

**SUPREME COURT OF THE
AUSTRALIAN CAPITAL TERRITORY**
ANNUAL REVIEW

20¹⁴₁₅



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'THE PAST YEAR HAS
PROVED TO BE A PERIOD OF
CONSOLIDATION ... AND
PREPARING FOR NEXT YEAR'S
IMPORTANT CHANGES.'

WELCOME

CHIEF JUSTICE HELEN MURRELL

The Australian Capital Territory (ACT) Supreme Court is pleased to present the Court's second annual review.

The past year has proved to be a period of consolidation with the Court embedding the innovations of 2013–14 and preparing for next year's important changes. In particular, the building of the new Supreme Court and the introduction of the Integrated Case Management System (ICMS). Justice John Burns and I have been working with the consultants that are tendering for the new Court building. Associate Judge David Mossop has been working with the ICMS team.

Ceremonial highlights this year included our hosting of an event marking the commencement of the law year; and a special ceremony marking the 800th anniversary of the sealing of the Magna Carta.

In late 2014, we warmly welcomed the appointment of Philip Kellow as Principal Registrar, a position that serves both the Supreme Court and the Magistrates Court. The new position recognises that the administration of courts requires independence and special expertise. Mr Kellow is an experienced courts administrator with an excellent understanding of budgeting, governance and other matters affecting courts administration.

An independent review of the Court's workload confirmed the need for a fifth resident judge, and the Court was delighted at the minister's mid-year announcement that a fifth resident judge would be appointed to commence on 1 July 2016.

During 2014–15, the Court received limited additional funding, which enabled the engagement of acting judges, albeit not at the level that we would have preferred. In the forthcoming year, we anticipate a backlog of criminal trial and sentence matters, partly due to the number of longer matters that are awaiting trial and the fact that the average length of trials has increased. The development of a criminal backlog is disappointing, as the judges have worked tirelessly to eliminate the criminal backlog and, for a brief period in early 2015, there was no criminal backlog.

There was a modest reduction in the unacceptable backlog of civil cases. Associate Justice David Mossop and Registrar Annie Glover oversaw implementation of a new practice direction for civil proceedings commenced by originating claim. Mediation is built into the case management process and we continued to see a high level of resolution through mediation by the Court's experienced mediators. For those matters that failed to settle at mediation, an early hearing date was allocated. We are optimistic that, following the appointment of a fifth resident judge, there will be a gradual reduction in the backlog of civil cases.

The Court continues to improve its governance, looking to our sister jurisdictions to determine the best and most appropriate practices to achieve a strong and independent judiciary in the ACT.

The Court is continually reviewing its processes. Currently, we are reviewing processes in the Court of Appeal with a view to increasing efficiency and reducing paperwork.

The Court has worked closely with the Executive. I thank the Attorney General Simon Corbell, the Director-General of the Justice and Community Safety Directorate Alison Playford and senior staff of the Executive for consulting with the Court and providing as much support as possible.

I thank local practitioners, the ACT Law Society, the ACT Bar Association, the ACT Director of Public Prosecutions and the ACT Legal Aid Office for working with the Court to develop better processes, including those targeted at achieving the more timely resolution of cases.

Finally, on behalf of the judges and Associate Judge of the Supreme Court, I thank the Principal Registrar, Philip Kellow, Registrar Annie Glover, Senior Deputy Registrar Grant Kennealy and all the Supreme Court staff for their hard work and dedication during the past 12 months. Your support is vital to the Court.



Front Row (L–R): Justice Burns, Justice Penfold, Professor Gillian Triggs, Chief Justice Murrell, and Justice Refshauge

Back Row (L–R): Acting Justice Robinson, Justice Wigney, the Honourable J Gallop AM QC RFD, and David Harper OAM



PRINCIPAL REGISTRAR PHILIP KELLOW

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

As noted by the Chief Justice, significant progress was made in relation to the procurement of a new courts facility and the development of the ICMS. The new courts facility and the implementation of the ICMS are major areas of work that will strengthen court operations over the coming years by providing accommodation which properly supports the work of a modern court system and delivering a technology system which will streamline processes and provide a platform for electronic lodgement and other e-services. Further progress was also made with the identification of a new jury management system that will better support the administrative processes for putting together jury panels and related activities.

Preliminary work on the Court's 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 in courts administration in the ACT. Work also commenced on updating the structure and content of the Court's 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 Justice, Judges, Associate Judge and staff over the next 12 months as we progress a number of important projects and initiatives that will enhance the Court's operations.



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ABOUT THE COURT

JURISDICTION

The Supreme Court of the ACT is the highest court in the Australian Capital Territory. It is invested with both original and appellate jurisdiction.

The Court comprises the Chief Justice, three other resident judges, a resident associate judge, additional judges (judges of the Federal Court of Australia who have an additional appointment to the Supreme Court of the ACT) and acting judges (judges who have short term appointments of up to 12 months).

The judiciary is supported by the Registrar (Ms Annie Glover), Deputy Registrar (Mr Grant Kennealy) and by combined Registry staff. Registry maintains records, processes orders, lists cases and performs other functions. The Sheriff's Office provides security and administers the jury system. The Russell Fox Library is the main legal reference resource for the Supreme Court.

In civil matters the Supreme Court has an unlimited monetary jurisdiction, although claims for less than \$250 000 are usually heard in the Magistrates Court. Civil matters in the Supreme Court are heard by a single judge or the Associate Judge. The Associate Judge is responsible for hearing most civil matters.

With respect to criminal matters, trials are heard in the Supreme Court before a judge and jury or (in a limited range of cases) by a judge alone, at the election of the accused.

The Supreme Court considers appeals from decisions of the Magistrates Court, the Industrial Court, the Children's Court, and the ACT Civil and Administrative Tribunal. The Supreme Court is usually constituted by a single judge when considering these appeals.

Appeals from the decision of a single judge of the Supreme Court, the Associate Judge or a jury (in a criminal trial) are considered by a bench of three judges, at least one of whom is a resident judge. The Court is known as the Court of Appeal when exercising appeal jurisdiction in respect of these matters.



JUDGES OF THE COURT

Resident Judges



Chief Justice Helen Gay Murrell

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

Chief Justice Helen Murrell attended the University of New South Wales, from which she graduated in 1976 with a BA/LLB degree. In 1981 her Honour obtained a Diploma of Criminology from the University of Sydney.

Her Honour was admitted as a solicitor of the Supreme Court of New South Wales (NSW) in 1977. From 1977 to 1981 her Honour practised at the Commonwealth Crown Solicitor's Office and NSW Legal Aid Commission. From 1981 to 1996 her Honour practised as a barrister in the areas of criminal law, administrative law, environmental law, common law and equity. From 1994 to 1996 her Honour was the first Environmental Counsel to the NSW Environment Protection Authority. In 1995 her Honour was appointed Senior Counsel in NSW. From 1996 to 2013 her Honour was a judge of the District Court of NSW. In 1996 her Honour was also an Acting Judge in the Land and Environment Court of NSW. From 1997 to 1999 her Honour was President of the Equal Opportunity Tribunal of NSW. Her Honour then became Deputy President of the Administrative Decisions Tribunal of NSW (Head of the Equal Opportunity Division). Her Honour assisted to establish the Drug Court of NSW and, from 1998 to 2003, she was the first Senior Judge of that Court. In 1999 her Honour was a member of the United Nations Expert Working Group on Drug Courts, Vienna. From 2005 to 2013 her Honour was Deputy Chairperson of the NSW Medical Tribunal.

