



MAGISTRATES COURT

OF THE AUSTRALIAN CAPITAL TERRITORY

ANNUAL REVIEW
2015–16

COURT RO

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Foreword by Chief Magistrate of the ACT

The 2015–16 year has been a very positive one for the ACT Magistrates Court. Three of the major projects affecting the courts have progressed significantly during this year.

Firstly, in relation to administrative processes and data support, court staff have been working exceedingly hard to bring the court to readiness for the much awaited implementation of the Integrated Court Management System (ICMS) in the courts civil jurisdiction.

Secondly, the new ACT Courts precinct has progressed with assessment and some repair of existing Magistrates Court facilities, and a significant progressive upgrade of the courts audio visual facilities, alongside major works on the Supreme Court wing and shared functional and public areas. These upgrades have finally seen this Court in a position to meet its legislative obligation to conduct appropriate bail applications by audio visual facility, and increase functionality in the hearing context.

Thirdly, the court has continued to progress the recommendations of the alternative dispute resolution (ADR) review referred to in last year's annual report and is in the process of adopting a restructure to support improved access to effective ADR processes within the court.

The Court also resolved to adopt the International Courts Framework of Excellence (ICFE) and the judiciary are engaged in formulating a strategic statement to lead the court's administration of that.

In February 2016, Magistrate Fryar, who sat as Childrens Court Magistrate for six years, relinquished that position to return to the Magistrates Court general lists. Magistrate Fryar demonstrated a real commitment to this work and is extremely well regarded by colleagues both nationally and internationally. Magistrate Fryar very successfully hosted the South Pacific Youth and Childrens Court Conference in Canberra in 2015.

Having assumed responsibility for the Childrens Court in March 2015, I was fortunate enough to visit Leeds City Council in England and to meet with a number of childrens court judges, including the recently retired District Judge Nick Crichton. I was particularly impressed with their response to care and protection issues, from the restorative approach adopted by council administrators and social workers, to the therapeutic approach being piloted in the courts. I have determined to trial a therapeutic care court in the Territory, the aim of which will be to give those parents motivated to reunite with their children whatever support the Court can garner to do so, where that is deemed to be in the children's best interests. This project is now in its infancy but I expect a pilot in the 2016–17 year.

In 2016, the Court welcomed Magistrate Glenn Theakston to the bench in anticipation of the retirement of Magistrate Peter Dingwall, maintaining the number of full-time magistrates in the Territory at seven. I appreciate the proactive approach of the government to recruiting in a timely manner. However, in my view, the Court continues to be underresourced. Delayed hearings, particularly for those on remand in custody, are particularly concerning.

Unfortunately, the volume of work undertaken by the court has continued to require a very heavy reliance on Special Magistrates. Whilst the court very much appreciates the flexible and committed approach of these individuals, the level of usage supports my firm belief that the court requires the appointment of at least one further full-time magistrate, whilst maintaining a small cadre of Special Magistrates to assist with unexpected or longer term judicial absences. As I noted in last year's annual review, I am also of the view that the ACT community would benefit from the appointment of a dedicated coroner, a course which would only be tenable with a significant increase of judicial resources.

I again gratefully acknowledge the commitment and professionalism of my judicial colleagues, our Registrars and our administrative support team.

Foreword by Principal Registrar of the ACT Law Courts and Tribunal

During the reporting year the courts administration continued to focus on the new courts facility, the new case management system (ICMS), courts governance and how the organisational structures and processes best support the business of the Supreme Court and Magistrates Court.

The contract for the new courts facility was finalised at the end of 2015, and the first half of 2016 involved a range of workshops and other activities to settle the final design of the new facility. Major upgrades to the technology in the Magistrates Court courtrooms commenced, and the transition of facilities management to the consortium has seen various areas and services in the building refreshed.

The programming of the civil release for the ICMS was completed in mid-2016 with a view to implementation in the September quarter. Work commenced on refining the requirements for the criminal release of the ICMS that is due in the first half of 2018. This is the most complex of the releases and will also include a number of online services.

During the year, negotiations continued with the NSW Forensic Analytical Science Services (FASS) to establish a partnership for the provision of forensic pathology and a range of related services to the ACT Coroners Court.

In April and May the Court worked with Michael Vallance from the Supreme Court of Victoria and Anne O’Hehir from Court Services Victoria to assess its current performance, customs and practices against the criteria of the International Framework for Court Excellence. The outcomes from that assessment will inform a range of initiatives to be undertaken during 2016–17.

The last 12 months have been a particularly busy and productive period for the administration as major projects, and other activities, have made significant progress while staff also provided a range of high quality Registry and corporate services to the Court. I would like to acknowledge the hard work and commitment of staff that has made this occur.

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



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1 Magistrates Court: Our People

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*. 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 2016 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, CSC

Appointed 8 May 2012



COOK, Robert Matthew

Appointed 11 September 2013



THEAKSTON, Glenn Sacha

Appointed 30 May 2016

SPECIAL MAGISTRATES



DOOGAN, Maria Krystyna

Magistrate
5 August 1998 – 30 March 2012
Special Magistrate
24 May 2013 – Current



CUSH, Kenneth Michael

Appointed September 2008 – September 2010
and reappointed on 24 May 2013



HUNTER, Margaret Ann OAM

Appointed 21 May 2014



MULLIGAN, Dominic Hugh

Appointed 21 May 2014

Recent Judicial Appointments

THEAKSTON, Glenn

Mr Glenn Theakston was appointed on 30 May 2016.

Mr Theakston studied science and law at Macquarie University in Sydney and was admitted to practice as a solicitor in 1994.

