

# Land and Environment Court Act 1979 No 204

[1979-204]



New South Wales

## Status Information

### Currency of version

Historical version for 11 December 2020 to 28 November 2021 (accessed 25 April 2024 at 8:19)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Does not include amendments by**

[Water Management Amendment Act 2010 No 133](#) (not commenced)

[Local Government Amendment Act 2019](#) (not commenced)

[Community Land Management Act 2021 No 7](#) (not commenced — to commence on 1.12.2021)

[Water Industry Competition Amendment Act 2021 No 26](#) (not commenced)

- **See also**

[Uranium Mining and Nuclear Facilities \(Prohibitions\) Repeal Bill 2019](#) [Non-government Bill: the Hon Mark Latham, MLC]

[Planning Legislation Amendment Bill 2019](#)

[Customer Service Legislation Amendment Bill 2021](#)

[Plastic Reduction and Circular Economy Bill 2021](#)

[Environment Legislation Amendment Bill 2021](#)

### Authorisation

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File last modified 24 November 2021

# Land and Environment Court Act 1979 No 204



New South Wales

## Contents

<b>Long title</b> .....	7
<b>Part 1 Preliminary</b> .....	7
1 Name of Act .....	7
2 Commencement .....	7
3 (Repealed) .....	7
4 Definitions .....	7
<b>Part 2 Constitution of the Court</b> .....	8
<b>Division 1 Constitution</b> .....	8
5 Constitution of the Court .....	8
6 Single Judge to constitute the Court .....	9
<b>Division 2 The Judges</b> .....	9
7 Composition of the Court .....	9
8 Appointment and qualifications of Judges .....	9
9 Remuneration etc .....	9
10 Acting Chief Judge .....	9
11 Acting Judges .....	10
11A Supreme Court Judges may act as Land and Environment Court Judges .....	11
<b>Division 3 Commissioners</b> .....	12
12 Commissioners .....	12
13 Acting Commissioners .....	13

14 Disqualification of Commissioners.....	14
<b>Division 4 Other officers of the Court.....</b>	<b>15</b>
15 Appointment of other officers.....	15
<b>Part 3 Jurisdiction of the Court.....</b>	<b>15</b>
<b>Division 1 General.....</b>	<b>15</b>
16 Jurisdiction of the Court generally.....	15
17 Class 1—environmental planning and protection appeals.....	15
18 Class 2—local government and miscellaneous appeals and applications.....	16
19 Class 3—land tenure, valuation, rating and compensation matters.....	17
20 Class 4—environmental planning and protection, development contract and strata renewal plan civil enforcement.....	18
21 Class 5—environmental planning and protection summary enforcement.....	23
21A Class 6—appeals from convictions relating to environmental offences.....	24
21B Class 7—other appeals relating to environmental offences.....	24
21C Class 8—mining matters.....	24
22 Determination of matter completely and finally.....	24
23 Making of orders.....	25
<b>Division 2 Claims for compensation.....</b>	<b>25</b>
24 Claim for compensation in compulsory acquisition cases.....	25
25 Determination of estate, interest and amount.....	25
<b>Division 3 Orders of conditional validity for certain development consents.....</b>	<b>25</b>
25A Application of Division.....	25
25B Orders for conditional validity of development consents.....	26
25C Orders for validity of development consents.....	26
25D Power to grant another development consent.....	27
25E Duty of Court.....	27
<b>Part 4 Exercise of jurisdiction.....</b>	<b>27</b>

<b>Divisions 1, 2 (Repealed)</b> .....	27
<b>Division 3 Organisation generally</b> .....	27
29 Sittings of the Court .....	27
30 Arrangement of business of the Court.....	28
31 Irregularity of proceedings .....	29
32 (Repealed) .....	29
33 Exercise of jurisdiction generally .....	29
<b>Division 4 Special provisions respecting Class 1, 2 or 3 proceedings</b> .....	29
34 Conciliation conferences.....	29
34AA Mandatory conciliation and arbitration .....	32
34A Proceedings to which on-site hearing procedures apply.....	32
34B Arrangements for dealing with on-site hearing matters.....	34
34C Arrangements for dealing with court hearing matters .....	34
34D Site inspections in court hearing matters .....	35
35 Inquiries by Commissioners.....	36
36 Delegation to Commissioners.....	36
37 Commissioners sitting with a Judge.....	37
38 Procedure .....	38
39 Powers of Court on appeals .....	39
39A (Repealed).....	40
40 Additional powers of Court—provision of easements .....	40
<b>Division 5 Special provisions respecting Class 5 proceedings (summary jurisdiction)</b> .....	40
41 Application of Criminal Procedure Act 1986.....	40
<b>Division 6 Special provisions respecting Class 8 proceedings (mining matters)</b> .....	40
41A Mandatory conciliation and arbitration.....	40
42 Delegation to Commissioners.....	41
43 Commissioners sitting with a Judge.....	42

44–55 (Repealed) .....	42
<b>Part 5 Appeals from the Court</b> .....	42
<b>Division 1 General</b> .....	42
56 Nature of decision of the Court.....	42
<b>Division 2 Class 1-4 proceedings</b> .....	43
56A Class 1, 2, 3 and 8 proceedings—appeals to the Court against decisions of Commissioners.....	43
57 Class 1, 2, 3 and 8 proceedings—appeals .....	43
58 Class 4 proceedings—appeals .....	44
59 Suspension of operation of order etc.....	44
60 Termination of suspension .....	45
61 Manner in which appeals to the Court to be made .....	45
<b>Part 5A (Repealed)</b> .....	45
<b>Part 6 Miscellaneous</b> .....	45
62 Proceedings in open court .....	45
63 Right of appearance .....	45
64 Appearance by the Crown .....	46
65 Issue of process.....	46
66 Judicial notice of certain signatures.....	46
67 Powers of the Court as to the production of evidence .....	46
67A Disrespectful behaviour in Court .....	47
68 Amendments and irregularities .....	48
69–70 (Repealed) .....	49
71 Proceedings in Supreme Court .....	49
72 Transfer of proceedings from Supreme Court .....	49
73 Proceedings after transfer .....	49
74 Rules.....	49
75 Court may dispense with rules in particular cases .....	51
76 Practice notes.....	51
77 Court may give directions in circumstances not covered by rules.....	51
77A Forms .....	51
78 Regulations.....	52

79 Savings, transitional and other provisions.....	52
<b>Schedule 1 The Commissioners .....</b>	<b>52</b>
<b>Schedule 2.....</b>	<b>55</b>
<b>Schedule 3 Savings, transitional and other provisions .....</b>	<b>56</b>

# 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).

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

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

**mandatory judicial retirement age** means the maximum age at which a Judge is required by law to retire.

**Note—**

Section 44 of the *Judicial Officers Act 1986* provided for a maximum retirement age for Judges of 72 years before its amendment by the *Justice Legislation Amendment Act (No 3) 2018*.

