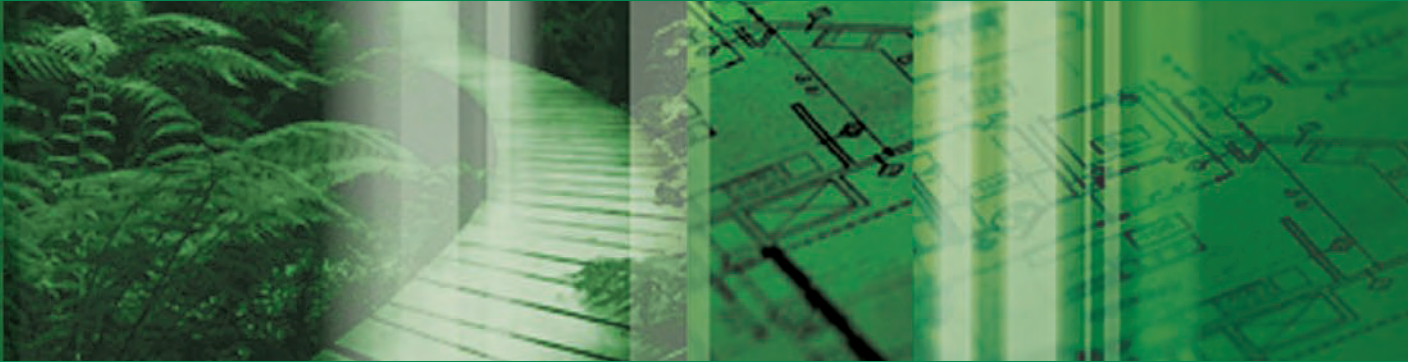


The Land and Environment Court of NSW



Annual Review

2008

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Foreword From Chief Judge

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

Traditionally, court administration performance is evaluated by quantitative output indicators based on the registrations (filings), finalisations, pending caseload and time taken between filing and finalisation. Prior to 2006, the Court's Annual Reviews had focused solely on these performance indicators. This year's Review continues the practice adopted in the last two 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 leave unevaluated the Court's material contribution to the community represented by the large volume of decisions made. The Court produced 747 substantive written judgments. These judgments are published on the Court's website www.lawlink.nsw.gov.au/lec and elsewhere. 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
Chief Judge

1 **2008: 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 most areas of its work, the Court has been able to improve its performance in achieving this overriding objective relative to the results achieved in 2006 and 2007.

Of particular significance are:

- A decrease in the number of matters pending in the Court, to its lowest level in the last five years;
- Maintenance of productivity, as evidenced by the total clearance rate for all matters exceeding 100%;
- Improvements in all but two classes of the Court's jurisdiction in the timeliness of the caseload, as measured by the backlog indicator;
- A decrease in the time taken for finalisation of merits review appeals (Classes 1, 2 and 3);
- Maintenance of the high percentage of reserved judgments delivered within 90 days; and
- A significant increase in the use of alternative dispute resolution mechanisms, particularly conciliation.

Chapter 5 Court Performance outlines the indicators, both quantitative and qualitative, for measuring the Court's performance and presents a detailed analysis of the results achieved. These measures include information with respect to the Court's criminal jurisdiction.

Reforms and Developments

The Court has continued to improve its practice and procedure to better enable the just, quick and cheap resolution of civil proceedings.

The major legislative reform was to apply the *Civil Procedure Act 2005* and *Uniform Civil Procedure Rules 2005* to the Court. This involved legislative changes, including to the *Land and Environment Court Act 1979* and the *Land and Environment Court Rules 2007*. Although the legislation was assented to on 15 November 2007, the changes took effect on 28 January 2008. The new practice and procedure has been implemented successfully, without any transitional difficulties.

The Court has continued to develop its practice and procedure under the *Trees (Disputes Between Neighbours) Act 2006* to ensure the just, quick and cheap resolution of disputes between neighbours about trees. The Court revised its standard directions, issued explanatory notes on enforcement of orders, produced an annotated version of the Act and issued a practice note for tree disputes.

The Court, in conjunction with the Judicial Commission of New South Wales, established a sentencing database for environmental offences in NSW, the first database of its kind in the world.

Legislation was passed in 2008 to give the Court jurisdiction to hear and dispose of proceedings under the *Mining Act 1992* and the *Petroleum (Onshore Act) 1991*. Civil proceedings will be dealt with in a new class of jurisdiction, Class 8, whilst criminal proceedings will be dealt with in the current Class 5 of the Court's jurisdiction. These proceedings were formerly dealt with by the Mining Wardens' Courts which were

abolished by the legislation. Although the legislation was assented to on 8 December 2008, the changes will not take effect until 7 April 2009. The operation and effect of the legislative changes will be reported on in next year's Annual Review.

These developments in the Court's 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. The twilight seminar series commenced in November 2008, with two seminars being held in 2008.

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 targeted the national and international legal community.

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

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

Consultation with Court Users

In 2008, the Court continued to consult and work closely with users to improve systems and procedures through its Committees and User Group. 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 are in Appendix 1 and the Court's Committees are in Appendix 2.

2 Court Profile

- The Court's Jurisdiction
- Who makes the decisions?
 - The Judges
 - The Commissioners
 - The Registrars
- Appointments and Retirements
- Supporting the Court: The Registry

The Court's Jurisdiction

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 combined jurisdiction within a single court.

The Court has an appellate and a review jurisdiction in relation to planning, building, environmental 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 2008, the Court Act provided for seven classes of jurisdiction in the Court. Legislative changes, to take effect on 7 April 2009, will add a further class, Class 8, concerning civil proceedings under mining legislation.

Table 2.1 summarises these seven 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)

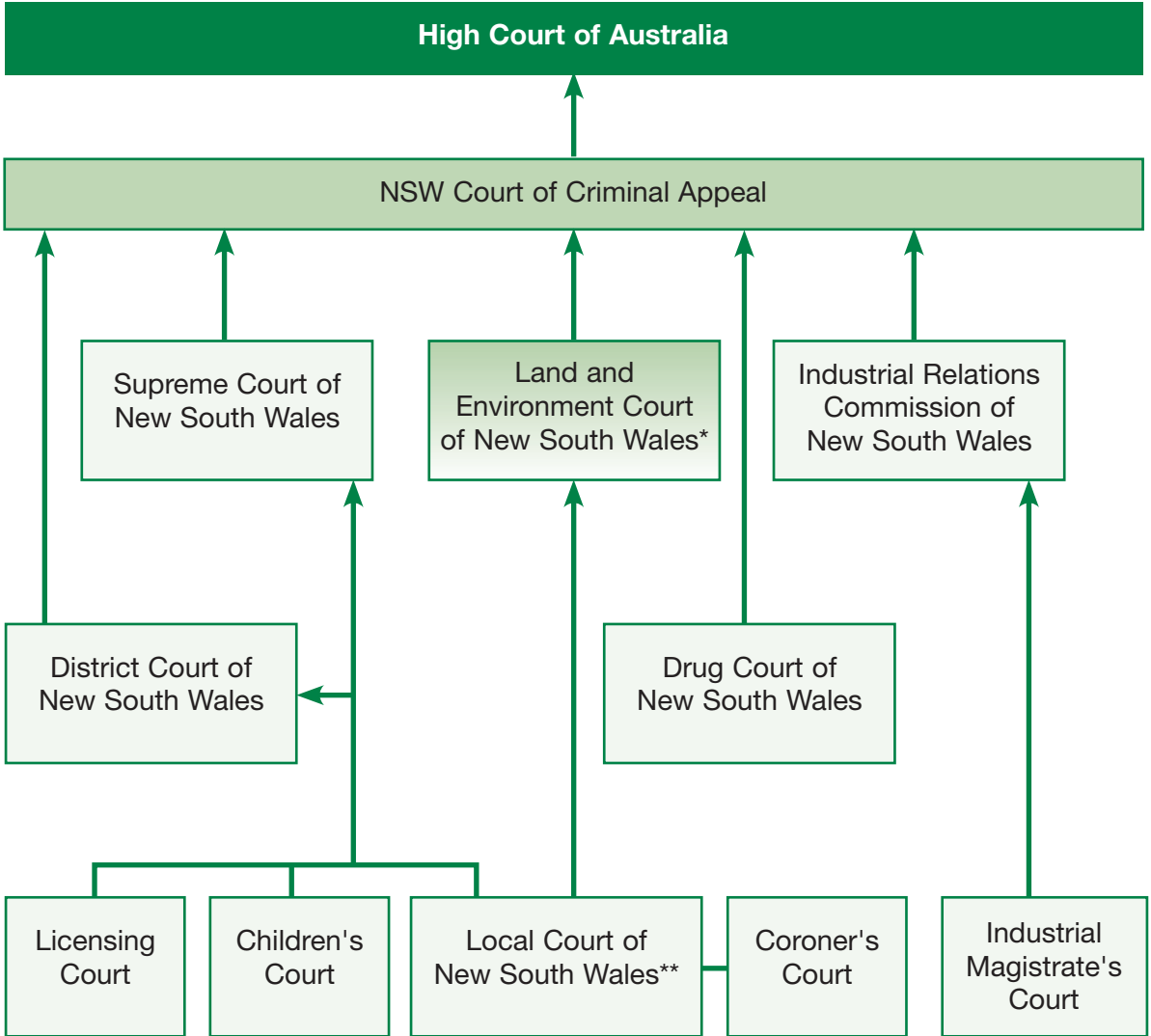
Class 5 environmental planning and protection (summary criminal enforcement)

Class 6 appeals against convictions or sentences relating to environmental offences (appeals as of right from Magistrates in Local Court prosecutions for environmental offences)

Class 7 appeals against convictions or sentences relating to environmental offences (appeals requiring leave from Magistrates in Local Court prosecutions for environmental offences)

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 Class 1, 2 or 3 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.

