

# Land and Environment Court Act 1979 No 204

[1979-204]



New South Wales

## Status Information

### Currency of version

Historical version for 2 April 2004 to 30 June 2004 (accessed 28 February 2024 at 0:17)

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Water Management Act 2000 No 92](#) (not commenced)
  - [Native Vegetation Act 2003 No 103](#) (not commenced)
  - [Water Management Amendment Act 2004 No 39](#) (not commenced)
- **See also**
  - [Crown Lands \(Prevention of Sale\) Bill 2004](#) [Non-government Bill: Mr Ian Cohen, MLC]

### Authorisation

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File last modified 28 June 2004

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# Land and Environment Court Act 1979 No 204



New South Wales

An Act to constitute the Land and Environment Court and to make provision with respect to its jurisdiction.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Land and Environment Court Act 1979*.

### 2 Commencement

- (1) This section and section 1 shall commence on the date of assent to this Act.
- (2) Except as provided by this section, this Act shall commence on:
  - (a) such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette (being a day that is not later than the day referred to in paragraph (b)), or
  - (b) if a day is not appointed and notified under paragraph (a)—the day appointed and notified under section 2 (2) of the *Environmental Planning and Assessment Act 1979*.
- (3) Section 71 shall commence on the day appointed and notified under section 2 (2) of the *Environmental Planning and Assessment Act 1979*.
- (4) No proceedings shall be commenced in the Court before the day appointed and notified under section 2 (2) of the *Environmental Planning and Assessment Act 1979*.

### 3 (Repealed)

### 4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**Chief Judge** means the Chief Judge of the Court.

**Commissioner** means a person appointed as a Commissioner of the Court under

Division 3 of Part 2.

**Court** means the Land and Environment Court constituted under this Act.

**court hearing matter**—see section 34A (5).

**Division** means a Division of the Court specified in section 26.

**functions** includes powers, authorities and duties.

**Judge** means a Judge of the Court.

**on-site hearing matter**—see section 34A (3).

**registrar** means the registrar of the Court.

**regulations** means regulations for the time being in force under this Act.

**rules** means the rules of the Court for the time being in force under this Act.

- (2) A reference in this Act to the exercise of a function includes, where that function is a duty, the performance of that duty.

## **Part 2 Constitution of the Court**

### **Division 1 Constitution**

#### **5 Constitution of the Court**

- (1) There is hereby constituted a superior court of record to be known as the Land and Environment Court.
- (2) There shall be a seal of the Court, and any document required by or under this or any other Act or law to be sealed or stamped with the seal of the Court shall be so sealed or stamped.

#### **6 Single Judge to constitute the Court**

- (1) All proceedings in the Court, and all business arising out of any such proceedings, shall, subject to this Act, be heard and disposed of before a Judge, who shall constitute the Court.
- (2) Subsection (1) does not affect the provisions of this Act and the rules concerning the hearing and disposal of proceedings and business before one or more Commissioners or other officers of the Court.



## **Division 2 The Judges**

### **7 Composition of the Court**

The Court shall be composed of a Chief Judge appointed by the Governor and such other Judges as the Governor may from time to time appoint.

### **8 Appointment and qualifications of Judges**

- (1) The Governor may, by commission under the public seal of the State, appoint any qualified person to be a Judge.
- (2) A person is qualified for appointment as a Judge if the person is under 70 years of age and:
  - (a) holds or has held a judicial office of this State or of the Commonwealth, another State or a Territory, or
  - (b) (Repealed)
  - (c) is a legal practitioner of at least 7 years' standing.

### **9 Remuneration etc**

- (1) (Repealed)
- (2) Each Judge shall have the same rank, title, status and precedence and, except as provided by subsection (2A), the same remuneration and other rights as a Judge of the Supreme Court (other than the Chief Justice and the President of the Court of Appeal).
- (2A) The Chief Judge shall have the same remuneration as the President of the Industrial Relations Commission of New South Wales.
- (3) (Repealed)

### **10 Acting Chief Judge**

- (1) The Governor may, by commission under the public seal of the State, appoint a Judge (but not an acting Judge) to be Acting Chief Judge during such period as the Chief Judge may be absent from duty.
- (2) While holding office, the Acting Chief Judge shall have and may exercise the functions of the Chief Judge.

### **11 Acting Judges**

- (1) The Governor may, by commission under the public seal of the State, appoint any qualified person to act as a Judge for a time not exceeding 12 months to be specified in the commission.

- (2) In subsection (1), **qualified person** means a person qualified for appointment as a Judge.
- (3) The person so appointed shall, for the time and subject to the conditions or limitations specified in the person's commission, have and may exercise the functions of a Judge and shall, for the purposes of this or any other Act, be deemed to be a Judge.
- (3A) The person so appointed may, despite the expiration of the period of the person's appointment, complete or otherwise continue to deal with any matters relating to proceedings that have been heard, or partly heard, by the person before the expiration of that period.
- (4) A retired Judge of the Court or of another court in New South Wales (including a retired judicial member of the Industrial Commission or the Industrial Relations Commission) may be so appointed even though the retired Judge has reached the age of 72 years (or will have reached that age before the appointment expires), but may not be so appointed for any period that extends beyond the day on which he or she reaches the age of 75 years.
- (5) The conditions or limitations specified in a commission under this section may exclude the whole or any part of the period of appointment from being regarded as prior judicial service (within the meaning of section 8 of the *Judges' Pensions Act 1953*) by the person.

## **Division 3 Commissioners**

### **12 Commissioners**

- (1) The Governor may appoint any qualified person to be a Commissioner of the Court.
- (2) A person is qualified to be appointed as a Commissioner if the person has, in the opinion of the Minister:
  - (a) special knowledge of and experience in the administration of local government or town planning,
  - (b) suitable qualifications and experience in town or country planning or environmental planning,
  - (c) special knowledge of and experience in environmental science or matters relating to the protection of the environment and environmental assessment,
  - (d) special knowledge of and experience in the law and practice of land valuation,
  - (e) suitable qualifications and experience in architecture, engineering, surveying or building construction,
  - (f) special knowledge of and experience in the management of natural resources or

the administration and management of Crown lands, lands acquired under the Closer Settlement Acts and other lands of the Crown, or

- (g) suitable knowledge of matters concerning land rights for Aborigines and qualifications and experience suitable for the determination of disputes involving Aborigines, or
- (h) special knowledge of and experience in urban design or heritage.

In appointing Commissioners, the Minister should ensure, as far as practicable, that the Court is comprised of persons who hold qualifications across the range of areas specified in this subsection.

- (2A) A person may be appointed as a full-time Commissioner or a part-time Commissioner.
- (2B) A person appointed as a part-time Commissioner is guilty of misbehaviour if, during the term of his or her appointment, the person appears as an expert witness, or acts as the representative of any party, in proceedings before the Court.
- (3) One of the full-time Commissioners may, by the instrument of the Commissioner's appointment or by a subsequent instrument, be appointed to be Senior Commissioner.
- (4) Schedule 1 has effect in respect of the Commissioners.

### 13 Acting Commissioners

- (1) The Governor may appoint any qualified person to act as a Commissioner of the Court for a time not exceeding 12 months to be specified in the instrument of appointment.
- (2) In subsection (1), **qualified person** means a person qualified for appointment as a Commissioner.
- (3) The person so appointed shall, for the time and subject to the conditions or limitations specified in the instrument of appointment, have and may exercise the functions of a Commissioner and shall, for the purposes of this or any other Act, be deemed to be a Commissioner.
- (4) An acting Commissioner is entitled to receive such remuneration and allowances as the Governor may determine.
- (5) The provisions of the [Public Service Act 1979](#) do not apply to or in respect of the appointment of an acting Commissioner, and an acting Commissioner is not, in the acting Commissioner's capacity as such, subject to those provisions during the acting Commissioner's term of office.

## **14 Disqualification of Commissioners**

(1) Where a Commissioner:

- (a) has a pecuniary interest, direct or indirect, in a matter which is the subject of proceedings before the Court, or
- (b) is a member, officer, employee or servant of a public or local authority that is a party to any proceedings before the Court,

being proceedings in respect of which the Commissioner is exercising any functions conferred or imposed on the Commissioner by or under this Act or the rules, then:

- (c) the Commissioner shall inform the Chief Judge that the Commissioner has such an interest or is such a member, officer, employee or servant, and
- (d) the Commissioner shall thereupon cease to exercise those functions in relation to the proceedings.

(2) A decision of the Court is not vitiated by reason that a Commissioner has failed to comply with subsection (1).

## **Division 4 Other officers of the Court**

### **15 Appointment of other officers**

- (1) A registrar, an assistant registrar and such other officers of the Court as may be necessary for the proper administration of this Act and the rules may be appointed and employed under and subject to the [Public Service Act 1979](#).
- (2) The registrar, assistant registrar and other officers of the Court shall have such functions as may be prescribed by this Act, the rules or the regulations.
- (3) The assistant registrar shall have and may exercise the functions of the registrar, and all acts, matters and things done or omitted by the assistant registrar shall be as valid and effectual and shall have the same consequences as if the acts, matters and things had been done or omitted by the registrar.

## **Part 3 Jurisdiction of the Court**

### **Division 1 General**

#### **16 Jurisdiction of the Court generally**

- (1) The Court shall have the jurisdiction vested in it by or under this or any other Act.
- (1A) The Court also has jurisdiction to hear and dispose of any matter not falling within its jurisdiction under any other provision of this Act or under any other Act, being a matter that is ancillary to a matter that falls within its jurisdiction under any other

provision of this Act or under any other Act.

- (2) For the purposes of this Act, the jurisdiction of the Court is divided into 7 classes, as provided in this Division.

