



The New South Wales Bar Association

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

OCTOBER 2006

INDEX

INTRODUCTION	4
THE HIGH COURT OF AUSTRALIA	6
FEDERAL COURTS AND TRIBUNALS.....	8
2. The Federal Court of Australia.....	8
3. The Family Court of Australia.....	9
4. The Federal Magistrates Court.....	10
5. The Australian Industrial Relations Commission.....	12
6. The Australian Fair Pay Commission.....	12
7. The National Native Title Tribunal (NNTT)	13
8. The Australian Competition Tribunal (ACTrib).....	14
9. The Copyright Tribunal (CT).....	15
10. The Defence Force Discipline Appeal Tribunal (DFDAT)	16
11. The Federal Police Disciplinary Tribunal (FPDT)	17
12. The Social Security Appeals Tribunal (SSAT).....	18
13. The Refugee Review Tribunal (RRT).....	19
14. The Administrative Appeals Tribunal (AAT).....	20
15. The Australian Human Rights and Equal Opportunities Commission.....	21
16. Australian Competition and Consumer Commission (ACCC).....	22
STRUCTURE OF THE AUSTRALIAN COURTS SYSTEM	24
NEW SOUTH WALES COURTS AND TRIBUNALS	24
NEW SOUTH WALES COURTS AND TRIBUNALS	25
17. The Supreme Court of New South Wales.....	25
18. The Court of Appeal and Court of Criminal Appeal	26
19. The Industrial Relations Commission of New South Wales	26
20. The Land and Environment Court of New South Wales	28
21. The District Court of New South Wales.....	29
22. The Workers' Compensation Commission.....	30
23. The Local Court of New South Wales.....	31
24. Coroners Court.....	32
25. The Drug Court of NSW.....	33
26. Juvenile Courts.....	35
27. Consumer, Trader & Tenancy Tribunal (CTTT)	35
28. Guardianship Tribunal	36

29. Independent Commission Against Corruption (ICAC)	37
30. Judicial Commission.....	37
31. The Dust Diseases Tribunal	38
32. The Mental Health Review Tribunal (MHRT)	39
33. The Administrative Decisions Tribunal (ADT).....	40
34. The Victims Compensation Tribunal (VCT)	41
35. Community Justice Centres (CJC).....	41
36. The Government and Related Employees Appeal Tribunal (GREAT)	42
37. LawAccess NSW	43
STRUCTURE OF NEW SOUTH WALES COURTS AND TRIBUNALS	44
TITLES	45
38. Superior court judges	45
39. Federal Court Magistrates.....	47
40. District Court Judges.....	47
41. Local Court Magistrates.....	48
42. Acting Judges.....	48
43. Retired judges and members of the Executive Council	49
44. Federal and State Attorneys General	49
45. Barristers	50
46. Queen’s Counsel (QC) and Senior Counsel (SC).....	50
47. Other Post-Nominals.....	51
ORDER OF SENIORITY.....	52
48. Seniority of Senior Counsel	52
49. Listing junior members of the Bar in order of seniority	53
ADMISSION TO THE ROLL OF LEGAL PRACTITIONERS	55

NOTE:

The information contained in this booklet is current as at October 2006. 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:

Mr Alastair McConnachie
 Director, Law Reform and Public Affairs
 The New South Wales Bar Association

Phone: (02) 9232 4055
 Fax: (02) 9221 1149
 E-mail: amconnachie@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 Constitution, an Act of Parliament or by letters patent. The Commonwealth Constitution provides that the judicial power of the Australian Government be vested in the High Court of Australia and other courts created by the federal parliament. The High Court may deal with federal and state/territory matters and has original jurisdiction in interpreting the Constitution and determining legal disputes between the federal and state/territory courts. It is the final court of appeal in Australia from federal and state/territory courts. It is a 'superior court.'
- 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 legal practitioners.

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. 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 (i.e. the relevant case starts in that court) 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 or 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 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 all judgments, decrees, orders and sentences from (a) any justice(s) exercising the original jurisdiction of the High Court, (b) any federal court, (c) any court exercising federal jurisdiction, and (d) the Supreme Court of any state.

- 1.4 Cases which involve interpretation of the Constitution, or where the Court may be invited to depart from one of its previous decisions, or where the Court considers the principle of law involved to be one of major public importance, are normally determined by a full bench comprising all seven Justices if they are available to sit. Other cases which come to the High Court for final determination involve appeals against the decisions of the Supreme Courts of the states and territories, of the Federal Court of Australia and of the Family Court of Australia. These cases are usually determined by a bench of five justices. In addition, there are certain matters which can be heard and determined by a single Justice.
- 1.5 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. There then needs to be a ‘special leave’ application to the High Court. The ‘special leave’ application is a short preliminary hearing before one or more judges (usually two) of the High Court. The criteria for granting ‘special leave’ is set out in s35A of the *Judiciary Act 1903*.
- 1.6 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.
- 1.7 The High Court is based in Canberra, but travels to Brisbane, Adelaide and Perth annually, and Hobart less frequently, for circuitry 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 Murray Gleeson AC. The other current members of the Court are the Hon Justice William Gummow AC, the Hon Justice Michael Kirby AC, the Hon Justice Kenneth Hayne AC, the Hon Justice Ian Callinan AC, the Hon Justice Dyson Heydon AC and the Hon Justice Susan Crennan.

1.8 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

2. 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 jurisdiction formerly exercised in part by the High Court of Australia and the whole of the 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. The Court most commonly deals with industrial disputes, corporations, trade practices, judicial review and federal tax matters. 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 Michael Black AC, who is based in Melbourne. 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, the Defence Force Discipline Appeal Tribunal and the Federal Police Disciplinary 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 residence and maintenance of children.

3.2 Although the 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.

3.3 The Family Court exercises original and appellate jurisdiction throughout Australia except in Western Australia and Northern Territory. 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. In the Northern Territory, the Supreme Court of the Northern Territory and the Family Court of Australia exercise concurrent original jurisdiction under the Act.

3.4 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.

- 3.5 The Family Court sits in each capital city in Australia.
- 3.6 The Chief Justice of the Family Court of Australia is the Honourable Justice Diana Bryant.
- 3.7 For further information about the Family Court of Australia see:
<http://www.familycourt.gov.au>

4. The Federal Magistrates Court

- 4.1 The Federal Magistrates Court was established in 1999 by the *Federal Magistrates Act 1999* to deal with a range of less complex federal disputes previously heard in the Federal Court. It conducted its first sittings on 3 July 2000. The Federal Magistrates Court was established to provide a simple and accessible service for litigants and to ease the workload of both the Family Court of Australia and the Federal Court of Australia. The Court is an independent federal court under the Australian Constitution.
- 4.2 The jurisdiction of the Federal Magistrates Court includes family law and child support, admiralty, administrative law, bankruptcy, copyright, consumer protection law and trade practices, privacy law; migration, and unlawful discrimination and workplace relations. In addition, the Federal Magistrates Court has jurisdiction to hear any matters transferred to it by the Federal Court or the Family Court.
- 4.3 The Court shares its jurisdiction with the Federal Court of Australia and the Family Court of Australia other than in migration where the Federal Magistrates Court has the same jurisdiction in relation to application for judicial review as

