

The Land and Environment Court of NSW



Annual Review

2017

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Foreword from the Chief Judge

This Review provides information on the Court, its people 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 11 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 517 written judgments. These judgments are published on NSW Caselaw website (<https://www.caselaw.nsw.gov.au/>). 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 **2017: An Overview**

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

Court performance

The Court has an overriding duty to ensure the just, quick and cheap resolution of the real issues in all civil proceedings in the Court. In many areas of its work, the Court has been able to maintain or improve its performance in achieving this overriding objective relative to the results achieved in 2016. Of particular significance are:

- Continued improvement in the timeliness of the pending caseload in Class 1 and Classes 4-8 as measured by the backlog indicator in those Classes.
- A slight increase in the percentage of matters in Classes 1-3 finalised by means of s 34 and s 34AA conciliation conferences and on-site hearings, to be the highest level in the last five years.
- An improvement in the percentage of matters in Class 1 finalised within 12 months, to be the Court's best result in the past five years.
- The number of pre-hearing attendances was maintained or decreased in Classes 1, 2, 4 and 5.
- An improvement in the percentage of reserved judgments delivered within 14 and 30 days of hearing but a slight decline in the percentage of reserved judgments delivered within 90 days of hearing.
- An improvement in the clearance rate for matters in Classes 3, 5 and 6.
- All judges and commissioners met the standard for continuing professional development.

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

- A decline in the clearance rate for matters in Classes 1, 2, 4 and 8.
- A greater increase in total registrations than the increase in total finalisations, resulting in the total pending caseload increasing.
- A decrease in the number and percentage of matters in all Classes finalised pretrial from the high percentage attained in 2016.

Reforms and developments

During 2017, reforms occurred in the following areas:

- New Planning Principles;
- New Tree Dispute Principle;
- New Practice Notes and Policy;
- Review of existing Practice Note;
- Launch of the Paperless Trial Pilot Project;
- New information on the Court's website;
- The Land and Environment Court Clinic; and
- Maintenance of Library services.

The Court continued implementing the International Framework for Court Excellence. The Court has monitored access to and use of the Court's decisions. The Court, in conjunction with the Judicial Commission of New South Wales, updated the sentencing database for environmental offences maintained on the Judicial Information Research System (JIRS).

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

Education and community involvement

The Court's commitment to continuing professional development was manifested by the adoption in October 2008 of a continuing professional development policy for Judges and Commissioners of the Court. The policy sets a standard of five days (30 hours) of professional development activities each calendar year. To assist in meeting the standard, the Court and the Judicial Commission of New South Wales provide an annual court conference and a twilight seminar series. In 2017, the Court's Annual Conference was held at the Parkroyal in Parramatta. The Court held six twilight seminars in 2017, two field trips, and three cross-jurisdictional seminars.

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

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

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

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

Consultation with court users

In 2017, the Court continued to consult and work closely with users to improve systems and procedures through its Committees and User Groups. Consultation occurred both formally through the Court Users Group and also the Mining Court Users Group and informally with a variety of legal practitioners and professional bodies.

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

2 Court Profile

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

The Court

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

Statement of purpose

The Court's purpose is to safeguard and maintain:

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

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

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



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

The Court's jurisdiction

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

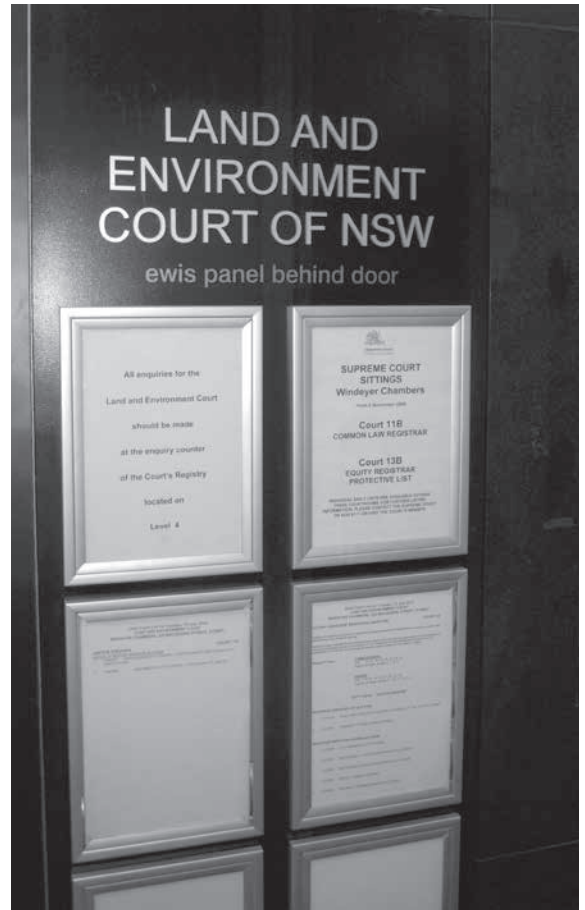
criminal jurisdiction and appellate criminal jurisdiction in relation to environmental offences.

In 2017, 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

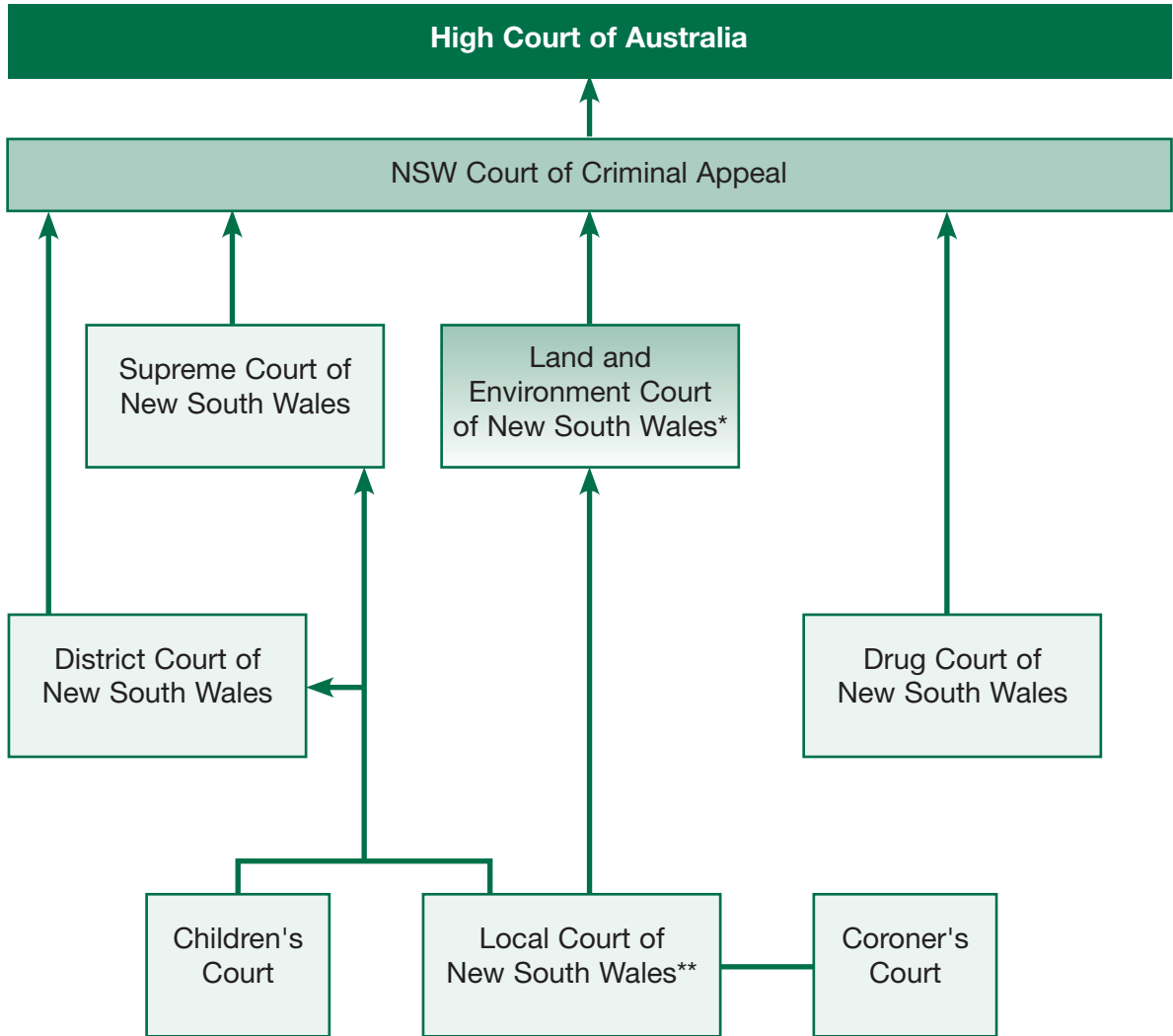
| | |
|----------------|--|
| Class 1 | environmental planning and protection appeals (merits review appeals) |
| Class 2 | local government, trees and miscellaneous appeals (merits review appeals) |
| Class 3 | land tenure, valuation, rating and compensation matters (merits review appeals) |
| Class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

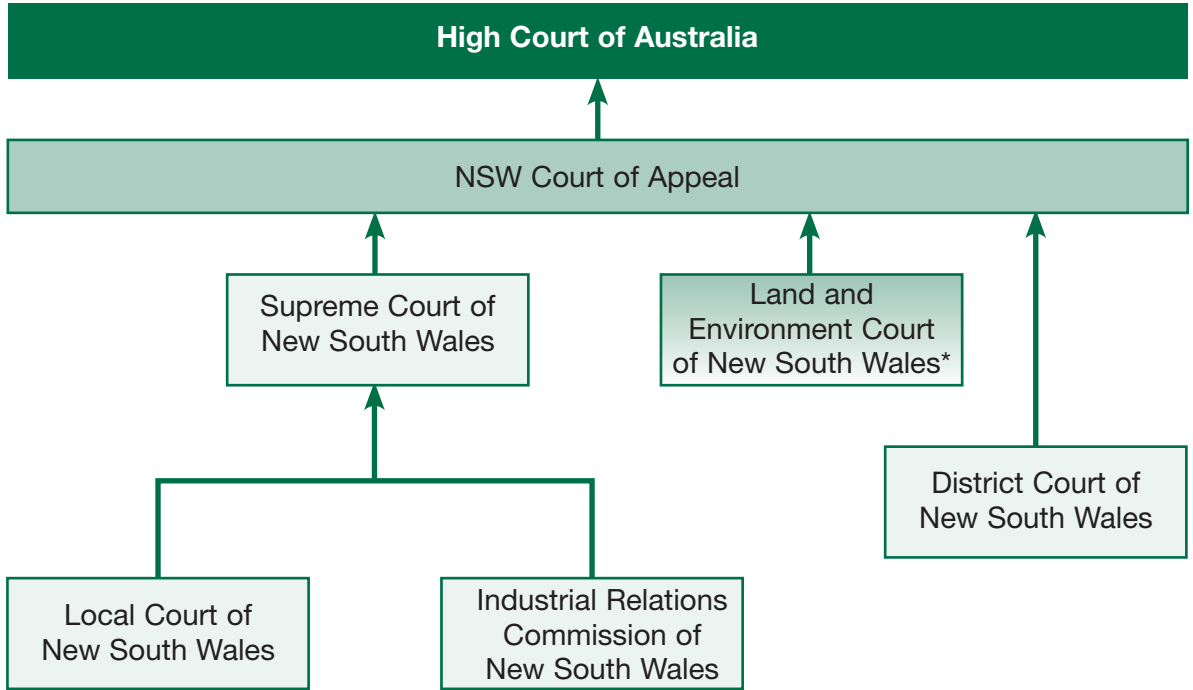
Figure 2.1 New South Wales Court System – Criminal Jurisdiction



* 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.

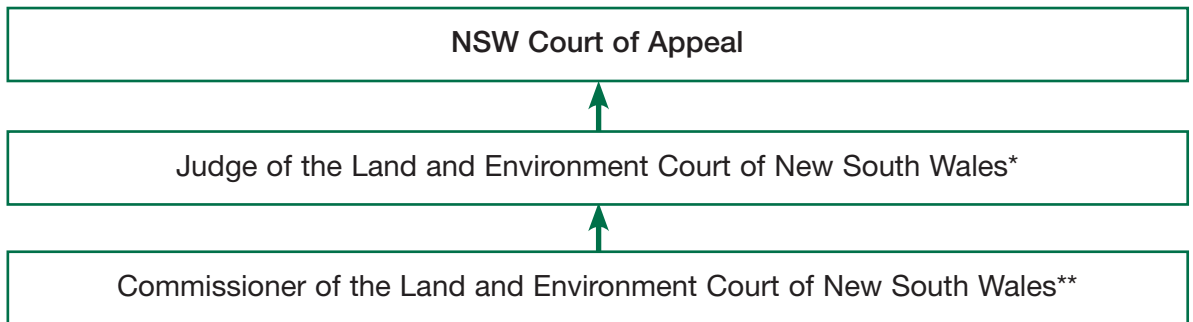
** Appeals from the Local Court of New South Wales to the Land and Environment Court are with respect to an environmental offence under the *Crimes (Appeal and Review) Act 2001* and are in Classes 6 and 7 of the Land and Environment Court's jurisdiction.

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 2017, the Judges, in order of seniority, were as follows:

Chief Judge

The Honourable Justice Brian John Preston

Judges

The Honourable Justice Terence William Sheahan AO

The Honourable Justice Nicola Hope
Margaret Pain

The Honourable Justice Rachel Ann Pepper (on a leave of absence from the Court from 30 January 2017 to 9 May 2018 to chair the NT Scientific Inquiry into Hydraulic Fracturing of Unconventional Reservoirs and Associated Activities)

The Honourable Justice Timothy John Moore

The Honourable Justice John Ernest Robson



Court hearing

Acting Judges

The Honourable Acting Justice Simon Molesworth AO QC

The Commissioners

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

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

Persons may be appointed as full-time or part-time Commissioners for a term of 7 years. Persons may also be appointed as Acting Commissioners for a term not exceeding 5 years. 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 Judge hearing a matter in Class 1, 2, 3, 4 or 8 of the Court's jurisdiction be assisted by a Commissioner (see ss 37 and 43 of the Court Act).

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 2017, the Commissioners were as follows:

Senior Commissioner

Ms Rosemary Martin

Commissioners

Mr Graham T Brown

Ms Susan A Dixon

Ms Susan T O'Neill

Ms Danielle Dickson

Mr Michael Chilcott

Ms Jennifer Smithson

Ms Joanne Gray

Ms Sarah Bish

Acting Commissioners

Associate Professor Dr Paul Adam AM – botanist and ecologist

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

Mr John Douglas – arborist

Mr David Galwey – arboricultural consultant

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

Mr Norman Laing – member of the Aboriginal community and lawyer

Mr John Maston – lawyer with experience in land valuation matters

Ms Susan Morris – town planner

Professor David Parker – valuer and mediator

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

Mr Ross Speers – engineer



R-L: Commissioners Susan Dixon, Susan O'Neill, Jennifer Smithson, Graham Brown, Sue Morris, Senior Commissioner Rosemary Martin, Commissioners Joanne Gray, Michael Chilcott and Danielle Dickson

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 Justice. The Registrar, as Business Centre Manager, has reporting and budgetary responsibilities to the Secretary of that department.

As at 31 December 2017, the Registrars were as follows:

Director and Registrar

Ms Sarah Froh

Assistant Registrar and Manager Court Services

Ms Maria Anastasi

Commissioners

Ms Joanne Gray was appointed as a Commissioner of the Court on 18 April 2017.

Ms Sarah Bish was appointed as a Commissioner of the Court on 28 June 2017.

Mr John Douglas was appointed as an Acting Commissioner of the Court on 22 December 2017 for a period of 2 years.

Ms Susan Morris was appointed as an Acting Commissioner of the Court on 22 December 2017 for a period of 2 years.

Retirements

Commissioners

Ms Susan Morris retired as a Commissioner of the Court on 27 June 2017.

Acting Commissioners

Ms Judy Fakes resigned as an Acting Commissioner of the Court on 9 December 2017.

Appointments and retirements

Appointments

Judges

The Hon. Acting Justice Simon Molesworth AO QC was appointed an Acting Judge of the Court on 23 January 2017.

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 Online Court.

Listings

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

Information and Research

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

Commissioner Support

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



Lodging documents at the Registry

Copies of decisions of the Court can be found on NSW Caselaw by either going through the tab on the Court website home page 'Land and Environment Court decisions' or directly at

<https://www.caselaw.nsw.gov.au/>

The Court provides copies of daily court lists on the Court's website at:

http://www.lec.justice.nsw.gov.au/Pages/court_lists/court_lists.aspx

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 Online Court 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 s 34AA 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, Class 1 Residential 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 59% of the parties in this type of proceeding are self-represented. The application is returnable before the Assistant Registrar who is assigned to manage the list. This first court attendance can be either a telephone conference or in court. The Assistant Registrar explains the process of preparation for and hearing of the application.

The Assistant Registrar explores whether the parties may be able to resolve the dispute between themselves without court orders

authorising interference with or removal of a tree. If the parties are not able to resolve the dispute, the Assistant Registrar will fix a final hearing date, usually not more than four to five weeks after the first court attendance. The Assistant Registrar will make directions in preparation for the final hearing, such as for the provision of information by the parties to each other.

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

Class 3

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

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

Valuation objections are usually heard by Commissioners, mostly persons with special knowledge and expertise in the valuation of land. Compensation claims are usually

heard by a Judge, at times assisted by a Commissioner with special knowledge and expertise in valuation of land.

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

Class 4

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

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

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

Class 5

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

Class 5 proceedings are case managed in a Class 5 List by the List Judge on a Friday. The List Judge makes appropriate directions for the orderly, efficient and proper

preparation for trial or sentence hearing. One purpose of the directions hearings is to allow the entry of pleas prior to the trial.

Such a procedure can minimise the loss of available judicial time that occurs when trials are vacated after they are listed for hearing or when a guilty plea is entered immediately prior to, or on the day of, the trial's commencement.

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

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

Classes 6 and 7

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

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

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 or as the caseload demands. The Commissioner for Mining makes appropriate directions for the orderly, efficient and proper preparation for trial. Class 8 proceedings must be

heard by a Judge or a Commissioner for Mining. Information on Class 8, and mining legislation and cases, are available on the special pages for mining on the Court's website.

Types of directions hearings

The Court offers court users three types of directions hearing:

in-court directions hearing

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

telephone directions hearing

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

Online Court 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 Online Court facility for further directions hearings.

In 2017 there were 1,733 matters registered and adjudicated by this Court through Online Court.

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



An on-site hearing conducted by Commissioner Susan Dixon.
Photo source: http://nningt-a.akamaihd.net/transform/v1/crop/fm/TimAB2MTHanvQWPwhBc6mp/3b5e5108-bc02-4280-91a8-8a93d04cf14a.JPG/r0_215_2304_1515_w1200_h678_fmax.jpg

of conciliation whereby resolution is attempted, and may make suggestions for terms of settlement, give expert advice on likely settlement terms, and may actively encourage the parties to reach agreement.

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

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

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

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. This is still a useful outcome, as it can narrow the issues in dispute between the parties and often results in the proceedings being able to be heard and determined expeditiously, in less time and with less cost.

Table 3.1 shows the number of conciliation conferences between 2013-2017.

