

The Land and Environment Court of NSW



Annual Review

2014

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Foreword from the Chief Judge

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

Traditionally, court administration performance is evaluated by quantitative output indicators based on the registrations (filings), finalisations, pending caseload and time taken between filing and finalisation. Prior to 2006, the Court's Annual Reviews had focused solely on these performance indicators. This year's Review continues the practice adopted in the last eight 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 470 written judgments. These judgments are published on the Court's website (http://www.lec.justice.nsw.gov.au/Pages/judgements/judgments.aspx#Online_judgments_). 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 **2014: 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 2013. Of particular significance are:

- A greater increase in total finalisations than the increase in total registrations, resulting in total pending caseload decreasing.
- A substantial improvement in the timeliness of the pending caseload, as measured by the backlog indicator, in Classes 1-3, but a slight decline in caseload timeliness in Classes 4-8.
- An improvement in the total clearance rate for matters in all classes and for matters in Classes 1-3 to exceed 100%, however a decline in the clearance rate for matters in Classes 4-8.
- An increase in the percentage of matters in all classes finalised pre-trial (to the highest percentage in the last five years).
- An increase in the number of matters in Classes 1-3 finalised by means of s 34 and s 34AA conciliation conferences and on-site hearings, although because of the significant increase in registrations, this represents a lower percentage.
- All judges and commissioners met the standard for continuing professional development.

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

- The time taken to finalise matters increased in all classes except for Classes 2 and 6.
- A decline in the percentage of reserved judgments delivered within 14, 30 and 90 days of hearing.
- The median number of pre-hearing attendances increased in Classes 3, 4 and 5, but was maintained in Classes 1, 2, 6 and 8.

Reforms and developments

During 2014, reforms occurred in the following areas:

- Introduction of a new Practice Note – Subpoena Practices;
- Adoption of a new summons to be used in judicial review proceedings;
- Review of planning principles.
- New information on the Court's website; 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 2014, the Court's Annual Conference was held at the Palais Royale Boutique Hotel, Katoomba. The Court held four twilight seminars in 2014, one field trip, one site visit and there were also two 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 2014, 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 2014, 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

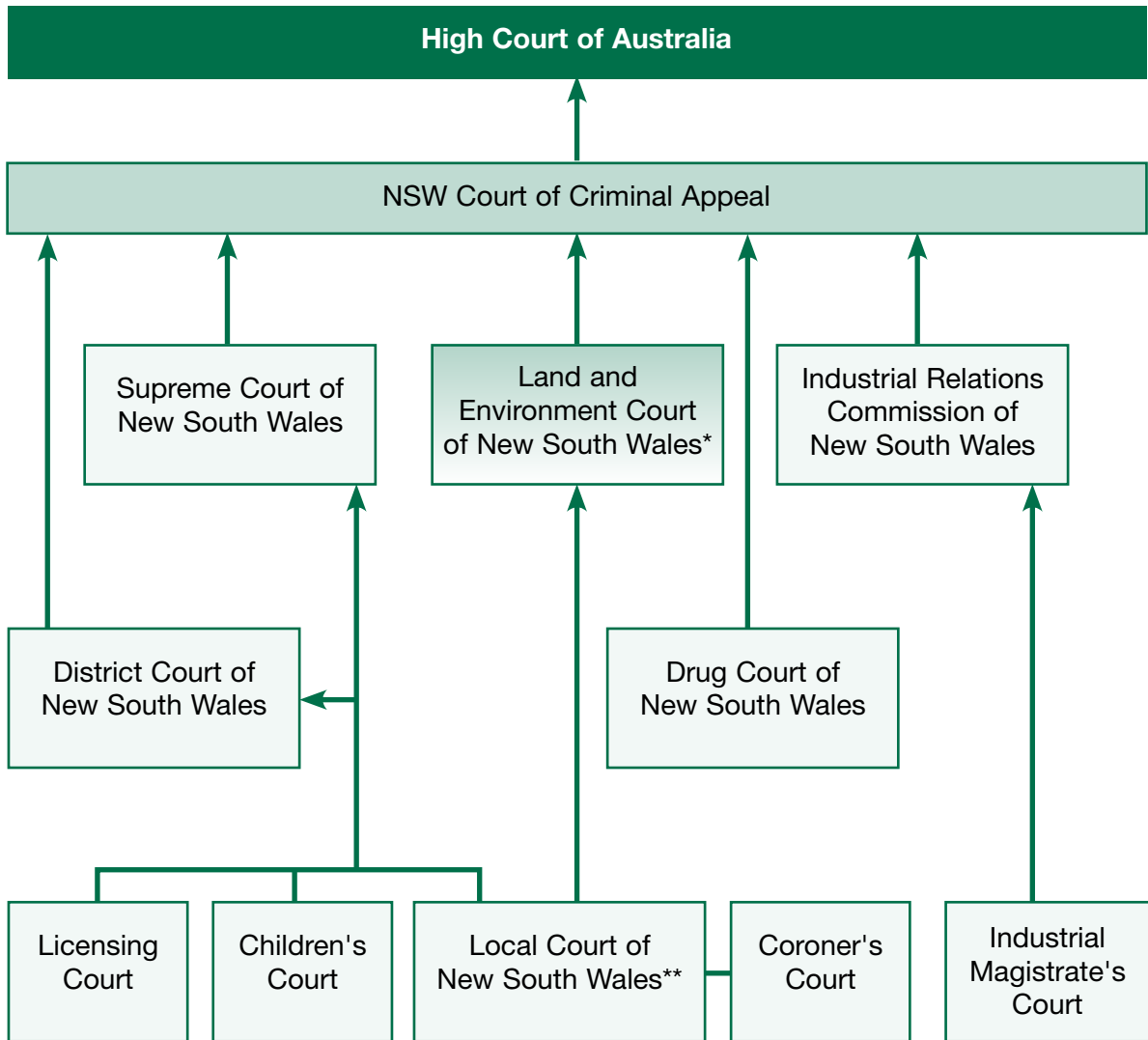
Class 1	environmental planning and protection appeals (merits review appeals)
Class 2	local government, trees and miscellaneous appeals (merits review appeals)
Class 3	land tenure, valuation, rating and compensation matters (merits review appeals)
Class 4	environmental planning and protection (civil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

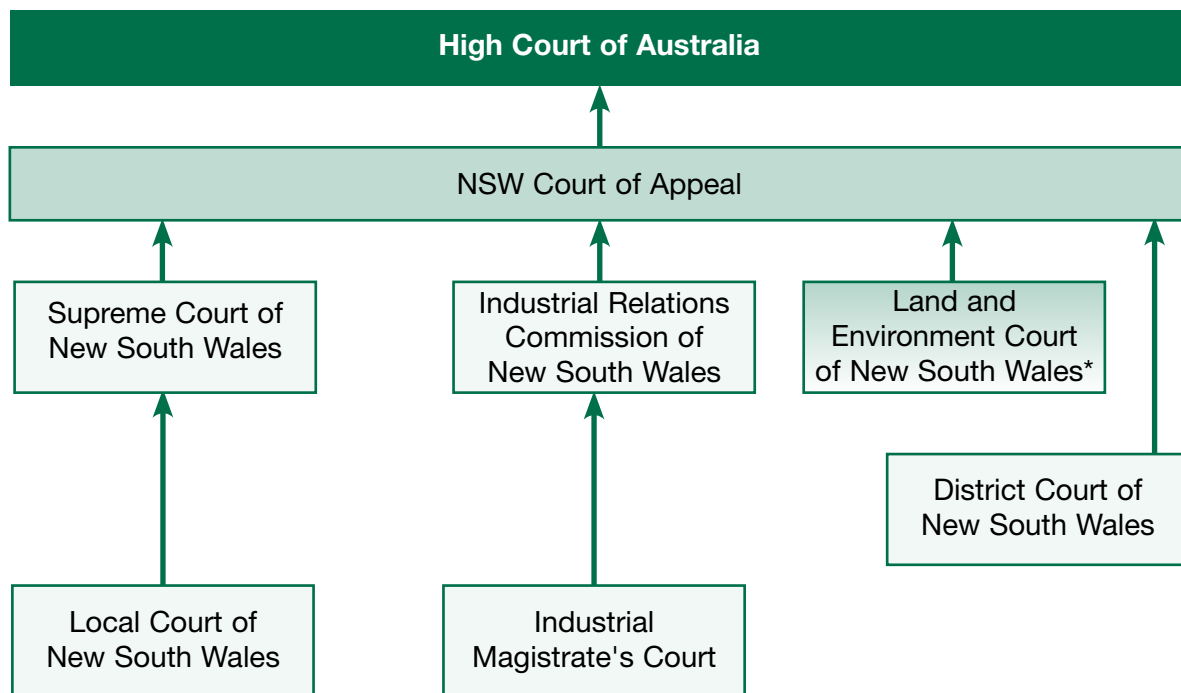
Figure 2.1 New South Wales Court System – Criminal Jurisdiction



* 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.

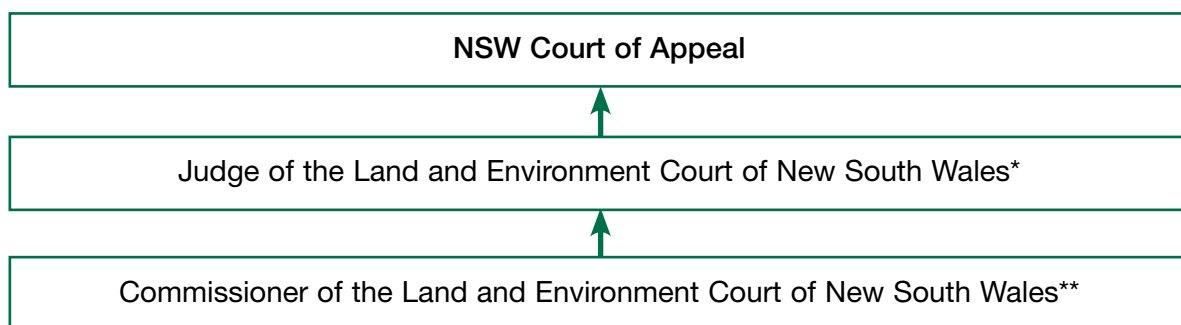
** Appeals from the Local Court of New South Wales to the Land and Environment Court are with respect to an environmental offence under the *Crimes (Appeal and Review) Act 2001* and are in Classes 6 and 7 of the Land and Environment Court's jurisdiction.

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 2014, the Judges, in order of seniority, were as follows:

Chief Judge

The Honourable Justice Brian John Preston SC

Judges

The Honourable Justice Terence William Sheahan AO

The Honourable Justice Nicola Hope Margaret Pain

The Honourable Justice Peter Meldrum Biscoe

The Honourable Justice Rachel Ann Pepper

The Honourable Justice Malcolm Graeme Craig

Acting Judges

There were no Acting Judges during 2014.

The Commissioners

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

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

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

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



Court hearing

sit with a Judge, or that two or more Commissioners sit together to hear Class 1, 2 and 3 matters.

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

As at 31 December 2014, the Commissioners were as follows:

Senior Commissioner

Mr Tim Moore

Commissioners

Mr Graham T Brown

Ms Annelise Tuor

Ms Susan A Dixon

Ms Linda Pearson

Ms Judy A Fakes

Ms Susan I Morris

Ms Susan T O'Neill

Acting Commissioners

Associate Professor Dr Paul Adam AM – botanist and ecologist

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

Ms Lisa Durland – arboricultural consultant

Mr David Galwey – arboricultural consultant

Mr Robert Hussey – engineer

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

Mr E Craig Miller – valuer and mediator

Dr David Parker – valuer and mediator

Mr Michael Ritchie – environmental scientist and mediator



*L-R back: Commissioners Susan O'Neill, Sue Morris and Graham Brown, Senior Commissioner Tim Moore and Commissioner Susan Dixon
L-R front: Commissioners Annelise Tuor, Bob Hussey, Judy Fakes and Linda Pearson*

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

Ms Jennifer Smithson – town planner

Mr Ross Speers – engineer

Professor Sharon Sullivan AO – heritage consultant

Mr Michael Whelan – surveyor, mediator and arbitrator

The Registrars

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

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

As at 31 December 2014, the Registrars were as follows:

Registrar

Ms Joanne Gray (on maternity leave during 2014)

Acting Registrar

Ms Leonie Walton

Assistant Registrar and Manager Court Services

Ms Maria Anastasi

Appointments and retirements

Appointments

Mr Robert Hussey was appointed as an Acting Commissioner of the Court on 15 October 2014.

Mr John Maston was appointed as an Acting Commissioner of the Court on 15 October 2014.

Ms Lisa Durland was appointed as an Acting Commissioner of the Court on 28 May 2014.

Mr Norman Laing was appointed as an Acting Commissioner of the Court on 28 May 2014.

Mr Ross Speers was appointed as an Acting Commissioner of the Court on 28 May 2014.

Retirements

Mr Robert Hussey retired as a Commissioner of the Court on 31 August 2014 after 21 years of service.

Supporting the Court: the Registry

The Court Registry comprises the following four sections:

Client Services

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

Listings

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

Information and Research

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

Commissioner Support

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



Lodging documents at the Registry

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 eCourt hearing (see Types of Directions Hearings below).

At the directions hearing, the Registrar will review the matter and make appropriate

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

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

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

Class 2: Tree disputes

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

The Court manages a separate list for tree disputes. About 69% of the parties in this type of proceeding are self-represented. The application is returnable before a Commissioner assigned to manage the list. This first court attendance can be either a telephone conference or in court. The Commissioner explains the process of preparation for and hearing of the application.

The Commissioner explores whether the parties may be able to resolve the dispute between themselves without court orders authorising interference with or removal of

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

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

Class 3

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

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

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

Commissioner with special knowledge and expertise in valuation of land.

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

Class 4

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

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

The practice and procedure governing Class 4 proceedings is described in the Practice Note Class 4 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. The Commissioner for Mining makes appropriate directions for the orderly, efficient and proper preparation for trial. Class 8 proceedings must be heard by a Judge or a Commissioner for Mining. Information on Class 8, and mining legislation and cases, are available on the

special pages for mining on the Court's website.

Types of directions hearings

The Court offers court users three types of directions hearing:

in-court directions hearing

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

telephone directions hearing

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

eCourt directions hearing

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

In general, the initial allocations for directions hearings are:

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

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

In 2014, the Court experienced an increase from 2013 in the use of eCourt callover and recorded 1,474 registered eCourt users (1,389 in 2013). The Court is recognised nationally as a leader in eCourt case management.