- possessed by the High Court. Appeals from a Federal Magistrate on such a review of a migration decision is, however, to a single judge of the Federal Court. There are arrangements in the legislation for the transfer of matters between the courts.
- 4.4 Appeals from final decisions of Federal Magistrates 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 Magistrates in migration must be heard by a single judge. Appeals from final decisions of Federal magistrates 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 Magistrates as well as any child support decisions.
- 4.5 The Federal Magistrates Court is based in the same premises as the Federal Court and Family Court throughout Australia as well as in some other locations (for example, the John Maddison Tower in Sydney). The Court also conducts regular circuits to regional and metropolitan locations.
- 4.6 The use of conciliation, counselling and mediation is strongly encouraged in appropriate cases.
- 4.7 The Chief Federal Magistrate is Mr John Pascoe AO.
- 4.8 For further information about the Federal Magistrates Court of Australia see:
<http://www.fmc.gov.au>

5. The Australian Industrial Relations Commission

5.1 Significant changes to the workplace relations system in Australia were brought about with the enactment of the *Workplace Relations Amendment (Work Choices) Act 2005* which came into effect on 27 March 2006.

5.2 The role of the Australian Industrial Relations Commission has changed under the Workplace Relations Amendment (Work Choices) Act.

5.3 The work of the Commission now includes:

- assisting employers and employees in resolving industrial disputes;
- handling certain termination of employment claims;
- rationalising and simplifying awards; and
- dealing with applications about industrial action.

5.4 The Commission is no longer responsible for certifying collective agreements. Increases in minimum rates and a number of other key conditions is now the responsibility of a new body, the Australian Fair Pay Commission.

5.5 For further information about the Australian Industrial Relations Commission see: <http://www.airc.gov.au>

6. The Australian Fair Pay Commission

6.1 The Australian Fair Pay Commission was established under the *Workplace Relations Amendment (WorkChoices) Act 2005* to set and adjust the federal minimum wage. It is a statutory body independent from the Australian Government.

- 6.2 The Commission replaced the wage-setting and adjusting functions of the Australian Industrial Relations Commission.
- 6.3 The work of the Commission includes setting and adjusting:
- the federal minimum wage;
 - minimum classification rates of pay in Australian Pay and Classification Scales;
 - the federal minimum wage for juniors, trainees (including school-based apprentices) and employees with disabilities; and
 - casual loadings.
- 6.4 For further information about the Australian Fair Pay Commission see: www.fairpay.gov.au.

7. The National Native Title Tribunal (NNTT)

- 7.1 The NNTT was set up under the *Native Title Act 1993* to assist people to resolve native title issues.
- 7.2 The NNTT facilitates the making of agreements among Aboriginal and Torres Strait Islander people, governments, industry and others whose rights or interests may co-exist with native title rights and interests in respect of land and water. The NNTT mediates native title claims under the direction of the Federal Court of Australia. The NNTT is not a court and does not decide whether or not native title exists.
- 7.3 On request, the NNTT assists people in negotiations about proposed developments e.g. mining. The NNTT acts as an arbitrator or umpire in some situations where the people involved cannot reach agreement about proposed developments. The NNTT also assists people who want to negotiate other sorts of

agreements, such as indigenous land use agreements. Hundreds of agreements have been documented throughout Australia since the NNTT was established in 1994.

- 7.4 The NNTT maintains a principal registry in Perth, other registries in Sydney, Adelaide, Darwin, Melbourne, Brisbane and a regional office in Cairns. In Hobart and Canberra, where the NNTT does not have a separate registry, administrative assistance, public information, NNTT materials and client services are provided by the Administrative Appeals Tribunal.
- 7.5 Members of the NNTT are appointed by the Governor General. The President of the NNTT is Mr Graeme Neate.
- 7.6 For further information about the NNTT see <http://www.nntt.gov.au>

8. The Australian Competition Tribunal (ACTrib)

- 8.1 The ACTrib was established under the *Trade Practices Act 1965* and continues under the *Trade Practices Act 1974* ('the Act'). Prior to 6 November 1995, the ACTrib was known as the Trade Practices Tribunal.
- 8.2 The ACTrib 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.
- 8.3 The ACTrib also 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 or natural gas pipelines. The ACTrib further 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.

- 8.4 The ACTrib consists of a President and such number of Deputy Presidents and other members as are appointed by the Governor-General. A presidential member must be a judge of a 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 ACTrib is constituted by a presidential member and two non-presidential members. Currently, all presidential members are judges of the Federal Court of Australia.
- 8.5 For further information about the ACTrib see:

http://www.fedcourt.gov.au/aboutct/aboutct_act.html

9. The Copyright Tribunal (CT)

- 9.1 The CT was established under Part VI of the *Copyright Act 1986*.
- 9.2 The CT 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.

- 9.3 For further information about the CT see:

http://www.fedcourt.gov.au/aboutct/aboutct_copy.html

10. The Defence Force Discipline Appeal Tribunal (DFDAT)

- 10.1 The DFDAT was established under the *Defence Force Discipline Appeals Act 1955*. The DFDAT is empowered to hear and determine appeals from Courts Martial and Defence Force magistrates in respect of service offences by Australian Defence Force personnel, as well as by persons who have been convicted or who have been acquitted of a Service offence on the ground of unsoundness of mind by a court martial or a Defence Force magistrate under the *Defence Force Discipline Act 1982*.
- 10.2 The DFDAT may determine an appeal in one of the following ways: it may allow an appeal and quash the conviction, substitute for the conviction so quashed an acquittal on the ground of unsoundness of mind and direct that the appellant be kept in strict custody until the pleasure of the Governor-General is known; if it finds that the appellant was unfit to stand trial, it may allow the appeal, quash the conviction or prescribed acquittal and direct that the appellant be kept in strict custody until the pleasure of the Governor-General is known. Subject to the reference of questions of law and appeals on questions of law to the Federal Court of Australia, the DFDAT's determination is final.
- 10.3 The DFDAT consists of a President, a Deputy President and such other persons as are appointed to be members of the Tribunal. There is a Registrar of the DFDAT and such deputies of the Registrar as are required.
- 10.4 The principal office (registry) of the DFDAT is located in Canberra. It also has offices in each of the other capital cities. The President of the DFDAT is the Honourable Justice Peter Heerey.
- 10.5 For further information about the DFDAT see:
<http://defenceappeals.fedcourt.gov.au/>

11. The Federal Police Disciplinary Tribunal (FPDT)

- 11.1 The FPDT is established by the *Complaints (Australian Federal Police) Act 1981* ('Complaints Act').
- 11.2 The FPDT deals with disciplinary offences under the *Australian Federal Police (Discipline) Regulations*. In addition, the Minister (Attorney-General) may refer to the FPDT for inquiry and report a matter relating to the Australian Federal Police ('AFP').
- 11.3 Disciplinary proceedings against AFP appointees are begun by the Commissioner of Police. The Complaints Act requires certain of those proceedings to be heard and determined by the FPDT. Other disciplinary proceedings may also be heard and determined by the FPDT in circumstances prescribed by the Complaints Act, otherwise they are dealt with by the Commissioner.
- 11.4 Where the Commissioner determines that an AFP appointee is guilty of a disciplinary offence and he or she imposes a penalty, an appeal lies to the FPDT constituted by the President or a Deputy President. The FPDT may set aside the findings of the Commissioner and either substitute another finding or dismiss the proceeding, impose a penalty in respect of a breach of discipline different from that with which the AFP appointee concerned was charged, affirm the penalty imposed by the Commissioner, or set aside that penalty and substitute another penalty.
- 11.5 The FPDT consists of a President and such numbers of Deputy Presidents and other members as are appointed by the Governor-General. To be appointed a President or Deputy President of the FPDT, the person must be or have the same status as a judge of the Federal Court of Australia or of a supreme court of a state/territory. A member other than the President or Deputy President must hold office as a magistrate or be a legal practitioner of not less than 5 years standing.