Section 44 of the *Judicial Officers Act 1986*, as amended, has increased the maximum retirement age for Judges to 75 years. Clause 9 of Schedule 6 to the *Judicial Officers Act 1986* provides that the new retirement age does not apply to Judges holding office who were appointed before the amendments commenced unless they consent to the change applying to them as required by section 55(2) of the *Constitution Act 1902*. The retirement age of 72 years continues to apply to Judges who do not consent to the increased retirement age applying to them.

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

**practice note** means a practice note issued under section 76.

**Registrar** means the Registrar of the Court.

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

**rules** means rules of the Court.

- (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 an Australian lawyer 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 Court of Appeal.
- (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.

- (1A) While the Chief Judge is absent from Australia and an Acting Chief Judge has not been appointed under subsection (1), the senior Judge present in Australia is taken to be the Acting Chief Judge.
- (1B) For the purposes only of subsection (1A)—
- (a) the Judges shall have seniority between themselves according to the dates of their commissions as Judges under this Act, a Judge whose commission is dated earlier than that of another Judge being senior to that other Judge, and
  - (b) if the commissions of two or more Judges bear the same date, those Judges shall have seniority between themselves according to the seniority assigned to them by their commission or, failing any such assignment, according to the order of their being sworn.
- (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 5 years 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.
- (3B) While a person completes or otherwise continues under subsection (3A) to deal with any matters relating to proceedings that have been heard or partly heard by the person before the expiration of the period of the person's appointment, the person has all the entitlements and functions of a Judge and, for the purpose of those proceedings, is taken to continue to be a Judge.
- (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 mandatory judicial retirement age (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 78 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.

#### **11A Supreme Court Judges may act as Land and Environment Court Judges**

- (1) This section applies to each of the Judges of the Supreme Court (an **eligible judicial officer**) other than the following—
- (a) the Chief Justice,
  - (b) the President of the Court of Appeal,
  - (c) the other Judges of Appeal,
  - (d) the Chief Judge at Common Law,
  - (e) the Chief Judge in Equity,
  - (f) an acting Judge.
- (2) An eligible judicial officer may act as a Judge for a particular period or in relation to particular proceedings in the Court if—
- (a) the Chief Judge certifies that it is expedient that the eligible judicial officer should act as a Judge of the Court for the period or in relation to the proceedings, and
  - (b) the eligible judicial officer consents to acting as a Judge for the period or in relation to the proceedings, and
  - (c) the Chief Justice consents to the eligible judicial officer acting as a Judge for the period or in relation to the proceedings.
- (3) The following provisions apply to and in respect of an eligible judicial officer who acts as a Judge of the Court pursuant to the provisions of this section—
- (a) the eligible judicial officer has, while acting as a Judge, all the powers, authorities, privileges and immunities of a Judge of the Land and Environment Court,
  - (b) the eligible judicial officer may attend the sittings of the Court for the purpose of giving judgment in, or otherwise completing, any proceedings which have been heard by the Court while the eligible judicial officer was acting as a Judge in the proceedings even if the eligible judicial officer is no longer acting as a Judge,
  - (c) the eligible judicial officer is not, while receiving remuneration as a Judge of the Supreme Court, entitled to remuneration for acting as a Judge of the Land and

Environment Court,

- (d) any service of the eligible judicial officer while acting as a Judge is taken for all purposes (including for the purposes of the *Supreme Court Act 1970* and the *Judges' Pensions Act 1953*) to be service as a Judge of the Supreme Court,
- (e) nothing in this Act or any other law requires the eligible judicial officer to devote the whole of his or her time to the duties of acting as a Judge of the Land and Environment Court.

## **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.
- (2AA) A person is also qualified to be appointed as a Commissioner if the person is an Australian lawyer.
- (2AB) 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 subsections (2) and (2AA).

- (2AC) While exercising the jurisdiction of the Court or any other function under this Act in relation to proceedings in Class 8 of the Court's jurisdiction, a Commissioner may be called a "Commissioner for Mining".
- (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.
- (2C) A person appointed as a Commissioner may, despite the expiration of the term of the person's appointment, complete or otherwise continue to deal with any matters relating to proceedings that have been heard or partly heard, or a conciliation conference that has been presided over or partly presided over, by the person before the expiration of that term.
- (2D) While a person completes or otherwise continues under subsection (2C) to deal with any matters relating to proceedings that have been heard or partly heard by the person, or conciliation conferences that have been presided over or partly presided over, before the expiration of the term of the person's appointment, the person has all the entitlements and functions of a Commissioner and, for the purpose of those proceedings or conferences, is taken to continue to be a Commissioner.
- (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 5 years 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 has and may exercise, for the time and subject to the conditions or limitations specified in the instrument of appointment, the functions of a Commissioner and is, for the purposes of this or any other Act, deemed to be—
- (a) in the case of a person acting on a full-time basis—a full-time Commissioner, and
  - (b) in the case of a person acting on a part-time basis—a part-time Commissioner.
- (4) An acting 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 acting Commissioner.
- (5) The provisions of the *Government Sector Employment Act 2013* 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.
- (6) A person so appointed may, despite the expiration of the term of the person's appointment, complete or otherwise continue to deal with any matter relating to proceedings that have been heard or partly heard, or a conciliation conference that has been presided over or partly presided over, by the person before the expiration of that term.
- (7) While a person completes or otherwise continues under subsection (6) to deal with any matters relating to proceedings or a conciliation conference, the person has all the entitlements and functions of a Commissioner (in the case of a person who acted on a full-time basis) or a part-time Commissioner (in the case of a person who acted on a part-time basis) and, for the purpose of those proceedings or that conference, is taken to continue to be a full-time Commissioner or part-time Commissioner (as the case may be).

