

The Land and Environment Court of NSW



Annual Review

2019

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## Foreword from the Chief Judge

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

Traditionally, court administration performance is evaluated by quantitative output indicators based on the registrations (filings), finalisations, pending caseload and time taken between filing and finalisation. Prior to 2006, the Court's Annual Reviews had focused solely on these performance indicators. This year's Review continues the practice adopted in the last 13 years' Annual Reviews of reporting on an expanded range of quantitative performance indicators. Reference to these quantitative performance indicators reveals that the Court has been successful in achieving the objectives of equity, effectiveness and efficiency.

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

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

The Court delivered 384 written judgments. These judgments are published on NSW Caselaw website (<https://www.caselaw.nsw.gov.au>). They provide a valuable contribution to planning and environmental jurisprudence. They also enable transparency and accountability in the Court's decision-making.

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

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



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

# 1 **2019: An Overview**

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

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## Court performance

The Court has an overriding duty to ensure the just, quick and cheap resolution of the real issues in all civil proceedings in the Court. In many areas of its work, the Court has been able to maintain or improve its performance in achieving this overriding objective relative to the results achieved in 2018. Of particular significance are:

- Improvement or maintenance in the clearance ratio in Classes 1, 3, 5, and 8.
- Improvement in clearance ratio in the Class 1-3 cumulative category, and the overall clearance rate (Class 1-8).
- A decrease in the time taken to finalise cases in Classes 2, 3 and 8.
- The number of pre-hearing attendances was maintained or decreased in Classes 1, 2, 4, 5 and 6.
- An increase in the percentage of pre-hearing attendances conducted by Online Court.
- An increase in the percentage of reserved judgments delivered within the Court's time standards.
- All judges and commissioners met the standard for continuing professional development.

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

- A decline in the clearance rate in Classes 2, 4 and 6.
- A decrease in case processing timeliness in Classes 1, 3 and 5, as indicated by the increase in the backlog indicator.
- An increase in the time taken to finalise cases in Classes 1, 4 and 5.
- A slight decrease in the percentage of matters in Classes 1-3 finalised by means of s 34 and s 34AA conciliation conferences and on-site hearings.

## Reforms and developments

During 2019, reforms occurred in the following areas:

- A New Practice Note;
- New information on the Court's website;
- Duty Lawyer Scheme;
- Land and Environment Court Clinic;
- Tree Helpdesk; and
- Maintenance of Library services.

The Court continued implementing the International Framework for Court Excellence. The Court has monitored access to and use of the Court's decisions. The Court, in conjunction with the Judicial Commission of New South Wales, updated the sentencing database for environmental offences maintained on the Judicial Information Research System (JIRS).

These developments in the Court's jurisdiction and work are discussed in Chapter 4 – Reforms and Developments.

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## Education and community involvement

The Court's commitment to continuing professional development was manifested by the adoption in October 2008 of a continuing professional development policy for Judges and Commissioners of the Court. The policy sets a standard of five days (30 hours) of professional development activities each calendar year. To assist in meeting the standard, the Court and the Judicial Commission of New South Wales provide an annual court conference and a twilight seminar series. In 2019, the Court's Annual Conference was held at the Rydges Hotel in Cronulla. The Court held three twilight seminars in 2019, two field trips, and two cross-jurisdictional seminars. All judges and commissioners achieved the continuing professional development standard.

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

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

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

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

## Consultation with court users

In 2019, the Court continued to consult and work closely with users to improve systems and procedures through its Committees and User Groups. Consultation occurred both formally through the Court Users Group and informally with a variety of legal practitioners and professional bodies.

Details of the Court Users Group and Mining Court Users Group are in Appendix 1 and the Court's Committees are in Appendix 2.

## 2 Court Profile

- The Court
- Statement of purpose
- The Court's jurisdiction
- The Court's place in the court system
- Who makes the decisions?
  - The Judges
  - The Commissioners
  - The Registrars
- Appointments and retirements
- Supporting the Court: the Registry

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## The Court

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



## Statement of purpose

The Court's purpose is to safeguard and maintain:

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

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

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

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

## The Court's jurisdiction

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

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

In 2019, the Court Act provided for eight classes of jurisdiction in the Court.

Table 2.1 summarises these eight classes.

**Table 2.1 Classes of the Court's Jurisdiction**

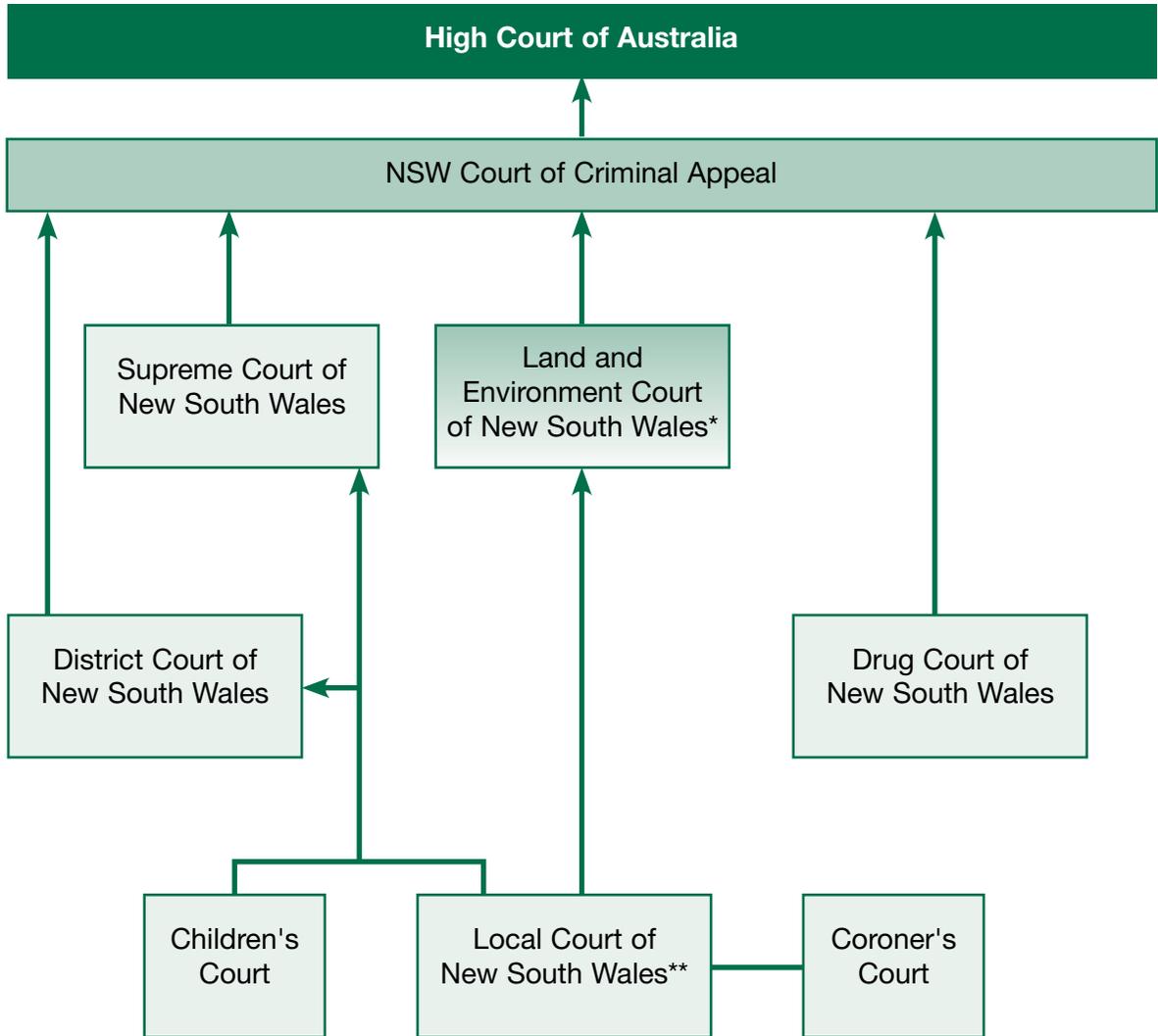
<b>Class 1</b>	environmental planning and protection appeals (merits review appeals)
<b>Class 2</b>	local government, trees and miscellaneous appeals (merits review appeals)
<b>Class 3</b>	land tenure, valuation, rating and compensation matters (merits review appeals)
<b>Class 4</b>	environmental planning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



## The Court's place in the court system

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

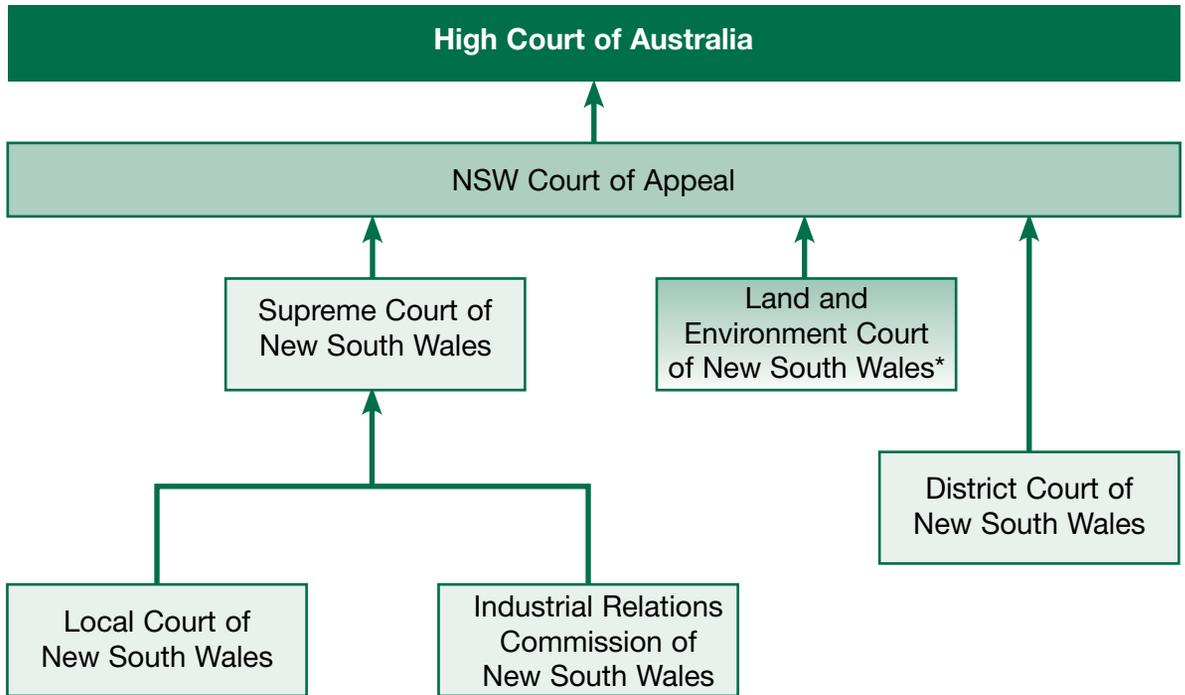
**Figure 2.1 New South Wales Court System – Criminal Jurisdiction**



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

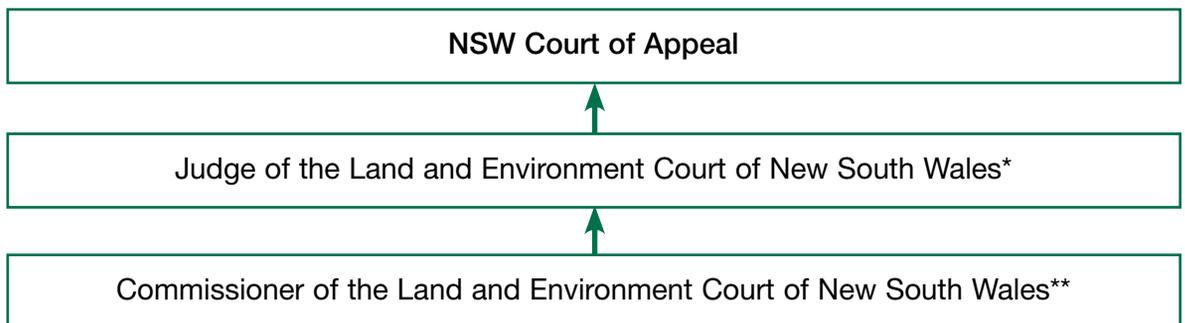
\*\* Appeals from the Local Court of New South Wales to the Land and Environment Court are with respect to an environmental offence under the *Crimes (Appeal and Review) Act 2001* and are in Classes 6 and 7 of the Land and Environment Court's jurisdiction.

**Figure 2.2 New South Wales Court System – Civil Jurisdiction**



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

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



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

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

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## Who makes the decisions?

### The Judges

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

As at 31 December 2019, the Judges, in order of seniority, were as follows:

#### Chief Judge

The Honourable Justice Brian John Preston SC

#### Judges

The Honourable Justice Nicola Hope  
Margaret Pain

The Honourable Justice Rachel Ann Pepper

The Honourable Justice Timothy John Moore

The Honourable Justice John Ernest Robson SC

The Honourable Justice Sandra Anne Duggan SC



*Justice Duggan SC and Justice Preston SC on the occasion of Justice Duggan's swearing-in, 10 September 2019*

### The Commissioners

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

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

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

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

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

As at 31 December 2019, the Commissioners were as follows:

**Senior Commissioner**

Ms Susan Dixon

**Commissioners**

Ms Susan O'Neill

Ms Danielle Dickson

Mr Michael Chilcott

Ms Jennifer Smithson

Ms Joanne Gray

Ms Sarah Bish

Mr Peter Walsh

Mr Timothy Horton

**Acting Commissioners**

Associate Professor Dr Paul Adam AM – botanist and ecologist

Ms Julie Bindon – town planner

Mr Philip Clay SC – lawyer with experience in planning and land valuation matters

Professor Dr Edward Blakely – town planner

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

Mr John Douglas – arborist

Mr David Galwey – arboricultural consultant

Mr Norman Laing – member of the Aboriginal community and lawyer

Mr John Maston – lawyer with experience in land valuation matters

Ms Susan Morris – town planner

Professor Dr David Parker – valuer and mediator

Ms Maureen Peatman – lawyer with experience in land valuation matters

Mr Ross Speers – engineer



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

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## **The Registrars**

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

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

As at 31 December 2019, the Registrars were as follows:

### ***Director and Registrar***

Ms Sarah Froh

### ***Assistant Registrar and Manager Court Services***

Ms Maria Anastasi

## **Appointments and retirements**

### **Appointments**

#### ***Judges***

The Honourable Justice Sandra Duggan SC was appointed as a Judge of the Court from 10 September 2019.

#### ***Commissioners***

Ms Susan O'Neill was re-appointed as a Commissioner of the Court on 30 January 2019.

#### ***Acting Commissioners***

Mr Philip Clay SC was appointed as an Acting Commissioner of the Court on 4 September 2019.

Ms Maureen Peatman was appointed as an Acting Commissioner of the Court on 4 September 2019.

#### **Retirements**

#### ***Judges***

The Honourable Justice Terence William Sheahan AO retired as a Judge of the Court on 16 August 2019.

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## Supporting the Court: the Registry

The Court Registry comprises the following four sections:

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### Client Services

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

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### Listings

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

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### Information and Research

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

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### Commissioner Support

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

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*A court hearing*

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

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

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

[http://www.lec.justice.nsw.gov.au/Pages/court\\_lists/court\\_lists.aspx](http://www.lec.justice.nsw.gov.au/Pages/court_lists/court_lists.aspx)

# 3 Caseflow Management

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

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## Introduction

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

## Overview by class of jurisdiction

Caseload management varies with the type or class of proceeding.

### Class 1

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

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

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

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

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

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

### Class 2: Tree disputes

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

The Court manages a separate list for tree disputes. About 63% of the parties in this type of proceeding are self-represented. The application is returnable before the Assistant Registrar who is assigned to manage the list. This first court attendance can be either a telephone conference or in court. The Assistant Registrar explains the process of preparation for and hearing of the application.

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

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

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

Additional information is available in the special pages for tree disputes on the Court's website.