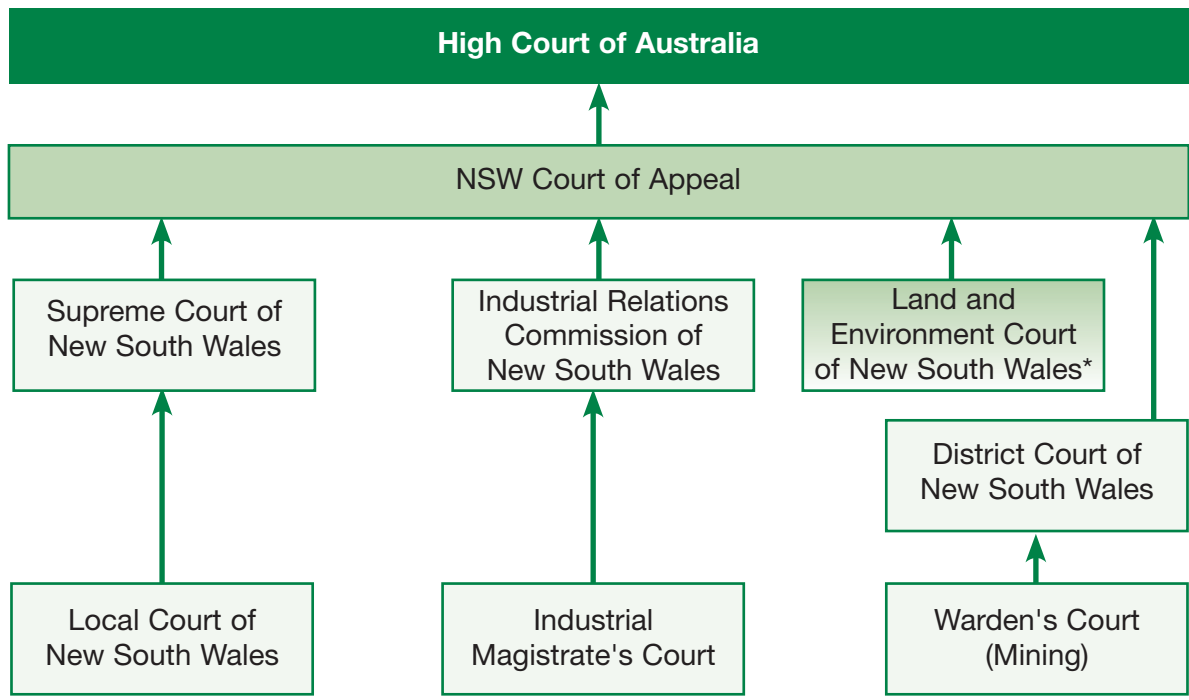
Figure 2.1 New South Wales Court System – Criminal Jurisdiction



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

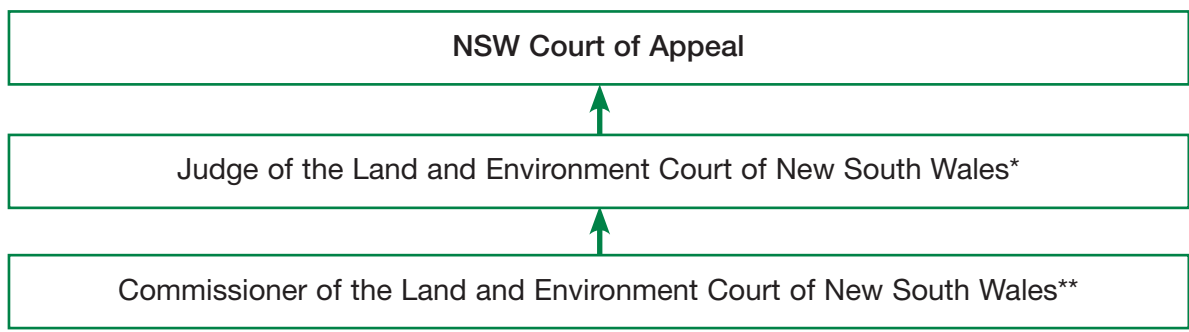
** Appeals from the Local Court of New South Wales to the Land and Environment Court are with respect to an environmental offence under the *Crimes (Appeal and Review) Act 2001* and are in Classes 6 and 7 of the Land and Environment Court's jurisdiction.

Figure 2.2 New South Wales Court System – Civil Jurisdiction



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

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



* Appeals from a decision of a Judge in Class 1, 2 or 3 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 Class 1, 2 or 3 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 and status 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 2008, the Judges, in order of seniority, were as follows:

Chief Judge

The Honourable Justice Brian John Preston

Judges

The Honourable Mr Justice David Henry Lloyd

The Honourable Justice Terence William Sheahan AO

The Honourable Justice Nicola Hope Margaret Pain

The Honourable Justice Peter Meldrum Biscoe

Acting Judges

No acting judges were appointed during 2008.

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:

- local government administration;
- town planning;
- environmental science;
- land valuation;
- architecture, engineering, surveying;
- building construction;
- natural resources management;
- urban design or heritage; and
- land rights for Aborigines or disputes involving Aborigines.

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

The primary function of Commissioners is to hear and determine merits review appeals in Class 1, 2, and 3 of the Court's jurisdiction. On occasion the Chief Judge may direct that a Commissioner sit with a Judge, or that two or more Commissioners sit together to hear Class 1, 2 and 3 matters.

At 31 December 2008, the Commissioners were as follows:

Senior Commissioner

Dr John Roseth

Commissioners

Mr Trevor A Bly

Mr Robert R Hussey

Mr Kevin G Hoffman

Mr Graham T Brown

Ms Janette S Murrell

Ms Annelise Tuor

Mr Tim Moore

Dr Mark Taylor

Acting Commissioners

Associate Professor Dr Paul Adam – botanist and ecologist

Professor Dr Larissa Behrendt – member of the Aboriginal community

Ms Megan Davis – member of the Aboriginal community

Ms Mary Edmunds – anthropologist and mediator

Ms Judy Fakes – arborist

Professor Dr David Goldney – ecologist

Ms Rhonda Jacobson – member of the Aboriginal community

Mr E Craig Miller – valuer and mediator

Dr David Parker – valuer

Professor Sharon Sullivan AO – heritage consultant

Mr Peter Thyer – arborist

Mr Michael Whelan – surveyor, mediator and arbitrator

The Registrars

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

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

As at 31 December 2008, the Registrars were as follows:

Registrar Ms Susan Dixon

Acting Assistant Registrar Ms Lesley Hourigan

Appointments and Retirements

Appointments

Mr Stafford Watts was appointed an Acting Commissioner of the Court for a term effective 7 March to 16 July 2008.

Dr Mark Taylor was appointed as a full-time Commissioner on 11 August 2008.

Retirements

The Honourable Justice Jayne Margaret Jagot resigned as a Judge of the Court on 2 September 2008.

Mr Stafford Watts retired as a full-time Commissioner on 18 January 2008.

The following persons ceased to be Acting Commissioners during 2008:

Mr Ken Jurotte (term expired on 9.01.08)

Mr John Sheehan (term expired on 9.01.08)

Dr Stephen Phillips (resigned on 18.08.08)

Dr Mark Carleton (term expired on 27.02.08)

Supporting the Court: The Registry

The Court Registry comprises the following four sections:

Client Services

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

Listings

This section provides listing services, including preparation of the Court's daily and weekly program and publishes the daily Court list to 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 and the CaseLaw judgment database.

Commissioner Support

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

The Court provides copies of its decisions and daily court lists on the Court's website at www.lawlink.nsw.gov.au/lec

3 Caseflow Management

- Introduction
- Overview by Class of Jurisdiction
- Types of Directions Hearings
- Class 1 Hearing Options
- Alternative Dispute Resolution
 - Conciliation
 - Mediation
 - Neutral evaluation

Introduction

The Court manages the flow of its cases from inception to completion in a number of ways, and is continually looking to improve its processes and outcomes. The Chief Judge determines the day-to-day caseload management strategy of the Court. This strategy is reflected in the *Land and Environment Court Act 1979*, *Land and Environment Court Rules 2007*, the *Civil Procedure Act 2005* and the *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

Caseload management varies with the type or class of proceeding.

Class 1

Proceedings in Class 1 involve merits review appeals. The Court in the appeal sits in the place of the original administrative decision-maker and re-exercises the administrative decision-making functions. The decision of the Court is final and binding and becomes that of the original decision-maker.

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

At the directions hearing, the Registrar will review the matter and make appropriate directions for the orderly, efficient and proper preparation of the matter for resolution by the appropriate dispute resolution process.

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

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

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

Class 2: Tree Disputes

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

The Court manages a separate list for tree disputes. About 75% of the parties are self-represented. The application is returnable before a Commissioner assigned to manage the list. This first court attendance can be either a telephone conference or in court. The Commissioner explains the process of preparation for and hearing of the application.

The Commissioner explores whether the parties may be able to resolve the dispute between themselves. If the parties are not able to resolve the dispute, the Commissioner will fix a final hearing date, usually not more than four to five weeks after the first court attendance. The Commissioner will make directions in

preparation for the final hearing, such as for the provision of information by the parties to each other.

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

Class 3

Proceedings in Class 3 also involve merits review appeals. 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, but at times assisted by a Commissioner with special knowledge and expertise in valuation of land.

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

Class 4

Proceedings in Class 4 are of two types: civil enforcement, usually by government authorities, of planning or environmental laws to remedy or restrain breaches and judicial review of administrative action 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 a Judge of the Court.

