

“Achieving Court Excellence: The need for a collaborative approach”

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The International Framework for Court Excellence (‘the Framework’) has been instrumental in providing courts with a resource for measuring their performance across seven areas of excellence, and providing a tool for developing initiatives for continuous improvement across those areas. The Land and Environment Court of NSW (‘the Court’) became the first court in the world to implement the Framework in 2009, and developed a number of initiatives to work towards attaining the goal of court excellence. In carrying out these initiatives, it has been necessary for the Court to go beyond its internal resources and engage with the department that funds it, as well as with other departments and organisations that support its work and share its goals. This has led to a strategic approach to leadership of the Court, whereby it is necessary to first ascertain what resources are required to carry out the initiatives, then identify where those resources might be available and how they might be engaged, and, where external resources are utilised, work collaboratively with the external organisation to achieve both their goals and the court’s initiatives. The carrying out of this process provides the leadership envisaged by the Framework and delivers the key results identified by the Framework as being essential for court excellence.

The path to court excellence

The International Framework for Court Excellence (‘the Framework’) is upfront in its purpose as a resource “for assessing a court’s performance against seven detailed areas of court excellence” and providing “clear guidance for courts intending to improve their performance” (International Framework for Court Excellence, p.1). 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 service.

The Framework is intended as a methodology for continuous evaluation and improvement. In implementing the Framework, a court not only identifies where it performs in each of the seven areas of court excellence, but also identifies initiatives to address shortfalls and improve its performance in those areas.

However, this is only the first step on the path to court excellence. Upon identifying those initiatives, a court must ascertain what resources are required to achieve them. On so ascertaining, a court needs to determine where those resources might be available and how they might be engaged. An assumption underlying the Framework is that such resources are available within the court itself. In that respect, the Framework assumes that courts are sufficiently autonomous to dedicate their own time and resources to achieve the initiatives identified for attaining court excellence. For some courts, this reflects the reality that they are self-funded autonomous bodies that have the discretion to raise funds and recruit support as they see fit and apply their budget according to their own priorities.

However, for a vast number of other courts, of which the Land and Environment Court of NSW ('the Court') is one, this is not the reality. Although the judicial and decision-making functions of the Court remain independent of the government, the funding is given by a government department in a controlled budget that is subject to savings targets and treasury cut-backs. This lack of self-sufficiency can present an impediment to achieving initiatives that require expenditure, specialist resources or the investment of large amounts of time. To achieve these initiatives, a court that operates in this manner must therefore look beyond its internal resources and engage with the funding department as well as other stakeholder departments and organisations. This recognises that not only does the court have at its disposal its own resources, but that its relationship with government departments and external bodies avails it of resources that can also be utilised.

The aim of this presentation is to highlight the need for those in leadership in courts to collaborate with government departments and external bodies to achieve the court's initiatives. We will look first at how such collaboration fits into the strategic process of court improvement. We will then share some of the achievements the Court has made through its collaboration with government departments and other organisations. Finally, we will highlight the benefits of this collaboration, and how, through it, a court can achieve more than what it could have, if it had all the resources to achieve its initiatives, on its own.

Successful leadership demands collaboration

In the pursuit of court excellence, leadership of a court involves a strategic process of identifying a shortfall within an area of excellence, devising a solution or initiative

to address that shortfall, ascertaining what resources are required to carry out that solution, and then gauging where those resources might be available and how they could be employed.

The first step of identifying a shortfall in an area of excellence is facilitated by the Framework. The Framework proposes that the court assess its performance in each of the seven areas of excellence through a self-assessment process that measures performance against a number of outcome statements and sub-categories within each of the seven areas. Through that process, scores are obtained against each outcome statement and sub-category, and, by addition of those scores, against each area of excellence. These scores enable a court to identify the areas in need of improvement.

Once the need for improvement is established, the second step is to examine the statements and subcategories in each area where a low ranking is assigned in order to devise a solution or initiative to address the court's performance. Through so doing, those in leadership can confer with other court members to brainstorm ideas, devise solutions and develop an action plan for carrying out improvements that will address the shortfalls in performance.

Whilst these first two steps can be achieved quite quickly, the next steps, involving the implementation of the action plan, can be difficult in comparison. The third step is to ascertain what resources are required to carry out a particular solution or initiative. Those resources might be material resources, human resources or financial resources. There might be a number of different resources required for the one improvement. For example, a website improvement might require the investment of time by a court staff member to write the content, as well as the financial and technical resource for improving the website platform and layout.

The fourth step is to gauge where those resources are available and consider how they could be engaged. Some may be available within the court, such as pre-existing material resources or court personnel. However, where a court is reliant on a government budget allocation and spends its time carrying out the court's business, it may be necessary also to look beyond the court to determine what resources might be available elsewhere. These might be the government departments that support the court, including those that provide financial resources and any others responsible for the administration of legislation that confers jurisdiction on the court. Professional and stakeholder organisations may also share the goals of the court and prove to have useful resources available.

