

The Land and Environment Court of NSW



Annual Review

2011

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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 five 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 636 written judgments. These judgments are published on the Court's website (www.lawlink.nsw.gov.au/lec) and elsewhere. They provide a valuable contribution to planning and environmental jurisprudence. They also enable transparency and accountability in the Court's decision-making.

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

The Honourable Justice Brian J Preston SC
Chief Judge



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

1 2011: 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 some 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 2010. Of particular significance are:

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

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

- The clearance rate for matters in all classes of the Court's jurisdiction, except for Classes 2 and 8, declined below 100%;
- The total number of matters pending increased;

- The timeliness of the pending caseload, as measured by the backlog indicator, declined for three classes (Classes 3, 4 and 5);

- The time taken to finalise cases increased in four Classes (Classes 3, 4, 5 and 8).

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 2011, reforms occurred in the following areas:

- New Practice Notes;
- New delegation to Registrars and new form;
- Upgrading of the Court's website.

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).

The Court also refurbished the Registry of the Court.

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 2011, the Court's Annual Conference was held at the Crowne Plaza Hotel at Coogee Beach. The Court held seven twilight seminars in 2011.

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 was 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 2011, 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.



L to R: Justice Brian Preston, Professor Noriko Okubo and Mr Mahito Shindo

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 2011, 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

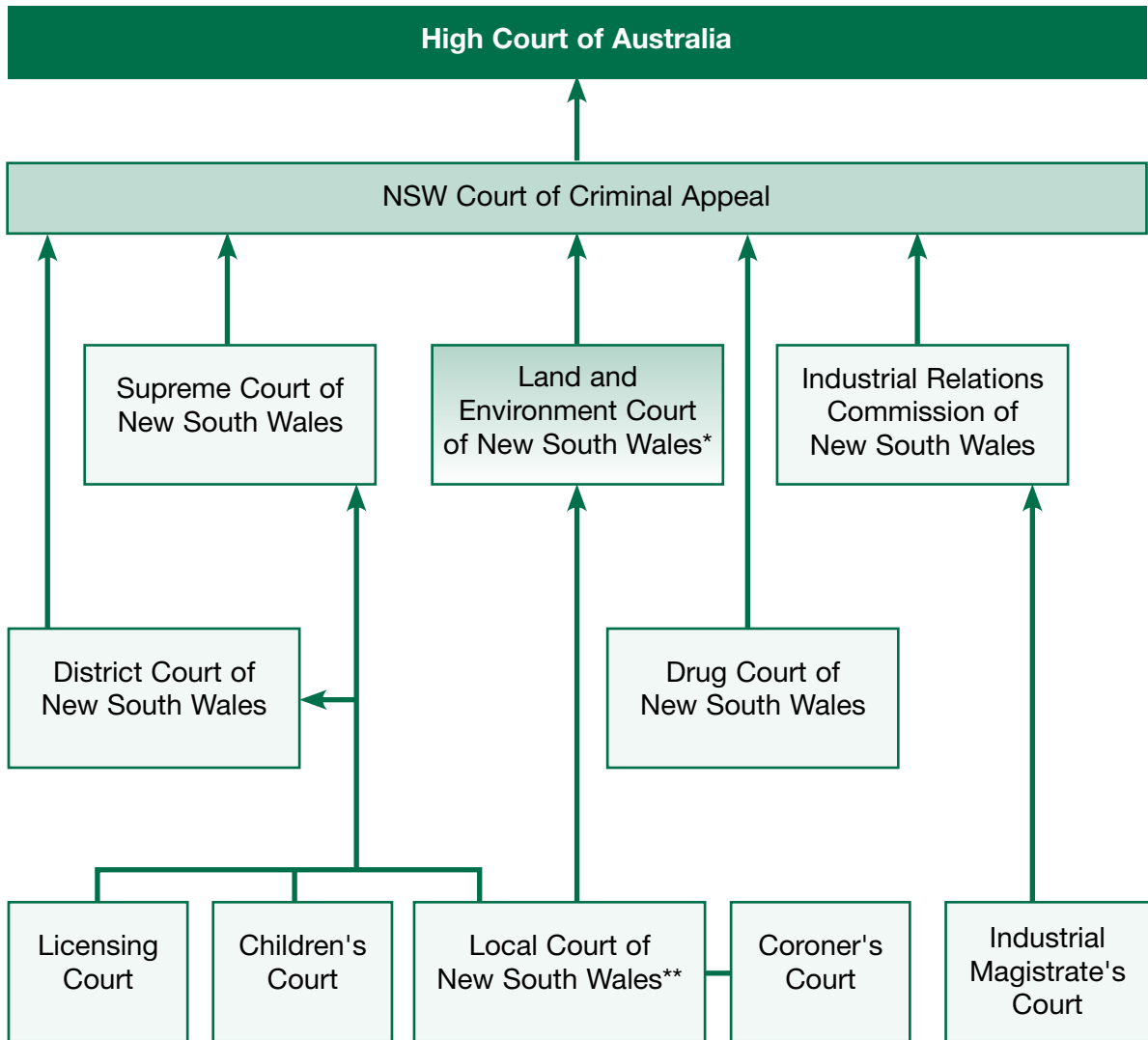
Class 1	environmental planning and protection appeals (merits review appeals)
Class 2	local government, trees and miscellaneous appeals (merits review appeals)
Class 3	land tenure, valuation, rating and compensation matters (merits review appeals)
Class 4	environmental planning and protection (civil 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.

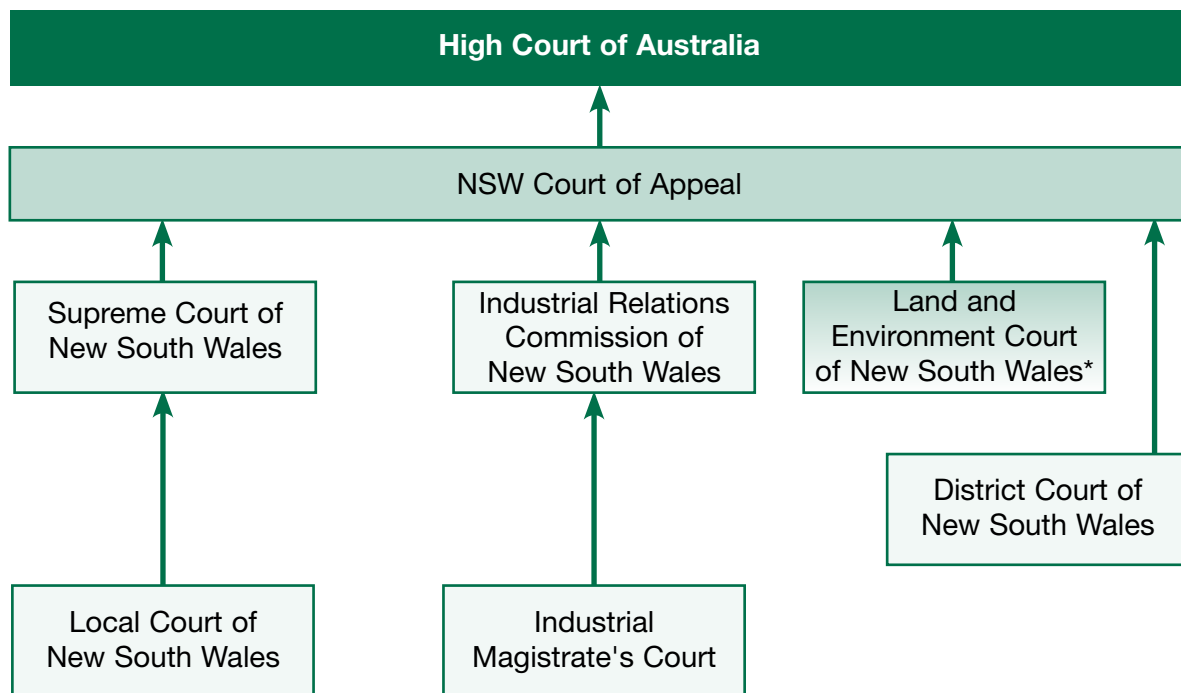
Figure 2.1 New South Wales Court System – Criminal Jurisdiction



* 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.

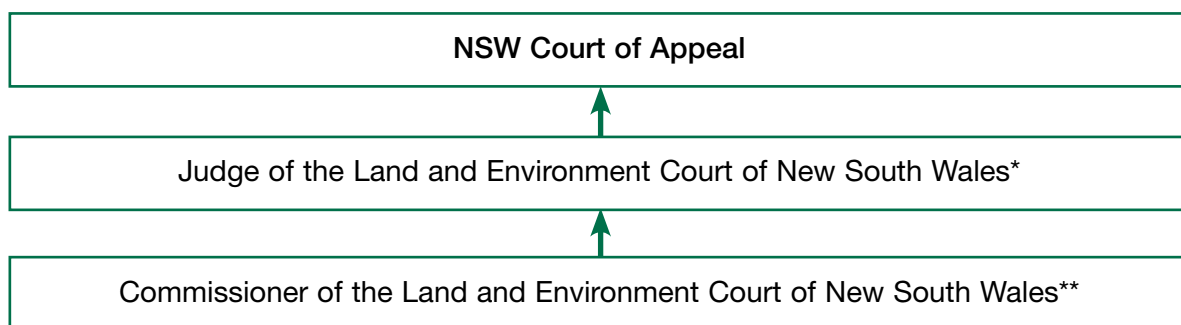
** Appeals from the Local Court of New South Wales to the Land and Environment Court are with respect to an environmental offence under the *Crimes (Appeal and Review) Act 2001* and are in Classes 6 and 7 of the Land and Environment Court's jurisdiction.

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 2011, the Judges, in order of seniority, were as follows:

Chief Judge

The Honourable Justice Brian John Preston SC

Judges

The Honourable Justice Terence William Sheahan AO

The Honourable Justice Nicola Hope Margaret Pain

The Honourable Justice Peter Meldrum Biscoe

The Honourable Justice Rachel Ann Pepper

The Honourable Justice Malcolm Graeme Craig

Acting Judges

The Hon. Acting Justice Michael Francis Moore was appointed from 3 October to 16 December 2011.

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;



Court hearing

- 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 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 2011, the Commissioners were as follows:

Senior Commissioner

Mr Tim Moore (on leave from 22 July 2011)

Acting Senior Commissioner

Mr Graham Brown (from 25 August 2011 to 31 December 2011)

Commissioners

Mr Robert R Hussey

Mr Graham T Brown

Ms Janette S Murrell

Ms Annelise Tuor

Ms Susan A Dixon

Ms Linda Pearson

Ms Judy A Fakes

Ms Susan I Morris

Acting Commissioners

Associate Professor Dr Paul Adam AM – botanist and ecologist

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

Mr Russell Cowell – valuer

Dr Megan Davis – member of the Aboriginal community and lawyer

Dr Mary Edmunds – anthropologist and mediator

Mr David Galwey – arboricultural consultant

Mr Philip Hewett – arboriculturist

Mr David Johnson – environmental consultant and environmental scientist

Mr Anthony McAvoy – member of the Aboriginal community and lawyer

Mr E Craig Miller – valuer and mediator

Dr David Parker – valuer

Mr Michael Ritchie – environmental scientist and mediator

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

Ms Jennifer Smithson – town planner

Professor Sharon Sullivan AO – heritage consultant

Mr Michael Whelan – surveyor, mediator and arbitrator

The Registrars

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

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

As at 31 December 2011, the Registrars were as follows:

Registrar

Ms Joanne Gray (on leave from 4 September 2011)

Acting Registrar

Ms Leonie Walton (from 7 November 2011 to 31 December 2011)

Assistant Registrar and Manager Court Services

Ms Maria Anastasi

Appointments and retirements

Appointments

The Hon. Michael Francis Moore was appointed an Acting Judge from 3 October to 16 December 2011.

Mr Anthony McAvoy was appointed an Acting Commissioner on 21 September 2011.

Mr Graham Brown was appointed Acting Senior Commissioner from 25 August 2011.

Retirements

There were no retirements from the Court during 2011.

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.



Lodging documents at the Registry

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 and the CaseLaw judgment database.

