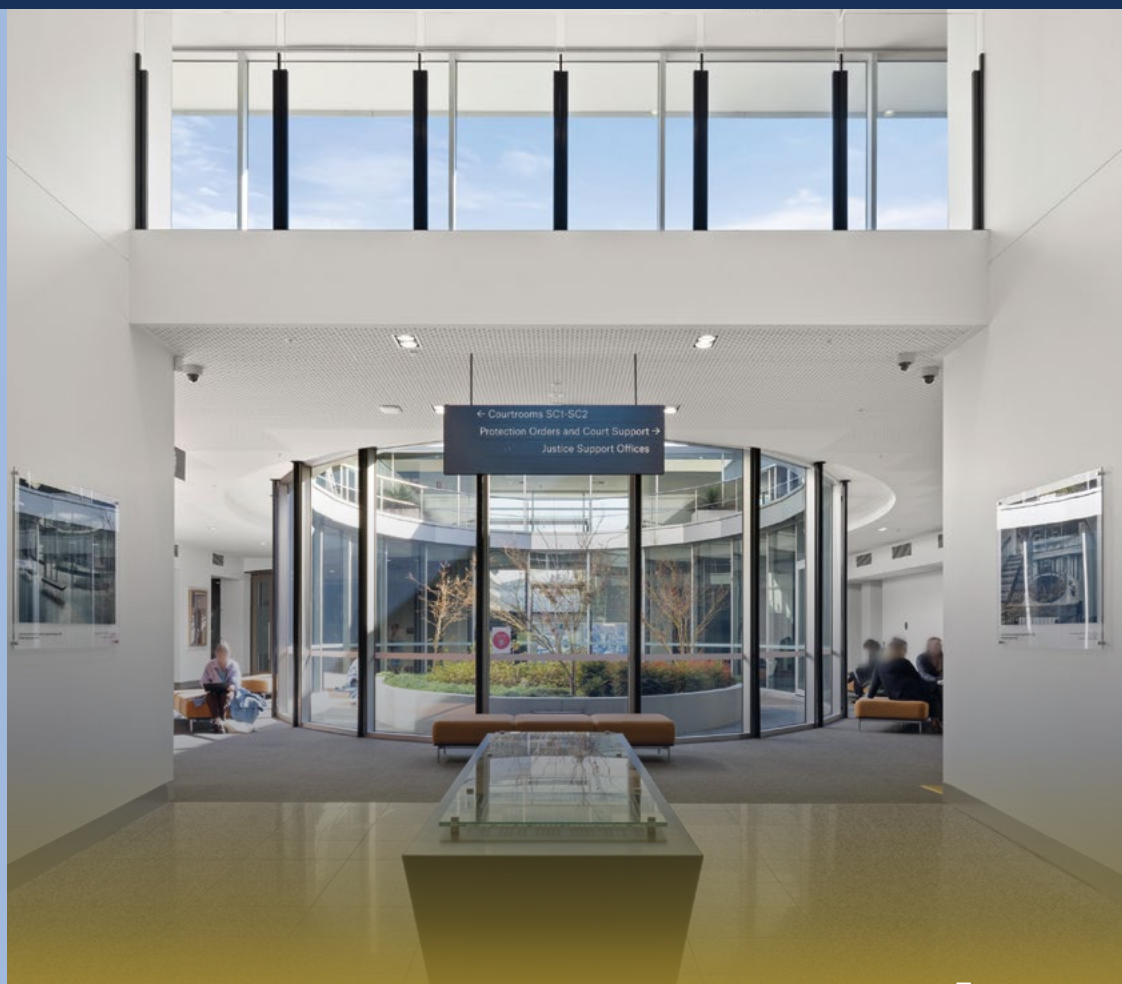
SUPREME COURT

OF THE AUSTRALIAN CAPITAL TERRITORY



Annual Review 2021–22

ACT Courts

SUPREME COURT

OF THE AUSTRALIAN CAPITAL TERRITORY

Annual Review 2021–22

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INTRODUCTIONS

CHIEF JUSTICE'S INTRODUCTION

Chief Justice Lucy McCallum

I was sworn in as the Chief Justice on 8 March 2022, my predecessor, Chief Justice Helen Murrell, having been farewelled with the highest praise for her achievements in improving the processes and efficiency of the Court. It was my good fortune to come into the role to build upon her legacy of reform.

During the part of the 2021–22 financial year that I was Chief Justice, there were several important developments.

The appointment of two new judges

On 11 March 2022, the Attorney-General announced the appointment of two new resident judges to the ACT Supreme Court. Justice Geoffrey Kennett was sworn in as a judge of the Court on 21 March 2022. His Honour brought to the role a breadth of experience particularly in civil and administrative law, his huge intellect, astute legal analysis and a prodigious capacity for hard work. Justice Kennett filled the vacancy created by the retirement of Justice Burns in August 2021, who had served over 30 years at the ACT Courts.

The Attorney-General also announced the appointment of Justice Belinda Baker as a resident judge, to be sworn in as a judge of the Court in December 2022. The Court will be greatly assisted by Justice Baker's depth of experience in criminal appeals. Her Honour most recently served as the Deputy Senior Crown Prosecutor to the NSW Director of Public Prosecutions. Justice Baker fills the vacancy that will be created by the retirement of Elkaim J in December 2022.

The Court joins socials

2022 marked the year that the ACT Supreme Court joined Facebook to complement our existing Twitter page. Both will now be the subject of regular posts informing practitioners and members of the public of the work of the Court including the publication of judgments.

Overhaul of civil cases

In March 2022, the Registrar and I conducted an audit of all proceedings that have been in the Court's civil list for more than 12 months, the paradigm for the disposition of civil matters reflected in Practice Direction No 2 of 2014. It is accepted that some matters take longer than others to prepare for hearing, for various good reasons, but those cases should be the exception rather than the norm. On 14 April 2022, the Court conducted a "super callover" of matters that appeared to have suffered undue delay by that measure.

Early stages of developing circle sentencing in the Supreme Court

The Court has begun considering the practicality of extending the philosophy of circle sentencing (currently practiced in the Childrens Court and the Magistrates Court) to the Supreme Court. Circle sentencing has operated successfully in the Magistrates Court since 2004 and is currently conducted there in the Galambany Court. In New South Wales, it has recently been extended from the Magistrates Court to the District Court through the Walama List. The Galambany Court has enhanced relationships between Aboriginal and Torres Strait Islander peoples and the ACT criminal justice system by seeking involvement from Elders and offenders in the sentencing process and providing the Court the opportunity for careful listening to culturally relevant information. This process of deep, respectful listening reflects the Court's obligation to every person who has any business before the Court but is particularly important in relation to Aboriginal and Torres Strait Islander people who remain vastly overrepresented in custody. The Galambany Court has been shown to assist persons appearing before it to maintain employment, improve their health and that of their families, improve educational opportunities and reduce the risk of homelessness.

It has been an exciting first four months as Chief Justice. I look forward to furthering these developments at the ACTSC in the 2022–2023 financial year.

CEO'S INTRODUCTION

Following my appointment as Principal Registrar and Chief Executive Officer of the ACT Courts and Tribunal (ACTCT) in March 2021, I am pleased to write the introduction for another Supreme Court Annual Review.

Much like the previous financial year, 2021–22 saw a persistence of the COVID-19 pandemic and the need for continuous adaptation to the way the Court worked to deliver our services. COVID-19 lockdowns and restrictions had an undesirable effect on the timely completion of cases due to the legal profession's capacity to progress matters to hearing, and the Court's inability to hold some jury trials. Despite this, several key priorities were met by the ACT Supreme Court and Courts Administration.

The Court implemented the **International Framework for Court Excellence** to help improve performance. The framework outlines universal core values with seven areas of court excellence aligned to those values, as well as concepts, case studies, and tools to voluntarily assess and improve quality of justice and court administration. Assessment statements relating to ethics, conduct, technology, risk management, security, data integrity, alternate dispute resolution, and problem-solving approaches are a feature of the framework.

We also saw the implementation of the **Jury Management System (JMS)**, designed to support jury selection processes, manage juror payments, and improve the experience of those asked to perform jury service. Notwithstanding the halt to some jury trials due to COVID-19, the JMS still improved the effective and efficient delivery of jury trials in the Supreme Court. Between the system go-live date on 21 March 2022 and the end of the financial year on 30 June 2022, more than 2,000 users engaged with the online system. A reduction in enquiries from jurors/potential jurors, and jurors being paid efficiently were two of the desired outcomes of the new system.

The Courts Administration procured an external provider to deliver **Proactive Wellbeing Services** to support Judicial Officers and Court employees. The program aims to enhance individuals' health and wellbeing by normalising the seeking of professional help, and highlighting ways to acknowledge and discuss burnout, stress, confronting subject matter and self-care practice. Court staff also undertook workshops in behavioural de-escalation, vicarious trauma and self-care, to help build their mental health first aid and resilience during the pandemic.

The **Drug and Alcohol Sentencing List (DASL)** continued successful operations in the Supreme Court. A report conducted by the Australian National University found that 85% of DASL participants were satisfied with their experience, and 95% were satisfied with the judge[1]. Similarly, the Directorate continued its support of the Court's **Criminal Case Conferencing**.

1 *ACT Drug and Alcohol Sentencing List: Process and Outcome Evaluation Final Report* (Briefing, 29 June 2022) 2.

During 2021–22 over 30% of matters listed for criminal conference were resolved by way of pleas of guilty at the time of the conferencing[2]. This created efficiencies for the Court, prosecution and defence, and reduced the trauma for victims and other witnesses by avoiding the need for them to give evidence at trial.

Pivotal changes were made to the notice requirement for applying for a **grant of probate**. From 1 March 2022 all notices of intention to apply for a grant of probate, letters of administration and reseal of a foreign grant were digitised and published on the ACT Supreme Court website, replacing the requirement for probate notices to be published in a printed newspaper. The Supreme Court website was also updated to include an online form to facilitate easy publication of probate notices, with a new function making searching notices more straightforward.

As an organisation we focussed on making the **ACTCT accessible and inclusive** for all. Following liaison with the ACT Aboriginal and Torres Strait Islander community, the need for a dedicated safe space at the ACT Courts for Aboriginal and Torres Strait Islander persons and their families was identified. In February 2022 the 'Ngilimadadun Room' was opened. The name *Ngilimadadun* was gifted to the Court from the Ngunnawal Elders, meaning *belong here* or *our home too*. The room is available for the use of Aboriginal and Torres Strait Islander clients of the Court to meet in a culturally safe space whilst awaiting Court proceedings.

Other ways we improved accessibility and inclusivity at the Supreme Court included providing information in culturally appropriate formats and easy English guides, installation of power operated

2 ACT Justice and Community Safety Directorate, *Annual Report 21–22* (Report, September 2022) 86.

doors on disabled bathrooms, and improvements to assist vision impaired patrons. We also gained new data storage capabilities and technology enhancements to operate in a COVID-safe online world.

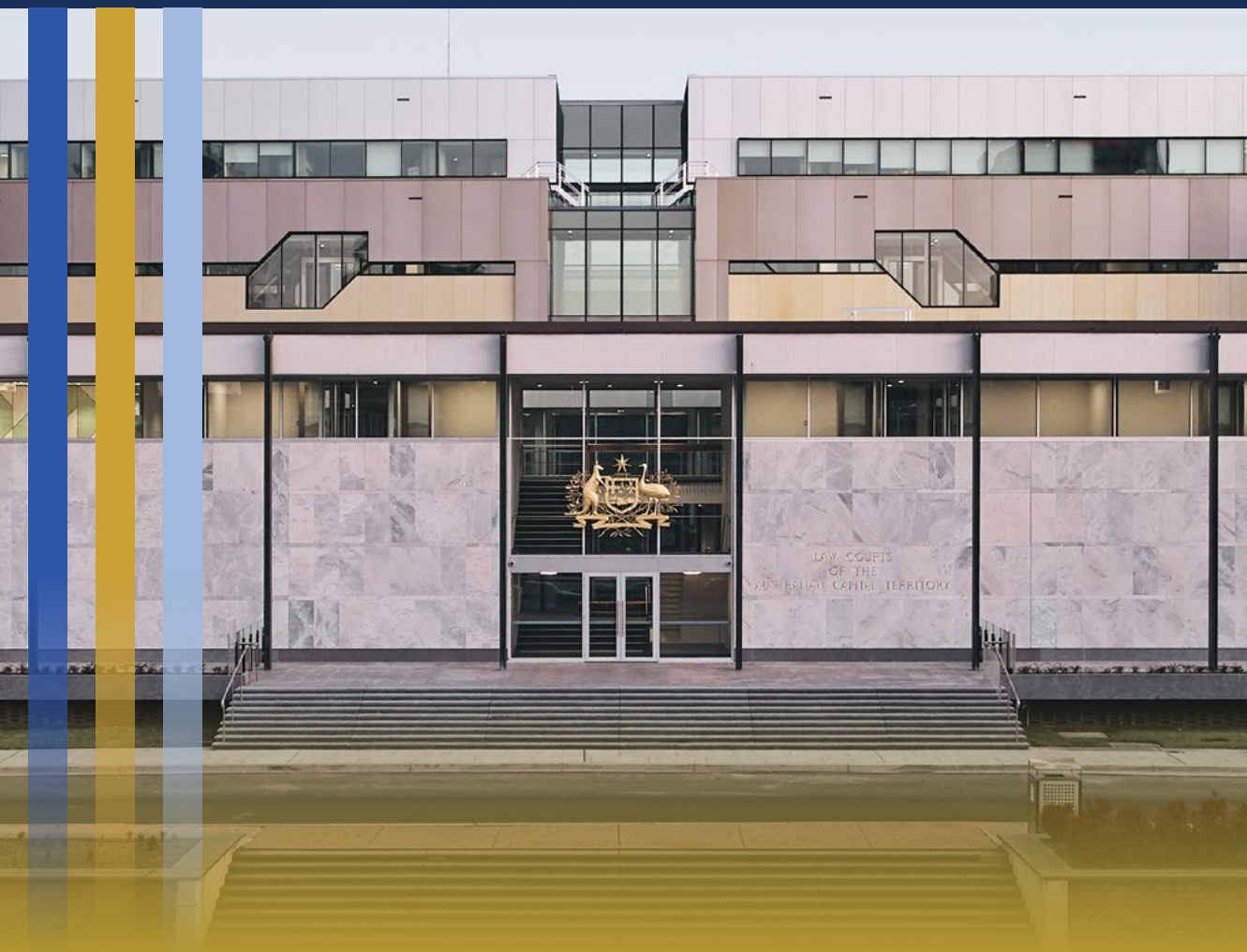
An **education program** was released to support students in years 7–12 to develop their understanding of the work of the Courts. The program includes 7 modules covering the purpose of laws and the justice system, the Court hierarchy, the ACT Courts and the rule of law, criminal cases, sentencing, civil cases, and access to justice. Resources include videos, fact sheets, activities, and links to external materials.