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

Class 5

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

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.

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 a 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.

Types of Directions Hearings

The Court offers court users three types of directions hearing:

in court directions hearing

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

telephone directions hearing

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

eCourt directions hearing

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

In general, the initial allocations for directions hearings are:

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

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

In 2008, the Court experienced an increase in the use of eCourt callover and recorded 916 registered eCourt users (up from 798 in 2007). The Court is recognised nationally as a leader in eCourt case management.

Class 1 Hearing Options

The Court Act provides that a variety of Class 1 and Class 2 matters are to be dealt with by the Court as either an on-site hearing or a court hearing. The Registrar determines at callover 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 determination of a matter conducted at the site the subject of the appeal. Apart from the judgment, an on-site hearing is not recorded.

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

Alternative Dispute Resolution

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

- Conciliation;
- Mediation; and
- Neutral evaluation.

Conciliation

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

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

The 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. 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 proceedings are referred 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 setting out that fact as well as stating the Commissioner's views as to the issues in dispute between the parties to the proceedings. This is still a useful outcome, as it scopes the issues and often will result in the proceedings being able to be heard and determined expeditiously, in less time and with less cost.

Table 3.1 shows the comparison between the number of conciliation conferences in 2004-2008.

Table 3.1 s 34 Conciliation Conferences 2004 – 2008

	2004	2005	2006	2007	2008
s 34 conferences	39	17	29	214	552

The table shows a continued, significant increase in the utilisation of conciliation in 2008. This increase has been facilitated by legislative provisions enabling all proceedings in Classes 1, 2 and 3 to be conciliated, the Court's practices and procedures encouraging conciliation, specialist training of Commissioners in conciliation, and education of lawyers and court users about conciliation.

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 and 4 to mediation. The Court provides a mediation service at no cost to the parties by referral to the Court's mediator. The Court will 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 2004-2008. Internal mediations are those conducted by a 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 2004 – 2008

		2004	2005	2006	2007	2008
Classes 1 and 2	Total:	23	8	15	9	3
	Internal	6	7	5	6	2
	External	17	1	10	3	1
	Number finalised pre-hearing	8	5	13	5	2
	% finalised pre-hearing	35	63	87	56	66
Class 3	Total:	15	9	30	15	8
	Internal	2	1	1	0	5
	External	13	8	29	15	3
	Number finalised pre-hearing	8	3	26	12	7
	% finalised pre-hearing	53	33	87	80	88
Class 4	Total:	11	7	7	7	13
	Internal	8	3	3	3	8
	External	3	4	4	4	5
	Number finalised pre-hearing	4	6	7	5	11
	% finalised pre-hearing	36	86	100	71	85
All Classes	Total:	49	24	52	31	24
	Internal	16	12	9	9	15
	External	33	13	43	22	9
	Number finalised pre-hearing	20	14	46	22	20
	% finalised pre-hearing	41	58	88	71	83

The table shows a decrease between 2006 and 2008 in the number of mediations in Classes 1, 2 and 3, attributable to the increased availability and utilisation of conciliation under s 34 of the Court Act, conciliation being another form of alternative dispute resolution. The number of Class 4 matters mediated has increased in 2008, compared to 2005-2007. This increase is attributable to the increase in the availability of mediators provided by the Court for Class 4 proceedings, mostly civil enforcement proceedings.

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 and 4 to neutral evaluation with or without the consent of the parties. The Court has referred matters to neutral evaluation by a Commissioner or an external person agreed to by the parties.

4 Reforms and Developments

- Uniform Civil Procedure
- Practice Notes
- Tree Disputes
- Planning Principles and Tree Dispute Principles
- Sentencing Database for Environmental Offences

During 2008, reforms continued with respect to the following areas:

- Uniform Civil Procedure;
- Practice Notes; and
- Tree Disputes.

Planning principles were applied and a decision providing guidance on the trees legislation was delivered.

The Court established a sentencing database for environmental offences.

Uniform Civil Procedure

During 2007, legislation was passed applying the *Civil Procedure Act 2005* and the *Uniform Civil Procedure Rules 2005* to the Court. This brings the Court into conformity with the Supreme Court, District Court and Local Court, in all of which the uniform civil procedure regime applies. The legislation effecting this change, the *Courts Legislation Amendment Act 2007*, was assented to on 15 November 2007, and came into effect in relation to the Court on 29 January 2008.

Practice Notes

The Court has continued the reform of its practice notes, which group practice and procedure according to the types of proceedings, by issuing a practice note for proceedings under the *Trees (Dispute Between Neighbours) Act 2006*. The Practice Note Class 2 Tree Applications commenced on 1 September 2008.

Tree Disputes

The Court continued to develop its special Trees Dispute Information webpage which provides reference material to assist applicants, tree owners, and local councils to understand how the Court deals with tree disputes. The additional material includes:

- An annotated *Trees (Dispute Between Neighbours) Act 2006* which provides a comprehensive, plain English explanation of how the Court has applied the legislation in the first two years of its operation, with links to the Court's decisions.
- Tree Dispute Principles (published by the Court)
- Revised standard directions to be given at preliminary Trees Act conferences
- Updated guidance decisions about the Act and the Court's decisions
- Updated decisions of the Court under the Trees Act, grouped firstly by refusals and approvals and secondly, within each category, by the type of application, such as removal of tree, pruning or other work on a tree, remedial works or compensation.
- Notes on enforcement of judgments and orders of the Court.

Planning Principles and Tree Dispute Principles

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

A planning principle is a statement of a desirable outcome from, a chain of reasoning aimed at reaching, or a list of appropriate matters to be considered in making, a planning decision. While planning principles are stated in general terms, they may be applied to particular cases to promote consistency. Planning principles are not legally binding and they do not prevail over environmental planning instruments and development control plans.

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

In 2008, the Court did not publish any new planning principles. However, the decisions of the Court in 2008 were assisted by reference to prior planning principles.

In a similar fashion, the Court has developed principles or provided guidance in decisions under the *Trees (Disputes Between Neighbours) Act 2006*. In 2008, the Court did not publish any new tree dispute principles. However, the Court delivered one judgment considering and

interpreting the Act. In *Robson v Leischke* [2008] NSWLEC 152, the Court examined the common law position before the Act came into force, the legislative history of the Act, and the current statutory scheme. The decision provides a guide to the requirements for applications under the Act seeking orders for compensation for property damage.

Sentencing Database for Environmental Offences

The Court, in conjunction with the Judicial Commission of New South Wales, established 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 peculiar to environmental offences. The user is also able to access directly the remarks on sentencing behind each graph.

The sentencing database was launched by the Honourable John Hatzistergos, MLC, Attorney-General of New South Wales, on 30 April 2008. The development and operation of the sentencing database is discussed in Preston B J and Donnelly H, *Achieving consistency and transparency in sentencing for environmental offences*, Judicial Commission of New South Wales, Monograph 32, June 2008.

5 Court Performance

- Overall Caseload
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Overall Caseload

The comparative caseload statistics between 2004 and 2008 are summarised in Table 5.1.

Table 5.1 Caseload Statistics

		2004	2005	2006	2007	2008
Class 1	Registrations	1211	1099	874	788	865
	Restored	112	80	131	90	57
	Pre-Trial Disposals	742	618	675	507	552
	Disposed by Hearing	563	519	524	485	357
	Pending	611	653	457	328	342
Class 2	Registrations	32	15	12	184	149
	Restored	1	1	1	8	6
	Pre-Trial Disposals	13	26	8	59	57
	Disposed by Hearing	2	3	5	100	103
	Pending	23	11	7	40	36
Class 3	Registrations	232	288	152	124	134
	Restored	47	16	18	14	15
	Pre-Trial Disposals	161	113	212	125	114
	Disposed by Hearing	61	80	115	43	58
	Pending	204	319	165	130	108
Class 4	Registrations	196	187	244	234	184
	Restored	43	42	39	45	47
	Pre-Trial Disposals	176	123	180	219	181
	Disposed by Hearing	96	80	87	89	87
	Pending	109	142	164	133	97
Class 5	Registrations	77	73	48	88	93
	Restored	1	14	6	7	8
	Pre-Trial Disposals	30	6	3	7	15
	Disposed by Hearing	63	67	68	68	71
	Pending	66	81	63	79	94
Class 6	Registrations	7	14	12	20	17
	Restored	0	1	0	1	0
	Pre-Trial Disposals	3	3	6	6	7
	Disposed by Hearing	4	6	12	9	9
	Pending	2	8	2	8	10
TOTAL	Registrations	1755	1676	1342	1438	1442
	Restored	204	154	195	165	133
	Pre-Trial Disposals	1125	889	1083	923	923
	Disposed by Hearing	789	755	811	794	687
	Pending	1015	1214	858	718	687

Table 5.1 shows the following trends between 2007 and 2008:

- Total registrations stayed almost constant in 2008, a result of increased registrations in Classes 1, 3 and 5 nearly offsetting a decrease in registrations in Classes 2, 4 and 6.
- Total finalisations decreased in 2008, a result of the decrease in finalisations in Classes 1 and 4 which more than offset the marginal increase in finalisations in Classes 2, 3, 5 and 6.
- Total finalisations continued to exceed total registrations in 2008, resulting in the total pending caseload decreasing in 2008, indeed to its lowest level in five years.
- Merits review proceedings in Classes 1, 2 and 3 comprised 77% of the Court's finalised caseload in 2008.
- Judicial proceedings in Classes 4, 5, 6 and 7 comprised 23% of the Court's finalised caseload in 2008.
- The means of finalisation in 2008 were 57% pre-trial disposals (including by negotiated settlement) and 43% by adjudication by the Court. This proportion has remained reasonably constant over the last five years, as Table 5.2 shows.

