

The Land and Environment Court of NSW



Annual Review

2012

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# Foreword from the Chief Judge

This Review provides information on the Court, its human resources and its performance in the year under review. The focus is on court administration, in particular on the Court's management of its caseload. The objectives of court administration are equity, effectiveness and efficiency. The Review analyses the ways in and the extent to which the Court has achieved these objectives in the year under review.

Traditionally, court administration performance is evaluated by quantitative output indicators based on the registrations (filings), finalisations, pending caseload and time taken between filing and finalisation. Prior to 2006, the Court's Annual Reviews had focused solely on these performance indicators. This year's Review continues the practice adopted in the last six years' Annual Reviews of reporting on an expanded range of quantitative performance indicators. Reference to these quantitative performance indicators reveals that the Court has been successful in achieving the objectives of equity, effectiveness and efficiency.

However, these quantitative performance indicators do not give a full picture of the Court's performance. There are other qualitative indicators that assist in gaining an appreciation of the Court's performance. This year's Review again includes qualitative output indicators of access to justice, including in relation to the affordability of litigation in the Court, the accessibility of the Court and the responsiveness of the Court to the needs of users.

But even the inclusion of these qualitative indicators still leaves unevaluated the Court's material contribution to the community represented by the large volume of decisions made. The Court delivered 741 written judgments. These judgments are published on the Court's website ([www.lawlink.nsw.gov.au/lec](http://www.lawlink.nsw.gov.au/lec)) and elsewhere. They provide a valuable contribution to planning and environmental jurisprudence. They also enable transparency and accountability in the Court's decision-making.

Throughout the year, the Judges, Commissioners and Registrars of the Court have administered the Court and the rule of law with a high degree of independence, impartiality, integrity, equity, effectiveness and efficiency.

**The Honourable Justice Brian J Preston  
SC**

Chief Judge



*The Hon. Justice Brian J Preston SC, Chief Judge  
Photo by Ted Sealey*

# 1 2012: An Overview

- Court performance
- Reforms and developments
- Education and community involvement
- Consultation with court users

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## Court performance

The Court has an overriding duty to ensure the just, quick and cheap resolution of the real issues in all civil proceedings in the Court. In many areas of its work, the Court has been able to maintain or improve its performance in achieving this overriding objective relative to the results achieved in 2011. Of particular significance are:

- The total clearance rate of cases improved and exceeded 100%;
- The total number of matters pending decreased;
- Improvement or maintenance in the timeliness of the pending caseload, as measured by the backlog indicator, in four classes of the Court's jurisdiction (Classes 1, 2, 6 and 8);
- Improvement or maintenance of the time taken to finalise cases in all classes of the Court's jurisdiction;
- An improvement of the percentage of reserved judgments delivered within 14, 30 and 90 days;
- A decrease or maintenance in the median number of pre-hearing attendances for four classes (Classes 1, 2, 4 and 6) of the Court's jurisdiction;
- Increase in the level of use of alternative dispute resolution mechanisms, particularly conciliation, as evidenced by the increased number of conciliation conferences and increased percentage of matters finalised by conciliation conferences or on-site hearings; and
- All judges and commissioners met the standard for continuing professional development.

In other areas, however, the Court's performance declined:

- The timeliness of the pending caseload, as measured by the backlog indicator, declined for three classes (Classes 3, 4 and 5) of the Court's jurisdiction;
- An increase in the median number of pre-hearing attendances for three classes (Classes 3, 5 and 8) of the Court's jurisdiction.

Chapter 5 – Court Performance outlines the indicators, both quantitative and qualitative, for measuring the Court's performance and presents a detailed analysis of, and explains the reasons for, the results achieved. These measures include information with respect to the Court's criminal jurisdiction.

## Reforms and developments

During 2012, reforms occurred in the following areas:

- New Practice Notes;
- Amendment to the Court Act
- Upgrading of the Court's website; and
- Library Services.

The Court continued implementing the International Framework for Court Excellence. The Court, in conjunction with the Judicial Commission of New South Wales, updated the sentencing database for environmental offences maintained on the Judicial Information Research System (JIRS).

These developments in the Court's jurisdiction and work are discussed in Chapter 4 – Reforms and Developments.

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## Education and community involvement

The Court's commitment to continuing professional development was manifested by the adoption in October 2008 of a continuing professional development policy for Judges and Commissioners of the Court. The policy sets a standard of five days (30 hours) of professional development activities each calendar year. To assist in meeting the standard, the Court and the Judicial Commission of New South Wales provide an annual court conference and a twilight seminar series. In 2012, the Court's Annual Conference was held at the Crowne Plaza Hotel at Coogee Beach. The Court held four twilight seminars in 2012, two cross-jurisdictional seminars, two field trips and one skills workshop on communication in the courtroom.

In 2009, the Court commenced production on a quarterly basis of a judicial newsletter summarising recent legislation and judicial decisions of relevance to the Court's jurisdiction. The judicial newsletter is distributed to all Judges, full time and Acting Commissioners and Registrars. From January 2010, the Judicial Newsletter has been made publicly available on the Court's website.

The Judges and Commissioners updated and developed their skills and knowledge during the year by attending conferences, seminars and workshops. Some of the educational activities were tailored specifically to the Court's needs while others were of broader relevance.

The Court has a high national and international reputation as a leading specialist environment court. There is significant demand for the exchange of knowledge and experience within the national and international legal and judicial communities. Judges and Commissioners of the Court have actively participated in capacity building and information exchange by presenting papers and participating as trainers in a variety of conferences, seminars and workshops, giving lectures at educational institutions and presiding over moot courts. The Court has also regularly hosted international and national delegations.

Chapter 6 – Education and Community Involvement details the Court's activities in judicial education and involvement in the community.

## Consultation with court users

In 2012, the Court continued to consult and work closely with users to improve systems and procedures through its Committees and User Groups. Consultation occurred both formally through the Court Users Group and also the Mining Court Users Group and informally with a variety of legal practitioners and professional bodies.

Details of the Court Users Group and Mining Court Users Group are in Appendix 1 and the Court's Committees are in Appendix 2.

## 2 Court Profile

- The Court
- Statement of purpose
- The Court's jurisdiction
- The Court's place in the court system
- Who makes the decisions?
  - The Judges
  - The Commissioners
  - The Registrars
- Appointments and retirements
- Supporting the Court: the Registry

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## The Court

The Land and Environment Court of New South Wales was established on 1 September 1980 by the *Land and Environment Court Act 1979* (the Court Act) as a superior court of record. It is a specialist court that enjoys the benefits of a wide jurisdiction combined in a single court. It is the first specialist environmental, superior court in the world.

## Statement of purpose

The Court's purpose is to safeguard and maintain:

- the rule of law;
- equality of all before the law;
- access to justice;
- fairness, impartiality and independence in decision-making;
- processes that are consistently transparent, timely and certain;
- accountability in its conduct and its use of public resources; and
- the highest standards of competency and personal integrity of its Judges, Commissioners and support staff.

To assist in fulfilling its purpose, the Court aims to achieve excellence in seven areas:

- **Court leadership and management:** To provide organisational leadership that promotes a proactive and professional management culture, pursues innovation and is accountable and open.
- **Court planning and policies:** To formulate, implement and review plans and policies that focus on fulfilling the Court's purpose and improving the quality of its performance.



- **Court proceedings:** To ensure the Court's proceedings and dispute resolution services are fair, effective and efficient.
- **Public trust and confidence:** To maintain and reinforce public trust and confidence in the Court and the administration of justice.
- **User satisfaction:** To understand and take into account the needs and perceptions of its users relating to the Court's purpose.
- **Court resources:** To manage the Court's human, material and financial resources properly, effectively and with the aim of gaining the best value.
- **Affordable and accessible court services:** To provide practical and affordable access to information and court processes and services.

## The Court's jurisdiction

The Court has an appellate and a review jurisdiction in relation to planning, building, environmental, mining and ancillary matters. Jurisdiction is exercised by reference to the subject matter of the proceedings. This may involve matters that have an impact on community interest as well as matters of government policy. The Court has summary



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criminal jurisdiction and appellate criminal jurisdiction in relation to environmental offences.

In 2012, the Court Act provided for eight classes of jurisdiction in the Court. Table 2.1 summarises these eight classes.

**Table 2.1 Classes of the Court's Jurisdiction**

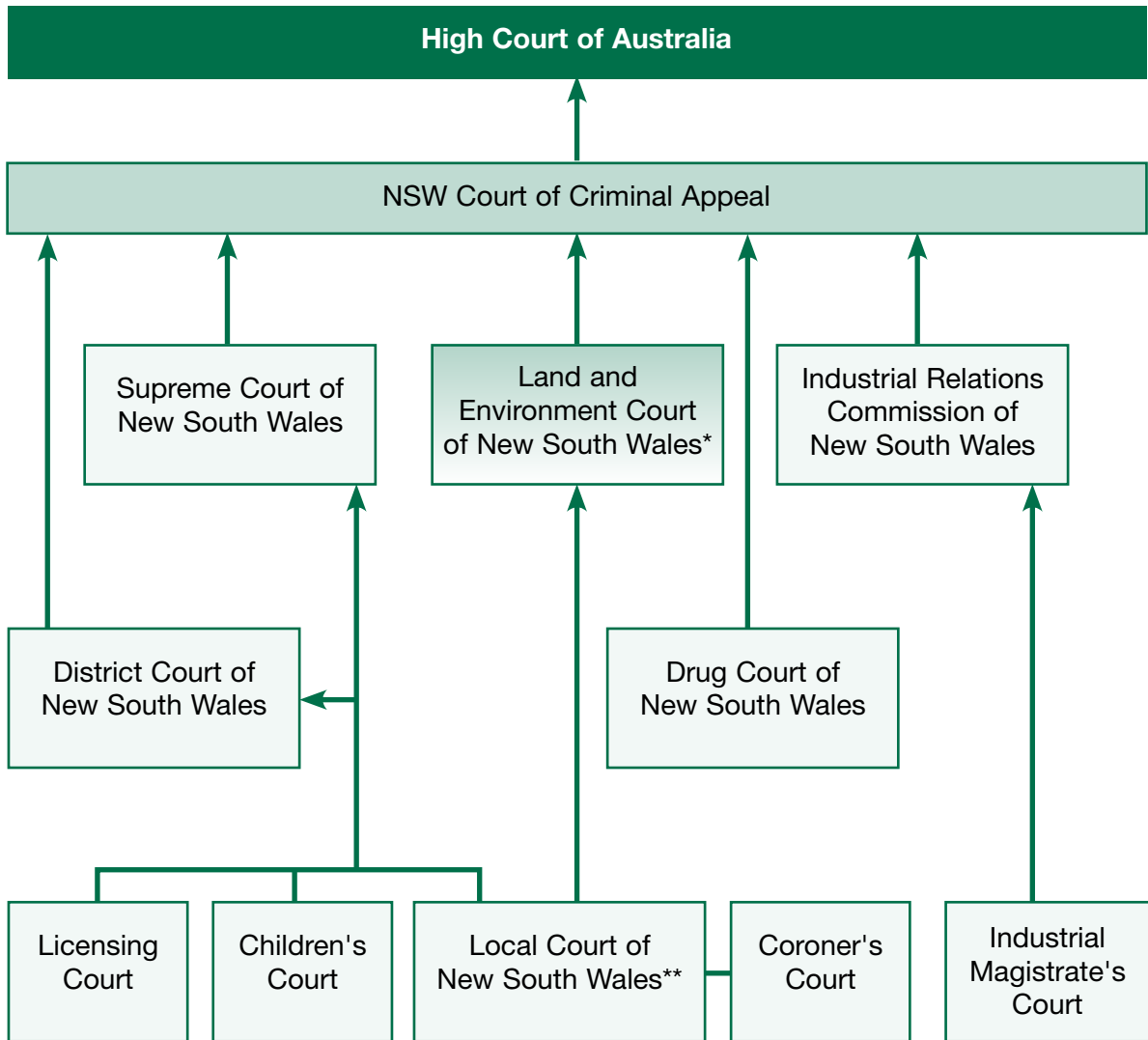
<b>Class 1</b>	environmental planning and protection appeals (merits review appeals)
<b>Class 2</b>	local government, trees and miscellaneous appeals (merits review appeals)
<b>Class 3</b>	land tenure, valuation, rating and compensation matters (merits review appeals)
<b>Class 4</b>	environmental planning and protection (civil enforcement and judicial review)
<b>Class 5</b>	environmental planning and protection (summary criminal enforcement)
<b>Class 6</b>	appeals against convictions or sentences relating to environmental offences (appeals as of right from decisions of the Local Court in prosecutions for environmental offences)
<b>Class 7</b>	appeals against convictions or sentences relating to environmental offences (appeals requiring leave from decisions of the Local Court in prosecutions for environmental offences)
<b>Class 8</b>	civil proceedings under the mining legislation



## The Court's place in the court system

The Court's place in the New South Wales court system is shown diagrammatically in Figure 2.1 (criminal jurisdiction) and Figure 2.2 (civil jurisdiction). Special arrangements are made in relation to appeals from the Court's decisions in Classes 1, 2, 3, 4 and 8 of the Court's jurisdiction depending on whether the decision was made by a Judge or a Commissioner. Figure 2.3 shows diagrammatically these appellate arrangements.

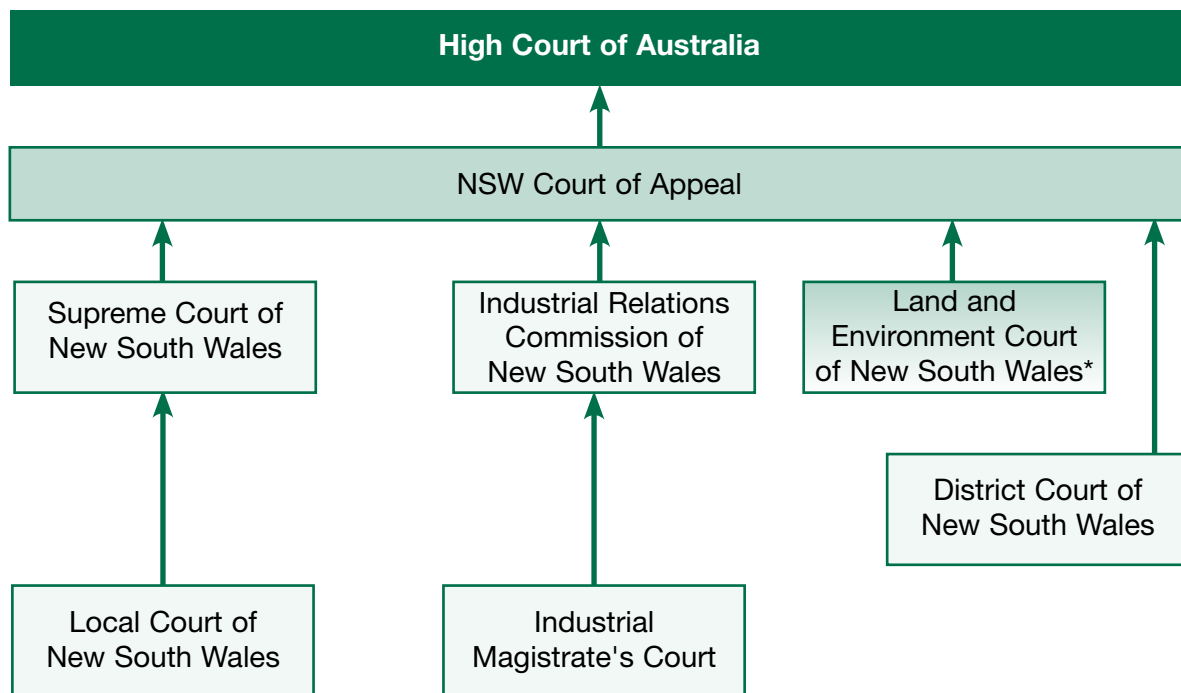
**Figure 2.1 New South Wales Court System – Criminal Jurisdiction**



\* Appeals to the NSW Court of Criminal Appeal are in relation to proceedings in Classes 5, 6 or 7 of the Land and Environment Court's jurisdiction.

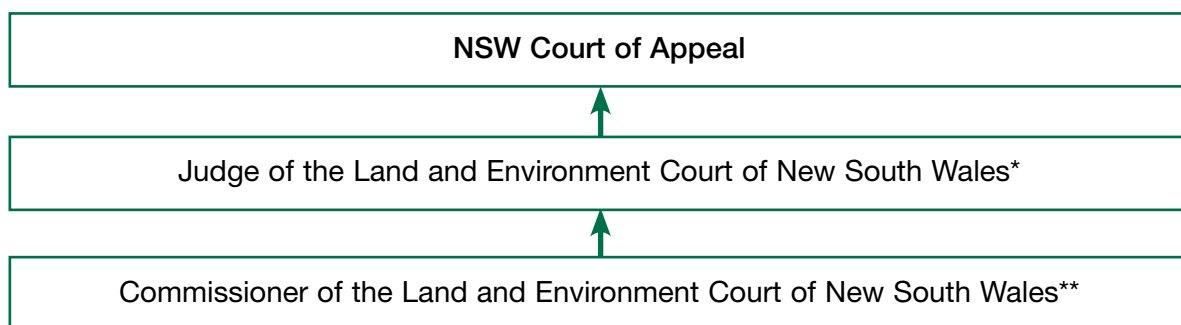
\*\* Appeals from the Local Court of New South Wales to the Land and Environment Court are with respect to an environmental offence under the *Crimes (Appeal and Review) Act 2001* and are in Classes 6 and 7 of the Land and Environment Court's jurisdiction.

**Figure 2.2 New South Wales Court System – Civil Jurisdiction**



\* Appeals to the NSW Court of Appeal are in relation to proceedings in Classes 1, 2, 3, 4 or 8 of the Land and Environment Court's jurisdiction.

**Figure 2.3 Appeals from decisions in Classes 1, 2, 3, 4 and 8 of the Land and Environment Court of New South Wales**



\* Appeals from a decision of a Judge in Classes 1, 2, 3, 4 or 8 of the Land and Environment Court's jurisdiction are to the NSW Court of Appeal on a question of law.

\*\* Appeals from a decision of a Commissioner in Classes 1, 2, 3 or 8 of the Land and Environment Court's jurisdiction are to a Judge of the Land and Environment Court on a question of law and any further appeal from the Judge's decision is only by leave of the NSW Court of Appeal.

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## Who makes the decisions?

### The Judges

Judges have the same rank, title, status and precedence as the Judges of the Supreme Court of New South Wales. Judges preside over all Class 3 (land tenure and compensation), 4, 5, 6 and 7 matters, and can hear matters in all other Classes of the Court's jurisdiction.

As at 31 December 2012, the Judges, in order of seniority, were as follows:

#### Chief Judge

The Honourable Justice Brian John Preston  
SC

#### Judges

The Honourable Justice Terence William Sheahan  
AO

The Honourable Justice Nicola Hope  
Margaret Pain

The Honourable Justice Peter Meldrum  
Biscoe

The Honourable Justice Rachel Ann Pepper

The Honourable Justice Malcolm Graeme  
Craig

### Acting Judges

The Honourable Acting Justice David Lloyd QC was appointed from 5 March 2012 to 12 October 2012.

### The Commissioners

Suitably qualified persons may be appointed as Commissioners of the Court. The qualifications and experience required for a Commissioner are specified in s 12 of the Court Act and include the areas of:

- administration of local government or town planning;
- town, country or environmental planning;
- environmental science, protection of the environment or environmental assessment;
- land valuation;
- architecture, engineering, surveying or building construction;
- management of natural resources or Crown Lands;
- urban design or heritage;
- land rights for Aborigines or disputes involving Aborigines; and
- law.

Persons may be appointed as full-time or part-time Commissioners for a term of 7 years. Persons may also be appointed as Acting Commissioners for a term of up to 12 months. Acting Commissioners are called upon on a casual basis to exercise the functions of a Commissioner as the need arises.



*Court hearing*

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The primary function of Commissioners is to adjudicate, conciliate or mediate merits review appeals in Classes 1, 2, and 3 of the Court's jurisdiction. On occasion the Chief Judge may direct that a Commissioner sit with a Judge, or that two or more Commissioners sit together to hear Class 1, 2 and 3 matters.

A Commissioner who is an Australian lawyer may also hear and determine proceedings in Class 8 of the Court's jurisdiction (when they are called a Commissioner for Mining).