The Supreme Court experienced a significant change in judicial officers with the **appointments and retirement** of several judges:

- Chief Justice Helen Murrell retired and Justice Lucy McCallum was appointed as the Chief Justice.
- Justice Burns retired and Geoffrey Kennett was appointed as a Resident Judge.
- Belinda Baker was announced as an incoming Justice upon the retirement of Justice Michael Elkaim.

It has been trying at times, but the Court's staff have navigated through these pandemic years with enduring reliance and dedication, and for that I commend them. The judiciary, Associates, Registrars, Sheriff's Officers, Client Services, Corporate and IT, and Registry teams have made tremendous efforts to be adaptive and agile and adjust their processes to accommodate unforeseen setbacks. I thank all ACTCT staff for their unwavering commitment to the provision of justice and accessibility. I am proud of our organisation and the people who make it.

ABOUT THE COURT



JUDGES OF THE COURT

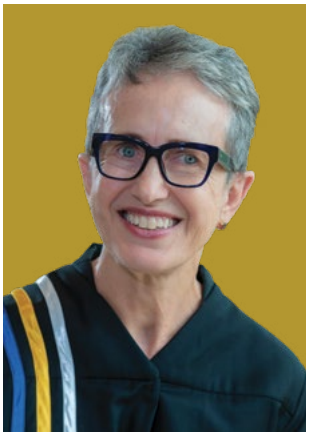
Chief Justice Lucy McCallum

On 8 March 2022, Lucy McCallum was sworn in as the sixth Chief Justice of the Supreme Court of the Australian Capital Territory.

Her Honour attended the University of New South Wales where she graduated in 1986 with a Bachelor of Laws and a Bachelor of Arts, majoring in philosophy. She worked in Sydney as a solicitor in commercial litigation for 18 months at what was then Mallesons Stephen Jaques, before taking a position as a prosecutor in the ACT in 1988. In 1990 her Honour spent a year as a trial advocate with the Queensland DPP. She became a barrister in Sydney in 1991 and took silk in 2005.

In 2008, her Honour was appointed a judge of the Supreme Court of New South Wales in the Common Law Division. She was the Defamation List judge from 2014 to 2018. In 2016, her Honour was appointed Chair of the NSW Judicial Commission Ngara Yura Committee which aims to increase awareness among judicial officers about contemporary Aboriginal and social cultural issues, and their effect on Aboriginal people in the justice system. In February 2019, her Honour was elevated to the New South Wales Court of Appeal where she sat on a wide range of matters until her Honour's appointment as Chief Justice of the Supreme Court of the Australian Capital Territory.

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 an 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

John Burns was first admitted to practice as a solicitor of the Supreme Court of New South Wales in 1981. He practiced 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 Solicitor's 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.

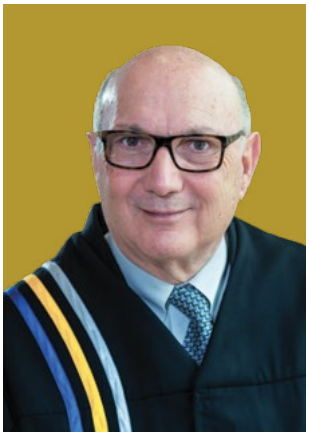
In April 1989 his Honour commenced practice at the bar at Blackburn Chambers. His Honour practised in criminal law and general civil litigation.

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 3 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.

His Honour also led the Drug and Alcohol Court Supreme Court Working Group for the purpose of developing an appropriate Drug and Alcohol Court model for the ACT. The working group was successful in establishing the Drug and Alcohol Sentencing List, which commenced operation at the beginning of the 2020 legal year.

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 his Honour 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.

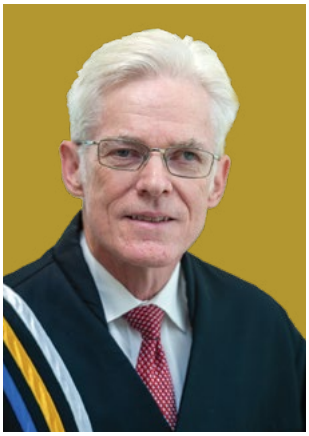
Her Honour attended the University of Sydney, where she graduated in 1985 with a Bachelor of Laws and a Bachelor of Arts. Her Honour was admitted as a solicitor in July of the same year and worked as a solicitor, including at the Aboriginal Legal Service and the Legal Aid Commission, prior to being called to the New South Wales Bar in December 1989. Her Honour was appointed Public Defender in 1995 and was appointed Senior Counsel 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 of the New South Wales Bar Association from 1991 to 2003, 2007 to 2014, and 2016 to 2018. Her Honour was elected to the executive of the New South Wales Bar Council in 2015 and elected a 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.

Justice Geoffrey Kennett



On 21 March 2022, Geoffrey Kennett was sworn in as a judge of the Supreme Court of the Australian Capital Territory.

His Honour attended the Australian National University. He completed a Bachelor of Arts (Hons) in 1985, Bachelor of Laws (Hons) in 1989, and a Master of Public Law in 1993. In 2013, he completed a Master of Laws at the University of Sydney.

Between 1985 and 1998, his Honour worked in Canberra for the Commonwealth, including as counsel assisting the Solicitor-General. In August 1998, he moved to Sydney to commence practice at the New South Wales Bar. His main area of practice was in public law, including judicial review of administrative decisions and constitutional law. He also appeared in native title, revenue and regulatory matters. In October 2010, he was appointed as Senior Counsel.

His Honour also served as chair of the Law Council of Australia's Administrative Law Committee and as a member of the Constitutional Law Committee.

Associate Justice Verity McWilliam

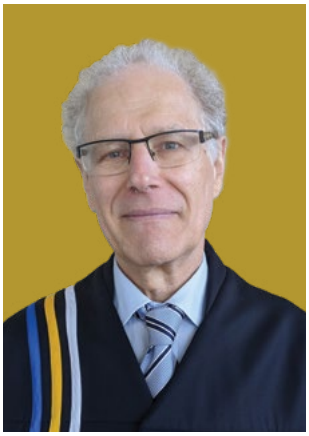
Verity McWilliam was sworn in as the Associate Judge of the Supreme Court of the Australian Capital Territory on 26 June 2017 and currently also holds a commission as an Acting Judge.

Her Honour holds a Bachelor of Arts (Hons I) and a Bachelor of Laws degree from the Australian National University, as well as a Master of International Law degree from the University of Sydney. Her Honour has been admitted to the Roll of Solicitors in the Supreme Court of New South Wales and to the High Court of Australia since 2002. Her Honour formerly practised at the NSW Bar for over 11 years. Her Honour also lectured in public law, federal constitutional law and litigation at the University of New South Wales and the University of Sydney, before her appointment to the Supreme Court.

Previously, her Honour worked as a solicitor for DLA in London, and PricewaterhouseCoopers Legal and the Crown Solicitor's Office in Sydney. Interspersed with her employment as a solicitor were 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.

Her Honour is currently a member of the Judicial Council on Cultural Diversity, which focuses on increasing access to justice within the courts for cultural minorities.

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 key function of the Russell Fox Library – named after the Territory's first Chief Judge, the late Honourable Russell Walter Fox AC QC – is to provide and maintain legal resources for use by judicial officers of the ACT Supreme Court, the Magistrates Court and members of the ACT Civil and Administrative Tribunal.

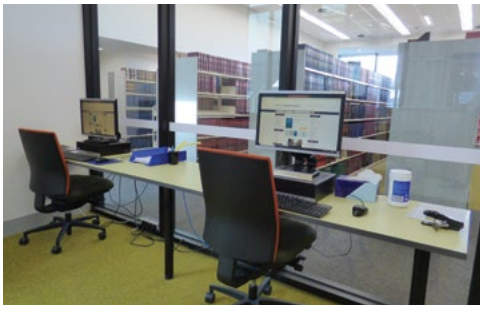
In addition to ensuring that legal resources remain updated and relevant, the library also provides research services to judicial officers and their associates and assists them with locating reference material. Library staff also serve, in a limited capacity, legal practitioners, self-represented litigants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

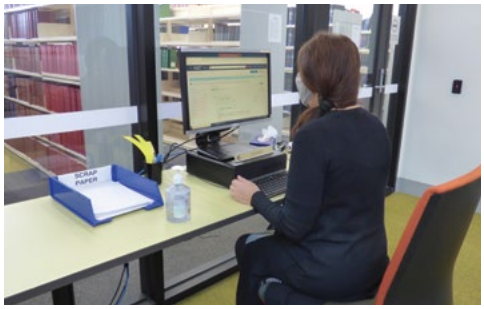
Further, the library is responsible for the publishing of judgments and decisions on the ACT Courts website, assisting with web page updating and with the Court's social media presence on Twitter. Judgments and sentencing remarks appear on the Supreme Court's website at http://courts.act.gov.au/supreme/judgment.

Supreme Court – Judgments and Sentences webpage

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 ACTCT employees. However, both print and online collections are available to external clients and members of the public within the main reading area.





Public area with computers

Public computers

Together with IT support, the library completed the new public computers project to better reflect external clients' needs and support access to the justice. External ACTCT clients are now able to:

- login, load and save material to and from USBs
- login to their internet resources and tools
- work with office documents by using MS Word and Excel
- use printing options
- use the library catalogue
- access online legal resources and
- manage their privacy by restarting the computers to default settings (saved documents and other work are deleted immediately).

Specific COVID-19 measures

During the 2021–22 financial year, the Russell Fox Library was closed to the public between August and October 2021 as a response to the ACT Health advice on lockdown. Most of the year the library remained open with the following restrictions in place:

- number of persons within the library limited to 4
- the library should be contacted in advance to arrange a visit
- time spent at the library limited to 1 hour
- using hand sanitiser before and after using library computers / materials
- wearing a mask and
- online services preferable where possible.

Further, the library was regularly cleaned during each working day from October 2020 and received additional equipment (such as face shields) to protect the staff and the public in 2021.

The above listed restrictions were ceased in February 2022 when the Supreme Court resumed in-person appearances for all matters.

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.

The following recommendations were completed in 2021–22:

- Key Performance Indicators
- Communication Policy and
- Strategic Plan 2022–2027.

The ACTCT Library Management Committee will continue to govern library activities and oversee the implementation of the recommendations based on the action plan timeframe set up to 2022.

Online resources

The Russell Fox Library will continue providing access to Lexis Advance by procuring the LexisNexis resources for next 3 years. External clients can access the library's online resources – LexisAdvance, WestlawAU and CCH – on public computers located at the library public area.

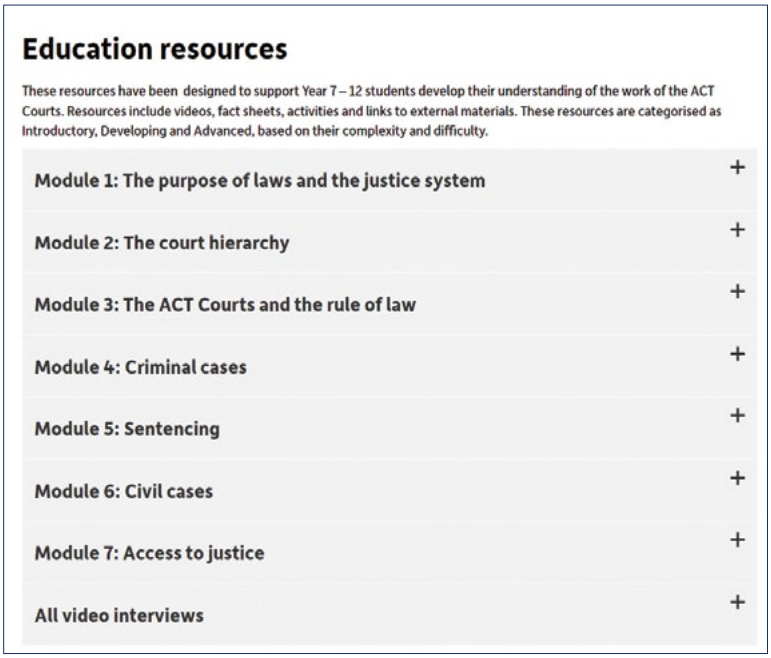
More details about library online resources can be found on the library website, collections page at https://courts.act.gov.au/about-the-courts/russell-fox-library/library-collection.