Her Honour has a continuing interest in therapeutic jurisprudence and a strong involvement with judicial education, particularly through the National Judicial College of Australia.



Justice Richard Christopher Refshauge

Justice Richard Refshauge was sworn in as a judge of the Supreme Court of the ACT on 1 February 2008.

He commenced legal practice in 1976 in the ACT with the then-leading law firm of Macphillamy Cummins and Gibson. He became a partner in 1981 and senior partner in 1992. The firm merged with Sly and Weigall and his Honour became Chairman of Canberra partners. The firm changed its name later to Deacons Graham and James.

In practice, his Honour specialised in commercial litigation, administrative and constitutional law, reconstruction and insolvency industrial law and criminal law.

In 1998 his Honour was appointed the ACT's third Director of Public Prosecutions, a position he held until his appointment to the Court. His Honour was appointed Senior Counsel in 2000.

His Honour has lectured annually since 1986 in civil litigation in the Australian National University (ANU) College of Law. In 2001 his Honour was appointed an Adjunct Professor in the then Faculty of Law of the ANU and in 2007 an Adjunct Professor in the School of Law of the University of Canberra.

His Honour has a wide involvement in community activities. He chairs the Ministerial Advisory Council on Sexual Health, HIV/AIDS, Hepatitis C and Related Diseases and is on the Board of QL2 Dance. His Honour was, until recently, the Chair of the Board of Australian Volunteers International and the Anglican Board of Mission Australia. His Honour is Chancellor of the Anglican Diocese of Canberra and Goulburn and a member of the Appellate Tribunal of the Anglican Church of Australia.

In the Court, his Honour chairs the Joint Rules Advisory Committee and the Criminal Procedure Committee. His Honour is also editor and an author of the standard text on court procedure and practice in the ACT, *Civil Procedure ACT*.



Justice Hilary Ruth Penfold

On 1 February 2008, Hilary Penfold PSM QC was sworn in as a judge of the Supreme Court of the ACT, at the same ceremony as Justice Refshauge. Born in Dunedin, her Honour was educated at Ascham School in Sydney and the ANU, from which she graduated BA in 1975 and LLB (Hons) in 1977. After completing the Legal Workshop at the ANU, her Honour was admitted as a barrister and solicitor of the Supreme Court of the ACT in 1977. In 1977 her Honour joined the Commonwealth Office of Parliamentary Counsel, where she worked as a legislative drafter, and in due course as First Parliamentary Counsel for 10 years until 2004. In 2001, she was appointed Commonwealth Queen's Counsel.

During her career as a legislative drafter, her Honour drafted a wide range of legislation, including taxation, corporations law, defamation, industrial relations, human rights, sex discrimination, and forensic procedures, as well as the constitutional amendments proposed to create an Australian Republic in 1999. Her Honour was also actively involved in the work of the Parliamentary Counsel's Committee (covering Australia and New Zealand). She was the President of the Commonwealth Association of Legislative Counsel (representing all legislative drafters in the Commonwealth) from 1999 to 2003. Her Honour was a member of the Board of Taxation from 2000 until 2004, and headed the Migration Litigation Review. In 2004 her Honour was appointed Secretary of the newly-formed Commonwealth Department of Parliamentary Services. Her Honour is the patron of the ACT Women Lawyers Association.



Justice John Dominic Burns

Justice John Burns was first admitted to practice as a solicitor of the Supreme Court of NSW in 1981. He practised as a Legal Aid solicitor in the Legal Services Commission of NSW, specialising in criminal law, until January 1983 when he joined the Deputy Crown Solicitor's Office in Canberra as a prosecutor.

In 1984 he joined the newly created office of the Australian Government Solicitor in Canberra as a senior solicitor. In August 1985 he resigned from the Australian Government Solicitor to take up a position in the firm of Gallens Barristers and Solicitors. He subsequently became a partner in the firm

of Gallens Barristers and Solicitors. When Gallens merged with the firm of Crowley and Chamberlain, he became a partner in the new firm of Gallens Crowley and Chamberlain. During this period, his Honour practised predominately in the field of criminal law and civil litigation.

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

His Honour was appointed as a Magistrate and Coroner of the ACT in April 1990. At the same time his Honour was also appointed as Magistrate of the Norfolk Island Territory. During his time as a Magistrate his Honour spent three years as the Children's Court Magistrate. His Honour also took over responsibility for managing the lists of the Magistrates Court as List Co-ordinating Magistrate in 2007.

In December 2009 his Honour was appointed Chief Magistrate and Chief Coroner of the Australian Capital Territory. He held those positions until he took up his appointment as a judge of the Supreme Court on 1 August 2011. Since 2012 his Honour has been a member of the ACT Law Reform Advisory Committee.



Associate Justice David Mossop

David Mossop was appointed as Master of the Supreme Court on 22 May 2013. At the time of his appointment he was a Magistrate and a Coroner of the ACT. He holds a Bachelor of Science and Bachelor of Laws from the University of New South Wales and a Master of Laws (Public Law) from the ANU. He was admitted to practice as a solicitor in 1992. He was a solicitor at the Environmental Defenders Office (NSW) from 1993–1994 and the Environmental Defenders Office (ACT) from 1996–1997. He was Associate to McHugh J of the High Court in 1995. He practised as a barrister for 14 years from 1998 to

2011. His principal areas of practice were administrative and commercial law. On 21 April 2015, the office of the 'Master' was re-titled to 'Associate Judge'.



Additional Judges

During 2014–15 the following additional judges sat:

The Honourable Justice Steven David Rares

The Honourable Justice Lindsay Graeme Foster

The Honourable Justice Anna Judith Katzmann

The Honourable Justice John Gilmour

The Honourable Justice Michael Andrew Wigney

The Honourable Justice Iain James Kerr Ross AO

The Honourable Justice Melissa Anne Perry

The Honourable Justice Darryl Rangiah

Acting Judges

During 2014–15 the following acting judges sat:

The Honourable Acting Justice Linda Ashford

The Honourable Acting Justice Stephen Walmsley

The Honourable Acting Justice Dennis Cowdroy OAM

The Honourable Acting Justice David Robinson

The Honourable Acting Justice Anthony Whealy

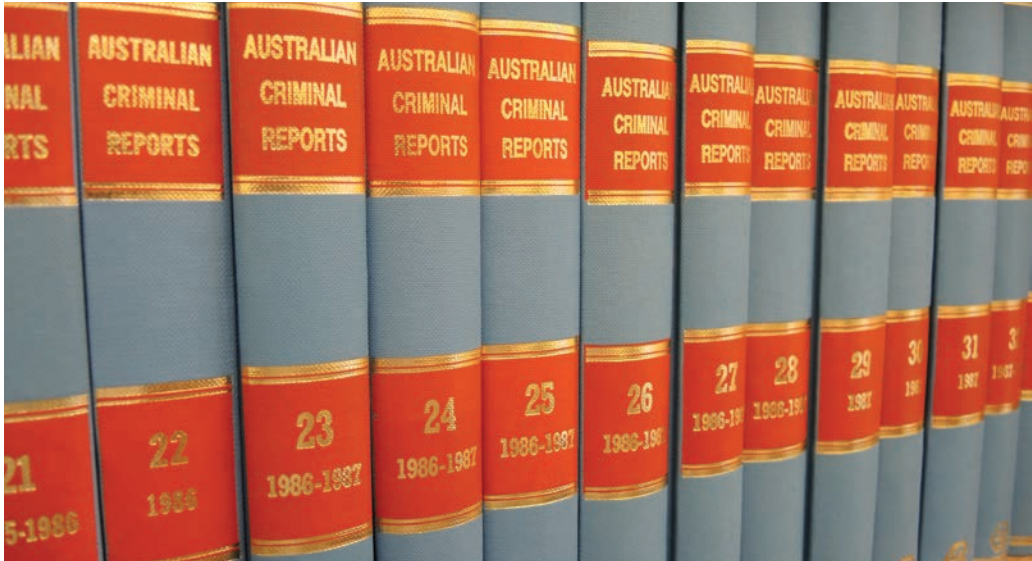
LIBRARY

The Russell Fox Library is named after former judge and Chief Justice of the ACT Supreme Court, the late, the Honourable Russell Walter Fox AC QC. The primary purpose of the Library is to provide legal resources and research assistance to judges and magistrates, members of the ACT Civil and Administrative Tribunal, registrars and staff.

As with most other superior court libraries, the Russell Fox Library is open to the general public. Although the public is welcome to visit the Library and use its resources in the reading room, they are unable to take out any texts or law reports – only legal practitioners registered with the Library have borrowing privileges.

The services provided by the Library include:

- › Loaning out books, legislation, law reports and other materials to registered clients.
- › Maintaining and providing access to a number of online legal databases – both free and commercial based – and hardcopy legal resources.
- › Providing access to court forms to members of the public and unrepresented litigants.
- › Providing research assistance to associates, judges, magistrates and legal practitioners, including locating hard to find judgments and other legal material.
- › Arranging for training in the use of commercial databases
- › Publishing Supreme Court and Magistrate Court judgments and decisions on the ACT Law Courts' website.
- › Distributing judgments to the media and publishing firms, including free websites AustLII and Jade Barnet.
- › Conducting library tours for new associates, interested members of the public and the occasional school group.
- › Registering new users to the ACT Sentencing Database and providing assistance on its use.



Library statistics

Seventy new library books were purchased during the 2014–15 financial year. In addition to the usual texts dealing with administrative, contract and criminal law, some of the more interesting titles included *Computer Forensics, Electronic Discovery and Electronic Evidence* by Allison Stanfield; *Australian Feminist Judgments: Righting and Rewriting Law* by Heather Douglas et al (eds); Albie Sachs' *The Strange Alchemy of Life and Law*; and Andrew Palmer's *Proof: How to Analyse Evidence in Preparation for Trial*.

In addition to the publication of 55 ACT Court of Appeal judgments on the ACT Law Courts and Tribunal website, 174 sentences and 231 Supreme Court judgments were also published on the website. The total number of published judgments, decisions and findings from the various courts during 2014–15 came to 473.

In relation to hardcopy resources, 1014 items were loaned to associates, other court staff and registered legal practitioners. In addition, some 1902 books and looseleaf publications were used in the Library reading room by Library clientele. Not surprisingly the most popular title was the looseleaf service *Civil Procedure ACT* followed by Odgers' *Uniform Evidence Law*.

During 2014–15 over 300 legal practitioners, unrepresented litigants, members of the public and other Library users visited the Library. Visiting reasons varied from borrowing specific items for use in court, such as legislation and case law, to locating court forms and seeking advice in relation to useful texts on a particular legal area. As an added security precaution, a standalone computer terminal has been made available to unrepresented litigants and legal practitioners needing to access their email accounts and USB flash drive content.

International visit

During 2014–15 the Library was pleased to host a visiting library officer from the Samoan Attorney-General's Office. The visit provided the Library with an opportunity to show the various resources and services offered to courts and tribunal officers as well as to better understand some of the concerns and issues facing Pacific Island libraries.

Return to work

In this financial year the Library also participated in a workplace rehabilitation program. Two return-to-work employees were provided with various tasks to help facilitate their return to full-time employment within the ACT Government public service.

Pacific Law Library Twinning Program

The Library continues to participate and support the Pacific Law Library Twinning Program. The program – set up in 1991 as a result of the Asia Pacific Law Librarians Conference – seeks to improve law library collections and services in the South Pacific by linking or 'twinning' an Australian legal library with a South Pacific counterpart library.

The Russell Fox Library has been providing legal materials to its 'twin', the Fijian Attorney-General's Office Library, since 2010. Requests for assistance are received periodically throughout the year. In the vast majority of cases the Russell Fox Library is able to supply the material that they have requested.

The legal information most commonly sought are Australian and English judgments.



SHERIFF'S OFFICE

During 2014–15 the Sheriff's Office provided extensive support to the Supreme Court during the central criminal listing periods. Prior to each listing period, considerable planning and preparation was required. This included the development of strategic and operational planning models.

The support provided by the Sheriff's Office was successful and it is a credit to all of the Sheriff's Office staff members for the considerable effort they made to provide the necessary assistance to the Supreme Court.

In 2015 the Sheriff's Office staff members were nominated for the Justice and Community Safety Directorate Director-General's Award for Excellence. This nomination recognised the significant and crucial work performed by the Sheriff's Office staff for the Supreme Court.

The Sheriff's Office is currently considering and preparing for the new courts facility. The Office anticipates changes to work practices as a result of construction activities likely to impact jury panel transitions, trial locations and general service and support activities. This planning and preparation will be done in consultation with the judiciary and the Registrar of the Supreme Court.



Sheriff's Officers (L–R): Toni Broekhuysse, Cameron Naughton, Yvette Garcia and Tim Lorraway



HIGHLIGHTS

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HIGHLIGHTS

OPENING OF THE 2015 LEGAL YEAR

The 2015 legal year was welcomed on 2 February 2015. A special ceremonial sitting was held at the Supreme Court and was attended by judges, magistrates, tribunal members, members of the ACT Legislative Assembly, the legal profession, members of the public and the media. The ceremony was well attended and proceedings were broadcast live to a second court room. Speeches were delivered by Chief Justice Murrell, ACT Deputy Chief Minister and Attorney-General, Simon Corbell and guest speaker, Glenn Keys, Managing Director of Aspen Medical and ACT Australian of the Year.

Chief Justice Murrell's opening of the legal year speech

I acknowledge the traditional custodians of this land and pay my respects to their elders, past and present.

I welcome all practitioners to the first opening of the law year held in the Supreme Court – and (we hope) the last to be held in this courtroom.

2014 was challenging for all of us. It was my first full year as Chief Justice. I recognise that both the profession and the government worked closely with the Court to implement change.

