

## LAND AND VALUATION COURT ACT.

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Act No. 10, 1921.

**George V, No. 10.** **An Act** to provide for the dissolution of the Land Appeal Court; to provide for the constitution of a Land and Valuation Court, and to define the jurisdiction, powers, and procedure of such court; to amend the Crown Lands Consolidation Act, 1913, and certain other Acts; and for purposes connected therewith. [Assented to, 10th December, 1921.]

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title. **1.** This Act may be cited as the "Land and Valuation Court Act, 1921."

Definitions. **2.** In this Act, unless the context otherwise requires,—

"Court" means the Land and Valuation Court constituted by this Act.

"Crown Lands Acts" means the Crown Lands Consolidation Act, 1913, and any Acts amending the same.

"Judge" means the judge of the court.

"Land Appeal Court" means Land Appeal Court as constituted by the Crown Lands Acts.

"Land board" means local land board under the Crown Lands Acts.

"Prescribed" means prescribed by this Act, or by rule made thereunder. **3.**

**3.** (1) Upon the passing of this Act the Land Appeal Court shall be dissolved, the appointment of the members of the said court shall terminate, and the jurisdiction and powers of the said court shall cease and determine, except as to things done or commenced before the passing of this Act, which shall respectively be continued and dealt with under this Act.

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Dissolution of  
Land Appeal  
Court, and  
savings.

(2) Any reference to the Land Appeal Court in the Crown Lands Acts, the Closer Settlement Acts, the Pastures Protection Act, 1912, the Public Roads Act, 1902, the Water Act, 1912, or any other Act, shall be construed as a reference to the court constituted by this Act.

(3) All decisions, determinations, orders, or directions made or given by the Land Appeal Court shall be deemed to have been made or given by the court constituted under this Act:

Provided that nothing in this section shall be deemed to confer any right of appeal from any such decision, determination, order, or direction, where such right of appeal would not have existed if this Act had not been passed.

(4) All rules, regulations, and notices made or given or published under the Crown Lands Acts in connection with proceedings before the Land Appeal Court, and in force at the passing of this Act, shall, in so far as they are not inconsistent with this Act, be deemed to have been made or given or published under this Act.

(5) The registrar and other officers of the Land Appeal Court holding office at the passing of this Act shall be deemed to have been appointed hereunder.

(6) All documents filed or deposited in the office of the registrar in connection with appeals or proceedings before the Land Appeal Court shall be handed over to and filed with the court constituted under this Act.

**4.** (1) There is hereby constituted a court to be called the Land and Valuation Court. It shall be a court of record, and have an official seal, which shall be judicially noticed.

Constitution  
of Land and  
Valuation  
Court and  
appointment  
of judge.

(2) The court shall be constituted by a judge who shall be appointed by the Governor.

(3)

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(3) In case of the absence, from whatever cause, of the judge, or in any case where the judge deems it not proper or desirable that he should adjudicate in any proceeding pending before the court, the Governor may appoint a deputy judge. The person so appointed shall, subject to the conditions or limitations, and for the period specified in his appointment have all the powers and privileges and fulfil all the duties of the judge.

(4) The person appointed as a judge, or deputy judge, shall be a Supreme Court or a district court judge, or a practising barrister of not less than five years standing, or a practising solicitor of not less than seven years standing.

(5) The judge shall be removable from office in the same manner and upon such grounds only as a Supreme Court judge is by law liable to be removed from such office.

Salary and  
rights of  
judge.

**5.** (1) The judge shall have the same rank, title, status, and precedence, and the same salary and rights as judges of the Supreme Court.

(2) If the judge has served in the office of judge for fifteen years he shall, on retiring, be entitled to an annual pension at the rate of one-half of his salary. If the judge retires on permanent disability or infirmity, or by reason of his attaining the age of seventy years, he shall, if he has served in such office for five years, be entitled on retiring to an annual pension at the rate of twenty one-hundredths of his salary, and at the additional rate of three one-hundredths of his salary for each complete year of his service after the expiration of the said five years to the date of his retirement, but so that the rate of his pension shall not exceed one-half of his salary.

(3) Such salary and pension shall be charged upon and payable out of the Consolidated Revenue Fund in every year.

(4) If after the assignment of such pension the judge accepts any new appointment under the Crown, such pension shall merge or be reduced pro tanto during the tenure of such appointment, according as the salary or emoluments of such appointment are greater or less than such pension.

