

The Land and Environment Court of NSW



Annual Review

2023

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## Foreword from the Chief Judge

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

Traditionally, court administration performance is evaluated by quantitative output indicators based on the registrations (filings), finalisations, pending caseload and time taken between filing and finalisation. Prior to 2006, the Court's Annual Reviews had focused solely on these performance indicators. This year's Review continues the practice adopted in the last 17 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, particularly given the novel challenges presented by the COVID-19 Pandemic.

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 434 written judgments. These judgments are published on NSW Caselaw website (<https://www.caselaw.nsw.gov.au>). They provide a valuable contribution to planning and environmental jurisprudence. They also enable transparency and accountability in the Court's decision-making.

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

**The Honourable Justice Brian J Preston  
FRSN SC**  
Chief Judge



*The Hon. Justice Brian J Preston SC,  
Chief Judge.*

*Photo by Ted Sealey*

# 1 **2023: An Overview**

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

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## 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 2022. Of particular significance are:

- A clearance rate greater than 100% in Classes 4, 5, 6 and 8 (and hence the Class 4-8 cumulative category).
- An overall increase in clearance rate for all matters since 2022.
- A significant increase in the total number of matters finalised.
- The highest total Class 1 finalisations in a year since 2005.
- A reduction in the number of pending matters in Classes 4, 5, 6 and 8 (and hence the Class 4-8 cumulative category).
- An increase in the proportion of all matters finalised via pre-hearing methods.
- Maintenance or a decrease in the time taken to complete 95% of matters in Classes 1, 2, 3, 4 and 5.
- Maintenance of case processing timeliness in Classes 1 and 2, as indicated by meeting the backlog indicator (national time standard).
- Maintenance or a reduction in the median number of pre-hearing attendances in finalised Classes 1, 2, 5 and 6 matters.

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

- A decrease in the clearance rate in Classes 2 and 3.
- An increase in the pending caseload in Classes 1, 2 and 3.

- A reduction in the number of finalised matters in Classes 2 and 4.
- A decrease in case processing timelines in Classes 3, 4 and 5, as indicated by the increased proportion of cases not meeting the backlog indicator (national time standard).
- An increase in the median number of pre-hearing attendances in Classes 3 (all matters), 4 and 8.

## Reforms and developments

During 2023, reforms occurred in the following areas:

- New Policies;
- New technology and equipment;
- New information on the Court's website;
- Technology and accessibility;
- Duty Lawyer Scheme;
- Land and Environment Court Clinic;
- Tree Helpdesk; 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.

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## Education and community involvements

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 2023, the Court's Annual Conference was held at Sebel Harbourside, Kiama. The Court held three twilight seminars, two webinars, and one field trip.

In 2009, the Court commenced production of a judicial newsletter, issued three times a year, 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 Judicial Newsletter continued to be published in 2023.

The Judges and Commissioners updated and developed their skills and knowledge during the year by attending conferences, seminars, webinars 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 members did so in a hybrid manner during 2023.

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

## Consultation with court users

In 2023, 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 meetings of the 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

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## 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 2023, 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**

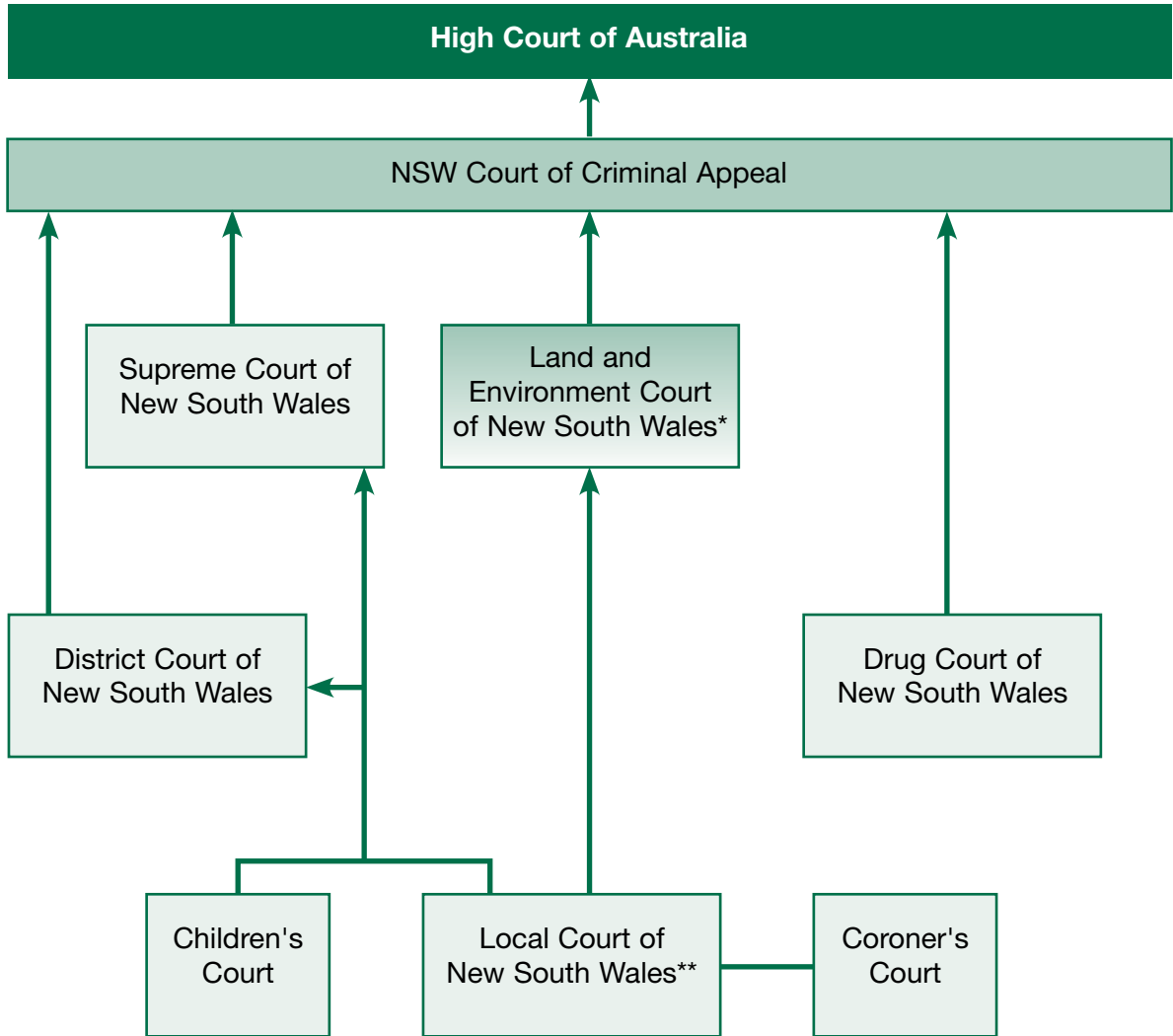
<b>Class 1</b>	environmental planning and protection appeals (merits review appeals)
<b>Class 2</b>	local government, trees and miscellaneous appeals (merits review appeals)
<b>Class 3</b>	land tenure, valuation, rating and compensation matters (merits review appeals)
<b>Class 4</b>	environmental planning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

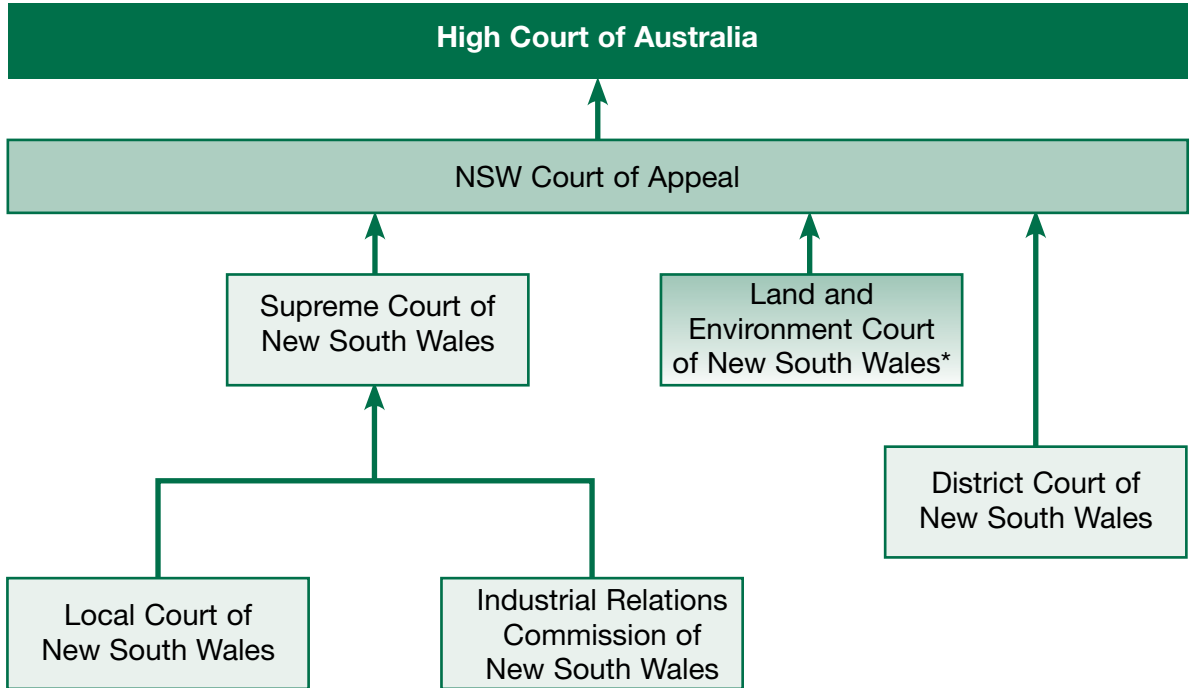
**Figure 2.1 New South Wales Court System – Criminal Jurisdiction**



\* 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.

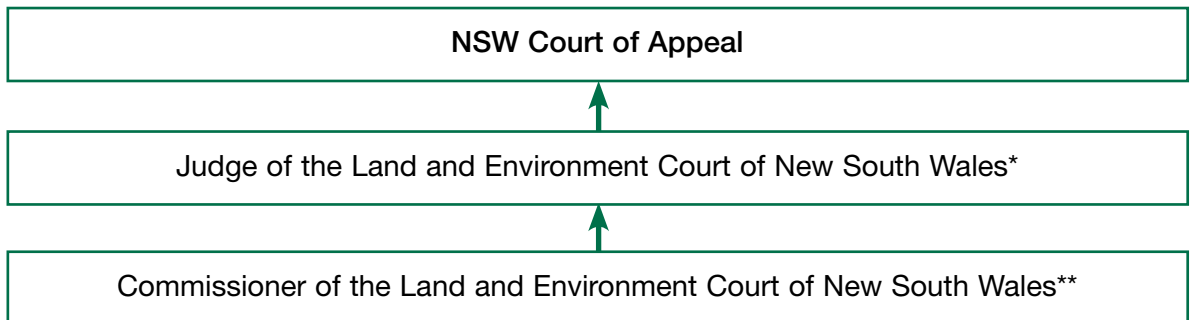
\*\* Appeals from the Local Court of New South Wales to the Land and Environment Court are with respect to an environmental offence under the *Crimes (Appeal and Review) Act 2001* and are in Classes 6 and 7 of the Land and Environment Court's jurisdiction.

**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.

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## 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 2023, the Judges, in order of seniority, were as follows:

#### **Chief Judge**

The Honourable Justice Brian John Preston SC

#### **Judges**

The Honourable Justice Nicola Hope  
Margaret Pain

The Honourable Justice Rachel Ann Pepper

The Honourable Justice John Ernest  
Robson SC

The Honourable Justice Sandra Anne  
Duggan SC

The Honourable Justice Sarah Pritchard SC

### 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 Aboriginals or disputes involving Aboriginals; and
- law.

Persons may be appointed as full-time or part-time Commissioners for a term of 7 years. Persons may also be appointed as Acting Commissioners for a term not exceeding 5 years. Acting Commissioners are called upon on a casual basis to exercise the functions of a Commissioner as the need arises.

The primary function of Commissioners is to adjudicate, conciliate or mediate merits review appeals in Classes 1, 2, and 3 of the Court's jurisdiction. On occasion, the Chief Judge may direct that a Judge hearing a matter in Class 1, 2, 3, 4 or 8 of the Court's jurisdiction be assisted by a Commissioner (see ss 37 and 43 of the Court Act).

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

As at 31 December 2023, the Commissioners were as follows:

#### **Senior Commissioner**

Ms Susan Dixon

#### **Commissioners**

Ms Susan O'Neill

Ms Danielle Dickson

Ms Joanne Gray

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Ms Sarah Bish  
Dr Peter Walsh  
Mr Timothy Horton  
Ms Elizabeth Espinosa  
Ms Shona Porter

### **Acting Commissioners**

Associate Professor Dr Paul Adam AM –  
botanist and ecologist  
Ms Louise Byrne - lawyer  
Mr Michael Davidson – valuer  
Professor Dr Megan Davis – member of the  
Aboriginal community and lawyer  
Mr John Douglas – arborist  
Mr David Galwey – arborist  
Mr Stuart Harding – town planner  
Mr Peter Kempthorne – valuer  
Mr Paul Knight – valuer  
Ms Gwenda Kullen – civil engineer and  
town planner  
Dr David Parker - valuer  
Ms Maureen Peatman – lawyer with  
experience in land valuation and planning  
Mr Matthew Pullinger – architect and  
urban designer  
Mr Andrew Smith – member of the  
Aboriginal community and lawyer  
Ms Nicola Targett - lawyer  
Ms Emma Washington – landscape architect

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

As at 31 December 2023, the Registrars  
were as follows:

### **Director and Registrar**

Ms Sarah Froh

### **Senior Deputy Registrar**

Ms Donette Holm

### **Deputy Registrar**

Ms Elizabeth Orr

## **Appointments and retirements**

### **Appointments**

#### **Commissioners**

Ms Shona Porter was appointed as a  
Commissioner of the Court on 7 August  
2023.

#### **Retirements**

The Hon. Justice Timothy John Moore  
retired as a Judge of the Court on 3  
November 2023.

Mr Alan Bradbury retired as an Acting  
Commissioner of the Court on 8 November  
2023.

Mr Michael Chilcott retired as a  
Commissioner of the Court on 24 July 2023.

Ms Lynne Sheridan retired as an Acting  
Commissioner of the Court on 25 November  
2023.

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## Supporting the Court: the Registry

The Court Registry comprises the following four sections:

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### Client Services

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

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### 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.

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### 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.

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### Commissioner Support

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

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*A court hearing*

Copies of decisions of the Court can be found on NSW Caselaw by either going through the tab on the Court website home page 'Decisions' or directly at:  
<https://www.caselaw.nsw.gov.au>

The Court provides copies of daily court lists on the Court's website at:  
<https://lec.nsw.gov.au/lec/online-services/court-lists.html>

# 3 Caseflow Management

- Introduction
- Overview by class of jurisdiction
- Types of directions hearings
- Class 1 hearing options
- Alternative Dispute Resolution
  - Conciliation
  - Mediation
  - Neutral evaluation
  - Recognition of the Court's ADR programme

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## 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 caseload 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 a Registrar when the appeal is filed with the Court. The directions hearing may take the form of an in-court hearing, a telephone hearing, a hearing using a remote meeting platform, such as Microsoft Teams, or an Online Court hearing (see Types of Directions Hearings below).

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

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

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

### Class 2: Tree disputes

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

The Court manages a separate list for tree disputes. About 71% of the parties in this type of proceeding are self-represented, with an additional 4% represented by an authorised agent. The application is returnable before the Senior Deputy or Deputy Registrar who is assigned to manage the list. This first court attendance can be either a telephone conference or in court. The Senior Deputy or Deputy Registrar explains the process of preparation for and hearing of the application.



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The Senior Deputy or Deputy Registrar explores whether the parties may be able to resolve the dispute between themselves without court orders authorising interference with or removal of a tree. If the parties are not able to resolve the dispute, the Senior Deputy or Deputy Registrar will fix a final hearing date, usually not more than four to five weeks after the first court attendance. The Senior Deputy or Deputy Registrar will make directions in preparation for the final hearing, such as for the provision of information by the parties to each other.

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

The Court provides assistance to self-represented parties through the Tree Helpdesk. This helpdesk is operated by law students and supervised by a staff solicitor from Macquarie University.

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 on a 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 Aboriginal land rights. The practice and procedure governing Aboriginal land claims is described in the Practice Note – Class 3 Aboriginal Land Claims.

