uploaded onto the ACT Supreme Court website by the Library during 2020–2021:

Jurisdiction	Number of Items Published
Supreme Court of the Australian Capital Territory Court of Appeal	31
Supreme Court of the Australian Capital Territory Full Court	2
Supreme Court of the Australian Capital Territory	167
Sentencing Remarks	170

SHERIFF'S OFFICE

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

Sheriff's Officers strive to meet the demands of the Courts in an efficient and professional manner. This year we have continued to do this amid the ongoing COVID–19 pandemic.

As reported last year, the COVID–19 pandemic placed challenges on the Sheriff's Office and in particular the way we operated. The changes we made to our processes to comply with COVID–19 restrictions continued this year to ensure the operations of the Courts could continue.

The lockdown in the ACT resulted in changes to the workplace arrangements for Sheriff's Officers. Sheriff's Officers were classified as Essential Workers, and as such were expected to undertake work as per their normal routine. To undertake this work Sheriff's Office staff were provided with masks, hand sanitizer, face shields and gloves to use during their workday. Sheriff's Officers were rostered in a variety of areas, dependent on the needs of the Court. Some staff were relocated to other areas of the Court precinct due to operational needs. Steps were also taken to reduce and limit the risk Sheriff's Officers faced by ensuring only Sheriff's Office staff were allowed access to their area and they were directed to reduce their visits to other areas of the Court precinct. Social distancing measures were enforced, both in the Sheriff's Office and the Court precinct.

Lockdown also saw some of the duties of Sheriff's Officers change. These changes included:

- All enforcement (road) work was ceased.
- To limit the amount of people attending the Court a concierge desk was established an operated by Sheriff's Officers. Court attendees were required to report to the concierge desk before they were allowed entrance into the Court.
- Sheriff's Officers took the temperature of Court users before they were allowed entry into the Court precinct.
- Sheriff's Officers were responsible for assisting in some of the Magistrates Court lists. When the list was separated between two Courts, the Sheriff's Officers were required to undertake the duties of the Associate in the second Court and run files and paperwork between the two Courts.
- Due to the increase in the need for people to appear via remote links, Sheriff's Officers undertook additional work in the Remote Witness Suite and in other remote rooms located within the Court premises.
- When security staff were short staffed due to the need for staff to attend for COVID testing, Sheriff's Officers undertook the security duties.

- Sheriff's Officers dealt with the majority of enquiries from people attending Court in an attempt to limit the number of people entering the Court precinct.
- At times, Sheriff's Officers undertook cleaning duties within the Court where they were rostered.
- Sheriff's Officers undertook the webex responsibilities for Court appearances for the Registrar and Senior Deputy Registrar Courts.

Working during the pandemic also required adjustments from staff to not only meet the demands of the Courts, but to also keep us motivated and physically and mentally well. The Sheriff's Office, when possible celebrated birthdays, significant occasions and lunches together to remind us of the importance of each other and to appreciate the difficulties of the times we were experiencing. An added bonus for having former hairdressers on our staff, was the ability to have much needed haircuts over our lunch breaks during the lockdown period!

COVID–19 again also affected the development and implementation of our much–anticipated Jury Management System (JMS). As noted last year, our new JMS is being developed by Tyler Technologies who are based in Texas, United States of America. This has resulted in reduced capacity to work on the project and the inability of Tyler staff to fly to Australia. Subsequently the JMS project has been delayed, with a completion date now set for early 2022.

Sadly, this year has also seen the retirement of a number of valued Sheriff's Officers who have worked within the Office for significant periods of time. We wish them the best in their retirement!

HIGHLIGHTS

CEREMONIAL SITTING TO MARK THE OPENING OF THE LEGAL YEAR

The ceremonial sitting to mark the opening of the legal year was held on 1 February 2021, and was followed by morning tea provided by the ACT Law Society.

[EXTRACTS FROM THE SPEECH OF CHIEF JUSTICE HELEN MURRELL, DELIVERED 1 FEBRUARY 2021]

Attorney–General, fellow judicial officers of the ACT Magistrates Court and other Courts, retired judicial officers, members of the legal profession and other friends of the Court, a year ago we were gathered in one ceremonial courtroom, side–by–side, shaking hands, remarking on the interstate and overseas holidays that some of us had taken during the shutdown and bemoaning the commencement of the work year.

It is now almost a year since 11 March 2020 when the World Health Organisation declared the Coronavirus outbreak to be a pandemic and we sit 1.5 metres apart and in two courtrooms but we still meet as one profession and sit as one Court. We welcome the fact that we are here at all. We are happy to be surrounded by our colleagues and that we have survived with our health intact, but have our institutions survived with their health intact? Has liberal democracy survived with its health intact?

A year on it is instructive to reflect on how the past year has both accelerated change in the delivery of justice and exposed the fragility of the rule of law; that pillar of liberal democracy that is so important to us as lawyers.

Unfortunately for much of the rest of the Australian population the concept of rule of law is apparently unknown, let alone respected. The 2019 National Assessment Program on Civics and Citizenship showed that among year 10 students only 38 per cent had a proficient level of knowledge of democracy and the rights and legal obligations of Australian citizens, and only 19 per cent were capable of correctly identifying two modern day democratic principles after being provided with a short description of the Magna Carta. It is, of course, difficult to appreciate and value something if you don't understand it or even know that it exists.

The rule of law is closely associated with the separation of powers. I expect that almost no year 10 students, indeed, very few adults, understand the separation of powers and how fundamental it is to the maintenance of liberal democracy. The widespread lack of understanding is illustrated by the frequency with which the Court is asked by the executive whether it will allow administrative inquiries to occur within the courthouse.

During the pandemic if the community has not understood why it is so, at least it has understood that the Courts and lawyers do provide essential services that must be maintained. In a climate where health and the importance of connection trumps all, in which many a bar, gym or nightclub owner might optimistically seek to leverage on the argument that their business is essential, the recognition that delivery of the rule of law is an essential service should perhaps be considered to be an achievement.

The rule of law is associated with other rights, such as the right to a fair and public trial and the right to be tried without unreasonable delay. Modern liberal democracies also recognise and celebrate the rights to peaceful assembly, freedom of association and freedom of expression. In the ACT these rights are recognised in the Human Rights Act, however, over the past 12 months we have been able to take neither the rule of law, nor these other rights, for granted. In the name of the pandemic these rights have been challenged and, in some instances, eroded.

As the New Zealand High Court stated, 'In times of emergency the Court's constitutional role in keeping a weather eye on the rule of law assumes particular importance.'

In this jurisdiction have we succeeded in keeping our weather eye on the rule of law? Have we continued to deliver equal access to the law and to deal with the accused persons fairly and publicly without unreasonable delay? In general we have. We have done relatively well, partly because we have had the physical resources to do so. We have had enough Courtrooms and they have been large enough to enable safe distancing. They are equipped with the technology that facilitates remote or hybrid hearings on a good day and, fortunately, today seems to be one of those days. Like other Courts around Australia, we have used videoconferencing, e–filing and other electronic means to ensure that we can continue to operate. These changes have been coming anyway but coming slowly. The pressure of the pandemic has accelerated the change.

Amidst the personal challenges that no doubt we will all face during the second year of the pandemic let us remind ourselves to also look outwards, to identify and confront those challenges that the pandemic poses to liberal democracy to keep a weather eye on the rule of law.

