

The Role of Judicial Networking and Information Sharing in Promoting and Implementing Environmental Law

The Hon Justice Rachel Pepper
Land and Environment Court of NSW

Judicial Networking in Environmental Law

- Domestic legal systems are being impacted by globalisation
 - Formal mechanisms include treaties and international courts and tribunals
 - Informal mechanisms include extensive overseas judicial networks
- Judicial networks are fora for the mutual exchange of ideas
- Each legal system is unique (different jurisdictions, powers, staff and resources)
- Judicial networks are particularly useful in environmental law because environmental law needs to be dynamic and responsive to scientific and technological advancements, and social and economic developments

Judicial and Legal Networks

- Network - a set of non-hierarchical relationships where the participants share a common interest and who exchange resources to achieve common goals
- Judicial networks:
 - More specialised
 - Consist of judges
 - Common goal – strengthening the rule of law and developing jurisprudence
 - Operate at local, domestic and international levels
- Legal networks:
 - More general
 - Consist of all legal practitioners

Judicial and Legal Networks in the Australian Context


- Publishing judgments
- In almost all cases a judge will provide reasons for the decision
- Giving reasons is part of the judicial process and promotes the rule of law
- Reasons:
 1. Provide parties with the opportunity to see the extent to which their arguments have been understood and accepted
 2. Furthers judicial accountability
 3. Identify how the law will be applied to similar cases in the future

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Judge or commissioner

Catchwords

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☒ Children's Court ☒ Industrial Court

☒ Compensation Court ☒ Industrial Relations Commission (Commissioners)

☒ Court of Appeal ☒ Industrial Relations Commission

Case name

MNC

Medium Neutral Citation. For example [2010] NSWCA 333

Date range **to**

Example: 26/06/2014 Example: 26/06/2014

File number

Cases cited

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☒ Administrative Decisions Tribunal (Divisions) ☒ Civil and Administrative Tribunal (Occupational Division)

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- 25th Anniversary of the Report of the [Royal Commission into Aboriginal Deaths in Custody](#)
- [Construction Forestry Mining and Energy Union v Director of the Fair Work Building Industry Inspectorate](#) [2016] HCA 41 (28 October 2016)
- [Tasmanian Motor Accidents Compensation Tribunal 2012-](#)
- [High Court of Australia Bulletin](#) [2016] HCAB 3 (19 October 2016)
- [Victorian Commission for Gambling and Liquor Regulation 2016-](#)
- [Bulletin of the Australian Society of Legal Philosophy 1977-1994](#)
- [The Victorian Law Times and Legal Observer 1856-1857](#)
- [Webb, A Beckett and William's Reports \(Victoria\) 1870-1872](#)
- [Wyatt, Webb and A Beckett's Reports \(Victoria\) 1864-1869](#)
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- [Local Court of the Northern Territory 2016-](#)
- [Argus Law Reports 1895-1950](#)
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- [ABA Update: Newsletter of the Australian Broadcasting Authority 1992-2005](#)
- [ACMASphere Newsletter 2005-2011](#)
- [Australian Plant Breeder's Rights Office Decisions 2016-](#)
- [AustLII Research Seminar 2016 No 1](#) - AustLII invites you to attend a seminar and the launch of *Myanmar/Burma resources on AsianLII* at UNSW Law on Monday, 23 May 2016
- The [Northern Territory Law Handbook](#) launched at Government House, Darwin, 16 May 2016 - [Announcement](#) (PDF)
- [AustLII Annual Report 2015](#) (PDF)
- [Flinders Law Journal 2010-](#)
- [New Zealand Motor Spirits Licensing Appeal Authority 1965-](#)
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- [New Zealand Indecent Publications Tribunal 1964-](#)
- [New Zealand Compensation Court 1967-](#)
- [New Zealand Sports Tribunal 2003-](#)
- [New Zealand Arbitration Commission 1988-](#)
- [New Zealand Arbitration Court 1986-](#)
- [New Zealand Regulations As Made 1926-2007](#)
- [Legge's Supreme Court Cases \(NSW\) 1830-1863](#)
- [Crime and Justice Bulletin \(NSW\) 1987-](#)
- [Young Lawyers Journal 1996-](#)

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[Osteopathy Tribunal of New South Wales 2010-](#)
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[Residential Tribunal of New South Wales 1987-2002](#)
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NSW Legislation

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[Chief Industrial Magistrate's Court of New South Wales 1999-](#)
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[Administrative Decisions Tribunal Appeal Panel of New South Wales 1999-2013](#)
[Civil and Administrative Tribunal of New South Wales - Administrative and Equal Opps](#)
[Civil and Administrative Tribunal of New South Wales - Guardianship Division 2014-](#)
[Chiropractors Tribunal of New South Wales 2008-](#)
[Consumer, Trader and Tenancy Tribunal of New South Wales 2002-2013](#)
[Dust Diseases Tribunal of New South Wales 1989-](#)
[Guardianship Tribunal of New South Wales 1996-2013](#)
[New South Wales Medical Professional Standards Committee 2008-](#)
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[Optometry Tribunal of New South Wales 2012-](#)
[Pharmacy Board of New South Wales 1990-2010](#)
[Physiotherapists Tribunal of New South Wales 2007-](#)
[Psychologists Tribunal of New South Wales 2007-](#)
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Database last updated: 4 November 2016

Most recent decision: 2 November 2016

Number of decisions: 12300

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2016 Land and Environment Court of New South Wales Decisions

