

ANNUAL REVIEW 2007



**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 2007. This is but a small sample of the 2000 or so separate substantive judgments delivered by the 51 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 2007, 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

## 2007: AN OVERVIEW

- Notable judgments
- Court operations
- Education and public information
- Consultation with Court users
- Development and launch of new Court policies

### **Notable judgments**

During 2007, the Court of Appeal handed down 377 judgments, and the Court of Criminal Appeal delivered 371. In respect of its criminal and civil trial work, the Court delivered 1,519 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**

The avoidance of excessive delay remains a priority for the Court. In most areas of its work, the Court has been able to surpass results achieved in 2006, or at least maintain its position. The proportion of criminal appeals less than 12 months was once again seven percent higher than the national standard. For the second consecutive year the Court successfully allocated judicial officers to all criminal trials that proceeded to the hearing stage and no criminal trial was “not reached”. The Court was also able to reduce the proportion of “not reached” civil hearings in the Common Law Division from eight to one percent. This is a particularly significant achievement as 43 per cent more matters were listed for hearing in 2007 compared with 2006. The Court operations chapter outlines the specific time standards set by the Court along with detailed analysis of the results achieved in each jurisdiction. This chapter should be read in conjunction with the comprehensive statistical data tabled in Appendix (ii) to this Review.

### **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 the educational activities were specifically tailored to the Court’s needs, while others targeted the international legal community. The Public Information Officer continued to provide the media, and consequently the general public, with reliable information about contentious issues or proceedings before the Court. During the year, the Registrars addressed over 1,300 students and community group members, providing them with a unique insight into the work of the Court 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 2007 forms Appendix (iii) to this Review.

### **Development and launch of new Court policies**

In 2007, the Court issued five policy statements concerning issues relevant to its operations that fall outside the scope of its Practice Note collection. The policies addressed the following issues: Delays in Reserved Judgments; Court Attire; Release of Statistics, data and information; Tape recording of court proceedings, and Identity Theft and Anonymisation. These policies are publicly available on the Court’s website, on the “Practice and Procedure” page. The policies are designed to clarify the Court’s procedures and expectations in areas that have been a source of confusion or concern to court users, the media or the general public.

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

- Common Law Division, and
- Equity Division.

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

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

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

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

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

### **Court of Appeal**

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

### **Court of Criminal Appeal**

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

Sittings of the Court of Criminal Appeal are organised on a roster basis whilst taking into account the other regular judicial duties and commitments of the Judges who form the Court's bench. The Judges who sit in the Court of Criminal Appeal are the Chief Justice, the President, the Judges of the Court of Appeal, the Chief Judge at Common Law and Judges of the Common Law Division. During 2007, 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.

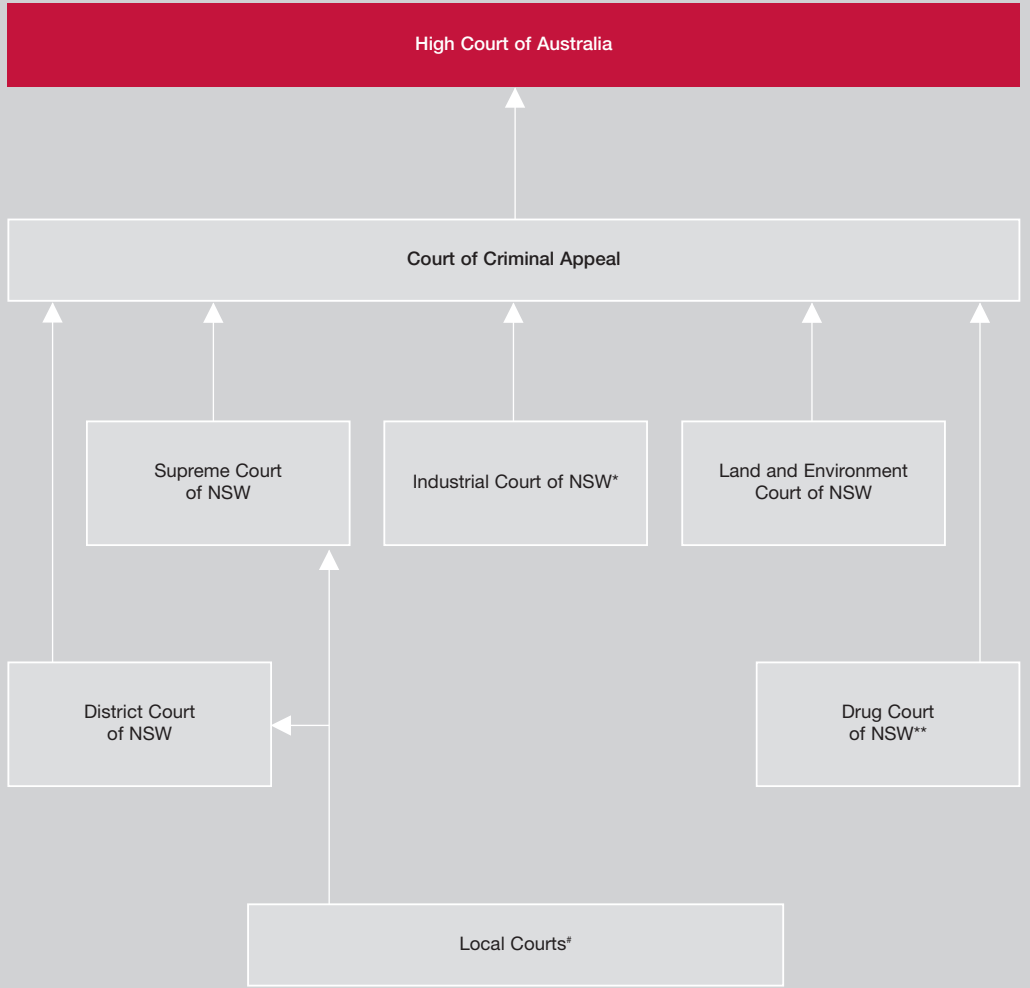
The Division deals with all serious personal injury and contractual actions, in which the Court has unlimited jurisdiction. The civil business of the Division also comprises:

- 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 claims, 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 (Commonwealth)*, the *Family Provision Act 1982*, 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



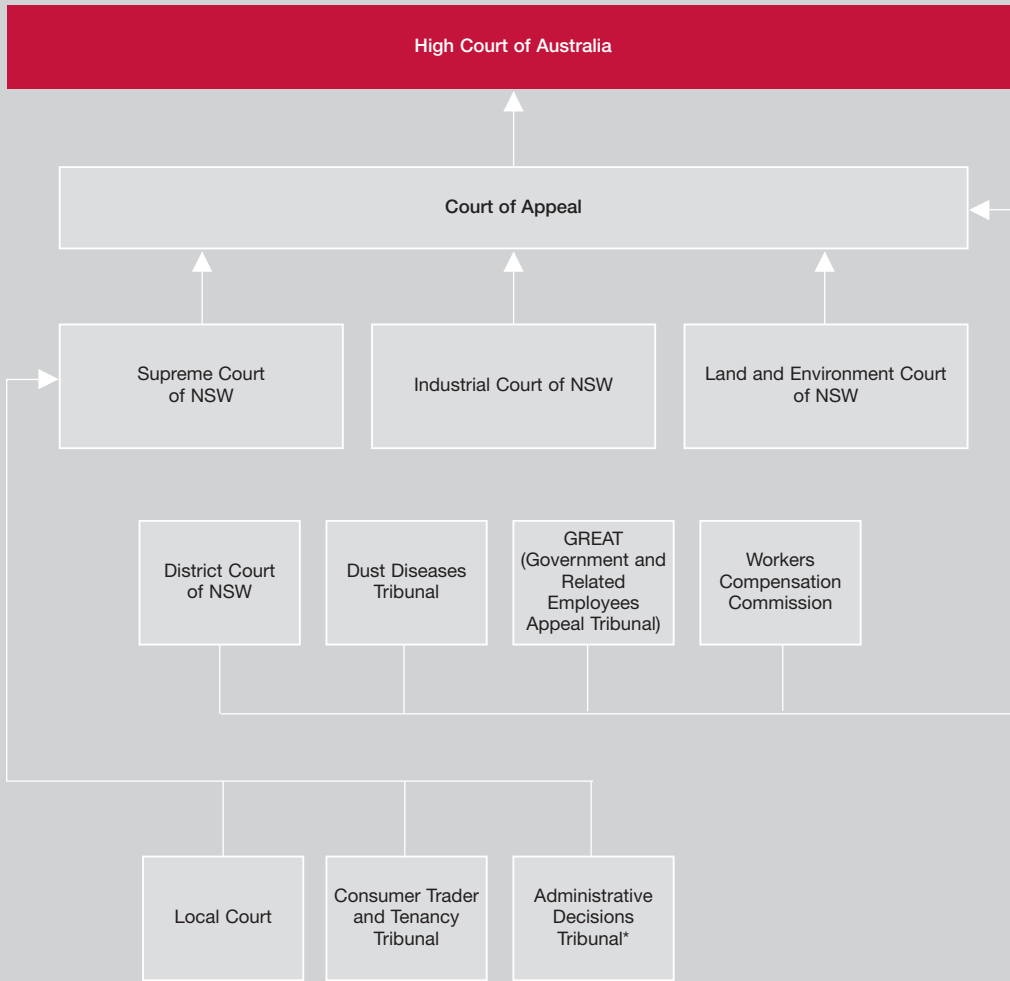
*Note: the above diagram is a simplified representation of the appeal process in NSW. Actual appeal rights are determined by the relevant legislation.*

*\*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.

\*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 a 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 2007 can be found in the chapter entitled Caseflow Management.

As at 31 December 2007 the Judges, in order of seniority, were as follows:

### Chief Justice

The Honourable James Jacob Spigelman AC

### President

The Honourable Justice Keith Mason AC

### Judges of Appeal

The Honourable Justice

Margaret Joan Beazley AO

The Honourable Justice Roger David Giles

The Honourable Justice

David Hargraves Hodgson

The Honourable Justice David Andrew Ipp AO

The Honourable Justice

Murray Herbert Tobias AM RFD

The Honourable Justice

Ruth Stephanie McColl AO

The Honourable Justice John Basten

The Honourable Justice

Joseph Charles Campbell

Chief Judge in Equity

The Honourable Mr Justice

Peter Wolstenholme Young AO

Chief Judge at Common Law

The Honourable Justice Peter David McClellan

### Judges

The Honourable Mr Justice

Michael Brian Grove RFD

The Honourable Mr Justice

Bruce Meredith James

The Honourable Mr Justice William Victor

Windeyer AM RFD ED

The Honourable Mr Justice

Robert Shallcross Hulme

The Honourable Justice

Carolyn Chalmers Simpson

The Honourable Justice Peter John Hidden AM

The Honourable Justice Graham Russell Barr

The Honourable Mr Justice John Perry Hamilton

The Honourable Justice Clifford Roy Einstein

The Honourable Justice

Michael Frederick Adams

The Honourable Justice David Kirby

The Honourable Justice Robert Peter Austin  
 The Honourable Justice Patricia Anne Bergin  
 The Honourable Justice Virginia Margaret Bell  
 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

### **Acting Judges**

The following persons held commissions during 2007. 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 2007 is detailed in brackets below.

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

- The Honourable John Purdy Bryson (commission effective between 1 May and 31 Dec; acted as a Judge of the Court for 96 days).
- The Honourable Kenneth Robert Handley AO QC (commission effective between 29 Jan and 31 Dec; acted as a Judge of the Court for 151 days).
- The Honourable Jane Hamilton Mathews AO (commission effective between 1 Jan and 31 Dec; acted as a Judge of the Court for 85 days).

### *Acting Judges (in alphabetical order)*

- His Honour Judge Peter Graeme Berman (commission effective between 5 Nov and 14 Dec; acted as a Judge of the Court for 30 days).
- The Honourable Justice Peter Meldrum Biscoe (commission effective between 5 Nov and 13 Nov; acted as a Judge of the Court for 20 days).
- The Honourable Harvey Leslie Cooper AM (commission effective between 31 Jan and 22 Mar; acted as a Judge of the Court for 19 days).
- The Honourable David Anthony Hunt AO QC (commission effective between 1 Jan and 13 Jan, but was not required to act a Judge of the Court during 2007).
- The Honourable David Louthean Patten (commission effective between 1 January 2007 and 14 November 2007; acted as a Judge of the Court for 185 days).
- His Honour Judge Nigel Geoffrey Rein SC (commission effective between 4 June and 3 Aug; acted as a Judge of the Court for 44 days).
- The Honourable Rex Foster Smart QC (commission effective between 1 Jan and 31 Dec; acted as a Judge of the Court for 74 days).
- The Honourable Timothy James Studdert QC (commission effective between 5 Nov and 31 Dec, acted as a Judge of the Court for 15 days).
- His Honour Judge Stephen Lewis Walmsley SC (commission effective between 5 Nov and 14 Dec, acted as a Judge of the Court for 30 days).

### Appointments

The Honourable Justice Joseph Charles Campbell was appointed a Judge of the Court of Appeal on 29 January 2007.

David Jacob Hammerschlag was appointed a Judge of the Supreme Court on 30 January 2007.

Ian Gordon Harrison SC was appointed a Judge of the Supreme Court on 12 February 2007.

Elizabeth Lillian Fullerton was appointed a Judge of the Supreme Court on 19 February 2007.

### Retirements

The Honourable Justice Kenneth Robert Handley AO retired as a Judge of Appeal on 11 January 2007.

The Honourable Mr Justice Brian Thomas Sully retired as a Judge of the Supreme Court on 24 March 2007.

The Honourable Mr Justice Timothy James Studdert retired as a Judge of the Supreme Court on 15 July 2007.

The Honourable Justice Geza Francis Kim Santow OAM retired as a Judge of Appeal on 31 December 2007.

### 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 (Commonwealth)*. 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 2007, the Associate Judges were:

- The Honourable Associate Justice John Kennedy McLaughlin;
- The Honourable Associate Justice Bryan Arthur Malpass;
- 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 (Commonwealth) and the Proceeds of Crime Act 1987 (Commonwealth);
- dealing with applications for orders under many of the provisions of the Corporations Act 2001 (Commonwealth), such as the winding up of companies;
- handling applications as referred to them by an Associate Judge;
- issuing court orders and writs of execution; and
- entering default judgments.

The *Supreme Court Rules 1970* and delegations under the *Civil Procedure Act 2005* permit registrars to directly assist the Judges in caseflow 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 2007, nine of the Court's Registrars were qualified mediators and available to conduct mediations throughout the year on a rostered basis.

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

As at 31 December 2007, the Registrars were as follows:

**Chief Executive Officer and Principal Registrar**

Megan Greenwood

**Manager, Court Services and Prothonotary**

Leonie Walton (acting)

**Registrar, Court of Appeal**

Peter Schell

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

Gabrielle Drennan

**Registrar, Common Law Case Management**

Christopher Bradford

**Registrar in Equity**

Andrew Musgrave (acting)

**Registrar in Probate**

Jonathan Finlay

**Senior Deputy Registrars**

Paul Studdert

Nicholas Flaskas

Opal King

Joanne Gray

**Deputy Registrars**

Emoke Durkin

Geoffrey Haggett

Bhaskari Siva

Suzin Yoo

Sharon Bowen (acting)

## SUPPORTING THE COURT: THE REGISTRY

### **The Work of the Registry**

The Court operates with the support of the registry that provides administrative and clerical support to the Court. In civil matters, the registry is responsible for: accepting documents filed at the Court; securing the custody of court documents including exhibits and documents produced under subpoena; listing matters for hearing; issuing court process; attending to the information needs of the Court's users by providing procedural guidance; maintaining the 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 offer 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 the case is properly prepared for hearing. If an issue arises that falls outside the specified duties of a Registrar, the Registrar may refer that case to a Judge or an Associate Judge.

## OVERVIEW BY JURISDICTION

### **Court of Appeal**

New appeal cases are initially 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. 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 applications to stay judgments pending an appeal.

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).

### **Court of Criminal Appeal**

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

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

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

### **Common Law Division**

Case management in the Division begins when a summons or statement of claim is filed in the registry. Each summons or statement of claim (with the exception of default matters) is given a return date before a Judge or Registrar and placed in a List. A Judge is appointed to manage each List, while the Common Law List Judge monitors all matters listed for hearing before a Judge. Registrars handle default matters administratively.

### **Common Law List Judge**

The List Judge allocates matters listed for hearing to specific judges. When deciding which judge will hear a matter, the List Judge considers the type of matter, its estimated hearing length, and whether the judge has other Court commitments. The List Judge also hears various applications in matters already listed for hearing, including all applications for adjournment. From time to time, the List Judge will issue further case management directions in matters already listed for hearing. Justice Hoeben was the Common Law List Judge in 2007.

### **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 *Listening Devices Act 1984*.

### **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*), the Consumer Trader and Tenancy Tribunal, and against costs assessors.

The Associate Judges also deal with applications for summary judgment and dismissal, applications for extension under the *Limitations 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 2007 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 2007, Justice Hall was responsible for the management of the Administrative Law List

### **Bails List**

Applications for bail or to review bail determinations can be made to the Supreme Court under the *Bail Act 1978* in respect of any person accused of any offence, even if the trial will

not be heard in the Supreme Court. These applications are listed throughout the year, including during the court vacation. Common Law Division Judges are rostered on a weekly basis to determine these applications.

### **Criminal List**

Arraignment hearings are held each month during Law Term. The aim of the arraignment procedure is to minimise the loss of available judicial time that occurs when trials are vacated after they are listed for hearing, or when a guilty plea is entered immediately prior to, or on the day of, the trial's commencement.

The arraignment procedure involves counsel at an early stage of the proceedings. This allows both the prosecution and defence to consider a range of issues that may provide an opportunity for an early plea of guilty, or shorten the duration of the trial. The procedures for arraignment are detailed in Practice Note SC CL 2. Justice Barr was the Criminal List Judge during 2007.

### **Defamation List**

Matters filed in this List after 1 January 2006 are handled according to the provisions of the *Defamation Act 2005*. Matters are first listed before a Registrar for directions. Once this 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 will 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 2007. 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 2007.

### **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 2007.

### **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 2007.

### **Equity Division**

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

### **Equity List Judge**

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

### **Expedition list**

A case is expedited when sufficient urgency is shown. When the application is granted, the Judge gives directions and monitors the preparations for hearing. The Expedition list Judges heard all applications for expedited hearings in 2007. The same Judge hears the case when it is ready to proceed. Mr Justice Young was the Expedition list Judge during 2007.

### **Equity Duty Judge list**

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

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

### **General list**

Other cases are placed in the General list when set down for hearing (if commenced by a statement of claim), or when the Registrar considers the matter ready for hearing (if commenced by summons). Provided the estimated hearing length is less than six days and there are fewer than 100 matters already listed, the Registrar will provide the parties with a range of available dates and set the matter down for hearing before an available Judge. The Registrar will usually offer a hearing date within three months of the final directions hearing.

### **Long Matters list**

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

### **Associate Judges' list**

The work of the Equity Division Associate Judges includes dealing with contested procedural applications and conducting inquiries as directed by Judges. Their work also includes the hearing of most applications under the *Family Provision Act 1982*, the *Property (Relationships) Act 1984*, and certain provisions of the *Corporations Act 2001 (Commonwealth)*. An Associate Judge handles weekly referrals from the Registrar, determining those that can be dealt with immediately, and adjourning the balance. The Registrar only refers matters where the hearing time is not expected to

exceed an hour. More complex matters are listed for hearing in the Associate Judges' list at a later date. Urgent referrals, such as the extension of a caveat, may be made at any time.

