



# MAGISTRATES COURT

OF THE AUSTRALIAN CAPITAL TERRITORY



**ANNUAL  
REVIEW**  
2017–18



# YEAR AT A GLANCE

ACT MAGISTRATES COURT **2017-18**

CRIMINAL  
MATTERS FINALISED

 **8523**

INDUSTRIAL COURT  
MATTERS FINALISED

✓ **439**

CIVIL  
CLAIMS FINALISED

 **1646**



PROTECTION  
APPLICATIONS

**1742**

INTERIM ORDER  
APPLICATIONS

**1816**

## CHILDRENS COURT

CARE MATTERS  
FINALISED

**116**

CRIMINAL  
MATTERS FINALISED

✓ **362**

MATTERS  
SENTENCED IN  
GALAMBANY COURT

**43** ✓

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## BY CHIEF MAGISTRATE OF THE ACT

The 2017–18 year has seen steady improvement in a number of areas of core performance.

In the criminal jurisdiction, there has been an increase in the criminal clearance rate. A significantly larger number of matters were finalised than were lodged and the pending rate for matters less than 12 months improved significantly over the 2017–18 period. There continue to be a small number of matters pending for over 12 months. This is influenced by a number of factors, including utilisation of a deferred sentence process in some cases, matters which are unable to be finalised because defendants have not attended court and warrants have been issued for their arrest and, in some instances, a significant degree of complexity or requirement for lengthy hearing time which have made it impossible to achieve finalisation within the year. Block listing of criminal matters has continued to result in the better utilisation of hearing time; very few matters are not reached despite at least 100% over listing of matters in these blocks.

In the Childrens Court criminal jurisdiction there was a significant increase in matters lodged in court but an even more significant increase in matters finalised and reduction in matters pending for over 12 months, the latter being reduced to a handful. This is a very positive outcome noting the potentially negative impact on young people of extended involvement in the criminal justice system.

The year has also seen a decrease in pending civil matters. This to some extent no doubt reflects the devolution of jurisdiction to the ACT Civil and Administrative Tribunal for matters under \$25,000 in value. It also, however, reflects a concerted effort by registrars and dedicated civil magistrates to drive efficiency.

In relation to family violence orders, duty magistrates have noted an increase in applications for after-hours orders by police on behalf of people affected by violence in the home. Court initiated orders are also implemented to assist in ensuring the safety of people so affected. These may be made pursuant to the *Family Violence Act 2016* or, in appropriate cases, pursuant to the *Children and Young People Act 2009*. These two types of orders provide some protection in circumstances where an affected person may not have yet had the opportunity to apply for orders personally, either because the issue arises outside of regular court times or because they are not yet in a practical position to apply for orders. A number of magistrates during the year participated in an education session regarding the particular risks associated with strangulation and choking cases and the predictive relevance of such offending.

Whilst the 2017–18 year held great promise in terms of commencement of the ICMS criminal module and completion of stage 1 of the new courts precinct, I note that these were not in fact achieved. The court function has been significantly frustrated by these delays and we very much look forward to a better outcome next year.

The court continues to engage with local communities to explore ways of improving access to just outcomes. Whilst a number of initiatives which are desirable are not immediately achievable due to lack of funding, some progress is being made. The mere fact of engagement with exchange of ideas with the Aboriginal and Torres Strait Islander and other communities is a positive development for the Court and one which I hope to see become more regular.

I take this opportunity to acknowledge the continued excellent work and commitment of our registrars, ably leading registry, security and corrections staff to reliably support the day-to-day functioning of the court. As with most organisations, the court is unable to function without a well-oiled engine room. I also acknowledge the consummate professionalism of my fellow magistrates in the exercise of their duties in what is often a highly pressured and challenging environment. Well done on a solid performance this year.





## **BY PRINCIPAL REGISTRAR OF THE ACT COURTS AND TRIBUNAL**

During 2017–18 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 Magistrates Court.

The upgrades to the Magistrates Court courtrooms, including the installation of new audio-visual facilities and related technologies, and chambers were completed as was the construction of the new remote witness suites and the refurbishment of most of the combined courts registry. Temporary conferencing rooms were installed pending completion of modern conferencing facilities in the new building in Spring 2018 and in the refurbished heritage building in the second half of 2019. I would like to thank staff for their patience as they maintained business as usual during the often disruptive building works.

Work continued on the criminal release of the ICMS that is due to be implemented in early 2019. The criminal release is the most complex of the releases and includes interfaces with a number of justice agencies and the first tranche of online services.

In the first half of 2018 a workflow review of the business processes of the bail officer and protection unit was undertaken. The review identified and mapped the time spent on over 1500 activities, and produced a range of recommendations for improving the operation of these registry areas. A number of these recommendations will be implemented during 2018–19.