LAW WEEK

Chief Justice Murrell and Justice Loukas–Karlsson attended the ACT Bar Law Week Breakfast hosted by ACT Bar Women Barristers on 10 May 2021. The Hon Ruth McColl AO was the speaker, delivering an insightful speech touching on her experience as a woman working in the law across various capacities through her career.

That same day as part of Law Week, as patron of the Young Lawyers ACT, Justice Loukas-Karlsson was the Chair of the Judging Panel of the 2021 Golden Gavel along with the Attorney–General Shane Rattenbury and the President of the Law Society Elizabeth Carroll. Daniel Magnussen was the winner with his speech on the topic "I am the hero Canberra law deserves, just not the one it needs right now".

At the end of Law Week on 15 May 2021, Justice Loukas–Karlsson presented at the Women Lawyers Association Court Family Day. On Saturday, 15 May 2021, WLA were pleased to work with the ACT Law Courts to present Court Family Day. Justice Loukas-Karlsson opened the event, and attendees were then taken on a tour of the Court buildings, including the witness rooms, jury assembly room and the internal glazed oval atrium. Attendees (including the kids) were then able to try on her Honour's barristers' and judges' horse–hair wigs.

ATTENDANCE AT KEY PRESENTATIONS AND SPEECHES

On 15 October 2020 Justices Burns and Elkaim attended the *Contrasts between the High Court of Australia and the Supreme Court of the United Kingdom* with The Right Hon Lady Arden, Justice of the Supreme Court of the United Kingdom and the Hon Justice James Edelman, Justice of the High Court of Australia.

On 3 March 2020 Justice Elkaim was a keynote Speaker at 'Pathway to Silk' session by Justice Elkaim and Michael Fordham SC. The link to the recording of this session is available via contacting the ACT Bar Association.

In light of Justice Loukas–Karlsson international criminal law experience at the Hague, her Honour chaired a webinar discussing Victim Representation in International Tribunals hosted by the NSW Bar Association on 24 June. The speakers at the event were Megan Hirst (Doughty Street Chambers), Eva Buzo (Black Chambers) and Kate Gibson (St Philips Chambers). The webinar explored the framework through which victims are afforded participatory rights in international tribunals and how they are utilised by often extremely marginalised and vulnerable individuals. The speakers, drawing on their own expertise working at international tribunals, addressed the challenges of bridging the gap between complex and lengthy criminal proceedings and meaningfully including victims in these proceedings.

ENGAGEMENT WITH STUDENTS OF LAW

ACT Schools Mock Trial (October 2020)

Justice Elkaim was a judge on the Judging Panel at ACT Schools Mock Trials Grand Final on 15 October 2020.

University of Canberra Law School Prize Ceremony (May 2021)

On 11 May 2021 the Chief Justice attended the University of Canberra Law School Prize Ceremony to present the Supreme Court Judges' Prize for the graduating student with the highest overall mark. James Drury was the recipient of the prize.

Canberra Law School Prize Ceremony

CULTURAL DIVERSITY

On Monday 23 November 2020, the Court was fortunate to secure the attendance of Dr Matilda House–Williams for a lunchtime talk. Judges, Magistrates, Associates were invited to attend to hear stories from Aunty Matilda, a proud Ngambri–Ngunnawal woman, a Ngambri elder, and one of the ACT's pioneering indigenous campaigners.

On 11 June 2021, a meeting of the Judicial Council on Cultural Diversity was held. Speakers included Professor Kim Rubenstein (Co–Director of the 50/50 by 2030 Foundation), who spoke on the changing nature of citizenship in Australia. Associate Professor Marie Segrave of Monash University also gave a briefing on migrant and refugee women in the Australian National Survey. The meeting was held in the Judicial Common Room, with some participants via WebEx.

COMMITTEES

National Judicial College of Australia

Justice Loukas–Karlsson attended the NJCA New Perspectives on Courtroom Leadership Conference in Brisbane on 18–19 March 2021.

Chief Justice Murrell chaired the program committee at the NJCA Jury Management Conference that took place at the ACT Supreme Court on 6–7 May 2021. Justice Loukas-Karlsson also attended the Conference. At the conference, attendees were taken on the 'Juror's Journey', in which they were:

- issued with a juror's summons;
- taken to the jury assembly area;
- empanelled; and
- taken to the jury deliberation room by the Sheriffs, who outlined the process and procedure for deliberations.

A question and answer session followed.

The aim of the Juror's Journey was to enable participants to understand the juror's perspective, to engage with issues faced by jurors, and to consider ways in which jurors may be better addressed, and provided useful context for the balance of the program.

Consultative Council of Australasian Law Reporting

Justice Mossop attended the Consultative Council of Australasian Law Reporting 40th annual meeting on 4 June 2021. The conference was chaired by the Hon Justice Cameron Macauley, Justice of the Supreme Court of Victoria.

In the morning there was an open forum which was addressed by Governor Margaret Beazley, John McKenna (Incorporated Council on Law Reporting Queensland), the Hon Justice Mark Leeming (Justice of the New South Wales Court of Appeal) and Professor Lyria Bennett Moses (UNSW). A speech was given by John McKenna relating to the origins of authorised law reports in the UK between 1863 and 1865.

The next conference is set down for 2–3 June 2022 in Darwin.

SELECTED CASES

Will v The Queen (No 2) [2021] ACTCA 14

The appellant was sentenced to 10 years and 10 months' imprisonment with a 6 year nonparole period for the offence that he aided, abetted, counselled or procured an offence of aggravated robbery committed by two other offenders. The appellant appealed against the sentence on two grounds: (1) whether the evidence that the appellant gave when subpoenaed to give evidence in the related trial of a co–offender was assistance to a "law enforcement authority" which entitled them to a sentencing discount and (2) whether the sentence (including the nonparole period) was manifestly excessive.

The Court (Murrell CJ, Loukas–Karlsson and Charlesworth JJ) held that "law enforcement authority" includes the Director of Public Prosecutions. Murrell CJ and Charlesworth J held that, by giving evidence under a subpoena, the appellant did not provide assistance to a law enforcement authority; compliance with a subpoena under compulsion by the Court should not be rewarded and it would undermine the proper administration of justice if witnesses were rewarded just because they complied with a subpoena. Murrell CJ and Charlesworth J also held the sentence was not manifestly excessive. Murrell CJ and Charlesworth J, in the majority, dismissed the appeal.

Loukas–Karlsson J, dissented, stating that persons giving evidence under a subpoena should not be deprived of a sentencing discount on the basis that their evidence was compelled and not voluntary. Rather, the issue was whether the person actually assisted authorities. The fact that evidence was given under subpoena may be relevant to the amount of a sentence discount but does not disqualify a person from receiving a discount for assisting authorities. Her Honour considered that there had been a specific error, and the appellant should be resentenced.

Smith (a pseudonym) v The Queen [2021] ACTCA 16

The appellant was found guilty by a judge alone of an act of indecency without consent and two offences of sexual intercourse without consent against the complainant. He appealed against the convictions on the grounds that: (1) the guilty verdicts were unreasonable and (2) there had been a miscarriage of justice caused by the trial judge's impermissible consideration of "common knowledge" material that had not been the subject of evidence or submissions by the parties. The appeal was allowed by majority.

At the trial, the contentious issue was whether the complainant had consented. The complainant's credit was very much in issue.