11.6 The President of the FPDT is the Honourable Justice Susan Mary Kiefel.

11.7 For further information about the FPDT see:

http://www.fedcourt.gov.au/aboutct/aboutct_fpdt.html

12. The Social Security Appeals Tribunal (SSAT)

12.1 The SSAT is a statutory body established under the *Social Security (Administration) Act 1999* to review administrative decisions made under the Social Security law, Family Assistance law and various other pieces of legislation in relation to social security, education or training payments.

12.2 The SSAT can hear appeals against decisions by Centrelink, the agency that delivers social security and student assistance services on behalf of the Department of Family and Community Services (formerly the Department of Social Security) and the Department of Education, Science and Training.

12.3 The SSAT is also able to review some decisions made by officers of the Department of Veterans' Affairs (DVA).

12.4 The SSAT is completely independent of Centrelink and the departments. It has the power to change Centrelink and DVA decisions.

12.5 The only requirement is that a decision *must* be reviewed by a Centrelink authorised review officer or a DVA Service Pension Review Officer (SPRO) *before* an appeal is made to the SSAT.

12.6 The objective of the SSAT is to provide a mechanism of review that is fair, just, economical, informal and quick.

- 12.7 For further information about the SSAT see:
<http://www.ssat.gov.au/Internet/ssat.nsf/pubh/home.1>

13. The Refugee Review Tribunal (RRT)

- 13.1 The RRT was established under Part 7 of the *Migration Act 1958 (Cth)* (the Act). It commenced operations on 1 July 1993 replacing the Refugee Status Review Committee (RSRC).
- 13.2 The RRT is an independent merits review tribunal. The RRT's main function is to review decisions made by the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) to refuse or cancel protection visas to non-citizens in Australia. A criterion for the grant of a protection visa is the person is a non-citizen in Australia to whom Australia has protection obligations under the *1951 UN Convention Relating to the Status of Refugees* ('Refugees Convention') as amended by the *1967 UN Protocol Relating to the Status of Refugees* ('the Protocol').
- 13.3 In addition to its function of reviewing DIMIA decisions relating to protection visas, the RRT also has the power, in respect of certain 'transitory persons', to conduct an assessment of whether a person is covered by the definition of a 'refugee' in Article 1A of the Refugee Convention as amended by the Protocol. A 'transitory person' (as defined by the Act) who has been in Australia for 6 months or more may apply directly to the RRT for an assessment.
- 13.4 In conducting a review of a decision to refuse or cancel a protection visa, the RRT looks at the issues and evidence afresh. The RRT has the power to affirm the DIMIA's decision, vary the decision, set the decision aside and substitute a new decision, or remit the matter to DIMIA for reconsideration.

- 13.5 Unlike a court, the RRT is not adversarial. DIMIA is not usually represented at RRT hearings. The RRT is inquisitorial in nature and can obtain whatever information it considers necessary to conduct the review. It is not bound by technicalities, legal forms or the rules of evidence but must act according to substantial justice and the merits of the case.
- 13.6 RRT members are appointed by the Governor-General for a fixed term. The RRT's principal registry is located in Sydney.
- 13.7 The RRT is headed by the Principal Member, Mr Steve Karas OAM.
- 13.8 For further information about the RRT see <http://www.rrt.gov.au>

14. The Administrative Appeals Tribunal (AAT)

- 14.1 The AAT was established by the *Administrative Appeals Tribunal Act 1975* ('AAT Act'). The AAT Act and the *Administrative Appeals Tribunal Regulations 1976* ('AAT Regulations') set out its powers, functions and procedures.
- 14.2 The AAT 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 AAT also reviews administrative decisions made by some non-government bodies. The AAT 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 AAT will affirm, vary, or set aside the original decision.
- 14.3 The AAT 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 by the department or agency that made the primary decision. In other cases review by the AAT is only available after immediate review by a specialist tribunal e.g. in

the area of social security, an application may be made to the AAT only after it has been reviewed by the Social Security Appeals Tribunal.

- 14.4 The AAT's jurisdiction is contained in 395 separate Acts and statutory instruments, covering areas such as taxation, social security, veterans' entitlements, Commonwealth employees' compensation and superannuation, criminal deportation, civil aviation, customs, freedom of information, bankruptcy, student assistance, security assessments undertaken by ASIO, corporations and export market development grants.
- 14.5 The AAT's membership consists of a President, Presidential Members (including Judges and Deputy Presidents), Senior Members and Members. The President, the Hon Justice Gary Downes AM, is a Judge of the Federal Court of Australia.
- 14.6 For further information about the AAT see <http://www.aat.gov.au>

15. The Australian Human Rights and Equal Opportunities Commission

- 15.1 The Human Rights and Equal Opportunity Commission is an independent statutory government body, established in December 1986 by the *Human Rights and Equal Opportunity Commission Act 1986*. The Federal Attorney General is the Minister responsible in Parliament for the Commission.
- 15.2 Under the legislation administered by the Commission, it has responsibilities for inquiring into alleged infringements under three anti-discrimination laws - the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, and the *Disability Discrimination Act 1992*, as well as inquiring into alleged infringements of human rights under the *Human Rights and Equal Opportunity Commission Act 1986*.

