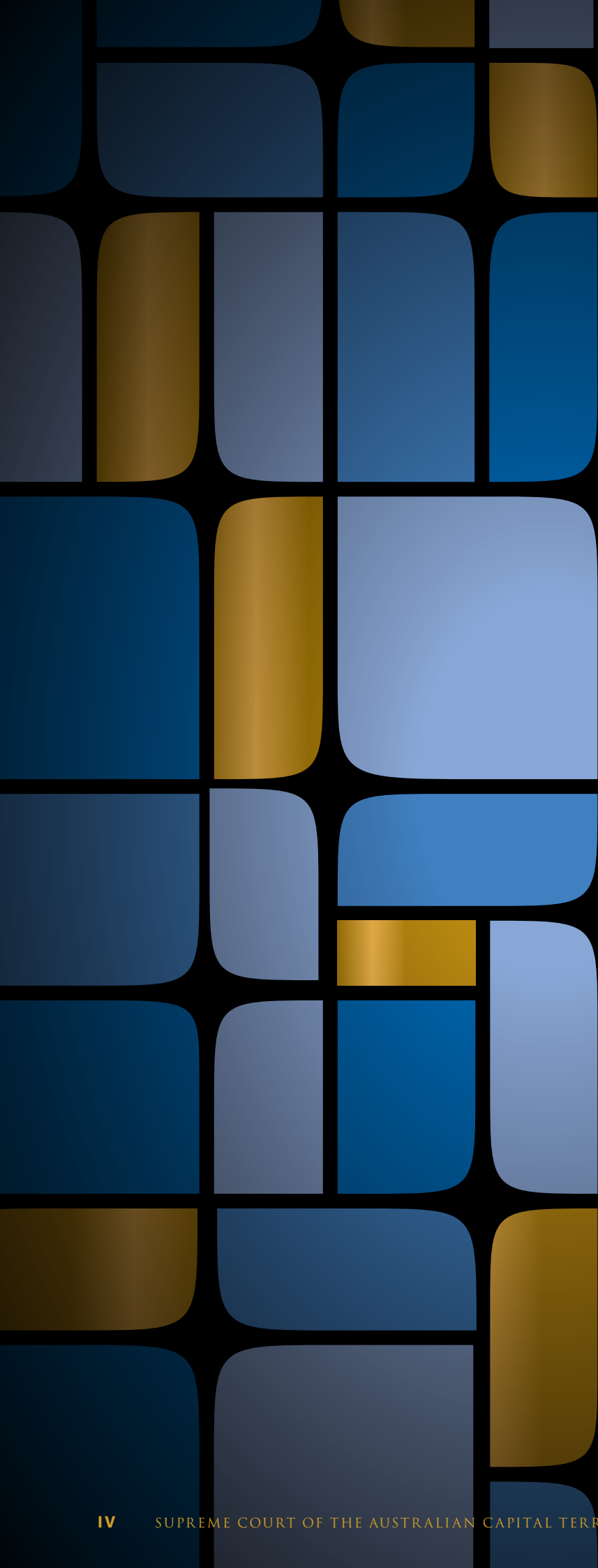


SUPREME COURT
OF THE AUSTRALIAN
CAPITAL TERRITORY

ANNUAL
REVIEW
2013-14







“THE PAST
12 MONTHS
HAVE BEEN
A TIME OF
CHANGE”

WELCOME

The Judges and Master of the Supreme Court of the Australian Capital Territory are pleased to present the Court's first Annual Review. The Review will assist the public to understand some of the key matters associated with the administration of justice in the Court.

The past 12 months have been a time of change. After 23 years as a Judge of the Court including 10 years as head of jurisdiction, Chief Justice Terence Higgins AO retired. Master David Harper OAM retired after 10 years service to the Court. Master David Mossop was appointed on 22 May 2013, and on 28 October 2013, I was sworn in as Chief Justice.

This year, the Court introduced two important case management initiatives: central listing of criminal trials and court-based mediation of civil matters. In February 2014, all Judges participated in an exhausting but successful central criminal trial listing pilot program. The Court has now moved to the permanent central listing of criminal trials. Long-standing concerns about an unacceptable backlog of civil matters have been partly addressed by the introduction of a party-funded, court-based mediation program. The profession has supported both initiatives. We have consulted the profession regarding proposed changes to our civil case flow management system, which (subject to availability of judicial resources) should see further improvements in the timeliness with which matters are heard in the forthcoming year.

We were delighted at the announcement of a new Court building. Other highlights this year included the first sitting of an all-women Court of Appeal (to hear the appeal in *Electro Optic Systems Pty Ltd v State of New South Wales; West & Anor v State of New South Wales* [2014] ACTCA 45 (Canberra Bushfires appeal)).

I thank the judicial officers of the Court, the Registrar, the Deputy Registrar, the Chambers staff, the Sheriff, the Librarian and all the Court staff for their great support and assistance during the past year. I am grateful for the assistance of the Justice and Community Safety Directorate Courts Administrator and the combined Registry staff, who have worked towards improving processes.

My legal researcher, Anneke Bossard, has compiled this Review, for which I thank her.



The Honourable Chief Justice Helen Murrell

ABOUT THE COURT

HISTORY



Snow on City Hill, Canberra, 1965 – ABC News. NATIONAL ARCHIVES OF AUSTRALIA: A1200, L51751

The Supreme Court of the Australian Capital Territory was established as a superior court of record on 1 January 1934 by the *Seat of Government Supreme Court Act 1933* (Cth). The principal reasons behind the establishment of the Supreme Court were to relieve the High Court of Australia of its original jurisdiction in relation to the Australian Capital Territory and to provide an intermediate court of appeal from what was then the Court of Petty Sessions. Justice Lionel Oscar Lukin, who was also a Judge of the Federal Court of Bankruptcy at the time, was appointed a Judge of the Supreme Court on 25 January 1934 and remained the sole Judge of the Court until November 1943.