### **Class 3**

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

The Practice Note – Class 3 Compensation Claims and Practice Note Class 3 – Valuation Objections establish Lists for these matters. The Class 3 Lists are managed by the List Judge in court each Friday. The Practice Notes specify the directions hearings to be held in preparation for hearing

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

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

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

### **Class 4**

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

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

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

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## **Class 5**

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

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

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

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

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

## **Classes 6 and 7**

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

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

## **Class 8**

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

## **Types of directions hearings**

The Court offers court users three types of directions hearing:

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### **in-court directions hearing**

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

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### **telephone directions hearing**

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

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### **Online Court directions hearing**

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

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In general, the initial allocations for directions hearings are:

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

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

In 2019, Online Court was used in 1,097 civil matters in Classes 1, 2, 3, 4 and 8, and for 1,959 Online Court directions hearings.

## Class 1 hearing options

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

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



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

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



*A paperless court hearing.*

## Alternative Dispute Resolution

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

- conciliation;
- mediation; and
- neutral evaluation.

### Conciliation

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

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

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

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

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

proceedings back to the Court for the purpose of being fixed for a hearing before another Commissioner. In that event, the conciliation Commissioner makes a written report to the Court stating that no agreement was reached and the conference has been terminated and setting out what in the Commissioner's view are the issues in dispute between the parties. This is still a useful outcome, as it can narrow the issues in dispute between the parties and often results in the proceedings being able to be heard and determined expeditiously, in less time and with less cost.

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

Table 3.1 shows the number of conciliation conferences between 2015 - 2019.

**Table 3.1 ss 34 and 34AA Conciliation Conferences 2015 – 2019**

	2015	2016	2017	2018	2019
ss 34 and 34AA conferences	1,500	2,035	1,534	1,465	962

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

Table 3.1 shows a substantial decrease in the total number of conciliation conferences held in 2019 compared to the previous four years. However, as Table 5.3 shows, the percentage of matters finalised by s 34 and s 34AA conciliation conferences

or on-site remained relatively constant over this five year period. The decrease in the number of conciliation conference in 2019 may be indicative of improved management of conciliation processes with less adjournments and fewer conferences for each matter.

## Mediation

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

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

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

Table 3.2 provides a comparison between mediations in 2015 to 2019. Internal mediations are those conducted by the Court mediator. External mediations are those conducted by a mediator not associated with the Court and agreed to by the parties.

**Table 3.2 Mediations in 2015 – 2019**

		2015	2016	2017	2018	2019
<b>Classes 1 and 2</b>	Total:	5	2	3	5	7
	Internal	4	2	3	5	6
	External	1	0	0	0	1
	Number finalised pre-hearing	3	2	2	4	3
	% finalised pre-hearing	60	100	67	80	43
<b>Class 3</b>	Total:	2	5	1	4	4
	Internal	2	4	1	2	4
	External	0	1	0	2	0
	Number finalised pre-hearing	1	5	1	2	4
	% finalised pre-hearing	50	100	100	50	100
<b>Class 4</b>	Total:	22	19	15	11	22
	Internal	22	17	15	10	22
	External	0	2	0	1	22
	Number finalised pre-hearing	19	14	11	7	17
	% finalised pre-hearing	86	74	73	64	77
<b>All Classes</b>	Total:	29	26	19	20	33
	Internal	28	23	19	17	32
	External	1	3	0	3	1
	Number finalised pre-hearing	23	21	14	13	24
	% finalised pre-hearing	79	81	74	65	73

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The total number of mediations increased significantly between 2018 and 2019 (an increase of 65%). The number of mediations in 2019 in Class 3 remained consistent with the previous year. Class 4 mediations doubled from 2018. Mediations in Classes 1 and 2 increased slightly from 2018. The number of mediations in Classes 1, 2 and 3 are comparatively few because of the ready availability and utilisation of conciliation under s 34 of the Court Act, conciliation being another form of alternative dispute resolution.

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

### **Neutral evaluation**

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

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

### **Recognition of the Court's ADR programme**

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

In 2019, the Court was a Finalist in the 'ADR Group of the Year' category at the Australian Disputes Centre ADR Awards. The success of the Land and Environment Court's alternative dispute resolution programme, the value to the community and the benefits to the parties of providing individualised justice are demonstrated by the year on year increase in the number of matters that continue to be filed in the Court and the number of matters that are conciliated and resolved prior to any hearing, revealing a high level of ongoing user satisfaction with the Court's dispute resolution processes.

## 4 Reforms and Developments

- New Practice Note
- New information on the Court's website
- Duty Lawyer Scheme
- Land and Environment Court Clinic
- Tree Helpdesk
- Maintenance of library services
- Implementing the International Framework for Court Excellence
- Monitoring access to and use of the Court's decisions
- Sentencing database for environmental offences

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During 2019, reforms occurred in the following areas:

- New Practice Note
- New information on the Court's website
- Duty Lawyer Scheme
- The Land and Environment Court Clinic
- Tree Helpdesk
- Maintenance of library services

The Court continued implementing the International Framework for Court Excellence. One initiative has been to monitor access to and use of the Court's decisions. The Court, in conjunction with the Judicial Commission of New South Wales, maintained the sentencing database for environmental offences on the Judicial Information Research System (JIRS).

## New Practice Note

The Court made one new Practice Note during 2019, the Practice Note - Class 3 Compensation Claims which commenced on 15 March 2019. The new practice note repealed the practice note by the same name made on 15 July 2011. The new practice note:

- requires early identification of areas of proposed expert evidence and of the proposed experts;
- shortens the times for taking procedural steps in compensation claim proceedings; and
- sets out the standard directions which will be made if the compensation claim hearing is to be conducted on a paperless basis.

## New information on the Court's website

The Court's website was updated with the new Class 3 – Compensation Claims Practice Note.

The Court continued to update the information published on the website in relation to the Duty Lawyer and Tree Helpdesk schemes.

The Court website was updated with the addition of a new section under 'Tree disputes: helpful materials'. The new section is titled 'Enforcement of Court Orders in Tree dispute cases' and is designed to assist self-represented litigants with the enforcement of previously made tree orders.

## Duty Lawyer Scheme

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

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

A duty lawyer is available on Level 4 between 9am and 12 noon each Friday to provide preliminary advice to self-represented litigants with a view to guiding them through the Court process and referring them to appropriate services. In 2019, it assisted 59 unrepresented persons.

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## The Land and Environment Court Clinic

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

The students are selected to participate in a practical program which involves work with the Registry and attendance with Commissioners and Judges at hearings onsite and in court. The students are engaged in administrative and research tasks as well as active participation in litigation and other dispute resolution procedures. The experience is an interactive learning experience and complements the Court's outreach activities.

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

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

## Tree Helpdesk

Following its establishment in 2016 with Macquarie University law students, the Tree Helpdesk continued operation in 2019. The student helpdesk is operated by Macquarie University law students and supervised by a staff solicitor to provide assistance to unrepresented persons with tree dispute matters under the Trees Act.

It is an independent service from the Land and Environment Court. In 2019, it assisted 112 unrepresented persons who wished to become or were parties to tree dispute matters, a 32% decrease from 2018 (165 persons).

## Maintenance of library services

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

## Implementing the International Framework for Court Excellence

In late 2008, the Court agreed to adopt and to implement the International Framework for Court Excellence. The Framework was developed by an International Consortium for Court Excellence including the Australasian Institute of Judicial Administration, Federal Judicial Center (USA), National Center for State Courts (USA) and Subordinate Courts of Singapore, assisted by the European Commission for the Efficiency of Justice and other organisations. The Framework provides a methodology for assessing a court's performance against seven areas of court excellence and guidance for courts intending to improve their performance. The Framework takes a holistic approach to court performance. It requires a whole-court approach to delivering court excellence rather than simply presenting a limited range of performance measures directed to limited aspects of court activity.

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The seven areas of court excellence are:

**1. Court leadership and management:**

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

**2. Court planning and policies:**

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

**3. Court proceedings:**

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

**4. Public trust and confidence:**

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

**5. User satisfaction:**

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

**6. Court resources:**

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

**7. Affordable and accessible services:**

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

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

In 2019, the Court continued implementation of actions to improve the Court's performance in each of the seven areas of court excellence. In addition to continuing the actions described in the 2013 - 2018 Annual Reviews, the Court has undertaken the following actions, grouped under the areas of court excellence:

**1. Court leadership and management:**

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

**2. Court planning and policies:**

- updating the Court's Practice Note for Class 3 Compensation Claims with a view to improving the case management and resolution of these matters.

**3. Court proceedings:**

- monitoring, measuring and managing the timeliness and efficiency of the resolution of different types of proceedings, including continuous collection and regular review of case processing statistics;
- continuing monitoring and management of delays in reserved judgments; and
- implementing, after a successful pilot project, the use of paperless trials in certain classes of cases;
- introducing the eSubpoena portal which allows parties to remotely produce and access subpoenaed material;

- placed as a finalist in the ‘ADR Group of the Year’ category at the Australian Disputes Centre ADR Awards recognising the Court’s ADR programme; and
- arranging a mediator from the NSW Community Justice Centre to be present at the tree disputes directions hearings to facilitate ADR in these matters.

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

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

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

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

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

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

- continuing the Duty Lawyer Scheme to assist self-represented litigants;
- continuing a Tree Helpdesk to assist self-represented parties in tree disputes; and
- regularly monitoring and reviewing case processing statistics, case management and court practice and procedure with a view to reducing private and public costs of litigation.

### **Monitoring access to and use of the Court’s decisions**

The Court, as part of its implementation of the International Framework for Court Excellence, commissioned a project with the Australasian Legal Information Institute (AustLII) to use AustLII’s databases to generate relevant metrics and statistics concerning the Court. These metrics provide information concerning the frequency and nature of the citation of decisions of the Court by other courts or tribunals and the use made of the Court’s decisions by academic journals that are publicly electronically accessible. The project also enables extraction of information about what are the most frequently cited decisions of the Court as well as about the general rate of accessing the Court’s cases through AustLII’s databases. The information that is contained in the citations by database section is collected on an accrual basis using 2010 as the base year.

The data is available on a calendar year basis and links for the data for the years ending 31 December for each of 2010 to 2019 are available on the Court’s website at Publications and Resources then Database metrics and statistics.

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From the ten years of data available from the project, it can be seen that there continues to be widespread citation of decisions of this Court in other jurisdictions.

In Australia, by the end of 2019, decisions of this Court were cited 4,996 times, in every State and Territory (including internal citations by this Court). The number of citations continues to increase. For example, in Western Australia, in the base year (2010) this Court's decisions had been cited 94 times in decisions of courts and tribunals (including 11 times in the Western Australian Court of Appeal). By the end of 2019, decisions of this Court had been cited 169 times (including 18 times in the Western Australian Court of Appeal), which represents a further 75 citations by courts and tribunals in Western Australia over the nine year period. Similar positions apply to other Australian jurisdictions as can be seen by a comparison between the December 2019 metrics and those of December 2010.

Although the data able to be accessed internationally by AustLII for the purposes of preparing the metrics is comparatively limited, decisions of this Court have been cited, since 2010, four times by New Zealand courts (once by the High Court and three times by the Supreme Court), twice by South African courts (once by the Supreme Court of Appeal) and once by a Hong Kong court.

By the end of 2019, decisions of this Court had been cited in 69 courts and tribunals and two other institutions throughout Australia and the world. In Australia, the courts, tribunals and other decision-making bodies citing decisions of this court have ranged from the High Court of Australia to the Criminal Injuries Compensation Assessor of Western Australia.

The Court's decisions have also been cited in a range of law journals and other commentaries (14 in total). This is a considerable underestimation of academic citation. AustLII's databases of law journals or other commentaries are limited. This is because the range of law journals able to be accessed by AustLII's indexing process is limited to publicly accessible material and does not include most proprietary subscription based journals.

The full range of courts and tribunals and law journals that have cited cases from this Court's AustLII database can be seen by accessing the December 2019 metrics on the Court's website at: [http://www.lec.justice.nsw.gov.au/Pages/publications/database\\_metrics\\_and\\_statistics.aspx](http://www.lec.justice.nsw.gov.au/Pages/publications/database_metrics_and_statistics.aspx).

## **Sentencing database for environmental offences**

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

In 2019, the Court continued to provide statistics on sentences imposed by the Court in the year for environmental offences and for contempt proceedings. The statistics were loaded promptly onto JIRS. To ensure accuracy, the sentence statistics were audited on a quarterly basis by the Judicial Commission. Any errors in data entry revealed by the audits were corrected.

# 5 Court Performance

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

## Overall caseload

The comparative caseload statistics between 2015 and 2019 are summarised in Table 5.1.

**Table 5.1 Caseload Statistics**

	2015	2016	2017	2018	2019
<b>Class 1</b>					
Registrations	794	842	1,009	1,001	904
Restored	15	4	12	9	19
Pre-Trial Disposals	585	705	556	641	636
Disposed by Hearing	158	127	275	242	219
Pending	384	398	578	705	790
<b>Class 2</b>					
Registrations	143	117	131	85	91
Restored	13	5	8	5	4
Pre-Trial Disposals	62	36	28	34	16
Disposed by Hearing	84	94	104	67	77
Pending	40	32	39	28	31
<b>Class 3</b>					
Registrations	108	156	77	107	84
Restored	8	10	5	0	0
Pre-Trial Disposals	68	120	72	68	79
Disposed by Hearing	32	17	36	38	10
Pending	90	121	94	95	93
<b>Class 4</b>					
Registrations	124	133	118	116	102
Restored	15	14	23	24	21
Pre-Trial Disposals	99	101	82	83	68
Disposed by Hearing	48	55	44	46	39
Pending	90	84	99	87	105
<b>Class 5</b>					
Registrations	47	52	59	156	164
Restored	2	2	2	0	1
Pre-Trial Disposals	9	27	6	22	24
Disposed by Hearing	70	35	69	36	65
Pending	89	81	67	166	249

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## Classes 6 & 7

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

## Class 8

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

## TOTAL

Registrations	1,237	1,322	1,408	1,486	1,363
Restored	58	35	52	43	45
Pre-Trial Disposals	823	1,000	747	864	833
Disposed by Hearing	419	340	541	442	418
Pending	705	729	889	1,091	1,279

Tables 5.1 and 5.2 show the following trends:

- 2019 reversed a recent trend of increasing total registrations. 2019 is the first year to record fewer registrations than the previous year since 2013. Despite this, 2019 still recorded the third highest total registrations of the last 10 years. Class 1 registrations fell below 1,000 for the first time since 2016. The 2019 total of 923 still represents an increase of 70% from the result reported by the Court just 6 years ago (2013 - 543). The Court continued to experience relatively few restored matters despite the generally elevated caseload.
- Total finalisations (1,251) decreased from 2018. After a significant increase in the proportion of matters finalised by hearing in 2017, the Court continued a return to

more expected numbers in terms of the pre-trial/hearing disposal ratio. The Court continued to experience relatively few restored matters despite the generally elevated caseload.

- Total finalisations (1,251) were lower than total registrations (1,408) in 2019, resulting in the total pending caseload (1,279) further increasing in 2019. However, the difference between the two was lower in 2019 (157) than in 2018 (223), so that the increase in pending caseload was less.
- Merits review appeals and other civil proceedings finalised in Classes 1, 2 and 3 (1,037) comprised 83% of the Court's finalised caseload (1,251) in 2019. This proportion is unchanged from 2018.

- Civil and criminal proceedings finalised in Classes 4, 5, 6, 7 and 8 (214) comprised 17% of the Court's finalised caseload (1,251) in 2019. This proportion is unchanged from 2018.
- The means of finalisation in 2019 were 67% pre-trial disposals (including by

use of alternative dispute resolution processes and negotiated settlement) and 33% by adjudication by the Court. This is consistent with the 2018 result after an increase in the proportion of matters finalised by hearing in 2017 (an increase of 17% from 2016).

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

	2015	2016	2017	2018	2019
Total matters finalised – all classes	1,242	1,340	1,288	1,306	1,251
Total pre-trial finalisations	823	1,000	747	864	833
% matters finalised pre-trial	66	75	58	66	67

The means of finalisation for proceedings in Class 1, 2 and 3 included s 34 and s 34AA conciliation conferences and on-site hearings (mainly for Class 1 and 2 proceedings). As Table 5.3 shows, over 48% of appeals in Classes 1, 2 and 3 were finalised by these means. Although this is a

slight decrease from an all time high 50.2% recorded in 2018, 48.2% is consistent with the recent results since 2016. Of the total of 500 matters, 429 were finalised by s 34 and s 34AA conciliation conferences and 71 matters by on-site hearings.