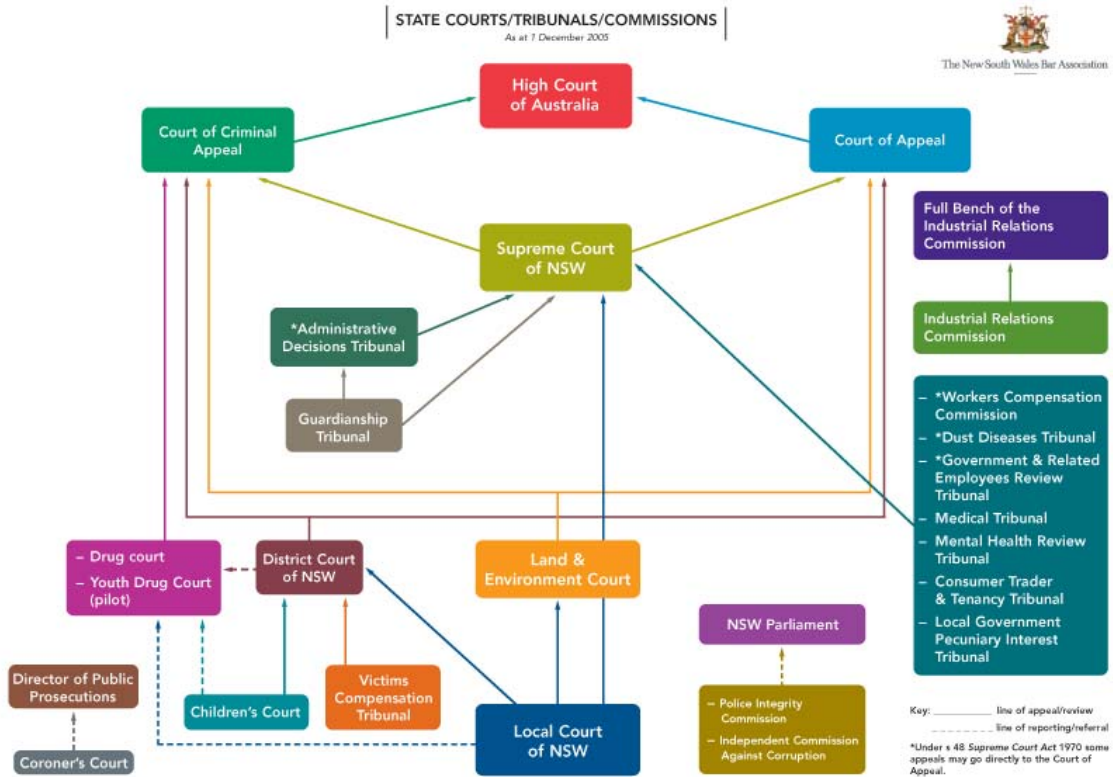
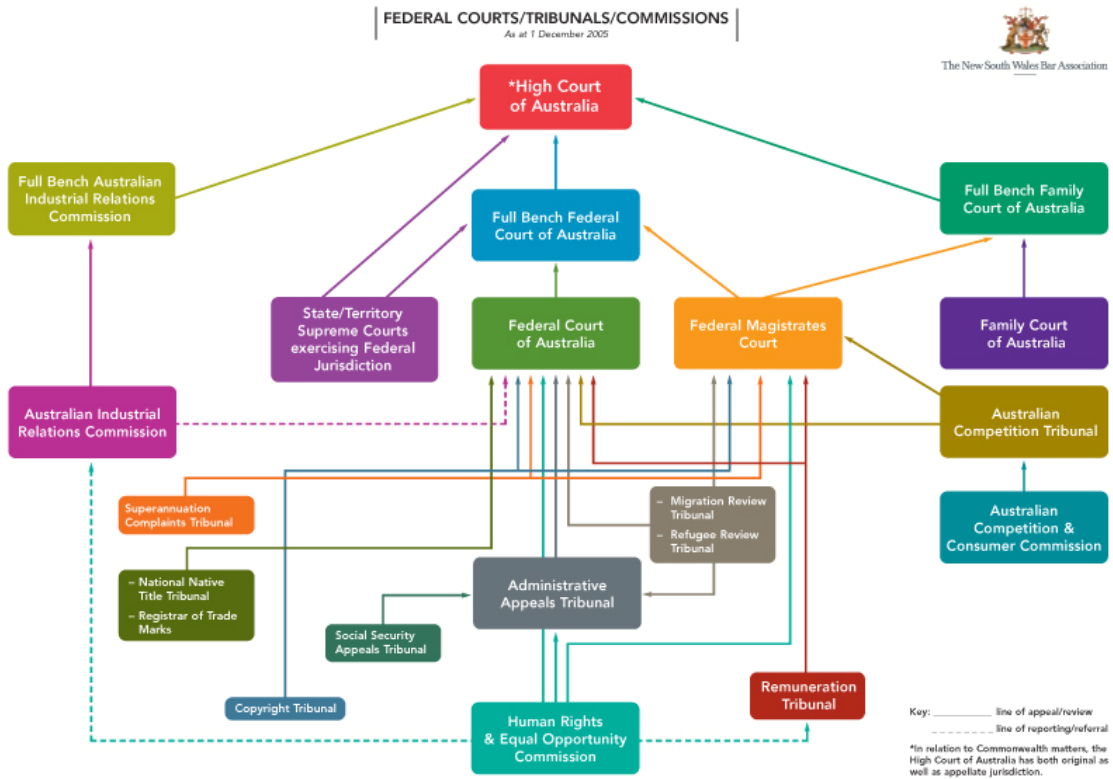
- 15.3 The Commission also has responsibilities with respect to the following international instruments: International Covenant on Civil and Political Rights; Convention Concerning Discrimination in Respect of Employment and Occupation; Convention on the Rights of the Child; Declaration of the Rights 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.
- 15.4 Matters which can be investigated by the Commission include discrimination on the grounds of race, colour or ethnic origin, racial vilification, sex, sexual harassment, marital status, pregnancy, or disability. Human rights education is one of the core responsibilities of the Commission along with the investigation and attempted resolution of complaints about breaches of human rights and anti-discrimination legislation.
- 15.5 The Commission is administered by the President, the Honourable John von Doussa QC.
- 15.6 For further information about the Commission see <http://www.hreoc.gov.au>

16. Australian Competition and Consumer Commission (ACCC)

- 16.1 The Australian Competition and Consumer Commission was formed on 6 November 1995 by the merger of the Trade Practices Commission and the Prices Surveillance Authority.
- 16.2 An independent statutory authority, the Commission administers the *Trade Practices Act 1974* and the *Prices Surveillance Act 1983* and has additional responsibilities under other legislation.
- 16.3 The ACCC promotes competition and fair trade in the marketplace to benefit consumers, business and the community. It also regulates national infrastructure

- services. Its primary responsibility is to ensure that individuals and businesses comply with the Commonwealth competition, fair trading and consumer protection laws. The role of the ACCC compliments that of state and territory consumer affairs agencies which administer their respective legislation.
- 16.4 The Trade Practices 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, as well as third party access to facilities of national significance. The Commission is the only national agency dealing generally with competition matters.
- 16.5 The ACCC has in recent years had a fair amount of dealings with the Bar Association concerning matters such as the appointment of senior counsel and the *New South Wales Barrister's Rules*.
- 16.6 The ACCC has a network of offices in all capital cities as well as Townsville and Tamworth to handle public complaints and inquiries. The National Office is located in Canberra. An information line 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. The information line phone number is 1300 302 502. Staff can provide guidance to business and consumers on their rights and obligations under the law, but not legal advice.
- 16.7 The Chairman of the ACCC is Graeme Samuel AO.
- 16.8 For further information about the ACCC see <http://www.accc.gov.au>

STRUCTURE OF THE AUSTRALIAN COURTS SYSTEM



NEW SOUTH WALES COURTS AND TRIBUNALS

17. The Supreme Court of New South Wales

- 17.1 The Supreme Court of New South Wales, established in 1824, is the highest State court in New South Wales. It 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. The Court is divided into the Common Law Division and the Equity Division. Matters are heard before a Judge or an Associate Judge¹.
- 17.2 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.
- 17.3 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.
- 17.4 The Chief Justice of the Supreme Court of NSW is the Honourable JJ Spigelman AC. The President of the Court of Appeal is the Honourable Justice Keith Mason AC. The Chief Judge at Common Law is the Honourable Justice Peter McClellan. The Chief Judge in Equity is the Honourable Mr Justice Peter Young AO.
- 17.5 For further information about the Supreme Court of NSW see:
<http://www.lawlink.nsw.gov.au/sc/sc.nsf/pages/index>

¹ Associate Judges deal with the less complex matters and trials not involving a jury.