Class 1 hearing options

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

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

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

Alternative Dispute Resolution

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

- conciliation;
- mediation; and
- neutral evaluation.

Conciliation

Conciliation is a process in which the parties to a dispute, with the assistance of an impartial conciliator, identify the issues in dispute, develop options, consider alternatives and endeavour to reach agreement. The conciliator may have an advisory role on the content of the dispute or the outcome of its resolution, but not

a determinative role. The conciliator may advise on or determine the process of conciliation whereby resolution is attempted, and may make suggestions for terms of settlement, give expert advice on likely settlement terms, and may actively encourage the parties to reach agreement.

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

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

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

If the parties are not able to agree either about the substantive outcome or that the Commissioner should dispose of the proceedings, the Commissioner terminates the conciliation conference and refers the proceedings back to the Court for the purpose of being fixed for a hearing before another Commissioner. In that event, the conciliation Commissioner makes a written report to the Court stating that no agreement was reached and the conference has been terminated and setting out what in the Commissioner's view are the issues

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

Table 3.1 shows the comparison between the number of conciliation conferences in 2010-2014.

Table 3.1 s 34 and s 34AA Conciliation Conferences 2010 – 2014

	2010	2011	2012	2013	2014
ss 34 and 34AA conferences	632	637	911	899	1,169

(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 2010 and 2014, with an additional 270 matters in 2014 compared to 2013.

Mediation

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

The Court may, at the request of the parties or of its own volition, refer proceedings in Classes 1, 2, 3, 4 and 8 to mediation. The Court provides a mediation service at no cost to the parties by referral to the



An on-site conciliation conference facilitated by Commissioner Annelise Tuor

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 2010 to 2014. 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.

Table 3.2 Mediations in 2010 – 2014

		2010	2011	2012	2013	2014
Classes 1 and 2	Total:	3	4	5	0	3
	Internal	3	4	3	0	3
	External	0	0	2	0	0
	Number finalised pre-hearing	0	3	4	0	2
	% finalised pre-hearing	0	75	80	0	67
Class 3	Total:	6	4	9	9	4
	Internal	3	3	5	7	4
	External	3	1	4	2	0
	Number finalised pre-hearing	5	4	9	9	3
	% finalised pre-hearing	83	100	100	100	75
Class 4	Total:	6	8	9	9	22
	Internal	3	5	8	8	17
	External	3	3	1	1	5
	Number finalised pre-hearing	6	7	8	7	18
	% finalised pre-hearing	100	88	89	88	82
All Classes	Total:	15	16	23	18	29
	Internal	9	12	16	15	24
	External	6	4	7	3	5
	Number finalised pre-hearing	11	14	21	16	23
	% finalised pre-hearing	73	88	91	89	79

The number of mediations in 2014 in Classes 1 and 2 increased slightly from 2013 and in Class 3 decreased from 2013. 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. Mediations in Class 4 between 2013 and 2014 increased substantially.

Neutral evaluation

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

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

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

4 Reforms and Developments

- New Practice Note
- New summons for judicial review proceedings
- Review of planning principles
- New information on the Court's website
- 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 2014, reforms occurred in the following areas:

- A new Practice Note – Subpoena Practices
- A new summons for judicial review proceedings
- Review of planning principles
- New information on the Court’s website
- 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 Practice Note

The Court made one new Practice Note during 2014, Practice Note – Subpoena Practices (which commenced on 2 January 2015). The purpose of this practice note is to inform parties and the producing person of new procedures and practices in the Court in relation to:

- (i) the ability to nominate a convenient return date on the subpoena before filing the subpoena;
- (ii) the Court’s default access orders;
- (iii) changes to the operation of the return of subpoena list;
- (iv) the Court’s preferred practice in relation to the format of documents being produced in response to a subpoena;

- (v) the Court’s practice in relation to accessing subpoenaed material produced in an electronic format;
- (vi) the Court’s practice in relation to the production of bulky material; and
- (vii) the Court’s practice in returning exhibits and subpoenaed material.

The new procedures are similar to the procedure used in the Supreme Court of New South Wales.

New summons for judicial review proceedings

A new Class 4 Summons was introduced from 5 March 2014 to be used in all Class 4 Judicial Review proceedings – Form 85 (version 1) which can be found on the Court’s website at http://www.lec.justice.nsw.gov.au/Documents/ucpr_form_85_v1.pdf.

The existing Form 4A or Form 4B (version 3) is to be used in all other Class 4 proceedings.

Review of planning principles

To ensure consistency of decision making in merits review appeals, the Chief Judge has encouraged the Judges and Commissioners to develop planning principles in their judgments in appropriate cases or to refine existing planning principles published in earlier judgments of the Court.

A planning principle is a statement of a desirable outcome from, a chain of reasoning aimed at reaching, or a list of appropriate matters to be considered in making, a planning decision. While planning

principles are stated in general terms, they may be applied to particular cases to promote consistency. Planning principles are not legally binding and they do not prevail over environmental planning instruments and development control plans.

Planning principles assist when making a planning decision, including where there is a void in policy, or where policies expressed in qualitative terms allow for more than one interpretation, or where policies lack clarity.

In November 2013, the Commissioners of the Court decided that it would be appropriate to undertake a review of the

continuing relevance of the 42 planning principles that had, as at that time, been adopted. The purpose of the review was to determine whether or not any of the planning principles should be revised or abandoned. The review has been an ongoing one with Commissioners giving effect to the outcomes of the review, on a planning principle by planning principle basis, as an appropriate case has arisen. During 2014, eight planning principles were dealt with through the review process with five of them being confirmed, two being modified and one set aside as not warranting further use. These are set out in detail in the table below:

Principle reviewed	Review outcome	Reviewing decision
<i>Anglican Church Property Trust v Sydney City Council</i> [2003] NSWLEC 353	The principle is no longer to apply	<i>Comino v Council of the City of Sydney</i> [2014] NSWLEC 1211 (O'Neill C)
<i>Project Venture Developments v Pittwater Council</i> [2005] NSWLEC 191; (2005) 141 LGERA 80	Confirmed as having continuing relevance without amendment	<i>Revelop Projects Pty Limited v Parramatta City Council</i> [2014] NSWLEC 1167 (Moore SC)
<i>Randall Pty Ltd v Leichhardt Council</i> [2004] NSWLEC 277	Confirmed as having continuing relevance without amendment	<i>The Presbyterian Church (New South Wales) Property Trust v Woollahra Municipal Council</i> [2014] NSWLEC 1218 (Moore SC)
<i>Seaside Property Developments Pty Ltd v Wyong Shire Council</i> [2004] NSWLEC 117; (2004) 136 LGERA 111	The principles in Seaside Property remain relevant in relation to the comments on the zone boundary interface but not relevant in relation to the comments on the location of private open space	<i>Doolan v Strathfield Municipal Council</i> [2014] NSWLEC 1212 (Brown C)

<i>Super Studio v Waverley Council</i> [2004] NSWLEC 91	<i>Davies v Penrith City Council</i> [2013] NSWLEC 1141 superseded the first limb of the planning principle in <i>Super Studio</i> . As a consequence, the first limb of this planning principle is no longer to be applied.	<i>Meriton Property Services Pty Limited v Minister for Planning and Infrastructure</i> [2013] NSWLEC 1260 (Moore SC and Pearson C)
<i>Tenacity Consulting v Warringah Council</i> [2004] NSWLEC 140	Confirmed as having continuing relevance without amendment	<i>Stamford Property Services Pty Limited v Council of the City of Sydney</i> [2014] NSWLEC 1206 (Moore SC)
<i>Veloshin v Randwick Council</i> [2007] NSWLEC 428	Confirmed as having continuing relevance without amendment	<i>Doolan v Strathfield Municipal Council</i> [2014] NSWLEC 1212 (Brown C)
<i>Vinson v Randwick Council</i> [2005] NSWLEC 142; (2005) 141 LGERA 27	Confirmed as having continuing relevance without amendment	<i>The Presbyterian Church (New South Wales) Property Trust v Woollahra Municipal Council</i> [2014] NSWLEC 1218 (Moore SC)

New information on the Court's website

The Court's website was relaunched on 10 September 2014 in line with the updates that occurred to all websites under the Department of Justice. The address of the website also changed to www.lec.justice.nsw.gov.au

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 2014, 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 2012 and 2013 Annual Reviews, the Court has undertaken the following actions, grouped under the areas of court excellence:

1. Court leadership and management:

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

2. Court planning and policies

- adopting a new practice note for subpoenas practices;
- adopting a new summons for judicial review proceedings.

3. Court proceedings:

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

4. Public trust and confidence and

5. User satisfaction:

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

6. Court resources:

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

7. Affordable and accessible services:

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

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 and 2014 are available on the Court's website at Publications and Resources then Database metrics and statistics.

From the five years of data available from the project, it can be seen that there remains a continuing widespread citation of decisions of this Court in other jurisdictions. For example, 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 2014, decisions of this Court had been cited

a further 29 times by courts and tribunals in Western Australia. Similar positions apply to other Australian jurisdictions as can be seen by a comparison between the December 2014 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 twice during 2014 by the Supreme Court of New Zealand.

The full range of courts and tribunals (43 in total) that have cited cases from this Court's AustLII database can be seen by accessing the December 2014 metrics on the Court's website.

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 2014, 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 2010 and 2014 are summarised in Table 5.1.

Table 5.1 Caseload Statistics

	2010	2011	2012	2013	2014
Class 1					
Registrations	584	631	625	521	692
Restored	25	28	11	22	10
Pre-Trial Disposals	410	410	524	386	468
Disposed by Hearing	229	202	196	135	124
Pending	223	270	188	211	320
Class 2					
Registrations	151	159	135	114	103
Restored	5	11	10	7	7
Pre-Trial Disposals	29	50	47	40	41
Disposed by Hearing	99	137	105	86	77
Pending	61	47	42	37	29
Class 3					
Registrations	193	215	325	202	87
Restored	7	6	11	7	21
Pre-Trial Disposals	205	136	184	171	267
Disposed by Hearing	33	35	34	39	55
Pending	120	170	288	284	71
Class 4					
Registrations	129	145	123	102	133
Restored	26	17	34	27	13
Pre-Trial Disposals	95	77	86	75	91
Disposed by Hearing	63	67	97	52	44
Pending	83	103	81	86	96
Class 5					
Registrations	43	100	57	74	74
Restored	5	3	16	3	2
Pre-Trial Disposals	8	12	63	11	7
Disposed by Hearing	47	25	61	48	42
Pending	57	123	72	90	118

Class 6

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

Class 8

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

TOTAL

Registrations	1,115	1,263	1,282	1,024	1,104
Restored	73	67	84	68	54
Pre-Trial Disposals	755	689	906	687	874
Disposed by Hearing	479	478	503	372	353
Pending	551	722	684	717	649

Table 5.1 shows the following trends between 2010 and 2014:

- Total registrations and restorations (1158) have increased since 2013, mainly due to the significant increase in Class 1 registrations.
- Total finalisations (1227) increased from the low in 2013 to be comparable to finalisations in 2012.
- Total finalisations (1227) were higher than total registrations (1158) in 2014, resulting in the total pending caseload (649) decreasing in 2014.
- Merits review and other civil proceedings finalised in Classes 1, 2 and 3 (1032) comprised 84% of the Court's finalised caseload (1227) in 2014.
- Civil and criminal proceedings in Classes 4, 5, 6, 7 and 8 (195) comprised 16% of the Court's finalised caseload (1227) in 2014.
- The means of finalisation in 2014 were 71% pre-trial disposals (including by use of alternative dispute resolution processes and negotiated settlement) and 29% by adjudication by the Court. This is an increase from 2013 and makes it the highest figure of pre-trial disposals in five years, as Table 5.2 shows.

Table 5.2 Means of Finalisation – All Matters

	2010	2011	2012	2013	2014
Total matters finalised – all classes	1,234	1,167	1,409	1,059	1,227
Total pre-trial finalisations	755	689	906	687	874
% matters finalised pre-trial	61	59	64	65	71

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

shows, 35% of appeals in Classes 1, 2 and 3 were finalised by these means. Of the total of 363 matters, 291 matters were finalised by s 34 and s 34AA conciliation conferences and 72 matters by on-site hearings.

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

	2010	2011	2012	2013	2014
Total matters finalised	1,005	1,050	1,090	857	1,032
s 34 and s 34AA conferences and on-site hearings	322	331	399	345	363
% s 34 and s 34AA other matters finalised on-site	32.0	31.5	36.6	40.3	35.1

Court performance by class of jurisdiction

A brief summary of the Court's performance in 2014 for each of the eight classes of jurisdiction is provided.

Class 1

Registrations and restorations of Class 1 matters in 2014 increased by 30% and finalisations increased by 14%, resulting in an increase of 52% in the pending caseload. Class 1 registrations represent 61% of all filings in the Court in 2014.

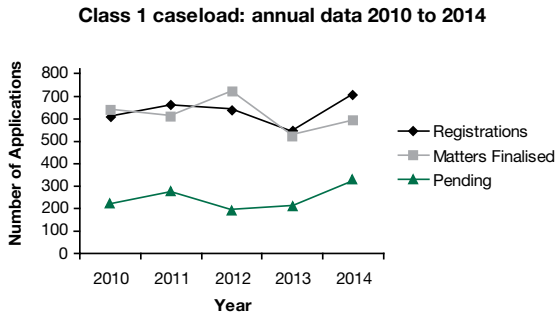
Class 1 matters constitute the bulk of the Court's finalised caseload (48%). 62% of all Class 1 matters finalised were appeals under s 97 of the *Environmental Planning and Assessment Act 1979* relating to development applications. 59% of the

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

Of the remaining matters finalised in 2014, 18% were applications to modify a development consent under s 96 of the *Environmental Planning and Assessment Act 1979* and 8% were appeals against council orders and the actual or deemed refusal by councils to issue building certificates. Applications for costs, appeals under s 56A of the Court Act against a Commissioner's decision, and prevention/remediation notices constituted the remaining matters in Class 1.

Figure 5.1 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 1 between 2010 to 2014.

