





## CONTENTS

FOREWORD BY CHIEF JUSTICE OF NSW	2
1 2003: AN OVERVIEW	
• Important judgments	4
• Court operations	4
• CourtLink	4
• Consultation with Court users	4
• Improving mediation services	4
• Opening of King St Courtroom 3	4
• Other judicial activities	4
2 COURT PROFILE	
• The Court's jurisdiction and Divisions	6
• Who makes the decisions: the Judges, Masters and Registrars	9
- The Judges	9
- Appointments and Retirements	10
- The Masters	11
- The Registrars	11
• Supporting the Court: the Registry	12
3 CASEFLOW MANAGEMENT	
• Overview by jurisdiction	14
• Regional sittings of the Court	19
• Alternative dispute resolution	19
• New mediation procedures	20
4 COURT OPERATIONS	
• Overview of operations by jurisdiction	22
• Time standards	25
5 OTHER ASPECTS OF THE COURT'S WORK	
• CourtLink	27
• Law Courts Library	27
• Admission to the Legal Profession and appointment of Public Notaries	28
• The role of the Public Information Officer	31
• Pro Bono Scheme	31
• Administration of the Costs Assessment Scheme	31
• Admission under the Mutual Recognition Acts	32
• Acknowledgements	32
APPENDICES	
i. Important judgments - summaries of decisions	34
ii. Court statistics - comprehensive table of statistics	50
iii. The Court's Committees and User Groups	54
iv. Other judicial activity: Conferences, Speaking Engagements, Publications, Membership of Legal and Cultural Organisations, Delegations and International Assistance, and Commissions in Overseas Courts	61

## FOREWORD BY CHIEF JUSTICE OF NSW

This review provides information of the Court's stewardship of the resources made available to it. The primary measurement of the Court's activity must be qualitative: fidelity to the law and fairness of its processes and outcomes. This Review, for the first time, sets out a short summary of a few cases decided in 2003. They are a small sample of the 2,000 or so separate substantive judgments delivered by the 51 judicial officers of the Court during the year.

Over recent years NSW courts have substantially reduced the delays that have, in the past, been of great concern. That process is not yet complete, but the problem has been substantially alleviated. As long as the same levels of resources are made available to the courts, further progress can be expected.

This is not a cause for complacency. In the administration of justice, as in all areas of government, the search for improved ways of doing things must be ongoing. In the years ahead the focus of our attention must be on reducing costs. This does not mean the reduction of costs to consolidated revenue, although that is important, but reducing costs to the parties involved in litigation. Delay has, of course, been a major cause of waste and increased costs. However, other sources of avoidable costs require attention.

In many areas of litigation, the costs incurred in the process bear no rational relationship, let alone a proportionate relationship, to what is at stake in the proceedings. The principal focus of improvement, now that delays are well on the way to being acceptable, must be the creation of a proportionate relationship between costs and what is at stake.

Some of the case management practices that the courts have adopted, in order to reduce delays, may have resulted in increased costs, such as the costs that can increase as a result of the over-listing of cases. The courts are continuing to fine-tune case management practices, by minimising over-listing and adjournments in order to reduce costs to litigants.

The new computer system for NSW courts, CourtLink, will create numerous opportunities to reduce costs. The legal profession should prepare itself for a substantial expansion in the use of online mentions and e-filing. CourtLink has

provided an opportunity to streamline processes within each court, as well as between courts.

A working party with judicial and registry representatives of the three main courts and of the profession, is well advanced. It appears, for example, that something like 695 different forms are used in the criminal jurisdictions of the Local, District and Supreme Courts. The rationalisation process will result, in the criminal area, in a standard type of warrant, a standard type of bond, a standard type of affidavit and notices performing identical functions in the different courts will be in a standard form. Progress is well advanced towards a single set of rules and forms and a civil procedure act for NSW courts.

Nevertheless, it will remain appropriate that the rules accommodate the need for different levels of complexity in the different components of the hierarchy of courts in this State. It must remain possible to conduct matters of greater complexity and significance in a different manner from other matters. Accordingly, the requirements and procedures of the Local Court should remain simpler and more expeditious than those of the District Court, which in turn should remain simpler and more expeditious than those of the Supreme Court. These gradations can be incorporated in a common framework.

Perhaps the most distinctive feature of CourtLink is that it will provide a single system for all of the courts in New South Wales. Interaction between courts, for example by way of appeal from one court to another, and interaction between courts and other agencies of the justice system, will be facilitated to an extent that has never been possible in the past. What is in prospect is a considerable simplification of the processes with which litigants and their representatives have had to become familiar in the past.

This process of change will gain momentum in the coming year in order to provide the community with more affordable access to the NSW court system.

**The Honourable JJ Spigelman AC**  
Chief Justice of New South Wales

- Important judgments
- Court operations
- CourtLink
- Consultation with Court users
- Improving mediation services
- Opening of King St Courtroom 3
- Other judicial activities

### Important judgments

During 2003, the Court of Appeal handed down 396 judgments, and the Court of Criminal Appeal 415 judgments. At first instance, a total of 1,270 judgments related to the Court's trial work, both criminal and civil. Some judgments were of particular significance, 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 either been able to consolidate upon gains achieved in 2002 or maintain its position. However, some areas, such as crime, could not achieve their expected outcomes during 2003. The *Court operations* chapter outlines the specific time standards set by the Court, and provides detailed analysis of the results achieved in each jurisdiction. This chapter should be read in conjunction with Appendix (ii) which contains comprehensive statistical data regarding the Court's caseload during 2003.

### CourtLink

The CourtLink project is a significant development for the Court. The NSW Attorney General's Department is managing the project in close consultation with the Court's Judges and staff to ensure that CourtLink delivers improved services to Court users. A single system - CourtLink - with linked databases for each jurisdiction, will mean greater ease of access for Court users. Implementation of CourtLink will enable time standards to be adopted for all of the Court's work. Further details about the Court's involvement in the CourtLink project during 2003 can be found in the chapter *Other aspects of the Court's work*.

### Consultation with Court users

In 2003 the Court continued to work closely with Court users through a number of different processes. User groups are an important means by which the Court's Judges and Registry managers identify the needs of litigants and other participants in the administration of justice. A list of the Court's User Groups forms Appendix (iii) to this Review. The Court obtains input from users by

various means, including participation on various committees, such as the Rule Committee, and surveys of Registry users. Registry managers and staff meet regularly with different groups of Court users and also attend meetings with the legal profession and justice agencies. A number of Court committees seek to improve the Court's systems and procedures to give effect to suggestions made by Court users. These committees are also listed at Appendix (iii).

### Improving mediation services

The resolution of disputes through alternative means, particularly mediation, is encouraged within the Court's civil jurisdiction. A general discussion of how alternative dispute resolution is used in the management of the Court's caseload and the future directions of the Court in this regard, can be found in the chapter *Caseload Management*.

### Opening of King St Courtroom 3

Following extensive refurbishment by the NSW Attorney General's Department, Courtroom 3 at the King Street Court complex was officially opened for use in August 2003. The Court wishes to continue with the refurbishment program at the complex, particularly to improve its mediation facilities. The Supreme Court Building Committee continued to focus on the maintenance and refurbishment of the complex, whilst considering ways to promote the building's historical importance to the public. The Members of the Building Committee are detailed in Appendix (iii).

### Other judicial activities

The Judges of the Court participate in a wide range of activities other than the administration of justice, including judicial education, speeches and the publication of articles and books (generally on legal matters), and involvement in a wide range of community organisations. Australian courts occupy an important place in the Asia-Pacific region. The practices, procedures, structures and systems of NSW courts are of interest to court officials in other countries, especially those in the Asia-Pacific region. The Court's Judges are committed to providing appropriate assistance within the region, as evidenced by the delegations hosted by the Court and the international work undertaken by the Court's Judges. Such other judicial activity is set out in Appendix (iv).

- The Court's jurisdiction and Divisions
- Who makes the decisions: the Judges, Masters and Registrars
- 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 also has appellate jurisdiction. The Court generally exercises its supervisory jurisdiction through its appellate courts.

The Industrial Relations Commission 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 and the Compensation Court of New South Wales are intermediate courts, where 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.

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 proceedings in the Supreme, District and the Land and Environment courts, challenging convictions or sentences imposed at trial.

Sittings of the Court of Criminal Appeal are organised on a roster basis, whilst taking into account the regular judicial duties and commitments of the Judges who form the Court's bench. During 2003, the Court sat during each week of term.

### Common Law Division

The Division hears both criminal and civil matters. Most of the criminal cases heard by the Judges involve the offence of murder. Other matters may be brought before the Court with the approval of the Chief Justice. Approval is only given in cases involving the most serious criminality, or that involve an important public interest, for example, large-scale corporate crime, aggravated sexual assault, and major drug offences. The Judges of the Division hear bail applications and matters concerning proceeds of crime.

Civil actions within the Division generally relate to the following:

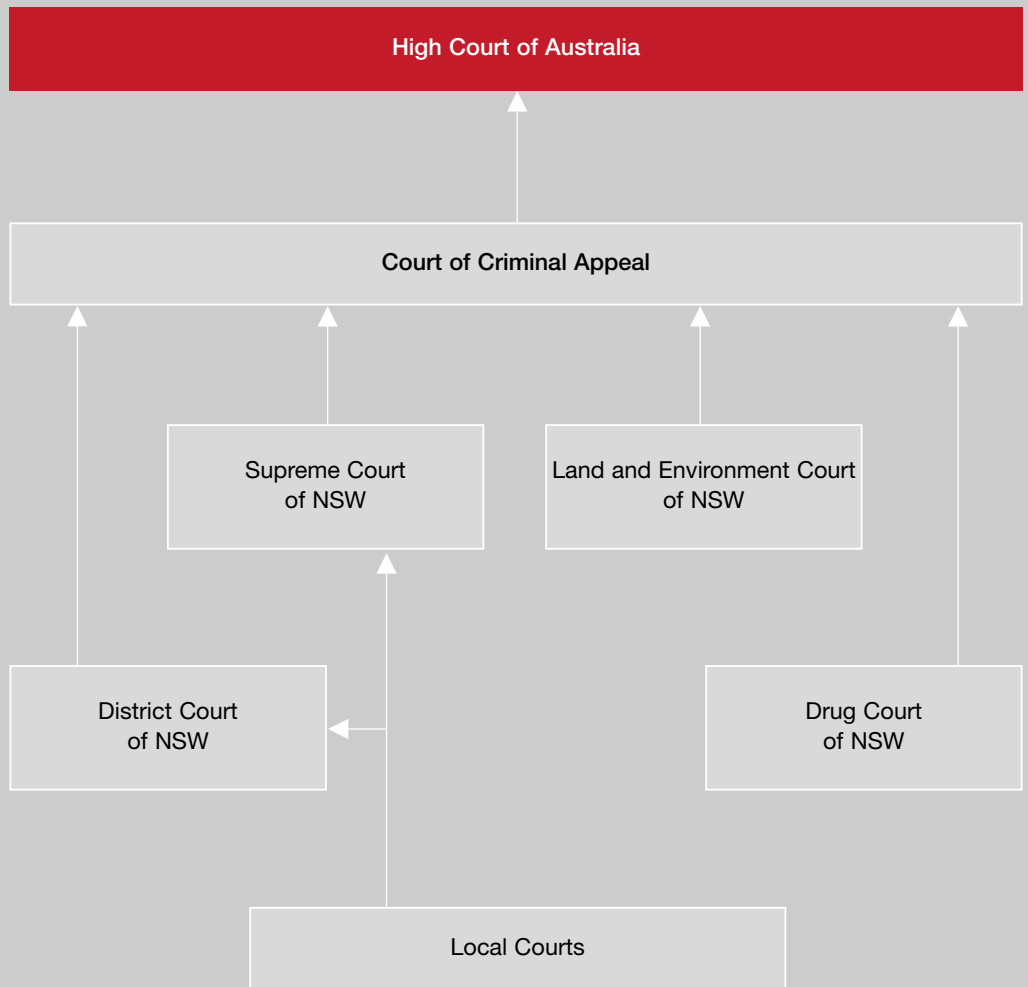
- claims for damages for personal injury;
- claims of professional negligence;
- claims relating to the possession of land;
- claims of defamation; and
- administrative law cases seeking the review of decisions by government and administrative tribunals.

### Equity Division

The Equity Division exercises the traditional Equity jurisdiction dealing with claims for remedies other than damages and recovery of debts, contractual claims, rights of property, 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, Family Law, Probate and its Adoption and Protective jurisdictions.

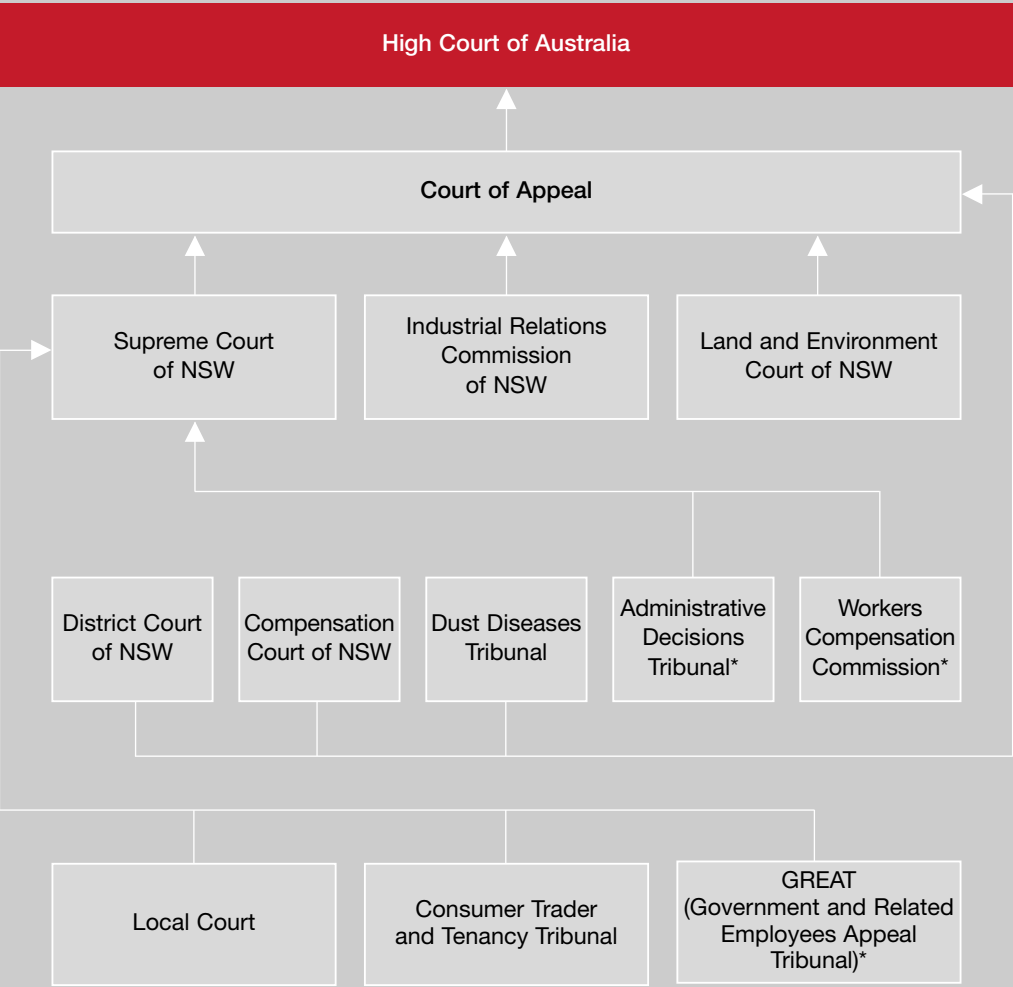


FIGURE 2.1 NSW COURT SYSTEM – CRIMINAL JURISDICTION



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

FIGURE 2.2 NSW COURT SYSTEM – CIVIL JURISDICTION



*Note: the above diagram is a simplified representation of the appeal process in NSW. Actual appeal rights are determined by the relevant legislation.  
\*Some appeals 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 JUDGES, MASTERS AND REGISTRARS

The Judicial Officers of the Supreme Court of New South Wales are its Judges and Masters. The Registrars of the Court have limited judicial powers.

### The Judges

The Governor of New South Wales appoints the Judges of the Court. 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, and 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 2003 can be found in the chapter entitled *Caseflow Management*.

As at 31 December 2003 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 Mr Justice  
Roderick Pitt Meagher

The Honourable Justice Kenneth  
Robert Handley AO

The Honourable Mr Justice Charles Simon  
Camac Sheller

The Honourable Justice  
Margaret Joan Beazley

The Honourable Justice Roger David Giles

The Honourable Justice  
David Hargraves Hodgson

The Honourable Justice  
Geza Francis Kim Santow OAM

The Honourable Justice David Andrew Ipp

The Honourable Justice  
Murray Herbert Tobias AM RFD

The Honourable Justice  
Ruth Stephanie McColl AO

### Chief Judge at Common Law

The Honourable Justice  
James Roland Tomson Wood AO

### Chief Judge in Equity

The Honourable Mr Justice  
Peter Wolstenholme Young

### Judges

The Honourable Mr Justice  
Michael Brian Grove RFD

The Honourable Justice John Purdy Bryson

The Honourable Mr Justice  
Timothy James Studdert

The Honourable Mr Justice Brian Thomas Sully

The Honourable Mr Justice  
Bruce Meredith James

The Honourable Mr Justice  
William Victor Windeyer AM RFD ED

The Honourable Justice  
David Daniel Levine RFD

The Honourable Mr Justice  
John Robert Dunford

The Honourable Mr Justice  
Robert Shallcross Hulme

The Honourable Mr Justice  
Barry Stanley John O'Keefe AM

The Honourable Justice  
Carolyn Chalmers Simpson

The Honourable Justice  
John Robert Arthur Dowd AO

The Honourable Justice Harold David Sperling

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 Gregory Reginald James

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  
Joseph Charles Campbell

The Honourable Justice Terence Lionel Buddin

The Honourable Justice Ian Vitaly Gzell

The Honourable Justice Jeffrey William Shaw

The Honourable Justice William Henric Nicholas

The Honourable Justice  
Robert Calder McDougall

### Acting Judges

The following persons held commissions as Acting Judges of Appeal or Acting Judges of the Court during 2003, and sat from time to time:

The Honourable John Edward Horace Brownie QC  
(Acting Judge of Appeal)  
1 January 2003 to 31 December 2003

The Honourable Jane Hamilton Mathews  
(Acting Judge of Appeal)  
1 January 2003 to 20 December 2003

The Honourable Jerrold Sydney Cripps QC  
(Acting Judge of Appeal)  
1 January 2003 to 31 December 2003

The Honourable John Daryl Davies QC  
(Acting Judge of Appeal)  
1 January 2003 to 20 December 2003

The Honourable Michael Leader Foster QC  
(Acting Judge of Appeal)  
1 January 2003 to 26 November 2003

The Honourable Jeffrey Allan Miles AO  
(Acting Judge of Appeal)  
28 April 2003 to 31 December 2003

The Honourable Rex Foster Smart QC  
January 2003 to 31 December 2003

The Honourable Kenneth John Carruthers QC  
1 January 2003 to 31 December 2003

The Honourable Peter James Newman RFD  
1 January 2003 to 31 December 2003

The Honourable Morris David Ireland QC  
1 January 2003 to 13 June 2003

The Honourable Thomas Swanson Davidson  
1 January 2003 to 31 December 2003

The Honourable James  
Charles Sholto Burchett QC  
1 January 2003 to 31 December 2003

## Appointments and Retirements

### Appointments

- Jeffrey William Shaw QC was appointed a Judge of the Court on 4 February 2003.
- William Henric Nicholas QC was appointed a Judge of the Court on 5 February 2003.
- Murray Herbert Tobias AM RFD QC was appointed a Judge of Appeal on 28 April 2003.
- Ruth Stephanie McColl SC was appointed a Judge of Appeal on 29 April 2003.
- Robert Calder McDougall was appointed a Judge of the Court on 21 August 2003.

### Retirements

- The Honourable Justice Peter David McClellan retired as a permanent Judge of the Supreme Court after accepting the position of Chief Judge of the Land and Environment Court of NSW with effect from 25 August 2003.
- The Honourable Justice Paul Leon Stein AM retired as a Judge of Appeal on 11 April 2003.
- The Honourable Justice John Dyson Heydon retired as a Judge of Appeal on 10 February 2003 after accepting a position as a Judge of the High Court of Australia.

## The Masters

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

The work of the Masters generally involves hearing applications that arise before trial, certain types of trial work and work on proceedings that a Judge or the Court of Appeal 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, Masters conduct trials of actions for personal injury and possession of property. Masters do not hear jury trials. The Common Law Masters also hear other trials (without a jury) that are referred to them by a Judge or the Court of Appeal, in addition to appeals from the Local Court and various tribunals. The Masters also handle appeals against the determinations of cost assessors.

In the Equity Division, Masters 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 Equity Judges or Court of Appeal, along with applications relating to the administration of trusts, and certain probate matters.

As at 31 December 2003, the Masters were as follows:

- John Kennedy McLaughlin
- Bryan Arthur Malpass
- Richard Hugh Macready
- Joanne Ruth Harrison

Grahame James Berecny, Registrar in Equity, held a commission as an Acting Master of the Supreme Court throughout 2003.

## The Registrars

Registrars are appointed by the Governor pursuant to section 120 of the *Supreme Court Act 1970*. Registrars are allocated to work within the Court of Appeal, or to each Division; however, they are permitted to work outside these boundaries, if required.

Registrars are afforded limited judicial powers under the Supreme Court Rules, and undertake some of the duties formerly performed by Judges and Masters.

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 a Judge or Master;
- issuing court orders and writs of execution; and
- entering default judgments.

Registrars are assigned specific powers under the *Supreme Court Rules 1970* that permit them to directly assist the Judges in caseload management. For instance, in the Court of Appeal, the Registrar deals with most interlocutory applications, excluding applications to stay judgment pending an appeal; in the Common Law

## SUPPORTING THE COURT: THE REGISTRY

Division, the Registrar conducts status and final conferences in the Differential 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 2003, nine of the Court's Registrars were qualified mediators and available to conduct mediations throughout the year on a rostered basis.

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

As at 31 December 2003, the Registrars were as follows:

### **Chief Executive Officer and Principal Registrar**

Megan Greenwood

### **Manager, Court Services and Prothonotary**

Jerry Riznyczok

### **Registrar of the Court of Appeal**

Peter Schell

### **Registrar of the Court of Criminal Appeal**

Michael Whitehead

### **Registrar in Equity**

Grahame Berecny

### **Registrar in Probate**

Jonathan Finlay

### **Assistant Registrar at Common Law**

Bruce Howe

### **Senior Deputy Registrar (Protective List)**

Francesca Guido

### **Senior Deputy Registrars**

Deborah Robinson

Paul Studdert

Phillippa Wearne

### **Deputy Registrars**

Emoke Durkin

Geoffrey Haggett

Bhaskari Siva

Suzin Yoo

Leonie Walton

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

The Court operates with the support of four registries. There are two general registries for civil claims and criminal matters, and two specialist registries for the Court of Appeal and the Court of Criminal Appeal. Generally, each Registry provides administrative and clerical support to the Court, enabling it to manage its work.

Staff in the civil registry may be responsible for checking and 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 addition to these tasks, staff working in the criminal registry provide support in processing committals, bail applications, applications under 474D of the *Crimes Act 1900* and Common Law Division criminal summary jurisdiction proceedings.