Table 5.2 Means of Finalisation – All Matters

	04	05	06	07	08
Total matters finalised – all classes	1914	1644	1894	1718	1610
Total pre-trial finalisations	1125	889	1083	923	923
% matters finalised pre-trial	59	54	57	54	57

The means of finalisation for proceedings in Class 1, 2 and 3 included s 34 conciliation conferences and on-site hearings (mainly for Class 1 and 2 proceedings). As Table 5.3 shows, 29.8% of appeals in Classes 1, 2 and 3 were finalised by these means, an increase on the previous two years.

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

	04	05	06	07	08
Total matters finalised	1541	1359	1539	1319	1241
s 34 conferences and on-site hearings	226	184	175	277	370
% s 34 and matters finalised on-site	14.7	13.5	11.4	21.0	29.8

Court Performance by Class of Jurisdiction

A brief summary of the Court's performance in 2008 for each of the seven classes of jurisdiction is provided.

Class 1

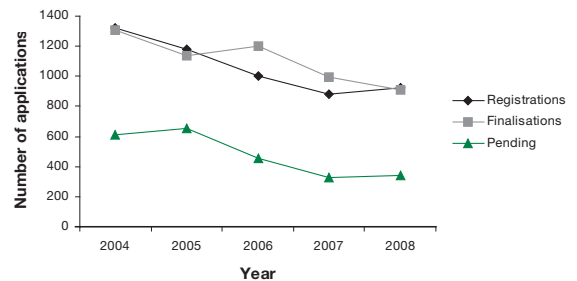
Class 1 matters constitute the bulk of the Court's finalised caseload (56%). 62% of all Class 1 matters finalised were appeals under s 97 of the *Environmental Planning and Assessment Act 1979* relating to development applications. 42% of the appeals under s 97 were applications where councils had not determined the development application within the statutory time period ("deemed refusals").

Of the remaining matters finalised in 2008, 19% were applications to modify a development consent under 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. Applications for costs, appeals against the Court's decisions 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 2004 to 2008.

Figure 5.1

Class 1 caseload: annual data 2004 to 2008



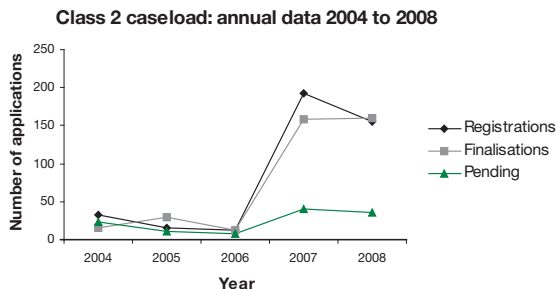
Class 2

Class 2 registrations increased dramatically in 2007 due to the coming into force of the *Trees (Disputes Between Neighbours) Act 2006*. There was an easing of registrations in 2008 compared to 2007. Class 2 registrations represented 10% of total registrations in the Court in 2008.

The number of Class 2 matters finalised in 2008 represented 10% of the Court's finalised caseload. These are overwhelmingly applications under the *Trees (Disputes Between Neighbours) Act 2006*.

Figure 5.2 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 2 between 2004 to 2008.

Figure 5.2



Class 3

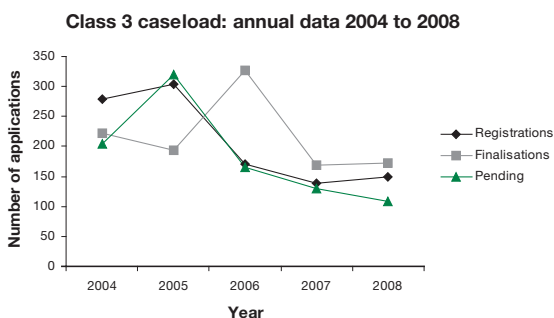
Class 3 of the Court’s jurisdiction encompasses a range of proceedings including claims for compensation as a result of the compulsory acquisition of land, valuation and rating appeals and some Aboriginal land rights matters.

New registrations in Class 3 increased by 8% in 2008. Valuation and rating appeals accounted for 54% of new Class 3 appeals in 2008. Compensation claims for compulsory acquisition of land constituted 31% of all Class 3 appeals registered in 2008. Other matters constituted 15%.

Of the matters finalised in 2008, 45% were valuation or rating appeals, 27% were compensation claims and 28% were other matters.

Figure 5.3 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 3 between 2004 and 2008.

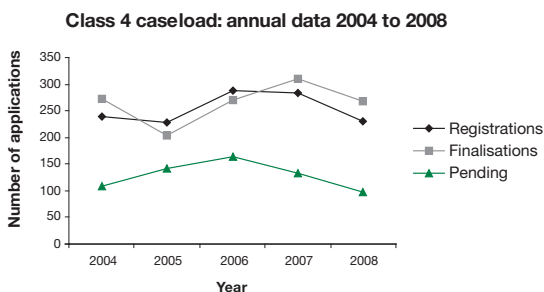
Figure 5.3



Class 4

New Class 4 registrations fell by 21% and finalisations decreased by 13% in 2008. Because registrations decreased by a greater margin than finalisations, the pending caseload in Class 4 also decreased. Of the Class 4 matters finalised in 2008, 62% were initiated by councils. Figure 5.4 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 4 between 2004 and 2008.

Figure 5.4



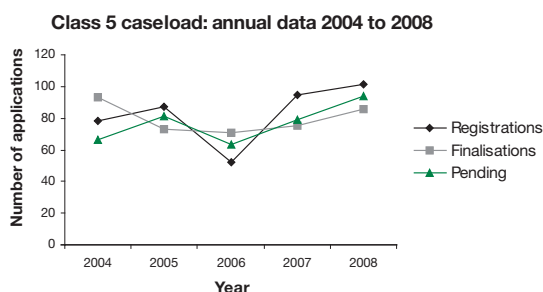
Class 5

New Class 5 registrations rose 6% in 2008. The Environment Protection Authority initiated 27% of all new registrations. The number of matters initiated by local councils decreased to 47%, down from 65% in 2007. Other statutory bodies initiated 26% of all new registrations.

Finalisations also rose, by 15%, in 2008. Of the 86 matters finalised in 2008, convictions were recorded in 42, 15 were withdrawn, 22 were dismissed, 7 were proved with no conviction entered. Fines for conviction ranged from \$7,500 to \$200,000.

Figure 5.5 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 5 between 2004 to 2008.

Figure 5.5



Classes 6 and 7

17 new Class 6 appeals were filed, 12 of which were finalised in 2008. The balance of 4 finalisations were filed in late 2007. There were no appeals allocated to Class 7 in 2008.

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 2008 to increase court fees by 4.8% to be able to balance the Court's budget and ensure a high standard of court administration service quality (effective 1 July 2008). 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 steps 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 increase in steps with the increased 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. 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.

First, the Court regularly holds court hearings in country locations. Table 5.4 shows hearings held in a country courthouse for 2008.

Table 5.4 Country Hearings

Courtthouse	Number of Hearings				
	Class 1	Class 2	Class 3	Class 4	Class 5
Albury	1				
Albion Park	1				
Armidale	1				
Ballina	3				
Bathurst	1		1		
Byron	2				
Cessnock	1				
East Maitland	2				
Finley	1				
Forbes	1				
Gosford	1		1		
Goulburn	1				
Katoomba	1				
Kiama	2		1		
Kurri Kurri	1				
Macksville	1				
Moama				1	
Moss Vale	2				
Mudgee	1				
Murwillumbah	1				
Muswellbrook	1				
Newcastle	2				
Nowra	1				
Orange	1				
Penrith			1		
Picton	1				
Queanbeyan	1				
Raymond Terrace			1		
Tamworth	1				
Taree	2				
Toronto	1				
Tweed Heads	1				
Wauchope			1		
TOTAL	36	0	6	1	0

Secondly, for attendances before hearings, the Court has established the facility of a telephone directions hearing. This type of directions hearing takes place in a court equipped with conference call equipment where the parties or their representatives can participate in the court attendance whilst remaining in their distant geographical location.

Thirdly, the Court pioneered the use of eCourt directions hearings. This involves the parties or their representatives posting electronic requests to the Registrar using the internet and the Registrar responding. This also mitigates the tyranny of distance.

Fourthly, conduct of the whole or part of a hearing on the site of the dispute also means that the Court comes to the litigants. An official on-site hearing involves conducting the whole hearing on-site. This type of hearing is required where there has been a direction that an appeal under ss 96, 96AA, 97, 121ZK or 149F of the *Environmental Planning and Assessment Act 1979* or s 7 of the *Trees (Disputes Between Neighbours) Act 2006* be conducted as an on-site hearing. The hearing is conducted as a conference presided over by a Commissioner on the site of the development. In 2008, 169 matters were conducted as an on-site hearing.

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.

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 programs. 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 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.

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

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

Access for unrepresented litigants

The Court also makes special efforts to assist unrepresented litigants, through its website and its published information and fact sheets, and by the Registry staff. The Court has a special fact sheet for "Litigants

in Person in the Land and Environment Court of New South Wales". The fact sheet contains information on:

- The Court's jurisdiction;
- Legal advice and assistance;
- The Court's schedule of fees;
- How to request a waiver, postponement or remission of fees;
- The availability of interpreters;
- Disability access information;
- User feedback – Land and Environment Court services;
- Information about the Court's website; and
- Land and Environment Court contact information.

