



ACT MAGISTRATES COURT
ANNUAL REVIEW

2014-15



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Foreword by Chief Magistrate of the ACT

I am pleased to present the inaugural annual review for the Magistrates Court of the Australian Capital Territory (the Magistrates Court). The decision to produce this document, in addition to the formal reporting to government required by legislation, was motivated by a desire for transparency about the work of the court and to make this public institution more accessible to the whole community.

In doing so, I remind readers that courts are places of open justice, with very limited exceptions. I invite all who are motivated by a desire to understand its operation to attend the Magistrates Court in person to see how the legal system operates at its grass roots level in the Territory. The Magistrates Court deals with an overwhelming majority of legal disputes and criminal prosecutions and is the court, if any, that most citizens are likely to have contact with.

The magistrates of the ACT pride themselves on delivering a fair, intelligent and responsive judicial service. All magistrates must have the basic requirements of legal qualification and at least five years of professional practice. In fact, all current incumbents are significantly more experienced and bring together a wealth and breadth of experience in diverse practice areas prior to appointment.

A large proportion of the Court's work is in the criminal jurisdiction. The court is currently focused on improving efficiency in managing matters from first mention to finalisation while maintaining quality justice delivery.

Many criminal matters are very simple and require only one or two appearances at court; others take considerably longer and involve a number of processes in which other participants have a role to play. These participants may include: defendants in acting expeditiously on their own behalf; legal practitioners, both public and private, in advising their clients and negotiating with other parties efficiently; the police in producing evidence in a timely manner for contested prosecutions; and various government organisations which provide reports to the court, such as pre-sentence or mental health reports.

With its limited resources, the court is committed to providing the necessary processes and support needed to finalise matters. Part of this requires each participant in the court process to play their part efficiently. However, the court recognises that some matters, and some people, demand a greater investment of time and resources. While the court has an acute balancing act to perform, and timeliness is an important aspect of the delivery of justice, it is just one aspect.



Generally, mentions, sentencing and committal of matters to the Supreme Court occur with an acceptable level of efficiency, although they remain under constant review. However, the Achilles heel for the court is its efficiency in bringing matters to hearing due to the significant shortage of hearing time.

Measures taken to address this include block listings in which a number of magistrates sit concurrently over a number of weeks — typically two to three — so that there is flexibility to move matters between magistrates according to need. The court also 'overlists', that is, lists more matters than would fit in to the time available each day if they were all to run. This system provides a flexible pool of judicial officers and reduces time wastage when matters resolve late or are adjourned unexpectedly. In order to offer such block listings along with maintaining the various other jurisdictional commitments, the court has called heavily on the assistance of special magistrates to supplement judicial capacity.

However, the court has found that even by adopting this approach, hearings are being listed much longer after a plea of not guilty has been entered than is desirable. The court administration is undertaking a review of judicial capacity, and I am reviewing existing listing arrangements, with a view to reducing that unacceptable delay.

In the civil jurisdictions, an emphasis on alternative dispute resolution services provided by, or under the auspices of, the court, is assisting in more timely resolution of matters, often on terms more palatable to parties and with a saving in legal expenditure. An alternative dispute resolution (ADR) review conducted in 2014 made recommendations for expanding the court's ADR capacity. The review recommendations are being implemented.

The year saw a considerable change in the coronial jurisdiction with increased in-house legal support capacity which is already showing tangible improvement in case finalisation. The court is exploring how links with New South Wales (NSW) pathology support services might result in a more efficient and expert technical support service to the Coroners Court. Nonetheless, the Coroners Court is a specialist area currently manned by generalists. There remains a continuing question as to whether this jurisdiction would be better served by a dedicated coroner and whether the Australian Capital Territory (ACT), despite its population size, warrants a specialist approach.

I have been working closely with the Chief Justice of the ACT Supreme Court on matters which affect the whole jurisdiction, such as court security, building development, judicial well-being and whole-courts administration. I am grateful to Chief Justice Helen Murrell for her collaborative approach on these issues of mutual significance.

I wish to acknowledge the untiring support of court staff to the magistrates. We are fortunate to have a very dedicated workforce comprising a mix of the highly experienced with the new and enthusiastic, at all levels in the court administration. This team responds to the demands of the judiciary, from regular court administration to unexpected late sittings and urgent requests for information or technological support, as well as the ever-increasing demands from the Executive for facts, figures and feedback, with calm and dedication. From our entry level administrative officers to our most senior staff, I have personally felt well supported, and that no demand was too onerous. I thank them all.



Foreword by Principal Registrar of the ACT Law Courts and Tribunal

During the reporting year the courts administration focused on four priority areas, being the new courts facility, the new case management system (the ICMS), courts governance and how organisational structures and processes best support the business of the Supreme and Magistrates Courts. Staff members also continued to provide a range of high quality registry and corporate services to the courts.



Significant progress was made in relation to the procurement of a new courts facility and the development of the ICMS. The new courts facility will include a complete refresh of the information and communications technology (ICT) equipment in the courtrooms and remote witness rooms in the current Magistrates Court building. The new ICMS will streamline processes and provide a platform for electronic lodgement and other e-services.

Negotiations commenced with the NSW Forensic and Analytical Science Service to develop a partnership for the provision of forensic pathologist services in the ACT.

Preliminary work on the courts governance has included a review of arrangements in other jurisdictions and of the potential of the International Framework for Courts Excellence to help guide further developments on courts administration in the ACT. Work also commenced on updating the structure and content of the courts risk register, business continuity plan and internal financial and other reports to ensure greater currency and clarity.

The need to commit registry staff and other resources to the ICMS project has required careful management to minimise the impact on day-to-day operations. This balancing will continue through 2015–16, along with the need to manage any disruption during the design and construction phase of the new courts facility.

I look forward to working with the Chief Magistrate, magistrates and staff over the next 12 months as we progress a number of important projects and initiatives that will enhance the Magistrates Court's operations.



MAGISTRATES COURT GOVERNANCE

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MAGISTRATES COURT GOVERNANCE

The magistrates

The full-time judicial officers of the Magistrates Court are appointed by the Executive pursuant to s.7 of the *Magistrates Court Act 1930* (the *Magistrates Court Act*). Each magistrate is also a Coroner pursuant to s.5 of the *Coroner's Act 1997*.

Special magistrates are appointed by the Executive pursuant to s. 8 of the *Magistrates Court Act*. In the ACT, special magistrates hear the same kinds of matters as the full-time Magistrates.