Where resources are available that belong to organisations or bodies external to the court, these organisations are unlikely to be willing to invest their own material, financial or human resources where it is not in their interests to do so. An external organisation will share its resources only in order to meet its own goals and priorities. The task of gauging where the resources are to achieve the stated solution therefore necessitates having an understanding of the goals and priorities of those other bodies in order to partner with them.

This fourth step in implementation of these initiatives involves working co-operatively with either the internal or external resource organisations, or both, in

order to achieve the stated solution or initiative. This in turn creates a co-operative working relationship between the court and the other organisation. Ongoing relationships with such government departments and organisations then allow a court to utilise the resources of those bodies again in the future where resources are otherwise unavailable within the court.

Working collaboratively: The experience of the Land and Environment Court of NSW

The Court was the first court in the world to implement fully the Framework¹. Through the implementation of the Framework, the Court identified a number of areas where improvement was required in order to achieve the outcomes of each area of court excellence. The Court then developed an action plan that set out the initiatives to achieve improvement in those areas.

(a) Utilising the Court's own resources

A number of these action items could be achieved with the use of resources available within the Court. The Court identified the need to, and had the internal resources to be able to, formulate, implement and review plans, policies and practice notes. For example, the Court did not have a Statement of Purpose, so a number of court personnel formed a team that developed and introduced one.

The Court identified that there were many areas where there were no policies, but policies would be beneficial to guide conduct of court members. The Court drafted many policies, including ones on a code of conduct for commissioners (non-judicial court members), annual performance appraisals for commissioners, delays in reserved judgments, case management, conciliation conferences, site inspections, and identity theft protection. Each of these policies was introduced by the Chief Judge, but was the result of a consultation and drafting process that involved the Registrar and the Senior Commissioner.

The action plan developed under the Framework also identified areas of the Court's jurisdiction where practice and procedure was not well articulated. In light of this, the Chief Judge worked together with other judges to create practice notes in areas of jurisdiction where there previously were no such practice notes. To address a shortfall in the articulation of the process for electronic filing of documents, the Registrar recently wrote and published new guidelines for filing documents using eCourt.

The Court was also able to improve its performance by better management of human resources. In conjunction with the policy for annual performance appraisals for commissioners, it commenced the annual performance review process for commissioners, wrote and introduced a handbook for commissioners, and commenced a performance review process for registry personnel.

¹ The Court's experience is recorded in Justice Brian J Preston, 'Implementing the International Framework for Court Excellence: The Experience of the Land and Environment Court of New South Wales', paper presented to the Asia Pacific Courts Conference, 4-6 October 2010, Singapore, available at http://www.lec.justice.nsw.gov.au/Pages/publications/speeches_papers.aspx

To facilitate continuing education and to promote public trust and confidence, a team of court personnel was established to produce a judicial newsletter summarising recent legislation and judicial decisions of relevance to the Court's jurisdiction. This judicial newsletter was initially used only for the continuing education of court personnel, but after a year of publication was made available to the public. It is published on the Court's website.

Other areas that required improvement were measuring user satisfaction and promoting public trust and confidence. To measure user satisfaction, the registry introduced yearly court surveys, which were developed and managed by the Registrar and distributed by registry staff.

These initiatives are just some of many examples of what the Court has achieved by utilising its own time and resources to improve in each of the areas of court excellence. Each of them involved an investment of time and effort by existing personnel but were nonetheless achievable within existing resources.

(b) Working with the Department of Justice

Fundamental to the operation of the Court is the support of the NSW Department of Justice ('the Department'), which is responsible for the administration of the Court and its resources. Registry staff (including the Registrar) and judges' staff are employees of the Secretary of the Department. The budget for the Court is allocated to it from within the budget for the Department. The Department's Corporate Services division provide all the administrative support required for human resources issues, payroll, recruitment, asset management, financial services (including debt recovery), management of accounts and information technology services. The Legislation and Policy division of the Department provides opportunities for the Court to provide feedback on proposed legislation as well as to propose changes to governing legislation. Within the Department, the Court Services division provides library services, court security through the Office of the Sheriff of NSW, and transcription services through the Reporting Services Branch.

It is clear that the support of the Department is fundamental to the success of the Court's operations. This ongoing support provides opportunities for the Court to implement initiatives that align with the priorities of the Department. We will provide some examples.

First, through the implementation of the Framework, problems were identified with the layout of the registry office and public counter area, as well as with the lack of signage within the floors occupied by the Court in the building. In order to address these problems, a refurbishment of the registry and the installation of signage was required. It was clear that the Court did not, of itself, have the funds to engage directly with a project manager or builder for this to occur. The Registrar and the Chief Judge then sought the input of the Department. In conjunction with the Court, the Department reviewed these problems and included both a refurbishment project and a signage package in the capital works expenditure plan. The inclusion of these projects was consistent with the Department's commitment to improving court facilities. As a result, in 2011, the registry office and counter underwent a

refurbishment to improve the facilities available to court users and the public, including new counter facilities, work desks, a computer terminal available to the public with internet and printing facilities, and a meeting room available for use on request. The signage within the building also improved, resulting in improved navigation within the building for court users.