### **Lists of the Division**

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

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

The Chief Justice appoints a Judge to each of these Lists to bear responsibility for monitoring the List throughout the year. The Judges allocated to each List during 2007 are noted below.

### **Admiralty List**

The Admiralty List deals with maritime and shipping disputes. It is administered in the same manner as the Commercial List (see below). Justice Palmer was responsible for this List in 2007.

### **Adoptions List**

This List deals with applications for adoption orders and declarations of the validity of foreign adoptions under the *Adoptions Act 2000*. Most applications are unopposed. Once all supporting affidavits are filed, a Judge will deal with the application in the absence of the public, and without the attendance of the applicants or their lawyers. Unopposed applications require close attention for compliance with formal requirements, but there is little delay. A small number of contentious hearings take place in court in the absence of the public. Most of these relate to dispensing with consent to adoption. The Registrar in Equity deals with requests for information under the *Adoptions Act 2000*. Justice Palmer was the List Judge during 2007.

### **Commercial List**

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

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

There is also adherence to the allotted hearing dates, and hearings are continued to conclusion, even though time estimates may be exceeded. Justice Bergin was the Commercial List Judge in 2007.

### **Corporations List**

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

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

The Corporations List Judge during 2007 was Justice Austin in conjunction with Justice Barrett, Justice White and Justice Hammerschlag.

### **Probate List**

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

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

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

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

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

The Probate List Judge meets with the Registrars on a regular basis to discuss the efficient working of the List. Mr Justice Windeyer was the Probate List Judge during 2007.

### **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 endeavours to be as flexible as permissible in handling these proceedings with a minimum of formality. However, when there is a dispute which cannot be solved in this way, it is decided according to law.

The Senior Deputy Registrar dedicated to the Protective List 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 Deputy Registrar to discuss the efficient working of the List. Mr Justice Windeyer was the Protective List Judge during 2007.

### **Revenue List**

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

Justice Gzell handled the Revenue List during 2007.

### **Technology and Construction List**

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

## **REGIONAL SITTINGS OF THE COURT**

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

Civil hearings were held at regional venues by special fixture at the following locations during the year: Bega, Coffs Harbour, Forbes, Mudgee, Toronto and Wollongong.

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

## ALTERNATIVE DISPUTE RESOLUTION

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

### Mediation

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

The role of the mediator is to assist parties in resolving their dispute by alerting them to possible solutions, while allowing the parties to choose which option is the most agreeable. The mediator does not impose a solution on the parties. Nine qualified Registrars and Deputy Registrars were available throughout 2007 to conduct mediations at specified times each week. Alternatively, parties may use private mediators.

A matter may proceed to mediation at the request of the parties, or the Court may refer appropriate cases to mediation, with or without the consent of parties. If the Court orders that a matter be referred to mediation, there are several ways in which a mediator may be appointed. If the parties are in agreement as to a particular mediator, then they can ask the Court to appoint that mediator, who may also be a Registrar of the Court. If parties cannot agree upon a mediator, then they should attempt to agree on how the Court can appoint a qualified mediator. Some options are set out in Practice Note SC Gen 6.

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

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

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

### Arbitration

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

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

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

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

## 4

### COURT OPERATIONS

- Overview of operations by jurisdiction
- Time standards

### Court of Appeal

The number of new cases coming to the Court of Appeal was 14 per cent higher in 2007 than in 2006. This upturn follows a reduction in filings during 2005 and 2006. A particular area of growth was the appeals not requiring a preliminary grant of leave to appeal (336 in 2007 compared with 260 in 2006).

The disposal rate in 2007 was 11 per cent below the rate in 2006. Among the substantive appeals there was a considerably lower settlement rate: 61 (18 per cent) of the 338 substantive appeal disposals in 2007 occurred through settlement or discontinuance, compared with 119 (30 per cent) of the 402 substantive appeal disposals in 2006. The lower settlement rate will have contributed to the reduced disposal rate for 2007. Also, compared with 2006, there was one fewer Judge of Appeal available during 2007.

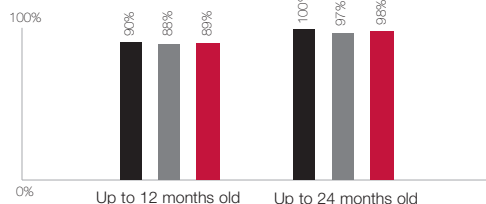
In 2007 there were 77 cases finalised by concurrent hearing (where parties elect to have a single hearing for determination of both the leave application and, if leave is granted, the related appeal), compared with 83 cases in 2006. Among the disposals of substantive appeals, 231 were finalised by delivery of reserved judgments and 34 by ex tempore judgments.

The increased filing rate in 2007 together with the reduced disposal rate have led to a seven per cent increase in the size of the pending caseload over the year. While the pending caseload has increased from 381 to 408 cases over the year, the number and proportion of older cases were reduced.

The age profile of the Court of Appeal's pending cases has improved slightly, returning closer to the national time standards (see Figure 4.1). The number of cases older than 24 months has decreased from ten to nine, and the number of cases older than 12 months has decreased from 54 to 44.

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

■ National standard ■ Achieved in 2006 ■ Achieved in 2007



### Court of Criminal Appeal

The number of new cases coming to the Court of Criminal Appeal was two per cent lower in 2007 than in 2006.

The disposal rate for 2007 was 11 per cent lower than the rate in 2006. However, that reduction is not of concern: in each of the past five years the Court of Criminal Appeal has disposed of more cases than were commenced, and its backlogs are now at record low levels.

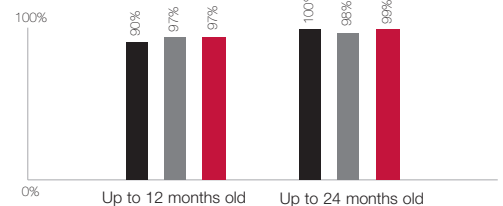
Of the criminal appeals finalised during 2007, 89 per cent required a substantive hearing. The proportion of cases finalised by abandonment or withdrawal of the appeal remained at nine per cent, the same level as in 2006 and 2005. Less than one per cent of finalisations were by summary dismissal or striking out the proceedings.

By the end of 2007 there was a further slight reduction in the number of pending cases (from 180 to 177). The reduced filing rate has contributed to this, together with the timely listing, hearing and determination of cases generally.

The improvements made in 2006 in the age profile of the pending caseload have been maintained through 2007. Figure 4.2 shows the position relative to the national time standards. At the end of 2007 there were five pending cases older than 12 months; only two of these were older than 24 months.

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

■ National standard ■ Achieved in 2006 ■ Achieved in 2007



### Common Law Division criminal cases

The caseload and performance statistics for 2007, 2006 and 2005 are not directly comparable with statistics for previous years because the Court applied new counting rules from 1 January 2005. The changes to the counting rules are explained in Appendix (ii).

During 2007, 133 defendants entered the Criminal List, compared with 104 during 2006. Most defendants enter a plea of 'not guilty' at arraignment, and those cases are then listed for trial.

At arraignments held during 2007, 146 defendants were listed for trial (starting in either 2007 or 2008) and 13 defendants entered pleas of 'guilty' and were listed for sentence hearings. Nearly all trials are conducted with a jury.

During 2007, 115 defendants were finalised. Of these, 95 were sentenced.

At the end of 2007 there were 111 defendants with cases pending in this List, compared with 93 at the end of 2006. This increase is largely due to the relatively high number of defendants registered during 2007.

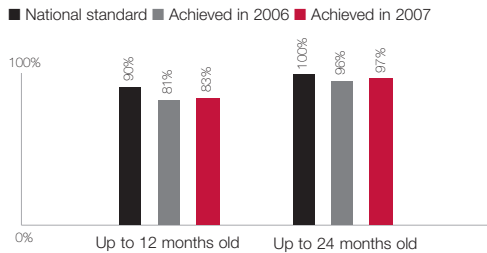
The age profile for pending cases in this List has improved further this year, returning closer to the national time standards (see Figure 4.3). When evaluating the Court's performance against the national time standards, it is important to note that almost all indictments in this List are for offences of murder, 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 involve lesser maximum sentences.

At the end of 2007 there were 19 pending cases that were older than 12 months; only three of these were older than 24 months. Those three oldest cases have been protracted for different reasons: one could not start its trial until an appeal in a related case was decided; another was heard over the course of 11 months in 2007, having had the jury dismissed (after 28 weeks of hearing time) in an earlier trial; the third case involves terrorism charges and is taking considerable time to become ready to list for trial.

For criminal trials listed this year the hearing estimates given to the Court ranged from one day to 30 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 without withdrawing judges from other areas of work.

During 2007, trials for eight defendants either collapsed or were adjourned. No trial was "not reached". There is limited over-listing of criminal trials and it is a high priority to run all listed criminal trials. The Court is aware of the financial impact for the various publicly funded agencies involved in the criminal justice system, and of the emotional and financial impact for family of the victim and for witnesses, when trials are unable to run.

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



### Common Law Division civil cases

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).

For Common Law Division civil cases, the filing levels during 2007 were only slightly changed from those in 2006: for defended cases there was a two per cent decrease, for uncontested cases there was no appreciable change, and overall there was a decrease of less than one per cent. This follows increases in preceding years, most noticeably for cases that proceed as uncontested matters in the Possession List.

Overall, the disposal rate was 11 per cent higher in 2007 than in 2006. This was largely due to the increased number of finalisations of uncontested Possession List cases. Among the defended cases the disposal rate was four per cent higher in 2007 than in 2006. Among the uncontested cases there was a 13 per cent increase in the disposal rate. Trends in disposal rates are not expected to replicate instantly trends in filing rates. This is because some time is required to progress a case to any form of finalisation, and that time will vary from case to case according to the extent and nature of the issues in dispute.

Overall, the Division's pending caseload decreased by nine per cent during 2007 (see Figure 4.4). For defended cases, while this year brought an overall two per cent reduction in pending cases, there were increases of five per cent or more in the Possession List, the Summons List and the Professional Negligence List. For uncontested cases, during 2007 there was a 13 per cent reduction in the number of pending cases.

By the end of 2007, defended cases were 40 per cent of the pending civil caseload of the Common Law Division, compared with 38 per cent at the end of 2006. This position is significantly different from the end of 2004, when defended cases were 60 per cent of the Division's pending caseload. The decreased proportion since 2004 is a direct result of the growth of the Possession List caseload, where the overwhelming majority of cases are uncontested.

During 2007 there were 760 matters listed for hearing, 43 per cent above the 2006 rate (see Figure 4.5). Of these 760 listings, 60 per cent proceeded to be heard and 28 per cent settled after being listed for hearing. This is a significant change from 2006 when 45 per cent of the 531 listed matters proceeded to be heard and 37 per cent settled.

So that available judicial time is used optimally, the Common Law Division's civil hearings are over-listed, and this has a risk that some cases may be "not reached". In 2007, only one per cent of listed cases were "not reached" compared with eight per cent in 2006.

Median finalisation time has improved significantly in the Professional Negligence List, being at least five months less than in any of the preceding four years. Increases (of a smaller extent) were seen in the Defamation List, Administrative Law List, Possession List and Summons List (for civil summons cases). Median finalisation time describes the age at finalisation of cases disposed during the year. It does not predict disposal times for pending or future cases. Median finalisation times can increase within a year if relatively more old cases are finalised, or if settlement rates decline. Each list is monitored monthly to examine delays within the caseload.

For cases proceeding by default, median finalisation time was reduced during 2007. This followed a significant increase in median finalisation time during 2006, which had arisen from the greatly increased workload in this area. In late 2006 and early 2007, more registry officers were trained in the procedures for entering default judgments to improve the finalisation time for cases proceeding by default.

FIGURE 4.4  
Common Law Division pending civil caseloads at 31 December

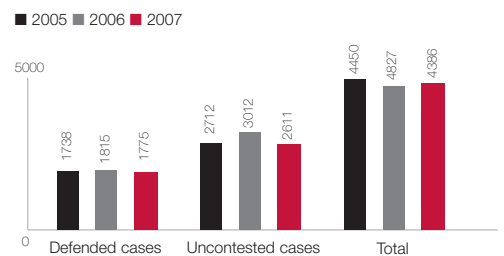
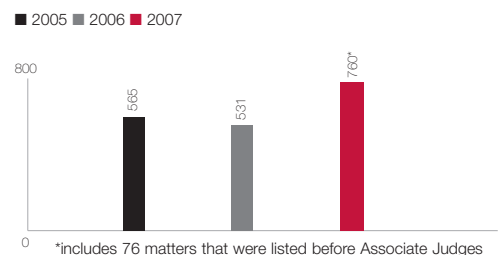


FIGURE 4.5  
Listings for hearing - common law civil hearings



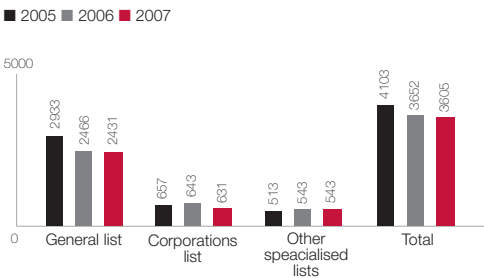
### Equity Division

The rate of filing in the Equity Division has decreased again this year, this time by three per cent. There were filing decreases in the two largest lists: the Corporations List (in which 80 to 90 per cent of cases are dealt with by the Registrar only) decreased by six per cent and the General List decreased by one per cent. Among the smaller lists, the Probate (Contentious Matters) List had a 15 per cent decrease. Although the number of filings has decreased, the greater complexity of some case-types and the observed reduction in settlement rates are believed to be actually increasing the judicial workload of the Division.

The reported disposal rate overall was ten per cent lower than in 2006. This is a return to more typical levels and follows a nine per cent rise in 2006. The Commercial List showed a 32 per cent increase in disposals this year. Within the Corporations List and the General List many cases are finalised in the Registrar’s lists and are unlikely to have been listed before a Judge or Associate Judge – these made up about 40 per cent of the overall disposals within Equity Division this year.

The pending caseload has reduced slightly over the year (by one per cent). Other than in the Technology and Construction List, in which there was ten per cent growth, in each list the caseload remained relatively stable or was slightly reduced (see Figure 4.6).

FIGURE 4.6  
Equity Division pending civil caseloads at 31 December

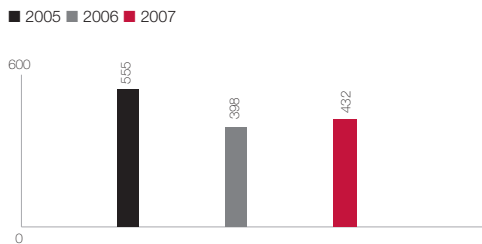


The figures for disposals and pending cases in the Division’s two largest lists, the General List and Corporations List, need to be interpreted with care. Those lists cannot be monitored sufficiently to eliminate counting of cases that have been re-

opened after finalisation of the substantive issues. Also, a significant number of cases may have more than one disposal recorded against them. These counting problems are expected to diminish when the JusticeLink system becomes available for civil cases. Meanwhile, however, some trends can be inferred from any significant patterns of change over time.

During 2007 there were 432 matters listed for hearing (other than matters before the Duty Judge, cases referred to a Corporations Judge, Adoptions List matters and Protective List matters). In comparison there were 398 such listings during 2006 (see Figure 4.7). Similar to the Common Law Division, proportionally more listed hearings are proceeding to judgment (73 per cent in 2007 compared with 68 per cent in 2006) and less are settling (27 per cent in 2007 compared with 32 per cent in 2006). As with the Common Law Division, this will have implications for judicial hearing time and case durations. Unlike the Common Law Division, the Equity Division does not routinely over-list the cases for hearing, so there are no “not reached” cases.

FIGURE 4.7  
Listings for hearing - equity division



The median case finalisation time for the Commercial List and the General List improved significantly during 2007. The Admiralty List has also shown a reduction in median finalisation time – this List can show erratic patterns because it handles a very small number of cases. For other lists, median finalisation times have remained relatively stable. Median finalisation time describes the age at finalisation of cases disposed during the year; it does not predict disposal times for pending or future cases. Median finalisation times can increase within a year if relatively more old cases are finalised, or if settlement rates decline.

Uncontested applications relating to probate matters are finalised by Registrars. A total of 22,673 applications were filed during 2007. Where an application for a grant of probate, letters of administration or re-seal (of a probate grant) meets all procedural requirements, the grant is usually issued within 3-5 working days.

### **Use of alternative dispute resolution**

During 2007 the Registry recorded 748 referrals to mediation, of which 282 were referrals to court-annexed mediation conducted by the Court's Registrars.

Within the court-annexed program, the percentage of cases settling at mediation was lower in 2007 than in previous years. Cases are considered to have settled at mediation only if the parties agree to finalising orders by the close of the mediation procedure. 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.

No cases were referred to arbitration during the year. After the District Court's jurisdiction expanded to include most of the work that typically had been arbitrated in the Supreme Court, referrals progressively declined between 1997 and 2004. During the past three years, the Court has made only one referral to arbitration.

### **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. Achievement for 2007 against national standards is shown in Appendix (ii).

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

performance in terms of the time from committal to acquittal or sentencing.

The Court's timeliness reporting for criminal matters (including criminal appeals) aligns with the methods used by the Productivity Commission in its annual Report on Government Services. Timeliness reporting for the Court of Appeal is also aligned with the methods used by the Productivity Commission, but is confined to those cases lodged in the Court of Appeal (whereas the Productivity Commission's figures cover all civil cases that are appellate in nature, not just those lodged in the Court of Appeal). Measurement of the age distribution within a pending caseload helps the Court to assess the success of delay reduction strategies and to identify areas where further case-management would be beneficial.

The Court has determined that it will report on the age distribution within its civil lists once the JusticeLink (formerly CourtLink) system is able to provide precise and timely statistics on the age of those cases. Current systems are unable to provide statistics of sufficient detail and accuracy for pending civil cases within the Common Law and Equity Divisions (approximately 8,000 pending cases as at the end of 2007, excluding non-contentious probate applications). Each year the Court completes a time-consuming analysis for the Productivity Commission, using the Commission's counting rules, to estimate the age profile for the Court's civil non-appeal cases as a single group (as at 30 June). The results are published in the Productivity Commission's annual Report on Government Services.

This year, for the first time, the Court has chosen to report on another aspect of timeliness: listing delays. Appendix (ii) features a new table the average waiting time for cases that become ready for hearing. The waiting time is measured from the date the case is identified as ready for hearing to the earliest hearing date the Court offered the parties. When interpreting the delays detailed in the table, it should be borne in mind that not all parties accept the earliest available hearing date offered by the Court, and instead seek a later date. It should also be noted that parties can apply for an expedited hearing of their case. When urgency is sufficiently demonstrated, the Court will allocate an earlier hearing date.

## 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 2007 appears below. For a more comprehensive list of activities, please refer to Appendix (iv) "Other Judicial Activity".

