

The Land and Environment Court of NSW



Annual Review

2018

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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 12 years' Annual Reviews of reporting on an expanded range of quantitative performance indicators. Reference to these quantitative performance indicators reveals that the Court has been successful in achieving the objectives of equity, effectiveness and efficiency.

However, these quantitative performance indicators do not give a full picture of the Court's performance. There are other qualitative indicators that assist in gaining an appreciation of the Court's performance. This year's Review again includes qualitative output indicators of access to justice, including in relation to the affordability of litigation in the Court, the accessibility of the Court and the responsiveness of the Court to the needs of users.

But even the inclusion of these qualitative indicators still leaves unevaluated the Court's material contribution to the community represented by the large volume of decisions made.

The Court delivered 473 written judgments. These judgments are published on NSW Caselaw website (<https://www.caselaw.nsw.gov.au/>). They provide a valuable contribution to planning and environmental jurisprudence. They also enable transparency and accountability in the Court's decision-making.

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

The Honourable Justice Brian J Preston SC
Chief Judge



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

1 **2018: An Overview**

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

Court performance

The Court has an overriding duty to ensure the just, quick and cheap resolution of the real issues in all civil proceedings in the Court. In many areas of its work, the Court has been able to maintain or improve its performance in achieving this overriding objective relative to the results achieved in 2017. Of particular significance are:

- Improvement or maintenance in the clearance ratio in Classes 1, 2, 3, 4, 6 and 8.
- An increase in case processing timeliness in Classes 2, 3, 5, 6 and 8.
- A decrease in the time taken to finalise cases in Classes 4, 5, 6 and 8.
- A slight increase in the percentage of matters in Classes 1-3 finalised by means of s 34 and s 34AA conciliation conferences and on-site hearings, to be the highest level in the last five years. A majority of Class 1-3 matters were finalised by these methods for the first time.
- An increase in the number and percentage of matters in all Classes finalised pretrial, as indicated by the decrease in or maintenance of the backlog indicator.
- The number of pre-hearing attendances was maintained or decreased in Classes 1, 2, 3, 4, 6 and 8.
- An increase in the percentage of pre-hearing attendances conducted by Online Court.
- All judges and commissioners met the standard for continuing professional development.

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

- A decline in the overall clearance rate and the clearance rate in Class 5.
- A greater increase in total registrations than the increase in total finalisations, resulting in the total pending caseload increasing.
- A decrease in case processing timeliness in Classes 1 and 4, as indicated by the increase in the backlog indicator.
- An increase in the time taken to finalise cases in Classes 1, 2 and 3.
- A decrease in the percentage of reserved judgments delivered within the Court's time standards.

Reforms and developments

During 2018, reforms occurred in the following areas:

- New Practice Notes and Policies;
- New information on the Court's website;
- Launch of the 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.

Education and community involvement

The Court's commitment to continuing professional development was manifested by the adoption in October 2008 of a continuing professional development policy for Judges and Commissioners of the Court. The policy sets a standard of five days (30 hours) of professional development activities each calendar year. To assist in meeting the standard, the Court and the Judicial Commission of New South Wales provide an annual court conference and a twilight seminar series. In 2018, the Court's Annual Conference was held at the Headlands Hotel in Austinmer. The Court held six twilight seminars in 2018, two field trips, and three cross-jurisdictional seminars. All judges and commissioners achieved the continuing professional development standard.

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

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

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

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

Consultation with court users

In 2018, the Court continued to consult and work closely with users to improve systems and procedures through its Committees and User Groups. Consultation occurred both formally through the Court Users Group and 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
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- Appointments and retirements
- Supporting the Court: the Registry

The Court

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

Statement of purpose

The Court's purpose is to safeguard and maintain:

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

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

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



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

The Court's jurisdiction

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

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

In 2018, the Court Act provided for eight classes of jurisdiction in the Court.

Table 2.1 summarises these eight classes.

Table 2.1 Classes of the Court's Jurisdiction

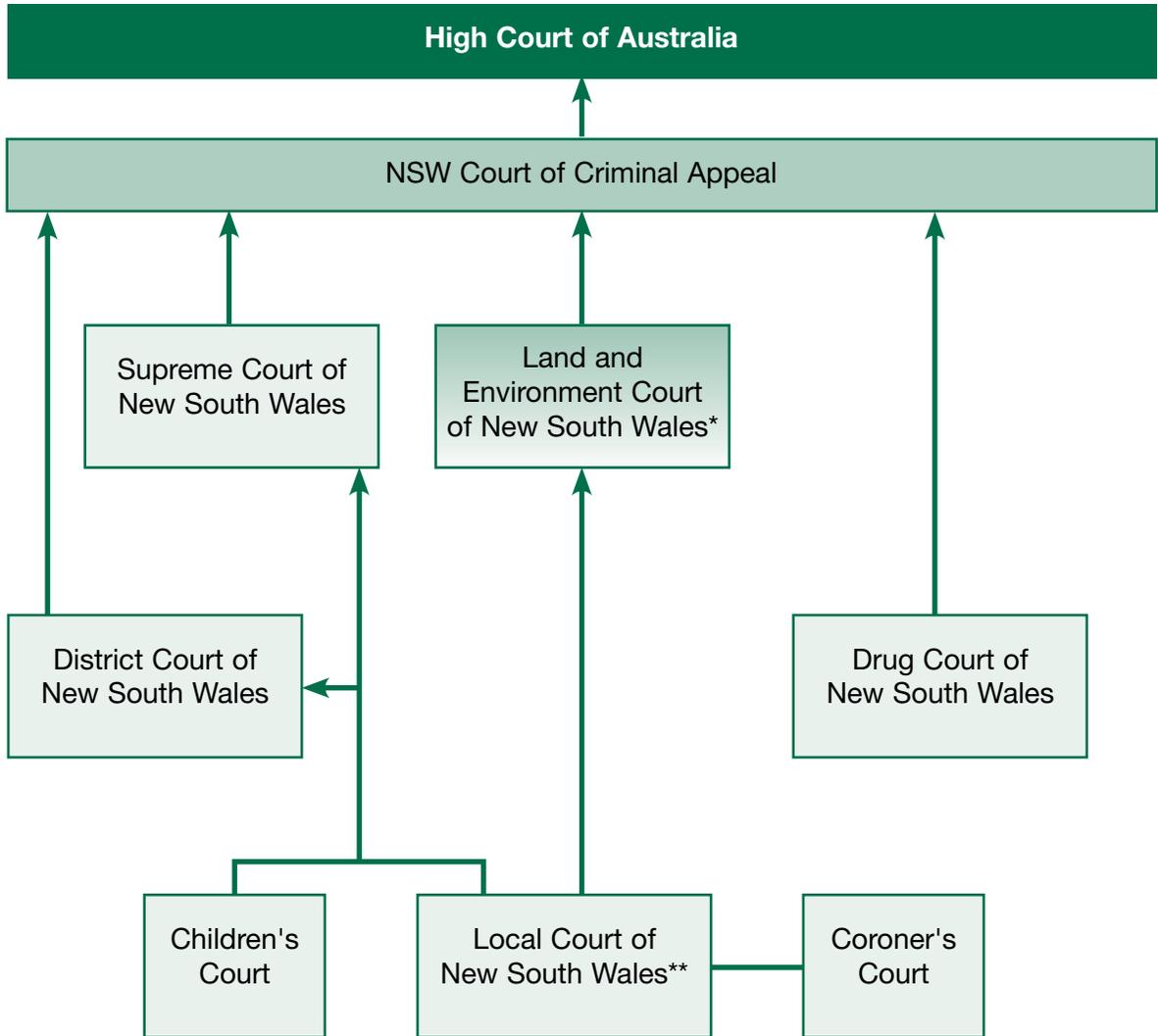
Class 1	environmental planning and protection appeals (merits review appeals)
Class 2	local government, trees and miscellaneous appeals (merits review appeals)
Class 3	land tenure, valuation, rating and compensation matters (merits review appeals)
Class 4	environmental planning and protection (civil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



The Court's place in the court system

The Court's place in the New South Wales court system is shown diagrammatically in Figure 2.1 (criminal jurisdiction) and Figure 2.2 (civil jurisdiction). Special arrangements are made in relation to appeals from the Court's decisions in Classes 1, 2, 3, 4 and 8 of the Court's jurisdiction depending on whether the decision was made by a Judge or a Commissioner. Figure 2.3 shows diagrammatically these appellate arrangements.

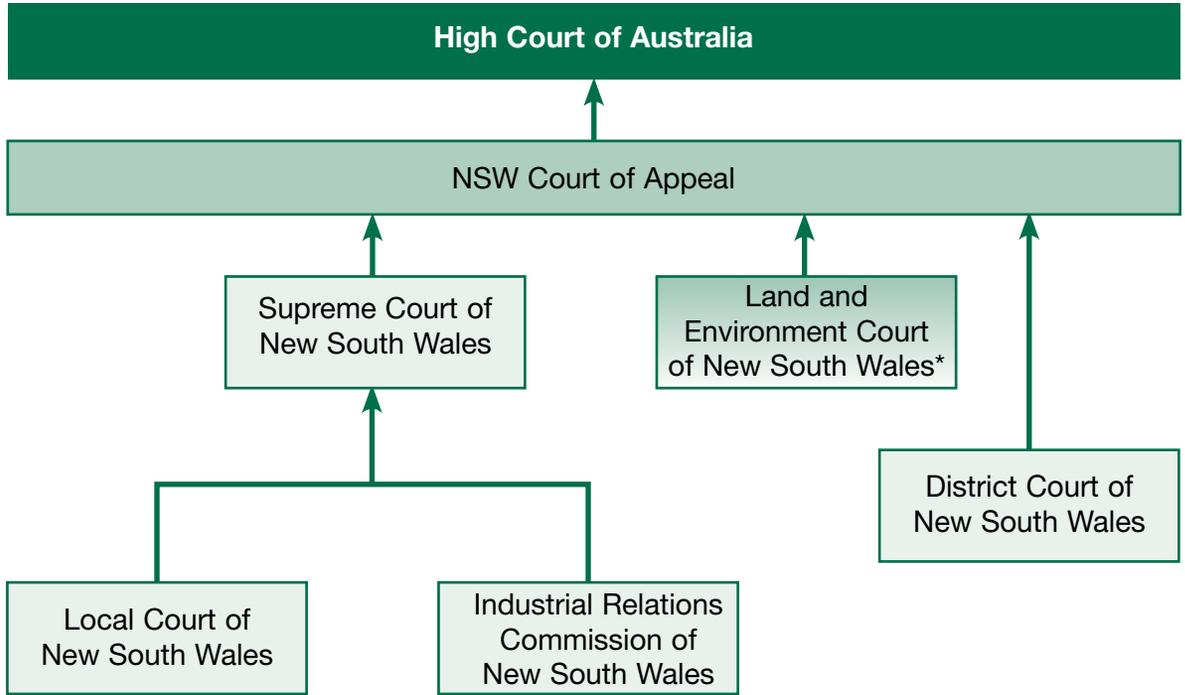
Figure 2.1 New South Wales Court System – Criminal Jurisdiction



* Appeals to the NSW Court of Criminal Appeal are in relation to proceedings in Classes 5, 6 or 7 of the Land and Environment Court's jurisdiction.

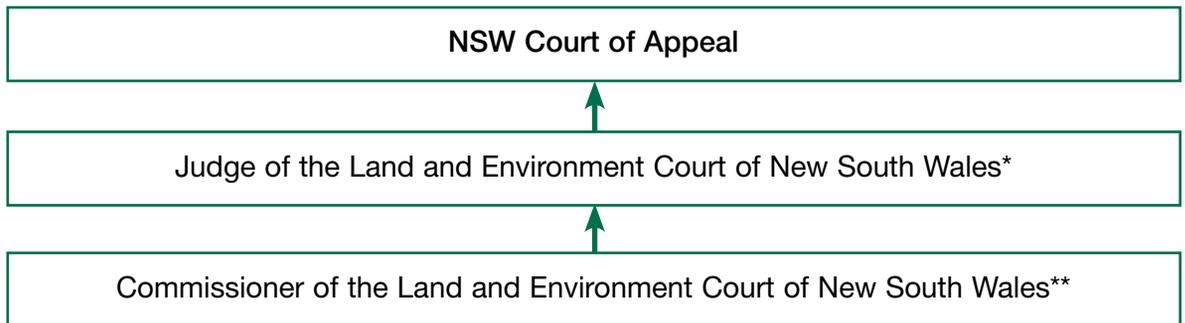
** Appeals from the Local Court of New South Wales to the Land and Environment Court are with respect to an environmental offence under the *Crimes (Appeal and Review) Act 2001* and are in Classes 6 and 7 of the Land and Environment Court's jurisdiction.

Figure 2.2 New South Wales Court System – Civil Jurisdiction



* Appeals to the NSW Court of Appeal are in relation to proceedings in Classes 1, 2, 3, 4 or 8 of the Land and Environment Court’s jurisdiction.

Figure 2.3 Appeals from decisions in Classes 1, 2, 3, 4 and 8 of the Land and Environment Court of New South Wales



* Appeals from a decision of a Judge in Classes 1, 2, 3, 4 or 8 of the Land and Environment Court’s jurisdiction are to the NSW Court of Appeal on a question of law.

** Appeals from a decision of a Commissioner in Classes 1, 2, 3 or 8 of the Land and Environment Court’s jurisdiction are to a Judge of the Land and Environment Court on a question of law and any further appeal from the Judge’s decision is only by leave of the NSW Court of Appeal.

Who makes the decisions?

The Judges

Judges have the same rank, title, status and precedence as the Judges of the Supreme Court of New South Wales. Judges preside over all Class 3 (land tenure and compensation), 4, 5, 6 and 7 matters, and can hear matters in all other Classes of the Court's jurisdiction.

As at 31 December 2018, the Judges, in order of seniority, were as follows:

Chief Judge

The Honourable Justice Brian John Preston
SC

Judges

The Honourable Justice Terence William Sheahan AO

The Honourable Justice Nicola Hope
Margaret Pain

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

The Honourable Justice Timothy John Moore

The Honourable Justice John Ernest Robson
SC



Court hearing

Acting Judges

The Honourable Acting Justice Simon Molesworth AO QC

The Commissioners

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

- administration of local government or town planning;
- town, country or environmental planning;
- environmental science, protection of the environment or environmental assessment;
- land valuation;
- architecture, engineering, surveying or building construction;
- management of natural resources or Crown Lands;
- urban design or heritage;
- land rights for 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 2018, the Commissioners were as follows:

Senior Commissioner

Ms Susan Dixon

Commissioners

Ms Susan O'Neill

Ms Danielle Dickson

Mr Michael Chilcott

Ms Jennifer Smithson

Ms Joanne Gray

Ms Sarah Bish

Mr Peter Walsh

Mr Timothy Horton

Acting Commissioners

Associate Professor Dr Paul Adam AM – botanist and ecologist

Ms Julie Bindon – town planner

Professor Dr Edward Blakely – town planner

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

Mr John Douglas – arborist

Mr David Galwey – arboricultural consultant

Dr Jeffrey Kildea – lawyer with experience in matters concerning Aboriginal land claims

Mr Norman Laing – member of the Aboriginal community and lawyer

Mr John Maston – lawyer with experience in land valuation matters

Ms Susan Morris – town planner

Professor Dr David Parker – valuer and mediator

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

Mr Ross Speers – engineer



L-R: Commissioner Gray, Commissioner Smithson, Commissioner Dickson, Registrar Froh, Commissioner Chilcott, Justice Preston, Commissioner Bish, Commissioner O'Neill, and Senior Commissioner Dixon

The Registrars

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

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

As at 31 December 2018, the Registrars were as follows:

Director and Registrar

Ms Sarah Froh

Assistant Registrar and Manager Court Services

Ms Maria Anastasi

Appointments and retirements

Appointments

Judges

The Hon. Acting Justice Simon Molesworth AO QC was reappointed as an Acting Judge of the Court from 1 January 2018 to 30 December 2018.

Commissioners

Ms Susan Dixon was appointed as Senior Commissioner of the Court on 29 January 2018.

Mr Peter Walsh was appointed as a Commissioner of the Court on 29 January 2018.

Mr Timothy Horton was appointed as a Commissioner of the Court on 5 November 2018.

Acting Commissioners

Professor Edward Blakely was appointed as an Acting Commissioner of the Court on 1 February 2018 for a period of 2 years.

Ms Julie Bindon was appointed as an Acting Commissioner of the Court on 21 December 2018 for a period of 2 years.

Retirements

Commissioners

Ms Rosemary Martin resigned as Senior Commissioner of the Court on 26 January 2018.

Mr Graham Brown retired as a Commissioner of the Court on 29 June 2018.

