



NEW SOUTH WALES
BAR ASSOCIATION[®]

**COURT STRUCTURE,
JUDGES' TITLES AND
ORDER OF SENIORITY**

FEBRUARY 2018

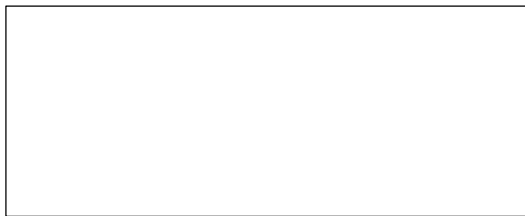
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NOTE: The information contained in this booklet is current as at February 2018. The Association does not accept responsibility if any information contained herein is relied on and happens to be incorrect or out of date. We welcome any feedback on this booklet. If you would like to make comments on the booklet, please contact the Deputy Executive Director, Alastair McConnachie at amcconnachie@nswbar.asn.au



INTRODUCTION

- i) In Australia courts cases are conducted under the adversarial system in which the court is asked to adjudicate upon 'issues' put forward by the parties upon evidence adduced by the parties. The presiding judge has no power of inquiry (the 'inquisitorial system'), unlike courts in parts of Europe.
- ii) Courts in Australia can only be created by the Commonwealth Constitution or an Act of Parliament. The Constitution provides that the judicial power of the Commonwealth be vested in a Federal Supreme Court known as the High Court of Australia, and other courts as created by the federal parliament. The High Court has original jurisdiction in interpreting the Constitution, it determines disputes between states and matters involving other countries or officers of the Commonwealth. It also reviews decisions of the federal and state/territory courts as the final court of appeal in Australia. It is a 'superior court', its judgments are final and conclusive.
- iii) A 'superior court' is a court of high authority. Other 'superior courts' in Australia are the Federal Court of Australia and the Family Court of Australia. In NSW the 'superior courts' are the Supreme Court of NSW, the Industrial Relations Commission of NSW and the Land and Environment Court.
- iv) In addition to federal and state/territory courts, there are a number of tribunals. Tribunals are bodies created to deal with specific areas of the law. They aim to deal with legal disputes in a cheap and speedy manner and keep cases from going to the higher courts. Often the procedures used are very informal and barristers and solicitors do not always appear.
- v) Generally speaking, courts are structured according to the limits of their 'jurisdiction'. This governs the types of legal disputes each court is empowered to deal with. Most commonly, jurisdiction is divided into civil and criminal. Civil jurisdiction is usually (but not always) determined on the basis of the amount of money at stake in the case. In criminal matters, jurisdiction is determined by the seriousness of the offence the accused is charged with, and consequently the penalty that may be imposed.

- vi) Because Australia has a federal system of government, some legal matters fall outside state/territory control. Common examples of this are family law (except Western Australia and the Northern Territory), customs, income tax and controlling the importation of drugs. These matters are thus usually heard in federal courts, not state/territory courts; however, in some circumstances state/territory courts may be given federal jurisdiction.

- vii) In addition to the federal and NSW court structures, this paper also deals with addressing judges and magistrates, the use of post-nominals, the order of seniority for barristers and admission to the roll of lawyers.

THE HIGH COURT OF AUSTRALIA

- 1.1 The High Court of Australia was created in 1901 pursuant to s71 of the *Commonwealth of Australia Constitution Act* ('*Constitution*') and came into existence in 1903. The High Court is the highest court in Australia and is the final court of Appeal. Access to the High Court is very limited.
- 1.2 The jurisdiction of the High Court is derived from s75 and s76 of the Constitution. Section 75 of the Constitution expressly confers on the Court original jurisdiction in all matters:
- (a) arising under any treaty;
 - (b) affecting consuls or other representatives of other countries;
 - (c) in which the Commonwealth, or a person being sued or being sued on behalf of the Commonwealth is a party;
 - (d) between states, or between residents of different states, or between a state and a resident of another state;
 - (e) in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth.

Under s76, Parliament may make laws conferring original jurisdiction on the High Court in any matter:

- (a) arising under the Constitution, or involving its interpretation;
 - (b) arising under any laws made by Parliament;
 - (c) of Admiralty or maritime jurisdiction; or
 - (d) relating to the same subject-matter claimed under the laws of different States.
- 1.3 The original jurisdiction of the High Court refers to matters that originate in the High Court. The requirement of 'a matter' in section 75 and section 76 of the constitution means that a concrete issue must need to be resolved. The High Court cannot give an

advisory opinion. Such matters are related to constitutional questions, disputes between the states or between the Commonwealth and the states, or involve foreign affairs and treaties. They may also be actions against people employed by or holding office under the Commonwealth.

- 1.4 The appellate jurisdiction of the High Court is conferred by s73 of the Constitution. Section 73 provides that the High Court can hear and determine appeals from decisions of the High Court itself in its original jurisdiction, Federal courts, other courts exercising federal jurisdiction, and State Supreme Courts.
- 1.5 Appellate cases are usually determined by a bench of five justices. Cases which involve interpretation of the Constitution, where the Court considers the principle of law involved to be one of public importance, or when the Court has been invited to depart from a previous decision, are usually determined by a full bench. A full bench comprises all seven Justice of the High Court if they are available to sit. There are also certain matters which can be heard and determined by a single Justice.
- 1.6 Generally speaking, the first step in getting an appeal to the High Court is for all appeal rights in the lower courts to have been exhausted. A 'special leave' application must then be filed with the High Court. The 'special leave' application is a short preliminary hearing before one or more judges (usually two) of the High Court. The gateway criteria for granting 'special leave' are set out in s35A of the *Judiciary Act 1903*.
- 1.7 In a special leave application, the applicant must convince the judge(s) that their case involves an important point of law which the Australian public would benefit from having decided with some finality or certainty.
- 1.8 The High Court is based in Canberra, but travels to Brisbane, Adelaide and Perth annually, and Hobart less frequently, for circuit sittings. As well, it regularly sits in both Sydney and Melbourne to hear 'special leave' applications. The Court is comprised of the Chief Justice and six other justices. The Chief Justice of the High Court of Australia is the Honourable Chief Justice Susan Kiefel AC. The other current

members of the Court are the Hon Justice Virginia Bell AC, the Hon Justice Stephen Gageler AC, the Patrick Keane AC, the Hon Justice Geoffrey Nettle, the Hon Michelle Gordon, and the Hon James Edelman.

- 1.9 For further information about the High Court see <http://www.hcourt.gov.au/> and the *Oxford Companion to the High Court*, available in the Association's Library.

FEDERAL COURTS AND TRIBUNALS

1 The Federal Court of Australia

2.1 The Federal Court of Australia, created by the *Federal Court of Australia Act 1976*, began to exercise its jurisdiction on 1 February 1977. It assumed some jurisdiction formerly exercised by the High Court of Australia and the entire jurisdiction of the Australian Industrial Court and of the Federal Court of Bankruptcy.

2.2 The Federal Court's jurisdiction covers almost all civil matters originating under federal law, including matters arising under the Constitution and some criminal matters. The Court most commonly deals with industrial disputes, corporations, trade practices, native title, judicial review and federal tax matters. It provides operational support for the Australian Competition Tribunal, Copyright Tribunal, Defence Force Discipline Appeal Tribunal and the Native Title Tribunal. The Federal Court also sits as an appeal court with three judges to hear appeals from decisions of single judges of the Court, decisions of the Supreme Court of Norfolk Island, decisions of the Federal Magistrates Court in non-family law matters, and certain decisions of the Supreme Courts of the states and territories exercising federal jurisdiction.

2.3 The Federal Court sits in each capital city in Australia.

2.4 The Chief Justice of the Federal Court is the Honourable James Allsop AO, who is based in Sydney. The Chief Justice manages the administrative affairs of the Court.

2.5 Some judges of the Federal Court of Australia are also Presidents or Deputy Presidents of the Administrative Appeals Tribunal, Australian Competition Tribunal, the Copyright Tribunal and the Defence Force Discipline Appeal Tribunal.

2.6 For further information about the Federal Court of Australia, see: <http://www.fedcourt.gov.au/>

3. The Family Court of Australia

- 3.1 The Family Court works within the powers given to it under the *Family Law Act 1975*. Prior to this Act, state courts heard and determined divorce and associated matters such as maintenance of children.
- 3.2 Although NSW courts can deal with children appearing in court, for example on a shoplifting offence, it is the Family Court which deals with issues such as residency and welfare of children (previously referred to as 'custody') following divorce or separation of the parents, access to children by the other parent, or grandparent, maintenance payments for children and spouses (where appropriate), division of property (usually) following divorce, etc. The Court also covers specialist areas such as applications pursuant to The Hague Convention on International Child Abduction, special medical procedures, and international relocation.
- 3.3 Since 1 March 2009 (1 July 2010 in South Australia), the Family Court of Australia also has jurisdiction to deal with property settlements involving separating de facto couples, regardless of whether they have children. The new laws enable de facto couples to access, as married couples can, the Family Court of Australia and the Federal Circuit Court (the Family Law Courts) for property and spousal maintenance matters. Cases concerning children of de facto couples have been part of the federal family law regime since 1988.
- 3.4 The Family Court exercises original and appellate jurisdiction throughout Australia except in Western Australia. In Western Australia, original jurisdiction under the Act is exercised by the Family Court of Western Australia (a state court funded by the Commonwealth Government). Since 1987 the judges of the Family Court of Western Australia have also held commissions of the Federal Court of Australia.
- 3.5 The Family Court can sit as the Full Family Court in order to hear appeals from single judge decisions of the Family Court. Generally, the Full Court consists of three judges.

The Family Court also provides mediation services to help resolve disputes.

