

**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 2008

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 2008.

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Constitution of the Court

On 31 December 2008 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 Kevin Patrick Duggan AM RFD
The Honourable Margaret Jean Nyland AM
The Honourable David John Bleby
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 Robyn Ann Layton
The Honourable Michael David
The Honourable Patricia Kelly
The Honourable Christopher John Kourakis

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

Acting Deputy Registrar, Combined Criminal Registry:
Ms Michelle Caldwell BJS

Acting Manager Registry Services, Civil Registry:
Mr Simon De Bortoli

Manager, Probate Services:
Mr Kent Wilson AETI, PNA

Manager, CAA Library Service:
Ms Susan Carter BA

Judicial Appointments and Retirements

The Honourable Justice Debelle retired on 20 June 2008 after 18 years as a Justice of the Supreme Court.

The Honourable Justice Kourakis was appointed to the bench on 21 August 2008.

General

The Supreme Court, as a participating Court in the Courts Administration Authority (“CAA”), has contributed to the CAA’s *Annual Report* for 2007–2008.

The information contained in that report is not repeated here.

Supreme Court Buildings

Some reparation work has commenced on the exterior of that part of the Supreme Court that houses the Civil Registry. However, 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 building 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. 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 flooding of part of the Library (dealt with later in this Report) illustrates the hazards of working in unsatisfactory accommodation. The air conditioning in some courtrooms is inadequate.

The Government has provided funds for the fitting out of two new criminal courtrooms in Sturt Street. The additional courtrooms will enable more criminal cases to be listed. The Government has agreed to appoint two additional District Court judges, so that full use can

be made of the new courtrooms. These measures should result in some reduction in the time that elapses before a criminal trial is listed in the District Court.

However, the use of two courtrooms at a site separated from the Supreme Court and the District Court will cause some inefficiency, and some inconvenience to the public.

Technology

Potential efficiencies for the parties to civil proceedings and for the Court cannot be realised because of the lack of technology infrastructure. The Court is still in the position of requiring parties in long and complex cases to engage external service providers to provide the technology infrastructure to support electronic trials (e-trials) because it lacks appropriate facilities. The Court continues to consider how best to provide for e-trials in the context of budgetary restraints.

Since 2006 the Court of Criminal Appeal has used electronic trial transcripts, instead of hard copy. This resulted in reduced production costs for the Court, immediate access to transcript during hearings, and enhanced search facilities.

The Court is considering using electronic transcripts of civil trials in Full Court appeal hearings, subject to sufficient funding being available.

Video Conferencing Project

The aim of the Video Conferencing Project is, by increasing the use of video conferencing and related facilities, and by improving those facilities, to improve the efficiency and the management of the criminal justice system.

In August 2008 the Steering Committee approved Stage 1 of an approach focused on demonstrating the effectiveness of a whole of Justice Video Conferencing environment in a manageable number of courts and justice locations. The Supreme Court and District Court sites included in Stage 1 are the Supreme Court Library Vulnerable Witness Suites and Courtrooms 1 and 5 in the Sir Samuel Way Building.

The implementation of Stage 1 has commenced. The Supreme Court and the District Court will begin using the new equipment early in 2009. If Stage 1 is successful, further installations will be undertaken.

Aboriginal Cultural Awareness Program

In December 2007 Justice French (as he then was), on behalf of the National Indigenous Justice Issues Committee established by the National Judicial College of Australia, wrote to Chief Justice Doyle and invited him to establish a State Committee to put proposals to the National Committee for funding for judicial professional development programs in South Australia.

The Chief Justice invited Justice Sulan to form a cross-jurisdictional State Committee and to chair that Committee. That Committee was formed in early 2008. Members of the State Committee are:

Justice Sulan (Supreme Court) - Chairperson
Justice Mansfield (Federal Court)
Justice Burr AM (Family Court)
Judge Tilmouth (District Court)
Federal Magistrate Mead (Federal Magistrates Court)
Mr Boxall SM (Youth Court)
Mr Johns SM (Coroner)

The new Committee replaces the previous Aboriginal Cultural Awareness Committee.

Justice Sulan is also a member of the National Indigenous Justice Issues Committee.