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

	2015	2016	2017	2018	2019
Total matters finalised	989	1,099	1,071	1,090	1,037
s 34 and s 34AA conferences and on-site hearings	444	532	523	547	500
% s 34 and s 34AA and other matters finalised on-site	44.9	48.4	48.8	50.2	48.2

## Court performance by class of jurisdiction

A brief summary of the Court's performance in 2019 for each of the eight classes of jurisdiction is provided.

### Class 1

Registrations of Class 1 matters decreased from 2018. There was a total of 923 Class 1 registrations and restorations in 2019,

87 less than the 2018 total of 1,010 (an 8.6% decrease). 2019 is the first year to record a total of less than 1,000 Class 1 registrations since 2016 and the first year to record less Class 1 registrations than the previous year since 2013. Finalisations also decreased in 2019, but the decrease of 3% was proportionally less than the decrease experienced in registrations. Pending caseload increased by 12%, an improvement on the 22% increase seen in 2018.

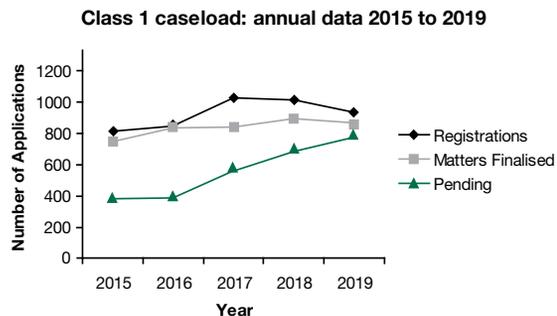
Class 1 represents 66% of all registrations and restorations in 2019 (923/1,408). The decrease in the proportional percentage of Class 1 registrations experienced over the last two years can largely be explained by the significant increase in Class 5 registrations.

Class 1 matters constitute the bulk of the Court’s finalised caseload (68%). 69% of all Class 1 matters finalised were appeals under s 8.7 of the Environmental Planning and Assessment Act 1979 relating to development applications. 61% (up from 59% in 2018) of the appeals under s 8.7 were applications where councils had not determined the development application within the statutory time period (“deemed refusals”).

Of the remaining Class 1 matters finalised in 2019, 12% were applications to modify a development consent under s 8.9 of the Environmental Planning and Assessment Act 1979 and 9% were appeals against council orders and the actual or deemed refusal by councils to issue building certificates. Third party objector appeals constituted less than 1%. Applications for costs, s 56A appeals against the Court’s decisions and prevention / remediation notices constituted the bulk of the remaining finalised matters in Class 1.

Figure 5.1 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 1 between 2015 and 2019.

**Figure 5.1**



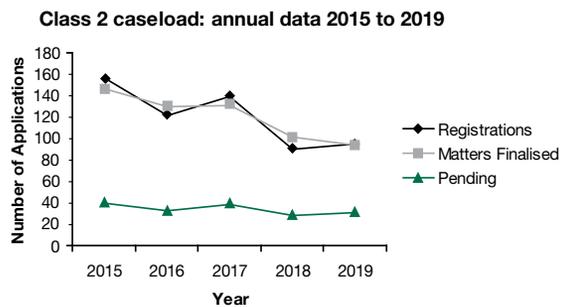
**Class 2**

Class 2 registrations and restorations represented just 7% of total registrations in the Court in 2019 (an increase of 1% from 2018). Registrations increased slightly from 2018; a 6% increase from 90 to 95.

The number of Class 2 matters finalised in 2019 is 93, a decrease of 8% from 2018. Class 2 finalisations represent 7% of the Court’s finalised caseload for the year. Applications under the Trees (Disputes Between Neighbours) Act 2006 are the bulk of Class 2 finalisations for 2019 (86%).

Figure 5.2 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 2 between 2015 and 2019.

**Figure 5.2**



### Class 3

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

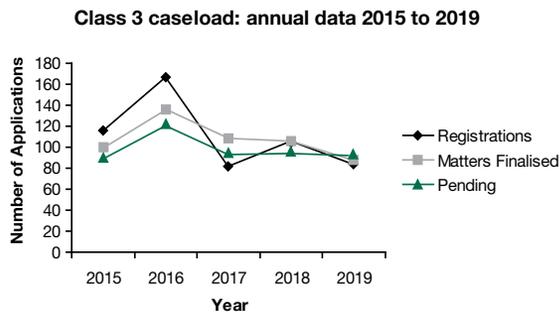
New registrations in Class 3 decreased by 22% in 2019, after 2018 saw a return to expected levels. Compensation claims for compulsory acquisition of land constituted 42% of all Class 3 appeals registered in 2019, whilst valuation and rating appeals accounted for 33%.

Finalisations decreased by 16% from the 2018 total (106 down to 89). Of the Class 3 matters finalised in 2019, 53% were compensation claims, 28% were valuation or rating appeals and 19% were other matters. There were 2 land claim matters completed in the year and 4 strata scheme matters.

The pending caseload of Class 3 matters was also very consistent with the 2018 total, a minor decrease of 2%.

Figure 5.3 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 3 between 2015 and 2019.

**Figure 5.3**

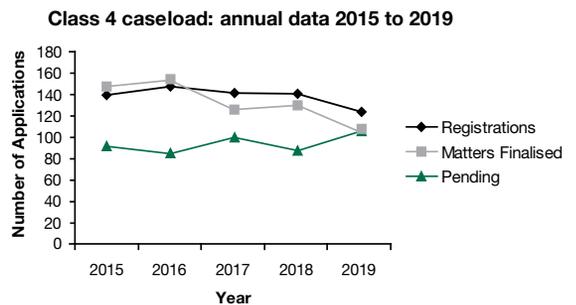


### Class 4

Class 4 registrations and restorations decreased by 12% in 2019, whilst finalisations also decreased (17%). Class 4 matters comprised 8.7% of all registrations and 8.6% of all finalisations in 2019. The Class 4 pending caseload increased significantly (21%), although the total of 105 represents an increase of only 6% from the 2017 pending total (99). Of the Class 4 matters registered in 2019, 46% were initiated by councils.

Figure 5.4 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 4 between 2015 and 2019.

**Figure 5.4**



### Class 5

Class 5 registrations increased from an already massively elevated level in 2018; 156 up to 165 in 2019. Although this only represents a 6% increase, this builds on the enormous 156% increase in 2018. The Environment Protection Authority initiated 15% of all new registrations (down from 54% in 2018). The Natural Resources Access Regulator initiated 38% of new Class 5 matters in 2019, up from 19% in 2018.

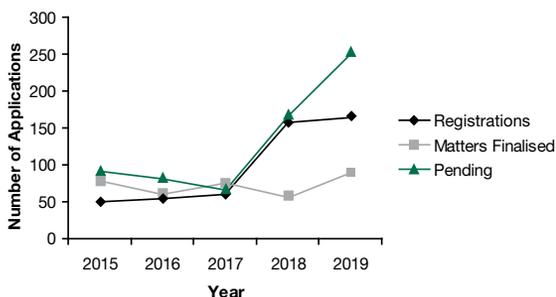
These are mainly prosecutions for water offences. The Office of Environment and Heritage initiated 17% of the new matters, whilst the Department of Planning and Environment accounted for 21%. The remainder were brought by local councils and the Roads and Maritime Services or Transport for NSW.

Class 5 finalisations increased by a massive 53% in 2019. Convictions were recorded in 58 matters, 23 were withdrawn or otherwise discontinued and 5 were dismissed. Fines and remediation orders ranged from \$500 for providing false/misleading information to regulatory authority under conditions of a licence to \$348,750 for clearing of native vegetation without consent. No community service orders were issued in 2019. 6 section 10 bonds were ordered for providing false/misleading information to regulatory authority under conditions of a licence (all 6 to the same defendant). There were no imprisonment orders made by the Court in 2019.

Figure 5.5 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 5 between 2015 and 2019.

**Figure 5.5**

**Class 5 caseload: annual data 2015 to 2019**



## Classes 6 and 7

17 new Class 6 appeals were filed in 2019. 14 Class 6 matters were finalised, a decrease of 44% from 2018. There were no Class 7 appeals registered or finalised in 2019.

## Class 8

The Court has jurisdiction to hear and dispose of civil proceedings under the *Mining Act 1992* and the *Onshore (Petroleum) Act 1991*. There was only 1 Class 8 matter registered in 2019, down from 6 in 2018. There were 4 Class 8 matters finalised this year, the same number recorded in 2018.

## 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.

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## 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 2019 to increase court fees by 1.75% to be able to balance the Court's budget and ensure a high standard of court administration service quality (effective 12 July 2019). Notwithstanding the increase, the increased court fees still meet criteria of equity.

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

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

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

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

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

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

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## **Accessibility**

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

### ***Geographical accessibility***

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

Up until 2016, a matter was counted as a country matter if it was outside the area bordered by the local government areas of Wollongong, Blue Mountains and Gosford. From 2016, a matter is counted as a country matter if it is in a local government area outside the Greater Sydney region. In 2019, 25% of matters registered were country matters. This represents a 3% increase from an already elevated ratio in 2018, which is largely explained by the sustained high volume of Class 5 registrations (of which 81% were country matters).

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

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

Secondly, the Court pioneered the use of Online Court (previously eCourt) directions hearings. This involves the parties or their representatives posting electronic requests to the Registrar using the internet and the Registrar responding. This also mitigates the tyranny of distance. Again, Online Court directions hearings are used extensively in country matters. Parties appeared by Online Court directions hearing in 75% of completed Class 1 country matters and 39% of completed Class 3 country matters in 2019.

Table 5.4 shows the percentage of pre-hearing attendances conducted by Online Court directions hearings and telephone directions hearings in Classes 1-4 in 2019.

**Table 5.4 Online Court and Telephone Directions Hearings**

<b>Class</b>	<b>No of cases</b>	<b>Total pre-hearing attendances</b>	<b>% Online Court directions hearings</b>	<b>% Telephone directions hearings</b>
1	753	4,626	41	4
2	81	197	19	14
3	71	752	34	1
4	75	491	18	0
All	980	6,066	37	4

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

Thirdly, proceedings in Classes 1, 2 and 3 are commonly referred to conciliation under s 34 of the Court Act. Conciliation conferences are frequently held on the site of the dispute. 62% of finalised Class 1 country matters and 89% of finalised Class 3 country matters featured a s 34 or s 34AA conciliation conference.

Fourthly, conduct of the whole or part of a hearing on the site of the dispute also means that the Court comes to the litigants. An official on-site hearing involves conducting the whole hearing on-site. This type of hearing is required where there has been a direction that an appeal under ss 4.55, 4.56, 8.7, 8.18 or 8.25 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 2019, 8% of finalised matters (in Classes 1 and 2) were conducted as an on-site hearing, of which 27% were country matters.



*An on-site hearing conducted by Senior Commissioner Dixon.*

However, even for other hearings which may be conducted as a court hearing, it is the Court's standard practice that the hearing commence at 9:30am on-site. This enables not only a view of the site and surrounds but also the taking of evidence from residents and other persons on the site. This facilitates participation in the proceedings by witnesses and avoids the necessity for their attendance in the Court in Sydney. Nearly all country matters in Classes 1, 2 and 3 that were conducted as a court hearing still had an on-site view in the country.

Fifthly, the Court regularly holds court hearings in country locations. Table 5.5 shows hearings held in a country courthouse for 2019.

**Table 5.5 Country hearings in courthouses**

<b>Courthouse</b>	<b>Class 1</b>	<b>Class 2</b>	<b>Class 3</b>	<b>Class 4</b>	<b>Class 5</b>	<b>Class 6</b>	<b>Class 8</b>
Ballina	3						
Byron	3						
Coffs Harbour	2						
Cooma	1						
Kiama	3						
Mudgee	1						
Murwillumbah	1						
Newcastle	3						
Port Kembla	2						
Queanbeyan	2						
Tweed	2			2			
Wagga Wagga	2						
Windsor	1						
Wollongong	2						
<b>TOTAL</b>	<b>28</b>			<b>2</b>			

***Access for persons with disabilities***

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

***Access to help and information***

The Court facilitates access to help and provides information to parties about the Court and its organisation, resources and services, the Court's practices and procedures, its forms and fees, court lists

and judgments, publications, speeches and media releases, and self-help information, amongst other information. Primarily it does this by its website. However, the Court also has guides and other information available at the counter. Registry staff assist parties and practitioners, answer questions and provide information. Registry staff cannot provide legal advice.

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

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

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### ***Access for unrepresented litigants***

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

The Tree Helpdesk has continued to assist unrepresented litigants in tree disputes. The Tree Helpdesk is operated by law students and staff from Macquarie University.

The Court also makes special efforts to assist unrepresented litigants through its website and its published information and fact sheets, and by the Registry staff. The Court has a special guide, under the tab 'Publications & Resources', for Litigants in Person in the Land and Environment Court of New South Wales.

The guide contains information on:

- The Court's jurisdiction;
- Legal advice and assistance – a referral guide;
- The Court's schedule of fees;
- Application form to postpone, waive or remit Court fees;
- The availability of interpreters;
- Disability access information;
- User feedback on Land and Environment
- Court services;
- Information about the Court's website; and
- Contact information for the Court.

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

### ***Access to Alternative Dispute Resolution***

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

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

The Court provides mediation services. In 2019, all full-time Commissioners, a number of the Acting Commissioners and the Registrar and Assistant Registrar of the Court were nationally accredited mediators and could provide in-house mediation for parties. In addition, the Court encourages and will make appropriate arrangements for mediation by external mediators. Informal mechanisms such as case management conferences also encourage negotiation and settlement of matters.

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

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

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

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

### ***Responsiveness to the needs of users***

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

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

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

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

In 2019, the Judges, Commissioners and the Registrar participated in numerous conferences and seminars to enhance awareness of recent developments in the Court relating to both procedural and substantive law.

## Output indicators of effectiveness and efficiency

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

### Backlog indicator

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

These are:

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

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

The national standards are:

- No more than 10% of lodgments pending completion are to be more than 12 months old (ie 90% disposed of within 12 months).
- No lodgments pending completion are to be more than 24 months old (i.e. 100% disposed of within 24 months). Performance relative to the timeliness standards indicates effective management of caseloads and court accessibility.

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 2019 are set out in Table 5.6.

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

	Unit	LEC Standards	2015	2016	2017	2018	2019
<b>Class 1</b>							
Pending caseload	no.		384	398	578	705	790
Cases > 6 months	%	5	17.1	22.2	21.5	26.4	48
Cases > 12 months	%	0	5.7	5.5	2.8	7.2	17.5
<b>Class 2</b>							
Pending caseload	no.		40	32	39	28	31
Cases > 6 months	%	5	0	9.4	15.4	7.1	9.7
Cases > 12 months	%	0	0	0	2.6	0	3.2

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**Class 3**

Pending caseload	no.		90	121	94	95	93
Cases > 6 months	%	5	27.8	39.3	56.4	48.4	58.1
Cases > 12 months	%	0	13.3	19.7	41.5	27.4	38.7

**Class 4**

Pending caseload	no.		90	84	99	87	105
Cases > 8 months	%	5	30.0	32.9	39.4	47.1	41.0
Cases > 16 months	%	0	16.7	15.3	21.2	25.3	22.9

**Class 5**

Pending caseload	no.		89	81	67	166	249
Cases > 8 months	%	5	69.7	48.1	35.8	29.5	47.4
Cases > 16 months	%	0	30.3	21.0	7.5	12.1	17.3

**Class 6**

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

**Class 8**

Pending caseload	no.		9	2	3	5	2
Cases > 8 months	%	5	11.1	50.0	0	40	100
Cases > 16 months	%	0	0	0	0	0	100

**Class 1 – 3**

Pending caseload	no.		514	551	711	828	914
Cases > 6 months	%	5	17.7	25.4	25.9	28.3	47.3
Cases > 12 months	%	0	6.6	8.3	7.9	9.3	19.1

**Class 4 – 8**

Pending caseload	no.		193	178	178	263	364
Cases > 8 months	%	5	47.2	38.0	35.4	35.0	44.8
Cases > 16 months	%	0	21.8	16.8	14.6	16.0	19.0

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These backlog figures need some explanation:

- Class 1: The backlog figures for pending caseloads greater than 6 and 12 months increased in 2019 compared to 2018. The total pending caseload in Class 1 increased during 2019 as a result of registrations exceeding finalisations (although the difference between the two was less in 2019). There were significant increases in matters exceeding both the 6 and 12 month time standards. The proportion of active matters exceeding the 6 month time standard is approaching 50%.
- Class 2: There was a slight increase in the amount of pending Class 2 matters at the end of 2019 following a significant decrease in 2018. There is one pending matter that has exceeded the 12 month time standard. 3 pending matters have exceeded the 6 month time standard. This represents 9.7% of the pending caseload, a slight increase from the 7.1% recorded in 2018. The total amount of pending Class 2 matters increased by 3 from the end of 2018.
- Class 3: Despite the pending caseload slightly decreasing, the number of pending matters exceeding both the 6 month and 12 month internal time standard increased. This suggests that a smaller amount of older active matters are affecting the overall caseload management whilst newer matters are being handled efficiently.
- Class 4: Despite an increase in the pending caseload of Class 4 matters, timeliness improved in 2019. There was a decrease in the proportion of matters exceeding both the 6 month and 12 month time standards of the Court. The Court performed well in this category in 2019.
- Class 5: The backlog figures worsened in 2019 after a significant improvement in 2018. This is a result of the massive increase in registrations seen in 2018 and 2019. There has been a delayed effect as the bulk of those matters that have remained active now begin to cross the time standard thresholds. This influx was also the cause of the improved result in 2018 as a vast majority of the active caseload were recently filed matters. The volume of pending matters increased by 50% from the end of 2018, following an increase of 148% from 2017 to 2018. This is likely to cause significant increases in the proportion of matters exceeding time standards for some time to come, especially as Class 5 registrations increased further in 2019.
- Class 6: There was an increase in the number of pending Class 6 matters in 2019. Of the 8 pending class 6 appeals, none were pending for more than 8 months.
- Class 8: The pending caseload decreased by 3 in 2019. Both of the pending matters exceeded the internal 8 and 16 month time compliance standards.