### Domestic activities

- In January, eight Judges attended the Supreme and Federal Courts Judges' Conference in Perth. Over the course of the Conference, judges and academics from around Australia chaired sessions on medical research, social justice, the changing nature of evidence, long trials, recent developments in criminal trials, terrorism trials and international criminal courts.
- In August, 38 Judges and four Associate Judges attended the Supreme Court Annual Conference at North Entrance. The three-day programme included sessions on: *Greater Efficiency in Criminal Justice* presented by the Right Honourable Sir Igor Judge; *Conducting Long Trials* presented by the Honourable Justice Sackville; *Developments in Criminal Trials* presented by the Honourable Justice Howie; *The Nature of a Beneficiary's Equitable Interest in a Trust* presented by the Honourable Justice White; *Contempt* presented by the Honourable Justice McClellan (paper by the Honourable Justice Whealy); *A Historical Perspective on Review of Merits and Legality* presented by the Honourable Justice Keane; *What it is like to be an Arab-Christian Judge on the Supreme Court of Israel* presented by the Honourable Justice Salim Joubran; *Historical and Other Truths* presented by Professor Pierre Ryckmans; *The UK Approach to Human Rights* presented by the Right Honourable the Lord Robert Walker of Gestingthorpe; and *Mission Impossible? Judicial Performance and Peer Review* presented by His Honour Chief Judge Michael Rozenes.

- The Court continued to host a series of occasional seminars to inform judges about legal developments and encourage the exchange of information about common experiences. In June, 10 Judges from the Supreme Court and eight Judges from the Federal Court attended an occasional seminar on *Risk Allocation in Commercial Finance Transactions* presented by Mr John Stumbles, Mr Ted Kerr, Mr Scott Farrell and Mr David Clifford.

### International activities

- In April, the Chief Justice attended the 7th Worldwide Common Law Judicial Conference in London. The Chief Justice presented a paper entitled *Judicial Independence: Purposes and Threats*. In addition to judicial independence, other themes for discussion at the Conference included: international legal challenges; alternative dispute resolution as a judicial tool; the relationship between courts and the media; the role of technology in case and judicial management, and domestic application of international human rights law.
- In July, the Chief Justice attended the LawAsia Conference in Hong Kong. The Chief Justice addressed Conference attendees on the topic of *International Commercial Litigation: an Asian perspective*. Directly following the Conference, the Chief Justice led a judicial delegation comprised of Justice David Kirby and Justice Brian Preston (Chief Judge of the Land and Environment Court of NSW). The Chief Justice and other delegates met with the Chief Justice and senior judges of the Higher People's Court of Hubei Province and Guang Zhou Province.
- In October, the Chief Justice formed part of an Australian judicial delegation to India. The delegation was led by the Honourable Justice Dyson Heydon AC, High Court of Australia, and also comprised the Honourable Justice Marilyn Warren AC (Chief Justice of Victoria), the Honourable Justice Paul de Jersey AC (Chief Justice of South Queensland), and the Honourable Justice Robert French (Federal Court of Australia). The Australian delegation met with the Chief Justice of India and several senior Indian judges and lawyers to discuss

how each country is tackling new challenges in commercial litigation and arbitration, reducing delay in criminal matters, and constitutional differences between the two countries concerning freedom of speech.

- In November, Justice McClellan, Chief Judge at Common Law, attended the 17th Biennial Pacific Judicial Conference in Tonga. The Conference was attended by Chief Justices and Judges from various islands in the Pacific, Australia and New Zealand. Topics for discussion at the Conference included judicial independence and accountability in the Pacific; case management and delay reduction; codes of judicial conduct in the Pacific region, and striking a balance between Customary and Country Law.

#### PUBLIC EDUCATION PROGRAMME

Each week the Court's Registrars address secondary school students and community groups regarding the Court's jurisdiction and daily operations. After the lecture, the group is taken to an appropriate courtroom to observe a Supreme Court trial. Demand for these group talks remains high, particularly amongst secondary school Legal Studies students. More than 1,300 students and members of the public attended these lectures in 2007.

The Court also participated in *Law Week 2007: Know the Score, Check Out the Law*. To celebrate Law Week, the Court conducted architectural tours of the King Street Complex and doubled the availability of scheduled group talks with the Registrars.

#### 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 NSW 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 2007, the PIO handled 2,004 enquiries from the media. Of these:

- 87.4 per cent (1,751 enquiries) related to Supreme Court matters;
- 9.9 per cent (198 enquiries) related to District Court matters, and
- 2.75 per cent (55 enquiries) related to other courts, including the Industrial Relations Commission and the Land and Environment Court.

Of the 1,751 media enquiries relating to the Supreme Court: 63.7 per cent were from Sydney metropolitan journalists/reporters (major newspapers, radio and TV stations); 5 per cent were from journalists at Sydney suburban newspapers; 16.6 per cent were from NSW regional newspapers, radio and TV stations, and 14.7 per cent were from interstate or international journalists, specialist/trade publications or members of the public.

## 6

## OTHER ASPECTS OF THE COURT'S WORK

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

## UNIFORM CIVIL PROCEDURE RULES

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

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

By the end of 2007, the Committee had approved new rules incorporating Court of Appeal proceedings into the uniform legislation with effect from 1 January 2008. The Committee also approved the use of re-designed uniform civil forms from early 2008.

## JUSTICELINK

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

The Committee is an initiative of the Department and includes representatives from the Supreme, District and Local Courts. It aims to ensure the JusticeLink system meets the needs of courts and other justice agencies in the Department. The following Supreme Court judicial officers and registry staff served on the Committee in 2007:

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

During 2007, the Court received a new version of the JusticeLink system that offers enhanced processes and functions. The Court also invited legal practitioners to use JusticeLink's Online Court facility for straightforward directions hearings in Common Law and Equity Division proceedings. Online Court is a virtual court that replaces the need for physical court attendance at case management directions hearings.

## LAW COURTS LIBRARY

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

The NSW Attorney General's Department and the Federal Court of Australia jointly fund the Law Courts Library. Two committees oversee the operations of the Library: the Operations Committee and the Advisory Committee.

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

During 2007, the Supreme Court representatives on the Advisory Committee were:

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

## ADMISSION TO THE LEGAL PROFESSION AND APPOINTMENT OF PUBLIC NOTARIES

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

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

During 2007, the members of the Legal Profession Admission Board were:

The Honourable the Chief Justice

The Honourable Mr Justice Windeyer AM RFD  
ED (Presiding Member)

The Honourable Mr Justice Sully (Deputy  
Presiding Member; until March)

The Honourable Justice Tobias AM RFD (Deputy  
Presiding Member; from April)

The Honourable Mr Justice Studdert (until July)

The Honourable Mr Justice Grove (from July)

Mr P Taylor SC

Mr J Gormly SC

Mr C Cawley

Ms J McPhie

Mr J Feneley (to June)

Ms M Tangney (from September)

Professor J McKeough

Professor S Colbran

## Executive Officer and Secretary:

Ms R Szabo

## The Board's work during 2007

The Board committed substantial funding to redevelop its current computerised student record system to enhance controls and improve the quality, reliability and accuracy of student records. The new system (SRS) will include the delivery of administrative and business rules to automate key LPAB activities, provide comprehensive audit facilities and reporting and statistical analysis tools for future service initiatives. The Board also appointed a Key User to manage testing, training and the implementation of the new system.

The Board continued to assist the Law Admissions Consultative Committee to progress the development of Uniform Principles for Admission of Qualified Overseas Practitioners.

The Board accredited one new university degree under the Admission Rules, the Juris Doctor degree at the University of Technology Sydney

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

	2005	2006	2007
Lawyer admissions approved by the Board	381	2,019	1,985
Legal Practitioner admissions approved by the Board	1,585		
Certificates of Current Admission produced by the Board	585	430	452
Public Notaries appointed by the Board	50	53	58
Students-at-Law registrations	733	640	600

(Note: admissions under Mutual Recognition Acts are not included, refer section 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 unsuccessful applicants.

During 2007 the members of the Legal Qualifications Committee were:

The Honourable Justice White (Chairperson)

The Honourable Justice Kirby (until June)

The Honourable Justice Harrison (from July)

The Honourable Justice Campbell

Mr J Fernon SC

Ms J Oakley

Mr P Doyle Gray

Mr J Dobson

Mr H Macken

Mr C Cawley

Mr R Harris

Professor A Lamb AM

Mr G Ross

Dr K F Sin

Dr G Elkington

### Executive Officer and Secretary:

Ms R Szabo

### Work during 2007

- For the second consecutive year, the Committee considered an increased number of academic and practical training exemption applications.
- The Committee continued to assist the Law Admissions Consultative Committee, through the Board to progress the development of Uniform Principles for Admission of Qualified Overseas Practitioners.
- The Committee assisted the Board in establishing the requirement of applicants for admission to undertake the English Language Test.

TABLE 6.2: APPLICATIONS CONSIDERED BY THE LEGAL QUALIFICATIONS COMMITTEE

	2005	2006	2007
Applications for Academic Exemptions	411	452	509
Applications for Practical Training Exemptions	176	193	207

## Examinations Committee

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

During 2007, the members of the Examinations Committee were:

The Honourable Justice Simpson (Chairperson)

The Honourable Justice Hall (Deputy Chairperson)

Mr M Christie

Mr J Dobson

Mr F Astill

Associate Professor G Monahan

Mr R Anderson

### Executive Officer and Secretary:

Ms R Szabo

### Work during 2007

The Committee made further advances in assuring the quality of the Board's Examinations.

The Committee recommended to the Board that subjects Contracts and Criminal Law and Procedure be swapped in order to test the theory that the high failure rate in Contracts is due to its being the first substantive subject in the Board's course.

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

	2005	2006	2007
Examination subject enrolments by Students-at-Law	5,367	5,159	5,042
Approved applications to sit examinations in non-scheduled venues	51	43	46
Approved applications for special examination conditions	17	25	37
Student-at-law course applications	296	299	310
Applications from students-at-law liable for exclusion from the Board's examinations	396	400	361

#### ADMISSION UNDER THE MUTUAL RECOGNITION ACTS

The management of applications from legal practitioners for admission under the Mutual Recognition Acts forms another aspect of the Registry's work. The Registry liaises with the Legal Profession Admission Board in performing this task. In 2007, three interstate and 70 New Zealand practitioners were enrolled under Mutual Recognition Acts, compared with 18 and 53 in 2006 and 198 and 92 in 2005. The number of practitioners enrolled under Mutual Recognition Acts has dropped significantly as each State and Territory enacts legislation that allows interstate practitioners to practise seamlessly throughout Australia.

#### ADMINISTRATION OF THE COSTS ASSESSMENT SCHEME

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

The Costs Assessment Scheme is the exclusive method of assessment of legal costs for most jurisdictions. A costs assessment application enables an assessor to determine costs disputes between practitioners and clients, between practitioners and practitioners or between parties to legal proceedings. Applications under the Scheme are determined by external assessors appointed by the Chief Justice. All assessors are members of the legal profession and educational seminars are arranged for them each year by the Costs Assessment Rules Committee. Mr Gordon Salier AM, solicitor, was the Chair of the Costs Assessment Rules Committee during 2007.

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

During 2007, there were 1,816 applications lodged. Of these, 1,217 related to costs between parties; 259 were brought by clients against practitioners, and 358 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 2007 there were 156 applications 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. These appeals are heard by Associate Judges in the Common Law Division and form part of the Division's civil caseload. A small number of appeals in relation to costs assessment are lodged each year.

## 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 33 referrals under the Scheme: 23 referrals were made in Common Law matters and 10 were made in the Equity Division. 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/lawlink/caselaw>

### 1. CTM v R

This was an appeal from a decision of the District Court. The appellant, aged 17 at the time of the offence, was convicted by a jury of having sexual intercourse with a child between the age of 14 and 16, contrary to section 66C(3) of the Crimes Act 1900 (NSW). That section operates a statutory alternative to an aggravated form of a similar offence under section 66C(4). The jury found the appellant not guilty of the alternative offence as well as not guilty of the charge of aggravated sexual assault contrary to section 61J(1).

The key issue in this case, which the Court identified as being the subject of controversy in the District and Local Courts, was the consequence of the repeal of section 77(2) of the Crimes Act. Prior to its repeal in 2003, this section provided a limited defence to some sexual assault offences, including section 66C(3) in which the issue of the victim's consent is irrelevant.

The Court of Criminal Appeal held that, by repealing the statutory defence for these offences, Parliament had not intended to restore the common law Proudman v Day defence of "honest and reasonable mistake of fact". In reaching this conclusion the Court discussed at length the history of the defence and sexual assault offence provisions.

The High Court considered an appeal in 2008. Whilst the result remained unchanged, their Honours overturned the Court of Criminal Appeal's reasoning on the existence of the Proudman v Day defence.

**Bench:** Hodgson JA, Howie & Price JJ

**Citation:** CTM v R [2007] NSWCCA 131

**Judgment date:** 24 May 2007

### 2. Deputy Commissioner of Taxation v Dick

This was an appeal against a District Court decision. During the period 1 June 2002 to 31 March 2003, a Company failed to remit its monthly PAYG income tax liability to the Commissioner of Taxation by the relevant due dates. The trial judge found that as a director of the Company during that period, the respondent breached his duty under Divisions 8 and 9 of the *Income Tax*

*Assessment Act 1936 (Cth) (ITAA)* to ensure that the company either remitted the PAYG amounts or took other steps to remedy the situation.

However, the trial judge determined that he should excuse the respondent under section 1318 *Corporations Act 2001 (Cth)*. Section 1318 allows a court to excuse a person from liability where they have acted honestly and in all the circumstances it is fair to excuse them. The Deputy Commissioner of Taxation appealed to the Court of Appeal, challenging the finding that section 1318 applied to this case. The Court of Appeal was asked to interpret whether section 1318 could only apply to proceedings under the *Corporations Act*, or if its reach extended beyond this statute.

The Court of Appeal found that it was not appropriate to apply section 1318 to this case. Accordingly the Court of Appeal overturned the trial judge's decision and ordered the respondent to pay the penalty to the appellant. The judges came to this conclusion via different reasoning.

Chief Justice Spigelman found that section 1318 was clearly and solely directed to corporations law purposes, under both statutory and general law. It has no application to any obligation imposed by other statutes upon a company director or employee, only those imposed by the *Corporations Act 2001*. The Chief Justice found that this interpretation of section 1318 is strongly supported by the history of legislation with respect to corporations, which reveals that the area of corporations law has been treated as quite distinct from other fields of statutory intervention.

Justice Santow found that the history of section 1318 did not necessarily suggest that section 1318 could not apply to other statutes imposing duties on directors or employees, depending on the terms of that legislation. The history of corporations legislation shows that there is a trend of having some connected corporations duties in allied, and not solely corporations, legislation. Accordingly section 1318 does not apply only to *Corporations Act* obligations – the question which remains is whether it can apply to Divisions 8 and 9 of the ITAA.

1. Discusses whether defence by reason of mistaken age exists following the repeal of s 77(3) of the Crimes Act

2. Can s1318 of the Corporations Act excuse a company director from liability for a penalty incurred under the Income Tax Assessment Act 1936 (Cth)?

Section 1318 and the ITAA provisions were both made by the Federal legislature so the presumption must be that they can be accommodated. However, this presumption is refutable. There is a conflict between the specific requirements of the provisions of the ITAA and the generality of section 1318 which precludes section 1318 applying. Divisions 8 and 9 of the ITAA are exhaustive, leaving no room for section 1318 to apply.

3. Discussion of the tests for establishing if an accused is in "double jeopardy"

Justice Basten concluded that section 1318 had no relevant operation. The duties in Divisions 8 and 9 of the ITAA are stringent and there are specific defences prescribed by the ITAA. This statutory scheme is inconsistent with an intention to allow a Court to exercise a broad discretionary power to grant relief to a director in circumstances where the ITAA had otherwise imposed liability, subject to its own regime of defences.

**Bench:** Spigelman CJ, Santow & Basten JJA

**Citation:** Deputy Commissioner of Taxation v Dick [2007] NSWCA 190

**Judgment date:** 3 August 2007

### 3. Gilham v R

This was an appeal from a decision of the Supreme Court. On 28 August 1993, Mr Gilham's mother, father and brother were stabbed to death. Mr Gilham was charged with his brother's murder, but pleaded guilty to the lesser charge of manslaughter. The plea was accepted on the basis that the killing was provoked because his brother had killed their parents. The indictment for his brother's murder was discharged.

Following a police investigation, two coronial inquests and two reviews of the investigations, Mr Gilham was charged with the murder of his parents. After being arraigned for the trial, the applicant applied to the Supreme Court for a stay of proceedings on the basis that the prosecution constituted an abuse of process as it contravened the principles of finality of litigation, incontrovertibility of decisions and "double jeopardy". Justice Howie gave judgment against Mr Gilham and he appealed to the Court of Criminal Appeal.

Importantly, the Court of Criminal Appeal interpreted the previous trial as follows: Mr Gilham had not only been convicted of his brother's

manslaughter, but had also been acquitted of his murder.

The first issue was whether the new trial would be against the principle of incontrovertibility or finality of the previous acquittal for his brother's murder. The majority decided that the incontrovertibility principle applies when, in a later trial, the prosecution tries to establish one or more of the elements necessary to establish the offence in the earlier trial. The majority found that the current prosecution cannot be reconciled with the previous acquittal. Chief Justice Spigelman determined that the test for incontrovertibility is whether the later prosecution is manifestly inconsistent with a previous acquittal once the elements of the new charge are compared with the issues in the first trial. The Chief Justice also concluded that the current prosecution was only indirectly inconsistent with Mr Gilham's prior acquittal for his brother's murder.

The second issue was whether Mr Gilham was in double jeopardy. The majority of the Court of Criminal Appeal took the view that Mr Gilham's present trial had commenced because he had already been arraigned. As he was previously acquitted for the murder of his brother and the new trial had commenced, he was now in double jeopardy. Justice Hulme added it was irrelevant whether Mr Gilham's earlier acquittal had not resulted from a jury verdict after a fully contested trial. Chief Justice Spigelman dissented, concluding that Mr Gilham's acquittal for his brother's murder in the previous trial happened before the jury was empanelled, and as the present trial was only at the point of arraignment, it had not commenced as far as incontrovertibility, finality and double jeopardy were concerned.

Thirdly, the Court of Criminal Appeal found that the principle of double jeopardy, normally applied to previous acquittals, should also apply to previous convictions. The majority of the Court of Criminal Appeal concluded that the current trial would be inconsistent with the prior conviction. Chief Justice Spigelman dissented and concluded that the doubt cast on the previous conviction was only incidental and did not contravene the principles of incontrovertibility, finality and double jeopardy.

Finally, the Court of Criminal Appeal considered whether this current trial would be an abuse of process. The majority found that the present trial would be inconsistent with the previous trial's verdicts and would deny Mr Gilham the full benefit of his earlier acquittal. Despite this, the majority concluded that the Court of Criminal Appeal should not intervene for abuse of process as this was a prosecution for a different offence and there was a strong public interest in prosecuting this serious crime. Chief Justice Spigelman agreed that the trial should proceed, but did so on the basis there was no relevant inconsistency or double jeopardy with his previous acquittal for his brother's murder and conviction for his manslaughter.

**Bench:** Spigelman CJ, McClellan CJ at CL, Hulme, Hidden & Latham JJ

**Citation:** *Gilham v R* [2007] NSWCCA 323

**Judgment date:** 26 November 2007

#### 4. *Hall v Poolman*

This case raised a number of issues relating to directors and liquidators under the insolvency provisions of the *Corporations Act 2001 (Cth)*. It also provided commentary on the court's ability to control litigation funding.