Second, the Court identified through the Framework that its presentation of information to the public through its website was lacking in various ways. The leadership team who devised the action plan following the self-assessment process identified a number of areas in which there might be more information on the website. Another such action was to improve the manner in which it was presented on the website, including making the information available in video, audio or diagrammatic form. In identifying the resources required to carry out these solutions, it was clear that not only would internal court personnel be required to draft the content, but IT resources would be required to improve the website. Although the latter were not available from the Department initially, in 2012 the Department implemented a communications project for improving the website design across the Department. This gave the Court the opportunity to tap into the Department's website review process and develop and publish comprehensive and detailed information on the Court, its processes and decisions, as well as provide practical and helpful information on the main types of cases along with step by step instructions on commencing, preparing and running these cases.

In developing the content for the website, the Court recognised the need to collaborate with LawAccess, a branch of the Department whose focus is to provide legal information to the public through its website and over the phone. LawAccess was able to review the content as well as publish links to the information from their own website.

The website was officially launched by the then Director General of the Department at an event attended by court members, various guests and court users.

In 2015, the Department was required to move its various websites to a new platform. This again presented an opportunity to the Court to improve its website, resulting in the updating of information, restructuring the website so that most pages are within 'one click' from the home page, as well as making the site accessible to those on mobile devices and to those with disabilities through a read text feature.

Third, the implementation of the Framework identified a need to extend the availability of the Court's electronic filing and online court system (eCourt) to all areas of the Court's jurisdiction. The Court did not have the know-how to do so or the funding to engage a contractor to carry out this work. Accordingly, the Court engaged the services of the Department's Information Technology branch, who worked co-operatively with the Court to engage a contractor to extend eCourt to all areas of the Court.

The Court's continued use of the areas of excellence as measures of performance has identified problems with the use of eCourt. Whilst the Court was the first court in Australia to introduce online filing and online court directions hearings through

eCourt in 2001, this technology is not integrated with the Court's electronic case management system. The use of eCourt therefore results in the double-entry of data on two different IT systems. In order to introduce an online filing and online court that is integrated with a case management system, the Court is currently working with the Department and its dedicated project teams to deliver an integrated solution. This is a significant project funded by the Department in furtherance of its goal for the digitalisation of court services.

Fourth, in order to maintain safe facilities for court staff, users and the public, another outcome of the Framework, the Court reviewed its security arrangements and identified a number of areas of concern. However, in addressing those areas of concern, the Court did not have the resources to implement its own security or improve the security of the building. The raising of the terror threat level in Australia, as well as the unfortunate siege at Martin Place only one block away from the Court, gave the Court the opportunity to seek the co-operation of the Sheriff of NSW to conduct a further security review. In order to address areas of concern identified by that review, the Registrar worked closely with the Office of the Sheriff to identify areas where improvements could be made and with the Asset Management Branch to carry out those improvements where they related to the security of the building itself. The review went further to improve security outside the court. The review identified the need for ongoing protocols and training on security, and as a result the Registrar worked with the training and development team within the Department to commence work on a protocol or manual around security arrangements, as well as to provide content for a course on identifying and responding to security risks.

Fifth, in order to improve the accessibility of its forms to court users, the Court has at various times reviewed the forms. Whilst the resources to improve the forms can be found within the Court's human resources, the Court does not have an expert that can review the forms and provide feedback on how easily their content can be understood by court users. As a result, the Court took advantage of the plain language experts engaged by the Court Services division within the Department. Their expertise was used to review the understandability and ease of completion of the forms for unrepresented persons.

It is clear, therefore, that the Court has been able to achieve many of its initiatives for improvement through the resources provided by the Department. This is the result of the Court identifying what resources are required and determining whether those resources might be available within the Department. Where the Department has priorities consistent with the Court's initiatives, those resources are made available to the Court for its use. The Registrar, the Chief Judge or other leaders within the Court then work collaboratively to achieve the Court's goals.

(c) Working with other courts

The Court has achieved success by implementing initiatives for improvement through its collaboration with other courts in NSW.

First, one of the practical difficulties of the Court is that it has only a central registry in Sydney, yet it services all of NSW and sits regionally throughout NSW, an area

of over 809,000 square kilometres. In order to address this geographical problem, the Court has an ongoing relationship with the Local Court for the use of their court rooms throughout NSW. Similarly, the Court has an arrangement established through legislation that allows parties to file documents for the Court in a local court registry. Both of these arrangements enable the Court to be geographically accessible to those who are located in remote or regional areas of NSW.

Second, the Court has identified that there are occasions in which it is not suitable for a hearing to be held in one of the courtrooms in Sydney. This can occur because there are security risks and weapons screening is therefore required, or where the parties are numerous, or the expected public audience is sizeable, and cannot be accommodated in the Court's court rooms. To address this, the Court has an arrangement with the Supreme Court of NSW for the use of their court rooms where such an occasion arises. It has similar arrangements in place with the NSW Industrial Relations Commission (IRC) (which incorporates the NSW Industrial Court), so that their court rooms and offices can be utilised on these occasions or when refurbishments or repairs make space unavailable at the Court. The Court also has an agency arrangement with the Supreme Court for the Supreme Court registry to accept documents for filing in the Court to increase accessibility, especially in circumstances where the Court's registry may be closed.