The State Committee met regularly throughout 2008. In November 2008 the Committee held a very successful one-day conference for members of the judiciary and magistracy from both State and Federal jurisdictions. The Conference was held at Nunkuwarrin Yunti in Wakefield Street and included four guest speakers, as follows:

Ms Jenni Caruso (University of Adelaide), who spoke on “The Effect of Colonisation on the Aboriginal Community”;

Dr Suzi Hutchings (independent consultant and anthropologist), who spoke on “Appearing Before the Courts – A Discussion of Case Studies”;

Professor Peggy Brock (Edith Cowan University, WA), who spoke on “Aboriginal People and Criminal Justice: Trends in Arrest and Incarceration Rates in South Australia, 1836-1960s”; and

Mr Major Sumner (Nunkuwarrin Yunti), who spoke on “A Ngarrindjeri Perspective on Colonisation”.

The Conference was funded by the National Indigenous Justice Issues Committee.

It is anticipated that a trip to one of the Aboriginal communities will be organised for some time in 2009.

Courts Aboriginal Reference Group (CARG)

At a meeting of CARG in September 2007, proposed amendments to the Terms of Reference were discussed. Justice Sulan subsequently met with the Council of Aboriginal Elders and invited them to nominate six community representatives to join CARG. The Council of Elders nominated two community representatives, one of whom lived in Port Lincoln.

After consultation with Mr Frank Lampard, who chaired a sub-committee of members of CARG, Justice Sulan agreed with the sub-committee that there was little point in proceeding with CARG for the time being, due to a difficulty in arranging appropriate representation on CARG.

The CAA Council agreed that the pilot scheme for CARG be abandoned for the time being.

Joint Rules Advisory Committee

The Joint Rules Advisory Committee (“JRAC”) comprises two Judges, a Master and the Registrar from the Supreme Court; three Judges, a Master and the Registrar from the District Court; one 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 pursuant to the *Supreme Court Act* and the *District Court Act*. The Rules regulate the procedures and practice in the Supreme and District Courts. JRAC also has a role in the preparation and review of the Practice Directions of both the Supreme Court and the District Court. 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. In order to ensure that the legal profession is informed of amendments made to Rules and Practice Directions, and to ensure that amendments reflect practical needs, JRAC liaises directly with the profession 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, Corporations Rules, Probate Rules, Criminal Rules, Criminal Appeal Rules and Bail Review rules and to the District Court's Civil Rules, Criminal and Miscellaneous Rules. These amendments were made by the respective courts.

A number of the amendments were necessary because of legislative changes, for example, the *Child Sex Offenders Registration Act 2006*.

In addition, JRAC recommended changes to the Supreme and District Court Practice Directions.

The civil e-filing pilot program has not been a success. No e-filings occurred in 2008. Quite substantial use of e-filing has occurred in interstate courts and the Adelaide registries of the Commonwealth courts. JRAC is investigating the experience of those courts with a view to recommending changes to the Court's program.

A member of JRAC is a member of the national committees, chaired by Justice Lindgren of the Federal Court, which are harmonising rules of civil procedure on topics considered suitable for harmonisation. During the year, amendments to the Supreme and District Court Civil Rules and to the Supreme Court Corporations Rules were made in accordance with proposals by the national committees.

Community Relations Committee

The Community Relations Committee reports to the State Courts Administration Council and comprises judicial officers and senior administrative staff. The committee meets monthly and is responsible for the Authority's Community Involvement Plan.

The committee oversees a Community Reference Group (CRG), comprising representatives from 14 community organisations. The CRG provides comment on the desirability and effectiveness of court-initiated activities that are intended to improve public trust and confidence in, and understanding of, the work of the courts.

Community relations work in 2007-08 included:

- a mock public sentencing demonstration at the Courts Annual Open Day. More than 1500 people attended the Open Day;
- several community activities in the South-East, including a 'Day on the Bench';
- several mainstream news feature articles explaining court processes;

- quarterly online publication of a *Courts Newsletter* on the CAA website, explaining court services and processes;
- reviewing information stations in courthouses; and
- a redesign of *Ask the Judge*, an interactive educative e-mail centre for students, who pose questions to judicial officers. Answers are also published to the site where they can be researched. Approximately 120 questions and 110 answers were dealt with this year.

