



**REPORT OF THE JUDGES OF THE
SUPREME COURT OF SOUTH AUSTRALIA
TO THE ATTORNEY-GENERAL
PURSUANT TO
SECTION 16 OF THE *SUPREME COURT ACT 1935 (SA)*
FOR THE YEAR ENDED 31 DECEMBER 2011**

The Judges of the Supreme Court have assembled, as directed by s 16 of the *Supreme Court Act 1935 (SA)*, and considered the matters referred to in that section. In consequence, they furnish this Report for the year ending 31 December 2011.

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Constitution of the Court

On 31 December 2011 the Court was constituted of the following Judges, Masters and Principal Administrative Officers:

Judicial Officers

Chief Justice: The Honourable John Jeremy Doyle AC

Justices: The Honourable Margaret Jean Nyland AM
The Honourable Thomas Andrew Gray
The Honourable John Robert Sulan
The Honourable Ann Marie Vanstone
The Honourable Timothy Russell Anderson
The Honourable Richard Conway White
The Honourable Michael David
The Honourable Patricia Kelly
The Honourable Christopher John Kourakis
The Honourable David Harvey Peek
The Honourable Malcolm Fraser Blue
The Honourable Timothy Laurence Stanley

Masters: His Honour Judge Robert Martin Lunn
His Honour Judge Brian Edmund Withers

Principal Administrative Officers

Registrar of the Supreme Court, Registrar of Probates and Registrar in Admiralty:
Mr Steve Roder LLB (Hons)

Deputy Registrar of Probates:
Mr Antony Reid Smith LLB

Senior Deputy Registrar, Supreme Court:
Mr Errol Surman

Deputy Registrar, Combined Criminal Registry:
Mr Paul Ryan

Manager, Probate Services:
Mr Kent Wilson AETI, PNA

Manager, CAA Library Service:
Ms Susan Carter BA

The Supreme Court, as a participating Court of the Courts Administration Authority ("CAA"), has contributed to the CAA's *Annual Report* for 2010-2011.

The information contained in that report is not repeated here.

General

Retirements and appointments

During the year Justice Duggan and Justice Bleby both reached the statutory age for retirement and Justice Blue and Justice Stanley were appointed to the Court.

Staffing

As a result of the reduction imposed by the Government in the CAA's annual appropriation for the financial years 2009/2010 and 2010/2011 the Court has reduced the number of judicial support staff by seven (a 17.5% reduction) and civil registry staff by two (a 22% reduction).

The relocation of the civil registry to the Sir Samuel Way Building (co-located with the civil registry of the District Court and the registry of the Environment Resources and Development Court) has gone some way to reducing the impact of the staff reductions on services to the public, but the Court's resources remain severely stretched.

Supreme Court Buildings

The accommodation of the Court continues to be inadequate. Nothing has changed in that respect since the 2008 report. As the Judges said in that report – and repeated in 2009 and 2010:

“The Supreme Court buildings continue to provide facilities of an unsatisfactory standard in which staff, the legal profession and the judges must work.

This impacts on the Court's ability to provide a safe, healthy and efficient work environment for its staff, for users of the Court, and for the judges. The layout of the buildings makes it difficult to use staff in an efficient manner.

Staff are accommodated in cramped conditions. Public amenities are well below contemporary standards in every respect. Courtroom No 1 and Courtroom No 2 have no suitable waiting areas. The nearest public toilets can be reached only by leaving the building and walking about 100 metres to public toilets at the back of the building, access being by yet another building. There is a lack of appropriate spaces for witnesses and others waiting at court. Hot water is not available to all of the toilets. Buildings do not meet disability access standards. There is disability access to only four of the 12 courtrooms. Only one of those four provides disability access to the witness box. ... The air conditioning in some courtrooms is inadequate.”

Even minimal maintenance of the buildings is very expensive. Upgrading the existing buildings to contemporary standards is not practical.

It is very disappointing that, year after year, the Government declines to make a commitment to a redevelopment of the Supreme Court, while finding funds for other projects. The Government is not willing even to fund the preparation of a detailed business case for a redevelopment.

There is no other State Supreme Court with such inadequate accommodation. Yet again the Judges ask the Government to agree to the expenditure required to provide, for the State and its people, premises of an adequate standard for the Court.

Technology

It remains the case that potential efficiencies for parties to civil proceedings and for the Court cannot be realised because of the lack of technology infrastructure. The Court still does not have appropriate facilities of its own to support electronic trials (e-trials). The Court is not in a position to provide an effective system of electronic filing (e-filing) of documents.

Audio-visual links in criminal proceedings

In 2011 the Court commenced hearing certain criminal applications (not trials) involving persons in custody by audio-visual link, using a mobile video unit situated in Court No 4. This has had the effect of easing some of the pressure on the criminal courtrooms in the Sir Samuel Way Building.

Committees

Indigenous Justice – SA Committee

Through workshops, seminars, community visits and cultural awareness programs the SA Indigenous Justice Committee aims to enhance the judiciary's understanding of issues affecting Aboriginal people. The Committee is chaired by Justice Sulan. Its members are drawn from the federal jurisdiction as well as the higher courts, Magistrates, Youth and Coroners Courts. It is supported by the CAA's Manager Aboriginal Programs and Senior Aboriginal Justice Officers.