In 2015 the judicial officers of the court are as follows:

Chief Magistrate



WALKER, Lorraine Anne

Magistrate 19 July 2010–12 October 2011
Chief Magistrate 13 October 2011–Current

Magistrates

DINGWALL, Peter Geoffrey

Appointed 26 April 1990



FRYAR, Karen Margaret, AM

Appointed 6 September 1993



CAMPBELL, Lisbeth Ellen

Appointed 5 August 1998



MORRISON, Peter John

Appointed 14 February 2012



BOSS, Bernadette Carmel

Appointed 8 May 2012



COOK, Robert Matthew

Appointed 11 September 2013

Special magistrates

**DOOGAN, Maria Krystyna**

Magistrate

5 August 1998–30 March 2012

Special Magistrate

3 June 2013–Current

**CUSH, Kenneth Michael**

Appointed 3 June 2013

**HUNTER, Margaret Ann**

Appointed 21 May 2014

MULLIGAN, Dominic Hugh

Appointed 21 May 2014

**IN THE ACT,
SPECIAL MAGISTRATES
HEAR THE SAME KINDS
OF MATTERS AS THE
FULL-TIME MAGISTRATES.**

Recent judicial appointments

COOK, Robert Matthew

Robert Cook was appointed on 11 September 2013. After graduating from the Queensland University of Technology (LLB) and the Queensland Bar Practice Centre in 1993 he went on to complete the Graduate Diploma in Legal Practice at the Queensland University of Technology. Mr Cook was admitted to the Roll of Barristers in both Queensland and the High Court in April 1993.

In December 1993 he commenced as the Royal Australian Air Force (RAAF) Legal Officer in Western Australia undertaking both prosecuting and defending officer roles. He was also appointed the Assistant Defence Force Advocate. Mr Cook has appeared as a duty lawyer at the Western Australian Joondalup Local Court, predominantly appearing before the Fair Work Commission, as well as in the Federal Court, Federal Circuit Court, Supreme Court and local courts.

In 1996 he began working with Clayton Utz in Canberra and was made partner in 2001. In 2006 he moved to Minter Ellison Canberra, as the partner leading the Employment Law and Industrial Relations team. In 2010 he was called to the Bar prior to being appointed as ACT Magistrate and Coroner.

HUNTER, Margaret Ann, OAM

Margaret Hunter was appointed to the Magistrates Court on 21 May 2014. Prior to her judicial appointment she acted as the Principal Counsel Assisting the Coroner and as Senior Crown Prosecutor at the ACT Office of Public Prosecutions in the Coronial Practice section.

Ms Hunter has a significant interest in coronial law and has been the serving treasurer for the Asia Pacific Coroners Society for the past five years. She was awarded the Order of Australia Medal in 2013 for her service to the law and legal profession, particularly in relation to women lawyers. She has bachelor degrees in Arts and Laws from the Australian National University and completed the Graduate Diploma in Legal Practice at the University of Technology Sydney.

MULLIGAN, Dominic Hugh

Dominic Mulligan was appointed to the Magistrates Court on 21 May 2014. He graduated from Canterbury University in New Zealand with a Bachelor of Laws in 1989. Mr Mulligan was admitted to the High Court of New Zealand the same year. His legal practice has predominantly focused on litigation with particular interest in coronial work, public prosecution and civil practice centred on the internet and the law. He was Temporary Coroner in Western Australia from 2010 to 2013. Mr Mulligan has an interest in mental health issues with a focus on assisting those who cannot afford legal representation.

Recent judicial retirements

LUNNEY, Graeme

Appointed 16 May 2011–15 May 2014

Graeme Lunney is a well respected and long-serving member of the ACT legal community. He commenced legal practice in 1971 and went to the Bar in 1977. He was appointed to the ACT Community Law Reform Committee and during his time worked on a number of projects. He has also been a member ACT Civil and Administrative Tribunal since its inception in 2009.

CHENOWETH, Christopher

Appointed 16 May 2011–15 May 2014

Christopher Chenoweth has had a distinguished legal career, commencing legal practice in 1968. For nine years he was a partner at Mallesons Stephen Jaques. He was also appointed acting presidential member of the ACT Civil and Administrative Tribunal and served as president of the ACT Law Society. Mr Chenoweth has also been actively involved in several local community organisations.



The Registrar



The Registrar of the Magistrates Court is appointed by the Minister pursuant to s. 9 of the *Magistrates Court Act*. The jurisdiction of the Magistrates Court exercisable by the Registrar is set out in part 6.5 of the *Court Procedures Rules 2006*. Ms Amanda Nuttall is the Registrar of the Magistrates Court and has also been appointed as Deputy Coroner of the Coroners Court. The Registrar is supported by the Legal Manager, a legal officer, Counsel Assisting Coroners, a conferencing team and registry staff.

The Registrar may appoint deputy registrars of the court, bailiffs and other officers that are required for the operation of the court. Subject to the *Magistrates Court Act* and to any directions of the Registrar, a deputy registrar may exercise the functions of the Registrar.

The work of the Registrar involves a range of civil matters and in-chambers work to support the court, including issuing search warrants; issuing summons for breach of good behaviour orders; determining various civil applications and motions; enforcement hearings; and determining applications for interim domestic violence, personal protection, and workplace protection orders.

Court staff

Staff members of the Law Court Registry provide administrative support to allow for the efficient operation of the court. Responsibilities of staff members include processing, filing and preparing court documents, settling court orders and maintaining accurate court records. Registry staff members possess sound operational knowledge of the Magistrates Court jurisdiction, practices and procedure and support court users by providing procedural advice and assistance.

Long-serving staff

The law courts have been privileged to have a number of long-serving staff members who are acknowledged for their contributions and dedication. Their assistance has been integral to the functioning and development of the court. We give particular mention to those who are recently deceased or retired:

Gloria Keogh 1977–2014 (deceased)

Maree Debenham 1970–2015 (retired)

Anne Barr 1978–2015 (retired)

Janina Kaczor 1989–2015 (retired)

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OVERVIEW

History

The Magistrates Court commenced as the Court of Petty Sessions and was established on 25 November 1930 as the Territory's first court. Prior to its establishment Territorians were required to travel interstate to Queanbeyan, Goulburn or Cooma to have their legal matters heard. Appeals from the court were heard in the High Court until the Supreme Court commenced on 1 January 1934.

In 1929 Attorney-General Latham accepted Acton House as a suitable building for court proceedings. Later that year the building was refurbished and converted for court use.

Visiting magistrates presided over the court until 1949 when Francis Keane was appointed as the first resident magistrate. However, it was not until 1974 that Charles Kilduff became the inaugural Chief Magistrate, holding office until 1980. In 1977 under the *Court of Petty Sessions Amendment Act*, magistrates became independent judicial officers rather than public servants.