Commissioner Support

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

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

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

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

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

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

Class 3

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

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

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

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

Class 4

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

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

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

Class 5

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

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

hearing 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.

Classes 6 and 7

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

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

Class 8

Proceedings in Class 8 are disputes under the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991*. Class 8 proceedings are case managed in a Class 8 List by a Commissioner for Mining on every second Monday morning. The Commissioner for Mining makes appropriate directions for the orderly, efficient and proper preparation for trial. Class 8 proceedings must be heard by a Judge or a Commissioner for Mining. Information on Class 8, and mining legislation and cases, are available on the special pages for mining on the Court's website.



On-site view

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 2011, the Court experienced an increase in the use of eCourt callover and recorded 1224 registered eCourt users (up from 1079 in 2010). 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



Conciliation or on-site hearing

dispute, they can nevertheless agree to the Commissioner adjudicating and disposing of the proceedings.

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 2007-2011.

Table 3.1 s 34 Conciliation Conferences 2007 – 2011

	2007	2008	2009	2010	2011
s 34 conferences	214	552	481	632	637

The table shows a continued increase in utilisation of conciliation conferences, with 2011 recording the highest number of conciliation conferences in the last five years.

Mediation

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

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

Table 3.2 provides a comparison between mediations in 2007 to 2011. 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 2007 – 2011

		2007	2008	2009	2010	2011
Classes 1 and 2	Total:	9	3	5	3	4
	Internal	6	2	5	3	4
	External	3	1	0	0	0
	Number finalised pre-hearing	5	2	1	0	3
	% finalised pre-hearing	56	66	20	0	75
Class 3	Total:	15	8	8	6	4
	Internal	0	5	2	3	3
	External	15	3	6	3	1
	Number finalised pre-hearing	12	7	8	5	4
	% finalised pre-hearing	80	88	100	83	100
Class 4	Total:	7	13	14	6	8
	Internal	3	8	3	3	5
	External	4	5	11	3	3
	Number finalised pre-hearing	5	11	12	6	7
	% finalised pre-hearing	71	85	86	100	88
All Classes	Total:	31	24	27	15	16
	Internal	9	15	10	9	12
	External	22	9	17	6	4
	Number finalised pre-hearing	22	20	19	11	14
	% finalised pre-hearing	71	83	70	73	88

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 these classes between 2010 and 2011 has remained relatively constant. There was an increase in mediations in Class 4 between 2010 and 2011.

Neutral evaluation

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

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

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

4 Reforms and Developments

- New Practice Notes
- New delegation to Registrars and new form
- Upgrading of the Court's website
- Implementing the International Framework for Court Excellence
- Sentencing database for environmental offences
- Refurbishment of the Registry

During 2011, reforms occurred in the following areas:

- New Practice Notes and Policies;
- New delegation to Registrars and new form; and
- Upgrading of the Court's website.

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).

The Court also refurbished the Registry of the Court.

New Practice Notes

The Court made two new Practice Notes during 2011: Practice Note Class 1 – Residential Development Appeals (which commenced on 7 February 2011) and Practice Note Class 3 -Compensation Claims (which commenced on 15 July 2011).

The Residential Development Appeals Practice Note applies to the types of residential development described in s 34AA of the *Land and Environment Court Act 1979*, including detached single dwellings and dual occupancies. Section 34AA was introduced by the *Planning Appeals Legislation Amendment Act 2010*. Section 34AA provides for a combined conciliation-adjudication dispute resolution process. The Court must arrange a conciliation conference between the parties. If the parties reach agreement at the conciliation, the commissioner proceeding at the

conciliation must dispose of the proceedings in accordance with the parties' agreement (if lawful). If the parties do not agree, then the commissioner must terminate the conciliation and proceed to dispose of the proceedings following a hearing held forthwith or, if the parties consent, on the basis of what occurred at the conciliation conference. The Practice Note explains the process of commencing a residential development appeal, and preparing for and conducting directions hearings, the conciliation conference and any subsequent hearing, and sets a target time for finalising residential development appeals.

In conjunction with the Practice Note, the Court established a special webpage on residential development appeals and conducted workshops for court users, professional partners and the public explaining the new dispute resolution process for residential development appeals.

The Class 3 Compensation Claims Practice Note is a revision of an earlier practice note. It was developed in response to monitoring of the effectiveness of the previous practice note and consultation with professional partners and court users, including focus group discussion of key provisions of a draft of the revised practice note.

New delegation to Registrars and new form

A new Instrument of Delegation was issued on 28 February 2011 to Registrars pursuant to s 13 of the *Civil Procedure Act 2005* giving Registrars powers under s 34AA of the *Land and Environment Court Act 1979* and a new Tree Dispute Application Form (Form C) was approved, taking effect from 19 September 2011.

Upgrading of the Court's website

The Court upgraded the Court's website in 2011 by:

- launching a new webpage (on 7 February 2011) for residential development appeals, including information materials on the new dispute resolution process for residential development appeals, the practice note, court materials, reference materials, and relevant legislation;
- updating the trees and hedges information webpage with new information on the high hedges jurisdiction including a new form and new decisions of the Court; and
- updating the biodiversity, heritage and mining webpages listing the statutes and subordinate legislation, decisions of the Court classified by categories and links to other websites, and providing new information on biodiversity, heritage, mining and the law.

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 November 2011, the Court again undertook the self-assessment process under the Framework. The Framework recommends regular self-assessment to monitor a court's progress in achieving the areas of court excellence. The Court first undertook self-assessment in 2009. The process was summarised in the Court's 2009 Annual Review. The Court followed the same process in 2011 of convening a meeting of all judges, commissioners and registrars, and a number of acting commissioners, to explain again the Framework and the process of self-



assessment. After the first meeting, each of the participants completed the self-assessment questionnaire. The individual results were combined and discussed at the second meeting. The participants at the second meeting selected by consensus answers to the self-assessment questions, which were representative of the collective views of the participants and hence became the Court's answers.

The consensus answers were weighted and converted to a score using the methodology in the Framework. The final weighted score placed the Court in Band 5 (out of 6), an improvement from 2009 where the Court was placed in Band 4. The Framework describes the effect of Band 5 assessment in these terms.

Approach

A proven and well-defined approach with evidence of refinement through learning and improvement which is well integrated with organisational needs identified in other categories

Deployment

Approach is deployed in all key areas of the organisation and is practised consistently by all levels

Results

Current performance levels are good to excellent in most key indicators and/or improvement trends are sustained in most areas; or there are favourable comparisons or benchmarks in most areas; or results are reported for all key indicators

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 2011, 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 2009 and 2010 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;
- undertaking re-assessment of the Court's performance using self-assessment methodology in the Framework.

2. Court planning and policies

- adopting new practice note for residential development appeals and a revised practice note for compensation claims.

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:

- improving information on the Court's website, including establishing and updating webpages on specialised areas of the Court's jurisdiction;
- continuing publication on a quarterly basis of a court newsletter with the latest legislation, judicial decisions and changes in practice and procedure;
- conducting public workshops on the new jurisdiction of residential development appeals;
- expanding reporting on the Court's performance in the Annual Review on the areas of court excellence.

6. Court resources:

- continuing and extending the professional development programme for judges and commissioners, as explained in Chapter 6;
- refurbishment of the registry, both the public areas and the court areas.

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 2012.

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 2011, 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.



Refurbishment of the Registry

The refurbishment of the Court's Registry finished on 5 July 2011. The refurbishment substantially improved the facilities available to court users and the public, including new counter facilities, work desks, computer terminals with internet and printing facilities, and a meeting room available for use on request. The work space and conditions for Registry staff have been modernised and improved.



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
 - Patterns in complaints

Overall caseload

The comparative caseload statistics between 2007 and 2011 are summarised in Table 5.1.

Table 5.1 Caseload Statistics

		2007	2008	2009	2010	2011
Class 1	Registrations	788	865	577	584	631
	Restored	90	57	43	25	28
	Pre-Trial Disposals	507	552	452	410	410
	Disposed by Hearing	485	357	253	229	202
	Pending	328	342	255	223	270
Class 2	Registrations	184	149	116	151	159
	Restored	8	6	10	5	11
	Pre-Trial Disposals	59	57	8	29	50
	Disposed by Hearing	100	103	120	99	137
	Pending	40	36	33	61	47
Class 3	Registrations	124	134	183	193	215
	Restored	14	15	5	7	6
	Pre-Trial Disposals	125	114	113	205	136
	Disposed by Hearing	43	58	28	33	35
	Pending	130	108	155	120	170
Class 4	Registrations	234	184	141	129	145
	Restored	45	47	22	26	17
	Pre-Trial Disposals	219	181	111	95	77
	Disposed by Hearing	89	87	64	63	67
	Pending	133	97	85	83	103
Class 5	Registrations	88	93	82	43	100
	Restored	7	8	9	5	3
	Pre-Trial Disposals	7	15	25	8	12
	Disposed by Hearing	68	71	94	47	25
	Pending	79	94	68	57	123
Class 6	Registrations	20	17	7	9	8
	Restored	1	0	0	4	0
	Pre-Trial Disposals	6	7	2	6	3
	Disposed by Hearing	9	9	14	5	4
	Pending	8	10	1	2	4

Class 8	Registrations	-	-	5	6	5
	Restored	-	-	0	1	2
	Pre-Trial Disposals	-	-	1	2	1
	Disposed by Hearing	-	-	2	3	8
	Pending	-	-	2	4	2
TOTAL	Registrations	1438	1442	1111	1115	1263
	Restored	165	133	89	73	67
	Pre-Trial Disposals	923	923	740	755	689
	Disposed by Hearing	794	687	547	479	478
	Pending	718	687	599	551	722

Table 5.1 shows the following trends between 2007 and 2011:

- Total registrations and restorations (1330) have increased from both 2009 and 2010, reflecting an increase in the major caseload classes of Class 1 to 5 of the Court's jurisdiction. Class 1 increased from 2009 and 2010, which were both years of lower registrations. Civil enforcement actions in Class 4 and particularly criminal prosecutions in Class 5 increased between 2010 and 2011. Registrations in tree and hedge applications in Class 2 increased marginally. Compensation claims and valuation objections in Class 3 continued to increase, resulting in the highest number in the last five years. Criminal appeals in Class 6 marginally decreased. Mining matters in Class 8 remained relatively constant.
- Total finalisations (1167) also decreased in 2011. The total number of cases disposed of by hearing in 2011 remained the same as in 2010, but the total number of cases disposed of before hearing decreased. The decline in finalisations was not uniform across the classes of the Court's jurisdiction. Finalisations in Classes 2 and 8 increased but finalisations in all other classes declined.
- Total finalisations (1167) were lower than total registrations (1330) in 2011, resulting in the total pending caseload (722) increasing in 2011, to its highest level in five years.
- Merits review and other civil proceedings finalised in Classes 1, 2 and 3 (970) comprised 83% of the Court's finalised caseload (1167) in 2011.
- Civil and criminal proceedings in Classes 4, 5, 6, 7 and 8 (197) comprised 17% of the Court's finalised caseload (1167) in 2011.
- The means of finalisation in 2011 were 59% pre-trial disposals (including by use of alternative dispute resolution processes and negotiated settlement) and 41% by adjudication by the Court. This is a decrease from 2010 but is still the second highest figure in five years, as Table 5.2 shows.

Table 5.2 Means of Finalisation – All Matters

	2007	2008	2009	2010	2011
Total matters finalised – all classes	1718	1610	1287	1234	1167
Total pre-trial finalisations	923	923	740	755	689
% matters finalised pre-trial	54	57	57	61	59

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

shows, 31.5% of appeals in Classes 1, 2 and 3 were finalised by these means. Of the total of 331 matters, 217 were finalised by conciliation and 114 by on-site hearings.

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

	2007	2008	2009	2010	2011
Total matters finalised	1319	1241	974	1005	1050
conciliation conferences and on-site hearings	277	370	299	322	331
% conciliation and matters finalised on-site	21.0	29.8	30.7	32.0	31.5

Court performance by class of jurisdiction

A brief summary of the Court's performance in 2011 for each of the eight classes of jurisdiction is provided.