Figure 5.1

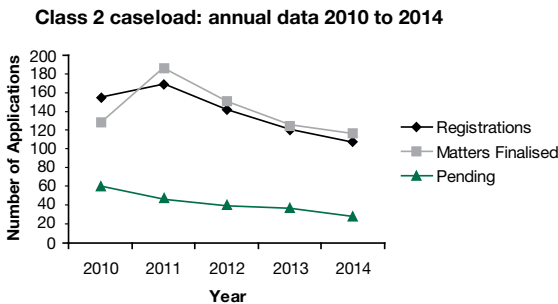


Class 2

Class 2 registrations and restorations in 2014 decreased by 9% from 2013 and represented 9% of total registrations in the Court in 2014. The number of Class 2 matters finalised in 2014 represented 10% of the Court’s finalised caseload (down 6% from 2013). 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 2010 to 2014.

Figure 5.2



Class 3

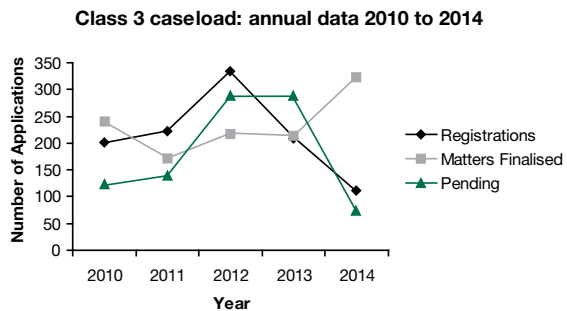
Class 3 of the Court’s jurisdiction encompasses a range of proceedings including claims for compensation as a result of the compulsory acquisition of land, valuation and rating appeals and some Aboriginal land rights matters.

New registrations in Class 3 decreased by 57% in 2014. Valuation and rating appeals accounted for 52% of new Class 3 appeals in 2014. Compensation claims for compulsory acquisition of land constituted 29% of all Class 3 appeals registered in 2014.

Of the matters finalised in 2014, 64% were valuation or rating appeals, 17% were compensation claims and 19% were other matters. There was a 53% increase in completions from 2013, and the pending caseload decreased by 75% from 2013.

Figure 5.3 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 3 between 2010 and 2014.

Figure 5.3

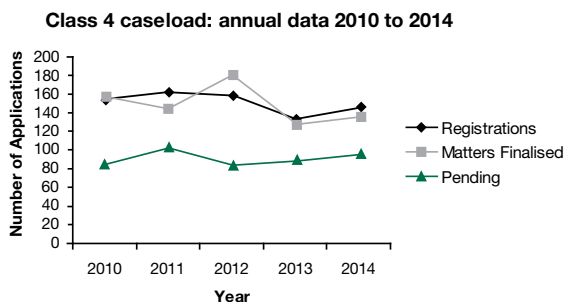


Class 4

New Class 4 registrations increased by 30% and finalisations increased by 6% in 2014 resulting in the pending caseload increasing by 11%. Class 4 matters finalised in 2014 constituted 11% of the Court's finalised caseload. Of the Class 4 matters finalised in 2014, 56% were initiated by councils.

Figure 5.4 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 4 between 2010 and 2014.

Figure 5.4



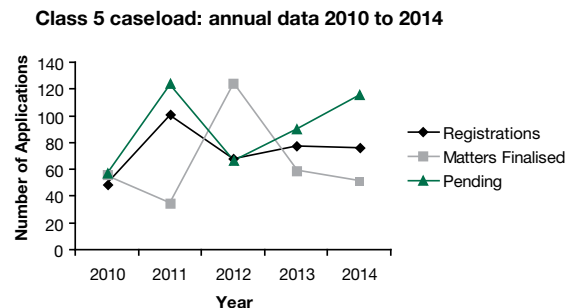
Class 5

There was no change in new Class 5 registrations in 2014. The Environment Protection Authority/Office of Environment and Heritage initiated 41% of all new registrations. The number of matters initiated by local councils increased to 51%, up from 18% in 2013.

17% less matters were finalised in 2014. Of the 42 matters finalised by hearings in 2014, convictions were recorded in 34, six were withdrawn and nine were dismissed. Fines for convictions and remediation orders ranged from \$9,750 for a breach of a development consent to \$175,000 for breach of a licence causing air pollution. No community service orders were issued in 2014.

Figure 5.5 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 5 between 2010 to 2014.

Figure 5.5



Classes 6 and 7

Six new Class 6 appeals were filed, two of which were finalised. There were no Class 7 appeals before the Court in 2014.

Class 8

Nine mining matters were filed in 2014, four of which were finalised. Two pending matters were completed, including one restored for costs. The pending caseload increased by three matters.

Measuring Court performance

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

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

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

Output indicators of access to justice

Affordability

Access to justice is facilitated by ensuring affordability of litigation in the Court. One indicator of affordability is the fees paid by applicants. Lower court fees help keep courts accessible to those with less financial means. However, ensuring a high standard of court administration service quality (so as to achieve the objective of effectiveness) requires financial resources. These days, a primary source of revenue

to fund court administration is court fees. The Land and Environment Court is no exception. It was necessary in 2014 to increase court fees by 2.9% to be able to balance the Court's budget and ensure a high standard of court administration service quality (effective 1 July 2014). Notwithstanding the increase, the increased court fees still meet criteria of equity.

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

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

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

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

and indeed before the establishment of the Land and Environment Court were conducted in, the Supreme Court. The court fees for these proceedings are comparable to those charged by the Supreme Court.

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

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

Accessibility

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

Geographical accessibility

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

hearing by means of telephone or eCourt; enabling communication between the Court and parties and their legal representatives by email and facsimile; conducting final hearings on the site of the dispute; and sitting in country courthouses proximate to the parties.

The Court identifies and especially case manages country matters. A matter is a country matter if it is outside the area bordered by the local government areas of Wollongong, Blue Mountains and Gosford. In 2014, 21% of matters finalised were country matters.

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

Secondly, the Court pioneered the use of eCourt directions hearings. This involves the parties or their representatives posting electronic requests to the Registrar using the internet and the Registrar responding. This also mitigates the tyranny of distance. Again, eCourt directions hearings are used extensively in country matters. Parties appeared by eCourt directions hearing in 59% of Class 1 country matters and 66% of Class 3 country matters in 2014.

Table 5.4 shows the percentage of pre-hearing attendances conducted by eCourt directions hearings and telephone directions hearings in Classes 1-4 in 2014.

Table 5.4 eCourt and Telephone Directions Hearings

Class	No of cases	Total pre-hearing attendances	% eCourt directions hearings	% Telephone directions hearings
1	585	2,905	22	5
2	118	205	7	19
3	322	2,335	11	0.2
4	130	813	13	0.2
All	1,155	6,248	17	3

Thirdly, proceedings in Classes 1, 2 and 3 are commonly referred to conciliation under s 34 of the Court Act. Conciliation conferences are frequently held on the site of the dispute. 45% of Class 1 country matters and 35% of Class 3 country matters had a s 34 conciliation conference.

Fourthly, conduct of the whole or part of a hearing on the site of the dispute also means that the Court comes to the litigants. An official on-site hearing involves conducting the whole hearing on-site. This type of hearing is required where there has been a direction that an appeal under ss 96, 96AA, 97, 121ZK or 149F of the *Environmental Planning and Assessment Act 1979* or s 7 of the *Trees (Disputes Between Neighbours) Act 2006* be conducted as an on-site hearing. The hearing is conducted as a conference presided over by a Commissioner on the site of the development. In 2014,

10% of matters (in Classes 1 and 2) were conducted as an on-site hearing, of which 19% were country matters.

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

Fifthly, the Court regularly holds court hearings in country locations. Table 5.5 shows hearings held in a country courthouse for 2014.

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
Bellingen	1						
Coffs Harbour	1						
East Maitland	1						
Forster	2						
Gosford	2						
Kiama	1						
Lightning Ridge							3
Lismore	2						
Moree	1						
Murwillumbah	3						
Muswellbrook	2						
Newcastle	1						
Nowra	1						
Picton	2						
Queanbeyan	1						
Quirindi				1			
Taree	2						
Tweed Heads	2						
Young	1						
TOTAL	26			1			3

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 2014, all of the full-time Commissioners and a number of the Acting Commissioners of the Court were qualified for national accreditation as a mediator and could provide in-house mediation for parties. In addition, the Court encourages and will make appropriate arrangements for mediation by external mediators. Informal mechanisms such as case management conferences also encourage negotiation and settlement of matters.

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

Facilitating public participation

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

Responsiveness to the needs of users

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

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

the community to assist the Court to be responsive to the needs of users.

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

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

In 2014, 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 2014 are set out in Table 5.6.

Table 5.6 Backlog Indicator (LEC time standards)

	Unit	LEC Standards	2010	2011	2012	2013	2014
Class 1							
Pending caseload	no.		223	270	188	210	320
Cases > 6 months	%	5	17.5	19.3	14.4	14.8	14.1
Cases > 12 months	%	0	4.9	2.6	3.2	5.2	4.1
Class 2							
Pending caseload	no.		61	47	42	37	29
Cases > 6 months	%	5	4.9	0	0	0	3.4
Cases > 12 months	%	0	0	0	0	0	0
Class 3							
Pending caseload	no.		120	170	288	284	71
Cases > 6 months	%	5	44.2	44.1	63.2	79.9	46.5
Cases > 12 months	%	0	15.0	21.8	11.8	62.0	26.8
Class 4							
Pending caseload	no.		83	103	81	86	96
Cases > 8 months	%	5	33.7	30.1	40.7	38.4	39.6
Cases > 16 months	%	0	14.5	15.5	18.5	23.3	17.7

Class 5

Pending caseload	no.		57	123	72	90	118
Cases > 8 months	%	5	63.2	28.4	50.0	58.9	56.8
Cases > 16 months	%	0	15.8	25.2	20.8	31.1	33.1

Class 6

Pending caseload	no.		2	4	5	6	8
Cases > 8 months	%	5	100.0	50.0	40.0	16.7	50.0
Cases > 16 months	%	0	0	0	40.0	0	37.5

Class 8

Pending caseload	no.		4	1	6	4	7
Cases > 8 months	%	5	25.0	50.0	33.3	50.0	28.6
Cases > 16 months	%	0	0	0	0	0	14.3

Class 1- 3

Pending caseload	no.		404	487	518	531	420
Cases > 6 months	%	5	23.5	26.5	40.5	48.6	18.8
Cases > 12 months	%	0	7.2	9.0	7.7	35.2	7.6

Class 4 – 8

Pending caseload	no.		152	233	166	186	229
Cases > 8 months	%	5	26.3	29.6	44.0	47.8	48.5
Cases > 16 months	%	0	10.5	20.2	19.8	25.8	26.2

These backlog figures need some explanation:

- Class 1: The backlog figures for pending caseloads greater than 6 months and also greater than 12 months decreased in 2014 compared to 2013. The total pending caseload in Class 1 increased during 2014 due to the increase in registrations. The timeliness of case processing of Class 1 matters therefore improved in 2014 compared to 2013.
- Class 2: There was only one case pending in Class 2 for more than 6 months and none for more than 12 months. This is a continuing highly commendable result. The pending caseload decreased slightly.
- Class 3: The backlog figures in 2014 for pending caseload greater than 6 months decreased substantially to 46.5% and for cases greater than 12 months also decreased substantially to 26.8%. Total pending caseload decreased significantly to 71, the lowest figure in the last five years. Hence, the timeliness of case processing of Class 3 matters improved substantially in 2014.
- Class 4: There was a slight increase in the backlog figure for pending caseload exceeding 8 months and a decrease for pending caseload greater than 16 months. There were more total registrations than total finalisations of Class 4 matters in 2014, resulting in a slight increase in

the total pending caseload in Class 4. However, this has not lead to a material increase in the backlog figures for Class 4 matters.

- Class 5: The backlog figures for pending caseload exceeding the 8 month standard decreased slightly and the backlog figures for pending caseload greater than 16 months increased slightly. The total pending caseload in Class 5 increased as a result of registrations significantly exceeding finalisations. Again, however, this has not resulted in a material increase in the backlog figure for Class 5 matters.

- Class 6: There were only a small number of appeals in Class 6. There was a significant percentage increase in appeals greater than 8 months and a smaller percentage increase in appeal cases greater than 16 months, but these represent only a handful of cases.

- Class 8: There was an increase in pending caseload, but only two cases were pending greater than 8 months and one case was pending for greater than 16 months.

If the national time standards are used, the results of the backlog indicator for the Court in 2014 are as shown in the table below:

Table 5.7 Backlog indicator (national time standards)

	Unit	National Standards	2010	2011	2012	2013	2014
Class 1							
Pending caseload	no.		223	270	188	210	320
Cases > 12 months	%	10	4.9	2.6	3.2	5.2	4.1
Cases > 24 months	%	0	0	0.4	0.5	1.4	0.6
Class 2							
Pending caseload	no.		61	47	42	37	29
Cases > 12 months	%	10	0	0	0	0	0
Cases > 24 months	%	0	0	0	0	0	0
Class 3							
Pending caseload	no.		120	170	288	284	71
Cases > 12 months	%	10	15.0	21.8	11.8	62.0	26.8
Cases > 24 months	%	0	5.8	2.4	4.5	6.2	8.5
Class 4							
Pending caseload	no.		83	103	81	86	96
Cases > 12 months	%	10	21.7	20.4	28.4	31.4	26.0
Cases > 24 months	%	0	2.4	8.7	7.4	11.6	13.5

Class 5

Pending caseload	no.		57	123	72	90	118
Cases > 12 months	%	10	52.7	28.5	34.7	44.4	50.0
Cases > 24 months	%	0	5.3	20.3	18.1	25.6	22.9

Class 6

Pending caseload	no.		2	4	5	6	8
Cases > 12 months	%	10	0	0	40.0	16.7	50.0
Cases > 24 months	%	0	0	0	0	0	12.5

Class 8

Pending caseload	no.		4	2	6	4	7
Cases > 12 months	%	10	0	0	16.7	50.0	14.3
Cases > 24 months	%	0	0	0	0	0	0

This table shows that the Court's performance in Classes 1 and 2 better or meets the national standard for 12 months and 24 months. The Court's performance in Class 3 has significantly improved in 2014 compared to 2013 for the standard for 12 months but slightly deteriorated for the standard for 24 months. The Court's performance in Classes 4 and 5 is worse than the national standards although comparable to previous years. The Court's performance in Classes 6, 7 and 8 is above the national standard for 12 months and 24 months. However, there are only a small number of cases involved in these Classes. The reasons for the Court's performance are given in the explanation of the backlog indicator (LEC time standards).

