

ANNUAL REVIEW 2009



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 2009. This is but a small sample of the 2,000 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 2009, 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 2009: AN OVERVIEW

- Refurbishment of the Law Courts Building in Queens Square
- Notable judgments
- Court operations
- Education and public information
- Consultation with Court users

Refurbishment of the Law Courts Building in Queens Square

In August, a significant milestone was reached in the staged refurbishment of the Law Courts Building with the opening of the new courtrooms on level 9. The Court now has a large courtroom at its disposal that is properly equipped to accommodate civil litigation involving multiple parties. Both this large courtroom and the three conventionally sized courtrooms on level 9 are also now better equipped to handle technology associated with modern litigation, including video links with improved sound recording and audio capabilities, and superior facilities for evidence playback.

The new courtrooms on level 9 represent the first comprehensive upgrade to the Court's facilities since the Building's construction in 1977. Works of a similar scale have already commenced on level 7 and 12. These works are due for completion in the latter half of 2010 and are expected to deliver improved facilities for Court users.

Notable judgments

During 2009, the Court of Appeal handed down 433 judgments, and the Court of Criminal Appeal delivered 310. In respect of its criminal and civil trial work, the Court delivered 1,477 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 and some significant positive outcomes were achieved in 2009. The age of the pending caseloads of both the Court of Appeal and Court of Criminal Appeal were within the national standard, with 90% of pending cases aged less than 12 months old. The listing delay in the Court of Appeal also reduced by two months. In 2009, substantive appeals were heard on average within 1.5 months from the date they were deemed ready for hearing; by contrast, in 2008, the period of delay was 3.5 months. Similarly, the listing delays measured in the General list and Probate List in the Equity Division halved during the year, from an average of 5 months in 2008, to 2.5 months in 2009. In the Common

Law Division, for the fourth consecutive year all criminal trials set down and ready for hearing were able to proceed before a judge; no trial was "not reached".

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).

Education and public information

Many judicial officers updated and developed their skills and knowledge during the year by attending conferences, seminars and workshops, some of which were specifically tailored to the Court's needs. The Public Information Officer continued to provide the media, and consequently the general public, with reliable information about contentious issues and court proceedings. During the year, the Registrars addressed over 1,000 students and members of the general public, giving the attendees a unique insight into the Court's work and its place in the State's legal system. These are some of the activities featured in Chapter 5 of the Review.

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 2009 forms Appendix (iii) to this Review.

2 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 trial work of the 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 2009, 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.

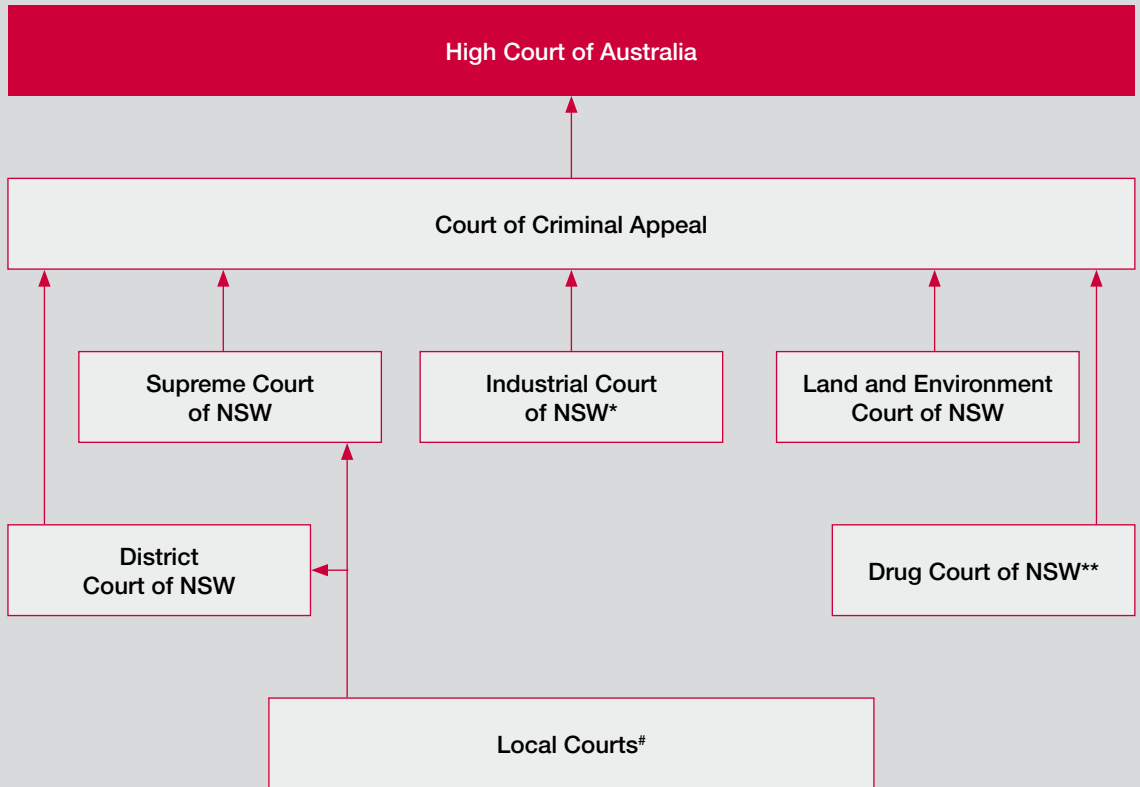
The Division deals with all serious personal injury and contractual actions, in which the Court has unlimited jurisdiction. The civil business of the Division also comprises:

- 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



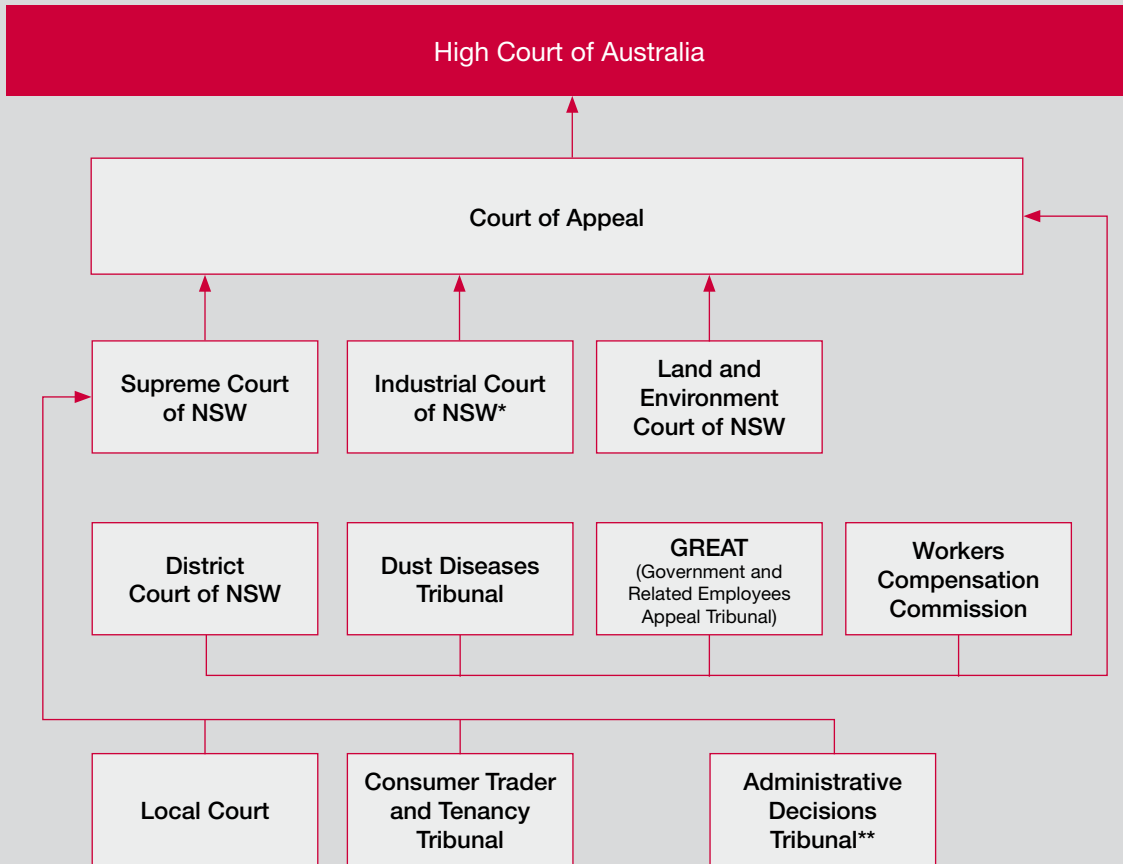
Note: The above diagram is a simplified representation of the appeal process in NSW. Actual appeal rights are determined by the relevant legislation.

* 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 CCA.

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.

* No appeal lies to the Court of Appeal from decision of the Industrial Court of NSW; however, some proceedings may be brought by way of judicial review.

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

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 2009 can be found in the chapter entitled *Caseflow Management*.

As at 31 December 2009 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 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 Robert Macfarlan

The Honourable Mr Justice Peter Wolstenholme Young AO

Chief Judge at Common Law

The Honourable Justice Peter David McClellan

Chief Judge in Equity

The Honourable Justice Patricia Anne Bergin

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 Clifford Roy Einstein

The Honourable Justice Michael Frederick Adams

The Honourable Justice David Kirby

The Honourable Justice Robert Peter Austin

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
The Honourable Justice Robert Allan Hulme
The Honourable Justice Robert Gabor Forster
The Honourable Justice Michael John Slattery
The Honourable Justice David Lloyd Davies
The Honourable Justice Monika Schmidt

Acting Judges

The following persons held commissions during 2009. 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 2009 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 (acted as a Judge and Judge of Appeal for 115 days)
- The Honourable Kenneth Robert Handley AO QC, former Judge of the Supreme Court of New South Wales and Judge of Appeal (acted as a Judge and Judge of Appeal for 155 days)
- The Honourable Jane Hamilton Mathews AO, former Judge of the Federal Court of Australia (acted as a Judge and Judge of Appeal for 114 days)
- The Honourable Ronald Sackville AO QC, former Judge of the Federal Court of Australia (acted as a Judge and Judge of Appeal 157 days)

Acting Judges (in alphabetical order)

- The Honourable Graham Russell Barr, former Judge of the Supreme Court of New South Wales (commission effective between 1 October and 31 December; acted as a Judge for 50 days)
- The Honourable Bruce Malcolm DeBelle QC, former Judge of the Supreme Court of South Australia (commission effective between 1 January and 31 August; acted as a Judge of the Court for 32 days)

- The Honourable John Perry Hamilton QC, former Judge of the Supreme Court of New South Wales (commission effective between 3 August and 31 December; acted as a Judge for 36.5 days)
- The Honourable David Louthean Patten, former Judge of the District Court of New South Wales (commission effective between 9 April and 16 November; acted as a Judge for 117 days)
- The Honourable Justice Monika Schmidt, a Deputy President of the Industrial Relations Commission of New South Wales and a Member of the Industrial Court of New South Wales (commission effective between 2 February and 29 May; acted as a Judge of the Court for 80 days)
- The Honourable Rex Foster Smart (acted as a Judge of the Court for 137 days)
- The Honourable Timothy James Studdert QC, former judge of the Supreme Court of New South Wales (acted as a Judge of the Court for 31 days)
- The Honourable Brian John Michael Tamberlin QC, former Judge of the Federal Court of Australia (commission effective between 6 July and 31 December; acted as a Judge of the Court for 32 days)
- The Honourable William Victor Windeyer AM RFD ED, former judge of the Supreme Court of New South Wales (commission effective between 17 August and 16 October; acted as a Judge of the Court for 43 days)

Appointments

- The Honourable Mr Justice Peter Wolstoneholme Young AO was appointed a Judge of Appeal on 6 March 2009.
- The Honourable Justice Patricia Anne Bergin was appointed Chief Judge of the Equity Division on 6 March 2009.
- Robert Allan Hulme SC was appointed a Judge of the Supreme Court on 2 March 2009.
- Robert Gabor Forster was appointed a Judge of the Supreme Court on 4 May 2009.
- Michael John Slattery was appointed a Judge of the Supreme Court on 25 May 2009.
- David Lloyd Davies was appointed a Judge of the Supreme Court on 29 June 2009.
- The Honourable Justice Monika Schmidt, a Deputy President of the Industrial Relations

Commission of New South Wales and a Member of the Industrial Court of New South Wales, was appointed a Judge of the Supreme Court on 27 July 2009.

Retirements

- The Honourable Justice Graham Russell Barr retired on 21 March 2009.
- The Honourable Mr Justice John Perry Hamilton retired on 31 March 2009.
- The Honourable Justice David Andrew Ipp AO retired on 13 November 2009.

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 2009, 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.

SUPPORTING THE COURT: THE REGISTRY

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 2009, eight 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 2009, 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, Crime and Court of Criminal Appeal

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

James Howard

Deputy Registrars

Emoke Durkin

Bhaskari Siva

Suzin Yoo

Stefano Calabretta

Jonathan Cottam

Carmel Lee

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 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.

3 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 Price was the Common Law List Judge throughout 2009.

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 (Commonwealth)*. 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 2009 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 2009, 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 Howie was the Criminal List Judge during 2009.

Defamation List

Matters filed in this List after 1 January 2006 are handled in accordance with 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 2009. 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 2009.

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 2009.

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 2009.

Equity Division

Proceedings in the Equity Division are case managed by Registrars and Judges of the Division to achieve the just, quick and cheap resolution of the real issues in dispute between the litigants. The work of the Division is administered through the General list and a number of Specialist Lists.

Expedition list

Cases are expedited when sufficient urgency is shown. Applications for Expedition are made to the Expedition Judge on Fridays. The Expedition Judge on Fridays. The Expedition Judge case manages all expedited cases and hears those cases when they are ready for trial. During 2009, the Expedition Judges were Justice Palmer, Justice Brereton and Justice Rein.

Equity Duty Judge list

A Judge of the Division is available at all times for urgent applications. Duty Judges are rostered in blocks of two weeks. If a matter requires an urgent final hearing, the Duty Judge will consult with the Chief Judge in respect of the possible allocation of an urgent final hearing date.

General list

All cases, other than those in the Specialist Lists, are case managed by the Registrar in Equity in the General list. A new Practice Note (SC Eq 1) was introduced in 2009 to assist the parties with identifying the real issues in dispute and having their cases managed efficiently.

The Registrar sets matters down for hearing before the Judges of the Division. During 2009, the Registrar offered parties a hearing date within four months of the final directions hearing. The Registrar will consult with the Chief Judge in Equity in relation to long and/or complex matters.

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.

Specialist 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, together with the identity of each List Judge for 2009.

- Admiralty List (List Judge: Justice Rein);
- Adoptions List (List Judge: Justice Palmer);

- Commercial List (List Judge: Justice Hammerschlag);
- Corporations List (List Judge: Justice Austin, in conjunction with Justice Barrett and Justice White);
- Probate List (List Judge: Justice Palmer);
- Protective List (List Judge: Justice Palmer);
- Revenue List (List Judge: Justice Gzell), and
- Technology and Construction List (List Judge: Justice Hammerschlag).

Admiralty List

The Admiralty List deals with maritime and shipping disputes. It is administered in the same manner as the Commercial List (see below).

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*.

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.

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.

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.

REGIONAL SITTINGS OF THE COURT

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.

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.

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.

First instance criminal trials were conducted in the following regional locations: Albury, Armidale, Bathurst, Broken Hill, Dubbo, East Maitland, Katoomba, Lismore, Newcastle, Orange, Parramatta, Wagga Wagga and Wollongong. Criminal trials will continue to be held in venues outside Sydney as required.

Civil hearings were held at regional venues by special fixture at the following locations during the year: Albury, Coffs Harbour, Orange, and Wagga Wagga.

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 considered for 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. Eight qualified Registrars and Deputy Registrars were available throughout 2009 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.

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
- Timeliness
 - Time Standards
 - Waiting Times
- Use of Alternative Dispute Resolution

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 2009 than 2008. This follows a six per cent decrease last year when compared to 2007.

The net disposal rate was three per cent lower in 2009 than in 2008. Settlement rates were lower than last year. In 2009, 21 per cent of the leave application disposals, and 30 per cent of the finalised appeals and applications for relief, were achieved through settlement.

There was, however, a significant increase in the number of cases finalised through a concurrent hearing. This is where the leave application and, if leave is granted, the related appeal, are determined in a single hearing. Of the 151 leave applications finalised by hearing during 2009, 97 (64 per cent) were finalised by concurrent hearing, compared with 60 (43 per cent) during 2008.

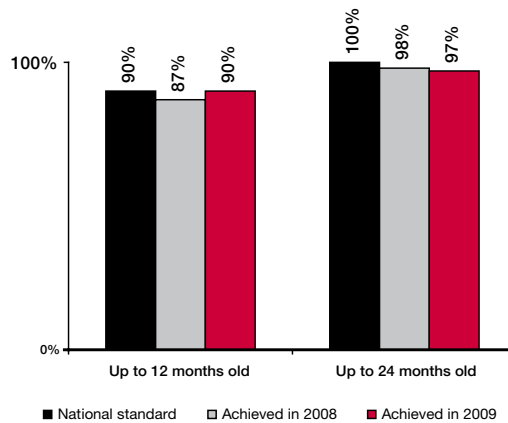
Among the 368 disposals of substantive appeals and applications for relief during 2008, 256 (70 per cent) were finalised by judgment; 32 of these were extempore judgments.

The reduced filing rate and the increased use of concurrent hearings have contributed to the 12 per cent reduction in the overall Court of Appeal caseload during 2009 (from 379 to 328). This follows a seven per cent reduction in the previous year (from 408).

The age profile of the Court of Appeal's pending caseload has also improved. Ninety per cent of pending cases are less than 12 months old, which means the age of the pending caseload is now consistent with the national standard (see Figure 4.1). Compared with the position at the end of 2008, the number of cases older than 12 months has decreased from 51 to 34. While the number of cases older than 24 months has increased from six to nine, there are external factors delaying finalisation in five of those nine cases.

The listing delay for substantive appeals that are ready for hearing has also improved greatly during 2009, from 3.5 months to 1.5 months.

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



Court of Criminal Appeal

The number of new cases coming to the Court of Criminal Appeal was eight per cent lower in 2009 than in 2008. This follows a four per cent decrease in 2008 compared to 2007.

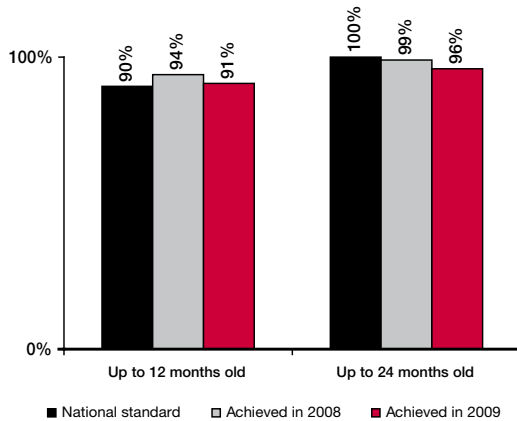
The disposal rate was six per cent lower in 2009 than in 2008. This degree of reduction is expected, as there has been a continued decrease in filings over the last five years, which reduces the volume of cases available for hearing and disposal.

Of the criminal appeals finalised during 2009, 91 per cent required a substantive hearing. The percentage of cases that were finalised by the appellant abandoning the proceedings or withdrawing the appeal was nine per cent in 2009, compared with six per cent in 2008.

The listing delay for criminal appeals that are ready for hearing improved during 2009, reducing from three months to 2.5 months.

Although the age profile of the Court of Criminal Appeal's pending caseload declined during 2009, it still remains good relative to the national time standards (see Figure 4.2). Compared with the position at the end of 2008, the number of cases older than 12 months increased from 11 to 16, and the number of cases older than 24 months increased from three to eight. One of those eight cases is particularly complex and still requires a large amount of preparation before it can be considered ready for hearing.

