

The Land and Environment Court of NSW



Annual Review

2013

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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 seven 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 489 written judgments. These judgments are published on the Court's website (<http://www.lec.justice.nsw.gov.au/lec/index.html>). 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 **2013: An Overview**

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

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 2012. Of particular significance are:

- An improvement in the time taken to finalise cases in five classes of the Court's jurisdiction (Classes 1–5);
- 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 seven classes (Classes 2–8) of the Court's jurisdiction;
- A slight increase in the percentage of matter in all classes finalised pre-trial as well in the percentage of matter in Classes 1–3 finalised by means of s 34 conciliation conferences or at on onsite hearing.
- All judges and commissioners met the standard for continuing professional development.

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

- The clearance rate decreased, both in total and for many classes, reflecting a decrease in finalisations compared to registrations.
- The total number of matters pending therefore increased.

- The timeliness of the pending caseload, as measured by the backlog indicator, declined in all classes and in total.
- The median number of pre-hearing attendances in Class 1 of the Court's jurisdiction increased slightly.

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 2013, reforms occurred in the following areas:

- Introduction of a new Practice Note on Class 4 proceedings and new policies on conciliation conferences, site inspections, and court attire;
- New information on the Court's website; and
- Expansion of 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.

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 2013, the Court's Annual Conference was held at the Sebel Harbourside Kiama. The Court held six twilight seminars in 2013, one cross-jurisdictional seminar and one field trip.

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 2013, 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

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

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

In 2013, 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

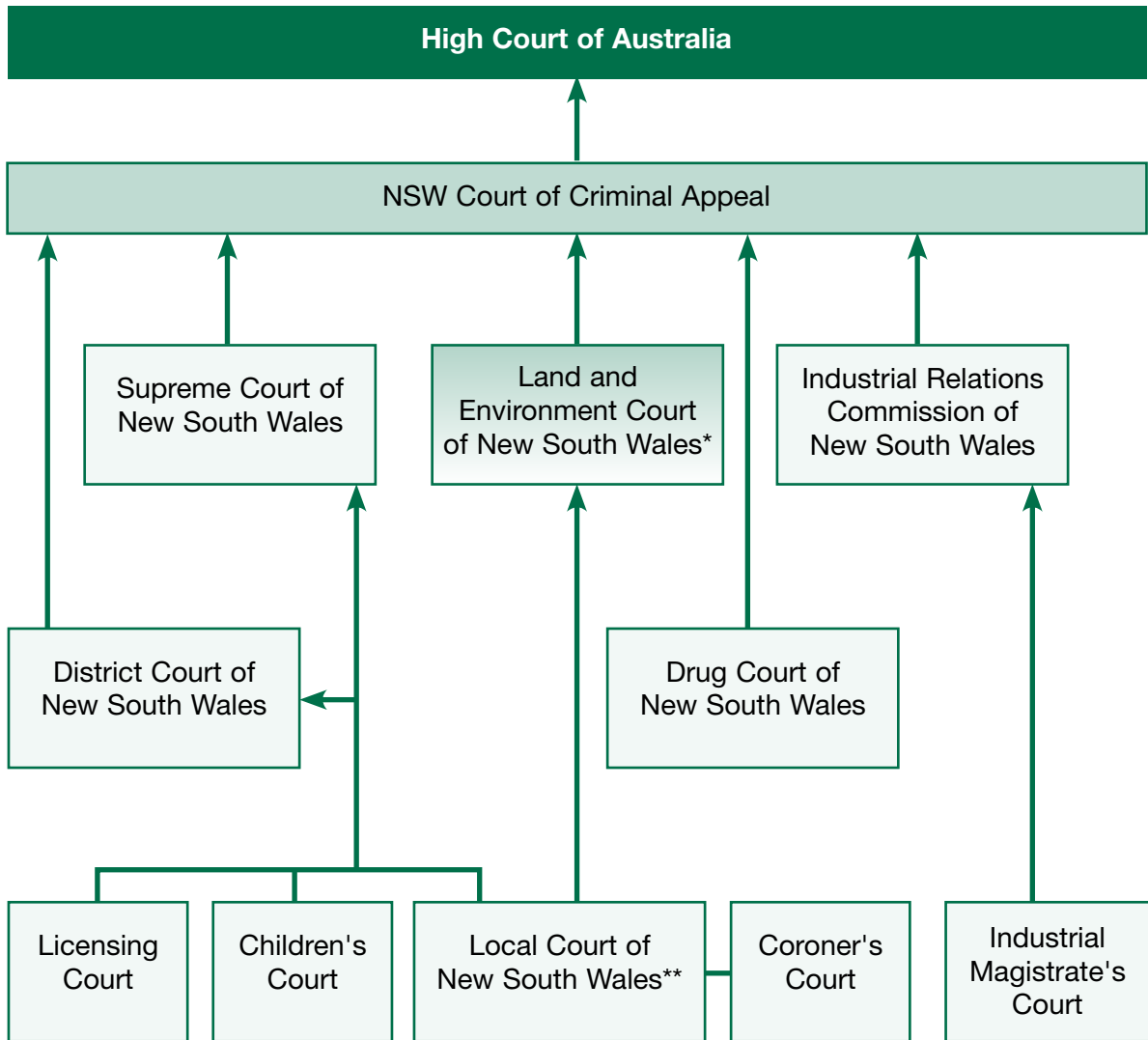
Class 1	environmental planning and protection appeals (merits review appeals)
Class 2	local government, trees and miscellaneous appeals (merits review appeals)
Class 3	land tenure, valuation, rating and compensation matters (merits review appeals)
Class 4	environmental planning and protection (civil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

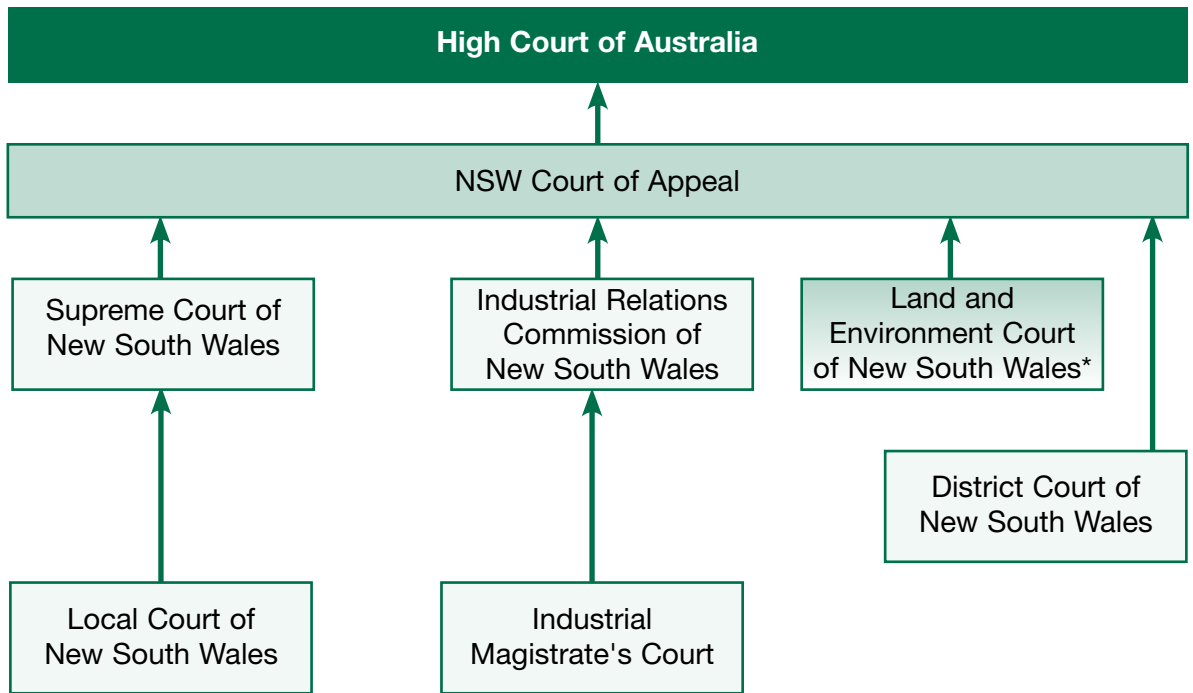
Figure 2.1 New South Wales Court System – Criminal Jurisdiction



* 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.

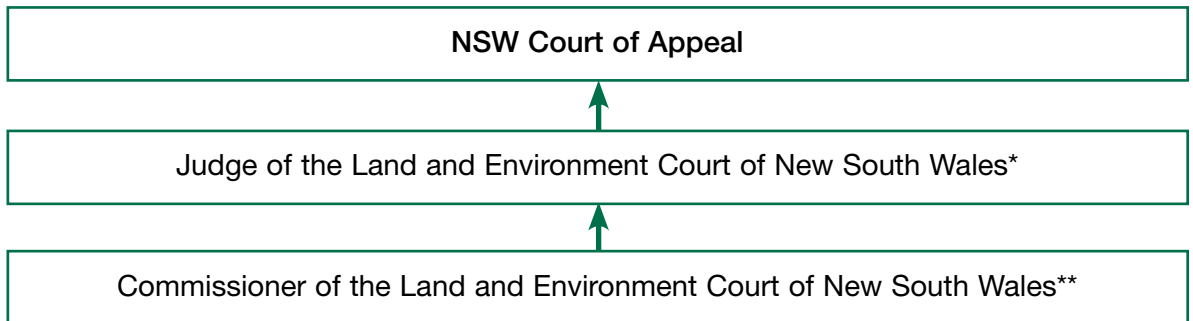
** Appeals from the Local Court of New South Wales to the Land and Environment Court are with respect to an environmental offence under the *Crimes (Appeal and Review) Act 2001* and are in Classes 6 and 7 of the Land and Environment Court's jurisdiction.

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.

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 2013, 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

There were no Acting Judges during 2013.

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.

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



Court hearing

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 2013, 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

Mr Russell Cowell – valuer

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

Mr David Galwey – arboricultural consultant

Dr Jeffrey Kildea – lawyer with experience in matters concerning land rights for Aborigines

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 2013, the Registrars were as follows:

Registrar

Ms Joanne Gray (on maternity leave during 2013)

Acting Registrar

Ms Leonie Walton

Assistant Registrar and Manager Court Services

Ms Maria Anastasi

Appointments and retirements

Appointments

Dr Jeffrey Kildea was appointed as an Acting Commissioner of the Court on 20 March 2013.

Retirements

There were no retirements during 2013.

Supporting the Court: the Registry

The Court Registry comprises the following four sections:

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.

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.

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.

Commissioner Support

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



Lodging documents at the Registry

The Court provides copies of its decisions and daily court lists on the Court's website at: www.lec.justice.nsw.gov.au/lec/index.html

3 Caseflow Management

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

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 caseflow 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 54% of the parties in this type of proceeding are self-represented. The application is returnable before the Registrar assigned to manage the list. This first court attendance can be either a telephone conference or in court. The Registrar explains the process of preparation for and hearing of the application.

The Registrar 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 Registrar will fix a final hearing date, usually not more than four to five weeks after the first court attendance. The Registrar 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 Proceedings.

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

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.

The practice and procedure governing Class 5 proceedings is described in the Practice Note Class 5 Proceedings.

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.



On-site view

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.

Types of directions hearings

The Court offers court users three types of directions hearing:

in-court directions hearing

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

telephone directions hearing

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

eCourt directions hearing

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

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 2013, the Court experienced an increase from 2012 in the use of eCourt callover and recorded 1,389 registered eCourt users (1,275 in 2012). 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.

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 2009-2013.

Table 3.1 s 34 Conciliation Conferences 2009 – 2013

	2009	2010	2011	2012	2013
s 34 conferences	481	632	637	911	899

The table shows a substantial increase in utilisation of conciliation conferences between 2009 and 2013, with only 12 less conferences in 2013 compared to 2012.