Table 3.1 s 34 Conciliation Conferences 2013 – 2017

| | 2013 | 2014 | 2015 | 2016 | 2017 |
|------------------|------|-------|-------|-------|-------|
| s 34 conferences | 899 | 1,169 | 1,500 | 2,035 | 1,534 |

(NB: the figures are totals of ss 34 and 34AA conferences held in a year)

The table shows a substantial increase in utilisation of conciliation conferences between 2013 and 2017, with an additional 635 conferences in 2017 compared to 2013. The decrease in the number of conciliation conferences between 2016 and 2017 is not indicative that less matters were subject to conciliation, only that the number of times conciliation conferences were held in the matters decreased. As Table 5.3 shows, the number of matters finalised by means of ss 34 and 34AA conferences and on-site hearings remained about the same between 2016 and 2017.

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 2013 to 2017. 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

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.



An on-site hearing conducted by Commissioner Graham Brown. Photo source: <http://www.nbnnews.com.au/2016/12/14/land-and-environment-court-take-tour/>

Table 3.2 Mediations in 2013 – 2017

| | | 2013 | 2014 | 2015 | 2016 | 2017 |
|------------------------|------------------------------|------|------|------|------|------|
| Classes 1 and 2 | Total: | 0 | 3 | 5 | 2 | 3 |
| | Internal | 0 | 3 | 4 | 2 | 3 |
| | External | 0 | 0 | 1 | 0 | 0 |
| | Number finalised pre-hearing | 0 | 2 | 3 | 2 | 2 |
| | % finalised pre-hearing | 0 | 67 | 60 | 100 | 67 |
| Class 3 | Total: | 9 | 4 | 2 | 5 | 1 |
| | Internal | 7 | 4 | 2 | 4 | 1 |
| | External | 2 | 0 | 0 | 1 | 0 |
| | Number finalised pre-hearing | 9 | 3 | 1 | 5 | 1 |
| | % finalised pre-hearing | 100 | 75 | 50 | 100 | 100 |
| Class 4 | Total: | 9 | 22 | 22 | 19 | 15 |
| | Internal | 8 | 17 | 22 | 17 | 15 |
| | External | 1 | 5 | 0 | 2 | 0 |
| | Number finalised pre-hearing | 7 | 18 | 19 | 14 | 11 |
| | % finalised pre-hearing | 88 | 82 | 86 | 74 | 73 |
| All Classes | Total: | 18 | 29 | 29 | 26 | 19 |
| | Internal | 15 | 24 | 28 | 23 | 19 |
| | External | 3 | 5 | 1 | 3 | 0 |
| | Number finalised pre-hearing | 16 | 23 | 23 | 21 | 14 |
| | % finalised pre-hearing | 89 | 79 | 79 | 81 | 74 |

The total number of mediations decreased between 2016 and 2017. The number of mediations in 2017 in Classes 3 and 4 decreased from 2016 and in Classes 1 and 2 increased slightly from 2016. The number of mediations in Classes 1, 2 and 3 are comparatively few because of the ready availability and utilisation of conciliation under s 34 of the Court Act, conciliation being another form of alternative dispute resolution.

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 Planning Principles
- New Tree Dispute Principle
- New Practice Notes and Policy
- Review of existing Practice Note
- Launch of Paperless Trial Pilot Project
- New information on the Court's website
- The Land and Environment Court Clinic
- Maintenance of library services
- Implementing the International Framework for Court Excellence
- Monitoring access to and use of the Court's decisions
- Sentencing database for environmental offences

During 2017, reforms occurred in the following areas:

- New Planning Principles
- New Tree Dispute Principle
- New Practice Notes and Policy
- Review of existing Practice Note
- Launch of Paperless Trial Pilot Project
- New information on the Court's website
- The Land and Environment Court Clinic
- Maintenance of library services

The Court continued implementing the International Framework for Court Excellence. One initiative has been to monitor access to and use of the Court's decisions. The Court, in conjunction with the Judicial Commission of New South Wales, maintained the sentencing database for environmental offences on the Judicial Information Research System (JIRS).

New Planning Principles

Planning Principles Update

Continuing the process of reviewing the existing planning principles of the Court, Moore J explained in *193 Liverpool Road Pty Ltd v Inner West Council* [2017] NSWLEC 13 that the planning principle in *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251 concerning redevelopment of sites and potential impacts on neighbouring sites was confirmed and that the planning principles in *Cornerstone Property Group Pty Ltd v Warringah Council* [2004] NSWLEC 189 and *Melissa Grech v Auburn Council* [2004] NSWLEC 40 had been subsumed by *Karavellas* and were no longer required to be referred to in the future.

New Planning Principle

The Court set out a new planning principle for the location of brothels in *Yao v Liverpool City Council* [2017] NSWLEC 1167 (see [24]-[25]). Commissioner Brown said that the planning principle in *Martyn v Hornsby Shire Council* [2004] NSWLEC 614 (at 18-21) should be replaced with objective based considerations for the location of brothels.

New Tree Dispute Principle

The Court set out a new tree dispute principle in *Fang v Li & anor* [2017] NSWLEC 1503 (see [58]-[60]). Acting Commissioner Galwey said that the principle was designed to provide guidance to parties where applications made pursuant to Part 2 of the *Trees (Disputes Between Neighbours) Act 2006* ('the Trees Act') include claims for rectification of, or compensation for, structural damage to property caused by roots of a tree located on adjoining land (being land to which s 4(1) of the Trees Act applies and where the tree is one to which s 4(3) and (4) of the Trees Act applies).

New Practice Notes and Policy

New Practice Notes

The Court made three new Practice Notes during 2017:

- Class 1 Residential Development Appeals (commenced 28 March 2017 and 24 July 2017);
- Class 1 Development Appeals (commenced 27 March 2017); and
- Class 1, 2 and 3 Miscellaneous Appeals (commenced 27 March 2017).

The new Practice Note for Class 1 Residential Development Appeals (commenced 28 March 2017) replaced the

practice note by the same name made on 7 February 2011. The new practice note for residential development appeals reflects the practice notes for Class 1 Development Appeals, and Class 1, 2 and 3 Miscellaneous Appeals. In particular, the Practice Note was changed to:

- clearly articulate the party responsible for filing the Statement of Facts and Contentions prior to the first directions hearing;
- require the parties to make an application to rely on expert evidence, with that application being made in court at the directions hearing and supported by the hearing information sheet;
- require certain documents to be provided in preparation for the conciliation phase of the conciliation and hearing;
- specify that an adjournment of the conciliation phase is only granted in circumstances where an agreement has been reached in principle;
- make it clear that there is to be no adjournment if the conciliation conference is terminated;
- prescribe a procedure for circumstances in which where there has been a default in compliance with the directions;
- require the completion of a new hearing information sheet; and
- provide new usual directions.

The further new Class 1 Residential Development Appeals Practice Note (commenced 24 July 2017) replaced the practice note of the same name which commenced on 27 March 2017. The new practice note amended the usual directions regarding draft conditions of consent in Schedule E paragraph 12 (a) and (e) so that the respondent consent authority is to

file and serve draft conditions of consent (both hard copy and electronic form) by 14 days before the conciliation conference and hearing (instead of 7 days) and that the applicant for consent is to file and serve its draft conditions in response (both hard copy and electronic form) by 7 days before the conciliation conference and hearing (instead of 2 days).

The new Practice Notes for Class 1 Development Appeals, and Class 1, 2 and 3 Miscellaneous Appeals, repealed the two practice notes by the same names made on 30 April 2007. The changes to these two practice notes resulted in a number of changes to the procedure that applies to development appeals and miscellaneous appeals. The practice notes:

- clearly articulate the party responsible for filing the Statement of Facts and Contentions prior to the first directions hearing;
- align the procedure for expert evidence with the provisions of Part 31 of the Uniform Civil Procedure Rules 2005, requiring parties to make an application for leave to rely on expert evidence and for directions for the filing of expert evidence;
- require certain documents to be provided before a conciliation conference;
- specify the circumstances in which it is appropriate for an adjournment of a conciliation conference to be given, and how the adjournment is managed;
- prescribe a procedure for circumstances in which where there has been a default in compliance with the directions;
- require the completion of new hearing information sheets; and
- provide new usual directions, including usual directions that will be made when a conciliation conference is arranged.

New Policy

The Court issued a new Conciliation Conference Policy (commenced 27 March 2017) to replace the previous policy by the same name made on 30 April 2007. The new Conciliation Conference Policy differs from the earlier policy by:

- requiring certain documents to be provided before a conciliation conference; and
- specifying the circumstances in which it is appropriate for an adjournment of a conciliation conference to be given, and how the adjournment is managed.

Review of existing Practice Note

During 2017, the Court undertook a review of the Practice Note – Class 3 Compensation Claims. The review, coordinated by Justice Moore as the Land Valuation and Compensation List Judge, sought feedback from those practising in this area on those aspects, if any, of the Practice Note that might warrant revision. A series of questions were asked. After reviewing all submissions, a draft practice note was put before the Court Users Group for comment and the new practice note is scheduled to be made in May 2018.

Launch of Paperless Trial Pilot Project

In 2017, the Court trialed the running of paperless civil trials in two Class 3 cases concerning compensation for the compulsory acquisition of land. The technology used was simple and inexpensive. All materials (particularly the court book and tender

bundle) were tendered on a USB thumb drive. During the course of the trial, material required to be referred to was projected on the courtroom wall. The Court found significant benefits in these pilot trials including financial, environmental and access to justice benefits. On 1 November 2017, the Attorney General of NSW launched a video that provided information about the Paperless Trial Pilot Project that was conducted. The Court subsequently scheduled a number of further matters to be conducted on a paperless basis in 2017 and 2018 including civil enforcement and a Class 1 merit appeal. Paperless trials accounted for a minority of hearings in the Land and Environment Court in 2017, but they could quickly become the norm for lengthy civil matters as the legal profession adjusts to the technology and realises the benefits.



A paperless trial at the Land and Environment Court of New South Wales

New information on the Court's website

In early 2017, the Court's website was updated to provide information on the Court's jurisdiction under the *Strata Schemes Development Act 2015*. Information is provided on how to commence and carry on Class 2 and 3 Strata Schemes Development proceedings.

The former eCourt website was decommissioned on 10 March 2017 following the Court's implementation of Online Court and Online Registry in 2016.

The website was also updated to include information on the Court's Paperless Trial Pilot Project.

The Land and Environment Court Clinic

The Land and Environment Court Clinic is a clinical placement program for law students run in conjunction with two universities, the University of New South Wales and Macquarie University in the first half of 2017 and Macquarie University in the second half of 2017.

The students are selected to participate in a practical program which involves work with the Registry and attendance with Commissioners and Judges at hearings onsite and in court. The students are engaged in administrative and research tasks as well as active participation in litigation and other dispute resolution procedures. The experience is an interactive learning experience and complements the Court's outreach activities.

Students engage with Registry and Court personnel to highlight the Court's

support for access to justice in its practice and procedures. Practice and ethical matters may be considered by students through observation of the court process, interactions with the public at the Registry counter and detailed debriefing with Court personnel. The experiential learning is supported by a seminar series provided in part by Court staff.

Student reflections revealed that the experience was highly valued and rewarding. Comments included that the programme "was well designed, providing both practical work experience as well as a unique exposure to a diverse range of environmental matters ranging from tree disputes to environmental crime litigation." One student commented: "I am certain that the accumulation of these skills and knowledge sets will only improve myself as a future lawyer, especially one who aspires to practice in environmental law." Another noted: "The experience was interesting, challenging and provided a rare insight into the inner workings of a specialist court... working at the Registry allowed me to appreciate the plight and struggles of courtgoers, especially for self-represented litigants... it was a fantastic experience that provided me with a deeper understanding of the environmental, planning and development space in NSW..." Another student described the clinic as "invaluable, not only to myself and my future law career, but was beneficial to the Court and the wider community." Finally, a student noted: "The community is benefited not just in the short term of having procedural assistance available to them but also because the placement is growing community-minded lawyers who will incorporate access to justice in their future practice."

The clinical program between the Court and the universities was dynamic and of multi-dimensional benefit for all participants.

Following its establishment in 2016 with Macquarie University law students, the Tree Helpdesk continued operation in 2017. The student helpdesk is operated by Macquarie University law students and staff to provide assistance to unrepresented persons with tree dispute matters under the Trees Act. It is an independent service from the Land and Environment Court. In 2017, it assisted 104 unrepresented persons who wished to become or were parties to tree dispute matters.

Maintenance of library services

Library Services has continued to support the work of the Land and Environment Court in a number of ways: providing hardcopy and electronic legal research materials, supplying an extended hours reference service, providing Caselaw NSW support and legal research training for court staff.

Implementing the International Framework for Court Excellence

In late 2008, the Court agreed to adopt and to implement the International Framework for Court Excellence. The Framework was developed by an International Consortium for Court Excellence including the Australasian Institute of Judicial Administration, Federal Judicial Center (USA), National Center for State Courts (USA) and Subordinate Courts of Singapore, assisted by the European Commission for the Efficiency of Justice and other organisations. The Framework provides a methodology for assessing a court's performance against seven areas of court excellence and guidance for courts intending to improve their performance. The

Framework takes a holistic approach to court performance. It requires a whole-court approach to delivering court excellence rather than simply presenting a limited range of performance measures directed to limited aspects of court activity.

The seven areas of court excellence are:

1. Court leadership and management:

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

2. Court planning and policies:

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

3. Court proceedings:

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

4. Public trust and confidence:

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

5. User satisfaction:

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

6. Court resources:

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

7. Affordable and accessible services:

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

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

In 2017, 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 2013, 2014, 2015 and 2016 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 new jurisdiction and revised practice and procedure;
- involving all court personnel in advancing the Court's purpose and strategies, including by regular meetings, regular provision of information and performance review;
- improving case registration and case management systems.

2. Court planning and policies

- adopting updated practice notes for Residential Development Appeals, Class 1 Development Appeals and Class 1, 2 and 3 Miscellaneous Appeals to improve case management and resolution of these matters;
- issuing an updated Conciliation Conference Policy to improve conciliation conference procedure;

- reviewing the Court's practice note for Class 3 Compensation Claims;
- updating existing planning principles and making a new planning principle on the location of brothels; and
- making a new tree dispute principle to provide guidance to parties.

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; and
- undertaking a pilot project trialling the use of paperless trials in certain classes of cases.

4. Public trust and confidence and

5. User satisfaction:

- continuing to meet on a quarterly basis with court users as part of the Court Users Group, as explained in Appendix 1.
- continuing publication on a quarterly basis of a court newsletter with the latest legislation, judicial decisions and changes in practice and procedure;
- continuing to report on the Court's performance in the Annual Review on the areas of court excellence; and
- continually updating the Court's website to improve accessibility and usability and the information available, including expanding the webpages in the special areas of jurisdiction such as providing information on the new strata schemes development proceedings and updating relevant legislation conferring jurisdiction, case law and facts.

6. Court resources:

- maintaining the Court's human resources, by appointment of a new acting judge, commissioners, acting commissioners and registrar;
- continuing and extending the professional development programme for judges and commissioners, as explained in Chapter 6; and
- undertaking training and education of judges' tipstaves and researchers, and registry staff in the different types of matters and their resolution, and in the Framework.

7. Affordable and accessible services:

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

Monitoring access to and use of the Court's decisions

The Court, as part of its implementation of the International Framework for Court Excellence, commissioned a project with the Australasian Legal Information Institute (AustLII) to use AustLII's databases to generate relevant metrics and statistics concerning the Court. These 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 cases through AustLII's databases. The information that is contained in the citations by database section is collected on an accrual basis using 2010 as the base year.

The data is available on a calendar year basis and links for the data for the years ending 31 December for each of 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017 are available on the Court's website at Publications and Resources then Database metrics and statistics.

From the eight years of data available from the project, it can be seen that there continues to be widespread citation of decisions of this Court in other jurisdictions.

In Australia, by the end of 2017, decisions of this Court were cited 4,290 times, in every State and Territory (including internal citations by this Court). The number of citations continues to increase. For example, in Western Australia, in the base year (2010) this Court's decisions had been cited 94 times in decisions of courts and tribunals in Western Australia (including 11 times in the Western Australian Court of Appeal). By the end of 2017, decisions of this Court had been cited 149 times (including 17 times in the Western Australian Court of Appeal), which represents a further 55 citations by courts and tribunals in Western Australia. Similar positions apply to other Australian jurisdictions as can be seen by a comparison between the December 2017 metrics and those of December 2010.

Although the data able to be accessed internationally by AustLII for the purposes of preparing the metrics is comparatively limited, decisions of this Court were also cited three times by New Zealand courts, once by the South African courts and once

by Hong Kong courts. By the end of 2017, decisions of this Court have been cited in 62 courts and tribunals and two other institutions throughout Australia and the world.

The Court's decisions have also been cited in a range of law journals and other commentaries (12 in total). This is an under estimate of academic citation. AustLII's databases of law journals or other commentaries are limited. This is because the range of law journals able to be accessed by AustLII's indexing process is limited to publicly accessible material and does not include a number of proprietary subscription based journals.

The full range of courts and tribunals and law journals that have cited cases from this Court's AustLII database can be seen by accessing the December 2017 metrics on the Court's website at http://www.lec.justice.nsw.gov.au/Pages/publications/database_metrics_and_statistics.aspx

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 2017, the Court continued to provide statistics on sentences imposed by the Court in the year for environmental offences and for contempt proceedings. The statistics were loaded promptly onto JIRS. To ensure accuracy, the sentence statistics were audited on a quarterly basis by the Judicial Commission. The audits revealed satisfactory results.

5 Court Performance

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

Overall caseload

The comparative caseload statistics between 2013 and 2017 are summarised in Table 5.1.