This year, five judicial officers and magistrates gave talks to about 275 members of the public involved in community groups. Most talks lasted around 45 minutes, with most questions from the public being about the sentencing process.

Court staff provided presentations at courts and community venues for a further 450 members of the public.

In addition to those talks, this year 27 organisations (in all, about 650 individuals) visited courts in the city centre. Those visits are additional to visits that occur during Court Open Day and Law Week. It is intended that statistics relating to visits to country courts will also be reported on in future years.

During the year, the Courts Education Officer held workshops and tours for more than 4000 school students and specialist educator groups, and supported a Young Women in Leadership seminar for approximately 80 senior school girls. The Education Officer also presented the courts' website resources to 30 teachers at a forum in July. This was repeated, in response to demand, in October, commencing with a Magistrates Court and courts precinct tour. The Education Officer arranged for six judicial officers to attend a training evening dinner with 60 legal studies teachers, and coordinated completion of a virtual tour of the Youth Court.

Civil Change and Reform Group

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 eight occasions in 2008.

Criminal Law Change and Reform Group

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.

Court Users Group

The Court invited business, community, government and professional groups that have some involvement with the Court's work to comment on the Court's processes and services and to participate in sub-groups that might formulate proposals for improvements in the Court's processes and services that it provides.

The Group is chaired by the Registrar and met on two occasions during the year. A number of sub-groups have been set up.

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 courts of the State. As well, Judges are involved in the legal profession's program of education and professional development. 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 Australian Institute of Judicial Administration (AIJA) conducts professional skills courses and seminars for judicial officers and others involved in the administration of justice. Three members of the Court are 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 DeBelle was the Chair of the JCA until his retirement. Another member of the Court is a member of the Council of the JCA.

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

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 Trenorden of the District Court. It presents a number of professional development programs for judges and magistrates during the course of the year. One member of the Supreme Court is a member of that Committee.

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. One member of the Court is 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.

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. A member of the Court chairs the Advisory Board of the Law School at the University of Adelaide.

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

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.

Legislative changes that are likely to have significant impacts on the Court include the *Serious and Organised Crime (Control) Act 1998*, the *Statutes (Amendment) Evidence and Procedure Act, 2008* and the *Criminal Law Consolidation (Rape and Sexual Offences) Amendment Act 2008*.

Key Performance Indicators

Key Performance Indicators (KPIs) are used to indicate trends in the management of 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 2008.

Criminal Jurisdiction Backlog

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 1 to 4 evidence a continued reduction in the backlog of work, despite increased lodgements.

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

	2006	2007	2008
Number of lodgements pending as at year's end	1394	1285	1374
Number of lodgements more than 12 months old (but less than 24 months old)	302 (22%)	252 (20%)	204 (15%)
Lodgements more than 24 months old	115 (8%)	93 (7%)	70 (5%)

Table 2 – Supreme Court Criminal Backlog – Non-Appeal

	2006	2007	2008
Number of lodgements pending as at year's end	71	43	43
Number of lodgements more than 12 months old (but less than 24 months old)	10 (14%)	8 (19%)	1 (2%)
Lodgements more than 24 months old	10 (14%)	2 (5%)	3 (7%)

Table 3 – Court of Criminal Appeal Backlog

	2006	2007	2008
Number of lodgements pending as at year's end	65	33	45
Number of lodgements more than 12 months old (but less than 24 months old)	0 (0%)	0 (0%)	1 (2.2%)
Lodgements more than 24 months old	0 (0%)	0 (0%)	0 (0%)

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.

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

	2006	2007	2008
Number of lodgements	1921	1995	2360
Number of finalisations	1741	2119	2305
Clearance ratio (%)	91%	106%	98%

Table 5 shows that the Supreme Court continues to dispose of matters at a rate exceeding lodgements.

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

	2006	2007	2008
Number of lodgements	206	177	258
Number of finalisations	228	201	268
Clearance ratio (%)	111%	114%	104%

Table 6 shows that lodgements in the CCA increased in 2008.

Table 6 – Court of Criminal Appeal Clearance Ratio

	2006	2007	2008
Number of lodgements	142	107	129
Number of finalisations	122	140	117
Clearance ratio (%)	86%	131%	91%

Civil Jurisdiction Backlog

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) excludes Probate and Admission applications. Most of the matters pending are at the pre-trial stage before the Masters. While the timeline standards are still not being met, performance against the standards has continued to improve, notwithstanding a substantial increase in lodgements pending.