After serving as a Legal Officer in the Permanent Air Force for a number of years, he transferred to the Reserve and commenced civilian legal practice in Canberra. Initially he worked in private practice in general litigation. He then joined Legal Aid ACT, where he conducted a busy criminal legal practice for the best part of a decade.

In 2006, Mr Theakston moved to the Head Office of the Commonwealth DPP and managed its Counter Terrorism prosecutions. In 2012, he was called to the Bar and practised in a range of areas, including criminal and family law, as well as an assortment of civil litigation.

During his time within the Air Force Reserve, Mr Theakston provided legal advice across all levels of the Defence organisation, appeared before most discipline and inquisitorial fora, and conducted and reviewed a wide range of statutory inquiries, including deploying on operations for that purpose.



*Chief Magistrate Walker, Magistrate Theakston
and Chief Justice Murrell*

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. She 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 procedures, and support court users by providing procedural advice and assistance.

Long-serving staff

The Magistrates Court has 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 a recently retired staff member, Judy Talevich, who commenced employment with the Court in 1988 and retired in 2016.



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2 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 having commenced 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 established 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 Coroner.



Work of the Court

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3 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 \$5 000 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 for each offence. With this expanded jurisdiction, the court hears many serious matters including aggravated robbery and aggravated burglary and serious offences of a violent or sexual nature.

All criminal matters commence in the Magistrates Court and approximately 97% are finalised in this Court.

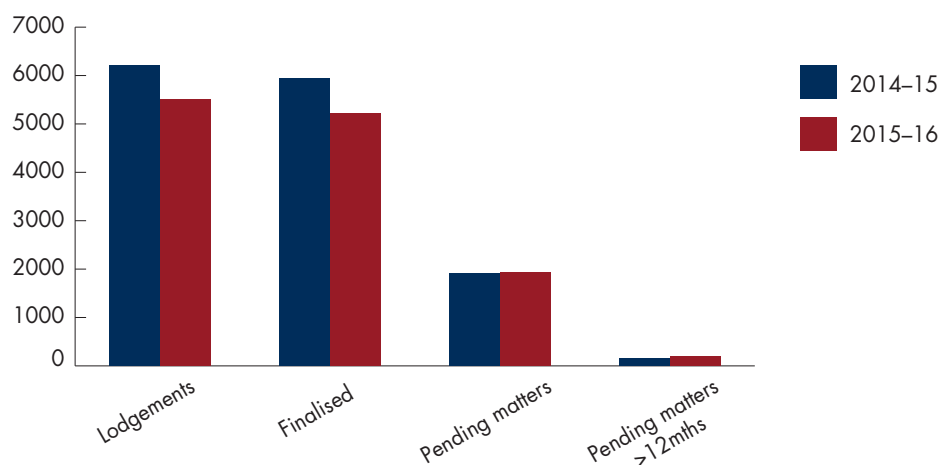
There are a number of diversionary and specialist aspects to the court's criminal jurisdiction, some of which are detailed below, including restorative justice and the Galambany Court.

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

In the reporting year, the court referred 75 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. Ten 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 42 defendants who were unfit to enter a plea.

Between 1 July 2015 and 30 June 2016

	2014–15	2015–16	% variance
Lodgements	6219	5504	-11%
Finalised	5949	5227	-12%
Pending matters	1915	1936	+1%
Pending matters >12mths	165	197	+19%



Despite reduced lodgements, the Chief Magistrate is concerned that there is an unacceptable delay in finalisation of criminal matters in this Court. The Court has taken a number of approaches to addressing the increasing delays in the criminal jurisdiction of the Court. Greater use has been made of Special Magistrates to supplement the resources of the Court. However, Special Magistrates are an underfunded resource and their future use is uncertain. The approach has attracted criticism from the ACT Bar Association because of the non-tenured nature of the role and the uncertainty of the continuing availability of Special Magistrates. The Chief Magistrate has called upon the Government to fund the appointment of a further judicial officer, particularly in the face of the growing criticism of delays, the increase in the criminal and civil jurisdiction in 2011 to the Magistrates Court, and the perception regarding the use of untenured judicial officers.

Analysis of the listing practices of the Court indicate that significant judicial time is being under-utilised due to matters being listed for hearing but not proceeding. Over the past five years 50% of criminal matters (excluding family violence) that have been set down for a one day hearing have not proceeded as planned. This has resulted in a loss, on average, of approximately 70 judicial days each year. Over the past 5 years, on average, 67% of short criminal matters (excluding family violence) set down for hearing have not proceeded as planned resulting in approximately 150 hours of judicial time being lost per year (the equivalent of 30 sitting days).

Over the past five years, 51% of family violence matters that have been set down for a one day hearing have not proceeded as planned, resulting in a loss, on average, of 30 judicial days each. A further 69% of short family violence matters have not proceeded as planned, resulting in approximately 60 hours, on average, of lost judicial time (the equivalent of a further 12 sitting days). It is anticipated with the analysis of the above figures, the Court will move towards a more robust over-listing practice in the coming year. Whilst there is a risk of some matters not being able to proceed on the day they are listed, the current underutilisation level is not acceptable to the Chief Magistrate.