Time standards for finalisation of cases

The backlog indicator is a measure of the timeliness of the pending caseload. The Court also measures the timeliness of completed cases by comparing the time taken for finalisation of cases in each class to the Court's time standards. The higher the percentage of cases completed by each time standard and the shorter the time period to complete 95% of the cases, the better the Court's performance. Table 5.8 sets out the Court's performance in finalising cases in each class in compliance with the Court's time standards for the period 2010-2014.

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

	2010	2011	2012	2013	2014
Class 1					
No. of cases	639	612	720	521	592
% < 6 months	75	77	78	80	78
% < 12 months	97	96	97	97	96
95% completed within (months)	11	11	11	9	10
Class 2					
No. of cases	128	187	152	126	118
% < 6 months	95	94	93	98	97
% < 12 months	99	99	98	100	100
95% completed within (months)	6	6	6	5	5
Class 3					
No. of cases	238	171	218	211	322
% < 6 months	44	53	44	59	25
% < 12 months	81	74	79	81	38
95% completed within (months)	19	21	20	21	28
Class 4					
No. of cases	158	144	183	127	135
% < 8 months	73	73	73	73	66
% < 16 months	94	90	91	91	87
95% completed within (months)	19	20	22	25	27
Class 5					
No. of cases	55	37	124	59	49
% < 8 months	56	47	19	61	45
% < 16 months	76	79	82	90	71
95% completed within (months)	20	29	28	18	34
Class 6					
No. of cases	11	7	9	8	4
% < 8 months	100	100	100	63	100
% < 16 months	100	100	100	80	100
95% completed within (months)	5	11	6	30	8
Class 8					
No. of cases	5	9	3	8	7
% < 8 months	100	89	100	75	71
% < 16 months	100	100	100	88	71
95% completed within (months)	6	9	17	19	22

The table shows that in 2014, compared to 2013, the Court improved or maintained its performance by reducing or maintaining the time taken to finalise cases in Classes 2 and 6. In Class 1, there was a marginal increase in the time taken to finalise cases. In Classes 3, 4 and 5, the percentage of cases finalised in less than 6 months and less than 12 months deteriorated and the time taken to complete 95% of the matters increased. This is the poorest performance in the last five years in these Classes. The number of matters in Class 8 is small, so delay in one or two matters disproportionately affects the percentages.

Time standards for delivery of reserved judgments

The Court may dispose of proceedings by judgment delivered at the conclusion of the hearing (ex tempore judgment) or at a later date when judgment is reserved by the Court (reserved judgment). A substantial number of judgments (35%) 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 2014 for reserved judgments being delivered within 14 days met the standard but declined for reserved judgments delivered within 30 days. For the 90 days standard, the Court's performance was maintained at a similar level to the previous five years but was still less than the standard. The Court's performance in meeting judgment timeliness standards is an average of the performance of all individual decision-makers, both Commissioners and Judges, in matters in all classes of the Court's jurisdiction.

Table 5.9 Reserved judgments compliance with time standards

	Standard	2010	2011	2012	2013	2014
% delivered within 14 days	50	39	41	50	57	51
% delivered within 30 days	75	55	62	66	73	67
% delivered within 90 days	100	81	83	86	87	85

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

	2010	2011	2012	2013	2014
Class 1	11	20	10	9	2
Class 2	1	1	1	0	1
Class 3	1	2	5	7	5
Class 4	12	28	12	11	10
Class 5	3	13	2	3	3
Classes 6 and 7	0	0	0	2	0
Class 8	0	1	0	0	0
Total	28*¹	65*²	30*³	32*⁴	21*⁵

*¹ In 2010, 71% of inquiries (20) concerned judges' reserved judgments and 29% (8) concerned commissioners' judgments.

*² In 2011, 80% of inquiries (52) concerned judges' reserved judgments and 20% (13) concerned commissioners' reserved judgments.

*³ In 2012, 73% of inquiries (22) concerned judges' reserved judgments and 27% (8) concerned commissioners' reserved judgments.

*⁴ In 2013, 97% of inquiries (31) concerned judges' reserved judgments and 3% (1) concerned commissioners' reserved judgments.

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

The Chief Judge investigated each inquiry made in 2014 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

	2010	2011	2012	2013	2014
	%	%	%	%	%
Class 1	104.9	92.9	113.2	95.9	84.3
Class 2	82.1	110.0	104.8	104.1	107.2
Class 3	119.0	77.4	64.9	100.5	298.1
Class 4	101.9	88.9	116.6	98.4	92.5
Class 5	114.6	35.2	169.9	76.6	64.5
Class 6	84.6	87.5	90.0	88.9	66.7
Class 8	71.4	128.6	33.3	200.0	70.0
Classes 1-3	104.1	92.4	97.6	98.2	112.2
Classes 4-8	102.7	70.4	128.1	92.2	81.9
Total	103.9	87.7	103.1	97.0	106.0

These figures show that the total clearance rate for all matters improved and exceeded 100% (106.0%), as did the clearance rate for matters in Classes 1-3 (112.2%). However, the total clearance rate for matters in Classes 4-8 declined (to 81.9%).

The total clearance rate for matters in Classes 2 and 3 exceeded 100% in 2014 leading to a decrease in the pending caseload in these classes.

The clearance rate for matters in Class 1 (84.3%) reflects the proportionately greater increase in registrations compared to finalisations in 2014. The clearance rate for matters in Class 4 is just below 100% (92.5%) also due to a proportionately greater increase in registrations compared to finalisations. The lower clearance rate for Class 5 matters was caused by a decrease in finalisations.

The clearance rate for matters in Classes 6 and 8, although less than 100% (66.7% and 70% respectively), represents 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 2010-2014.

Table 5.12 Median number of pre-hearing attendances by Class

	2010	2011	2012	2013	2014
Class 1	4	3	3	4	4
Class 2	1	1	1	1	1
Class 3: (all matters)	6	5	6	5	7
Compensation claims	9	9	12	6	12
Valuation objections	6	3	6	4	6
Miscellaneous	5	7	4	6	7
Class 4	3	3	3	3	5
Class 5	5	3	7	3	5
Class 6	2	13	3	2	2
Class 8	1	3	5	4	4

The table reveals that the number of pre-hearing attendances stayed constant for matters in Classes 1, 2, 6 and 8 between 2013 and 2014. The number of pre-hearing attendances for all matters in Class 3 increased, but of significance is the substantial increase in attendances for compensation claims to the same number as in 2012. The number of pre-hearing attendances for valuation objections also increased. The number of pre-hearing attendances also increased in Classes 4 and 5 from 2013. This is a disappointing regression.

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 2014, 17 s 56A appeals were commenced, two appeals were settled pre-hearing, 14 were completed after a hearing, and eight remained pending at 31 December 2014.

Of the 14 appeals that were completed at hearing, five were upheld. This represents 0.9% of the number of matters in Classes 1, 2, 3 and 8 disposed of by a decision of a Commissioner of the Court in 2014 (541 matters).

Table 5.13 s 56A Appeal outcomes

	2010	2011	2012	2013	2014
Total no. of appeals	14	14	29	12	17
No. finalised pre-hearing	3	4	11	2	2
No. of appeals to hearing	15	16	17	15	14
Outcome:					
Upheld	4	8	2	5	5
Dismissed	11	8	15	10	9

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

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

In 2014, 13 appeals were lodged with the Court of Appeal and one appeal was lodged with the Court of Criminal Appeal. The number of appeals to these appellate courts in 2014 is shown in Table 5.14 below.

The table reflects the distinctions drawn in the legislation and rules between, firstly, a notice of appeal and a summons seeking leave to appeal and, secondly, a notice of appeal and a notice of intention to appeal. In respect of the second distinction, rather than immediately appeal, a party may

lodge a notice of intention to appeal, the effect of which is to extend the time within which an appeal may be lodged. However, many parties do not subsequently lodge an appeal.

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

Table 5.14 Appeals to the appellate courts

	2010	2011	2012	2013	2014
Court of Appeal					
Notice of Intention to appeal	27	22	14	13	17
Notice of appeal	18	25	17	10	13
Total	41	44	29	21	24
Court of Criminal Appeal					
Notice of Intention to appeal	9	0	2	3	1
Notice of appeal	0	1	1	2	1
Stated case, section 5AE	0	0	2	0	2
Total	9	1	5	5	3

Complaints

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

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

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

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

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

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

Complaints received and finalised

In 2014, the Court received six formal complaints.

Table 5.15 gives particulars about the complaints made and dealt with in 2014 and the outcomes.

Table 5.15 Complaint particulars

Complaints pending as at 31 December 2014	0
Complaints made during 2014	6
Total number of complaints	6
Complaints examined but dismissed	5
Complaints not dismissed but dealt with by the Chief Judge	1
Complaints referred by Chief Judge to Complaint Committee	0
Complaint withdrawn	0
Total number of complaints finalised	6
Complaints pending as at 31 December 2014	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 2014, Commissioners exercised the functions of undertaking conciliations, mediations, on-site hearings or court hearings in 541 matters in Classes 1, 2 and 3 and 8. Complaints, therefore, occurred in only 1% 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 2014. More than one criterion may be used for each complaint. The table shows that five of the six complaints were dismissed.

Table 5.16 Criteria for dismissing complaints

No misconduct was established	5
The complaint related to a judicial or other function that is or was subject to adequate appeal review rights	3

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 2014. 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

	2014
Bias, collusion or conflict of interest	3
Delay	0
Dissatisfaction with substantive outcome or wrong decision	3
Dissatisfaction with procedural and evidentiary rulings	3
Error interpreting or applying the law	2
Failure of Court to enforce judgment or orders	0
Failure to give fair hearing	2
Impairment	0
Inadequate reasons for judgment	1
Inappropriate behaviour or comments or discourtesy	3
Incompetence	0

Substitution for appeals or review

Many of the complaints made amount, in essence, to a complaint that a Commissioner has made the wrong decision. These complaints are often made in apparent substitution of an appeal against the decision of 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 2014, three of the complaints were that the Commissioners had made wrong findings of fact on the evidence and made the wrong substantive decision. Three complaints were that the Commissioners made wrong rulings about the procedure and conduct of the hearing or the evidence to be admitted. Two of the complaints were that the Commissioners wrongly interpreted and applied the law. 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. Persons other than parties to proceedings, such as local residents, can misunderstand the dispute resolution process being utilised.

In 2014, one of the complaints was made by a neighbour of the site of the proposed development. The Court had arranged a conciliation conference between the parties, the developer and the local council. At that conciliation conference, the parties reached agreement that the proposed development should be approved. The Commissioner made orders in accordance with the parties' agreement, as she was required by the Court Act to do. The neighbour who was not a party complained that the Commissioner had not conducted a full hearing and given a reasoned judgment. This complaint revealed a misunderstanding about the difference between conciliation and adjudication and the obligations of a Commissioner conducting a conciliation.

Inappropriate conduct or discourtesy

One of the complaints was that the Commissioner had made inaccurate and inappropriate comments during the hearing. During the course of a self-represented litigant making submissions on whether the Court should grant leave to amend the plans for an application to modify a development, the Commissioner threatened to modify other aspects of the development than those aspects that were the subject of the modification application before the Court for determination. The Commissioner's comment was inaccurate in law and inappropriate. This complaint was upheld and the Commissioner counselled.

6 Education and Community Involvement

- Continuing professional development
 - Continuing professional development policy
 - Annual Court Conference 2014
 - 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 2014

The Annual Court Conference for 2014 was held on Thursday 29 May and Friday 30 May 2014 at the Palais Royale Boutique Hotel, Katoomba. Six Judges, nine Commissioners, seven Acting Commissioners and the Acting Registrar attended the conference. The conference was organised in partnership with the Judicial Commission of New South Wales. The two day conference programme included sessions on:

- Update on Practice, Procedure, Legislation and Jurisdiction

- The Internationalisation of Public Law in Australia
- Field Trip: Planning for Bushfire Protection
- Mediation and Conciliation: What Have We Learnt?
- Litigants in Person – The Good, the Bad and the Ugly
- Judicial Bullying
- Unreasonable Litigants
- Complaints to the Judicial Commission
- Responding to Unreasonably Persistent Litigants



*Field Trip: Planning for Bushfire Protection
Presenters: Mr Corey Shackleton, Group Manager Community Resilience and Superintendent David Jones, District Manager, NSW Rural Fire Service*

Twilight seminar series

The Court commenced its twilight seminar series in November 2008. The seminars are held after court hours from 4.30pm to 6.00pm. The Court held four twilight seminars in 2014, and there were also two cross-jurisdictional seminars, one field trip and one site visit:

12 February	Judicial Commission field trip, Tree Tour of the Royal Botanic Gardens Sydney, led by Mr David Bidwell, Senior Horticulturist, Arboriculture and Commissioner Judy Fakes
18 March	Cross-jurisdictional twilight seminar, Stress and Vicarious Trauma for Judges, presented by Professor Stephen J Woods, School of Law and Justice, Southern Cross University, Supreme Court of NSW
19 March	Twilight seminar, Overview of Regulatory Scheme for Building Professionals, presented by Mr George Maltabarow, President of the Building Professionals Board, commentary by His Honour Judge Kevin O'Connor AM, Judicial Commission of NSW
16 July	Twilight seminar, Social Media, presented by Ms Julia Virgo, Special Counsel, Clayton Utz, Judicial Commission of NSW
24 September	Twilight seminar, Criminal Law Update, presented by Justice Lucy McCallum, Judicial Commission of NSW
15 October	Judicial Commission site visit, Tour of One Central Park with Mr Michael Goldrick, Director Project Management, Frasers Property Group, Broadway
20 October	Cross jurisdictional twilight seminar, Administrative Law Update – Recent Developments in the High Court and Overseas, presented by Justice John Basten and Justice Mark Leeming, Supreme Court of NSW
26 November	Conciliation and Mediation in the Land and Environment Court, presented by The Hon. Justice Philip Hallen, Commissioner Linda Pearson, Commissioner Graham Brown and Acting Registrar Leonie Walton, Judicial Commission of NSW

National Mediator Accreditation

In 2014, all full-time Commissioners 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.