On 8 May 1963 the Court of Petty Sessions was relocated to the Law Courts building in Knowles Place which was opened by Sir Robert Menzies. By the 1980s the workload of both the Court of Petty Sessions and the Supreme Court had significantly increased. As such, additional facilities were organised in order to accommodate the growing workload of the courts. On 1 February 1986 the Court of Petty Sessions was renamed as the Magistrates Court. The current Magistrates Court building was completed in 1996. The courts precinct is to be renovated with work due to commence in 2016.

Functions

The Magistrates Court operates under the *Magistrates Court Act*. It has jurisdiction to hear a wide range of matters across both the civil and criminal jurisdictions. The *Magistrates Court Act* also establishes the Childrens Court, the Family Violence Court, the Galambany Court and most recently the Industrial Court. The Coroners Court operates in the same building. Each magistrate is also a coroner and the Registrar is appointed as a Deputy Coroner¹.

¹ A separate annual report is produced for the Coroners Court of the Australian Capital Territory and can be accessed at http://www.courts.act.gov.au/magistrates/courts/coroners_court



**THE MAGISTRATES
COURT COMMENCED
AS THE COURT OF
PETTY SESSIONS AND
WAS ESTABLISHED ON
25 NOVEMBER 1930 ...**



WORK OF THE COURT

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Duty Magistrate and Saturday/public holiday Court	27

WORK OF THE COURT

Criminal jurisdiction

The majority of the Magistrates Court's work is in the criminal jurisdiction. The Magistrates Court has jurisdiction to hear all summary offence matters. Summary offences are ACT offences that carry a maximum sentence of two years imprisonment or less and Commonwealth offences with a maximum penalty of one year imprisonment.

The Magistrates Court's jurisdiction is expanded in certain circumstances to hear more serious offences (indictable offences) where either the prosecution elects to have the offence heard summarily or the defendant consents to the jurisdiction of the Magistrates Court. Where the prosecution elects, the maximum penalty that can be imposed for that offence is a fine of \$5000 and/or two years imprisonment. Where there is consent of the defendant, the maximum penalty that can be imposed for that offence is a \$15 000 fine and/or five years imprisonment.

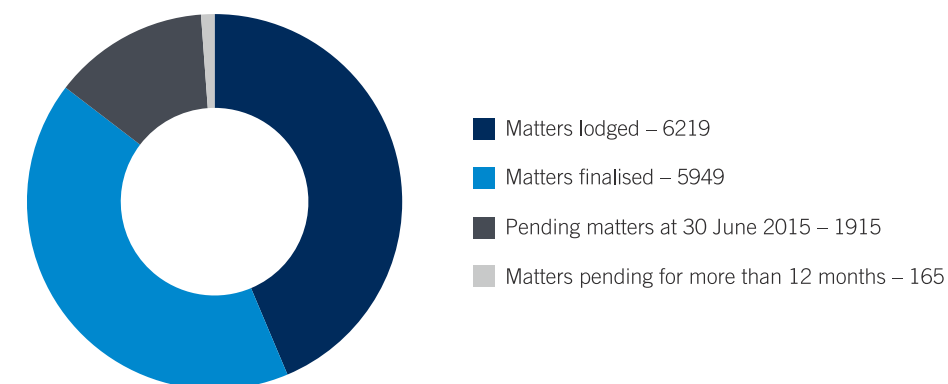


There are a number of diversionary and specialist aspects to the court's criminal jurisdiction, some of which are detailed below, including restorative justice and the Galambany Court.

Additional to these, the court has an important diversionary role in identifying where there are mental health illnesses that impact on a defendant's culpability, or need for a response that is directed towards their health needs rather than a criminal justice response.

In the reporting year, the court referred 67 defendants to a health facility under s. 309 of the *Crimes Act 1900* for an assessment of the defendant's requirement for immediate treatment or care for mental health reasons. Thirty-six defendants were referred to the ACT Civil and Administrative Tribunal for assessment as to whether a treatment order was required under the *Mental Health (Treatment and Care) Act 1994*. The court determined pursuant to s. 335 of the *Crimes Act 1900*, that there were 14 defendants who were unfit to enter a plea.

Between 1 July 2014 and 30 June 2015



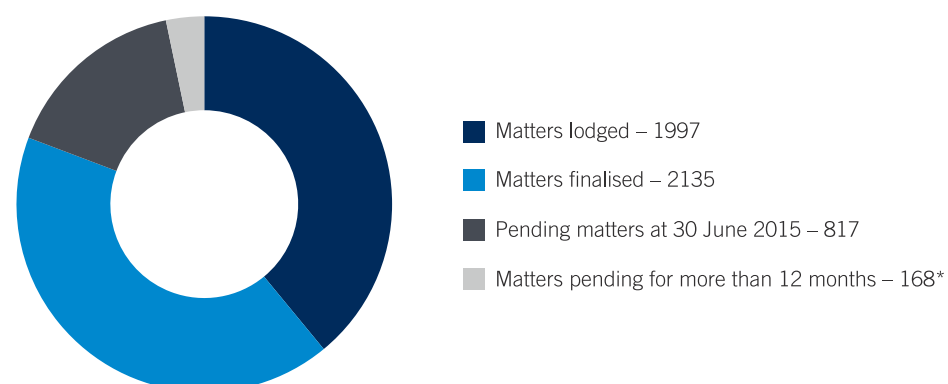
The court implemented a new practice direction in January 2015 that provides timeframes for the preparation of matters towards finalisation. The Chief Magistrate has mentioned in her foreword to this report the measures that have been taken by the court to continue to reduce the timeframes for the finalisation of matters.

Civil jurisdiction

The court has a broad jurisdiction to hear and determine applications in its civil jurisdiction. These include claims for damages, such as personal injury, breach of contract and debt and applications under the *Domestic Violence and Protection Orders Act*.

The court has jurisdiction to hear and decide civil applications where damages between \$10 000–\$250 000 are claimed. Other matters that are determined by the court are matters under the *Leases (Commercial and Retail) Act 2001*; claims for criminal injuries compensation under the *Victims of Crime (Financial Assistance) Act 1983*; and workers compensation claims under the *Workers Compensation Act 1951*. Workers compensation matters are now heard by a specialist Industrial Court magistrate. Further details are provided later in this report.

Between 1 July 2014 and 30 June 2015



* These figures are exclusive of matters lodged under the *Domestic Violence and Protection Orders Act* which are reported separately below.