This year the SA Committee received a grant from the National Judicial College to undertake a Judicial Officers' Anangu Pitjantjatjara Yankunytjatjara (APY) Lands trip with *Desert Tracks* Aboriginal Tours from 29 August to 3 September 2011. 17 Judicial Officers attended from the Federal and South Australian courts with 2 CAA staff members. A participants' booklet was provided to all participants containing information about logistics, protocols, interpreters, as well as APY statistical, community and services information.

Mr Lee Brady, a Cultural Advisor with *Desert Tracks* accompanied the tour group and shared his insights and knowledge with individuals and in group sessions. The CAA has produced a DVD for training purposes, in conjunction with PY Media, to share the experience and benefits of the judicial visit. A PY Media cameraman and reporter accompanied the group on the *Desert Tracks* tour. Their interviews and filming have documented the expectations, experiences and reflections of participants.

Joint Rules Advisory Committee

Justice White chairs the Joint Rules Advisory Committee ("JRAC"). Two Judges, a Master and the Registrar of the Supreme Court were also members during the year. The other members are two Judges, two Masters and the Registrar of the District Court, a Magistrate, the President of the Law Society and three legal practitioners.

The role of JRAC is to prepare, review and revise the Rules of Court made under the Supreme Court Act 1935 and the District Court Act 1991. The Rules regulate the procedures and practice in the Supreme and District Courts. JRAC also prepares and reviews the Practice Directions of both the Supreme and District Courts. It is JRAC's responsibility to ensure that the Rules of Court and Practice Directions are adequate to deal with the requirements of contemporary litigation, and to assist in the efficient running of the Courts.

JRAC meets monthly.

In order to ensure that the legal profession is informed of amendments made to the Rules and Practice Directions, and to ensure that amendments reflect practical needs, JRAC liaises directly with the profession through its practitioner members and by consulting with professional organisations such as the Law Society and the Bar Association.

During the year, JRAC recommended changes to the Supreme Court's Civil Rules, Criminal Rules, Criminal Appeal Rules and Bail Rules, and to the District Court's Civil Rules. These amendments were made by the Judges of the respective Courts.

The amendments included provisions relating to the use of audio-visual facilities in the criminal jurisdiction of the Supreme Court, and a revised scale of costs in the Civil Rules.

A number of amendments were necessary because of legislative changes, for example, the Trans-Tasman Proceedings Act 2010 (Cth) and the Commercial Arbitration Act 2011 (SA).

In addition, JRAC recommended changes to the Supreme and District Court Practice Directions, including a major revision of the Practice Directions concerning the provision of summaries of argument and lists of authorities by electronic means.

In the past, JRAC has monitored the civil e-filing pilot program. This program has not been a success. No e-filings occurred in 2011. Quite substantial use of e-filing has occurred in interstate courts and in the Adelaide registries of the Commonwealth courts. JRAC referred to the Chief Justice and to the Chief Judge the report prepared by its sub-committee concerning the e-filing project. Since then the Courts Administration Authority has established its own sub-group to investigate the use of e-filing in the Courts.

One of the Judges on JRAC is a member of the national committees, chaired by The Honourable Mr Kevin Lindgren, formerly Justice Lindgren of the Federal Court, which are harmonising rules of civil procedure on topics considered suitable for this purpose. However, during the year, no proposals for the introduction of uniform rules were made by the national committees.

Community Relations Committee

As part of its Community Engagement Strategy (2010–13), the Community Relations Committee held an information session for Members of Parliament and Electorate Staff. Two MPs and 23 electorate staff attended. The Chief Justice welcomed participants. Judicial officers and CAA staff gave presentations on sentencing, intervention programs, Magistrates Court civil jurisdiction and the Youth Court, including Family Conferencing.

A familiarisation session for Members of Parliament, to be conducted by Judges of the Supreme Court, is planned for early in 2012.

The CAA continues to arrange visits and tours of the courts. During 2011 CAA staff received or visited 33 community, professional and higher education groups involving 915 visitors.

The CRC continued its Judicial Guest Speaker program. A number of Judges of the Supreme Court and several District Court Judges and Magistrates are on the roster. During 2011, judicial officers (including Supreme Court judges) gave talks to two community groups and four high school and university groups comprising 240 individuals. In addition, judicial officers spoke to 20 professional groups, such as the Law Society of SA, SAPOL, Families SA, and medical practitioners, with audiences totalling approximately 1400 individuals.

The Courts Education Manager had contact with about 8276 school children and ran professional development and familiarisation programs for more than 740 teachers. Of the visits by school students, 330 were to country and suburban courthouses. A further 700 students visited courthouses accompanied by a teacher, but were not given presentations or workshops by the Courts Education Manager. Judicial officers have assisted by giving short presentations to students on such visits.

Civil Change and Reform Group

In 2009 the Chief Justice established a group to consider changes to civil procedure and practice that might be able to be implemented without legislative amendment.

The Group is chaired by Justice White and includes a District Court Judge, the Registrar of the Supreme Court and three practitioners.