ACTCT education project

In 2021, the library provided assistance to the ACTCT educational project. The project developed:

- 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) 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 were uploaded to the ACTCT website by December 2021 and are now publicly available at https://www.courts.act.gov.au/about-the-courts/education-resources.



Education resources webpage

International relations

The library has a reciprocal inter-library 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 judgments and sentencing remarks uploaded onto the ACT Supreme Court website by the library during 2021–22:

Jurisdiction	Number of Items Published
Supreme Court of the Australian Capital Territory Court of Appeal	59
Supreme Court of the Australian Capital Territory Full Court	1
Supreme Court of the Australian Capital Territory	185
Sentencing Remarks	129

SHERIFF'S OFFICE

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

During the past year the COVID–19 pandemic continued to place challenges on the Sheriff's Office and how they undertook their functions. Staff continued to strive to meet the demands of the Court as well as ensure the health and safety of staff and the public who had either been summonsed for jury service or attended the Court precinct.

Although the Sheriff's Office did not face the strict requirements of a lockdown situation, staff continued to enforce health restrictions (while they remained in force) which, at times, saw the following occur:

- all enforcement (road) work was either ceased or limited to where contact with the public was manageable
- additional work in the Remote Witness Suite and other remote rooms located within the Court premises to assist with people appearing in court remotely
- facilitating Webex meetings for Court appearances for the Registrar and Senior Deputy Registrar Courts
- continuing the operation of the concierge desk to enforce the approved number of people attending the Courts
- being the first point of contact for people attending Court and addressing enquires from members of the public, particularly in relation to restrictions imposed in the Court precinct
- Distributing Rapid Antigen Tests to people summonsed for jury service, as well as selected jurors, staff and court users (when required) and
- to ensure jury trials could continue, continuing to implement changes to processes, including:
  - when necessary, undertaking the empanelment process via video link
  - the use of an adjacent court room to allow for social distancing amongst jurors
  - provision of individual hand sanitiser sprays, gloves and face masks
  - individually wrapped lunches for jurors to reduce handling of food
  - water bottles to jurors and in court rooms
  - ongoing contact with potential jurors via text messaging to reduce the risk of someone attending the Court premises when unwell and
  - ensuring social distancing practices, when necessary.

Since the removal of health restrictions, the Sheriff's Office has been able to resume pre COVID–19 operations, which has been a welcome relief to all.

In March 2022, the much-anticipated jury management system became operational. This system was developed by Tyler Technologies, a company based in Texas, United States of America. The system is used to support the processes for selecting jurors, managing juror payments and related matters. The new system allows jurors and potential jurors, who have received a jury summons, to have a more active role in the process from the moment they receive their summons. The potential juror can enter their relevant details in the privacy of their home, via a new jury portal. If they wish to defer their service, they can choose a suitable time which meets their needs. They are then able to opt in to receive text messages or emails, with updates to their jury service requirements. This process has given prospective jurors more ownership of their service; has seen a reduction in enquiries from people summonsed for jury service; and has resulted in jury payments being paid more efficiently. Overall, the new jury management system has improved the effective and efficient delivery of jury trials in the ACT and has streamlined processes to improve the experience of those asked to perform jury service.

HIGHLIGHTS

CEREMONIAL SITTINGS

Commencement of 2022 law year

Extract from Chief Justice Murrell's speech given at the opening of the legal year:

> "For the second consecutive year, at the commencement of the legal year we pause to reflect on the values that guide our profession at a time when the means of delivering those services are challenged.
>
> In 2009, Murray Gleeson remarked that:
>
> [T]he Court of the future will need to embrace, and respond appropriately to, the demands of the future, while remaining a Court.[3]

In March 2020, we were confronted with the urgent need to consider that which was essential to the way in which justice was delivered through the Courts. What was it about the delivery of justice that had to be maintained and what could be jettisoned? Consideration of this question was a daunting task, albeit at the time we then optimistically imagined that the issues were short-term, and the solutions could also be temporary. Instead, we became increasingly familiar with the Greek alphabet.

How to respond to a dramatic change in the means of delivering our services "while remaining a Court"? The Courts and the legal profession provide an essential service. But what is essential about it? And what is essential about the means by which the Courts deliver justice?

As with other essential services, questions about what is important may be answered by reference to quantifiable performance outcomes—response times, exam results or lives saved—in the case of courts it is often by reference to finalisation times, settlement rates, and backlogs. But at a more fundamental level the answers are unquantifiable. They are about the means as well as the ends; through the best means we achieve the best ends. That is a tenet of therapeutic jurisprudence to which we should all subscribe.

In every sphere of human activity, one of the key lessons of the last two years has been the importance of connection and communication, and that connection and communication is most satisfactorily achieved by direct personal engagement.

3 Murray Gleeson, 'The Judicial Method: Essential and Inessentials' (Speech, District and County Court Judges' Conference, 25 June 2009) 6.

As in many other fields of endeavour, for courts and the legal profession, "meeting" is not just a means of transacting business. It promotes better decisions. Within the legal profession, meetings such as that in which we are engaged today reinforce who we are, both as individual lawyers and as a community of lawyers with shared ethical values.

Canberra: the meeting place

We are privileged that our legal community meets in Canberra, the meeting place of the nation.

In 1823, Joshua Moore established a station at what is now the site of the National Museum, at "Manarro" as it was called by local Indigenous people.[4] In 1826, he referred to the location as "Canberry", a name that came to be applied to all the surrounding areas. The local Indigenous people were referred to by white writers as the "Kamberra", "Kghambury", "Nganbra" and "Gnabra". It is popularly believed that "Canberra" is an anglicised version of a word that was used by the local Aboriginal people meaning 'meeting place'.[5]

The Canberra region was a significant meeting place for Indigenous peoples to meet for marriages, ceremonies, and trading.[6] Hanging Rock, an undercut boulder within Tidbinbilla, has been a meeting place for centuries. Important ceremonies were held at Tidbinbilla Mountain and other sites within the Namadgi National Park. Within the Canberra area there are more than 3,500 known Aboriginal heritage sites.[7] The Canberra area has been an important meeting place for a very long time.

In 1927, the provisional Parliament house was completed, and the federal Parliament (comprising 112 males) moved its meeting place from Melbourne to Canberra.[8] At the time, Canberra was a town of scattered suburbs with three small shopping centres (at Civic, Manuka, and Kingston) and five temporary hotels providing for a recorded population of 5,915. As prohibition was in force at the time, Parliament and hotels were "dry" and residents had to travel to Queanbeyan to drink.[9]

The Griffin plan for Canberra was completed by 1918, although implementation was interrupted by the First World War and the Depression.[10] By the mid-1930s, the Australian War Memorial, a new hospital and public schools were under construction.

4 'The Early History of the ACT', *National Capital Authority* (Web Page) https://www.nca.gov.au/sites/default/files/3EarlyHistory_0.pdf.
5 Ibid.
6 'Aboriginal Cultural Heritage of the ACT', *ACT Government* (Web Page) ACT Natural Resource Management Council, 'Understanding the Land through the Eyes of the Ngunnawal People' (Resource, 2010).
7 Ibid.
8 Greg McIntosh, 'As it was in the Beginning (Parliament House in 1927)' (Research Paper No 25, Social Policy Group, 27 March 2001).
9 Ibid.
10 Peter Freeman, 'Building Canberra up to 1958', *National Capital Authority* (Web Page) https://www.nca.gov.au/education/canberras-history/building-canberra-1958.

The Second World War again interrupted building activities into the 1950s, when the new National Capital Development Committee proclaimed three objectives: that Canberra should remain a "Garden City", should develop a modern system of communications by road and air, and should eventually become a cultural centre for several aspects of Australian culture.[11] Canberra has become a meeting place for many cultural communities, home to such iconic institutions as the National Museum, the National Portrait Gallery, and Mooseheads.

But while the courts and the profession are well situated in this long-established meeting place, for the past two years we have been unable to meet as we would wish, in the way that we consider most easily promotes the interests of justice."

11 Ibid.

CHANGE OF JUDGES

Retirement of Justice Burns

Justice Burns retired on 31 August 2021. Below are some excerpts from Burns J's speech at his farewell dinner, held at Gandel Atrium, National Museum of Australia on 29 July 2021 (hosted by the ACT Law Society).

Below is an excerpt of Justice Burns' speech:

> "Over the past 31 years, as both a magistrate and a judge, I have been fortunate to have had the benefit of the companionship and guidance of many gifted and generous judicial colleagues... Each and every one of my colleagues on the Supreme Court has in some way contributed to whatever success I have achieved on that court.
>
> My nearly 40 years of experience with the legal profession in Canberra has given me ample opportunity to observe the profession at work... In my opinion the Canberra profession is overwhelmingly competent, diligent and honest. From time to time there are those who disappoint, but from my perspective, looking back over 40 years, I see them as aberrations. The profession in the ACT has much to be proud of.
>
> There is no such thing as a self-made man or woman. We all owe something to someone else; for opportunities that have come our way, for faith in our abilities and for keeping up our spirits when times are tough... I want to thank generally all those members of the profession and my colleagues on the bench with whom I have come into contact over the last 40 years."

Below is an excerpt of Associate Justice McWilliam's speech:

> "Justice Burns is warmly regarded by the profession because of his charm, integrity and his enormous experience. Certain senior members of the profession who have experience with his Honour's entire legal career have said to me that they will miss his Honour greatly, first as a judge, but equally as a mate... The Supreme Court has benefited immensely from John's legal knowledge, his kindness and his generosity, both of spirit and with his time. His door is always open. Meetings with his Honour are always brief, succinct, to the point and helpful... Congratulations John on a wonderful career and we wish you well."

Retirement of Chief Justice Murrell

Chief Justice Murrell retired on 4 March 2022. Below are some excerpts from her Honour's speech, given at the Ceremonial Sitting at the ACT Supreme Court to mark her retirement on 4 March 2022.

> "My time as a judge of this Court has reinforced something that I expressed when I was sworn in as Chief Justice—that judging is the most rewarding way in which to practise the law. I think that I was a reasonable barrister and a fair judge. But it was really only in the autumn of my career, in this role, that I found my vocational stride. In this role, I have felt most extended and most comfortable. I am one of the lucky few who can say that my career has given me everything that I would have wished for if, in myopic adolescence, I could have had the wisdom of later years.
>
> I came into this role at a time when—as the judges, the profession and the bureaucracy agreed, change was needed on many fronts. Changes were needed to improve court efficiency. Resources were antiquated—the courthouse was in adequate for contemporary needs and so was the IT. There was neither a civil nor a criminal mediation system. Governance was, at best, idiosyncratic, and at worst, just plain absent. There was distressingly little recognition that the judiciary was a separate arm of government—rather, it was widely regarded as an eccentric outpost of the Justice and Community Services Directorate. No one person or group of people can effect sustainable change.
>
> The changes that have occurred here have been the work of everyone present in Court today and everyone who has been associated with the Court over the past eight years. I would like to mention a few of my fellow travellers on that journey to change. No doubt, I will omit some important names and I apologise for those omissions.
>
> Attorney-General, Simon Corbell, and successive JACS Director-Generals, enabled the Court to resume control of its own affairs, progressed the funding of a new Court building, and otherwise adequately resourced the Court. They supported the critical decision to appoint a Principal Registrar, answerable to the heads of jurisdiction, rather than to the executive. I know that our current Attorney-General is also committed to supporting and strengthening the judicial arm of government.
>
> The legal profession. For us as judges, the gossiping habits acquired as advocates continue—much as we once complained about judges, we now complain about counsel. "I can't believe I've drawn X. I'll be here all week", "If I've said it once, I've said it a dozen times, but they just can't understand the obvious point", and so on.

But in the clear light of day, it must be conceded that most of you don't waste the Court's time and you do get the point. You demonstrate the qualities of the profession at its best—integrity, courage and efficiency. You have proposed creative ideas and fearlessly embraced change. Thank you for the way in which you have served as officers of the Court.

As has been remarked, one of the most satisfying changes has been the increase in the number and seniority of women advocates in this jurisdiction. It was only three years ago that I lamented, "perhaps before I retire…women will occupy the front bar table". And now you have taken your seat at that table. The ACT is probably the only Australian jurisdiction in which women are appropriately represented in all parts of the courtroom most of the time."

Appointment of Chief Justice McCallum

Chief Justice McCallum commenced on 8 March 2022. Below are some excerpts from her Honour's speech, given at the Ceremonial Sitting at the ACT Supreme Court to mark her appointment on 8 March 2022.

> "Although I worked as a prosecutor in the ACT for several years at the outset of my career, I cannot lay claim to being a true local; at least, not yet. I want to begin by assuring my fellow judicial officers, judges and magistrates, tribunal members and the legal practitioners of the ACT of my commitment to immerse myself in your professional community, to be educated by you, to hear about what you are proud of and what you think could be done better, and to take every measure within my personal capacity and the institutional power of the Court to foster a culture of excellence and a continual exchange of ideas.
>
> Perhaps I can begin that exchange – and it has been observed that I am an open book; it's true – by sharing some of my ideas and beliefs with people present today. In so doing, I recognise that the authority of the court is institutional not personal to me. I do not and will not seek to impose my personal beliefs on others, but I also recognise that strong leadership demands a strong expression of where I hope to carry hearts and minds and for that reason, I want to explain four of my core beliefs.
>
> First, and I have to say foremost, I believe that the overrepresentation of indigenous people in custody is a national tragedy that demands urgent attention. More broadly, the overcrowding of prisons across Australia, including in this territory, reflects an approach to sentencing which prefers isolation of offenders in a custodial setting over early engagement with the endemic problems that contribute to the causes of their offending.
>
> Addressing those issues is not something the Court can or should seek to achieve alone. I am not talking about introducing a culture of leniency in sentencing or exposing the community to unwarranted risk by taking an unduly generous approach to bail applications. I am not talking about setting at nought the hard work of police, who have perhaps the most difficult and thankless role in the criminal justice system. I am talking about the need for an exchange of ideas about the concept of moral culpability.
>
> First Nations people have been wronged in a number of ways by the imposition on them of our rule of law. No longer can we suffer the administration of justice to be the instrument of injustice. The High Court has recognised in a series of decisions that offenders who have experienced a childhood of profound deprivation may on that account have a lesser moral culpability for the offences they commit.