But the challenges that we faced in the ACT paled in comparison to those faced by our sister state. 2014 ended tragically with the Lindt Cafe siege which struck at the heart of Sydney's legal precinct and resulted in the death of two victims, one of whom was a fellow barrister, and a week of chaos in the courts. Many of us were only one or two degrees removed from that tragedy. Our sons and daughters frequented the Lindt Cafe, our friends shared chambers with the victim.

Then the New Year brought the Charlie Hebdo massacre and the 'Je suis Charlie' phenomenon.

We had pause to reflect on the significance of these events for us, both as practising lawyers and as citizens in a democratic society.

The emotions aroused by the events sometimes clouded and confused the discourse about what are important issues. Would the political and public response have been the same if the perpetrators had claimed no association with Islam? Why do we call the violent acts of Muslims 'terrorism' rather than criminal acts carried out by people who may be mentally disturbed?

And what were people saying when they asserted that 'Je suis Charlie'? Undoubtedly, it was a statement of defiance, but in relation to what?

Members of the fourth estate were saying, 'Free speech is a fundamental value that we will courageously defend'.

Members of the public may have been saying, 'I sympathise with the Charlie Hebdo victims'. Some were certainly saying, 'The pen is mightier than the sword' (although it may have been more appropriate to say that the hashtag is mightier than the sword). Many were asserting that 'our democratic system will not be cowed by random acts of politically motivated violence'.

What about the politicians who marched in apparent solidarity with the victims and the public? Some of those politicians represented nations with a poor human rights record and no Bill of Rights to facilitate the enforcement of rights by an independent judiciary. Some could hardly have been marching in support of free speech, let alone the right to ridicule religion. Most represented nations that have legislated to exclude those labelled 'terrorists' from some of the rights to which other members of their communities are entitled. They have been waging a 'war on terror' in which normal civil rights have been suspended during the period of warfare. The cynical lawyer might suggest that waging a 'war on terror' is about as helpful as waging a 'war on drugs'.

I suggest that for lawyers the key message from both tragic events was the importance of the rule of law. We need to separate that issue from hashtag enthusiasm and the politics of convenience. From the events and their aftermath a lawyer may see the need to proclaim the resilience of our criminal justice processes and their established capacity to deal with such events, rather than glorifying criminal conduct as 'terrorism', or labelling it in that way to excuse the abandonment of due process. The lawyer may compare the extent of the carnage in Martin Place or Paris with the daily extent of oppression, injury and death through domestic violence, both nationally and globally.

This year we celebrate the 800th anniversary of Magna Carta. It was in 1215 that King John I was forced by his barons to sign the 'Great Charter' in Runnymede near Windsor, laying the constitutional foundations for government under the rule of law.

No (freeperson) shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land.¹

¹ Magna Carta (1297) 25 Edw 1 cl 29.

Today, as we reflect on these matters and look forward to a new year practising law in the ACT, we lawyers may choose to consider:

- Our role as advocates for the rule of law;
- The need to ensure that our justice system is independent and quarantined from the politics of government; and
- The opportunities that we in the ACT have to uphold human rights through the *Human Rights Act 2004* (ACT).

At a more prosaic level, for the Supreme Court this will be a year of consolidation, focused on improving processes for litigants and practitioners, and improving the governance of the Court itself. We look forward to working with the profession to achieve a better justice system for the ACT community.

We hope that 2015 will be a year in which all members of the ACT legal community not only contribute to strengthening the rule of law, but also enjoy the camaraderie of their colleagues and relish their practice of the law.



Left to right: Justices Refshauge and Penfold, Professor Gillian Triggs and Chief Justice Murrell.



800TH ANNIVERSARY OF THE SEALING OF THE MAGNA CARTA

The ending of the financial year saw various ceremonies across Australia celebrate the 800th anniversary of the sealing of the Magna Carta. On 15 June 2015, the ACT Supreme Court held a ceremonial sitting commemorating the anniversary.

Past and present judges from the ACT Supreme Court and other jurisdictions attended, with the make-up of the bench consisting of Chief Justice Murrell, Justices Refshauge, Penfold, Burns and Wigney, Acting Justice Robinson, the Honourable John Gallop AM QC RFD and the Honourable David Harper OAM. Other attendees included members of the ACT Legislative Assembly, current and former magistrates, tribunal members, members of the legal profession, interested members of the public and the media. Speakers included Chief Justice Murrell, ACT Deputy Chief Minister and Attorney-General, Simon Corbell MLA; President of the ACT Law Society, Martin Hockridge; President of the ACT Bar Association, Shane Gill; and keynote speaker, President of the Australian Human Rights Commission, Professor Gillian Triggs.


Professor Triggs, spoke about the rise of executive power and that ‘while we rightly celebrate Magna Carta, the reality is that our freedoms are constantly threatened 800 years later.’ Professor Triggs noted the failure by modern parliaments to protect our ancient democratic liberties and rights by sidelining the judiciary and granting to the executive ‘excessive and unsupervised powers’. She suggested that the most effective, long-term solution is to improve our education system, so that young Australians better understand the value of Australia’s core constitutional protections for the rule of law and democracy.

The Honourable Justice Refshauge provided a historical overview of the Magna Carta. His Honour chronicled the changing prominence accorded to the provisions of Magna Carta over time. His Honour noted that the key concepts underpinning this agreement between the King and his subjects – the basic rights of individuals and equality under the law – continue to this day and continue to be evoked in legal proceedings.

Attorney-General Simon Corbell referred to the Magna Carta as a pre-eminent legal document in the development of constitutional and parliamentary democracy and also noted its enduring influence in the criminal legal system through the principles of proportionality and justice. He urged continuing support for its principles.

The ceremony was followed by a delightful morning tea, complete with a special Magna Carta-themed cake. All those on the bench and special guests, including keynote speaker Professor Triggs attended, presenting a wonderful opportunity to discuss the key issues raised in the speeches.

To read the full-transcript of the ceremony, visit the ACT Supreme Court website, <http://www.courts.act.gov.au/supreme/>.



'WHILE WE RIGHTLY
CELEBRATE MAGNA CARTA,
THE REALITY IS THAT
OUR FREEDOMS ARE
CONSTANTLY THREATENED
800 YEARS LATER.'

Dr Helen Watchirs OAM

CAUSE BOOKS DIGITISATION PROJECT

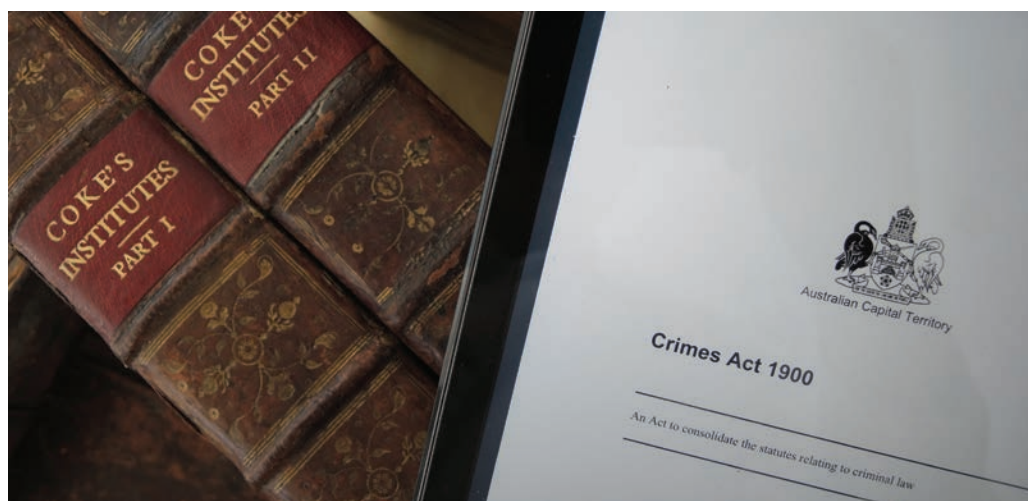
Prior to the introduction of computerised systems, details of parties appearing before the ACT Law Courts on criminal charges were recorded in large red-bound ledgers known as Cause Books and in the Indictable Offences Record Book. Entries in the books start from 1930, finishing in 2004. In addition to party and file information, the nature of the offence and sentence imposed were also recorded.