18. The Court of Appeal and Court of Criminal Appeal

- 18.1 The Court of Appeal hears appeals arising from civil matters from the District Court, Land and Environment Court, and some tribunals and appeals from single judges of the Supreme Court. In some cases the right of appeal is not automatic and a grant of leave may be required.
- 18.2 The Court of Appeal normally sits as a full court of three judges. In cases dealing with very important principles of law, a full bench of five or more judges will sit.
- 18.3 The Court of Criminal Appeal 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 or more judges will sit.
- 18.4 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.
- 18.5 The President of the Court of Appeal is the Hon. Justice Keith Mason AC. There is no President of the Court of Criminal Appeal, but the Chief Justice oversees its operations.

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

- 19.1 The Industrial Relations Commission of New South Wales and the Industrial Court of New South Wales are established under the *Industrial Relations Act 1996*.
- 19.2 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.

- 19.3 The head of the jurisdiction is the President of the Commission. The President is the Honourable Justice F L Wright who also heads the Industrial Court. The Commission currently has 23 Members comprised of 10 Judges, three Deputy Presidents and 10 Commissioners. The Industrial Registrar is Mr Mick Grimson.
- 19.4 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.
- 19.5 The Commission has an appellate jurisdiction which considers appeals from single members of the Commission. 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 include at least two Presidential Members (that is, a Judge or a Deputy President).
- 19.6 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.
- 19.7 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. The Industrial Court is a court of equivalent status to the Supreme Court.
- 19.8 The Industrial Court in its appellate jurisdiction hears appeals from decisions of judges in occupational health and safety prosecutions and unfair contract cases, appeals from Industrial Magistrates (who are Magistrates in Local Courts who most commonly deal with underpayment of wages claims and prosecutions for

breaches of various industrial and occupational health and safety laws) and from the Industrial Registrar.

19.9 The Commission's and the Court's principal premises are in the Chief Secretary's Building at 47 Bridge Street, Sydney. The Commission also hears matters at the Hospital Road Court Complex (behind the Mint Building in Macquarie Street); Level 1, 237 Wharf Road, Newcastle; and at the AMP Centre, 90 Crown Street, Wollongong.

19.10 For further information about the Industrial Relations Commission and the Industrial Court see: <http://www.lawlink.nsw.gov.au/irc>

20. The Land and Environment Court of New South Wales

20.1 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.

20.2 The jurisdiction of the Court is governed by the *Land and Environment Court Act 1979*, being a court of limited statutory jurisdiction. In a broad sense, the Court is vested with the power to determine matters, including interlocutory matters, arising from environmental and planning statutes.

20.3 The jurisdiction of the Court is divided into seven classes of proceedings: environmental planning and protection appeals; local government and miscellaneous appeals and applications; land tenure, valuation, rating and compensation matters; environmental planning protection and civil enforcement; environmental planning and protection summary criminal enforcement; appeals

by defendants from convictions relating to environmental offences imposed by magistrates in the Local Court; and appeals from magistrates in respect of environmental offences which previously would have been heard by the Supreme Court. Proceedings in the first and second class and some in the third class are generally heard by a Commissioner. Proceedings in classes 4, 5, 6 and 7 are always heard by a judge.

20.4 The Chief Judge of the Land and Environment Court is the Honourable Justice B J Preston.

20.5 For further information about the Land and Environment Court see:
<http://www.lawlink.nsw.gov.au/lec.nsf/pages/index>

21. The District Court of New South Wales

21.1 The District Court is the ‘intermediate court’ in NSW. The District Court has jurisdiction in both civil and criminal matters.

21.2 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 deal with treason, piracy and murder. The Court can hear appeals from the Local Court.

21.3 In 1997 the civil jurisdiction of the District Court was increased to \$750,000. The Court can deal with cases where larger amounts are involved if the parties to the case agree. The Court’s jurisdiction in equity proceedings is generally limited to claims up to \$20,000, although some for \$750,000. The District Court has an unlimited jurisdiction in claims for damages for personal injuries arising out of a motor vehicle accident and industrial accident cases.

- 21.4 The Court also deals with cases under a number of Acts of Parliament such as the *Property (Relationships) Act 1984*, the *Family Provision Act 1982*, *Testator's Family Maintenance and Guardianship of Infants Act 1916*, and the *Family Provision Act 1982*, that involve an order for property worth not more than \$250,000.
- 21.5 The Court's judges hear appeals in criminal matters from the Local Court and also preside over a range of administrative and disciplinary tribunals.
- 21.6 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.
- 21.7 The Chief Judge of the District Court is the Honourable Justice R.O. Blanch AM who has the status of a Supreme Court judge.
- 21.8 For further information about the District Court see:
<http://www.lawlink.nsw.gov.au/dc.nsf/pages/index>

22. The Workers' Compensation Commission

- 22.1 The Workers' Compensation Commission, which in part replaced the Compensation Court of NSW (which ceased to operate on 31 December 2003), determines disputes on workers' compensation claims made on an employer/insurer from 1 January 2002 (with the exception of claims by coal miners and claims lodged prior to 1 January 2002).

- 22.2 The Commission is an independent and impartial statutory tribunal for disputed workers' compensation claims in NSW and was established by the *Workplace Injury Management and Workers Compensation Act 1998*.
- 22.3 The Commission deals with interim payment directions (the Commission can order interim weekly compensation payments for limited periods and payment of medical and related expenses up to \$5,000); 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 the death of a worker and management of a worker's injury/illness in the workplace (suitable duties).
- 22.4 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.
- 22.5 The President of the Commission is the Hon. Justice Terry Sheahan AO.
- 22.6 The Commission is located at 1 Oxford Street, Darlinghurst.
- 22.7 For further information about the Workers' Compensation Commission see <http://www.wcc.nsw.gov.au>

23. The Local Court of New South Wales

- 23.1 The Local Court (previously the 'Magistrates Court') has jurisdiction to deal with the vast majority of criminal and summary prosecutions, civil matters with a monetary value of up to \$60,000, family law matters, child care proceedings,

juvenile prosecutions and care matters, and coronial inquiries. Single Magistrates sitting without a jury hear cases in the Local Court. It has no jurisdiction for claims in equity.

23.2 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.

23.3 The Downing Centre (old Mark Foys Building) on the corner of Elizabeth and Liverpool Street is the main local court in Sydney. In addition to the Downing Centre branches of the Local Court are 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 all Local Courts see:

<http://www.lawlink.nsw.gov.au/locations/locnsw.nsf/pages/nswmap>

23.4 The Chief Magistrate of the Local Court is His Honour Chief Magistrate Graeme Henson.

23.5 For further information about the Local Court see:

<http://www.lawlink.nsw.gov.au/lc.nsf/pages/index>

24. Coroners Court

24.1 Coroners Courts are situated around NSW in Local Courts. Coroners inquire into circumstances surrounding deaths that are reported to them.