The logical corollary of that recognition is to embrace the proposition that we in turn have a moral responsibility to seek to identify and address the causes of profound deprivation. I believe it would strengthen, not weaken, our criminal justice system to take some of the fear out of our conception of criminals and address offending conduct as a broader social issue.

Secondly, the court of course expects practitioners and litigants to assist it to resolve the real issues in dispute in a manner that is just, quick and cheap, and not to waste its resources, which are finite and precious. However, we – and I mean 'we', the court – must not lose sight of the fact that the role of these resources is to serve the public. The court must provide its services in the recognition that the resources of litigants are also finite and precious. I am not talking only about financial resources. The experience of litigation for both individuals and companies drains more than a family's savings or a company's finances. The primary function of the court in its civil jurisdiction is to bring an end to the often draining conflict that brings litigants before the court. To that end, we have a duty to strive to implement procedures that are constant and immune from the vagaries of individual whim and to produce decisions that are clear and that are delivered promptly.

Thirdly, I believe that with the exercise of judicial power comes the responsibility to recognise its proper limits. That is, in part, a principle of constraint, but it is not only that. We must have the discipline, for example, not to succumb to the siren call of the merits when the task is judicial review for jurisdictional error. Equally, however, we must have the discipline, and indeed the courage, not to refuse to do right to any person under the guise of a constructed limit on power.

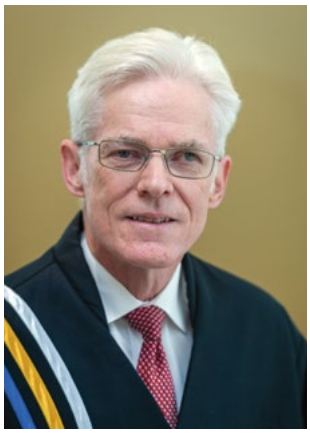
Fourthly, in all contexts, in court and out, I believe that all those who play any role in the administration of justice have a fundamental right to be treated with respect. When the court is convened the court officer traditionally announces, 'Any person having any business before the court draw nigh, give your attendance and you shall be heard'. I am speaking of my experience in that other jurisdiction. There is more to being heard than being allocated time to talk. The court must listen."

Appointment of Justice Kennett

On 21 March 2022, Geoffrey Kennett was sworn in as a judge of the Supreme Court of the Australian Capital Territory.

Below are some excerpts from Justice Kennett's speech given at the ceremonial sitting for his Honour's swearing in at the ACT Supreme Court on 21 March 2022.

> "The Chief Justice spoke at her swearing-in ceremony the week before last of the great emergency that is the over-representation of Aboriginal people in the criminal justice system. That is one of many ways in which life in this country for its first peoples is, to put it very mildly, not what it should be. This is not something to be fixed by the provision of social services, although they are needed and important. The pain of dispossession, destruction of culture, frontier violence that is only now being fully brought to light, and decades of outright discrimination, echoes down through the generations, and that is not only a massive burden for Aboriginal people to carry. It is a weight on our nation's mind and a cloud over its heart, something our polity needs to make right before we can truly be comfortable and relaxed.
>
> The method and the content of that reckoning with the past are way beyond my expertise and beyond my proper province from today, but it has to start, I think, with showing respect and meaning it, which is why, when we conduct ceremonies on this land, it is important to acknowledge the people who occupied it, understood it intimately, and cared for it four countless generations before Europeans came, and who are still here among us.
>
> I'm sobered by the responsibility that I'm taking on to do justice to all manner of people in cases that affect them deeply. Judges always need the assistance of the profession, even if they sometimes appear not to, but in my case the need will be obvious. I'm very much looking forward to that learning process. I am also excited to be joining a strong and energetic court. My colleagues have reputations that extend well beyond the borders of the territory and they are nice people, to boot."



EVENTS

Australian Law Librarians' Association Virtual Conference

An excerpt from Chief Justice Murrell's speech, 23 September 2021:

> "There are many new and insidious ways of ensuring that we see only what we want to see, and we hear only what we want to hear, regardless of whether it is true.
>
> Social media algorithms perpetuate the dissemination of fake news in consumers' "feeds".
>
> > [S]earch engines and social media platforms provide personalized recommendations based on the vast amounts of data they have about users' past preferences. They prioritize information in our feeds that we are most likely to agree with—no matter how fringe—and shield us away from information that might change our minds.[12]
>
> Social media create "echo chambers" for misinformation; via algorithms and confirmation bias, people are led to others who are like them.[13] These echo chambers separate people into large and increasingly misinformed communities that readily share fake news within the community; the supposed "truth" of the misinformation is affirmed by "likes" piling on "likes". It is a pandemic with a frightening R factor.
>
> The US Centre for Countering Digital Hate has named a "Disinformation Dozen", 12 anti-vaccine activists that, across the social media platforms of Facebook, YouTube, Instagram and Twitter, reach more than 59 million followers, and are responsible for as much as 65% of anti-vaccine misinformation on those platforms.[14] Misinformation has dramatic real-life consequences. Exposure to even a small amount of online vaccine misinformation may reduce the number of people willing to receive a COVID-19 vaccine by up to 8.8%.[15]
>
> The spread of misinformation on social media is further enhanced by "bots", automated accounts that impersonate human users.[16] Bots are easy to create. They can amplify misinformation by interacting with a social media post, increasing the popularity of the post and spreading the post in users' algorithms.[17] Research by the Australian National University concluded that bots were two-and-a-half times more influential than humans during the first US presidential debate in 2016.[18] In 2017, Menczer and Hill estimated that up to 15% of active Twitter users were bots, and they played a large role in spreading misinformation during the 2016 US presidential election:

12 Panel, 'New Directions for Law Libraries: Alternatives for the Future' (1971) 64(4) Law Library Journal 507.
13 Ibid.
14 'The Disinformation Dozen: Why Platforms Must Act on Twelve Leading Online Anti-Vaxxers' (Center for Countering Digital Hate, 2021) 5.
15 Sahil Loomba et al, 'Measuring the impact of COVID-19 vaccine misinformation on vaccination intent in the UK and USA' (2021) 5 Nature Human Behaviour 337–348.
16 Filippo Menczer and Thomas Hills, 'Information Overload Helps Fake News Spread, and Social Media Knows It', *Scientific American* (Web Page, 1 December 2020) Information Overload Helps Fake News Spread, and Social Media Knows It – Scientific American.
17 Ibid.
18 Marian-Andrei Rizoiu et al, '#Debatenight: The role and Influence of Socialbots on Twitter During the 1st 2016 U.S. Presidential Debate' (Conference paper, International AAI Conference on Web and Social Media, June 2018).

> Within seconds of a fake news article being posted—such as one claiming the Clinton campaign was involved in occult rituals—it would be tweeted by many bots, and humans, beguiled by the apparent popularity of the content, would retweet it.[19]
>
> Bots fired off hashtags such as #trump2016 and #neverhillary. Approximately 126 million Facebook users were exposed to this content.[20] The end result—an estimated increase of 3.23% in the Trump vote.[21]"

Bows Ceremony of Senior Counsel

Chief Justice Murrell's speech on the announcement of Margaret Jones and Rebecca Christensen as Senior Counsel, 5 November 2021:

> "Ms Jones, Ms Christensen,
>
> The Court is delighted at your announcements.
>
> Each of you is very well known to the Court as both a trial and appellate counsel.
>
> Ms Jones, over the past 30 years your ability has been enhanced by working on both sides of the record. You commenced at the Legal Aid Office in Fairfield, Western Sydney, working for Legal Aid for eight years before moving to prosecute in the ACT, where you rose to the position of Deputy Director. At the ACT Director of Public Prosecutions, you made a significant contribution, particularly in relation to the Territory's response to family violence and sexual offending. Since 2019, the private bar has benefited from your talents. You continue to contribute to the development of the criminal law and criminal law reform.
>
> Ms Christensen, you too have become a regular and welcome counsel in the Court, especially in the Court of Appeal. You have prosecuted in several very challenging jurisdictions, the Solomon Islands and Papua New Guinea—not to mention Queensland. You have made a valuable contribution by mentoring others there and here. No doubt the challenges that you had to meet elsewhere fostered the resilience that has enabled you to gain recognition in this jurisdiction so quickly.
>
> In the past eight years, only two other senior counsel have been appointed in this jurisdiction, Mr White and Mr Drumgold. All four of you are the product of that hothouse of talent, the office of the ACT Director of Public Prosecutions.

19 Filippo Menczer and Thomas Hills (n 14).

20 Sophie Marineu, 'Fact check US: What is the impact of Russian interference in the US presidential election', *The Conversation* (online, 30 September 2020) https://theconversation.com/fact-check-us-what-is-the-impact-of-russian-interference-in-the-us-presidential-election-146711.

21 Yurity Gorodnichenko, Tho Phan and Oleksandr Talavera, 'Social Media, Sentiment and Public Opinions: Evidence from #Brexit and #USELECTION' (Working Paper No 24631, National Bureau of Economic Research, 2018).

It is, of course, a matter of particular satisfaction to Justice Loukas-Karlsson, Justice McWilliam and me to see such capable women recognised in this way. Unfortunately, Justice McWilliam is not here because she has had to attend to urgent parental duties. But she is here in spirit.

We can all take pride that this year two eminent women have been appointed senior counsel. I confidently predict that this is the only jurisdiction in which all senior counsel appointed this year will be women.

Ms Jones and Ms Christensen, your appointment is a recognition of your advocacy skills, your contribution to, and your stature within the profession—not to mention your tenacity. It is also a tribute to the progressive nature of the profession that has briefed you, enabled you to develop your potential, and which has now publicly proclaimed your achievements. You are role models for the many women who will follow."

Chief Justice Murrell portrait unveiling

Ross Townsend, a Canberra local artist, was commissioned to provide a portrait of Chief Justice Murrell to mark her retirement. Ross spent some time with the Chief Justice taking photos of her in preparation for the portrait. The portrait was unveiled in November 2021 and hangs alongside the portraits of all former Chief Justices outside Supreme Court Rooms 1 and 2 in the heritage wing of the building. The portrait depicts Chief Justice Murrell standing robed in the new ceremonial court (Court Room 3).

The Chief Justice was instrumental in the new courts building project and worked closely with the project team to ensure the build of a high-quality facility that will serve the Territory well for decades to come.

Women Lawyers Association International Women's Day breakfast

An excerpt from Chief Justice Murrell's speech "Ambition is not a dirty word", 3 March 2022:

> "Ambition is a gendered concept.
>
> If a man is ambitious, he is impressive, bold, and resourceful.[22] He is a real man, just the sort of guy you would want on your team. But an ambitious woman is a self-promoting troublemaker, and generally unlikable.[23] In other words, unwomanly, an affront to her gender.
>
> In a well-known experiment by Professor Flynn of Columbia Business School, students were presented with the same case scenario, except that for the half the students the case subject was named "Heidi" and for the other half the case subject was "Howard".[24] The students rated both Heidi and Howard as equally competent, but they disliked Heidi and liked Howard.[25] The "more assertive a student found Heidi to be, the more they rejected her".[26]
>
> The Pew Research Center found that the three most valued traits in men were:[27]
>
> 1. Honesty/morality;
> 2. Professional/financial success; and
> 3. In an interesting pairing of success and ambition, for men the third valued trait was Ambition/leadership.
>
> But for women the three most valued traits included neither success nor ambition. No, the most valued traits were:[28]
>
> 1. Physical attractiveness;
> 2. Empathy/nurturing/kindness; and
> 3. Intelligence.

22 Emma Lovell, 'Ambition is not a dirty word: why women should change their view of ambition', *She Defined* (Web Page, 13 February 2019) https://shedefined.com.au/life/ambition-is-not-a-dirty-word-why-women-should-change-their-view-of-ambition/.
23 Ibid.
24 Maria Katsarou, 'Women & the Leadership Labyrinth Howard vs Heidi', *Leadership Psychology Institute* (Web Page) http://www.leadershippsychologyinstitute.com/women-the-leadership-labyrinth-howard-vs-heidi/.
25 Ibid.
26 Caroline Castrillon, 'Why Ambition Isn't A Dirty Word for Women', *Forbes* (Web Page, 28 July 2019) https://www.forbes.com/sites/carolinecastrillon/2019/07/28/why-ambition-isnt-a-dirty-word-for-women/?sh=7ca8e886e07c.
27 Kim Parker, Juliana Menasce Horrowitz and Renee Stepler, *On Gender Differences, No Consensus on Nature vs. Nurture* (Report, 5 December 2017) https://www.pewresearch.org/social-trends/2017/12/05/americans-see-different-expectations-for-men-and-women/.
28 Ibid.

