

The Land and Environment Court of NSW



Annual Review

2020

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

However, these quantitative performance indicators do not give a full picture of the Court's performance. There are other qualitative indicators that assist in gaining an appreciation of the Court's performance. This year's Review again includes qualitative output indicators of access to justice, including in relation to the affordability of litigation in the Court, the accessibility of the Court and the responsiveness of the Court to the needs of users, particularly given the novel challenges presented by the COVID-19 Pandemic.

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

The Court delivered 458 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 **2020: 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 2019. Of particular significance are:

- Improvement or maintenance of a clearance rate greater than 100% in Classes 1, 3, 4, 6, and 8.
- Improvement in clearance rate in the Class 1-3 cumulative category, the Class 4-8 cumulative category and the overall clearance rate (Class 1-8).
- A decrease in the time taken to finalise cases in Classes 3, 4 and 6.
- The number of pre-hearing attendances was maintained or decreased in Classes 1 and 4.
- An increase in the percentage of pre-hearing attendances conducted by Online Court.
- A reduction in the number of pending matters in Classes 1, 3, 4, 6 and 8.

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

- A clearance rate of less than 100% in Classes 2 and 5.
- A decrease in case processing timeliness in Classes 1, 2 and 5, as indicated by the increase in the backlog indicator.
- An increase in the time taken to finalise cases in Classes 1, 2, 5 and 8.
- 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.
- An increase in the number of prehearing attendances in Classes 2, 3, 5, 6 and 8.

## Reforms and developments

During 2020, reforms occurred in the following areas:

- New Practice Notes;
- New Policies;
- New technology and equipment;
- Launch of a new Court website;
- New information on the Court's website;
- Technology and accessibility;
- Duty Lawyer Scheme;
- Land and Environment Court Clinic;
- Tree Helpdesk; and
- Maintenance of Library services.

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

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

## 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.

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In 2020, the Court's Annual Conference was cancelled due to the COVID-19 Pandemic and government restrictions. The Court nevertheless was able to hold four twilight webinars, one field trip (pre-COVID-19), and four cross-jurisdictional webinars.

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

The 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 members did so remotely during 2020.

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

## Consultation with court users

In 2020, the Court continued to consult and work closely with users to improve systems and procedures through its Committees and User Groups. Consultation occurred both formally through meetings of the Court Users Group, which were held remotely due to the COVID-19 Pandemic, 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. 2020 marks the Court's 40th year of operation. 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



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

In 2020, 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**

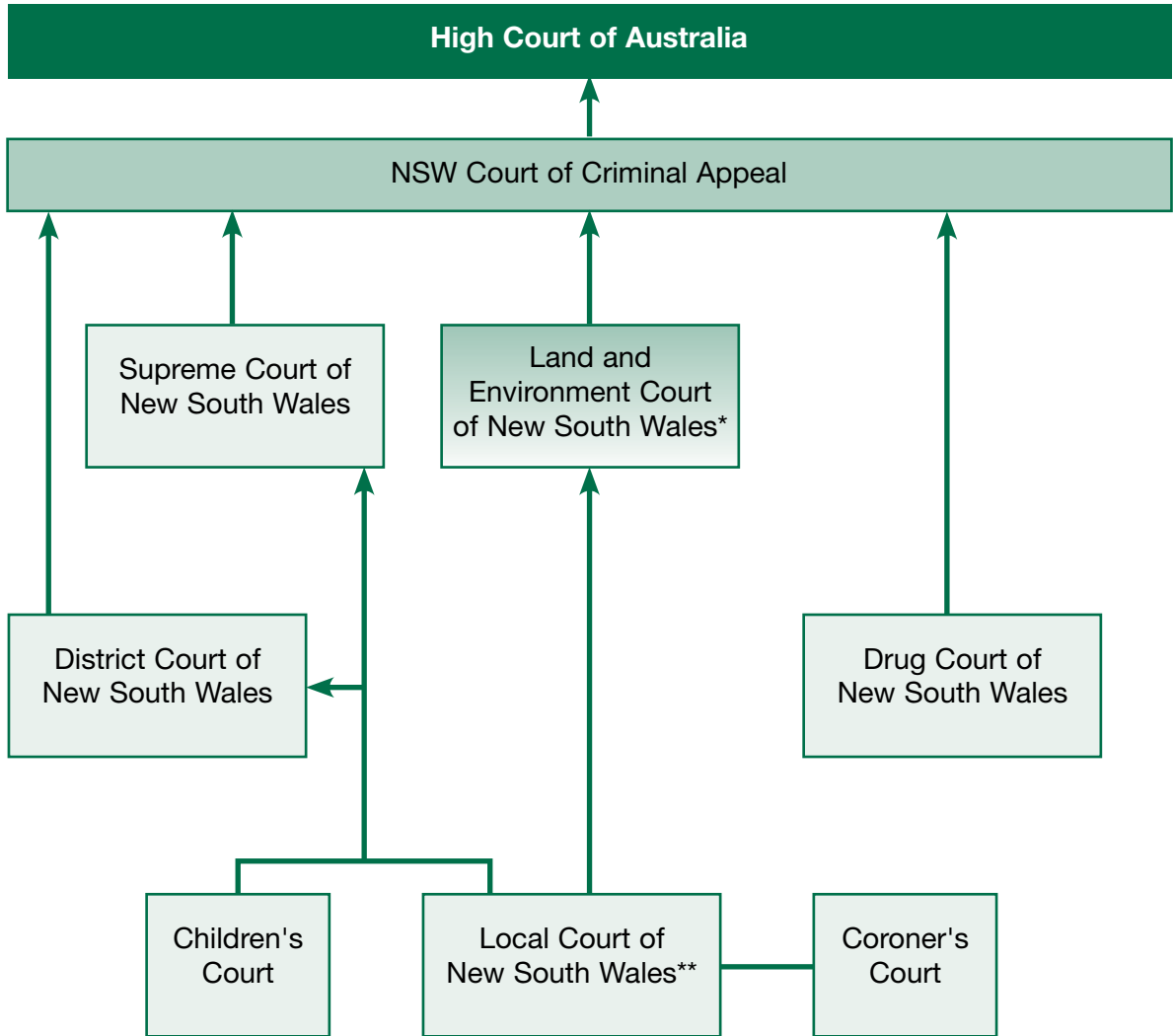
<b>Class 1</b>	environmental planning and protection appeals (merits review appeals)
<b>Class 2</b>	local government, trees and miscellaneous appeals (merits review appeals)
<b>Class 3</b>	land tenure, valuation, rating and compensation matters (merits review appeals)
<b>Class 4</b>	environmental planning 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.

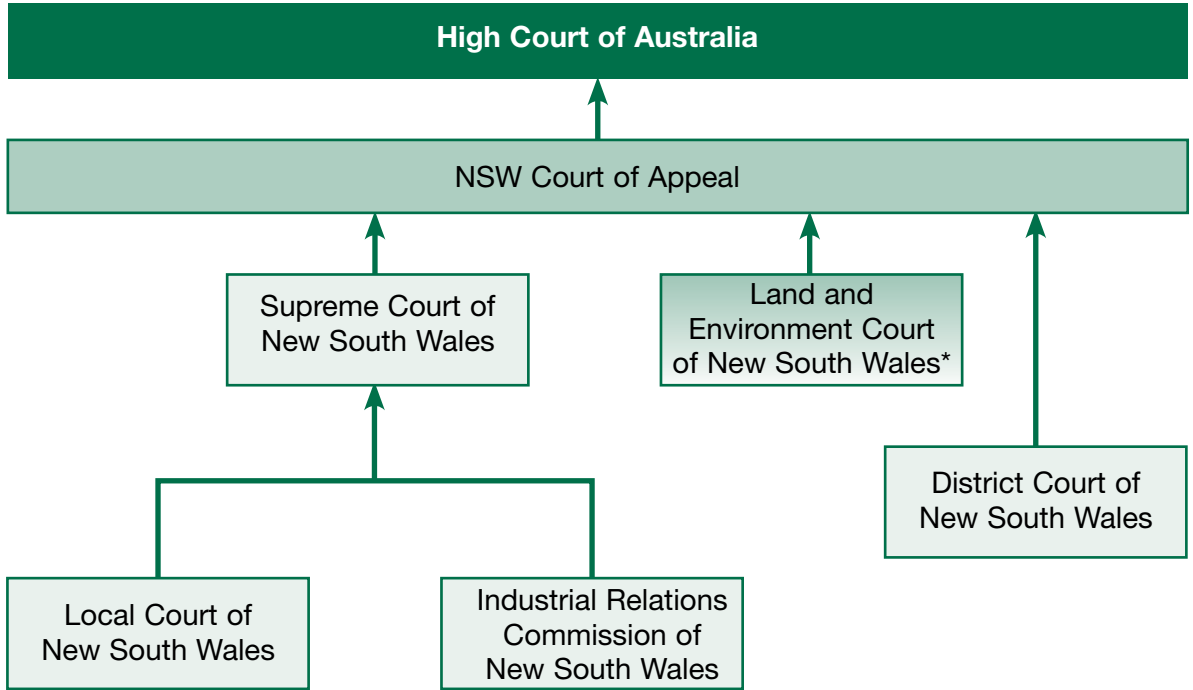
**Figure 2.1 New South Wales Court System – Criminal Jurisdiction**



\* 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.

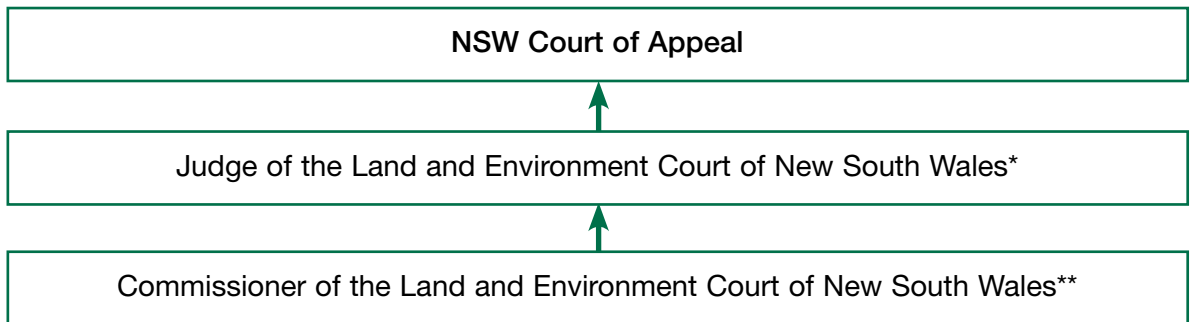
\*\* Appeals from the Local Court of New South Wales to the Land and Environment Court are with respect to an environmental offence under the *Crimes (Appeal and Review) Act 2001* and are in Classes 6 and 7 of the Land and Environment Court's jurisdiction.

**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 2020, 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

### 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.



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

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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 2020, the Commissioners were as follows:

### **Senior Commissioner**

Ms Susan Dixon

### **Commissioners**

Ms Susan O'Neill

Ms Danielle Dickson

Mr Michael Chilcott

Ms Joanne Gray

Ms Sarah Bish

Dr Peter Walsh

Mr Timothy Horton

Ms Elizabeth Espinosa

### **Acting Commissioners**

Associate Professor Dr Paul Adam AM – botanist and ecologist

Ms Julie Bindon – town planner

Mr Alan Bradbury – lawyer

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

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

Mr John Douglas – arborist

Mr David Galwey – arboricultural consultant

Mr Peter Kempthorne – valuer

Mr Paul Knight – valuer

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

Ms Maureen Peatman – lawyer with experience in land valuation matters

Mr Matthew Pullinger – architect and urban designer



*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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Mr Paul Rappoport – architect and town planner

Dr Gary Shiels – town planner and urban designer

Ms Jennifer Smithson – town planner

Mr Ross Speers – engineer

Ms Emma Washington – landscape architect

## **The Registrars**

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

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

As at 31 December 2020, the Registrars were as follows:

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

Ms Sarah Froh

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

Ms Maria Anastasi

## **Appointments and retirements**

### **Appointments**

#### ***Commissioners***

Ms Elizabeth Espinosa was appointed as a Commissioner of the Court on 1 June 2020.

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

Mr Alan Bradbury was appointed as an Acting Commissioner of the Court on 9 November 2020.

Mr Peter Kempthorne was appointed as an Acting Commissioner of the Court on 8 April 2020.

Mr Paul Knight was appointed as an Acting Commissioner of the Court on 8 April 2020.

Mr Matthew Pullinger was appointed as an Acting Commissioner of the Court on 8 April 2020.

Mr Paul Rappoport was appointed as an Acting Commissioner of the Court on 9 November 2020.

Ms Jennifer Smithson was appointed as an Acting Commissioner of the Court on 8 April 2020.

Dr Gary Shiels was appointed as an Acting Commissioner of the Court on 9 November 2020.

Ms Deborah Sutherland was appointed as an Acting Commissioner of the Court on 9 November 2020 and resigned on 16 December 2020.

Ms Emma Washington was appointed as an Acting Commissioner of the Court on 9 November 2020.

### **Retirements**

#### ***Commissioners***

Ms Jennifer Smithson retired as a Commissioner of the Court on 27 March 2020.

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## Supporting the Court: the Registry

The Court Registry comprises the following four sections:

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### Client Services

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

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### Listings

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

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### Information and Research

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

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### Commissioner Support

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

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*A court hearing*

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

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

# 3 Caseflow Management

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



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## Introduction

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

## Overview by class of jurisdiction

Caseflow management varies with the type or class of proceeding.

### Class 1

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

Appeals are allocated a date for a directions hearing before 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, a hearing using a remote meeting platform, such as Microsoft Teams, or an Online Court hearing (see Types of Directions Hearings below).

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

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

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

### Class 2: Tree disputes

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

The Court manages a separate list for tree disputes. About 60% 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 on a Friday. The Practice Notes specify the directions hearings to be held in preparation for hearing and the directions

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

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

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

### **Class 4**

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

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

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

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## **Class 5**

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

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

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

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

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

## **Classes 6 and 7**

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

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

## **Class 8**

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

## **Types of directions hearings**

The Court offers court users four types of directions hearing:

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

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

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### **telephone directions hearing**

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

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### **Microsoft Teams directions hearing**

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

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### **Online Court directions hearing**

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

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In general, the initial allocations for directions hearings are:

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

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

From March 2020, due to the COVID-19 Pandemic, the Court operated all directions hearings by telephone, Microsoft Teams, audio-visual link (AVL) or Online Court.

In early December 2020, the Court was able to conduct directions hearings using a hybrid model, allowing some matters to be conducted in person in court, where appropriate and at the request of the parties, and other matters to be conducted by telephone, AVL or by Microsoft Teams.

In 2020, Online Court was used in 1,039 civil matters in Classes 1, 2, 3, 4 and 8, and for 3,786 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. A court hearing is a hearing conducted in court in person or by telephone, AVL or Microsoft Teams.

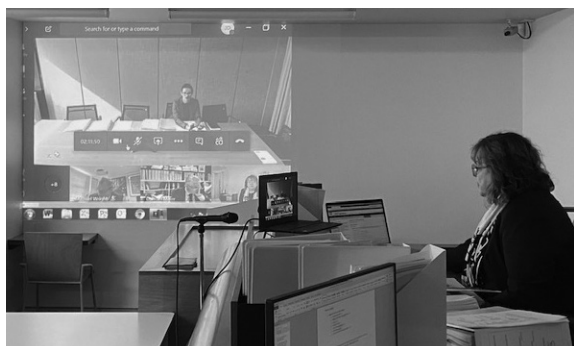


*An on-site hearing conducted by Acting Commissioner Paul Adam.*

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



*A paperless court hearing.*



*A Microsoft Teams court hearing.*

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## 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 2016 - 2020. Table 3.1 shows a substantial increase in the total number of conciliation conferences held in 2020 compared to 2019, bringing it in line

with the results from earlier 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.