- 3.6 The commencement of the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Shared Parental Responsibility Act) on 1 July 2006 made important changes to the operation of the family law system, particularly with the establishment of Family Relationship Centres. The key objective of the new system is to encourage shared parental responsibility after separation, promote solving of disputes outside court and to enable parenting disputes to be conducted using a less adversarial and more child focussed approach.
- 3.7 The Family Court sits in each capital city in Australia.
- 3.8 The Chief Justice of the Family Court of Australia is the Honourable John Pascoe AC CVO.
- 3.9 For further information about the Family Court of Australia see:
<http://www.familycourt.gov.au>

4. The Federal Circuit Court of Australia

- 4.1 The Federal Circuit Court of Australia was formerly known as the Federal Magistrates Court. The Court was originally established in 1999 by the *Federal Magistrates Act 1999* to deal with a range of less complex federal disputes previously heard in the Family Court of Australia and the Federal Court of Australia. The Court was established to provide a simple and accessible service for litigants and to ease the caseload. The Court's rules and procedures are simpler and less formal than the Federal Court. The use of conciliation, counselling and mediation is strongly encouraged in appropriate cases.
- 4.2 The Court was renamed the Federal Circuit Court of Australia by amendments made to what is now the *Federal Circuit Court of Australia Act 1999* by the *Federal Circuit Court of Australia Legislation Amendment Act 2012* passed on 19 November 2012. The changes commenced on 12 April 2013 and were intended to recognise the Court's broad jurisdiction and its regional circuit program. Amendments also included changing the title of Chief Federal Magistrate to Chief Judge while Federal Magistrates are now known as Judges.
- 4.3 The jurisdiction of the Federal Circuit Court includes family law and child support, admiralty, administrative law, bankruptcy, intellectual property, human rights, industrial law, consumer law, privacy law, and migration. The Federal Circuit Court has jurisdiction to hear any matters transferred to it by the Federal Court or the Family Court. Family law comprises a very large percentage of the court's workload. It does not deal with criminal matters.
- 4.4 Due to amendments in 2009, as from 1 July 2009, the Court was split into two divisions, the Fair Work Division and General Division. Proceedings must be instituted, heard and determined in one of these two divisions.

- 4.5 The Court shares its jurisdiction with the Federal Court of Australia and the Family Court of Australia, other than in migration where the Federal Circuit Court has the same jurisdiction in relation to application for judicial review as possessed by the High Court.
- 4.6 Appeals from final decisions of Federal Circuit Court judges in general federal law (other than migration) are to the Full Court of the Federal Court. The Chief Justice of the Federal Court does however have the power to direct an appeal to be heard by a single judge. Appeals from judicial review decisions of Federal Circuit Court judges in migration must be heard by a single judge. Appeals from final decisions of Federal Circuit Court judges in family law are to the Full Court of the Family Court. The Chief Justice of the Family Court, again, has the power to direct an appeal be heard by a single judge. Leave is required to appeal from interlocutory decisions of Federal Circuit Court judges as well as any child support decisions.
- 4.7 The Federal Circuit Court is based in the same premises as the other federal Courts. Its primary locations are Melbourne, Dandenong, Sydney, Adelaide, Brisbane, Cairns, Canberra, Darwin, Launceston, Hobart, Newcastle, Parramatta, Perth and Townsville. In addition, the court conducts regular circuits (sittings) in other regional and metropolitan locations. The court does not have its own registries, but relies on arrangements with the Federal and Family Courts to service its clients through their registries.
- 4.8 The Chief Judge of the Federal Circuit Court is The Chief Judge William Alstergren QC.
- 4.9 For further information about the Federal Circuit Court of Australia see:
<http://www.federalcircuitcourt.gov.au>

5. Fair Work Commission and Fair Work Ombudsman

5.1 The Fair Work Commission is the national workplace relations tribunal. It is an independent body with power to carry out a range of functions relating to workplace matters including:

- The safety net of minimum wages and employment conditions
- Enterprise bargaining
- Industrial action
- Dispute resolution
- Termination of employment; and
- Other workplace matters

5.2 For further information about the Fair Work Commission see: <https://www.fwc.gov.au/>

5.3 The Fair Work Ombudsman is an independent statutory office. The Ombudsman investigates complaints and also conducts audits on industries or workplaces, even if no complaint has been made. Its function is to promote workplace relations and monitor compliance with Commonwealth workplace laws. Australia's Fair Work Ombudsman is Natalie James.

5.4 For further information about the Fair Work Ombudsman see: <https://www.fairwork.gov.au/>

6. The National Native Title Tribunal

- 6.1 The National Native Title Tribunal was established in 1994 under the *Native Title Act 1993* to assist with native title application and Indigenous land use agreements.
- 6.2 Native title recognises a set of rights and interests over land or waters where Aboriginal and Torres Strait Islander groups have practised and continue to practise, traditional laws and customs prior to sovereignty. Native Title can also be thought of as a bundle of sticks, each stick representing specific rights, such as the right to live and camp in the area, conduct ceremonies, hunt and fish, collect food, build shelters and visit places of cultural importance.¹ Selling or leasing of the land, reduces the size of the bundle of sticks until sometimes nothing is left.
- 6.3 The Tribunal facilitates the resolution of disputes between Aboriginal and Torres Strait Islander communities, governments, industry and other people with rights or interests in the land and water concerned. The Tribunal mediates native title claims under the direction of the Federal Court of Australia. It is not a court and does not determine the existence of enduring native title; this is done at the Federal Court level.
- 6.4 On request, the Tribunal assists people in negotiations about proposed developments (e.g. mining). The Tribunal acts as an arbitrator or umpire in some situations where the parties involved cannot reach agreement about land use.
- 6.5 The Tribunal maintains a principal registry in Perth, other registries in Sydney, Adelaide, Melbourne, Brisbane and a regional office in Cairns.
- 6.6 Members of the Tribunal are appointed by the Governor General under the Native Title Act. The President of the Tribunal is Ms Raelene Webb QC.
- 6.7 For further information about the Native Title Tribunal, see <http://www.nntt.gov.au>.

¹ The Aurora Project, *What is native title?* <<http://auroraproject.com.au/what-native-title>>; *Western Australia v Ward* (2002) 191 ALR 1 [74]-[76], [95] (per Gleeson CJ, Gummow, Gaudron & Hayne JJ).

7. The Australian Competition Tribunal

- 7.1 The Australian Competition Tribunal was established under the *Trade Practices Act 1965* and continues under what was the *Trade Practices Act 1974*, the *Competition and Consumer Act 2010* (the Act). Prior to 6 November 1995, the Tribunal was known as the Trade Practices Tribunal.
- 7.2 The Tribunal hears applications for review of determinations of the Australian Competition and Consumer Commission ('the Commission') granting or revoking authorisations. Authorisations are granted by the Commission permitting conduct and arrangements (including company mergers and acquisitions) to be carried on that would otherwise be prohibited under the Act because of their anti-competitive effect.
- 7.3 The Tribunal hears applications for review of certain decisions of the Minister or the Commission in access matters. The Act establishes a legislative regime to facilitate third party access to the services of certain essential facilities of national significance such as electricity grids, telecommunications or natural gas pipelines. The Tribunal also hears applications for review of certain determinations of the Commission in relation to notices given by the Commission under s93 of the Act regarding exclusive dealing.
- 7.4 The Tribunal consists of a President, The Hon. Justice John Eric Middleton and such number of Deputy Presidents and other members as are appointed by the Governor-General. A presidential member must be a judge of the Federal Court. Other members must have knowledge of or experience in industry, commerce, economics, law or public administration. For the purpose of hearing and determining proceedings, the Tribunal is constituted by a presidential member and two non-presidential members.
- 7.5 For further information about the Australian Competition Tribunal see:
<http://www.competitiontribunal.gov.au>

8. The Copyright Tribunal

- 8.1 The Copyright Tribunal was established under Part VI of the *Copyright Act 1968*.
- 8.2 The Tribunal has the power to inquire into the amount of royalty payable in respect of the recording of musical works; fix royalties or equitable remuneration in respect of compulsory licences; arbitrate disputes in relation to the terms of existing and proposed licensing schemes; and deal with applications for the granting of licences.
- 8.3 For further information about the Copyright Tribunal see: [http://
www.fedcourt.gov.au/aboutct/aboutct_admin_other_ct.html](http://www.fedcourt.gov.au/aboutct/aboutct_admin_other_ct.html)
- 8.4 The principal office (registry) of the Tribunal is located in Melbourne.
- 8.5 For further information about the Defence Force Discipline Appeal Tribunal see: www.defenceappeals.gov.au

9. The Administrative Appeals Tribunal

- 9.1 The Administrative Appeals Tribunal (AAT) was established by the *Administrative Appeals Tribunal Act 1975*. The Act and the *Administrative Appeals Tribunal Regulations 1976* set out the Tribunal's powers, functions and procedures. The Tribunal aims to provide a mechanism of review which is fair, just economical, informal and quick.
- 9.2 As of July 2015, the Migration Review Tribunal (MRT), Refugee Review Tribunal (RRT) and Social Security Appeals Tribunal (SSAT) merged with the Administrative Appeals Tribunal. Decisions that could be reviewed in the former MRT or RRT are now reviewed under the Migration and Refugee Division of the AAT. Decisions that could be reviewed in the former SSAT are now reviewed under the Social Services and Child Support Division of the AAT.
- 9.3 The Tribunal is an independent body that reviews, on the merits, a broad range of administrative decisions made by Commonwealth (and, in limited circumstances, State) Government ministers and officials, authorities and other tribunals. The Tribunal also reviews administrative decisions made by some non-government bodies. The Tribunal decides whether, on the facts before it, the correct or, in a discretionary area, the preferable decision has been made in accordance with the applicable law. The Tribunal will affirm, vary, or set aside the original decision.
- 9.4 The Tribunal can only review a decision if an Act, regulation or other legislative instrument provides specifically that the decision is subject to review by the Tribunal. The Tribunal's jurisdiction is contained in over 400 separate Acts and legislative instruments, covering areas such as taxation, social security, veterans' affairs, workers' compensation, bankruptcy, civil aviation, corporations law, customs, freedom of information, immigration and citizenship, industry assistance and security assessments undertaken by the Australian Security Intelligence Organisation.
- 9.5 The Tribunal is not always the first avenue of review of an administrative decision. In some cases, it will not review a decision until after an internal review has been

undertaken by the department or agency that made the primary decision. In other cases, the Tribunal cannot review a decision until after an immediate review by a specialist tribunal e.g. matters involving social security, must be reviewed by the Social Security Appeals Tribunal before an application may be made to the AAT.