The Group met on eleven occasions in 2011 and organised a day long case management seminar, moderated by Justice Byrne of the Supreme Court of Queensland. The seminar was attended by Judges and Masters of both the Supreme Court and the District Court and legal practitioners. The seminar focused on reforms to civil case management systems.

Criminal Law Change and Reform Group

In 2009 the Chief Justice established a group to consider changes in the exercise of the Court's criminal jurisdiction that might be possible to implement without legislation. The Group is chaired by Justice Sulan and includes a District Court Judge, the District Court Registrar and two practitioners.

Other Committees and Programs

The Judges of the Court participate in the work of various organisations, committees and programs, which support the work of the Court and the work of the judiciary, and which in a general way promote the administration of justice. Some of these activities are intended to improve the operations of the Court and its administration. Others are concerned with professional development for the judiciary of the State. As well, Judges are involved in the legal profession's program of education and professional development, as presenters and chairpersons. Judges are also actively involved in the CAA's Community Relations Program. Through this program judges help the public better understand the administration of justice in the State.

It is not practical to record all of these contributions to the administration of justice and to the work of the judiciary. However, a summary of this aspect of the work of the judges follows.

The Australasian Institute of Judicial Administration (AIJA) conducts professional skills courses and seminars for judicial officers and others involved in the administration of justice. Justices Sulan, Bleby (until his resignation) and Blue were members of committees of the AIJA.

The Judicial Conference of Australia (JCA) draws its membership from judges and magistrates from all of the Australian courts. Its activities include informing the community about the role of the judiciary, and promoting improvements in the administration of justice. Justice White is a member of the Council of the JCA. Judge Withers is the Treasurer.

The Criminal Legislation Committee, at the request of the Chief Justice from time to time prepares comments on drafting and practical aspects of proposed criminal legislation. Justice Sulan is the chairman of the committee.

The National Judicial College of Australia (NJCA) is funded by the Commonwealth and most State and Territory Governments. It provides professional development programs to judicial officers throughout Australia. Judges of the Court are members of committees of the NJCA.

Most Australian Courts have adopted the Standard proposed by the NJCA for professional development. That Standard is that each judicial officer participate in professional development activities amounting to five days in each year. Most judicial officers of the Court met that Standard in 2011. This has been achieved despite minimal funding being available to support professional development programs for the judiciary. The CAA has made a number of submissions to the Government, in the context of its annual appropriation, seeking increased provision for professional development programs for the judiciary of the State. So far, none of these submissions have been successful.

The Judicial Development Committee was established by the Chief Justice to provide professional development programs for the judges and magistrates of the Courts of the State. The Committee is chaired by Judge Chivell of the District Court. It presents a number of professional development programs for judges and magistrates during the course of the year.

The Law Admissions Consultative Committee (LACC) comprises representatives of the authorities in each State and Territory that are responsible for the admission to practice of legal practitioners. LACC works closely with the Legal Practitioners Education and Admission Council, the work of which is dealt with later in this Report. Justice Bleby was until his retirement a member of LACC.

A number of the judges of the Court support the professional development programs of the Law Society of South Australia by serving on committees that present those programs, and by their involvement in the presentation of particular professional development programs. Judges of the Court chair the Professional Development Advisory Group and the Advocacy Committee, and other judges are regularly involved in the work of these two bodies.

Justice Gray chairs the Advocacy Committee. Other Judges are regularly involved in the work of that committee and of the Professional Development Advisory Group. Justice Gray is also Patron of the Young Lawyers Committee.

From time to time judges of the Court are asked to provide lectures or presentations to students studying law at one of the State's three universities offering a degree in law, and to students undertaking the Graduate Diploma of Legal Practice. Justice Gray chairs the Advisory Board of the Law School at the University of Adelaide. Judges of the Court regularly preside over moots argued by law students.

The Law Foundation makes grants to promote legal research, education and community projects related to the law. Justice Nyland is the chair of the Foundation.

A Judge of the Court is a member of the South Australian Law Reform Institute.

In addition to the above, judges of the Court from time to time undertake speaking engagements to a wide range of community groups, using these engagements as an opportunity to inform members of the public about the administration of justice in the State.

Changes in the Law

As in previous years, the Chief Justice commented on a number of Bills and legislative proposals at the invitation of the Attorney-General. A committee of judges considered some of these. In accordance with practice, comment was restricted to the practical application of the proposals, as distinct from policy issues.

Key Performance Indicators

Key Performance Indicators (KPIs) are used to indicate trends in the Court's work. Other statistical reports record lodgements, disposals and time taken at various stages. The KPIs indicate whether the Court is coping and is expected to cope with its workload. KPI reports are prepared for the civil, probate and criminal jurisdictions. Each of these is referred to below with an explanation of how they are derived and the result for the year ending 31 December 2011.

The KPIs are necessarily selective. They do not capture all aspects of the Court's workload in the criminal or civil jurisdiction. For example, in the criminal jurisdiction a substantial amount of judicial time is committed to bail reviews, applications to the Court for the variation or revocation of a licence applying to a person found not guilty of an offence by reason of mental impairment, and to directions hearings in connection with cases awaiting trial. In the civil jurisdiction the KPIs do not capture the substantial amount of judicial time involved in the management of cases assigned a special classification, or the time spent dealing with applications to a judge sitting in chambers.