Class 1

Registrations and restorations of Class 1 matters in 2011 increased by 8% from 2010 but finalisations declined by 4%, resulting in an increase in the pending caseload.

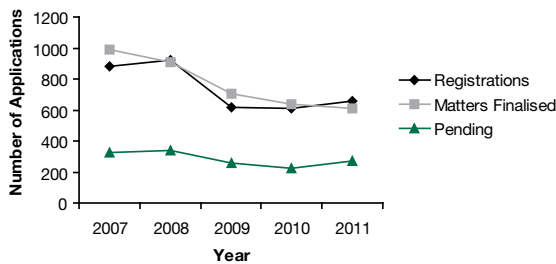
Class 1 matters finalised in 2011 constitute 52% of the Court's finalised caseload. 56% of all Class 1 matters finalised were appeals under s 97 of the *Environmental Planning and Assessment Act 1979* relating to development applications. 36% of the appeals under s 97 were applications where councils had not determined the development application within the statutory time period ("deemed refusals").

Of the remaining Class 1 matters finalised in 2011, 22% were applications to modify a development consent under s 96 of the *Environmental Planning and Assessment Act 1979* and 12% were appeals against council orders and the actual or deemed refusal by councils to issue building certificates and 10% were other matters, including applications for costs, appeals under s 56A of the Court Act against a Commissioner's decision, and appeals against prevention or remediation notices.

Figure 5.1 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 1 between 2007 and 2011.

Figure 5.1

Class 1 caseload: annual data 2007 to 2011



Class 2

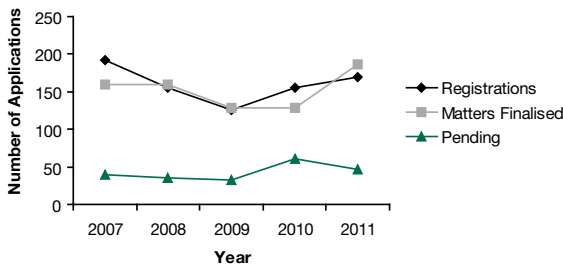
Class 2 registrations in 2011 increased by 9% from 2010, and represented 13% of total registrations in the Court in 2011.

The number of Class 2 matters finalised in 2011 increased significantly (by 46%) from 2010, and represented 16% 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 2007 and 2011.

Figure 5.2

Class 2 caseload: annual data 2007 to 2011



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.

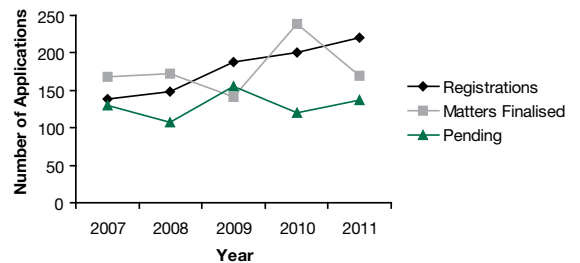
New registrations in Class 3 increased by 10% in 2011. Valuation and rating appeals accounted for 58% of new Class 3 appeals in 2011. Compensation claims for compulsory acquisition of land constituted 16% of all Class 3 appeals registered in 2011.

Class 3 matters finalised in 2011 declined by 28% from 2010, and constituted 15% of the Court's finalised caseload. Of the matters finalised in 2011, 49% were valuation or rating appeals, 21% were compensation claims and 30% were other matters.

Figure 5.3 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 3 between 2007 and 2011.

Figure 5.3

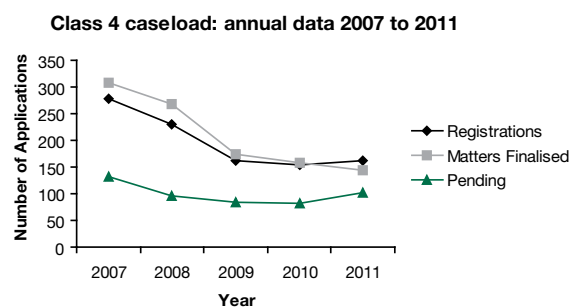
Class 3 caseload: annual data 2007 to 2011



Class 4

Class 4 registrations increased by 5% and finalisations decreased by 9% in 2011. Class 4 matters finalised in 2011 constituted 12% of the Court's finalised caseload. Of the Class 4 matters finalised in 2011, 49% were initiated by councils. Figure 5.4 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 4 between 2007 and 2011.

Figure 5.4



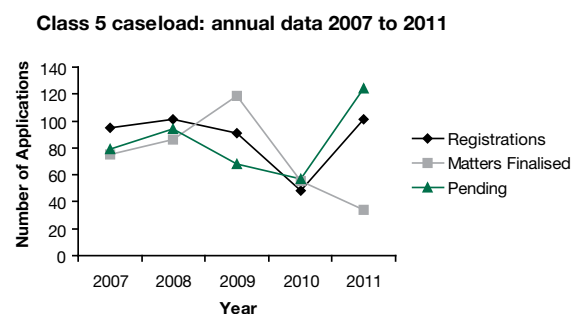
Class 5

Class 5 registrations rose 115% in 2011. The Environment Protection Authority/Office of Environment and Heritage initiated 32% of all new registrations. The number of matters initiated by local councils decreased to 11%, down from 33% in 2010. The NSW Office of Water initiated 53% of all new prosecutions.

Finalisations in 2011 declined by 33% from 2010. Of the 37 matters finalised in 2011, convictions were recorded in 26, 7 were withdrawn, and 4 were dismissed. Fines for conviction ranged from \$5,600 to \$300,000. No community service orders were issued in 2011.

Figure 5.5 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 5 between 2007 and 2011.

Figure 5.5



Classes 6 and 7

Eight Class 6 appeals were filed in 2011 and 7 were finalised. There were no Class 7 appeals before the Court in 2011.

Class 8

Seven mining matters were filed or restored and 9 were finalised in 2011.

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 2011 to increase court fees by 3.5% to be able to balance the Court's budget and ensure a high standard of court administration service quality (effective 1 July 2011). 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 increase 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. 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 2011, 25% 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 36.8% of Class 1 country matters and 3.4% of Class 3 country matters in 2011.

Table 5.4 shows the percentage of pre-hearing attendances conducted by eCourt directions hearings and telephone directions hearings in Classes 1-4 in 2011.

Table 5.4 eCourt and Telephone Directions Hearings

Class	No of cases	Total pre-hearing attendances	% eCourt directions hearings	% Telephone directions hearings
1	597	2,458	16	10
2	184	302	3	28
3	172	1,318	15	0.2
4	143	751	8	0.4
All	1,096	4,829	13.5	7

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

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

site of the development. In 2011, 14.4% of matters (in Classes 1 and 2) were conducted as an on-site hearing, of which 18.4% 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 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 2011.

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	1		
Ballina	2						
Casino	1						
Coffs Harbour	1						
Dubbo	1						
Gosford	4						
Kiama	1						
Lismore	1						
Maclean	1						
Maitland	1						
Mullumbimby	1						
Newcastle	1						
Nowra	2						
Oberon	1						

Orange	1		
Singleton	1		
Taree	2		
Tenterfield	1		
Toronto	3		
Tweed Heads	2		
Uralla	1		
Wagga Wagga	1		
Yass	1		
TOTAL	31	1	1

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 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 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 a special page on “self-help”. That page provides links to other web pages and to external links dealing with:

- Information sheets on each of the types of proceedings in the Court;
- Contacts in the Court;
- Frequently asked questions;
- A guide to the Court;
- Interpreters and their availability;
- Judgments of the Court;
- The jurisdiction of the Court;
- Languages and translation services;
- Legal advice and assistance – a referral guide;
- Legal research links;
- Litigants in person in Court;
- Mediation;
- Planning principles; and
- Tree dispute applications.

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 2011, all of the full-time Commissioners, a number of Acting Commissioners, the Registrar and the Acting Registrar 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 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 2011, 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 2011 are set out in Table 5.6.

Table 5.6 Backlog Indicator (LEC time standards)

	Unit	LEC Standards	2007	2008	2009	2010	2011
Class 1							
Pending caseload	no.		328	342	255	223	270
Cases > 6 months	%	5	11.3	13.5	9.7	17.5	19.3
Cases > 12 months	%	0	3.4	2.0	1.6	4.9	2.6
Class 2							
Pending caseload	no.		40	36	33	61	47
Cases > 6 months	%	5	12.5	2.8	6.1	4.9	0
Cases > 12 months	%	0	2.5	0	3.0	0	0
Class 3							
Pending caseload	no.		130	108	155	120	170
Cases > 6 months	%	5	51.5	32.4	34.2	44.2	44.1
Cases > 12 months	%	0	40.0	13.9	16.8	15.0	21.8
Class 4							
Pending caseload	no.		133	97	85	83	103
Cases > 8 months	%	5	21.1	24.7	21.2	33.7	30.1
Cases > 16 months	%	0	8.3	10.3	10.6	14.5	15.5
Class 5							
Pending caseload	no.		79	94	68	57	123
Cases > 8 months	%	5	31.6	33.0	32.4	63.2	28.4
Cases > 16 months	%	0	10.1	14.9	10.3	15.8	25.2
Class 6							
Pending caseload	no.		8	10	1	2	4
Cases > 8 months	%	5	0	0	0	100.0	50.0
Cases > 16 months	%	0	0	0	0	0	0

Class 8

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

Class 1- 3

Pending caseload	no.		498	486	443	404	487
Cases > 6 months	%	5	21.9	16.9	18.5	23.5	26.5
Cases > 12 months	%	0	12.9	4.5	7.0	7.2	9.0

Class 4 – 8

Pending caseload	no.		229	220	201	152	233
Cases > 8 months	%	5	29.3	24.1	27.4	26.3	29.6
Cases > 16 months	%	0	11.8	8.6	11.9	10.5	20.2

These backlog figures need some explanation:

- Class 1: The backlog figure for pending caseload greater than 6 months increased again in 2011 but decreased slightly for pending caseload greater than 12 months. The total pending caseload in Class 1 increased during 2011. The timeliness of case processing of Class 1 matters therefore declined slightly in 2011.
- Class 2: There were no cases pending in Class 2 for more than 6 or 12 months, hence the backlog figure of 0%. The Court bettered its standard for 6 months and met the standard for 12 months. This is a highly commendable result. The pending caseload decreased slightly.
- Class 3: The backlog figures for pending caseload greater than 6 months stayed constant but increased slightly for cases greater than 12 months. Total pending caseload increased. The increase in the backlog figure for cases greater than 12 months reflects an increase in the actual number of cases pending greater than 12 months, a product partly of longer preparation time before hearing

(particularly for larger compensation claims and Aboriginal land claims) and partly of delays in reserved judgments in certain matters. Hence, the timeliness of case processing of Class 3 matters declined in 2011.

- Class 4: There was a slight decrease in the backlog figure for pending caseload exceeding 8 months and a slight increase for pending caseload greater than 16 months. The total pending caseload in Class 4 increased. The higher backlog figures are a result of increases in the actual number of cases pending for greater than 8 and 16 months. Case processing timeliness for Class 4 matters therefore declined. One reason is that a number of cases have involved either multiple interlocutory matters before any final hearing or relisting after the final hearing for applications for costs, determining appropriate orders and enforcement of orders including by contempt proceedings. Another reason is delay in reserved judgments in certain matters.

■ Class 5: The backlog figures for pending caseload exceeding the 8 month standard decreased, indeed to its lowest level in five years, but the backlog figures for pending caseload greater than 16 months increased again. The total pending caseload in Class 5 increased significantly. The increase in the pending caseload to a large extent reflects the significant increase in Class 5 registrations in 2011. The increase in the backlog figure for caseload greater than 16 months is a continued product of delays in reserved judgments in certain matters.

■ Class 6: There was only a small number of appeals in Class 6, which were disposed of within 16 months.

■ Class 8: Because of the small total pending caseload, only 1 case exceeded the 8 months target. The Court's time standards were otherwise met.