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 2009 to 2013. 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 2009 – 2013

		2009	2010	2011	2012	2013
Classes 1 and 2	Total:	5	3	4	5	0
	Internal	5	3	4	3	0
	External	0	0	0	2	0
	Number finalised pre-hearing	1	0	3	4	0
	% finalised pre-hearing	20	0	75	80	0
Class 3	Total:	8	6	4	9	9
	Internal	2	3	3	5	7
	External	6	3	1	4	2
	Number finalised pre-hearing	8	5	4	9	9
	% finalised pre-hearing	100	83	100	100	100
Class 4	Total:	14	6	8	9	9
	Internal	3	3	5	8	8
	External	11	3	3	1	1
	Number finalised pre-hearing	12	6	7	8	7
	% finalised pre-hearing	86	100	88	89	88
All Classes	Total:	27	15	16	23	18
	Internal	10	9	12	16	15
	External	17	6	4	7	3
	Number finalised pre-hearing	19	11	14	21	16
	% finalised pre-hearing	70	73	88	91	89

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 2013 in Classes 1 and 2 was less than in 2012 and in Class 4 remained the same as in 2012. Mediations in Class 3 between 2012 and 2013 remained constant.

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 Note
- New policies
- New information on the Court's website
- Expansion of library services
- Implementing the International Framework for Court Excellence
- Sentencing database for environmental offences

During 2013, reforms occurred in the following areas:

- A new Practice Note in Class 4 proceedings
- New policies on conciliation conferences, site inspections, and court attire introduced;
- A new webpage on the Court's website on compensation for compulsory acquisition of land; and
- Expansion of 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 Note

The Court made one new Practice Note during 2013, Practice Note Class 4 Proceedings (which commenced on 13 January 2014). It replaced the Practice Note Class 4 Proceedings dated 30 April 2007. The Practice Note applies to proceedings in Class 4 of the Court's jurisdiction referred to in s 20 of the *Land and Environment Court Act 1979*, including civil enforcement proceedings and judicial review proceedings. The purpose of this practice note is to set out the case management procedures for the just, quick and cheap resolution of Class 4 proceedings.

New Policies

A new Conciliation Conference Policy commenced on 11 November 2013. The purpose of the policy is to guide the conduct of conciliation conferences under s 34 and s 34AA of the Court Act in certain matters in Classes 1 and 2 of the Court's jurisdiction.

Simultaneously, the Site Inspections Policy was amended to apply only to on-site hearing and court hearings under s34B and s 34D of the Court Act, and not conciliation conferences.

The Court Attire Policy was revised to delete the requirement for barristers to robe in hearings of proceedings in Class 3 of the Court's jurisdiction. The revised policy commenced on 11 November 2013.

New information on the Court's website

The Court introduced new webpages on compensation for compulsory acquisition of land. The new section of the Court's website provides three sets of pages:

- an overview that explains the proceedings in the Court claiming compensation for the compulsory acquisition of land; how compensation is assessed, including

the relevant matters which must be considered; and the methods of valuation commonly used to determine value;

- key or helpful judicial decisions on aspects of compensation for the compulsory acquisition of land; and
- the statutes relevant to claims for compensation for the compulsory acquisition of land.

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- Heritage
- Water
- Land valuation
- Compensation for compulsory acquisition of land**
- Reviewing a government decision
- Failing to obey the law or orders
- Environmental crime
- Aboriginal land claims

Compensation for compulsory acquisition of land

The government has power under various statutes to acquire land compulsorily. The public authority which acquires the land is obliged to pay just compensation to the person whose land has been acquired. The amount of compensation may be agreed by the person and the authority. However, if there is no agreement, the Valuer-General determines the amount of compensation. The authority must give the person a notice of compensation entitlement and offer the amount of compensation determined by the Valuer-General.

If the person is dissatisfied with the amount of compensation offered by the authority, the person may lodge an objection with the Land and Environment Court. The objection is allocated to Class 3 of the Court's jurisdiction. The Court decides the amount of compensation which will justly compensate the person for the acquisition of the land.



Compulsory acquisition of land

Fast track ...

Need to know how to lodge an objection to compensation for the compulsory acquisition of land? Go to Class 3: valuation, compensation and Aboriginal land claim cases - Claims for compensation for compulsory acquisition of land.

More information

Information is available on:

- the process for making claims for compensation for compulsory acquisition of land at claims for compensation for compulsory acquisition of land process.
- proceedings in the Land and Environment Court, the amount of compensation, and methods of valuation at compensation for compulsory acquisition of land overview
- compensation for compulsory acquisition cases
- compensation for compulsory acquisition statutes.

Expansion of library services

Library Services expanded the hours of the reference and research services offered to the Land and Environment Court. They are now available from 8.30am until 5.30pm, Monday to Friday.

Librarians Holger Aman and Larissa Reid are dedicated to providing services to Land and Environment Court judges and staff.

The Judges of the Land and Environment Court have also been issued access cards to the Law Courts Library.

Training for Judges' tipstaves and researchers has included sessions on legislative research and the advanced use of journals, encyclopedias and online databases. These have been well attended by Land and Environment Court staff.

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.

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 2013, 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 2011 and 2012 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 a new practice notes for Class 4 proceedings;
- introducing new policies to guide conciliation conferences and site inspections during on-site hearings and court hearings.

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:

- continuing publication on a quarterly basis of a court newsletter with the latest legislation, judicial decisions and changes in practice and procedure;
- continuing to report on the Court's performance in the Annual Review on the areas of court excellence;
- continually updating the Court's website with relevant changes in the law and constantly expanding the webpages in the special areas of jurisdiction, updating relevant case law and facts.

6. Court resources:

- continuing and extending the professional development programme for judges and commissioners, as explained in Chapter 6;
- undertaking training and education of judges' tipstaves and researchers, and registry staff in the different types of matters and their resolution, and in the Framework.

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 2014.

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 2013, 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
 - Complaints received and finalised
 - Informal enquiries

Overall caseload

The comparative caseload statistics between 2009 and 2013 are summarised in Table 5.1.

Table 5.1 Caseload Statistics

	2009	2010	2011	2012	2013
Class 1					
Registrations	577	584	631	625	521
Restored	43	25	28	11	22
Pre-Trial Disposals	452	410	410	524	386
Disposed by Hearing	253	229	202	196	135
Pending	255	223	270	188	211
Class 2					
Registrations	116	151	159	135	114
Restored	10	5	11	10	7
Pre-Trial Disposals	8	29	50	47	40
Disposed by Hearing	120	99	137	105	86
Pending	33	61	47	42	37
Class 3					
Registrations	183	193	215	325	202
Restored	5	7	6	11	7
Pre-Trial Disposals	113	205	136	184	171
Disposed by Hearing	28	33	35	34	39
Pending	155	120	170	288	284
Class 4					
Registrations	141	129	145	123	102
Restored	22	26	17	34	27
Pre-Trial Disposals	111	95	77	86	75
Disposed by Hearing	64	63	67	97	52
Pending	85	83	103	81	83
Class 5					
Registrations	82	43	100	57	74
Restored	9	5	3	16	3
Pre-Trial Disposals	25	8	12	63	11
Disposed by Hearing	94	47	25	61	48
Pending	68	57	123	72	90

Classes 6 and 7

Registrations	7	9	8	10	9
Restored	0	4	0	0	0
Pre-Trial Disposals	2	6	3	2	3
Disposed by Hearing	14	5	4	7	5
Pending	1	2	4	5	6

Classes 8

Registrations	5	6	5	7	2
Restored	0	1	2	2	2
Pre-Trial Disposals	1	2	1	0	1
Disposed by Hearing	2	3	8	3	7
Pending	2	4	2	6	4

TOTAL

Registrations	1,111	1,115	1,263	1,282	1,024
Restored	89	73	67	84	68
Pre-Trial Disposals	740	755	689	906	687
Disposed by Hearing	547	479	478	503	372
Pending	599	551	722	684	717

Table 5.1 shows the following trends between 2009 and 2013:

- Total registrations and restorations (1092) have decreased to the lowest level in five years. The decline in registrations and restorations was across all classes of the Court's jurisdiction except Class 5 where registration increased from 2012.
- Total finalisations (1059) decreased in 2013, again to the lowest level in the last five years. The decline in finalisations was across all classes except Class 8.
- Total finalisations (1059) were lower than total registrations (1092) in 2013, resulting in the total pending caseload (717) increasing in 2013.
- Merits review and other civil proceedings finalised in Classes 1, 2 and 3 (857) comprised 80% of the Court's finalised caseload (1059) in 2013.
- Civil and criminal proceedings in Classes 4, 5, 6, 7 and 8 (202) comprised 20% of the Court's finalised caseload (1059) in 2013.
- The means of finalisation in 2013 were 65% pre-trial disposals (including by use of alternative dispute resolution processes and negotiated settlement) and 35% 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

	2009	2010	2011	2012	2013
Total matters finalised – all classes	1,287	1,234	1,167	1,409	1,059
Total pre-trial finalisations	740	755	689	906	687
% matters finalised pre-trial	57	61	59	64	65

The means of finalisation for proceedings in Class 1, 2 and 3 included conciliation conferences under s 34 and s 34AA of the Court Act and on-site hearings (mainly for Class 1 and 2 proceedings). As Table 5.3

shows, 40% of appeals in Classes 1, 2 and 3 were finalised by these means. Of the total of 345 matters, 263 matters were finalised by s 34 and s 34AA conciliation conferences and 82 matters by on-site hearings.

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

	2009	2010	2011	2012	2013
Total matters finalised	974	1005	1050	1090	857
s 34 and s 34AA conferences and on-site hearings	299	322	331	399	345
% s 34 and s 34AA and other matters finalised on-site	30.7	32.0	31.5	36.6	40.3

Court performance by class of jurisdiction

A brief summary of the Court's performance in 2013 for each of the eight classes of jurisdiction is provided.

Class 1

Registrations and restorations of Class 1 matters in 2013 decreased by 15% while finalisations decreased by 28%, resulting in an increase of 12% in the pending caseload. Class 1 registrations represent 50% of the total registrations in the Court in 2013.

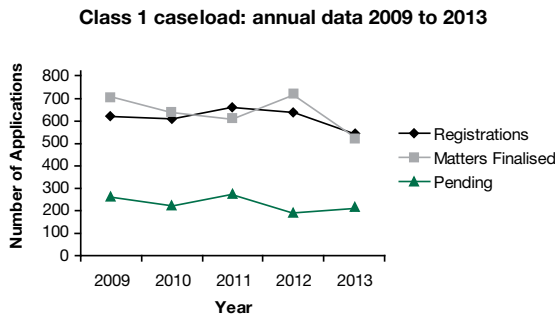
Class 1 matters finalised in 2013 constitute 49% of the Court's finalised caseload. 57% of all Class 1 matters finalised were appeals under s 97 of the *Environmental Planning and Assessment Act 1979* relating

to development applications. 47% 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 2013, 20% were applications to modify a development consent under s 96 of the *Environmental Planning and Assessment Act 1979* and 11% were appeals against council orders and the actual or deemed refusal by councils to issue building certificates. Applications for costs, appeals under s 56A of the Court Act against a Commissioner's decision, and prevention/remediation notices constituted the remaining matters in Class 1.

Figure 5.1 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 1 between 2009 to 2013.

Figure 5.1



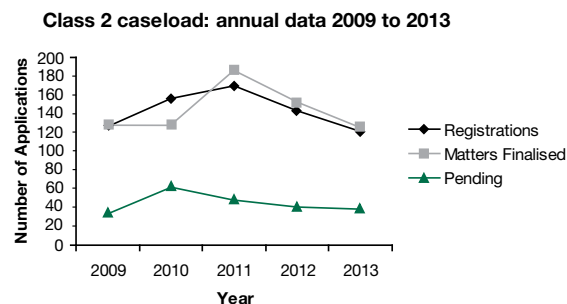
Class 2

Class 2 registrations and restorations in 2013 decreased by 17% from 2012 and represented 11% of total registrations in the Court in 2013.

The number of Class 2 matters finalised in 2013 decreased by 17% and represented 12% of the Court's finalised caseload. These are overwhelmingly applications under the *Trees (Disputes Between Neighbours) Act 2006*.

Figure 5.2 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 2 between 2009 to 2013.

Figure 5.2



Class 3

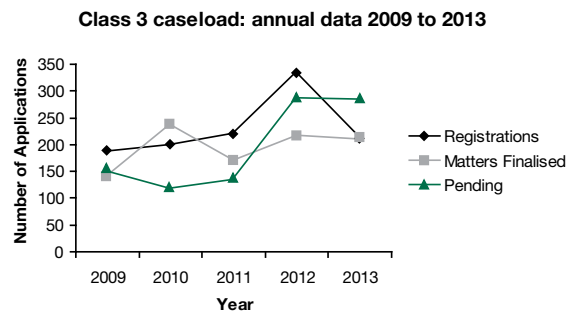
Class 3 of the Court's jurisdiction encompasses a range of proceedings including claims for compensation as a result of the compulsory acquisition of land, valuation and rating appeals and some Aboriginal land rights matters.