Criminal Jurisdiction Lodgements

Two timeliness standards are applied. The first of these is that "no more than 10% of lodgements pending completion are to be more than 12 months old". The second is that "no lodgments pending completion are to be more than 24 months old".

The lodgement figures reported for the criminal jurisdiction include matters committed for trial, matters committed for sentence, breach of bond matters, matters transferred from a summary court, ex-officio Informations and various minor applications.

Various factors (not all of them under the Court's control) influence the Court's ability to meet the standards. Tables 2, 3, 5 and 6 indicate that the Supreme Court is disposing of its work

at a rate similar to last year. There were 12 lodgements more than 12 months old. There has been an increase in the number of lodgements more than 24 months old. With the numbers being so low, it is not enough to cause concern.

Table 1 – Combined (Supreme Court and District Court) Criminal Lodgements

	2009	2010	2011
Number of lodgements pending as at year's end	1724	1626	1493
Number of lodgements more than 12 months old (but less than 24 months old)	295 (17%)	335 (21.2%)	219 (15.3%)
Lodgements more than 24 months old	85 (5%)	109 (6.9%)	86 (6.0%)

Table 2 – Supreme Court Criminal Lodgements – Non-Appeal

	2009	2010	2011
Number of lodgements pending as at year's end	57	60	56
Number of lodgements more than 12 months old (but less than 24 months old)	4 (7%)	11 (18.3%)	8 (14.5%)
Lodgements more than 24 months old	1 (2%)	1 (1.7%)	4 (7.3)

Table 3 – Court of Criminal Appeal Lodgements*

	2009	2010	2011
Number of lodgements pending as at year's end	37	40	57
Number of lodgements more than 12 months old (but less than 24 months old)	1 (2.7%)	1 (2.5%)	0 (0%)
Lodgements more than 24 months old	1 (2.7%)	0 (0%)	1 (1.75%)

* Includes applications for permission to appeal

Criminal Jurisdiction Clearance Ratio

The clearance ratio is the ratio of finalisations to lodgements over a reporting period. The standard is 100%, which indicates that the Court is disposing of matters at the same rate as lodgements occur. A figure above 100% indicates that more cases are disposed of than are received. 2011 shows a clearance rate of greater than 100%, which has contributed to a reduced number of pending matters (refer Table 1). There has been a small increase in lodgements in 2011, and a small reduction in the clearance ratio (Table 6).

Table 4 – Combined (Supreme Court and District Court) Criminal Clearance Ratio (non-appeal)

	2009	2010	2011
Number of lodgements	2749	2655	2739
Number of finalisations	2402	2998	2748
Clearance ratio (%)	88%	113%	100.3%

Table 5 – Supreme Court Criminal Clearance Ratio – Non-Appeal

	2009	2010	2011
Number of lodgements	272	212	214
Number of finalisations	260	216	223
Clearance ratio (%)	96%	102%	104.2%

Table 6 – Court of Criminal Appeal Clearance Ratio

	2009	2010	2011
Number of lodgements	111	135	175
Number of finalisations	119	132	158
Clearance ratio (%)	107%	98%	90.2%

Civil Jurisdiction Lodgements

The Court's civil workload is measured using the same two standards applied to the criminal workload.

The figures reported for the civil jurisdiction non-appeal backlog (Table 7) exclude Probate and Admission applications. Most of the matters pending are at the pre-trial stage before the Masters.

Table 7 – Supreme Court Civil Lodgements – Non-Appeal

	2009	2010	2011
Number of lodgements pending as at year's end	717	825	815
Number of lodgements more than 12 months old (but less than 24 months old)	101 (14%)	136 (16%)	134 (17%)
Lodgements more than 24 months old	95 (13%)	133 (16%)	107 (13%)

In Table 8 the figures for the appeals backlog include Full Court appeals, all Magistrates Court appeals and other miscellaneous appeals.

Table 8 – Supreme Court Civil Lodgements - Appeals (Includes Magistrates' Civil and Criminal Appeals)

	2009	2010	2011
Number of lodgements pending as at year's end	57	54	56
Number of lodgements more than 12 months old (but less than 24 months old)	6 (10%)	5 (9%)	5 (8.9%)
Lodgements more than 24 months old	2 (3%)	2 (4%)	2 (3.6%)

* includes appeals not set down by the parties

Table 9 shows that lodgements increased in 2011 by 12%, after a decrease in the previous year of 11%. There has been an increase in the clearance ratio.

Table 9 – Supreme Court Civil Clearance Ratio – Non-Appeal

	2009	2010	2011
Number of lodgements	1393	1232	1378
Number of finalisations	1428	1135	1386
Clearance ratio (%)	102.5%	92.1%	100.5%

General Statistics

This section of the *Report* sets out a number of tables containing statistics relating to the work of the Court.

It is important to note that there are other aspects of the Court's work, and of the work of the three Registries (Civil, Probate and Combined Criminal), that are not reflected in these tables.

Full Court and Court of Criminal Appeal

Three judges usually constitute the Full Court (for civil appeals) and the Court of Criminal Appeal (CCA). Data relating to appeals and applications for permission to appeal is displayed in Tables 10 and 11 below.