The co-operation between the Court and the Supreme Court has also achieved a number of other efficiencies. Both courts are superior courts of record, where the Court is given exclusive jurisdiction regarding planning and environmental laws. The result of this exclusive jurisdiction is that for some disputes with multiple claims and issues, proceedings have to be brought both in the Court and in the Supreme Court. This results in two related proceedings being dealt with separately by two superior courts. This inefficiency was identified, and both the Chief Judge of the Court and the Chief Justice of NSW requested changes to the relevant court legislation to enable the transfer of proceedings between the two jurisdictions, and to give the transferee court all the powers of the court from whom the proceedings have been transferred.²

Another efficiency that has been achieved through collaboration between the Supreme Court and the Court is the sharing of both judicial and registry resources. In 2010, both the Chief Judge of the Court and the Chief Judge of NSW identified the need to share judicial resources and agreed to amendments to court legislation to enable judges of the Supreme Court to act as judges of the Court, and visa versa.³ This not only allows the Court to use the Supreme Court judges to deal with additional caseload as it arises, but it also gives the judges of both courts the opportunity for education by sitting in areas in which they are not generally accustomed. The Chief Judge of the Court may also act as an additional Judge of Appeal in the Court of Appeal and Court of Criminal Appeal.⁴

Similar opportunities exist for registry staff, where the staff of each of the courts have opportunities for development by working for periods at the other court. The

² *Civil Procedure Act 2005* (NSW), ss 149A-149E (civil proceedings) and *Land and Environment Court Act 1979*, ss 72 and 73 (criminal proceedings).

³ *Land and Environment Court Act 1979*, s 11A and *Supreme Court Act 1970* (NSW), s 37B.

⁴ *Supreme Court Act 1970*, s 37A and *Criminal Appeal Act 1912*, s 3(1A) respectively.

Court also has the benefit of utilising the Supreme Court's media officers for media enquiries. This collaboration between the courts therefore results in the ongoing sharing of resources where required.

The use of the Framework also identified a need to change the Court's aging and unsupported computerised case management system in existence at that time. Given the longer term goal to move to a system integrated with online services, an interim solution was required. However, no funding was available to go to a vendor for an interim solution. The Court partnered with the IRC to adopt their computerised case management system. This interim system was the first time that the Court's computerised system contained a full record of all events in particular proceedings, and has now been in place for more than 6 years.

The Court has also been able to achieve continual improvement in its practice and procedure and in the accessibility of its judgments through participation in inter-court committees. One such committee is the Uniform Rules Committee, which considers proposals to change the rules that govern courts in NSW and of which the Chief Judge is a member. When the Court identified a need to change the rules governing internal appeals within the Court, the support of the committee was sought, which then also enabled assistance to be provided by Parliamentary Counsel. Similarly, the Court's partnership with other courts through the committee enabled it to contribute to the introduction of new rules governing practice and procedure concerning the commencement and conduct of judicial review proceedings in superior courts.

Another such committee is the Caselaw governance committee, which oversees the Caselaw NSW website that publishes judgments given by NSW courts. In order to make the Court's decisions accessible, it is imperative to partner with those responsible for publishing them and ensure that there are solutions in place to address any problems with that publication. When problems have been identified with the Caselaw publishing system, representatives of the Court who are members of the committee have been able to identify those problems to the committee and therefore contribute to its improvement.

In its pursuit of court excellence, the Court has made significant achievements through working with other courts. Its partnership with other courts allows it to find resources where resources would otherwise be unavailable.

(d) Working with the Judicial Commission

The Judicial Commission of NSW is an independent statutory corporation established by the government and responsible for receiving and investigating complaints against judicial officers, providing training and education to judicial officers, and conducting research on trends in law and justice.

First, in relation to training and education, the Court identified through the Framework the need to introduce a handbook for Commissioners. The handbook provides guidance 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 was drafted by court personnel, but a need was identified to have this handbook available as a service that could be updated as required. The Judicial Commission already produced a number of handbooks and bench books for courts of a similar nature, and therefore the Court identified it as a possible resource for maintaining the Commissioners' Handbook. There was an alignment of interests and priorities between the Court and the Judicial Commission in providing educational materials to members of courts. The Judicial Commission agreed to publish and maintain the Commissioners' Handbook. The Court worked with the Judicial Commission to publish the handbook in both a hard copy and an accessible, searchable electronic resource.

The commitment of the Judicial Commission to the ongoing training and development of judicial officers in NSW has enabled the Court to partner with it to achieve the Court's own goals for continuing education. Continuing education of judicial officers and commissioners is essential for maintaining high quality decision-making and ensuring that commissioners with expertise in particular fields continue to update their knowledge as changes in those fields occur.