**Table 3.1 ss 34 and 34AA Conciliation Conferences 2016 – 2020**

	2016	2017	2018	2019	2020
ss 34 and 34AA conferences	2,035	1,534	1,465	962	1,342

**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 2016 to 2020. 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 2016 – 2020**

		2016	2017	2018	2019	2020
<b>Classes 1 and 2</b>	Total:	2	3	5	7	9
	Internal	2	3	5	6	9
	External	0	0	0	1	0
	Number finalised pre-hearing	2	2	4	3	6
	% finalised pre-hearing	100	67	80	43	67
<b>Class 3</b>	Total:	5	1	4	4	2
	Internal	4	1	2	4	2
	External	1	0	2	0	0
	Number finalised pre-hearing	5	1	2	4	2
	% finalised pre-hearing	100	100	50	100	100
<b>Class 4</b>	Total:	19	15	11	22	19
	Internal	17	15	10	22	19
	External	2	0	1	0	0
	Number finalised pre-hearing	14	11	7	17	15
	% finalised pre-hearing	74	73	64	77	79
<b>All Classes</b>	Total:	26	19	20	33	30
	Internal	23	19	17	32	30
	External	3	0	3	1	0
	Number finalised pre-hearing	21	14	13	24	23
	% finalised pre-hearing	81	74	65	73	77

The total number of mediations decreased slightly between 2019 and 2020 but the 2020 total of 30 is still high compared to recent years. The number of mediations in 2020 in Class 3 decreased. Class 4 mediations remained high despite a small increase. Mediations in Classes 1 and 2 further increased from 2019, the highest total since 2007. 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.

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## **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 2020, the Land and Environment Court was awarded 'ADR Innovation of the Year' at the Australian Disputes Centre ADR Awards. Whilst other courts curtailed their ADR programmes due to the COVID-19 Pandemic, the Court quickly adapted the modes by which conciliations and mediations were organised and conducted to be by telephone, AVL and Microsoft Teams, or a combination. The success of the Land and Environment Court's alternative dispute resolution programme, the value to the community and the benefits to the parties of providing individualised justice are demonstrated by the flexibility in responding to the COVID-19 Pandemic, the year on year increase in the number of matters that continue to be filed in the Court and the number of matters that are conciliated and resolved prior to any hearing, revealing a high level of ongoing user satisfaction with the Court's dispute resolution processes.



## 4 Reforms and Developments

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

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During 2020, reforms occurred in the following areas:

- New Practice Notes
- New Policies
- New technology and equipment
- Launch of a new Court website
- New information on the Court's website
- Technology and accessibility
- Duty Lawyer Scheme
- The Land and Environment Court Clinic
- Tree Helpdesk
- Maintenance of library services

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

## New Practice Notes

The Court made two new Practice Notes during 2020:

- Subpoena Practices (commenced 22 July 2020);
- Practice Note - Class 5 Proceedings (commenced on 10 December 2020).

The Subpoena Practices Practice Note remakes the practice note by the same name made on 7 May 2015, to insert an explanation of the process for access and production of material through the eSubpoena portal.

The new Practice Note for Class 5 Proceedings repealed the practice note by the same name made on 3 April 2018. The new practice was amended and remade to:

- revoke the Interim Protocol for the Issuing of Class 5 proceedings, which was adopted as an interim measure to deal with the first phase of the COVID-19 pandemic;
- amend the procedure for obtaining orders to provide for alternative methods of hearing an application to commence proceedings; and
- set out procedures for filing summons for the respective methods of hearing an application.

## New Policies

In 2020, the Court adopted new policies on two topics, the COVID-19 Pandemic and dignity and respect.

In March 2020, in response to the emerging pandemic, the Court issued a COVID-19 Pandemic Arrangements Policy, to facilitate ongoing Court operations to both protect the health and safety of all court users and to maintain access to justice and essential court services. This Policy was subsequently revised in July and December to remain consistent with the changing NSW Government restrictions. The Policy was also issued alongside the Interim Protocol for the Issuing of Class 5 proceedings, which has since been repealed by the New Class 5 Practice Note.

The Court also issued an internal Dignity and Respect Policy. The Court's Policy applies and extends the Dignity and Respect Policy of the Department of Communities and Justice to all people working in the Court, including judges, commissioners and court staff.

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The Court's Policy reasserts the need to ensure that the Court is a workplace free from inappropriate workplace behaviour and sets out the procedure for making and dealing with a complaint about inappropriate workplace behaviour. As a supplementary measure, the Court administered a survey of all people working in the Court to ascertain whether people had experienced inappropriate workplace behaviour. The Court has proactively responded to the results of the survey, including induction and training in appropriate workplace behaviour.

## **New technology and equipment**

The COVID-19 Pandemic prevented or restricted the Court's ability to resolve disputes in person and in court. The Court quickly responded by organising and conducting dispute resolution by telephone, AVL and Microsoft Teams. This required the installation of new technology and equipment. The Court replaced existing telephones in courtrooms with polycom telephonic equipment and upgraded telecommunication cables and lines to the Court building. The Court issued to all Court staff laptops, on which remote meeting platform technology had been installed, for use in all dispute resolution processes, including those conducted in courtrooms. All judges, commissioners and registrars were trained in the conduct of dispute resolution processes using remote meeting platforms. AVL facilities were installed in one courtroom, adding to the existing AVL facilities in another courtroom. A project is underway to install AVL facilities in more courtrooms in 2021-2022.

## **Launch of a new Court Website**

In December 2020, the Court launched a new website. The new site has been designed to make it easier and more efficient for users to access the information they need. The new site features improved search and navigation functionality and uses a more responsive layout to respond to an increasing proportion of users accessing the site via mobile devices. The new site also features improved analytics software that helps the Court understand how users interact with the site and the information contained therein. This feedback allows the Court to focus on topics of interest to users and will allow further development of assets and resources in these areas in the future.

## **New information on the Court's website**

The Court's website was updated with the new practice notes, policies as well as protocols and fact sheets for use of audio-visual links and Microsoft Teams.

Information explaining the practice and procedure that applies for particular types of cases in the Court has been expanded with the publishing of a selection of 'Templates' of standard orders for Court-granted development consents and modification of consents, for use by Court staff, parties and practitioners.

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

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## 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 between 9am and 12 noon each Friday, either in person or by telephone, to provide preliminary advice to self-represented litigants with a view to guiding them through the Court process and referring them to appropriate services. In 2020, it assisted 69 unrepresented persons.

## The Land and Environment Court Clinic

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

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

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

The clinical program between the Court and the universities 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 2020. 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 2020, it assisted 94 unrepresented persons, across 112 appointments, who wished to become or were parties to tree dispute matters, a 16% decrease from 2019 (112 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.

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## Implementing the International Framework for Court Excellence

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

The seven areas of court excellence are:

### **1. Court leadership and management:**

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

### **2. Court planning and policies:**

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

### **3. Court proceedings:**

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

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

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

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

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

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

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

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

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

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

In 2020, 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 - 2019 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;
- improving case registration and case management systems; and
- adaptively managing the Court's response to the COVID-19 Pandemic.

## **2. Court planning and policies:**

- updating the Court's Practice Note for Class 5 Proceedings and Subpoena practices with a view to improving case management and resolution of matters;
- adopting and implementing policies to ensure the ongoing provision of dispute resolution services during the COVID-19 Pandemic; and
- adopting and implementing a Dignity and Respect Policy to ensure the Court provides a workplace free from inappropriate behaviour.

## **3. Court proceedings:**

- monitoring, measuring and managing the timeliness and efficiency of the resolution of different types of proceedings, including continuous collection and regular review of case processing statistics;
- continuing monitoring and management of delays in reserved judgments; 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;

- organising and conducting court proceedings by telephone, AVL and Microsoft Teams to maintain access to justice and avoid delay and cost by the adjournment of proceedings due to the COVID-19 Pandemic; and
- being awarded winner of the 'ADR Innovation of the Year' category at the Australian Disputes Centre ADR Awards recognising the Court's adaptation of its ADR programme.

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

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

- continuing to meet on a quarterly basis with court users as part of the Court Users Group, as explained in Appendix 1.
- continuing publication of a court newsletter three times a year with the latest legislation, judicial decisions and changes in practice and procedure;
- continuing to report on the Court's performance in the Annual Review on the areas of court excellence; 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 commissioner and acting commissioners;
- continuing and extending the professional development programme for judges and commissioners, as explained in Chapter 6;

- undertaking training and education of judges' tipstaves and researchers, and registry staff in the different types of matters and their resolution, and in the Framework;
- adopting and implementing a Dignity and Respect Policy to ensure the Court provides a workplace free of inappropriate behaviour;
- providing new technology and equipment to conduct dispute resolution processes by telephone, AVL and Microsoft Teams; and
- providing training for judges, commissioners and registrars and registry staff in the use of the new technology and equipment.

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

- maintaining access to the Court and its dispute resolution services during the COVID-19 Pandemic;
- continuing the Duty Lawyer Scheme to assist self-represented litigants;
- continuing the 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 in 2010 a project with the Australasian Legal Information Institute (AustLII) to use AustLII's databases to generate relevant metrics and statistics

concerning the Court. The data is available on a calendar year basis and links for the data for the years ending 31 December for each year from 2010 to 2020 are available on the Court's website at Publications and Resources then Database metrics and statistics.

The metrics provide information concerning the frequency and nature of the citation of decisions of the Court by other courts or tribunals and the use made of the Court's decisions by those academic journals that are publicly electronically accessible. The project also enables extraction of information on the most frequently cited decisions of the Court as well as the general rate of accessing the Court's cases through AustLII's databases. The information that is contained in the citations by database section is collected on an accrual basis using 2010 as the base year.

From the eleven 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 2020, decisions of this Court were cited 5,343 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 2020, decisions of this Court had been cited 185 times (including 18 times in the Western Australian Court of Appeal), which represents a further 91 citations by courts and tribunals in Western Australia over the eleven-year period. Similar positions apply to other Australian jurisdictions as can be seen by a comparison between the December 2010 metrics and those of December 2020.

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For the Court's 2020 metrics, AustLII was able to expand its search range for both international citation data and for journal and other commentary sources. This gave a wider range of results in each category.

Although the data able to be accessed internationally is comparatively limited, decisions of this Court have been cited since 2010:

- seven times by New Zealand courts (three times by each of the High Court and the Supreme Court);
- twice by South African courts (once by the Supreme Court of Appeal) and by the National Court of Papua New Guinea; and
- once each by the Belize Supreme Court, the Court of Appeal of Fiji, the Court of Appeal of the Cook Islands and the Hong Kong Court of First Instance.

By the end of 2020, decisions of this Court had been cited in 75 courts and tribunals and 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 (45 in total). This is a considerable underestimation of academic citation as AustLII's access to databases of law journals or other commentaries is very 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 2020 metrics on the Court's website at: <https://lec.nsw.gov.au/lec/publications-and-resources/metrics-and-statistics.html>.

## 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 2020, 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 2016 and 2020 are summarised in Table 5.1.

**Table 5.1 Caseload Statistics**

	2016	2017	2018	2019	2020
<b>Class 1</b>					
Registrations	842	1,009	1,001	904	732
Restored	4	12	9	19	11
Pre-Trial Disposals	705	556	641	636	659
Disposed by Hearing	127	275	242	219	215
Pending	398	578	705	790	643
<b>Class 2</b>					
Registrations	117	131	85	91	90
Restored	5	8	5	4	8
Pre-Trial Disposals	36	28	34	16	24
Disposed by Hearing	94	104	67	77	63
Pending	32	39	28	31	43
<b>Class 3</b>					
Registrations	156	77	107	84	82
Restored	10	5	0	0	3
Pre-Trial Disposals	120	72	68	79	77
Disposed by Hearing	17	36	38	10	12
Pending	121	94	95	93	85
<b>Class 4</b>					
Registrations	133	118	116	102	92
Restored	14	23	24	21	11
Pre-Trial Disposals	101	82	83	68	72
Disposed by Hearing	55	44	46	39	43
Pending	84	99	87	105	83
<b>Class 5</b>					
Registrations	52	59	156	164	116
Restored	2	2	0	1	4
Pre-Trial Disposals	27	6	22	24	29
Disposed by Hearing	35	69	36	65	36
Pending	81	67	166	249	300

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**Classes 6 & 7**

Registrations	19	11	16	17	7
Restored	0	1	4	0	1
Pre-Trial Disposals	4	3	13	8	2
Disposed by Hearing	9	11	12	6	12
Pending	11	9	5	8	3

**Class 8**

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

**TOTAL**

Registrations	1,322	1,408	1,486	1,363	1,121
Restored	35	52	43	45	38
Pre-Trial Disposals	1,000	747	864	833	865
Disposed by Hearing	340	541	442	418	382
Pending	729	889	1,091	1,279	1,158

Tables 5.1 and 5.2 show the following trends:

- 2020 saw less registrations than the previous year for the second consecutive year. The 2020 total is the lowest since 2014. The Class 1 total of 743 is the lowest since 2013 (although it is still a 37% increase from the 2013 total of 543).
- Total finalisations (1,247) decreased very slightly from 2019 (1,251). The Court further increased the proportion of matters finalised through pre-trial disposals (to 69%). The Court continued to experience relatively few restored matters despite the generally elevated caseload.
- Total finalisations (1,247) were higher than total registrations (1,159) in 2020, resulting in the total pending caseload (1,158) decreasing. This is the first year that pending caseload has decreased since 2014. The change in differential is notable as a measure of both decreased registrations and improved Court efficiency.
- Merits review and other civil proceedings finalised in Classes 1, 2 and 3 (1,050) comprised 84% of the Court's finalised caseload (1,247) in 2020, a very slight increase from 2019 (83%).

- Civil and criminal proceedings finalised in Classes 4, 5, 6, 7 and 8 (197) comprised 16% of the Court’s finalised caseload (1,247) in 2020, a very slight decrease from 2019 (17%).
- The means of finalisation in 2020 were 69% pre-trial disposals (including by use of alternative dispute resolution processes

and negotiated settlement) and 31% by adjudication by the Court. This is a slight increase in the proportion of pre-trial finalisations but otherwise remains consistent with the 2018 and 2019 results following a sharp increase in the proportion of matters finalised by hearing in 2017.

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

	2016	2017	2018	2019	2020
Total matters finalised – all classes	1,340	1,288	1,306	1,251	1,247
Total pre-trial finalisations	1,000	747	864	833	865
% matters finalised pre-trial	75	58	66	67	69

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, almost 47% of appeals in Classes 1, 2 and 3 were finalised by these means. Although a high percentage when compared to some of the Court’s older reported statistics, this is a slight decrease from an all time high 50.2% recorded in 2018. 46.7% is consistent with

the recent results since 2016. Of the total of 490 matters, 452 were finalised by s 34 and s 34AA conciliation conferences and 38 matters by on-site hearings. This is a significant reduction in the amount of on-site hearings (down from 71 in 2019) largely due to COVID-19 social distancing restrictions. This also accounts for the decrease in the percentage of matters finalised by s34/s34AA/on-site hearings outlined in Table 5.3 below.

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

	2016	2017	2018	2019	2020
Total matters finalised	1,099	1,071	1,090	1,037	1,050
s 34 and s 34AA conferences and on-site hearings	532	523	547	500	490
% s 34 and s 34AA and other matters finalised on-site	48.4	48.8	50.2	48.2	46.7

## Court performance by class of jurisdiction

A brief summary of the Court's performance in 2020 for each of the eight classes of jurisdiction is provided.

### Class 1

Registrations of Class 1 matters decreased further from 2018. There were 743 Class 1 registrations in 2020, 180 less than the 2019 total of 923 (a 19.5% decrease). 2020 saw a lower total number of Class 1 registrations than the previous year for the second consecutive year, but only the second time since 2013. Finalisations also increased in 2020. There were 19 additional Class 1 finalisations in 2020 (an increase of 2%). The reduction in incoming matters and the increase in finalising matters resulted in the Class 1 pending caseload reducing significantly (a decrease of 18.6%). This is the first time the Class 1 caseload has been less than the previous year since 2012. Class 1 represents 64% of all filings in 2020. The decrease in proportional percentage of Class 1 registrations experienced over the last two years can largely be explained by the significantly elevated level of Class 5 registrations (Class 1 matters constituted almost 70% of all registrations in 2017 for example). COVID-19 also likely affected the incoming matters in Class 1 as it has had wide ranging impacts on the planning and development industries.