Table 10 – Permission to Appeal Applications to the Court of Criminal Appeal

	2009	2010	2011
Applications for permission to appeal (dealt with by single Judge)	109	111	121

Table 11 – Appeals and Applications to the Full Court and Court of Criminal Appeal

	2009	2010	2011
Full Court (appeals and applications)	58	66	67
Court of Criminal Appeal (appeals and applications)	111	136	175
Total	169	202	242

Table 11 includes applications for permission to appeal that were considered by the Full Court or the CCA. It also includes appeals that have been instituted but have not been set down by the parties at the end of the reporting period. Table 12 records appeals that were heard by the Full Court and CCA. The difference between these tables reflects cases in which leave to appeal was refused, leave applications or appeals were abandoned, appeals were not set down by the parties, or remained unheard at the end of the year.

Table 12 – Disposals by Hearing

	2008	2009	2010	2011
Full Court	45	53	41	46
Court of Criminal Appeal	78	96	97	129
Total	123	149	138	161

Table 13 – Full Court – Average Hearing Lengths

	2008	2009	2010	2011
Full Court – average actual length (hours)	3.73	3.98	3.07	4.70

Table 14 shows that the time taken from setting down to hearing has increased, even though the Court is usually able to offer an earlier listing if required.

In relation to criminal appeals, there has been a small increase in the time between leave being granted and the appeal hearing, but the time taken to deliver judgments in this jurisdiction has decreased.

Table 14 – Full Court and Court of Criminal Appeal Time Intervals

Full Court	2009	2010	2011
<i>Average time taken (days)</i>			
Institution to setting down (not under the Court's control)	91	120	100
Setting down to hearing	54	48	50
Hearing to judgment delivery	62	62	50
Court of Criminal Appeal	2009	2010	2011
<i>Average time taken (days)</i>			
Application to leave being granted	57	43	54
Leave granted to hearing	39	38	42
Hearing to judgment delivery	42	57	42

Single Judge Appeals

Each month, one judge is allocated to work in this jurisdiction, with some assistance in most months from another judge or judges. The criminal appeals are from decisions of Magistrates in the criminal jurisdiction of the Magistrates Court. The civil appeals are from Masters of this Court, from interlocutory (preliminary) orders in the District Court, from decisions of Magistrates in the civil jurisdiction, and from various Tribunals and Boards. Table 15 below shows the number of appeals that were disposed of by way of judgment.

Table 15 – Disposals by Judgment – Single Judge Appeals

	2009	2010	2011
Criminal appeals	117	147	115
Civil appeals	63	37	27
Total disposed	180	184	142

The Civil Jurisdiction

Lodgements

Table 16 shows civil lodgements other than appeals and admission applications.

Table 16 – Civil Jurisdiction – Matters Instituted

	2006	2007	2008	2009	2010	2011
Summonses	1167	1197	1302	1133	1062	1203
Companies application – companies liquidation	149	215	180	186	137	116
Other company matters	104	61	49	75	33	59
Total	1420	1473	1531	1393	1232	1378

Table 16 indicates that the overall workload in the civil jurisdiction has not varied greatly over the last six years. However, although the Court does not have reliable statistics, it appears that the number of unrepresented litigants in civil cases and magistrates appeals may be increasing. The impact of this is to increase the workload of Registry staff (because of the time spent giving assistance to unrepresented litigants). There is also a tendency for the length of hearings to increase. This is a matter which the Court will have to watch.

Land and Valuation Court

The Land and Valuation Division (LVD) is a specialist division of the Court under Part 3A of the Supreme Court Act 1935. Three Judges heard LVD actions in the 2011 calendar year. Following Justice Bleby's retirement on 9 June 2011 Justice Kourakis became the head LVD Judge.

The Division hears a variety of actions relating to land issues. The specialist nature of this Division enables speedy determination of actions. All cases are judge-managed to completion. Hearings include judicial review of planning decisions, compensation for compulsory acquisition of land and planning appeals from the Environment, Resources and Development Court together with contested interlocutory applications. They do not include matters heard by the Full Court.

During the 2011 year 29 actions were disposed of, leaving 85 active matters unresolved. The number of actions commenced in this Division in the 2011 year was 36.

Approximately 80% of the actions commenced this year involved Government agencies such as the Commissioner of Highways and the Valuer-General and approximately 22 % involved various Councils. There is an overlap between these categories as some actions involved a Government agency and a Council. Only three matters involved disputes between private individuals.

The matters which were the subject of contested hearings included planning appeals, judicial review of planning and related decisions and appeals from the ERD Court. Contested hearings varied in length from as little as a couple of hours to two days.

As at 31 December 2011, there are no outstanding judgments in the Division.

A significant number (30) of the newly commenced actions were compulsory acquisition matters. It is important to note that many of the compulsory acquisition matters lie effectively dormant following payment into court until an application for payment out is made, sometimes many years later. It may be appropriate to consider whether there are more efficient alternatives to the payment in procedure. Any change is likely to require legislative amendment.

The following tables show an analysis of the Division's active matters and matters commenced from 2009 to 2011 as at year end.