New registrations in Class 3 decreased by 38% in 2013. Valuation and rating appeals accounted for 60% of new Class 3 appeals in 2013. Compensation claims for compulsory acquisition of land constituted 26% of all Class 3 appeals registered in 2013.

Of the matters finalised in 2013, 61% were valuation or rating appeals, 19% were compensation claims and 20% were other matters. There was no significant change in finalisations or pending caseload from 2012.

Figure 5.3 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 3 between 2009 and 2013.

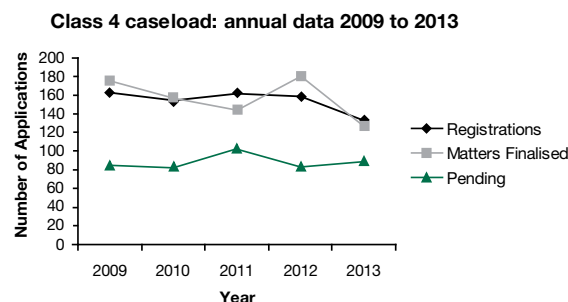
Figure 5.3



Class 4

Class 4 registrations and restorations decreased by 18% and finalisations decreased by 31% in 2013, resulting in a marginal increase in the pending caseload. Class 4 matters finalised in 2013 constituted 12% of the Court's finalised caseload. Of the Class 4 matters finalised in 2013, 57% were initiated by councils. Figure 5.4 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 4 between 2009 and 2013.

Figure 5.4



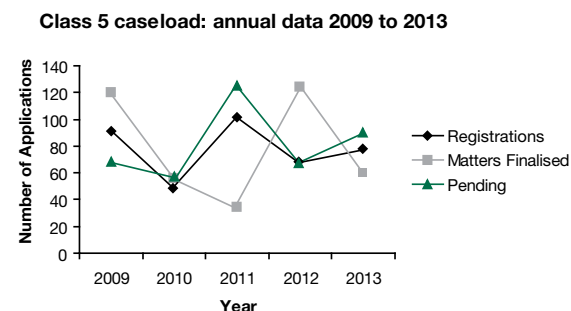
Class 5

Class 5 registrations increased by 5% in 2013. The Environment Protection Authority/Office of Environment and Heritage initiated 51% of all new registrations. The number of matters initiated by local councils decreased to 18%, down from 27% in 2012.

52% less Class 5 matters were finalised in 2013. Of the 48 matters finalised by hearings in 2013, convictions were recorded in 35, 11 were dismissed, and 1 was proved with no conviction. Fines for convictions ranged from \$1,000 to \$1,200,000. No community service orders were issued in 2013.

Figure 5.5 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 5 between 2009 to 2013.

Figure 5.5



Classes 6 and 7

Eight new Class 6 appeals and one Class 7 appeal were filed. Three appeals were finalised, resulting in an increase in the pending caseload to six appeals.

Class 8

Two mining matters were filed and two mining matters were restored in 2013. Eight pending matters were completed during 2013, including two matters that were restored for costs. The pending caseload decreased to two 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.

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 2013 to increase court fees by 2.5% to be able to balance the Court's budget and ensure a high standard of court administration service quality (effective 1 July 2013). 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.

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 2013, 24% 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 63% of Class 1 country matters and 57% of Class 3 country matters in 2013.

Table 5.4 shows the percentage of pre-hearing attendances conducted by eCourt directions hearings and telephone directions hearings in Classes 1-4 in 2013.

Table 5.4 eCourt and Telephone Directions Hearings

Class	No of cases	Total pre-hearing attendances	% eCourt directions hearings	% Telephone directions hearings
1	516	2,548	20	4
2	125	224	11	25
3	208	1,459	12	0.1
4	118	655	6	0
All	967	4,885	16	3

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% 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 2013, 13% of matters (in Classes 1 and 2) were conducted as an on-site hearing, of which 21% 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 2013.

Table 5.5 Country hearings in courthouses

Courthouse	Number of Hearings						
	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 8
Armidale				1			
Bathurst				1			
Belmont		1					
Byron Bay	1						
Cooma	1						
Deniliquin				1			
Gosford	1						
Gundagai	1	1					
Katoomba	1						
Kurri Kurri	1						
Moama	1						
Moss Vale	1						
Murwillumbah	3						
Muswellbrook	1						
Orange	1						
Queanbeyan	1			1			
Singleton	1						
Taree	2						
Toronto	1						
Wyong	1						
TOTAL	19	2		4			

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

The Court provides mediation services. In 2013, 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 2013, 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 2013 are set out in Table 5.6.

Table 5.6 Backlog Indicator (LEC time standards)

	Unit	LEC Standards	2009	2010	2011	2012	2013
Class 1							
Pending caseload	no.		255	223	270	188	210
Cases > 6 months	%	5	9.7	17.5	19.3	14.4	14.8
Cases > 12 months	%	0	1.6	4.9	2.6	3.2	5.2
Class 2							
Pending caseload	no.		33	61	47	42	37
Cases > 6 months	%	5	6.1	4.9	0	0	0
Cases > 12 months	%	0	3.0	0	0	0	0
Class 3							
Pending caseload	no.		155	120	170	288	284
Cases > 6 months	%	5	34.2	44.2	44.1	63.2	79.9
Cases > 12 months	%	0	16.8	15.0	21.8	11.8	62.0
Class 4							
Pending caseload	no.		85	83	103	81	86
Cases > 8 months	%	5	21.2	33.7	30.1	40.7	38.4
Cases > 16 months	%	0	10.6	14.5	15.5	18.5	23.3

Class 5

Pending caseload	no.		68	57	123	72	90
Cases > 8 months	%	5	32.4	63.2	28.4	50.0	58.9
Cases > 16 months	%	0	10.3	15.8	25.2	20.8	31.1

Class 6

Pending caseload	no.		1	2	4	5	6
Cases > 8 months	%	5	0	100.0	50.0	40.0	16.7
Cases > 16 months	%	0	0	0	0	40.0	0

Class 8

Pending caseload	no.		2	4	1	6	4
Cases > 8 months	%	5	0	25.0	50.0	33.3	50.0
Cases > 16 months	%	0	0	0	0	0	0

Class 1- 3

Pending caseload	no.		443	404	487	518	531
Cases > 6 months	%	5	18.5	23.5	26.5	40.5	48.6
Cases > 12 months	%	0	7.0	7.2	9.0	7.7	35.2

Class 4 – 8

Pending caseload	no.		201	152	233	166	186
Cases > 8 months	%	5	27.4	26.3	29.6	44.0	47.8
Cases > 16 months	%	0	11.9	10.5	20.2	19.8	25.8

These backlog figures need some explanation:

- Class 1: The backlog figures for pending caseloads greater than 6 months and also greater than 12 months increased in 2013 compared to 2012. The total pending caseload in Class 1 increased during 2013. The timeliness of case processing of Class 1 matters therefore declined in 2013 compared to 2012. However, case processing timeliness and total pending caseload in 2013 still compare favourably to earlier years.
- 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 both 2011 and 2012. This is a continuing highly commendable result. The pending caseload decreased slightly.

- Class 3: The backlog figures in 2013 for pending caseload greater than 6 months increased significantly to 79.9% and for cases greater than 12 months also increased substantially to 62%, making it the highest percentage in the last five years. Total pending caseload decreased marginally. The increase in the backlog figure for cases greater than 6 months was mainly caused by two sets of matters (with multiple files in each) which were adjourned pending judgment being given in other proceedings 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 2013.

- Class 4: There was a slight decrease in the backlog figure for pending caseload exceeding 8 months and an increase for pending caseload greater than 16 months. However, there were a few more total registrations than total finalisations of Class 4 matters in 2013, resulting in a slight increase in the total pending caseload in Class 4. This led to an increase in the backlog figure for Class 4 matters.
- Class 5: The backlog figures for pending caseload exceeding the 8 month standard increased and the backlog figures for pending caseload greater than 16 months

increased substantially. The total pending caseload in Class 5 increased, as a result of registrations significantly exceeding finalisations. The increase in the backlog figure for Class 5 matters is a product of this increase in pending caseload.

- Class 6: There were only a small number of appeals in Class 6. There was a significant decrease in appeals greater than 8 months and no appeal cases greater than 16 months were pending.
- Class 8: There was a decrease 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 2013 are as shown in the table below:

Table 5.7 Backlog indicator (national time standards)

	Unit	National Standards	2009	2010	2011	2012	2013
Class 1							
Pending caseload	no.		255	223	270	188	210
Cases > 12 months	%	10	1.6	4.9	2.6	3.2	5.2
Cases > 24 months	%	0	0.4	0	0.4	0.5	1.4
Class 2							
Pending caseload	no.		33	61	47	42	37
Cases > 12 months	%	10	3.0	0	0	0	0
Cases > 24 months	%	0	0	0	0	0	0
Class 3							
Pending caseload	no.		155	120	170	288	284
Cases > 12 months	%	10	16.8	15.0	21.8	11.8	62.0
Cases > 24 months	%	0	1.9	5.8	2.4	4.5	6.2

Class 4

Pending caseload	no.		85	83	103	81	86
Cases > 12 months	%	10	15.3	21.7	20.4	28.4	31.4
Cases > 24 months	%	0	4.7	2.4	8.7	7.4	11.6

Class 5

Pending caseload	no.		68	57	123	72	90
Cases > 12 months	%	10	23.5	52.7	28.5	34.7	44.4
Cases > 24 months	%	0	2.9	5.3	20.3	18.1	25.6

Class 6

Pending caseload	no.		1	2	4	5	6
Cases > 12 months	%	10	0	0	0	40.0	16.7
Cases > 24 months	%	0	0	0	0	0	0

Class 8

Pending caseload	no.		2	4	2	6	4
Cases > 12 months	%	10	0	0	0	16.7	50.0
Cases > 24 months	%	0	0	0	0	0	0

This table shows that the Court's performance in Classes 1 and 2 better or meets the national standard for 12 months and 24 months. The Court's performance in Class 3 has significantly deteriorated for the standard for 12 months but approaches the standard for 24 months. The Court's performance in Classes 4 and 5 is worse than the national standards 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. The reasons for the Court's performance are given in the explanation of the backlog indicator (LEC time standards).

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 2009-2013.

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

	2009	2010	2011	2012	2013
Class 1					
No. of cases	703	639	612	720	521
% < 6 months	71	75	77	78	80
% < 12 months	95	97	96	97	97
95% completed within (months)	11	11	11	11	9
Class 2					
No. of cases	127	128	187	152	126
% < 6 months	98	95	94	93	98
% < 12 months	100	99	99	98	100
95% completed within (months)	5	6	6	6	5
Class 3					
No. of cases	137	238	171	218	211
% < 6 months	43	44	53	44	59
% < 12 months	74	81	74	79	81
95% completed within (months)	25	19	21	20	21
Class 4					
No. of cases	175	158	144	183	127
% < 8 months	90	73	73	73	73
% < 16 months	93	94	90	91	91
95% completed within (months)	20	19	20	22	25
Class 5					
No. of cases	119	55	37	124	59
% < 8 months	51	56	47	19	61
% < 16 months	76	76	79	82	90
95% completed within (months)	40	20	29	28	18
Class 6					
No. of cases	18	11	7	9	8
% < 8 months	78	100	100	100	63
% < 16 months	100	100	100	100	80
95% completed within (months)	10	5	11	6	30

Class 8

No. of cases	3	5	9	3	8
% < 8 months	100	100	89	100	75
% < 16 months	100	100	100	100	88
95% completed within (months)	6	6	9	17	19

The table shows that in 2013, compared to 2012, the Court improved or maintained its performance by reducing or maintaining the time taken to finalise cases in all classes other than Classes 6 and 8. In Classes 1 to 5, the Court increased or maintained the percentage of cases finalised within the relevant time standards. In Classes 1, 2 and 5, the time take to complete 95% of matters also decreased, while in Classes 3 and 4, it only marginally increased. The number of matters in Classes 6 – 8 are small, so delay in one or two matters disproportionately affects the percentages.