### **17 Class 1—environmental planning and protection appeals**

The Court has jurisdiction (referred to in this Act as “Class 1” of its jurisdiction) to hear and dispose of:

- (a) appeals under Part 9.2 of the *Protection of the Environment Operations Act 1997*,
- (aa) (Repealed)
- (b) appeals under section 114 of the *Pesticides Act 1999*,
- (ba)–(c) (Repealed)
- (ca) appeals under section 54 of the *Biological Control Act 1985*,
- (cb) appeals and determinations under sections 6 and 22L of the *Rivers and Foreshores Improvement Act 1948*,
- (cc) appeals under section 180J of the *Water Act 1912*,
- (d) appeals, objections and applications under sections 95A, 96, 96AA, 96A, 97, 98, 98A, 109K, 121ZK, 121ZM and 149F of the *Environmental Planning and Assessment Act 1979*,
- (da) appeals under section 211 of the *Water Act 1912*,
- (e) appeals under section 30, 70, or 70A of the *Heritage Act 1977* and appeals remitted to the Court under section 77 (1) (b) of the *Heritage Act 1977* in respect of applications under the *Environmental Planning and Assessment Act 1979*,
- (ea) appeals under section 106 of the *Threatened Species Conservation Act 1995*, and
- (f) appeals under sections 37–40 of the *Environmentally Hazardous Chemicals Act 1985* and applications under section 44 (4) of that Act,
- (g) appeals under section 48 of the *Native Vegetation Conservation Act 1997*, and
- (h) appeals under Part 6 of the *Contaminated Land Management Act 1997*, and
- (i) appeals under section 24 of the *Plantations and Reafforestation Act 1999*.

### **18 Class 2—local government and miscellaneous appeals and applications**

The Court has jurisdiction (referred to in this Act as “Class 2” of its jurisdiction) to hear and dispose of:

- (a) appeals or objections under sections 176, 177, 178, 180, 182 and 611 of the *Local Government Act 1993*,
- (a1) appeals under sections 15 and 105, and applications under section 106, of the *Roads Act 1993*,
- (a2) appeals under section 26 (3) of the *Water Supply Authorities Act 1987*,
- (b) appeals under section 3 (1) (a) of the *Local Government (Regulation of Flats) Act 1955*,
- (c) appeals under section 40 (4) of the *Strata Schemes (Freehold Development) Act 1973* and under section 69 (4) of the *Strata Schemes (Leasehold Development) Act 1986*,
- (c1) appeals under section 16 of the *Lake Illawarra Authority Act 1987*,
- (c2) (Repealed)
- (c3) appeals under section 26 of the *Swimming Pools Act 1992*,
- (c4) appeals under section 25 of the *Noxious Weeds Act 1993*,
- (d) appeals remitted to the Court under section 77 (1) (b) of the *Heritage Act 1977* other than appeals referred to in section 17 (e),
- (e) appeals under section 120L of the *Heritage Act 1977*, and
- (f) proceedings under sections 28K and 28QA of the *Strata Schemes (Freehold Development) Act 1973*, under sections 51 and 57AA of the *Strata Schemes (Leasehold Development) Act 1986* and under section 107 of the *Community Land Management Act 1989*.

### **19 Class 3—land tenure, valuation, rating and compensation matters**

The Court has jurisdiction (referred to in this Act as “Class 3” of its jurisdiction) to hear and dispose of:

- (a) appeals, references or other matters that may be heard and disposed of by the Court under the *Crown Lands Act 1989*, the *Western Lands Act 1901* or Division 2 of Part 12 of the *Roads Act 1993*, being appeals, references or other matters that are not referred to in any other section of this Part,
- (b) appeals under section 37 (1) of the *Valuation of Land Act 1916*,
- (b1) (Repealed)
- (c) appeals against boundary determinations under Part 14A (Boundary determinations) of the *Real Property Act 1900*,

- (c1) proceedings under the *Encroachment of Buildings Act 1922*,
- (d) appeals and applications under sections 179, 181, 526 (and section 526 as applied by section 531), 574, 677 and 730 of the *Local Government Act 1993*,
- (e) claims for compensation by reason of the acquisition of land, referred to in Division 2,
- (e1) appeals under section 199 of the *Water Act 1912*,
- (e2) proceedings under sections 29, 30 and 31 of the *Access to Neighbouring Land Act 2000*,
- (e3) appeals under section 22 or 24 of the *Lord Howe Island Act 1953*,
- (f) proceedings under section 10 of the *Growth Centres (Land Acquisition) Act 1974*,
- (f1) appeals under section 12B of the *Mine Subsidence Compensation Act 1961*,
- (g) proceedings to recover compensation payable pursuant to sections 96A (7) and 121ZL of the *Environmental Planning and Assessment Act 1979*,
- (g1) appeals under section 44 or 202 of the *Fisheries Management Act 1994*,
- (g2) appeals under section 174 of the *Aboriginal Land Rights Act 1983*,
- (g3) references under section 175 of the *Aboriginal Land Rights Act 1983*, and
- (h) any other appeals, references or other matters which an Act provides may be heard and disposed of by the Court, being appeals, references or other matters that are not referred to in any other section of this Part.

**20 Class 4—environmental planning and protection and development contract civil enforcement**

- (1) The Court has jurisdiction (referred to in this Act as “Class 4” of its jurisdiction) to hear and dispose of:
  - (a) proceedings under section 44 or 153 of the *Heritage Act 1977*,
  - (aa) proceedings under section 282 of the *Fisheries Management Act 1994*,
  - (b) proceedings referred to in section 35 of the *Environmental Planning and Assessment Act 1979*,
  - (ba) proceedings under section 10 of the *Uranium Mining and Nuclear Facilities (Prohibitions) Act 1986*,
  - (bb) proceedings under section 18 of the *Ozone Protection Act 1989*,
  - (c) proceedings under section 123 of the *Environmental Planning and Assessment Act*

1979,

- (ca) proceedings under section 57 of the *Environmentally Hazardous Chemicals Act 1985*,
- (caa) proceedings under Division 6 of Part 3, Part 7 and section 96 of the *Contaminated Land Management Act 1997*,
- (cb) proceedings under section 96 of the *Pesticides Act 1999*,
- (cbb) proceedings under section 108 of the *Pesticides Act 1999*,
- (cc) proceedings under section 32 of the *Forestry and National Park Estate Act 1998*,
- (cd) proceedings under section 60B of the *Pipelines Act 1967*,
- (ce) proceedings referred to in section 69G of the *National Parks and Wildlife Act 1974*,
- (cf) proceedings under section 91H of the *National Parks and Wildlife Act 1974*,
- (cg) proceedings under section 176A of the *National Parks and Wildlife Act 1974*,
- (ch) proceedings under section 27 of the *Wilderness Act 1987*,
- (ci) proceedings under Part 8.4 of the *Protection of the Environment Operations Act 1997*,
- (cia) proceedings under sections 247 and 307 of the *Protection of the Environment Operations Act 1997*,
- (cj) proceedings under section 22E of the *Rivers and Foreshores Improvement Act 1948*,
- (cja) proceedings under section 100H of the *Rural Fires Act 1997*,
- (ck) proceedings under section 147 of the *Threatened Species Conservation Act 1995*,
- (cl), (cm) (Repealed)
- (cn) proceedings under clauses 14–17 of Schedule 2 to the *Rural Lands Protection Act 1998*,
- (d) proceedings under sections 673 and 674 of the *Local Government Act 1993*,
- (da) applications under section 17 of the *Restricted Premises Act 1943*,
- (db) proceedings under section 15D of the *Mine Subsidence Compensation Act 1961*,
- (dc) proceedings under section 30 of the *Swimming Pools Act 1992*,



- (dd) proceedings under Division 5 of Part 7 of the *Aboriginal Land Rights Act 1983*,
  - (de) proceedings under section 45 or 63 of the *Native Vegetation Conservation Act 1997*,
  - (df) proceedings under section 180C or 180K of the *Water Act 1912*,
  - (df1) proceedings under sections 335 and 336 of the *Water Management Act 2000*,
  - (dg) proceedings under the *Nature Conservation Trust Act 2001*,
  - (dh) proceedings under section 57 or 60 of the *Plantations and Reafforestation Act 1999*,
  - (e) proceedings referred to in subsection (2).
- (2) The Court has the same civil jurisdiction as the Supreme Court would, but for section 71, have to hear and dispose of proceedings:
- (a) to enforce any right, obligation or duty conferred or imposed by a planning or environmental law or a development contract,
  - (b) to review, or command, the exercise of a function conferred or imposed by a planning or environmental law or a development contract,
  - (c) to make declarations of right in relation to any such right, obligation or duty or the exercise of any such function, and
  - (d) whether or not as provided by section 68 of the *Supreme Court Act 1970*—to award damages for a breach of a development contract.
- (2A) The Court has jurisdiction to hear and dispose of proceedings referred to in subsection (1) (dd).
- (3) For the purposes of subsection (2), a planning or environmental law is:
- (a) any of the following Acts or provisions:
    - Aboriginal Land Rights Act 1983* (other than Division 5 of Part 7),
    - Biological Control Act 1985*,
    - Coastal Protection Act 1979*,
    - Contaminated Land Management Act 1997*,
    - Environmental Planning and Assessment Act 1979*,
    - Environmentally Hazardous Chemicals Act 1985*,
    - Forestry and National Park Estate Act 1998*,

*Heritage Act 1977,*

Part 2 of Chapter 6, Chapter 7 or Chapter 15 of the *Local Government Act 1993,*

Schedule 3 to the *Miscellaneous Acts (Planning) Repeal and Amendment Act 1979,*

*National Parks and Wildlife Act 1974,*

*Native Vegetation Conservation Act 1997,*

Part 5 of the *Olympic Co-ordination Authority Act 1995,*

*Ozone Protection Act 1989,*

*Pesticides Act 1999,*

*Plantations and Reafforestation Act 1999*

*Protection of the Environment Administration Act 1991,*

*Protection of the Environment Operations Act 1997*

*Rivers and Foreshores Improvement Act 1948,*

*Rural Fires Act 1997,*

*Threatened Species Conservation Act 1995,*

*Uranium Mining and Nuclear Facilities (Prohibitions) Act 1986,*

*Waste Avoidance and Resource Recovery Act 2001,*

*Waste Recycling and Processing Corporation Act 2001,*

(b) any statutory instrument made or having effect thereunder or made for the purposes thereof, including any deemed environmental planning instrument within the meaning of the *Environmental Planning and Assessment Act 1979*, or

(c) (Repealed)

as respectively in force at any time, whether before, on or after 1 September 1980.