Supporting the Court: the Registry

The Court Registry comprises the following four sections:

Client Services

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

Listings

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

Information and Research

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

Commissioner Support

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



Lodging documents at the Registry

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

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

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

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

3 Caseflow Management

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- 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

Introduction

The Court manages the flow of its cases from inception to completion in a number of ways, and is continually looking to improve its processes and outcomes. The Chief Judge determines the day-to-day caseflow management strategy of the Court. This strategy is reflected in the *Land and Environment Court Act 1979*, *Land and Environment Court Rules 2007*, *Civil Procedure Act 2005*, *Uniform Civil Procedure Rules 2005*, and the Practice Notes issued by the Chief Judge. The Judges, Commissioners and Registrars work together to ensure cases are resolved in a just, timely and cost-efficient manner.

Overview by class of jurisdiction

Caseflow management varies with the type or class of proceeding.

Class 1

Proceedings in Class 1 involve merits review of administrative decisions of local or State government under various planning or environmental laws. The Court in hearing and disposing of the appeal sits in the place of the original decision-maker and re-exercises the administrative decision-making functions. The decision of the Court is final and binding and becomes that of the original decision-maker.

Appeals are allocated a date for a directions hearing before the Registrar when the appeal is filed with the Court. The directions hearing may take the form of an in-court hearing, a telephone hearing or an Online Court hearing (see Types of Directions Hearings below).

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

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

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

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

Class 2: Tree disputes

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

The Court manages a separate list for tree disputes. About 61% of the parties in this type of proceeding are self-represented. The application is returnable before the Assistant Registrar who is assigned to manage the list. This first court attendance can be either a telephone conference or in court. The Assistant Registrar explains the process of preparation for and hearing of the application.

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

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

The Court provides assistance to self-represented parties through the Tree Helpdesk. This helpdesk is operated by law students and supervised by a 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 in court each Friday. The Practice Notes specify the directions hearings to be held in preparation for hearing

and the directions that will usually be made at these directions hearings. The purpose of the Practice Notes is to set out the case management practices for the just, quick and cheap resolution of the proceedings.

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

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

Class 4

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

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

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

Class 5

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

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

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

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

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

Classes 6 and 7

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

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

Class 8

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

Types of directions hearings

The Court offers court users three types of directions hearing:

in-court directions hearing

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

telephone directions hearing

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

Online Court directions hearing

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

In general, the initial allocations for directions hearings are:

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

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

In 2018, Online Court was used in 1,090 civil matters in Classes 1, 2, 3, 4 and 8, for 1,926 Online Court directions hearings.

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.



An on-site hearing conducted by Justice Preston and Senior Commissioner Dixon.

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



A paperless court hearing.

Alternative Dispute Resolution

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

- conciliation;
- mediation; and
- neutral evaluation.

Conciliation

Conciliation is a process in which the parties to a dispute, with the assistance of an impartial conciliator, identify the issues in dispute, develop options, consider alternatives and endeavour to reach agreement. The conciliator may have an advisory role on the content of the dispute or the outcome of its resolution, but not a determinative role. The conciliator may advise on or determine the process of conciliation whereby resolution is attempted, and may make suggestions for terms of settlement, give expert advice on likely settlement terms, and may actively encourage the parties to reach agreement.

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

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

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

If the parties are not able to agree either about the substantive outcome or that the Commissioner should dispose of the proceedings, the Commissioner terminates the conciliation conference and refers the

proceedings back to the Court for the purpose of being fixed for a hearing before another Commissioner. In that event, the conciliation Commissioner makes a written report to the Court stating that no agreement was reached and the conference has been terminated and setting out what in the Commissioner's view are the issues in dispute between the parties. 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 2014 - 2018.

Table 3.1 ss 34 and 34AA Conciliation Conferences 2014 – 2018

	2014	2015	2016	2017	2018
ss 34 and 34AA conferences	1,169	1,500	2,035	1,534	1,465

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

The table shows an increase in utilisation of conciliation conferences between 2014 and 2018, with an additional 296 conferences in 2018 compared to 2014. The decrease in the number of conciliation conferences between 2016 and 2017/2018 is not indicative that fewer matters were subject to conciliation, only that the number of times

conciliation conferences were held in the matters decreased. As Table 5.3 shows, the number of matters finalised by means of ss 34 and 34AA conferences and on-site hearings in 2018 increased from both 2016 and 2017, as did the ratio of matters finalised through these methods. 50.2% of Class 1 - 3 matters were finalised via s 34 and s 34AA conciliation conferences in 2018, up from 48.4% in 2016 and 48.8% in 2017.

Mediation

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

The Court may, at the request of the parties or of its own volition, refer proceedings in Classes 1, 2, 3, 4 and 8 to mediation.

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

Table 3.2 provides a comparison between mediations in 2014 to 2018. 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 2014 – 2018

		2014	2015	2016	2017	2018
Classes 1 and 2	Total:	3	5	2	3	5
	Internal	3	4	2	3	5
	External	0	1	0	0	0
	Number finalised pre-hearing	2	3	2	2	4
	% finalised pre-hearing	67	60	100	67	80
Class 3	Total:	4	2	5	1	4
	Internal	4	2	4	1	2
	External	0	0	1	0	2
	Number finalised pre-hearing	3	1	5	1	2
	% finalised pre-hearing	75	50	100	100	50
Class 4	Total:	22	22	19	15	11
	Internal	17	22	17	15	10
	External	5	0	2	0	1
	Number finalised pre-hearing	18	19	14	11	7
	% finalised pre-hearing	82	86	74	73	64
All Classes	Total:	29	29	26	19	20
	Internal	24	28	23	19	17
	External	5	1	3	0	3
	Number finalised pre-hearing	23	23	21	14	13
	% finalised pre-hearing	79	79	81	74	65

The total number of mediations remained steady between 2017 and 2018, experiencing a very slight increase. The number of mediations in 2018 in Class 3 increased back to an expected level, and Class 4 mediations decreased from 2017. Mediations in Classes 1 and 2 increased slightly from 2017. The number of mediations in Classes 1, 2 and 3 are comparatively few because of the ready availability and utilisation of conciliation under s 34 of the Court Act, conciliation being another form of alternative dispute resolution.

Neutral evaluation

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

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

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.

In 2018, the Land and Environment Court was awarded 'ADR Group of the Year' at the Australian Disputes Centre ADR Awards. 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 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.



Justice Sheahan and Registrar Froh accepting the ADR Award on behalf of the Court on 10 August.

4 Reforms and Developments

- New Practice Notes and Policies
- New information on the Court's website
- Launch of Duty Lawyer Scheme
- 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

During 2018, reforms occurred in the following areas:

- New Practice Notes and Policies
- New information on the Court's website
- Launch of the 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 Practice Notes and Policies

New Practice Notes

The Court made five new Practice Notes during 2018:

- Class 1 Development Appeals (commenced 3 April 2018);
- Class 1 Residential Development Appeals (commenced 3 April 2018);
- Class 1, 2 and 3 Miscellaneous Appeal (commenced 3 April 2018);
- Class 2 Tree Applications (commenced 1 December 2018);
- Class 5 Proceedings (commenced 3 April 2018).

The Practice Note – Class 1 Development Appeals, Practice Note – Class 1 Residential Development Appeals and Practice Note – Classes 1, 2 and 3 Miscellaneous Appeals

repealed the three practice notes by the same names made on 22 March 2017 and 20 July 2017 respectively. The Practice Notes were remade to refer to the new numbering of the statutory provisions in the *Environmental Planning and Assessment Act 1979*. The Practice Notes commenced on 3 April 2018.

The new Practice Note for Class 2 Tree Applications (commenced 1 December 2018) repealed the practice note by the same name made on 13 May 2014. The new practice note adds a paragraph to direction 10 of the Usual Directions found in Schedule A to require the tree owner, if wishing to retain the tree, to propose a solution to prevent the tree causing damage to the neighbour's property.

The new Practice Note for Class 5 proceedings (commenced 1 December 2018) repealed the practice note by the same name made on 22 October 2012. The new practice note was amended and remade to:

- require notification to the Court of any proposed restorative justice process to be undertaken or proposed order for carrying out a restorative justice activity;
- require the prosecutor to give to the defendant notice and details of any proposed order in connection with the offence (such as orders under Part 8.3 of the Protection of the Environment Operation Act 1997) if the offence is proved; and
- clarify the procedure for providing to the Court submissions for trials, sentencing hearings and notices of motion.

New Policies

The Court issued a new Site Inspections Policy and a new Identity Theft Prevention and Anonymisation Policy (commenced

3 April 2018) to replace two previous policies by the same name made on 1 November 2013 and 30 June 2010, respectively. The policies were remade to refer to the new statutory provisions in the *Environmental Planning and Assessment Act 1979*.

New information on the Court's website

The Court's website was updated with several new Practice Notes throughout 2018 including Class 1, Class 2 and Class 5 Practice Notes. The Court also published updated Site Inspections Policy and Identity Theft Prevention and Anonymisation Policy documents.

The Court published an updated version of the Approval of Forms document under s 77A of the *Land and Environment Court Act* to reflect the updated sections of the *Environmental Planning and Assessment Act 1979*.

The Court published information relating to the Duty Lawyer Pilot Scheme on the website early in 2018 to assist the public in understanding the scheme and its purpose.

The Court website was also updated with some important cases in the Court's special areas of jurisdiction including biodiversity, water, compensation claims and mining.

Launch of 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 is 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 now available on Level 4 between 9am and 12 noon each Friday 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 2018, it assisted 88 unrepresented persons.

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 as active participation in litigation and other dispute resolution procedures. The experience is an interactive learning experience and complements the Court's outreach activities.

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

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

Tree Helpdesk

Following its establishment in 2016 with Macquarie University law students, the Tree Helpdesk continued operation in 2018. The student helpdesk is operated by Macquarie University law students and supervised by a staff solicitor to provide assistance to unrepresented persons with tree dispute matters under the Trees Act. It is an independent service from the Land and Environment Court. In 2018, it assisted 165 unrepresented persons who wished to become or were parties to tree dispute matters, a 59% increase from 2017 (104 persons).

Maintenance of library services

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

Implementing the International Framework for Court Excellence

In late 2008, the Court agreed to adopt and to implement the International Framework for Court Excellence. The Framework was developed by an International Consortium for Court Excellence including the Australasian Institute of Judicial Administration, Federal Judicial Center (USA), National Center for State Courts (USA) and Subordinate Courts of Singapore, assisted by the European Commission for the Efficiency of Justice and other organisations. The Framework

provides a methodology for assessing a court's performance against seven areas of court excellence and guidance for courts intending to improve their performance. The Framework takes a holistic approach to court performance. It requires a whole-court approach to delivering court excellence rather than simply presenting a limited range of performance measures directed to limited aspects of court activity.

The seven areas of court excellence are:

1. Court leadership and management:

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

2. Court planning and policies:

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

3. Court proceedings:

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

4. Public trust and confidence:

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

5. User satisfaction:

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

6. Court resources:

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

7. Affordable and accessible services:

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

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

In 2018, the Court continued implementation of actions to improve the Court's performance in each of the seven areas of court excellence. In addition to continuing the actions described in the 2013, 2014, 2015, 2016 and 2017 Annual Reviews, the Court has undertaken the following actions, grouped under the areas of court excellence:

1. Court leadership and management:

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

2. Court planning and policies:

- updating the Practice Notes for Class 1 Development Appeals, Class 1 Residential Development Appeals, and Class 1, 2 and 3 Miscellaneous Appeals;
- updating the Class 2 Tree Applications Practice Note to improve case management and resolution of these matters;

- updating the Practice Note for Class 5 proceedings to encourage restorative justice processes and the procedure for providing submissions; and
- reviewing the Court's Practice Note for Class 3 Compensation Claims with a view to improving the case management and resolution of these matters.

3. Court proceedings:

- monitoring, measuring and managing the timeliness and efficiency of the resolution of different types of proceedings, including continuous collection and regular review of case processing statistics;
- continuing monitoring and management of delays in reserved judgments; and
- implementing, after a successful pilot project, the use of paperless trials in certain classes of cases; and
- being awarded 'ADR Group of the Year' at the Australian Disputes Centre ADR Awards for the Court's ADR programme.

4. Public trust and confidence and

5. User satisfaction:

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

6. Court resources:

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

7. Affordable and accessible services:

- undertaking a trial of a Duty Lawyer Scheme, and after its success, continuing the scheme to assist self-represented litigants;
- continuing a Tree Helpdesk to assist self-represented parties in tree disputes; 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.

Monitoring access to and use of the Court's decisions

The Court, as part of its implementation of the International Framework for Court Excellence, commissioned a project with the Australasian Legal Information Institute (AustLII) to use AustLII's databases to generate relevant metrics and statistics concerning the Court. These provide information concerning the frequency and nature of the citation of decisions of the Court by other courts or tribunals and the use made of the Court's decisions by academic journals that are publicly electronically accessible. The project also enables extraction of information about what

are the most frequently cited decisions of the Court as well as about the general rate of accessing the Court's cases through AustLII's databases. The information that is contained in the citations by database section is collected on an accrual basis using 2010 as the base year.

The data is available on a calendar year basis and links for the data for the years ending 31 December for each of 2010 - 2018 are available on the Court's website at Publications and Resources then Database metrics and statistic.

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 2018 metrics on the Court's website at: http://www.lec.justice.nsw.gov.au/Pages/publications/database_metrics_and_statistics.aspx

Sentencing database for environmental offences

The Court, in conjunction with the Judicial Commission of New South Wales, established in 2008 the world's first sentencing database for environmental offences, as part of the Judicial Information Research System (JIRS). Sentencing statistics for environmental offences display sentencing graphs and a range of objective and subjective features relevant to environmental offences. The user is able to access directly the remarks on sentencing behind each graph.

In 2018, the Court continued to provide statistics on sentences imposed by the Court in the year for environmental offences and for contempt proceedings. The statistics were loaded promptly onto JIRS. To ensure accuracy, the sentence statistics were audited on a quarterly basis by the Judicial Commission. The audits revealed satisfactory results.

5 Court Performance

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

Overall caseload

The comparative caseload statistics between 2014 and 2018 are summarised in Table 5.1.

Table 5.1 Caseload Statistics

	2014	2015	2016	2017	2018
Class 1					
Registrations	692	794	842	1,009	1,001
Restored	10	15	4	12	9
Pre-Trial Disposals	468	585	705	556	641
Disposed by Hearing	124	158	127	275	242
Pending	320	384	398	578	705
Class 2					
Registrations	103	143	117	131	85
Restored	7	13	5	8	5
Pre-Trial Disposals	41	62	36	28	34
Disposed by Hearing	77	84	94	104	67
Pending	29	40	32	39	28
Class 3					
Registrations	87	108	156	77	107
Restored	21	8	10	5	0
Pre-Trial Disposals	267	68	120	72	68
Disposed by Hearing	55	32	17	36	38
Pending	71	90	121	94	95
Class 4					
Registrations	133	124	133	118	116
Restored	13	15	14	23	24
Pre-Trial Disposals	91	99	101	82	83
Disposed by Hearing	44	48	55	44	46
Pending	96	90	84	99	87
Class 5					
Registrations	74	47	52	59	156
Restored	2	2	2	2	0
Pre-Trial Disposals	7	9	27	6	22
Disposed by Hearing	42	70	35	69	36
Pending	118	89	81	67	166

Classes 6 & 7

Registrations	6	11	19	11	16
Restored	0	3	0	1	4
Pre-Trial Disposals	0	0	4	3	13
Disposed by Hearing	4	17	9	11	12
Pending	8	5	11	9	5

Class 8

Registrations	9	10	3	3	5
Restored	1	2	0	1	1
Pre-Trial Disposals	0	0	7	0	3
Disposed by Hearing	7	10	10	2	1
Pending	7	9	2	3	5

TOTAL

Registrations	1,104	1,237	1,322	1,408	1,486
Restored	54	58	35	52	43
Pre-Trial Disposals	874	823	1,000	747	864
Disposed by Hearing	353	419	340	541	442
Pending	649	705	729	889	1,091

Tables 5.1 and 5.2 show the following trends:

- Total registrations and restorations (1,529) have increased every year since 2013, and are the highest since 2005. The Court also saw a reduction in the amount of restored matters in 2018, the second lowest amount in the last 5 years. Class 1 registrations remained consistent with the 2017 total, but represent an increase of 44% compared to 2014. The 2018 total of 1,010 is almost double the registrations received by the Court in 2013 (543).
- Total finalisations (1,306) increased from 2017. After a significant increase in the proportion of matters finalised by hearing in 2017, the Court saw a return to more expected numbers in terms of the pre-trial/hearing disposal ratio.
- Total finalisations (1,306) were lower than total registrations (1,529) in 2018, resulting in the total pending caseload (1,091) further increasing in 2018.
- Merits review and other civil proceedings finalised in Classes 1, 2 and 3 (1,090) comprised 83% of the Court's finalised caseload (1,306) in 2018.
- Civil and criminal proceedings finalised in Classes 4, 5, 6, 7 and 8 (216) comprised 17% of the Court's finalised caseload (1,306) in 2018.
- The means of finalisation in 2018 were 66% pre-trial disposals (including by use of alternative dispute resolution processes and negotiated settlement) and 34% by adjudication by the Court. This represents a significant decrease in the percentage

of matters disposed of by hearing after a sharp increase in that category in 2017 (a decrease of 8% from 2017 - 2018, following an increase of 17% from

2016 - 2017) . The 2018 ratio is more consistent with the expected ratio in recent years prior to 2017.