January 2016

- [Steele v Council of the City of Sydney \[2016\] NSWLEC 1000 \(5 January 2016\)](#)
- [Ingham v Scenna \[2016\] NSWLEC 1001 \(5 January 2016\)](#)
- [Ingham v Pettigrew \[2016\] NSWLEC 1002 \(5 January 2016\)](#)
- [Wei v Borello & ors \[2016\] NSWLEC 1003 \(5 January 2016\)](#)
- [Anvari v Strata Plan 12974 \[2016\] NSWLEC 1004 \(5 January 2016\)](#)
- [Integrated Mentoring Pty Ltd v The Hills Shire Council & anor \(No 2\) \[2016\] NSWLEC 1005 \(5 January 2016\)](#)
- [Fox Johnston Pty Ltd v Randwick City Council \[2016\] NSWLEC 1006 \(5 January 2016\)](#)
- [Bisso & Anor v Fairfield City Council \[2016\] NSWLEC 1007 \(5 January 2016\)](#)
- [Al Ali v Bankstown City Council \[2016\] NSWLEC 1044 \(5 January 2016\)](#)
- [Foster v North Sydney Council \[2016\] NSWLEC 1008 \(8 January 2016\)](#)
- [Condor Design Pty Limited v Bankstown City Council \[2016\] NSWLEC 1009 \(8 January 2016\)](#)
- [Derwent Property Pty Ltd v Wollongong City Council \[2016\] NSWLEC 1010 \(12 January 2016\)](#)
- [Coogee Developments Pty Ltd v Randwick City Council \[2016\] NSWLEC 1011 \(13 January 2016\)](#)
- [Landmark Group Australia Pty Limited v Holroyd City Council \[2015\] NSWLEC 1564 \(13 January 2016\)](#)
- [Parker Logan Property Pty Ltd v Waverley Council \[2016\] NSWLEC 1035 \(14 January 2016\)](#)
- [Levett & anor v Murray & anor; Levett & anor v Lyndall Jane Makin and Michelle Toni Le Mesurier as administrators for the Estate of Dryve Clean Pty Ltd v Waverley Council \[2016\] NSWLEC 1013 \(20 January 2016\)](#)
- [Manasseh v Segal & anor \[2016\] NSWLEC 1014 \(20 January 2016\)](#)
- [Moskovich v Waverley Council \[2016\] NSWLEC 1015 \(20 January 2016\)](#)
- [McVicker v Finlay & anor \[2016\] NSWLEC 1019 \(21 January 2016\)](#)
- [Barrie v City of Sydney Council \[2016\] NSWLEC 1016 \(22 January 2016\)](#)
- [Weinert & anor v Metcalfe \[2016\] NSWLEC 1017 \(22 January 2016\)](#)
- [Schutz v Kotsis \[2016\] NSWLEC 1026 \(22 January 2016\)](#)
- [Rogers v Relf & anor \[2016\] NSWLEC 1018 \(27 January 2016\)](#)
- [Puruse Pty Ltd v Woollahra Municipal Council \[2016\] NSWLEC 1025 \(27 January 2016\)](#)
- [Duthie v Mosman Council \[2016\] NSWLEC 1020 \(29 January 2016\)](#)
- [Dumont v Kennedy \[2016\] NSWLEC 1021 \(29 January 2016\)](#)
- [Agoratsios v Ashfield Council \[2016\] NSWLEC 1022 \(29 January 2016\)](#)
- [Choi v Buining & anor \[2016\] NSWLEC 1024 \(29 January 2016\)](#)
- [Conca D'Oro Lounge Pty Ltd v Leichhardt Municipal Council \[2016\] NSWLEC 1028 \(29 January 2016\)](#)
- [Conca D'Oro Lounge Pty Ltd v Leichhardt Municipal Council \[2016\] NSWLEC 1029 \(29 January 2016\)](#)
- [Flip Out \(Castle Hill\) Pty Ltd v Campbelltown City Council \[2016\] NSWLEC 1034 \(29 January 2016\)](#)
- [1390 Botany Road Botany Pty Ltd v Council of the City of Botany Bay \[2015\] NSWLEC 1569 \(29 January 2016\)](#)
- [The Lebanese Moslem Association v Fairfield City Council \[2015\] NSWLEC 1570 \(29 January 2016\)](#)

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Sentencing Principles

80. A basic principle of sentencing law is that the sentence imposed for an offence must reflect, and be proportionate to, the objective circumstances of the offence and the personal or subjective circumstances of the offender (*Veen v The Queen* [1979] HCA 7; (1979) 143 CLR 458 at 490 and *Veen v The Queen* (No 2) [1988] HCA 14; (1988) 164 CLR 465 at 472).
81. The instinctive synthesis method is the correct method of sentencing. The Court identifies all the factors relevant to the sentence and weighs their significance to arrive at an appropriate sentence (*Muldrock v R* [2011] HCA 39; (2011) 244 CLR 120 at [26] and *Markarian v The Queen* [2005] HCA 25; (2005) 228 CLR 357 at [35]-[39], [50]-[84] and [136]-[139]).
82. Although Orica's plea of guilty to both charges entails acceptance of the proof beyond reasonable doubt of the elements of each offence, the Court must not take facts into account in a manner that is adverse to Orica unless those facts have been established beyond reasonable doubt by the EPA. But if there are circumstances that the Court proposes to take into account in favour of Orica, it is enough that these circumstances are proved on the balance of probabilities (*R v Olbrich* [1999] HCA 54; (1999) 199 CLR 270 at [27]; *Gore v The Queen*; *Hunter v The Queen* [2010] NSWCCA 330 at [27] and [105] and *R v Wickham* [2004] NSWCCA 193 at [26]).
83. Section 3A of the *Crimes (Sentencing Procedure) Act 1999* ("the CSPA") sets out the purposes of sentencing an offender. Relevant purposes in these proceedings are those contained in ss 3A(a), (b), (c), (e), (f) and (g).

Citations of Para 80 Close

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4 citations in 3 Jade documents

Wingecarribee Shire Council v O'Shanassy (No 6) (21 August 2015)
[2015] NSWLEC 138 (Pepper J)

Citation 1

143. The sentence imposed by the Court must reflect, and be proportionate to, both the objective elements of the offence and the subjective factors relating to Mr O'Shanassy and his conduct (*Environment Protection Authority v Orica Australia Pty Ltd (the Nitric Acid Air Lift Incident)* [2014] NSWLEC 103; (2014) 206 LGERA 239 at [80]; *Director-General, Department of Environment and Climate Change v Walker Corporation Pty Limited (No 4)* [2011] NSWLEC 119 at [21]; *Veen v The Queen* [1979] HCA 7; (1979) 143 CLR 458 at 490 and *Veen v The Queen* (No 2) [1988] HCA 14; (1988) 164 CLR 465 at 472).