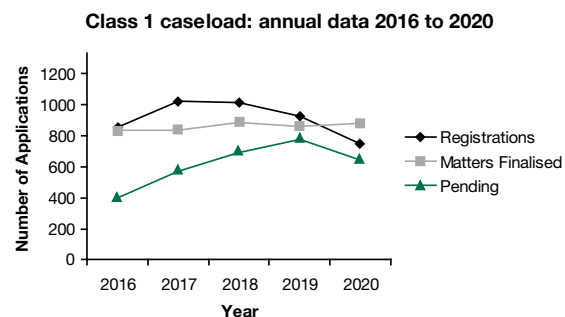
Class 1 matters constitute the bulk of the Court's finalised caseload (70%). 70% of all Class 1 matters finalised were appeals under s 8.7 of the *Environmental Planning and Assessment Act 1979* relating to development applications. 57% of the appeals under s 8.7 were applications where councils had not determined the development application within the statutory

time period ("deemed refusals"). This is a decrease from the proportion of deemed refusals reported in 2019.

Of the remaining matters finalised in 2020, 11% were applications to modify a development consent under s 8.9 of the *Environmental Planning and Assessment Act 1979* and 12% were appeals against council orders and the actual or deemed refusal by councils to issue building or occupation certificates. Third party objector appeals constituted less than 1%. Applications for costs, s 56A appeals against the Court's decisions, and prevention or remediation notices constituted the bulk of the remaining finalised matters in Class 1.

Figure 5.1 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 1 between 2016 and 2020.

**Figure 5.1**



### Class 2

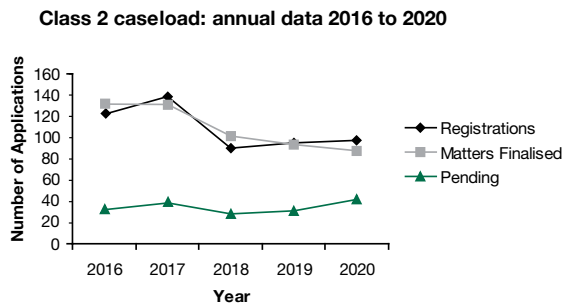
Class 2 registrations represented 8.5% of total registrations in the Court in 2019 (up from 7% in 2019). Registrations increased slightly from 2019; a 3% increase from 95 to 98.

The number of Class 2 matters finalised in 2020 is 87, a decrease of 6.5% from 2019. Despite this, the number represents 7% of the Court's finalised caseload for the year, an unchanged proportion from 2019.

Applications under the *Trees (Disputes Between Neighbours) Act 2006* represent a strong majority of Class 2 finalisations for 2020 (83%).

Figure 5.2 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 2 between 2016 and 2020.

**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.

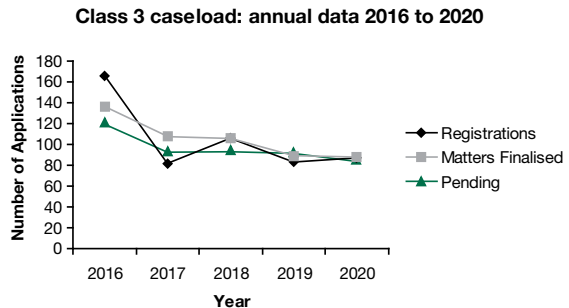
New registrations in Class 3 remained consistent, a small increase of 1% in 2020. Compensation claims for compulsory acquisition of land constituted 29% of all Class 3 appeals registered in 2020, down significantly from 42% in 2019. Valuation and rating appeals accounted for 35%.

Of the Class 3 matters finalised in 2020, 40% were compensation claims (down from 53% in 2019), 33% were valuation or rating appeals and 27% were other matters (up from 19% in 2019). There were 3 land claim matters completed in the year and 1 strata scheme matter. Finalisations of Class 3 matters remained consistent (no change in total number).

The pending caseload of Class 3 matters decreased by 9% as finalisations exceeded registrations.

Figure 5.3 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 3 between 2016 and 2020.

**Figure 5.3**

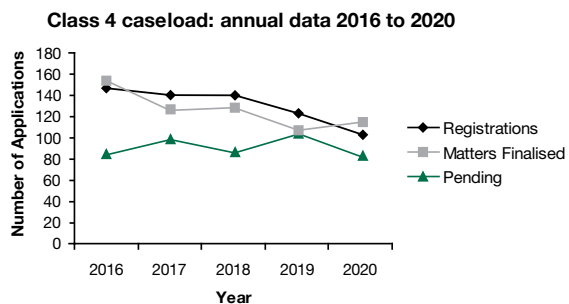


### Class 4

Class 4 registrations further decreased by 16% in 2020, whilst finalisations increased by 7%. Class 4 matters comprise 9% of all registrations and 9% of all finalisations in 2020. As a result of Class 4 finalisations exceeding registrations, the Class 4 pending caseload decreased significantly (19%). Of the Class 4 matters registered in 2021, 48% were initiated by councils.

Figure 5.4 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 4 between 2016 and 2020.

**Figure 5.4**



## Class 5

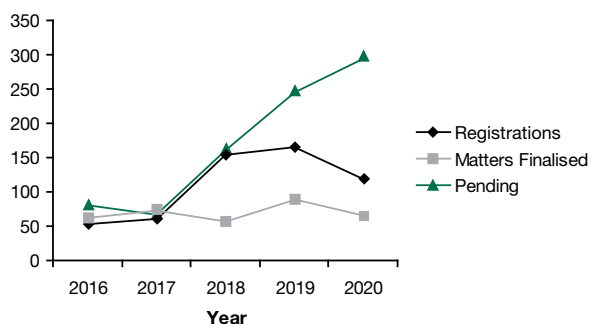
Class 5 registrations decreased significantly (27%) from an historic high in 2019 (165). Despite this, the total of 120 is still very high, being the third highest yearly total since 2003 (behind only the previous two years). The Environment Protection Authority initiated 27% of all registrations (up from 15% in 2019 but down from 54% in 2018). The Natural Resources Access Regulator initiated 42.5% of new Class 5 matters in 2020, up from 38% in 2019 and 19% in 2018. The Department of Planning and Environment accounted for 9%. The Department of Regional NSW commenced 16% (19) and local councils accounted for the remainder (City of Parramatta Council 6, Liverpool City Council 1).

Class 5 finalisations decreased significantly in 2020 (65 total, a change of 27%). Convictions were recorded in 29 matters, 28 were withdrawn or otherwise discontinued and 7 were dismissed (one restored application to vary orders was upheld). Fines and remediation orders ranged from \$1,500 for construction of an enclosure (for the purpose of entertainment) without approval to \$400,000 for knowingly supplying false or misleading information relating to waste. No community service orders were issued in 2020. One section 10 bond was ordered for causing damage to native vegetation in land reserved under the *National Parks and Wildlife Act 1974*. There were no imprisonment orders made by the Court in 2020.

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 2016 to 2020**



## Classes 6 and 7

Eight new Class 6 appeals were filed in 2020. 14 Class 6 matters were finalised, the same number as 2019. There were no Class 7 appeals registered or finalised in 2020. There are three pending Class 6 matters and no pending Class 7 matters.

## Class 8

On 7 April 2009 the Court acquired jurisdiction to hear and dispose of civil proceedings under the *Mining Act 1992* and the *Onshore (Petroleum) Act 1991*. There were two Class 8 matters registered in 2020. There were three Class 8 matters finalised this year, one less than 2019. There is only one Class 8 matter pending at the end of 2020.

## 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.

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The objectives of court administration are equity, effectiveness and efficiency. Various performance indicators can be used to evaluate the Court's achievement of these objectives of court administration.

The objectives of equity and effectiveness involve ensuring access to justice. Access to justice can be evaluated by reference to various criteria, both quantitative and qualitative. These include affordability, accessibility, responsiveness to the needs of users, and timeliness and delay measured by a backlog indicator and compliance with time standards. The objective of efficiency can be evaluated by output indicators including an attendance indicator and a clearance rate indicator.

## Output indicators of access to justice

### Affordability

Access to justice is facilitated by ensuring affordability of litigation in the Court. One indicator of affordability is the fees paid by applicants. Lower court fees help keep courts accessible to those with less financial means. However, ensuring a high standard of court administration service quality (so as to achieve the objective of effectiveness) requires financial resources. These days, a primary source of revenue to fund court administration is court fees. The Land and Environment Court is no exception. It was necessary in 2020 to increase court fees by 1.5% to be able to balance the Court's budget and ensure a high standard of court administration service quality (effective 1 July 2020). 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.



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

### **Accessibility**

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

#### ***Geographical accessibility***

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

site; and conducting final hearings by telephone, AVL or Microsoft Teams.

Up until 2016, a matter was counted as a country matter if it was outside the area bordered by the local government areas of Wollongong, Blue Mountains and Gosford. From 2016, a matter is counted as a country matter if it is in a local government area outside the Greater Sydney region. In 2020, 30% of matters registered were country matters. This represents a 5% increase from an already elevated rate in 2019, which is largely explained by the sustained high volume of Class 5 registrations (of which 83% 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 91% of completed Class 1 country matters and 52% of completed Class 3 country matters in 2020.

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 2020.

The total percentage of Online Court directions hearings of 42% is an increase on 37% for 2019.

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

Class	No of cases	Total pre-hearing attendances	% Online Court directions hearings	% Telephone directions hearings
1	815	7,197	45	3
2	68	254	21	28
3	74	770	33	2
4	79	835	32	0
8	3	55	27	0
All	1,039	9,111	42	3

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 or s 34AA 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. 69% of finalised Class 1 country matters and 48% of finalised Class 3 country matters featured a s 34 or s 34AA conciliation conference.

Fourthly, conduct of the whole or part of a hearing on the site of the dispute also means that the Court comes to the litigants. A formal on-site hearing involves conducting the whole hearing on-site. This type of hearing is required where there has been a direction that an appeal under ss 4.55, 4.56, 8.7, 8.18 or 8.25 of the *Environmental Planning and Assessment Act 1979* or 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 2020, 4% of finalised matters (in Classes 1 and 2) were conducted as an on-site hearing, of which 37% were country matters. Of the Class 1 country matters, however, none were conducted as an on-site hearing. The number of on-site hearings was reduced in 2020 due to COVID-19 Pandemic restrictions.



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 2020.

**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	1						
Byron	1						
Kiama	1						
Lismore	1						
Moss Vale	1						
Mullumbimby	1						
Newcastle	2						
Wollongong		1					
<b>TOTAL</b>	<b>8</b>	<b>1</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 and now, with the use of AVL and Microsoft Teams, physical attendance is no longer a requirement. The Land and Environment Court website contains a special page, under the tab 'Access for people with disabilities', outlining the disability services provided by the Court.

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.

***Access to help and information***

The Court facilitates access to help and provides information to parties about the Court and its organisation, resources

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

The Tree Helpdesk has continued to assist unrepresented litigants in tree disputes. The Tree Helpdesk is operated by law students and 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 and Procedure', 'Forms & Fees', 'Land and Environment Court Decisions', amongst others.

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

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

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

The Court provides mediation services. In 2020, 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.

Open justice is critical to the rule of law. Courts conduct hearings in public, allowing any member of the public to observe proceedings. During 2020, due to the restrictions imposed on in-person attendances at Court, matters were able to be observed via Microsoft Teams, AVL and the initiative of YouTube livestreaming.

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

Access to justice can also be facilitated by the Court taking a more user-orientated approach. The justice system should be more responsive to the needs and 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 2020, the Judges, Commissioners and the Registrar participated in numerous seminars to enhance awareness of recent developments in the Court relating to both procedural and substantive law.

### **Output indicators of effectiveness and efficiency**

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

## Backlog indicator

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

These are:

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

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

The national standards are:

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

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

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

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

The results of the backlog indicator measured against the Land and Environment Court time standards for 2020 are set out in Table 5.6.

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

		LEC	2016	2017	2018	2019	2020
	Unit	Standards					
<b>Class 1</b>							
Pending caseload	no.		398	578	705	790	643
Cases > 6 months	%	5	22.2	21.5	26.4	48	47.1
Cases > 12 months	%	0	5.5	2.8	7.2	17.5	24.3
<b>Class 2</b>							
Pending caseload	no.		32	39	28	31	43
Cases > 6 months	%	5	9.4	15.4	7.1	9.7	20.9
Cases > 12 months	%	0	0	2.6	0	3.2	9.3

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**Class 3**

Pending caseload	no.		121	94	95	93	85
Cases > 6 months	%	5	39.3	56.4	48.4	58.1	47.1
Cases > 12 months	%	0	19.7	41.5	27.4	38.7	31.8

**Class 4**

Pending caseload	no.		84	99	87	105	83
Cases > 8 months	%	5	32.9	39.4	47.1	41.0	45.8
Cases > 16 months	%	0	15.3	21.2	25.3	22.9	19.3

**Class 5**

Pending caseload	no.		81	67	166	249	300
Cases > 8 months	%	5	48.1	35.8	29.5	47.4	78.7
Cases > 16 months	%	0	21.0	7.5	12.1	17.3	41.3

**Class 6**

Pending caseload	no.		11	9	5	8	3
Cases > 8 months	%	5	0	0	0	0	0
Cases > 16 months	%	0	0	0	0	0	0

**Class 8**

Pending caseload	no.		2	3	5	2	1
Cases > 8 months	%	5	50.0	0	40	100	0
Cases > 16 months	%	0	0	0	0	100	0

**Class 1 – 3**

Pending caseload	no.		551	711	828	914	771
Cases > 6 months	%	5	25.4	25.9	28.3	47.3	45.7
Cases > 12 months	%	0	8.3	7.9	9.3	19.1	24.3

**Class 4 – 8**

Pending caseload	no.		178	178	263	364	387
Cases > 8 months	%	5	38.0	35.4	35.0	44.8	70.8
Cases > 16 months	%	0	16.8	14.6	16.0	19.0	36.2

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These backlog figures need some explanation:

- **Class 1:** The backlog percentage figures for pending caseloads greater than 12 months increased in 2020 compared to 2019, whilst the percentage of pending matters exceeding 6 months decreased slightly. The total pending caseload in Class 1 decreased during 2020 as a result of finalisations exceeding registrations. This is the first time this has occurred since 2012. The increase in matters exceeding 12 months suggests a small amount of long running Class 1 matters are impacting the overall backlog results.
- **Class 2:** There was a further increase in the amount of pending Class 2 matters at the end of 2020. There are 9 pending matters that have exceeded the 6 month time standard and 4 of those have exceeded the 12 month time standard. This represents 9.3% of the pending caseload, an increase from 3.2% recorded in 2019. These results are due to COVID-19 social gathering restrictions, which made on-site hearing (the primary means of determination for tree disputes) difficult to organize for over 6 months of the year.
- **Class 3:** The number of pending Class 3 matters decreased to its lowest in the 5 year reporting period (and the lowest since 2014). There was also a reduction in the proportion of matters exceeding both the 6 and 12 month time standards. This reveals an improvement in case processing timelines for Class 3 matters.
- **Class 4:** The number of pending Class 4 matters decreased significantly from 2019. There was a slight increase in the proportion of matters pending for more than 6 months, but a decrease in the proportion of matters pending for more than 12 months. This suggests a significant amount of Class 4 matters finalise somewhere after 6 months but before 12 months.
- **Class 5:** The backlog figures for Class 5 matters worsened significantly in 2020. This is a result of the large increase in registrations that began in 2018 and continued through 2019 and 2020. The volume of pending matters increased by 81% from the end of 2018 (an increase of 348% compared to the 2017 figures). This is likely to cause significant increases in the proportion of matters exceeding time standards for some time to come despite a decrease in the 2020 registrations. Some of these older pending matters will finalise en masse so the Court should see a significant increase in Class 5 finalisations in the coming years. Many of these finalisations will exceed the Court's time standards for finalisation.
- **Class 6:** There was a decrease in the number of pending Class 6 matters in 2020. Of the 3 pending appeals, none have been active for more than 8 months.
- **Class 8:** The pending caseload decreased to just 1 in 2020. The matter has been active for less than 8 months.

