



Mining Matters in the Land and Environment Court of NSW



Transfer of mining jurisdiction to Land and Environment Court of NSW (“LEC”)

- From 7 April 2009, the LEC will have jurisdiction to hear and dispose of proceedings under the *Mining Act* 1992 and the *Petroleum (Onshore) Act* 1991.

Allocation of mining matters to different courts

- Mining matters commenced **before** 7 April 2009 in the Mining Warden's Court will be heard and determined by the Local Court
 - Acting Magistrate John Bailey (the former Chief Mining Warden) will exercise this jurisdiction until 30 June 2009
- All mining matters **on or after** 7 April 2009 need to be commenced in the Land and Environment Court and will be heard and determined by the Land and Environment Court.

Allocation of proceedings to classes of jurisdiction

- All civil proceedings under the *Mining Act* 1992 or the *Petroleum (Onshore) Act* 1991 are allocated to a new Class 8 of the LEC's jurisdiction (*Land and Environment Court Act* 1979: s 21C)
- All criminal proceedings under those Acts are allocated to the existing Class 5 of the LEC's jurisdiction (*Land and Environment Court Act*: s 21)

Exercise of civil jurisdiction

- Civil proceedings in Class 8 can be heard and determined by:
 - a judge of the Court or
 - one or more commissioners, each of whom is an Australian lawyer (*Land and Environment Court Act. s 33(2A)*) and who, whilst exercising the Class 8 jurisdiction, may be called a “Commissioner for Mining” (*Land and Environment Court Act. s 12(2AC)*); or
 - a judge assisted by one or more commissioners (*Land and Environment Court Act. s 43*)

Referral and removal of proceedings from a commissioner to a judge

- Proceedings that are before a commissioner may be referred or removed for hearing and determination by a judge (*Land and Environment Court Act. s 42*)

Exercise of criminal jurisdiction

- Criminal proceedings in Class 5 of the Court's jurisdiction can be exercised by a judge of the Court (*Land and Environment Court Act: s 33(2)*).

Registrars authorised to exercise certain functions

- The Registrars may, by delegation from the Chief Judge, exercise certain functions under the *Civil Procedure Act 2005* and uniform rules and the *Land and Environment Court Act 1979* and Court rules.

Court personnel relevant to mining matters

- Judges: Chief Judge, four judges and one additional judge to be appointed in the next 2 months to fill a vacancy.
- Commissioners (who are Australian lawyers): Senior Commissioner Tim Moore, Acting Commissioner John Bailey (current Mining Warden) and two full time Commissioner positions being advertised, one specifically to be an Australian lawyer to act as a Commissioner for Mining.

Court rules applicable to mining matters

- Legislation transferring jurisdiction repealed the Mining Warden's Court Rules.
- Civil proceedings in Class 8 are governed by *Civil Procedure Act 2005* and *Uniform Civil Procedure Rules 2005*.
- Criminal proceedings in Class 5 are governed by *Land and Environment Court Rules 2007* and adopted parts (including Part 75) of the *Supreme Court Rules 1970*.

Court may dispense with rules in particular cases

- The Court may, by order, dispense with any requirements imposed by rules of court if satisfied that it is appropriate to do so in the circumstances of the case (*Civil Procedure Act*: s 14 and *Land and Environment Court Act*: s 75)

Originating process to commence proceedings

- Civil proceedings in Class 8:
 - Summons or statement of claim (*Uniform Civil Procedure Rules 2005 Pt 6 r 6*)
- Criminal proceedings in Class 5:
 - Summons (*Land and Environment Court Rules 2007 Pt 5 r 5.3*)

Filing originating process and documents

- Originating process and documents may be filed:
 - At the Court's Registry at Level 4, 225 Macquarie Street, Sydney.
 - At any Local Court Registry throughout NSW, which are agents of the Court (*Land and Environment Court Rules 2007 Pt 2 r 2.5*)
 - Electronically through the e-Court system (proposed subject to funding).

Court fees applicable

- Civil proceedings in Class 8:
 - Fee to commence proceedings is the same as the fee to commence proceedings in the Local Court, namely \$189 for individuals and \$378 for corporations.
 - Fees for other steps and documents are in the Schedule of Court Fees: 1 July 2008 to 30 June 2008.
- Criminal proceedings in Class 5:
 - Fee to commence proceedings is \$718
 - Fees for other steps and documents are in the Schedule of Court Fees.
- Waiver, postponement or remission of fees – application can be made to Registrar: see request form.