Civil jurisdiction

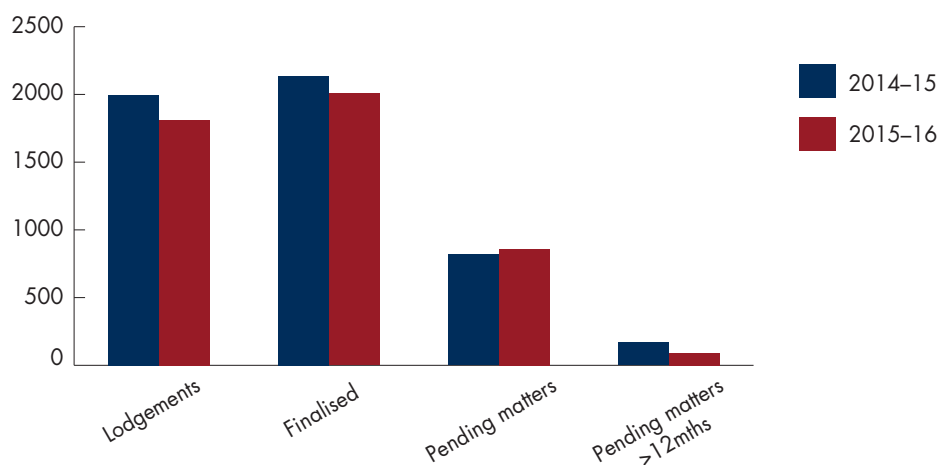
The court has a broad jurisdiction to hear and determine applications in its civil jurisdiction. These include claims for damages, such as personal injury, breach of contract, and debt and applications under the *Domestic Violence and Protection Orders Act*.

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* in which there is not financial limit, 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 2015 and 30 June 2016

*1	2014–15	2015–16	% variance
Lodgements	1997	1811	-9%
Finalised	2136	2006	-6%
Pending matters	817	860	+5%
Pending matters >12mths	168	89	-47%



1 These figures exclude lodgements and finalisations for domestic violence and protection orders

There has been a decrease in civil lodgments in the reporting year from the previous reporting year. This has allowed the court to reduce the number of pending matters over 12 months old.

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. Magistrate Peter Morrison has worked closely with the Registrar to ensure that all pending matters over 12 months old are proactively case managed and progressed to finalisation as soon as possible. This has resulted in a significant reduction in pending matters over 12 months old.

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.

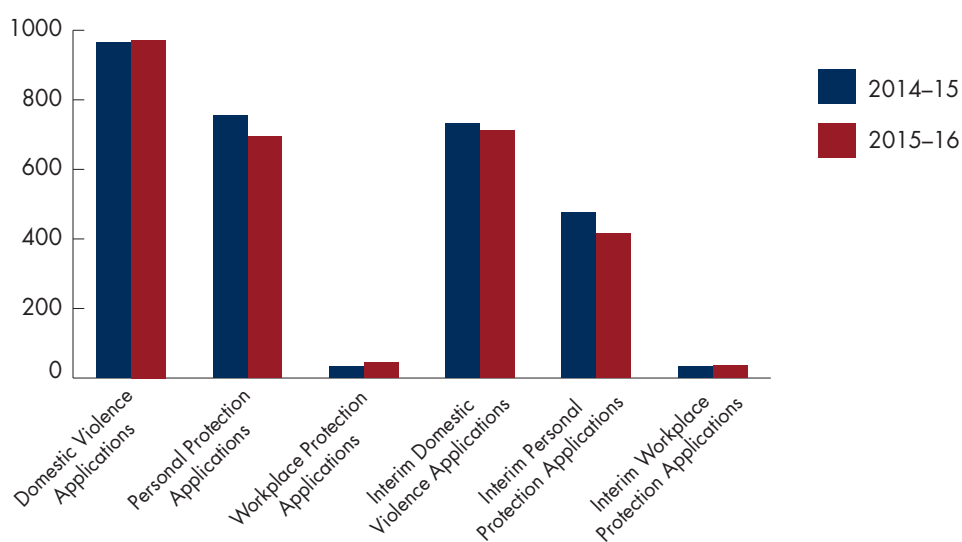
All applications for domestic violence and protection orders are set down for a conference before a deputy registrar to explore an agreed outcome between the parties. If not resolved at conference, and an interim order is sought, some matters need to go before a magistrate on an ad hoc basis. Unfortunately, due to limited judicial resources, these matters occasionally attract longer than desirable waiting times as these matters are allocated as a secondary list and must be fitted in with the primary list before the magistrate that day.

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 10–12 weeks of the conference.

Between 1 July 2015 and 30 June 2016

	2014–15	2015–16	% variance
Domestic Violence Applications	964	972	+1%
Personal Protection Applications	756	695	-8%
Workplace Protection Applications	34	45	+32%
Interim Domestic Violence Applications	732	711	-3%
Interim Personal Protection Applications	476	415	-13%
Interim Workplace Protection Applications	34	36	+1%



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 and within 48 hours at the latest. 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 365 days per year.



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4 The specialist courts

Childrens Court

The Magistrates Court sits as the Childrens Court when exercising jurisdiction under Chapter 4A of the *Magistrates Court Act*. Chief Magistrate, Lorraine Walker, is currently the Childrens Court Magistrate, having commenced in the role on 29 February 2016. Prior to this, Magistrate Karen Fryar was the Childrens Court Magistrate. Magistrate Fryar held this position for six years; her work in the area was highly regarded and the Chief Magistrate thanks her for her contribution.

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). Pursuant to the *Criminal Code 2002 (ACT)* the current age of criminal responsibility is 10. There is a rebuttable presumption that a child is unable to know the wrongfulness of her or his conduct between 10 and 14 years of age.

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, and whether there is a person with parental responsibility willing or able to provide that protection.

Childrens Court proceedings are not open to the public. The court must consider on each occasion whether people who wish to be present have a legitimate interest warranting their attendance.