Table 17: Land and Valuation Division

Type of Action	Percentage		
	2009	2010	2011
Encroachment	11%	14%	12 %
Planning Appeals	21%	13%	1 %
Judicial Review	15%	12%	2 %
Partition and Sale	5%	6%	2 %
Compulsory Acquisition	42%	46%	76 %
Valuation Appeal	5%	3%	7 %
Other	2%	6%	-
Total	100%	100%	100%

Table 18: LVD actions commenced

	2009	2010	2011
Matters commenced	62	29	36

The Land and Valuation Rules, although amended from time to time, have not been comprehensively reviewed since they were first enacted in 1970. This is despite comprehensive reviews of the Supreme Court Rules in 1986 and 2006. The present rules are outdated and contain inconsistencies and obsolete references, contributing to a degree of confusion in the profession. They are in urgent need of revision. However, the necessary comprehensive review is beyond the resources of fully occupied sitting judges and requires external assistance. An appropriate budget allocation is essential.

Civil Trials

Table 19 contains data relating to civil trials (other than long and complex cases).

Table 19 – Civil Trials

CIVIL TRIALS	2006	2007	2008	2009	2010	2011
Orders to proceed to trial	36	36	34	43	33	26
Cases fixed for trial	39	37	31	40	30	43
Disposals after fixing of trial date	24	31	31	33	37	25
Cases disposed of by trial*	17	16	15	11	26	14
Cases awaiting trial at end of year	17	15	15	23	16	18

* This figure is included in "Disposals after fixing of trial date".

During 2011 the Court was listing trials up to 12 months after the Listing Conference. The Court continues to be able to offer earlier trial dates, but parties continue to ask for later dates.

Table 20 shows that the average trial length (for cases tried to judgment) has not varied from last year.

Table 20 – Civil Trial Details

	2006	2007	2008	2009	2010	2011
Average trial length (days)	2.7	2.9	4	4.8	4.8	4.8
Number of trials exceeding five days in length	5	4	3	3	8	6

Special Classification Civil Cases (previously referred to as Long and Complex Civil Cases)

A panel of judges managed the list of special classification actions with the assistance of the Masters. A special classification action is assigned as such under r 115 of the Supreme Court Civil Rules 2006 or as a complex action under r 2A of the 1987 Rules. They are cases expected to take more than 15 hearing days or involving complex issues of law and/or fact.

The management of these actions requires the judges to conduct pre-trial proceedings and, where appropriate, examine the possibility of alternative dispute resolution. The judges endeavour to define and reduce the issues with a view to reducing the length of the trial. On occasions parties appeal against decisions made by a judge in these pre-trial proceedings, causing delay in the listing of the action for trial.

Most of the management conferences were of short duration. However, some pre-trial applications took a considerable hearing time and required reasons for judgment. The management of these actions is a task over and above the ordinary workload of the panel judges.

At the beginning of the year 19 actions remained in the list. An additional 11 were referred to the panel. A total of 15 actions had a trial date fixed or tentatively fixed for hearing in 2011. Six actions had a trial fixed for 2012. No new trials commenced during the year. In late 2009 one matter commenced, 61 days of hearing proceeded in 2010 and a further 63 days of evidence and submissions were heard in 2011. Judgment was reserved in August 2011 and is still outstanding.

Seventeen actions resolved by consent orders or by being discontinued. Of those, 14 had a trial date fixed. In most cases settlement was shortly before or on the trial commencement date. For the previous three years the number outstanding at end of year was the same. The number of disposals this year reduced that balance by about a third, albeit without hearings.

Of the 30 current actions 3 were referred to mediation, which is less than previous years and only 2 of those matters resulted in a settlement without need to fix a trial date.

Table 21 – Special Classification Cases

	2007	2008	2009	2010	2011
No. of cases in the Special Classification list at years end	15	19	19	19	13
No. of Cases with estimates of six weeks or greater	4	9	9	13	6
Range of Estimated length (in weeks)	3-52	1-12	1-52	1-52	1 to 8
Total No. of trial days sat on Special Classification matters	46	47	58	72	63

Masters' Jurisdiction

The primary responsibility for the case flow management system rests with the Masters of the Court. They oversee all cases in the general civil list and ensure that solicitors appearing for parties, as far as possible meet the prescribed time standards.

There has been an increase in the applications to and hearings conducted by the two Masters.

Table 22 – Applications Dealt with by Masters

	2006	2007	2008	2009	2010	2011
Hearings in court	592	654	689	757	708	500
Hearings in chambers (eg: possession and interlocutory applications)	2089	2206	2055	2548	2153	2538
Hearings in chambers (urgent applications)	116	107	90	113	106	110
Total	2797	2967	2834	3418	2957	3148

Case Flow Management

The status hearing (the first hearing) is used to get the parties ready for a settlement conference as soon as possible. If the parties are unable to resolve the matter at the settlement conference the matter is adjourned to a final directions hearing, which is used to get the matter ready for trial.