In late 2008, the Court adopted a formal policy for continuing professional development that required judicial officers and commissioners to complete 30 hours of education each calendar year. The Court worked with the Judicial Commission in the formulation of the policy and in the design of the continuing education programme. The Judicial Commission assists the Court in the continual evaluation, both quantitative and qualitative, of the continuing education programme to ensure that it meets the objectives of the programme and the needs of Court members. The Court reports on programme evaluation in its Annual Reviews.

The Court's continuing education program is managed through the Court's Education Committee, which is comprised of members of the Court and representatives of the Judicial Commission. The Education Committee is both proactive in setting a schedule for seminars and the court conference and engaging relevant persons to conduct those seminars, and re-active in responding to identified training needs. The Education Committee creates a training schedule that includes the achievement of around 24 of the required 30 hours, including a 2 day court conference and around 8 twilight seminars. Judges and commissioners are then expected to complete the remaining 6 hours in their own time. An example of reactive management is when, in 2011, the Education Committee identified a need for training of commissioners in judgment writing and the Judicial Commission arranged for a suitably qualified person to carry out that training.

The Judicial Commission not only provides the support needed for the Court to carry out its initiatives for continuous education, but their experience and expertise in planning training and seminars for judicial officers in NSW means that the continuous education provided is of a higher standard than if the Court had worked alone in organising the training itself. It is therefore through its partnership with the

Judicial Commission that the Court is able to maintain its commitment to continuing education, therefore enhancing its management of the Court's human resources and improving the quality of the decision-making process.

Second, in relation to research, the Court identified that whilst a sentencing database was available for other courts in NSW, there was no sentencing database for environmental offences dealt with by the Court and by the Local Court. The purpose of such sentencing databases is to provide data on sentencing trends, give transparency in decisions on sentence, and therefore achieve consistency in sentencing. The sentencing database for NSW courts is part of the Judicial Information Research System (JIRS) managed by the Judicial Commission. The Court partnered with the Judicial Commission to design and introduce the world's first sentencing database for environmental offences.⁵ This initiative has yielded many benefits to the criminal justice system, including improving quality of sentencing, consistency and predictability of sentencing outcomes, and transparency of decision-making.⁶ The Judicial Commission continues to work with the Court in maintaining and updating the database, and auditing its quality and accuracy.

Third, the Court identified that, in order to enhance public confidence in the Court and to promote good practices and high standards of performance, there was a need to implement a mechanism whereby court users and the public may make complaints about the conduct of Commissioners. As the Judicial Commission deals with complaints against judicial officers in New South Wales, the Court approached it to assist the Court in formulating a policy and implementing a system for dealing with complaints against Commissioners.

(e) Working with other departments and organisations

(i) Department of Environment

As explained earlier, the Court has worked to develop a principled approach to sentencing for environmental crime⁷ and the sentencing database. Amongst the benefits of the Court's work in these regards is a bespoke approach to sentencing, particularly in the selection of sentencing options that promote the purposes of sentencing that are appropriate for the particular offence and offender being sentenced.

Initially, this principled and bespoke approach to sentencing was best able to be applied to pollution offences, as the pollution legislation permits a wide range of

⁵ Justice Brian J Preston and Hugh Donnelly, *Achieving Consistency and Transparency in Sentencing for Environmental Offences*, Research Monograph No 32 (Judicial Commission of NSW, 2008) also published as Justice Brian J Preston and Hugh Donnelly, 'The Establishment of an Environmental Crime Sentencing Database in New South Wales' (2008) 32 *Criminal Law Journal* 214.

⁶ Justice Brian J Preston, 'A Judge's Perspective on Using Sentencing Databases' (2010) 3 *Journal of Court Innovation* 247 (also published in (2010) 9 *The Judicial Review* 421).

⁷ See generally Justice Brian J Preston 'Principled sentencing for environmental offences – Part 1: Purposes of sentencing' (2007) 31 *Criminal Law Journal* 91 and Justice Brian J Preston, 'Principled Sentencing for environmental offences – Part 2: Sentencing considerations and options' (2007) 31 *Criminal Law Journal* 142.

sentencing options.⁸ The Court's experience in sentencing for pollution offences was soon recognised by other regulatory agencies (including the New South Wales Office of Environment and Heritage) and they investigated how sentencing for offences within their regulatory jurisdiction could take advantage of the principled and bespoke approach to sentencing. These investigations included discussions with the Court. As a result, the regulatory agencies requested and the legislature responded to the request by amending legislation protecting national parks and wildlife, and threatened species, populations and ecological communities in particular, and regulating planning and development to expand the range of factors to be considered in sentencing and the available sentencing options.⁹

The Court, in enhancing public trust and confidence, publicises information about the Court and its work, its experience in court administration and implementation of the Framework, and its initiatives to improve its performance. Partly as a consequence, the Court hosts many judicial and regulatory delegations, from both Australia and other countries. To enhance the learning experience and knowledge of the delegations, the Court collaborates with and organises visits and meetings with the Judicial Commission, regulatory agencies (such as the Environment Protection Authority and Office of Environment and Heritage), environmental law non-governmental agencies (such as the NSW Environmental Defender's Office), and professional organisations (such as the Environment Planning Law Association, Law Society of NSW and NSW Bar Association).