There has been a decrease in civil lodgements in the reporting year from the previous reporting year. This has allowed the court to reduce the number of overall pending matters during this period. Practice Direction 2 of 2014 *Case management in proceedings commenced by originating claim* commenced operation in February 2015. The practice direction provides for early case management with a view to completing civil matters within 12 months. Parties are required to identify early in the process the steps that are required to progress the litigation within a timely manner, and have the matter prepared for hearing within nine months from filing of the claim.

Domestic violence and protection orders

A significant area of the court's civil jurisdiction is focused on the important social issue of domestic and personal violence. This requires a unique approach within the legal system.

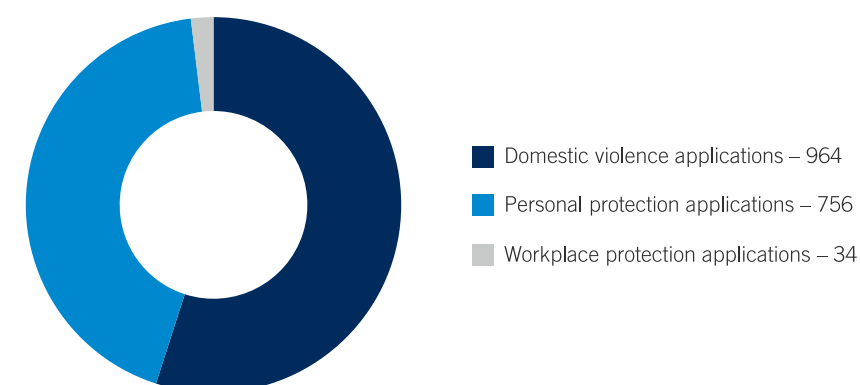
The court lists applications for interim domestic violence and protection orders on a daily basis. The court can issue orders restraining conduct such as physical violence and property damage and threatening, harassing or offensive behaviour. Orders may also prohibit a respondent from having contact with the applicant and other named persons, or from being within a certain distance of the applicant and other named persons.

The court is supported in this area of work by the Protection Unit. The team is engaged in processing applications for interim and final orders. Upon the making of an order, the Protection Unit processes the order on the same day and provides it to ACT Policing for service of documents upon the respondent. The team also assists in directing parties to support services within the court precinct, such as legal aid and the Domestic Violence Crisis Service.

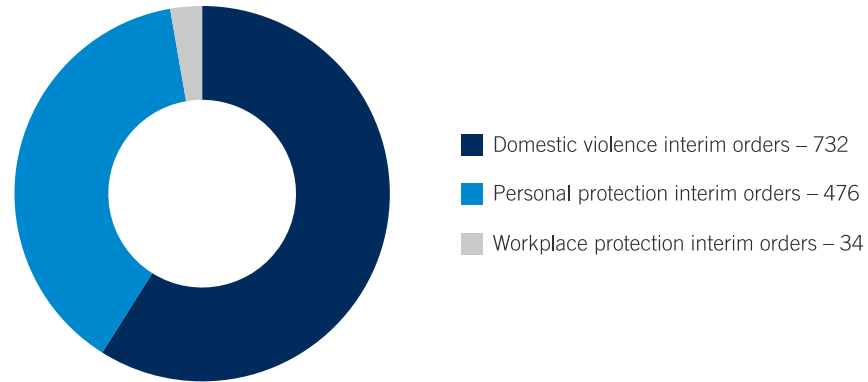
All applications for domestic violence and protection orders are set down for a conference before a deputy registrar to explore an agreed outcome between the parties. Matters are scheduled for conference within four weeks of an interim order being made and within 10 days where there is no application for an interim order or where an interim order has been refused.

Where a matter is unable to be resolved at conference, it will proceed to a hearing before a magistrate. Hearings are listed on a weekly basis and are generally heard within 6–8 weeks of the conference.

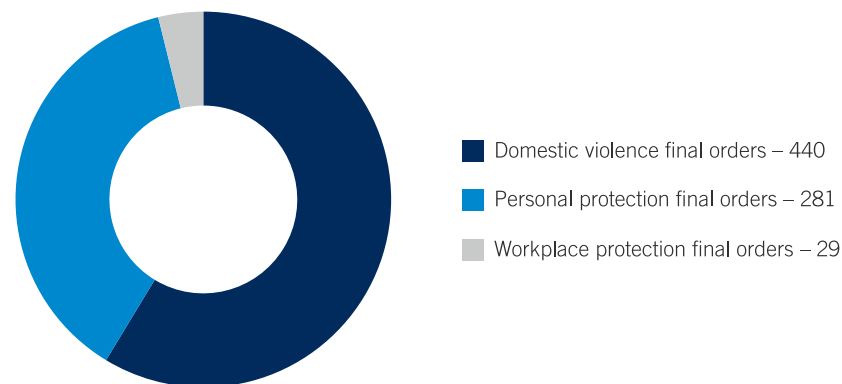
Number of applications lodged in the Protection Unit between 1 July 2014 and 30 June 2015



Number of interim orders made



Number of final orders made



Duty magistrate and Saturday/public holiday Court

Where a person is taken into custody and charged with an offence and the person is not released on bail by the police, they must be brought before a court as soon as practicable within 48 hours. As a result of this statutory requirement, a Duty Magistrate sits in court on Saturdays and public holidays.

The Duty Magistrate is also responsible for issuing various forms of warrants, receiving notification of deaths referred under the *Coroners Act 1997* and dealing with urgent domestic violence and personal protection matters. All full-time magistrates, including the Chief Magistrate, share this roster.





THE SPECIALIST COURTS

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THE SPECIALIST COURTS

Childrens Court

The Magistrates Court sits as the Childrens Court when exercising jurisdiction under Chapter 4A of the *Magistrates Court Act*. Magistrate Karen Fryar is currently the Childrens Court Magistrate. Childrens Court proceedings are not open to the public. The Childrens Court has jurisdiction to hear criminal cases where the alleged offender is a child (under 12 years of age) or young person (between the ages of 12 and 18 years).

