



ANNUAL REVIEW 2008



Supreme Court
of New South Wales

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FOREWORD BY CHIEF JUSTICE OF NSW

This Review sets out an overview of the structure, organisation and procedures adopted by the Court for the purposes of discharging its constitutional responsibilities pursuant to the common law and statutes of both the New South Wales and Commonwealth Parliaments. The Review also provides information of the Court's stewardship of the resources made available to it.

The full detail of the Court's contribution to the people of New South Wales exists in the large volume of documentation produced by the Court – encompassing tens of thousands of pages of judgments and hundreds of thousands of pages of transcript. The bald figures of filings, disposals and pending caseload, upon which this Review reports in some detail, does not reflect the richness which is contained in the considerable volume of documentation which the Court's judicial officers and registrars generate in the course of the year.

An indication of the contribution made by the Court, and of the effectiveness and efficiency of its procedures, can be gleaned from this Review, which contains information of a quantitative kind about how the Court has dealt with its caseload and the speed with which litigants have had their disputes resolved.

However, the primary measure of the Court's performance must be qualitative: fidelity to the law and the fairness of its processes and outcomes. This Review sets out in short summary a few of the cases decided in the year 2008. This is but a small sample of the 2000 or so separate substantive judgments delivered by the judicial officers of the Court.

The judges of the Court are conscious of the fact that this public confidence in the administration of justice cannot be taken for granted and must be continually earned, so that that confidence is continually replenished. A Review of this character cannot provide anything other than a general indication of the extent to which the Court has performed its duties in such a manner as to justify the high level of trust that the public of New South Wales displays in the operations of the Court.

One of the ways in which this trust has been earned during the course of this year is by the participation of members of the public in the entire process of the administration of justice, whether as litigants, as witnesses, or as jurors. Each year thousands of citizens of New South Wales acquire direct experience of the operations of the Court in one of these ways.

I am confident that, during the course of 2008, the rule of law was administered by the judicial officers of the Court with a high level of independence, impartiality, integrity, efficacy and efficiency. I have no doubt that that will continue to be the case.



J J Spigelman AC

1 2008: AN OVERVIEW

- Refurbishment of the Law Courts Building in Queens Square
- Leadership on key issues
- Notable judgments
- Court operations
- Consultation with Court users

Refurbishment of the Law Courts Building in Queens Square

In 2008, the first major phase of work in a staged upgrade of the Court's facilities commenced on level 9 of the Law Courts Building. This work, due for completion in the latter half of 2009, will deliver improved facilities for witnesses, jurors, litigants and their representatives.

Once work is complete, the courtrooms and adjoining public areas will feature wireless access for practitioners, electronic displays of evidence, video-conferencing technology enabling witnesses to provide evidence remotely, and electronic transcription of Court proceedings. The Court will also have another large courtroom at its disposal to accommodate civil litigation involving multiple parties, an increasingly common feature of the commercial litigation instituted at this Court.

The work on level 9 marks the beginning of the first comprehensive upgrade to the Court's facilities that has occurred since the Building's construction in 1977.

Leadership on key issues

In April, the first Asian Judicial Seminar on Commercial Litigation was held in Sydney. The Court jointly hosted the inaugural event with the High Court of Hong Kong Special Administrative Region and 32 judges attended. The Seminar provided participants with an unique opportunity to discuss current issues affecting commercial litigation in their own jurisdiction and the region as a whole. The event was a resounding success and a second Seminar is planned in 2009.

In August, the Court co-hosted the Third Annual Conference on Corporate Law with the Law Society of New South Wales. The Conference's theme, *The Credit Crunch and the Law*, was particularly apt given the global economic events that transpired in 2008. The quality of the Conference's papers ensured it made a significant contribution to the understanding of a range of important corporations law issues that have arisen after the global economic downturn.

Further details about these two events can be found in Chapter 5 of this Review.

Notable judgments

During 2008, the Court of Appeal handed down 354 judgments, and the Court of Criminal Appeal delivered 337. In respect of its criminal and civil trial work, the Court delivered 1,422 judgments at first instance. Some judgments were particularly notable either for their contribution in developing the law, their factual complexity or the level of public interest they generated. Summaries of a selection of these judgments appear in Appendix (i) to this Review.

Court operations

Avoidance of excessive delay remains a priority for the Court. The Court of Appeal and Court of Criminal Appeal both remained close to the national standards for the age of their pending caseloads. In the Common Law Division, once again the Court was able to allocate judicial officers to all criminal trials that proceeded to hearing, and no trial was "not reached". With respect to the Division's civil caseload, despite a 15 per cent increase in the number of matters listed for hearing, only one case was "not reached". In the Equity Division, there were four per cent fewer cases pending at the end of 2008 compared to 2007 and an eight per cent increase in the number of matters listed for hearing.

Detailed analysis of the Court's caseload and its achievements against time standards are found in Chapter 4 of this Review. This chapter should be read in conjunction with the comprehensive statistical data in Appendix (ii).

Consultation with Court users

The Court continued to work closely with its users to improve systems and procedures through a network of Committees and User Groups. Representatives on the Committees and User Groups include judicial officers (from this Court and other jurisdictions), senior registry staff and representatives from justice agencies and the legal profession. A list of the Court's Committees and User Groups and their members during 2008 forms Appendix (iii) to this Review.

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COURT PROFILE

- The Court's jurisdiction and Divisions
- Who makes the decisions?
- Supporting the Court: the Registry

THE COURT'S JURISDICTION AND DIVISIONS

The Supreme Court of New South Wales: our place in the court system

The court system in New South Wales is structured on a hierarchical basis. The Supreme Court is the superior court of record in New South Wales and, as such, has an inherent jurisdiction in addition to its specific statutory jurisdiction.

The Supreme Court has appellate and trial jurisdictions. The appellate courts are the:

- Court of Appeal, and
- Court of Criminal Appeal.

The work of the first instance criminal and civil jurisdictions, is divided between two Divisions:

- Common Law Division, and
- Equity Division.

This structure facilitates the convenient despatch of business in accordance with the provisions under section 38 of the *Supreme Court Act 1970*.

Section 23 of the *Supreme Court Act 1970* provides the Court with all jurisdiction necessary for the administration of justice in New South Wales. The Supreme Court has supervisory jurisdiction over other courts and tribunals in the State. The Court generally exercises its supervisory jurisdiction through its appellate courts.

The Industrial Court of New South Wales and the Land and Environment Court of New South Wales are specialist courts of statutory jurisdiction. The Judges of these courts have the status of Supreme Court Judges.

The District Court of New South Wales is an intermediate court whose jurisdiction is

determined by statute. The Local Court sits at the bottom of the hierarchy of New South Wales courts, and has broad criminal and civil jurisdictions. There are also tribunals and commissions in New South Wales with statutory powers similar to the District and Local Courts.

Figures 2.1 and 2.2 overleaf illustrate the court hierarchy in New South Wales and the gateways to appeal in the criminal and civil jurisdictions.

Court of Appeal

The Court of Appeal is responsible for hearing appeals in civil matters against the decisions of the judicial officers of the Supreme Court, other courts, commissions and tribunals within the State, as prescribed in the *Supreme Court Act 1970*.

Court of Criminal Appeal

The Court of Criminal Appeal hears appeals from criminal proceedings in the Supreme Court, the Industrial Court, the Land and Environment Court, the District Court and the Drug Court. Appeals may challenge convictions and sentences imposed upon indictment or in the trial court's summary jurisdiction, or interlocutory orders made by the trial court. Appeals from committal proceedings in the Local Court may also be heard in certain circumstances.

Sittings of the Court of Criminal Appeal are organised on a roster basis whilst taking into account the other regular judicial duties and commitments of the Judges who form the Court's bench. The Judges who sit in the Court of Criminal Appeal are the Chief Justice, the President, the Judges of the Court of Appeal, the Chief Judge at Common Law and Judges of the Common Law Division. During 2008, the Court of Criminal Appeal benches comprised at least two Common Law judges, with the presiding judge being either the Chief Justice, the President, a Judge of Appeal or the Chief Judge at Common Law.

Common Law Division

The Division hears both criminal and civil matters. The criminal matters heard involve homicide offences and offences where the prosecution seeks life imprisonment. Other matters involving serious criminality or the public interest may be brought before the Court with the Chief Justice's approval. The Judges of the Division also hear bail applications, matters concerning proceeds of crime, and post-conviction inquiries.

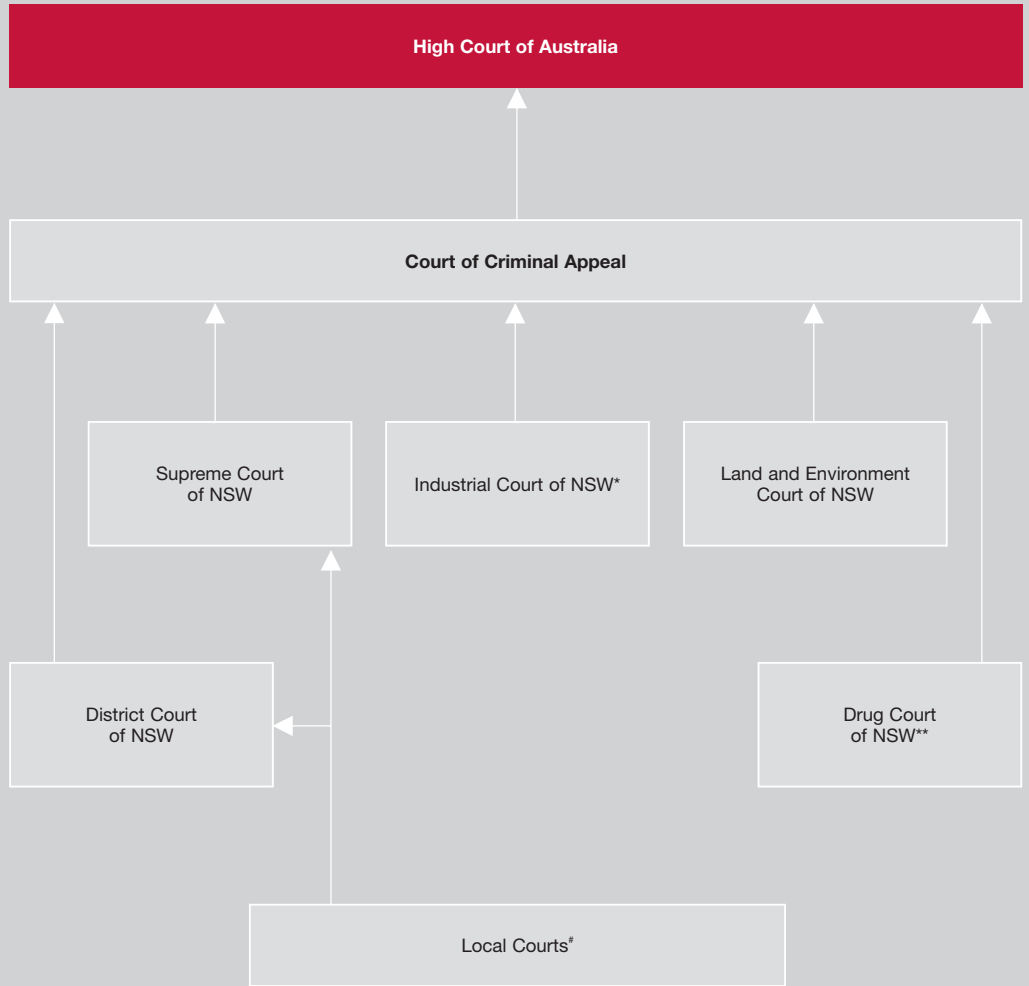
The Division deals with all serious personal injury and contractual actions, in which the Court has unlimited jurisdiction. The civil business of the Division also comprises:

- claims for damages;
- claims of professional negligence;
- claims relating to the possession of land;
- claims of defamation;
- administrative law cases seeking the review of decisions by government and administrative tribunals; and
- appeals from Local courts.

Equity Division

The Equity Division exercises the traditional equity jurisdiction dealing with claims for remedies other than damages and recovery of debts, including contractual actions, rights of property, and disputes relating to partnerships, trusts, and deceased estates. The Division hears applications brought under numerous statutes, including the *Corporations Act 2001 (Cth)*, the *Succession Act 2006*, and the *Property (Relationships) Act 1984*. The Division also handles a diverse range of applications in the areas of Admiralty law, Commercial law, Technology and Construction, Probate and the Court's Adoption and Protective jurisdictions

FIGURE 2.1 NSW COURT SYSTEM – CRIMINAL JURISDICTION



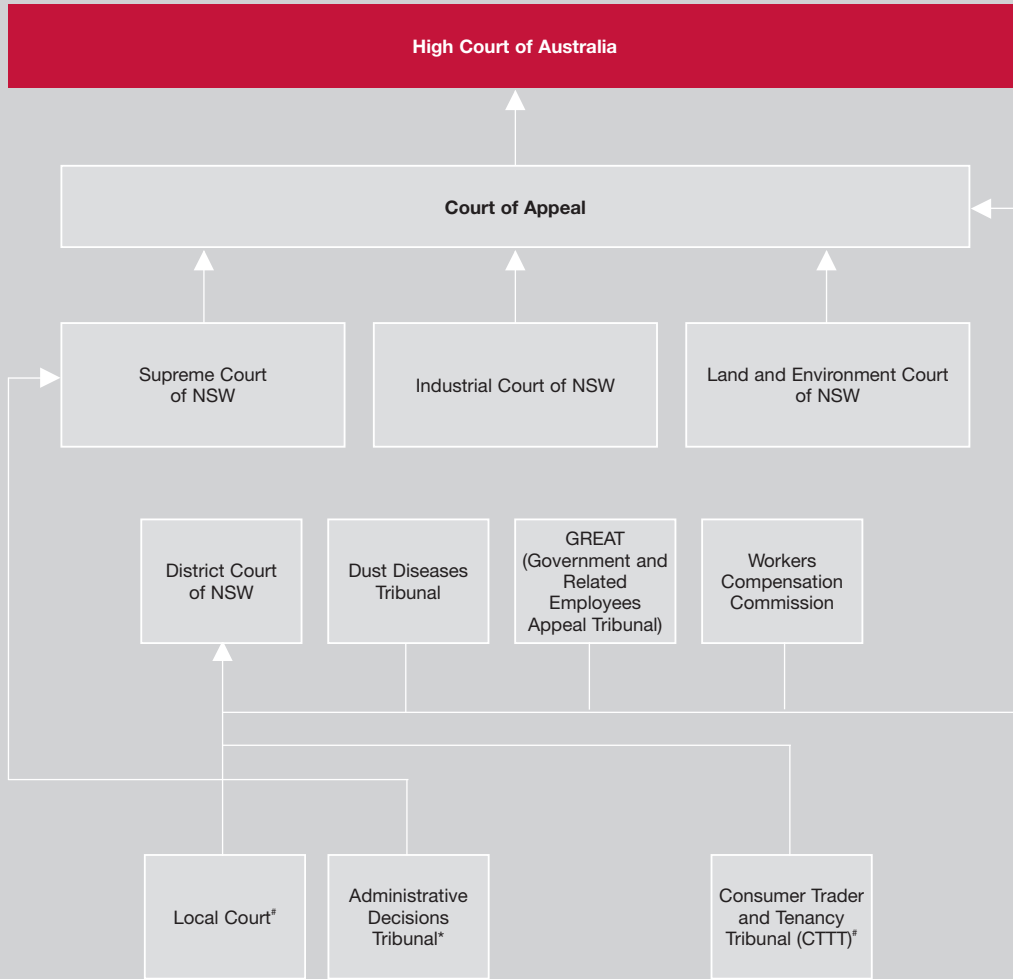
Note: the above diagram is a simplified representation of the appeal process in NSW. Actual appeal rights are determined by the relevant legislation.

**The Court of Criminal Appeal may hear some appeals in matters relating to section 32A of the Occupational Health and Safety Act 2000.*

*** Some appeals are made to the District Court of NSW.*

Some appeals from committal proceedings may be made to the Court of Criminal Appeal.

FIGURE 2.2 NSW COURT SYSTEM – CIVIL JURISDICTION



Note: the above diagram is a simplified representation of the appeal and judicial review process in NSW. Actual appeal rights are determined by the relevant legislation.

* Some claims may instead be made directly to the Court of Appeal pursuant to section 48 of the Supreme Court Act 1970.

* From 1 September 2008, all appeals against decisions in the CTTT are made to the District Court. Also from this date, all appeals against decisions in the Smalls Claims Division of the Local Court are made directly to the District Court; other appeals against Local court decisions may still be made to the Supreme Court.

WHO MAKES THE DECISIONS?

The Judicial Officers of the Supreme Court of New South Wales are its Judges and Associate Judges. The Registrars of the Court have limited decision-making powers.

The Judges

The Governor of New South Wales formally appoints the Judges of the Court following a decision by Cabinet. Judicial appointments are made on the basis of a legal practitioner's integrity, high level of legal skills and the depth of his or her practical experience.

The Governor appoints judges pursuant to section 25 of the *Supreme Court Act 1970*. Section 25 specifies that the Court will include: a Chief Justice, a President of the Court of Appeal and such other Judges of Appeal, Judges and Associate Judges, as the Governor may appoint from time to time. The Governor is also empowered to appoint qualified persons as Acting Judges of Appeal or Acting Judges when the need arises.

The Chief Justice is, by virtue of his office, a Judge of Appeal, and the senior member of the Court of Appeal. The other members of the Court of Appeal are the President and the other Judges of Appeal. The Judges of the Court are assigned to specific Divisions, and ordinarily confine their activities to the business of those Divisions. In certain circumstances, the Chief Justice may certify that a particular Judge should act as an additional Judge of Appeal in certain proceedings before the Court of Appeal.

The *Supreme Court Act 1970* also provides that the Chief Justice may appoint Judges to administer a specific list within the Common Law or Equity Divisions. Details of the Judges assigned to these lists in 2008 can be found in the chapter entitled Caseflow Management.

As at 31 December 2008 the Judges, in order of seniority, were as follows:

Chief Justice

The Honourable James Jacob Spigelman AC

President

The Honourable Justice James Allsop

Judges of Appeal

The Honourable Justice Margaret Joan Beazley AO

The Honourable Justice Roger David Giles

The Honourable Justice David Hargraves Hodgson

The Honourable Justice David Andrew Ipp AO

The Honourable Justice Murray Herbert Tobias AM RFD

The Honourable Justice Ruth Stephanie McColl AO

The Honourable Justice John Basten

The Honourable Justice Joseph Charles Campbell

The Honourable Justice Virginia Margaret Bell

The Honourable Justice Robert Macfarlan

Chief Judge in Equity

The Honourable Mr Justice Peter Wolstenholme Young AO

Chief Judge at Common Law

The Honourable Justice Peter David McClellan

Judges

The Honourable Mr Justice Michael Brian Grove RFD

The Honourable Mr Justice Bruce Meredith James

The Honourable Mr Justice Robert Shallcross Hulme

The Honourable Justice Carolyn Chalmers Simpson

The Honourable Justice Peter John Hidden AM

The Honourable Justice Graham Russell Barr

The Honourable Mr Justice John Perry Hamilton

The Honourable Justice Clifford Roy Einstein

The Honourable Justice Michael Frederick Adams

The Honourable Justice David Kirby

The Honourable Justice Robert Peter Austin

The Honourable Justice Patricia Anne Bergin

The Honourable Justice Anthony Gerard Joseph Whealy

The Honourable Justice Roderick Neil Howie

The Honourable Justice Reginald Ian Barrett

The Honourable Justice George Alfred Palmer

The Honourable Justice Terence Lionel Buddin

The Honourable Justice Ian Vitaly Gzell

The Honourable Justice William Henric Nicholas

The Honourable Justice Robert Calder McDougall

The Honourable Justice John David Hislop

The Honourable Justice Richard Weeks White

The Honourable Justice Clifton Ralph Russell Hoeben AM RFD

The Honourable Justice Peter Anthony Johnson

The Honourable Justice Peter Michael Hall

The Honourable Justice Megan Fay Latham

The Honourable Justice Stephen Rothman AM

The Honourable Justice Paul Le Gay Brereton RFD

The Honourable Justice Derek Michael Price

The Honourable Justice David Jacob Hammerschlag

The Honourable Justice Ian Gordon Harrison

The Honourable Justice Elizabeth Lillian Fullerton

The Honourable Justice Lucy McCallum

The Honourable Justice Nigel Rein

The Honourable Justice Julie Ward

Acting Judges

The following persons held commissions during 2008. Unless otherwise indicated, the judicial officer's commission was effective for the entire calendar year.

Acting Judges are asked to preside over specific hearings as the need arises. The total number of days each person acted as a Judge of the Court during 2008 is detailed in brackets below.

Acting Judges and Acting Judges of Appeal (in alphabetical order)

- The Honourable John Purdy Bryson QC, former Judge of the Supreme Court of New South Wales and Judge of Appeal (commission effective between 1 January and 31 December; acted as a Judge and Judge of Appeal for 87 days)
- The Honourable Roger Vincent Gyles AO, former Judge of the Federal Court of Australia (commission effective between 1 September and 31 December; acted as a Judge and Judge of Appeal for 42 days)
- The Honourable Kenneth Robert Handley AO QC, former Judge of the Supreme Court of New South Wales and Judge of Appeal (commission effective between 1 January and 31 December; acted as a Judge and Judge of Appeal for 139 days)
- The Honourable Jane Hamilton Mathews AO, former Judge of the Federal Court of Australia (commission effective between 1 January and 31 December; acted as a Judge and Judge of Appeal for 118 days)
- The Honourable Jeffrey Arthur Akeroyd Nettle, Judge of the Court of Appeal, Supreme Court of Victoria (commission effective between 22 and 24 October 2008; acted as a Judge and Judge of Appeal for three days)
- The Honourable Ronald Sackville, former Judge of the Federal Court of Australia (commission effective between 1 September and 31 December; acted as a Judge and Judge of Appeal 51 days)
- The Honourable Mark Samuel Weinberg, Judge of the Court of Appeal, Supreme Court of Victoria (commission effective between 23 and 24 July; acted as Judge and Judge of Appeal for two days)

Acting Judges (in alphabetical order)

- The Honourable Justice Peter Meldrum Biscoe, Judge of the Land and Environment Court of New South Wales (held a commission between 28 April and 31 May; acted as a Judge of the Court for 20 days)
- The Honourable Bruce Malcolm DeBelle QC (commission effective between 1 September and 31 December 2008; acted as a Judge of the Court for 25 days)
- The Honourable Wayne Roger Haylen, Deputy President of the Industrial Relations Commission of New South Wales (held a commission between 3 July and 30 November but was not required to sit during the year)
- His Honour Judge Robert Allan Hulme SC, Judge of the District Court of New South Wales (held a commission between 3 November and 19 December; acted as a Judge of the Court for 35 days)
- The Honourable Jayne Margaret Jagot, Judge of the Land and Environment Court of New South Wales (commission effective between 1 and 30 May; acted as a Judge of the Court for 20 days)
- His Honour Judge Stephen Ronald Norrish QC, Judge of the District Court of New South Wales (commission effective between 7 July and 29 August; acted as a Judge of the Court for 40 days)
- His Honour Judge Nigel Geoffrey Rein SC, Judge of the District Court of New South Wales (commission effective between 29 January and 28 March; acted as a Judge of the Court for 67 days)
- The Honourable Rex Foster Smart (commissions effective between 1 January and 3 March and 20 March and 31 December; acted as a Judge of the Court for 122.5 days)
- The Honourable Timothy James Studdert QC, former judge of the Supreme Court of New South Wales (commission effective between 1 January and 31 December; acted as a Judge of the Court for 55 days)

Appointments

- The Honourable Justice Virginia Margaret Bell was appointed a Judge of Appeal on 29 January 2008.
- Lucy McCallum SC was appointed a Judge of the Supreme Court on 30 January 2008.
- Nigel Geoffrey Rein SC was appointed a Judge of the Supreme Court on 5 May 2008.
- The Honourable Justice James Allsop, Judge of the Federal Court of Australia, was appointed a Judge of Appeal and President of the Court of Appeal on 2 June 2008.
- Robert Bruce Scott Macfarlan QC was appointed a Judge of the Supreme Court and Judge of Appeal on 8 September 2008.
- Julie Kathryn Ward was appointed a Judge of the Supreme Court on 28 September 2008.

Retirements

- The Honourable Justice Keith Mason AC, President of the Court of Appeal, retired on 30 May 2008.
- The Honourable Associate Justice Bryan Malpass retired on 30 October 2008.
- The Honourable Mr Justice William Windeyer AM RFD ED retired on 28 November 2008.

The Associate Judges

The Governor appoints Associate Judges to the Court under section 111 of the *Supreme Court Act 1970*. Associate Judges are usually assigned to perform work within either the Equity or Common Law Division, but may be asked to work outside the confines of these Divisions in the interests of flexibility.

The work of the Associate Judges generally involves hearing applications that arise before trial, certain types of trial work and work on proceedings that the Court of Appeal or a Judge may refer to them.

Applications that arise before trial include:

- applications for summary judgment;
- applications for dismissal of proceedings;
- applications for extensions of time to commence;
- proceedings under various Acts; and
- applications for the review of decisions of Registrars.

In the Common Law Division, Associate Judges conduct trials of actions for personal injury and possession of property. Associate Judges also hear other trials (without a jury) that are referred to them by the Court of Appeal or a Judge, in addition to appeals from the Local Court and various tribunals. The Associate Judges also handle appeals against the determinations of costs assessors.

In the Equity Division, Associate Judges deal with proceedings under the *Family Provision Act 1982* and the *Property (Relationships) Act 1984*, and applications for the winding up of companies under the *Corporations Act 2001 (Cth)*. They also deal with inquiries as to damages, or accounts referred to them by the Court of Appeal or Equity Judges, along with applications relating to the administration of trusts, and certain probate matters.

As at 31 December 2008, the Associate Judges were:

- The Honourable Associate Justice John Kennedy McLaughlin;
- The Honourable Associate Justice Richard Hugh Macready, and
- The Honourable Associate Justice Joanne Ruth Harrison.

The Registrars

Registrars to the Court are appointed under section 120 of the *Supreme Court Act 1970* pursuant to the provisions of the *Public Sector Management Act 2002*. The Chief Justice may also certify officers of the Supreme Court or Local Courts to act as deputy registrars of the Court from time to time.

Registrars are allocated to work within the Court of Appeal, the Court of Criminal Appeal, or to one of the Court's Divisions. However, they are permitted to work outside these boundaries if required.

Registrars are afforded limited powers of the Court under the *Supreme Court Rules 1970* and the *Uniform Civil Procedure Rules 2005*, and undertake some of the functions formerly performed by Judges and Associate Judges.

The work of the Registrars commonly includes:

- defended applications in relation to security for costs, discovery, interrogatories, provision of particulars and subpoenas;
- costs disputes if the amount in question is unlikely to exceed \$20,000;
- unopposed applications for the removal of cases to, or from, the District Court;
- conducting examinations under various Acts, including the *Corporations Act 2001 (Cth)* and the *Proceeds of Crime Act 1987 (Cth)*;
- dealing with applications for orders under many of the provisions of the *Corporations Act 2001 (Cth)*, such as the winding up of companies;
- handling applications as referred to them by an Associate Judge;
- issuing court orders and writs of execution, and
- entering default judgments.

The *Supreme Court Rules 1970* and delegations under the *Civil Procedure Act 2005* permit Registrars to directly assist the Judges in caseload management. For instance, in the Court of Appeal, the Registrar deals with most interlocutory applications, excluding applications to stay judgment pending an appeal; in the Common Law Division, a Registrar conducts status and final conferences in the General Case Management List, and also assists the Possession List and Professional Negligence List Judges.

The Registrars may also be called upon to mediate cases. During 2008, nine of the Court's Registrars were qualified mediators and available to conduct mediations throughout the year on a rostered basis.

Deputy Registrars are rostered to act as Duty Registrar and provide procedural assistance to court users in the Registry each day. They also attend to the issue of court orders, writs of execution and other miscellaneous matters.