During 2018 the Magistrates Court updated its strategic statement which informs the ACT Courts and Tribunal's corporate plan. The strategic priorities identified in the statement help ensure the administration is focused on those matters of most importance to the Court. The administration also adopted an Action Plan to improve access to courts for Aboriginal and Torres Strait Islander people in the ACT based on the workshop with community representatives hosted by the courts in May 2017.

Significant progress was made in the project to improve the design and content of the Court's website. A new information architecture was designed having regard to feedback from the judiciary and court users and work commenced on updating the content.

The last 12 months have again 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 to occur.

I look forward to working with the Chief Magistrate, Magistrates, Special 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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# 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 2017–18 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

## MAGISTRATES



**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



**CUSH, Kenneth Michael**

Appointed September 2008 – September 2010  
and reappointed on 24 May 2013  
and 7 May 2017



**HUNTER, Margaret Ann OAM**

Appointed 21 May 2014 and  
reappointed on 7 May 2017



## 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 Jayne Reece is the Acting Registrar of the Magistrates Court whilst the nominal occupant Ms Nuttall is on long term leave. 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, ADR Manager, 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 family violence, personal protection, and workplace protection orders.

## COURT STAFF

Staff members of the 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.



# OVERVIEW

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## 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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# 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 the court was able to clear 32% more matters than were lodged for the financial year<sup>1</sup>.

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 164 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. Twenty 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 70 defendants who were unfit to enter a plea.

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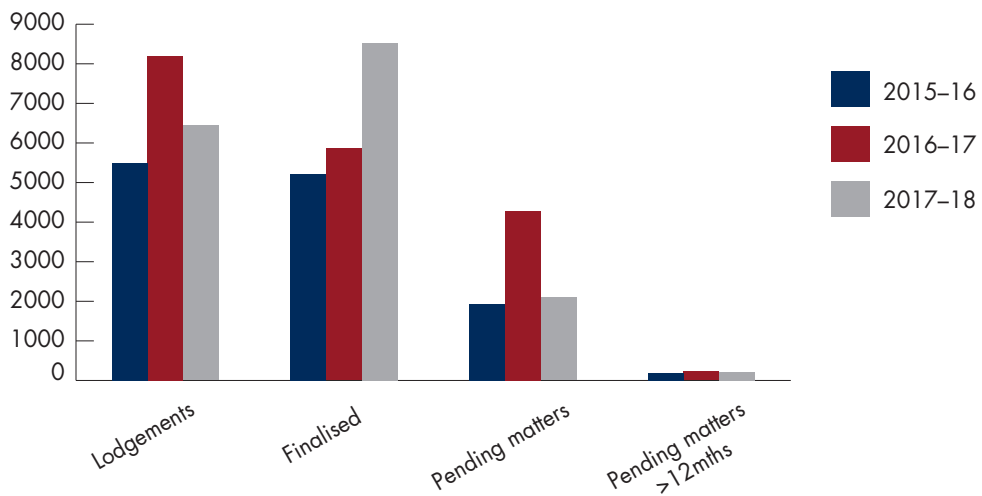
<sup>1</sup> This figure includes fail to vote finalisations



### Between 1 July 2016 and 30 June 2018

Criminal Matters	2015-16	2016-17	2017-18	% variance	% variance exclusive of fail to vote
Lodgements	5504	8202	6,441	-21%	2%
Finalised	5227	5861	8,523	45%	13%
Pending matters	1936	4278	2,096	-51%	-13%
Pending matters >12mths	197	227	207	-9%	-9%

### Criminal Matters



Adjustments have been noted in the variance above to account for the large amount of fail to vote charges which were processed in the Magistrates Court during 2017/18.

## 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 *Family Violence Act 2016* and the *Personal Violence Act 2016*.

On 15 November 2016, section 266A of the *Magistrates Court Act 1930* was amended to prohibit the filing of claims for civil disputes if an amount of not more than \$25 000 is claimed, or sought to be declared as a debt. This results in the jurisdiction of the Magistrates Court now being between \$25 000 and \$250 000, those matters up to \$25 000 are now lodged in the ACT Civil and Administrative Tribunal.

Other matters that are determined by the court are matters under the *Leases (Commercial and Retail) Act 2001* in which there is no financial limit, claims for criminal injuries compensation under the *Victims of Crime (Financial Assistance) Act 1983 (the 1983 Act)*, 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. On 1 July 2016, the *Victims of Crime (Financial Assistance) Act 2016* commenced and the 1983 Act was repealed. Applications for financial assistance are no longer lodged with the ACT Magistrates Court and are now administered through the Victims of Crime Commissioner. Transitional provisions provided for lodgements in the Magistrates Court for incidents that occurred up to 30 June 2016 to be lodged with the Court until 30 June 2017. Any matters that occurred from 1 July 2016 are to be lodged with the Commissioner.