If the national time standards are used, the results of the backlog indicator for the Court in 2019 are as shown in the table below:

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

	Unit	National Standards	2015	2016	2017	2018	2019
<b>Class 1</b>							
Pending caseload	no.		384	398	578	705	790
Cases > 12 months	%	10	5.7	5.5	2.8	7.2	17.5
Cases > 24 months	%	0	0.8	0	0.3	0.3	0.5
<b>Class 2</b>							
Pending caseload	no.		40	32	39	28	31
Cases > 12 months	%	10	0	0	2.6	0	3.2
Cases > 24 months	%	0	0	0	0	0	0
<b>Class 3</b>							
Pending caseload	no.		90	121	94	95	93
Cases > 12 months	%	10	13.3	19.7	41.5	27.4	38.7
Cases > 24 months	%	0	7.8	0.8	8.5	10.5	6.5
<b>Class 4</b>							
Pending caseload	no.		90	84	99	87	105
Cases > 12 months	%	10	22.2	25.9	28.3	35.6	32.4
Cases > 24 months	%	0	8.9	8.2	6.1	13.8	15.2
<b>Class 5</b>							
Pending caseload	no.		89	81	67	166	249
Cases > 12 months	%	10	58.4	44.4	29.9	15.7	36.9
Cases > 24 months	%	0	21.3	17.3	3.0	3.6	4.8
<b>Class 6</b>							
Pending caseload	no.		5	11	9	5	8
Cases > 12 months	%	10	20.0	0	0	0	0
Cases > 24 months	%	0	0	0	0	0	0
<b>Class 8</b>							
Pending caseload	no.		9	2	3	5	2
Cases > 12 months	%	10	0	50.0	0	0	100
Cases > 24 months	%	0	0	0	0	0	0

This table shows that the Court's performance in Classes 2, 6 and 8 better or meets the national standard for 12 months and 24 months. The Court's performance in Class 3 has improved significantly in 2019 compared to 2018 for the standard for 24 months (from 10.5% down to 6.5%). The Court's performance declined in the 12 month standard for Class 3 matters. The Court's performance in Class 4 fell short of the national standard in 2019, despite an improvement in the 12 month measure. The Court's performance in Class 5 is below the national standard for 12 months and 24 months. There was significant increase in the number of matters exceeding the 12 month standard in Class 5 (over 20%) but a much smaller increase in the amount of matters exceeding the 24 month standard (just over 1%). This suggests that many of the matters exceeding 12 months will likely shift into the 24 month category in 2020 (as

a long term consequence of the increased level of Class 5 registrations that began in 2018).

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

### Time standards for finalisation of cases

The backlog indicator is a measure of the timeliness of the pending caseload. The Court also measures the timeliness of completed cases by comparing the time taken for finalisation of cases in each class to the Court's time standards. The higher the percentage of cases completed by each time standard and the shorter the time period to complete 95% of the cases, the better the Court's performance. Table 5.8 sets out the Court's performance in finalising cases in each class in compliance with the Court's time standards for the period 2015-2019.

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

	2015	2016	2017	2018	2019
<b>Class 1</b>					
No. of cases	743	832	831	883	855
% < 6 months	70	63	62	37	25
% < 12 months	96	94	94	90	77
95% completed within (months)	11	13	13	14	16
<b>Class 2</b>					
No. of cases	146	130	132	101	93
% < 6 months	94	93	93	89	89
% < 12 months	100	99	99	98	99
95% completed within (months)	6	6	7	9	7
<b>Class 3</b>					
No. of cases	100	137	108	106	89
% < 6 months	45	51	44	28	29
% < 12 months	70	80	72	63	66
95% completed within (months)	28	30	26	34	27

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**Class 4**

No. of cases	147	156	126	129	107
% < 8 months	64	73	71	67	63
% < 16 months	88	87	88	91	85
95% completed within (months)	28	24	24	22	23

**Class 5**

No. of cases	79	62	75	58	89
% < 8 months	24	8	19	28	26
% < 16 months	38	76	73	76	80
95% completed within (months)	67	86	53	18	22

**Class 6**

No. of cases	17	13	14	25	14
% < 8 months	76	85	71	68	71
% < 16 months	76	92	100	100	100
95% completed within (months)	27	13	10	10	11

**Class 8**

No. of cases	10	10	2	4	4
% < 8 months	40	50	0	100	75
% < 16 months	80	90	0	100	100
95% completed within (months)	20	20	23	7	6

In Class 1, less cases were completed within both 6 months and 12 months, to be the lowest percentage of cases completed in less than 6 months and 12 months in the last five years. The time taken to finalise 95% of cases increased by an additional 2 months. This measure has increased by 5 months over the last 5 years.

In Class 2, the high percentage of cases completed within 6 and 12 months was maintained in 2019. After an increase in the time taken for 95% of matters to be completed in 2018, this year it returned to expected levels. The Court continued to manage the Class 2 caseload well.

In Class 3, the Court's performance improved generally, with slightly higher percentages of cases completed in both 6 and 12 month intervals. There was a significant improvement in the time taken to complete 95% of the cases, down from 34 months in 2018 to 27 months.

In Class 4, the percentage of cases finalised in less than 8 months again declined slightly from 2018. The percentage of cases finalised in less than 16 months also decreased slightly. The time taken to complete 95% of the matters increased relative to last year, but compares favourably to the last 5 years.

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In Class 5, the percentage of cases finalised in less than 8 months decreased slightly following a significant increase in 2017. The percentage of cases finalised in less than 16 months increased from an already improved level in 2018. 2019 saw the highest proportion of Class 5 matters completed within 16 months since 2013. The time taken to complete 95% of cases increased slightly following the Court's best result in 5 years recorded in 2018.

The Court's performance in complying with time standards for Class 6 matters increased in the 8 month category. The percentage of cases finalised within 16 months maintained the 100% standard achieved in 2017 and 2018. The time taken to finalise 95% of cases increased slightly to 11 months.

The Court's performance in Class 8 decreased slightly in the 8 month finalization category, but maintained the 100% result in the 16 month category. The time taken to complete 95% of cases improved slightly. The low volume of cases makes it difficult to draw any meaningful inferences from the results.

### **Time standards for delivery of reserved judgments**

The Court may dispose of proceedings by judgment delivered at the conclusion of the hearing (ex tempore judgment) or at a later date when judgment is reserved by the Court (reserved judgment). A number of judgments (12%) are delivered ex tempore, thereby minimising delay. To minimise delay for reserved judgments the Court has adopted time standards.

The Court's time standard for delivery of reserved judgments is determined from the date of the last day of hearing to the delivery date of the judgment. The current time standards for reserved judgments are as follows:

- 50% of reserved judgments in all classes are to be delivered within 14 days of hearing.
- 75% are to be delivered within 30 days of hearing.
- 100% are to be delivered within 90 days of hearing.

These are strict standards compared to other courts.

As Table 5.9 shows, the Court's performance in 2019 for reserved judgments being delivered within 14 days and 30 days declined slightly from 2018, to both be the lowest result for the last five years. There was a slight increase in the percentage of reserved judgments being delivered within the 90 day limit, compared to 2018, but it still was less than the results in 2015-2017.

The Court's performance in meeting judgment timeliness standards is an average of the performance of all individual decision-makers, both commissioners and judges, in matters in all classes of the Court's jurisdiction.

**Table 5.9 Reserved judgments compliance with time standards**

	Standard	2015	2016	2017	2018	2019
% delivered within 14 days	50	45	41	39	30	24
% delivered within 30 days	75	62	60	59	52	50
% delivered within 90 days	100	83	86	83	78	80

### Inquiries about delays in reserved judgments

A delay in delivering a reserved judgment impedes achievement of the goal of the just, quick and cheap resolution of proceedings. One of the Court's time standards for the delivery of reserved judgments is that 100% of reserved judgments should be delivered within 90 days of the judgment being reserved, usually at the completion of the hearing.

The Court has adopted a policy on Delays in Reserved Judgments that allows a party or legal representative who is concerned that a reserved judgment has been outstanding for a period in excess of the Court's standard of 3 months, to make a written inquiry to the Chief Judge. The policy provides that

the Chief Judge will discuss each inquiry with the judicial officer involved, but without revealing the inquirer's identity to the judicial officer, to ascertain the expected timing for delivery of the reserved judgment. The Chief Judge responds to the inquirer with the expected timing provided by the judicial officer. The inquirer may make a further inquiry if the judgment is not delivered within the notified expected timing.

Table 5.10 provides information on the total number of inquiries received under the Delays in Reserved Judgments Policy and the type of case (the classes of the Court's jurisdiction) which the inquiry concerned. In a number of instances, successive inquiries have been made with respect to the same reserved judgment. Each successive inquiry is recorded as a new inquiry.

**Table 5.10 Inquiries about delays in reserved judgments**

	2015	2016	2017	2018	2019
Class 1	6	7	30	10	2
Class 2	0	2	3	0	0
Class 3	5	0	2	4	1
Class 4	7	5	2	5	2
Class 5	9	3	1	0	0
Classes 6 and 7	2	0	0	0	0
Class 8	2	0	0	0	1
<b>Total</b>	<b>31<sup>*1</sup></b>	<b>17<sup>*2</sup></b>	<b>38<sup>*3</sup></b>	<b>19<sup>*4</sup></b>	<b>6<sup>*5</sup></b>

<sup>\*1</sup> In 2015, 84% of inquiries (26) concerned judges' reserved judgments and 16% (5) concerned commissioners' reserved judgments

<sup>\*2</sup> In 2016, 71% of inquiries (12) concerned judges' reserved judgments and 29% (5) concerned commissioners' reserved judgments.

<sup>\*3</sup> In 2017, 18% of inquiries (7) concerned judges' reserved judgments and 82% (31) concerned commissioners' reserved judgments.

<sup>\*4</sup> In 2018, 68% of inquiries (13) concerned judges' reserved judgments and 32% (6) concerned commissioners' reserved judgments.

<sup>\*5</sup> In 2019, 67% of inquiries (4) concerned judges' reserved judgments and 33% (2) concerned commissioners' reserved judgments

The Chief Judge investigated each inquiry made in 2019 in accordance with the policy and responded in writing to the inquirer in a timely manner.

### Clearance rate

The clearance rate is an output indicator of efficiency. It shows whether the volume of finalisations matches the volume of lodgments in the same reporting period. It indicates whether the Court's pending caseload has increased or decreased over that period. The clearance rate is derived by dividing the number of finalisations in the reporting period by the number of lodgments in the same period. The result is multiplied by 100 to convert it to a percentage.

A figure of 100% indicates that during the reporting period the Court finalised as many cases as were lodged and the pending caseload is the same as what it was

12 months earlier. A figure of greater than 100% indicates that, during the reporting period, the Court finalised more cases than were lodged, and the pending caseload has decreased. A figure less than 100% indicates that during the reporting period, the Court finalised fewer cases than were lodged, and the pending caseload has increased. The clearance rate should be interpreted alongside finalisation data and the backlog indicator. Clearance over time should also be considered.

The clearance rate can be affected by external factors (such as those causing changes in lodgment rates) as well as by changes in the Court's case management practices.

The results of the clearance rate for the Court in each of its classes are shown in Table 5.11.

**Table 5.11 Clearance rate**

	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
	%	%	%	%	%
Class 1	91.8	98.3	81.4	87.4	92.6
Class 2	93.6	106.6	95.0	112.2	97.9
Class 3	86.2	82.5	131.7	99.1	106.0
Class 4	105.8	106.1	89.4	92.1	87.0
Class 5	161.2	114.8	123.0	37.2	53.9
Class 6	121.4	68.4	116.7	125	82.4
Class 8	83.3	333.3	66.7	66.7	400
Classes 1-3	91.5	96.9	86.2	90.3	94.1
Classes 4-8	118.2	107.2	99.5	67.1	69.0
<b>Total</b>	<b>95.9</b>	<b>98.7</b>	<b>88.2</b>	<b>85.4</b>	<b>88.6</b>

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These figures show that the total clearance rate for all matters increased to be the highest since 2016. The clearance rate for Classes 1-3 improved from 2018, as did the clearance rate for Classes 4-8. Similar to last year, the highly elevated amount of Class 5 registrations was enough to negatively skew both the Class 4-8 clearance ratio category and the total clearance ratio categories, despite improvements in both.

The Class 1 clearance ratio improved by 5% compared to 2018, a significant increase when the volume of Class 1 matters is accounted for. This follows an improvement of 6% recorded the previous year. In Class 2, registrations exceeded finalisations in 2019, producing a clearance ratio of 97.9%. The clearance ratio marginally dropped below the 100% mark in 2019, as it did in 2017 and 2015. In Class 3, finalisations exceeded registrations (89 to 84). As a result the clearance ratio is over 100. This represents a slight increase in clearance ratio from 2018. The Class 4 clearance ratio decreased in 2019. The final result of 87% is the lowest since the Court began reporting on clearance ratios by Class in 2001. The clearance ratio in Class 5 saw a significant increase following an historic low in 2018. Despite the increase of 16%, the ratio remained significantly below the 100% mark. This was caused a continuation of the exceptionally high levels of Class 5 registrations. 2019 saw 165 Class 5 registrations. This severe increase (that began in 2018) had a continued dramatic effect on the clearance ratio of Class 5 matters themselves, the Class 4-8 group and ultimately the Class 1-8 yearly total. The Class 6 clearance ratio decreased from 2017, whilst the Class 8 clearance ratio increased dramatically. These two categories feature such low volumes of cases that the

changes often have a negligible effect on the Court's yearly workload regardless of large fluctuations in the clearance ratio.

### **Attendance indicator**

The attendance indicator is an output indicator of efficiency where Court attendances act as a proxy for input costs. The more attendances, the greater the costs both to the parties and to public resources. The number of attendances is the number of times that parties or their representatives are required to be present in court to be heard by a judicial officer or mediator (including appointments that are adjourned or rescheduled).

The attendance indicator is presented as the median number of attendances required to reach finalisation for all cases finalised during the year, no matter when the attendance occurred.

Fewer attendances may suggest a more efficient process. However, intensive case management, although increasing the number of attendances, may have countervailing benefits. Intensive case management may maximise the prospects of settlement (and thereby reduce the parties' costs, the number of cases queuing for hearing and the flow of work to appellate courts) or may narrow the issues for hearing (thus shortening hearing time and also reducing costs and queuing time for other cases waiting for hearing). In the Land and Environment Court, increased use of the facilities of conciliation conferences and case management conferences may be means to achieve these benefits.

Table 5.12 below compares the median number of pre-hearing attendances for each class of proceedings completed in 2015-2019.