The Court of Appeal Registry provides specialist support and procedural guidance to the Court of Appeal's judges, litigants, and their representatives, in addition to performing the general administrative tasks already outlined. Staff of the Court of Criminal Appeal Registry provide a similar level of support to the Court of Criminal Appeal, and also enforce 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 set priorities reflect the central aim of meeting the expectations of Court users, whilst servicing their needs with competency, efficiency and professionalism.

Day to day management of the Registry is handled by the Chief Executive Officer and Principal Registrar of the Court. In addition, the Chief Executive Officer is responsible for securing and managing the resources provided to the Court by the NSW Attorney General's Department, providing executive support to the Judges and Masters, and developing policies and strategies for improving service delivery to the Court and its users. The Chief Executive Officer undertakes these duties in close consultation with the Chief Justice, other judicial officers, and key professional bodies and users.

## 3

## CASEFLOW MANAGEMENT

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

## 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 in this regard.

Caseflow management strategies are reflected in the Rules of the Supreme Court and detailed in the Practice Notes issued by the Chief Justice. The Judges, Masters 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 Master. 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 the attention of a Master or Judge.

## OVERVIEW BY JURISDICTION

### Court of Appeal

New appeal cases are initially scanned 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 call-over date before the Registrar when a notice of appeal is filed. At that call-over, 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, however 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 (i).

### Court of Criminal Appeal

The Registrar fixes the listing of appeals through a fortnightly call-over of cases. The Registrar also gives directions for the filing of written submissions and the preparation of other material before a matter is given a hearing date.

Once a hearing date has been allocated, a bench consisting of three Judges will usually hear the appeal. The number of Judges occupying the bench may increase at the direction of the Chief Justice. A bench of two Judges may hear sentence appeals where no issue of principle is under dispute.

The Judges who sit in the Court of Criminal Appeal are the Chief Justice, the President and Judges of the Court of Appeal, and the Chief Judge and Judges of the Common Law Division.

Amendments to the *Criminal Appeal Act* passed by Parliament in 2001 precipitated significant changes

*You can view the Supreme Court Rules and Practice Notes online by visiting the Supreme Court's website. Go to the "Practice Collection" area:*

*<http://www.lawlink.nsw.gov.au/sc/sc.nsf/pages/scpractice>*



to the Court's *Criminal Appeal Rules* and case management procedures. The legislative changes specifically affected how appeals are lodged, and how much time is allowed for making an appeal.

The new procedures were implemented on 1 July 2002. Under the new procedures, the first step is that a notice of intention to appeal is lodged. The notice of intention has an effective period of six months and any notice of appeal is to be filed within that time. Failure to do so results in the notice of intention lapsing.

The circumstances that in the past typically led to appeals being abandoned are now dealt with before a notice of appeal is filed. Rather than filing a notice of abandonment, a potential appeal that is not to be pursued lapses at the expiration of the period of effect of the notice of intention. As a result, fewer appeals are filed than was the case under the former practice.

The effect of this procedure is that most of the tasks that contribute to delay in fixing cases for hearing have to be attended to before a notice of appeal can be filed. This facilitates a more streamlined and faster listing process once the matter is filed in the Court. This is the first year where the impact of these amendments on disposal rates can be seen by comparison with previous years. For detailed statistical analysis of the effects the new procedures have had on disposal rates, refer to the chapter entitled *Court operations*.

### **Common Law Division**

The work carried out by the List Judge and Duty Judge is critical to the management of the Division's caseload.

### **Common Law List Judge**

The List Judge is responsible for allocating judicial hearing time to facilitate the efficient running of the lists within the Division. The List Judge monitors the availability of Judges within the Division to hear cases, and directs listing to maximise the number of civil and criminal cases that can be heard. The List Judge aims to keep the number of cases "not reached" to a minimum. The term "not reached" is applied when a case cannot be heard because the Court cannot provide a Judge. In 2003, two per cent of the Division's civil cases were "not reached"; the figure was zero with respect to

criminal trials. The List Judge also conducts call-ups to list cases for hearing, and hears any applications for adjournment.

Justice Whealy was the Common Law Division List Judge until 18 August 2003 when Justice Bell assumed responsibility.

### **Common Law Duty Judge List**

One of the Judges of the Division is rostered to act as the Duty Judge for a week at a time during the law term. The Duty Judge hears urgent applications, including applications for interlocutory injunctions, throughout the week, and outside normal Court hours when required. A Vacation Judge is rostered during the law 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 a Master or Registrar. These matters include stated cases, applications for restraining orders, applications for declaratory relief, and applications to dispense with a jury. Matters that cannot be heard on a Monday may be specially fixed for hearing before the Duty Judge later that week.

The Duty Judge determines interlocutory applications restraining assets and issuing examination orders under the *Confiscations 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 under the *Listening Devices Act 1984*.

### **Masters' List**

The Masters in the Common Law Division deal with statutory appeals from the Local Court, Consumer Trader and Tenancy Tribunal, and cost assessors. The Masters also deal with applications for summary judgment and dismissal, applications for extension under the *Limitations Act 1969*, as well as opposed applications for transfer from the District Court. The Masters may deal with other matters as outlined in Schedule D of the *Supreme Court Rules 1970*.

These matters are case managed by a Registrar who refers applications to a Master 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;
- Differential Case Management List;
- Possession List; and
- Professional Negligence List.

The Chief Justice may appoint a specific Judge as responsible for the management of a List throughout the year. Where applicable, the Judges responsible for the management of a list at 31 December 2003 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 No 119.

In 2003, Mr Justice Dunford was responsible for the management of the Administrative Law List, with the assistance of Justice Adams.

### **Bails List**

Applications for bail or to review bail determinations can be made to the Supreme Court by 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 the court vacation. Common Law Division Judges are rostered on a weekly basis to determine these applications.

### **Criminal List**

Arraignment hearings are normally scheduled once a month. 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 because a guilty plea is entered immediately prior to the trial commencing, or on the day of the trial.

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 No 112.

Justice Barr was responsible for the management of the Criminal List during 2003.

### **Defamation List**

Section 7A of the *Defamation Act 1974* sets out the respective functions of the Court and jury in defamation proceedings. An initial hearing is held before a jury to determine whether the matter complained of carries the imputation alleged and, if it does, whether the imputation is defamatory. A separate, subsequent, hearing takes place before a Judge to determine whether any defence can be established and if damages are payable. This second hearing is only required if the jury determines that the matter complained of was defamatory.

The Defamation List was managed by Justice Levine during 2003, with the assistance of Justice Simpson and Justice Kirby. A Registrar assists by case-managing matters listed for directions. Practice Notes Nos 14 and 114 govern the operation of the List.

### **Differential Case Management (DCM) List**

This List consists of all civil cases that are commenced by a statement of claim that cannot be 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 conduct 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. The procedures associated with the running of this List are set out in Practice Note No 120.

### **Possession List**

The Possession List deals with 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

*Changes to the Common Law Division's Caseload Arrangements were announced in December 2003, to take effect from January 2004. For details of these changes, go to the Announcements section of the Supreme Court's website:*

*[http://www.lawlink.nsw.gov.au/practice\\_notes/nswsc\\_pc.nsf/WebAnnounce](http://www.lawlink.nsw.gov.au/practice_notes/nswsc_pc.nsf/WebAnnounce)*

management is also used to clarify the real issues in dispute. Practice Note No 106 applies to cases in this List.

Justice Greg James was responsible for the management of the Possession List during 2003.

### **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 the parties to focus on the real issues involved in these types of claims. Regular conference hearings are scheduled before a Registrar to monitor cases. Conference hearings provide an opportunity for parties to discuss outstanding issues in the case, as well as a forum for mediation between the parties. The Professional Negligence List Judge hears applications and makes directions according to specific needs of each matter.

Mr Justice Studdert managed the List during 2003 with the assistance of Justice Sperling.

### **Equity Division**

The bulk of the Equity Division's caseload is distributed amongst the following Lists:

- General List;
- Expedition List;
- Short Notice List;
- Equity Duty Judge List; and
- Masters' List.

### **General List**

Other cases are placed in the General List when set down for hearing (if commenced by statement of claim), or when considered ready for hearing (if commenced by summons). The Registrar conducts regular call-overs giving provisional fixtures for hearing (about three months ahead), and nominating a Judge to hear the case. The trial Judge ensures that the matter is ready for hearing though pre-trial directions hearings.

### **Expedition List**

In previous years, two Judges of the Division have been designated to sit exclusively in the Expedition List. In 2003, the List was assigned one Judge only as delays in general Equity matters allocated to the Equity call-over were

reduced considerably. The Expedition List Judge heard all applications for expedited hearings in 2003. 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 same Judge hears the case when it is ready to proceed.

The Chief Judge in the Equity Division, Mr Justice Young, was the Expedition List Judge during 2003.

### **Short Notice List**

Cases in this List are fixed for hearing before a Judge when judicial time becomes available at short notice. A Registrar maintains this List, which includes cases that will be ready for hearing with three days' notice. These are mostly cases of a less complex kind that can usually be disposed of within one day.

The Short Notice List will be suspended in 2004, and matters will instead be allocated to the Expedition Judge's applications on the last Friday of the month.

### **Equity Duty Judge List**

The Duty Judge mainly hears urgent interlocutory applications, and uncontested or short cases, sometimes outside normal court hours. Judges of the Division act as Duty Judge on a roster system, for two weeks at a time.

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.

### **Masters' List**

The work of the Equity Division Masters includes dealing with contested procedural applications and conducting inquiries as directed by Judges. Their work 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)*.

A Master conducts a monthly callover of matters, at which time a hearing date (usually in two months' time) is allocated. A Master also 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 in the next call-over of proceedings in the Masters' List. 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 to some extent by allocating matters to specific Lists according to the issues contested. These Lists (in alphabetical order) are:

- Admiralty List;
- Adoptions List;
- Commercial List;
- Corporations List;
- Probate List;
- Protective 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 2003 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 assumed responsibility for this List following Justice McClellan's retirement as a permanent Judge of the Court in August 2003.

#### **Adoptions List**

This List deals with applications for adoption orders and declarations of the validity of foreign adoptions under the *Adoption of Children Act 1965*. 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 *Adoption Information Act 1990*.

Justice Bryson was the Adoptions List Judge during 2003.

#### **Commercial List**

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

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

There is also adherence to the allotted hearing dates, and the policy has been adopted of continuing hearings to conclusion, even though time estimates may be exceeded.

Justice Bergin assumed responsibility for this List upon Justice McClellan's retirement as a permanent Judge of the Court in August 2003. The List Judge was assisted by Justice Einstein until August 2003 when Justice McDougall was assigned. Other Equity Division Judges were also assigned for shorter periods.

#### **Corporations List**

A Judge sits each Monday and Friday to hear short applications under the *Corporations Act 2001 (Commonwealth)* and related legislation. The Registrar may refer applications to the Judge, with urgent applications to be heard on Friday.

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 2003 was Justice Austin, assisted by Justice Barrett.

#### **Probate List**

The work performed by the Judges and the Probate Registry consists of both contentious and non-contentious business. 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. This supervision is usually by way of “spot checks” or upon receiving a complaint.

The Registrar sits in court twice each week to consider 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 business is monitored by either the Registrar or a Judge. Contentious business commonly includes disputes as to what was a testator's last valid will. When these cases are ready to proceed, they are placed in the call-over 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 2003.

### **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.

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 Deputy Registrar dedicated to the Protective List sits in court one day a week and almost all

cases are listed in front of her. 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 meets with the Deputy Registrar each month to discuss the efficient working of the List. Mr Justice Windeyer was the Protective List Judge during 2003.

### **Technology and Construction List**

Previously known as the “Construction List”, the alteration to the List's name was made in 2001 to reflect the increasing number of cases involving complex technological issues. These cases, as well as disputes arising out of building or engineering contracts, are administered by the same Judges and in the same manner as the Commercial List.

## **REGIONAL SITTINGS OF THE COURT**

In 2003, Judges travelled throughout New South Wales on circuit to hear both civil and criminal cases. Civil circuits were conducted in the following regions: Central West (encompassing Bathurst, Dubbo and Orange), Goulburn/Wollongong, and Riverina (encompassing Albury, Griffith and Wagga Wagga). Civil proceedings were also heard at Lismore Court.

Criminal trials were conducted at Bathurst, Broken Hill, Dubbo, Gosford, Grafton, Katoomba, Newcastle, Nowra, Orange, Port Macquarie, Queanbeyan and Wollongong.

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

## **ALTERNATIVE DISPUTE RESOLUTION**

Alternative dispute resolution (ADR), 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. The two alternative dispute resolution processes most commonly employed in Supreme Court proceedings are Mediation and Arbitration.

## Mediation

The option of dispute resolution through mediation is available for most civil proceedings pursuant to Part 7B of the *Supreme Court Act 1970*. Mediation is not available in criminal proceedings.

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. Firstly, parties may be in agreement as to a particular mediator. Secondly, the Court may appoint a specific mediator, who may also be a Registrar of the Court. If parties cannot come to an agreement, the Court is responsible for appointing a qualified mediator from a prescribed list.

The role of the mediator is to assist parties in resolving their dispute by alerting them to possible solutions, whilst allowing the parties to choose which option is the most agreeable. The mediator does not impose a solution on the parties. The Court made nine of its qualified Registrars and Deputy Registrars available throughout 2003 to conduct mediations at specified times each week.

Settlement of disputes by mediation is encouraged in the Court of Appeal, and both 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.

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

While arbitration involves adjudication of a dispute by a third party, this adjudication is not conducted by the Court. Determination of a dispute regarding recovery of damages through arbitration is permitted under Section 76B of the *Supreme*

*Court Act 1970*. Arbitrations are conducted under the *Arbitration (Civil Actions) Act 1983*.

Experienced barristers & solicitors are appointed by the Chief Justice following a nomination by their respective professional associations. Arbitrators generally hold their appointment for two years and the Chief Justice may also reappoint the arbitrator.

By contrast with a mediator, an arbitrator imposes a solution on the parties (an award) after listening to the arguments and evidence presented. A decision of an arbitrator becomes a final judgment of the Court 28 days after the award is given. Any party to the arbitration may apply for a rehearing, upon which, the matter is then reheard before a Judge.

## NEW MEDIATION PROCEDURES

On 18 December 2003, significant changes to the Court's mediation referral procedures were announced. These changes are outlined in Practice Note No 125 and take effect from 1 January 2004. The changes involve the implementation of a Joint Protocol designed to assist the Court in appointing mediators when parties cannot, or will not, appoint a mediator of their choosing. Under the Protocol, parties will be responsible for providing Referral Information to the Principal Registrar, who then passes this information on to one of the following professional associations that act as nominating entities:

- NSW Bar Association;
- Law Society of New South Wales;
- Institute of Arbitrators and Mediators Australia;
- Australian Commercial Disputes Centre;
- LEADR; and
- Australian Branch of the Chartered Institute of Arbitrators.

The Nominating Entity selected by the Principal Registrar will then nominate a mediator from a prescribed panel of qualified mediators.

During 2003, 141 cases were settled through the Court's mediation program; the Court would like to see this number increase. In 2004, focus will be given to the development of initiatives to achieve this aim.

More information on mediation can be accessed via the Court's website at:

<http://www.lawlink.nsw.gov.au/sc/sc.nsf/pages/mednevalguide>





OVERVIEW OF OPERATIONS  
BY JURISDICTION

Court of Appeal

There was a nine per cent increase in the filing of appeals and applications for relief during 2003 in comparison with the previous year. Over the last four years, the rate has been fairly stable. The number of disposals this year was lower than in each of the last four years. The number of pending appeals and applications for relief has fluctuated over the last three years but at the end of 2003 it was still 28 per cent lower than the number in 2000.

The filing of applications for leave to appeal increased by five per cent over last year's figure. There has been a tendency towards increases in filings over the last four years. The disposal rate for these applications was 20 per cent higher in 2003 than the previous year. The number of leave applications pending at the end of 2003 was slightly higher than at the end of 2002.

During the year, 36 per cent of the Court of Appeal disposals occurred within six months of commencement, down from 46 per cent in 2002. For 2003, the standard for case disposals within 12 months of commencement was raised from 85 per cent to 90 per cent. The Court of Appeal achieved 86 per cent of its case disposals within this time frame, identical with the achievement in 2002. The Court of Appeal's achievement against the 18-month disposal standard has remained stable in 2003 when compared with 2002. The age profile of the pending caseload is being monitored to assist in managing waiting times.

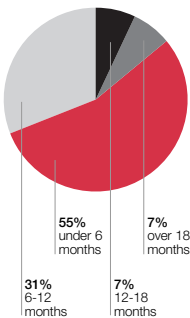
Court of Criminal Appeal

The new criminal appeal procedures, commenced on 1 July 2002, have produced dramatic changes in the operational statistics for this area of work, setting the filings, disposals and pending caseload at a clearly lower level. This change directly results from the effect of the new procedures, which remove those cases from the Court's work that, under the old procedures, would be abandoned before hearing. The real work of the Court of Criminal Appeal is, therefore, relatively unchanged. The apparent decrease in the operational statistics does not reflect a decreased demand for criminal appeal hearings. Increased sitting time has been progressively allocated to the Court of Criminal Appeal over recent years. The sitting rate is now at least 35 per cent higher than the rate typically seen prior to 1998. For the first seven months of the new procedures, filings were atypically low. By the end of 2003 the filing rate had stabilised. With fewer cases being disposed by abandonment, the cases disposed by way of substantive hearing formed an increased proportion of the total disposals. In the period July-December 2003, 90 per cent of the 305 case disposals were by a substantive hearing, compared with 61 per cent of the 470 disposals for the same period in 2002.

By March 2003 the sharp reduction in the number of pending cases stopped and the caseload approached a more stable position. Over the course of the year the proportion of "new system" cases within the caseload continued to increase, from 15 per cent of the 284 pending cases at the close of 2002, to 89 per cent of the 264 pending cases at the end of 2003. At the close of the year, there were only 29 cases remaining from the old procedures. The impact of the new procedures on the age composition of the pending caseload is shown in Figure 4.1.

FIGURE 4.1 CHANGE  
IN AGE COMPOSITION  
OF PENDING CRIMINAL  
APPEALS

Pending cases as at  
30 June 2002 (all cases  
under "old system")



As at 31 December  
2003 - 235 (89%) of  
the 264 pending cases  
(all cases that are under  
the new criminal appeal  
procedures)

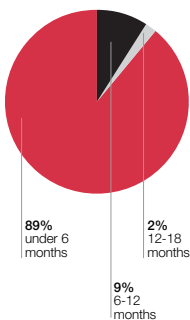
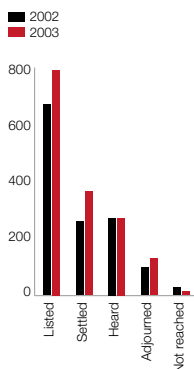




FIGURE 4.2  
HEARING OUTCOMES  
- COMMON LAW  
DIVISION CIVIL CASES



### Common Law Division criminal cases

The number of criminal cases lodged during 2003 was 10 per cent higher than in the previous year. The number of cases disposed (to the verdict or plea stage) was almost identical to that in 2002. The number of pending cases has consequently risen over the year by 27 per cent.

During 2003 the percentage of criminal case disposals occurring within nine months of commencement was 56 per cent, which was lower than the achievement in 2002. The target for this time frame had been increased in 2003 from 50 per cent to 60 per cent. The percentage of case disposals occurring within 12 months of commencement was 75 per cent, also lower than the achievement in 2002. For 2003, the target percentage for this time frame had been raised from 75 per cent to 85 per cent. For case disposals within 18 months of commencement the achievement remained relatively unchanged from 2002.

Twenty-eight criminal trials needed either to be re-started or to have the trial date vacated during 2003 owing to issues outside the Court's control. Examples of the circumstances that created the need to abandon trials or trial dates during 2003 were:

- late service of evidence, or the defence not being ready;
- a juror not recognising a conflict of interest until a late stage;
- inability to locate crucial witnesses;
- the accused changing legal representation;
- the accused being unfit to stand trial for medical reasons; and
- media publicity surrounding the accused having the potential to affect the jury during the trial.

In many instances, the case was affected at a late stage, after the start of the trial or critically close to the trial date. This prevented re-allocation of the remaining trial-time to other criminal cases. The overall result is increased delay to all cases waiting in the Criminal List. At the end of the year, despite the increase in the pending caseload, 82 per cent of cases awaiting trial were less than nine months old.

Where there are early indications that a trial might not run, the Court will consider listing a reserve trial. Supreme Court trials generally involve murder and manslaughter charges and any unsuccessful over-listing can create emotional and financial stress for the family of the victim and for witnesses. It also has a financial impact for the community, which funds the various agencies involved in bringing criminal cases to trial and supporting the criminal justice system. For the last three years the Court has successfully listed reserve trials as a method of reducing waiting time in its Criminal List and no trial has been "not reached".

### Common Law Division civil cases

The civil work of the Common Law Division can be separated into two groups: defended cases (including the specialist case-managed Lists) currently representing about 65 per cent of the cases on hand, and administratively handled cases (such as cases proceeding to default judgment and applications dealt with by Registrars and Registry officers), comprising the remainder of pending cases.

For cases proceeding as defended work, the overall filing rate in 2003 was 25 per cent lower than in 2002. Case disposals were 14 per cent less for this category than in 2002. However, the rate of disposals exceeded the filing rate by 39 per cent and this enabled continued reduction in the number of defended cases on hand by a further 15 per cent during the year. The reduction in the pending caseloads of the two largest case-managed lists, the Differential Case Management List and the Professional Negligence List, by 25 per cent and 13 per cent respectively, is particularly significant.

Defended cases are placed within case-management lists and supervised by Judges or Registrars, with a view to obtaining a settlement or progressing to hearing. There were 17.5 per cent more Common Law Division civil hearings listed in 2003 than in 2002. Over-listing is practised for these matters and the proportion of listed hearings that were not reached improved to two per cent in 2003, compared with five per cent in 2002. The outcomes of the listings for 2002 and 2003 are set out in Figure 4.2.

For administratively handled cases, the filing rate was six per cent higher in 2003 than in 2002. The disposal rate during 2003 was lower than in 2002 and this has caused a net increase in the number of pending cases of this type. Procedures for these cases were reviewed in late 2003 and some changes have been made to minimise delays in processing.

No time standards can yet be set for the civil work of this Division. However, median case disposal times are reported in Appendix (ii). Generally, the trends are that median case disposal times have been maintained or improved.

### Equity Division

For the third year in succession the filings in the Equity Division have increased. In 2003 the increase was seven per cent, principally in the Corporations List and the General List. The Division achieved a five per cent higher disposal rate in 2003 compared to that in 2002. Overall, this limited the increase in the pending caseload to four per cent. At present, the General List and Corporations List cannot be monitored sufficiently to eliminate counting of cases that have been re-opened after finalisation of the substantive issues. This problem is expected to diminish when the CourtLink system becomes available for civil cases.

During 2003 there were 767 hearings listed before Judges or Masters, the figure barely changing from 2002. A total of 212 listed matters settled without hearing, 28 per cent fewer than in 2002. The number of listings that proceeded to hearing was 366, 25 per cent more than in 2002. Overall, the percentage of cases settled or heard remained stable on last year's rate. The outcomes of the listings for 2002 and 2003 are set out in Figure 4.3.

Of the total disposals in 2003, there were 2,777 from the Registrar's Corporations List and 631 from the Registrar's General List. This compares with 2,872 and 586, respectively, in 2002.

As with the Common Law Division civil work, there are no time standards set for Equity Division case disposals. The median case disposal times are shown in Appendix (ii). The median disposal time has improved markedly for cases in the Probate (Contentious Matters) List. The increase in the

median disposal time for cases in the Technology and Construction List is of concern.

