

2018

LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

ACT JUDICIAL COUNCIL
17-18 ANNUAL REPORT

Presented by
Gordon Ramsay MLA
Attorney-General



ACT JUDICIAL
COUNCIL

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The Judicial Council Annual Report 2017–18
is available on the website.

WELCOME

Chief Justice Helen Murrell, Head of Council



The Council received a steady but small number of complaints, including allegations of bias, failure to give a fair hearing and discourtesy.

This was the first full year of operation for the ACT Judicial Council. The Council creates greater transparency in the judiciary.

The Council received a steady but small number of complaints, including allegations of bias, failure to give a fair hearing and discourtesy.

Self-represented litigants were the most significant source of complaints, and their complaints highlighted the difficulties that some self-represented litigants experience in navigating court processes.

This year, the Council farewelled Ms Diane Collins, who served as the Council's community member until early 2018 and Mr Will Mueller who assisted the Council for most of this year. It was a pleasure to work with both.

I thank my fellow Council members, Chief Magistrate Lorraine Walker, Ms Jenny Hodges (community representative) and Mr Bryan Meagher SC (senior legal practitioner) for their hard work. I also thank Mr Michael Manthorpe (Principal Officer) and his staff for providing support and assistance to the Council.



COUNCIL OVERVIEW

The Judicial Council was established on 1 February 2017 following amendments to the *Judicial Commissions Act 1994* (ACT).

The Council is made up of the ACT Chief Justice, the ACT Chief Magistrate, an appointed legal practitioner and an appointed member of the community. The Council is supported by a Principal Officer and their staff.

The Council can consider complaints about the behaviour or capacity of a judge of the ACT Supreme Court or a magistrate of the ACT Magistrates Court.

The Council's functions include:

- receiving complaints about judicial officers
- examining complaints about judicial officers
- referring complaints to the ACT Executive or the relevant head of jurisdiction
- responding to enquires about the complaints process.

After receiving a complaint about an ACT judicial officer, the Council will conduct a preliminary examination.

The Council met six times in 2017–18.

After receiving a complaint about an ACT judicial officer, the Council will conduct a preliminary examination. Depending on this preliminary examination, the Council may take the following actions:

- early dismissal of the complaint
- referring the complaint to the head of the relevant jurisdiction (the Chief Justice or the Chief Magistrate)
- proceed to an examination by the Council.

If the Council conducts an examination of the complaint and is satisfied that it is wholly or partially substantiated, it will consider whether the complaint justifies parliamentary consideration of the removal of the judicial officer.

If the Council concludes the complaint justifies parliamentary consideration, the Council is required to make a recommendation to the ACT Executive that it appoint a judicial commission to examine the complaint further.

If the Council considers the complaint does not justify its further consideration or does not justify parliamentary consideration, the complaint is referred to the head of the relevant jurisdiction.

LODGING A COMPLAINT

Anyone can submit a complaint to the Council by using the complaint form available on the ACT Judicial Council website or sending the Council a letter or email.

Once a complaint is received, staff members provide it to the judicial officer complained of and to the Council for its consideration.

Complaints need to:

- be in writing
- provide the name and address of the person making a complaint
- identify the judicial officer
- explain the complaint so that the Council can understand what has happened.

The Principal Officer and his staff take enquiries about the Council and receive complaints. Once a complaint is received, staff members provide it to the judicial officer complained of and to the Council for its consideration. They will also conduct a preliminary examination of the complaint for the Council to consider and keep them informed about the progress of the complaint.

The Council can consider complaints about the behaviour or capacity of a judge of the ACT Supreme Court or a magistrate of the ACT Magistrates Court.

COMPLAINTS RECEIVED

The Council received 12 complaints about judicial officers during 2017–18.

These complaints included allegations of bias, conflict of interest, inappropriate comments, discourtesy and failure to give a fair hearing. Seven complaints related to magistrates and five related to Supreme Court judges, with the most common allegations being bias and failure to give a fair hearing.

Following a preliminary examination of these complaints by the Council, 11 were dismissed under s 35B of the *Judicial Commissions Act 1994*. Nine of these complaints could not be substantiated after considering the relevant transcripts and audio recordings and so did not justify further consideration by the Council. Two complaints were dismissed as the person who was the subject of the complaint was no longer a judicial officer.

The Council found that one complaint was partly substantiated and decided to refer it to the relevant head of jurisdiction under s 35C of the *Judicial Commissions Act 1994*.