Table 7 – Supreme Court Civil Backlog – Non-Appeal

	2006	2007	2008
Number of lodgements pending as at year's end	654	601	801
Number of lodgements more than 12 months old (but less than 24 months old)	117 (18%)	100 (17%)	105 (13%)
Lodgements more than 24 months old	132 (20%)	106 (18%)	133 (17%)

In Table 8 the figures for the appeals backlog include Full Court appeals, all Magistrates Court appeals and other miscellaneous appeals. Although the percentage of matters between 12 and 24 months old has increased, it remains within the standard.

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

	2006	2007	2008
Number of lodgements pending as at year's end	122	72	86*
Number of lodgements more than 12 months old (but less than 24 months old)	12 (10%)	3 (4%)	9 (10%)
Lodgements more than 24 months old	5 (4%)	2 (3%)	2 (2%)

* includes appeals not yet set down by the parties

Table 9 shows that lodgements have increased in 2008 compared with last year by 10% (n=117). There has been a decrease in the clearance ratio, reflecting the fact that the number of finalisations was a little less than last year, while the number of lodgements increased.

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

	2006	2007	2008
Number of lodgements	1149	1185	1302
Number of finalisations	1037	1085	1061
Clearance ratio (%)	90.3%	91.6%	81.5%

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.

Time Standards

The time standard for civil trials from listing conference to start of trial is set at six to eight weeks. In 2008 the time between listing conference and trial ranged from six to thirty weeks. The Court is usually able to provide a trial date within a close time to the standard, but most parties are not ready to proceed at that time.

Table 10 – Target Standards and Actual Achievements

	Target	2006 Actual	2007 Actual	2008 Actual
<u>Civil Cases</u>	6-8 wks	3-28wks	1-29wks	6-30wks
Listing Conference to start trial				
<u>Criminal Cases</u>				
Arraignment to start trial (180 days standard)*	80%	9%	5%	11%
Arraignment to start trial (365 days standard)*	100%	70%	77%	76%
<u>Single Judge Appeal</u>	Next List	No Delay	No Delay	No Delay
<u>Full Court Civil Appeals</u>	Next List	No Delay	No Delay	No Delay

*as at October each year

The average time between institution of an appeal to the Full Court and setting down for hearing of the appeal increased by 36% in 2008 compared with last year (n=29 days). This time is not within the control of the Court. Appeals are automatically dismissed if they are not set down for hearing within six months of institution.

Table 11 shows the time taken from setting down to hearing has increased, even though the Court is usually able to offer an earlier listing if required. The period from hearing to the delivery of judgment in the Full Court has also increased by 21%(n=16 days).

In relation to criminal appeals, there has been a 14% decrease in the time between leave being granted and the appeal hearing (n=6 days). The time taken to deliver judgment has also decreased by 14% (n=8 days).

Table 11 – Full Court and Court of Criminal Appeal Time Intervals

<u>Full Court</u>	2006	2007	2008
<i>Average time taken (days)</i>			
Institution to setting down (not under the Court's control)	99	80	109
Setting down to hearing	40	41	29
Hearing to judgment delivery	98	74	90
<u>Court of Criminal Appeal</u>	2006	2007	2008
<i>Average time taken (days)</i>			
Application to leave being granted	56	57	41
Leave granted to hearing	42	42	36
Hearing to judgment delivery	48	60	52

Full Court and Court of Criminal Appeal

Three judges usually constitute the Full Court (for civil appeals) and the Court of Criminal Appeal (CCA). Appeals and applications to both the Full Court and the CCA increased this year. This data is displayed in Tables 12 and 13 below.