Table 23 – Number of Conferences

	2006	2007	2008	2009	2010	2011
Status hearing (SH)						
- No. of SHs held	500	372	404	436	564	392
- No. at first hearing*	168	147	167	188	177	171
Settlement Conferences (SC)						
- No. of SCs held	160	138	194	246	159	185
- No. at first hearing*	95	80	102	127	102	113
Directions Hearing (DH)						
- No. of DHs held	392	517	494	515	600	563
- No. at first hearing*	70	92	87	131	113	90

* A 'first hearing' records the number of cases involving a first hearing of the relevant conference type (i.e. each case is counted only once for this figure).

The Criminal Registry

Lodgements

Table 24 below shows another significant increase in lodgements in the combined criminal jurisdiction in 2011 as has been the case for the last five years.

Table 24 – Combined Criminal – Lodgements

	2006	2007	2008	2009	2010	2011
Lodgements	1921	1974	2360	2513	2655	2739

Table 24a – Supreme Court Criminal – Lodgements

	2009	2010	2011
Lodgements	274	212	214

Table 25 shows a significant increase in the number of matters that have been disposed of after being listed for trial. For these purposes, disposals include matters with a trial date set and then a guilty plea entered before or on the day of trial; a *nolle prosequi* entered before or on the day of trial; trials with verdicts, including mental impairment trials; and disputed facts hearings that were listed and disposed of.

At the end of 2011 353 trials were listed but not yet heard. This is a significant decrease compared with the number of trials listed and awaiting hearing at the end of December 2010. In 2011 there were less matters committed for trial with 1246 compared to 2010, 1413.

Table 25 – Combined Criminal – Trial List Disposals

	2006	2007	2008	2009	2010	2011
Disposals after entry into trial list (includes non-verdict disposals)	516	533	540	523	680 ⁺	628
Average length of trial (in days) – commencement of trial to verdict	6.5	5.7	6.3	6.5	6.7 ⁺	6.5
Listed trials outstanding (at end of year)	466	430	519	581	451 ⁺	353

+ From 2010 includes Supreme Court circuit trials

Table 25a – Supreme Court Criminal – Trial List Disposals

	2009	2010	2011
Disposals after entry into trial list (includes non-verdict disposals)	37	38 ⁺	41 ⁺
Average length of trial (in days) – commencement of trial to verdict	6.5	11 ⁺	18 ⁺
Listed trials outstanding (at end of year)	n/a	7 ⁺	12

+ From 2010 includes Supreme Court circuit trials

Table 26 shows an increase in the number of trials that proceeded to verdict in 2011, when compared with 2010. Of those trials that proceeded to verdict, there has been an decrease in the number of 3-4 day trials and an increase in trials sitting 1-2 days.

Table 26 – Combined Criminal – Length of Trials Proceeding to Verdict

	2006	2007	2008	2009	2010	2011
Trials to verdict	176	166	159	174	181 ⁺	221 ⁺
1-2 days	8%	5%	8%	9%	4% ⁺	8% ⁺
3-4 days	32%	39%	38%	36%	48% ⁺	33% ⁺
5-10 days	48%	45%	41%	44%	39% ⁺	48% ⁺
Over 10 days	11%	11%	13%	8%	9% ⁺	12% ⁺

+ From 2010 includes Supreme Court circuit trials

Table 26a – Supreme Court Criminal – Length of Trials Proceeding to Verdict

	2009	2010	2011
Trials to verdict	20	30 ⁺	20 ⁺
1-2 days	5%	16% ⁺	5% ⁺
3-4 days	15%	27% ⁺	15% ⁺
5-10 days	45%	27% ⁺	40% ⁺
Over 10 days	35%	30% ⁺	40% ⁺

+ From 2010 includes Supreme Court circuit trials

Legal Practitioner’s Education Admission Council (LPEAC)

LPEAC met on four occasions in 2011. The Chief Justice chairs LPEAC. The Registrar provides executive support.

During the year LPEAC recommended a number of amendments to the *Legal Practitioners Act, 1981*.

LPEAC continued to consider whether LPEAC should fix a minimum length of time for a student to complete a degree in law. One commonly held opinion is that a degree in law should not be completed in less than three years, absent special circumstances. Another commonly held opinion is that admitting authorities should not impose a minimum time for completion of a law degree. The consideration was prompted by an application made by one particular student. The matter arose also as an aspect of the USA’s course, which can be completed by a student, without obtaining any dispensation, in less than three years. LPEAC has raised the matter with the Law Admissions Consultative Committee (LACC) because it is a national issue.

LPEAC is also considering whether it is appropriate to create different categories of practising certificates, for example “employed practitioner”, “government practitioner” and “pro bono practitioner”.

As in recent years, LPEAC has made comments to LACC on a number of matters that LACC raised in the course of its work to bring about a uniform national approach to aspects of admission to practice. To some extent the work of LACC has been overshadowed by the National Legal Profession Reform process.

LPEAC recorded with gratitude the contribution Justice Bleby, who retired during the year, has made to its work.

LPEAC consults regularly with the Board of Examiners on matters relating to admission to practice. To facilitate communications between the two bodies Judge Withers (the Presiding Master) attends meetings of LPEAC as an observer.

The Board of Examiners

The Chief Justice appoints the members of the Board of Examiners. The Board comprises a Master of the Court - Judge Withers (who is the presiding member) – two persons nominated by the Attorney-General and 12 legal practitioners.