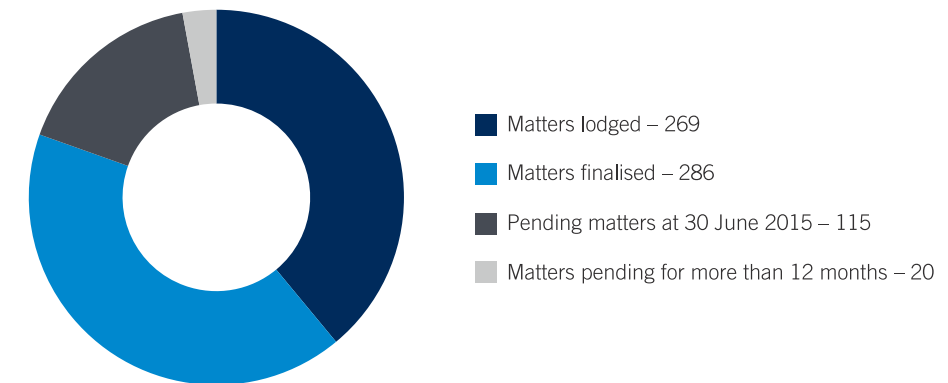
The Childrens Court also has jurisdiction for care and protection orders under the *Children and Young People Act 2008*. The court is tasked with determining whether a child or young person is at risk of abuse or neglect and in need of care and protection when there is no person with parental responsibility willing or able to provide that protection.

The court has a unique task in both its care and criminal jurisdiction. In the care jurisdiction, when making a decision regarding a child or young person the court must consider the best interests of the child or young person. In the court's criminal jurisdiction, upon a young person being convicted or found guilty of an offence, the court must — in its sentencing of the young offender — consider the rehabilitation of the young offender and may give more weight to that purpose than it gives to any other sentencing purpose.



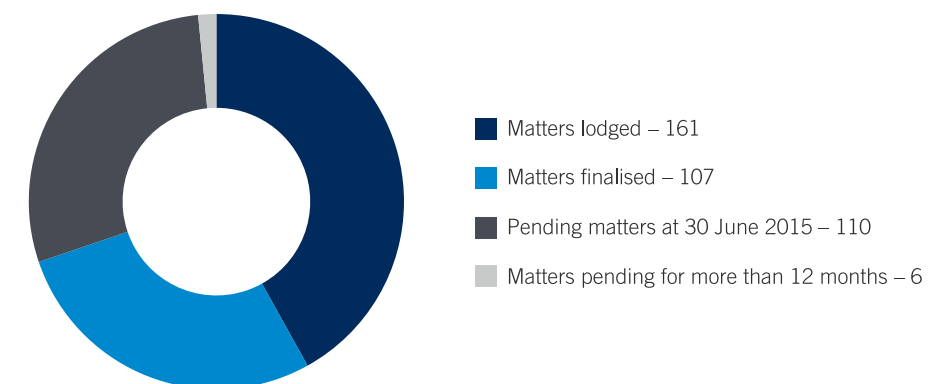
Children criminal matter statistics

Between 1 July 2014 and 30 June 2015



Care and protection matter statistics

Between 1 July 2014 and 30 June 2015



Galambany Court

The Galambany Court is a specialised court with the purpose of assessing and sentencing Aboriginal and Torres Strait Islander people. Aboriginal and Torres Strait Islander offenders may be referred to the Galambany Court for sentencing following a plea of guilty.

Magistrate Bernadette Boss is currently the Galambany Court Magistrate. The Galambany Court has the same sentencing powers as the Magistrates Court. There are three distinct stages in the Galambany Court sentencing process. These are: referral by a Magistrate; assessment for suitability undertaken by the Galambany co-ordinator within the Justice and Community Safety Directorate; and the sentence hearing and sentencing.

A panel of Elders and community members presides over the court and recommends culturally appropriate sentences to effectively address the underlying cause of offending behaviour. Panel members contribute to the process in a variety of ways and have a role in explaining culturally relevant details to the court while also expressing to the defendant that criminal behaviour will not be accepted or tolerated in the Aboriginal and Torres Strait Islander communities. The Elders and community members also have an opportunity to explore with the defendant how he or she may avoid further criminal behaviour. Recommendations of the panel are considered by the Galambany Court Magistrate when imposing sentences.

Relationships Australia and Community Corrections are in attendance at court proceedings to provide advice to the panel on their decision making and the practicalities of implementing recommended outcomes.

Culturally appropriate programs are provided to the court for referrals upon sentencing. At this stage, young adult offenders (18–25 years) may be referred to an Outward Bound program which allows the offender to engage in reconnecting with country.

The Galambany Magistrate and the Galambany Steering Committee are currently exploring further programs with Parks and Wildlife for offenders to engage in a day program which will allow them to go onto country and learn their history from Elders of the community.



History

The predecessor to the Galambany Court was the Ngambra Circle Sentencing Court which was established through a practice direction of the Magistrates Court. The inaugural circle sentencing magistrate was Shane Madden.

The change of name from 'Ngambra' to 'Galambany' was recommended by participants in the Circle Court and agreed to by the ACT Elected Body and Ngunnawal Council of Elders in 2010. Galambany means 'we all, including you'. It is an inclusive word that recognises the various origins of people of Aboriginal and Torres Strait Islander descent living on Ngunnawal country today.

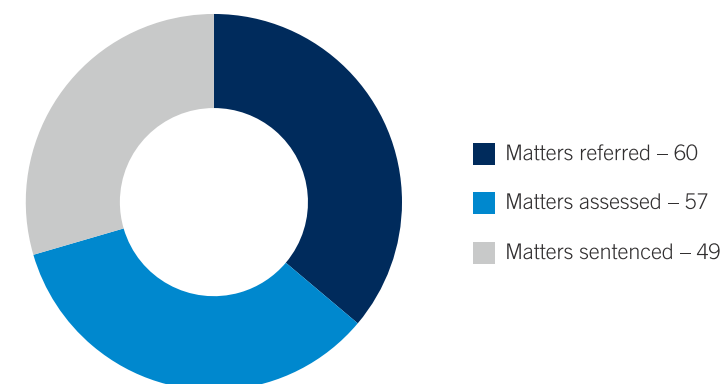
In 2012 the Galambany Court Practice Direction, came into effect. The *Courts Legislation Amendment Act 2011* gave formal recognition to the circle sentencing process, introducing chapter 4C into the *Magistrates Court Act* which provides that when the Magistrates Court is sitting for the purposes of circle sentencing it operates as the Galambany Court.

Highlights of the Galambany Court

The Circle Sentencing Court celebrated its 10-year anniversary on 9 August 2014 with a ceremony and the opening of a dedicated court room — the Galambany Court Room. The Traditional Owners of the land upon which the court sits attended and undertook a smoking ceremony of the new court room. Aboriginal and Torres Strait Islander artworks have been kindly donated from Aboriginal and Torres Strait Islander artists to provide a culturally sensitive court environment.