Table 5.1 Caseload Statistics

| | 2013 | 2014 | 2015 | 2016 | 2017 |
|---------------------|------|------|------|------|-------|
| Class 1 | | | | | |
| Registrations | 521 | 692 | 794 | 842 | 1,009 |
| Restored | 22 | 10 | 15 | 4 | 12 |
| Pre-Trial Disposals | 386 | 468 | 585 | 705 | 556 |
| Disposed by Hearing | 135 | 124 | 158 | 127 | 275 |
| Pending | 211 | 320 | 384 | 398 | 578 |
| Class 2 | | | | | |
| Registrations | 114 | 103 | 143 | 117 | 131 |
| Restored | 7 | 7 | 13 | 5 | 8 |
| Pre-Trial Disposals | 40 | 41 | 62 | 36 | 28 |
| Disposed by Hearing | 86 | 77 | 84 | 94 | 104 |
| Pending | 37 | 29 | 40 | 32 | 39 |
| Class 3 | | | | | |
| Registrations | 202 | 87 | 108 | 156 | 77 |
| Restored | 7 | 21 | 8 | 10 | 5 |
| Pre-Trial Disposals | 171 | 267 | 68 | 120 | 72 |
| Disposed by Hearing | 39 | 55 | 32 | 17 | 36 |
| Pending | 284 | 71 | 90 | 121 | 94 |
| Class 4 | | | | | |
| Registrations | 102 | 133 | 124 | 133 | 118 |
| Restored | 27 | 13 | 15 | 14 | 23 |
| Pre-Trial Disposals | 75 | 91 | 99 | 101 | 82 |
| Disposed by Hearing | 52 | 44 | 48 | 55 | 44 |
| Pending | 86 | 96 | 90 | 84 | 99 |
| Class 5 | | | | | |
| Registrations | 74 | 74 | 47 | 52 | 59 |
| Restored | 3 | 2 | 2 | 2 | 2 |
| Pre-Trial Disposals | 11 | 7 | 9 | 27 | 6 |
| Disposed by Hearing | 48 | 42 | 70 | 35 | 69 |
| Pending | 90 | 118 | 89 | 81 | 67 |

Classes 6 & 7

| | | | | | |
|---------------------|---|---|----|----|----|
| Registrations | 9 | 6 | 11 | 19 | 11 |
| Restored | 0 | 0 | 3 | 0 | 1 |
| Pre-Trial Disposals | 3 | 0 | 0 | 4 | 3 |
| Disposed by Hearing | 5 | 4 | 17 | 9 | 11 |
| Pending | 6 | 8 | 5 | 11 | 9 |

Class 8

| | | | | | |
|---------------------|---|---|----|----|---|
| Registrations | 2 | 9 | 10 | 3 | 3 |
| Restored | 2 | 1 | 2 | 0 | 1 |
| Pre-Trial Disposals | 1 | 0 | 0 | 7 | 0 |
| Disposed by Hearing | 7 | 7 | 10 | 10 | 2 |
| Pending | 4 | 7 | 9 | 2 | 3 |

TOTAL

| | | | | | |
|---------------------|-------|-------|-------|-------|-------|
| Registrations | 1,024 | 1,104 | 1,237 | 1,322 | 1,408 |
| Restored | 68 | 54 | 58 | 35 | 52 |
| Pre-Trial Disposals | 687 | 874 | 823 | 1,000 | 747 |
| Disposed by Hearing | 372 | 353 | 419 | 340 | 541 |
| Pending | 717 | 649 | 705 | 729 | 889 |

Tables 5.1 and 5.2 show the following trends:

- Total registrations and restorations (1,460) have increased every year since 2013, to be the highest in five years. The main contributor is the large increases in Class 1 registrations. Indeed, Class 1 registrations in 2017 are around double those in 2013.
- Total finalisations (1,288) increased from the low in 2013 but decreased from 2016. The latter result was due to less matters being disposed of without a hearing in 2017. The Court increased significantly, however, the number of matters disposed of by a hearing, to be the highest number of disposals by hearing in five years.
- Total finalisations (1,288) were lower than total registrations (1,460) in 2017, resulting in the total pending caseload (889) increasing in 2017.
- Merits review and other civil proceedings finalised in Classes 1, 2 and 3 (1,071) comprised 83% of the Court's finalised caseload (1,288) in 2017.
- Civil and criminal proceedings finalised in Classes 4, 5, 6, 7 and 8 (217) comprised 17% of the Court's finalised caseload (1,288) in 2017.
- The means of finalisation in 2017 were 58% pre-trial disposals (including by use of alternative dispute resolution processes and negotiated settlement) and 42% by adjudication by the Court. This represented a decrease in pre-trial disposals but an increase in disposals by hearing from 2016.

Table 5.2 Means of Finalisation – All Matters

| | 2013 | 2014 | 2015 | 2016 | 2017 |
|---------------------------------------|-------|-------|-------|-------|-------|
| Total matters finalised – all classes | 1,059 | 1,227 | 1,242 | 1,340 | 1,288 |
| Total pre-trial finalisations | 687 | 874 | 823 | 1,000 | 747 |
| % matters finalised pre-trial | 65 | 71 | 66 | 75 | 58 |

The means of finalisation for proceedings in Class 1, 2 and 3 included s 34 and s 34AA conciliation conferences and on-site hearings (mainly for Class 1 and 2 proceedings). As Table 5.3 shows, nearly 49% of appeals in Classes 1, 2 and 3 were finalised by these means. This maintained

the same high level of finalisations by these means as was achieved in 2016 and is the highest level in the last five years. Of the total of 523 matters, 432 were finalised by s 34 and s 34AA conciliation conferences and 91 matters by on-site hearings.

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

| | 2013 | 2014 | 2015 | 2016 | 2017 |
|---|------|-------|------|-------|-------|
| Total matters finalised | 857 | 1,032 | 989 | 1,099 | 1,071 |
| s 34 and s 34AA conferences and on-site hearings | 345 | 363 | 444 | 532 | 523 |
| % s 34 and s 34AA and other matters finalised on-site | 40.3 | 35.1 | 44.9 | 48.4 | 48.8 |

Court performance by class of jurisdiction

A brief summary of the Court's performance in 2017 for each of the eight classes of jurisdiction is provided.

Class 1

Registrations and restorations of Class 1 matters in 2017 increased by 21%; there was no change in finalisations; and the pending caseload increased by 45% from 2016. Class 1 registrations and restorations represent 70% of all filings in the Court in 2017.

Class 1 matters constitute the bulk of the Court's finalised caseload (65%). 73% of all Class 1 matters finalised were appeals under s 97 of the *Environmental Planning and Assessment Act 1979* relating to development applications. 57% of the

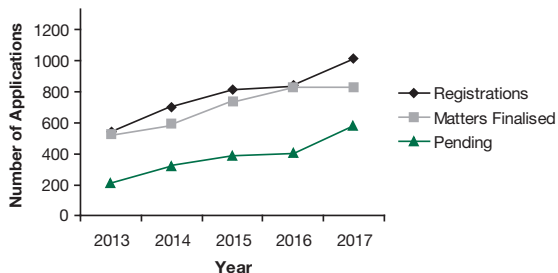
appeals under s 97 were applications where councils had not determined the development application within the statutory time period (known as "deemed refusals").

Of the remaining matters finalised in 2017, 14% were applications to modify a development consent under s 96 of the *Environmental Planning and Assessment Act 1979* and 6% were appeals against council orders and the actual or deemed refusal by councils to issue building certificates. Applications for costs, appeals under s 56A of the Court Act against a Commissioner's decision, and prevention or remediation notices under pollution legislation constituted the remaining matters in Class 1.

Figure 5.1 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 1 between 2013 to 2017.

Figure 5.1

Class 1 caseload: annual data 2013 to 2017



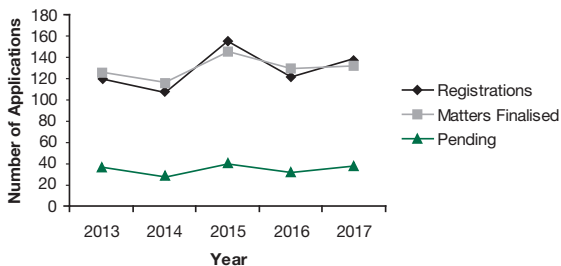
Class 2

Class 2 registrations and restorations in 2017 increased by 12% from 2016 and represented 10% of total registrations in the Court in 2017. There was no relevant change in finalisations. The number of Class 2 matters finalised in 2017 represented 10% of the Court’s finalised caseload. As registrations increased more than finalisations, the pending caseload increased (by 22%). 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 2013 to 2017.

Figure 5.2

Class 2 caseload: annual data 2013 to 2017



Class 3

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

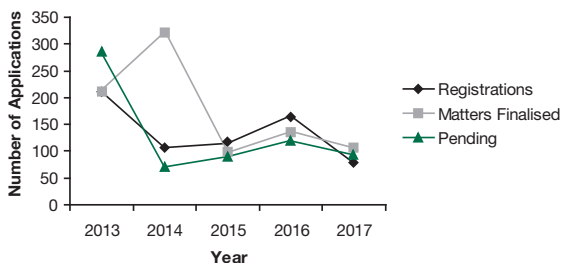
Registrations and restorations in Class 3 decreased by 51% in 2017. Valuation and rating appeals constituted 23% of new Class 3 appeals in 2017. Compensation claims for compulsory acquisition of land constituted 42% of all Class 3 appeals registered in 2017.

There was a 21% decrease in finalisations from 2016. Of the matters finalised in 2017, 22% were valuation or rating appeals, 51% were compensation claims and 22% were other matters. Finalised Class 3 matters constituted 8% of the Court’s finalised caseload. As finalisations exceeded registrations, the pending caseload decreased (by 22%) from 2016.

Figure 5.3 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 3 between 2013 and 2017.

Figure 5.3

Class 3 caseload: annual data 2013 to 2017

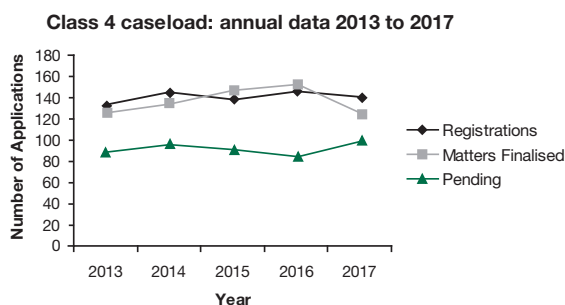


Class 4

Class 4 registrations and restorations decreased by 4% and finalisations decreased by 19% in 2017 resulting in the pending caseload increasing by 18%. Class 4 matters finalised in 2017 constituted 10% of the Court's finalised caseload. Of the Class 4 matters finalised in 2017, 45% were initiated by councils.

Figure 5.4 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 4 between 2013 and 2017.

Figure 5.4



Class 5

Class 5 registrations and restorations increased by 13% in 2017. The Environment Protection Authority/Office of Environment and Heritage initiated 28% of all new registrations. The number of matters initiated by local councils increased to 36%, up from 23% in 2016.

In 2017, 21% more matters were finalised. As finalisations exceeded registrations, the pending caseload in 2017 decreased (by 17%).

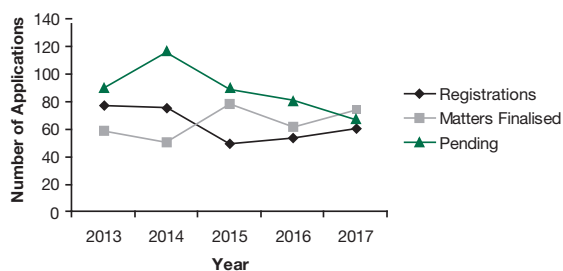
Of the 126 matters finalised by hearings in 2017, convictions were recorded in 56, 7 were withdrawn and 10 were dismissed.

Fines for convictions and remediation orders ranged from \$2,800 for transporting dangerous goods in an unsafe manner to \$720,000 for land and water pollution from slurry released at a coal mine. No community service orders were issued in 2017.

Figure 5.5 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 5 between 2013 to 2017.

Figure 5.5

Class 5 caseload: annual data 2013 to 2017



Classes 6 and 7

Eleven new Class 6 appeals were filed in 2017, three of which were finalised. There were no Class 7 appeals before the Court in 2017. In total, 14 appeals were finalised in 2017. As finalisations exceeded registrations, the pending caseload decreased slightly (by 18% or two matters).

Class 8

Three mining matters were filed in 2017, none of which were finalised. Two pending matters were completed. The pending caseload increased by one matter.

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 2017 to increase court fees by 2.2% to be able to balance the Court's budget and ensure a high standard of court administration service quality (effective 1 July 2017). The fee for a standard file retrieval request was increased by 471%. Notwithstanding the increase, the increased court fees still meet criteria of equity.

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

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

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

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

conducted in, the Supreme Court. The court fees for these proceedings are comparable to those charged by the Supreme Court.

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

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

Accessibility

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

Geographical accessibility

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

Up until 2016, a matter was counted as a country matter if it was outside the area bordered by the local government areas of Wollongong, Blue Mountains and Gosford. From 2016, a matter is counted as a country matter if it is in a local government area outside the Greater Sydney region. In 2017, 20% of matters finalised were country matters.

The Court identifies and case manages country matters in a particular way.

Firstly, 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 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, now Online Court, 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, Online Court directions hearings are used extensively in country matters. Parties appeared by Online Court directions hearing in 62% of Class 1 country matters and 83% of Class 3 country matters in 2017.

Table 5.4 shows the percentage of pre-hearing attendances conducted by eCourt or Online Court directions hearings and telephone directions hearings in Classes 1-4 in 2017.

Table 5.4 Online Court and Telephone Directions Hearings

| Class | No of cases | Total pre-hearing attendances | % Online Court directions hearings | % Telephone directions hearings |
|-------|-------------|-------------------------------|------------------------------------|---------------------------------|
| 1 | 824 | 4,113 | 22 | 5 |
| 2 | 132 | 258 | 5 | 23 |
| 3 | 106 | 844 | 23 | 0.2 |
| 4 | 122 | 703 | 10 | 1.6 |
| All | 1,184 | 5,918 | 20 | 4 |

Telephone conferences are used more than this as these figures are only for directions hearings before a Registrar or a Judge. The figures do not include the many adjourned s 34 conciliation conferences conducted by telephone.

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. 64% of Class 1 country matters and 48% of Class 3 country matters had a s 34 or s 34AA 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 2017, 10% of matters (in Classes 1 and 2) were conducted as an on-site hearing, of which 27% were country matters. Of the Class 1 country matters, however, none were conducted as an on-site hearing in 2017.

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

Fifthly, the Court regularly holds court hearings in country locations. Table 5.5 shows hearings held in a country courthouse for 2017.

Table 5.5 Country hearings in courthouses**Number of Hearings**

| Courthouse | Class 1 | Class 2 | Class 3 | Class 4 | Class 5 | Class 6 | Class 8 |
|-------------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| Albion Park | 1 | | | | | | |
| Ballina | 1 | | 1 | | | | |
| Batemans Bay | 1 | | | | | | |
| Bathurst | 1 | | | | | | |
| Byron Bay | 1 | | | | | | |
| Coffs Harbour | | | | 1 | | | |
| Eden | 1 | | | | | | |
| Forster | 1 | | | | | | |
| Gosford | 1 | | | | | | |
| Kiama | 2 | | | | | | |
| Murwillumbah | 5 | | | | | | |
| Newcastle | 2 | | | | | | |
| Orange | 2 | | | | | | |
| Port Kembla | 1 | | | | | | |
| Scone | 1 | | | | | | |
| Singleton | 2 | | | | | | |
| Tweed Heads | 1 | | | | | | |
| Wentworth | | | 1 | | | | |
| Wollongong | 1 | | | | | | |
| TOTAL | 25 | | 2 | 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 the tab 'Facilities & Support', outlining the disability services provided by the Court.

Access to help and information

The Court facilitates access to help and provides information to parties about the Court and its organisation, resources and services, the Court's practices and procedures, its forms and fees, court lists and judgments, publications, speeches and media releases, and self-help information, amongst other information. Primarily it does this by its website. However, the Court also has guides and other information available at the counter. Registry staff assist parties and

practitioners, answer questions and provide information. Registry staff cannot provide legal advice.

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

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

Access for unrepresented litigants

The Court also makes special efforts to assist unrepresented litigants, through its website and its published information and fact sheets, and by the Registry staff. The Court has a special guide, under the tab 'Publications & Resources', for Litigants in Person in the Land and Environment Court of New South Wales. The guide contains information on:

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

The Court's website also has on its home page special pages on: 'Your legal problem

is about', 'Types of cases', 'Resolving Disputes', 'Coming to the court', 'Practice & Procedure', 'Forms & Fees', 'Land and Environment Court Decisions', amongst others.

Access to Alternative Dispute Resolution

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

When the Land and Environment Court was established in 1980 there was the facility for conciliation conferences under s 34 of the Court Act. These were curtailed in 2002 when on-site hearings were provided for but in 2006 the facility of conciliation conferences was extended to all matters in Classes 1, 2 and 3. Since then there has been a significant increase in utilisation of conciliation conferences (see Table 3.1).

The Court provides mediation services. In 2017, all full-time Commissioners, a number of the Acting Commissioners and the Registrar and Assistant Registrar of the Court were nationally accredited mediators and could provide in-house mediation for parties. In addition, the Court encourages and will make appropriate arrangements for mediation by external mediators. Informal mechanisms such as case management conferences also encourage negotiation and settlement of matters.

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

Facilitating public participation

Access to justice can also be facilitated by the Court ensuring that its practice and procedure promote and do not impede access by all. This involves careful identification and removal of barriers to participation, including by the public. Procedural law dealing with standing to sue, interlocutory injunctions (particularly undertaking for damages), security for costs, laches and costs of proceedings, to give some examples, can either impede or facilitate public access to justice.

The Court's decisions in these matters have generally been to facilitate public access to the courts. The Land and Environment Court Rules 2007 (Part 4 rule 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 2017, 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 2017 are set out in Table 5.6.

Table 5.6 Backlog Indicator (LEC time standards)

| | Unit | LEC Standards | 2013 | 2014 | 2015 | 2016 | 2017 |
|-------------------|------|---------------|------|------|------|------|------|
| Class 1 | | | | | | | |
| Pending caseload | no. | | 210 | 320 | 384 | 398 | 578 |
| Cases > 6 months | % | 5 | 14.8 | 14.1 | 17.1 | 22.2 | 21.5 |
| Cases > 12 months | % | 0 | 5.2 | 4.1 | 5.7 | 5.5 | 2.8 |
| Class 2 | | | | | | | |
| Pending caseload | no. | | 37 | 29 | 40 | 32 | 39 |
| Cases > 6 months | % | 5 | 0 | 3.4 | 0 | 9.4 | 15.4 |
| Cases > 12 months | % | 0 | 0 | 0 | 0 | 0 | 2.6 |
| Class 3 | | | | | | | |
| Pending caseload | no. | | 284 | 71 | 90 | 121 | 94 |
| Cases > 6 months | % | 5 | 79.9 | 46.5 | 27.8 | 39.3 | 56.4 |
| Cases > 12 months | % | 0 | 62.0 | 26.8 | 13.3 | 19.7 | 41.5 |
| Class 4 | | | | | | | |
| Pending caseload | no. | | 86 | 96 | 90 | 84 | 99 |
| Cases > 8 months | % | 5 | 38.4 | 39.6 | 30.0 | 32.9 | 39.4 |
| Cases > 16 months | % | 0 | 23.3 | 17.7 | 16.7 | 15.3 | 21.2 |

Class 5

| | | | | | | | |
|-------------------|-----|---|------|------|------|------|------|
| Pending caseload | no. | | 90 | 118 | 89 | 81 | 67 |
| Cases > 8 months | % | 5 | 58.9 | 56.8 | 69.7 | 48.1 | 35.8 |
| Cases > 16 months | % | 0 | 31.1 | 33.1 | 30.3 | 21.0 | 7.5 |

Class 6

| | | | | | | | |
|-------------------|-----|---|------|------|------|----|---|
| Pending caseload | no. | | 6 | 8 | 5 | 11 | 9 |
| Cases > 8 months | % | 5 | 16.7 | 50.0 | 20.0 | 0 | 0 |
| Cases > 16 months | % | 0 | 0 | 37.5 | 0 | 0 | 0 |

Class 8

| | | | | | | | |
|-------------------|-----|---|------|------|------|------|---|
| Pending caseload | no. | | 4 | 7 | 9 | 2 | 3 |
| Cases > 8 months | % | 5 | 50.0 | 28.6 | 11.1 | 50.0 | 0 |
| Cases > 16 months | % | 0 | 0 | 14.3 | 0 | 0 | 0 |

Class 1- 3

| | | | | | | | |
|-------------------|-----|---|------|------|------|------|------|
| Pending caseload | no. | | 531 | 420 | 514 | 551 | 711 |
| Cases > 6 months | % | 5 | 48.6 | 18.8 | 17.7 | 25.4 | 25.9 |
| Cases > 12 months | % | 0 | 35.2 | 7.6 | 6.6 | 8.3 | 7.9 |

Class 4 – 8

| | | | | | | | |
|-------------------|-----|---|------|------|------|------|------|
| Pending caseload | no. | | 186 | 229 | 193 | 178 | 178 |
| Cases > 8 months | % | 5 | 47.8 | 48.5 | 47.2 | 38.0 | 35.4 |
| Cases > 16 months | % | 0 | 25.8 | 26.2 | 21.8 | 16.8 | 14.6 |

These backlog figures need some explanation:

■ Class 1: The backlog figures for pending caseloads greater than 6 and 12 months decreased in 2017 compared to 2016. The total pending caseload in Class 1 increased during 2017 as a result of registrations exceeding finalisations. Despite the increase in registrations, the timeliness of case processing of Class 1 matters improved in 2017 compared to 2016.