Mr Hall and Mr Carter were appointed as liquidators charged with the winding up of the Reynolds group of companies including two companies of which Mr Poolman was the deputy chairman and director, and Mr Irving was the chairman. The Reynolds group had accrued debts of approximately \$130M.

Pursuant to section 588M of the Corporations Act the liquidators, and plaintiffs of the case, claimed loss and damage from Mr Poolman and Mr Irving, suffered as a result of the two companies' trading while insolvent. There were also other related claims and cross-claims.

From 2001 the group had been in dispute with the ATO in regards to its tax liabilities. Mr Poolman and Mr Irving attempted to prevent the collapse of the group, however, in 2003 when the ATO rejected the group's offer of compromise, the directors appointed voluntary administrators to the group and it was placed into liquidation.

The Directors' attempts to settle the Group's tax liability were protracted. Refinancing and sale of assets to restore the Group to solvency could not be achieved unless the ATO agreed to a favourable settlement. The Directors permitted the Group to continue trading throughout the settlement negotiations. His Honour found that the Directors had no defence under s 588H of the Corporations Act to the Insolvent Trading Claim. However, his Honour found that the Directors had at all times acted honestly and that, in waiting up to a certain point for negotiations to conclude, they had acted as reasonable, commercially experienced directors. His Honour exercised discretion under s 1317S and s 1318 of the Corporations Act to relieve the Directors of liability for the initial stage of negotiations, but held the Directors liable from that time onwards."

Justice Palmer also made critical comments on the conduct of the liquidators. The liquidators, who were without funds to commence the litigation, had entered into a litigation funding agreement in circumstances where a significant proportion of the claimed figure (approximately \$9M in total) would be consumed by the costs of the liquidators and litigation funder. His Honour provided guidance on the proper conduct of liquidators in such circumstances, including seeking directions pursuant to section 511(1) of the Corporations Act.

**Bench:** Palmer J

**Citation:** *Hall v Poolman* [2007] NSWSC 1330

**Judgment date:** 23 November 2007

#### 5. *Lodhi v R*

This was an appeal from a judgment of the Supreme Court of NSW. The appellant was tried on four charges laid under sections 101.4, 101.5 and 101.6 of the Commonwealth Criminal Code.

The first charge was collecting certain documents, namely maps of the Australian electricity supply grid, connected with preparing for a terrorist act.

The second charge was doing a certain act in preparation for a terrorist act, namely seeking information from a chemical supply company about the availability of materials capable of being used to make explosives or incendiary devices.

4. Discusses the Court's supervisory role in ensuring any litigation funding agreements that liquidators enter into do not disadvantage creditors

5. Discusses the tests for determining when the interests of justice demand a trial by jury

The third charge was making documents, namely a set of aerial photographs of certain defence establishments, connected with preparation for a terrorist act.

The fourth charge was possessing a certain thing connected with preparation for a terrorist act, namely a document setting out the ingredients for and the method of making poisons, explosives, detonators, incendiary devices and others.

The jury found the appellant guilty of charges one, two and four. He was sentenced to imprisonment for twenty years with a non-parole period of 15 years. The appellant appealed against his conviction and sentence.

First, it was argued that section 31(8) of the National Security Information (*Criminal and Civil Proceedings*) Act 2004 was invalid as it breached Chapter III of the Constitution. Under this section, the Attorney General issued a certificate that certain information relevant to the trial should not be disclosed in order to protect national security. Following this, the trial judge made an order about the disclosure of the information, and in accordance to section 31(8) this certificate had to be given greatest weight. The appellant argued this was unconstitutional as it usurped judicial power by requiring the balance to always come down in favour of the risk of prejudice to national security. However, the Court held that giving the court guidance about how to balance incommensurable interests does not usurp judicial function and therefore the section was not constitutionally invalid. It also rejected the submission that the section infringed the right to a fair trial, insofar as any such right exists under the Constitution.

Second, it was argued that the evidence of an association between the appellant and a man called Willie Brigitte should have been excluded because it had no probative value and was simply evidence of association. However, the Court held that the evidence's probative value rested in its ability to explain the impetus behind the accused's actions. The Court also rejected an alternative submission that the risk of unfair prejudice of that evidence outweighed the probative value of the evidence.

Third, it was argued that evidence relating to Brigitte's identification by photograph ought to have been rejected because the manner of identification was prone to produce error. This submission was rejected as the probative value was quite high and there was no likelihood that the jury would misuse it.

The fourth ground of appeal relied on fresh evidence given after the trial by a witness who had identified Willie Brigitte from a photograph. The Court was concerned to determine whether the absence of that evidence in the trial occasioned a miscarriage of justice. However, the Court found that the evidence did not pass the test for cogency and decided not to receive it.

Fifth, it was argued that the trial judge erred in refusing to direct verdicts of acquittal because the Crown could not prove that, when the appellant did the acts forming the basis of each charge, he had determined when, how, where or by whom the terrorist act might be carried out. The Court determined that the acts charged were preparatory only and that proof of the specifics of completion of the acts was not necessary for conviction.

The Court also dismissed the appeal against sentence, holding that the trial judge's assessment of the objective seriousness of the offences was not flawed. The trial judge had given sufficient weight to the conditions in which the appellant would be held in custody, and accordingly the sentence was not manifestly excessive. The Court found that imposing a sentence that gives substantial weight to the protection of society is consistent with the principle of proportionality in *Veen v The Queen (No 2)* (1988) 164 CLR 465, particularly where personal deterrence and rehabilitation are entitled to little weight due to the nature of the offence and findings of fact. The Court also found that his Honour did not err in reducing the head sentence by reference to s19AG of the *Crimes Act 1914 (Cth)*.

**Bench:** Spigelman CJ, Barr & Price JJ

**Citation:** Faheem Khalid Lodhi v R [2007] NSWCCA 360

**Judgment date:** 20 December 2007

## 6. Maroubra Rugby League Football Club Inc v Malo

This was an appeal from an interlocutory judgment of the Supreme Court. The first respondent commenced negligence proceedings against his football club after suffering a spinal injury when he was tackled in a rugby league match in July 1998. The first respondent sought a trial by jury but the appellant opposed this. The trial judge nevertheless ordered that the proceedings were to be tried by a jury, relying on section 85(2) of the *Supreme Court Act 1970*. The appellant appealed from this order before the trial was due to commence.

Section 85 (2) of the Supreme Court Act removes the common law right to a trial by jury in civil proceedings. It states that, as a general rule, civil proceedings in the Supreme Court are to be tried by a judge alone. However, under this section a trial judge may order a jury trial if 3 requirements are met: 1) one of the parties applies for a jury trial, 2) that party pays the appropriate fee and 3) the trial judge is satisfied that “the interests of justice require a trial by jury in the proceedings”.

The appellant argued that the trial judge erred with respect to requirement 3) above. The Court of Appeal upheld the appellant’s arguments and found that a jury trial should not have been ordered in this case.

First, the general test in *Muir v Council of Trinity Grammar School* [2005] NSWSC 555., which the trial judge adopted, was rejected by the Court of Appeal. The test in *Muir* requires a trial judge to assess whether the proceedings raise questions that ought to be resolved by a jury. However, this departs from the statutory test that is of a higher threshold. A trial judge must be satisfied that the interests of justice require a trial by jury in the present proceedings. Furthermore, the Court held that a jury’s ability to contribute “general community contemporary values” to the verdict is not a relevant factor. Parliament determined that a trial by judge alone is the norm; the absence of a “representative” or “community” viewpoint is not an inherent defect of trial by judge alone.

Second, the Court of Appeal upheld the appellant’s argument that it was irrelevant to label the facts as “novel” and as involving a “quintessentially community activity” when assessing whether a jury trial was appropriate. A jury verdict has no precedential effect, so any novelty in the proceeding adds nothing to deciding whether the interests of justice require the participation of jurors. Likewise, there is nothing to indicate that the “community activity” aspect of the facts would satisfy a judge that the interests of justice require a trial by jury.

**Bench:** Mason P, Ipp & Tobias JJA

**Citation:** *Maroubra Rugby League Football Club Inc v Malo* [2007] NSWCA 39

**Judgment date:** 7 March 2007

## 7. MG v R

The applicant, MG, appealed to both the Court of Appeal and Court of Criminal Appeal (CCA) against a decision of the District Court to dismiss his motion that his re-trial be stayed until the prosecutor, Ms Margaret Cunneen, was replaced by the Crown. The Chief Justice approved a joint sitting of the Court of Appeal and CCA to allow both appeals to be determined simultaneously.

The Court began by examining MG’s first trial and appeal, Ms Cunneen appearing for the Crown in both proceedings. MG was tried with three others for allegedly taking part in a series of sexual assaults against the same complainant. The trial was subject to intense media coverage, reflecting the community’s outrage at the brutality of the crime. All four accused were convicted. On appeal, the Court of Criminal Appeal held the trial judge had failed to direct on certain misleading comments made by Ms Cunneen in an address to the jury. A re-trial was ordered in relation to MG.

During the preparatory stages of the re-trial, Ms Cunneen delivered the Sir Ninian Stephen Lecture at Newcastle University. Ms Cunneen spoke about how, as a Crown Prosecutor who frequently worked with victims of crime and their families, she detected a growing perception that the justice system was disproportionately weighted in the favour of the accused. She then provided a detailed account of MG’s first trial, the reversal of

his conviction on appeal, the disastrous impact on the complainant, and the prosecution's struggle to admit key evidence in MG's new trial. Ms Cunneen also spoke of the pressure on prosecutors to strictly comply with complex rules of evidence, so that convictions could withstand appeals on "very minor matters" unlikely to have influenced the jury's verdict.

Given the significance of the occasion of the Sir Ninian Stephen Lecture and the controversy surrounding MG's trials, her comments inevitably attracted widespread publicity. Her address was reported in several major New South Wales and national newspapers. One article attributed Ms Cunneen as its author.

Although Ms Cunneen's address suggested she had considered the New South Wales Bar Rules and Director of Public Prosecution (DPP) Guidelines, the Court found she either deliberately, or without sufficient reflection, breached them. In particular, the Court found the address contravened Bar Rule 59 (publication of material concerning current proceedings) and Guideline 32 (in relation to media contact). These provisions restrict when, and upon what, prosecutors may publicly comment with the aim of preserving the integrity of the trial process.

The Court then considered the trial judge's refusal to stay MG's re-trial or restrain Ms Cunneen from prosecuting the matter. The relevant test was whether a fair-minded, reasonably informed member of the public would conclude that the proper administration of justice required Ms Cunneen's removal from the case. His Honour had identified this test, but did not consider all of the factual matters which required consideration in the application of the test.

The Court held that a prosecutor has a responsibility to act with fairness and detachment and with the objective of assisting the tribunal to establish the truth. Whilst there was no difficulty in Ms Cunneen privately holding the view that MG was guilty, by publicly expressing that view at the same time as making generalised arguments about the criminal justice system, a reasonable person might conclude her prosecution could tend towards vindicating her personal belief rather than discharging her obligation to remain

independent. Justice might not be seen to be done and, therefore, continued public confidence in an accused's right to a fair trial might be threatened. Further, whilst expressions of sympathy for the complainant were understandable, it was not for the Crown prosecutor to take a public role in support of the complainant.

The Court upheld MG's appeal and ordered his re-trial be stayed until another Crown Prosecutor was given carriage of the matter.

**Bench:** McClellan CJ at CL, Bell JA & Hoeben J  
**Citation:** MG v R [2007] NSWCCA 57  
**Judgment date:** 5 March 2007

### 8. O'Shane v Burwood Local Court

This was an application for review of a decision by a Local Court magistrate to issue a pseudonym order in respect of proceedings for an Apprehended Personal Violence Order (APVO) pursuant to Part 15A of the *Crimes Act 1900* (see now *Crimes (Domestic and Personal Violence) Act 2007*, commenced 10 March 2008). The terms of the order suppressed media reporting of the names of the parties to the APVO application, brought by police on behalf of Miss Armstrong ('Ms B') and her partner, Mr Cole, against the claimant, Patricia O'Shane – a well-known NSW magistrate. The police made the request for the pseudonym order to protect Miss Armstrong against unwanted publicity on the basis that she had previously been 'besieged by the media' during earlier proceedings involving the parties. No evidence was put before the court of that earlier media interest.

Section 562ZK of the Crimes Act provided for pseudonym orders in relation to Apprehended Domestic Violence Orders, but not for Personal Violence Orders (see now s 45 *Crimes (Domestic and Personal Violence) Act*). However, counsel for the police submitted the magistrate could make the order in the exercise of the implied powers of the Local Court. The magistrate granted the suppression order on the basis that it was necessary to secure the proper administration of justice. Her Honour reasoned that if the order was not made, complainants in future APVO proceedings against persons in public office might be deterred by the prospect of intense media interest.

Reviewing the magistrate's decision, McClellan CJ at CL held that the Local Court did not have the power to issue a pseudonym order in the circumstances of the case. The powers of the Local Court, a statutory court, were confined to powers 'necessary' for the effective exercise of the jurisdiction conferred by the statute. The test of necessity was a strict one given the principle of open justice was engaged. That court proceedings should be conducted openly before the public is 'one of the most fundamental aspects of the system of justice in Australia' (John Fairfax Publications Pty Ltd v District Court of New South Wales [2004] NSWCA 324; 61 NSWLR 344). It was also necessary to be mindful of the fact that parliament did not explicitly legislate for suppression orders in relation to APVO proceedings.

In the past, exceptions to the principle of open justice have been made where suppression orders were necessary to secure the proper administration of justice in cases involving alleged extortion, blackmail or police informants. This was because if such orders were not made, the consequences would be unacceptable: threats to the safety or livelihood of a victim or witness, or the undermining of covert police operations. Such orders were within the implied jurisdiction of the court as they were necessary to protect the administration of justice. However, the Court will be very reluctant to create new categories of exceptions. In the present case, the basis of the pseudonym order was merely unwanted publicity. The inconvenience, irritation or distress that might be suffered by Miss Armstrong because of media interest in the proceedings did not justify a departure from the principle of open justice.

Further, even if there was power to make suppress media reporting of the names of the parties, there was simply no evidence of the asserted necessity. The Court should not draw inferences as to the likely future conduct of the press in relation to the APVO proceedings in the absence of evidence and there was no reason to assume the press would act irresponsibly (distinguishing John Fairfax Group Pty Ltd v Local Court of New South Wales (1991) 26 NSWLR 131). If they did, the

police were available to protect Miss Armstrong. Therefore, pursuant to s 69 of the *Supreme Court Act 1970*, the pseudonym order made by the magistrate was quashed.

**Bench:** McClellan CJ at CL

**Citation:** O'Shane v Burwood Local Court (NSW) & Ors [2007] NSWSC 1300

**Judgement date:** 19 November 2007

### 9. R v Petroulias

In the appellant's first trial in the Supreme Court, the jury was unable to agree on a verdict and was discharged. A new jury was selected on 26 March 2007 and the re-trial commenced. It was discovered on 7 May, on the 25th day of the trial, that one of the jurors was disqualified from driving a motor vehicle and therefore ineligible for jury service.

Section 19 of the *Jury Act 1977* requires a jury in a criminal trial to consist of 12 persons who are selected in accordance with the Jury Act. However, section 22(a) of the Jury Act permits a trial judge to order that, where a juror dies or is discharged for any reason, a jury can be considered properly constituted and the trial can continue with the remaining jurors.

The trial judge exercised this power, discharging the disqualified juror and ordering that the remaining 11 jurors be considered a properly constituted jury. This decision was appealed to the Court of Criminal Appeal.

The first issue was whether the trial judge had validly exercised the power under section 22(a) by allowing the trial to continue with a jury of less than 12, when at least one ineligible juror was discovered at the beginning, rather than during, the trial. The Court held that since the juror in question was not qualified to serve from the outset, then the jury was invalidly selected from the outset and the trial process was flawed. By contrast, Justice McClellan in his dissenting judgment held that the power of section 22(a) did enable the trial judge to exercise power in such situations.

The Court then considered whether section 73(a) of the Jury Act had any application. This section states that the verdict of a jury shall not be affected or invalidated solely because a member of the jury was disqualified from serving as a juror.

9. What action should be taken if a disqualified juror is discovered prior to a jury reaching its verdict?

However, the Court interpreted this section to mean that the trial is preserved if the defect in the jury is found after the verdict, not before.

The final consideration was section 80 of the Constitution which holds that the trial of any indictable offence under Commonwealth law shall be by jury. The Court held that the flaw in the present trial lies not in any departure from constitutional requirements, but in the departure from the specific standards in the NSW Jury Act.

Accordingly the appellant was successful and the Court ordered that the jury be discharged.

**Bench:** McClellan CJ at CL, Simpson & Hoeben JJ

**Citation:** *Petroulias v R* [2007] NSWCCA 134

**Judgment date:** 16 May 2007

### 10. Regina v JS

This was an appeal from a judgment of the Supreme Court of NSW. The respondent was tried for two indictable offences under the *Crimes Act 1914 (Cth)* for allegedly intentionally destroying computer data that may have been required as evidence in a judicial proceeding. It was the third trial of the respondent on this charge.

At the end of the trial, the judge directed the jury to return a verdict of acquittal. The Crown appealed to the Court of Criminal Appeal. The Crown relied on section 107 of the *Crimes (Appeal and Review) Act 2001*. Section 107 permits the Crown to appeal from a directed acquittal of a criminal charge. The respondent challenged the Court of Criminal Appeal's jurisdiction to hear the appeal.

The first argument of the respondent was whether section 107 could have retrospective application. The respondent was arraigned for the first trial on 13 March 2006, the section came into force on 15 December 2006 and the respondent was re-arraigned for the third trial on 21 February 2007. The Court held that the indictment was virtually identical in all three trials, and that the relevant criminal issue had been joined in the first trial, well before the Act commenced. The section expressly states that it does not apply to a person arraigned before its commencement. As this section modifies a common law presumption, it is necessary to construe the section strictly. The appeal was therefore dismissed on this ground.

The second argument of the respondent was that the appellant's Notice of Appeal (as provided for in section 107(3) of the *Crimes (Appeal and Review) Act 2001*) was invalid because it did not address requisite details. The Court of Criminal Appeal held that since there was a power to grant leave to appeal after the expiry of time, the appellant's failure to identify matters that should have been identified did not render the Notice invalid. There was no denial of procedural fairness as the respondent could not have been in doubt as to the issue raised on appeal.

The appellant sought leave to file an amended notice of appeal. This was granted in part. The respondent argued that under section 107(2) of the *Crimes (Appeal and Review) Act*, the Court of Criminal Appeal might only hear an appeal against acquittal on a "ground that involves a question of law alone". The respondent submitted that the Notice of Appeal featured mixed questions of law and fact. It was held that the determinative step in the trial judge's reasoning was the interpretation of the statute, which involved a question of law alone.

The respondent raised a constitutional argument namely whether the finality of a verdict of acquittal is an essential characteristic of a trial by jury within the meaning of section 80 of the Constitution and therefore that the legislation was invalid. The Court decided to follow a decision of the Tasmanian Court of Criminal Appeal in *R v Kim* (1993) 65 A Crim R 278, which rejected this argument.

The Court also followed the decision in *R v Kim* (1993) 65 A Crim R 278 to reject the respondent's alternative argument that section 68(2) of the *Judiciary Act 1903 (Cth)* does not pick up and apply the provisions of the *Crimes (Appeal and Review) Act*.