Registrars deal with the non-contentious applications relating to probate matters. A total of 21,966 applications were filed during 2003. Where an application for a grant of probate, letters of administration or re-seal (of a probate grant) meets all procedural requirements, the grant is usually made within two working days.

### Use of alternative dispute resolution

The number of cases referred to court-annexed mediation increased this year. The Court's Registrars conducted 48 more mediations in 2003 than in 2002 and continued to achieve a healthy percentage of settlements.

Fewer cases were referred to arbitration this year compared with last year. The number of suitable cases for arbitration has been significantly limited since 1997, when the District Court's jurisdiction expanded to include most of the work that had typically been arbitrated in the Supreme Court.

The statistics for mediation and arbitration are detailed in Appendix (ii).

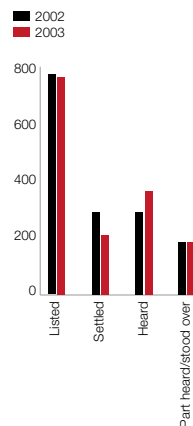
### TIME STANDARDS

The Court adopted time standards in 2000 for processing cases heard in the Court of Appeal, Court of Criminal Appeal and within the Common Law Division's criminal jurisdiction. The case disposal time standards are reviewed each year and may be adjusted to reflect changes in circumstances, such as changes in the work flowing to the Court.

For the work of the Court of Appeal, the standards refer to the time taken to dispose of appeals (including any preceding application for leave to appeal), summonses (for other relief) and applications for leave to appeal where an appeal does not follow. In 2003 the standards for disposals were: 50 per cent within six months of commencement, 90 per cent within 12 months and 100 per cent within 18 months. These standards will also apply in 2004.

New procedures for commencing cases in the Court of Criminal Appeal came into effect on 1 July 2002. The Court decided that the 2002 time standards would be continued during 2003, to

FIGURE 4.3  
HEARING OUTCOMES  
- EQUITY DIVISION



allow time for observation of the impact of the new procedures on case disposal times. The 2002 standards were: 50 per cent of cases to be disposed of within six months of commencement, 90 per cent within 12 months and 100 per cent within 18 months. For 2004, the time standards will be 60 per cent within six months of commencement, 90 per cent within 12 months and 100 per cent within 18 months.

In 2003 the standards for disposal of Common Law Division criminal cases to verdict, plea or other final disposal were: 60 per cent within nine months of committal or commencement, 85 per cent within 12 months, 95 per cent within 15 months and 100 per cent within 18 months. Although the pressures in the List will make these standards even more difficult to achieve, the same standards will apply in 2004.

Other courts and organisations also report on case disposal times but the statistics are not necessarily comparable. The criteria for reporting may vary between different courts and organisations. To cite criminal cases committed for trial as an example, the District Court of New South Wales measures the time between committal and commencement of the trial while the Australian Bureau of Statistics and Productivity Commission produce national statistics that measure from committal to a later event (acquittal or sentencing). In this Court, the kinds of criminal cases dealt with (mostly charges of murder or manslaughter) attract long sentences and the period between the verdict or entry of a guilty plea and the delivery of sentence is not time critical. In this Court the disposal of a criminal case committed for trial is, for that reason, counted at the time of verdict or upon entry of a plea of guilty, not sentence.

The Court has determined that it will set time standards for disposition of the civil work of the Common Law Division and the work of the Equity Division. However, the Court will not be able to publish time standards until CourtLink becomes available to provide precise and timely measurement of the disposal times for this large volume of work. Together these Divisions deal with nearly 10,000 civil cases each year (excluding non-contentious probate applications).

The Court's achievement against its time standards is detailed in Appendix (ii).

- CourtLink
- Law Courts Library
- Admission to the Legal Profession and appointment of Public Notaries
- The role of the Public Information Officer
- Pro Bono Scheme
- Administration of the Costs Assessment Scheme
- Admission under the Mutual Recognition Acts
- Acknowledgements

## COURTLINK

The new CourtLink project represents a significant development for the Court. Unnecessary differences in the Supreme, District and Local courts have been identified and flagged for elimination. For example, the number of criminal forms will be reduced from more than 600 to less than 100.

Although the NSW Attorney General's Department manages the CourtLink project, judicial officers of the Court, and key Registry staff, have been actively involved since the project's inception. The work of the CourtLink Steering Committee and the Working Party on Harmonising and Simplifying Civil Procedure Rules in NSW has proven particularly valuable in ensuring that CourtLink will meet the needs of the Court. Both bodies are initiatives of the NSW Attorney General's Department, and include representatives from the Supreme, District and Local Courts. The following judicial officers and Registry staff represented the Supreme Court during 2003:

- The Honourable Justice Ipp;
- The Honourable Mr Justice Hamilton;
- The Honourable Justice Greg James;
- Master Macready; and
- Ms Megan Greenwood, Chief Executive Officer and Principal Registrar.

During 2003, CourtLink was implemented in two areas of the Court: Adoptions and Cost Assessment. CourtLink is expected to be implemented in the Court's criminal jurisdiction and the Court of Criminal Appeal in May 2004, with the civil jurisdictions and the Court of Appeal to follow at the end of 2004.

## LAW COURTS LIBRARY

### Organisation of Business

The NSW Attorney General's Department and the Federal Court of Australia jointly fund the Law Courts Library. Library policy is the responsibility of the Operations Committee in consultation with the Advisory Committee, formerly known as the Law Courts Library Management Committee.

The Operations Committee comprises an equal number of representatives from the NSW Attorney General's Department and the Federal Court of Australia. The Committee's role is to determine and endorse matters of budget and policy. The Advisory Committee comprises three Judges from the Federal Court of Australia, and three Judges from the Supreme Court of NSW. As its name implies, the Advisory Committee provides advice to the Operations Committee on matters of budget and policy.

The Advisory Committee Members at 31 December 2003 were:

### Supreme Court Representatives:

The Honourable Mr Justice Sheller  
The Honourable Justice Ipp  
The Honourable Justice Austin

### Library Services

The Law Courts Library acts as a legal resource and information centre to the Judges, Masters and Registrars of the Court. The library also assists Court users by making its resources available to legal practitioners and litigants in person, by application, on a user-pays basis. The funds raised from these access fees are then used for ongoing maintenance of the Library collection. Legal practitioners and litigants may, however, borrow library material free of charge on the day a matter is heard for use in court.

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

The Law Courts Library offers the following services:

- Legal reference and research services;
- Library homepage providing access to a comprehensive range of electronic resources and services;
- Guides to the Library's collections and resources;
- Legal research training using hard copy, electronic databases and internet resources;
- Materials to support the Library's training database;
- Document delivery and inter-library loan services;
- On-line index to Hansard including details of first and second reading speeches and assent and commencement dates for NSW and Commonwealth legislation;
- On-line current awareness service;
- Maintenance of the departmental legal tools page; and
- Conference database.

### Significant Matters and Overview of 2003

- The Law Courts Library was completely refurbished. The Library was officially re-opened on 23 September by the Honourable Justice Heydon of the High Court of Australia.
- The Memorandum of Understanding between the NSW Attorney General's Department and the Federal Court of Australia for the provision of library services was finalised and signed by both parties.
- A Review of the NSW Attorney General's Department's Library network was conducted and a draft report and recommendations presented to the Review Management Advisory Committee.
- The NSW Attorney General's Department court libraries intranet site, InfoSource, was launched. The site comprises a home page with links to individual court pages. The Law Courts Library page was adopted as the standard for all new pages.
- Negotiations with electronic Library service providers were finalised, improving the range of services available through InfoSource.

### The Legal Practitioners Admission Board

The Board is a self-funding body, created by legislation, responsible for making rules for, and approving, applications for the admission of legal practitioners and the appointment public notaries. Once admitted as a legal practitioner, 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, several other Judges of the Court, a nominee of the Attorney General and key members of the legal profession. The Board maintains a close working relationship with the Supreme Court in other respects, by providing officers to assist in the administration of admission ceremonies, maintaining the Rolls of Legal Practitioners and Public Notaries, and liaising with the Court's Registry about applications made under the Mutual Recognition Acts. In addition, several Judges of the Court provide important policy input by maintaining positions on the Boards' committees.

In 2003 the Legal Practitioners Admission Board arranged to review all of the practical training courses it accredits to ascertain how satisfactorily the practical training programs are testing the nationally adopted competencies for newly admitted practitioners. A description of the competencies is set out in *Practical Legal Training – Competency Standards for Entry Level Lawyers*, a document adopted by the national Law Admissions Consultative Committee. Mr Frank Riley has been commissioned by the Board to conduct the review in 2004.

The Board has co-operated with the admission-related aspects of the Standing Committee of Attorneys-General (SCAG) initiative to develop a nationally consistent regulatory regime for the legal profession. The Board has considered draft legislation in considerable detail and has provided advice to SCAG officers involved in the drafting of nationally applicable laws.

In March 2003 the Board, after consultation with the Society of Public Notaries, introduced a new procedure to update comprehensively the Roll of Legal Practitioners on an annual basis.

In 2003 the Board produced 691 Certificates of Current Admission, which are used mainly for the purpose of mutual recognition in other States and

overseas, compared with 682 in 2002 and 680 in 2001. The Court appointed 34 public notaries whose applications had been approved by the Board in 2003. This matches the 34 approved in 2002, but exceeds the 27 in 2001.

The upward trend in Student-at-Law registrations continues, with 903 new students registered in 2003, compared with 862 in 2002 and 594 in 2001. The Board, in co-operation with the Law Extension Committee of the University of Sydney, continues to provide access to academic legal qualifications at a considerably lower cost than universities.

During 2003, the members of the Legal Practitioners 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)

The Honourable Mr Justice Studdert

Professor D Barker

Mr R Benjamin

Mr C Cawley

Mr J Feneley

Mr J Gormly SC

Professor C Sappideen

Mr P Taylor SC

Executive Officer and Secretary:

Mr R Wescombe

### **Legal Qualifications Committee**

The Legal Qualifications Committee is constituted under the Legal Practitioners 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. The Committee, which performs its work largely through its sub-committees, also reviews decisions of those sub-committees when requested to do so by unsuccessful applicants.

There has been a continuing increase in the number of applications from overseas lawyers seeking recognition of their legal qualifications. The Committee's Academic Exemptions Sub-Committee determined 525 applications during 2003, compared with 433 in 2002 and 347 in 2001. The Practical Training Exemptions

Sub-Committee, which from 1 July 2003 dealt only with applications from persons already admitted in a foreign jurisdiction, considered 281 applications in 2003, compared with 254 during 2002 and 231 in 2001.

In 2003 the Committee developed a proposal for the introduction of transfer tests for overseas lawyers wishing to qualify for admission in New South Wales. In 2004 the Committee will weigh this proposal against other possible approaches to the assessment and supplementation of the qualifications of overseas lawyers.

During 2003 the members of the Legal Qualifications Committee were:

The Honourable Mr Justice Dunford (Chairperson)

The Honourable Justice Barrett (Deputy Chairperson)

The Honourable Justice Palmer

Mr R Benjamin (from 11 December)

Mr C Cawley

Ms M Curran (to 10 December)

Mr J Fernon

Mr M Fitzgerald

Associate Professor A Goh

Associate Professor A Lamb

Associate Professor G Monahan

Ms J Oakley

Ms R Pepper

Ms G Ramensky

Dr K F Sin

Executive Officer and Secretary:

Mr R Wescombe

### Examinations Committee

The Examinations Committee, formed in July 2002, is constituted by the Legal Practitioners 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. The Quality Sub-Committee oversees the quality of the examinations and marking.

The increase in new Student-at-Law registrations is reflected in the number of Students-at-Law sitting for each of the Board's examination sessions. In 2003 there were 5,303 examination subject enrolments compared with 4,866 in 2002 and 4,422 in 2001. Some Students-at-Law are located interstate and others overseas. Forty-four applications to sit examinations in non-scheduled locations were approved in 2003, compared with 48 in 2002 and 44 in 2001. Fourteen applications for special examination conditions owing to disability were approved in 2003, compared with 22 in 2002.

Extensive documentation has been prepared in relation to quality assurance and curriculum matters and it is expected that in 2004 the Examinations Committee will utilise this in developing the Board's curriculum and assuring the quality of the Board's examinations.

During 2003 the Committee has had to deal, through the Board's disciplinary processes, with five cases of plagiarism in student assignments. Though assignments do not count towards students' results in any subject, students must perform satisfactorily in assignments in order to be eligible to sit for exams. The Board is protected from the most damaging effects of plagiarism by its students because all evaluation is by means of written examinations. Nevertheless, the Committee is concerned that plagiarism involves misrepresentation and therefore has implications for the fame and character of the students involved.

In addition to the matters referred to above, the Examinations Committee was responsible for the determination of 392 student course applications and 347 applications from Students-at-Law who were liable for exclusion from the Board's examinations. This compares with 308 student course applications and 299 applications relating to exclusion in 2002.

During 2003, the members of the Examinations Committee were:

The Honourable Justice Carolyn Simpson  
(Chairperson)

The Honourable Justice Campbell  
(Deputy Chairperson)

Mr R Anderson

Mr F Astill

Mr R Benjamin (from 11 December)

Ms A Cerny (to 10 December)

Mr M Christie

Associate Professor G Monahan

Executive Officer and Secretary:

Mr R Wescombe



## THE ROLE OF THE PUBLIC INFORMATION OFFICER

*For more information about the Pro Bono Scheme, visit the Court's website at:*

*<http://www.lawlink.nsw.gov.au/sc/sc.nsf/pages/probono>*

The Court's Public Information Officer is a member of the Chief Justice's personal staff and works from his chambers to provide the media with information about Court proceedings. Commonly, the Public Information Officer assists the media with understanding the terms of court orders and judgments issued by the Court, clarifying court procedure with respect to accessing information, and obtaining permission to film within the Court. The Public Information Officer 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 impact of these orders. The distribution of these alerts to the media is a critical function of the Public Information Officer, as the media's failure to acknowledge the terms of suppression orders in their coverage could compromise proceedings.

The Public Information Officer also performs various public relations functions for the Court, including conducting tours of the Court throughout the year. The Public Information Officer regularly conducts Court tours with school, university and community groups. These tours afford the Court an ideal opportunity to educate members of the public about how the Court operates internally, and within the broader New South Wales' court system. These tours are essential in demonstrating the Court's commitment to ensuring transparency in its operations and procedures.

## PRO BONO SCHEME

The Pro Bono Scheme under Part 66A of the Supreme Court Rules was established in 2001 with support from the NSW Bar Association and the Law Society of NSW. The scheme enables unrepresented litigants, who have been considered by the Court to be deserving of assistance, to be referred to a barrister and/or solicitor. Seven referrals were made during the year; five of these referrals were made in Common Law matters, and two 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 give of their time so freely in supporting the Scheme.

## 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 who are 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 Assessors' Rules Committee. Mr Robert Benjamin, solicitor, is the current Chair of the Costs Assessors' Rules Committee.

From 31 January 2003 to 31 December 2003 there were 2,148 applications lodged. Of these, 1,658 (78 per cent) related to costs between parties, 217 (10 per cent) were brought by clients against practitioners, and 259 (12 per cent) were brought by practitioners. There were 14 applications lodged between legal practitioners for assessment of costs either instructing practitioners against retained practitioners and the reverse. 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. During 2003 there were 105 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 Masters in the Common Law Division and form part of the Division's civil caseload. There were 21 such appeals filed in 2003.

## ADMISSION UNDER THE MUTUAL RECOGNITIONS 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 Practitioners Admission Board in performing this task. In 2003, 330 interstate and New Zealand practitioners were enrolled under Mutual Recognition Acts, compared with 317 in 2002 and 470 in 2001. Although the number of practitioners enrolled under Mutual Recognition Acts is generally trending downwards under the influence of recent legislation that permits practitioners in one State to practise in another, there is still a significant number of practitioners seeking such enrolment.

## ACKNOWLEDGEMENTS

The Supreme Court of NSW wishes to thank the following organisations and individuals for their support and assistance during 2003:

- The NSW Attorney General's Department, and in particular, the Department's Director General, Mr Laurie Glanfield, AM, for the support both he and his Department have given during the year. The Department has continued to provide the Court with essential support services including:
  - information technology support to the judiciary and Registry;
  - human resource management services such as payment of salaries, staff recruitment and training;
  - court reporting services through the Reporting Services Branch;
  - security and jury management services through the Sheriff's Office; and
  - library facilities through the Law Courts Library. The Law Courts Library provides the Judges, Masters and Registrars of the Court with access to essential legal resources, and sophisticated research facilities, recently enhanced by the Library's complete refurbishment. The support provided by the Library to Court users, including legal practitioners and litigants in person, is also gratefully acknowledged.
- Law Courts Limited, with particular thanks to Mr Garry Donnelly, Chief Executive Officer, and his staff, for their assistance in maintaining Law Courts building facilities and providing a reception service to Court users.
- Ms Nerida Johnston, the outgoing Chief Executive Officer and Principal Registrar of the Court. Ms Johnston held this position from 1998 to 2003 and her hard work and achievements throughout this period are acknowledged.
- The Judicial Commission of NSW for their assistance in the training of newly appointed Judges, and the planning and running of the Court's annual conference. Particular thanks is extended to the Commission's Education Director, Ms Ruth Windeler, for her support in these areas.



## APPENDIX (j): IMPORTANT JUDGMENTS - SUMMARIES OF DECISIONS

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

### 1. Deputy Commissioner Of Taxation v Clark

Mrs Clark was a director of Southern Cross Interiors between August 1995 and June 1997. Her husband was the company's other director. The company was wound up on 27 October 1997. The company's liquidator obtained an order against the Deputy Commissioner of Taxation for the recovery of \$208,737.44 paid by way of group tax and under the prescribed payments scheme. The payments were held to be an unfair preference. Mrs Clark's husband was ordered to indemnify the Deputy Commissioner of Taxation for the amount, but Mrs Clark succeeded in establishing the defence pursuant to s588FGB(5) of the *Corporations Act 2001 (Cth)*. The Deputy Commissioner appealed against the judgment given by Justice George Palmer in favour of Mrs Clark.

The issue before the Court of Appeal was whether Mrs Clark had good reason not to take part in the management of the company at the times of the payments.

The Court of Appeal found that the determination of what may be a good reason for not participating in the management of a company is illuminated by the requirements of standards of care and skill by directors. The symbiotic interaction between legislative change and judicial decisions relating to directors' participation in the management of the corporation also informs the interpretation of the defence in s588FGB(5). Legislative development and case law indicate that the expectation that directors will participate in management has intensified over time.

One aspect of the directors' duty of care and diligence is a core, irreducible requirement of participation in the management of the company. Such a requirement is one of the factors underlying the scheme for insolvent trading of which s588FGB is a part. Such participation is a basal structural feature of Australian corporations law.

A total failure to participate, for whatever reason, should not be regarded as a "good reason" within s588FGB(5). Mr and Mrs Clark were ordered to indemnify the Deputy Commissioner of Taxation and pay its costs.

**Bench:** Spigelman CJ; Handley JA; Hodgson JA.

**Judgment citation:** Deputy Commissioner of Taxation v Clark [2003] NSWCA 91.

**Judgment date:** 1 May 2003.

### 2. Robert Diamond v Calandre Simpson

The Court of Appeal delivered four judgments in this matter during the year. Two in particular attracted considerable public interest.

Calandre Simpson, who has athetoid cerebral palsy, was severely disabled at the time of her birth. All her physical activities are affected by her disability. Dr Diamond admitted his negligence caused her cerebral palsy. Ms Simpson sued Dr Diamond and the Trustees of the Sisters of St Joseph (who managed and controlled the hospital of Ms Simpson's birth) for damages. Justice Anthony Whealy awarded Ms Simpson \$14 million in damages. Dr Diamond sued the hospital for contributing to his negligence. Justice Whealy found that the hospital had been negligent in administering to Ms Simpson's mother an overdose of Syntocinon, however, he found that this negligence was not a cause of Ms Simpson's disability. Broadly speaking, the \$14 million in damages covered damages for Ms Simpson's past and future loss of earning capacity, interest and superannuation; future gratuitous services; future attendant care; home building costs; additional home maintenance; computer equipment; a special education teacher for five years; vacation costs for Ms Simpson and two carers for the next 50 years and the provision of medical and allied professional services. Dr Diamond challenged some of these amounts (see Findings in Judgment No 1) and Ms Simpson cross appealed against the trial Judge's disallowance of an amount claimed for a fund manager. Dr Diamond also appealed Justice Whealy's decision that the hospital did not contribute to Dr Diamond's negligence (see Finding in Judgment No 3).

#### Findings in judgment No 1

The size of the aggregate sum awarded was very large and it was questioned whether its size should play any role in the determination of the appropriateness of the total sum awarded. The mere fact, however, that the total award might be particularly high does not warrant an appellate court interfering with it.

*1. The director's under the insolvent trading provisions of the Corporations Act 2001 (Cth) applied to a director who failed to participate in management*

**3. The Court of Criminal Appeal does not have power to review a decision by the Land and Environment Court when it does not make costs orders in summary criminal proceedings**

The Court of Appeal dealt separately with each of the heads of damages challenged by Dr Diamond. The Court did not disturb Justice Whealy's calculations for past and future loss of earning capacity, interest and superannuation; additional home maintenance; therapeutic aids, appliances and equipment and computer equipment. However, the Court did reduce damages for future gratuitous services (from \$25,000 to \$10,000); future attendant care (from \$6.5 million to \$4.9 million); home building costs (from \$202,322 to nil); a special education teacher for five years (from \$171,628 to \$158,628); additional vacation costs for Ms Simpson and two carers for the next 50 years (from \$330,000 to \$200,000).

Ms Simpson had received medical and allied professional services from the Spastic Centre of NSW free of charge. The Centre sent invoices to Ms Simpson to be paid if she successfully received damages. The trial Judge allowed \$614,752 for these services. However, the Court of Appeal found that Justice Whealy had erroneously extended the legal principle in *Griffiths v Kerkemeyer* basis to cover therapeutic services provided free of charge by a charitable organisation.

Claims using this principle are anomalous and exceptional and courts should be reluctant to extend the doctrine to new categories of claims. The Court found that claims for gratuitous services rendered by a friend or relative fall into a separate, identifiable category of claims, that can properly be described as *Griffiths v Kerkemeyer* claims. Claims for gratuitous services rendered by a publicly or privately funded charitable institution are not payable by the wrongdoer merely on the ground that the injured person has established a need for the services in question.

The Court of Appeal found that the Spastic Centre conferred the benefit of its services on Ms Simpson independently of any right of redress she might have against others.

The orders of the court were that Dr Diamond's appeal be allowed. The amount of damages (except costs) awarded by Justice Whealy was set aside and a new verdict of \$10,998,692 awarded to Ms Simpson. Ms Simpson was ordered to pay Dr Diamond any sum already received over and above this amount plus interest. The Court dismissed the cross appeal against the trial

judge's disallowance of an amount claimed for a fund manager.

### Findings in Judgment No 3

The Court considered the evidence provided by the hospital's partogram and the correct application of the principles of scientific evidence meant that the probabilities were that there was more than one cause of Ms Simpson's injury and that both the doctor and the hospital's act of administering an overdose of Syntocinon contributed to her injury. The Court found that Dr Diamond and the hospital were equally liable for Ms Simpson's damage.