### **Class 4**

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

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

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

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## Class 5

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

Class 5 proceedings are case managed in a Class 5 List by the List Judge on a Friday. The List Judge makes appropriate directions for the orderly, efficient and proper preparation for trial or sentence hearing. One purpose of the directions hearings is to allow the entry of pleas prior to the trial.

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

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

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

## Classes 6 and 7

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

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

## Class 8

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

## Types of directions hearings

The Court offers court users four types of directions hearing:

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### In-court directions hearing

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

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### Telephone directions hearing

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

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### Microsoft Teams directions hearing

where representatives of the parties talk with the Registrar or a Judge or Commissioner via a Microsoft Teams audio visual call

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### Online Court directions hearing

where representatives of the parties post electronic requests to the Registrar and the Registrar responds using the Online Court platform

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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, although directions hearing in Class 2 tree disputes were conducted by telephone.
- For country appeals, the appeal will usually be listed for the first directions hearing as a telephone directions hearing.

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

From March 2020, due to the COVID-19 Pandemic, the Court operated all directions hearings by telephone, Microsoft Teams, audio-visual link (AVL) or Online Court. Throughout the 2021 lockdown period, the Court continued to conduct directions hearing remotely. By late 2021, and continuing throughout 2023, the Court was able to conduct directions hearings using a hybrid model, allowing some matters to be conducted in person in court and other matters to be conducted by telephone, AVL or by Microsoft Teams.

In 2023, Online Court was used in 1,093 civil matters in Classes 1, 2, 3, 4 and 8, and there were 4,274 Online Court directions hearings.



*Virtual court setting (teleconference) – Registrar’s Direction Hearings and online Court.*



*Virtual court setting (Microsoft Teams) – Conciliation conferences.*

## **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 a hearing conducted in court in person or by telephone, AVL or Microsoft Teams.



*An on-site hearing conducted by Acting Commissioner Paul Adam.*



*An on-site hearing conducted by Justice Preston.*

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



*A paperless court hearing.*



*A Microsoft Teams court hearing.*



*Site inspections before a hybrid hearing (face-to-face and AVL).*



*Hybrid court setting (face-to-face and AVL).*

## 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.

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

Conciliation of small scale residential development appeals is conducted under s 34AA of the Court Act. The procedure prescribed by s 34 of the Court Act applies with two modifications. First, it is mandatory for the Court to arrange a conciliation conference between the parties. Secondly, if the parties do not agree on the substantive outcome, the presiding Commissioner terminates the conciliation conference and immediately adjudicates and disposes of the proceedings.

Table 3.1 shows the number of conciliation conferences between 2017 - 2023. Table 3.1 shows a substantial increase in the total number of conciliation conferences held in 2021 and 2022 compared to 2019 and 2020. This might be a product of the mode in which conciliation conferences have been conducted, often by Microsoft Teams meetings, due to Covid-19 Pandemic restrictions on meeting in person. This may require meeting on more occasions. However, as Table 5.3 shows, the percentage of matters finalised by s 34 and s 34AA conciliation conferences or on-site remained relatively constant over this five year period. However, 2023 saw a notable increase, and the majority of Class 1-3 finalisations occurred via ss 34 and 34AA conferences or on-site hearings for the first time.

**Table 3.1 Ss 34 and 34AA Conciliation Conferences 2019 – 2023**

	2019	2020	2021	2022	2023
ss 34 and 34AA conferences	962	1,342	1,959	1,559	1,660

**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 motion, refer proceedings in

Classes 1, 2, 3, 4 and 8 to mediation.

The Court provides a mediation service at no cost to the parties by referral to the Court's mediator. The Court may also refer proceedings for mediation to an external mediator not associated with the Court and agreed to by the parties.

Table 3.2 provides a comparison between mediations in 2018 to 2023. 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 2019 – 2023**

		2019	2020	2021	2022	2023
<b>Classes 1 and 2</b>	Total:	7	9	21	23	20
	Internal	6	9	20	22	20
	External	1	0	1	1	0
	Number finalised pre-hearing	3	6	16	16	15
	% finalised pre-hearing	43	67	76	70	75
<b>Class 3</b>	Total:	4	2	3	4	5
	Internal	4	2	3	4	5
	External	0	0	0	0	0
	Number finalised pre-hearing	4	2	3	2	4
	% finalised pre-hearing	100	100	100	50	80
<b>Class 4</b>	Total:	22	19	26	32	36
	Internal	22	19	26	32	36
	External	0	0	0	0	0
	Number finalised pre-hearing	17	15	21	28	26
	% finalised pre-hearing	77	79	81	88	72

		2019	2020	2021	2022	2023
<b>All Classes</b>	Total:	33	30	50	59	61
	Internal	32	30	49	58	61
	External	1	0	1	1	0
	Number finalised pre-hearing	24	23	40	46	45
	% finalised pre-hearing	73	77	80	78	74

The total number of mediations increased significantly between 2020 and 2021 and remained elevated in 2023.

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 tree disputes in Class 2 are facilitated by a mediator from the NSW Community Justice Centre.

### 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.

### Recognition of the Court's ADR programme

The Court is now a recognised leader in dispute resolution, setting itself apart from other courts and tribunals by providing a multi-door courthouse or a dispute resolution centre, with a range of dispute resolution processes available to parties, which it matches to the individual dispute and disputants.

The success of the Land and Environment Court's alternative dispute resolution programme, the value to the community and the benefits to the parties of providing individualised justice are demonstrated by the flexibility in responding to the COVID-19 Pandemic, the year on year increase in the number of matters that continue to be filed in the Court and the number of matters that are conciliated and resolved prior to any hearing, revealing a high level of ongoing user satisfaction with the Court's dispute resolution processes.

## 4 Reforms and Developments

- New Policies
- New technology and equipment
- New information on the Court's website
- Duty Lawyer Scheme
- The Land and Environment Court Clinic
- Tree Helpdesk
- 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



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During 2023, reforms occurred in the following areas:

- New Policies
- New technology and equipment
- New information on the Court's website
- Technology and accessibility
- Duty Lawyer Scheme
- The Land and Environment Court Clinic
- Tree Helpdesk
- 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 Policies

In June 2023, the Court published the Electronic Filing Policy to enable the filing of larger size documents using the Online Registry. The Policy also details when and how documents are to be provided to the Court in hardcopy when documents have been filed electronically.

Effective 1 July 2023, the Justice Legislation Amendment (Fees) Regulation 2023 has increased the Court's fees in all Classes of the Court's jurisdiction by 7.65%. This increase also applies to Court administrative fees.

## New technology and equipment

The COVID-19 Pandemic and lockdown periods during 2021 prevented or restricted the Court's ability to resolve disputes in person and in court. The Court quickly

responded by organising and conducting dispute resolution by telephone, AVL and Microsoft Teams. This required the installation of new technology and equipment. The Court replaced existing telephones in courtrooms with polycom telephonic equipment and upgraded telecommunication cables and lines to the Court building. All judges, commissioners and registrars continued training in the conduct of dispute resolution processes using remote meeting platforms. In 2022, AVL facilities were installed in nine courtrooms. In 2023, AVL facilities were installed in the remaining four courtrooms and the mediation room.

The installation of AVL facilities in these nine courtrooms also enabled the technology for the 'YouTube Livestream' initiative, with a number of high profile matters being livestreamed to facilitate open access to the Court and justice throughout periods of lockdown, and to allow the public to observe hearings without having to physically attend the court. The Court also arranged for the installation of public / guest wifi for use by all attendees within the court, which was completed in February 2023.



*YouTube Livestream of proceedings before Justice Duggan.*

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## New information on the Court's website

The Court's website was upgraded to improve accessibility and a global language translator was added.

The Court continued to update the information published on the website in relation to the Duty Lawyer and Tree Helpdesk schemes and information designed to assist self-represented litigants.

## Duty Lawyer Scheme

In 2018, a duty lawyer scheme was trialed in the Court for a 6 month period commencing 6 April 2018. The pilot scheme was the result of a collaboration between the Environment and Planning Law Association, the Environmental Defenders Office, NSW Law Society Young Lawyers Environment and Planning Committee, Macquarie University Law School and practitioners from the Court Users Group.

The pilot scheme was aimed at assisting self-represented litigants in Classes 4 and 5 of the Court's jurisdiction. As a result of the success of the scheme, it has been extended to run permanently and has been broadened to other classes or types of proceedings in the Court.

A duty lawyer is available between 9am and 12 noon each Friday, either in person or by telephone, to provide preliminary advice to self-represented litigants with a view to guiding them through the Court process and referring them to appropriate services. In 2023 it assisted 219 unrepresented persons, a significant increase of 184% from the previous year.

## The Land and Environment Court Clinic

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

The students are selected to participate in a practical program which involves work with the Registry and attendance with Commissioners and Judges at hearings onsite and in court. The students are engaged in administrative and research tasks as well observation of adjudication, conciliation and mediation of matters in the Court. The experience is an interactive learning experience and complements the Court's outreach activities.

Students engage with Registry and Court personnel to highlight the Court's support for access to justice in its practice and procedures. Practical and ethical causes are considered by students through observation of the court process, interactions with the public at the Registry counter and detailed debriefing with Court personnel. The experiential learning is supported by a seminar series provided in part by Judges, commissioners and staff of the Court.

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

## Tree Dispute Help Desk

Following its establishment in 2016 with Macquarie University law students, the Tree Dispute Help Desk continued operation in 2023. The student helpdesk is operated by Macquarie University law students and supervised by a staff solicitor to provide assistance to unrepresented persons

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with tree dispute matters under the *Trees (Disputes Between Neighbours) Act 2006*.

It is an independent service from the Land and Environment Court. In 2023 it assisted 70 unrepresented persons, across 74 appointments, who wished to become or were parties to tree dispute matters. These numbers were less than in 2022 as the Tree Dispute Help Desk did not operate between January and mid-May 2023 due to unavailability of the staff solicitor.

## Maintenance of library services

Library Services has continued to support the work of the Land and Environment Court in a number of ways: maintain and update the court's library collection, 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.

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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 2022, the Court leadership undertook informal self-assessment of the Court's performance, especially in light of the COVID-19 pandemic restrictions.

In 2023, the Court continued implementation of actions to improve the Court's performance in each of the seven areas of court excellence. In addition to continuing the actions described in the 2013 - 2022 Annual Reviews, the Court has undertaken or continued to undertake the following actions, grouped under the areas of court excellence:

**1. Court leadership and management:**

- continuing to demonstrate external orientation of the Court by communicating and consulting on the Court's vision, goals, programmes and outcomes, in particular with respect to new jurisdiction and revised practice and procedure;
- involving all court personnel in advancing the Court's purpose and strategies, including by regular meetings, regular provision of information, performance review and conferences;
- improving case registration and case management systems;
- adaptively managing the Court's response to the COVID-19 Pandemic, including ceasing the Court's COVID-19 Pandemic Arrangements Policy in November; and

- formulating and implementing new modes of conducting dispute resolution services, so as to match the "form of the forum to the fuss".

**2. Court planning and policies:**

- adopting and implementing policies to ensure the ongoing provision of dispute resolution services during the COVID-19 Pandemic, return to in person court services;
- adopting the Electronic Filing Policy to enable the filing of larger size documents using the Online Registry; and
- implementing the Dignity and Respect Policy, and administering court wide surveys, to ensure the Court provides a workplace free from inappropriate behaviour.

**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;
- continuing the use of paperless trials in certain classes of cases;
- implementing the eSubpoena portal which allows parties to remotely produce and access subpoenaed material; and
- organising and conducting court proceedings by telephone, AVL and Microsoft Teams to maintain access to justice to all.

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#### **4. Public trust and confidence and**

##### **5. User satisfaction:**

- continuing to meet on a quarterly basis with court users as part of the Court Users Group, as explained in Appendix 1;
- continuing publication of a court newsletter three times a year 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 to improve accessibility and usability and the information available, including expanding the webpages in the special areas of jurisdiction and updating relevant legislation conferring jurisdiction, case law and facts; and
- continuing to receive and efficiently respond to, and appropriately action, complaints and inquiries regarding delays in reserved judgments, conduct of commissioners or processes of the Court.

##### **6. Court resources:**

- maintaining the Court's human resources, by re-appointment of the Senior Commissioner and a Commissioner, appointment of a new Commissioner, and re-appointment of five Acting Commissioners;
- 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;

- implementing a Dignity and Respect Policy to ensure the Court provides a workplace free of inappropriate behaviour;
- administering a survey of all Court staff to ascertain any instances of inappropriate workplace behaviour and taking appropriate action to address survey responses;
- continuing to install new technology and equipment in courtrooms to conduct dispute resolution processes by telephone, AVL and Microsoft Teams and to livestream proceedings on YouTube; and
- providing training for judges, commissioners and registrars and registry staff in the use of the new technology and equipment.

##### **7. Affordable and accessible services:**

- maintaining access to the Court and its dispute resolution services after the COVID-19 Pandemic, including enabling litigants to apply for a different mode of appearance if required following the return to in-person court lists and hearings;
- continuing the Duty Lawyer Scheme to assist self-represented litigants;
- continuing the Tree Dispute Help Desk to assist self-represented parties in tree disputes;
- continuing the 'YouTube livestream' initiative allowing open access for the public to court hearings; and
- regularly monitoring and reviewing case processing statistics, case management and court practice and procedure with a view to reducing private and public costs of litigation.

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## 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 in 2010 a project with the Australasian Legal Information Institute (AustLII) to use AustLII's databases to generate relevant metrics and statistics concerning the Court. The data is available on a calendar year basis and links for the data for the years ending 31 December for each year from 2010 to 2023 are available on the Court's website at Publications and resources - Other Resources - Metrics and statistics.

The metrics 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 those academic journals and legal scholarship publications that are publicly electronically accessible by AustLII. 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.

From the thirteen years of data available from the project, it can be seen that there continues to be widespread citation of decisions of this Court in other jurisdictions. In Australia, by the end of 2023, decisions of this Court had been cited 10,815 times across every State and Territory (including internal citations by this Court). The number of citations continues to increase. For example, in Western Australia, in the base year (2010) this Court's decisions had been cited 94 times in decisions of that

state's courts and tribunals (including 11 times in the WA Court of Appeal). By the end of 2023, Western Australian citations of decisions of this Court now totalled 244 times (including 19 times in the Court of Appeal), which represents a further 150 citations by courts and tribunals in Western Australia over the thirteen-year period. Similar positions apply to other Australian jurisdictions as can be seen by a comparison between the December 2010 metrics and those of December 2023.

Although the data able to be accessed internationally by AustLII for the purposes of preparing the metrics is comparatively limited, decisions of this Court have now been cited, since 2010, thirteen times by New Zealand courts (including five by the High Court and three times by the Supreme Court); three times by the National Court of Papua New Guinea; and six times by South African courts (once by the Supreme Court of Appeal). By the end of 2023, decisions of this Court had been cited in courts and tribunals and other institutions throughout Australia and in ten other jurisdictions across the world. In Australia, the courts, tribunals and other decision-making bodies citing decisions of this Court have ranged from the High Court of Australia to the Criminal Injuries Compensation Assessor of Western Australia. The full list of citations in courts outside Australia is set out at the commencement of the detailed statistical analysis.

The Court's decisions have also been cited in a range of law journals and other legal scholarship (on 160 occasions). This is a considerable underestimation of academic citation as AustLII's access to databases of law journals or other commentaries is limited.

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This is because the range of law journals able to be accessed by AustLII's indexing process is limited to publicly accessible material and does not include most proprietary subscription-based journals.

Other open access databases containing scholarly writings citing the Court's decisions include the Social Science Research Network (SSRN).

The Court's decisions have also been cited four times in Law Reform publications since the commencement of the AustLII metrics project.

The full range of courts and tribunals and law journals that have cited cases from this Court's AustLII database can be seen by accessing the December 2023 metrics on the Court's website at: <https://lec.nsw.gov.au/publications-and-resources/metrics-and-statistics.html>.

In 2023, 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. Any errors in data entry revealed by the audits were corrected.