9.6 The Tribunal's membership consists of a President, Presidential Members (including Judges and Deputy Presidents), Senior Members and Members. The President of the Tribunal must be a judge of the Federal Court of Australia. The current president is the Hon Justice David Thomas.

9.7 For further information about the Administrative Appeals Tribunal see: <http://www.aat.gov.au>

10. The Australian Human Rights Commission

- 10.1 The Australian Human Rights Commission is an independent statutory government body, established in December 1986 by the *Australian Human Rights Commission Act 1986*. The Federal Attorney-General is the Minister responsible in Parliament for the Commission.
- 10.2 The Commission Administers the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, the *Disability Discrimination Act 1992*, the *Age Discrimination Act 2004*, as well as inquiring into alleged infringements of human rights under the *Australian Human Rights Commission Act 1986*.
- 10.3 The Commission also has specific responsibilities under the *Native Title Act 1993*, to report on the exercise and enjoyment of the human rights of Indigenous people with regards to native title, and the *Fair Work Act 2009*, in relation to federal awards and equal pay.
- 10.4 The Commission has additional responsibility in relation to the following international human rights instruments ratified by Australia: *International Covenant on Civil and Political Rights* (ICCPR); *Convention Concerning Discrimination in Respect of Employment and Occupation*; *Convention on the Rights of the Child* (CRC); *Declaration of the Rights of the Child*; *Declaration on the Rights of Disabled Persons*; *Declaration on the Rights of Mentally Retarded Persons*; and *Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief*
- 10.5 The role of the Human Rights Commission can be summarised as follows:
- investigating and conciliating complaints of discrimination or breaches of human rights
 - holding public inquiries into human rights issues of national importance and making recommendations to address discrimination or breaches
 - developing human rights education programs & resources for schools, workplaces and the community
 - providing independent legal advice to assist courts in cases that involve

human rights principles

- providing advice and submissions to parliaments and governments to develop laws, policies and programs consistent with existing national laws and international human rights agreements
- undertaking and coordinating research into human rights and discrimination issues.

10.6 Matters which can be investigated by the Commission include discrimination on the grounds of age, race, colour or ethnic origin, racial vilification, sex, sexual harassment, marital status, pregnancy, or disability. On receipt of a complaint, the Commission must make sure it can be investigated under the laws for which it has responsibility. The complaint is then reviewed as to whether it is suitable for conciliation, where the Commission brings the parties together to try and resolve the matter, or whether it should be terminated. Many complaints are successfully conciliated. If a complaint is terminated, the complainant can apply to the Federal Court of Australia or the Federal Magistrates Services for determination.

10.7 The Commission plays an important educative role in society in raising awareness of rights and responsibilities under anti-discrimination laws through the provision of programs or specialist, independent advice to schools, community groups, business and industry and government.

10.8 The Commission is administered by its President, Emeritus Professor Rosalind Croucher AM with seven commissioners:

- Ms June Oscar AO: Aboriginal and Torres Strait Islander Social Justice Commissioner
- The Hon Dr Kay Patterson AO: Age Discrimination Commissioner
- Ms Megan Mitchell: Children's Commissioner
- Mr Alastair McEwin: Disability Discrimination Commissioner
- Mr Edward Santow: Human Rights Commissioner
- Dr Tim Soutphommasane: Race Discrimination Commissioner
- Ms Kate Jenkins: Sex Discrimination Commissioner

10.9 For further information about the Australian Human Rights Commission see <https://www.humanrights.gov.au/>.

11. Australian Competition and Consumer Commission

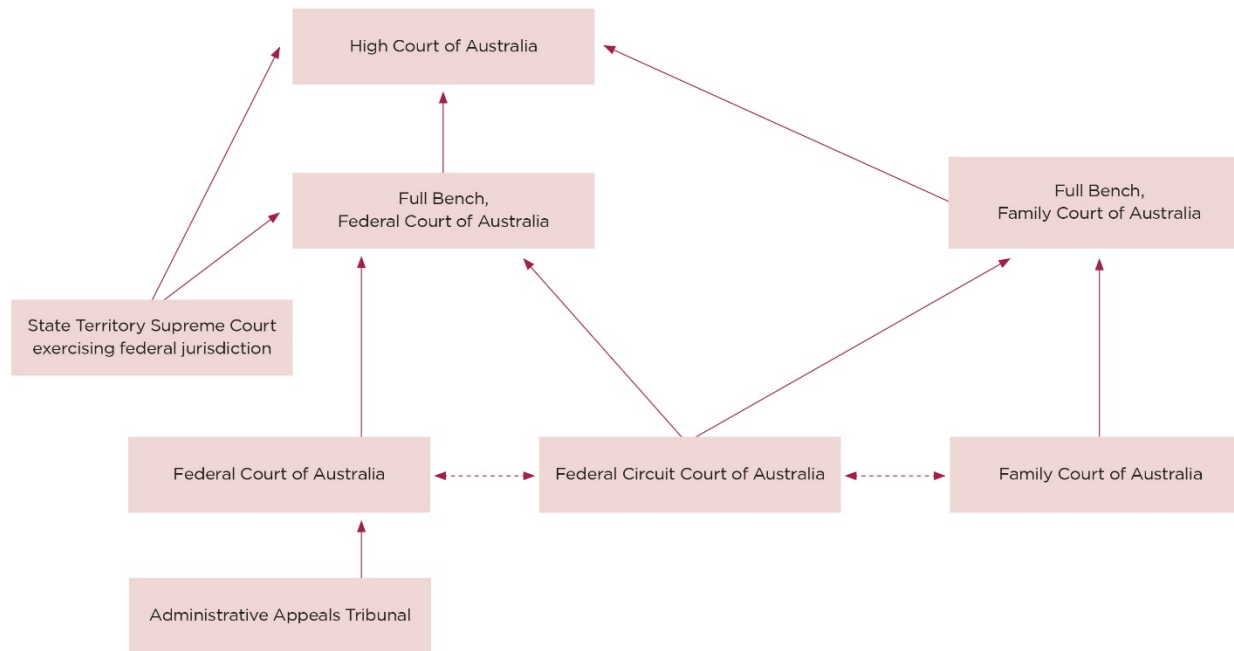
- 11.1 The Australian Competition and Consumer Commission (ACCC) was formed on 6 November 1995 by the merger of the Trade Practices Commission and the Prices Surveillance Authority. The Commission administers the *Trade Practices Act 1974* (renamed the *Competition and Consumer Act 2010*). It also has responsibilities under other legislation.
- 11.2 The *Competition and Consumer Act* covers anti-competitive and unfair market practices, mergers or acquisitions of companies, product safety/labelling, price monitoring and the regulation of industries such as telecommunications, gas, electricity and airports. The Commission is the only national agency dealing generally with competition matters.
- 11.3 The Commission promotes competition and fair trade to benefit consumers, business and the community. It also regulates national infrastructure services. The Commission's primary responsibility is to ensure that individuals and businesses comply with the Commonwealth competition, fair trading and consumer protection laws. The role of the Commission complements that of state and territory consumer affairs agencies which administer their respective legislation.
- 11.4 The Commission has a network of offices in all capital cities as well as Townsville to handle public complaints and inquiries. The national centres of operations are in Canberra and Melbourne. An information line is available to business and consumers to explain rights and obligations under the legislation, and how the commission is likely to react to particular business practices. Staff can provide guidance to business and consumers on their rights and obligations under the law, but not legal advice.
- 11.5 Appeals against some of the Commission's decisions, e.g. relating to grants of immunity from the Trade Practices Act can be made to the Australian Competition Tribunal.
- 11.6 The Chairman of the Commission is Rod Sims.