**Bench (Judgment No 1):** Stein JA; Ipp JA; Young CJ in Eq.

**Citation:** *Diamond v Simpson* (No 1) [2003] NSWCA67.

**Judgment date:** 7 April 2003.

**Bench (Judgment No 3):** Meagher JA; Ipp JA; Young CJ in Eq.

**Citation:** *Diamond v Simpson* (No 3) [2003] NSWCA 373.

**Judgment date:** 16 December 2003.

### 3. Director Of Public Prosecutions v Roslyndale Shipping Pty Ltd

The Court of Criminal Appeal does not have power to review a decision by the Land and Environment Court when it does not make costs orders in summary criminal proceedings

On 1 December 1996, the ship *Sitka II* discharged 15 litres of oil, of which five litres flowed into the lagoon at Lord Howe Island. Roslyndale Shipping Pty Ltd pleaded guilty to an offence under the *Marine Pollution Act 1987*. Prior to the plea, substantial costs were incurred in earlier proceedings to determine whether or not Roslyndale Shipping Pty Ltd and Captain Peacock could rely on a statutory defence. The Land and Environment Court directed that the charge be dismissed without proceeding to conviction. Chief Judge Pearlman held that the offence was minor and that neither of the defendants could have done anything to avert the event that occurred. She also refused to make a costs order.

The Director of Public Prosecutions appealed, submitting that a conviction ought to have been recorded and a fine imposed, and that it should

have received an order for costs. Roslyndale Shipping Pty Ltd challenged the power of the Court of Appeal to hear an appeal from the Land and Environment Court's decision refusing the costs order.

The NSW Court of Criminal Appeal held that the dismissal of the charge was within the range of her Honour's discretion. Although such an order will rarely be appropriate for a strict liability offence of this character, it was open to her Honour to conclude that there was no visible warning of a character sufficient to put the Roslyndale Shipping Pty Ltd on notice of a likely equipment failure.

The Court of Criminal Appeal found that it does not have the power to hear an appeal from a refusal by the Land and Environment Court to award costs in a criminal case dealt within its summary jurisdiction.

**Bench:** Spigelman CJ; Studdert J; Hulme J.

**Judgment citation:** Director of Public Prosecutions (NSW) v Roslyndale Shipping Pty Ltd [2003] NSWCCA 356.

**Judgment date:** 3 December 2003.

#### 4. Harris v Digital Pulse Pty Ltd

Mr Harris and another, Mr Eden, were employees of Digital Pulse Pty Ltd. At the beginning of their employment they signed employment contracts that contained terms preventing them from competing with the company while they remained employed. During their employment, Mr Harris and others secretly established their own business and secured contracts with prospective clients of Digital Pulse Pty Ltd. Digital Pulse Pty Ltd sued Mr Harris and others for breaching their employment contracts, breaching their fiduciary duties and breaching their duties under the *Corporations Act 2001 (Cth)*. In addition to the usual remedies, Digital Pulse Pty Ltd also sought exemplary damages. Digital Pulse Pty Ltd was successful, receiving an account of profits from Mr Harris and Mr Eden for breach of contracts and fiduciary duty, equitable compensation from one of the appellants for breach of duty and misuse of confidential information, and exemplary damages for breach of fiduciary duty. Mr Harris and Mr Eden sought leave to appeal against the orders for exemplary damages.

The NSW Court of Appeal by majority held that there is no power in equity to award exemplary damages for breach of fiduciary duties by an employee.

**Bench:** Spigelman CJ; Mason P; Heydon JA.

**Judgment citation:** Harris v Digital Pulse Pty Ltd [2003] NSWCA 10.

**Judgment date:** 7 February 2003.

#### 5. ISPT Nominees Pty Ltd v Chief Commissioner Of State Revenue

The dispute in this case was whether two transfers of Coles Myer retail sites on which stamp duty of \$2 each had already been paid were liable to substantially more duty based on the value of the transferred property. Each transfer was signed as part of a complex trust arrangement designed to ensure that the transfers were liable to only the fixed duty of \$2 applicable to a transfer of trust property for nominal consideration upon the appointment of a new trustee. Duty was initially assessed on that basis but the Chief Commissioner later purported to exercise a power to require the payment of more duty. That demand was met under protest. The transferee then initiated this proceeding challenging the demand and seeking a refund.

Liability to stamp duty was governed by the now superseded *Stamp Duties Act 1920* but the Chief Commissioner's claims were made during the transition from that legislation to the *Duties Act 1997*. This raised a number of questions about implied statutory repeal, the applicability of procedures under the new taxation administration laws to a claim under the old Act and the continuity of delegations under replaced legislation.

The central issues litigated before Justice Barrett were issues of trust law and equitable principle relevant to the question whether the transfers were in reality transfers of trust property upon the appointment of a new trustee. The first step was to consider whether earlier Court of Appeal proceedings involving the same transactions had already decided these issues. That involved questions of how the ratio decidendi is to be extracted when three judges deliver separate judgments expressing different views on a particular matter.

4. There is no power in equity to award exemplary damages for breach of fiduciary duties by an employee



7. Silence may not amount to a misrepresentation, except when viewed in the totality of a given situation

Next, it was necessary to address in some detail Equity's approach to a situation where A holds property on trust for B who in turn holds it on trust for A, with related questions as to the nature of a bare trust and its significance in this type of situation. There were also questions about the nature of implied trusts and their relevance to displacement of the requirement for writing under the Statute of Frauds.

Finally, the court dealt with the question whether a transfer for a stated consideration of "nil" is a transfer for "nominal consideration".

The transferee was unsuccessful in arguing that the delegate of the Chief Commissioner lacked power to make the demand for additional duty. The trust law and "nominal consideration" aspects were, however, decided in favour of the transferee. The Chief Commissioner was therefore ordered to refund, with interest, moneys collected beyond the \$2 initially paid on each transfer.

**Bench:** Barrett J.

**Judgment citation:** ISPT Nominees Pty Ltd v Chief Commissioner of State Revenue [2003] NSWSC 697.

**Judgment date:** 12 August 2003.

### 6. Kolavo v Pitsikas

Ms Eva Kolavo retained a solicitor Mr Spero Pitsikas and a barrister Mr J Conomos to advise her regarding legal proceedings against two companies (a travel agent and a tour operator). These companies were involved in the provision of a package tour holiday on which Ms Kolavo was injured. Ms Kolavo was advised that she had a cause of action in negligence against both companies. Legal proceedings were instituted on her behalf.

In the District Court of NSW it became apparent that the case was a hopeless one in that no cause of action existed against either company. Ms Kolavo then brought an action against her solicitor and barrister on the grounds that they were negligent because they failed to advise her that she had no cause of action against either of the companies.

Acting District Court Judge Helen Gamble held that neither the solicitor or barrister was liable for the costs of the litigation. She held that Ms Kolavo

had been provided with adequate legal advice, despite the fact neither lawyer advised her that she had no cause of action.

Ms Kolavo challenged Acting District Court Judge Gamble's findings on the grounds that a reasonable competent lawyer could not have given any advice other than that the case was hopeless and the solicitor and barrister failed to exercise reasonable care and skill in the provision of professional advice. She sought a declaration from the Court of Appeal that the solicitor and barrister indemnify her for the costs payable to the two companies as a result of the failed litigation.

The Court of Appeal set aside Acting District Court Judge Gamble's verdict and order. The solicitor and barrister had to pay Ms Kolavo's costs of those proceedings. They were also ordered to pay her costs of the appeal. Money paid by Ms Kolavo to the tour operator were to be reimbursed to her by the solicitor and barrister. She was also reimbursed for the money paid to the solicitor and barrister and the cost of medical reports. The Court of Appeal awarded Ms Kolavo \$11,000 in damages for distress, discomfort, disappointment and inconvenience.

**Bench:** Stein JA; Santow JA; Cripps AJA.

**Judgment citation:** Kolavo v Pitsikas (t/as Comino and Pitsikas) & Anor [2003] NSWCA 59.

**Judgment date:** 1 April 2003.

### 7. Metalcorp Recyclers Pty Ltd v Metal Manufactures Ltd

The Metalcorp Recyclers sold and delivered 77 tonnes of scrap copper cathode to Metal Manufactures. The companies had been doing business with each other for about 10 years. The copper had been stolen from Western Mining Corp (WMC) by persons unknown but Metalcorp Recyclers acquired it in good faith from a third party. Metalcorp Recyclers had previously dealt with the third party without incident.

WMC informed Metal Manufactures about the theft and as a result it suspected that the copper it was buying may have been stolen. Metal Manufactures inspected the copper after delivery, noticed that less had been delivered than promised, and saw evidence that the copper had been manufactured by WMC. Metal Manufactures passed this information onto WMC by fax.

Under the established course of business between the companies deliveries of copper by Metalcorp Recyclers were quarantined until inspected and accepted and there was a procedure for dealing with quality disputes arising from an inspection.

During a telephone conversation between Metalcorp Recyclers and Metal Manufactures about 10 minutes after the fax was sent to WMC, Metal Manufactures said that it had inspected the copper and asked about the short delivery. There was no mention of any difficulties about quality. Metalcorp Recyclers told Metal Manufactures that it had delivered all the copper that was available. Although Metal Manufactures then believed that the copper had probably been stolen, nothing was said about title and Metalcorp Recyclers was not told about the theft from WMC, the evidence found on inspection, or that it had been passed on to WMC to enable that company to determine whether the copper had been stolen. Later that day WMC advised Metal Manufactures that the copper had been stolen.

As a result of the telephone conversation, Metalcorp Recyclers understood that Metal Manufactures, having only raised the question of the short delivery, had accepted the copper and intended to pay for it in due course. About 2.5 hours after the telephone conversation, Metal Manufactures gave a cheque to its supplier (the third party) which the latter had specially cleared. Metal Manufactures later refused to pay for the copper and Metalcorp Recyclers was unable to recover the money paid from the third party.

Metalcorp Recyclers sued Metal Manufactures for damages for misleading and deceptive conduct in contravention of s52 of the *Trade Practices Act*. Acting District Court Judge Gamble dismissed the action. Metalcorp Recyclers filed an appeal against this decision.

The Court of Appeal held that Metal Manufactures' conduct during the critical conversation was misleading and deceptive. Justice Handley said "...silence that is capable of being misleading or deceptive never stands alone. In the absence of some positive duty to speak, silence can only be misleading or deceptive against a background of other facts known to both parties which make what is actually said so incomplete that it conveys a misrepresentation."

The Court held that what was said and not said against the background of the established course of business between the companies conveyed a representation to Metalcorp Recyclers that Metal Manufactures had accepted the delivery and intended to pay for it in due course. This was a misrepresentation which Metalcorp Recyclers acted on when it paid its supplier some hours later, and as a result the Metalcorp Recyclers was entitled to recover as damages the price it paid its supplier.

**Bench:** Handley JA; Hodgson JA; Gzell J.

**Judgment citation:** Metalcorp Recyclers Pty Limited v Metal Manufactures Limited [2003] NSWCA 213.

**Judgment date:** 5 August 2003.

## 8. Mitchforce v Industrial Relations Commission Of NSW

Mitchforce Pty Ltd, the landlord of the Empire Bay Tavern on the Central Coast, applied to the NSW Court of Appeal to quash orders made against it by the Industrial Relations Commission of NSW. Mitchforce Pty Ltd argued that the Commission did not have the power to vary a lease of the tavern to reduce the rent.

Mitchforce Pty Ltd leased the Tavern for 10 years with an option of renewal for a further 10 years to Sherwood Trading Pty Limited, who in turn assigned the lease to experienced hoteliers Keith and Dawn Starkey. The Starkeys paid \$650,000 for the lease. There was an indexation clause in the lease, and when the rate of inflation fell the indexation formula in the lease increased the rent to uneconomic levels which the business could not support.

The Starkeys applied to the Industrial Relations Commission for relief under s106 of the *Industrial Relations Act 1996* on the ground that the lease was a contract whereby work was performed in an industry. Justice Hungerford upheld the Starkeys' claim, varied the lease to reduce the rent and declared that they were entitled to a renewed lease. The Full Bench of the Commission refused the Mitchforce Pty leave to appeal. Mitchforce Pty applied to the Court of Appeal for prerogative relief on the ground that the Industrial Relations Commission lacked jurisdiction because the lease was not a contract whereby work was performed

8. The Court of Appeal found the decision of the Industrial Relations Commission was beyond jurisdiction, but was in part protected by a privative clause



9. *There is no common law duty of care on a council to give notice to affected neighbours when approving a housing development*

in an industry. The key word was “whereby” and the NSW Court of Appeal considered the importance of “whereby” in detail. The Starkey’s relied on the privative clause in s179 of the Act, but Mitchforce Pty Ltd asserted that the orders of the Commission were either not protected by the well known Hickman principles or s179 was invalid.

The Court of Appeal decided that the clauses of the lease did not make the lease a contract whereby work was performed in an industry, and that therefore, the Commission did not have jurisdiction over the relevant contract.

Whilst the Commission did not have jurisdiction under s106 with respect to the lease, the principal orders made by the Commission were protected and validated by s179. However, the orders of the Commission for specific performance of the option for a renewed lease were made without jurisdiction and were not protected by s179.

The Court did not decide whether s179 was contrary to Chapter III of the *Commonwealth Constitution*. The Full Bench of the Industrial Relations Commission should have an opportunity to reconsider its interlocutory decision refusing the claimant leave to appeal.

**Bench:** Spigelman CJ; Mason P; Handley JA.

**Judgment citation:** *Mitchforce v Industrial Relations Commission & Ors* [2003] NSWCA 151.

**Judgment date:** 13 June 2003.

### 9. *Newcastle City Council v Shortland Management Services*

Newcastle City Council received a building application for an extension to a house. It failed to give the neighbour notice of the building application. Section 114(1) of the *Local Government Act 1993*, required such notification to be given where the enjoyment of adjoining land may, in the Council’s opinion, be detrimentally affected by the proposed building. An officer of the Council formed the opinion that there would be no such effect and that notification was not required. The neighbour successfully sued the Council for damages for the economic loss caused by a breach of the Council’s statutory duties, that is, the officer should not have formed the opinion that resulted in the failure to notify, or alternatively, for negligence. The negligence claim was successful.

The Council appealed to the Court of Appeal on the ground that it was not negligent.

The Court of Appeal held that, in the context of the legislative scheme for considering building applications and of the legislative history of prior provisions, the obligations arising concerning the formation of an opinion under section 114 were to be found only in the statute. Parliament intended to cover the field and common law duties were excluded. Alternatively, there was no duty of care at common law to protect the neighbour from the kind of harm that occurred.

**Bench:** Spigelman CJ; Mason P; Sheller JA.

**Judgment citation:** *Newcastle City Council v Shortland Management Services & Ors* [2003] NSWCA 156.

**Judgment date:** 18 June 2003.

### 10. *NSW Bar Association v Young*

#### *NSW Bar Association v Stevens*

These two decisions concern the legal and civic responsibilities of barristers. Both Mr Young and Mr Stevens were barristers. For many years neither paid income tax. The NSW Bar Association sought to have their names removed from the Roll of Legal Practitioners. The Court of Appeal ordered their names be removed. This means they cannot be issued with a practising certificate and therefore can no longer practise as barristers.

Despite the forceful arguments by Mr Young’s barrister, the Court of Appeal found that those arguments did not derogate from the fact that non-filing of the tax returns was incompatible with the degree of integrity which the public has the right to expect in a barrister. The Court found that Mr Young knew that he had an obligation to file income tax returns each year. Justice Meagher said that for more than 16 years he did not file an income tax return and for 20 years “did not pay a penny’s worth of income tax”. Mr Young’s barrister conceded that this conduct lacked all possible excuse but submitted it was not without explanation. Justice Ipp expressed considerable sympathy for Mr Young but ultimately found that by failing to file his income tax returns he was concealing his income and thereby displaying a lack of integrity. Acting Justice Foster found that Mr Young did not deliberately plan to evade tax to

amass wealth at the expense of the community but he was guilty of most seriously neglecting his fiscal obligations.

Mr Stevens failed to lodge tax returns and to pay income tax for nearly 20 years. The NSW Bar Association sought to have his name removed from the Roll of Legal Practitioners and for him to be guilty of professional misconduct. Mr Stevens was found to have a history of default in paying tax and lodging tax returns, bespeaking a lack of integrity which the public has a right to expect in a barrister and reflecting a failure of the barrister's "legal and civic responsibilities". The Court of Appeal found that this type of conduct justifies a finding of professional misconduct and that Mr Stevens is not a fit and proper person to remain on the Roll of Legal Practitioners.

**Bench (NSW Bar Association v Young):**

Meagher JA; Ipp JA; Foster AJA.

**Judgment citation:** NSW Bar Association v Young [2003] NSWCA 228.

**Judgment delivered:** 19 August 2003.

**Bench (NSW Bar Association v Stevens):**

Meagher JA; Sheller JA; Ipp JA.

**Judgment citation:** New South Wales Bar Association v Stevens [2003] NSWCA 261.

**Judgment delivered:** 18 September 2003.

## **11. NSW Thoroughbred Racing Board v Waterhouse**

A Mr Peter McCoy owed Mr William Waterhouse Snr ("Mr Waterhouse Snr"), his son Mr Robert Waterhouse ("Mr Waterhouse") and other family members more than \$900,000. Whilst still owing this money, Mr McCoy was declared bankrupt. Eventually his legal liability for the debt was extinguished by the bankruptcy. However he and Mr Waterhouse Snr considered the debt a matter of honour and if Mr McCoy wanted an interest in a Waterhouse business in Fiji the debt would have to be reduced. Mr Waterhouse, a licensed bookmaker, and Mr McCoy agreed that the debt would be capped at \$500,000. They made an arrangement that Mr Waterhouse would place bets on horses and races which Waterhouse chose on behalf of Mr McCoy to enable Mr McCoy to win between \$50,000 and \$100,000. The winnings (or losses) would be deducted from (or added to) the \$500,000 debt. Both men intended that this arrangement not be disclosed to

Mr Waterhouse Snr and that any reductions in debt would appear to Mr Waterhouse Snr to indicate Mr McCoy was truly paying off the debt. Mr Waterhouse placed 13 bets. Six of the 13 horses won, the other seven lost. Mr McCoy won \$60,000 (less the outlay of the losing bids), giving a net figure of \$59,860. Robert Waterhouse recorded these transactions as credit bets in his betting records. He also entered in his settling records the debt of \$500,000 and showed it had reduced by the net winnings.

The racing stewards opened an enquiry into these transactions and Mr Waterhouse faced 16 charges (only 14 charges were the subject of ultimate appeal). The charges included 13 counts of having entered book bets which were not legitimate wagers and another count of conduct prejudicial to the image of racing. The latter charge was in relation to placing the 13 bets and the entry into the settling records of the \$500,000 debt which had no association with Mr Waterhouse's business as a licensed bookmaker. Mr Waterhouse was found guilty of the 14 charges. He was fined \$78,000 on the first 13 counts. The other charge attracted a 12 month disqualification from bookmaking.

Mr Waterhouse appealed against the stewards' decision to the Appeals Panel. The Panel dismissed his appeal against the findings of guilt but reduced the fine to \$19,500 and substituted a penalty of nine months' suspension on the conduct prejudicial charge.

Mr Waterhouse appealed against the Appeals Panel's decision to the Racing Appeals Tribunal. The NSW Thoroughbred Racing Board appealed to the Tribunal against the inadequacy of the penalty on the conduct prejudicial charge.

The Tribunal struck out the Board's appeal. The Tribunal confirmed the findings of guilt and the fine, but increased the penalty on the conduct prejudicial charge to nine months' disqualification. Mr Waterhouse commenced proceedings in the Supreme Court claiming amongst other things that the adverse decisions of the Panel and Tribunal were void. Justice Young found that the Tribunal's decision was void.

The NSW Thoroughbred Racing Board appealed against Justice Young's decision to the Court of Appeal, seeking to have reinstated the heavier

12. *The need for legal representation depends on the background of the party concerned, the nature of the proceedings, the nature of the tribunal and the nature of the claim*

penalty imposed by the Tribunal. Mr Waterhouse cross-appealed, seeking to have set aside the findings of guilt made against him.

Mr Waterhouse's barrister submitted that there was no impropriety in giving extravagant odds, the bets were legitimate, and even if they were not, the charge of conduct prejudicial to the image of racing would only replicate the 13 betting charges. His barrister also submitted there was nothing wrong in including a non-racing debt in the settlement records, that Mr Waterhouse was not to blame, and the possibility of false suspicion of impropriety is insufficient. Also, that there was no damage or reasonable possibility of damage to the image of racing.

The Court of Appeal found that the real basis of the 13 betting transactions was not the chance or hope of winning but to confer a benefit on Mr McCoy, in a way that concealed this was being done, by a series of transactions at extraordinary odds (500:1) which gave him the near certainty of receiving a benefit. Therefore, none of the transactions was a bet or a legitimate wager.

The Court of Appeal found that the misleading nature of what was done and its tendency to give rise to reasonable suspicions were matters associated with the blameworthy breaches of the racing industry's rules. It was prejudicial to the image of racing should such conduct become known, and it was no defence that Mr Waterhouse did not wish the conduct to become known: otherwise, even the most dishonest conduct by bookmakers, which they intended to keep secret, could not be conduct prejudicial to the image of racing.

The Court of Appeal therefore confirmed the findings of guilt. However, it agreed with Mr Justice Young that the Tribunal had no power to increase the penalty imposed by the Panel.

The effect of the decision was that Mr Waterhouse remained suspended rather than being disqualified from conducting his business as a bookmaker, and remained liable for fines totalling \$19,500.

**Bench:** Handley JA; Hodgson JA; Santow JA.

**Judgment citation:** NSW Thoroughbred Racing Board v Waterhouse & Anor. (2003) 56 NSWLR 691.

**Judgment date:** 16 April 2003.

## 12. Orellan-Fuentes v Standard Knitting Mill

Mrs Fuentes brought a claim for compensation against her employer Standard Knitting Mills Pty Limited. The Workers Compensation Commission held that she was injured in the course of her employment and made orders accordingly.

Mrs Carey brought a claim for compensation against her employer Blasdom Pty Limited trading as Ascot Freightlines. The arbitrator hearing her claim referred a same question of law to President Sheahan. President Sheahan refused Ms Carey leave to refer the question of law in her case as the question was not novel or complex, as is required by the Workplace Injury Management and Workers Compensation Act 1998.

The question of law related to Schedule 6 to the *Workers Compensation (General) Regulation 1995* and the 1998 Act. The relevant section of the Act states that "[a] person who is a party to proceedings before the Commission is entitled to be represented by a legal practitioner or an agent". Schedule 6 to the General Regulation sets out the maximum costs recoverable in compensation matters. It was contended that the maximum amount under the 1995 Regulation was so low as effectively to preclude legal representation at an arbitration hearing. Therefore the Regulation was inconsistent with the 1998 Act. President Sheahan held that 1995 Regulation was validly made by power granted under another section of the 1998 Act. Mrs Fuentes argued that the Commission was a court which exercised judicial power.

The Court of Appeal found that all the relevant factors have to be considered in determining whether a particular institution is a court, including the persons which it composes, as they form part of the institution. Although the Commission has some powers and trappings of a court, the cumulative effect of the matters that indicate that it is not a court is extremely powerful and compel the conclusion that the Commission is not a court.

The Court held that there was no foundation for the argument that the costs recoverable under the Schedule are so low that they have the practical effect of negating any rights that the claimants might have to legal representation. The Court of Appeal held that an examination of the whole of Schedule 6 of the General Regulation should be

undertaken to determine the reasonableness or otherwise of the scheme of fees available for representing a party involved in a dispute before the Commission. It is inappropriate to focus on one item in the Schedule

The Court also held that there was no absolute common law right to legal representation. There may be circumstances in which a person's right to a fair hearing would be negated if that person did not have legal representation. On the other hand, there may be circumstances where the interests of justice will be sufficiently served by hearing only the parties themselves. The need for legal representation depends on the background of the party concerned, the nature of the proceedings, the nature of the tribunal and the nature of the claim.