If the national time standards are used, the results of the backlog indicator for the Court in 2011 are as shown in the table below:

Table 5.7 Backlog indicator (national time standards)

	Unit	National Standards	2007	2008	2009	2010	2011
Class 1							
Pending caseload	no.		328	342	255	223	270
Cases > 12 months	%	10	3.4	2.0	1.6	4.9	2.6
Cases > 24 months	%	0	1.5	0.6	0.4	0	0.4
Class 2							
Pending caseload	no.		40	36	33	61	47
Cases > 12 months	%	10	2.5	0	3.0	0	0
Cases > 24 months	%	0	0	0	0	0	0
Class 3							
Pending caseload	no.		130	108	155	120	170
Cases > 12 months	%	10	40.0	13.9	16.8	15.0	21.8
Cases > 24 months	%	0	13.1	5.6	1.9	5.8	2.4
Class 4							
Pending caseload	no.		133	97	85	83	103
Cases > 12 months	%	10	15.8	15.5	15.3	21.7	20.4
Cases > 24 months	%	0	2.3	5.2	4.7	2.4	8.7
Class 5							
Pending caseload	no.		79	94	68	57	123
Cases > 12 months	%	10	13.9	28.7	23.5	52.7	28.5
Cases > 24 months	%	0	8.9	8.5	2.9	5.3	20.3

Class 6

Pending caseload	no.		8	10	1	2	4
Cases > 12 months	%	10	0	0	0	0	0
Cases > 24 months	%	0	0	0	0	0	0

Class 8

Pending caseload	no.		-	-	2	4	2
Cases > 12 months	%	10	-	-	0	0	0
Cases > 24 months	%	0	-	-	0	0	0

This table shows that the Court's performance in Classes 1, 2, 6 and 8 better the national standard. The Court's performance in Class 3 is above the national time standard for 12 months but close to compliance with the standard for 24 months. The Court's performance in Classes 4 and 5 is above the national standard and represents a decrease in case processing timeliness.

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 2007-2011.

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

	Year				
	2007	2008	2009	2010	2011
Class 1					
No. of cases	993	909	703	639	612
% < 6 months	72	77	71	75	77
% < 12 months	94	97	95	97	96
95% completed within (months)	13	10	11	11	11
Class 2					
No. of cases	159	160	127	128	187
% < 6 months	96	94	98	95	94
% < 12 months	99	99	100	99	99
95% completed within (months)	5	7	5	6	6

Class 3

No. of cases	168	172	137	238	171
% < 6 months	46	38	43	44	53
% < 12 months	70	66	74	81	74
95% completed within (months)	27	36	25	19	21

Class 4

No. of cases	310	268	175	158	144
% < 8 months	83	80	90	73	73
% < 16 months	93	94	93	94	90
95% completed within (months)	17	17	20	19	20

Class 5

No. of cases	75	86	119	55	37
% < 8 months	55	64	51	56	47
% < 16 months	84	94	76	76	79
95% completed within (months)	21	17	40	20	29

Class 6

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

Class 8

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

The table shows that in 2011, compared to 2010, the Court improved or maintained its performance by reducing or maintaining the time taken to finalise cases in Classes 1, 2 and 6. Class 8 had too small a number of cases to provide a meaningful indicator. In Class 3, the Court's performance improved in completing more cases within 6 months, but declined in terms of the proportion of cases completed within 16 months and in the time taken to complete 95% of cases.

In Class 4, the Court maintained the proportion of cases finalised within 8 months but the proportion of cases finalised within 16 months declined slightly and the Court took slightly longer to complete 95% of cases. In Class 5, the Court slightly improved the proportion of cases completed within 16 months, but the proportion of cases completed in 8 months declined. The time taken to complete 95% of cases increased. The increase in time

taken to complete cases in Classes 3, 4 and 5 is partly a product of the delay in reserved judgments in these classes. When a judgment that has been reserved after a hearing in previous years is delivered in the reporting year (2011), it increases the proportions of cases completed within 12 or 16 months and increases the time taken to complete 95% of cases.

Time standards for delivery of reserved judgments

The Court may dispose of proceedings by judgment delivered at the conclusion of the hearing (ex tempore judgment) or at a later date when judgment is reserved by the Court (reserved judgment). An appreciable number of judgments (36%) 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 2011, compared to both 2010 and previous years, improved for reserved judgments being delivered within 14 days and within 30 days. For the 90 days standard, the Court’s performance improved marginally compared to 2010, but was still less than previous years. 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	2007	2008	2009	2010	2011
% delivered within 14 days	50	39	36	37	39	41
% delivered within 30 days	75	62	56	56	55	62
% delivered within 90 days	100	90	90	86	81	83

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

	2007	2008	2009	2010	2011
Class 1	8	2	2	11	20
Class 2	0	0	0	1	1
Class 3	0	0	1	1	2
Class 4	0	2	4	12	28
Class 5	0	0	2	3	13
Classes 6 and 7	0	0	0	0	0
Class 8	0	0	0	0	1
Total	8*1	4*2	9*3	28*4	65*5

*1 In 2007, 0% of inquiries (0) concerned judges' reserved judgments and 100% (8) concerned commissioners' judgments.

*2 In 2008, 50% of inquiries (2) concerned judges' reserved judgments and 50% (2) concerned commissioners' judgments.

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

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

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

The Chief Judge investigated each inquiry made in 2011 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

	2007 %	2008 %	2009 %	2010 %	2011 %
Class 1	113.0	98.6	113.7	104.9	92.9
Class 2	82.8	103.2	101.6	82.1	110.0
Class 3	121.7	115.4	75.0	119.0	77.4
Class 4	110.4	116.0	107.4	101.9	88.9
Class 5	78.9	85.1	130.8	114.6	35.2
Class 6	71.4	88.2	228.6	84.6	87.5
Class 8	-	-	60.0	71.4	128.6
Classes 1-3	109.2	101.2	104.3	104.1	92.4
Classes 4-8	100.8	105.7	118.4	102.7	70.4
Total	107.1	102.2	107.3	103.9	87.7

These figures show that the clearance rates in total, and for Classes 1-3 and for Classes 4-8, in 2011 have decreased compared to the last five years. The total clearance rate for all of the Court's caseload is less than 100% (87.7%), leading to an increase in the total pending caseload. The clearance rate for Class 1 matters is a reflection of both a material increase in registrations in 2011 and a slight decline in finalisations. The clearance rate for Class 2 matters exceeds 100% (110%) despite the increase in registrations, indicating efficient and timely finalisation of these matters.

The clearance rates for matters in Classes 3 and 4 reflect an increase in registrations

and a decline in finalisations. However, the number of matters in these classes finalised by hearings remained relatively constant. The low clearance rate for Class 5 matters was largely caused by the 115% increase in registrations in the second half of 2011, which cases were not able to be finalised by the year end. There was also a decrease in the number of finalisations.

The clearance rate for matters in Class 6, although less than 100% (87.5%), is a product of the small number of cases. The clearance rate for matters in Class 8 exceeds 100% (128.6%), but again reflects the small number of cases.

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 2007-2011.

Table 5.12 Median number of pre-hearing attendances by Class

	2007	2008	2009	2010	2011
Class 1	3	4	4	4	3
Class 2	1	1	1	1	1
Class 3: (all matters)	5	7	7	6	5
Compensation claims	10	9	12	9	9
Valuation objections	3	5	6	6	3
Miscellaneous	5	6	4	5	7
Class 4	3	4	4	3	3
Class 5	3	4	5	5	3
Class 6	2	1	2	2	13
Class 8	-	-	2	1	3

The table reveals the number of pre-hearing attendances decreased for cases in Classes 1, 3 and 5 and remained constant for cases in Classes 2 and 4 between 2010 and 2011. The number of pre-hearing attendances increased for cases in Classes 6 and 8, but

because of the small number of cases, and the use of the median, this reflects only one case in each class. The improvement in the attendance indicator is encouraging, indicating less delay between filing and hearing and less cost to the parties.

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

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.

Table 5.13 s 56A Appeal outcomes

	2007	2008	2009	2010	2011
Total no. of appeals filed	29	14	21	14	14
No. finalised pre-hearing	9	4	2	3	4
No. of appeals to hearing	19	13	10	15	16
Outcome:					
Upheld	5	5	4	4	8
Dismissed	14	8	6	11	8

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 2011, 25 appeals were lodged with the Court of Appeal and one appeal was lodged

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 2011, 14 s 56A appeals were commenced, 4 appeals were settled pre-hearing, 16 were completed at a hearing, and 6 remained pending at 31 December 2011.

Of the 16 appeals that were completed at hearing, 8 were upheld. This represents 1.3% of the number of matters in Classes 1, 2 and 3 disposed of by a decision of a Commissioner of the Court in 2011 (582 matters).

with the Court of Criminal Appeal. The number of appeals to these appellate courts in 2011 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

	2007	2008	2009	2010	2011
Court of Appeal					
Notice of Intention to appeal	25	24	13	27	22
Notice of appeal	19	8	30	18	25
Total	44	32	43	41	44
Court of Criminal Appeal					
Notice of Intention to appeal	2	0	1	9	0
Notice of appeal	0	0	5	0	1
Stated case, s 5AE	0	0	0	0	0
Total	2	0	6	9	1

Complaints

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

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

Complaints about Commissioners, who are not judicial officers, are made to the

Chief Judge of the Court. The Court has published a policy on making, examining and dealing with complaints against Commissioners. Complaints that are upheld can result in action being taken by the Chief Judge (such as counselling or the making of administrative arrangements designed to avoid repetition of the problem) or referral to the Attorney-General for consideration of removal of the Commissioner from office.

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

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

Complaints received and finalised

In 2011, the Court received 2 complaints about the conduct of Commissioners and Registrars exercising the functions of the Court. Table 5.15 gives particulars about the complaints made and dealt with in 2011 and the outcomes.

Table 5.15 Complaint particulars

	2011
Complaints pending as at 31 December 2010	0
Complaints made during 2011	2
Total number of complaints	2
Complaints examined but dismissed	2
Complaints not dismissed but dealt with by the Chief Judge	0
Complaints referred by Chief Judge to Complaint Committee	0
Complaints withdrawn	0
Total number of complaints finalised	2
Complaints pending as at 31 December 2010	0

As can be seen from Table 5.15 the number of complaints is low. The vast majority of complaints is made after, and in relation to, the hearing and disposal of a matter by a Commissioner. In 2011, Commissioners exercised the functions of undertaking conciliations, on-site hearings or court hearings in 582 matters in Classes 1, 2 and 3. Complaints, therefore, occurred in only 0.3% of matters dealt with by Commissioners. This small proportion of complaints to matters dealt with by Commissioners is a pleasing indication of the high standard of conduct of Commissioners and the community's preparedness to accept decisions if they are made in accordance with the due process of the law.

The Chief Judge examines each complaint in accordance with the Court's policy. If the examination shows no misconduct, the Chief Judge dismisses the complaint and explains in writing to the complainant why the complaint was dismissed. Table 5.16 shows the criteria used for dismissing complaints in 2011. More than one criterion may be used for each complaint. The table shows that the two finalised complaints were dismissed, firstly, because the examination disclosed no misconduct of the Commissioners and, secondly, because there was an adequate right of appeal against the Commissioners' decisions under s 56A of the Court Act.

Table 5.16 Criteria for dismissing complaints

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

Patterns in complaints

The Court monitors patterns in the nature and scope of complaints to identify areas that might need to be addressed through its continuing professional development programmes or other appropriate action.

For example, information gathered from complaints in previous years has been used to develop education programmes on judgment writing for Commissioners.

Causes for complaint

Table 5.17 sets out the common causes of complaint and identifies which causes were raised by the complaints made in 2011. The number refers to the number of complaints raising that cause of complaint. Many complaints raise multiple causes and these are captured by this approach. It is to be emphasised that these are the categories of allegations made in complaints, whether or not they were upheld.