Loukas–Karlsson and Charlesworth JJ allowed the appeal on the ground that the evidence could not support the verdicts. Loukas–Karlsson J found that the Crown had failed to establish that the element that the appellant was reckless about consent; a doubt arose because of what the complainant had told the appellant's mother about the incident, because of the appellant's evidence, and because the complainant had lied about the existence of a forensic report that supported her version of events. Charlesworth J reasoned that discrepancies in the complainant's evidence ought to have caused a reasonable doubt about the appellant's guilt.

In dissent, Murrell CJ concluded that the trial judge had not used a "common knowledge" fact (concerning how 17–year–old boys behave) to reason that a fact in issue was proved; his Honour had simply applied his common sense and life experience, looking at the context and the individual appellant, when considering whether the appellant's evidence about consent might possibly be true. In relation to the complainant's credibility, her Honour concluded the trial judge had correctly applied the onus of proof, had not used the appellant's lies to bolster the complainant's credibility and was entitled to accept the complainant beyond reasonable doubt, despite the flaws in her evidence.

Saipani v The Queen [2021] ACTCA 5

The appellant was charged with aggravated burglary by joint commission with two co-offenders. The offending occurred by way of the appellant and two co–offenders entering a residence, demanding money from the occupants and assaulting one of the occupants.

The appellant and co–offenders were to be tried by jury, when the appellant exited the jurisdiction. He later said he attended a funeral in New Zealand. The co–offender's trial commenced in the appellant's absence and on the fourth day, they entered pleas of guilty to two lesser charges, being common assault and possessing an offensive weapon with intent. At sentence, Good Behaviour Orders were imposed on the co–offenders. Upon return to the ACT, the appellant elected to be tried by judge alone on the charge of aggravated burglary and at first instance, the primary judge convicted the appellant and sentenced him to two years, four months' imprisonment.

The appellant appeared before the Court of Appeal, constituted by Burns, Loukas–Karlsson and Charlesworth JJ and appealed against the conviction and sentence imposed by the primary judge. In their Honour's judgment, the Court considered the two factual pathways the Crown submitted would satisfy a conviction of aggravated burglary on the facts. In their Honour's view, the first pathway relied upon a finding that all three the offenders were party to an agreement to **enter** the unit as trespassers, whilst the second pathway relied upon a finding that the offenders were party to an agreement to **remain** in the unit as trespassers.

The Court of Appeal considered the common law and legislative development of the definition of 'trespass' for the purpose of the offence of burglary. The Court of Appeal held the effect of the inclusion of sub–s 4 to the offence of burglary (s 311 of the *Criminal Code 2002* (ACT)) makes irrelevant any divergence or lack of identity between the purpose between that which an occupant permits entry to an entrant, and the purpose of the entrant for entering. Accordingly, the Court found that, to the extent that the primary judge found the offence proved on the basis of a differing purpose for entry versus that of the invitation, was an error. Further, the Court of Appeal found that to the extent that the primary judge found the offence proven on the basis that an occupant of the property was unauthorised to invite the three co-offenders into the residence, thereby making the co–accused trespassers, was also an error on conviction via the first pathway. On the second pathway the Court of Appeal was satisfied that it was open to the primary judge to find the agreement to remain in the unit as trespassers, and held that despite the appellant being absent whilst that portion of the conduct occurred by virtue of s 45A(7)(b). Thus, the Court of Appeal held that it was open to the primary judge on the second pathway to find the appellant guilty of the aggravated burglary offence and the appeal against conviction was rejected.

On the appeal against sentence, the Court of Appeal found the primary judge erred in misapplying the parity principle and upheld the ground of manifest excess. The appellant was resentenced to 20 months' imprisonment.

R v Pikula–Carroll (No 2) [2020] ACTSC 347

The offender entered pleas of guilty to six offences occurring on 22 September 2016 and 3 November 2016, including aggravated burglary, assault occasioning actual bodily harm and murder. His Honour Justice Burns made findings on the disputed facts of those offences, thereafter imposing an aggregate sentence of 30 years' imprisonment, with a non–parole period of 18 years.

The two courses of offending occurred in a unit in Watson regularly used for the purchase or use of illicit drugs including heroin and methylamphetamine. On the first occasion the offender, accompanied by two co–offenders, arrived at the unit armed with a sawn–off double barrel shotgun, machete and a metal pole or bat. The co–offenders then demanded drugs and money from the occupants remaining in the house and assaulted them. On the second occasion, the three co–offenders again drove to the unit in Watson, in possession of the sawn–off shotgun, and carrying a bag containing a machete. The offender and one of the co–offenders attempted to enter the front door of the unit, whilst the two occupants of the unit barricaded the door. The co–offender fired a single shot into the front wooden door, causing fatal injuries to the heart and lung of one of the unit occupants. The two co–offenders then forced entry to the unit, assaulted the uninjured occupant and took her handbag containing her mobile phone. She had earlier phoned 000 and the call was still connected and recording whilst the co-offenders left the unit. During that call, various comments were made which his Honour found to contradict the evidence later provided by the offender, including that he claimed to be intoxicated, that he did not know the occupant that was shot was dead, and that he did not know the shotgun was loaded.

Justice Burns considered the culpability of the three co–offenders in the commission of the various offence. In assessing the offences of assault occasioning actual bodily harm on the first occasion, his Honour considered that the offences were clearly premeditated, but noted that this was subsumed in the premeditated nature of the aggravated burglary offence. His Honour found that to take those matters into account on sentencing would be to inflict a punishment twice for the same conduct. In sentencing for the offences of the second occasion, his Honour noted that the offence of murder occurred in the course of another offence, the robbery, and thereby could not be described as being planned or premeditated. His Honour noted that the agreement formed between two of the co–offenders to commit an offence, namely the aggravated robbery, formed the basis for the proof of the offence of murder, as an offence committed in the course of carrying out the aggravated robbery. His Honour held that whilst the offender did not pull the trigger, there was little difference in the moral culpability of the co–offender and the offender.

Benning v Richardson [2021] ACTSC 34

The plaintiff was injured in a motor vehicle accident where she was an intoxicated passenger in a vehicle driven by an intoxicated driver (the first defendant). The plaintiff claimed that the accident was caused by the negligence of the first defendant and she sought damages as a result of that negligence.

The first defendant admitted a breach of duty of care owed to the plaintiff by driving while intoxicated. However, he said that the breach did not cause her injuries because the accident was the result of the plaintiff "taking hold of the Mazda's steering wheel and turning it sharply to the left" so that the motor car veered off the road into a tree. Further, if the first defendant was wrong on its primary submission, his case was that there should be a substantial finding of contributory negligence because the plaintiff voluntarily departed in the vehicle when she knew or ought reasonably to have known that the driver was intoxicated. In addition, she was not wearing a seatbelt.

Held: In finding for the plaintiff, Elkaim J held that:

1. The defendants did not discharge their onus to establish that the plaintiff had interfered with the steering of the vehicle, and the defendant therefore breached its duty of care to the plaintiff.
2. The plaintiff was not wearing a seatbelt at the time of the incident and the failure to do so contributed to her injuries.
3. A further finding of contributory negligence arose from the plaintiff travelling in the vehicle with an intoxicated driver.

- The damages payable ($458,429.69) are reduced by 35% for contributory negligence, bringing the total damages payable to the plaintiff to the sum of $297,979.30.