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 2014, both the

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

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

Table 6.1 Participant evaluation of Land and Environment Court Annual Conferences 2010 to 2014

	Target	2010	2011	2012	2013	2014
Overall satisfactory rating	85%	87%	90%	80%	90%	89%

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

The Court's twilight seminar series commenced in 2008 but had its first full year of operation in 2009. Figure 6.2 shows the

overall satisfaction of the twilight seminar series in the years 2010 to 2014, all of which exceeded the 85% standard.

Table 6.2 Participant evaluation of Land and Environment Court Twilight seminar series 2010 to 2014

	Target	2010	2011	2012	2013	2014
Overall satisfactory rating	85%	90%	93%	93%	88%	86%

Note: 2010 and 2011 were based on 7 seminars in each year; 2012 was based on 4 seminars, 2 cross-jurisdictional seminars and 2 field trips and one skills workshop on Communication in the courtroom; 2013 was based on 6 seminars, one cross-jurisdictional seminar and one field trip; and 2014 was based on four seminars, two cross-jurisdictional seminars, one field trip and one site visit.

The Education Director of the Judicial Commission provides an evaluation report on each educational programme to the Court's Education Committee about the

usefulness and relevance of the programme, noting any recommendations for improvements to future programmes based on input from participants and presenters.

Publications

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

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

Beginning in January 2010, the Court publishes quarterly on the Court's website a Judicial Newsletter for the benefit of members of the Court and the wider public to better enable them to keep up to date with recent legal developments. The Newsletter provides summaries of recent legislation and judicial decisions of the High Court of Australia, NSW Court of Appeal, NSW Court of Criminal

Appeal, NSW Supreme Court and Land and Environment Court, as well as of other courts in Australia and overseas, concerning matters of relevance to the Court's jurisdiction. In the electronic version of the Newsletter published on the Court's website under the tab 'Publications & Resources' then Judicial Newsletters, links are included in the text to enable direct access to the legislation, documents and decisions referred to in the text.

Education and participation in the community

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

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

Individual Judges' and Commissioners' activities

The Judges' and Commissioners' activities during 2014 are summarised below:

The Hon. Justice Brian John Preston SC, Chief Judge

Conferences and seminars

12 February	Judicial Commission field trip, Tree Tour of the Royal Botanic Gardens Sydney, led by Mr David Bidwell, Senior Horticulturist, Arboriculture and Commissioner Judy Fakes
27 February	Women Lawyers Association of NSW, Celebrating Women in the Judiciary Event, The Union University & Schools Club, Sydney
18 March	Cross-jurisdictional twilight seminar, Stress and Vicarious Trauma for Judges, presented by Professor Stephen J Woods, School of Law and Justice, Southern Cross University, Supreme Court of NSW
19 March	Twilight seminar, Overview of Regulatory Scheme for Building Professionals, presented by Mr George Maltabarow, President of the Building Professionals Board, commentary by His Honour Judge Kevin O'Connor AM, Judicial Commission of NSW
22 March	Ngara Yura Program Community Visit: site visit to the Aboriginal Heritage Office Museum and Keeping Place, Northbridge, led by Mr David Watts, Aboriginal Heritage Manager
24 March	Australian Academy of Law Event, visit by Professor Ricky Revesz, New York University Law School, Herbert Smith Freehills, Sydney
27 May	Book launch by The Hon. James Spigelman AC QC of Murray Gleeson – The Smiler, biography written by Mr Michael Pelly, journalist, Federal Court of Australia
24 June	Reception for the 15th anniversary of the China-Australia Technical Cooperation, hosted by Emeritus Professor Gillian Triggs, President, Australian Human Rights Commission, Sydney
31 July – 2 August	Supreme Court Annual Conference, Novotel Wollongong
18 August	NSW Bar Association CPD Seminar 'Aspects of Judicial Review' and book launch by The Hon. Michael Kirby AC CMG of Judicial Review: The Laws of Australia, Mark Robinson SC (ed)
26 August	Council of Australasian Tribunals Whitmore Lecture 2014, Australian Exceptionalism: Human rights treaties and Australian Law, presented by Emeritus Professor Gillian Triggs, President of the Human Rights Commission
18-19 September	National Judicial College of Australia, Witness Reliability and Credibility Program, Supreme Court of Queensland, Brisbane

23 September	Farewell reception for Her Excellency Professor The Honourable Dame Marie Bashir AD CVO, Governor of NSW, Law Courts Building
24-26 September	International Association for Court Administration, 7th International Conference, Sydney
24 September	Twilight seminar, Criminal Law Update, presented by The Hon. Lucy McCallum, Judicial Commission of NSW
5 November	Australian Association of Constitutional Law (AACL) seminar, The Principle of Legality, presented by Mr Brendan Lim, Barrister, Federal Court of Australia
17 November	Inaugural Spigelman Public Law Oration, "The Doctrine of Deference" presented by The Hon. Justice Stephen Gageler at NSW Bar Association and followed by the Public Law Section dinner

Speaking Engagements

14 February	<i>Progressing the understanding and implementation of ecologically sustainable development (ESD) in government decision making in the ACT</i> , second part of a two part presentation with Dr Gerry Bates, Adjunct Professor, University of Sydney to ACT Government officials, ACT Government Offices, Canberra
29 May	<i>Update on Jurisdiction Practice and Procedure</i> , a paper presented to the Land and Environment Court Annual Conference, Katoomba
3 July	<i>Unconventional Natural Gas in the Courts: An Overview</i> , a paper presented to the 12 th IUCN Academy of Environmental Law Colloquium, Tarragona, Spain
18 August	<i>Overview of the Land and Environment Court</i> , a presentation to Environmental Law students from Macquarie University as part of their Environmental Law Clinic component
12 September	<i>Internalising ecocentrism in environmental law</i> , a paper presented to the Australian Earth Laws Alliance (AELA) Symposium, 'New trends in environmental law and governance', Allens Linklaters, Sydney
17 September	Book launch of <i>Climate Change and Coastal Development Law in Australia</i> , written by Dr Justine Bell, Lecturer, TC Beirne School of Law, University of Queensland, Brisbane
5 October	<i>Characteristics of Successful Environmental Courts and Tribunals</i> , a paper presented to the 27 th Annual LAWASIA Conference, Bangkok, Thailand
22 October	<i>The Adequacy of the Law in Satisfying Society's Expectations for Major Projects</i> , a paper presented to the International Bar Association Annual Conference, Tokyo, Japan
24 October	<i>Specialised Court procedures for Expert Evidence</i> , a presentation to the Symposium on 'How to Use Expert Evidence in Court', Japanese Federation of Bar Associations, Tokyo, Japan

6 November	<i>Welcome address</i> , Silks Bows ceremony, Land and Environment Court
6 November	Panel member, Community Awareness of the Judiciary Program, Judicial Commission of NSW
12 November	<i>Writing Judgments Wildly</i> , a paper presented to the AELA Workshop, University of New South Wales
13 November	<i>Protected Areas in the Courts</i> , a paper presented to the Judiciary and Protected Areas Event at the IUCN World Parks Congress 2014, Olympic Park, Sydney
15 November	<i>The Adequacy of the Law in Satisfying Society's Expectations for Major Projects</i> , a paper presented to the Environment and Planning Law Association (EPLA) Annual Conference, Charles Sturt University, Orange
18 November	<i>Update on the LEC</i> , Guest speaker, Urban Taskforce Australia Members luncheon, Corrs Chambers Westgarth, Sydney
28 November	<i>Climate justice and the role of an international environment court</i> , a presentation to the DLA Piper 'Climate Change, Planning and the Law' student workshop, DLA Piper, Brisbane
1-4 December	<i>Economic Valuation of the Environment</i> , a paper and other presentations given to the Joint Economy and Environment Program of Southeast Asia (EEPSEA) Regional Training on Economic Value, Compensation and the Environment, Bali, Indonesia
11 December	Acceptance speech on the award of Honorary Fellowship of the Environmental Institute of Australia and New Zealand, Museum of Sydney

Publications

"Characteristics of Successful Environmental Courts and Tribunals" (2014) 26(3) *Journal of Environmental Law* 365

"Unconventional Natural Gas in the Courts: An Overview" (2014) 32(4) *Journal of Energy & Natural Resources Law* 277

Membership of legal, cultural or benevolent organisations

Chair, Land and Environment Court Rules Committee

Member, Uniform Rules Committee, Supreme Court of NSW

Official member, Judicial Commission of New South Wales

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

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

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

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

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

Fellow, Australian Academy of Law (FAAL)

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

Guest lecturer, ANU College of Law, Australian National University

Delegations and international assistance

12 February Meeting with Professor Mitsuaki Usui, Professor of Administrative Law at Meiji University Law School, Chiyodaku, Tokyo who is conducting research about specialist courts

25 February Meeting with Professor Tetsuro Hirano, Ryukoku University, Kyoto and Judge Shota Watanuki, Tokyo District Court (visiting Scholar at the University of Sydney) to discuss environmental courts and tribunals

3 March Japanese Delegation visiting the Court, Dr Tsuyoshi Hondou, Tohoku University, Sendai; Professor Tetsuro Hirano, Ryukoku University, Kyoto; Professor Chihara Watanabe, Ristumeikan University and Professor Dr Kohji Hirata, The Graduate University for Advanced Studies to discuss specialist court procedures for expert evidence and concurrent evidence

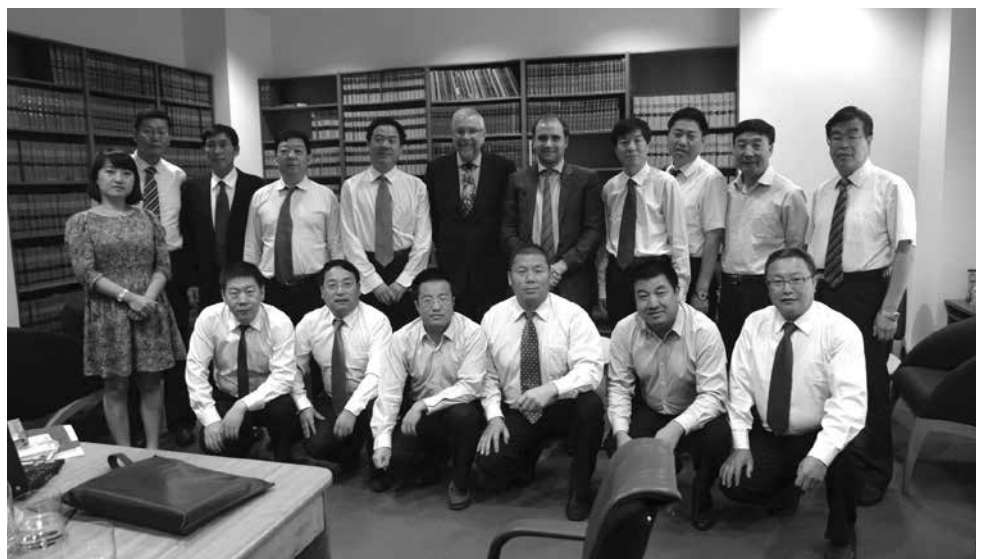
28 March Meeting with the President, Her Honour Carmel MacDonald, His Honour Paul A Smith and His Honour Wayne Cochrane of the Land Court of Queensland, Brisbane

17 April Meeting with Mr Niko Soininen, PhD student of environmental law and lecturer at the University of Eastern Finland to discuss the procedure and obligation for giving reasons in judicial decisions which is the topic for his thesis

22 May Meeting with Ms Valerie Dupont, PhD student, Catholic University of Louvain to discuss biodiversity offsets in NSW and the biobanking mechanism which is the topic for her thesis

12 June Meeting with Professor Steve Johnson, Walter F George Professor of Law, Mercer University, Georgia, USA to discuss the annual 'Virtual Environmental Law Guest Speaker Program' at Mercer University and also to observe matters in the Court

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- 29 July Thai delegation visiting the Court, Mr Derekrid Janekrongthm, Secretary General of the Office of the Administrative Courts and Mr Krairach Ngoeyvijt, Deputy Secretary General, Office of the Administrative Courts of Thailand and their 57 member delegation, to discuss an overview of the jurisdiction and the operation of the Land and Environment Court as a specialist court
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- 27 August Chinese delegation visiting the Court from the Qinghai Provincial Land and Resource Department to discuss land use and environmental issues in the mining industry. A presentation on the operation of the Land and Environment Court was given by the Chief Judge, Senior Commissioner Tim Moore and Mining Commissioner Susan Dixon to Mr Hao Kuanjian, Director, Qinghai Provincial Science and Technology Information Center and his delegation of 21 Senior Engineers
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- 11 September Meeting with Ms Gayatri (Gege) Parthasarathy, BCL student, Oxford University who is visiting the Court to research for an environmental law dissertation looking at access to justice issues in a comparative perspective (currently between the Land and Environment Court in NSW and courts in the UK)
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- 8-9 December Advisory Committee meeting to provide input into and settle the draft 2010 UNEP Bali Guidelines Guidebook, World Resources Institute, Washington DC, USA
-
- 18 December Chinese judicial delegation led by Mr Wang Shihua, Chief Judge of No 1 Division of Jiangsu High People's Court, Jiangsu Province, China and his 20 member Judicial delegation representing Courts in China to discuss an overview of the jurisdiction and operation of the Land and Environment Court as a specialist court



Chinese delegation visiting the Court from the Qinghai Provincial Land and Resource Department