- 24.2 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.
- 24.3 As part of the 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; protect lives and well being by bringing to the notice of relevant authorities any practices; policies or laws which could be changed to prevent similar deaths in the future; and expose other matters of public importance.
- 24.4 The coroner also has jurisdiction to inquire into fires and explosions etc where property has been destroyed or damaged or where people have been injured, e.g. the Thredbo Inquiry.
- 24.5 The State Coroner is (until his retirement in late September 2006) His Honour J.B. Abernethy.
- 24.6 For further information about the Coroners Court see:
<http://www.lawlink.nsw.gov.au/lc.nsf/pages/coronersindex>

25. The Drug Court of NSW

- 25.1 The Drug Court is a special court 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.
- 25.2 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.
- 25.3 The Court has Local Court and District Court jurisdiction and operates from the Parramatta Court complex.
- 25.4 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.
- 25.5 The Senior Judge of the Drug Court is his Honour Senior Drug Court Judge R Dive.
- 25.6 For further information about the Drug Court of NSW see:
<http://www.lawlink.nsw.gov.au/drugcrt/drugcrt.nsf/pages/index>

26. Juvenile Courts

- 26.1 In all States and Territories, there are specialised children's courts that have jurisdiction over offences committed by young people (under 18 years: Section 8, *Children and Young People Act 1999*). 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.
- 26.2 In NSW there are a number of juvenile courts: Bidura Children's Court, Campsie Children's Court, Cobham Children's Court (includes the Youth Drug Court), Lidcombe Children's Court, St James Children's Court and Worimi Children's Court. The Bidura, St James and Lidcombe courts will close in November 2006 when the new Children's Court opens that month at Parramatta.
- 26.3 Juvenile Courts in NSW are not open to the public: Section 10 of the *Children (Criminal Proceedings) Act 1987*.
- 26.4 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*.

27. Consumer, Trader & Tenancy Tribunal (CTTT)

- 27.1 On 25 February 2002 the Fair Trading Tribunal and the Residential Tribunal merged to create the CTTT. The CTTT was established as the specialist dispute resolution forum for some consumer, trader and tenancy based matters.

- 27.2 The CTTT deals with the following matters: home building, residential parks, motor vehicles, retirement villages, residential tenancy, strata and community schemes and a limited range of commercial matters.
- 27.3 The role of the CTTT is to provide an independent, low cost and accessible dispute resolution forum to the people of NSW who are parties in consumer or tenancy disputes. In most practical aspects, it acts like a court.
- 27.4 The CTTT conducts hearings at over 100 venues throughout NSW including designated hearing rooms and registries at Hurstville, Penrith, Liverpool, Sydney CBD, Newcastle, Parramatta, Tamworth and Wollongong.
- 27.5 The Chairperson of the CTTT is Ms K Ransome.
- 27.6 For further information on the CTTT see:
<http://www.fairtrading.nsw.gov.au/secondarymenus/cttt.html>

28. Guardianship Tribunal

- 28.1 The Tribunal operates under the *Guardianship Act 1987*. The Act sets out the orders that can be made by the Tribunal, the principles to be applied when making decisions and the limits of its responsibilities and functions.
- 28.2 The primary role of the Guardianship Tribunal is to make guardianship and financial management orders for people aged 16 years and over who do not have the capacity to make their own decisions. It may also make a range of other orders.
- 28.3 For further information on the Guardianship Tribunal see:
<http://www.gt.nsw.gov.au/>

29. Independent Commission Against Corruption (ICAC)

- 29.1 ICAC was created by the *Independent Commission Against Corruption Act 1988*. ICAC has the authority to investigate any matter involving public sector corruption in NSW.
- 29.2 ICAC 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.
- 29.3 The Act gives ICAC significant powers and discretion to expose corruption through investigations which can include public hearings; prevent corruption by giving advice and developing resistance to corrupt practices in public sector organisations; and to educate the public sector and community about corruption and the role of ICAC.
- 29.4 The Commissioner of ICAC is The Hon. Jerrold Cripps QC.
- 29.5 For further information about ICAC see <http://www.icac.nsw.gov.au/>

30. Judicial Commission

- 30.1 The Judicial Commission was established by the *Judicial Officers Act 1986*.
- 30.2 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, and examine complaints against judicial officers.

30.3 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 appointed members by the Governor of NSW. The President of the Commission is the Honourable Chief Justice Spigelman AC.

30.4 For further information on the Commission see <http://www.judcom.nsw.gov.au>

31. The Dust Diseases Tribunal

31.1 The Dust Diseases Tribunal, established by the *Dust Diseases Tribunal Act 1989*, is a specialist Court which deals with claims in tort for negligence relating to death or personal injury resulting from exposure to asbestos and other dusts resulting in dust diseases and other dust-related conditions. 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 for dust, claims for contribution or indemnity between tortfeasors, and claims for indemnity arising under policies of insurance.

31.2 The Tribunal was established to fast-track claims related to dust-related conditions so that plaintiffs could give evidence whilst they were still able.

31.3 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 overtaken, in large part, by the *Uniform Civil Procedure Rules*).

31.4 The President of the Tribunal is the Hon Judge John O'Meally RFD AM.

31.5 For further information on the Dust Diseases Tribunal see:
<http://www.lawlink.nsw.gov.au/cc.nsf/pages/ddtfirst>

32. The Mental Health Review Tribunal (MHRT)

- 32.1 The MHRT is an independent body established by *the NSW Mental Health Act 1990* which upholds the civil and legal rights of people with mental illness and ensures that they receive the best possible care in the least restrictive environment.
- 32.2 The MHRT reviews case management plans proposed by psychiatric case managers and hospital staff. It does not prescribe drugs or treatments.
- 32.3 The MHRT conducts hearing and collects evidence from consumers, mental health workers and other interested people. The MHRT 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.
- 32.4 After considering this information, the MHRT 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 MHRT makes an order which sets out its decision. If the MHRT 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.
- 32.5 Appeals against the decision of the MHRT must be made to the Supreme Court of NSW.
- 32.6 The President of the MHRT is Dr Duncan Chappell.
- 32.7 For further information on the MHRT see <http://www.mhrt.nsw.gov.au>

33. The Administrative Decisions Tribunal (ADT)

- 33.1 The ADT, established on 6 October 1998, is responsible for reviewing administrative decisions made by government agencies, including freedom of information decisions; reviewing certain decisions regarding adoption, community and disability services; hearing complaints of discrimination, vilification, harassment and victimisation referred by the President of the Anti-Discrimination Board; hearing certain types of professional misconduct cases (for example, matters referred to the Tribunal by the Legal Services Commissioner, the Bar Council or the Law Society Council against a solicitor or barrister), and hearing retail lease claims.
- 33.2 The ADT is made up of six Divisions, each responsible for particular areas. They are the General Division and five specialist Divisions, namely the Community Services Division, the Revenue Division, the Equal Opportunity Division, the Retail Leases Division and the Legal Services Division. Parliament has also passed legislation to establish an Occupation Regulation Division, but a commencement date has not yet been announced.
- 33.3 The Legal Services Division of the ADT deals with complaints about the professional conduct of barristers, solicitors and registered conveyancers referred to it by the Office of the Legal Services Commissioner, the Bar Council or the Law Society Council.
- 33.4 The ADT cannot deal with some cases involving administrative decisions, these are decisions made by Local Councils about development or building applications, and land valuation made by the Office of the Valuer General, both of which are dealt with by the Land and Environment Court. There are also claims for review of state administrative decisions of government departments, such as in relation to public transport licenses.