Table 5.2 Means of Finalisation – All Matters

	2014	2015	2016	2017	2018
Total matters finalised – all classes	1,227	1,242	1,340	1,288	1,306
Total pre-trial finalisations	874	823	1,000	747	864
% matters finalised pre-trial	71	66	75	58	66

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, over 50% of appeals in Classes 1, 2 and 3 were finalised by these means. This further improved upon the high level of finalisations by these means achieved in 2017 and is the

highest level in the last five years. This is the first time in the history of the Court that this figure has crossed the 50% mark (coming very close in both 2016 and 2017) and as such represents an all-time high. Of the total of 547 matters, 489 were finalised by s 34 and s 34AA conciliation conferences and 58 matters by on-site hearings.

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

	2014	2015	2016	2017	2018
Total matters finalised	1,032	989	1,099	1,071	1,090
s 34 and s 34AA conferences and on-site hearings	363	444	532	523	547
% s 34 and s 34AA and other matters finalised on-site	35.1	44.9	48.4	48.8	50.2

Court performance by class of jurisdiction

A brief summary of the Court’s performance in 2018 for each of the eight classes of jurisdiction is provided.

Class 1

Total Class 1 registrations (new registrations and restored matters combined) remained almost identical to 2017, a decrease of 1% (from 1,021 to 1,010). Finalisations increased

by 6.3% (from 831 to 883) and the pending caseload at year’s end increased by 22% (578 to 705). Class 1 matters represent 66% of all filings in 2018 (1,010/1,529). This decrease in proportional composition from the previous year can largely be explained by the significant increase in Class 5 registrations.

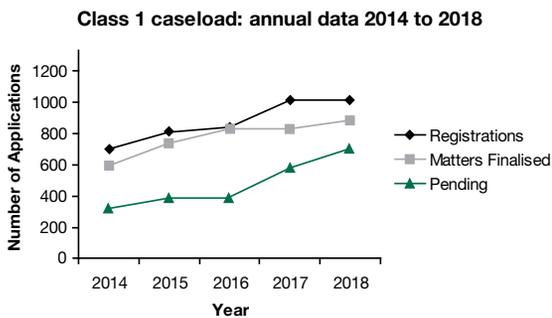
Class 1 matters constitute the bulk of the Court’s finalised caseload (68%). 70% of all Class 1 matters finalised were appeals under s 8.7 (formerly s 97) of the *Environmental*

Planning and Assessment Act 1979 relating to development applications. 59% (up from 57% in 2017) of the appeals under s 8.7 were applications where councils had not determined the development application within the statutory time period, known as “deemed refusals”.

Of the remaining matters finalised in 2018, 13% were applications to modify a development consent under s 8.9 (formerly s 96) of the *Environmental Planning and Assessment Act 1979* and 10% were appeals against council orders and the actual or deemed refusal by councils to issue building certificates. Third party objector appeals constituted roughly 1% of finalised Class 1 matters. Applications for costs, appeals under s 56A of the Court Act against a Commissioner’s decision, and prevention or remediation notices constituted the remaining matters in Class 1.

Figure 5.1 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 1 between 2014 to 2018.

Figure 5.1

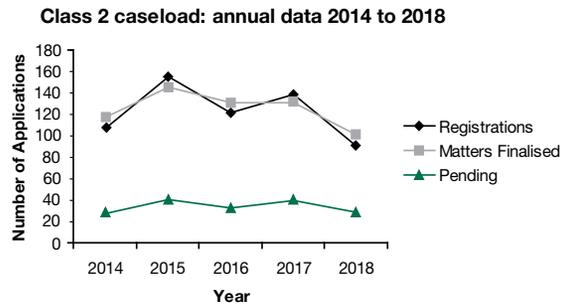


Class 2

Class 2 registrations represented just 6% of total registrations in the Court in 2018 (90/1,529). Registrations decreased sharply from 2017; a 35% decrease from 139 to 90. There were 101 Class 2 matters finalised by the Court in 2018. This represents less than 8% of the Court’s total finalisations (1,306) for the year. The final total represents a decrease of 24% from 2017, in accordance with the low representation of Class 2 overall across the year. Further, there were just 28 pending Class 2 appeals at the end of 2018, a decrease of 28% compared to the end of 2017. Applications under the *Trees (Disputes Between Neighbours) Act 2006* represent a strong majority of Class 2 finalisations for 2018 (76%).

Figure 5.2 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 2 between 2014 to 2018.

Figure 5.2



Class 3

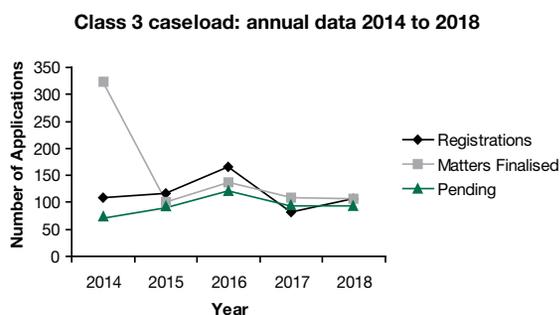
Class 3 of the Court's jurisdiction encompasses a range of proceedings including claims for compensation as a result of the compulsory acquisition of land, valuation and rating appeals and some Aboriginal land rights matters.

New registrations in Class 3 increased by 31% in 2018, after 2017 saw an unusual low of 82. For broader context, the 2018 total of 107 represents a 36% decrease when compared to the 2016 total (166), but is similar to both the 2015 and 2014 final totals (116 and 108 respectively). Compensation claims for compulsory acquisition of land constituted 58% of all Class 3 registrations in 2018, whilst valuation and rating appeals accounted for 22%.

Finalisation of Class 3 matters remained steady from 2017, a slight decrease of less than 2%. Of the 106 Class 3 finalisations in 2018, 44% were compensation claims, 42% were valuation or rating appeals and 14% were other matters. There were 3 land claim matters and 4 strata scheme matters completed in the year. The pending caseload of Class 3 matters is also very consistent with 2017 results, a minor increase of just over 1%.

Figure 5.3 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 3 between 2014 and 2018.

Figure 5.3

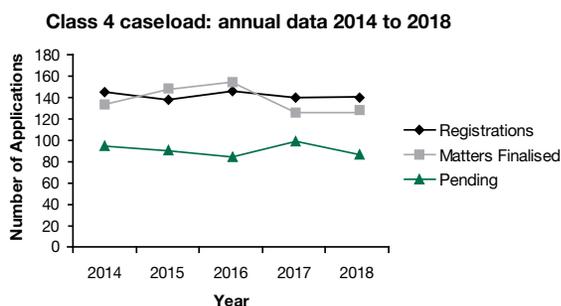


Class 4

Class 4 registrations remained consistent with the 2017 totals, a decrease of less than 1%, whilst finalisations increased marginally (2%) in 2018. Class 4 matters comprise roughly 9% of all registrations (140/1,529) and 10% of all finalisations in 2018 (129/1,306). The Class 4 pending caseload decreased by 12% compared to the end of 2017. Of the 140 total Class 4 matters registered in 2018, 41% were initiated by Councils.

Figure 5.4 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 4 between 2014 and 2018.

Figure 5.4



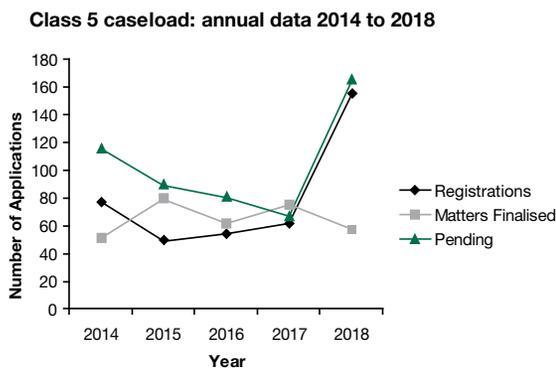
Class 5

New Class 5 registrations saw an enormous 156% increase from 2017. The Environment Protection Authority and the Office of Environment and Heritage combined initiated 54% of all Class 5 registrations in 2018. The ratio of Class 5 matters initiated by local council decreased to 21%, down from 36% in 2017. Water NSW and the Natural Resources Access Regulator combined initiated 19% of Class 5 registrations for the year.

Class 5 finalisations were down by 13% in 2018. Convictions were recorded in 27 matters, 16 were withdrawn or otherwise discontinued and 15 matters were dismissed. Fines and remediation orders ranged between \$2,800 for transporting dangerous goods in an unsafe manner, \$5,250 for development without consent/unlawful development, \$300,000 for harm caused to a known Aboriginal object (scar tree) and \$720,000 for land and water pollution from slurry released at a coal mine. No community service orders were issued in 2018. A single section 10 bond was ordered for unauthorised clearing of native vegetation. An imprisonment order was issued in 2018 that accounted for 5 separate convictions for a waste offence committed within 5 years of a previous waste offence. The aggregate sentence for these 5 convictions was 3 years imprisonment.

Figure 5.5 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 5 between 2014 to 2018.

Figure 5.5



Classes 6 and 7

There were 16 new Class 6 appeals filed in 2018. 25 Class 6 matters were finalised (7 in relation to one conviction, 8 in relation to another). This represents a 79% increase from 2017 finalisations in Class 6. There were no Class 7 appeals registered or finalised in 2018. There are no pending Class 7 appeals before the Court.

Class 8

There were 6 mining matters filed in 2018, 1 of which was finalised via discontinuance. There were 4 Class 8 matters finalised in 2018, up from 2 in 2017.

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 2018 to increase court fees by 2.02% to be able to balance the Court's budget and ensure a high standard of court administration service quality (effective 1 July 2018). The fee for a standard file retrieval request was increased by 2.5%. Notwithstanding the increase, the increased court fees still meet criteria of equity.

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

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

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

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

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

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

Accessibility

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

Geographical accessibility

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

Up until 2016, a matter was counted as a country matter if it was outside the area bordered by the local government areas of Wollongong, Blue Mountains and Gosford. From 2016, a matter is counted as a country matter if it is in a local government area outside the Greater Sydney region. In 2018, 25% of matters registered were country matters. This represents a 5% increase from 2017. This increase can be largely explained by the significant increase in Class 5 registrations this year, of which 71% were country matters.

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

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

Secondly, the Court pioneered the use of 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 73% of completed Class 1 country matters and 25% of completed Class 3 country matters in 2018.

Table 5.4 shows the percentage of pre-hearing attendances conducted by Online Court directions hearings and telephone directions hearings in all matters (not only country matters) in Classes 1- 4 in 2018. This reveals increased usage of Online Court in each of Classes 1, 2, 3 and 4 and overall compared to 2017. Overall usage increased by 65% (from 20% to 33%).

Table 5.4 Online Court and Telephone Directions Hearings

Class	No of cases	Total pre-hearing attendances	% Online Court directions hearings	% Telephone directions hearings
1	883	4,495	35	4
2	101	218	18	20
3	106	486	31	0
4	129	654	20	0
All	1,218	5,853	33	4

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

Thirdly, proceedings in Classes 1, 2 and 3 are commonly referred to conciliation under s 34 of the Court Act. Conciliation conferences are frequently held on the site of the dispute. 58% of finalised Class 1 country matters and 38% 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. An official on-site hearing involves conducting the whole hearing on-site. This type of hearing is required where there has been a direction that an appeal under ss 4.55 (formerly 96), 4.56 (formerly 96AA), 8.7 (formerly 97), 8.18 (formerly 121ZK) or 8.25 (formerly 149F) of the *Environmental Planning and Assessment Act 1979* or s 7 of the *Trees (Disputes Between Neighbours) Act 2006* be conducted as an on-site hearing. The hearing is conducted as a conference presided over by a Commissioner on the site of the development. In 2018, 5% of finalised matters (in Classes 1 and 2) were conducted

as an on-site hearing, of which 34% were country matters. Of the Class 1 country matters, however, none were conducted as an on-site hearing in 2018.



An on-site hearing conducted by Acting Commissioner David Galwey.

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 2018.

Table 5.5 Country hearings in courthouses

Courthouse	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 8
Ballina	4						
Bega	1						
Byron	1						
Coffs Harbour	2						
Cooma				1		1	
Gloucester	2						
Gundagai	1						
Gunnedah	1						
Kiama	3						
Mid-Coast	1						
Murwillumbah	1						
Newcastle	2						
Picton	1						
Shoalhaven	1						
Singleton	1						
Temora							1
Toronto	1						
Tweed	1						
Wentworth	1						
Windsor	1						
Wollongong	6						
TOTAL	32			1		1	1

Access for persons with disabilities

The Court has a disability strategic plan that aims to ensure that all members of the community have equal access to the Court's services and programmes. The Court is able to make special arrangements for witnesses with special needs. The Court can be accessed by persons with a disability. The Land and Environment Court website contains a special page, under the tab 'Facilities & Support', outlining the disability services provided by the Court.

Access to help and information

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

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

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

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

Access for unrepresented litigants

In 2018 a duty lawyer scheme was trialed 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 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 staff from 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;
- User feedback on Land and Environment Court services;
- Information about the Court's website; and
- Contact information for the Court.

The Court's website also has on its home page special pages on: 'Your legal problem is about', 'Types of cases', 'Resolving Disputes', 'Coming to the court', 'Practice & Procedure', 'Forms & Fees', 'Land and Environment Court Decisions', amongst others.

Access to Alternative Dispute Resolution

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

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

The Court provides mediation services. In 2018, all full-time Commissioners, a number of the Acting Commissioners and the Registrar and Assistant Registrar of the Court were nationally accredited mediators and could provide in-house mediation for parties. In addition, the Court encourages and will make appropriate arrangements for mediation by external mediators. Informal mechanisms such as case management conferences also encourage negotiation and settlement of matters.

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

Facilitating public participation

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

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

Responsiveness to the needs of users

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

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

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

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

In 2018, the Judges, Commissioners and the Registrar participated in numerous conferences and seminars to enhance awareness of recent developments in the Court relating to both procedural and substantive law.

Output indicators of effectiveness and efficiency

The effectiveness and efficiency of the Court is able to be measured by reference to the output indicators of backlog indicator, time standards for finalisation of cases, time standards for delivery of judgments, clearance rate and attendance indicator.

Backlog indicator

The backlog indicator is an output indicator of case processing timeliness. It is derived by comparing the age (in elapsed time from lodgment) of the Court's caseload against time standards. The Court adopted its own standards for the different classes of its jurisdiction in 1996.

These are:

- Classes 1, 2 and 3: 95% of applications should be disposed of within 6 months of filing.
- Classes 4, 5, 6, 7 and 8: 95% of applications should be disposed of within 8 months of filing.

These standards are far stricter than the national standards used by the Productivity Commission in its annual *Report on Government Services*.

The national standards are:

- No more than 10% of lodgments pending completion are to be more than 12 months old (ie. 90% disposed of within 12 months).
- No lodgments pending completion are to be more than 24 months old (i.e. 100% disposed of within 24 months).

Performance relative to the timeliness standards indicates effective management of caseloads and court accessibility.

Time taken to process cases is not necessarily due to court administration delay. Some delays are caused by factors other than those related to the workload of the Court. These include delay by parties, unavailability of a witness, other litigation taking precedence, and appeals against interim rulings.

The results of the backlog indicator measured against the Land and Environment Court time standards for 2018 are set out in Table 5.6.