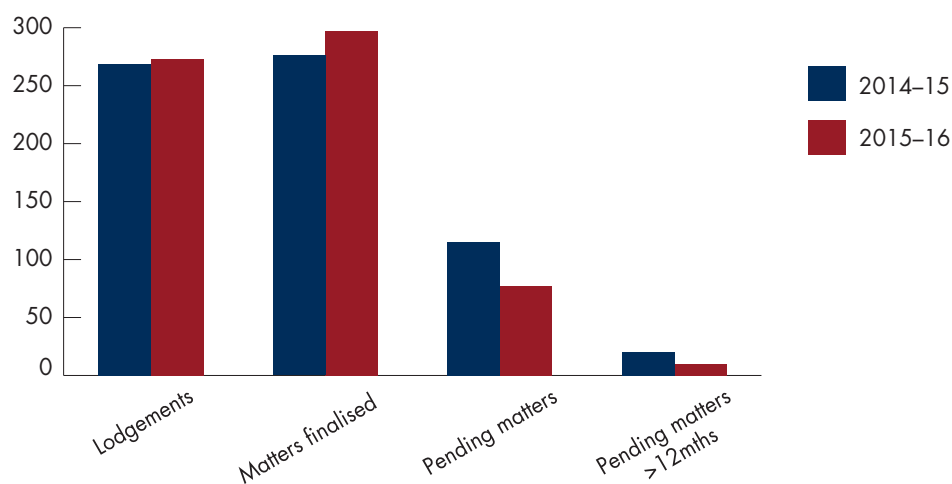
The court has a unique task in both its care and criminal jurisdiction. In the care jurisdiction, when making a decision regarding a child or young person the court must consider the best interests of the child or young person. In the court's criminal jurisdiction, upon a young person being convicted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



Children criminal matter statistics

	2014–15	2015–16	% variance
Lodgements	269	273	+1%
Matters finalised	276*	297*	+8%
Pending matters	115	77	-33%
Pending matters >12 months	20	10	-50

*Note: Finalisation data excludes matters transferred to the ACT Supreme Court.



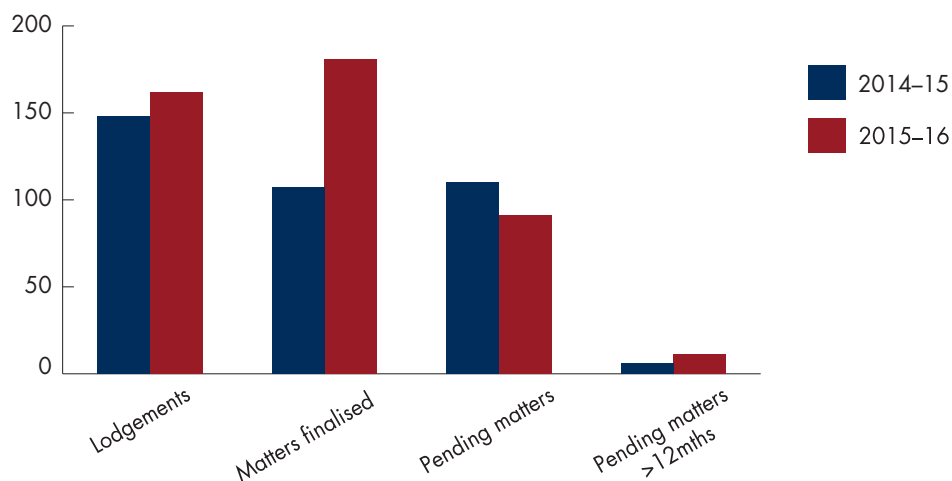
The Court has been assisted in moving matters more quickly through the Childrens Court, where it is in the child or young person's best interests, by a greater willingness of the Legal Aid Office to provide advice on a duty basis, and a preparedness of the Director of Public Prosecutions office to respond quickly to requests for information which might facilitate early finalisation of criminal proceedings. The Chief Magistrate considers that this is highly desirable where prolonged involvement in the criminal justice system is likely to detriment a child or young person, particularly first offenders, and has welcomed the response of the profession in this regard.

The Court also welcomes the increased support offered by PCYC to children and young people appearing in the criminal jurisdiction, facilitated by regular attendance of a PCYC staff member at court.

On 17 June 2016, the Chief Magistrate revoked the Youth Drug and Alcohol Practice Direction. The Practice Direction has proved to be ineffective and had not been taken up in the manner that had been envisioned. The Court is currently exploring options with key stakeholders to implement a therapeutic intensive list in the care and protection jurisdiction of the Childrens Court. The aim is for the Court to work together with key service providers, the family, and the Community Service Directorate to develop a therapeutic program to address presenting factors such as drug and alcohol, mental health and domestic violence so that, where possible, children can remain or return home safely.

Care and protection matter statistics

	2014-15	2015-16	% variance
Lodgements	148	162	+9%
Matters finalised	107	181	+69%
Pending matters	110	91	-17%
Pending matters >12 months	6	11	+83%



The Court implemented a new Practice Direction in the Care jurisdiction which commenced on 14 June 2016. The principles of the practice direction however commenced operation in February 2016 with a closer focus on case management in this jurisdiction. Early indications have been positive with significant reductions in the number of pending matters in this jurisdiction of the Court. The cooperation of the Director-General Community Services and the legal profession in implementing a more streamlined approach is greatly appreciated.

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 on the defendant's application following a plea of guilty; 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 preside 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 attend these 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.