33.5 The President of the Administrative Decisions Tribunal is his Hon Judge Kevin O'Connor AM. The Deputy President and Divisional Head of the Legal Services Division of the Tribunal is The Hon Acting Judge Angela Karpin.

33.6 For further information about the ADT see:

<http://www.lawlink.nsw.gov.au/adt.nsf/pages/index>

34. The Victims Compensation Tribunal (VCT)

34.1 The VCT provides a mechanism whereby persons can apply for compensation if they are the victim of an act of violence and are injured as a result or if they are injured as a result of witnessing an act of violence. Victims can also claim compensation if they are the member of the immediate family of a homicide victim; if they are the parent or guardian of a primary victim of a sexual assault and the primary victim was under the age of 18 years at the time of the act, and if they are injured whilst trying to prevent someone from committing an act of violence.

34.2 For further information about the VCT see:

<http://www.lawlink.nsw.gov.au/vct.nsf/pages/index>

35. Community Justice Centres (CJC)

35.1 Community Justice Centres (CJC) are not courts but operate a free, impartial and confidential mediation and conflict management service for NSW under the *Community Justice Centres Act 1983*.

35.2 The purpose of CJsCs is to provide an expeditious, impartial, and accessible informal dispute resolution service to all sections of the community through an

- informed appreciation of their needs. All mediations are conducted by accredited community mediators, selected, trained and supervised by CJs. CJs use a co-mediation approach in which two mediators conduct each session.
- 35.3 The services provided by CJs are mediation, conflict management, dispute counselling, facilitation, technology assisted mediation and community education. Mediation is the preferred method of dispute resolution.
- 35.4 CJs are a business centre of the New South Wales Attorney-General's Department. The CJC Directorate is the office of the Director and Administration for Community Justice Centres which is situated in the Goodsell Building.
- 35.5 There are six CJs throughout the State, providing an informal and impartial dispute resolution service to all sections of the community and Government agencies. The types of matters dealt with by CJs include family disputes and youth conflict, workplace grievances, neighbourhood and community disputes.
- 35.6 For further information about CJs see <http://www.lawlink.nsw.gov.au/cjc>

36. The Government and Related Employees Appeal Tribunal (GREAT)

- 36.1 GREAT is an independent body established under the *Government and Related Employees Appeal Tribunal Act 1980*. The Tribunal hears and determines appeals against decisions relating to the discipline and promotion of NSW public sector employees. Members of the NSW Police Service also have appeal rights in respect of promotions, refusals to have injury or illness classified as work related and disciplinary sanctions other than dismissal.
- 36.2 For further information on GREAT see:
<http://www.industrialrelations.nsw.gov.au/great>

37. LawAccess NSW

37.1 LawAccess NSW is a free Legal Helpline service designed to provide people of NSW with a telephone service where they can be referred to appropriate legal and related assistance services in NSW. LawAccess NSW was launched by the Attorney General of NSW, the Hon Bob Debus MP, on 17 June 2002.

37.2 LawAccess provides legal information, referral and advice; develops and distributes legal information resources, and works with other legal assistance services in NSW to streamline the provision of legal services.

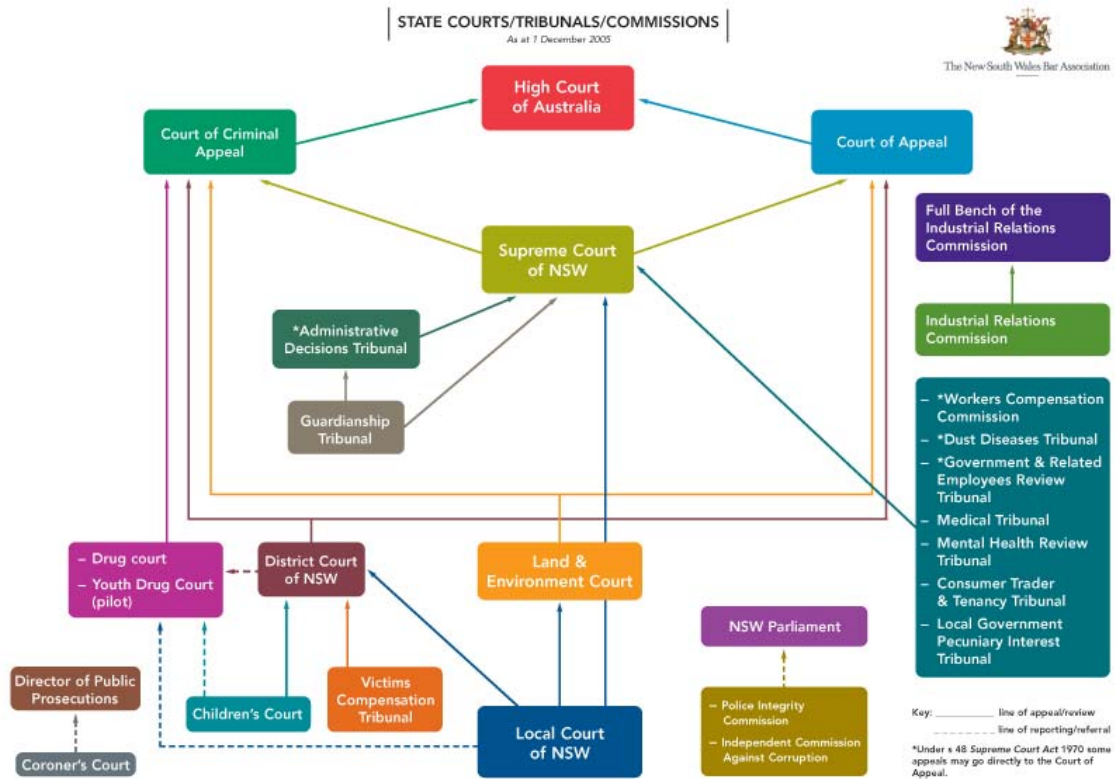
37.3 The Bar Association was one of the founding partners in the initiative, together with the NSW Attorney General's Department, the NSW Legal Aid Commission and the Law Society of NSW. In addition to the founding partners, the Combined Community Legal Centres and Public Interest Advocacy Centre are on the LawAccess NSW board.

37.4 LawAccess NSW is a free service providing a single point of access to legal and related assistance services in New South Wales. 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

37.5 For further information see the Bar Association's website or:

<http://www.lawaccess.nsw.gov.au>

STRUCTURE OF NEW SOUTH WALES COURTS AND TRIBUNALS



TITLES

38. Superior court judges

38.1 '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

38.2 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*' (refer to 1.6 regarding how to address the President).