#### **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 employed under the *Government Sector Employment Act 2013*.
- (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 8 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 the following—

- (a) appeals under Part 9.2 of the *Protection of the Environment Operations Act 1997*,
- (aa) appeals under section 85 of the *Water NSW Act 2014*,
- (ab) appeals under section 22 of the *Dams Safety Act 2015*,
- (b) appeals under section 114 of the *Pesticides Act 1999*,
- (ba), (bb) (Repealed)
- (c) appeals under section 368 of the *Water Management Act 2000*,

- (ca) appeals under section 54 of the *Biological Control Act 1985*,
- (cb), (cc) (Repealed)
- (d) appeals, objections and applications under sections 4.55, 8.7, 8.8, 8.9, 8.16, 8.18, 8.21, 8.22, 8.23 and 8.25 of, and clause 35 of Schedule 5 to, the *Environmental Planning and Assessment Act 1979*,
- (da) (Repealed)
- (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 to the Court under the *Biodiversity Conservation Act 2016*,
- (eb) appeals to the Court under Part 5A of the *Local Land Services Act 2013*,
- (f) appeals under sections 37–40 of the *Environmentally Hazardous Chemicals Act 1985* and applications under section 44(4) of that Act,
- (g) (Repealed)
- (h) appeals under Part 6 of the *Contaminated Land Management Act 1997*,
- (ha) appeals under section 18 or 36A of the *Radiation Control Act 1990*,
- (i) appeals under section 24 of the *Plantations and Reafforestation Act 1999*,
- (j) appeals under section 35(1)(a) or 45(1)(a) of the *Dangerous Goods (Road and Rail Transport) Act 2008*, and
- (k) appeals under sections 90L and 91T of the *National Parks and Wildlife Act 1974*,
- (l) appeals under section 9.21 of the *Crown Land Management Act 2016*.

## **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 the following—

- (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 307 of the *Water Management Act 2000*,
- (a3) proceedings under section 71X(5) of, or Schedule 1A to, the *Water Management Act*



2000,

- (b) (Repealed)
- (c) appeals under sections 66 and 85 of the *Strata Schemes Development Act 2015*,
- (c1) appeals under section 16 of the *Lake Illawarra Authority Act 1987*,
- (c2) appeals under section 38C or 38F of the *Roads Act 1993*,
- (c3) appeals under section 26 of the *Swimming Pools Act 1992*,
- (c4) (Repealed)
- (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*,
- (f) proceedings under sections 86 and 92 of the *Strata Schemes Development Act 2015* and under section 107 of the *Community Land Management Act 1989*,
- (g) applications under the *Trees (Disputes Between Neighbours) Act 2006* (including applications involving the exercise of jurisdiction under the *Dividing Fences Act 1991*),
- (h) appeals under section 39 of the *Plumbing and Drainage Act 2011*,
- (i) appeals under sections 140, 182, 213, 259, 277, 328 and 360 of the *Biosecurity Act 2015*,
- (j) despite any other provision of this Division—appeals under any Act to the Court against building product rectification orders made under the *Building Products (Safety) Act 2017*,
- (k) proceedings under section 83 of the *Design and Building Practitioners Act 2020*,
- (l) proceedings under sections 10, 30, 49 and 52 of the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*.

### **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 the following—

- (a) appeals, references or other matters that may be heard and disposed of by the Court under the *Crown Land Management Act 2016* 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*,
- (d1) appeals under section 64 of the *Fire and Emergency Services Levy Act 2017*,
- (e) claims for compensation by reason of the acquisition of land, referred to in Division 2,
- (e1) (Repealed)
- (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) (Repealed)
- (f1) appeals under section 16 of the *Coal Mine Subsidence Compensation Act 2017*,
- (g) proceedings to recover compensation payable pursuant to sections 4.57(7) and 8.19 of the *Environmental Planning and Assessment Act 1979*,
- (g1) appeals under section 44, 202 or 220AA of the *Fisheries Management Act 1994*,
- (g2) appeals under section 36(7) or 174 of the *Aboriginal Land Rights Act 1983*,
- (g3) references under section 175 of the *Aboriginal Land Rights Act 1983*,
- (g4) claims for compensation under section 71X of the *Water Management Act 2000*,
- (g5) applications under section 40(2) of this Act,
- (g6) applications and proceedings under Divisions 6, 7 and 8 of Part 10 of the *Strata Schemes Development Act 2015*,
- (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, development contract and strata renewal plan civil enforcement**

- (1) The Court has jurisdiction (referred to in this Act as “Class 4” of its jurisdiction) to hear and dispose of the following—

- (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 3.27 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 9.45 of the *Environmental Planning and Assessment Act 1979*,
- (ca) proceedings under section 57 of the *Environmentally Hazardous Chemicals Act 1985*,
- (caa) proceedings under Divisions 6 and 6A of Part 3, Part 7 and Division 3 of Part 10 of the *Contaminated Land Management Act 1997*,
- (cb) proceedings under section 96 of the *Pesticides Act 1999*,
- (cbb) proceedings under section 108 or 110 of the *Pesticides Act 1999*,
- (cc) (Repealed)
- (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 sections 193 and 202 of the *National Parks and Wildlife Act 1974*,
- (cga) proceedings under Division 2 of Part 13 and sections 13.22 and 13.27 of the *Biodiversity Conservation Act 2016*,
- (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 that have been transferred to the Court under section 149B of the *Civil Procedure Act 2005* (**transferred civil proceedings**),

- (cja) proceedings under section 100H of the *Rural Fires Act 1997*,
- (ck) proceedings under section 57 of the *Dangerous Goods (Road and Rail Transport) Act 2008*,
- (cl), (cm) (Repealed)
- (cn) proceedings relating to elections for members of local boards (including relating to enrolment) under regulations made under the *Local Land Services Act 2013*,
- (co) proceedings under section 24A, 25B or 27 of the *Radiation Control Act 1990*,
- (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 50 (Prevention of unauthorised work) of the *Coal Mine Subsidence Compensation Act 2017*,
- (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 84 of the *Design and Building Practitioners Act 2020*,
- (dea) proceedings under section 31 of the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*,
- (df) proceedings under section 10.32, 11.13 or 11.19 of the *Crown Land Management Act 2016*,
- (df1) proceedings under sections 335, 336 and 336E of the *Water Management Act 2000*,
- (dg) proceedings under section 353D of the *Water Management Act 2000*,
- (dh) proceedings under section 57 or 60 of the *Plantations and Reafforestation Act 1999*,
- (di) proceedings under section 40 of the *Plumbing and Drainage Act 2011*,
- (dj) proceedings under sections 109, 148, 171, 350 and 385 of the *Biosecurity Act 2015*,
- (dk) proceedings under section 105 of the *Building and Development Certifiers Act 2018*,
- (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 the following proceedings—