HISTORY

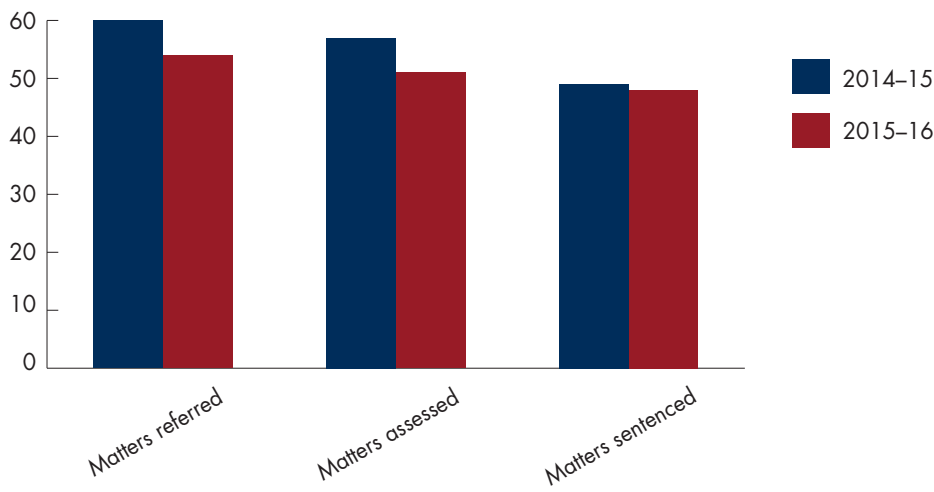
The predecessor to the Galambany Court was the Ngambra Circle Sentencing Court which was established through a practice direction of the Magistrates Court. The inaugural circle sentencing magistrate was Shane Madden.

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.

Galambany Court statistics—adults

	2014–15	2015–16
Matters referred	60	54
Matters assessed	57	51
Matters sentenced	49	48



The court is keen to see the circle approach extended to sentencing of children and young people. Legislative amendment is required before this can progress.

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 or were married, are or were in a domestic partnership, are in an intimate relationship, or are in a parent/child relationship.

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' 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*.

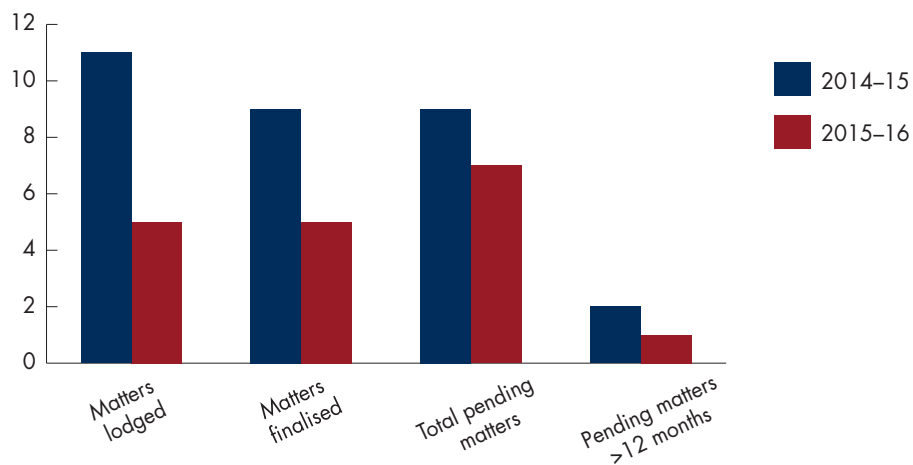
The court also has jurisdiction to hear and determine personal injury matters arising from the same facts that form the basis for proceedings under any of the above Acts, up to a limit of \$250 000.

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.

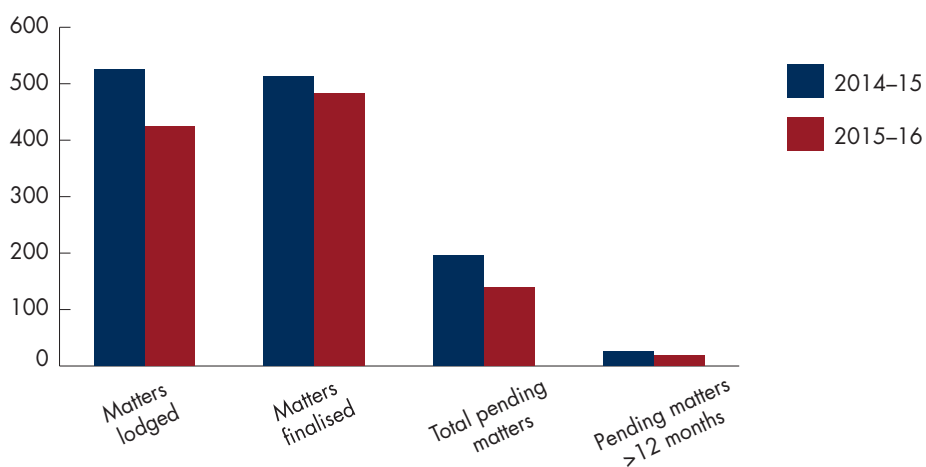
Industrial Court statistics

Industrial Court	2014–15	2015–16
<i>Criminal Charges (not cases)</i>		
Matters lodged	11	5
Matters finalised	9	5
Total pending matters	9	7
Pending matters >12 months	2	1
<i>Civil</i>		
Matters lodged	526	424
Matters finalised	512	482
Total pending matters	195	139
Pending matters >12 months	25	18

Criminal Charges (not cases)



Civil





Highlights and developments

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5 Highlights and developments

ACT Law Courts Precinct project

Construction has commenced on the ACT Courts project. The Magistrates Court has been working closely with the Attorney-General, the Justice and Community Safety Directorate and the Private Industry Partner (Juris Partnership) to finalise the design and manage the staged construction process.

The new building will reflect and support a progressive and independent judiciary. Apart from providing technology upgrades to existing magistrates courtrooms, and a number of shared spaces in an integrated facility, the building 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 and Child and Youth Protection Services.