Director-General, Department of Environment and Climate Change v Hudson (No 2) (10 July 2015)
[2015] NSWLEC 110 (Pepper J)

Citation 1

Conferences and Professional Bodies

- The LEC holds an annual conference
 - Attended by the judges and commissioners of the Court
 - Presentations from judges of superior courts, members of the bar and experts who appear before the Court
- LEC attends seminars run by the Judicial Commission
- Domestic professional bodies:
 - National Environmental Law Association
 - Environment and Planning Law Association
- Hosts overseas delegations

The Land and Environment Court Website



The screenshot shows the NSW Land and Environment Court website. A large grey arrow points to the navigation bar, which is highlighted with a red box. The navigation bar includes the following links: Home, Your legal problem is about ..., Types of cases, Resolving disputes, Coming to the court, Practice & Procedure, Forms & Fees, and Land and Environment Court Decisions. Below the navigation bar, the main content area is visible. A smaller grey arrow points to the 'Popular content' section, which is also highlighted with a red box. This section lists various resources: Caselaw NSW, Court lists, Fee Schedule, Forms, News, Judicial Newsletter, Practice notes, Transcripts, and Contact us. Below this, the 'Online Services' section is visible, listing links for About Online Services, Getting started, Online Court, Filing documents online, and Overview of Online Services (pdf). The main content area also features a 'Latest News' section with a photo of a lighthouse and a 'Recent News' section with a list of updates from October 2016.

Land and Environment Court

Home | Your legal problem is about ... | Types of cases | Resolving disputes | Coming to the court | Practice & Procedure | Forms & Fees | Land and Environment Court Decisions

Land and Environment Court

Welcome to the website of the NSW Land and Environment Court.

The Land and Environment Court hears environmental, development, building and planning disputes. [Read more.](#)

Latest News

3 November 2016: The Chief Judge has issued a new practice note, [Practice Note - Strata Schemes Development proceedings](#), which sets out the practice and procedure for strata schemes development proceedings in Classes 2 and 3 of the Court's jurisdiction. It commences on 30 November 2016.

Recent News

- **7 October 2016:** Information about the law vacation 2016-17.
- **5 October 2016:** Housing NSW's median sales prices for the March quarter 2016 are now available. [Metro](#) [Rural](#)
- **22 September 2016:** The Registrar has published a new handout on [Online Services](#), including frequently asked questions regarding Online Court and Online Registry. [Read the handout online.](#)
- **20 September 2016:** From 1 October 2016, personal cheques will no longer be accepted for the payment of filing fees. Personal cheques will continue to be accepted for payments that are made pursuant to the *Fines Act 1996*. [See more information about payment methods.](#)
- **8 September 2016:** The Valuer General's interim policy on "Correcting a valuation previously determined on objection" has been replaced with a [final version](#).
- **1 September 2016:** Do you need assistance with a tree dispute? Call the registry

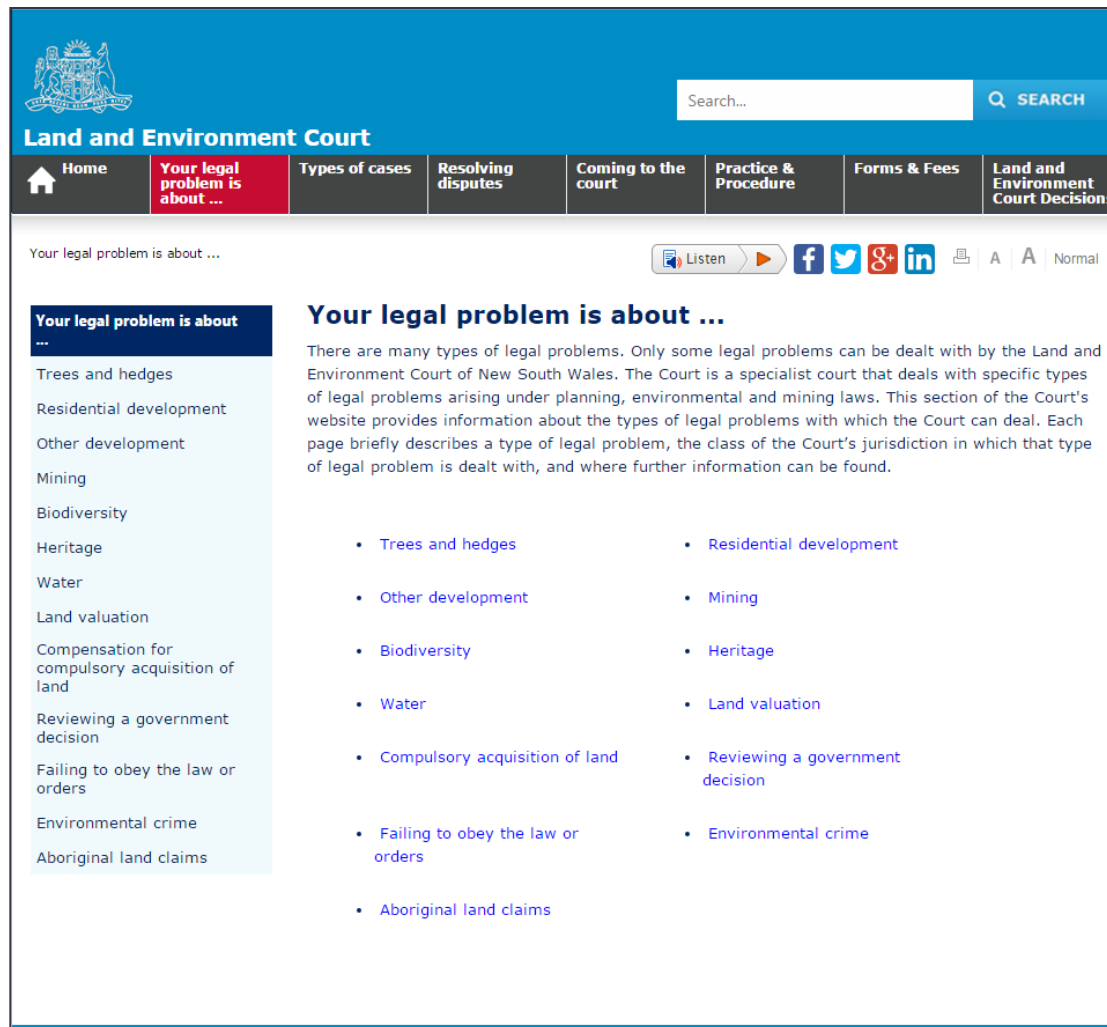
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- Caselaw NSW
- Court lists
- Fee Schedule
- Forms
- News
- Judicial Newsletter
- Practice notes
- Transcripts
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Online Services