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

**Chief Executive Officer and
Principal Registrar**

Megan Greenwood

**Manager, Court Services and
Prothonotary**

Jennifer Atkinson (acting)

Registrar, Court of Appeal

Peter Schell

**Registrar, Court of Criminal Appeal
and Crime**

Gabrielle Drennan

**Registrar, Common Law Case
Management**

Christopher Bradford

Registrars in Equity

Leonie Walton

Andrew Musgrave (acting)

Registrar in Probate

Jonathan Finlay

Senior Deputy Registrars

Paul Studdert

Nicholas Flaskas

Opal King

Joanne Gray

Deputy Registrars

Emoke Durkin

Geoffrey Haggett

Bhaskari Siva

Suzin Yoo

Court's physical files and computer records, and ensuring that all the necessary facilities are available for hearings. In criminal matters, the Registry provides support in processing committals, bail applications, applications under Part 7 of the *Crimes (Appeal and Review) Act 2001* and Common Law Division criminal summary jurisdiction proceedings.

In respect of the Court of Appeal, the Registry provides specialist administrative and clerical support to the Court of Appeal's judges and offers procedural guidance to litigants and their representatives. Similarly, in criminal appeal matters, the Registry provides support to the Court of Criminal Appeal's judges and users, and also enforces orders concerning the custody of prisoners.

How the Registry is managed

The Chief Justice directs the priorities to be pursued by the Registry. In general, the priorities reflect the central aim of meeting the expectations of Court users competently, efficiently and professionally.

Day to day management of the Registry is handled by the Chief Executive Officer and Principal Registrar of the Court. The Chief Executive Officer is also responsible for securing and managing the resources the NSW Attorney General's Department provide the Court, providing executive support to the Court's judicial officers and developing strategies to improve the delivery of Registry services. The Chief Executive Officer undertakes these duties in close consultation with the Chief Justice, other judicial officers, the Department, and representatives from key professional bodies and other Court users.

SUPPORTING THE COURT: THE REGISTRY

The Work of the Registry

The Court operates with the support of the Registry that provides administrative and clerical support to the Court. In civil matters, the Registry is responsible for: accepting documents filed at the Court; securing the custody of court documents including exhibits and documents produced under subpoena; listing matters for hearing; issuing court process; attending to the information needs of the Court's users by providing procedural guidance; maintaining the

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CASEFLOW MANAGEMENT

- Overview by jurisdiction
- Regional sittings of the Court
- Alternative dispute resolution

INTRODUCTION

The Court manages the flow of its cases from inception to completion in a number of different ways, and is continually looking to improve its processes and outcomes.

Caseflow management strategies are reflected in the *Uniform Civil Procedure Rules*, the Rules of the Supreme Court and the Practice Notes issued by the Chief Justice. The Judges, Associate Judges and Registrars work together to ensure that cases are resolved as efficiently and justly as possible.

Commonly, cases will be allocated to Registrars to establish the core arguments in dispute and determine when cases should progress to hearing before a Judge or an Associate Judge. A Registrar makes directions to ensure that a case is properly prepared for hearing. If an issue arises that falls outside the specified duties of a Registrar, he or she may refer that case to a Judge or an Associate Judge.

OVERVIEW BY JURISDICTION

Court of Appeal

New appeal cases are reviewed for competency and, if necessary, referred back to legal representatives to either substantiate the claim of appeal as of right or seek leave to appeal. Applications for leave to appeal are examined to ascertain whether they are suitable for hearing concurrently with the argument on appeal.

Appeals are allocated a directions callover date before the Registrar when a notice of appeal is filed. At that callover, the appeal may be listed for hearing if the appellant has filed written submissions and the red appeal book. Further case management may be ordered with respect to lengthy or complex appeals.

The Registrar case-manages and lists most appeals and applications for leave to appeal, although some cases may be referred to a Judge of Appeal for special case management. Urgent cases are expedited and can be heard at short notice, if appropriate. The Registrar in the Court of Appeal also deals with most interlocutory applications, except contested applications to stay judgments pending an appeal, and applications for expedited hearing.

Mediation is offered to parties in appeals identified as capable of resolution by this process. Detailed statistics regarding the number of matters referred to mediation can be found in Appendix (ii).

For more detailed information about case management practices in the Court of Appeal, please refer to Practice Note SC CA 1.

Court of Criminal Appeal

Since 1 July 2002, pre-appeal management procedures have been implemented for sentence and conviction appeals to the Court of Criminal Appeal. Accused persons may initially lodge a Notice of Intention to Appeal, without specifying their grounds of appeal. The Notice of Intention to Appeal allows the accused person six months (or such longer time as the Court grants) to file an actual appeal. Transcripts and exhibits are now provided to accused persons free of charge to facilitate the preparation of an actual appeal.

Case management begins when an appeal or application for leave to appeal is filed in the registry. The appeal or application is listed for callover within two weeks of filing. Callovers are held fortnightly, although special callovers can be held in urgent matters. At the callover, the presiding Registrar will fix a hearing date and make directions for the filing and serving of submissions by the parties. The Registrar also case-manages matters that are deemed to require special attention.

Generally, three Judges hear an appeal or application. The Chief Justice may also direct that more than three Judges sit on an appeal or application, particularly in matters involving an important issue of law. In some circumstances, the Chief Justice may direct that two Judges hear an appeal against sentence. A single judge hears sentence appeals from the Drug Court of New South Wales, and also deals with bail applications and other interlocutory applications in the Court.

Common Law Division

Case management in the Division begins when a summons or statement of claim is filed in the registry. Each summons or statement of claim (with the exception of default matters) is given a return date before a Judge or Registrar and placed in a List. A Judge is appointed to manage

each List, while the Common Law List Judge monitors all matters listed for hearing before a Judge. Registrars handle default matters administratively.

Common Law List Judge

The List Judge allocates matters listed for hearing to specific judges. When deciding which judge will hear a matter, the List Judge considers the type of matter, its estimated hearing length, and whether the judge has other Court commitments. The List Judge also hears various applications in matters already listed for hearing, including all applications for adjournment. From time to time, the List Judge will issue further case management directions in matters already listed for hearing. Justice Hoeben was the Common Law List Judge until November 2008, when Justice Price assumed this role.

Common Law Duty Judge list

The Duty Judge is available each day to hear urgent applications, including applications for interlocutory injunctions, during and outside normal Court hours when required. Judges of the Division are rostered to act as the Duty Judge for a week at a time during law term. A Vacation Judge is rostered during the court vacation to perform this same role.

The Duty Judge also conducts an applications list each Monday. The applications in this list are matters that cannot be determined by an Associate Judge or a Registrar. These matters include appeals from the Local Court under the *Crimes (Local Courts Appeal and Review) Act 2001*, applications for restraining orders, applications for declaratory relief, and applications to dispense with a jury. Matters are initially listed at 9am before a Registrar to determine whether the application is ready to proceed. The Duty Judge may specially fix matters that cannot be heard on the Monday to later that week.

The Duty Judge determines interlocutory applications for restraining assets and issuing examination orders under the *Confiscation of Proceeds of Crime Act 1989*, *Criminal Assets Recovery Act 1990*, and *Proceeds of Crime Act 1987 (Cth)*. The Duty Judge also considers, in chambers, applications seeking authorisation of warrants, such as those made under the *Surveillance Devices Act 2007*.

Associate Judges' list

The Associate Judges in the Common Law Division deal with statutory appeals from the Local Court (except under the *Crimes (Local Courts Appeal and Review) Act 2001*) and the Consumer, Trader and Tenancy Tribunal. The Associate Judges also deal with applications for summary judgment and dismissal, applications for extension under the *Limitation Act 1969*, and opposed applications to transfer matters from the District Court. The Associate Judges may deal with other matters as outlined in Schedule D of the *Supreme Court Rules 1970*.

Matters allocated to the Associate Judges' List are case-managed by a Registrar daily at 9am. The Registrar refers applications to an Associate Judge when ready for hearing.

Lists of the Division

In addition to the above, the work of the Division is also distributed amongst a number of specialised Lists. These Lists (in alphabetical order) are:

- Administrative Law List;
- Bails List;
- Criminal List;
- Defamation List;
- General Case Management List;
- Possession List; and
- Professional Negligence List.

The Chief Justice appoints a specific Judge to be responsible for the management of a List throughout the year. The Judges responsible for the management of a list during 2008 are detailed below.

Administrative Law List

The Administrative Law List reviews decisions of government, public officials and administrative tribunals such as the Consumer Trader and Tenancy Tribunal. The Administrative Law List operates in accordance with the procedures outlined in Practice Note SC CL 3.

In 2008, Justice Hall was responsible for the management of the Administrative Law List

Bails List

Applications for bail or to review bail determinations can be made to the Supreme Court under the *Bail Act 1978* in respect of any

person accused of any offence, even if the trial will not be heard in the Supreme Court. These applications are listed throughout the year, including during the court vacation. Common Law Division Judges are rostered on a weekly basis to determine these applications.

Criminal List

Arraignment hearings are held each month during Law Term. The aim of the arraignment procedure is to 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 arraignment procedure involves counsel at an early stage of the proceedings. This allows both 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 procedures for arraignment are detailed in Practice Note SC CL 2. Justice Barr was the Criminal List Judge during 2008.

Defamation List

Matters filed in this List after 1 January 2006 are handled according to the provisions of the *Defamation Act 2005*. Matters are first listed before a Registrar for directions. Once the Registrar is satisfied that the initiating process is in order, he or she will refer the matter to a Judge for further directions and legal argument. The parties may also ask the Judge to consider if the dispute should be tried before a jury. If the judge grants an application for trial by a jury, the matter will be set down for hearing. The jury will determine if the material in question is defamatory and if there is any lawful defence for publishing the material. If the jury finds that the plaintiff has been defamed without any lawful defence being established, the Judge will then determine any damages payable and resolve any outstanding issues under dispute.

Matters filed before 1 January 2006 are case-managed in an identical way, but the issues considered by the jury differ slightly. In these matters, the jury is asked to consider whether the matter complained of carries the imputation alleged, and if it does, whether the imputation is defamatory.

The Defamation List was managed by Justice Nicholas during 2008. A Registrar assists by case-managing matters listed for directions. Practice Note SC CL 4 governs the operation of the List.

General Case Management (GCM) List

This List comprises all civil cases commenced by Statement of Claim that are not included in the Administrative Law, Defamation, Professional Negligence or Possession Lists. It includes money claims, personal injury claims, claims for possession (excluding land), breach of contract, personal property damage, malicious prosecution, and claims under the *Compensation to Relatives Act 1897*. These cases are case-managed by a Registrar who conducts status conferences and final conferences. At the status conference, the Registrar gives directions to ensure the case is ready for hearing by the compliance date and encourages the early resolution of disputes through mediation or settlement. The procedures associated with the running of this List are set out in Practice Note SC CL 5. Justice Hoeben managed the GCM List during 2008.

Possession List

The Possession List deals with all proceedings for the recovery of possession of land. The management of the List encourages early resolution of cases through mediation, other alternative dispute resolution processes, or settlement. Case management is also used to clarify the real issues in dispute. Practice Note SC CL 6 applies to cases in this List. Justice Johnson was responsible for managing the Possession List during 2008.

Professional Negligence List

Claims against medical practitioners, allied health professionals (such as dentists, chemists and physiotherapists), hospitals, solicitors and barristers are allocated to the Professional Negligence List. Specialisation in the List allows parties to focus on the real issues under dispute in these types of claims. A Registrar monitors cases at regular conference hearings. Conference hearings provide an opportunity for parties to discuss outstanding issues in the case, and provide a forum for mediation between the parties. Practice Note SC CL 7 applies to this List.

The Professional Negligence List Judge hears applications and makes directions according to the specific needs of each matter. Justice Hislop managed the List during 2008.

Equity Division

Case management begins when a summons or statement of claim is filed in the Registry. Each summons or statement of claim is given a return date before a Judge or Registrar and placed into one of the Divisions general or specialised lists. The Registrar makes directions to prepare matters for hearing and, when ready, will allocate a hearing date to the case.

Equity List Judge

The List Judge allocates all matters ready for hearing in the Division's specialist lists to individual Judges. For matters in the General List, while the Registrar is initially responsible for assigning Judges to these, the List Judge closely monitors the Registrar's allocations, adjusting them as required. When deciding which Judge will hear a particular matter, the List Judge considers the nature of the dispute, its estimated hearing length and whether a judge has existing court commitments close to the hearing date. If required, the List Judge personally case manages matters even once they have been listed for hearing. The List Judge regularly reviews cases listed for hearing and monitors their progress. Justice Hammerschlag was the List Judge throughout 2008.

Expedition list

A case is expedited when sufficient urgency is shown. When the application is granted, the Judge gives directions and monitors the preparations for hearing. The Expedition list Judges heard all applications for expedited hearings in 2008. The same Judge hears the case when it is ready to proceed. During 2008, the Expedition list Judges were Mr Justice Young, Justice Palmer, Justice Brereton and Justice Rein.

Equity Duty Judge list

The Duty Judge mainly hears urgent applications, sometimes outside normal court hours. The Duty Judge also hears uncontested or short cases. Judges of the Division are ordinarily rostered as Duty Judge for a two-week period. There is

provision for the Duty Judge to fix an early hearing date for a case and engage in pre-trial management of that case. The Duty Judge would make use of this provision if he or she considers that an early final hearing would result in a substantial saving of the Court's time. The work carried out by the Duty Judge is extremely varied and may include urgent applications by the Department of Community Services to intervene where a child's welfare is involved, or property and commercial disputes.

General list

Other cases are placed in the General list when set down for hearing (if commenced by a statement of claim), or when the Registrar considers the matter ready for hearing (if commenced by summons).

Provided the estimated hearing length is less than six days, the Registrar will set the matter down for hearing before an available Judge. During 2008, the Registrar usually offered parties a hearing date within four months of the final directions hearing.

Matters that require more than six hearing days are set down for hearing in consultation with the Chief Judge. Once they are set down for hearing, the trial judge then case manages these cases.

Long Matters list

Matters in the General list are placed in the Long Matters list when the Registrar becomes aware a matter may require more than six hearing days. Parties are required to file a synopsis of facts of the case and the issues under dispute. On receipt of this synopsis and any other details required by the Registrar, the matter will be referred to a Judge who will then conduct case management hearings and fix the hearing date.

Associate Judges' list

The work of the Equity Division Associate Judges includes dealing with contested procedural applications and conducting inquiries as directed by Judges. Their work also includes the hearing of most applications under the *Succession Act 2006*, the *Property (Relationships) Act 1984*, and certain provisions of the *Corporations Act 2001 (Cth)*. An Associate Judge handles weekly referrals from the Registrar, determining those that can be dealt with immediately, and adjourning the

balance. The Registrar only refers matters where the hearing time is not expected to exceed an hour. More complex matters are listed for hearing in the Associate Judges' list at a later date. Urgent referrals, such as the extension of a caveat, may be made at any time.

Lists of the Division

The Equity Division's caseload is also managed by allocating certain matters to specific Lists according to the nature of the claims. These Lists are set out below in alphabetical order:

- Admiralty List;
- Adoptions List;
- Commercial List;
- Corporations List;
- Probate List;
- Protective List;
- Revenue List, and
- Technology and Construction List.

The Chief Justice appoints a Judge to each of these Lists to bear responsibility for monitoring the List throughout the year. The Judges allocated to each List during 2008 are noted below.

Admiralty List

The Admiralty List deals with maritime and shipping disputes. It is administered in the same manner as the Commercial List (see below). Justice Palmer was responsible for this List in 2008.

Adoptions List

This List deals with applications for adoption orders and declarations of the validity of foreign adoptions under the *Adoptions Act 2000*. Most applications are unopposed. Once all supporting affidavits are filed, a Judge will deal with the application in the absence of the public, and without the attendance of the applicants or their lawyers. Unopposed applications require close attention for compliance with formal requirements, but there is little delay. A small number of contentious hearings take place in court in the absence of the public. Most of these relate to dispensing with consent to adoption. The Registrar in Equity deals with requests for information under the *Adoptions Act 2000*. Justice Palmer was the List Judge during 2008.

Commercial List

The Commercial List is concerned with cases arising out of transactions in trade or commerce. The caseload management strategy applied to the running of this List aims to have matters brought on for hearing quickly by:

- attending to the true issues at an early stage;
- ensuring witness statements are exchanged in a timely manner; and
- intense monitoring of the preparation of every case.

There is also adherence to the allotted hearing dates, and hearings are continued to conclusion, even though time estimates may be exceeded. Justice Bergin was the Commercial List Judge in 2008.

Corporations List

A Judge sits each day of the week to hear most applications and hearings under the *Corporations Act 2001 (Cth)* and related legislation. The Registrar may refer applications to the Judge on a Monday. The Registrar determines routine applications to wind-up companies, applications for leave to proceed against companies in liquidation (limited to personal injury actions) and applications to reinstate companies.

The Judge will give directions and monitor preparations for hearing in longer matters, as well as in other complex corporate cases. Cases managed in this List are generally given a hearing date as soon as they are ready.

The Corporations List Judge during 2008 was Justice Austin in conjunction with Justice Barrett and Justice Hammerschlag.

Probate List

The work performed by the Judges and the Probate Registry consists of both contentious and non-contentious matters. The majority of non-contentious cases are dealt with by the Registrar and Deputy Registrars. This includes the granting of common form probate where applications are in order and unopposed.

Both the Probate List Judge and the Registrars have procedures whereby some supervision is kept over executors in the filing of accounts, and ensuring beneficiaries are paid.

In court, the Registrar considers routine applications, and applications concerning accounts. Should a routine application require a decision on a matter of principle, the application is referred to the Probate List Judge.

The Probate List Judge sits once a week to deal with complex applications. If an application can be dealt with quickly, it is usually heard immediately. Others are set down for hearing, normally within a month.

Contentious matters are monitored by either a Judge or a Registrar. Contentious matters commonly include disputes as to what was a testator's last valid will. When these cases are ready to proceed, they are placed in the callover list to receive a hearing date before an Equity Judge.

The Probate List Judge meets with the Registrars on a regular basis to discuss the efficient working of the List. Mr Justice Windeyer was the Probate List Judge in 2008 until November when Justice Palmer assumed responsibility for this List.

Protective List

The work of this List involves ensuring that the affairs of people deemed incapable of looking after their property, or themselves, are properly managed. The List also deals with appeals from the Guardianship Tribunal of NSW, along with applications (in chambers) by the Protective Commissioner for advice regarding the administration of estates. The Court also considers applications regarding missing persons' estates and, in certain circumstances, may order that their estate be managed under the *Protected Estates Act 1983*.

Often, the issues under dispute in the Protective List are of a highly sensitive nature. The Court acknowledges this situation, and handles these proceedings with the minimum degree of formality. However, when there is a dispute which cannot be solved in this way, it is decided according to law.

The Registrar sits in court one day a week. The Deputy Registrar may submit a case to be determined by the Judge without further appearance or adjourn a case into the Judge's list. A Judge sits once a week to deal with any referred cases. Most cases are considered on the Judge's

usual sitting day as soon as the parties are ready. Longer cases, however, are specially fixed, usually within one month.

The Protective List Judge consults regularly with the Registrar to discuss the efficient working of the List. Mr Justice Windeyer was the Protective List Judge during 2008.

Revenue List

The Revenue List is a list dedicated to the hearing of taxation matters. The List was created to ensure that these matters are heard as efficiently as possible. Matters in the Revenue List are heard by a specific Equity Division Judge each month, and allocated the earliest hearing date possible before this same Judge.

Justice Gzell handled the Revenue List during 2008.

Technology and Construction List

Cases involving complex technological issues and disputes arising out of building or engineering contracts are allocated to this List. The List is administered by the same Judges and in the same manner as those in the Commercial List.

REGIONAL SITTINGS OF THE COURT

First instance criminal trials were conducted in the following regional locations: Bathurst, Dubbo, East Maitland, Lismore, Newcastle, Orange, Port Macquarie and Wollongong. Criminal trials will continue to be held in regional venues as required.

Civil hearings were held at regional venues by special fixture at the following locations during the year: Albury, Lismore, Newcastle, Tamworth, Wagga Wagga and Wollongong.

All proceedings are managed from Sydney irrespective of where the proceedings were commenced or the venue for hearing.

ALTERNATIVE DISPUTE RESOLUTION

Alternative dispute resolution is a broad term that refers to the means by which parties seek to resolve their dispute, with the assistance of a neutral person, but without a conventional contested hearing before a Judge or Associate Judge. The two alternative dispute resolution processes most commonly employed in Supreme Court proceedings are mediation and arbitration.

Mediation

Mediation is available for most civil proceedings pursuant to Part 4 of the *Civil Procedure Act 2005*. Mediation is not available in criminal proceedings.

The role of the mediator is to assist parties in resolving their dispute by alerting them to possible solutions, while allowing the parties to choose which option is the most agreeable. The mediator does not impose a solution on the parties. Nine qualified Registrars and Deputy Registrars were available throughout 2008 to conduct mediations at specified times each week. Alternatively, parties may use private mediators.

A matter may proceed to mediation at the request of the parties, or the Court may refer appropriate cases to mediation, with or without the consent of parties. If the Court orders that a matter be referred to mediation, there are several ways in which a mediator may be appointed. If the parties are in agreement as to a particular mediator, then they can ask the Court to appoint that mediator, who may also be a Registrar of the Court. If

parties cannot agree upon a mediator, then they should attempt to agree on how the Court can appoint a qualified mediator. Some options are set out in Practice Note SC Gen 6.

Settlement of disputes by mediation is encouraged in the Court of Appeal, and in the Common Law and Equity Divisions. Parties may derive the following benefits from mediation:

- an early resolution to their dispute;
- lower costs; and
- greater flexibility in resolving the dispute as the solutions that may be explored through mediation are broader than those open to the Court's consideration in conventional litigation.

Even where mediation fails to resolve a matter entirely and the dispute proceeds to court, the impact of mediation can often become apparent at the subsequent contested hearing. Mediation often helps to define the real issues of the proceedings and this may result in a reduction in eventual court time and, consequently, lower legal costs.

Arbitration

Arbitration involves the hearing and adjudication of a dispute by an arbitrator, rather than by a Judge or Associate Judge. Determination through arbitration of a dispute regarding recovery of damages is permitted under Part 5 of the *Civil Procedure Act 2005*.

The Chief Justice appoints experienced barristers and solicitors as arbitrators following a nomination by their respective professional associations. Arbitrators generally hold their appointment for two years, and they may be reappointed for further periods.

In contrast to a mediator, an arbitrator imposes a solution (an award) on the parties after considering the arguments and evidence presented.

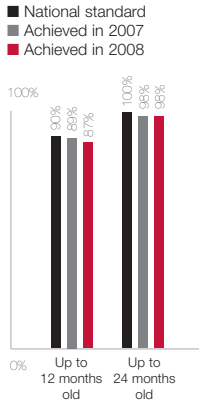
An award of an arbitrator becomes a final judgment of the Court 28 days after the award has been given, provided no party to the arbitration has applied within that time for a rehearing. If a party applies for a rehearing, then the dispute is referred for case management, to be heard afresh before a Judge.

4

COURT OPERATIONS

- Overview of operations by jurisdiction
- Time standards
- Use of Alternative Dispute Resolution

FIGURE 4.1
Court of Appeal achievements against time standards for pending caseload



OVERVIEW OF OPERATIONS BY JURISDICTION*

* to be read in conjunction with Appendix (ii)

Court of Appeal

The number of new cases coming to the Court of Appeal was six per cent lower in 2008 than in 2007. This follows a 14 per cent increase during 2007.

The net disposal rate was four per cent higher in 2008 than in 2007. Notably, disposals of substantive appeals and applications for relief rose by 12 per cent to 380. This was assisted by an increased settlement rate for such cases: 117 cases in 2008, compared with 61 cases in 2007. There was also an increase in the settlement rate for cases seeking leave to appeal: 52 in 2008, compared with 44 in 2007.

In cases where it is necessary to seek leave to appeal, the parties may elect for a concurrent hearing (a single hearing for determination of both the leave application and, if leave is granted, the related appeal). During 2008, the Court of Appeal finalised 60 cases by concurrent hearings.

Among the 380 disposals of substantive appeals and applications for relief during 2008, 246 (65 per cent) were finalised by judgment, 37 of these being ex tempore judgments.

The reduced filing rate and the higher disposal rate have contributed to the seven per cent reduction in the overall Court of Appeal caseload during 2008 (from 408 to 379).

The listing delay for substantive appeals that are ready for hearing has reduced during 2008 (from four months to 3.5 months).

The age profile of the Court of Appeal's pending caseload remains close to the national time standards (see Figure 4.1). Compared with the position at the end of 2007, the number of cases older than 12 months has increased from 44 to 51, and the number of cases older than 24 months decreased from nine to six.

Court of Criminal Appeal

The number of new cases coming to the Court of Criminal Appeal was four per cent lower in 2008 than in 2007. This follows a two per cent decrease during 2007.

The disposal rate for 2008 was seven per cent lower in 2008 than in 2007. There are two principal reasons for this reduction: firstly, the continued decrease in filings over the last four years reduces the availability of cases for hearing and disposal; and secondly, there was a slight reduction in Court of Criminal Appeal sitting time during 2008 in order to provide Judges to other areas of work.

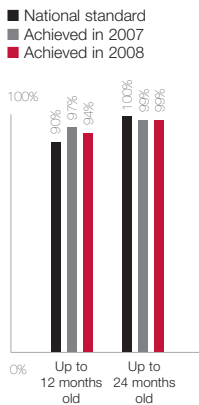
Of the criminal appeals finalised during 2008, 92 per cent required a substantive hearing. The percentage of cases that were finalised by the appellant abandoning the proceedings or withdrawing the appeal decreased to six per cent (from nine per cent in each of the previous three years). Less than one per cent of finalisations were by summary dismissal or striking out the proceedings.

During 2008 the Court of Criminal Appeal caseload increased by five per cent (from 177 to 185), a result of the reduced disposal rate.

The listing delay for criminal appeals that are ready for hearing increased during 2008 (from two months to three months). The slight reduction in sitting time during 2008 contributed to this.

The age profile of the Court of Criminal Appeal's pending caseload declined during 2008 but still remains good relative to the national time standards (see Figure 4.2). Compared with the position at the end of 2007, the number of cases older than 12 months increased from five to 11, and the number of cases older than 24 months increased from two to three.

FIGURE 4.2
Court of Criminal Appeal achievements against time standards for pending caseload



Common Law Division criminal cases

The caseload and performance statistics for the years 2005 onwards are not directly comparable with statistics for previous years because the Court applied new counting rules from 1 January 2005. Those changes to the counting rules are explained in Appendix (ii).

During 2008, 101 defendants entered the Criminal List, compared with 133 during 2007. After entering the List, the next step is usually arraignment. Most defendants enter a plea of “not guilty” at arraignment, and those cases are then listed for trial.

The listing delay for criminal trials that require at least three weeks of hearing time has been reduced during 2008 (from four – five months to 2.5 months).

At arraignments held during 2008, 104 defendants were listed for trial (starting in either 2008 or 2009) and seven defendants entered pleas of “guilty” and were listed for sentence hearings. Nearly all trials are conducted with a jury. During 2008 a total of 45 guilty pleas were taken: seven at the time of arraignment, 36 after being listed for trial (this includes pleas taken at the start of or during the trial) and two at other stages.

During 2008, 122 defendants were finalised, six per cent more than in 2007. The high plea rate has contributed to this higher disposal rate. During 2008, the Court handed down sentences to 80 defendants.

At the end of 2008 there were 92 defendants with cases pending in the Criminal List, 19 per cent below the number pending at the end of 2007. The reduced number of defendants entering the List and the higher disposal rate both contribute to this result.

The age profile for pending cases in this List has declined slightly since last year, and the results remain below the national time standards (see Figure 4.3). Compared with the position at the end of 2007, the number of pending defendants with cases older than 12 months decreased from 19 to 17, and those with cases older than 24 months increased from three to five. When evaluating the Court’s performance against the national time standards it is important to note that almost all indictments in this List are for offences of murder

or manslaughter, or otherwise have the potential for a life sentence to be imposed, whereas the range of charges routinely brought in criminal lists of Supreme Courts in other States and Territories is broader and includes lesser maximum sentences.

Three of the five oldest pending cases have been delayed by collapsed trials or hung juries, and another is a terrorism trial where the start of the trial was repeatedly put back. The pending caseload also includes eight more defendants charged with terrorism offences – these eight defendants comprise nine per cent of the Criminal List and they are involved in a single complex trial that has already exceeded 10 months. Long trials with multiple defendants have a strongly unfavourable impact on the age profile of the List.