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 39% 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 2013 improved for reserved judgments being delivered within 14 days and met the standard for the second 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 (almost meeting the standard). For the 90 days standard, the Court's performance improved again, representing the highest proportion in the last 5 years, 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	2009	2010	2011	2012	2013
% delivered within 14 days	50	37	39	41	50	57
% delivered within 30 days	75	56	55	62	66	73
% delivered within 90 days	100	86	81	83	86	87

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

	2009	2010	2011	2012	2013
Class 1	2	11	20	10	9
Class 2	0	1	1	1	0
Class 3	1	1	2	5	7
Class 4	4	12	28	12	11
Class 5	2	3	13	2	3
Classes 6 and 7	0	0	0	0	2
Class 8	0	0	1	0	0
Total	9*¹	28*²	65*³	30*⁴	32*⁵

*¹ In 2009, 67% of inquires (6) concerned judges' reserved judgments and 33% (3) concerned commissioners' judgments.

*² In 2010, 71% of inquiries (20) concerned judges' reserved judgments and 29% (8) concerned commissioners' judgments.

*3 In 2011, 80% of inquiries (52) concerned judges' reserved judgments and 20% (13) concerned commissioners' reserved judgments.

*4 In 2012, 73% of inquiries (22) concerned judges' reserved judgments and 27% (8) concerned commissioners' reserved judgments.

*5 In 2013, 97% of inquiries (31) concerned judges' reserved judgments and 3% (1) concerned commissioners' reserved judgments.

The Chief Judge investigated each inquiry made in 2013 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

	2009	2010	2011	2012	2013
	%	%	%	%	%
Class 1	113.7	104.9	92.9	113.2	95.9
Class 2	101.6	82.1	110.0	104.8	104.1
Class 3	75.0	119.0	77.4	64.9	100.5
Class 4	107.4	101.9	88.9	116.6	98.4
Class 5	130.8	114.6	35.2	169.9	76.6
Class 6	228.6	84.6	87.5	90.0	88.9
Class 8	60.0	71.4	128.6	33.3	200.0
Classes 1-3	104.3	104.1	92.4	97.6	98.2
Classes 4-8	118.4	102.7	70.4	128.1	92.2
Total	107.3	103.9	87.7	103.1	97.0

These figures show that the total clearance rate for Classes 2, 3 and 8 exceeded 100% in 2013 leading to a decrease in the pending caseload in these classes.

The clearance rate for matters in Class 1 (95.9%) reflects the proportionate decrease in finalisations in 2013 compared to 2012.

The clearance rate for matters in Class 4 is just below 100% (98.4%) also due to a decrease in finalisations. The lower clearance rate for Class 5 matters was caused by both an increase in registrations and a decrease in finalisations.

The clearance rate for matters in Class 6, although less than 100% (88.9%), represents a difference of only one case (9 registrations and 8 finalisations in 2013).

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 2009-2013.

Table 5.12 Median number of pre-hearing attendances by Class

	2009	2010	2011	2012	2013
Class 1	4	4	3	3	4
Class 2	1	1	1	1	1
Class 3: (all matters)	7	6	5	6	5
Compensation claims	12	9	9	12	6
Valuation objections	6	6	3	6	4
Miscellaneous	4	5	7	4	6
Class 4	4	3	3	3	3
Class 5	5	5	3	7	3
Class 6	2	2	13	3	2
Class 8	2	1	3	5	4

The table reveals the number of pre-hearing attendances stayed constant for cases in Classes 2 and 4 between 2012 and 2013. The number of pre-hearing attendances for all matters in Class 3 decreased, but of significance is the substantial decrease in attendances for compensation claims to the lowest number in the last five years. This may reveal that the Court's revised practice note for compensation claims is improving case management of these matters. The number of pre-hearing attendances for valuation objections also decreased. The increase in miscellaneous matters in Class 3 (principally Aboriginal land claims) is due to those matters being adjourned multiple times to await the delivery of judgments in the Court of Appeal. The number of pre-hearing attendances also decreased in Classes 5, 6 and 8 from 2012. The improvement in Class 5 may also be due to the new case management procedures under the Practice Note Class 5 Proceedings. 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 Class 1. 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 less than for matters with a conciliation conference. 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 slightly increased in 2013 to 74%.

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 2013, 12 s 56A appeals were commenced, 2 appeals were settled pre-hearing, 15 were completed at a hearing, and 6 remained pending at 31 December 2013.

Of the 15 appeals that were completed at hearing, 5 were upheld. This represents 0.9% of the number of matters in Classes 1, 2, 3 and 8 disposed of by a decision of a Commissioner of the Court in 2013 (529 matters).

Table 5.13 s 56A Appeal outcomes

	2009	2010	2011	2012	2013
Total no. of appeals	21	14	14	29	12
No. finalised pre-hearing	2	3	4	11	2
No. of appeals to hearing	10	15	16	17	15
Outcome:					
Upheld	4	4	8	2	5
Dismissed	6	11	8	15	10

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 2013, 10 appeals were lodged with the Court of Appeal and two appeals were lodged with the Court of Criminal Appeal. The number of appeals to these appellate courts in 2013 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

	2009	2010	2011	2012	2013
Court of Appeal					
Notice of Intention to appeal	13	27	22	14	13
Notice of appeal	30	18	25	17	10
Total	43	41	44	29	21
Court of Criminal Appeal					
Notice of Intention to appeal	1	9	0	2	3
Notice of appeal	5	0	1	1	2
Stated case, section 5AE	0	0	0	2	0
Total	6	9	1	5	5

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 counseling 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.

Complaints received and finalised

In 2013, the Court received no formal complaints.

Table 5.15 gives particulars about the complaints made and dealt with in 2013 and the outcomes.

Table 5.15 Complaint particulars

Complaints pending as at 31 December 2013	0
Complaints made during 2013	0
Total number of complaints	0
Complaints examined but dismissed	0
Complaints not dismissed but dealt with by the Chief Judge	0
Complaints referred by Chief Judge to Complaint Committee	0
Complaint withdrawn	0
Total number of complaints finalised	0
Complaints pending as at 31 December 2013	0

Informal enquiries

The Court also received enquiries about the conduct of proceedings or preliminary to making a formal complaint in accordance with the Court's policy on complaints. In 2013, the Court received two inquiries.

The first enquiry raised concerns about the conduct of a local council in not keeping the inquirer and other objectors informed at a conciliation of a case. The inquirer believed the presiding commissioner might have been unaware of the Council's conduct and consequently the orders made may be legally deficient. The Chief Judge responded to the inquirer explaining that the Commissioner had made orders in terms of the parties' agreement at the conciliation conference, the process for participation in

a conciliation conference, and the need for the inquirer to raise her concerns with the council.

The second inquiry requested the Court to provide evidence of its lawful jurisdiction and evidence of the qualifications, appointment, and oaths of the Judges and Commissioners of the Court, with particular reference to a judge. The Chief Judge replied to this inquiry stating that the Court is constituted under s 5(1) of the *Land and Environment Court Act 1979*; outlined the process of appointment of judges by the Governor of NSW, by commission under the public seal of the State, the qualifications for appointment and the two oaths of office they take; and outlined the qualifications and process of appointment of Commissioners under the Court Act.

6 Education and Community Involvement

- Continuing professional development
 - Continuing professional development policy
 - Annual Court Conference 2013
 - Twilight seminar series
 - National Mediator Accreditation
 - Training and education seminars for Court staff
 - Other educational activities
- Performance indicators and programme evaluation
- Publications
- Education and participation in the community
- Individual Judges' and Commissioners' activities

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 2013

The Annual Court Conference for 2013 was held on Thursday 23 May and Friday 24 May 2013. Six Judges, nine Commissioners, eight 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:

- Aboriginal Heritage
- Biodiversity and Indigenous Issues
- A field trip to Gerroa, Seven Mile Beach and Shoalhaven Heads
- Fact or Law: The question without an answer?
- ADR Craft
- Statistics
- Criminal Law update
- Architecture and Heritage: Enabling well-designed outcomes
- The New Planning System for NSW: White Paper and Exposure Draft Bills
- Courtcraft Panel



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 six twilight seminars in 2013, one cross-jurisdictional seminar and one field trip:

28 February	Good Design, presented by a panel of experts from the Australian Institute of Architects (NSW Chapter): Mr Ian Moore; Mr Adam Haddow; Mr William Smart; Mr Jon Pizey and Ms Agi Sterling
21 March	Twilight seminar/Field trip to “The Block”, Redfern, conducted by Mr Michael Mundine, CEO Aboriginal Housing Company and Mr Greg Colbran, Project Manager DeiCorp
8 May	Judicial Recusal, presented by Mr Arthur Moses SC
5 June	JIRS App on the iPad, presented by Mr Murali Sagi, Director of Information Management and Corporate Services, Judicial Commission of NSW
24 July	3D Imaging, presented by Mr Tony MacDonald, Managing Director and 3D Visualisation Artist from Arterra Interactive
21 August	Hoarding, presented by Dr Jessica Grisham, Senior Lecturer at the School of Psychology, University of NSW
10 September	Cross-jurisdictional twilight seminar, Evidence Amendment (Evidence of Silence) Act and Criminal Procedure Amendment (Mandatory Pre-trial Defence Disclosure) Act, presented by The Hon. Justice Megan Latham, Supreme Court of NSW
20 November	The Neurobiology of Satisfaction: Application of <i>Briginshaw v Briginshaw</i> to Land and Environment Court proceedings, presented by Dr Hayley Bennett, Barrister and Neuropsychologist

National Mediator Accreditation

In 2013, all full-time Commissioners were nationally accredited as mediators.

Training and education seminars for Court staff

The Court undertook two new training initiatives during the year. The first involved a program in which the 2013 intake of judges’ tipstaves together with all existing registry staff undertook two field visits with Commissioners – one to each of an on-site hearing/site inspection or conciliation

conference and a tree dispute hearing. These visits, with a maximum of two participants on each visit, permitted the tipstaves and registry staff members to obtain a broader understanding of the nature of and processes for on-site activities of the Court in merit review matters and those in the Class 2 tree disputes.

The second initiative was to conduct a series of internal training sessions at which the Chief Judge and other members of the Court presented. The training sessions comprised a short talk on an aspect of the Court’s work

that would not ordinarily be experienced by the registry staff. Each talk was followed by a question and answer session. The talks were given on the following topics:

Topic:

“What happens before a matter comes to Court?”

“What happens at a s 34 conciliation conference?”

“What type of orders can the court make in development appeals?”

“What do you do with all those reports the parties file anyway?”

“Overview of the Trees legislation”

“The significance of heritage buildings, and how and why we need to preserve our heritage”

“What is the difference between merits review, judicial review and civil enforcement?”

“The International Framework for Court Excellence”

“What is the Court's criminal jurisdiction?”

“What happens in Class 3, 4 and 8 matters?”

As a part of the Court's work towards implementation of the International Framework for Court Excellence, the induction visits for tipstaves will be scheduled on an annual basis for each new intake. For registry staff, field visits will form part of the induction process for any new staff joining the registry team.

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 2013, 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 2009 to 2013

	Target	2009	2010	2011	2012	2013
Overall satisfactory rating	85%	88%	87%	90%	80%	90%

*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 2009 to 2013, all of which exceeded the 85% standard.

Table 6.2 Participant evaluation of Land and Environment Court Twilight seminar series 2009 to 2013

	Target	2009	2010	2011	2012	2013
Overall satisfactory rating	85%	89%	90%	93%	93%	88%

Note: 2009 was based on 6 seminars; 2010 and 2011 were based on 7 seminars in each year; 2012 was based on 4 seminars, 2 cross-jurisdictional seminars and 2 field trips and one skills workshop on Communication in the courtroom; and 2013 was based on 6 seminars, one cross-jurisdictional seminar and one field trip.

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.

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.

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

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.