■ Class 2: There was an increase in cases pending in Class 2 for more than 6 months (6 cases) and 12 months (1 case) in 2017 compared to 2016. The pending caseload increased (by 7 matters).

■ Class 3: The backlog figures in 2017 for pending caseload greater than 6 months increased to 56.4% and for cases greater than 12 months also increased to 41.5%. However, the total pending caseload decreased. The timeliness of the pending caseload therefore decreased but there were fewer cases pending for the longer periods.

- Class 4: There was an increase in the backlog figure for pending caseload exceeding 8 months and 16 months. The total pending caseload in Class 4 increased. The timeliness of case processing of Class 4 cases therefore declined in 2017.
- Class 5: The backlog figures for pending caseload exceeding 8 months and 16 months both decreased significantly to be the best results in the last five years. The total pending caseload in Class 5 decreased as a result of finalisations exceeding registrations. The timeliness

of case processing of Class 5 matters therefore continued to improve in 2017.

- Class 6: There were only a small number of appeals in Class 6. There were no appeal cases pending for more than 8 months or 16 months.
- Class 8: The pending caseload increased by one case however, no cases were pending for greater than 8 or 16 months.

If the national time standards are used, the results of the backlog indicator for the Court in 2017 are as shown in the table below:

Table 5.7 Backlog indicator (national time standards)

| | Unit | National Standards | 2013 | 2014 | 2015 | 2016 | 2017 |
|-------------------|------|--------------------|------|------|------|------|------|
| Class 1 | | | | | | | |
| Pending caseload | no. | | 210 | 320 | 384 | 398 | 578 |
| Cases > 12 months | % | 10 | 5.2 | 4.1 | 5.7 | 5.5 | 2.8 |
| Cases > 24 months | % | 0 | 1.4 | 0.6 | 0.8 | 0 | 0.3 |
| Class 2 | | | | | | | |
| Pending caseload | no. | | 37 | 29 | 40 | 32 | 39 |
| Cases > 12 months | % | 10 | 0 | 0 | 0 | 0 | 2.6 |
| Cases > 24 months | % | 0 | 0 | 0 | 0 | 0 | 0 |
| Class 3 | | | | | | | |
| Pending caseload | no. | | 284 | 71 | 90 | 121 | 94 |
| Cases > 12 months | % | 10 | 62.0 | 26.8 | 13.3 | 19.7 | 41.5 |
| Cases > 24 months | % | 0 | 6.2 | 8.5 | 7.8 | 0.8 | 8.5 |
| Class 4 | | | | | | | |
| Pending caseload | no. | | 86 | 96 | 90 | 84 | 99 |
| Cases > 12 months | % | 10 | 31.4 | 26.0 | 22.2 | 25.9 | 28.3 |
| Cases > 24 months | % | 0 | 11.6 | 13.5 | 8.9 | 8.2 | 6.1 |

Class 5

| | | | | | | | |
|-------------------|-----|----|------|------|------|------|------|
| Pending caseload | no. | | 90 | 118 | 89 | 81 | 67 |
| Cases > 12 months | % | 10 | 44.4 | 50.0 | 58.4 | 44.4 | 29.9 |
| Cases > 24 months | % | 0 | 25.6 | 22.9 | 21.3 | 17.3 | 3.0 |

Class 6

| | | | | | | | |
|-------------------|-----|----|------|------|------|----|---|
| Pending caseload | no. | | 6 | 8 | 5 | 11 | 9 |
| Cases > 12 months | % | 10 | 16.7 | 50.0 | 20.0 | 0 | 0 |
| Cases > 24 months | % | 0 | 0 | 0 | 0 | 0 | 0 |

Class 8

| | | | | | | | |
|-------------------|-----|----|------|------|---|------|---|
| Pending caseload | no. | | 6 | 4 | 9 | 2 | 3 |
| Cases > 12 months | % | 10 | 16.7 | 50.0 | 0 | 50.0 | 0 |
| Cases > 24 months | % | 0 | 0 | 0 | 0 | 0 | 0 |

This table shows that the Court's performance in Classes 1, 2, 6 and 8 better or meets the national standard for 12 months and 24 months. The Court's performance in Class 3 has declined in 2017 compared to 2016 for the standard for 12 and 24 months. The Court's performance in Class 4 is worse than the national standard but improved from 2016 for the standard for 24 months. The Court's performance in Class 5 is below the national standard for 12 months and 24 months but has improved significantly to be the Court's best result in five years.

The reasons for the Court's performance are given in the explanation of the backlog indicator (LEC time standards).

Time standards for finalisation of cases

The backlog indicator is a measure of the timeliness of the pending caseload. The Court also measures the timeliness of completed cases by comparing the time taken for finalisation of cases in each class to the Court's time standards. The higher the percentage of cases completed by each time standard and the shorter the time period to complete 95% of the cases, the better the Court's performance. Table 5.8 sets out the Court's performance in finalising cases in each class in compliance with the Court's time standards for the period 2013-2017.

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

| | 2013 | 2014 | 2015 | 2016 | 2017 |
|-------------------------------|------|------|------|------|------|
| Class 1 | | | | | |
| No. of cases | 521 | 592 | 743 | 832 | 831 |
| % < 6 months | 80 | 78 | 70 | 63 | 62 |
| % < 12 months | 97 | 96 | 96 | 94 | 94 |
| 95% completed within (months) | 9 | 10 | 11 | 13 | 13 |
| Class 2 | | | | | |
| No. of cases | 126 | 118 | 146 | 130 | 132 |
| % < 6 months | 98 | 97 | 94 | 93 | 93 |
| % < 12 months | 100 | 100 | 100 | 99 | 99 |
| 95% completed within (months) | 5 | 5 | 6 | 6 | 7 |
| Class 3 | | | | | |
| No. of cases | 211 | 322 | 100 | 137 | 108 |
| % < 6 months | 59 | 25 | 45 | 51 | 44 |
| % < 12 months | 81 | 38 | 70 | 80 | 72 |
| 95% completed within (months) | 21 | 28 | 28 | 30 | 26 |
| Class 4 | | | | | |
| No. of cases | 135 | 135 | 147 | 156 | 126 |
| % < 8 months | 73 | 66 | 64 | 73 | 71 |
| % < 16 months | 91 | 87 | 88 | 87 | 88 |
| 95% completed within (months) | 25 | 27 | 28 | 24 | 24 |
| Class 5 | | | | | |
| No. of cases | 59 | 49 | 79 | 62 | 75 |
| % < 8 months | 61 | 45 | 24 | 8 | 19 |
| % < 16 months | 90 | 71 | 38 | 76 | 73 |
| 95% completed within (months) | 18 | 34 | 67 | 86 | 53 |
| Class 6 | | | | | |
| No. of cases | 8 | 4 | 17 | 13 | 14 |
| % < 8 months | 63 | 100 | 76 | 85 | 71 |
| % < 16 months | 80 | 100 | 76 | 92 | 100 |
| 95% completed within (months) | 30 | 8 | 27 | 13 | 10 |
| Class 8 | | | | | |
| No. of cases | 8 | 7 | 10 | 10 | 2 |
| % < 8 months | 75 | 71 | 40 | 50 | 0 |
| % < 16 months | 88 | 71 | 80 | 90 | 0 |
| 95% completed within (months) | 19 | 22 | 20 | 20 | 23 |

In Class 1, there was a marginal reduction in the percentage of cases completed within 6 months while the high percentage of cases completed within 12 months was maintained. The time taken to finalise 95% of cases remained steady. In Class 2, the high percentage of cases completed within 6 and 12 months was maintained, however there was a marginal one month increase in the time taken to complete 95% of cases (7 months). In Class 3, the Court's performance slightly decreased, with lower percentages of cases completed in less than 6 months and 12 months. However, there was an improvement (of 4 months) in the time taken to complete 95% of the cases. In Class 4, the percentage of cases finalised in less than 8 months declined slightly from 2016, however, the percentage of cases finalised in less than 16 months increased marginally and the time taken to complete 95% of the matters remained the same. In Class 5, the percentage of cases finalised in less than 8 months increased markedly, however, the percentage of cases finalised in less than 16 months decreased marginally from 2016. The time taken to complete 95% of cases decreased significantly, being the Court's best result in three years. The Court's performance in complying with time standards for Class 6 matters improved, with the percentage of cases finalised within 16 months reaching 100% and the time taken to finalise 95% of cases decreasing. However, the percentage of cases completed within 8 months decreased. The Court's performance in Class 8 decreased but there were only two cases.

Time standards for delivery of reserved judgments

The Court may dispose of proceedings by judgment delivered at the conclusion of the hearing (ex tempore judgment) or at a later date when judgment is reserved by the Court (reserved judgment). A substantial number of judgments (21%) 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 2017 for reserved judgments being delivered within 14 days, 30 days and 90 days declined slightly from 2016. This is the poorest result in five years. It does, however, need to be viewed in the context of the material increase in the numbers of matters disposed of by hearings and hence the increase in the number of judgments needing to be given. 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.

Table 5.9 Reserved judgments compliance with time standards

| | Standard | 2013 | 2014 | 2015 | 2016 | 2017 |
|----------------------------|----------|------|------|------|------|------|
| % delivered within 14 days | 50 | 57 | 51 | 45 | 41 | 39 |
| % delivered within 30 days | 75 | 73 | 67 | 62 | 60 | 59 |
| % delivered within 90 days | 100 | 87 | 85 | 83 | 86 | 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

| | 2013 | 2014 | 2015 | 2016 | 2017 |
|-----------------|------------------------|------------------------|------------------------|------------------------|------------------------|
| Class 1 | 9 | 2 | 6 | 7 | 30 |
| Class 2 | 0 | 1 | 0 | 2 | 3 |
| Class 3 | 7 | 5 | 5 | 0 | 2 |
| Class 4 | 11 | 10 | 7 | 5 | 2 |
| Class 5 | 3 | 3 | 9 | 3 | 1 |
| Classes 6 and 7 | 2 | 0 | 2 | 0 | 0 |
| Class 8 | 0 | 0 | 2 | 0 | 0 |
| Total | 32^{*1} | 21^{*2} | 31^{*3} | 17^{*4} | 38^{*5} |

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

*2 In 2014, 95% of inquiries (20) concerned judges' reserved judgments and 5% (1) concerned commissioners' reserved judgments.

*3 In 2015, 84% of inquiries (26) concerned judges' reserved judgments and 16% (5) concerned commissioners' reserved judgments.

*4 In 2016, 71% of inquiries (12) concerned judges' reserved judgments and 29% (5) concerned commissioners' reserved judgments.

*5 In 2017, 18% of inquiries (7) concerned judges' reserved judgments and 82% (31) concerned commissioners' reserved judgments.

The Chief Judge investigated each inquiry made in 2017 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

| | 2013 | 2014 | 2015 | 2016 | 2017 |
|---------|-------|-------|-------|-------|-------|
| | % | % | % | % | % |
| Class 1 | 95.9 | 84.3 | 91.8 | 98.3 | 81.4 |
| Class 2 | 104.1 | 107.2 | 93.6 | 106.6 | 95.0 |
| Class 3 | 100.5 | 298.1 | 86.2 | 82.5 | 131.7 |
| Class 4 | 98.4 | 92.5 | 105.8 | 106.1 | 89.4 |
| Class 5 | 76.6 | 64.5 | 161.2 | 114.8 | 123.0 |
| Class 6 | 88.9 | 66.7 | 121.4 | 68.4 | 116.7 |
| Class 8 | 200.0 | 70.0 | 83.3 | 333.3 | 66.7 |

| | | | | | |
|--------------|-------------|--------------|-------------|-------------|-------------|
| Classes 1-3 | 98.2 | 112.2 | 91.5 | 96.9 | 86.2 |
| Classes 4-8 | 92.2 | 81.9 | 118.2 | 107.2 | 99.5 |
| Total | 97.0 | 106.0 | 95.9 | 98.7 | 88.2 |

These figures show that the total clearance rate for all matters decreased to be the lowest in the past five years (88.2%). The clearance rate for all matters in Classes 4-8 was almost 100% (99.5%). The clearance rate for all matters in Classes 1-3 was less than 100% (86.2%).

The clearance rate for matters in Class 1 (81.4%) decreased from 2016. This is the poorest result in five years. However, it is a direct result of the continued significant increases in registrations since 2013, including from 2016 to 2017. Although finalisations remained steady in 2017 from 2016, the registrations exceeded the finalisations, leading to a decrease in the clearance rate. In Class 2, finalisations were slightly less than registrations in 2016, resulting in a percentage slightly below 100% (95%). In Class 3, finalisations were greater than registrations, resulting in a clearance rate over 100% (131.7%), the highest in 3 years. The clearance rate for matters in Class 4 was below 100% due to a proportionately greater decrease in finalisations compared to the decrease in registrations. The clearance rate in Class 5 matters compared to 2016 was higher (123%), caused by a proportionately higher rate of finalisations compared to registrations. This continues a trend of improvement in performance in the last three years. The large increase in the clearance rate in Class 6 and the significantly lower clearance rate in Class 8 represent a difference of only a few 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 2013-2017.

Table 5.12 Median number of pre-hearing attendances by Class

| | 2013 | 2014 | 2015 | 2016 | 2017 |
|------------------------|------|------|------|------|------|
| Class 1 | 4 | 4 | 4 | 4 | 4 |
| Class 2 | 1 | 1 | 1 | 1 | 1 |
| Class 3: (all matters) | 5 | 7 | 5 | 5 | 6 |
| Compensation claims | 6 | 12 | 8 | 6 | 7 |
| Valuation objections | 4 | 6 | 7 | 2 | 7 |
| Miscellaneous | 6 | 7 | 6 | 5 | 5 |
| Class 4 | 3 | 5 | 7 | 4 | 4 |
| Class 5 | 3 | 5 | 9 | 10 | 5 |
| Class 6 | 2 | 2 | 2 | 1 | 3 |
| Class 8 | 4 | 4 | 4 | 6 | 10 |

The table reveals that the median number of pre-hearing attendances stayed constant for matters in Classes 1 and 2 between 2016 and 2017. Overall, the number of pre-hearing attendances for all matters in Class 3 increased slightly. The number of pre-hearing attendances increased significantly in valuation objections, increased slightly in compensation claims and stayed the same in miscellaneous matters. These increases in the number of attendances reverses the improvements since 2014. The number of pre-hearing attendances stayed the same in Class 4. The number of attendances in Class 5 decreased significantly. There were 50% less pre-hearing attendances in Class 5 matters in 2017 compared to 2016. This is the best performance in Class 5 matters in three years. The number of attendances increased in Classes 6 and 8 from 2016, although the number of cases involved is small.

Appeals

Measuring the number of appeals from a court's decisions and their success are not appropriate or useful indicators of the quality of the decisions or of court administration.

Nevertheless, as there are appeal rights from the Court's decisions, the Court should provide statistics on the exercise of the appeal rights in the review year.

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

First, decisions of Commissioners in Classes 1, 2 and 3 may be appealed to a Judge of the Court pursuant to s 56A of the Court Act. Section 56A appeals are confined to appeals against decisions on a question of law and do not permit a review of the Commissioner's decision on the facts or merits. As shown in Table 5.13, in 2017, 13 s 56A appeals were commenced, one appeal was settled pre-hearing, 12 were completed after a hearing, and none remained pending at 31 December 2017.

Of the 12 appeals that were completed at hearing, two were upheld. This represents 0.5% of the number of matters in Classes 1, 2, 3 and 8 disposed of at a hearing by a Commissioner of the Court in 2017 (417 matters).

Table 5.13 s 56A Appeal outcomes

| | 2013 | 2014 | 2015 | 2016 | 2017 |
|---------------------------|------|------|------|------|------|
| Total no. of appeals | 12 | 17 | 12 | 9 | 13 |
| No. finalised pre-hearing | 2 | 2 | 0 | 6 | 1 |
| No. of appeals to hearing | 15 | 14 | 6 | 8 | 12 |
| Outcome: | | | | | |
| Upheld | 5 | 5 | 2 | 3 | 2 |
| Dismissed | 10 | 9 | 4 | 7 | 10 |

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

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

The Court has continued the approach it adopted for the 2016 Annual Review of reporting on the number of cases determined by the appellate courts on

appeal from the Land and Environment Court. Table 5.14 shows the number and types of decisions determined by the appellate courts from 2013 to 2017.

In 2017, 20 appeals were determined by the Court of Appeal on appeal from the Land and Environment Court and 5 appeals were determined by the Court of Criminal Appeal on appeal from the Land and Environment Court.

Table 5.14 Appeals to the appellate courts

| | 2013 | 2014 | 2015 | 2016 | 2017 |
|---------------------------------|-----------|------------|------------|-----------|------------|
| Court of Appeal | | | | | |
| Appeal by right | 7 | 14 | 12 | 10 | 18 |
| Leave to appeal | 4 | 4 | 8 | 4 | 4 |
| Total matters determined | 11 | 17* | 19* | 14 | 20* |
| Court of Criminal Appeal | | | | | |
| Appeal by right | 1 | 3 | 0 | 1 | 4 |
| Stated case, section 5AE | 1 | 2 | 2 | 0 | 1 |
| Leave to appeal | 3 | 0 | 2 | 0 | 0 |
| Total matters determined | 5 | 5 | 4 | 1 | 5 |

* The total reflects that an appeal was heard both as of right and by leave of the Court of Appeal or Court of Criminal Appeal

Complaints

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

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

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

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

An inquiry to the Chief Judge by parties to proceedings or their legal representatives, pursuant to the Court's Policy on Delays in Reserved Judgments, as to the expected date for delivery of reserved judgment in proceedings is not a complaint about the conduct of the Court member concerned. Similarly, an inquiry as to the expected date of publication of the written reasons

for judgment given ex tempore at the conclusion of a hearing is not a complaint about the conduct of the Court member concerned. Inquiries pursuant to the Court's Policy on Delays in Reserved Judgments are discussed earlier in this chapter.

Complaints received and finalised

In 2017, the Court received 4 formal complaints.

Table 5.15 gives particulars about the complaints made and dealt within 2017 and the outcomes.

Table 5.15 Complaint particulars

| | |
|--|----------|
| Complaints pending as at 31 December 2016 | 0 |
| Complaints made during 2017 | 4 |
| Total number of complaints | 4 |
| Complaints examined but dismissed | 4 |
| Complaints not dismissed but dealt with by the Chief Judge | 0 |
| Complaints referred by Chief Judge to Complaint Committee | 0 |
| Complaint withdrawn | 0 |
| Total number of complaints finalised | 4 |
| Complaints pending as at 31 December 2017 | 0 |

As can be seen from Table 5.15, the number of complaints is low. The vast majority of complaints are made after, and in relation to, the hearing and disposal of a matter by a Commissioner. In 2017, Commissioners exercised the functions of undertaking conciliations, mediations, on-site hearings or court hearings in Classes 1, 2 and 3 and 8. There were 1,073 matters disposed of in 2017 in those classes. Complaints, therefore, occurred in only 0.4% of matters dealt with by Commissioners. This small

proportion of complaints to matters dealt with by Commissioners is a pleasing indication of the high standards 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 2017. More than one criterion may be used for each complaint. The table shows that each of the 4 complaints were dismissed.