Table 5.17 Common causes for complaint

	2011
Bias, collusion or conflict of interest	0
Delay	0
Dissatisfaction with outcome or wrong decision	2
Failure of Court to enforce judgment or orders	0
Failure to give fair hearing	0
Impairment	0
Inadequate reasons for judgment	2
Inappropriate behaviour or comments or discourtesy	0
Incompetence	0

Substitution for appeals

Many of the complaints made amount, in essence, to a complaint that a Commissioner has made the wrong decision. These complaints are often made in apparent substitution of an appeal against the decision of the Commissioner or Registrar. They are usually made when a party to litigation is aggrieved by an

unfavourable decision but for one reason or another (including financial reasons) does not wish to appeal. Instead, a personal complaint is made against the decision-maker, either directly challenging the outcome or indirectly doing so by alleging that the outcome could only have resulted by the fault of the decision-maker. Such complaints are dealt with on their merits. However, a complaint about a Commissioner is not a substitute for an appeal and the Chief Judge cannot correct allegedly erroneous decisions.

In 2011, both complaints were made by an expert witness called in two different matters, whose evidence was not accepted by the Commissioners hearing the matters. The expert witness disagreed with the decision of the Commissioners on the merits of the cases.

Inadequate reasons for judgment

The complaints made in 2011 criticised the correctness and the adequacy of the reasons for judgment of the Commissioners in making findings and drawing inferences of fact from the evidence and in assessing the relevance and reliability of expert evidence. Disagreement as to whether expert evidence should have been accepted or rejected, or the Commissioners' reasons for accepting or rejecting the evidence, or the facts that should have been found and inferences that should have been drawn from the evidence, do not establish judicial misconduct by the Commissioners.

Complaints by legally unrepresented litigants and objectors

Often complaints are made by legally unrepresented litigants or by persons such as local residents who objected to the development proposed in development appeals but who were not a party. In 2011, both complaints were made by an expert witness called to give evidence in two different cases by a legally unrepresented party.

6 Education and Community Involvement

- Continuing professional development
 - Continuing professional development policy
 - Annual Court Conference 2011
 - Twilight seminar series
 - National Mediator Accreditation
 - Other educational activities
- Performance indicators and programme evaluation
- Publications
- Education and participation in the community
- Individual Judges' and Commissioners' activities

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 2011

The Annual Court Conference for 2011 was held on Thursday 5 May and Friday 6 May 2011. Six Judges, nine Commissioners, 13 Acting Commissioners and the 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:

- The Effect of Conditions of Development Approval on Property Rights;
 - The Impact of Aboriginal Cultural Heritage Issues on the Land and Environment Court;
 - Climate Change and Coastal Protection;
 - Practice, Procedure and Evidence in the Supreme Court Equity Division;
 - Alternative Dispute Resolution in Merits Matters;
 - Judicial Review: Grounds, Standards and Intensity of Review of “Who is Miss Behavin’?”;
 - Values in the Law;
 - Criminal Law Update;
 - Why Planning Needs Design; and
 - The Land and Environment Court 1985-1997: Reminiscences.
- Update on Jurisdiction and Practice and Procedure;
 - Practice, Procedure and Evidence In the Administrative Appeals Tribunal;



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. Six seminars for the Court and one cross-jurisdictional seminar were held in 2011:

2 March	<i>Noise 101</i>
13 April	<i>Biobanking</i>
15 June	<i>Assessing Competing Expert Evidence</i>
16 June	<i>Criminal Case Management</i>
28 September	<i>Litigants in Person</i>
9 November	<i>Mental Health Issues</i>
8-9 December	<i>Judgment Writing Workshop for Commissioners</i>

National Mediator Accreditation

In 2011, one full-time Commissioner completed the mediation training course conducted by the Australian Commercial Disputes Centre and received accreditation under the National Mediator Accreditation System.

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 2011, both the collective target as well as the individual standard for each Judge and full time Commissioner (except one 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. This exceeded the target of 85%.

Table 6.1 Participant evaluation of Land and Environment Court Annual Conferences 2006 to 2011

	Target	2007	2008	2009	2010	2011
Overall satisfaction rating	85%	90%	89%	88%	87%	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 2008 to 2011, all of which exceeded the 85% standard.

Table 6.2 Participant evaluation of Land and Environment Court Twilight seminar series 2008 and 2011

	Target	2008	2009	2010	2011
Overall satisfaction rating	85%	87%	89%	90%	93%

Note: 2009 was based on 6 seminars, 2010 and 2011 were based on 7 seminars in each year.

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

Publications

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

In August 2010, the Court, in conjunction with the Judicial Commission of New South Wales, produced the *Land and Environment Court of NSW Commissioners' Handbook*. The Handbook provides guidance, especially to Commissioners and Registrars, on the Court and its jurisdiction; the members of the Court and their functions; court practice and procedure; the commencement of proceedings and pleadings; case management; the different processes for resolution of proceedings, including hearings

and conciliation conferences; decision-making and judgments; conduct of court members; and resources and remuneration for Commissioners. The Handbook is published online by the Judicial Commission on a closed website for members of the Court.

Beginning in January 2010, the Court publishes quarterly on the Court's website a Judicial Newsletter for the benefit of members of the Court and the wider public to better enable them to keep up to date with recent legal developments. The Newsletter provides summaries of recent legislation and judicial decisions of the High Court of Australia, NSW Court of Appeal, NSW Court of Criminal Appeal, NSW Supreme Court and Land and Environment Court, as well as of other courts in Australia and overseas, concerning matters of relevance to the Court's jurisdiction. In the electronic version of the Newsletter published on the Court's website, 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 2011 are summarised below:

The Hon. Justice Brian John Preston SC, Chief Judge

Conferences and seminars

2 March	Twilight seminar, Noise 101, Mr Louis Challis AM, Judicial Commission of New South Wales
3 March	Australian Association of Constitutional Law (AACL) seminar, The Constitutionalisation of Water Rights: Solution or Levee, Justice Rachel Pepper, Federal Court, Sydney
4 March	NSW Bar Association CPD Seminar, The Importance of Economic Rights in the Law: A perspective from Botswana, an oration presented by Justice Unity Dow, Banco Court, Sydney
25 March	Law Council of Australia, Alternative Dispute Resolution (ADR) Committee Luncheon to discuss relevant developments in ADR, Sydney
13 April	Twilight seminar, Biobanking, Mr Tom Grosskopf, Judicial Commission of New South Wales
26 May	Sir Maurice Byers lecture, Truth and the Law, The Hon. James Spigelman AC QC, New South Wales Bar Association
1 June	Women Lawyers Association of NSW, 2011 NSW Women Lawyers Achievement Awards, Sydney
15 June	Twilight seminar, Assessing Competing Expert Evidence, Justice Peter McClellan, Judicial Commission of New South Wales
16 June	Twilight seminar, Criminal Case Management, Justice Peter McClellan, District Court, Sydney
20-23 June	World Justice Forum III, Barcelona, Spain
18 August	Inaugural R P Meagher lecture, Varieties of Judicial Method in the Late Twentieth Century, presented by The Hon. Justice J D Heydon AC and The Hon. T F Bathurst QC, Chief Justice of NSW, Banco Court, Sydney

19-21 August	Supreme Court of New South Wales Annual Conference, Port Stephens
29 August	CPD Seminar, Constitutional and Administrative Law Section, Reform of Judicial Review in NSW, Dr J Griffiths SC and Mr S Lloyd SC, New South Wales Bar Association, Sydney
7 September	Australian Institute of Judicial Administration Incorporated (AIJA) 17th Oration in Judicial Administration, Vulnerable Witnesses In the Administration of Criminal Justice, The Right Hon. the Lord Igor Judge, Lord Chief Justice of England and Wales, Federal Court, Sydney
10-11 September	Exchanging Ideas Conference II, organised by the Judicial Commission of New South Wales for judicial officers and Aboriginal Community members
14 September	AACL seminar, Insult and Emotion, Calumny and Invective: The Constitutional Protection of Incivility In Political Communication, Professor Adrienne Stone, Federal Court, Sydney
28 September	Twilight seminar, Litigants in Person, Justice Anna Katzmann, Judicial Commission of New South Wales
31 October	AACL seminar, The Fractured Constitutional Basis of Environmental Regulation, presented by Dr Melissa Perry QC and Mr Jonathon Redwood. Chaired by The Hon. Murray Gleeson AC QC, Federal Court, Sydney
25 November	Law Council of Australia, The Future of Environmental Law, Westin Hotel, Sydney

Speaking engagements

2 February	<i>Adjudication of Environmental Disputes</i> , a presentation to Environmental Law Students, Environmental Law Centre, University of Victoria, British Columbia, Canada
3 February	<i>Operating an Environment Court: The Experience of the Land and Environment Court of New South Wales</i> , Renewing Environmental Law, a conference for Public Interest Environmental Law Practitioners, Vancouver, British Columbia, Canada
18 February	<i>How to Emulate the Land and Environmental Court</i> , a presentation to environmental law students at Sturm School of Law, Denver University, Colorado
9 March	<i>The Use of Alternate Dispute Resolution in Administrative Disputes</i> , symposium on Guarantee of the Right to Access to the Administrative Jurisdiction, on the occasion of the 10th Anniversary of the Administrative Court of Thailand, Bangkok
11 March	<i>Enforcement of Environmental and Planning Laws in New South Wales</i> , a presentation to The Law and Sustainability Symposium 2011, University of Southern Queensland (USQ) Law School and USQ Australian Centre for Sustainable Business and Development, Brisbane

22 March	<i>The Use of Restorative Justice for Environmental Crime</i> , Environment Protection Authority Victoria, Share with the Chair Seminar Series on Restorative Environmental Justice, Melbourne
1 April	<i>Benefits of Judicial Specialisation in Environmental Law: The Land and Environment Court of NSW as a Case Study</i> , Working Symposium on Environmental Adjudication around the World organised by Pace Law School, Pace University, New York Judicial Institute, Environmental Law Institute and IUCN Commission on Environmental Law, New York State Judicial Institute, White Plains, New York
14 April	<i>Update on the Land and Environment Court</i> , a presentation to Urban Taskforce Australia Boardroom lunch, Sydney
28 May	<i>The Globalisation and Harmonisation of Environmental Law</i> , ANU College of Law International Environmental Law Symposium, Towards Rio+20: Contemporary Issues In Environmental Law, The Australian National University, Canberra
16 September	<i>Internalising Ecocentrism in Environmental Law</i> , Third Wild Law Conference: Earth Jurisprudence – Building Theory and Practice, Griffith University Ecocentre, Brisbane
6 October	<i>International Quality Framework in Operation at the Land and Environment Court of New South Wales</i> , Australian Institute of Judicial Administration Incorporated (AIJA) Australasian Court Administrators' Conference, Australian Courts: Serving Democracy and its Publics, Sydney
13 October	<i>The Enduring Importance of the Rule of Law in Times of Change</i> , EPLA (NSW) Annual Conference: The Times They are A–Changin, Sydney
26 October	<i>Update on the Land and Environment Court</i> , a presentation to Urban Development Institute of Australia (UDIA) Corporate Luncheon, Sydney

Publications

- “Climate change litigation (Part 1)” (2011) 5(1) *Carbon and Climate Law Review* 3
- “Climate change litigation (Part 2)” (2011) 5(2) *Carbon and Climate Law Review* 244
- “The use of restorative justice for environmental crime” (2011) 35 *Criminal Law Journal* 136
- “The use of alternative dispute resolution in administrative disputes” (2011) 22 *Alternative Dispute Resolution Journal* 144
- “Enforcement of environmental and planning laws in New South Wales” (2011) 16 *Local Government Law Journal* 72
- “The influence of climate change litigation on governments and the private sector” (2011) 2(4) *Climate Law* 485
- “Senior Counsel: Recognition, review, requirements, responsibilities and renewal” (2011) 35 *Australian Bar Review* 185

Membership of legal, cultural or benevolent organisations

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)

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

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

Member, Advisory Board, TREENET

Adjunct Professor, Sydney Law School, University of Sydney

Guest lecturer, ANU College of Law, Australian National University

Delegations and international assistance

17 February Meeting with Mr David Askman, Senior Counsel, US Department of Justice to discuss litigation involving natural resource damage assessment, Denver, Colorado

18 February Meeting with Mr Daniel Hall, Vice President of Court Consulting Services, National Center for State Courts (NCSC) and also Mr Richard Van Duizend, Principal Court Management Consultant, NCSC to discuss implementation of the International Framework for Court Excellence, Denver, Colorado