Justice Lukin retired due to ill-health in November 1943 and was succeeded by Sir Thomas Stuart Clyne on 18 November 1943. Justice Clyne held the office of Judge for two years, resigning in October 1945.

Brigadier William Ballantyne Simpson was appointed Judge in October 1945 and held the office for fifteen years until 1960. Mr Justice Simpson was the first person to be appointed solely as a Judge of the Supreme Court and, as a result, was the Court's first resident Judge. In 1958, during his tenure, provision was made for Judges of Commonwealth Courts to serve as Additional Judges. This was a timely provision, because in the seven year hiatus following Justice Simpson's retirement, the Court was constituted principally by Additional Judges, Justices Dunphy, Joske, Eggleston, Smithers and Kerr (Judges of the Commonwealth Industrial Court) and Justice Bridge (Judge of the Northern Territory Supreme Court).

The first sitting of the Supreme Court was held at Acton House Courthouse on 12 February 1934. From January 1941 the Court sat at the then new Patents Office in the suburb of Parkes. The Court has occupied its present accommodation in Knowles Place on the western side of City Hill, since the Law Courts Building was opened in 1963 by Prime Minister Sir Robert Menzies.

JURISDICTION

The ACT Supreme Court is a superior court of record invested with all original and appellate jurisdiction that is necessary to administer justice in the ACT.

The Court consists of the Chief Justice, three other resident Judges, a resident Master, Additional Judges (Federal Court Judges who have an additional appointment to the ACT Supreme Court) and Acting Judges (Judges who have short term appointments of up to twelve months).

The judiciary is supported by a Registrar (Ms Annie Glover), Deputy Registrar (Mr Grant Kennealy) and by combined Registry staff who assist by maintaining records, processing orders, listing cases and performing 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 ACT Law Courts.

Usually, the original and appellate jurisdiction of the Supreme Court is exercised by a single Judge. In general, the Master has the same civil jurisdiction as the Judges and exercises similar powers. Criminal trials are heard before a Judge and jury, or (in a limited range of cases) by a Judge alone at the election of the accused.

In civil matters the Supreme Court has an unlimited monetary jurisdiction, although claims for less than \$250,000 are usually brought in the Magistrates Court. An appeal lies to the Supreme Court from the Magistrates Court, the Children's Court, and the ACT Civil and Administrative Tribunal.

In most cases, an appeal from the Master or from a single Judge is taken to the Court of Appeal, which is constituted by three Judges, at least one of whom is a resident Judge.



L-R: Justice Burns, Justice Refshauge, Chief Justice Murrell, Master Mossop, and Justice Penfold

WORK OF THE COURT

JUDGES OF THE COURT

The composition of the Court changed this year. Master David Harper OAM and Chief Justice Terence Higgins AO retired from the Court on 22 May 2013 and 13 September 2013 respectively. Chief Justice Helen Murrell was appointed Chief Justice of the Court on 28 October 2013.



Front Row (L-R): Justice Beazley AO, Acting Justice Sidis, Justice Foster, Justice Refshauge, Chief Justice Murrell, Justice Penfold, Justice Burns, Justice Katzmman, and Justice Bennett AO

Back Row (L-R): The Honourable T Higgins AO QC, Chief Justice French AC, Justice Rares, Master Mossop, Acting Justice Nield, the Honourable J Gallop AM QC RFD, Justice Cowdroy OAM, and the Honourable J Miles AO QC

RESIDENT JUDGES

CHIEF JUSTICE HELEN GAY MURRELL

Chief Justice 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 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 New South Wales. From 1996 to 2013 her Honour was a Judge of the District Court of New South Wales. In 1996 her Honour was also an Acting Judge in the Land and Environment Court of New South Wales. From 1997 to 1999 her Honour was President of the Equal Opportunity Tribunal of New South Wales. Her Honour then became Deputy President of the Administrative Decisions Tribunal of New South Wales (Head of the Equal Opportunity Division). Her Honour assisted to establish the Drug Court of New South Wales and, from 1998 to 2003, 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 New South Wales Medical Tribunal.

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

JUSTICE RICHARD CHRISTOPHER REFSHAUGE

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

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

JUSTICE HILARY RUTH PENFOLD

On 1 February 2008, Hilary Penfold PSM QC was sworn in as a Judge of the Australian Capital Territory Supreme Court, at the same ceremony as Justice Refshauge.

Born on 15 November 1953 in Dunedin, her Honour was educated at Ascham School in Sydney and the Australian National University, from which she graduated BA in 1975 and LLB (Hons) in 1977.

After completing the Legal Workshop at the Australian National University, her Honour was admitted as a barrister and solicitor of the Supreme Court of the Australian Capital Territory 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 ten years until 2004. In 2001, she was appointed a 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.

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

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

His Honour was appointed as a Magistrate and Coroner of the Australian Capital Territory in April 1990. At the same time his Honour was also appointed as a Magistrate of the Norfolk Island Territory. During his time as a Magistrate his Honour spent 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.

MASTER 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 Australian Capital Territory. 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 Australian National University. He was admitted to practice as a solicitor in 1992. He was a solicitor at the Environmental Defenders Office (NSW) in 1993 and 1994 and the Environmental Defenders Office (ACT) in 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.