For criminal trials listed this year the hearing estimates given to the Court ranged from one day to 52 weeks, and averaged about five weeks per trial. This represents a considerable demand for judicial time. The Court uses acting judges to increase its capacity to hear cases, including criminal trial work. Without access to acting judges, it would be unlikely that the Court could maintain an acceptable age profile for the Criminal List except by withdrawing Judges from other areas of work.

During 2008, trials for 126 defendants were listed to start. Of these, trials for 29 defendants either collapsed or were adjourned. No trial was “not reached”. There is limited over-listing of criminal trials and it is a high priority to run all listed criminal trials. The Court is aware of the financial impact for the various publicly funded agencies involved in the criminal justice system, and of the emotional and financial impact for family of the victim and for witnesses, when trials are unable to run.

Common Law Division civil cases

The civil first instance work of the Supreme Court comes from the civil lists of the Common Law Division and from the Equity Division.

The civil work of the Common Law Division can be separated into two groups: defended cases (including the specialised case-managed lists) and uncontested cases (such as those proceeding to default judgment and applications dealt with administratively by Registrars and Registry officers).

FIGURE 4.3
Criminal List
achievements against
time standards for cases
of pending defendants

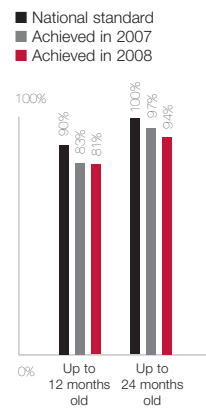


FIGURE 4.4
Common Law
Division pending
civil caseloads
at 31 December

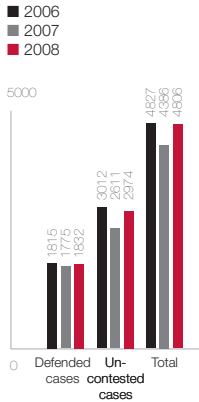
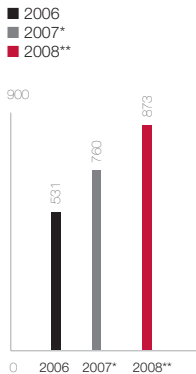


FIGURE 4.5
Listings for hearing -
common law civil
hearings



* Includes 76 matters listed before Associated Judges

** Includes 191 matters listed before Associated Judges

The few cases that have previously come to the Court under its summary criminal jurisdiction have usually been incorporated into the civil caseload statistics. However, during 2007 and 2008 a total of 248 related summary jurisdiction criminal cases were filed (as prosecutions under the *Food Act 2003*). These are excluded from the following analysis because they disproportionately distort the statistics.

For Common Law Division civil cases overall, the filing levels during 2008 were four per cent higher than those in 2007: for defended cases the increase was 11 per cent, and for uncontested cases the increase was two per cent. Increases were seen in every civil list of the Division. The most significant areas of growth were the Professional Negligence List, General Case Management List and defended Possession List cases. The single largest group of cases, the uncontested Possession List cases, remained relatively stable.

Overall, the disposal rate was eight per cent lower in 2008 than in 2007. However, there was a six per cent improvement in the disposal rate for defended civil cases, which is masked by the 12 per cent decrease in the disposal rate for uncontested cases. The 11 per cent reduction in disposals of uncontested Possession List cases dominates the overall disposal statistics.

The number of cases pending in the Division increased by 10 per cent during 2008 (see Figure 4.4). For defended cases, the increase was three per cent, with increases of 5 per cent or more in each of the Possession List, Professional Negligence List and Defamation List. For uncontested cases, the increase was 14 per cent.

By the end of 2008, defended cases were 38 per cent of the pending civil caseload of the Common Law Division, compared with 40 per cent at the end of 2007. This position is significantly different from that at the end of 2004, when defended cases were 60 per cent of the Division's pending caseload. The decreased proportion since 2004 is a direct result of the growth of the Possession List, where the overwhelming majority of cases are uncontested.

During 2008 there were 873 matters listed for hearing, 15 per cent above the 2007 rate (see Figure 4.5). Of these 873 listings, 61 per cent proceeded to hearing and 25 per cent settled after being listed for hearing. This is similar to 2007, when 60 per cent of the 760 listed matters proceeded to hearing and 28 per cent settled.

The listing delay for Common Law Division civil hearings that require up to 5 days of hearing time has reduced (from three to four months to 2.5 months).

So that available judicial time is used optimally, the Common Law Division's civil hearings are over-listed. This has a risk that some cases may be "not reached". In 2008, only one case (less than one per cent of listed cases) was "not reached", which is a notable achievement given the higher listing rate. It improves upon previous "not reached" rates: four cases (one per cent) in 2007 and 41 cases (eight per cent) in 2006.

The median finalisation times for most of the defended lists show improvements from the 2007 results. The median finalisation time increased slightly in the General Case Management List and for proceeds of crime matters in the Summons List but these lists still show a strong improvement compared to the 2004 position. For cases proceeding by default, median finalisation time has improved slightly during 2008. Median finalisation time describes the age at finalisation for cases disposed during the year. It does not predict disposal times for pending or future cases.

Equity Division

The following analysis covers all cases filed within the Equity Division other than the cases that proceed as uncontested probate matters (which are covered in the final paragraph of this section).

The rate of filing in the Equity Division increased by four per cent in 2008, following a three per cent decrease in 2007. There were increases in every list other than the Protective List. Numerically, the largest increase was in the Corporations List (in which about 90 per cent of cases are dealt with by a Registrar only), followed by the General List. The increases in the Technology and Construction List and Commercial List represent significant growth in those particular lists.

The reported disposal rate overall was five per cent higher in 2008 than in 2007. Disposals increased in the General List, Technology and Construction List, Probate (Contentious Matters) List and Adoptions List. The two largest lists of the Equity Division are the Corporations List and the General List, and the figures for disposals in those two lists need to be interpreted with care. Those lists cannot be monitored sufficiently to segregate cases that have been re-opened after finalisation of the substantive issues. Hence a significant number of cases may have more than one disposal recorded against them. These counting problems are expected to diminish when the JusticeLink system becomes available for civil cases. Meanwhile, some trends can be inferred from any significant patterns of change over time.

Most cases in the Corporations List are applications that can be handled fully by a Registrar. Additionally 10 to 15 per cent of cases in the General List are finalised by a Registrar. Registrars' disposals made up 41 per cent of the overall disposals within the Equity Division this year.

The number of pending cases in the Division decreased by four per cent during 2008 (see Figure 4.6). The most significant area of reduction was the General List, particularly the *Family Provision Act* cases within that list. The pending caseload grew in the Commercial List (by 13 per cent) and Technology and Construction List (by nine per cent). The pending caseload also grew in the Corporations List (by 36 per cent) where, as noted above, most cases are dealt with fully by a Registrar.

During 2008 there were 468 matters listed for hearing (other than matters before the Duty Judge, cases referred to a Corporations Judge, Adoptions List matters and Protective List matters). The rate was eight per cent above the 2007 rate (see Figure 4.7). Of the 468 listings, 69 per cent proceeded to hearing and 31 per cent settled. In 2007, 73 per cent proceeded to hearing and 27 per cent settled. Unlike the Common Law Division, the Equity Division does not routinely over-list the cases for hearing, so there are no "not reached" cases.

The listing delay for General List and Probate List cases that require up to two days of hearing time has reduced slightly (from five to six months to five months).

The median case finalisation times for most Equity Division Lists improved or were maintained during 2008. For the Probate (Contentious) List and Protective List there were slight increases in the median finalisation times. Median finalisation time describes the age at finalisation for cases disposed during the year; it does not predict disposal times for pending or future cases.

Uncontested applications relating to probate matters are finalised by Registrars. A total of 23,428 applications were filed during 2008. Where an application for a grant of probate, letters of administration or re-seal (of a probate grant) meets all procedural requirements, the grant is usually made and posted within four to six working days.

FIGURE 4.6
Equity Division
pending civil
caseloads
at 31 December

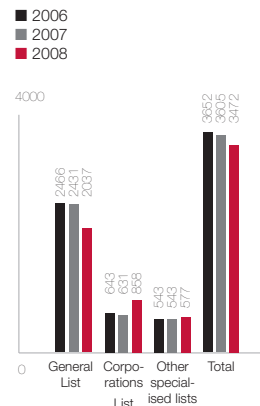
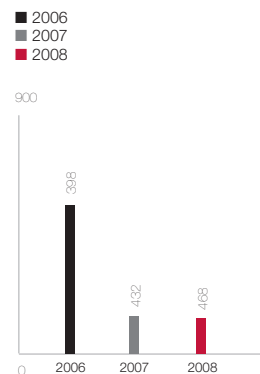


FIGURE 4.7
Listings for hearing -
Equity Division



TIME STANDARDS

For its appellate courts and for the Criminal List, the Court's performance in dealing with cases in a timely way is reported in terms of the age of the pending caseload. Measurement of the age distribution within a pending caseload helps the Court to assess over time the success of delay reduction strategies and to identify areas where further case management would be beneficial.

Appendix (ii) shows the position reached at 31 December of the reporting year in comparison with the national standards.

Other courts and organisations may use different methods to measure the age of cases or report timeliness of case handling, and statistics are not necessarily comparable. To cite criminal cases as an example, the District Court of New South Wales reports performance in terms of the time between committal and the commencement of trial, while the Australian Bureau of Statistics produces national statistics that report performance in terms of the time from committal to acquittal or sentencing.

The Court's timeliness reporting for criminal matters (including criminal appeals) aligns with the methods used by the Productivity Commission in its annual *Report on Government Services*. Timeliness reporting for the Court of Appeal is also aligned with the methods used by the Productivity Commission, but is confined to those cases lodged in the Court of Appeal (whereas the Productivity Commission's figures cover all civil cases that are appellate in nature, not just those lodged in the Court of Appeal).

The Court has determined that it will report on the age distribution within its civil lists once the JusticeLink (formerly CourtLink) system is able to provide precise and timely statistics on the age of those cases. Current systems are unable to provide statistics of sufficient detail and accuracy for pending civil cases within the Common Law and Equity Divisions (approximately 8,300 cases as at the end of 2008, excluding non-contentious probate applications). Each year the Court completes a time-consuming analysis for the Productivity Commission, applying the Commission's counting rules, to estimate the age profile for the Court's civil non-appeal cases as a

single group (as at 30 June). The results are published in the Productivity Commission's annual *Report on Government Services*.

Waiting times

For the areas of the Court where reporting systems are unable to provide information needed to accurately report the age of the pending caseload, waiting time information can be considered instead.

The waiting times shown in Appendix (ii) represent case finalisation times, using median times, usual times or time ranges that were recorded during the reporting year.

When looking at the changes in case finalisation times over the years it is important to understand that case finalisation times can appear to worsen (lengthen) in years when an unusually large number of older cases are finalised. Years with comparatively high case finalisation times are often years when backlogs of old cases have been addressed.

Case finalisation times should not be used to predict the finalisation time of current or future cases. This is not only because case finalisation results depend on whether older cases form an unusually high proportion of the year's finalised cases (as explained above), but also because case finalisation time includes the time that parties take to prepare the case to the point where it is ready to be heard substantively. The time required to prepare a case for hearing will vary significantly from case to case, according to the complexity of issues, the situation of the parties involved and other factors.

Listing delays

This is the second year the Court has reported listing delays. The listing delays indicate how quickly the Court is providing hearings for various types of cases once they are assessed as ready for hearing, providing the parties are willing to select from the first available group of hearing dates offered by the Court.

The table in appendix (ii) shows the listing delay that will apply at the start of the new law term following the close of the reporting year. The listing delays refer to hearing-time requirements that are considered representative or typical of the various areas of the Court. The various listing delays can

change during the year, and updated information is published daily in the court list.

Generally, the listing delays have improved during 2008. The only area where the listing delay has lengthened is the Court of Criminal Appeal, where there was a slight reduction in sitting time in order to provide Judges to other areas of work.

In contrast to the measurements of age of pending cases and case finalisation times, the measurement of listing delays largely eliminates the impact of factors outside the control of the court. Such factors can include, for example, delays in serving court documents, delays caused by the need to join additional parties to proceedings, time taken up with interlocutory issues, time needed for parties to prepare their evidence, time that elapses while parties attempt mediation or take points on appeal, and delays that arise if a party needs a trial date that is later than the first available.

USE OF ALTERNATIVE DISPUTE RESOLUTION

Mediation is the most popular form of alternative dispute resolution for court proceedings. During 2008 the Registry recorded 868 referrals to mediation, of which approximately 65 per cent were referrals to court-annexed mediation conducted by the Court's Registrars.

Litigants in any contested civil case (including appeals) can consider using mediation. During 2008 approximately 4,850 civil cases were filed for which mediation might be possible. Mediation is inapplicable to the other civil cases that were commenced (largely cases where no defendant contests the claim, routine probate applications, applications for adoption of children, applications to wind up companies, applications for recovery of proceeds of crime and applications that require administrative processing only).

During 2008, the rate of referring cases to mediation was 18 per cent of the filing rate for cases in which mediation might be applicable. This represents strong growth in use of mediation over the last three years: during 2005 the mediation referral rate was only nine per cent of the filing rate for cases in which mediation might be applicable.

Within the court-annexed mediation program, the number and percentage of cases settling at mediation increased from 49 per cent last year to 59 per cent in 2008. Cases are considered to have settled at mediation if the parties have agreed to finalising orders by the close of the mediation procedure or have drafted heads of agreement. If parties agree to settle their dispute at any time after the close of the mediation session, those settlements are not recorded as settlements "at mediation" even though the mediation procedure may have helped the parties to eventually reach that settlement. There are no statistics on settlement rates for cases referred to private mediators.

The listing delay for mediation sessions ranged between two and eight weeks during most of the year. For a short period it rose to 14 weeks to accommodate the large number of *Family Provision Act* cases that were referred to mediation. At the close of the year the listing delay was six weeks. The listing delay can change during the year, and updated information is published daily in the court list.

No cases were listed for arbitration during 2008. The use of arbitration declined between 1997 (when the District Court's jurisdiction expanded to include most of the work that had typically been arbitrated in the Supreme Court) and 2004. During the past four years, the Court has referred only one case to arbitration.

5

EDUCATION AND PUBLIC INFORMATION

- Judicial officer education
- Public education programme
- The role of the Public Information Officer

JUDICIAL OFFICER EDUCATION

Many judicial officers updated and developed their skills and knowledge during the year by attending conferences, seminars and workshops. Some of the programmes are tailored specifically to the Court's needs, while others target the international legal community. An overview of some of the educational activities completed during 2008 appears below. For a more comprehensive list of activities, please refer to Appendix (iv) "Other Judicial Activity".

Domestic activities

- In January, 15 Judges attended the Supreme and Federal Courts Judges' Conference in Hobart. The Chief Justice opened the three-day Conference, Justice McColl chaired a session on the *Psychology of Decision Making*, and Justice Whealy chaired a session entitled *Protecting Our Borders*. Other topics discussed at the Conference were climate change; the future of the media; current issues in judicial life, behaviour and expectations; the "vanishing trial"; a jury sentencing study, and vexatious/quarulous litigants.
- In March, in preparation for the commencement of the *Surveillance Devices Act 2007*, representatives from the NSW Police presented a seminar for 13 Supreme Court judges on changes to legislation regulating the installation, use, maintenance and retrieval of surveillance devices. This was followed by a hands-on demonstration of some of the surveillance devices used by NSW Police.
- In August, the 2008 Annual Conference was held at the Shoal Bay Resort & Spa located on the mid-North Coast of New South Wales. Forty-two judges and two associate judges attended the three-day Conference. This year's keynote speaker was Professor Luzius Wildhaber, Former President of the European Court of Human Rights. In his keynote address entitled *Changing Ideas About the Tasks of the European Court of Human Rights*, Professor Wildhaber examined the institution's history and its future direction. Several of the Court's judges presented sessions at the Conference. Justice Giles presented a session on *Duty of Care, Scope and Breach*; Justice McClellan discussed *Developments in Criminal Trials* based on a paper by Justice Howie; Justice Campbell spoke to the topic of *Access to Trustees, Documents and Reasons*; Justice Beazley and other participants from the programme reported on the pilot of a 360 Degree Feedback programme for judicial officers and Justice Hodgson spoke about *Free Will and Criminal Responsibility*. There were also several guest presenters at the Conference. Professor John Coffee from Columbia Law School delivered a session entitled *Gatekeeper Failure: A Post Mortem*; Associate Professor John Watson, a Consultant Neurologist at the University of Sydney, presented the session *A Penny for Your Torts – A Simple Guide to How the Brain Works*, and Professor John Mattick AO, Professor of Molecular Biology at the University of Queensland, spoke about *The Influence of DNA on Free Will*.
- In August, the third Annual Supreme Court/Law Society Conference on Corporate Law took place. The theme for this year's Conference was The Credit Crunch and the Law. The Chief Justice opened the Conference and chaired the session on Economic and Policy Issues and Justice Austin chaired the session on Legal Issues. Speakers at the Conference were drawn from both the legal profession and the financial sector. The topics discussed included *The Credit Crunch: Diagnosis and Prognosis*; *Financial Crises 101: What Can We Learn from Scandals and Meltdowns – from Enron to Subprime?*; *Valuation of Instruments without Market Value*; *Directors' Margin Loans: Disclosure Issues*; *Short Selling and Securities Lending and Directors' Insolvent Trading Liability After Collapse of Trading Markets in Debt Instruments*.

International activities

In April, the Supreme Court and High Court of Hong Kong Special Administrative Region jointly hosted the first Asian Judicial Seminar on Commercial Litigation. The inaugural Seminar was attended by commercial judges from Australia, China, India, Japan, South Korea, Singapore, Hong Kong, The Philippines, Malaysia and Papua New Guinea. The Chief Justice opened the Seminar with Mr Justice Geoffrey Ma, Chief Judge, High Court of Hong Kong Special Administrative Region. The Chief Justice and Chief Judge Ma then led a discussion on the Challenges of Commercial Litigation. Justice

Bergin co-chaired a session on Case Management with Mr Justice Hartmann from the High Court of Hong Kong, Justice Einstein led a discussion on Expert Evidence with Justice Chesterman of the Supreme Court of Queensland, Justice Allsop was joined by Justice Ang from the Supreme Court of Singapore in a discussion about Long and Complex Cases, and Justice Barrett jointly chaired a discussion about Corporate Insolvency with Madam Justice Kwan of the Court of First Instance of the Hong Kong High Court. Other issues discussed at the Conference were Documentary Material and Alternative Dispute Resolution.



Supreme Court of New South Wales and High Court of Hong Kong Special Administrative Region
JUDICIAL SEMINAR ON COMMERCIAL LITIGATION
3–5 April 2008, The Mint, Sydney

Front Row: Judge Yasushi Kanokogi; Justice Mohammad Anwarul Haque; Justice Xiaoming Xi; Justice Ashok Bhan; Chief Justice James Spigelman; Chief Judge Geoffrey Ma; Justice Patricia Bergin; Justice Anselmo Reyes; Judge Soonhyung Kwon.

Second Row: Ms Xiaoxu Ma; Justice Susan Kwan; Ms Audrey Lim; Justice Belinda Ang; Associate Justice Teresita Leonardo-de Castro; Assistant Judge Shimpei Takahashi.

Third Row: Mr Zhigang Li; Justice Dato' T. Selenthiranathan; Justice Kim Hargrave; Judge Yongjian Zhang.

Fourth Row: Senior Associate Justice Leonardo Quisumbing; Justice Derek Hartshorn; Justice Johnson Lam; Justice David Hammerschlag; Judge Mohammad Taufiq Aziz.

Fifth Row: Justice Michael Hartmann; Justice Greg Lay; Justice Reg Barrett; Justice Cliff Einstein; Justice Richard Chesterman.

PUBLIC EDUCATION PROGRAMME

Each week the Court's Registrars address secondary school students and community groups regarding the Court's jurisdiction and daily operations. After the lecture, the group is taken to an appropriate courtroom to observe a Supreme Court trial. Demand for these group talks remains high, particularly amongst secondary school Legal Studies students. More than 1,300 students and members of the public attended these lectures in 2008.

In November, the Court also participated in Sydney Open Day, a biennial event organised by the Historic Houses Trust. The King Street Court Complex was opened up to visitors with over 500 people attending guided architectural tours of the building.

THE ROLE OF THE PUBLIC INFORMATION OFFICER

The Court's Public Information Officer (PIO) is the principal media spokesperson for the superior NSW courts and provides a professional court-media liaison service.

The major role of the position is to provide the media with information about court proceedings in the NSW Supreme Court, the Land and Environment Court, the Industrial Relations Commission of NSW and the District Court of NSW.

The PIO works with the media to ensure that judicial decisions are correctly interpreted and reported to the community, and that initiatives taken by the courts to enhance access to justice are widely promoted.

The PIO is also responsible for ensuring that media outlets are alert to any suppression orders issued in proceedings, and that they are familiar with the terms and impacts of these orders.

The distribution of, and adherence to, suppression or non-publication orders is critical as the media's failure to acknowledge them in their coverage could compromise proceedings.

During 2008, the PIO handled 3,255 enquiries from the media. Of these:

- 80.3 per cent (2,614 enquiries) related to Supreme Court matters;
- 15.1 per cent (492 enquiries) related to District Court matters, and
- 4.6 per cent (149 enquiries) related to other courts, including the Industrial Relations Commission and the Land and Environment Court.

Of the 3,255 media enquiries received: 65.6 per cent were from Sydney metropolitan journalists/reporters (major newspapers, radio and TV stations); 18.4 per cent were from NSW regional newspapers, radio and TV stations, 3.2 per cent were from suburban Sydney newspapers, and 1.3 per cent were from interstate journalists. The remaining 11.6 per cent of the enquiries were from writers for specialist/trade publications or members of the public.

6

OTHER ASPECTS OF THE COURT'S WORK

- Uniform Civil Procedure Rules
- JusticeLink
- Law Courts Library
- Admission to the Legal Profession and appointment of Public Notaries
- Admission under the Mutual Recognition Acts
- Administration of the Costs Assessment Scheme
- Pro Bono scheme
- Judicial Assistance Program

UNIFORM CIVIL PROCEDURE RULES

The Uniform Civil Procedure Rules project commenced in 2003 when the Attorney General's Department developed a cross-jurisdictional Working Party, chaired by Mr Justice Hamilton. The Working Party's chief aim was to consolidate provisions about civil procedure into a single Act and develop a common set of rules for civil processes in the Supreme, District and Local Courts.

This aim was substantially achieved through the commencement in 2005 of the *Civil Procedure Act 2005* and *Uniform Civil Procedure Rules 2005*. A Uniform Rules Committee was established under sections 8, 17 and Schedule 2 of the Act. The Committee is chaired by the Chief Justice, and the Court is also represented by the President of the Court of Appeal, Mr Justice Hamilton and Justice Hoeben.

JUSTICELINK

The Court continued to be actively involved in the NSW Attorney General's Department's JusticeLink project during the year, particularly through the JusticeLink Steering Committee.

The Committee is an initiative of the Department and includes representatives from the Supreme, District and Local Courts. It aims to ensure the JusticeLink system meets the needs of courts and other justice agencies in the Department. The following Supreme Court judicial officers and registry staff served on the Committee in 2008:

- The Honourable Mr Justice Hamilton;
- The Honourable Justice Howie;
- The Honourable Justice Gzell;
- The Honourable Justice Latham;
- The Honourable Associate Justice Macready, and
- Ms Megan Greenwood, Chief Executive Officer and Principal Registrar.

LAW COURTS LIBRARY

The Law Courts Library is a legal resource and information centre for all judicial officers, chamber staff and Registrars in the Law Courts Building.

The NSW Attorney General's Department and the Federal Court of Australia jointly fund the Law

Courts Library. Two committees oversee the operations of the Library: the Operations Committee and the Advisory Committee.

The Operations Committee comprises an equal number of representatives from the NSW Attorney General's Department and the Federal Court of Australia. The Operations Committee is responsible for setting budget priorities, revenue, business planning and Library policy. The Advisory Committee consists of three Judges from the Federal Court of Australia and three Judges from the Supreme Court of NSW. The Advisory Committee consults with the Operations Committee on matters of budget, collection development and service provision.

During 2008, the Supreme Court representatives on the Advisory Committee were:

- The Honourable Justice Allsop;
- The Honourable Justice Ipp;
- The Honourable Justice Basten, and
- The Honourable Justice Austin.

ADMISSION TO THE LEGAL PROFESSION AND APPOINTMENT OF PUBLIC NOTARIES

The Legal Profession Admission Board is a self-funding statutory body established under the *Legal Profession Act 2004*. The Board makes and applies rules governing the admission of lawyers and appointment of public notaries in New South Wales. Successful completion of the Board's examinations leads to the award of a Diploma in Law that, for the purpose of admission as a lawyer in New South Wales, is the equivalent of a degree from an accredited law school. Once admitted as a lawyer, a person may apply to the Law Society of NSW or the NSW Bar Association for a practising certificate as either a solicitor or barrister.

The Board comprises the Chief Justice, three other Judges of the Supreme Court, a nominee of the Attorney General and key members of the legal profession. The Board maintains a close working relationship with the Court in other respects, by providing officers to assist in the administration of admission ceremonies, maintaining the Rolls of Lawyers and Public Notaries, and liaising with the Court's Registry about applications made under the Mutual

Recognition Acts. In addition, five Judges of the Court provide important policy input by maintaining positions on the Board's committees.

During 2008, the members of the Legal Profession Admission Board were:

- The Honourable the Chief Justice
- The Honourable Justice Tobias AM RFD (Presiding Member)
- The Honourable Mr Justice Grove (Deputy Presiding Member)
- The Honourable Justice Campbell
- Mr P Taylor SC (to 20 August)
- Mr J Gormly SC
- Mr G McGrath (from 21 August)
- Mr C Cawley
- Ms J McPhie (to 1 February)
- Mr J Dobson (from 2 February)
- Professor S Colbran
- Professor J McKeough
- Ms M Tangney (NSW Attorney General's Department)
- Executive Officer and Secretary: Ms R Szabo.

The Board's work during 2008

• Uniform Principles for assessing qualifications of overseas applicants for admission

The Uniform Principles were adopted by the Legal Profession Admission Board on 7 April 2008. The principles were designed to provide a consistent assessment process of overseas applicants across Australia and eliminate the possibility of different assessment procedures operating in different jurisdictions. The principles were developed by the Law Admissions Consultative Committee (LACC) in consultation with those who assess applications in each jurisdiction.

• English language requirements

As part of the reforms, from 1 July 2008, the Board introduced the requirement that applicants for admission will be required to take the International English Language Testing System (IELTS) test. An applicant will not be exempted from taking the test unless a person has attained an undergraduate Law Degree or Diploma in Law in Australia or has undertaken both the final two years of secondary school and academic legal qualification in one of the approved countries (below) and has lived in that country or countries for the entire duration of study:

- Canada;
- Republic of Ireland;
- New Zealand;
- United Kingdom and Northern Ireland;
- USA, and
- South Africa.

TABLE 6.1: **SUMMARY AND COMPARISON OF THE LEGAL PROFESSION ADMISSION BOARD'S WORKLOAD**

| | 2006 | 2007 | 2008 |
|---|-------|-------|-------|
| Lawyer admissions approved by the Board | 2,019 | 1,985 | 2,005 |
| Certificates of Current Admission produced by the Board | 430 | 452 | 427 |
| Public Notaries appointed by the Board | 53 | 58 | 58 |
| Students-at-Law registrations | 640 | 600 | 548 |

(Note: admissions under Mutual Recognition Acts are not included. Please refer to the section below entitled Admission Under Mutual Recognition Acts.)

Legal Qualifications Committee

The Legal Qualifications Committee is constituted under the Legal Profession Admission Rules to superintend the qualification of candidates for admission and to advise the Board in relation to the accreditation of academic and practical training courses in New South Wales. The Committee performs its work largely through its sub-committees and reviews decisions of these sub-committees at the request of aggrieved applicants.