The Hon. Justice Terence William Sheahan AO

Conferences and seminars

6 February	Sydney Institute seminar, Legal Limits – The Dismissal Revisited, presented by The Hon. Nicholas Hasluck QC (retired WA Supreme Court Judge), The Gallipoli Club, Sydney
12 February	Judicial Commission field trip, Tree Tour of the Royal Botanic Gardens Sydney, led by Mr David Bidwell, Senior Horticulturist, Arboriculture and Commissioner Judy Fakes
13 February	George Winterton Memorial Lecture 2014, Judges as Royal Commissioners' Reprised: The Involvement of Australian Judges in Extra-Judicial Work, presented by Professor Fiona Wheeler, Banco Court, Sydney
20 February	NSW Society of Labor Lawyers seminar, Free the Information: How to Successfully Challenge FOI Refusals in the AAT, presented by The Hon. Mark Dreyfus QC MP, Level 22 Chambers, Martin Place, Sydney
25 February	Ngara Yura Twilight seminar, The Impact of Bugmy and Munda on Sentencing Aboriginals and Other Offenders, presented by The Hon. Justice Stephen Rothman, Judicial Commission of NSW
6 March	Marla Pearlman AO Annual Oration, The Appropriate Role for the Commonwealth in Environmental Law and Impact Assessment, presented by Adjunct Professor Rob Fowler, University of South Australia at the Federal Court, Sydney
13 March	Hal Wootten Lecture 2014, How to be a 'Good Lawyer': Lessons from the American 'War on Terror', presented by Professor Richard L Able, University of California, Los Angeles at University of NSW Law School
18 March	Cross-jurisdictional twilight seminar, Stress and Vicarious Trauma for Judges, presented by Professor Stephen J Woods, School of Law and Justice, Southern Cross University, Supreme Court of NSW
19 March	Twilight seminar, Overview of Regulatory Scheme for Building Professionals, presented by Mr George Maltabarow, President of the Building Professionals Board, commentary by His Honour Judge Kevin O'Connor AM, Judicial Commission of NSW
22 March	Ngara Yura Program Community Visit: site visit to the Aboriginal Heritage Office Museum and Keeping Place, Northbridge, led by Mr David Watts, Aboriginal Heritage Manager
25 March	Council of Australasian Tribunals (NSW) Annual Meeting, The operations of the Tribunal, address by The Hon. Justice Robertson Wright, Inaugural President of the NSW Civil and Administrative Tribunal, Workers Compensation Commission seminar room

10 July	AALS Breakfast seminar, The Continuing Influence of English Law On Our Common Law, presented by President Margaret Beazley AO, Australian Club, Sydney
17 July	“Life without a New Planning Act?”, Panel discussion with Mr Glen Byres, NSW CEO of the Property Council of Australia; Mr Jeff Angel, Executive Director of the Total Environment Centre; Professor Peter Phibbs, Chair of Urban Planning, University of Sydney; Ms Sarah Hill, Hill PDA, Ms Sue Weatherly, Parramatta City Council and Ms Alice Spizzo, Lander and Rogers, hosted by the Planning Research Centre, Faculty of Architecture, Design and Planning, University of Sydney
6 August	AALS Breakfast seminar, Human Rights in the United Kingdom and the Two European Courts, presented by Lord Neuberger, President of the Supreme Court of the United Kingdom, Australian Club, Sydney
20 August	2014 Sir Maurice Byers Lecture, “Appellate Review of the Facts”, presented by Justice Virginia Bell AC of the High Court of Australia, NSW Bar Association
8 September	Sydney Institute seminar, Energy, Innovation, and a Brave New World, presented by Mr Robert Bryce, Senior Fellow, Centre for Energy Policy and the Environment, Manhattan Institute, Gallipoli Club, Sydney
10 September	AALS Breakfast seminar, The United Kingdom – Is the End Nigh? Constitutional Challenges of the Scottish Independence Referendum, presented by Mr Roy Martin QC, English and Scottish Bars, Australian Club, Sydney
10 September	Presentation by the Right Honourable Lord Dyson, Master of the Rolls, “Advances in Open Justice in England and Wales” at the invitation of Chief Justice T F Bathurst AC, Banco Court, Supreme Court of NSW
24 September	Twilight seminar, Criminal Law Update, presented by The Hon. Justice Lucy McCallum, Judicial Commission of NSW
9 October	NSW Society of Labor Lawyers seminar, New Terror Laws: A Conversation with Mr Bret Walker SC and Professor George Williams AO, Gilbert and Tobin Lawyers, Sydney
10-12 October	Judicial Conference of Australia Annual Colloquium, Noosa
14 October	Sydney Institute seminar, Possible Reforms of Competition Law and Policy, presented by Professor Ian Harper, Chairman of the Australian Government’s Competition Policy Review, The Gallipoli Club, Sydney
15 October	Judicial Commission site visit, Tour of One Central Park with Mr Michael Goldrick, Director Project Management, Frasers Property Group, Broadway
15 October	2014 Paul Byrne SC Memorial Lecture, Is the Weight of Evidence Material to its Admissibility?, presented by The Hon. John Dyson Heydon AC QC, Sydney University Law School

20 October	Twilight Seminar, Administrative Law Update – Recent Developments in the High Court and Overseas, presented by The Hon. Justice John Basten and The Hon. Justice Mark Leeming, Supreme Court of NSW
28 October	NSW Bar Association CPD seminar, Chapter II of the Constitution, presented by Mr Justin Gleeson SC, Solicitor General and Ms Anna Mitchelmore, NSW Bar Association
5 November	AACL seminar, The Principle of Legality, presented by Mr Brendan Lim, Barrister, Federal Court of Australia
11 November	Carroll & O’Dea Lunchtime Speaker Series – “The Politics of Climate Change Policy” – presented by Hon. Greg Combet – College of Law, Sydney
11 November	NSW Society of Labor Lawyers Inaugural Frank Walker Memorial Lecture, “A Golden Era of Law Reform”, presented by Judge G D Woods QC, Parliament House, Sydney
17 November	Inaugural Spigelman Public Law Oration, “The Doctrine of Deference” presented by The Hon. Justice Stephen Gageler at NSW Bar Association and followed by the Public Law Section dinner
26 November	Twilight seminar, Conciliation and Mediation in the Land and Environment Court, The Hon. Justice Philip Hallen, Commissioner Graham Brown, Commissioner Linda Pearson and Acting Registrar Leonie Walton, Judicial Commission of NSW
9 December	AACL Seminar, “Comparative Constitutional Law, Final Courts Round Up 2014”, presented by Professor Mark Tushnet, Harvard Law School and international experts, hosted by Prof Rosalind Dixon, University of NSW, Federal Court, Sydney

Speaking Engagements

5 May	<i>Finding Better Ways?</i> , address to the Australian Institute of Building Annual Conference, Newcastle University
23 September	<i>The Land and Environment Court’s Role in the Court, Planning, and Development Systems</i> , a presentation to Architecture Faculty Planning Law students, University of Sydney
10 October	<i>The Media, Politicians, and the Courts</i> , introduced and moderated a double session, Judicial Conference of Australia Colloquium, Noosa
13 October	<i>The Land and Environment Court’s Role in the Court, Planning, and Development Systems</i> , a presentation to Planning Law Students, University of Technology Sydney

Membership of legal, cultural or benevolent organisations

Member, Land and Environment Court Rules Committee

Court nominee on Governing Council of the Judicial Conference of Australia

Member, Council of Southern Cross University

Board member, UNICEF Australia National Committee

Member, Australian Committee of the Oxford Health Alliance

Member, Management Committee, Edmund Rice Business Ethics Initiative

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

The Hon. Justice Nicola Hope Margaret Pain

Conferences and seminars

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|--------------|--|
| 12 February | Judicial Commission field trip, Tree Tour of the Royal Botanic Gardens Sydney, led by Mr David Bidwell, Senior Horticulturist, Arboriculture and Commissioner Judy Fakes |
| 18 March | Cross-jurisdictional twilight seminar, Stress and Vicarious Trauma for Judges, presented by Professor Stephen J Woods, School of Law and Justice, Southern Cross University, Supreme Court of NSW |
| 19 March | Twilight seminar, Overview of Regulatory Scheme for Building Professionals, presented by Mr George Maltabarow, President of the Building Professionals Board, commentary by His Honour Judge Kevin O'Connor AM, Judicial Commission of NSW |
| 22 March | Ngara Yura Program Community Visit: site visit to the Aboriginal Heritage Office Museum and Keeping Place, Northbridge, led by Mr David Watts, Aboriginal Heritage Manager |
| 16 July | Twilight seminar, Social Media, presented by Ms Julia Virgo, Special Counsel, Clayton Utz, Judicial Commission of NSW |
| 24 September | Twilight seminar, Criminal Law Update, presented by The Hon. Justice Lucy McCallum, Judicial Commission of NSW |
| 15 October | Judicial Commission site visit, Tour of One Central Park with Mr Michael Goldrick, Director Project Management, Frasers Property Group, Broadway |
| 20 October | Twilight Seminar, Administrative Law Update – Recent Developments in the High Court and Overseas, presented by The Hon. Justice John Basten and The Hon. Justice Mark Leeming, Supreme Court of NSW |
| 26 November | Twilight seminar, Conciliation and Mediation in the Land and Environment Court, The Hon. Justice Philip Hallen, Commissioner Graham Brown, Commissioner Linda Pearson and Acting Registrar Leonie Walton, Judicial Commission of NSW |
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Speaking engagements

7 March	<i>Protective costs orders: Increasing access to courts by capping costs</i> , Australasian Conference of Planning and Environment Courts and Tribunals (ACPECT), Hobart
30 June	<i>Human Rights and Environmental Rights – a Role for Domestic Courts</i> , Human rights symposium Global Network for the Study of Human Rights and the Environment (GNHRE), 12 th IUCN Academy of Environmental Law Colloquium, Tarragona, Spain
3 July	<i>Thinking Globally, Acting Locally – Renewable Energy in Court</i> , 12 th IUCN Academy of Environmental Law Colloquium, Universitat Rovira I Virgili Tarragona, Spain
30 August	<i>River to River</i> , launch of exhibition, Penrith Regional Art Gallery
14 November	<i>Climate Change Adaptations in NSW Environmental and Planning Laws</i> , distinguished speaker at the Sustainability Dialogues 2014: Achieving Climate Change Adaptation Symposium hosted by Centre for Environmental Law (CEL) Macquarie University City Campus
18 November	Chair, Mock International Court of Justice Panel – International Case on Marine Issues, IUCN World Parks Congress event co-hosted with the Australian Centre for Climate and Environmental Law, Sydney Law School, University of Sydney; Institute for Marine Science; and the World Commission for Protected Areas – Marine Specialist Group, Sydney Olympic Park
21 November	Chair, ‘Transformation or Train Wreck? Environment and Climate Change law at the Crossroads’, National Environmental Lawyers Association (NELA) Conference, InterContinental Hotel, Sydney

Publications

“Protective costs orders: Increasing access to courts by capping costs” (2014) 31 *Environmental Planning Law Journal* 415

Membership of legal, cultural or benevolent organisations

Board member, Australian Centre for Climate and Environmental Law, University of Sydney

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

Member, Land and Environment Court Education Committee

Chair, Land and Environment Court Library Committee

The Hon. Justice Peter Meldrum Biscoe

Conferences and seminars

12 February	Judicial Commission field trip, Tree Tour of the Royal Botanic Gardens Sydney, led by Mr David Bidwell, Senior Horticulturist, Arboriculture and Commissioner Judy Fakes
19 March	Twilight seminar, Overview of Regulatory Scheme for Building Professionals, presented by Mr George Maltabarow, President of the Building Professionals Board, commentary by His Honour Judge Kevin O'Connor AM, Judicial Commission of NSW
16 July	Twilight seminar, Social Media, presented by Ms Julia Virgo, Special Counsel, Clayton Utz, Judicial Commission of NSW
17 September	EPLA Twilight seminar, Swimming Pool Registration and farewell to Commissioner Hussey, presented by Mr Stuart Harding, Director of Willana Associates and Ms Fenja Berglund, Barrister, Martin Place Chambers
24 September	Twilight seminar, Criminal Law Update, presented by The Hon. Justice Lucy McCallum, Judicial Commission of NSW
20 October	Twilight Seminar, Administrative Law Update – Recent Developments in the High Court and Overseas, presented by The Hon. Justice John Basten and The Hon. Justice Mark Leeming, Supreme Court of NSW
17 November	Inaugural Spigelman Public Law Oration, “The Doctrine of Deference” presented by The Hon. Justice Stephen Gageler at NSW Bar Association and followed by the Public Law Section dinner

Speaking engagements

5 March	<i>Planning and Environment Law</i> , University of New South Wales Faculty of Law seminar, Sydney
14 November	<i>A Perspective on Developments in Resumption Compensation Law</i> , a paper presented to the Environment and Planning Law Association (EPLA) Annual Conference, Charles Sturt University, Orange

Membership of legal, cultural or benevolent organisations

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

Chair, Land and Environment Court Education Committee

Member, Land and Environment Court Rules Committee

The Hon. Justice Rachel Ann Pepper

Conferences and seminars

12 February	Judicial Commission field trip, Tree Tour of the Royal Botanic Gardens Sydney, led by Mr David Bidwell, Senior Horticulturist, Arboriculture and Commissioner Judy Fakes
13 February	2014 George Winterton Memorial Lecture, Australia Association of Constitutional Law, Professor Fiona Wheeler, Sydney
18 March	Cross-jurisdictional twilight seminar, Stress and Vicarious Trauma for Judges, presented by Professor Stephen J Woods, School of Law and Justice, Southern Cross University, Supreme Court of NSW
19 March	Twilight seminar, Overview of Regulatory Scheme for Building Professionals, presented by Mr George Maltabarow, President of the Building Professionals Board, commentary by His Honour Judge Kevin O'Connor AM, Judicial Commission of NSW
22 March	Ngara Yura Program Community Visit: site visit to the Aboriginal Heritage Office Museum and Keeping Place, Northbridge, led by Mr David Watts, Aboriginal Heritage Manager
1 May	AACL seminar, Panel on the Unions of NSW Political Finance Case, panel members: Professor Adrian Stone, Associate Professor Joo-Cheong Tam and Dr Anika Gauja, Federal Court, Sydney
18 August	NSW Bar Association CPD Seminar 'Aspects of Judicial Review' and book launch by The Hon. Michael Kirby AC CMG of Judicial Review: The Laws of Australia, Mark Robinson SC (ed)
13 – 14 September	Ngara Yura Program Community visit to Walgett to increase awareness amongst judicial officers about contemporary Aboriginal social and cultural issues
19 September	Presiding Judicial Officer, Mock Trial, Australian Property Institute, Sydney
24 September	Twilight seminar, Criminal Law Update, presented by The Hon. Justice Lucy McCallum, Judicial Commission of NSW
20 October	Twilight Seminar, Administrative Law Update – Recent Developments in the High Court and Overseas, presented by The Hon. Justice John Basten and The Hon. Justice Mark Leeming, Supreme Court of NSW
23 October	Australian Academy of Law Patron's Address, The Common Law Litigation Process – Time for a Rethink?, presented by The Hon Chief Justice Sundaresh Menon, Supreme Court of Singapore
24 October	Public Law Weekend, Australian National University, Canberra
28 October	NSW Bar Association CPD seminar, Chapter II of the Constitution, presented by Mr Justin Gleeson SC, Solicitor General and Ms Anna Mitchelmore, NSW Bar Association