ADDITIONAL JUDGES

This year the following Additional Judges sat:

- The Honourable Justice Anthony Max North
- The Honourable Justice John Alfred Dowsett AM
- The Honourable Justice Dennis Antill Cowdroy OAM
- The Honourable Justice Steven David Rares
- The Honourable Justice Richard Francis Edmonds
- The Honourable Justice Anthony James Besanko
- The Honourable Justice Robert John Buchanan
- The Honourable Justice Jayne Margaret Jagot
- The Honourable Justice Lindsay Graeme Foster
- The Honourable Justice Anna Judith Katzmann
- The Honourable Justice Michael Andrew Wigney
- The Honourable Justice Iain James Kerr Ross AO

ACTING JUDGES

This year the following Acting Judges sat:

- The Honourable Acting Justice John Roscoe Nield
- The Honourable Acting Justice Margaret Sidis
- The Honourable Acting Justice Brian Martin AO
- The Honourable Acting Justice Dennis Antill Cowdroy OAM

FURTHER ADDITIONAL JUDGES

The following Judges are also Additional Judges of the Court:

- The Honourable Justice Annabelle Claire Bennett AO
- The Honourable Justice John Ronald Mansfield AM
- The Honourable Justice John Gilmour
- The Honourable Justice Melissa Anne Perry

Former Chief Justice of the Supreme Court, the Honourable Terence Higgins AO QC returned to the Court to complete a sentencing hearing during 2013-2014.

Former Master of the Supreme Court David Harper OAM also returned to the Court during 2013-2014 to complete outstanding judgments.



LIBRARY

The Russell Fox Library is a legal information resource supporting proceedings in the Supreme Court, Magistrates Court and the ACT Civil and Administrative Tribunal. The main collection is located on the first floor of the ACT Law Courts Building. Self-represented litigants, students, the general public and legal practitioners may use the Library's collection in-house; Library items may be borrowed by legal practitioners who are paid Library subscribers and ACT Government agencies.

As a means of making judgments more accessible to the community and legal profession, over 4,000 judgments and decisions are now available for viewing on the ACT Supreme Court and ACT Magistrates Court websites. A great number of Supreme Court judgments have now been digitised and uploaded, with the earliest case going back to 1963.

The Library's opening hours are from 8:30 am to 4:51 pm Monday to Friday. The Library's collection consists of judgments, legislation, law reports, textbooks and periodicals relevant to ACT court proceedings. Since 1966 the Library has clipped court-related news from the Canberra Times, and from 1992 it has been maintaining an index to these clippings.



Staff of the Russell Fox Library, L–R: Victor Rodziewicz, Annie Butler, Janine Delfs, and Randi Tolbøll Taylor

THE SHERIFF AND THE SHERIFF'S OFFICE

Robert Fraser is the Sheriff and Security Manager at the ACT Supreme Court. The Sheriff's Office provides support and court services primarily to the Judges and Master of the ACT Supreme Court. The Sheriff's Office comprises of the Sheriff of the ACT and 11 Sheriff's Office Assistants. Their services range from setting up of the Supreme Court rooms each day, the ongoing management of Jury Panels, to the provision of coordination assistance to the Judges and Master, the legal profession and others who attend the Law Courts Building.

The Sheriff's Office also manages the administration, registration and induction of our Jury Panels for the Supreme Court and works closely in partnership with the Registrar of the ACT Supreme Court, our Listings Clerk, Associates to our Judges and Master and others within the Supreme Court family. This is to ensure that trials and other matters before the Supreme Court are conducted as seamlessly as possible and with minimal disruption to our clients and the public.

The Sheriff's Office plays an important role in the coordinated management and planning of our Criminal Listings Programs (as well as Special Ceremonial Events) and in partnership with our Registrar, Associates and Listings Clerk, ensuring that our Judges and Master have the best possible services at their disposal.



Sheriff's Officers of the Supreme Court

CEREMONIAL SITTINGS

FAREWELL TO CHIEF JUSTICE TERENCE HIGGINS AO

A ceremonial sitting marking the retirement of former Chief Justice, the Honourable Terence Higgins AO QC was held in the ACT Supreme Court on 13 September 2013. The Court sitting helped celebrate the achievements of the Supreme Court's longest serving Judge. His Honour was the first ACT Supreme Court Judge to have started his career as a local practitioner. After completing law at the Australian National University, his Honour began his legal career as a solicitor in Canberra. In addition to holding a commission with the ACT Supreme Court, his Honour, in July of 1990 was appointed to the Federal Court of Australia.

His Honour's participation in various community organisations was recognised along with a commitment to advancing the importance of natural justice and human rights. Changes to case management were initiated during his Honour's time as judicial officer which led to improvements in Court procedures. As Chief Justice, his Honour was well known for championing the need for new court facilities to meet modern court requirements and community expectations.



Staff attending farewell morning tea for the Honourable Terence Higgins AO QC

CEREMONIAL SITTING FOR THE LATE THE HONOURABLE RUSSELL WALTER FOX AC QC

On 4 February 2014, the Supreme Court paid tribute to the life and achievements of the late, the Honourable Russell Walter Fox AC QC who died in December at the age of 93. He took up his position as resident judge of the ACT Supreme Court in 1967. His appointment saw the gradual modernisation of Court practice and improvement in administrative efficiencies. Nevertheless, his Honour maintained a friendly and warm relationship with the Canberra legal profession. His Honour helped found the Supreme Court Judges Conference and the Australian Institute of Judicial Administration. In 1977 his Honour became the ACT's first Chief Judge, retiring from this position later that year.

His Honour held progressive views; he was a strong opponent of the death penalty and had a progressive approach concerning drug law reform and imprisonment.

The memorial sitting was attended by judicial officers from various jurisdictions, and senior members of the ACT legal profession including the ACT Attorney-General, and the Presidents of the ACT Bar Association and Law Society.



President of the ACT Bar Association addresses the Court at the Ceremonial Sitting for the Late the Honourable Russell Walter Fox AC QC

HIGHLIGHTS

FIRST ALL-WOMEN ACT COURT OF APPEAL

On Monday, 26 May 2014, for the first time in the ACT, the Court of Appeal sat as an all-women bench. The bench heard the appeal in *Electro Optic Systems Pty Ltd v State of New South Wales; West & Anor v State of New South Wales* [2014] ACTCA 45 (Canberra Bushfires appeal).

The bench comprised Chief Justice Helen Murrell (Chief Justice of the ACT Supreme Court), Justice Jayne Jagot (Additional Judge of the ACT Supreme Court and Judge of the Federal Court of Australia), and Justice Anna Katzmann (Additional Judge of the ACT Supreme Court and Judge of the Federal Court of Australia).