However, for legislation to do away with legal representation in a tribunal such as the Commission, it must convey that intent expressly or by necessary implication. The Court of Appeal found that sections of the 1998 Act make it unmistakably clear that Parliament intended that, in this case, a legal practitioner is not entitled to recover costs for performing a service, in this case, to the claimant.

**Bench:** Spigelman CJ; Handley JA; Ipp JA.

**Judgment citation:** Orellana-Fuentes v Standard Knitting Mill Pty Limited & Anor; Carey v Blasdom Pty Limited T/as Ascot Freightlines & Anor [2003] NSWCA 146.

**Judgment date:** 20 June 2003.

### 13. PD v Doctors Harvey & Chen

Ms PD and her future husband (FH) together went to see Dr Harvey for blood tests for sexually transmitted diseases including HIV. Both gave blood in the presence of each other. Ms PD was informed of her results – they were negative. Doctor Harvey told FH in a separate consultation about his results – they were positive. He did not raise with Mr FH whether he was proposing to tell Ms PD of his test results. Dr Harvey did not inform Ms PD or Mr FH at their joint consultation that unless consent was given to him, he was legally forbidden from disclosing any information concerning their HIV results to each other.

Acting Justice Cripps found that Doctor Harvey (employed by Doctor Chen) should have warned

Mr FH to tell Ms PD that he was HIV positive. Ms PD contracted HIV after she married Mr FH and had unprotected sex after what she believed were negative test results (for him and her). Acting Justice Cripps awarded Ms PD \$700,000 in damages.

Trial bench: Cripps AJ.

**Judgment citation:** PD v Dr Nicholas Harvey & 1 Ors [2003] NSWSC 487.

**Judgment date:** 10 June 2003.

### 14. R v. Phillip Nathan King

Mr King and Ms Flick engaged in a single act of consensual sexual intercourse after which Ms Flick became pregnant. Mr King wished the pregnancy terminated and when he could not persuade Ms Flick to terminate it or procure others to attack her, he assaulted her including kicking and stomping on her stomach. Ms Flick was taken to hospital and the foetus was delivered stillborn three days later.

The medical evidence indicated that the death of the foetus was caused by an abruption of the placenta. Mr King was charged with the offences of intentional infliction of grievous bodily harm or alternatively procuring a miscarriage. The Crown relied upon the death of the foetus and the abruption of the placenta as constituting grievous bodily harm to Ms Flick. It did not rely on any of Ms Flick's other injuries. District Court Judge Robyn Tupman ordered a permanent stay of the grievous bodily harm charge on the basis that a conviction could not be obtained as the particulars of the charge could not amount to grievous bodily harm to the mother.

The offence is described as being "whoever maliciously inflicts grievous bodily harm upon an person with intent". District Court Judge Tupman found that a foetus was not a 'person'. However, the Court of Criminal Appeal held that the close physical bond between the mother and the foetus is of such a character that, for the purposes of offences such as this, the foetus should be regarded as part of the mother. The Court held that there was no reason why Mr King could not be convicted of the offence.

**Bench:** Spigelman CJ; Dunford J; Adams J.

**Judgment citation:** Regina v King [2003] NSWCCA 399.

**Judgment date:** 19 December 2003.

*13. A doctor was found liable for failing to inform a person that her sexual partner was HIV positive*

*14. The close physical bond between the mother and the foetus is such that the foetus is considered part of the mother for purposes of a charge of inflicting grievous bodily harm on an expectant mother*

*15. The Court has the power to prevent a legal practitioner from participating in a mediation*

### 15. Rajski v Tectran Corporation Pty Ltd

Mr Rajski believed that settlement agreements (the result of mediation) had been reached in some other proceedings, some of which he had been a party to for more than 22 years. In 2001 Mr Rajski asked the Court to order that the agreements be executed. Mediation was ordered. In 2002 some of the defendants filed a notice of motion seeking a six month extension of the mediation. Mr Rajski supported this motion but the Tectran interests opposed it. Justice George Palmer again ordered the proceedings to mediation, which was also extended. One day prior the time end of the extension period, Mr Justice Windeyer granted leave to Mr Rajski and another co-plaintiff seeking a further extension of the mediation. Justice Palmer heard the arguments on this further extension.

The plaintiffs argued that there was utility in continuing the mediation proceedings. Tectran Corporation and others argued the opposite. They argued that the mediation process had gone on too long and would be completely futile and the matter should go to hearing as soon as possible. Ultimately, the question before the Court was whether Mr Rajski was genuine in his desire to settle the litigation and whether he wanted to resolve all aspects of the dispute with Tectran and others once and for all. Justice Palmer found that Mr Rajski was genuine and, subject to certain conditions, there was sufficient prospect that a further mediation could be successful. Justice Palmer took into account the long history of the litigation, the bitter animosity which it had generated, the failure of two previous mediations and Mr Rajski's volatile and confrontational manner. He also took into account that, if the litigation did not settle, 15 separate proceedings (at least) would continue in Court.

Justice Palmer found that the drain on the parties, their resources and the resources of the Court had been incalculable and that it would continue unless the litigation stopped.

Mr Rajski also applied for an order restraining Tectran's legal advisers from participating in the mediation process. Justice Palmer said that the Court had the power to do all things necessary to ensure the due administration of justice and to protect the integrity of the judicial process. Also,

the Court has the power to restrain lawyers from acting in particular legal proceedings, including mediations. However, this is an extreme order to make. Justice Palmer found that this case was not one in which he should bar any particular lawyer from the mediations.

**Bench:** Palmer J.

**Judgment citation:** Rajski & Anor v Tectran Corporation Pty Limited & Ors [2003] NSWSC 478.

**Judgment date:** 30 May 2003.

### 16. Re French Caledonia Travel

This judgment is a thorough analysis of the principles concerning the tracing of monies.

A liquidator was appointed to the travel agency French Caledonia Travel, which sold travel packages to travel agents on behalf of customers of those travel agents. It also sold packages to travellers. Some travellers who had made bookings through the company, paid for their bookings and had travel documents issued found that some of the travel documents were not honoured. Others who had made bookings or paid deposits but had not received travel documents could not get back their money. Some travel services providers honoured travel documents issued by the company but were not paid.

Money received from travellers for bookings (a deposit at the time of booking and one or more further payments) would be credited to the Trust Account of the Company. To pay for the cost of travel packages, payments would be made from the Trust Account. Sometimes the company would transfer money from the Trust Account to its CD Account, which earned a higher interest rate, and was also a trust account. Sometimes money from the CD Account would be transferred to the Trust Account. Sometimes the Company would also transfer money from the Trust Account to its General Account.

The liquidator received various claims from airlines, travellers and various travel agents to monies held in the Trust and CD accounts. The travel agents and travellers claimed that they had paid the company for travel services which were not provided. The airlines claimed they had carried passengers, not been paid for it, and that the



Company held in trust for the airlines the money paid by the travellers who the airlines had carried. The claims totalled about \$1.4 million. If they were to be paid, there would be a deficiency on the bank accounts of more than \$1.25 million. The liquidator could not analyse the claims because the company's books and records were not adequately kept. Therefore the liquidator approached the Court for directions and orders concerning the payment of the liquidator's costs for analysing the claims and an order that the liquidator would be justified in distributing the balance of the funds in the trust accounts on a pro-rata basis.

Justice Campbell considered whether there was precedent to apply Clayton's Case to decide the liquidator's problem and whether Clayton's Case would decide the problem; or whether some other form of rateable division was appropriate.

Justice Campbell concluded that the liquidator should not apply Clayton's Case. He ordered that the liquidator was justified in distributing the funds held in the trust accounts of the company. The first distribution should be to QT Travel, who had been appointed by the Court to argue that Claytons Case applied, for its reasonable costs and expenses incurred in its participation in the proceedings. The second distribution should be to the liquidator for his costs and expenses in connection with the proceedings. The third distribution should be to the liquidator for his Court approved costs. These were costs connected with administering the trust account and CD account, but not his general costs of the liquidation. The next distributions should be made equally amongst those individuals who made claims in response to the liquidator's notice and producing evidence to the liquidator of a proprietary claim.

**Bench:** Campbell J.

**Judgment citation:** Re French Caledonia Travel 48 ACSR 97.

**Judgment date:** 24 November 2003.

## 17. Regina v Ellis

Mr Ellis was convicted by a jury of 11 counts of break enter and steal or attempted break enter and steal with intent or aggravated break enter and steal. The offences were all committed on commercial premises in rural New South Wales, with access to the premises obtained or attempted by removing an entire pane of glass from its seals. Originally there were 13 counts on the indictment. Before the trial commenced, an issue arose as to admissibility of evidence of each offence as tendency or coincidence evidence in relation to all other offences on the indictment. Acting District Court Judge Holt concluded that such evidence was admissible in respect of 11 of the 13 counts, and, accordingly, permitted a joint trial to proceed on those counts. The trial judge's reasoning failed to refer to the test in *Pfennig v The Queen* – the common law test on tendency and coincidence.

Mr Ellis appealed against his convictions, submitting that the trial judge applied the wrong test for admission of the tendency and coincidence evidence and wrongly admitted that evidence.

The Court of Criminal Appeal held that the statutory regime for the admissibility of tendency and coincidence evidence found in the Evidence Act 1995 was intended to cover the relevant field to the exclusion of common law principles previously applicable. The use of the word “substantially” to indicate the extent to which the probative value of tendency or coincidence evidence must outweigh its prejudicial effect is a legislative formulation, not derived from prior case law.

The continued application of the common law test for admissibility of tendency and coincidence evidence explicated in *Pfennig v The Queen* is inconsistent with the statutory requirements of the Evidence Act for a balancing process between probative force and prejudicial effect, during which the court must make a judgment that probative value substantially outweighs prejudicial effect.

The Court of Criminal Appeal held that Acting Judge Holt was correct to adopt and apply the terminology of the legislation, rather than the pre-existing common law test. Application of the common law test may result in a trial judge failing

*17. The test in Pfennig v The Queen (1995) 182 CLR 461 on the admission of tendency and coincidence evidence is displaced by the Evidence Act 1995*

**18. Important observations on section 294A of the Criminal Procedure Act 1986**

to give adequate consideration to the actual prejudice in the specific case that the probative value of the evidence must substantially outweigh.

The Court held that the line of authority applying the common law Pfennig test to the statutory requirements for admissibility of tendency and coincidence evidence is incorrect. However, there may be cases where, on the facts, it would not be open to conclude that the statutory test for admissibility is satisfied unless the common law test is also satisfied.

**Bench:** Spigelman CJ; Sully J; O’Keefe J; Hidden J; Buddin J.

**Judgment citation:** Regina v Elliss [2003] NSWCCA 319.

**Judgment date:** 5 November 2003.

**18. Regina v MAK, RS, MSK, MRK, MMK**

The five accused were jointly charged with offences relating to the sexual assault of two young women. The Crown alleged the assaults were of an unlawful common enterprise to which all five accused are parties. It was alleged the objective of the enterprise was to entice the two young women to certain premises and detaining them there for their sexual gratification.

Three of the accused were represented by Counsel; two were not. The two accused explained that they intended to defend themselves without legal representation or assistance at the forthcoming trial. The three represented accused made applications for separate trials. The two unrepresented accused did not wish separate trials.

Justice Brian Sully granted separate trials because to do so would ensure that the accused, whether represented or not, would obtain a fair trial in light of recent legislative changes to the *Criminal Procedure Act 1986*. However, Justice Sully was very blunt in his assessment of the utilitarian benefit of an accused person using an appointed “person” to cross-examine a complainant.

He said that the Court cannot decline to appoint a “person” to ask vicariously the questions that the unrepresented accused would normally have been both entitled and permitted to ask for themselves. He said that the controversial section 294A gives no guidance or assistance as to where

such a person is actually to be found; as to what qualifications, training, experience or other characteristics it is envisaged the appointed “person” should have; or as to the provision of any funding that might be required in order to secure the willing cooperation and assistance of a suitable “person”. The trial judge also noted the difficulties involved in handling the questions posed by an accused.

**Bench:** Sully J.

**Judgment citation\*:** Regina v MAK; Regina v RS; Regina v MSK; Regina v MRK; Regina v MMK [2003] NSWSC 849.

\*At the time of writing, non-publication orders were in place. The accused have been convicted at trial. RS committed suicide prior to sentence. The other four prisoners have been sentenced.

**19. Regina v Ngo**

**Regina v K**

These two appeals to the Court of Criminal Appeal involved the issue of inadmissible evidence coming before the jury. The circumstances of that evidence coming before each jury was different as were the final orders of the Court. In Regina v Ngo, the Court considered in detail whether witnesses giving evidence via videolink in a remote location would mean the accused received an unfair trial.

In Regina v Ngo, Mr Ngo appealed against his conviction and life sentence for the murder of NSW politician John Newman. Two of the accused were found not guilty. One of Mr Ngo’s 12 grounds of appeal was the trial judge should have discharged the jury because a juror had been inadvertently exposed to inadmissible evidence.

During cross-examination by Mr Ngo’s barrister, the Crown Prosecutor was reading a photocopy of a newspaper article which had the heading ‘ICAC to probe Viet game club’. The concern was that if the jury saw the headline, they would believe that it related to the Mekong Club, central to so much of the evidence placed before them by the Crown. They would then relate the headline to Mr Ngo and this would prejudice Mr Ngo.

In the absence of the jury, the trial Judge reminded the Crown Prosecutor to be sensitive to what he was reading. Mr Ngo’s barrister was concerned with what the jury may have seen. The Crown Prosecutor said he would be careful but

added there was no way the jury could have read the headline. Mr Ngo's instructing solicitor passed a note to his barrister which said that the foreperson of the jury had looked towards the article and spoken to a female juror next to her. The Crown Prosecutor said he was leaning back in his chair and did not believe the jury could have read it as he was reading it under the lectern on the bar table.

Mr Ngo's barrister asked for a demonstration. The trial Judge said that he had seen the foreperson and the female juror speaking, however, he did not relate it to what the Crown Prosecutor was reading and he did not see what was being read. The Crown Prosecutor suggested that the foreperson be asked whether she saw anything. The forewoman told the trial Judge that she could see what looked like the back of a newspaper being read by the Crown Prosecutor and could only see the letters ICAC. She spoke to the juror next to her about this. Later, Mr Ngo's barrister asked that the jury be discharged. The Crown Prosecutor argued that the situation could be cured by a direction to the jury by the trial Judge. The trial Judge declined to discharge the jury.

The trial Judge, Mr Justice Dunford, stated the relevant test for a discharge of the jury is whether the incident gives rise to a reasonable apprehension or suspicion on the part of a fair-minded and informed member of the public that the juror or jury has not, or will not, discharge its task impartially. The trial Judge concluded that the incident did not pose any risk of unfair prejudice and that there was no evidence that anyone saw anything except the letter "ICAC". He also expressed doubts that Mr Ngo would have been unfairly prejudiced even if the whole of the title had been inadvertently disclosed. The trial Judge gave the jury a direction telling them to put the article out of their minds and confine themselves to the evidence.

The Court of Criminal Appeal found that there was no evidence before the trial Judge which could have lead him to conclude that there was any risk of unfair prejudice to Mr Ngo or his co-accused. The Court concluded that the trial Judge did not misstate the applicable test. The Court of Criminal Appeal will not interfere with the exercise of judicial discretion unless it can be shown that the Judge acted on the wrong principle or that there was a miscarriage of justice.

During the trial, Mr Justice Dunford granted an application that two witnesses, Mr and Mrs L, give their evidence via videolink and from a remote location. [Mr Ngo could only hear Mr and Mrs L's evidence]. The Judge was satisfied that Mr and Mrs L's fears were genuine and that they would probably not give evidence if required to do so in a courtroom in the presence of Mr Ngo. The Judge concluded that the order be made in the interests of the administration of justice. Mr and Mrs L also said that they had met Mr Ngo and were familiar with his appearance from the media. Mr Ngo's barrister argued that since the trial involved issues of identity, Mr Ngo should be entitled to see Mr and Mrs L because he would not have the opportunity to properly contest that evidence. The Court of Criminal Appeal referred in detail to similar cases in Australia, the United Kingdom and the United States.

The Court ultimately found that making an order for evidence to be received via videolink in a remote location involves unfairness to an accused because it deprives him or her of a face-to-face confrontation with the witness. The relevant legislation cannot mean any unfairness, however small. The Court must consider the degree and effect of the unfairness. In a criminal trial, the best measure is whether the making of a direction will cause the trial to be an unfair one to the accused. An accused person has the fundamental right to a fair trial. A direction should not be made if it would mean the accused could not have a fair trial.

Another argument before Court was that Mr Ngo could only hear Mr and Mrs L's evidence, compounding the unfairness of the fact Mr Ngo would not have the opportunity to properly contest their evidence. On this point, The Court of Criminal Appeal found that Mr Justice Dunford did give considerable consideration to whether Mr Ngo would receive a fair trial and balanced it with the position of the witnesses. The Court of Criminal Appeal found that Mr Justice Dunford was not in error.

The decision of the Court of Criminal Appeal on each ground of appeal was unanimous. Each ground failed. Mr Ngo's conviction and sentence stand.

In R v K, Mr K was found guilty of murdering his first wife, JK. He appealed against this conviction.



**20.** *The history and statutory context of the power to disqualify a person from managing corporations indicates that a disqualification order is protective. The privilege against self-exposure to a penalty does not apply to a proceeding for this type of orders sought by ASIC*

Mr K had previously been placed on trial for the murder of his second wife but was acquitted of that offence. Following the guilty verdict for the murder of JK, virtually all the members of the jury adjourned to a nearby hotel, which was also visited by Mr K's barrister. It was disclosed during conversations between the barrister and the juror that a number of jurors had acquired knowledge via internet searches about the history of Mr K, including his acquittal of murdering his second wife and that the trial for murdering JK was a retrial.

The NSW Sheriff obtained affidavits from nine of the 12 jurors. It was argued that the affidavits were not admissible however the Court of Criminal Appeal found that the results of the internet searches were similar to cases where evidence had been received showing that documents, which were not in evidence in the trial, had found their way to the jury room.

The Court found that the information was potentially prejudicial as there was a real risk of the jury applying tendency and or coincidence reasoning, or of them regarding the evidence as having raised bad character, and as a result there should be a new trial.

The material concerning discussions between jurors and any evidence concerning the effect which the information may or may not have had on their deliberations should not be received. This is consistent not only with important public policy considerations but also with the long established rule that the court will not hear evidence of the deliberations of the jury.

The evidence showing that some jurors learned from internet searches that the case was a retrial did not warrant a new trial. This circumstance was before the jury and the trial Judge gave clear and unambiguous directions to ignore any information relating to the previous trial and to concentrate on the evidence presented.

The Court of Criminal Appeal also stated that the extent of information regarding criminal investigations and trial online through media reports, legal databases and judgment systems of the court and its use are of ongoing importance. The Court said that there may be need to review and to amend the Jury Act 1977 in order to protect the jury system by making it an offence for jurors to conduct external inquiries about an

accused or the case as well as the need to discourage any such practice by the trial Judge giving the jury appropriate directions.

The Court of Criminal Appeal stated that the direction which is routinely given at the start of a trial, to the effect that the jury should not take into account any publicity of which they be may be aware, should be extended to include an instruction that they should not undertake any independent research, by internet or otherwise and a suitable explanation given as to why they should not do so.

Justice Wood, Chief Judge at Common Law, also expressed the personal view that the "spectacle of lawyers, jurors, police and other persons who may have had an interest in the case, fraternising openly" in a hotel after a trial "does little for the image of the justice system or for the apparent professionalism of those who practice in this area of law."

The decision of the Court of Criminal Appeal was unanimous, quashing Mr K's sentence and conviction and ordered a new trial.

**Bench (Regina v Ngo):** Stein JA; Sully J; Levine J.

**Judgment citation:** Regina v Ngo [2003] NSWCCA 82 revised – 16/04/2003.

**Judgment date:** 3 April 2003.

**Bench (Regina v K):** Wood CJ at CL; Grove J; Dunford J.

**Judgement citation:** R v K [2003] NSWCCA 406 revised – 29/01/04.

**Judgment date:** 23 December 2003.

## **20. Rich & Silberman v ASIC**

Mr Rich and Mr Silberman are former directors of One.Tel (in liq). ASIC alleges a number of contraventions by them of the *Corporation Act 2001 (Cth)* in their discharge of their director's duties. ASIC seeks declarations of the alleged contraventions, orders disqualifying Mr Rich and Mr Silberman from management of companies and orders requiring compensation to be paid by them to the company. ASIC applied to Justice Austin for interlocutory orders compelling the discovery of documents and filing of witness statements (including statements of Mr Rich and Mr Silberman's anticipated testimony) by Mr Rich and Mr Silberman. They resisted the application on the ground that the interlocutory orders would require them to expose themselves to a penalty,

namely the orders sought by ASIC. ASIC argued that the final orders involved no imposition of a penalty, that the disqualification orders being sought were for a protective purpose and therefore the privilege against self-exposure to a penalty did not arise. Justice Austin held that the proceedings did not seek to impose a penalty and the privilege did not apply. He granted ASIC's application. Mr Rich and Mr Silberman challenged his Honour's characterisation of the proceedings as not punitive, seeking in particular to emphasise the severity of the consequences of disqualification for a company director.

Chief Justice Spigelman and Justice Ipp found that the characterisation of a statutory sanction as a penalty for purposes of the privilege against self-exposure to a penalty is affected by whether the sanction is imposed for the purpose of punishment. This characterisation is also affected by the severity of the consequences of the sanction. The distinction between a 'punitive' and a 'protective' purpose to be served by imposing a sanction has been drawn in a number of areas of the law.

The history and statutory context of the power to disqualify a person from managing corporations, indicate that a disqualification order is protective. The privilege against self-exposure to a penalty does not apply to a proceeding for the orders sought by ASIC.

The distinction between a 'punitive' and a 'protective' purpose is of considerable significance as it determines the scope of considerations relevant to the exercise of the power to make a disqualification order. It is not just a question of characterising the purpose or effect of the court's order. It is, in essence, a question of characterising the power conferred by the legislative scheme. Insofar as the power to order disqualification is purely protective, the decision to make the order and the determination of the period for which the order can take effect must be made on the basis that only protective considerations are relevant. The power cannot be exercised in order to punish.

**Bench:** Spigelman CJ; Ipp JA; McColl JA.

**Judgment citation:** Rich & Silberman v The Australian Securities & Investments Commission [2003] NSWCA 342 revised – 3/02/2004.

**Judgment date:** 26 November 2003.

## 21. Roads And Traffic Authority of NSW v Wilson

Mr Wilson had his driving licence suspended for three months because he had accumulated 14 demerit points within three years. Instead of waiting three months for a renewal of his driving licence, he elected to be of good behaviour for 12 months. During this time however he incurred the loss of another four demerit points. The RTA then suspended his licence for six months.

Mr Wilson appealed to the Local Court, which heard and dismissed his appeal. Mr Wilson then appealed to the Supreme Court. Justice Peter Hidden found that the Local Court Magistrate had erred and that he should have embarked on an examination of Mr Wilson's good character, his driving history and other extenuating circumstances, and upheld Mr Wilson's appeal.

The RTA then appealed to the Court of Appeal arguing that the Magistrate did not have the power to hear Mr Wilson's initial appeal. *The Road Transport (Driver Licensing) Act 1998 (NSW)* states that a 'decision' can be appealed. The Court of Appeal found that at no stage did any person make a 'decision' to suspend Mr Wilson's licence. His suspension occurred automatically on the incurring of more than twelve demerit points, therefore, there was nothing for Mr Wilson to appeal against.