Individual Judges' and Commissioners' activities

The Judges' and Commissioners' activities during 2013 are summarised below:

The Hon. Justice Brian John Preston SC, Chief Judge

Conferences and seminars

14 February	George Winterton Memorial Lecture 2013, Judicial review and the dismissal of an elected government in 1975: then and now?, presented by Professor Geoffrey Lindell AM, Banco Court, Sydney
28 February	Twilight seminar, Good Design, presented by a panel of experts from the Australian Institute of Architects (NSW Chapter), Judicial Commission of NSW
7-9 March	Australian Institute of Judicial Administration Conference, The Pursuit of Excellence and Innovation in Courts and Tribunals, Auckland, New Zealand
10 April	Art Gallery Distinguished Speakers Series, "Art and Law: a battleground", The Hon. Michael Kirby AC CMG
2-3 May	National Judicial College of Australia, Leadership Program for Heads of Specialist Courts, Quarantine Station, Manly
8 May	Twilight seminar, Judicial Recusal, presented by Mr Arthur Moses SC, Judicial Commission of NSW
8-11 July	World Justice Forum IV, The Hague, Netherlands
22 July	Australian Institute of Administrative Law (AIAL) (NSW Chapter) seminar, The Boundaries of Judicial Review and Justiciability: comparing perspectives from Australia and Canada, presented by Professor Lorne Sossin, Dean of Osgoode Hall Law School, York University, Toronto, Canada, and The Hon. Justice Alan Robertson, Federal Court of Australia

31 July	EPLA twilight seminar, Access to Justice and the Right to Public Participation: Lessons learned from the GUNNS20 Litigation and film presentation, <i>Defendant 5: The Fall of the House of Gunns</i> , produced by Ms Heidi Lee Douglas followed by a discussion panel with Mr Julian Burnside AO QC, Defence Counsel for GUNNS20 litigation; Prof. Sharon Beder, University of Wollongong; Dr Gerry Bates, University of Sydney; and Mr Pepe Clarke, CEO of The Nature Conservation Council of NSW
1 August	Council of Australasian Tribunals Whitmore Lecture 2013, Forewarned and Four-Armed – Administrative Law Values and the Fourth Arm of Government, presented by The Hon. Wayne Martin AC, Chief Justice of Western Australia
7 August	Book launch by The Hon. James Spigelman AC QC of <i>Arthur Phillip: Sailor, Mercenary, Governor, Spy</i> , written by Michael Pembroke, Wentworth Galleries, Sydney
6-8 August	Supreme Court Annual Conference, Novotel Wollongong
22 August	ANU Symposium on the Tasmanian Dam Case 30th Anniversary, National Museum of Australia, Canberra
2 October	Judicial Commission Ngara Yura twilight seminar, Constitutional Recognition of Indigenous Australians, presented by Professor Megan Davis, Professor of Law UNSW and Dr Sarah Pritchard SC, Adjunct Professor University of NSW, Judicial Commission of NSW
6-11 October	International Bar Association Annual Conference, Boston, USA
24 October	NSW Law Society Annual Dinner, Doltone House, Sydney
31 October	10th Annual Lowy Lecture and Dinner, speaker Mr Rupert Murdoch AC, Town Hall, Sydney

Speaking Engagements

30 March	<i>Environmental public interest litigation: conditions of success</i> , Osaka University with the Green Access Project and Japan Association for Environmental Law and Policy International Symposium: Towards an Effective Guarantee of the Green Access: Japan's Achievements and Critical Points from a Global Perspective, Awaji Island, Japan
25 May	Keynote speaker at the Faculties of Arts, Business and Economics Graduation Ceremony, Macquarie University, Sydney
13 June	<i>Update on the LEC</i> , Guest speaker, UDIA Luncheon, Hilton Hotel, Sydney
28 June	<i>The effectiveness of the law in providing access to environmental justice: an introduction</i> , 11th IUCN Academy of Environmental Law Colloquium, University of Waikato, Hamilton, New Zealand
20 July	<i>Characteristics of successful environmental courts and tribunals</i> , Eco Forum Global Annual Conference Guiyang 2013: The 3rd Environmental Justice Seminar, Guiyang, Guizhou Province, China

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- 7 August *Update on practice and procedural changes in the LEC*, Guest speaker, Urban Taskforce Australia Members luncheon, Norton Rose Fulbright, Sydney
-
- 14 August *International Framework for Court Excellence*, presentation to the Land and Environment Court's Registry staff
-
- 13 September *An Introduction to Courtroom Evidence*, Environment Institute of Australia and New Zealand, Environment Institute of Australia and New Zealand, Environmental Expert Course, Clayton Utz, Sydney
-
- 17 September *Unconventional natural gas in the courts: an overview*, keynote address to Cleanup 2013 Conference: 5th International Contaminated Site Remediation Conference, Crowne Conference Centre, Melbourne
-
- 18 September Panel member, Community Awareness of the Judiciary Program, Supreme Court, Sydney
-
- 20 September Moot Court Judge for the Grand Final of the Australian Environmental Law Moot organised by La Trobe University Law School, Federal Court, Melbourne
-
- 8 October Chair, *Environmental Courts and Tribunals* session at the IBA Annual Conference, Boston, USA
-
- 9 October *Climate Change Justice and Human Rights – concepts for legal and institutional reforms*, commentary to the IBA Showcase Session, IBA Annual Conference, Boston, USA
-
- 18 October *Update on Practice and Procedure in the LEC*, address to Environment and Planning Law Association (EPLA) Annual Conference opening session, Sydney Cricket Ground
-
- 25 October *Progressing the understanding and implementation of ecologically sustainable development (ESD) in government decision making with the ACT*, presentation with Dr Gerry Bates, Adjunct Professor, University of Sydney to ACT Government officials, ACT Government Offices, Canberra
-
- 28 October Chair, Breakout Session 6, *Saving the Environment Through Sustainable Cities*, 26th LAWASIA Conference, Singapore
-
- 5 November Participant in Strengthening OECD Work on Justice Institutions Workshop, OECD Headquarters, Paris, France
-
- 13 November *Principled sentencing for environmental offences: structures, statistics, trends and challenges*, presentation with Mr Hugh Donnelly, Research Director of the Judicial Commission of NSW to 2013 AELERT Conference, Melbourne
-
- 15 November *Welcome address*, Silks Bows Ceremony, Land and Environment Court



Silks Bows Ceremony

Publications

B J Preston, “*Natural justice by the courts: some recent cases*” (2013) 11 *The Judicial Review* 193.

B J Preston, “*Adapting to the impacts of climate change: The limits and opportunities of law in conserving biodiversity*” (2013) 30 *Environmental and Planning Law Journal* 375.

B J Preston and C Hanson, “*The Globalisation and Harmonisation of Environmental Law: An Australian Perspective*” (2013) 16 *Asia-Pacific Journal of Environmental Law* 1.

Membership of legal, cultural or benevolent organisations

Chair, Land and Environment Court Rules Committee

Member, Uniform Rules Committee, Supreme Court of NSW

Official member, Judicial Commission of New South Wales

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

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

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

Executive Committee Member, Australian Centre for Climate and Environmental Law (ACCEL), University of Sydney

Member, International Bar Association President’s Climate Change Justice and Human Rights Task Force

Fellow, Australian Academy of Law (FAAL)

Member, Advisory Board, Asia Pacific Centre for Environmental Law, National University of Singapore

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

General Editor, Local Government Planning and Environment NSW Service

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

Adjunct Professor, Sydney Law School, University of Sydney

Guest lecturer, ANU College of Law, Australian National University

Delegations and international assistance

15 February Meeting with Ms Anne Brosnan, UK Chief Environmental Prosecutor; Mr Steve Garrett, Office and Environment and Heritage (OEH); Mr Gordon Plath (OEH); Mr Barry Buffier, Chair, Environment Protection Authority (EPA); and Mr Mark Gifford, Chief Environmental Regulator to discuss restorative justice

-
- 27 May President Qianfei Xu and judicial delegation from Jiangsu High People's Court, P.R. China and also President Jiang Huiqin, Intermediate People's Court of Yangzhou, P.R. China to discuss judgments in environmental cases, in order to exchange views and experiences between the Courts
-
- 14 June Vietnamese Human Rights delegation led by Mr Hoang Chi Trung, Director General in the Ministry of Foreign Affairs and other officials from the Government of Vietnam on a study visit to Australia in conjunction with the Vietnam-Australia Human Rights Dialogue in Canberra, to discuss conciliation and mediation for resolving land related disputes
-
- 3 September Meeting with Ms Claire Stockwell, PhD Student from the University of Oxford to discuss a comparative study of Australian and US climate change litigation as part of her doctoral thesis
-
- 5 September Meeting with Dr Eloise Scotford, Lecturer School of Law, King's College, London to discuss an upcoming monograph on environmental principles and the evolution of environmental law
-
- 17 October Meeting with Professor Rob White, Professor of Criminology, University of Tasmania to discuss environmental courts, environmental crime and restorative justice for a research project
-
- 11 & 28 November Meeting with Dr Warren Mundy, Presiding Commissioner, Ms Angela MacRae, Commissioner and Ms Diane Orr, Principal Legal Officer from the Productivity Commission to discuss the inquiry into access to justice arrangements, particularly barriers individuals face in accessing civil justice
-
- 18 November Meeting with Mr Pole Kale and Mr Joseph Kilbogo from Papua New Guinea to discuss the operation of the Land and Environment Court and the potential for environmental courts in Papua New Guinea
-
- 9 December Chinese delegation from the GEF Project, Gansu Province on a study tour program to discuss land management and environmental protection in Australia



Chinese Judicial Delegation

The Hon. Justice Terence William Sheahan AO

Conferences and seminars

6 February	Australian Association of Constitutional Law (AACL) seminar, State Jurisdictional Residue: What remains to a State Court when its Chapter III functions are exhausted?, presented by Professor Helen Irving, Sydney
14 February	George Winterton Memorial Lecture 2013, Judicial review and the dismissal of an elected government in 1975: then and now?, presented by Professor Geoffrey Lindell AM, Banco Court, Sydney
28 February	Twilight seminar, Good Design, presented by a panel of experts from the Australian Institute of Architects (NSW Chapter), Judicial Commission of NSW
12 March	Whitlam Institute Seminar, Legality in the Contracting-Out State: The Mubenga Case, presented by Dr Kristen Rundle, London School of Economics and Associate Professor Fleur Johns, Faculty of Law, Sydney Centre of International Law, UNSW, Sydney
19 March	Anglo-Australasian Lawyers Society (AALS) Breakfast seminar, Challenges to the Profession, presented by Ms Lucy Scott-Moncrieff, President of the Law Society of England and Wales
21 March	Twilight seminar/Field trip to “The Block”, Redfern, conducted by Mr Michael Mundine, CEO Aboriginal Housing Company and Mr Greg Colbran, Project Manager DeiCorp
8 May	Twilight seminar, Judicial Recusal, presented by Mr Arthur Moses SC, Judicial Commission of NSW
22 May	Sydney Institute seminar, Politics and the Australian Coal Industry – What’s Next? presented by Ms Nikki Williams, Chief Executive Officer, Australian Coal Association
30 May	AALS Breakfast seminar, Reflection on major issues, past and present, The Hon. R J Ellicott QC, former Commonwealth Attorney-General and Solicitor-General
5 June	Twilight seminar, JIRS App on the iPad, presented by Mr Murali Sagi, Director of Information Management and Corporate Services, Judicial Commission of NSW
19 June	NSW Bar Association CPD Seminar, Federal Judicial Review – where to from here? Analysis of the Administrative Review Council’s 2012 recommendations and other prospects for change, presented by The Hon. Justice Alan Robertson, Federal Court of Australia, and Kristina Stern SC
1 July	Panel Discussion, “Australia’s Environmental Challenges” presented by the Faculty of Law, University of Technology Sydney

2 July	Carroll & O’Dea Lunchtime Speaker Series, Reform & Harmonisation of Law, The Hon. Philip Ruddock MP, former Attorney General
16 July	Sydney Institute seminar, Boats, Whales and Batts: Human rights & the Public Service, The Hon. Mark Dreyfus QC MP, Federal Attorney General and Special Minister for State
22 July	Australian Institute of Administrative Law (AIAL) (NSW Chapter) seminar, The Boundaries of Judicial Review and Justiciability: comparing perspectives from Australia and Canada, presented by Professor Lorne Sossin, Dean of Osgoode Hall Law School, York University, Toronto, Canada, and The Hon. Justice Alan Robertson, Federal Court of Australia
24 July	Twilight seminar, 3D Imaging, presented by Mr Tony MacDonald, Managing Director and 3D Visualisation Artist from Arterra Interactive
31 July	Sydney University Law School, Launch of text book, “Policing and the Mentally Ill: International Perspectives”, edited by Dr Duncan Chappell
1 August	Council of Australasian Tribunals Whitmore Lecture 2013, Forewarned and Four-Armed – Administrative Law Values and the Fourth Arm of Government, presented by The Hon. Wayne Martin AC, Chief Justice of Western Australia
6 August	NSW Society of Labor Lawyers address, The Law and Labor Values, The Hon. Mark Dreyfus QC MP, Federal Attorney General
15 August	AACL seminar, Realism about the High Court revisited: Pragmatic Statesmanship in the expansion of Chapter III, Professor Jeffrey Goldsworthy, Monash University, with commentary by Professor Peter Cane (ANU) and The Hon. Roger Gyles QC
21 August	Twilight seminar, Hoarding, presented by Dr Jessica Grisham, Senior Lecturer at the School of Psychology, University of NSW
27 August	AIAL (NSW Chapter) seminar, Keep the AAT from becoming a Court, presented by The Hon. Justice Duncan Kerr, President of the Administrative Appeals Tribunal, with commentary by The Hon. Bob Ellicott QC
10 September	Judicial Commission cross-jurisdictional twilight seminar, Evidence Amendment (Evidence of Silence) Act and Criminal Procedure Amendment (Mandatory Pre-trial Defence Disclosure) Act, presented by The Hon. Justice Megan Latham
25 September	EPLA Twilight seminar, Environmental Crime – Perspectives from the criminal bar on practice, procedure and the conduct of Class 5, presented by Mr Tim Game SC, Ms Sophie Callan and Mr Ian Hemmings of counsel, and Ms Rebecca Pleming of Norton Rose Fulbright
27 September	AALS Breakfast seminar, William Charles Wentworth: Australia’s favourite son, presented by Andrew Tink biographer