In early 2015 it was decided that the best way to preserve and maintain these books – as well as to make them accessible to approved parties – was to have the contents digitised. A number of books have already been digitised and the project is expected to be completed within the first quarter of the next financial year. For those books already digitised content is available in JPEG and PDF file formats.

Information in the Cause, and Indictable Offences Record Books is an invaluable resource for legal practitioners when dealing with historical offences. Academics wanting to chronicle and analyse the changing nature of criminal activity in the ACT will also find these resources of great use.

Due to the sensitive nature of these books, access to this material is restricted. Users wishing to view these books are to contact the ACT Supreme Court Registrar outlining their reasons for access.

Since the start of this project, criminal and civil entries in other ledgers have been identified. It is hoped that over time these, too, can be digitised and the information preserved for future generations.





SELECTED CASES

Electro Optic Systems Pty Ltd v State of New South Wales [2014] ACTCA 45; (2014) 10 ACTLR 1

In January 2003, bush fires burned from the Brindabella National Park in NSW into the ACT. The appellants held properties which burned in the bush fires. They sued NSW (the respondent) for damages alleging, among other things, negligence by the incident controllers in charge of co-ordinating the response to the bush fires, for whom NSW was vicariously liable.

The primary judge held that, although NSW owed a duty of care in respect of the conduct of the incident controllers, which he found to be negligent and causative of the plaintiffs damage, NSW was protected from civil liability by s. 28 of the *Rural Fires Act 1997* (NSW) and s 43 of the *Civil Liability Act 1995* (NSW).

In dismissing the appeal, the Court of Appeal held that NSW was protected from liability by s 128 and s 43. On this basis, the Court dismissed the appeal. The Court further found that the appellants did not make out their claims for breaches of duties of care.

Stewart & Ors v Ackland [2015] ACTCA 1; (2015) 10 ACTLR 207

Mr Ackland suffered serious injuries trying to do a backflip on a jumping pillow at an amusement park in NSW owned by the appellants. His claim in negligence was defended on the basis that his injuries were the result of the materialising of an 'obvious risk' of a 'dangerous recreational activity' (defined as an activity involving a significant risk of physical harm), and therefore liability was excluded by s 5L of the *Civil Liability Act 2002* (NSW). A doctor with expertise in biomechanics gave evidence that the relatively firm surface of the pillow created a risk of spinal damage if a backflip was not completed successfully.

The trial judge found that the risk of spinal damage was not obvious, and that the appellants were liable because although Mr Ackland had been engaged in a dangerous recreational activity, his injury did not result from the materialisation of the obvious risk of minor harm but from that of the non-obvious risk of major harm.

On appeal, all members of the Court found that the trial judge had correctly given judgment for Mr Ackland. Two members of the Court agreed with the trial judge's conclusion that the activity was a dangerous recreational activity, that the obvious risk was of minor injury, and that the risk of injury that materialised was not an obvious risk. One member of the Court noted the various NSW authorities to the effect that the proper test for a dangerous recreational activity was 'objective and prospective', and concluded that an activity that carried no obvious risk of significant physical harm was not a dangerous recreational activity under the NSW legislation.

R v Hoang [2015] ACTSC 17

Mr Hoang was charged in the ACT with heroin trafficking. The evidence against him was obtained by a NSW Police Force undercover operative (Jason), who arranged for 'M' to buy heroin from Mr Hoang, who only operated in the ACT. Jason acted under a cross-border operation authority granted under the *Law Enforcement (Controlled Operations) Act 1997* (NSW) (NSW Act).

Mr Hoang claimed that the evidence against him was inadmissible under s 138 of the *Evidence Act 2011* (ACT) because Jason's conduct was not authorised by the authority. The argument was that since neither Mr Hoang nor 'M' was named as a suspect in the authority, the authority could not authorise Jason's activities in relation to those two men.

Penfold J reviewed detailed evidence about Jason's activities and found that his dealings with 'M' and Mr Hoang were protected by the authority because they related to, or amounted to, a step in the supply of prohibited drugs involving a suspect who was named in the authority. Accordingly, the evidence against Mr Hoang obtained through Jason's activities was not inadmissible.

In her judgment, her Honour raised the question whether Mr Hoang's activities, which were confined to the ACT, would have sufficed to make him a 'suspect' under the NSW Act, and whether the NSW Act was intended to empower NSW police to conduct cross-border controlled operations targeting exclusively activities carried out in another jurisdiction that could only be prosecuted in NSW because of the extended jurisdiction provided by pt 1A of the *Crimes Act 1900* (NSW).

Slipper v Turner [2015] ACTSC 27; (2015) 294 FLR 164

The appellant was convicted in the Magistrates Court on three counts of dishonestly causing a risk of loss to a Commonwealth entity, knowing or believing that there was a substantial risk of the loss occurring: s 135.1(5) of the *Criminal Code 1995* (Cth). The charges were based on the appellant's use of Cabcharge vouchers to pay for three journeys as a Member of the House of Representatives at the government's expense.

The appellant was entitled under cl 3.1 of Remuneration Tribunal Determination 18 of 2006 to be provided with transport at government expense when travelling on parliamentary business. The prosecution alleged that he was not travelling on parliamentary business on the three journeys the subject of the offences and that he had claimed payment for those journeys when he knew he was not entitled to do so.

The appeal turned on the question of whether the Magistrate was entitled to find beyond a reasonable doubt that the appellant undertook those journeys for purely personal reasons. Burns J accepted that, while the evidence before the Magistrate was capable of raising a rational inference that the appellant undertook the journeys for purposes unrelated to parliamentary business, his Honour was not satisfied that this was the only rational inference available on the evidence. His Honour held that the prosecution had to disprove first that any rational possibility that the appellant had engaged in any meeting or information gathering, no matter how brief, that, in the appellant's mind, related to his functions as a parliamentarian; and secondly, that it was appropriate, in the appellant's mind, to conduct that business outside of Parliament House. As the prosecution had not excluded those possibilities, his Honour held that it was not open to the Magistrate to convict the appellant.