During 2008 the members of the Legal Qualifications Committee were:

- The Honourable Justice White (Chairperson)
- The Honourable Justice Campbell (Deputy Chairperson)
- The Honourable Justice Harrison
- Mr J Fernon SC
- Ms J Oakley (to 30 June)
- Ms S Leis (from 1 July)
- Mr P Doyle Gray (to 30 June)
- Ms E Picker (from 1 July)
- Mr H Macken
- Mr C Cawley
- Mr J Dobson
- Mr G Ross
- Mr R Harris
- Dr Kam Fan Sin (to 30 June)
- Mr P Underwood (from 1 July)
- Professor A Lamb AM
- Dr G Elkington
- Executive Officer and Secretary: Ms R Szabo.

Work during 2008

• Application of the Uniform Principles

The Legal Qualifications Committee and Academic Exemption and Practical Legal Training Exemptions Sub-Committees will have regard to the Uniform Principles in exercising their functions and discretions under Rules 97 and 98 of the *Legal Profession Admission Board Rules 2005*, in so far as that is consistent with the application of those Rules to the circumstances of the individual cases.

• Rule drafting Committee

The Legal Qualifications Committee appointed a rules drafting committee to ensure that as the Uniform Principles evolve, the admission rules and associated legislation will be appropriately considered.

• Academic requirements for admission

Academic courses offered by the College of Law in NSW and England in Australian Constitutional Law and Legal Ethics no longer satisfy the academic requirements of admission. All undergraduate law subjects must be taken as part of a tertiary course that leads to admission to practice law.

• Practical Legal Training

The Committee supported the proposition that the Uniform Principles should not restrict opportunities for Australian students to obtain requisite work experience in overseas law firms.

• Active Practice

The Legal Qualifications Committee recognised that applicants who are resident in Australia and are employed in a legal firm or legal office of a corporation at a level of responsibility of an admitted practitioner and under the supervision of a legal practitioner should be regarded as being in “active practice” and their experience being recognised as relevant for the purpose of their PLT assessment.

TABLE 6.2: APPLICATIONS CONSIDERED BY THE LEGAL QUALIFICATIONS COMMITTEE

| | 2006 | 2007 | 2008 |
|--|------|------|------|
| Applications for Academic Exemptions | 452 | 509 | 616 |
| Applications for Practical Training Exemptions | 193 | 207 | 195 |

Examinations Committee

The Examinations Committee is constituted by the Legal Profession Admission Rules to oversee the content and conduct of the Board’s examinations and the candidatures of Students-at-Law. It has three sub-committees. The Performance Review Sub-Committee determines applications from students seeking to avoid or overcome exclusion from the Board’s examinations. The Curriculum Sub-Committee, in consultation with the Board’s examiners and revising examiners, plans the curriculum for the Board’s examinations, and the Quality Sub-Committee oversees the quality of examinations and marking.

During 2008, the members of the Examinations Committee were:

- The Honourable Justice Simpson (Chairperson)
- The Honourable Justice Hall (Deputy Chairperson)
- Mr M Christie
- Mr J Dobson
- Mr F Astill
- Associate Professor G Monahan (to 19 Sep 08)
- Ms S Carter (from 19 Sep 08)
- Mr R Anderson
- Executive Officer and Secretary: Ms R Szabo

Work during 2008

- The addition of a new optional subject, Environmental Law, was included in the Board’s Diploma in Law syllabus.
- The Committee has recommended to the Board that the assessment structure of the Diploma in Law course be modified to include an assignment worth 20 per cent of the final mark in all of the Board’s subjects.
- A new syllabus for the subject, Legal Institutions, was adopted.
- The position of 02 Contracts with 04 Criminal Law and Procedure was swapped in curriculum order and commenced in the Winter 2008 session. The swap has created a number of administrative issues. The subject sequence will be reviewed in three years time.

TABLE 6.3: **THREE-YEAR COMPARISON OF THE EXAMINATION COMMITTEE'S WORKLOAD**

| | 2006 | 2007 | 2008 |
|--|-------|-------|-------|
| Examination subject enrolments by Students-at-Law | 5,159 | 5,042 | 4,847 |
| Approved applications to sit examinations in non-scheduled venues | 43 | 46 | 39 |
| Approved applications for special examination conditions | 25 | 37 | 34 |
| Student-at-law course applications | 299 | 310 | 236 |
| Applications from students-at law liable for exclusion from the Board's examinations | 400 | 361 | 335 |

ADMISSION UNDER THE MUTUAL RECOGNITION ACTS

The management of applications from legal practitioners for admission under the Mutual Recognition Acts forms another aspect of the Registry's work. The Registry liaises with the Legal Profession Admission Board in performing this task. In 2008, no interstate and 64 New Zealand practitioners were enrolled under the Mutual Recognition Acts, compared with three and 70 respectively in 2007, and 18 and 54 in 2006. The number of practitioners enrolled under Mutual Recognition Acts has dropped significantly as each State and Territory enacts legislation that allows interstate practitioners to practise seamlessly throughout Australia.

ADMINISTRATION OF THE COSTS ASSESSMENT SCHEME

The Costs Assessment Scheme commenced on 1 July 1994. It is the process by which clients and practitioners determine the amount of costs to be paid in two principal areas: between practitioners and their clients and party/party costs. Party/party costs are costs to be paid when an order is made from a Court (or Tribunal) for unspecified costs. The Costs Assessment section of the Registry undertakes the day-to-day administration of the Costs Assessment Scheme.

The Costs Assessment Scheme is the exclusive method of assessment of legal costs for most jurisdictions. A costs assessment application enables an assessor to determine costs disputes between practitioners and clients, between practitioners and practitioners or between parties

to legal proceedings. Applications under the Scheme are determined by external assessors appointed by the Chief Justice. All assessors are members of the legal profession and educational seminars are arranged for them each year by the Costs Assessment Rules Committee. Mr Gordon Salier AM, solicitor, was the Chair of the Costs Assessment Rules Committee during 2008.

In conjunction with the Costs Assessment Rules Committee, a Costs Assessment Users' Group meets on a quarterly basis to discuss issues in costs assessment from a user's perspective. The Costs Assessment Users' Group is chaired by Justice Brereton and consists of costs assessors, costs consultants and a representative of the Office of the Legal Services Commissioner.

During 2008, 1,556 applications were lodged. Of these, 931 (60 per cent) related to costs between parties; 169 (11 per cent) were brought by clients against practitioners, and 331 (21 per cent) were brought by practitioners. The review process, which is relatively informal in nature, is carried out by two senior assessors of appropriate experience and expertise and is conducted along similar lines to that used in the original assessment process. The review panel can vary the original assessment and is required to provide a short statement of its reasons. In 2008, 125 (eight per cent) applications were filed for review of costs assessments.

There is still provision to appeal the review panel's decision to the Court, as of right on questions of law and otherwise by leave. Up until September 2008, these appeals were heard by Associate Judges in the Common Law Division and formed part of the Division's civil caseload. After 1 September 2008, following a legislative change, any new appeals against a review panel's decision are lodged in the District Court.

PRO BONO SCHEME

The Pro Bono Scheme was established under Part 66A of the *Supreme Court Rules 1970* in 2001 with support from the NSW Bar Association and the Law Society of NSW. The scheme enables unrepresented litigants to be referred to a barrister and/or solicitor once the Court determines they are deserving of assistance. Over the course of the year, the Court made 35 referrals under the Scheme: one referral was made in a Court of Appeal matter, 17 referrals were made by judges in each of the Common Law and Equity Divisions. The Scheme's success depends upon the continued goodwill of barristers and solicitors, and the Court gratefully acknowledges those who support the Scheme by volunteering their services.

JUDICIAL ASSISTANCE PROGRAM

A Judicial Assistance Program was launched to help New South Wales judicial officers meet the demands of their work whilst maintaining good health and well-being. The scheme provides for 24-hour access to a professional, confidential counselling service and free annual health assessments. The Court administers this Program on behalf of all the jurisdictions.

APPENDIX (i): NOTABLE JUDGMENTS - SUMMARIES OF DECISIONS

The Court's full text judgments are accessible online at: www.lawlink.nsw.gov.au/caselaw

1. Attorney General for New South Wales v Dylan Chidgey

Mr Chidgey was alleged to have sold ecstasy on an ongoing basis. The buyers were undercover police officers participating in a controlled operation under section 6 of the *Law Enforcement (Controlled Operations) Act 1997*. Mr Chidgey was charged with five counts of supplying a prohibited drug, contrary to section 25(1) of the *Drug Trafficking Act 1985*, and one count of supplying a prohibited drug on an ongoing basis, contrary to section 25A(1) of the same Act. The latter was a more serious offence that carried a heavier penalty.

During committal proceedings in the Local Court, Mr Chidgey applied to have a subpoena issued to the NSW Commissioner of Police. The subpoena required the production of: “[T]he relevant documents and things required to be completed by the Police in accordance with the Controlled Operations Act and Regulations, including but not limited to the applications made for the approval of the Controlled Operation...”.

The NSW Commissioner of Police sought to have the subpoena set aside on the ground that there was no “legitimate forensic purpose” for seeking access to those documents. The onus then fell on Mr Chidgey to establish he had a legitimate forensic purpose for requiring their production.

In the Local Court, Mr Chidgey claimed that the documents sought in the subpoena contained information that would assist his defence, particularly his challenge against the admissibility of evidence under section 138(1)(b) of the *Evidence Act 1995*. That section provides that improperly or illegally obtained evidence must be excluded, unless the court determines that it is more desirable than not to admit it. The respondent submitted that it was “on the cards” that the documents authorising the controlled operation were “granted pursuant to some impropriety”.

The respondent claimed that the police deliberately sought to “ramp up” the charges from isolated incidents to a course of dealing. The respondent alleged they had induced him to supply the ecstasy repetitively and that they could only have done so in a controlled operation. The respondent alleged that this was an abuse of power.

The Magistrate rejected that there was a legitimate forensic purpose as the respondent described it. However, he found there was another legitimate purpose for seeking access: to allow access to the documents “so that [the defence] can check that there has been compliance with form”. The Attorney General, who was not a party to the proceedings, appealed this decision as of right under section 5F(2) of the *Criminal Appeal Act 1912*.

The Court unanimously allowed the Attorney General’s appeal and ordered that the relevant paragraph of the subpoena be struck out.

The Court found that the test for determining if a party must produce a document under a subpoena is whether there is a legitimate forensic purpose for seeking access, and whether it is “on the cards” that the documents will materially assist the respondent’s case. The Court held that checking to see if the form of the documents complied with the requirements of the *Law Enforcement (Controlled Operations) Act 1997* did not meet this test. Allowing access to the documents for this purpose “amount[ed] to no more than a ‘fishing expedition’” and was impermissible. The Court noted that there was no material before the Magistrate to indicate that the forms might not have complied with requirements. Allowing the respondent to “check” compliance meant that the respondent needed to have access to the documents to discover whether he had a case at all. Therefore, the Court held that there was nothing to suggest that failure to follow correct procedures was “on the cards”.

Bench: Beazley JA; James J; Kirby J

Citation: Attorney General for New South Wales v Dylan Chidgey [2008] NSWCCA 65; 182 A Crim R 536

Judgment date: 28 March 2008

2. Campbell v R

The appellant, a former pharmacist, conducted a business that sold furniture manufactured in Indonesia. The appellant had a business associate in Indonesia who would arrange shipments of furniture from Indonesia to Australia. In a five-year period, the appellant had received 25 shipments. Seven of those shipments included packages that were not part of any order she had placed. These

1. Clarifies the appropriate test for determining if documents sought for production under subpoena have a legitimate forensic purpose

2. The criminal offence of "imports" requires a coincidence of physical and fault elements

packages were not declared to customs. The appellant's Indonesian business associate had arranged for two men to pick up the packages from the appellant's business premises after each shipment. The shipment that was the subject of the charge contained a large number of commercially available medications containing pseudoephedrine. The appellant admitted opening some of the packages on previous occasions to find they contained cigarettes. On a least one occasion (and perhaps three), the packages had contained a quantity of cold tablets. The appellant maintained that she never intended to import the pseudoephedrine and gave evidence that she had tried to stop her business associate including the packages on numerous occasions.

The Crown relied on telephone intercepts of the appellant's conversations and her answers in a record of interview. These revealed that the appellant knew her associate intended to come to Australia from Indonesia after the shipment arrived. In the past, he had only done so when the shipments contained additional packages. The Crown also relied on text messages from the appellant to her husband and associate expressing relief after she was advised that the Australia Quarantine and Inspection Services did not intend to proceed with its planned inspection of the shipment.

In addition, the Crown submitted that the appellant could still be found guilty even if the jury were not satisfied that the appellant intended to import the tablets from the beginning. The Crown argued that the importation process continued until the men picked up the tablets. It submitted that, if the jury decided she found out about the tablets only after the container was opened at her business premises, the intent requirement could still be satisfied as her subsequent conduct culminated in the pickup. The Crown submitted that her intention could be formed based only on her conduct after the container was opened. The appellant objected, and submitted that this Crown submission should be withheld from the jury. The trial judge refused to do so. The appellant was convicted of importing a commercial quantity of a border-controlled precursor, contrary to section 307.11 of the *Criminal Code Act 1995 (Cth)*.

The appellant appealed against her conviction. Counsel for the appellant argued that the importation was complete before she opened the container and that the trial judge failed to adequately address the jury regarding the physical and fault elements of the offence.

The Court allowed the appeal and ordered a retrial.

The Court was required to consider the meaning of the word "imports" in section 307.11. The appellant argued that the physical act of importing was completed before the packages arrived at her business premises and, accordingly, the physical element of the crime did not coincide with the fault element of the crime. The act of importing, with which the appellant was charged, had to be distinguished from participating in the process of importation as an accessory, with which the appellant was not charged.

The Crown argued that "imports" should be read broadly. It contended that the act of importing continued until the packages were removed from the appellant's business premises and through to when the packages reached their distributors in Australia.

To resolve this issue, the Court considered the judgment of Isaacs J in *Wilson v Chambers & Co Pty Ltd* (1926) 38 CLR 131 (which was adopted in *The Queen v Bull* (1974) 131 CLR 203). In that case, "imported goods" was held to mean goods "brought from abroad into Australian territory, and in respect of which the carriage is ended or its continuity in some way in fact broken... [and where] the absence of some new or further arrangement for carrying them away would make the place of arrival their destination and would therefore result in the goods remaining in Australia". The Court determined that the issue was where this place of arrival was in the present case.

The Court then considered the statutory context in which the word "imports" appears in section 307.11. It concluded that, in the context of a new criminal code that criminalises a wide range of drug offences, a precise, rather than expansive, sense of the word "imports" must be adopted. The Court found that the point at which the goods were delivered that would have resulted in them

staying in Australia occurred when the appellant's customs agent picked them up or, at the latest, when the container arrived at the appellants premises before it was unpacked.

The Court held that the Crown case, as put to the jury, permitted them to find the appellant guilty on the basis that her intention (the fault element) was formed after the importing (the physical element) was completed. The Court found that this was impermissible and ordered a retrial.

In additional remarks, Acting Justice Weinberg considered that the offence of being "knowingly concerned" in the importation of prohibited imports no longer exists in the Code. His Honour said: "To be 'knowingly concerned' in an importation is to be involved in an activity that is necessarily ambulatory. To import, or to aid and abet an importer, is to engage in a more finite activity, which is part of a broader process properly characterised as the process of importation." His Honour concluded that: "Whatever flexibility there may be built into the verb 'imports' in s 307.11... the act of importing (as distinct from the broader venture which centred upon the importation) had, in my view, well and truly concluded by the Saturday when the appellant actually saw those boxes. ... That makes it impossible to allow this conviction to stand."

Bench: Spigelman CJ; Weinberg AJA; Simpson J
Citation: Campbell v R [2008] NSWCCA 214
Judgment date: 16 September 2008

3. Dennis v Australian Broadcasting Corporation

The applicant commenced defamation proceedings against the respondent alleging a program about a failed investment scheme contained a series of adverse imputations about him. The applicant had previously filed four amended statements of claim. The applicant sought leave to file a fifth amended statement of claim, which would have re-introduced four imputations that had previously been abandoned.

The trial judge refused the application for leave. In the interlocutory judgment, his Honour said: "In my view, there comes a limit to which leave to replead in cases of this kind should be granted and that limit has been well and truly reached."

The applicant appealed against the trial judge's decision. The applicant relied on the High Court's decision in *Queensland v J L Holdings* (1997) 189 CLR 146, where it was held that: "the ultimate aim of a court is the attainment of justice and no principle of case management can be allowed to supplant that aim."

The Court refused leave to appeal from the trial judge's interlocutory judgment. It distinguished the decision in *J L Holdings*, partly on the basis that case management practices have changed significantly in the decade since the High Court delivered that judgment. The Court held that the mandatory statutory duty imposed upon the courts by section 56(2) of the *Civil Procedure Act 2005* to "facilitate the just, quick and cheap resolution of the real issues in the proceedings" (which was reinforced in the object sections of the *Defamation Act 1974* and the *Defamation Act 2005*) constituted a significant qualification of the power to grant leave to amended a pleading.

The Court held that the trial judge was correct in exercising his discretion to refuse leave to file further amended pleadings solely on the basis that the "limit" had been reached.

Bench: Spigelman CJ; Basten JA; Campbell JA
Citation: Dennis v Australian Broadcasting Corporation [2008] NSWCA 37
Judgment date: 1 April 2008

4. Dubbo RSL Memorial Club Limited & Anor v Steppat & Ors

Dubbo RSL Memorial Club contained two areas described as an "outdoor gaming terrace" and the "TAB outdoor area". The agreed facts described the areas in the following terms:

"...the "outdoor gaming terrace" is comprised in part of an area covered by a roof in which gaming machines and other facilities are provided. Beyond the roof is an open terrace area. The covered area is comprised of approximately 75 square metres. The open area is approximately 84 square metres. The area described as the "TAB outdoor area" is comprised in part of an area covered by a roof in which there are recreation facilities including television screens and other facilities to facilitate betting. Beyond the roof of that area is an open terrace. The covered area is comprised of approximately 125 square metres. The open area is approximately 75 square metres."

3. A court's power to grant leave to amend pleadings is subject to its statutory duty to facilitate the just, quick and cheap resolution of cases.

The parties disagreed about whether smoking was permitted in these areas. The plaintiffs argued that the areas were not "enclosed public places" and therefore not "smoke-free areas" for the purposes of the *Smoke-free Environment Act 2000* (the "Act").

The Court began by examining the statutory definition of an "enclosed public place". Section 4 of the Act defined an "enclosed" public place as one that has "a ceiling or roof and, except for doors and passageways, [is] completely or substantially enclosed, whether permanently or temporarily".

Clause 6(2) of the Regulations made under the Act stated that a place is "substantially enclosed if the total area of the ceiling and wall surfaces (the *total actual enclosed area*) of the public place is more than 75 per cent of its total notional ceiling and wall area."

The plaintiffs' case relied upon the Court finding that the outdoor gaming terrace and TAB outdoor area (both the covered and uncovered parts) were a single "place". Such a finding would mean that the total enclosed area was less than 75 per cent of the total notional ceiling and wall area, and it was therefore not an "enclosed public space" in which smoking was prohibited.

Regarding the "outdoor gaming terrace", the plaintiffs argued that an objective observer would regard it as a single place because it had a continuous wall uniting both the covered and uncovered portions, and there were no internal obstacles to moving freely between them. They argued the whole area had a single purpose: to provide a place where patrons could smoke while playing gaming machines or drinking. The plaintiffs made similar submissions regarding the TAB outdoor area.

The Court rejected these submissions. Regarding the outdoor gaming terrace, the Court found that, although the walls were continuous and there were no internal barriers, the area lacked a "uniformity of purpose". The gaming facilities were confined to the covered area, and the uncovered area could be used only as an outdoor area for socialising and related activities. The Court also found that the TAB outdoor area comprised two distinct places: the covered area was used for

viewing races on television, playing gaming machines and dancing, and the uncovered area used for drinking and socialising.

The Court accepted the defendants' submission that only the covered areas could be regarded as "enclosed" as envisaged under the Act. The Court noted: "If the area in question is not covered by a roof the opportunity is available for smoke to disperse to the atmosphere. However, when the relevant place has a roof the smoke may only escape laterally and the extent of lateral openings becomes the critical issue affecting the healthiness of the premises." The Court declared both the outdoor gaming terrace and the TAB outdoor area were "enclosed public places" in which smoking was prohibited.

Bench: McClellan CJ at CL

Citation: Dubbo RSL Memorial Club Limited v Steppat [2008] NSWSC 965; 160 LGERA 455

Judgment date: 19 September 2008

5. Fastlink Calling Pty Ltd v Macquarie Telecom Pty Ltd

The defendant served the plaintiff with a statutory demand for payment of a debt. The plaintiff applied under section 459G of the *Corporations Act 2001 (Cth)* (the "Act") for an order to set it aside.

Applications under this provision must be supported by an affidavit that has been filed and served on the person who made the demand. The question that arose in this case was whether a document filed by the plaintiff with the application under section 459G of the Act and served on the defendant was, in truth, an affidavit.

The document was in the following form:

AFFIDAVIT

Name ANA JEBRIL

Address XXX Liverpool Street Sydney NSW 2000

Occupation Director

Date

I Ana Jebрил do solemnly declare:

[...]

SWORN at Greenacre

Signature of deponent (signed) A Jebрил

Signature of witness

Name of witness Hilal Chouman

Address of Witness L1, 134A, Waterloo Road
Greenacre NSW 2190
Capacity of witness Solicitor

An annexure to the document was marked as follows:

This [sic] annexure marked 'A' referred to in the affidavit of Ana Jebriil sworn on 21 January 2008.

(signed) H Chouman
Hilal Chouman
Solicitor

The defendant claimed that the document was not an affidavit for the purposes of the Act. The signatory did not purport to "swear" or to "affirm", but instead used the words "solemnly declare". No signature appeared in the space for the signature of the person before whom the affidavit was made. The space for the date was also left blank.

The Court found that the document was not an affidavit for the purposes of section 459G of the Act. In arriving at this conclusion, the Court considered the principles in the *Oaths Act 1900* governing the creation of affidavits, which it considered applicable because of section 79 of the *Judiciary Act 1903 (Cth)*.

The Court found that a deponent's oath is essential to the character of a written statement as an affidavit. If a person objects to taking an oath, however, section 12 of the *Oaths Act 1900* permits the deponent to make instead an affirmation, with "affirm" substituted for "swear". These principles are reflected in Form 40 "Affidavit", prescribed pursuant to section 17(1) of the *Civil Procedure Act 2005*.

The Court then considered the use of the words "do solemnly declare". It concluded that the *Oaths Act* contemplates the use of "swear" or "affirm" only, and that "declare" is not interchangeable with either word. Regardless of this, the Court found the use of the words "Sworn at Greenacre" in the jurat resolved any ambiguity and represented that the deponent had made her statements on oath.

The Court then considered the fact that the solicitor before whom the document was sworn had not signed the document. It decided that resort could be had to extrinsic evidence to prove

due swearing. It therefore had regard to an affidavit subsequently sworn by the solicitor, which said:

"2. I filed an Originating Process in [the matter the subject of the proceedings] dated 21 November [sic] 2008 together with an Affidavit of Ana Jebriil a copy annexed herewith and marked with the letter 'A'.

3. Ana Jebriil swore the Affidavit and placed her signature on the Affidavit before me at Greenacre. I unintentionally and due to oversight at the time did not place my signature in the 'Signature of Witness' part of the Affidavit."

However, annexure 'A', which purported to be a copy of the disputed affidavit, consisted of only four pages; the disputed affidavit consisted of nine pages. The Court found that: "Mr Chouman's affidavit thus cannot prove that Ms Jebriil swore before him the affidavit of nine pages filed with the originating process... The most it can prove, if it proves anything, is that Ms Jebriil swore before Mr Chouman an affidavit of four pages in the form of its annexure 'A'."

There was no evidence allowing the Court to determine that Ms Jebriil had signed the nine-page document before Mr Chouman. Therefore, there could be no finding that Mr Chouman administered an oath to Ms Jebriil in respect of that document, an essential element to establishing that the document was indeed an "affidavit". This in turn left the Court unable to conclude that the plaintiff had complied with section 459G of the Act by filing an affidavit supporting its application to set aside the statutory demand within the prescribed 21-day period.

Consequently, as the plaintiff's application did not fulfil the necessary statutory requirements, the Court had no jurisdiction to set aside the statutory demand. The application was dismissed with costs.

In closing, the Court noted that the case "illustrates the high price that may have to be paid for lack of attention to simple matters of detail."

Bench: Barrett J

Citation: Fastlink Calling Pty Ltd v Macquarie Telecom Pty Ltd [2008] NSWSC 299; 217 FLR 366; 26 ACLC 374

Judgment date: 8 April 2008

5. Consideration of
what constitutes an
affidavit

6. Characterises a constitutional immunity as a substantive issue for choice of law purposes

6. Garsec Pty Ltd v His Majesty the Sultan of Brunei

The applicant claimed to have entered into an agreement to sell an old, rare and beautiful manuscript copy of the Koran to the first respondent, the Sultan of Brunei. The first respondent indicated that he did not intend to proceed with the transaction. The applicant alleged that the first respondent failed to perform his contractual obligations.

The applicant commenced proceedings in the Equity Division against the first respondent, seeking specific performance of the contract because of the uniqueness of the manuscript. The applicant also commenced proceedings against the second respondent, who was the private and confidential secretary of the Sultan. The applicant alleged that the second respondent represented that he had the first respondent's authority to receive and accept the offer, and that, if he did not have that authority, he was liable for breach of warranty of authority and the tort of negligent misstatement.

Where a cause of action arises in a foreign jurisdiction but proceedings are commenced in Australia, the Australian court must choose which law to apply. Should the court apply the law of the foreign jurisdiction, the law of the Australian forum in which the case is being heard, or a combination of the two? Under Australian choice of law rules, the court applies a combination: substantive issues that arise in a cause of action are dealt with using the law of the place where the claim arose and procedural issues that arise are dealt with using the law of the forum in which the case is heard.

Article 84B(1) of the Constitution of Brunei stated: "His Majesty the Sultan and Yang Di-Pertuan can do no wrong in either his personal or any official capacity. His Majesty the Sultan and Yang Di-Pertuan shall not be liable to any proceedings whatsoever in any court." The trial judge had to consider whether the immunity granted to the first respondent was substantive or procedural. If the immunity were held to be substantive, the proceedings could be permanently stayed on the basis that the first respondent was immune from legal proceedings and the applicant's claim would be defeated. If the immunity were found to be procedural, the court could proceed to hear the case.

The trial judge found that the immunity was substantive and ordered a permanent stay. The applicant sought leave to appeal against this decision.

The Court dismissed the appeal and upheld the stay. The Court cited the High Court's decision in *John Pfeiffer Pty Ltd v Rogerson* (2000) 203 CLR 503 in which the distinction between substantive and procedural issues was examined. Here, the majority held that "matters that affect the existence, extent or enforceability of the rights or duties of the parties to an action are matters that, on their face, appear to be concerned with issues of substance". Conversely, "rules which are directed to governing or regulating the mode or conduct of court proceedings" are likely to be procedural.

The applicant submitted that the immunity was procedural. An expert in Brunei law gave evidence of how Article 84B(1) operated. The expert told the Court that the constitution declared two distinct prerogatives: that the Sultan could "do no wrong" and that he "shall not be liable to any proceedings whatsoever in any court". The expert told the court that the second sentence had been added in a constitutional amendment in 2004. The expert explained to the Court that Brunei was a British protectorate until 1984 and that the laws of Brunei had their origins in English law. He told the Court that the idea that the Sultan could "do no wrong" meant that the Sultan's position would be the same as the sovereign's position in England before the *Crown Proceedings Act 1947 (UK)* was passed. That Act allowed civil proceedings for breach of contract to be brought against the Crown in the same way as against any other party. Before this legislation, a subject who entered into a contract with the Crown and who alleged that the Crown had breached its obligations could only seek to recover property by what was called a petition of right. This petition of right was not available in Brunei. No proceedings had ever been brought using this method and, in the expert's opinion, the 2004 amendment eliminated even a theoretical possibility of using it to sue the Sultan for breach of contract.

The applicant argued that the petition of right overcame a procedural difficulty. The evidence of the expert was that the position of the Sultan was the same as the Crown before the *Crown*

Proceedings Act. The applicant argued that the Crown's immunity derived from the fact that the courts were the King's courts and no lord could be sued in his own court. However, though this immunity existed, it was still possible to sue the Crown in contract using a petition of right. The petition of right overcame a procedural difficulty, because without it there was no procedure to sue the Crown. The applicant argued, therefore, that the Sultan's immunity "reflect[ed] a purely domestic sensitivity [which was] not apt to be characterised in the same way as general substantive rules".