- (a) to enforce any right, obligation or duty conferred or imposed by a planning or environmental law, a development contract or a strata renewal plan,
- (b) to review, or command, the exercise of a function conferred or imposed by a planning or environmental law, a development contract or a strata renewal plan,
- (c) to make declarations of right in relation to any such right, obligation or duty or the exercise of any such function,
- (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),

*Biodiversity Conservation Act 2016*,

*Biological Control Act 1985*,

*Coal Mine Subsidence Compensation Act 2017*,

*Coastal Management Act 2016*,

*Contaminated Land Management Act 1997*,

*Environmental Planning and Assessment Act 1979*,

*Environmentally Hazardous Chemicals Act 1985*,

*Fire and Emergency Services Levy Act 2017*,

Part 5A or 5B of the *Forestry Act 2012*,

*Heritage Act 1977*,

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

Part 5A or 5B of, and Schedule 5A to, the *Local Land Services Act 2013*,

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

*National Parks and Wildlife Act 1974,*  
*Ozone Protection Act 1989,*  
*Pesticides Act 1999,*  
*Plantations and Reafforestation Act 1999,*  
*Plumbing and Drainage Act 2011,*  
*Protection of the Environment Administration Act 1991,*  
*Protection of the Environment Operations Act 1997,*  
*Radiation Control Act 1990,*  
*Rural Fires Act 1997,*  
*Trees (Disputes Between Neighbours) Act 2006,*  
*Uranium Mining and Nuclear Facilities (Prohibitions) Act 1986,*  
*Waste Avoidance and Resource Recovery Act 2001,*  
*Waste Recycling and Processing Corporation Act 2001,* or

(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*,

(c) (Repealed)

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

(3A) The Court (constituted by a Judge) may, by order, declare that any proceedings in the Court that it considers to be related or ancillary to transferred civil proceedings are to be dealt with together with the transferred civil proceedings. In the event of such an order being made, the proceedings that are the subject of the declaration may be dealt with under this Act as if they belonged to Class 4 of the Court's jurisdiction even if they belong to a different class of the Court's jurisdiction.

(4) Subject to any adaptations prescribed by the rules, the provisions of the *Supreme Court Act 1970*, the *Civil Procedure Act 2005* and the rules made under those Acts apply to the enforcement of a judgment or order of the Court in the same way as they apply to the enforcement of a judgment or order of the Supreme Court.

(5) In this section—

**development contract** means an agreement implied by section 15 of the *Community Land Management Act 1989* or section 81 of the *Strata Schemes*

*Development Act 2015*.

**strata renewal plan** means a strata renewal plan under the *Strata Schemes Development Act 2015* that has been given effect by an order of the Court.

## 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 the following in a summary manner—

- (a) proceedings under Parts 8.2 and 8.3 of the *Protection of the Environment Operations Act 1997*,
- (a1) proceedings under section 67, 70, 71, 73, 74, 77, 80, 81, 84, 92, 93 or 94 of the *Water NSW Act 2014* or offences under regulations made under that Act,
- (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) proceedings under section 11.1 of the *Crown Land Management Act 2016*,
- (c)–(d) (Repealed)
- (da) proceedings under section 47(5) of the *Dangerous Goods (Road and Rail Transport) Act 2008*,
- (e) proceedings under section 158 of the *Heritage Act 1977*,
- (f) proceedings under section 9.57 of the *Environmental Planning and Assessment Act 1979*,
- (faa) proceedings under Divisions 1, 2, 2A and 4 of 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 364 of the *Water Management Act 2000*.
- (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*,
- (ha) proceedings under section 21 of the *Very Fast Train (Route Investigation) Act 1989*,

- (hb) proceedings under Division 1 of Part 13 of the *Biodiversity Conservation Act 2016*,
- (hc) proceedings for an offence under section 15 of the *Trees (Disputes Between Neighbours) Act 2006*,
- (he) proceedings for an offence under the *Marine Pollution Act 2012*,
- (hf) proceedings for an offence under section 25 of the *Radiation Control Act 1990*,
- (hg) proceedings under section 119 of the *Building and Development Certifiers Act 2018*,
- (hfa) proceedings for an offence under the *Design and Building Practitioners Act 2020*,
- (hfb) proceedings for an offence under the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*,
- (hg) proceedings under section 55 of the *Coal Mine Subsidence Compensation Act 2017*,
- (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 (Appeal and Review) Act 2001*.

#### **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 (Appeal and Review) Act 2001*.

#### **21C Class 8—mining matters**

- (1) The Court has jurisdiction (referred to in this Act as “Class 8” of its jurisdiction) to hear and dispose of proceedings arising under the *Mining Act 1992* or the *Petroleum (Onshore) Act 1991*.
- (2) This section does not apply to proceedings for an offence under either of those Acts.

#### **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 4.60 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 4.61 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**

#### **Divisions 1, 2**

#### **26-28 (Repealed)**

#### **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), (2B) and (2C), 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 Commissioner has a qualification referred to in section 12(2)(g).
  - (2B) A Commissioner whose only qualification under section 12(2) or (2AA) is 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](#).
  - (2C) A Commissioner shall not exercise the jurisdiction of the Court or any other function under this Act in relation to proceedings in Class 8 of the Court's jurisdiction unless the Commissioner is an Australian lawyer.
- (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 Irregularity of proceedings**

- (1) This section applies if the Court determines, on application by a party or of its own motion, that any proceedings before it are not being dealt with in the manner appropriate to the class of jurisdiction to which they belong.
- (2) In the circumstances referred to in subsection (1), the Court may make either of the following orders on such terms as may be necessary—
  - (a) an order that the proceedings be dismissed,
  - (b) an order that the proceedings be dealt with in the appropriate manner.
- (3) If the Court makes an order referred to in subsection (2)(b)—
  - (a) the proceedings are taken to have been duly commenced, and
  - (b) any step that has been taken in the proceedings is deemed to have been duly taken.
- (4) The Court may make such orders as it thinks fit for the future conduct of the proceedings.