11.7 For further information about the Australian Competition and Consumer Commission see: <http://www.accc.gov.au>

STRUCTURE OF THE AUSTRALIAN FEDERAL COURTS SYSTEM

Federal Courts

Current as at February 2018



NEW SOUTH WALES
BAR ASSOCIATION

There are a number of Federal tribunals, commissions and boards each of which has appeal rights to either the Administrative Appeals Tribunal, Federal Court of Australia, Federal Circuit Court of Australia, or the Family Court of Australia. Included is a non-exhaustive list of the Federal tribunals, commissions and boards in Australia:

- Australian Competition Tribunal
- Australian Human Rights Commission
- Copyright Tribunal
- Fair Work Commission and Fair Work Ombudsman
- National Native Title Tribunal

KEY: referral

NEW SOUTH WALES COURTS AND TRIBUNALS

12. The Supreme Court of New South Wales

- 12.1 The Supreme Court of New South Wales, established by the 1823 Charter of Justice, is the highest court in New South Wales. The Court now operates under the *Supreme Court Act 1970* and the *Civil Procedure Act 2005*. The Court has unlimited civil jurisdiction and handles the most serious criminal matters. It has the ability to deal with all matters that are not within the exclusive jurisdiction of the federal courts and has supervisory jurisdiction over other NSW courts and tribunals.
- 12.2 The Court is divided into the Common Law Division and the Equity Division. Matters are heard before a Judge or an Associate Judge². The Common Law Division deals with civil, criminal and administrative law matters. The Equity Division hears equity, probate, commercial, admiralty and protective matters.
- 12.3 The Supreme Court also encompasses a Court of Appeal and a Court of Criminal Appeal to hear cases where one party believes an earlier decision of the Supreme Court or a lower court is incorrect.
- 12.4 The Supreme Court of NSW is based in Sydney (Law Courts Building, Queen's Square); however, the judges occasionally hear both civil and criminal cases in regional courts. Most criminal trials in the Supreme Court are heard at King Street or Darlinghurst.
- 12.5 The Chief Justice of the Supreme Court of NSW is the Honourable T F Bathurst. The President of the Court of Appeal is the Honourable Justice Margaret Joan. Beazley AO. The Chief Judge at Common Law is the Honourable Justice Clifton Ralph Russell Hoeben AM RDF. The Chief Judge in Equity is the Honourable Justice Julie Ward.
- 12.6 For further information about the Supreme Court of NSW see: <http://www.supremecourt.justice.nsw.gov.au/>

13. The Court of Appeal and Court of Criminal Appeal

- 13.1 The Court of Appeal hears appeals arising from civil matters from the Supreme Court, District Court, Land and Environment Court, and some tribunals. In some cases the right of appeal is not automatic and a grant of leave may be required.
- 13.2 The Court of Criminal Appeal is the State's highest court for criminal matters. It deals exclusively with appeals arising from criminal trials. Appeals are normally heard by three judges or, in some sentence appeals where there is no issue of principle, two judges. In some cases dealing with very important principles of law, a full bench of five judges will sit.
- 13.3 The Court of Appeal and the Court of Criminal Appeal can review questions of law and may overturn findings of fact. They can also reduce or increase penalties or awards of damages or gaol sentences. The only avenue of appeal at this stage is to the High Court for which special permission must be granted.
- 13.4 The President of the Court of Appeal is the Honourable Justice Margaret Joan Beazley AO. There is no President of the Court of Criminal Appeal, the Chief Justice oversees its operations.

14. **The Industrial Relations Commission and the Industrial Court of New South Wales**

- 14.1 The Industrial Relations Commission of New South Wales was established under the *Industrial Relations Act 1996*. The Commission may be constituted as the Industrial Court of New South Wales, and in such circumstances is a court of equivalent status to the Supreme Court.
- 14.2 The Commission deals with most aspects of employment law and industrial relations. It conciliates and arbitrates to resolve industrial disputes, sets conditions of employment, fixes wages and salaries by making industrial awards, approves enterprise agreements and decides claims of unfair dismissal.
- 14.3 When not sitting as the Industrial Court, the Commission is not bound to act in a formal manner, nor is it bound by the rules of evidence. It may inform itself on any matter in any way it considers just and it is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms. The rules of evidence and other formal procedures of a superior court do, however, apply to the Industrial Court.
- 14.4 The Commission has an appellate jurisdiction which considers appeals from single members of the Commission, the Industrial Magistracy (Magistrates in the Local Court who most commonly deal with underpayment of wages claims and prosecutions for breaches of various industrial and occupational health and safety laws) and the Industrial Registrar. Appeals are to a Full Bench of the Commission and proceed by way of application for leave to appeal. A Full Bench usually consists of at least three Members of the Commission (judges, Deputy Presidents and Commissioners) and usually includes at least one Presidential Member (that is, a Judge or a Deputy President) and one Commissioner. A Full Bench of the Industrial Court of New South Wales must include only judicial members.
- 14.5 The Industrial Court has a civil jurisdiction and a criminal jurisdiction where it hears

serious breaches of the State's occupational health and safety laws.

- 14.6 Section 179(1) of the *Industrial Relations Act* provides that where an appeal to the Full Bench of the Commission has been exercised, the decision of the Commission is final and may not be appealed against, reviewed, quashed or called into question by any court, tribunal, whether on an issue of fact, law jurisdiction or otherwise.
- 14.7 The judicial members of the Commission are the judges of the Industrial Court. They have power to deal with criminal matters brought before the Commission, matters involving harsh and unfair contracts and certain matters relating to trade unions.
- 14.8 All Members of the Commission have power to deal with industrial disputes, conditions of employment, the making of awards and industrial agreements and claims for unfair dismissal.
- 14.9 Since 1 January 2010 all private sector employees previously covered by the NSW industrial relations system were transferred into the national award scheme. As a result, the jurisdiction of the Commission has been reduced to matters involving the terms and conditions of employment of state and local government employees.
- 14.10 The Commission's and the Court's principal premises are in the Chief Secretary's Building, Sydney. There are also Commission sites in Newcastle, Parramatta and Wollongong.
- 14.11 The head of the jurisdiction is the Chief Commissioner. The Chief Commissioner is Peter Kite SC.
- 14.12 For further information about the Industrial Relations Commission and the Industrial Court see: <http://www.irc.justice.nsw.gov.au/>.

15. The Land and Environment Court of New South Wales

15.1 The Land and Environment Court of New South Wales was established in 1980, replacing the Local Government Appeals Tribunal, the Land and Valuation Court, the Clean Waters Appeal Board and the Valuation Boards of Review. Certain jurisdictions formerly exercised by the District Court were also transferred to the Land and Environment Court.

15.2 The jurisdiction of the Court is governed by the *Land and Environment Court Act 1979*. In a broad sense, the Court is vested with the power to determine environmental, development, mining, building and planning disputes. The Court is highly specialised and has the same status as the Supreme Court of NSW.

15.3 The Court has appellate and review jurisdiction divided into eight classes of proceedings:

1. Environmental planning and protection appeals;
2. Local government and miscellaneous appeals and applications;
3. Land tenure, valuation, rating and compensation matters;
4. Environmental planning and protection;
5. Environmental planning and protection (criminal enforcement);
6. Appeals by defendants from convictions relating to environmental offences imposed by magistrates in the Local Court;
7. Applications for leave to appeal with respect to environmental offences; and
8. Hear disputes arising under the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991*.

Proceedings may be transferred between the Supreme Court and the Land and Environment Court.

15.4 The Court cannot award damages. Damages can be sought in the Supreme Court. The Land and Environment Court can, however, order an injunction to restrain or stop someone from doing something, or order a declaration, which is a statement by the Court setting out what the law is or whether the law has been broken in a particular case.

15.5 The Chief Judge of the Land and Environment Court is the Honourable Justice Brian J Preston SC. The Court Registry is located at level 4, 225 Macquarie Street, Sydney, however the Court has adopted a number of measures to extend its reach beyond the metropolitan area including measures that allow Land and Environment Court to sit or documents to be filed, at any Local Court in NSW.

15.6 For further information about the Land and Environment Court see:

<http://www.lec.justice.nsw.gov.au/>

16. The District Court of New South Wales

- 16.1 The District Court is the 'intermediate court' in NSW. The District Court has jurisdiction in both civil and criminal matters.
- 16.2 The criminal jurisdiction of the District Court (as set out in the *Criminal Procedure Act 1986*) is concerned with indictable matters, that is, serious criminal offences which are normally heard by a judge and jury but on occasions by a judge alone. The Court does not, however, deal with treason or murder, which are dealt with by the Supreme Court.
- 16.3 The Court can hear appeals from the Local Court, the Children's Court and preside over a range of administrative and disciplinary tribunals.
- 16.4 In its civil jurisdiction the District Court can deal with motor accident (personal injury) cases, irrespective of the amount claimed, and other claims up to \$750,000. The Court can deal with cases where larger amounts are involved if both parties agree.
- 16.5 Some former Compensation Court matters were transferred to the District Court, when the Compensation Court was abolished after the enactment of the *Compensation Court Repeal Act 2002*. These matters include:
1. The *Police Act 1990* - concerning police officers hurt whilst on duty;
 2. The *Police Regulation (Superannuation) Act 1906* - concerning the payment of superannuation benefits to police officers;
 3. The *Workers' Compensation Act 1987*- concerning workers in or about a coal mine;
 4. The *Workers' Compensation (Dust Diseases) Act 1942*;
 5. The sporting injuries insurance scheme; and
 6. The *Workers' Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*.
- 16.6 The District Court is based in Sydney in the John Maddison Tower (next door to the Downing Centre) on the corner of Elizabeth and Goulburn Streets. The District

Court also sits permanently in some major centres, e.g. Parramatta, Wollongong and Newcastle. Judges travel on 'circuit' to hear cases in the main towns in NSW.