Table 5.16 Criteria for dismissing complaints

| | |
|---|---|
| No misconduct was established | 4 |
| The complaint related to a judicial or other function that is or was subject to adequate appeal review rights | 1 |

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 programs or other appropriate action. For example, information gathered from complaints in previous years has been used to develop education programmes on improving judgment writing and court craft by Commissioners.

Causes of complaint

Table 5.17 sets out the common causes of complaint and identifies which causes were raised by the complaints made in 2017. 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 these are the categories of allegations made in complaints, whether or not they were upheld.

Table 5.17 Common causes of complaint

| | 2017 |
|--|------|
| Bias, collusion or conflict of interest | 3 |
| Delay | |
| Dissatisfaction with substantive outcome or wrong decision | 3 |
| Dissatisfaction with procedural and evidentiary rulings | 3 |
| Error interpreting or applying the law | |
| Failure of Court to enforce judgment or orders | |
| Failure to give fair hearing | 3 |
| Impairment | |
| Inadequate reasons for judgment | 1 |
| Inappropriate behaviour or comments or discourtesy | 3 |
| Incompetence | |

Substitution for appeals or review

Many of the complaints made amount, in essence, to a complaint that a Commissioner has made the wrong decision. These complaints are often made in apparent substitution of an appeal against the decision of a 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 some fault or bias

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 2017, one complaint was that the Commissioner had made incorrect findings of fact. Another complaint was that the Commissioner's reasons for judgment, including the identification and treatment of the issues, the findings of fact and the ultimate decision, were inadequate. Another complaint was the Commissioner was wrong not to have accepted evidence of the complainant's expert witness and instead preferred the evidence of the other party's expert witness. Another complaint sought to make submissions, which were not made during the hearing, after the proceedings had been decided. Another complaint sought a review of the Commissioner's decision. The existence of the right of appeal under s 56A of the Court Act was a satisfactory means to redress these complaints.

Misunderstanding as to dispute resolution process

The Court resolves matters by a variety of dispute resolution processes, including consensual mechanisms such as conciliation and mediation, and adjudicative mechanisms such as hearings. Self-represented parties and persons other than parties to proceedings, such as local residents, can misunderstand the dispute resolution process being utilised.

Three complaints concerned hearings conducted onsite of applications under the *Trees (Disputes Between Neighbours) Act 2006* concerning neighbours' trees. The complainants were concerned about the procedure adopted for the conduct of the hearing onsite. One complaint expressed

concern that the Commissioner allowed a person who was not a party to speak onsite and did not control interruptions. Another complaint was that the Commissioner asked questions of the complainant and other parties during the hearing.

These complaints revealed a misunderstanding of how hearings are conducted on the site of a dispute and the necessary differences in procedure from a hearing conducted in court. The Commissioner had a discretion to determine how the hearing should be conducted on the site, including controlling who should speak and when and how they could speak. The Commissioner was able to inform herself on any matter and in such manner as she thought appropriate and the proper consideration of the matter before her permitted.

Inappropriate conduct or discourtesy

Three complaints concerned the manner in which the Commissioners conducted hearings. The hearings were held on the site of disputes about neighbour's trees. One complaint was that the Commissioner did not answer legal questions asked by one party, which would have been inappropriate for a Commissioner to do. Another complaint was that the Commissioner had a stern manner and spoke in a raised voice.

These complaints reveal a misunderstanding about onsite hearings. An onsite hearing is a hearing of the proceedings, notwithstanding that it is conducted onsite and not in a courtroom. The Commissioner in these matters has a responsibility to control the conduct of the hearing, including the admission of evidence and ensuring that all parties can follow the proceedings. The open air venue may necessitate the Commissioner speaking louder and firmer than would occur in a court room.

Bias

Two complainants expressed concern that the Commissioner was biased. Both complainants argued that the Commissioner was biased in deciding a tree dispute because the Commissioner was an arborist. These complaints demonstrated a misunderstanding of the role of a Commissioner. Section 12(1) of the *Land and Environment Court Act 1979* requires a person to have knowledge, experience or qualifications of a type listed in s 12(2) or (2AA). Under s 30(2) of *Land and Environment Court Act 1979* requires the Chief Judge in determining the Commissioner who is to hear and determine any proceedings to have regard to the knowledge, experience and qualifications of the Commissioners and to the nature of the matters involved in the proceedings. For tree disputes, the relevant knowledge, experience and qualifications usually concern arboriculture and it is therefore appropriate that a Commissioner with knowledge, experience or qualifications in arboriculture hear and determine a tree dispute. In doing so, the Commissioner can draw on that knowledge and experience.

Misunderstanding as to enforcement role of the Court

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

6 Education and Community Involvement

- Continuing professional development
 - Continuing professional development policy
 - Annual Court Conference 2017
 - 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 2017

The Annual Court Conference for 2017 was held on Thursday 18 May and Friday 19 May 2017 at Parkroyal Parramatta.

Five Judges, one Acting Judge, nine Commissioners, five Acting Commissioners and the Acting Registrar attended the conference. The conference was organised in partnership with the Judicial Commission of New South Wales. The two day conference program included sessions on:

- Planning for Western Sydney
- Analysing expert evidence
- Apprehended bias
- An update on recent developments in criminal law
- An update on alternative dispute resolution
- Court craft and managing conflict in the court room
- Witness memory reliability
- Field Trip: Parramatta North Urban Transformation Precinct
- Field Trip: Guided tour of Old Government House



Field trip to Parramatta North Urban Transformation Program, Female Factory Buildings



Field trip to Old Government House, Parramatta



Field trip to Parramatta Light Rail site



Commissioner Chilcott introducing a presentation on the Parramatta Light Rail Project at the Land and Environment Court Annual Conference 2017



Presentations at the Land and Environment Court Annual Conference 2017

Twilight seminar series

The Court commenced its twilight seminar series in November 2008. The seminars are held after court hours from 4.30pm

to 6.00pm. The Court held six twilight seminars in 2017, and there was also two cross-jurisdictional workshops, two field trips and two Ngara Yura Program seminars.

| | |
|-------------|--|
| 14 February | Field trip, Renewal of Public Places, Hyde Park, presented by Ms Karen Sweeney, Urban Forest Manager, City of Sydney |
| 7 March | Ngara Yura Program seminar, Motor Kite Dreaming Movie Night |
| 27 April | Twilight seminar, Recent Developments in the Law of Evidence, presented by Mr Stephen Odgers SC, NSW Bar |
| 4 May | Cross-jurisdictional seminar, Accommodating Muslims in Court, presented by Dr Ghena Krayem, Senior Lecturer, University of Sydney |
| 23 May | Cross-jurisdictional seminar, Reforming the Justice System: The Alchemy of Data, Leadership and Synergy, presented by Justice Rebecca Love Kourlis, Executive Director, Institute for the Advancement of the American Legal System |
| 6 June | Field trip, Tour of the redeveloped building, the 'Money Box' 5 Martin Place, presented by Ms Megan Jones, TKD Architects |
| 3 August | Twilight seminar, Environment and Resource Adjudication of China, presented by Presiding Judge Lui Xiaofei and Judge Cai Zhousen, Supreme People's Court of China Adjudication Tribunal for Environment and Resources, |
| 9 August | Twilight seminar, Legal Research on the iPad, presented by Ms Alison Passé-de Silva, Policy Officer, Local Court of NSW |
| 17 August | Twilight seminar, Legal Research on the iPad, presented by Ms Alison Passé-de Silva, Policy Officer, Local Court of NSW |
| 4 October | Twilight seminar, Cultural Landscapes, presented by Professor Sharon Sullivan AO |

| | |
|------------|---|
| 24 October | Ngara Yura Program seminar, The Uluru Statement, presented by Professor Megan Davis, Mr Noel Pearson and Professor Rosalind Dixon (joint initiative with NSW Bar Association and Law Society of NSW) |
| 6 December | Twilight seminar, Climate change litigation: Lessons and pathways, presented by Professor Hari Osofsky, Robins Kaplan Professor, Faculty Director Energy Transition Lab Director, Joint Degree Program in Law, Science, and Technology, University of Minnesota Law School and Professor Jacqueline Peel, Associate Dean, Melbourne Law Masters |



Ngara Yura Program Kite Dreaming Movie Night, 7 March 2017

National Mediator Accreditation

In 2017, all Commissioners, the Registrar and Assistant Registrar were nationally accredited as mediators.

Other educational activities

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



Ngara Yura Program seminar, The Uluru Statement, 24 October 2017



Twilight seminar, Accommodating Muslims in Court, 4 May 2017

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 2017, both the

collective target as well as the individual standard for each Judge and full time Commissioner was met or exceeded.

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

Table 6.1 Participant evaluation of Land and Environment Court Annual Conferences 2013 to 2017

| | Target | 2013 | 2014 | 2015 | 2016 | 2017 |
|-----------------------------|--------|------|------|------|------|------|
| Overall satisfactory rating | 85% | 90% | 89% | 93% | 100% | 95% |

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 2013 to 2017, all of which exceeded the 85% standard.

Table 6.2 Participant evaluation of Land and Environment Court Twilight seminar series 2013 to 2017

| | Target | 2013 | 2014 | 2015 | 2016 | 2017 |
|-----------------------------|--------|------|------|------|------|------|
| Overall satisfactory rating | 85% | 88% | 86% | 91% | 92% | 94% |

*Note: 2013 was based on 6 seminars, 1 cross-jurisdictional seminar and 1 field trip; 2014 was based on 4 seminars, 2 cross-jurisdictional seminars, 1 field trip and 1 site visit; 2015 was based on 3 seminars and 2 field trips; 2016 was based on 6 seminars and 2 field trips; and 2017 was based on 6 seminars, 2 cross-jurisdictional seminar and 2 field trips.

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.



Twilight seminar: Climate Change Litigation, 6 December 2017

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. The Handbook was updated in February 2017.

Beginning in January 2010, the Court publishes quarterly on the Court's website a Judicial Newsletter for the benefit of members of the Court and the wider public to better enable them to keep up to date with recent legal developments. The Newsletter provides summaries of recent legislation and judicial decisions of the High Court of Australia, NSW Court of Appeal, NSW Court of Criminal Appeal, NSW Supreme Court and Land and Environment Court, as well as of other courts in Australia and overseas, concerning matters of relevance to the Court's jurisdiction. In the electronic version of the Newsletter published on the Court's website under the tab 'Publications & Resources' then Judicial Newsletters, links are included in the text to enable direct access to the legislation, documents and decisions referred to in the text.

Education and participation in the community

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

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



Visiting judicial delegation from Japan with Justice Preston and Justice Moore, 8 March 2017

Individual Judges' and Commissioners' activities

The Judges' and Commissioners' activities during 2017 are summarised below:

The Hon. Justice Brian John Preston SC, Chief Judge

Conferences and seminars

| | |
|---------------|---|
| 1 February | Doing right by all manner of people: Building a more inclusive legal system, presented by the Hon. T. F. Bathurst AC at the Opening of the Law Term 2017 Dinner, Law Society of NSW, Parliament House, Sydney |
| 19-21 January | The Oxford Handbook of Comparative Environmental Law Workshop, Cambridge, United Kingdom |
| 27 April | Twilight seminar, Recent Developments in the Law of Evidence, presented by Mr Stephen Odgers SC, NSW Bar, Judicial Commission of NSW, Sydney |

| | |
|-----------------|--|
| 4 May | Cross-jurisdictional seminar, Accommodating Muslims in Court, presented by Dr Ghena Krayem, Senior Lecturer at University of Sydney Law School, Judicial Commission of NSW, Sydney |
| 18-19 May | Land and Environment Court 2017 Annual Conference, Parkroyal Hotel, Parramatta |
| 23 May | Cross-jurisdictional seminar, Reforming the Justice System: The Alchemy of Data, Leadership and Synergy, presented by Justice Rebecca Love Kourlis, Executive Director, Institute for the Advancement of the American Legal System, Judicial Commission of NSW, Sydney |
| 8 June | The Australian Law Journal 90 th Anniversary Celebration, Banco Court, Sydney |
| 21 June | Law and Justice Foundation of NSW breakfast briefing, presented by Dame Hazel Genn DBE QC, Ashurst Ballroom, Sydney |
| 2 August | Royal Society Open Lecture, Self-Driving Cars: Will they help?, presented by Professor Ann Williamson, Director Transport and Road Safety Research Centre, University of NSW, Union, University and Schools Club, Sydney |
| 3 August | Twilight seminar, Environment and Resource Adjudication of China, presented by Presiding Judge Lui Xiaofei and Judge Cai Zhousen, Supreme People's Court of China Adjudication Tribunal for Environment and Resources, Land and Environment Court of NSW, Sydney |
| 9 August | Twilight seminar, Legal Research on the iPad, presented by Alison Passé-de Silva, Policy Officer, Local Court of NSW, Judicial Commission on NSW, Sydney |
| 19-21 September | 30 th Annual LAWASIA Conference, Hotel New Otani, Tokyo, Japan |
| 4 October | Twilight seminar, Cultural Landscapes, presented by Professor Sharon Sullivan AO, Judicial Commission of NSW, Sydney |
| 26 October | 2017 James Spigelman Oration, New Tricks for Old Dogs: The Limits of Judicial Review of Integrity Bodies, presented by The Hon. T F Bathurst AC, Chief Justice of NSW, Banco Court, Sydney |
| 2 November | Climate Change and Australia, presented by Professor Lesley Hughes, Sydney Mechanics' School of Arts, Sydney |
| 6 November | Address by The Hon. Michael Kirby AC CMG at the launch of the Macquarie University Law School Campaign and Social Justice Project, The Mint, Sydney |
| 21 November | What Past Climates and Antarctica tell us about Present and Future Climate, presented by Professor Chris Turney, Professor of Earth Sciences and Climate Change, University of NSW, Australian Club, Sydney |

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| 22 November | Breakfast seminar, Climate Change Frustration: What Role the Public Scientist?, presented by Professor Lesley Hughes, Government House, Sydney |
| 6 December | Twilight seminar, Climate change litigation: Lessons and pathways, presented by Professor Hari Osofsky, Robins Kaplan Professor, Faculty Director Energy Transition Lab Director, Joint Degree Program in Law, Science and Technology, University of Minnesota Law School and Professor Jacqueline Peel, Associate Dean, Melbourne Law Masters, Judicial Commission of NSW, Sydney |

Speaking Engagements

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| 20 January | <i>Regulatory Organisation in the Modern World</i> , a presentation to the Oxford Handbook of Comparative Environmental Law Workshop, Cambridge University, United Kingdom |
| 17 February | <i>International Bar Association Model Statute on Climate Change Claims and Remedies</i> , a presentation to the 'How climate change will shape environmental law' Conference, Murdoch University, Perth |
| 21 February | <i>The Judicial Development of the Precautionary Principle</i> , a paper presented at the Queensland Government Environmental Management of Firefighting Foam Policy Implementation Seminar, Brisbane |
| 9 March | <i>The Impact of the Paris Agreement on Environmental Jurisprudence in Australia</i> , a presentation to the EDO Seminar 'The Paris Climate Change Agreement: Implications for Australian Lawyers', QEII Courts of Law Complex, Brisbane |
| 21 March | <i>Alternative Dispute Resolution in the Land and Environment Court</i> , Macquarie University Land and Environment Court Clinic, Land and Environment Court of NSW, Sydney |
| 26 March | <i>The Judicial Development of the Precautionary Principle</i> , a presentation to the World Conference on Environment 2017, National Green Tribunal, Vigyan Bhawan Centre, New Delhi, India |
| 11-12 April | <i>The Role of ECTs in promoting the rule of law and ensuring equal access to justice for all</i> , presentation given to the International Symposium on Environmental Adjudication in the 21st Century, Auckland, New Zealand |
| 12 May | <i>The judicial development of ecologically sustainable development</i> , a presentation given to Office of Environment and Heritage, SMC Conference and Function Centre, Sydney |
| 12 May | <i>Bangladesh Judicial Training and Research Programme</i> , a presentation with Professor Donna Craig to the Bangladesh Judicial Training and Research Programme, Western Sydney University, Parramatta |
| 30 May | Moot Court Judge, with Justice Rothman and Justice Rares, of the Grand Final of the Public International Law Moot, University of Sydney, Sydney |

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| 2 June | <i>The Australian experience on environmental law</i> , a presentation to the IUCN-AEL 15 th Annual Colloquium, Shangri-La Mactan Resort, Cebu, Philippines |
| 4 June | <i>Speech on the release of the green sea turtle</i> , delivered at SEA CAMP, Bantayan Island, Philippines |
| 27 June | <i>Access to Environmental Justice</i> , lecture presented via Skype to Assistant Professor Mahito Shindo's international environmental law course, School of Social Sciences (Legal Science Group), Waseda University, Tokyo, Japan |
| 29 June - 1 July | Lecturer, Environmental Dispute Management Course, Australian National University, Canberra |
| 3 July | <i>Access to Justice, Human Rights and Judicial Decision-making in Environmental Matters</i> , presented to academics at Northumbria University Law School, Newcastle Upon Tyne, United Kingdom |
| 20 July | <i>Introduction and launch of Judicial Commission of NSW Research Monograph 40: Transparent and Consistent Sentencing in the Land and Environment Court</i> , Judicial Commission of NSW, Sydney |
| 3 August | <i>Sentencing for Environmental Crime</i> , presentation delivered at Local Court of NSW 2017 Annual Conference, Amora Jamison Hotel, Sydney |
| 28 August | <i>Update on the Land and Environment Court's performance and measures to improve performance</i> , address at Urban Taskforce Boardroom Lunch, Doltone House, Sydney |
| 29 August | <i>The challenges of approaching judging from an Earth-centred perspective</i> , an address and launch of the book by N Rogers and M Maloney (eds), <i>Law as if Earth Really Mattered: The Wild Law Judgment Project</i> (Routledge, 2017), Southern Cross University, Gold Coast |
| 30 August | <i>The legal status of nature in the Australian legal system</i> , presentation delivered at the Australian Earth Law Alliance (AELA) Exploring the Legal Status of Nature Seminar, Southern Cross University, Gold Coast |
| 31 August | <i>Good Assessment of Projects</i> , presentation to Senior Officer Resource Assessment Committee, Department of Planning and Environment, Sydney |
| 1 September | <i>What's equity got to do with the environment?</i> 2017 Sir Frank Kitto Lecture, delivered at University of New England, Armidale |
| 1 September | <i>Launch of the book by Amanda Kennedy, 'Environmental Justice and Land Use Conflict: The Governance of Mineral and Gas Resource Development (Routledge, 2017)'</i> , University of New England, Armidale |
| 1 September | <i>Occasional address</i> , delivered at University of New England 2017 Law Ball, Armidale |

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| 19 September | <i>Access to Environmental Justice</i> , lecture recorded for Assistant Professor Mahito Shindo's international environmental law course, School of Social Sciences (Legal Science Group), Waseda University, Tokyo, Japan |
| 20 September | <i>Chair</i> , Environmental Law Session on issues concerning waste and its consequences, 30th Annual LAWASIA Conference, Hotel New Otani, Tokyo, Japan |
| 22 September | <i>Specialised Court Procedures for Expert Evidence</i> , presentation delivered to legal seminar at Ritsumeikan University, Kyoto, Japan |
| 18 October | <i>Adapting to a sustainable energy future</i> , 2017 Australian Institute of Building Address, delivered at the University of NSW, Kensington |
| 31 October | <i>Welcome Address</i> to newly appointed senior counsel, Silks Bows Ceremony, Land and Environment Court of NSW |
| 9 November | <i>The legal status of nature in the Australian Legal System</i> , presentation delivered at the AELA Exploring the Legal Status of Nature Seminar, University of Technology, Sydney |
| 27 November | <i>Statements of Reasons</i> , presentation to Planning Assessment Commission, Sydney |
| 15-16 December | Lecturer, Climate Change Law Course, Macquarie University, North Ryde |

Publications

B J Preston and J Gray, "Achieving Court Excellence: The need for a collaborative approach" (2017) 8 *International Consortium for Court Excellence Newsletter* 4.