The Court rejected this argument. It found that after the 2004 amendment the immunity granted to the Sultan was more than a procedural rule. The decision in *John Pfeiffer* made a distinction between having a right or duty and the manner of enforcing it in court. The Court held: "A law whereby no duty is owed is substantive law. Similarly, a law whereby a person has no liability is substantive law. It does more than govern or regulate the mode or conduct of court proceedings – it stipulates the inevitable outcome of them." The Court found that the immunity was substantive and upheld the trial judge's order to permanently stay the Equity Division proceedings.

Bench: Spigelman CJ; Hodgson JA; Campbell JA

Citation: *Garsec v His Majesty The Sultan of Brunei* [2008] NSWCA 211; 250 ALR 682

Judgment date: 5 September 2008

7. IE v R

The applicant was convicted of five sexual offences, including three counts of aggravated sexual assault in company. The applicant was 16 years and five months old at the time the offences were committed.

The applicant sought leave to appeal against his sentence. He argued that the trial judge failed to adequately consider the sentencing principles applicable to juveniles, as set out in section 6 of the *Children (Criminal Proceedings) Act 1987*. He further submitted that the trial judge failed to consider the applicant's youth adequately when assessing the objective seriousness of the offence and that the resulting aggregate sentence and non-parole period imposed were manifestly excessive.

The applicant relied on a passage from the Court of Criminal Appeal's decision in *R v Way* (2004) 60 NSWLR 168 to support his argument. In that case, the Court held that circumstances that can affect the objective seriousness of an offence, such as mental illness or intellectual disability, "become relevant because of the causal connection with its commission". The applicant submitted that the juvenile status of an offender constituted an objective factor in sentencing because the offender's immaturity reduced his ability to reason and make sound judgments. The applicant further submitted that inadequate weight was given to the principle that children bear lesser responsibility for offences because of their dependence on others and their immaturity. In support of this argument, he relied upon the Court of Criminal Appeal's decision in *DB v Regina: DNN v Regina* [2007] NSWCCA 27.

The applicant conceded that accepting his arguments would mean that an offender's youth would be taken into account at two stages of the sentencing exercise: first, when the objective gravity of the offence is being taken into account; and, second, when the Court considers what weight should be apportioned to the principles of general deterrence and rehabilitation.

The Court granted the applicant leave to appeal, but dismissed the appeal.

The Court was not persuaded that the trial judge failed to give adequate consideration to the sentencing principles applicable to juvenile offenders. The circumstances in *DB v Regina: DNN v Regina* were very different to case currently at hand. In those cases, the offender had committed robberies with, and under the direction of, his adult brother-in-law, upon whom he depended for food and shelter. In the present case, there was no evidence to suggest a similar relationship of dependence existed between the applicant and his co-offender. The Court held that: "It is not the youth of an offender per se that justifies the amelioration of a sentence that would otherwise be imposed... It is only where the circumstances of a particular juvenile offender and the circumstances of a particular offence indicate that general deterrence and retribution ought play a lesser role, that the principles are given their full expression: *R v Voss* [2003] NSWCCA 182. The

7. The youth of an offender per se does not justify amelioration of a sentence

greater the objective gravity of an offence, the less likely it is that retribution and general deterrence will cede to the interests of rehabilitation."

The Court was also not persuaded that the applicant's youth constituted an objective feature of the offences. If this submission were accepted, the potential for "double-dipping" could "distort the sentencing exercise". If the Court regarded an offender's youth as a factor lessening the objective gravity of an offence, then also decided the rehabilitation of the juvenile offender was more important than general deterrence through the imposition of a longer or maximum sentence, that offender would effectively receive a discount on an already reduced penalty.

The Court further held that factors which affect the intention of the offender, and might therefore reduce or increase the objective seriousness of the offence, are those that are causally related to the commission of the offence in a significant respect. If immaturity were considered as a factor relevant to objective seriousness, it would be necessary to examine whether each juvenile offender was so immature or lacking in the ability to reason that he or she did not understand the wrongfulness of his or her act. The Court found that that inquiry would be an examination of factors personal to the offender.

Bench: Spigelman CJ; Hulme J; Latham J

Citation: IE v R [2008] NSWCCA 70; 183 A Crim R 150

Judgment date: 21 April 2008

8. Langbein v R

The appellant, Mr Langbein, was convicted in the District Court for persistently abusing a child contrary to section 66EA of the *Crimes Act 1900*. The offence was committed against his partner's 11 year-old daughter. Both mother and child lived with the appellant when the offence was committed, but at the time the abuse was revealed, the child lived with her father and stepmother.

The child first revealed the abuse to a teacher during a child protection class at her school. The teacher suggested that the child discuss the allegations with either her father or stepmother. The child chose to discuss the incidents with her stepmother, and the teacher informed the

Department of Community Services of the child's complaints.

The police interviewed the child on three occasions. She informed them of four occasions of sexual abuse. She told police that the fourth occasion of sexual abuse took place approximately 12 weeks before she made the complaint to her teacher. The third occasion had taken place some months before that, and the second and first occasions some 18 months prior to the complaint.

The appellant denied any sexual misconduct and pleaded not guilty at trial. He was convicted and sentenced to a term of imprisonment. On appeal, he submitted that the trial judge should not have admitted evidence of the child's complaint to her teacher and stepmother because it was hearsay. The appellant alleged that a miscarriage of justice occurred as a result.

The Court unanimously found that the evidence should not have been admitted, but nevertheless dismissed the conviction appeal.

Evidence of what the child told her teacher and stepmother (which they later relayed in court) could not ordinarily be introduced as evidence that what the child said was true; such statements are usually regarded as hearsay. However, section 66 of the *Evidence Act 1995* provides an exception to the hearsay rule if the complainant herself was (or would be) called to give evidence, and if the facts surrounding her abuse were fresh in her memory at the time she told her teacher and stepmother.

The Court held that the trial judge should not have admitted the evidence. The Court relied upon the High Court's decision in *Graham v The Queen* (1998) 195 CLR 606. In that case, for the purposes of section 66, the High Court found that "fresh" meant "recent" or "immediate", and the temporal relationship between the event and complaint "will very likely be measured in hours or days". In that decision, Justice Callinan asserted that "contemporaneity or near contemporaneity... will almost always be the most important consideration in any assessment of [a recollection's] freshness."

The Court indicated that the exception to the hearsay rule was meant for situations where the alleged event provokes a contemporaneous

complaint. Where days or months pass, the account will "most likely suffer from the frailties of human recollection". The Court found that the passage of time that had elapsed in this case between the date of the events and their revelation was too significant for the asserted facts to have been fresh in the child's memory.

However, the Court dismissed the appeal on the basis that even though the trial judge should not have admitted the evidence, no miscarriage of justice occurred as a result. The Court found that both the teacher's and stepmother's evidence was brief and imprecise. It added so little to the child's evidence that it could not unfairly prejudice the appellant.

Bench: McClellan CJ at CL; Hall J; Price J

Citation: Langbein v R [2008] NSWCCA 38; 181 A Crim R 378

Judgment date: 28 February 2008

9. McGovern & Anor v Ku-ring-gai Council

Mrs Allan was a resident of Pymble and the appellants were Mrs Allan's neighbours. Mrs Allan lodged a development application with Ku-ring-gai Council ("the Council"), which proposed additions and alterations to her property. The appellants objected to the application.

The appellants alleged that two councillors were biased (or might reasonably have been assumed to be biased) in their support for the development application. They relied on emails between Mrs Allan's husband and these councillors. The emails indicated there had been a series of disputes between the neighbours over previous applications and contained numerous derogatory comments Mr Allan had made about the appellant, Mrs McGovern. These emails revealed that both councillors supported the application. They also revealed that at least one councillor had formed an early view that the application should be approved.

The Council granted consent to the development application by a seven to three majority. The appellants sought a declaration from the Land and Environment Court that the development consent was invalid. This application was dismissed and the appellants challenged that decision in the Court of Appeal.

On appeal, they argued the councillors had prejudged the application and that their emails gave rise to a reasonable apprehension of bias. As a result, the appellants submitted that the decision-making process of the entire Council was invalidated due to this apprehended bias, even though the votes of the allegedly biased councillors did not determine the outcome.

The Court first reviewed the general test for reasonable apprehension of bias. Citing the High Court's decision in *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337, the Court held that the general approach is to examine if a fair-minded lay observer might reasonably apprehend that the decision-maker might not be able to impartially exercise his/her decision-making power. However, *Ebner* involved a judge whose decisions are presumed to be arrived at independently of external political influences. The important question here was how the test should operate with respect to a decision by a local government authority of elected councillors required to perform broadly political functions and make administrative decisions by authorising developments in accordance with statutory criteria. The Chief Justice, with whom Justice Campbell agreed, determined that the relevant test for apprehended bias by prejudgment was whether an independent observer might reasonably conclude that the decision-maker might not be open to persuasion. Justice Basten found that, in respect of councillors, the fair-minded observer would expect little more than an absence of personal interest in the decision and a willingness to give genuine and appropriate consideration to the application, matters required by law and any recommendation of council officers.

The Court then considered whether the conduct of the two councillors created a reasonable apprehension of bias. Justice Basten held that the communications between the councillors and the appellant's husband confirmed they were firm supporters of the application, but did not demonstrate they held a fixed view. For there to be prejudgment of the kind that would indicate bias, there needed to be some indication that the councillors had gone beyond this conduct to effectively become advocates of the development application.

9. Discusses the tests for establishing a reasonable apprehension of bias in a decision-maker and when such a finding can render a decision invalid

10. Discusses the concepts "control of property" and "belonging to another" and also reminds trial judges to exercise caution when certifying a matter is appropriate for appeal

The Chief Justice and Justice Campbell agreed that in the context of a multi-member elected decision-making body there is no requirement that each of the decision-makers keep an "open mind" until every decision-maker is prepared to make a decision. Their Honours held that the fact the councillors concluded the application should be approved prior to the final decision, and expressed their support in strong terms, did not of itself establish they were not open to persuasion. Both of them formed their views after consideration of the material available to them. This ground of appeal was dismissed.

The Court then considered if apprehended bias on the part of the councillors could have invalidated the decision-making of the Council as a whole. The Court ultimately concluded that if a multi-member decision-making body was affected by apprehended bias, it would only affect the validity of the decision if the prejudgment decided the outcome. In this case, the result would have been the same if the two councillors had not voted. Justice Basten stated that where impropriety is established the courts will not inquire into its actual effect, if any, on the decision. His Honour stated that, if the councillors were disqualified, their participation during deliberation and voting may have tainted the proceedings and vitiated the decision.

Bench: Spigelman CJ; Basten JA; Campbell JA
Citation: *McGovern v Ku-Ring-Gai Council* [2008] NSWCA 209; 161 LGERA 170
Judgment date: 1 September 2008

10. *Pellegrino v Director of Public Prosecutions (Cth)*

The appellant and two others were involved in the removal of a shipping container from a wharf in Port Botany two days after it was delivered. The container was held in a secure area under the control of Patrick Stevedores and removed without the permission of the Australian Customs Service. Customs were advised that it contained PVC electrical tape, but when seized by police it was found to contain 750 boxes of cigarettes that had not been declared. The appellant and two others were charged with dishonest appropriation of property belonging to a Commonwealth entity (the Australian Customs Service) in breach of section 131 of the *Criminal Code Act 1995 (Cth)*.

The appellant filed a notice of motion seeking a permanent stay in relation to this charge on the basis that it would necessarily fail. The appellant submitted the prosecution could not establish that the contents of the container belonged to the Australian Customs Service. The trial judge dismissed the motion. However, his Honour granted the appellant a certificate under section 5F of the *Criminal Appeal Act 1912*.

In the Court of Criminal Appeal, the appellant challenged the trial judge's refusal to stay the proceedings. The Court unanimously dismissed this appeal.

The Court then considered the circumstances in which it will be appropriate to grant a certificate that the matter is a proper one for determination on an interlocutory appeal. The Court held that the power to issue a certificate under section 5F should be exercised with caution. The effect of issuing a certificate is to deny the appellate court the opportunity to consider whether granting leave to appeal is appropriate, which is an important control over the exercise of its appellate jurisdiction. The Court found that the power to provide a certificate may be properly exercised where there is no doubt that an interlocutory appeal is appropriate, or where the trial judge may have particular insight into the proceedings that might not be shared by the court on appeal.

The Court then considered whether the property belonged to the Australian Customs Service at the time it was dishonestly appropriated. Section 130 of the Criminal Code provides that property "belongs to" a person if the person has "possession or control" of it, or if the person has a "proprietary right or interest" in the property. The argument on appeal turned on the question of whether the Australian Customs Service had control of the property at the time it was taken.

The appellant argued that the concept of "control" in the Criminal Code referred to a primary right of an owner of moveable property. He submitted that there was no evidence that the Australian Customs Service was exercising any form of physical control over the goods.

The Court held that the Australian Customs Service was aware of the container of goods and had not expected the container and its contents

be moved. Customs exercised practical physical control over the goods because it withheld authority to move them from the wharf. The Australian Customs Service did not exercise control through its own officers, but the court inferred that it was a party to the security arrangement with Patrick Stevedores. Although the precise nature of that relationship was not known, it could not be said that the prosecution was doomed to fail and the trial judge was right to refuse a stay.

In addition, section 229 of the *Customs Act 1901 (Cth)* provided that goods smuggled, unlawfully imported, moved or interfered with, or concealed to avoid payment of customs duties, would be forfeited immediately to the Crown. The agreed facts included that the goods had not been the subject of a Customs declaration, that no duty had been paid and that Customs had labelled the goods in their records in a manner demonstrating there was no authority to release them. The Court held that it was arguable that the goods were concealed, smuggled, or forfeited because they were moved without authorisation. The appellant failed to satisfy the Court, on these agreed facts, that the prosecution could not establish that the property belonged to the Australian Customs Service.

Bench: Basten JA; Hidden J; Barr J

Citation: *Pellegrino v Director of Public Prosecutions (Cth)* [2008] NSWCCA 17

Judgment date: 11 February 2008

11. R v Bruce Allan Burrell [No 3]

On 30 May 1995, Mrs Dorothy Davis set out on foot to visit a friend who had recently had cancer. She was then aged 74 years. She was never seen again.

In November 2002, Mr Burrell was charged with her murder. In September 2007, after a jury trial, he was convicted. When passing sentence the Court examined the circumstances leading to Mrs Davis' disappearance.

Mrs Davis had known Mr Burrell's wife since she was a child. She was especially fond of her. Mrs Burrell had recently had cancer. In August 1994, she gave Mr Burrell a cheque to assist in the purchase of a house not far from her own home, to benefit his wife. She told her daughter and others that it was a short term loan.

Mr Burrell and his wife purchased the house. They did so by borrowing the whole of the purchase price. The money lent by Mrs Davis was not used. However, Mr Burrell had been unemployed for some time. Instead, he used the money to fund his living expenses. By late May 1995, Mrs Davis had become anxious for the return of her money. Mr Burrell was in no position to repay. He told a friend that she was threatening legal action against him.

On 30 May 1995, Mr Burrell invited Mrs Davis to his home to see her friend, his wife. Mrs Davis was lured to the house with that expectation. His wife was at work. He was at home alone. Having arrived, Mrs Davis was then murdered by Mr Burrell. How she was killed is uncertain. There was an internal staircase leading to the garage. That afternoon Mr Burrell drove three hours to a remote property where he had a farm. He returned to Sydney the same evening, only to drive back early the next morning and again return soon after lunch the same day. By that means he disposed of the body, which has never been found.

The Crown sought a life sentence, likening the murder to a contract killing. According to the Crown, there were similarities with the murder and kidnapping of Mrs Kerry Whelan for which Mr Burrell had also been convicted. In each case the victim was a wealthy woman who was a family friend. Each involved premeditation and planning.

Here, the murder was in cold blood where the motive was money. However, there was not the degree of persistence and planning that was present in the Whelan murder. A life sentence was not warranted.

There was no remorse. There was delay in the prosecution but it did not ameliorate the sentence. The Crown had chosen to prosecute the later crime (the murder of Mrs Whelan) first. The convictions in respect of that murder and kidnapping were not aggravating factors, although relevant to the need to protect the community.

The Court sentenced Mr Burrell to a term of imprisonment of 28 years, with a non-parole period of 21 years.

Bench: Kirby J

Citation: *R v Bruce Allan Burrell [No 3]* [2008] NSWSC 30

Judgment date: 8 February 2008

12. Prejudicial publicity is not in itself an adequate reason to stay criminal proceedings

12. R v Jamal

The respondent was alleged to have been involved in a joint criminal enterprise in which a group of people fired a number of bullets at Lakemba Police Station. The Crown case was that the respondent drove the getaway vehicle. He was charged with maliciously discharging a loaded firearm with intent to inflict grievous bodily harm, contrary to section 33A(1) of the *Crimes Act 1900*.

The respondent fled overseas and was extradited to face trial. The respondent was already serving a term of imprisonment for an unrelated offence at the time of his trial. Before the trial, the respondent was the subject of adverse media reports that related to the charge for which he was to be tried. These reports included allegations that he was a terrorist. The latest of the reports was published approximately two months before the trial was scheduled to begin and the reports were widely available on the internet.

The respondent unsuccessfully sought to have his trial heard by judge alone (as opposed to trial by jury), but the Director of Public Prosecutions declined to consent to this application. The trial judge held the view that the respondent could not receive a fair jury trial because of the prejudicial media coverage. The trial judge concluded that "the only course available" was to stay the proceedings until the Director agreed that the respondent's trial should proceed by judge alone.

The Crown appealed against the interlocutory judgment and the order to stay the proceedings under section 5F of the *Criminal Appeal Act 1912*. The Crown argued that a stay was not the "only" course of action available to the trial judge and her Honour could have ordered an adjournment.

The Crown's appeal was successful and the Court set aside the order staying the proceedings. The Court held that the trial judge erred by characterising the conditional stay as the only course available to her. Although the trial judge considered the possibility of a short adjournment, it appeared that her Honour failed to consider the possibility of a longer adjournment. The Court found that there were good reasons for considering a longer adjournment, including that the respondent was already serving a term of imprisonment and the trial had already been delayed because the respondent had fled overseas.

The Court also noted that previous applications for a stay of proceedings because of adverse publicity had failed in some of the most sensational cases ever tried. It cited with approval the decision in *John Fairfax Publications Pty Ltd v District Court of New South Wales* (2004) 61 NSWLR 344, where it was found that the case law "decisively rejected the previous tendency to regard jurors as exceptionally fragile and prone to prejudice. Trial judges of considerable experience have asserted, again and again, that jurors approach their task in accordance with the oath they take, that they listen to the directions that they are given and implement them. In particular that they listen to the direction that they are to determine guilt only on the evidence before them."

The Court also considered the nature of the power conferred in the statutory provision that led to the impasse. The Chief Justice did not consider it appropriate for the Court to interfere with the statutory discretion that the legislation conferred on the Director of Public Prosecutions. His Honour found that Parliament had deliberately excluded the Court from the determination of the mode of trial. Determining the mode of a trial, which is often made in the decision to present an indictment or proceed summarily, is an executive function, with which the judiciary should be reluctant to interfere. Such orders can lead to a standoff between the judiciary and the executive, which has the potential to adversely affect the integrity of the judicial process.

The Court should not have made an order that imposed a condition the executive could ignore. Assuming that the Director of Public Prosecutions continued to withhold consent, the trial judge should have exercised her power to stay the proceedings for a defined period.

Bench: Spigelman CJ; Simpson J; Price J

Citation: R v Jamal [2008] NSWCCA 177; 72 NSWLR 258

Judgment date: 21 July 2008

13. R v Keenan Mundine

Mr Mundine was alleged to have entered a home unit very early one morning while its two female occupants, Ms V and Ms L, were sleeping in the bedroom. The intruder placed a number of items in his pockets and prepared others for removal.

He then entered the bedroom and awoke the two women. A physical confrontation ensued and the intruder punched each of the women, threw away the property in his pockets and left the premises. Ms V suffered relatively minor injuries and was treated briefly at hospital. Ms L's injuries were more serious, requiring surgical treatment.

Police interviewed both women immediately after the incident. They gave a description of the intruder, which included that he was male, had dark skin, was approximately five feet 10 inches tall, and was possibly Aboriginal. Ms V gave a similar description in a statement to police that evening. She also took part in a photographic identification, where she viewed a compact disc containing images of 63, predominantly Aboriginal, individuals. The police informed Ms V that the disc showed some "local offenders", but that the individuals were not necessarily people who had been convicted of criminal offences. The police also warned Ms V that the person who entered her apartment was not necessarily on the disc. The police asked Ms V not to discuss the case with anyone or to tell anyone whether or not she made an identification. Ms V identified Mr Mundine from the images on the disc and was very definite in her identification.

Ms L also participated in an identification process 16 days later upon her release from hospital. Ms L was shown a different compact disc, with fewer individuals. She also identified Mr Mundine.

Both women were cross-examined on whether Ms V told Ms L that she had identified Mr Mundine. Ms V said she did not tell her, but she "sensed" Ms L knew. Ms L said that Ms V told her that she had "selected a photograph".

At trial, Mr Mundine objected to the admission of the witnesses' identification evidence under section 137 of the *Evidence Act 1995*. He argued that the prejudice created to him by admitting the evidence outweighed its probative value. The trial judge rejected the identification evidence in two separate judgments. The trial judge held that the probative value of the evidence was not high. In the judgment about Ms L's evidence, his Honour found that Mr Mundine was prejudiced because he could not cross-examine Ms L about whether Ms V told her she had identified someone, as Ms V's evidence had been excluded in the other judgment.

The Crown appealed the trial judge's decision on the basis that the rulings to exclude the evidence substantially weakened the prosecution's case.

On appeal, the Court agreed that it was only concerned with the trial judge's judgment in relation to Ms L's evidence. The Court found that the trial judge had erred.

The Court held that the probative value of evidence should not be determined by considering the weight that the jury might give to it. That is a matter for the jury alone. Probative value should be assessed by considering the role the evidence would play in resolving a fact in issue, assuming the jury accepted it. Here, the issue was whether the respondent was the intruder. The evidence, if accepted, consisted of a positive identification by each witness. Therefore, if the jury accepted the evidence it would have very high probative value in resolving the question of the intruder's identity.

The Court then considered whether the probative value of the evidence was outweighed by the prejudice to Mr Mundine.

The Court found that, when the police officer qualified his remark that the men in the photographs were "local offenders" with an instruction that Ms V should not assume that all the men had criminal records, he ameliorated or nullified the prejudice to Mr Mundine. The Crown offered to excise those words from the transcript and sound recording, and, if this were done, the avenue of cross-examination Mr Mundine's counsel wished to pursue would have evaporated. Even if the words were left in, Mr Mundine's counsel could have explored the issue in cross-examination and any prejudice could have been dealt with adequately by directing the jury not to make any assumption about Mr Mundine's criminal history.

Where an error in the exercise of discretion under section 137 of the *Evidence Act 1995* has been demonstrated, the decision as to whether to exclude the evidence can be taken afresh. The Court held that the probative value of the evidence was high and the prejudice to the respondent was low. It allowed the appeal and set aside the trial judge's decision to exclude Ms V's evidence. The Court held that setting aside the ruling on Ms V's

13. Consideration of whether probative value of identification evidence is outweighed by the danger of unfair prejudice to the defendant

evidence removed the alleged prejudice regarding Ms L's evidence. The second ruling of the trial judge was also set aside.

Bench: McClellan CJ at CL; Grove J; Simpson J

Citation: R v Keenan Mundine [2008] NSWCCA 55; 182 A Crim R 302

Judgment date: 18 March 2008

14. R v Wood

Gordon Wood was found guilty of murdering his girlfriend, Caroline Byrne.

Ms Byrne died on or about 7 June 1995 when she was thrown over cliffs at The Gap near Watsons Bay. Ms Byrne's death was initially accepted to be suicide. It was not until 1996 that her death was referred to the Homicide Squad for investigation at the Coroner's recommendation. A further 10 years would elapse before Mr Wood was charged with her murder.

The Court first examined Mr Wood's relationship with Ms Byrne. They had met in 1991 and moved in together the following year. This arrangement lasted six months before the couple parted company. They reunited in 1993 and for some time Mr Wood and Ms Byrne were happy. But in 1995 the relationship deteriorated. Ms Byrne confided in friends that at times she feared for her life.

In the month before Ms Byrne's death, witnesses thought Mr Wood's behaviour was obsessive, and they overheard him talking angrily to her on the phone. Ms Byrne admitted to friends that she and the offender were having arguments. About a week before Ms Byrne's death, Mr Wood publicly abused her in a gymnasium that she regularly visited. Around this time, Ms Byrne sought medical treatment for depression and was referred to a psychiatrist.

On the day before her death, Ms Byrne attended work and finished her duties, to all appearances intending to return on the next day as arranged with her employer. Yet that evening Mr Wood telephoned Ms Byrne's employer to say she was ill and absent from work for some time. Ms Byrne's mobile telephone was switched off and it was not used again until after Ms Byrne's death.

On the afternoon of her death, Mr Wood, Ms Byrne and an unidentified man were seen together several times in Watsons Bay. Later that evening,

a witness observed Mr Wood, Ms Byrne and an unidentified man opposite his premises. The witness observed Mr Wood loudly berating Ms Byrne, who was arguing back in strong terms. He saw the three walk away in the direction of the park at The Gap. At about 10.30pm he heard the group arguing again. He estimated that the argument lasted for an hour and ended with a woman's scream. It must have been Ms Byrne's scream and it must have happened as or immediately before she was thrown from the cliff top.

The Crown submitted that a number of aggravating factors might prompt the Court to impose a more severe sentence on Mr Wood. First, the Crown submitted that Mr Wood killed Ms Byrne for financial gain. It was suggested Mr Wood thought that murdering Ms Byrne would secure his employment with the wealthy businessman Rene Rivkin. The Court could not be satisfied beyond reasonable doubt that Mr Wood had a financial motive for killing Ms Byrne.

The second aggravating factor the Crown put forward was that Mr Wood "substantially isolated" Ms Byrne from her family, friends and work colleagues at the time of her murder. Although there was some evidence of isolation in the week prior to her death, there was nothing to suggest this isolation was geared towards engineering her murder. Even hours before her death, Ms Byrne was in the presence of a person other than Mr Wood.

The third aggravating factor was that the offence was committed "in the context of a domestic relationship that had gone sour". The Court accepted that this was a fair description of the circumstances surrounding Ms Byrne's murder, but could not regard this as an aggravating feature.

The Court also had to consider mitigating factors. First, it was agreed there was no substantial premeditation. The Court was satisfied that the offence was committed in rage and the intent to kill was only formed at the end of a long, noisy and serious argument. Secondly, Mr Wood had no prior criminal convictions. Thirdly, there was an 11-year delay in Mr Wood's prosecution. While Mr Wood's own falsehoods were responsible for the first year or so of delay, a further 10 years elapsed before authorities were in a position to charge Mr Woods. The Court determined that the

investigating authorities, and not Mr Wood, were responsible for this lengthy delay, and that this was a relevant mitigating factor.

The Court extended its sympathies to Ms Byrne's family before sentencing Mr Wood to 17 years and four months' imprisonment, with a non-parole period of 13 years

Bench: Barr J

Citation: R v Wood [2008] NSWSC 1273

Judgment date: 4 December 2008

15. Sultan v R

The appellant was involved in a fraudulent loan scheme as a mortgage broker. A man who was pretending to own a piece of real property engaged the appellant to enter into a mortgage agreement. Funds would be advanced to a third party and the property he purported to own would be used as security for the loan. The trial judge found that the appellant knew that the man was not the true owner of the property and that the mortgage documents were fraudulent. The appellant was convicted of one count of using a false instrument contrary to section 300(2) of the *Crimes Act 1900*.

The appellant appealed his conviction and sentence. The appellant argued that the trial judge's finding that the mortgage documents were "used" to procure the loan was wrong, and contrary to the weight of the evidence. He submitted that the trial judge did not explain his finding in terms of who used the documents and in what circumstances they were used.