- 16.7 The Chief Judge of the District Court is the Honourable Justice Derek Michael Price AM who has the status of a Supreme Court Judge.
- 16.8 For further information about the District Court see <http://www.districtcourt.justice.nsw.gov.au/>

17. The Workers' Compensation Commission

- 17.1 The Workers' Compensation Commission, partially replaced the Compensation Court of NSW. The Commission is an independent statutory tribunal for disputed workers' compensation claims in NSW and was established by the *Workplace Injury Management and Workers Compensation Act 1998*.
- 17.2 The Commission deals with interim payment directions; weekly benefits paid as compensation for loss of earnings; medical and related expenses; permanent impairment/pain and suffering; payment for damages to personal property; compensation for domestic assistance; compensation for the death of a worker and management of a worker's injury/illness in the workplace (suitable duties).
- 17.3 The Commission consists of the President, two Deputy Presidents, a Registrar and Arbitrators, supported by Approved Medical Specialists and other staff. The President is the judicial head of the Commission. The President hears appeals from Arbitrators' decisions, determines points of law and appoints the Commission's Arbitrators and Approved Medical Specialists. The two Deputy Presidents also hear appeals from Arbitrators' decisions.
- 17.4 The President of the Commission is the Hon. Judge Greg Keating. The Commission is located at 1 Oxford Street, Darlinghurst.
- 17.5 For further information about the Workers' Compensation Commission see <http://www.wcc.nsw.gov.au>

18. The Local Court of New South Wales

- 18.1 The Local Court has jurisdiction to deal with the vast majority of criminal and summary prosecutions and civil matters with a monetary value of up to \$100,000 when sitting in its General Division, and \$10,000 when sitting in its Small Claims Division. The Court also conducts committal proceedings to determine whether indictable offences are to be committed to the District and Supreme Courts.
- 18.2 On 6 July 2009, the *Local Courts Act 1982* was repealed and replaced by the *Local Court Act 2007*. The new Act abolished the Local Courts within NSW and provides for one Local Court of NSW sitting at different locations. It also provides for the appointment of Magistrates and other officers of the Court and outlines the jurisdiction of the Court.
- 18.3 In criminal matters magistrates hear criminal cases which do not need a judge and jury. These are called summary offences and include traffic matters, minor stealing, offensive behaviour, and some types of assault. Magistrates also hear applications for apprehended violence orders where one person is seeking a restraining order against another. In more serious matters such as armed robbery or attempted murder, a magistrate conducts 'committal proceedings' to decide if there is enough evidence to go before the District or Supreme Court.
- 18.4 The Downing Centre (the old Mark Fays Building) on the corner of Elizabeth and Liverpool Street is the main Local Court in Sydney. In addition to the Downing Centre the Local Court is found in a large number of suburbs in Sydney and both large and small country towns. These courts, usually attached to the local police station, hear matters that have occurred in the surrounding areas. For a detailed description of the location of the Local Court in each area see: http://www.localcourt.justice.nsw.gov.au/localcourts/court_locations.html
- 18.5 The Chief Magistrate of the Local Court is His Honour Chief Magistrate Graeme Henson.

18.6 For further information about the Local Court see:
<http://www.localcourt.justice.nsw.gov.au/>

19. Coroners Court

19.1 The NSW Coroner's Court is headquartered in Glebe Sydney, with a system that runs across the state. Coroners ensure that reported deaths, suspected deaths, fires and explosions (which cause serious injury or damage to property) are properly investigated. The Coroner's Court has jurisdiction where the deceased had some connection with the State of NSW, i.e. at the time of death the person was a resident, travelling through or died in NSW. The coroner may conduct an inquest (hearings) into such deaths.

19.2 The role of the coroner is outlined in the *NSW Coroners Act 1980*. All coroners and deputy coroners are magistrates. Coronial inquests in the Sydney metropolitan area are generally conducted by the State Coroner or one of the Deputy State Coroners at Glebe, or in hearing rooms in the Local Court at Parramatta. Coroners also travel to regional courthouses to conduct inquests when required however in these areas, an inquest may be conducted by the Local Court magistrate in his or her capacity as a coroner.

19.3 A death must be reported to a Coroner in a large number of circumstances. The most common is where a person has died a violent or unnatural death, died suddenly and the cause is unknown, or died while in police custody or during a police operation.

19.4 As part of an inquiry, the coroner will determine the identity of the deceased person, inquire into the time, place, cause and manner of death; refer the matter to the Director of Public Prosecutions if the inquest reveals that a known person has committed a serious criminal offence in connection with the death; act in the public interest by notifying relevant authorities of any practices; policies or laws which could be changed to prevent similar deaths; and highlight other matters of public importance

19.5 The State Coroner is Magistrate Michael Barnes.

19.6 For further information about the Coroners Court see:

<http://www.coroners.justice.nsw.gov.au/>

20. The Drug Court of NSW

- 20.1 The Drug Court is a special court established pursuant to the *Drug Court Act 1998* with the responsibility for dealing with non-violent criminal matters committed by drug dependent offenders. The Court emerged as a result of the inability of the traditional criminal justice approaches to provide long-term solutions to the cycle of drug use and crime and aims to assist drug-dependent offenders to overcome their dependence and criminal offending. The Court provides intensive judicial supervision, treatment provision and individual case management for eligible offenders in a Drug Court program.
- 20.2 The aim of the Court is to reduce the level of criminal activity that results from drug dependency. The Court achieves that object by establishing a scheme under which drug dependent persons who are charged with criminal offences can be diverted into programs designed to eliminate, or at least reduce, their dependency on drugs.
- 20.3 The Court exercises Local Court and District Court criminal jurisdiction and sits in three locations, Parramatta, Sydney CBD and Toronto on the state's north coast.
- 20.4 To be eligible for the Drug Court a person must be highly likely to be sentenced to full-time imprisonment if convicted; have indicated that he or she will plead guilty to the offence; be dependent on the use of prohibited drugs; reside within the catchment area (specified areas of Western Sydney); be referred from a court in the catchment area; be 18 years of age or over and be willing to participate. A person is not eligible if he or she is charged with an offence involving violent conduct, is charged with a sexual offence or an offence punishable under Division 2 Part 2 of *the Drug Misuse and Trafficking Act 1985*, or is suffering from a mental condition that could prevent or restrict participation in the program. There is no appeal against a decision taken by the Drug Court to refuse entry to a program.
- 20.5 Part of the role of the Drug Court Team is to oversee the progress of participants through the program, and formulate strategies to assist in the participant's

rehabilitation. The Drug Team consists of the DPP solicitor, a police representative, Clinical Nurse Consultant, Legal Aid solicitors, Probation and Parole Coordinator, the Court Registrar and the Judge.

20.6 The Drug Court program is individually tailored to address each participant's specific needs and will last for at least 12 months unless it is terminated sooner. The treatment options include abstinence, methadone and buprenorphine programs conducted in either the community or residential rehabilitation settings. Ongoing psychiatric treatment is also provided. Participants are also regularly tested for drug use. Participants are closely monitored by the Court.

20.7 The Senior Judge of the Drug Court is his Honour Judge Roger Dive.

20.8 For further information about the Drug Court of NSW see:

<http://www.drugcourt.justice.nsw.gov.au/>

21. Children's Court

- 21.1 In all States and Territories, there are specialised children's courts that have jurisdiction over offences committed by young people. The courts may be constituted by a specialised children's court magistrate or judge, or by a magistrate constituting a children's court and exercising the powers under the relevant legislation. In most jurisdictions, they are modified courts of summary jurisdiction with enlarged powers to deal with matters summarily.
- 21.2 The Children's Court in NSW is a specialised court that deals with matters related to the care and protection of children and young people, and also criminal cases concerning children and young people. Established in 1988 under the *Children's Court Act 1987*, 'young people' refers to people who are under 18 years of age or were under 18 at the time of the alleged offence (Section 8, *Children and Young People Act 1999*).
- 21.3 Juveniles in NSW charged with serious offences such as murder, rape and armed robbery are tried in a higher court: Section 28 of the *Children (Criminal Proceedings) Act 1987*.
- 21.4 Proceedings in the Children's Court are conducted with as little formality and legal technicality as the case permits. They are also not conducted in an adversarial manner. The Court tries to ensure that a child or young person has every opportunity to be heard and participate in the proceedings and that the proceedings and decisions are understood by the child or young person.
- 21.5 The Court can make a variety of orders with respect to the care and protection of a child or young person, including:
1. interim care orders;
 2. orders for supervision; orders allocating parental responsibility for a child or young person;

3. orders prohibiting an act by a person with parental responsibility;
4. contact orders;
5. orders for the provision of support services; and
6. orders to attend therapeutic or treatment program.

21.6 The Children's Court in NSW is not open to the public when it is hearing criminal proceedings to which a child is a party: Section 10 of the *Children (Criminal Proceedings) Act 1987*.

21.7 The head of the Children's Court is the President, His Honour Judge P Johnstone.

21.8 For further information about the Children's Court of NSW see:
<http://www.childrenscourt.justice.nsw.gov.au/>

22. NSW Civil and Administrative Tribunal (NCAT)

22.1 The NSW Civil and Administrative Tribunal (NCAT) is an independent statutory body established by the *Civil and Administrative Tribunal Act 2013*. Two further pieces of legislation have been enacted that amend the Act to provide the powers, and duties of NCAT. These are the *Civil & Administrative Tribunal Amendment Act 2013* (NSW) and the cognate *Civil & Administrative Legislation (Repeal & Amendment) Act 2013* (NSW).

22.2 NCAT is a 'super tribunal' which consolidated the work of 22 former tribunals into a single point of access for specialist tribunal services in **NSW**. It deals with a broad and diverse range of matters, from tenancy issues and building works, to decisions on guardianship and administrative review of government decisions.

22.3 On 1 January 2014 the following former tribunals were consolidated into NCAT:

- Aboriginal and Torres Strait Islander Health Practice Tribunal
- Aboriginal Land Councils Pecuniary Interest and Disciplinary Tribunal
- Administrative Decisions Tribunal
- Charity Referees
- Consumer, Trader and Tenancy Tribunal (CTTT)
- Dental Tribunal
- Guardianship Tribunal
- Chinese Medicine Tribunal
- Chiropractic Tribunal
- Medical Radiation Practice
- Medical Tribunal
- Nursing and Midwifery Tribunal
- Occupational Therapy Tribunal
- Optometry Tribunal
- Osteopathy Tribunal
- Pharmacy Tribunal
- Physiotherapy Tribunal

- Podiatry Tribunal
- Psychology Tribunal
- Local Government Pecuniary Interest and Disciplinary Tribunal
- Local Land Boards
- Victims Compensation Tribunal
- Vocational Training Appeals Panel

22.4 NCAT's workload is managed under four divisions – Consumer and Commercial, Administrative and Equal Opportunity, Occupational and Guardianship. NCAT also has an Internal Appeals Panel which determines appeals against decisions of the Tribunal.