May v Helicopter Resources; Commonwealth of Australia v May [2021] ACTSC 116

This matter involved two separate appeals arising from the prosecution of two defendants, Helicopter Resources Pty Ltd (Helicopter Resources) and the Commonwealth of Australia (the Commonwealth) for offences under the *Work Health and Safety Act 2011* (Cth). The charges were brought by Comcare resulting from an incident in Antarctica where an employee of Helicopter Resources, Mr David Wood, died after falling into an ice crevasse. Mr Wood was depositing fuel drums when he fell into a crevasse where he was trapped for about five hours. He later died of hypothermia. The form of the allegations against the Commonwealth and Helicopter Resources in the original proceedings included a number of "reasonably practicable" measures which the Commonwealth should have conducted in pursuance of the duty owed to the pilots. As for Helicopter Resources, Comcare asserted that Helicopter Resources should have ensured the Commonwealth's compliance with the measures.

The charges were heard at first instance by Acting Chief Magistrate Theakston in June and July 2019, who acquitted Helicopter Resources and convicted the Commonwealth of the relevant charges against it.

Appeal: There were two appeals filed, the first being Comcare's appeal against the decision to acquit Helicopter Resources and the second being the Commonwealth's appeal against the convictions against it. The appeals were heard together.

Held: Elkaim J dismissed the appeal brought by Comcare against Helicopter Resources and allowed the appeal by the Commonwealth so that the convictions of the Commonwealth in respect of all charges were set aside. His Honour found the manner in which the Informations were styled were such that they not only required proof of all of the measures, but proof of their compliance in the order in which they were listed. His Honour found that the first measure listed, which concerned the use of satellite imaging to determine whether a site had minimal crevassing, 'was not reasonably practicable and therefore the balance of the measures fell with it.'

R v Ralston [2020] ACTCA *47*

In a trial by jury, the respondent was found guilty of the offence of using a carriage service to groom a person under 16 years of age. The respondent was sentenced to two years' imprisonment, wholly suspended upon the respondent entering into a recognisance release order. The Crown appealed against the sentence on the grounds that (1) there was a specific error as to the subject of the offending conduct, and (2) the resulting sentence was manifestly inadequate. The respondent conceded that there had been a specific error with regards to the conduct taken to have constituted the offence. Their Honours, Murrell CJ and Mossop J concurred with her Honour, Loukas–Karlsson J, to hold that the Crown did not establish that the sentence was manifestly inadequate. Therefore, the question became whether a finding of specific error was sufficient to enliven the discretion to resentence on a Crown appeal, or whether the Crown must establish both specific error and that the sentence was manifestly inadequate before the Court would intervene. Their Honours, Murrell CJ and Mossop J examined the history of Crown appeals in the ACT in order to resolve this issue.

Through conducting a survey of case law, Murrell CJ and Mossop J found that requiring that the sentence be manifestly inadequate before the Court would intervene would be to "impose a judicially created additional requirement" with no statutory foundation, and therefore be inappropriate. It is therefore not necessary in a Crown sentence appeal, where specific error has been established, to also establish a manifestly inadequate sentence. Loukas Karlsson J dissented on this point. However, the decisions of the High Court indicate that the primary purpose of Crown appeals is to lay down principles for the governance and guidance of sentencing Courts and to facilitate the maintenance of sentencing standards, rather than to correct judicial error in particular cases. Murrell and Mossop J found that this "limiting purpose" may provide the foundation for a Court of appeal to decline to intervene, either alone or in combination with other discretionary factors the Court may consider. Applying this finding to the matter at hand, their Honours held that notwithstanding that a specific error of fact had been established, the sentence was lenient but not manifestly inadequate and no issues of principle arose from the factual error identified. Further, if the respondent was resentenced, any increase in his sentence would be modest. Therefore, the limiting purpose was an appropriate basis to decline to intervene, and their Honours dismissed the appeal.

McConell v ACT [2020] ACTSC 259

This plaintiff in this case, Daniel McConell, was a resident of Jervis Bay Territory (JBT) who wanted to vote in the 2020 ACT general election. He sought declarations that he was qualified to vote in the election and entitled to be enrolled on the ACT electoral roll. The plaintiff was on the Commonwealth electoral roll at the time of the application.

In finding that the plaintiff was not entitled to vote in the ACT general election, Mossop J considered the relevant provisions of the *Australian Capital Territory (Self–Government) Act 1988* (Cth) (*Self–Government Act*) and the *Electoral Act 1992* (ACT). Of particular relevance was s 67C(1) of the *Self–Government Act* which provides that a person will be entitled to vote in a general election in the ACT if:

- they are on the Roll of the electors for the Territory for the purposes of general elections; and
- they would be entitled vote at an election held that day to choose a member of the House of Representatives for the Territory.

His Honour found that the plaintiff clearly satisfied the second requirement, that he would be entitled to vote in an election to choose a member of the House of Representatives for the Territory, as JBT is in one of the ACT electoral divisions under the *Commonwealth Electoral Act 1918* (Cth). The decision, therefore, turned on whether the plaintiff was on the Roll of electors for the Territory for the purposes of general elections.

His Honour's conclusion with respect to whether the plaintiff was on the Roll of electors for the Territory was made after analysing the key provisions of the *Electoral Act*. Section 72 of the *Electoral Act* provides that a person will be entitled to be enrolled for an electorate if their address is in "the electorate". His Honour found that in order for this requirement to be satisfied, the person's address had to be within the boundaries of the "electorate" in a defined sense. As only areas within the ACT were included in the notifiable instrument defining the boundaries of the five ACT electorates for the purpose of ss 34 and 35 of the *Electoral Act*, the plaintiff's address was not in an "electorate".

The effect of his Honour's conclusion was that a person in JBT cannot be enrolled to vote in an ACT electorate. That in turn meant that a person in JBT could not be entitled to vote in the ACT general election, as entitlement to vote in a general election is dependent on enrolment.

R v KN [2020] ACTSC 218

KN (the young person) was to be sentenced for: an offence of aggravated burglary; an offence of arson; and an offence of damage property. The offences had all taken place at night at a public school in Canberra, the Namadgi School. The young person was a student at the Namadgi school.

The young person and an unknown co–offender entered the grounds of the school by scaling a perimeter fence. Upon entry, the young person and the co–offender attempted to gain entry to the school's canteen. One of the young persons kicked the canteen door three times causing the panel to bend. The two young persons then gained entry to the canteen by breaking a lock and smashing a window. They then proceeded to steal six bottles of strawberry–flavoured milk from the canteen. The young persons then forced entry into the school gymnasium, building 3A and the Administration building. They smashed 13 windows in the gymnasium and broke the lock on the side fire door. In Building 3A, the young persons damaged various technological items and then lit a fire in the office. The fire caused extensive fire and smoke damage. In the Administration Building, the young persons damaged various technological items and windows. The total damage caused by the young persons was estimated to be $183,834.89.

In evidence before Loukas–Karlsson J was a pre–sentence report and letters from OzChild Act and Gugan Gulwan Youth Aboriginal, all of which provided insight into the young person's subjective circumstances. The young person is a young Aboriginal man, who was 17 at the time of sentence and 14 at the time the offences were committed. The young person and his siblings had been subject to extensive child protection history. The young person also lived with significant and long standing chronic conductive hearing loss, he had worn hearing aids as a child but ceased doing so due to bullying. The Young Person regularly used cannabis and commenced use at age 11. The Young person reported first consuming alcohol at 12 years of age and drank alcohol weekly.