18 February Meeting with Ms Pamela Gagel, Assistant Director, Institute for the Advancement of the American Legal System, University of Denver; also attending was Ms Natalie Knowlton, Research Analyst, Institute for the Advancement of the American Legal System to discuss excellence in court administration, University of Denver, Colorado

8 July Meeting with Chief Justice Fredrick Egonda-Ntende, Supreme Court of Seychelles and Mr Ernest Schmatt, Chief Executive of the Judicial Commission of New South Wales to discuss the Land and Environment Court's implementation of the International Framework for Court Excellence

25 July Meeting with Judge Jan-Marie Doogue and Judge Colin Doherty from the District Court of New Zealand to discuss the Court's implementation of the International Framework for Court Excellence

2 August Meeting with Dr Diane Solomon Westerhuis, Researcher from Charles Sturt University, Bathurst to discuss sentencing for environmental crime; JIRS environmental crime sentencing database and the Chief Judge's articles on this topic

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- 24 August Meeting with Professor Noriko Okubo, environmental law scholar, Osaka University and Mr Mahito Shindo, PhD Candidate at Macquarie Law School, Macquarie University to discuss the operation of the Land and Environment Court for Professor Okubo's field research
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- 29 September Meeting with Ms Rebecca Hicks, solicitor from Office of Environment & Heritage and recipient of the John Hennessy Research Scholarship to discuss her research project on sentencing orders concerning monetary benefits from crime and natural resource damages
-
- 13 October Meeting with Chief Justice Truong Hoa Binh of the Supreme People's Court of Vietnam and seven other delegates, organised by the Federal Court of Australia to discuss the Land and Environment Court and its operation
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L to R: Justice Brian Preston, Professor Noriko Okubo, Mrs Judith Preston and Mr Mahito Shindo

The Hon. Justice Terence William Sheahan AO

Conferences and seminars

- 16 February Ngara Yura Programme seminar, The Power of Sorry, Judicial Commission of New South Wales
-
- 2 March Twilight seminar, Noise 101, Mr Louis Challis AM, Judicial Commission of New South Wales
-
- 4 March NSW Bar Association CPD Seminar, The Importance of Economic Rights in the Law: A perspective from Botswana, an oration presented by Justice Unity Dow, Banco Court, Sydney
-
- 13 April Twilight seminar, Biobanking, Mr Tom Grosskopf, Judicial Commission of New South Wales
-
- 26 May Sir Maurice Byers lecture, Truth and the Law, The Hon. James Spigelman AC QC, New South Wales Bar Association
-
- 8 June The Sydney Institute seminar, The Carbon Tax and Regional Australia, The Hon. Richard Marles MP and The Hon. Sophie Mirabella MP, Corrs Chambers Westgarth, Sydney
-

10 June	Anglo-Australasian Lawyers Society, New Attorney's Agenda, a presentation by incoming NSW Attorney General, The Hon. Greg Smith SC MP
15 June	Twilight seminar, Assessing Competing Expert Evidence, Justice Peter McClellan, Judicial Commission of New South Wales
16 June	Twilight seminar, Criminal Case Management, Justice Peter McClellan, District Court, Sydney
12 July	The Sydney Institute seminar, Climate Change and the Storage of Carbon Dioxide, Professor Herbert E Huppert, Clayton Utz, Sydney
14 July	Anglo-Australasian Lawyers Society, Challenges in the UK Justice System, a presentation by the Attorney General for England & Wales, Mr Dominic Grieve QC MP
18 July	The Matt Laffan Memorial Address, Forgotten Victims: Criminal Justice Remembers, Mr Peter Strain and Mr Nicholas Cowdery QC, Emeritus Professor Ron McCallum (Chair), Sydney Law School, University of Sydney
19 July	Supreme Court of NSW seminar, Representative Actions in the Supreme Court – The New Part 10 of the Civil Procedure Act, Justice Basten and Acting Justice Ronald Sackville AO QC, Judicial Commission of New South Wales
20 July	The Sydney Institute seminar, Environmental Issues and the Murray Darling Basin, The Hon. Tony Burke MP, Maddocks Lawyers, Sydney
2 August	The Sydney Institute seminar, Atmospheric Science, Climate Change & Carbon, Professor Murray Salby, Sydney
4 August	Australian Institute of Administrative Law (AIAL), The role of Administrative Law as a Foundation for Good Governance, a presentation by the NSW Attorney General, The Hon. Greg Smith SC MP
18 August	Inaugural R P Meagher lecture, Varieties of judicial method in the late twentieth century, presented by The Hon. T F Bathurst QC, Chief Justice of NSW and The Hon. Justice J D Heydon AC, Banco Court, Sydney
19 August	Anglo-Australasian Lawyers Society, Change but not Decay in the English Judiciary, a presentation by The Right Hon. Lord Justice Stanley Burnton, Lord Justice of Appeal, UK
7 September	Australian Institute of Judicial Administration Incorporated (AIJA) 17th Oration in Judicial Administration, Vulnerable Witnesses In the Administration of Criminal Justice, The Right Hon. Lord Igor Judge, Lord Chief Justice of England and Wales, Federal Court, Sydney
9 September	Anglo-Australasian Lawyers Society, 1361 – Keeping the Peace, a presentation by The Right Hon. Lord Igor Judge, Lord Chief Justice of England and Wales
28 September	Twilight seminar, Litigants in Person, Justice Anna Katzmann, Judicial Commission of New South Wales

5 October	The Sydney Institute seminar, Sharia in the West – is This a Reality?, Ms Raheel Raza, Maddocks Lawyers, Sydney
26 October	Supreme Court of NSW seminar, Personal Property Securities, Mr Robert Newlinds SC, Justice P Bergin (Chair), Judicial Commission of New South Wales
9 November	Twilight seminar, Mental Health Issues, The Hon. Keith Mason AC QC, Dr Robert Fisher and Mrs M Jepson, Judicial Commission of New South Wales
15 November	Edmund Rice Centre, Business Ethics seminar, Ethical media reporting, a speech by Mr Mike Carlton, media commentator and broadcaster
29 November	Anglo-Australasian Lawyers Society, Eminent Persons Report on the Future of the Commonwealth, a presentation by The Hon. Michael Kirby AC CMG

Speaking engagements

11 May	A presentation to Local Government Law Students, University of New South Wales Law School
5 July	<i>Real Life at the LEC</i> , a presentation to the Young Lawyers Environmental Law Committee, Sydney
16 August	A lecture to the Planning Law Students, Sydney School of Architecture, University of Sydney
24 October	A presentation to Planning Law Students, University of Technology Sydney
8 November	<i>Are There any New Doorways?</i> , a presentation to Rotary Club of Sydney

Membership of legal, cultural or benevolent organisations

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

2 March	Twilight seminar, Noise 101, Mr Louis Challis AM, Judicial Commission of New South Wales
13 April	Twilight seminar, Biobanking, Mr Tom Grosskopf, Judicial Commission of New South Wales
15 June	Twilight seminar, Assessing Competing Expert Evidence, Justice Peter McClellan, Judicial Commission of New South Wales

16 June	Twilight seminar, Criminal Case Management, Justice Peter McClellan, District Court, Sydney
19 July	Supreme Court of NSW seminar, Representative Actions in the Supreme Court – The New Part 10 of the Civil Procedure Act, Justice John Basten and Acting Justice Ronald Sackville AO QC, Judicial Commission of New South Wales
28 September	Twilight seminar, Litigants in Person, Justice Anna Katzmann, Judicial Commission of New South Wales
9 November	Twilight seminar, Mental Health Issues, The Hon. Keith Mason AC QC, Dr Robert Fisher and Mrs M Jepson, Judicial Commission of New South Wales
25 November	Law Council of Australia, The Future of Environmental Law, Westin Hotel, Sydney

Publications

“Protective costs orders: increasing access to courts by capping costs”, (2011) 26 *Australian Environment Review* 276

Membership of legal, cultural or benevolent organisations

Member, Australian Association of Constitutional Law

Member, Australian Institute of Administrative Law

Member, National Environmental Law Association

Delegations and international assistance

24 August Delegation from Peoples’ Republic of China, presentation, *Environmental Aspects of Mining: the View from the Land and Environment Court*

The Hon. Justice Peter Meldrum Biscoe

Commissions in other Courts

May – June Acting Judge of the Supreme Court of New South Wales (Equity Division)

Conferences and seminars

13 April	Twilight seminar, Biobanking, Mr Tom Grosskopf, Judicial Commission of New South Wales
15 June	Twilight seminar, Assessing Competing Expert Evidence, Justice Peter McClellan, Judicial Commission of New South Wales
16 June	Twilight seminar, Criminal Case Management, Justice Peter McClellan, District Court, Sydney
17 July – 13 August	International Human Rights Law summer programme, conducted by Oxford University and George Washington University, Oxford, England

28 September	Twilight seminar, Litigants in Person, Justice Anna Katzmann, Judicial Commission of New South Wales
26 October	Supreme Court of NSW seminar, Personal Property Securities, Mr Robert Newlinds SC, Justice P Bergin (Chair), Judicial Commission of New South Wales
9 November	Twilight seminar, Mental Health Issues, The Hon. Keith Mason AC QC, Dr Robert Fisher and Mrs M Jepson, Judicial Commission of New South Wales

Speaking engagements

15 July	<i>Transnational Freezing Orders</i> , lecture to students in the post-graduate course on Commercial Conflict of Laws conducted by Sydney Law School at Magdalen College, Oxford, England
28 November	Royal Institute of Chartered Surveyors, Inter-State Moot Court Judge

Membership of legal, cultural or benevolent organisations

Chair, Land and Environment Court Education Committee

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

The Hon. Justice Rachel Ann Pepper

Conferences and seminars

18 January	The Constitutionalisation of Water Rights: Solution or Levee, Gilbert + Tobin 2011 Constitutional Law Conference, Sydney
2 March	Twilight seminar, Noise 101, Mr Louis Challis AM, Judicial Commission of New South Wales
13 April	Twilight seminar, Biobanking, Mr Tom Grosskopf, Judicial Commission of New South Wales
19 May	<i>Constitutional Reform in the Twenty-First Century</i> , Senator the Hon. Bob Carr, Senator the Hon. George Brandis SC, Associate Professor Anne Twomey, Professor Gillian Triggs, University of Sydney
15 June	Twilight seminar, Assessing Competing Expert Evidence, Justice Peter McClellan, Judicial Commission of New South Wales
16 June	Twilight seminar, Criminal Case Management, Justice Peter McClellan, District Court, Sydney
4 August	Australian Institute of Administrative Law, <i>The Role of Administrative Law as a Foundation for Good Governance</i> , The Hon. Greg Smith SC MP
18 August	Inaugural R P Meagher lecture, Varieties of Judicial Method in the Late Twentieth Century, presented by The Hon. Justice J D Heydon AC and The Hon. T F Bathurst QC, Chief Justice of NSW, Banco Court, Sydney

29 August	CPD Seminar, Constitutional and Administrative Law Section, Reform of Judicial Review in NSW, Dr J Griffiths SC and Mr S Lloyd SC, New South Wales Bar Association, Sydney
7 September	Australian Institute of Judicial Administration Incorporated (AIJA) 17th Oration in Judicial Administration, Vulnerable Witnesses In the Administration of Criminal Justice, The Right Hon. Lord Igor Judge, Lord Chief Justice of England and Wales, Federal Court, Sydney
9-10 September	The Sixteenth Annual Public Law weekend, The Australian National University, Canberra
14 September	AACL seminar, Insult and Emotion, Calumny and Invective: The Constitutional Protection of Incivility In Political Communication, Professor Adrienne Stone, Federal Court, Sydney
27 September	Supreme Court of NSW seminar, Cybercrime, Technology Trends and Electronic Evidence, Mr Matthew Nevin, Judicial Commission of New South Wales
28 September	Twilight seminar, Litigants in Person, Justice Anna Katzmann, Judicial Commission of New South Wales
26 October	Supreme Court of NSW seminar, Personal Property Securities, Mr Robert Newlinds SC, Justice P Bergin (Chair), Judicial Commission of New South Wales
25 November	Law Council of Australia, The Future of Environmental Law, Westin Hotel, Sydney
13 December	Gilbert + Tobin and the Australian Association of Constitutional Law seminar, The Final Courts Round-Up, Sydney