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



Common Law Division criminal cases

During 2009, 106 defendants entered the Criminal List, compared with 101 during 2008. 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.

At arraignments held during 2009, 105 defendants were listed for trial (starting in either 2009 or 2010) and 17 defendants entered pleas of “guilty” and were listed for sentence hearings. During 2009 a total of 40 guilty pleas were taken: 17 at the time of arraignment, 22 after being listed for trial (this includes pleas taken at the start of or during the trial) and one at other some other stage.

The listing delay for criminal trials that require at least three weeks of hearing time has increased slightly during 2009 (from 2.5 months to three months). It is rare for Supreme Court criminal trial dates to be taken when they are closer in than 2.5 months. Nearly all of the trials are conducted with a jury.

During 2009, 112 defendants were finalised, compared with 122 during 2008. The Court prepared and handed down 80 sentences during the year.

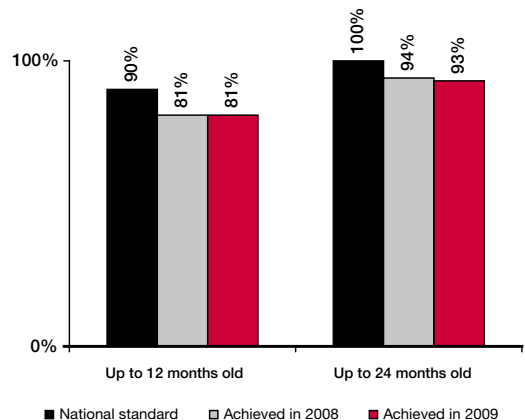
At the end of 2009 there were 84 defendants with cases pending in the Criminal List, a seven per cent reduction from the position at the end of 2008.

The age profile for pending cases in this List at the end of 2009 is similar to the position at the end of 2008, and the results remain below the national

time standards (see Figure 4.3). However, 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.

Compared with the position at the end of 2008, the number of pending defendants with cases older than 12 months decreased from 17 to 16, and those with cases older than 24 months increased from five to six. One of the six oldest pending cases was delayed by the collapse of the initial trial, with a new six-week trial run some time later. The remaining five cases were for defendants charged with terrorism offences, who were tried in a complex single trial in which the voir-dire and hearing time exceeded 12 months. The five defendants were sentenced in February 2010. This exceptional trial has masked the otherwise strong position of the Criminal List: excluding these five defendants, there was only one other pending defendant with a case older than 24 months.

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



For criminal trials conducted during the 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 2009, trials for 109 defendants were listed to start. Of these, trials for 24 defendants either collapsed or were adjourned. For the fourth consecutive year, no trial was “not reached”. There is some over-listing of criminal trials and it is a high priority to run every trial. 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.

The caseload and performance statistics for the years 2005 and 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).

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 (see next section). The civil caseload position reported for 2009 is the position that had been reached at 17 December (not 31 December), at which point JusticeLink, the new case management system, was implemented.

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).

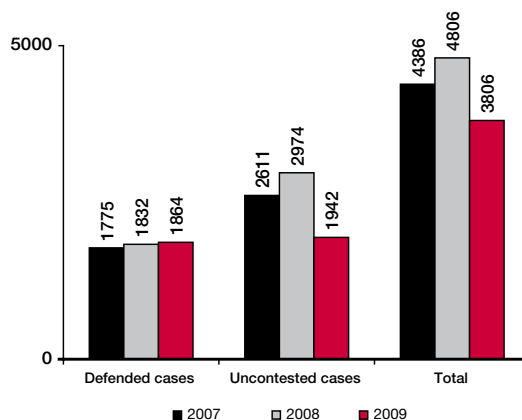
The few cases that have previously come to the Court under its summary criminal jurisdiction have usually been incorporated into the civil caseload statistics. An exception has been made for a group of 248 related summary jurisdiction criminal cases (prosecutions under the *Food Act 2003*) that were filed during 2007 and 2008, and finalised in 2009. Those particular cases are excluded from the following analysis because of their disproportionate effect on the statistics.

Compared with 2008, the Division’s civil filing rate fell by 14 per cent. For defended cases, the decrease was three per cent. There was a 17 per cent decrease for uncontested matters. Contrary to the overall trend, increases were seen for the contested cases of the General Case Management List and, to a lesser extent, the Possession List.

Overall, the disposal rate was six per cent higher in 2009 than in 2008. This result can be attributed to the nine per cent increase in the disposal rate for uncontested cases, which offset the two per cent reduction in the disposal rate for defended cases.

The number of pending cases in the Common Law Division decreased by 21 per cent during 2009 (see Figure 4.4). This is due to the large reduction (35 per cent) in the number of uncontested cases on hand. Most of the undefended cases are within the Possession List. For defended cases, however, the pending caseload increased by two per cent. This growth has come from the General Case Management List and the Administrative Law List.

Figure 4.4 Common Law Division pending civil caseloads at 31 December



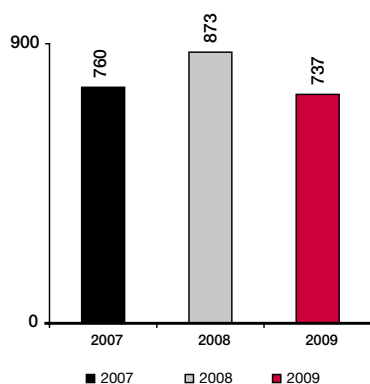
By the end of 2009, defended cases made up 49 per cent of the pending civil caseload of the Common Law Division, compared with 38 per cent at the end of 2008. The proportion is swinging back toward the position seen in 2004 (when defended cases were 60 per cent of the Division’s civil caseload). These variations have been strongly influenced by the trends in Possession List filings, which increased rapidly from 2005, but declined during 2009.

At the close of 2009, the listing delay for Common Law Division civil cases that require up to five days of hearing time was three months.

During the year there were 737 matters listed for hearing (see Figure 4.5), of which 62 per cent proceeded to hearing and 25 per cent settled after being listed for hearing. So that available judicial time is used optimally, the Common Law Division's civil hearings are over-listed. This carries a risk that some cases may be "not reached". In 2009, only one case (less than one per cent of listed cases) was "not reached", which was the same result as for 2008. This is a notable achievement. In 2007 there were four cases (one per cent of listings) not reached, and in 2006 there were 41 (eight per cent).

The median finalisation times have improved for most of the defended lists, in particular for the two largest lists, the General Case Management List and the Professional Negligence List. For cases proceeding by default, median finalisation time has remained more or less steady (at around six months) for the last three years. 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.

Figure 4.5 Listings for hearing – common law civil hearings



Equity Division

The following analysis covers all cases filed within the Equity Division other than the uncontested probate matters (which are covered in the final paragraph of this section). For most lists in this Division, the 2009 the caseload position is reported as at 17 December (not 31 December), at which point JusticeLink, the new case management system, was implemented.

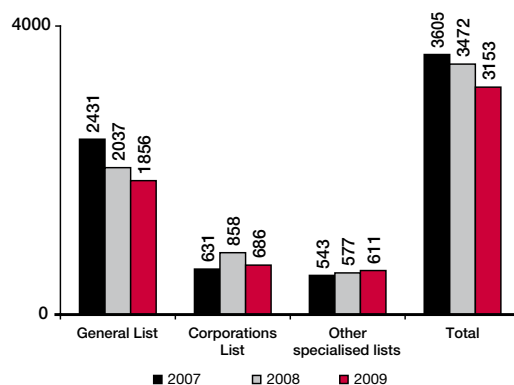
The rate of filing in the Equity Division decreased by 11 per cent in 2009, following a four per cent increase in 2008. Numerically, the largest decrease was in the Corporations List (in which about 90 per cent of cases are dealt with by a Registrar only), followed by the General List. There was also a significant reduction in filings in the Commercial List, while the Technology and Construction List filings were at a similar level to those in 2008.

The reported disposal rate overall was nine per cent lower in 2009 than in 2008. The decrease was largely within the General List (which also experienced a significant reduction in filings). 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. Consequently, a significant number of cases may have more than one disposal recorded against them. These counting problems are expected to diminish next year when the JusticeLink system is able to provide caseload data 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 44 per cent of the overall disposals within Equity Division this year.

The number of pending cases in the Division decreased by nine per cent during 2009 (see Figure 4.6). Principally, this occurred within the Corporations List (a 20 per cent reduction) and the General List (a nine per cent reduction).

Figure 4.6 Equity Division pending civil caseloads at 31 December



TIMELINESS

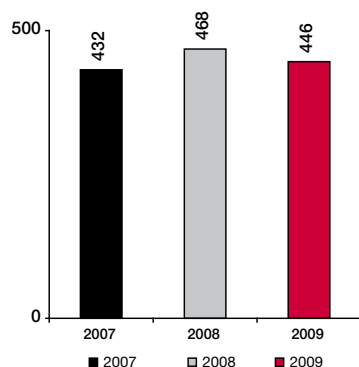
At the close of 2009, the listing delay for General List and Probate List cases that require up to two days of hearing time had improved greatly (from five months to 2.5 months).

During 2009 there were 446 matters listed for hearing, excluding matters before the Duty Judge, cases referred to a Corporations Judge, Adoptions List matters and Protective list matters (see Figure 4.7). Of those 446 listings, 70 per cent proceeded to hearing and 30 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 median case finalisation times for most Equity Division Lists regressed slightly during 2009, but continued to be well under 12 months. 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 22,985 applications were filed during 2009. The processing time for applications for a grant of probate, letters of administration or a re-seal (of a probate grant), where the initial applications met all procedural requirements, increased to several weeks at times during 2009. Increased resources were allocated to bring the delay back to normal levels. The processing time consequently improved toward the end of the year and should return to normal levels in 2010.

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 this can produce statistics that 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 system is able to provide precise and timely statistics on the age of those cases (approximately 7,000 cases as at the end of 2009, excluding non-contentious probate applications). The previous system (CourtNet) was unable to provide statistics of sufficient detail and accuracy for pending civil cases within the Common Law and Equity Divisions. An indication of the age of pending civil cases is provided annually for Productivity Commission's *Report on Government Services*. In

the absence of computerised reporting, each year the Registry staff undertake a time-consuming analysis, applying the Commission's counting rules, to estimate the age profile (as at 30 June) for the Court's civil non-appeal cases as a single group.

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 is shown 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

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.

By the close of 2009, the listing delays across all the nominated areas of the Court's work were three months or less. Listing delays improved strongly in the Court of Appeal and the Equity Division, and there was a slight improvement in the Court of Criminal Appeal. There were slight increases in the listing delay for the civil and criminal cases of the Common Law Division.

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 Supreme Court proceedings. During 2009, the Registry recorded 1,111 referrals to mediation, of which approximately 60 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 2009 approximately 4,650 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 2009, the rate of referring cases to mediation was 24 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 four years (in 2005, the mediation referral rate was only nine per cent of the filing rate for applicable cases).

Within the court-annexed mediation program, the number and percentage of cases settling at mediation decreased from 59 per cent last year to 49 per cent in 2009. Although a significant decrease, it is within the range of results seen over the last few years. 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 court-annexed mediation sessions ranged between one and six weeks during most of the year. 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 2009. The use of arbitration has declined, primarily because the District Court's jurisdiction has expanded to include most of the work that had typically been arbitrated in the Supreme Court. During the past five 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 2009 appears below. For a more comprehensive list of activities, please refer to Appendix (iv) "Other Judicial Activity".

Domestic activities

- In January, 14 judges attended the annual Supreme and Federal Courts Judges' Conference in Hobart. Some of the topics covered during three day Conference programme included complex civil litigation, the impact of migration law on administrative law, and policy and ethical issues in litigation funding.
- In February, nine Supreme Court judges attended a cross-jurisdictional twilight seminar "Recent Amendments to the Evidence Act" given in the Banco Court by Mr Stephen Odgers SC.
- In May, 12 judges attended an advanced online research skills workshop held at the court.
- In August, the annual Supreme Court Judges' Conference was held at the Mercure Hunter Valley Gardens in Pokolbin. Forty-one judges, three associate judges and one acting judge attended the three-day conference. This year's keynote speaker was Lord Neuberger of Abbotsbury. In his keynote address, entitled *Proprietary Estoppel in Domestic and Commercial Contexts*, Lord Neuberger examined the development of the doctrine of proprietary estoppel (or equitable estoppel as it is known in Australia) and considered a number of cases that have been the subject of much extra-judicial comment and interest by reason of their differing approach. Several of the Court's judges presented sessions at the Conference. Acting Justice Handley provided a commentary on Lord Neuberger's paper; Justice Howie spoke about *Developments in Criminal Trials*; Justice Rein presented a paper entitled *Outside the Construction Zone: Three Aspects of Practical Importance in Insurance Litigation*; and Justices Allsop and McCallum provided a short presentation about the *Exchanging Ideas Conference*. In addition, Justices McClellan, Bergin, Hoeben and Brereton participated in a panel discussing *Current (or is that Concurrent?) Trends in Expert Evidence and Expert Determination*. There were also several guest presenters at the conference. The Chief Justice of Australia, the Honourable Robert French, spoke about *International Conventions and Australian Domestic Law*; Professor Prue Vines from the Faculty of Law at the University of NSW spoke about *Government Liability in Tort – Public Authorities*; Major General (Retired) Jim Molan delivered a session about *Running the War in Iraq*; and Professor Fred Watson, Astronomer in Charge at the Anglo-Australian Telescope, presented a session on *Astronomers Behaving Badly*.
- In August six judges attended the Annual Supreme Court Conference on Corporate Law organised by the Supreme Court of New South Wales, the Law Society of New South Wales and the Ross Parsons Centre of Commercial, Corporate and Taxation Law at the University of Sydney. Each of the five sessions was chaired by a judge of the Court. The Conference was substantially organised by Justice Robert Austin who prepared a detailed background paper for the Conference and edited the publication of the papers delivered which were: Professor Ian Ramsay "In the Best Interests of the Company (including creditors)"; Ian Jackman SC "Recent Developments in Liability for Insolvent Trading"; Neil Young QC "Directors' Duty of Care and Diligence"; Professor Jennifer Hill "New Trends in the Regulation of Executive Compensation" and Alan Cameron "How Do Directors Sleep at Night?".
- In October, 10 judges attended a twilight seminar "The Mental Health Legislation Amendment (Forensic Provisions) Act" given by the Honourable Greg James QC.
- In December, 12 judges attended a twilight seminar given by The Honourable Justice McClellan and The Honourable Justice Hoeben AM RFD on "Concurrent Evidence in the Supreme Court".

PUBLIC EDUCATION PROGRAMME

Other domestic educational activities judges undertook during the year included:

- Judgment Writing Workshop: Five judges attended a cross-jurisdictional judgment writing workshop. These interactive workshops help judicial officers develop and refine the ability to write clear, concise, well-structured judgments. Twenty eight Supreme Court judges have now attended one of these workshops.
- Orientation Program: Four judges from the Supreme Court attended one of the two five-day residential National Judicial Orientation Programs, which assist newly appointed judicial officers with their transition to judicial office by facilitating the development and refinement of the skills and knowledge necessary for effective judging. It is conducted by the National Judicial College of Australia with the assistance of the Judicial Commission of New South Wales and the Australian Institute of Judicial Administration.
- Aboriginal Awareness Program: Supreme Court judges were enthusiastic participants in the Judicial Commission's Ngará Yura Program which aims to increase awareness among judicial officers about contemporary Aboriginal society, customs and traditions, and their effect on Aboriginal people in the justice system. The "Exchanging Ideas" Conference brought together judicial officers from all levels of the courts and Aboriginal community members from across NSW to discuss a diverse range of matters relating to Aboriginal cultural, social and legal issues. It provided a unique opportunity for a discussion of the ways judicial officers may contribute to the just treatment of Aboriginal people in the court system. Four Supreme Court judges were involved.
- 360 Degree Feedback Program: This year, two judges participated in the 360 degree feedback program conducted for a cross-jurisdictional group of judges and magistrates. The program is designed to provide judicial officers with candid, constructive feedback on their performance, and assist in their personal and professional development
- Bench Book Development: The Court continued to work with the Judicial Commission to ensure the Criminal Trials Courts Bench Book and the Civil Trials Bench Book were regularly updated by judges to reflect developments in the law and sentencing practice.

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 1,000 students and members of the public attended these lectures in 2009.

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 2009, the PIO handled 3,327 enquiries from the media. Of these:

- 76.2 per cent (2,467 enquiries) related to Supreme Court matters;
- 18 per cent (582 enquiries) related to District Court matters, and
- 5.8 per cent (278 enquiries) related to other courts, including the Industrial Relations Commission and the Land and Environment Court.

Of the 3,327 media enquiries received: 64.3 per cent were from Sydney metropolitan journalists/reporters (major newspapers, radio and TV stations); 18.9 per cent were from NSW regional newspapers, radio and TV stations, 2.9 per cent were from suburban Sydney newspapers, and 1.4 per cent were from interstate journalists. The remaining 12.5 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. 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. The President of the Court of Appeal, Justice Hoeben, and Justice Rein also represent the Court on the Committee.

JUSTICELINK

The Court continued to be actively involved in the NSW Department of Justice and Attorney General'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 2009:

- The Honourable Justice Howie;
- The Honourable Justice Gzell;
- The Honourable Justice Latham;
- The Honourable Justice Rein
- 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 Department of Justice and Attorney General 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 Department of Justice and Attorney General 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 2009, the Supreme Court representatives on the Advisory Committee were:

- The Honourable Justice Allsop;
- 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. It also assesses the qualifications of overseas applicants and accredits academic law degrees and practical legal training courses. 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 and the Law Admissions Consultative Committee (LACC).

During 2009, 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; until 23 June)
 The Honourable Justice Campbell
 The Honourable Justice Slattery (Deputy Presiding Member from 24 June)
 Mr J Gormly SC
 Mr G McGrath
 Mr C Cawley
 Mr J Dobson

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 2009

- Since the Uniform Principles were introduced in April 2008, the Board has continued to work with the Law Admissions Consultative Committee (LACC) and other Australian admitting authorities to apply the Principles when assessing overseas qualifications. Recommendations for amendments made by the Board have been adopted by LACC. In an effort to assist applicants in their understanding of the Principles, the Board published a paper 'Policies for Overseas Applicants for Admission' on its website.
- After much discussion about the Principles and their impact on eminent overseas practitioners, in particular, those from the UK, the Board made it known that it would retain an unfettered discretion to grant exemptions under section 24(4) of the *Legal Profession Act 2004*. In order to facilitate reform and uniformity, documentation relating to all exemptions granted by the Board was circulated to LACC, Admitting Authorities and the National Legal Profession Taskforce.

Table 6.1: Summary and comparison of the Legal Profession Admission Board's workload

	2007	2008	2009
Lawyer admissions approved by the Board	1,985	2,005	1,839
Certificates of Current Admission produced by the Board	452	427	324
Public Notaries appointed by the Board	58	58	66
Students-at-Law registrations	600	548	610

(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. In addition to appeals from sub-committee decisions and requests for extensions of the periods of validity of academic and practical training exemptions, it considers applications from students-at-law who seek approval under rule 97(9) to apply for exemptions on the basis of studies undertaken at other institutions after registration as a student-at-law with the Board.

During 2009 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 S Leis

Ms E Picker

Mr H Macken

Mr C Cawley

Mr J Dobson

Mr G Ross

Mr R Harris

Mr P Underwood

Professor A Lamb AM

Dr G Elkington

Executive Officer and Secretary: Ms R Szabo

Work during 2009

- The Committee and its sub-committees continued to apply the Uniform Principles to applications for overseas assessment and worked closely with the Board in resolving issues that arose as a result of their implementation. In addition to reviewing and making recommendations to the Board on changes proposed by the Law Admissions Consultative Committee (LACC) it has suggested changes that have ultimately been adopted by LACC.
- The Committee considered a record number of applications for review (87), compared to 70 in 2008 and 33 in 2007 – a direct result of the introduction of the Principles. The Committee also considered 25 applications for extensions of time for academic or PLT exemptions, 19 of which were approved and 11 requests from students to credit subjects undertaken at other institutions, 9 of which were approved.