Her Honour set out the relevant principles for sentencing a young person and extracted the relevant portions of the *Crimes (Sentencing) Act 2005* (ACT), the *Children and Young People Act 2008* (ACT) and the *Human Rights Act 2004* (ACT). It was accepted by both parties that rehabilitation was a crucial consideration in the sentencing exercise for the young person. Both parties also submitted that the young person had experienced childhood deprivation, particularly in relation to his engagement with child protection services, his early exposure to drugs and alcohol, and his hearing loss. The young person's childhood deprivation reduced his moral culpability in line with the application of the principles from *Bugmy v The Queen* [2013] HCA 37; 249 CLR 571.

R v Chemhere [2021] ACTSC 45

The accused had pleaded not guilty because of mental impairment in respect of an offence of arson and six counts of damaging property. In accordance with s 321(2)(b) of the *Crimes Act 1900* (ACT), the prosecution had agreed to the entering of a special verdict that the accused was not guilty of the offences because of mental impairment. Pursuant to s 321(2)(a) of the *Crimes Act*, Loukas–Karlsson J had to consider whether special verdicts were appropriate.

The accused had lit a fire using an unknown implement in the Woden Hotel. At this time, the Woden Hotel was closed due to the COVID–19 pandemic and there were no other persons present within the building. The accused then attended the Westfield Shopping Centre in Woden and proceeded to set multiple fires to material contained within publish rubbish bins.

All of the evidence admitted at the hearing was received by the Court by consent. A Psychiatric Report under the hand of Dr Richard Furst (the Furst Report) was included within the material received by the Court. The Furst Report noted that prior to the commission of the offences, the accused had been discharged by the Adult Mental Health Unit at the Canberra Hospital on "three occasions in a psychotic state without stable accommodation and without any feasible discharge plan" as the accused was homeless at the time. The Furst Report opined that the "failure of the Canberra Hospital to adequately treat Mr Chemhere and to detain him as a mentally ill person in the hospital…was the indirect but substantive cause of the offences in question".

Loukas–Karlsson J was satisfied that the prosecution had proven beyond reasonable doubt that the accused had committed the physical elements relevant to each of the offences. Her Honour was also satisfied that the accused was suffering from a mental impairment, namely schizophrenia, at the time of the offences. On the balance of probabilities, her Honour was satisfied that the mental impairment had the effect that the accused was not criminally responsible for the offences: ss 27 and 28 of the *Criminal Code 2002* (ACT). Special verdicts of not guilty because of mental impairment were entered in respect of each offence and the accused was ordered to submit to the jurisdiction of the ACAT to enable the ACAT to make recommendations as to how he should be dealt with: ss 321(2) and 323(1)(a) of the *Crimes Act*.

In the matter of an adoption of QS (No 2) [2021] ACTSC 107

This case involved an application by foster carers to adopt a child, "QS" who had been in their care since she was three months old. The child was eight at the time the application was heard. QS's birth father had consented to the adoption application. However, the birth mother opposed the adoption. It was therefore necessary for the applicants to first seek to dispense with the birth mother's consent, through an application made pursuant to s 35 of the *Adoption Act 1993* (ACT) (***the Adoption Act***).

Issues arising in the case included:

- Which version of the *Adoption Act* applied, as the statute had been amended by the *Adoption Amendment Act 2020* (ACT) (***the Amendment Act***) during the life of the proceeding;
- The proper construction of sections of the *Adoption Act* (in particular s 35(1)(c) of the *Adoption Act* as amended, and what was meant by the insertion of the word 'necessary');
- Whether it was in the best interests of QS to dispense with the birth mother's consent so that QS could be adopted by her foster carers.

It was held that the *Adoption Act* as amended applied, because on the proper construction of the statute, the parties' rights only arose at the time the Court is called upon to make an order, rather than at the time the application was filed.

Further, s 35(c) of the amended *Adoption Act* is to be read in the following way: dispensation of consent is necessary because adoption is in the best interests of the child or young person. The inclusion of the word "necessary" did not raise the level of satisfaction required in the statute.

Applying this construction to the mandatory considerations set out in the statute, her Honour formed the view that the adoption was in the best interests of QS, and as such, it was necessary to dispense with the birth mother's consent to achieve that result.

Islam v Director–General, Justice and Community Safety Directorate [2021] ACTSC 33

These proceedings involved complaints relating to the plaintiff's detention at the Alexander Maconochie Centre (**the AMC**). The plaintiff's complaints arose from disciplinary measures applied to him on seven separate occasions under the *Corrections Management Act 2007* (ACT) (***the Corrections Act***). The essence of the complaints was that when the plaintiff was charged with a breach of discipline at the AMC, he was not given an opportunity to address the charge or seek review of the decision before a sanction was imposed. The plaintiff was subject to sanctions such as separate confinement and loss of privileges.

Separate questions were brought before the Court for determination. They were as follows:

1. Can a detainee be disciplined without the detainee first having a right of review either under the *Corrections Act* or otherwise? **Answer:** Yes.
   The reason for that finding was that the sanction of a warning and/or reprimand may be given without any charge, inquiry, or subsequent review. However, a detainee must be charged before any more serious any disciplinary action is taken.
2. Can an inmate be disciplined immediately upon a disciplinary breach charge being issued (via a Discipline Form 3) under s 159 of the *Corrections Act*? **Answer:** No.
   The reason for that finding was that on the proper construction of the *Corrections Act*, when a charge is laid, and the detainee does not admit the breach or penalty (or both), an internal inquiry *must* take place. Disciplinary action cannot be taken while a charge is the subject of an internal inquiry.
3. Can an inmate be disciplined immediately upon a disciplinary decision being made? **Answer:** Not necessary to determine.
4. Did the defendant's conduct constitute denial of procedural fairness? **Answer:** Yes.
   The plaintiff suffered practical injustice as the failure to afford the plaintiff with notice of the charge in writing and opportunity to respond led to the loss of his opportunity to make representations to an independent internal decision–maker different from the officer involved in issuing the charge.
5. Did the defendant's conduct constitute a breach of the *Corrections Act*? **Answer:** Yes.
   As the procedures required the *Corrections Act* were not carried out, any disciplinary action taken was in breach of the *Corrections Act*.
6. Was the defendant's conduct in breach of s 10(1)(b) of the *Human Rights Act 2004* (ACT) (***Human Rights Act***)? **Answer:** No.
   Her Honour adopted the principles for interpreting s 10 of the *Human Rights Act* as discussed by Garde J in *Certain Children v Minister for Families* [2016] VSC 796; 51 VR 473 and the authorities there–cited. Her Honour found that, on the facts of this case, a repeated breach of the *Corrections Act* did not equate to cruel, inhuman or degrading treatment under the *Human Rights Act*.
7. Was the defendant's conduct in breach of s 21(1) of the *Human Rights Act*? **Answer:** Yes.
   Although not every breach of the *Corrections Act*, nor every failure to afford procedural fairness, equates to a contravention of a person's right to a fair trial, in this case the conduct constituted a contravention of s 21(1) of the *Human Rights Act*. Four reasons contributing to this conclusion were as follows: the plaintiff's vulnerability by virtue of his incarceration, the statutory procedure provided by the *Corrections Act*, the serious nature of the sanctions suffered by the plaintiff, and the systemic nature of the failure to afford the procedural fairness required by the *Corrections Act*.
8. Does the Discipline Form 3 contain a right to appeal, and/or, an avenue of appeal (or review) for an accused inmate? **Answer:** No.
   No part of Discipline Form 3 provides for the detainee to seek review. However, when the procedure set out under the *Corrections Act* is properly implemented, an internal inquiry commences automatically upon the detainee communicating that he does not consent to the charge.