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The Land and Environment Court Website



The screenshot shows the homepage of the Land and Environment Court of New South Wales. The header features the court's crest and a search bar. A navigation menu includes links to Home, 'Your legal problem is about ...', Types of cases, Resolving disputes, Coming to the court, Practice & Procedure, Forms & Fees, and Land and Environment Court Decisions. The 'Your legal problem is about ...' section is highlighted in red. Below the navigation menu, there is a section titled 'Your legal problem is about ...' with a list of legal problem types on the left and a detailed description on the right. The list includes: Trees and hedges, Residential development, Other development, Mining, Biodiversity, Heritage, Water, Land valuation, Compensation for compulsory acquisition of land, Reviewing a government decision, Failing to obey the law or orders, Environmental crime, and Aboriginal land claims. The detailed description on the right explains that the court deals with specific types of legal problems arising under planning, environmental, and mining laws, and provides information about the types of legal problems with which the court can deal.

Land and Environment Court

Search...

Home | **Your legal problem is about ...** | Types of cases | Resolving disputes | Coming to the court | Practice & Procedure | Forms & Fees | Land and Environment Court Decisions

Your legal problem is about ...

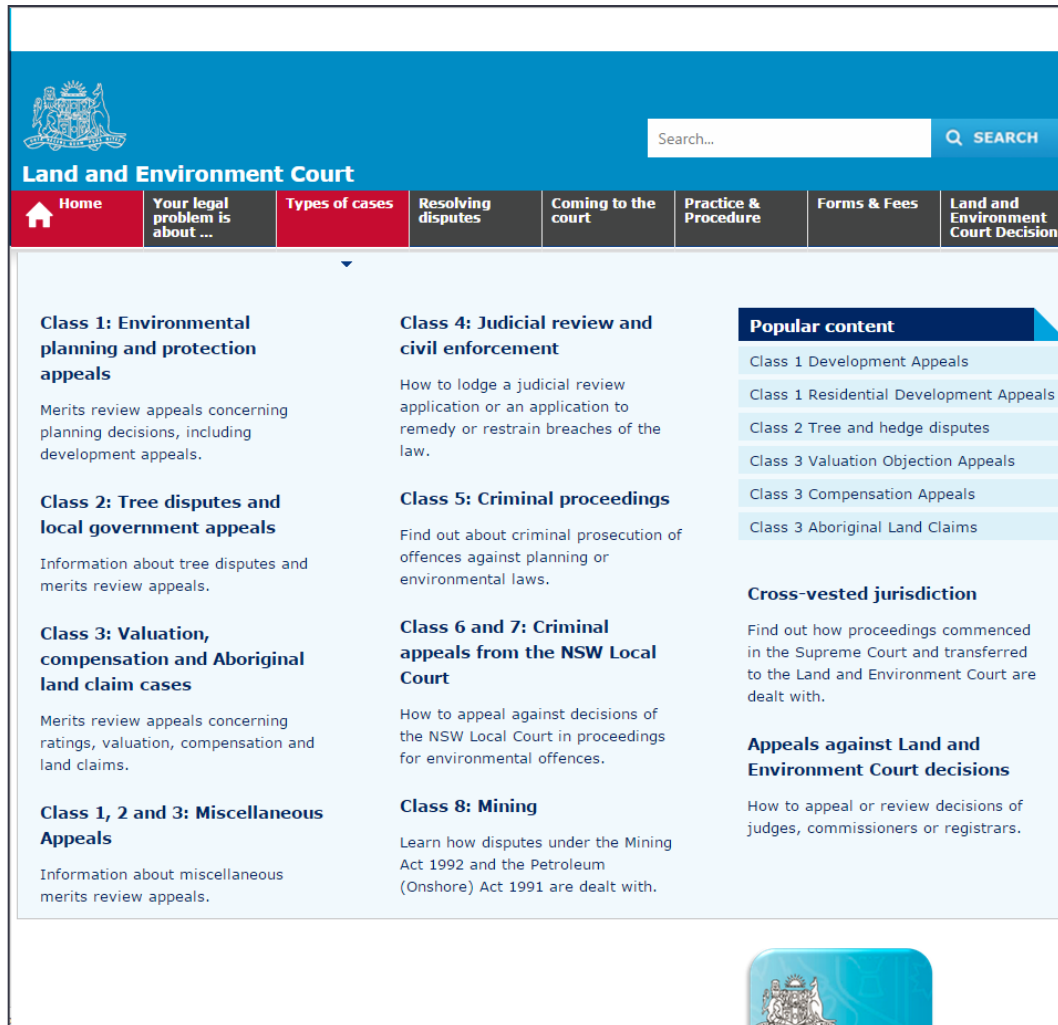
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Your legal problem is about ...

There are many types of legal problems. Only some legal problems can be dealt with by the Land and Environment Court of New South Wales. The Court is a specialist court that deals with specific types of legal problems arising under planning, environmental and mining laws. This section of the Court's website provides information about the types of legal problems with which the Court can deal. Each page briefly describes a type of legal problem, the class of the Court's jurisdiction in which that type of legal problem is dealt with, and where further information can be found.

- Trees and hedges
- Residential development
- Other development
- Mining
- Biodiversity
- Heritage
- Water
- Land valuation
- Compensation for compulsory acquisition of land
- Reviewing a government decision
- Failing to obey the law or orders
- Environmental crime
- Aboriginal land claims

The Land and Environment Court Website



The screenshot shows the homepage of the Land and Environment Court website. The header is blue with the court's crest on the left and a search bar on the right. Below the header is a navigation menu with links to Home, Your legal problem is about..., Types of cases, Resolving disputes, Coming to the court, Practice & Procedure, Forms & Fees, and Land and Environment Court Decisions. The main content area is divided into several sections: Class 1: Environmental planning and protection appeals, Class 2: Tree disputes and local government appeals, Class 3: Valuation, compensation and Aboriginal land claim cases, Class 1, 2 and 3: Miscellaneous Appeals, Class 4: Judicial review and civil enforcement, Class 5: Criminal proceedings, Class 6 and 7: Criminal appeals from the NSW Local Court, Class 8: Mining, Popular content (listing various appeal classes), Cross-vested jurisdiction, and Appeals against Land and Environment Court decisions. The footer features a small version of the court's crest.