As at 31 December 2012, the Commissioners were as follows:

### ***Senior Commissioner***

Mr Tim Moore

### ***Commissioners***

Mr Robert R Hussey

Mr Graham T Brown

Ms Annelise Tuor

Ms Susan A Dixon

Ms Linda Pearson

Ms Judy A Fakes

Ms Susan I Morris

Ms Susan T O'Neill

### ***Acting Commissioners***

Associate Professor Dr Paul Adam AM – botanist and ecologist

Professor Dr Larissa Behrendt – member of the Aboriginal community and lawyer

Mr Russell Cowell – valuer

Professor Dr Megan Davis – member of the Aboriginal community and lawyer

Mr David Galwey – arboricultural consultant

Mr Anthony McAvoy – member of the Aboriginal community and lawyer

Mr E Craig Miller – valuer and mediator

Dr David Parker – valuer

Mr Michael Ritchie – environmental scientist and mediator

Dr Robert (Bob) Smith – environmental management consultant (regional, national and international)

Ms Jennifer Smithson – town planner

Professor Sharon Sullivan AO – heritage consultant

Mr Michael Whelan – surveyor, mediator and arbitrator

### **The Registrars**

The Court Registrar has the overall administrative responsibility for the Court, as well as exercising quasi-judicial powers such as conducting directions hearings and mediations. The Chief Judge directs the Registrar on the day-to-day running of the Court.

The Court is a business centre within the Department of Attorney General and Justice. The Registrar, as Business Centre Manager, has reporting and budgetary responsibilities to the Director General of that department.

As at 31 December 2012, the Registrars were as follows:

### ***Registrar***

Ms Joanne Gray (on maternity leave during 2012)

### ***Acting Registrar***

Ms Leonie Walton

### ***Assistant Registrar and Manager Court Services***

Ms Maria Anastasi

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## Appointments and retirements

### Appointments

Ms Susan O'Neill was appointed a Commissioner from 30 January 2012.

### Retirements

Ms Jan Murrell retired as a full time Commissioner of the Court on 18 January 2012.

Mr Philip Hewett retired as an Acting Commissioner of the Court on 20 February 2012.

Mr David Johnson retired as an Acting Commissioner of the Court on 31 August 2012.

## Supporting the Court: the Registry

The Court Registry comprises the following four sections:

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### Client Services

This section is the initial contact for Court users and provides services such as procedural assistance, filing and issuing of court process, maintaining of records and exhibits, as well as having responsibilities under the *Public Finance and Audit Act 1983*. It also provides administrative assistance for the Court's eCourt system.

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### Listings

This section provides listing services, including preparation of the Court's daily and weekly programme and publication of the daily Court list on the internet.

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*Lodging documents at the Registry*

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### Information and Research

This section provides statistical analysis and research to the Registrar and the Chief Judge. It also supports the administration of the Court's website.

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### Commissioner Support

This section provides word processing and administrative support in the preparation of Commissioners' judgments and orders.

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The Court provides copies of its decisions and daily court lists on the Court's website at [www.lec.lawlink.nsw.gov.au](http://www.lec.lawlink.nsw.gov.au)

# 3 Caseflow Management

- Introduction
- Overview by class of jurisdiction
- Types of directions hearings
- Class 1 hearing options
- Alternative Dispute Resolution
  - Conciliation
  - Mediation
  - Neutral evaluation

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## Introduction

The Court manages the flow of its cases from inception to completion in a number of ways, and is continually looking to improve its processes and outcomes. The Chief Judge determines the day-to-day caseload management strategy of the Court. This strategy is reflected in the *Land and Environment Court Act 1979*, *Land and Environment Court Rules 2007*, *Civil Procedure Act 2005*, *Uniform Civil Procedure Rules 2005*, and the Practice Notes issued by the Chief Judge. The Judges, Commissioners and Registrars work together to ensure cases are resolved in a just, timely and cost-efficient manner.

## Overview by class of jurisdiction

Caseflow management varies with the type or class of proceeding.

### Class 1

Proceedings in Class 1 involve merits review of administrative decisions of local or State government under various planning or environmental laws. The Court in hearing and disposing of the appeal sits in the place of the original decision-maker and re-exercises the administrative decision-making functions. The decision of the Court is final and binding and becomes that of the original decision-maker.

Appeals are allocated a date for a directions hearing before the Registrar when the appeal is filed with the Court. The directions hearing may take the form of an in-court hearing, a telephone hearing or an eCourt hearing (see Types of Directions Hearings below).

At the directions hearing, the Registrar will review the matter and make appropriate directions for the orderly, efficient and proper

preparation of the matter for resolution by the appropriate dispute resolution process. The appropriate dispute resolution process may be a consensual process such as conciliation (a conference under s 34 of the Court Act), mediation or neutral evaluation or an adjudicative process by the Court hearing and disposing of the matter either at an on-site hearing or a court hearing.

If an issue arises that falls outside the specified duties of a Registrar or the Registrar otherwise considers it appropriate, the Registrar may refer the case to a Judge.

The practice and procedure governing Class 1 appeals is described in the Practice Notes Class 1 Development Appeals and Classes 1, 2 and 3 Miscellaneous Appeals (depending on the type of appeal).

### Class 2: Tree disputes

Proceedings under the *Trees (Disputes Between Neighbours) Act 2006* involve applications to the Court to remedy, restrain or prevent damage caused, being caused or likely to be caused to property or to prevent a risk of injury to any person as a consequence of a tree.

The Court manages a separate list for tree disputes. About 71% of the parties in this type of proceeding are self-represented. The application is returnable before a Commissioner assigned to manage the list. This first court attendance can be either a telephone conference or in court. The Commissioner explains the process of preparation for and hearing of the application.

The Commissioner explores whether the parties may be able to resolve the dispute between themselves without court orders authorising interference with or removal of a tree. If the parties are not able to resolve the dispute, the Commissioner will fix a final



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hearing date, usually not more than four to five weeks after the first court attendance. The Commissioner will make directions in preparation for the final hearing, such as for the provision of information by the parties to each other.

The final hearing will usually be held on-site. A Commissioner or Commissioners will preside at the hearing. Usually, one of the Commissioners will have special knowledge and expertise in arboriculture. The practice and procedure for tree disputes is described in the Practice Note Class 2 Tree Applications. Additional information is available in the special pages for tree disputes on the Court's website.

### **Class 3**

Proceedings in Class 3 are of different types. One type of proceeding involves claims for compensation by reason of the compulsory acquisition of land and another type involves valuation objections under s 37 of the *Valuation of Land Act 1916*.

The Practice Note Class 3 Compensation Claims and Practice Note Class 3 Valuation Objections establish Lists for these matters. The Class 3 Lists are managed by the List Judge in court each Friday. The practice notes specify the directions hearings to be held in preparation for hearing and the directions that will usually be made at these directions hearings. The purpose of the practice notes is to set out the case management practices for the just, quick and cheap resolution of the proceedings.

Valuation objections are usually heard by Commissioners, mostly persons with special knowledge and expertise in the valuation of land. Compensation claims are usually heard by a Judge, at times assisted by a Commissioner with special knowledge and expertise in valuation of land.

Other matters assigned to Class 3, such as Aboriginal land claims, are also case managed by the Class 3 List Judge. Such matters are heard by a Judge, assisted by one or more Commissioners appointed with qualifications under s 12(2)(g) of the Court Act including in relation to land rights for Aborigines.

### **Class 4**

Proceedings in Class 4 are of two types: civil enforcement, usually by government authorities, of planning or environmental laws to remedy or restrain breaches, and judicial review of administrative decisions and conduct under planning or environmental laws.

Class 4 proceedings are case managed in a Class 4 List by the List Judge on a Friday. The List Judge makes appropriate directions for the orderly, efficient and proper preparation for trial. Applications for urgent or interlocutory relief can be dealt with at any time by the Duty Judge.

The practice and procedure governing Class 4 proceedings is described in the Practice Note Class 4 Applications.

### **Class 5**

Proceedings in Class 5 involve summary criminal enforcement proceedings, usually by government authorities prosecuting offences against planning or environmental laws.

Class 5 proceedings are case managed in a Class 5 List by the List Judge on a Friday. The List Judge makes appropriate directions for the orderly, efficient and proper preparation for trial or sentence hearing. One purpose of the directions hearings is to allow the entry of pleas prior to the trial. Such a procedure can minimise the loss of available judicial time that occurs when trials are vacated after they are listed for hearing

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or when a guilty plea is entered immediately prior to, or on the day of, the trial's commencement.

The directions hearing involves legal practitioners of the parties at an early stage of the proceedings. This allows the prosecution and defence to consider a range of issues that may provide an opportunity for an early plea of guilty, or shorten the duration of the trial.



On-site view

### **Classes 6 and 7**

Proceedings in Classes 6 and 7 involve appeals and applications for leave to appeal from convictions and sentences with respect to environmental offences by the Local Court. The procedure for such appeals and applications for leave to appeal is regulated by the *Crimes (Appeal and Review) Act 2001*.

Proceedings in Classes 6 and 7 are case managed by the List Judge on a Friday.

### **Class 8**

Proceedings in Class 8 are disputes under the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991*. Class 8 proceedings are case managed in a Class 8 List by a Commissioner for Mining on every second Monday morning. The Commissioner for

Mining makes appropriate directions for the orderly, efficient and proper preparation for trial. Class 8 proceedings must be heard by a Judge or a Commissioner for Mining. Information on Class 8, and mining legislation and cases, are available on the special pages for mining on the Court's website.

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## Types of directions hearings

The Court offers court users three types of directions hearing:

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### **in-court directions hearing**

where representatives of the parties attend before the Registrar or a Judge in court

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### **telephone directions hearing**

where representatives of the parties talk with the Registrar or a Judge in a conference call

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### **eCourt directions hearing**

where representatives of the parties post electronic requests to the Registrar and the Registrar responds using the internet

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In general, the initial allocations for directions hearings are:

- For Sydney and metropolitan appeals, the appeal will usually be listed for the first directions hearing as an in-court directions hearing at the Land and Environment Court in Sydney.
- For country appeals, the appeal will usually be listed for the first directions hearing as a telephone directions hearing.

Once the first directions hearing has been held, the parties may utilise the eCourt facility for further directions hearings.

In 2012, the Court experienced an increase in the use of eCourt callover and recorded 1275 registered eCourt users (up from 1224 in 2011). The Court is recognised nationally as a leader in eCourt case management.

## Class 1 hearing options

The Court Act provides that a variety of Class 1 and Class 2 matters are to be dealt with by the Court as either an on-site hearing or a court hearing. The Registrar determines at directions hearings the appropriate type of hearing having regard to the value of the proposed development, the nature and extent of the likely impacts, the issues in dispute, any unfairness to the parties and the suitability of the site for an on-site hearing.

An on-site hearing is a final hearing of a matter conducted at the site the subject of the appeal. Apart from the judgment, an on-site hearing is not recorded.

A court hearing is the final determination of a matter in the Court, and the hearing is recorded.

## Alternative Dispute Resolution

The Court encourages Alternative Dispute Resolution (ADR). ADR refers to processes, other than adjudication by the Court, in which an impartial person assists the parties to resolve the issues between them. The methods of ADR available are:

- conciliation;
- mediation; and
- neutral evaluation.

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## Conciliation

Conciliation is a process in which the parties to a dispute, with the assistance of an impartial conciliator, identify the issues in dispute, develop options, consider alternatives and endeavour to reach agreement. The conciliator may have an advisory role on the content of the dispute or the outcome of its resolution, but not a determinative role. The conciliator may advise on or determine the process of conciliation whereby resolution is attempted, and may make suggestions for terms of settlement, give expert advice on likely settlement terms, and may actively encourage the parties to reach agreement.

Conciliation in the Court is undertaken pursuant to s 34 of the Court Act. This provides for a combined or hybrid dispute resolution process involving first, conciliation and then, if the parties agree, adjudication.

Conciliation involves a Commissioner with technical expertise on issues relevant to the case acting as a conciliator in a conference between the parties. The conciliator facilitates negotiation between the parties with a view to their achieving agreement as to the resolution of the dispute.

If the parties are able to reach agreement, the conciliator, being a Commissioner of the Court, is able to dispose of the proceedings in accordance with the parties' agreement (if it is a decision that the Court could have made in the proper exercise of its functions). Alternatively, even if the parties are not able to decide the substantive outcome of the dispute, they can nevertheless agree to the Commissioner adjudicating and disposing of the proceedings.



*Conciliation or on-site hearing*

If the parties are not able to agree either about the substantive outcome or that the Commissioner should dispose of the proceedings, the Commissioner terminates the conciliation conference and refers the proceedings back to the Court for the purpose of being fixed for a hearing before another Commissioner. In that event, the conciliation Commissioner makes a written report to the Court stating that no agreement was reached and the conference has been terminated and setting out what in the Commissioner's view are the issues in dispute between the parties to the proceedings. This is still a useful outcome, as it scopes the issues and often will result in the proceedings being able to be heard and determined expeditiously, in less time and with less cost.

Table 3.1 shows the comparison between the number of conciliation conferences in 2008-2012.

**Table 3.1 s 34 Conciliation Conferences 2008 – 2012**

	2008	2009	2010	2011	2012
<b>s 34 conferences</b>	552	481	632	637	911

The table shows a substantial increase in utilisation of conciliation conferences, with 2012 recording the highest number of conciliation conferences in the last five years.

### **Mediation**

Mediation is a process in which the parties to a dispute, with the assistance of an impartial mediator, identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted.

The Court may, at the request of the parties or of its own volition, refer proceedings in Classes 1, 2, 3, 4 and 8 to mediation. The Court provides a mediation service at no cost to the parties by referral to the Court's mediator. The Court may also refer proceedings for mediation to an external mediator not associated with the Court and agreed to by the parties.

Table 3.2 provides a comparison between mediations in 2008 to 2012. Internal mediations are those conducted by the Court mediator. External mediations are those conducted by a mediator not associated with the Court and agreed to by the parties.



*Mediation at the Court*

**Table 3.2 Mediations in 2008 – 2012**

		2008	2009	2010	2011	2012
<b>Classes 1 and 2</b>	Total:	3	5	3	4	5
	Internal	2	5	3	4	3
	External	1	0	0	0	2
	Number finalised pre-hearing	2	1	0	3	4
	% finalised pre-hearing	66	20	0	75	80
<b>Class 3</b>	Total:	8	8	6	4	9
	Internal	5	2	3	3	5
	External	3	6	3	1	4
	Number finalised pre-hearing	7	8	5	4	9
	% finalised pre-hearing	88	100	83	100	100
<b>Class 4</b>	Total:	13	14	6	8	9
	Internal	8	3	3	5	8
	External	5	11	3	3	1
	Number finalised pre-hearing	11	12	6	7	8
	% finalised pre-hearing	85	86	100	88	89
<b>All Classes</b>	Total:	24	27	15	16	23
	Internal	15	10	9	12	16
	External	9	17	6	4	7
	Number finalised pre-hearing	20	19	11	14	21
	% finalised pre-hearing	83	70	73	88	91

The number of mediations in Classes 1, 2 and 3 decreased after 2006 as a result of the increased availability and utilisation of conciliation under s 34 of the Court Act, conciliation being another form of alternative dispute resolution. The number of mediations in Classes 1, 2 and 4 between 2011 and 2012 increased marginally. There was a significant increase in mediations in Class 3 between 2011 and 2012.

### Neutral evaluation

Neutral evaluation is a process of evaluation of a dispute in which an impartial evaluator

seeks to identify and reduce the issues of fact and law in dispute. The evaluator's role includes assessing the relative strengths and weaknesses of each party's case and offering an opinion as to the likely outcome of the proceedings, including any likely findings of liability or the award of damages.

The Court may refer proceedings in Classes 1, 2, 3, 4 and 8 to neutral evaluation with or without the consent of the parties. The Court has referred matters to neutral evaluation by a Commissioner or an external person agreed to by the parties.

## 4 Reforms and Developments

- New Practice Notes
- Amendment to the Court Act
- Upgrading of the Court's website
- Library services
- Implementing the International Framework for Court Excellence
- Sentencing database for environmental offences



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During 2012, reforms occurred in the following areas:

- New Practice Notes and Policies;
- Amendment to the Court Act; and
- Upgrading of the Court's website; and
- Library services

The Court continued implementing the International Framework for Court Excellence. The Court, in conjunction with the Judicial Commission of New South Wales, maintained the sentencing database for environmental offences on the Judicial Information Research System (JIRS).

## New Practice Notes

The Court made two new Practice Notes during 2012, Practice Note Class 3 Aboriginal Land Claims (which commenced on 10 December 2012) and Practice Note Class 5 Proceedings (which commenced on 12 November 2012).

The Practice Note Class 3 Aboriginal Land Claims is the first practice note governing Aboriginal land claims in the Court. It is intended to facilitate the just, quick, and cheap resolution of these claims and sets out the case management measures to be employed to achieve this goal. The practice note was developed in consultation with relevant stakeholders, including court users and their legal representatives who regularly act in Aboriginal land claims.

The Practice Note Class 5 Proceedings is also the first practice note governing criminal prosecutions and sentencing proceedings for environmental offences in the Court. It implements the amendments to the *Criminal Procedure Act 1986* which provide for case

management procedures and preliminary conferences in Class 5 criminal proceedings. The practice note was also developed in consultation with prosecutorial authorities and legal practitioners who regularly act for the prosecution or defence in Class 5 criminal proceedings.

## Amendment to the Court Act

Section 63 of the *Land and Environment Court Act 1979* has been amended by the *Courts and Other Legislation Amendment Act 2012* to remove the right of a person to appear by an agent authorised in writing and instead now requires a person to apply for leave from the Court to be represented by an agent. The amended s 63 came into force on 28 October 2012 by proclamation. The amended s 63 applies to proceedings commenced after the date of commencement (28 October 2012). For proceedings already commenced before the amendment, the unamended s 63 applies. Subsequently the Court adopted rule 7.7 of the *Land and Environment Court Rules 2007* which outlines the information required for the purposes of the amended s 63 of the Act.



## Upgrading of the Court's website



*Court website official launch by Mr L. M. Glanfield AM, Director General of the Department of Attorney General and Justice*

The Court completely upgraded its website on 6 December 2012 with a new structure, layout and webpages. The new website is simpler and easier to navigate. It includes comprehensive and detailed information on the Court, its processes and decisions, as well as practical and helpful information on the main types of cases along with step by step instructions on commencing, preparing and running these cases.

The website also contains resources on various aspects of the Court's jurisdiction, including trees, mining, heritage, water, biodiversity and publications including the Judicial Newsletter, Annual Reviews and judicial speeches and papers.

There is detailed information on (amongst other areas): ADR, facilities in the Court, information for self-represented litigants and Court practice and procedure.

The new website was officially launched by Mr Laurie Glanfield AM, Director General of the Department of Attorney General and Justice, and the launch event was attended by the Judges and Commissioners of the Court, various distinguished guests, practitioners, court users and court staff.

The feedback received in the weeks following the launch of the new website was complimentary. Court users commented that the site was user friendly and provided essential and practical information to practitioners, self represented litigants and students alike.

An example of a webpage from the new website regarding 'Your legal problem is about' is shown below:

The screenshot shows the website interface for the Land and Environment Court. The main heading is "Your legal problem is about...". Below this, there is a list of categories on the left and a grid of specific legal problem types on the right.

• Trees and hedges	• Residential development
• Other development	• Mining
• Biodiversity	• Heritage
• Water	• Land valuation
• Compulsory acquisition of land	• Reversing a government decision
• Failing to obey the law or orders	• Environmental crime
• Aboriginal land claims	

## Library Services

The Department of Attorney General and Justice's Library Services expanded the services offered to the Land and Environment Court.

Online research and resource training for tipstaves/researchers was increased in 2012 by inclusion in the extensive online training offered by Library Services at the Law Courts Library.

Library Services has greatly improved access to approximately 2400 pre-2002 Land and Environment Court judgments by scanning and cataloguing the collection.

## Implementing the International Framework for Court Excellence

In late 2008, the Court agreed to adopt and to implement the International Framework for Court Excellence. The Framework was developed by an International Consortium for Court Excellence including the Australasian Institute of Judicial Administration, Federal Judicial Center (USA), National Center for State Courts (USA) and Subordinate Courts of Singapore, assisted by the European Commission for the Efficiency of Justice and other organisations. The Framework provides a methodology for assessing a court's performance against seven areas of court excellence and guidance for courts intending to improve their performance. The Framework takes a holistic approach to court performance. It requires a whole-court approach to delivering court excellence rather than simply presenting a limited range of performance measures directed to limited aspects of court activity.