The appellant submitted that he had no control over the documents and that without control there could be no "use" within the meaning of section 300(2). The Crown did not allege that the appellant was involved in a joint criminal enterprise under which use by another member of the enterprise would constitute use by the appellant.

The Court allowed the appeal, quashed the conviction and directed a verdict of acquittal.

The Court rejected the test of "control" that the appellant proposed. The Court found that "use" required "a direct link between the conduct of the accused and the deployment of the instrument for a purpose", that is actual dealing, active employment or the actual carrying into effect of

the instrument. The appellant did not actually deploy the false instrument and his mere presence was insufficient to found the charge. The Court quashed the conviction and directed the appellant be acquitted.

Bench: Spigelman CJ; Price J; McCallum J

Citation: Sultan v R [2008] NSWCCA 175

Judgment date: 24 July 2008

16. Trudgett v R

The complainant attended a party hosted by the appellant in the backyard of his house. A mutual friend introduced the appellant to the complainant as "Adam" (not his real name). The appellant and the complainant entered the house together. After a period of time, the complainant emerged from the house distressed and crying. She told the police that "Adam" had sexually assaulted her.

The police arrested the appellant and charged him with sexual intercourse without consent. The complainant was not asked to identify the person who had assaulted her by a photographic array, by an identification parade or in court.

Whether the complainant had been sexually assaulted was not in dispute at trial. The only issue was whether the appellant was the person who sexually assaulted her. The complainant gave evidence that "Adam" was the offender. Witnesses gave evidence at trial that the appellant was at the party, that he was introduced to the complainant as "Adam", and that he entered and left the house where the assault took place at the material times.

The jury found that the appellant was the offender. He was convicted of one count of sexual assault contrary to section 611 of the *Crimes Act 1900*.

The appellant appealed his conviction. He argued that the evidence the complainant and other witnesses had given at trial was identification evidence and the trial judge should have provided a direction to the jury under section 116 of the *Evidence Act 1995* (the "*Evidence Act*"). The appellant argued that a miscarriage of justice had occurred because the trial judge had not issued such a direction and alerted the jury to the dangers of identification evidence.

The issue on appeal was whether the evidence given was "identification evidence" for the purposes of the *Evidence Act*.

15. Conviction for the criminal offence "use false instrument" requires actual deployment of the instrument, not mere presence when the instrument is being used

16. Discusses the distinction between "recognition evidence" and "identification evidence"

The appellant argued that the evidence fell within the definition of "identification evidence" in the Dictionary of the *Evidence Act*. He submitted that the evidence contained assertions "based wholly or partly on what the person making the assertion saw, heard or otherwise perceived" that he was, or resembled a person who was, present at or near the place where the attack took place.

The Crown argued that the evidence did not fall within that definition. It argued that all the witnesses (other than the complainant) knew the appellant personally and had attended his home on several occasions before the night of the assault. The Crown argued that the witnesses were giving recognition evidence, not identification evidence.

The Court dismissed the appeal. The Court held that recognition evidence is generally more reliable than identification evidence. It rejected the submission that recognition evidence should necessarily be excluded from the Dictionary definition of "identification evidence". Instead, in some circumstances, recognition evidence may be "partly" based on what the witness perceived at the time of the event and a direction to the jury may be appropriate.

The Court held that in this instance the complainant had not given identification evidence within the meaning of the *Evidence Act*. Although the complainant's evidence included a physical description, her evidence was that the person who attacked her was introduced to her as "Adam". She did not make an assertion to the effect that the appellant resembled the perpetrator. Her evidence of the introduction assisted the jury to "identify" the appellant as the assailant.

The Court held that the evidence of the witness who introduced the appellant to the complainant as "Adam" was evidence of what the witness said; it was not evidence of what the witness "saw, heard or otherwise perceived". Accordingly, it did not fall within the definition of "identification evidence" in the *Evidence Act*.

The Court also found that the evidence from other witnesses indicating the appellant entered and left the house around the time of the offence did not require a direction under section 116. The fact that

the appellant was present at the party at his residence was not in issue. In *Dhanhoa v The Queen* (2003) 217 CLR 1, the High Court held that once presence is accepted, the detail of presence at a specific time or location is not relevantly in issue for the purposes of section 116.

Bench: Spigelman CJ; Hulme J; Latham J

Citation: *Trudgett v R* [2008] NSWCCA 62; 70 NSWLR 696

Judgment date: 25 March 2008

APPENDIX (ii): COURT STATISTICS – COMPREHENSIVE TABLE OF STATISTICS

- Filings, disposals and pending cases
- Timeliness
 - a. Court of Appeal, Court of Criminal Appeal, Criminal List - age of pending cases at 31 December
 - b. Other lists - waiting times
 - c. Listing delays
- Use of alternative dispute resolution

Notes

The figures for pending cases will include cases that have been re-opened after judgment, and cases referred between case management lists. For this reason, the pending caseload figures will not always reconcile with associated filing and disposal figures in this table.

“n/a” – figures not available or not separately reported

“-” – item not applicable

“0” – zero count

FILINGS, DISPOSALS AND PENDING CASES

| | 2004 | 2005 | 2006 | 2007 | 2008 |
|---|------------|------------|------------|------------|------------|
| COURT OF APPEAL¹ | | | | | |
| Filings | | | | | |
| Appeals and applications for relief | 516 | 442 | 319 | 377 | 361 |
| Applications for leave to appeal ² | 287 | 285 | 213 | 206 | 185 |
| Net new cases ³ | 760 | 690 | 494 | 564 | 530 |
| Disposals | | | | | |
| Appeals and applications for relief | 497 | 456 | 402 | 338 | 380 |
| Applications for leave to appeal | 273 | 320 | 239 | 218 | 196 |
| Net disposals ⁴ | 728 | 739 | 603 | 537 | 560 |
| Pending cases at 31 December | | | | | |
| Appeals and applications for relief | 350 | 336 | 253 | 292 | 273 |
| Applications for leave to appeal | 189 | 154 | 128 | 116 | 106 |
| Total | 539 | 490 | 381 | 408 | 379 |

1 These statistics exclude holding notices of appeal, holding summonses for leave to appeal and notices of intention to appeal because those forms do not commence substantive appeals or applications.

2 This item also includes applications where parties have elected to have a concurrent hearing of both the application for leave to appeal and the appeal (if leave is granted).

3 For reporting the net new cases, where a summons for leave to appeal has been filed and then a notice of appeal is filed pursuant to a grant of leave, this is counted as one continuous case (not two separate cases).

4 For reporting the net disposals, where an appeal has been preceded by a grant of leave, this is counted as one continuous case and a disposal is counted only when the substantive appeal is finalised.

| | 2004 | 2005 | 2006 | 2007 | 2008 |
|---|------|------|------|------|------|
| COURT OF CRIMINAL APPEAL¹ | | | | | |
| Filings | 539 | 524 | 452 | 441 | 422 |
| Disposals | 564 | 536 | 501 | 444 | 414 |
| Pending cases at 31 December ² | 239 | 229 | 180 | 177 | 185 |

1 From 2006 onwards, these statistics exclude appeals from decisions of the NSW State Parole Authority. In 2008 a total of 13 parole decision appeals were filed.

2 The pending caseload does not reconcile from 2004 to 2005. The JusticeLink system does not yet provide reporting, and the Court of Criminal Appeal still relies upon separate, manually maintained systems to produce statistical reports. From time to time audits are taken and corrections may be made.

| | 2004 | 2005 | 2006 | 2007 | 2008 |
|---|------|------|------|------|------|
| COMMON LAW DIVISION - CRIMINAL^{1,2} | | | | | |
| Criminal List | | | | | |
| Filings ³ | 81 | 94 | 104 | 133 | 101 |
| Disposals ⁴ | 105 | 126 | 104 | 115 | 122 |
| Pending cases at 31 December | 99 | 93 | 93 | 111 | 90 |

FILINGS, DISPOSALS AND PENDING CASES CONTINUED

| | 2004 | 2005 | 2006 | 2007 | 2008 |
|--|-------|-------|-------|-------|-------|
| Bails List ⁵ | | | | | |
| Filings | 2,756 | 2,715 | 2,789 | 2,981 | 2,765 |
| Disposals | 2,753 | 2,709 | 2,898 | 2,893 | 2,716 |
| Pending cases at 31 December | 240 | 344 | 235 | 270 | 243 |
| Summary jurisdiction cases ⁶ | | | | | |
| Filings | - | - | - | 11 | 237 |
| Disposals | - | - | - | 0 | 0 |
| Pending cases at 31 December | - | - | - | 11 | 248 |

- In all years, the figures exclude matters under Part 7 of the Crimes (Appeal and Review) Act 2001 (formerly s474D Crimes Act) and applications for re-determination of life sentence.*
- From 2005 onwards, the figures are based on counting rules that align with national counting rules and are therefore not directly comparable with figures for earlier years. The differences are: the counting unit is now defendants (previously it was cases); disposal is now counted at the time of sentence/acquittal or other final disposal (previously it was at verdict/plea or other final disposal); and, where a trial collapses and retrial is ordered, the counting of the age of the case continues (previously the time taken for the collapsed trial was ignored and age was calculated from the date of the order for the retrial).*
- The figures include committals for trial/sentence, ex officio indictments, re-trials ordered by the Court of Criminal Appeal or High Court, matters referred from the Mental Health Review Tribunal, transfers from the District Court, and re-activated matters (eg where a bench warrant is executed).*
- Since 1 January 2005, disposal is counted at sentence, acquittal or other final disposal (previously it was counted at verdict, plea of guilty, or other final disposal). "Other final disposal" includes referral to the Mental Health Tribunal, no bill, death of the accused, order for a bench warrant to issue, transfer to another court, and other final orders.*
- At present, the figures for pending cases do not always reconcile with associated filings and disposals figures. This is because the figures for filings, disposals and pending cases are being obtained from disparate information sources until the JusticeLink system can provide integrated reporting.*
- An unusually large number of related summary criminal jurisdiction cases have been commenced. Normally, the few summary jurisdiction cases that come to the Court are included with civil cases within the Summons List of the Common Law Division, where they are managed. The group of related prosecutions under the Food Act 2003 (against one company and its two directors) are being separately reported to prevent misinterpretation of the situation in the Summons List. Note that 234 filings reported to the Productivity Commission counted as nine lodgements only under the national counting rules.*

| | 2004 | 2005 | 2006 | 2007 | 2008 |
|--|------|------|------|------|------|
| COMMON LAW DIVISION - CIVIL | | | | | |
| Administrative Law List | | | | | |
| Filings | 118 | 116 | 183 | 145 | 150 |
| Disposals | 114 | 128 | 131 | 195 | 191 |
| Pending cases at 31 December | 60 | 63 | 121 | 78 | 52 |
| Defamation List | | | | | |
| Filings | 57 | 56 | 64 | 61 | 73 |
| Disposals | 73 | 60 | 74 | 65 | 74 |
| Pending cases at 31 December | 92 | 90 | 90 | 93 | 99 |
| General Case Management List ¹ | | | | | |
| Filings | | | | | |
| Contested | 288 | 283 | 333 | 271 | 317 |
| Uncontested | 211 | 216 | 133 | 128 | 208 |
| Total | 499 | 499 | 466 | 399 | 525 |
| Disposals | | | | | |
| Contested | 442 | 414 | 375 | 442 | 383 |
| Uncontested | 91 | 191 | 135 | 92 | 85 |
| Total | 533 | 605 | 510 | 534 | 468 |
| Pending cases at 31 December | | | | | |
| Contested | 794 | 744 | 784 | 674 | 680 |
| Uncontested | 127 | 116 | 77 | 62 | 107 |
| Total | 921 | 860 | 861 | 736 | 787 |

FILINGS, DISPOSALS AND PENDING CASES *CONTINUED*

| | 2004 | 2005 | 2006 | 2007 | 2008 |
|---|-------|-------|-------|-------|-------|
| Possession List | | | | | |
| Filings | | | | | |
| Contested | 132 | 163 | 190 | 256 | 282 |
| Uncontested | 2,929 | 4,710 | 5,178 | 5,198 | 5,190 |
| Total | 3,061 | 4,873 | 5,368 | 5,454 | 5,472 |
| Disposals | | | | | |
| Contested | 103 | 124 | 162 | 196 | 224 |
| Uncontested | 2,823 | 3,544 | 4,986 | 5,722 | 5,072 |
| Total | 2,926 | 3,668 | 5,148 | 5,918 | 5,296 |
| Pending cases at 31 December | | | | | |
| Contested | 93 | 126 | 136 | 189 | 243 |
| Uncontested | 1,128 | 2,411 | 2,702 | 2,269 | 2,498 |
| Total | 1,221 | 2,537 | 2,838 | 2,458 | 2,741 |
| Professional Negligence List | | | | | |
| Filings | 117 | 114 | 142 | 152 | 211 |
| Disposals | 157 | 183 | 162 | 139 | 182 |
| Pending cases at 31 December | 389 | 354 | 353 | 373 | 418 |
| Summons List ² | | | | | |
| Filings | 629 | 560 | 565 | 564 | 571 |
| Disposals | 690 | 582 | 609 | 531 | 614 |
| Pending cases at 31 December | 379 | 360 | 331 | 368 | 340 |
| Miscellaneous applications ³ | | | | | |
| Filings | 405 | 456 | 306 | 281 | 314 |
| Disposals | 318 | 306 | 153 | 162 | 130 |
| Pending cases at 31 December | 120 | 185 | 233 | 280 | 369 |
| Related issues cases filed before February 1994 ⁴ | | | | | |
| Disposals | 0 | 282 | 1 | - | - |
| Pending cases at 31 December | 283 | 1 | 0 | - | - |

COMMON LAW DIVISION TOTALS - CIVIL

| | 2004 | 2005 | 2006 | 2007 | 2008 |
|-------------------------------------|--------------|--------------|--------------|--------------|--------------|
| Filings | 4,886 | 6,674 | 7,094 | 7,056 | 7,316 |
| Disposals | 4,811 | 5,814 | 6,788 | 7,544 | 6,955 |
| Pending cases at 31 December | 3,465 | 4,450 | 4,827 | 4,386 | 4,806 |

1 This List was formerly called the Differential Case Management List.

2 The figures exclude 248 cases that are related prosecutions under the Food Act 2003. Those cases are reported as a separate category within the criminal workload.

3 These include applications under the Mutual Recognition (New South Wales) Act 1992, Trans-Tasman Mutual Recognition (New South Wales) Act 1996, applications for production orders, requests for service within NSW of documents related to civil proceedings being conducted outside NSW, and applications to enforce judgments given outside Australia.

4 These were cases against Dow Corning and 3M where damages were claimed for personal injury arising from silicon implants. From 2007 onwards there is no activity because the last remaining case in this group was finalised in January 2006.

| | 2004 | 2005 | 2006 | 2007 | 2008 |
|------------------------------|------|------|------|------|------|
| EQUITY DIVISION | | | | | |
| Admiralty List | | | | | |
| Filings | 3 | 2 | 2 | 2 | 4 |
| Disposals | 4 | 2 | 3 | 3 | 4 |
| Pending cases at 31 December | 4 | 4 | 4 | 3 | 3 |

FILINGS, DISPOSALS AND PENDING CASES CONTINUED

| | 2004 | 2005 | 2006 | 2007 | 2008 |
|---|---------------|---------------|-----------------|---------------|---------------|
| Adoptions List ¹ | | | | | |
| Applications | 207 | 204 | 154 | 161 | 203 |
| Orders made | 195 | 176 | 162 | 167 | 203 |
| Pending cases at 31 December | 23 | 38 | 30 | 20 | 20 |
| Commercial List | | | | | |
| Filings | 193 | 192 | 215 | 249 | 264 |
| Disposals | 175 | 196 | 190 | 251 | 246 |
| Pending cases at 31 December | 233 | 240 | 265 | 263 | 298 |
| Corporations List | | | | | |
| Filings | 3,460 | 3,134 | 3,213 | 3,008 | 3,150 |
| Disposals ² | 2,903 | 2,807 | 2,775 | 2,401 | 2,223 |
| Pending cases at 31 December | 684 | 657 | 643 | 631 | 858 |
| Protective List ³ | | | | | |
| Applications | 67 | 90 | 70 ⁴ | 112 | 92 |
| Disposals | 39 | 85 | 62 ⁵ | 107 | 103 |
| Pending applications at 31 December | 15 | 15 | 23 | 28 | 17 |
| Technology and Construction List | | | | | |
| Filings | 93 | 106 | 98 | 104 | 114 |
| Disposals | 110 | 94 | 93 | 91 | 109 |
| Pending cases at 31 December | 98 | 120 | 125 | 138 | 150 |
| General List ⁶ | | | | | |
| Filings | 2,493 | 2,354 | 2,209 | 2,187 | 2,228 |
| Disposals ⁷ | 2,839 | 2,943 | 3,622 | 3,205 | 3,615 |
| Pending cases at 31 December | 2,956 | 2,933 | 2,466 | 2,431 | 2,037 |
| Probate (Contentious Matters) List | | | | | |
| Filings | 168 | 172 | 166 | 141 | 150 |
| Disposals | 177 | 167 | 166 | 140 | 152 |
| Pending cases at 31 December | 91 | 96 | 96 | 91 | 89 |
| EQUITY DIVISION TOTALS ⁸ | | | | | |
| Filings | 6,684 | 6,254 | 6,127 | 5,964 | 6,205 |
| Disposals ⁹ | 6,442 | 6,470 | 7,073 | 6,365 | 6,655 |
| Pending cases at 31 December | 4,104 | 4,103 | 3,652 | 3,605 | 3,472 |
| PROBATE APPLICATIONS – UNCONTESTED ¹⁰ | | | | | |
| Applications received | 22,506 | 21,515 | 22,079 | 22,673 | 23,428 |

1 In this List, all applications types are counted, including information applications. Following an audit, the results for 2005 have been revised from those published in the 2005 Annual Review.

2 These are Registrars' disposals only – disposals by Judges and Associate Judges are included in the total for the General List. Typically, Registrars finalise about 90 per cent of Corporations List cases.

3 Applications are counted instead of "cases" because cases in this List can be of a perpetual nature. During the period when a person's affairs or property are managed under the Protected Estates Act 1983, it is possible that more than one application will be made in relation to that person. The disposals figure refers to the number of disposed applications.

4 This figure is an estimate.

5 This figure is an estimate.

6 The Revenue List cases are included within the General List.

7 The disposals in this list also include cases disposed from the Corporations List by a Judge or Associate Judge.

8 The figures for 2005 have been revised following an audit of the Adoptions List.

9 The disposals counting for the Equity Division is not fully reliable because, for the two largest lists, a significant number of cases are re-opened (but not counted as a fresh filings) and, consequently, can have one or more additional disposals recorded against them.

10 This includes all uncontested applications filed in the Probate List. Registrars deal with uncontested applications. Only a small proportion of Probate List cases are contested and they are handled in the Probate (Contentious Matters) List.

TIMELINESS – AGE OF PENDING CASES

COURT OF APPEAL, COURT OF CRIMINAL APPEAL AND CRIMINAL LIST ^{1,2}

| Number pending (and % of total) | National standard ³ | 2004 | 2005 | 2006 | 2007 | 2008 |
|--|---------------------------------------|-------------|-------------|-------------|-------------|-------------|
| COURT OF APPEAL | | | | | | |
| Total number of cases pending | | 539 | 490 | 381 | 408 | 379 |
| Cases within 12 months of age | | 483 | 436 | 327 | 364 | 328 |
| | 90% | (90%) | (89%) | (86%) | (89%) | (87%) |
| Cases within 24 months of age | | 531 | 480 | 371 | 399 | 373 |
| | 100% | (99%) | (98%) | (97%) | (98%) | (98%) |
| COURT OF CRIMINAL APPEAL | | | | | | |
| Total number of cases pending | | 239 | 229 | 180 | 177 | 185 |
| Cases within 12 months of age | | 212 | 214 | 174 | 172 | 174 |
| | 90% | (89%) | (93%) | (97%) | (97%) | (94%) |
| Cases within 24 months of age | | 231 | 222 | 177 | 175 | 184 |
| | 100% | (97%) | (97%) | (98%) | (99%) | (99%) |
| COMMON LAW DIVISION - CRIMINAL ^{4,5} | | | | | | |
| Total number of defendants pending | | 125 | 93 | 93 | 111 | 90 |
| Cases within 12 months of age | | 75 | 68 | 75 | 92 | 73 |
| | 90% | (60%) | (73%) | (81%) | (83%) | (81%) |
| Cases within 24 months of age | | 114 | 80 | 89 | 108 | 85 |
| | 100% | (91%) | (86%) | (96%) | (97%) | (94%) |

1 The Equity Division and the civil cases of the Common Law Division are not yet included in this table because precise and timely reporting on the age of pending cases is not yet available in those areas. The JusticeLink system, when fully delivered, should provide the necessary reporting.

2 For cases in the Court of Appeal and the Court of Criminal Appeal, the age of cases includes time taken to deal with any associated application for leave to appeal.

3 These figures include the effect of factors outside the control of the Court. Some examples are: the time taken to complete relevant cases or appeals in other courts, time taken to prepare essential reports, and time occupied by trials that result in a hung jury.

4 The national standards are taken from the "backlog" performance indicator within the Court Administration chapter of the Report on Government Services (published by the Productivity Commission). Note that the national standards apply to District/County courts as well as supreme courts, and therefore cover a broad range of indictments and criminality. Most indictments presented in the Criminal List in this Court are for the offence of murder. Other matters may be brought before the Court only with the approval of the Chief Justice and generally involve the most serious criminality.

5 In all years, the figures exclude matters under Part 7 of the Crimes Appeal and Review Act 2001 (formerly s 474D Crimes Act 1900) and applications for re-determination of a life sentence.

6 The figures presented are comparable from year to year: the counting unit is defendants; disposal is counted at the time of sentence/acquittal or other final disposal; and, where a trial collapses and retrial is ordered, the counting of the age of the case is calculated from the date of committal (not from the date of the order for the retrial).

TIMELINESS – WAITING TIMES (OTHER LISTS)

| Median finalisation time ^{1,2} (unless otherwise indicated) | 2004 | 2005 | 2006 | 2007 | 2008 |
|---|-------------|-------------|-------------|-------------|-------------|
| COMMON LAW DIVISION - CRIMINAL | | | | | |
| Bails List – range during year (weeks) | n/a | 3-6 | 3-6 | 2-4 | 3-6 |
| COMMON LAW DIVISION - CIVIL | | | | | |
| Administrative Law List (months) | 4.8 | 4.4 | 4.8 | 6.3 | 4.7 |
| Defamation List (months) | 16.2 | 12.6 | 10.9 | 14.0 | 12.6 |
| General Case Management List (months) | 27.1 | 28.8 | 22.1 | 21.6 | 22.4 |
| Possession List (months) | 6.7 | 6.6 | 6.2 | 7.5 | 6.7 |
| Professional Negligence List (months) | 39.9 | 34.2 | 33.3 | 24.8 | 24.0 |
| Summons List – civil matters (months) | 2.6 | 3.5 | 2.8 | 3.5 | 3.0 |
| Summons List – proceeds of crime matters (months) | 15.2 | 6.6 | 10.0 | 6.3 | 8.0 |
| Cases proceeding by default (months) | 5.6 | 4.6 | 7.6 | 6.3 | 5.7 |
| EQUITY DIVISION | | | | | |
| Admiralty List (months) | 14.4 | 17.4 | 23.5 | 18.4 | 17.5 |
| Adoptions List – usual finalisation time (weeks) | 4-5 | 2-6 | 2-6 | 3-6 | 1-6 |
| Commercial List (months) | 10.4 | 10.1 | 12.0 | 9.1 | 8.8 |

TIMELINESS – WAITING TIMES (OTHER LISTS) CONTINUED

| Median finalisation time^{1,2} (unless otherwise indicated) | 2004 | 2005 | 2006 | 2007 | 2008 |
|--|-------------|-------------|-------------|-------------|-------------|
| Corporations List (months) | 1.6 | 1.6 | 1.4 | 1.6 | 1.6 |
| Probate (Contentious Matters) List (months) | 2.8 | 4.0 | 3.8 | 4.2 | 4.9 |
| Protective List – usual time for orders to be made (weeks) | 3 | 2-4 | 2-4 | 2-4 | 3-11 |
| Technology and Construction List (months) | 5.4 | 7.3 | 7.7 | 8.1 | 7.9 |
| General List (months) | 10.3 | 9.6 | 11.1 | 9.4 | 8.6 |
| Probate applications (uncontested) – time for grant to be made ³ – range during year (working days) | 1-2 | 2-3 | 2-3 | 2-3 | 2-5 |

1 The median finalisation time refers to the time between commencement and disposal for cases finalised during the year. It is not an indicator of future waiting time or of entrenched delay. When an unusually high number of older cases are finalised in a year, the median finalisation time may be significantly higher than in other years.

2 Median finalisation times are not fully reliable due to limitations of current computer system. Where cases have been disposed, then re-opened post-judgment, and then re-closed, the finalisation time is calculated from the date of the original commencement to the latest disposal date, resulting in an over-representation of the time taken to finalise the issues before the Court.

3 This is the usual waiting time for initial assessment of uncontested probate applications. If the application is fully in order, then the grant is made at the initial assessment. It does not include the time taken to prepare and post the final documents.

TIMELINESS – LISTING DELAYS^{1,2,3}

| | 2007 | 2008 |
|------------------------------------|-------------|-------------|
| COURT OF APPEAL⁴ | 4 months | 3.5 months |
| COURT OF CRIMINAL APPEAL | 2 months | 3 months |
| COMMON LAW DIVISION | | |
| Criminal List ⁵ | 4-5 months | 2.5 months |
| Civil lists ⁶ | 3-4 months | 2.5 months |
| Bails List | 3-4 weeks | 6 weeks |
| EQUITY DIVISION⁷ | 5-6 months | 5 months |

1 This is the time between the establishment of readiness for hearing and the first group of available hearing dates that the Court offers for criminal and civil trial cases, criminal and civil appeals and Bails List cases. These delays do not apply if the Court orders an expedited hearing.

2 The listing delays show the position at the start of the new law term (for example, for 2008 it is the position at the start of the 2009 law term). This removes any effect of the law vacation.

3 This is the second year of reporting listing delays in the Annual Review.

4 This refers to substantive appeals (including concurrent hearings). For leave applications only the listing delay is now significantly shorter.

5 This refers to cases requiring at least three weeks of hearing time.

6 This refers to cases requiring up to five days of hearing time.

7 This refers only to General List and Probate List cases requiring two or more days of hearing time before a Judge.

ALTERNATIVE DISPUTE RESOLUTION

| | 2004 | 2005 | 2006 | 2007 | 2008 |
|--|-------------|-------------|-------------|-------------|-------------|
| COURT-ANNEXED MEDIATION LISTED^{1,2} | | | | | |
| Common Law Division | 7 | 6 | 12 | 24 | 37 |
| Equity Division – not probate cases ³ | 284 | 229 | 262 | 246 | 518 |
| Equity Division – probate cases | 7 | 8 | 7 | 11 | 12 |
| Court of Appeal | 10 | 7 | 5 | 1 | 1 |
| Percentage of cases settling at mediation ⁴ | 67% | 62% | 58% | 49% | 59% |
| Listing delay ⁵ | n/a | 8 weeks | 4 weeks | 7 weeks | 6 weeks |
| ARBITRATION LISTED | | | | | |
| Common Law Division | 15 | 0 | 1 | 0 | 0 |

1 "Court-annexed mediation" refers to mediations conducted by the Registrars of the Court who are also qualified as mediators. It excludes "external" mediations, which are conducted by private mediators.

2 During 2008 the Registry recorded 868 referrals to mediation. The court-annexed mediation program handled approximately 65 per cent of these. This table records the court-annexed mediations that are listed each year – note that referrals to court-annexed mediation that are made very late in a year may result in a listing early in the following year. The Registry does not collect data for mediations conducted by private mediators.

3 The number for this group for 2004 may be an over-count.

4 This refers only to cases that have settled and either agreed upon finalising orders or drafted heads of agreement by the close of the mediation procedure. It does not include cases that advise a settlement at any later time (even though the mediation may have contributed significantly to reaching that settlement).

5 This is the delay until the first available group of mediation sessions as reported at the start of the new law term (for example, for 2008 it is the position at the start of the 2009 law term). Earlier mediation sessions are arranged, if ordered by the Court.

