

**LAND AND ENVIRONMENT COURT RULES
(Amendment No. 6) 1991**

NEW SOUTH WALES



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1. These rules are made by Judges of the Court.
2. These rules shall commence on 1st July, 1991.
3. The Land and Environment Court Rules, 1980, are amended by the following rules—
 - (A) By adding after rule 1 (2) (a) in Part 3 the following:
 - (a1) for the filing of affidavits, points of claim, points of defence, statements of facts, statements of issues, interrogatories, or any other document which, in the Registrar's opinion, will aid the resolution of the matters in dispute between the parties;
 - (B) By adding after rule 1 (2) (m) in Part 3 the following:
 - (m1) that an extension of time be granted for the filing of an application to the Court in those matters where such an extension may be granted;
 - (C) By adding after rule 1 (2) (p) in Part 3 of the Rules the following:
 - (q) awarding costs where, in the Registrar's opinion, it is appropriate to make such an order.
 - (D) By adding after Rule 2 in Part 6 of the Rules the following:
 3. Notwithstanding Rule 2 the summons seeking an order pursuant to section 41 of the Land and Environment Court Act shall be accompanied by affidavits intended to be relied on by the prosecutor as establishing prima facie proof of the offence charged.

- (E) By adding after rule 10B in Part 12, Division 6, the following:

**DIVISION 6A—PROCEEDINGS IN CLASSES
1 AND 2**

Matters specific to Classes 1 and 2

1. At the first callover before the Registrar, issues, including questions of law, will be identified and settled. The parties will be required to identify the issues with precision and will not be permitted to expand those issues without leave.
2. At callover the Registrar will, where appropriate, refer proceedings to mediation or conciliation in accordance with the Practice Notes concerning mediation and conciliation.
3. Where proceedings are not referred to mediation or conciliation or where the proceedings remain unresolved following mediation or conciliation, they will be fixed for hearing. Where proceedings have been fixed for hearing the following requirements apply:
 - (i) All expert reports, plans, diagrams and photographs to be relied upon by the Applicant at the hearing must be served at least fourteen days prior to the date fixed for hearing. Any reports, plans, diagrams and photographs in reply must be served at least seven days prior to the date fixed for hearing.
 - (ii) A party shall give notice in writing to the Court and to the other party or parties of his or her desire to examine any expert whose report is to be relied upon:
 - (a) in respect of a report of an expert in chief, at least seven days prior to the hearing;
 - (b) in respect of a report of an expert filed in reply to a report filed in chief, at least three days prior to the hearing.

Cross-examination so requested shall only be allowed by leave of the presiding Judge or Assessor.

- (iii) Unless a point of law is raised at the callover referred to above, in accordance with subrule 1 it can only be raised in the proceedings by leave, by notice of motion.
- (iv) Subject to the foregoing it shall not be open to a party to raise any question of law in proceedings before an Assessor and the determination by the Assessor shall be made:
 - (a) on the issues in dispute between the parties, and
 - (b) on the merits of the case.
- (v) Notwithstanding subrules (iii) and (iv) where in proceedings heard by an Assessor a dispute arises as to whether there is power in the Court to grant the application, the Assessor shall refer the question of the Chief Judge pursuant to section 36 (5) of the **Land and Environment Court Act**.
- (vi) Where parties to a proceeding consent the Court may give its decision after a hearing limited to submissions based upon documentary materials lodged with the court.
- (vii) Except with the leave of the Court:
 - (a) oral expert evidence in chief of any expert is not admissible unless the subject is covered by the expert's report served in accordance with any relevant Practice Direction and Rules of Court and,
 - (b) the expert's report is not admissible unless it has been served in accordance with my relevant Practice Direction and Rules of Court.

DIVISION 6B—PROCEEDINGS IN CLASS 3**Rules specific to Class 3 compensation matters**

The following rules apply only to proceedings in Class 3 of the Court's jurisdiction relating to compensation sought for the resumption or acquisition of land pursuant to section 19 (e) of the Land and Environment Court Act.

1. On or before the first callover before the Registrar, the resuming authority shall file and serve points of assessment of compensation which shall include—
 - (1) the value of the land taken;
 - (2) the basis of the valuation;
 - (3) comparable sales, if any, upon which such valuation was based.
2. The Registrar may give directions to all parties to, inter alia, serve expert reports, which shall include—
 - (1) a full description of the bases of valuation.
 - (2) sales relied upon and full reconciliation of sales; and
 - (3) particulars of all costs, rates, estimates.
3. Before the matter is set down for hearing, the Registrar may give directions for the giving of notice of—
 - (1) questions of law raised in the valuation;
 - (2) the facts in issue arising from such reports; and
 - (3) contracts which are in issue or must be produced.
4. The Registrar may direct by consent, that the assessment of compensation be determined with or without oral submissions on the filed documents or affidavit evidence without a formal hearing.
5. The provisions of Part 22 of the **Supreme Court Rules “Offer of Compromise”** apply to all Compensation proceedings in Class 3.

- (F) By adding after rule 24 in Division 8 of Part 12 the following:

Written submissions

25. At least seven days prior to the date set for the commencement of the hearing the parties to the appeal shall file a written outline of their respective legal arguments and serve a copy on the other party or parties.

- (G) By adding after the end of Part 12 the following:

PART 12B—CLASS 4 PROCEEDINGS

Rules specific to Class 4 proceedings

1. At the first callover before the Registrar or any subsequent callover the Registrar shall determine whether the evidence shall be given in affidavit form or otherwise and shall give directions accordingly, including, where necessary, requiring the filing of points of claim and points of defence.
2. Where directions have been given for evidence to be in affidavit form, at the final callover before the hearing, parties must nominate in writing any objections to the affidavit material. Except with the leave of the Court no objection shall be made to an affidavit unless prior notice has been given at the callover.

- (H) By adding after rule 6 in Part 13 of the Rules the following:

7. The Court, may, on terms, set aside or vary an order—
 - (a) where the order has been made in the absence of a party, whether or not the absent party is in default of appearance or otherwise in default, and whether or not the absent party had notice of the motion for the order;
 - (b) where notice of motion for the setting aside or variation is filed before filing of the order;
 - (c) the order was obtained by fraud;
 - (d) the order is interlocutory;

- (e) the order does not reflect the intention of the Court; or
- (f) the party in whose favour the order was made consents.

J. S. Cripps, Chief Judge

N. R. Bignold, Judge

B. L. Stein, Judge

N. A. Hemmings, Judge

EXPLANATORY NOTE

These rule changes are designed to achieve the following:

- (a) to clarify the Registrar's powers in relation to certain matters and to give the Registrar additional powers such as the awarding of costs in appropriate cases;
 - (b) to provide for procedural matters in Class 5 of the Court's jurisdiction;
 - (c) to specify the procedure in relation to Classes 1 and 2 of the Court's jurisdiction particularly with relation to the early identification of issues, the filing of expert reports and the cross-examination of experts.
 - (d) to provide a specific procedure for Class 3 compensation matters in the Court and to provide for the application of offers of compromise in relation to these matters;
 - (e) providing for written submissions in Section 56A appeals;
 - (f) to provide for the giving of directions in relation to proceedings in Class 4 of the Court's jurisdiction;
 - (g) to allow the Court to set aside orders it has made in certain circumstances
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