The seven areas of court excellence are:

### **1. Court leadership and management:**

To provide organisational leadership that promotes a proactive and professional management culture, pursues innovation and is accountable and open.

### **2. Court planning and policies:**

To formulate, implement and review plans and policies that focus on achieving the Court's purpose and improving the quality of its performance.

### **3. Court proceedings:**

To ensure the Court's proceedings and dispute resolution services are fair, effective and efficient.

### **4. Public trust and confidence:**

To maintain and reinforce public trust and confidence in the Court and the administration of justice.

### **5. User satisfaction:**

To understand and take into account the needs and perceptions of its users relating to the Court's purpose.

### **6. Court resources:**

To manage the Court's human, material and financial resources properly, effectively and with the aim of gaining the best value.

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## **7. Affordable and accessible services:**

To provide practical and affordable access to information, court processes and services.

In 2009 and 2011, the Court undertook the self-assessment process in accordance with the Framework. The process and results were summarised in the Court's 2009 and 2011 Annual Reviews. As the Framework envisages, the Court is using the results of the self-assessment processes in 2009 and 2011 to identify areas which appear to be in most need of attention and to focus on improvement in those areas.

In 2012, the Court continued implementation of actions to improve the Court's performance in each of the seven areas of court excellence. In addition to continuing the actions described in the 2010 and 2011 Annual Reviews, the Court has undertaken the following actions, grouped under the areas of court excellence:

### **1. Court leadership and management:**

- continuing to demonstrate external orientation of the Court by communicating and consulting on the Court's vision, goals, programmes and outcomes, in particular with respect to the new jurisdiction of residential development appeals and revision of practice and procedure for compensation claims;
- continuing management training for managers in the registry;
- involving all court personnel in advancing the Court's purpose and strategies, including by regular meetings, regular provision of information and performance review;
- improving case registration and case management systems.

## **2. Court planning and policies**

- adopting two new practice notes for Class 3 Aboriginal land claims and Class 5 criminal prosecutions.

### **3. Court proceedings:**

- monitoring, measuring and managing the timeliness and efficiency of the resolution of different types of proceedings, including continuous collection and regular review of case processing statistics;
- continuing monitoring and management of delays in reserved judgments.

## **4. Public trust and confidence and**

### **5. User satisfaction:**

- completely upgrading the Court's website, including establishing and updating webpages on specialised areas of the Court's jurisdiction;
- continuing publication on a quarterly basis of a court newsletter with the latest legislation, judicial decisions and changes in practice and procedure;
- expanding reporting on the Court's performance in the Annual Review on the areas of court excellence.

### **6. Court resources:**

- continuing and extending the professional development programme for judges and commissioners, as explained in Chapter 6.

## **7. Affordable and accessible services:**

- regular monitoring and review of case processing statistics, case management and court practice and procedure with a view to reducing private and public costs of litigation.

More actions will be taken in 2013.

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## Sentencing database for environmental offences

The Court, in conjunction with the Judicial Commission of New South Wales, established in 2008 the world's first sentencing database for environmental offences, as part of the Judicial Information Research System (JIRS). Sentencing statistics for environmental offences display sentencing graphs and a range of objective and subjective features relevant to environmental offences. The user is able to access directly the remarks on sentencing behind each graph.

In 2012, the Court continued to provide statistics on sentences imposed by the Court in the year for environmental offences and for contempt proceedings. The statistics were loaded promptly onto JIRS. To ensure accuracy, the sentence statistics were audited on a quarterly basis by the Judicial Commission. The audits revealed satisfactory results.



# 5 Court Performance

- Overall caseload
- Court performance by class of jurisdiction
- Measuring Court performance
- Output indicators of access to justice
  - Affordability
  - Accessibility
  - Responsiveness to the needs of users
- Output indicators of effectiveness and efficiency
  - Backlog indicator
  - Time standards for finalisation of cases
  - Time standards for delivery of reserved judgments
  - Inquiries about delays in reserved judgments
  - Clearance rate
  - Attendance indicator
- Appeals
- Complaints
  - Informal enquiries
  - Complaints received and finalised
  - Patterns in complaints

## Overall caseload

The comparative caseload statistics between 2008 and 2012 are summarised in Table 5.1.

**Table 5.1 Caseload Statistics**

		2008	2009	2010	2011	2012
<b>Class 1</b>	Registrations	865	577	584	631	625
	Restored	57	43	25	28	11
	Pre-Trial Disposals	552	452	410	410	524
	Disposed by Hearing	357	253	229	202	196
	Pending	342	255	223	270	188
<b>Class 2</b>	Registrations	149	116	151	159	135
	Restored	6	10	5	11	10
	Pre-Trial Disposals	57	8	29	50	47
	Disposed by Hearing	103	120	99	137	105
	Pending	36	33	61	47	42
<b>Class 3</b>	Registrations	134	183	193	215	325
	Restored	15	5	7	6	11
	Pre-Trial Disposals	114	113	205	136	184
	Disposed by Hearing	58	28	33	35	34
	Pending	108	155	120	170	288
<b>Class 4</b>	Registrations	184	141	129	145	123
	Restored	47	22	26	17	34
	Pre-Trial Disposals	181	111	95	77	86
	Disposed by Hearing	87	64	63	67	97
	Pending	97	85	83	103	81
<b>Class 5</b>	Registrations	93	82	43	100	57
	Restored	8	9	5	3	16
	Pre-Trial Disposals	15	25	8	12	63
	Disposed by Hearing	71	94	47	25	61
	Pending	94	68	57	123	72
<b>Classes 6 and 7</b>	Registrations	17	7	9	8	10
	Restored	0	0	4	0	0
	Pre-Trial Disposals	7	2	6	3	2
	Disposed by Hearing	9	14	5	4	7
	Pending	10	1	2	4	5

<b>Class 8</b>	Registrations	-	5	6	5	7
	Restored	-	0	1	2	2
	Pre-Trial Disposals	-	1	2	1	0
	Disposed by Hearing	-	2	3	8	3
	Pending	-	2	4	2	6
<b>TOTAL</b>	Registrations	1442	1111	1115	1263	1282
	Restored	133	89	73	67	84
	Pre-Trial Disposals	923	740	755	689	906
	Disposed by Hearing	687	547	479	478	503
	Pending	687	599	551	722	684

Table 5.1 shows the following trends between 2008 and 2012:

- Total registrations and restorations (1366) have increased from both 2010 and 2011, reflecting primarily an increase in the caseload in Class 3 of the Court's jurisdiction. Class 1 registrations decreased marginally from 2011 but increased from 2010. Registrations in tree and hedge applications in Class 2 decreased. Compensation claims and valuation objections in Class 3 continued to increase, resulting in the highest number in the last five years. Civil enforcement actions in Class 4 and particularly criminal prosecutions in Class 5 decreased from 2011 but slightly increased from 2010. Criminal appeals in Class 6 marginally increased. Mining matters in Class 8 also marginally increased.
- Total finalisations (1409) increased in 2012. The total number of cases disposed of by hearing in 2012 increased 2011, as did the total number of cases disposed of before hearing. The increase in finalisations was not uniform across the classes of the Court's jurisdiction. Finalisations in Classes 1, 3, 4, 5 and 6 increased but finalisations in Classes 2 and 8 declined.
- Total finalisations (1409) were higher than total registrations (1366) in 2012, resulting in the total pending caseload (684) decreasing in 2012.
- Merits review and other civil proceedings finalised in Classes 1, 2 and 3 (1090) comprised 77% of the Court's finalised caseload (1409) in 2012.
- Civil and criminal proceedings in Classes 4, 5, 6, 7 and 8 (319) comprised 23% of the Court's finalised caseload (1409) in 2012.
- The means of finalisation in 2012 were 64% pre-trial disposals (including by use of alternative dispute resolution processes and negotiated settlement) and 36% by adjudication by the Court. This is an increase from 2011 and makes it the highest figure in five years, as Table 5.2 shows.



**Table 5.2 Means of Finalisation – All Matters**

	2008	2009	2010	2011	2012
Total matters finalised – all classes	1610	1287	1234	1167	1409
Total pre-trial finalisations	923	740	755	689	906
% matters finalised pre-trial	57	57	61	59	64

The means of finalisation for proceedings in Class 1, 2 and 3 included s 34 conciliation conferences and on-site hearings (mainly for Class 1 and 2 proceedings). As Table 5.3 shows, 37% of appeals in Classes 1, 2 and

3 were finalised by these means. Of the total of 424 matters, 319 matters were finalised by s 34 conferences and 105 matters by on-site hearings.

**Table 5.3 Means of Finalisation – Classes 1, 2 & 3**

	2008	2009	2010	2011	2012
Total matters finalised	1241	974	1005	1050	1090
s 34 conferences and on-site hearings	370	299	322	331	399
% s 34 and matters finalised on-site	29.8	30.7	32.0	31.5	36.6

## Court performance by class of jurisdiction

A brief summary of the Court's performance in 2012 for each of the eight classes of jurisdiction is provided.

### Class 1

Registrations and restorations of Class 1 matters in 2012 decreased by 3.5% from 2011 but finalisations increased by 17.6%, resulting in a decrease of 30.4% in the pending caseload. Class 1 registrations represent 46.6% of the total registrations in the Court in 2012.

Class 1 matters finalised in 2012 constitute 47% of the Court's finalised caseload. 60% of all Class 1 matters finalised were appeals under s 97 of the *Environmental Planning and Assessment Act 1979* relating

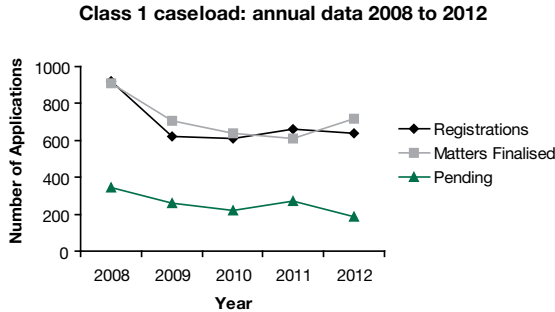
to development applications. 37% of the appeals under s 97 were applications where councils had not determined the development application within the statutory time period ("deemed refusals").

Of the remaining Class 1 matters finalised in 2012, 16% were applications to modify a development consent under s 96 of the *Environmental Planning and Assessment Act 1979*, 9% were appeals against council orders and the actual or deemed refusal by councils to issue building certificates and 15% were applications for costs, appeals under s 56A of the Court Act against a Commissioner's decision and prevention/remediation notices.

Figure 5.1 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 1 between 2008 to 2012.



**Figure 5.1**



**Class 2**

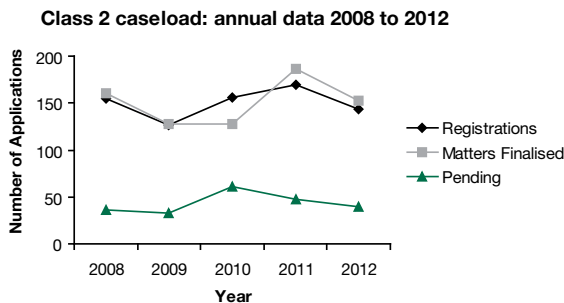
Class 2 registrations and restorations in 2012 decreased by 14.7% and represented 11% of total registrations in the Court in 2012.

The number of Class 2 matters finalised in 2012 decreased by 18.7% and represented 11% of the Court’s finalised caseload.

These are overwhelmingly applications under the *Trees (Disputes Between Neighbours) Act 2006*. As a result, the pending caseload decreased by 10.6%.

Figure 5.2 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 2 between 2008 to 2012.

**Figure 5.2**



**Class 3**

Class 3 of the Court’s jurisdiction encompasses a range of proceedings including claims for compensation as a result of the compulsory acquisition of land, valuation and rating appeals and some Aboriginal land rights matters.

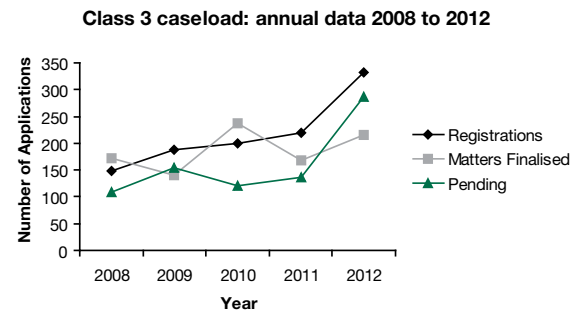
Registrations and restorations in Class 3 increased by 51% in 2012. Valuation and rating appeals accounted for 78% of new Class 3 appeals in 2012. Compensation claims for compulsory acquisition of land constituted 10% of all Class 3 appeals registered in 2012.

Class 3 matters finalised in 2012 increased by 27.5%. Of the Class 3 matters finalised in 2012, 65% were valuation or rating appeals, 19% were compensation claims and 16% were other matters.

As a consequence of the relatively greater increase in registrations than the increase in finalisation, pending caseload increased by 69.4%.

Figure 5.3 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 3 between 2008 and 2012.

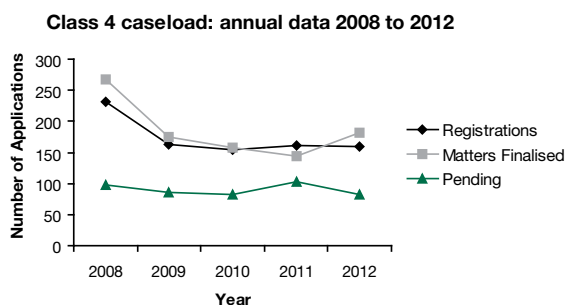
**Figure 5.3**



## Class 4

Class 4 registrations and restorations decreased by 2% and finalisations increased by 26% in 2012, resulting in a decrease of 21.4% in the pending caseload. Class 4 matters finalised in 2012 constituted 13% of the Court's finalised caseload. Of the Class 4 matters finalised in 2012, 53% were initiated by councils. Figure 5.4 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 4 between 2008 and 2012.

**Figure 5.4**



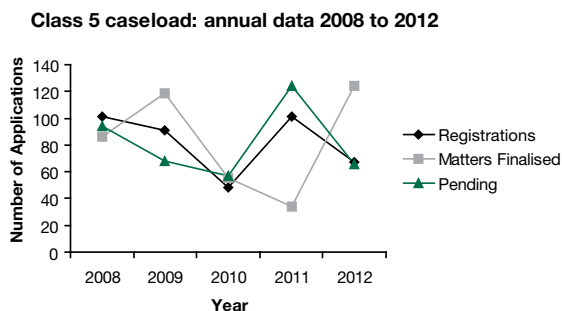
## Class 5

Class 5 registrations decreased by 35% in 2012. The Environment Protection Authority/Office of Environment and Heritage initiated 60% of all new registrations. The number of matters initiated by local councils increased to 27%, up from 11% in 2011. The remaining matters (13%) were initiated by the Department of Planning & Infrastructure, Newcastle Port Corporation and the Office of Water.

235% more Class 5 matters were finalised in 2012. Of the 124 matters finalised in 2012, convictions were recorded in 43, 55 were withdrawn, 23 were dismissed. Fines for conviction ranged from \$1,000 to \$120,000. No community service orders were issued in 2012.

As a consequence of the increase in finalisations and decrease in registrations, the pending caseload in Class 5 decreased by 41.5%. Figure 5.5 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 5 between 2008 to 2012.

**Figure 5.5**



## Classes 6 and 7

Nine new Class 6 appeals and one Class 7 appeal were filed, and nine appeals were finalised, resulting in a marginal increase in the pending caseload to five appeals.

## Class 8

Seven mining matters were filed and two mining matters were restored in 2012, and three matters were finalised, resulting in an increase in the pending caseload to six matters.

## Measuring Court performance

The Court has a statutory duty to facilitate the just, quick and cheap resolution of the real issues in civil proceedings in the Court. The Court's practice and procedure is designed to achieve this overriding purpose. In order to determine whether this purpose is being fulfilled, the Court needs to monitor and measure performance.

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The objectives of court administration are equity, effectiveness and efficiency. Various performance indicators can be used to evaluate the Court's achievement of these objectives of court administration.

The objectives of equity and effectiveness involve ensuring access to justice. Access to justice can be evaluated by reference to various criteria, both quantitative and qualitative. These include affordability, accessibility, responsiveness to the needs of users, and timeliness and delay measured by a backlog indicator and compliance with time standards. The objective of efficiency can be evaluated by output indicators including an attendance indicator and a clearance rate indicator.

## Output indicators of access to justice

### Affordability

Access to justice is facilitated by ensuring affordability of litigation in the Court. One indicator of affordability is the fees paid by applicants. Lower court fees help keep courts accessible to those with less financial means. However, ensuring a high standard of court administration service quality (so as to achieve the objective of effectiveness) requires financial resources. These days, a primary source of revenue to fund court administration is court fees. The Land and Environment Court is no exception. It was necessary in 2012 to increase court fees by 2.8% to be able to balance the Court's budget and ensure a high standard of court administration service quality (effective 1 July 2012). Notwithstanding the increase, the increased court fees still meet criteria of equity.

First, the court fees differentiate having regard to the nature of applicants and their inherent likely ability to pay. Individuals are likely to have less financial resources than corporations and hence the court fees for individuals are about half of those for corporations.

Secondly, the court fees vary depending on the nature of the proceedings. For example, the court fees for proceedings concerning a dispute over trees under the *Trees (Disputes Between Neighbours) Act 2006* have been set low, equivalent to Local Court fees, reflecting the fact that these proceedings are likely to be between individual neighbours.

Thirdly, in development appeals in Class 1, the quantum of court fees increases in step with increases in the value of the development (and the likely profit to the developer). Similarly, in compensation claims in Class 3, the court fees increased in step with the increases in the amount of compensation claimed.

Fourthly, the increased court fees bring about parity with the court fees for equivalent proceedings in other courts. The court fees for tree disputes are equivalent to Local Court fees reflecting the fact that the nature of the dispute is one that the Local Court might entertain. Similarly, proceedings in Class 4 for civil enforcement and judicial review are of the nature of proceedings in, and indeed before the establishment of the Land and Environment Court were conducted in, the Supreme Court. The court fees for these proceedings are comparable to those charged by the Supreme Court.

Finally, the Registrar retains a discretion to waive or vary the court fees in cases of hardship or in the interests of justice.

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It is also important to note that court fees are only part of the costs faced by litigants. Legal fees and experts' fees are far more significant costs of litigation and are the principal indicator of affordability of access to the Court. The Court continues to improve its practice and procedure with the intention of reducing these significant costs and hence improve the affordability of litigation in the Court.

### **Accessibility**

The Court has adopted a number of measures to ensure accessibility including geographical accessibility, access for people with disabilities, access to help and information, access for unrepresented litigants, access to alternative dispute resolution mechanisms and facilitating public participation.

#### ***Geographical accessibility***

Geographical accessibility concerns ensuring parties and their representatives and witnesses are able to access the Court in geographical terms. New South Wales is a large state. The Land and Environment Court is located in Sydney which is a considerable distance from much of the population. To overcome geographical accessibility problems, the Court has adopted a number of measures, including conducting directions hearings and other attendances before the final hearing by means of telephone or eCourt; enabling communication between the Court and parties and their legal representatives by email and facsimile; conducting final

hearings on the site of the dispute; and sitting in country courthouses proximate to the parties.

The Court identifies and especially case manages country matters. A matter is a country matter if it is outside the area bordered by the local government areas of Wollongong, Blue Mountains and Gosford. In 2012, 31% of matters finalised were country matters.

First, for attendances before final hearings, the Court has established the facility of a telephone directions hearing. This type of directions hearing takes place in a court equipped with conference call equipment where the parties or their representatives can participate in the court attendance whilst remaining in their distant geographical location. Most telephone directions hearings held by the Court involve parties and their legal representatives in country matters.

Secondly, the Court pioneered the use of eCourt directions hearings. This involves the parties or their representatives posting electronic requests to the Registrar using the internet and the Registrar responding. This also mitigates the tyranny of distance. Again, eCourt directions hearings are used extensively in country matters. Parties appeared by eCourt directions hearing in 51% of Class 1 country matters and 62% of Class 3 country matters in 2012.