22.5 Matters previously heard in the CTTT are now heard in NCAT's Consumer and Commercial Division, as are retail lease matters (previously heard in the ADT) and dividing fence matters (previously dealt with by Local Land Boards).

22.6 Matters previously heard in the ADT's General and Equal Opportunity Divisions are now heard in NCAT's Administrative and Equal Opportunity Division.

22.7 Matters previously heard in the Guardianship Tribunal are now heard in NCAT's Guardianship Division.

22.8 Occupational Division matters include health practitioner matters previously dealt with by the former various medical tribunals, and legal practitioner matters (previously dealt with by the ADT).

22.9 The President of NCAT is a Supreme Court judge with experience in administrative law and commercial dispute resolution. The inaugural NCAT President is the Hon Justice Robertson Wright.

22.10 Each NCAT division and the Internal Appeals Panel is headed by a Deputy President with experience relevant to the subject matter of that division. Each Deputy President is responsible for the day-to-day running of the division, including the allocation of members to hear matters. The five Deputy Presidents are:

- Magistrate Nancy Hennessy: Administrative and Equal Opportunity Division

- Mr Malcolm Schyvens: Guardianship Division
- Mr Stuart Westgarth: Consumer and Commercial Division
- The Hon Acting Judge Jennifer Boland AM: Occupational Division
- Acting Judge Kevin O'Connor AM

22.11 Tribunal Members are independent statutory officers appointed by the Attorney General and Minister for Justice under the *Civil and Administrative Tribunal Act 2013*. Members are assigned to Divisions to hear and determine matters before them.

22.12 NCAT's Divisional Registrars are responsible for providing specialised administrative and case management support for applications received in their Division. They are also responsible for managing Registry staff and other functions as delegated by the Principal Registrar.

22.13 For further information about NCAT see: <http://www.ncat.nsw.gov.au/>

23. Independent Commission Against Corruption

- 23.1 Independent Commission Against Corruption (ICAC) was established in 1989 by the Independent Commission Against Corruption Act 1988. The Commission has the authority to investigate any matter involving public sector corruption in NSW. It is an independent statutory body which also has advisory and educative functions.
- 23.2 The jurisdiction of the ICAC extends to all NSW public sector agencies (except the NSW Police Force) and employees, including government departments, local councils, members of Parliament, ministers, the judiciary and the governor.
- 23.3 The Commission is a public authority, but is independent of the Government and is accountable to the people of NSW through the NSW Parliament. Its aims are to protect the public interest, prevent breaches of public trust and guide the conduct of public officials.
- 23.4 The Commission has three main functions:
1. Investigating and publicly exposing corrupt conduct so lessons may be learned and its recurrence minimised - this can include public hearings but most investigations are conducted in private;
 2. Actively preventing corruption by giving advice and assistance; and
 3. Educating the community and public sector about corruption and its effects.
- 23.5 The Commission appears to run like a court but key differences include that it can only make recommendations for prosecution and it is not bound by rules of evidence or grounds of privilege and self-incrimination.
- 23.6 Amongst other things, the Commission is required to investigate any matter referred to it by both houses of Parliament, produce reports on any matter the subject of a public inquiry, or matters referred by both houses of Parliament, and furnish the reports for tabling in Parliament.
- 23.7 ICAC may only investigate conduct that involves or affects a NSW public official or

NSW public sector organisation which could amount to dishonest exercise of public official functions, or could adversely affect the exercise of official functions and are serious enough to constitute a criminal offence or warrant disciplinary action. For members of the NSW Parliament and local government councillors, such a matter might also constitute a substantial breach of an applicable code of conduct.

23.8 The ICAC Chief Commissioner is the Honourable Peter Hall QC. Ms Patricia McDonald SC and Mr Stephen Rushton SC are part-time Commissioners

23.9 For further information about the Independent Commission Against Corruption see:
<http://www.icac.nsw.gov.au/>

24. Judicial Commission

- 24.1 The Judicial Commission of NSW was established by the *Judicial Officers Act 1986*, and commenced operation in October 1987. It is an independent statutory body. The Commission's principal functions are to assist the courts to achieve consistency in sentencing, organise and supervise an appropriate scheme of continuing education and training of judicial officers both in NSW and overseas, and examine complaints against judicial officers in **NSW**.
- 24.2 The Commission consists of six official members, being the heads of jurisdiction in the State's six courts (Supreme Court, Court of Appeal, Industrial Relations Commission, Land and Environment Court, District Court and Local Court), together with four members appointed by the Governor of **NSW**. The President of the Commission is the Honourable Chief Justice Bathurst.
- 24.3 For further information on the Commission see: <http://www.judcom.nsw.gov.au>

25. The Dust Diseases Tribunal

- 25.1 The Dust Diseases Tribunal established by the *Dust Diseases Tribunal Act 1989*, is a specialist Court dealing with claims in tort for negligence relating to death or personal injury resulting from dust-related diseases including exposure to asbestos.
- 25.2 The Tribunal also hears ancillary matters relating to actions for nervous shock, claims under the *Compensation to Relatives Act 1897*, claims for product liability based on exposure to dust, claims for contribution or indemnity between tortfeasors, and claims for indemnity arising under insurance policies.
- 25.3 The Tribunal was established to inexpensively fast-track claims for damages for sufferers of dust related diseases many of whom are in the final stage of their illness or for dependents of sufferers who have already died.
- 25.4 Proceedings are brought before the Tribunal by filing a Statement of Claim in the Tribunal's Registry. The practice and procedure which applies in the Tribunal is determined by the *Supreme Court Rules* (which have now been largely superseded by the *Uniform Civil Procedure Rules*). There are different procedures for asbestos exposure related cases and those cases that involve exposure to other dusts. Claims are prioritised so that plaintiffs whose life-expectancy is shortest are dealt with first.
- 25.5 The Tribunal is a court of record and has the same powers that the Supreme Court used to have in relation to dust diseases cases, including the ability to award damages against a defendant who negligently exposed an injured plaintiff to dust.
- 25.6 The President of the Tribunal is the Chief Judge of the District Court, the Hon Justice Derek Price AM
- 25.7 For further information on the Dust Diseases Tribunal see: <http://www.dustdiseasestribunal.justice.nsw.gov.au/>

26. The Mental Health Review Tribunal

- 26.1 Established in 2007 the Mental Health Review Tribunal is a specialist quasi-judicial body operating under the *Mental Health Act 2007* and the *Mental Health (Forensic Provisions) Act 1990*.
- 26.2 The Tribunal has broad powers to make decisions regarding the care and treatment of mentally ill persons in **NSW**. It has both civil and forensic jurisdiction. The civil jurisdiction deals with people receiving treatment from general mental health facilities while the forensic jurisdiction which deals with people involved with the criminal justice system as forensic or correctional patients.
- 26.3 The Tribunal conducts hearings at inpatient and community mental health facilities throughout the Sydney metropolitan area as well as in large regional centres like Newcastle, Wollongong, Goulburn and Orange and via videoconference. Each Tribunal panel consists of three members with extensive experience in mental health: a lawyer member who chairs the hearing, a psychiatrist and another suitably qualified member. Single members may conduct mental health inquiries for people who have been detained in a mental health facility.
- 26.4 The Tribunal reviews case management plans proposed by psychiatric case managers and hospital staff. It does not prescribe drugs or treatments. The Tribunal conducts hearings and collects evidence from consumers, mental health workers and other interested people. The Tribunal can consider reports from the patient or mental health consumer, their relatives and friends, treating doctors, social workers, nurses, case workers and other hospital or community centre staff. The Tribunal is not bound by the formal rules of evidence and is able to ask questions and gather whatever information it deems relevant during a hearing.
- 26.5 After considering this information, the Tribunal members decide whether or not the treatment and care suggested by the hospital or community health centre staff is appropriate and in line with the Mental Health Act. If they agree, the Tribunal sets out its decision and makes a legally binding order. If the Tribunal does not agree with the

treatment plan suggested by the health care team, they may discharge the patient, adjourn the review to get more information or vary the proposed plan.

26.6 In civil hearings, the Tribunal may:

- make Temporary Patient Orders and Continued Treatment Patient Orders, authorising the continued involuntary detention of a person made an involuntary patient by a Magistrate's Order;
- review continued treatment patients (usually every 6 months);
- review informal (voluntary) patients (usually every 12 months);
- hear appeals against a medical officer's refusal to discharge an involuntary patient
- make, vary and revoke Community Treatment Orders;
- hear appeals against a Magistrate's decision to make a Community Treatment Order;
- approve the use of electro-convulsive therapy (ECT) for involuntary patients and determine if voluntary patients have consented to ECT;
- Approve surgery on a patient detained in a mental health facility;
- approve special medical treatment (sterilisation); and
- make orders under the *NSW Trustee and Guardian Act 2009* for a person's financial affairs to be managed by the NSW Trustee

26.7 The Tribunal also reviews the cases of all forensic patients (at least every 6 months) who have been found not guilty by reason of mental illness, found unfit to be tried, or transferred from prison to hospital because of mental illness. The Tribunal makes recommendations to the NSW Minister for Health about their care and treatment and can also make a determination about whether a person is fit to stand trial.