If the national time standards are used, the results of the backlog indicator for the Court in 2020 are as shown in the table below:



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

	Unit	National Standards	2016	2017	2018	2019	2020
<b>Class 1</b>							
Pending caseload	no.		398	578	705	790	643
Cases > 12 months	%	10	5.5	2.8	7.2	17.5	24.3
Cases > 24 months	%	0	0	0.3	0.3	0.5	2.8
<b>Class 2</b>							
Pending caseload	no.		32	39	28	31	43
Cases > 12 months	%	10	0	2.6	0	3.2	9.3
Cases > 24 months	%	0	0	0	0	0	0
<b>Class 3</b>							
Pending caseload	no.		121	94	95	93	85
Cases > 12 months	%	10	19.7	41.5	27.4	38.7	31.8
Cases > 24 months	%	0	0.8	8.5	10.5	6.5	21.2
<b>Class 4</b>							
Pending caseload	no.		84	99	87	105	83
Cases > 12 months	%	10	25.9	28.3	35.6	32.4	30.1
Cases > 24 months	%	0	8.2	6.1	13.8	15.2	7.2
<b>Class 5</b>							
Pending caseload	no.		81	67	166	249	300
Cases > 12 months	%	10	44.4	29.9	15.7	36.9	66.7
Cases > 24 months	%	0	17.3	3.0	3.6	4.8	19
<b>Class 6</b>							
Pending caseload	no.		11	9	5	8	3
Cases > 12 months	%	10	0	0	0	0	0
Cases > 24 months	%	0	0	0	0	0	0
<b>Class 8</b>							
Pending caseload	no.		2	3	5	2	1
Cases > 12 months	%	10	50.0	0	0	100	0
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 4 has improved in 2020 compared to 2019 for the standards for both 12 and 24 months. The Court's performance declined in both the 12 month standard and the 24 month standard for Class 1 matters. The Court's performance in Class 5 remains below the national standard for 12 months and 24 months. There was a further significant increase in the number of matters exceeding both these categories in Class 5. 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 2016-2020.

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

	2016	2017	2018	2019	2020
<b>Class 1</b>					
No. of cases	832	831	883	855	874
% < 6 months	63	62	37	25	27
% < 12 months	94	94	90	77	68
95% completed within (months)	13	13	14	16	20
<b>Class 2</b>					
No. of cases	130	132	101	93	87
% < 6 months	93	93	89	89	66
% < 12 months	99	99	98	99	99
95% completed within (months)	6	7	9	7	10
<b>Class 3</b>					
No. of cases	137	108	106	89	89
% < 6 months	51	44	28	29	38
% < 12 months	80	72	63	66	66
95% completed within (months)	30	26	34	27	23
<b>Class 4</b>					
No. of cases	156	126	129	107	115
% < 8 months	73	71	67	63	57
% < 16 months	87	88	91	85	86
95% completed within (months)	24	24	22	23	22

<b>Class 5</b>					
No. of cases	62	75	58	89	65
% < 8 months	8	19	28	26	22
% < 16 months	76	73	76	80	51
95% completed within (months)	86	53	18	22	26
<b>Class 6</b>					
No. of cases	13	14	25	14	14
% < 8 months	85	71	68	71	50
% < 16 months	92	100	100	100	100
95% completed within (months)	13	10	10	11	9
<b>Class 8</b>					
No. of cases	10	2	4	4	3
% < 8 months	50	0	100	75	33
% < 16 months	90	0	100	100	33
95% completed within (months)	20	23	7	6	25

In Class 1, there was a slight increase in the percentage of cases completed within 6 months but a significant decrease in the percentage of Class 1 matters completed within 12 months. The number of finalisations increased from 2019, which suggests that more of the older Class 1 matters were finalised in 2020. The growth in backlog over recent years makes it necessary to improve the Court's efficiency going forward. This is corroborated by the associated increase in the 95% completion measure: the time taken to finalise 95% of cases increased by an additional 4 months. This measure has increased by 7 months over the last 5 years. The COVID-19 Pandemic has not assisted. A number of hearings and conciliations that were listed to be conducted onsite were vacated and re-listed to be conducted remotely at a later date. This extended the time taken to finalise the matters.

In Class 2, the high percentage of cases completed within 12 months was maintained in 2020. The percentage of matters finalised

within 6 months decreased significantly, large as a result of the Court being unable to conduct on-site hearings for large periods of the year due to COVID-19 movement and gathering restrictions. The time taken for 95% of matters to be completed also increased due to the same reasons. The Court continued to manage the Class 2 caseload very well.

In Class 3, the Court's performance improved generally. A higher percentages of cases were completed within 6 months and the 12 month standard was maintained from the previous year. There was another significant improvement in the time taken to complete 95% of the cases, down to 23 months (the lowest since 2013).

In Class 4, the percentage of cases finalised in less than 8 months declined further from 2019. However, the percentage of cases finalised in less than 16 months increased slightly. The time taken to complete 95% of the matters decreased slightly from 2019. This measure has remained very consistent over the last 5 years.

In Class 5, the percentage of cases finalised in less than 8 months decreased slightly. The percentage of cases finalised in less than 16 months decreased significantly. This is a product of 3 years of abnormally high registrations. The time taken to complete 95% of cases further increased to be more than 2 years (26 months).

The Court's performance in complying with time standards for Class 6 matters decreased in the 8 month category. The percentage of cases finalised within 16 months maintained the 100% standard achieved in 2017, 2018 and 2019. The time taken to finalise 95% of cases decreased to 9 months, the lowest since 2011.

The Court's performance in Class 8 decreased significantly in both the 8 month and 16 month finalisation categories. The low volume of cases makes it difficult to draw any inferences from the result.

### Time standards for delivery of reserved judgments

The Court may dispose of proceedings by judgment delivered at the conclusion of the hearing (ex tempore judgment) or at a later date when judgment is reserved by the Court (reserved judgment). A number of judgments (11%) 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 2020 for reserved judgments being delivered within the 14 days, 30 days and 90 days all declined slightly from 2019. These results need to be viewed in the context of the Court's workload, both the numbers of matters dealt with by the Court in the year and the number of matters that were disposed of by hearing and therefore required a judgment.

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	2016	2017	2018	2019	2020
% delivered within 14 days	50	41	39	30	24	19
% delivered within 30 days	75	60	59	52	50	46
% delivered within 90 days	100	86	83	78	80	78

## Inquiries about delays in reserved judgments

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

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

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

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

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

	2016	2017	2018	2019	2020
Class 1	7	30	10	2	2
Class 2	2	3	0	0	0
Class 3	0	2	4	1	0
Class 4	5	2	5	2	1
Class 5	3	1	0	0	0
Classes 6 and 7	0	0	0	0	0
Class 8	0	0	0	1	0
<b>Total</b>	<b>17<sup>*1</sup></b>	<b>38<sup>*2</sup></b>	<b>19<sup>*3</sup></b>	<b>6<sup>*4</sup></b>	<b>3<sup>*5</sup></b>

\*1 In 2016, 71% of inquiries (12) concerned judges' reserved judgments and 29% (5) concerned commissioners' reserved judgments.

\*2 In 2017, 18% of inquiries (7) concerned judges' reserved judgments and 82% (31) concerned commissioners' reserved judgments.

\*3 In 2018, 68% of inquiries (13) concerned judges' reserved judgments and 32% (6) concerned commissioners' reserved judgments.

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

\*5 In 2020, 33% of inquiries (1) concerned judges' reserved judgments and 67% (2) concerned commissioners' reserved judgments.

The Chief Judge investigated each inquiry made in 2020 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**

	2016	2017	2018	2019	2020
	%	%	%	%	%
Class 1	98.3	81.4	87.4	92.6	117.6
Class 2	106.6	95.0	112.2	97.9	88.8
Class 3	82.5	131.7	99.1	106.0	104.7
Class 4	106.1	89.4	92.1	87.0	111.7
Class 5	114.8	123.0	37.2	53.9	54.2
Class 6	68.4	116.7	125	82.4	175
Class 8	333.3	66.7	66.7	400	150
Classes 1-3	96.9	86.2	90.3	94.1	113.4
Classes 4-8	107.2	99.5	67.1	69.0	84.6
<b>Total</b>	<b>98.7</b>	<b>88.2</b>	<b>85.4</b>	<b>88.6</b>	<b>107.6</b>

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These figures show that the total clearance rate for all matters increased to be the highest since 2009. The clearance rate for classes 1-3 improved to be the highest since 2014. The clearance rate for classes 4-8 also improved compared to both 2018 and 2019. The Court also recorded an overall clearance rate of over 100 for the first time since 2014.

The Class 1 clearance rate improved by 25% compared to 2019, a very significant increase when the high volume of Class 1 matters is accounted for. In Class 2, registrations exceeded finalisations in 2020, producing a clearance rate of 88.8%. The clearance rate was below the 100% mark for the second consecutive year, the third occasion since 2016. The result in 2020 was a product of Class 2 tree dispute matters filed in 2020 not being able to be heard and disposed of on site due to the COVID-10 Pandemic restrictions. In Class 3, finalisations exceeded registrations (89 to 85), resulting in a clearance rate over 100. The Class 4 clearance rate increased significantly in 2020. The final result of 111.7% is the highest since 2012. The clearance rate in Class 5 saw a further slight increase following an historic low in 2018. Despite this, the clearance rate remained significantly below the 100% mark. This was caused by a continuation of the exceptionally high level of Class 5 registrations. This significant increase (that began in 2018) had a continued dramatic effect on the clearance rate of Class 5 matters themselves and the Class 4-8 cumulative clearance rate. The Class 6 clearance rate increased significantly from 2019, whilst the Class 8 clearance rate was also over 100%. These two classes feature such low volumes of cases that the changes have a negligible effect on the Court's yearly workload regardless of large fluctuations in the clearance rate.

## **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 2016-2020.

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

	2016	2017	2018	2019	2020
Class 1	4	4	4	4	4
Class 2	1	1	1	1	3
Class 3: (all matters)	5	6	5	6	5
Compensation claims	6	7	4	7	8
Valuation objections	2	7	5	3	6
Miscellaneous	5	5	7	7	3
Class 4	4	4	4	4	4
Class 5	10	5	7	6	9
Class 6	1	3	2	2	3
Class 8	6	10	3	4	6

The table reveals that the median number of pre-hearing attendances stayed constant for matters in Classes 1. The volume of Class 1 matters means the median attendance figures are unlikely to change unless as a result of a change in Court policy. Prior to 2020 this was also true for Class 2 matters. COVID-19 movement and gathering restrictions made on-site hearing difficult to conduct safely, which meant many Class 2 tree matters required extra case management. This has produced an increase in the number of pre-hearing attendances.

Overall, the number of pre-hearing attendances for all matters in Class 3 decreased. The number of pre-hearing attendances decreased in miscellaneous Class 3 matters but increased in both compensation claims and valuation appeals. In the latter types of matters, the pre-hearing attendances include conciliations and mediations which can yield benefits in terms of the parties agreeing to the matters being disposed of without the necessity of a hearing.

The number of pre-hearing attendances stayed the same in Class 4 for the fifth consecutive year. The number of attendances in Class 5 increased. This may be a product of the increased Class 5 registrations. The number of attendances increased in Class 6. 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. The effects of COVID-19 restrictions have affected these results in many ways, forcing additional pre-hearing attendance in many matters to discuss practical matters regarding conduct of hearings, conciliation conferences, mediations and on-site views.

## 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 2020, 10 s 56A appeals were commenced, 3 appeals were settled pre-hearing, 7 were completed after a hearing, and 3 s 56A appeals were pending at 31 December 2020.

Of the 7 appeals that were completed at hearing, 2 were upheld. This represents 0.9% of the number of matters in Classes 1, 2, 3 and 8 disposed of at a hearing by a Commissioner of the Court in 2020.

**Table 5.13 s 56A Appeal outcomes**

	2016	2017	2018	2019	2020
Total no. of appeals	9	13	15	13	10
No. finalised pre-hearing	6	1	1	2	3
No. of appeals to hearing	8	12	14	11	7
Outcome:					
Upheld	3	2	4	5	2
Dismissed	7	10	10	6	5

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 2016 to 2020.

In 2020, 12 appeals were determined by the Court of Appeal on appeal from the Land and Environment Court and 5 appeals were determined by the Court of Criminal Appeal on appeal from the Land and Environment Court.

**Table 5.14 Appeals to the appellate courts**

	2016	2017	2018	2019	2020
<b>Court of Appeal</b>					
Appeal by right	10	18	18	14	7
Leave to appeal	4	4	4	5	5
<b>Total matters determined</b>	<b>14*</b>	<b>20*</b>	<b>23*</b>	<b>19*</b>	<b>12</b>
<b>Court of Criminal Appeal</b>					
Appeal by right	1	4	3	2	1
Stated case, section 5AE	0	1	1	3	0
Leave to appeal	0	0	1	1	4
<b>Total matters determined</b>	<b>1</b>	<b>5</b>	<b>5</b>	<b>6</b>	<b>5</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 2020, the Court received five formal complaints.

Table 5.15 gives particulars about the complaints made and dealt with in 2020 and the outcomes.

**Table 5.15 Complaint particulars**

Complaints pending as at 31 December 2019	0
<b>Complaints made during 2020</b>	<b>5</b>
Total number of complaints	5
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 2020	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 2020, Commissioners exercised the functions of undertaking conciliations, mediations, on-site hearings or court hearings in Classes 1, 2 and 3 and 8. There were 1,053 matters disposed of in 2020 in those classes. Complaints, therefore, occurred in only 0.47% 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 2020. More than one criterion may be used for each complaint. The table shows that each of the 5 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 2020. The number refers to the number of complaints raising that cause of complaint. Many complaints raise multiple causes and these are captured by this approach. It is to be emphasised these are the categories of allegations made in complaints, whether or not they were upheld.

**Table 5.17 Common causes of complaint**

	2020
Bias, collusion or conflict of interest	3
Delay	
Dissatisfaction with substantive outcome or wrong decision	4
Dissatisfaction with procedural and evidentiary rulings	4
Error interpreting or applying the law	2
Failure of Court to enforce judgment or orders	
Failure to give fair hearing	
Impairment	
Inadequate reasons for judgment	
Inappropriate behaviour or comments or discourtesy	2
Incompetence	

***Substitution for appeals or review***

Four of the five 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 2020, four complaints were that the Commissioner had made wrong findings on the evidence and made the wrong substantive decision. These complaints alleged that the Commissioner was in error in not having given substantial weight to the evidence of objectors or in preferring the evidence of one party to the evidence of the other party. Two complaints alleged that this revealed a lack of balance or bias. Three complaints were that the Commissioner had made wrong rulings about the procedure and conduct of the hearing and the evidence to be admitted. These complaints about the admission of evidence, fact-finding and decision-making do not reveal misconduct. Commissioners and judges are tasked with the functions of deciding the evidence to be admitted, the weight to be given to evidence, the findings and inferences of fact to be drawn from the evidence, and the decision to be made based on those findings and inferences of fact. Exercising these functions in ways with which complainants disagree is not misconduct.

Two complaints were that the Commissioner had wrongly interpreted and applied the law. The existence of the right of appeal against the decision under s 56A of the Court Act or the right to bring proceedings to judicially review the decision was a satisfactory means to redress these complaints.

Three complaints concerned hearings conducted onsite of applications under the *Trees (Disputes Between Neighbours) Act 2006* concerning neighbours’ trees.

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Commissioners are tasked to exercise a discretionary function to determine tree disputes, and in doing so make findings of fact based on evidence tendered by the parties. Exercising this discretion in ways with which the complainants disagree does not reveal misconduct. Two complaints alleged the Commissioner was discourteous by being critical of evidence on which parties sought to rely.

***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. 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.

One complaint raised dissatisfaction that the complainant was not able to hold a private meetings with the Commissioner hearing the tree dispute and that there was no further opportunity to negotiate with the neighbour after the hearing had concluded and before the judgment was delivered. This complaint revealed a misunderstanding of the judicial process of deciding tree disputes.