B J Preston, "Writing Judgments 'Wildly'" in Nicole Rogers and Michelle Maloney (eds), *Law as if Earth Really Mattered: The Wild Law Judgment Project* Routledge, 2017, 19.

B J Preston, "Green Sea Turtles by their Representative, Meryl Streef v The State of Queensland and the Commonwealth of Australia" in Nicole Rogers and Michelle Maloney (eds), *Law as if Earth Really Mattered: The Wild Law Judgment Project* Routledge, 2017, 31.

B J Preston and T Orgill, "Adapting to a sustainable energy future: Part 1 – The localisation of sustainable energy generation under the New South Wales planning law regime" (2017) 34 *Environmental and Planning Law Journal* 418.

B J Preston, "The role of environmental courts and tribunals in promoting the rule of law and ensuring equal access to justice for all" (2017) 29 *Environmental Law and Management Journal* 72.

Membership of legal, cultural or benevolent organisations

Chair, Land and Environment Court Rules Committee

Member, Uniform Rules Committee, Supreme Court of NSW

Official member, Judicial Commission of New South Wales

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

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

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

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

Fellow, Australian Academy of Law (FAAL)

Fellow, Royal Society of NSW

Honorary Fellow, Environment Institute of Australia and New Zealand

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

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

General Editor, Local Government Planning and Environment NSW Service

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

Adjunct Professor, Sydney Law School, University of Sydney

Adjunct Professor, School of Law, Western Sydney University

Member, Bangladesh Judicial Capacity Building and Research Partnerships Advisory Committee, Western Sydney University

Guest lecturer, ANU College of Law, Australian National University

Member, Advisory Board, Centre for Environmental Law, Macquarie University

Member, Macquarie University Law School Campaign Committee

Member, Technical Advisory Committee on Combatting Crimes that have serious impacts on the environment: State of Knowledge on approaches, Intergenerational Crime and Justice Research Institute, United Nations

Member, Interim Governing Committee, Global Judicial Institute on the Environment

Member, Advisory Committee on The Judges and the Academy, University of New South Wales

Delegations and international assistance

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| 7 February | Talk to Indonesian delegation on the operation of the Land and Environment Court of NSW, hosted by Mr Tomassy, Macquarie Law School, Macquarie University |
| 8 March | Talk to Japanese judicial and legal delegation, hosted by Professor Chihara Watanabe, Ritsumeikan University, on concurrent evidence in the Land and Environment Court, in conjunction with the Hon. Justice Moore |
| 20 March | Interviewed by Mark Hamilton, PhD candidate UNSW, on restorative justice |
| 22 May | Meeting with Windu Kisworo, The Asia Foundation, on environmental courts in Indonesia |

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| 29 May | Telephone interview with Jane Wheatley about James Thornton and ClientEarth for <i>Good Weekend</i> |
| 21 June | Presented to a delegation of 11 Judges as part of Bangladesh Judicial Training Programme, Western Sydney University, at the Land and Environment Court of NSW, on: Overview of the Land and Environment Court; video conferencing; case management; development of judicial skills and values; and International Framework for Court Excellence |
| 17 July – 25 August | Hosted visiting delegation of two Judges, Presiding Judge Liu Xiaofei and Judge Cai Zhousen, from Adjudication Tribunal for Environment and Resources, Supreme People’s Court of China |
| 8 August | Presented to delegation of 42 Judges as part of Bangladesh Judicial Training Programme, Western Sydney University, at Judicial Commission of NSW, on: Overview of the Land and Environment Court; video conferencing; case management; development of judicial skills and values; and International Framework for Court Excellence |
| 11 August | Presented to a delegation of 42 Judges as part of the Bangladesh Judicial Training Programme, Western Sydney University, on climate law and litigation |
| 15 September | Hosted visiting delegation of 20 judges and justice officials from China studying at UTS and presented on jurisdiction of the Land and Environment Court of NSW |
| 5 October | Meeting with Dr Dong Xia Yang, Director, Vice Chairman and Secretary General, Research Centre of Agricultural Law, Agricultural Management Institute of Ministry of Agriculture, Beijing on issues in water law and agricultural law |
| 17 November | Presented to delegation of 20 Judges as part of Bangladesh Judicial Training Programme, Western Sydney University, at Land and Environment Court of NSW, on: Overview of the Land and Environment Court; video conferencing; case management; development of judicial skills and values; and International Framework for Court Excellence |



Justice Preston presenting to the Bangladesh Judicial Training Programme, 11 August 2017



Justice Preston participating in the UNICRI Technical Advisory Committee meeting "Combating Crimes that have serious impacts on the environment: State of Knowledge on approaches", 15-16 June 2017

The Hon. Justice Terence William Sheahan AO

Conferences and seminars

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| 7 February | Ceremonial Sitting of the Full Court of the Federal Court of Australia, The Court's Forty Years, led by the Hon. James Allsop AO, Chief Justice, Federal Court of Australia, Sydney |
| 14 February | Judicial Commission of NSW field trip, Renewal of Public Spaces, Hyde Park, presented by Karen Sweeney, Urban Forest Manager, City of Sydney, Sydney |
| 15 February | The Sydney Institute Lecture, The Trials of Justice Murphy, presented by Stephen Walmsley SC, Corrs Chambers Westgarth, Sydney |
| 16 February | Sydney Law School Annual George Winterton Memorial Lecture, Sir Owen Dixon Today, presented by Prof the Hon William Gummow, AC QC, Banco Court, Sydney |
| 27 February | Anglo-Australasian Lawyers Society breakfast seminar, Human Rights: What role for Australia?, presented by the Hon. Philip Ruddock, Special Envoy on Human Rights, The Australian Club, Sydney |
| 9 March | Mahla Pearlman Oration 2017, Should I stay or Should I Go? Shaping International Responses to Climate Change, Disasters and Displacement, presented by Professor Jane McAdam, University of New South Wales, Federal Court of Australia, Sydney |
| 16 March | Anglo-Australasian Lawyers Society breakfast seminar, The Challenges for Justice in a Culturally and Linguistically Diverse Society, presented by the Hon. Justice Melissa Perry, Federal Court of Australia, The Australian Club, Sydney |
| 27 April | Anglo-Australasian Lawyers Society breakfast seminar, Dr Google and Mr Austlii QC: the Rule of Lawyers in the Age of the Internet, presented by the Hon. Justice Stephen Gageler AC, High Court of Australia, The Australian Club, Sydney |
| 27 April | Twilight seminar, Recent Developments in the Law of Evidence, presented by Stephen Odgers, Judicial Commission of NSW, Sydney |
| 4 May | Cross Jurisdictional seminar, Accommodating Muslims in Court, presented by Dr Ghena Krayem, Judicial Commission of NSW, Sydney |
| 16 May | City of Sydney Law Week Breakfast, The Kilmuir Rules, MasterChef and the Merits of Judicial Silence, presented by the Hon. Justice Julie Ward, Queen Victoria Tea Rooms, Sydney |
| 17 May | Australian Association of Constitutional Law seminar, Structured Proportionality after <i>McCloy</i> and <i>Murphy</i> , presented by Nicholas Owens SC and Associate Professor Gabrielle Appleby, University of New South Wales, Federal Court of Australia, Sydney |

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| 18-19 May | Land and Environment Court NSW 2017 Annual Conference, Parkroyal Hotel, Parramatta |
| 23 May | Cross Jurisdictional seminar, Reforming the Justice System: The Alchemy of Data, Leadership and Synergy, presented by Justice Rebecca Love Kourlis, Colorado Supreme Court, Judicial Commission of NSW, Sydney |
| 5 June | Australian Institute of Administrative Law NSW chapter seminar, Natural Justice, presented by the Hon. Margaret Beazley AO, President, Court of Appeal NSW and Andrew Carter, Partner, Ashurst, Sydney |
| 6 June | Judicial Commission of NSW field trip, "The Money Box" 5 Martin Place, presented by Megan Jones, TKD Architects, Sydney |
| 4 October | Twilight seminar, Cultural Landscapes, presented by Professor Sharon Sullivan AO, Judicial Commission of NSW, Sydney |
| 10 October | Anglo-Australasian Lawyers Society breakfast seminar, The Singapore International Commercial Court, presented by Sir Bernard Eder, international arbitrator and former judge of the High Court of Justice of England and Wales (QBD), The Australian Club, Sydney |
| 10 October | Carroll & O'Dea lunchtime seminar, The state of political discussion and policy debate in Australia, presented by the Hon. Nathan Rees, National Assistant Secretary, Finance Sector Union of Australia, Carroll & O'Dea, Sydney |
| 17 October | New South Wales Chapter of Council of Australian Tribunals, 2017 Whitmore Lecture, Separation of Powers – Dialogue and Deference, presented by the Hon. Justice John Basten, Banco Court, Sydney |
| 18 October | Anglo-Australasian Lawyers Society breakfast seminar, Dueling Law Officers, presented by Prof Gabrielle Appleby, Associate Dean (International & External engagement) University of New South Wales Law Faculty, The Australian Club, Sydney |
| 24 October | Carroll & O'Dea lunchtime seminar, Current Criminal Justice Issues in NSW, presented by Lloyd Babb SC, Director of Public Prosecutions, Carroll & O'Dea, Sydney |
| 24 October | Ngara Yura Program seminar, The Uluru Statement, presented by Professor Megan Davis, Mr Noel Pearson and Professor Rosalind Dixon (Joint initiative with NSW Bar Association and NSW Law Society), NSW Bar Association, Sydney |
| 16 November | New South Wales Society of Labor Lawyers Annual Dinner, Rethinking Trade Unionism, presented by Mary Gaudron QC, Aesop's Greek Restaurant, Sydney |

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| 29 November | The Sydney Institute seminar, Climate Change – 2017, presented by Dr Jennifer Marohasy, Australian Biologist and Prof Peter Ridd, College of Science & Engineering, James Cook University, The Sydney Institute, Sydney |
| 6 December | Twilight seminar, Climate change litigation: Lessons and pathways, presented by Professor Hari Osofsky, Robins Kaplan Professor, Faculty Director Energy Transition Lab Director, Joint Degree Program in Law, Science and Technology, University of Minnesota Law School and Professor Jacqueline Peel, Associate Dean, Melbourne Law Masters, Judicial Commission of NSW, Sydney |

Speaking engagements

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| 16 May | <i>Self-Represented Litigants</i> , Macquarie University and University of NSW joint student clinic, Land and Environment Court of NSW, Sydney |
| 29 May | <i>Promoting Better Access to Justice</i> , Resolution Institute Global Pound Conference, Herbert Smith Freehills, Sydney |
| 6 June | <i>Self-Represented Litigants</i> , Bangladesh Judicial Training and Research Program, Land and Environment Court of NSW, Sydney |
| 18 October | <i>The L & E Court's Role in the State's Planning and Development Systems</i> , a presentation to Planning Law Students, University of Technology, Sydney |
| 8 November | <i>Early Dispute Resolution – Progress since 1988</i> , Resolution Institute NSW Chapter, Resolution Institute, Sydney |

Membership of legal, cultural or benevolent organisations

Fellow, The Royal Society of New South Wales

Member, Land and Environment Court's Rules Committee

Member, Land and Environment Court's Nominee, Governing Council of the Judicial Conference of Australia

Member, Committee of Management, Anglo-Australian Lawyers Society

The Hon. Justice Nicola Hope Margaret Pain

Conferences and seminars

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| 14 February | Judicial Commission of NSW field trip, Renewal of Public Places, Hyde Park, presented by Ms Karen Sweeney, Urban Forest Manager, City of Sydney |
| 16 February | George Winterton Memorial Lecture, presented by Professor William Gummow, AC QC, The Australian Association of Constitutional Law (AACL), Sydney |
| 7 March | Ngara Yura Program seminar, Motor Kite Dreaming Movie Night, Judicial Commission of NSW, Sydney |

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| 4 April | Lecture, The Trump Administration and the Future of US Environmental Law, presented by Professor Robert L Glicksman, Sydney Law School, University of Sydney, Sydney |
| 27 April | Twilight seminar, Recent Developments in the Law of Evidence, presented by Stephen Odgers SC, NSW Bar, Judicial Commission of NSW, Sydney |
| 27-30 April | Asia Pacific Regional Conference of the International Association of Women Judges 2017, Impacts of Judging: An Asia Pacific Perspective, Sydney |
| 4 May | Twilight seminar, Accommodating Muslims in Court, presented by Dr Ghena Krayem, Senior Lecturer, University of Sydney, Judicial Commission of NSW, Sydney |
| 18-19 May | Land and Environment Court of NSW 2017 Annual Conference, Parkroyal Hotel, Parramatta |
| 23 May | Cross-Jurisdictional seminar, Reforming the Justice System: The Alchemy of Data, Leadership and Synergy, presented by Justice Rebecca Love Kourlis, Executive Director, Institute for the Advancement of the American Legal System, Judicial Commission of NSW, Sydney |
| 6 June | Judicial Commission field trip, Tour of the “Money Box” 5 Martin Place, presented by Ms Megan Jones, TKD Architects, Sydney |
| 9 August | Twilight seminar, Legal Research on the iPad, presented by Ms Alison Passé-de Silva, Policy Officer, Local Court of NSW, Judicial Commission of NSW, Sydney |
| 4 October | Twilight seminar, Cultural Landscapes, presented by Dr Sharon Sullivan AO, Judicial Commission of NSW, Sydney |
| 24 October | Ngara Yura Program seminar, The Uluru Statement, presented by Professor Megan Davis, Mr Noel Pearson and Professor Rosalind Dixon (joint initiative with NSW Bar Association, Law Society of NSW), Judicial Commission of NSW, Sydney |
| 26 October | Spigelman Public Law Oration, Limits of judicial review of “integrity” bodies, presented by The Hon. T F Bathurst AC, Chief Justice of NSW, Sydney |
| 7 December | Comparative Constitutional Courts Round-Up, Australian Association of Constitutional Law, Federal Court, Sydney |

Speaking engagements

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| 25 March | <i>Air pollution - challenges for courts</i> , World Conference on Environment, National Green Tribunal India, New Delhi, India |
| 18 August | Address to university students, Female Student Open Day, NSW Bar Association, Sydney |
| 12 October | <i>Sentencing in Environmental Crime in New South Wales</i> , University of Wollongong Faculty of Law, Wollongong |

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| 4 November | <i>Climate Change in Court: Challenges for Judges</i> , International Conference on Environment, National Green Tribunal of India, New Delhi, India |
| 9 November | <i>The future of (domestic) courts in protecting environmental (human) rights</i> , Global Network for the Study of Human Rights and the Environment, University of Sydney, Sydney |

Membership of legal, cultural or benevolent organisations

Chair, Australian Centre for Climate and Environmental Law advisory committee, University of Sydney

Member, World Commission on Environmental Law, International Union for Conservation of Nature

Chair, Land and Environment Court of NSW Education Committee

The Hon. Justice Rachel Ann Pepper

Justice Pepper was on leave from the Court through 2017.

The Hon. Justice Timothy John Moore

Conferences and seminars

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| 14 February | Judicial Commission of NSW field trip, Renewal of Public Spaces, presented by Ms Karen Sweeney, City of Sydney Urban Forest Manager, Sydney |
| 27 April | Twilight seminar, Recent Developments in the Law of Evidence, presented by Mr Stephen Odgers SC, NSW Bar, Judicial Commission of NSW, Sydney |
| 18-19 May | Land and Environment Court 2017 Annual Conference, Parkroyal Hotel, Parramatta |
| 6 June | Judicial Commission of NSW field trip, Tour of the 'Money Box' 5 Martin Place, presented by Ms Megan Jones, TKD Architects, Sydney |
| 20 July | Seminar, Launch of Judicial Commission of NSW Research Monograph 40 - Transparent and consistent sentencing in the Land and Environment Court: orders for costs as an aspect of punishment, presented by Mr Michael Cain, Consultant and Mr Hugh Donnelly, Director, Research and Sentencing, Judicial Commission of NSW, Sydney |
| 9 August | Twilight seminar, Legal Research on the iPad, presented by Alison Passé de Silva, Policy Officer, Local Court of NSW, Judicial Commission of NSW, Sydney |
| 11 October | Seminar, Death penalty briefing: 15th World Day against the death penalty, presented by Julian McMahon QC, Sydney |

Speaking engagements

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| 15 March | Seminar, <i>Planning Law</i> , CLE Program, University of New South Wales, Sydney |
| 22 March | Workshop, <i>Drafting Just Terms Compensation Reports</i> , API, Sydney |
| 16 May | <i>Self-Represented Litigants</i> , Land and Environment Court Clinic, Land and Environment Court of NSW, Sydney |
| 30 May | Discussion, <i>The Role of the Arborist in the Land and Environment Court</i> , Land and Environment Court of NSW in conjunction with ArborSkills |
| 2 August | <i>Induction</i> , Land and Environment Court Clinic, Land and Environment Court of NSW, Sydney |
| 22 August | Interview, Centre for Environmental Law |
| 5 September | <i>Self-Represented Litigants</i> , Land and Environment Court Clinic, Land and Environment Court of NSW, Sydney |
| 5 September | <i>Overview of the Land and Environment Court of NSW</i> , EDO ACT Clinic students, Land and Environment Court of NSW, Sydney |
| 4 October | Twilight seminar, <i>Cultural Landscape</i> , Chair, Judicial Commission of NSW |
| 20 October | Panellist, <i>Digital Litigation in the Land and Environment Court - Paper? Where we're going, we don't need paper ...</i> , with Ms Cecilia McMaster, RMS (Chair), Sonya Duncan, Australian Legal Sector Alliance and Mr Ian Hemmings SC, EPLA, Sydney |
| 1 November | Launch, " <i>Paperless</i> " trial video, Land and Environment Court of NSW, Australian Legal Sector Alliance and EDO, Sydney |
| 30 November | Presentation, <i>The Work of the LEC</i> , Supreme Court of NSW Library, Sydney |

Publications

Judicial Newsletter, editor, Land and Environment Court of NSW

Membership of legal, cultural or benevolent organisations

Acting Chair, Land and Environment Court Library Committee

Member, Land and Environment Court Education Committee

Member, Caselaw Governance Committee

Member, John Koowarta Reconciliation Law Scholarship Advisory Committee

Member, Australian Legal Sector Alliance - Sustainable Legal Sector Working Group

Delegations and international assistance

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| 21 February | Discussions with visiting delegation of two Judges, Presiding Judge Liu Xiaofei and Judge Cai Zhousen, from Adjudication Tribunal for Environment and Resources, Supreme People's Court of China |
| 6 June | Presented to delegation of 20 Judges as part of Bangladesh Judicial Training Programme, Western Sydney University, at Land and Environment Court of NSW |
| 17 July | Discussions with visiting delegation of two Judges, Presiding Judge Liu Xiaofei and Judge Cai Zhousen, from Adjudication Tribunal for Environment and Resources, Supreme People's Court of China |