38.3 Out of court you should 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'.

38.4 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 JJ Spigelman AC, 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 JJ Spigelman AC.....'* and in correspondence as *'Dear Chief Justice.'*

- 38.5 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

- 38.6 The President of the Court of Appeal and the President of the Industrial Relations Commission of NSW should be addressed as *'President'*, both in writing and in conversation (in the case of the *'President'*, if you forget and call him/her *'Judge'* that would not be a monumental faux pas).

- 38.7 When writing to the current President address the letter as follows:

'The Hon. Justice Keith Mason AC
President
Judges' Chambers
Supreme Court of NSW'

- 38.8 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...'*.

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

39. Federal Court Magistrates

- 39.1 In court, Federal Court Magistrates are referred to as *'Your Honour'* or *'Chief Federal Magistrate'* or *'Federal Magistrate'*, but not *'Your Worship'*.
- 39.2 Outside court, the correct form of address is *'Chief Federal Magistrate'* (in the case of Mr John Pascoe AO), or *'Federal Magistrate'*, *'Mr'*, *'Ms'*, *'Sir'* or *'Madam'*.
- 39.3 Correspondence should be addressed:

'Mr/Ms (surname)

Federal Magistrate (or Chief Federal Magistrate in the case of Mr Pascoe AO)

Federal Magistrates' Chambers

Federal Magistrates Service'

40. District Court Judges

- 40.1 In court, judges of the District Court of NSW (other than the Chief Judge – see paragraph 3.3) are referred to as *'His Honour Judge...'*. Female judges of the District Court are referred to as *'Her Honour Judge...'*.
- 40.2 Outside court, the correct way to introduce a District Court judge is *'Judge*' So, for example, Judge Penny Hock would be introduced as *'...this is Judge Hock.'* In conversation with a District Court judge, you refer to them as *'Judge'*.
- 40.3 Sometimes a District Court judge may have been a superior court judge, in Australia or overseas. In such cases, the judge retains the title *'The Honourable Justice...'* and you do not include the post nominals QC or SC, e.g. the

Honourable Justice R.O. Blanch (Chief Judge of District Court of NSW) has retained *'The Honourable Justice'* title as he was a judge of the Supreme Court of NSW prior to his appointment as a 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.

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

His Honour Judge Peter Berman SC

Judges' Chambers

District Court of New South Wales

Dear Judge

41. Local Court Magistrates

41.1 In court, Magistrates are addressed as *'Your Honour'*.

41.2 Outside of court, Magistrates are addressed as *'Magistrate _____'*.

41.3 When writing to Magistrates write to them as *'Dear Magistrate'*. When writing to the Chief Magistrate write to him as *'Dear Chief Magistrate'*.

42. Acting Judges

42.1 In conversation, refer to them as *'Judge'* for the period they are an Acting Judge. When writing to Acting Judges, use the same mode as referred to in previous paragraphs of this memo but insert the word *'Acting'* before the word Justice or Judge (i.e. Superior Court: *'The Honourable Acting Justice _____'* /District Court: *'His (or Her) Honour Acting Judge _____'*).

43. Retired judges and members of the Executive Council

- 43.1 Retired Judges of ‘superior courts’ retain for their life the title ‘*The Honourable*’ and the post nominals QC/SC. Therefore, when writing to a retired Supreme Court judge you write to ‘*The Honourable _____ (name)*’ and insert the nominals QC/SC as appropriate. Of course, you drop the use of the word Justice.
- 43.2 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.
- 43.3 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). One example is Mr Hughes QC, who is referred to as ‘The Honourable T E F Hughes AO QC’ (he is a former Attorney-General of the Commonwealth of Australia and remains a member of the Executive Council).

44. Federal and State Attorneys General

- 44.1 The NSW Attorney General is currently The Honourable Bob Debus MP. He is the highest law officer in this State, but is also a Minister of Government in State Parliament. Mr Debus holds a NSW barrister’s practising certificate. He is also a member of the New South Wales Bar Association. For further information about the NSW Attorney General and his Department see <http://www.lawlink.nsw.gov.au/lawlink.nsf/pages/index>

44.2 The Commonwealth Attorney-General (note hyphen here) is The Honourable Philip Ruddock MP. He is the highest Commonwealth law officer and is also a Minister of Government in Federal Parliament. For further information about the Commonwealth Attorney-General and his Department see <http://law.gov.au/ministers/attorney-general/dwhome.html>

45. Barristers

45.1 Barristers will customarily omit 'Mr', 'Mrs' etc when speaking about each other to other barristers. (For example, a conversation may go as follows: 'Lydiard will speak to Harrison about making arrangements for her and Slattery 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.

45.2 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).

45.3 The practice of omitting 'Mr', 'Mrs' etc is not usually followed when non-barristers are involved in the conversation or being written to (in other words, we write to and refer to barristers as 'Mr', 'Mrs', etc).

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

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

46.2 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 SC is to the President of the Bar Association. For information about the appointment of Senior Counsel see the Association's website.

- 46.3 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.
- 46.4 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'.
- 46.5 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'.
- 46.6 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.
- 46.7 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'.

47. Other Post-Nominals

- 47.1 If any member of the Bar has other post nominals (eg, 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

48. Seniority of Senior Counsel

- 48.1 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.
- 48.2 A silk appointed in, say, 1980 will rank far in front in the seniority stakes to a silk appointed in 1995. As all QC appointments predate the SC appointment system, it follows that all QCs are senior (though equal in status) to all SCs.
- 48.3 On 1 January 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 practising certificate granted by the Bar Council under the Act (not being an annual renewal of that certificate) unless otherwise determined by the Bar Council.

- 48.4 Therefore a barrister who began practice at the Bar, say, 12 years ago and who became senior counsel in 1995 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 1996. In other words, the 1995 appointment of senior counsel takes precedence over any 1996 appointment of senior counsel, despite the varying number of the years that the individual barristers had been in practice at the Bar. In NSW, all seniority is determined by admission and appointment to silk in NSW. Seniority of barristers practising in other States is irrelevant.

48.5 There are of course a 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 issued in that year, which will give you the seniority of the respective persons appointed as silk in any given year. That seniority is determined by the relative seniority held by the appointees as junior counsel.

49. Listing junior members of the Bar in order of seniority

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

49.2 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 or may not be their date of seniority).

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

A. The seniority of a barrister who practised at the Bar of New South Wales 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 admissions are ordered by the court.

B. 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 of the barrister is the date of the first practising certificate issued to him or her after his or her return to the Bar.

C. The seniority of Queen's Counsel/Senior Counsel is determined in accordance with the terms of the Queen's Commission or the statement issued 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.

*If special exemption is granted and the barrister retains their original seniority date, the applicable practising certificate fee (and membership fee) is to be determined by that earlier date.

49.4 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 eg. the order of barristers sitting at the Bar Table in a ceremonial sitting of a court.

ADMISSION TO THE ROLL OF LEGAL PRACTITIONERS

- 50.1 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. 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 October 2005 and after July 1994 a legally qualified person was admitted to the Supreme Court as a *legal practitioner*, and prior to July 1994 a legally qualified person was admitted to the Supreme Court as either a *barrister* or as a *solicitor*.
- 50.2 The New South Wales Bar Association requires legal practitioners 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 five week 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.
- 50.3 For further information on practising certificates see the Bar Association's web site at http://www.nswbar.asn.au/Professional/Member_PCs/contents.htm