Table 5.4 shows the percentage of pre-hearing attendances conducted by eCourt directions hearings and telephone directions hearings in Classes 1-4 in 2012.

**Table 5.4 eCourt and Telephone Directions Hearings**

<b>Class</b>	<b>No of cases</b>	<b>Total pre-hearing attendances</b>	<b>% eCourt directions hearings</b>	<b>% Telephone directions hearings</b>
1	714	2,969	18	9
2	152	288	10	28
3	216	1,647	12	0.2
4	178	822	8	0.5
All	1,260	5,726	14	6

Thirdly, proceedings in Classes 1, 2 and 3 are commonly referred to conciliation under s 34 of the Court Act. Conciliation conferences are frequently held on the site of the dispute. 43.9% of Class 1 country matters and 19% of Class 3 country matters had a s 34 conciliation conference.

Fourthly, conduct of the whole or part of a hearing on the site of the dispute also means that the Court comes to the litigants. An official on-site hearing involves conducting the whole hearing on-site. This type of hearing is required where there has been a direction that an appeal under ss 96, 96AA, 97, 121ZK or 149F of the *Environmental Planning and Assessment Act 1979* or s 7 of the *Trees (Disputes Between Neighbours) Act 2006* be conducted as an on-site hearing. The hearing is conducted as a conference presided over by a Commissioner on the site of the development. In 2012, 12% of

matters (in Classes 1 and 2) were conducted as an on-site hearing, of which 19% were country matters.

However, even for other hearings which may be conducted as a court hearing, it is the Court's standard practice that the hearing commence at 9.30am on-site. This enables not only a view of the site and surrounds but also the taking of evidence from residents and other persons on the site. This facilitates participation in the proceedings by witnesses and avoids the necessity for their attendance in the Court in Sydney. Nearly all country matters in Classes 1, 2 and 3 that were conducted as a court hearing still had an on-site view in the country.

Fifthly, the Court regularly holds court hearings in country locations. Table 5.5 shows hearings held in a country courthouse for 2012.

**Table 5.5 Country hearings in courthouses**

<b>Courthouse</b>	<b>Number of Hearings</b>						
	<b>Class 1</b>	<b>Class 2</b>	<b>Class 3</b>	<b>Class 4</b>	<b>Class 5</b>	<b>Class 6</b>	<b>Class 8</b>
Armidale				1	1		
Ballina	3						
Byron Bay	1						
Casino	1						
Cessnock	1						
Coffs Harbour	1						
Dubbo	1						
Gloucester	1						
Gosford	5						
Grafton	1	2					
Junee	1						
Kiama	1						
Lismore	1						
Macleay	1						
Maitland	1						
Newcastle	4						
Nowra	1						
Oberon	2						
Orange	1						
Picton	2						
Singleton	1						
Taree	2						
Tenterfield	1						
Toronto	5						
Tweed Heads	2						
Uralla	1						
Yass	1						
<b>TOTAL</b>	<b>43</b>	<b>2</b>		<b>1</b>	<b>1</b>		

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### ***Access for persons with disabilities***

The Court has a disability strategic plan that aims to ensure that all members of the community have equal access to the Court's services and programmes. The Court is able to make special arrangements for witnesses with special needs. The Court can be accessed by persons with a disability. The Land and Environment Court website contains a special page, under the tab 'Facilities & Support', outlining the disability services provided by the Court.

### ***Access to help and information***

The Court facilitates access to help and provides information to parties about the Court and its organisation, resources and services, the Court's practices and procedures, its forms and fees, court lists and judgments, publications, speeches and media releases, and self-help information, amongst other information. Primarily it does this by its website. However, the Court also has guides and other information available at the counter. Registry staff assist parties and practitioners, answer questions and provide information. Registry staff cannot provide legal advice.

The Local Courts throughout New South Wales also have information on the Land and Environment Court and documents are able to be filed in those Courts, which are passed on to the Land and Environment Court.

The provision of such help and information facilitates access to justice and allows the people who use the judicial system to understand it.

### ***Access for unrepresented litigants***

The Court also makes special efforts to assist unrepresented litigants, through its website and its published information and fact sheets, and by the Registry staff. The

Court has a special guide, under the tab 'Publications & Resources', for Litigants in Person in the Land and Environment Court of New South Wales. The guide contains information on:

- The Court's jurisdiction;
- Legal advice and assistance – a referral guide;
- The Court's schedule of fees;
- Application form to postpone, waive or remit Court fees;
- The availability of interpreters;
- Disability access information;
- User feedback on Land and Environment Court services;
- Information about the Court's website; and
- Contact information for the Court.

The Court's website also has on its home page special pages on: 'Your legal problem is about', 'Coming to the court', 'Court lists', 'Transcripts', 'Judgments', 'Types of cases', 'Practice & Procedure', 'Facilities and Support', 'Publications & Resources' and 'Contact us' amongst others.

### ***Access to Alternative Dispute Resolution***

The Court has been a pioneer in providing alternative dispute resolution services. The availability of alternative dispute resolution mechanisms allows the tailoring of mechanisms to the needs of disputants and the nature of the evidence.

When the Land and Environment Court was established in 1980 there was the facility for conciliation conferences under s 34 of the Court Act. These were curtailed in 2002 when on-site hearings were provided for but in 2006 the facility of conciliation conferences was extended to all matters in Classes 1, 2 and 3. Since then there has



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been a significant increase in utilisation of conciliation conferences (see Table 3.1).

The Court provides mediation services. In 2012, all of the full-time Commissioners and a number of the Acting Commissioners of the Court were qualified for national accreditation as a mediator and could provide in-house mediation for parties. In addition, the Court encourages and will make appropriate arrangements for mediation by external mediators. Informal mechanisms such as case management conferences also encourage negotiation and settlement of matters.

The Court's website, under the tab on the home page of 'Resolving disputes', contains information explaining the alternative dispute resolution mechanisms and providing links to other sites explaining ADR methods including mediation.

### ***Facilitating public participation***

Access to justice can also be facilitated by the Court ensuring that its practice and procedure promote and do not impede access by all. This involves careful identification and removal of barriers to participation, including by the public. Procedural law dealing with standing to sue, interlocutory injunctions (particularly undertaking for damages), security for costs, laches and costs of proceedings, to give some examples, can either impede or facilitate public access to justice. The Court's decisions in these matters have generally been to facilitate public access to the courts. The *Land and Environment Court Rules 2007* (Pt 4 r 4.2) also allow the Court not to require an undertaking as to damages or order security for costs or order costs against an unsuccessful party if satisfied that proceedings have been brought in the public interest.

### **Responsiveness to the needs of users**

Access to justice can also be facilitated by the Court taking a more user-orientated approach. The justice system should be more responsive to the needs and expectations of people who come into contact with the system. The principle of user orientation implies that special steps should be taken to ensure that the Court takes specific measures both to assist people to understand the way the institution works and to improve the facilities and services available to members of the public. These steps require sensitivity to the needs of particular groups.

The measures adopted by the Court for ensuring accessibility (discussed above) also make the Court more responsive to the needs and expectations of people who come into contact with the Court. The Court also consults with court users and the community to assist the Court to be responsive to the needs of users.

The Court has a Court Users Group to maintain communication with, and feedback from, Court users as to the practice and procedure and the administration of the Court. Information on, and membership of, the Court Users Group is in Appendix 1. In 2009, the Court established a specialised Mining Court Users Group. Court Users Groups assist the Court to be responsive to the needs of those who use it.

The Chief Judge has held informal gatherings with practitioners and experts who use the Court and delivered numerous speeches where the Court's practices and procedures have been discussed.



In 2012, the Judges, Commissioners and the Registrar participated in numerous conferences and seminars to enhance awareness of recent developments in the Court relating to both procedural and substantive law.

## Output indicators of effectiveness and efficiency

The effectiveness and efficiency of the Court is able to be measured by reference to the output indicators of backlog indicator, time standards for finalisation of cases, time standards for delivery of judgments, clearance rate and attendance indicator.

### Backlog indicator

The backlog indicator is an output indicator of case processing timeliness. It is derived by comparing the age (in elapsed time from lodgment) of the Court's caseload against time standards. The Court adopted its own standards for the different classes of its jurisdiction in 1996. These are:

- Classes 1, 2 and 3: 95% of applications should be disposed of within 6 months of filing.
- Classes 4, 5, 6, 7 and 8: 95% of applications should be disposed of within 8 months of filing.

These standards are far stricter than the national standards used by the Productivity Commission in its annual *Report on Government Services*. The national standards are:

- No more than 10% of lodgments pending completion are to be more than 12 months old (ie. 90% disposed of within 12 months).
- No lodgments pending completion are to be more than 24 months old (i.e. 100% disposed of within 24 months).

Performance relative to the timeliness standards indicates effective management of caseloads and court accessibility.

Time taken to process cases is not necessarily due to court administration delay. Some delays are caused by factors other than those related to the workload of the Court. These include delay by parties, unavailability of a witness, other litigation taking precedence, and appeals against interim rulings.

The results of the backlog indicator measured against the Land and Environment Court time standards for 2012 are set out in Table 5.6.

**Table 5.6 Backlog Indicator (LEC time standards)**

	Unit	LEC Standards	2008	2009	2010	2011	2012
<b>Class 1</b>							
Pending caseload	no.		342	255	223	270	188
Cases > 6 months	%	5	13.5	9.7	17.5	19.3	14.4
Cases > 12 months	%	0	2.0	1.6	4.9	2.6	3.2
<b>Class 2</b>							
Pending caseload	no.		36	33	61	47	42

Cases > 6 months	%	5	2.8	6.1	4.9	0	0
Cases > 12 months	%	0	0	3.0	0	0	0
<b>Class 3</b>							
Pending caseload	no.		108	155	120	170	288
Cases > 6 months	%	5	32.4	34.2	44.2	44.1	63.2
Cases > 12 months	%	0	13.9	16.8	15.0	21.8	11.8
<b>Class 4</b>							
Pending caseload	no.		97	85	83	103	81
Cases > 8 months	%	5	24.7	21.2	33.7	30.1	40.7
Cases > 16 months	%	0	10.3	10.6	14.5	15.5	18.5
<b>Class 5</b>							
Pending caseload	no.		94	68	57	123	72
Cases > 8 months	%	5	33.0	32.4	63.2	28.4	50.0
Cases > 16 months	%	0	14.9	10.3	15.8	25.2	20.8
<b>Classes 6 and 7</b>							
Pending caseload	no.		10	1	2	4	5
Cases > 8 months	%	5	0	0	100.0	50.0	40.0
Cases > 16 months	%	0	0	0	0	0	40.0
<b>Class 8</b>							
Pending caseload	no.		-	2	4	1	6
Cases > 8 months	%	5	-	0	25.0	50.0	33.3
Cases > 16 months	%	0	-	0	0	0	0
<b>Class 1- 3</b>							
Pending caseload	no.		486	443	404	487	518
Cases > 6 months	%	5	16.9	18.5	23.5	26.5	40.5
Cases > 12 months	%	0	4.5	7.0	7.2	9.0	7.7
<b>Class 4 – 8</b>							
Pending caseload	no.		220	201	152	233	166
Cases > 8 months	%	5	24.1	27.4	26.3	29.6	44.0
Cases > 16 months	%	0	8.6	11.9	10.5	20.2	19.8

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These backlog figures need some explanation:

- Class 1: The backlog figure for pending caseload greater than 6 months decreased in 2012 but increased slightly for pending caseload greater than 12 months. The total pending caseload in Class 1 decreased during 2012. The timeliness of case processing of Class 1 matters therefore improved in 2012.
- Class 2: There were no cases pending in Class 2 for more than 6 or 12 months, hence the backlog figure of 0%. These figures were consistent to those in 2011. This is a continuing highly commendable result. The pending caseload decreased slightly.
- Class 3: The backlog figures in 2012 for pending caseload greater than 6 months increased significantly to 63.2% but for cases greater than 12 months reduced to 11.8%, the lowest in the last five years. Total pending caseload increased significantly as a result of the increase in cases pending for greater than 6 months. The increase in the backlog figure for cases greater than 6 months was mainly caused by the increase in the actual number of cases (the significant increase in Class 3 registrations) and, to a lesser extent, by delays in reserved judgments in certain matters. Hence, the timeliness of case processing of Class 3 matters declined in 2012.
- Class 4: There was an increase in the backlog figure for pending caseload exceeding 8 months and a slight increase for pending caseload greater than 16 months. However, there were more finalisations than registrations of Class 4 matters in 2012, resulting in a decrease in the total pending caseload in Class 4. The higher backlog figures are a product of this decrease in pending caseload. There were about the same number of Class 4 matters pending for greater than 8 and 16 months in 2012 as there were in 2011 but because of the decrease in the pending caseload, the older matters represent a higher percentage of that pending caseload. Case processing timeliness for Class 4 matters has therefore appeared to decline. Another reason is delay in reserved judgments in certain matters.
- Class 5: The backlog figures for pending caseload exceeding the 8 month standard increased substantially, but the backlog figures for pending caseload greater than 16 months decreased. The total pending caseload in Class 5 decreased significantly, as a result of finalisations significantly exceeding registrations. The increase in the backlog figure for Class 5 matters is a product of this significant decrease in pending caseload. The actual number of Class 5 matters pending for more than 8 months remained about the same in 2012 as in 2011 but because the pending caseload has decreased, the older matters represent a higher percentage of the pending caseload. Another reason is continued delays in reserved judgments in certain matters.
- Class 6: There were only a small number of appeals in Class 6. There was a decrease in appeals greater than 8 months but an increase pending in appeals cases greater than 16 months.
- Class 8: There was an increase in pending caseload, but only two cases were pending greater than 8 months and no cases were pending for greater than 16 months.

If the national time standards are used, the results of the backlog indicator for the Court in 2012 are as shown in the table below:

**Table 5.7 Backlog indicator (national time standards)**

	Unit	National Standards	2008	2009	2010	2011	2012
<b>Class 1</b>							
Pending caseload	no.		342	255	223	270	188
Cases > 12 months	%	10	2.0	1.6	4.9	2.6	3.2
Cases > 24 months	%	0	0.6	0.4	0	0.4	0.5
<b>Class 2</b>							
Pending caseload	no.		36	33	61	47	42
Cases > 12 months	%	10	0	3.0	0	0	0
Cases > 24 months	%	0	0	0	0	0	0
<b>Class 3</b>							
Pending caseload	no.		108	155	120	170	288
Cases > 12 months	%	10	13.9	16.8	15.0	21.8	11.8
Cases > 24 months	%	0	5.6	1.9	5.8	2.4	4.5
<b>Class 4</b>							
Pending caseload	no.		97	85	83	103	81
Cases > 12 months	%	10	15.5	15.3	21.7	20.4	28.4
Cases > 24 months	%	0	5.2	4.7	2.4	8.7	7.4
<b>Class 5</b>							
Pending caseload	no.		94	68	57	123	72
Cases > 12 months	%	10	28.7	23.5	52.7	28.5	34.7
Cases > 24 months	%	0	8.5	2.9	5.3	20.3	18.1
<b>Classes 6 and 7</b>							
Pending caseload	no.		10	1	2	4	5
Cases > 12 months	%	10	0	0	0	0	40.0
Cases > 24 months	%	0	0	0	0	0	0
<b>Class 8</b>							
Pending caseload	no.		-	2	4	2	6
Cases > 12 months	%	10	-	0	0	0	16.7
Cases > 24 months	%	0	-	0	0	0	0

This table shows that the Court's performance in Classes 1 and 2 betters the national standard. The Court's performance in Class 3 is close to compliance with the national time standard for 12 months but above the standard for 24 months. The Court's performance in Classes 4 and 5 is above the national standard and represents a decrease in case processing timeliness. The Court's performance in Classes 6, 7 and 8 is above the national standard for 12 months but meets the standard for 24 months. However, there are only a small numbers of cases involved in these Classes.

### Time standards for finalisation of cases

The backlog indicator is a measure of the timeliness of the pending caseload. The Court also measures the timeliness of completed cases by comparing the time taken for finalisation of cases in each class to the Court's time standards. The higher the percentage of cases completed by each time standard and the shorter the time period to complete 95% of the cases, the better the Court's performance. Table 5.8 sets out the Court's performance in finalising cases in each class in compliance with the Court's time standards for the period 2008-2012.

**Table 5.8 Finalisation of cases – compliance with time standards by Class**

	Year				
	2008	2009	2010	2011	2012
<b>Class 1</b>					
No. of cases	909	703	639	612	720
% < 6 months	77	71	75	77	78
% < 12 months	97	95	97	96	97
95% completed within (months)	10	11	11	11	11
<b>Class 2</b>					
No. of cases	160	127	128	187	152
% < 6 months	94	98	95	94	93
% < 12 months	99	100	99	99	98
95% completed within (months)	7	5	6	6	6
<b>Class 3</b>					
No. of cases	172	137	238	171	218
% < 6 months	38	43	44	53	44
% < 12 months	66	74	81	74	79
95% completed within (months)	36	25	19	21	20
<b>Class 4</b>					
<b>No. of cases</b>	268	175	158	144	183
% < 8 months	80	90	73	73	73
% < 16 months	94	93	94	90	91
95% completed within (months)	17	20	19	20	22

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**Class 5**

No. of cases	86	119	55	37	124
% < 8 months	64	51	56	47	19
% < 16 months	94	76	76	79	82
95% completed within (months)	17	40	20	29	28

**Class 6**

No. of cases	15	18	11	7	9
% < 8 months	93	78	100	100	100
% < 16 months	100	100	100	100	100
95% completed within (months)	8	10	5	11	6

**Class 8**

No. of cases	-	3	5	9	3
% < 8 months	-	100	100	89	100
% < 16 months	-	100	100	100	100
95% completed within (months)	-	6	6	9	17

The table shows that in 2012, compared to 2011, the Court improved or maintained its performance by reducing or maintaining the time taken to finalise cases in Classes 1, 2 and 8. In Class 3, the Court's performance declined in completing less cases within 6 months, but improved in terms of the proportion of cases completed within 12 months and in the time taken to complete 95% of cases. In Class 4, the Court maintained the proportion of cases finalised within 8 months but the proportion of cases finalised within 16 months declined slightly and the Court took slightly longer to complete 95% of cases. In Class 5, the Court slightly improved the proportion of cases completed within 16 months, but the proportion of cases completed in 8 months declined significantly. The time taken to complete 95% of cases also declined. The increase in time taken to complete cases in Classes 3, 4 and 5 is partly a product of the delay in reserved judgments in these classes. When a judgment that has been

reserved after a hearing in previous years is delivered in the reporting year (2012), it increases the proportions of cases completed within 12 or 16 months and increases the time taken to complete 95% of cases.

**Time standards for delivery of reserved judgments**

The Court may dispose of proceedings by judgment delivered at the conclusion of the hearing (ex tempore judgment) or at a later date when judgment is reserved by the Court (reserved judgment). A substantial number of judgments (42%) are delivered ex tempore, thereby minimising delay. To minimise delay for reserved judgments the Court has adopted time standards.

The Court's time standard for delivery of reserved judgments is determined from the date of the last day of hearing to the delivery date of the judgment. The current time standards for reserved judgments are as follows:

- 50% of reserved judgments in all classes are to be delivered within 14 days of hearing.
- 75% are to be delivered within 30 days of hearing.
- 100% are to be delivered within 90 days of hearing.

These are strict standards compared to other courts.

As Table 5.9 shows, the Court's performance in 2012 improved for reserved judgments being delivered within 14 days and met the standard for the first time in the last five years, and also improved for reserved

judgments delivered within 30 days, representing the highest proportion in the last five years. For the 90 days standard, the Court's performance improved compared to 2011 and 2010, but was still less than the standard. The Court's performance in meeting judgment timeliness standards is an average of the performance of all individual decision-makers, both commissioners and judges, in matters in all classes of the Court's jurisdiction. Commissioners decide a greater number of matters than judges. Hence, an improvement in reserved judgment timeliness by commissioners improves the Court's average.

**Table 5.9 Reserved judgments compliance with time standards**

	Standard	2008	2009	2010	2011	2012
% delivered within 14 days	50	36	37	39	41	50
% delivered within 30 days	75	56	56	55	62	66
% delivered within 90 days	100	90	86	81	83	86

### **Inquiries about delays in reserved judgments**

A delay in delivering a reserved judgment impedes achievement of the goal of the just, quick and cheap resolution of proceedings. One of the Court's time standards for the delivery of reserved judgments is that 100% of reserved judgments should be delivered within 90 days of the judgment being reserved, usually at the completion of the hearing.