(5)

(5) The judge shall retire when he attains the age of seventy years, unless he is granted retiring leave, in which case he shall retire on the expiration of such leave. George V,  
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**6.** (1) The Governor may upon the recommendation of the Public Service Board, appoint a registrar and such other officers of the court as may be necessary. Appointment  
of officers.

(2) The registrar and such other officers so appointed shall be paid such salaries as may from time to time be approved, and shall be subject to the provisions of the Public Service Acts during their tenure of office.

(3) In the absence, from whatever cause, of the registrar, a person may be provisionally appointed as deputy registrar, and such person while so appointed may exercise the powers and discharge the duties of the registrar.

(4) The registrar and other officers shall have such powers and perform such duties as may be prescribed.

**7.** The court shall sit at such places as the judge shall direct. Court to sit at  
places directed  
by judge.

**8.** The court shall have jurisdiction to hear and determine— Jurisdiction  
of court.

- (a) appeals, references, or other matters under the Crown Lands Acts, the Pastures Protection Act, 1912, the Closer Settlement Acts, the Water Act, 1912, the Public Roads Act, 1902, or any other Act, in respect of which jurisdiction was conferred prior to the passing of this Act upon the Land Appeal Court, or appeals, references, or other matters which at the passing of this Act were pending before the Land Appeal Court ;
- (b) objections to or appeals against valuations under the Valuation of Land Act, 1916, including objections and appeals which are pending at the passing of this Act ;
- (c) appeals under section eighteen of the Closer Settlement Act, 1904, and section ten of the Closer Settlement (Amendment) Act, 1907 ;
- (d) objections or appeals under section one hundred and thirty-three, or Schedule Three, of the Local Government Act, 1919, or under  
Part

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Part IX of the Sydney Corporation Act, 1902, or any Act amending the same (including objections or appeals which are pending at the passing of this Act), except where the unimproved capital value of the land or ratable property does not exceed five thousand pounds;

- (e) appeals under section one hundred and seventy-one of the Local Government Act, 1919;
- (f) appeals under section ten of the Western Lands (Amendment) Act, 1918:

Provided that upon the hearing under this section of any objection or appeal against any valuation of land, or the levying of any rate, or the assessment of ratable property, or upon the determination under the next following section of any claim for compensation, the court may elect to sit with two assessors, who shall be appointed by the court in the manner prescribed from persons nominated as prescribed. Such assessors shall have power to advise, but not to adjudicate in any proceeding before the court. The assessors shall be paid such fees and allowances as are prescribed.

Hearing of  
claims for  
compensation  
in resumption  
cases.

**9.** (1) In any case in which a claim is made for compensation by reason of the acquisition of land for public purposes under the Public Works Act, 1912, or any other Act which makes provision for the resumption or compulsory acquisition of land other than the Crown Lands Acts or the Closer Settlement Acts, and no agreement is come to between the claimant and the Resuming or Constructing Authority as to the amount of compensation payable, such claim shall be heard and determined in the following way, and not otherwise—

- (a) where the claim does not exceed one hundred pounds, by a stipendiary or police magistrate or any two justices in petty sessions; and
- (b) where the claim exceeds one hundred pounds, by the court without a jury:

Provided that for the purpose of any such determination the judge or magistrate or justices shall give effect to any provision of the Act, under which the land is acquired, which prescribes a basis for, or matters to be considered in, the assessment of compensation:

Provided

Provided further that where the claim exceeds one hundred pounds, the claim may be heard and determined in accordance with the provisions of paragraph (a) of this subsection if the claimant and the Resuming or Constructing Authority consent thereto in writing.

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(2) Notwithstanding anything contained in the Public Works Act, 1912, the compensation claimed shall not in any case be settled by arbitrators, but in every case where land is taken or acquired, either by Gazette notification or by notice to the parties, and the claim exceeds one hundred pounds, and there is no such consent as aforesaid, any proceeding to determine the amount of compensation payable shall be instituted by action in the Supreme Court.

(3) After issue joined or after any interlocutory judgment, the action shall be remitted by the Prothonotary to the court for determination.

(4) Notice of the time and place appointed by the judge for the hearing of the action shall be given by the registrar to the parties or their attorneys in the manner prescribed. Provided that the judge shall not be bound to appoint a place for the hearing in accordance with the venue laid in the action.