It was also the first time that the Court of Appeal ran as an electronic courtroom.



On the Bench L-R: Justice Jayne Jagot, Chief Justice Helen Murrell, and Justice Anna Katzmann

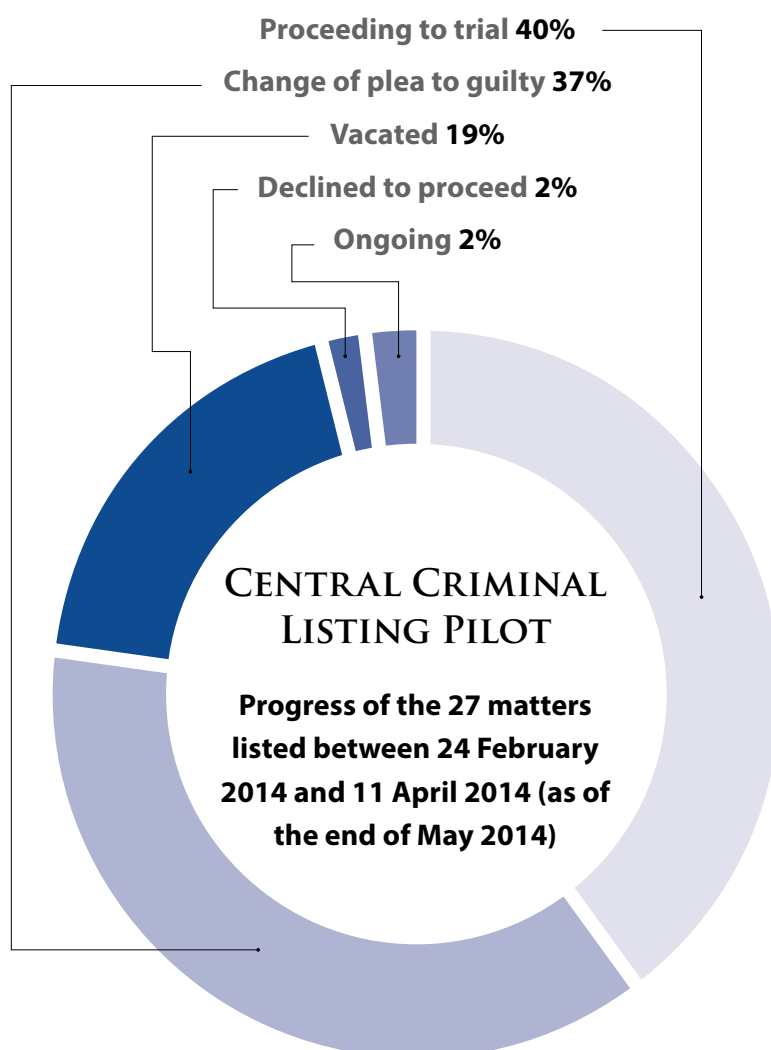
CENTRAL CRIMINAL LISTING

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

The Central Criminal Listing Pilot was fixed for seven weeks from 24 February 2014 to 11 April 2014. A total of 67 matters were allocated trial dates. Sixteen accused elected to be tried by judge alone. Twenty-seven matters proceeded to trial, 25 offenders changed their plea to guilty (between the allocation of a trial date and commencement of the trial), 13 matters were vacated (five matters were not reached and eight matters were vacated for reasons such as the death of the accused), the ACT Director of Public Prosecutions declined to proceed in one matter, and one matter was adjourned part-heard.

Of the 27 matters that proceeded to trial, four matters resulted in hung juries and 23 matters were resolved by verdict (11 guilty and 12 not guilty). Fifteen matters (65.2%) took less than 12 months from committal to verdict. The average period from committal to verdict was 13.3 months.

The available judge days were 134. The actual number of judge days used in the Pilot was 133, an efficiency of 100%. On occasion, Judges ran two trials concurrently; while one jury was considering its verdict another trial commenced.



COURT-BASED MEDIATION

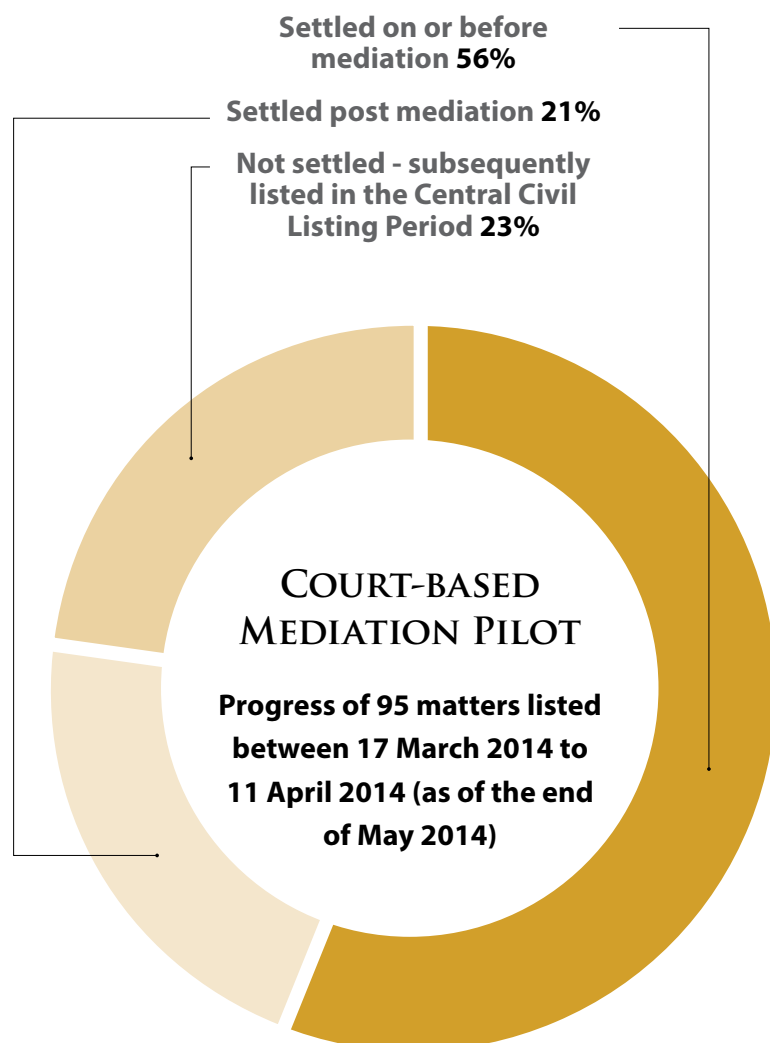
In the civil arena, alternative dispute resolution has many benefits to the parties, as well as to the Court and the community. In the first half of 2014, the Court instituted a Court-based Mediation Pilot.