Galambany Court statistics—adults

Between 1 July 2014 and 30 June 2015



Family Violence Court

In 2011 the *Magistrates Court Act* was amended to give statutory recognition to the family violence list. This created a specialised criminal court responsible for hearing domestic violence offences.

Giving the Family Violence Court a legislative basis provided a more integrated approach to dealing with domestic violence. Domestic violence takes place in the context of specified relationships between people and may result in considerable harm to the victim and all other individuals exposed to it. The purpose of establishing the specialised Family Violence Court was to recognise the complex nature of domestic and family violence and the need to protect victims and the community as a whole.

Chapter 4B of the *Magistrates Court Act* provides that the Magistrates Court can also operate as the Family Violence Court when exercising the following jurisdiction:

- any criminal proceeding against an adult in relation to a domestic violence offence;
- a proceeding in relation to bail for an adult charged with a domestic violence offence; and
- a proceeding in relation to a breach of a sentence imposed by the Magistrates Court or the Family Violence Court on a person for a domestic violence offence.

Domestic violence offences are characterised as such based on the nature of the relationship between the offender and the victim and the type of offence. 'Relevant' relationships include those between alleged offenders and victims: who are married; were formerly married; in a domestic partnership; or former domestic partnership; in an intimate relationship; a child or step child of the alleged offender; or parent or step-parent of the alleged offender.

Offences include murder, manslaughter, assault, acts endangering life, stalking, property damage, sexual assault, acts of indecency and reckless driving. The full range of relationships and offences are detailed in the *Domestic Violence and Protection Orders Act 2008*.



Industrial Court

The Industrial Court commenced operation on 8 November 2013, following the recommendations of the 'Getting Home Safely'² report. The court has a wide jurisdiction to deal with industrial and work safety matters.

Section 291P of the *Magistrates Court Act* sets out the circumstances in which the Magistrates Court sits as the Industrial Court. Industrial Court matters must be heard by an appointed Industrial Court Magistrate. Chief Magistrate Lorraine Walker is the current Industrial Court Magistrate.

The Industrial Court has jurisdiction to deal with proceedings under the:

- *Workers Compensation Act 1951*
- *Work Health and Safety Act 2011*
- *Scaffolding and Lifts Act 1912*
- *Dangerous Substances Act 2004*
- *Machinery Act 1949*.

The court also has jurisdiction to hear and determine personal injury matters arising from the same facts that form the basis for proceedings under any of the above Acts, up to a limit of \$250 000.

The Industrial Court exercises the Magistrates Court's jurisdiction in criminal prosecutions against adult offenders where they relate to industrial or work safety offences; bail proceedings and proceedings for breach of sentences imposed for those offences.

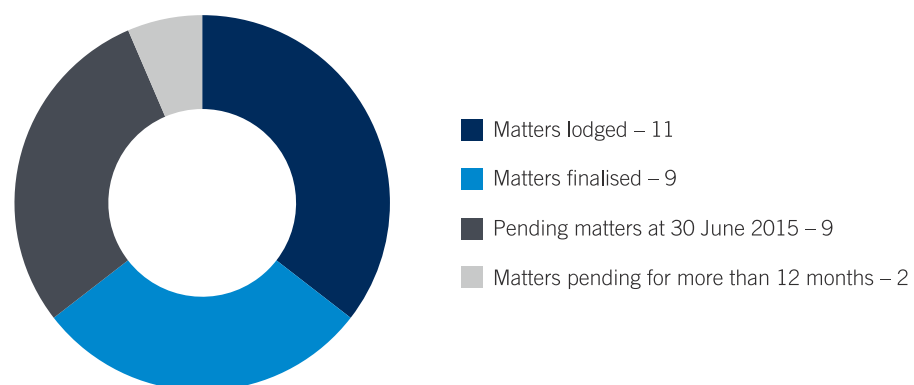
² Getting Home Safely: Inquiry into Compliance with Work Health and Safety Requirements in the ACT's Construction Industry, accessible at <http://www.worksafety.act.gov.au/publication/view/1991>

Industrial Court statistics

The following statistics provide a snapshot of matters that have been dealt with in the Industrial Court since its commencement.

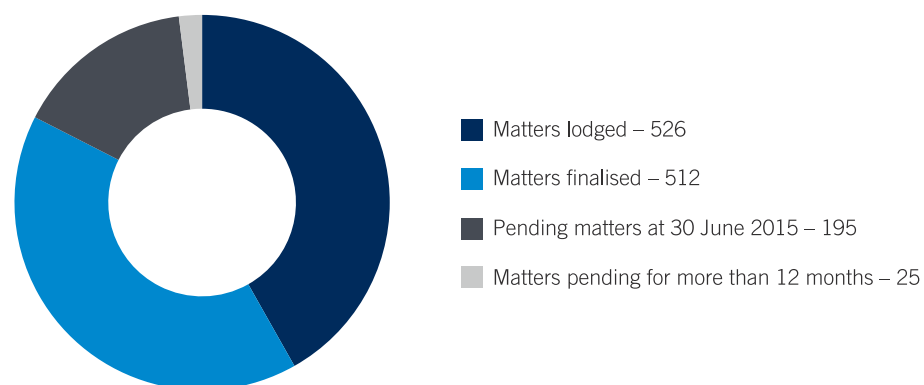
Criminal cases

Between 1 July 2014 and 30 June 2015



Civil cases

Between 1 July 2014 and 30 June 2015



CASE STUDY

In the decision of *McKie v Al-Hasani and Kenoss Contractpors Pty Ltd* [2015] ACTIC 1, the Industrial Court considered the meaning of an “officer” for the *Work, Health and Safety Act*, the first reported consideration of this concept under the model legislation.

In this case, a project manager employed by the second defendant, a corporation in liquidation, was charged with breaching a safety duty not in his personal capacity but as an “officer” of the corporation. The factual circumstances involved the death of a contractor attending an outpost of the work site which was situated below live power lines and as to which there was no warning or proper preventative safety measures in place. The contractor was electrocuted when his tipper truck touched the wires. The project manager was found not to be an “officer” of the corporation in light of the fact that his role in the corporation was operational rather than controlling. The corporation was found guilty of a breach of its safety duty and fined in its absence.

**THE PROJECT MANAGER
WAS NOT AN
“OFFICER”... HIS ROLE
WAS OPERATIONAL NOT
CONTROLLING.**



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HIGHLIGHTS AND DEVELOPMENTS

ACT Law Courts Precinct project

The Magistrates Court has been working closely with the Attorney-General and the Justice and Community Safety Directorate on the law courts expansion project. Magistrates and staff members of the Magistrates Court have participated in the consultative process and provided constructive advice to relevant stakeholders. The project is progressing, with a preferred bidder confirmed in October 2015 who will provide completion of the new ACT Law Courts Precinct.