Finally the Court considered whether it was necessary for the prosecution to prove that an accused knew that the data could be used in a federal judicial proceeding. Relevant to the resolution of this question were principles of interpretation of the Criminal Code, on which the Court made some observations.

**Bench:** Spigelman CJ, Mason P, McClellan CJ at CL, Hidden & Howie JJ

**Citation:** *Regina v JS* [2007] NSWCCA 272

**Judgment date:** 10 September 2007

## **11. Regina v Raymond Sutton; Regina v Margaret Sutton**

This case required the Court to determine an appropriate sentence for a couple who admitted ending the life of their disabled 29-year-old son, Matthew. Before considering the facts of the crime, it was necessary to examine the history of Matthew's condition and its impact on the couple's life and mental stability.

Matthew was diagnosed with an incurable genetic disorder known as Trisomy 13 Syndrome shortly after his birth. Sufferers are typically afflicted with a range of serious physical disabilities. Matthew was born without eyes, his nose was not properly formed, and he had a cleft lip and palate. Matthew soon became completely deaf in his right ear and suffered a 60-70% loss of hearing in his left ear. It then also became apparent that Matthew was severely mentally retarded.

Mr and Mrs Sutton initially cared for Matthew at home, receiving some support from Mrs Sutton's mother. After Mrs Sutton's mother died, they placed Matthew in a facility that afforded them periodic respite from their carer responsibilities. At age seven, Matthew was accepted into a residential school for handicapped children. He lived there for the next 11 years, returning home each weekend. Matthew then moved into a group home. He had difficulty coping with his new lifestyle and the violent behaviour of some residents. Over the next five years, Matthew's own behaviour became increasingly aggressive. The Suttons continued to care for Matthew each weekend, but they struggled to manage his anti-social behaviour. The Suttons eventually resorted to excluding him, and therefore themselves, from family and social outings.

The sacrifices and stresses that inevitably accompany caring for a severely ill and child, compounded by their concerns over the quality of care provided at the group home, took their toll on the Suttons's health. Mrs Sutton was treated for anxiety and depression. Mr Sutton was also treated for depression and began to drink heavily.

Matthew's physical condition remained stable for the next few years. His behaviour stabilised and he began to enjoy listening to music and could repeat some of the words he heard. Doctors then

discovered that Matthew's mastoid bone was diseased. Doctors warned the disease could spread to his brain and recommended removing the part of the bone, along with most of the hearing mechanism in Matthew's left ear. Among other things, the operation would further restrict Matthew's hearing and could leave him profoundly deaf and unable to speak.

The Suttons were faced with letting the disease run its course or agreeing to surgery that would destroy Matthew's hearing - certainly temporarily, perhaps permanently - and prevent him from doing the one thing they perceived brought him joy: listening to music. The realisation that Matthew's severe retardation would preclude him from understanding why the operation and its consequences were necessary also weighed heavily on their minds.

On 22 April 2001, after rendering him unconscious with prescription drugs, the Suttons took steps to end Matthew's life. The Suttons were charged with murder, but pleaded guilty to the lesser charge of manslaughter. Both claimed impairment by abnormality of mind.

The prosecution and defence tendered independent psychiatric reports supporting the availability of substantial impairment defences for both Mr and Mrs Sutton. The prosecution accordingly accepted the guilty pleas for manslaughter.

When considering an appropriate sentence, the judge accepted that neither offender posed any threat to the community. The judge further remarked that, by offering guilty pleas early in the process, the offenders had saved the community the considerable expense of committal proceedings and a trial.

The judge also observed that no punishment available to the Court could add to the offenders' suffering. He acknowledged that the community would expect the Suttons to receive psychiatric treatment, and that the Suttons had demonstrated their willingness to continue this treatment. In the judge's opinion, given the nature and circumstances of the offence and the offenders' overriding need for treatment, a custodial sentence would be unnecessarily cruel.

13. When is it appropriate to apply majority verdict provisions and what directions should the jury be given?

The judge ordered Mr and Mrs Sutton to enter into good behaviour bonds for five years conditional on their receiving ongoing psychiatric treatment.

**Bench:** Barr J

**Citation:** Regina v Raymond Douglas Sutton; Regina v Margaret Ellen Sutton [2007] NSWSC 295

**Judgment date:** 4 April 2007

## 12. RJS v Regina

This was an appeal against a conviction in the Supreme Court of NSW. In a majority jury verdict, the appellant was found guilty of indecently assaulting a person under the age of 10 years, contrary to section 61M(2) of the *Crimes Act 1900*.

Majority verdicts are available under section 55F of the *Jury Act 1977*. This means that a verdict can be returned where, in a jury of 12, 11 jurors agree, or in a jury of 11, 10 agree. The trial judge must be satisfied that the jury was unable to reach a unanimous verdict and, after examining on at least one of the jurors, that the jury is unlikely to reach a unanimous verdict.

The trial judge also must be satisfied that the jury deliberated for a reasonable “period of time”. Provided a jury deliberates for at least 8 hours, the period of time considered reasonable can vary according to the nature and complexity of the proceedings. Having taken all these factors into account, the trial judge directed the jury that a majority verdict was available in this case.

In the Court of Criminal Appeal, the appellant argued that the trial judge should not have permitted a majority verdict in this case because the verdict was unreasonable and not supported by the evidence.

As to the majority verdict, the appellant argued that the trial judge did not examine any juror on oath and therefore could not be satisfied that the jurors would fail to reach a unanimous verdict after further deliberation. The appellant also argued that while the trial judge took into account that 8 hours had elapsed, his Honour did not consider whether this was a reasonable period given the nature and complexity of the proceedings. The Crown conceded these errors were made. Accordingly there was a miscarriage of justice and the appellant had not received a trial according to law.

The appellant further submitted that the trial judge improperly directed the jury. This argument focused on the timing of the direction, just 15 minutes before 8 hours of deliberation would have elapsed. The trial judge gave the direction in accordance with *Black v The Queen* (1993) 179 CLR 44, urging the jury to reach a unanimous verdict. However, the trial judge also added that in 15 minutes the jury could reach a majority verdict. The Court upheld the appellant’s submission that the trial judge’s actions undermined the *Black* direction.

As to the reasonableness of the verdict, the appellant had argued that there were deficiencies and inconsistencies in the evidence. The Court found that any inconsistencies were inconsequential and within the normal bounds of variations in recollection among numerous people.

The appeal was allowed, conviction quashed and a new trial ordered.

**Bench:** Spigelman CJ, Simpson & Harrison JJ

**Citation:** RJS v Regina [2007] NSWCCA 241

**Judgment date:** 8 August 2007

## 13. Rockdale Beef Pty Ltd v Industrial Relations Commission of NSW

This was an application for judicial review in the Court of Appeal of a decision of the Full Court of the Industrial Relations Commission of NSW (“IRC”).

After a contractor was injured while working in an abattoir, the WorkCover Authority brought proceedings in the IRC against the abattoir’s owner for breaches of either section 8 or 10 of the *Occupational Health and Safety Act 2000*. The trial judge appeared to dismiss the section 10 charge, but before making formal orders, stated a case to the Full Bench pursuant to section 5AE of the *Criminal Appeal Act 1912*. The WorkCover Authority also appealed to the Full Bench under section 5C of the *Criminal Appeal Act*. The Full Bench heard the stated case and the appeal together.

The first issue for the Court of Appeal to resolve was whether section 179 of the *Industrial Relations Act 1996* (a privative clause) prevented it from reviewing a Full Bench decision of the IRC. The Court found that this proceedings fell within the exception in section 179(4) and accordingly the Court of Appeal had power to review any jurisdictional errors.

Second, the Court of Appeal found that there was no jurisdictional error in the Full Bench procedure of hearing the stated case and the appeal together. As to the stated case, the Court of Appeal found that the Full Bench erred in deciding questions of fact and by investigating evidence that went beyond the stated case. However, the Court felt it unnecessary to intervene with respect to this error.

Third, the Court of Appeal found there was no problem charging section 8 and section 10 as alternatives.

Fourth, the Court of Appeal considered the effect of the WorkCover Authority's failure during the trial to plead certain elements of the offence under section 10 of the *Occupational Health and Safety Act*. Justice Mason and Justice Basten decided that those elements were essential factual elements. As this was a technical problem that could be cured, there was no jurisdictional error. Chief Justice Spigelman disagreed and felt those elements were essential legal ingredients of the offence, and failure to plead them constituted a jurisdictional error.

The Court of Appeal agreed with the Full Bench that the trial judge had in fact erroneously dismissed the section 10 charge.

There was also an allegation that the prosecutor for the WorkCover Authority had breached the duty to present all relevant material fairly and completely. The Court of Appeal did not find any basis to interfere with the Full Bench's finding that the prosecutor had acted appropriately.

**Bench:** Spigelman CJ, Mason P & Basten JA

**Citation:** *Rockdale Beef Pty Ltd v Industrial Relations Commission of NSW* [2007] NSWCA 128

**Judgment date:** 22 June 2007

#### 14. *Swansson v R; Henry v R*

This was an appeal from trials in the District Court. The two appellants were convicted after separate trials for offences arising from the importation into Australia of methylenedioxymethamphetamine (MDMA). The appellant Henry was tried for a Federal offence under the *Customs Act 1901 (Cth)* along with four other accused, each of whom was arraigned on a separate indictment. The appellant Swansson was tried for a Federal offence under

the *Customs Act 1901 (Cth)* with two other accused, both of whom were also arraigned on separate indictments. The appellant Swansson was further arraigned under a second indictment for the State offence in relation to the MDMA.

Swansson and Henry submitted that the trials and convictions of each of the accused were a nullity as they proceeded on more than one indictment. The Crown accepted that the "one indictment, one jury" principle is longstanding, but submitted it was only a rule of practice that has no relevant application in the modern criminal justice system.

The Court of Criminal Appeal agreed that there is long established rule of criminal procedure that there can be only one indictment in any one criminal proceeding. The court determined that the rule still has practical value and ought to be retained.

The Crown also argued that contravention of the "one indictment, one jury" rule did not result in the proceedings being a nullity in the strict sense. It asserted that the Court could invoke the proviso under s5(1) of the *Criminal Appeal Act 1912*, which allows a court to decide that there has been no substantial miscarriage of justice.

The majority of the Court of Criminal Appeal found that the proviso cannot be applied if a proceeding is a nullity. Chief Justice Spigelman and Justice McClellan, Chief Judge at Common Law, disagreed and decided it was possible to apply the proviso even if a proceeding is a nullity. However, because the defect in this proceeding (violation of the "one indictment, one jury" rule) was so fundamental, the proviso could not apply.

The final issue was whether the Court of Criminal Appeal could take Swansson's other grounds of appeal into account in deciding whether to order a new trial. The majority of the Court of Criminal Appeal decided that the court should consider the other grounds of appeal, which could lead to a verdict of acquittal. Even though the proceedings were a "nullity", s8 of the *Criminal Appeal Act* still applies and empowers this Court to order a new trial. Justices Simpson and Howie disagreed and felt the court was not able to consider other grounds of appeal or order a new trial.

The majority of the Court of Criminal Appeal decided that the convictions and the sentences

14. Discusses the difference between an ordinary error of law and a jurisdictional error

should be quashed and a new trial held. The majority also gave leave for the additional ground of appeal in the matter of Swansson, but decided that the Court should not make any order on this additional ground at this stage.

**Bench:** Spigelman CJ, McClellan CJ at CL, Sully, Simpson & Howie JJ

**Citation:** Swansson v R; Henry v R [2007] NSWCCA 67

**Judgment date:** 21 March 2007

### 15. Timbery v R

This was an appeal from a judgment of the District Court. After being acquitted of 11 charges, the appellant challenged his conviction on 12 similar counts, including malicious wounding and aggravated sexual assault offences. The appellant argued several grounds before the Court of Criminal Appeal, and its decisions on each point provide useful guidance to trial judges.

First, the appellant argued that the trial judge erred in summing up the case as one in which sexual intercourse was not in issue, and by directing defence counsel to correct part of his address suggesting it was. The Court of Criminal Appeal agreed with this argument and found the existence of sexual intercourse in the circumstances alleged by the Crown was in issue and could not sensibly be separated from the issue of consent.

Second, the appellant argued that the trial judge erred in directing the jury that certain evidence was corroborative evidence. The Court of Criminal Appeal found that the trial judge incorrectly directed the jury, because his Honour used the term “corroboration” as though it meant evidence in support of the Crown case. The proper approach, based on *Conway v The Queen* (2002) 209 CLR 203 and *R v Li* (2003) 140 A Crim R 386 is that corroborative evidence is a technical legal term referring to evidence that confirms a material particular of an offence or that it was committed by the appellant.

Third, the trial judge warned the jury that, for the sexual intercourse charges, if it decided there was no corroboration, it could only return a guilty verdict after scrutinising the evidence with great care. The appellant argued that this should not have been limited to the sexual intercourse charges. The Court of Criminal Appeal agreed,

confirming that the warning should be given in cases of serious crime, such as this one where all charges were serious.

Fourth, the trial judge gave a warning according to *Longman v The Queen* (1980) 168 CLR 79 about the 18-month delay between the date the alleged acts took place and the complaint was made. The appellant argued the trial judge should have explicitly warned the jury that the appellant might have difficulty accurately recalling the events. The Court of Criminal Appeal found that the warning was adequate.

Fifth, at one point the jury asked for the judge’s advice as it could agree on some counts, but not all. The direction given by the judge emphasised that the jurors should strive for unanimity and that it was still too early to discharge them. The appellant argued that this was an inappropriate direction because it did not emphasise clearly that each juror had a duty to give a verdict according to the evidence. The Court of Criminal Appeal agreed and found that there was a miscarriage of justice because of this direction.

Sixth, the appellant argued that there was a miscarriage of justice because of the way the Crown prosecutor conducted several lines of cross-examination. The Court of Criminal Appeal held that although some of the cross-examination was open to criticism, there was no miscarriage of justice, largely because counsel for the appellant made no objection to these transgressions, and the appellant was able to deny any adverse allegations effectively.

Seventh, the appellant argued that there was a miscarriage of justice because his counsel had conducted the trial incompetently. In rejecting that argument the Court of Criminal Appeal held that his counsel had not examined him and cross-examined the complainant incompetently. The Court rejected the other complaints.

Eighth, the trial judge directed the jury that, while each count had to be considered separately, the jury “may” use evidence of the complainant’s unreliability in relation to one count when assessing her evidence on any other count. The appellant argued that the trial judge should have used the word “must”. The Court of Criminal

Appeal decided that this was not a mistake and the words used by a trial judge can be flexible and tailored to the circumstances of the case.

Finally, the appellant argued that the verdict of the jury on count 2 (sexual intercourse without consent) was unreasonable and could not be supported on the evidence. The Court of Criminal Appeal rejected this argument

In conclusion, the Court of Criminal Appeal did not find this an appropriate case to apply the proviso under section 6 of the *Criminal Appeal Act 1912 (NSW)*, which permits a conviction to stand even where there is an insubstantial irregularity.

The Court of Criminal Appeal ordered a new trial on the 12 counts on which the appellant was convicted.

**Bench:** Mason P, Adams J & Smart AJ

**Citation:** *Timbery v R* [2007] NSWCCA 355

**Judgment date:** 18 December 2007

## 16. *Valceski v Valceski*

This involved an application to transfer proceedings from the Equity Division of the Supreme Court to the Family Court of Australia.

The defendants were estranged husband and wife. The wife had instituted proceedings between them in the Family Court of Australia for parenting orders and financial adjustment. The property the subject of those proceedings included their former matrimonial home. The husband and his father (the first plaintiff) used to be joint tenants, but in February 2004 the father had transferred his interest in the house to the husband. In the equity suit, the father and his wife (the plaintiffs) contended that this transfer was invalid and claimed orders setting it aside. They also sought a declaration as to the equitable interests of the various parties in the property having regard to their respective contributions to its purchase price and improvement.

The wife applied for an order that the equity suit be transferred to the Family Court of Australia under s 5(1)(b)(ii) of the *Jurisdiction of Courts (Cross-Vesting) Act*, and consolidated with the matrimonial proceedings in that court.

The first issue to be determined was whether the Family Court had jurisdiction to resolve the issues in the equity suit, as otherwise it could not be

transferred. Justice Brereton held that the Family Court had jurisdiction and power, as part of its ordinary jurisdiction in matrimonial causes, in aid of or ancillary to property adjustment proceedings, to make a declaration that a spouse was beneficially entitled to property held by a third party, or that a spouse was not beneficially entitled to property in his or her name, so as to bind the third party. His Honour also held that the Family Court has accrued jurisdiction, just as does the Federal Court and the High Court, to determine the whole of a matter, even though some aspects of it may involve State, and not federal, law. So long as the controversy arises under the *Family Law Act*, it need not be limited to it. While there may be a discretion to decline to exercise accrued jurisdiction and not resolve the entire dispute in one court, the proper exercise of this discretion would require exceptional circumstances. A typical case for the exercise of accrued jurisdiction is where in the course of property adjustment proceedings, an issue arises as to the entitlement of a spouse to property, as against a third party.

One of the major issues in the matrimonial proceedings was the extent of the husband's beneficial interest in the home (which necessarily included the validity and effect of the February 2004 transfer). Resolution of that question would be a necessary step in determining the nature and value of the matrimonial parties' assets available for division. This was also the very issue at the heart of the equity suit. The issues in the equity suit were a subset of the issues in the matrimonial proceedings, so there was but one "matter". Accordingly, the Family Court had jurisdiction to determine the equity issues.

**Bench:** Brereton J

**Citation:** *Valceski v Valceski* [2007] NSWSC 440

**Judgment date:** 4 May 2007

16. *Relevant considerations in transfer applications when issues under dispute overlap Federal and State jurisdiction*

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

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

### Notes

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

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

“-“ – item not applicable

“0” – zero count

### FILINGS, DISPOSALS AND PENDING CASES

	2003	2004	2005	2006	2007
<b>COURT OF APPEAL<sup>1</sup></b>					
Filings					
Appeals and applications for relief	485	516	442	319	377
Applications for leave to appeal <sup>2</sup>	330	287	285	213	206
Net new cases <sup>3</sup>	761	760	690	494	564
Disposals					
Appeals and applications for relief	443	497	456	402	338
Applications for leave to appeal	317	273	320	239	218
Net disposals <sup>4</sup>	703	728	739	603	537
Pending cases at 31 December					
Appeals and applications for relief	331	350	336	253	292
Applications for leave to appeal	175	189	154	128	116
<b>Total</b>	<b>506</b>	<b>539</b>	<b>490</b>	<b>381</b>	<b>408</b>

1 These statistics exclude holding notices of appeal and holding summonses for leave to appeal because those forms do not commence substantive appeals or applications. (From 1 January 2008 those forms will be unable to be filed and a new form, a notice of intention to appeal, will replace them. Similarly, the notice of intention to appeal will not commence proceedings.)

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.

	2003	2004	2005	2006	2007
<b>COURT OF CRIMINAL APPEAL<sup>1</sup></b>					
Filings					
	538	539	524	452	441
Disposals					
	578	564	536	501	444
Pending cases at 31 December <sup>2</sup>					
	264	239	229	180	177

1 From 2006 onwards, these statistics exclude appeals from decisions of the NSW State Parole Authority (note that no parole decision appeals were pending at the end of 2005.) Typically, less than 10 parole decision appeals have been filed each year.