APPENDIX (iii) THE COURT'S COMMITTEES AND USER GROUPS

Chief Justice's Policy and Planning Committee

The Committee meets each month to determine strategic policy to be adopted by the Court, particularly in relation to legislative, procedural or administrative changes that are likely to affect the Court and its users. The Policy and Planning Committee is one of only two Court Committees with decision-making responsibilities, the other being the Rule Committee. Caseload management remained an important focus throughout the year. The Committee also continued to review policy and procedural initiatives submitted by the Court's other Committees detailed in this Appendix.

Members during 2008

The Honourable the Chief Justice (Chairperson)
The Honourable the President
The Honourable Justice Giles
The Honourable Justice Beazley AO
The Honourable Mr Justice Young AO
The Honourable Justice McClellan
Secretary: Ms M Greenwood

Rule Committee

The Rule Committee meets each month to consider proposed changes to the *Supreme Court Rules 1970* 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. The Committee is a statutory body that has the power to alter, add to, or rescind any of the Rules contained in, or created under, the *Supreme Court Act 1970*. The Committee's membership is defined in section 123 of the Act, and includes representatives from each Division of the Court and key organisations within the legal profession.

Members during 2008

The Honourable the Chief Justice (Chairperson)
The Honourable the President
The Honourable Justice Hodgson
The Honourable Mr Justice James
The Honourable Mr Justice Hamilton
The Honourable Justice Bergin (until June)
The Honourable Justice Hoeben
The Honourable Justice Rein (from July)
Mr Geoff Lindsay SC (NSW Bar Association)
Mr H Macken (Law Society of NSW; until June)
Ms A Rose (Law Society of NSW; from July)
Secretary: Mr S Jupp
Advising Officer: Senior Deputy Registrar Flaskas

Education Committee

The Supreme Court Education Committee is responsible for the continuing education of the judges and associate judges of the Court. It meets three or four times each year, primarily to discuss arrangements for the Court's Annual Conference and to organise occasional seminars on topics relevant to the Court's work.

Members during 2008

The Honourable Justice Ipp
(Chairperson until December)
The Honourable Justice McColl AO
(until October)
The Honourable Justice Basten (Chairperson from December)
The Honourable Justice Bell
The Honourable Justice Gzell (until December)
The Honourable Justice Nicholas
The Honourable Justice Hislop
The Honourable Justice White (until January)
The Honourable Justice Johnson
The Honourable Justice Fullerton (from October)
Ms M Greenwood
Secretary: Ms R Windeler
(Judicial Commission of NSW)

Building Committee

The Committee meets approximately every two months to discuss matters affecting the buildings within the Darlinghurst and King Street court complexes, and the Law Courts Building in Phillip Street. The Committee submits recommendations to the Chief Justice through the Policy and Planning Committee concerning maintenance and restoration work, including the desired outcome from the work. The Committee also identifies facilities that are required to support courtroom operations and the needs of Court users. The upcoming refurbishment of the Law Courts Building and the ongoing refurbishment of the King Street Court Complex remained the Committee's primary concerns during 2008.

Members during 2008

The Honourable Justice Giles
The Honourable Justice McClellan
The Honourable Justice McDougall (Chairperson)
The Honourable Justice Hoeben
The Honourable Justice Brereton
The Honourable Justice Price
Ms M Greenwood
Mr N Sanderson-Gough
Mr K Marshall (Director, Asset Management Branch, NSW Attorney General's Department)
Secretary: Mr J Grant

Information Technology Committee

The Information Technology Committee meets every two months to assess the information technology needs of judicial officers and their staff, and to review the implementation of IT services. During the year, the Committee discussed measures to increase the effectiveness of the remote access system.

Members during 2008

The Honourable Justice McColl AO
The Honourable Justice Einstein
The Honourable Justice Gzell (Chairperson)
The Honourable Justice Latham
The Honourable Associate Justice Macready
Ms M Greenwood
Mr N Sanderson-Gough

Mr W Cellich (Information Services Branch, NSW Attorney General's Department)
Mr J Mahon (Information Services Branch, NSW Attorney General's Department)
Ms K Ashley-Cooper (Information Services Branch, NSW Attorney General's Department)
Mr D Lane (Information Services Branch, NSW Attorney General's Department)
Ms A McNicol (Law Courts Library; from April)
Ms L O'Loughlin (Law Courts Library; until June)
Mr G Walker (Reporting Services Branch, NSW Attorney General's Department)
Ms E Walsham (Reporting Services Branch, NSW Attorney General's Department)
Secretary: Ms S Thambyrajah

Alternative Dispute Resolution Steering Committee

The Alternative Dispute Resolution (ADR) Steering Committee meets every two months to discuss the Court's ADR processes and consider ways in which they might be improved. The Committee works to encourage the use of ADR (particularly mediation) in solving disputes, and to ensure the Court has adequate infrastructure to provide this service. The Committee makes recommendations to the Chief Justice in pursuit of these objectives, consulting with other courts and external organisations where appropriate.

Members during 2008

The Honourable Justice Bergin (Chairperson)
The Honourable Justice Campbell
The Honourable Justice Hoeben
The Honourable Justice Hislop
The Honourable Justice Hall
The Honourable Justice Latham
The Honourable Associate Justice Harrison
Ms M Greenwood
Ms L Walton
Ms M Walker
Ms G Daley
Secretary: Ms J Highet

Jury Task Force

The Task Force was formed by the Chief Justice in 1992 to examine and report on matters relating to the welfare and wellbeing of jurors. The Task Force meets every two months to discuss issues affecting juries and jury service referred to it by the Chief Justice, a head of jurisdiction, or the Attorney General. It monitors areas of policy concerning jurors with disabilities, the Sheriff's power to disclose the identity of a juror in the event of jury tampering, and exemptions from jury service.

Members during 2008

The Honourable Justice Buddin (Chairperson)
The Honourable Justice Fullerton
Her Honour Judge Hock (District Court)
His Honour Judge Hulme (District Court)
Mr M Lacey (Manager Client Services, Supreme Court)
Mr C Allen (Sheriff of NSW)
Mr R Kruij (Regional Manager, Sheriff of NSW)
Ms L Anamourlis (Manager, Jury Services, Sheriff of NSW)
Mr M Savary, (Legislation & Policy Division, NSW Attorney General's Department)
Mr K Marshall (Director, Asset Management Branch, NSW Attorney General's Department)
Secretary: Ms M Morgan

Library Committee

The Supreme Court Library Committee meets as required to provide advice on the management of the Judges' Chambers Collections and Supreme Court Floor Collections. The Committee did not meet in 2008.

Members during 2008

The Honourable Justice Mason
The Honourable Justice Ipp AO (Chairperson)
The Honourable Mr Justice Young
The Honourable Justice Harrison
Ms M Greenwood
Ms L O'Loughlin (Law Courts Library)
Secretary: Ms E Drynan (Law Courts Library)

Court of Appeal Users' Group

The Group was established in 1999 and consists of representatives from the legal profession nominated by the Bar Association and the Law Society. The Group meets with the President twice a year and provides users with an opportunity to share ideas and raise concerns about the Court of Appeal's operations.

Members during 2008

The Honourable Justice Mason AC (Chairperson; until May)
The Honourable Justice Allsop (Chairperson; from June)
The Honourable Justice Beazley AO
Mr P Schell
Mr J Maconachie QC
Mr D Davies SC
Mr J Gleeson SC
Mr N Mavrakis
Mr T Abbott
Mr B Moroney
Mr M Polden
Mr G Ulman
Ms K Fitzgerald

Court of Criminal Appeal/Crime User Group

The joint Court of Criminal Appeal/Crime User Group was established in 2004 to promote effective communication between the Court and key users. The Group focuses on ensuring that Court of Criminal Appeal procedures work effectively within the required time frames. The Group met three times in 2008.

Members during 2008

The Honourable Justice McClellan (Chairperson)
The Honourable Justice Barr
Ms J Atkinson
Ms G Drennan
Ms P Olsoen (District Court of NSW)
Ms J Chin (District Court of NSW)
Mr M Ierace SC (Senior Public Defender)
Ms S Calomeris (Legal Aid Commission of NSW)
Ms A Coultas-Roberts (Legal Aid Commission of NSW)

Mr D Arnott SC (Crown Prosecutor NSW)
Ms D Kelly (Office of the Director of Public Prosecutions NSW)
Ms E McKenzie (Office of Commonwealth Director of Public Prosecutions)
Mr S Odgers SC (NSW Bar Association)
Mr D Giddy (Law Society of NSW)
Ms E Skinner (Aboriginal Legal Services)
Ms E Walsham (Reporting Services Branch, NSW Attorney General's Department)

Common Law Civil Users' Committee

The Committee provides a forum for discussing and addressing matters of concern or interest in the administration of the Common Law Division's civil trial workload. The Committee met three times during the year to discuss matters including: caseload management; listing practice and delays; specialist lists; jury issues, and regional hearings.

Members in 2008

The Honourable Justice McClellan (Chairperson)
The Honourable Justice Hoeben
The Honourable Justice Hall
Ms M Greenwood
Ms J Atkinson
Mr C Bradford

Legal profession representatives

Mr P Deakin QC
Ms A Sullivan
Mr T Hewitt SC
Ms L McFee
Ms C Lazzarotto
Ms S Fernandez

Professional Negligence List User Group

The Group meets as required to discuss issues relevant to the administration and operation of the List. The Group convenes as required and met twice during 2008.

Members during 2008

The Honourable Justice Hislop (Chairperson)
Mr David Davies SC
Mr Ian Butcher
Mr Don Munro
Mr Terence Stern
Ms Anna Walsh
Ms Janice Tully

Equity Liaison Group

This Group commenced during 2001 and met quarterly during 2008. The Group was established to promote discourse between the legal profession and representatives of the Equity Division upon matters of interest and importance to the operation of the Division. The Group is informal and the meetings facilitate candid discussions about the operations of the Division. Typically these discussions encourage cooperation between the judges and legal profession in developing suggested improvements to the Division's operations.

Members during 2008

The Honourable Mr Justice Young AO (Presiding Member)
The Honourable Justice Bergin
Ms L Walton

Legal profession representatives

Mr R G Forster SC
Mr C (Robert) Newlinds SC
Mr R Harper SC
Ms J A Needham SC
Mr G A Sirtes SC
Ms P Ryan
Ms V Whittaker
Mr M Ashhurst
Mr M Condon
Ms A Kennedy
Mr J Martin
Mr B Miller
Ms P Suttor
Mr S Westgarth

Corporations List Users' Group

The Group promotes open and regular discussion between judicial officers and legal practitioners regarding the Corporations List, and assists in ensuring that the List is conducted in a fair and efficient manner. The Group met three times during 2008 to consider and discuss various issues concerning the Court's work in corporations matters including Court procedures, listing arrangements, and application of the Corporations Rules.

Members during 2008

The Honourable Justice Austin (Chairperson)

The Honourable Justice Barrett (Secretary)

The judicial officers of the Equity Division

Ms M Greenwood

Ms J Atkinson

Ms L Walton

Mr A Musgrave

Ms O Kiang

Legal profession representatives

Mr C (Robert) Newlinds SC

Mr M B Oakes SC

Mr S Gollledge (from September)

Mr G Cussen

Mr M Hayter

Mr J Johnson

Ms L Johnson

Mr D McCrostie

Ms M O'Brien

Mr J Thomson

Mr M Hughes (from September)

Other members

Ms G Hayden (Australian Securities and Investments Commission)

Mr M Lotzof (Insolvency Practitioners Association of Australia; until June)

Ms D North (Insolvency Practitioners Association of Australia; from July)

Mr K Rennie (Ernst & Young; until June)

Mr M Murray (Insolvency Practitioners Association of Australia)

Commercial List Users' Group

The Group provides a forum for discussion amongst the Commercial List Judges and legal practitioners who practise in the Commercial List and the Technology and Construction List (the Lists). The Group meets to discuss various issues concerning the administration of the Lists, including matters of procedure and practice in relation to the Lists and the potential for revision of the practice to ensure that the Lists operate as efficiently as possible.

Members during 2008

The Honourable Justice Clifford Einstein

The Honourable Justice Bergin (List Judge)

The Honourable Justice McDougall

Legal profession representatives

Barristers

Mr T Alexis SC

Mr M A Ashhurst

Mr T F Bathurst QC

Ms E A Collins

Mr L V Gyles

Mr N C Hutley SC

Mr J C Kelly SC

Mr G C Lindsay SC

Mr R B Macfarlan QC

Mr G T Miller QC

Ms E M Olsson SC

Ms R Rana

Mr S D Robb QC

Mr M G Rudge SC

Mr R M Smith SC

Solicitors

Mr J Dooley

Mr R J Drinnan

Mr R K Heinrich

Ms L E Johnson

Mr R G Johnston

Mr P J Keel

Mr H D Keller

Mr B P Kermond

Mr D J Kemp

Mr S H Klotz

Mr G A McClellan
Mr S A McDonald
Mr B Miller
Ms N K Nygh
Mr J Pagan
Ms M A Pavey
Ms R S Persaud
Mr R W Schaffer
Mr G S Ulman
Mr M W Watson
Mr S D Westgarth

Possession List Users' Group

The Possession List Users' Group was established in 2006. The Possession List is numerically the largest list in the Common Law Division of the Court and involves claims for possession of land following mortgage default. The Group comprises representatives from a range of law firms who regularly appear for plaintiffs in the List and organisations (Legal Aid NSW, the Consumer Credit Legal Centre and Redfern Legal Centre) who provide legal assistance to those experiencing problems with debt. The Group does not have appointed members. Rather, representatives from those firms and organisations attend and provide a range of views on relevant issues. The Group's primary objectives are to encourage frank discussion concerning issues affecting the running of the List, to identify how problems might be overcome and to improve court processes to assist parties in this class of proceedings. The Group met on five occasions in 2008.

Membership during 2008:

The Honourable Justice Johnson (Chairperson)
The Honourable Justice McCallum
Ms J Atkinson
Mr C Bradford
Mr K Breen

Apart from those listed above, the following persons attended meetings regularly during 2008:

Mr B Burke (Hicksons)
Ms K Cooper (Bransgroves)
Ms R Daher (Bransgroves)
Mr C Hudson (Gadens)
Ms A Kelly (Consumer Credit Legal Centre)
Ms K Lane (Consumer Credit Legal Centre)
Ms S Lever (Henry Davis York)
Mr D McMillan (Legal Aid NSW)
Mr J Moratelli (Legal Aid NSW)
Ms F Parker (Henry Davis York)
Ms N Petrou (Redfern Legal Centre)
Ms J Pike (Dibbs Abbott Stillman)
Mr T Sherrard (Gadens)
Mr S Stierli (Hicksons)
Ms S Winfield (Consumer Credit Legal Centre)

Probate Users' Group

The Group meets regularly to discuss matters concerning the operation of the Court's probate work. The Group considers improvements to practices and processes and makes recommendations to the Rule Committee when appropriate. The Group also discusses specific issues pertinent to probate matters and deceased estates generally.

Members during 2008

The Honourable Mr Justice Windeyer AM RFD
ED
Ms M Greenwood
Mr J Finlay
Professor R Croucher (Macquarie University,
representing NSW law schools)
Ms R Edenborough (Perpetual Trustee Company,
representing corporate trustees)
Mr R Neal (Law Society of NSW)
Mr P Whitehead (Public Trustee NSW)
Mr M Willmott (NSW Bar Association)
Secretary: Mr P Studdert

Media Consultation Group

The Media Consultation Group was established in 2002 to promote open discussion between key representatives from the courts, legal profession and media. The aim of the Group is to identify issues affecting the reporting of court proceedings by the media. Some of the issues considered by the Group included access to court records and the implications for the media when a suppression or non-publication order is issued. The Group meets on a needs basis and met once during 2008.

Members during 2008

The Honourable Justice McColl AO (Chairperson)
The Honourable Justice McClellan
The Honourable Justice Kirby
The Honourable Justice Nicholas
The Honourable Justice Blanch (Chief Judge, District Court of NSW)
Ms S Zadel (Public Information Officer, NSW superior courts)
Ms K Douglass (Public Information Officer, NSW superior courts)
Mr N Cowdery QC (NSW Director of Public Prosecutions)
Mr M Ierace SC (Senior Public Defender)
Ms A Coopes (Australian Associated Press)
Ms E Smith (Macquarie Radio Network)
Ms G Jacobsen (Sydney Morning Herald)
Ms K Arlington (Daily Telegraph)
Mr L Jeloscek (Seven Network)
Ms L Casben (Australian Broadcasting Corporation)

Judges' JusticeLink Committee

The Committee meets weekly to monitor and discuss aspects of the JusticeLink project specifically from the Supreme Court's perspective. The Committee consists of nominated judicial representatives from the Court and key staff members from the Court's Registry, the Attorney General's Department and the JusticeLink project team.

Members during 2008

The Honourable Mr Justice Hamilton
The Honourable Justice Howie
The Honourable Justice Gzell (Chairperson)
The Honourable Justice Latham
The Honourable Associate Justice Macready
Ms M Greenwood
Ms J Atkinson
Mr S Jupp (Principal JusticeLink Development Officer)
Ms N Ubrihien (Principal Courts Development Officer, JusticeLink)

Heritage Committee

The Committee, which was established in 2002, is an advisory committee to the Chief Justice on matters concerning the Court's heritage. It comprises serving and retired judges and specialists in the fields of architecture, conservation and history. The Committee meets regularly to discuss ways of preserving and promoting aspects of the Court's heritage and history and makes recommendations to the Chief Justice as required.

Members during 2008

The Honourable Simon Sheller AO QC (Chairperson)
The Honourable John Bryson QC
The Honourable Paul Stein AM
The Honourable Brian Sully QC
The Honourable Justice Nicholas
The Honourable Justice Brereton RFD
The Honourable Associate Justice McLaughlin
Mr K Marshall (Director, Asset Management Branch, NSW Attorney General's Department)
Mrs M Betteridge (museum consultant)
Ms D Jones (architectural consultant)

Civil Registry Users' Group

The Civil Registry Users' Group is a mechanism allowing open discussion between the Court and key users regarding the delivery of civil registry services. It was established to assist the Court in identifying and meeting the needs and expectations of its users. The Group did not meet in 2008, but regular meetings will resume in 2009.

Members during 2008

Mr M Lacey

Ms L Jennings

Mr R Rosman (Law and Order)

Ms L Allen (Minter Ellison)

Ms D Howitt (Blake Dawson Waldron)

Ms K Davidson (Deacons Lawyers)

Mr D Willoughby (Thomson)

Ms S Dart (Litsupport)

APPENDIX (iv): OTHER JUDICIAL ACTIVITY

As well as hearing and determining cases, Judges and Associate Judges actively contribute to the ongoing professional development of the legal community both domestically and abroad. Their contributions extend to activities such as presenting papers and speeches at conferences and seminars, submitting articles for publication, giving occasional lectures at educational institutions, meeting judicial officers from courts around the world, and hosting delegations. Many Judges and Associate Judges are also appointed to serve on boards, commissions, and committees for wide range of legal, cultural and benevolent organisations.

The Judges' and Associate Judges' activities during 2008 are summarised below.

THE HONOURABLE J J SPIGELMAN AC, CHIEF JUSTICE OF NEW SOUTH WALES

Conferences:

| | |
|----------------|---|
| 21 Jan | Supreme Court and Federal Courts Judges' Conference (Sydney) |
| 8 Feb | National Judicial College of Australia Sentencing Conference (Canberra) |
| 3 – 5 Apr | Judicial Seminar on Commercial Litigation (Sydney) |
| 31 Jul – 3 Aug | Centre for Independent Studies Consilium (Coolum, Qld) |
| 20 Aug | Third Annual Supreme Court/Law Society Conference on Corporate Law (Sydney) |
| 22 – 24 Aug | Supreme Court Annual Judges' Conference (Shoal Bay, NSW) |
| 13 - 17 Sep | INSOL International Annual Regional Conference (Shanghai, China) |

Speaking Engagements:

| | |
|--------------|---|
| 21 Jan | <i>Foundations of the Rule of Law in Australia</i> , Supreme Court and Federal Court Judges' Conference (Sydney) |
| 22 Jan | <i>Bicentenary of the Coup of 1808</i> , The Annual Australia Day Address (Sydney) |
| 29 Jan | Opening of Law Term Dinner (Sydney) |
| 8 Feb | <i>Consistency and Sentencing</i> , National Judicial College of Australia Sentencing Conference (Canberra) |
| 10 – 12 Mar | The 2008 McPherson Lectures on Statutory Interpretation and Human Rights, The University of Queensland (Brisbane, Qld) <ol style="list-style-type: none"> 1. <i>The Common Law Bill of Rights</i> 2. <i>The Application of Quasi-Constitutional Laws</i> 3. <i>Legitimate and Spurious Interpretation</i> |
| 18 Mar | Sydney Chamber of Commerce Legal Counsel Forum (Sydney) |
| 29 Mar | Opening address – NSW Young Lawyers Annual Civil Litigation Seminar (Sydney) |
| 30 May | Address on the Retirement of the Honourable Justice K Mason AC |
| 8 Jul | Launch – “Australia’s Empire”, by D Scheuder & S Ward (eds) (Sydney) |
| 24 Jul | Launch – “The Chinese Commercial Legal System”, by P Blazey & Dr K Chan (eds) (Sydney) |
| 2 Aug, 4 Aug | <i>Lord Mansfield and the Culture of Improvement</i> , Centre for Independent Studies, The Ideas for the Enlightenment in the 21st Century Consilium (Coolum, Qld); Big Ideas Forum (Sydney) |
| 20 Aug | 3rd Annual Supreme Court/Law Society Conference on Corporate Law 2008: The Credit Crunch and the Law (Sydney) |
| 16 Sep | <i>Cross-Border Insolvency: Co operation or Conflict?</i> , INSOL International Annual Regional Conference (Shanghai, China) |
| 11 Nov | University of Sydney Association of Professors Annual Dinner (Sydney) |
| 14 Nov | Launch – “Rediscovering Rhetoric: Law, Language, and the Practice of Persuasion”, by J Gleeson SC & R Higgins (eds), Banco Court (Sydney) |
| 10 Dec | Response to the Right Honourable Lord Bingham of Cornhill, launch – “Speeches of A Chief Justice: James Spigelman 1998-2008” by T Castle (ed) Banco Court (Sydney) |
| 19 Dec | Address on the Retirement of the Honourable Justice V Bell |

Publications:

Judicial Appointments and Judicial Independence (2008) 17 *Journal of Judicial Administration* 139
Bicentenary of the Coup of 1808 (2008) 30 *Australian Bar Review* 129; 12 *Legal History* 1
Lions in Conflict: Ellesmere, Bacon and Coke – Treason and Unity (2008) 30 *Australian Bar Review* 144
The Significance of the Integrity System (2008) 4 *The Original Law Review* 39
The Rule of Law and Challenges to it (2008) 46(2) *Law Society Journal* 57
Consistency and Sentencing (2008) 82 *Australian Law Journal* 450; 9 *The Judicial Review* 45
Foreword – Forum on International Commercial Arbitration (2008) 31 *University of New South Wales Law Journal* 264
Lord Mansfield and the Culture of Improvement (2008) 82 *Australian Law Journal* 764; 52(10) *Quadrant* 53;
The Equitable Origins of the Improper Purpose Ground, *Administrative Law in a Changing State: Essays in Honour of Mark Aronson*, C Harlow & L Pearson (et al, eds), Hart Publishing Ltd, Oxford, 2008
“Statutory Interpretation and Human Rights”, J J Spigelman AC, McPherson Lecture Series Vol 3, University of Queensland Press, St Lucia, 2008
“Speeches of a Chief Justice: James Spigelman 1998-2008”, T Castle (ed), CS2N Publishing, Sydney, 2008
Rediscovering Rhetoric (2008-2009) *Bar News* 40

Participation in International Judicial Activities:

| | |
|-----------------|--|
| 6 Feb | Bangladesh Delegation led by Mr Justice Md. Ruhul Amin, Chief Justice of Bangladesh |
| 13-15 Feb | Nepal Delegation led by the Honourable Mr Min Bahadur Rayamajhee, Judge of Supreme Court, Nepal |
| 20 Feb | Chinese Judicial Delegation led by Mr Jianjun Dang, Presiding Judge & Senior Judge, Criminal Division, Supreme People’s Court of China |
| 22 Feb China | Chinese Delegation led by Mr Shuming Sun, Director, Shenzhen Judicial Identification Management Office, China |
| 18 Apr China | Chinese Delegation led by Mr Huajie Chen, Deputy President, High People’s Court of Guangdong Province, China |
| 23 May China | Chinese Delegation led by Mr Quiman Ling, Vice President of High People’s Court of Guangdong Province, China |
| 17 Sep | Visit to the President and Judges of the High People’s Court of Shanghai, China |
| 22 Oct | Visit by the Honourable Justice F MacGregor, President of the Seychelles Court of Appeal, Seychelles |
| 30 Oct | Vietnamese Judicial Delegation led by Mr Bui Thanh Long, Chief Judge of the People’s Court of Lam Dong Province, Vietnam |
| 26 Nov | Hong Kong SAR Delegation led by Mr Yan-Lung Wong SC, Secretary for Justice, Hong Kong |
| 28 Nov | Vietnamese Delegation led by Mr Lai Hop Viet, Senior Prosecutor, Director of International Cooperation Department, Supreme People’s Prosecution Service, Vietnam |
| 4 Dec | Chinese Delegation led by Mr Yinkui Zhang, Vice President, National Judges College, China |

THE HONOURABLE JUSTICE JAMES ALLSOP, PRESIDENT OF THE COURT OF APPEAL**Conferences:**

| | |
|-----------|---|
| 12-13 Jun | Seminar – Chartered Institute of Arbitrators (Aust) Ltd (Kuala Lumpur) |
| 4 July | Seminar – Resolution of Commercial Disputes in the Chinese Courts – A Judge’s View (University of Sydney) |
| 22-24 Aug | Supreme Court Annual Judges’ Conference (Shoal Bay, NSW) |
| 30 Aug | Australian Maritime College (Launceston) |
| 4 Sep | Law Society Arbitration Seminar (Sydney) |
| 13 Dec | Australian Maritime College (Launceston) |

Speaking Engagements:

| | |
|---------|--|
| 2 June | Swearing-in Ceremony (Sydney) |
| 25 Oct | Paper - National Judicial College of Australia (Sydney) – Conference on the Australian Justice System in 2020 “Complex Litigation” |
| 7 Nov | Paper – AJA - Appellate Judges’ Conference (Melbourne) “ <i>Farah Constructions v Say-Dee Pty Ltd – Some Reflections for Intermediate Courts of Appeal</i> ” |
| 12 Nov | Speak – AILA (Sydney) Construction and Interpretation of Insurance Policies |
| 13 Nov | Paper – NSW Bar Association – “ <i>Legal Professional Privilege</i> ” (Sydney) |
| 14 Nov | Keynote Address – Administrative Decisions Tribunal Members’ Conference (Australian Museum, Sydney) |
| 21 Nov | Keynote speaker - ACICA Conference (Sydney) |
| 1-5 Dec | Papers – National Judges Conference (Beijing) |

Appointments to Legal, Cultural or Benevolent Organisations:

Adjunct Professor Australian Maritime College and University of Sydney

THE HONOURABLE JUSTICE MARGARET JOAN BEAZLEY AO

Conferences:

| | |
|-----------|--|
| 19-23 Jan | Supreme and Federal Court Judges' Conference, Sydney |
| 14-15 Mar | Australian Lawyers Alliance Conference, Hunter Valley |
| 22-24 Aug | Supreme Court Annual Judges' Conference (Shoal Bay, NSW) |
| 10 Nov | LexisNexis personal injury conference, Sydney |
| 28 Nov | Breaking Down Boundaries conference, Sydney |