### Between 1 July 2017 and 30 June 2018\*<sup>2</sup>

Civil Matters	2015–16	2016–17	2017–18	% variance
Lodgements	1811*	1177**	933**	
Enforcement of ACAT Orders & Registration of judgements		482	661	
<b>Total</b>	<b>1811</b>	<b>1659</b>	<b>1594</b>	<b>-4%</b>
Finalised	2006*	1250**	985**	
Enforcement of ACAT Orders & Registration of judgements		482	661	
<b>Total</b>	<b>2006</b>	<b>1732</b>	<b>1646</b>	<b>-5%</b>
Pending matters <sup>2</sup>	603***	495	433	-5%
Pending matters >12mths <sup>2</sup>	89	76	68	-4%

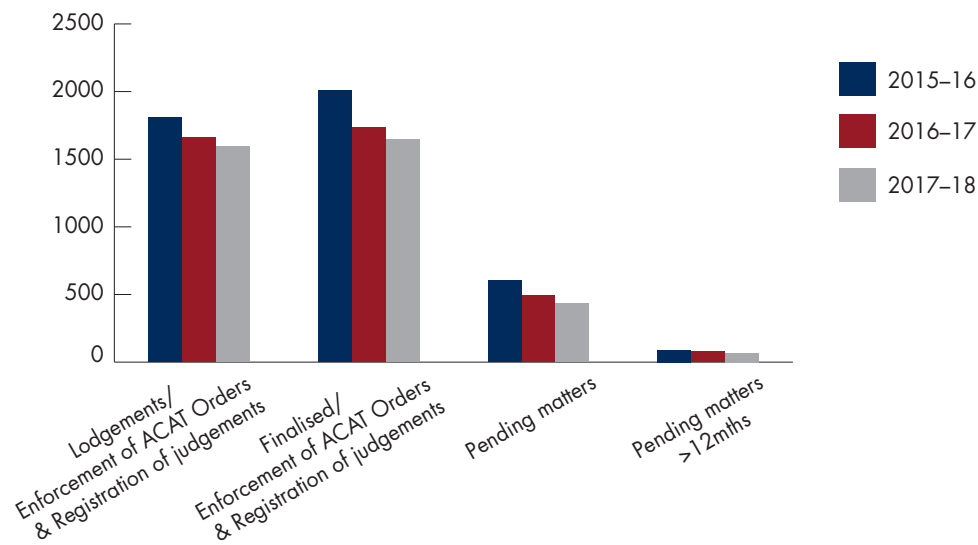
\* inclusive of ACAT enforcement matters and registration of interstate judgments

\*\* exclusive of ACAT enforcement matters and registration of interstate judgments

\*\*\* this figure was reported inclusive of pending matters in the domestic violence and protection orders jurisdiction, this has been adjusted this year to be consistent with the separate counting of these matters below

<sup>2</sup> These figures exclude lodgements, pending and finalisations for domestic violence, family violence and personal violence orders

Civil Matters



There continues to be a fall in lodgements for the Magistrates Court. Increases in the jurisdiction of the ACAT and the resolution of matters prior to court proceedings may be causes for this reduction. This has enabled resources to combat the pending pools which has led to a decrease in the number of matters waiting for available court time.

## FAMILY VIOLENCE AND PROTECTION ORDERS

Just over half of the matters lodged in the court's civil jurisdiction are focused on the important social issue of family and personal violence. This requires a unique approach within the legal system.

The court lists applications for interim family violence and protection orders on a daily basis.

The *Family Violence Act 2016* and the *Personal Violence Act 2016* commenced on 1 May 2017 and the *Domestic Violence and Personal Orders Act 2008* was repealed. Legislation previously provided for the making of domestic violence orders; the newly commenced legislation provides for the making of family violence orders. The definition of family violence was broadened and strengthens the focus on a range of behaviours that constitute family violence.

The court can issue orders prohibiting a person from engaging in family violence. Family violence includes:

- (a) any of the following behaviour by a person in relation to a family member of the person:
  - (i) physical violence or abuse;
  - (ii) sexual violence or abuse;
  - (iii) emotional or psychological abuse;
  - (iv) economic abuse;
  - (v) threatening behaviour;
  - (vi) coercion or any other behaviour that –
    - (A) controls or dominates the family member; and
    - (B) causes the family member to feel fear for the safety or wellbeing of the family member or another person; or
- (b) behaviour that causes a child to hear, witness or otherwise be exposed to behaviour mentioned in paragraph (a), or the effects of the behaviour.

Personal violence orders prohibit personal violence which includes conduct such as physical violence or abuse, sexual violence or abuse, threatening behaviour, stalking, harassing, intimidating or offensive behaviour, and/or property damage. 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 family violence and personal violence orders are set down for a conference before a deputy registrar to explore an agreed outcome between the parties. Matters are usually 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.