Speaking engagements

24 February	<i>Land and Environment Law Update</i> , a presentation to students, University of New South Wales
3 March	<i>The Constitutionalisation of Water Rights: Solution or Levee</i> , Australian Association of Constitutional Law, Sydney
24 May	<i>Expert Evidence in the Land and Environment Court</i> , Australian Property Institute, Sydney
25 May	Moot Judge, Australian Property Institute, Sydney

Publications

The Constitutionalisation of Water Rights: Solution or Levee, (2011) 26 *Australian Environmental Review* 34

Contributing author, *Practice and Procedure High Court and Federal Court of Australia*, LexisNexis

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

Membership of legal, cultural or benevolent organisations

Chair, Land and Environment Court Judicial Newsletter Committee (until 1 December 2011)

The Hon. Justice Malcolm Graeme Craig

Conferences and seminars

2 March	Twilight seminar, Noise 101, Mr Louis Challis AM, Judicial Commission of New South Wales
7 April	CPD Seminar, Satisfaction as a Jurisdictional Fact – a Consideration of the Implications of <i>Minister for Immigration and Citizenship v SZMDS & Anor</i> (2010) 240 CLR 611, Ms Theresa Baw and Mr James Hutton, Mr Neil Williams SC (Chair), New South Wales Bar Association
13 April	Twilight seminar, Biobanking, Mr Tom Grosskopf, Judicial Commission of New South Wales
26 May	Sir Maurice Byers lecture, Truth and the Law, The Hon. James Spigelman AC QC, New South Wales Bar Association
15 June	Twilight seminar, Assessing Competing Expert Evidence, Justice Peter McClellan, Judicial Commission of New South Wales
16 June	Twilight seminar, Criminal Case Management, Justice Peter McClellan, District Court, Sydney
28 September	Twilight seminar, Litigants in Person, Justice Anna Katzmann, Judicial Commission of New South Wales
26 October	Supreme Court of NSW seminar, Personal Property Securities, Mr Robert Newlinds SC, Justice P Bergin (Chair), Judicial Commission of New South Wales
9 November	Twilight seminar, Mental Health Issues, The Hon Keith Mason AC QC, Dr Robert Fisher and Mrs M Jepson, Judicial Commission of New South Wales

Speaking engagements

10 January	<i>Recent Developments in Climate Change Litigation: The Australian Experience</i> , Freshfields Bruckhaus Deringer, London
1 April	<i>Environmental Expert Evidence – the Good, the Bad and the Ugly</i> , Environmental Expert Witness training course convened by Environment Institute of Australia and New Zealand, Sydney
7 April	<i>Overview of the Appeal Process Land and Environment Court of NSW</i> , NEERG seminar, The Mint, Sydney
18 August	<i>Class 3 Compensation Claims</i> , EPLA Twilight seminar, Sydney

Membership of legal, cultural or benevolent organisations

Member, Australian Institute of Judicial Administration

Member, Judicial Conference of Australia Inc

Member, Caselaw Governance Committee

Mr Tim Moore, Senior Commissioner

Conferences and seminars

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|----------|--|
| 2 March | Twilight seminar, Noise 101, Mr Louis Challis AM, Judicial Commission of New South Wales |
| 13 April | Twilight seminar, Biobanking, Mr Tom Grosskopf, Judicial Commission of New South Wales |
| 15 June | Twilight seminar, Assessing Competing Expert Evidence, Justice Peter McClellan, Judicial Commission of New South Wales |
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Speaking engagements

- | | |
|------------|---|
| 24 March | <i>Disputes about DA Outcomes – the Multi-Door Role of the Court</i> , NEERG seminar, Sydney |
| 24 March | <i>Trees (Disputes Between Neighbours) Act 2006</i> Training session for Sydney-based Community Justice Centre mediators, Sydney |
| 30 March | <i>Section 34AA of the LEC Act and the Hedges Elements of the Trees (Disputes Between Neighbours) Act 2006</i> , EPLA Twilight seminar, Sydney |
| 24 May | <i>Giving Expert Evidence and Preparing Expert Reports</i> , API Expert evidence seminar, Sydney |
| 6 & 26 May | <i>Trees (Disputes Between Neighbours) Act 2006</i> , training sessions for members of the Queensland Civil and Administrative Tribunal, Sydney |
| 2 June | <i>The role of the Land and Environment Court</i> , lecture to postgraduate Planning Law students, University of Technology Sydney |
| 9 June | <i>Trees (Disputes Between Neighbours) Act 2006</i> , training session for Macarthur-based Community Justice Centre mediators, Sydney |
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Mr Robert Hussey, Commissioner

Conferences and seminars

- | | |
|-------------|--|
| 16 February | Twilight seminar, The Role of Mediation in the International Arbitration Arena, Mr I Bailey SC, ADRA |
| 2 March | Twilight seminar, Noise 101, Mr Louis Challis AM, Judicial Commission of New South Wales |
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13 April	Twilight seminar, Biobanking, Mr Tom Grosskopf, Judicial Commission of New South Wales
15 June	Twilight seminar, Assessing Competing Expert Evidence, Justice Peter McClellan, Judicial Commission of New South Wales
28 September	Twilight seminar, Litigants in Person, Justice Anna Katzmann, Judicial Commission of New South Wales

Speaking engagements

22 August	NSWLEC – Practice, Procedure and Participation, International Public Works Conference, Canberra
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Mr Graham Brown, Commissioner

Conferences and seminars

2 March	Twilight seminar, Noise 101, Mr Louis Challis AM, Judicial Commission of New South Wales
30 March	EPLA Twilight seminar, New Conciliation-Arbitration Scheme, Senior Commissioner Moore, Land and Environment Court of New South Wales, Sydney
13 April	Twilight seminar, Biobanking, Mr Tom Grosskopf, Judicial Commission of New South Wales
15 June	Twilight seminar, Assessing Competing Expert Evidence, Justice Peter McClellan, Judicial Commission of New South Wales
16 August	Managing Emotions in Mediation, Ms Linda Fisher, for and on behalf of LEADR for Community Justice Centres NSW
28 September	Twilight seminar, Litigants in Person, Justice Anna Katzmann, Judicial Commission of New South Wales
9 November	Twilight seminar, Mental Health Issues, The Hon. Keith Mason AC QC, Dr Robert Fisher and Mrs M Jepson, Judicial Commission of New South Wales
29 November	Seminar, Negotiating In Good Faith, Mr A Butt, ADRA/ACDC, Sydney

Speaking engagements

7 April	<i>The LEC in 2011: Reviewing Key Cases & New Procedures; Framing Contentions: Court View</i> , NEERG seminar, Sydney
21 June	<i>Residential Appeals under s 34AA of the Land and Environment Court Act 1979</i> , a presentation to the Law Society of New South Wales Young Lawyers, Sydney
30 August	<i>The Land and Environment Court</i> , a presentation to students in Master of Urban and Regional Planning course, Sydney

13 October	<i>Joint Reports</i> , workshop session, EPLA Annual Conference, Sydney
3 November	<i>The Land and Environment Court</i> , a presentation to Environmental and Planning Law students, University of Technology, Sydney

Ms Jan Murrell, Commissioner

Conferences and seminars

2 March	Twilight seminar, Noise 101, Mr Louis Challis AM, Judicial Commission of New South Wales
30 March	EPLA Twilight seminar, New Conciliation-Arbitration Scheme, Senior Commissioner Moore, Land and Environment Court of New South Wales, Sydney
13 April	Twilight seminar, Biobanking, Mr Tom Grosskopf, Judicial Commission of New South Wales
15 June	Twilight seminar, Assessing Competing Expert Evidence, Justice Peter McClellan, Judicial Commission of New South Wales
28 September	Twilight seminar, Litigants in Person, Justice Anna Katzmann, Judicial Commission of New South Wales
9 November	Twilight seminar, Mental Health Issues, The Hon. Keith Mason AC QC, Dr Robert Fisher and Mrs M Jepson, Judicial Commission of New South Wales
29 November	Seminar, Negotiating In Good Faith, Mr A Butt, ADRA/ACDC, Sydney

Speaking engagements

October	<i>The Land and Environment Court</i> , a presentation to Environment and Development Law students, University of Technology, Sydney
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Membership of legal, cultural or benevolent organisations

Member, Editorial Panel, *Local Government Reporter*, LexisNexis

Ms Annelise Tuor, Commissioner

Conferences and seminars

2 March	Twilight seminar, Noise 101, Mr Louis Challis AM, Judicial Commission of New South Wales
8 March	City Talk: Sydney: Creative, Vibrant, Sustainable – Fostering a Green Cultural Precinct at Walsh Bay, panel discussion
13 April	Twilight seminar, Biobanking, Mr Tom Grosskopf, Judicial Commission of New South Wales

15 June	Twilight seminar, Assessing Competing Expert Evidence, Justice Peter McClellan, Judicial Commission of New South Wales
16 August	Managing Emotions in Mediation, Ms Linda Fisher, for and on behalf of LEADR for Community Justice Centres NSW
28 September	Twilight seminar, Litigants in Person, Justice Anna Katzmann, Judicial Commission of New South Wales
2 November	City Talk: The Art of City Making – How Imagination and Creativity Play Their Part, Charles Landry and panel discussion
9 November	City Conversations 2011: How the Carbon Price Effects You, panel discussion
9 November	Twilight seminar, Mental Health Issues, The Hon. Keith Mason AC QC, Dr Robert Fisher and Mrs M Jepson, Judicial Commission of New South Wales
29 November	Seminar, Negotiating In Good Faith, Mr A Butt, ADRA/ACDC, Sydney

Ms Susan Dixon, Commissioner

Conferences and seminars

2 March	Twilight seminar, Noise 101, Mr Louis Challis AM, Judicial Commission of New South Wales
13 April	Twilight seminar, Biobanking, Mr Tom Grosskopf, Judicial Commission of New South Wales
28 September	Twilight seminar, Litigants in Person, Justice Anna Katzmann, Judicial Commission of New South Wales
9 November	Twilight seminar, Mental Health Issues, The Hon. Keith Mason AC QC, Dr Robert Fisher and Mrs M Jepson, Judicial Commission of New South Wales
8-9 December	Judgment Writing Workshop for Commissioners of the Land and Environment Court, Mr Tom Wodak, Justice Monika Schmidt, His Hon. Acting Judge Paul Cloran and Ms Ruth Windeler, Judicial Commission of New South Wales

Speaking engagements

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

Member, Council of Australasian Tribunals

Member, Institute of Arbitrators and Mediators Australia

Ms Linda Pearson, Commissioner

Conferences and seminars

2 March	Twilight seminar, Noise 101, Mr Louis Challis AM, Judicial Commission of New South Wales
13 April	Twilight seminar, Biobanking, Mr Tom Grosskopf, Judicial Commission of New South Wales
15 June	Twilight seminar, Assessing Competing Expert Evidence, Justice Peter McClellan, Judicial Commission of New South Wales
28 September	Twilight seminar, Litigants in Person, Justice Anna Katzmann, Judicial Commission of New South Wales
31 October	AACL seminar, The Fractured Constitutional Basis of Environmental Regulation, presented by Dr Melissa Perry QC and Mr Jonathon Redwood. Chaired by The Hon. Murray Gleeson AC QC, Federal Court, Sydney
9 November	Twilight seminar, Mental Health Issues, The Hon. Keith Mason AC QC, Dr Robert Fisher and Mrs M Jepson, Judicial Commission of New South Wales
25 November	Law Council of Australia, The Future of Environmental Law, Westin Hotel, Sydney
29 November	Seminar, Negotiating In Good Faith, Mr A Butt, ADRA/ACDC, Sydney
8-9 December	Judgment Writing Workshop for Commissioners of the Land and Environment Court, Mr Tom Wodak, Justice Monika Schmidt, His Hon Acting Judge Paul Cloran and Ms Ruth Windeler, Judicial Commission of New South Wales