Speaking Engagements:

| | |
|---------|--|
| 14 Mar | Keynote address: <i>"Why did I bother to go to Law School? What is happening in the Judicial Landscape"</i> , Australian Lawyers Alliance Conference, Hunter Valley |
| 14 Mar | Paper: <i>"Calderbank offers"</i> , Australian Lawyers Alliance Conference, Hunter Valley |
| 22 May | Chair, Seminar, <i>"Federal Government Freedom of Information Reform"</i> (Speaker: The Hon Robert McClelland MP, Attorney General), Australian Association of Administrative Law, NSW Chapter, Sydney |
| 23 May | Occasional Address: University of Sydney Faculty of Law graduation ceremony and conferral on her Honour of an honorary degree of Doctor of Laws |
| 28 June | Speech: opening of the Toongabbie Legal Centre, Toongabbie |
| 13 Aug | Speech: launch of <i>Yemaya</i> 2008 (women's journal of the Sydney University Law Society) |
| 3 Oct | Welcome to new Bar Readers, NSW Bar Association, Sydney |
| 10 Nov | Keynote address: <i>"The conduct of personal injury actions in the New South Wales Court of Appeal: insight from the Bench"</i> , LexisNexis personal injury conference, Sydney |
| 28 Nov | Speech: <i>"Lawyers without boundaries"</i> : Breaking Down Boundaries conference, Sydney |
| 17 Dec | Speech: Young Lawyers Christmas Party, Sydney |

Appointments to Legal, Cultural or Benevolent Organisations:

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|---|
| Chair, NSW Chapter, Australian Institute Administrative Law |
| Executive Committee Member, Judicial Conference of Australia |
| Chair, Advisory Committee, "Equality Before the Law Bench Book", Judicial Commission of New South Wales |
| Chair, Women's Advisory Network, National Breast and Ovarian Cancer Centre |
| Member of the Board of Governors, Queenwood School for Girls |
| Member of the Advisory Board, Centre for Children and Young People, Southern Cross University |
| Member of the Board of Directors, Sydney Talent |
| Member of the Advisory Board, Centenary Institute |

THE HONOURABLE JUSTICE R D GILES

Conferences:

| | |
|-----------|--|
| 19-22 Jan | Supreme and Federal Court Judges Conference, Sydney |
| 22-24 Aug | Supreme Court Annual Judges' Conference (Shoal Bay, NSW) |
| 6-7 Nov | ALJA Appellate Judge's Conference, Melbourne |
| 13-14 Mar | New Zealand Court of Appeal Conference, Wellington |
| 31 Oct | Session Chair, Journal of Contract Law Conference |

Appointments to Legal, Cultural or Benevolent Organisations:

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| Member, Editorial Board of the Insurance Law Journal |
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Publications:

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| "Duty of Care, Scope and Breach" (2009) 9 TJR 165 |
|---|

THE HONOURABLE JUSTICE D H HODGSON

Conferences:

| | |
|-----------|---|
| 22-24 Aug | Supreme Court Annual Judges' Conference (Shoal Bay, NSW) |
| 15 Nov | Julius Stone Institute of Jurisprudence Conference (Sydney) |

Speaking Engagements:

| | |
|--------|---|
| 24 Aug | Paper – Supreme Court Annual Judges' Conference “Free Will and Criminal Responsibility” (Shoal Bay, NSW) |
| 25 Oct | Paper – National Judicial College Conference “Neuroscience and Criminal Responsibility” (Sydney) |
| 15 Nov | Paper – Julius Stone Institute of Jurisprudence Conference “The Role of Gestalts in Conscious Decision-Making” (Sydney) |

Publications:

“A Role for Consciousness” *Philosophy Now* 65 (2008), 22-24
“The Knowledge Argument: A Reply to Elizabeth Schier” *Journal of Consciousness Studies* 15(4) (2008), 112-115
Appointments to Legal, Cultural or Benevolent Organisations:
Part-time Commissioner, NSW Law Reform Commission
Supreme Court Representative on the Faculty of Law of the University of New South Wales

THE HONOURABLE JUSTICE DAVID ANDREW IPP AO

Conferences:

| | |
|-------------|--|
| 27 - 29 Mar | 7TH Annual Conference on European Tort Law (Vienna, Austria) |
| 22 – 24 Aug | Supreme Court Annual Judges' Conference (Shoal Bay, NSW) |

Publications:

21 Nov - “Maintaining The Tradition of Judicial Impartiality” – Published in Southern Cross University

Appointments to Legal, Cultural or Benevolent Organisations:

Law Courts Library Advisory committee
Standing Advisory committee on judicial education

THE HONOURABLE JUSTICE JOHN BASTEN

Conferences:

| | |
|-----------|---|
| 19-23 Jan | Supreme Court/Federal Court Judges' Conference (Sydney) |
| 14 Mar | New Zealand Court of Appeal 50th Anniversary Conference (Wellington, New Zealand) |
| 22-24 Aug | Supreme Court Annual Judges' Conference (Shoal Bay, NSW) |
| 9-12 Oct | Judicial Conference of Australia Inc, 2008 Colloquium (Surfers Paradise) |
| 7 Nov | Appellate Judges' Conference (Melbourne) |
| 29 Nov | Planning for a Republic – the Legal Mechanic's Perspective Seminar (Perth) |

Speaking Engagements:

| | |
|--------|--|
| 26 Mar | Paper - NSW Young Lawyers Continuing Legal Education Seminar “ <i>Administrative Law – A Perspective From The Bench</i> ” (Sydney) |
| 4 Apr | 2008 Sir Ninian Stephen Lecture “ <i>Human Rights and the Rule Of Law</i> ” (University of Newcastle) |
| 9 May | Paper - 2008 Land & Environment Court Conference “ <i>Judicial Review: Intensity of Scrutiny</i> ”, Camden, Sydney |
| 26 Jun | Paper – Australian Institute of Administrative Law Seminar “ <i>Administrative Law and Statutory Interpretation</i> ” (Sydney) |
| 24 Sep | Paper – NSW Young Lawyers CLE Seminar Series “ <i>International Conventions and Administrative Law</i> ” (Sydney) |

Publications:

Foreword “Australian Anti-Discrimination Law: Text, Cases and Materials”, Prof Neil Rees, Kate Lindsay, Simon Rice, Federation Press
“Judicial Review: Intensity of Scrutiny” *The Judicial Review*, September 2008 issue

Participation in International Judicial Activities:

| | |
|-----------|--|
| 20-24 Oct | Session on “Discussion and exchange of views on case management and court administration” at the Judicial Administration Training Institute in Dhaka, Bangladesh; meetings with the Chief Justice and other members of the Bangladeshi judiciary |
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THE HONOURABLE JUSTICE CAMPBELL

Conferences:

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|-------------|--|
| 28 Feb | Superannuation Conference of the Law Council of Australia (Brisbane) |
| 22 - 24 Aug | Supreme Court Annual Conference (Port Stephens) |
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Speaking Engagements:

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|--------|--|
| 28 Feb | Paper – Libby Slater Plenary Session of Superannuation Conference of Law Council of Australia “ <i>Exercise by Trustees of Discretionary Powers</i> ” (Brisbane) |
| 24 Aug | Paper – NSW Supreme Court Conference “ <i>Access by Trust Beneficiaries to Trustees’ Documents Information and Reasons</i> ” (Port Stephens) |
-

Appointments to Legal, Cultural or Benevolent Organisations:

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| Member, Law Admissions Consultative Committee |
| Member, Legal Profession Admission Board |
| Member, Legal Profession Admission Board, Legal Qualifications Committee |
| Member, Alternative Dispute Resolution Steering Committee |
-

THE HONOURABLE JUSTICE MCCLELLAN, CHIEF JUDGE AT COMMON LAW

Conferences:

- | | |
|-----------|--|
| 29 Feb | CARS Assessors Annual Conference (Sydney) |
| 14 Mar | Forensic Accounting Conference (Sydney) |
| 25 Mar | New South Wales Crown Prosecutors’ Annual Conference (Sydney) |
| 7-11 Apr | Chinese National Judges’ College, (Kunming, China) |
| 21 May | National Judicial College of Australia (Canberra) |
| 23 May | 5th Annual Conference of the Council of Australasian Tribunals, New South Wales Chapter Inc (Sydney) |
| 7 Jun | Association of Australian Magistrates Annual Conference (Sydney) |
| 5 Aug | National Judicial Orientation Program (Gold Coast) |
| 22-24 Aug | Supreme Court Annual Judges’ Conference (Shoal Bay, NSW) |
| 17-19 Sep | National Australian Insurance Law Associate Conference (Hamilton Island) |
| 18 Oct | University of South Australia (Adelaide) |
| 25 Oct | The Australian Justice System in 2020 - National Judicial College of Australia (Sydney) |
-

Speaking Engagements:

- | | |
|-----------|--|
| 29 Feb | Continuing Legal Education – A Civil Litigation Day –Case Preparation – <i>putting your case together in a way that will find favour</i> |
| 29 Feb | Launch of the CARS Assessors Practice Manual – The Motor Accidents Authority of NSW: <i>Procedure Fairness and the Hearing Rule</i> |
| 25 Mar | New South Wales Crown Prosecutors’ Annual Conference “ <i>Law and Order and the Jury System – Juries – Common Sense and the Truth</i> ” |
| 7-11 Apr | Chinese National Judges’ College, Kunming, China: 2 papers – “ <i>ADR – An Introduction</i> ” and “ <i>Some Benefits of Mediation</i> ” |
| 15 May | EIANZ – Professional Environmental Practise Course Program – “ <i>The Role of the Environmental Expert</i> ” |
| 21 May | National Judicial College of Australia, Phoenix Judges Program, Expert Evidence in Civil Proceedings |
| 23 May | Council of Australasian Tribunals, New South Wales Chapter Inc “ <i>Assessing Credibility</i> ” |
| 3 Jun | Sydney University, Faculty of Law, Post graduate Course Expert Evidence |
| 3 Jun | The College of Law, Continuing Professional Education Expert evidence |
| 7 Jun | Association of Australian Magistrates, Annual Conference – <i>Two Contemporary Challenges: the role of deterrence in sentencing and the effective use of experts</i> |
| 5 Aug | National Judicial Orientation Program expert evidence in civil proceedings |
| 7 Aug | The Australian Institute of Judicial Administration: Flinders University, Law School: Concurrent Evidence Seminar, Adelaide |
| 17-19 Sep | National Australian Insurance Law Association Conference, (Hamilton Island) <i>Dispute Resolution in the 21st Century – Mediate or Litigate</i> |
| 18 Oct | Keynote address – University of South Australia |
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Appointments to Legal, Cultural or Benevolent Organisations:

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|---|
| Member, Australian Academy of Forensic Sciences |
| Member, Australian Pacific Judicial Reform Forum Steering Committee |
-

Participation in International Judicial Activities:

| | |
|---------|---|
| 6-8 Feb | Bangladesh delegation |
| 15 Feb | Nepalese delegation |
| 3 Mar | Kyoto Bar Association |
| 23 Oct | Chief Justice of Taiwan |
| 27 Oct | Philippine Judges Association |
| 27 Nov | Supreme People's Prosecution Office of Vietnam – Australian Human Rights Commission |

THE HONOURABLE JUSTICE PETER HIDDEN AM**Speaking Engagements:**

| | |
|--------|--|
| 25 Mar | Crown Prosecutors Conference 'Majority Verdicts in Criminal Trials in NSW' (Terrigal, NSW) |
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THE HONOURABLE JUSTICE CLIFFORD EINSTEIN**Conferences:**

| | |
|-----------|--|
| 19-23 Jan | Supreme Court/Federal Court Judges' Conference (Sydney) |
| 5 Apr | Commercial Litigation Conference (Sydney) |
| 22-24 Aug | Supreme Court Annual Judges' Conference (Shoal Bay, NSW) |

Speaking Engagements:

| | |
|--------|---|
| 12 Mar | Opening address, Building and Construction Law Seminar (Sydney) |
| 5 Apr | Address, "Evidence – Lay and Expert", Commercial Litigation Conference (Sydney) |
| 24 May | Address to residents of the Montefiore Home, "Judging the Judges" (Sydney) |

Publications:

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| "Liquidators, litigation funding and security for costs" September 2008 Australian Bar Review: vol 31/02-31021 |
|--|

Participation in International Judicial Activities:

| | |
|-----------|--|
| 6 Feb | Received a delegation of judicial officers from Bangladesh |
| 15 Feb | Received a delegation from Nepal |
| 21-24 Oct | Delivered lectures to new judicial officers in Bangladesh and engaged in dialogue with several senior judges on issues of mutual interest |
| Dec | Met with Justice Alyakim Rubenstein of the Supreme Court of Israel concerning commercial litigation and methods of judicial appointment; also met with judges in Tel Aviv and Haifa to discuss the handling of commercial disputes |

THE HONOURABLE JUSTICE KIRBY**Conferences:**

| | |
|-----------|--|
| 29 May | Judged the Sydney University Public International Law Moot |
| 22-24 Aug | Supreme Court Annual Judges' Conference (Shoal Bay, NSW) |
| 29 Aug | Lunchtime address to Law Students at the University of New South Wales |
| 24 Oct | Speaker at Wollri Creek Preservation Society dinner |
| 13 Nov | Judged the Macquarie University Witness Exam Competition |

Appointments to Legal, Cultural or Benevolent Organisations:

| |
|---|
| Member of the Media Consultation Group, Supreme Court |
|---|

THE HONOURABLE JUSTICE R P AUSTIN**Speaking Engagements:**

| | |
|--------|--|
| 21 May | Some Remarks on the Launching of the Code of Professional Practice, Insolvency Practitioners Association of Australia National Conference |
| 20 Aug | <i>An introduction to the Conference themes</i> (with Andrew Bilski): The Credit Crunch and the Law, Third Annual Corporate Law Supreme Court of New South Wales and the Law Society of New South Wales Conference |
| 20 Sep | <i>Current Issues Around the Corporate Form: Shareholders, Directors and Officers</i> , Law Council of Australia Business Law Section, Corporations Workshop at Gold Coast, Queensland |

Publications:

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| Co-author, Ford's Principles of Corporations Law (LexisNexis, looseleaf) |
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THE HONOURABLE JUSTICE HOWIE

Conferences:

8-10 Feb Sentencing Conference 2008 (Canberra)

Speaking Engagements:

10 Feb National Judicial College of Australia - Sentencing Conference - "*Sentencing Discounts*" (Canberra)
15 Mar The Royal College of Pathologists of Australasia – Pathology Update – "*Expert Witness For and Against*" (Sydney)
25 Jun Young Lawyers Seminar – "*Sentencing*" (Sydney)
2 Jul Local Court Conference – *Review of the Criminal Law 2008* (Sydney)
23 Aug Supreme Court Conference – *Review of the Criminal Law 2008* (Shoal Bay) – presented by McClellan CJ at CL

Publications:

Sentencing Discounts – Are They Worth the Effort – The Judicial Review March 2008 issue
Review of the Criminal Law 2008 – Judicial Officers' Bulletin September 2008 issue
Consulting Editor for Criminal Law News (published by Lexis Nexis)
Co-author of Criminal Practice and Procedure (Lexis Nexis looseleaf)

Appointments to Legal, Cultural or Benevolent Organisations:

Chairman of the Bench Book Committee

THE HONOURABLE JUSTICE REGINALD BARRETT

Conferences:

3 - 5 Apr Supreme Court of New South Wales and High Court of Hong Kong Special Administrative Region Judicial Seminar on *Commercial Litigation* (Sydney)
24 – 26 Jul 25th Annual Banking and Financial Services Law and Practice Conference Banking & Financial Services Law Association (Queenstown, New Zealand)
22-24 Aug Supreme Court Annual Judges' Conference (Shoal Bay, NSW)
19 – 21 Sep Law Council of Australia, Business Law Section, Corporations Law Workshop (Gold Coast, Queensland)

Speaking Engagements:

6 Mar University of New South Wales Centre for Continuing Legal Education Seminar – Opening remarks "*Directors Duties*" (Sydney)
26 Jul Banking & Financial Services Law Association Conference– Paper, "*Insolvency of registered managed investment Schemes*" (Queenstown, New Zealand)
20 Sep Law Council of Australia, Business Law Section, Corporations Law Workshop – Opening remarks "*Recent developments in schemes of arrangement*" (Gold Coast, Queensland)

THE HONOURABLE JUSTICE PALMER

Conferences:

22-24 Aug Supreme Court Annual Judges' Conference (Shoal Bay, NSW)

Speaking Engagements:

12 May Speech at the opening of Victorian Arts Law Week, Melbourne
21 Aug Queens Club "*Lawyers and Composers*"
21 Nov NSW Young Lawyers: Adjudication at National Golden Gavel.

THE HONOURABLE JUSTICE TERRY BUDDIN

Conferences:

4-6 Jun National Judicial College of Australia (Gold Coast)
Attended meeting of Steering Committee of NJOP
Presenter, Session on Sentencing
22-24 Aug Supreme Court Annual Judges' Conference (Shoal Bay, NSW)

Appointments to Legal, Cultural or Benevolent Organisations:

Member, National Judicial Orientation Program, Steering Committee
Chairperson, Jury Taskforce

THE HONOURABLE JUSTICE GZELL

Conferences:

| | |
|-----------|--|
| 19-23 Jan | Supreme and Federal Courts Judges' Conference (Sydney) |
| 3-7 Feb | The International Academy of Estate and Trust Law Conference (Cape Town, South Africa) |
| 27 Feb | Society of Trust and Estate Practitioners (STEP) Presentation by Peter Mann " <i>Insurance for Trustees</i> " (Sydney) |
| 12 Mar | STEP Presentation by the Honourable Justice WMC Gummow AC " <i>Form or Substance</i> " (Sydney) |
| 18 Apr | STEP Presentation by John de Groot " <i>Family Provision in Australia</i> " (Sydney) |
| 28 May | STEP Presentation by the Honourable Justice Dyson Heydon AC " <i>Does Statutory Reform Stultify Trusts Law Analysis</i> " (Sydney) |
| 25 Jun | STEP Presentation by David Rolleston and Michael Hutton " <i>Compliance Issues of Self Managed Superannuation Funds</i> " (Sydney) |
| 9 Jul | STEP Presentation by James Kessler QC " <i>Drafting Inter Vivos Trusts and Will Trusts</i> " (Sydney) |
| 17 Sep | STEP Presentation by Mark Leeming SC "What is a Trust?" (Sydney) |
| 22 Oct | STEP Presentation by Paul Dowd and Michael Brown " <i>Managed Investment Trust: Practical Issues</i> " (Sydney) |
| 13 Nov | STEP Presentation by the Honourable Mr Justice Peter Young AO " <i>Quasi Trusts</i> " (Sydney) |
| 20 Nov | STEP Australasian and East Asian Regional Committee Conference (London) |
| 22 Nov | STEP Branch Chairmen's Assembly (London) |

Speaking Engagements:

| | |
|--------|--|
| 27 Feb | Paper – 6th Annual Wills, Succession and Estate Planning Conference " <i>Philanthropy and Charitable Giving</i> " (Sydney) |
| 15 Mar | Paper – NSW Young Lawyers Property Law Seminar " <i>The Supreme Court Revenue List</i> " (Sydney) |
| 15 May | Opening of de Groot's Wills & Estate Lawyers' Offices (Sydney) |
| 26 Jun | Paper – 4th ALJA Law & Technology Conference " <i>Current State of Courts in Australia – New South Wales</i> " (Sydney) |
| 10 Jul | Paper – The Taxation Institute of Australia's 8th State Taxes Conference " <i>CPT Custodian: The Aftermath</i> " (Sydney) |
| 1 Aug | Dinner Speech – Golden Jubilee of Challis Taxation Discussion Group (Sydney) |

Appointments to Legal, Cultural or Benevolent Organisations:

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|---|
| Vice-President Western Pacific, The International Academy of Estate and Trust Law |
| Judiciary Member, Society of Trust and Estate Practitioners (STEP) |
| Chairman STEP Australia – Sydney Branch |
| Honorary Life Member, Taxation Institute of Australia |
| Member, Attorney-General's Department CourtLink Steering Committee |
| Patron and Life Member, Regional Arts New South Wales |
| Honorary Member, Taxation Committee of Business Law Section of Law Council of Australia |
| Councillor of Australasian Institute of Judicial Administration |

THE HONOURABLE JUSTICE WHITE

Conferences:

| | |
|-----------|--|
| 22-24 Aug | Supreme Court Annual Judges' Conference (Shoal Bay, NSW) |
| 13-17 Sep | INSOL Conference Shanghai |

Appointments to Legal, Cultural or Benevolent Organisations:

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|---|
| Chair of Legal Qualifications Committee of Legal Profession Admission Board |
|---|

THE HONOURABLE JUSTICE JOHNSON

Conferences:

| | |
|-----------|--|
| 21-23 Jan | Supreme and Federal Courts Judges' Conference (Sydney) |
| 11-15 Jul | "Codifying the Criminal Law" - 22nd International Conference of the International Society for the Reform of the Criminal Law (Dublin, Ireland) |
| 22-24 Aug | Supreme Court Annual Judges' Conference (Shoal Bay, NSW) |

Speaking Engagements:

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| 31 Apr | Chaired Seminar on <i>Surveillance Devices Act 2007</i> (Supreme Court, Sydney) |
| 26 Sep | Speaker - "Controlling Unreasonable Cross-Examination", Industrial Relations Commission of New South Wales Annual Conference (Sutton Forrest) |
| 28-29 Sep | Speaker - "Challenges of Running a Commonwealth Criminal Trial in the Supreme Court", Federal Criminal Justice Forum (Canberra) |

THE HONOURABLE JUSTICE PETER HALL

Conferences:

22-24 Aug Supreme Court Annual Judges' Conference (Shoal Bay, NSW)

Appointments to Legal, Cultural or Benevolent Organisations:

Director of the Board of College of Law Pty Limited

Committee Member of the Legal Profession Admission Board - Examinations Committee

THE HONOURABLE JUSTICE STEPHEN ROTHMAN AM

Conferences:

8-10 Feb National Judicial College of Australia – Sentencing 2008 Conference (Canberra)

13-14 Mar Catholic Commission for Employment Relations Conference: *'Catholic Social Welfare: Changing Employment Relations in Changing Communities'* (Sydney)

31 Mar NSW Judicial Commission – Twilight Seminar: *'Overview of the Surveillance Devices Act 2007 and Demonstration of Surveillance Devices'* [Superintendent Col Roddan, Inspector Steve Reynard, Inspector Stefan Kent, Senior Sergeant Stuart Davis, State Technical Investigation Branch, NSW Police] (Sydney)

17-18 May NSW Judicial Commission – Ngara Yura Committee: *'Judicial Visit to Dubbo Community'* (Dubbo, NSW)

20 May The Anglo-Australasian Lawyers Society: *'Pro Bono Work'* [Vera Baird QC MP] (Sydney)

20 May NSW Judicial Commission – Twilight Seminar: *'Using a Process Like Circle Sentencing in the Bail Process'* [Mr Mark McMilan, Senior Lecturer, Jumbanna Indigenous House of Learning, University of Technology] (Sydney)

22 May Australian Institute of Administrative Law – *'Federal Government Freedom of Information Reform'* [The Hon. Robert McClelland MP, Attorney General] (Sydney)

2 Jun The NSW Bar Association – AACL Seminar: *'Between the crime and the war falls the terror: constitutional powers in Thomas v Mowbray'* (Sydney)

12 Jun The NSW Bar Association – Seminar: *'Judicial Review of Administrative Tribunals - Some Current Issues'* (Sydney)

22-24 Aug Supreme Court Annual Judges' Conference (Shoal Bay, NSW)

12 Sep The Anglo-Australasian Lawyers Society: *'New directions in Commonwealth judicial appointments'* [The Hon. Robert McClelland MP, Attorney General] (Sydney)

10-12 Oct Judicial Conference of Australia Colloquium (Surfers Paradise, QLD)

14 Oct The Julian Small Foundation Limited: *'What should we expect from our industrial tribunals?'* [The Hon Justice Geoffrey Giudice] (Sydney)

25 Oct National Judicial College of Australia Conference: *'The Australian Justice System in 2020'* (Sydney)

7 Nov The Anglo-Australasian Lawyers Society: *'Reflections on the Inquest into the Death of Diana, Princess of Wales'* [Lord Justice Scott Baker] (Sydney)

19 Nov The NSW Bar Association – Constitutional & Administrative Law Section Seminar: *'Challenging decisions based on opinion, satisfaction and belief (or Sumo wrestling with jurisdictional fact)'* [Dr Christos Mantziaris, Barrister] (Sydney)

Speaking Engagements:

13 Mar Catholic Commission for Employment Relations Conference: *'Catholic Social Welfare: Changing Employment Relations in Changing Communities'* – Address on "Duty of Care and Common Law Avenues for Employees" (Sydney)

19 Oct Australian Catholic University – Abrahamic Conference on Reconciliation – Address on *"Reconciliation: An Interfaith Perspective"* (Sydney)

Appointments to Legal, Cultural or Benevolent Organisations:

Director; Board Member and Chair of the Workplace Relations Committee, Association of Independent Schools

Non-Trustee Governor; Executive Member and Member of the Planning Committee and Status Committee, Jewish Communal Appeal

Immediate Past President and Executive Member, NSW Jewish Board of Deputies

Executive Member, Board of Jewish Education

Delegations and International Assistance:

2 Dec The Hon. Mr Justice David Michael Bean, UK High Court

18-19 Dec Judge Nira Duskin, Vice President-District Court, Rechovot, Israel

THE HONOURABLE JUSTICE PAUL BRERETON RFD

Speaking Engagements:

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| 27 Feb | Speaker, College of Law, Judges' Series "Subpoenas, Discovery & Interrogatories", (Sydney) |
| 28 Mar | Keynote address – NSW State Legal Conference "Costs Update", Sydney |
| 7 Apr | Speaker – 13th National Family Law Conference, "Third Parties – Invited Guests or Gate Crashers?" (Adelaide) |
| 20 Jun | CLE Family Law Day, "Third Parties – Invited Guests or Gate Crashers?", (Sydney) |
| 14 Aug | Keynote address – Bar Association Continuing Professional Development Programme, "Practice & Procedure before the Duty Judge in Equity" |
| 23 Aug | Keynote address – Outdoor Recreation Industry Council of NSW, Novotel Hotel, Sydney Olympic Park – "Aspects of Law for Outdoor Educators" |

Appointments to Legal, Cultural or Benevolent Organisations:

Member, Law Extension Committee, University of Sydney
Chair, Costs Assessment Users' Group, Supreme Court

Publications:

"Equitable Estoppel in Australia: The Court of Conscience in the Antipodes", *Estoppel, Theories and Applications*, 2008, Amicus Books, The ICFAI University Press
"Aspects of Advocacy: The Effective Presentation of Evidence", Gjesdahl Law Office, Training Seminar, 14 November, (Nth Dakota, USA)
"Practice & Procedure before the Duty Judge in Equity", Bar News, Summer 2008/09,
"Third Parties: Invited Guests or Gate Crashers", Australian Journal of Family Law, (2008) 22 AJFL No 3, LexisNexis

THE HONOURABLE JUSTICE IAN HARRISON

Conferences:

22 - 24 Aug Supreme Court Annual Judges' Conference (Shoal Bay, NSW)

Speaking Engagements:

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| 8 - 10 Feb | After dinner speech - National Sentencing Conference, Canberra |
| 2 - 3 May | Mediation seminar for Judges and Magistrates, Kuching, East Malaysia |
| 4 Aug | Harvard Graduates Club, Sydney |
| 20 Sep | Wardell Chambers annual CPD conference, Katoomba |
| 10 Oct | Expert Identification Evidence Symposium, University of Technology, Sydney |
| 11 Oct | 11th International Criminal Law Congress, Sydney |
| 26 Nov | Makinson & D'Apice 150th anniversary, Sydney |

Appointments to Legal, Cultural or Benevolent Organisations:

Supreme Court representative on Legal Qualifications Committee
Supreme Court of New South Wales representative on Joint Courts Litigation Funding & Insurance Harmonisation Committee

THE HONOURABLE JUSTICE FULLERTON

Conferences:

25 Oct "The Australian Justice System in 2020", National Judicial College of Australia (Sydney)

Speaking Engagements:

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| 7 Mar | Speaker - Queensland Law Society Vincents' Symposium "Preparing a Substantive Defence at Criminal Trial: the 'case theory' approach" (Brisbane) |
| 30 Oct | Guest speaker – The Maurice Blackburn Women's Law Section Inaugural Breakfast (Sydney) |

THE HONOURABLE JUSTICE REIN

Conferences:

13 - 15 Nov Maritime Law Association of Australia and New Zealand Conference (Perth, Western Australia)
22 - 24 Aug Supreme Court Annual Conference (Port Stephens, New South Wales)

Appointments to Legal, Cultural or Benevolent Organisations:

Member, Supreme Court Rules Committee



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