(4) The provisions of the *Supreme Court Act 1970*, and the rules thereunder, relating to the enforcement of judgments and orders of the Supreme Court apply to the enforcement of any judgment or order of the Court in proceedings referred to in Class 4 of its jurisdiction, and so apply as if references in those provisions to the Supreme Court were references to the Court, and with such other adaptations as may be necessary or as may be prescribed by the rules.

- (5) In this section, **development contract** means an agreement implied by section 15 of the *Community Land Management Act 1989*, section 28I of the *Strata Schemes (Freehold Development) Act 1973* or section 49 of the *Strata Schemes (Leasehold Development) Act 1986*.

## **21 Class 5—environmental planning and protection summary enforcement**

The Court has jurisdiction (referred to in this Act as “Class 5” of its jurisdiction) to hear and dispose of in a summary manner:

- (a) proceedings under Parts 8.2 and 8.3 of the *Protection of the Environment Operations Act 1997*,
- (aa) proceedings under section 23 of the *Ozone Protection Act 1989*,
- (b) proceedings under Divisions 1, 3 and 4 of Part 10 of the *Pesticides Act 1999*,
- (ba) (Repealed)
- (c) proceedings under section 55 of the *Waste Disposal Act 1970*,
- (ca), (d) (Repealed)
- (da) proceedings under section 39 (4) of the *Road and Rail Transport (Dangerous Goods) Act 1997*,
- (e) proceedings under section 158 of the *Heritage Act 1977*,
- (f) proceedings under section 127 of the *Environmental Planning and Assessment Act 1979*,
- (faa) proceedings under Part 10 of the *Contaminated Land Management Act 1997*,
- (fa) proceedings under section 12 of the *Uranium Mining and Nuclear Facilities (Prohibitions) Act 1986*,
- (g) proceedings under section 691 of the *Local Government Act 1993*,
- (ga) proceedings under section 26 of the *Rivers and Foreshores Improvement Act 1948*,
- (gb) proceedings under section 277 (1) (c) of the *Fisheries Management Act 1994*,
- (gc) proceedings under section 53 of the *Sydney Water Act 1994*,
- (h) proceedings under section 176 (1AA) of the *National Parks and Wildlife Act 1974*, and
- (ha) proceedings under section 21 of the *Very Fast Train (Route Investigation) Act 1989*, and
- (hb) proceedings under the *Irrigation Corporations Act 1994*, and

- (i) any other proceedings for an offence which an Act provides may be taken before, or dealt with by, the Court.

### **21A Class 6—appeals from convictions relating to environmental offences**

The Court has jurisdiction (referred to in this Act as “Class 6” of its jurisdiction) to hear and dispose of appeals under section 31 or 42 of the *Crimes (Local Courts Appeal and Review) Act 2001*, other than appeals under Division 3A of that Part.

### **21B Class 7—other appeals relating to environmental offences**

The Court has jurisdiction (referred to in this Act as “Class 7” of its jurisdiction) to hear and dispose of appeals under section 32 or 43 of the *Crimes (Local Courts Appeal and Review) Act 2001*.

### **22 Determination of matter completely and finally**

The Court shall, in every matter before the Court, grant either absolutely or on such terms and conditions as the Court thinks just, all remedies to which any of the parties appears to be entitled in respect of a legal or equitable claim properly brought forward by that party in the matter, so that, as far as possible, all matters in controversy between the parties may be completely and finally determined and all multiplicity of proceedings concerning any of those matters may be avoided.

### **23 Making of orders**

The Court has power, in relation to matters in which it has jurisdiction, to make orders of such kinds, including interlocutory orders, as the Court thinks appropriate.

## **Division 2 Claims for compensation**

### **24 Claim for compensation in compulsory acquisition cases**

(1) If:

(a) a claim is made for compensation because of the compulsory acquisition of land in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*, Division 2 of Part 12 of the *Roads Act 1993* or any other Act, and

(b) no agreement is reached between the claimant and the authority required to pay the compensation,

the claim is (subject to any such Act) to be heard and disposed of by the Court and not otherwise.

(2) The Court shall, for the purpose of determining any such claim, give effect to any relevant provisions of any Acts that prescribe a basis for, or matters to be considered in, the assessment of compensation.

(3) (Repealed)

## **25 Determination of estate, interest and amount**

- (1) In hearing and disposing of any claim referred to in section 24, the Court shall have jurisdiction to determine the nature of the estate or interest of the claimant in the subject land and the amount of compensation (if any) to which the claimant is entitled.
- (2) In the exercise of its jurisdiction under subsection (1), the Court may order that any other person who claims to have had or who may have had an interest in the subject land at the date of acquisition or taking be joined as a party to the proceedings and may then proceed to determine the nature of the estate or interest of that person and the amount of compensation (if any) to which the person is entitled.

(3) (Repealed)

## **Division 3 Orders of conditional validity for certain development consents**

### **25A Application of Division**

- (1) This Division applies to:
  - (a) a development consent granted, or purporting to be granted, under the [Environmental Planning and Assessment Act 1979](#):
    - (i) by the Minister, and
    - (ii) whether before or after the commencement of this subsection, and
  - (b) a development consent granted, or purporting to be granted, under the [Environmental Planning and Assessment Act 1979](#):
    - (i) by any other consent authority, and
    - (ii) in respect of a development application made on or after the commencement of this subsection.
- (2) This Division extends to invalidity arising from any steps preliminary to the granting of a development consent to which this Division applies, whether those steps were taken, or should have been taken, by the Minister or any other consent authority, or by any other person or body.
- (3) In particular, this Division extends to invalidity arising from non-compliance with requirements declared to be mandatory requirements under section 102 of the [Environmental Planning and Assessment Act 1979](#).
- (4) A reference in this Division to the Minister is a reference to the Minister responsible for

the administration of the *Environmental Planning and Assessment Act 1979*.

**25B Orders for conditional validity of development consents**

- (1) The Court may, instead of declaring or determining that a development consent to which this Division applies is invalid, whether in whole or in part, make an order:
  - (a) suspending the operation of the consent in whole or in part, and
  - (b) specifying terms compliance with which will validate the consent (whether without alterations or on being regranted with alterations).
- (2) Terms may include (without limitation):
  - (a) terms requiring the carrying out again of steps already carried out, or
  - (b) terms requiring the carrying out of steps not already commenced or carried out, or
  - (c) terms requiring acts, matters or things to be done or omitted that are different from acts, matters or things required to be done or omitted by or under this Act or any other Act.

**25C Orders for validity of development consents**

- (1) On application by the Minister or any other consent authority for an order under this subsection on the grounds that the terms specified under section 25B have been substantially complied with and that it is not proposed that the relevant development consent be regranted with alterations, the Court may make an order:
  - (a) declaring that the terms have been substantially complied with, and
  - (b) declaring that the consent is valid, and
  - (c) revoking the order of suspension.
- (2) On application by the Minister or any other consent authority for an order under this subsection on the ground that the terms specified under section 25B have been substantially complied with and that the development consent has been regranted with alterations as referred to in section 103 of the *Environmental Planning and Assessment Act 1979*, the Court may make an order:
  - (a) declaring that the terms have been complied with, and
  - (b) declaring that the development consent has been validly regranted, and
  - (c) declaring that the suspended development consent has been revoked, and
  - (d) revoking the order of suspension.

### **25D Power to grant another development consent**

Nothing in this Division prevents the grant of another development consent in relation to the same matter, during or after the period of suspension, pursuant to a development application duly made.

### **25E Duty of Court**

It is the duty of the Court to consider making an order under this Division instead of declaring or determining that a development consent to which this Division applies is invalid, whether in whole or in part.

## **Part 4 Exercise of jurisdiction**

### **Division 1 Divisions of the Court**

#### **26 Divisions of the Court**

For the more convenient despatch of business, the Court shall be divided into:

- (a) the Environmental Planning and Protection Appeals Division,
- (b) the Local Government and Miscellaneous Appeals and Applications Division,
- (c) the Land Tenure, Valuation, Rating and Compensation Division,
- (d) the Environmental Planning and Protection and Development Contract Civil Enforcement Division,
- (e) the Environmental Planning and Protection Summary Enforcement Division, and
- (f) the Environmental Offences Appeals Division.

### **Division 2 Distribution of business among the Divisions of the Court**

#### **27 Arrangements for despatch of business**

The business of the Court shall, for convenient despatch, be assigned in accordance with this Division.

#### **28 Distribution of business among the Divisions**

- (1) Proceedings in Class 1 of the Court's jurisdiction shall be assigned to the Environmental Planning and Protection Appeals Division.
- (2) Proceedings in Class 2 of the Court's jurisdiction shall be assigned to the Local Government and Miscellaneous Appeals and Applications Division.
- (3) Proceedings in Class 3 of the Court's jurisdiction shall be assigned to the Land Tenure, Valuation, Rating and Compensation Division.

- (4) Proceedings in Class 4 of the Court's jurisdiction shall be assigned to the Environmental Planning and Protection and Development Contract Civil Enforcement Division.
- (5) Proceedings in Class 5 of the Court's jurisdiction shall be assigned to the Environmental Planning and Protection Summary Enforcement Division.
- (6) Proceedings in Class 6 or Class 7 of the Court's jurisdiction shall be assigned to the Environmental Offences Appeals Division.

## **Division 3 Organisation generally**

### **29 Sittings of the Court**

- (1) The Court shall sit at such places and times as the Chief Judge may direct.
- (2) More than one sitting of the Court may be held at the same time.