Just, quick and cheap resolution of civil proceedings

- The Court is to seek to give effect to the overriding purpose to facilitate the just, quick and cheap resolution of the real issues in civil proceedings in Class 8 (*Civil Procedure Act*: s 56(1), (2))
- Parties to civil proceedings are under a duty to assist the Court to further this overriding purpose (*Civil Procedure Act*: s 56(3))

Case management of civil proceedings

- To further the overriding purpose, civil proceedings are to be managed by the Court having regard to the following objects:
 - the just determination of the proceedings;
 - the efficient disposal of the business of the Court;
 - the efficient use of available judicial and administrative resources;
 - the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable to the parties.

Mining matters Lists

- Civil proceedings in Class 8 will be case managed in a Class 8 List.
- The Class 8 List will be managed by a Commissioner for Mining:
 - Initially, Acting Commissioner John Bailey (the former Chief Mining warden) will manage the List with a Commissioner for Mining taking over after 30 June 2009.
- Summonses commencing proceedings will be returnable at a directions hearing in the Class 8 List.
- A list of dates for directions hearings for the Class 8 List will be set and published by the Court.

Mining matters Lists

- Criminal proceedings in Class 5 are managed in a Class 5 List
- The Class 5 List is managed by a Judge on a Friday.
- Summonses are returnable in the Class 5 List.

Accessibility of the Court

- The Court has adopted 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
 - facilitating public participation

Geographical accessibility of the Court

- The Court seeks to achieve geographical accessibility by careful selection of the appropriate means and the convenient venues for hearings (proximate to the place and parties of the dispute).

Directions hearing and interlocutory hearings

- Directions hearings and interlocutory hearings can be conducted by three means:
 - a) actual hearing in court;
 - b) by telephone in a specially equipped court with telephone conference facilities and ability to record the hearing;
 - c) by e-Court where representatives of the parties post electronic requests to the Registrar using the internet.

Final hearings

- Final hearings can be held:
 - a) in Sydney, at the Court (225 Macquarie Street, Sydney);
 - b) in Local Courts in suburban, regional and country areas throughout NSW;
 - c) in other venues as may be appropriate, including public halls and on site.

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 including legislation and court rules, practice notes and standard directions;
 - forms and fees;
 - Court lists;
 - judgments;
 - publications including Annual Reviews;
 - speeches and media releases; and
 - self-help information.

Information on the Court

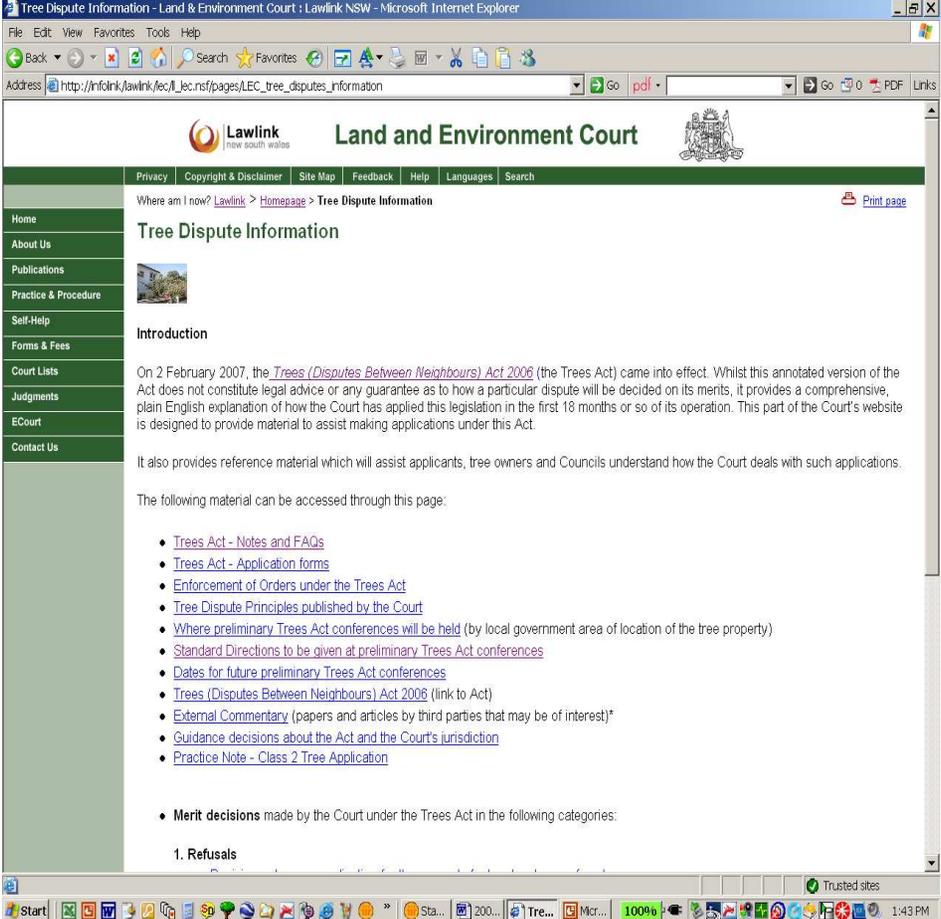
The Court provides an extensive range of information on its website. The URL of the Court's website is www.lawlink.nsw.gov.au/lec