The Court has adopted a policy on Delays in Reserved Judgments that allows a party or legal representative who is concerned that a reserved judgment has been outstanding for a period in excess of the Court's standard of 3 months, to make a written inquiry to the Chief Judge. The policy provides that the Chief Judge will discuss each inquiry

with the judicial officer involved, but without revealing the inquirer's identity to the judicial officer, to ascertain the expected timing for delivery of the reserved judgment. The Chief Judge responds to the inquirer with the expected timing provided by the judicial officer. The inquirer may make a further inquiry if the judgment is not delivered within the notified expected timing.

Table 5.10 provides information on the total number of inquiries received under the Delays in Reserved Judgments Policy and the type of case (the classes of the Court's jurisdiction) which the inquiry concerned. In a number of instances, successive inquiries have been made with respect to the same reserved judgment. Each successive inquiry is recorded as a new inquiry.

**Table 5.10 Inquiries about delays in reserved judgments**

	2008	2009	2010	2011	2012
Class 1	2	2	11	20	10
Class 2	0	0	1	1	1
Class 3	0	1	1	2	5
Class 4	2	4	12	28	12
Class 5	0	2	3	13	2
Classes 6 and 7	0	0	0	0	0
Class 8	0	0	0	1	0
<b>Total</b>	<b>4*<sup>1</sup></b>	<b>9*<sup>2</sup></b>	<b>28*<sup>3</sup></b>	<b>65*<sup>4</sup></b>	<b>30*<sup>5</sup></b>

\*<sup>1</sup> In 2008, 50% of inquiries (2) concerned judges' reserved judgments and 50% (2) concerned commissioners' judgments.

\*<sup>2</sup> In 2009, 67% of inquiries (6) concerned judges' reserved judgments and 33% (3) concerned commissioners' judgments.

\*<sup>3</sup> In 2010, 71% of inquiries (20) concerned judges' reserved judgments and 29% (8) concerned commissioners' judgments.

\*<sup>4</sup> In 2011, 80% of inquiries (52) concerned judges' reserved judgments and 20% (13) concerned commissioners' reserved judgments.

\*<sup>5</sup> In 2012, 73% of inquiries (22) concerned judges' reserved judgments and 27% (8) concerned commissioners' reserved judgments.

The Chief Judge investigated each inquiry made in 2012 in accordance with the policy and responded in writing to the inquirer in a timely manner.

### Clearance rate

The clearance rate is an output indicator of efficiency. It shows whether the volume of finalisations matches the volume of lodgments in the same reporting period. It indicates whether the Court's pending caseload has increased or decreased over that period. The clearance rate is derived by dividing the number of finalisations in the reporting period by the number of lodgments

in the same period. The result is multiplied by 100 to convert it to a percentage.

A figure of 100% indicates that during the reporting period the Court finalised as many cases as were lodged and the pending caseload is the same as what it was 12 months earlier. A figure of greater than 100% indicates that, during the reporting period, the Court finalised more cases than were lodged, and the pending caseload has decreased. A figure less than 100% indicates that during the reporting period, the Court finalised fewer cases than were lodged, and the pending caseload has increased. The clearance rate should be interpreted alongside finalisation data and the backlog indicator. Clearance over time should also be considered.

The clearance rate can be affected by external factors (such as those causing changes in lodgment rates) as well as by changes in the Court's case management practices.

The results of the clearance rate for the Court in each of its classes are shown in Table 5.11.



**Table 5.11 Clearance rate**

	2008 %	2009 %	2010 %	2011 %	2012 %
Class 1	98.6	113.7	104.9	92.9	113.2
Class 2	103.2	101.6	82.1	110.0	104.8
Class 3	115.4	75.0	119.0	77.4	64.9
Class 4	116.0	107.4	101.9	88.9	116.6
Class 5	85.1	130.8	114.6	35.2	169.9
Class 6	88.2	228.6	84.6	87.5	90.0
Class 8	-	60.0	71.4	128.6	33.3
Classes 1-3	101.2	104.3	104.1	92.4	97.6
Classes 4-8	105.7	118.4	102.7	70.4	128.1
<b>Total</b>	<b>102.2</b>	<b>107.3</b>	<b>103.9</b>	<b>87.7</b>	<b>103.1</b>

These figures show that the total clearance rate for all the Court's caseload and the clearance rates for Classes 1, 2, 4 and 5 exceeded 100% in 2012 leading to a decrease in the pending caseload in total and in those classes.

The clearance rate for matters in Class 3 reflects the substantial increase in registrations (by 51%) which was greater than the increase in finalisations. The higher clearance rate for Class 5 matters was caused by both a decrease in registrations and an increase in finalisations.

The clearance rate for matters in Class 6, although less than 100% (90%), represents a difference of only one case (10 registrations and 9 finalisations in 2012). The clearance rate for matters in Class 8 is less than 100% (33.3%), but again reflects the small number of cases (9 registrations and 3 finalisations).

### Attendance indicator

The attendance indicator is an output indicator of efficiency where court attendances act as a proxy for input costs. The more attendances, the greater the costs

both to the parties and to public resources. The number of attendances is the number of times that parties or their representatives are required to be present in court to be heard by a judicial officer or mediator (including appointments that are adjourned or rescheduled).

The attendance indicator is presented as the median number of attendances required to reach finalisation for all cases finalised during the year, no matter when the attendance occurred.

Fewer attendances may suggest a more efficient process. However, intensive case management, although increasing the number of attendances, may have countervailing benefits. Intensive case management may maximise the prospects of settlement (and thereby reduce the parties' costs, the number of cases queuing for hearing and the flow of work to appellate courts) or may narrow the issues for hearing (thus shortening hearing time and also reducing costs and queuing time for other cases waiting for hearing). In the Land and Environment Court, increased use of the

facilities of conciliation conferences and case management conferences may be means to achieve these benefits.

Table 5.12 below compares the median number of pre-hearing attendances for each class of proceedings completed in 2008-2012.

**Table 5.12 Median number of pre-hearing attendances by Class**

	2008	2009	2010	2011	2012
Class 1	4	4	4	3	3
Class 2	1	1	1	1	1
Class 3: (all matters)	7	7	6	5	6
Compensation claims	9	12	9	9	12
Valuation objections	5	6	6	3	6
Miscellaneous	6	4	5	7	4
Class 4	4	4	3	3	3
Class 5	4	5	5	3	7
Class 6	1	2	2	13	3
Class 8	-	2	1	3	5

The table reveals the number of pre-hearing attendances stayed constant for cases in Classes 1, 2 and 4 between 2011 and 2012. The number of pre-hearing attendances decreased substantially for cases in Class 6 from 2011 but was similar to the figures in 2008-2010. The maintenance or improvement in the attendance indicator for matters in these classes is encouraging, indicating less delay between filing and hearing and less cost to the parties. However, there was an increase in the median number of attendances for matters in Classes 3, 5 and 8, indicating greater delay between filing and hearing and greater cost to the parties. The introduction in 2012 of new practice notes for Class 3 Aboriginal land claims and Class 5 criminal proceedings, with targets for number of attendances, may reduce the number of attendances in future years.

For Class 1 matters, the median number of attendances is increased by the arrangement of conciliation conferences before any final hearing. The median number of pre-hearing attendances for matters with no conciliation conference is 2 but for matters with a conciliation conference the median is 4. The increase in pre-hearing attendances through use of conciliation conferences is, however, beneficial as it can lead to resolution of the matter by agreement of the parties without the necessity of a final hearing, or to a reduction in the issues and hearing time. The proportion of Class 1 matters being disposed of without a hearing increased in 2012 to 73%.

## Appeals

Measuring the number of appeals from a court's decisions and their success are not appropriate or useful indicators of the quality of the decisions or of court administration. Nevertheless, as there are appeal rights from the Court's decisions, the Court should provide statistics on the exercise of the appeal rights in the review year.

There are three types of appeals that can be generated from decisions of the Court (see Figures 2.1, 2.2 and 2.3 in Chapter 2 Court Profile).

First, decisions of Commissioners in Classes 1, 2 and 3 may be appealed to a Judge of

the Court pursuant to s 56A of the Court Act. Section 56A appeals are confined to appeals against decisions on a question of law and do not permit a review of the Commissioner's decision on the facts or merits. As shown in Table 5.13, in 2012, 29 s 56A appeals were commenced, 11 appeals were settled pre-hearing, 17 were completed at a hearing, and 7 remained pending at 31 December 2012.

Of the 17 appeals that were completed at hearing, 2 were upheld. This represents 0.3% of the number of matters in Classes 1, 2, 3 and 8 disposed of by a decision of a Commissioner of the Court in 2012 (672 matters).

**Table 5.13 s 56A Appeal outcomes**

	2008	2009	2010	2011	2012
Total no. of appeals	14	21	14	14	29
No. finalised pre-hearing	4	2	3	4	11
No. of appeals to hearing	13	10	15	16	17
Outcome:					
Upheld	5	4	4	8	2
Dismissed	8	6	11	8	15

Secondly, appeals from decisions made by Judges in Classes 1 to 4 and 8 are heard in the Court of Appeal.

Thirdly, appeals from decisions made by Judges in Classes 5, 6 and 7 are heard in the Court of Criminal Appeal.

In 2012, 17 appeals were lodged with the Court of Appeal and one appeal was lodged with the Court of Criminal Appeal. The number of appeals to these appellate courts in 2012 is shown in Table 5.14 below.

The table reflects the distinctions drawn in the legislation and rules between, firstly, a notice of appeal and a summons seeking leave to appeal and, secondly, a notice of

appeal and a notice of intention to appeal. In respect of the second distinction, rather than immediately appeal, a party may lodge a notice of intention to appeal, the effect of which is to extend the time within which an appeal may be lodged. However, many parties do not subsequently lodge an appeal.

The figures for the different appeal processes are not able to be added together because of the partial duplication in the categories of appeal process. For example, a party who lodges a notice of intention to appeal and then a notice of appeal will be counted in each category of appeal process.

**Table 5.14 Appeals to the appellate courts**

	2008	2009	2010	2011	2012
<b>Court of Appeal</b>					
Notice of Intention to appeal	24	13	27	22	14
Notice of appeal	8	30	18	25	17
<b>Total</b>	<b>32</b>	<b>43</b>	<b>41</b>	<b>44</b>	<b>29</b>
<b>Court of Criminal Appeal</b>					
Notice of Intention to appeal	0	1	9	0	2
Notice of appeal	0	5	0	1	1
Stated case, section 5AE	0	0	0	0	2
<b>Total</b>	<b>0</b>	<b>6</b>	<b>9</b>	<b>1</b>	<b>5</b>

## Complaints

Accountability and public trust and confidence in the Court and the administration of justice is enhanced by the availability of a procedure for making complaints about the conduct of Court members in the performance of their functions. The procedure for making complaints differs according to the Court member concerned.

Judges of the Court are judicial officers and complaints about Judges' conduct are made to the Judicial Commission of New South Wales according to the procedure in the *Judicial Officers Act 1989*.

Complaints about Commissioners, who are not judicial officers, are made to the Chief Judge of the Court. The Court has published a policy on making, examining and dealing with complaints against Commissioners. Complaints that are upheld can result in action being taken by the Chief Judge (such as counselling or the making of administrative arrangements designed to avoid repetition of the problem) or referral to the Attorney-General for consideration of removal of the Commissioner from office.

The Court advises all complainants and the Commissioner concerned of the outcome of the examination of the complaint. Starting with the 2009 Annual Review, the Court also reports on its handling of complaints and patterns in the nature and scope of complaints.

An inquiry to the Chief Judge by parties to proceedings or their legal representatives, pursuant to the Court's Policy on Delays in Reserved Judgments, as to the expected date for delivery of reserved judgment in proceedings is not a complaint about the conduct of the Court member concerned. Similarly, an inquiry as to the expected date of publication of the written reasons for judgment given *ex tempore* at the conclusion of a hearing is not a complaint about the conduct of the Court member concerned. Inquiries pursuant to the Court's Policy on Delays in Reserved Judgments are discussed earlier in this chapter.

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## Informal enquiries

The Court also received enquiries about or preliminary to making a formal complaint in accordance with the Court's policy on complaints. In 2012, the Court received two inquiries. The first concerned an allegation of apprehended bias by a commissioner based on a previous decision of the Commissioner in a different case to approve the development in the same locality. The inquirer was advised of the process under the Court's policy for making a complaint. The inquirer did not proceed to make a formal complaint.

The second inquiry concerned the threatened harm to endangered fauna by the carrying out of development in accordance with development consent granted by a commissioner. The inquirer sought advice as to the avenues open to the Court to prevent such harm.

## Complaints received and finalised

In 2012, the Court received two complaints about the conduct of Commissioners or Registrars exercising the functions of the Court. Table 5.15 gives particulars about the complaints made and dealt with in 2012 and the outcomes.

**Table 5.15 Complaint particulars**

Complaints pending as at 31 December 2012	0
Complaints made during 2012	2
<b>Total number of complaints</b>	<b>2</b>
Complaints examined but dismissed	2
Complaints not dismissed but dealt with by the Chief Judge	0
Complaints referred by Chief Judge to Complaint Committee	0

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Complaint withdrawn	0
Total number of complaints finalised	2
Complaints pending as at 31 December 2012	0

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As can be seen from Table 5.15 the number of complaints is low. The vast majority of complaints are made after, and in relation to, the hearing and disposal of a matter by a Commissioner. In 2012, Commissioners exercised the functions of undertaking conciliations, on-site hearings or court hearings in 672 matters in Classes 1, 2, 3 and 8. Complaints, therefore, occurred in only 0.2% of matters dealt with by Commissioners. This small proportion of complaints to matters dealt with by Commissioners is a pleasing indication of the high standard of conduct of Commissioners and the community's preparedness to accept decisions if they are made in accordance with the due process of the law.

The Chief Judge examines each complaint in accordance with the Court's policy. If the examination shows no misconduct, the Chief Judge dismisses the complaint and explains in writing to the complainant why the complaint was dismissed. Table 5.16 shows the criteria used for dismissing complaints in 2012. More than one criterion may be used for each complaint. The table shows that four finalised complaints were dismissed.

**Table 5.16 Criteria for dismissing complaints**

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No misconduct was established	2
The complaint related to a judicial or other function that is or was subject to adequate appeal or review rights	2

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## Patterns in complaints

The Court monitors patterns in the nature and scope of complaints to identify areas that might need to be addressed through its continuing professional development programmes or other appropriate action. For example, information gathered from complaints in previous years has been used to develop education programmes on judgment writing for Commissioners.

## Causes for complaint

Table 5.17 sets out the common causes of complaint and identifies which causes were raised by the complaints made in 2012. The number refers to the number of complaints raising that cause of complaint. Many complaints raise multiple causes and these are captured by this approach. It is to be emphasised that these are the categories of allegations made in complaints, whether or not they were upheld.

**Table 5.17 Common causes for complaint**

	2012
Bias, collusion or conflict of interest	0
Delay	0
Dissatisfaction with outcome or wrong decision	1
Failure of Court to enforce judgment or orders	1
Failure to give fair hearing	0
Impairment	0
Inadequate reasons for judgment	1
Inappropriate behaviour or comments or discourtesy	1
Incompetence	0

## Substitution for appeals or review

Many of the complaints made amount, in essence, to a complaint that a Commissioner has made the wrong decision. These complaints are often made in apparent substitution of an appeal against the decision of the Commissioner or Registrar. They are usually made when a party to litigation is aggrieved by an unfavourable decision but for one reason or another (including financial reasons) does not wish to appeal. Instead, a personal complaint is made against the decision-maker, either directly challenging the outcome or indirectly doing so by alleging that the outcome could only have resulted by the fault of the decision-maker. Such complaints are dealt with on their merits. However, a complaint about a Commissioner is not a substitute for an appeal and the Chief Judge cannot correct allegedly erroneous decisions.

In 2012, one of the complaints was that the Commissioners erred on a question of law in applying the wrong version of the statute and misconstruing the statute. The existence of the right of appeal under s 56A of the Court Act was a satisfactory means to redress these complaints.

The second complaint lodged in 2012 concerned the Commissioner incorrectly naming in the published judgment an expert witness who gave evidence in the case. The witness' name was subsequently changed under the slip rule. The existence and exercise of the power to correct an accidental error was a satisfactory means to redress the complaint.

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***Misunderstanding as to enforcement role of the Court***

A common misunderstanding is that the Court has a police role to investigate and enforce on its own initiative compliance with judgments and orders the Court has made. The Court, of course, has no such role. It is a matter for parties in whose favour judgment and orders are made, or government authorities with enforcement powers, to move the Court for orders enforcing any judgment and orders. The Court only then will determine the appropriate enforcement orders.

One complaint alleged that the neighbour's landscaping was not in accordance with the landscaping plans approved under the development consent granted by a local council and that the neighbour was in contempt of court. This was not a complaint about the Commissioners' conduct in the proceedings.

***Inappropriate conduct or discourtesy***

One of the complaints alleged that the Commissioners abruptly concluded the proceedings. The complainant misunderstood the Court process. At the conclusion of the hearing, the presiding Commissioner delivered orally the judgment of both commissioners. After delivering the judgment, the Commissioners departed the site (the proceedings involved an on-site hearing). This was appropriate conduct.

## 6 Education and Community Involvement

- Continuing professional development
  - Continuing professional development policy
  - Annual Court Conference 2012
  - Twilight seminar series
  - National Mediator Accreditation
  - Other educational activities
- Performance indicators and programme evaluation
- Publications
- Education and participation in the community
- Individual Judges' and Commissioners' activities



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## Continuing professional development

### Continuing professional development policy

The Court adopted in October 2008 a Continuing Professional Development Policy for the Court. The purpose of continuing professional development is to enhance professional expertise, facilitate development of professional knowledge and skills, and promote the pursuit of juristic excellence. The policy sets a standard for each Judge and Commissioner of the Court of five days (or 30 hours) each calendar year of professional development activities relating to their professional duties.

To assist in meeting the standard, the Court and the Judicial Commission of New South Wales provide an annual conference of two days (12 hours) and a twilight seminar series providing at least 12 hours (two days) of professional development activities a year.

### Annual Court Conference 2012

The Annual Court Conference for 2012 was held on Thursday 17 May and Friday 18 May 2012. Six Judges, one Acting Judge, eight Commissioners, 11 Acting Commissioners and the Acting Registrar attended the conference. The conference was organised in partnership with the Judicial Commission of New South Wales. The two day conference programme included sessions on:

- Update on Jurisdiction and Practice and Procedure
- Easements and Covenants: A Grand Tour in Words and Pictures

- Expert Conferences and Reports and Concurrent Evidence in the Supreme Court
- Setting the use-by date for Jurisdictional Error
- Criminal Law update
- Mediation and Conciliation: Skills and Process Review and Update
- The origins of the NSW Mining Warden's Court
- Environmental Law in the High Court
- Exclusionary Rules of Evidence
- Environmental Law in the Local Court
- Rationalising State and Commonwealth Environmental Law
- Catastrophic Climate Risks and Disaster Law
- Environmental Law and the Rule of Law



*L-R: Justice Peter Biscoe, The Hon. John Hamilton QC and Commissioner Susan Dixon*

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## Twilight seminar series

The Court commenced its twilight seminar series in November 2008. The seminars are held after court hours from 4.30pm to 6.00pm. The Court held four twilight seminars in 2012, two cross-jurisdictional seminars, two field trips and one skills workshop on communication in the courtroom:

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15 February	<i>Mutual Observation, 360 degree feedback and communication</i> , Judicial Commission of New South Wales
18 April	Field Trip, <i>Green Building</i> , 1 Bligh Street, presented by Mr Tony Gulliver, Head of Development, Dexus Property Group and Mr Bruce Jones, Project Manager, Grocon Group
1 May	Cross Jurisdictional seminar: <i>Australian Consumer Law</i> , Mr Russell Miller AM, Chairman of Minter Ellison and Senior Fellow, Melbourne Law School, The University of Melbourne
20 June	<i>The Nuts and Bolts of Criminal Sanctions: Part I</i> , His Honour Judge Stephen Norrish QC, Land and Environment Court
25 July	<i>The Court Suppression and Non-Publication Orders Act 2010, One Year on – Some Legal and Practical Issues</i> , The Hon. Justice Peter Johnson, His Honour Paul Lakatos SC and Her Honour Deputy Chief Magistrate Jane Culver, Law Courts Building
30 July	Cross Jurisdictional seminar: <i>Advanced Judicial Writing</i> , Professor Bryan A Garner, Distinguished Research Professor of Law, SMU Dedman School of Law and President of LawProse Inc, Judicial Commission of New South Wales
22 August	<i>Court Craft Panel</i> , Justice Nicola Pain, Senior Commissioner Tim Moore, Commissioner Graham Brown, Commissioner Susan Dixon and Acting Registrar Leonie Walton, Judicial Commission of New South Wales
12 September	<i>The Nuts and Bolts of Criminal Sanctions: Part II</i> , His Honour Judge Stephen Norrish QC, Judicial Commission of New South Wales
3 October	Field Trip, <i>Ballast Point Park (Walama)</i> , Birchgrove, Dr Wayne Johnson, Archaeologist, Sydney Harbour Foreshore Authority
28 November	<i>Communication in the Courtroom for Judges</i> , Ms Maura Fay, Judicial Commission of New South Wales
29 November	<i>Communication in the Courtroom for Commissioners</i> , Ms Maura Fay, Judicial Commission of New South Wales

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## National Mediator Accreditation

In 2012, all full-time Commissioners were nationally accredited as mediators and attended along with the Acting Registrar a seminar at the Australian Commercial Disputes Centre (“ACDC”) on ‘Beyond Question: Advanced Questioning Techniques and Impasse Breakers for Mediators’.