The new building will reflect and support a progressive and independent judiciary. The proposed project will integrate the Supreme Court, Court of Appeal and Magistrates Court into one building. The project will also provide the court with the opportunity to accommodate a number of assessment and support services, including the Domestic Violence Crisis Service, ACT Legal Aid and ACT health agencies including Court Alcohol and Drug Assessment Service (CADAS) and the Forensic Mental Health Court Liaison Team.

The building will also include best practice facilities for vulnerable witnesses, with an increase in remote witness facilities. Early works on improving and upgrading video conferencing technology are expected to commence in 2016 and will result in every courtroom in the precinct being equipped with audio visual facilities.

Integrated Courts Management System

The 2012–13 ACT Budget provided \$9.5 million over four years for the acquisition and development of a new electronic case management system to improve the operation of the ACT Courts and Tribunal. In the 2014–15 Budget an additional \$2.44 million in capital funding was provided over four years to further develop the new ICT courts case management system.

The funding will be used to implement in-court technology; online services for the legal profession and unrepresented litigants; and automate information sharing among justice agencies. The new system will also facilitate the electronic filing of documents to improve the efficiency and effectiveness of registry operations and ultimately service delivery to court users.

The ACT has finalised an agreement with the Western Australian Department of the Attorney General for the provision of their courts case management system. Court staff are working through the complex task of commissioning the new system. Implementation will be finalised in the civil jurisdiction of the Magistrates Court in mid-2016. Full implementation is expected to be completed by 2018.

Dispute resolution conferences – workers compensation

In order to support the work of the Industrial Court, on 29 April 2015, the *Court Procedure Rules 2006* were amended to provide for all applications for arbitration hearings in the workers compensation jurisdiction of the court to proceed to a dispute resolution conference, unless otherwise ordered by the court. The purpose of the dispute resolution conference is to enable parties to an application, with the assistance of a conciliator, to settle any issues in dispute and settle the amount of compensation payable or the basis upon which compensation is payable. If settlement is not reached, the process should nonetheless allow parties to narrow the issues in dispute and facilitate the future progress of the application.

For the period 29 April to 30 June 2015, 33 applications for arbitration have been filed. Of those, 16 have been directed to a dispute resolution conference. This process is in early stages and the full impact of these changes will be assessed in the next financial year.

Court-based mediation

In recent years, the Magistrates Court has increasingly focused on early dispute resolution processes to support the Court in managing an increasing demand on its service and in recognition of the benefit to litigants. The Magistrates Court has a varied remit within its civil jurisdiction which requires a targeted approach to resolving matters.

On 9 February 2015, Practice Direction 2 of *2014 Case management in proceedings commenced by originating claim* implemented the process of referring for mediation all matters commenced by way of an originating claim. The first two mediations were conducted on 29 June 2015. Both of these matters settled prior to hearing.

Mediations have been well received. Further detail and analysis will be available at the conclusion of the 2015–16 financial year.



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COURT SUPPORT SERVICES

Sentencing database

With the assistance of the Judicial Commission of NSW, ACT courts have developed a database of sentences imposed in the Magistrates Court and the Supreme Court.

The ACT Sentencing Database was launched on the 4 December 2013 by the courts Administrator, the Chief Justice and the Chief Magistrate. The project is now in its second phase which centres on enhancing the system, developing additional sentencing tools, and training users.

Access to the sentencing database has improved the availability and quality of sentencing information in the ACT including statistics, case summaries and judgments. The database will support the work of judicial officers in making assessments about sentencing decisions and drawing on relevant precedent in past cases. The availability of sentencing data may inform judicial officers of the range of penalties imposed in similar matters and may promote consistency in sentencing.

The database is accessible to the legal profession without charge. Members of the public may apply for access through the Russell Fox Library located in the Supreme Court.

Transcript services

Recording, monitoring and transcription services are provided by Spark & Cannon. Appointed following a public request for tender procurement process, Spark & Cannon commenced as provider to the courts in December 2013. Transcripts of court proceedings are available, for a fee, at: http://www.courts.act.gov.au/magistrates/forms_and_applications/forms_for_ordering_court_transcripts.

Justices of the Peace

A Justice of the Peace (JP) is present in the Magistrates Court building each day. The JPs provide a valuable volunteer service to the court and community and are available between 9:30am and 12:30pm to witness and certify documents such as statutory declarations. Justices of the Peace also administer oaths and affirmation relating to evidence in affidavit form.

Legal aid duty office

Legal Aid ACT offers services across two areas of the court's jurisdiction, namely criminal and domestic violence and protection orders.

Legal Aid ACT supports the work of the court by providing on-site duty solicitors for criminal matters. This work has been enhanced during the year with the court's administration providing Legal Aid ACT with additional office space allowing the organisation to support defendants at court throughout the day. The legal aid Duty Officer is available during weekdays and on Saturday mornings and provides preliminary legal advice to defendants that are in custody or otherwise appearing in court.

Additionally, legal aid solicitors staff the Domestic Violence team on the ground floor of the court. This team provides duty advice to members of the community seeking interim domestic violence and protection orders. The team also provides advice when matters return to court for conference or hearing.

Court Alcohol and Drug Assessment Service

The CADAS provides two services to the court.

Where a defendant is found guilty or pleads guilty to a drink driving offence and is an habitual offender (three drink driving offences within five years) or has committed a high range (level 4) offence, the court is required to obtain a report from CADAS. This report summarises CADAS' assessment on whether any form of therapeutic treatment or program might assist the person and, if so, CADAS makes recommendations about an appropriate treatment or program. In sentencing, the court must consider the report and may order the person have treatment or undergo a program recommended by the assessment.

CADAS may also be engaged to provide a report to the court for the purposes of a bail application or sentencing, for offenders who have been charged with an alcohol or drug related offence. The report may recommend a treatment plan either during court proceedings or as part of a sentencing order.

The magistrates can take into account the information provided in the CADAS report and may require high risk offenders in particular to participate in appropriate therapeutic programs or treatments to address their substance abuse. CADAS clinicians will monitor attendance with any programs ordered by the court and report all outcomes to the court.

Forensic Mental Health Service

An important part of the criminal jurisdiction within the court is to ensure, where appropriate, diversionary measures are considered. The Forensic Mental Health Court Assessment and Liaison Service supports the court in matters where a defendant presents with mental health issues.