## **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.

# 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 2019 and 2023 are summarised in Table 5.1.

**Table 5.1 Caseload Statistics**

	2019	2020	2021	2022	2023
<b>Class 1</b>					
Registrations	904	732	779	1,066	1,096
Restored	19	11	16	2	3
Pre-Trial Disposals	636	659	655	683	824
Disposed by Hearing	219	215	306	206	169
Pending	790	643	488	673	781
<b>Class 2</b>					
Registrations	91	90	123	105	111
Restored	4	8	12	7	4
Pre-Trial Disposals	16	24	38	35	34
Disposed by Hearing	77	63	87	88	76
Pending	31	43	53	43	48
<b>Class 3</b>					
Registrations	84	82	116	148	176
Restored	0	3	5	3	0
Pre-Trial Disposals	79	77	74	109	105
Disposed by Hearing	10	12	16	18	26
Pending	93	85	114	135	181
<b>Class 4</b>					
Registrations	102	92	124	97	81
Restored	21	11	19	6	2
Pre-Trial Disposals	68	72	78	79	65
Disposed by Hearing	39	43	38	31	41
Pending	105	83	105	95	71
<b>Class 5</b>					
Registrations	164	116	192	118	136
Restored	1	4	3	42	21
Pre-Trial Disposals	24	29	75	152	145
Disposed by Hearing	65	36	76	55	78
Pending	249	300	343	298	252

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**Classes 6 & 7**

Registrations	17	7	6	10	8
Restored	0	1	1	0	0
Pre-Trial Disposals	8	2	5	2	7
Disposed by Hearing	6	12	3	4	5
Pending	8	3	2	6	2

**Class 8**

Registrations	1	2	2	1	1
Restored	0	0	1	0	0
Pre-Trial Disposals	2	2	1	1	2
Disposed by Hearing	2	1	1	1	0
Pending	2	1	2	2	0

**TOTAL**

Registrations	1,363	1,121	1,342	1,545	1,609
Restored	45	38	57	60	30
Pre-Trial Disposals	833	865	926	1,061	1,182
Disposed by Hearing	418	382	527	403	395
Pending	1,279	1,158	1,107	1,251	1,335

Tables 5.1 and 5.2 show the following trends:

- 2023 saw another increase in registrations. Class 1 registrations increased by 3% of the 2022 yearly total. The 2023 total of 1,099 Class 1 registrations is the highest in the last five years period above, and the highest total since 2005 (1,179). Class 2 registrations increased marginally. Class 3 registrations increased significantly for the third consecutive year (16.5%). Class 3 registrations are the highest yearly total since 2013. Class 4 registrations decreased significantly (19%) to their lowest level in the last five years. Despite a slight decrease from 2022, Class 5 registrations remained high. The Court has registered over 120 Class 5 matters for six consecutive years.
- Total finalisations (1,577) increased significantly (8%) from 2022 (1,464) to be the highest since 2005. The proportion of matters finalised through pre-hearing methods further increased in 2023, both in total (to 75%) and particularly in Class 1 with a 20.6% increase. The increase in the proportion of post-trial disposals was marked in Classes 2, 4 and 5. The proportion of restored matters decreased overall. The number of restored matters remains low relative to the caseload.
- Because the increase in total registrations (1,639) exceeded the increase in finalisations (1,577) in 2023, the total pending caseload (1,335) increased by 7%. This is the second consecutive year the pending caseload has increased, following consecutive decreases in 2020 and 2021.

- Merits review and other civil proceedings finalised in Classes 1, 2 and 3 (1,234) comprised 78% of the Court's finalised caseload (1,577) in 2023. This proportion is the same as 2022 and slightly lower than in 2021 (81%) and 2020 (84%).
- Civil and criminal proceedings finalised in Classes 4, 5, 6, 7 and 8 (343) comprised 22% of the Court's finalised caseload in 2023. This proportion is the same as 2022 and a slight increase from 2021 (19%) and 2020 (16%) due to increased Class 5 finalisations.

- The means of finalisation in 2023 were 75% pre-trial disposals (including by use of alternative dispute resolution processes and negotiated settlement) and 25% adjudicated by the Court. This is a slight increase in the proportion of pre-trial finalisations from 2022 (72%) and a significant increase from 2021 (64%). This can largely be explained by the significant increase in the number and proportion of Class 1 pre-trial disposals and the continued high number of Class 5 pre-trial disposals.

**Table 5.2 Means of Finalisation – All Matters**

	2018	2019	2020	2021	2022	2023
Total matters finalised – all classes	1,306	1,251	1,247	1,453	1,464	1,578
Total pre-trial finalisations	864	833	865	926	1,061	1,182
% matters finalised pre-trial	66	67	69	64	72	75

The means of finalisation for proceedings in Class 1, 2 and 3 included s 34 and s 34AA conciliation conferences and on-site hearings (mainly for Class 1 and 2 proceedings). As Table 5.3 shows, 53.4% of appeals in Classes 1, 2 and 3 were finalised by these means. This proportion of Class 1-3 matters finalized pre-hearing represents a new all-time high in this category, beating the previous high of 50.2% recorded in 2018.

Of the total of 659 matters, 586 were finalised by ss 34 and 34AA conciliation conferences and 73 matters by on-site hearings. 2022 saw a return to the usual level of matters finalised by on-site hearing after COVID-19 restrictions severely reduced the numbers in 2020 and 2021. The number of matters finalised by on-site hearing further increased in 2023.

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

	2019	2020	2021	2022	2023
Total matters finalised	1,037	1,050	1,176	1,139	1,234
s 34 and s 34AA conferences and on-site hearings	500	490	529	552	659
% s 34 and s 34AA and other matters finalised on-site	48.2	46.7	45.0	48.5	53.4

## Court performance by class of jurisdiction

A brief summary of the Court's performance in 2023 for each of the eight classes of jurisdiction is provided.

### Class 1

Registrations of Class 1 matters increased in 2023. There were 1,099 Class 1 registrations in 2023, 31 more than the 2022 total of 1,068 (a 3% increase). Class 1 finalisations also increased. There were 104 additional Class 1 finalisations in 2023 (an increase of 12%). The totals for both registrations and finalisations are the highest recorded in Class 1 since 2005. The number of registrations exceeding the number of finalisations resulted in the Class 1 pending caseload further increasing (an increase of 16%). This increase follows an increase of 38% in 2022. Prior to this, there were two consecutive years in which the Class 1 pending caseload reduced. Class 1 represents 67% of all filings in 2023, the same proportion reported in 2022, following a significant increase from 57% in 2021.

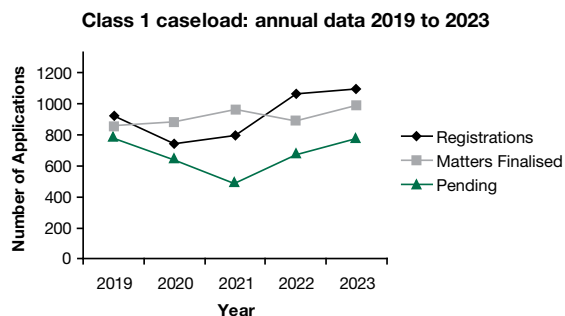
Class 1 matters constitute the bulk of the Court's finalised caseload (63%, up slightly from 61% in 2022, but down from 66% in 2021 and 70% in 2020). 73% of Class 1 matters finalised were appeals under s 8.7 of the *Environmental Planning and Assessment Act 1979* relating to development applications. 60% of the appeals under s 8.7 were applications where councils had not determined the development application within the statutory time period ("deemed refusals"). This is the same proportion as reported in 2022 following 52% in 2021 and 57% in 2020. One explanation for the 2021 decrease might be the legislative amendments that extended the time for

deemed refusals which were repealed in March 2022.

Of the remaining Class 1 finalisations in 2023, 8% were applications to modify a development consent under s 8.9 of the *Environmental Planning and Assessment Act 1979* and 11% were appeals against council orders and the actual or deemed refusal by councils to issue building or occupation certificates. Third party objector appeals constituted roughly 0.2%. Appeals against interim heritage orders, applications for costs, s 56A appeals against the Court's decisions, and prevention or remediation notices constituted the bulk of the remaining finalised matters in Class 1.

Figure 5.1 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 1 between 2019 and 2023.

**Figure 5.1**



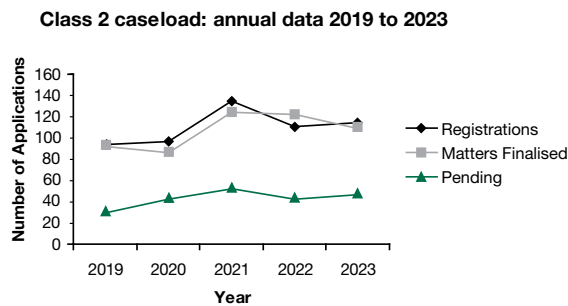
### Class 2

Class 2 registrations represented 7% of total registrations in the Court in 2023 (the same proportion as 2022, down from 10% in 2021, 8.5% in 2020). Registrations increased slightly from 2022; a 3% increase from 112 to 115.

The number of Class 2 matters finalised in 2023 is 110, a decrease from 2022 (123) and 2021 (125). This number represents 7% of the Court's finalised caseload for the year (8% in 2022, 9% in 2021). Applications under the *Trees (Disputes Between Neighbours) Act 2006* represent a strong majority of Class 2 finalisations for 2023 (80%).

Figure 5.2 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 2 between 2019 and 2023.

**Figure 5.2**



### Class 3

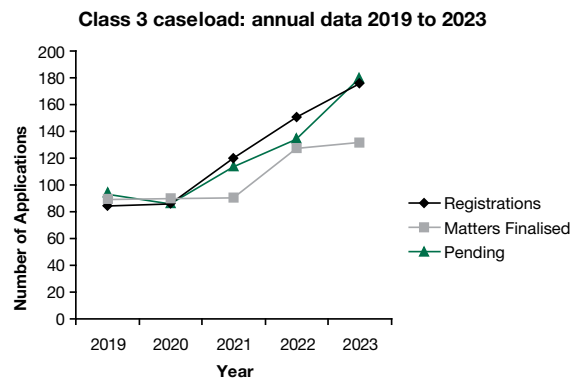
Class 3 of the Court's jurisdiction encompasses a range of proceedings including claims for compensation as a result of the compulsory acquisition of land, valuation and rates category appeals and Aboriginal land rights claims.

Registrations in Class 3 further increased in 2023 (16.5%) from an already elevated 2022 figure. The total of 176 is the highest since 2013. Compensation claims for compulsory acquisition of land constituted 43% of all Class 3 appeals registered in 2022, down significantly from 59% in 2022, but up from 2021 (37%) and 2020 (29%). Valuation and rating appeals accounted for 35%, up from 26% in 2022. Aboriginal land claim appeals constituted approximately 6% (11 filed in total, more than double the amount filed in 2022).

Of the 131 Class 3 matters finalised in 2023, about 50% were compensation claims (up from 48% in 2022 and 31% in 2021), 31% were valuation or rating appeals (21% in 2022, 33% in 2021) and 19% were other matters. There were 8 Aboriginal land claim matters completed in the year (6%). Finalisations of Class 3 matters increased slightly from 2022 (3%). The pending caseload of Class 3 matters increased, a change of 34% as registrations significantly exceeded finalisations in 2022.

Figure 5.3 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 3 between 2019 and 2023.

**Figure 5.3**

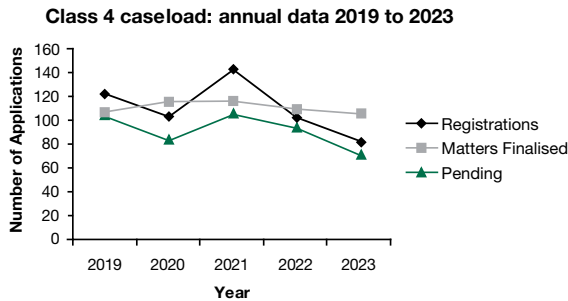


### Class 4

Class 4 registrations decreased significantly in 2023 (19%), whilst finalisations also decreased moderately (4%). Class 4 matters comprise 5% of all registrations and 7% of all finalisations in 2023. As a result of Class 4 finalisations significantly exceeding registrations, the Class 4 pending caseload decreased (25%). Of the Class 4 matters registered in 2023, 32.5% were initiated by councils (down significantly from 45% in 2022 and 57% in 2021). Civil enforcement proceedings constituted 42.5% of finalised Class 4 matters and judicial review constituted 53%.

Figure 5.4 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 4 between 2019 and 2023.

**Figure 5.4**



### Class 5

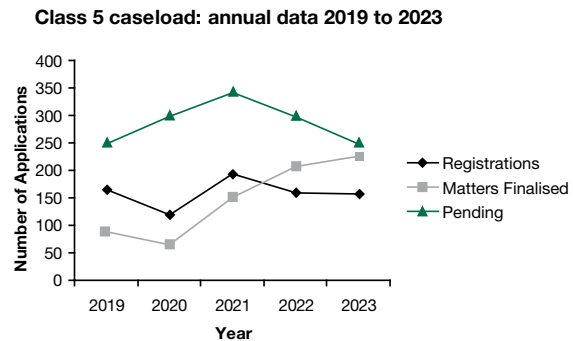
Class 5 registrations decreased slightly from 2022 (2%). Despite the lower total, there were more Class 5 matters commenced in 2023: in 2022 there were 118 Class 5 commencements and 42 restored matters; in 2023 there were 136 commencements and 21 restored matters. The Environment Protection Authority initiated 60.5% of new Class 5 registrations (up from 41% in 2022). The Natural Resources Access Regulator initiated 20%. The Department of Planning and Environment accounted for 2.5%. Local councils accounted for 17% (5 matters by Canterbury-Bankstown Council, 6 matters by Georges River Council, 6 matters by Midcoast Council and 10 matters by Wollahra Municipal Council). Restored costs motions account for the remaining Class 5 registrations.

Class 5 finalisations increased significantly in 2023 from an already high total in 2022 (an increase of 8%). The total of 224 is the highest on record. Convictions were recorded in 52 matters, 108 were withdrawn or otherwise discontinued and 64 were dismissed. Fines and remediation orders

ranged from \$1,500 for supply of false or misleading information relating to waste under s 144 of the *Protection of the Environment Operations Act 1997* to \$405,000 for unauthorised clearing of vegetation under s 12 of the *Native Vegetation Act 2003* (proceedings commenced prior to repeal of this legislation). There were no community correction or imprisonment orders made by the Court in 2023. There were 4 s 10 orders issued by the Court in 4 related prosecutions.

Figure 5.5 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 5 between 2019 and 2023.

**Figure 5.5**



### Classes 6 and 7

There were 7 Class 6 appeals and 1 Class 7 appeal filed in 2023. There were 12 Class 6 matters finalised. There is 1 pending Class 6 matter and 1 pending Class 7 matter.

### Class 8

On 7 April 2009 the Court acquired jurisdiction to hear and dispose of civil proceedings under the *Mining Act 1992* and the *Onshore (Petroleum) Act 1991*. There was 1 Class 8 matter registered in 2023. There were 2 Class 8 matters finalised in 2023. There are no Class 8 matters pending at the end of 2023.

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## 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 2023 to increase court fees by 7.65% to be able to balance the Court's budget and ensure a high standard of court administration service quality (effective 1 July 2023). 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.

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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 electronically filing originating process and case documents by Online Registry; conducting directions hearings and other attendances before the final hearing by means of telephone, AVL, Microsoft Teams or Online Court; producing and accessing documents by eSubpoena; enabling communication between the Court and parties and their legal representatives by Online Court, email and facsimile;

conducting final hearings on the site of the dispute or sitting in country courthouses proximate to the parties and/or the subject site; and conducting final hearings by telephone, AVL or Microsoft Teams.

Up until 2016, a matter was counted as a country matter if it was outside the area bordered by the local government areas of Wollongong, Blue Mountains and Gosford. From 2016, a matter is counted as a country matter if it is in a local government area outside the Greater Sydney region. In 2023, 28% of matters registered were country matters. This represents a slight decrease from an elevated rate in recent years. Continuing the trend from 2022, the decrease is caused by the increased proportion of Class 1 registrations, the strong majority of which are city based (79%).

The Court identifies and case manages country matters (other than criminal matters in Class 5) in a particular way.

Firstly, for attendances before final hearings, the Court has established the facility of a telephone directions hearing. This type of directions hearing takes place in a court equipped with conference call equipment where the parties or their representatives can participate in the court attendance whilst remaining in their geographical location. In response to the Covid-19 Pandemic restrictions in 2021, and continuing into the beginning of 2022, all directions hearings conducted by the Registrar and nearly all directions hearings conducted by the List Judges were by telephone conferences. Most telephone directions hearings held by the Court involve parties and their legal representatives in country matters.

Secondly, the Court pioneered the use of Online Court (previously 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, Online Court directions hearings are used extensively in country matters. Parties appeared by Online Court directions hearing in 71% of completed Class 1 country matters (45% using OLC more than once) and 27% of

completed Class 3 country matters in 2023 (18% using OLC more than once).