Table 6.2: **Applications considered by the Legal Qualifications Committee**

	2007	2008	2009
Applications for Academic Exemptions	509	616	443
Applications for Practical Training Exemptions	207	195	103

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.

ADMISSION UNDER THE MUTUAL RECOGNITION ACTS

During 2009, the members of the Examinations Committee were:

The Honourable Justice Simpson (Chairperson)
 The Honourable Justice Hall (Deputy Chairperson)
 Mr M Christie SC
 Mr J Dobson
 Mr F Astill
 Ms S Carter
 Mr R Anderson
 Executive Officer and Secretary: Ms R Szabo

Work during 2009

- The Committee approved a new Family Law syllabus, which takes into account recent changes, particularly the less adversarial trial (LAT) process in parenting and family services.
- It endorsed and referred to the Board for approval, proposals that assignments contribute towards the final examination mark and the introduction of a new optional course to the Board's Diploma in Law curriculum entitled *Understanding Legal Language and Legislation*.
- Amendments and improvements continued to be made to the document setting out requirements of Examiners and Revising Examiners in the conduct of the Board's exams and the Committee continued to closely monitor each semester's examination performance statistics

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 2009, 38 New Zealand practitioners were enrolled under the Trans Tasman Mutual Recognition Act 1997. No person was admitted under the Mutual Recognition Act 1992. For comparison purposes, in 2008, there were 64 Trans-Tasman admissions and nil interstate enrolments, while for 2007, the respective totals were 70 and 3. The number of practitioners enrolled under the Mutual Recognition Act 1992 is negligible, if not non-existent as each State and Territory, except South Australia, has enacted legislation that allows interstate practitioners to practise seamlessly throughout Australia.

Table 6.3: **Three-year comparison of the Examinations Committee's workload**

	2007	2008	2009
Examination subject enrolments by Students-at-Law	5,042	4,847	4,804
Approved applications to sit examinations in non-scheduled venues	46	39	45
Approved applications for special examination conditions	37	34	41
Student-at-law course applications	310	236	248
Applications from students-at-law liable for exclusion from the Board's examinations	361	335	315

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. Applications under the Scheme are determined by external assessors appointed by the Chief Justice. All assessors are members of the legal profession. The Chief Justice also appoints costs assessors to the Costs Assessment Rules Committee. Mr Gordon Salier AM, solicitor, was the Chair of the Costs Assessment Rules Committee during 2009. There were no meetings of the Costs Assessment Rules Committee in 2009.

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 the Manager, Costs Assessment, costs assessors, costs consultants and a representative of the Office of the Legal Services Commissioner.

During 2009, 1,991 applications were lodged. Of these, 1,081 (54 per cent) related to costs between parties; 253 (13 per cent) were brought by clients against practitioners, and 502 (25 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 2009, 155 (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. However, following a legislative change on 1 September 2008, these appeals are heard in the District Court, not the Supreme Court, unless in the case of a party/party application a party seeks leave to appeal to the court or tribunal that made the costs order.

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.

7 APPENDICES

APPENDIX (I): NOTABLE JUDGMENTS – SUMMARIES OF DECISIONS

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

1. Australian Securities and Investments Commission v Macdonald (No 11)

This decision was one of several the Court handed down in determining the plaintiff's civil penalty proceedings against former executive and non-executive directors of James Hardie Industries Limited ("JHIL"). This particular decision was significant as it clarified the statutory duties of executives, particularly those of non-executive directors.

The 12 defendants in the proceedings comprised the company being wound up (ABN 60 Pty Ltd, formerly known as JHIL), a Dutch holding company, three executive directors and seven non-executive directors of JHIL. JHIL was the holding company for the James Hardie group of companies. These companies were responsible for the production and sale of asbestos products and subject to significant damages claims from people affected by asbestos related diseases. While there were some differences in the claims the plaintiff made against each defendant, they essentially related to the JHIL board's role in approving and distributing several allegedly false and misleading communications.

The first aspect of the plaintiff's allegations against the directors was that they allegedly approved false and misleading Australian Stock Exchange announcements about an independent foundation established to cover future damages claims for asbestos related diseases. The statements indicated the foundation was fully funded and had the capacity to meet all future legitimate asbestos claims. The plaintiff alleged the board's approval of false or misleading statements contravened section 180(1) of the *Corporations Act*. It further alleged that one executive director had breached section 181(1) by failing to exercise his powers and discharge his duties in good faith, in the best interests of the corporation, and for a proper purpose.

The second aspect of the plaintiff's allegations focussed on a memorandum sent to members of JHIL concerning the availability of partly paid shares to meet JHIL's liabilities. The memo stated that the partly paid shares would allow JHIL to call on the resources of new Dutch holding company, James Hardie Industries NV ("JHINV"), if it required funds to meet liabilities. The plaintiff alleged this statement was false or misleading because the board knew the

partly paid shares would be cancelled during a planned restructure. The plaintiff claimed the 11 directors breached section 180(1) by approving the memo's distribution without amendment.

1. Examination and clarification of the differences between the statutory duties imposed on executive and non-executive directors

Justice Gzell made a range of findings concerning the stock exchange announcements, mostly, but not exclusively, supporting the plaintiff's allegations. His Honour was satisfied JHIL's board certainly approved a draft announcement that exaggerated the adequacy of the foundation's funding, and its ability to unreservedly cover all future legitimate damages claims. Justice Gzell dismissed any suggestion that blame could be transferred from the directors to those responsible for drafting the announcement, or that an appreciation of the announcement's inaccuracy required detailed specialist knowledge. The announcement concerned a major restructure, the details of which all 11 directors were familiar, and was written in plain English. Justice Gzell found that, by approving the draft announcement, all 11 executive and non-executive directors failed to discharge their duties with the care and diligence section 180(1) demands.

His Honour made further findings about the executive directors. Justice Gzell found all four executive directors had additionally breached section 180(1) when they failed to declare to the rest of the board that there were known limitations in the financial projections referred to in the announcement. However, his Honour was not prepared to allow the plaintiff's claim that the directors breached their duties by failing to declare that the projected liabilities for future asbestos claims were too uncertain.

Justice Gzell also considered the added duties on individual executive directors. JHIL's CEO and Company Secretary, Mr Macdonald and Mr Shafron, were uniquely positioned to have the greatest input into decisions affecting the whole, or a substantial part, of JHIL's business. Consequently, Justice Gzell found they had an added obligation to alert the rest of the board to the announcement's inaccuracies, and their failure to do so constituted another breach of section 180(1). Justice Gzell also found that

Mr Macdonald had the opportunity to amend the statement before its publication and his failure to remove the false or misleading material constituted another contravention of section 180(1). His Honour also found that Mr Macdonald's verbal repetition of the false and misleading financial projections at several roadshow presentations was yet another breach of section 180(1).

However, Justice Gzell rejected the plaintiff's allegations that Mr Macdonald had breached section 181(1) of the Act. His Honour held that section 181(1) is only contravened when a director knowingly engages in conduct contrary to a company's interests. While Mr Macdonald may have exercised poor judgment in promoting the establishment of the foundation to the extent he did, the evidence did not establish any improper or collateral motivation.

The plaintiff was also unsuccessful in its claims regarding the memorandum on partly paid shares. The plaintiff's allegation rested on proving that at the time the directors approved the memo, they knew the partly paid shares would be cancelled, or assumed that this would happen. Justice Gzell could not find any evidence to support this intention or assumption; therefore, the memorandum was neither false nor misleading. None of the executive or non-executive directors were found to have breached section 180(1) in this respect.

Bench: Gzell J

Citation: Australian Securities and Investments Commission v Macdonald (No 11) [2009] NSWSC 287[2009] ALMD 5385; 27 ACLC 522; 71 ACSR 368; 256 ALR 199; 230 FLR

Judgment date: 23 April 2009

2. Australian Securities and Investments Commission v Rich

Mr Rich and Mr Silbermann ("the defendants") were respectively the former Joint Managing Director and Finance Director of One.Tel, a large Australian listed company that collapsed in May 2001. The Australian Securities and Investments Commission ("ASIC") alleged that the defendants contravened section 180 of the Corporations Act (2001) (Cth). This section imposes a civil penalty on any company director or officer shown to have breached his or her statutory duty of care and diligence. ASIC sought

a compensation order for \$92 million in favour of One.Tel (in liquidation), along with orders banning the defendants from managing a corporation for appropriate periods.

This case was one of the largest civil trials in the Court's history. It was heard over 232 days; involved 67 published interlocutory judgments; generated 16,000 pages of transcript, and the parties handed up more than 18 volumes of final written submissions.

ASIC's case against the defendants hinged upon demonstrating that:

- the true financial position of the One. Tel Group in the four months preceding its collapse was much worse than that conveyed to the board of directors;
- financial forecasts provided to the board and the market through media releases, particularly for the period to June 2001, had no proper basis, and
- the defendants were either aware of the poor financial position (or at least ought to have been), and deliberately withheld these issues from the board.

In support of its claims, ASIC presented the Court with three categories of documents: the Australian fixed wire/service provider management accounts; the Australian aged creditor reports, and collection profile summaries. Justice Austin found these documents failed to withstand close scrutiny, and were on the whole too unreliable to form the basis for such broad financial findings. This unreliability was compounded by ASIC's failure to bring forward witnesses to explain these contentious documents and give evidence as to their status.

ASIC was also unable to sufficiently advance its case through other, less contentious evidence. The defendants were consistently able to provide alternate, plausible explanations for what ASIC alleged had occurred. Also, the Court had to reject many of ASIC's submissions as they strayed outside the scope of its pleading. All these factors compromised ASIC's ability to prove its case to the appropriate civil standard.

Ultimately, Justice Austin found that ASIC failed to establish that either defendant had breached the

statutory duty of care and diligence that section 180 of the Corporations Act imposes. Justice Austin found that, although ASIC's contentions had some superficial appeal, they were time and again shown to be unpersuasive when the underlying financial detail was investigated.

With respect to costs, Justice Austin's preliminary view was that costs should be awarded on a party/party basis, as agreed or assessed. On 5 February 2010, Justice Austin ordered ASIC to pay the defendants' legal costs quantified at nearly \$14 million.

Bench: Austin J

Citation: Australian Securities and Investments Commission v Rich [2009] NSWSC 1229; 75 ACSR 1; 236 FLR 1

Judgment date: 18 November 2009

3. Berjaya Group (Aust) Pty Ltd v Ariff; Australian Securities and Investments Commission v Ariff

These two cases focussed on the conduct of the same Administrator, Mr Ariff. The first case, the "Berjaya case", concerned Mr Ariff's attempts to subvert restrictions on his remuneration under a deed of company arrangement. Mr Ariff's conduct in this regard led to him being denied a substantial portion of his claimed remuneration as an administrator. The evidence that emerged from the Berjaya case regarding Mr Ariff's conduct and charging practices gave rise, in part, to the second case: the "ASIC case". This was an application by the Australian Securities and Investment Commission (ASIC) for the Court to exercise its supervisory powers under the *Corporations Act 2001* (Cth).

In the Berjaya case, the plaintiffs were two groups of related companies referred to collectively as the Berjaya Companies and the Carlovers Companies. The Berjaya Companies were the major shareholder (97%) and creditor (90%) in the Carlovers Companies. Mr Ariff was appointed the administrator of the Carlovers Companies under a deed of company arrangement pursuant to Part 5.3A of the *Corporations Act*. Under this arrangement, the Carlovers Companies were to remunerate Mr Ariff. The dispute before the Court arose after Mr Ariff claimed remuneration

greatly exceeding the level upon which the Berjaya Companies felt they had agreed.

In a letter dated 9 September 2004, Mr Ariff indicated to the Berjaya Companies, the major creditors, that he would only seek to recover his future remuneration from Deed Fund Number 1, an account established under the deeds of company arrangement. Under the deed, this account could only be used to pay Mr Ariff's remuneration with respect to the preparation, approval and implementation of the Deed. Any fees or disbursements Mr Ariff accrued after 9 September 2004 were not to be recovered from Deed Fund Number 1. This letter was issued in exchange for the Berjaya Companies' undertaking that they would support Mr Ariff's claim for remuneration payable since his appointment as administrator until the date of the letter, a period of roughly nine months.

Although Mr Ariff did not concede he agreed to the conditions conveyed in the letter, Justice Barrett found in the plaintiffs' favour. His Honour held that the representation contained in the letter induced the Berjaya Companies to expect that Mr Ariff would draw remuneration solely from Deed Fund Number 1, and that he would refrain from resorting to other assets of the Carlovers Companies. Mr Ariff did nothing to warn the Berjaya Companies that he intended to depart from his representation.

Justice Barrett also held that, while Mr Ariff's representation was made to the Berjaya companies only, the estoppel in their favour should extend to the remaining 10% of shareholders and creditors with an interest in the Carlovers Companies. His Honour made orders under section 447A of the *Corporations Act* confirming that the deeds of company arrangement are to operate and Mr Ariff must limit his remuneration consistent with his representations made in the letter of 9 September 2004.

A little more than two months after Justice Barrett made these orders, Mr Ariff appeared before Justice Bergin for the conclusion of the ASIC case. The ASIC case commenced in 2008 following an investigation ASIC undertook in 2007. This investigation encompassed Mr Ariff's conduct as the liquidator of 16 companies, including the Carlovers Companies. The investigation led ASIC to conclude that Mr Ariff was not faithfully performing

his duties as an insolvency practitioner, and that his conduct was contrary to the interests of creditors or members of a company. ASIC approached the Court for orders under sections 447E and 536 of the *Corporations Act*. Under Section 536, the Court may conduct an inquiry into the matter, conduct an examination of the liquidator, and make any orders it considers appropriate and just, including compensation.

After contesting ASIC's claims for a year, Mr Ariff admitted to the 83 allegations of misconduct levelled against him. In doing so, Mr Ariff admitted to charging the Carlovers Companies for overseas travel for himself and his family, including travel expenses and accommodation charges over a period of 4 years. Those travel expenses had nothing to do with the business of the Carlovers Companies. Mr Ariff also admitted that he had paid family members large amounts of the companies' money, amounts that he claimed to be for services to the company, but in reality had nothing to do with the Carlovers companies. Mr Ariff also admitted to failures to properly administer numerous other companies and making unauthorised and improper payments to himself.

Mr Ariff consented to declarations in relation to the 16 companies to whom he had not faithfully performed his duties as a liquidator, and managed in a manner contrary to the interests of creditors and members. Mr Ariff also consented to a declaration that he was unfit to hold the office of liquidator and that he be prohibited from holding that office and agreed to pay compensation to the companies he had mismanaged.

Following Mr Ariff's admissions, Justice Bergin ordered that Mr Ariff be prohibited for life from holding the office of official liquidator, registered liquidator, liquidator, provisional liquidator, voluntary administrator, administrator of a deed of company arrangement, or controller. Her Honour also ordered that he pay compensation totalling \$4.9 million to the 16 companies he had mismanaged.

Bench: Barrett J; Bergin CJ in Eq

Citations: *Berjaya Group (Aust) Pty Ltd v Ariff* [2009] NSWSC 569; *Australian Securities and Investments Commission v Ariff* [2009] NSWSC 829

Judgment dates: 18 June 2009; 18 August 2009

4. *Caterpillar of Australia Pty Ltd v Industrial Court of New South Wales*

Mr Gough and Mr Gilmour were the owners and senior executives of the second respondent, a company (collectively "Gough and Gilmour"). Caterpillar, the applicant, entered into three Dealership Agreements with the second respondent in 1991 for the sale and servicing of the applicants' construction and mining equipment. The Dealership Agreements, along with the Last Resort Policy and the Fourth Assurance, formed an Overall Arrangement. There was a breakdown in the relationship between Caterpillar and Gough and Gilmour that led to Caterpillar to terminate the arrangements.

Gough and Gilmour instituted proceedings under section 106 of the *Industrial Relations Act 1996* in the Industrial Court of New South Wales. Justice Boland held that the contractual arrangement was unfair and made orders varying it. Caterpillar unsuccessfully challenged the jurisdiction of the Industrial Court, and appealed that holding to the Full Bench which also dismissed it.

Caterpillar then invoked the supervisory jurisdiction of the Court of Appeal pursuant to sections 58(2) and 69 of the *Supreme Court Act 1970*, principally challenging the jurisdiction of the Industrial Court to order the variation of the contractual arrangements pursuant to section 106(1).

The Chief Justice (President Allsop and Justice Tobias agreeing) held that there is a significant distinction between the supervisory jurisdiction of a superior court of general jurisdiction, such as the Court of Appeal, and a superior court of limited jurisdiction, such as the Industrial Court. The Court noted that decisions with respect to jurisdictional error by courts created under Ch III of the Constitution are instructive but must be treated with care.

In the interpretation of section 106(1), the Court held that a court is required to have regard to the context in which words appear, without

4. Considers the scope of the Industrial Court of New South Wales' jurisdiction under section 106 of the Industrial Relations Act 1996, and the Court of Appeal's supervisory jurisdiction over the Industrial Court

the need to first identify an ambiguity. As such, the phrase “whereby a person performs work in any industry” must be interpreted in the overall industrial context of the *Industrial Relations Act* 1996. The introduction of section 106(2A) confirms that “whereby a person performs work in any industry” must be read and understood in an industrial context. This is reinforced by the second reading speeches. The Full Bench failed to give express regard in its reasons to the industrial context of the legislative scheme.

The Court considered a trilogy of recent High Court decisions *Fish v Solution 6 Holdings Ltd* [2006] HCA 22; (2006) 225 CLR 180; *Batterham v QSR Ltd* [2006] HCA 23; (2006) 225 CLR 237 and *Old UGC Inc v Industrial Relations Commission of New South Wales* [2006] HCA 24; (2006) 225 CLR 274, in applying s 106(1). The first step is to determine whether a person performs work in any industry and the second step is to identify the arrangements whereby that work is performed. The Full Bench did not take this approach and was in error in failing to focus on the contractual arrangement between the second respondent and Messrs Gough and Gilmour.

The further away the relevant contract or arrangement is from something resembling an employer/employee relationship, the less likely that it satisfies the statutory ‘hinge’ in section 106. The Full Bench erred in concluding that Messrs Gough and Gilmour were performing work in an industry. There was no “industrial” element of the work they performed. They were entrepreneurs who conducted an enterprise of significant scale. Insofar as they performed work, they did not perform it consequence of the Dealership Agreements or the Overall Arrangement. Section 106(2A) was not satisfied and could not be used as a basis to vary the Last Resort Policy or the Fourth Assurance.

Bench: Spigelman CJ; Allsop P; Tobias JA
Citation: Caterpillar of Australia Pty Ltd v Industrial Court of New South Wales [2009] NSWCA 83
Judgment date: 17 April 2009

5. Fenwick, Re; Application of J R Fenwick & Re Charles

These two applications required the Court to exercise its powers under sections 18 to 26 of the *Succession Act 2006*, which concern the

authorisation of “statutory wills”. These sections empower the Court to make, alter or revoke the will of a person lacking testamentary capacity.

The combined judgment in these two matters is the first of its kind, and as such, offers significant guidance on the proper interpretation and application of these legislation provisions.

The applicant in *Fenwick* was the sole carer of his younger brother, an adult male. The applicant’s brother was placed in his care after sustaining severe head injuries in a workplace accident. These injuries rendered the applicant’s brother incapable of altering the will he had made 10 years before his accident. The applicant asked the Court to authorise a statutory codicil to the existing will to include his brother’s children as supplementary beneficiaries.