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

	2015	2016	2017	2018	2019
Class 1	4	4	4	4	4
Class 2	1	1	1	1	1
Class 3: (all matters)	5	5	6	5	6
Compensation claims	8	6	7	4	7
Valuation objections	7	2	7	5	3
Miscellaneous	6	5	5	7	7
Class 4	7	4	4	4	4
Class 5	9	10	5	7	6
Class 6	2	1	3	2	2
Class 8	4	6	10	3	4

The table reveals that the median number of pre-hearing attendances stayed constant for matters in Classes 1 and 2 between 2018 and 2019. The case management of Class 1 matters means the median attendance figures are unlikely to change. The four attendances before a hearing usually comprise the first directions hearing, a second directions hearing, a conciliation conference and a directions hearing after termination of the conciliation conference. Likewise, the median attendances in Class 2 are unlikely to change due to the structure of Class 2 case management. Tree disputes, which are most Class 2 matters, have one directions hearing before the final hearing.

Overall, the number of pre-hearing attendances for all matters in Class 3 increased slightly to return to the same figure reported in 2017, a result of the increase in attendances in compensation claims. Compensation claims continue to take too long to be set down for hearing. The new practice note was intended to address this problem, but had not, by the end of the reporting period, reduced the time taken before hearing or the number of

attendances. The number of pre-hearing attendances decreased in valuation objections, a commendable outcome.

The number of pre-hearing attendances stayed the same in Class 4 for the fourth consecutive year. The number of attendances in Class 5 decreased slightly. The number of attendances in Class 6 remained consistent with the 2018 results. Class 8 attendances increased slightly following a significant decrease in 2018. The caseload volume for Classes 6 and 8 is small, so they are prone to more variation across years without impacting the Court's overall caseload management.

## Appeals

Measuring the number of appeals from a court's decisions and their success are not appropriate or useful indicators of the quality of the decisions or of court administration. Nevertheless, as there are appeal rights from the Court's decisions, the Court should provide statistics on the exercise of the appeal rights in the review year.

There are three types of appeals that can be generated from decisions of the Court (see Figures 2.1, 2.2 and 2.3 in Chapter 2 Court Profile).

First, decisions of Commissioners in Classes 1, 2 and 3 may be appealed to a Judge of the Court pursuant to s 56A of the Court Act. Section 56A appeals are confined to appeals against decisions on a question of law and do not permit a review of the Commissioner's decision on the facts or

merits. As shown in Table 5.13, in 2019, 13 s 56A appeals were commenced: 2 appeals were settled pre-hearing, 11 were completed after a hearing and 2 were pending at 31 December 2019.

Of the 11 appeals that were completed at hearing, 5 were upheld. This represents 1.2% of the number of matters in Classes 1, 2, 3 and 8 disposed of at a hearing by a Commissioner of the Court in 2019.

**Table 5.13 s 56A Appeal outcomes**

	2015	2016	2017	2018	2019
Total no. of appeals	12	9	13	15	13
No. finalised pre-hearing	0	6	1	1	2
No. of appeals to hearing	6	8	12	14	11
Outcome:					
Upheld	2	3	2	4	5
Dismissed	4	7	10	10	6

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

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

The Court has continued the approach it adopted for the 2016 Annual Review of reporting on the number of cases determined by the appellate courts on appeal from the Land and Environment Court. Table 5.14 shows the number and types of decisions determined by the appellate courts from 2015 to 2019.

In 2019, 19 appeals were determined by the Court of Appeal on appeal from the Land and Environment Court and 6 appeals were determined by the Court of Criminal Appeal on appeal from the Land and Environment Court.

**Table 5.14 Appeals to the appellate courts**

	2015	2016	2017	2018	2019
<b>Court of Appeal</b>					
Appeal by right	12	10	18	18	14
Leave to appeal	8	4	4	4	5
<b>Total matters determined</b>	<b>19*</b>	<b>14*</b>	<b>20*</b>	<b>23*</b>	<b>19*</b>
<b>Court of Criminal Appeal</b>					
Appeal by right	0	1	4	3	2
Stated case, section 5AE	2	0	1	1	3
Leave to appeal	2	0	0	1	1
<b>Total matters determined</b>	<b>4</b>	<b>1</b>	<b>5</b>	<b>5</b>	<b>6</b>

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

## Complaints

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

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

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

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

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

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

## Complaints received and finalised

In 2019, the Court received 5 formal complaints.

Table 5.15 gives particulars about the complaints made and dealt with in 2019 and the outcomes.

**Table 5.15 Complaint particulars**

Complaints pending as at 31 December 2018	0
Complaints made during 2019	5
<b>Total number of complaints</b>	<b>5</b>
Complaints examined but dismissed	5
Complaints not dismissed but dealt with by the Chief Judge	0
Complaints referred by Chief Judge to Complaint Committee	0
Complaint withdrawn	0
Total number of complaints finalised	5
Complaints pending as at 31 December 2019	0

As can be seen from Table 5.15, the number of complaints is low. The vast majority of complaints are made after, and in relation to, the hearing and disposal of a matter by a Commissioner. In 2019, Commissioners exercised the functions of undertaking conciliations, mediations, on-site hearings or court hearings in Classes 1, 2 and 3 and 8. There were 1,041 matters disposed of in 2019 in those classes. Complaints, therefore, occurred in only 0.48% of matters dealt with by Commissioners. This small proportion of complaints to matters dealt with by Commissioners is a pleasing indication of the high standards of conduct of Commissioners and the community's preparedness to accept decisions if they are made in accordance with the due process of the law.

The Chief Judge examines each complaint in accordance with the Court's policy. If the examination shows no misconduct, the Chief Judge dismisses the complaint and explains in writing to the complainant why the complaint was dismissed.

Table 5.16 shows the criteria used for dismissing complaints in 2019. More than one criterion may be used for each complaint. The table shows that each of the 3 complaints were dismissed.

**Table 5.16 Criteria for dismissing complaints**

No misconduct was established	5
The complaint related to a judicial or other function that is or was subject to adequate appeal or review rights	0

## Patterns in complaints

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

## Causes of complaint

Table 5.17 sets out the common causes of complaint and identifies which causes were raised by the complaints made in 2019. The number refers to the number of complaints raising that cause of complaint. Many complaints raise multiple causes and these are captured by this approach. It is to be emphasised these are the categories of allegations made in complaints, whether or not they were upheld.

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**Table 5.17 Common causes of complaint**

	<b>2019</b>
Bias, collusion or conflict of interest	1
Delay	
Dissatisfaction with substantive outcome or wrong decision	5
Dissatisfaction with procedural and evidentiary rulings	2
Error interpreting or applying the law	2
Failure of Court to enforce judgment or orders	
Failure to give fair hearing	3
Impairment	
Inadequate reasons for judgment	2
Inappropriate behaviour or comments or discourtesy	
Incompetence	

***Substitution for appeals or review***

All of the complaints stated that the Commissioner made the wrong decision. These complaints are often made in apparent substitution of an appeal against the decision of a Commissioner or Registrar. They are usually made when a party to litigation is aggrieved by an unfavourable decision but for one reason or another (including financial reasons) does not wish to appeal. Other times, the complaint is made by a person who is not a party to the proceedings and has no right to appeal the decision. Instead, a personal complaint is made against the decision-maker, either directly challenging the outcome or indirectly doing so by alleging that the outcome could only have resulted by some fault or bias of the decision-maker. Such complaints are dealt with on their merits.

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

In 2019, five complaints were that the Commissioner had made wrong findings on the evidence and made the wrong substantive decision. Two of these complaints raised that the Commissioner was in error in not having given substantial weight to the evidence of objectors and in preferring the evidence of one party to the other. Two complaints were that the Commissioner had made wrong rulings about the procedure and conduct of the hearing and the evidence to be admitted. Two complaints were that the Commissioner had wrongly interpreted and applied the law. Two complaints were that the Commissioner's reasons for findings of fact and the ultimate decisions were inadequate. The existence of the right of appeal against the decision under s 56A of the Court Act was a satisfactory means to redress these complaints.

***Misunderstanding as to dispute resolution process***

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

One complaint concerned the decision of a Commissioner disposing of proceedings in Class 1 pursuant to an agreement made under s 34 of the Court Act.

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The complainant argued that the Commissioner should have directed the parties to provide objectors with a copy of the amended development application before the Court accepted the amended plans, and before the parties entered into an agreement under s 34 of the Court Act resolving the dispute. However, the Commissioner is not obliged to direct the parties to do so. As the Commissioner was satisfied that the parties' decision was a decision that the Court could have made in the proper exercise of its functions, the Commissioner was obliged under s 34(3) of the Court Act to dispose of the proceedings in accordance with the parties' decision.

Two complaints concerned hearings conducted onsite of applications under the *Trees (Disputes Between Neighbours) Act 2006* concerning neighbours' trees. The complainants were concerned with the Commissioner's factual findings that meant that the trees in one case were not likely in the near future to cause damage to a dividing fence and in the other case were not planted so as to form a hedge. These factual findings meant that the Commissioner was unable to make orders requiring the trees be cut down or removed.

These complaints revealed a misunderstanding of the necessary statutory jurisdictional requirements that must be met before a Commissioner can make orders that trees be cut down or removed. The Commissioner hearing a matter must be satisfied of jurisdictional requirements before the power in the statute to make orders is able to be exercised. The complaints revealed a misunderstanding of the statutory process for deciding tree disputes.

### **Bias**

One complaint raised concern that the Commissioner allowed the applicant for consent repeatedly to amend its development application. The fact that the outcome of each application to amend the development application was to allow amendment did not, by itself, demonstrate that the Commissioner was biased in favour of the applicant at the expense of the Council.

## 6 Education and Community Involvement

- Continuing professional development
  - Continuing professional development policy
  - Annual Court Conference 2019
  - Twilight seminar series
  - National Mediator Accreditation
  - Other educational activities
- Performance indicators and programme evaluation
- Publications
- Education and participation in the community
- Individual Judges' and Commissioners' activities

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## Continuing professional development

### Continuing professional development policy

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

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

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

### Annual Court Conference 2019

The Annual Court Conference for 2019 was held on Thursday 16 May and Friday 17 May 2019 at Rydges Hotel, Cronulla.

Six Judges, nine Commissioners, seven Acting Commissioners and the Registrar attended the conference. The conference was organised in partnership with the Judicial Commission of New South Wales. The two day conference programme included sessions on:

- Climate change trends, impacts and risks
- Challenges posed by contamination
- Updates within the Court
- Judicial review
- Land management and coastal habitat restoration
- Restorative justice approaches in mediation
- Criminal law update
- Legal research
- Field Trip: Sydney Desalination Plant and Kamay Botany Bay National Park



Field Trip: Sydney Desalination Plant



Field Trip: Sydney Desalination Plant



Field Trip: Sydney Desalination Plant



*Field Trip: Kamay Botany Bay National Park*



*Field Trip: Kamay Botany Bay National Park*

### **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.

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12 March	Twilight seminar, "Biodiversity Conservation and Land Management Reforms: The Nuts and Bolts", presented by Ms Kathryn Ridge, Solicitor Director, Ridge & Associates, Judicial Commission of New South Wales, Sydney
10 April	Twilight seminar, "Leadership", presented by The Honourable Justice James Stevenson, Supreme Court of NSW, Sydney
8 May	Field Trip, a presentation by artist Janet Laurence, of her new exhibition 'Janet Laurence: After Nature', Museum of Contemporary Art, Sydney
16-17 May	Land and Environment Court 2019 Annual Conference, Rydges Hotel, Cronulla
15 June	Ngara Yura Program Seminar, "Exchanging Ideas: First Nations Consensus in Constitutional Reform, Nation Building and Treaty Making Processes", Judicial Commission of New South Wales, Sydney
27 June	Twilight seminar, "The Murray Darling Basin Royal Commission - what's in the report, and what's not", Mr Richard Beasley SC, Barrister, 9 Wentworth Chambers, Judicial Commission of New South Wales, Sydney
20 August	Cross-jurisdictional Seminar, "Forensic Science in the Courtroom", Judicial Commission of New South Wales, Sydney
27 August	Field Trip, "Shakespeare Room: State Library of NSW", a presentation by Ms Emma Gray, Librarian, Academics & Rare Books, State Library NSW, Sydney
31 October	Ngara Yura Program Seminar, "The Wotton Decision", Judicial Commission of NSW, Sydney

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6 November	Ngara Yura Seminar, “Living Language: Country, Culture, Community” Library of New South Wales, Sydney
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21 November	Cross-jurisdictional Seminar, “Risky Business”, Judicial Commission of New South Wales, Sydney

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*Seminar: Biodiversity Conservation and Land Management Reforms, 12 March 2019*

**National Mediator Accreditation**

In 2019, all Commissioners, the Registrar and Assistant Registrar were nationally accredited as mediators.

**Other educational activities**

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



*Field Trip: Museum of Contemporary Art, 8 May 2019*



*Field Trip: Shakespeare Room, State Library of NSW, 27 August 2019*

## Performance indicators and programme evaluation

All educational activities conducted by the Court and Judicial Commission of New South Wales are evaluated both quantitatively and qualitatively to ensure they meet the needs of the Judges, Commissioners and Registrars of the Court.

Quantitatively, the Court's Continuing Professional Development policy sets a standard of five days (or 30 hours) in each calendar year of professional development activities for each Judge and full-time Commissioner. Collectively, the quantitative target is 450 hours. In 2019, both the

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

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

**Table 6.1 Participant evaluation of Land and Environment Court Annual Conferences 2015 to 2019**

	Target	2015	2016	2017	2018	2019
Overall satisfactory rating	85%	93%	100%	95%	90%	94%

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

overall satisfaction of the twilight seminar series in the years 2015 to 2019, all of which exceeded the 85% standard.

**Table 6.2 Participant evaluation of Land and Environment Court Twilight seminar series 2015 to 2019**

	Target	2015	2016	2017	2018	2019
Overall satisfactory rating	85%	91%	92%	94%	89%	97%

\* Note: 2015 was based on 3 seminars and 2 field trips; 2016 was based on 6 seminars and 2 field trips; 2017 was based on 6 seminars, 2 cross-jurisdictional seminars and 2 field trips; 2018 was based on 6 seminars, 3 cross-jurisdictional seminars and 2 field trips and 2019 was based on 3 seminars, 2 cross-jurisdictional seminars and 2 field trips.

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



*Field Trip: Presentation by Janet Lawrence, Museum of Contemporary Art, 8 May 2019*

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## Publications

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

In August 2010, the Court, in conjunction with the Judicial Commission of New South Wales, produced the *Land and Environment Court of NSW Commissioners' Handbook*. The Handbook provides guidance, especially to Commissioners and Registrars, on the Court and its jurisdiction; the members of the Court and their functions; court practice and procedure; the commencement of proceedings and pleadings; case management; the different processes for resolution of proceedings, including hearings and conciliation conferences; decision-making and judgments; conduct of court members; and resources and remuneration for Commissioners. The Handbook is published online by the Judicial Commission on a closed website for members of the Court. The Handbook was updated in April 2018.