2 October	Judicial Commission Ngara Yura twilight seminar, Constitutional Recognition of Indigenous Australians, presented by Professor Megan Davis, Professor of Law UNSW and Dr Sarah Pritchard SC, Adjunct Professor University of NSW, Judicial Commission of NSW
11-13 October	Judicial Conference of Australia Annual Colloquium, Sydney
15 October	Bar Association of NSW Plunkett Lecture 2013, Arthur Phillip Sailor, Mercenary, Governor, Spy, delivered by The Hon. Justice Michael Pembroke
15 October	Sydney Institute seminar, Franklin D Roosevelt and America's European Pivot, presented by Dr Michael Fullilove, author
21 October	AALS Breakfast seminar, Singapore – Where Common Law and Constitutions Meet, presented by The Hon. Robert French AC, Chief Justice of Australia
23 October	AACL seminar, State Law and Order Regimes and the High Court: A study in federalism and rights protection, presented by Dr Gabrielle Appleby, Senior Lecturer, Adelaide University Law School
28 October	Sydney Institute seminar, Deregulation at the Commonwealth Government level, presented by The Hon. Josh Frydenberg MP, Parliamentary Secretary to the Prime Minister
7 November	Bar Association of NSW Constitutional and Administrative Law Branch Annual Dinner, "Poetry and Public Law" address by The Hon. Robert French AC, Chief Justice of Australia
20 November	Twilight seminar, The Neurobiology of Satisfaction: Application of <i>Briginshaw v Briginshaw</i> to Land and Environment Court proceedings, presented by Dr Hayley Bennett, Barrister and Neuropsychologist
10 December	AACL seminar, Comparative Constitutional Law – Final Courts Round-up 2013, presented by Professor Richard Fallon (Harvard), Professor Janet Hiebert (Queens University, Canada) and Professor Claudia Geiringer (Victoria University of Wellington, Wellington, NZ)

Speaking Engagements

10 January	<i>A Judge's perspective on sentencing environmental offenders</i> , Undergraduate Summer School on "Pollution Law", University Wollongong
12 March	<i>Recent Developments in Planning & Environment Law</i> , keynote opening address to UNSW CLE seminar
14 March	Vote of thanks to orator at the Second Mahla Pearlman Oration, Law Council of Australia and EPLA (NSW), The Hon. Paul Stein AM QC, former judge of the LEC and NSW Court of Appeal, Dixon Room, State Library of NSW
11 September	<i>The Land & Environment Court: A Judge's Perspective</i> , guest lecturer to Planning Law students, University of Technology Sydney,
24 September	<i>Judicial Decision Making</i> , guest lecturer to Planning Law students, University of Sydney School of Architecture,

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

The Hon. Justice Nicola Hope Margaret Pain

Conferences and seminars

28 February	Twilight seminar, Good Design, presented by a panel of experts from the Australian Institute of Architects (NSW Chapter), Judicial Commission of NSW
21 March	Twilight seminar/Field trip to “The Block”, Redfern, conducted by Mr Michael Mundine, CEO Aboriginal Housing Company and Mr Greg Colbran, Project Manager DeiCorp
10 April	Judicial Commission Ngara Yura Program, Understanding Kinship, Ms Lynette Riley, Senior Lecturer, University of Sydney, Judicial Commission of NSW
8 May	Twilight seminar, Judicial Recusal, presented by Mr Arthur Moses SC, Judicial Commission of NSW
24 July	Twilight seminar, 3D Imaging, presented by Mr Tony MacDonald, Managing Director and 3D Visualisation Artist from Arterra Interactive
21 August	Twilight seminar, Hoarding, presented by Dr Jessica Grisham, Senior Lecturer at the School of Psychology, University of NSW
11-13 October	Judicial Conference of Australia Annual Colloquium, Sydney
16 November	Judicial Commission Ngara Yura Program, Aboriginal Community Visit to Campbelltown
20 November	Twilight seminar, The Neurobiology of Satisfaction: Application of <i>Briginshaw v Briginshaw</i> to Land and Environment Court proceedings, presented by Dr Hayley Bennett, Barrister and Neuropsychologist

Speaking engagements

12 September *A career in the law – a personal perspective*, 2013 Women in Law Leadership Summit, Sydney Harbour Marriott Hotel

Membership of legal, cultural or benevolent organisations

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

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

Member, Land and Environment Court Education Committee

Chair, Land and Environment Court Library Committee

The Hon. Justice Peter Meldrum Biscoe

Conferences and seminars

21 March	Twilight seminar/Field trip to “The Block”, Redfern, conducted by Mr Michael Mundine, CEO Aboriginal Housing Company and Mr Greg Colbran, Project Manager DeiCorp
10 April	Judicial Commission Ngara Yura Program, Understanding Kinship, Ms Lynette Riley, Senior Lecturer, University of Sydney, Judicial Commission of NSW
8 May	Twilight seminar, Judicial Recusal, Mr Arthur Moses SC, Judicial Commission of NSW
2 October	Judicial Commission Ngara Yura twilight seminar, Constitutional Recognition of Indigenous Australians, presented by Professor Megan Davis, Professor of Law UNSW and Dr Sarah Pritchard SC, Adjunct Professor University of NSW, Judicial Commission of NSW
20 November	Twilight seminar, The Neurobiology of Satisfaction: Application of <i>Briginshaw v Briginshaw</i> to Land and Environment Court proceedings, presented by Dr Hayley Bennett, Barrister and Neuropsychologist

Speaking engagements

18 April *How can valuers provide reports that meet the needs of the Court in compulsory acquisition compensation cases?*, Australian Property Institute NSW Seminar, Sydney

30 April *The New Judicial Review Rules 2013*, EPLA Seminar, Sydney

Membership of legal, cultural or benevolent organisations

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

Chair, Land and Environment Court Education Committee

Member, Land and Environment Court Rules Committee

The Hon. Justice Rachel Ann Pepper

Conferences and seminars

6 February	Australian Association of Constitutional Law (AACL) seminar, State Jurisdiction Residue: What Remains to a State Court when its Chapter III Functions are Exhausted?, Sydney
14 February	George Winterton Memorial Lecture 2013, Judicial review and the dismissal of an elected government in 1975: then and now?, Professor Geoffrey Lindell AM, Banco Court, Sydney
15 February	Gilbert + Tobin 2013 Constitutional Law Conference, Sydney
7-9 March	NELA National Conference, Melbourne
14 March	The Law Council of Australia and EPLA (NSW) Inc, Second Mahla Pearlman Oration, The Hon. Paul Stein AM QC, Dixon Room, State Library NSW
21 March	Twilight seminar/Field trip to “The Block”, Redfern, conducted by Mr Michael Mundine, CEO Aboriginal Housing Company and Mr Greg Colbran, Project Manager DeiCorp
10 April	Judicial Commission Ngara Yura Program, Understanding Kinship, Ms Lynette Riley, Senior Lecturer, University of Sydney, Judicial Commission of NSW
14 May	Constitution and Administration Law Section seminar, Limits of Executive Power, The Hon. Justice John Basten, Sydney
19 June	NSW Bar Association Constitutional and Administrative Law Section seminar, Federal Judicial Review, The Hon. Justice Alan Robertson and Ms Katrina Stern SC, Sydney
11 July	NSW Bar Association Human Rights Committee seminar, Obama’s Global Legal Strategy, Professor Harold Hongju Koh, Yale Law School, Chair, Mr Tim Game SC, commentary by Mr Bret Walker SC, Sydney
22 July	The Australian Institute of Administrative Law seminar, Boundaries of Judicial Review and Justiciability; comparing perspectives from Australia and Canada, Professor Lorne Sossin, Dean of Osgoode Hall Law School, York University, Toronto, Banco Court, Supreme Court, Queens Square, Sydney
10 September	Judicial Commission cross-jurisdictional twilight seminar, Evidence Amendment (Evidence of Silence) Act and Criminal Procedure Amendment (Mandatory Pre-trial Defence Disclosure) Act, presented by The Hon. Justice Megan Latham
2 October	Judicial Commission Ngara Yura twilight seminar, Constitutional Recognition of Indigenous Australians, presented by Professor Megan Davis, Professor of Law UNSW and Dr Sarah Pritchard SC, Adjunct Professor University of NSW, Judicial Commission of NSW

23 October	AACL seminar, State Law and Order Regimes and the High Court: Past, Present and Future, presented by Dr Gabrielle Appleby, Sydney
30 October	Relevancy Grounds in Environmental and Administrative Law, presented by Richard Lancaster SC and Stephen Free, NSW Bar Association, Sydney
16 November	Judicial Commission Ngara Yura Program, Aboriginal Community Visit to Campbelltown
3-5 December	Second Asian Judges Symposium on the Environment, Asian Development Bank Headquarters, Manila, Philippines
10 December	AACL seminar, Comparative Constitutional Law – Final Court’s Round-Up 2013, Sydney

Speaking engagements

1 March	Chair, Property and Planning Law Conference, Commercial Law Association of Australia Ltd, Sydney
20 November	<i>Briginshaw in Land and Environment Court Proceedings – Introductory Observations from the Judicial Perspective</i> , Twilight Seminar, Judicial Commission of NSW
28 November	Chair, Same Sex Marriage Legislation: Constitutional Law Perspectives, presented by Prof Anne Twomey and Perry Herzfeld, NSW Bar Association and Australian Association of Constitutional Law, Sydney
18 December	<i>Address to Graduates</i> upon conferral of Law Degrees, College of Law, Australian National University, ACT

Publications

Co-Consulting Editor, Australian Environmental Review, LexisNexis

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

Membership of legal, cultural or benevolent organisations

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

Secretary and board member, Australian Association of Constitutional Law

Member, International Association of Women Judges

Member, Australian Institute of Judicial Administration

Member, National Judicial College of Australia

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

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

Member, Australian Commercial Law Association

Judicial Member, Football Federation of Australia

The Hon. Justice Malcolm Graeme Craig

Conferences and seminars

14 March	The Law Council of Australia and EPLA (NSW) Inc, Second Mahla Pearlman Oration, The Hon. Paul Stein AM QC, Dixon Room, State Library NSW
21 March	Twilight seminar/Field trip to “The Block”, Redfern, conducted by Mr Michael Mundine, CEO Aboriginal Housing Company and Mr Greg Colbran, Project Manager DeiCorp
10 April	Sir Maurice Byers Lecture, Finality, presented by The Hon. A M Gleeson AC QC, Banco Court
8 May	Twilight seminar, Judicial Recusal, presented by Mr Arthur Moses SC, Judicial Commission of NSW
22 July	The Australian Institute of Administrative Law seminar, Boundaries of Judicial Review and Justiciability; comparing perspectives from Australia and Canada, presented by Professor Lorne Sossin, Dean of Osgoode Hall Law School, York University, Toronto, Banco Court, Supreme Court, Queens Square, Sydney
24 July	Twilight seminar, 3D Imaging, presented by Mr Tony MacDonald, Managing Director and 3D Visualisation Artist from Arterra Interactive
14 August	International Framework for Court Excellence, presented by The Hon. Justice Brian Preston, Chief Judge, Land and Environment Court, Sydney
21 August	Twilight seminar, Hoarding, presented by Dr Jessica Grisham, Senior Lecturer at the School of Psychology, University of NSW
10 September	Judicial Commission cross-jurisdictional twilight seminar, Evidence Amendment (Evidence of Silence) Act and Criminal Procedure Amendment (Mandatory Pre-trial Defence Disclosure) Act, presented by The Hon. Justice Megan Latham
30 October	NSW Bar Association CPD Seminar, Relevancy Grounds in Environmental and Administrative Law presented by Mr Richard Lancaster SC and Mr Stephen Free, commentary by The Hon. Justice Jayne Jagot
20 November	Twilight seminar, The Neurobiology of Satisfaction: Application of <i>Briginshaw v Briginshaw</i> to Land and Environment Court proceedings, presented by Dr Hayley Bennett, Barrister and Neuropsychologist