The Hon. Justice John Ernest Robson

Conferences and seminars

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| 14 February | Judicial Commission of NSW field trip, Renewal of Public Spaces, Hyde Park, presented by Karen Sweeney, Urban Forest Manager, City of Sydney, Sydney |
| 19-24 February | National Judicial Orientation Program, coordinated by the National Judicial College of Australia, Blackman Hotel, Melbourne |
| 9 March | Mahla Pearlman AO Annual Oration and presentation of the Mahla Pearlman Australian Young Environmental Lawyer of the Year Award, <i>Should I Stay or Should I Go? Shaping International Responses to Climate Change, Disasters and Displacement</i> , presented by Professor Jane McAdam, University of New South Wales, Federal Court, Sydney |
| 18-19 May | Land and Environment Court Annual Conference 2017, Parkroyal Hotel, Parramatta |
| 6 June | Judicial Commission of NSW field trip, Tour of the 'Money Box' 5 Martin Place, presented by Ms Megan Jones, TKD Architects, Sydney |
| 20 July | Seminar, Launch of Judicial Commission of NSW Research Monograph 40 - Transparent and consistent sentencing in the Land and Environment Court: orders for costs as an aspect of punishment, presented by Mr Michael Cain, Consultant and Mr Hugh Donnelly, Director, Research and Sentencing, Judicial Commission of NSW, Sydney |
| 9 August | Twilight seminar, Legal Research on the iPad, presented by Alison Passé-de Silva, Policy Officer, Local Court of NSW, Judicial Commission of NSW, Sydney |
| 14 September | NSW Bar Association Bar Practice Course, September 2017, A day with a Judge, Land and Environment Court of NSW, Sydney |
| 4 October | Twilight seminar, Cultural Landscapes, presented by Professor Sharon Sullivan AO, Judicial Commission of NSW, Sydney |

6 December Twilight seminar, Climate change litigation: Lessons and pathways, presented by Professor Hari Osofsky, Robins Kaplan Professor, Faculty Director Energy Transition Lab Director, Joint Degree Program in Law, Science and Technology, University of Minnesota Law School and Professor Jacqueline Peel, Associate Dean, Melbourne Law Masters, Judicial Commission of NSW, Sydney

Speaking engagements

25 March *Making the Case for Restorative Justice in Environmental Law*, New South Wales Young Lawyers Environment and Planning Law Committee, Annual One Day Intensive - Environment and Planning Law, The Law Society of New South Wales

5 September Q & A Session with ANU Environmental Law Clinical Program students, hosted by the Environmental Defenders' Office, ACT, visit to the Land and Environment Court of NSW, Sydney

Membership of legal, cultural or benevolent organisations

Member, Judicial Conference of Australia

Member, NSW Bar Association

Delegations and international assistance

15 July- Hosted visiting Judges from the Adjudication Tribunal for Environment and
26 August Resources, The Supreme People's Court of the People's Republic of China, Land and Environment Court of NSW, Sydney

The Hon. Acting Justice Simon R Molesworth AO QC

Conferences and seminars

14 February Judicial Commission of NSW field trip, Renewal of Public Spaces, presented by Ms Karen Sweeney, Urban Forest Manager, City of Sydney, Hyde Park, Sydney

7 March Ngara Yura Program seminar, Motor Kite Dreaming Movie Night, Judicial Commission of NSW, Sydney

9 March Marla Pearlman Oration 2017, Should I Stay or Should I Go? Shaping International Responses to Climate Change, Disasters and Displacement, presented by Professor Jane McAdam, NSW Supreme Court, Sydney

24 March Presentation ceremony of the NSW/ACT 2017 Young Achiever Awards, including finalist and awardee presentations including Anika Molesworth, recipient of the NSW/ACT 2017 Young Achiever – Environment and Sustainability Award, SMC Conference & Function Centre, Sydney

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| 4 April | The Trump Administration and the Future of US Environmental Law, presented by Professor Robert L Glicksman, University of Sydney Law School, Sydney |
| 27 April | Twilight seminar, Recent Developments in the law of Evidence, presented by Mr Stephen Odgers SC, NSW Bar, Judicial Commission of NSW, Sydney |
| 4 May | Twilight seminar, Accommodating Muslims in Court, presented by Dr Ghena Krayem, Senior Lecturer, University of Sydney, Judicial Commission of NSW, Sydney |
| 18-19 May | Land and Environment Court of NSW 2017 Annual Conference, Parkroyal Hotel, Parramatta |
| 6 June | Judicial Commission of NSW field trip, Tour of the 'Money Box' 5 Martin Place, presented by Ms Megan Jones, TKD Architects, Sydney |
| 20 July | Launch of Judicial Commission of NSW Research Monograph 40: Transparent and consistent sentencing in the Land and Environment Court, presented by Mr Hugh Donnelly, Director, Research and Sentencing and Mr Michael Cain, Consultant, Judicial Commission of NSW, Sydney |
| 3 August | Twilight seminar, Environment and Resources Adjudication of China, presented by Presiding Judge Liu Xiaofei and Judge Cai Zhousen, Supreme People's Court of China Adjudication Tribunal for Environment and Resources, Land and Environment Court of NSW, Sydney |
| 9 August | Twilight seminar, Legal research on the iPad, presented by Alison Passé-de Silva, Policy Officer, Local Court of NSW, Judicial Commission of NSW, Sydney |
| 6 September | Farmers are key to a better future, presented by Ms Anika Molesworth, TEDxYouth@Sydney "Shifting the Future" Forum, Sydney Town Hall, Sydney |
| 11-16 September | 17th International Conference of National Trusts, International National Trusts Organisation & BPPI, the Indonesian Heritage Trust, Ibud, Bali, Indonesia |
| 4 October | Twilight seminar, Cultural Landscapes, presented by Professor Sharon Sullivan AO, Judicial Commission of NSW, Sydney |
| 13-15 October | NPWS Regional Advisory Committees Conference 2017, Murramarang National Park, South Coast, NSW |
| 19 October | Presentation ceremony of the NSW Government's Green Globe Awards 2017 |
| 20 October | Environment and Planning Law Association NSW (EPLA) 2017 Annual Conference, Sydney |

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| 24 October | Ngara Yura Program seminar, The Uluru Statement, presented by Professor Megan Davis, Mr Noel Pearson and Professor Rosalind Dixon (joint initiative with the NSW Bar Association and Law Society of NSW), Bar Association, Sydney |
| 29-31 October | 30 th Anniversary Annual Conference, Environment Institute of Australia and New Zealand (EIANZ), Wellington, New Zealand |
| 17 November | Repatriation ceremony of Mungo Man to Lake Mungo in the Willandra Lakes World Heritage Area, NSW |
| 6 December | Twilight seminar, Climate change litigation: Lessons and pathways, presented by Professor Hari Osofsky, Robins Kaplan Professor, Faculty Director Energy Transition Lab Director, Joint Degree Program in Law, Science and Technology, University of Minnesota Law School and Professor Jacqueline Peel, Associate Dean, Melbourne Law Masters, Judicial Commission of NSW, Sydney |

Speaking engagements

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| 1 May | <i>Climate Change, Refugees and International Human Rights: Sustaining Cultural Heritage</i> , University of Melbourne Law Students Society's Annual Environmental Law Lecture, Melbourne University, Melbourne, Victoria |
| 23 May | <i>The Right Hon. Sir William Molesworth (Bart) PC, MP, FRS – The Radical Aristocrat: Sir William Molesworth's formative influence on Australian history</i> a paper presented to a South Australian 2017 History Month Seminar, SAMHRI Centre, Adelaide, South Australia |
| 5 August | <i>World Heritage: Lessons from Sydney</i> , a presentation to a delegation of environmental judges from Bangladesh, Land and Environment Court of NSW, Sydney |
| 13 August | <i>Broken Hill – Australia's First Heritage City</i> , Vienna Cottage Annual Heritage Lecture, Hunters Hill, Sydney |
| 12 September | <i>Responding to Climate Change – Thirteen Essential Strategies</i> , paper presented to 17 th International Conference of National Trusts, International National Trusts Organisation & BPPI, the Indonesian Heritage Trust, Wana Ubud Resort, Ubud, Bali, Indonesia |
| 20 October | <i>Recent decisions of the Land and Environment Court of New South Wales</i> , a paper presented to the EPLA 2017 Annual Conference, Sydney |
| 30 October | Dinner address on the occasion of the award of the 2017 Annual EIANZ <i>Simon Molesworth Award for Outstanding Service to the EIANZ</i> , EIANZ 40 th Annual Conference, Wellington, New Zealand |
| 18 December | <i>The impacts of climate change on both natural and cultural World Heritage Sites</i> , a paper presented to the Climate Change Law Council, Macquarie University, Sydney |

Membership of legal, cultural or benevolent organisations

Member, Victorian Bar, Division B Part II (Judges, Associate Judges, Magistrates and Judicial Registrars List)

Fellow, Victorian Planning and Environment Law Association (VPELA)

Fellow, Australian Institute of Company Directors (AICD)

Fellow, Environment Institute of Australia and New Zealand (EIANZ)

Fellow, Australian Institute of Managers and Leaders (formerly the Australian Institute of Management) (AIML)

Honorary Fellow, Planning Institute of Australia (PIA)

Certified Environmental Practitioner, Australian C.Env.P Scheme, EIANZ

Accredited Professional Member, Australia ICOMOS

Honorary Life Member, Environment Institute of Australia and New Zealand (EIANZ)

Member, National Environment Law Association of Australia (NELA)

Board Director, Foundation Broken Hill (ACN 092 415 800)

Board Director, The Rippon Lea Endowment Fund Limited (ACN 083 011 858)

Board Director, Alternative Technology Association of Australia (ATA)

Chair, Environment Institute of Australia and New Zealand (EIANZ) Disciplinary Committee

Member & Deputy Chair, Far West Regional Advisory Committee, National Parks & Wildlife Service of NSW

Member, Broken Hill Regional Art Gallery Advisory Committee

Member, Broken Hill Heritage Advisory Committee

Member, Broken Hill Living Museum and Perfect Light Project Steering Committee

Patron, Broken Hill Historical Society Inc.

Patron, Bolton Clarke (formerly the Royal District Nursing Service)

Amicus Member & Immediate Past Honorary President & Chair, INTO – International National Trusts Organisation

Distinguished Alumni, Monash University

Honorary Life Member, National Trust of Australia (Victoria)

Honorary Life Member, Europa Nostra

Honorary Life Member, Din L-Art Helwa, The National Trust of Malta

Honorary Life Member, Emerge Australia - ME and Chronic Fatigue Syndrome Society of Victoria Inc.

Member, Australian Museum, NSW

Member, The Historic Houses Trust of NSW (Sydney Living Museums)

Member, Broken Hill Regional Art Gallery

Delegations and international assistance

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| 5 July | Presentation and then hosted all day guided speaking tour of Sydney's World Heritage sites with a delegation of Bangladesh environmental judges, under the auspices of the University of Western Sydney, Sydney |
| 25 July | Hosted delegation of Cambodian lawyers and law administrators, Land and Environment Court of NSW, Sydney |
| 1 August | Participated in a number of discussion sessions with Presiding Judge Liu Xiaofei, and Judge Cai Zhousen, Supreme People's Court of China Adjudication Tribunal for Environment and Resources, Land and Environment Court of NSW, Sydney |

Ms Rosemary Martin, Senior Commissioner

Conferences and seminars

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|---------------------------------|--|
| 2, 3, 9, 10, 16 and 17 February | Training course, Mediation: Skills, techniques and practice, Australian Disputes Centre, Sydney |
| 14 February | Judicial Commission of NSW field trip, Renewal of Public Places, Hyde Park, presented by Ms Karen Sweeney, Urban Forest Manager, City of Sydney |
| 6 March | Commissioner's Training Day, Land and Environment Court of NSW, Sydney |
| 27 April | Twilight seminar, Recent Developments in the Law of Evidence, presented by Mr Stephen Odgers SC, NSW Bar, Judicial Commission of NSW, Sydney |
| 4 May | Cross-jurisdictional seminar, Accommodating Muslims in Court, presented by Dr Ghena Krayem, Senior Lecturer, University of Sydney, Judicial Commission of NSW, Sydney |
| 18-19 May | Land and Environment Court 2017 Annual Conference, Parkroyal Hotel, Parramatta |
| 6 June | Judicial Commission of NSW field trip, Tour of the 'Money Box' 5 Martin Place, presented by Megan Jones, TDK Architects, Sydney |
| 3 August | Twilight seminar, Environment and Resource Adjudication of China, presented by Presiding Judge Lui Xiaofei and Judge Cai Zhousen, Supreme People's Court of China Adjudication Tribunal for Environment and Resources, Land and Environment Court of NSW, Sydney |
| 17 August | Twilight Seminar, Legal Research on the iPad, presented by Alison Passé-de Silva, Policy Officer, Local Court of NSW, Judicial Commission of NSW, Sydney |
| 4 October | Twilight Seminar, Cultural Landscapes, presented by Professor Sharon Sullivan AO, Judicial Commission of NSW, Sydney |

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| 24 October | Ngara Yura Program seminar, The Uluru Statement, presented by Professor Megan Davis, Mr Noel Pearson and Professor Rosalind Dixon (joint initiative with NSW Bar Association and Law Society of NSW), NSW Bar Association, Sydney |
| 20 November | Commissioner's Training Day, Land and Environment Court of NSW, Sydney |

Membership of legal, cultural or benevolent organisations

Member, Australian Institute of Company Directors

Member, Land and Environment Court of NSW Education Committee

Member, Land and Environment Court of NSW Library Committee

Member, Land and Environment Court of NSW Court Users Group

Nationally Accredited Mediator

Mr Graham Brown, Commissioner

Conferences and seminars

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| 6 March | Commissioner's Training Day, Land and Environment Court of NSW, Sydney |
| 27 April | Twilight seminar, Recent Developments in the Law of Evidence, presented by Mr Stephen Odgers SC, NSW Bar, Judicial Commission of NSW, Sydney |
| 4 May | Twilight seminar, Accommodating Muslims in Court, presented by Dr Ghena Krayem, Senior Lecturer, University of Sydney, Judicial Commission of NSW, Sydney |
| 18-19 May | Land and Environment Court 2017 Annual Conference, Parkroyal Hotel, Parramatta |
| 23 May | Cross-jurisdictional seminar, Reforming the Justice System: The Alchemy of Data, Leadership and Synergy, presented by Justice Rebecca Love Kourlis, Executive Director, Institute for the Advancement of the American Legal System, Judicial Commission of NSW, Sydney |
| 6 June | Judicial Commission of NSW field trip, Tour of the 'Money Box' 5 Martin Place, presented by Ms Megan Jones, TKD Architects, Sydney |
| 3 August | Twilight seminar, Environment and Resource Adjudication of China, presented by Presiding Judge Lui Xiaofei and Judge Cai Zhousen, Supreme People's Court of China Adjudication Tribunal for Environment and Resources, Land and Environment Court of NSW, Sydney |
| 17 August | Twilight seminar, Legal Research on the iPad, presented by Ms Alison Passé-de Silva, Policy Officer, Local Court of NSW, Judicial Commission of NSW, Sydney |

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| 4 October | Twilight seminar, Cultural Landscapes, presented by Professor Sharon Sullivan AO, Judicial Commission of NSW, Sydney |
| 19-20 October | Environment and Planning Law Association 2018 Annual Conference, Darling Harbour, Sydney |
| 20 November | Commissioner's Training Day, Land and Environment Court of NSW, Sydney |
| 6 December | Twilight seminar, Climate Change Litigation: Lessons and Pathways, presented by Professor Hari Osofsky, Robins Kaplan Professor; Faculty Director, Energy Transition Lab Director, Joint Degree Program in Law, Science and Technology, University of Minnesota Law School and Professor Jacqueline Peel, Associate Dean, Melbourne Law Masters. Judicial Commission of NSW, Sydney |

Membership of legal, cultural or benevolent organisations

Fellow, Planning Institute of Australia

Ms Susan Dixon, Commissioner

Conferences and seminars

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|-------------|---|
| 14 February | Judicial Commission of NSW field trip, Renewal of Public Spaces, Hyde Park, Ms Karen Sweeney, Urban Forest Manager, City of Sydney, Sydney |
| 6 March | Commissioner's Training Day, Land and Environment Court of NSW, Sydney |
| 27 April | Twilight seminar, Recent Developments in the Law of Evidence, presented by Mr Stephen Odgers SC, NSW Bar, Judicial Commission of NSW, Sydney |
| 4 May | Twilight seminar, Accommodating Muslims in Court, presented by Dr Ghena Krayem, Senior Lecturer, University of Sydney, Judicial Commission of NSW, Sydney |
| 18-19 May | Land and Environment Court 2017 Annual Conference, Parkroyal Hotel, Parramatta |
| 6 June | Judicial Commission of NSW field trip to the 'Money Box' 5 Martin Place, led by Ms Megan Jones, TKD Architects, Sydney |
| 3 August | Twilight seminar, Environment and Resource Adjudication of China, Presiding Judge Lui Xiaofei and Judge Cai Zhousen, Supreme People's Court of China Adjudication Tribunal for Environment and Resources, Land and Environment Court of NSW, Sydney |
| 9 August | Twilight seminar, Legal Research on the iPad, Ms Alison Passé-de Silva, Policy Officer, Local Court of NSW, Judicial Commission of NSW, Sydney |
| 20 November | Commissioner's Training Day, Land and Environment Court of NSW, Sydney |

6 December Twilight seminar, Climate change litigation: Lessons and pathways, presented by Professor Hari Osofsky, Robins Kaplan Professor, Faculty Director Energy Transition Lab Director, Joint Degree Program in Law, Science and Technology, University of Minnesota Law School and Professor Jacqueline Peel, Associate Dean, Melbourne Law Masters, Judicial Commission of NSW, Sydney

Speaking engagements

15 August 2017 *Operation of the Land and Environment Court*, Macquarie University Internship Students, Sydney

4 October *Mediation Workshop*, Macquarie University Internship Students, Sydney

10 October *Clause 4.6 Variation Presentation*, Planning Institute of Australia Seminar, Sydney

Membership of legal, cultural or benevolent organisations

Member, Council of Australasian Tribunals

Member, Institute of Arbitrators and Mediators Australia

Member, Australian Dispute Resolution Association Inc.