### **32 (Repealed)**

### **33 Exercise of jurisdiction generally**

- (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.
- (2A) Class 8 of the Court's jurisdiction shall, in accordance with this Act, be exercised by a Judge or by a Commissioner who is an Australian lawyer.
- (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 Conciliation conferences**

- (1) If proceedings are pending in Class 1, 2 or 3 of the Court's jurisdiction, the Court—
  - (a) may arrange a conciliation conference between the parties or their representatives, with or without their consent, and

- (b) if it does so, must notify the parties or their representatives of the time and place fixed for the conference.
- (1A) It is the duty of each party to proceedings where a conciliation conference has been arranged under subsection (1) to participate, in good faith, in the conciliation conference.
- (2) A conciliation conference is to be presided over by a single Commissioner.
- (3) If, either at or after a conciliation 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—
- (a) must dispose of the proceedings in accordance with the decision, and
  - (b) must set out in writing the terms of the decision.
- (4) If no such agreement is reached, the Commissioner must terminate the conciliation conference and—
- (a) unless the parties consent under paragraph (b), must make a written report to the Court—
    - (i) stating that no such agreement has been reached and that the conciliation conference has been terminated, and
    - (ii) setting out what in the Commissioner's view are the issues in dispute between the parties, or
  - (b) if the parties consent to the Commissioner disposing of the proceedings, must dispose of the proceedings—
    - (i) following a hearing, whether held forthwith or later, or
    - (ii) with the consent of the parties, on the basis of what has occurred at the conciliation conference.
- (5) The Commissioner, when giving his or her decision under subsection (4)(b), is to give reasons for the decision—
- (a) in writing, or
  - (b) orally and recorded by means that can be reproduced.
- (6) If satisfied that there is a good reason to do so, the Commissioner may adjourn the conciliation conference to a time and place fixed in consultation with the Registrar.
- (7) Subject to this Act and the rules, the Commissioner disposing of, or hearing and disposing of, proceedings pursuant to subsection (3) or (4)(b) has and may exercise

the functions of the Court.

- (8) The decision of the Commissioner under subsection (3) or (4)(b) is taken to be the decision of the Court.
- (9) If a report is made to the Court under subsection (4)(a), it must, as soon as practicable, furnish a copy of the report to each of the parties.
- (10) If an agreement is reached between the parties and proceedings are being dealt with under subsection (3), any document signed by the parties is admissible as to the fact that such an agreement has been reached and as to the substance of the agreement.
- (10A) 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 conciliation conference, and
  - (b) a document or other material sent to or produced to a Commissioner, or sent to or produced at the Court or the registry of the Court, for the purpose of enabling a conciliation conference to be arranged.
- (10B) The privilege conferred by subsection (10A) extends only to a publication made—
  - (a) at a conciliation conference, or
  - (b) in a document or other material sent to or produced to a Commissioner, or sent to or produced at the Court or the registry of the Court, for the purpose of enabling a conciliation conference to be arranged.
- (11) Subject to subsections (10) and (12)—
  - (a) evidence of anything said or of any admission made in a conciliation conference is not admissible in any proceedings before any court, tribunal or body, and
  - (b) a document prepared for the purposes of, or in the course of, or as a result of, a conciliation conference, or any copy of such a document, is not admissible in evidence in any proceedings before any court, tribunal or body.
- (12) Subsection (11) does not apply with respect to any evidence or document if the parties consent to the admission of the evidence or document.
- (13) The Commissioner presiding over a conference under this section in relation to any proceedings is disqualified from further participation in those proceedings, unless the parties otherwise agree.
- (14) Unless otherwise directed by the Chief Judge, the Registrar may preside over a conference under this section and, in that event, a reference in this section to a Commissioner includes a reference to the Registrar.

### **34AA Mandatory conciliation and arbitration**

- (1) This section applies to the following proceedings pending in Class 1 of the Court's jurisdiction relating to appeals, objections and applications under section 8.7 or 8.9 of the *Environmental Planning and Assessment Act 1979*—
  - (a) proceedings concerning development applications, or modifications to development consents, for—
    - (i) development for the purposes of detached single dwellings and dual occupancies (including subdivisions), or alterations or additions to such dwellings or dual occupancies, or
    - (ii) development of a kind prescribed by the regulations,
  - (b) particular proceedings that the Court orders, on the application of a party to the proceedings or of its own motion, to be dealt with under this section.
- (2) Section 34 applies to the proceedings with the following modifications—
  - (a) the Court must arrange a conciliation conference between the parties and their representatives with or without their consent,

**Note—**

The Commissioner has the discretion to determine the place (including an on-site hearing) fixed for the conciliation conference.

  - (b) if no agreement of a kind referred to in section 34(3) is reached, the Commissioner who presides over the conciliation conference must terminate the conciliation conference and, subject to this section, dispose of the proceedings—
    - (i) following a hearing held forthwith, or
    - (ii) if the parties consent, on the basis of what has occurred at the conciliation conference.
- (3) The Court or the Commissioner may at any time, if the Court or Commissioner thinks it appropriate in the circumstances of the case, determine that proceedings are not to be dealt with or are not to continue to be dealt with under subsection (2). A determination may be made on the motion of the Court or Commissioner or on application by the parties.
- (4) If the Court or Commissioner determines that proceedings are not to be dealt with or are not to continue to be dealt with under subsection (2), the proceedings are to be dealt with under section 34C.

### **34A Proceedings to which on-site hearing procedures apply**

- (1) This section applies to the following proceedings, if the proceedings have not been



disposed of under section 34—

(a), (b) (Repealed)

(c) proceedings in Class 1 of the Court's jurisdiction that are brought under section 8.7 of the *Environmental Planning and Assessment Act 1979*,

(c1) proceedings in Class 1 of the Court's jurisdiction that are brought under section 8.9 of the *Environmental Planning and Assessment Act 1979*,

(d) proceedings in Class 1 of the Court's jurisdiction that are brought under section 8.18 of the *Environmental Planning and Assessment Act 1979*,

(e) proceedings in Class 1 of the Court's jurisdiction that are brought under section 8.25 of the *Environmental Planning and Assessment Act 1979*,

(f) proceedings in Class 2 of the Court's jurisdiction that are brought under section 7 of the *Trees (Disputes Between Neighbours) Act 2006*,

(g) proceedings in Class 2 of the Court's jurisdiction that are brought under section 14B of the *Trees (Disputes Between Neighbours) Act 2006*.

(1A) This section does not apply to proceedings to which section 34AA applies.

(2) If, in relation to proceedings under section 8.7 of the *Environmental Planning and Assessment Act 1979*, 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).

(2A) Proceedings to which this section applies (other than proceedings under section 8.7 of the *Environmental Planning and Assessment Act 1979*) are to be dealt with under section 34B, subject to subsection (6), if the Registrar at the first or a subsequent callover determines that the proceedings—

(a) have little or no impact beyond neighbouring properties, and

(b) do not involve any significant issue of public interest beyond any impact on neighbouring properties.