### **30 Arrangement of business of the Court**

- (1) The Chief Judge is responsible for ensuring the orderly and expeditious discharge of the business of the Court and accordingly may, subject to this Act and to such consultation with the Judges as is appropriate and practicable, make arrangements as to:
  - (a) the Judge, Commissioner or Commissioners who is or are to exercise the Court's jurisdiction in particular matters or classes of matters, and
  - (b) the Commissioner or Commissioners who is or are to exercise any other function under this Act.
- (2) Subject to subsections (2A) and (2B), in determining the Commissioner or Commissioners who is or are to exercise the jurisdiction of the Court or any other function under this Act in relation to any proceedings, regard shall be had to the knowledge, experience and qualifications of the Commissioners and to the nature of the matters involved in the proceedings.
  - (2A) A Commissioner shall not exercise the jurisdiction of the Court or any other function under this Act in relation to any proceedings arising under the [Aboriginal Land Rights Act 1983](#), unless the qualification for the Commissioner's appointment was a qualification referred to in section 12 (2) (g).
  - (2B) A Commissioner whose qualification for appointment was a qualification referred to in section 12 (2) (g) shall not exercise the jurisdiction of the Court or any other function under this Act in relation to any proceedings other than proceedings arising under the [Aboriginal Land Rights Act 1983](#).
- (3) Where the hearing of any proceedings has been commenced or completed by 2 or



more Commissioners in accordance with section 36 but, before the proceedings have been disposed of, one of those Commissioners has ceased to be a Commissioner or has ceased to be available for the purposes of the proceedings:

(a) if the parties agree and the Chief Judge concurs, the proceedings may be heard and disposed of, or disposed of, by the remaining Commissioner or Commissioners, or

(b) in any other case—the proceedings shall be reheard in accordance with this Act.

(4) Where proceedings are reheard, as referred to in subsection (3), the Court or the Commissioner or Commissioners rehearing the proceedings may, for the purposes of those proceedings, have regard to any record of the proceedings before the Commissioners referred to in that subsection, including a record of any evidence taken in the proceedings.

### **31 Transfer and retention**

(1) The Court in a Division, on application by a party or of its own motion, may, on terms, order that the whole or any part of any proceedings in that Division be transferred to another Division.

(2) Proceedings may be retained in a Division whether or not the proceedings are assigned to that Division by this Act.

### **32 Validity of proceedings in any Division**

Any step taken, order made, judgment given or other thing done in any proceedings in any Division shall be as valid in every way as if taken, made, given or done in the Division to which the proceedings are assigned by this Act.

### **33 Exercise of jurisdiction in the Divisions**

(1) Classes 1, 2 and 3 of the Court's jurisdiction shall, in accordance with this Act, be exercised by a Judge or one or more Commissioners.

(2) Classes 4, 5, 6 and 7 of the Court's jurisdiction shall, in accordance with this Act, be exercised by a Judge.

(3) The Court's jurisdiction under section 16 (1A) is to be exercised by a Judge, but this subsection does not prevent a Judge from being assisted by one or more Commissioners in accordance with section 37.

## **Division 4 Special provisions respecting Class 1, 2 or 3 proceedings**

### **34 Preliminary conferences**

(1) Where proceedings are pending in Class 1 or 2 of the Court's jurisdiction (other than proceedings in Class 1 that are brought under section 97 of the *Environmental*

*Planning and Assessment Act 1979*), the registrar shall, unless otherwise directed by the Chief Judge, arrange a conference between the parties to the proceedings or their representatives, to be presided over by a single Commissioner.

- (1A) Where proceedings are pending in Class 3 of the Court's jurisdiction in respect of a claim for compensation by reason of the compulsory acquisition of land (referred to in Division 2 of Part 3), the registrar is required to arrange (at the request of all the parties to the proceedings) a conference between the parties to the proceedings or their representatives, to be presided over by a single Commissioner. The conference is to be arranged within 28 days after the proceedings are commenced or within such further time as the Chief Judge directs.
- (2) The registrar shall notify the parties or their representatives of the time and place fixed by the registrar for the conference.
- (3) Where:
- (a) at or after a conference, agreement is reached between the parties or their representatives as to the terms of a decision in the proceedings that would be acceptable to the parties (being a decision that the Court could have made in the proper exercise of its functions)—the Commissioner shall dispose of the proceedings in accordance with the decision, or
  - (b) no such agreement is reached:
    - (i) unless the parties consent under subparagraph (ii)—the Commissioner shall make a written report to the Court setting out that fact and also setting out the Commissioner's views as to the issues in dispute between the parties to the proceedings, or
    - (ii) if the parties consent—the Commissioner may dispose of the proceedings, whether with or without further hearing.
- (4) Subject to this Act and the rules, the Commissioner disposing of, or hearing and disposing of, proceedings pursuant to subsection (3) (a) or (3) (b) (ii) shall have and may exercise the functions of the Court.
- (5) The decision of the Commissioner under subsection (3) (a) or (3) (b) (ii) shall be deemed to be the decision of the Court.
- (6) Where a report is made to the Court under subsection (3) (b) (i), the registrar shall, as soon as practicable, furnish a copy of the report to each of the parties.
- (7) Evidence of anything said or admission made in the course of a conference shall not, unless the parties consent, be admissible at the hearing of the proceedings.
- (8) A Commissioner who has presided over a conference under this section in relation to

any proceedings is disqualified from further participation in those proceedings, unless the parties otherwise agree.

- (9) The registrar may, unless otherwise directed by the Chief Judge, preside over a conference under this section, and for that purpose a reference in this section to a Commissioner includes a reference to the registrar.

**34A Class 1 proceedings under sec 97 of *Environmental Planning and Assessment Act 1979***

- (1) This section applies to proceedings in Class 1 of the Court's jurisdiction that are brought under section 97 of the *Environmental Planning and Assessment Act 1979*.
- (2) If, in relation to proceedings to which this section applies, the parties agree, or, in the absence of any such agreement, the Registrar at the first or a subsequent callover determines, that the proceedings involve proposed development that:
- (a) has an estimated value that is less than half the median sale price for the previous quarter for all dwellings in the local government area in which the development is proposed to be carried out, and
  - (b) if carried out, would have little or no impact beyond neighbouring properties, and
  - (c) does not involve any significant issue of public interest beyond any impact on neighbouring properties,
- the proceedings are to be dealt with under section 34B, subject to subsection (6).
- (3) Proceedings that are dealt with under section 34B are referred to in this Act as ***on-site hearing matters***.
- (4) Proceedings to which this section applies, other than those referred to in subsection (2), are to be dealt with under section 34C.
- (5) Proceedings that are dealt with under section 34C are referred to in this Act as ***court hearing matters***.
- (6) At any time before proceedings to which this section applies commence to be dealt with under section 34B or 34C, the Court, on the application of a party or of its own motion, may determine that the proceedings are to be dealt with:
- (a) under section 34C instead of under section 34B, or
  - (b) under section 34B instead of under section 34C.

**34B Arrangements for dealing with on-site hearing matters**

- (1) Proceedings that are dealt with under this section are to be dealt with by means of a conference presided over by a single Commissioner.

- (2) The conference is to be held on the site of the proposed development, unless the Commissioner is of the opinion that:
  - (a) it would be unfair to the interests of one or more of the parties to hold the conference there, or
  - (b) the lack of facilities at that site make it impractical to hold the conference there.
- (3) The Commissioner may dispose of the proceedings with or without further hearing, at any time after the conclusion of the conference.
- (4) The Commissioner is to give reasons for his or her decision by means of:
  - (a) a written statement issued at the conclusion of the hearing, or
  - (b) an oral statement given at the conclusion of the hearing and recorded by means that can be reproduced.
- (5) The provisions of section 36 (2), (3), (5), (6) and (7) apply to the hearing and disposal of proceedings under this section in the same way as those provisions apply to the hearing and disposal of proceedings under that section by a single Commissioner.

#### **34C Arrangements for dealing with court hearing matters**

- (1) Proceedings that are dealt with under this section are to be dealt with, at the direction of the Chief Judge:
  - (a) by a Judge, or
  - (b) by a single Commissioner, or
  - (c) if, in the opinion of the Chief Judge, the hearing of the proceedings is likely to be lengthy, or if the proceedings involve a publicly controversial site, or a publicly controversial development, or if the proceedings involve a substantial number of issues, or if the Chief Judge is of the opinion that it is otherwise appropriate to do so, by a panel consisting of:
    - (i) two or more Commissioners, or
    - (ii) a Judge and one or more Commissioners.
- (2) The appointment of a person to a panel is to be made having regard to the relevance of the person's expertise and experience to the subject of the proceedings.
- (3) If a panel consists of two or more Commissioners, the provisions of section 36 (2)–(7) apply to the proceedings before the panel in the same way as those provisions apply to proceedings under section 36.
- (4) If a panel consists of a Judge and one or more Commissioners:

- (a) subject to this Act and the rules, the panel has and may exercise the functions of the Court, and
  - (b) the Judge is to preside at the hearing of the proceedings before the panel, and
  - (c) the Commissioner or Commissioners may advise and assist the Judge but are not to adjudicate on any matter before the panel, and
  - (d) the provisions of section 37 (4) apply to the Judge who is a member of the panel in the same way as those provisions apply to a Judge before whom proceedings referred to in section 37 (1) or (2) are pending, and
  - (e) the decision of the panel is taken to be the decision of the Court.
- (5) The provisions of section 36 (2), (3), (5), (6) and (7) apply to the hearing and disposal of proceedings under this section by a single Commissioner in the same way as those provisions apply to the hearing and disposal of proceedings under that section by a single Commissioner.

#### **34D Site inspections in court hearing matters**

Before disposing of a court hearing matter, the Court (or the persons exercising the functions of the Court) must make an inspection of the site of the proposed development, unless all the parties agree to dispense with an inspection.

#### **35 Inquiries by Commissioners**

- (1) Where proceedings are pending in Class 3 of the Court's jurisdiction, the Court may, with the consent of the parties, direct that an inquiry into any issue raised in, or other matter connected with, the proceedings be made by a single Commissioner.
- (2) The Commissioner making an inquiry pursuant to this section shall make a report to the Court.
- (3) Where a report is made to the Court under subsection (2), the registrar shall, as soon as practicable, furnish a copy of the report to each of the parties.
- (4) The Court may, with the consent of the parties, adopt any findings or observations set out in a report under subsection (2).
- (5) A Commissioner, in making an inquiry pursuant to this section, shall have and may exercise the functions of the Court under section 67 (paragraphs (d) and (e) excepted).
- (6) A Commissioner who has made an inquiry pursuant to this section in relation to any proceedings is disqualified from further participation in those proceedings, unless the parties otherwise agree.