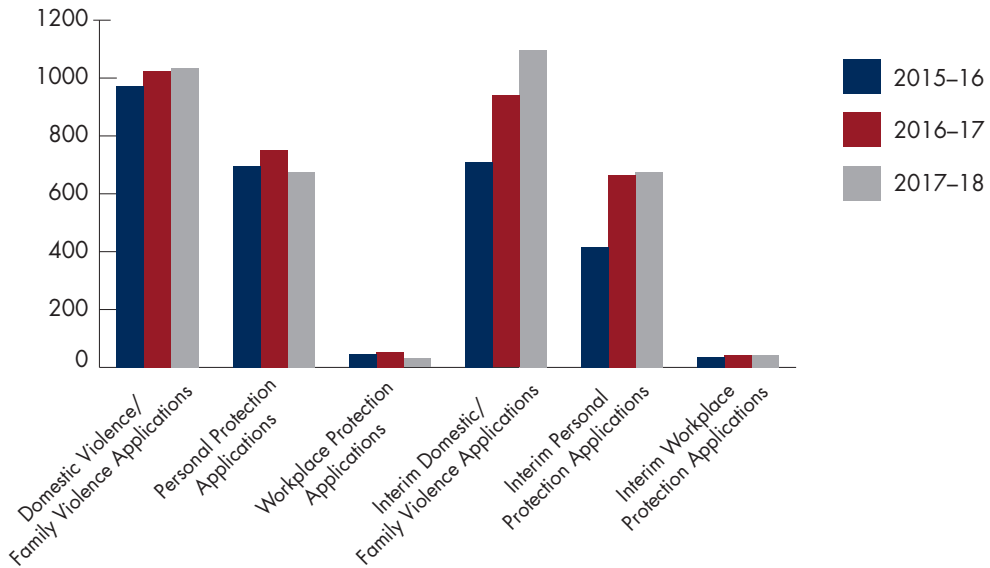
In order to ensure the optimum service to members of the public seeking protection from family violence and personal violence, the jurisdiction of the Registrar has been expanded to ensure parties are heard quickly. The Registrar hears applications for interim orders and applications for final orders when a respondent has been served with relevant documents but has not attended at Court.

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 2017 and 30 June 2018

Protection Unit Statistics	2015–16	2016–17	2017–18	% variance
<b>Applications for final orders</b>				
Domestic Violence Applications	972	843	0	
Family Violence Applications		181	1035	
<b>Total</b>	<b>972</b>	<b>1024</b>	<b>1035</b>	<b>1%</b>
Personal Protection Applications	695	752	676	–10%
Workplace Protection Applications	45	54	31	–43%
<b>Applications that included an application for Interim orders</b>				
Interim Domestic Violence Applications	711	777	6	
Interim Family Violence Applications		163	1092	
<b>Total</b>	<b>711</b>	<b>940</b>	<b>1098</b>	<b>17%</b>
Interim Personal Protection Applications	415	664	676	2%
Interim Workplace Protection Applications	36	42	42	0%

## Protection Unit Statistics



The commencement of the new FDV legislation is reflected in this statistics. The FDV applications measure approximately with the prior years DV lodgements.

## 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 family violence and personal protection matters. All full-time magistrates, including the Chief Magistrate, share this roster 365 days per year.





# THE SPECIALIST COURTS

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## The specialist courts



### **CHILDREN AND YOUNG PERSONS COURT**

The Magistrates Court sits as the Childrens Court when exercising jurisdiction under Chapter 4A of the *Magistrates Court Act*. Magistrate Robert Cook is currently the Childrens Court Magistrate, having commenced in the role on 1 June 2018.

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.

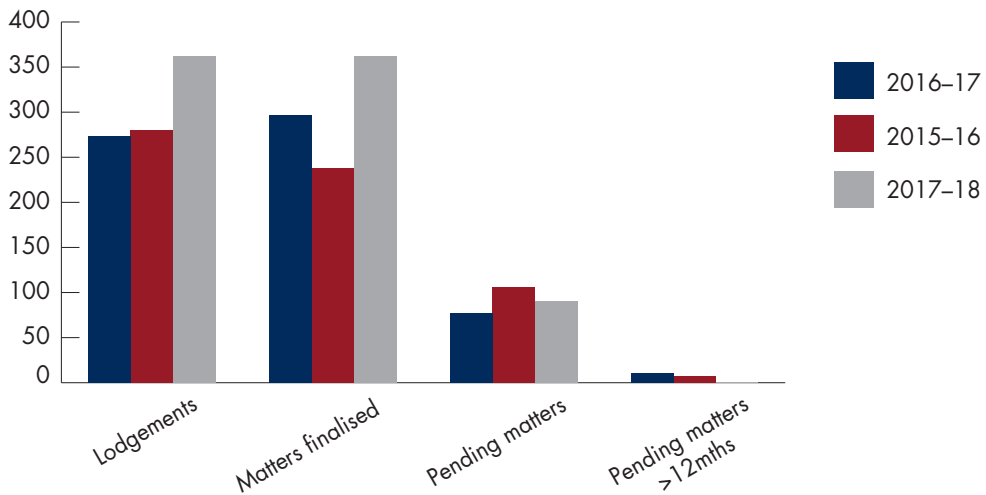
Childrens Court proceedings are not open to the public. The court must consider on each occasion whether people who wish to be present have a legitimate interest warranting their attendance.