(ii) The NSW Valuer General

The Court has jurisdiction to hear and determine proceedings concerning the valuation of land (the land value is used for rating and taxing purposes) and compensation payable for the compulsory acquisition of land for public purposes. From time to time, there are governmental reviews of the regulatory system for valuation of land by the Valuer-General and appeals against such valuation to the Court. On the occasion of one of those reviews, the Court identified areas in which the Court could improve the ways in which, and speed by which, proceedings concerning valuation of land could be resolved in the Court. One critical aspect was that the Court sought for the government to appoint, as acting commissioners of the Court, persons with special knowledge of and experience in the law and practice of land valuation. The appointment and utilisation of expert land valuers has had a number of benefits. It enabled greater use of the appropriate dispute resolution process of conciliation of proceedings concerning the valuation of land. The land valuers are able to use their expertise to assist the parties to reach agreement without the necessity for a hearing. The conciliation process is highly successful with more than 83% of matters being resolved without the necessity for a hearing. The availability and use of land valuers improves the quality of decision-making by the land valuers being able to better understand and evaluate the evidence, bringing their expertise to bear. It also has improved consistency, and thereby predictability, in decision-making on land valuation issues.

⁸ *Protection of the Environment Operations Act 1997* Part 8.3.

⁹ *National Parks and Wildlife Act 1974*, Division 3 of Part 15; *Threatened Species Conservation Act 1995*, Division 3 of Part 9B; and *Environmental Planning and Assessment Act 1979*, s 126(2A).

The Court has worked with the key stakeholders in this area, including the Valuer-General. The Court has held meetings with the Valuer-General to discuss ways in which legislation and policy governing the valuation of land in New South Wales and appeals to the Court can be improved. The Court consulted the Valuer-General, as well as other court users and professional organisations involved in the valuation of land process, in developing and reviewing the Court's practice notes on the valuation of land and compensation for the compulsory acquisition of land. The consultations and discussions are ongoing and iterative, allowing continuous improvement of the Court's performance.

The Court has also collaborated with the Valuer-General to improve the information available to the public and court users on valuation of land. The Court has developed special sections on its website dealing with the compensation for the compulsory acquisition of land. The Overview section provides information on proceedings in the Court for compensation, the amount of compensation that can be ordered (including the types of compensation) and the methods of valuation. The Cases section identifies and groups judicial decisions on particular issues and aspects of compensation for the compulsory acquisition of land. The Statute section identifies and links the key substantive and procedural legislation governing determining compensation. The Types of Cases section describes, step by step, the practice and procedure for claims for compensation for the compulsory acquisition of land and objections to the valuation of land. In each of these sections, there are pages listing and providing links to helpful materials. These include the Valuer-General's policies for the land valuation system. The Court collaborates with and publicises the Valuer-General's policies, being one administrative policy about the handing of complaints and 24 valuation policies dealing with particular aspects or types of land valuation.

The provision of all of this information improves user satisfaction and public trust and confidence in the Court.

(iii) Department of Primary Industries

In 2009, the Court was given the exclusive jurisdiction to hear and determine proceedings under the mining legislation and onshore petroleum legislation. The former Mining Warden's Court was abolished. The vesting of new jurisdiction in the Court raised challenges for the Court. The types of mining involved is diverse, ranging from small-scale titles (such as for opal prospecting) by individuals to large-scale mines (such as open-cut coal mines) by multinational corporations. The jurisdiction covers a large geographical area, the whole of the state of New South Wales, including remote locations (such as the opal-mining districts), making access to the Court difficult. The former Mining Warden's Court had been around for over a century: it and its practices were familiar. The Land and Environment Court was new to the mining industry. They were worried about what the Court would be like and how it would go about hearing and disposing of mining matters.

The Court rose to the challenge in a number of ways. First, it collaborated with the regulatory agencies primarily involved with mining to make the transition to the Court from the Mining Warden's Court as smooth as possible. The Court consulted on the information that should be prepared and the key stakeholders who should

be involved. The Court organised stakeholder and public meetings in Sydney and key mining locations (such as the opal-mining town of Lightning Ridge), at which presentations about the Court and the practice and procedure that would be used for mining matters and questions and concerns could be raised.

Second, the Court established special sections on its website dealing with mining. Information is provided explaining the process of commencing, hearing and determining mining matters. Helpful materials are identified and linked. The Court worked with the relevant mining regulatory agencies to identify and provide links to reference materials of those agencies, such as mineral and petroleum titles and land access arrangements for mining and petroleum exploration and production. The Court gained access to and arranged for the decisions of the former Mining Warden's Court, for the last forty years, to be transcribed, published and uploaded to the Court's website. This was the first time that decisions of the Mining Warden's Court had been made publicly available. To assist court users, the decisions were classified in two ways: by year of decision and by the type of application or issues determined. The Court continues to publish and upload to the Court's website all mining decisions of the Court. To assist users in accessing and using the decisions, the Court has included short catchwords describing the nature of the case and issues involved. The mining regulatory agencies also promote the Court's work by identifying and providing links on their websites to the Court's website materials on mining.