Margaret Heffernan, author, and entrepreneur, stated that:

> All leaders are expected to be competent, benevolent, consistent and to demonstrate integrity.... But women also are expected to show that they care about the people working for them. To the degree that that isn't visible, they are disliked or distrusted or both.[29]

Sheryl Sandberg, Chief Operating Officer of Meta Platforms (formerly Facebook) said in her book *Lean In: Women, Work, and the Will to Lead:*

> Aggressive and hard-charging women violate unwritten rules about acceptable social conduct. Men are continually applauded for being ambitious and powerful and successful, but women who display these same traits often pay a social penalty.[30]

Australia's first woman Prime Minister, Julia Gillard, and Ngozi Okonjo-Iweala have spoken of how powerful women must walk a tightrope, balancing strength and empathy, being neither too tough (a bitch) nor too soft (lacking the backbone required by the job).[31]

From an early age, girls learn that they shouldn't be tough and ambitious. In primary school, girls tend to outperform boys.[32] But from puberty they start playing down their ambitions. They don't want to be labelled "bossy", "pushy" or a "show off".[33]

According to the Australian CGU Ambition Index, 7 in 10 women have hidden their ambition from others "for fear of being labelled a bragger".[34]

As the recent Grace Tame incident illustrates, some people still think that, when a woman is faced with the choice of being honest or being nice, it's more important to be nice.

We hear a lot about the "ambition gap": that women are inherently less ambitious than men, that motherhood and age dampen female career goals and that women just aren't interested in leading.[35] Or, as has been suggested, there is an "ambition gap" that reflects the "F Factors" – fear and family.

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29 Caroline Castrillon, 'Why Ambition Isn't A Dirty Word for Women', *Forbes* (Web Page, 28 July 2019) https://www.forbes.com/sites/carolinecastrillon/2019/07/28/why-ambition-isnt-a-dirty-word-for-women/.

30 Sheryl Sandberg, *Lean In: Women, Work, and the Will to Lead* (W H Allen, 2015) 17.

31 See Julia Gillard and Ngozi Okonjo-Iweala, *Women and Leadership* (Penguin Random House Australia, 2021). See also Michael Gordon, 'Julia Gillard: On Women', *University of Melbourne* (Web Page, 27 January 2018) https://pursuit.unimelb.edu.au/articles/julia-gillard-on-women.

32 Jennifer O'Connell, 'Ambition: Why is it still a dirty word for women?', *The Irish Times* (online, 20 October 2018) https://www.irishtimes.com/life-and-style/people/ambition-why-is-it-still-a-dirty-word-for-women-1.3665720#:~:text=For%20women%2C%20ambition%20is%20sometimes%20seen%20as%20a%20dirty%20word.&text=If%20you're%20a%20woman,world%2C%20much%20less%20socially%20acceptable.

33 Ibid.

34 Emma Lovell, 'Ambition is not a dirty word: why women should change their view of ambition', *She Defined* (Web Page, 13 February 2019) https://shedefined.com.au/life/ambition-is-not-a-dirty-word-why-women-should-change-their-view-of-ambition/.

35 Katie Abouzahr et al, 'Dispelling the Myths of the Gender "Ambition Gap"', *Boston Consulting Group* (Web Page, 5 April 2017) https://www.bcg.com/en-au/publications/2017/people-organization-leadership-change-dispelling-the-myths-of-the-gender-ambition-gap.

In fact, research shows that there is no "ambition gap"; it is a myth.

In a large 2017 survey, the Boston Consulting Group survey found that women began their professional careers with levels of ambition that – at least – matched those of men, and their ambition was not eroded by motherhood or family status.[36] However, company culture did influence ambition.[37] Consistent with common sense, women retained their ambition if they worked in companies that had a positive work environment and valued diversity; if leadership looks achievable, ambition is fostered.[38] CEOs and managers can foster a positive culture in which women feel included, relaxed and able to be themselves.

In 2015, Michelle Ryan of the University of Exeter in the UK found that, while men's ambition increased over time, that of women decreased.[39] However, the decrease was not associated with having children. Rather, it reflected subtle system biases.[40]

Similarly, a 2020 American study found that there was no "ambition gap" influencing the number of women who entered politics.[41] Rather, individual, institutional and contextual gendered dynamics encouraged male candidacy and undermined female candidacy.[42]

A 2021 Citizen Political Ambition Study in the United States found that, over a 20-year period, there had been no narrowing of the gender gap in political ambition.[43] In contrast to men, women still perceived themselves to be unqualified rather than qualified to run for office, possibly because it was also much less likely that a colleague had encouraged them to run.[44] They also were much less likely to have the domestic and financial support necessary to engage in political campaigning.[45]

Fortunately, we can be confident that, within the ACT legal profession, ambition is not a dirty word. Our law faculties are led by women. Our courts are led by women and women are well represented on both courts. Our Law Society is led by a woman and 60% of our solicitors are women.[46] At the junior bar there are many talented women who are extensively briefed. Last year, both the new silks were women. I don't think that we need to fear slippage. Women have become entrenched at all levels."

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36 Ibid.
37 Ibid.
38 Ibid.
39 Melissa Davey, 'Women start out as ambitious as men but it erodes over time, says researcher', *The Guardian* (Online, 19 November 2015) https://www.theguardian.com/australia-news/2015/nov/19/women-start-out-as-ambitious-as-men-but-it-erodes-over-time-says-researcher. See further Michelle Ryan et al, 'Getting on top of the glass cliff: Reviewing a decade of evidence, explanations, and impact' 27 (2016) *The Leadership Quarterly* 446–455.
40 Ibid.
41 Jennifer M. Piscopo and Meryl Kenny, 'Rethinking the ambition gap: gender and candidate emergency in comparative perspective' 3(1) *European Journal of Politics and Gender* 3–10.
42 Ibid.
43 Jennifer L. Lawless and Richard L. Fox, 'Running for office is still for men—some data on the "Ambition Gap"', *FixGov* (Blog Post, 8 February 2022) https://www.proquest.com/blogs-podcasts-websites/running-office-is-still-men-some-data-on-ambition/docview/2628092498/se-2?accountid=8330.
44 Ibid.
45 Ibid.
46 URBIS, *2020 National Profile of Solicitors* (Final Report, 1 July 2021) 2020 National Profile of Solicitors – Final (lawsociety.com.au).

Provision of robes to Solomon Islands

The ACT Supreme Court donated a dozen associate robes to the Public Solicitor's Office (PSO) of the Solomon Islands. The PSO is an independent public office established under the Constitution of the Solomon Islands to provide legal aid, advice and assistance to persons in need. The donation was warmly received.

> "I refer to the recent donation of court gowns from ACT Courts. The Public Solicitors Office is supported by the Solomon Islands Government and the lack of appropriate court attire is a constant issue for our office.
>
> The gracious donation will be a welcome addition to our office and assist in our mission of defending the rights of the most disadvantaged in the Solomon Islands.
>
> Your assistance is greatly appreciated."
>
> Best regards,
>
> **George Gray**
> Public Solicitor

SELECTED CASES

ACT COURT OF APPEAL

Collaery v The Queen (No 2) [2021] ACTCTA 28

The Court of Appeal has unanimously allowed an appeal by Mr Collaery concerning the public disclosure of certain information that is likely to be given as evidence in his trial.

Mr Collaery is facing five charges alleging that he breached section 39 of the *Intelligence Services Act 2001* (Cth) by communicating information to various ABC journalists that was prepared by or on behalf of the Australian Secret Intelligence Service (ASIS) in connection with its functions, and that he conspired with "Witness K" to communicate information to the Government of Timor-Leste that was prepared by or on behalf of ASIS in connection with its functions.

On 26 June 2020, the primary judge made orders under the *National Security Information (Criminal and Civil Proceedings) Act 2004* (Cth) prohibiting the public disclosure of certain evidence that may be given during the trial of Mr Collaery.

The nondisclosure orders were sought by the Attorney-General for Australia. They would mean that significant parts of the trial were not conducted in public and that persons involved in the trial, including jurors, and others, including the media, could not disclose parts of the evidence given at the trial. The prohibition would continue after the conclusion of the trial.

Mr Collaery accepted that some sensitive information should not be publicly disclosed. Ultimately, he sought public disclosure only of information relating to the truth of six specific matters, which he called the Identified Matters.

The primary judge considered that public disclosure of information relating to the truth of the Identified Matters posed a real risk of prejudice to national security. His Honour concluded that nondisclosure orders were appropriate because they would not have a substantial adverse effect on Mr Collaery's right to receive a fair hearing, and the desirability of conducting the proceedings in public did not outweigh the need to protect national security. The appellant appealed from the order.

The Court of Appeal accepted that public disclosure of information relating to the truth of the Identified Matters would involve a risk of prejudice to national security. However, the Court doubted that a significant risk of prejudice to national security would materialise. On the other hand, there was a very real risk of damage to public confidence in the administration of justice if the evidence could not be publicly disclosed. The Court emphasised that the open hearing of criminal trials was important because it deterred political prosecutions, allowed the public to scrutinise the actions of prosecutors, and permitted the public to properly assess the conduct of the accused person. The Court of Appeal remitted the matter to the primary judge to consider the admissibility and effect of further affidavits held by the Attorney-General that the primary judge has not yet considered, and which have not been provided to Mr Collaery or his lawyers. Subject to any impact that these affidavits may have, there may be public disclosure of information relating to the truth of the Identified Matters.

John XXIII College v SMA [2022] ACTCA 32

The Court of Appeal (Murrell CJ, Loukas-Karlsson J and McWilliam AJ) partially allowed an appeal by John XXIII College (a residential college at the ANU) against a decision by a single judge to award damages to a former resident of the College in the sum of $420,201.57 plus costs. The Court of Appeal reduced the sum awarded by the primary judge to $267,500.

In the proceedings at first instance, the resident had been successful in a claim for negligence against the College, the genesis of which was a social event she attended at the College which involved the consumption of alcohol both at the College and then at various different locations around Canberra. The resident claimed that she had suffered psychiatric injury as a result of the assault and the handling of her subsequent complaint to the College about the conduct of the other resident.

The primary judge found on the balance of probabilities (as opposed to the criminal standard) that the resident of the College was sexually assaulted during that event by another resident of the College. It was also found that the College had breached its duty of case in directing its students to leave the College while they were heavily intoxicated and secondly, in its inappropriate management of the resident's subsequent complaint to the College about the behaviour of the other resident who had assaulted her. The conduct of the College was accepted to have caused the psychiatric injury which resulted in damages being awarded to the resident for non-economic and economic loss. The College appealed the primary judgment on 15 grounds. These included certain factual findings made at first instance, admissibility of evidence, liability, and the quantum of damages awarded. The resident brought a cross-appeal on 2 grounds, complaining that the quantum of general damages awarded was too low, and also contesting the costs orders made by the primary judge, which were in her favour, but not to the extent she believed accorded with the proper operation of the procedural rules of court when formal offers of compromise are made during the proceeding. The Court of Appeal found that the primary judge made two errors that were material to the result. The first was that it had not been established the College's direction to the students to leave the College premises caused the resident to suffer injury. The second was in the assessment of damages for past and future economic loss.

However, the Court of Appeal found no error in the primary judge's finding that the College breached its duty of care in the handling of the resident's complaint. The Court of Appeal concurred with the primary judge's view that this aspect of the claim was the more significant cause of the resident's psychiatric injuries and disability. The finding that the College had a duty to investigate complaints competently and in accordance with its own policies was upheld, as was the finding that the College had failed to do so in this case, which materially contributed to the resident developing a psychiatric injury.

In relation to the cross-appeal, the Court of Appeal found there had been no error with regard to the quantum of general damages awarded to the resident and, in light of the other findings made on the appeal, it was unnecessary to consider the costs argument based on a formal offer of compromise.

The result of the appeal and cross-appeal is that the resident ultimately remained successful in the action she brought in negligence, but the damages awarded to her were reduced.

May v Helicopter Resources Pty Ltd; May v Commonwealth of Australia [2022] ACTCA 15; 17 ACTLR 295

The two respondents in these appeals were tried in the Magistrates Court for failure to ensure the health and safety of pilots providing helicopter services to the Australian Antarctic Division, following the death of a helicopter pilot in Antarctica. At first instance, Helicopter Resources was acquitted and the Commonwealth was convicted of two charges and acquitted of a third. The appellant appealed to the Supreme Court in relation to Helicopter Resources, and the Commonwealth appealed to the Supreme Court in relation to its convictions. The appeals were dismissed and allowed respectively, with the result that none of the charges were made out.

The appellant then appealed to the Court of Appeal from both decisions. The respondents contended the appeals were outside the scope of appeals that may be brought to the Court of Appeal. Their Honours Mossop and Thawley JJ and McWilliam AJ held that, for different reasons as between the respondents, the objections to competency were not made out.

Their Honours considered the general principle that, as a reflection of the common law right not to be subject to double jeopardy, no appeal should lie from a judgment of acquittal pronounced in criminal proceedings by a court of competent jurisdiction after a hearing on the merits. Through conducting a survey of case law, they found that the principle did not apply in either appeal. For Helicopter Resources, this was because the legislature had expressly provided for prosecution appeals against an acquittal to the Supreme Court. Their Honours found that there was no interpretative reason that the principle against double jeopardy would be revived for a second-level appeal to the Court of Appeal. In the case of the Commonwealth, their Honours found that the principle had no application in circumstances where the Commonwealth initiated the appellate chain by appealing against its conviction to the Supreme Court. The Court held there was no principled basis to read down the general right of appeal in the *Supreme Court Act 1933* (ACT) to deny a prosecutors' appeal from an order made on appeal (rather than from an acquittal after a hearing on the merits).

Their Honours also dismissed a contention that the grounds of appeal were incompetent, in part due to the complexity of the case. The Court stated that the availability of particular grounds of appeal was a matter which may be addressed at the hearing of the appeal.