Where mental health concerns have been identified, the liaison service assists the court by assessing a defendant prior to his or her appearance in court. The liaison service will provide advice to the court as to whether it is necessary for the court to make an order pursuant to s. 309 of the *Crimes Act 1900* for an assessment of the defendant's requirement for immediate treatment or care for mental health reasons. The liaison service may also provide advice about any presenting mental health concerns and current treatments relevant to bail or treatment in custody.

Specialist clinicians in the fields of psychology and psychiatry provide reports at the direction of the court in relation to mental impairment and fitness to plead and may also be requested to provide reports relating to mental health issues relevant to culpability on sentence.

Prisoners Aid

The Court Assistance and Referral Service (CARS) run by Prisoners Aid operates out of the Magistrates Court each day between 9am and 12:30pm.

It offers a support and referral service to people charged with offences in the ACT law courts, their families and prisoners. The referral service provides pre-release and post-release assistance to detainees to help them reintegrate into the community.

Prisoners Aid volunteers visit detainees and assist families of ACT prisoners to visit their loved ones who are incarcerated interstate.

Child and Youth Protection Services

In the ACT the Community Services Directorate is responsible for providing Child and Youth Protection Services (CYPS). CYPS focuses on reducing youth crime by addressing the underlying causes of crime through early intervention, prevention and diversion strategies. It promotes a number of initiatives which have been progressed over the past year including a more comprehensive case management system and strengthened role of the Court Liaison Officer.

The Court Liaison Officer is the Director-General's representative in the Children's Court. The officer also supports the young person and his or her family through the court process. The Court Liaison Officer is responsible for advising the court of the young person's progress, compliance with orders, and may also communicate concerns to the court.

Restorative Justice Unit

Restorative Justice is a way for the people most affected by a crime — the victim, their family and friends and the offender and their family and friends — to talk about:

- What happened?
- How were people affected?
- What needs to be done to make things better?

The ACT Restorative Justice Unit's (RJU) primary objective is to provide restorative justice to members of the ACT community who have been affected by an offence in a forum that provides:

- victims with an opportunity to talk about how the offence has affected them and others close to them
- offenders with an opportunity to accept responsibility for their actions
- victims, offenders and supporters an opportunity to discuss the harm and what needs to be done to repair that harm, and
- offenders with an opportunity to repair the harm done by the offence.

In 2014–2015 there were 112 referrals made to the RJU (83 by ACT Policing and 29 by the Children's Court) involving 294 offences.

Referrals may be made at any time during the criminal justice process and are used significantly by ACT Policing to divert young people from the courts. However, where matters proceed to court, a referral may be made to the RJU during the court proceedings either on the request of parties or by the Children's Court Magistrate.

The Children's Court may refer a matter at any time following the admission of guilt. The Children's Court may take into account the young offender's participation in the restorative justice process when sentencing. The court cannot take into account the fact that a young offender chooses not to participate.

Phase two of restorative justice will be commenced in 2016. Phase two will allow for referrals to be made for adult offenders. The court will be working with the Justice and Community Safety Directorate to ensure a smooth transition of this option into the adult criminal justice system.



JUDICIAL EDUCATION AND COMMUNITY INVOLVEMENT

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JUDICIAL EDUCATION AND COMMUNITY INVOLVEMENT

Judicial education and professional development

The court adopts a policy of supporting 5 days annual judicial education, consistent with National Judicial College of Australia's *National Standard for Professional Development of Australian Judicial Officers*.

The magistrates are actively involved in continuing judicial education. In August and December 2014, seminars were held at the Australian National University. The seminars — which were open to all magistrates and Supreme Court judges — comprised a number of presentations as well as interactive question time. All magistrates attended some, if not all, of the sessions offered.

External presenters were invited to speak about a number of topics relevant to the court. These included presentations relating to the thinking behind making laws, domestic violence responses, understanding mental health issues, drug use and abuse education, forensic issues, restorative justice, costs orders and the International Courts Framework of Excellence.



The magistrates have also attended a number of external continuing education conferences and seminars including:

- Asia Pacific Coroners Society Conference (Chief Magistrate)
- National Judicial College of Australia – Judicial Leadership Program (Chief Magistrate)
- The South Pacific Council of Children and Youth Courts Conference in Samoa (Magistrate Fryar)
- Writing better Judgements Program convened by the National Judicial College of Australia (Magistrate Cook)
- The Magistrates Orientation Program convened by the Judicial Commission of NSW (Magistrate Cook)

Legal education, public and professional engagement

The magistrates actively engage in community and professional organisations and events. In the reporting year the Chief Magistrate was a member of, presented at and attended a number of fora including:

- Law Reform Advisory Council member
- Board member of Australian Association of Women Judges
- A judicial member of the ACT Bar Association
- Donate for Life engagements
- University of the Third Age
- Justice of the Peace engagements
- Key speaker for the Conflict Resolution Services Annual General Meeting
- Australian Lawyers Alliance Professional Development Seminar
- Women Lawyers Association Annual Law Week dinner
- ABC Program – Coronial Support 'Suicide Awareness'
- Minter Ellison – 'Mothers in Law Event'
- Forensic Mental Health Services interactive sessions
- Presentations to various groups within the Australian Federal Police
- Presentations to high school and university groups

Magistrate Boss is a serving member of the Australian Army Reserve with the rank of Brigadier; a member of the Judicial Council on Cultural Diversity; the ACT Bar Association; and has been involved in numerous events supporting the Aboriginal and Torres Strait Islander Community.

The Registrar of the Magistrates Court has been actively involved, together with the Deputy Registrar of the Supreme Court, in providing continuing legal education seminars for young lawyers including presentation on two occasions on court etiquette.

Community engagement

To assist the community understand the operation and processes of the Magistrates Court, Court officers provide introductory talks and facilitate opportunities for the viewing of court proceedings. The court administration also organises and provides courtrooms for activities such as mooting for groups, including school and university students.

More than 20 formal tours and introduction to proceedings were conducted in 2014–15. The tours assist groups whose work involves appearing in or reporting on court proceedings; providing an opportunity to police recruits, law and journalism students, customs officers and care and protection workers to become familiar with the court environment and legal processes. Tours may include an address by a magistrate.

Under the ACT Law Courts and Tribunal Work Experience program individual school students from local high schools and colleges can apply to participate in work experience. Usually five students each year are accepted. Students attend for one week to observe and assist staff in the various jurisdictions of the Magistrates Court, the Supreme Court and the ACT Civil and Administrative Tribunal to experience how the legal system runs on a practical level. In addition, law students spend time in magistrates' chambers and accompany an associate on work experience to gain an understanding of the duties and responsibilities of that role.