Land and Environment Court

Search... **Q SEARCH**

Home Your legal problem is about ... **Types of cases** Resolving disputes Coming to the court Practice & Procedure Forms & Fees Land and Environment Court Decisions

Class 1: Environmental planning and protection appeals
Merits review appeals concerning planning decisions, including development appeals.

Class 2: Tree disputes and local government appeals
Information about tree disputes and merits review appeals.

Class 3: Valuation, compensation and Aboriginal land claim cases
Merits review appeals concerning ratings, valuation, compensation and land claims.

Class 1, 2 and 3: Miscellaneous Appeals
Information about miscellaneous merits review appeals.

Class 4: Judicial review and civil enforcement
How to lodge a judicial review application or an application to remedy or restrain breaches of the law.

Class 5: Criminal proceedings
Find out about criminal prosecution of offences against planning or environmental laws.

Class 6 and 7: Criminal appeals from the NSW Local Court
How to appeal against decisions of the NSW Local Court in proceedings for environmental offences.

Class 8: Mining
Learn how disputes under the Mining Act 1992 and the Petroleum (Onshore) Act 1991 are dealt with.

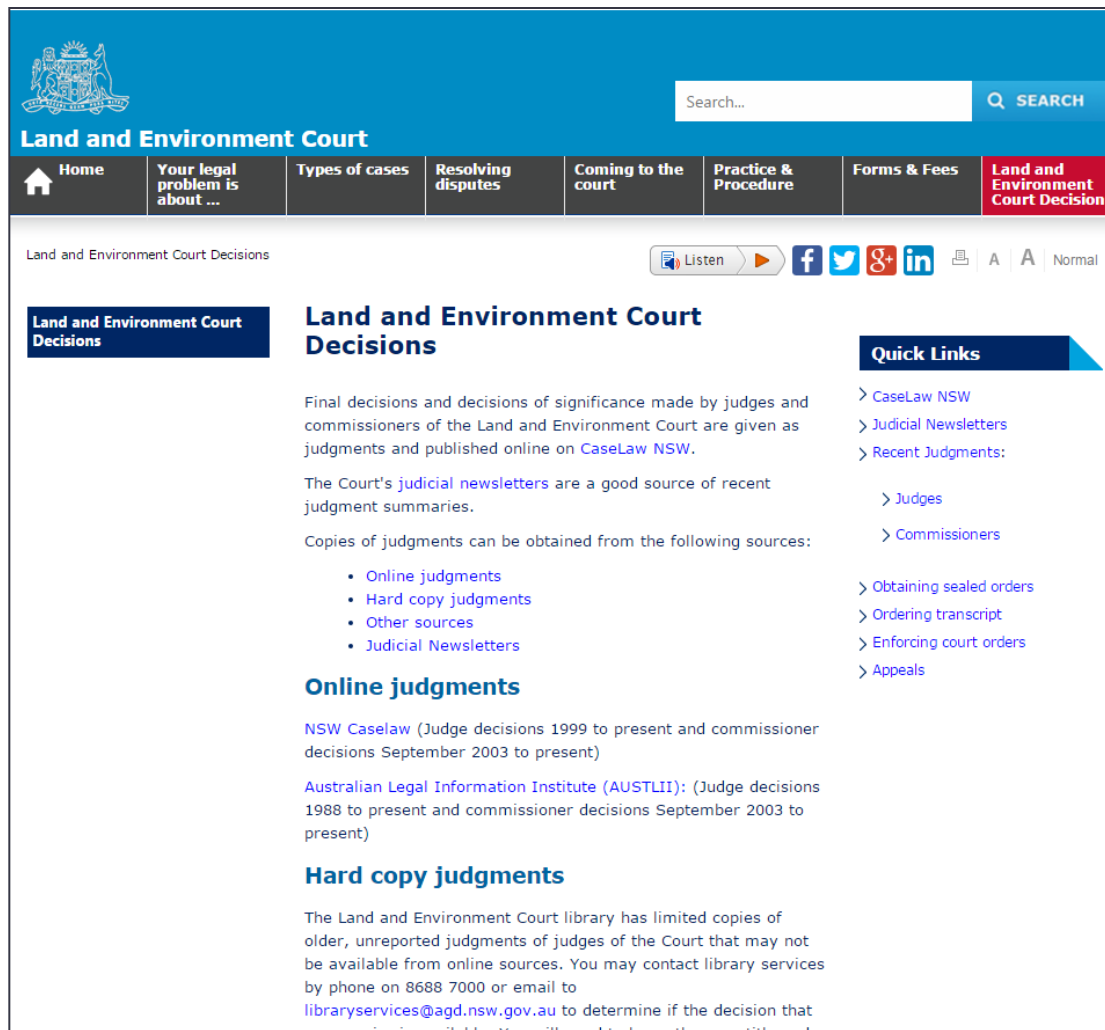
Popular content

- Class 1 Development Appeals
- Class 1 Residential Development Appeals
- Class 2 Tree and hedge disputes
- Class 3 Valuation Objection Appeals
- Class 3 Compensation Appeals
- Class 3 Aboriginal Land Claims

Cross-vested jurisdiction
Find out how proceedings commenced in the Supreme Court and transferred to the Land and Environment Court are dealt with.

Appeals against Land and Environment Court decisions
How to appeal or review decisions of judges, commissioners or registrars.

The Land and Environment Court Website



The screenshot shows the official website of the Land and Environment Court of New South Wales. The header features the court's crest and a search bar. A navigation menu includes links to Home, legal problem guides, case types, dispute resolution, court procedures, forms, and decisions. The main content area is titled 'Land and Environment Court Decisions' and provides information on how judgments are published on CaseLaw NSW, the availability of judicial newsletters, and sources for obtaining copies of judgments. A 'Quick Links' sidebar offers direct access to CaseLaw NSW, judicial newsletters, recent judgments, judges, commissioners, sealed orders, transcripts, court orders, and appeals. The 'Online judgments' section lists NSW Caselaw and AUSTLII as sources for decisions from 1999 and 1988 respectively. The 'Hard copy judgments' section explains the limited availability of older, unreported judgments and provides contact information for library services.