Third, the Court established and maintains a special Mining Court Users Group as a consultative committee comprising representatives from mining-related organisations and mining lawyers. The group meets throughout the 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. Issues raised by court users have led to measures being taken to improve the Court's performance.

(iv) Department of Planning

Increasingly, laws and policies are being published and applied electronically. Planning and environmental laws and policies are a recent illustration. The New South Wales government has established an electronic planning system (ePlanning), including a planning portal which provides electronically the laws, legal and planning instruments, planning policies, planning consents and other approvals, and other information relating to planning and the environment.

One of the features of the Planning Portal is the Planning Viewer which provides public access to the map layers for planning maps incorporated by reference in environmental planning instruments made under the planning legislation. The Planning Viewer enables users to search, navigate and view the map layers using standard map-viewer functionality.

The Court plays an important role in the planning system. It hears and determines planning appeals and can, itself, grant planning consent. In doing so, the Court needs to be able to accept for filing and to process the documents electronically, and to access electronically the functions, materials and information on the Planning Portal. If approval is given, the Court needs to publish electronically the

planning consent in a form that is able to be uploaded to the register of planning consents.

During the design process for ePlanning in New South Wales, the Court identified the need for it to upgrade its IT capabilities so as to be able to participate fully and effectively in this electronic age of planning. The Court approached the Department of Planning to seek the assistance of its ePlanning team to review the capabilities of the Court and recommend how they could be improved to achieve the goal. The Court also arranged for the ePlanning team to collaborate with the Department's IT team who were working on upgrading the Court's IT system for JusticeLink and eCourt. By the Court facilitating the two teams, the Court better enables it to take advantage of the latest IT functionalities and equips it for the modern technological age.

This will improve the Court's ability to hear and dispose of planning appeals in a just, quick and cheap manner, improve user satisfaction of the Court and its processes, and improve public trust and confidence in the Court.

Achieving the just, quick and cheap resolution of proceedings is fostered by employing differential case management and different dispute resolution processes depending on the nature of the dispute and the disputants and what is at stake. Under the planning system, there is vast spectrum of developments for which consent is required, from small scale residential projects by individuals to large scale urban releases that create the equivalent of a new town. Appeals concerning such different types of development need to be managed and resolved differently.

The NSW government introduced, in 2011, a new planning regime governing small scale residential development, such as single dwelling houses and dual occupancies. The government wanted to ensure that appeals for small scale residential development were dealt with quickly and cheaply. The government consulted with the Court about the best means to achieve this goal. Working together, a new dispute resolution process, involving mandatory conciliation and arbitration, was developed and implemented for small scale residential development.¹⁰

The Court prepared a special practice note for these residential development appeals. It prepared special sections on the Court's website providing information about the conciliation-arbitration process, from the beginning to the end. In collaboration with the Department of Planning, the Court prepared helpful information and materials, including questions and answers about residential development appeals, the requirements for documents to be filed in such appeals, such as the Statement of Facts of Contentions, including a worked example of such a statement, and the standard conditions of consent that are likely to be imposed if consent is to be granted. The Department of Planning also provided information on its website about residential development appeals in the Court and included links to the information on the Court's website.

¹⁰ *Land and Environment Court Act 1979*, s 34AA.

The collaboration between the Court and the Department of Planning allowed the new planning regime for small scale residential development to be implemented from the outset successfully and efficiently. The specially tailored dispute resolution process for residential development appeals has achieved the goal of the just, quick and cheap resolution of these matters. The success of the process has prompted the government and the Court to examine if, where and how the process could be adapted and applied to other types of planning and environmental disputes. One example is the application of the conciliation-arbitration process for small scale title disputes under mining legislation.¹¹

(v) Australasian Legal Information Institute (AustLII)

One of the areas in which the Court identified, through implementation of the Framework, that it needed to improve was in the evaluation of public trust and confidence in the Court. The Court considered that one way in which public trust and confidence could be assessed was by looking at how often and in what way were the decisions of the Court referred to and used. Such information would provide insight into the relevancy of the Court and its work.

The Court identified the Australasian Legal Information Institute (AustLII) as a resource partner who could assist in monitoring access to and use of the Court's decisions. AustLII is a free-access online case law, legislation and research resource for legal information in Australia and other countries. AustLII provides the largest source of online legal materials, including primary source documentation (legislation and decisions of courts and tribunals), secondary source documentation (such as law reform and royal commission reports), and a major collection of law journals.

The Court commissioned a project with AustLII to use AustLII's databases to generate metrics and statistics concerning the Court. These data provide information concerning the frequency and nature of the citation of decisions of the Court by other courts or tribunals and the use made of the Court's decisions by academic journals that are publicly electronically accessible. The project also enables extraction of information about what are the most frequently cited decisions of the Court as well as about the general rate of accessing the Court's decisions through AustLII's databases. The data have been collected on an annual accrual basis from 2010 onwards and are available on the Court's website. The data are analysed in the Court's Annual Reviews to evaluate trends and patterns in access to and use of the Court's decisions. This provides insight into the relevancy of the Court's work and public trust and confidence in the Court.