The Court-based Mediation Pilot ran from 17 March 2014 to 11 April 2014. A total of 95 matters were listed. Most (about 75%) were personal injury matters. The remainder included claims for defamation, breach of contract, debt and family provision.

Of the 95 matters listed, as of 20 May 2014, 73 matters (76.8%) had settled. Fifty-three matters (72.6%) settled at or before mediation, and 20 matters (27.3%) settled post mediation. Early settlement through mediation achieved a saving for the Court (no judge sitting time was allocated needlessly) and a saving for the parties (legal representatives were briefed for a half-day mediation, not a potentially lengthy hearing).

A critical factor that encouraged the parties to reach a resolution was the provision of Acting Judges in July-August 2014, enabling the Court to offer early hearing dates for unresolved matters.

Overall, the Court received very positive feedback from the legal profession. In 2014-15 it is likely that the Court will run four Court-based mediation blocks, each with an associated listing period designed to deal with those matters that do not resolve at mediation.



SELECTED CASES

DIRECTOR OF PUBLIC PROSECUTIONS (ACT) v MARTIN AND OTHERS **[2014] ACTSC 104**

In 1995, David Eastman was convicted of the murder of Assistant Police Commissioner Colin Winchester. On 10 August 2012 an order was made for an inquiry into his conviction. This order was refined by an order of 3 September 2012, by Justice Marshall. The Inquiry commenced and had made substantial progress. In November 2013, the DPP brought an application for judicial review of the decision to order the Inquiry.

A Full Court of the Supreme Court constituted by Murrell CJ, Katzmann and Wigney JJ granted the DPP an extension of time to bring the application for judicial review. The Court held the decision in question was capable of being reviewed under the *Administrative Decisions (Judicial Review) Act 1989 (ACT)* (*ADJR Act*) as it was an administrative decision made under an enactment. The Court further held that the DPP had standing to seek a review under the *ADJR Act*. The Court found that a number of jurisdictional and other errors had been made by the decision maker. However, in the exercise of its discretion the Court refused the relief sought due to the inordinate delay in bringing the proceedings, the considerable work already carried out by the Inquiry, the personal and financial investment in that work, and the matters that the Inquiry had uncovered. The Court found that it was in the interests of justice that the Inquiry be completed.

LM v CHILDRENS COURT OF THE ACT AND THE DPP OF THE ACT **[2014] ACTSC 26**

LM (a young person) made an application for a permanent stay of proceedings in the Children's Court on the basis that there had been breaches of the *Human Rights Act 2004 (ACT)*, including the right in s 20(3) that "a child must be brought to trial as quickly as possible". The Magistrate found that this right had been breached. However, the Magistrate refused the application for a stay, stating that no prejudice flowed from the 10-month delay and that only the Supreme Court has "express power" to grant relief for breaches of human rights (under s 40C of the *Human Rights Act*). The young person made an application to the Supreme Court to quash that decision on the basis of jurisdictional error. Mossop M heard the application.

Section 40C of the *Human Rights Act* gives the Supreme Court power to grant relief where a public authority has not acted consistently with human rights. Mossop M considered that the Magistrates Court had power to order a stay due to a breach of the *Human Rights Act*, even though s 40C does not extend to the Magistrates Court. However, Mossop M refused to quash the Magistrate's decision. His Honour found that it was open to the Magistrate to refuse the application for a stay on the basis of the Magistrate's finding that no prejudice was caused by the delay.

His Honour considered that determining the meaning of "unlawful" in s 40B, which states that it is "unlawful" for public authorities to act in a way that is incompatible with a right in the *Human Rights Act*, remains the "fundamental and unresolved question" of the Act.



SLIPPER v MAGISTRATES COURT OF THE AUSTRALIAN CAPITAL TERRITORY AND OTHERS (2014) 285 FLR 78

Peter Slipper, a former member of the Commonwealth House of Representatives, pleaded not guilty in the ACT Magistrates Court to charges of dishonestly causing a risk of loss to the Department of Finance and Administration, arising out of his use of Cabcharge vouchers to pay for travel outside of parliamentary business. Mr Slipper made an application for a permanent stay of proceedings on the basis that they were an abuse of process, which was rejected by the Chief Magistrate. The matter came before Burns J for review.

Mr Slipper argued that an inquiry as to whether he was travelling on parliamentary business fell within the exclusive cognisance of Parliament and was inappropriate for judicial determination. He also submitted that the operation of s 16 of the *Parliamentary Privileges Act 1987* (Cth) prevents the Court from receiving evidence that would establish that he was travelling on parliamentary business, as it provides that it is unlawful for a Court to receive evidence of questions asked or statements, submissions or comments made concerning proceedings in Parliament, and those proceedings in Parliament ought not to be impeached or questioned in any Court or place outside of Parliament.