Table 5.6 Backlog Indicator (LEC time standards)

	Unit	LEC Standards	2014	2015	2016	2017	2018
Class 1							
Pending caseload	no.		320	384	398	578	705
Cases > 6 months	%	5	14.1	17.1	22.2	21.5	26.4
Cases > 12 months	%	0	4.1	5.7	5.5	2.8	7.2
Class 2							
Pending caseload	no.		29	40	32	39	28
Cases > 6 months	%	5	3.4	0	9.4	15.4	7.1
Cases > 12 months	%	0	0	0	0	2.6	0

Class 3

Pending caseload	no.		71	90	121	94	95
Cases > 6 months	%	5	46.5	27.8	39.3	56.4	48.4
Cases > 12 months	%	0	26.8	13.3	19.7	41.5	27.4

Class 4

Pending caseload	no.		96	90	84	99	87
Cases > 8 months	%	5	39.6	30.0	32.9	39.4	47.1
Cases > 16 months	%	0	17.7	16.7	15.3	21.2	25.3

Class 5

Pending caseload	no.		118	89	81	67	166
Cases > 8 months	%	5	56.8	69.7	48.1	35.8	29.5
Cases > 16 months	%	0	33.1	30.3	21.0	7.5	12.1

Class 6

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

Class 8

Pending caseload	no.		7	9	2	3	5
Cases > 8 months	%	5	28.6	11.1	50.0	0	40
Cases > 16 months	%	0	14.3	0	0	0	0

Class 1 – 3

Pending caseload	no.		420	514	551	711	828
Cases > 6 months	%	5	18.8	17.7	25.4	25.9	28.3
Cases > 12 months	%	0	7.6	6.6	8.3	7.9	9.3

Class 4 – 8

Pending caseload	no.		229	193	178	178	263
Cases > 8 months	%	5	48.5	47.2	38.0	35.4	35.0
Cases > 16 months	%	0	26.2	21.8	16.8	14.6	16.0

These backlog figures need some explanation:

- Class 1: The backlog figures for pending caseloads greater than 6 and 12 months increased in 2018 compared to 2017. The total pending caseload in Class 1 increased during 2018 as a result of registrations exceeding finalisations. The increase in matters exceeding 6 months was minor, with a more significant increase (proportionally) occurring in the category of matters exceeding 12 months. This reflects the longer time needed to allocate a date for a conciliation conference or hearing, typically 5 to 6 months after being listed.
- Class 2: There was a significant decrease in the number of pending Class 2 matters at the end of 2018, the lowest since 2014. The total amount of pending Class 2 matters decreased by 11 from the end of 2017, a 28.2% decrease. There are no pending matters that have exceeded the 12 month time standard. 2 pending matters have exceeded the 6 month time standard. This represents 7.1% of the pending caseload, the lowest since 2015.
- Class 3: Despite the pending caseload increasing by one matter, the number of pending matters exceeding both the 6 month and 12 month internal time standard decreased. The Court performed well in the Class 3 category, as registrations increased significantly from 2017 to 2018. The timeliness and effectiveness of case management was improved despite an increased overall caseload.
- Class 4: Despite a decrease in the pending caseload of Class 4 matters, timeliness declined in 2018. There was an increase in the proportion of matters exceeding both the 6 month and 12 month time standards of the Court.
- Class 5: The backlog figures for Class 5 continued the significant improvement that was experienced in 2017. The percentage of cases pending for more than 8 months decreased, dropping below 30% for the first time in the last 5 years. The percentage of matters exceeding 12 months saw a slight increase from 2017, but still represents a significantly better result than 2014 to 2016. The pending caseload increased by 148%, and exceeded 100 pending matters for the first time since 2014. This was a product of the marked increase in Class 5 registrations.
- Class 6: There were only a small number of appeals in Class 6. Of the 5 pending Class 6 appeals, none were pending for more than 8 months.
- Class 8: The pending caseload increased by two in 2018. Two of these pending matters exceeded the 8 month pending time standard, which represents 40% of the total pending caseload.

If the national time standards are used, the results of the backlog indicator for the Court in 2018 are as shown in the table below:

Table 5.7 Backlog indicator (national time standards)

	Unit	National Standards	2014	2015	2016	2017	2018
Class 1							
Pending caseload	no.		320	384	398	578	705
Cases > 12 months	%	10	4.1	5.7	5.5	2.8	7.2
Cases > 24 months	%	0	0.6	0.8	0	0.3	0.3
Class 2							
Pending caseload	no.		29	40	32	39	28
Cases > 12 months	%	10	0	0	0	2.6	0
Cases > 24 months	%	0	0	0	0	0	0
Class 3							
Pending caseload	no.		71	90	121	94	95
Cases > 12 months	%	10	26.8	13.3	19.7	41.5	27.4
Cases > 24 months	%	0	8.5	7.8	0.8	8.5	10.5
Class 4							
Pending caseload	no.		96	90	84	99	87
Cases > 12 months	%	10	26.0	22.2	25.9	28.3	35.6
Cases > 24 months	%	0	13.5	8.9	8.2	6.1	13.8
Class 5							
Pending caseload	no.		118	89	81	67	166
Cases > 12 months	%	10	50.0	58.4	44.4	29.9	15.7
Cases > 24 months	%	0	22.9	21.3	17.3	3.0	3.6
Class 6							
Pending caseload	no.		8	5	11	9	5
Cases > 12 months	%	10	50.0	20.0	0	0	0
Cases > 24 months	%	0	0	0	0	0	0
Class 8							
Pending caseload	no.		4	9	2	3	5
Cases > 12 months	%	10	50.0	0	50.0	0	0
Cases > 24 months	%	0	0	0	0	0	0

This table shows that the Court's performance in Classes 1, 2, 6 and 8 better or meets the national standard for 12 months and 24 months. The Court's performance in Class 3 has improved significantly in 2018 compared to 2017 for the standard for 12 months (from 41.5% down to 27.4%). The Court's performance declined slightly in the 24 month standard for Class 3 matters. The Court's performance in Class 4 fell short of the national standard in 2018. The Court's performance in Class 5 is below the national standard for 12 months and 24 months, but is an improvement on previous years. The percentage of cases exceeding 12 months has declined significantly to be the Court's best result in five years. The percentage of cases exceeding 24 months in 2018 is consistent with the results for 2017 and is not greatly above the national standard. The percentage of cases exceeding 12 months

has decreased by 35.3% since 2014, and the percentage exceeding 24 months has decreased by 19.3% in the same time frame.

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

Time standards for finalisation of cases

The backlog indicator is a measure of the timeliness of the pending caseload. The Court also measures the timeliness of completed cases by comparing the time taken for finalisation of cases in each class to the Court's time standards. The higher the percentage of cases completed by each time standard and the shorter the time period to complete 95% of the cases, the better the Court's performance. Table 5.8 sets out the Court's performance in finalising cases in each class in compliance with the Court's time standards for the period 2014-2018.

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

	2014	2015	2016	2017	2018
Class 1					
No. of cases	592	743	832	831	883
% < 6 months	78	70	63	62	37
% < 12 months	96	96	94	94	90
95% completed within (months)	10	11	13	13	14
Class 2					
No. of cases	118	146	130	132	101
% < 6 months	97	94	93	93	89
% < 12 months	100	100	99	99	98
95% completed within (months)	5	6	6	7	9
Class 3					
No. of cases	322	100	137	108	106
% < 6 months	25	45	51	44	28
% < 12 months	38	70	80	72	63
95% completed within (months)	28	28	30	26	34

Class 4

No. of cases	135	147	156	126	129
% < 8 months	66	64	73	71	67
% < 16 months	87	88	87	88	91
95% completed within (months)	27	28	24	24	22

Class 5

No. of cases	49	79	62	75	58
% < 8 months	45	24	8	19	28
% < 16 months	71	38	76	73	76
95% completed within (months)	34	67	86	53	18

Class 6

No. of cases	4	17	13	14	25
% < 8 months	100	76	85	71	68
% < 16 months	100	76	92	100	100
95% completed within (months)	8	27	13	10	10

Class 8

No. of cases	7	10	10	2	4
% < 8 months	71	40	50	0	100
% < 16 months	71	80	90	0	100
95% completed within (months)	22	20	20	23	7

In Class 1, there was a significant reduction in the percentage of cases completed within 6 months. The percentage of Class 1 matters completed within 12 months also reduced, but not nearly to the same level of significance. This suggests that many Class 1 matters are finalising between the 6 and 12 months' time standard. Again, an explanation is the longer lead time before Class 1 matters can be listed for a conciliation conference or hearing. The time taken to finalise 95% of cases increased by a month. This measure has increased by 4 months over the last 5 years, reflecting the significant increase in registrations that has occurred over this 5 year period.

In Class 2, the high percentage of cases completed within 6 and 12 months decreased slightly but the overall caseload

management suggests this was not problematic. However there was another increase in the time taken to complete 95% of cases (9 months). Rounding plays a role in the increase of 2 months from 2017, as the actual figure is roughly 8.5 months. This represents the fifth year of increased time taken to resolve 95% of Class 2 matters. One explanation might be the delay in listing the matters for hearing, associated with the limited availability of Acting Commissioners with arboricultural expertise to hear these matters. This difficulty is expected to be addressed in 2019.

In Class 3, the Court's performance decreased, with lower percentages of cases completed in less than 6 months and 12 months and longer time taken to complete 95% of the cases.

In Class 4, the percentage of cases finalised in less than 8 months again declined slightly from 2017, however, the percentage of cases finalised in less than 16 months increased slightly to a 5 year high. The time taken to complete 95% of the matters also improved to the lowest in the 5 year reporting period.

In Class 5, the percentage of cases finalised in less than 8 months increased markedly again (an increase of over 47% from 2017). The percentage of cases finalised in less than 16 months increased from 2017 to an identical level recorded in 2016. The time taken to complete 95% of cases decreased significantly (down by 35 months), being the Court's best result in 5 years.

The Court's performance in complying with time standards for Class 6 matters decreased slightly in the 8 month category. However, the percentage of cases finalised within 16 months maintained the 100% standard achieved in 2017 and the time taken to finalise 95% of cases remained constant at 10 months.

The Court's performance in Class 8 improved dramatically in all categories but 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 (16%) 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 2018 for reserved judgments being delivered within 14 days, 30 days and 90 days declined again from 2017 to be the worst results in the last 5 years. These results, however, need to be viewed in the context of the material increases in the number of matters dealt with by the Court in the year. In Class 1, for example, there has been a 95% increase in matters disposed of by hearing (and hence judgments) between 2014 and 2018. The number of decision-makers at the Court has not increased in that time.

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	2014	2015	2016	2017	2018
% delivered within 14 days	50	51	45	41	39	30
% delivered within 30 days	75	67	62	60	59	52
% delivered within 90 days	100	85	83	86	83	78

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

	2014	2015	2016	2017	2018
Class 1	2	6	7	30	10
Class 2	1	0	2	3	0
Class 3	5	5	0	2	4
Class 4	10	7	5	2	5
Class 5	3	9	3	1	0
Classes 6 and 7	0	2	0	0	0
Class 8	0	2	0	0	0
Total	21^{*1}	31^{*2}	17^{*3}	38^{*4}	19^{*5}

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

^{*2} In 2015, 84% of inquiries (26) concerned judges' reserved judgments and 16% (5) concerned commissioners' reserved judgments.

^{*3} In 2016, 71% of inquiries (12) concerned judges' reserved judgments and 29% (5) concerned commissioners' reserved judgments.

^{*4} In 2017, 18% of inquiries (7) concerned judges' reserved judgments and 82% (31) concerned commissioners' reserved judgments.

^{*5} In 2018, 68% of inquiries (13) concerned judges' reserved judgments and 32% (6) concerned commissioners' reserved judgments.

The Chief Judge investigated each inquiry made in 2018 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

	2014	2015	2016	2017	2018
	%	%	%	%	%
Class 1	84.3	91.8	98.3	81.4	87.4
Class 2	107.2	93.6	106.6	95.0	112.2
Class 3	298.1	86.2	82.5	131.7	99.1
Class 4	92.5	105.8	106.1	89.4	92.1
Class 5	64.5	161.2	114.8	123.0	37.2
Class 6	66.7	121.4	68.4	116.7	125
Class 8	70.0	83.3	333.3	66.7	66.7
Classes 1-3	112.2	91.5	96.9	86.2	90.3
Classes 4-8	81.9	118.2	107.2	99.5	67.1
Total	106.0	95.9	98.7	88.2	85.4

These figures show that the total clearance ratio for all matters decreased to be the lowest in the past five years (85.4%). The clearance ratio for Classes 1-3 improved from 2017, whilst the clearance ratio for Classes 4-8 decreased. The significant increase in Class 5 registrations dramatically affected the clearance ratio for Class 5, which in turn negatively tilted the Class 4-8 clearance ratio and the total (Class 1-8) clearance ratio.

The Class 1 clearance ratio improved by 6% compared to the 2017, a significant increase if the volume of Class 1 matters is accounted for. In Class 2, finalisations exceeded registrations in 2018, producing a clearance ratio of 112.2% which was a positive result after the clearance ratio dropped below the 100% mark in 2017. In Class 3, registrations exceeded finalisations by one matter (107 to 106). As a result the clearance ratio is at near parity. The Class 4 clearance ratio improved in 2018. Despite falling short of the 100% parity mark, Class 4 registrations exceeded finalisations by just 11 matters. The clearance ratio in Class 5 saw a significant decrease. In 2018, the Class 5 clearance ratio dropped below 100% for the first time since 2014. This was caused by a slight reduction in Class 5 finalisations (although the final total is similar to the 2014 and 2016 figures), combined with a sharp increase in registrations. In 2018 the Court also saw 156 Class 5 registrations, which is more than double the next highest single year total in the last 5 years (76 in 2014). This severe increase had a dramatic effect on the clearance ratio of Class 5 matters themselves, the Class 4-8 group and ultimately the Class 1-8 yearly total. The Class 6 clearance ratio increased from 2017 following a significant increase in the 2016 result. The Class 8 clearance ratio remained unchanged from 2017. These two categories

feature such low volumes of cases that the changes often have a negligible effect on the Court's yearly workload regardless of large changes to the clearance ratio.

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 2014-2018.

Table 5.12 Median number of pre-hearing attendances by Class

	2014	2015	2016	2017	2018
Class 1	4	4	4	4	4
Class 2	1	1	1	1	1
Class 3: (all matters)	7	5	5	6	5
Compensation claims	12	8	6	7	4
Valuation objections	6	7	2	7	5
Miscellaneous	7	6	5	5	7
Class 4	5	7	4	4	4
Class 5	5	9	10	5	7
Class 6	2	2	1	3	2
Class 8	4	4	6	10	3

The table reveals that the median number of pre-hearing attendances stayed constant for matters in Classes 1 and 2 between 2014 and 2018. The volume of Class 1 matters means the median attendance figures are unlikely to change unless as a result of a change in Court policy. Likewise, the median attendances in Class 2 are unlikely to change due to the structure of Class 2 case management. Overall, the number of pre-hearing attendances for all matters in Class 3 decreased slightly to return to the same figure reported in 2015 and 2016. The number of pre-hearing attendances decreased in valuation objections, decreased in compensation claims and increased in miscellaneous matters. These decreases in the number of attendances represent a return to expected levels after an increase in pre-hearing attendance for Class 3 matters in 2017. The number of pre-hearing attendances stayed the same in Class 4 for the third consecutive year. The number of attendances in Class 5 increased after a significant decrease in 2017. The number of attendances increased in Class 6 decreased slightly from 2017. Class 8 attendances

decreased significantly. The caseload volume for Classes 6 and 8 is small, so they are prone to more variation across years without affecting 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 2018, 15 s 56A appeals were commenced, one appeal was settled pre-hearing, 14 were completed after a hearing, and none remained pending at 31 December 2018.

Of the 14 appeals that were completed at hearing, four were upheld. This represents 1.6% of the number of matters in Classes 1, 2, 3 and 8 disposed of at a hearing by a Commissioner of the Court in 2018 (252 matters).

Table 5.13 s 56A Appeal outcomes

	2014	2015	2016	2017	2018
Total no. of appeals	17	12	9	13	15
No. finalised pre-hearing	2	0	6	1	1
No. of appeals to hearing	14	6	8	12	14
Outcome:					
Upheld	5	2	3	2	4
Dismissed	9	4	7	10	10

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

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

The Court has continued the approach it adopted for the 2017 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 2014 to 2018.

In 2018, 23 appeals were determined by the Court of Appeal on appeal from the Land and Environment Court and 5 appeals were determined by the Court of Criminal Appeal on appeal from the Land and Environment Court.

Table 5.14 Appeals to the appellate courts

	2014	2015	2016	2017	2018
Court of Appeal					
Appeal by right	14	12	10	18	18
Leave to appeal	4	8	4	4	4
Total matters determined	17*	19*	14	20*	23*
Court of Criminal Appeal					
Appeal by right	3	0	1	4	3
Stated case, section 5AE	2	2	0	1	1
Leave to appeal	0	2	0	0	1
Total matters determined	5	4	1	5	5

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

Complaints

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

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

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

the problem) or referral to the Attorney-General for consideration of removal of the Commissioner from office.

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

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

Complaints received and finalised

In 2018, the Court received 3 formal complaints.

Table 5.15 gives particulars about the complaints made and dealt with in 2018 and the outcomes.

Table 5.15 Complaint particulars

Complaints pending as at 31 December 2017	0
Complaints made during 2018	3
Total number of complaints	3
Complaints examined but dismissed	3
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	3
Complaints pending as at 31 December 2018	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 2018, Commissioners exercised the functions of undertaking conciliations, mediations, on-site hearings or court hearings in Classes 1, 2 and 3 and 8. There were 1,094 matters disposed of in 2018 in those classes. Complaints, therefore, occurred in only 0.27% 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 2018. More than one criterion may be used for each complaint. The table shows that each of the 3 complaints were dismissed.

Table 5.16 Criteria for dismissing complaints

No misconduct was established	3
The complaint related to a judicial or other function that is or was subject to adequate appeal review rights	0

Patterns in complaints

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

Causes of complaint

Table 5.17 sets out the common causes of complaint and identifies which causes were raised by the complaints made in 2018. The number refers to the number of complaints raising that cause of complaint. Many complaints raise multiple causes and these are captured by this approach. It is to be emphasised these are the categories of allegations made in complaints, whether or not they were upheld.