(5) After such hearing the registrar shall certify to the Prothonotary the finding of the judge, and subject to the provisions of section seventeen, the finding of the judge shall be final and conclusive and subject as aforesaid shall be deemed to be the verdict in the action, whether for the purposes of costs or otherwise.

(6) Except as provided by this section, the practice and procedure of the Supreme Court shall apply to any such action.

(7) This section shall come into operation upon a date to be notified by the Governor in the Gazette, and shall apply to all matters the hearing of which has not commenced prior to the date specified in the notification.

**10.** All proceedings before the court shall, unless the court otherwise orders, be heard in open court.

Proceedings to  
be heard in  
open court.

**11.** Persons entitled to appear before the court may appear in person, or may be heard by counsel, or by attorney, or by agent authorised by such person in writing.

Right of  
audience.

**12.**

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Appearance  
by Crown.

Issue of process  
and judicial  
notice to be  
taken of  
signature of  
judge and  
registrar.

Powers of  
judge as to  
production of  
evidence.

**12.** The Crown may appear before the court in any case in which the public interest or any right or interest of the Crown may be affected or involved.

**13.** (1) A summons or other process issuing out of the court shall be under the seal of the court, and shall be signed by the judge or the registrar.

(2) All courts shall take judicial notice of the signature of the judge, deputy judge, registrar, or deputy registrar when attached to any document issuing out of the court.

**14.** (1) The judge shall have all such powers, rights, and privileges as are vested in the Supreme Court or a judge thereof, in respect of the following matters:—

- (a) Compelling the attendance of witnesses, and examining them on oath, affirmation, or declaration.
- (b) Compelling the production, discovery, and inspection of books, documents, and writings.
- (c) Compelling witnesses to answer questions which the judge deems to be relevant to any proceeding before him.
- (d) The punishment of persons guilty of contempt, or of disobedience of any order made by the judge, or of any summons issuing out of the court.
- (e) Directing witnesses to be prosecuted for perjury.

(2) Any warrant to apprehend and to detain and bring before the court, or to keep in any gaol or other place of detention, any person liable upon the order of the court to be so dealt with, shall be valid and effectual if it be in the form prescribed, or to the effect thereof; and the sheriff, his deputy, and assistants, and all officers of the police force and gaolers, to whom the same shall be addressed, shall obey the same:

Provided that no such warrant shall be issued against a person who fails to appear as a witness when called, unless it be proved to the satisfaction of the court that he has been duly served with a summons, and that payment or tender of his reasonable expenses has been made to him.

**15.** (1) In any proceeding before the court the court may allow further evidence to be given upon such terms as to costs or otherwise as the court thinks fit.

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Power of court to allow further evidence to be given and to remit matters to land board.

(2) Any appeal, reference, or other matter in respect of which jurisdiction was conferred prior to the passing of this Act upon the Land Appeal Court may be remitted by the court to a land board for such action as may be directed, and the land board, after taking such action, may return the matter to the court or may uphold, reverse, alter, or amend its previous decision in any way that may be considered necessary, and any order made by the court may be remitted to a land board with a direction to the land board to enforce or carry out such order, and thereupon the land board shall be empowered and bound to act accordingly.

**16.** In any proceeding before the court the court shall have power at any stage of the proceeding to order any amendments to be made which in the opinion of the court are necessary in the interests of justice, and upon such terms as to costs or otherwise as the court thinks fit.

Power of amendment.

**17.** (1) When any question of law arises in any proceeding before the court the court shall, if so required in writing by any of the parties within the prescribed time and subject to the prescribed conditions, or may of its own motion, state a case for the decision of the Supreme Court thereon.

Appeal by case stated to Supreme Court.

(2) The Supreme Court for the purpose of hearing any such case shall consist of three judges, and shall have power to make such order as it thinks fit in regard to the costs of and incidental to any case so stated.

(3) The judges of the Supreme Court, or any two of them, may make rules with regard to the setting down of any case for argument, and the hearing and decision of the same, and its return with the decision of the Supreme Court thereon.

(4) The decision of the Supreme Court upon the hearing of any such case shall be binding upon the court and upon all the parties to such proceeding.

(5) Subject to the provisions of this section and of section one hundred and sixty-six of the Crown Lands Acts the decision of the court shall be final and conclusive.



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Costs.

**18.** The court shall have power to make such order as to the costs of or incidental to any proceeding before the court as it may think fit :

Provided that the provisions of section twenty-three of the Closer Settlement (Amendment) Act, 1909, shall apply to the costs of proceedings referred to in that section to the extent therein stated.