Table 12 – Permission to Appeal Applications to the Court of Criminal Appeal

	2006	2007	2008
Applications for permission to appeal (dealt with by single Judge)	121	96	112

Table 13 – Appeals and Applications to the Full Court and Court of Criminal Appeal

	2006	2007	2008
Full Court (appeals and applications)	85	74	78
Court of Criminal Appeal (appeals and applications)	141	108	129
Total	226	182	207

Table 13 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 14 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 14 – Disposals by Hearing

	2006	2007	2008
Full Court	70	58	45
Court of Criminal Appeal	103	93	78
Total	173	151	123

Table 15 – Full Court – Average Hearing Lengths

	2006	2007	2008
Full Court – average actual length (hours)	3.21	3.13	3.73

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. Appeals from Magistrates in the criminal (Summary) jurisdiction outnumber civil appeals by more than three to one. The civil appeals are from Masters of this Court, from interlocutory (preliminary) orders in the District Court, from Magistrates in the civil jurisdiction, and from various Tribunals and Boards. Table 16 below shows the number of appeals that were disposed of by way of judgement.

Table 16 – Disposals by Judgment – Single Judge Appeals

	2006	2007	2008
Criminal appeals	135	139	149
Civil appeals	67	32	43
Total disposed	202	171	192

The Civil Jurisdiction

Lodgements

Table 17 shows a 9% increase in summonses issued in the civil jurisdiction of the Supreme Court. The number of companies applications lodged decreased by 16% this year (n=35).

Table 17 – Civil Jurisdiction – Matters Instituted

	2004	2005	2006	2007	2008
Summonses	1020	1158	1167	1197	1302
Companies application – companies liquidation	206	154	149	215	180
Other company matters	137	81	104	61	49
Total	1363	1393	1420	1473	1531

Land and Valuation Court

The Land and Valuation Court is a division of the Supreme Court.

Three judges constituted the Court in the 2008 calendar year. They were Justice Debelle, until his retirement on 25 June 2008, Justice Bleby, and Justice Kourakis from 16 October 2008.

The Division hears a variety of actions, mainly matters relating to land use and value. 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.

During the 2008 year 43 actions were disposed of, leaving 22 active matters unresolved. Approximately one third of all actions commenced this year involved Government agencies such as the Commissioner of Highways and the Valuer-General, while a further 43% involved various Local Government Councils. The remaining 23% of actions were disputes between individuals or corporations.

There were 14 contested hearings and four contested interlocutory applications in the Court during the year. All contested hearings were actions that were planning appeals, applications for judicial review or valuation appeals. While the average length of hearing was just under one day, the number of half day hearings, one day hearings and one and a half day hearings is about equal. The average length of time spent in hearing contested interlocutory applications was just over one hour.

As at 31 December 2008, there were three outstanding judgments in the Court.

The following is an analysis of the Court's active matters from 2006 to 2008 as at year end.

Table 18 – Land and Valuation Division

Type of Action	Percentage		
	2006	2007	2008
Encroachment	5%	2%	23%
Planning Appeals	20%	17%	14%
Judicial Review	17%	12%	18%
Partition and Sale	15%	9%	14%
Compulsory Acquisition	17%	50%	18%
Valuation Appeal	10%	5%	14%
Other	17%	5%	-

The number of actions commenced in this Division has varied, with no particular trend, and has ranged from 17 actions in 2006 to 33 cases in 2008. The average number per annum for the last six years is 29.

Table 19 – LVD Actions Commenced

No. of Summonses	2004	2005	2006	2007	2008
Summons issued	26	32	17	26	33

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 are in need of revision. The Judges of the Division do not have the time or the resources to undertake a comprehensive review. It is hoped that an appropriate budget allocation can be made to enable this task to be undertaken in the near future.

Civil Trials

The number of civil cases ordered to proceed to trial (excluding long and complex cases) in 2008 decreased slightly (n=2).

Table 20 – Civil Trials

CIVIL TRIALS	2004	2005	2006	2007	2008
Orders to proceed to trial	44	44	36	36	34
Cases fixed for trial	30	43	39	37	31
Disposals after fixing of trial date	52	31	24	31	31
Cases disposed of by trial*	19	24	17	16	15
Cases awaiting trial at end of year	26	21	17	15	15

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

During 2008 the Court was listing trials up to seven 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 21 shows that the average trial length (for cases tried to judgment) has increased from 2007.

Table 21 – Civil Trial Details

	2004	2005	2006	2007	2008
Average trial length (days)	1.22	4.38	2.7	2.9	4
Number of trials exceeding five days in length	4	4	5	4	3

Long and Complex Civil Cases

A panel of judges (Justice Debelle - until his retirement - and Justices Bleby, Anderson and White) managed the list of long and complex cases with the assistance of the Masters. Long and complex cases are cases expected to take more than 15 hearing days or involving complex issues of law and/or fact.