The Court's website also has a special page on "self-help". That page provides links to other web pages and to external links dealing with:

- Information sheets on each of the types of proceedings in the Court;
- Contacts in the Court;
- Frequently asked questions;
- A guide to the Court;
- Interpreters and their availability;
- Judgments of the Court;
- The jurisdiction of the Court;
- Languages and translation services;
- Legal advice and assistance;
- Legal research links;
- Litigants in person in Court;
- Mediation;
- Planning principles; and
- Tree dispute applications.

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. Currently, the Registrar of the Court is an accredited mediator and can provide in-house mediation for parties. A number of Acting Commissioners are also accredited mediators. 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 contains a page explaining the alternative dispute resolution mechanisms and providing links to other sites explaining ADR methods include mediation.

Facilitating public participation

Access to justice can also be facilitated by the Court ensuring that its practice and procedure promotes and does not impede access by all. This involves careful identification and removal of barriers to participation, including by the public. Procedural law dealing with standing to sue, interlocutory injunctions (particularly

undertaking for damages), security for costs, laches and costs of proceedings, to give some examples, can either impede or facilitate public access to justice. The Court's decisions in these matters have generally been to facilitate public access to the courts. *The Land and Environment Court Rules 2007* (Pt 4 r 4.2) also allow the Court not to require an undertaking as to damages or order security for costs or order costs 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. The Court Users Group assists 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 2008, the Judges, Commissioners and the Registrar have 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 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 and 7: 95% of applications to 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 (i.e. 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 2008 are:

Table 5.5 Backlog Indicator (LEC time standards)

	Unit	LEC Standards	2004	2005	2006	2007	2008
Class 1							
Pending caseload	no.		611	653	457	328	342
Cases > 6 months	%	5	12.8	29.1	22.8	11.3	13.5
Cases > 12 months	%	0	5.4	9.6	10.1	3.4	2.0
Class 2							
Pending caseload	no.		23	11	7	40	36
Cases > 6 months	%	5	82.1	45.5	28.6	12.5	2.8
Cases > 12 months	%	0	25.0	36.3	14.3	2.5	0
Class 3							
Pending caseload	no.		204	319	165	130	108
Cases > 6 months	%	5	32.0	44.8	55.2	51.5	32.4
Cases > 12 months	%	0	17.9	25.1	38.8	40.0	13.9
Class 4							
Pending caseload	no.		109	142	164	133	97
Cases > 8 months	%	5	35.0	28.8	19.5	21.1	24.7
Cases > 16 months	%	0	19.7	16.4	12.2	8.3	10.3
Class 5							
Pending caseload	no.		66	81	63	79	94
Cases > 8 months	%	5	52.1	29.1	55.5	31.6	33.0
Cases > 16 months	%	0	26.1	18.9	11.1	10.1	14.9
Class 6							
Pending caseload	no.		2	8	2	8	10
Cases > 8 months	%	5	0	0	0	0	0
Cases > 16 months	%	0	0	0	0	0	0
Class 1 – 3							
Pending caseload	no.		838	983	629	498	486
Cases > 6 months	%	5	25.8	34.6	31.3	21.9	16.9
Cases > 12 months	%	0	11.1	15	17.6	12.9	4.5
Class 4 – 7							
Pending caseload	no.		177	231	229	220	201
Cases > 8 months	%	5	44.0	27.9	29.3	24.1	27.4
Cases > 16 months	%	0	22.6	16.7	11.8	8.6	11.9

These backlog figures need some explanation:

- Class 1: The backlog figure for pending caseload greater than 12 months has improved in 2008, resulting in the figure for pending caseload exceeding the 12 months standard falling to its lowest level in five years. However, there was a small increase in the figure for pending cases greater than 6 months, compared to 2007, due to an increase (by 27%) in the number of older cases. Whilst the total pending caseload also increased (by 5%), it rose proportionately less than the increase in older cases and thus did not offset the rise in older cases.
- Class 2: The backlog figure decreased in 2008 resulting in Class 2 cases meeting the Court's time standards for both 6 months and 12 months for the first time in five years. This commendable result is testament to the active case management of cases under the *Trees (Disputes Between Neighbours) Act 2006* by the List Commissioner.
- Class 3: The 2008 backlog figures improved significantly, with the pending caseload greater than 6 months falling by 45% and the pending caseload greater than 12 months falling by 67%. The result is that the figures for pending caseload exceeding both the 6 months and 12 months standards fell to their lowest levels in five years. This commendable result is a product of active case management, particularly of older cases, by the List Judge.
- Class 4: Although there was a slight increase in the backlog figure for pending caseload exceeding the 8 months and 16 months standards, this was due to a decrease (by 27%) in the total pending caseload in Class 4. The number of older cases remained steady but represented a higher proportion of the pending caseload.
- Class 5: There was an increase in the backlog figure for 2008 for pending cases exceeding both the 8 months and 16 months standards. Many of these older cases are related prosecutions, involve difficulties and complexities, or have been prolonged by appeals against interlocutory rulings to the Court of Criminal Appeal. As these cases are disposed of, the backlog figure will improve.

If the national time standards are used, the results of the backlog indicator for the Court in 2008 are:

Table 5.6 Backlog Indicator (national time standards)

	Unit	National Standards	2004	2005	2006	2007	2008
Class 1							
Pending caseload	no.		611	653	457	328	342
Cases > 12 months	%	10	5.4	9.6	10.1	3.4	2.0
Cases > 24 months	%	0	0.84	0.9	2.2	1.5	0.6
Class 2							
Pending caseload	no.		23	11	7	40	36
Cases > 12 months	%	10	25.0	36.3	14.3	2.5	0
Cases > 24 months	%	0	4.3	9.1	0	0	0
Class 3							
Pending caseload	no.		204	319	165	130	108
Cases > 12 months	%	10	17.9	25.1	38.8	40.0	13.9
Cases > 24 months	%	0	6.3	8.1	10.9	13.1	5.6
Class 4							
Pending caseload	no.		109	142	164	133	97
Cases > 12 months	%	10	26.9	20.0	17.1	15.8	15.5
Cases > 24 months	%	0	10.1	10.8	6.7	2.3	5.2
Class 5							
Pending caseload	no.		66	81	63	79	94
Cases > 12 months	%	10	38.8	19.5	42.9	13.9	28.7
Cases > 24 months	%	0	3.0	9.1	4.8	8.9	8.5
Class 6							
Pending caseload	no.		2	8	2	8	10
Cases > 12 months	%	10	0	0	0	0	0
Cases > 24 months	%	0	0	0	0	0	0

This table shows that the Court's performance in Classes 1, 2 and 6 betters the national standard and in Classes 3 and 4 is comparable to the national standard. The result for Class 5 is explicable for the reasons given above in relation to the Court's time standards.

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). An appreciable number of judgments 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 5.7 shows, the Court's performance in 2008 matched that in 2007 of 90% of reserved judgments being delivered within 90 days, but was not as favourable with regard to the 14 and 30 day standards.

Table 5.7 Reserved Judgments compliance with time standards

	Standard	2004	2005	2006	2007	2008
% delivered within 14 days	50	42	35	33	39	36
% delivered within 30 days	75	64	51	52	62	56
% delivered within 90 days	100	88	90	80	90	90

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 5.8.

Table 5.8 Clearance Rate

	2004	2005	2006	2007	2008
	%	%	%	%	%
Class 1	98.6	96.4	119.3	113.0	98.6
Class 2	45.5	181.3	100.0	82.8	103.2
Class 3	79.8	63.5	192.4	121.7	115.4
Class 4	113.8	88.7	94.3	110.4	116.0
Class 5	119.2	83.9	131.5	78.9	85.1
Class 6	100.0	60.0	150.0	71.4	88.2
Classes 1-3	94.3	90.7	129.5	109.2	101.2
Classes 4-7	114.8	86.1	102.0	100.8	105.7
Total	97.7	89.8	123.4	107.1	102.2

These figures show that the clearance rate in 2008 has continued to be commendable. The total clearance rate for all of the Court's caseload exceeds 100% (102%), thereby decreasing the total pending caseload. The three classes in which the clearance dropped below 100%, Classes 1, 5 and 6, all experienced an increase in registrations or registrations late in the reporting year (leaving insufficient time to finalise the cases in the reporting year). Nevertheless, the Court continued to be productive in finalising cases in these classes of jurisdictions, as the figures for the backlog indicator show.

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 can increase the number of attendances although there may be 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 5.9 below compares the median number of pre-hearing attendances for each class of proceedings completed in 2006-2008.

Table 5.9 Median number of Pre-hearing Attendances by Class
(for matters completed in the reporting year)

	2006	2007	2008
Class 1	5	3	4
Class 2	3	1	1
Class 3: (all matters)	4	5	7
Compensation claims	7	10	9
Valuation objections	4	3	5
Miscellaneous	2	5	6
Class 4	4	3	4
Class 5	6	3	4
Class 6	2	2	1

The table reveals that for all classes other than Class 3, the number of pre-hearing attendances decreased from 2006 to 2007 but for Classes 1, 3, 4 and 5 increased from 2007 to 2008. These increases in 2008 in the number of pre-hearing attendances are a continued legacy of the finalisation in 2008 of older cases that, prior to 2008, already had many pre-hearing attendances. When these older cases are cleared from pending caseload, the figures should improve.

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, Commissioner decisions 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 5.10, in 2008 the Court registered 14 s 56A appeals. Of these, 10 were completed at hearing, 3 were settled pre-hearing and 1 remained pending at 31 December 2008. Of the 10 that were completed at hearing, 3 were upheld. This represents 0.2% of the number of matters finalised in 2008 in Classes 1, 2 and 3 (1241 matters).