### 36 Delegation to Commissioners

- (1) Where proceedings are pending in Class 1, 2 or 3 of the Court's jurisdiction (other than proceedings in Class 1 that are brought under section 97 of the *Environmental Planning and Assessment Act 1979*), the Chief Judge:
  - (a) except as provided by paragraph (b) or subsection (1B), may, of the Chief Judge's own motion or on the request of a party, direct that the proceedings be heard and disposed of by one or more Commissioners, and
  - (b) shall, where the proceedings are proceedings:
    - (i) arising under the *Aboriginal Land Rights Act 1983*, and
    - (ii) of a kind specified in Schedule 2,direct that the proceedings be heard and disposed of by a Commissioner.
- (1A) The Governor may, by regulation, amend Schedule 2 by:
  - (a) adding thereto any matter,
  - (b) altering any matter therein, or
  - (c) omitting any matter therefrom,or may, by regulation, omit the Schedule and insert instead a new Schedule.
- (1B) The Chief Judge may not direct under this section that proceedings under section 29, 30 or 31 of the *Access to Neighbouring Land Act 2000* are to be heard and disposed of by one or more Commissioners.
- (2) Subject to this Act and the rules, the Commissioner or Commissioners hearing and disposing of the proceedings pursuant to this section shall have and may exercise the functions of the Court (other than its functions under this section).
- (3) The decision of the Commissioner or Commissioners shall be deemed to be the decision of the Court.
- (4) Where proceedings are directed to be heard and disposed of by 2 or more Commissioners:
  - (a) if the Senior Commissioner is one of the Commissioners hearing and disposing of the proceedings—the Senior Commissioner shall preside at the hearing of the proceedings,
  - (b) if the Senior Commissioner is not one of those Commissioners—one of those Commissioners directed to do so by the Chief Judge shall preside at the hearing, and

- (c) if the Commissioners are divided in opinion as to the decision to be made on any question:
  - (i) if there is a majority of the one opinion—the question shall be decided according to the opinion of the majority, or
  - (ii) in any other case—the question shall be decided according to the opinion of the Commissioner presiding.
- (5) The Commissioner or Commissioners may, of the Commissioner's or the Commissioners' own motion or on the request of a party, refer a question of law (including the question whether a particular question is one of law) raised in the proceedings to the Chief Judge for determination by a Judge.
- (6) Where a question is referred to the Chief Judge under subsection (5):
  - (a) subject to paragraphs (c) and (d), the Commissioner or Commissioners may continue to hear the proceedings unless the Chief Judge otherwise directs,
  - (b) a Judge shall determine the question and then remit the determination to the Commissioner or Commissioners,
  - (c) the Commissioner or Commissioners shall not make an order or decision to which the question is relevant until a Judge has determined the question, and
  - (d) the Commissioner or Commissioners shall not make an order or determination that is inconsistent with the determination of the question by a Judge.
- (7) A decision of a Judge that a question referred under subsection (5) need not be determined because it is not relevant to the particular proceedings shall, for the purposes of subsection (6), be deemed to be the Judge's determination of the question.

### **37 Commissioners sitting with a Judge**

- (1) Where proceedings are pending in Class 1, 2 or 3 of the Court's jurisdiction before a Judge (other than proceedings in Class 1 that are brought under section 97 of the *Environmental Planning and Assessment Act 1979*), the Court may, in hearing the proceedings, or any part of the proceedings, be assisted by one or more Commissioners.
- (2) Notwithstanding subsection (1), where proceedings are pending in Class 3 of the Court's jurisdiction, being proceedings:
  - (a) arising under the *Aboriginal Land Rights Act 1983*, and
  - (b) other than of a kind specified in Schedule 2,the Court shall, in hearing the proceedings or any part of the proceedings, be assisted

by 2 Commissioners or, if the Chief Judge so directs, by one Commissioner.

- (3) A Commissioner assisting the Court as referred to in subsection (1) or (2) may assist and advise the Court, but shall not adjudicate on any matter before the Court.
- (4) A Judge before whom proceedings referred to in subsection (1) or (2) are pending may commence or continue the hearing of the proceedings, or any part of the proceedings:
  - (a) without the assistance of a Commissioner who is not available or has ceased to be available to assist in the hearing of the proceedings or part of the proceedings, and
  - (b) without the assistance of Commissioners generally if, in the opinion of the Judge, the proceedings or part of the proceedings concern or concerns a question of law only.

### **38 Procedure**

- (1) Proceedings in Class 1, 2 or 3 of the Court's jurisdiction shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and of every other relevant enactment and as the proper consideration of the matters before the Court permit.
- (2) In proceedings in Class 1, 2 or 3 of the Court's jurisdiction, the Court is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate and as the proper consideration of the matters before the Court permits.
- (3) Subject to the rules, and without limiting the generality of subsection (2), the Court may, in relation to proceedings in Class 1, 2 or 3 of the Court's jurisdiction, obtain the assistance of any person having professional or other qualifications relevant to any issue arising for determination in the proceedings and may receive in evidence the certificate of any such person.
- (4) In proceedings in Class 1, 2 or 3 of the Court's jurisdiction, the Court may, in respect of a matter not dealt with by this Act or the rules, give directions as to the procedure to be followed at or in connection with the hearing.
- (5) In this section, a reference to the Court includes a reference to the Commissioner or Commissioners directed under section 36 to hear and dispose of proceedings.

### **39 Powers of Court on appeals**

- (1) In this section, **appeal** means an appeal, objection, reference or other matter which may be disposed of by the Court in proceedings in Class 1, 2 or 3 of its jurisdiction.
- (2) In addition to any other functions and discretions that the Court has apart from this subsection, the Court shall, for the purposes of hearing and disposing of an appeal, have all the functions and discretions which the person or body whose decision is the



subject of the appeal had in respect of the matter the subject of the appeal.

- (3) An appeal in respect of such a decision shall be by way of rehearing, and fresh evidence or evidence in addition to, or in substitution for, the evidence given on the making of the decision may be given on the appeal.
- (4) In making its decision in respect of an appeal, the Court shall have regard to this or any other relevant Act, any instrument made under any such Act, the circumstances of the case and the public interest.
- (5) The decision of the Court upon an appeal shall, for the purposes of this or any other Act or instrument, be deemed, where appropriate, to be the final decision of the person or body whose decision is the subject of the appeal and shall be given effect to accordingly.
- (6) Notwithstanding any other provision of this section, if an appeal relates to an application made to a council within the meaning of the *Local Government Act 1993* or a consent authority within the meaning of the *Environmental Planning and Assessment Act 1979* and that council or consent authority may not approve of, consent to, or deal with, or grant a permission in respect of, the application except after consultation with, or with the concurrence or approval of, any person or body:
  - (a) the Court may determine the appeal whether or not the consultation has taken place and whether or not the concurrence or approval has been granted, and
  - (b) in a case where the concurrence or approval has been granted—the Court may vary or revoke any conditions imposed by that person or body or may impose any conditions that could have been imposed by that person or body.
- (6A) Notwithstanding any other provision of this section, if an appeal relates to an application made to a consent authority within the meaning of the *Environmental Planning and Assessment Act 1979* and the application relates to integrated development within the meaning of section 91 of that Act:
  - (a) the Court may determine the appeal whether or not the consent authority has obtained the general terms of approval of each relevant approval body within the meaning of section 90A of that Act, and
  - (b) the Court is not bound to refuse an application for development consent because an approval body has decided not to grant its approval or has failed to inform the consent authority whether or not it will grant its approval, and
  - (c) the Court may determine the appeal even though a development consent granted as a result of the appeal is inconsistent with the general terms of approval of an approval body.

Section 93 of that Act applies to a development consent granted as a result of the

appeal.

- (7) The functions of the Court under this section are in addition to and not in derogation from any other functions of the Court.
- (8) This section (other than subsection (5)) does not apply to proceedings under section 30 or 31 of the [Access to Neighbouring Land Act 2000](#).

### **39A Joinder of parties in certain appeals**

On an appeal under section 97 or 98 of the [Environmental Planning and Assessment Act 1979](#), the Court may, at any time, on the application of a person or of its own motion, order the joinder of a person as a party to the appeal if the Court is of the opinion:

- (a) that the person is able to raise an issue that should be considered in relation to the appeal but would not be likely to be sufficiently addressed if the person were not joined as a party, or
- (b) that:
  - (i) it is in the interests of justice, or
  - (ii) it is in the public interest,

that the person be joined as a party to the appeal.

### **40 Additional powers of Court—provision of easements**

- (1) If the Court has determined to grant development consent on an appeal under section 97 of the [Environmental Planning and Assessment Act 1979](#), the appellant may apply to the Court for an order imposing an easement over land.
- (2) The Court, on application under subsection (1), may make an order imposing an easement over land if it is satisfied that:
  - (a) the easement is reasonably necessary for the development to have effect in accordance with the consent, and
  - (b) use of the land having the benefit of the easement will not be inconsistent with the public interest, and
  - (c) the owner of the land to be burdened by the easement can be adequately compensated for any loss or other disadvantage that will arise from imposition of the easement, and
  - (d) all reasonable attempts have been made by the applicant for the order to obtain the easement or an easement having the same effect but have been unsuccessful.
- (3) The jurisdiction of the Court to make an order under this section is exercisable only by

a Judge, whether or not sitting alone.

- (4) Before making an order under this section, the Court must notify the owner of the land affected by the proposed easement (other than an owner who is a party to the proceedings before the Court), and the owner of any land on which it may be necessary for works to be carried out in connection with the easement (other than such a party), of the proposed easement or works, or both.
- (5) An owner of land affected by the proposed easement and an owner of land on which it may be necessary for works to be carried out in connection with the easement:
  - (a) may object to the proposed easement or works, and
  - (b) is entitled to appear before the Court in support of the objection.

The Court must consider each objection.