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

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

## Education and participation in the community

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

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



Visiting judicial delegation from Bangladesh

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## Individual Judges' and Commissioners' activities

The Judges' and Commissioners' activities during 2019 are summarised below:

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

#### Conferences and seminars

7 March	Twilight Seminar, a presentation by Bret Walker SC, former Commissioner of the Murray-Darling Basin Royal Commission, 'Aspects of the process involved in Royal Commissions, and implications of complex environmental laws', Environment and Planning Law Association NSW, Allens Linklaters, Sydney
3 April	Royal Society of NSW lecture, 'Measuring what we can: or how to lose weight on May 20th', presented by Emeritus Professor D Brynn Hibbert, State Library of NSW, Sydney
4 April	2019 Whitmore Lecture, 'The Foundations of Administrative Law', presented by The Hon Chief Justice James Allsop AO, Federal Court of Australia, Sydney
30 April	'The Significance of Mao's Cultural Revolution for Modern China', presented by Professor Timothy Cheek, Sydney
8 May	Twilight Seminar, a presentation by artist Janet Laurence, of her new exhibition 'Janet Laurence: After Nature', Museum of Contemporary Art, Sydney
10 May	Royal Society of NSW Annual Dinner lecture, 'The New Field of Atomic Electronics', presented by Professor Michelle Simmons, Swissôtel, Sydney
16-17 May	Land and Environment Court 2019 Annual Conference, Rydges Hotel, Cronulla
3 June	"Transit of Venus: The Scientific Event that led Captain Cook to Australia", presented by Adjunct Professor Nick Lomb, Sydney
20 June	"Climate change and our life support system", Women and Science Lecture presented by Professor Lesley Hughes, Sydney Mechanics' School of Arts, Sydney
1 July	"The Role of the Australian Delegation in the Formation of the Versailles Treaty and its Aftermath", lecture presented by Associate Professor David Lee, Sydney
4 July	Breakfast seminar of the Anglo-Australasian Lawyers Society, "History, Guns and Judges - Antonin Scalia and the Right to Bear Arms?", presented by Justice Glenn Martin AM, Sydney
18 July	"Early women scientists in colonial and pre-WWII Australia", Women and Science Lecture presented by Emeritus Professor Robert Clancy AM FRSN, Sydney Mechanics' School of Arts, Sydney

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30 July	“Fake news, propaganda and politics” Evening Conversation presented by Dr Anna Broinowski, Affinity Intercultural Foundation, Sydney
31 July	Book launch, 3rd edition of “Jesting Pilate” by The Rt Honourable Sir Owen Dixon, launched by The Hon Murray Gleeson AC QC
22 August	Joint Symposium of the Australian Academy of Law and Australian Academy of Science: “A hypothetical on Climate Change: Science and the Law”, moderated by former Solicitor-General of the Commonwealth Justin Gleeson SC, Federal Court of Australia, Sydney
23 August	Supreme Court Conference, Bowral
26-30 August	Judicial Institute for Africa Environmental Law Training Week, Sustainability Institute, Stellenbosch, South Africa
12-14 September	European Union Forum of Judges for the Environment, Helsinki, Finland
28 September	Dundee Climate Law Conference, University of Dundee, Scotland
11 November	Meeting of the Interim Governing Committee, Global Judicial Institute on the Environment (via Zoom)
20 November	Journal of Environmental Law Workshop, “Environmental Law and Populism”, Corpus Christi College, University of Oxford, England
21 November	“Legislation and the Stress of Environmental Problems”, a lecture presented by Professor Eloise Scotford, Bentham House, University College London, England

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### Speaking Engagements

5 March	<i>Overview of the Land and Environment Court</i> , lecture given to environmental law students at Macquarie University, Land and Environment Court of NSW, Sydney
8 March	<i>The judicial development of ecologically sustainable development</i> , lecture given to environmental law students at University of Sydney, New Law Building, Sydney
16 April	<i>Principled sentencing for environmental offences</i> , lecture given to environmental law students at Macquarie University, Land and Environment Court of NSW, Sydney
4 June	<i>The Paris Agreement and principles of international environmental law</i> , lecture given to the Law Council of Australia’s International Law and Practice Course at the Law Society of NSW, Sydney
27-29 June	Lecturer, Environmental Dispute Management Course, Australian National University, Canberra
28 June	<i>The impact of the Paris Agreement on climate change litigation</i> , lecture given to the Tarragona International Environmental Law Colloquium in Spain (via Zoom).

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30 July	<i>Valuation of land objections</i> , address given to the Australian Property Institute Members, Minter Ellison, Sydney
5 August	<i>Issues in granting conditional development consent</i> , talk given to the members' meeting of the Independent Planning Commission, Sydney
6 August	<i>Overview of the Land and Environment Court</i> , lecture given to environmental law students at Macquarie University, Land and Environment Court of NSW, Sydney
8 August	<i>Legal Responsibility in Construction and Development</i> , address given to the Australian Institute of Building, Western Sydney University, Parramatta
9 September	<i>Overview of the Land and Environment Court</i> , lecture given to environmental law students at the Australian National University, Land and Environment Court of NSW, Sydney
10 September	<i>Principled sentencing for environmental offences</i> , lecture given to environmental law students at Macquarie University, Land and Environment Court of NSW, Sydney
14 September	<i>Specialised Court Procedures for Expert Evidence</i> , presentation given at the European Union Forum of Judges for the Environment, Helsinki, Finland
28 September	<i>The Impact of the Paris Agreement on climate change litigation</i> , a paper presented at the Dundee Climate Law Conference, University of Dundee, Scotland
20 November	<i>The End of Enlightened Environmental Law?</i> , a paper presented at the Journal of Environmental Law Workshop "Environmental Law and Populism", at Corpus Christi College, University of Oxford, England
8-9 December	Lecturer, Climate Change Law Course, Macquarie University

## Publications

Brian J Preston, 'Regulatory Organization' in Emma Lees and Jorge E. Viñuales (eds) *The Oxford Handbook of Comparative Environmental Law* (Oxford University Press, 2019) 719.

Brian J Preston, 'Foreword' in *A Practitioner's Guide to the Land and Environment Court of NSW* (Law Society of NSW, 4th ed, 2019) iii.

B J Preston, 'The End of Enlightened Environmental Law?' (2019) 31(3) *Journal of Environmental Law* 399.

## Membership of legal, cultural or benevolent organisations

Chair, Land and Environment Court Rules Committee

Member, Uniform Rules Committee, Supreme Court of NSW

Official member, Judicial Commission of New South Wales

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

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

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Fellow, Australian Academy of Law (FAAL)

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Fellow, Royal Society of NSW

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Visiting Fellow, Corpus Christi College, University of Oxford

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Honorary Fellow, Environment Institute of Australia and New Zealand

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

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

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General Editor, Local Government Planning and Environment NSW Service

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

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Member, Editorial Board, Chinese Journal of Environmental Law

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Adjunct Professor, Sydney Law School, University of Sydney

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Adjunct Professor, School of Law, Western Sydney University

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

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

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

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

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

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Associate Member, European Union Forum of Judges for the Environment

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Member, The Francis Forbes Society for Australian Legal History

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### **Delegations and international assistance**

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20 March	Presentation on Overview of Land and Environment Court delivered to 34 Bangladeshi judges as part of the Western Sydney University Bangladesh Judicial Training Programme, Land and Environment Court of NSW, Sydney
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27 May	Presentation on Overview of Land and Environment Court delivered to 34 Bangladeshi judges as part of the Western Sydney University Bangladesh Judicial Training Programme, Land and Environment Court of NSW, Sydney
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8 November	Meeting with Professor Catherine Redgwell, to discuss a seminar on the use of satellite technology for enforcement and prevention of environmental crime, All Souls College, University of Oxford, England
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11 November	Meeting with Ms Kate O'Regan, the Director of the Bonavero Institute of Human Rights, and former Judge of the South African Constitutional Court, to discuss future collaboration, University of Oxford, England
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*Justice Preston presenting at the Judicial Institute for Africa Environmental Law Conference in Stellenbosch, South Africa, 20 August 2019.*



*Law Society of NSW Luncheon in honour of Justice Sheahan, 13 May 2019.  
Photo Source: Law Society of NSW.*

## **The Hon. Justice Terence William Sheahan AO**

### **Conferences and seminars**

14 February	Anglo-Australasian Lawyers Society breakfast seminar, "Section 44 of the Constitution - a selection of outdated prejudices", presented by David Bennett AC QC, The Australian Club, Sydney
14 February	2019 George Winterton Memorial Lecture, "The Mysteries of Judicial Power: Defining the Relationship between law and power in the modern state", presented by The Hon. Thomas Bathurst AC, Chief Justice of New South Wales, Banco Court, Sydney
18 February	Sydney Institute Seminar, "Voluntary Euthanasia: Impacts on Individuals and Society", presented by The Rev, Peter Kurti, Senior Research Fellow, and Penny Hackett, President of Dying with Dignity NSW, The Sydney Institute, Sydney
26 February	The Centre for Independent Studies Forum, "NSW State election preview", presented by Nick Greiner, former NSW Liberal premier, and Mr Bob Carr, former NSW Labor premier, The Centre for Independent Studies, Sydney
6 March	2019 Bathurst Lecture, "Is the modern company fit for purpose?", presented by Mr Graham Bradley AM, Non-Executive Chairman of HSBC Bank Australia, Virgin Australia International Holdings, Energy Australia Holdings and Grain Corp Limited, Banco Court, Sydney
7 March	New South Wales Society of Labor Lawyers Seminar, "Campaign Briefing", presented by Mr Paul Lynch MP, Shadow Attorney-General NSW, Law Society of New South Wales, Sydney
8 March	Catalyst Lecture, "Education for a Changing World", presented by Mr Mark Scott AO, Secretary of the NSW Department of Education, Villa Maria Parish Hall, Hunters Hill
12 March	Twilight seminar, "Implementation of Biodiversity Conservation Act 2016 (NSW)", presented by Kathryn Ridge, Judicial Commission of New South Wales, Sydney

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14 March	Mahla Pearlman Oration, "Understanding the Uluru Statement from the Heart and a settlement process", presented by Prof Megan Davis, Pro-Vice Chancellor Indigenous, University of NSW, Federal Court of Australia, Sydney
27 March	Anglo-Australasian Lawyers Society breakfast seminar, "The Uluru Statement from the Heart ", presented by Prof Megan Davis, Pro-Vice Chancellor Indigenous, University of NSW, The Australian Club, Sydney
4 April	Whitmore Lecture - COAT NSW, "The Foundations of Administrative Law", presented by the Hon Chief Justice James Allsop AO, Federal Court of Australia, Law Courts Building, Sydney
9 April	New South Wales Society of Labor Lawyers Seminar, "Post-Hayne: The State of Financial Regulation in Australia", presented by Prof Dimity Kingsford-Smith, Director of the Centre of Law, Markets and Regulation, University of NSW, Carroll & O'Dea Lawyers, Sydney
10 April	Land and Environment Court Twilight seminar, "Leadership in the Courtroom, not of the Court", presented by The Hon. Justice James Stevenson, Supreme Court of NSW, Judicial Commission of New South Wales, Sydney
7 May	Lunchtime Speaker Series, "In the space of regulation and technology", presented by Elizabeth Espinosa, President of the Law Society of NSW, Carroll & O'Dea Lawyers, Sydney
8 May	Land and Environment Court Twilight seminar and field trip, "Museum of Contemporary Art Exhibition Tour - Janet Laurence: After Nature", presented by Janet Laurence, artist, Museum of Contemporary Art, The Rocks, Sydney
16-17 May	Land and Environment Court of New South Wales 2019 Annual Conference, Rydges Cronulla, Cronulla
30 May	Anglo-Australasian Lawyers Society breakfast seminar, "Where to for law reform in Australia? ", presented by The Hon. Justice Sarah Derrington, Present, Australian Law Reform Commission, The Australian Club, Sydney
27 June	Land and Environment Court Twilight seminar, "The Murray Darling Basin Royal Commission - what's in the report, and what's not", presented by Mr Richard Beasley SC, Judicial Commission of New South Wales, Sydney
2 July	Lunchtime Speaker Series, "Redress One Year On", presented by Mr Howard Harrison, Managing Partner, Carroll & O'Dea Lawyers and others, Carroll & O'Dea Lawyers, Sydney
4 July	Anglo-Australasian Lawyers Society breakfast seminar, "History, Guns and Judges - Antonin Scalia and the Right to Bear Arms ", presented by Justice Glenn Martin AM, of the Queensland Supreme Court, The Australian Club, Sydney

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11 July	Sydney Institute Seminar, "The Media and Freedom of Speech - Two Views", presented by Mr Chris Kenny, author and columnist, The Australian, and Mr Chris Mitchell, columnist and former Editor-In-Chief, The Australian, The Sydney Institute, Sydney
18 July	Gilbert + Tobin Legal Symposium, "Recognition in keeping with the Constitution", presented by The Hon. A M Gleeson AC, former Chief Justice of Australia, Gilbert + Tobin Lawyers, Sydney
5 August	Gilbert + Tobin Centre of Public Law, "2019 Mason Conversation", presented by The Hon. Michael McHugh AC QC in conversation with Prof George Williams AO, Banco Court, Sydney
7 August	Royal Society of New South Wales Open Lecture, "Democracy under Challenge: How can we Restore a Sense of Citizenship?", presented by Prof Peter Shergold, Chancellor, Western Sydney University, State Library of NSW, Sydney
8 August	Anglo-Australasian Lawyers Society breakfast seminar, "To our children's children, the glad tomorrow ", presented by Emeritus Professor Rosalind Croucher AM, President, Australian Human Rights Commission, The Australian Club, Sydney

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### **Speaking engagements**

30 May	Officiated on behalf of the Chief Judge at the launch of, "A Practitioners Guide to the Land and Environment Court of NSW", Environment and Planning Law Committee, The Law Society of NSW, Sydney
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### **Membership of legal, cultural or benevolent organisations**

Fellow, The Royal Society of New South Wales

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

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## **The Hon. Justice Nicola Hope Margaret Pain**

### **Conferences and seminars**

14 February	George Winterton Memorial Lecture: the Mysteries of Judicial Power: Defining the Relationship between Law and Power in the Modern State, Sydney
12 March	Twilight seminar: Biodiversity Conservation and Land Management Reforms: The Nuts and Bolts, Judicial Commission, Sydney
19 March	Seminar: "Duties to consider in administrative law", Geoffrey Kennett SC NSW Bar Association, Sydney

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25 March	ACCEL Environmental Law Seminar Series: "Environmental Impact Assessment in the Global Commons - Bringing Cooperation Back In" Professor Neil Craik University of Waterloo Canada, Sydney
26 March	Seminar: "How to prepare and run an administrative law case" - N Williams SC & Joanna Davidson, NSW Bar Association, Sydney
10 April	Twilight seminar: "Leadership" Honourable Justice James Stevenson, Supreme Court of NSW, Judicial Commission, Sydney
8 May	Twilight seminar field trip: Museum of Contemporary Art Exhibition Tour - Janet Laurence: After Nature, Janet Laurence artist, Judicial Commission, Sydney
5 June	Forbes lecture: "Pitt Cobbett - A Pre-Engineer's Ghost Speaks from the Grave", Professor Anne Twomey, Sydney
27 June	Twilight seminar: "Murray Darling Basin Royal Commission - what's in the report, and what's not", Mr Richard Beasley SC, Judicial Commission, Sydney
23 July	Seminar: "A litigator's guide to electronic evidence - Mr Clinton Towers CA CISA, Director, Access Forensics, NSW Bar Association, Sydney
31 July	"Class Actions and Law Reform", Elizabeth Collins SC, Jonathon Redwood and Rebecca Gilsenan, NSW Bar Association, Sydney
8 August	Seminar: "To our children's children, the glad tomorrow", Emeritus Professor Rosalind Croucher AM President, Australian Human Rights Commission, AALS Sydney
20 August	Cross-jurisdictional Seminar: "Forensic Science in the Courtroom", Dr Lucina Hackman, Judicial Commission, Sydney
22 August	Joint Symposium: "A 'hypothetical' on Climate Change: the Science and the Law", Australian Academy of Science and Australian Academy of Law, Sydney
27 August	Seminar: "Directors duties & Climate Change: keeping pace with environmental challenges" The Right Hon Lord Sales, AALS Sydney
27 August	Twilight seminar field trip: Shakespeare Room: State Library of NSW, Judicial Commission, Sydney

### Speaking engagements

7 March	Opening remarks – "Current environmental challenges in the Land and Environment Court: focus on coastal development and inland water resources", Planning and Environmental Law seminar, University of New South Wales
23 March	"Recent developments in climate change litigation in Australia and beyond", Law Society of NSW, Young Lawyers Environment Committee annual conference

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27 June	Chair: "Future of Climate Change litigation" – The future of international dispute settlement, International Law Association, Young Lawyers, Luna Park Sydney
18 July	"Administering Water Policy in the Eastern States of Australia – Administrative and Other Challenges", AIAL National Administrative Law Conference 2019 – People, Parliament and the Public Interest, Canberra ACT

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### **Publications**

N Pain, 'Encouraging Restorative Justice in Environmental Crime' (2019) 13 *The Newcastle Law Review* 29

N Pain and R Pepper 'Legal costs considerations in public interest climate change litigation (2019) 30 *King's Law Journal* 211

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

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

Chair, Land and Environment Court Education Committee

Member, Australian Association of Constitutional Law

Member, Australian Association of Women Judges

Member, Australian Institute of Administrative Law

Member, International Law Association Australia branch Committee

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

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

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

### **Conferences and seminars**

13 February	Workshop, "Bringing Indigenous Voices into Judicial Decision Making", University of Sydney Law School, Sydney
14 February	2019 George Winterton Memorial Lecture, "The Mysteries of Judicial Power: Defining the Relationship Between Law and Power in the Modern State", Bathurst CJ AC, Australian Association of Constitutional Law, Sydney
20 February	Seminar, "The Scope of Appellate Review of Public Law Judgments", Kristina Stern SC and Georgina Westgarth, NSW Bar Association Public Law Section, Sydney