Works commenced on site in April 2016. Works to the existing Magistrates Court will be undertaken during the first phase of the project which is due for completion in November 2017. As part of an early works package, two existing courtrooms in the Magistrates Court building have received technology upgrades with the rest to be upgraded during the 2016–17 financial year.

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.

In November 2014, the ACT Government entered an agreement with the Western Australian Department of the Attorney-General for the acquisition and implementation of a new case management system known as the Integrated Courts Management System (ICMS). The ICMS system is a more efficient, next generation business system, which will improve service delivery to Court users and will provide a platform for e-lodgement after full implementation. It will save court users' time and resources through better control of, and access to, case information, and will facilitate better information flow between criminal justice agencies. Improved data collection will also strengthen the capability for evidence-based policy analysis in areas such as recidivism rates in the ACT.

The ICMS system is being rolled out in three stages – the first stage was successfully implemented in the ACT Civil and Administrative Tribunal (ACAT) in December 2015. Stage 2 focuses on the civil jurisdiction and will be implemented in September 2016, while the third and final stage for the criminal jurisdiction is due to be rolled out in the fourth quarter of 2017–18.

Alternative Dispute Resolution

Review into Alternative Dispute Resolution Processes

Following a review into Alternative Dispute Resolution (ADR) services in the Court, and consultation with the profession, judiciary and staff, a consultant's report was received in January 2015. The Court is currently addressing a number of the recommendations.

The Court has over recent years increasingly placed a focus on early dispute resolution processes to support the Court in managing an ever increasing demand on its service. The Magistrates Court has a varied remit within its civil jurisdiction which requires a targeted and focussed approach to resolution of matters.

The Court has had a successful Conferencing team in the jurisdiction of the Domestic Violence and Protection Orders Act, and Care and Protection. It is intended to build upon this expertise and expand the use of ADR in a manner that appropriately targets the needs of Court users and ensures, where appropriate, scarce public resources are utilised effectively.

It is imperative in each of the areas of civil jurisdiction that the model for early alternative dispute resolution is designed to ensure access to justice. The Court has restructured its ADR service to provide flexibility and expertise within each of its areas of jurisdiction.

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.

With the introduction of the new case management system in the civil jurisdiction of the Court, it is anticipated that comprehensive data on settlement rates for Dispute Resolution Conferences will be available in the next financial year.

Court-based mediation

In recent years, the Magistrates Court has increasingly focused on early dispute resolution processes in recognition of the benefit to litigants of earlier and agreed outcomes, and to support the Court in managing demands on its services. 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 matters commenced by way of an originating claim.

Mediations have been well received. In the 2015–16 year:

- 106 mediations were conducted; 57 matters settled at mediation; 15 matters settled after mediation.
- **72% of matters settled at mediation and shortly thereafter.**
- Three matters were transferred to the Supreme Court; 17 matters proceeded to hearing; 14 matters were adjourned to a listing hearing and not yet allocated a hearing date as at 30 June 2016.

Childrens Court Practice Direction

The ACT Childrens Court implemented a new practice direction on 14 June 2016. The Practice Direction outlines new listing procedures in the case management of care and protection proceedings brought under the *Children and Young People Act 2008*. These procedures are being implemented with the objective of reducing the number of adjournments and delays in such proceedings in the best interests of children and young people, and will introduce court ordered meetings for the purpose of enabling parties to resolve matters, if possible, as early as possible.

The commencement of the practice direction has been enthusiastically received by the profession, court users and other stakeholders. Further detail of the implementation will be provided in the next financial year.

Front Up – Aboriginal Legal Services

The court recognises the overrepresentation of indigenous people in the justice system and in incarceration in particular. Often incarceration follows a failure to attend at court as required pursuant to a bail undertaking.

In February 2016, Aboriginal Legal Services (ALS), in consultation with the court, commenced the Front Up program which is designed to reduce remands in custody. An ALS liaison officer is available to assist defendants for whom a warrant has been issued by the court. The Court supports this program by encouraging such defendants to present themselves directly to Court.

In circumstances where a defendant has become aware that the Court has issued a warrant for failure to attend Court, they may, prior to 11:30am on any weekday, present themselves to the Court. The matter will be listed before the Court at the earliest opportunity, and in any event, on that day.

Whilst the program does not ensure that a recalcitrant defendant will not be remanded in custody, the likelihood is very significantly reduced where they have attended at court voluntarily. By allowing direct access to court, rather than through the police service which would in itself involve at least some period in custody, the program contributes to better outcomes for indigenous defendants.

Aboriginal and Torres Strait Islander defendants are encouraged to seek support through the ALS who can be contacted on 02 6249 8488.

Family Violence Reforms: Impacts

On 5 November 2015, amendments to the *Domestic Violence and Protection Orders Act 2008* commenced. The amendments introduced a new category of interim domestic violence order (DVO), a “special interim domestic violence order”, to allow an interim DVO to be in place until related criminal charges have been determined by a criminal court. The result is that the court cannot consider whether to issue a final DVO if there are current criminal charges relating to the same applicant and respondent, except by consent of the parties. At any time during the term of an interim DVO, if related criminal charges are filed, the interim DVO is deemed to be a special interim domestic violence order.

The initial form of legislation created practical difficulties in its implementation, precluding early resolution of matters by consent. The Registrar worked constructively with the executive to amend the legislation, which now operates to the benefit of applicants, where a respondent is prepared to consent to an order, reducing uncertainty, anxiety and further court attendance for such applicants.

The reforms also had significant impacts upon the Court and its resources. In circumstances where an application for an interim DVO is made, the Court must satisfy itself that there are no related criminal charges. Furthermore, where fresh criminal charges are filed, the courts case management system must be interrogated to determine whether there is an ongoing application for a domestic violence order, either where an interim order has been made or is being sought.