Land and Environment Court

Search...

Home | Your legal problem is about ... | Types of cases | Resolving disputes | Coming to the court | Practice & Procedure | Forms & Fees | **Land and Environment Court Decisions**

Land and Environment Court Decisions

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Land and Environment Court Decisions

Land and Environment Court Decisions

Final decisions and decisions of significance made by judges and commissioners of the Land and Environment Court are given as judgments and published online on [CaseLaw NSW](#).

The Court's [judicial newsletters](#) are a good source of recent judgment summaries.

Copies of judgments can be obtained from the following sources:

- [Online judgments](#)
- [Hard copy judgments](#)
- [Other sources](#)
- [Judicial Newsletters](#)

Online judgments

[NSW Caselaw](#) (Judge decisions 1999 to present and commissioner decisions September 2003 to present)

[Australian Legal Information Institute \(AUSTLII\)](#): (Judge decisions 1988 to present and commissioner decisions September 2003 to present)

Hard copy judgments

The Land and Environment Court library has limited copies of older, unreported judgments of judges of the Court that may not be available from online sources. You may contact library services by phone on 8688 7000 or email to libraryservices@agd.nsw.gov.au to determine if the decision that you require is available. You will need to know the case title and

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The Land and Environment Court Website

- **5 October 2016:** Housing NSW's median sales prices for the March quarter 2016 are now available. [Metro Rural](#)
- **22 September 2016:** The Registrar has published a new handout on Online Services, including frequently asked questions regarding Online Court and Online Registry. [Read the handout online.](#)
- **20 September 2016:** From 1 October 2016, personal cheques will no longer be accepted for the payment of filing fees. Personal cheques will continue to be accepted for payments that are made pursuant to the *Fines Act 1996*. [See more information about payment methods.](#)
- **8 September 2016:** The Valuer General's interim policy on "Correcting a valuation previously determined on objection" has been replaced with a [final version](#).
- **1 September 2016:** Do you need assistance with a tree dispute? Call the registry 9113 8200 to make an appointment at the [Student Helpdesk](#). The helpdesk is run by Macquarie Uni staff and students to provide procedural assistance in tree dispute matters. [More info.](#)
- **20 July 2016:** The Chief Judge is pleased to announce the appointment of Rosemary Martin as the Senior Commissioner of the Land and Environment Court from 17 October 2016. [More information.](#)
- **6 July 2016:** Please note that a new administrative form is required to be completed for all requests for litigation searches.
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Court Practice Notes



**Land and Environment
Court**
of New South Wales

PRACTICE NOTE

CLASS 4 PROCEEDINGS

Name and commencement of Practice Note

1. This Practice Note is to be known as Practice Note – Class 4 Proceedings. It commences on 13 January 2014. It replaces the Practice Note – Class 4 Proceedings dated 30 April 2007.

Application of Practice Note

2. This Practice Note applies to proceedings in Class 4 of the Court's jurisdiction referred to in s 20 of the *Land and Environment Court Act 1979*.

Purpose of Practice Note

3. The purpose of this practice note is to set out the case management procedures for the just, quick and cheap resolution of Class 4 proceedings.

Responsibility of parties, legal practitioners and agents

4. It is the responsibility of each party, its legal representatives and agents (as applicable) to consider the directions appropriate to be made in the particular case to facilitate the just, quick and cheap resolution of the real issues in the proceedings.
5. If a party reasonably considers that compliance with this practice note will not be possible, or will not be conducive to the just, quick and cheap resolution of the proceedings, the party should apply to be relieved from compliance on the basis that an alternative proposed regime will be more conducive to such resolution. In that event, the party is to notify other parties of the proposed alternative regime as soon as practicable and is to provide the Court with short minutes of proposed directions reflecting that alternative regime.

Legal practitioners and agents of parties to be prepared

6. Each party not appearing in person shall be represented before the Court by a legal practitioner (or an agent authorised by the party in writing to whom leave

Judicial Newsletter

June 2016

Volume 8 Issue 2

Land and Environment Court of NSW

Judicial Newsletter

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[Local Government and Elections Legislation Amendment \(Integrity\) Act 2016](#) – commenced 1 July 2016:

- (a) amended the [Election Funding, Expenditure and Disclosures Act 1981](#) to impose caps on political donations in respect of local government elections;
- (b) amended the [Local Government Act 1993](#) to disqualify a person from holding civic office if the person has been convicted of an offence against the [Election Funding, Expenditure and Disclosures Act 1981](#) relating to unlawful political donations or the failure to disclose donations or electoral expenditure, or has been convicted of an offence of any kind that is punishable by imprisonment for 5 years or more;
- (c) repealed section 448(g) of the [Local Government Act 1993](#), which exempts councillors and senior officers from the requirement to disclose pecuniary interests in relation to certain planning matters;
- (d) enabled the Chief Executive of the Office of Local Government to apply to the Supreme Court for an order to recover, from a councillor who has been found to have contravened the disclosure obligations of the [Local Government Act 1993](#), the amount of any monetary benefit obtained by the councillor as a result of the decision to which the contravention relates;
- (e) made changes to development application forms under the [Environmental Planning and Assessment Act 1979](#) so that an applicant is required to disclose whether the applicant, or any other person having a financial interest in the application, is a councillor or council general manager, or a spouse or relative of a councillor or general manager (a failure to disclose would constitute an offence under [section 148B](#) of that Act);
- (f) made changes to delegations and gateway determination procedures under that Act that authorise local councils to make local environmental plans concerning permissible development so that a councillor or council general manager who has a financial interest in the plan does not take part in the making of the plan; and
- (g) made changes to the model code of conduct for councillors under the [Local Government Act 1993](#) to ensure that councillors do not participate in council decisions relating to the determination of development applications made by them or by the council general manager or in which they have a financial interest.