Enforcement  
of order for  
payment of  
money.

**19.** (1) Any order of the court for payment of money as costs or otherwise shall be conclusive upon the parties, and have the force of a judgment in the Supreme Court at common law.

(2) The party in whose favour any such order is finally made may obtain from the registrar a certificate of the amount due thereunder, and, upon production thereof to the Prothonotary, shall be entitled to have judgment entered thereon without any judge's order, and to have execution for such amount and costs issued and enforced in the same way as may be done upon judgments at common law :

Provided that where a deposit has been made by an appellant, the same shall be available in payment or part payment of any sum he may be ordered to pay, and the balance, if any, shall be returned.

Power to  
make rules.

**20.** (1) The judge may make rules to regulate the procedure of the court, and generally as to all matters necessary or convenient for giving effect to the provisions of this Act.

(2) Such rules upon being published in the Gazette shall be binding upon the court and the parties to any proceeding therein.

(3) A copy of such rules shall be laid before both Houses of Parliament within fourteen days after publication, if Parliament is then in session, and if Parliament is not then in session, within fourteen days after the commencement of the next session.

(4) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such rules have been laid before such House, disallowing any rule or part thereof, such rule or part thereof shall thereupon cease to have effect.

**21.** Section eighteen of the Closer Settlement Act, **George V., No. 10,** 1904, as amended by section seven of the Closer Settlement (Amendment) Act, 1909, is further amended by omitting subsections three, four, five, and six and by inserting after subsection two the following new subsection :—

Amendment of Closer Settlement Act, 1904.

(3) Such appeal shall be heard by the Land and Valuation Court constituted by the Land and Valuation Court Act, 1921.

Section ten of the Closer Settlement (Amendment) Act, 1907, is amended by omitting all the words after the expression "Principal Act."

Amendment Closer Settlement (Amendment) Act, 1907.

**22.** Sections twenty-one and twenty-two of the Crown Lands Consolidation Act, 1913, and the Fifth Schedule to the said Act, are repealed with the exception of the following words in subsection two of section twenty-two:—"The Land Appeal Court shall have power to hear and determine all appeals and all matters referred to such court by the Minister or by a local land board."

Amendment of Crown Lands Consolidation Act, 1913.

**23.** The Valuation of Land Act, 1916, is amended as follows :—

Amendment of Valuation of Land Act, 1916.

(1) By omitting section thirty-seven, and substituting therefor the following new section :—

Sec. 37.

37. The valuer-general shall, when objections to valuations in respect of land in any district or group of adjacent districts have been received by him, forward such objections to the registrar of the Land and Valuation Court as constituted by the Land and Valuation Court Act, 1921, for hearing and determination by that court;

Valuer-general shall forward objections to the registrar of court.

(2) by omitting section thirty-eight, and substituting therefor the following new section :—

Sec. 38.

38. The Land and Valuation Court as constituted by the Land and Valuation Court Act, 1921, shall be the valuation court for the purpose of this Act;

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(3) by omitting section forty ;

Sec. 40.

(4) by omitting section forty-one ;

Sec. 41.

(5) (a) by omitting in section forty-two the words "upon the appointment of any court" and the words "before such appointment";

Sec. 42.

(b)

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(b) by omitting in the same section the word "clerk" wherever occurring, and substituting therefor the word "registrar";

(c) by omitting in the same section the words "the president of the court" and substituting therefor the words "the judge of the court";

Sec. 44.

(6) by omitting section forty-four;

Sec. 45.

(7) by omitting section forty-five;

Sec. 46.

(8) by omitting section forty-six.

Amendment of  
Local Govern-  
ment Act, 1919.

**24.** The Local Government Act, 1919, is amended as follows:—

Sec. 133 (3).

(1) By omitting subsection three of section one hundred and thirty-three, and substituting therefor the following new subsection:—

(3) Where the valuation of the unimproved capital value of the land does not exceed five thousand pounds the appeal shall be made to the nearest court of petty sessions, and where such valuation exceeds five thousand pounds the appeal shall be made to the Land and Valuation Court as constituted by the Land and Valuation Court Act, 1921;

Sec. 133 (4).

(2) (a) by omitting in subsection four of section one hundred and thirty-three the words "the district court" and substituting therefor the words "the Land and Valuation Court";

(b) by omitting in the same subsection the words "ten thousand pounds" and substituting therefor the words "five thousand pounds";

Sec. 133 (7).