26.8 Appeals against the decision of the Tribunal must be made to the Supreme Court of NSW.

26.9 The Tribunal has a president, two full time and eight-part time deputy presidents, a registrar and approximately one-hundred-part time members. The current president is

Professor Dan Howard SC.

26.10 For further information on the Mental Health Review Tribunal see: [http://
www.mhrt.nsw.gov.au](http://www.mhrt.nsw.gov.au)

27. Community Justice Centres

27.1 Community Justice Centres are not courts but operate a free, impartial and confidential mediation and conflict management services to assist people resolve disputes. The Centres operate under the *Community Justice Centres Act 1983*.

27.2 The types of matters dealt with by the Centres include family disputes and youth conflict, workplace grievances, neighbourhood and community disputes.

27.3 The services provided by the Centres are mediation, conflict management, dispute counselling, facilitation, technology assisted mediation and community education. Mediation is the preferred method of dispute resolution. Mediations are conducted by mediators who are selected, trained and supervised by the Centres. All mediators are accredited under the National Mediator Accreditation System (NMAS) and comply with the NMAS Practice Standards.

27.4 The Centres are funded by the NSW Government and forms part of the NSW Department of Attorney General and Justice.

27.5 For further information about Community Justice Centres see: <http://www.cjc.justice.nsw.gov.au/>

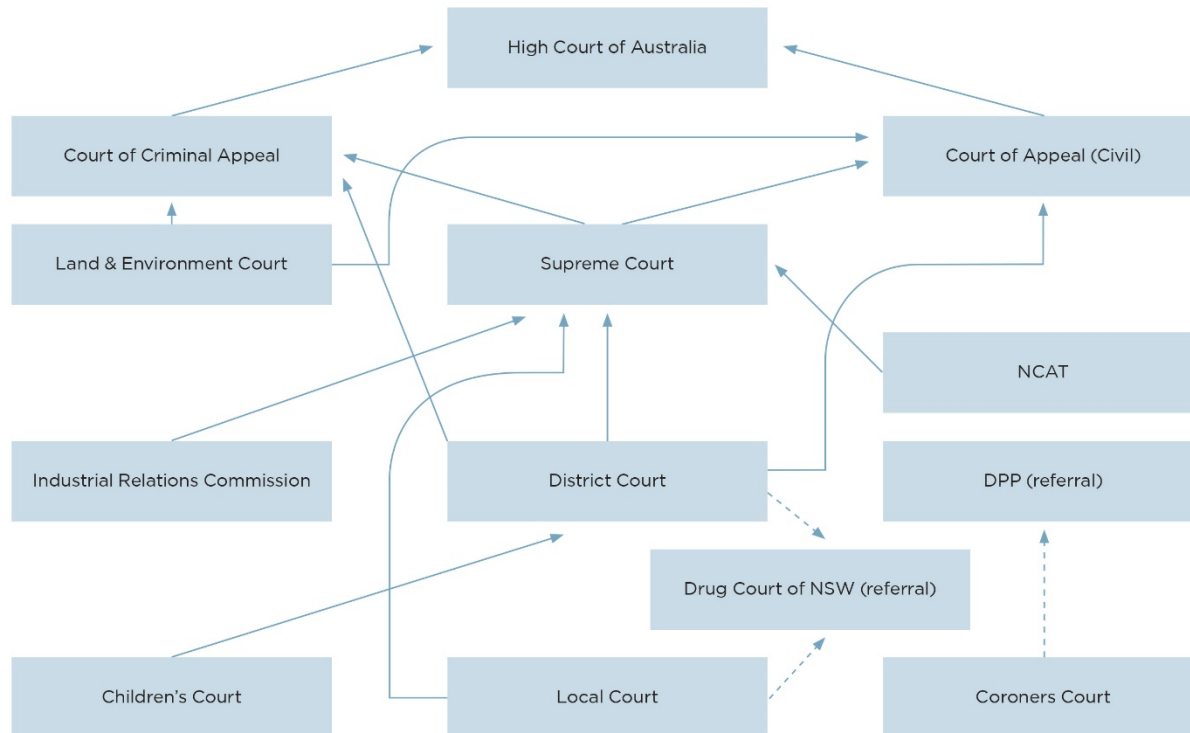
28. LawAccess NSW

- 28.1 LawAccess NSW is a free Legal Helpline service that provides the people of NSW with a telephone service where they can be referred to appropriate legal and related assistance services state wide. LawAccess NSW was launched by the then Attorney General of NSW, the Hon Bob Debus MP, on 17 June 2002.
- 28.2 In addition to referrals, LawAccess also provides legal information and general advice; it develops and distributes legal information resources, and works with other legal assistance services in NSW to streamline the provision of legal services.
- 28.3 The New South Wales Bar Association was one of the founding partners in the initiative, together with the NSW Attorney General's Department, the NSW Legal Aid Commission and the Law Society of NSW. In addition to the founding partners, the Combined Community Legal Centres and Public Interest Advocacy Centre are on the LawAccess NSW Board.
- 28.4 The service helps customers to find the information and services that are best able to assist with legal problems and questions. LawAccess NSW is available to all NSW residents but is particularly aimed at people who have difficulty accessing traditional community and government legal services such as people in regional and isolated areas and people with disabilities
- 28.5 For further information see: <http://www.lawaccess.nsw.gov.au>

STRUCTURE OF THE NSW COURTS SYSTEM

State Courts

Current as at February 2018



NEW SOUTH WALES
BAR ASSOCIATION

Non-exhaustive list of NSW tribunals, commissions and boards which may have appeal rights to any of the court of appeal listed above:

- Dust Disease Tribunal
- Independent Commission Against Corruption
- Mental Health Review Tribunal
- Workers Compensation Commission

TITLES

29. Superior court judges

29.1 'Superior court' judges are judges of the following courts:

- the High Court of Australia
- the Federal Court of Australia
- the Family Court of Australia
- the Supreme Court of NSW (including Court of Appeal and Court of Criminal Appeal)
- the Industrial Relations Commission of NSW
- the Land & Environment Court

29.2 In conversation in court, superior court judges should be addressed as 'Your Honour', the exception being the Chief Justice of the High Court and the Chief Justice of the Supreme Court (of NSW or any other State) who should be referred to in conversation and in writing as '*Chief justice*'.

29.3 Out of court you introduce a superior court judge as 'Justice/Associate Justice.....' So for example, if you were introducing someone to The Honourable Justice Virginia Bell you would introduce her as '... this is Justice Bell'. However, in conversation with a judge you refer to him/her as 'judge'.

29.4 All superior court judges are referred to in written form as '*The Honourable Justice/Associate justice....*' This may be shortened to '*The Hon. justice/Associate Justice...*' In correspondence, they should thereafter be addressed as '*Dear Judge/Associate judge.*' However, in the case of the Chief Justice, he should be referred to as The Hon T F Bathurst; it is incorrect to refer to him as the Hon Justice

because Chief Justices do not hold that particular commission, only Chief Justice. The Chief Justice should be referred to in written form as *'The Honourable T F Bathurst.....'* and in correspondence as *'Dear Chief justice.'*

29.5 When writing to a superior court judge address the letter as follows:

The Honourable/Hon. Justice/Associate Justice_____

Judges' Chambers

Supreme Court of NSW

Dear Judge/Associate Judge

29.6 When writing to the current President address the letter as follows:

'The Hon. Justice Beazley AO

President Court of Appeal

Judges' Chambers

Supreme Court of NSW'

29.7 It should be noted that judges of the superior courts may choose to be known as *'The Honourable Mr justice/Associate justice...'* or *'The Honourable Justice/Associate Justice...'* The Supreme Court website has a list of Judges and Associate Judges who use the title The Honourable Mr Justice/Associate Justice. Please note that female judges of superior courts are referred to as *'The Honourable justice/Associate justice...'*

29.8 Many superior court judges were QCs or SCs prior to their appointment. However, you do not include the post nominals QC or SC.

30. Federal Circuit Court Judges

30.1 In Court, Federal Court Judges (other than the Chief Judge – see paragraph 3.2) are referred to as ‘*Your Honour*’ or ‘*Judge/Chief Judge*’.

30.2 Outside court, the correct form of address is ‘*Judge*’ or in the case of his Hon William Alstergren, ‘*Chief Judge*’. The term ‘*Your Honour*’ should not be used.

30.3 Correspondence should be addressed:

His/Her Hon Judge (surname)

Federal Circuit Court of Australia

Or for the Chief Judge:

His Hon W. Alstergren QC, Chief Judge

31. District Court Judge

31.1 In Court, District Court of NSW Judges (other than the Chief Judge – see paragraph 4.3) are referred to as ‘*Your Honour*’, or ‘*His Honour Judge...*’, or ‘*Her Honour Judge...*’.

31.2 Outside court, the correct way to introduce a District Court judge is ‘*Judge...*’. So, for example, Judge Penny Hock would be introduced as ‘...*the is Judge Hock*’. In conversation with a District Court, you would call them ‘*Judge*’.

31.3 If a District Court judge has been a superior court judge, in Australia or overseas, the judge retains the title ‘*The Honourable Justice...*’ and you do not include the post nominal QC or SC; e.g. The Honourable Justice DM Price as he was a judge of the Supreme Court of NSW prior to his appointment of Chief Judge of the District Court. But if a judge has never been a superior court judge, you do include the post nominals QC or SC, e.g. the Honourable Judge Peter Berman SC.

31.4 When writing to a District Court Judge, address the letter as follows:

His Honour Judge Peter Berman SC

Judges' Chambers

District Court of NSW

Dear Judge

32. Local Court Magistrates

32.1 In court, Magistrates are addressed *Your Honour*.

32.2 Outside of court, magistrate are addressed as 'Magistrate _____'.

32.3 When writing to a magistrate, write to them as '*Dear Magistrate*'. When writing to the Chief Magistrate, write '*Dear Chief Magistrate*'.