The Council noted that 11 of the 12 complaints received this year were made by self-represented litigants.

Judicial officers have a unique duty to assist persons who are self-represented, however this assistance cannot conflict with the judicial officer's role as an impartial adjudicator.

The Council's preliminary examination of the complaints revealed some of the difficulties that are faced by self-represented litigants. It observed that many of the complaints made this year relate to the difficulties self-represented litigants experienced when attempting to navigate court processes, rather than the conduct of the judicial officer in performing their duty to explain the correct process.

... many of the complaints made this year relate to the difficulties self-represented litigants experienced when attempting to navigate court processes ...

COUNCIL MEMBERS

The Council is made up of the ACT Chief Justice, the ACT Chief Magistrate, an appointed legal practitioner and an appointed member of the community.



Chief Justice Helen Gay Murrell

Chief Justice of the Supreme Court and Head of the Council

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

Her Honour holds a Bachelor of Arts and Bachelor of Laws (UNSW) and a Diploma of Criminology (University of Sydney). She was admitted as a solicitor of the Supreme Court of New South Wales (NSW) in 1977.

Her Honour practised as a solicitor before being called to the bar in 1981. In 1995 she was appointed Senior Counsel in NSW. From 1996 to 2013, her Honour was a Judge of the District Court of NSW. During this period her Honour also held positions as President of the Equal Opportunity Tribunal of NSW (later, Deputy President of the Administrative Decisions Tribunal) and the first Senior Judge of the Drug Court of NSW.

Her Honour has longstanding interests in therapeutic jurisprudence and judicial education.



Chief Magistrate Lorraine Walker

Chief Magistrate Lorraine Walker holds a Bachelors of Arts and Laws from the University of Sydney. She was admitted as a solicitor in New South Wales in 1987, working briefly as an employed solicitor until joining the Royal Australian Air Force later that year. She served as a legal officer for three years in Melbourne and the Northern Territory before relocating to her birthplace, the United Kingdom.

She was employed by the Crown Prosecution Service as a prosecutor from 1990 to 1996. On returning to Australia, she practised as a solicitor in the ACT for one year prior to being made a partner in a national law firm. She commenced at the ACT Bar in 2000.

She was appointed to the ACT bench in 2010 with a dual commission as Coroner and Magistrate. She was subsequently appointed Chief Coroner and Chief Magistrate in 2011.



Ms Jenny Hodges

Jenny Hodges was appointed to the ACT Judicial Council in May 2018.

She has had a long involvement with the charitable sector as a volunteer and in a paid capacity. Her experience includes work in the animal welfare and youth services areas and she has also worked in community services in local government authorities.

The Council is made up of the ACT Chief Justice, the ACT Chief Magistrate, an appointed legal practitioner and an appointed member of the community.



Mr Bryan Meagher, SC

Bryan Meagher is a Senior Counsel who has practised as a barrister for over 30 years and as a lawyer for more than 40 years in the ACT and NSW.

He is currently a part time Senior Member of the ACT Civil and Administrative Tribunal (ACAT), Editor of the ACT Law Reports, the authorised reports of the ACT Supreme Court and an author of the ACT Civil Procedure published by Lexis Nexis.

He has been President of the ACT Bar Association and a member of many committees of the ACT Law Society. He is an accredited mediator and has conducted numerous mediations in ACT Court matters.

Bryan has been closely involved in life in the ACT since first attending school here in 1960.

THE PRINCIPAL OFFICER AND SUPPORTING STAFF

Since March 2017, the Council has been supported by a Principal Officer.

The Principal Officer is the Commonwealth Ombudsman.

The Principal Officer's staff is the point of contact for complainants and facilitates communication between a complainant and the Judicial Council.



Chelsey Bell

Chelsey Bell assists the Principal Officer to support the Council.

Chelsey is the Director of the ACT Ombudsman Team in the Commonwealth Ombudsman's Office.

Chelsey is a lawyer by training.



Michael Manthorpe PSM

Principal Officer

Michael Manthorpe PSM commenced as the Council's Principal Officer on 7 December 2017.

Michael is the Commonwealth Ombudsman and the ACT Ombudsman.



Anika Khwaja

Anika Khwaja commenced assisting the Principal Officer in April 2018.

Prior to this, she was an Investigation Officer at the Commonwealth Ombudsman's Office.

Anika was admitted as a solicitor of the Supreme Court of Australian Capital Territory in 2015 and has experience in family and employment law.



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