The screenshot shows the homepage of the Land and Environment Court of NSW Online. The browser window title is "Homepage - Land & Environment Court : Lawlink NSW - Microsoft Internet Explorer". The address bar shows the URL: http://infolink.lawlink/lec/lec.nsf/pages/LEC_index. The website features a navigation menu with links for Privacy, Copyright & Disclaimer, Site Map, Feedback, Help, Languages, and Search. A sidebar on the left contains links for About Us, Publications, Practice & Procedure, Self-Help, Forms & Fees, Court Lists, Judgments, ECourt, and Contact Us. The main content area includes a welcome message, a "Quick Links" section with links to E-Court Login, Court Directory, Registry Services, Planning Principles, FAQs, Appeal Info Sheets, Tree Disputes, Speeches and Papers, and Policies. A "Need Legal Help?" section provides links to a Legal referral guide and LawAccess NSW. The "News and Announcements" section lists several recent updates, including a judgment in *Double Bay Marina Pty Ltd v Woollahra Municipal Council* [2009] NSWLEC 1001, a new instrument of delegation, a paper on sentencing databases, a seminar on Emissions Trading Law, and an announcement regarding filing fees and sealed copies.

Date	News and Announcements
12 March 2009	The judgment in <i>Double Bay Marina Pty Ltd v Woollahra Municipal Council</i> [2009] NSWLEC 1001 at [47]-[52] which proposed a planning principle, concerning discerning the public interest in development applications, has not been adopted by the Court and will not be published on the Court's website as a planning principle of the Court.
11 March 2009	The Chief Judge has made a new instrument of delegation of powers in functions to the Registrars under s 13 of the <i>Civil Procedure Act 2005</i> , effective 11 March 2009.
9 March 2009	Latest Department of Housing median sales prices for all dwellings (September Quarter 2008)
8 February 2009	A judge's perspective on using sentencing databases , a paper delivered by Justice Brian J Preston to "Judicial Reasoning: Art or Science?" Conference.
4 December 2008	Paper entitled " Emissions Trading Law ", presented by Justice Biscoe on 4 December 2008 at a seminar on Emissions Trading Law organised by the NSW Bar Association.
19 November 2008	Announcement: With effect from 1 December 2008, if a party requires a sealed copy (or copies) of a judgment or order, the party is to file the required number of copies of UCPR Form 43 (judgment or order) together with the prescribed filing fee (currently \$48) for each copy. The copy (or copies) will be sealed by the Registrar in chambers and sent back to the party.
19 November 2008	This practice is in accordance with the practice of the Supreme Court. The amount of the filing fee is prescribed by the Civil Procedure Regulation 2005 Schedule 1 Part 5 item 6.
4 November 2008	Latest Department of Housing median sales prices for all dwellings (June Quarter 2008) The Keys to the Effective Pre-Trial and Hearing, Preparation and Presentation of Merit Appeals, including s 34; papers delivered by Senior Commissioner Roseth , Commissioner Brown and Commissioner Tuor at the Environment and Planning Law Conference, October

Trees (*Dispute Between Neighbours*) Act 2006 – Example 1

The Court has had a new jurisdiction – dealing with trees disputes – since early 2007. The Court has developed an extensive range of plain English material on the website to help people understand how the Court has implemented this jurisdiction.