Table 5.4 shows the percentage of pre-hearing attendances conducted by Online Court directions hearings in Classes 1-4 and 8 in 2023. The total percentage of Online Court directions hearings of 44% is very similar to the 46% recorded in 2022 and the 47% recorded in 2021, albeit slightly less.

**Table 5.4 Online Court Directions Hearings**

Class	No of cases	Total pre-hearing attendances	% Online Court directions hearings
1	825	7,373	47
2	73	232	25
3	110	1,100	39
4	85	1,111	30
8	1	10	30
All	1,094	9,826	44

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. 79% of finalised Class 1 country matters and 58% of finalised Class 3 country matters featured a s 34 or s 34AA conciliation conference.

Fourthly, conduct of the whole or part of a hearing on the site of the dispute also means that the Court comes to the litigants. A formal 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 4.55, 4.56, 8.7, 8.18 or 8.25 of the *Environmental Planning and Assessment Act 1979* or ss 7 or 14B 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 2023, 7% of finalised matters (in Classes 1 and 2) were conducted as an on-site hearing, of which 38% were country matters. The country matters conducted as an on-site hearing were in Class 2, not Class 1.



An on-site hearing conducted by Senior Commissioner Dixon.

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 2023. The number of hearings in country courthouses has increased following a notable reduction due to COVID-19 movement restrictions. 2023 saw more than double the amount of hearings in a Country courthouse compared to 2022.

**Table 5.5 Country hearings in courthouses**

<b>Courthouse</b>	<b>Class 1</b>	<b>Class 2</b>	<b>Class 3</b>	<b>Class 4</b>	<b>Class 5</b>	<b>Class 6</b>	<b>Class 8</b>
Ballina	6						
Bathurst	1						
Broken Hill							1
Coffs Harbour	1		1				
Cooma			1				
Gosford	1						
Goulburn	2						
Grafton	1						
Katoomba	1						
Kiama	3						
Lismore	1						
Maitland	2						
Mullumbimby	1						
Newcastle	3						
Nowra	3						
Raymond Terrace	1						
Singleton			2				
Toronto	1						
Wentworth	1						
Wollongong	3						
<b>TOTAL</b>	<b>32</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>

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### ***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 and now, with the use of AVL and Microsoft Teams and hybrid modes of conducting proceedings, physical attendance is no longer a requirement. The Land and Environment Court website contains a special page, under the tab 'Access for people with disabilities', 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 Registry counter. Registry staff assist parties and practitioners, answer questions and provide procedural 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***

In 2018 a duty lawyer scheme was trialled in the Court for a 6 month period commencing 6 April 2018. The pilot scheme was aimed at assisting self-represented litigants in Classes 4 and 5 of the Court's jurisdiction. As a result of the success of the scheme, it continues to run and has been broadened to other Classes or types of proceedings in the Court. A duty lawyer is available on Level 4 between 9am and 12 noon each Friday, or remotely via telephone, introduced during the COVID-19 Pandemic, to provide preliminary advice to self-represented litigants with a view to guiding them through the Court process and referring them to appropriate services.

The Tree Helpdesk has continued to assist unrepresented litigants in tree disputes. The Tree Helpdesk is operated by law students and a solicitor on the staff of Macquarie University.

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;

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- User feedback on Land and Environment Court;
  - 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 and 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 2023, all full-time Commissioners, a number of the Acting Commissioners and the Registrar and Deputy Registrars of the Court were nationally accredited mediators and could provide in-house mediation for parties. In addition, the Court encourages and will make appropriate arrangements for mediation by external mediators. Informal mechanisms such as case management conferences also encourage negotiation and settlement of matters.

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

### ***Facilitating public participation***

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

The Court's decisions in these matters have generally been to facilitate public access to the courts. The Land and Environment Court Rules 2007 (Part 4 rule 4.2) also allow the Court not to require an undertaking as to damages or order security for costs or order costs against an unsuccessful party if satisfied that proceedings have been brought in the public interest.

Open justice is critical to the rule of law. Courts conduct hearings in public, allowing any member of the public to observe proceedings. During 2023, where in-person attendances at Court were restricted, matters were able to be observed via Microsoft Teams, AVL and the initiative of YouTube livestreaming.

### ***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

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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) 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 2023, the Judges, Commissioners and the Registrar participated in numerous 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.

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 2023 are set out in Table 5.6.

**Table 5.6 Backlog Indicator (LEC time standards)**

	Unit	LEC Standards	2019	2020	2021	2022	2023
<b>Class 1</b>							
Pending caseload	no.		790	643	488	673	781
Cases > 6 months	%	5	48	47.1	23.2	24.2	34.8
Cases > 12 months	%	0	17.5	24.3	7.6	5.7	7.3
<b>Class 2</b>							
Pending caseload	no.		31	43	53	43	48
Cases > 6 months	%	5	9.7	20.9	18.9	9.3	18.8
Cases > 12 months	%	0	3.2	9.3	1.9	0	6.3
<b>Class 3</b>							
Pending caseload	no.		93	85	114	135	181
Cases > 6 months	%	5	58.1	47.1	33.3	35.6	46.4
Cases > 12 months	%	0	38.7	31.8	17.5	20.0	25.4
<b>Class 4</b>							
Pending caseload	no.		105	83	105	95	71
Cases > 8 months	%	5	41.0	45.8	33.3	42.1	46.5
Cases > 16 months	%	0	22.9	19.3	16.2	14.7	21.1
<b>Class 5</b>							
Pending caseload	no.		249	300	343	298	252
Cases > 8 months	%	5	47.4	78.7	76.1	61.1	63.5
Cases > 16 months	%	0	17.3	41.3	40.2	47.7	48.8
<b>Class 6 and Class 7</b>							
Pending caseload	no.		8	3	2	6	2
Cases > 8 months	%	5	0	0	50	0	0
Cases > 16 months	%	0	0	0	0	0	0

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**Class 8**

Pending caseload	no.		2	1	2	1	0
Cases > 8 months	%	5	100	0	0	0	0
Cases > 16 months	%	0	100	0	0	0	0

**Class 1 – 3**

Pending caseload	no.		914	771	655	851	1,010
Cases > 6 months	%	5	47.3	45.7	24.6	25.3	36.1
Cases > 12 months	%	0	19.1	24.3	8.6	7.6	10.5

**Class 4 – 8**

Pending caseload	no.		364	387	452	400	325
Cases > 8 months	%	5	44.8	70.8	65.7	55.5	59.4
Cases > 16 months	%	0	19.0	36.2	34.3	39.0	42.5

These backlog figures need some explanation:

■ **Class 1:** The backlog percentage figures for pending caseloads greater than 6 months and 12 months increased in 2023 following two consecutive decreases. Despite the increase, the proportion of matters exceeding the 12 month active time standard (7.3%) is significantly less than in 2019 (17.5%) and 2020 (24.3%). The total pending caseload in Class 1 increased during 2022 as a result of registrations exceeding finalisations. The significant decrease in the proportion of matters exceeding 6 months to the proportion of matters exceeding 12 months indicates a large volume of Class 1 matters are finalising between these two measuring points. In 2023, the average finalisation time for Class 1 matters was roughly 8 months, whilst the median finalisation time was about 7 months. Both of these measures have increased by about a month compared to the 2022 results.

■ **Class 2:** There was an increase in the number of pending Class 2 matters at the end of 2023, as registrations exceeded finalisations. Most of these are tree disputes. There are 9 pending matters that have exceeded the 6 month time standard and 3 matters have exceeded the 12 month time standard (none of these are tree matters).

■ **Class 3:** The number of pending Class 3 matters further increased significantly in 2023 (34%) following a notable growth in Class 3 registrations. There was a notable increase in the proportion of matters exceeding both the 6 month time standard and a moderate increase for the 12 month time standard, but the rates are still lower than those reported in 2018 – 2020.

■ **Class 4:** The number of pending Class 4 matters significantly decreased from 2022 following a significant decrease in registrations. There was a moderate increase in the proportion of active matters exceeding both the 8 month time standard and the 16 month time standard.

The proportion of matters exceeding the 16 month target is less than half of those exceeding the 8 month target. This indicates a significant number of Class 4 matters finalise after 8 months but before 16 months. The average duration for finalised Class 4 matters in 2023 was slightly less than 10 months and the median slightly less than 7 months, both of these measure representing a slight improvement over the 2022 results.

■ **Class 5:** Although the registrations of Class 5 matters remained high, the pending caseload reduced in 2023 as a result of elevated finalisations (the highest on record; there were 66 more finalisations than registrations). Class

5 matters will continue to finalise en masse in the coming years, as many are related prosecutions. Due to the age of the pending caseload, many of these upcoming finalisations will exceed the Court's time standards.

■ **Class 6:** There was a decrease in the number of pending Class 6 matters in 2023 but the total caseload is small. Of the 2 pending appeals, neither has been active for more than 8 months.

■ **Class 8:** The pending caseload decreased to 0 at the end of 2023. If the national time standards are used, the results of the backlog indicator for the Court in 2023 are as shown in the table below:

**Table 5.7 Backlog indicator (national time standards)**

	Unit	National Standards	2019	2020	2021	2022	2023
<b>Class 1</b>							
Pending caseload	no.		790	643	488	673	781
Cases > 12 months	%	10	17.5	24.3	7.6	5.7	7.3
Cases > 24 months	%	0	0.5	2.8	1.6	0.6	0.6
<b>Class 2</b>							
Pending caseload	no.		31	43	53	43	48
Cases > 12 months	%	10	3.2	9.3	1.9	0	6.3
Cases > 24 months	%	0	0	0	0	0	0
<b>Class 3</b>							
Pending caseload	no.		93	85	114	135	181
Cases > 12 months	%	10	38.7	31.8	17.5	20	25.4
Cases > 24 months	%	0	6.5	21.2	2.6	0.7	6.1
<b>Class 4</b>							
Pending caseload	no.		105	83	105	95	71
Cases > 12 months	%	10	32.4	30.1	22.9	30.5	33.8
Cases > 24 months	%	0	15.2	7.2	9.5	4.2	12.7



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**Class 5**

Pending caseload	no.		249	300	343	298	252
Cases > 12 months	%	10	36.9	66.7	46.4	60.4	53.2
Cases > 24 months	%	0	4.8	19	34.4	22.2	32.1

**Class 6 and Class 7**

Pending caseload	no.		8	3	2	6	2
Cases > 12 months	%	10	0	0	0	0	0
Cases > 24 months	%	0	0	0	0	0	0

**Class 8**

Pending caseload	no.		2	1	2	1	0
Cases > 12 months	%	10	100	0	0	0	0
Cases > 24 months	%	0	0	0	0	0	0

This table shows that the Court's performance in Classes 1, 2, 6, 7 and 8 better or meets the national standard for both 12 months and 24 months. The Court's performance decreased in the national standards in Classes 3, 4 and 5 in 2023. The Court's performance in Class 5 remains substantially below the national standard for 12 months and 24 months for the reasons given earlier.

**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 2019-2023.

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

	2019	2020	2021	2022	2023
<b>Class 1</b>					
No. of cases	855	874	961	889	993
% < 6 months	25	27	32	51	36
% < 12 months	77	68	72	89	87
95% completed within (months)	16	20	22	15	15
<b>Class 2</b>					
No. of cases	93	87	125	123	110
% < 6 months	89	66	69	67	79
% < 12 months	99	99	97	94	97
95% completed within (months)	7	10	9	13	7
<b>Class 3</b>					
No. of cases	89	89	90	127	131
% < 6 months	29	38	40	45	27
% < 12 months	66	66	60	73	63
95% completed within (months)	27	23	37	25	22
<b>Class 4</b>					
No. of cases	107	115	116	110	106
% < 8 months	63	57	58	51	52
% < 16 months	85	86	89	83	80
95% completed within (months)	23	22	20	32	26
<b>Class 5</b>					
No. of cases	89	65	151	207	224
% < 8 months	26	22	9	22	34
% < 16 months	80	51	32	55	44
95% completed within (months)	22	26	35	38	37
<b>Class 6</b>					
No. of cases	14	14	6	6	12
% < 8 months	71	50	83	83	67
% < 16 months	100	100	83	100	100
95% completed within (months)	11	9	13	9	10
<b>Class 8</b>					
No. of cases	4	3	2	2	2
% < 8 months	75	33	50	100	50
% < 16 months	100	33	100	100	100
95% completed within (months)	6	25	8	6	11

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In Class 1, there was a significant decrease in the percentage of cases completed within 6 months and a slight decrease in the percentage of cases completed within 12 months. The growth in backlog over recent years has made finalisation of older matters necessary to improve the Court's efficiency going forward. This is corroborated by the associated increase in the 95% completion measure in 2018-2021. However, this measure reduced in 2022 for the first time since 2012-2013 to 15 months. This result was maintained in 2023. However, the mean (8 months) and median (7 months) time for completion of Class 1 matters both increased in 2023 following a decrease in 2022.

In Class 2, the percentage of matters completed within 6 months increased, as did the percentage of matters completed within 12 months. The time taken for 95% of matters to be completed decreased significantly (to 7 months), and the mean and median time for finalisation also decreased. The Court continued to manage the Class 2 caseload very well.

In Class 3, a smaller percentages of cases were completed within 6 months and 12 months. However, the time taken to complete 95% of the cases is lower than in 2022. The average (10 months) and median (9 months) finalisation times both increased from 2022.

In Class 4, the percentage of cases finalised in less than 8 months slightly increased and 16 months slightly decreased. The time taken to complete 95% of the matters decreased (to 26 months). The mean and median finalisation times both also increased. These figures reflect more older cases being finalised in 2023.

In Class 5, the percentage of cases finalised in less than 8 months increased whilst

the 16 month measure decreased. Both measures remain well outside the set time standards. This is a product of 5 years of high registrations, with those cases being finalised throughout 2023. The time taken to complete 95% of cases decreased but remains slightly over 3 years. The average finalisation time decreased slightly to just under 17 months (19 months in 2022, 21 months in 2021).

The Court's performance in complying with time standards for Class 6 matters decreased in the 8 month category but maintained the 2022 result of all matters being finalised within 16 months. The time taken to finalise 95% of cases increased to 10 months, whilst the average and median finalisation times decreased.

The Court's performance in Class 8 decreased in the 8 month category but maintained the 16 month target of 100% that was achieved in 2021 and 2022. The low volume of cases makes it difficult to draw any great inferences from the result.

### **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 number of judgments (about 9%) 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 2023 for reserved judgments being delivered within 14 days and 90 days decreased slightly, but was maintained for the 30 day time standard. These results need to be viewed in the context of the material increase in the numbers of matters dealt with by the Court in the year.

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	2019	2020	2021	2022	2023
% delivered within 14 days	50	24	19	21	32	27
% delivered within 30 days	75	50	46	48	51	52
% delivered within 90 days	100	80	78	78	79	74

**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**

	2019	2020	2021	2022	2023
Class 1	2	2	9	19	21
Class 2	0	0	0	15	3
Class 3	1	0	0	2	2
Class 4	2	1	1	0	1
Class 5	0	0	1	1	3
Classes 6 and 7	0	0	0	0	0
Class 8	1	0	0	0	0
<b>Total</b>	<b>6<sup>1</sup></b>	<b>3<sup>2</sup></b>	<b>11<sup>3</sup></b>	<b>37<sup>4</sup></b>	<b>30<sup>5</sup></b>

\*<sup>1</sup> In 2019, 67% of inquiries (4) concerned judges' reserved judgments and 33% (2) concerned commissioners' reserved judgments.

\*<sup>2</sup> In 2020, 33% of inquiries (1) concerned judges' reserved judgments and 67% (2) concerned commissioners' reserved judgments.

\*<sup>3</sup> In 2021, 27% of Inquiries (3) concerned judges' reserved judgments and 73% (8) concerned commissioners' reserved judgments.

\*<sup>4</sup> In 2022, 14% of Inquires (5) concerned judges' reserved judgments and 86% (31) concerned commissioners' reserved judgments.

\*<sup>5</sup> In 2023, 20% of Inquiries (6) concerned judges' reserved judgments, 77% (23) concerned commissioners' reserved judgments, 0.03% (1) concerned registrar's reserved judgment.