- (6) The Court:
  - (a) is to specify in the order the nature and terms of the easement and such of the particulars referred to in section 88 (1) (a)-(d) of the *Conveyancing Act 1919* as are appropriate, and
  - (b) is to identify its site by reference to a plan that is, or is capable of being, registered or recorded under Division 3 of Part 23 of the *Conveyancing Act 1919*.

The terms may limit the times at which the easement applies.

- (7) The Court is to provide in the order for payment by the applicant for the order to such persons as the Court specifies of such compensation as the Court considers appropriate, unless the Court determines that compensation is not payable because of the special circumstances of the case.
- (8) The costs of the proceedings, in so far as they relate to an order sought or made under this section, are payable by the applicant for the order, subject to any order of the Court to the contrary.
- (9) An easement imposed under this section:
  - (a) may be released by the owner of the land having the benefit of it, or
  - (b) may be modified by a deed made between the owner of the land having the benefit of it and the persons for the time being having the burden of it (or in the case of land under the provisions of the *Real Property Act 1900*) by a dealing in the form approved under that Act giving effect to the modification.
- (10) An easement imposed under this section, a release of such an easement or any modification of such an easement by a deed or dealing takes effect:

- (a) if the land burdened is under the *Real Property Act 1900*, when the Registrar-General registers a dealing in the form approved under that Act setting out particulars of the easement, or of the release or modification, by making such recordings in the Register kept under that Act as the Registrar-General considers appropriate, or
  - (b) in any other case, when a minute of the order imposing the easement, or the deed of release or modification, is registered in the General Register of Deeds.
- (11) An easement imposed under this section has effect (for the purposes of the *Conveyancing Act 1919* and the *Real Property Act 1900*) as if it were contained in a deed.
- (12) Nothing in this section prevents such an easement from being extinguished or modified under section 89 of the *Conveyancing Act 1919*.
- (13) In this section, **owner** of land includes a person having an estate or interest in the land that is evidenced by an instrument registered in the General Register of Deeds or the Register kept under the *Real Property Act 1900*.

## **Division 5 Special provisions respecting Class 5 proceedings (summary jurisdiction)**

### **41 Application of *Criminal Procedure Act 1986***

Part 5 of Chapter 4 of the *Criminal Procedure Act 1986* applies to proceedings in Class 5 of the Court's jurisdiction.

### **42-55 (Repealed)**

## **Part 5 Appeals from the Court**

### **Division 1 General**

#### **56 Nature of decision of the Court**

Except as provided:

- (a) by Division 2, in relation to proceedings in Class 1, 2, 3 or 4 of the Court's jurisdiction, or
- (b) by the *Criminal Appeal Act 1912*, in relation to proceedings in Class 5, 6 or 7 of the Court's jurisdiction,

a decision of the Court shall be final and conclusive.

## **Division 2 Class 1-4 proceedings**

### **56A Class 1, 2 and 3 proceedings—appeals to the Court against decisions of Commissioners**

- (1) A party to proceedings in Class 1, 2 or 3 of the Court's jurisdiction may appeal to the Court against an order or a decision of the Court on a question of law, being an order or a decision made by a Commissioner or Commissioners.
- (2) On the hearing of an appeal under subsection (1), the Court shall:
  - (a) remit the matter to the Commissioner or Commissioners for determination by the Commissioner or Commissioners in accordance with the decision of the Court, or
  - (b) make such other order in relation to the appeal as seems fit.
- (3) Notwithstanding subsection (1), an appeal shall not lie to the Court under that subsection in respect of a question of law that has been referred to, and determined by, a Judge pursuant to section 36.

### **57 Class 1, 2 and 3 proceedings—appeals**

- (1) A party to proceedings in Class 1, 2 or 3 of the Court's jurisdiction may appeal to the Supreme Court against an order or decision (including an interlocutory order or decision) of the Court on a question of law.
- (2) On the hearing of an appeal under subsection (1), the Supreme Court shall:
  - (a) remit the matter to the Court for determination by the Court in accordance with the decision of the Supreme Court, or
  - (b) make such other order in relation to the appeal as seems fit.
- (3) Despite subsection (1), an appeal does not lie to the Supreme Court against an order or decision of the Court that has been made by a Commissioner or Commissioners, other than a decision of the kind referred to in subsection (4) (a) or (b).
- (4) Despite subsection (1), an appeal does not lie to the Supreme Court against any of the following orders or decisions of the Court except by leave of the Supreme Court:
  - (a) a decision on a question of law determined by a judge pursuant to a reference under section 36 (5),
  - (b) a decision of a Commissioner or Commissioners made after a judge's determination referred to in paragraph (a), where the judge's determination is itself the subject of an appeal to the Supreme Court,
  - (c) an order or decision made on an appeal under section 56A,

- (d) an interlocutory order or decision,
- (e) an order made with the consent of the parties,
- (f) an order or decision as to costs.

#### **58 Class 4 proceedings—appeals**

- (1) Where a party to proceedings in Class 4 of the Court’s jurisdiction is dissatisfied with an order or decision (including an interlocutory order or decision) of the Court, the party may appeal to the Supreme Court against the order or decision.
- (2) On the hearing of an appeal under subsection (1), the Supreme Court shall:
  - (a) make an order reversing, affirming or amending the order or decision appealed against,
  - (b) remit the matter to the Court for determination by the Court in accordance with the decision of the Supreme Court,
  - (c) make an order directing a rehearing of the proceedings in respect of which the order or decision appealed against was made, or
  - (d) make such other order in relation to the appeal as seems fit.
- (3) Despite subsection (1), an appeal does not lie to the Supreme Court against any of the following orders or decisions of the Court except by leave of the Supreme Court:
  - (a) an interlocutory order or decision,
  - (b) an order made with the consent of the parties,
  - (c) an order or decision as to costs.
- (4) The amendment made to this section by the [Courts Legislation Further Amendment Act 1995](#) does not operate to require leave to appeal against an order or decision of the Court if, when the order or decision was made, an appeal lay as of right.

#### **59 Suspension of operation of order etc**

- (1) Where an appeal is made to the Supreme Court under this Division, either the Court or the Supreme Court may suspend the operation of any relevant order or decision until the Supreme Court makes its decision.
- (2) Where an appeal is made to the Court under this Division, the Court may suspend the operation of any relevant order or decision until the Court makes its decision.

#### **60 Termination of suspension**

- (1) Where, under section 59 (1), the Court has suspended the operation of an order or

decision, the Court or Supreme Court may terminate the suspension and, where the Supreme Court has suspended the operation of any such order or decision, the Supreme Court may terminate the suspension.

- (2) Where, under section 59 (2), the Court has suspended the operation of an order or a decision, the Court may terminate the suspension.

## 61 Rules

- (1) An appeal to the Supreme Court under this Division shall be made in such manner, and be subject to such conditions, as are prescribed by rules of court of the Supreme Court.
- (2) An appeal to the Court under this Division shall be made in such manner, and be subject to such conditions, as are prescribed by the rules.

## Part 5A Mediation and neutral evaluation

### 61A Purpose of Part

- (1) The purpose of this Part is to enable the Court to refer matters for mediation or neutral evaluation if the parties to the proceedings concerned have agreed to that course of action.
- (2) This Part does not prevent:
  - (a) the parties to proceedings from agreeing to and arranging for mediation or neutral evaluation of any matter otherwise than as referred to in this Part, or
  - (b) a matter arising in proceedings from being dealt with under the provisions of the *Community Justice Centres Act 1983*.

### 61B Meaning of “mediation” and “neutral evaluation”

- (1) For the purposes of this Part, **mediation** means a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute to achieve their own resolution of the dispute.
- (2) For the purposes of this Part, **neutral evaluation** means a process of evaluation of a dispute in which the evaluator seeks to identify and reduce the issues of fact and law in dispute. The evaluator’s role includes assessing the relative strengths and weaknesses of each party’s case and offering an opinion as to the likely outcome of the proceedings, including any likely findings of liability or the award of damages.

### 61C Other definitions

In this Part:

**evaluator** means a person to whom the Court refers a matter for neutral evaluation

under this Part.

**mediation session** means a meeting arranged for the mediation of a matter under this Part.

**mediator** means a person to whom the Court refers a matter for mediation under this Part.

**neutral evaluation session** means a meeting arranged for the neutral evaluation of a matter under this Part.

#### **61D Referral by Court**

- (1) The Court may, by order, refer a matter arising in proceedings before it (other than criminal proceedings) for mediation or neutral evaluation if:
  - (a) the Court considers the circumstances appropriate, and
  - (b) the parties to the proceedings consent to the referral, and
  - (c) the parties to the proceedings agree as to who is to be the mediator or evaluator for the matter.
- (2) The mediator or evaluator may, but need not be, a person whose name is on a list compiled under this Part.

#### **61E Mediation and neutral evaluation to be voluntary**

- (1) Attendance at and participation in mediation sessions or neutral evaluation sessions are voluntary.
- (2) A party to a mediation session or neutral evaluation session may withdraw from the session at any time.

#### **61F Costs of mediation and neutral evaluation**

The costs of mediation or neutral evaluation, including the costs payable to the mediator or evaluator, are to be borne by the parties to the proceedings in such proportions as they may agree among themselves or, failing agreement, in equal shares.

#### **61G Agreements and arrangements arising from mediation sessions**

- (1) The Court may make orders to give effect to any agreement or arrangement arising out of a mediation session.
- (2) This Part does not affect the enforceability of any other agreement or arrangement that may be made, whether or not arising out of a mediation session, in relation to the matters the subject of a mediation session.



### **61H Mediators and evaluators**

- (1) The Chief Judge may compile a list or lists of persons considered by the Chief Judge to be suitable to be mediators for the purposes of this Part.
- (2) The Chief Judge may compile a list or lists of persons considered by the Chief Judge to be suitable to be evaluators for the purposes of this Part.
- (3) Different lists may be compiled for different types of matters or to take account of any other factors.
- (4) A person may be included in a list under this section only if:
  - (a) the person consents to being included in the list, and
  - (b) the person agrees to comply with the provisions of this Part and of any regulations or rules made for the purposes of this Part.
- (5) The Chief Judge may amend or revoke any list compiled under this section for any reason that the Chief Judge considers appropriate.
- (6) The Chief Judge is to review at least annually any list compiled under this section.