All the beneficiaries in the existing will were older than the applicant’s brother, and some had suffered from life-threatening illnesses. Consequently, it was conceivable that the applicant’s brother would outlive all of his beneficiaries. This event would result in an intestacy, which could trigger the complete transfer of the sizeable estate to the Crown. Without the proposed codicil, the applicant’s brother’s children might be denied a share of their own father’s estate.

The applicant in the matter of *Charles* was the Minister for Community Services. The Minister applied for the authorisation of a statutory will on behalf of a child who had been permanently incapacitated following injuries consistent with “shaken baby syndrome”. While the child’s parents were never charged with the offence, the surrounding circumstances and their inability to explain the child’s injuries created suspicions about their actions.

As it currently stood, if the child were to die intestate, his estate – which included a substantial award from the Victims Compensation Tribunal for his injuries – would go in equal shares to his parents under section 61B (5) *Probate and Administration Act 1898*. Under the statutory will the Minister proposed, the child’s estate would instead pass on

5. Interpretation and application of previously untested statutory will provisions in the Succession Act 2006

to his sister, or to various charitable organisations should she predecease him.

Justice Palmer authorised both applications. His Honour was satisfied that the persons who would otherwise have been entitled to administer the estates upon intestacy (in the absence of the statutory codicil or will) did not object to the applications. Justice Palmer also examined historical antecedents to statutory wills in other jurisdictions domestically and abroad, before ultimately deciding New South Wales should instead start with a “clean slate”.

His Honour also analysed the requirements of sections 18 to 22 of the Act, with particular emphasis on the interpretation of section 22(b). This section required examination of whether the proposed will, alteration or revocation was, or was reasonably likely to be, one that the person would have made if he or she had testamentary capacity. Importantly, Justice Palmer identified the significance of the person’s subjective intention in the three circumstances in which the Court would inevitably be required to apply section 22(b): intention in a lost capacity case; intention in a nil capacity case, and intention in a pre-empted capacity case.

Bench: Palmer J

Citation: Fenwick, Re; Application of J R Fenwick & Re Charles [2009] NSWSC 530

Judgment date: 12 June 2009

6. Hall v Poolman

The liquidators of two companies in voluntary winding up commenced recovery proceedings against two directors of the companies, in accordance with an agreement with a litigation funder. The likelihood of securing a return for creditors was remote. The directors argued that they should not be held liable under sections 1317S and 1318 of the *Corporations Act* when so little, if any, of the proceeds of the litigation would go to creditors. That submission was unsuccessful but the trial judge ordered an inquiry pursuant to sections 536(1)(a), 536(1)(b) and 536(3) of the *Corporations Act*.

In the Court of Appeal, the liquidators challenged the decision to order an inquiry. The appeal proceeded without a contradictor. The Chief Justice, Justice Hodgson and Justice Austin held that there

was sufficient basis for the trial judge to order an inquiry, but on re-exercising the discretion declined to order an inquiry in light of the circumstances.

In interpreting section 536, the court indicated that the range of complaints under s 536(1)(b) is not confined by section 536(1)(a), declining to follow *Vink v Tuckwell* [2008] VSC 100. Section 536 requires the applicant to demonstrate something about the liquidator’s performance of duties that is a sufficient basis for making an order for inquiry, but there does not need to be a prima facie evidentiary case. Ultimately, the court has a discretion to order an inquiry, which it must exercise in accordance with its supervisory role of liquidation proceedings. In its reasons, the Court indicated that there is no lesser degree of supervision of liquidators simply because they are not court-appointed liquidators.

Justice Hodgson and Justice Austin held that a complaint under section 536(1)(b) need only be a criticism expressed to the court, in any context, with respect to the fulfilment of the liquidator’s duties. There is no specific form of complaint required under that section, or under rule 7.11(1) of the *Supreme Court (Corporations) Rules* 1999 where the complainant is already before the court.

The Chief Justice held that section 536(1)(b) requires a formal request to the court to make an inquiry, and that alternatively rule 7.11(1) of the *Supreme Court (Corporations) Rules* 1999 imposes a mandatory process for making a complaint under section 536(1)(b) by way of originating process.

The Court commented on the relationship between sections 536(1) and 536(3) and on the factors relevant to the exercise of discretion to order an inquiry under section 536. It was not necessarily improper for a liquidator to pursue litigation with the aid of litigation funding even in circumstances where recovery of monies for creditors was unlikely. However, a prima facie view by the trial judge that the cost of proceedings was disproportionate to the maximum possible recovery and that the

6. Clarifies the obligations on liquidators charged with undertaking recovery proceedings in which the likelihood of securing a return for creditors is remote

proceedings could have been conducted at a significantly lower cost, was a sufficient basis to order an inquiry.

However, there is no requirement that liquidators should routinely approach the courts before entering into a litigation funding agreement and it is relevant to consider the public interest in the proceedings as a factor in the court's exercise of discretion. In failing to account for these various factors appropriately, the trial judge's exercise of discretion miscarried.

In re-exercising the discretion, the Court held that there did not appear to be any utility in ordering an inquiry, in light of the fact that costs had been settled and the *Australian Securities and Investments Commission* had declined to appear in the proceedings.

Bench: Spigelman CJ; Hodgson JA; Austin J

Citation: Hall v Poolman [2009] NSWCA 64; 254 ALR 333 228; FLR164 71; ACSR 139 75; NSWLR 99

Judgment date: 31 March 2009

7. Hunter and New England Area Health Service v A by his tutor T

These proceedings required the Court to determine if the defendant's refusal to receive medical treatment was a valid exercise of his right of self-determination.

On 1 July 2009, the defendant ("Mr A"), was admitted into the emergency department of a hospital administered by the plaintiff ("the Service"). Mr A was suffering from septic shock and respiratory failure and in a state of diminished consciousness. His condition gradually worsened, and within a fortnight Mr A was being kept alive by mechanical ventilation and kidney dialysis.

On 14 July 2009, the Service became aware of a document apparently prepared by Mr A a year earlier. The document indicated that Mr A would refuse dialysis. It was subsequently discovered that Mr A's refusal to receive dialysis most likely stemmed from his religious beliefs (Mr A was a member of the Jehovah's Witness congregation). The Service sought declarations from the Court that Mr A's document was a valid "Advance Care Directive" ("ACD"), and that it would be justified in complying with his refusal to receive dialysis.

Justice McDougall considered the common law principles governing a patient's right of self-determination. Two established yet conflicting themes emerged from His Honour's exploration of the common law:

- that a competent adult has the right of self-determination over his or her body; and
- that the State has an interest in protecting and preserving the lives and health of its citizens.

Justice McDougall was careful to clarify that in this case the Court was not being asked to consider any such notion as "the right to die" but, rather, to recognise a competent individual's right to refuse medical treatment, even if death may result from that decision.

Justice McDougall concluded that the court should start by respecting the proposition that a competent individual's right to self-determination prevails over the State's interest in the preservation of life, even though the individual's exercise of that right may result in his or her death. If an ACD is made by a capable adult, is clear and unambiguous, and extends to the situation at hand, it should be respected. A valid refusal may be based upon religious, social or moral grounds. It may be valid even if the reasons are apparently irrational, unknown or non-existent. Whilst the court should undertake a careful analysis of an ACD, an over-careful scrutiny of the material may well have the effect of undermining or even negating the exercise of the right of self-determination.

However, his Honour acknowledged that there would be situations in which the Court should question the validity and operation of an ACD. But his Honour emphasised that these circumstances should be confined to:

- where the person is not competent in law to give or refuse consent;
- where the consent or refusal of consent is obtained by undue influence;
- where the apparent consent or refusal of consent does not extend to the particular situation;
- where the terms of the consent or refusal of consent are ambiguous/uncertain;

7. Guidance on the considerations for courts when determining an individual's right of self-determination

- where the consent or refusal of consent has not been made in response to the provision of adequate information regarding the benefits of treatment and the dangers consequent on refusal.

Other exceptions to the general right of an individual to refuse medical treatment may arise where the individual's refusal to receive treatment compromises the wider community's health, or where carrying out the patient's wishes will lead to the death of a viable foetus.

Justice McDougall ultimately concluded that Mr A's document represented a considered decision, and that when Mr A made that decision, he had the legal capacity to do so. Justice McDougall also found there was no evidence to suggest Mr A's expression of intent was subject to undue influence, or that it was in any way unclear or uninformed. His Honour declared that the ACD was valid and that Service would be justified in ceasing dialysis.

Bench: McDougall J

Citation: *Hunter and New England Area Health Service v A* by his tutor T [2009] NSWSC 761; 74 NSWLR 88

Judgment date: 6 August 2009

8. Jameson v Professional Investment Services Pty Ltd

Jameson sought to bring a representative action under rule 7.4 of the *Uniform Civil Procedure Rules* ('UCPR'), on behalf of a group of investors who had acquired promissory notes from a company in liquidation within the Westpoint Group of companies. Jameson alleged that each investor obtained the promissory notes on the basis of recommendations made by authorised representatives of Professional Investment Services Pty Ltd. Jameson submitted that these recommendations breached various company law statutory duties, such as failure to provide a product disclosure statement, failure to provide appropriate advice, and misrepresentation.

Mr Justice Young, the Chief Judge in Equity at that time, made an order that the proceedings not continue as representative proceedings. His Honour also refused to grant leave to amend the originating

process. In the Court of Appeal, Jameson sought to have those two orders set aside.

The Chief Justice (President Allsop and Justice Ipp agreeing) held that Mr Justice Young's decision was an exercise

of the discretion to "otherwise order" under rule 7.4(2), and as such should be reviewed in the Court of Appeal using the *House v The King* (1936) 55 CLR 499 approach, that is, with deference to the trial judge's discretion.

The Court of Appeal held that his Honour failed to take into account or give sufficient weight to issues which would be common to all cases. These included the issue of the required content of a Product Disclosure Statement, had it been provided, which would likely involve significant contest between the parties.

His Honour also erred in finding that the "opt in" nature of the representative action weighed against the proceedings continuing as representative proceedings. Rule 7.4(2) of the UCPR provides flexibility and no one system of representative proceedings is necessarily to be preferred over another. Additionally, the Federal Court scheme is not applicable to the UCPR scheme.

Finally, the Court of Appeal indicated that it was important to give weight to the significant access to justice issues arising in representative proceedings. It was likely that litigation costs would have prevented the action proceedings as a series of individual cases. Courts should give proper weight to the access to justice a litigation funder might provide to people unable to individually bear the risks of litigation.

Bench: Spigelman CJ; Allsop P; Ipp JA

Citation: *Jameson v Professional Investment Services Pty Ltd* [2009] NSWCA 28; 72 NSWLR 281; 253 ALR 515

Judgment date: 25 February 2009

8. Courts should give proper weight to the access to justice a litigation funder might provide to people unable to individually bear the risks of litigation

9. Penrose v Nominal Defendant & Anor

This case required the Court to determine whether circumstantial evidence in a civil case can lead to a finding of serious misconduct against a defendant.

The plaintiff, Mr Penrose, suffered catastrophic injuries in a motor accident. Mr Penrose had attempted to get into a taxi when it drove away. Mr Penrose was dragged from the moving vehicle for over 300m before falling away. The taxi drove away without stopping. As neither Mr Penrose nor any witness could identify the taxi or driver involved, the proceedings were commenced against the Nominal Defendant. Following inquiries by the Nominal Defendant, Mr Penrose added the second defendant, known as Mr A, the owner of the taxi thought to be involved in the accident.

The main issue in the case was whether, on the balance of probabilities, Mr A's taxi was the one involved in the accident. While there was no direct evidence to definitively prove Mr A's taxi was involved, it was the same make and model, had the same distinguishing features described by witnesses, and was consistent in appearance with the taxi captured in CCTV footage of the accident.

GPS data from Mr A's taxi showed it was in the vicinity of the accident both shortly before and after the accident. Computer records also showed that the driver of Mr A's taxi refused another job in the accident's vicinity that night, but accepted work in a different area soon after.

The Nominal Defendant introduced evidence in an effort to exclude other taxis of the same make and model active at the time of the accident. Although not all such taxis could be excluded and the evidence was not exhaustive, it was sufficient to indicate there were few other taxis that could have been involved in the incident. Therefore, it was more probable than not that Mr A's taxi was the one involved in the accident.

The driver of Mr A's taxi at the time of the accident, known as Mr R, insisted he was not involved in the accident. Mr R testified that he could not remember whether or not he drove the taxi past the scene of the accident. When presented with GPS data placing him near the scene, Mr R refused to accept he would logically have driven down the street in which the accident took place given his departure

point and intended destination, and the lesser likelihood of fares in that street.

Justice Hoeben accepted that the test in *Briginshaw v Briginshaw* (1938) 60 CLR 336

set the relevant standard of proof in the present case. In a circumstantial case, it is sufficient if the circumstances raise a more probable inference in favour of what is alleged. Applying this test, Justice Hoeben was satisfied that the taxi being driven by Mr R was indeed the one involved in the accident. Despite Mr R's insistence to the contrary, Justice Hoeben was satisfied that the most logical route for Mr R to take would see him drive directly past the scene of the accident. Secondly, Mr R's refusal of work in that location following the time of the accident, but later acceptance of a job elsewhere, raised an inference that something unusual or untoward had occurred in that particular location. Finally, the exclusion of other taxis made it improbable that another taxi matching the description of Mr A's taxi was in the location of the accident at the time.

Justice Hoeben awarded Mr Penrose damages, to be paid by Mr A as assessed. His Honour also ordered Mr A to pay both Mr Penrose's and the Nominal Defendant's costs.

Bench: Hoeben J

Citation: *Penrose v Nominal Defendant & Anor* [2009] NSWSC 1187

Judgment date: 12 November 2009

10. R v Borkowski

This was a Crown appeal challenging the adequacy of a sentence delivered in the Penrith District Court. The Crown submitted that the trial judge's sentence was manifestly inadequate. Among other things, the Crown argued that the trial judge erred when he applied the maximum allowable discount to a sentence in recognition of Mr Borkowski's (the respondent's) guilty plea. The Court's judgment in this Crown appeal offers guidance on the principles that should govern a sentencing judge's application of the "utilitarian discount" for an early plea of guilty. Although this guidance was not strictly required

9. Examination of the required standard of proof in a civil proceedings for a finding serious misconduct on purely circumstantial evidence

to determine the appeal, it reflects the Court's growing awareness that decisions handed down in some criminal courts did not reflect established sentencing principles.

10. Discusses the proper considerations when applying the utilitarian discount to an offender's sentence

The "utilitarian discount" is a mathematically applied reduction to the sentence of a person who has pleaded guilty to an offence. The rate of discount ranges from ten to 25 per cent, and depends upon various factors, principally the time at which the plea of guilty was entered.

The respondent pleaded guilty on arraignment in the District Court to two charges of manslaughter following a street-racing incident. The trial judge sentenced Mr Borkowski to nine years' imprisonment, with a minimum period of six years to be served from the date he was charged. This penalty included a 25 per cent discount for pleading guilty at the commencement of his arraignment in the Penrith District Court. The trial judge indicated there was a local practice at that particular court whereby people who entered a plea of guilty on arraignment were always awarded the maximum discount.

The Court held that the discount to be applied for a plea of guilty does not depend upon the administrative arrangements or practice of a particular court or judge. The Court reinforced the need for the State's criminal courts to apply the discount in accordance with sentencing principles set out in statute, and supplemented by the decisions of the appellate courts.

The Court provided a summary of the general principles applicable to determining the appropriate discount. As a matter of general practice, the maximum discount should be awarded only to those accused persons who plead guilty in the Local Court, and continue that plea in a higher court. There may be a valid reason for awarding the maximum discount where this does not occur, but the reason would have to be exceptional.

In Mr Borkowski's case, the Court found that the trial judge should not have applied more than a 15 per cent discount to his sentence. The Court considered that in the usual case, a plea of guilty on

arraignment, and not at committal stage or sooner, cannot justify a discount greater than this unless there are exceptional circumstances. However, due to several errors by the Crown, including erroneously conceding at Mr Borkowski's sentence that the discount should be 20–22.5 per cent, the Court determined it should not interfere in this instance and ultimately dismissed the Crown's appeal.

Bench: McClellan CJatCL at 1; Simpson J at 2; Howie J at 5

Citation: R v Borkowski [2009] NSWCCA 102; 195 A Crim R 1; 52 MVR 528; [2009] ALMD 4819; [2009] ALMD 4858

Judgment date: 15 April 2009

11. R v BW & SW

This case required the Court to determine an appropriate sentence for a mother ("SW") and father ("BW") found to be responsible for the death of their 7-year-old daughter, Ebony.

Ebony was found dead in her bedroom on 3 November 2007. A post mortem examination revealed she weighed only nine kilograms and she had been the victim of prolonged and extreme neglect.

The jury found SW guilty of Ebony's murder. In doing so, the jury acknowledged SW deliberately failed to ensure Ebony received adequate nourishment or medical attention reflecting, at worst, an intention to kill Ebony, or at the very least, a reckless indifference to her life. The jury found BW guilty of the lesser alternate charge of manslaughter through criminal negligence. The jury confirmed that BW had breached his duty of care by failing to ensure Ebony received adequate nourishment or medical attention, and that this breach had contributed to her death.

Before determining appropriate sentences, Justice R A Hulme chronicled attributes of Ebony's short life that offered insight into the offenders' ultimate responsibility for her death, and the gravity of their offences.

By the age of five, Ebony was diagnosed with global developmental delay and autism. These conditions increased Ebony's vulnerability and reduced her capacity to defend herself against her parents' escalating neglect. Although there was considerable evidence to suggest a pattern of parental neglect

throughout Ebony's life, the situation deteriorated significantly in the final 16 months of her life. Ebony was a prisoner in her bedroom and excluded from family celebrations. The room in which she died was filthy and doubled as her toilet. Her bedroom was devoid of any household items except soiled bedding, and there were no toys in Ebony's room.

While Ebony's living conditions would have intensified her distress leading up to her death, undoubtedly the symptoms of chronic starvation were her greatest source of suffering. Expert medical evidence indicated that such severe malnutrition could only have resulted after weeks, or many months, of starvation. Medical evidence also confirmed that extreme hunger would have prompted behavioural changes in Ebony, and her distress must have been obvious to any adult who saw her.

Before sentencing SW and BW, Justice Hulme considered if there were any factors that might ameliorate their responsibility for Ebony's death. His Honour refused to accept that their abuse of prescription drugs prohibited them from perceiving Ebony's deteriorating condition, or from having the capacity to do something about it. While conceding they showed some signs of accepting responsibility for Ebony's death and there was little chance of either parent re-offending, his Honour stressed the need for both parents' sentences to contain a significant element of general deterrence.

In sentencing BW, his Honour accepted he had the lesser role in caring for of Ebony and that he had not seen her when her death was imminent. Nevertheless, BW still failed to intervene with any assistance upon observing her obviously poor condition leading up to her death. His Honour concluded that the difference between the standard of care that a reasonable person would have exercised, and that which BW exercised, was vast. Justice Hulme found the objective gravity of BW's offence was within the worst category for the crime of manslaughter. BW was sentenced to 16 years' imprisonment, with a non-parole period of 12 years.

When sentencing SW, His Honour considered her established physical and mental health problems, and claims that BW was physically abusive towards her. Notwithstanding these factors, Justice Hulme

concluded SW would have been well aware of Ebony's distress in her final weeks, yet still chose to do nothing about it. His Honour found that none of SW's personal circumstances reduced her extreme culpability for Ebony's death and that only the maximum sentence of life imprisonment was appropriate.

Bench: R A Hulme J

Citation: R v BW & SW [2009] NSWSC 1043

Judgment date: 2 October 2009

12. R v Khazaal

This case required the Court to determine an appropriate sentence for Mr Belal Khazaal. Mr Khazaal was convicted of knowingly making a document that could be used to assist in a terrorist act, an offence under section 101.5(1) of the *Criminal Code* (Cth). The maximum sentence for this offence is 15 years imprisonment.