Table 5.10 s 56A Appeal Outcomes

	2004	2005	2006	2007	2008
Total no. of appeals	14	19	12	29	14
No. finalised pre-hearing	5	7	3	8	3
No. of appeals to hearing	7	11	4	13	10
Outcome:					
Upheld	3	2	2	4	3
Dismissed	4	9	2	9	7

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

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

In 2008, 24 appeals were lodged with the Court of Appeal but no appeals were lodged with the Court of Criminal Appeal. The number of appeals to these appellate courts over the past five years is shown below in Table 5.11.

Table 5.11 Appeals to the Appellate Court

	2004	2005	2006	2007	2008
Court of Appeal					
Appeal	24	13	17	25	24
Notice of intention to appeal	43	12	30	19	8
Total	67	25	47	44	32
Court of Criminal Appeal					
Conviction and Sentence	1	0	4	2	0
Severity of Sentence	0	0	0	0	0
Sentence only	2	0	0	0	0
Crown Appeals	0	1	2	0	0
Costs	1	0	0	0	0
Stated case, section 5AE	1	0	2	0	0
Total	5	1	8	2	0

6 Education and Community Involvement

- Continuing Professional Development
 - Continuing professional development policy
 - Annual Court conference
 - Twilight seminar series
 - Judgment writing seminar
 - Other educational activities
- Education and Participation in the Community

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 (2 days) of professional development activities a year.

Annual Court conference

Six Judges and eight Commissioners attended the Land and Environment Court's Annual Conference at Camden on 8-9 May 2008. The conference was organised in partnership with the Judicial Commission of New South Wales. The two day conference programme included sessions on:

- Practice and procedure update;
- Urbanisation in the catchment: challenges and solutions;
- Judicial conduct, ethics and bias;
- Administrative law update;
- Merit appeals;
- Case law update.

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. Two seminars were held in 2008:

5 November	Magistrate Hugh Dillon, Giving Reasons for Judgment
1 December	Mr Ernest Schmatt PSM, Complaints against Judicial Officers: Causes and Lessons to be Learnt.

Judgment writing seminar

The Court organised a one day, judgment writing workshop on 15 February 2008 for the Commissioners and Acting Commissioners of the Court to enhance knowledge and skills in writing judgments.

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.

Education and Participation in the Community

The Court has a high national and international reputation as a leading specialist environment court. There is significant demand for the exchange of knowledge and experience within the national and international legal and judicial communities. Judges and Commissioners of the Court have actively participated in

capacity building and information exchange by presenting papers and participating as trainers in a variety of conferences, seminars, workshops, giving lectures at educational institutions and presiding at moot courts. The Court has also regularly hosted international and national delegations to the Court.

The Judges' and Commissioners' activities during 2008 are summarised below:

The Hon. Justice Brian John Preston, Chief Judge

Conferences and seminars

8-10 February	National Judicial College of Australia, Sentencing 2008 Conference, Canberra
5 March	Journey in Judicial Education Seminar, Professor Brettel Dawson, Judicial Commission of New South Wales, Sydney
19-22 May	National Judicial College of Australia, Phoenix Judges Program, Canberra
22-24 August	Supreme Court of New South Wales Annual Conference, Shoal Bay
22-23 September	Australian Institute of Judicial Administration, Court Quality Forum, Sydney
10-12 October	Judicial Conference of Australia Colloquium 2008, Surfers Paradise
27-31 October	LAWASIA 21 st Conference 2008, Kuala Lumpur, Malaysia
5 November	Twilight Seminar, Giving Reasons for Judgment, Magistrate Hugh Dillon, Judicial Commission of New South Wales, Sydney
12 November	Professor Ross Garnaut, Policy Response to the Global Warming Challenge lecture, University House, ANU, Canberra
26-28 November	COAT Tribunal Leadership Course, Melbourne
1 December	Twilight Seminar, Complaints against Judicial Officers: Causes and Lessons to be Learnt, Mr Ernest Schmatt PSM, Judicial Commission of New South Wales

Speaking Engagements

14 February	<i>The Land and Environment Court of New South Wales: Moving Towards a Multi-Door Courthouse</i> , University of New South Wales CLE Seminar, Environmental and Planning Law, Sydney
28 February	<i>Ecologically Sustainable Development in the Context of Contaminated Land</i> , Australian Land and Groundwater Association 1st Annual Conference, Ecoforum 2008, Gold Coast
4 March	<i>Expert Evidence</i> , Australian Property Institute NSW Division, Associate Professional Certificate in Expert Evidence, Sydney
13 March	<i>Principles of Ecologically Sustainable Development</i> , Australian Corporate Lawyers Association 2 nd Annual In-House Counsel Symposium 2008, Sydney
30 April	<i>The Establishment of an Environmental Crime Sentencing Database in New South Wales</i> , Judicial Commission of New South Wales, Sydney
15 May	<i>The Role of an Environmental Expert</i> , Environment Institute of Australia and New Zealand, Environmental Expert Course, Sydney
30 May	<i>Land and Environment Court Update</i> , Urban Development Institute of Australia (NSW) luncheon, Sydney
20 June	<i>The Role of Courts in Relation to Adaptation to Climate Change</i> , ANU Centre for Climate Law and Policy and Griffith University Socio-Legal Research Centre, Adapting to Climate Change: Law and Policy Conference, Canberra
26 June	<i>Consultation: One Aspect of Procedural Propriety in Administrative Decision Making</i> , Australian Institute of Administrative Law 2008 Seminar Series, Administrative Law: Musings from the Bench, Sydney
23 July	<i>Operating an Environment Court: The Experience of the Land and Environment Court of New South Wales</i> , Inaugural Distinguished Lecture on Environmental Law, Environmental Commission of Trinidad and Tobago, Port of Spain, Trinidad
8 August	<i>Climate Change Litigation</i> , Australian Centre for Climate and Environmental Law, Sydney Law School, University of Sydney, Sydney
15 August	<i>Principles of Ecologically Sustainable Development</i> , Young Planning Professionals Day, Department of Planning, Sydney
18 August	<i>ADR in the Land and Environment Court</i> , lecture to judicial delegation from Vietnam, Sydney
21 August	<i>Principled Sentencing for Environmental Offences</i> , University of Sydney, Faculty of Law, Pollution Law course lecture

26 August	<i>Climate Change Litigation</i> , Responsible Business Forum Breakfast Seminar, Sydney
11-13 September	Biodiversity Law Course, University of Sydney, Sydney Law School, Sydney
23 September	<i>Developing Practical Court Performance Measures</i> , AIJA Court Quality Forum, Sydney
24 September	<i>Merit Appeals in the Land and Environment Court</i> , NEERG Seminar on the Future of Appeals, Sydney
11 October	<i>Climate Change Litigation</i> , Judicial Conference of Australia Colloquium 2008, Surfers Paradise
17 October	<i>Water and Ecologically Sustainable Development in the Courts</i> , Australian Sustainability Laws and Water Management: The Future Symposium, University of South Australia, Adelaide
31 October	<i>Climate Change Litigation</i> , LAWASIA 21 st Conference 2008, Kuala Lumpur, Malaysia
5 November	Launch of Global Climate Change Law Guide (CCH), Sydney
7 November	<i>Climate Change Litigation</i> , Phillip Harris Memorial Lecture, Australian Property Institute NSW Division Seminar, Sydney
13 November	<i>Civil Justice Reform & ADR: Should Judges Mediate?</i> European Focus Group of the International Law Section and the Law Council of Australia's Standing Committee of ADR, Sydney
22-23 November	<i>Natural Resource Damage Assessment: Experience in Australia and Applying Key Tools and Methods for Awarding NRD in Asia</i> , 2008 Asian Justices Forum on the Environment: Natural Resource Damage Assessment and Environmental Capacity Building for the Judiciary, Bali, Indonesia
25 November	TAFE (NSW) – Northern Institute, Diploma of Arboriculture, Moot Court for expert witnesses

Publications

“The Land and Environment Court of New South Wales: Moving towards a multi-door courthouse – Part I (2008) 19 *Australasian Dispute Resolution Journal* 72

“The Land and Environment Court of New South Wales: Moving towards a multi-door courthouse – Part II (2008) 19 *Australasian Dispute Resolution Journal* 144

“Ecologically sustainable development in the context of contaminated land” (2008) 25 *Environmental and Planning Law Journal* 164

“The environment and its influence on the law” (2008) 82 *Australian Law Journal* 180

“Achieving consistency and transparency in sentencing for environmental offences”, Judicial Commission of New South Wales Monograph 32, June 2008

“Environmental crime sentencing database is a world first” (2008) 20(4) *Judicial Officers’ Bulletin* 27 (with Donnelly H)

“The establishment of an environmental crime sentencing database in New South Wales” (2008) 32 *Criminal Law Journal* 214 (with Donnelly H)

“The Trees (Disputes Between Neighbours) Act 2006 – background and operation” (2008) 14 *Local Government Law Journal* 84 (with Moore T)

“Consultation: One aspect of procedural propriety in administrative decision-making” (2008) 16 *Australian Journal of Administrative Law* 185

“Foreword” to Forum – Climate Change Law in Australia (2008) 14(2) *University of New South Wales Law Journal* Forum, reprinted (2008) 31(3) *University of New South Wales Law Journal* 833

“The art of judging environmental disputes” (2008) 12 *Southern Cross University Law Review* 103

“Operating an environment court: The experience of the Land and Environment Court of New South Wales” (2008) 25 *Environmental and Planning Law Journal* 385

“Feeling the heat: The emergence of climate change law” (December 2008) *Lawasia Update* 12 (with Coculescu A)

Membership of Legal, Cultural or Benevolent Organisations

Official member, Judicial Commission of New South Wales

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

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

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

Member, Australian Centre for Climate and Environmental Law (Sydney)