The Chief Judge investigated each inquiry made in 2023 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**

	2019	2020	2021	2022	2023
	%	%	%	%	%
Class 1	92.6	117.6	120.9	83.2	90.4
Class 2	97.9	88.8	92.6	109.8	95.7
Class 3	106.0	104.7	74.4	84.1	74.4
Class 4	87.0	111.7	81.1	106.8	127.7
Class 5	53.9	54.2	77.4	129.4	142.7
Class 6	82.4	175	120	60	150
Class 8	400	150	66.7	200	200
Classes 1-3	94.1	113.4	111.9	85.6	88.8
Classes 4-8	69.0	84.6	79.6	118.6	138.2
<b>Total</b>	<b>88.6</b>	<b>107.6</b>	<b>103.9</b>	<b>91.2</b>	<b>96.3</b>

These figures show that the total clearance rate increased from 2022 but still was slightly below the 100% mark, meaning the total pending caseload increased over the course of the year. The clearance rate for classes 1-3 increased slightly, whilst the clearance rate for classes 4-8 increased significantly. The Class 1-3 clearance rate finished well below 100% (that is, more Class 1-3 matters were registered than finalised across the year) reflecting increased registrations in those classes. The Class 4-8 clearance rate finished significantly above the 100% mark, for the second time since 2016 (the first being 2022).

The Class 1 clearance rate increased from 2022, but was still below 100%. This reflects the continued increase in Class 1 registrations in 2023. In Class 2, registrations marginally exceeded finalisations, resulting in a clearance rate slightly below 100%. In Class 3, the clearance rate decreased due to the significant increase in registrations. The Class 4 clearance rate increased significantly to exceed the 100% target. The clearance rate in Class 5 increased significantly, to

exceed 100% for the second time since 2017. The Class 6 clearance rate increased from 2021, whilst the Class 8 clearance rate stayed high above 100%. These two categories feature such low volumes of cases that the changes are often extreme but have a negligible effect on the Court's yearly workload.

### 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 2019-2023.

**Table 5.12 Median number of pre-hearing attendances by Class**

	2019	2020	2021	2022	2023
Class 1	4	4	5	4	4
Class 2	1	3	2	2	2
Class 3: (all matters)	6	5	6	4	5
Compensation claims	7	8	15	4	5
Valuation objections	3	6	3	3	5
Miscellaneous	7	3	6	4	5
Class 4	4	4	5	4	5
Class 5	6	9	7	8	5
Class 6	2	3	1	1	1
Class 8	4	6	8	3	5

The table reveals that the median number of pre-hearing attendances was maintained for Class 1 matters in 2023. The 2021 increase was likely caused by changes to case management practices made by the Court in response to the COVID-19 pandemic and related movement and gathering restrictions. For Class 2 matters, the number of pre-hearing attendances remained consistent. Overall, the number of pre-hearing attendances for all matters in Class 3 increased, especially for valuation objections. The number of pre-hearing attendances in Class 4 also increased.

The number of pre-hearing attendances in Class 5 decreased. Table 5.12 shows that this measure for Class 5 has been fluctuating considerably over recent years. The number of pre-hearing attendances remained steady in Class 6 and increased significantly in Class 8. The caseload volume for Classes 6 and 8 is small, so they are prone to more variation across years without impacting the Court's overall caseload management.

## 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 2023, 14 s 56A appeals were commenced, 5 appeals were settled pre-hearing, 6 appeals were completed after a hearing, and 5 appeals were pending at 31 December 2023.

Of the 6 appeals that were completed at hearing, 4 were upheld. This represents 0.5% of the number of matters in Classes 1, 2, 3 and 8 disposed of at a hearing by a Commissioner of the Court in 2023.

**Table 5.13 s 56A Appeal outcomes**

	2019	2020	2021	2022	2023
Total no. of appeals	13	10	11	12	14
No. finalised pre-hearing	2	3	4	6	5
No. of appeals to hearing	11	7	7	6	6
Outcome:					
Upheld	5	2	2	0	4
Dismissed	6	5	5	6	2

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

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

The Court has continued the approach it adopted for the 2016 Annual Review of reporting on the number of cases determined by the appellate courts on appeal from the Land and Environment Court. Table 5.14 shows the number and types of decisions determined by the appellate courts from 2019 to 2023.

In 2023, 11 appeals were determined by the Court of Appeal on appeal from the Land and Environment Court and 3 appeals were determined by the Court of Criminal Appeal on appeal from the Land and Environment Court.



**Table 5.14 Appeals to the appellate courts**

	2019	2020	2021	2022	2023
<b>Court of Appeal</b>					
Appeal by right	14	7	7	6	7
Leave to appeal	5	5	5	3	4
<b>Total matters determined</b>	<b>19*</b>	<b>12*</b>	<b>12*</b>	<b>9*</b>	<b>11*</b>
<b>Court of Criminal Appeal</b>					
Appeal by right	2	1	3	4	1
Stated case, section 5AE	3	0	0	1	0
Leave to appeal	1	4	2	1	2
<b>Total matters determined</b>	<b>6</b>	<b>5</b>	<b>5</b>	<b>6</b>	<b>3</b>

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

## Complaints

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

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

Complaints about Commissioners, who are not judicial officers, are made to the Chief Judge of the Court. The Court has published a policy on making, examining and dealing with complaints against Commissioners. Complaints that are upheld can result in action being taken by the Chief Judge (such as 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.

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## Complaints received and finalised

In 2023, the Court received six formal complaints.

### Table 5.15 Complaint particulars

Complaints pending as at 31 December 2023	0
<b>Complaints made during 2023</b>	
Total number of complaints	6
Complaints examined but dismissed	6
Complaints not dismissed but dealt with by the Chief Judge	0
Complaints referred by Chief Judge to Complaint Committee	0
Complaint withdrawn	0
Total number of complaints finalised	6
Complaints pending as at 31 December 2023	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 2023, Commissioners exercised the functions of undertaking conciliations, mediations, on-site hearings or court hearings in Classes 1, 2 and 3 and 8. There were 1,236 matters disposed of in 2023 in those classes. Complaints, therefore, occurred in only 0.5% 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 2023. More than one criterion may be used for each complaint. The table shows that each of the 2 complaints were dismissed.

### Table 5.16 Criteria for dismissing complaints

No misconduct was established	6
The complaint related to a judicial or other function that is or was subject to adequate appeal or review rights	2

## Patterns in complaints

The Court monitors patterns in the nature and scope of complaints to identify areas that might need to be addressed through its continuing professional development programs or other appropriate action. For example, information gathered from complaints in previous years has been used to develop education programs 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 2023. 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.

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**Table 5.17 Common causes of complaint**

	<b>2023</b>
Bias, collusion or conflict of interest	2
Delay	1
Dissatisfaction with substantive outcome or wrong decision	4
Dissatisfaction with procedural and evidentiary rulings	2
Error interpreting or applying the law	
Failure of Court to enforce judgment or orders	
Failure to give fair hearing	1
Impairment	
Inadequate reasons for judgment	
Inappropriate behaviour or comments or discourtesy	1
Incompetence	1

#### ***Misunderstanding as to administrative court process***

One complaint concerned the decision of the Registrar not to refer immediately an unrepresented litigant's application for interlocutory relief, sought in the originating process to be filed, to the Duty Judge. The applicant sought to review the conduct of Councillors and employees of a local council as being in breach of the *Local Government Act 1993*. The Registrar declined to refer the application for interlocutory relief immediately to the Duty Judge but instead allocated an early return date of the originating process so that appropriate case management directions could be made. The applicant disagreed with the Registrar's decision, believing it to be not in accordance with the Practice Note for Urgent Applications. In so believing, the applicant misunderstood the process for referral of an application, claimed by an applicant to be urgent, to the

Duty Judge. The Registrar has a discretion to evaluate whether an application is urgent and when and how the application is to be heard and determined, including the judicial decision-maker to hear the application.

#### ***Misunderstanding of hearing process***

Two complaints concerned the Commissioner's rulings as to the conduct of the hearing on site. At the on-site hearing of a development appeal, at which there were many objectors present, the Commissioner directed that except for the objectors scheduled to give evidence on site, there be no noise, recordings, photography or questions. At the on-site hearing of an application under the *Trees (Dispute Between Neighbours) Act 2006*, the Commissioner cautioned the applicant for disdainful and uncivil conduct towards the respondents and advised that if it were to continue the hearing would be adjourned to a courtroom. In both cases, the Commissioner presiding at the hearing had the function of managing and controlling the conduct of the hearing, including how the parties and the public behaved and the manner and content of what they said. The Commissioner's management and control of the hearings did not involve judicial misconduct. The fact that the objectors or a party disagreed with the Commissioner's directions did not make the Commissioner's exercise of the function to manage and control the hearings inappropriate or misbehaviour.

#### ***Substitution for appeals or review***

Four of the complaints asserted that the Commissioner made wrong factual findings on the evidence or the wrong substantive decision. These complaints alleged that the Commissioner was wrong not to have given substantial weight to the evidence of the objectors or in preferring the evidence of one

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party or its expert to the evidence of another party or its expert. One complaint concerned the criticism by a Commissioner, who is a qualified arborist, of a party's arborist's qualifications and methodology used in the expert report. One complaint contended the Commissioner, who is an architect, lacked the expertise necessary to decide acoustic issues. One complaint contended the Commissioner's findings were contrary to the findings and recommendations of the consent authority whose decision was subject to appeal. One complaint alleged that the Commissioner's findings revealed a lack of balance or bias in weighing the benefits and costs of the proposed development.

These complaints about what evidence to admit, what weight to give to evidence or whose evidence to prefer do not reveal judicial misconduct. Commissioners and judges are tasked with the functions of deciding the evidence to be admitted, the weight to be given to evidence, the findings and inferences of fact to be drawn from the evidence, and the decision to be made based on those findings and inferences of fact. Exercising those functions in ways with which complainants disagree is not judicial misconduct.

These types of complaints are often made in apparent substitution of an appeal against the decision of a Commissioner. They may be 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. One of the complaints by an applicant under the *Trees (Disputes Between Neighbours) Act 2006* fell into this category. Other times, the complaint is made by a person who is not a party to the proceedings and has no right to appeal the decision. Two complaints fell into this category. Another complaint by an expert

called as a witness in an application under the *Trees (Disputes Between Neighbours) Act 2006* repeated concerns raised by the dissatisfied applicant in a successful appeal against the Commissioner's decision.

A complaint about a Commissioner's decision is not a substitute for an appeal against the Commissioner's decision. The Chief Judge cannot correct alleged wrong decisions when dealing with complaints.

## 6 Education and Community Involvement

- Continuing professional development
  - Continuing professional development policy
  - Annual Court Conference 2023
  - National Mediator Accreditation
  - Other educational activities
  - Twilight seminar series
- Performance indicators and programme evaluation
- Publications
- Education and participation in the community
- Individual Judges' and Commissioners' activities

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## 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 2023

The Annual Court Conference for 2023 was held on Thursday 25 May to Friday 26 May 2023 at The Sebel Harbourside, Kiama.

Six Judges, one Senior Commissioner, eight Commissioners, 12 Acting Commissioners and two Registrars 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:

- Changing how we view change: the artist's insight
- You can only keep something by giving it away
- Resilience, Recovery and Sustainability
- Values in Cities: Urban Heritage in Twentieth-Century Australia

- Caring for Country
- Judicial Wellbeing
- Emerging Digital Planning Tools
- Field Trip: Bundanon and visit to Arthur Boyd's studio.



*Field Trip: Arthur Boyd's studio, May 2023.*

### National Mediator Accreditation

In 2023, all Commissioners, the Registrar, Senior Deputy Registrar and Deputy Registrar were nationally accredited as mediators.

### Other educational activities

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

### 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 three twilight seminars, one field trip and two webinars in 2023. There were also two cross-jurisdictional webinars.

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### **23 March**

Twilight seminar, "Q & A Session on Court Craft" presented by the Hon Justice Duggan, Judicial Commission of NSW, Sydney

### **26 June**

Twilight webinar, "A Mindful Court - introduction to mindfulness", presented by Prof Craig Hassed OAM, Judicial Commission of NSW, via Cisco Webex

### **22 August**

Twilight webinar, "Connecting with Country" presented by Dillon Kombumerri, principal architect, Government Architect NSW, Judicial Commission of NSW, Sydney

### **14 September**

Twilight seminar, "Existential Ethics: Problematising Lawyer Involvement with, and Responsibility for, The Environmental Harms of Their Clients", presented by Professor Steven Vaughan, UCL, Judicial Commission of NSW, Sydney

### **21 September**

Twilight seminar, "Issues in Biodiversity Conservation Law", presented by Justice Preston and Acting Commissioner Paul Adam, Judicial Commission of NSW, Sydney

### **8 November**

Cross-jurisdictional Webinar: First Nations Speaker Series 2023, presented by Victor Steffensen

### **22 November**

Judicial Commission Twilight Tour, hosted by Mr Fred Holt, Partner with lead architects 3XN, and Mr Sacha Coles, Global Design Director of Aspect Studios, an international design practice of global landscape architects and designers, a visit to "Quay Quarter"

### **12 December**

Cross-jurisdictional Webinar: First Nations Speaker Series 2023, presented by Blak Douglas

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## **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 2023, both the collective target as well as the individual standard for each Judge and full-time Commissioner was met or exceeded.

Qualitatively, an evaluation form is distributed to each participant of each educational programme to receive feedback on whether the educational objectives were met and to measure the programme's usefulness, content and delivery. The ratings derived from the evaluation forms assist in measuring the success of the education programmes. Figure 6.1 shows the overall satisfaction with the Court's annual conference over the past five years has met or exceeded the target of 85%. The 2020 Annual Conference was not held due to the Covid-19 Pandemic.

**Table 6.1 Participant evaluation of Land and Environment Court Annual Conferences 2018 to 2023**

	Target	2018	2019	2020	2021	2022	2023
Overall satisfactory rating	85%	90%	94%	NA	91%	88%	95%

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

overall satisfaction of the twilight seminar series in the years 2017 to 2023, all of which exceeded the 85% standard.

**Table 6.2 Participant evaluation of Land and Environment Court Twilight seminar series 2017 to 2023**

	Target	2018	2019	2020	2021	2022	2023
Overall satisfactory rating	85%	94%	89%	97%	88%	93%	93%

\* Note: 2018 was based on 6 seminars, 3 cross-jurisdictional seminars and 2 field trips; 2019 was based on 3 seminars, 2 cross-jurisdictional seminars and 2 field trips and 2020 was based on 3 webinars, 1 cross-jurisdictional webinar and 1 field trip; 2021 was based on 6 webinars, 1 cross-jurisdictional webinar and 2 field trips; 2022 was based on 1 webinar and 1 field trip. 2023 was based on 3 twilight seminars 1 field trip and 2 webinars.

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 program, the Court produced two publications.

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

and conciliation conferences; decision-making and judgments; conduct of court members; and resources and remuneration for Commissioners. The Handbook is published online by the Judicial Commission on a closed website for members of the Court. The Handbook was updated in March 2021 to update references to legislation, Practice Notes and Policies, including the Covid-19 Pandemic Arrangements Policy and update links to the Court’s new website.

Beginning in January 2010, the Court publishes on the Court’s website a Judicial Newsletter three times a year, 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



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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 also regularly hosts international and national delegations to the Court. In 2023, members of the Court presented lectures and seminars in person or remotely using Microsoft Teams and Zoom.