The management of these cases 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 cases is a task over and above the ordinary workload of the panel judges.

At the beginning of the year the list comprised 15 actions. A further 14 were added during the year, a substantial increase from the 8 new matters for 2007. Of those 29 actions, 8 had trial dates fixed for 2008 and a further 8 have trial dates fixed for 2009. By the end of the year, 10 matters had been completed or resolved. One matter had a trial of 45 days duration and judgment was delivered, one trial settled after two days of hearing. Eight matters were discontinued or resolved by consent order, and of those 6 had trial dates fixed. The 8 trials listed in 2008 had an aggregate estimated sitting time of 48 weeks. All actions listed in 2008 were resolved. Of the total number of actions listed in 2008, 6 were referred for mediation, 3 settled, 1 went on for trial and the remaining 2 are likely to resolve in 2009.

At the end of the year, there were 19 matters in the long and complex list. Eight matters have been listed for trial although settlement has been indicated for one of them. The remaining 11 matters in the list are under active management. Four of those matters are close to having a trial listing in 2009.

Table 22 – Long and Complex Cases

	2004	2005	2006	2007	2008
Number of cases in the Long & Complex list at year's end	20	13	16	15	19
Number of cases with estimates of six weeks or greater	6	3	3	4	9
Range of estimated length (in weeks)	1-26	2-52	3-52	3-52	1-12
Total number of trial days sat on Long & Complex matters	14	29	101	46	47

Masters' Jurisdiction

There was a slight decrease of 4.5% in the number of hearings in 2008 compared with 2007 (n=133). While there was a decrease in the number of urgent chamber applications heard, there was an increase in the number of hearings in court.

Table 23 – Applications Dealt with by Masters

	2004	2005	2006	2007	2008
Hearings in court	754	509	592	654	689
Hearings in chambers (possession and interlocutory applications)	2187	1940	2089	2206	2055
Hearings in chambers (urgent applications)	228	116	116	107	90
Total	3166	2565	2797	2967	2834

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 24 – Number of Conferences

	2004	2005	2006	2007	2008
Status hearing (SH)					
- No. of SHs held	288	355	500	372	404
- No. at first hearing	179	138	168	147	167
Settlement Conferences (SC)					
- No. of SCs held	116	184	160	138	194
- No. at first hearing	80	98	95	80	102
Final Directions Hearing (FDH)					
- No. of FDHs held	397	512	392	517	494
- No. at first hearing	111	93	70	92	87

* 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 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.

Bill of Costs and Schedules of Costs

Table 25 – Contentious Bills – Masters’ Jurisdiction

	2006	2007	2008
Bills / schedules filed	24	43	20
Bills / schedules taxed	48	38	17

Table 26 – Non-Contentious Bills – Registrar’s Jurisdiction

	2006	2007	2008
Bills / schedules filed	16	3	11
Bills / schedules taxed	16	3	11

The Combined Criminal Registry

Lodgements

Table 27 below shows a significant increase in lodgements (386) in the combined criminal jurisdiction in 2008.

Table 27 – Combined Criminal – Lodgements

	2004	2005	2006	2007	2008
Lodgements	1773	1964	1921*	1974	2360

* The counting rules in relation to lodgements were varied slightly in 2006 in line with the 2005-2006 CAA Annual Report. As a result of this some lodgement types that were previously counted have been excluded, i.e. Bench Warrants, Change of plea, Change of venue, and re-trials.

Table 28 shows a slight 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.

The average length of trial increased slightly in 2008, compared with 2007. Overall, the average trial length has not varied significantly since 2005.

At the end of December 2008, 519 trials had been listed for hearing in 2009. This is a significant increase compared with the number of trials listed and awaiting hearing at the end on December each year from 2004 – 2007.

Table 28 – Combined Criminal – Trial List Disposals

	2004	2005	2006	2007	2008
Disposals after entry into trial list (includes non-verdict disposals)	364	388	516	533	540
Average length of trial (in days) – commencement of trial to verdict	8.1	6.6	6.5	5.7	6.3
Listed trials outstanding (at end of year)	261	299	466	430	519

Table 29 shows a slight decrease in the number of trials that proceeded to verdict in 2008, when compared with 2007. Of those trials that proceeded to verdict, the length of trial has been relatively consistent with the trial lengths in 2007. Only 2% more trials were long trials with a length of over 10 days.