Between 20 and 23 September 2003, Mr Khazaal downloaded numerous articles from the Internet to produce a book entitled "Provisions on the Rules of Jihad". Mr Khazaal made some editorial changes to the articles and added some commentary of his own to the book. Mr Khazaal subsequently submitted his document to a website possibly endorsed by al Qaeda in the hope that it might be published on that site.

The Crown alleged that the first half of the book advanced religious or ideological justifications for "Jihad", while the second half provided practical guidance to achieving martyrdom and destroying those who would oppose or oppress Islam. The book included material that referred to targeting foreign governments and officials, methods of assassination, and the commission of acts of violence in the name of restoring the nation of Islam.

Justice Latham considered the objective gravity of the offence in considerable detail. Her Honour rejected Mr Khazaal's submission that the jury's failure to find he *intended* to incite the commission of a terrorist act lessened the gravity of his offence. Her Honour also declined to accept that the Crown's inability to demonstrate a link between Mr Khazaal's document and the commission of any specific terrorist act reduced the objective gravity of his offence. The volume, detail and accuracy

of the document concerning the commission of terrorist acts, combined with the nature and extent of the harm it could cause, led Justice Latham to conclude that the offence was not far from the worst category envisaged under 101.5(1). Consequently, Mr Khazaal's offence called for a sentence close to the maximum penalty.

Justice Latham then considered Khazaal's subjective circumstances. While there was evidence to suggest Mr Khazaal exhibited symptoms of anxiety and depression, Justice Latham concluded that these related almost wholly to the circumstances of his arrest, charge and conviction, and did not contribute to his commission of the offence. Consequently, the imposition of a lesser sentence than otherwise appropriate was not warranted for reasons of ill health.

Justice Latham then considered the question of character. After considering some evidence indicating that Mr Khazaal had been convicted of several criminal offences in Lebanon, her Honour concluded that Khazaal could not be considered a person of good character. However, her Honour remarked that the issue of good character was of minimal significance to this sentencing exercise given the serious nature of the offence. Her Honour also concluded that Mr Khazaal's lack of remorse and acknowledgement of his extremist views, together with his repeated attempts to underplay the severity of his offence, reduced his prospects of rehabilitation.

Justice Latham ultimately sentenced Mr Khazaal to 12 years imprisonment with a non-parole period of 9 years.

Bench: Latham J

Citation: R v Khazaal [2009] NSWSC 1015

Judgment date: 25 September 2009

13. R v Pfitzner*

In mid October 2007, a child's body was found floating in a pond. A post mortem examination revealed that the child, Dean, had died from asphyxiation several days before his body was disposed of in the pond. The examination revealed that Dean had been shaken, choked, and possibly suffocated, although the exact manner in which he was asphyxiated remained unclear. Dean's mother,

Rachel Pfitzner, was charged with Dean's murder, a charge to which she pleaded guilty.

Ms Pfitzner had only recently resumed limited parental contact with her son following a custody battle with Dean's paternal grandmother. As a result of these proceedings, Dean's grandmother retained overall custody of Dean, but Ms Pfitzner was awarded access to her son for defined, scheduled periods. These interim orders were made in June 2007.

Although Ms Pfitzner was initially pleased to have renewed contact with her son, she became increasingly resentful of Dean's presence and reacted with unjustifiable anger towards him. Ms Pfitzner told people that Dean reminded her of his father, a man who was violent towards her during the time they were together. Bruises were evident on Dean's body when he died, and some witnesses testified that Ms Pfitzner would hit Dean several times a day. There was also evidence that Dean was severely neglected, often ordered to remain outside of the familial home while pleading to be allowed inside.

In late July 2007, the offender did not return Dean after a scheduled access period. Dean's grandmother commenced court proceedings in an attempt to compel Dean's return. A hearing to determine this issue in the Federal Magistrate's Court was scheduled for late September 2007, but subsequently adjourned to 11 October 2007. The recovery order made on this date was never given effect as it coincided with the day Ms Pfitzner killed her son.

Justice Hulme considered the objective seriousness of Ms Pfitzner's offence and whether the standard non-parole period of 25 imprisonment years should be imposed. His Honour acknowledged that the offence was unplanned and spontaneous. It had occurred in light of Ms Pfitzner's awareness that she was unlikely to succeed in the custody proceedings and was on the verge of having to relinquish her son to his grandmother's care. While Ms Pfitzner had undoubtedly intended to harm her son, she had not wished to kill him. However, the offence did occur as part of a course of ongoing mistreatment, and there was nothing to suggest Ms Pfitzner was operating under any mental condition that reduced her moral culpability.

Justice Hulme stressed the importance of general deterrence in a matter involving the murder of a young child. His Honour made no findings in favour of the offender that would suggest she was unlikely to re-offend, or that she had good prospects of rehabilitation. Ms Pfitzner had a considerable criminal history and was even subject to a good behaviour bond at the time of Dean's death. Her clear breach of this bond was an aggravating factor to be taken into account in her sentence for Dean's murder.

Ultimately, having taken Ms Pfitzner's guilty plea into account and assessing the objective seriousness of her offence as being slightly below the middle of the range, His Honour sentenced Ms Pfitzner to a term of imprisonment of 25 years and six months. Justice Hulme determined the non-parole period should be set at 19 years and two months.

Bench: R A Hulme J

Citation: R v Pfitzner [2009] NSWSC 1267

Judgment date: 9 December 2009

**This decision is subject to an ongoing appeal.*

14. R v Thomas Sam; R v Manju Sam

This case required the Court to determine an appropriate sentence for a couple found to be criminally responsible for the death of their infant daughter.

The facts that gave rise to these proceedings were as follows. Gloria Mary Thomas was born to Thomas Sam and Manju Sam ("the Offenders") on 18 July 2001. Both Gloria's parents were well-educated and, relevantly, her father Thomas was a qualified and practising homeopath. In October 2001, Gloria was diagnosed with eczema. Between October 2001 and May 2002, Gloria displayed clear and manifest symptoms of eczema. Gloria died on 8 May 2002, three days after her admission to Sydney Children's Hospital at Randwick.

As her eczema worsened, a variety of medical professionals in both Australia and India suggested that Gloria needed specialist treatment from a dermatologist. The Offenders repeatedly chose to disregard this advice, persisting instead with homeopathic treatment. Advice was received from several homeopaths, however Thomas Sam was the only homeopath in Australia actually examining

Gloria and administering her treatment. Gloria was also seen once by other homeopaths during a trip to India several weeks before her death.

Gloria's eczema ultimately covered her entire body. It caused Gloria to become severely malnourished and she developed an infection in her left eye. The totality of these symptoms culminated in a disseminated infection, which was the direct cause of her death. Although Gloria's parents had taken her to hospital on 5 May 2002 (a week after their return from India), her condition by that time was such that medical treatment could not save her life.

The Offenders were charged with the offence of manslaughter by criminal negligence; the jury found both Offenders guilty of this charge. Implicit in the jury's verdicts was a finding that the conduct of the Offenders fell far short of the standard of care of Gloria that a reasonable person would be expected to exercise in response to those circumstances. In passing sentence, the Court had to determine the seriousness of each parent's offence.

While it was accepted at trial that both Offenders owed a duty of care to Gloria as "reasonable parents", an issue was whether Thomas Sam owed a special duty of care as a "reasonable homeopath". The evidence given by homeopaths during the trial universally indicated that homeopathic treatment could be tried for a period, but if no improvement was observed, medical assessment was necessary. Justice Johnson concluded that Mr Sam did in fact owe an additional duty of care towards his daughter as a homeopath, and that he had fallen gravely short of the expected standard of care in this regard. This finding, coupled with the evidence that suggested Mr Sam played the dominant role in determining the course of Gloria's treatment, led his Honour to ultimately conclude that Thomas Sam's offence was objectively more serious than that of his wife.

Before sentencing the Offenders, Justice Johnson acknowledged that any sentence imposed must convey an element of general deterrence as the protection of children is of fundamental importance to society. The sentence had to demonstrate that the unlawful homicide of a child, particularly at the hands of those entrusted with that child's care, is a crime that is punished severely. His Honour also felt the sentence of Thomas Sam should

contain a warning to alternative health providers about the consequences of failing to ensure a patient receives conventional medical treatment if alternative treatments fail. After taking into account the delay in prosecuting the Offenders, the effect their incarceration would have on the couple's other young child and other subjective matters, his Honour held that fulltime imprisonment was the only appropriate sentence for both Offenders in the circumstances, with Manju Sam to receive a shorter sentence to reflect her lesser criminality.

Bench: Johnson J

Citation: R v Thomas Sam; R v Manju Sam (No 18) [2009] NSWSC 1003

Judgment date: 28 September 2009

* *This decision is the subject of an ongoing appeal.*

15. Stewart v Ronalds

Mr Stewart was a member of the Lower House of the New South Wales Parliament, and a Minister and member of the Executive Council. In 2008, the Lieutenant-Governor withdrew the commissions that gave effect to his Ministerial appointment, acting on the recommendation of the Premier of New South Wales. The Premier had privately engaged Ms Ronalds, the defendant, to investigate allegations that Mr Stewart behaved improperly towards a female colleague, and to prepare a report of her findings for tabling in Parliament. Ms Ronalds found the allegations were justified. The Premier subsequently lost confidence in Mr Stewart and sought his removal from the Ministry and the Executive Council.

Mr Stewart commenced proceedings in the Supreme Court alleging that the Lieutenant-Governor's actions were void for denial of procedural fairness. Those proceedings were transferred to the Court of Appeal to determine several preliminary questions of law that raised important Constitutional questions as to whether the decisions of the Premier and Lieutenant-Governor are subject to judicial review or the principles of natural justice.

President Allsop remarked that these issues must, along with the *Constitution Act 1902* itself, be examined against the background of responsible

government. A fundamental aspect of the system of responsible government in New South Wales is that the operation of the Executive is guided by Parliament.

Except for reserve powers, no executive power should be exercised without first receiving advice from the government and without recognising the responsibility of the Executive to the Parliament.

The Court held that the Lieutenant-Governor acted in accordance with ss 35C(2) and 35E(2) of the *Constitution Act 1902* (NSW). section 35 of the *Constitution Act 1902* enables the Governor to appoint members of the Executive Council and Ministers of the State, providing that any such appointment is "at the Governor's pleasure". Notwithstanding, the Court acknowledged that any such decisions are inherently political. The phrase "at the Governor's pleasure" reflects the width of the political considerations attendant upon, and capable of informing, the Premier's advice regarding the Ministry's composition, and any decisions flowing from this advice.

If the Court were to scrutinise the Premier's advice to the Lieutenant-Governor regarding the composition of the Ministry, this would be tantamount to reviewing the political process. This is not a function of the Court, but the preserve of Parliament.

Additionally, the phrase "at the Governor's pleasure" indicates that the Governor (or Lieutenant-Governor) and Premier owe no duty of procedural fairness in making appointment decisions. In this context, the phrase means that the Mr Stewart had no right to be heard before dismissal and that no reasons are needed; the office is terminable for good, or bad, or no, reasons.

The Court dismissed the appeal.

Bench: Allsop P; Hodgson JA; Handley AJA

Citation: Stewart v Ronalds [2009] NSWCA 277

Judgment date: 4 September 2009

15. The acts and decisions of the Premier and Lieutenant-Governor are outside the scope of judicial review

16. Tzaidas v Child & Ors [2009] NSWSC 465

A cross-claim filed by two doctors in an ongoing professional negligence case required the Court to examine the proper construction of section 601AG of the *Corporations Act 2001* (Cth). That section provides a mechanism for a claim against a deregistered company to be pursued against its insurer. It enables a person, subject to the satisfaction of certain conditions, to recover from the deregistered company's insurer an amount that was payable to the company under the relevant contract of insurance.

The negligence claims were commenced in 2001 and are yet to be determined by the Court. The plaintiffs' claims were brought against Hurstville Community Co-operative Hospital ("the Hospital"), two of its resident doctors and CGU Insurance Limited ("the Insurer"). The doctors brought cross-claims against the Hospital seeking contribution as a joint tortfeasor, but the Hospital had been deregistered in the meantime, in 2005.

The doctors then filed amended cross claims seeking relief under section 601AG of the *Corporations Act*. They sought to recover from the Insurer the amount it would have paid to the Hospital under its policy in respect of the doctors' claims for contribution. An essential element of the doctors' cross claims was to prove the Hospital had a liability to them immediately before its deregistration, and that the Hospital's insurance policy covered that liability immediately before its deregistration.

The Insurer argued that the Hospital could only have "had a liability" immediately before its deregistration if the plaintiffs' negligence claims had been established before that date. As those claims had not yet been determined, the Hospital could not be said to have "had a liability" immediately before its deregistration in 2005. The doctors disagreed. They submitted that the fact that the plaintiffs had not obtained judgment against the doctors prior to the deregistration of the hospital did not preclude the doctors from recovering on their cross claims against the Insurer. It would be sufficient if the determination that a liability existed immediately before deregistration were made at the final hearing of the proceedings.

Justice McCallum accepted the doctors' submission. Her Honour noted that section 601AG was remedial in nature, creating a discrete cause of action, not a claim for damages. Justice McCallum found that the conditions of recovery

under section 601AG could be met if it were proved at the time of final hearing that the hospital and the doctors were tortfeasors each liable to the plaintiffs and entitled to recover contribution from each other. It was not necessary for the doctors to prove that any liability they may have to the plaintiffs had been determined before the Hospital was deregistered.

With respect to whether the insurance contract "covered the liability", the Insurer submitted that its policy only indemnified the Hospital for claims "...for which [it] shall become legally liable...". The Insurer again relied upon the notion that the contract could only cover a liability that had been established by a judgment, award or settlement in the negligence proceedings before the deregistration date. By contrast, the doctors contended that the only question the Court need ask was whether the policy in place at the time of deregistration covered the Hospital in the circumstances that gave rise to the negligence claims.

Justice McCallum once again accepted the doctors' submissions. Her Honour considered it to be reasonably arguable that, if it is established at a final hearing that the Hospital had a liability to the doctors, and the doctors establish that the policy responds to that liability, the doctors will have shown that the policy "covered that liability" immediately before deregistration of the hospital. Justice McCallum found that the doctors should have leave to file the amended cross claims against the Insurer under section 601AG.

Bench: McCallum J

Citation: Tzaidas v Child & Ors [2009] NSWSC 465; [2009] ALMD 4244; 257 ALR 394; 27 ACLC 805; 74 NSWLR 208; 230 FLR 475; 72 ACSR 112; 72 ACSR 112; 257 ALR 394; 230 FLR 475

Judgment date: 29 May 2009

16. Judgment provides renewed guidance as to the proper construction of section 601AG of the Corporations Act 2001 (Cth) and the principles governing claims against the insurer of a deregistered company

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

(to be read in conjunction with Chapter 4)

- Filings, disposals and pending cases
- Timeliness
 - Court of Appeal, Court of Criminal Appeal, Criminal List – age of pending cases at 31 December
 - Other lists – waiting times
 - Listing delays
- Alternative dispute resolution

NOTES:

The figures for pending cases for each list can include cases that have been re-opened after judgment, and cases referred from other case management lists. For this reason, pending caseload figures do 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

	2005	2006	2007	2008	2009
COURT OF APPEAL ¹					
Filings					
<i>Appeals and applications for relief</i>	442	319	377	361	339
<i>Applications for leave to appeal ²</i>	285	213	206	185	172
<i>Net new cases ³</i>	690	494	564	530	496
Disposals					
<i>Appeals and applications for relief</i>	456	402	338	380	368
<i>Applications for leave to appeal</i>	320	239	218	196	192
<i>Net disposals ⁴</i>	739	603	537	560	545
Pending cases at 31 December					
<i>Appeals and applications for relief</i>	336	253	292	273	241
<i>Applications for leave to appeal</i>	154	128	116	106	88
<i>Total</i>	490	381	408	379	329

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.

	2005	2006	2007	2008	2009
COURT OF CRIMINAL APPEAL ¹					
Filings	524	452	441	422	389
Disposals	536	501	444	414	391
Pending cases at 31 December	229	180	177	185	183

¹ From 2006 onwards, these statistics exclude appeals from decisions of the NSW State Parole Authority. In 2009 a total of 5 parole decision appeals were filed.

	2005	2006	2007	2008	2009
COMMON LAW DIVISION – Criminal ^{1,2}					
Criminal List					
Filings ³	94	104	133	101	106
Disposals ⁴	126	104	115	122	112
Pending cases at 31 December	93	93	111	90	84

FILINGS, DISPOSALS AND PENDING CASES *continued* **2005 2006 2007 2008 2009**

Bails List ⁵

Filings	2,715	2,789	2,981	2,765	2,449
Disposals	2,709	2,898	2,893	2,716	2,770
Pending cases at 31 December	344	235	270	243	304

Summary jurisdiction cases ⁶

Filings	-	-	11	237	0
Disposals	-	-	0	0	248
Pending cases at 31 December	-	-	11	248	0

- ¹ In all years, the figures exclude matters under Part 7 Crimes (Appeal and Review) Act (formerly s474D Crimes Act) and applications for re-determination of life sentence.
- ² 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.
- ³ 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).
- ⁴ 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.
- ⁵ 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.
- ⁶ 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 commencement of 248 related prosecutions under the *Food Act 2003* (against one company and its two directors) have been separately reported to prevent skewing of the statistics in the Summons List. Note that the 248 cases reported here were reported to the Productivity Commission as 9 cases only, in accordance with the national counting rules.

2005 2006 2007 2008 2009

COMMON LAW DIVISION – Civil ¹

Administrative Law List

Filings	116	183	145	150	125
Disposals	128	131	195	191	110
Pending cases at 31 December	63	121	78	52	74

Defamation List

Filings	56	64	61	73	73
Disposals	60	74	65	74	89
Pending cases at 31 December	90	90	93	99	88

General Case Management List ²

Filings					
<i>Contested</i>	283	333	271	317	402
– <i>personal injury</i>	160	226	169	213	272
– <i>other</i>	123	107	102	104	130
<i>Uncontested</i>	216	133	128	208	173
<i>Total</i>	499	466	399	525	575
Disposals					
<i>Contested</i>	414	375	442	383	414
– <i>personal injury</i>	201	185	228	194	232
– <i>other</i>	213	190	214	189	182
<i>Uncontested</i>	191	135	92	85	120
<i>Total</i>	605	510	534	468	534
Pending cases at 31 December					
<i>Contested</i>	744	784	674	680	770
– <i>personal injury</i>	439	451	381	391	443
– <i>other</i>	305	333	293	289	327
<i>Uncontested</i>	116	77	62	107	105
<i>Total</i>	860	861	736	787	875

FILINGS, DISPOSALS AND PENDING CASES <i>continued</i>	2005	2006	2007	2008	2009
Possession List					
Filings					
<i>Contested</i>	163	190	256	282	286
<i>Uncontested</i>	4,710	5,178	5,198	5,190	4,324
<i>Total</i>	4,873	5,368	5,454	5,472	4,610
Disposals					
<i>Contested</i>	124	162	196	224	286
<i>Uncontested</i>	3,544	4,986	5,722	5,072	5,145
<i>Total</i>	3,668	5,148	5,918	5,296	5,431
Pending cases at 31 December					
<i>Contested</i>	126	136	189	243	220
<i>Uncontested</i>	2,411	2,702	2,269	2,498	1,787
<i>Total</i>	2,537	2,838	2,458	2,741	2,007
Professional Negligence List					
Filings	114	142	152	211	172
Disposals	183	162	139	182	185
Pending cases at 31 December	354	353	373	418	419
Summons List ³					
Filings	560	565	564	571	497
Disposals	582	609	531	614	555
Pending cases at 31 December	360	331	368	340	293
Miscellaneous applications ⁴					
Filings	456	306	281	314	261
Disposals	306	153	162	130	491
Pending cases at 31 December	185	233	280	369	50
Related issues cases filed before February 1994 ⁵					
Disposals	282	1	-	-	-
Pending cases at 31 December	1	0	-	-	-
COMMON LAW DIVISION TOTALS – Civil					
Filings	6,674	7,094	7,056	7,316	6,313
Disposals	5,814	6,788	7,544	6,955	7,395
Pending cases at 31 December	4,450	4,827	4,386	4,806	3,806

¹ Between 17 and 21 December 2009 the Court changed to a new case information and management system – JusticeLink. The caseload reporting function of JusticeLink is still being developed, so the data for 2009 were taken at 17 December.