### **61I Privilege**

- (1) In this section, **mediation session** or **neutral evaluation session** includes any steps taken in the course of making arrangements for the session or in the course of the follow-up of a session.
- (2) Subject to subsection (3), the same privilege with respect to defamation as exists with respect to judicial proceedings and a document produced in judicial proceedings exists with respect to:
  - (a) a mediation session or neutral evaluation session, or
  - (b) a document or other material sent to or produced to a mediator or evaluator, or sent to or produced at the Court or the registry of the Court, for the purpose of enabling a mediation session or neutral evaluation session to be arranged.
- (3) The privilege conferred by subsection (2) only extends to a publication made:
  - (a) at a mediation session or neutral evaluation session, or
  - (b) as provided by subsection (2) (b), or
  - (c) as provided by section 61J.
- (4) Evidence of anything said or of any admission made in a mediation session or neutral evaluation session is not admissible in any proceedings before any court, tribunal or body.

- (5) A document prepared for the purposes of, or in the course of, or as a result of, a mediation session or neutral evaluation session, or any copy of such a document, is not admissible in evidence in any proceedings before any court, tribunal or body.
- (6) Subsections (4) and (5) do not apply with respect to any evidence or document:
  - (a) if the persons in attendance at, or identified during, the mediation session or neutral evaluation session and, in the case of a document, all persons identified in the document, consent to the admission of the evidence or document, or
  - (b) in proceedings instituted with respect to any act or omission in connection with which a disclosure has been made under section 61J (c).

### **61J Secrecy**

A mediator or evaluator may disclose information obtained in connection with the administration or execution of this Part only in any one or more of the following circumstances:

- (a) with the consent of the person from whom the information was obtained,
- (b) in connection with the administration or execution of this Part,
- (c) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property,
- (d) if the disclosure is reasonably required for the purpose of referring any party or parties to a mediation session or neutral evaluation session to any person, agency, organisation or other body and the disclosure is made with the consent of the parties to the mediation session or neutral evaluation session for the purpose of aiding in the resolution of a dispute between those parties or assisting the parties in any other manner,
- (e) in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.

### **61K Exoneration from liability for listed mediators and evaluators**

No matter or thing done or omitted to be done by a mediator or evaluator subjects the mediator or evaluator to any action, liability, claim or demand if:

- (a) the matter or thing was done in good faith for the purposes of a mediation session or neutral evaluation session under this Part, and
- (b) when the subject-matter of the mediation or neutral evaluation was referred for mediation or neutral evaluation, the mediator's or evaluator's name was included in a list compiled under this Part.

### **61L Regulations for the purposes of this Part**

The regulations may include provisions for the purposes of this Part.

## **Part 6 Miscellaneous**

### **62 Proceedings in open court**

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

### **63 Right of appearance**

A person entitled to appear before the Court may appear in person, or by a barrister or solicitor, or (except in proceedings in Class 5, 6 or 7 of the Court's jurisdiction) by an agent authorised by the person in writing.

### **64 Appearance by the Crown**

- (1) 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.
- (2) Without affecting the generality of subsection (1), the Attorney General or the Minister for Planning and Environment, or both, may, at any stage of any proceedings before the Court, intervene by counsel, solicitor or agent, and may examine witnesses and address the Court with respect to matters relevant to the proceedings.
- (3) Without affecting the generality of subsection (1), the Minister administering the [Community Welfare Act 1987](#) may, at any stage of any proceedings before the Court in which an approved non-Government organisation within the meaning of that Act is a party, with the consent of that organisation, intervene by counsel, solicitor or agent and may examine witnesses and address the Court with respect to matters relevant to the proceedings.

### **65 Issue of process**

All process issuing out of the Court shall be in the form prescribed by the rules and be signed or otherwise authenticated in accordance with the rules.

### **66 Judicial notice of certain signatures**

Judicial notice shall be taken of the signature of a Judge, a Commissioner, the registrar or the assistant registrar when appearing on a document issuing out of the Court.

### **67 Powers of the Court as to the production of evidence**

The Court shall have and may exercise the functions vested in the Supreme Court 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, records, documents and other papers,
- (c) compelling witnesses to answer questions which the Court considers to be relevant in any proceeding before it,
- (d) the apprehension, detention and punishment of persons guilty of contempt, or of disobedience to any order made by the Court, or of any process issuing out of the Court, and
- (e) directing witnesses to be prosecuted for perjury.

### **68 Amendments and irregularities**

- (1) In any proceedings before the Court, the Court shall have power at any stage of the proceeding to order, upon such terms as to costs or otherwise as the Court thinks fit, any amendments to be made which, in the opinion of the Court, are necessary in the interests of justice.
- (2) Where, in beginning or purporting to begin any proceedings before the Court or at any stage in the course of or in connection with any such proceedings, there is, by reason of anything done or left undone, a failure to comply with the requirements of this Act or of the rules whether in respect of time, place, manner, form or content or in any other respect:
  - (a) the failure shall be treated as an irregularity and shall not nullify the proceedings, or any step taken in the proceedings, or any document, judgment or order in the proceedings, and
  - (b) subject to subsection (3), the Court may, on terms, set aside wholly or in part the proceedings or any step taken in the proceedings or any document, judgment or order in the proceedings or exercise its functions under this Act and the rules to allow amendments and to make orders dealing with the proceedings generally.
- (3) The Court shall not set aside any proceedings before it or any step taken in any such proceedings or any document, judgment or order in any such proceedings on the ground of a failure to which subsection (2) applies on the application of any party unless the application is made within a reasonable time and before the applicant has taken any fresh step after becoming aware of the irregularity.

### **69 Costs**

- (1) In this section, **costs** includes:
  - (a) costs of or incidental to proceedings in the Court,

- (b) in the case of an appeal to the Court, the costs of or incidental to the proceedings giving rise to the appeal, as well as the costs of or incidental to the appeal, and
  - (c) in the case of proceedings transferred or remitted to the Court, the costs of or incidental to the whole proceedings, both before and after the transfer or remittal.
- (2) Subject to the rules and subject to any other Act:
- (a) costs are in the discretion of the Court,
  - (b) the Court may determine by whom and to what extent costs are to be paid, and
  - (c) the Court may order costs to be assessed on the basis set out in Division 6 of Part 11 of the [Legal Profession Act 1987](#) or on an indemnity basis.
- (3) The Court may order a party instituting proceedings in the Court to give security for the payment of costs that may be awarded against that party.
- (4) The security referred to in subsection (3) shall be of such amount, and given at such time and in such manner and form, as the Court directs.
- (5) The Court may reduce or increase the amount of security ordered under subsection (3) to be given and may vary the time at which, or the manner or form in which, the security is to be given.
- (6) If security, or further security, is not given in accordance with an order under this section, the Court may order that the proceedings be dismissed.
- (7) The provisions of this section relating to security do not affect the operation of any provision made by or under any other Act or by the rules for or in relation to the furnishing of security.
- (8) A Commissioner or Commissioners may not make an order under this section except with the concurrence of the Chief Judge.
- (9) This section does not apply to proceedings in Class 5, 6 or 7 of the Court's jurisdiction.

**69A Interest payable on money ordered to be paid**

- (1) If an order is made by the Court for the payment of money, interest is payable at the prescribed rate from the date the order takes effect on so much of the money as is from time to time unpaid, unless the Court otherwise orders.
- (2) This section does not apply in the case of money ordered to be paid as a penalty.
- (3) In the case of an order of the Court for the payment of compensation under the [Land Acquisition \(Just Terms Compensation\) Act 1991](#), the rate of interest is the rate determined under that Act in respect of the payment of compensation.

## **70 Vexatious litigant**

- (1) Where any person (in this subsection called ***the vexatious litigant***) habitually and persistently and without any reasonable ground institutes vexatious legal proceedings in the Court, whether against the same person or against different persons, the Court may, on application by the Attorney General, order that the vexatious litigant shall not, without the leave of the Court, institute any legal proceedings in the Court and that any legal proceedings instituted by the vexatious litigant in the Court before the making of the order shall not be continued by the vexatious litigant without the leave of the Court.
- (2) Where any person (in this subsection called ***the vexatious litigant***) habitually and persistently and without any reasonable ground institutes vexatious legal proceedings against any person (in this subsection called ***the person aggrieved***) in the Court, the Court may, on application by the person aggrieved, order that the vexatious litigant shall not, without the leave of the Court, institute any legal proceedings against the person aggrieved in the Court and that any legal proceedings instituted by the vexatious litigant against the person aggrieved in the Court before the making of the order shall not be continued by the vexatious litigant without the leave of the Court.
- (3) The Court may, from time to time, rescind or vary any order made by it or under subsection (1) or (2).
- (4) Where the Court has made an order under subsection (1) or (2) against any person, the Court shall not give that person leave to institute or continue any legal proceedings unless the Court is satisfied that the proceedings are not an abuse of process and that there is prima facie ground for the proceedings.

## **71 Proceedings in Supreme Court**

- (1) Subject to section 58, proceedings of the kind referred to in section 20 (1) (e) may not be commenced or entertained in the Supreme Court.
- (2) (Repealed)

## **72 Transfer of proceedings from Supreme Court**

Where the Supreme Court is of opinion that any proceedings commenced or purporting to have been commenced in the Supreme Court could or should have been commenced in the Court, the Supreme Court may, on the application of any party or of its own motion, order that those proceedings be transferred to the Court.

## **73 Procedure on transfer**

Where the Supreme Court makes an order under section 72 for the transfer of any proceedings to the Court:

- (a) the plaintiff shall lodge a copy of the order and a copy of the pleadings (if any) in the proceedings with the registrar and, if the plaintiff does not lodge that copy or those copies, as the case may be, within 10 days after the entry of the order, the defendant may lodge it or them with the registrar,
- (b) where the copy or copies, as the case may be, has or have been lodged under paragraph (a), the proceedings shall:
  - (i) cease to be proceedings in the Supreme Court, and
  - (ii) become proceedings in the Court and be continued in the Court as if originally commenced in the Court, and
- (c) any costs payable in respect of the proceedings shall:
  - (i) as regards costs of work done after the making of the order—be dealt with under section 69, and
  - (ii) as regards costs of the order, copies of the order and pleadings (if any), and work done before the making of the order—be allowed, subject to any order of the Supreme Court.