June 2016

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Hornsby Shire Council v Trives (No 4) [2016] NSWLEC 28 (Craig J)

(related decisions: *Trives v Hornsby Shire Council* [2015] NSWCA 158; 89 NSWLR 268 Basten, Macfarlan and Meagher JJA, *Hornsby Shire Council v Trives (No 3)* [2015] NSWLEC 190 Biscoe J and *Hornsby Shire Council v Trives* [2014] NSWLEC 171 Craig J)

Facts: Hornsby Shire Council ("the Council") sought judicial review of the decisions by the First Respondent (Mr Trives), an accredited certifier, to issue complying development certificates for a new structure to be erected on each of three different residential properties. The properties were owned by the respective Second and Third Respondents joined in each proceeding. In *Hornsby Shire Council v Trives* [2014] NSWLEC 171 the Court determined a separate question as to whether each of the impugned complying development certificates issued by the First Respondent was valid. That question was determined by Craig J in the negative. The First Respondent appealed to the Court of Appeal on the sole ground that the determination of the question was not one of objective jurisdictional fact, notwithstanding that in the argument before Craig J, it was accepted by the First Respondent that the question was to be so determined. The Court of Appeal upheld the appeal on this ground and remitted the matter for determination by this Court *Trives v Hornsby Shire Council* [2015] NSWCA 158; 89 NSWLR 268. On remitter to this Court, Biscoe J determined that each of the complying development certificates was invalid (*Hornsby Shire Council v Trives (No 3)* [2015] NSWLEC 190). As a consequence the Council sought orders in each proceeding declaring the relevant complying development certificates to be invalid. None of the Respondents opposed the making of such an order. Further, the Council sought mandatory orders for the demolition of works constructed pursuant to the complying development certificates. In addition, the Council sought an order that the First Respondent pay its costs of proceedings. The Second and Third Respondents in each proceeding also sought an order for costs against the First Respondent.

Issues:

- (1) Determination of the orders that should be made for final disposition of each proceeding:
 - (a) whether it is appropriate to make declaratory orders with respect to the invalidity of each complying development certificate issued by the First Respondent; and
 - (b) whether it is appropriate to order the demolition of structures erected on two of the premises.
- (2) Costs orders:
 - (a) whether it is appropriate to award costs against the First Respondent for costs attributable to the determination of the separate question and the costs of the proceedings generally; and
 - (b) whether the position of the Second and Third Respondents can correctly be equated to that of a submitting respondent whose joinder has only been made necessary because of the unlawful action of another party.

Held: Declaratory and remedial orders made; First Respondent to pay costs of Applicant in all three proceedings and those of the Second and Third Respondents in two of the proceedings attributable to the determination of the separate question and the costs of the proceedings generally.

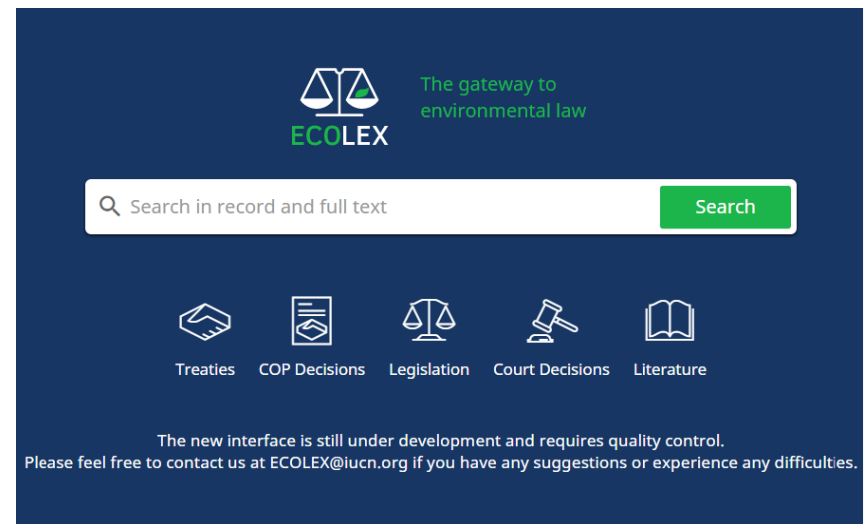
- (1) Given that the challenge to the validity of each of the certificates issued by the First Respondent had been successful, declaratory orders reflecting the Court's determination were appropriate: at [10];
- (2) It was appropriate that an order for demolition of structures erected pursuant to the invalid certificates, particularly as those structures constituted prohibited development. Such an order gives effect to the intent of the *Environmental Planning and Assessment Act 1979* (NSW) ("the Act") that "the orderly development and use of the environment" should be controlled by adherence to the provisions of the Act and planning instruments made under it: at [14];
- (3) With respect to costs sought by the Council, the Court of Appeal held that the costs of the first hearing before this Court "should depend on the final outcome of the Council's application, which is to be remitted". As the Council has been successful in this Court in obtaining orders that it sought the usual course is that costs should follow that event pursuant to r 42.1 of the Uniform Civil Procedure Rules 2005. In those circumstances, the proper exercise of discretion was that the First Respondent should be ordered to pay the Council's costs of the proceedings, including the costs of the separate question in this Court: at [18-19].

International Judicial Networks

- Global Judicial Institute for the Environment
 - Established in 2016
 - Aims to support courts and tribunals in applying and enforcing environmental law
 - Comprised of sitting judges from across the world
- International Union for Conservation of Nature
 - Established in 1948
 - Aims to provide all members with the knowledge and tools to enable human progress, economic development and nature conservation
 - Every year holds the IUCN Environmental Law Colloquium
- Australasian Conference of Planning and Environment Courts
 - Biennial conference in Australasia

Available Resources: Ecolex

- Allows users to search for:
 - Treaties
 - International soft-law and other non-binding policy and technical guidance documents
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 - Judicial decisions
 - Law and policy literature
- Operated by FAO, IUCN and UNEP
- <https://www.ecolex.org/>