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

Member, Editorial Board, Local Government Planning and Environment NSW Service

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

Member, Advisory Board, TREENET

Adjunct Professor, Sydney Law School, University of Sydney

Delegations and International Assistance

19 March Delegation of Chinese lawyers arranged by the Australia-China Legal Professional Development Program, Commonwealth Attorney-General's Department

19 March Meeting Professor G Pring and C Pring, Sturm College of Law, University of Denver, Colorado, USA, Comparative international study of specialist environmental courts and tribunals in the 21st century

13 June Associate Professor Dr Ke Jiang, Research Institute of Environmental Law, Wuhan University, Wuhan, PRC, water pollution law and enforcement

29 July – 6 August Internship at Court by Judge Josephina D. Farrales, Regional Trial Court, Third Judicial Regional Branch 69, Iba, Zambales, Philippines

18 August Delegation of Judges from Vietnam, on ADR within the courts

26 August Meeting with Eloise Scotford, Corpus Christi College and Faculty of Law, University of Oxford, on judicial treatment of environmental principles in the courts

The Hon. Mr Justice David Henry Lloyd

Conferences and Seminars

28 September	Industrial Relations Commission Annual Conference, Bowral
10-12 October	Judicial Conference of Australia Colloquium, Surfers Paradise
1 December	Twilight Seminar, Complaints against Judicial Officers: Causes and Lessons to be Learnt, Mr Ernest Schmatt PSM, Judicial Commission of New South Wales

Speaking Engagements

15 February	Judgment Writing Workshop for Commissioners and Acting Commissioners of the Land and Environment Court, Sydney
3-8 August	Chair, National Judicial Orientation Programme, Broadbeach
1 September	Judgment Writing Master Class for New South Wales Judges and Magistrates, Judicial Commission of New South Wales, Sydney
5-6 September	Judgment Writing Programme, National Judicial College of Australia, Hobart
21-23 September	Judgment Writing Programme, National Judicial College of Australia, Adelaide

Publications

Judicial Decisions – Crafting Clear Reasons (2008), National Judicial College of Australia

Membership of Legal, Cultural or Benevolent Organisations

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

Member, National Judicial College of Australia Consultative Committee

Chair, Steering Committee, National Judicial Orientation Programme, National Judicial College of Australia

Member, Governing Council of the Judicial Conference of Australia

Member, Synod of the Anglican Church of Australia, Diocese of Sydney

The Hon. Justice Terence William Sheahan AO

Conferences and Seminars

1-3 September	Judgment Writing Master Class for New South Wales Judges and Magistrates, Judicial Commission of New South Wales, Sydney
5 November	Twilight Seminar, Giving Reasons for Judgment, Magistrate Hugh Dillon, Judicial Commission of New South Wales

Speaking Engagements

5 June	<i>ADR in the Court</i> , Women in Development Seminar, Urban Development Institute of Australia
25 July	<i>ADR in the Court</i> , Marsdens Annual Local Government, Planning Environmental Law Conference
9 September	<i>How Judges make and write decisions and ensure natural justice</i> , lecture to Planning Law students, University of Sydney
12 November	<i>Litigation</i> , lecture to Strathfield Rotary Club

Delegations and International Assistance

18 August	Delegation of Judges from Vietnam, on ADR within the courts
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The Hon. Justice Nicola Hope Margaret Pain

Conferences and Seminars

1 December	Twilight Seminar, Complaints against Judicial Officers: Causes and Lessons to be Learnt, Mr Ernest Schmatt PSM, Judicial Commission of New South Wales
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Speaking Engagements

15 May	<i>Women in Law</i> , address to University of Technology Sydney's Law Students' Society, Speed Dating Mentoring Night sponsored by the Women Lawyers' Association of New South Wales, Sydney
28-30 May	<i>Operation of the Land and Environment Court in NSW</i> , address to Queensland Environmental Law Association
7 July	<i>Do ecologically sustainable development principles matter? A view from the bench</i> , address to the Australian Law Teachers Association, Townsville

Publications

Book review of R Lyster et al, *Environmental and Planning Law in New South Wales* (Federation Press, 2007), (2008) 25 EPLJ 218

The Hon. Justice Jayne Margaret Jagot

Commissions in Other Courts

May Acting Judge of the Supreme Court of New South Wales (Equity Division)

Speaking Engagements

6 March *Bridging the Gap – Planning and the Law*, Launch of NSW Chapter, Planning Law Chapter, Planning Institute of Australia

9 May *Case Law Update – merits appeals*, Land and Environment Court Conference, Camden

The Hon. Justice Peter Meldrum Biscoe

Commissions in Other Courts

May Acting Judge of the Supreme Court of New South Wales (Equity Division)

Conferences and Seminars

1-3 September Judgment Writing Master Class for New South Wales Judges and Magistrates, Judicial Commission of New South Wales, Sydney

5 November Twilight Seminar, Giving Reasons for Judgment, Magistrate Hugh Dillon, Judicial Commission of New South Wales

1 December Twilight Seminar, Complaints against Judicial Officers: Causes and Lessons to be Learnt, Mr Ernest Schmatt PSM, Judicial Commission of New South Wales

Speaking Engagements

13 May *The Land and Environment Court Rules 2007*, Environment and Planning Law Association (NSW) Twilight Seminar, Sydney

15 May *Court Practice and Procedure for Experts*, Environment Institute of Australia & New Zealand, Professional Environmental Practice Course Program, Sydney

13 October *Land and Environment Court Practice Directions – How they Relate to Compensation Cases*, Australian Property Institute Seminar on Just Terms Compensation, Sydney

18 October	<i>JIRS for Dummies</i> , Environment and Planning Law Association (NSW) Annual Conference, Bangalow
21 November	<i>Global Warming, Climate Change and the Courts</i> , address to Pittwater High School Solar Panel Project students, Pittwater
28 November	Adjudicator, valuation moot between University of Technology and University of Queensland, organised by The Royal Institution of Chartered Surveyors
4 December	<i>Emissions Trading Law</i> commentary at seminar on Emissions Trading Law, Bar Association of New South Wales

Publications

Freezing and Search Orders: Mareva and Anton Piller Orders, 2nd ed, 2008, LexisNexis

Membership of Legal, Cultural or Benevolent Organisations

Member, NSW Attorney General's Working Party on Civil Procedure

Member, Caselaw Governance Committee

Dr John Roseth, Senior Commissioner

Conferences and Seminars

15 February	Judgment Writing Workshop for Commissioners of the Land and Environment Court of New South Wales, Sydney
5 November	Twilight Seminar, Giving Reasons for Judgment, Magistrate Hugh Dillon, Judicial Commission of New South Wales
1 December	Twilight Seminar, Complaints against Judicial Officers: Causes and Lessons to be Learnt, Mr Ernest Schmatt PSM, Judicial Commission of New South Wales

Speaking Engagements

17-18 October	<i>The keys to effective pre-trial and hearing preparation and presentation of merit appeals (court hearings, onsite hearings and site visits)</i> , Environmental and Planning Law Association (NSW) Annual Conference, Bangalow
21 November	<i>Overview of the Land and Environment Court of New South Wales</i> , presentation to the Royal Australian Institute of Architects, Sydney

Mr Trevor Bly, Commissioner

Conferences and Seminars

15 February	Judgment Writing Workshop for Commissioners of the Land and Environment Court of New South Wales, Sydney
5 November	Twilight Seminar, Giving Reasons for Judgment, Magistrate Hugh Dillon, Judicial Commission of New South Wales
1 December	Twilight Seminar, Complaints against Judicial Officers: Causes and Lessons to be Learnt, Mr Ernest Schmatt PSM, Judicial Commission of New South Wales

Mr Robert Hussey, Commissioner

Conferences and Seminars

15 February	Judgment Writing Workshop for Commissioners of the Land and Environment Court of New South Wales, Sydney
5 November	Twilight Seminar, Giving Reasons for Judgment, Magistrate Hugh Dillon, Judicial Commission of New South Wales
1 December	Twilight Seminar, Complaints against Judicial Officers: Causes and Lessons to be Learnt, Mr Ernest Schmatt PSM, Judicial Commission of New South Wales

Speaking Engagements

22 May	<i>Role of the Land and Environment Court of New South Wales in Development Appeals</i> , address to Urban Development Institute of Australia (NSW), Customised Professional Development course
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Mr Kevin Hoffman, Commissioner

Conferences and Seminars

22 January	Planning Reform in NSW, seminar by Chris Johnson, Australian Institute of Architects
15 February	Judgment Writing Workshop for Commissioners of the Land and Environment Court of New South Wales, Sydney
12 March	Shaping the Global City, Professor Jon Lang, UNSW Inaugural Paul Reid Lecture on Urban Design
18 September	The End of Suburbia, seminar by Kumamoto Artopolis, Royal Australian Institute of Architects, Sydney
7-11 October	Royal Australian Institute of Architects Annual Conference – “Architecture an Organic Revelation”
23 October	Our Vulnerable Earth, Dr Rajenda Pachauri, the Wallace Wurth Memorial Lecture, University of New South Wales
24 October	Seminar to launch “D.City – an Agency to Connect Global Research Towards Data Solutions for Eco Cities”, Customs House, Sydney
5 November	Twilight Seminar, Giving Reasons for Judgment, Magistrate Hugh Dillon, Judicial Commission of New South Wales
6 November	Planning Institute of Australia Awards for Excellence
1 December	Twilight Seminar, Complaints against Judicial Officers: Causes and Lessons to be Learnt, Mr Ernest Schmatt PSM, Judicial Commission of New South Wales
12 December	Improving the NSW Planning System, workshop on the new NSW Housing Code by the NSW Department of Planning