Table 5.17 Common causes of complaint

	2018
Bias, collusion or conflict of interest	
Delay	
Dissatisfaction with substantive outcome or wrong decision	2
Dissatisfaction with procedural and evidentiary rulings	1
Error interpreting or applying the law	
Failure of Court to enforce judgment or orders	2
Failure to give fair hearing	
Impairment	
Inadequate reasons for judgment	1
Inappropriate behaviour or comments or discourtesy	
Incompetence	1

Substitution for appeals or review

Many of the complaints made amount, in essence, to a complaint that a Commissioner has made the wrong decision. These complaints are often made in apparent substitution of an appeal against the decision of a Commissioner or Registrar. They are usually made when a party to litigation is aggrieved by an unfavourable decision but for one reason or another (including financial reasons) does not wish to appeal. Instead, a personal complaint is made against the decision-maker, either directly challenging the outcome or indirectly doing so by alleging that the outcome could only have resulted by some fault or bias of the decision-maker. Such complaints are dealt with on their merits. However a complaint about a Commissioner is not a substitute for an appeal and the Chief Judge cannot correct allegedly erroneous decisions.

In 2018, two complaints, concerning proceedings under the *Trees (Disputes Between Neighbours) Act 2006*, were that the Commissioner's reasons for judgment, including the identification and treatment of the issues, the findings of fact and the ultimate decision, were inadequate. One of these complaints raised that the Commissioner was wrong not to have accepted the evidence of the complainant and instead preferred the evidence of the other party's expert witnesses. The other complaint expressed dissatisfaction that the Commissioner lacked tree knowledge and the decision was "inept". Both complaints were really that the Commissioner made the wrong decision on the facts. This does not reveal judicial misconduct.

Misunderstanding as to dispute resolution process

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

Two complaints concerned hearings conducted onsite of applications under the *Trees (Disputes Between Neighbours) Act 2006* concerning neighbours' trees. The complainants were concerned about the procedure adopted for the conduct of the hearing onsite. One complaint expressed concern about the Commissioner considering and giving weight to expert evidence adduced by the other party. This complainant had given notice to the other party requiring the attendance of the two experts at the hearing for cross examination, but the experts did not attend. Nevertheless,

the complaint did not object to their written evidence being tendered in evidence or otherwise object to the non-attendance of the experts. The complainant also notified the other party that the experts had failed to acknowledge the Expert Witness Code of Conduct in their reports, but again did not object to the tender of the reports at the hearing on this basis. Another complaint was that the Commissioner lacked knowledge about the subject trees.

These complaints revealed a misunderstanding of how hearings are conducted on the site of a dispute and the necessary differences in procedure from a hearing conducted in court. The Commissioner hearing a matter has a discretion to admit evidence with which a party disagrees. No judicial misconduct is revealed by making an evidential or procedural ruling as to the evidence to be admitted or the conduct of the hearing. Further, a Commissioner allocated to hear tree disputes is usually appointed to the Court on the basis of their extensive knowledge and experience as an arborist. Section 12(1) of the *Land and Environment Court Act 1979* requires a person to have knowledge, experience or qualifications of a type listed in s 12(2) or (2AA). Under s 30(2) of *Land and Environment Court Act 1979* requires the Chief Judge in determining the Commissioner who is to hear and determine any proceedings to have regard to the knowledge, experience and qualifications of the Commissioners and to the nature of the matters involved in the proceedings. For tree disputes, the relevant knowledge, experience and qualifications usually concern arboriculture and it is therefore appropriate that a Commissioner with knowledge, experience or qualifications in arboriculture hear and determine a tree dispute. In doing so, the Commissioner

can draw on that knowledge and experience. The complainant's belief that the Commissioner lacked "tree knowledge" was incorrect.

Misunderstanding as to enforcement role of the Court

Two complaints concerned the Court not enforcing orders made by the Court. One complaint expressed dissatisfaction with the Court not independently investigating whether a development was being carried in accordance with a consent granted by the Court. Another complaint was that neighbours had failed to comply with a Court order that they remove tree roots that were causing property damage and the Court should take action to resolve the tree root situation.

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

6 Education and Community Involvement

- Continuing professional development
 - Continuing professional development policy
 - Annual Court Conference 2018
 - Twilight seminar series
 - National Mediator Accreditation
 - Other educational activities
- Performance indicators and programme evaluation
- Publications
- Education and participation in the community
- Individual Judges' and Commissioners' activities

Continuing professional development

Continuing professional development policy

The Court adopted in October 2008 a Continuing Professional Development Policy for the Court. The purpose of continuing professional development is to enhance professional expertise, facilitate development of professional knowledge and skills, and promote the pursuit of juristic excellence. The policy sets a standard for each Judge and Commissioner of the Court of five days (or 30 hours) each calendar year of professional development activities relating to their professional duties.

To assist in meeting the standard, the Court and the Judicial Commission of New South Wales provide an annual conference of two

days (12 hours) and a twilight seminar series providing at least 12 hours (two days) of professional development activities a year.

Annual Court Conference 2018

The Annual Court Conference for 2018 was held on Thursday 17 May and Friday 18 May 2018 at Headlands Hotel, Austinmer.

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

- Responding to climate induced changes in the distribution of diversity
- Challenges posed by development
- Judicial review
- International mediation
- Land management and biodiversity conservation reforms
- Criminal law update
- Legal research
- Field Trip: Port Kembla Harbour and BlueScope Steel Illawarra



Field Trip: Port Kembla Harbour and BlueScope Steel Illawarra



Field Trip: Port Kembla Harbour and BlueScope Steel Illawarra



Field Trip: Port Kembla Harbour and BlueScope Steel Illawarra



Judges and Commissioners at the Land and Environment Court Conference on 17 May 2018



Judges and Commissioners at the Land and Environment Court Conference Field Trip on 17 May 2018

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.

21 February	Twilight seminar, "Updates to the Environmental Planning and Assessment Act", presented by Jonathon Schipp, Director, Policy and Legislation, Department of Environment and Planning, Judicial Commission of NSW, Sydney
1 March	Ngara Yura Seminar, "Sorry Business And Wills", Judicial Commission of NSW, Sydney
5 April	Twilight seminar, "The Science of Expertise", presented by Dr Kristy Martire, Senior Lecturer & ARC DECRA Fellow, School of Psychology, University of NSW, Judicial Commission of New South Wales, Sydney
31 May	Ngara Yura Field Trip: Visit to the Sydney Observatory
14 June	Twilight seminar, "Criminal Law Update", presented by The Hon Justice Helen Wilson, Supreme Court of NSW, Judicial Commission of NSW, Sydney
14 August	Twilight seminar, "Fact Finding", presented by His Honour Judge Paul Lakatos SC, Judicial Commission of New South Wales, Sydney
11 September	Twilight seminar, "Conflicts between urban development and bird populations", presented by Dr Stephen Ambrose, Judicial Commission of New South Wales, Sydney
18 September	Ngara Yura Seminar, "Introduction to the Aboriginal Land Rights System in NSW", Part 1, Judicial Commission of New South Wales, Sydney
25 September	Ngara Yura Seminar, "Introduction to the Aboriginal Land Rights System in NSW", Part 2, Judicial Commission of New South Wales, Sydney
15 October	Twilight seminar, "Implementing Court Managed Expert Evidence", presented by Ms Peta Stilgoe, Member of the Queensland Land Court, Land and Environment Court of New South Wales, Sydney

30 October Field Trip, "Part 2 - Conflicts between urban development and bird populations: are they adequately addressed by our planning and building regulations?", presented by Dr Stephen Ambrose, University of Western Australia, Judicial Commission of NSW

5 December Twilight seminar and field trip, "The Value of Public Art", presented by Ms Eva Rodriguez Riestra, Sydney City's Public Art Program Manager, Sydney



Field Trip: The Value of Public Art, 5 December 2018



Field Trip: The Value of Public Art, 5 December 2018



Field Trip: The Value of Public Art, 5 December 2018

National Mediator Accreditation

In 2018, all Commissioners, the Registrar and Assistant Registrar were nationally accredited as mediators.

Other educational activities

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

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 2018, both the

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

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

Table 6.1 Participant evaluation of Land and Environment Court Annual Conferences 2014 to 2018

	Target	2014	2015	2016	2017	2018
Overall satisfactory rating	85%	89%	93%	100%	95%	90%

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

overall satisfaction of the twilight seminar series in the years 2013 to 2017, all of which exceeded the 85% standard.

Table 6.2 Participant evaluation of Land and Environment Court Twilight seminar series 2014 to 2018

	Target	2014	2015	2016	2017	2018
Overall satisfactory rating	85%	86%	91%	92%	94%	89%

*Note: 2014 was based on 4 seminars, 2 cross-jurisdictional seminars, 1 field trip and 1 site visit; 2015 was based on 3 seminars and 2 field trips; 2016 was based on 6 seminars and 2 field trips; 2017 was based on 6 seminars, 2 cross-jurisdictional seminars and 2 field trips and 2018 was based on 6 seminars, 3 cross-jurisdictional seminars and 2 field trips.

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



Ngara Yura Program, Introduction to the Aboriginal land rights system in NSW, 18 September.

Publications

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

In August 2010, the Court, in conjunction with the Judicial Commission of New South Wales, produced the *Land and Environment Court of NSW Commissioners' Handbook*. The Handbook provides guidance, especially to Commissioners and Registrars, on the Court and its jurisdiction; the members of the Court and their functions; court practice and procedure; the commencement of proceedings and pleadings; case management; the different processes for resolution of proceedings, including hearings and conciliation conferences; decision-making and judgments; conduct of court members; and resources and remuneration for Commissioners. The Handbook is published online by the Judicial Commission on a closed website for members of the Court. The Handbook was updated in February 2017.

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

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

Education and participation in the community

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

The Court also regularly hosts international and national delegations to the Court.



Visiting judicial delegation from Bangladesh with Justice Preston, 27 March 2018

Individual Judges' and Commissioners' activities

The Judges' and Commissioners' activities during 2018 are summarised below:

The Hon. Justice Brian John Preston SC, Chief Judge

Conferences and seminars

31 January	Law Society Opening of the Law Term Dinner, Parliament House, Sydney
21 February	Twilight seminar, Updates to the Environmental Planning and Assessment Act, presented by Jonathon Schipp, Director, Policy and Legislation, Department of Environment and Planning, Judicial Commission of NSW, Sydney
18-19 March	8th World Water Forum and Meeting of the Interim Governing Committee, Global Judicial Institute on the Environment, Brasilia, Brazil
10 April	Opening keynote address, presented by former Judge Shirin Ebadi, Nobel Peace Prize Laureate, King's Transnational Law Summit 2018, King's College London, United Kingdom
19 April	Advocacy Lawyering - Client responsibility and change agendas, Mahla Pearlman Oration 2018, presented by the Hon. Robert French AC, Federal Court of Australia, Sydney
30 April	Australian Academy of Law Access to Justice Lecture Series, Access to justice: The breadth of the concept of justice, presented by the Hon. Justice Sarah Derrington, Federal Court of Australia and President, Australian Law Reform Commission, Mr Ed Santow, Commissioner, Australian Human Rights Commission, Mr George Newhouse, Principal Solicitor, National Justice Project and Mr Chris Povey, Chief Executive Officer, JusticeConnect, Supreme Court of NSW, Sydney
17-18 May	Land and Environment Court 2018 Annual Conference, Headlands Hotel, Austinmer
5 June	Walking free and beyond, presented by Dr Manjed Al Mudens, refugee and orthopaedic surgeon, Sydney
6 June	Royal Society of NSW lecture, "No sex please: we're Cape Bees", presented by Professor Ben Oldroyd, University of Sydney, State Library of NSW, Sydney
14 June	Twilight seminar, Criminal Law Update, presented by the Hon Justice Helen Wilson, Supreme Court of NSW, Judicial Commission of NSW, Sydney
14 June	The New Australian Garden, presented by Mr Michael Bates, landscape architect, Sydney
26 June	The Myth of Liveability, presented by Professor Les Stein, Sydney University, Darlington

20 August	Inaugural Hellenic Australian Lawyers NSW Chapter Oration, presented by Justice Gageler AC, Law Courts Building, Sydney
23 August	Australian Academy of Science and Australian Academy of Law Joint Symposium, "Are You Sure?" chaired by Justice Gageler AC, Federal Court of Australia, Sydney
24-25 August	Supreme Court Conference, Craigieburn Bowral
5 September	Royal Society of NSW lecture, Psychology of Eye Witness Memory, presented by Professor Richard Kemp, State Library of NSW, Sydney
20 September	The 2018 ADC Supreme Court of NSW ADR Address 'ADR, ODR and AI-DR or, Do We Even Need Courts Anymore?', by the Hon. Chief Justice Tom Bathurst AC, Supreme Court of NSW, Law Courts Building, Sydney
26 September	"Rise of the Machines", Science & Technology Lecture presented by Professor Hugh Durrant-Whyte, Sydney
18 October	"The scientific contribution and legacy of Stephen Hawking", Science & Technology Lecture presented by Professor Celine Boehm, Sydney
29-30 October	Asia Pacific Judicial Conference on Environmental and Climate Change Adjudication, Nay Pyi Taw, Myanmar
2-5 November	2018 LAWASIA Conference, Siem Reap, Cambodia
4 November	Annual General Meeting of the LAWASIA Environmental Law Subcommittee, Siem Reap, Cambodia
8 November	Public Lecture on Climate Justice, 'The Time for Talk is over: Climate Justice for Future Generations, presented by Antonio Oposa Jr, hosted by Baker McKenzie, International Centre for Ocean Governance and Western Sydney University School of Law, Sydney
16-17 November	European Union Forum of Judges for the Environment, Sofia, Bulgaria
27 November	Australian Academy of Law Access to Justice Lecture Series, Access to justice: 'Overcoming non-financial barriers', Law Courts Building, Sydney
27 November	2018 Blackshield Lecture presented by Justice Stephen Gageler AC, Federal Court of Australia, Sydney

Speaking Engagements

18 and 23 January	<i>Climate Principles for Enterprises</i> , presentations at the Launch of Climate Principles for Enterprises, University of Amsterdam, Amsterdam, Netherlands and Hausfeld Law Firm, London, United Kingdom
19 and 24 January	<i>Climate Principles for Enterprises</i> , presentations to Dutch Prudential Authority, Amsterdam, Netherlands and Principles for Responsible Investment, London, United Kingdom
25 January	<i>The Impact of the Paris Agreement on Environmental Jurisprudence</i> , lecture given to BCL students at Oxford University, United Kingdom

26 February	<i>Recent climate litigation concerning environmental rights</i> , presentation delivered at Asia Pacific Judicial Colloquium on Climate Change: Using Constitutions for Advance Environmental Rights and Achieve Climate Justice, Lahore, Pakistan
19 March	Presentation on Draft Brasilia Declaration of Judges on Water Justice, presented at the 8th World Water Forum, Brasilia, Brazil
21 March	<i>The judicial contribution to water justice: The Australian experience</i> , presentation to the 8th World Water Forum, Brasilia, Brazil
21 March	Moot Court Judge, 1st World Commission on Environmental Law (WCEL) International Water Justice Moot Court, 8th World Water Forum, Brasilia, Brazil
11 April	<i>Using environmental rights to address climate change</i> , "Climate Change and Court Rooms" panel session, Transnational Law Summit, King's College, London, United Kingdom
19 April	<i>Using environmental rights to address climate change</i> , Law Council of Australia, Future of Environmental Law Symposium, Law Society of NSW, Sydney
11 May	<i>Principled sentencing for environmental matters</i> , presentation delivered to environmental law and criminology students at Wollongong University, Wollongong
21 May	<i>Towards better environmental assessment and approval of developments</i> , presentation delivered at Australian Conference of Planning and Environment Courts and Tribunals (ACPECT) 2018 Conference, QEII Courts of Law, Brisbane
31 May	<i>Adapting to a sustainable energy future</i> , presentation delivered as part of the University of Newcastle School of Architecture and Built Environment Practice Matters Lecture Series, University of Newcastle, Newcastle
2 July	<i>The judicial contribution to water justice: The Australian experience</i> , presentation to the International Seminar on Environmental Adjudication, Beijing, China
24 July	<i>Characteristics of successful environmental courts and tribunals</i> , presentation to the United Kingdom Environmental Law Association (UKELA) via Skype, London, United Kingdom
7 August	<i>Overview of the Land and Environment Court</i> , lecture given to environmental law students at Macquarie University, Land and Environment Court of NSW, Sydney
2 September	<i>Climate change litigation</i> , lecture given to environmental law students at Western Sydney University
25 September	<i>Occasional Address</i> , given to the Faculty of Arts Graduation Ceremony, Macquarie University, Sydney

9 October	<i>Update on the Land and Environment Court</i> , address to Urban Taskforce Boardroom Luncheon, Dolton House, Hyde Park, Sydney
11 October	<i>The role of courts in preserving heritage</i> , lecture given to heritage law students at Macquarie University, Sydney
16 October	<i>Principled sentencing for environmental offences</i> , lecture given to environmental law students at Macquarie University, Land and Environment Court of NSW, Sydney
24 October	<i>Implementing a climate conscious approach in daily legal practice</i> , presentation given to the Australian Launch of the Ecological Law and Governance Association, Spring Hill Reservoirs, Brisbane
25 October	<i>Exploring the legal status of nature</i> , presentation given to the AELA International Symposium on Exploring our Legal Relationship with the Living World, Griffith University, Brisbane
29 October	<i>The different types of climate change litigation against governments and entities</i> , a lecture given at the ADB Asia Pacific Judicial Conference on Environmental and Climate Change Adjudication, Nay Pyi Taw, Myanmar
3 November	<i>International arbitration of environmental disputes</i> , presentation given at the LAWASIA session on Judicial Interaction in International Commercial Arbitration, moderated by Chief Justice Bathurst, Siem Reap, Cambodia
4 November	<i>Impact of climate change on human rights</i> , moderator of the LAWASIA Environmental Law session, Siem Reap, Cambodia
17 November	<i>Operating an environment court: The experience of the Land and Environment Court of NSW and 12 benefits of judicial specialisation in environmental law</i> , presentations given at the European Union Forum of Judges for the Environment, Sofia, Bulgaria
8-9 December	Lecturer, Climate Change Law Course, Macquarie University,
15 December	<i>Access to environmental justice: the effectiveness of the law</i> , presentation given to the Law and Society Association of Australia and New Zealand Annual Conference, University of Wollongong

Publications

B J Preston and T Orgill, 'Adapting to a sustainable energy future: Part 2 – Regulating wind energy development under the NSW planning law regime' (2018) 35 *Environmental and Planning Law Journal* 26.