## Individual Judges’ and Commissioners’ activities

The Judges’ and Commissioners’ activities during 2023 are summarised below:

### The Hon. Justice Brian John Preston SC, Chief Judge

#### Conferences and seminars

16 May	Law and Emotion: A Misunderstood Relation, The Macquarie University Research Centre for Agency, Values and Ethics, a public lecture presented by Professor Susan Bandes (DePaul University, Chicago) and Professor Richard Weisman (York University, Canada), Banco Court, Supreme Court of New South Wales, Sydney
17 May	The 2023 Whitmore Lecture, “The Constitution and State Tribunals” presented by the Honourable Justice Beech-Jones, Federal Court, Queens Square Law Courts Building, 184 Phillip Street, Sydney
17 May	The ASEAN Environmental Rights Framework and Opportunities for Australia, Presented by Mr Matthew Baird and Ms Melanie Montalban, College of Law, Sydney
25-26 May	Land and Environment Court 2023 Annual Conference, “Cultural Heritage: Place, Preservation & Prospects”, The Sebel Harbourside, Kiama
14 June	NSW Breakfast Seminar, “Is Agriculture ready for Artificial Intelligence”, presented by Ros Harvey, CEO of Australian AgTech company The Yield, The Strangers’ Function Room, Parliament of NSW, Sydney
21 June	Writing Constitutions Vol. I (Institutions) Book Launch, Dr Wolfgang Babeck, Hall & Wilcox, Sydney

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26 June	Twilight webinar, “A Mindful Court - introduction to mindfulness”, presented by Prof Craig Hassed OAM, Judicial Commission of NSW, via Cisco Webex
19 July	Seminar and Board Meeting of Global Judicial Institute on the Environment, New York, USA
20-21 July	World Law Congress New York 2023, New York, USA
25-26 August	Supreme Court of NSW Annual Conference, Newcastle, NSW
8-10 September	AAL, ALJA and ALJ, “Enduring Courts in Changing Times Conference”, Supreme Court of New South Wales, Sydney
14 September	Twilight seminar, “Existential Ethics: Problematising Lawyer Involvement with, and Responsibility for, The Environmental Harms of Their Clients”, presented by Professor Steven Vaughan, UCL, Judicial Commission of NSW, Sydney
8 November	2022 Clarke Memorial Lecture of the Royal Society of NSW, Metcalfe Auditorium, State Library of NSW, Macquarie St, Sydney
14 November	International Building Quality Centre (IBQC) function with Governor General, Canberra, ACT
24-27 November	36 <sup>th</sup> LAWASIA Annual Conference, Bengaluru, India
5 December	Australian Academy of Science and Australian Academy of Law Joint Symposium, public lecture by Dame Julie Maxton, Supreme Court of New South Wales, Sydney

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## Speaking Engagements

10 January	<i>Climate litigation developments 2021-22: government and corporate accountability</i> , keynote address to ‘International Law Year in Review’, NUS Centre for International Law, Singapore
17 January	<i>The Influence of the Paris Agreement on Australian Climate Change Litigation: Rocky Hill Mine</i> , a guest lecture presented to International Environmental Law Course, Oxford University, Oxford UK
8 February	<i>The right to a clean, healthy and sustainable environment: how to make it operational and effective</i> , keynote presentation to “People Place Involvement: The Key to Cross-Disciplinary Solutions for Equitable Peatland Restoration”, Northumbria University, Newcastle, UK
9 February	<i>The Brasilia Declaration of Judges on Water Justice: Principles of environmental stewardship, prevention and precaution, and environmental governance</i> , a presentation to the World Law Congress 2023, Energy Transition and Climate Forum, via Zoom
17 February	<i>The Globalisation and Harmonisation of Environmental Law</i> , a lecture in Durham Global Environmental Law Lecture series, Durham University, Durham UK

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20 March	<i>Climate litigation: government and corporate accountability</i> , ICCL Winter Lecture, Leiden Law School, Leiden, The Netherlands
21 March	<i>Judiciary and climate change: government and corporate accountability</i> , a lecture to Utrecht University and Dutch Society for Environmental Law, Utrecht, The Netherlands
23 March	<i>Climate litigation: government and corporate accountability</i> , a lecture to University of Groningen, Groningen, The Netherlands
24 March	<i>Climate litigation: corporate accountability</i> , a lecture to ZIFO seminar, Vrije Universiteit Amsterdam, Amsterdam, The Netherlands
27 March	<i>Pre-empting Construction Disputes</i> , a presentation to Resolution of Construction Disputes Seminar, Salford University, Manchester, UK
13 April	<i>Climate litigation: corporate accountability</i> , presentation to the Climate Change, Corporate Governance and Rule of Law Panel, World Law Congress 2023, Opening Session New York, UN Headquarters, New York, USA
13 April	<i>Remarks on Award of the World Jurist Association (WJA) Medal of Honor</i> , UN Headquarters, New York, USA
26 April	<i>Competencies and Expertises of Courts Resolving Environmental Disputes</i> , a presentation to the Journal of Environmental Law (JEL) Workshop 2023, 'Taking the Temperature of Environmental Law Scholarship: Honouring Professor Elizabeth Fisher', Oxford, UK, via Zoom
19 May	<i>An Introduction to Court Room Evidence</i> , a lecture to EIANZ Environmental Expert Course, Sydney
26 May	<i>Changing how we view change: the artist's insight</i> , a presentation to the Land and Environment Court of NSW Annual Conference, Kiama, NSW
22 June	<i>Can litigation assist in implementing the outcome of the global stocktake?</i> , a presentation to The Global Stocktake and International Law: Paradigm Process and Ambition Conference, Durham University, UK, via Zoom
23 June	<i>Climate change and the future of legal need</i> , a presentation to the Law Council of Australia 2023 National Access to Justice and Pro Bono Conference, Brisbane, Queensland
27 June	<i>Trends in Coal Mine-Focused Climate Litigation in Australia</i> , lecture to Australian Earth Laws Alliance Webinar, via Zoom
6 July	<i>Mainstreaming Climate Change in Legal Education</i> , a presentation to Environmental Law Webinar, University of Waikato and IUCN Academy of Environmental Law, NZ via Zoom
20 July	<i>Climate litigation: government accountability</i> , a presentation to the Rule of Law, Energy Transition and Climate Panel, World Law Congress New York 2023, New York, USA

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4 August	<i>The role of the courts in delivering environmental justice</i> , The 2023 Sir Ninian Stephen Lecture, University of Newcastle School of Law and Justice, Newcastle, NSW
8 August	<i>Overview of the Land and Environment Court</i> , a lecture to Macquarie University, Land and Environment Court Clinic, Land and Environment Court, Sydney
24 August	<i>Developments in the Court and the Court's jurisdiction in the last year</i> , a talk to the Urban Taskforce Australia Boardroom Luncheon
5 September	<i>The Right to a Clean, Healthy and Sustainable Environment: How to Make It Operational and Effective</i> , a lecture to Australian Earth Laws Alliance Webinar, via Zoom
9 September	<i>Specialist environmental courts: their objective, integrity and legitimacy</i> , a presentation to the AAL, AIJA and ALJ "Enduring Courts in Changing Times" Conference, Supreme Court of NSW, Sydney
12 September	<i>Current challenges and opportunities for improvement of construction dispute resolution systems</i> , a presentation to the IBQC Global Construction Dispute Resolution Conference, via Zoom
18 September	<i>Careers in environmental law</i> , panel discussion at the University of New South Wales, Kensington, NSW
21 September	<i>Issues in Biodiversity Conservation Law</i> , a lecture with Dr Paul Adam at Land and Environment Court Twilight Seminar Judicial Commission of New South Wales, Sydney
22 September	<i>The contribution of the Land and Environment Court of NSW to ecologically sustainable development</i> , a lecture to Sustainability: Law and Policy Course, University of Sydney, Sydney
25-29 September	<i>Lectures to ADB Judicial Capacity Building on Environment and Climate Change Law in Cambodia Training Workshop</i> , Phnom Penh, Cambodia
3 October	<i>Principled sentencing for environmental offences</i> , a lecture to Macquarie University, Land and Environment Court Clinic, Land and Environment Court, Sydney
5 October	<i>Justiciability Issues in Climate Change Litigation</i> , a lecture to the British Institute of International and Comparative Law (BIICL), Climate Change Litigation Course, via Zoom
12 October	<i>Law and Nature Dialogue: Ecocide-Australian and global perspectives</i> , Chair and Panellist, Macquarie University, Sydney
20 October	<i>Presiding judge, Grand Final, Macquarie University Environmental Law Moot</i> , Land and Environment Court, Sydney
2 November	<i>The right to a clean, healthy and sustainable environment: its nature, content and realization</i> , The 2023 Blackshield Lecture, Macquarie Law School, Sydney

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9 November	Chair, Western Sydney University, Master of Construction Law External Advisory Committee meeting, Western Sydney University, Sydney
24 November	<i>Remarks on the award of Life Membership of LAWASIA</i> , 36 <sup>th</sup> LAWASIA Annual Conference, Bengaluru, India
26 November	<i>The Right to a Clean, Sustainable and Healthy Environment</i> , a presentation to the 36 <sup>th</sup> LAWASIA Annual Conference, Bengaluru, India

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## **Publications**

B J Preston, "Changing climate law and governance: A multi-level perspective" (2023) *Global Policy* 1-12.

C Warnock and B J Preston, "Climate Change, Fundamental Rights, and Statutory Interpretation" (2023) 35(1) *Journal of Environmental Law* 1-18.

Wiebren Johannes Boonstra, Rakhyun E. Kim, Louis J. Kotzè, Michelle Lim, Paulo Magalhães, Brian J. Preston and Johan Rockström, Prue Taylor, "Earth steward: Will Steffen's contributions to Earth System Science, governance and law" (2023) 52 *Ambio* 995-1003.

B J Preston and N Silbert, "Trends In Human Rights-Based Climate Litigation: Pathways For Litigation In Australia", (2023) 49(1) *Monash University Law Review* 39-72.

B J Preston, "Can litigation assist in implementing the outcome of the global stocktake?" (2023) 41(4) *Journal of Energy & Natural Resources Law* 457-488.

B J Preston, "The Interaction of Policy and Law in Environmental Governance" (2023) 108 *Australian Institute of Administrative Law* 39-61.

B J Preston, "The Role of the Judiciary in Keeping the Legislature and Executive Accountable" (2023 Winter) *Bar News* 64-66.

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## **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

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

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

Fellow, Australian Academy of Law (FAAL)

Fellow, Royal Society of NSW (FRSN)

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

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

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Member, Editorial Board, Chinese Journal of Environmental Law

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Adjunct Professor, Sydney Law School, University of Sydney

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Adjunct Professor, School of Law, Western Sydney University

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Adjunct Professor, School of Law and Justice, Southern Cross University

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Visiting Professor, Durham Law School, Durham University, UK

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Member, International Research Advisory Board, Durham University

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Chair, External Advisory Committee, Masters of Construction Law, Western Sydney University

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

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

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Member, Governing Board, Global Judicial Institute on the Environment

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Vice President, Oceania, Global Judicial Institute on the Environment

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Associate Member, European Union Forum of Judges for the Environment

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Member, Francis Forbes Society for Australian Legal History

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### **Delegations and international assistance**

18 April	Giving evidence to UK House of Lords, Built Environment Committee: The impact of environmental regulations on development, Westminster, London, UK
25 April	Meeting of ICCA Panel of Experts to Develop a Paris Agreement Conciliation Annex, via Zoom
4 May	Meeting with Professor David Estrin and Mr Gianni Ghinelli, PhD candidate, University of Windsor, Toronto on his thesis on climate litigation
12 May	BIICL Corporate Climate Litigation Toolbox Workshop – Regional Summits, via Zoom
6 June	Meeting with Visiting Professor Manju Menon, Centre for Policy Research, India, on the Land and Environment Court and its work
19 June	Meeting of ICCA Panel of Experts to Develop a Paris Agreement Conciliation Annex, via Zoom
20 June	Meeting with Visiting Professor Eeshan Chaturvedi, Stanford University on environmental and climate law and adjudication
9 August	Meeting with President Fleur Kingham, Chair of Queensland Law Reform Commission on judicial resolution of mining disputes
6 September	Meeting with Professor Marcos Orellana, Special Rapporteur on Toxics and Human Rights, Land and Environment Court of NSW, Sydney
12 September	Meeting with Professor Eeshan Chaturvedi on environmental and climate law and adjudication

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6, 17 October	Interview with Dr Susan Bartie for The History of Environmental Lawyers, Land and Environment Court of NSW, Sydney
23 October	Meeting with Dr Sam Campbell, University of Waikato, Te Piringa Faculty of Law on sustainable development law
13, 16 November	Meeting with visiting delegation from Japan, led by Professor Tsuyoshi Hondou, on concurrent expert evidence

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*Ms Deborah Enix-Ross and Justice Preston at the World Jurist Association World Law Congress 2023, Opening Session New York at United Nations Headquarters, Award for World Jurist Association Medal of Honour 2023.*

## The Hon. Justice Nicola Hope Margaret Pain

### Conferences and seminars

4 February	Ngara Yura Program Symposium, “Exchanging Ideas: Constitutional Reform, Nation Building and Treaty Making Processes”, Museum of Applied Arts and Sciences, Powerhouse Museum, Judicial Commission of New South Wales
17 February	2023 George Winterton Memorial Lecture, Supreme Court of NSW
27 February	Webinar: National Environmental Law Association - Environmental Constitutionalism
1 March	Webinar: Australian Academy of Law - The Treaty Negotiation Framework for Victoria
14 March	Webinar: International Law Association - Judging the Law of the Sea
18 March	Australian Judicial Officer's Association Governing Council Meeting, Melbourne
20 March	Iain McCalman Lecture, University of Sydney
23 March	Twilight seminar, "Q & A Session on Court Craft" presented by the Hon Justice Duggan, Judicial Commission of NSW, Sydney
19 April	Webinar: Fossil Fuel Litigation - The context, the science, the cases

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25-26 May	Land and Environment Court 2023 Annual Conference, “Cultural Heritage: Place, Preservation & Prospects”, The Sebel Harbourside, Kiama
16 June	Australian Judicial Officer's Association 30th Anniversary Lecture, Supreme Court of NSW
26 June	Twilight webinar, “A Mindful Court - introduction to mindfulness”, presented by Prof Craig Hassed OAM, Judicial Commission of NSW, via Cisco Webex
22 August	Twilight webinar, “Connecting with Country” presented by Dillon Kombumerri, principal architect, Government Architect NSW, Judicial Commission of NSW, Sydney
8-10 September	Enduring Courts in Changing Times Conference, Supreme Court of NSW
14 September	Twilight seminar, “Existential Ethics: Problematising Lawyer Involvement with, and Responsibility for, The Environmental Harms of Their Clients”, presented by Professor Steven Vaughan, UCL, Judicial Commission of NSW, Sydney
20 September	Webinar: Law Council, The Voice
21 September	Twilight seminar, “Issues in Biodiversity Conservation Law”, presented by Justice Preston and Acting Commissioner Paul Adam, Judicial Commission of NSW, Sydney
5-8 October	Australian Judicial Officers Association Colloquium, Auckland New Zealand

## Speaking Engagements

14 February	<i>Reflections on a National EPA</i> , Australian Centre for Climate and Environmental Law Year in Review, University of Sydney
21 February	<i>Climate Litigation</i> , King's College London, on-line
3 May	<i>The right to a clean, healthy and sustainable environment in practice</i> , Council of Europe conference, on-line
10 May	<i>Update from the Land and Environment Court</i> , UNSW Edge, University of NSW
29 June	National Judicial College of Australia Oral Decisions Course facilitator, Kirribilli
12 July	Chair, Climate Change Advisory Opinion, ILA (Australia branch) webinar
4 August	<i>Adjudication and adaptation: Challenges for courts and tribunals</i> , International Union for Conservation of Nature Academy of Environmental Law Colloquium 2023, on-line
23-26 August	<i>Master of Environmental Law: Environmental Dispute Resolution</i> , University of Sydney
25 September	Chair, International Law Association Early Career Seminar, on-line



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23 October	<i>Climate Change Litigation</i> , University of Wollongong, on-line
28-29 October	<i>Asia Pacific Judicial Training on Environment and Climate Law Adjudication</i> , Supreme Court of Indonesia, Jakarta Indonesia

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### **Membership of legal, cultural or benevolent organisations**

Fellow, Australian Academy of Law

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

Chair, Land and Environment Court Education Committee

Member, Australian Association of Constitutional Law

Member, Australian Association of Women Judges

Member, Australian Institute of Administrative Law

Member, Australian Institute of Company Directors

Member, Australian Judicial Officers Association

Member, International Law Association (Australian Branch)

Member, Judicial Commission of NSW Standing Advisory Committee on Judicial Education

Member, LAWASIA

Member, Law Council of Australia (International Law Section)

Member, National Environmental Law Association

Member, NSW Bar Association

Member, World Commission on Environmental Law IUCN

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## **The Hon. Justice Rachel Ann Pepper**

### **Conferences and seminars**

4 February	Ngara Yura Program Symposium, “Exchanging Ideas: Constitutional Reform, Nation Building and Treaty Making Processes”, Museum of Applied Arts and Sciences, Powerhouse Museum, Judicial Commission of New South Wales
15 February	<i>The Green Tribunal of India: Recent Advances and Challenges</i> , Professor Sahu, Associate Professor of the Tata Institute of Sciences, Land and Environment Court of NSW, Sydney
29 March	<i>Stanley v Director of Public Prosecutions (NSW) [2023] HCA 3: Implications for Administering Law and Sentencing</i> , Stephen Odgers SC and Tim Game SC, Bar Association, Sydney
17 May	<i>The Constitution and State Tribunals</i> , Whitmore Lecture, Beech-Jones Chat CL, Council of Australian Tribunals NSW Chapter Incorporated, Federal Court of Australia, Sydney