The amendments were not supported by resources to implement the significant systems changes that were required to track the pathway of related criminal matters within the Court. Significant resources of the Courts administration have been shifted to enable the data matching across two jurisdictions of the Court to identify relevant matters any time that fresh family violence charges are filed, or any time that an application for an Interim Domestic Violence Order is sought.

In the period from 5 November 2015 to 30 June 2016, the Court made 78 special interim domestic violence orders.

Family Violence Lists

There has been an increased focus and understanding in the community over the recent past of the impacts of family violence. In order to ensure that family violence matters are given appropriate focus, and there are no undue delays within the court system, a trial program was commenced in June 2016 to have an additional family violence list to encompass mentions, case management and sentencing. This has resulted in an increase of 100% of judicial time for these matters. This practice is continuing under review and will be evaluated in the coming year.



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6 Court Support Services

Sentencing Database

The ACT Sentencing Database (ACTSD) is hosted by and mirrors the NSW Judicial Information Retrieval System (JIRS). Like JIRS, the ACTSD is designed to facilitate consistency in sentencing and to enhance judicial, practitioner and public access to ACT Supreme Court and Magistrates Court sentencing data.

The ACTSD captures sentencing outcomes and includes general statistical information, as well as enabling users to 'drill down' for the purpose of obtaining more detailed information. The database also provides an access point to ACT and Commonwealth legislation. Full-text searching of recent and historic ACT Supreme Court judgments and sentencing remarks, including Magistrates Court decisions, is also available.

The next few years will see database content gradually increase to a level where information regarding particular offences is statistically significant.

Additionally, the ACT Magistrates Court decisions began to be reported on the Australasian Legal Information Institute (Austlii) website and the BarNet Jade websites.



Justices of the Peace

A Justice of the Peace is present in the Magistrates Court building each day. The Justices of the Peace 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 affirmations relating to evidence in affidavit form. The ACT Justices of the Peace Association co-ordinates the roster to ensure that a Justice of the Peace (JP) is present in the Magistrates Court at these times.

This is a rare voluntary service and greatly assists day to day operations of the court. The court is very grateful for the support of the Association and its dedicated members.



Morning tea held with volunteer Justices of the Peace

Legal Aid Duty Office

Legal Aid ACT offers court-based duty services in criminal and domestic violence and protection order matters, and in the Childrens Court.

For criminal matters, Legal Aid ACT supports the work of the court by providing on-site duty solicitors. This work has been enhanced in the past year due to additional office space, allowing the organisation to support defendants at court throughout the day. The Legal Aid criminal duty lawyer is available during weekdays and on Saturday mornings. The lawyers provide preliminary legal advice to defendants that are in custody or who are otherwise appearing in court.

Legal Aid lawyers also assist members of the community who are applying for, or responding to, domestic violence and personal protection orders. Increased demand means the unit is now staffed with three solicitors each morning with drop-in appointments available throughout the day. Legal Aid is representing an increased number of primary victims when their domestic violence matters return to court for a conference or hearing. Whilst the unit focuses specifically on protection orders, Legal Aid is also working to ensure that clients receive information, advice and referrals about related matters, such as arrangements for children or property settlement following relationship breakdown.

Whilst recognising the difficulty of providing as full a service as might be desirable in light of resource constraints, the court acknowledges the invaluable assistance of the Legal Aid Office to its operations and the community.

Court Alcohol and Drug Assessment Service

The Court Alcohol and Drug Assessment Service (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.

This is a very valuable service and the court thanks CADAS staff for their dedication and responsiveness.

Forensic Mental Health Service

The Forensic Mental Health Service provides a Court Assessment and Liaison Service within the ACT court system. The service aims to provide a range of high quality and timely supports to individuals who appear before the courts and present with mental health issues.

The Court Liaison Service is available during business hours to provide assessment services to defendants who have been identified as having mental health concerns. These assessments generally occur prior to the defendant's court appearance, and the assessing clinician provides advice to the court with regards to any identified mental health concerns and current treatments which may be relevant to either community or custody treatment options. The assessing clinician is also able to provide advice with regards to whether it is necessary for an order pursuant to s. 309 of the *Crimes Act 1900* be made for an assessment of the defendant's requirement for immediate treatment or care for mental health reasons.

The Court Assessment Service is also able to provide expert forensic mental health reports at the direction of the court. These reports may include assessment of mental impairment and fitness to plead.

The court appreciates the difficult work undertaken by clinicians in this area, often with significant time constraints, and records its appreciation for the invaluable service provided.

Prisoners Aid

The Court Assistance and Referral Service (CARS) is run by Prisoners Aid and operates out of the Magistrates Court each day between 9:00am and 12:30pm.

It offers a support and referral service to people charged with offences in the ACT 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.

This is another volunteer service providing practical and low level financial support to vulnerable people; their work is greatly appreciated.

Child and Youth Protection Services

In the ACT the Community Services Directorate is responsible for providing Child and Youth Protection Services (CYPS) within both the care and protection and youth justice arenas. These two areas often intersect and the relatively recently combined service is proving a valuable asset in assisting the court across its jurisdictions.

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 Childrens 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

The objects of the *Crimes (Restorative Justice) Act 2004* are detailed at s 6:

The objects of this Act are as follows:

- (a) to enhance the rights of victims of offences by providing restorative justice as a way of empowering victims to make decisions about how to repair the harm done by offences;
- (b) to set up a system of restorative justice that brings together victims, offenders and their personal supporters in a carefully managed, safe environment;
- (c) to ensure that the interests of victims of offences are given high priority in the administration of restorative justice under this Act;
- (d) to enable access to restorative justice at every stage of the criminal justice process without substituting for the criminal justice system or changing the normal process of criminal justice;
- (e) to enable agencies that have a role in the criminal justice system to refer offences for restorative justice.