R v LT [2020] ACTSC 18

On 26 October 2017, Murrell CJ convicted LT of aiding and abetting the reckless infliction of grievous bodily harm and sentenced her to two years and three months imprisonment, which was suspended and a Good Behaviour Order imposed. In June 2019, LT appeared before the Court for breach of the Good Behaviour Order. In her reasons, Murrell CJ noted LT's non-compliance with the drug rehabilitation conditions of the Good Behaviour Order, indicating that that Order provided insufficient motivation for LT to exercise self–discipline in managing her drug dependency.

On 3 December 2019, the Drug and Alcohol Sentencing List (**DASL**) of the ACT Supreme Court came into operation and, following an adjournment, LT was referred to the DASL and assessed as suitable for a Drug and Alcohol Treatment Order under s 80T of the *Crimes (Sentencing) Act 2005* (ACT) (***Sentencing Act***), given her dependency on methylamphetamines and commitment to rehabilitation, evidenced by her attendance at SMART Recovery Group fortnightly since June 2019. On 28 January 2020, Murrell CJ re–sentenced LT to one year and nine months imprisonment, which her Honour suspended upon making a Drug and Alcohol Treatment Order (**a Treatment Order**).

Despite some challenges along the way, not unusual in the difficult process or addressing drug dependency, LT successfully completed the program of treatment and rehabilitation prescribed by the Treatment Order and on 26 March 2021 graduated from the DASL, which was then presided over by Refshauge AJ. Chief Walker, as then Acting Justice Walker initially supervised her Treatment Order and Loukas–Karlsson J, who next supervised the order, both attended the graduation and, along with Refshauge AJ, congratulated LT for her abstinence from illicit drug use, her ability to manage her dependency on those drugs and the steps she had made to live a worthwhile and successful life in the community. While subject to a Treatment Order, LT had remained committed to regular attendance with counselling and urinalysis and she had regained custody of her two young children, which required her to engage effectively with Child and Youth Protection Services and establish necessary, healthy boundaries with her ex–partner, who was then in custody. LT also had successfully passed her driver licence test and built a strong relationship with another DASL participant who supported her through her rehabilitation.

Since her graduation, LT has not appeared before the Court again.

R v Tonna (No 1) [2020] ACTSC 360; *R v Tonna (No 2)* [2020] ACTSC 362

On 7 October 2020 Refshauge AJ convicted Ryan Tonna of six offences, those being aggravated burglary, two offences of breaching a Family Violence Order, assault occasioning actual bodily harm, driving whilst disqualified and possessing a drug of dependence, and sentenced him to a total of two years and four months imprisonment, which was wholly suspended and a Drug and Alcohol Treatment Order (**a Treatment Order**) was made under s 12A of the *Crimes (Sentencing) Act 2005* (ACT) (***Sentencing Act***) .

As set out in *R v Tonna (No 1)* [2020] ACT 360, his Honour considered that the sentencing purpose of rehabilitation, supported by the imposition of a Treatment Order, was of greater significance than the specific deterrence achieved by a term of imprisonment, in Mr Tonna's circumstances. His youth, recent history of drug use to treat pain associated with an assault and his expressed desire to achieve rehabilitation were particularly pertinent to his Honour's reasoning.

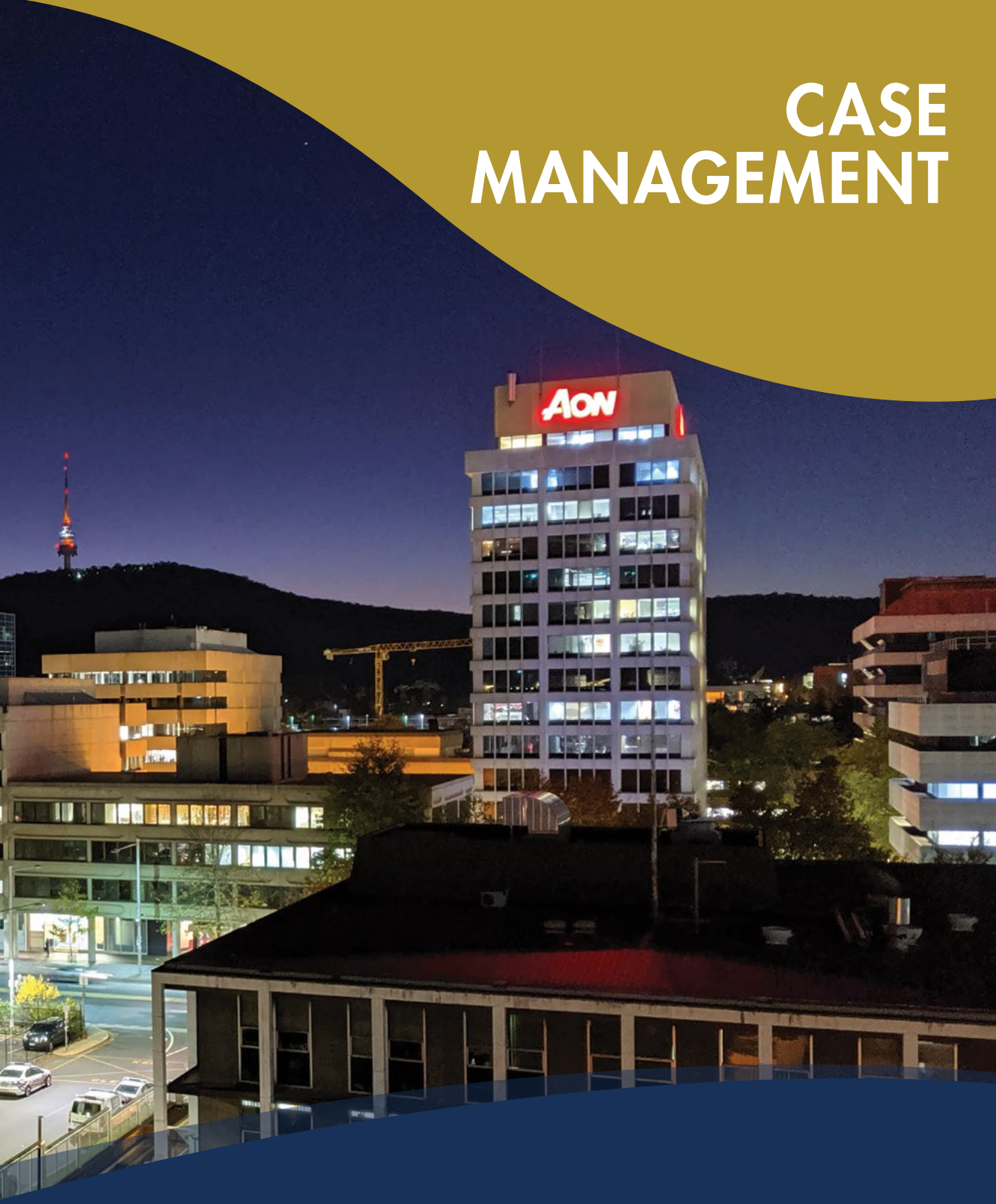
His Honour imposed a Treatment Order, including the imposition of a curfew and a direction that Mr Tonna attend a day program operated by the Canberra Recovery Services and other treatment, and commenced the weekly judicial supervision of the Mr Tonna as part of the Drug and Alcohol Sentencing List (**DASL**).