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2 November	<i>The Robodebt Royal Commission – Part 1</i> , Peter Hanks SC, Dr Darren O’Donovan and Angus Scott KC, Australian Institute of Administrative Law, Sydney
29 November	<i>Post Referendum: Some ways forward?</i> The Michael Will address, Professor Asmi Wood, ANU Law School, Webinar, Canberra

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### **Membership of legal, cultural or benevolent organisations**

Fellow of the Australian Academy of Law
Adjunct Professor, University of Sydney School of Law
Lecturer, Environmental Dispute Resolution, University of Sydney School of Law
Secretary, Australian Institute of Administrative Law (NSW Chapter)
Editorial Board, Australian Journal of Administrative Law
Environment Section Editor, Australian Journal of Law
Vice President, Australian Institute of Administrative Law, National Executive Committee
Member, Australian Institute of Judicial Administration Indigenous Committee
Standing Organising Committee Member, National Judicial College of Australia Sentencing Conference
Judicial member, Football Federation of Australia
NSW representative, Australian Association of Woman Judges
Ngara Yura Committee, Judicial Commission of New South Wales
Board member, Twenty10
Member, Australian Institute of Administrative Law
Member, World Commission on Environmental Law
Member, IUCN Commission on Environmental Law
Member, National Judicial College of Australia
Member, Australian Institute of Judicial Administration
Member, Commonwealth Magistrates’ and Judges’ Association
Member, Environment Institute of Australia and New Zealand
Member, ADB, UNEP and IUCN Pacific Environmental Dispute Mechanism Working Group
Chair and founder, Mahla Pearlman Oration

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## The Hon. Justice Timothy John Moore

### Conferences and seminars

23 March	Twilight seminar, "Q & A Session on Court Craft" presented by the Hon Justice Duggan, Judicial Commission of NSW, Sydney
26 June	Twilight webinar, "A Mindful Court - introduction to mindfulness", presented by Prof Craig Hassed OAM, Judicial Commission of NSW, via Cisco Webex
22 August	Twilight webinar, "Connecting with Country" presented by Dillon Kombumerri, principal architect, Government Architect NSW, Judicial Commission of NSW, Sydney
14 September	Twilight seminar, "Existential Ethics: Problematizing Lawyer Involvement with, and Responsibility for, The Environmental Harms of Their Clients", presented by Professor Steven Vaughan, UCL, Judicial Commission of NSW, Sydney
21 September	Twilight seminar, "Issues in Biodiversity Conservation Law", presented by Justice Preston and Acting Commissioner Paul Adam, Judicial Commission of NSW, Sydney

### Membership of legal, cultural or benevolent organisations

Member, Australasian Cave and Karst Management Association Committee

Member, John Koowarta Reconciliation Law Scholarship Advisory Committee

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## The Hon. Justice John Ernest Robson SC

### Conferences and seminars

4 February	Ngara Yura Program Symposium, "Exchanging Ideas: Constitutional Reform, Nation Building and Treaty Making Processes", Museum of Applied Arts and Sciences, Powerhouse Museum, Judicial Commission of New South Wales
15 February	Presentation, "The Green Tribunal of India: Recent Advances and Challenges", presented by Associate Professor Geetanjoy Sahu, Centre for Science, Technology & Society School of Habitat Studies, Tata Institute of Social Sciences, Mumbai, Land and Environment Court of NSW
21 February	The University of Sydney Law School and The Federation Press Book Launch, "Learning to Litigate: A Guide for Young Lawyers", launched by Neil Williams SC and Alison Hammond, Supreme Court of NSW
23 March	Twilight seminar, "Q & A Session on Court Craft" presented by the Hon Justice Duggan, Judicial Commission of NSW, Sydney

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25-26 May	Land and Environment Court 2023 Annual Conference, “Cultural Heritage: Place, Preservation & Prospects”, The Sebel Harbourside, Kiama
20 July	2023 Mahla Pearlman Oration, “The Rock, the Gorge and the Voice: protecting places and spaces”, delivered by Dr Tony McAvoy SC, Federal Court of Australia
22 August	Twilight webinar, “Connecting with Country” presented by Dillon Kombumerri, principal architect, Government Architect NSW, Judicial Commission of NSW, Sydney
22 November	Judicial Commission Twilight Tour, hosted by Mr Fred Holt, Partner with lead architects 3XN, and Mr Sacha Coles, Global Design Director of Aspect Studios, an international design practice of global landscape architects and designers, a visit to “Quay Quarter”
23 November	Briefing, “Sovereign Citizen” movement, presented by the Sheriff and the NSW Police Counter Terrorism Unit, District Court of New South Wales

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### **Membership of legal, cultural or benevolent organisations**

Member, Australian Judicial Officers Association

Member, New South Wales Bar Association

Chair, Land and Environment Court Library Committee

Member, Land and Environment Court Education Committee

Member, Judicial Well-being Advisory Committee, “Judicial Well-being Project”, research panel led by the School of Law and the School of Psychology, University of NSW and the Judicial Commission of NSW

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## **The Hon. Justice Sandra Anne Duggan SC**

### **Conferences and seminars**

20 March	“Judicial Advisory Panel: Judges' Work, Place and Psychological Health: A National View”, Panel Meeting, at the Judicial Commission of NSW
22 March	Webinar, “Returning to Court In Person Etiquette Guidance”, presented by Registrar Froh, Environment and Planning Law Association, via Zoom
24 May	Twilight webinar, “Constitutional Reform: Next steps in “Muru Ngubadi”, Path of Respect”, presented by Anthony McAvoy SC, Judicial Commission of NSW, via Cisco Webex
24-26 May	Land and Environment Court 2023 Annual Conference, “Cultural Heritage: Place, Preservation & Prospects”, The Sebel Harbourside, Kiama
26 June	Twilight webinar, “A Mindful Court - introduction to mindfulness”, presented by Prof Craig Hassed OAM, Judicial Commission of NSW, via Cisco Webex

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20 July	Mahla Pearlman Oration, Federal Court of Australia
14 September	Twilight seminar, “Existential Ethics: Problematizing Lawyer Involvement with, and Responsibility for, The Environmental Harms of Their Clients”, presented by Professor Steven Vaughan, UCL, Judicial Commission of NSW, Sydney
21 September	Twilight seminar, “Issues in Biodiversity Conservation Law”, presented by Justice Preston and Acting Commissioner Paul Adam, Judicial Commission of NSW, Sydney
23 November	Webinar, “Sovereign Citizen Briefing”, presented by the Chief Judge of the District Court and the President Dust Diseases Tribunal, via Cisco Webex

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### **Speaking Engagements**

23 March	Presenter, “Q&A Session on Court Craft”, LEC Education Committee and the Judicial Commission of NSW, Judicial Commission of NSW
4 May	Presenter, “Macquarie University Geography and Planning Society's Careers Night 2023”, Macquarie University
2 August	Presenter, “Environmental Sentencing”, Annual Local Court Conference 2023, Rydges Hotel World Square
6 November	Presenter, “Reasons and Process”, Office of the Independent Planning Commission NSW

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### **Publications**

Judicial Newsletter, editor, Land and Environment Court of NSW

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### **Membership of legal, cultural or benevolent organisations**

Member, Australian Judicial Officers Association

Member, Environment and Planning Law Association

Member, Australian Association of Women Judges

Member, International Association of Women Judges

Member, Australian Institute of Administrative Law

Member, NSW Bar Association

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## The Hon. Justice Sarah Pritchard

### Conferences and seminars

26-31 March	National Judicial Orientation Program, Sofitel Brisbane Central, Brisbane
17 February	The Hon Justice Susan Kiefel AC, Chief Justice of Australia, 2023 George Winton Memorial Lecture, Banco Court, Supreme Court of NSW, Sydney
26 April	Bugmy Justice Reports Seminar, Judge Peter McGrath SC, Ms Carly Stanley, CEO, Deadly Connections and Dr Thalia Anthony UTS, NSW Bar Association, Sydney
27 April	Selden Society and Australian Academy of Law lecture, Michael McHugh's casebook: enduring issues in defamation law, Federal Court, Sydney
25-26 May	Land and Environment Court 2023 Annual Conference, "Cultural Heritage: Place, Preservation & Prospects", The Sebel Harbourside, Kiama
8-10 September	Australian Academy of Law, Australasian Institute of Judicial Administration and Australian Law Journal 'Enduring Courts in Changing Times' Conference, Supreme Court of New South Wales, Sydney
22 August	Twilight webinar, "Connecting with Country" presented by Dillon Kombumerri, principal architect, Government Architect NSW, Judicial Commission of NSW, Sydney
23 September	Judicial Commission of New South Wales Ngara Yura site visit led by Mr David Watts, Aboriginal Heritage Manager, and Mr Phil Hunt Archaeologist, Aboriginal Heritage Office, Freshwater
5-8 October	AJOA Colloquium, Sofitel Auckland, Auckland, New Zealand

### Speaking Engagements

4 February	<i>Session Chair</i> , 'Exchanging Ideas: Constitutional Reform, Nation Building and Treaty Making Processes Symposium', Powerhouse Museum, Ultimo
3 November	Keynote address, <i>International processes relating to the enforcement of environmental law, in particular in relation to the rights of indigenous peoples</i> , NELA National Conference 2023, Melbourne University, Melbourne
9 November	<i>Judgment Update</i> with Justice Ward, President of the Court of Appeal, EPLA Annual Conference, Sydney Zoo, Bungarribee

### Publications

Sean O'Brien, 'Interview with Justice Sarah Pritchard of the Land and Environment Court' (2023) Winter edition *Bar News* 74-76

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## Membership of legal, cultural or benevolent organisations

Fellow, Australian Academy of Law

Member, Australian Judicial Officers Association

Member, Ngara Yura Aboriginal Cultural Awareness Committee, Judicial Commission of NSW

Member, Women Lawyers Association of NSW

Board member, John Mac Foundation

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## Ms Susan Dixon, Senior Commissioner

### Conferences and seminars

23 March	Twilight seminar, "Q & A Session on Court Craft" presented by the Hon Justice Duggan, Judicial Commission of NSW, Sydney
27-28 April	Train the Trainer Course, Council of Australasian Tribunals, Sydney
25-26 May	Land and Environment Court 2023 Annual Conference, "Cultural Heritage: Place, Preservation & Prospects", The Sebel Harbourside, Kiama
26 June	Twilight webinar, "A Mindful Court - introduction to mindfulness", presented by Prof Craig Hassed OAM, Judicial Commission of NSW, via Cisco Webex
16 August	Webinar: The Promises and Perils of AI in the Courts: AI 101, National Center for State Courts, via Zoom
22 August	Twilight webinar, "Connecting with Country" presented by Dillon Kombumerri, principal architect, Government Architect NSW, Judicial Commission of NSW, Sydney
14 September	Twilight seminar, "Existential Ethics: Problematizing Lawyer Involvement with, and Responsibility for, The Environmental Harms of Their Clients", presented by Professor Steven Vaughan, UCL, Judicial Commission of NSW, Sydney
21 September	Webinar: AI and the Impact on the Practice of Law, National Center for State Courts, via Zoom
21 September	Twilight seminar, "Issues in Biodiversity Conservation Law", presented by Justice Preston and Acting Commissioner Paul Adam, Judicial Commission of NSW, Sydney
18 October	Webinar: Impact of AI in the Courts, National Center for State Courts, via Zoom
9-10 November	Environment and Planning Law Association 2023 Annual Conference, Sydney Zoo, via Zoom

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## Speaking Engagements

March to November	Mentor, Mentoring Program/Clinic Placement for final year law students, Macquarie University
19 May	Guest Speaker, "Open Forum: Let's Talk about Expert Witnesses in the LEC", Environment Institute of Australia and New Zealand Environmental Expert Course, Clayton Utz, Sydney

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## Publications

S Dixon, 'Virtual Courtrooms: Technical and Jurisprudential Challenges and Solutions - Lessons Learned By the Land and *Environment Court of New South Wales*' (2023) 39 *Environment and Planning Law Journal* 321

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## Membership of legal, cultural or benevolent organisations

Member, Council of Australasian Tribunals

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Member, Land and Environment Court of NSW Education Committee

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Member, Land and Environment Court of NSW Library Committee

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Member, Land and Environment Court of NSW Court Users Group

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Member, Institute of Arbitrators and Mediators Australia

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Member, Australian Dispute Resolution Association Inc.

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Member, Law Society of NSW

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Nationally Accredited Mediator

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## Ms Susan O'Neill, Commissioner

### Conferences and seminars

23 March	Twilight seminar, "Q & A Session on Court Craft" presented by the Hon Justice Duggan, Judicial Commission of NSW, Sydney
2 May	Paul Reid 2023 Utzon Lecture, Deciding Sydney's Density Destiny, The Hon Dr Robert Stokes, University of NSW
25-26 May	Land and Environment Court 2023 Annual Conference, "Cultural Heritage: Place, Preservation & Prospects", The Sebel Harbourside, Kiama
22 August	Twilight webinar, "Connecting with Country" presented by Dillon Kombumerri, principal architect, Government Architect NSW, Judicial Commission of NSW, Sydney
14 September	Seminar, The Protection of First Nations Cultural Heritage in Australia, Laurie Perry, CEO of Wonnarua Nation Aboriginal Corporation, James Wilson-Miller, Senior Elder of the Gringai Clan of the Wonnarua Nation, James Walkey and Alex Romano of Chalk & Behrendt, Australian Institute of Administrative Law (NSW) Chapter and EPLA

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18 September	Denis Winston Memorial Lecture and Panel Discussion, Wicked Assumptions: how planning promises from the past shape the cities of tomorrow, The Hon Dr Robert Stokes, University of Sydney
22 November	Judicial Commission Twilight Tour, hosted by Mr Fred Holt, Partner with lead architects 3XN, and Mr Sacha Coles, Global Design Director of Aspect Studios, an international design practice of global landscape architects and designers, a visit to “Quay Quarter”
23 November	"Sovereign Citizen" Briefing, The Sheriff and a member of the NSW Police Terrorism Unit, District Court of New South Wales
12 December	Cross-jurisdictional Webinar: First Nations Speaker Series 2023, presented by Blak Douglas

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### Speaking Engagements

12-13 April	Lecturer, Environmental Planning and Impact Assessment Law, Sydney Law School, University of Sydney
11 September	Guest Lecturer, "The Land and Environment Court and heritage issues", Heritage Law at Policy, School of Architecture, Design and Planning, The University of Sydney

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### Membership of legal, cultural or benevolent organisations

Member, Australian Institute of Architects

Registered Architect, NSW Architects Registration Board

Admitted as Solicitor in NSW

Full International Member of Australia ICOMOS

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## Ms Danielle Dickson, Commissioner

### Conferences and seminars

23 March	Twilight seminar, "Q & A Session on Court Craft" presented by the Hon Justice Duggan, Judicial Commission of NSW, Sydney
25-26 May	Land and Environment Court 2023 Annual Conference, “Cultural Heritage: Place, Preservation & Prospects”, The Sebel Harbourside, Kiama
26 June	Twilight webinar, “A Mindful Court - introduction to mindfulness”, presented by Prof Craig Hassed OAM, Judicial Commission of NSW, via Cisco Webex
22 August	Twilight webinar, “Connecting with Country” presented by Dillon Kombumerri, principal architect, Government Architect NSW, Judicial Commission of NSW, Sydney

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14 September	Twilight seminar, “Existential Ethics: Problematising Lawyer Involvement with, and Responsibility for, The Environmental Harms of Their Clients”, presented by Professor Steven Vaughan, UCL, Judicial Commission of NSW, Sydney
22 November	Judicial Commission Twilight Tour, hosted by Mr Fred Holt, Partner with lead architects 3XN, and Mr Sacha Coles, Global Design Director of Aspect Studios, an international design practice of global landscape architects and designers, a visit to “Quay Quarter”

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### **Membership of legal, cultural or benevolent organisations**

Member, Law Society of NSW

Member and Nationally Accredited Mediator, Australian Dispute Centre

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## **Mr Michael Chilcott, Commissioner**

### **Conferences and seminars**

23 March	Twilight seminar, "Q & A Session on Court Craft" presented by the Hon Justice Duggan, Judicial Commission of NSW, Sydney
26 June	Twilight webinar, “A Mindful Court - introduction to mindfulness”, presented by Prof Craig Hassed OAM, Judicial Commission of NSW, via Cisco Webex

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### **Membership of legal, cultural or benevolent organisations**

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

Member, Rotary Club of Sydney

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## **Ms Joanne Gray, Commissioner**