(f) Working with professional partners

To promote public trust and confidence in the Court and its processes, the Court's action plan highlighted the need for court personnel to present seminars and participate in education of legal practitioners on the Court's jurisdiction, processes and decisions. It has done so by partnering with a number of professional organisations. This includes the Law Society of NSW, the NSW Bar Association

¹¹ *Land and Environment Court Act 1979*, s 41A.

and the Environmental Planning and Law Association of NSW. Members of the Court and the Registrar present regularly at courses or seminars offered by these organisations, facilitating the provision of high quality, contemporary information about court practice and procedure or updates on planning and environmental law.

The resolution of proceedings of the Court in all areas depends to a considerable extent on expert evidence. The quality and reliability of expert evidence is critical to sound decision making. Courts have taken many initiatives to improve the quality and reliability of expert evidence. These include special rules of court regulating codes of conduct for experts and the manner of giving and the content of expert evidence. The Court identified the need for further measures to be taken to promote these standards and codes for expert witnesses. One of these is to arrange and provide training for persons who may be expert witnesses in court proceedings. In order to do so, the Court has partnered with organisations such as the Environment Institute of Australia and New Zealand, the Australian Institute of Architects and the Australian Property Institute. Members of the Court, as well as the Registrar, present at training courses and seminars for expert witnesses hosted by these organisations.

The Court's partnership with these organisations is mutually beneficial. Whilst the organisation and training delegates receive the benefit of the skill and experience of a member of the Court, the Court also benefits from the recipients of the training being better equipped when they represent parties or give evidence in the Court. The result of these partnerships is enhancement in the quality and efficiency of proceedings before the Court.

The just, quick and cheap resolution of proceedings in the Court depends, to a large extent, on using the appropriate dispute resolution process for the particular dispute: matching the forum to the fuss. In order for the Court to achieve the goal of appropriate dispute resolution, the Court identified that it needed to expand the range of dispute resolution processes offered by the Court. In particular, the Court identified the need to offer conciliation, utilising the technical expertise of the commissioners of the Court. The Court sought and obtained legislative amendment to enable more widespread use of conciliation of proceedings in the Court. However, the Court needed to improve the capacity and skills of the commissioners who would act as conciliators. The Court collaborated with the Department and the Australian Commercial Disputes Centre (ACDC) to design and conduct intensive training programs in conciliation. The Court has continued to utilise ACDC's services by commissioners undertaking mediation training to obtain and maintain accreditation under the National Mediation Accreditation Scheme.

Regular meetings of the Court's User Group also allows the Court to maintain ongoing relationships with the professional partners represented by the members of the group, and serves to provide feedback on Court practice and procedure. The Court Users Group assists the Court to be responsive to the needs of those who use it by allowing members to raise issues of concern. The Court Users Group also allows the Court to communicate changes to practice and procedure to those who use the Court, and to obtain feedback on those changes.

Through the Court Users Group various ad hoc committees have been established to review practice and procedure within certain areas of the Court's jurisdiction. For example, in 2012 the Court introduced a new practice note for Aboriginal land claims. Prior to its introduction, the Court conferred with relevant stakeholders, including court users and their legal representatives who regularly act in Aboriginal land claims. Similarly, in 2012, the Court developed a new practice note for criminal prosecutions in consultation with the prosecuting authorities and legal practitioners who regularly act for the prosecution of the defence in criminal proceedings. The involvement of practitioners and court users in introducing new practice notes enables the Court to address the concerns of those stakeholders, give them ownership of any changes to practice and procedure through their participation in the practice note, and therefore achieve public trust and confidence in the introduction of the practice note.

Attaining excellence through collaboration

A court's success in its path of improvement therefore depends not only on being able to identify and utilise its internal resources, but also on its ability to collaborate with other organisations that can share their resources to achieve the court's initiatives for improvement. There are at least four benefits of such collaboration.

First, collaboration provides more resources to enable more of a court's goals and initiatives for improvement to be achieved than the court would be able to achieve if it relied only on its own resources.

Second, collaboration with different organisations affords different insights and information that enhances the quality and effectiveness of the court's initiatives for improvement of its performance. The involvement of different organisations adds value to what the court achieves. A court is able to make far greater achievements through its partnership with specialist organisations dedicated to the task of implementing particular reforms or with particular foci than if the court had achieved its goal with its own funding and resources.

Third, the ability to develop relationships with other bodies and collaborate with them to share their resources to achieve these gains, in itself, achieves court excellence by fulfilling a number of areas of excellence. In part, this is recognised by the Framework, which sees such co-operation with stakeholders in the justice system as an essential element of court leadership and management.

Fourth, through collaboration, the government departments, regulatory authorities and organisations develop confidence in the court. This confidence arises from their contribution toward better system enablers for the court. Their confidence engenders public trust and confidence.

Achieving court excellence is therefore not the work of a court alone. To adapt the words of John Donne, no court is an island, entire of itself; every court is a piece in the justice system. Whilst the decision making functions of a court are independent, its success in achieving outcomes in each of the seven areas of excellence depends on collaboration with partners in the justice system.