As part of its general work the Board each month considers applications for:

- local admission;
- re-admissions;
- registrations pursuant to the *Mutual Recognition Act* and the *Trans-Tasman Mutual Recognition Act*;
- accreditation of academic and practical qualifications of overseas applicants;
- accreditation of interstate degrees to confirm the academic requirements required to be satisfied under the *Admission Rules*;
- intimations as to suitability for admission;
- approvals to variations in the supervision requirements for post-admission supervised employment;
- variation or removal of conditions on practising certificates; and
- determining conditions to be placed on a right of practice by a practitioner returning to practice after three or more years.

Some of that work can involve considerable investigation by the Board. Once the Board is satisfied as to eligibility and suitability a brief report is made to the Court recommending admission, which forms the basis upon which an applicant is admitted as a practitioner of the Court.

Applications for accreditation of academic and practical qualifications are now referred by the Board to the Victorian Council of Legal Education in conformity with a nationally uniform approach to the assessing of such applications recommended by the Law Admissions Consultative Committee and adopted by the Legal Practitioner's Education and Advisory Council.

The board met on 11 occasions in 2011. During the year there were 268 applications for admission, compared to 283 in 2010.

**Table 27 – Applications for Admission
(other than Mutual Recognition applications)**

	2007	2008	2009	2010	2011
Applications for admission	251	249	297	283	268

Table 28 – Mutual Recognition Applications

	2007	2008	2009	2010	2011
Mutual recognition applicants	49	58	51	53	76
	2007	2008	2009	2010	
Degrees assessed	24	49	20	10	15

Table 29 – Overseas Degrees Assessed

	2007	2008	2009	2010	2011
Degrees assessed	24	49	20	21	9

Table 30 – Mutual Recognition – Applications by State

	2007	2008	2009	2010	2011
New South Wales	26	23	20	27	24
Victoria	7	11	13	16	24
Queensland	2	6	7	4	4
ACT	4	3	3	3	14
Western Australia	2	4	2	1	4
Northern Territory	5	9	2	2	5
Tasmania	1	2	2	0	1
Trans-Tasman	2	0	2	3	0

Probate Registry

The bulk of the work of the Probate Registry is the issue (in non-contentious cases) of grants of probate or administration in respect of the estates of deceased persons. In issuing such grants the Registrar of Probates and the Deputy Registrar of Probates exercise the powers of the Court in the manner prescribed by law.

The Registry was again very busy in 2011 (Table 31). For the first time in many years there was a change in the composition of the clerical staff of the Registry, requiring a substantial training exercise. As anticipated in the last report, the backlog was substantially reduced during the year, notwithstanding a small increase in the number of applications.

Table 31 – Probate Registry – Grants and Orders

	2009	2010	2011
Grants issued	5618	5148	5715
Grants resealed in South Australia	46	24	28
Orders made in chambers	1242*	1507	2018
Inquiries and searches	1016	928	890
Personal applicants	276	265	165
Applications pending at 31 December	807	1027	886
Clearance rate for year	106%	96%	104%

* Since April 2009, a new system has been in place, recording **all** orders made in chambers by the Registrar and by the Deputy Registrar of Probates

Table 32 – Probate Registry – Total applications

2009	2010	2011
5399	5414	5491

CAA Library Service

Overview of the collection

The Library Service is made up of several collections. The main collections are located in the Supreme Court (which is open to the public) and the Sir Samuel Way Library. Other smaller, specifically-targeted collections are maintained in the Adelaide Magistrates' Court, suburban and regional courts, specialist courts and in judges' chambers. The major jurisdictions represented in the library collections are the Australian Commonwealth, states and territories and the United Kingdom. Print and digital formats are available.

Table 33 - Volumes held by CAA Library Service

	2008–09	2009–10	2010–11
Total volumes	185 852	187 397	188 736

Strategic Direction

In support of the CAA's strategic goals of continuously improving delivery of services and to use technology to enable service excellence, the Library Service this year commenced a process to transform resources from predominantly print-based to digital formats. The strategy is to establish digital as the preferred medium for information. The transition strategy involves a structured collaborative process with minimal disruption to the work of the courts.

Activities undertaken during 2011 to initiate implementation of this strategy include the:

- Changing the selection criteria for staff to include a greater emphasis the need for skills in managing digital resources and skills in supporting users in their use of digital resources.
- Piloting the use of a selection of digital resources with a representative selection of judicial officers to enable Library staff to better understand the digital information needs and preferences of judicial officers.
- Increasing the level of resources dedicated to supporting judicial officers in their transition from print to digital resources
- Strengthening the collaboration between the Library and the Information Technology Services Branch regarding utilising emerging technologies in the provision of information resources.

Review of Library staffing

A resignation early in the year provided an opportunity to undertake a review the Library staffing structure. Over the second half of the year a revised structure incorporating a reduced staffing entitlement has been developed and should be implemented early in 2012.

Amenity of the Supreme Court Library

Library staff regularly receive negative comment regarding the physical amenity of the Supreme Court Library. During 2011 some improvement has occurred with the steam cleaning of the carpet. Funding for further improvements will be sought in future.

DATED this 28th day of March 2012



CHIEF JUSTICE

On behalf of the Judges of the Supreme Court