Brian J Preston, 'The Judicial Development of the Precautionary Principle' (2018) 35 *Environment and Planning Law Journal* 123.

Brian J Preston, 'The Challenges of Approaching Judging from an Earth-centred Perspective' (2018) 35 *Environment and Planning Law Journal* 218.

Brian J Preston, 'Foreword for "The Brief" Special Environmental Law Edition' (2018) 24(2) *The Brief: Macquarie University Law Society Magazine* 6.

Brian J Preston, 'Book review: Environmental justice and land use conflict: The Governance of mineral and gas resource development' (2018) 36 *Journal of Energy and Natural Resources Law* 364.

Brian J Preston, 'What's equity got to do with the environment?' (2018) 92 *Australian Law Journal* 257 and 13 *The Judicial Review* 431.

Brian J Preston, 'The judicial contribution to water justice: the Australian experience' (2018) 48 *Environmental Law Reporter* 10580.

Brian J Preston, 'Mapping Climate Change Litigation' (2018) 92 *Australian Law Journal* 774.

Brian J Preston, 'The Australian Experience on Environmental Law' (2018) 35 *Environment and Planning Law Journal* 637.

Brian J Preston, 'The Evolving Role of Environmental Rights in Climate Change Litigation' (2018) 2 *Chinese Journal of Environmental Law* 131.

Brian J Preston, 'Recent Climate Litigation Concerning Environmental Rights', in the Meeting Report of the Asia Pacific Judicial Colloquium on Climate Change using Constitutions to Advance Environmental Rights and Achieve Climate Justice.

Brian J Preston, 'Bridging the gap between aspiration and outcomes: the role of the court in ensuring ecologically sustainable development' in Christina Voight and Zen Makuch (eds) *Courts and the Environment* (Edward Elgar, 2018) 35.

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 Standing 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

Honorary Fellow, Environment Institute of Australia and New Zealand

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

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

General Editor, Local Government Planning and Environment NSW Service

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

Member, Editorial Board, *Chinese Journal of Environmental Law*

Adjunct Professor, Sydney Law School, University of Sydney

Adjunct Professor, School of Law, Western Sydney University

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

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

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

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

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

Delegations and international assistance

20 February Presentation on Overview of Land and Environment Court delivered to 20 law students from Macquarie University and Hamburg University, Land and Environment Court of NSW, Sydney

26 March Presentation on Overview of Land and Environment Court delivered to 40 Bangladeshi judges as part of the Western Sydney University Bangladesh Judicial Training Programme, Land and Environment Court of NSW, Sydney

13 June Presentation on Overview of Land and Environment Court delivered to 40 Bangladeshi judges as part of the Western Sydney University Bangladesh Judicial Training Programme, Land and Environment Court of NSW, Sydney

22 June Meeting with two Bangladeshi judges to discuss the operation of specialized environmental courts and tribunals, Land and Environment Court of NSW, Sydney

4 July Training delivered to Supreme People's Prosecutors, Beijing, China. Topics included: What's equity got to do with the environment?, Mapping climate change litigation and Protected areas in the courts: An overview

5 July Training delivered to Judges of the Supreme People's Court, Beijing, China. Topics included: What's equity got to do with the environment?, Mapping climate change litigation and Protected areas in the courts: An overview

26 July Meeting with Ms Tanj Ganguly, PhD student at the London School of Economics about her research on climate change litigation and the courts, Land and Environment Court of NSW, Sydney

31 August Meeting with Dr Tsuyoshi Hondou, Professor at Tohoku University, Sendai, Japan, about his research on concurrent expert evidence, Land and Environment Court of NSW, Sydney

12 November	Presentation on Overview of Land and Environment Court delivered to 32 officials from the Local Government Councils of Vietnam as part of the Macquarie University capacity building programme, Land and Environment Court of NSW, Sydney
13 November	Presentation on Overview of Land and Environment Court, and Online Court Services delivered to 30 Bangladeshi judges as part of the Western Sydney University Bangladesh Judicial Training Programme, Land and Environment Court of NSW, Sydney



Justice Preston presenting at the Law Council of Australia's Environmental Law Symposium 19 April 2018



Justice Lindsay, Law Society President Ms Elizabeth Espinosa and Justice Preston on 6 December 2019.

Photo Source: Law Society of NSW.

The Hon. Justice Terence William Sheahan AO

Conferences and seminars

13 February	Lunchtime Speaker Series, "Reflections on the Role of Royal Commissions in a Western Democracy", presented by Prof Greg Craven, Carroll & O'Dea Lawyers, Sydney
19 February	Sydney Institute Seminar, "Managing the Financial Risks of Climate Change", presented by the Hon. Mark Butler MP, The Sydney Institute, Sydney
21 February	Twilight seminar, "Legislative Updates to the NSW Planning System", presented by Mr Jonathon Schipp, Director, Policy and Legislation, Department of Environment and Planning, Judicial Commission of New South Wales, Sydney
19 March	Anglo-Australasian Lawyers Society breakfast seminar, "Rather His Own Man: Reliable Memoirs", presented by Mr Geoffrey Robertson AO QC, The Australian Club, Sydney
4 April	Royal Society of New South Wales Annual General Meeting and Open Lecture, "Decarbonation of Industry", presented by Prof Paul Fennell, Professor of Clean Energy, Imperial College London, Union, University and Schools Club, Sydney

5 April	Twilight seminar, "The Science of Expertise", presented by Dr Kristy Martire, Senior Lecturer & ARC DECRA Fellow, School of Psychology, University of NSW, Judicial Commission of New South Wales, Sydney
9 April	New South Wales Bar Association, "The Structure and Themes of the ICAC", presented by the Hon. Peter Hall QC, Chief Commissioner ICAC, Bar Association Common Room, Sydney
10 April	Lunchtime Speaker Series, "The Commission is over – where to from here?", presented by Father Frank Brennan SJ AO, Carroll & O'Dea Lawyers, Sydney
13 April	University of Sydney Conference, "Class Actions: Access to Justice or Commercial Profit?", presented by Prof Peter Cashman, "Regulation of Litigation Funding" presented by Ms Jane Diplock AO, "International Dispute Resolution", presented by Ms Mary Walker, barrister, University of Sydney – Sydney City Campus
19 April	Law Council of Australia and EPLA Mahla Pearlman Oration 2018, "Cause Lawyering", presented by the Hon. Robert French AC, Federal Court of Australia, Sydney
24 April	Lunchtime Speaker Series, "On the edges of history: personal encounters with law, politics and literature in the post-war years", presented by Mr Michael Sexton SC, Solicitor General for New South Wales, Carroll & O'Dea Lawyers, Sydney
3 May	New South Wales Bar Association, "Advocate, Judge and Arbitrator: Perspectives on Commercial Law", presented by the Hon. Murray Gleeson AC QC, Banco Court, Sydney
8 May	Anglo-Australasian Lawyers Society breakfast seminar, "Same Old Picture – New Story", presented by the Hon. John Pascoe AC CVO, Chief Justice of the Family Court of Australia, The Australian Club, Sydney
15 May	City of Sydney Law Society Law Week Breakfast, "Minority Rights: has political correctness gone too far?", presented by the Hon. Justice Stephen Rothman, Royal Automobile Club of Australia, Sydney
15 May	New South Wales Society of Labor Lawyers Frank Walker Lecture, "How does law reform happen in the new age of Trump?", presented by Mr Bruce Hawker, NSW Teachers Federation Conference Centre, Surry Hills
17-18 May	Land and Environment Court of New South Wales 2018 Annual Conference, Headlands Austinmer Beach, Austinmer
22 May	Anglo-Australasian Lawyers Society breakfast seminar, "Cousins in Law: Common Origins and Continental Drift in Legal Thinking Today", presented by the Right Hon. Dame Sian Elias GNZM, Chief Justice of New Zealand, The Australian Club, Sydney

31 May	Judicial Commission Ngara Yura Program Field Trip, "The Astronomical Knowledge Systems of Australia's First People", presented by Mr Geoff Wyatt and Ms Joanne Selfe, Sydney Observatory, Sydney
5 June	Whitlam Institute, University of Western Sydney Annual Gough Whitlam Oration, "The Information that Democracy Needs", presented by Mr Bret Walker SC, Riverside Theatre, Parramatta
14 June	Twilight seminar, "Criminal Law Update", presented by the Hon. Justice Helen Wilson, Supreme Court of NSW, Judicial Commission of New South Wales, Sydney
22 June	Anglo-Australasian Lawyers Society breakfast seminar, "Challenges and Opportunities for the Independence of the Judiciary in the 21st Century – a view from the UK", presented by Sir Jack Beatson, retired Judge of the UK Court of Appeal, The Australian Club, Sydney
5 July	Anglo-Australasian Lawyers Society breakfast seminar, "President Trump and Chairman Kim: will it end in tears?", presented by the Hon. Michael Kirby AC CMG, The Australian Club, Sydney
11 July	Sydney Institute Seminar, "Partnering With Our Cities", presented by the Hon. Anthony Albanese MP, The Sydney Institute, Sydney
6 August	Sydney Institute Seminar, "The Queen's Role in the Appointing and Dismissing the Governor General", presented by Prof Anne Twomey, Professor of Constitutional Law, University of Sydney, The Sydney Institute, Sydney
7 August	Public Interest Advocacy Centre, "Mental Health Matters: Tackling taboos, stigma and discrimination around mental health", presented by Dr Lisa Pryor, Sydney Grammar School, Darlinghurst
14 August	Twilight seminar, "Fact Finding", presented by His Honour Judge Paul Lakatos SC, Judicial Commission of New South Wales, Sydney
16 August	Anglo-Australasian Lawyers Society breakfast seminar, "The Royal Commission into Child Sexual Abuse: why it was different", presented by the Hon. Peter McClellan AM, The Australian Club, Sydney
20 August	Australian Association of Constitutional Law Seminar, "History in the High Court: Recourse to Historical Materials in Constitutional Interpretation", presented by Dr Stephen Donaghue QC, Solicitor-General of the Commonwealth, Federal Court of Australia, Sydney
22 August	New South Wales Society of Labor Lawyers Seminar, "Whitlam, The Dismissal, and the Fight for the Palace Letters", presented by Professor Jenny Hocking, Monash University, Holding Redlich, Sydney
23 August	Anglo-Australasian Lawyers Society breakfast seminar, "Commercial Law After Brexit", presented by the Rt Hon. Lady Justice Arden DBE of the Supreme Court of the United Kingdom, The Australian Club, Sydney

5 September	Royal Society of New South Wales Open Lecture, "The Psychology of Eyewitness Memory", presented by Prof Richard Kemp, University of NSW, State Library of NSW, Sydney
11 September	Twilight seminar, "Conflicts between urban development and bird populations", presented by Dr Stephen Ambrose, Judicial Commission of New South Wales, Sydney
19 September	Australian Association of Constitutional Law Seminar, "Reflections on the Executive Power of the Commonwealth: Recent Developments, Interpretational Methodology and Constitutional Symmetry", presented by Prof Peter Gerangelos, University of Sydney, Federal Court of Australia, Sydney
20 September	Supreme Court ADR Address, "ADR, ODR and AI-DR, or Do we even need Courts anymore?", presented by the Hon. Tom Bathurst, Chief Justice of New South Wales, Supreme Court of NSW, Sydney
25 September	Judicial Commission Ngara Yura Program seminar, "Introduction to the Aboriginal Land Rights System in NSW", presented by Ms Nicole Courtman, Registrar of the ALRA and Mr Chris Ingrey, Chief Executive of La Perouse Aboriginal Land Council, Law Courts Building, Sydney
28 September	Anglo-Australasian Lawyers Society breakfast seminar, "A Vision For Britain After Brexit", presented by Her Excellency Menna Rawlings CMG, British High Commissioner to Australia, The Australian Club, Sydney
9 October	Lunchtime Speaker Series, "Trust, Legitimacy & the Ethical Foundations of the Market Economy", presented by Dr Simon Longstaff AO FCPA, Carroll & O'Dea Lawyers, Sydney
15 October	Twilight seminar, "Implementing Court Managed Expert Evidence", presented by Ms Peta Stilgoe, Member of the Queensland Land Court, Land and Environment Court of New South Wales, Sydney
16 October	New South Wales Society of Labor Lawyers Seminar, "Constitutional conundrums: the rise and fall (?) of an eligibility crisis", presented by Professors Helen Irving FASSA and George Williams AO, Maurice Blackburn Lawyers, Sydney
12 November	Supreme Court commemoration "The sacrifice and service of the New South Wales Legal Profession in the First World War", presented by the Hon. Justice A J Meagher, the Hon. Justice J K Ward, and the Hon. Justice M J Slattery, Banco Court, Sydney
14 November	City of Sydney Law Society 2018 Annual Dinner, "Arbitration and Zebras", the Hon. Justice David Hammerschlag, Radison Blu Hotel, Sydney
20 November	Australian Law Journal's launch of the special issue "Climate Change and the Law", presented by Prof Lesley Hughes, Baker McKenzie, Sydney

21 November	Australian Association of Constitutional Law Annual General Meeting and Seminar, "The rule of law in the age of statutes", presented by Ms Lisa Burton Crawford, Senior Lecturer University of New South Wales Law Faculty, Federal Court of Australia, Sydney
30 November	New South Wales Society of Labor Lawyers Annual Dinner, "Australian Family Law – What's The Solution?", presented by the Hon. Diana Bryant AO QC, Sky Phoenix Restaurant, Sydney
5 December	Twilight seminar and field trip, "The Value of Public Art", presented by Ms Eva Rodriguez Riestra, City's Public Art Program Manager, Sydney

Speaking engagements

12 March	"Self-represented litigants", University of New South Wales Land and Environment Court Clinic, Land and Environment Court of New South Wales Library, Sydney
30 May	"The use of Technology in Court", lunch discussions with visiting Thai delegation, Land and Environment Court of New South Wales, Sydney
10 October	"The L & E Court's Role in the State's Planning, and Development Systems", a presentation to Planning Law Students, University of Technology, Sydney

Membership of legal, cultural or benevolent organisations

Fellow, The Royal Society of New South Wales

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

Member, Anglo-Australian Lawyers Society

The Hon. Justice Nicola Hope Margaret Pain

Conferences and seminars

21 February	Twilight seminar: "Updates to the Environmental Planning and Assessment Act", Jonathon Schipp, Director, Policy and Legislation, Department of Environment and Planning, Judicial Commission
22 February	Seminar: "Celebrating Women in the Judiciary", The Honourable Justice Virginia Bell AC, High Court of Australia, Women Lawyers Association
5 April	Twilight seminar: "The Science of Expertise", Dr Kristy Martire, Senior Lecturer & ARC DECRA Fellow, School of Psychology, University of NSW
19 April	Seminar: "Concurrent evidence: Giving evidence in the 'hot tub'", Dr Lisa Brown and Dr Jonathan Phillips, Bar Association
20-21 May	Australasian Conference of Planning and Environment Courts and Tribunals (ACPECT), Planning and Environment Court of Queensland, Brisbane

30 May	Forbes Society Lecture: Centenary of the Women's Legal Status Act 1918 (NSW), Hon Justice Virginia Bell AC
31 May	Twilight Seminar: Ngara Yura field trip Sydney Observatory
13 June	26th Annual Sir Ninian Stephen Lecture, Newcastle Museum, Newcastle Law School
14 August	Twilight seminar: "Fact Finding", Judge Paul Lakatos, Judicial Commission of NSW
17-18 August	Judicial training: Mastering Judicial Presentations, National Judicial College of Australia
21 November	AACL seminar: The Judicial Power to Interpret Statutes, Dr Lisa Burton Crawford UNSW, Federal Court of Australia