- (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) or (2A), are to be dealt with under section 34C, subject to subsection (6).
- (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 an on-site conference to be heard and disposed of by one or more Commissioners.
- (2) The on-site 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 on-site conference there, or
  - (b) the lack of facilities at that site make it impractical to hold the on-site conference there.
- (3) The Commissioner may dispose of the proceedings with or without further hearing, at any time after the conclusion of the on-site conference.
- (4) The Commissioner, when giving his or her decision, is to give reasons for the decision—
  - (a) in writing, or
  - (b) orally and recorded by means that can be reproduced.
- (5) The provisions of section 36(2)–(6) apply to the hearing and disposal of proceedings under this section.
- (6) In this section, **Commissioner** means the Commissioner or Commissioners hearing the on-site hearing matter.

### **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—

- (a) all the parties agree to dispense with an inspection, or
- (b) the Court (or the persons exercising the functions of the Court) considers that the matter can be properly determined without the need for 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 Court 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 68 of the *Civil Procedure Act 2005*.
- (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 that are being dealt with under section 34A or 40), 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) Proceedings that are before a Commissioner under section 34, or under this section, may be referred or removed for hearing and determination by a Judge in the same way as proceedings before an associate Judge may be referred or removed for hearing and determination by a Judge in the Supreme Court.
- (6) The power of a Commissioner to refer proceedings pursuant to subsection (5) is subject to any contrary order of the Chief Judge.
- (7) (Repealed)

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

- (1) Where proceedings are pending in Class 1, 2, 3 or 4 of the Court's jurisdiction before a Judge (other than proceedings that are being dealt with under section 34A), 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) (Repealed)
- (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 (Repealed)**

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

- (1) This section applies if—
  - (a) the Court has determined to grant or modify a development consent pursuant to proceedings on an appeal under the *Environmental Planning and Assessment Act 1979*, or
  - (b) proceedings on an appeal under the *Environmental Planning and Assessment Act 1979* with respect to the granting or modification of a development consent are pending before the Court (whether constituted by a Judge or by one or more Commissioners).
- (2) The appellant may make an application to the Court for an order imposing an easement over land.
- (3) The parties to an application under this section include the owner of the land to be burdened by the easement, and each other person having an estate or interest in the land, as evidenced by an instrument registered in the General Register of Deeds or the Register kept under the *Real Property Act 1900*.
- (4) In dealing with an application under this section, the Court may exercise the jurisdiction of the Supreme Court under section 88K of the *Conveyancing Act 1919* and, in that event, section 88K of the *Conveyancing Act 1919* applies to the Court's exercise of that jurisdiction in the same way as it applies to the exercise of that jurisdiction by the Supreme Court.

#### **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.

#### **Division 6 Special provisions respecting Class 8 proceedings (mining matters)**

##### **41A Mandatory conciliation and arbitration**

- (1) This section applies to proceedings relating to small-scale titles that are pending in Class 8 of the Court's jurisdiction to hear and dispose of proceedings arising under the *Mining Act 1992* other than proceedings relating to a matter referred to in section 293(1)(q) of that Act.
- (2) Section 34 applies to the proceedings (in the same way as it applies to proceedings in



Class 1, 2 or 3 of the Court's jurisdiction) but with the following modifications—

- (a) the Court must arrange a conciliation conference between the parties and their representatives with or without their consent at such place as the Court determines,
  - (b) if no agreement of a kind referred to in section 34(3) is reached, the Commissioner who presides over the conciliation conference must terminate the conciliation conference and, subject to this section, dispose of the proceedings—
    - (i) following a hearing held forthwith, or
    - (ii) if the parties consent, on the basis of what has occurred at the conciliation conference.
- (3) The Court or the Commissioner may at any time, if the Court or Commissioner thinks it appropriate in the circumstances of the case, determine that proceedings are not to be dealt with or are not to continue to be dealt with under subsection (2). A determination may be made on the motion of the Court or Commissioner or on application by the parties.
- (4) If the Court or Commissioner determines that proceedings are not to be dealt with or are not to continue to be dealt with under subsection (2), the proceedings are to be dealt with as a hearing in court and sections 38 and 39 apply as far as is relevant as if the proceedings were proceedings in Class 1, 2 or 3 of the Court's jurisdiction.

#### **42 Delegation to Commissioners**

- (1) Where proceedings are pending in Class 8 of the Court's jurisdiction, the Chief Judge 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.
- (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, and
  - (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) Proceedings that are before a Commissioner under this section may be referred or removed for hearing and determination by a Judge in the same way as proceedings before an associate Judge may be referred or removed for hearing and determination by a Judge in the Supreme Court.

(6) The power of a Commissioner to refer proceedings pursuant to subsection (5) is subject to any contrary order of the Chief Judge.

#### **43 Commissioners sitting with a Judge**

(1) Where proceedings are pending in Class 8 of the Court's jurisdiction before a Judge, the Court may, in hearing the proceedings, or any part of the proceedings, be assisted by one or more Commissioners.

(2) A Commissioner assisting the Court as referred to in subsection (1) may assist and advise the Court, but shall not adjudicate on any matter before the Court.

(3) A Judge before whom proceedings referred to in subsection (1) 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.

#### **44-55 (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, 4 or 8 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, 3 and 8 proceedings—appeals to the Court against decisions of Commissioners**

- (1) A party to proceedings in Class 1, 2, 3 or 8 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, 3 and 8 proceedings—appeals**

- (1) A party to proceedings in Class 1, 2, 3 or 8 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 Manner in which appeals to the Court to be made**

- (1) (Repealed)
- (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**

#### **61A-61L (Repealed)**

### **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**

- (1) A person entitled to appear before the Court may appear in person, or by an Australian legal practitioner, or (except in proceedings in Class 5, 6 or 7 of the Court's jurisdiction) by an agent authorised by the person in writing.
- (2) Despite subsection (1), a person may not appear before the Court by an agent except with the leave of the Court.
- (3) In determining whether to grant leave for a person to appear by an agent the Court is to consider—
  - (a) whether the agent has provided the person with the information required by the rules, and
  - (b) whether granting leave is in the best interests of the person.

- (4) Leave granted under this section may—
  - (a) be granted subject to conditions, and
  - (b) be revoked at any time for any reason.

#### **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 an Australian legal practitioner or an 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 an Australian legal practitioner or an 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 approved under section 77A 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**

- (1) 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.

(2) This section does not apply to proceedings in Class 1, 2, 3 or 4 of the Court's jurisdiction.