**Bench:** Meagher JA; Ipp JA; Foster AJA.

**Judgment citation:** RTA of NSW v. Wilson & Anor [2003] NSWCA 279.

**Judgment date:** 3 October 2003.

## 22. Phillip Ruddock & Ors v Taylor

Mr Taylor successfully sued the two Federal Government Ministers in the District Court for wrongful imprisonment and was awarded \$116,000 in damages. The Government appealed this decision and the amount of damages. Mr Taylor appealed the amount of damages.

Mr Taylor was born in the United Kingdom. In 1966, at the age of nine, he arrived in Australia with his family. In 1994 he was granted a Permanent Transitional Visa.

In 1996 he pleaded guilty to a number of criminal offences and was gaoled. In November 1999, Mr Ruddock cancelled Mr Taylor's visa. Shortly after

*21. A driver whose license is suspended because he or she has accumulated demerit points cannot appeal the suspension*

the cancellation, Mr Taylor was arrested and detained as an 'unlawful non-citizen', sometimes called an 'alien'. He remained in detention until April 2000. A decision by the High Court saw him released and his visa restored. The visa was again cancelled by the Minister on 30 June 2000. On 6 July 2000 Mr Taylor was again detained. He was in detention until 7 December 2000. Again the High Court ordered his release. Mr Taylor commenced proceedings for wrongful imprisonment.

The Court of Appeal found that, by cancelling the visa, the Ministers made Mr Taylor an 'unlawful non-citizen' within the meaning of the Migration Act. By doing so they knew their actions would lead to detention. Therefore the Ministers were the real and direct cause of Mr Taylor's imprisonment.

The Court found that when the High Court quashed the Minister's decision to cancel Mr Taylor's visa, it also meant that any other direct consequence of cancellation – in this case wrongful imprisonment – could not constitutionally apply to Mr Taylor. Therefore, Mr Taylor was entitled to be compensated for the wrongful imprisonment brought about by the Ministers' actions. These judges also found that damages for false imprisonment cannot be computed on a daily rate. A substantial proportion of the award must be given for the shock of arrest. As the term of imprisonment extends, the effect upon the person falsely imprisoned diminishes.

Mr Taylor appealed the amount of damages awarded to him. In the District Court he had been awarded general damages only (that is \$116,000) but no exemplary or aggravated damages. He asked the Court of Appeal to award him exemplary damages, saying that he served his detention in a prison environment, which was harsher than other forms of immigration detention. The Court of Appeal did not agree that there had been disregard for Mr Taylor's rights.

**Bench:** Spigelman CJ; Meagher JA; Ipp JA.

**Judgment citation:** Ruddock & Ors v Taylor [2003] NSWCA 262.

**Judgment date:** 18 September 2003.

### 23. Waverley Municipal Council v Guy Edward Swain

Mr Swain was rendered a quadriplegic when he dived into the water at Bondi Beach in small surf. He was swimming between the flags, was injured there and drifted south of the flags before being rescued. He sued Waverley Council which had care, management and control of the beach. Prior to the hearing, the parties agreed to damages of \$3.75 million. The litigation concerned liability for Mr Swain's injury. A jury returned a verdict in favour of Mr Swain but found he had contributed to his own injury and reduced the damages by 25 per cent. Waverley Council appealed seeking a verdict in its favour, that is, a finding that it was not negligent, or a new trial.

In the appeal, Waverley Council submitted that the jury verdict was against the evidence and against the weight of the evidence. Waverley Council submitted that on all but one issue, there was no evidence to support the verdict.

The Court of Appeal found that the phrases 'against the evidence' and 'against the weight of the evidence' do not carry different meanings and when used together express a single idea in two sets of words. The test is whether the evidence in its totality preponderates so strongly against the conclusion favoured by the jury that it can be said that its verdict is not one that reasonable jurors could reach.

The Court found that there was no evidence before the jury capable of justifying a finding that Waverley Council had breached its duty of care to Mr Swain by failing to warn of the risk of a sandbar.

Justices Handley and Ipp found there was no evidence capable of sustaining a finding that Waverley Council had been negligent in its placement of the swimming flags. There was no evidence that Mr Swain relied on the flags as an assurance of safety when diving. The risks of channels and sandbars on the ocean floor are obvious and inherent when diving close to shore. Chief Justice Spigelman dissented on this point.

**Bench:** Spigelman CJ; Handley JA; Ipp JA.

**Citation:** Waverley Municipal Council v Swain [2003] NSWCA 61 revised - 22/04/2003.

**Judgment date:** 3 April 2003.

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

- Filings, disposals and pending cases
- Waiting times (where time standards are not set)
- Performance against time standards in 2003
- Use of alternative dispute resolution

TABLE 01: **FILINGS, DISPOSALS AND PENDING CASES<sup>1</sup>**

"n/a" – figures not available or not separately reported / "-" – item not applicable / "0" – zero count

	2000 <sup>2</sup>	2001	2002	2003
<b>COURT OF APPEAL<sup>3</sup></b>				
Filings				
appeals and applications for relief <sup>4</sup>	483	504	446	485
applications for leave to appeal	299	256	314	330
Disposals				
appeals and applications for relief	517	627	494	443
applications for leave to appeal <sup>5</sup>	301	314	264	317
Pending cases at 31 December				
appeals and applications for relief	460	337	289	331
applications for leave to appeal	143	112	162	175
<b>COURT OF CRIMINAL APPEAL<sup>6</sup></b>				
Filings	867	940	516	538
Disposals	907	923	998	578
Pending cases at 31 December	750	767	284	264
<b>COMMON LAW DIVISION - CRIMINAL</b>				
<b>Criminal List</b>				
Filings <sup>7</sup>	127	125	124	136
Disposals to verdict/plea or other final disposal <sup>8</sup>	107	130	112	113
Pending cases at 31 December	95	69	83	105
<b>Bails List</b>				
Filings	2,257	2,531	2,315	2,691
Disposals	2,306	2,509	2,272	2,679
Pending cases at 31 December	143	165	209	212
<b>COMMON LAW DIVISION - CIVIL</b>				
<b>Administrative Law List</b>				
Filings	89	74	108	112
Disposals	96	97	96	125
Pending cases at 31 December	63	40	57	49
<b>Defamation List</b>				
Filings	72	63	45	50
Disposals	107	102	64	65
Pending cases at 31 December	162	122	112	105
<b>Differential Case Management List<sup>9</sup></b>				
Filings	684 <sup>10</sup>	746	438	213
Disposals	625	461	626	527
Pending cases at 31 December	1,415	1,339	1,190	896
<b>Possession List<sup>11</sup></b>				
Filings	195	129	142	91
Disposals	62	159	117	97
Pending cases at 31 December	135	89	102	76

TABLE 01: FILINGS, DISPOSALS AND PENDING CASES *CONTINUED*

	2000 <sup>2</sup>	2001	2002	2003
<b>Professional Negligence List</b>				
Filings <sup>12</sup>	127	259	111	101
Disposals	423	255	236	204
Pending cases at 31 December	539	550	487	423
<b>Summons List</b>				
Filings	498	618	622	527
Disposals	680	934	624	505
Pending cases at 31 December	573	442	418	425
<b>Cases proceeding by default and other applications<sup>13</sup></b>				
Filings	2,512 <sup>14</sup>	3,143	2,662	2,829
Disposals	3,950	3,369	2,709	2,419
Pending cases at 31 December	1,217	1,153	912	1,210
<b>Related issues cases filed before February 1994<sup>15</sup></b>				
Disposals	3,624	308	17	4
Pending cases at 31 December	612	304	287	283
<b>COMMON LAW DIVISION TOTALS - Civil</b>				
<b>Filings</b>	<b>4,177</b>	<b>5,032</b>	<b>4,128</b>	<b>3,923</b>
<b>Disposals</b>	<b>9,567</b>	<b>5,685</b>	<b>4,489</b>	<b>3,946</b>
<b>Pending cases at 31 December</b>	<b>4,716</b>	<b>4,039</b>	<b>3,565</b>	<b>3,467</b>
<b>EQUITY DIVISION</b>				
<b>Admiralty List</b>				
Filings	9	4	1	6
Disposals	18	11	4	3
Pending cases at 31 December	10	4	2	5
<b>Adoptions List</b>				
Filings	150	143	170	151
Orders made	152	129	176	75
Pending cases at 31 December	54	41	38	38
<b>Commercial List</b>				
Filings	174	196	216	181
Disposals	139	173	203	203
Pending cases at 31 December	207	217	234	218
<b>Corporations List</b>				
Filings	2,316	3,148	3,113	3,289
Disposals <sup>16</sup>	n/a	2,455	2,872	2,777
Pending cases at 31 December	n/a	702	569	633
<b>Protective List</b>				
New applications	107	91	74	77
Disposals	n/a	89	76	63
Pending cases at 31 December	4	4	3	9
<b>Technology and Construction List<sup>17</sup></b>				
Filings	45	56	69	72
Disposals	38	29	76	56
Pending cases at 31 December	68	100	93	116

TABLE 01: FILINGS, DISPOSALS AND PENDING CASES *CONTINUED*

	2000 <sup>2</sup>	2001	2002	2003
<b>General List</b>				
Filings	1,803	1,966	2,020	2,219
Disposals	n/a	2,984	2,290	2,808
Pending cases at 31 December	n/a	2,212	2,391	2,436
<b>Probate (Contentious Matters) List</b>				
Filings	101	124	132	202
Disposals	129	136	143	174
Pending cases at 31 December	92	83	72	100
<b>EQUITY DIVISION TOTALS</b>				
<b>Filings</b>	<b>4,705</b>	<b>5,728</b>	<b>5,795</b>	<b>6,197</b>
<b>Disposals</b>	<b>347<sup>18</sup></b>	<b>6,006</b>	<b>5,840</b>	<b>6,159</b>
<b>Pending cases at 31 December</b>	<b>3,680</b>	<b>3,363</b>	<b>3,402</b>	<b>3,555</b>
<b>PROBATE APPLICATIONS (Non-Contentious)<sup>19</sup></b>				
<b>Applications received</b>	<b>20,672</b>	<b>20,825</b>	<b>21,895</b>	<b>21,966</b>

TABLE 02: WAITING TIMES (WHERE TIME STANDARDS ARE NOT SET)

<b>Median finalisation time (unless otherwise indicated)</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
<b>COMMON LAW DIVISION - CRIMINAL</b>				
Bails List – usual delay (weeks)	1-2	1-2	1-2	1-2
<b>COMMON LAW DIVISION - CIVIL</b>				
Administrative Law List (months)	6.3	7.0	4.6	5.6
Defamation List (months)	30.2	19.4	22.6	19.1
Differential Case Management List (months)	n/a	n/a	23.1	25.1
Possession List (months)	n/a	n/a	8.5	9.5
Professional Negligence List (months)	49.2	32.1	28.1	30.6
Summons List – civil matters (months)	n/a	n/a	2.4	3.8
Summons List – criminal matters (months)	n/a	n/a	8.2	7.0
Cases proceeding by default (months)	6.8	6.8	5.3	5.6
<b>EQUITY DIVISION</b>				
Admiralty List (months)	n/a	n/a	18.3	5.7
Adoptions List – usual finalisation time (weeks)	n/a	n/a	8-12	4-5
Commercial List (months)	n/a	n/a	10.4	14.0
Corporations List (months)	n/a	n/a	1.6	1.5
Probate (Contentious Matters) List (months)	n/a	n/a	5.0	1.7
Protective List – usual time for orders to be made (weeks)	1-8	n/a	3.5	3.5
Technology and Construction List (months)	n/a	n/a	14.0	21.9
General List (months)	n/a	n/a	11.3	10.1
Probate applications (Non-Contentious) – usual time for grant to be made (working days)	2	2	2	2

TABLE 03: PERFORMANCE AGAINST TIME STANDARDS IN 2003

	Standard	Achieved
<b>COURT OF CRIMINAL APPEAL<sup>20</sup></b>		
Disposals within 6 months of commencement	50%	54%
Disposals within 12 months of commencement	90%	76%
Disposals within 18 months of commencement	100%	88%
<b>COURT OF APPEAL<sup>21</sup></b>		
Disposals within 6 months of commencement	50%	36%
Disposals within 12 months of commencement	90%	86%
Disposals within 18 months of commencement	100%	98%
<b>COMMON LAW DIVISION - CRIMINAL<sup>22</sup></b>		
Disposals within 9 months of commencement	60%	56%
Disposals within 12 months of commencement	85%	75%
Disposals within 15 months of commencement	95%	92%
Disposals within 18 months of commencement	100%	96%

TABLE 04: USE OF ALTERNATIVE DISPUTE RESOLUTION

	2000	2001	2002	2003
<b>Court-annexed mediation referrals</b>				
Common Law Division	n/a	6	8	19
Equity Division – not probate cases <sup>23</sup>	143	165	133	180
Equity Division – probate cases	n/a	n/a	6	8
Court of Appeal <sup>24</sup>	-	-	23	11
Percentage of cases settling at mediation	70%	60%	64%	65%
<b>Arbitration referrals</b>				
Common Law Division	44	21	58	44

<sup>1</sup> The figures for pending cases will include cases that have been re-opened after judgment. For this reason, the figures for pending cases will not always reconcile with associated filing and disposal figures reported in this Appendix.

<sup>2</sup> Statistics for the civil lists do not include cases where a venue other than Sydney was nominated for hearing.

<sup>3</sup> Holding notices of appeal and holding summonses for leave to appeal are not included in these figures.

<sup>4</sup> This includes appeals filed pursuant to a grant of leave to appeal.

<sup>5</sup> This includes applications where parties elected to have a concurrent hearing (ie where, if leave to appeal were granted, hearing of the substantive appeal would immediately follow). The figures include all disposed leave applications, regardless of whether an appeal followed.

<sup>6</sup> New criminal appeal procedures commenced on 1 July 2002. Filings for 2002 and 2003 are not comparable with those for earlier years.

<sup>7</sup> Includes committals for trial/sentence, ex officio indictments, re-trials ordered by the Court of Criminal Appeal or High Court, separate trial granted for one or more accused, referred matters from the Mental Health Review Tribunal, transfers from the District Court, re-activated matters (eg bench warrant executed) and applications made under s 474D of the Crimes Act.

<sup>8</sup> "Other final disposal" outcomes are no bill, order for a bench warrant to issue, referral to the Mental Health Review Tribunal, transfer to another court, discharge of jury and order for retrial, death of the accused, final judgment or order (in applications under s474D of the Crimes Act).

<sup>9</sup> The statistics relate to cases not proceeding by default (except as indicated in endnote 10). Cases proceeding by default are reported separately in this table.

<sup>10</sup> Not all of the 684 cases proceeded as defended cases. During 2000, it was not possible to separately report defended cases from those proceeding by default.

<sup>11</sup> This List commenced on 1 February 2000. The statistics relate to cases not proceeding by default. Cases proceeding by default are reported separately in this table.

<sup>12</sup> Additionally, there were 184, 50 and 47 cases transferred to this List in 2000, 2001 and 2002, respectively.

<sup>13</sup> This includes applications under the Mutual Recognition Act, Trans-Tasman Mutual Recognition Act and applications for production orders.

<sup>14</sup> This figure does not include those cases in the Differential Case Management List that proceeded by default. Improvements to reporting enabling this distinction to be made did not occur until 2001.

<sup>15</sup> These are cases against Dow Corning and 3M.

<sup>16</sup> These are the Registrar's disposals only - disposals by Judges or Masters are included with the General List cases.

<sup>17</sup> Before 1 January 2002 this List was called the Construction List.

<sup>18</sup> This figure is incomplete because disposal figures are not available for the Corporations, Protective and General Lists.

<sup>19</sup> These applications are dealt with administratively by the Registry, usually within two to three working days after filing. A small proportion of these applications are contested and dealt with by a Judge. The number of contested applications appears in the Equity Division under the heading "Probate (Contentious Matters) List".

<sup>20</sup> The standards from 2002 were continued for 2003, subject to assessment of the impact of the new criminal appeal procedures.

<sup>21</sup> The measurement is from commencement to the date of judgment, settlement, discontinuance or striking out. Commencement is the date of filing the substantive notice of appeal or, if leave to appeal is required, the application for leave to appeal.

<sup>22</sup> The measurement is from the date of committal to the plea of guilty, the verdict or other final disposal.

<sup>23</sup> Any referrals of admiralty, commercial or construction matters were not recorded for 2000.

<sup>24</sup> Before 2002 the Court of Appeal did not refer matters to mediation.



## 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, and considers matters on which its view has been sought, 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. Particular attention was given to the refinement of time standards, and the application of Acting Judge resources. The Committee also considered policy and procedural initiatives submitted by the Court's other Committees detailed in this Appendix.

### Members during 2003

The Honourable the Chief Justice (Chairperson)  
The Honourable the President  
The Honourable Justice Handley AO  
The Honourable Justice Giles  
The Honourable Justice Wood AO  
The Honourable Mr Justice Young  
Secretary: Ms M Greenwood (from April)

### Rule Committee

The Rule Committee meets each month to consider proposed changes to the Supreme Court Rules 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.

During the year the Committee made 19 substantive amendments to the Supreme Court Rules, the most significant of which are summarised below:

- proceedings commenced by summons are now generally to be commenced by a summons specifying a return date, rather than a summons under which an appointment for hearing was to be specified at a later time
- the powers of Masters and Registrars were further extended
- the Supreme Court and Corporations Law rules were updated with references to the Corporations Act to promote uniformity between the rules of the Federal Court and the Supreme Courts of other States and Territories concerning federal corporations legislation

### Members during 2003

The Honourable the Chief Justice (Chairperson)  
The Honourable the President  
The Honourable Justice Hodgson  
The Honourable Mr Justice Young  
The Honourable Mr Justice Bruce James  
The Honourable Mr Justice Hamilton  
The Honourable Justice Bergin  
Ms R McColl SC  
(NSW Bar Association) (until 29 April)  
Mr M J Slattery QC  
(NSW Bar Association) (from 7 May)  
Mr P L Johnstone (Law Society of NSW)  
Secretary: Mr S Jupp  
Advising Officer: Mr N Flaskas

### Supreme Court Education Committee

The Supreme Court Education Committee is responsible for the continuing education of the Judges and Masters of the Court. It meets between three to four times each year, primarily to discuss arrangements for the Court's Annual Conference. The 2003 Annual Conference was held at Sebel Kirkton Park, Hunter Valley from 22 to 24 August. The Right Honourable Lord Justice May, Lord Justice of Appeal and Deputy Head of Civil Justice provided the keynote address entitled *The English High Court and Expert Evidence*. Professor Jane Stapleton from the Australian National University was invited to speak at the Conference regarding the



relationship between public bodies and a common law duty of care, and Ms Nada Roude and Mr Ahmed Abdo from the Islamic Council of NSW presented the session *What Muslims think Judges need to know about Islam*. In addition, Judges of the Court addressed such issues as recent technological advancements and their impact on court operations, improvements to the Court's alternative dispute resolution procedures, and recent developments in criminal trials.

### **Members during 2003**

The Honourable Justice Handley AO (Chairperson until October)

The Honourable Justice Ipp  
(Chairperson from October)

The Honourable Justice Giles

The Honourable Justice Santow OAM

The Honourable Mr Justice Studdert

The Honourable Justice Kirby

The Honourable Justice Austin (until October)

The Honourable Justice Bell

The Honourable Justice Gzell

Master McLaughlin

Ms M Greenwood (from April)

Secretary: Ms R Windeler  
(Judicial Commission of NSW) (from April)

### **Supreme Court 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. Court security remained a focus for the Committee during 2003, particularly the development of policies to ensure the safety of Court users, judicial officers and staff, as well as the security of the buildings and other material assets. The Committee also continued to focus on enhancing the courtroom resources in King Street and monitoring the Complex's ongoing renovation program.

### **Members during 2003**

The Honourable Mr Justice Sheller (Chairperson)

The Honourable Justice Giles

The Honourable Justice Wood AO

The Honourable Mr Justice Dunford

Ms M Greenwood (from April)

Mr G Byles (Sheriff of NSW)

Mr W Brown (Capital Works, Attorney General's Department)

Mr A Kuti (Financial Services, Attorney General's Department)

Mr G Donnelly (Law Courts Limited)

Secretary: Ms E Stockdale (from December)

### **Supreme Court Information Technology Committee**

The Supreme Court Information Technology Committee meets every three 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 continued to consider revisions to Practice Note No 105 concerning the use of Technology in Civil Litigation. The Committee also continued to refine its proposed improvements to the CaseLaw system to increase the database's value as a research tool. Lastly, the Committee engaged in successful negotiations with the Attorney General's Department for the provision of litigation support software to assist in meeting the Court's needs with respect to transcription services.

### **Members during 2003**

The Honourable Justice Margaret Beazley  
(Chairperson)

The Honourable Justice Ruth McColl

The Honourable Justice Carolyn Simpson

The Honourable Justice Clifford Einstein

Master Macready

Ms M Greenwood (from April)

Mr P Cutbush (Reporting Services Branch, NSW Attorney General's Department)

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

Ms L O'Loughlin (Law Courts Library)

Secretary: Mr W Millar

### **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 work of the Committee is guided by the principal aims of encouraging the use of ADR (particularly mediation) in solving disputes and ensuring that the Court has adequate infrastructure to provide this service. The Committee makes recommendations to the Chief Justice in pursuit of these objectives, occasionally in consultation with other courts and external organisations. In 2003, the Committee successfully pursued approval of a new mediation practice note (Practice Note No 125), and several rule amendments including the removal of references to neutral evaluation. The Committee also continued to seek improvements to the Court's mediation facilities throughout 2003, and will continue its efforts in 2004.

#### **Members during 2003**

The Honourable Mr Justice Sheller (Chairperson)  
The Honourable Justice Bryson  
The Honourable Mr Justice Studdert  
The Honourable Justice Greg James  
Master Harrison  
Ms M Greenwood (from April)  
Mr G Berecny  
Secretary: Ms J Highet

### **Supreme Court Library Committee**

The Supreme Court Library Committee meets every two months to provide advice on the management of the Judges' Chambers Collections and Supreme Court Floor Collections. In 2003, the Committee reviewed how the collections are managed to promote greater collaboration with the Law Courts Library and greater efficiency of operations.

#### **Members during 2003**

The Honourable The President  
The Honourable Justice Ipp (Chairperson)  
The Honourable Mr Justice Young  
The Honourable Justice Sully  
Ms M Greenwood (from April)  
Mrs L O'Loughlin (Law Courts Library)  
Secretary: Ms E Drynan (Law Courts Library)

#### **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 met regularly during 2003 to discuss issues affecting juries and jury service referred to it by the Chief Justice, a head of jurisdiction, or the Attorney General. The Task Force 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 2003**

The Honourable Justice Greg James,  
Supreme Court (Chairperson)  
His Honour Judge Shadbolt (District Court)  
Mr G Byles (Sheriff of NSW)  
Ms J Cook (Management Services,  
NSW Attorney General's Department)  
(from December)  
Ms J Atkinson (Legislation and Policy Division,  
NSW Attorney General's Department)  
Ms L Anamourlis (Jury Services,  
Office of the Sheriff of NSW)  
Ms R Young (Assistant Parliamentary Liaison  
Officer, NSW Attorney General's Department)  
(until 3 September)  
Secretary: Mr R Escott

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

This Group was primarily established in 2001 to address the issue of delay in the hearing of Court of Criminal Appeal matters. The Group meets on a quarterly basis and provides an essential forum for discussion about the Court of Criminal Appeal's operations across different jurisdictions and organisations. The primary focus for the Group during 2003 was refining the lodgment procedures with respect to the notice of intention to appeal to ensure that the needs of users would be met.