***Roblin v Public Trustee for the Australian Capital Territory* [2015] ACTSC 100; (2015) 10 ACTLR 300**

In April 2012, at 26 years of age, Jerome Pink died from cancer. One month before his death, he married Amelia Roblin (the plaintiff), whom he had been in a relationship with since 2006. Prior to treatment, Jerome's doctors recommended that he make a sperm deposit because chemotherapy and radiotherapy were likely to affect his fertility. Consequently, Jerome deposited two sperm samples with the Canberra Fertility Centre (CFC), which were frozen and cryogenically stored. Jerome's intention was to preserve the possibility of having children. On more than one occasion, the couple discussed the use of Jerome's sperm upon his death: use by Amelia and use by two lesbian friends of the couple.

Jerome did not leave a will. After his death, his intestate estate was administered by the Public Trustee. Subsequently, Amelia brought court proceedings to first, overcome a contractual obligation on the part of the CFC to destroy Jerome's cryogenically stored sperm; and second, to confirm that the cryogenically stored sperm constituted Jerome's personal property and thus formed part of his estate.

Mossop M held that the contractual obligation on the part of the CFC to destroy Jerome's sperm upon his death was circumvented by characterising the storage as a bailment. He further held that Jerome's cryogenically stored sperm was personal property and formed part of his estate. Amelia, as Jerome's surviving spouse, was entitled to the stored sperm.

Piscioneri v Brisciani [2015] ACTSC 106

The defendant commenced a forum on a website of which he was the owner and operator. The forum attacked the plaintiff, a legal practitioner, for reporting jurors in the infamous Skaf gang rape trial for conducting their own investigation of the crime scene, which led to the convictions and sentences being overturned. The forum and those following were not moderated and contributed to by people posting under pseudonyms. The plaintiff claimed damages for defamation.

Burns J found that the material was defamatory in part. Viewing some forums as a whole, the plaintiff was largely vindicated due to supportive posts effectively rebutting offensive posts, and thus did not constitute defamation in their entire form. His Honour however acknowledged that the content of online forums depends on the point in time the webpage was accessed, and held that offensive posts would have remained defamatory until a supportive post was later published to rebut it. He also found that, while in much of the material the plaintiff was only identifiable to one viewer and not the general public, this nevertheless constituted defamation.

As the defendant was not a passive facilitator and personally initiated the forum, he was held liable for the defamatory material posted by other unknown users.

His Honour rejected the defences of triviality, honest opinion and qualified privilege as the ordinary reader would have understood that the posts were intended to be taken seriously; the material was not based upon facts that were substantially true or identified; and the defendant was not under any moral or social duty to publish the material.

Eastman v The Queen [2015] ACTCA 24

The appellant was convicted of murdering the Assistant Commissioner of the Australian Federal Police in 1995. In August 2014, the conviction was quashed by the ACT Court of Appeal and a new trial ordered. The appellant applied to permanently stay the proceedings on the ground of abuse of process, including prosecutorial misconduct in the original trial. The appellant asked the stay judge to recuse himself on the basis of apprehended bias, as the stay judge and the Crown Prosecutor in the original trial, a key witness in any stay application, had both served as judges of the NSW Supreme Court for 12 years. The stay judge dismissed the application, saying that 'a fair-minded lay observer would have no reasonable apprehension that [he] would fail to bring an impartial mind to the resolution of these issues'. The appellant appealed.

The ACT Court of Appeal disqualified the stay judge, deciding that his Honour had applied the wrong test, in that he erroneously considered the matter in terms of probabilities instead of possibilities. It was held that the correct test required the consideration of the reasonableness of any apprehension that the primary judge ‘might’ not bring an impartial mind to the matter. The Court of Appeal found that, in the extraordinary circumstances of the case, a reasonable bystander might reasonably conclude that the primary judge might not be able to act impartially, even having regard to the fact that he was a professional and highly experienced judge who would undoubtedly do everything he could consciously to act impartially. The reasonable bystander would also have regard to human frailty and to the possibility that the judge might be subconsciously influenced by his longstanding professional relationship with the witness, particularly given that serious contumacious ethical breaches were likely to be alleged against the witness.

***R v Scerba* [2015] ACTSC 176**

Michael Scerba was committed for trial in the Supreme Court, charged with unauthorised access to or modification of restricted data, an offence against s 478.1 of the *Criminal Code* 1995 (Cth) and disclosure of information by a Commonwealth officer, an offence against s 70 of the *Crimes Act* 1914 (Cth). The information and data allegedly improperly disclosed was sensitive information contained in a classified report by the Defence Intelligence Organisation. The question before the Court was how the information could be used within the context of a fair trial.

Refshauge J held that the Court has inherent jurisdiction to make orders necessary to ensure the protection of national security (*Scott v Scott* [1913] AC 417) and may also do so under s 85B of the *Crimes Act*, s 93(2) of the *Criminal Code* and, in this case, s 22 of the *National Security Information (Criminal and Civil Proceedings) Act* 2004 (Cth). His Honour held that the disclosure of the sensitive information in question may cause very serious prejudice to Australian national security and that, in this instance, the principle of open justice required modification in order to preserve national security and ensure that the proceedings are conducted in a manner which serves the overall interests of society. The procedures proposed by the parties, including restricting access to sensitive information and security classified documents to a select number of court personnel and legal representatives, for the purpose of proceedings only, were held to be an appropriate limited, but effective, means of protecting that information.



Chief Justice Murrell and Liang Jiye

INTERNATIONAL JUDICIAL VISIT

In the 2014–15 financial year, the Court was delighted to host a judicial visit from China. Mr. Liang Jiye, the Vice President of The Higher People's Court of Shaanxi Province, led a delegation of five members to visit Canberra, which included a visit to the ACT Supreme Court. The delegates met with Chief Justice Murrell and discussed their understanding of the role of courts, court structure and the judicial appointment process. The delegates also met with Principal Registrar Philip Kellow and Security, Sheriffs and Facilities Manager Robert Fraser, where they exchanged information and ideas at a morning tea. The delegates also had an opportunity to tour the Court and observe a criminal trial.

The delegation comprised of the following people:

Name	Unit	Position
Mr. Liang Jiye	The Higher People's Court of Shaanxi Province	Vice President
Mr. Zhang Jinian	No.1 Executive Court of The Higher People's Court of Shaanxi Province	Presiding Judge
Ms. Zhao Yanhui	The Intermediate People's Court of Yan'an City	Vice President
Mr. Luo Xiaofeng	The Intermediate People's Court of Xianyang City	Vice President
Mr. Qiang Yinbao	The Intermediate People's Court of Baoji City	Vice President



Registrar Glover, Luo Xiaofeng, Zhang Jinian, Liang Jiye, Chief Justice Murrell, Zhao Yanhui and Qiang Yinbao



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TECHNOLOGY AND FUTURE PROJECTS

NEW COURT BUILDING

The last year saw significant progress in the project to replace the Supreme Court building. Following the successful example of jurisdictions in Western Australia and Victoria, the new building is being delivered under a public private partnership (PPP) model – the first such arrangement in the ACT. After receiving six expressions of interest, in October the ACT Government settled on Capital Courts and Juris Partnership as the two successful consortia to provide detailed tenders.

The judges have been heavily involved in an ‘interactive tender process’ where they have had the opportunity to meet with bidders to review and comment on proposals prior to the parties submitting a final bid. It has been an interesting and challenging process and it is hoped that the winning bidder, when announced, will produce a court building that is both architecturally appealing and functional and meets the needs of the judiciary, legal practitioners and the community, now and into the future.