## 6 Education and Community Involvement

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

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## Continuing professional development

### Continuing professional development policy

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

### National Mediator Accreditation

In 2020, 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: 60 Martin Place, 26 February 2020*



*Field Trip: 60 Martin Place, 26 February 2020*

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## 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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26 February	Field Trip, New office building at 60 Martin Place, Sydney
24 June	Cross-jurisdictional Webinar, “The neurobiology of ‘prejudice’ (or ‘bias’) in legal decision making”, Dr Hayley Bennett, Cisco Webex
21 July	Twilight webinar, “Concrete: The influence of concrete on urban water pollution”, Dr Ian Wright, Senior Lecturer, School of Natural Sciences, University of Western Sydney, Cisco Webex
22 July	Cross-jurisdictional Webinar, “An introduction to the Bugmy Bar Book Project”, Mr Richard Wilson SC, Deputy Senior Public Defender, The Public Defenders and Mr Peter McGrath SC, Deputy Director, Office of the Director of Public Prosecutions, Cisco Webex
9 September	Twilight webinar, “Could Opal Towers happen again? Building Certification Explored — Part 1 of 2”, Mr Michael Wynn-Jones, Associate, University of Technology Sydney, Cisco Webex
24 September	Ngara Yura Program Webinar, Virtual Tour of the Linear Exhibition, Museum of Applied Arts and Sciences, Cisco Webex
14 October	Ngara Yura Program Webinar, “Implicit Bias against Indigenous Australians: Implicit Association Test results for Australia”, Mr Siddharth Shirodkar, Sir Roland Wilson Scholar, Centre for Social Research & Methods, Australian National University, Cisco Webex
4 November	Twilight webinar, “Could Opal Towers happen again? Building Certification Explored — Part 2 of 2”, Mr Michael Wynn-Jones, Associate, University of Technology Sydney, Cisco Webex
5 November	Ngara Yura Program Webinar, “Making the Past Visible: The Colonial Frontier Massacre Map Project and the Legacies of Frontier massacres”, Professor Lyndall Ryan AM FAHA, Conjoint Professor in History, University of Newcastle, Cisco Webex
18 November	Cross-jurisdictional Webinar, “2020 Interrupted – judicial wellbeing in trying times”, Ms Carly Schrever, Judicial Wellbeing Advisor, Judicial College of Victoria and Ms Sally Ryan, Judicial Wellbeing Advisor, Judicial College of Victoria, Cisco Webex
10 December	Cross-jurisdictional Webinar, “Sexual harassment prevention and response in the workplace – a new approach”, Ms Kate Jenkins, Sex Discrimination Commissioner, Australian Human Rights Commission, Cisco Webex

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## Performance indicators and programme evaluation

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

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

In 2020, the Court's annual conference was not able to be held due the COVID-19 Pandemic movement and gathering restrictions. This prevented the Court delivering 12 hours of professional development for each judge and

commissioner. There were, however, twilight seminars, webinars and field trips that delivered 16.5 hours of professional development. Individual judges and commissioners were also able to supplement these hours of professional development with their own educational activities. These are shown in the entries for individual judges' and commissioners' activities.

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 2016 to 2020**

	Target	2016	2017	2018	2019	2020
Overall satisfactory rating	85%	100%	95%	90%	94%	NA

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 2016 to 2020, all of which exceeded the 85% standard.

**Table 6.2 Participant evaluation of Land and Environment Court Twilight seminar series 2016 to 2020**

	Target	2016	2017	2018	2019	2020
Overall satisfactory rating	85%	92%	94%	89%	97%	88%

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

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

## Publications

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

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

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

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

## Education and participation in the community

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

The Court also regularly hosts international and national delegations to the Court. In 2020, members of the Court presented lectures and seminars remotely using Microsoft Teams and Zoom.

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## Individual Judges' and Commissioners' activities

The Judges' and Commissioners' activities during 2020 are summarised below:

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

#### Conferences and seminars

9 January	Legal Change Workshop, Corpus Christi College, University of Oxford, UK
20 February	"Controlling Climate Chaos" Seminar at the Lauterpacht Centre for International Law, University of Cambridge, UK
26-27 February	"Are Climate Impacts Environmental Impacts?" Seminar at the Faculty of Law, University of Helsinki, Finland
2 March	"The Poodle Problem: Are Corporate Lawyers Still Professionals?", a lecture presented by Professor Steven Vaughan, University of Oxford, UK
19 May	2020 Forbes Society Annual Lecture "Lawyers' uses of history, from <i>Entick v Carrington</i> to <i>Smethurst v Commissioner of Police</i> " presented by Justice Mark Leeming via AVL from the Banco Court, Supreme Court of NSW
24 June	Cross-jurisdictional Twilight Webinar, "Unconscious Judicial Prejudice: The neurobiology of "prejudice" (or "bias") in legal decision making" presented by Dr Hayley Bennett, barrister and neuroscientist, via Cisco Webex
21 July	Twilight Webinar, "Concrete: The influence of concrete on urban water pollution", presented by Dr Ian Wright, Senior Lecturer, School of Science, Western Sydney University, via Cisco Webex
21 July	Opening Lecture, International Law Section of the Law Council of Australia Lecture series "The Rule of Law Issues in the Pacific", presented by the Hon. Michael Kirby AC CMG, Justice Martin Daubney AM, and Dr Gordon Hughes AM, via Zoom
22 July	Cross-jurisdictional Twilight Webinar, "The Bugmy Bar Book Project", presented by Mr Richard Wilson SC and Mr Peter McGrath SC, via Cisco Webex
28 July	"The Impact of COVID-19 on the Rule of Law in the Commonwealth", webinar run by the Rule of Law and OCCJR Sections of the Commonwealth Secretariat of the Commonwealth Magistrates' and Judges' Association, via Zoom
18 August	Launch of the Good Stories Movement, chaired by Antonio Oposa Jr, The Philippines, via Zoom
19 August	"The Reception, Quality and Evaluation of Scientific Evidence in Australian Courts" Australian Academy of Science and Australian Academy of Law Joint Symposium, chaired by The Hon Justice Virginia Bell, via Zoom.
26 August	"Governors Game to Northcott and their impact on the life of Sir Frederick Jordan CJ" a presentation by the Honourable Keith Mason AC QC, Sydney

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9 September	Twilight Webinar, “Could Opal Towers happen again? Building Certification Explored (Part 1)” presented by Mr Michael Wynn-Jones, Associate, University of Technology, via Cisco Webex
23 September	“The story of Europe, from sub-tropical archipelago to the arrival of homo sapiens”, a presentation by Dr Tim Flannery, Sydney
8 October	Francis Forbes Society tutorial “The History of Defamation Law” delivered by Chief Justice Bathurst, via AVL from the Banco Court, Supreme Court of NSW
22 October	Australian Academy of Law Patron's address “Aboriginal Australians and the Common Law” presented by Her Excellency the Honourable Margaret Beazley AC QC, via Zoom
24 October	World Concert, Good Stories Movement, chaired by Antonio Oposa Jr, The Philippines, via Zoom
4 November	Twilight Webinar, “Could Opal Towers happen again? Building Certification Explored (Part 2)” presented by Mr Michael Wynn-Jones, Associate, University of Technology, via Cisco Webex
5 November	Ngara Yura Judicial Commission Twilight Webinar, “Making the Past Visible: The Colonial Frontier Massacre Map Project and the Legacies of Frontier massacres” presented by Professor Lyndall Ryan AM FAHA, The University of Newcastle, via Cisco Webex
12 November	7 <sup>th</sup> Annual Spigelman Oration, “Supervising the legal boundaries of executive powers” delivered by the Hon Alan Robertson SC, via Microsoft Teams
18 November	Twilight Webinar “2020 Interrupted – judicial wellbeing in trying times” presented by Ms Carly Schrever and Ms Sally Ryan, via Cisco Webex
24 November	Monash Law Series, “Change Makers: Can Litigation Stop the Climate Emergency?”, panel discussion chaired by Professor John Thwaites, Professorial Fellow, Monash University, and Chair of the Monash Sustainable Development Institute and ClimateWorks Australia
26 November	2020 Michael Kirby Lecture by Tony McAvoy SC on “First Nations, Human Rights and Climate Change: An Intricate Web” via Zoom
9-11 Dec	Asian Development Bank and Asian Judges Network on Environment, Asia Pacific Judicial Conference “Climate Change - Adjudication in the Time of Covid-19”, via Zoom
9 Dec	Royal Society of NSW Open Lecture “Dispelling Climate Change Myths - how ocean physics can help explain surprises in the modern-day climate record” by Professor Matthew England FRSN FAA, Climate Change Research Centre, UNSW Sydney, via Zoom
10 Dec	Cross-jurisdictional Twilight Webinar: “Sexual harassment prevention and prevention in the workplace – a new approach” presented by Ms Kate Jenkins, Sex Discrimination Commissioner, Australian Human Rights Commission, via Cisco Webex

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## Speaking Engagements

9 January	<i>Concluding remarks</i> , given at the Legal Change Workshop, Corpus Christi College, University of Oxford, UK
28 January	<i>The Influence of the Paris Agreement on Australian Climate Litigation</i> , presentation given to Professor Lavanya Rajamani's International Environmental Law Course, All Souls College, University of Oxford, UK
5 February	<i>Climate Change, Coal Mining and the Law: The Rocky Hill Mine Case</i> , public lecture at the School of Geography and the Environment, University of Oxford, UK
11 February	<i>Climate Conscious Lawyering: Five Ways that Lawyers can Implement a Climate Conscious Approach in their Daily Legal Practice</i> , public lecture at Bentham House, University College London, UK
20 February	<i>Recent climate change litigation</i> , a presentation given at the 'Controlling Climate Chaos' Seminar at the Lauterpacht Centre for International Law, University of Cambridge, UK
26 February	<i>Contemporary issues in Environmental Impact Assessment</i> , a presentation given at the 'Are Climate Impacts Environmental Impacts? Climate Science in the EIA and Judicial Review' Seminar at the Faculty of Law, University of Helsinki, Finland
9 March	<i>Recent climate change litigation</i> , a lecture given to International Climate Change Law Course, University of Dundee, Scotland
10 March	<i>Recent climate change litigation</i> , a lecture to environmental law students, University College London, UK
27 May	<i>How the Court has adapted its process for conducting virtual hearings and conciliations in response to COVID-19</i> , a presentation with Senior Commissioner Susan Dixon for the Environmental and Planning Law Association Twilight Seminar Series, via Microsoft Teams
1 July	<i>Judging Wildly</i> , a presentation to the UK Earth Law Judgments Project Workshop "Earth Law Judging: Learning from Experience", University of Sussex, UK, via Zoom
17 July	<i>Principles of environmental stewardship, prevention and precaution, and environmental governance</i> , a presentation given at the International Union for Conservation of Nature World Commission on Environmental Law webinar on 'Judges as Guardians of Water Resources - The Brasilia Declaration of Judges on Water Justice', via Zoom
28 July	<i>Land and Environment Court Induction</i> , presentation given to students of the Macquarie University 'Land and Environment Court Clinic', Land and Environment Court of NSW, Sydney

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4 August	<i>Overview of the Land and Environment Court</i> , a presentation given to students of the Macquarie University 'Land and Environment Court Clinic', Land and Environment Court of NSW, Sydney
18 August	<i>A message delivered at the Launch of the Good Stories Movement</i> , The Philippines, via Zoom
18 August	<i>The impact of the Paris Agreement on climate change litigation</i> , a lecture given to the International Law Section of the Law Council of Australia, via Zoom
24 September	<i>Climate conscious lawyering, the role of lawyers advising corporate actors</i> , a lecture given to the IBA Climate Action Webinar "Environmental Activism as a core element within the strategic agenda of corporations", via Zoom
20 October	<i>Principled sentencing for environmental offenders</i> , a presentation given to students of the Macquarie University 'Land and Environment Court Clinic', Land and Environment Court of NSW, Sydney
24 October	<i>A message delivered to the Good Stories World Concert</i> , The Philippines, via Zoom
27 October	<i>Climate Change, Coal Mining and the Law: The Rocky Hill Mine Case</i> , a seminar presented to the Supreme Court of Thailand, in conjunction with training by the Thailand Institute of Justice, Bangkok, Thailand, via Zoom
28 October	<i>Virtual Courts 6 Months on</i> , a lecture for the opening session of the Environment and Planning Law Association NSW 2020 Conference, via Zoom
29 October	<i>Climate Conscious Lawyering</i> , a lecture to the Victorian Environmental Law Student Network, Melbourne, via Zoom
5 November	<i>Updates on the Land and Environment Court</i> , address to Urban Taskforce Boardroom Luncheon, Dolton House, Hyde Park, Sydney
6 November	<i>Climate Consciousness and the Law</i> , a public lecture given to Mansfield College, University of Oxford, UK, via Zoom
19 November	<i>Environmental Law and Populism: The End of Enlightened Environmental Law?</i> , a lecture given to the Australian Institute of Administrative Law webinar, via Zoom
20 November	<i>Judges as Emergency and Disaster Managers</i> , moderator of the introductory session of the ADB/UNEP Asia Pacific Judicial Conference on Climate Change - Adjudication in the Time of Covid-19, via Zoom
11 December	<i>Evaluating Expert Evidence in Environmental Cases</i> , presentation to a seminar for the Indonesian judiciary at the Indonesian Supreme Court, Jakarta, Indonesia, via Zoom

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## Publications

B J Preston, 'Contemporary Issues in Environmental Impact Assessment' (2020) 37 *Environment and Planning Law Journal* 423.

B J Preston, 'Legal imagination and climate litigation' (2020) 35(1) *Australian Environment Review* 2.

B J Preston, 'The Land and Environment Court of New South Wales: A Very Short History of an Environmental Court in Action' (2020) 94(8) *Australian Law Journal* 631.

B J Preston, 'The Land and Environment Court and the Judicial Commission: a shared pursuit of court excellence' (2020) 32(8) *Judicial Officers' Bulletin* 79.

B J Preston, 'The Influence of the Paris Agreement on Climate Litigation: Legal Obligations and Norms (Part I)' (2020) *Journal of Environmental Law* (advanced access online).

B J Preston, 'The Influence of the Paris Agreement on Climate Litigation: Causation, Corporate Governance and Catalyst (Part II)' (2020) *Journal of Environmental Law* (advanced access online).

B J Preston, 'Perish the thought: Some remarks on the Land and Environment Court's 40<sup>th</sup> anniversary' (2020) 65 *Environmental Law News* 4.

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## Membership of legal, cultural or benevolent organisations

Chair, Land and Environment Court Rules Committee

Member, Uniform Rules Committee, Supreme Court of NSW

Official member, Judicial Commission of New South Wales

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

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

Fellow, Australian Academy of Law (FAAL)

Fellow, Royal Society of NSW

Honorary Fellow, Environment Institute of Australia and New Zealand

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

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

General Editor, Local Government Planning and Environment NSW Service

Member, Advisory Board, Journal of Environmental Law

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

Member, Editorial Board, Chinese Journal of Environmental Law

Adjunct Professor, Sydney Law School, University of Sydney

Adjunct Professor, School of Law, Western Sydney University

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

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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, International Research Advisory Board

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Robert S Campbell Jr Visiting Fellow (Trinity Term, 2020), Magdalen College, University of Oxford

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### **Delegations and international assistance**

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14 January Meeting with Jaap Spier on the revised Enterprise Principles, London, UK

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20 January Meeting with European tort lawyers to discuss a research project on liability for carbon emissions, University of Passau, Germany

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27 January Meeting with Samuel Ruiz-Tagle, PhD student at the University of Oxford, UK

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21 February Meeting with Ms Sakshi Aravind, PhD student at the University of Cambridge on a comparative study of indigenous environmental litigation in Australia, Brazil, and Canada, University of Oxford, UK

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12 June Meeting with Professor Petra Minnerop and other members of the International Research Advisory Board to discuss the newly formed Board

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22 July 2nd Meeting of the International Research Advisory Board, via Zoom

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5 November Meeting with Professor Tanya Wyatt, Northumbria University to discuss her research for the Scottish Government on non-custodial interventions for animal welfare and wildlife offences, via Microsoft Teams

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1 December Meeting of the Advisory Board for the Centre for Environmental Law, Macquarie University, via Zoom

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7 December Meeting with Ms Sallie Yang (USAID) to discuss an environmental law training program for judges of the Supreme Court of Thailand

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8 December Follow up meeting with Professor Jörg Fedtke and Professor Jaap Spier to discuss the research project on liability for carbon emissions

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9 December Meeting with Ethiopian Environmental Tribunal Procedures Drafting Team to discuss and assist the Ethiopian Environment and Climate Change Commission establish a Federal Environmental Tribunal and Rules and Procedures, via Zoom.