21 November	NELA Annual Conference, Sydney
26 November	Twilight seminar, Conciliation and Mediation in the Land and Environment Court, The Hon. Justice Philip Hallen, Commissioner Graham Brown, Commissioner Linda Pearson and Acting Registrar Leonie Walton, Judicial Commission of NSW
9 December	AACL Seminar, Comparative Constitutional Law, Final Courts Round Up 2014, presented by Professor Mark Tushnet, Harvard Law School and international experts, hosted by Professor Rosalind Dixon, University of NSW, Federal Court, Sydney

Speaking engagements

5 March	<i>Not Plants or Animals: the Protection of Indigenous Cultural Heritage in Australia</i> , Australasian Conference of Planning and Environment Courts and Tribunals (ACPECT), Hobart, Tasmania
2 April	<i>The Centrality of Statutory Interpretation in Judicial Review</i> , lecture given to Advanced Administrative Law students, University of New South Wales
15 August	Discussion with female law students, NSW Bar Association
13 November	Panel discussion moderator, 'Healthy Life, Healthy Parks', IUCN World Parks Congress 2014, Sydney
18 November	Judge, ICJ Mock Court, IUCN World Parks Congress 2014, Sydney
14 December	Presenter and Session Facilitator in Recent Developments in Access to Environmental Justice and also in Assessment of Damages in Environmental Cases, ADB Fourth ASEAN Roundtable on the Environment, Hanoi, Vietnam

Publications

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

Environment Section Editor, *The Australian Law Journal*, Thompson Reuters

Pepper R and Duxson S, Not Plants or Animals: the Protection of Indigenous Cultural Heritage in Australia (2014) 29(2) *Australian Environmental Review* 2; (2014) 26(9) *Judicial Officers' Bulletin*

Membership of legal, cultural or benevolent organisations

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

Secretary, Australian Association of Constitutional Law

Member, International Association of Women Judges

Member, Australian Institute of Judicial Administration

Member, National Judicial College of Australia

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

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

Member, World Commission on Environmental Law

Member, International Bar Association

Member, Australian Commercial Law Association

Judicial Member, Football Federation of Australia

The Hon. Justice Malcolm Graeme Craig

Conferences and seminars

12 February	Judicial Commission field trip, Tree Tour of the Royal Botanic Gardens Sydney, led by Mr David Bidwell, Senior Horticulturist, Arboriculture and Commissioner Judy Fakes
6 March	Marla Pearlman AO Annual Oration, The Appropriate Role for the Commonwealth in Environmental Law and Impact Assessment, presented by Adjunct Professor Robert Fowler, University of South Australia at the Federal Court, Sydney
7 March	Property and Planning Law Conference, Mr Max Wilson, Chief Executive Officer of The Commercial Law Association of Australia Limited, NSW State Library
18 March	Cross-jurisdictional twilight seminar, Stress and Vicarious Trauma for Judges, presented by Professor Stephen J Woods, School of Law and Justice, Southern Cross University, Supreme Court of NSW
19 March	Twilight seminar, Overview of Regulatory Scheme for Building Professionals, presented by Mr George Maltabarow, President of the Building Professionals Board, commentary by His Honour Judge Kevin O'Connor AM, Judicial Commission of NSW
16 July	Twilight seminar, Social Media, presented by Ms Julia Virgo, Special Counsel, Clayton Utz, Judicial Commission of NSW
30 July	Judicial Q & A: The Hon. Justice Melissa Perry from the Federal Court, The Hon. Justice Lucy McCallum from the Supreme Court and His Honour Judge David Frearson from the District Court, organised by the New Justice Barristers' Committee, New South Wales Bar Association
10 September	Presentation by the Right Honourable Lord Dyson, Master of the Rolls, "Advances in Open Justice in England and Wales" at the invitation of Chief Justice T F Bathurst AC, Banco Court, Supreme Court of NSW
15 October	Judicial Commission site visit, Tour of One Central Park with Mr Michael Goldrick, Director Project Management, Frasers Property Group, Broadway

20 October	Twilight Seminar, Administrative Law Update – Recent Developments in the High Court and Overseas, presented by The Hon. Justice John Basten and The Hon. Justice Mark Leeming, Supreme Court of NSW
17 November	Inaugural Spigelman Public Law Oration, “The Doctrine of Deference” presented by The Hon. Justice Stephen Gageler at NSW Bar Association and followed by the Public Law Section dinner

Speaking engagements

19 March	Launch of the Environment and Planning Law Careers Guide for NSW Young Lawyers, The Law Society of NSW
22 September	<i>Technology and Ethics</i> , keynote legal address to The Ninth Greek Legal & Medical Conference, Costa Navarino, Greece

Membership of legal, cultural or benevolent organisations

Member, The Australasian Institute of Judicial Administration Incorporated
Member, Judicial Conference of Australia Inc
Member, New South Wales Bar Association
Member, Caselaw Governance Committee

Mr Tim Moore, Senior Commissioner

Conferences and seminars

19 March	Twilight seminar, Overview of Regulatory Scheme for Building Professionals, presented by Mr George Maltabarow, President of the Building Professionals Board, commentary by His Honour Judge Kevin O’Connor AM, Judicial Commission of NSW
17 September	EPLA Twilight seminar, Swimming Pool Registration and farewell to Commissioner Hussey, presented by Mr Stuart Harding, Director of Willana Associates and Ms Fenja Berglund, Barrister, Martin Place Chambers
24 September	Twilight seminar, Criminal Law Update, presented by The Hon. Justice Lucy McCallum, Judicial Commission of NSW
25 September	7th International Conference on International Perspectives on Judicial Administration – International Association for Court Administration
15 October	Judicial Commission site visit, Tour of One Central Park with Mr Michael Goldrick, Director Project Management, Frasers Property Group, Broadway
26 November	Twilight seminar, Conciliation and Mediation in the Land and Environment Court, The Hon. Justice Philip Hallen, Commissioner Graham Brown, Commissioner Linda Pearson and Acting Registrar Leonie Walton, Judicial Commission of NSW

Speaking engagements

- 5 February *Conciliation and Mediation in the Land and Environment Court*, Blacktown College of TAFE Aboriginal Certificate IV in mediation
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- 27 August Chinese Delegation visiting the Court from the Qinghai Provincial Land and Resource Department to discuss land use and environmental issues in the mining industry. A presentation on the Land and Environment Court by the Chief Judge, Senior Commissioner Tim Moore and Mining Commissioner Susan Dixon to Mr Hao Kuanjian, Director, Qinghai Provincial Science and Technology Information Center and his delegation of 21 Senior Engineers
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Membership of legal, cultural or benevolent organisations

Member, NSW Bar Association

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

Member, Australian Cave and Karst Management Association

Life Member, Industrial Relations Society of New South Wales

Mr Robert Hussey, Commissioner

Conferences and seminars

- 12 February Judicial Commission field trip, Tree Tour of the Royal Botanic Gardens Sydney, led by Mr David Bidwell, Senior Horticulturist, Arboriculture and Commissioner Judy Fakes
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- 17 September EPLA Twilight seminar, Swimming Pool Registration and farewell to Commissioner Hussey, presented by Mr Stuart Harding, Director of Willana Associates and Ms Fenja Berglund, Barrister, Martin Place Chambers
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Membership of legal, cultural or benevolent organisations

Member, Planning Institute of Australia

Member, Institution of Engineers, Australia

Mr Graham Brown, Commissioner

Conferences and seminars

12 February	Judicial Commission field trip, Tree Tour of the Royal Botanic Gardens Sydney, led by Mr David Bidwell, Senior Horticulturist, Arboriculture and Commissioner Judy Fakes
19 March	Twilight seminar, Overview of Regulatory Scheme for Building Professionals, presented by Mr George Maltabarow, President of the Building Professionals Board, commentary by His Honour Judge Kevin O'Connor AM, Judicial Commission of NSW
15 October	Judicial Commission site visit, Tour of One Central Park with Mr Michael Goldrick, Director Project Management, Frasers Property Group, Broadway
29 October	Seminar on Kinship, National Native Title Tribunal, Sydney

Speaking engagements

14 November	<i>Joint Expert Reports</i> , a presentation to the Environment and Planning Law Association (EPLA) Annual Conference, Charles Sturt University, Orange
26 November	<i>Conciliation and Mediation in the Land and Environment Court</i> , a joint presentation to the Twilight seminar with The Hon. Justice Philip Hallen, Commissioner Linda Pearson and Acting Registrar Leonie Walton, Judicial Commission of NSW

Membership of legal, cultural or benevolent organisations

Planning Institute of Australia

Ms Annelise Tuor, Commissioner

Conferences and seminars

12 February	Judicial Commission field trip, Tree Tour of the Royal Botanic Gardens Sydney, led by Mr David Bidwell, Senior Horticulturist, Arboriculture and Commissioner Judy Fakes
19 March	Twilight seminar, Overview of Regulatory Scheme for Building Professionals, presented by Mr George Maltabarow, President of the Building Professionals Board, commentary by His Honour Judge Kevin O'Connor AM, Judicial Commission of NSW
16 July	Twilight seminar, Social Media, presented by Ms Julia Virgo, Special Counsel, Clayton Utz, Judicial Commission of NSW
20 August	Review of National Mediator Practice Standards, IAMA, AIDC, ACDC

15 October	Judicial Commission site visit, Tour of One Central Park with Mr Michael Goldrick, Director Project Management, Frasers Property Group, Broadway
26 November	Twilight seminar, Conciliation and Mediation in the Land and Environment Court, The Hon. Justice Philip Hallen, Commissioner Graham Brown, Commissioner Linda Pearson and Acting Registrar Leonie Walton, Judicial Commission of NSW

Speaking engagements

6 March	<i>The Contribution of the NSW Land and Environment Court to Heritage Conservation Areas</i> , a presentation to the Australasian Conference of Planning and Environment Courts and Tribunals (ACPECT), Hobart, Tasmania
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Membership of legal, cultural or benevolent organisations

Member, Planning Institute of Australia

Ms Susan Dixon, Commissioner

Conferences and seminars

12 February	Judicial Commission field trip, Tree Tour of the Royal Botanic Gardens Sydney, led by Mr David Bidwell, Senior Horticulturist, Arboriculture and Commissioner Judy Fakes
19 March	Twilight seminar, Overview of Regulatory Scheme for Building Professionals, presented by Mr George Maltabarow, President of the Building Professionals Board, commentary by His Honour Judge Kevin O'Connor AM, Judicial Commission of NSW
15 October	Judicial Commission site visit, Tour of One Central Park with Mr Michael Goldrick, Director Project Management, Frasers Property Group, Broadway
29 October	Seminar on Kinship, National Native Title Tribunal, Sydney
26 November	Twilight seminar, Conciliation and Mediation in the Land and Environment Court, The Hon. Justice Philip Hallen, Commissioner Linda Pearson, Commissioner Graham Brown and Acting Registrar Leonie Walton, Judicial Commission of NSW

Speaking Engagements

22 August	<i>The Class 8 Mining Jurisdiction of the Land and Environment Court of NSW</i> , a presentation to Mining and Petroleum Law Students, University of Notre Dame, Sydney
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27 August Chinese Delegation visiting the Court from the Qinghai Provincial Land and Resource Department to discuss land use and environmental issues in the mining industry. A joint presentation on the Land and Environment Court by the Chief Judge, Senior Commissioner Tim Moore and Mining Commissioner Susan Dixon to Mr Hao Kuanjian, Director, Qinghai Provincial Science and Technology Information Center and his delegation of 21 Senior Engineers.

Membership of legal, cultural or benevolent organisations

Member, Australian Disputes Resolution Association Inc.

Ms Linda Pearson, Commissioner

Conferences and seminars

12 February	Judicial Commission field trip, Tree Tour of the Royal Botanic Gardens Sydney, led by Mr David Bidwell, Senior Horticulturist, Arboriculture and Commissioner Judy Fakes
6 March	Marla Pearlman AO Annual Oration, The Appropriate Role for the Commonwealth in Environmental Law and Impact Assessment, presented by Adjunct Professor Robert Fowler, University of South Australia at the Federal Court, Sydney
17 March	NSW Bar Association CPD seminar, Administrative Law and Accountability: The Bias Rule and Avenues for Merits Review of Commercial Decisions, presented by Ms Margaret Allars SC and Ms Brenda Tronson
19 March	Twilight seminar, Overview of Regulatory Scheme for Building Professionals, presented by Mr George Maltabarow, President of the Building Professionals Board, commentary by His Honour Judge Kevin O'Connor AM, Judicial Commission of NSW
5-6 June	Council of Australasian Tribunals (COAT) National Conference, Auckland, New Zealand
17 September	EPLA Twilight seminar, Swimming Pool Registration and farewell to Commissioner Hussey, presented by Mr Stuart Harding, Director of Willana Associates and Ms Fenja Berglund, Barrister, Martin Place Chambers
24 September	Twilight seminar, Criminal Law Update, presented by The Hon. Justice Lucy McCallum, Judicial Commission of NSW
15 October	Judicial Commission site visit, Tour of One Central Park with Mr Michael Goldrick, Director Project Management, Frasers Property Group, Broadway

Speaking engagements

26 March	<i>Tribunals and a Fair Hearing</i> , a presentation to students in Advanced Administrative Law, Faculty of Law, University of New South Wales
23 July	<i>Principles of Ecologically Sustainable Development</i> , a presentation to a Senior Staff Seminar, NSW Office of Environment and Heritage
18 September	<i>Role of Experts in the Court Process</i> , a presentation to the API Associate Professional Certificate in Expert Evidence course for the Land and Environment Court
23 October	<i>The Vision Splendid: Australian Tribunals in the 21st Century</i> , ANU College of Law, Public Law Weekend, Canberra
14 November	<i>Conditions of Consent</i> , a presentation to the Environment and Planning Law Association (EPLA) Annual Conference, Charles Sturt University, Orange
26 November	<i>Conciliation and Mediation in the Land and Environment Court</i> , a joint presentation to the Twilight seminar with The Hon. Justice Philip Hallen, Commissioner Graham Brown and Acting Registrar Leonie Walton, Judicial Commission of NSW

