



New South Wales

# Land and Environment Court (Fees) Amendment Regulation 1998

under the

Land and Environment Court Act 1979

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Land and Environment Court Act 1979*.

JEFFREY SHAW, Q.C., M.L.C.,

Attorney General

## Explanatory note

The object of this Regulation is to amend the *Land and Environment Court (Fees) Regulation 1994* to provide a method of determining the amount of costs to be paid in accordance with a direction under section 52 of the *Land and Environment Court Act 1979* if no agreement can be reached between a prosecutor and a defendant.

This Regulation, as a consequential amendment, also changes the name of the principal regulation.

This Regulation is made under the *Land and Environment Court Act 1979*, including sections 52 (as amended by the *Courts Legislation Amendment Act 1997*) and 78 (the general regulation making power).

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## **Land and Environment Court (Fees) Amendment Regulation 1998**

### **1 Name of Regulation**

This Regulation is the *Land and Environment Court (Fees) Amendment Regulation 1998*.

### **2 Commencement**

This Regulation commences on 9 March 1998.

### **3 Amendment of Land and Environment Court (Fees) Regulation 1994**

The *Land and Environment Court (Fees) Regulation 1994* is amended as set out in Schedule 1.

### **4 Notes**

The explanatory note does not form part of this Regulation.

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## Schedule 1 Amendments

(Clause 3)

### [ 1 ] Clause 1 Name of regulation

Omit “(Fees)” from clause 1.

### [2] Clause 7A

Insert after clause 7:

#### **7A Determination of costs if no agreement between prosecutor and defendant: section 52**

- (1) This clause applies if no agreement between a prosecutor and defendant can be reached as to the amount of costs payable in accordance with a direction under section 52 of the Act.
- (2) The prosecutor or defendant may apply to the registrar for an assessment of those costs.
- (3) An application for an assessment:
  - (a) must be supported by a bill of costs, and
  - (b) may not be made unless at least 28 days have passed since the direction was given.
- (4) The registrar is to make available general requirements relating to the form of, and the particulars to be included in, bills of costs for the purposes of this clause. A bill of costs filed in support of an application for an assessment under this clause must comply with those requirements.
- (5) The application must contain a statement by the applicant that there is no reasonable prospect of settlement of the matter by agreement.
- (6) The registrar is to determine the costs payable by assessing the amount of the costs that, in the registrar’s opinion, is a fair and reasonable amount.

**1998 No 111**

Land and Environment Court (Fees) Amendment Regulation 1998

Schedule 1 Amendments

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- (7) In considering an application for an assessment of costs, the registrar may have regard to any or all of the following matters:
  - (a) whether or not it was reasonable to carry out the work to which the costs relate,
  - (b) what is a fair and reasonable amount of costs for the work concerned,
  - (c) the skill, labour and responsibility displayed on the part of the person carrying out the work concerned,
  - (d) the complexity, novelty or difficulty of the matter,
  - (e) the quality of the work done and whether the level of expertise was appropriate to the nature of the work done,
  - (f) the place where, and circumstances in which, the work was done,
  - (g) the time within which the work was required to be done,
  - (h) the outcome of the matter.
- (8) On making a determination under this clause, the registrar is to issue to the prosecutor and defendant a certificate that sets out the determination.
- (9) The determination is taken to be an order of the Court and is not subject to any review under Rule 9 of Part 3 of the *Land and Environment Court Rules 1996*.