² This list was formerly called the Differential Case Management List.

³ The figures exclude 248 cases that are related prosecutions under the *Food Act 2003* – those cases are reported under the heading ‘Summary jurisdiction cases’ within the criminal workload of this Division.

⁴ These include applications under the Mutual Recognition Act, Trans-Tasman Mutual Recognition Act, 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. This list was audited during 2009 and approximately 350 cases were closed consequently.

⁵ These were cases against Dow Corning and 3M where damages were claimed for personal injury arising from silicon implants. The last remaining case in this group was finalised in January 2006.

	2005	2006	2007	2008	2009
EQUITY DIVISION ¹					
Admiralty List					
Filings	2	2	2	4	22
Disposals	2	3	3	4	4
Pending cases at 31 December	4	4	3	3	21
Adoptions List ²					
Applications	204	154	161	203	220
Orders made	176	162	167	204	204
Pending cases at 31 December	38	30	20	19	35

FILINGS, DISPOSALS AND PENDING CASES <i>continued</i>	2005	2006	2007	2008	2009
Commercial List					
Filings	192	215	249	264	212
Disposals	196	190	251	246	240
Pending cases at 31 December	240	265	263	298	283
Corporations List					
Filings	3,134	3,213	3,008	3,150	2,764
Disposals ³	2,807	2,775	2,401	2,223	2,201
Pending cases at 31 December	657	643	631	858	686
Protective List ⁴					
Applications	90	70 ⁵	112	91	75
Disposals	85	62 ⁶	107	104	73
Pending applications at 31 December	15	23	28	15	17
Technology and Construction List					
Filings	106	98	104	114	115
Disposals	94	93	91	109	109
Pending cases at 31 December	120	125	138	150	163
General List ⁷					
Filings	2,354	2,209	2,187	2,228	1,993
– family provision cases	655	598	624	641	512
– other	1,699	1,611	1,563	1,587	1,481
Disposals ⁸	2,943	3,622	3,205	3,615	3,098
– family provision cases	578	696	594	781	605
– other	2,365	2,926	2,611	2,834	2,493
Pending cases at 31 December	2,933	2,466	2,431	2,037	1,856
– family provision cases	745	626	660	551	459
– other	2,188	1,840	1,771	1,486	1,397
Probate (Contentious Matters) List					
Filings	172	166	141	150	125
Disposals	167	166	140	152	123
Pending cases at 31 December	96	96	91	89	92
EQUITY DIVISION TOTALS ⁹					
Filings	6,254	6,127	5,964	6,205	5,526
Disposals ¹⁰	6,470	7,073	6,365	6,655	6,052
Pending cases at 31 December	4,103	3,652	3,605	3,472	3,153

PROBATE APPLICATIONS – UNCONTESTED ¹¹

Applications received	21,515	22,079	22,673	23,428	22,985
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- ¹ Between 17 and 21 December 2009 the Court changed to a new case information and management system – JusticeLink. The caseload reporting function of JusticeLink is still being developed, so the data for 2009 were taken at 17 December – the exceptions are the Adoptions List, Protective List and Probate (Contentious Matters) List, for which the data were taken at 31 December.
- ² In this List, all applications types are counted, including information applications. As a result of audits, the 2005 figures were revised in 2006, and the 2008 figures were revised in 2009.
- ³ 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.
- ⁴ 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, 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. Following an audit in 2009, the figures for 2008 have been revised.
- ⁵ This figure is an estimate.
- ⁶ This figure is an estimate.
- ⁷ The Revenue List cases are included within the General List.
- ⁸ The disposals in this list also include cases disposed from the Corporations List by a Judge or Associate Judge.
- ⁹ The figures for 2005 have been revised following an audit of the Adoptions List.
- ¹⁰ 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). Consequently, such matters can have more than one disposal recorded against them.
- ¹¹ This includes all 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, Criminal List) ^{1, 2, 3}

Number pending (and % of total)	National standard ⁴	2005	2006	2007	2008	2009
COURT OF APPEAL						
Total number of cases pending		490	381	408	379	329
Cases within 12 months of age	90%	(89%)	(86%)	(89%)	(87%)	(90%)
Cases within 24 months of age	100%	(98%)	(97%)	(98%)	(98%)	(97%) ⁵
COURT OF CRIMINAL APPEAL						
Total number of cases pending		229	180	177	185	183
Cases within 12 months of age	90%	(93%)	(97%)	(97%)	(94%)	(91%)
Cases within 24 months of age	100%	(97%)	(98%)	(99%)	(99%)	175 ⁶ (96%)
COMMON LAW DIVISION – Criminal ^{7, 8}						
Total number of defendants pending		93	93	111	90	84
Cases within 12 months of age	90%	(73%)	(81%)	(83%)	(81%)	(81%)
Cases within 24 months of age	100%	(86%)	(96%)	(97%)	(94%)	78 ⁹ (93%)

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 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, such as the time taken to complete relevant cases 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, for criminal cases, 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 Nine cases were older than 24 months. Five of those are particularly difficult to progress – 3 of them cannot progress until determinations are made in either other courts or external investigations; the remaining 2 have been commenced by a person in custody who is having difficulty progressing the cases in a timely way.

⁶ Eight cases were older than 24 months. One of those continues to have difficulty in becoming ready for hearing, being a ‘whole of case’ referral involving State and Commonwealth charges and a self-represented appellant – it requires extensive case preparation and management to become ready for hearing. The remaining 7 cases have also been problematic but are now either heard or set down for hearing.

⁷ The figures exclude matters under Part 7 Crimes (Appeal and Review) Act (formerly s474D Crimes Act) and applications for re-determination of a life sentence.

⁸ The figures 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 new trial 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 new trial).

⁹ Six defendants had cases that were older than 24 months. Five of those were tried for terrorism offences in a single trial where the voir-dire and trial time extended over 19 months – they were sentenced in February 2010. The remaining case was delayed by a collapsed trial – a subsequent 6-week trial has been completed.

TIMELINESS – WAITING TIMES (OTHER LISTS)

Median finalisation time ^{1,2} (unless otherwise indicated)	2005	2006	2007	2008	2009
COMMON LAW DIVISION – Criminal					
Bails List – range during year (weeks)	3-6	3-6	2-4	3-6	3-7
COMMON LAW DIVISION – Civil ³					
Administrative Law List (months)	4.4	4.8	6.3	4.7	4.2
Defamation List (months)	12.6	10.9	14.0	12.6	14.6
General Case Management List (months)	28.8	22.1	21.6	22.4	16.2
Possession List (months)	6.6	6.2	7.5	6.7	7.2
Professional Negligence List (months)	34.2	33.3	24.8	24.0	21.7
Summons List – civil matters (months)	3.5	2.8	3.5	3.0	2.5
Summons List – proceeds of crime matters (months)	6.6	10.0	6.3	8.0	9.3
Cases proceeding by default (months)	4.6	7.6	6.3	5.7	6.0
EQUITY DIVISION ⁴					
Admiralty List (months)	17.4	23.5	18.4	17.5	3.1
Adoptions List – usual finalisation time (weeks)	2-6	2-6	3-6	1-6	1-3
Commercial List (months)	10.1	12.0	9.1	8.8	9.3
Corporations List (months)	1.6	1.4	1.6	1.6	1.7
Probate (Contentious Matters) List (months)	4.0	3.8	4.2	4.9	5.6
Protective List – usual time for orders to be made (weeks)	2-4	2-4	2-4	3-11	2-19
Technology and Construction List (months)	7.3	7.7	8.1	7.9	9.5
General List (months)	9.6	11.1	9.4	8.6	8.8
Probate applications (uncontested) – processing time ⁵ – range during year (working days)	3-28	4	4	4-20	4-31

- 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 the current computer system. Where cases have been disposed, but re-opened after 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 substantive issues before the Court.
- 3 For 2009 the median has been taken for case finalisation times recorded up to and including 17 December.
- 4 For 2009 the median has been taken from case finalisation times recorded up to and including 17 December, except for the Adoptions List, the Protective List, the Probate (Contentious Matters) List and the uncontested probate applications (where case finalisation times for the full year were available).
- 5 This is the time from lodgment to posting, when applications are fully in order when lodged. Applications that are not in order are requisitioned, and take longer.

TIMELINESS – LISTING DELAYS AT THE END OF THE YEAR ^{1,2,3}

	2007	2008	2009
COURT OF APPEAL⁴	4 months	3.5 months	1.5 months
COURT OF CRIMINAL APPEAL	2 months	3 months	2.5 months
COMMON LAW DIVISION			
Criminal List⁵	4-5 months	2.5 months	3 months
Civil lists⁶	3-4 months	2.5 months	3 months
Bails List	3-4 weeks	6 weeks	3 weeks
EQUITY DIVISION⁷	5-6 months	5 months	2.5 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 2009 it is the position at the start of the 2010 law term). This removes any effect of the law vacation.

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

⁴ This refers to substantive appeals (including concurrent hearings).

⁵ This refers to cases requiring at least 3 weeks of hearing time.

⁶ This refers to cases requiring up to 5 days of hearing time.

⁷ This refers only to General List and Probate (Contentious Matters) List cases requiring 2 or more days of hearing time before a Judge.

ALTERNATIVE DISPUTE RESOLUTION

	2005	2006	2007	2008	2009
Court-annexed mediations listed ^{1,2}					
Total	250	286	282	568	666
– Common Law Division	6	12	24	37	68
– Equity Division – not probate cases	229	262	246	518	553
– Equity Division – probate cases	8	7	11	12	36
– Court of Appeal	7	5	1	1	9
Percentage of cases settling at mediation ³	62%	58%	49%	59%	49%
Listing delay ⁴	8 weeks	4 weeks	7 weeks	6 weeks	5 weeks
Referrals to mediation generally					
Total referrals recorded ⁵	517	487	748	868	1,111
Arbitrations listed					
Common Law Division	0	1	0	0	0

¹ “Court-annexed mediation” refers to mediations conducted by the Registrars of the Court who are also qualified as mediators. It excludes mediations conducted by private mediators.

² This section refers to court-annexed mediation listings for the year – note that cases that are *referred* to court-annexed mediation very late in a year may result in a *listing* early in the following year.

³ 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). The Registry does not collect settlement data for mediations conducted by private mediators.

⁴ This is the delay until the first available group of mediation sessions within the court-annexed mediation program, as reported at the start of the new law term (for example, for 2009 it is the position at the start of the 2010 law term). Earlier mediation sessions are arranged, if ordered by the Court.

⁵ This covers all occasions when the Court refers a case to mediation, regardless of whether the mediation is to be conducted through the court-annexed mediation program or by a private mediator.

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 2009

The Honourable the Chief Justice (Chairperson)
The Honourable the President
The Honourable Justice Beazley AO
The Honourable Justice Giles
The Honourable Justice McClellan
The Honourable Justice Bergin
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 2009

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

Education Committee

The Supreme Court, in partnership with the Judicial Commission of New South Wales, provides a continuing judicial education program designed to meet the differing needs of Supreme Court judges and associate judges. The program aims to:

- promote high standards of judicial performance
- assist in the development of appropriate judicial skills and values
- keep judges up-to-date with current legal developments and emerging trends
- result in a better informed and professional judiciary.

Sessions range from orientation programs for new appointees, an annual conference, specialist occasional seminars on practical matters, social awareness issues and legislative changes. The focus in education for Supreme Court judges is on sentencing, important legal developments, improving knowledge in difficult areas of legal practice and procedure, and the development of judicial skills. Also offered is the 360 degree feedback program for judges.

The Supreme Court Education Committee develops each education program based on the identified needs of judges. Input regarding topics, presenters and format is provided by judges, other participants involved in the administration of justice, and community representatives. The Committee is composed of judges and the Education Director of the Judicial Commission. The Chair of the Committee is also a member of the Judicial Commission's Standing Advisory Committee on Judicial Education. The Education Committee circulated to all judges in August 2009 an information circular regarding the available options for the continuing professional development of Supreme Court judges in New South Wales. It included reference to the National Standard for Judicial Professional Development and educational initiatives of interest of Supreme Court judges.

Members during 2009

The Honourable Justice Basten (Chairperson)
The Honourable Justice Campbell (from February)
The Honourable Justice Nicholas
The Honourable Justice Hislop

The Honourable Justice Hoeben AM RFD (from February)
The Honourable Justice Johnson
The Honourable Justice Harrison (from August)
The Honourable Justice Fullerton
The Honourable Justice Schmidt (from August)
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 refurbishment of the Law Courts Building and the ongoing refurbishment of the King Street Court Complex remained the Committee's primary concerns during 2009.

Members during 2009

The Honourable Justice McDougall (Chairperson)
The Honourable Justice Giles
The Honourable Justice McClellan
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, Department of Justice & Attorney General)
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 2009

The Honourable Justice McColl AO
The Honourable Justice Einstein

The Honourable Justice Gzell (Chairperson)
The Honourable Justice Latham
The Honourable Justice Slattery (from July)
The Honourable Associate Justice Macready
Ms M Greenwood
Mr N Sanderson-Gough
Mr W Cellich (Information Services Branch, Department of Justice and Attorney General)
Mr J Mahon (Information Services Branch, Department of Justice and Attorney General)
Ms K Duke (Information Services Branch, Department of Justice and Attorney General)
Mr D Lane (Information Services Branch, Department of Justice and Attorney General)
Ms A McNicol (Law Courts Library)
Mr G Walker (Reporting Services Branch, Department of Justice and Attorney General)
Ms E Walsham (Reporting Services Branch, Department of Justice and Attorney General)
Ms S Thambyrajah (Secretary)

Alternative Dispute Resolution Steering Committee

The Alternative Dispute Resolution (ADR) Steering Committee meets 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 2009

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

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 month 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 2009

The Honourable Justice Buddin (Chairperson)
The Honourable Justice Fullerton
The Honourable Justice R A Hulme (from April)
Her Honour Judge Hock (District Court)
His Honour Judge Charteris (District Court)
Mr M Lacey
Mr C Allen (Sheriff of NSW)
Mr R Kruit (Regional Manager, Office of the Sheriff)
Ms L Anamourlis (Manager, Jury Services, Office of the Sheriff)
Ms S Huer (Chief Superintendent, Office of the Sheriff; from October)
Ms P Musgrave (Director, Legislation and Policy Division, Department of Justice & Attorney General)
Ms K Leah (Senior Policy Officer, Legislation and Policy Division, Department of Justice & Attorney General; from February)
Mr M Savarty (Senior Policy Officer, Legislation and Policy Division, Department of Justice & Attorney General; from April)
Mr K Marshall (Director, Asset Management Branch, Department of Justice & Attorney General; to August)
Mr A Andjic (Asset Management Branch, Department of Justice & Attorney General)
Secretary: Ms L Jennings

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 met once in 2009.

Members during 2009

The Honourable Justice Allsop (Chairperson)
The Honourable Justice McClellan
The Honourable Justice Bergin
Ms M Greenwood
Ms A McNicol (Library Services)
Ms S Ramsay (Library Services)

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. The Group did not meet in 2009.

Members during 2009

The Honourable Justice Allsop (Chairperson)
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
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 did not meet in 2009.

Members during 2009

The Honourable Justice McClellan (Chairperson)
The Honourable Justice Barr (to March)
Ms G Drennan
Ms P Olsoen (District Court of NSW)
Ms J Chin (District Court of NSW)
Mr M Ierace SC (Public Defenders Office)
Mr B Sandland (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 Solicitor for Public Prosecutions NSW)
Mr M Day (Office of the Solicitor for 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, Department of Justice & Attorney General)

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 during 2009

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 did not meet in 2009.

Members during 2009

The Honourable Justice Hislop (Chairperson)
Mr I Butcher
Mr D Munro
Mr T Stern
Ms A Walsh
Ms J Tully

Equity Liaison Group

This Group was established in 2001 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 2009

The Honourable Mr Justice Young AO (Presiding Member until March)
The Honourable Justice Bergin (Presiding Member from March)
The Honourable Justice Forster (from May)
Ms L Walton

Legal profession representatives

Mr R G Forster SC (until May)
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 2009 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 2009

The Honourable Justice Austin (Chairperson)
The Honourable Justice Barrett (Secretary)
The judicial officers of the Equity Division
Ms J Atkinson
Ms L Walton
Mr A Musgrave

Legal profession representatives

Mr C (Robert) Newlinds SC
Mr M B Oakes SC
Mr S Golledge (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

Other members

Ms G Hayden (Australian Securities and Investments Commission)
Ms D North (Insolvency Practitioners Association of Australia)
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 2009

The Honourable Justice Clifford Einstein
The Honourable Justice McDougall
The Honourable Justice Hammerschlag (List Judge from March)

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 four occasions in 2009.

Membership during 2009:

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

Apart from those listed above, persons who attended meetings regularly during 2009 included the following:

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 2009

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 three times during 2009.

Members during 2009

The Honourable Justice McColl AO (Chairperson)
The Honourable Justice McClellan
The Honourable Justice Kirby
The Honourable Justice Nicholas
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 M Scheikowski (Australian Associated Press)
Ms J Wells (Australian Broadcasting Corporation)
Mr M Martin (ABC Legal)
Ms E Smith (Macquarie Radio Network)
Ms G Jacobsen (Sydney Morning Herald)
Ms S Moran (The Australian)
Ms M Jacobs (Financial Review)
Ms L Cummings (Daily Telegraph)
Mr L Jeloscek (Seven Network)
Ms A Cooper (ODPP Public Information Officer)

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 Department of Justice & Attorney General and the JusticeLink project team.

Members during 2009

The Honourable Mr Justice Hamilton
The Honourable Justice Howie
The Honourable Justice Gzell (Chairperson)
The Honourable Justice Latham
The Honourable Justice Rein (from March)
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 2009

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 Department of Justice and Attorney General)
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 met twice in 2009.

Members during 2009

Mr M Lacey
Ms F Kole
Mr N Gray
Mr R Rosman (Law and Order)
Ms L Allen (Minter Ellison)
Ms D Howitt (Blake Dawson Waldron)
Ms C Wilson (Litsupport)
Ms L Aggett (Legal Liaison)
Ms P Tsiattalos (Mallesons)
M Smith (Mallesons)
Mr L Russo (Allens Arthur Robinson)
J Dansinger (Allens Arthur Robinson)

Access to Court Documents Working Group

The Working Group was established to review current arrangements for access to court documents and make recommendations for change, as appropriate.

Members during 2009

The Honourable Justice Ruth McColl AO
(Chairperson)
The Honourable Justice Johnson
The Honourable Justice Harrison
The Honourable Justice Rein
Ms M Greenwood
Ms K Douglass
Ms S Zadel

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 2009 are summarised below.