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5 March	Seminar, “Statutory Interpretation: The Time Dimension of Public Law Judgments”, Chloe Burnett, New South Wales Bar Association, Bar Common Room, Sydney
7 March	EPLA Twilight Seminar, “Aspects of the Process Involved in Royal Commissions, and on Some Implications of Complex Environmental Laws”, Bret Walker SC, Sydney
14 March	Mahla Pearlman Oration, Sydney
19 March	Seminar, “Duties to Consider in Administrative Law”, Geoffrey Kennett SC, NSW Bar Association, Sydney
29 March	2019 NELA Conference, “Twenty Years of the EPBC Act – Looking Back, Looking Forward”, Canberra
15 June	Symposium, “Exchanging Ideas: First Nations Consensus in Constitutional Reform, Nation Building and Treaty Making Processes”, Ngara Yura Program, Museum of Applied Arts and
17 June	Seminar, “Blockchain and Cryptocurrency for Barristers”, NSW Bar Association Common Law Section, Sydney
27 June	EPLA Twilight Seminar, “Murray Darling Basin Royal Commission”, Sydney
18 July	Gilbert + Tobin Legal Symposium, “Uluru Statement from the Heart: Indigenous Constitutional Recognition”, the Hon A M Gleeson QC AC, Sydney
31 July	Australian Institute of Administrative Law (NSW Chapter), “Robodebt: Automated Administrative Decisions”, Professor Terry Carney AO, Ashurst, Sydney
29 August	Sir Maurice Byers Annual Lecture, “The Constitutional Significance of the Barrister in Australia”, Sofronoff J, NSW Bar Association, Banco Court, Sydney
6 September	2019 COAT NSW Conference, “The Future is Now – Traditional Skills and New Technologies”, Pullman Hotel, Sydney
18 September	Australian Institute of Administrative Law (NSW Chapter), “The Use and Abuse of Soft Law in Environmental Decision-Making”, Neil Williams SC, Maddocks, Sydney
2-4 October	Residential Program, “Reflections on the Judicial Function”, National Judicial College of Australia, Mayfair Hotel, Adelaide
30 October	Spigelman Public Law Oration, “Silencing the Sovereign People”, Keane J AC, NSW Bar Association Common Room, Sydney
31 October	Ngara Yura Committee Seminar, “Reflections on the Wotton Decision”, Chris Ronalds SC AO and Tony McAvoy SC, NSW Bar Association Common Room

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7 November	Australian Institute of Administrative Law Lecture, “The Contributions of State Courts to Administrative Law in Australia”, Allsop CJ, Ashurst, Sydney
21 November	“On the Future of Climate Litigation in Australia”, National Environmental Law Association, Sydney

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### Speaking engagements

5 February	“The Myth of ‘Green Lawfare’ and ‘Vigilante Litigation’”, Keynote Address to Energy Transitions: Governing Unconventional Gas, Renewables and the Energy – Environment Nexus Workshop, UNSW, Sydney
13 February	“Bringing Indigenous Voices into Judicial Decision Making”, Judicial Officer representative, University of Sydney, Sydney
29 March	“The Myth of ‘Green Lawfare’ and ‘Vigilante Litigation’”, Visiting Judge’s Program, ANU College of Law, Canberra
29 April	“Mentoring in the Law – Because ‘That Sh*t Doesn’t Really Work’”, Keynote Address, UNSW Wom*n’s Mentoring Program, Herbert Smith Freehills, Sydney
15 June	Chair, Ngara Yura Program, “Exchanging Ideas: First Nations Consensus in Constitutional Reform, Nation Building and Treaty Making Process”, Museum of Applied Arts and Sciences (MAAS) – Powerhouse Museum, Sydney
6 September	“Making Sure That Curiosity Does Not Kill the CAT: the Use and Abuse of Expert Evidence in Merits Review Fora”, 2019 COAT NSW Conference, Pullman Hotel, Sydney
11 October	“Costs in Public Interest Litigation”, ANU College of Law, Canberra
19 November	“Making the Environment Alright: Human Rights, Constitutional Rights, and Environmental Rights”, Keynote Address at launch of Issue 42(4) of the <i>UNSW Law Journal</i> , King & Wood Mallesons, Sydney

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### Publications

R Pepper and A van Ewijk, “Making sure that Curiosity Does Not Kill the CAT: The Use of Expert Evidence in Merits Review Fora Where the Rules of Evidence Do Not Apply” (2019) 97 *AIAL Forum* 37.

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N Pain and R Pepper ‘Legal costs considerations in public interest climate change litigation (2019) 30 *King's Law Journal* 211.

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

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## Membership of legal, cultural or benevolent organisations

Adjunct Professor at University of Sydney, School of Law

Lecturer, Environmental Litigation, Sydney University Law Faculty

Secretary, Australian Institute of Administrative Law (NSW Chapter)

Standing organising committee member, National Judicial College of Australia Sentencing Conference

Judicial member, Football Federation of Australia

Ambassador, Twenty10

NSW committee representative, Australian Association of Woman Judges

Land and Environment Court of NSW representative, Ngara Yura Committee, Judicial Commission of New South Wales

Member, Australian Association of Constitutional Law

Member, Australian Commercial Law Association

Member, Australian Institute of Administrative Law Inc

Member, World Commission on Environmental Law

Member, IUCN Commission on Environmental Law

Member, National Judicial College of Australia

Member, Australian Institute of Judicial Administration

Member, Commonwealth Magistrates' and Judges' Association

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## The Hon. Justice Timothy John Moore

### Conferences and seminars

12 March	Twilight Seminar: Biodiversity Conservation and Land Management Reforms: The Nuts and Bolts, presented by Ms Kathryn Ridge, Solicitor Director, Ridge & Associates, Judicial Commission of New South Wales
10 April	Twilight Seminar: Leadership, presented by the Hon Justice James Stevenson, Supreme Court of New South Wales, Judicial Commission of New South Wales
8 May	Museum of Contemporary Art Exhibition Tour, 'After Nature', led by artist Janet Laurence, Judicial Commission of New South Wales
16-17 May	Land and Environment Court Conference
27 June	Twilight Seminar: Murray Darling Basin Royal Commission – what's in the report, and what's not, presented by Mr Richard Beasley SC, 9 Wentworth Chambers, Judicial Commission of New South Wales
22 August	Australian Academy of Science and Australian Academy of Law Joint Symposium, Federal Court of Australia

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26 August	De Simoni sentencing principles, presented by Justice Wendy Abrahams, Federal Court of Australia
27 August	Field Trip: Shakespeare Room: State Library, presented by Ms Emma Gray, Librarian Academics & Rare Books, State Library New South Wales, Judicial Commission of New South Wales
31 October	Ngara Yura Program Seminar: The Wotton Decision, 'Palm Island Class Action Case', NSW Bar Association in conjunction with the Law Society of New South Wales
21 November	Cross-jurisdictional Twilight Seminar: Risky Business, presented by Dr Allan Sparkes CV, OAM, VA, FRSN

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### **Speaking engagements**

29 January	Paperless trials, Land and Environment Court Clinic, Land and Environment Court of NSW, Sydney
14 February	Address to UNSW students, 'LEC Clinic Induction'
26 February	Address to Macquarie University students, 'LEC Clinic Induction'
16 April	Practice Note Class 3, panel discussion, Environment and Planning Law Association of New South Wales
27 May	TAFE Arborist Diploma students - Interpret legislation and role of the Court
9 September	Role of the Expert Witness and Report Structure, Australian Property Institute, Sydney
5 November	UNSW Environmental Law students (John Carr)

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### **Publications**

*Judicial Newsletter*, editor, Land and Environment Court of NSW

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*ACKMA Journal*, editor, Australian Cave and Karst Management Association

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

Chair, Land and Environment Court Library Committee

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Chair, Land and Environment Court Newsletter Committee

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Member, Land and Environment Court Education Committee

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Member, Caselaw Governance Committee

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Member, John Koowarta Reconciliation Law Scholarship Advisory Committee

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## Delegations and international assistance

14 October	Address to Taiwanese Legal Delegation
14 November	Address to Bangladeshi Judges' Delegation
27 May	Lunch: Professor Patrick C McGinley – Judge, West Virginia University College of Law; and Suzanne McGinley - Director, Child and Family Advocacy Clinic - hosted by Justice Pain

## The Hon. Justice John Ernest Robson SC

### Conferences and seminars

7 March	EPLA Twilight Seminar, 'commentary on aspects of the process involved in Royal Commissions and on some implications of complex environmental laws', presented by Brett Walker SC, barrister, and former Commissioner of the Murray-Darling Basin Royal Commission, Allens Linklaters, Sydney
12 March	Twilight Seminar, 'Biodiversity Conservation and Land Management Reforms: The Nuts and Bolts', presented by Kathy Ridge, environmental lawyer, Judicial Commission of NSW, Sydney
14 March	Mahla Pearlman AO Annual Oration and presentation of the Mahla Pearlman Australian Young Environmental Lawyer of the Year Award, Should I Stay or Should I Go? Shaping International Responses to Climate Change, Disasters and Displacement, Professor Megan Davis, Pro-Vice Chancellor Indigenous, University of New South Wales, Federal Court, Sydney
10 April	Twilight Seminar, 'Leadership', presented by Justice James Stevenson, Supreme Court of NSW, Judicial Commission of NSW, Sydney
16 - 17 May	Land and Environment Court Annual Conference 2019, 'Environmental Challenges: contamination, coastal erosion and climate change', Rydges Hotel, Cronulla
22 August	AAL & AAS Joint Symposium, a "hypothetical" on Climate Change: the Science and the Law, Federal Court, Sydney
27 August	Judicial Commission of NSW Field Trip, 'Shakespeare Room: State Library of NSW' presented Emma Gray, Librarian Academics and Rare Books, State Library of NSW, Sydney
5 September	Launch <i>Heydon on Contract</i> by J D Heydon (Lawbook Co, 2019) by the Honourable T F Bathurst AC, Chief Justice of NSW and the Honourable Justice A S Bell, President of the NSW Court of Appeal, Supreme Court of NSW

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

Member, Judicial Conference of Australia

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Member, NSW Bar Association

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Chair, Land and Environment Court of New South Wales Library Committee

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

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

### **Conferences and seminars**

18 September AIAL Seminar, Neil Williams SC, Maddocks Angel Place

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### **Speaking engagements**

13 September Land and Environment Court Practice, NSW Bar Association Reader's Course, NSW Bar Association Common Room

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9 October Land and Environment Court Practice, UTS Seminar, UTS campus

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24 October Stress Management, Difficult Situations and Bullying, EPLA Conference, Whitehouse Institute of Design

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25 October Class 3: Expert Evidence, EPLA Conference, Whitehouse Institute of Design

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

Member, Women Lawyers Association of NSW

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Member, Judicial Conference of Australia

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Member, Environment and Planning Law Association

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## **Ms Susan Dixon, Senior Commissioner**

### **Conferences and seminars**

7 March Twilight Seminar, a presentation by Bret Walker SC, as former Commissioner of the Murray-Darling Basin Royal Commission 'Aspects of the process involved in Royal Commissions, and implications of complex environmental laws', Environmental Planning Law Association NSW, Allens Linklaters, Sydney

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10 April Twilight Seminar, Leadership, presented by The Honourable Justice James Stevenson, Supreme Court of NSW, Sydney

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8 May	Twilight Seminar, a presentation by artist Janet Laurence, of her new exhibition 'Janet Laurence: After Nature', Museum of Contemporary Art, Sydney
16-17 May	Land and Environment Court 2019 Annual Conference, Rydges Hotel, Cronulla
11-12 July	Australian Bar Association, Convergence – Singapore Conference, Singapore

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### Speaking engagements

February to December	Mentor, Mentoring Program/Clinic Placement for final year law students, Macquarie University
3 May	Guest Speaker, Alternative Dispute Resolution, LAW6051 Environmental Litigation, University of Sydney Law School, Camperdown
16 May	Existing Use Rights, Land and Environment Court 2019 Annual Conference, Rydges Hotel, Cronulla
24 May	Guest Speaker, Section 34 Conferences, NSW Bar Association Bar Practice Course, Sydney
20 September	Guest Speaker, ADR in the LEC, NSW Bar Association Bar Practice Course, Sydney
24 October	Guest Speaker, An Overview of the Evolution of Clause 4.6 & What are and what are not "environmental planning grounds"?, Environmental Planning Law Association NSW, Martin Place Chambers, Sydney

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### Membership of legal, cultural or benevolent organisations

Member, Council of Australasian Tribunals
Member, Land and Environment Court of NSW Education Committee
Member, Land and Environment Court of NSW Library Committee
Member, Land and Environment Court of NSW Court Users Group
Member, Institute of Arbitrators and Mediators Australia
Member, Australian Dispute Resolution Association Inc.

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## Ms Susan O'Neill, Commissioner

### Conferences and seminars

12 March	Twilight seminar, Biodiversity Conservation and Land Management Reforms: The Nuts and Bolts, Kathy Ridge, Judicial Commission of New South Wales
8 May	Twilight seminar, Exhibition "After Nature", Janet Laurence, Museum of Modern Art, Judicial Commission of New South Wales

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7 August	Sydney University Professional Development for Law School Casual Academics, Classroom techniques – fostering student engagement Pedagogy at SLS – Learning Outcomes and Graduate Qualities, Dr Rita Shackel, University of Sydney
22 August	Australian Academy of Science and Australian Academy of Law Joint Symposium, A hypothetical on Climate Change: the Science and the Law, Justin Gleeson SC, Federal Court No. 1
21 August	Sydney University Professional Development for Law School Casual Academics, Classroom techniques – formative activities and assessments - online and face-to-face, DIY resources for your teaching toolkit, Dr Yvette Debergue, University of Sydney
27 August	Field trip, Shakespeare Room: State Library of NSW, Emma Gray, State Library of NSW, Judicial Commission of New South Wales
3 October	Annual Supreme Court ADR Address, Her Excellency The Honourable Margaret Beazley AO QC, Banco Court, Supreme Court of NSW.
6 November	Ngara Yura Field Trip, Living Language: Country, Culture, Community, Damien Webb, Melissa Jackson, Marika Duczynski & Ronald Briggs, State Library of NSW, Judicial Commission of New South Wales

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

Member, Australian Institute of Architects

Nationally Accredited Mediator

Registered Architect, NSW Architects Registration Board

### **Speaking engagements**

24 September Panel member, Legal Hour, UNSW Law hosted by King & Wood Mallesons, on planning and development decision making

9-10 October Lecturer, Sydney Law School, LAW6354 Environment Planning and Impact Assessment Law

## **Ms Danielle Dickson, Commissioner**

### **Conferences and seminars**

7 March Twilight Seminar, a presentation by Bret Walker SC, as former Commissioner of the Murray-Darling Basin Royal Commission aspects of the process involved in Royal Commissions, and implications of complex environmental laws, Environmental Planning Law Association NSW, Allens Linklaters, Sydney

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14 March	Marla Pearlman Oration, Environmental Planning Law Association NSW and Law Council of Australia, delivered by Professor Megan Davis, Pro-Vice Chancellor Indigenous at the University of New South Wales.
10 April	Twilight Seminar, Leadership, presented by The Honourable Justice James Stevenson, Supreme Court of NSW, Sydney
8 May	Twilight Seminar, a presentation by artist Janet Laurence, of her new exhibition 'Janet Laurence: After Nature', Museum of Contemporary Art, Sydney
16-17 May	Land and Environment Court 2019 Annual Conference, Rydges Hotel, Cronulla
27 August	Shakespeare Room: State Library of NSW", Ms Emma Gray, Librarian Academics & Rare Books, State Library of NSW, Field Trip.