#### **67A Disrespectful behaviour in Court**

(1) **Offence** A person is guilty of an offence against this section if—

- (a) the person is an accused person or defendant in, or a party to, proceedings before the Court or has been called to give evidence in proceedings before the Court, and
- (b) the person intentionally engages in behaviour in the Court during the proceedings, and
- (c) that behaviour is disrespectful to the Court or the Judge presiding over the proceedings (according to established court practice and convention).

Maximum penalty—14 days imprisonment or 10 penalty units, or both.

(2) In this section, **behaviour** means any act or failure to act.

(3) This section does not apply to an Australian legal practitioner appearing in that capacity.

(4) **Proceedings for offences** Proceedings against a person for an offence against this section are to be dealt with summarily before—

- (a) if the person is a child—the Children's Court, or
- (b) if the person is not a child—the Local Court.

(5) Proceedings for an offence against this section may be brought at any time within 12 months after the date of the alleged offence.

(6) Proceedings for an offence against this section may be brought only by a person or a member of a class of persons authorised, in writing, by the Secretary of the Department of Justice for that purpose.

(7) A Judge may refer any disrespectful behaviour in proceedings over which the Judge is presiding to the Attorney General.

(8) Proceedings for an offence against this section may be commenced only with the authorisation of the Attorney General. Authorisation may be given by the Attorney General whether or not the disrespectful behaviour is referred to the Attorney General by a Judge under this section.

(9) **Evidence** An official transcript or official audio or video recording of the proceedings in

the Court is admissible in evidence in proceedings for an offence against this section and is evidence of the matter included in the transcript or audio or video recording.

- (10) The Judge presiding over the proceedings in which the alleged disrespectful behaviour occurred cannot be required to give evidence in proceedings before any court for an offence against this section.
- (11) **Contempt and double jeopardy** This section does not affect any power with respect to contempt or the exercise of any such power.
- (12) A person cannot be prosecuted for an offence against this section and proceeded against for contempt in respect of essentially the same behaviour. However, nothing in this section prevents proceedings for contempt in respect of behaviour that constitutes an offence against this section.
- (13) This section does not apply in Class 1, 2, 3 or 4 of the Court's jurisdiction.

## **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.
- (4) This section does not apply to proceedings in Class 1, 2, 3 or 4 of the Court's jurisdiction.



## **69-70 (Repealed)**

### **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) The jurisdiction conferred on the Court in respect of proceedings referred to in section 20(1)(e) is not limited by any provision of the *Civil Procedure Act 2005* or the uniform rules under that Act.

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

- (1) 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.
- (2) This section does not apply to proceedings in Class 1, 2, 3, 4 or 8 of the Court's jurisdiction.

### **73 Proceedings after transfer** (cf *Civil Procedure Act 2005*, section 148)

- (1) Subject to the rules, any proceedings with respect to which an order under section 72 is made are to continue in the Court as if they had been duly commenced in the Court on the date on which they were commenced in the Supreme Court.
- (2) For the purposes of any proceedings continued in the Court, any admission duly made in the Supreme Court is to be treated as if it had been duly made in the Court.
- (3) Subject to the rules, the power of the Court to make orders as to costs includes a power to make orders with respect to the costs of—
  - (a) the application for, and the making of, the order under section 72, and
  - (b) any step taken in the proceedings before the order under section 72 was made.

### **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) (Repealed)

- (a2) appeals under section 32 or 43 of the *Crimes (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* or the *Civil Procedure Act 2005*, including rules that may be so made by virtue of section 257 of the *Criminal Procedure Act 1986*, 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* or the *Civil Procedure Act 2005*.
- (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—
- (a) any matter relating to costs that is regulated by the legal profession legislation (as defined in section 3A of the *Legal Profession Uniform Law Application Act 2014*), or
  - (b) any matter for which Admission Rules may be made under the *Legal Profession Uniform Law (NSW)*.
- (7) The rules made under this section may authorise or require the use of an electronic case management system established under clause 2 of Schedule 1 to the *Electronic Transactions Act 2000* in relation to any proceedings in a court in respect of which the use of such a system is authorised by an order in force under clause 3 of Schedule 1 to that Act.
- (8) The rules made under this section may provide for the exercise by the Registrar or any other officer of the Court of any of the Court's administrative or judicial functions

under this or any other Act and for the review by the Court of the exercise by the Registrar or any other such officer of any such function.

**75 Court may dispense with rules in particular cases** (cf *Civil Procedure Act 2005*, section 14)

The Court may, by order, dispense with any requirements of the rules if satisfied that it is appropriate to do so in the circumstances of the case.

**76 Practice notes** (cf *Civil Procedure Act 2005*, section 15)

- (1) Subject to the rules, the Chief Judge may issue practice notes in relation to any matter with respect to which rules may be made.
- (2) A practice note must be published in the Gazette.
- (2A) Sections 40 and 41 of the *Interpretation Act 1987* apply to a practice note in the same way as they apply to a statutory rule.
- (3) This section does not apply to proceedings in Class 1, 2, 3 or 4 of the Court's jurisdiction.

**77 Court may give directions in circumstances not covered by rules** (cf *Civil Procedure Act 2005*, section 16)

- (1) In relation to particular proceedings, the Court may give directions with respect to any aspect of practice or procedure for which the rules or practice notes do not provide.
- (2) Anything done in accordance with such a direction (including the commencing of proceedings and the taking of any step in proceedings) is taken to have been validly done.
- (3) This section does not apply to proceedings in Class 1, 2, 3 or 4 of the Court's jurisdiction.

**77A Forms** (cf *Civil Procedure Act 2005*, section 17)

- (1) The Chief Judge—
  - (a) may approve forms for documents to be used in connection with proceedings, and
  - (b) in the case of documents filed with a court, or issued by a court, by means of an ECM system within the meaning of the *Electronic Transactions Act 2000*, may approve the format in which such documents are to be filed or issued.
- (2) Copies of the approved forms are to be made available for public inspection at each registry of the Court and on the Court's internet website.
- (3) If a form is approved in relation to a document to be used in connection with proceedings, a document that is filed with or issued by the Court is to be in that form.

- (4) If a form is approved under section 17 of the *Civil Procedure Act 2005* in relation to the same matter as that for which a form is approved under subsection (1), the form to be used is the form approved under subsection (1).