#### **Members during 2003**

The Honourable Mr Justice Grove (Chairperson)  
The Honourable Justice Greg James  
Ms M Greenwood (from April)  
Mr D Barrow (Legal Aid Commission of NSW)  
Mr C Craigie (Public Defenders Office)  
Ms G Drennan (Office of Commonwealth Director of Public Prosecutions)  
Mr D Giddy (Law Society of NSW) (from February 2003)  
Ms D Kelly (Office of the Director of Public Prosecutions NSW)  
Ms J Mathison (Reporting Services Branch, NSW Attorney General's Department)  
Mr C Smith (District Court of NSW) (from November 2003)  
Secretary: Mr M Whitehead (from May)

### **Common Law Criminal Users' Committee**

The Committee meets quarterly to discuss issues affecting the administration of the Court's criminal trial workload. During the year, the Committee addressed such issues as: case management processes; listing issues and reserve trial delays; procedural changes; non-party access to Court records; pre-trial disclosure, and facilities for legal practitioners. In addition, the Committee discussed the operation of the *Mental Health (Criminal Procedure) Act* with respect to forensic patients. These important inter-agency discussions will continue in 2004.

### **Members during 2003**

The Honourable Justice Wood AO (Chairperson)  
The Honourable Justice Graham Barr  
The Honourable Justice Virginia Bell  
Mr P Zahra SC (Senior Public Defender)  
Mr P Barrett (Deputy Senior Crown Prosecutor)  
Mr T Game SC  
Mr C Craigie (Public Defenders Office)  
Mr R Ellis (Office of the Director of Public Prosecutions)  
Mr B Sandland (Legal Aid Commission of NSW) (from April)  
Ms E Hawdon (Legal Aid Commission of NSW) (from April)  
Ms N Marshall (Legal Aid Commission of NSW) (from November)  
Ms P Wright (Councillor, Law Society of NSW)

### **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 circuit hearings.

#### **Members during 2003**

The Honourable Justice Wood AO (Chairperson)  
The Honourable Justice Virginia Bell

#### *Legal profession representatives*

Mr B Murray QC (to April)  
Mr P Deakin QC (from April)  
Ms N Goodman  
Mr P Johnstone  
Ms S Fernandez (from November)  
Mr R Ishak (from November)

### **Supreme Court Equity Liaison Group**

This Group commenced during 2001 and again met quarterly during 2003. 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 2003**

The Honourable Mr Justice Young  
(Presiding Member)

The Honourable Justice Bergin

#### *Legal profession representatives*

Mr R G Forster SC

Mr C (Robert) Newlinds SC

Mr R Harper

Ms A Kennedy

Mr J Martin

Mr B Miller

Ms J A Needham

### **Supreme Court 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 quarterly during 2003 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 2003**

The Honourable Justice Austin (Chairperson)

The Honourable Justice Barrett (Secretary)

The judicial officers of the Equity Division

Mr G Berecny

#### *Legal profession representatives*

Mr C (Robert) Newlinds SC

Mr M Oakes SC

Mr G Cussen (from May)

Mr M Hayter (from May)

Mr J Johnson

Ms L Johnson

Mr P Johnstone

Mr D McCrostie (from September)

Ms M O'Brien (from May)

Mr J Thomson

#### *Other members*

Ms L Macaulay (Australian Securities and  
Investments Commission)

Mr H Parsons (Insolvency Practitioners  
Association of Australia)

Ms J Redfern (Australian Securities and  
Investments Commission)

Mr K Rennie (Ernst & Young)

### **Supreme Court Commercial List Users' Group**

The Group provides a forum for discussion amongst Judges who sit in the Commercial List and the Technology and Construction List, and legal practitioners who practise in those lists. The Committee met by arrangement during 2003 to discuss various issues concerning the administration of the lists. Typically the Group considers matters of procedure and practice in relation to the lists and the potential for revision to ensure that the lists operate as efficiently as possible.

### **Members during 2003**

The Honourable Justice McClellan  
(Chairperson until August)

The Honourable Justice Clifford Einstein

The Honourable Justice Bergin  
(Chairperson from August)

The Honourable Justice Gzell

#### *Legal profession representatives*

Mr T Alexis SC (from November)

Mr D J Hammerschlag SC

Mr N C Hutley SC

Mr J Kelly SC (from November)

Mr G Lindsay SC (from November)

Ms E Olsson SC (from November)

Mr S D Rares SC

Mr M G Rudge SC

Mr R M Smith SC

Mr T F Bathurst QC

Mr R B S MacFarlan QC

Mr G T W Miller QC

Mr S Robb QC (from November)

Mr M Ashurst (from November)

Ms E Collins (from November)

Mr R Drinnan

Mr L Gyles (from November)

Mr R Heinrich (from November)

Mr M Hughes (from August)

Ms L Johnson

Mr R Johnston

Mr P Keel (from August)

Mr H Keller

Mr D Kemp

Mr S Klotz (from November)

Mr S Lewis

Mr G McClellan

Mr S McDonald

Ms N Nygh (from November)

Ms M Pavey (from November)

Ms R Persaud (from November)

Ms R Rana (from November)

Mr R Schaffer

Mr G Standen

Mr M Watson (from November)

Mr S Westgarth

### **Supreme Court Probate Users' Group**

The Group meets quarterly to discuss matters concerning the operation of the Court's Probate Registry. 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 2003**

The Honourable Mr Justice Windeyer  
AM RFD ED

Ms M Greenwood (from April 2003)

Mr J Finlay

Professor R Atherton (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 Group**

The Media Group was established in 2002 to promote open discussion between key representatives from the courts, legal profession and media. The Group is primarily concerned with the reporting of pending and current criminal trials and the potential impact of media reports on trial outcome. Other 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. Although the Group did not have cause to meet during 2003, the Group will continue to convene when required in the future.

### **Members during 2003\***

The Honourable Justice Wood AO (Chairperson)  
The Honourable Mr Justice Young  
The Honourable Justice Graham Barr  
The Honourable Justice Greg James  
The Honourable Justice Michael Adams  
The Honourable Chief Judge,  
District Court of NSW  
Ms S Bursill (representing the Chief Magistrate)  
Ms K Ashbee  
Ms J Stanton (NSW Sentencing Council,  
NSW Attorney General's Department)  
Mr N Cowdery QC (Director of Public  
Prosecutions)  
Mr S Odgers SC (representing the President,  
NSW Bar Association)  
Mr P Zahra SC (Senior Public Defender)  
Ms D Auchinachie (ABC Legal Department)  
Mr M Boyd (SBS)  
Mr M Cameron (representing Brian Gallagher,  
News Limited)  
Mr R Coleman (John Fairfax Limited)  
Ms E Cowdery (AAP)  
Mr C Craigie (Public Defenders Office)  
Mr D Giddy (representing the President,  
Law Society of NSW)  
Mr W Grant (Legal Aid Commission of NSW)  
Ms A Laing (ACP Publishing)  
Mr M Lloyd-Jones (Channel 7)  
Ms S McCausland (SBS)  
Mr P Reddy (representing Andrew Stewart,  
Channel 9)  
Superintendent R Redfern (NSW Police)  
Mr R Todd (representing Steven Partington,  
Channel 10)

*\* As per inaugural 2002 meeting; membership subject to  
change in 2004.*

### **Supreme Court Civil Registry Users' Group**

The Civil Registry Users' Group meets approximately every three 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. Particular attention during 2003 was paid to the anticipated impact on users that would follow the introduction of CourtLink into the Civil Registry. The Group also recommended that a comprehensive client satisfaction survey be conducted in 2004 to identify areas requiring improvement.

### **Members during 2003**

Ms M Greenwood (from April 2003)  
Ms N Ubrihien  
Mr M Meek (NSW Bar Association)  
Ms L Allen (Minter Ellison)  
Mr K Davies (Deacons Lawyers)  
Ms D Howlet (Blake Dawson Waldron Lawyers)

## APPENDIX (iv): OTHER JUDICIAL ACTIVITY

As well as hearing and determining cases, Judges and Masters 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 Masters also serve as members of boards, commissions and committees for legal and cultural organisations within the community.

### The Judges' and Masters' activities during 2003 are summarised below:

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

##### Conferences

22 – 24 January	ICAC Interpol Conference (Hong Kong)
6 – 11 April	Fifth Worldwide Common Law Judiciary Conference (Sydney)
13 – 16 April	The 13th Commonwealth Law Conference (Melbourne)
2 July	Local Court Annual Conference (Sydney)
9 –11 October	The High Court of Australia Centenary Conference (Canberra)

##### Speaking Engagements

22 January	ICAC - Interpol Conference (Hong Kong), Keynote Address <i>The Rule of Law and Enforcement</i>
3 February	Opening of Law Term Dinner
7 February	Address on the Retirement of the Honourable Justice Heydon
13 February	6th IBA International Arbitration Day, Welcome Address
14 February	Presided over and addressed the Legal Practitioners Admission Board Admission Ceremony (Sydney); also presided over and addressed the remaining Sydney Admission Ceremonies held during the year on: 4 April, 30 May, 11 July, 29 August, 3 October and 5 December
27 February	Launch of 5th Annual Review of Insurance Law
20 March	International Legal Services Advisory Council Conference, Opening Address
3 April	Australian Law Awards 2003, Keynote Address
8 April	Fifth Worldwide Common Law Judiciary Conference, <i>Dealing with Judicial Misconduct and Worse</i>
24 April	Address on the retirement of the Honourable Justice Paul Stein
22 May	Launch of <i>Owen Dixon: A Biography</i> by Phillip Ayres
27 May	Spencer Mason Trust lecture (Auckland), <i>Negligence and Insurance Premiums: Recent Changes in Australian Law</i>
2 July	<i>Judging Today</i> , Annual Conference Local Court, Keynote Address
13 August	Opening of the Refurbished Court 3, King Street, Address
4 September	4th Annual National CA Forensic Accounting Conference 2003, Keynote Address, <i>Forensic Accounting in an Adversary System</i>
5 September	Open Administrative Decisions Tribunal Members' Professional Development Day
29 September	St Thomas More Society - <i>Becket and Henry II: Martyrdom</i>
13 October	National Judicial Orientation Programme
25 October	Gerard Brennan Lecture - Bond University, <i>The Truth Can Cost Too Much: The Principle of a Fair Trial</i>
30 October	Australian Institute of Police Management graduation
6 November	Commercial Causes Centenary Dinner
10 November	HREOC - Australia Human Rights Technical Cooperation Program - Judicial Training Activity - National Judges' College (China), <i>Reasons for Judgment and the Rule of Law</i> and spoke at the Shanghai Judges' Training Institute
28 November	AustLII Law Via the Internet 2003 Conference
19 December	Closing Ceremony of the Compensation Court of New South Wales, Address

##### Publications

- "Convergence and the Judicial Role: Recent Developments in China" - *Revue Internationale de Droit Comparé* 57 (2003)
- "Are Lawyers Lemons? Competition Principles and Professional Regulation" - (2003) 77 *ALJ* 44
- "The Rule of Law and the Origins of Freedom of the Press in Australia" - (2003) 23 *Australian Bar Review* 84
- "The Rule of Law and Enforcement" (2003) 26 *UNSW Law Journal*, 200
- "Dealing with Judicial Misconduct and Worse" (2003) 6 *The Judicial Review* 241
- "Launch of Owen Dixon: A Biography by Phillip Ayres" (2003) 77 *ALJ* 882; and *Quadrant* July/August 2003
- "Negligence and Insurance Premiums: Recent Changes in Australian Law" (2003) 11 *Torts Law Journal* 291
- "Forensic Accounting in an Adversary System" *Law Society Journal*, October 2003 p60



#### Delegations and International Assistance

14 February	Delegation from Supreme People's Court, People's Republic of China, Led by Justice Zhu Mingshan, Executive Vice President
11 April	Delegation from Beijing High People's Court, People's Republic of China, Led by Mr Hon Chief Justice Zheng'an Qin, President
25 June	Delegation from Supreme People's Court, People's Republic of China, Led by Chief Judge Xiong Xuanguo, Second Criminal Division, Supreme People's Court
26 June	Delegation from Association of Legal Studies of Chongqing, People's Republic of China, Led by Mr Chen Yongxiang, Vice Chairman
12 August	Delegation from Tranby Aboriginal College, National Indigenous Legal Studies (Students), Welcome
9 September	Delegation from Supreme Court of Hubei Province, People's Republic of China, Led by the Hon Chief Justice Jiayou Wu, Chief Justice of the Supreme Court of Hubei
7 October	Delegation from the Supreme Court of Thailand, Led by Mr Atthaniti Disatha-Amnarj, President
8 October	Akira Machida, Chief Justice of Japan
17 October	Delegation from Beijing High People's Court, People's Republic of China, Led by Mr Tan Jingsheng Presiding & Senior Judge of No 1 Criminal Court
8-19 November	Participated in the Human Rights and Equal Opportunity Commission China-Australia Human Rights Technical Co-operation Program Judicial Training Activity at the National Judges' College, Beijing (China)
10 November	Visited the Shanghai High People's Court and Shanghai Judges' Training Institute
14 November	Met with the Hon Justice Teng Yilong, President, Shanghai People's Court
24 November	Dr Claudio Ximenes, Chief Justice of East Timor

#### Commissions In Overseas Courts

12-16 May	Sat as Judge of the Supreme Court of Fiji
-----------	---

#### THE HONOURABLE JUSTICE MASON AC, PRESIDENT OF THE COURT OF APPEAL

#### Conferences

19 – 23 January	Supreme & Federal Courts Judges' Conference (Adelaide)
14 – 22 July	The Cambridge Lectures (London)
9 –11 October	The High Court of Australia Centenary Conference (Canberra)

#### Speaking Engagements

February 2003	NSW Chapter of Council of Australasian Tribunals, <i>The Bounds of Flexibility in Tribunals</i>
March 2003	Macquarie Christian Studies Institute Conference, <i>Christian Integrity in a Changing Legal Environment</i>
April 2003	District Court Judges' Conference, <i>Recurring Issues in the Court of Appeal</i>
May 2003	Law Graduation Address - Sydney University
October 2003	ANZELA Conference, <i>Tort in the Classroom: What Can Teachers Learn?</i>
November 2003	College of Law Graduation, Occasional Address

#### Publications

- "Rights Protected by Statute and by the Courts" *UNSW Law Journal* Vol 26(2)
- "Unconscious Judicial Prejudice", monograph on decision-making, Judicial Commission of NSW

#### Delegations And International Assistance

16 June	Delegation from Cambodia, Mr Ang Vong Vathana (Secretary of State, Ministry of Justice & Vice Chair National Committee on Legal and Judicial Reform) and Mr Bunyay Narin (Assistant to the Secretary of State), Overview of the Court
13 November	Delegation from Shanghai (Judges), Welcome

#### Commissions In Overseas Courts

12-16 May	Sat as Judge of the Supreme Court of Fiji from 16 to 23 May 2003
-----------	--



#### THE HONOURABLE JUSTICE HANDLEY AO

##### Conferences

19 – 23 January	Supreme & Federal Courts Judges' Conference (Adelaide)
6 – 11 April	Fifth Worldwide Common Law Judiciary Conference (Sydney)
13 – 16 April	The 13th Commonwealth Law Conference (Melbourne)
21 – 25 September	International Academy of Estate and Trust Law (Santiago)
9 – 11 October	The High Court of Australia Centenary Conference (Canberra)

##### Publications

- "Exclusion Clauses for Fraud" (2003) 119 *LQR* 537
- "President versus Prime Minister" (2003) *Quadrant* June, pp 22-25

#### THE HONOURABLE MR JUSTICE SELLER

##### Conferences

19 – 23 January	Supreme & Federal Courts Judges' Conference (Adelaide)
30 May – 1 June	The Judicial Conference of Australia's Colloquium 2003 (Darwin)
9 – 11 October	The High Court of Australia Centenary Conference (Canberra)
25 October	Judicial Conference of Australia Governing Council Meeting and AGM (Melbourne)

#### THE HONOURABLE JUSTICE MARGARET BEAZLEY

##### Conferences

9 – 11 October	The High Court of Australia Centenary Conference (Canberra)
----------------	---

#### THE HONOURABLE JUSTICE GILES

##### Conferences

19 – 23 January	Supreme & Federal Courts Judges' Conference (Adelaide)
-----------------	--

##### Speaking Engagements

20 September	Southern Cross University Graduation Ceremony, Occasional Address
--------------	---

##### Membership of Legal and Cultural Organisations

- Chair of the Law Advisory Committee of the School of Law and Justice at Southern Cross University
- Member of the Editorial Board of the Insurance Law Journal

#### THE HONOURABLE JUSTICE HEYDON

##### Conferences

19 – 23 January	Supreme & Federal Courts Judges' Conference (Adelaide)
-----------------	--

##### Publications

- "Judicial activism and the death of the rule of law" *Australian Bar Review* Volume 23 Number 2

#### THE HONOURABLE JUSTICE HODGSON

##### Conferences

12 – 18 August	21st World Congress - International Association for Philosophy of Law & Social Philosophy (Lund, Sweden)
19 – 21 September	Australian Institute of Judicial Administration Annual Conference (Perth)

##### Speaking Engagements

August	21st World Congress International Association for Philosophy of Law & Social Philosophy (Lund, Sweden), presented the paper <i>Responsibility and Good Reasons</i>
--------	--

##### Publications

- "Free Will" *Encyclopaedia of Cognitive Science*, Volume 2

##### Membership of Legal and Cultural Organisations

- Part time Commissioner, NSW Law Reform Commission
- Supreme Court Representative on the Faculty of Law at the University of NSW
- Member of Professional Category Selection Panel for Churchill Fellowships NSW

## THE HONOURABLE JUSTICE SANTOW OAM

### Conferences

13 – 16 April	The 13th Commonwealth Law Conference (Melbourne)
9 –11 October	The High Court of Australia Centenary Conference (Canberra)
24 October	International Law Weekend (New York)

### Speaking Engagements

26 March	ANZ Indigenous Scholarship Ceremony at St Paul's College, Introduction
1 April	Official Opening of the Anderson Stuart Courtyard of the Medical School
14 April	The Women's College Chancellor's Dinner
6 May	Launch of Jamie Boyd paintings, <i>The Boyd Family – Jamie Boyd</i> , Wagner Gallery, Sydney
8 May	Celebrating the 50th Anniversary of the Sydney University Arts Association, ARTS GENERATIONS, Closing remarks
12 May	Address for academic dinner 2003, Sancta Sophia College
29 June	Sydney University Regiment, Regimental Dinner, Toast to the Army
3 July	R J Chambers Memorial Research Lecture, lecture by Dr Daniel Kahneman 2002 Nobel Laureate for Economic Sciences, Welcome
12 September	Graduating Address for Singapore Students, <i>What do the blind see?</i>
23 September	Graduation Ceremony for Sir Charles Mackerras CH AC, Sydney Conservatorium of Music, Opening remarks

### Publications

- Preface to *Market-to-Market Accounting* by Walter P Schuetze, edited by Peter Wolnizer, 31 January 2003
- "People first in the global community" Summing up and paper, The IXth Commonwealth Study Conference Australia and New Zealand, October 2003
- Preface to *Festschrift* for Emeritus Professor Alice Erh-Soon Tay

### Membership of Legal and Cultural Organisations

- Chancellor, University of Sydney
- Board Member, VisAsia – Art Gallery of NSW
- Occasional Lecturer, Masters of Laws Program, University of NSW
- Member, The Takeovers Panel, Commonwealth Government (Australia)
- Board Member, UK Friends of Bundanon (London)
- Member, International Council, Institute of Advanced Legal Studies, University of London
- Committee Member, Law Admitting Consultative Committee

## THE HONOURABLE JUSTICE D A IPP

### Conferences

19 – 23 January	Supreme & Federal Courts Judges' Conference (Adelaide)
2 – 3 September	Einshac - Genetics in the Courtroom Conference (Sydney)
October	Panel Member on the Open Forum at the National Judicial Orientation Programme (a joint project of the Judicial Commission of NSW and the Australian Institute for Judicial Administration)

### Speaking Engagements

January	Supreme Court & Federal Court Judges' Conference (Adelaide), delivered paper
February	Address to Minter Ellison, Solicitors on negligence law reform
May	Annual Scientific Meeting of The Royal Australasian College of Surgeons, delivered the President's Lecture titled <i>Judges and Judging</i>
September	Government Risk Management Conference, Keynote Address (Perth)
September	Address to Litigation Master Class, University of NSW

### Publications

- "Negligence – Where Lies the Future?" (2003) 23 *Australian Bar Review* 158
- "Judges and Judging" (2003) 24 *Australian Bar Review* 23
- "Policy and the Swing of the Negligence Pendulum" (2003) 77 *Australian Law Journal* 732

### Membership of Legal and Cultural Organisations

- Part time Commissioner, New South Wales Law Reform Commission
- Member, International Society for Reform of Criminal Law
- Member, Court of Arbitration for Sport – Appeals Division, Oceania Registry
- Chair, Standing Advisory Committee on Judicial Education

## THE HONOURABLE JUSTICE RUTH MCCOLL AO

### Conferences

28 August 2003	Conference of The Bar of Ireland
2 – 3 September	Einshac - Genetics in the Courtroom Conference (Sydney)
19 – 21 September	Australian Institute of Judicial Administration Annual Conference (Fremantle, Perth)
9 –11 October	The High Court of Australia Centenary Conference (Canberra)
26 – 28 November	AustLII 5th Conference on Computerisation of Law via the Internet

### Speaking Engagements

31 May	University of New England Annual Law Society Ball (Armidale), <i>The Journey of Law</i>
2 June	Torch Bearers for Legacy (Sydney), <i>Successful Australians</i>
28 August	Conference of The Bar of Ireland, <i>The Bar, Bankruptcy and the Media: Anatomy of A Crisis</i> (Sydney)
19 September	Women Lawyers Association of Western Australia (Perth), <i>Women Lawyers in 2003 – 'A View from the Top'</i>
26-28 November	AustLII 5th Conference on Computerisation of Law via the Internet (Sydney), <i>IT in the Courtroom from both sides of the Bench – The Transformation of Justice</i>

### Membership of Legal and Cultural Organisations

- Member, Sydney Public Education Council (July – December)

### Delegations and International Assistance

9 September	Delegation from Supreme Court of Hubei Province, People's Republic of China, Led by the Hon Chief Justice Jiayou Wu, Chief Justice of the Supreme Court of Hubei, Independence & Impartiality
-------------	---

## THE HONOURABLE JUSTICE WOOD AO, CHIEF JUDGE AT COMMON LAW

### Conferences

12 February	Attorney General's Department, Violence Against Women Unit, Seminar, <i>Practice and Prevention: Contemporary Issues in Adult Sexual Assault in New South Wales</i>
4 November	Judicial Commission of New South Wales, Seminar on Child Sexual Assault (Sydney)
16-18 December	Indonesian Judicial Training Workshop, (Bandar Lampung, Indonesia),

### Publications

- "Forensic sciences from the judicial perspective" *Australian Bar Review* Volume 23 Number 2

### Membership of Legal and Cultural Organisations

- Member, The Australian Institute of Judicial Administration
- Member, The Australian Academy of Forensic Sciences

### Delegations and International Assistance

9 September	Delegation from Supreme Court of Hubei Province, People's Republic of China, Led by the Hon Chief Justice Jiayou Wu, Chief Justice of the Supreme Court of Hubei
-------------	--

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

### Conferences

30 May – 1 June	The Judicial Conference of Australia's Colloquium 2003 (Darwin)
9 –11 October	The High Court of Australia Centenary Conference (Canberra)