33. Acting Judges

33.1 In Conversation refer to them as '*Judge*' for the period they are an Acting Judge. When writing to acting judges, use the same model referred to previously in this memo but insert the word '*Acting*', before the word Judge or Justice (i.e. Superior Court: '*The Honourable Acting Justice _____*'/ District Court: '*His/Her Honour Acting Judge _____*'

34. Retired Judges

34.1 Retired Judges of 'superior courts' retain the title '*The Honourable*' and the post nominal QC for life. They can only use the post nominal SC if they resume practise and hold a barrister's practising certificate. Therefore, when writing to a retired Supreme Court judge you write to '*The Honourable__(name)*'. If that judge was a Queen's Counsel, insert the post nominal QC. If the retired Judge was a Senior Council and has resumed practise as a barrister and holds a practising certificate, only then do you insert SC. You do not continue to use the word Justice.

34.2 You may feel comfortable still calling a retired judge *Judge* in conversation. Most will not object to that. However, when a judge retires, there is no entitlement to the title. It should **not** be used in any formal dealings, correspondence or publications etc.

34.3 In addition, all members of the Executive Council (both current and past) are

referred to as '*The Honourable*_____ (*name*)' and are entitled to retain that title for life (i.e. normally an appointment to the Executive Council is for life, although in practice only currently serving Ministers of State or Parliamentary Secretaries are summoned to Executive Council meetings).

35. Federal and State Attorneys General

35.1 The NSW Attorney General is currently the Honourable Mark Speakman MP. He is the first law officer in this State, but is also a Minister in the Executive Government and a member of State Parliament. Mr Speakman holds a practising certificate with the NSW Bar Association. For further information about the NSW Attorney General and his Department see: <http://www.justice.nsw.gov.au/>

35.2 The Commonwealth Attorney-General (note hyphen here) is The Honourable Christian Porter MP. He is the highest Commonwealth law officer and is also a Minister of Government in the Federal Parliament. For further information about the Commonwealth Attorney-General and his Department see <https://www.attorneygeneral.gov.au/Pages/default.aspx>

36. Barristers

36.1 Barristers customarily omit 'Mr', 'Ms', 'Mrs' etc when speaking about each other to other barristers. (For example, a conversation may go as follows: 'Lydiard will speak

to Boulten about making arrangements for her and Game to attend the High Court ceremony.'). The same omission is customary when barristers speak to each other, if they are not on first name terms.

36.2 Similarly, if writing to a barrister who they do not know personally, some barristers address the letter 'Dear Walker,' (i.e. using the surname only).

36.3 The practice of omitting 'Mr', 'Ms' etc is not usually followed when non-barristers are involved in the conversation or being written to (in other words, the Bar Association writes to and refer to barristers as 'Mr', 'Ms', etc).

37. Queen's Counsel (QC) and Senior Counsel (SC)

37.1 Only 'silk' or 'senior counsel' can use the post nominals QC or SC (as appropriate - i.e., to whichever they were appointed).

37.2 You will hear the expressions 'the taking of silk', 'taking silk' or 'took silk'. In fact, one doesn't 'take it' as such; rather one is appointed silk. Application for appointment as Senior Counsel is to the President of the Bar Association. For information about the appointment of Senior Counsel see the Association's website.

37.3 Being appointed a silk is an acknowledgment by a person's peers that his or her advocacy skills and knowledge of the law are such that they are able to take on cases involving complex law. In other words, their skills are being recognised by their peers.

37.4 When a barrister 'takes silk' he/she changes the robes they wear (i.e., from robes worn by a junior to robes worn by a silk) and use a red brocade bag instead of the blue brocade bag used by juniors. The gown worn by a 'silk' is made of silk, and from a visual point of view is easily distinguishable because both arms have a 'tail'.

37.5 There is no difference in status between a QC and an SC - only the title has changed.

Queen's Counsel were appointed by the State Attorney General up to 1992 and are therefore referred to as 'one of Her Majesty's Counsel'.

37.6 The title 'Senior Counsel' (SC) was introduced with the first set of appointments of Senior Counsel by the NSW Bar Association on 1 December 1993 after the NSW Government announced it would no longer appoint Queen's Counsel and legislated to that effect.

37.7 Both QCs and SCs are known as 'senior counsel'. They commonly (but not always) appear with a junior barrister, not surprisingly referred to as 'the junior'. QCs and SCs, when leading a junior, are known as 'the leader', or 'leading counsel'

37.8 Those appointed QC retain the title for life and may continue to use it even when they retire. Those appointed SC, however, may only use the post nominal whilst they hold a practising certificate.

38. Other Post-Nominals

38.1 If any member of the Bar has other post nominals (e.g., Australian and Military Honours), these all need to go after their names, for example CBE, AO, AE, RFD. Those honours are listed before the post nominals QC or SC. For example, Maurice Neil RFD QC.

ORDER OF SENIORITY

39 Senior Counsel

39.1 Seniority of senior counsel is determined by their date of appointment as senior counsel, not their date of admission to the Supreme Court or date of commencing practice at the Bar.

39.2 A silk appointed in, say, 1980 will rank far in front in the seniority stakes to a silk appointed in 1995. As all QC. As all QC appointments predate the SC appointment system, it follows that all QCs are senior (though equal in status) to all SCs.

39.3 On January 1 2000 the New South Wales Bar Association Constitution took effect, replacing the previous Articles. The Constitution provides a definition of Practice Date in Clause 1.1, namely;

Practice Date: means in relation to a Local Practising Barrister the date of the most recent practicing certificate granted by the Bar Council under the Act (not being an annual renewal of that certificate) unless otherwise determined by Bar Council.

39.4 Therefore a barrister who began practicing at the Bar say, 12 years ago and who had become senior counsel in 2013, will have precedence (i.e. seniority) over a barrister who began practice at the Bar, say, 25 years ago but who was appointed senior counsel in 2015. In other words, the 2013 appointment of senior counsel takes precedence over any 2015 appointment of senior counsel despite the varying number of the years that the individual barrister had been in practice. In NSW, all seniority is determined by admission and appointment to silk in NSW. Seniority of barristers practicing in other states is irrelevant.

39.5 There number of silk appointed in any single year (usually 12-20). In those circumstances you may need to go to the actual list of seniority that was issues in that year, which will give you the seniority of the respective persons appointed as silk in any given year. The seniority is determined by the relevant seniority held by the appointees as junior counsel.

40 Listing junior members of the Bar in order of seniority

40.1 All senior counsel (whether they by QCs or SCs) are senior to any junior barristers.

40.2 All junior barristers should be listed in order of seniority by reference to their seniority date in the Bar Association's database (not by reference to their date of admission which may not be their date of seniority).

40.3 The Bar Council endorsed the following policy in relation to seniority at its meeting held on 2 December 2004:

The seniority of a barrister who practiced at the Bar of New South Wale on or before 30 June 1988, or held a practising certificate on or before 30 June 1992 is the date of his or her most

recent admission to the Bar of New South Wales, and, in the case of admission upon the same day, then according to the order in which admission are ordered by the court.

The seniority of a barrister who does not come under category 'A' is the commencement date of the first barrister's practising certificate issued to him or her, unless there has been a period of absence from the Bar for more than two years. Where there has been a period of absence from the Bar of more than two years, unless special exemption is granted by the Executive Director in consultation with the Executive*, the seniority date of the barrister is the date of the first practising certificate issued to him or her after his or her return to the Bar.

The seniority of Queen's Counsel/Senior Counsel is determined in accordance with the terms of the Queen's Commission or the statement issues by the President of the New South Wales Bar Association announcing the appointments of Senior Counsel. All Queen's Counsel/Senior Counsel shall be deemed to be senior to all other barristers except law officers.

40.4 As a general rule, documents including letters and memos etc addressed to more than one barrister should set out names in accordance with seniority. Failure to set out a barrister's seniority correctly may cause offence to the barrister 'downgraded'. Sometimes the Chair of one of the Association's committees may be 'junior' to other members of the committee. In such cases the Chair will be listed ahead of more senior members, but of course for all other purposes the normal seniority rules apply.

NOTE: Whilst it is important that the order of seniority be correct in correspondence today, for many the significance of seniority exists primarily as a matter of courtesy e.g. the order of barristers sitting at the Bar Table in a ceremonial sitting of a court.

41 Admission to the roll of lawyers

41.1 In New South Wales, since October 2005 legally qualified persons are admitted by the Supreme Court as a *lawyer* but cannot practise as solicitors or barristers unless they are the holders of a practising certificate issued by the Council of the Law Society of New South Wales in the case of those choosing to practise as solicitors, or by the Bar Council of New

South Wales in the case of those choosing to practise as barristers.

41.2 The newly admitted lawyer is entitled, subject to the legislation, at his or her election, to be issued with a solicitor's practising certificate or a barrister's practising certificate, but the respective Councils are empowered to impose conditions with respect to certain matters on those certificates. Prior to July 1994 a legally qualified person was admitted to the Supreme Court as either a *barrister* or as a *solicitor*. After July 1994 and prior to October 2005, a legally qualified person was admitted to the Supreme Court as a *legal practitioner*.

41.3 The New South Wales Bar Association requires lawyers commencing practice as barristers to undertake the Reading Program. The Reading Program consists of: examinations in ethics, evidence, and practice and procedure; a Bar Practice Course, which is a full time course of practical advocacy instruction; and reading with a practising barrister of not less than seven years standing for a period of twelve months.

41.4 For further information on practising certificates see the Bar Association's web site at <http://www.nswbar.asn.au/coming-to-the-bar/reading-programme/conditions>