Monday (a pseudonym) v The Queen [2022] ACTCA 25

The appellant, Mr Monday (a pseudonym) sought leave to appeal from an order made by Murrell CJ to revoke a non-publication order under s 111 of the *Evidence (Miscellaneous Provisions) Act 1991* (ACT) that prohibited the publication of the appellant's name and matters that may tend to identify him. Elkaim J, Loukas-Karlsson J and McWilliam AJ agreed that Chief Justice Murrell's revocation order was interlocutory in nature as it concerned a procedural matter, namely whether the appellant's name should remain suppressed after he had been sentenced.

The majority, Elkaim J and McWilliam AJ, did not grant leave to appeal as their Honours did not consider Murrell CJ's decision was attended with sufficient doubt to warrant reconsideration and the proceeding did not otherwise fall within an established bases for a grant of leave. Their Honours held that Murrell CJ reasoned that a suppression order of the type sought did not fall within the bounds of the "administration of justice". Accordingly, their Honours found the scope of the "administration of justice" encompassed "justice between the parties". The non-publication order in question was made at an early stage in the proceedings and once the proceedings were completed, as Murrell CJ reasoned, "the proceedings have been finalised and justice administered". Their Honours held that the primary judge was emphasising that any further suppression order "must promote or be in furtherance of the administration of justice". The majority held that while the Court acknowledges the hardship that impacts an offender's family members, "this is a consequence of the conduct of the offender and the outcome of the proceedings, not a prejudice affecting the administration of justice".

Loukas-Karlsson J, in dissent, held that there was an error in principle and that leave to appeal should be granted as a substantial injustice would result if leave were refused. Her Honour acknowledged the two competing considerations in the matter, being the principles of open justice and the need for protection. Her Honour reasoned that at common law and in s 111 the safety of persons was a recognised category of case under the administration of justice ground in which non-publication orders in the form of assigning a pseudonym can be made. Accordingly, her Honour held that consequences of harm to a third party have been recognised as justifying the making of relevant orders and go to the administration of justice where the impact of not making an order may result in harm to third parties.

ACT SUPREME COURT FULL COURT

UD v Bishop [2021] ACTSCFC 1; 17 ACTLR 159

The appellant was charged with one count of minor theft in the Children's Court. The appellant was 13 years old at the time of the alleged offence. At the hearing a no case submission was made on the basis that a prima facie case that the appellant knew his conduct was wrong had not been established. The submission was rejected on the basis that the accused did not discharge the evidential burden and that it was contrary to the single judge decision of *Williams v IM* [2019] ACTSC 234; 14 ACTLR 147.

The issue on appeal was whether or not the appellant bore an evidential burden in relation to his denial that he knew his conduct was wrong. Under the *Criminal Code 2002* (ACT), a child under 10 years old cannot be criminally responsible for an offence: s 25. Where a child is aged 10 years or older, but under 14 years old, the child can only be responsible for that offence if the child knows that their conduct is wrong: s 26. Section 26(3) provides that the burden of proving that a child knows their conduct is wrong is on the prosecution. However, s 58(2) provides that a defendant who wishes to deny criminal responsibility by relying on a provision of Pt 2.3 (which involves s 26) has an evidential burden in relation to the matter.

Their Honours interpreted this ambiguity by reference to the law in the ACT prior to the Code, the Commonwealth Code, common law and extrinsic materials. Their Honours concluded that, on the balance, the purpose of s 58(2) appears to be to impose an evidential burden on the defendant to raise an issue under s 26. However, the extrinsic material indicates an intention to replicate the existing law, which did not impose an evidential burden on the defendant.

Their Honours concluded that the issue was best resolved by reference to the principal of legality. That is, if the legislature intends to infringe or qualify fundamental principles, rights and freedoms then it should do so in a way that is clear enough to take responsibility for, and be politically accountable for, that infringement or qualification. Their Honours concluded that the corollary for the need for sufficient clarity, is that vague or ambiguous provisions are not to be interpreted in a way that infringes upon or qualifies fundamental principles, rights or freedoms. As a result, their Honours held that the legal burden is at all times on the prosecution.

ACT SUPREME COURT

Aspen Medical Pty Ltd v BA Capital Inc [2021] ACTSC 321

The Supreme Court has granted summary judgment in favour of the plaintiff, Aspen Medical Pty Ltd, in the sum of $3,712,301.69 to recover losses incurred as a result of an alleged default of the contract by the defendant, BA Capital Inc.

Shortly after the outbreak of COVID-19, the plaintiff entered into a contract with the defendant for the supply of 20 million N-95 face masks in instalments pursuant to an agreed timeline. The contract provided for the plaintiff to reduce the number of facemasks to be supplied and accordingly reduce the contract price if there was a failure to meet the timeline. There were multiple failures to deliver shipments on time. As a result, the plaintiff sought to reduce the amount, and in the end only 5 million facemasks were supplied. Of those, 500,000 were defective.

The plaintiff commenced action to seek recovery of funds paid in respect of the defective masks. The defendant failed to provide further and better particulars of its filed defence as ordered by the Court. The plaintiff ultimately sought summary judgment in favour of the plaintiff.

Crowe AJ held that as the defendant did not file any evidence, it was "reasonable to infer" that the defendant did not have any evidence available that could contradict evidence filed by the plaintiff. Having regard to the material that was filed, Crowe AJ further held that the defence included pleadings that were contrary to the contract, did not give rise to real issues, and did not provide an answer or a meaningful defence to the plaintiff's claims. In particular, the defence did not plead any facts to counter the plaintiff's evidence of the defectiveness of the masks. Additionally, the defence included allegations that were "factually wrong," and assertions that were unsupported by any identified facts or particulars.

Considering the defence, as pleaded, Crowe AJ held that the defendant did not have a good defence to the plaintiff's claims, and "the sufficient facts" were not "disclosed to entitle the defendant to defend the claim generally". It was held the defence was "without substance," and did not raise issues requiring determination at a full hearing.

Brown v Director-General of the Justice and Community Safety Directorate [2021] ACTSC 320

The Supreme Court has found that the defendant, the Director-General of the Justice and Community Safety Directorate, was not required to ensure the plaintiff was offered an Aboriginal Health Assessment while detained at the Alexander Maconochie Centre.

The plaintiff, who was Aboriginal detainee, submitted that the obligations placed on the defendant under ss 53, 67 and 68 of the *Corrections Management Act 2007* (ACT), interpreted by reference to the *Human Rights Act 2004* (ACT), required that an Aboriginal Health Assessment be offered, without request, to the detainee during each period of her detention.

Taking into account ss 19 and 27 of the *Human Rights Act*, Crowe AJ interpreted obligations of the Director-General under s 53 of the *Corrections Management Act* to mean that an Aboriginal or Torres Strait Islander detainee must be provided with access to the range of services they would normally have access, as an Aboriginal or Torres Strait Islander, in the ACT Community. However, this does not extend to requiring the Director-General to provide that specific medical service, such as an Aboriginal Health Assessment, as a matter of ordinary practice.

Crowe AJ held that such an obligation includes ensuring that Aboriginal and Torres Strait Islander detainees have access to a culturally appropriate medical provider, for the purpose of health checks to be conducted with the regularity required having regard to all the circumstances of the detainee. However, whether such a check should be in the form of an Aboriginal Health Assessment remains a matter of expertise for that relevant provider.

Further, compliance with the *Human Rights Act* does not require that the initial assessment under ss 67 and 68 of the *Corrections Management Act* consist of an Aboriginal Health Assessment.

It was ultimately held that the defendant did not breach the obligations imposed by ss 53, 67 and 68 of the *Corrections Management Act*, construed in light of the *Human Rights Act*, and therefore the defendant acted consistently with the *Human Rights Act*.

This decision is subject to an appeal heard on 24 February 2023 in the Court of Appeal.

Davidson v Director-General, Justice and Community Safety Directorate [2022] ACTSC 83

Mr Davidson was sentenced to a term of imprisonment in 2018 and was detained at the AMC. During his detention, Mr Davidson was held in solitary confinement for 63 days in the Management Unit of the AMC. While in solitary confinement, Mr Davidson was kept in a cell with an attached "rear courtyard" but was denied access to the general exercise area at the AMC. Mr Davidson commenced an action in the Supreme Court seeking declaratory relief that he was denied access to open air for at least one hour and exercise for at least one hour.

Loukas-Karlsson J found that Mr Davidson was denied access to open air for the required period of time and denied access to an area he could exercise in for the required period of time. In particular, her Honour found that the "rear courtyard", although deemed to meet the minimum requirements by cl 4.3 of the *Corrections Management (Separate Confinement) Operating Procedure 2019* (ACT) did not, in fact, provide access to open air. Her Honour also found that the space was not "suitable to exercise in". In reaching this conclusion, Loukas-Karlsson J noted the importance of exercise and access to open air in prisons, and the impact that denial of such access may have on individuals' mental health. In the result, her Honour found that cl 4.3 was inconsistent with the *Corrections Management Act 2007* (ACT).

Her Honour referred to the requirement stated in the Mandela Rules that "[t]he requirement that prisoners be allowed at least one hour of exercise in the open air every day is widely accepted as a basic safeguard.... [A]ll prisoners ... should be offered the possibility to take outdoor exercise daily".

Her Honour made four declarations: that the rear courtyard did not comply with the obligations of s 45 of the *Corrections Management Act*, that cl 4.3 is invalid due to the inconsistency, that the Director General breached Mr Davidson's rights under s 19(1) of the *Human Rights Act*, and that cl 4.3 is incompatible with Mr Davidson's human rights.

Islam v Director-General of JACS [2018] ACTSC 322

This case concerned an incident at the Alexander Maconochie Centre (AMC) where the plaintiff, Isa Islam, refused to leave his cell to attend muster. The following day, Corrections Officers attended Mr Islam's cell and tried to serve a "Discipline Form 3" on him. This form described the failure to attend muster as a disciplinary breach and proposed several sanctions that would be imposed if the breach was admitted by Mr Islam.

Under the *Corrections Management Act 2007* (ACT) (the Act), Corrections Officers could impose the disciplinary action if Mr Islam gave "written notice" that he admitted the disciplinary breach charged and accepted the proposed disciplinary action. The form contained boxes that Mr Islam could tick and a space for him to sign.

Although there was some factual dispute, Justice Kennett found that while the charge and proposed disciplinary action was explained to the Mr Islam orally, Mr Islam did not accept service of the accompanying form or sign it. Instead, he made various dismissive responses such as "do what you want". This was interpreted by a Corrections Officer as Mr Islam accepting the charge and proposed disciplinary action, who then ticked the boxes on the form to reflect that position and wrote "refused to sign" in the space for Mr Islam's signature. Corrections Officers then took the disciplinary action proposed, which involved the revocation of certain privileges for a seven-day period.

His Honour held this procedure did not satisfy the requirement that Mr Islam give "written notice" that he admitted the breach. Accordingly, the imposition of disciplinary action constituted a contravention of the Act. Two further questions arose:

- First, was the decision to take disciplinary action affected by jurisdictional error? and
- Secondly, did the taking of disciplinary action breach the plaintiff's human rights?

In respect of the first point, his Honour considered that the decision was affected by jurisdictional error. It was clear from the Act that the legislature intended written notice by the detainee be a precondition for valid exercise of the power. The breach of the Act was also material, as it resulted in the taking of disciplinary action without further inquiry into the conduct alleged to be the breach and the appropriateness of the sanctions proposed. An inquiry may have produced a different result, such as the dismissal of the charge or the imposition of different disciplinary actions. Although the sanctions had come to an end, his Honour granted declaratory relief stating that the taking of the disciplinary action was beyond power. Such relief was not futile; it prevented the disciplinary action from being taken into account as part of Mr Islam's disciplinary record in any future decisions that might be made about him as a detainee.

In respect of the second point, his Honour held that the conduct did not constitute breach of the plaintiff's human rights, including the right to be treated, while deprived of liberty, with humanity and with respect for the inherent dignity of the human person. While his Honour considered that the taking of disciplinary action in disregard of a detainee's procedural rights might, in some circumstances, amount to conduct lacking respect for the detainee's inherent dignity, this had not occurred in the present case. There was no evidentiary basis for a finding that the Corrections Officer who made the decision to impose the disciplinary action knew that they lacked the requisite power under the Act. There was a genuine attempt to explain the charge to Mr Islam and to ascertain whether or not he admitted the charge and agreed to the proposed disciplinary action.

R v Crawford (No 4) [2021] ACTSC 209

In *R v Crawford (No 1)* [2020] ACTSC 245, Mr Crawford was sentenced for a series of serious offences to which he had pleaded guilty to a total of four years imprisonment to be served by a Drug and Alcohol Treatment Order (**Treatment Order**) under s 12A of the *Crimes (Sentencing) Act 2005* (ACT) (**Sentencing Act**).

After repeated breaches of the Treatment Order, the Crown twice filed an application to cancel the Treatment Order under s 80ZE(1) of the *Sentencing Act*. The first application was dismissed in *R v Crawford (No 3)* [2020] 369 in order for Mr Crawford to pursue further rehabilitation. This matter was the result of the second application. Mr Crawford opposed the cancellation.

For a Treatment Order to be cancelled, the grounds of the application must be satisfied on the balance of probabilities and the Court exercises discretion to proceed to cancellation, having regard to any amendments that could be made to the Order to address the grounds that otherwise would justify cancellation. The grounds of the application were:

1. Unwillingness or unlikelihood to comply with a condition of a Treatment Order (s 80ZE(1)(c) of the *Sentencing Act*).

   Mr Crawford had two opportunities to undertake residential rehabilitation, but absconded from both, only returning to Court upon his arrest. In the latter occasion, Mr Crawford was remanded in custody in Victoria for offending there. The circumstances of the breaches of the Treatment Order, albeit noting Mr Crawford's psychological difficulties in assessing his choices and his expressed wish to engage, satisfied this ground.