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

Childrens Criminal Court	2015-16	2016-17	2017-18	% variance
Lodgements	273	280	362	29%
Matters finalised	297	238	362	52%
Pending matters	77	106	90	-15%
Pending matters >12 months	10	7	1	-86%

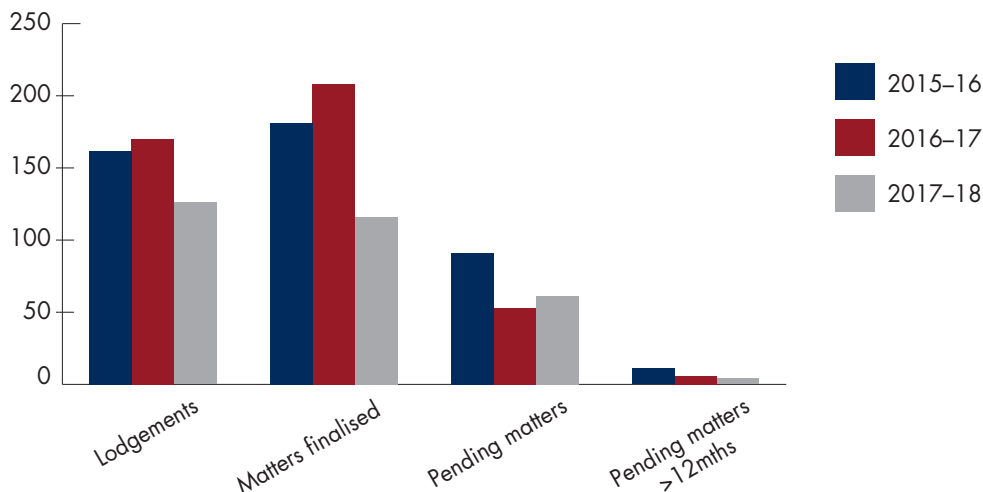
## Childrens Criminal Court



## Care and protection matter statistics

Care and Protection	2015-16	2016-17	2017-18	% variance
Lodgements	162	170	126	-26%
Matters finalised	181	208	116	-44%
Pending matters	91	53	61	15%
Pending matters >12 months	11	6	4	-33%

## Care and Protection Statistics



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. The Practice Direction has now been in place for nearly 2 years with considerably positive results.

The past two years have seen considerable in-roads made into finalising matters in a more timely manner. In the 2015/16 year 96 matters were finalised within six months; in 2016-17 year the finalisations within six months increased to 140 and in the current reporting year that has increased to 297. This is a significant improvement in the jurisdiction and ensures that the Court is meeting the principles of section 9 of the *Children and Young People Act 2008*.

## 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.

## 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 Magistrate 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

	2015–16	2016–17	2017–18
Matters referred	54	39	54
Matters assessed	51	41	55
Matters sentenced	48	45	43

The court is keen to see the circle approach extended to sentencing of children and young people. Legislation to facilitate this was passed by the Legislative Assembly on 20 February 2018 with the relevant provisions to commence in the next financial year.



## 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 family violence offences.

Giving the Family Violence Court a legislative basis provided a more integrated approach to dealing with domestic violence. Family 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 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 family violence offence;
- a proceeding in relation to bail for an adult charged with a family 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 family violence offence.

Family 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 *Family Violence Act 2016*.

In March 2018 a number of magistrates attended training in relation to the impact of strangulation and choking on victims and its predictive significance run by the Royal College of Pathologists of Australia.





## INDUSTRIAL COURT

The Industrial Court commenced operation on 8 November 2013 following the recommendations of the 'Getting Home Safely' report. The court has 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. Magistrate Glenn Theakston 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*.

During the reporting period criminal charges under the Commonwealth's *Work Health and Safety Act 2011* came before the Industrial Court. The Court accepted submissions that those proceeding were not within the jurisdiction of the Industrial Court and the matter was transferred to the Magistrates Court to be dealt within in the ordinary way for criminal proceedings. There are no obvious policy reasons why the Industrial Court should not have jurisdiction to hear charges arising under the Commonwealth Act and this may be an issue that the ACT Executive may wish to address in consultation with the Commonwealth.