Burns J held that s 16 does not apply to all acts done by a parliamentarian in the course of their occupation; rather, it applies only to the words spoken or acts done in the course of, or for purposes incidental to, the transacting of the business of a House or of a committee. His Honour further held that a Court is entitled to determine whether the circumstances before it found a case of parliamentary privilege, and may receive evidence for the purposes of making that determination. His Honour concluded that the proceedings did not constitute an abuse of process, and the door was opened for Mr Slipper's trial to proceed.

COMMISSIONER FOR ACT REVENUE v ARAGHI [2013] ACTCA 54

In *Commissioner for ACT Revenue v Araghi* [2013] ACTCA 54 the Court of Appeal, constituted by Murrell CJ, Burns and Cowdroy JJ, considered whether purchasers of a house and land package had to pay stamp duty on the entire package or only on the purchase of land. On 9 April 2009, a couple entered into two contracts. The first was a contract with the Land Development Agency to purchase a block of land for \$81,000 and the second was a contract with Crace Developments Pty Ltd to construct a house on the land for \$352,900. Completion of the contracts was designed to be simultaneous. The Commissioner for ACT Revenue assessed stamp duty as being payable on the combined value of the land and house (\$433,900).

The Court of Appeal considered an appeal by the Commissioner for ACT Revenue from a decision of a single Supreme Court Judge that stamp duty was only payable on the \$81,000. The Court determined that the payments under the building contract were separate and distinct from payment for the transfer of land. The Court determined that the “dutiable transaction” under the *Duties Act 1999* (ACT) was the transfer of land only. Therefore, stamp duty was only payable on the \$81,000.

MEREDITH v COMMONWEALTH (NO 2) [2013] ACTSC 221

Mr Meredith commenced full-time work as a temporary, remotely-located employee of a Commonwealth agency in 1966. During his working life, he made a number of inquiries to his supervisors about joining a relevant Commonwealth superannuation scheme, but was consistently and incorrectly advised that he was not eligible. Mr Meredith thus commenced a claim against the Commonwealth for negligent misstatement, common law negligence and a breach of statutory duty by the officers of the Commonwealth.

Refshaug J found that, given the remote location of the workplace and its distance from any human resources section of the relevant department, it was reasonable for Mr Meredith to rely on the information he received from his supervisors who, having ready access to the correct information, breached their duty to exercise reasonable care by giving him incorrect information. His Honour further found that the Commonwealth did not owe a duty of care to Mr Meredith generally to prevent him from suffering pure economic loss, nor was Mr Meredith vulnerable in the relevant sense as he had reasonable access to accurate sources of information. Further, the damage did not flow from the Commonwealth’s exclusive control given the alternate sources of information available. Finally, his Honour found that while the *Superannuation Act 1922* (Cth) established eligibility for the superannuation scheme, there is no inferred duty to ensure that every eligible person is personally notified of their eligibility, nor does it create a private right of action.

NEW COURT BUILDING

We are delighted with the announcement that the Government is proceeding with a new Court building. Preliminary work is well underway and the new building is expected to be operating by 2018.

The new building will reflect and support a progressive, strong and independent judicial arm of government. Despite struggling with the antiquated facilities in the existing building, the Judges and staff of the Court are fond of it. We strongly support the preservation of its key heritage features.

COURT TECHNOLOGY

For years, the Court has struggled with both an antiquated electronic case management system with limited functionality and outdated audio-visual and conferencing infrastructure.

The 2012-13 ACT budget provided \$9.5 million over 4 years for the acquisition and development of a new electronic case management system for the ACT Courts and ACAT. The ICT Case Management System is being acquired from Western Australia. The introduction of the new system is aimed at reducing waiting times at the ACT Courts, enabling the filing of court documents electronically and improving the efficiency of Registry operations. It will facilitate efficient access by the judiciary and their staff to important information.

In the 2014-15 budget the ACT Government provided an additional \$2.44 million in capital to the ICT Case Management System project. The additional funding will be used to upgrade backend computer infrastructure, implement online services for the legal profession and unrepresented litigants, and automate information sharing.

The roll-out of the system will be in three phases:

- Phase 1 - ACT Civil and Administrative Tribunal;
- Phase 2 – Supreme and Magistrates Courts civil jurisdiction; and
- Phase 3 – Supreme and Magistrates Courts criminal jurisdiction.

The implementation is expected to commence in 2014-15, with the ACAT launch in June 2015, followed by the civil release in November 2015 and the criminal release in 2016.



ACT SENTENCING DATABASE

The ACT Government provided \$2.2 million over two years in the 2012-13 budget for the establishment of an ACT Sentencing Database hosted by the NSW Judicial Commission. By providing sentencing statistics and access to the underlying cases, the system assists Judges with sentencing.

The Sentencing Database was launched on 4 December 2013 by the Attorney-General, the Chief Justice and the Chief Magistrate.

At present, the Sentencing Database has 140 users, including judicial officers and associated Chambers' staff, administrative staff and general subscribers from local law firms and media outlets.

The project has now moved to the second phase, looking at enhancements to the system and the development of additional sentencing tools.

INTERNATIONAL JUDICIAL VISITS

In the 2013-14 financial year, the Court was delighted to host judicial visits from the Turkish and Kenyan judiciaries. The delegates attended the Supreme Court building to observe and study the Court's case management and administration systems. The delegates had an opportunity to observe a criminal trial. The Kenyan delegation was particularly interested in the Court's procedures in relation to taking complaint evidence. The visits included the sharing of information with the Judges, the Master, the Registrar, the Deputy Registrar and the JACS Courts Administrator about practical matters such as case management, information technology and the conduct of trials.



Kenyan delegation with Justice Refshauge, Chief Magistrate Walker, Justice Burns, Chief Justice Murrell, and Master Mossop



OPENING OF THE 2014 LEGAL YEAR

On 3 February 2014, Chief Justice Murrell spoke at the Great Hall, University House, to mark the opening of the legal year. Her Honour highlighted the importance of ethics to the practice of law. A copy of the speech can be found on the Supreme Court website.