#### **74 Rules**

- (1) The Chief Judge and any 2 other Judges may make rules for or with respect to:
  - (a) the procedure (including the method of pleading) and the practice to be followed in the Court in any proceedings (including the procedure and practice to be followed in the offices of the Court) and any matters incidental to, or relating to, any such procedure or practice, including the manner and time of making any application or appeal which under this or any other Act or Commonwealth Act is to be made to the Court,
    - (a1) the practice and procedure to be followed in the mediation or neutral evaluation of any matter under Part 5A,
    - (a2) appeals under section 32 or 43 of the *Crimes (Local Courts Appeal and Review) Act 2001*,
  - (b) the joinder of causes of action, the consolidation of proceedings, and the joinder, misjoinder and non-joinder of parties,
  - (c) the means for, and the practice and procedure to be followed in, the enforcement and execution of decisions, judgments and orders of the Court,
  - (d) the furnishing of security,
  - (e) the costs of proceedings in the Court, and

- (f) all matters that by this Act are required or permitted to be prescribed by rules or that are necessary or convenient to be prescribed by rules for carrying out or giving effect to this Act.
- (2) Without affecting the generality of subsection (1), rules may be made, in relation to matters within the jurisdiction of the Court, for or with respect to matters for or with respect to which rules may be made under the *Supreme Court Act 1970*, including rules that may be so made by virtue of the *Supreme Court (Summary Jurisdiction) Act 1967*, or any other Act.
- (3) The rules may, with any adaptations specified therein, adopt by reference any rules made under the *Supreme Court Act 1970*.
- (4) Rules may be made so as to apply differently according to such factors as may be specified in the rules.
- (5) While there are no Judges other than the Chief Judge, the reference in subsection (1) to other Judges shall be deemed to be omitted, and while there is only one such Judge, that reference shall be construed as a reference to that Judge.
- (6) This section does not give power to make rules with respect to any matter relating to costs that is regulated by Part 11 of the *Legal Profession Act 1987*.
- (7) A practice note (including any other document, however described, which regulates the practice or procedure of the Court, or of any class of proceedings in the Court, but excluding a decision of the Court) issued by or on behalf of the Court is taken to be a statutory rule for the purposes of Part 6 of the *Interpretation Act 1987*. This subsection does not apply to a practice note issued before the commencement of this subsection.

#### **75-77 (Repealed)**

#### **78 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to:

- (a) fixing or otherwise relating to fees and percentages to be taken in respect of the business of the Court,
  - (aa) the leave which may be granted to Commissioners,
- (b) the appointment of persons to panels from which persons may be appointed as acting Commissioners, and
- (c) all matters that by this Act are required or permitted to be prescribed by regulations or that are necessary or convenient to be prescribed by regulations for carrying out or giving effect to this Act.



## **79 Savings, transitional and other provisions**

Schedule 3 has effect.

## **Schedule 1 The Commissioners**

(Section 12)

### **1 Term of office**

- (1) A Commissioner shall, subject to this Schedule, hold office for a term of 7 years, and shall be, if otherwise qualified, eligible for re-appointment from time to time for further like terms.
- (2) A full-time Commissioner shall, except as the Minister may otherwise approve, devote the whole of the Commissioner's time to the duties of the Commissioner's office.

### **2 Remuneration**

- (1) A full-time Commissioner is entitled to be paid:
  - (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and
  - (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the full-time Commissioner.
- (2) A part-time Commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the Commissioner.

### **2A Leave entitlements**

Subject to this Act and the regulations, the leave which may be granted to Commissioners shall be as determined by the Minister from time to time.

### **3 Application of *Public Service Act 1979***

The provisions of the *Public Service Act 1979* do not apply to or in respect of the appointment of a Commissioner, and a Commissioner shall not, in the Commissioner's capacity as such, be subject to those provisions during the Commissioner's term of office.

### **4, 5 (Repealed)**

### **6 Removal from office**

The Governor may remove a Commissioner from office for misbehaviour or incompetence.

### **7 Vacation of office**

A Commissioner shall be deemed to have vacated office if the Commissioner:

- (a) dies,
- (b) resigns the office by instrument in writing addressed to the Minister,
- (c) becomes a mentally incapacitated person, or
- (d) is removed from office by the Governor under clause 6.

## **8 Preservation of rights of Commissioner if previously public servant etc**

- (1) In this clause:

**statutory body** means any body declared under clause 10 to be a statutory body for the purposes of this Schedule.

**superannuation scheme** means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

- (2) Subject to subclause (3) of this clause and to the terms of appointment, where a full-time Commissioner was, immediately before being appointed as full-time Commissioner:
- (a) an officer of the Public Service,
  - (b) a contributor to a superannuation scheme,
  - (c) an officer employed by any statutory body, or
  - (d) a person in respect of whom provision was made by an Act for the retention of any rights accrued or accruing to the person as an officer or employee,
- the Commissioner:
- (e) shall retain any rights accrued or accruing to the Commissioner as such an officer, contributor or person,
  - (f) may continue to contribute to any superannuation scheme to which the Commissioner was a contributor immediately before being appointed as Commissioner, and
  - (g) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,
- as if the Commissioner had continued to be such an officer, contributor or person during the Commissioner's service as Commissioner, and:
- (h) the Commissioner's service as Commissioner shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which the Commissioner continues to contribute or by which

that entitlement is conferred, and

- (i) the Commissioner shall be deemed to be an officer or employee, and the Government of New South Wales shall be deemed to be the Commissioner's employer, for the purpose of the superannuation scheme to which the Commissioner is entitled to contribute under this subclause.
- (3) Where a Commissioner would, but for this subclause, be entitled under subclause (2) of this clause to contribute to a superannuation scheme or to receive any payment, pension or gratuity under that scheme, the Commissioner shall not be so entitled upon the Commissioner's becoming (whether upon being appointed as Commissioner or at any later time while the Commissioner holds office as Commissioner) a contributor to any other superannuation scheme, and the provisions of subclause (2) (i) of this clause cease to apply to or in respect of the Commissioner and the Government of New South Wales in any case where the Commissioner becomes a contributor to such another superannuation scheme.
- (4) Subclause (3) of this clause does not prevent the payment to a Commissioner upon the Commissioner's ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to the Commissioner if the Commissioner had ceased, by reason of resignation, to be an officer or employee for the purposes of that scheme.
- (5) A Commissioner shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

**9 Full-time Commissioner entitled to re-appointment in former employment in certain cases**

- (1) In this clause:

***retiring age*** means:

- (a) in relation to a person who was, immediately before being appointed as a full-time Commissioner, an officer of the Public Service—the age of 60 years, and
- (b) in relation to a person who was, immediately before being appointed as a full-time Commissioner, an officer or employee of a statutory body and except as provided in paragraph (a)—the age at which officers or employees (being officers or employees of the class to which that person belonged immediately before being appointed as a full-time Commissioner), as the case may be, of that body are entitled to retire.

***statutory body*** means any body declared under clause 10 to be a statutory body for the purposes of this Schedule.

- (2) Where a person ceases to be a full-time Commissioner, otherwise than pursuant to

clause 7 (paragraph (b) excepted), the person shall, if the person has not attained the retiring age, be entitled to be appointed, where, immediately before being appointed as full-time Commissioner, the person was:

- (a) an officer of the Public Service—to some position in the Public Service, or
- (b) an officer or employee of a statutory body, except as provided in paragraph (a)—to some office in the service of that body,

not lower in classification and salary than that which the person held immediately before being appointed as Commissioner.

## 10 Statutory bodies

The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.

## Schedule 2

(Sections 36 (1) (b), (1A), 37 (2))

Proceedings under Part 13 of the *Aboriginal Land Rights Act 1983*.  
Appeals under section 26 of the *Swimming Pools Act 1992*.

## Schedule 3 Savings, transitional and other provisions

(Section 79)

### 1 Provisions consequent on enactment of *Courts Legislation Amendment Act 1997*

Section 52, as amended by the *Courts Legislation Amendment Act 1997*, does not apply to or in respect of any conviction or order arising out of proceedings determined before the commencement of Schedule 4 to that Act.

### 2 Provisions consequent on enactment of *Courts Legislation Further Amendment Act 1998*

- (1) In this clause, **amending Act** means the *Courts Legislation Further Amendment Act 1998*.
- (2) A person appointed as an assessor immediately before the commencement of Schedule 6 [3] to the amending Act is taken to be duly appointed as a Commissioner under section 12 for the balance of the term of his or her appointment.
- (3) The person appointed as senior assessor immediately before the commencement of Schedule 6 [3] to the amending Act is taken to be duly appointed as Senior Commissioner under section 12 (3).
- (4) On and from the commencement of Schedule 6 [3] to the amending Act, a reference in any other Act or any instrument to an assessor of the Land and Environment Court is taken to be a reference to a Commissioner.

**3 Provisions consequent on enactment of [Courts Legislation Amendment Act 1999](#)**

The amendments made to sections 19 and 20 by the [Courts Legislation Amendment Act 1999](#) do not apply in relation to proceedings that have been commenced in the Court (but not determined) before the commencement of those amendments.

**4 Provision consequent on enactment of [Land and Environment Court Amendment Act 2002](#)**

Section 40, as substituted by the [Land and Environment Court Amendment Act 2002](#), extends to proceedings before the Court at the time the section, as substituted, commences.

**5 Provision consequent on enactment of [Courts Legislation Further Amendment Act 2002](#)**

Anything that was done or omitted to be done on or after 1 July 2002 and before the commencement of the amendment made by Schedule 2 to the [Courts Legislation Further Amendment Act 2002](#), and that would have been valid if that amendment had been in force when the thing was done or omitted to be done, is validated.