(3) by omitting subsection seven of section one hundred and thirty-three, and substituting therefor the following new subsection:—

(7) Any person dissatisfied with the decision of any court of petty sessions as being erroneous in point of law may appeal therefrom to the Supreme Court in the manner provided for appeals from the determinations of justices in the exercise of their summary jurisdiction, and subject thereto the decision of such court shall be final and conclusive;

(4)

- (4) (a) by omitting in subsections three and four of section one hundred and seventy-one the words "the district court" and substituting therefor the words "the Land and Valuation Court"; George V,  
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Sec. 171 (3)  
(4).
- (b) by omitting in paragraph (a) of subsection one of section nineteen of Schedule Three the figures "£10,000" and substituting therefor the figures "£5,000"; Sch. 3.
- (c) by omitting paragraph (b) of the same subsection, and substituting therefor the following new paragraph:—
- (b) the Land and Valuation Court where the valuation exceeds £5,000;
- (5) by omitting subsection three of section nineteen of Schedule Three and substituting therefor the following new subsection:—
- (3) Except where the unimproved capital value as stated in the valuation notice does not exceed £500, a valuation court may make such order as it thinks fit for payment of the costs of any objection, and the order shall be enforceable as an order made by the Land and Valuation Court, or as a judgment under the Small Debts Recovery Act, 1912, as the case may be;
- (6) by omitting subsection five of section nineteen of Schedule Three;
- (7) by omitting section twenty of Schedule Three and substituting therefor the following new section:—
- (20) Any person dissatisfied with the decision of any court of petty sessions as being erroneous in point of law may appeal therefrom to the Supreme Court in the manner provided for appeals from the determinations of justices in the exercise of their summary jurisdiction, and subject thereto the decision of such court shall be final and conclusive; Appeals to  
Supreme  
Court.  
cf. L.G. Act,  
1906, s. 140.
- (8) by omitting paragraph (f) of section twenty-three of Schedule Three.

George V, No. 10. **25.** The Sydney Corporation Act, 1902, is amended as follows :—

Amendment of  
Sydney  
Corporation  
Act, 1902.  
Secs. 114,  
115, 116.  
New s. 114.

(1) By omitting sections one hundred and fourteen, one hundred and fifteen, and one hundred and sixteen ;

(2) by inserting after section one hundred and thirteen the following new section :—

Hearing of  
appeal.

114. (1) Where the valuation of the unimproved capital value of the ratable property, the subject of the assessment, does not exceed five thousand pounds, such appeal may be made to the nearest court of petty sessions, and where such valuation exceeds five thousand pounds, such appeal may be made to the Land and Valuation Court as constituted by the Land and Valuation Court Act, 1921.

(2) The person appealing shall, within the time mentioned in section one hundred and thirteen, give notice in writing of his intention to appeal, stating the grounds of such appeal to the clerk of the court of petty sessions or to the registrar of the Land and Valuation Court, as the case may require.

(3) Notice of the time when and of the place where the said courts will sit for the hearing of appeals shall be published in the Gazette and in one or more newspapers at least seven clear days before the time appointed for the hearing of appeals by such courts respectively.

(4) No appeal shall be entertained unless notice of appeal has been given as required by section one hundred and thirteen.

(5) An appellant may appear at the hearing of an appeal under this section by counsel, solicitor, or agent authorised in writing.

(6) The court hearing the appeal may confirm or alter the assessment, but the same shall not be reduced in amount by reason of the property assessed having decreased in value subsequently to the making of the assessment appealed from.

(7)

(7) Any person dissatisfied with the decision of any court of petty sessions as being erroneous in point of law may appeal therefrom to the Supreme Court in the manner provided for appeals from the determination of justices in the exercise of their summary jurisdiction.

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(3) By omitting in section one hundred and seventeen, as amended by section seven of the Sydney Corporation Amendment Act, 1905, the words "by the district court" and substituting therefor the words "by the Land and Valuation Court."

**26.** Section ten of the Western Lands (Amendment) Act, 1918, is amended by omitting the words "by a district court judge appointed for the purpose by the Governor," and substituting therefor the words "by the Land and Valuation Court constituted by the Land and Valuation Court Act, 1921."

Amendment  
of Western  
Lands  
(Amendment)  
Act, 1918.