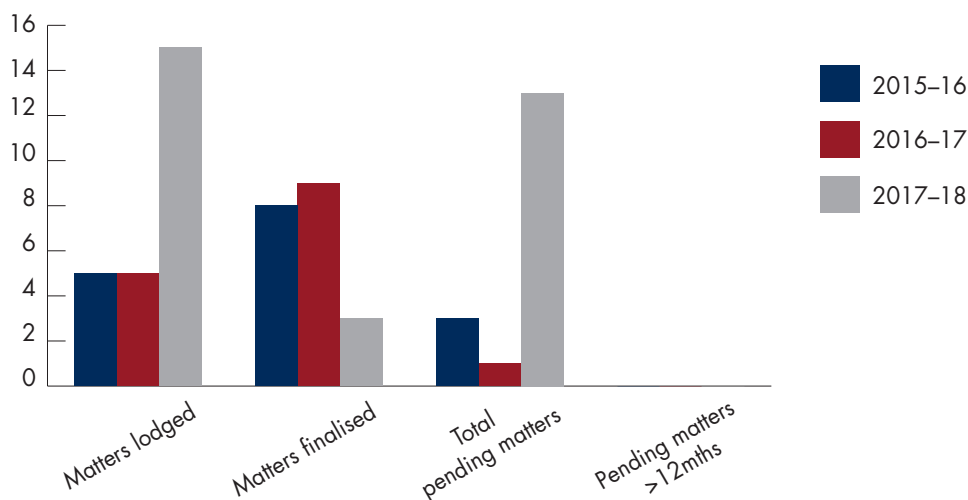
The bulk of matters in the Industrial Court are workers compensation arbitrations. The court also has jurisdiction to hear and determine personal injury matters arising from the same facts that form the basis for proceedings under any of the above Acts, up to a limit of \$250 000.

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. In criminal prosecutions, the defendant is often a corporate legal person. There is currently some uncertainty as to the limit of the Court's jurisdiction under the *Work Health and Safety Act* in imposing financial penalties on such defendants.

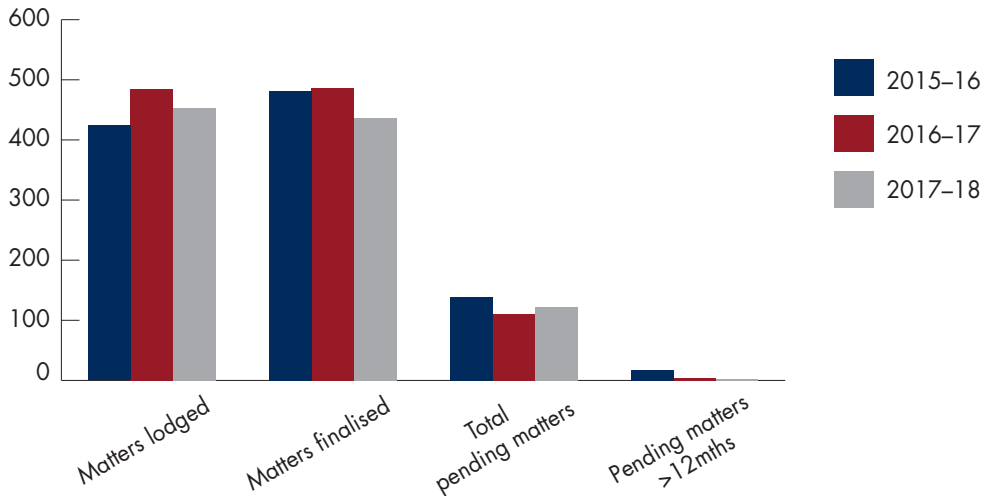
## Industrial Court statistics

Industrial Court	2015-16	2016-17	2017-18
<b>Criminal Matters</b>			
Matters lodged	5	5	15
Matters finalised	8	9	3
Total pending matters	3	1	13
Pending matters >12 months	0	0	0
<b>Civil Matters</b>			
Matters lodged	424	484	453
Matters finalised	482	486	436
Total pending matters	139	110	122
Pending matters >12 months	18	4	2

## Industrial Court Statistics (Criminal)



## Industrial Court Statistics (Civil)



## EXTERNAL TERRITORIES

The Jervis Bay Territory and the Australian Antarctic Territory are territories of the Commonwealth of Australia.

With respect to the Jervis Bay Territory, the laws of the Australian Capital Territory apply in that territory in accordance with section 4A of the *Jervis Bay Acceptance Act 1915* (Cth). Subsection 4D of the *Jervis Bay Acceptance Act 1915* (Cth) also provides that each court of the Australian Capital Territory has jurisdiction in the Jervis Bay Territory. It follows that the ACT Magistrates Court has jurisdiction to hear and determine matters in the Jervis Bay Territory.