2 The pending caseload does not reconcile from 2004 to 2005. The JusticeLink system does not yet provide reporting, and the Court of Criminal Appeal relies on separate manually maintained systems to produce statistical reports.

**FILINGS, DISPOSALS AND PENDING CASES** *CONTINUED*

	2003	2004	2005	2006	2007
<b>COMMON LAW DIVISION - CRIMINAL<sup>1,2</sup></b>					
<b>Criminal List</b>					
Filings <sup>3</sup>	127	81	94	104	133
Disposals <sup>4</sup>	106	105	126	104	115
Pending cases at 31 December	118	99	93	93	111
<b>Bails List<sup>5</sup></b>					
Filings	2,691	2,756	2,715	2,789	2,981
Disposals	2,679	2,753	2,709	2,898	2,893
Pending cases at 31 December	212	240	344	235	270

- In all years, the figures exclude matters under s474D Crimes Act and applications for re-determination of life sentence.*
- The figures for 2005 and onwards are based on different counting rules and are therefore not directly comparable with figures for earlier years. On 1 January 2005, the Court changed its counting rules to align with national counting rules. The changes were: the counting unit is now defendants (previously it was cases); disposal is now counted at the time of sentence/acquittal or other final disposal (previously it was at verdict/plea or other final disposal); and, where a trial collapses and retrial is ordered, the counting of the age of the case continues (previously the time taken for the collapsed trial was ignored and age was calculated from the date of the order for the retrial).*
- The figures include committals for trial/sentence, ex officio indictments, re-trials ordered by the Court of Criminal Appeal or High Court, matters referred from the Mental Health Review Tribunal, transfers from the District Court, and re-activated matters (eg where a bench warrant is executed).*
- Since 1 January 2005, disposal is counted at sentence, acquittal or other final disposal (previously it was counted at verdict, plea of guilty, or other final disposal). "Other final disposal" includes referral to the Mental Health Tribunal, no bill, death of the accused, order for a bench warrant to issue, transfer to another court, and other final orders.*
- At present, the figures for pending cases do not always reconcile with associated filings and disposals figures. This is because the figures for filings, disposals and pending cases are being obtained from independent information sources until the JusticeLink system can provide integrated reporting.*

	2003	2004	2005	2006	2007
<b>COMMON LAW DIVISION - CIVIL</b>					
<b>Administrative Law List</b>					
Filings	112	118	116	183	145
Disposals	125	114	128	131	195
Pending cases at 31 December	49	60	63	121	78
<b>Defamation List</b>					
Filings	50	57	56	64	61
Disposals	65	73	60	74	65
Pending cases at 31 December	105	92	90	90	93
<b>General Case Management List<sup>1</sup></b>					
Filings					
Contested	213	288	283	333	271
Uncontested	94	211	216	133	128
Total	307	499	499	466	399
Disposals					
Contested	527	442	414	375	442
Uncontested	33	91	191	135	92
Total	560	533	605	510	534
Pending cases at 31 December					
Contested	896	794	744	784	674
Uncontested	61	127	116	77	62
Total	957	921	860	861	736

**FILINGS, DISPOSALS AND PENDING CASES** *CONTINUED*

	2003	2004	2005	2006	2007
<b>Possession List</b>					
Filings					
Contested	91	132	163	190	256
Uncontested	2,270	2,929	4,710	5,178	5,198
Total	2,361	3,061	4,873	5,368	5,454
Disposals					
Contested	97	103	124	162	196
Uncontested	1,981	2,823	3,544	4,986	5,722
Total	2,078	2,926	3,668	5,148	5,918
Pending cases at 31 December					
Contested	76	93	126	136	189
Uncontested	1,031	1,128	2,411	2,702	2,269
Total	1,107	1,221	2,537	2,838	2,458
<b>Professional Negligence List</b>					
Filings					
	101	117	114	142	152
Disposals					
	204	157	183	162	139
Pending cases at 31 December					
	423	389	354	353	373
<b>Summons List</b>					
Filings					
	527	629	560	565	564
Disposals					
	505	690	582	609	531
Pending cases at 31 December					
	425	379	360	331	368
<b>Miscellaneous applications<sup>2</sup></b>					
Filings					
	465	405	456	306	281
Disposals					
	405	318	306	153	162
Pending cases at 31 December					
	118	120	185	233	280
<b>Related issues cases filed before February 1994<sup>3</sup></b>					
Disposals					
	4	0	282	1	-
Pending cases at 31 December					
	283	283	1	0	-
<b>COMMON LAW DIVISION TOTALS - CIVIL</b>					
<b>Filings</b>	<b>3,923</b>	<b>4,886</b>	<b>6,674</b>	<b>7,094</b>	<b>7,056</b>
<b>Disposals</b>	<b>3,946</b>	<b>4,811</b>	<b>5,814</b>	<b>6,788</b>	<b>7,544</b>
<b>Pending cases at 31 December</b>	<b>3,467</b>	<b>3,465</b>	<b>4,450</b>	<b>4,827</b>	<b>4,386</b>

1 This list was formerly called the Differential Case Management List

2 These include applications under the Mutual Recognition Act, Trans-Tasman Mutual Recognition Act and applications for production orders.

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

	2003	2004	2005	2006	2007
<b>EQUITY DIVISION</b>					
<b>Admiralty List</b>					
Filings					
	6	3	2	2	2
Disposals					
	3	4	2	3	3
Pending cases at 31 December					
	5	4	4	4	3
<b>Adoptions List <sup>1</sup></b>					
Applications					
	151	207	204	154	161
Orders made					
	75	195	176	162	167
Pending cases at 31 December					
	38	23	38	30	20

**FILINGS, DISPOSALS AND PENDING CASES** *CONTINUED*

	2003	2004	2005	2006	2007
<b>Commercial List</b>					
Filings	181	193	192	215	249
Disposals	203	175	196	190	251
Pending cases at 31 December	218	233	240	265	263
<b>Corporations List</b>					
Filings	3,289	3,460	3,134	3,213	3,008
Disposals <sup>2</sup>	2,777	2,903	2,807	2,775	2,401
Pending cases at 31 December	633	684	657	643	631
<b>Protective List <sup>3</sup></b>					
Applications	77	67	90	70 <sup>4</sup>	112
Disposals	63	39	85	62 <sup>5</sup>	107
Pending applications at 31 December	9	15	15	23	28
<b>Technology and Construction List</b>					
Filings	72	93	106	98	104
Disposals	56	110	94	93	91
Pending cases at 31 December	116	98	120	125	138
<b>General List</b>					
Filings	2,219	2,493	2,354	2,209	2,187
Disposals <sup>6</sup>	2,607	2,839	2,943	3,622	3,205
Pending cases at 31 December	2,436	2,956	2,933	2,466	2,431
<b>Probate (Contentious Matters) List</b>					
Filings	202	168	172	166	141
Disposals	174	177	167	166	140
Pending cases at 31 December	100	91	96	96	91
<b>EQUITY DIVISION TOTALS<sup>7</sup></b>					
<b>Filings</b>	<b>6,197</b>	<b>6,684</b>	<b>6,254</b>	<b>6,127</b>	<b>5,964</b>
<b>Disposals <sup>8</sup></b>	<b>6,159</b>	<b>6,442</b>	<b>6,470</b>	<b>7,073</b>	<b>6,365</b>
<b>Pending cases at 31 December</b>	<b>3,555</b>	<b>4,104</b>	<b>4,103</b>	<b>3,652</b>	<b>3,605</b>
<b>PROBATE APPLICATIONS – UNCONTESTED<sup>9</sup></b>					
<b>Applications received</b>	<b>21,966</b>	<b>22,506</b>	<b>21,515</b>	<b>22,079</b>	<b>22,673</b>

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

2 These are the Registrar's disposals only – disposals by Judges and Associate Judges are included in the total for the General List. Typically, the Registrar handles about 90 per cent of disposals.

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

4 This figure is an estimate.

5 This figure is an estimate.

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

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

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

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

## TIMELINESS – AGE OF PENDING CASES

COURT OF APPEAL, COURT OF CRIMINAL APPEAL AND CRIMINAL LIST <sup>1,2</sup>

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

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 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 apply to 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.

4 In all years, the figures exclude matters under s474D Crimes Act and applications for re-determination of a life sentence.

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

## TIMELINESS – WAITING TIMES OTHER LISTS

<b>Median finalisation time<sup>1,2</sup> (unless otherwise indicated)</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007<sup>6</sup></b>
<b>COMMON LAW DIVISION - CRIMINAL</b>					
Bails List – usual delay (weeks)	1-2	2-3	2-3	3-4	2-4
<b>COMMON LAW DIVISION - CIVIL</b>					
Administrative Law List (months)	5.6	4.8	4.4	4.8	6.3
Defamation List (months)	19.1	16.2	12.6	10.9	14.0
General Case Management List (months)	25.1	27.1	28.8	22.1	21.6
Possession List (months)	9.5	6.7	6.6	6.2	7.5
Professional Negligence List (months)	30.6	39.9	34.2	33.3	24.8
Summons List –civil matters (months)	3.8	2.6	3.5	2.8	3.5
Summons List – criminal matters (months)	7.0	15.2	6.6	10.0	6.3
Cases proceeding by default (months)	5.6	5.6	4.6	7.6	6.3

**TIMELINESS – WAITING TIMES OTHER LISTS CONTINUED**

<b>Median finalisation time<sup>1,2</sup> (unless otherwise indicated)</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007<sup>6</sup></b>
<b>EQUITY DIVISION</b>					
Admiralty List (months)	5.7	14.4	17.4	23.5	18.4
Adoptions List – usual finalisation time (weeks)	4-5	4-5	2-6	2-6	3-6
Commercial List (months)	14.0	10.4	10.1	12.0	9.1
Corporations List (months)	1.5	1.6	1.6	1.4	1.6
Probate (Contentious Matters) List (months)	1.7	2.8	4.0	3.8	4.2
Protective List – usual time for orders to be made (weeks)	3.5	3	2-4	2-4	2-4
Technology and Construction List (months)	21.9	5.4	7.3	7.7	8.1
General List (months)	10.1	10.3	9.6	11.1	9.4
Probate applications (uncontested) – usual waiting time for grant (working days)	2	2	2	2	5

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

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

**TIMELINESS – LISTING DELAYS <sup>1,2,3</sup>**

	<b>2007</b>
<b>COURT OF APPEAL</b>	4 months
<b>COURT OF CRIMINAL APPEAL</b>	2 months
<b>COMMON LAW DIVISION</b>	
Criminal List <sup>4</sup>	4-5 months
Civil lists <sup>5</sup>	3-4 months
Bails List	3-4 weeks
<b>EQUITY DIVISION <sup>6</sup></b>	5-6 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 delay reflects the position at the start of the new law term (for example, for 2007 it is the position at the start of the 2008 law term). This removes any effect of the law vacation.

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

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

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

6 This refers to General List cases requiring 2 or more days of hearing time before a Judge.

**USE OF ALTERNATIVE DISPUTE RESOLUTION**

	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
<b>COURT-ANNEXED MEDIATION REFERRALS <sup>1,2</sup></b>					
Common Law Division	19	7	6	12	24
Equity Division – not probate cases <sup>3</sup>	180	284	229	262	246
Equity Division – probate cases	8	7	8	7	11
Court of Appeal	11	10	7	5	1
Percentage of cases settling at mediation <sup>4</sup>	65%	67%	62%	58%	49%
<b>TOTALS</b>	<b>218</b>	<b>308</b>	<b>250</b>	<b>286</b>	<b>282</b>

**ARBITRATION REFERRALS**

Common Law Division	44	15	0	1	0
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1 “Court-annexed mediation” refers to mediations conducted by the Registrars of the Court who are also qualified as mediators. It excludes “external” mediations, which are conducted by private mediators.

2 During 2007 the Registry recorded 748 referrals to mediation. Of those, 282 were handled within the court-annexed mediation program, and the statistics here refer to those mediations only. The Registry does not collect data for mediations conducted by private mediators.

3 The number of referrals within this group for 2004 is unusually high and may be an over-count.

4 This refers only to cases that have settled and agreed upon finalising orders 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 to reaching that settlement).

## 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 considered policy statements highlighting a number of key administrative matters and approved the issue of judgment production guidelines designed to ensure key legal research terms are consistently recorded on Caselaw.

The Committee continued to review policy and procedural initiatives submitted by the Court's other Committees detailed in this Appendix.

### **Members during 2007**

The Honourable the Chief Justice (Chairperson)  
The Honourable the President  
The Honourable Justice Giles  
The Honourable Justice Beazley AO  
The Honourable Justice McClellan  
The Honourable Mr Justice Young AO  
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 2007**

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

### **Education Committee**

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

### **Members during 2007**

The Honourable Justice Ipp AO (Chairperson)  
The Honourable Justice Santow OAM  
The Honourable Justice McColl AO  
The Honourable Justice Basten  
The Honourable Justice Bell  
The Honourable Justice Gzell  
The Honourable Justice Nicholas  
The Honourable Justice Hislop  
The Honourable Justice White  
The Honourable Justice Johnson  
Ms M Greenwood  
Secretary: Ms R Windeler  
(Judicial Commission of NSW)

### **Building Committee**

The Committee meets approximately every two months to discuss matters affecting the buildings within the Darlinghurst and King Street court complexes, and the Law Courts Building in Phillip Street. The Committee submits recommendations to the Chief Justice through the Policy and Planning Committee concerning maintenance and restoration work, including the desired outcome from the work. The Committee also identifies facilities that are required to support courtroom operations and the needs of Court users. The upcoming refurbishment of the Law Courts Building and the ongoing refurbishment of the King Street Court Complex were the Committee's primary concerns during 2007.

### **Members during 2007**

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 S Furness (Asset Management Service,  
Attorney General's Department)

Secretary: Mr J Grant

### **Information Technology Committee**

The Information Technology Committee meets every two months to assess the information technology needs of judicial officers and their staff, and to review the implementation of IT services. During the year, the Committee discussed measures to increase the effectiveness of the remote access system. Network and document security was also a major focus for the Committee during 2007.

### **Members during 2007**

The Honourable Justice Beazley (Chairperson)

The Honourable Justice McColl AO

The Honourable Justice Simpson

The Honourable Justice Einstein

The Honourable Justice Gzell

The Honourable Associate Justice Macready

Ms M Greenwood

Mr J Mahon (Information Technology Services,  
NSW Attorney General's Department)

Mr D Lane (Information Technology Services,  
NSW Attorney General's Department)

Ms J Gee (Information Technology Services,  
NSW Attorney General's Department)

Ms L O'Loughlin (Law Courts Library)

Ms E Walsham (Reporting Services Branch;  
from August)

Secretary: Ms S Thambyrajah

### **Alternative Dispute Resolution Steering Committee**

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

### **Members during 2007**

The Honourable Justice Bergin (Chairperson)

The Honourable Justice Bryson (until 28  
February)

The Honourable Justice Campbell

The Honourable Mr Justice Studdert (to 15 July)

The Honourable Justice Hoeben

The Honourable Justice Hislop (from 16 July)

The Honourable Justice Hall

The Honourable Justice Latham

The Honourable Associate Justice Harrison

Ms M Greenwood

Ms L Walton

Ms M Walker (from 2 May)

Ms G Daley (from 7 May)

### **Jury Task Force**

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

### **Members during 2007**

The Honourable Justice Buddin (Chairperson)  
His Honour Judge Shadbolt (District Court)  
Mr R Kruitt (Acting Sheriff of NSW)  
Mr M Savarty (Senior Policy Officer, Legislation and Policy Division, Attorney General's Department)  
Mr K Marshall (Assistant Director, Major Works, Attorney General's Department)  
Ms L Anamourlis (Manager, Jury Services)  
Secretary: Mr M Lacey

### **Court of Appeal Users' Group**

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

### **Members during 2007**

The Honourable Justice Mason (Chairperson)  
Mr J Maconachie QC  
Mr D Davies SC  
Mr J Gleeson SC  
Mr N Mavrakis  
Mr T Abbott  
Mr B Moroney  
Mr M Polden  
Mr G Ulman  
Ms K Fitzgerald

### **Court of Criminal Appeal/Crime User Group**

The joint Court of Criminal Appeal/Crime User Group was established in 2004 to promote effective communication between the Court and key users. The Group focuses on ensuring that Court of Criminal Appeal procedures work effectively within the required time frames. The Group met three times in 2007.

### **Members during 2007**

The Honourable Justice McClellan (Chairperson)  
The Honourable Justice Barr  
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, NSW Attorney General's Department)

### **Common Law Civil Users' Committee**

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

### **Members during 2007**

The Honourable Justice McClellan (Chairperson)  
The Honourable Justice Hoeben  
The Honourable Justice Hall  
Ms M Greenwood  
Ms L Walton  
Mr C Bradford  
Legal profession representatives  
Mr P Deakin QC  
Ms A Sullivan  
Mr T Hewitt SC  
Ms C Lazzarotto

### **Professional Negligence List User Group**

The Group meets as required to discuss issues relevant to the administration and operation of the List. The Group convenes as required and met twice during 2007.

### **Members during 2007**

The Honourable Mr Justice Studdert  
(Chairperson; until July)  
The Honourable Justice Hislop (Chairperson;  
from August)  
Mr David Davies SC  
Mr Ian Butcher  
Mr Don Munro  
Mr Terence Stern  
Ms Anna Walsh  
Ms Janice Tully

### **Equity Liaison Group**

This Group commenced during 2001 and met quarterly during 2007. The Group was established to promote discourse between the legal profession and representatives of the Equity Division upon matters of interest and importance to the operation of the Division. The Group is informal and the meetings facilitate candid discussions about the operations of the Division. Typically these discussions encourage cooperation between the judges and legal profession in developing suggested improvements to the Division's operations.

### **Members during 2007**

The Honourable Mr Justice Young AO  
(Presiding Member)  
The Honourable Justice Bergin

#### *Legal profession representatives*

Mr R G Forster SC  
Mr C (Robert) Newlinds SC  
Mr R Harper SC  
Ms J A Needham SC  
Ms E Frizell  
Mr M Ashhurst  
Mr M Condon  
Ms A Kennedy  
Mr J Martin  
Mr B Miller  
Ms P Suttor

### **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 2007 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 2007**

The Honourable Justice Austin (Chairperson)  
The Honourable Justice Barrett (Secretary)

#### *The judicial officers of the Equity Division*

Ms M Greenwood  
Ms L Walton  
Ms O Kiang (from September)  
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 (from September)

*Other members*

Ms G Hayden (Australian Securities and Investments Commission)  
Mr M Lotzof (Insolvency Practitioners Association of Australia)  
Mr K Rennie (Ernst & Young)  
Mr M Murray (Insurance Practitioners' Association; from September)

**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 2007**

The Honourable Justice Clifford Einstein  
The Honourable Justice Bergin (List Judge)  
The Honourable Justice McDougall

*Legal profession representatives*

*Barristers*

Mr T Alexis SC  
Mr M A Ashhurst  
Mr T F Bathurst QC  
Ms E A Collins  
Mr L V Gyles  
Mr N C Hutley SC  
Mr J C Kelly SC  
Mr G C Lindsay SC  
Mr R B Macfarlan QC  
Mr G T Miller QC  
Ms E M Olsson SC  
Ms R Rana  
Mr S D Robb QC  
Mr M G Rudge SC  
Mr R M Smith SC

*Solicitors*

Mr J Dooley  
Mr R J Drinnan  
Mr R K Heinrich  
Ms L E Johnson  
Mr R G Johnston  
Mr P J Keel  
Mr H D Keller  
Mr B P Kermond  
Mr D J Kemp  
Mr S H Klotz  
Mr G A McClellan  
Mr S A McDonald  
Mr B Miller  
Ms N K Nygh  
Mr J Pagan  
Ms M A Pavey  
Ms R S Persaud  
Mr R W Schaffer  
Mr G S Ulman  
Mr M W Watson  
Mr S D Westgarth

**Probate Users' Group**

The Group meets quarterly 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 2007**

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 did not meet in 2007.