### Speaking Engagements

24 February	Speech to Insolvency Practice Symposium, <i>Current Developments as Seen from a Judicial Perspective</i>
6 September	Speech on retirement as Chancellor, Anglican Diocese of Bathurst, Charles Sturt University (Bathurst)
7 September	Sermon on retirement as Chancellor, All Saints Cathedral (Bathurst)
17 September	Seminar on Conveyancing Law, Law Society (Sydney)

### Publications

- "Church & State in Australia, *Journal of Anglican Studies*" Pt 1 No 2
- Various notes on Current Issues and Recent Cases, *Australian Law Journal* Vol 7

### Membership of Legal and Cultural Organisations

- Chancellor, Anglican Diocese of Bathurst to 7 September 2003
- Deputy Chairman of Committees, General Synod, Anglican Church of Australia
- Patron, Sydney Bus and Truck Museum
- Vice Patron, Motor Neurone Disease Association

## THE HONOURABLE JUSTICE JOHN BRYSON

### Conferences

19 – 23 January	Supreme & Federal Courts Judges' Conference (Adelaide)
-----------------	--

### Speaking Engagements

29 March	Property Law Seminar conducted by NSW Young Lawyers, presented the paper <i>Caveats against Dealings under the Real Property Act 1900</i>
----------	---

## THE HONOURABLE MR JUSTICE WINDEYER AM RFD ED

### Conferences

19 – 23 January	Supreme & Federal Courts Judges' Conference (Adelaide)
-----------------	--

### Speaking Engagements

13 May	City of Sydney Law Society, <i>Legal Aspects of Dementia</i>
--------	--

## THE HONOURABLE JUSTICE DAVID LEVINE RFD

### Membership of Legal and Cultural Organisations

- Chairs the Friends of the State Library of NSW
- President of the Arts Law Centre of Australia

## THE HONOURABLE MR JUSTICE DUNFORD

### Conferences

19 – 23 January	Supreme & Federal Courts Judges' Conference (Adelaide)
1 – 6 June	Greek/Australian International Legal & Medical Conference (Rhodes, Greece)

## THE HONOURABLE MR JUSTICE HULME

### Delegations and International Assistance

6 August	Delegation from Taiwan (Judges), Overview of the Criminal & Civil Justice System
----------	--

## THE HONOURABLE MR JUSTICE B S J O'KEEFE AM

### Conferences

22 January	ICAC (Hong Kong)/Interpol Anti Corruption Conference (Hong Kong)
25 -27 May	Eleventh International Anti Corruption Conference (Seoul, Korea)
29 May	Global Forum III (Seoul, Korea)
1 September	Annual Union Internationale des Avocats (UIA) Conference (Lisbon, Portugal)

### Speaking Engagements

22 January	Chaired the ICAC (Hong Kong)/Interpol Anti Corruption Conference and presented a paper during the <i>Law Enforcement</i> session (Hong Kong)
6 May	Presented a paper on <i>Reform of the Planning System</i> at the Royal Australian Institute of Architects Seminar (Sydney)
25 -27 May	Chaired the Eleventh Anti Corruption Conference hosted by the Government of Korea (Seoul, Korea)
29 May	Presented a paper on <i>Global Anti Corruption Initiatives</i> to Global Forum III (Seoul, Korea)
20 June	Address to Senior New Zealand Public Servants on probity (Wellington, New Zealand)
16 August	Presented Heritage Awards for 2003 for the Mudgee/Gulgong/Rylstone Region (Mudgee)
21 August	Presented a paper on the <i>Comparative Advantages of Arbitration, Mediation, and Neutral Evaluation</i> at the Chartered Institute of Arbitrators (Sydney)
1 September	Presented a paper on <i>The Right to Silence</i> to the Criminal Law Section of the Annual <i>Union Internationale des Avocats</i> (UIA) Conference (Lisbon, Portugal)
16 October	Adjudicated the UNSW Law Faculty Mooting Competition (Supreme Court of NSW, Sydney)
30 October	Presented a paper on the <i>Impact on Heritage Areas of Planning Controls</i> (Ku-ring-gai, Sydney)
21 November	Annual Dinner of the Members of the Bar practising in Newcastle, Address
25 November	Spoke at a seminar on <i>Law and Disorder – The Demerits of Merit Assessment</i> hosted by the Royal Australia Institute of Architects (Sydney)

### Membership of Legal and Cultural Organisations

- Sydney Harbour Federation Trust, Trustee
- University of Sydney's Celtic Studies Foundation, Chairman
- University of Technology's Faculty of Law Advisory Committee, Member
- National Trust of Australia (NSW), President
- Chartered Institute of Arbitrators, Chairman

#### Delegations and International Assistance

January, May & November	Chairman of Interpol's International Group of Experts against Corruption (IGEC), chairing meetings in Hong Kong, Korea and France during the year
22 July	Received Lt General Munir Hafiez, Chairman of the National Accountability Office of Pakistan
6 August	Delegation of 18 judges from the High Court of Taiwan

#### THE HONOURABLE JUSTICE DOWD AO

##### Conferences

January	International Commission of Jurists, Fact Finding Mission to Nepal
September	Australian Conference of Commonwealth Chancellors and Vice- Chancellors, Queens University (Belfast)
November	Lawyers Conference to form Section of the International Commission of Jurists for Bosnia- Herzegovina (Sarajevo)

##### Speaking Engagements

October	Australian Plaintiff Lawyers Association (Coolumb, Queensland), Keynote Speaker
November	Lawyers Conference to form Section of the International Commission of Jurists for Bosnia- Herzegovina (Sarajevo), Speaker
December	Southern Cross University (Byron Bay Summer School), Speaker

##### Membership of Legal and Cultural Organisations

- President, Australian Section International Commission of Jurists
- Chancellor, Southern Cross University
- Chair, Executive Committee, International Commission of Jurists Geneva
- Goodwill Ambassador, Spastic Centre
- Patron, University Buddhist Education Foundation

#### Delegations and International Assistance

October	Representative of the International Commission of Jurists at Dedication of Balibo Flag House, East Timor
October	Meeting with Governor-General of Solomon Islands
December	Visit by Chief Justice of East Timor

#### THE HONOURABLE JUSTICE SPERLING

##### Conferences

30 May – 1 June	The Judicial Conference of Australia's Colloquium 2003 (Darwin)
2 – 3 September	Einshac - Genetics in the Courtroom Conference (Sydney)

##### Membership of Legal and Cultural Organisations

- Office, Judicial Conference of Australia

#### THE HONOURABLE JUSTICE PETER HIDDEN AM

##### Publications

- "Some Ethical Problems for the Criminal Advocate", (2003) *Criminal Law Journal*, Volume 27

#### THE HONOURABLE MR JUSTICE HAMILTON

##### Conferences

19 – 23 January	Supreme & Federal Courts Judges' Conference (Adelaide)
30 May – 1 June	The Judicial Conference of Australia's Colloquium 2003 (Darwin)
24 – 29 August	Commonwealth Magistrates & Judges Association Conference (Malawi)
28 – 30 October	Courts Technology Conference (Kansas City, Missouri, USA)

##### Speaking Engagements

25 August	<i>Some Aspects of the Role of an Independent Judiciary and of the Latimer House Guidelines in the Promotion of Economic Development and in the Attainment of Social Expectations</i> , Panel Discussion Paper, Commonwealth Magistrates & Judges Association Conference (Malawi)
30 September	<i>Developments in Civil Procedure in Australia over the Last 30 Years</i> , Address delivered to Anglo-Australasian Lawyers Society (London, UK)

##### Membership of Legal and Cultural Organisations

- Anglo-Australasian Lawyers Society
- Australian Mining & Petroleum Law Association
- Law Extension Committee of University of Sydney
- Australian Chief Justices' Rules Harmonisation Committee

## THE HONOURABLE JUSTICE CLIFFORD EINSTEIN

### Conferences

19 – 23 January	Supreme & Federal Courts Judges' Conference (Adelaide)
30 May – 1 June	The Judicial Conference of Australia's Colloquium 2003 (Darwin)
9 – 13 November	46th Annual Meeting of the International Association of Judges (Vienna, Austria)

### Speaking Engagements

9 September	Macquarie University, <i>Advocacy and Evidence</i> , Address
25 September	College of Law, <i>Opinion Evidence - Discretion, Practice and Procedure</i> , Address
15 October	National Judicial Orientation Program, <i>Evidence - Common Law and Act</i> , Address

### Delegations and International Assistance

11 April	Delegation from Beijing High People's Court, People's Republic of China, Led by Mr Hon Chief Justice Zheng'an Qin, President, Overview & Demonstration of the Technology Court
----------	--

## THE HONOURABLE JUSTICE GREG JAMES

### Conferences

30 May – 1 June	The Judicial Conference of Australia's Colloquium 2003 (Darwin)
24 – 28 August	International Society for the Reform of Criminal Law 17th International Conference (The Hague, Netherlands)

### Delegations and International Assistance

9 September	Delegation from Supreme Court of Hubei Province, People's Republic of China, Led by the Hon Chief Justice Jiayou Wu, Chief Justice of the Supreme Court of Hubei, Overview of the Criminal Justice System
15 September	Delegation from Nanjing, China (Judges), Overview of the NSW Court system
13 November	Delegation from Shanghai (Judges), Overview of the NSW Court System

## THE HONOURABLE JUSTICE MICHAEL ADAMS

### Conferences

19 – 23 January	Supreme & Federal Courts Judges' Conference (Adelaide)
23 – 27 June	15th South Pacific Judicial Conference (Madang, Papua New Guinea)
24 – 28 August	International Society for the Reform of Criminal Law 17th International Conference (The Hague, Netherlands)

## THE HONOURABLE JUSTICE DAVID KIRBY

### Conferences

18 – 24 September	Pan Europe Asia Legal Conference (Rome)
-------------------	---

### Speaking Engagements

September	Pan Europe Asia Legal Conference (Rome), presented the paper <i>Intentional Infliction of Harm</i>
-----------	--

### Membership of Legal and Cultural Organisations

- Part Time Commissioner, NSW Law Reform Commission

## THE HONOURABLE JUSTICE AUSTIN

### Conferences

28 – 30 March	Judges' Corporations Seminar (Sydney)
22 May	Australian Institute of Administrative Law Conference (Sydney)
18 – 20 July	Law Council of Australia 2003 Corporations Workshop (Victoria)
22 July	UNSW Insolvency and Reconstruction (Sydney)

### Speaking Engagements

22 May	The New South Wales Chapter of the Australian Institute of Administrative Law, <i>The relationship between administrative law and equity: relative concepts or parallel developments?</i>
22 July	UNSW Insolvency & Reconstruction Seminar, Opening Remarks
27 October	Occasional Master of Laws Class, Faculty of Law, University of New South Wales, <i>Compulsory Acquisition</i>
21 November	50th Anniversary Sydney Law Review Dinner, <i>Academics, Practitioners and Judges</i>

### Publications

- Co-author, *Ford's Principles of Corporations Law* (Butterworths, looseleaf)

---

**Membership of Legal and Cultural Organisations**

- Lecturer (Part-time) in Law, University of Sydney
- Member, The Takeovers Panel, Australian Government
- Member, Editorial Board, International and Comparative Corporate Law Journal
- Member, Editorial Board, Company and Securities Law Journal

---

**THE HONOURABLE JUSTICE P A BERGIN**

---

**Speaking Engagements**

17 April	Conferral of Law Degrees Ceremony, Division of Law, Macquarie University, The Occasional Address
26 July	Law Society of New South Wales Specialist Accreditation Business, Property, Wills, Advocacy and Commercial Litigation Annual Conference, delivered the paper <i>A Judicial Perspective on what the Court Expects from Legal Practitioners in Equity and Commercial Litigation</i>
26 August 2003	Lexis Nexis Butterworths Practice and Procedure in Commercial Litigation Conference, delivered the paper <i>Commercial Litigation: Tips for Success and Traps for the Unwary: A Judge's Perspective on Case Preparation</i>
6 November	Commercial Causes Centenary Dinner, The Welcome
26 November	University of New South Wales Continuing Legal Education Seminar, delivered the paper <i>Equity in Practice</i>

---

**Membership of Cultural and Legal Organisations**

- Chairperson, Cancer Institute (NSW), established in 2003 pursuant to the *Cancer Institute (NSW) Act 2003*
- Member of the Board, NSW State Records Authority

---

**THE HONOURABLE JUSTICE VIRGINIA BELL**

---

**Conferences**

19 – 21 September	Australian Institute of Judicial Administration Annual Conference (Fremantle, Perth) Chairperson of session “ <i>The state of mind in civil matters</i> ”
30 September – 4 October	28th International Congress on Law and Mental Health (Sydney); Chaired a session on 2/10/03

---

**Speaking Engagements**

15 March	Royal College of Pathologists of Australasia, Pathology Update 2003
15 April	Social Justice and Schooling Conference - Quality Teachers Group, Stamford Hotel, Mascot
13 June	Compensation Court Conference, presented the paper <i>The Evidence Act</i>
25 July	Address to Inaugural Tutors and Readers Dinner
13-17 October	National Judicial Conference – Orientation programme; delivered a speech on the <i>credibility of witnesses</i> , and a commentary on the paper <i>The assessment of credibility</i>
20 October	National Pro Bono Conference Speech

---

**Membership of Legal and Cultural Organisations**

- Committee member, Child Sexual Assault Pilot Project Team
- Council Member and Board Member, Australian Institute for Judicial Administration
- Chairperson, “Aboriginal Cultural Awareness Committee” a joint committee of The Judicial Commission of NSW and the Australian Institute of Judicial Administration

---

**Delegations and International Assistance**

25 June	Delegation from Supreme People's Court, People's Republic of China, Led by Chief Judge Xiong Xuanguo, Second Criminal Division, Supreme People's Court, Overview of the Bails Court
26 June	Delegation from Association of Legal Studies of Chongqing, People's Republic of China, Led by Mr Chen Yongxiang, Vice Chairman, Overview of the Criminal Justice System
8-14 November	Participated in the Human Rights and Equal Opportunity Commission China-Australia Human Rights Technical Co-operation Program Judicial Training Activity at the National Judges' College, Beijing (China)

---

**THE HONOURABLE JUSTICE WHEALY**

---

**Conferences**

19 – 23 January	Supreme & Federal Courts Judges' Conference (Adelaide)
30 May – 1 June	The Judicial Conference of Australia's Colloquium 2003 (Darwin)

---

**Speaking Engagements**

21 February	Admission Ceremony, Legal Practitioners Admission Board (Newcastle)
-------------	---

## THE HONOURABLE JUSTICE HOWIE

### Conferences

30 May – 1 June	The Judicial Conference of Australia's Colloquium 2003 (Darwin)
24 – 28 August	International Society for the Reform of Criminal Law 17th International Conference (The Hague, Netherlands)

### Speaking Engagements

11 April	Delegation from Beijing organised by the Judicial Commission of NSW, delivered the paper <i>Overview of the Criminal Justice System</i>
22 – 23 April	District Court Annual Conference (Terrigal), delivered the paper <i>Criminal Law Update</i>
2 – 4 July	Local Courts Annual Conference (Brighton-Le-Sands), delivered the paper <i>Criminal Law Update</i>

### Publications

- Consulting Editor, *Criminal Law News* (published by Lexis Nexis)
- Co-author, *Criminal Practice and Procedure* (Lexis Nexis, looseleaf)
- "Criminal Law Update 2003", *Judicial Review*, September 2003

### Membership Of Legal And Cultural Organisations

- Model Criminal Code Officers' Committee

### Delegations And International Assistance

11 April	Delegation from Beijing High People's Court, People's Republic of China, Led by Mr Hon Chief Justice Zheng'an Qin, President, Overview of the Criminal Justice System
----------	---

## THE HONOURABLE JUSTICE BARRETT

### Conferences

19 – 23 January	Supreme & Federal Courts Judges' Conference (Adelaide)
28 – 30 March	Judges' Corporations Seminar (Sydney)
21 – 23 May	International Bar Association's 20th International Finance Law Conference (Munich)
18 – 20 July	Law Council of Australia 2003 Corporations Workshop (Victoria)
2 – 4 August	20th Annual Banking and Financial Services Law and Practice Conference (Queenstown, New Zealand)

### Speaking Engagements

22 June	Addressed the annual seminar of the Costs Assessors Rules committee
2 – 4 August	20th Annual Conference of Banking and Financial Services Law Association (Queenstown, New Zealand), presented the paper on <i>developments in Australian banking and financial services law over the past 20 years</i> and was a panel member on <i>future directions</i>

### Publications

- "A judicial response to plain language" (2003) *Clarity* No 49, 8
- "Some themes in Australian banking and finance law – 1984 to 2003 and beyond" (2003) *31 Australian Business Law Review* 391

### Membership of Legal and Cultural Organisations

- Member, Editorial Board, Company and Securities Law Journal

## THE HONOURABLE JUSTICE PALMER

### Conferences

19 – 23 January	Supreme & Federal Courts Judges' Conference (Adelaide)
8 March	NSW Conference of Maritime Law Association of Australia & New Zealand
2 – 3 October	Annual Conference of Maritime Law Association of Australia & New Zealand

### Speaking Engagements

8 March	NSW Conference of Maritime Law Association of Australia & New Zealand, Opening Address
2 October	Annual Conference of Maritime Law Association of Australia & New Zealand, <i>Admiralty Reform and the Role of the Courts</i>

### Membership of Legal and Cultural Organisations

- Member, Maritime Law Association of Australia & New Zealand

### Delegations and International Assistance

4 April	Delegation from Higher People's Court, Tianjin (Justice Si-Ping Yu and Judges)
---------	--



#### THE HONOURABLE JUSTICE CAMPBELL

##### Conferences

2 – 3 September	Einshac - Genetics in the Courtroom Conference (Sydney)
-----------------	---

#### THE HONOURABLE JUSTICE BUDDIN

##### Conferences

19 – 23 January	Supreme & Federal Courts Judges' Conference (Adelaide)
-----------------	--

##### Speaking Engagements

3 May	Public Defenders' Annual Conference Dinner – Appellate Advocacy – Judge's Perspective (Sydney)
20 June	The Judicial Commission of NSW – Australian-China Human Rights Cooperation Programme – Right to Silence (Sydney)
1 August	National Judicial College of Australia – Sentencing (Adelaide)
2 October	28th International Congress on Law and Mental Health – Culpability, Responsibility and Mental Illness (Sydney)

##### Delegations and International Assistance

7 April	Delegation from Tokyo High Court (Judge Yasushi Handa), Overview of the Criminal Justice System
9 September	Delegation from Supreme Court of Hubei Province, People's Republic of China, Led by the Hon Chief Justice Jiayou Wu, Chief Justice of the Supreme Court of Hubei, Overview of the Criminal Justice System
15 September	Delegation from Nanjing, China (Judges), Overview of the NSW Court System

#### THE HONOURABLE JUSTICE GZELL

##### Conferences

19 – 23 January	Supreme & Federal Courts Judges' Conference (Adelaide)
21-25 September	The International Academy of Estate and Trust Law (Santiago, Chile)

##### Speaking Engagements

22-25 September	Annual Conference of The International Academy of Estate and Trust Law (Santiago, Chile), <i>Contesting Testamentary Instruments and Intestacies</i>
-----------------	--

##### Membership of Legal and Cultural Organisations

- Member, Executive Council, The International Academy of Estate and Trust Law
- Patron, Regional Arts New South Wales
- Honorary Member, Taxation Committee of Business Law Section of Law Council of Australia
- Member, Editorial Board, Law Book Company "Australian Tax Practice"
- Honorary Life Member, The Taxation Institute of Australia

#### THE HONOURABLE JUSTICE SHAW

##### Conferences

30 May – 1 June	The Judicial Conference of Australia's Colloquium 2003 (Darwin)
13 – 17 October	National Judicial Orientation Program

##### Speaking Engagements

30 May	Graduation Speech, Faculty of Law, University of Sydney
7 November	Address 2002/2003 Moot Awards Ceremony, Faculty of Law, University of Sydney

##### Publications

- "Dispute resolution, minus the judiciary", *Australian Financial Review*, 23 May 2003
- "Our Heritage of Practising Industrial Relations" (2003) Vol 28, Issue 5, *Industrial Relations Society of New South Wales Newsletter*
- "David Bennett QC", (2003) 77 *Australian Law Journal* 579
- "Is a clergyman an employee?" (2003) Vol 77 *Australian Law Journal* 588
- "Should the Upper House have the power to veto" (2003) 77 *Australian Law Journal* 634
- "When can a party to civil proceedings withdraw an admission?" (2003) 77 *Australian Law Journal* 731
- "Laying the foundations of industrial justice: the Presidents of the Industrial Relations Commission of NSW 1902-1998", 77 *Australian Law Journal*, 828
- "The Rule of Law and a Bill of Rights", Vol 75, No 5, 2003, *Australian Quarterly* 10
- "A Perilous and Fighting Life: From Communist to Conservative, the Political Writings of Professor John Anderson" (Book Review) ed. Mark Weblin, Pluto Press 2003, *The Sydney Morning Herald*, 6-7 December 2003

---

**Membership of Legal and Cultural Organisations**

---

- Deputy Chairperson, New South Wales Law Reform Commission
- Adjunct Professor, School of Business, Faculty of Economics and Business, University of Sydney
- Adjunct Professor, Faculty of Law, University of Technology, Sydney
- Honorary Visiting Professor, School of Law, Faculty of Law, University of New South Wales
- Member of the Management Committee of the Industrial Relations Research Centre, University of New South Wales

**THE HONOURABLE JUSTICE NICHOLAS**

---

**Membership of Legal and Cultural Organisations**

---

- Chairman, St Paul's College Council
- Director, NSW Cultural Management Ltd (Sydney Theatre)
- Chairman, Kimberley Foundation Australia
- Honorary Councilor, Royal Agricultural Society of NSW
- Trustee, McGarvie Smith Institute

**Delegations and International Assistance**

---

16 June	Delegation from Cambodia, (Mr Ang Vong Vathana (Secretary of State, Ministry of Justice, and Vice Chair, National Committee on Legal and Judicial Reform) and, Mr Bunyay Narin (Assistant to the Secretary of State), Overview of the Court
---------	---

---

**MASTER MCLAUGHLIN**

---

**Conferences**

---

1 – 6 June	Greek/Australian International Legal & Medical Conference (Rhodes, Greece)
------------	--

---

**Speaking Engagements**

---

10 November	Law Society of New South Wales, Wills & Estates Accredited Specialists
-------------	--

---

**MASTER MACREADY**

---

**Conferences**

---

30 May – 1 June	The Judicial Conference of Australia's Colloquium 2003 (Darwin)
18– 19 September	Australian Institute of Judicial Administration Masters' Conference (Perth)
19 – 21 September	Australian Institute of Judicial Administration Annual Conference (Fremantle, Perth)

---

**MASTER HARRISON**

---

**Conferences**

---

18– 19 September	Australian Institute of Judicial Administration Masters' Conference (Perth)
------------------	---

---

**Membership of Legal and Cultural Organisations**

---

- Part time Commissioner, NSW Law Reform Commission





Supreme Court of New South Wales

Law Courts Building  
184 Phillip Street  
Sydney NSW 2000  
Australia

GPO Box 3  
Sydney NSW 2001  
Australia

DX 829 Sydney

Phone: + 61 2 9230 8111  
Fax: + 61 2 9230 8628  
Email: [supreme\\_court@agd.nsw.gov.au](mailto:supreme_court@agd.nsw.gov.au)  
Internet: [www.lawlink.nsw.gov.au/sc](http://www.lawlink.nsw.gov.au/sc)