The screenshot shows a web browser window displaying the 'Tree Dispute Information' page on the Land and Environment Court website. The page title is 'Tree Dispute Information - Land & Environment Court : Lawlink NSW - Microsoft Internet Explorer'. The address bar shows the URL: http://info.link/lawlink/lec/lec.nsf/pages/LEC_tree_disputes_information. The page header includes the Lawlink logo and the text 'Land and Environment Court'. A navigation menu is visible on the left side, with 'Home' selected. The main content area is titled 'Tree Dispute Information' and includes an 'Introduction' section. The introduction text states: 'On 2 February 2007, the *Trees (Disputes Between Neighbours) Act 2006* (the Trees Act) came into effect. Whilst this annotated version of the Act does not constitute legal advice or any guarantee as to how a particular dispute will be decided on its merits, it provides a comprehensive, plain English explanation of how the Court has applied this legislation in the first 18 months or so of its operation. This part of the Court's website is designed to provide material to assist making applications under this Act.' Below this, it says: 'It also provides reference material which will assist applicants, tree owners and Councils understand how the Court deals with such applications. The following material can be accessed through this page:' followed by a list of links:

- [Trees Act - Notes and FAQs](#)
- [Trees Act - Application forms](#)
- [Enforcement of Orders under the Trees Act](#)
- [Tree Dispute Principles published by the Court](#)
- [Where preliminary Trees Act conferences will be held](#) (by local government area of location of the tree property)
- [Standard Directions to be given at preliminary Trees Act conferences](#)
- [Dates for future preliminary Trees Act conferences](#)
- [Trees \(Disputes Between Neighbours\) Act 2006](#) (link to Act)
- [External Commentary](#) (papers and articles by third parties that may be of interest)*
- [Guidance decisions about the Act and the Court's jurisdiction](#)
- [Practice Note - Class 2 Tree Application](#)

Below the list, it says: '• Merit decisions made by the Court under the Trees Act in the following categories:' followed by a numbered list:

1. Refusals

Trees (Dispute Between Neighbours) Act 2006 – Example 2

- We provide links to all tree judgments in relevant categories

+ **Mark** judgments made by the Court under the Trees Act in the following categories:

1. Referrals

- [Decisions where an application for the removal of a tree has been refused,](#)
- [Decisions where an application for compensation has been refused,](#)
- [Decisions where an application for the removal of a tree and an application for compensation have been refused.](#)

2. Appeals

- [Decisions where an order has been made for the removal of a tree,^{***}](#)
- [Decisions where an order has been made for planting or other work on a tree,^{***}](#)
- [Decisions where an order has been made for structural work,^{***}](#)
- [Decisions where an order has been made for remedial works,^{***} and^{***}](#)
- [Decisions where other preservative or protection orders have been made.^{***}](#)