Table 29 – Combined Criminal – Length of Trials Proceeding to Verdict

	2004	2005	2006	2007	2008
Trials to verdict	150	154	176	166	159
1-2 days	17%	7%	8%	5%	8%
3-4 days	37%	34%	32%	39%	38%
5-10 days	35%	45%	48%	45%	41%
Over 10 days	11%	14%	11%	11%	13%

Admission to the Legal Profession

Background

The *Legal Practitioners Act 1981* establishes the Legal Practitioners Education and Admission Council (“LPEAC”) and the Board of Examiners.

The Chief Justice chairs LPEAC. The other members of LPEAC include the Attorney-General, three Judges from the Supreme Court or the Federal Court, the Deans of Law at

Flinders University and at the University of Adelaide, representatives of the legal profession and a law student representative.

LPEAC has asked the Attorney-General to put forward an amendment to the *Legal Practitioners Act 1981* (SA) that would make the Dean of Law at the University of South Australia a member of LPEAC. Meantime the Dean, Professor Fairall, attends LPEAC meetings as an observer.

LPEAC has the responsibility to set the academic and practical requirements for admission, to participate in the development of uniform national standards relating to admission qualifications; to review the effectiveness of legal education and training courses, and to perform any other functions assigned to LPEAC pursuant to the provisions of the *Legal Practitioners Act*.

LPEAC's work in 2008

LPEAC met on six occasions during 2008.

LPEAC undertook a general review of the Graduate Diploma of Legal Practice ("GDLP"). By arrangement with the Management Committee an assessment committee was established, which included three members of LPEAC, one of whom was the Dean of Law at Adelaide University. The assessment committee provided a detailed report to LPEAC. The Management Committee commented on aspects of the report. LPEAC was satisfied that the assessment committee had undertaken a thorough review of the GDLP. LPEAC resolved that the Graduate Diploma in Legal Practice Course met the requirements of Rule 2.4 (a) of the *Legal Practitioners Education and Admission and Council Rules 2004* ("the LPEAC Rules").

In 2008 LPEAC accepted a proposal from the national Law Admissions Consultative Committee ("LACC") intended to achieve uniformity in the assessment of qualifications of overseas applicants for admission. The proposal involved admitting authorities agreeing on uniform principles for the assessment of such qualifications, and also agreeing to centralise the consideration of such applications so as to minimise the scope for differences of approach. LPEAC also adopted recommendations by LACC relating to English language proficiency of applicants for admission.

LPEAC approved in principle Uniform Admission Rules developed by LACC and resolved that regard would be had to the uniform rules in any revision of the Admission Rules or the LPEAC Rules.

LPEAC considered proposals by LACC relating to conditional admission to practice. After discussion, LPEAC resolved that it was unpersuaded of any need for specific provision to be made for conditional admission in South Australia.

LPEAC considered a notification from the Dean of Law at the University of Adelaide of a restructure of the LLB degree at that University. After considering the proposal in some detail, LPEAC resolved that it was satisfied that the proposed restructure of the LLB degree would meet the requirements of Rule 2.2 of the LPEAC Rules.

A Working Group chaired by Justice Besanko of the Federal Court met during the year and submitted a detailed proposal to LPEAC as to the approach that LPEAC might take in future to approving the courses that lead to degrees in Law offered by Flinders University, the University of Adelaide and the University of South Australia. LPEAC expects to continue considering that issue in the coming year. It hopes to settle a framework within which it can operate in the future. If a framework can be agreed, this will give the Universities advance information about what information will be expected from them when LPEAC undertakes a general review of their courses in law.

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, two persons nominated by the Attorney-General and 12 legal practitioners. Judge Withers is the Presiding Member. The Board of Examiners inquires into applications for admission and reports to the Court whether an applicant has complied with the requirements for admission. The Board met on 11 occasions in 2008. During 2008 there were 249 applications for admission, compared with 251 in 2007.