2. The continuation of the Treatment Order will not likely achieve its objects (s 80ZE(1)(d) of the *Sentencing Act*).

   The objects of a Treatment Order, set out in s 80O of the *Sentencing Act*, were summed up as achieving rehabilitation. It was held Mr Crawford, without substantial assistance, would be unable to achieve rehabilitation. This ground was made out.

3. An unacceptable risk is posed to the safety or welfare of a person (s 80ZE(1)(f) of the *Sentencing Act*).

In light of a quite substantial criminal history and, importantly, his continuous offending while under the Treatment Order, without substantial progress to rehabilitation, this third ground was satisfactorily made out.

Importantly, it was held that no number of breaches of a Treatment Order necessitates cancellation and the Court may give the participant a further chance to complete the Order. Such chances are based on careful analysis and it was held that where there is no satisfactory alternative regime, even where such alternative, if available, would have likely been able to progress rehabilitation, or reason to permit continuation of the Treatment Order, then the Order must likely be cancelled.

No alternatives were proposed for Mr Crawford and, with no rational basis to continue, the Treatment Order was cancelled. No grounds for re-sentencing were identified and the original sentence in *R v Crawford (No 1)* was imposed, with its commencement date backdated under s 63 of the Sentencing Act to take into account periods Mr Crawford had served in custody, including both periods of pre-sentence custody and periods of custody when the suspension of the imprisonment under the sentence was provisionally cancelled.

R v Higgins (No 2) [2021] ACTSC 202

The Supreme Court has sentenced an offender to eight years and six months' imprisonment, with a non-parole period of five years and three months for the crime of manslaughter contrary to s 15(2) of the *Crimes Act 1900* (ACT). Following a 21 day trial, a jury acquitted Joshua Higgins of murder, but found him guilty of the manslaughter of Jae-Ho Oh.

On 11 March 2019, the offender stabbed the victim at the victim's residence. The offender and the victim had been friends for several years. Prior to the incident of 11 March 2019, the offender had lost all his money gambling and arranged to stay at the victim's residence. At the time of the stabbing, the offender had been awake for about 60 hours, due to consuming methylamphetamine, and both him and the victim had consumed a large amount of alcohol.

The precise events leading up to the stabbing were contested at trial. The Crown submitted that the offender had been in a drug-induced psychosis. The offender claimed that he acted in self-defence, or in response to being provoked by the victim sexually assaulting him. As the jury's reasoning of arriving at a verdict of guilty for manslaughter was not available, at sentence, Burns J considered the evidence to determine which pathway was likely taken.

The Crown's submission regarding drug-induced psychosis was found to not be supported by the evidence. Burns J further found that the case for provocation was not strong and that self-defence had not fully been made out. Ultimately, Burns J determined the offender did not have the mental state required for murder and proceeded with sentencing on the basis that the conviction of manslaughter was based upon proof that the offender caused the death of the victim by a dangerous and unlawful act or acts.

In determining the sentence, Burns J reduced the offender's moral culpability taking into account his Post Traumatic Stress Disorder (PTSD) and applied a discount due to the offender's offer before trial to plead guilty to manslaughter.

R v Loeschnauer [2022] ACTSC 30

McWilliam AJ sentenced an offender to five years' imprisonment, with a non-parole period of two years and 11 months, for three offences relating to driving culpably while under the influence of alcohol and prescribed drugs, which ultimately caused the death of a young man.

With the aid of seven victim impact statements from the family of the victim, six of which were read aloud by the family members themselves, her Honour's reasons on sentence recorded the devastating consequences of the offending, which extended far beyond the primary victim.

The subjective factors relating to the offender included a stable, prosocial personal life, limited criminal history and extreme remorse, culminating in major lifestyle changes immediately following the offending. Her Honour assessed his likelihood of recidivism as "extremely low." However, given the catastrophic harm inflicted on all victims and high level of moral culpability for the offending, which was the result of a chain of conscious decisions, her Honour accepted that the psychological harm suffered by the offender did not exclude him as a vehicle for general deterrence in sentencing.

While McWilliam AJ accepted the overwhelming strength of the prosecution's case prevented the Court from making any significant reduction in sentence for the offender's early guilty plea under s 35(4) of the *Sentencing Act*, her Honour found that the utilitarian value of the plea nonetheless ought to be reflected in the discount on sentence, noting the tension between the mandatory language in the provision and considerations of utilitarian value. Her Honour then considered the availability of a further discount under s 35A of the same act in recognition of the offender's assistance in the administration of justice, on top of the discount already applied under s 35(4). Ultimately, her Honour found that the structure and language of the provisions read together did not support a construction that prevented a further discount where a guilty plea had been entered, and accordingly awarded a total discount of 25% for the offender's guilty plea and active facilitation of the case against him.

R v Massey [2022] ACTSC 3

On the 18 January 2022, Refshauge AJ convicted and sentenced Mr Massey to two offences to which he had pleaded guilty: burglary with the intent to commit an offence that involves or threatens harm and assault occasioning actual bodily harm.

The offences arose from an incident where Mr Massey was asked to leave a home where he had previously been legitimately residing and subsequently, in a struggle, punctured the abdomen of the homeowner with an unknown weapon. Mr Massey was on conditional liberty at the time.

Notably, his Honour summed up the factors relevant to the offence of burglary with the intent to cause or threaten harm, a less common form of burglary, that have been identified by the courts: the nature of the property entered or on which the offender remains is relevant, and with the modification set out in *R v McHughes (No 3)* [ACTSC [2021] 344], a residential premises makes the offence more serious;

a) whether any damage was committed while the offender entered or was on the premises;

b) the nature, duration and injury or other harm caused by the offender;

c) how the attack was ended, such as by the offender being restrained by others or whether the offender desisted;

d) the effect of the attack on the victim;

e) whether there was any verbal attack or intimidation or threat made as well;

f) the motivation for the burglary; and

g) whether there was any premeditation, planning or organisation in the way the offence was committed.

In assessing objective seriousness, submissions implying that a quasi-mathematical point on a continuum is required to be identified by the Court by *R v Kilic* [2016] HCA 48; 258 CLR 256 at 266; [19] – such as 'mid-range' – were rejected. Upon proper analysis, *R v Kilic* states that sentencing requires consideration of where the whole case (that is the circumstances of the offence *and* the offender) 'lie[s] on a spectrum', not the objective seriousness alone. At one end of the spectrum, the worst case warrants the imposition of the maximum penalty prescribed. Terms such as 'mid-range' were held to be unacceptably pseudo-statistical, misleading and unhelpful.

The analysis of Mr Massey's subjective circumstances revealed a life marred by considerable childhood disadvantage and severe drug and alcohol abuse. Evidence also demonstrated Mr Massey's long history of mental health issues. Mr Massey expressed a wish to seek rehabilitation, but did not pursue a Drug and Alcohol Treatment Order at sentence.

Mr Massey was sentenced to two years and six months imprisonment on the offence of burglary and twelve months imprisonment on the offence of assault occasioning actual bodily harm; with a non-parole period of one year and five months. Further, his Honour recommended parole conditions to further his mental health and addiction recovery.

R v QX (No 2) [2021] ACTSC 244

After being charged with various sexual offences QX (a pseudonym) applied to the Court seeking an order that it was "not in the interests of justice" that a witness intermediary be appointed in the matter. An intermediary was required to be appointed pursuant to s 4AK of the *Evidence (Miscellaneous Provisions) 1991 Act* (ACT) for the complainant as the complainant was a child at the time of the alleged offending conduct.

QX argued before the Court that the appointment of an intermediary was limited to circumstances where the witness had a communication difficulty, that the appointment was not in the interests of justice, that the witness did not have a communication difficulty and that the appointment of an intermediary was in conflict with the *Human Rights Act 2004* (ACT) in that it impacted QX's right to a fair hearing or QX's right to examine the witness.

In relation to the first three matters, the Court found that s 4AK was not limited to situations where there was a communication difficulty and that, in any event, the witness in this case had communication difficulties and an intermediary could be appointed pursuant to s 4AJ. The Court also found that QX had not established that the appointment of an intermediary was not in the interests of justice.

In relation to the latter issues, the Court found that consideration of the right to a fair hearing involved an assessment of a "triangulation of interests" of the accused, the general public and the victim or victims of the offence. In the result, the Court found that the appointment of an intermediary does not undermine the right to a fair hearing. Rather, the right to a fair hearing should be understood in the context of the right to equality. The Court found that the purpose of the intermediary scheme is to ensure that vulnerable witnesses are treated fairly by Courts and are not unduly impacted by Court processes.

The Court also found that s 22(2)(g) did not establish an absolute right to cross-examine a witness in the way an accused saw fit. Rather, the right was limited to providing the accused with the same legal powers as the prosecution. The Court dismissed the application and made orders appointing a witness intermediary.

R v Stevenson [2021] ACTSC 299

The accused, Mr Stevenson, pleaded not guilty by reason of mental impairment to the following offences: one count of possessing an offensive weapon, two counts of damaging property, and a transfer charge of possessing an offensive weapon. In determining whether the accused was indeed not guilty by reason of mental impairment, Elkaim ACJ noted that there are three steps a Court must undertake.

First, the Court is to decide whether the facts alleged against the accused have been proved beyond reasonable doubt. This step relates to the physical elements of the charges. Agreeing with the Crown and the accused, his Honour found these facts were proved beyond reasonable doubt.

Second, the Court is to deal with the mental elements, that being the question of mental impairment. In this matter, the Crown did not object to a special verdict being made under s 28(7)(a) of the *Criminal Code 2002* (ACT) that the accused was not guilty of the offences because of mental impairment. After considering the expert opinions of two psychiatrists, his Honour was satisfied on a balance of probabilities that the accused was suffering from mental impairment so as to render him not criminally responsible under s 28 of the *Criminal Code*.

Third, the Court is to decide upon the course of action flowing from the above findings. Both parties submitted that the Court should make an order under s 324(2)(b) of the *Crimes Act 1900* (ACT) that the accused submit to the jurisdiction of ACAT. This was in order to allow ACAT to make a mental health order or a forensic mental health order under the *Mental Health Act 2015* (ACT).

His Honour found the accused not guilty by reason of mental impairment for all four offences. Further, the accused was ordered to submit to the jurisdiction of ACAT under the *Mental Health Act 2015*.

R v Whittaker [2021] ACTSC 189

This was the sentence of an offender who pleaded guilty to 24 counts of child sexual offences (as well as a singular firearm offence). All counts, except the firearm offence and one count of possessing child abuse material, concerned the same complainant.

The complainant was 14 years old when she began working at Kmart in 2017. The offender, 20 years her senior, was a manager there. They soon became 'boyfriend and girlfriend'. Between 2018–2019, prior to the complainant turning 16, their sexual relationship constituted the relevant charges. The offender produced material of certain sexual acts between himself and the complainant. The age gap and the power imbalance aggravated the offender's culpability. The offending was not accompanied by violence, inherent degradation or manipulation, but her Honour noted that such relationships can increase the psychological damage to the victim.

Other than the material concerning the complainant, the offender possessed child exploitation material of 100 different children. All material was deemed to be for personal use.

The offender had previously been convicted of two child sexual offences in 2002. It was noted he had difficulty communicating and suffered from depression. He understood criminality, but stated he loved the complainant and maintained it was consensual. For the child offences, her Honour gave weight to general deterrence and the opportunity for rehabilitation.

A total sentence of nine years and six months with a non-parole period of four years and nine months was imposed.

R v Yeaman [2021] ACTSC 252

This case was a trial by judge alone. The accused, Mr Yeaman, was charged with arson and intentionally inflicting grievous bodily harm. The accused pleaded not guilty on the ground of mental impairment.

The evidence of the arson was that the accused, alone in his cell in custody, lit a box and other material and covered a detecting vent in his room. He then called for help and he and other detainees were evacuated. He was found to have committed the offence.

For inflicting grievous bodily harm, the evidence was that the accused was in the Dhulwa Forensic Unit where his mother visited him. When she went to leave, the accused struck her twice. She fell to the ground and again the accused punched her two times, leading to head injury and a fractured ankle. Her Honour found that the accused, in the four strikes, intentionally caused harm.

Expert evidence showed, at the time of both incidents, the accused suffered from schizophrenia, borderline personality disorder and ADHD. For the arson offence, it was found that the accused was able to control his conduct and made the choice to light the fire. As such, no special verdict was entered. For inflicting grievous bodily harm, her Honour found that the accused knew his offending was wrong but there was a possibility he could not control his conduct and was acting impulsively. For this offence, the accused was found not guilty because of mental impairment.

Zapari Property Coombs Pty Ltd v Commissioner for Australian Capital Territory Revenue [2022] ACTSC 189

The plaintiff is the lessee pursuant to a Crown lease of a block of land in Coombs. The plaintiff sought to lodge a development application seeking a variation of the Crown lease to, among other things, increase the maximum number of permitted dwellings.

The proposed variation was a "chargeable variation" under the *Planning and Development Act 2007* (ACT) (the Act) which required a charge to be paid to the Territory before the variation could be executed. The total charge was comprised of the lease variation charge (calculated in accordance with a formula contained in s 277 of the Act), less any remission under s 278, plus any increase under s 279.