Almost two weeks after the Treatment Order was made, Mr Tonna's urinalysis showed a positive result for cocaine, his use of which continued until Refshauge AJ sanctioned him by remanding him in custody for 7 days on 2 November 2020. The Treatment Order was amended to require Mr Tonna's attendance at Canberra Recovery Services' Residential Rehabilitation Program. Although his rehabilitation initially improved while at Canberra Recovery Services, on 1 December 2020 Mr Tonna discharged himself from the Program and on 3 December 2020 he attended Court and Refshauge AJ remanded him in custody. Mr Tonna reported that he left Canberra Recovery Services because he used illicit drugs and felt bullied by other persons participating in the Program.

R v Tonna (No 2) [2020] ACTSC 362 at [33]–[40] sets out that, on 8 December 2020, the Crown filed an application for the cancellation of Mr Tonna's Treatment Order. Refshauge AJ had to consider how the legislation for cancellation of the Treatment Order was intended to operate and concluded that it would require a review of the Order and whether it could be amended, where doing so would address the grounds for cancellation relied upon by the Crown. On 17 December 2021 his Honour cancelled Mr Tonna's Treatment Order and imposed the original sentence of two years and four months imprisonment. In his reasons for sentence, Refshauge AJ noted Mr Tonna's continued use of illicit drugs, sense of entitlement (evidenced by his behaviour) and his continuing lack of honesty, which his Honour noted is fundamental to successful drug rehabilitation, as justifying the cancellation of the Treatment Order.

His Honour also recognised, however, Mr Tonna's youth and that the emphasis placed on rehabilitation for young offenders is not limited to those under the age of 18. Giving some thought to what age the mitigation afforded for youth in sentencing stops, his Honour found that Mr Tonna, aged 23, could still be considered a young offender. His Honour also noted that, unfortunately, there was no available alternative appropriate rehabilitation facilities for Mr Tonna as this may have seen the continuation of the Treatment Order. The limited resources available to the DASL played a role in undermining Mr Tonna's ability to access the rehabilitation he required. Further, the Court could not remand Mr Tonna in custody until such resources became available as the operation of s 80ZB(1)(e) of the *Sentencing Act* meant that the time an individual subject to a Treatment Order can be remanded in custody was limited to 14 days, after which the Treatment Order must either be amended or cancelled. His Honour accepted that this was 'simply the reality of the position' (*R v Tonna (No 2)* at [73]).

CASE MANAGEMENT



STATISTICS

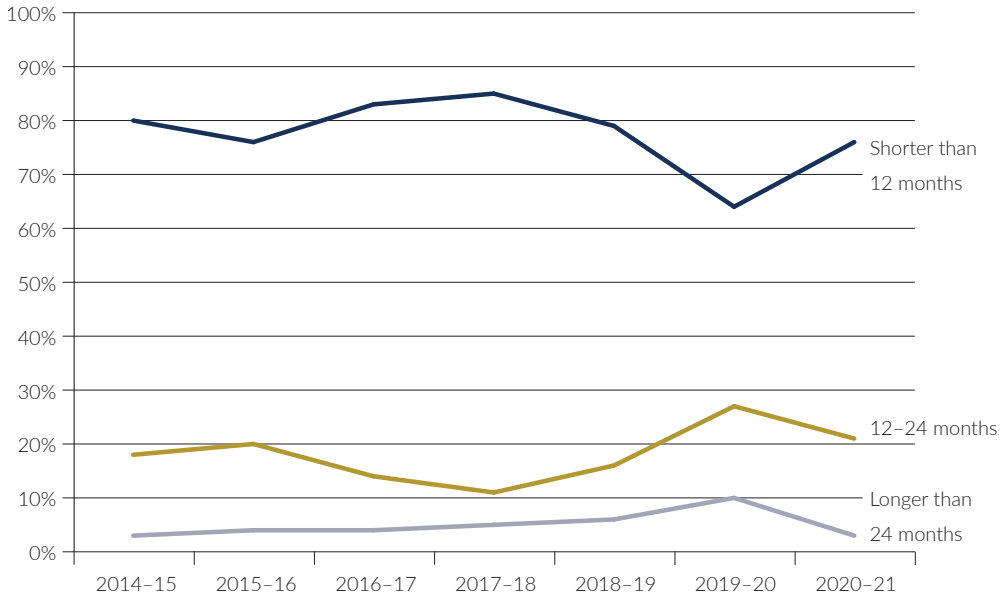
Outstanding matters

Court Time	2017–18	2017–18	2017–18	2017–18	2018–19	2018–19	2018–19	2018–19
	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil
< 12 months	217	437	85%	80%	206	455	79%	71%
12–24 months	27	74	11%	14%	41	142	16%	22%
>24 months	12	36	5%	7%	15	40	6%	6%
Total	**256**	**547**			**262**	**637**		

Court Time	2019–20	2019–20	2019–20	2019–20	2020–21	2020–21	2020–21	2020–21
	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil
< 12 months	213	433	64%	70%	202	375	76%	69%
12–24 months	89	142	27%	23%	56	126	21%	23%
>24 months	33	40	10%	7%	8	39	3%	7%
Total	**335**	**615**			**266**	**540**		

** Includes Magistrates Court Appeals Matters (CA) but not Court of Appeal Matters (AC)*

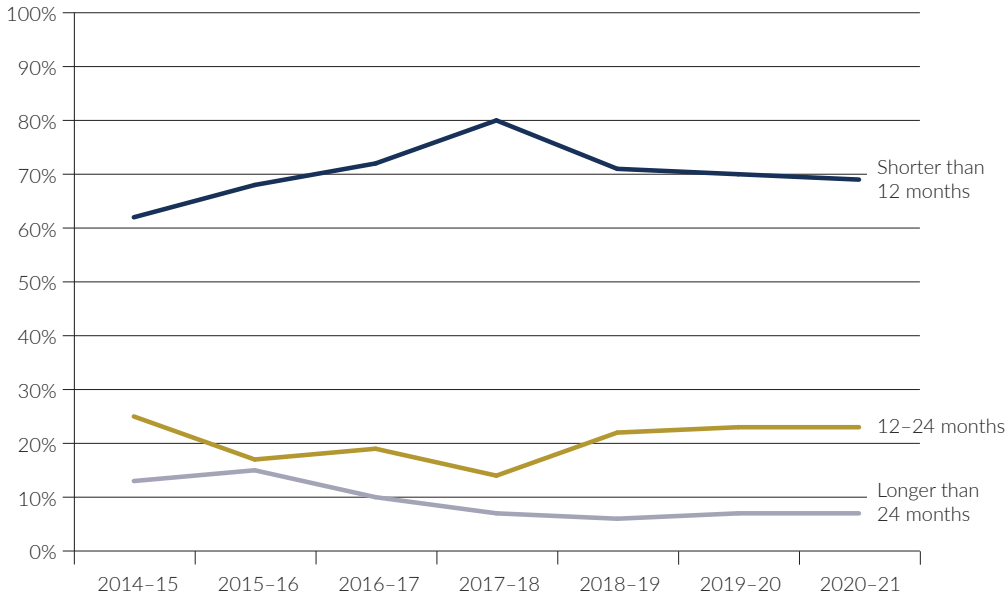
Outstanding criminal matters (in percentages)