Table 30 – Applications for Admission
(other than Mutual Recognition applications)

	2004	2005	2006	2007	2008
Applications for admission	230	274	244	251	249

The *Mutual Recognition Act, 1992* enables a practitioner who is admitted in one jurisdiction to be admitted in other jurisdictions.

Table 31 – Mutual Recognition Applications

	2004	2005	2006	2007	2008
Mutual recognition applicants	48	52	62	49	58

Table 32 – Mutual Recognition – Applications by State

	2004	2005	2006	2007	2008
New South Wales	26	28	39	26	23
Victoria	10	5	5	7	11
Queensland	2	7	8	2	6
ACT	2	3	3	4	3
Western Australia	0	4	1	2	4
Northern Territory	4	2	3	5	9
Tasmania	1	1	0	1	2
Trans-Tasman	3	2	3	2	0

The number of overseas qualifications assessed was substantially higher in 2008.

Table 33 – Overseas Degrees Assessed

	2004	2005	2006	2007	2008
Degrees assessed	21	14	26	24	49

Probate Registry

The largest proportion of the work of the Probate Registry consists of the issue (in non-contentious cases) of grants of probate or administration in respect of the estate of deceased persons. In issuing such grants the Registrar of Probates exercises the powers of the Court in matters prescribed by the Rules of Court.

The Registry was again very busy in 2008. The total number of grants of representation remained high (Table 34), and the number of new applications was even higher (Table 35). The backlog of applications awaiting a grant has increased substantially.

New procedures implemented during 2008 have streamlined the Registry's dealings with personal applicants. The Registrar, Deputy Registrar and Manager, Probate Services between them see personal applicants between 9am and 10.30am each morning. This has resulted in greater efficiencies for both the Court and for all applicants.

Table 34 – Probate Registry – Grants and Orders

	2006	2007	2008
Grants issued	4727	5027	4968
Grants resealed in South Australia	43	28	31
Orders made in chambers	270	310	509
Inquiries and searches	9720	1076*	1015**
Personal applicants	313	342	301

* Since 2007, general telephone inquiries have not been included in the figure for inquiries and searches.

** The antiquated microfiche reader was unserviceable for the last two months of the year and as a consequence few searches were undertaken in that period. There is a substantial backlog of searches that cannot be undertaken until new digital technology is commissioned.

Table 35 – Probate Registry – Total applications

2006	2007	2008
5134	5286	5517

The Library

Increases in the costs associated with collection development have continued to place severe pressure on the Library Service's budget and have been a major focus of the Library staff during 2008. A review of the smaller collections that are located adjacent to a number of

chambers and which are shared between judges, and of the collection located in the Adelaide Magistrates Court building has commenced, with a view to rationalizing printed subscriptions and where possible utilizing more affordable electronic databases. There continues to be a shortfall between available funding and the cost of maintaining the collection.

During 2008 the Attorney-General agreed to a request to increase the library levy component of the annual fee for legal practitioners' practising certificates to \$100 per annum with CPI increases. It is hoped that this will help alleviate the budgetary pressure to some extent.

On 17 March 2008 sections of the first and second floors of the Supreme Court Library were inundated with water from a burst water pipe located on the third floor of the building. 444 volumes were damaged directly from the water and were quickly removed for remedial treatment by experts. Subsequently 97 volumes were assessed to be of insufficient value to the collection to warrant repair and were discarded. 81 volumes were beyond repair and replacements have been ordered. 216 volumes suffered only minor damage and were able to be returned to the collection. The remaining volumes are being rebound and undergoing minor repair. The cost of repairs and replacements was approximately \$21,000.

In light of the risks highlighted by the incident, a review of the content and management of the Library Historical Collection was undertaken and policy guidance regarding the storing of the Collection is being sought.

The Library's Automated Information Management System is now 17 years old. The availability of expert system support is declining. The issue has been identified as posing a significant risk to the Library's business continuity. During the later stages of 2008 a Business Case was prepared recommending that the Authority invest in a modern Automated Library Management System.

During 2008 the Library Service continued to be well patronized with an average of approximately 99 visits each day to the Supreme Court Library and approximately 9,000 documents being downloaded each month from its electronic database subscriptions.

DATED this 10th day of March 2009

CHIEF JUSTICE

On behalf of the Judges of the Supreme Court