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

Conferences:

5 – 9 Apr	16th Commonwealth Law Conference (Hong Kong)
16 May	Ngara Yura Conference (Rosehill)
29 – 31 May	Qatar Law Forum, Doha (Qatar)
2 – 5 Jun	Indo-Australian Legal Forum (Canberra)
28 – 31 Jul	House of Lords Conference (London, UK)
11 Aug	Supreme Court Annual Corporate Law Conference (Sydney)
21 – 23 Aug	Supreme Court Judges' Conference (Pokolbin)
27 Oct	International Organisation for Judicial Training Conference (Sydney)
20 Nov	Rule of Law Association Conference (Sydney)
27 – 28 Nov	International Commercial Litigation Conference (Sydney)

Speaking Engagements:

2 Feb	Opening of Law Term Dinner (Sydney)
7 Apr	The Hague Choice of Court Convention and International Commercial Litigation, Commonwealth Law Conference (Hong Kong)
30 Apr	The Traditionality of the Law, Official address at the opening of the Law School, University of Sydney
16 May	Address to the Ngara Yura Conference
24 May	Launch – The Words to Remember It: Memoirs of Child Holocaust Survivors The Sydney Jewish Museum
18 Jun	Launch – Corporate Governance and International Business Law, Sydney Law School, University of Sydney
2 Jul	Address, ASIC Lawyers Network, Martin Place (Sydney)
11 Aug	Address to the Supreme Court Annual Corporate Law Conference, Banco Court (Sydney)
4 Sep	The Macquarie Bicentennial: A Reappraisal of the Bigge Reports, The Annual History Lecture, History Council of New South Wales (Sydney)
9 Sep	Launch – A Social History of Company Law: Great Britain and the Australian Colonies 1854-1920 by Rob McQueen, Banco Court (Sydney)
21 Sep	Case Management in New South Wales, Paper prepared for visiting judicial delegation from India (Sydney)
22 Oct	Launch – DVD "Circle Sentencing in NSW", Banco Court (Sydney)
27 Oct	Address – International Organisation for Judicial Training Conference Dinner (Sydney)
13 Nov	Address on the Retirement of The Honourable David Ipp AO, Banco Court (Sydney)
17 – 18 Nov	The Forgotten Freedom: Freedom From Fear, Sydney Law School, University of Sydney; Australian Academy of Law, 2009 Symposium Series, Banco Court (Sydney)

Publications:

Speech of the Hon J J Spigelman AC, delivered at the launch of "Rediscovering Rhetoric: Law, Language and the Practice of Persuasion" (2009) 83 <i>Australian Law Journal</i> 486
A Place for Rhetoric (2009) January-February <i>Quadrant</i> No 453 (Vol LIII, No 1-2)
Opening of Law Term (2009) 47 <i>Law Society Journal</i> 62
Australian business law in international perspective: Remarks at a book launch (2009) 32 <i>Australian Bar Review</i> 1
Cross-border insolvency: Co-operation or conflict? (2009) 83 <i>Australian Law Journal</i> 44
Implications of the current economic crisis for the administration of justice (2009) 18 <i>Journal of Judicial Administration</i> 205
The Traditionality of the Law (2009) 83 <i>Australian Law Journal</i> 447
The Hague Choice of Court Convention and international commercial litigation (2009) 83 <i>Australian Law Journal</i> 386
<i>The Macquarie Bi-Centennial: A Re-appraisal of the Bigge Reports</i> , J J Spigelman AC, State Library of NSW and The History Council of NSW, Sydney, 2009
An Imperial civil servant: reappraising the Bigge Reports (2009) Summer <i>Insites</i> Issue 61

Delegations and International Assistance:

11 Feb	Visit by the Right Honourable Mr Justice Richard Malanjum, Chief Judge and the Honourable Justice David Wong, High Court of Sabah & Sarawak
17 Feb	Chinese delegation, Judicial Accountability Study Visit, led by Mr Jiang Huiling, Senior Judge, Supreme People's Court of China
19 Feb	Chinese delegation led by Mr Zhan Jinyun, Deputy Inspector of People's High Court of Hubei Province, China
20 Feb	Visit by The Right Honourable The Baroness Scotland of Asthal PC QC, Attorney General of England and Wales
20 Apr	Professor Lakshman Marasinghe, Chairman, Sri Lankan Law Reform Commission
22 Sep	Indian Judicial Delegation led by The Honourable Shri K G Balakrishnan, Chief Justice, Supreme Court of India
26 Nov	Korean delegation led by Judge Park Byung-Dae, Senior Presiding Judge, Civil Division, Seoul District Court, Korea
30 Nov	Korean delegation led by Judge Yang Eun-Sang, Tongyeong Branch Court, Korea
10 Dec	Vietnamese delegation led by The Honourable Truong Hoa Binh, Chief Justice, Supreme People's Court of Vietnam
18 Dec	Delegation from the Supreme Court of Korea

Commissions in Overseas Courts:

2-10 Aug	Commissioner, Commission Of Inquiry, Antigua And Barbuda
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THE HONOURABLE JUSTICE JAMES ALLSOP, PRESIDENT OF THE COURT OF APPEAL**Conferences:**

16 May	Conference on Judicial/Indigenous Issues (Parramatta, NSW)
24 Jun	District Court Conference (Sydney)
21 – 23 Aug	Supreme Court Annual Judges' Conference (Pokolbin, NSW)
27 – 28 Nov	International Commercial Litigation and Dispute Resolution Conference (Sydney)

Speaking Engagements:

15 Apr	2009 William Tetley Lecture – Maritime Law – the Nature and Importance of its International Character (Tulane, USA)
5 May	Australian Academy of Law 2009 Symposium Series – Professionalism and Commercialism – conflict or harmony in modern legal practice? (Sydney, NSW)
29 May	Q150 Constitutional Conference 2009 – Queensland's Constitutional Inheritance from New South Wales (Brisbane, Qld)
15 Aug	ACICA & University of New South Wales – Maritime Arbitration, Sydney, NSW
19 Sep	36th Australian Legal Convention – Appellate Judgments – The Need for Clarity (Perth, WA)
17 Oct	7th Annual University of South Australia Trade Practice Workshop – The Judicial Disposition of Competition Cases (Adelaide, SA)
11 Nov	Federal Court of Australia – Marine Insurance Act 1909 100th Anniversary (Sydney, NSW)

Publications:

"Queensland's Constitutional Inheritance from NSW" Queensland's Constitution – Past, Present and Future (published by Supreme Court of Queensland Library) pp 8-44

Appointments to Legal, Cultural or Benevolent Organisations:

Adjunct Professor, Australian Maritime College and University of Sydney

THE HONOURABLE JUSTICE M J BEAZLEY AO**Conferences:**

24 – 28 Jan	Supreme and Federal Courts Judges' Conference (Hobart)
4 Mar	Continuing Professional Development Seminar, New South Wales Bar Association
6 Mar	Commercial Litigation Seminar, (Chair) (Sydney)
19 – 20 Jun	The Law Society of New South Wales: Specialist Accreditation Personal Injury Law Conference (Hunter Valley)

Speaking Engagements:

4 Mar	Paper: <i>Practice and Advocacy in the Court of Appeal</i> Continuing Professional Development Seminar, New South Wales Bar Association
24 Apr	Speech: Notre Dame Law Society Inaugural Law Ball
2 May	Speech: Ballina Law Society dinner
19 Jun	Paper: <i>Personal Injury Actions: future directions</i> The Law Society of New South Wales: Specialist Accreditation Personal Injury Law Conference, Hunter Valley
25 Jun	Speech: <i>Much speech is one thing, well-timed speech is another</i> Australian Lawyers Phil-Hellenic Association, Sydney
15 Sep	Speech: <i>The Model Litigant: failing to be model?</i> Government Solicitors Annual Dinner

16 Oct Speech: 2009 Final Year Dinner for Graduating Students
Sydney University Law Society

Appointments to Legal, Cultural or Benevolent Organisations:

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, Board of Governors, Queenwood School for Girls
Member, Advisory Board, Centre for Children and Young People, Southern Cross University
Member, Board of Directors, Sydney Talent, University of Sydney
Member, Advisory Board, Centenary Institute
Patron, Toongabbie Legal Centre

THE HONOURABLE JUSTICE R D GILES

Conferences:

21 – 23 Aug Supreme Court Annual Judge's Conference (Pokolbin, NSW)

Appointments to Legal, Cultural or Benevolent Organisations:

Member, Editorial Board of the Insurance Law Journal

THE HONOURABLE JUSTICE DAVID HODGSON AO

Conferences:

26 – 27 Mar Workshop conducted by the Centre for Consciousness, ANU, on Consciousness and the Vegetative State (Canberra, ACT)
21 – 23 Aug Supreme Court Annual Judges' Conference (Pokolbin, NSW)
20 Oct Symposium on Addiction, Identity and Responsibility (Macquarie University, NSW)

Speaking Engagements:

12 Mar Philosophy Seminar, RSSS, ANU "The role of gestalts in conscious decision-making" (Canberra, ACT).
17 Mar ANU Philosophy Society Seminar "The Conway/Kochen free will theorem" (Canberra, ACT)
25 Mar Seminar at Centre for Applied Philosophy and Public Ethics, ANU "Virtues of retribution" (Canberra, ACT)
5 Aug Seminar at University of New South Wales, commentary on "Philosophical foundations of neuroscience" (Kensington, NSW)
20 Oct Paper given at symposium on Addiction, Identity and Responsibility "Addiction, free will and criminal responsibility" (Macquarie University, NSW)
24 Oct Discussant on ABC Radio National program All in the Mind on Addiction, Free Will and Self-control (Sydney)
14 Nov Paper given at Julius Stone Institute of Jurisprudence conference "Compatibilism and hard social conditions" (Sydney)

Publications:

"Criminal responsibility, free will and neuroscience" in Murphy, Ellis and O'Connor (eds) *Downward Causation and the Neurobiology of Free Will* (Springer 2009)
"The limits of physicalism" in McHenry (ed) *Science and the Pursuit of Wisdom* (Ontos Verlag 2009)

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 MURRAY TOBIAS AM RFD

Appointments to Legal, Cultural or Benevolent Organisations:

Chair of the Legal Profession Admission Board

THE HONOURABLE JUSTICE RS MCCOLL AO

Conferences:

24 – 28 Jan Supreme and Federal Courts Judges' Conference (Hobart)
30 Sep – 2 Oct Media Law Resource Conference (London, UK)
9 – 11 Oct Judicial Conference of Australia Annual Colloquium (Melbourne)

Speaking Engagements:

17 Jan	Speech, "What about me – your Pets and your Will" Young Lawyers Animal Law Committee
30 Sep	"An Australian Perspective on Privacy Law Developments" Media Law Resource Centre, London Conference
7 Dec	Speech, "Launch of the Animal Law Toolkit", Voiceless

Appointments to Legal, Cultural or Benevolent Organisations:

President, Judicial Conference of Australia
Chair, New South Wales Rhodes Scholarship Selection Committee

THE HONOURABLE JUSTICE JOHN BASTEN**Conferences:**

21 – 23 Aug	Supreme Court Annual Judges' Conference (Pokolbin, NSW)
25 – 29 Oct	4th International Conference on the Training of the Judiciary (Sydney)

Speaking Engagements:

31 Mar	Paper – <i>Judicial Review, Statutory Interpretation and Compensation</i> – AGS/Sydney Law School <i>Excellence in Government Decision-Making Course</i> (Canberra)
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Publications:

Book Review for UNSW Law Journal – "Rediscovering Rhetoric – Law, Language and the Practice of Persuasion (Federation Press, 2009) J T Gleeson and C A Higgins (eds)
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Appointments to Legal, Cultural or Benevolent Organisations:

Chair, Judicial Commission of NSW Standing Advisory Committee on Judicial Education
Member, UNSW Faculty Advisory Council

THE HONOURABLE JUSTICE MCCLELLAN, CHIEF JUDGE AT COMMON LAW**Conferences:**

18 – 20 Jan	Asia Pacific Judicial Reform Forum (Singapore)
26 Mar	NSW State Legal Conference (Sydney)
27 Mar	Collaborative Professionals (NSW) Inc (Sydney)
20 Mar	National Judicial Orientation Program – Expert Evidence (Melbourne)
12 – 19 Jun	Lecture to judges and practitioners on contemporary Australian civil justice processes (Malaysia)
2 Oct	Judicial College of Victoria Emerging Issues in Expert Evidence (Melbourne)
11 – 16 Oct	National Judicial College – Civil Evidence Seminar (Beijing and Shanghai)
13 Nov	National Judicial Orientation Program – Expert Evidence (Adelaide)
20 Nov	7th Annual Jury Research & Practice Conference presented by The Justice Research Group, University of Western Sydney – "Implementing Jury Reform" – Parliament House (Sydney)

Speaking Engagements:

19 – 21 Jan	Asia-Pacific Judicial Reform Forum – Roundtable meeting " <i>Important Issues for APJRF</i> " (Singapore)
25 Feb	Australian Academy of Forensic Sciences – Plenary Session (Sydney)
26 Mar	Keynote Address – NSW State Legal Conference – Liability in Health Care Sessions – <i>Litigation – Some Contemporary Issues</i> (Sydney)
27 Mar	Collaborative Professionals (NSW) Inc – join a panel of members of the judiciary to talk at the conference about the role of alternate dispute resolution
29 Apr	Official launch the Asia-Pacific Centre for Complex Real Property Rights at University of Technology – <i>A Discussion on Property Rights-</i> (Sydney)
12 – 19 Jun	Malaysia – expert evidence; judgment writing
Aug	Concurrent evidence – Hunt & Hunt (Sydney)
2 Oct	Judicial College of Victoria, " <i>Admissibility of Expert Evidence under the Uniform Evidence Act</i> " (Melbourne)
11 – 16 Oct	National Judicial College of China " <i>Administrative Law; Expert Evidence</i> "; " <i>Evidence in Civil Proceedings: an Australian perspective on documentary and electronic evidence; Judicial notice</i> (Beijing).
4 Nov	Defamation Seminar "Eloquence & Reason are juries appropriate for defamation trials?" (Sydney)
20 Nov	Welcome Address: Jury Research & Practice Conference (Sydney)
7 Dec	Concurrent evidence seminar with Justice Hoeben – Supreme Court of NSW (Sydney)
10 Dec	Paul Stein Conference: <i>Environment Crime in context: From ISPC v Caltex to date</i> (Sydney)

Publications:

"Are Juries Necessary? The Role of juries in defamation trials" Journal of the Australian Lawyers Alliance *Precedent* –(May/June 2009) Issue 92
Sworn together – a discussion of concurrent evidence *Precedent*
"Uniform Defamation Act 2005" *Gazette of Law & Journalism*

Appointments to Legal, Cultural or Benevolent Organisations:

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

Delegations and International Assistance:

17 Feb	Supreme People's Court of China – Australian Human Rights Commission – Judicial Accountability Study
17 Mar	Thai judges' delegation – expert evidence/trial process
25 May	Nepalese Criminal Law Reform & Realignment Taskforce
20 Jul	Shanghai judges' delegation
22 Sep	Indian judges' delegation
28 Oct	Delegation of Japanese attorneys at law – concurrent evidence
Nov	Delegation of Japanese attorneys at law – concurrent evidence
30 Nov	Korean Judicial delegation
10 Dec	Vietnamese judges' delegation

THE HONOURABLE JUSTICE SIMPSON**Conferences:**

21 – 23 Aug	Supreme Court Annual Judges' Conference (Pokolbin, NSW)
11 – 16 Oct	National Judicial College of China " <i>Administrative Law; Expert Evidence</i> "; " <i>Evidence in Civil Proceedings: an Australian perspective on documentary and electronic evidence; Judicial notice</i> " (Beijing, China)
11 – 16 Oct	National Judicial College – Civil Evidence Seminar (Beijing and Shanghai, China)

Appointments to Legal, Cultural or Benevolent Organisations:

Member, Legal Profession Admission Board Examinations Committee

THE HONOURABLE JUSTICE PETER HIDDEN AM**Conferences:**

21 – 23 Aug	Supreme Court Annual Judges' Conference (Pokolbin, NSW)
27 Nov	Presiding Judge of the Law Society Mock Trial Competition (Wesley Centre, Sydney)

Speaking Engagements:

3 Sep	New South Wales 2009 Litigation Skills Forum, " <i>Practical advice concerning the presentation of evidence</i> " (Sydney)
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THE HONOURABLE JUSTICE CLIFFORD EINSTEIN**Conferences:**

25 – 29 Jan	Supreme and Federal Court Judges' Conference (Hobart)
9 – 11 Jun	Australasian High Tech Crime Conference (Sydney)
21 – 23 Aug	Supreme Court Annual Judges' Conference (Pokolbin, NSW)

Speaking Engagements:

10 Mar	Building and Construction Seminar – chairman and opening address. " <i>Reflections on the Commercial List as at the commencement of 2009</i> "
14 Jul – 11 Aug	NSW Young Lawyers Civil Litigation Essay Competition and Presentation of Prizes – Judge and keynote address, " <i>I have made this [letter] longer, because I have not had the time to make it shorter</i> ", Blaise Pascal, " <i>Lettres provinciales</i> ", letter 16, 1657",
2 – 3 Sep	Lexis Nexis 2009 Litigation Skills Forum, keynote address, " <i>A forensic expert, like other experts, should not be like a "frog under the coconut shell"</i> " [Harcharan Sing Tara Malaysia [2006] 5MLJ xivi; [2006] 5 MLJA 46] – Expert Opinion Evidence

THE HONOURABLE JUSTICE KIRBY**Speaking Engagements:**

28 May	Castlecrag Conservation Society
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Appointments to Legal, Cultural or Benevolent Organisations:

Member, Supreme Court Media Consultation Group

THE HONOURABLE JUSTICE R P AUSTIN

Conferences:

11 Aug	Supreme Court of New South Wales Annual Corporate Law Conference (Sydney)
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Speaking Engagements:

31 Jul	Welcoming Remarks on Current Issues in Insolvency, Commercial Law Association Conference (Sydney)
11 Aug	<i>An Introduction to the Conference Themes</i> (with assistance from Aaron Rathmell) and Preface to monograph of The Supreme Court Annual Corporate Law Conference: Directors in Troubled Times (Sydney)

Publications:

Co-author, *Ford's Principles of Corporations Law* (Lexis Nexis, 14th ed and looseleaf) with IM Ramsay

Appointments to Legal, Cultural or Benevolent Organisations:

Challis Lecturer in Corporate Law, University of Sydney (Master of Laws degree courses in *Takeovers and Reconstructions* and *Corporate Fundraising*)

Member, Editorial Board, Company and Securities Law Journal

THE HONOURABLE JUSTICE ANTHONY WHEALY

Conferences:

25 – 29 Jan	Supreme and Federal Court Judges' Conference (Hobart)
21 – 23 Aug	Supreme Court Annual Judges' Conference (Pokolbin, NSW)

THE HONOURABLE JUSTICE ROD HOWIE

Conferences:

25 – 29 Jan	Supreme and Federal Court Judges' Conference (Hobart)
21 – 23 Aug	Supreme Court Annual Judges' Conference (Pokolbin, NSW)

Speaking Engagements:

21 Mar	NSW Young Lawyers CLE – <i>Criminal Law Update</i>
7 May	Land and Environment Court conference – <i>Criminal Law Update</i> – presented by Justice Johnson at the Conference (Sydney)
1 Jul	Local Court Conference – <i>Criminal Law Update</i> (Sydney)
21 Aug	Supreme Court Judges' Conference – <i>Criminal Law Update</i> (Hunter Valley, NSW)

Publications:

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, Bench Book Committee

THE HONOURABLE JUSTICE R I BARRETT

Conferences:

12 – 14 Mar	Law Council of Australia 2009 Insolvency Workshop (Hamilton Island, Qld)
20 – 21 Jun	Eighth Joint UNCITRAL/INSOL/World Bank Multinational Judicial Colloquium on Insolvency (Vancouver, Canada)
23 – 24 Jun	INSOL International Eighth Quadrennial Congress (Vancouver, Canada)
11 Aug	The Supreme Court of New South Wales Annual Corporate Law Conference (Sydney)
11 – 13 Sep	Law Council of Australia 2009 Corporations Law Workshop (Yarra Valley, Vic)

Speaking Engagements:

11 Jun	In conjunction with Justice Emmett of the Federal Court of Australia, presented a Bar Association Continuing Professional Development Seminar on Practice in the Corporations Lists (Sydney)
20 – 21 Jun	Eighth Joint UNCITRAL/INSOL/World Bank Multinational Judicial Colloquium on Insolvency. With Justice Kane of the Delhi High Court and Justice McGowan of the High Court of Ireland, led panel discussion "Reflection on the need for judicial co-operation" (Vancouver, Canada)
31 Jul	Current Issues in Insolvency Conference, Commercial Law Association and University of Sydney – Closing Address (Sydney)

Publications:

"Thoughts on court-to-court communication in insolvency cases" *Insolvency Law Journal* (2009) Vol 17 No 4 page 206

THE HONOURABLE JUSTICE PALMER

Conferences:

11 Aug	Supreme Court of New South Wales Annual Corporate Law Conference (Sydney)
21 – 23 Aug	Supreme Court Annual Judges' Conference (Pokolbin, NSW)
13 Nov	Legal Aid: Civil Law Conference – Member of Panel on Capacity Issues (Sydney)
25 – 27 Nov	Paper for International Conference "Architecture & Justice", "Shaping Justice" (Lincoln University, UK)

Speaking Engagements:

5 Mar	Opening commentary at the UNSW "Wills & Estate Administration Update"
17 Jun	Speech at the Commonwealth Director of Public Prosecutions, Sydney Office Conference: "Work/Life Balance".
27 Jun	Speech at the Annual Conference of the Blue Mountains Law Society: "Judicial Eccentricity"
11 Aug	Speech at Bar Association's New Barristers' Seminar "Presenting Opening Addresses".
11 Aug	Introduction to Prof Jennifer Hill at Supreme Court Annual Corporate Law Conference: "Directors in Troubled Times".
19 Oct	Presentation of 8th Annual Supreme Court Concert
9 Nov	Guest Speaker at the Law Society Will & Estates Accredited Specialists Annual Dinner

Appointments to Legal, Cultural or Benevolent Organisations:

President, Arts Law Centre of Australia
Chairman, Pacific Opera Company
Director, Ars Musica Australis
Director, Sydney Omega Ensemble

THE HONOURABLE JUSTICE TERRY BUDDIN

Conferences:

18 – 19 Mar	National Judicial College of Australia (Melbourne) Attended meeting of Steering Committee of NJOP Presenter, Session on Sentencing
12 – 13 Nov	National Judicial College of Australia (Adelaide) Attended meeting of Steering Committee of NJOP Presenter, Session on Sentencing

Appointments to Legal, Cultural or Benevolent Organisations:

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

THE HONOURABLE JUSTICE IAN VITALY GZELL

Conferences:

18 Feb	Society of Trust and Estate Practitioners (STEP) Presentation by W A Lee "Purifying the Dialect of Equity: Some Phrases and Concepts for the Waste Paper Basket" (Sydney)
26 Mar	STEP Presentation by Chris Cuffe "Prescribed Private Funds (PPFs) – past, present and future ... including an overview of Commonwealth Treasury's proposed Integrity Measures" (Sydney)
22 Apr	STEP Presentation by Professor Rosalind Croucher "Quirks and Curios – Lighthearted Reflections on Classic Moments in Succession Law" (Sydney)
25 – 30 Apr	The International Academy of Estate and Trust law Conference (Cartagena, Colombia)
11 – 13 May	International Seminar for Tax Judges (Paris, France)
20 May	STEP Presentation by Brendon Lamers and Mark Friezer "Managed Investments Trusts – The New Withholding Tax Regime" (Sydney)
17 Jun	STEP Presentation by the Honourable LJ Priestley QC "Anti-Money Laundering – Potential Problems for Australian Lawyers" (Sydney)
21 – 23 Aug	Supreme Court Annual Judges' Conference (Hunter Valley)
26 Aug	STEP Presentation by the Honourable Keith Mason AC QC "Deconstructing Constructive Trusts" (Sydney)
29 Sep	STEP Presentation by Tony Slater QC "Amending a Trust Deed" (Sydney)
14 Oct	STEP Presentation by Profession Gino Dal Pont "The Future of Charity Law in Principle and in Practice" (Sydney)
19 – 21 Nov	STEP Committees and Branch Chairs Assembly (London)
25 Nov	STEP Presentation by the Honourable Justice Bergin, Chief Judge in Equity "Executors/Trustees and Mandatory Mediation" (Sydney)

Speaking Engagements:

17 Jul	Paper – Queensland Bar Practice Course Final Address “ <i>Managing Technology</i> ” (Brisbane)
22 Jul	Speech – Opening of Perth Branch of the Society of Trust and Estate Practitioners (STEP) (Perth)
7 Oct	Paper – e-Discovery Australian Conference “ <i>Controlling the Flow of e-discovered Documents into Evidence</i> ” (Sydney)
22 Oct	Paper – e-Discovery & Digital Forensics “ <i>Managing Digital Information in Today’s Judicial and Legal Systems</i> ” (Singapore)
27 Nov	Dinner Speech – 10 th Anniversary of STEP (Sydney)

Appointments to Legal, Cultural or Benevolent Organisations:

Vice-President Western Pacific, The International Academy of Estate and Trust Law
 Member of Executive Council of 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, Department of Justice & Attorney General, JusticeLink 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

Delegations and International Assistance:

22 Sep Indian Delegate led by Chief Justice Balakrishnan, Supreme Court, Delhi

THE HONOURABLE JUSTICE W H NICHOLAS**Conferences:**

11 Aug The Supreme Court of New South Wales Annual Corporate Law Conference (Sydney)
 21 – 23 Aug Supreme Court Annual Judges’ Conference (Pokolbin, NSW)

Speaking Engagements:

17 Mar University of NSW CLE Seminar: Defamation Law Update

Appointments to Legal, Cultural or Benevolent Organisations:

Board Member, Kimberley Foundation Australia
 Honorary Councillor, Royal Agricultural Society of NSW
 Trustee, McGarvie Smith Institute
 Member, Court of Arbitration for Sport, Oceania Registry
 Member, Supreme Court Heritage Committee
 Member, Supreme Court Education Committee
 Member, State Records Authority of New South Wales

THE HONOURABLE JUSTICE MCDUGALL**Conferences:**

23 – 27 Jan Supreme and Federal Courts Judges’ Conference (Hobart)
 23 – 26 Mar Court of the Future Network Conference (Melbourne)
 5 – 9 Apr 16th Commonwealth Law Conference 2009 (Hong Kong)

Speaking Engagements:

5 – 9 Apr “*Law, Liberty and Terrorism*” (Commonwealth Law Conference, Hong Kong)
 11 Sep “*An examination of the role and content of natural justice in adjudications under construction industry payment legislation*” (LEADR Annual Conference, Melbourne)
 13 Nov “*Some thoughts on calling expert evidence*” (Sydney CLA)

THE HONOURABLE JUSTICE WHITE**Conferences:**

21 – 23 Aug Supreme Court Annual Judges’ Conference (Pokolbin, NSW)
 12 – 13 Sep Law Council Corporations Conference (Melbourne)

Appointments to Legal, Cultural or Benevolent Organisations:

Chair of Legal Qualifications Committee of Legal Profession Admission Board

THE HONOURABLE JUSTICE JOHNSON

Conferences:

21 – 23 Aug Supreme Court Annual Judges' Conference (Pokolbin, NSW)

Speaking Engagements:

7 May Land and Environment Court Annual Conference – “Criminal Law Update” (Sydney) (speaking to paper prepared by the Hon Justice Howie)

20 Oct Judicial Commission of New South Wales twilight seminar – the Mental Health Legislation Amendment (Forensic Provisions) Act – (Sydney) (chair)

5 Nov Annual ADT Members Conference – “Controlling Unreasonable Cross-Examination” (Sydney) (speaker)

21 Nov The Motor Accidents Assessment Service 2009 Assessors' Annual Conference – “Controlling Unreasonable Cross-Examination” (Sydney) (speaker)

22 Dec Office of the Director of Public Prosecutions Solicitors' Training and Development Day – “Recent Developments in Sentencing” (Sydney) (speaker)

Publications:

“Controlling Unreasonable Cross-Examination” – Judicial Officers' Bulletin, May 2009

Co-Author “Criminal Practice and Procedure NSW” (Lexis Nexis looseleaf service)

THE HONOURABLE JUSTICE STEPHEN ROTHMAN AM

Conferences:

23 – 27 Jan Supreme and Federal Courts Judges' Conference (Hobart)

6 – 7 Feb National Judicial College of Australia – Sentencing 2009 Conference (Canberra)

19 Feb NSW Judicial Commission – Twilight Seminar: *'Recent Amendments to the Evidence Act'* [Mr Stephen J Odgers SC] (Sydney)

20 Feb Constitutional Law Conference & Dinner (Sydney)

16 – 17 May NSW Judicial Commission – Ngara Yura Exchanging Ideas Conference (Parramatta)

29 Jun Carroll & O'Dea Lawyers Lunchtime Speaker Series [The Hon. Michael Kirby AC CMG] (Sydney)

1 Jul NSW Society of Jewish Jurists & Lawyers Inc Luncheon: *'A mixture of legal issues: Crime, Prisons, Human Rights and Civil Matters'* [The Hon. Greg Smith SC MP, Shadow Attorney-General and Shadow Minister for Justice] (Sydney)

20 Aug The Anglo-Australasian Lawyers Society: *'Equitable Estoppel: The House of Lords speaks twice breaking 150 years of silence'* [Lord Neuberger MR] (Sydney)

4 Sep The Anglo-Australasian Lawyers Society: *'The Common Law and the Protection of Human Rights'* [The Hon Chief Justice Robert French] (Sydney)

22 Sep The Anglo-Australasian Lawyers Society: *'Forum on the Pape Case'* [Dr Nicholas Seddon – Blake Dawson, Associate Professor Anne Twomey – UOS, The Hon Murray Gleeson AC] (Sydney)

20 Oct NSW Judicial Commission – Mental Health Legislation Amendment (Forensic Provisions) Act Seminar [The Hon. Greg James QC, President, Mental Health Review Tribunal] (Sydney)

22 Oct NSW Judicial Commission – Launch of DVD – Circle Sentencing in NSW [Professor Mick Dodson] (Sydney)

22 Oct The Anglo-Australasian Lawyers Society: *'The Entrenched Minimum Provision of Judicial review and the Rule of Law'* [Associate Professor Leighton McDonald – ANU] (Sydney)

17 Nov The Anglo-Australasian Lawyers Society: *'Reflections on the Republic and Executive Power: The Evolution of the Winterton Thesis'* [Associate Professor Peter Gerangelos – UOS] (Sydney)

19 Nov The Anglo-Australasian Lawyers Society: *'Protecting human rights in Australia: What is the best course for the future'* [Professor Frank Brennan SJ AO; The Hon. John Hatzistergos MLC] (Sydney)

7 Dec NSW Judicial Commission – Twilight Seminar: *'Concurrent Evidence in the Supreme Court'* [The Honourable Justice Peter McClellan, Honourable Justice Cliff Hoeben AM RFD] (Sydney)

Speaking Engagements:

3 Sep Lexis Nexis Litigation Skills Conference – Address on *'Thinking through hearsay during your case preparation'* (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

Honorary Life Member, Executive Member, NSW Jewish Board of Deputies

Executive Member, Board of Jewish Education

Co-Chair – Australian Council of Jewish Schools

Member – Organising Committee of the Joint Supreme Court/Federal Court Judges' Conference

THE HONOURABLE JUSTICE PAUL BRERETON RFD

Speaking Engagements:

28 Feb	Costs Assessors' Annual Seminar – " <i>Recent Developments in Costs Assessment</i> " (Sydney)
Aug	Keynote address – Outdoor Recreation Industry Council of NSW, Novotel Hotel, Sydney Olympic Park – " <i>Aspects of Law for Outdoor Educators</i> "
21 – 23 Aug	Supreme Court Conference – Commentator – " <i>Expert Witnesses & Concurrent Evidence</i> " – Hunter Valley
3 Sep	Lexis Nexis – Litigation Skills Forum – " <i>Cross examining & re-examining a witness</i> " (Sydney)
17 Sep	Department of Community Services – Legal Officers' Conference – " <i>Parens Patriae</i> " (Sydney)

Appointments to Legal, Cultural or Benevolent Organisations:

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

THE HONOURABLE JUSTICE PRICE

Conferences:

15 – 18 Jun 18th Pacific Judicial Conference (Tahiti)

THE HONOURABLE JUSTICE DAVID HAMMERSCHLAG

Conferences:

21 – 23 Aug Supreme Court Annual Judges' Conference (Pokolbin, NSW)

Speaking Engagements:

20 Nov	Panel "Is the Rule of Law Under Challenge in Australia?" – Rule of Law Association, Hilton Hotel, Sydney
26 Nov	NSW Young Lawyers Distinguished Speakers Series – Business Law Committee "Experiences in the Law" – NSW Law Society, Sydney

THE HONOURABLE JUSTICE IAN HARRISON

Conferences:

13-15 Mar AIJA Court Interpreters conference (Fremantle, WA)
5 Nov GILD Annual Conference

Speaking Engagements:

7 Feb	Speaker – The New South Wales Bar Association Personal Injury Conference, Sydney
7 Mar	Speaker – Public Defenders' Criminal Law Conference, Taronga Zoo, Sydney
22 May	Commencement speech to law graduates at University of Sydney graduation ceremony

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
Supreme Court Access to Court Documents Working Group

THE HONOURABLE JUSTICE FULLERTON

Conferences:

7 – 8 Feb "Judicial Reasoning: Art or Science?" (Canberra)

Speaking Engagements:

19 Aug CLE Seminar presentation – Law Society of NSW, "*Substantive defence – The Case Theory Approach*" (Sydney)

THE HONOURABLE JUSTICE LUCY MCCALLUM

Conferences:

18 Feb	STEP Lecture (Sydney)
16 – 17 May	Exchanging Ideas Conference (Sydney)
21 May	Twilight Seminar on Online Research (Sydney)
11 Aug	Corporate Law Conference (Sydney)
21 – 23 Aug	Supreme Court Annual Judges' Conference (Pokolbin, NSW)
22 Oct	Launch of Circle Sentencing DVD

Speaking Engagements:

9 Mar	Lecture to Bar Readers re. Written Submissions
16 Nov	Opening Address to the Sydney Institute of Criminology and Corrective Services Seminar 'Women, Crime, Custody and Beyond' (Sydney University)

Appointments to Legal, Cultural or Benevolent Organisations:

Member of the Advisory Board, Notre Dame University Law School

THE HONOURABLE JUSTICE N G REIN**Conferences:**

21 – 23 Aug Supreme Court Annual Judges' Conference (Pokolbin, NSW)

Publications:

"Outside the Construction Zone – Three Aspects of Insurance Litigation That Do Not Involve Interpretation of the Contract of Insurance", paper presented at Supreme Court Annual Judges' Conference, August 2009.

Appointments to Legal, Cultural or Benevolent Organisations:

Member, Supreme Court Rules Committee

Member, Uniform Civil Procedure Rules Committee

Member, Supreme Court Access to Court Documents Working Group Committee

Member, Supreme Court JusticeLink Committee

Member, Harmonisation Committee in relation to various matters, including: (1) Hague Convention on Service; (2) Interest Rates; (3) Subpoena Rules Amendment; and (4) Freezing Orders Amendment

THE HONOURABLE JUSTICE WARD**Conferences:**

23 – 27 Jan Supreme and Federal Court Judges' Conference (Hobart)

16 – 20 Mar New Judges' Conference (Melbourne)

27 Jul Multi-Door Courthouse Symposium, (Law Council of Australia) (Representative, Supreme Court of NSW) (Canberra)

24 Jun Department of Justice & Attorney General – ADR Blueprint Steering Committee meeting (Sydney)

21 – 23 Aug Supreme Court Annual Judges' Conference (Pokolbin, NSW)

17 – 18 Sep Judgment Drafting

Speaking Engagements:

28 Aug "Women in Law" – Women's College University of Sydney

27 Nov Occasional Address, Law Graduation Ceremony, University of Sydney

THE HONOURABLE JUSTICE ROBERT ALLAN HULME**Conferences:**

21 – 23 Aug Supreme Court Annual Judges' Conference (Pokolbin, NSW)

7 Sep Jury Management Program, National Judicial College of Australia (Adelaide)

Speaking Engagements:

27 Nov *Admissibility of Tendency and Coincidence Evidence under the uniform Evidence Act* (County Court, Victoria)

Publications:

Co-author *Criminal Law News*, Lexis Nexis Butterworths

Appointments to Legal, Cultural or Benevolent Organisations:

Member, Jury Task Force

Member, Judicial Commission of NSW Criminal Trials Bench Book Committee

Delegations and International Assistance:

19 – 22 Dec Consultation with judges of Qinghai Province, China at 14th Asian Consultation on Due Process Issues, Asian Legal Resource Centre (Bangkok, Thailand)

THE HONOURABLE JUSTICE M J SLATTERY

Conferences:

21 – 23 Aug	Supreme Court Annual Judges' Conference (Pokolbin, NSW)
17 – 18 Sep	Judgment Writing Workshop at the Judicial Commission of New South Wales (Sydney)
8 – 13 Nov	National Judicial Orientation Program Sunday (Glenelg, South Australia)

Speaking Engagements:

25 May	<i>Swearing In Speech</i> , Swearing in Ceremony as Judge of the Supreme Court of NSW, Banco (Sydney)
19 Nov	Speaker, City of Sydney Law Society Annual Dinner, Castlereagh Hotel (Sydney)
20 Nov	Speaker at New South Wales Navy Reserve Legal Panel Mess Dinner (Sydney)

Appointments to Legal, Cultural or Benevolent Organisations:

Member, Law Admissions Consultative Committee
Member, Legal Profession Admission Board
Member, Legal Qualifications Committee
Member, Indigenous Barristers Trust – The Mum Shirl Fund

THE HONOURABLE JUSTICE MONIKA SCHMIDT

Conferences:

7 – 14 Jan	Australian Accountants & Lawyers Conference (Aspen, Colorado)
21 – 23 Aug	Supreme Court Annual Judges' Conference (Pokolbin, NSW)
17 – 18 Sep	Logic and Legal Reasoning in Judicial Decision-Making Workshop (Melbourne)

Speaking Engagements:

7 – 14 Jan	Australian Accountants & Lawyers Conference " <i>Industrial Relations 2009 – Turbulent Times Ahead?</i> " (Aspen, Colorado)
19 Sep	Young Lawyers NSW " <i>Introduction to Advocacy, How to keep the judges happy</i> " (Sydney)
24 Sep	Annual Industrial Relations Commission Conference " <i>Concurrent Expert Evidence</i> " (Sydney)

THE HONOURABLE ASSOCIATE JUSTICE MCLAUGHLIN

Publications:

"Sir Charles Augustus Fitzroy", <i>The Governors of New South Wales</i> (Ed. Clune and Turner), 2009, Federation Press, Sydney
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Appointments to Legal, Cultural or Benevolent Organisations:

Honorary Fellow, University of Sydney, November 2009
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THE HONOURABLE ASSOCIATE JUSTICE RICHARD MACREADY

Conferences:

21 – 23 Aug	Supreme Court Annual Judges' Conference (Pokolbin, NSW)
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Speaking Engagements:

23 Jul	Electronic Discovery & Digital Document Management " <i>Overview and Challenges the Court Faces and Benefits to the Court</i> ", University of New South Wales (Sydney)
7 Oct	Judicial Perspectives on E Discovery (Sydney)

Appointments to Legal, Cultural or Benevolent Organisations:

Chairman, Caselaw Governance Committee
Member, Department of Justice & Attorney General's JusticeLink Steering Committee
Member, Supreme Court Judges JusticeLink Committee
Member, Supreme Court IT Committee

Supreme Court of New South Wales

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