Disagreement arose between the parties regarding whether the plaintiff was eligible for a remission under s 278. The plaintiff sought merits review in the ACAT of the defendant's decision that it was not eligible for any such remission. Two prior decisions of the ACAT meant this application was likely to fail for want of jurisdiction. The parties agreed an appeal was likely whatever the outcome, so the issue was removed to this Court for consideration. The plaintiff argued that ACAT had jurisdiction to consider the remission decision through two avenues:

- First, because the remission decision formed part of an "original decision" made pursuant to s 277E of the Act, the reconsideration of which is reviewable (in large part this turned on whether remissions are included in the "lease variation charge"); and
- Secondly, the plaintiff purported to lodge an objection to the defendant's remission decision pursuant to pt 10 of the Taxation Administration Act 1999 (ACT) (TA Act), which permits a taxpayer to lodge a written objection to "an assessment". The defendant refused to consider and determine such an objection on the ground that the decision was not amenable to objection under pt 10 because of s 297A(4) of the Act, which concerned reconsideration decisions made on the defendant's own motion and s 297A(4) provided that the operation of pt 10 "applies only to a reassessment of a lease variation charge under this section".

Justice Kennett held that merits review was not available to the plaintiff.

In respect of the first avenue, "original decision" was interpreted as not including any decision in relation to remissions or increases. Apparent inconsistencies in the drafting of the Act meant this conclusion was not without countervailing considerations, but the considerations which were determinative included:

- the operative provisions referred to the lease variation charge as the amount calculated under s 277;
- other provisions in the Act referred to the lease variation charge as distinct from any remission or were calculated on the basis of the lease variation charge; and
- the legislature previously deleted items in sch 1 that had conferred review rights expressly in relation to decisions concerning remissions or increases.

In respect of the second avenue, his Honour considered that s 297A(4) of the Act operated such that the only decisions under div 9.6.3 of the Act (which contained the provisions concerning calculation of the lease variation charge, remission and increase) amenable to objection under pt 10 of the TA Act were those made pursuant to s 297A. The limitation in s 297(4) was expressed to apply "for this division" and the only way to give effect to those words was to construe it as excluding the application of pt 10 to any other type of decision made under div 9.6.3.

CASE MANAGEMENT

STATISTICS

Outstanding matters

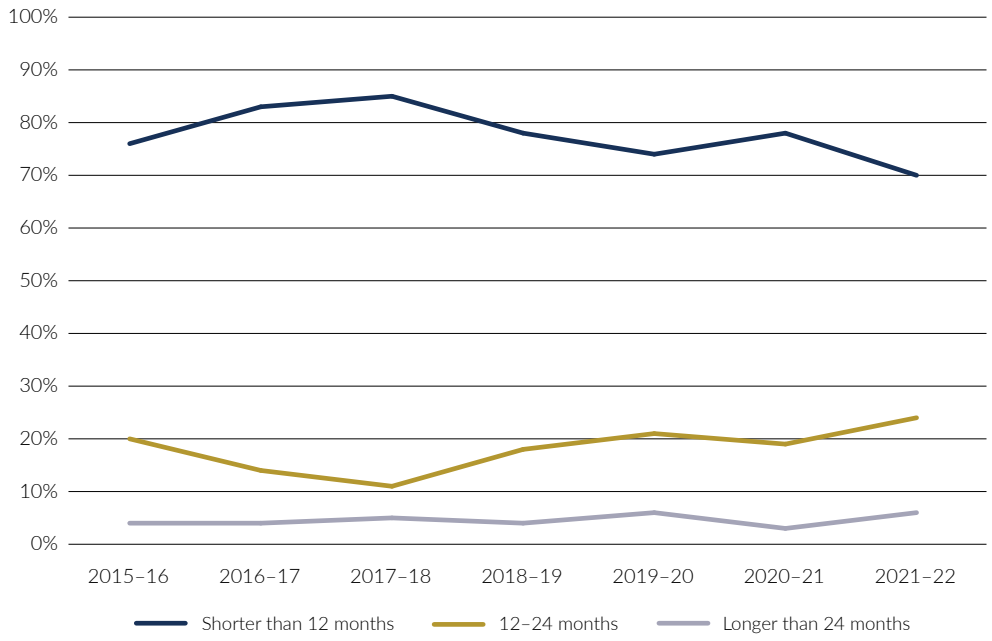
Court Time	2018–19	2018–19	2018–19	2018–19	2019–20	2019–20	2019–20	2019–20
	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil
<12mths	204	415	78%	73%	211	417	74%	73%
>12 and <=24	46	130	18%	23%	59	125	21%	22%
>24mths	11	20	4%	4%	16	30	6%	5%
Total	**261**	**565**			**286**	**572**		

Court Time	2020–21	2020–21	2020–21	2020–21	2021–22	2021–22	2021–22	2021–22
	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil
<12mths	190	351	78%	70%	194	340	80%	72%
>12 and <=24	47	120	19%	24%	43	97	18%	20%
>24mths	8	29	3%	6%	6	38	2%	8%
Total	**245**	**500**			**243**	**475**		

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

Where rounding causes the sum of percentages to be less than 100%, the middle values have been adjusted either up or down by 1% to ensure that the sum of percentages equals 100%".

Outstanding criminal matters (in percentages)



Criminal	2015–16	2016–17	2017–18	2018–19	2019–20	2020–21	2021–22
Shorter than 12 months	76%	83%	85%	78%	74%	78%	70%
12–24 months	20%	14%	11%	18%	21%	19%	24%
Longer than 24 months	4%	4%	5%	4%	6%	3%	6%

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

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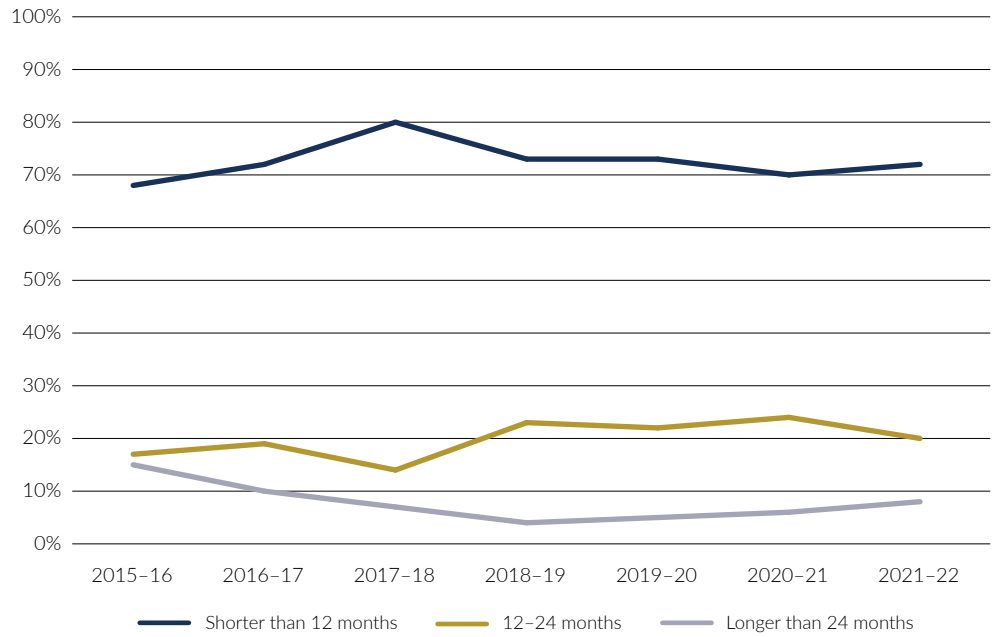
Outstanding civil matters (in percentages)

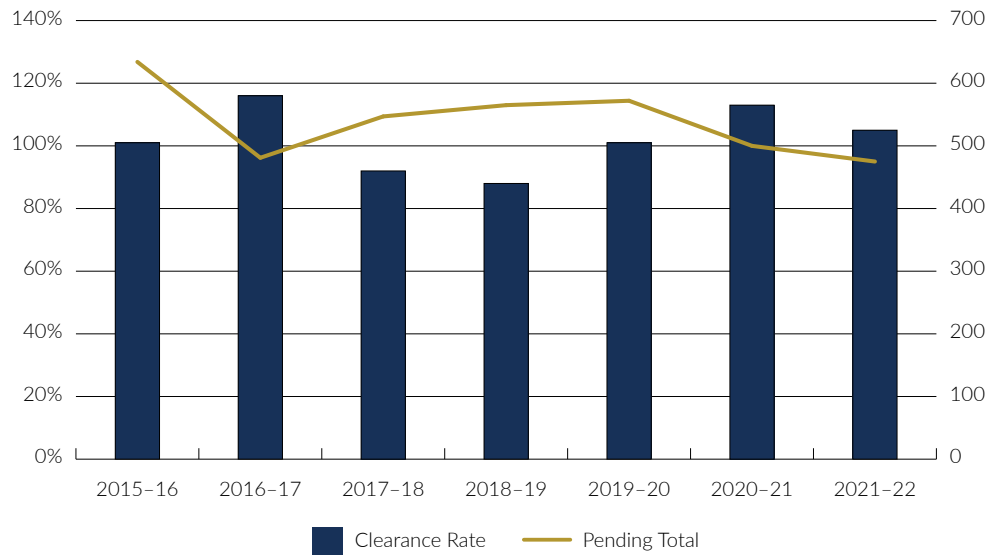


Civil	2015–16	2016–17	2017–18	2018–19	2019–20	2020–21	2021–22
Shorter than 12 months	68%	72%	80%	73%	73%	70%	72%
12–24 months	17%	19%	14%	23%	22%	24%	20%
Longer than 24 months	15%	10%	7%	4%	5%	6%	8%

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

Where rounding causes the sum of percentages to be less than 100%, the middle values have been adjusted either up or down by 1% to ensure that the sum of percentages equals 100%".

Summary data 2020–2021 – Civil matters



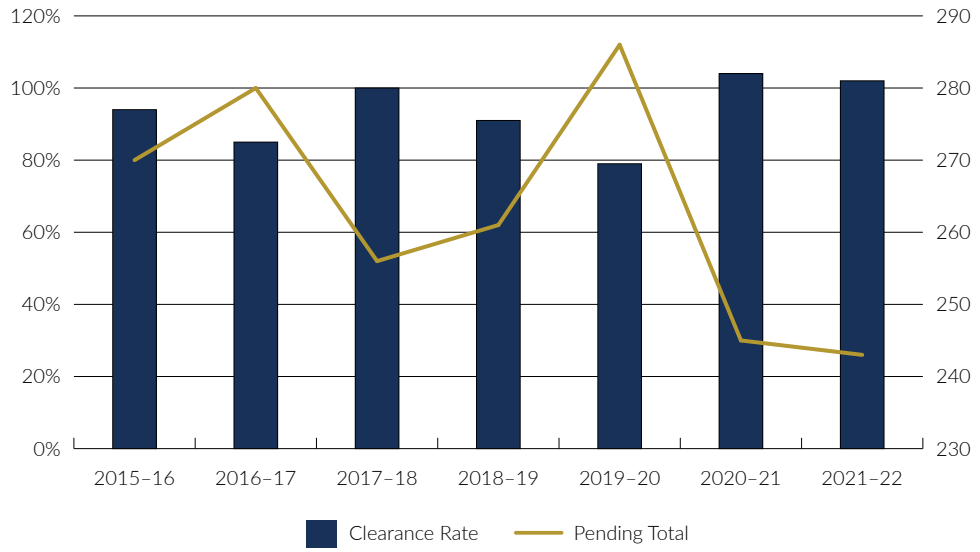
Supreme Court – Civil Matters	2015–16	2016–17	2017–18	2018–19	2019–20	2020–21	2021–22
Lodgments	614	561	608	632	591	521	512
Finalisations	619	648	559	556	599	591	536
Clearance Rate	101%	116%	92%	88%	101%	113%	105%
Pending Total	634	481	547	565	572	500	475
Pending <12 months	430	346	437	415	417	351	340
Pending >12 months*	204	135	110	150	155	149	135
Pending >24 months	98	46	36	20	30	29	38

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

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

Where rounding causes the sum of percentages to be less than 100%, the middle values have been adjusted either up or down by 1% to ensure that the sum of percentages equals 100%".

Summary data 2020–2021 – Criminal matters



Supreme Court – Criminal matters (includes Magistrates Court appeals)	**2015–16**	**2016–17**	**2017–18**	**2018–19**	**2019–20**	**2020–21**	**2021–22**
Lodgments	279	319	354	340	338	330	325
Finalisations	262	270	355	311	268	342	332
Clearance Rate	94%	85%	100%	91%	79%	104%	102%
Pending Total	270	280	256	261	286	245	243
Pending <12 months	206	231	217	204	211	190	194
Pending >12 months*	64	49	27	57	75	55	49
Pending >24 months	10	10	12	11	16	8	6

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

Where rounding causes the sum of percentages to be less than 100%, the middle values have been adjusted either up or down by 1% to ensure that the sum of percentages equals 100%".

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	2021–22	2021–22
	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal
Lodgements	27	36	37	36	23	35	18	28	23	33	28	34
Finalisations	58	36	31	42	31	37	21	28	16	28	22	36
Clearance Rate	215%	100%	84%	117%	135%	106%	117%	100%	70%	85%	79%	106%
Pending Total^	18	33	27	26	18	23	12	22	19	27	26	27
Pending <12 months	13	28	23	22	13	21	12	19	19	24	22	26
Pending >12 months*	4	5	3	4	5	2	0	3	0	3	4	1
Pending >24 months	1	0	1	0	0	0	0	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

Where rounding causes the sum of percentages to be less than 100%, the middle values have been adjusted either up or down by 1% to ensure that the sum of percentages equals 100%".


LAW COURTS
OF THE
AUSTRALIAN CAPITAL TERRITO


ORY

ACT Courts