Speaking engagements

29 June	<i>Land and Environment Court Processes</i> , NSW Farmer's Association Mining and Resources Legal Forum, Sydney
28 August	<i>Development Control</i> , Faculty of Law, University of New South Wales
12 September	<i>Expert Evidence and Expertise in Dispute Resolution</i> , International Built & Human Environment Research Week, Royal Institute of Chartered Surveyors' (RICS) Legal Research Symposium, Manchester UK
13 October	<i>Witnesses: Expert Evidence</i> , workshop session, EPLA Annual Conference, Sydney

Publications

Editorial Board, *Australian Environment Review*, LexisNexis

Membership of legal, cultural or benevolent organisations

Member, Administrative Review Council

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

Member, Land and Environment Court Judicial Newsletter Committee and Chair (from 2 December 2011)

Ms Judy Fakes, Commissioner

Conferences and seminars

17 January	WorkCover NSW OH&S Construction Induction Training
2 March	Twilight seminar, Noise 101, Mr Louis Challis AM, Judicial Commission of New South Wales
25-27 July	International Society of Arboriculture Conference, Parramatta
16 September	Institute of Australian Consulting Arboriculturists Forum on AS4970:2009, Sydney
28 September	Twilight seminar, Litigants in Person, Justice Anna Katzmann, Judicial Commission of New South Wales
9 November	Twilight seminar, Mental Health Issues, The Hon. Keith Mason AC QC, Dr Robert Fisher and Mrs M Jepson, Judicial Commission of New South Wales
29 November	Seminar, Negotiating In Good Faith, Mr A Butt, ADRA/ACDC, Sydney
8-9 December	Judgment Writing Workshop for Commissioners of the Land and Environment Court, Mr Tom Wodak, Justice Monika Schmidt, His Hon Acting Judge Paul Cloran and Ms Ruth Windeler, Judicial Commission of New South Wales

Speaking engagements

26 May	<i>Queensland Neighbourhood Dispute Resolution</i> Legislation, Queensland Civil Administrative Tribunal (QCAT) Workshop, Brisbane
18 July	<i>Arborist's Reports</i> , a lecture to students in Diploma in Arboriculture, Sydney
26 July	<i>I Love Trees but...Models to Resolve Tree Disputes Between Neighbours</i> , International Society of Arboriculture International Conference, Parramatta
1 September	<i>What is Expected of an Expert Witness?</i> TREENET Symposium, Adelaide
16 September	<i>AS4970 – an Overview and AS4970 – a Response from the Court</i> , Institute of Australian Consulting Arboriculturists (IACA) Forum, Sydney

Membership of legal, cultural or benevolent organisations

Member, Royal Botanic Gardens Horticulture Committee

Member, TREENET Management Committee

Further education

Completion of Graduate Certificate in Property and Planning, UTS Sydney

Ms Susan Morris, Commissioner

Conferences and seminars

21-25 February Mediation accreditation, Australian Commercial Disputes Centre (ACDC) & 4 March

2 March	Twilight seminar, Noise 101, Mr Louis Challis AM, Judicial Commission of New South Wales
13 April	Twilight seminar, Biobanking, Mr Tom Grosskopf, Judicial Commission of New South Wales
15 June	Twilight seminar, Assessing Competing Expert Evidence, Justice Peter McClellan, Judicial Commission of New South Wales
16 August	Managing Emotions in Mediation, Ms Linda Fisher, for and on behalf of LEADR for Community Justice Centres NSW
28 September	Twilight seminar, Litigants in Person, Justice Anna Katzmann, Judicial Commission of New South Wales
9 November	Twilight seminar, Mental Health Issues, The Hon. Keith Mason AC QC, Dr Robert Fisher and Mrs M Jepson, Judicial Commission of New South Wales
29 November	Seminar, Negotiating In Good Faith, Mr A Butt, ADRA/ACDC, Sydney
8-9 December	Judgment Writing Workshop for Commissioners of the Land and Environment Court, Mr Tom Wodak, Justice Monika Schmidt, His Hon Acting Judge Paul Cloran and Ms Ruth Windeler, Judicial Commission of New South Wales

Membership of legal, cultural or benevolent organisations

Member, Planning Institute of Australia, CPP

Member, Australian Dispute Resolution Association Inc

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 2011

The Hon. Justice Brian J Preston SC, Chief Judge (Chair)	Land and Environment Court
Senior Commissioner Tim Moore	Land and Environment Court
Acting Senior Commissioner Graham Brown (from 25 August 2011)	Land and Environment Court
Registrar Joanne Gray	Land and Environment Court
Acting Registrar Leonie Walton (from September 2011)	Land and Environment Court
Mr Damon Anderson	Department of Primary Industries, Office of Water
Ms Christina Bunbury	Australian Institute of Landscape Architects
Mr Peter Callaghan SC	Institute of Arbitrators and Mediators
Mr Peter Castor	Institute of Australian Consulting Aborigiculturists
Mr Ross Fox	Office of Environment and Heritage
Mr Aaron Gadiel	NSW Urban Taskforce
Mr Chris Hallam	Engineers Australia
Mr Ian Hemmings	Environment and Planning Law Association
Mr James Johnson	Nature Conservation Council of New South Wales
Dr Jeff Kildea	New South Wales Bar Association

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

Mining Court Users Group

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

Members during 2011

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	Industry & Investment NSW
Mr Matt Brand	NSW Farmers Association
Mr John Browne	Browne, Jeppesen & Sligar Solicitors
Mr Nicholas Dan	Bilbie Dan Solicitors & Attorneys
Mr Mark Faraday	Kemp Strang Lawyers
President Pat Fletcher	Grawin-Glengarry Sheeppark Miners' Association
Mr Rodney George	Department of Primary Industries
Ms Natasha Hammond-Deakin	Environmental Defender's Office
Mr Bob Harrison	Mining Titles Services Pty Ltd
Mr Russell Hetherington	Hetherington Mining and Exploration Titles Services Pty Ltd
Mr Robert Jarratt	Jarratt, Webb & Graham Pty Ltd
Mr Peter Long	Slater & Gordon Lawyers
Mr Lindsay Moore	Moore & Co Solicitors
Ms Maxine O'Brien	Lightning Ridge Miners' Association
Mr Stuart Percy	Stuart Percy & Associates Solicitors
Ms Sue-Ern Tan	NSW Minerals Council
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

The Hon. Justice Rachel Ann Pepper

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 Joanne Gray, Registrar to 7 September 2011

Ms Leonie Walton, Acting Registrar from 7 November 2011

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

Ms Ruth Sheard, Conference Co-ordinator, 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 Jan Murrell

Ms Anne Heritage, Court Librarian

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

The Hon. Justice Rachel Ann Pepper (Chair and member until 1 December 2011)

Commissioner Linda Pearson (Chair from 2 December 2011)

Ms Vicki Ferguson, Information & Research Officer

Ms Michelle Bradley, Tipstaff to Justice Pepper

31 January 2011
Volume 3 Issue 1

Land and Environment Court of NSW Judicial Newsletter

Legislation:

- Statutes and Regulations
- Consultation Drafts
- State Environmental Planning Policy (SEPP) Amendments
- Bills
- Miscellaneous

Judgments:

- High Court of Australia
- NSW Court of Criminal Appeal
- NSW Court of Appeal
- Supreme Court of NSW
- Western Australian Supreme Court
- Land and Environment Court of NSW

Judicial decisions

- o Judicial Review
- o Civil Enforcement
- o Development Application
- o Compulsory Acquisition & Valuation
- o Criminal Jurisdiction
- o Costs
- o Practice and Procedure
- o Section 56A Appeals

Commissioner decisions

- o Development Application Appeals under s 97 of the EPAA
- o Trees/Hedges
- o Mining

Court News

- New Developments
- Arrivals/Departures

Legislation

• Statutes and Regulations

Environmental Planning and Assessment Amendment Act 2008 — published 20 December 2010, proclaims that Schedule 4.1 [28] and [30] to the Act will commence 25 February 2011. These provisions will allow an authority who has issued an order under *Division 2A* of the *Environmental Planning and Assessment Act 1979* to recover certain reasonable costs associated with the order by issuing a compliance cost notice.

Environmental Planning and Assessment Amendment Act 2008 — published 20 December 2010, proclaims that Schedule 5.2 to the Act commenced 1 January 2011. This amended the *Coastal Protection Act 1979* to remove the need for the Minister of Planning's consent for development in coastal zones under the *Environmental Planning and Assessment Act 1979*.

Environmental Planning and Assessment Act 1979 and the *Local Government Act 1995* — published 1 December 2010, commences an *Assessment Act 1979* and the *Local Government Act 1995* development and bush fire prone

Environmental Planning and Assessment Regulation 2010 — published 1 December 2010, commences an *Assessment Act 1979* and the *Local Government Act 1995* development and bush fire prone

- Environmental Planning and Assessment Regulation 2010* — published 1 December 2010, commences an *Assessment Act 1979* and the *Local Government Act 1995* development and bush fire prone
- (a) to extend a transitional period under the *Mining Act 1992* (which allows a mining lease to be granted on a mining lease and *Assessment Act 1979*) existing mining leases;
 - (b) to omit a spent aspect of the *Mining Act 1992*;
 - (c) to permit single applications for development comprising the two storey dwelling houses
 - (d) to require documents associated with bush fire prone land and the relevant council;

27 October 2011
Volume 3 Issue 4

Land and Environment Court of NSW Judicial Newsletter

Legislation

- Statutes and Regulations
 - o Water legislation
 - o Criminal legislation
 - o Courts and other legislation
- State Environmental Planning Policies
- Bills
- Miscellaneous

Judgments

- Overseas
- High Court of Australia
- NSW Court of Appeal and Court of Criminal Appeal
- NSW Supreme Court
- Land and Environment Court of NSW
 - o Judicial Review
 - o Development Applications
 - o Civil Enforcement
 - o Contempt
 - o Criminal
 - o Costs
 - o Practice and Procedure
 - o Section 56A Appeals
- Commissioner Decisions

New Developments

Court News

Legislation

• Statutes and Regulations

Local government and planning related legislation

Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011 commenced 1 October 2011 (apart from *Schedule 1.2 [28]*). It repealed *Part 3A* of the *Environmental Planning and Assessment Act 1979* and introduced a new system for the assessment of State significant projects. The Act also made a number of changes to the operation and make-up of the Planning Assessment Commission and Joint Regional Planning Panels [full explanatory notes].

The Department of Planning and Infrastructure has information on its website on the current planning assessment systems:

- State significant assessment system;
- State significant infrastructure (SSI);
- Part 3A (not accepting new applications);
- Local and regional development;
- Return of certain regional development to councils for determination (*circular PS 11-020*); and
- Part 5.

Environmental Planning and Assessment Amendment (Part 3A Repeal) Regulation 2011, published 28 September 2011, makes provision for the purposes of the commencement of the *Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011* (including the revised savings and transitional provisions in the proposed *Sch 6A* to the *Environmental Planning and Assessment Act 1979*).

Environmental Planning and Assessment Amendment (Wagga Wagga Relevant Planning Authority) Regulation 2011, published 16 September 2011, makes transitional provision for the exercise of the functions of the Wagga Wagga Interim Joint Planning Panel as a consequence of the abolition of that Panel. The Regulation provides that, on the repeal of the Order constituting that Panel:

- (a) any function that the Panel had under a direction given by the Minister that makes the Panel the relevant planning authority for a proposed instrument is taken to be a function of the Southern Region Joint Planning Panel; and
- (b) anything done or omitted by Wagga Wagga Interim Joint Planning Panel in relation to an unresolved matter that on repeal can be determined by the Southern Region Joint Planning Panel, is taken to have been done or omitted by the Southern Region Joint Planning Panel.

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ISSN 1832-8563

Published October 2012 by State of New South Wales through the Department of Attorney General and Justice and The Land and Environment Court of NSW.

Printed on Monza Satin – 55% recycled and 45% FSC paper stock, using vegetable oil based inks and an environmentally friendly alcohol-free printing process.
(ecoDesign ecoPrint FSC Cert no. QMI-COC-001113)



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of New South Wales**

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Sydney NSW 2000**

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