The ACT Magistrates Court provides judicial and administrative resourcing to the Jervis Bay Territory. The Magistrates of the ACT Court sit in the Magistrates Court of Jervis Bay every second month.

With respect to the Australian Antarctic Territory, the laws of the Australian Capital Territory apply in that territory in accordance with section 6 of the *Australian Antarctic Territory Act 1954* (Cth). Section 10 also provides that the courts of the Australian Capital Territory, including the ACT Magistrates Court, have jurisdiction to hear and determine matters in the Australian Antarctic Territory. These matters are attended to by the ACT Magistrates on an as needs basis.



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## 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), the Forensic Mental Health Court Liaison Team and Child and Youth Protection Services.

Works commenced on the new building in 2016. As at July 2018, Stage One was 90% complete with the building watertight and only some internal areas needing completion. The new Registry Counter was opened in the first half of 2018 and relocations for registry staff are planned for the first quarter of the 2018/19 financial year.

The first stage of works are due for completion in the second quarter of 2018/19 with the second stage (the refurbishment of the existing Supreme Court including new mediation suites, hearing rooms, court rooms and facilities for assessment and support services) to be completed in the second half of 2019.



## 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-Services 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 has been rolled out in three stages – the first stage was successfully implemented in the ACT Civil and Administrative Tribunal (ACAT) in December 2015. Stage 2 was successfully implemented into the civil jurisdiction in September 2016. In addition the project team interposed the implementation of the family violence reforms which commenced in May 2017. Significant delays have been encountered in rolling out the third and final stage for the criminal jurisdiction. This is in part due to difficulty in securing access to the system for court users such as the Australian Federal Police. At this stage the roll out in the criminal jurisdiction is anticipated in the first quarter of 2018–19.

Further work is being undertaken to expand eService's capabilities across all jurisdictions which will pave the way for e-Distribution, e-Notifications leading to e-Filing and e-Trials over the coming years.



## JUDICIAL RESOURCES

During the reporting year the Government announced funding for an eighth magistrate. As at 30 June 2018 recruitment was underway to fill that position. The funding also supported independent modelling which demonstrated the need for nine magistrates in the court to maintain a reasonable level of efficiency.

Meanwhile court efficiency has been maintained by heavy listing of special magistrates to in excess of 1.5 full time equivalents. Whilst the court is grateful for the commitment of those individuals, it is not appropriate that it be required to rely on the availability of this resource on an ongoing basis. Firstly, special magistrates are not tenured and are thus theoretically open to criticism about a lack of unfettered independence. Secondly, special magistrates are not required to be available on a full time basis – listing depending upon their willingness to be available. Thirdly as a non-continuing resource, reliance on special magistrates limits the courts flexibility to list and plan optimally.

## FAMILY VIOLENCE CONSULTATION

During the year the Magistrates Court planned for consultation with the culturally and linguistically diverse (CALD) community to obtain feedback on how to improve access for family violence matters before the court. The workshop for the CALD community is scheduled to be held on 13 July 2018 with invitees from the CALD community, community organisations, legal services, agencies and representatives of the ACT Multicultural Advisory Council.

Following the workshop it is anticipated that an action plan will be prepared to enable the Court to improve access for the CALD community for family violence matters before the court.

## ACTIVITIES BY THE COURT TO IMPROVE ACCESS TO COURT SERVICES

On 9 May 2017 the ACT Courts Cultural Diversity Committee hosted a workshop with key agencies and non-government organisations to identify practical measures that would improve accessibility to the courts for Aboriginal and Torres Strait Islander people in the ACT. During the year the ACT Courts Cultural Diversity Committee endorsed the ACTCT 2017/18 Action Plan on Access to Courts for Aboriginal and Torres Strait islander People in the ACT.

During the reporting year the Magistrates Court commenced work on redeveloping the Court website. The aim of this project is to create a website that is more intuitive and better supports the needs of court users. It is anticipated that the new website will be launched in 2018–19.



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# 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.

## 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.

In the reporting year there were 29 Justices of the Peace on the roster team. They provided services to 1847 people with a total of 8471 documents.

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.

## LEGAL AID ACT

### CRIMINAL MATTERS

Legal Aid ACT offers court-based duty lawyer services in criminal matters for adults in the Magistrates Court and for children in the Childrens Court. Legal Aid lawyers provide preliminary legal advice to people who are in custody or who are otherwise appearing in court. The assistance of a duty lawyer is available throughout the day to complement court sitting hours.

When providing this type of duty assistance at court Legal Aid lawyers also identify matters that may be eligible for a grant of legal assistance to provide ongoing legal representation. Legal Aid lawyers identify people who may be eligible for a grant of aid for ongoing representation.