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16 December Adjudicator for the Youth Climate Court moot in conjunction with Macquarie University, Land and Environment Court of NSW, Sydney

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17 December 3<sup>rd</sup> Meeting of the International Research Advisory Board, to discuss the synthesis report, via Zoom

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## The Hon. Justice Nicola Hope Margaret Pain

### Conferences and seminars

25 February	Twilight seminar field trip: Field Trip: Visit to 60 Martin Place
3 March	AACL seminar: "Love and Thoms v Commonwealth [2020] HCA 3: The Constitution and Indigenous Australians" Hon Margaret Beazley AC QC, Sydney
4 March	Seminar: "Artificial Intelligence, technology and human rights - what's all the fuss?", Edward Santow, Elizabeth Tydd, Professor Toby Walsh, NSW Bar Association, Sydney
10 March	Seminar: "Climate change litigation for commercial lawyers", Noel Hutley SC, Sebastian Hartford Davis, Ilona Millar, Sharona Coutts, NSW Bar Association, Sydney
26 March	Symposium: "Future of Environmental Law", NSW Law Society, Sydney
19 May	Francis Forbes virtual lecture: "Legal history and its importance for practitioners today", Justice Leeming
25 June	Online Seminar: "COVID and Human rights", Louise Chappell, Australian International Law Association; Australian Human Rights Institute at UNSW Sydney
21 July	Twilight Webinar: "Concrete: The influence of concrete on urban water", Dr Ian Wright, Judicial Commission
22 July	Cross-jurisdictional webinar: "An introduction to the Bugmy Bar Book Project", Judicial Commission
8 September	Webinar: AIAL Queensland Chapter, "Queensland Human Rights Act 2019"
9 September	Twilight Webinar: "Could Opal Towers happen again? Building Certification Explored — Part 1 of 2", Michael Wynn-Jones, Judicial Commission

### Speaking engagements

14 March 2020	Environmental and Planning panel, NSW Young Lawyers Environment & Planning Intensive, Sydney
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### Publications

N Pain and G Pick, 'The Murray-Darling Basin in Court: administering water policy in the eastern states of Australia – administrative and other challenges' (2020) 37 *Environmental Planning Law Journal* 301.

N Pain, 'Administering Water Policy in the Eastern States of Australia' (2020) *AIAL Forum* No 99, 13.

N Pain and G Pick, 'Balancing competing interests in the criminal justice system: Aboriginal fishing rights in coastal New South Wales' (2020) 43(4) *University of New South Wales Law Journal* 1383.

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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, Governing Council Judicial Conference of Australia

Member, Australian Association of Constitutional Law

Member, Australian Association of Women Judges

Member, Australian Institute of Administrative Law

Member, International Law Association Australian Branch Committee

Member, National Environmental Law Association

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

11 February Presentation by the Bar Book Committee together with Jonathan Rudin, Aboriginal Legal Services, Toronto, Canada, Judicial Commission of NSW 2020, seminar, Sydney

26 February Tim Game SC and Ruth Higgins SC, *Criminal Aspects of Corporate Activity*, seminar presented by, NSW Bar Association, Sydney

29 Feb -1 March *2020 Sentencing Conference: New Challenges*, Australian National University, ACT (1.5 days)

3 March Her Excellency the Hon Margaret Beazley AC QC, Governor of NSW, Australian Association of Constitutional Law seminar, *Love and Thoms v Commonwealth [2020] HCA 3: the Constitution and Indigenous Australians*

10 March *Climate Change for Commercial Barristers*, NSW Bar Association, Sydney

15 July *Key Principles in Administrative Law – Some Recent Cases*, Australian Institute of Administrative Law and the Centre for International & Public Law, webinar, Sydney

21 July Dr Ian Wright, *Concrete - the Influence of Concrete on Urban Water Pollution*, School of Natural Science, University of Western Sydney, Judicial Commission twilight webinar, Sydney

14 August *Fairness in Virtual Courtrooms*, Gilbert + Tobin Centre of Public Law and AIAL (NSW), webinar, Sydney

20 August *The Reception, Quality and Evaluation of Scientific Evidence in Australian Courts*, Australian Academy of Science and Australian Academy of Law joint symposium, webinar, Sydney

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23 September	<i>Parliamentary Privilege – a View from the Australian House of Representatives</i> , AIAL webinar, Canberra
13 October	<i>Mechanical Cognition, Determinism and Individual Justice: New Challenges for Administrative Law from AI</i> , AIAL webinar, Canberra
14 October	<i>Implicit Bias against Indigenous Australians: Implicit Association Test Results for Australia</i> , Judicial Commission webinar, Canberra
19 October	The Honourable Kevin Rudd AC, Bruce Pascoe, and ClimateWorks Australia CEO Anna Skarbek, <i>Opportunity through crisis: Climate action during and beyond Covid-19</i> , the Sir Roland Wilson Foundation Wilson Dialogue, webinar, ANU, Canberra
20 October	<i>Aboriginal Australians and the Common Law</i> , Annual Patron's Address, Australian Academy of Law, webinar, Sydney
27 October	2020 Maurice Byers Lecture, <i>Maurice Byers – Legal Advice in the Constitutional Maelstrom of the Whitlam Era</i> , Supreme Court of NSW, webinar, Sydney
28 October	<i>Closing the Justice Gap – Implementing the Australian Law Reform Commission's Pathways to Justice Roadmap</i> , Law Council of Australia, webinar, Sydney
29 October	Kate Morgan, <i>Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) &amp; Federal Court Update</i> , EPLA 2020 Conference, webinar, Sydney
30 October	The Hon Justice John Robson, <i>Cases of Interest; NSW Courts Update</i> , EPLA 2020 conference, webinar, Sydney
4 November	<i>Could Opal Towers Happen Again? Building Certification Explored</i> , Judicial Commission of NSW, webinar, Sydney
6 November	<i>Environmental Markets – Can Economics Regulate the Environment?</i> , Sydney Joint EPLA/AIAL seminar, webinar, Sydney
10 November	<i>Gender and Sexuality Diverse Clients and the Law</i> , NSW Bar Association, webinar, Sydney
11 November	The Hon Dennis Cowdroy AO QC, 2020 Michael Will Address, AIAL webinar, Sydney
12 November	The Hon Alan Robertson SC, 2020 Spigelman Oration, <i>Supervising the Legal Boundaries of Executive Powers</i> , webinar, Sydney
23 November	<i>Destruction of Juukan Gorge: Law, Mining, and the Protection of Aboriginal Heritage</i> , ANU College of Law, webinar, 23 November 2020, ANU, Canberra

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## Speaking engagements

21 January	Speaker, <i>Making the Environment All Rights: Human Rights, Constitutional Rights and Environmental Rights</i> , presentation at University of Sydney Summer Innovation Program 2020, Sydney
29 Feb – 1 March	Chair, <i>2020 Sentencing Conference: New Challenges</i> , Australian National University, Canberra
10 March	Chair, <i>Climate Change Litigation for Commercial Barristers</i> , NSW Bar Association, Sydney
18 May	Speaker, Public Interest Law Clinic panel discussion, University of Sydney Law School, webinar, Sydney
30 June	Speaker, Feminist and critical legal theory panel discussion, Australian National University College of Law, webinar, Canberra
4 September	Speaker, <i>Walk in My Shoes</i> , Diverse Women in Law, Women's Club, Sydney
15 September	Speaker, <i>The Environment is All Rights: Human Rights, Constitutional Rights and Environmental Rights</i> , Centre for Law and Justice, Charles Sturt University, webinar, Bathurst
23 September	Speaker, <i>Linear Exhibition</i> , Ngara Yura Committee virtual live tour, MAAS, Sydney
13 October	Judge, <i>Gender Identity + Sexuality Law Moot</i> , Australian National University College of Law, webinar, Canberra
28 October	Panellist, <i>Addressing Heightened Challenges for Women in Law in Times of Covid-19</i> , Women Lawyers Association of NSW, webinar, Sydney
18 November	Panellist, <i>EPBC Act: Federal environment reform in an age of climate crisis</i> ", webinar, ANU College of Law, Canberra
19 November	Keynote speaker, Diverse Women in Law AGM, Women's Club, Sydney
23 November	Recorded interview, COAT judgment writing seminar, Sydney

## Publications

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

Rachel Pepper and Harry Hobbs, "The Environment is All Rights: Human Rights, Constitutional Rights and Environmental Rights" (2020) 44(2) *Melbourne University Law Review* 1

## Membership of legal, cultural or benevolent organisations

Adjunct Professor, University of Sydney School of Law

Lecturer, Environmental Litigation, University of Sydney School of Law

Secretary, Australian Institute of Administrative Law (NSW Chapter)

National Executive Member, Australian Institute of Administrative Law

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Standing Organising Committee Member, National Judicial College of Australia Sentencing Conference

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Judicial member, Football Federation of Australia

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Board member, Twenty10

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NSW Committee representative, Australian Association of Woman Judges

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

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Member, Australian Association of Constitutional Law

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Member, Australian Institute of Administrative Law

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Member, World Commission on Environmental Law, IUCN

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Member, National Judicial College of Australia

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Member, Australian Institute of Judicial Administration

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Member, Commonwealth Magistrates' and Judges' Association

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Member, Environment Institute of Australia and New Zealand

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## The Hon. Justice Timothy John Moore

### Conferences and seminars

26 February	Field Trip: Visit to 60 Martin Place, Judicial Commission of New South Wales
6 March	Law, Politics and Intelligence: A life of Robert Marsden Hope, Dr Peter Edwards AM FAIA
24 June	Cross-Jurisdictional Twilight Webinar: Unconscious Judicial Prejudice: The neurobiology of “prejudice” (or “bias”) in legal decision making, presented by Dr Hayley Bennett, Barrister, New Chambers and former clinical neuropsychologist, Judicial Commission of New South Wales
21 July	Twilight Seminar: Concrete: The influence of concrete on urban water pollution, presented by Dr Ian Wright, Senior Lecturer, School of Science, Western Sydney University, Judicial Commission of New South Wales
1 September	Land and Environment Court of New South Wales 40th Anniversary, MS Teams
9 September	Could Opal Towers happen again? Building Certification Explored – Part 1 of 2, presented by Michael Wynn-Jones, Associate – University of Technology and Fellow, Institute for Public Policy and Governance, Judicial Commission of New South Wales
24 September	Ngara Yura Live virtual tour of Linear Exhibition (MAAS), presented by Justice Rachel Pepper, Mr Jason Behrendt and Ms Joanne Selfe, Judicial Commission of New South Wales

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14 October	Implicit Bias against Indigenous Australians: Implicit Association Test results for Australia, presented by Mr Siddharth Shirodkar, Sir Roland Wilson Scholar, Centre for Social Research & Methods, Australian National University, Judicial Commission of New South Wales
4 November	Could Opal Towers happen again? Building Certification Explored – Part 2 of 2, presented by Michael Wynn-Jones, Associate – University of Technology and Fellow, Institute for Public Policy and Governance, Judicial Commission of New South Wales
5 November	Ngara Yura Webinar: Making the Past Visible: The Colonial Frontier Massacre Map Project and the Legacies of Frontier Massacres, presented by Prof Lyndall Ryan, chaired by the Hon Chief Justice James Allsop AO, Federal Court of Australia, and the hon Justice Lucy McCallum, New South Wales Court of Appeal
10 December	Cross-jurisdictional Twilight Seminar: Sexual harassment prevention and prevent in the workplace – a new approach, presented by Ms Kate Jenkins, Sex Discrimination Commissioner, Australian Human Rights Commission, introduced by the Hon Chief Justice Tom Bathurst AC, Judicial Commission of New South Wales

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### Speaking engagements

12 February	Planning and Environment, CLE Seminar, University of New South Wales, Sydney
17 February	Address to UNSW students, 'LEC Clinic Induction'
26 February	Address to Macquarie University students, 'LEC Clinic Induction'
5 March	TAFE Arborist Diploma students - Interpret legislation and role of the Court
10 March	Outcomes from the 2019 Practice Note changes; paperless trials update and pitfalls in expert report writing, Australian Property Institute, Sydney

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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 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

27 February	Macquarie University Visiting Scholars Delegation
5 March	Address to Bangladeshi Judiciary Capacity Building Program Delegation

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## The Hon. Justice John Ernest Robson SC

### Conferences and seminars

26 February	Judicial Commission of NSW Field Trip, 'Guided tour of 60 Martin Place', led by Mark Finch, Senior Development Manager, Mark Tait, Group Executive & Head of Commercial Development, Michael Cook, Group Executive Property of Investa Property Group; and Tony Grist, Principal Architect, Hassell Studio, Sydney
24 June	Twilight Webinar – 'Unconscious Judicial Prejudice: The neurobiology of "prejudice" (or "bias") in legal decision-making', presented by Dr Hayley Bennett, Barrister, New Chambers and former clinical neuropsychologist, Judicial Commission of NSW, Sydney
21 July	Twilight Webinar – 'Concrete: The influence of concrete on urban water pollution', Dr Ian Wright, Senior Lecturer, School of Science, Western Sydney University, Judicial Commission of NSW, Sydney
22 July	Twilight Webinar – 'An introduction to the Bugmy Bar Book Project', presented by Mr Peter McGrath SC, Deputy Director of Public Prosecutions, Member, Bugmy Bar Book Project Committee and Mr Richard Wilson SC, Deputy Senior Public Defender, Co-Chair, Bugmy Bar Book Project Committee, Judicial Commission of NSW, Sydney
19 August	Joint Symposium of the Australian Academy of Law and Australian Academy of Science Webinar, 'The reception, quality and evaluation of scientific evidence in Australian courts', chaired by the Hon Justice Virginia Bell, High Court of Australia, Canberra
24 September	Judicial Commission of NSW Ngara Yura Virtual Tour of 'Linear Exhibition', Museum of Applied Arts and Sciences, hosted by the Hon Justice Rachel Pepper, Land and Environment Court of NSW, Judicial Commission of NSW, Sydney
14 October	Twilight Webinar – 'Bias against Indigenous Australians: Implicit association test results for Australia', presented by Mr Siddharth Shirodkar, Sir Roland Wilson Scholar, Centre for Social Research & Methods, Australian National University, Judicial Commission of NSW, Sydney
15 October	Australasian Dispute Resolution Centre Address, 'The rise of the anti-arbitration injunction', presented by the Honourable Justice A S Bell, President, Court of Appeal of NSW, Supreme Court of NSW

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28-30 October	Virtual Event – NSW Environment and Planning Law Association Conference 2020, ‘Virtual Courts 6 months on, a review of hearings and procedures in the Land and Environment Court of NSW’, presented by the Hon Justice Brian Preston, Chief Judge, and Senior Commissioner Susan Dixon of the Land and Environment Court of NSW
4 November	Twilight Webinar – ‘Could Opal Towers happen again? Building certification explored - part 2 of 2’, presented by Mr Michael Wynn-Jones, Associate - University of Technology and Fellow, Institute for Public Policy and Governance, Judicial Commission of NSW, Sydney
18 November	Twilight Webinar – ‘2020 interrupted – Judicial wellbeing in trying times’, presented by Ms Carly Schrever and Ms Sally Ryan, Judicial College of Victoria, Judicial Commission of NSW, Sydney
19 November	Australian Institute of Administrative Law Webinar, ‘Populism in environmental decision making’, presented by the Honourable Justice B Preston, Chief Judge, Land and Environment Court of NSW, chaired by Commissioner Timothy Horton, Land and Environment Court of NSW, Sydney
9-11 December	Virtual Event – Asia-Pacific Judicial Conference on Climate Change: ‘Adjudication in the time of COVID-19’, co-organised by the Asian Development Bank (ADB) and the United Nations Environment Programme, with support from the Global Judicial Institute on the Environment and ClientEarth
10 December	Twilight Webinar – ‘Sexual harassment prevention and prevention in the workplace – a new approach’, presented by Ms Kate Jenkins, Sex Discrimination Commissioner, Australian Human Rights Commission, Judicial Commission of NSW, Sydney