### **Members during 2007**

The Honourable Justice McColl AO (Chairperson)

The Honourable Justice McClellan

The Honourable Justice Kirby

The Honourable Justice Nicholas

The Honourable Justice Blanch (Chief Judge,  
District Court of NSW)

Ms S Zadel (Public Information Officer, NSW  
superior courts)

Ms K Douglass (Public Information Officer, NSW  
superior courts)

Mr N Cowdery QC (NSW Director of Public  
Prosecutions)

Mr P Zahra SC (Senior Public Defender)

Mr R Coleman (Fairfax Legal)

Mr S Collins (ABC Legal)

Mr B Clifton (Chief Court Reporter, Daily  
Telegraph)

Mr D Smith (Channel 7 Court Reporter)

Mr A Stewart (Channel 9 Legal)

Ms J Horton (Court Reporter, Radio 2GB)

### **Judges' JusticeLink Committee**

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

### **Members during 2007**

The Honourable Mr Justice Hamilton

The Honourable Justice Howie

The Honourable Justice Gzell (Chairperson)

The Honourable Justice Latham

The Honourable Associate Justice Macready

Ms M Greenwood

Mr S Jupp

Ms N Ubrihien

Ms J Atkinson (Attorney General's Department)

Mr J Crowe (JusticeLink project)

### **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 2007**

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 (Assistant Director, Major Works,  
Attorney General's Department; from  
November)

Mrs M Betteridge (museum consultant)

Ms D Jones (architectural consultant)

Mr B Johnson (architectural consultant;  
until June)

**Civil Registry Users' Group**

The Civil Registry Users' Group meets approximately every four months to facilitate open discussion between the Court and key users regarding the delivery of civil registry services. The Group was established to assist the Court in identifying and meeting the needs and expectations of its users.

**Members during 2007**

Ms M Shevlin

Ms L Jennings

Mr R Rosman (Law and Order)

Ms L Allen (Minter Ellison)

Ms D Howitt (Blake Dawson Waldron)

Ms K Davidson (Deacons Lawyers)

Mr D Willoughby (Thomson)

Ms S Dart (Litsupport)

## APPENDIX (iv): OTHER JUDICIAL ACTIVITY

As well as hearing and determining cases, Judges and Associate Judges actively contribute, both in Australia and overseas, in matters touching upon the law and legal education. Their contribution includes 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 also serve as members of boards, commissions and committees for legal and cultural organisations within the community.

The Judges' and Associate Judges' activities during 2007 are summarised below:

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

#### Conferences:

3 – 8 Jul	Lawasia Conference (Hong Kong)
8 – 16 Jul	Judicial Delegation to China (Shenzhen, Guangzhou and Wuhan)
17 – 19 Aug	Supreme Court Annual Judges' Conference (Magenta Shores, NSW)
6 – 11 Oct	Judicial Delegation to India (New Delhi)

#### Speaking Engagements:

29 Jan	Opening of Law Term Dinner (Sydney)
14 Feb	Restoration of King Street Courts (Sydney)
28 Feb	Address on the Retirement of the Honourable Justice John Bryson (Sydney)
16 Mar	<i>Words, Words, Words</i> , Conference Celebrating 80 Years of the Australian Law Journal (Sydney)
21 Mar	<i>From Text to Context: Contemporary Contractual Interpretation</i> , Risky Business Conference (Sydney)
24 Mar	Access to Justice and Access to Lawyers, 35th Australian Legal Convention (Sydney)
30 Apr	<i>Judicial Independence: Purposes and Threats</i> , 7th Worldwide Common Law Judicial Conference (London)
26 May	<i>The Foundation of Western Shanghai</i> , Asian Arts Society of Australia (Sydney)
7 Jul	<i>International Commercial Litigation: An Asian Perspective</i> , 20th Biennial Lawasia Conference (Hong Kong)
21 Jul	Address to the Royal Commonwealth Society (Sydney)
5 Jul	Address to the Australian Association of Crown Prosecutors Conference (Sydney)
10 Aug	Address to the International Commercial Arbitration Conference (Sydney)
28 Aug	Opening address – Corporate Law Conference (Sydney)
31 Aug	<i>Judicial Appointments and Judicial Independence</i> , South Pacific Forum and Rule of Law Conference (Brisbane)
5 Oct	Launch – A Guide to Sentencing in Australia “Judge for Yourself”, Judicial Conference of Australia (Sydney)
9 Oct	<i>Commercial Litigation and Arbitration: New Challenges</i> , 1st Indo Australian Legal Forum (New Delhi)
24 Oct	<i>The Significance of the Integrity System</i> , Australian Public Sector Anti-Corruption Conference (Sydney)
14 Nov	<i>Lions in Conflict: Ellesmere, Bacon and Coke – Treason and Unity</i> , St Thomas More Society (Sydney)
21 Nov	Launch – the University of New South Wales Law Journal China: Business and the Law (Sydney)
14 Dec	Address on the Retirement of the Honourable Justice G F K Santow AO

#### Publications:

Judicial Exchange Between Australia and Japan (2006) 3(3) *Chuo Law Journal* 118 (Japanese)  
Lions in Conflict: Ellesmere, Bacon and Coke – Treason and Unity (2007) 28 *Australian Bar Review* 254  
Judicial Independence (2007) 8 *The Judicial Review* 343; (2007) 45 *Law Society Journal* 2  
From Text to Context: Contemporary Contractual Interpretation (2007) 81 *Australian Law Journal* 322  
Words, Words, Words (2007) 81 *Australian Law Journal* 601  
International Commercial Litigation: An Asian Perspective (2007) 35 *Australian Business Law Review* 318;  
(2007) 37 *Hong Kong Law Journal* 859  
Access to Justice and Access to Lawyers (2007) 14 *Australian Journal of Administrative Law* 158; (2007) 29  
*Australian Bar Review* 136  
Public Confidence in the Administration of Criminal Justice (2007) 19 *Current Issues in Criminal Justice* 219  
Foreword, *Owen Dixon (2nd edn)*, by Philip Ayres, Melbourne University Publishing, Melbourne, 2007  
Foreword, *A Setting for Justice: Building for the Supreme Court of New South Wales*, by Rosemary Annable,  
University of New South Wales Press, Sydney, 2007  
Shanghai and the West: First Contact (2007) *Warrane College UNSW pamphlet*; (2007) 51(7-8) *Quadrant* 18  
The Foundation of Western Shanghai (2007) 51(7-8) *Quadrant* 68 and (2007) 51(9) *Quadrant* 40; (2007) 16(3)  
*Asian Arts Society of Australia Review* 11

**Delegations and International Assistance:**

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21 Feb	Kenyan Delegation led by The Hon Mr Justice R.S.C. Omolo J.A., Presiding Judge, Court of Appeal and Chairman of the Expeditious Disposal of Cases Committee of the Kenyan Judiciary
25 May	Chinese Delegation led by Mr Yu Lingyu, Senior Judge and General Director, Enforcement Office, Supreme People's Court of China
19 Jul	Vietnamese Delegation led by Dr Khuat Van Nga, Deputy Procurator General of Supreme People's Procuracy of Vietnam
24 Sep	Chinese Judicial Delegation led by Mr Jiang Xingchang, Chief Judge and Vice President of Supreme People's Court of China

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**THE HONOURABLE JUSTICE KEITH MASON, PRESIDENT OF THE COURT OF APPEAL****Conferences:**

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17-19 Aug	Supreme Court Annual Judges' Conference (Magenta Shores,NSW)
6 Oct	JCA Colloquium

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**Speaking Engagements:**

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10 Apr	District Court Conference "Recurring Issues in the New South Wales Court of Appeal"
18 Apr	Law Graduation Address – Macquarie University
11 May	Keynote address – NSW Chapter Council of Australian Tribunals "The Bounds of Flexibility in Tribunals"
6 Jul	Keynote address – ANU Commercial Law Colloquium "Avoiding Conflict of Interest in Commercial Settings"
5 Aug	Paper to Restitution in Commercial Law Conference "Economic Duress"
6 Oct	Speech – JCA Conference "Throwing Stones: A cost/benefit analysis of judges being offensive to each other"
7 Dec	Speech – Lawyers Weekly Christmas Lunch "Judicial Humour"

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**Publications:**

"What has equity to do with restitution? Does it matter? (2007) 15 RLR 1  
"Law and Religion in Australia" in Piggin S (ed), *Shaping the Good Society in Australia: Australia's Christian Heritage: Its Importance in our Past and its Relevance for our Future*

**THE HONOURABLE JUSTICE K R HANDLEY AO****Conferences:**

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20 - 24 May	International Academy of Estate & Trust Law Boston USA
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**Speaking Engagements:**

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17 Mar	Estoppel by Convention: NSW Bar Association
29 Mar	Estoppel by Convention: Commercial Law Association
11 May	<i>Making a difference</i> Occasional Address Sydney University Law Graduation
2 Oct	After dinner address at The Institute, Lincoln's Inn (London)
8 Nov	W.A. Lee Lecture Unconscionability in Estoppel by Conduct: <i>Triable issue or underlying principle?</i> Queensland University of Technology, (Brisbane)

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**Publications:**

Paternity Fraud (2007) 123 *Law Quarterly Review* 337

**Appointments to Legal, Cultural or Benevolent Organisations:**

President St John Ambulance Australia (NSW)  
President Cranbrook School

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## THE HONOURABLE JUSTICE MARGARET JOAN BEAZLEY AO

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### Conferences:

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8 – 15 Jan	Europe Pacific Legal Conference (Cortina, Italy)
17-19 Aug	Supreme Court Annual Judges' Conference (Magenta Shores, NSW)
5 - 7 Oct	Judicial Conference of Australia Colloquium 2007, Sydney
12 - 14 Oct	Cultures and the law - 25th Annual AIJA Conference, Melbourne
29 Nov	Construction Law Conference (Sydney)

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### Speaking Engagements:

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16 Feb	Speech – Dinner to mark the retirement of the Honourable Ken Handley AO (Sydney)
2 Mar	Welcome speech and chair – National Breast Cancer Centre Workshop: 'Multidisciplinary care – what are the medico-legal implications?' (Sydney)
23 Apr	Presentation – Queenwood School for Girls staff (on issues associated with stealing at school) (Sydney)
25 May	Speech – HSC Legal Studies Conference, NSW Parliament House (Sydney)
21 Aug	Speech – Fems Rea Professional Womens Dinner (Sydney)
27 Sep	Speech – Dinner to mark the retirement of Professor Ron McCallum (Sydney)
23 Oct	Speech – University of NSW Women's Mentoring Programme (Sydney)
29 Nov	Keynote speech – "Recent trends in the Court of Appeal" – Construction Law Conference (Sydney)

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### 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  
Member, Planning Committee, International Association of Women Judges  
Member, Women's Advisory Network, National Breast and Ovarian Cancer Centre  
Member of the Board of Governors, Queenwood School for Girls  
Advisory Board Member, Centre for Children and Young People, Southern Cross University

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## THE HONOURABLE JUSTICE R D GILES

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### Appointments to Legal, Cultural or Benevolent Organisations:

Member, Editorial Board of the Insurance Law Journal

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## THE HONOURABLE JUSTICE D H HODGSON

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### Conferences:

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23-27 Jul	Toward a Science of Consciousness (Budapest, Hungary)
1-6 Aug	X111 World Congress of Philosophy of Law and Social Philosophy (Crackow, Poland)

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### Speaking Engagements:

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26 Jul	Paper given at Toward a Science of Consciousness Conference "Gestalts, Rationality and Free Will" (Budapest, Hungary)
4 Aug	Paper given at X111 World Congress of Philosophy of Law and Social Philosophy "In Defence of Voluntariness" (Crakow, Poland)
7 Dec	Keynote address at the HCSNet Forensic Speaker Recognition Workshop "Speaker Identification – a Judicial Perspective" (University of New South Wales, Sydney)

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### Publications:

"Dawkins and the Morality of the Bible", *Quadrant* (2007) No 436 (May)  
"Malaysia's Shackles on Religious Freedom", *Sydney Morning Herald* (2007) 22 July.  
"Partly Free", *Times Literary Supplement* (2007) 6 Jul.  
"Making our Own Luck", *Ratio* (2007) Vol 20 No 3.

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### Appointments to Legal, Cultural or Benevolent Organisations:

Part-time Commissioner, NSW Law Reform Commission  
Supreme Court Representative on the Faculty of Law at the University of New South Wales.

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## THE HONOURABLE JUSTICE SANTOW AO

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### Conferences:

20-25 Jan Supreme and Federal Courts Judges' Conference (Perth, WA)  
31 Oct - 4 Nov Union Internationale des Avocats (Paris)

### Appointments of Legal, Cultural or Benevolent Organisations:

Committee Member, Supreme Court Education Committee  
Chancellor of University of Sydney  
Member of International Council, Institute of Advanced Legal Studies, University of London

### Speaking Engagements:

26 Nov "Last Things", Talk to a dinner of the Wills and Estates Specialists, Law Society of New South Wales  
26 Mar "Truth-Telling" address to Women's College  
16 Apr "Women on Boards – the end of civilisation as we know it?"  
14 Dec "Remarks at my Farewell"

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## THE HONOURABLE JUSTICE DAVID ANDREW IPP AO

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### Conferences:

16 Mar The Australian Law Journal 80 Years Celebration Conference 2007 (Westin Hotel, Sydney)  
30 Mar New South Wales State Conference of the Australian Lawyers Alliance (Hunter Valley Gardens, New South Wales)  
17 May Conference of the Australian Insurance Law Association (Noosa, QLD)  
17 – 19 Aug Supreme Court Annual Judges' Conference (Magenta Shores, NSW)

### Speaking Engagements:

20 Feb New South Wales Young Lawyers CLE Committee, "Proportionate Liability" (Sydney)  
16 Mar The Australian Law Journal 80 Years Celebration Conference 2007, "Themes in the Law of Torts" (Westin Hotel, Sydney)  
29 Mar Opening Commentary – Litigation Master Class, University of NSW, Continuing Education Programme (Sydney)  
30 Mar Keynote Speaker – New South Wales State Conference of the Australian Lawyers Alliance, "The Metamorphosis of Slip and Fall" (Hunter Valley Gardens)  
17 May Keynote Speaker – Conference of the Australian Insurance Law Association, "The Politics, Purpose and Reform of the Law of Negligence" (Noosa)  
27 Sep The University of NSW Faculty of Law, Continuing Legal Education, 3-Day Symposium, Government Tort Liability, *Road Authorities*" (Kensington)  
1 Nov Launch of Prof Les Stein's Book, "Principles of Planning Law" (Sydney)

### Publications:

"Themes in the Law of Torts", (2007) 81 *Australian Law Journal* 609  
"The Politics, Purpose and Reform of the Law of Negligence", (2007) 81 *Australian Law Journal* 456  
"The Metamorphosis of Slip and Fall", (2007) 29 *Australian Bar Review* 150

### Appointments of Legal, Cultural or Benevolent Organisations:

Chair of the Supreme Court Education Committee  
Chair of the Supreme Court Library Committee  
Chair of the Standing Advisory Committee on Judicial Education (Judicial Commission of NSW)  
Committee Member, Admiralty Rules Committee  
Member, Court of Arbitration for Sport – Appeals Division, Oceania Registry  
Member, The International Association of Judges (Australian Section)

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## THE HONOURABLE JUSTICE JOHN BASTEN

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### Conferences:

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16 Feb	2007 Constitutional Law Conference (Sydney)
17-19 Aug	Supreme Court Annual Judges' Conference (Magenta Shores, NSW)
5-7 Oct	Judicial Conference of Australia - Colloquium 2007 (Sydney)
9-10 Oct	Genes Proteins - Proteomics in the Courts Conference (Sydney)

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### Speaking Engagements:

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15 Jul	Paper - 2007 National Administrative Law Forum " <i>Natural Justice: Is There Too Much, Too Little or Just The Right Amount?</i> " (Canberra)
18 Aug	Chair – 2007 Supreme Court Annual Conference – Session 3 " <i>A Historical Perspective on Review of Merits and Legality</i> " – Introduction and closing remarks (Magenta Shores, NSW)

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## THE HONOURABLE JUSTICE CAMPBELL

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### Conferences:

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17 – 19 Aug	Supreme Court Annual Judges' Conference (Magenta Shores, NSW)
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### Speaking Engagements:

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28 Nov	Anglo-Australasian Lawyers Association and Chancery Bar Association " <i>Some Historical and Policy Aspects of the Law of Equitable Liens</i> " (London)
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### Publications:

"Some Aspects of the Practical Operation of Litigation Relating to deceased Estates", *Retirement & Estate Planning Bulletin*, (2007) Vo. 10 No.1, No.2 and No.4

### Appointments to Legal, Cultural or Benevolent Organisations:

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Member, Law Admissions Consultative Committee  
Member, LPAB Legal Qualifications Committee  
Member, LPAB Examinations Committee  
Member, ADR Steering Committee

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## THE HONOURABLE MR JUSTICE YOUNG AO, CHIEF JUDGE IN EQUITY

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### Conferences:

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16 Mar	Australian Law Journal Judges' Review Conference (Sydney)
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### Speaking Engagements:

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16 Mar	Chairman's Welcome, Australian Law Journal Judges' Review Conference (Sydney)
31 Jul	Tips & Trips in Equity, Address to North Metropolitan Law Society (Sydney)
12 Oct	Christianity & Equity, Address to UNSW Christian Group (Sydney)

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### Publications:

"Current Topics & Recent Cases", Vol 81 *Australian Law Journal* (2007)

### Appointments to Legal, Cultural or Benevolent Organisations:

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Chairman, Sydney Bus & Truck Museum  
Chair, Anglican Church Appellate Tribunal  
Deputy Chair of Committees, General Synod Anglican Church of Australia  
General Editor, Australian Law Journal

## THE HONOURABLE JUSTICE MCCLELLAN, CHIEF JUDGE AT COMMON LAW

### Conferences:

9-11 Feb	National Judicial College, Confidence in the Courts (Canberra)
15 Feb	16th Annual Medico-Legal Conference (Melbourne)
15 May	National Judicial College - Orientation program
28-31 May	Asia Pacific Judicial Reform Forum (Kuala Lumpur, Malaysia)
17 -19 Aug	Supreme Court Annual Judges' Conference (Magenta Shores, NSW)
5-9 Nov	17th Pacific Judicial Conference (Tonga)