THE EASTMAN INQUIRY

On 3 September 2012, the Supreme Court of the Australian Capital Territory made orders under s 424(1) of the *Crimes Act 1900* (ACT) that there be an inquiry into the conviction of David Harold Eastman for the murder of Colin Stanley Winchester. On 23 July 2013, Acting Justice Brian Martin was appointed Chair of the Board of Inquiry. The Board of Inquiry commenced hearing the terms of reference on 5 November 2013 and completed hearings on 15 May 2014. On 29 May 2014, the Board concluded its function upon its delivery of the Report of the Inquiry to the Registrar of the Supreme Court.

It is important to note that, while the Inquiry was conducted at the Court by an Acting Judge of the Court, it was an administrative inquiry and it was not part of the judicial functions of the Court, although the Inquiry did generate several Court proceedings.

CASE MANAGEMENT

The Civil Case Flow Management Committee (Chief Justice Murrell, Acting Justice Sidis, Master Mossop and Registrar Glover) reviewed civil case flow procedures.

Master Mossop assumed primary responsibility for developing a new civil practice direction which will control case flow with a view to the majority of cases being disposed of within 12 months of commencement. The Committee consulted with the profession. The practice direction was made on 16 September 2014 and commences on 3 November 2014.

ROGS STATISTICS

The following information has been provided by the ACT Government Directorate of Justice and Community Safety.

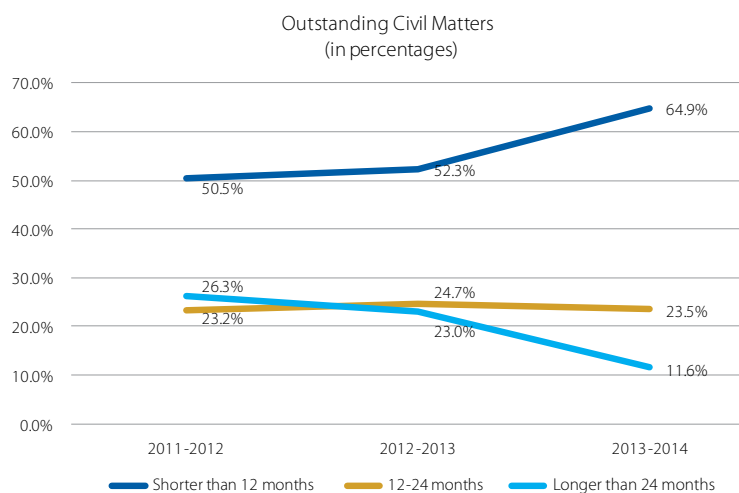
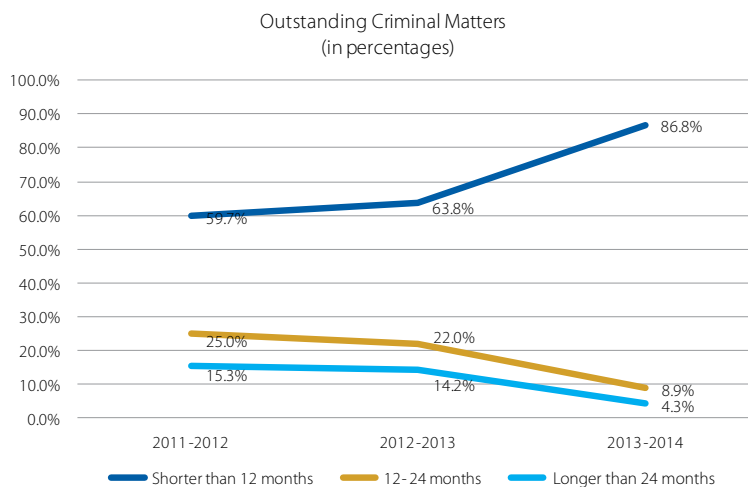
2013-2014	ROGS Civil matters				Backlog indicators from filing date	
	Lodged	Finalised	Pending	Clearance rate	% >12 months	% >24 months
Appeal	67	40	86	59.7%	43.0%	34.0%
Non-appeal	563	627	632	111.4%	15.1%	11.0%
Total	630	667	718	105.9%		

2013-2014	ROGS Criminal matters				Backlog indicators from filing date	
	Lodged	Finalised	Pending	Clearance rate	% >12 months	% >24 months
Appeal	138	109	81	82.6%	3.7%	0.0%
Non-appeal	242	258	176	106.6%	17.6%	6.3%
Total	380	367	257	96.6%		

OUTSTANDING MATTERS

There has been a welcome change in the composition of outstanding matters in the Supreme Court. Since the 2012-13 financial year, the percentage of outstanding matters which date back over 24 months has decreased sharply from 14.2% to 4.3% for criminal matters and from 23.0% to 11.6% for civil matters. Likewise, the percentage of outstanding matters which date 12-24 months from lodgment has fallen from 22.0% to 8.9% for criminal matters and from 24.7% to 23.5% for civil matters. The percentage of outstanding matters less than 12 months since lodgment has increased from 63.8% to 86.8% for criminal matters and from 52.3% to 64.9% for civil matters. These developments reflect the Court's continuing effort to tackle the backlog of both criminal and civil matters.