Ms Susan Morris, Commissioner

Conferences and seminars

14 February Judicial Commission of NSW field trip, Renewal of Public Places, Hyde Park, presented by Ms Karen Sweeney, Urban Forest Manager, City of Sydney

6 March Commissioner's Training Day, Land and Environment Court of NSW, Sydney

18-19 May Land and Environment Court 2017 Annual Conference, Parkroyal Hotel, Parramatta

6 June Judicial Commission of NSW field trip, Tour of the 'Money Box' 5 Martin Place, presented by Megan Jones, TDK Architects, Sydney

Membership of legal, cultural or benevolent organisations

Registered Planner, Planning Institute of Australia (CPP)

Ms Susan O'Neill, Commissioner

Conferences and seminars

14 February Judicial Commission of NSW field trip, Renewal of Public Places, Hyde Park, presented by Ms Karen Sweeney, Urban Forest Manager, City of Sydney, Sydney

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| 6 March | Commissioner's Training Day, Land and Environment Court of NSW, Sydney |
| 27 April | Twilight seminar, Recent Developments in the Law of Evidence, presented by Mr Stephen Odgers SC, NSW Bar, Judicial Commission of NSW, Sydney |
| 4 May | Cross-jurisdictional seminar, Accommodating Muslims in Court, presented by Dr Ghena Krayem, Senior Lecturer, University of Sydney, Judicial Commission of NSW, Sydney |
| 18-19 May | Land and Environment Court 2017 Annual Conference, Parkroyal Hotel, Parramatta |
| 6 June | Judicial Commission of NSW field trip, Tour of the 'Money Box' 5 Martin Place, presented by Megan Jones, TDK Architects, Sydney |
| 20 November | Commissioner's Training Day, Land and Environment Court of NSW, Sydney |

Membership of legal, cultural or benevolent organisations

Associate, Australian Institute of Architects

Nationally Accredited Mediator

Ms Danielle Dickson, Commissioner

Conferences and seminars

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|-------------|---|
| 14 February | Judicial Commission of NSW field trip, Renewal of Public Spaces, Hyde Park, presented by Ms Karen Sweeney, Urban Forest Manager, City of Sydney, Sydney |
| 6 March | Commissioner's Training Day, Land and Environment Court of NSW, Sydney |
| 9 March | Marla Pearlman Oration, Federal Court, Sydney |
| 4 May | Twilight seminar, Accommodating Muslims in Court, presented by Dr Ghena Krayem, Senior Lecturer, University of Sydney, Judicial Commission of NSW, Sydney |
| 18-19 May | Land and Environment Court 2017 Annual Conference, Parkroyal Hotel, Parramatta |
| 6 June | Judicial Commission of NSW field trip, Tour of the "The Money Box" 5 Martin Place, led by Megan Jones, TKD Architects, Sydney |
| 3 August | Twilight Seminar, Environment and Resource Adjudication of China, Presiding Judge Lui Xiaofei and Judge Cai Zhousen, Supreme People's Court of China Adjudication Tribunal for Environment and Resources, Land and Environment Court of NSW, Sydney |
| 4 October | Twilight seminar, Cultural Landscapes, Professor Sharon Sullivan AO, Judicial Commission of NSW, Sydney |

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| 20 November | Commissioner's Training Day, Land and Environment Court of NSW, Sydney |
| 6 December | Twilight seminar, Climate change litigation: Lessons and pathways, presented by Professor Hari Osofsky, Robins Kaplan Professor, Faculty Director Energy Transition Lab Director, Joint Degree Program in Law, Science and Technology, University of Minnesota Law School and Professor Jacqueline Peel, Associate Dean, Melbourne Law Masters, Judicial Commission of NSW, Sydney |

Membership of legal, cultural or benevolent organisations

Member, Planning Institute of Australia

Member, Resolution Institute

Mr Michael Chilcott, Commissioner

Conferences and seminars

| | |
|---------------------------------|--|
| 2, 3, 9, 10, 16 and 17 February | Training course, Mediation: Skills, techniques and practice, Australian Disputes Centre, Sydney |
| 14 February | Judicial Commission of NSW field trip, Renewal of Public Places, Hyde Park, presented by Ms Karen Sweeney, Urban Forest Manager, City of Sydney |
| 23 February | Seminar, Smarter water monitoring: Supporting environmental assessments at a project-specific level, presented by Dr Dan Evans, Beca, Environment Institute of Australia and New Zealand ('EIANZ') (NSW Div) |
| 1 March | Seminar, The true cost of litter, presented by Darren Perrin, Eunomia, Sharon Owens, NSW EPA and Blake Lindley, Edge Environment, EIANZ (NSW Div) |
| 6 March | Commissioners Training Day, Land and Environment Court of NSW, Sydney |
| 27 April | Twilight seminar, Recent Developments in the Law of Evidence, presented by Mr Stephen Odgers SC, NSW Bar, Judicial Commission of NSW, Sydney |
| 4 May | Cross-jurisdictional seminar, Accommodating Muslims in Court, presented by Dr Ghena Krayem, Senior Lecturer, University of Sydney, Judicial Commission of NSW, Sydney |
| 4 May | Seminar, Using digital technology to advance Sustainable Development Goals, presented by Dr Luis Neves, Chair, Global e-Sustainability Initiative, Environmental Professions Forum (EPF), Sydney |
| 17 May | Seminar, Changing face of Planning Approval Compliance: Changing face of Planning Approval Compliance, presented by Peter Briggs and Kirsty Rudd, EIANZ (NSW Div), Sydney |

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| 18-19 May | Land and Environment Court 2017 Annual Conference, Parkroyal Hotel, Parramatta |
| 6 June | Judicial Commission of NSW field trip, Tour of the 'Money Box' 5 Martin Place, presented by Megan Jones, TDK Architects, Sydney |
| 3 August | Twilight seminar, Environment and Resources Adjudication of China, presented by Presiding Judge Liu Xiaofei and Judge Cai Zhousen, Supreme People's Court of China Adjudication Tribunal for Environment and Resources, Land and Environment Court of NSW, Sydney |
| 17 August | Twilight seminar, Legal Research on the iPad, presented by Ms Alison Passé-de Silva, Policy Officer, Local Court of NSW, Judicial Commission of NSW, Sydney |
| 30 August | Seminar, Digital disruption, presented by Chris Fencher, CIO, NSW Department of Planning and Environment, Lee Stuart, Head of Sustainability of Fujitsu and Rick Walters, General Manager, Sustainability UGL, EIANZ (NSW Div), Sydney |
| 21 September | Seminar, Women in the Environment, presented by The Hon. Justice Nicola Pain, Land and Environment Court of NSW, Ms Jenny Macmahon, WSP and Erica van den Honert, DPE, EIANZ (NSW Div), Sydney |
| 4 October | Twilight seminar, Cultural Landscapes, presented by Professor Sharon Sullivan AO, Judicial Commission of NSW |
| 24 October | Ngara Yura Program seminar, The Uluru Statement, presented by Professor Megan Davis, Mr Noel Pearson and Professor Rosalind Dixon (joint initiative with NSW Bar Association and Law Society of NSW), NSW Bar Association, Sydney |
| 26 October | Seminar, Key stakeholder briefing on release of GSC city plans, Greater Sydney Commission, Sydney |
| 31-31 October | EIANZ 2017 Annual Conference, Wellington, New Zealand |
| 20 November | Commissioner's Training Day, Land and Environment Court of NSW, Sydney |
| 6 December | Twilight seminar, Climate change litigation: Lessons and pathways, presented by Professor Hari Osofsky, Robins Kaplan Professor, Faculty Director Energy Transition Lab Director, Joint Degree Program in Law, Science and Technology, University of Minnesota Law School and Professor Jacqueline Peel, Associate Dean, Melbourne Law Masters, Judicial Commission of NSW, Sydney |

Membership of legal, cultural or benevolent organisations

Member, Environment Institute of Australia and New Zealand (EIANZ)

Member, Rotary Club of Sydney

Speaking engagements

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| 30 October | <i>Opening conference address</i> , EIANZ 2017 Annual Conference, Te Papa, Wellington, New Zealand |
| 31 October | <i>Closing conference address</i> , EIANZ 2017 Annual Conference, Te Papa, Wellington, New Zealand |

Ms Jennifer Smithson, Commissioner

Conferences and seminars

| | |
|---------------------------------|--|
| 2, 3, 9, 10, 16 and 17 February | Training course, Mediation: Skills, techniques and practice, Australian Disputes Centre, Sydney |
| 6 March | Commissioner's Training Day, Land and Environment Court of NSW, Sydney |
| 4 May | Cross-jurisdictional seminar, Accommodating Muslims in Court, presented by Dr Ghena Krayem, Senior Lecturer, University of Sydney, Judicial Commission of NSW, Sydney |
| 18-19 May | Land and Environment Court 2017 Annual Conference, Parkroyal Hotel, Parramatta |
| 6 June | Judicial Commission of NSW field trip, Tour of the 'Money Box' 5 Martin Place, presented by Megan Jones, TDK Architects, Sydney |
| 9 August | Twilight seminar, Legal Research on the iPad, presented by Alison Passé-de Silva, Judicial Commission of NSW, Sydney |
| 20 November | Commissioner's Training Day, Land and Environment Court of NSW, Sydney |
| 6 December | Twilight seminar, Climate change litigation: Lessons and pathways, presented by Professor Hari Osofsky, Robins Kaplan Professor, Faculty Director Energy Transition Lab Director, Joint Degree Program in Law, Science and Technology, University of Minnesota Law School and Professor Jacqueline Peel, Associate Dean, Melbourne Law Masters, Judicial Commission of NSW, Sydney |

Membership of legal, cultural or benevolent organisations

Life Fellow, Planning Institute of Australia

Graduate, Australian Institute of Company Directors

Nationally Accredited Mediator

Ms Joanne Gray, Commissioner

Conferences and seminars

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| March-October | Graduate Certificate in Property and Planning (part-time), University of Technology Sydney Subjects completed: <i>Urban Design, Property Development Process, Sustainable Urban Development</i> |
| 14 February | Judicial Commission of NSW field trip, Renewal of Public Spaces, Hyde Park, presented by Ms Karen Sweeney, Urban Forest Manager for the City of Sydney, Sydney |
| 22 February | Lunch seminar, Ethics, presented by Linden Barnes, Law Society of NSW, Supreme Court, Sydney |
| 7 March | Land and Environment Court of NSW Commissioner training day, Land and Environment Court of NSW, Sydney |
| 6-7 April | Non-Adversarial Justice Conference, Australasian Institute of Judicial Administration, Sydney |
| 27 April | Twilight seminar, Recent Developments in the Law of Evidence, presented by Stephen Odgers SC, NSW Bar, Judicial Commission of NSW |
| 4 May | Twilight seminar, Accommodating Muslims In Court, presented by Dr Ghena Krayem, Senior Lecturer, University of Sydney Law School, Judicial Commission of NSW, Sydney |
| 18-19 May | Land and Environment Court of NSW Annual Conference 2017, Parkroyal Hotel, Parramatta |
| 6 June | Judicial Commission of NSW field trip, Tour of the “Money Box” 5 Martin Place, presented by Ms Megan Jones, TKD Architects, Sydney |
| 3 August | Twilight seminar, Environment and Resource Adjudication of China, presented by Presiding Judge Lui Xiaofei and Judge Cai Zhousen Supreme People’s Court of China Adjudication Tribunal for Environment and Resources, Land and Environment Court of NSW, Sydney |
| 9 August | Twilight seminar, Electronic Legal Research, presented by Alison Passé-de Silva, Judicial Commission of NSW, Sydney |
| 20 October | Environment and Planning Law Association 2017 Annual Conference, Lendlease Darling Quarter Theatre, Sydney |
| 20 November | Commissioner’s Training Day, Land and Environment Court of NSW, Sydney |
| 6 December | Twilight seminar, Climate change litigation: Lessons and pathways, presented by Professor Hari Osofsky, Robins Kaplan Professor, Faculty Director Energy Transition Lab Director, Joint Degree Program in Law, Science and Technology, University of Minnesota Law School and Professor Jacqueline Peel, Associate Dean, Melbourne Law Masters, Judicial Commission of NSW, Sydney |

Speaking engagements

| | |
|-------------|---|
| 6 March | <i>Court and Registry Practice</i> , Commissioner's Training Day, Land and Environment Court of NSW, Sydney |
| 25 March | <i>Update on Practice and Procedure - Demystifying Online Services</i> , presentation to the Law Society of NSW Annual One Day Intensive on Environment & Planning Law, Law Society of NSW, Sydney |
| 30 March | <i>New Practice Notes & Policy in the Land and Environment Court</i> , Environment and Planning Law Association Twilight Seminar, Bond Café, Sydney |
| 7 April | <i>Navigating proceedings through the multi-door court house: Moving beyond an 'adversarial' or 'non-adversarial' characterisation</i> , presentation at the Non-Adversarial Justice Conference, Australasian Institute of Judicial Administration, Parkroyal Darling Harbour, Sydney |
| 20 October | <i>Digital resources for advisers, experts and decision-makers</i> , presentation at the Environment & Planning Law Association 2017 Conference, Lendlease Darling Quarter Theatre, Sydney |
| 14 November | <i>Keynote address: Proceedings before the Land and Environment Court under the new Strata Schemes Development Act 2015</i> , College of Law Advanced Property Law Conference, St James Centre, Sydney |

Membership of legal, cultural or benevolent organisations

Member, Law Society of NSW

Ms Sarah Bish, Commissioner

Conferences and seminars

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| 3 August | Twilight seminar, Environment and Resources Adjudication of China, presented by Presiding Judge Liu Xiaofei and Judge Cai Zhousen, Supreme People's Court of China Adjudication Tribunal for Environment and Resources, Land and Environment Court of NSW, Sydney |
| 9 August | Twilight seminar, Legal Research on the iPad, presented by Ms Alison Passé-de Silva, Policy Officer, Local Court of NSW, Judicial Commission of NSW, Sydney |
| 20 November | Commissioners' Training Day, Land and Environment Court of NSW, Sydney |

Membership of legal, cultural or benevolent organisations

Member, Registered Engineers for Disaster Relief (RedR)

Member, Australian Civilian Corp (ACC)

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 2017

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| The Hon. Justice Brian J Preston SC, Chief Judge (Chair) | Land and Environment Court |
| Senior Commissioner Rosemary Martin | Land and Environment Court |
| Ms Joanne Gray/Ms Sarah Froh, Registrar | Land and Environment Court |
| Mr Peter Castor | Institute of Australian Consulting Aboriculturists |
| Mr Stephen Child | Australian Property Institute |
| Ms Lesley Finn | Law Society Development and Planning Committee, Law Society of New South Wales |
| Mr Aaron Gadiel | NSW Urban Taskforce |
| Mr Sam Haddad | Engineers Australia |
| Ms Sue Higginson/Ms Rana Koroglu/Mr David Morris | EDO NSW |
| Mr Clifford Ireland | New South Wales Bar Association |
| Mr James Johnson | Nature Conservation Council of New South Wales |
| Ms Sara Anderson/Ms Erin Gavin | Office of Environment and Heritage |
| Mr Bruce McCann | Local Government NSW |
| Ms Penny Murray | Urban Development Institute of Australia |

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| Ms Roslyn McCulloch/Dr James Smith | Environment and Planning Law Association NSW |
| Mr Michael Neustein | Royal Australian Institute of Architects (NSW Chapter) |
| 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 Donette Holm | Department of Planning & Environment |
| Mr Ian Woodward | Local Government Lawyers Group |
| Ms Carly Wood | Australian Institute of Landscape Architects |
| Mr Tim Walls/ Mr Mike Lichtwark | NSW Department of Industry |

Mining Court Users Group

A Mining Court Users Group was established in 2010 as a consultative committee comprising of representatives of the Court and representatives of mining related organisations and mining lawyers. The Group meets as needed 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.

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 (as need arises) 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 Preston SC, Chief Judge

The Hon. Justice Terry Sheahan AO

The Hon. Justice John Robson

Education Committee

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

Members

The Hon. Justice Nicola Pain (Chair)

The Hon. Justice Tim Moore

Senior Commissioner Rosemary Martin

Commissioner Susan O'Neill

Ms Joanne Gray/ Ms Sarah Froh, Registrar

Ms Una Doyle, Education Director, Judicial Commission of NSW

Library Committee

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

Members

The Hon. Justice Tim Moore (Chair)

Senior Commissioner Rosemary Martin

Ms Joanne Gray/ Ms Sarah Froh, Registrar

Mr Michael Unwin

Ms Larissa Reid

Ms Susan Ramsay

Ms Vanessa Blackmore

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 Tim Moore (Chair)

Ms Vicki Ferguson, Information & Research Officer

Land and Environment Court of NSW Judicial Newsletter

February 2017

Volume 9 Issue 1

Legislation

Statutes

Local Government Amendment (Governance and Planning) Act 2016 No 38 - published 25 November 2016, commenced certain amendments made by the *Local Government Amendment (Governance and Planning) Act 2016* to the *Local Government Act* 1993 that:

- require the Minister for Local Government to give notice to a council of the Minister's intention to appoint a financial controller, when giving notice of a proposed performance improvement order (*improvement order*) for the council;
- enable the Minister to appoint a financial controller to a council if the Minister issues an improvement order for the council;
- enable regulations to be made to establish criteria that must be considered by the Minister in deciding whether to appoint a financial controller to a council;
- provide for the operations of a financial controller once appointed; and
- enable regulations to be made to be considered by the Minister in deciding whether to appoint a temporary adviser to a council.

The *Strata Schemes Development Act* commenced 30 November 2016. The Act provides for:

- the subdivision of land, including create freehold strata schemes a
- the way in which lots and common areas can be dealt with; and
- the variation, termination and renewal of strata schemes.

The SSD Act provides (in Pt 10 Strata Schemes) that the Court has jurisdiction to make orders in relation to the redevelopment or sell for redevelopment of a strata scheme.

Legislation

Statutes

Regulations

- o Planning
- o Local Government
- o Water
- o Miscellaneous

Acts assented to but not yet in force

Acts assented to but not yet in force

Bills

State Environmental Planning Policies (SEPP)

Amendments

Miscellaneous

Civil Procedure Amendments

Mining Legislation Amendments

On Exhibition/Consultation

Judgments

United Kingdom

High Court of Australia

NSW Court of Appeal

Supreme Court of NSW

Land and Environment Court of NSW

Judicial Review

Compulsory Acquisition

Criminal

Contempt

Civil Enforcement

Aboriginal Land Claims

Valuation/Siting

Section 56A Appeals

Separate Question

Costs

Miscellaneous

Commissioner decisions

Court News

Arrivals/Departures

Land and Environment Court of NSW Judicial Newsletter

October 2017

Volume 9 Issue 3

Announcements

On Wednesday 1 November 2017, the Attorney General launched a video that provided information about the Paperless Trial Pilot Programme which has been conducted by the Court in two Class 3 Resumption Compensation matters. The video can be accessed through [this link](#). A fact sheet has also been prepared to provide information about the Paperless Trial Pilot Programme. The fact sheet can be accessed through [this link](#).

The Court has already scheduled a number of further Class 3 matters to be conducted on a "paperless" basis for the remainder of this year, and in 2018, and the first Class 1 Merit Appeal to be conducted on this basis will also take place in early 2018.

The Land and Environment Court's Annual Review 2016 is available and may be accessed through [this link](#).

Legislation

Statutes

• Planning:

Environmental Planning and Assessment Amendment (Staged Development Applications) Act 2017 - commenced 14 August 2017, amended the *Environmental Planning and Assessment Act 1979* to confirm the manner in which the staged development application provisions of that Act have operated prior to a recent decision of the NSW Court of Appeal that invalidated a State significant development consent for the Walsh Bay Arts Precinct (*Bay Simmer Investments Pty Ltd v State of New South Wales* [2017] NSWCA 135). That decision invalidates a staged development consent where a concept approval is followed by only 1 detailed development application or where the concept approval does not consider construction and other impacts arising from (and required to be assessed in connection with) the subsequent detailed development application. The Act validates previous decisions but does not render valid the development consent that the Court declared invalid in relation to the Walsh Bay Arts Precinct nor any subsequent development application lodged in reliance on that development consent.

Environmental Planning and Assessment Amendment (Sydney Drinking Water Catchment) Act 2017 - commenced 13 October 2017,

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