### Speaking Engagements:

15 Feb	<i>"Expert Evidence Aces Up Your Sleeve 16th Annual Medico-Legal Congress"</i> (Melbourne)
15 Mar	Maurice Byers chambers; seminar on expert evidence
2 Apr	Bar Readers; lecture on expert evidence
16 Apr	Expert Witness Institute of Australia & University of Sydney Faculty of Law Symposium. Keynote speaker: <i>"The New Rules"</i>
20 Apr	University of NSW; seminar on expert evidence
11 May	Bar Readers; lecture on expert evidence
12 Jul	Concurrent Evidence/Uniform Civil Procedure Rules; presentation to TressCox Lawyers (Sydney)
20 Jul	Australian Lawyers' Alliance Medical Law Conference 2007 <i>"Contemporary Challenges for the Justice System – Expert Evidence"</i>
13 Aug	Queensland Supreme Court Judges' Annual Conference <i>"Contemporary Challenges for the Justice System – Expert Evidence"</i>
17 Aug	NSW Supreme Court Judges Conference <i>"Contempt"</i>
30 Oct	National Judicial College – <i>"Expert Evidence in Civil Proceedings"</i>
29 Nov	Medicine & Law Conference – Law Institute of Victoria – Keynote address <i>"Concurrent Evidence"</i>

### Publications:

*"Expert Evidence – Aces up Your Sleeve"* – *The Judicial Review* Mar 2007

### Appointments to Legal, Cultural or Benevolent Organisations:

Member of the Executive of the Asia Pacific Judicial Reform Forum

## THE HONOURABLE MR JUSTICE WILLIAM VICTOR WINDEYER AM RFD ED

### Conferences:

20-25 Jan	Supreme and Federal Courts Judges' Conference (Perth, WA)
17-19 Aug	Supreme Court Annual Judges' Conference (Magenta Shores, NSW)

### Speaking Engagements:

15 Feb	Seminar on Developments in Succession Law – NSW Young Lawyers <i>"Effect of Changes in Law and Practice brought about by the Succession Act 2006"</i>
7 Mar	Opening address UNSW Centre of Continuing Legal Education on Succession Law
18 Jul	Seminar on Succession Act <i>"How the Succession Act 2006 will impact on matters coming before the Courts"</i>
20 Nov	Opening address UNSW Centre of Continuing Legal Education on Succession Law

### Appointments to Legal, Cultural or Benevolent Organisations:

Presiding Member Legal Profession Admission Board

## THE HONOURABLE MR JUSTICE CLIFFORD EINSTEIN

### Conferences:

20-25 Jan	Supreme and Federal Courts Judges Conference (Perth, WA)
17-19 Aug	Supreme Court Annual Judges' Conference (Magenta Shores, NSW)

## THE HONOURABLE JUSTICE MICHAEL FREDERICK ADAMS

### Conferences:

5-9 Nov	17th Pacific Judicial Conference (Tonga)
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## THE HONOURABLE JUSTICE ANTHONY WHEALY

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### Conferences:

20-25 Jan	Supreme and Federal Courts Judges' Conference (Perth, WA)
7 – 10 Nov	Queensland Law Society and Life Saving Australia (Surfers Paradise QLD)

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### Speaking Engagements:

20-25 Jan	Supreme and Federal Courts Judges' Conference "Difficulty in obtaining a fair trial in terrorism cases" (Perth W.A.)
22 Aug	Paper delivered on my behalf at Supreme Court Judges' Conference "Beneath Contempt? – A Treatise on the Law of Contempt"
7 Nov	Keynote Speech – Queensland Law Society and Life Saving Australia "Beach Safety and the Law of Negligence" (Surfers Paradise QLD)

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### Publications:

"Difficulty in obtaining a fair trial in terrorism cases" – *Australian Law Journal* 81 (9) Sept 2007: 743:759 81 ALJ 743  
Instructing a Jury in Complex Commercial Trials: The Position in England and its Significance in an Australian Context – *The Judicial Review – Journal of the Judicial Commission of New South Wales* Volume 8 Mar 2007 No. 2  
The Impact of Terrorism Related Laws on Judges Conducting Criminal Trials – *The Judicial Review – Journal of the Judicial Commission of New South Wales* Volume 8 Sept 2007 No. 3

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## THE HONOURABLE JUSTICE R P AUSTIN

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### Speaking Engagements:

13 Mar	Remarks at the launching of the Allens Arthur Robinson Annual Review of Insolvency & Restructuring Law, 2006
16 Mar	Remarks on the launching of Company Directors and Corporate Social Responsibility: UK and Australian Perspectives
20 Jul	"Implications of the Sons of Gwalia Decision" A commentary on the paper by Konrad de Kerloy, Law Council of Australia Business Law Section, Corporations Workshop (Glenelg, SA)
24 Oct	Opening Commentary – Faculty of Law, University of New South Wales, Centre for Continuing Legal Education, Mergers and Acquisitions Seminar

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### Publications:

Co-author, Ford's Principles of Corporations Law (*LexisNexis*, looseleaf)  
"Termination and Setting Aside of Winding-Up Orders," (2007) 81 *ALJ* 932 (with Kristin Van Zwieten)

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### Appointments of 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

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## THE HONOURABLE JUSTICE VIRGINIA BELL

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### Conferences:

7 Jul	Australasian Institute of Judicial Administration – Tribunal's Conference, Melbourne
12 –14 Oct	Australasian Institute of Judicial Administration- Annual Conference, Melbourne

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### Speaking Engagements:

10 Apr	Keynote Speaker – Crown Prosecutor's Conference (Magenta Shores, NSW)
6 Aug	Speech at Women's' College University of Sydney on behalf of the Women Barristers Forum
17-19 Aug	Supreme Court Annual Judges' Conference (Magenta Shores, NSW)
18 Oct	Lecture – Maurice Byers Chambers on Advocacy
19 Oct	Address at Graduation Ceremony of NSW Ambulance Service (Sydney)
10 Nov	National Judicial College Conference on Communication with the Jury – paper delivered
28 Nov	Speech at Academy of Forensic Science Forum

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### Appointments of Legal, Cultural or Benevolent Organisations:

President of Australasian Institute of Judicial Administration  
Chair of Law Faculty Advisory Committee of the University of Wollongong

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### Delegations and International Assistance:

13 Sep	Presentation to delegation of Judges from Taiwan concerning indigenous courts
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#### THE HONOURABLE JUSTICE HOWIE

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##### Conferences:

17-19 Aug Supreme Court Annual Judges' Conference (Magenta Shores, NSW)

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##### Speaking Engagements:

16 May Judge in the University of Sydney Law Moot final – issues of causation, intoxication and common purpose

18-25 Jul Australian expert presenter at the Vietnam-Australia Human Rights Technical Cooperation Program – seminars on Access to Justice – “Support Services for Participants in Criminal proceedings” and “Protection of Human Rights in Criminal Trials” (Ho Chih Minh City and Hanoi)

2 Aug Local Courts of NSW Annual Conference - “Criminal Law Update” (Sydney)

18 Aug Supreme Court Annual Conference – “Criminal Law Review” (Magenta Shores, NSW)

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##### Publications:

“Criminal Law Update”, *The Judicial Review* Mar 2007 Vol 8 No 2

“Review of Criminal Law 2007”, *Judicial Officers' Bulletin* Sept 2007 Vol 19 No 8

Consulting Editor for Criminal Law News (published by Lexis Nexis)

Co-author of Criminal Practice and Procedure (Lexis Nexis looseleaf)

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##### Appointments to Legal, Cultural or Benevolent Organisations:

Chairman of the Bench Book Committee

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#### THE HONOURABLE JUSTICE REGINALD BARRETT

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##### Conferences:

17 - 18 Mar Seventh Joint INSOL/UNCITRAL/World Bank Multinational Judicial Colloquium (Cape Town, South Africa)

18 - 21 Mar INSOL International Annual Regional Conference (Cape Town, South Africa)

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##### Speaking Engagements:

20 Mar Presentation as panel member INSOL - International Annual Regional Conference “Global trends in judicial co-operation” (Cape Town, South Africa)

3 Dec Address – UTS Law Alumni Network End of Year Event “Current Issues in insolvency” (Sydney)

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#### THE HONOURABLE JUSTICE PALMER

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##### Speaking Engagements:

8 Feb Speech at the Opening of Law Term Function for NSW Young Lawyers (Sydney)

27 Feb Speech to open Young Lawyers Forum on “Professional Darwinism” (Sydney)

26 Mar Speech to launch “Arts Law Week” (Sydney)

28 Apr Speech at NSW Young Lawyers “Work/Life Balance Forum”

3 Aug Restitution in Commercial Law Conference: Chair, Warren CJ, Supreme Court of Victoria: “Mistake: the core of unjust enrichment” (Sydney)

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##### 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

Member, Maritime Law Association of Australia and New Zealand

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#### THE HONOURABLE JUSTICE TERRY BUDDIN

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##### Conferences:

14 –15 May National Judicial College of Australia (Melbourne)

Attended meeting of Steering Committee of NJOP

Presenter, Session on Sentencing

17-19 Aug Supreme Court Annual Judges' Conference (Magenta Shores, NSW)

30 Oct National Judicial College of Australia (Sydney)

Attended meeting of Steering Committee of NJOP

Presenter, Session on Sentencing

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##### Appointments to Legal, Cultural or Benevolent Organisations:

Member, National Judicial Orientation Program, Steering Committee

Chairperson, Jury Taskforce

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## THE HONOURABLE JUSTICE GZELL

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### Conferences:

19-25 Jan	Supreme and Federal Courts Judges' Conference (Perth, WA)
21 Mar	Philanthropy – Corporate Governance and Tax in 2007 (Sydney)
2-3 Aug	Taxation Institute of Australia 2007 Queensland State Convention (Surfers Paradise)
17-19 Aug	Supreme Court Annual Judges' Conference (Magenta Shores, NSW)
24 Aug	AIJA Discovery Conference (Melbourne)
11-12 Oct	Society of Trust and Estate Practitioners (STEP) Asia Conference (Singapore)
15 –17 Oct	STEP Presentation by Dr Donovan Waters QC FRSC <i>"The Future of Trusts"</i> (Sydney)

### Speaking Engagements:

31 Mar	Commentary on <i>"Tax in Private Commercial Litigation – GST and Income Tax as both Elements and Products of Litigation"</i> (Melbourne)
27 Apr	Dinner Speech – Regional Arts NSW Congress (Sydney)
2 Aug	Keynote Address – TIA Qld Convention <i>"The Courts, Tax and Commercial Litigation"</i> (Surfers Paradise)
11 Oct	STEP Asia Conference <i>"The Nature of a Beneficiary's Interest in a Trust Estate"</i> (Singapore)
12 Oct	Debate - STEP Asia Conference <i>"Trusts are really the Alter Ego of the Settlor"</i>
25 Oct	Keynote Address - TIA National GST Intensive <i>"GST in the Courts"</i> (Gold Coast)

### Publications:

*"The Courts, Tax and Commercial Litigation"* (2007) 81 ALJ 866

### Appointments to Legal, Cultural or Benevolent Organisations:

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

## THE HONOURABLE JUSTICE NICHOLAS

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### Conferences:

17-19 Aug	Supreme Court Annual Judges' Conference (Magenta Shores, NSW)
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### Speaking Engagements:

28 Mar	University of NSW CLE Seminar; Defamation Law Update
17 Sep	Address: <i>"Asian Media Law Landscape"</i> , Media Law Resource Centre Conference, London
18 Sep	Discussion: <i>"The challenges of privacy litigation in the 21st century – perspectives from the bench"</i>

### Appointments to Legal, Cultural or Benevolent Organisations:

Director, NSW Cultural Management Ltd (Sydney Theatre)  
Chairman, 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

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#### THE HONOURABLE JUSTICE ROBERT MCDUGALL

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##### Conferences:

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17-19 Aug	Supreme Court Annual Judges' Conference (Magenta Shores, NSW)
16-21 Sep	The Greek Legal and Medical Conference (Kos, Greece)

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##### Speaking Engagements:

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22 Feb	Address – In-House Lawyers' conference – Client legal privilege and in-house lawyers
22 Jul	Commercial Law Association – The evolving principles governing client legal privilege
28 Jul	Institute of Arbitrators and Mediators Australia – Expert witness seminar
17 Sep	The Greek Legal and Medical Conference– Terrorism, Responses and the Role of the Courts (Kos, Greece)

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#### THE HONOURABLE JUSTICE WHITE

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##### Conferences:

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17-19 Aug	Supreme Court Annual Judges' Conference (Magenta Shores, NSW)
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##### Speaking engagements:

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31 Mar	NSW Young Lawyers Civil Litigation Committee – Equity general procedures
17 Aug	New South Wales Supreme Court Conference – <i>"The Nature of a Beneficiary's Equitable Interest in a Trust"</i> (Magenta Shores, NSW).
6 Jul	NSW Young Lawyers CLE Seminar Series – Equity general procedures

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##### Appointments to Legal, Cultural or Benevolent Organisations:

Chair of the Legal Qualifications Committee, Legal Practitioners Admission Board

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#### THE HONOURABLE JUSTICE C R R HOEBEN AM RFD

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##### Conferences:

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17-19 Aug	Supreme Court Annual Judges' Conference (Magenta Shores, NSW)
24 Aug	Attended conference on Discovery in Melbourne sponsored by ALJA
7-16 Sep	Attended National Judges' College in Beijing and participated in their Civil Evidence Seminar. Presented papers on Burden of Proof, Judicial Notice and Assessing the Credibility of Witnesses.
7-16 Sep	Attended Shanghai Judicial Training Institute and presented paper on Rules of Evidence in Civil Trials in Australia.

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##### Appointments to Legal, Cultural or Benevolent Organisations:

Chairman, Royal Humane Society of NSW  
Honorary Colonel University of NSW Regiment

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#### THE HONOURABLE JUSTICE JOHNSON

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##### Conferences:

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17-19 Aug	Supreme Court Annual Judges' Conference (Magenta Shores, NSW)
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##### Speaking Engagements:

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26 Mar	Speaker - City of Sydney Law Week seminar with Professor Ian Hickie - <i>"Significant Changes in Mental Health"</i>
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## THE HONOURABLE JUSTICE PETER HALL

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### Conferences:

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| 20 - 25 Jan | Supreme and Federal Courts Judges' Conference (Perth, WA)     |
| 17-19 Aug   | Supreme Court Annual Judges' Conference (Magenta Shores, NSW) |
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### Appointments to Legal, Cultural or Benevolent Organisations:

Director on the Board of the College of Law Pty Limited  
Member of the Legal Profession Admission Board Examinations Committee  
Administrative Law List Judge (Supreme Court)  
Member of the ADR Steering Committee (Supreme Court)  
Member of the Administrative Law Working Group (Supreme Court)  
Member of the Common Law Civil Users Group (Supreme Court)  
Member of the Judgment Working Party (Supreme Court)

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## THE HONOURABLE JUSTICE STEPHEN ROTHMAN AM

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### Conferences:

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| 16 Mar     | Corporate Governance Seminar – “Gatekeepers, the Profession and Corporate Governance” (Sydney)   |
| 27 Mar     | NSW Judicial Commission – Twilight Seminar: “Risk Allocation in Commercial Finance Transactions” (Sydney)  |
| 3 May      | Sir Maurice Byers Lecture (Sydney)   |
| 31 May     | AALS: ‘The Influence of the Privy Council in Australia’ (Sydney)   |
| 22-26 July | International Society for Reform of the Criminal Law – Twenty Years of Criminal Justice Reform: ‘Past Achievements and Future Challenges’ (Vancouver, Canada)  |
| 3 Aug      | ‘Leaving Stones Unthrown’ Human Rights Advocacy with Hauwa Ibrahim (Sydney)  |
| 8 Aug      | NSW Bar Associate Forum - Charter of Rights Forum #1: ‘An Australian Bill of Rights?’ (Sydney)   |
| 16 Aug     | AALS: ‘The Woolf reforms after nine years: is civil litigation in the High Court quicker and cheaper?’ [Rt Hon Sir Igor Judge (President of the Queen’s Bench Division and Head of Criminal Justice)] (Sydney) |
| 17-19 Aug  | Supreme Court Annual Conference (Magenta Shores, NSW)  |
| 22 Aug     | Australian Institute of Administrative Law (Sydney)  |
| 28 Aug     | Hans Blix Lecture (Sydney)   |
| 3 Sep      | St Thomas More Society – Helder Camara Lecture Series: ‘Caesar’s Coin: How Should Church and State Interact?’ (Sydney)   |
| 3-4 Sep    | Judicial Commission of NSW – Judgment Writing Master Class (Sydney)  |
| 11 Sep     | Judicial Commission Twilight Seminar: Tsuu T’ina Peacemaking Court and Siksika Court in Canada (Sydney)  |
| 5-7 Oct    | Judicial Conference of Australia Colloquium (Sydney)   |
| 12-14 Oct  | AIJA Annual Conference (Melbourne)   |
| 18 Oct     | AALS: ‘Issues Facing the Judiciary’ (Sydney)   |
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### Speaking Engagements:

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| 18 May | Industrial Relations Society Convention: ‘There’s more to work than Work Choices’ – Keynote Address: “Role of Common Law” (Leura, Blue Mountains)                   |
| 4 Jul  | Middletons - Workplace Relations & Safety Section – Address on Opening of Section (Sydney)  |
| 24 Aug | Catholic Independent Schools Employment Relations Conference: ‘Thinking Independently: Negotiations and Changing Generations in Schools’ – Keynote Address (Sydney) |
| 24 Oct | NSW Young Lawyers McCallum Medal Presentation Competition – Judge (Sydney)  |
| 3 Nov  | NSW Young Lawyers Evidence Act Seminar – Address on “Privilege” (Sydney)  |
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### Appointments to Legal, Cultural or Benevolent Organisations:

Director; Board Member & Chair Workplace Relations Committee – Association of Independent Schools  
Non-Trustee Governor; Executive Member, Member Planning Committee and Status Committee – Jewish Communal Appeal  
Immediate Past President; Executive Member – NSW Jewish Board of Deputies  
Executive Member – Board of Jewish Education  
Co-Chair – Australian Coordinating Committee of Jewish Day Schools

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THE HONOURABLE JUSTICE PAUL BRERETON RFD

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**Conferences:**

17-19 Aug Supreme Court Annual Judges' Conference (Magenta Shores, NSW)

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**Speaking Engagements:**

16 Mar Aust Law Journal Conference, Speaker "*The Court of Conscience in the Antipodes*" (Sydney)

24 Mar Property Law Seminar (Randwick), Opening Address

31 Aug CLE Legal Conference, Speaker "*Proportionality of Costs*" (Sydney)

10-14 Sep National Judicial College of China, Speaker "*Evidence in Civil Proceedings: An Australian Perspective on Documentary & Electronic Evidence*" (Beijing & Shanghai, China)

1 Sep Costs Assessors Seminar, Opening Address

18 Sep Family Provision Act Symposium, Law Society of NSW (Sydney)

25 Oct Macquarie University Law Society – Alternative Careers Workshop, Speaker, "*Lawyers in the Australian Defence Force*", (Sydney)

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**Appointments to Legal, Cultural or Benevolent Organisations:**

Member, Law Extension Committee, University of Sydney

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HE HONOURABLE JUSTICE IAN HARRISON

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**Conferences:**

17-19 Aug Supreme Court Annual Judges' Conference (Magenta Shores, NSW)

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**Appointments to Legal, Cultural or Benevolent Organisations:**

Supreme Court representative on Legal Profession Admission Board's Legal Qualifications Committee

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THE HONOURABLE ASSOCIATE JUSTICE MACREADY

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**Conferences:**

18 – 20 Aug Supreme Court of NSW Annual Conference (Leura)

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**Speaking Engagements:**

16 Sep NSW Young Lawyer Seminar – "*Appearing before the Associate Justices*"

19 Aug Supreme Court Annual Conference – "*Commentary on paper concerning property claims by de facto spouses*"

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