Legal Aid ACT supports the work of the court by providing on-site duty lawyers available to provide advice and representation to people who need assistance with any court appearance including on Saturday and public holiday Courts. In addition Legal Aid ACT has administrative para-legal staff on-site in the Court precincts to support their lawyers. Para-legal staff assist people to apply for a grant of Legal Assistance for ongoing assistance and direct them to the Legal Aid ACT premises in Allsop Street, Canberra.

### FAMILY VIOLENCE AND PROTECTION ORDERS UNIT

Legal Aid lawyers assist members of the community who are applying for, or responding to, family violence and personal protection orders. Increased demand means the unit is now staffed with three solicitors each day with drop-in appointments available throughout the day. Legal Aid is representing an increased number of primary victims when their family violence order matters return to court for a conference or hearing. Whilst the unit focuses specifically on family violence and personal 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 which may include a direct referral for a client to Legal Aid Family Law service for advice and representation.

## 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 to accept treatment or undergo a program recommended by the assessor.

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 may 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. 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 as 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 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.

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 ACT's Restorative Justice Scheme allows citizens to participate in voluntary conferencing processes and is guided by its own legislation, the *Crimes (Restorative Justice) Act 2004* (the Act).

The objects of the Act are detailed at s. 6 and 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.

The ACT Restorative Justice Unit's (RJU) primary objective is to facilitate an opportunity for the people affected by an offence to:

- talk about how the offence has affected them and others close to them;
- hear the responsible person accept responsibility for their actions;
- discuss what needs to be done to repair the harm.

Restorative Justice (RJ) participants and processes are carefully assessed by convenors in order to facilitate a restorative process which addresses the unique needs of all participants.

Referrals may be made at different points by the ACT Law Courts. The DPP can refer a less serious matter prior to the beginning of the second mention. The Court can refer a less serious offence prior to a plea being entered at s. 27. This requires a special Court Referral Order and the agreement of both defence and prosecution. The Court can also refer following a plea or finding of guilt before the end of proceedings, without requiring the agreement of defence and prosecution.

In 2017–18 there were 260 referrals made to the RJU, including: 123 by ACT Policing, 148 by the ACT Law Courts (33 by the Children's Court, 93 by the Magistrates Court, six by the Galambany Court and 16 by the Supreme Court), involving a total of 573 offences. Across all referring entities, 159 adults and 121 young offenders were referred to RJ in 2017–18. There were 494 less serious offences and 61 serious offences referred.

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 the expansion of restorative justice to phase 3 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, ACT Policing Order Liaison Officers, 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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# Judicial education and Community and professional engagement

## JUDICIAL EDUCATION

### Chief Magistrate Walker

24–30 September 2017	South Pacific Youth Children's Conference, Cook Islands
17 October 2017	Cultural Competency Workshop for Judicial Officers
27 March 2018	Human Services Cluster: Early Intervention by Design

### Magistrate Fryar

6–8 October 2017	Judicial Conference of Australia Colloquium – Hobart
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### Magistrate Morrison

6–8 October 2017	Judicial Conference of Australia Colloquium – Hobart
19–20 April 2018	National Judicial College of Australia – Applying Family Law to Parenting and Property

### Magistrate Boss

24–28 September 2017	Commonwealth Magistrates' and Judges' Association Conference: Building an Effective, Accountable and Inclusive Judiciary – Tanzania
4–6 October 2017	National Judicial College of Australia: Dialogues on being a Judge – Hobart

## COMMUNITY AND PROFESSIONAL ENGAGEMENT

### Chief Magistrate Walker

	Law Reform Advisory Council member
	Cultural Diversity Committee
	ACT Bar Association member
	Justice of the Peace engagements
	Member of Judicial Council
	Member of Council of Chief Magistrates
	Member of Council of State & Territory Coroners
	National Judicial College of Australia – alternate representative of Council of Chief Magistrate
	Judicial Mentoring Forum for Women Lawyers Association
	Launch of the Justice and Community Safety Reconciliation Plan
	Human Services Cluster – Early Intervention
16 September 2017	Chief Magistrates Council Meeting
18 September 2017	Childrens Court Stakeholder Engagement Meeting
12 October 2017	Gillian Beaumont Lunch Presentation
5 December 2017	Participation in Monash University Research Project on Domestic Violence Perpetrators
7 December 2017	ALS Bail Support Program Launch
13 December 2017	Criminal Procedures Committee Meeting
22 February 2018	Women in Government Dinner
6 March 2018	Strangulation Prevention and Intervention Presentation
6 March 2018	Presentation to ANU Class for Mary Spiers Williams
2 May 2018	Prisoners Aid Meeting





# **MAGISTRATES COURT**

OF THE AUSTRALIAN CAPITAL TERRITORY

[www.courts.act.gov.au/magistrates](http://www.courts.act.gov.au/magistrates)