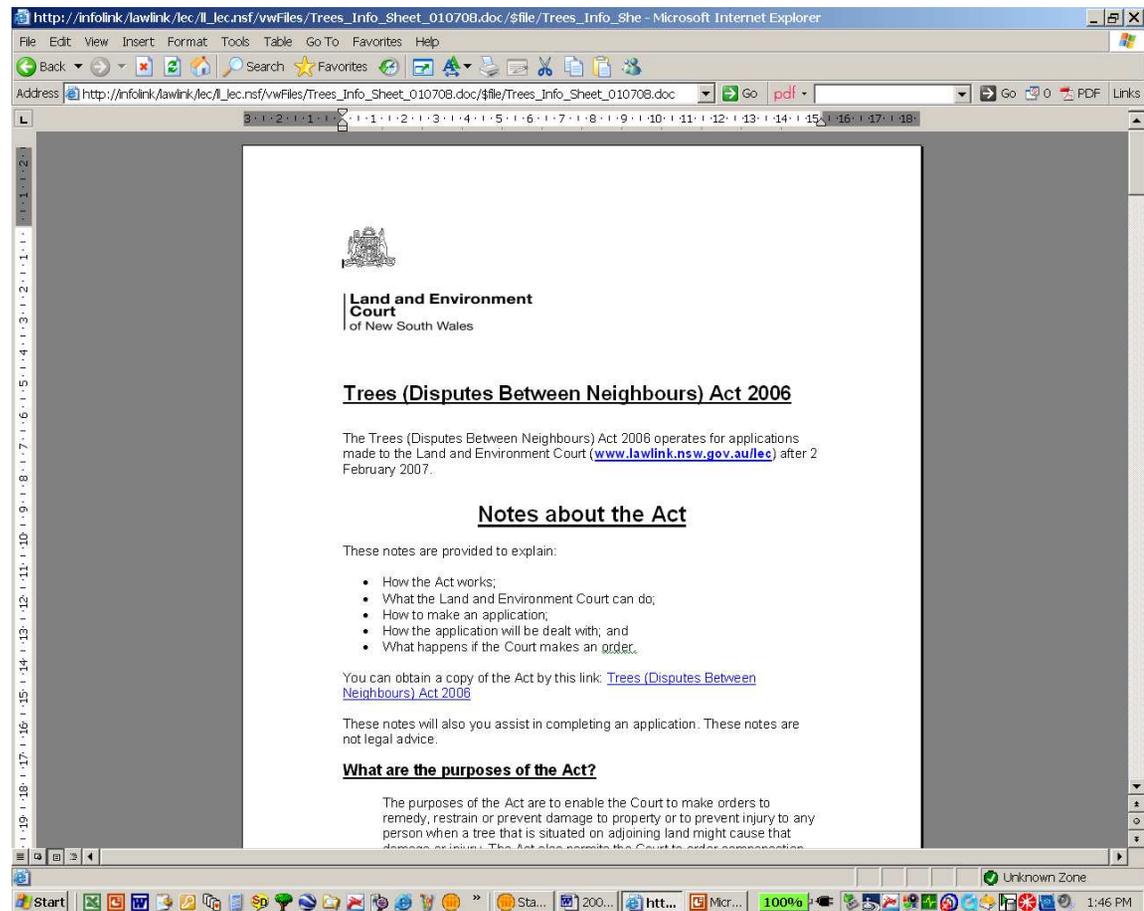
* Disclaimer: These lists are provided for the purposes of information only, and the information contained therein should not be understood as representing the views or position of the Court on any matter.

** These may also include orders for compensation or remedial works

*** These may also include orders for compensation.

Trees (Dispute Between Neighbours) Act 2006 – Example 3

The Court provides a plain English Questions and Answers section



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Land and Environment Court of New South Wales

Trees (Disputes Between Neighbours) Act 2006

The Trees (Disputes Between Neighbours) Act 2006 operates for applications made to the Land and Environment Court (www.lawlink.nsw.gov.au/lec) after 2 February 2007.

Notes about the Act

These notes are provided to explain:

- How the Act works;
- What the Land and Environment Court can do;
- How to make an application;
- How the application will be dealt with; and
- What happens if the Court makes an order.

You can obtain a copy of the Act by this link: [Trees \(Disputes Between Neighbours\) Act 2006](#)

These notes will also assist you in completing an application. These notes are not legal advice.

What are the purposes of the Act?

The purposes of the Act are to enable the Court to make orders to remedy, restrain or prevent damage to property or to prevent injury to any person when a tree that is situated on adjoining land might cause that damage or injury. The Act also permits the Court to order compensation.

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Trees (Dispute Between Neighbours) Act 2006 – Example 4

The Court provides an annotated Trees Act with links to cases

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Trees (Disputes Between Neighbours) Act 2006 No 126

New South Wales

The provisions of the *Trees (Disputes Between Neighbours) Act 2006* are in black typeface below. Notes in red are provided by the Land and Environment Court and notes, in purple, to s 18 were included by the Parliament.

The Court has provided the notes in red in order to assist understanding of the approach which the Court has taken to various provisions of the Act. These notes are provided for guidance only and do not constitute legal advice or a judgment on the interpretation or application of the provisions of the Act.

The notes provided to s. 18 were included by Parliament and are not a commentary made by the Court.

The notes provided by the Court in red do not form part of the Act nor do the notes to s. 18 form part of the Act.

http://infolink.lawlink.nsw.gov.au/vwFiles/Trees_Act_for_annotation-loaded-green_lines_out... - Microsoft Internet Explorer

3 Definitions

(1) In this Act:

council has the same meaning as it has in the [Local Government Act 1993](#).

interfere with a tree includes cut down, fell, remove, kill, destroy, poison, ringbark, uproot or burn a tree or any part of a tree (including its roots).

owner of land includes the occupier of the land.

the Court means the Land and Environment Court.

tree includes any woody perennial plant, any plant resembling a tree in form and size, and any other plant prescribed by the regulations.