### Speaking engagements

February to December	Mentor, Mentoring Program/Clinic Placement for final year law students, Macquarie University
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### Membership of legal, cultural or benevolent organisations

Member, Planning Institute of Australia

Member, Land and Environment Court Library Committee

Member, Land and Environment Court Education Committee

Nationally Accredited Mediator

## Mr Michael Chilcott, Commissioner

### Conferences and seminars

7 March	Twilight Seminar, a presentation by Bret Walker SC, as former Commissioner of the Murray-Darling Basin Royal Commission 'Aspects of the process involved in Royal Commissions, and implications of complex environmental laws', Environmental Planning Law Association NSW, Allens Linklaters, Sydney
12 March	Twilight seminar, Biodiversity Conservation and Land Management Reforms: The Nuts and Bolts, Kathy Ridge, Judicial Commission of New South Wales
7 May	Seminar: Sustainable Sydney 2030; Monica Barone, CEO of the City of Sydney; Environmental Professionals Network
8 May	Twilight seminar, Exhibition "After Nature", Janet Laurence, Museum of Modern Art, Judicial Commission of New South Wales

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16-17 May	Land and Environment Court 2019 Annual Conference, Rydges Hotel, Cronulla
27 June	Twilight Seminar: Murray Darling Basin Royal Commission – what’s in the report, and what’s not, presented by Mr Richard Beasley SC, 9 Wentworth Chambers, Judicial Commission of New South Wales
3 October	Annual Supreme Court ADR Address, Her Excellency The Honourable Margaret Beazley AO QC, Banco Court, Supreme Court of NSW.
1-2 November	Conference: EIANZ 2019 Annual Conference; Wellington, New Zealand, various presenters; EIANZ
21 November	Cross-jurisdictional Twilight Seminar: Risky Business, presented by Dr Allan Sparkes CV, OAM, VA, FRSN
5 December	EIANZ end of year function: Community Consultative Committees; David Johnson and Margaret Harvie; EIANZ

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

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

Member, Rotary Club of Sydney

Nationally Accredited Mediator

**Ms Jennifer Smithson, Commissioner**

**Conferences and seminars**

12 March	Judicial Commission of NSW – Biodiversity Conservation and Land Management Reforms, Twilight Seminar, Sydney
14 March	Law Society of NSW – The Marla Pearlman Oration, Federal Court, Sydney
15 March	Law Council of Australia – International Law + Practice Course 2019, Lecture 1 – EU Law, Sydney
8 May	Judicial Commission of NSW – After Nature Field Trip to MCA, Sydney
16-17 May	LEC Annual Conference, Judicial Commission of NSW, Cronulla
6 November	Judicial Commission of NSW Ngara Yura Committee, Living Languages Field Trip to State Library of NSW, Sydney

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

Life Fellow, Planning Institute of Australia

Graduate, Australian Institute of Company Directors

Nationally Accredited Mediator

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## Ms Joanne Gray, Commissioner

### Conferences and seminars

7 March	Twilight Seminar, a presentation by Bret Walker SC, as former Commissioner of the Murray-Darling Basin Royal Commission aspects of the process involved in Royal Commissions, and implications of complex environmental laws, Environmental Planning Law Association NSW, Allens Linklaters, Sydney
12 March	Twilight Seminar, Biodiversity Conservation and Land Management Reforms: The Nuts and Bolts, presented by Ms Kathryn Ridge, Solicitor Director, Ridge & Associates, Sydney
10 April	Twilight Seminar, Leadership, presented by The Honourable Justice James Stevenson, Supreme Court of NSW, Sydney
16-17 May	Land and Environment Court 2019 Annual Conference, Rydges Hotel, Cronulla
27 August	Twilight Seminar, Field Trip to the Shakespeare Room: State Library of NSW", presented by Ms Emma Gray, Librarian Academics & Rare Books, State Library NSW
27 September	Land and Environment Court, Commissioner training day, Land and Environment Court of NSW, Sydney
24 October	An Overview of the Evolution of Clause 4.6 & What are and what are not "environmental planning grounds"?, Environmental Planning Law Association NSW Conference, Sydney
24 October	Ethics & Obligations to the Court and Your Client, Presented by Michelle Painter SC, Nine Selborne Chambers, Environmental Planning Law Association NSW Conference, Sydney
24 October	Stress Management, Difficult Situations and Bullying, Presented by Associate Professor Greg de Moore, Westmead Hospital, Environmental Planning Law Association NSW Conference, Sydney

### Membership of legal, cultural or benevolent organisations

Member, Law Society of NSW

Nationally Accredited Mediator

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## Ms Sarah Bish, Commissioner

### Conferences and seminars

7 March	Twilight Seminar, a presentation by Bret Walker SC, as former Commissioner of the Murray-Darling Basin Royal Commission aspects of the process involved in Royal Commissions, and implications of complex environmental laws, Environmental Planning Law Association NSW
12 March	Twilight Seminar: Biodiversity Conservation and Land Management Reforms: The Nuts and Bolts, The Judicial Commission of NSW
10 April	Twilight Seminar, Leadership, presented by The Honourable Justice James Stevenson, Supreme Court of NSW, Sydney
8 May	Twilight Seminar, a presentation by artist Janet Laurence, of her new exhibition 'Janet Laurence: After Nature', Museum of Contemporary Art, Sydney
16 May	Land and Environment Court 2019 Annual Conference, Rydges Hotel, Cronulla
27 June	Twilight: Murray Darling Basin Royal Commission, The Judicial Commission of NSW
22 August	Australian Academy of Science: A "hypothetical" on Climate Change: the Science and the Law, Federal Court

### Membership of legal, cultural or benevolent organisations

Member, International Association of Hydrogeologists

Member, Institute of Arbitrators and Mediators Australia

Member, Registered Engineers for Disaster Relief, Australia

Member, United Nations International Children Emergency Fund WASH Consultants Roster

Member, United Nations Development Programme Consultants Roster

Nationally Accredited Mediator

## Dr Peter Walsh, Commissioner

### Conferences and seminars

7 March	Twilight Seminar, a presentation by Bret Walker SC, as former Commissioner of the Murray-Darling Basin Royal Commission, Environmental Planning Law Association NSW, Allens Linklaters, Sydney
12 March	Twilight Seminar, 'Biodiversity Conservation and Land Management Reforms: The Nuts and Bolts', presented by Ms Kathryn Ridge, Solicitor Director, Ridge & Associates, Judicial Commission of NSW, Sydney

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10 April	Twilight Seminar, Leadership, presented by The Honourable Justice James Stevenson, Supreme Court of NSW, Sydney
16-17 May	Land and Environment Court 2019 Annual Conference, Rydges Hotel, Cronulla
19-21 June	“World Forum on Climate Justice”, organised by The Centre for Climate Justice and Elsevier, Glasgow UK
27 June	Land and Environment Court Twilight seminar, "The Murray Darling Basin Royal Commission - what's in the report, and what's not", presented by Mr Richard Beasley SC, Judicial Commission of New South Wales, Sydney
27 September	Commissioners Training Day, Land and Environment Court

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### Speaking engagements

20 June	<i>Towards a new, more useful, narrative on institutional reform for climate justice</i> , a presentation to the World Forum on Climate Justice, organised by The Centre for Climate Justice and Elsevier, Glasgow UK.
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### Membership of legal, cultural or benevolent organisations

Fellow, Planning Institute of Australia

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Certified Practising Planner

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

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Nationally Accredited Mediator

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## Mr Timothy Horton, Commissioner

### Conferences and seminars

12 March	Twilight Seminar : “Biodiversity Conservation and Land Management Reforms: The Nuts and Bolts”, Ms Kathryn Ridge, Solicitor Director, Ridge & Associates,
10 April	Twilight Seminar: “Leadership”, presented by The Honourable Justice James Stevenson, Supreme Court of NSW, Sydney
8 May	Twilight Seminar: a presentation by artist Janet Laurence, of her new exhibition ‘Janet Laurence: After Nature’, Museum of Contemporary Art, Sydney
16-17 May	Land and Environment Court 2019 Annual Conference, Rydges Hotel, Cronulla
22 August	“A hypothetical on climate change: the science and the law”, co-presented by the Academy of Law and the Academy of Science, Federal Court Sydney

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5 September      “Aboriginal Rights, Interests & ADR – A New Epoch?”, presented by the Australian Disputes Centre

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3 October         Annual Address: “Conflicts of Interest in Commercial Arbitration”, presented by Her Excellency The Honourable Margaret Beazley AO QC, Governor of New South Wales, presented by the Australian Disputes Centre

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### **Speaking engagements**

February to         Mentor, Mentoring Program for graduates of architecture, program run by June                     the Australian Institute of Architects

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27 November      Guest Speaker, Land and Environment Court, Association of Consulting Architects

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

Fellow, Australian Institute of Architects

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Nationally Accredited Mediator

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Ambassador, Sight for all

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## Appendices

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

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# Appendix 1 – Court Users Groups

## Court Users Group

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

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

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

### Members during 2019

The Hon. Justice Brian Preston, Chief Judge (Chair)	Land and Environment Court
Senior Commissioner Susan Dixon	Land and Environment Court
Ms Sarah Froh, Registrar	Land and Environment Court
Mr Peter Castor	Institute of Australian Consulting Aboriculturists
Mr Stephen Child	Australian Property Institute
Ms Stacey Ella	Environment Protection Authority
Ms Lesley Finn	Law Society Development and Planning Committee, Law Society of New South Wales
Mr Aaron Gadiel	NSW Urban Taskforce
Mr Sam Haddad	Engineers Australia
Ms Christina Harrison	The Institution of Surveyors NSW Inc
Ms Donette Holm	Department of Planning & Environment
Mr David Morris/Ms Rana Koroglu	EDO NSW
Mr Clifford Ireland	New South Wales Bar Association
Mr James Johnson	Nature Conservation Council of New South Wales
Ms Erin Gavin	Office of Environment and Heritage
Mr Michael Knight	Local Government In-House Counsel Network
Mr Mike Lichtwark	NSW Department of Industry

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Ms Penny Murray	Urban Development Institute of Australia
Ms Roslyn McCulloch/ Dr James Smith	Environment and Planning Law Association NSW
Mr Shaun Carter	Royal Australian Institute of Architects (NSW Chapter)
Mr Ben Salon	NSW Young Lawyers Environment and Planning Law Committee
Mr Eugene Sarich	Australian Institute of Building Surveyors and Australian Institute of Environmental Health
Mr Chris Shaw	Property Council of Australia
Mr Gary Shiels	Planning Institute of Australia (NSW Division)
Mr Ian Woodward	Local Government Lawyers Group
Ms Carly Wood	Australian Institute of Landscape Architects
Ms Jessica Wood	Local Government NSW

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*Meeting of the Court Users Group 6 September 2019*

## **Mining Court Users Group**

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

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## Appendix 2 – Court Committees

### Court Committees

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

#### Rules Committee

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

##### Members

The Hon. Justice Brian Preston, Chief Judge

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The Hon. Justice Terry Sheahan AO (to August 2019)

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The Hon. Justice Nicola Pain (from August 2019)

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The Hon. Justice John Robson

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#### Education Committee

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

##### Members

The Hon. Justice Nicola Pain (Chair)

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The Hon. Justice Tim Moore

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Senior Commissioner Susan Dixon

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Commissioner Danielle Dickson

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Ms Sarah Froh, Registrar

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Ms Una Doyle, Education Director, Judicial Commission of NSW

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## Library Committee

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

### Members

The Hon. Justice Tim Moore (Chair to February 2019)

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The Hon. Justice John Robson (Chair from February 2019)

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Senior Commissioner Susan Dixon

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Ms Sarah Froh, Registrar

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Mr Michael Unwin

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Ms Larissa Reid

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Ms Susan Ramsay

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Ms Vanessa Blackmore

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## Court Newsletter Committee

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

### Members

The Hon. Justice Tim Moore (Chair)

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The Hon. Justice Brian Preston, Chief Judge

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February 2019  
Volume 11 Issue 1

## Land and Environment Court of NSW Judicial Newsletter

**Legislation**

*Statutes and Regulations*

- Planning
- Environmental Protection
- Buildings
- Water
- Transport
- Miscellaneous

*State Environmental Planning Policies (SEPP) Amendments*

**Judicial**

*United Kingdom, Court of Appeal*

*NSW, Court of Appeal*

*NSW, Court of General Appeal*

*Supreme Court of NSW*

*Land and Environment Court of NSW*

- Judicial Decisions
- Landmark Acquisitions
- Landmark
- Controversial
- Law Enforcement
- Judicial Decisions
- Insurance Law
- International Decisions
- Judicial Decisions
- Cases
- Review of Decisions
- Planning
- NSW, Decisions Unrelated
- NSW, Decisions
- Commentaries

**Other Court**

*High Court and Administrative Tribunal*

**Guest Items**

*Articles/Directions*

**Legislation**

**Statutes and Regulations:**

**• Planning:**

**Environmental Planning and Assessment Amendment (Contributions Plans) Regulation 2018** - commenced on 25 January 2018. This Regulation prevents a development application being determined in relation to certain land zoned under a Precinct Plan in State Environmental Planning Policy (Strategic Regional Growth - Centres) 2008 until a contributions plan under s.7 - 12 of the *Environmental Planning and Assessment Act 1979* imposing conditions is in force for the land concerned.

**Environmental Planning and Assessment Amendment (False or Misleading Information) Regulation 2018** - commenced 21 December 2018. The objects of this Regulation are:

- (a) to extend the offence of providing false or misleading information in connection with a planning matter to the provision of information in or for the purposes of a submission in response to the public exhibition and;
- (b) to update certain references to it consequent on the enactment of the *Environmental Planning and Assessment Act 2017*.

**Environmental Planning and Assessment (Development and Concurrence) Regulation 2018** commenced on 28 February 2018. Regulation are to amend the *Environmental Planning and Assessment Regulation 2000* to provide for the:

- (a) the use of the New South Wales planning authorities, concurrence authorities, and Secretary of the Department of Planning (the Planning Secretary) in connection applications for development requiring integrated development;
- (b) the authorisation of the Planning Secretary as an approval body in respect of an application for development;
- (c) procedural and other matters applying to the Planning Secretary acting on behalf of an approval application for integrated development;
- (d) the provision of fees in connection applications for development requiring integrated development;
- (e) other amendments of a law revision nature.

June 2019  
Volume 11 Issue 2

## Land and Environment Court of New South Wales

**Legislation**

*Statutes and Regulations*

- Planning
- Buildings
- Miscellaneous

*State Environmental Planning Policies (SEPP) Amendments*

**Judicial**

*United Kingdom, Supreme Court*

*High Court of Australia*

*New South Wales, Court of Appeal*

*New South Wales, Court of Criminal Justice*

*Supreme Court of New South Wales*

*Land and Environment Court of New South Wales*

- Judicial Decisions
- Controversial
- Insurance Law
- Landmark
- Landmark Acquisitions
- Landmark
- Controversial
- Law Enforcement
- Judicial Decisions
- Insurance Law
- International Decisions
- Judicial Decisions
- Cases
- Review of Decisions
- NSW, Decisions Unrelated
- NSW, Decisions
- Commentaries
- Statutes/Regulations

**Other Court**

*New South Wales, Civil and Administrative Tribunal*

**Legislation**

**Statutes and Regulations:**

**• Planning:**

**Environmental Planning and Assessment Amendment (Primary Production and Rural Development) Regulation 2018** - commenced 28 February 2018. The object of this Regulation is to amend the *Environmental Planning and Assessment Regulation 2000* as follows:

- (a) to restate, and incorporate as designated development, certain development for the purpose of artificial water bodies that was designated development under a superseded State environmental planning policy;
- (b) to update references to certain land use terms so that they are consistent with those in the Standard Instrument and to clarify the meaning of a term;
- (c) to separate out a provision for designated development in relation to horses so that it is not expressed in the context of a threshold relating to feedlots;
- (d) to clarify that a reference to layers in a description of designated development relating to poultry farms is to layers for egg production;
- (e) to update references to environmental planning instruments and omit redundant provisions.

**Environmental Planning and Assessment (Swamp, Transitional and Other Provisions) Amendment (Building Code of Australia) Regulation 2018** - commenced 10 May 2018. The object of this Regulation is to ensure that until the current version of Planning for Bush Fire Protection is updated certain references in the BCA continue to work by construing those references as being to existing documents.

**Environmental Planning and Assessment (Swamp, Transitional and Other Provisions) Amendment (State Significant Infrastructure) Regulation 2018** - commenced 28 February 2018. The object of this Regulation is to provide that an approval for certain development that is State significant infrastructure (and that was a transitional PI SA project) that is due to lapse on a specified day (the original lapsing day) does not lapse on that day if:

- (a) an application is made to the Minister to modify the approval to specify a later day on which the approval lapses; and
- (b) that application has not been determined on or before the original lapsing day.

**• Biodiversity:**

**Biodiversity Conservation Act 2016** - final determination regarding Ericaceae commenced on 31 May 2018.



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