Speaking engagements

24 March	Annual One Day Intensive: Environment & Planning Law "Air pollution – challenges for courts" Law Society of NSW Sydney
14 June	Newcastle as a Restorative City Symposium "Encouraging Restorative Justice in Environmental Crime" Newcastle University Newcastle
8 - 11 August	Environmental Litigation, Law Faculty, Sydney University, Lecturer
20 August	International Law Association Biennial Conference "The Due Diligence Principle from International to Domestic Law: Applying the Principle in Practice" Sydney
18 September	"Update on climate change litigation – a New South Wales perspective", EDO Qld Climate Law event: One-year since Paris Brisbane

Membership of legal, cultural or benevolent organisations

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

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

Chair, Land and Environment Court Education Committee

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

The Hon. Justice Rachel Ann Pepper

Conferences and seminars

19 April	Environmental Law Symposium, Law Council of Australia, Sydney
23 August	Are you sure?, Australian Academy of Science and Australian Academy of Law, Joint Symposium, Sydney
2-3 November	ANU Public Law Weekend, Centre for International and Public Law, Australian National University, Canberra

21 November	The Rule of Law in the Age of Statutes, Dr Lisa Burton Crawford of UNSW, Australian Association of Constitutional Law Seminar, Sydney
27 November	Non-Financial Barriers to Access to Justice, Australian Academy of Laws, Sydney
5 December	Sir Maurice Byers Annual Lecture, NSW Bar Association, Sydney

Speaking engagements

8 March	International Women's Day Q & A, Tattersalls Club, Sydney, Panellist
3 May	Environment, Sustainable Growth and Gender, International Association of Women Judges, Buenos Aires, Argentina, Presenter
19 April	Mahla Pearlman Oration, Sydney, Chair and introductory remarks
2 July	Vietnamese Ministerial Delegation, Aboriginal Culture and Heritage, Land and Environment Court of New South Wales, Presenter
8 - 11 August	Environmental Litigation, Law Faculty, Sydney University, Lecturer
18 and 25 September	New South Wales Aboriginal Land Rights Act, Ngara Yura Committee, Judicial Commission, Chair and introductory remarks
27- 28 September	AIAL National Administrative Law Conference 2018, UNSW, Sydney, Organising Committee, Moderator, Chair
1 November	The Myth of 'Green Lawfare' and 'Vigilante Litigation', EIANZ 2018 Annual Conference, Presenter
3 November	Judicial Review is Dead. Long Live Judicial Review!, ANU Public Law Weekend, Centre for International and Public Law, Australian National University, Canberra, Presenter

Publications

"Judicial Review is Dead. Long Live Judicial Review!" (2018) *Australian Journal of Administrative Law* (forthcoming)

"Ms Onus and Mr Neal: Agitators in an Age of 'Green Lawfare'" Courts and the Environment, (2018) 35 EPLJ 177 (co-authored with Rachel Chick)

The Scientific Inquiry into Hydraulic Fracturing in the Northern Territory, Final Report, 27 March 2018

"Are Courts Colour Blind to Country? Indigenous Cultural Heritage, Environmental Law and the Australian Judicial System", in Christina Voigt and Zen Makuch (ed) (Edward Elgar Publishing, 2018), 211; (2017) 40(4) UNSWLJ 1314 (co-authored with Lauren Butterly)

"Climate change litigation: introduction" (2017) 32(3) *Australian Environment Review* 54

"Climate change litigation: a comparison between current Australian and international jurisprudence" (2017) 13 *The Judicial Review* 329

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

Environmental Section Editor, *Australian Law Journal*, Thompson/Reuters

Membership of legal, cultural or benevolent organisations

Ambassador, Twenty10

Vice-President, Australian Association of Constitutional Law

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

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

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, International Association of Women Judges

Member, International Bar Association

Member, Commonwealth Magistrates' and Judges' Association

The Hon. Justice Timothy John Moore

Conferences and seminars

21 February	Twilight seminar, Updates to the EPA Act, presentation by Jonathon Schipp - Director, Policy and Legislation, Department of Environment and Planning, Judicial Commission of NSW
1 March	Ngara Yura Program seminar, Aboriginal People and Wills: Re Estate Wilson, Deceased [2017] NSWSC 1 – One Year On, Hon Justice Geoff Lindsay, Professor Prue Vines, Ms Anne Cregan, solicitor, and Mr Andrew Smith, barrister, Judicial Commission of NSW
17-18 May	Land and Environment Court Annual Conference 2016, Headlands Hotel, Austinmer
14 June	Twilight Seminar, Criminal Law Update, presented by the Honourable Justice Helen Wilson, Supreme Court of NSW, Judicial Commission of NSW
14 August	Twilight Seminar, Fact Finding, presented by his Honour Judge Paul Lakatos, District Court of NSW, Judicial Commission of NSW
11 September	Twilight Seminar, Part 1 - Conflicts between urban development and bird populations: Are they adequately addressed by our planning and building regulations?, presented by Dr Stephen Ambrose, University of Western Australia, Judicial Commission of NSW
30 October	Field Trip, Part 2 - Conflicts between urban development and bird populations: are they adequately addressed by our planning and building regulations?, presented by Dr Stephen Ambrose, University of Western Australia, Judicial Commission of NSW
5 December	Field Trip, The Value of Public Art, presented by Eva Rodriguez Riestra, Public Art Program Manager, City of Sydney Council, Judicial Commission of NSW

Speaking engagements

29 January	Paperless trials, Land and Environment Court Clinic, Land and Environment Court of NSW, Sydney
22 February	Presentation to the Royal Australian Institute of Architects, Sydney
4 March	Sentencing: New Challenges, National Judicial College of Australia and ANU Law School, Canberra
6 March	Criminal Sentencing in the LEC, API Workshop: Class 3 Appeals: Court practice and procedures, Sydney
15 March	Environmental and Planning law: Paperless Trials in the NSW Land and Environment Court, Seminar, UNSW Law Continuing Legal, Sydney
15 March	Interview, 'Paperless trials', (David Robertson, Ingmar Taylor SC, [2018] NSWBarAssocNews 26), Sydney
19 March	Concurrent Evidence and Paperless Trials, Land and Environment Court Clinic, Land and Environment Court of NSW, Sydney
8 May	Tutorial: Warrants and Bail, Land and Environment Court Clinic, Land and Environment Court of NSW, Sydney
16 May	Self-Represented Litigants, Land and Environment Court Clinic, Land and Environment Court of NSW, Sydney
2 August	Induction, Land and Environment Court Clinic, Land and Environment Court of NSW, Sydney
9 August	Lecture on Sentencing, Sydney University, Sydney
5 September	Self-Represented Litigants, Land and Environment Court Clinic, Land and Environment Court of NSW, Sydney
14 September	<i>The Paperless Practitioner: Virtual Legal Service Delivery Panel Session</i> , panelist, Future of Law And Innovation In The Profession (FLIP) Conference, Sydney

Publications

Judicial Newsletter, editor, Land and Environment Court of NSW

ACKMA Journal, editor, Australian Cave and Karst Management Association

Membership of legal, cultural or benevolent organisations

Acting Chair, Land and Environment Court Library Committee

Member, Land and Environment Court Education Committee

Member, Caselaw Governance Committee

Member, John Koowarta Reconciliation Law Scholarship Advisory Committee

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

Delegations and international assistance

22 February	Presentation on an Overview of the Land and Environment Court to delegation of Bangladeshi Judges as part of Bangladesh Judicial Training Programme, Western Sydney University, at Land and Environment Court of NSW
17 July	Presentation on the Benefits and Challenged of Paperless Trails to delegation of Thai legal officers at Land and Environment Court of NSW

The Hon. Justice John Ernest Robson

Conferences and seminars

21 February	Twilight Seminar, 'Legislative Updates to the NSW Planning System', presented by Jonathon Schipp, Director, Policy and Legislation, Department of Environment and Planning, Judicial Commission of NSW, Sydney
5 April	Twilight Seminar, 'The Science of Expertise', presented by Dr Kristy Martire, Senior Lecturer & ARC DECRA Fellow, School of Psychology, University of NSW, Judicial Commission of NSW, Sydney
8 May	Land and Environment Court Tutorial: 'Warrants and Bail', Land and Environment Court of NSW
17 - 18 May	Land and Environment Court Annual Conference 2018, "Human Impact on the Environment", Headlands Hotel, Austinmer
14 June	Twilight Seminar, 'Criminal Law Update', presented by the Honourable Justice Helen Wilson, Supreme Court of NSW, Judicial Commission of NSW, Sydney
14 August	Twilight Seminar, 'Fact Finding', presented by his Honour Judge Paul Lakatos SC, District Court of NSW, Judicial Commission of NSW, Sydney
11 September	Twilight Seminar, 'Conflicts between urban development and bird populations - Part 1', presented by Dr Stephen Ambrose, Ambrose Ecological Services Pty Ltd, Judicial Commission of NSW, Sydney
13 September	NSW Bar Association Bar Practice Course, September 2018, "A day with a Judge", Land and Environment Court of NSW, Sydney
20 September	ADR Address, 'ADR, ODR and AI-DR or, Do We Even Need Courts Anymore?', presented by the Honourable T F Bathurst AC, Chief Justice of NSW, Supreme Court of NSW
30 October	Judicial Commission of NSW Field Trip, 'Conflicts between urban development and bird populations - Part 2' presented by Dr Stephen Ambrose, Ambrose Ecological Services Pty Ltd, Judicial Commission of NSW, Sydney

8 November	Public Lecture on Climate Justice, 'The Time for Talk is over: Climate Justice for Future Generations, presented by Antonio Oposa Jr, hosted by Baker McKenzie, International Centre for Ocean Governance and Western Sydney University School of Law, Sydney
20 November	Australian Law Journal Launch, 'Climate Change and the Law', as guest of the Hon Justice François Kunc, General Editor and Martijn Wilder AM, Guest Editor, hosted by Professor Lesley Hughes, Professor of Biology and Pro Vice-Chancellor (Research Integrity & Development), Macquarie University, at Baker McKenzie, Sydney

Membership of legal, cultural or benevolent organisations

Member, Judicial Conference of Australia

Member, NSW Bar Association

Chair, Land and Environment Court of New South Wales Library 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

The Hon. Acting Justice Simon R Molesworth AO QC

Conferences and seminars

17 - 18 May	Land and Environment Court Annual Conference 2018, Headlands Hotel, Austinmer
31 May	Twilight Seminar: Ngara Yura field trip Sydney Observatory
18 September	Judicial Commission Ngara Yura Program seminar, "Introduction to the Aboriginal Land Rights System in NSW" (Part 1), presented by Ms Nicole Courtman, Registrar of the ALRA and Mr Chris Ingrey, Chief Executive of La Perouse Aboriginal Land Council, Law Courts Building, Sydney
25 September	Judicial Commission Ngara Yura Program seminar, "Introduction to the Aboriginal Land Rights System in NSW" (Part 2), presented by Ms Nicole Courtman, Registrar of the ALRA and Mr Chris Ingrey, Chief Executive of La Perouse Aboriginal Land Council, Law Courts Building, Sydney
15 October	Twilight seminar, "Implementing Court Managed Expert Evidence", presented by Ms Peta Stilgoe, Member of the Queensland Land Court, Land and Environment Court of New South Wales, Sydney
30 October	Judicial Commission of NSW Field Trip, 'Conflicts between urban development and bird populations - Part 2' presented by Dr Stephen Ambrose, Ambrose Ecological Services Pty Ltd, Judicial Commission of NSW, Sydney
5 December	Field Trip, The Value of Public Art, presented by Eva Rodriguez Riestra, Public Art Program Manager, City of Sydney Council, Judicial Commission of NSW

Membership of legal, cultural or benevolent organisations

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

Fellow, Victorian Planning and Environment Law Association (VPELA)

Fellow, Australian Institute of Company Directors (AICD)

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

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

Honorary Fellow, Planning Institute of Australia (PIA)

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

Accredited Professional Member, Australia ICOMOS

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

Member, National Environment Law Association of Australia (NELA)

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

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

Board Director, Alternative Technology Association of Australia (ATA)

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

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

Member, Broken Hill Regional Art Gallery Advisory Committee

Member, Broken Hill Heritage Advisory Committee

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

Patron, Broken Hill Historical Society Inc.

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

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

Distinguished Alumni, Monash University

Honorary Life Member, National Trust of Australia (Victoria)

Honorary Life Member, Europa Nostra

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

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

Member, Australian Museum, NSW

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

Member, Broken Hill Regional Art Gallery

Ms Susan Dixon, Senior Commissioner

Conferences and seminars

21 February	Twilight seminar, 'Updated EPA Act', Department of Planning and Environment, Judicial Commission of New South Wales
28 February	EPLA Seminar, 'Commencement of the updated Environmental Planning & Assessment Act 1979', presented by Nathan Laird, Senior Policy Advisor and Jonathon Schipp, Director Policy and Legislation, NSW Department of Planning & Environment., Environmental Planning Law Association
5 April	Twilight seminar, 'The science of expertise', Dr Kristy Martire, Senior Lecturer & ARC DECRA Fellow, School of Psychology, University of NSW, Judicial Commission of New South Wales
17-18 May	Land and Environment Court Annual Conference, Austinmer
14 August	Twilight seminar, 'Fact Finding', Judge Paul Lakatos SC, Judicial Commission of New South Wales
11 September	Twilight seminar, 'Conflicts between urban development and bird populations: are they adequately addressed by our planning and building regulations?', Dr Stephen Ambrose, Judicial Commission of New South Wales
5 December	Field Trip: The Value of Public Art, Eva Rodriguez Riestra, the City's Public Art Program Manager, Judicial Commission of New South Wales

Membership of legal, cultural or benevolent organisations

Member, Council of Australasian Tribunals

Member, Land and Environment Court of NSW Education Committee

Member, Land and Environment Court of NSW Library Committee

Member, Land and Environment Court of NSW Court Users Group

Member, Institute of Arbitrators and Mediators Australia

Member, Australian Dispute Resolution Association Inc.

Mr Graham Brown, Commissioner

Conferences and seminars

21 February	Twilight Seminar, 'Legislative Updates to the NSW Planning System', presented by Jonathon Schipp, Director, Policy and Legislation, Department of Environment and Planning, Judicial Commission of NSW, Sydney
17 - 18 May	Land and Environment Court Annual Conference 2018, Headlands Hotel, Austinmer
14 June	Twilight seminar, "Criminal Law Update", presented by the Hon. Justice Helen Wilson, Supreme Court of NSW, Judicial Commission of New South Wales, Sydney

Membership of legal, cultural or benevolent organisations

Fellow, Planning Institute of Australia

Ms Susan O'Neill, Commissioner

Conferences and seminars

21 February	Twilight seminar, 'Updated EPA Act', Department of Planning and Environment, Judicial Commission of New South Wales
28 February	EPLA Seminar, 'Commencement of the updated Environmental Planning & Assessment Act 1979', presented by Nathan Laird, Senior Policy Advisor and Jonathon Schipp, Director Policy and Legislation, NSW Department of Planning & Environment., Environmental Planning Law Association
5 April	Twilight seminar, 'The science of expertise', Dr Kristy Martire, Senior Lecturer & ARC DECRA Fellow, School of Psychology, University of NSW, Judicial Commission of New South Wales
2 May	Graduate Diploma of Legal Practice, College of Law
17-18 May	Land and Environment Court Annual Conference
14 August	Twilight seminar, 'Fact Finding', Judge Paul Lakatos SC, Judicial Commission of New South Wales
11 September	Twilight seminar, 'Conflicts between urban development and bird populations: are they adequately addressed by our planning and building regulations?', Dr Stephen Ambrose, Judicial Commission of New South Wales
5 December	Field Trip: The Value of Public Art, Eva Rodriguez Riestra, the City's Public Art Program Manager, Judicial Commission of New South Wales

Membership of legal, cultural or benevolent organisations

Associate, Australian Institute of Architects

Nationally Accredited Mediator

Registered Architect, NSW Architects Registration Board and Associate of the Institute of Architects

Admitted as a Lawyer in NSW Supreme Court and High Court of Australia 22 June 2018

Speaking engagements

3-6 October	Lecturer, LAWS6354 Environmental Planning and Impact Assessment Law, Sydney Law School, University of Sydney
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Ms Danielle Dickson, Commissioner