For a general commentary on "tree" in this Act, see [Robson v Leischke \[2008\] NSWLEC 152, \[2008\] LGERA 280](#) at paras 137 to 140.

Although bamboo is a grass, bamboo has been brought within the scope of the Act (see [Trees \(Disputes Between Neighbours\) Regulation 2007](#)).

The Court has held that a vine is not a tree (see [Buckingham v Ryder \[2007\] NSWLEC 458](#)).

In [Robson v Leischke \[2008\] NSWLEC 152, \[2008\] LGERA 280](#) at para 147, Preston CJ also dealt with how the word "tree" should be considered when only parts of trees or dead trees remained. His Honour said:

The concept of a "tree" is wide enough to include a tree that has been reduced to a bare trunk or a stump that is still connected to the soil of the land. The concept of a tree also includes a tree that has died. See [Ridley v Gyer \[2007\] NSWLEC 220](#) (20 April 2007) (Moore C, Hussey C, Fakes AC); [Ashworth v Joyce \[2007\] NSWLEC 357](#) (15 June 2007) (Moore C, Thyer AC); and [Coutts v Haydon \[2007\] NSWLEC 963](#) (20 December 2007) (Fakes AC).

(2) Notes included in this Act do not form part of this Act.

4 Act applies to trees on certain land

Providing information in the future for the Court's mining jurisdictions

- The Court proposes to develop a separate part of its website to be a Mining jurisdiction practice collection.
- Over time, the Court proposes to:
 - scan and publish past decisions of the Chief Mining Warden;
 - produce a plain English “Questions and Answers” guide to the Court's mining jurisdiction; and
 - after there are sufficient cases to provide a reasonable data foundation, provide an annotated Mining Act of the Court's decisions in its mining jurisdictions.

Responsiveness to users' needs

- The Court seeks to be responsive to the needs and expectations of court users by:
 - taking a user orientated approach;
 - ensuring accessibility of the Court;
 - developing working relationships with legal, professional and other partners;
 - maintaining a Court Users Group which meets quarterly to maintain communication with and feedback from Court users on the Court and its performance.
 - establishing a special Court Users Group for mining matters.

Appearing in the Court

- A party may appear in the Court:
 - in person;
 - by an Australian legal practitioner; and
 - in Class 8, by leave of the Court, by an agent authorised in writing by the person (*Land and Environment Court Act*: s 63).

Legal representation

- Legal representation varies depending on the class of jurisdiction and the nature and complexity of the matter.
- Where there is legal representation, solicitors regularly appear without briefing counsel, although counsel will appear in complex matters.
- A number of parties are self-represented or appear by agent.

Evidence in the proceedings

- The rules of evidence apply in both civil proceedings in Class 8 and criminal proceedings in Class 5.
- The Court has pioneered innovative means of receiving evidence, including use of parties' single experts, joint conferencing and joint report of parties' experts, concurrent evidence of parties' experts and use of videoconferencing to receive remote evidence.

Timely finalisation of proceedings

- The Court is committed to the timely finalisation of all proceedings in the Court.
- The Court had adopted performance indicators of effectiveness and efficiency including backlog indicator, time standards for delivery of judgments, clearance rates and attendance indicator.
- The Court monitors and reports on its performance by reference to these indicators eg. Annual Reviews.

Judgments

- All judgments of the Court are published.
- Reserved judgments are delivered by written reasons for judgment.
- Oral, ex tempore judgments are transcribed, edited and published as written reasons for judgment.
- All judgments are available through the Court's website on Caselaw and Austlii.
- Past judgments of the Mining Warden's Court will be scanned, uplifted and published on the Court's website.

Appeals

- A party to civil proceedings in Class 8 may appeal against an order or decision of the Court on a question of law only (*Land and Environment Court Act* ss 56A and 57)
 - An appeal against a Commissioner's decision lies to a judge of the Court
 - An appeal against a Judge's decision lies to the Court of Appeal.
- Appeals in criminal proceedings lie to the Court of Criminal Appeal.