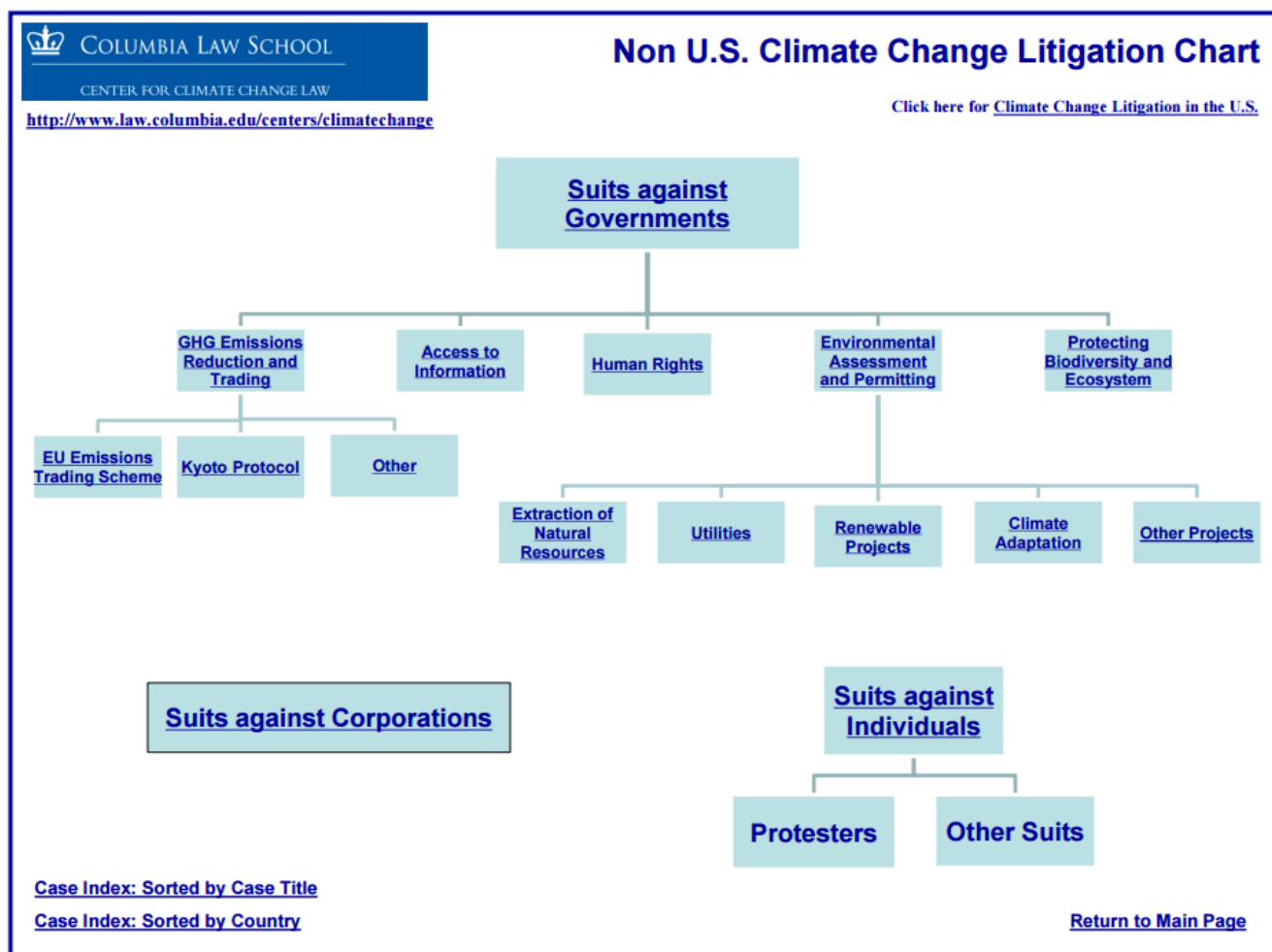


Sabine Centre for Climate Change

- Information about climate change
- Aim of the centre is to develop legal techniques to address climate change
- Operated by Columbia Law School
- <http://web.law.columbia.edu/climate-change>

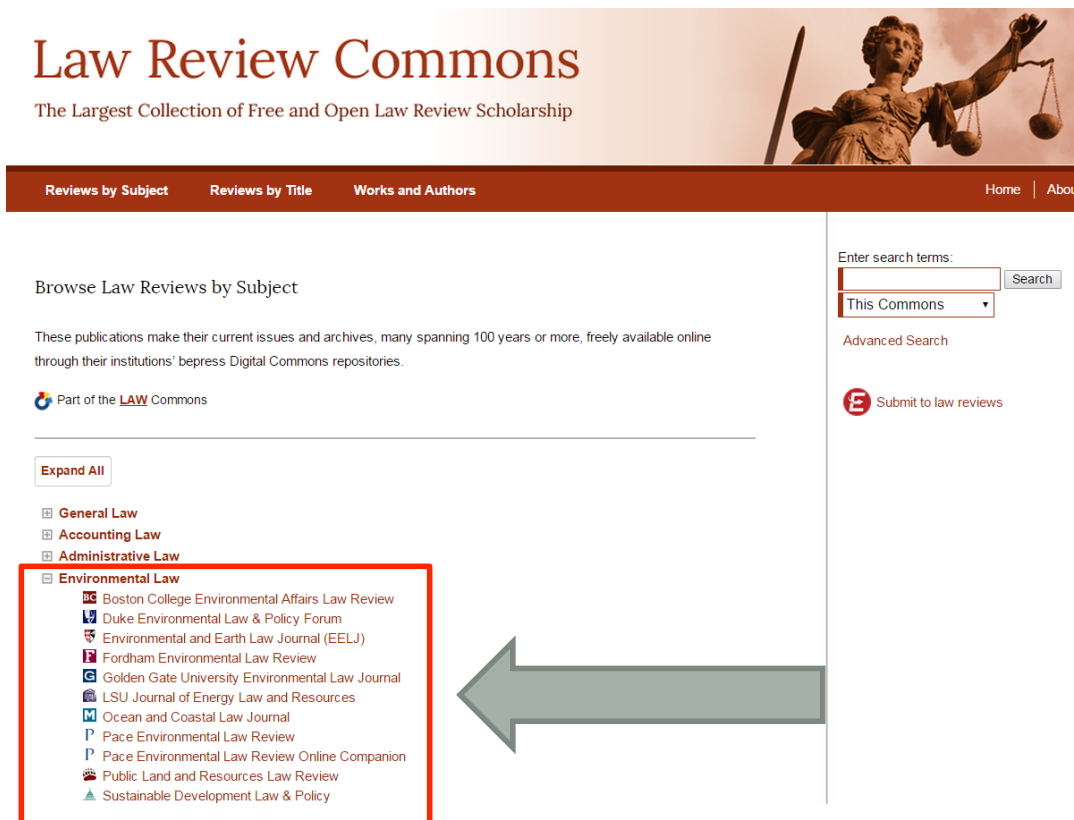


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