Speaking Engagements

15 April	Presentation of Graduands Annual Award for Urban Design, School of Architecture, University of Newcastle
July	Presentation of two Scholarships in the Master of Urban Development and Design Program, Faculty of the Built Environment, University of NSW, Sydney

Membership of Professional, Cultural or Benevolent Organisations

University of Newcastle Faculty Advisory Board member

University of Newcastle School of Architecture and the Built Environment, assessment of graduands urban design projects

Sponsor of two University of New South Wales Urban Design Scholarships, The Faculty of the Built Environment, Master of Urban Development and Design

Sponsor of University of Newcastle Graduands Urban Design Award, The School of Architecture and the Built Environment

Mr Graham Brown, Commissioner

Conferences and Seminars

15 February Judgment Writing Workshop for Commissioners of the Land and Environment Court of New South Wales, Sydney

5 November Twilight Seminar, Giving Reasons for Judgment, Magistrate Hugh Dillon, Judicial Commission of New South Wales

1 December Twilight Seminar – Complaints against Judicial Officers: Causes and Lessons to be Learnt, Mr Ernest Schmatt PSM, Judicial Commission of New South Wales

Speaking Engagements

16 May *Modes of courtroom evidence*, Environment Institute of Australia and New Zealand Conference, Sydney

17-18 October The keys to effective pre-trial and hearing preparation and presentation of merit appeals (pre-trial process in Class 1, 2 and 3 appeals), Environmental and Planning Law Association (NSW) Annual Conference, Bangalow

Ms Jan Murrell, Commissioner

Conferences and Seminars

15 February	Judgment Writing Workshop for Commissioners of the Land and Environment Court of New South Wales, Sydney
26 August	Lecture to Masters students in urban planning, University of Sydney, Sydney
8 October	Adjudicator, Young Lawyers and Young Planners Moot
17-18 October	Environmental and Planning Law Association (NSW) Annual Conference, Bangalow
1 December	Twilight Seminar, Complaints against Judicial Officers: Causes and Lessons to be Learnt, Mr Ernest Schmatt PSM, Judicial Commission of New South Wales

Ms Annelise Tuor, Commissioner

Conferences and Seminars

15 February	Judgment Writing Workshop for Commissioners of the Land and Environment Court of New South Wales, Sydney
5 November	Twilight Seminar, Giving Reasons for Judgment, Magistrate Hugh Dillon, Judicial Commission of New South Wales
1 December	Twilight Seminar, Complaints against Judicial Officers: Causes and Lessons to be Learnt, Mr Ernest Schmatt PSM, Judicial Commission of New South Wales

Speaking Engagements

17-18 October	<i>The keys to effective pre-trial and hearing preparation and presentation of merit appeals (s 34 conciliation conferences)</i> , Environmental and Planning Law Association (NSW) Annual Conference, Bangalow
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Mr Tim Moore, Commissioner

Conferences and Seminars

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| 15 February | Judgment Writing Workshop for Commissioners of the Land and Environment Court of New South Wales, Sydney |
| 7 November | Climate Change Litigation, Phillip Harris Memorial Lecture, Australian Property Institute Seminar |
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Speaking Engagements

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| 19 & 21 February | <i>Trees (Disputes Between Neighbours) Act 2006</i> , paper delivered to the Legal Information Access Centres Forum, State Library of NSW, Sydney |
| 4 March | Australian Property Institute, Associate Professional Certificate in Expert Evidence, Australian Property Institute Course |
-

Training

- Completed Graduate Diploma in Planning – University of Technology, Sydney
-
- Completed Practitioners Certificate in Mediation – Institute of Arbitrators and Mediators Australia
-

Publications

- “The *Trees (Disputes Between Neighbours) Act 2006* – background and operation”, (2008) 14 *Local Government Law Journal* 84 (with Preston B J)
-

Dr Mark Taylor, Commissioner

Conferences and Seminars

- 5 November Twilight Seminar, Giving Reasons for Judgment, Magistrate Hugh Dillon, Judicial Commission of New South Wales
-
- 1 December Twilight Seminar, Complaints against Judicial Officers: Causes and Lessons to be Learnt, Mr Ernest Schmatt PSM, Judicial Commission of New South Wales
-

Speaking Engagements

- 16-18 October *Legislative and policy challenges for the protection of biodiversity and bushland habitats: An evidence-based approach*, presentation to the Environmental Planning and Law Association Annual Meeting, Byron Bay, NSW
-
- 22 October *Environmental lead in Mount Isa – sources, distribution and human health risks*, lecture to Bachelor of Health students, Macquarie University.
-

Publications

- Hardwick, S., Stokes, H., Findlay, S, Taylor, M., Gillings, M. 2008, "Quantification of class 1 integron abundance in natural environments using real time quantitative PCR", *FEMS Microbiology Letters*, 278 (2), 207-212
-
- Hanley, C. and Taylor, M.P. 2008, "Wetlands minimise algal growth in a horticultural center", *Water*. 35 (6), 98-103
-
- Swanson, K M, Watson, E, Aalto, R, Bera, M T, Marshall, A, Taylor, M P, Apte, S, Dietrich, W E, 2008, "Sediment load and floodplain deposition rates: Comparison of the Fly and Strickland Rivers, Papua New Guinea", *Journal of Geophysical Research*, 113, F01S03, doi:10.1029/2006JF000623
-
- Taylor, M P and Hudson-Edwards, K A, 2008, "The dispersal and storage of sediment associated metals in an arid river system: the Leichhardt River, Mt Isa, Queensland", *Environmental Pollution*, 152, 193-204
-
- Kuypers, T, Taylor, M P and Mackay, A, "Natural clarification of potable water in a semiarid catchment. Access to sanitation and safe water: global partnerships and local actions" 33rd Water Engineering Development Centre International Conference, 7-11 April 2008, Accra, Ghana
-
- Mackay, A and Taylor, M P, "Water Chemistry and Potential Environmental Toxicology Risks Associated with Floodwaters Downstream of a Major Pb-Zn-Ag and Cu mine: Mount Isa, North-West, Queensland", Water Down Under 2008 Conference, 15-17 April 2008, Adelaide, Australia
-

Appendices

Appendix 1 – Court Users Group

Appendix 2 – Court Committees

Appendix 1 – Court Users Group

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 2008

The Hon. Justice Brian Preston, Chief Judge (Chair)	Land and Environment Court
The Hon. Justice Jayne Jagot	Land and Environment Court (to 2 September)
Dr John Roseth, Senior Commissioner	Land and Environment Court
Ms Susan Dixon, Registrar	Land and Environment Court
Mr Peter Callaghan SC	Institute of Arbitrators and Mediators
Mr Grant Christmas	Local Government Association of New South Wales and Shires Association of New South Wales
Mr James Eager	Australian Property Institute
Mr Ross Fox	Department of Environment and Climate Change
Ms Katherine Gardner	Law Society of New South Wales
Mr Chris Hallam	Engineers Australia
Mr Ian Hemmings	Environment and Planning Law Association
Mr James Johnson	Nature Conservation Council of New South Wales
Dr Jeff Kildea	New South Wales Bar Association
Mr Aaron Gadiel	NSW Urban Taskforce
Ms Helen MacFarlane	Urban Development Institute of Australia
Mr Warwick Mayne-Wilson	Australian Institute of Landscape Architects
Ms Louise McAndrew	Department of Planning
Ms Jacqueline Moore	Department of Water and Energy

Mr Michael Neustein	Royal Australian Institute of Architects (NSW Chapter)
Mr Stuart Simington	Housing Industry Association
Cr Michael Reymond	Local Government Representatives
Ms Kirsty Ruddock	Environmental Defender's Office
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)
Ms Mary-Lynne Taylor	Urban Development Institute of Australia
Ms Julie Walsh	Law Society Development and Planning Committee
Mr Colin Weatherby	Institution of Surveyors New South Wales
Mr Ian Woodward	Local Government Lawyers Group

Appendix 2 – Court Committees

Court Committees

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

Rules Committee

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

Members

The Hon. Justice Brian John Preston,
Chief Judge

The Hon. Justice Terence William Sheahan
AO (from 3 September)

The Hon. Justice Jayne Margaret Jagot
(to 2 September)

The Hon. Justice Peter Meldrum Biscoe

Education Committee

The Education Committee organised the Annual Conference for the Judges and Commissioners of the Court.

Members

The Hon. Mr Justice David Henry Lloyd
(Chair)

Mr Trevor A Bly, Commissioner

Ms Susan Dixon, Registrar

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

Ms R Sheard, Conference Co-ordinator,
Judicial Commission of New South Wales

Library Committee

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

Members

The Hon. Justice Nicola Hope Margaret Pain

The Hon. Justice Jayne Margaret Jagot
(to 2 September)

Ms Jan Murrell, Commissioner

Ms Julie Whitley, Court Librarian

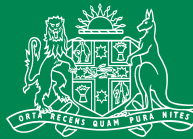
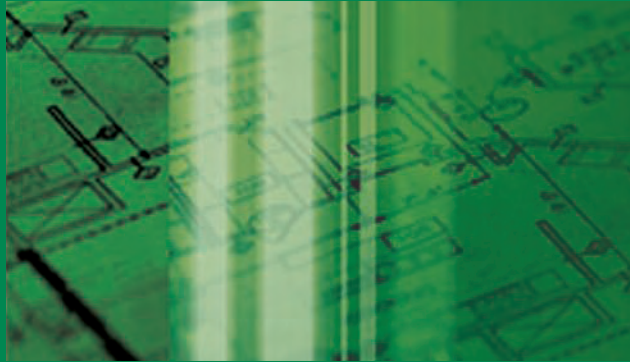
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