Final bids for the project were submitted at the end of May and evaluation is currently ongoing. Pending government endorsement of the preferred bidder, it is expected that work will commence on site in early 2016 and will be completed sometime during 2018.

COURT TECHNOLOGY



Courts and Tribunal website

Preliminary work is underway for an updated Courts and Tribunal website. A number of limitations with the current website have been identified and enhancements sought.

It is expected that the layout of the website will also be redeveloped, allowing for better navigation of the site and display of content. It will also meet the Web Content Accessibility Guidelines to the AA standard.



iPad initiative

The rollout of iPads to judges, magistrates and senior court officers during the year resulted in Library staff acquiring new skills and insights into the use of this piece of technology.

iPads have helped transform the way in which up-to-date legislation is distributed to judicial and non-judicial clients. Any amendments or changes to ACT and Commonwealth legislation are now immediately sent to the various iPads by Library staff. The portability of the tablet means that the judiciary can access legislative resources wherever they are – from Chambers to the courtroom.

This initiative has also provided another avenue for the judiciary to access free and subscription-based legal resources without having to rely solely on the desktop PC. In addition to accessing legislation, judiciary can now locate and save resource materials such as case law and commentary using their iPad.



OPAC updated

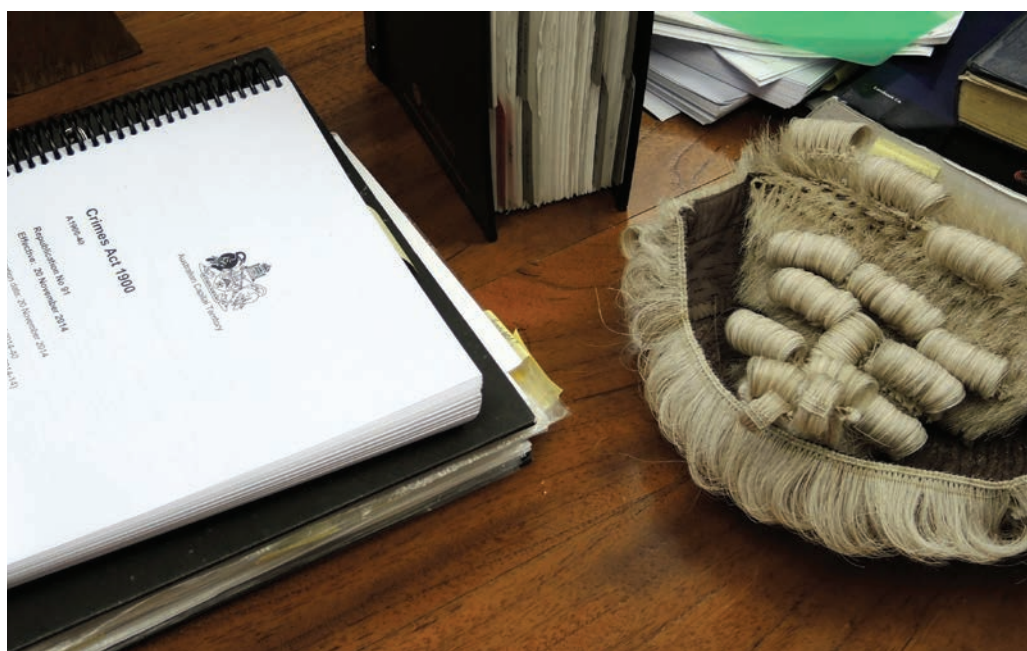
During 2014–15, the Library's Online Public Access Catalogue (OPAC) underwent user and visual enhancements. In particular, new image headers were inserted and links to important resources and websites were updated. Further improvements have been identified and will be implemented over the next financial year.

ACT 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.





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CASE MANAGEMENT

CENTRAL CRIMINAL LISTING

The Supreme Court is committed to the efficient listing and disposition of criminal matters. This serves the interests of accused persons, victims and other witnesses and the community generally.

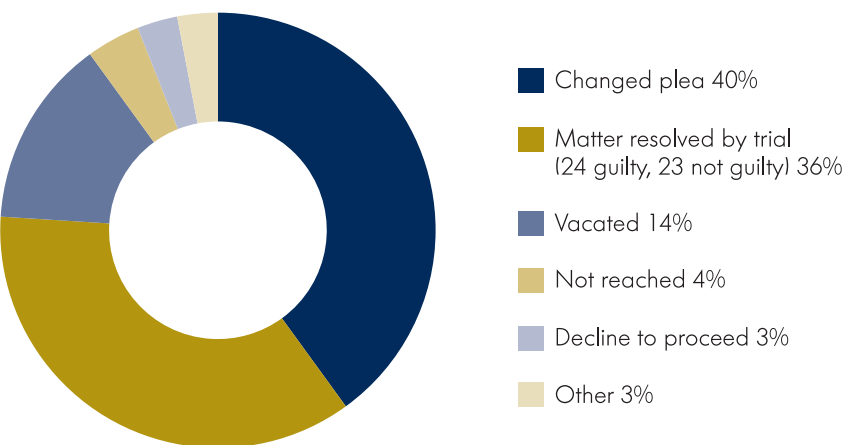
Following a successful pilot in the first half of 2014, the Court adopted a permanent system of central criminal listings whereby 4 sitting periods of 4-5 weeks are set aside each year to focus on criminal trials.

During 2014–15 a total of 132 matters were listed for trial during the central criminal listing periods. Of these, 47 matters proceeded to trial with 24 returning a verdict of guilty. Of those matters that did not proceed to trial, 53 did not proceed because the accused changed their plea to guilty, 19 matters were vacated before or during the trial and 5 matters were not reached. The ACT Director of Public Prosecutions declined to proceed in 4 matters.

Statistics on the Court's criminal jurisdiction are set out on pages 50 to 52. There has been a small increase in the total number of pending cases, and in the number of cases that have been pending for more than 12 months. The criminal clearance rate dropped to 92% from 96.6%, primarily as a result of a higher proportion of longer trials during the reporting year.

Central Criminal Listing

Progress of the 132 matters listed for trial in 2014–15





CIVIL CASE MANAGEMENT

During 2014–5 the Supreme Court continued to reduce the number and age of pending civil matters while introducing a number of measures to support the timely disposition of new matters.

In November 2014 the Court issued a new practice direction to facilitate the just resolution of the real issues in civil proceedings with a minimum of delay and expense. The practice direction, which applies to proceedings commenced by originating claim after 3 November 2014, has 4 key elements:

- it establishes a time standard whereby the majority of cases are to be completed within 12 months of commencement;
- it establishes a regime of early case management;
- it makes it clear that parties and their legal representatives are expected to assist the Court to meet the time standard and must comply with procedural directions; and
- it makes alternative dispute resolution, including court-facilitated mediation, an integral part of the trial preparation process.

Statistics on the Court's civil jurisdiction are set out on pages 50 to 52. Compared to the previous year, there has been an increase in the clearance rate which is reflected in a further reduction in the number and age of pending civil cases.