### **Conferences and seminars**

23 March	Twilight seminar, "Q & A Session on Court Craft" presented by the Hon Justice Duggan, Judicial Commission of NSW, Sydney
25-26 May	Land and Environment Court 2023 Annual Conference, “Cultural Heritage: Place, Preservation & Prospects”, The Sebel Harbourside, Kiama
26 June	Twilight webinar, “A Mindful Court - introduction to mindfulness”, presented by Prof Craig Hassed OAM, Judicial Commission of NSW, via Cisco Webex
14 September	Twilight seminar, “Existential Ethics: Problematising Lawyer Involvement with, and Responsibility for, The Environmental Harms of Their Clients”, presented by Professor Steven Vaughan, UCL, Judicial Commission of NSW, Sydney

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21 September	Twilight seminar, "Issues in Biodiversity Conservation Law", presented by Justice Preston and Acting Commissioner Paul Adam, Judicial Commission of NSW, Sydney
9 November	Environment and Planning Law Association Conference, Session 4 Practice Management: eCourts & Court Books (by MS Teams); Session 5: Judgment Update (by MS Teams)
10 November	Environment and Planning Law Association Conference, Session 7 Planning and Affordable Housing (by MS Teams); Session 9 Obligations to the Court (by MS Teams)
July-December	<i>Master of Urban Planning (in progress), University of Technology Sydney Subjects completed: Urban Economics and Infrastructure Funding, Urban Analytics, Environmental and Social Impact Assessments</i>

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### **Membership of legal, cultural or benevolent organisations**

Member, Law Society of New South Wales

Nationally Accredited Mediator

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## **Ms Sarah Bish, Commissioner**

### **Conferences and seminars**

23 March	Twilight seminar, "Q & A Session on Court Craft" presented by the Hon Justice Duggan, Judicial Commission of NSW, Sydney
26 June	Twilight webinar, "A Mindful Court - introduction to mindfulness", presented by Prof Craig Hassed OAM, Judicial Commission of NSW, via Cisco Webex
22 August	Twilight webinar, "Connecting with Country" presented by Dillon Kombumerri, principal architect, Government Architect NSW, Judicial Commission of NSW, Sydney
14 September	Twilight seminar, "Existential Ethics: Problematizing Lawyer Involvement with, and Responsibility for, The Environmental Harms of Their Clients", presented by Professor Steven Vaughan, UCL, Judicial Commission of NSW, Sydney
21 September	Twilight seminar, "Issues in Biodiversity Conservation Law", presented by Justice Preston and Acting Commissioner Paul Adam, Judicial Commission of NSW, Sydney
8 November	Cross-jurisdictional Webinar: First Nations Speaker Series 2023, presented by Victor Steffensen

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22 November	Judicial Commission Twilight Tour, hosted by Mr Fred Holt, Partner with lead architects 3XN, and Mr Sacha Coles, Global Design Director of Aspect Studios, an international design practice of global landscape architects and designers, a visit to “Quay Quarter”
12 December	Cross-jurisdictional Webinar: First Nations Speaker Series 2023, presented by Blak Douglas

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### **Membership of legal, cultural or benevolent organisations**

Member, International Association of Hydrogeologists
Member, Institute of Arbitrators and Mediators Australia
Member, Registered Engineers for Disaster Relief, Australia
Member, United Nations International Children Emergency Fund WASH Consultants Roster
Member, United Nations Development Programme Consultants Roster
Nationally Accredited Mediator

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## **Dr Peter Walsh, Commissioner**

### **Conferences and seminars**

25-26 May	Land and Environment Court 2023 Annual Conference, “Cultural Heritage: Place, Preservation & Prospects”, The Sebel Harbourside, Kiama
26 June	Twilight webinar, “A Mindful Court - introduction to mindfulness”, presented by Prof Craig Hassed OAM, Judicial Commission of NSW, via Cisco Webex
20 July	Mahla Pearlman Oration 2023 - The Rock, the Gorge and the Voice: protecting places and spaces, Law Council of Australia
22 August	Twilight webinar, “Connecting with Country” presented by Dillon Kombumerri, principal architect, Government Architect NSW, Judicial Commission of NSW, Sydney
14 September	Twilight seminar, “Existential Ethics: Problematising Lawyer Involvement with, and Responsibility for, The Environmental Harms of Their Clients”, presented by Professor Steven Vaughan, UCL, Judicial Commission of NSW, Sydney
20 September	Webinar: 2023 Referendum: The role and value of a constitutionally enshrined Voice, Law Council of Australia
21 September	Twilight seminar, “Issues in Biodiversity Conservation Law”, presented by Justice Preston and Acting Commissioner Paul Adam, Judicial Commission of NSW, Sydney

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## Membership of legal, cultural or benevolent organisations

Fellow, Planning Institute of Australia

Certified Practising Planner

Nationally Accredited Mediator

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## Mr Timothy Horton, Commissioner

### Conferences and seminars

23 March	Twilight seminar, "Q & A Session on Court Craft" presented by the Hon Justice Duggan, Judicial Commission of NSW, Sydney
25-26 May	Land and Environment Court 2023 Annual Conference, "Cultural Heritage: Place, Preservation & Prospects", The Sebel Harbourside, Kiama
26 June	Twilight webinar, "A Mindful Court - introduction to mindfulness", presented by Prof Craig Hassed OAM, Judicial Commission of NSW, via Cisco Webex
1 August	Lecture: Kirsten Thomson, recipient, Australian Institute of Architects Gold Medal
18 August	Final lecture presentation: Multi disciplinary Australian Danish Exchange, Sydney Opera House
22 August	Twilight webinar, "Connecting with Country" presented by Dillon Kombumerri, principal architect, Government Architect NSW, Judicial Commission of NSW, Sydney
24 August	Webinar: Meeting higher BASIX standards, Australian Institute of Architects
19 October	Let's settle this, once and for all: ADR 2023 and beyond, Law Society of NSW/Law Inform
22 November	Judicial Commission Twilight Tour, hosted by Mr Fred Holt, Partner with lead architects 3XN, and Mr Sacha Coles, Global Design Director of Aspect Studios, an international design practice of global landscape architects and designers, a visit to "Quay Quarter"
28 November	Lecture: The past and future of the Binishell

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### Speaking Engagements

12 September	Expert evidence, Macquarie University Law Clinic
10 November	Planning and Affordable Housing, Environmental Planning Law Association Conference

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## Membership of legal, cultural or benevolent organisations

Fellow, Australian Institute of Architects

Nationally Accredited Mediator

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## Ms Elizabeth Espinosa, Commissioner

### Conferences and seminars

1 February	Opening of Law Term: The Hon Chief Justice Andrew Bell, Law Society of NSW, Sydney
9 February	Women Lawyers Association NSW Launch: Kate Eastman AM SC, Sydney
15 February	Presentation by Assoc Prof Sahu: The Green Tribunal of India: Recent Advances and Challenges, Land and Environment Court of NSW
8 March	International Women's Day Breakfast; The Hon Ward J, President of Court of Appeal, Law Society of NSW
23 March	Twilight seminar, "Q & A Session on Court Craft" presented by the Hon Justice Duggan, Judicial Commission of NSW, Sydney
29 March	Commissioners' meeting - Debrief: Q & A Session on Court Craft, Land and Environment Court
5 April	Affinity's 14th NSW Parliament Friendship & Dialogue Iftar Dinner, NSW Police Commissioner Karen Webb APM, Sydney
25-26 May	Land and Environment Court 2023 Annual Conference, "Cultural Heritage: Place, Preservation & Prospects", The Sebel Harbourside, Kiama
19 June	Past Presidents Lunch, Law Society of NSW, Cassandra Banks, Sydney
26 June	Twilight webinar, "A Mindful Court - introduction to mindfulness", presented by Prof Craig Hassed OAM, Judicial Commission of NSW, via Cisco Webex
20 July	11th Mahla Pearlman Oration and Dinner: Legal Practice Section of the Law Council of Australia and the Environment and Planning Law Association of New South Wales, Sydney
22 August	Twilight webinar, "Connecting with Country" presented by Dillon Kombumerri, principal architect, Government Architect NSW, Judicial Commission of NSW, Sydney
1 September	AAWJ Dinner to Celebrate Justice Jagot's appointment to the High Court: Jagot J and Gleeson J, Australian Association of Women Judges, Sydney
21 September	Twilight seminar, "Issues in Biodiversity Conservation Law", presented by Justice Preston and Acting Commissioner Paul Adam, Judicial Commission of NSW, Sydney

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12 October	2023 Fellowship and Alumni Awards Celebration, University of Wollongong, City Beach Function Centre, Wollongong
9-10 November	2023 EPLA Conference: Practice Management Session 4, Planning and Disaster Response Session 9, Obligations to the Court (Ethics) Session 9, Environment and Planning Law Association, Sydney
13 November	Diverse Women in Law Annual General Meeting, Sydney
15 November	Women Silks Event: The Hon Justice Kristina Stern, Women Lawyers Association NSW and Women Barristers Forum, Sydney
21 November	Women Lawyers Association of NSW, 2023 Annual General Meeting, College of Law Sydney
22 November	Judicial Commission Twilight Tour, hosted by Mr Fred Holt, Partner with lead architects 3XN, and Mr Sacha Coles, Global Design Director of Aspect Studios, an international design practice of global landscape architects and designers, a visit to "Quay Quarter"
23 November	"Sovereign Citizen" Briefing: Chief Judge of the District Court of New South Wales & President Dust Diseases Tribunal NSW
7 December	Law Society of NSW Annual Members Dinner and Awards Night, Museum of Contemporary Art, Sydney

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### **Speaking Engagements**

21 February	Guest Address at the Diverse Women in Law annual volunteer training evening, Sydney
15 August	Welcome to the Law Seminars – Panel 1 of 4: Things I wish I had known – Tips, Tricks and Insider Knowledge, Sydney
23 August	Alternative Dispute Resolution in the LEC, Environmental Dispute Resolution program: University of Sydney ADR Masters
30 October	Master of Ceremonies: Cultural Event 2023: Land, Water & Community, Diverse Women in Law

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### **Membership of legal, cultural or benevolent organisations**

Member, Law Society of NSW

Member, Women Lawyers Association NSW

Member and Graduate, Australian Institute of Company Directors

Member and Nationally Accredited Mediator, Australian Dispute Centre

Member, Environment and Planning Law Association

Member, University of Wollongong School of Law Advisory Committee

Member, Diverse Women in Law

Chair, Australian Design Centre

Australian Hispanic Lawyers Plus, Founding Member

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# Appendices

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



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# Appendix 1 – Court Users Groups

## Court Users Group

A Court Users Group was established in 1996 as a consultative committee comprising of representatives from interested organisations. The Group meets 4 times a year and assists with improving Court services by making recommendations to the Chief Judge about:

- improving the functions and services provided by the Court; and
- ensuring services and facilities of the Court are adapted to the needs of litigants and their representatives.

The Group has an advisory role and has no authority to require any action or change. However, its deliberations have been a catalyst for a number of initiatives, such as the 1999 Pre-Hearing Practice Direction and a survey of electronic callover users resulting in significant improvements to callover procedures.

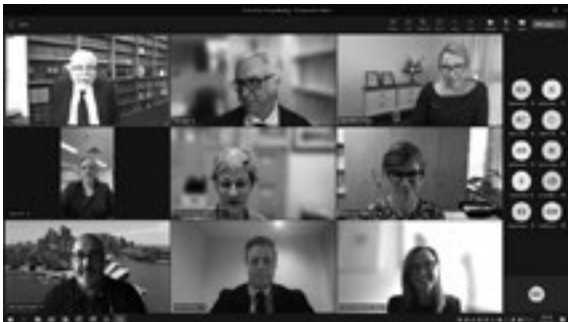
### Members during 2023

The Hon. Justice Brian Preston, Chief Judge (Chair)	Land and Environment Court
Senior Commissioner Susan Dixon	Land and Environment Court
Ms Sarah Froh, Registrar	Land and Environment Court
Mr Shaun Carter	Royal Australian Institute of Architects (NSW Chapter)
Mr Peter Castor	Institute of Australian Consulting Arboriculturists
Ms Kirsty Chambers	Australian Property Institute
Ms Johanna Geddes	Environment Protection Authority
Mr James Kingston	Housing Industry of Australia
Ms Elizabeth Densley	Planning Institute of Australia (NSW Division)
Mr Brendan Dobbie	Environmental Defenders Office
Ms Roslyn McCulloch	Law Society Development and Planning Committee, Law Society of New South Wales
Mr Aaron Gadiel	NSW Urban Taskforce
Ms Erin Gavin	NSW Department of Planning and Environment
Mr Sam Haddad	Engineers Australia
Ms Christina Harrison	The Institution of Surveyors NSW Inc
Ms Donette Holm/ Ms Elizabeth Orr	Deputy Registrar
Mr John Zorzetto	NSW Independent Planning Commission
Mr Clifford Ireland	New South Wales Bar Association

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Ms Alyce Kliese	Property Council of Australia
Ms Penny Murray	Urban Development Institute of Australia
Ms Roslyn McCulloch/ Ms Janet McKelvey	Environment and Planning Law Association NSW
Mr Ben Salon	NSW Young Lawyers Environment and Planning Law Committee
Mr Eugene Sarich	Australian Institute of Building Surveyors and Australian Institute of Environmental Health
Mr James Smith	Environment and Planning Law Association
Mr Alex Singh	Local Government In-House Counsel Network
Mr Ian Woodward	Local Government Lawyers Group
Ms Carly Wood	Australian Institute of Landscape Architects
Ms Jessica Wood	Local Government NSW

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*Meeting of the Court Users Group 14 September 2022*

## **Mining Court Users Group**

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

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## Appendix 2 – Court Committees

### Court Committees

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

#### Rules Committee

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

##### Members

The Hon. Justice Brian Preston, Chief Judge

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The Hon. Justice Nicola Pain

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The Hon. Justice John Robson

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#### Education Committee

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

##### Members

The Hon. Justice Nicola Pain (Chair)

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The Hon. Justice John Robson

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Senior Commissioner Susan Dixon

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Commissioner Tim Horton

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Ms Sarah Froh, Registrar

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Ms Una Doyle, then Ms Catherine Kenny, Education Director, Judicial Commission of NSW

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## Library Committee

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

### Members

The Hon. Justice John Robson (Chair)

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Senior Commissioner Susan Dixon

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Ms Sarah Froh, Registrar

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Mr Michael Unwin

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Ms Larissa Reid

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Ms Susan Ramsay

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Ms Vanessa Blackmore

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## Court Newsletter Committee

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

### Members

The Hon. Justice Sandra Duggan (Chair)

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The Hon. Justice Brian Preston, Chief Judge

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**Land and Environment Court of New South Wales**

**Judicial Newsletter**

**October 2023 / Vol 15 Issue 3**

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**APPOINTMENT OF THE HON JUSTICE OF THE ORDER OF AUSTRALIA**

His Honour Justice Moore was appointed as a Member of the Order of Australia in the 2023 King's Birthday Honours, in recognition of his service to the law, to the Parliament of New South Wales and to the community.

**APPOINTMENTS/RETIREMENTS**

Senior Commissioner Susan Dixon was reappointed to the position commencing 6 July 2023 and expiring 30 June 2024.

Justice Danielle Dickson was reappointed as a Commissioner commencing 6 July 2023 and expiring on 17 July 2024. Acting Commissioner Michael Chikoff was appointed as a Commissioner for the period commencing 6 July 2023 and expiring on 6 August 2023.

Commissioner Michael Chikoff retired as a Commissioner on 6 August 2023.



**Land and Environment Court of New South Wales**

**Judicial Newsletter**

**June 2023 / Vol 15 Issue 2**

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**COURT NEWS**

**THE HON JUSTICE PRESTON SC, CHIEF JUDGE OF THE LAND AND ENVIRONMENT COURT OF NSW AWARDED MEDAL OF HONOUR**

On 13 April 2023, His Honour Justice Preston CJ of the Land and Environment Court of New South Wales was awarded the World Judicial Association Medal of Honour at the World Law Congress 2023 Opening Session, United Nations Headquarters, New York.

The World Judicial Association is an NGO in special consultative status with the United Nations. The Medal of Honour is awarded to jurists and personalities for their distinguished efforts in the promotion and defence of the rule of law.



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**Land and Environment Court  
of New South Wales**

Website

**[www.lec.nsw.gov.au](http://www.lec.nsw.gov.au)**

Email

**[lecourt@justice.nsw.gov.au](mailto:lecourt@justice.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**