Membership of legal, cultural or benevolent organisations

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

Chair, Land and Environment Court Judicial Newsletter Committee

Member, Land and Environment Court Education Committee

Member, Administrative Review Council

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

Member, National Environmental Law Association

Member, Australian Association of Constitutional Law

Member, Council of Australasian Tribunals

Member, Australian Institute of Administrative Law

Ms Judy Fakes, Commissioner

Conferences and seminars

19 March	Twilight seminar, Overview of Regulatory Scheme for Building Professionals, presented by Mr George Maltabarow, President of the Building Professionals Board, commentary by His Honour Judge Kevin O'Connor AM, Judicial Commission of NSW
4-5 September	National Tree Symposium, TREENET, Adelaide
24 September	Twilight seminar, Criminal Law Update, presented by The Hon. Justice Lucy McCallum, Judicial Commission of NSW
15 October	Judicial Commission site visit, Tour of One Central Park with Mr Michael Goldrick, Director Project Management, Frasers Property Group, Broadway
26 November	Twilight seminar, Conciliation and Mediation in the Land and Environment Court, The Hon. Justice Philip Hallen, Commissioner Linda Pearson, Commissioner Graham Brown and Acting Registrar Leonie Walton, Judicial Commission of NSW

Speaking engagements

5 February	<i>Arborists and the Law</i> , a lecture to students of the Diploma in Arboriculture, Ryde TAFE
12 February	<i>Tree Tour of the Royal Botanic Gardens</i> , joint host of the twilight seminar/ field trip to the Royal Botanic Gardens with Mr David Bidwell, Senior Horticulturist, Arboriculture
18 August	<i>Aspects of the role of Commissioners of the LEC</i> , a presentation to the Macquarie University Law students, LEC Clinic
25 August	<i>The Trees (Disputes Between Neighbours) Act 2006</i> , a lecture to students of the Diploma in Arboriculture, Ryde TAFE
19 September	<i>The role of experts in the Court process</i> , a presentation to the Australian Property Institute and University of Sydney Associate Professional Certificate in Expert Evidence
13 October	<i>The duties of an expert witness</i> , a lecture to students of the Diploma in Arboriculture, Ryde TAFE

Membership of legal, cultural or benevolent organisations

Member, TREENET Management Committee

Member, International Society of Arboriculture

Ms Susan Morris, Commissioner

Conferences and seminars

12 February	Judicial Commission field trip, Tree Tour of the Royal Botanic Gardens Sydney, led by Mr David Bidwell, Senior Horticulturist, Arboriculture and Commissioner Judy Fakes
6 March	Marla Pearlman AO Annual Oration, The Appropriate Role for the Commonwealth in Environmental Law and Impact Assessment, presented by Adjunct Professor Robert Fowler, University of South Australia at the Federal Court, Sydney
19 March	Twilight seminar, Overview of Regulatory Scheme for Building Professionals, presented by Mr George Maltabarow, President of the Building Professionals Board, commentary by His Honour Judge Kevin O'Connor AM, Judicial Commission of NSW
16 July	Twilight seminar, Social Media, presented by Ms Julia Virgo, Special Counsel, Clayton Utz, Judicial Commission of NSW
20 August	Review of National Mediator Practice Standards. IAMA, AIDC, ACDC
26 November	Twilight seminar, Conciliation and Mediation in the Land and Environment Court, The Hon. Justice Philip Hallen, Commissioner Linda Pearson, Commissioner Graham Brown and Acting Registrar Leonie Walton, Judicial Commission of NSW

Membership of legal, cultural or benevolent organisations

Member, Planning Institute of Australia (CPP)

Member, Australian Disputes Resolution Association Inc

Ms Susan O'Neill, Commissioner

Conferences and seminars

12 February	Judicial Commission field trip, Tree Tour of the Royal Botanic Gardens Sydney, led by Mr David Bidwell, Senior Horticulturist, Arboriculture and Commissioner Judy Fakes
19 March	Twilight seminar, Overview of Regulatory Scheme for Building Professionals, presented by Mr George Maltabarow, President of the Building Professionals Board, commentary by His Honour Judge Kevin O'Connor AM, Judicial Commission of NSW
March – October	Juris Doctor (part-time), University of Sydney Subjects completed: <i>Foundations of Law, Torts, Legal Research, Public Law and Public International Law</i>
10 July	Venice Architecture Biennale, Italy
26 November	Twilight seminar, Conciliation and Mediation in the Land and Environment Court, The Hon. Justice Philip Hallen, Commissioner Linda Pearson, Commissioner Graham Brown and Acting Registrar Leonie Walton, Judicial Commission of NSW

Membership of legal, cultural or benevolent organisations

Member, Australian Institute of Architects

Registered Architect

Appendices

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

Appendix 1 – Court Users Groups

Court Users Group

A Court Users Group was established in 1996 as a consultative committee comprising of representatives from interested organisations. The Group meets four 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 2014

The Hon. Justice Brian J Preston SC, Chief Judge (Chair)	Land and Environment Court
Senior Commissioner Tim Moore	Land and Environment Court
Acting Registrar Leonie Walton	Land and Environment Court
Mr Damon Anderson	NSW Trade & Investment
Ms Christina Bunbury	Australian Institute of Landscape Architects
Mr Peter Callaghan SC	Institute of Arbitrators and Mediators
Mr Peter Castor	Institute of Australian Consulting Aboriculturists
Ms Lesley Finn	Law Society Development and Planning Committee and Law Society of New South Wales
Mr Aaron Gadiel	Gadens Lawyers
Mr Chris Hallam	Engineers Australia
Ms Sue Higginson	Environmental Defender's Office
Mr James Johnson	Nature Conservation Council of New South Wales
Mr Tom Howard SC	New South Wales Bar Association
Ms Patricia Lenehan	Office of Environment and Heritage
Mr Frank Loveridge	Local Government NSW
Ms Helen Macfarlane	Urban Development Institute of Australia
Mr Michael Neustein	Royal Australian Institute of Architects (NSW Chapter)

Ms Rebecca Fleming	Environment and Planning Law Association
Mr Greg Preston	Australian Property Institute
Cr Michael Reymond	Local Government Representative
Mr Eugene Sarich	Australian Institute of Building Surveyors and Australian Institute of Environmental Health
Mr Gavin Shapiro	Environment and Planning Law Association
Mr Chris Shaw	Property Council of Australia
Mr Gary Shiels	Planning Institute of Australia (NSW Division)
Mr Stuart Simington	Housing Industry Association
Ms Jennifer Smith/ Ms Anna Summerhayes	Department of Planning and Environment
Mr Colin Weatherby	Institution of Surveyors New South Wales Inc
Mr Ian Woodward	Local Government Lawyers Group

Mining Court Users Group

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

Members during 2014

The Hon. Justice Brian J Preston	Land and Environment Court SC, Chief Judge (Chair)
Senior Commissioner Tim Moore	Land and Environment Court
Commissioner Susan Dixon	Land and Environment Court
Mr Stewart Armstrong	Trade & Investment NSW
Mr Matt Brand	NSW Farmers Association
Mr John Browne	Browne, Jeppesen & Sligar Solicitors
Mr Nicholas Dan	Bilbie Dan Solicitors & Attorneys
Mr Mark Faraday	Kemp Strang Lawyers
President Pat Fletcher	Grawin-Glengary Sheepyards Miners' Association
Mr Bob Harrison	Mining Titles Services Pty Ltd
Mr Russell Hetherington	Hetherington Exploration & Mining Title Services
Ms Sue Higginson	Environmental Defender's Office
Mr Robert Jarratt	Jarratt, Webb & Graham Pty Ltd
Mr Peter Long	Rural Law with Peter Long
Mr Lindsay Moore	Moore & Co Solicitors
Ms Maxine O'Brien	Lightning Ridge Miners' Association & Australian Opal Exhibition Inc
Mr Stuart Percy	Stuart Percy & Associates Solicitors
Mr Andrew White	Sparke Helmore Lawyers

Appendix 2 – Court Committees

Court Committees

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

Rules Committee

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

Members

The Hon. Justice Brian John Preston SC, Chief Judge

The Hon. Justice Peter Meldrum Biscoe

The Hon. Justice Terence Sheahan AO

Education Committee

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

Members

The Hon. Justice Peter Meldrum Biscoe (Chair)

The Hon. Justice Nicola Hope Margaret Pain

Commissioner Linda Pearson

Ms Leonie Walton, Acting Registrar

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

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

Library Committee

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

Members

The Hon. Justice Nicola Hope Margaret Pain (Chair)

Commissioner Judy Fakes

Court Newsletter Committee

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

Members

Commissioner Linda Pearson (Chair)

Ms Vicki Ferguson, Information & Research Officer

January 2014
Volume 6 Issue 1

Land and Environment Court of NSW Judicial Newsletter

Legislation

- Statutes and Regulations
 - Planning
 - Local Government
 - Water
 - Mining and Petroleum
 - Miscellaneous
- State Environmental Planning Policies
- On Exhibition
- Miscellaneous

Court Practice and Procedure

Judgments

- United Kingdom
- High Court of Australia
- Federal Court of Australia
- NSW Court of Criminal Appeal
- NSW Court of Appeal
- Land and Environment Court of NSW
 - Judicial Review
 - Criminal
 - Aboriginal Land Claims
 - Development Appeals
 - Civil Enforcement
 - Compulsory Acquisition
 - Practice and Procedure and Orders
 - Costs
 - Section 56A Appeals
- Commissioner Decisions
- Court News

Statutes and Regulations

Planning:

The *Environmental Planning and Assessment Amendment (Complying Development and Fire Safety) Regulation 2013*, published 20 December 2013, amended the *Environmental Planning and Assessment Regulation 2000* to:

- make it clear that prescribed conditions of development consents and complying development certificates relating to shoring and adequacy of support of premises adjoining the development extend to adjoining structures on land in a road or rail corridor;
- require a certifying authority, before determining an application for a complying development certificate by issuing a certificate, to give a notice in certain circumstances containing specified information to the occupier of each dwelling within 20 metres of the development;
- require a complying development certificate to be issued subject to a condition requiring payment of a contribution or levy under s 84 or 84A of the *Environmental Planning and Assessment Act 1979* if the contributions plan for the local government area requires payment of a contribution or levy for the type of development the certificate relates to that plan;
- require a complying development certificate that a contribution or levy be paid under *Planning and Assessment Act 1979* when the contribution or levy is to be provided for the payment of security for a complying development certificate;
- place a duty on a principal certifying authority satisfied that preconditions to which the certificate before work commences;
- require a person having the benefit of a certificate to include in the prescribed notice of objection a statement signed by or on behalf of that person that the preconditions to which the certificate are satisfied;
- require an application for a certificate from Roads and Maritime Services to include a statement signed by or on behalf of that person that the preconditions to which the certificate are satisfied;
- require an application for a certificate from Roads and Maritime Services to include a statement signed by or on behalf of that person that the preconditions to which the certificate are satisfied;
- require an application for a certificate from Roads and Maritime Services to include a statement signed by or on behalf of that person that the preconditions to which the certificate are satisfied;

May 2014
Volume 6 Issue 2

Land and Environment Court of NSW Judicial Newsletter

Legislation

- Statutes and Regulations
 - Planning
 - Local Government
 - Criminal
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 - Pollution
 - Mining and Petroleum
 - Miscellaneous
 - Bills
- State Environmental Planning Policies
- On Exhibition
- Miscellaneous

Court Practice and Procedure

Judgments

- United Kingdom
- Federal Court of Australia
- NSW Court of Appeal
- NSW Court of Criminal Appeal
- Supreme Court of NSW
- Land and Environment Court of NSW
 - Judicial Review
 - Criminal
 - Contempt
 - Aboriginal Land Claims
 - Development Appeals
 - Easements
 - Compulsory Acquisition
 - Practice and Procedure
 - Costs
 - Valuation
 - Section 56A Appeals
- Commissioner and Registrar Decisions
- Court News

Legislation

- Statutes and Regulations

Planning:

Environmental Planning and Assessment Amendment (Bush Fire Prone Land) Regulation 2014, published 30 May 2014, amends the *Environmental Planning and Assessment Regulation 2000* to exclude certain development applications for the erection of various types of dwellings on bush fire prone land in urban release areas (as identified on a series of maps "Bush Fire Planning – Urban Release Area Map") from the operation of s 79BA of the *Environmental Planning and Assessment Act 1979*. Section 79BA generally prevents a consent authority from granting development consent unless the consent authority is satisfied, or has been provided with a certificate from a qualified consultant stating, that the development conforms to Planning for Bushfire Protection. New cl 273 provides the matters on which the consent authority is required to be satisfied, and the documents which must be provided to the consent authority, which include a bush fire safety authority for the subdivision of the land, and a plan of subdivision that shows bush fire attack levels for the land, a notation from the NSW Rural Fire Service ("RFS") showing that the plan was considered when the application for the bush fire safety authority was determined, and accompanies a "post-subdivision bush fire attack level certificate" issued by the RFS or a recognised consultant. New cl 273A enables the Commissioner of the RFS to review the designation of land on a bush fire prone land map and revise the map accordingly if the land is in an urban release area and the Commissioner is of the opinion that the map needs to be revised.

Rural Fires Amendment (Bush Fire Safety Authorities) Regulation 2014, published 30 May 2014, amends cl 44 of the *Rural Fires Regulation 2013* to provide the information that must accompany an application for a bush fire safety authority for proposed development that is subdivision for the purposes of certain types of dwellings on property that is in an urban release area, and the applicant specifies that it wishes the Commissioner to consider whether it would be appropriate for the future erection of the dwellings to be excluded from the application of s 79BA of the *Environmental Planning and Assessment Act 1979*.

Environmental Planning and Assessment Amendment (Three Ports) Regulation 2014, published on 30 May 2014, amends the *Environmental Planning and Assessment Regulation 2000* to make provision for inspections for certain building work carried out at Port Botany, Port Kembla and the Port of Newcastle and to exempt that building work from the requirement for an occupation certificate under the *Environmental Planning and Assessment Act 1979*.

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Land and Environment Court
of New South Wales

Website

www.lec.justice.nsw.gov.au

Email

lecourt@agd.nsw.gov.au

Street Address

Windeyer Chambers
Level 4, 225 Macquarie Street
Sydney NSW 2000

Registry Hours

Monday – Friday 8.30am to 4.30pm

Document Exchange

DX 264 Sydney

Postal Address

GPO Box 3565
Sydney NSW 2001

Telephone **(02) 9113 8200**

Facsimile **(02) 9113 8222**