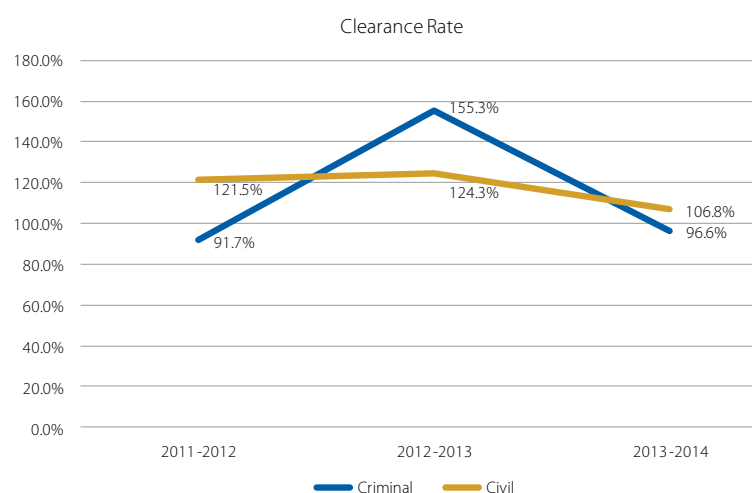
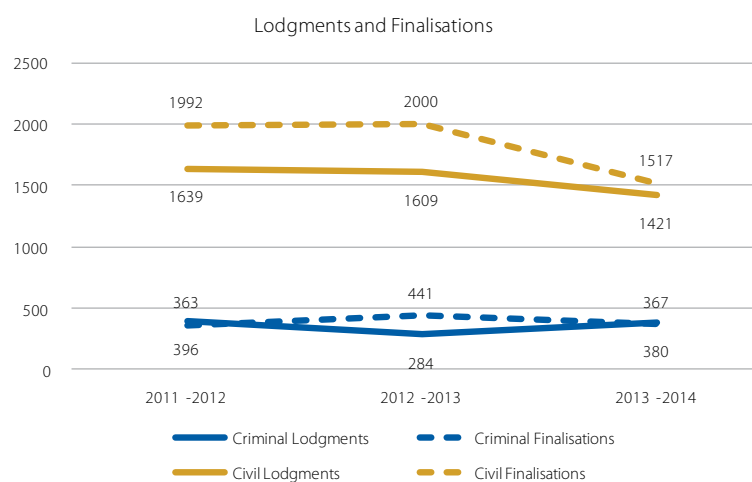
Court Time	July 2013-June 2014				July 2012-June 2013				July 2011-June 2012			
	Criminal	Criminal %	Civil	Civil %	Criminal	Criminal %	Civil	Civil %	Criminal	Criminal %	Civil	Civil %
Shorter than 12 months	223	86.8%	466	64.9%	162	63.8%	409	52.3%	284	59.7%	552	50.5%
12-24 months	23	8.9%	169	23.5%	56	22.0%	193	24.7%	119	25.0%	254	23.2%
Longer than 24 months	11	4.3%	83	11.6%	36	14.2%	180	23.0%	73	15.3%	287	26.3%
Total	257	100.0%	718	100.0%	254	100.0%	782	100.0%	476	100.0%	1093	100.0%



LODGMENTS, FINALISATIONS AND CLEARANCE RATES

The following tables and diagrams depict the number of lodgments and finalisations of criminal and civil matters in the Supreme Court in the last three financial years and the respective clearance rates (defined as the number of finalised matters divided by the number of lodged matters). In the 2013-14 financial year, there was an increase in the number of criminal matters lodged but a decrease in the number of civil matters lodged. The clearance rate for criminal matters fell to 96.6% from a peak of 155.3% in the 2012-13 financial year (when the Court received significant funding to employ Acting Judges), but was close to full clearance (100% clearance rate). The clearance rate for civil matters fell to 106.8% from 124.3% in the 2012-13 financial year, but remains above 100%.

Jurisdiction	July 2013-June 2014			July 2012-June 2013			July 2011-June 2012		
	Lodged	Finalised	Clearance %	Lodged	Finalised	Clearance %	Lodged	Finalised	Clearance %
Criminal	380	367	96.6%	284	441	155.3%	396	363	91.7%
Civil (including probate)	1421	1517	106.8%	1609	2000	124.3%	1639	1992	121.5%
Civil (excluding probate)	630	667	105.9%						



FINANCIAL REVIEW

The following information has been provided by the ACT Government Directorate of Justice and Community Safety.

Operating Statement for Year Ending 30 June 2014				
		Amended Budget \$'000	Actual \$'000	Variance \$'000
Revenue	Revenue from Government ¹	8,270	8,314	44
	Resources Free of Charge ²	257	435	178
	Service Receipts ³	82	207	125
	Other Revenue ⁴		47	47
	<i>Total Revenue</i>	<i>8,609</i>	<i>9,003</i>	<i>394</i>
Variable Expenses ⁵	Judiciary, Court and Registry staff	6,612	6,751	139
	Supplies and Services	2,779	3,101	322
	<i>Total Variable Expenses</i>	<i>9,391</i>	<i>9,852</i>	<i>461</i>
Fixed Expenses	Workers Compensation Premium	123	119	-4
	Utilities	103	109	6
	Cleaning	76	78	2
	Insurable Risk	36	39	3
	Depreciation ⁶	900	1,042	142
	<i>Total Fixed Expenses</i>	<i>1,238</i>	<i>1,387</i>	<i>149</i>
Total Expenses		10,629	11,239	610
Operating Result		-2,020	-2,236	-216

NOTES

- 1 Lodgment fees are paid into consolidated revenue and are not counted in the Supreme Court Budget.
- 2 Resources Free of Charge includes police checks on jurors provided by the Australian Federal Police, the cost of Additional Judges from the Federal Court of Australia and their staff.
- 3 Service Receipts includes the additional revenue that was collected through the Court-based Mediation Pilot (\$0.112m).
- 4 Other Revenue includes an insurance settlement by the ACT Insurance Authority (\$0.045m).
- 5 The intensive case management work conducted during the year resulted in higher employee and variable supplies and services costs. There were higher than budget juror costs (\$0.085m), law library costs (\$0.095m) and transcription costs (\$0.086m) for the year.
- 6 Depreciation expenses may vary from budget due to the revaluation of assets, changes to the useful life of assets or a change in timing of the capitalisation of new assets from the original budget.



I thank the judicial officers of the Court, the Registrar, the Deputy Registrar, the Chambers staff, the Sheriff, the Librarian and all the Court staff for their great support and assistance during the past year. I am grateful for the assistance of the Justice and Community Safety Directorate Courts Administrator and the combined Registry staff, who have worked towards improving processes.

The Honourable Chief Justice Helen Murrell