In July 2015, Attorney-General Simon Corbell announced that Canberra would strive to join a handful of other cities around the world as a "restorative city". The Childrens Court has been an integral part of the development of this practice through referral of children and young people to the process for a number of years. The results have been overwhelmingly positive.

Restorative Justice (RJ) 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.

Phase two of the roll out of restorative justice began on 25 February 2016. Phase two expands the RJ scheme to allow referrals to be made for adult offenders and for serious offences by both adults and young people. The court is working with the Justice and Community Safety Directorate to ensure a smooth transition of this option into the adult criminal justice system.

In 2015–16 there were 120 referrals made to the RJU (86 by ACT Policing; 16 by the Childrens Court; 14 by the Magistrates Court; three by the Galambany Court, none by the Supreme Court) and one self-referred by the RJU, involving 295 offences.

Referrals may be made at any time during the criminal justice process and are used significantly by ACT Policing to divert minor offenders away 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 judicial officer.

The Court may refer a matter at any time following the admission of guilt. If for a less serious offence, the matter may be referred prior to a plea or finding of guilt, for example, if an offender disagrees with the specific charge or elements of the statement of facts, as long as the offender takes responsibility for their involvement and causing some harm to a victim.

The Court may take into account an offender's participation in the restorative justice process when sentencing. The Court cannot take into account the fact that an offender chooses not to participate.

The court welcomes expansion of the availability of restorative justice and recognises the transformative role it can play for both victims and perpetrators of crime. Attendance of RJU staff at court and their cooperation with the court process is appreciated.

Domestic Violence Crisis Service

– Court Advocacy

The Domestic Violence Crisis Service (DVCS) has two full-time court advocates based at the Court Monday to Friday between 9:00am and 4:00pm.

Court advocates provide procedural advice and information, advocacy, support and safety planning to people experiencing domestic violence. This support may include linking clients to other supports such as legal advice or representation, public advocacy and emergency childcare.

The bulk of court advocacy takes place in the civil section, with advocates assisting people through the protection order process. In addition to this, advocates support DVCS clients giving evidence during criminal hearings. The program works in cooperation with the Legal Aid ACT Domestic Violence and Protection Orders unit, Office of the Director of Public Prosecutions, and Magistrates Court registry staff in order to support those experiencing domestic violence.

The court appreciates the assistance provided to those involved in court processes by the DVCS. That assistance goes some way to empowering the vulnerable and supports more effective proceedings in court.

DVCS may be accessed at the Court or via the DVCS Crisis Line on 6280 0900.





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7 Judicial education and Community and professional engagement

Judicial education

Chief Magistrate Walker

26–27 November 2015	Judicial Education Day
27 May 2016	National Judicial College of Australia Council Meeting
18–20 May 2016	International Coroners Conference held in England

Magistrate Fryar

21–25 September 2015	Hosted South Pacific Council of Youth and Children Conference held in Canberra
7–9 October 2015	National Judicial College of Australia Course 'Dialogues on being a Judge' held in Adelaide
26–27 November 2015	Judicial Education Day

Magistrate Campbell

7–9 October 2015	National Judicial College of Australia Course 'Dialogues on being a Judge' held in Adelaide
10–13 November 2015	Asia Pacific Coroners Society Conference held in Hobart
26–27 November 2015	Judicial Education Day

Magistrate Morrison

7–9 October 2015	National Judicial College of Australia Course 'Dialogues on being a Judge' held in Adelaide
26–27 November 2015	Judicial Education Day

Magistrate Boss

26–27 November 2015	Judicial Education Day
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Magistrate Cook

28–30 August 2015	Language and the Law II Conference held in Darwin
26–27 November 2015	Judicial Education Day

Magistrate Theakston

NIL – not appointed

Community and professional engagement

Chief Magistrate Walker

	Law Reform Advisory Council member
	Cultural Diversity Committee
	ACT Bar Association Member
	Board Member of Australian Association of Women's Judges
	Justice of the Peace engagements
23 June 2016	St Vincent De Paul's CEO Sleep out
22 June 2016	Presenter Canberra Regional Family Law Professional Association
10 May 2016	Community Corrections Mock Court Presentation
29 April 2016	Roundtable on the optional Protocol to the Convention against torture (OPCAT) in the context of Youth Justice Detention Centres
28 April 2016	Visit to Bimberi Youth Justice Centre
21 March 2016	Youth Law Clinical Program students visiting the Children's Court
9 March 2016	Speaker at the AFP DVI program
25 November 2015	The Russell Kennedy Women's Network – For Beryl Women Inc.
18 November 2015	Canberra's Restorative Communities Network in Celebration of International Restorative Communities Network
26 October 2015	Talk to Journalism Students
8 October 2015	ACT Policing Media Launch Community Safety and Family Violence Portfolio for the ACT Policing
20 July 2015	Restorative Communities Conference

Magistrate Morrison

	Law Society presentation with Justice Refshauge 'Infant settlements' held in Canberra
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Magistrate Boss

18 August 2015	Aboriginal Legal Services clinical students – Galambany Talk
3 February 2016	Guest speaker at Community Corrections Meeting
18 March 2016	Judicial Council on Cultural Diversity meeting - Melbourne
15 April 2016	Attended Hellenic Australian Lawyers Launch
6 June–8 July 2016	Hosted Study abroad student from New Haven University – Mirinda Osmer
30 June 2016	ACT DPP 25th anniversary celebration

Magistrate Cook

ANU Moot Judge Supreme Court ACT