## **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 [Government Sector Employment Act 2013](#)**

The office of a Commissioner is a statutory office and the provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to that 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) and to the terms of appointment, if a full-time Commissioner was, immediately before being appointed as full-time Commissioner—

- (a) a Public Service employee, or
- (b) a contributor to a superannuation scheme, or
- (c) a member of staff of a 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 a Public Service employee or member of staff of a statutory body,

the Commissioner—

(e) retains any rights accrued or accruing to the Commissioner as such an employee, contributor or member of staff, and

(f) may continue to contribute to any superannuation scheme to which the Commissioner was a contributor immediately before being appointed as Commissioner, and

(g) is entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if the Commissioner had continued to be such an employee, contributor or member of staff during the Commissioner's service as Commissioner, and—

(h) the Commissioner's service as Commissioner is taken to be service as an employee or member of staff for the purposes 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 is taken to be an employee or member of staff, and the Government of New South Wales is taken 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 employee or member of staff 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, a person employed in 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, a member of staff of a statutory body and except as provided in paragraph (a)—the age at which members of staff (being members of staff of the class to which that person belonged immediately before being appointed as a full-time Commissioner) 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) If a person ceases to be a full-time Commissioner, otherwise than pursuant to clause 7 (paragraph (b) excepted), the person is, if the person has not attained the retiring age, entitled to be employed, if, immediately before being appointed as full-time Commissioner, the person was—

(a) a person employed in the Public Service—in the Public Service, or

(b) a member of staff of a statutory body—as a member of staff of that body,

at a work level and salary not lower than the level at which the person was employed 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)

### Part 1 General

#### 1A Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts—

*Courts Legislation Amendment Act 2007*, but only in relation to the amendments made to this Act

*Courts and Crimes Legislation Further Amendment Act 2008*, but only in relation to the amendments made to this Act

*Planning Appeals Legislation Amendment Act 2010*

*Courts and Other Legislation Further Amendment Act 2011* (but only to the extent it amends this Act)

any other Act that amends this Act

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—
- to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### Part 2 Provisions consequent on enactment of other Acts

#### 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.

### **6 Provisions consequent on enactment of [Courts Legislation Amendment Act 2005](#)**

- (1) The amendments made to this Act by the [Courts Legislation Amendment Act 2005](#) extend to proceedings before the Court that were instituted or that the Court started to hear before the commencement of the amendments.
- (2) The power conferred on the Court in respect of a judgment or order by section 69B, as inserted by the [Courts Legislation Amendment Act 2005](#), extends to a judgment or order of the Court made or given before the commencement of that section.

### **7 Provisions consequent on enactment of [Courts Legislation Amendment Act 2006](#)**

An amendment made to this Act by the [Courts Legislation Amendment Act 2006](#) extends to proceedings before the Court that were instituted or that the Court started to hear before the commencement of that amendment but had not finally determined before that commencement.

**8 Provisions consequent on enactment of [Courts Legislation Amendment Act 2007](#)**

- (1) Section 32, as in force immediately before being repealed by Schedule 6[13] to the [Courts Legislation Amendment Act 2007](#), continues to apply to proceedings commenced in a Division of the Court before, but not yet finalised by, the date of the commencement of Schedule 6[13] as if it had not been repealed.
- (2) The amendments to this Act that are made by the [Courts Legislation Amendment Act 2007](#) do not affect the validity of any form in force before the commencement of Schedule 6[34] to that Act.

**9 Provisions consequent on enactment of [Courts and Crimes Legislation Further Amendment Act 2008](#)**

Any application or order that purports to have been made under section 40 before the commencement of Schedule 14[9] to the [Courts and Crimes Legislation Further Amendment Act 2008](#) is taken to have been validly made if it could have been validly made had that section, as amended, then been in force.

**10 Provisions consequent on enactment of [Planning Appeals Legislation Amendment Act 2010](#)**

Section 34AA as inserted by, and the amendment to section 34A made by, the [Planning Appeals Legislation Amendment Act 2010](#) do not apply to proceedings commenced in the Court (but not determined) before the commencement of section 34AA.

**11 Provisions consequent on enactment of [Courts and Other Legislation Amendment Act 2011](#)**

- (1) The amendment of section 17(d) by the amending Act does not affect the continued allocation of proceedings brought under repealed section 96 or 96AA of the [Environmental Planning and Assessment Act 1979](#) (as in force before the commencement of section 97AA of that Act) to Class 1 of the Court's jurisdiction.
- (2) Section 34A (as amended by the amending Act) extends to—
  - (a) appeals under section 97AA of the [Environmental Planning and Assessment Act 1979](#) lodged (but not yet heard) before the commencement of section 34A(1)(c1), and
  - (b) applications under section 14B of the [Trees \(Disputes Between Neighbours\) Act 2006](#) made (but not yet heard) before the commencement of section 34(1)(g).
- (3) Section 34A (as in force immediately before the repeal of section 34A(1)(a) and (b) by the amending Act) continues to apply in relation to appeals made under repealed section 96 or 96AA of the [Environmental Planning and Assessment Act 1979](#) (as in force before the commencement of section 97AA of that Act).

(4) In this clause—

**amending Act** means the *Courts and Other Legislation Amendment Act 2011*.

**12 Provisions consequent on enactment of *Courts and Other Legislation Amendment Act 2012***

(1) Section 13(6), as inserted by the amending Act, extends to a person who, immediately before that insertion, was an acting Commissioner.

(2) Section 63, as in force immediately before the amendment of that section by the amending Act, continues to apply in respect of proceedings commenced before that amendment.

(3) In this clause—

**amending Act** means the *Courts and Other Legislation Amendment Act 2012*.

**13 Provisions consequent on enactment of *Courts and Other Legislation Further Amendment Act 2013***

(1) Section 11(3B) extends to a person who, immediately before the insertion of that subsection by the amending Act, was an acting Judge.

(2) Section 12(2C) and (2D) extend to a person who, immediately before the insertion of those subsections by the amending Act, was a Commissioner.

(3) Section 13(7) extends to a person who, immediately before the insertion of that subsection by the amending Act, was an Acting Commissioner (whether full-time or part-time).

(4) In this clause—

**amending Act** means the *Courts and Other Legislation Further Amendment Act 2013*.

**14 Provision consequent on enactment of *Justice Portfolio Legislation (Miscellaneous Amendments) Act 2016***

Section 13(4), as in force before its substitution by the *Justice Portfolio Legislation (Miscellaneous Amendments) Act 2016*, continues to apply until the Statutory and Other Offices Remuneration Tribunal makes provision for the remuneration of acting Commissioners under the *Statutory and Other Offices Remuneration Act 1975*.