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### Speaking engagements

30 October	Virtual Event – NSW Environment and Planning Law Association Conference 2020, ‘Cases of Interest; NSW Courts Update’, presented by the Hon Justice Robert Macfarlan, Court of Appeal of NSW and the Hon Justice John Robson, Land and Environment Court of NSW, Sydney
18 November	Twilight Webinar – ‘2020 Interrupted – Judicial Wellbeing in Trying Times’, introduction of presenters by the Hon Justice John Robson, Land and Environment Court of NSW, presented by Ms Carly Schrever and Ms Sally Ryan, Judicial College of Victoria, Judicial Commission of NSW, Sydney

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## Membership of legal, cultural or benevolent organisations

Member, Judicial Conference of Australia

Member, NSW Bar Association

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

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

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## The Hon. Justice Sandra Anne Duggan SC

### Conferences and seminars

2-6 February	National Judicial Orientation, Novotel Sydney Manly Pacific
26 February	Field Trip visit to 60 Martin Place, Mark Finch et al, Judicial Commission of New South Wales
17 September	From Bar to Bench, National Judicial College, ANU
14 October	Webinar: Bias against Indigenous Australians - Implicit Association Test results for Australia, Judicial Commission of NSW
28-30 October	2020 EPLA conference, via Zoom
4 November	Webinar: Could Opal Towers happen again? Building Certification Explored - Part 2 of 2, Judicial Commission of NSW
5 November	Webinar: Making the Past Visible: The Colonial Frontier Massacre Map Project and the Legacies of Frontier massacres, Judicial Commission of NSW
18 November	Webinar: Cross-jurisdictional Webinar: 2020 Interrupted – judicial wellbeing in trying times, Judicial Commission of NSW
10 December	Webinar: Cross-jurisdictional Twilight Webinar: Sexual harassment prevention and response in the workplace – a new approach, Judicial Commission of NSW

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### Speaking engagements

14 March	<i>Keynote Address</i> , EPLA Annual Environment and Planning 1 Day Intensive CPD, NSW Young Lawyers, Law Society of NSW
28 April	<i>Panel Discussion</i> , Equitable Expert Briefing Webinar: Adaptations and modifications to Court processes, Clayton Utz, Zoom
10 June	<i>Presenter</i> , EPLA Sixth Twilight Webinar: MS Teams Mock Trial, LEC Court 10A, MS Teams
15 September	<i>Presenter</i> , The Land and Environment Court and perspective from the Bench, ANU
7 October	<i>Presenter</i> , The Land and Environment Court and perspective from the Bench, UTS, Zoom

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5-6 November	<i>Presenter</i> , Demystifying Environment Law – Master of Environmental Management, UNSW, MS Teams
17 November	<i>Keynote Speaker</i> , Herbert Smith Freehills Womens Mentoring Program, Zoom

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

Member, Women Lawyers Association of NSW

Member, Judicial Conference of Australia

Member, Environment and Planning Law Association

Member, Australian Association of Women Judges

Member, Australian Institute of Administrative Law

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

### **Conferences and seminars**

26 February	Twilight seminar Field Trip: 60 Martin Place
24 June	Cross-jurisdictional Twilight Webinar, “Unconscious Judicial Prejudice: The neurobiology of “prejudice” (or “bias”) in legal decision making” presented by Dr Hayley Bennett, barrister and neuroscientist via Cisco Webex
21 July	Twilight Webinar, “Concrete: The influence of concrete on urban water pollution”, presented by Dr Ian Wright, Senior Lecturer, School of Science, Western Sydney University, via Cisco Webex
31 August	Commissioner's Training Day, Land and Environment Court of NSW
9 September	Twilight Webinar, “Could Opal Towers happen again? Building Certification Explored (Part 1)” presented by Mr Michael Wynn-Jones, Associate, University of Technology, via Cisco Webex
4 November	Twilight Webinar, “Could Opal Towers happen again? Building Certification Explored (Part 2)” presented by Mr Michael Wynn-Jones, Associate, University of Technology, via Cisco Webex
5 November	Ngara Yura Judicial Commission Twilight Webinar, “Making the Past Visible: The Colonial Frontier Massacre Map Project and the Legacies of Frontier massacres” presented by Professor Lyndall Ryan AM FAHA, The University of Newcastle, via Cisco Webex.
18 November	Cross-jurisdictional Twilight Webinar “2020 Interrupted – judicial wellbeing in trying times” presented by Ms Carly Schrever and Ms Sally Ryan, via Cisco Webex.
10 December	Cross-jurisdictional Twilight Webinar: “Sexual harassment prevention and prevention in the workplace – a new approach” presented by Ms Kate Jenkins, Sex Discrimination Commissioner, Australian Human Rights Commission, via Cisco Webex

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## Speaking engagements

August to December	Mentor, Mentoring Program/Clinic Placement for final year law students, Macquarie University
7 February	Guest Speaker, ADR in the LEC, Fair Work Commission, Sydney
27 May	Guest Speaker, How the Court has adapted its process for conducting virtual hearings and conciliations in response to COVID-19, Environment and Planning Law Association Seminar, Online
25 August	Guest Speaker, ADR in the LEC, Land and Environment Court of NSW Student Clinic, Sydney
17 September	Guest Speaker, ADR in the LEC, NSW Bar Association Bar Practice Course, Sydney
28 October	Guest Speaker, Virtual Courts 6 months on, a review of hearings and procedures in the Land and Environment Court of NSW, Environment and Planning Law Association Annual Conference, Online
10 December	Guest Speaker, <i>Virtual Courtrooms: Technical and Jurisprudential Challenges and Solutions</i> , Asian Development Bank and the United Nations Environment Programme - Asia-Pacific Judicial Conference: Adjudication in the Time of COVID-19, Online

## 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.

Nationally Accredited Mediator

## Ms Susan O'Neill, Commissioner

### Conferences and seminars

26 February      Field Trip, 60 Martin Place, Sydney

### Speaking engagements

24 March and  
27 April - 1 May      Jury Chair, AIA NSW Heritage Awards

27 April - 1 May      Jury member, AIA NSW Enduring Architecture Award

31 August      Commissioner's Training Day, Land and Environment Court of NSW

9-12 September      Lecturer, Sydney Law School, LAW6354 Environment Planning and Impact Assessment Law

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## Publications

Updated Chapters 3 and 4, Lyster et al. *Environmental and Planning Law in New South Wales* (5<sup>th</sup> ed, 2020)

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## Membership of legal, cultural or benevolent organisations

Member, Australian Institute of Architects

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Nationally Accredited Mediator

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Registered Architect, NSW Architects Registration Board

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## Ms Danielle Dickson, Commissioner

### Conferences and seminars

26 February	Twilight seminar Field Trip: 60 Martin Place
24 June	Cross-jurisdictional Twilight Webinar, "Unconscious Judicial Prejudice: The neurobiology of "prejudice" (or "bias") in legal decision making" presented by Dr Hayley Bennett, barrister and neuroscientist via Cisco Webex
31 August	Commissioner's Training Day, Land and Environment Court of NSW
9 September	Twilight Webinar, "Could Opal Towers happen again? Building Certification Explored (Part 1)" presented by Mr Michael Wynn-Jones, Associate, University of Technology, via Cisco Webex
24 September	Ngara Yura Judicial Commission Twilight Webinar, "Virtual Tour of the Linear Exhibition, MAAS" via Cisco Webex
4 November	Twilight Webinar, "Could Opal Towers happen again? Building Certification Explored (Part 2)" presented by Mr Michael Wynn-Jones, Associate, University of Technology, via Cisco Webex
5 November	Ngara Yura Judicial Commission Twilight Webinar, "Making the Past Visible: The Colonial Frontier Massacre Map Project and the Legacies of Frontier massacres" presented by Professor Lyndall Ryan AM FAHA, The University of Newcastle, via Cisco Webex.
18 November	Cross-jurisdictional Twilight Webinar "2020 Interrupted – judicial wellbeing in trying times" presented by Ms Carly Schrever and Ms Sally Ryan, via Cisco Webex.
10 December	Cross-jurisdictional Twilight Webinar: "Sexual harassment prevention and prevention in the workplace – a new approach" presented by Ms Kate Jenkins, Sex Discrimination Commissioner, Australian Human Rights Commission, via Cisco Webex

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## Membership of legal, cultural or benevolent organisations

Member, Land and Environment Court Education Committee

Nationally Accredited Mediator

Member, Law Society of NSW

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## Mr Michael Chilcott, Commissioner

### Conferences and seminars

26 February	Field Trip: Visit to 60 Martin Place; Judicial Commission of New South Wales
24 June	Webinar. Unconscious Judicial Prejudice: The neurobiology of "prejudice" (or "bias") in legal decision making; Dr Hayley Bennett, Barrister, New Chambers; Judicial Commission of New South Wales.
13 July	Webinar. Climate Change and Resilience; Presenters: Grant Viljoen (Senior Environmental Consultant: Grant works in Sustainability and Resilience) AECOM Australia; Michael Lord (Research Lead at Beyond Zero Emissions); Nick Rose (Executive Director at Sustain: Australian Food Network). Katerina Gaita (Founder and CEO of Climate for Change). EIANZ
31 August	Commissioner's Training Day, Land and Environment Court of NSW
9 September	Twilight Webinar: Could Opal Towers happen again? Building Certification Explored - Part 1 of 2; Webinar; Mr Michael Wynn-Jones, Associate - University of Technology and Fellow, Institute for Public Policy and Governance; Judicial Commission of New South Wales
15 October	Lecture: Annual ADC lecture. The Hon Justice A S Bell, President, Court of Appeal of New South Wales. Australian Disputes Centre
21 October	Webinar 2: Ecology   EIANZ Virtual Annual Conference. Presenters: Nathan Garvey of EMM Consulting and Cristina Zenato, Shark Expert; EIANZ
28 October	Webinar. Virtual Courts 6 months on, a review of hearings and procedures in the Land and Environment Court of NSW - The Hon Justice Brian Preston SC, Chief Judge, and Senior Commissioner Susan Dixon of the Land and Environment Court of NSW. EPLA Conference 2020.
29 October	Webinar. Expert evidence considerations regarding design and design quality: Commissioner Tim Horton, Land and Environment; EPLA Conference 2020.
30 October	Webinar. Keynote address: "The areas we struggle – challenging factors for the IPC". Professor Mary O’Kane AC, Chair, NSW Independent Planning Commission. EPLA Conference 2020.

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4 November	Webinar: Could Opal Towers happen again? Building Certification Explored - Part 2 of 2; Mr Michael Wynn-Jones, Associate - University of Technology and Fellow, Institute for Public Policy and Governance; Judicial Commission of New South Wales
5 November	Ngara Yura Webinar: Making the Past Visible: The Colonial Frontier Massacre Map Project and the Legacies of Frontier massacres; Presenter: Professor Lyndall Ryan; Chairs: The Honourable Chief Justice James Allsop AO, Federal Court of Australia & The Honourable Justice Lucy McCallum, NSW Court of Appeal; Judicial Commission of New South Wales
9 December	Webinar: Impacts of the 2019/20 bushfires on koalas: cutting through the hype while looking to the future. Presenter: Dr Steven Phillips, Biolink Ecological Consultants; EIANZ
10 December	Cross-jurisdictional Twilight Webinar: Sexual harassment prevention and prevention in the workplace – a new approach. Presenter: Ms Kate Jenkins, Sex Discrimination Commissioner, Australian Human Rights Commission; Judicial Commission of New South Wales.

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

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

Member, Rotary Club of Sydney

Nationally Accredited Mediator

## **Ms Joanne Gray, Commissioner**

### **Conferences and seminars**

26 February	Twilight seminar Field Trip: 60 Martin Place
29 April	Twilight Webinar, Q & A with Rob Stokes, Minister for Planning and Public Places, Environmental Planning Law Association NSW, Sydney
24 June	Cross-jurisdictional Twilight Webinar, “Unconscious Judicial Prejudice: The neurobiology of “prejudice” (or “bias”) in legal decision making” presented by Dr Hayley Bennett, barrister and neuroscientist via Cisco Webex
22 July	Judicial Commission Twilight Webinar, “An introduction to the Bugmy Bar Book Project” presented by Mr Peter McGrath SC & Mr Richard Wilson SC via Cisco Webex
31 August	Commissioner's Training Day, Land and Environment Court of NSW
9 September	Twilight Webinar, “Could Opal Towers happen again? Building Certification Explored (Part 1)” presented by Mr Michael Wynn-Jones, Associate, University of Technology, via Cisco Webex

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14 October	Ngara Yura Judicial Commission Twilight Webinar, "Implicit Bias against Indigenous Australians: Implicit Association Test results for Australia" presented by Mr Siddharth Shirodkar, Centre for Social Research, ANU via Cisco Webex
15 October	3 <sup>rd</sup> Annual ADR Address of the Supreme Court of NSW, The Hon Justice A S Bell (Webinar)
28 October	"Virtual Courts 6 months on, a review of hearings and procedures in the Land and Environment Court of NSW", presented by the Hon Justice Brian Preston SC, Chief Judge, and Senior Commissioner Susan Dixon, Environment and Planning Law Association Annual Conference (Webinar)
29 October	"Environment Protection and Biodiversity Conservation Act 1999 and Federal Court update", presented by Kate Morgan SC, Environment and Planning Law Association Annual Conference (Webinar)
29 October	"Ethics and Contemporary Practice: Reflections on 2020", presented by Mark Seymour, barrister, Environment and Planning Law Association Annual Conference (Webinar)
29 October	"Expert evidence considerations regarding design and design quality", presented by Commissioner Tim Horton and Peter Smith, Smith & Tzannes, Environment and Planning Law Association Annual Conference (Webinar).
29 October	"Sustainability in Planning for Councils & Panels", presented by Commissioner Peter Walsh, David Eckstein, Sydney City Council; and Graham Brown, planner, Environment and Planning Law Association Annual Conference (Webinar).
4 November	Twilight Webinar, "Could Opal Towers happen again? Building Certification Explored (Part 2)" presented by Mr Michael Wynn-Jones, Associate, University of Technology, via Cisco Webex
18 November	Cross-jurisdictional Twilight Webinar "2020 Interrupted – judicial wellbeing in trying times" presented by Ms Carly Schrever and Ms Sally Ryan, via Cisco Webex.
19 November	Australian Institute of Administrative Law Late Afternoon Webinar, "Environmental Law and Populism: The End of Enlightened Environmental Law?" presented by Brian Preston SC, Chief Judge.
10 December	Cross-jurisdictional Twilight Webinar: "Sexual harassment prevention and prevention in the workplace – a new approach" presented by Ms Kate Jenkins, Sex Discrimination Commissioner, Australian Human Rights Commission, via Cisco Webex

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### **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