Speaking engagements

19 March	The Law Society of NSW Young Lawyers Environment and Planning Careers Guide Launch, the Guide launched by The Hon. Malcolm Craig as Patron
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Membership of legal, cultural or benevolent organisations

Member, The Australasian Institute of Judicial Administration

Member, Judicial Conference of Australia

Member, New South Wales Bar Association

Member, Caselaw Governance Committee

Mr Tim Moore, Senior Commissioner

Conferences and seminars

28 February	Twilight seminar, Good Design, presented by a panel of experts from the Australian Institute of Architects (NSW Chapter), Judicial Commission of NSW
8 May	Twilight seminar, Judicial Recusal, presented by Mr Arthur Moses SC, Judicial Commission of NSW
5 June	Twilight seminar, JIRS App on the iPad, presented by Mr Murali Sagi, Director of Information Management and Corporate Services, Judicial Commission of NSW
24 July	Twilight seminar, 3D Imaging, presented by Mr Tony MacDonald, Managing Director and 3D Visualisation Artist from Arterra Interactive
31 July	EPLA twilight seminar, Access to Justice and the Right to Public Participation: Lessons learned from the GUNNS20 Litigation, and film presentation, Defendant 5: The Fall of the House of Gunns, produced by Ms Heidi Lee Douglas followed by a discussion panel with Mr Julian Burnside AO QC, Defence Counsel for GUNNS20 litigation; Prof. Sharon Beder, University of Wollongong; Dr Gerry Bates, University of Sydney; and Mr Pepe Clarke, CEO of The Nature Conservation Council of NSW
21 August	Twilight seminar, Hoarding, presented by Dr Jessica Grisham, Senior Lecturer at the School of Psychology, University of NSW
12 & 13 September	Workshop: Logic and Legal reasoning in Judicial Decision-Making, presented by Prof. Douglas Lind, Judicial Commission of New South Wales
20 November	Twilight seminar, The Neurobiology of Satisfaction: Application of <i>Briginshaw v Briginshaw</i> to Land and Environment Court proceedings, presented by Dr Hayley Bennett, Barrister and Neuropsychologist

Speaking engagements

31 January	<i>Conciliation and mediation</i> , Aboriginal mediator students, Blacktown Institute of TAFE
16 April	<i>What happens at a s 34 conciliation conference</i> , seminar for LEC Registry staff
18 October	<i>The future of planning principles in the Court</i> , EPLA Annual Conference, Sydney
26 November	<i>New Environmental Laws</i> , Australian Sustainable Business Group seminar
27 November	<i>Recent Developments in Planning Law</i> , UNSW CLE Seminar

Membership of legal, cultural or benevolent organisations

Member, NSW Bar Association

Member, John Koowarta Reconciliation Law Scholarship Advisory Committee, Law Council of Australia

Member, Australian Cave and Karst Management Association

Life Member, Industrial Relations Society of New South Wales

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)

Mr Robert Hussey, Commissioner

Conferences and seminars

28 February Twilight seminar, Good Design, presented by a panel of experts from the Australian Institute of Architects (NSW Chapter), Judicial Commission of NSW

14 March The Law Council of Australia and EPLA (NSW) Inc, Second Mahla Pearlman Oration, The Hon. Paul Stein AM QC, Dixon Room, State Library NSW

21 March Twilight seminar/Field trip to “The Block”, Redfern, conducted by Mr Michael Mundine, CEO Aboriginal Housing Company and Mr Greg Colbran, Project Manager DeiCorp

8 May Twilight seminar, Judicial Recusal, presented by Mr Arthur Moses SC, Judicial Commission of NSW

24 July Twilight seminar, 3D Imaging, presented by Mr Tony MacDonald, Managing Director and 3D Visualisation Artist from Arterra Interactive

Speaking engagements

28 October *Court procedures, expert witnesses and s 34 conferences*, a tutorial to Planning Law students, University of Sydney

Membership of legal, cultural or benevolent organisations

Member, Planning Institute of Australia

Member, Institution of Engineers, Australia

Mr Graham Brown, Commissioner

Conferences and seminars

28 February	Twilight seminar, Good Design, presented by a panel of experts from the Australian Institute of Architects (NSW Chapter), Judicial Commission of NSW
21 March	Twilight seminar/Field trip to “The Block”, Redfern, conducted by Mr Michael Mundine, CEO Aboriginal Housing Company and Mr Greg Colbran, Project Manager DeiCorp
8 May	Twilight seminar, Judicial Recusal, presented by Mr Arthur Moses SC, Judicial Commission of NSW
31 July	EPLA twilight seminar, Access to Justice and the Right to Public Participation: Lessons learned from the GUNNS20 Litigation and film presentation, <i>Defendant 5: The Fall of the House of Gunns</i> , produced by Ms Heidi Lee Douglas followed by a discussion panel with Mr Julian Burnside AO QC, Defence Counsel for GUNNS20 litigation; Prof. Sharon Beder, University of Wollongong; Dr Gerry Bates, University of Sydney; and Mr Pepe Clarke, CEO of The Nature Conservation Council of NSW
21 August	Twilight seminar, Hoarding, presented by Dr Jessica Grisham, Senior Lecturer at the School of Psychology, University of NSW
20 November	Twilight seminar, The Neurobiology of Satisfaction: Application of <i>Briginshaw v Briginshaw</i> to Land and Environment Court proceedings, presented by Dr Hayley Bennett, Barrister and Neuropsychologist

Speaking engagements

13 September	<i>Environmental evidence – the good, the bad and the ugly</i> , presentation to Environment Institute of Australia and New Zealand Environmental Expert Course, Clayton Utz, Sydney
18 October	<i>Section 34 Conciliation Conferences</i> , EPLA Annual Conference workshop, Sydney

Ms Annelise Tuor, Commissioner

Conferences and seminars

28 February	Twilight seminar, Good Design, presented by a panel of experts from the Australian Institute of Architects (NSW Chapter), Judicial Commission of NSW
14 March	The Law Council of Australia and EPLA (NSW) Inc, Second Mahla Pearlman Oration, The Hon. Paul Stein AM QC, Dixon Room, State Library NSW
21 March	Twilight seminar/Field trip to “The Block”, Redfern, conducted by Mr Michael Mundine, CEO Aboriginal Housing Company and Mr Greg Colbran, Project Manager DeiCorp
18 April	A New Planning System for NSW – the White Paper, Planning Institute of Australia
8 May	Twilight seminar, Judicial Recusal, presented by Mr Arthur Moses SC, Judicial Commission of NSW
24 July	Twilight seminar, 3D Imaging, presented by Mr Tony MacDonald, Managing Director and 3D Visualisation Artist from Arterra Interactive
31 July	EPLA twilight seminar, Access to Justice and the Right to Public Participation: Lessons learned from the GUNNS20 Litigation and film presentation, <i>Defendant 5: The Fall of the House of Gunns</i> , produced by Ms Heidi Lee Douglas followed by a discussion panel with Mr Julian Burnside AO QC, Defence Counsel for GUNNS20 litigation; Prof. Sharon Beder, University of Wollongong; Dr Gerry Bates, University of Sydney; and Mr Pepe Clarke, CEO of The Nature Conservation Council of NSW
5 August	City Talk: Renewable Cities, Panel Discussion, City of Sydney Council
21 August	Twilight seminar, Hoarding, presented by Dr Jessica Grisham, Senior Lecturer at the School of Psychology, University of NSW
24 September	City Talk: Dr David Suzuki, City of Sydney Council

Speaking engagements

18 October	<i>Class 1 appeals in the LEC</i> , a presentation to Planning and Environmental Regulation Law students, University of Western Sydney
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Membership of legal, cultural or benevolent organisations

Member, Planning Institute of Australia

Ms Susan Dixon, Commissioner

Conferences and seminars

8 May	Twilight seminar, Judicial Recusal, presented by Mr Arthur Moses SC, Judicial Commission of NSW
24 July	Twilight seminar, 3D Imaging, presented by Mr Tony MacDonald, Managing Director and 3D Visualisation Artist from Arterra Interactive
21 August	Twilight seminar, Hoarding, presented by Dr Jessica Grisham, Senior Lecturer at the School of Psychology, University of NSW
27 August	Cross-jurisdictional seminar, Judgment Writing Workshop: A Refresher Course, presented by Professor James Raymond, Judicial Commission of NSW
20 November	Twilight seminar, The Neurobiology of Satisfaction: Application of <i>Briginshaw v Briginshaw</i> to Land and Environment Court proceedings, presented by Dr Hayley Bennett, Barrister and Neuropsychologist

Speaking engagements

7 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

Ms Linda Pearson, Commissioner

Conferences and seminars

28 February	Twilight seminar, Good Design, presented by a panel of experts from the Australian Institute of Architects (NSW Chapter), Judicial Commission of NSW
21 March	Twilight seminar/Field trip to “The Block”, Redfern, conducted by Mr Michael Mundine, CEO Aboriginal Housing Company and Mr Greg Colbran, Project Manager DeiCorp
10 April	Judicial Commission Ngará Yura Program, Understanding Kinship, Ms Lynette Riley, Senior Lecturer, University of Sydney, Judicial Commission of NSW
18-19 July	Australian Institute of Administrative Law 2013 National Forum, Administrative Law in an Interconnected World, Canberra
22 July	The Australian Institute of Administrative Law seminar, Boundaries of Judicial Review and Justiciability; comparing perspectives from Australia and Canada, presented by Professor Lorne Sossin, Dean of Osgoode Hall Law School, York University, Toronto, Banco Court, Supreme Court, Queens Square, Sydney
24 July	Twilight seminar, 3D Imaging, presented by Mr Tony MacDonald, Managing Director and 3D Visualisation Artist from Arterra Interactive
31 July	EPLA twilight seminar, Access to Justice and the Right to Public Participation: Lessons learned from the GUNNS20 Litigation and film presentation, <i>Defendant 5: The Fall of the House of Gunns</i> , produced by Ms Heidi Lee Douglas followed by a discussion panel with Mr Julian Burnside AO QC, Defence Counsel for GUNNS20 litigation; Prof. Sharon Beder, University of Wollongong; Dr Gerry Bates, University of Sydney; and Mr Pepe Clarke, CEO of The Nature Conservation Council of NSW
1 August	Council of Australasian Tribunals Whitmore Lecture 2013, Forewarned and Four-Armed – Administrative Law Values and the Fourth Arm of Government, presented by The Hon. Wayne Martin AC, Chief Justice of Western Australia
21 August	Twilight seminar, Hoarding, presented by Dr Jessica Grisham, Senior Lecturer at the School of Psychology, University of NSW
27 August	AIAL (NSW Chapter) seminar, Keep the AAT from becoming a Court, presented by The Hon. Justice Duncan Kerr, President of the Administrative Appeals Tribunal, with commentary by The Hon. Bob Ellicott QC
13 September	Access and Capacity, COAT NSW Annual Conference, Sydney

2 October	Judicial Commission Ngara Yura twilight seminar, Constitutional Recognition of Indigenous Australians, presented by Professor Megan Davis, Professor of Law UNSW and Dr Sarah Pritchard SC, Adjunct Professor University of NSW, Judicial Commission of NSW
8 October	NSW Bar Association seminar, Representing Clients at Mediation: Choosing the Most Effective Role, presented by Mr Robert Angyal SC
30 October	NSW Bar Association CPD Seminar, Relevancy Grounds in Environmental and Administrative Law presented by Mr Richard Lancaster SC and Mr Stephen Free, commentary by The Hon. Justice Jayne Jagot