## Other educational activities

The Judges and Commissioners of the Court updated and developed their skills and knowledge by attending conferences, seminars and workshops. Some of these programmes are tailored specifically to the Court’s needs, while others target the national or international legal and judicial communities. Specific information for each Judge or Commissioner is provided below.

## Performance indicators and programme evaluation

All educational activities conducted by the Court and Judicial Commission of

New South Wales are evaluated both quantitatively and qualitatively to ensure they meet the needs of the Judges, Commissioners and Registrars of the Court.

Quantitatively, the Court’s Continuing Professional Development policy sets a standard of five days (or 30 hours) in each calendar year of professional development activities for each Judge and full-time Commissioner. Collectively, the quantitative target is 450 hours. In 2012, both the collective target as well as the individual standard for each Judge and full time Commissioner was met or exceeded.

Qualitatively, an evaluation form is distributed to each participant of each educational programme to receive feedback on whether the educational objectives were met and to measure the programme’s usefulness, content and delivery. The ratings derived from the evaluation forms assist in measuring the success of the education programmes. Figure 6.1 shows the overall satisfaction with the Court’s annual conference over the past five years with all but one conference exceeding the target of 85%.

**Table 6.1 Participant evaluation of Land and Environment Court Annual Conferences 2008 to 2012**

	Target	2008	2009	2010	2011	2012
Overall satisfactory rating	85%	89%	88%	87%	90%	80%

\*Note: The 2010 annual conference was combined with the Australasian Conference of Planning and Environment Court and Tribunals.

The Court’s twilight seminar series commenced in 2008 but had its first full year of operation in 2009. Figure 6.2 shows the overall satisfaction of the twilight seminar series in the years 2008 to 2012, all of which exceeded the 85% standard.

**Table 6.2 Participant evaluation of Land and Environment Court Twilight seminar series 2009 and 2012**

	Target	2009	2010	2011	2012
Overall satisfactory rating	85%	89%	90%	93%	93%

Note: 2009 was based on 6 seminars, 2010 and 2011 were based on 7 seminars in each year and 2012 was based on 4 seminars, 2 cross-jurisdictional seminars and 2 field trips and one skills workshop on Communication in the courtroom.

The Education Director of the Judicial Commission provides an evaluation report on each educational programme to the Court's Education Committee about the usefulness and relevance of the programme, noting any recommendations for improvements to future programmes based on input from participants and presenters.

## Publications

As part of its education programme, the Court produced two publications.

In August 2010, the Court, in conjunction with the Judicial Commission of New South Wales, produced the *Land and Environment Court of NSW Commissioners' Handbook*. The Handbook provides guidance, especially to Commissioners and Registrars, on the Court and its jurisdiction; the members of the Court and their functions; court practice and procedure; the commencement of proceedings and pleadings; case management; the different processes for resolution of proceedings, including hearings and conciliation conferences; decision-making and judgments; conduct of court members; and resources and remuneration for Commissioners. The Handbook is published online by the Judicial Commission on a closed website for members of the Court.

Beginning in January 2010, the Court publishes quarterly on the Court's website a Judicial Newsletter for the benefit of members of the Court and the wider public to better

enable them to keep up to date with recent legal developments. The Newsletter provides summaries of recent legislation and judicial decisions of the High Court of Australia, NSW Court of Appeal, NSW Court of Criminal Appeal, NSW Supreme Court and Land and Environment Court, as well as of other courts in Australia and overseas, concerning matters of relevance to the Court's jurisdiction. In the electronic version of the Newsletter published on the Court's website under the tab 'Publications & Resources' then Judicial Newsletters, links are included in the text to enable direct access to the legislation, documents and decisions referred to in the text.

## Education and participation in the community

The Court has a high national and international reputation as a leading specialist environment court. There is significant demand for the exchange of knowledge and experience within the national and international legal and judicial communities. Judges and Commissioners of the Court have actively participated in capacity building and information exchange by presenting papers and participating as trainers in a variety of conferences, seminars, workshops, giving lectures at educational institutions and presiding at moot courts.

The Court has also regularly hosted international and national delegations to the Court.

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## Individual Judges' and Commissioners' activities

The Judges' and Commissioners' activities during 2012 are summarised below:

### The Hon. Justice Brian John Preston SC, Chief Judge

#### Conferences and seminars

15 February	Twilight Seminar, Mutual Observation, 360 Degree Feedback and Communication, Judicial Commission of New South Wales
14 March	EPLA twilight seminar, Duty to notify under the <i>Contaminated Land Management Act 1997</i> , Ms Camilla Charlton, Henry Davis York lawyers, representative from EPA NSW, Ms Kirsty Ruddock, EDO NSW (Chair)
22 March	Australian Property Institute and the University of Sydney, Associate Professional Certificate in Expert Evidence for the Land and Environment Court, Presiding Judge over Moot Court
28 March	Twilight seminar, Ngara Yura Program: Indigenous Peoples in International Law, Dr Megan Davis, His Honour Judge Stephen Norrish QC (Chair), Judicial Commission of New South Wales
3 April	The 2012 Maurice Byers Lecture, Dictator or Dialogue? The relationship between the Supreme Court of the United Kingdom and the European Court of Human Rights, The Rt Hon The Lord Phillips of Worth Matravers KG PC, former Lord Chief Justice of England and Wales
18 April	Field trip, Green Building, 1 Bligh Street, presented by Mr Tony Gulliver, Head of Development, Dexus Property Group and Mr Bruce Jones, Project Manager, Grocon Group
1 May	Cross Jurisdictional seminar: Australian Consumer Law, Mr Russell Miller AM, Chairman of Minter Ellison and Senior Fellow, Melbourne Law School, The University of Melbourne
12 June	Law Society of NSW panel discussion, Fitting the Forum to the Fuss – ADR: More than Mediation? Examining the ADR Toolkit, Federal Court, Sydney
20 June	The Nuts and Bolts of Criminal Sanctions: Part I, His Honour Judge Stephen Norrish QC, Land and Environment Court
18 July	Women Lawyers Association of NSW event, Celebrating Women in the Judiciary, Union University and Schools Club, Sydney
19 July	Leading Change Workshop, Ms Tiffany Jones, History House, Sydney
26 July	Macquarie University Colloquium Lecture Series, What the Australian community thinks about climate change?, Professor Tim Flannery, Macquarie University

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30 July	Cross Jurisdictional seminar: Advanced Judicial Writing, Professor Bryan A Garner, Distinguished Research Professor of Law, SMU Dedman School of Law and President of LawProse Inc, Judicial Commission of New South Wales
31 July	NSW Bar Association CPD seminar, Evidence in Administrative and Constitution Law Cases, Mr Neil Williams SC with Mr Alan Shearer and The Hon. Justice Alan Robertson (Chair)
7 – 9 September	Supreme Court Annual Conference, Leura
31 October	2012 Forbes Lecture, A man for all seasons: the Life and Times of Chief Justice Sir William Portus Cullen, Mr Tony Cunneen, NSW Bar Association
9 November	Diamond Jubilee Reception hosted by Her Excellency Professor Marie Bashir AC CVO, Governor of NSW in the presence of His Royal Highness The Prince of Wales and Her Royal Highness The Duchess of Cornwall, Sydney Opera House
15 November	Macquarie Law School 40 <sup>th</sup> Anniversary Event, keynote address by The Hon. T F Bathurst QC, Chief Justice of NSW, Macquarie University
28 November	Judicial Commission one-day course, Communication in the Courtroom, conducted by The Maura Fay Group, Judicial Commission of New South Wales

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### Speaking engagements

18 February	Presiding judge over Mock Trial, Sustainable Living Festival, organised by EDO Victoria, Melbourne
23 February	<i>The enduring importance of the rule of law in times of change</i> , paper delivered to The Australia and New Zealand School of Government (ANZSOG), Executive Master in Public Administration course, Rule of Law session, UNSW, Sydney
16 March	<i>Planet Panel Discussion</i> , Progressive Law Network Legal (r)Evolution Conference, Monash University, Melbourne
10 April	<i>Environment, Economics and the Court: Experience and lessons from Australia</i> , Economy and Environment Program for Southeast Asia, Economic Values, Compensation, and the Environment Workshop, Hua Hin, Thailand
30 April	<i>Adapting to the impacts of climate change: the limits and opportunities of law</i> , Thought Leadership Seminar, University of Technology, Sydney
17 May	<i>Natural justice by the courts: some recent cases</i> , Land and Environment Court Annual Conference, Sydney
7 June	<i>Adapting to the impacts of climate change: the limits and opportunities of law</i> , The Wentworth Group of Concerned Scientists, Sydney

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2 August	<i>Language, learning and life: linked losses</i> , Indigenous Knowledge and Biodiversity in India and Australia Forum, University of Technology Sydney
30 August	<i>Injunctions in planning and environmental cases</i> , Australasian Conference of Planning and Environment Courts and Tribunals (ACPECT) 2012, Perth
17 September	Presiding judge over Moot Court, Environmental Litigation students, Macquarie Law School, Macquarie University
2 October	<i>Biodiversity in the Courts</i> , International Bar Association (IBA) Annual Conference, Dublin, Ireland
21 November	<i>Wind-up Question and Answer Session</i> , Community Awareness of Judiciary Program 2012, Open Forum panel member, Judicial Commission of NSW, Sydney

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### **Publications**

B J Preston, "Jurisprudence on ecologically sustainable development: Paul Stein's contribution" (2012) 29 *Environmental and Planning Law Journal* 3

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B J Preston, "The enduring importance of the rule of law in times of change" (2012) 86 *Australian Law Journal* 175

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B J Preston, "Injunctions in planning and environmental cases" (2012) 36 *Australian Bar Review* 84

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B J Preston, "Operating an environmental court: the experience of the Land and Environment Court of New South Wales" (2012) *The Environmental Rule of Law* 110 (in Chinese)

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### **Membership of legal, cultural or benevolent organisations**

Chair, Land and Environment Court Rules Committee

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Member, Uniform Rules Committee, Supreme Court of NSW

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Official member, Judicial Commission of New South Wales

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Member, Adhoc Advisory Committee of Judges, United Nations Environment Programme (UNEP) Judges Programme

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Chair, Environmental Law Standing Committee, Law Association for Asia and the Pacific (LAWASIA)

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Member, Environmental Law Commission, The International Union for Conservation of Nature (IUCN)

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Member, Australian Centre for Climate and Environmental Law (ACCEL) (Sydney)

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Title Editor, Title 14 – Environment and Natural Resources, *The Laws of Australia*

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General Editor, Local Government Planning and Environment NSW Service

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Member, Editorial Advisory Board, *Asia Pacific Journal of Environmental Law*

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Member, Advisory Board, TREENET

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Adjunct Professor, Sydney Law School, University of Sydney

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Guest lecturer, ANU College of Law, Australian National University

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### **Delegations and international assistance**

- 9 February Meeting with Mr William Amos, Director, Ecojustice Environmental Law Clinic, University of Ottawa to discuss the operation of the Land and Environment Court
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- 27 April Meeting with Associate Professor Stuart Pearson, Deputy Head of School (Administration) School of Physical, Environmental and Mathematical Sciences, UNSW (ADFA) Canberra, Dr Mei Hong, Associate Professor in Law & Politics School, Ocean University of China and Mr Shengnan Chen, PhD student, to discuss the Australian legal system in relation to environmental and coastal protection
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- 13 September Presentation to visiting Judicial Delegation and Administrative Case Officials from The Supreme Administrative Court of Thailand on the Land and Environment Court's structure and injunctions in NSW
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- 5 November Presentation to visiting Judicial Delegation from the High People's Court of Yunnan Province, China and legal academics from various Chinese universities on judicial specialisation in environmental law. The delegation was assisted by Emeritus Professor Ben Boer, University of Sydney and Distinguished Professor, Research Institute of Environmental Law, Wuhan University, China



*Chinese Judicial Delegation visiting the Court, organised by Emeritus Professor Ben Boer of the University of Sydney, to discuss Green Courts and Public Interest Litigation*



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## The Hon. Justice Terence William Sheahan AO

### Conferences and seminars

8 February	The Sydney Institute seminar, River Murray: Food Bowl and Estuary, Dr Jennifer Marohasy, Central Queensland University
15 February	Twilight Seminar, Mutual Observation, 360 Degree Feedback and Communication, Judicial Commission of New South Wales
10 March	Judicial Commission Ngara Yura Programme, field trip to Redfern Aboriginal Sites and Community
14 March	EPLA twilight seminar, Duty to notify under the <i>Contaminated Land Management Act 1997</i> , Ms Camilla Charlton, Henry Davis York lawyers, representative from EPA NSW, Ms Kirsty Ruddock, EDO NSW (Chair)
27 March	Edmund Rice Business Ethics Breakfast Forum, Ethical Leadership and Modern Workplace Legislation, Mr Ged Kearney, ACTU President
28 March	Twilight seminar, Ngara Yura Program: Indigenous Peoples in International Law, Dr Megan Davis, His Honour Judge Stephen Norrish QC (Chair), Judicial Commission of New South Wales
3 April	The 2012 Maurice Byers Lecture, Dictator or Dialogue? The relationship between the Supreme Court of the United Kingdom and the European Court of Human Rights, The Rt Hon The Lord Phillips of Worth Matravers KG PC, former Lord Chief Justice of England and Wales
18 April	Field trip, Green Building, 1 Bligh Street, presented by Mr Tony Gulliver, Head of Development, Dexis Property Group and Mr Bruce Jones, Project Manager, Grocon Group
1 May	Cross Jurisdictional seminar: Australian Consumer Law, Mr Russell Miller AM, Chairman of Minter Ellison and Senior Fellow, Melbourne Law School, The University of Melbourne
3 May	Anglo-Australasian Law Society, The Constitution v The States: Federalism a century after Federation, Mr Michael Sexton, Solicitor-General of NSW
3 May	Council of Australasian Tribunals (NSW Chapter), The Harry Whitmore Lecture, The Duty to Give Reasons Revisited, The Hon. Michael Kirby AC CMG
16 May	City of Sydney Law Society Law Week Breakfast, Indigenous Justice, The Hon. Robert McClelland MP, former Attorney-General of the Commonwealth
30 May	NSW Bar Association CPD seminar, Jurisdictional Error, Mr Jeremy Kirk SC
5 June	Carroll & O’Dea Speakers Series, Refugee Law and Policy, Mr John Menadue AO
20 June	The Nuts and Bolts of Criminal Sanctions: Part I, His Honour Judge Stephen Norrish QC, Land and Environment Court
3 July	The Sydney Institute seminar, Living with the Carbon Tax, Mr Terry McCrann and Ms Miriam Lyons

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18 July	The Michael O’Dea Oration, Advocacy as the Soul of the Law, The Hon. Tom Hughes AO QC, Notre Dame University, Sydney
24 July	The Sydney Institute seminar, Climate Change: What we know and what we Don’t, Professor Murry Salby, Climate Chair, Macquarie University
25 July	Twilight seminar for Judges of the Supreme and Land and Environment Courts on Suppression and Non Publication Orders: Legal and Practical Issues, by Justice Johnson, Judge Lakatos, and Deputy Chief Magistrate Culver, Judicial Commission of New South Wales
30 July	Cross Jurisdictional seminar: Advanced Judicial Writing, Professor Bryan A Garner, Distinguished Research Professor of Law, SMU Dedman School of Law and President of LawProse Inc, Judicial Commission of New South Wales
31 July	Carroll and O’Dea Speakers Series, Policies Promoting Rehabilitation & Reduction in Reoffending, The Hon. Greg Smith SC MP, Attorney General of NSW
31 July	NSW Bar Association CPD seminar, Evidence in Administrative and Constitution Law Cases, Mr Neil Williams SC with Mr Alan Shearer and The Hon. Justice Alan Robertson (Chair)
1 August	Anglo-Australasian Law Society, A Breakfast Q&A Session, The Rt Hon The Lord Kerr, Justice of the UK Supreme Court
13 August	Australian Association of Constitutional Law seminar, Williams v the Commonwealth and the ‘Common Assumption’ regarding Executive Power, Professor Geoffrey Liddell AM, Sydney
23 August	NSW Bar Association CPD Seminar, Australian Emissions Trading Law, The Hon. Murray Wilcox AO QC and Mr Michael Rennie
11 September	Anglo-Australasian Law Society, Sex, Celebrities and Super-injunctions, The Rt Hon. The Lord Walker of Gestingthorpe, Justice of UK Supreme Court
12 September	Twilight seminar, The Nuts and Bolts of Criminal Sanctions: Part II, His Honour Judge Stephen Norrish QC, Judicial Commission of New South Wales
27 September	The Sydney Institute seminar, Australia in Asia, The Hon. Dr Craig Emerson MP, Minister for Trade and Competitiveness
3 October	Twilight seminar, field trip to Ballast Point Park (Walama), Dr Wayne Johnson, Archaeologist, Sydney Harbour Foreshore Authority, Ballast Point Park, Ballast Point Road, Birchgrove
5-7 October	Judicial Conference of Australia Annual Colloquium, Fremantle, WA
13 October	Judicial Commission Ngara Yura Programme Field Trip, and Aboriginal Cultural Cruise, aboard the “Tribal Warrior”

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17 October	Anglo-Australasian Law Society, What role for the Australian Human Rights Commission?, Professor Gillian Triggs, President of Australian Human Rights Commission
30 October	Australian Academy of Law Inaugural Patron's Address, Judges and the Academy – Dialogue of the Hard of Hearing, The Hon. Robert French AC, Chief Justice of Australia
31 October	University of Notre Dame, Faculty of Law Occasional Address, Faith in a Legal Professional Context, The Hon. Barry O'Keefe AM QC, Sydney
14 November	NSW Bar Association CPD Seminar, Concurrent Evidence: the view from inside the hot tub, Mr Nigel Carson, Mr John Temple-Cole and Mr Andrew Ross, KordaMentha Forensic partners
20 November	Australian Institute of Administrative Law Seminar, Project Blue Sky: Invalidity and the evolution of consequences for unlawful administrative action, The Hon. Justice Nye Perram and The Hon. Justice John Griffiths, Federal Court of Australia, Sydney
28 November	Judicial Commission one-day course, Communication in the Courtroom, conducted by The Maura Fay Group, Judicial Commission of New South Wales
30 November	Anglo-Australasian Law Society seminar, An Update on the UK-Australia Relationship, His Eminence Mr Paul Madden, British High Commissioner
11 December	Anglo-Australasian Law Society seminar, Comparative Constitutional Law: Final Courts Round-Up 2012, by various Australian and visiting international academics, Australian Association of Constitutional Law, Sydney

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### **Speaking engagements**