26 February	Field Trip, 60 Martin Place, Sydney
24 June	Cross-jurisdictional Webinar, “The neurobiology of ‘prejudice’ (or ‘bias’) in legal decision making”, Dr Hayley Bennett, Cisco Webex
21 July	Twilight webinar, “Concrete: The influence of concrete on urban water pollution”, Dr Ian Wright, Senior Lecturer, School of Natural Sciences, University of Western Sydney, Cisco Webex
31 August	Commissioner's Training Day, Land and Environment Court of NSW
9 September	Twilight webinar, “Could Opal Towers happen again? Building Certification Explored – Part 1 of 2”, Mr Michael Wynn-Jones, Associate, University of Technology Sydney, Cisco Webex
14 October	Ngara Yura Program Webinar, “Implicit Bias against Indigenous Australians: Implicit Association Test results for Australia”, Mr Siddharth Shirodkar, Sir Roland Wilson Scholar, Centre for Social Research & Methods, Australian National University, Cisco Webex
4 November	Twilight webinar, “Could Opal Towers happen again? Building Certification Explored – Part 2 of 2”, Mr Michael Wynn-Jones, Associate, University of Technology Sydney, Cisco Webex
18 November	Cross-jurisdictional Webinar, “2020 Interrupted – judicial wellbeing in trying times”, Ms Carly Schrever, Judicial Wellbeing Advisor, Judicial College of Victoria and Ms Sally Ryan, Judicial Wellbeing Advisor, Judicial College of Victoria, Cisco Webex

### Membership of legal, cultural or benevolent organisations

Member, International Association of Hydrogeologists

Member, Institute of Arbitrators and Mediators Australia

Member, Registered Engineers for Disaster Relief, Australia

Member, United Nations International Children Emergency Fund WASH Consultants Roster

Member, United Nations Development Programme Consultants Roster

Nationally Accredited Mediator



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## Dr Peter Walsh, Commissioner

### Conferences and seminars

10 June	Mock Microsoft Teams Trial, presented by Justice Sandra Duggan at Land and Environment Court, under auspices of EPLA
24 June	Cross-jurisdictional Twilight Webinar, "Unconscious Judicial Prejudice: The neurobiology of "prejudice" (or "bias") in legal decision making" presented by Dr Hayley Bennett, barrister and neuroscientist via Cisco Webex
13 August	Monash University Webinar, 'Globalisation and the COVID-19 Recovery'. Presented by Professor Jeffrey Sachs, Columbia University and Professor Margaret Gardner AC, President and Vice-Chancellor of Monash University, via Zoom
9 September	Twilight Webinar, "Could Opal Towers happen again? Building Certification Explored (Part 1)" presented by Mr Michael Wynn-Jones, Associate, University of Technology, via Cisco Webex
29 October	EPLA Conference, 'Expert evidence considerations regarding design and design quality', Commissioner Tim Horton; and Peter Smith, Smith & Tzannes, via Zoom
29 October	EPLA Conference, 'Sustainability in Planning for Councils & Panels': presented by David Eckstein, Sydney City Council; and Graham Brown, planner, via Zoom
30 October	EPLA Conference, 'The areas we struggle – challenging factors for the IPC'. Presented by Professor Mary O’Kane AC, Chair, NSW Independent Planning Commission, via Zoom
18 November	Cross-jurisdictional Twilight Webinar "2020 Interrupted – judicial wellbeing in trying times" presented by Ms Carly Schrever and Ms Sally Ryan, via Cisco Webex.
19 November	"Environmental Law and populism: the end of enlightened environmental law?", address by Justice Brian Preston, Chief Judge of the Land and Environment Court, via MS Teams

### Speaking engagements

29 October	Presentation to EPLA Conference, 'Sustainability in Planning for Councils & Panels: where attention needs to be shifting and why', via Zoom
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### Membership of legal, cultural or benevolent organisations

Fellow, Planning Institute of Australia

Certified Practising Planner

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

Nationally Accredited Mediator

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## Mr Timothy Horton, Commissioner

### Conferences and seminars

26 February	Twilight seminar Field Trip: 60 Martin Place
24 June	Twilight seminar, Unconscious Judicial Prejudice: the neurobiology of "prejudice" (or "bias") in legal decision making presented by Dr Hayley Bennett for the Judicial Commission of NSW
31 August	Commissioner's Training Day, Land and Environment Court of NSW
9 September	Twilight seminar, Could Opal Towers happen again? Building Certification Explored (Part 1) presented by Prof Michael Wyn-Jones for the Judicial Commission of NSW
4 November	Twilight seminar, Could Opal Towers happen again? Building Certification Explored (Part 2) presented by Prof Michael Wyn-Jones for the Judicial Commission of NSW
9 December	Seminar on proposed Design and Building Practitioner's Regulation, presented by Kathlyn Loseby and Dr Kirstin Orr on behalf of the Australian Institute of Architects and NSW Architects Registration Board

### Speaking engagements

9 October	Chair, 'Jørn Utzon and Sydney Opera House: shaking up history & shaping up tomorrow' for the Sydney Opera House
29 October	Guest speaker, 'Expert evidence considerations regarding design and design quality', EPLA Conference 2020 (via Zoom)
19 November	Chair, 'Environmental Law and Populism: The End of Enlightened Environmental Law?' presented by Justice Preston for the Australian Institute of Administrative Law

### Membership of legal, cultural or benevolent organisations

Fellow, Australian Institute of Architects

Nationally Accredited Mediator

Associate Member, The Law Association of Asia and the Pacific (Law Asia)

## Ms Elizabeth Espinosa, Commissioner

### Conferences and seminars

17 June to 2 July	Mediation National Accreditation training, Australian Dispute Centre (online)
21 July	Concrete: the influence of concrete on urban water pollution, Judicial Commission of NSW (online)

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28 July and 4 August	Mindfulness Series with Michael Bunting, Helping Lawyers cope with home and office challenges, Law Society NSW (online)
31 August	Commissioner Training Day, Land and Environment Court NSW
9 September	Twilight seminar, Could Opal Towers happen again? Building Certification Explored (Part 1) presented by Prof Michael Wyn-Jones for the Judicial Commission of NSW
26 October	Law Society NSW Annual Members Address, President and CEO of Law Society NSW (online)
4 November	Twilight seminar, Could Opal Towers happen again? Building Certification Explored (Part 2) presented by Prof Michael Wyn-Jones for the Judicial Commission of NSW
18 November	Cross-jurisdictional Twilight Webinar, 2020 Interrupted – judicial wellbeing in trying times, Ms Carly Schrever and Ms Sally Ryan, Judicial College of Victoria, Judicial Commission of New South Wales (online)
10 December	Cross-jurisdictional Twilight Webinar, Sexual harassment prevention and prevention in the workplace – a new approach, Kate Jenkins, Sex Discrimination Commissioner, Australian Human Rights Commission. Judicial Commission of NSW (online)

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### **Speaking engagements**

28 July	Trust and Accountability in a 2020 World, panel speaker, University of Wollongong, Sydney CBD Campus
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### **Membership of legal, cultural or benevolent organisations**

Member, Law Society of NSW

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Member, Women Lawyers of NSW

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Member, Environment and Planning Law Association NSW

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Member and Graduate, Australian Institute of Company Directors

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Member, International Bar Association

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Member, International Association of Lawyers (UIA)

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Member and Nationally Accredited Mediator, Australian Dispute Centre

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Chair, Australian Design Centre

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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 2020

The Hon. Justice Brian Preston, Chief Judge (Chair)	Land and Environment Court
Senior Commissioner Susan Dixon	Land and Environment Court
Ms Sarah Froh, Registrar	Land and Environment Court
Mr Shaun Carter	Royal Australian Institute of Architects (NSW Chapter)
Mr Peter Castor	Institute of Australian Consulting Arboriculturists
Ms Kirsty Chambers	Australian Property Institute
Ms Ellen Chapple	Environment Protection Authority
Ms Rebecca Cunningham	Housing Industry of Australia
Mr Brendan Dobbie	Environmental Defenders Office
Ms Lesley Finn	Law Society Development and Planning Committee, Law Society of New South Wales
Mr Aaron Gadiel	NSW Urban Taskforce
Ms Erin Gavin	NSW Department of Planning, Industry and Environment
Mr Sam Haddad	Engineers Australia
Ms Christina Harrison	The Institution of Surveyors NSW Inc
Ms Donette Holm	NSW Department of Planning, Industry and Environment
Mr James Innes	NSW Independent Planning Commission
Mr Clifford Ireland	New South Wales Bar Association
Mr James Johnson	Nature Conservation Council of New South Wales

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Mr Mike Lichtwark	NSW Department of Planning, Industry and Environment
Ms Penny Murray	Urban Development Institute of Australia
Ms Roslyn McCulloch/ Dr James Smith	Environment and Planning Law Association NSW
Mr Ben Salon	NSW Young Lawyers Environment and Planning Law Committee
Mr Eugene Sarich	Australian Institute of Building Surveyors and Australian Institute of Environmental Health
Mr Chris Shaw	Property Council of Australia
Mr Gary Shiels	Planning Institute of Australia (NSW Division)
Mr Alex Singh	Local Government In-House Counsel Network
Mr Ian Woodward	Local Government Lawyers Group
Ms Carly Wood	Australian Institute of Landscape Architects
Ms Jessica Wood	Local Government NSW

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*Meeting of the Court Users Group 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 Nicola Pain

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The Hon. Justice John Robson

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#### Education Committee

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

##### Members

The Hon. Justice Nicola Pain (Chair)

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The Hon. Justice 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 John Robson (Chair)

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Senior Commissioner Susan Dixon

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Ms Sarah Froh, Registrar

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Mr Michael Unwin

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Ms Larissa Reid

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Ms Susan Ramsay

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Ms Vanessa Blackmore

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## Court Newsletter Committee

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

### Members

The Hon. Justice Tim Moore (Chair)

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The Hon. Justice Brian Preston, Chief Judge

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February 2020  
Volume 12 Issue 1

## Land and Environment Court of NSW Judicial Newsletter

**Legislation**

**Statutes and Regulations:**

- o Planning
- o Biodiversity
- o Water
- o Pollution
- o Miscellaneous

**Bills**

State Environmental Planning Policies (SEPP)

State Environmental Planning Policies (SEPP) Amendments

**Judgments**

United Kingdom Court of Appeal

High Court of Australia

Federal Court of Australia

New South Wales Court of Appeal

New South Wales Court of Criminal Appeal

Supreme Court of New South Wales

Land and Environment Court of New South Wales

- o Judicial Review
- o Criminal
- o Civil Enforcement
- o Section 56A Appeals
- o Separate Question
- o Strata Schemes
- o Redevelopment
- o Mining
- o Interdisciplinary Decisions
- o Costs
- o Merit Decisions (Judges)
- o Merit Decisions (Commissioners)
- o Registrar Decisions

New South Wales Civil and Administrative Tribunal

**Court News**

Appointments/Retirements

**Legislation**

**Statutes and Regulations:**

- o Planning
- o Local Government
- o Biodiversity
- o Water
- o Criminal
- o Pollution
- o Miscellaneous

State Environmental Planning Policies (SEPP) Amendments

Mining Legislation Amendments

Civil Procedure Amendments

**Judgments**

United Kingdom Supreme Court

High Court of England and Wales

Supreme Court of the United States

Federal Court of Australia

New South Wales Court of Appeal

New South Wales Court of Criminal Appeal

Supreme Court of New South Wales

Land and Environment Court of New South Wales

- o Judicial Review
- o Compulsory Acquisition
- o Criminal
- o Appeals from Local Court
- o Civil Enforcement
- o Valuation/Rating
- o Section 56A Appeals
- o Separate Question
- o Interdisciplinary Decisions
- o Joinder Applications
- o Costs
- o Merit Decisions (Commissioners)

**Court News**

Appointments/Retirements

40<sup>th</sup> Anniversary and Court Conference

**Legislation**

**Statutes and Regulations:**

- o Planning

**Planning:**

**Environmental Planning and Assessment Amendment (Central Coast Council Local Planning Panel) Regulation 2019** - commenced 15 November 2019. The object of this regulation is to amend the Environmental Planning and Assessment Regulation 2000 to require the Central Coast Council to establish a local planning panel for the whole area of the council. The local planning panel will have the functions determined in accordance with s 2.19 of the Environmental Planning and Assessment Act 1979.

**Environmental Planning and Assessment Amendment (Community Participation Plans) Regulation 2019** - commenced 29 November 2019. The objects of this Regulation are to amend:

- (a) the Environmental Planning and Assessment Act 1979 (the Act) for the following purposes—
  - (i) to set out the minimum public exhibition periods for certain development consent applications and development consent applications;
  - (ii) to set out the mandatory notification of review of certain determinations and decisions;
  - (iii) to insert definitions for the purposes of the Act;
  - (iv) to make related law revision amendments.
- (b) the Environmental Planning and Assessment Act 1979 for the following purposes—
  - (i) to omit community participation requirements to be included in the Regulatory Insertion of community participation requirements in the Environmental Planning and Assessment Act,
  - (ii) to remove certain notification and advertisement requirements in the Act or in the relevant community participation requirements,
  - (iii) to prescribe the Lord Howe Island Board for Planning and Public Spaces may direct authority,
  - (iv) to permit Sydney district, regional and local government relevant council's community participation requirements,
  - (v) to establish public exhibition requirements for development, threatened species and aquaculture development,

June 2020  
Volume 12 Issue 2

## Land and Environment Court of NSW Judicial Newsletter

**Legislation**

**Statutes and Regulations:**

- o Planning
- o Local Government
- o Biodiversity
- o Water
- o Criminal
- o Pollution
- o Miscellaneous

State Environmental Planning Policies (SEPP) Amendments

Mining Legislation Amendments

Civil Procedure Amendments

**Judgments**

United Kingdom Supreme Court

High Court of England and Wales

Supreme Court of the United States

Federal Court of Australia

New South Wales Court of Appeal

New South Wales Court of Criminal Appeal

Supreme Court of New South Wales

Land and Environment Court of New South Wales

- o Judicial Review
- o Compulsory Acquisition
- o Criminal
- o Appeals from Local Court
- o Civil Enforcement
- o Valuation/Rating
- o Section 56A Appeals
- o Separate Question
- o Interdisciplinary Decisions
- o Joinder Applications
- o Costs
- o Merit Decisions (Commissioners)

**Court News**

Appointments/Retirements

40<sup>th</sup> Anniversary and Court Conference

**Legislation**

**Statutes and Regulations:**

- o Planning

**Planning:**

The *Environmental Planning and Assessment Act 1979* (NSW) was amended by the *COVID-19 Legislation Amendment (Emergency Measures) Act 2020* (NSW). Sections 10.17 and 10.18 were inserted, which confer powers on the Minister to make orders relating to planning approvals and allow for the electronic inspection of documents that would otherwise be required to be physically available. Subsequent changes were made by the *COVID-19 Legislation Amendment (Emergency Measures—Miscellaneous) Act 2020* (NSW). Alternative provisions were inserted that provided for the deferral of lapsing of development consents and continuance of, and limitations on, existing uses. This amendment also makes special provision for time within which appeals may be made, at s 8.10. At s 9.23, this amendment conferred authority on investigation officers to require answers by audio-visual link.

**Environmental Planning and Assessment Amendment (Activation Precincts) Regulation 2020 (NSW)** - commenced 12 June 2020. The objects of this regulation are:

- (a) to require a development application and a complying development certificate application that relate to proposed development on land within an Activation Precinct under State Environmental Planning Policy (Activation Precincts) 2020 to be accompanied by a current Activation Precinct certificate issued under that Policy by the Regional Growth NSW Development Corporation or the Secretary of the Department of Planning, Industry and Environment, and
- (b) to provide that development for certain purposes on land within the Regional Enterprise Zone in the Parkes Activation Precinct under State Environmental Planning Policy (Activation Precincts) 2020 is not designated development.

**Environmental Planning and Assessment Amendment (Sydney Gateway) Order 2020 (NSW)** - commenced 15 May 2020. This Order declares certain development for the purposes of the Sydney Gateway to be State Significant Infrastructure and Critical State Significant Infrastructure. The development is in Tempe, Street Peters and Mascot and includes the construction and operation of multi-lane roads around the Street Peters Interchange, Sydney Airport Terminals 1, 2 and 3, the Alexandra Canal and the Botany Rail Line, the construction of cycle and pedestrian pathways along the Alexandra Canal and other works.

**Local Government**

**Community Land Management Amendment (COVID-19) Regulation 2020 (NSW)** - commenced 5 June 2020. The object of this Regulation is to provide for the following matters under the *Community Land Management Act 1989* (NSW) for the purposes of responding to the public health emergency caused by the COVID-19 pandemic—

- (a) altered arrangements for convening, and voting at, meetings of an association or its executive committee,



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