Speaking engagements

25 July	<i>Role of Experts in the Court Process</i> , API Associate Professional Certificate in Expert Evidence for the Land and Environment Court
3 September	<i>Dispute Resolution Processes in the Land and Environment Court</i> , delegation from Ombudsman Republic Indonesia, Commonwealth Ombudsman Sydney
10 October	<i>Dispute Resolution in the Land and Environment Court</i> , a presentation Planning and Environmental Law students, Faculty of Design, Architecture and Building, University of Technology Sydney, Sydney
15 November	<i>Expert Evidence in Tribunals</i> , ANU College of Law Centre for International and Public Law, Public Law Weekend

Membership of legal, cultural or benevolent organisations

Chair, Reference Group, New South Wales Civil and Administrative Tribunal

Chair, Land and Environment Court Judicial Newsletter Committee

Member, Land and Environment Court Education Committee

Member, Administrative Review Council

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

Member, National Environmental Law Association

Member, Australian Association of Constitutional Law

Member, Council of Australasian Tribunals

Member, Australian Institute of Administrative Law

Ms Judy Fakes, Commissioner

Conferences and seminars

28 February	Twilight seminar, Good Design, presented by a panel of experts from the Australian Institute of Architects (NSW Chapter), Judicial Commission of NSW
21 March	Twilight seminar/Field trip to “The Block”, Redfern, conducted by Mr Michael Mundine, CEO Aboriginal Housing Company and Mr Greg Colbran, Project Manager DeiCorp
5 June	Twilight seminar, JIRS App on the iPad, presented by Mr Murali Sagi, Director of Information Management and Corporate Services, Judicial Commission of NSW
24 July	Twilight seminar, 3D Imaging, presented by Mr Tony MacDonald, Managing Director and 3D Visualisation Artist from Arterra Interactive
21 August	Twilight seminar, Hoarding, presented by Dr Jessica Grisham, Senior Lecturer at the School of Psychology, University of NSW
23 August	Local Government Tree Resources Association Presentation, Root Plate Investigations – Laman Street, Mr Phil Hewett, Newcastle City Council
5-6 September	2013 TREENET Symposium, Adelaide
18 October	EPLA Annual Conference, Day 2, Sydney
20 November	Twilight seminar, The Neurobiology of Satisfaction: Application of <i>Briginshaw v Briginshaw</i> to Land and Environment Court proceedings, presented by Dr Hayley Bennett, Barrister and Neuropsychologist

Speaking engagements

12 March	<i>Overview of the Trees (Disputes Between Neighbours) Act 2006</i> , a presentation to Macquarie University Environmental Law students, Land and Environment Court
18 September	<i>The Trees (Disputes Between Neighbours) Act 2006: what happens on site</i> , a presentation to LEC Registry staff
18 October	<i>What the Court expects of experts – ethical obligations of the expert</i> , a presentation to EPLA Annual Conference, Sydney

Membership of legal, cultural or benevolent organisations

Member, TREENET Management Committee

Member, International Society of Arboriculture

Member, Review Panel – Part 2A *Trees (Disputes Between Neighbours) Act 2006*

Ms Susan Morris, Commissioner

Conferences and seminars

28 February	Twilight seminar, Good Design, presented by a panel of experts from the Australian Institute of Architects (NSW Chapter), Judicial Commission of NSW
21 March	Twilight seminar/Field trip to “The Block”, Redfern, conducted by Mr Michael Mundine, CEO Aboriginal Housing Company and Mr Greg Colbran, Project Manager DeiCorp
10 April	Judicial Commission Ngara Yura Program, Understanding Kinship, Ms Lynette Riley, Senior Lecturer, University of Sydney, Judicial Commission of NSW
18 April	A New Planning System for NSW – the White Paper, Planning Institute of Australia
8 May	Twilight seminar, Judicial Recusal, presented by Mr Arthur Moses SC, Judicial Commission of NSW
16 May	The Draft Metropolitan Strategy for Sydney, Planning Institute of Australia
5 June	Twilight seminar, JIRS App on the iPad, presented by Mr Murali Sagi, Director of Information Management and Corporate Services, Judicial Commission of NSW
24 July	Twilight seminar, 3D Imaging, presented by Mr Tony MacDonald, Managing Director and 3D Visualisation Artist from Arterra Interactive
20 November	Twilight seminar, The Neurobiology of Satisfaction: Application of <i>Briginshaw v Briginshaw</i> to Land and Environment Court proceedings, presented by Dr Hayley Bennett, Barrister and Neuropsychologist

Speaking engagements

28 August	<i>What leads to Class 1</i> development appeals, a presentation to Environmental Planning and Development Law students, University of Technology Sydney
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Membership of legal, cultural or benevolent organisations

Member, Planning Institute of Australia (CPP)

Member, Australian Disputes Resolution Association Inc

Ms Susan O'Neill, Commissioner

Conferences and seminars

28 February	Twilight seminar, Good Design, presented by a panel of experts from the Australian Institute of Architects (NSW Chapter), Judicial Commission of NSW
14 March	The Law Council of Australia and EPLA (NSW) Inc, Second Mahla Pearlman Oration, The Hon. Paul Stein AM QC, Dixon Room, State Library NSW
21 March	Twilight seminar/Field trip to "The Block", Redfern, conducted by Mr Michael Mundine, CEO Aboriginal Housing Company and Mr Greg Colbran, Project Manager DeiCorp
8 May	Twilight seminar, Judicial Recusal, presented by Mr Arthur Moses SC, Judicial Commission of NSW
24 July	Twilight seminar, 3D Imaging, presented by Mr Tony MacDonald, Managing Director and 3D Visualisation Artist from Arterra Interactive
21 August	Twilight seminar, Hoarding, presented by Dr Jessica Grisham, Senior Lecturer at the School of Psychology, University of NSW
20 November	Twilight seminar, The Neurobiology of Satisfaction: Application of <i>Briginshaw v Briginshaw</i> to Land and Environment Court proceedings, presented by Dr Hayley Bennett, Barrister and Neuropsychologist

Speaking engagements

21 May	<i>Heritage issues in merits appeals</i> , Heritage Planning Law students, Master of Heritage Conservation, University of Sydney
29 August	<i>NSW Land and Environment Court planning appeals</i> , Australian Institute of Architects (NSW Chapter) CPD Event
10 September	<i>Land and Environment Court merits appeals</i> , Planning Law students, Master of Urban and Regional Planning, University of Sydney
1 November	<i>Merits appeals and heritage issues</i> , Heritage Law students, Master of Environmental Law, University of Sydney

Membership of legal, cultural or benevolent organisations

Associate Australian Institute of Architects

Registered Architect

Appendices

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

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 2013

The Hon. Justice Brian J Preston SC, Chief Judge (Chair)	Land and Environment Court
Senior Commissioner Tim Moore	Land and Environment Court
Acting Registrar Leonie Walton	Land and Environment Court
Mr Damon Anderson	NSW 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 Aborigiculturists
Ms Lesley Finn	Law Society Development and Planning Committee and Law Society of New South Wales
Mr Aaron Gadiel	NSW Urban Taskforce
Mr Chris Hallam	Engineers Australia
Ms Sue Higginson	Environmental Defender's Office
Mr James Johnson	Nature Conservation Council of New South Wales
Mr Tom Howard SC	New South Wales Bar Association
Ms Patricia Lenehan	NSW Office of Environment and Heritage
Mr Frank Loveridge	Local Government NSW
Ms Helen Macfarlane	Urban Development Institute of Australia

Mr Michael Neustein	Australian Institute of Architects (NSW Chapter)
Ms Rebecca Fleming	Environment and Planning Law Association (NSW) Inc
Mr Greg Preston	Australian Property Institute
Cr Michael Reymond	Local Government Representative
Mr Eugene Sarich	Australian Institute of Building Surveyors and Australian Institute of Environmental Health
Mr Gavin Shapiro	Environment and Planning Law Association (NSW) Inc
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 (to Nov)	NSW Department of Planning & Environment
Ms Jennifer Smith	
Mr Colin Weatherby	Institution of Surveyors New South Wales Inc
Mr Ian Woodward	Local Government Lawyers Group

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 up to 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 2013

The Hon. Justice Brian J Preston SC, Chief Judge (Chair)	Land and Environment Court
Senior Commissioner Tim Moore	Land and Environment Court
Commissioner Susan Dixon	Land and Environment Court
Mr Stewart Armstrong	Trade & 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 Sue Higginson	NSW Environmental Defender's Office
Mr Bob Harrison	Mining Titles Services Pty Ltd
Mr Russell Hetherington	Hetherington Exploration & Mining Title Services
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
Mr Andrew White	Sparke Helmore Lawyers

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

The Hon. Justice Terence William Sheahan AO

The Hon. Justice Peter Meldrum Biscoe

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)

The Hon. Justice Nicola Hope Margaret Pain

Commissioner Linda Pearson

Ms Leonie Walton, Acting Registrar

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

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

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)

Commissioner Judy Fakes

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)

Ms Vicki Ferguson, Information & Research Officer

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Legislation

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Legislation

• Statutes and Regulations

Planning:

The Native Vegetation Regulation 2013, commenced on 23 September 2013, repealed and remade, with some amendments, the Native Vegetation Regulation 2005, to provide for:

- development consent for clearing of native vegetation;
- the form and content of property vegetation plans (PVPs), the variation and termination of PVPs and a register of PVPs;
- the assessment of broadscale clearing, including the adoption of an Assessment Methodology for determining whether proposed broadscale clearing will improve or maintain environmental outcomes;
- clearing for private native forest;
- routine agricultural management;
- special provisions for vulnerable areas;
- miscellaneous and savings and transitional provisions.

The Regulation also amends the Native Vegetation Act 2005 to provide for the land zones as described in a standard form that the Act does not apply.

The Coastal Protection Amendment (Early Intervention) Regulation 2013, commenced 15 August 2013, updates the Coastal Protection Regulation 2013 to comply with in relation to:

- the placement, maintenance and repair of coastal protection works;
- orders to remove material, structures or buildings on beaches, and
- the restoration of land after the removal of coastal protection works.

Local Government:

The Local Government Amendment (Early Intervention) Regulation 2013, commenced 15 August 2013, updates the Local Government Regulation 2013 to comply with in relation to:

May 2013

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- Consultation Drafts
- Miscellaneous

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- Supreme Court of India
- High Court of Australia
- Northern Territory Court of Appeal
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- NSW Supreme Court
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- NSW Administrative Decisions Tribunal
- Land and Environment Court of NSW
 - Judicial Review
 - Compensation
 - Criminal
 - Development Appeals
 - Civil Enforcement
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 - Contaminated
 - Objector Appeals
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- Commissioner Decisions

Court News

Legislation

• Statutes and Regulations

Planning:

On 1 March 2013 the following provisions of Environmental Planning and Assessment Amendment Act 2012 No 93, commenced:

- Schedule 1 [1]-[15], [26] and [27], and
- the uncommenced provisions of Schedule 2.

The remaining provisions in Schedule 1 commenced 8 March 2013.

The Department of Planning and Infrastructure has released a Planning Circular [PS 12-003] that outlines the changes to the Environmental Planning and Assessment Act 1979 that commenced 1 March 2013, including the savings and transitional provisions relating to application of development control plans in assessing development applications.

Environmental Planning and Assessment Amendment Regulation 2013 published 1 March 2013, amends the Environmental Planning and Assessment Regulation 2000 to:

- make further provision in relation to matters that must be complied with before an occupation certificate may be issued that authorises a person to commence occupation or use of a new building or a partially completed new building;
- prescribe the maximum amounts that a relevant authority may require a person to pay, under a compliance cost notice, for certain costs and expenses of the authority relating to a notice of intention to give an order and the giving of an order; and
- make amendments (including savings and transitional arrangements) consequent on the commencement of certain provisions of the Environmental Planning and Assessment Amendment Act 2012.

Environmental Planning and Assessment Amendment (Paper Subdivisions) Regulation 2013 published 8 March 2013, amends the Environmental Planning and Assessment Regulation 2000 in connection with the commencement of Schedule 5 to the Environmental Planning and Assessment Act 1979 (relating to "paper subdivisions") as follows:

- to require a consent authority determining a development application for land to consider any applicable subdivision order under that Schedule and any development plan under that Schedule that relates to the land;
- to prescribe matters to be included in a development plan for land that is to be the subject of a subdivision order under that Schedule that will enable its consolidation and subsequent development;
- to set out requirements for the preparation, notification, adoption and amendment of any such development plan;

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