29 March	<i>Introduction and welcome</i> , Law Council of Australia and Environment and Planning Law Association (NSW) Inc (EPLA), the inaugural Mahla Pearlman Oration, Emeritus Professor Ben Boer, Faculty of Law, University of Sydney, Dixson Room, State Library of NSW
2 July	<i>Experiments in Dispute Resolution</i> , address to Narrabeen Lakes Rotary Club, Narrabeen
10 August	<i>The Role of Environmental Law in Developing Policies for Sustainable People, Places and Economies</i> , presentation to Aus-Aid Pacific Islands Leadership Training Programme, University of Sydney
4 September	<i>Decision Making</i> , guest lecture to Planning Law Students, University of Sydney School of Architecture
5-7 October	<i>Commentary on a paper, 'Judicial Accountability'</i> , written by Chief Justice Warren, Supreme Court of Victoria on, Judicial Conference of Australia Annual Colloquium, Fremantle, WA

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26 October	<i>The Land and Environment Court: a Judge's perspective</i> , guest lecture to Planning Law Students, University of Technology, Sydney
14 & 21 November	Hosted a delegation visiting the Court, participants in the Judicial Commission's "Community Awareness of the Judiciary" programme

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### **Membership of legal, cultural or benevolent organisations**

Member, Land and Environment Court Rules Committee

Court nominee on Governing Council of the Judicial Conference of Australia

Member, Council of Southern Cross University

Board member, UNICEF Australia National Committee

Member, Australian Committee of the Oxford Health Alliance

Member, Management Committee, Edmund Rice Business Ethics Initiative

Associate and Mentor, Graduate School of Government, University of Sydney

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## **The Hon. Justice Nicola Hope Margaret Pain**

### **Conferences and seminars**

15 February	Twilight seminar, Mutual Observation, 360 Degree Feedback and Communication, Judicial Commission of New South Wales
28 March	Twilight seminar, Ngara Yura Program: Indigenous Peoples in International Law, Dr Megan Davis, His Honour Judge Stephen Norrish QC (Chair), Judicial Commission of New South Wales
18 April	Field trip, Green Building, 1 Bligh Street, presented by Mr Tony Gulliver, Head of Development, Dexu Property Group and Mr Bruce Jones, Project Manager, Grocon Group
1 May	Cross Jurisdictional seminar: Australian Consumer Law, Mr Russell Miller AM, Chairman of Minter Ellison and Senior Fellow, Melbourne Law School, The University of Melbourne
30 May	NSW Bar Association CPD seminar, Jurisdictional Error, Mr Jeremy Kirk SC
7 June	NELA World Oceans Day Forum, NSW Law Society
20 June	The Nuts and Bolts of Criminal Sanctions: Part I, His Honour Judge Stephen Norrish QC, Land and Environment Court
25 July	Twilight seminar for Judges of the Supreme and Land and Environment Courts on Suppression and Non Publication Orders: Legal and Practical Issues, by Justice Johnson, Judge Lakatos, and Deputy Chief Magistrate Culver, Judicial Commission of New South Wales
22 August	Court Craft Panel, Justice Nicola Pain, Senior Commissioner Tim Moore, Commissioner Graham Brown, Commissioner Susan Dixon and Acting Registrar Leonie Walton, Judicial Commission of New South Wales

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12 September	Twilight seminar, The Nuts and Bolts of Criminal Sanctions: Part II, His Honour Judge Stephen Norrish QC, Judicial Commission of New South Wales
3 October	Twilight seminar, field trip to Ballast Point Park (Walama), Dr Wayne Johnson, Archaeologist, Sydney Harbour Foreshore Authority, Ballast Point Park, Ballast Point Road, Birchgrove
20 November	Australian Institute of Administrative Law Seminar, Project Blue Sky: Invalidity and the evolution of consequences for unlawful administrative action, The Hon. Justice Nye Perram and The Hon. Justice John Griffiths, Federal Court of Australia, Sydney
28 November	Judicial Commission one-day course, Communication in the Courtroom, conducted by The Maura Fay Group, Judicial Commission of New South Wales

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### **Speaking engagements**

8 March	<i>A Judicial Perspective on Contamination and the Law</i> , EcoForum – Land and Groundwater Remediation, Australian Technology Park, Sydney
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### **Membership of legal, cultural or benevolent organisations**

Chair, Land and Environment Court Library Committee

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Member, Land and Environment Court Education Committee

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Advisory Board member, Australian Centre for Climate and Environmental Law (ACCEL), University of Sydney

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Member, International Union for Conservation of Nature (IUCN), Commission on Environmental Law

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## **The Hon. Justice Peter Meldrum Biscoe**

### **Conferences and seminars**

15 February	Twilight seminar, Mutual Observation, 360 Degree Feedback and Communication, Judicial Commission of New South Wales
20 June	The Nuts and Bolts of Criminal Sanctions: Part I, His Honour Judge Stephen Norrish QC, Land and Environment Court
31 July	NSW Bar Association CPD seminar, Evidence in Administrative and Constitution Law Cases, Mr Neil Williams SC with Mr Alan Shearer and The Hon. Justice Alan Robertson (Chair)
12 September	Twilight seminar, The Nuts and Bolts of Criminal Sanctions: Part II, His Honour Judge Stephen Norrish QC, Judicial Commission of New South Wales

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## Membership of legal, cultural or benevolent organisations

Chair, Land and Environment Court Education Committee

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Member, Land and Environment Court Rules Committee

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Member, Judicial Commission of New South Wales Standing Advisory Committee on Judicial Education

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## The Hon. Justice Rachel Ann Pepper

### Conferences and seminars

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17 February	Gilbert + Tobin 2012 Constitutional Law Conference, Sydney
10 March	Judicial Commission Ngara Yura Programme, field trip to Redfern Aboriginal Sites and Community
14 March	EPLA twilight seminar, Duty to notify under the <i>Contaminated Land Management Act 1997</i> , Ms Camilla Charlton, Henry Davis York lawyers, representative from EPA NSW, Ms Kirsty Ruddock, EDO NSW (Chair)
29 March	Law Council of Australia and Environment and Planning Law Association (NSW) Inc (EPLA), the inaugural Mahla Pearlman Oration, Emeritus Professor Ben Boer, Faculty of Law, University of Sydney, Dixson Room, State Library of NSW
30 March	The Reform of the NSW Tribunal System, Australian Institute of Administrative Law, Sydney
17 April	Young Lawyers Environmental and Planning Law Committee, The Law Society of New South Wales, Sydney
18 April	Field trip, Green Building, 1 Bligh Street, presented by Mr Tony Gulliver, Head of Development, Dexis Property Group and Mr Bruce Jones, Project Manager, Grocon Group
1 May	Cross Jurisdictional seminar: Australian Consumer Law, Mr Russell Miller AM, Chairman of Minter Ellison and Senior Fellow, Melbourne Law School, The University of Melbourne
30 May	NSW Bar Association CPD Seminar, Jurisdictional Error, Mr Jeremy Kirk SC
16-19 June	World Congress on Justice Governance and Law for Environmental Sustainability, Rio de Janeiro, Brazil
20-21 July	Constitutional Law Recent Developments Conference, Melbourne Law School, Melbourne
25 July	Twilight seminar for Judges of the Supreme and Land and Environment Courts on Suppression and Non Publication Orders: Legal and Practical Issues, by Justice Johnson, Judge Lakatos, and Deputy Chief Magistrate Culver, Judicial Commission of New South Wales

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30 July	Cross Jurisdictional seminar: Advanced Judicial Writing, Professor Bryan A Garner, Distinguished Research Professor of Law, SMU Dedman School of Law and President of LawProse Inc, Judicial Commission of New South Wales
22 August	Australian Emissions Trading Law, The Hon. Murray Wilcox AO QC and Mr Michael Rennie, NSW Bar Association, Sydney
3 October	Twilight seminar, field trip to Ballast Point Park (Walama), Dr Wayne Johnson, Archaeologist, Sydney Harbour Foreshore Authority, Ballast Point Park, Ballast Point Road, Birchgrove
13 October	Judicial Commission Ngara Yura Programme Field Trip, and Aboriginal Cultural Cruise, aboard the "Tribal Warrior"
28 November	Judicial Commission one-day course, Communication in the Courtroom, conducted by The Maura Fay Group, Judicial Commission of New South Wales
11 December	Comparative Constitutional Law – Final Courts Round-Up 2012, Australian Association of Constitutional Law, Sydney

### **Speaking engagements**

21 March	<i>Expert Evidence in the Land and Environment Court</i> , Australian Property Institute, Sydney
30 March	<i>The Reform of the NSW Tribunal System</i> , Chair Tribunal Reform and the Industrial Relations Commission, Australian Institute of Administrative Law, Sydney
17 April	<i>Q &amp; A with Environment and Planning Law Committee</i> , NSW Young Lawyers, The Law Society of New South Wales, Sydney
25 May	<i>Presentation on being a Judge</i> , to students NSW Bar Association Open Day for Female Law Students, Sydney
7 June	<i>Introduction</i> , National Oceans Day Seminar, NSW Young Lawyers Environment and Planning Law Committee, Sydney
30 August	<i>Recent Developments in Sentencing for Environmental Offences</i> , Australasian Conference of Planning and Environment Courts and Tribunals, Perth

### **Publications**

Co-Consulting Editor, *Australian Environmental Review*, LexisNexis

Contributing Author, "Practice and Procedure High Court and Federal Court of Australia", LexisNexis

"The Byers Lectures", with The Hon. Justice Perram (eds), The Federation Press, 2012

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## Membership of legal, cultural or benevolent organisations

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Committee Member, Australian Institute of Administrative Law (NSW Chapter)

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Member, Australian Association of Constitutional Law

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Member, Australian Commercial Law Association

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Member, Australian Institute of Judicial Administration

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Member, International Association of Women Judges

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Member, IUCN Commission on Environmental Law

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Member, Judicial Conference of Australia Inc

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Member, National Environmental Law Association

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Member, Ngara Yura Committee, Judicial Commission of New South Wales

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2012 Patron, Young Lawyers Environmental and Planning Law Committee, The Law Society of New South Wales

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## The Hon. Justice Malcolm Graeme Craig

### Conferences and seminars

15 February Twilight seminar, Mutual Observation, 360 Degree Feedback and Communication, Judicial Commission of New South Wales

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14 March EPLA twilight seminar, Duty to notify under the *Contaminated Land Management Act 1997*, Ms Camilla Charlton, Henry Davis York lawyers, representative from EPA NSW, Ms Kirsty Ruddock, EDO NSW (Chair)

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28 March Twilight Seminar, Ngara Yura Program: Indigenous Peoples in International Law, Dr Megan Davis, His Honour Judge Stephen Norrish QC (Chair), Judicial Commission of New South Wales

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29 March Law Council of Australia and Environment and Planning Law Association (NSW) Inc (EPLA), the inaugural Mahla Pearlman Oration, Emeritus Professor Ben Boer, Faculty of Law, University of Sydney, Dixson Room, State Library of NSW

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30 May NSW Bar Association CPD seminar, Jurisdictional Error, Mr Jeremy Kirk SC

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20 June Twilight seminar, Nuts and Bolts of Criminal Sanctions, Part I, His Honour Judge Stephen Norrish QC, Land and Environment Court

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30 July Cross Jurisdictional seminar: Advanced Judicial Writing, Professor Bryan A Garner, Distinguished Research Professor of Law, SMU Dedman School of Law and President of LawProse Inc, Judicial Commission of New South Wales

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12 September Twilight seminar, The Nuts and Bolts of Criminal Sanctions: Part II, His Honour Judge Stephen Norrish QC, Judicial Commission of New South Wales

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3 October	Twilight seminar, field trip to Ballast Point Park (Walama), Dr Wayne Johnson, Archaeologist, Sydney Harbour Foreshore Authority, Ballast Point Park, Ballast Point Road, Birchgrove
28 November	Judicial Commission one-day course, Communication in the Courtroom, conducted by The Maura Fay Group, Judicial Commission of New South Wales

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### **Speaking engagements**

30 August	<i>Expert Evidence In the Land and Environment Court of NSW: A Synopsis</i> , Australasian Conference of Planning and Environment Courts and Tribunals (ACPECT) 2012 Conference, Perth and Busselton/Margaret River, Western Australia
15 October	<i>Drafting Just Terms Compensation Reports Workshop</i> , The Australian Property Institute, Sydney. Paper written by Justice Peter Biscoe, delivered by Justice Malcolm Craig
19 October	<i>Practice and Procedure</i> , Environmental and Planning Law Association Annual Conference, Shoal Bay

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### **Publications**

M G Craig, “*Expert Evidence in the Land and Environment Court of New South Wales: a synopsis*” (2012) 27(8) *Australian Environment Review* 269

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### **Membership of legal, cultural or benevolent organisations**

Member, Australian Institute of Judicial Administration

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Member, Judicial Conference of Australia Inc

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Member, Caselaw Governance Committee

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## **Mr Tim Moore, Senior Commissioner**

### **Conferences and seminars**

22 August	Court Craft Panel, Justice Nicola Pain, Senior Commissioner Tim Moore, Commissioner Graham Brown, Commission Susan Dixon and Acting Registrar Leonie Walton, Judicial Commission of New South Wales
3 October	Twilight seminar, field trip to Ballast Point Park (Walama), Dr Wayne Johnson, Archaeologist, Sydney Harbour Foreshore Authority, Ballast Point Park, Ballast Point Road, Birchgrove
29 November	Judicial Commission one-day course, Communication in the Courtroom, conducted by The Maura Fay Group, Sydney

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## Publications

July 2012      *The Way Ahead for Planning in NSW – Recommendations of the NSW Planning System Review* – Jointly authored with the Hon. Ron Dyer (2 volumes)

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## Membership of legal, cultural or benevolent organisations

Member, Bar Association of NSW

Life Member, Industrial Relations Society of New South Wales

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## Mr Robert Hussey, Commissioner

### Conferences and seminars

26 March      Beyond Question: Advanced Questioning Techniques and Impasse Breakers for Mediators, Australian Commercial Disputes Centre, Sydney

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18 April      Field trip, Green Building, 1 Bligh Street, presented by Mr Tony Gulliver, Head of Development, Dexus Property Group and Mr Bruce Jones, Project Manager, Grocon Group

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6 June        Twilight seminar, The Importance of the Public Interest in Class One proceedings in the Land and Environment Court, Environment and Planning Law Association, Sydney

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15 June      Twilight seminar, Assessing Competing Expert Evidence, Justice Peter McClellan, Judicial Commission of New South Wales

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30 July      Cross Jurisdictional seminar: Advanced Judicial Writing, Professor Bryan A Garner, Distinguished Research Professor of Law, SMU Dedman School of Law and President of LawProse Inc, Judicial Commission of New South Wales

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22 August    Court Craft Panel, Justice Nicola Pain, Senior Commissioner Tim Moore, Commissioner Graham Brown, Commission Susan Dixon and Acting Registrar Leonie Walton, Judicial Commission of New South Wales

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3 October    Twilight seminar, field trip to Ballast Point Park (Walama), Dr Wayne Johnson, Archaeologist, Sydney Harbour Foreshore Authority, Ballast Point Park, Ballast Point Road, Birchgrove

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29 November    Judicial Commission one-day course, Communication in the Courtroom, conducted by The Maura Fay Group, Sydney

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## Mr Graham Brown, Commissioner

### Conferences and seminars

15 February	Twilight Seminar, Mutual Observation, 360 Degree Feedback and Communication, Judicial Commission of New South Wales
26 March	Beyond Question: Advanced Questioning Techniques and Impasse Breakers for Mediators, Australian Commercial Disputes Centre, Sydney
28 March	Twilight Seminar, Ngara Yura Program: Indigenous Peoples in International Law, Dr Megan Davis, His Honour Judge Stephen Norrish QC (Chair), Judicial Commission of New South Wales
18 April	Field trip, Green Building, 1 Bligh Street, presented by Mr Tony Gulliver, Head of Development, Dexus Property Group and Mr Bruce Jones, Project Manager, Grocon Group
6 June	Twilight seminar, The Importance of the Public Interest in Class One proceedings in the Land and Environment Court, Environment and Planning Law Association, Sydney
15 June	Twilight seminar, Assessing Competing Expert Evidence, Justice Peter McClellan, Judicial Commission of New South Wales
30 July	Cross Jurisdictional seminar: Advanced Judicial Writing, Professor Bryan A Garner, Distinguished Research Professor of Law, SMU Dedman School of Law and President of LawProse Inc, Judicial Commission of New South Wales
22 August	Court Craft Panel, Justice Nicola Pain, Senior Commissioner Tim Moore, Commissioner Graham Brown, Commissioner Susan Dixon and Acting Registrar Leonie Walton, Judicial Commission of New South Wales
3 October	Twilight seminar, field trip to Ballast Point Park (Walama), Dr Wayne Johnson, Archaeologist, Sydney Harbour Foreshore Authority, Ballast Point Park, Ballast Point Road, Birchgrove
29 November	Judicial Commission one-day course, Communication in the Courtroom, conducted by The Maura Fay Group, Judicial Commission of New South Wales

### Speaking engagements

29 February	<i>Working with the Court – Improvements to the Process</i> , 2012 Tool Box Series, Planning Institute of Australia, Sydney
21 March	<i>Giving Expert Evidence and Preparing Expert Reports</i> , Associate Professional Certificate in Expert Evidence for the Land and Environment Court, Australian Property Institute, Sydney
21 June	<i>Making Your Case in the Land and Environment Court</i> , NEERG seminar, Sydney

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8 September	<i>The Land and Environment Court</i> , presentation to students in Master of Urban and Regional Planning course, Sydney
20 October	<i>Workshop – Case Management</i> , Environment and Planning Law Association (EPLA) 2012 Conference, Shoal Bay

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## Ms Annelise Tuor, Commissioner

### Conferences and seminars

15 February	Twilight seminar, Mutual Observation, 360 Degree Feedback and Communication, Judicial Commission of New South Wales
22 February	City Talk: Headland Park – Barangaroo, Mr Peter Walker and panel discussion
14 March	EPLA twilight seminar, Duty to notify under the <i>Contaminated Land Management Act 1997</i> , Ms Camilla Charlton, Henry Davis York lawyers, representative from EPA NSW, Ms Kirsty Ruddock, EDO NSW (Chair)
26 March	Beyond Question, Mediation Training – Questioning Skills and Impasses, Australian Commercial Disputes Centre
29 March	Law Council of Australia and Environment and Planning Law Association (NSW) Inc (EPLA), the inaugural <i>Mahla Pearlman Oration</i> , Emeritus Professor Ben Boer, Faculty of Law, University of Sydney, Dixon Room, State Library of NSW
18 April	Field trip, Green Building, 1 Bligh Street, presented by Mr Tony Gulliver, Head of Development, Dexus Property Group and Mr Bruce Jones, Project Manager, Grocon Group
20 June	Department of Planning & Infrastructure, Urban conversations, Professor Edward Glaeser
30 July	Cross Jurisdictional seminar: Advanced Judicial Writing, Professor Bryan A Garner, Distinguished Research Professor of Law, SMU Dedman School of Law and President of LawProse Inc, Judicial Commission of New South Wales
22 August	Court Craft Panel, Justice Nicola Pain, Senior Commissioner Tim Moore, Commissioner Graham Brown, Commission Susan Dixon and Acting Registrar Leonie Walton, Judicial Commission of New South Wales
3 October	Twilight seminar, field trip to Ballast Point Park (Walama), Dr Wayne Johnson, Archaeologist, Sydney Harbour Foreshore Authority, Ballast Point Park, Ballast Point Road, Birchgrove
29 November	Judicial Commission one-day course, Communication in the Courtroom, conducted by The Maura Fay Group, Judicial Commission of New South Wales

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### Membership of legal, cultural or benevolent organisations

Member, Planning Institute of Australia

Member, Australian Disputes Resolution Association Inc

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## Ms Susan Dixon, Commissioner