Criminal	2014–15	2015–16	2016–17	2017–18	2018–19	2019–20	2020–21
Shorter than 12 months	80%	76%	83%	85%	79%	64%	76%
12–24 months	18%	20%	14%	11%	16%	27%	21%
Longer than 24 months	3%	4%	4%	5%	6%	10%	3%

** Includes Magistrates Court Appeals Matters (CA) but not Court of Appeal Matters (AC)*

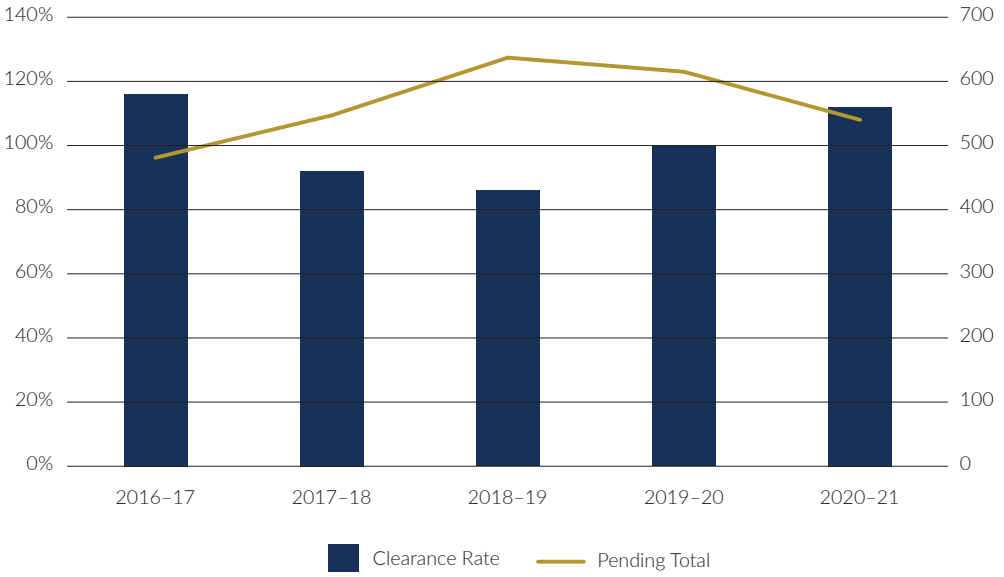
Outstanding civil matters (in percentages)



Civil	2014–15	2015–16	2016–17	2017–18	2018–19	2019–20	2020–21
Shorter than 12 months	62%	68%	72%	80%	71%	70%	69%
12–24 months	25%	17%	19%	14%	22%	23%	23%
Longer than 24 months	13%	15%	10%	7%	6%	7%	7%

** Includes Magistrates Court Appeals Matters (CA) but not Court of Appeal Matters (AC)*

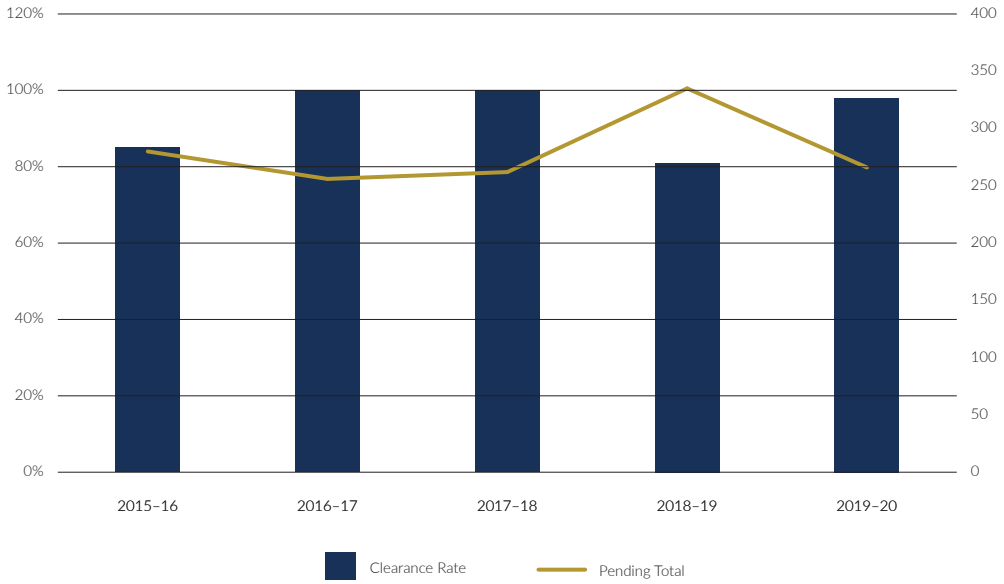
Summary data 2020–2021 – Civil matters



Supreme Court – Civil matters (includes Magistrates Court appeals)	**2016–17**	**2017–18**	**2018–19**	**2019–20**	**2020–21**
Lodgements	561	608	639	603	527
Finalisations	648	559	550	603	592
Clearance Rate	116%	92%	86%	100%	112%
Pending Total	481	547	637	615	540
Pending < 12 months	346	437	455	433	375
Pending > 12 months*	135	110	182	182	165
Pending > 24 months	46	36	40	40	39

** Includes [>12 months] + [>24 months]*

Summary data 2020–2021 – Criminal matters



Supreme Court – Criminal matters (includes Magistrates Court appeals)	**2016–17**	**2017–18**	**2018–19**	**2019–20**	**2020–21**
Lodgements	319	354	323	335	332
Finalisations	270	355	323	272	326
Clearance Rate	85%	100%	100%	81%	98%
Pending Total	280	256	262	335	266
Pending < 12 months	231	217	206	213	202
Pending > 12 months*	49	27	56	122	64
Pending > 24 months	10	12	15	33	8

** Includes [>12 months] + [>24 months]*

Summary data 2020–2021 – Court of Appeal

Court of Appeal*	2016–17	2016–17	2017–18	2017–18	2018–19	2018–19	2019–20	2019–20	2020–21	2020–21
	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal
Lodgements	27	36	37	36	25	35	20	28	23	33
Finalisations	58	36	31	42	30	37	25	27	16	27
Clearance Rate	215%	100%	84%	117%	120%	106%	125%	96%	70%	82%
Pending Total ^	18	33	27	26	17	22	12	23	19	28
Pending < 12 months	13	28	23	22	13	20	12	20	19	25
Pending > 12 months *	4	5	3	4	10	2	0	3	0	3
Pending > 24 months	1	0	1	0	6	0	0	0	0	0

** All Court of Appeal (COA) matters are heard as part of the civil jurisdiction for registry purposes.*

** In order to distinguish between criminal and civil COA matters, the remedy type lends a description as to whether a matter is civil in origin or an appeal against a criminal process*

** Includes [> 12 months] + [> 24 months]*

^ In 2018–19 6 matters considered pending in the court of appeal had been finalised in prior periods in the first instance. These have been removed from this pending value in 2018–19