Conferences and seminars

21 February	Twilight Seminar, 'Legislative Updates to the NSW Planning System', presented by Jonathon Schipp, Director, Policy and Legislation, Department of Environment and Planning, Judicial Commission of NSW, Sydney
28 February	Seminar: 'Changes to the Environmental Planning and Assessment Act' presented by the Environmental Planning and Law Association
5 April	Twilight Seminar, 'The Science of Expertise', presented by Dr Kristy Martire, Senior Lecturer & ARC DECRA Fellow, School of Psychology, University of NSW, Judicial Commission of NSW, Sydney
7 May	Land and Environment Court: Annual Commissioner Training Day
17 - 18 May	Land and Environment Court Annual Conference 2018, "Human Impact on the Environment", Headlands Hotel, Austinmer
14 June	Twilight Seminar, 'Criminal Law Update', presented by the Honourable Justice Helen Wilson, Supreme Court of NSW, Judicial Commission of NSW, Sydney
14 August	Twilight Seminar, 'Fact Finding', presented by his Honour Judge Paul Lakatos SC, District Court of NSW, Judicial Commission of NSW, Sydney
11 September	Twilight Seminar, 'Conflicts between urban development and bird populations - Part 1', presented by Dr Stephen Ambrose, Ambrose Ecological Services Pty Ltd, Judicial Commission of NSW, Sydney
15 October	Twilight Seminar, 'Implementing Court Managed Expert Evidence', Member Peta Stilgoe of the QLD Land Court, Judicial Commission of NSW, Sydney
30 October	Judicial Commission of NSW Field Trip, 'Conflicts between urban development and bird populations - Part 2' presented by Dr Stephen Ambrose, Ambrose Ecological Services Pty Ltd, Judicial Commission of NSW, Sydney
5 December	Judicial Commission of NSW Field Trip, 'Value of Public Art' presented by Eva Rodriguez Riestra, Judicial Commission of NSW, Sydney

Membership of legal, cultural or benevolent organisations

Member, Planning Institute of Australia

Member, Resolution Institute

Member, Land and Environment Court of New South Wales Education Committee

Mr Michael Chilcott, Commissioner

Conferences and seminars

2 February	Twilight seminar: Updates to the Environmental Planning and Assessment Act, Jonathon Schipp, Director, Policy and Legislation, Department of Environment and Planning; Judicial Commission of New South Wales
5 April	Twilight Seminar: The Science of Expertise, Dr Kristy Martire, Senior Lecturer & ARC DECRA Fellow, School of Psychology, University of NSW; Judicial Commission of New South Wales
17&18 May	Conference: Land and Environment Court Annual Conference 2018, Multiple speakers; Headlands Hotel, Austinmer; Judicial Commission of New South Wales
14 June	Twilight Seminar: Criminal Law Update: The Honourable Justice Helen Wilson, Supreme Court of NSW; Judicial Commission of New South Wales
13 August	EIANZ NSW Presentation and AGM; The role of environmental practitioners in environmental education; Rob Stokes, MP, NSW Minister for Education; WSP Sydney Office; EIANZ
14 August	Twilight Seminar: Fact Finding; His Honour Judge Paul Lakatos; Judicial Commission of New South Wales
11 September	Twilight Seminar: Conflicts between urban development and bird populations: are they adequately addressed by our planning and building regulations?; Dr Stephen Ambrose; Judicial Commission of New South Wales.
20 September	ADR Supreme Court Address; Alternative Dispute Resolution; The Hon. Chief Justice Tom Bathurst, AC. Australian Disputes Centre
25 September	Judicial Officers Seminar; Introduction to the Aboriginal Land Rights System in NSW/Aboriginal Land Rights Act 1983 (ALRA); Ms Nicole Courtman, Registrar of the ALRA, and Mr Chris Ingrey, Chief Executive of La Perouse Aboriginal Land Council; Law Courts Building; Judicial Commission of New South Wales
15 October	Twilight Seminar: Implementing Court Managed Expert Evidence; Peta G Stilgoe, Member, Land Court of Queensland; LEC; Judicial Commission of New South Wales
30 October	Field Trip: Urban Development and Birds; Dr Stephen Ambrose; Judicial Commission of New South Wales
1&2 November	Conference: EIANZ Annual Conference; Hilton Hotel, Sydney; Multiple speakers; EIANZ
8 November	Climate Justice - Oration by Antonio Oposa Jr; Baker MacKenzie, Barangaroo Avenue, Sydney

15 November	Koala Conservation and Management Seminar, Environmental Professionals Network, Sydney
3 December	Seminar: Art of Advocacy; Ian Davidson SC and Deborah Lockhart, CEO ADC; Australian Disputes Centre
5 December	Field Trip: The Value of Public Art; Eva Rodriguez Riestra, the City's Public Art Program Manager; Judicial Commission of New South Wales

Membership of legal, cultural or benevolent organisations

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

Member, Rotary Club of Sydney

Speaking engagements

31 August	<i>Environmental Impact Assessment</i> ; Seminar for students in environmental management course (ENVS 362); Macquarie University
14 September	<i>Environmental Governance</i> ; Seminar for students in environmental management course (ENVS 362); Macquarie University

Ms Jennifer Smithson, Commissioner

Conferences and seminars

21 February	Judicial Commission of NSW - Legislative Update to the NSW Planning System, Sydney
28 February	Environment and Planning Law Association - Commencement of the Updated Environmental Planning & Assessment Act 1979, Sydney
1 March	Judicial Commission of NSW Ngara Yura Committee, The NSW Bar Association Indigenous Barristers' Strategy Working Party and the Law Society of NSW Indigenous Issues Committee - Sorry Business and Wills, Sydney
5 April	Judicial Commission of NSW - The Science of Expertise, Sydney
17-18 May	LEC Annual Conference, Judicial Commission of NSW, Austinmer
20-22 May	ACPECT 2018 Conference, Brisbane
31 May	Judicial Commission of NSW - Ngara Yura visit to Sydney Observatory
7 August	Law Council of Australia - International Law in a Multi-Jurisdiction Environment, Sydney
14 August	Judicial Commission of NSW - Fact Finding, Sydney
25 September	Judicial Commission of NSW - Introduction to the Aboriginal Land Rights System in NSW
15 October	Judicial Commission of NSW - Court managed expert evidence, Sydney

Membership of legal, cultural or benevolent organisations

Life Fellow, Planning Institute of Australia

Graduate, Australian Institute of Company Directors

Nationally Accredited Mediator

Ms Joanne Gray, Commissioner

Conferences and seminars

21 February	Twilight seminar, 'Updated EPA Act', Department of Planning and Environment, Judicial Commission of New South Wales
28 February	EPLA Seminar, 'Commencement of the updated Environmental Planning & Assessment Act 1979', presented by Nathan Laird, Senior Policy Advisor and Jonathon Schipp, Director Policy and Legislation, NSW Department of Planning & Environment., Environmental Planning Law Association
5 April	Twilight seminar, 'The science of expertise', Dr Kristy Martire, Senior Lecturer & ARC DECRA Fellow, School of Psychology, University of NSW, Judicial Commission of New South Wales
17-18 May	Land and Environment Court Annual Conference
14 August	Twilight seminar, 'Fact Finding', Judge Paul Lakatos SC, Judicial Commission of New South Wales
11 September	Twilight seminar, 'Conflicts between urban development and bird populations: are they adequately addressed by our planning and building regulations?', Dr Stephen Ambrose, Judicial Commission of New South Wales
15 October	Twilight seminar, 'Implementing Court Managed Expert Evidence', Member Peta Stilgoe, Land Court of Queensland, Judicial Commission of New South Wales
30 October	Field Trip, 'Conflicts between urban development and bird populations', Dr Stephen Ambrose, Judicial Commission of New South Wales

Membership of legal, cultural or benevolent organisations

Member, Law Society of NSW

Ms Sarah Bish, Commissioner

Conferences and seminars

21 February	Twilight seminar, 'Updated EPA Act', Department of Planning and Environment, Judicial Commission of New South Wales
5 April	Twilight seminar, 'The science of expertise', Dr Kristy Martire, Senior Lecturer & ARC DECRA Fellow, School of Psychology, University of NSW, Judicial Commission of New South Wales
7 May	Commissioners Training Day
17-18 May	Land and Environment Court Annual Conference
11 September	Twilight seminar, 'Conflicts between urban development and bird populations: are they adequately addressed by our planning and building regulations?', Dr Stephen Ambrose, Judicial Commission of New South Wales
8 November	The Time for Talk is Over: Climate Justice for Future Generations
5 December	Field Trip: The Value of Public Art, Eva Rodriguez Riestra, the City's Public Art Program Manager, Judicial Commission of New South Wales

Membership of legal, cultural or benevolent organisations

Member, Registered Engineers for Disaster Relief (RedR)

Member, Australian Civilian Corp (ACC)

Delegations and international assistance

November Concept Note for UNICEF: Climate Change Adaptation of drinking water resources in Lebanon

Dr Peter Walsh, Commissioner

Conferences and seminars

21 February	Twilight seminar, Legislative Updates to the NSW Planning System, Jonathon Schipp, Judicial Commission of New South Wales
8,9,15,16 & 22 March	Training course, Mediation: Skills, techniques and practice, Australian Disputes Centre, Sydney
7 May	Commissioners' Training Day
17-18 May	Land and Environment Court Annual Conference
14 August	Twilight seminar, Fact Finding, His Honour Judge Paul Lakatos SC, Judicial Commission of New South Wales

25 September Twilight seminar – Introduction to the Aboriginal Land Rights System in NSW, Ms Nicole Courtman, Registrar of the ALRA and Mr Chris Ingrey, Chief Executive of La Perouse Aboriginal Land, Judicial Commission of New South Wales

20 November Launch of the Australian Law Journal’s special issue “Climate Change and the Law”, Hon Justice François Kunc, Mr Martijn Wilder AM and Professor Lesley Hughes, Baker McKenzie

5 December Twilight Field Trip: The Value of Public Art, Ms Eva Rodriguez Riestra, Judicial Commission of New South Wales

Publications

Walsh, P, 'Translating transitions thinking into the City Planning World', in Frantzeskaki, N., Holscher, K., Bach, M. and Avelino, F. (eds) Co-creating Sustainable Urban Futures (2018, Springer).

Vogel, R. K., Ryan, R., Lawrie, A., Grant, B., Meng, X., Walsh, P., Morris, A. and Riedy, C.. 'Global city Sydney' (2018) *Progress in Planning*.

Membership of legal, cultural or benevolent organisations

Fellow, Planning Institute of Australia

Certified Practising Planner

Visiting Fellow, Institute of Public Policy and Governance, University of Technology Sydney

Nationally Accredited Mediator

Mr Timothy Horton, Commissioner

Conferences and seminars

21-23, 26-28 November Training: ‘Mediation: Skills, Techniques and Practice’, Australian Disputes Centre

5 December Field Trip: The Value of Public Art, Eva Rodriguez Riestra, the City's Public Art Program Manager, Judicial Commission of New South Wales

Membership of legal, cultural or benevolent organisations

Fellow, Australian Institute of Architects

Ambassador, Sight for all

Appendices

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

Appendix 1 – Court Users Groups

Court Users Group

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

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

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

Members during 2018

The Hon. Justice Brian J 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 Peter Castor	Institute of Australian Consulting Aboriculturists
Mr Stephen Child	Australian Property Institute
Ms Stacey Ella	Environment Protection Authority
Ms Lesley Finn	Law Society Development and Planning Committee, Law Society of New South Wales
Mr Aaron Gadiel	NSW Urban Taskforce
Mr Sam Haddad	Engineers Australia
Ms Christina Harrison	The Institution of Surveyors NSW Inc
Ms Donette Holm/ Ms Anna Summerhayes	Department of Planning & Environment
Mr David Morris/Ms Rana Koroglu	EDO NSW
Mr Clifford Ireland	New South Wales Bar Association
Mr James Johnson	Nature Conservation Council of New South Wales
Ms Erin Gavin	Office of Environment and Heritage
Mr Michael Knight	Local Government In-House Counsel Network

Mr Mike Lichtwark	NSW Department of Industry
Mr Troy Loveday	Housing Industry Association
Ms Penny Murray	Urban Development Institute of Australia
Ms Roslyn McCulloch/ Dr James Smith	Environment and Planning Law Association NSW
Mr Michael Neustein	Royal Australian Institute of Architects (NSW Chapter)
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 Chris Shaw	Property Council of Australia
Mr Gary Shiels	Planning Institute of Australia (NSW Division)
Mr Ian Woodward	Local Government Lawyers Group
Ms Carly Wood	Australian Institute of Landscape Architects
Ms Jessica Wood	Local Government NSW



Meeting of the Court Users Group 21 June 2018

Mining Court Users Group

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

Appendix 2 – Court Committees

Court Committees

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

Rules Committee

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

Members

The Hon. Justice Brian Preston, Chief Judge

The Hon. Justice Terry Sheahan AO

The Hon. Justice John Robson

Education Committee

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

Members

The Hon. Justice Nicola Pain (Chair)

The Hon. Justice Tim Moore

Senior Commissioner Susan Dixon

Commissioner Danielle Dickson

Ms Sarah Froh, Registrar

Ms Una Doyle, Education Director, Judicial Commission of NSW

Library Committee

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

Members

The Hon. Justice Tim Moore (Chair)

Senior Commissioner Susan Dixon

Ms Sarah Froh, Registrar

Mr Michael Unwin

Ms Larissa Reid

Ms Susan Ramsay

Ms Vanessa Blackmore

Court Newsletter Committee

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

Members

The Hon. Justice Tim Moore (Chair)

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Land and Environment Court of NSW Judicial Newsletter

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 - Sentences
 - Multi-Applicant Litigation
 - Discretionary Decisions
 - Procedural Decisions
- NSW Civil and Administrative Tribunal

Civil Cases

- Appeals/Decisions

Legislation

Statutes

- Planning:

Environmental Planning and Assessment Amendment Act 2017 (No 32) (the EP&A Amendment Act) - commenced 1 March 2018.

The principal immediately operative provisions are:

- (1) The numbering system for provisions of the **Environmental Planning and Assessment Act 1979 (the EP&A Act)** has been changed to a decimal system and the existing provisions re-arranged;

- (2) The existing Pt 3A transitional provisions cease to have effect;
- (3) The EP&A Act now requires that a construction certificate be consistent with the development consent;

- (4) Development applications lodged with councils in the Greater Sydney region or with Strathgong City Council will not be determined by councillors but will be determined either by council staff under delegation or by local planning panels.

Other provisions are expected to come into effect over the next 12 months or so.

Environmental Planning and Assessment and Amendment (Planning Panels and Enforcement) Regulation 2017 - commenced 1 March 2018 and omitted Sch 4 which regional panels may be authorised to perform functions of councils of the EP&A Act replaced by provisions in the amending legislation commencing on 1 March 2018.

Environmental Planning and Assessment (Land Other Provisions) Regulation 2017 - published 15 December 2017 - made the necessary savings, to provisions as a consequence of the amendment the amending legislation noted at the commencement.

Environmental Planning and Assessment Act 1979 - previously uncommenced provisions in provisions of documents on the planning portal effect from 1 March 2018.

Environmental Planning and Assessment (Amendment) Regulation 2017 - published 15 December 2017 - prescribes specified universal authorities under Pt 5 of the **Environmental Planning and Assessment Act 1979** for certain development that may be consented under SEPP (Infrastructure) 2007 and **Establishments and Child Care Facilities 2017** specified universally to include land that is not under the control or management of a

June 2018

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Land and Environment Court of NSW Judicial Newsletter

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 - Procedural Decisions
- NSW Civil and Administrative Tribunal

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- Appeals/Decisions

Legislation

Statutes and Regulations:

- Planning:

Environmental Planning and Assessment Amendment (Planning Certificates Development Certificates) Regulation 2018 - published 1 June 2018, amended the **Environmental Planning and Assessment Regulation 2009** with respect to the lodgement of applications for complying development certificates on the NSW planning portal.

Environmental Planning and Assessment Amendment (Low Rise Medium Density Housing) Regulation 2017 - published 6 April 2018.

- (8) permits a single application for a complying development certificate to be made for complying development comprising the erection of a dual occupancy, minor house or multi dwelling housing (detached) on a lot and the subsequent subdivision of that lot or comprising the erection of dual occupancies, minor houses or multi dwelling housing (detached) on existing adjoining lots;

- (9) requires a certifying authority that issues a complying development certificate for development on bush fire prone land to send to the NSW Rural Fire Service a copy of any certification referred to in SEPP (General and Compliance Development Control) 2008 that is required to carry out the development on bush fire prone land; and

- (10) requires an application for a complying development certificate that relates to development involving the erection or alteration of, or an addition to, a dual occupancy, minor house or multi dwelling housing (detached) to be accompanied by a statement by a qualified designer (being a person registered as an architect in accordance with the **Architects Act 2002 (NSW)** or a person appointed as a building designer that:
 - (i) verifies that he or she designed, or directed the design of, the development; and

- (ii) addresses how the design is consistent with the relevant design criteria in the Medium Density Design Guide published by the Department of Planning and Environment.

Environmental Planning and Assessment Amendment (South East Milton Precinct) Regulation 2018 - published 13 April 2018, amended the **Environmental Planning and Assessment Regulation 2009** to require development applications for consent to carry out development on land within the South East Milton Precinct (as specified by SEPP (Sydney Region Growth Centres) 2006) to be accompanied by an assessment of the consistency of the proposed development with the South East Milton structure plans.

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