### Conferences and seminars

14 March	EPLA twilight seminar, Duty to notify under the <i>Contaminated Land Management Act 1997</i> , Ms Camilla Charlton, Henry Davis York lawyers, representative from EPA NSW, Ms Kirsty Ruddock, EDO NSW (Chair)
26 March	Beyond Question: Advanced Questioning Techniques and Impasse Breakers for Mediators, Australian Commercial Disputes Centre, Sydney
29 March	Law Council of Australia and Environment and Planning Law Association (NSW) Inc (EPLA), the inaugural <i>Mahla Pearlman Oration</i> , Emeritus Professor Ben Boer, Faculty of Law, University of Sydney, Dixson Room, State Library of NSW
30 July	Cross Jurisdictional seminar: Advanced Judicial Writing, Professor Bryan A Garner, Distinguished Research Professor of Law, SMU Dedman School of Law and President of LawProse Inc, Judicial Commission of New South Wales
22 August	Court Craft Panel, Justice Nicola Pain, Senior Commissioner Tim Moore, Commissioner Graham Brown, Commissioner Susan Dixon and Acting Registrar Leonie Walton, Judicial Commission of New South Wales
14 September	Council of Australasian Tribunals (COAT) NSW State Conference, “The Tribunal Skill Set”, Sydney
3 October	Twilight seminar, field trip to Ballast Point Park (Walama), Dr Wayne Johnson, Archaeologist, Sydney Harbour Foreshore Authority, Ballast Point Park, Ballast Point Road, Birchgrove
29 November	Judicial Commission one-day course, Communication in the Courtroom, conducted by The Maura Fay Group, Judicial Commission of New South Wales

### Speaking engagements

22 August	<i>The Class 8 Mining Jurisdiction of the Land and Environment Court of NSW</i> , a presentation to Mining and Petroleum Law students at The University of Notre Dame, Sydney
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### Membership of legal, cultural or benevolent organisations

Member, Council of Australasian Tribunals

Member, Institute of Arbitrators and Mediators Australia

Member, Australian Disputes Resolution Association Inc

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## Ms Linda Pearson, Commissioner

### Conferences and seminars

15 February	Twilight seminar, Mutual Observation, 360 Degree Feedback and Communication, Judicial Commission of New South Wales
26 March	Beyond Question: Advanced Questioning Techniques and Impasse Breakers for Mediators, Australian Commercial Disputes Centre, Sydney
18 April	Twilight seminar, field trip, Green Building, 1 Bligh Street, presented by Mr Tony Gulliver, Head of Development, Dexus Property Group and Mr Bruce Jones, Project Manager, Grocon Group
19 April	Sydney Law School Distinguished Speakers Program, Access to Justice, Professor Dame Hazel Genn, Dean of Laws, Professor of Socio-Legal Studies, Faculty of Laws, University College London,
19-20 July	Australian Institute of Administrative Law 2012 National Forum, Integrity in Administrative Decision Making, Adelaide, SA
3 October	Twilight seminar, field trip to Ballast Point Park (Walama), Dr Wayne Johnson, Archaeologist, Sydney Harbour Foreshore Authority, Ballast Point Park, Ballast Point Road, Birchgrove
13 October	Judicial Commission Ngara Yura Programme Field Trip, and Aboriginal Cultural Cruise, aboard the "Tribal Warrior"
20 November	Australian Institute of Administrative Law Seminar, Project Blue Sky: Invalidity and the evolution of consequences for unlawful administrative action, The Hon. Justice Nye Perram and The Hon. Justice John Griffiths, Federal Court of Australia, Sydney
28 November	Judicial Commission one-day course, Communication in the Courtroom, conducted by The Maura Fay Group, Sydney

### Speaking engagements

21 March	"Merit Review Processes in the Land and Environment Court", presentation to Advanced Administrative Law students, Faculty of Law, University of New South Wales
30 March	"Procedural Considerations in Undertaking Tribunal Reform" The Reform of the NSW Tribunal System Australian Institute of Administrative Law & NSW Bar Association
9 May	"Land and Environment Court", presentation to Environmental Law students, Faculty of Law University of New South Wales
14 August	"Mining Disputes in the Land and Environment Court" University of Sydney International Leaders Program: Training Program on Land and Resources Management and Mining Environment

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19 October	“Role of Planners in the Land and Environment Court” presentation to Planning and Environmental Regulation students, University of Western Sydney
20 October	“Recent Developments: Cases”, EPLA NSW Inc Annual Conference, Shoal Bay NSW

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### **Publications**

“Policy, Principles and guidance: Tribunal rule-making” (2012) 23 *Public Law Review* 16-32

R Lyster, Z Lipman, N Franklin, G Wiffen & L Pearson “Environmental and Planning Law in New South Wales”, 3rd ed, Federation Press

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### **Membership of legal, cultural or benevolent organisations**

Chair, Land and Environment Court Judicial Newsletter Committee (from 2 December 2012)

Member, Land and Environment Court Education Committee

Member, Administrative Review Council

Member, Environmental Law Commission, The International Union for Conservation of Nature (IUCN)

Member, Australian Association of Constitutional Law

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## **Ms Judy Fakes, Commissioner**

### **Conferences and seminars**

15 February	Twilight seminar, Mutual Observation, 360 Degree Feedback and Communication, Judicial Commission of New South Wales
14 March	EPLA twilight seminar, Duty to notify under the <i>Contaminated Land Management Act 1997</i> , Ms Camilla Charlton, Henry Davis York lawyers, representative from EPA NSW, Ms Kirsty Ruddock, EDO NSW (Chair)
26 March	Beyond Question: Advanced Questioning Techniques and Impasse Breakers for Mediators, Australian Commercial Disputes Centre, Sydney
18 April	Twilight seminar, field trip, Green Building, 1 Bligh Street, presented by Mr Tony Gulliver, Head of Development, Dexus Property Group and Mr Bruce Jones, Project Manager, Grocon Group
10 June	Lecture, ‘Introduction to the Natural History of the Kimberley’, Mr Dan Balint, Naturalist, Aurora Expeditions, Kimberley Coast
11 June	Lecture, ‘Wandjina & Bradshaws’, – and site visits, Dr Garry Darby, Art Historian, Aurora Expeditions, Kimberley Coast
14 June	Lecture, ‘Paintings of the Western and Central Deserts’, Dr Garry Darby, Art Historian, Aurora Expeditions, Kimberley Coast

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16 June	Lecture, 'First Wave: Origins of Settlement', Mr Mike Cusack, Naturalist and Expedition Leader, Aurora Expeditions, Kimberley Coast
22 August	Court Craft Panel, Justice Nicola Pain, Senior Commissioner Tim Moore, Commissioner Graham Brown, Commission Susan Dixon and Acting Registrar Leonie Walton, Judicial Commission of New South Wales
3 October	Twilight seminar, field trip to Ballast Point Park (Walama), Dr Wayne Johnson, Archaeologist, Sydney Harbour Foreshore Authority, Ballast Point Park, Ballast Point Road, Birchgrove
29 November	Judicial Commission one-day course, Communication in the Courtroom, conducted by The Maura Fay Group, Sydney

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### **Speaking engagements**

5 September	"Trees, Neighbours and the Law", lecture for Diploma in Arboriculture students, Ryde TAFE
12 September	"Introduction to Forestry & Vegetation Law", lecture for Diploma in Arboriculture students, Ryde TAFE
19 September	"The Land and Environment Court – Jurisdiction and Practice", "Introduction to the NSW Planning System", lecture for Diploma in Arboriculture students, Ryde TAFE
17 October	"Introduction to heritage and environmental legislation – Part 1", lecture for Diploma in Arboriculture students, Ryde TAFE
24 October	"Introduction to heritage and environmental legislation – Part 2", lecture for Diploma in Arboriculture students, Ryde TAFE
31 October	"Expert evidence", lecture for Diploma in Arboriculture students, Ryde TAFE

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### **Membership of legal, cultural or benevolent organisations**

Member, Land and Environment Court Library Committee

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Member, TREENET Management Committee

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Member, International Society of Arboriculture

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## Ms Susan Morris, Commissioner

### Conferences and seminars

15 February	Twilight seminar, Mutual Observation, 360 Degree Feedback and Communication, Judicial Commission of New South Wales
14 March	EPLA twilight seminar, Duty to notify under the <i>Contaminated Land Management Act 1997</i> , Ms Camilla Charlton, Henry Davis York lawyers, representative from EPA NSW, Ms Kirsty Ruddock, EDO NSW (Chair)
26 March	Beyond Question: Advanced Questioning Techniques and Impasse Breakers for Mediators, Australian Commercial Disputes Centre, Sydney
29 March	Law Council of Australia and Environment and Planning Law Association (NSW) Inc (EPLA), the inaugural Mahla Pearlman Oration, Emeritus Professor Ben Boer, Faculty of Law, University of Sydney, Dixon Room, State Library of NSW
30 July	Cross Jurisdictional seminar: Advanced Judicial Writing, Professor Bryan A Garner, Distinguished Research Professor of Law, SMU Dedman School of Law and President of LawProse Inc, Judicial Commission of New South Wales
22 August	Court Craft Panel, Justice Nicola Pain, Senior Commissioner Tim Moore, Commissioner Graham Brown, Commissioner Susan Dixon and Acting Registrar Leonie Walton, Judicial Commission of New South Wales
3 October	Twilight seminar, field trip to Ballast Point Park (Walama), Dr Wayne Johnson, Archaeologist, Sydney Harbour Foreshore Authority, Ballast Point Park, Ballast Point Road, Birchgrove
29 November	Judicial Commission one-day course, Communication in the Courtroom, conducted by The Maura Fay Group, Sydney

### Membership of legal, cultural or benevolent organisations

Member, Planning Institute of Australia

Member, Australian Dispute Resolution Association Inc

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## Ms Susan O'Neill, Commissioner

### Conferences and seminars

15 February	Twilight Seminar, Mutual Observation, 360 Degree Feedback and Communication, Judicial Commission of New South Wales
14 March	EPLA twilight seminar, Duty to notify under the <i>Contaminated Land Management Act 1997</i> , Ms Camilla Charlton, Henry Davis York lawyers, representative from EPA NSW, Ms Kirsty Ruddock, EDO NSW (Chair)
16 & 17 March	Administrative Law lectures as part of the Master of Environmental Law course, University of Sydney
26 March	Beyond Question: Advanced Questioning Techniques and Impasse Breakers for Mediators, Australian Commercial Disputes Centre, Sydney
28 March	Twilight Seminar, Ngara Yura Program: Indigenous Peoples in International Law, Dr Megan Davis, His Honour Judge Stephen Norrish QC (Chair), Judicial Commission of New South Wales
18 April	Twilight seminar, field trip, Green Building, 1 Bligh Street, presented by Mr Tony Gulliver, Head of Development, Dexus Property Group and Mr Bruce Jones, Project Manager, Grocon Group
20 & 21 April	Administrative Law lectures as part of the Master of Environmental Law course, University of Sydney
30 July	Cross Jurisdictional seminar: Advanced Judicial Writing, Professor Bryan A Garner, Distinguished Research Professor of Law, SMU Dedman School of Law and President of LawProse Inc, Judicial Commission of New South Wales
22 August	Court Craft Panel, Justice Nicola Pain, Senior Commissioner Tim Moore, Commissioner Graham Brown, Commissioner Susan Dixon and Acting Registrar Leonie Walton, Judicial Commission of New South Wales
3 October	Twilight seminar, field trip to Ballast Point Park (Walama), Dr Wayne Johnson, Archaeologist, Sydney Harbour Foreshore Authority, Ballast Point Park, Ballast Point Road, Birchgrove
9-10 November & 16-17 November	Mediation Skills and Theory as part of the Master of Environmental Law course, University of Sydney
29 November	Judicial Commission one-day course, Communication in the Courtroom, conducted by The Maura Fay Group, Judicial Commission of New South Wales

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### **Speaking engagements**

19 September      *Land and Environment Court heritage decisions*, lecture to Architecture and Planning students, University of NSW

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18 October        *The Land and Environment Court*, lecture to Architecture and Planning students, University of Technology, Sydney

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### **Membership of legal, cultural or benevolent organisations**

Chartered Architect and Associate of the Institute of Architects

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Member of the Planning Institute of Australia

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Member of ICOMOS

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National Mediation Accreditation

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## Appendices

- Appendix 1 – Court Users Groups
- Appendix 2 – Court Committees

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# Appendix 1 – Court Users Groups

## Court Users Group

A Court Users Group was established in 1996 as a consultative committee comprising of representatives from interested organisations. The Group meets 4 times a year and assists with improving Court services by making recommendations to the Chief Judge about:

- improving the functions and services provided by the Court; and
- ensuring services and facilities of the Court are adapted to the needs of litigants and their representatives.

The Group has an advisory role and has no authority to require any action or change. However its deliberations have been a catalyst for a number of initiatives, such as the 1999 Pre-Hearing Practice Direction and a survey of electronic callover users resulting in significant improvements to callover procedures.

## Members during 2012

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The Hon. Justice Brian J Preston SC, Chief Judge (Chair)	Land and Environment Court
Senior Commissioner Tim Moore	Land and Environment Court
Acting Senior Commissioner Graham Brown	Land and Environment Court
Acting Registrar Leonie Walton	Land and Environment Court
Mr Damon Anderson	Department of Primary Industries, Office of Water
Ms Christina Bunbury	Australian Institute of Landscape Architects
Mr Peter Callaghan SC	Institute of Arbitrators and Mediators
Mr Peter Castor	Institute of Australian Consulting Aboriculturists
Mr Ross Fox	Office of Environment and Heritage
Mr Aaron Gadiel	NSW Urban Taskforce
Mr Chris Hallam	Engineers Australia
Mr Ian Hemmings	Environment and Planning Law Association
Mr James Johnson	Nature Conservation Council of New South Wales
Dr Jeff Kildea (to August 2012) Mr Tom Howard (from September 2012)	New South Wales Bar Association
Mr Frank Loveridge	Local Government NSW

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Ms Helen Macfarlane	Urban Development Institute of Australia
Ms Janet McKelvey	Environment and Planning Law Association
Mr Michael Neustein	Royal Australian Institute of Architects (NSW Chapter)
Mr Greg Preston	Australian Property Institute
Cr Michael Reymond	Local Government Representative
Ms Kirsty Ruddock	Environmental Defender's Office
Mr Eugene Sarich	Australian Institute of Building Surveyors and Australian Institute of Environmental Health
Mr Chris Shaw	Property Council of Australia
Mr Gary Shiels	Planning Institute of Australia (NSW Division)
Mr Stuart Simington	Housing Industry Association
Ms Anna Summerhayes	Department of Planning & Infrastructure
Ms Julie Walsh	Law Society Development and Planning Committee and Law Society of New South Wales
Mr Colin Weatherby	Institution of Surveyors New South Wales Inc
Mr Ian Woodward	Local Government Lawyers Group

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## Mining Court Users Group

A Mining Court Users Group was established in 2010 as a consultative committee comprising of representatives from mining related organisations and mining lawyers. The Group meets 4 times a year to enable two-way communication in relation to the Court's functions in hearing and disposing of proceedings in the Court's mining jurisdiction. The Group has an advisory role and has no authority to require any action or change.

### Members during 2012

The Hon. Justice Brian J Preston SC, Chief Judge (Chair)	Land and Environment Court
Senior Commissioner Tim Moore	Land and Environment Court
Acting Senior Commissioner Graham Brown	Land and Environment Court
Commissioner Susan Dixon	Land and Environment Court
Mr Stewart Armstrong	Industry & Investment NSW
Mr Matt Brand	NSW Farmers Association
Mr John Browne	Browne, Jeppesen & Sligar Solicitors
Mr Nicholas Dan	Bilbie Dan Solicitors & Attorneys
Mr Mark Faraday	Kemp Strang Lawyers
President Pat Fletcher	Grawin-Glengarry Sheeppark Miners' Association
Mr Rodney George	Trade & Investment NSW
Ms Natasha Hammond-Deakin	Environmental Defender's Office
Mr Bob Harrison	Mining Titles Services Pty Ltd
Mr Russell Hetherington	Hetherington Mining and Exploration Titles Services Pty Ltd
Mr Robert Jarratt	Jarratt, Webb & Graham Pty Ltd
Mr Peter Long	Rural Law with Peter Long
Mr Lindsay Moore	Moore & Co Solicitors
Ms Maxine O'Brien	Lightning Ridge Miners' Association
Mr Stuart Percy	Stuart Percy & Associates Solicitors
Dr Nikki Williams	NSW Minerals Council
Mr Andrew White	Sparke Helmore Lawyers

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## Appendix 2 – Court Committees

### Court Committees

The Court has a number of internal committees to assist in the discharge of the Court's functions.

#### Rules Committee

The Rules Committee meets throughout the year to consider proposed changes to the Rules applicable to the Court with a view to increasing the efficiency of the Court's operations, and reducing cost and delay in accordance with the requirements of access to justice.

##### Members

The Hon. Justice Brian John Preston SC, Chief Judge

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The Hon. Justice Terence William Sheahan AO

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The Hon. Justice Peter Meldrum Biscoe

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#### Education Committee

The Education Committee organises the Annual Conference and twilight seminars for the Judges and Commissioners of the Court.

##### Members

The Hon. Justice Peter Meldrum Biscoe (Chair)

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The Hon. Justice Nicola Hope Margaret Pain

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Commissioner Linda Pearson

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Ms Leonie Walton, Acting Registrar

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Ms Ruth Windeler, Education Director, Judicial Commission of New South Wales

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Ms Ruth Sheard, Manager, Conferences and Communication, Judicial Commission of New South Wales



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## Library Committee

The Library Committee provides advice on the management of the Judges' Chambers Collections and other Court Collections.

### Members

The Hon. Justice Nicola Hope Margaret Pain (Chair)

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Commissioner Judy Fakes

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Ms Anne Heritage, Court Librarian

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## Court Newsletter Committee

The Court Newsletter Committee reviews and summarises recent legislation and judicial decisions for publication in the Judicial Newsletter. The Judicial Newsletter is published each quarter.

### Members

Commissioner Linda Pearson (Chair)

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Ms Vicki Ferguson, Information & Research Officer

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September 2012  
Volume 4 Issue 3

## Land and Environment Court of NSW Judicial Newsletter

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  - Miscellaneous
- State Environmental Planning Policies
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### Court News

### Legislation

- Statutes and Regulations

#### Planning:

Statute Law (Miscellaneous Provisions) Act 2012, assented to 21 June 2012, makes amendments to or repeals various acts. Amendments to the *Environmental Planning and Assessment Act 1979*:

- enable joint regional planning panels to provide advice about planning or development matters or environmental planning instruments to the Director-General of the Department of Planning and Infrastructure, and not just to the Minister for Planning and Infrastructure as is currently the case;
- enable the Minister to make an order declaring that the whole of particular development is State significant development even if part of the development is already State significant development under a State environmental planning policy;
- enable a person who has condition of a complying Environment Court if diss release the security; and
- remove any doubt that a modify his or her approval Minister to modify his or under the Act.

Environmental Planning and Assessment Act 2012, published 27 July 2012

- amended the *Environment* to arrangements for char to State significant infrast preserve consent arrange before the introduction of subject to determination t
- made a number of misco and Assessment Regula contributions levy for dev the Chatswood CBD);

Environmental Planning and Assessment Further Amendment (Part 3A Repeal) Regulation 2011, published 1 December 2011,

- revises the transitional arrangements that apply to existing Part 3A projects consequent on the repeal of Part 3A of the *Environmental Planning and Assessment Act 1979*; and
- clarifies the on-going status of concept plans for Part 3A projects and confirms that concept plans for transitional Part 3A projects or former Part 3A projects may be modified.

Environmental Planning and Assessment Amendment (Transitional) Regulation 2011, published 16 December 2011, extends the approval period for certain mining leases (see cl 8K of the *Environmental Planning and Assessment Regulation 2000*) to 31 March 2012.

Environmental Planning and Assessment (Cessnock City Council Planning Panel Repeal) Order 2012, published 27 January 2012, abolished the Council's Planning Panel and provides for consequential savings and transitional matters.

### Legislation

- Statutes and Regulations

#### Planning:

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#### Pollution:

The *Protection of the Environment Legislation Amendment Act 2011 No 63* published 20 January 2012, proclaims dates in February and March 2012 for the commencement of most of the amendments made by the *Protection of the Environment Legislation Amendment Act 2011*. The Act will amend environment protection legislation to create the office of Chairperson of the Environment Protection Authority and to make further provision with respect to the notification and management of pollution incidents, and for other purposes. The only amendment not being commenced is one that creates a duty to prepare and implement pollution incident response management plans (Schedule 2 [12]).

Protection of the Environment Operations Amendment (Miscellaneous) Regulation 2011, published 26 October 2011, amends various environmental legislation, such as Schedule 1 to the *Protection of the Environment Operations Act 1997*, to:

30 January 2012  
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#### Court News

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of New South Wales**

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