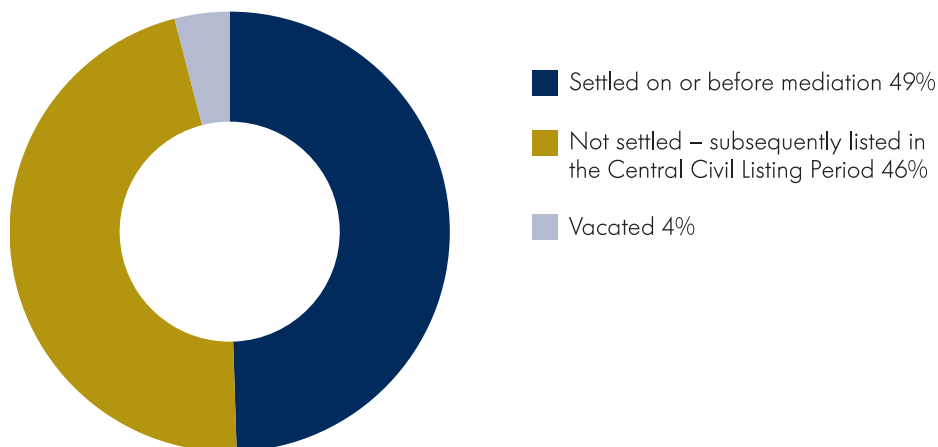
In accordance with the new practice direction, parties to matters allocated a hearing date will generally be required to participate in formal alternative dispute resolution processes unless the parties can satisfy the Court that such procedures have been completed or are not appropriate. Parties are encouraged to agree to participate in a mediation or other appropriate alternative dispute resolution procedures. However, if they do not then the Court is likely to compel it.

During 2014–15 the Court ran 4 court-based mediation blocks, each with an associated listing period designed to deal with those matters that did not resolve at mediation. The mediations were conducted by experienced practitioners and former judicial officers, including the Honourable Terence Higgins AO QC, Mr Bryan Meagher SC, Mr Paul Menzies QC, Mr Graeme Lunney SC, Mr Russell McIlwaine SC, Ms Margaret Sidis, Ms Mary Walker and Mr David Harper OAM.

Almost 50% of the matters referred to court-based mediation settled on or before the mediation.

Court-based Mediation

Progress of 99 matters listed

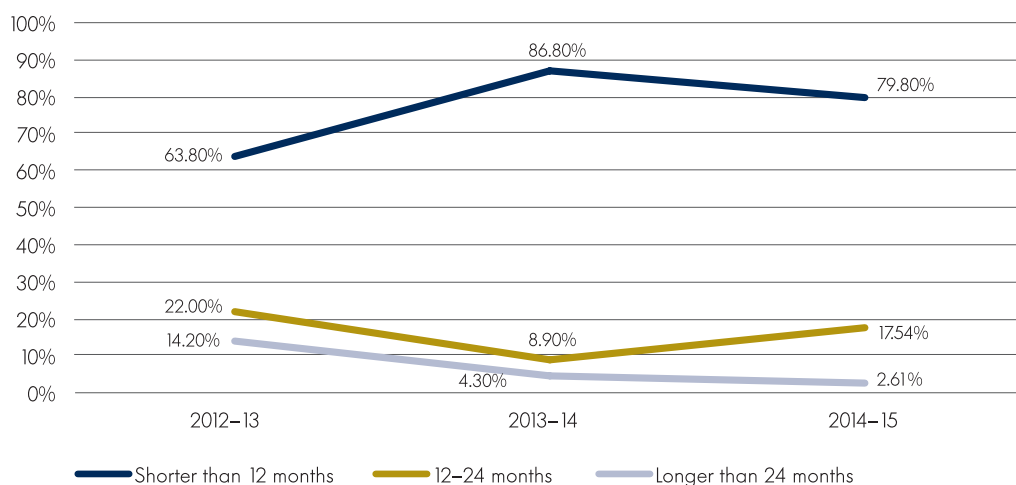


STATISTICS

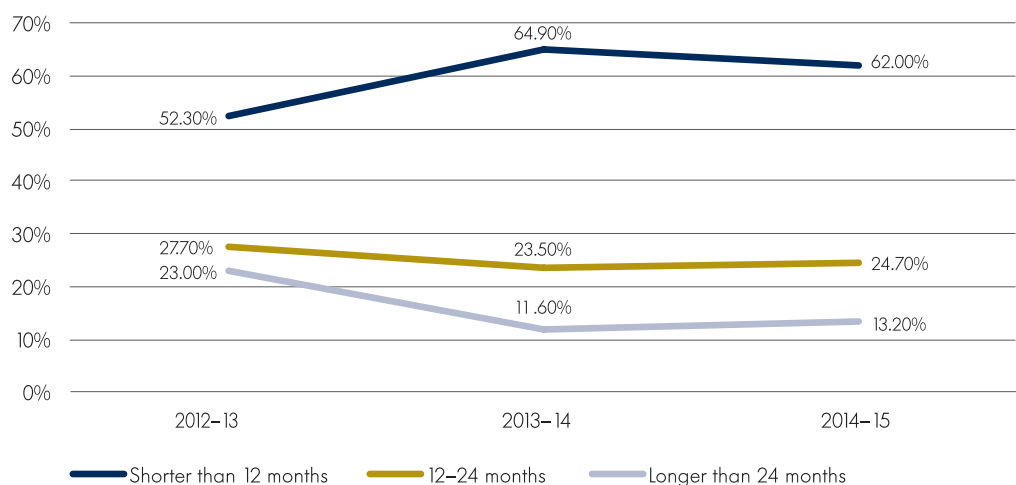
Outstanding matters

Court time	July 2014–June 2015				July 2013–June 2014				July 2012–June 2013			
	Criminal	Criminal %	Civil	Civil %	Criminal	Criminal %	Civil	Civil %	Criminal	Criminal %	Civil	Civil %
Shorter than 12 months	214	79.80%	402	62.00%	223	86.80%	466	64.90%	162	63.80%	409	52.30%
12–24 months	47	17.54%	160	24.70%	23	8.90%	169	23.50%	56	22.00%	193	27.70%
Longer than 24 months	7	2.61%	86	13.20%	11	4.30%	83	11.60%	36	14.20%	180	23.00%
Total	268	100%	648	100%	257	100%	718	100%	254	100%	782	100%

Outstanding criminal matters (in percentages)



Outstanding civil matters (in percentages)



Summary data 2014–15

Supreme Court – Civil	2014–15
Lodgements	580
Finalisations	624
Clearance rate	108%
Number pending (Total)	648
Number pending (<12 months)	402
Number pending (>12 months)	246
Number pending (>24 months)	86

Supreme Court – Criminal	2014–15
Lodgements	335
Finalisations	309
Clearance rate	92%
Number pending (Total)	268
Number pending (<12 months)	214
Number pending (>12 months)	54
Number pending (>24 months)	7

Court of Appeal	2014–15 Criminal	2014–15 Civil
Lodgements	115	56
Finalisations	110	65
Clearance rate	96%	116%
Number pending (Total)	85	76
Number pending (<12 months)	59	40
Number pending (>12 months)	26	16
Number pending (>24 months)	0	20

