

**LAND AND ENVIRONMENT COURT ACT, 1979,  
No. 204**

**New South Wales**



ANNO VICESIMO OCTAVO

**ELIZABETHÆ II REGINÆ**

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**Act No. 204, 1979.**

**An Act to constitute the Land and Environment Court and to  
make provision with respect to its jurisdiction. [Assented to,  
21st December, 1979.]**

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*Land and Environment Court.*

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

**PART I.****PRELIMINARY.**

**Short title.**     **1.** This Act may be cited as the "Land and Environment Court Act, 1979".

**Commence-  
ment.**         **2.** (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.

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3. This Act is divided as follows :—

Arrange-  
ment.

PART I.—PRELIMINARY—*ss.* 1–4.

PART II.—CONSTITUTION OF THE COURT—*ss.* 5–15.

DIVISION 1.—*Constitution—ss.* 5, 6.

DIVISION 2.—*The Judges—ss.* 7–11.

DIVISION 3.—*Assessors—ss.* 12–14.

DIVISION 4.—*Other officers of the Court—s.* 15.

PART III.—JURISDICTION OF THE COURT—*ss.* 16–25.

DIVISION 1.—*General—ss.* 16–23.

DIVISION 2.—*Claims for compensation—ss.* 24, 25.

PART IV.—EXERCISE OF JURISDICTION—*ss.* 26–55.

DIVISION 1.—*Divisions of the Court—s.* 26.

DIVISION 2.—*Distribution of business among the Divisions of the Court—ss.* 27, 28.

DIVISION 3.—*Organisation generally—ss.* 29–33.

DIVISION 4.—*Special provisions respecting Class 1, 2 or 3 proceedings—ss.* 34–40.

DIVISION 5.—*Special provisions respecting Class 5 proceedings (summary jurisdiction)—ss.* 41–55.

PART V.—APPEALS FROM THE COURT—*ss.* 56–61.

DIVISION 1.—*General—s.* 56.

DIVISION 2.—*Class 1–4 proceedings—ss.* 57–61.

PART VI.—MISCELLANEOUS—*ss.* 62–78.

SCHEDULE 1.—THE ASSESSORS.

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Inter-  
pretation.

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

“assessor” means a person appointed as a conciliation and technical assessor of the Court under Division 3 of Part II;

“Chief Judge” means the Chief Judge of the Court;

“Court” means the Land and Environment Court constituted under this Act;

“Division” means a Division of the Court specified in section 26;

“functions” includes powers, authorities and duties;

“Judge” means a Judge of the Court;

“registrar” means the registrar of the Court;

“regulations” means regulations for the time being in force under this Act;

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

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

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**PART II.**

**CONSTITUTION OF THE COURT.**

**DIVISION 1.—*Constitution.***

**Constitution**  
of the  
Court.

**5.** (1) There is hereby constituted a superior court of record to be known as the Land and Environment Court.

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(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. (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. Single Judge to 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 assessors or other officers of the Court.

DIVISION 2.—*The Judges.*

7. 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. Composition of the Court.

8. (1) The Governor may, by commission under the public seal of the State, appoint any qualified person to be a Judge. Appointment and qualification of Judge.

(2) A person is qualified to be appointed as a Judge if he is—

- (a) a Judge of the Supreme Court;
- (b) a member of the Industrial Commission of New South Wales;
- (c) a barrister of not less than 5 years' standing;
- (d) a solicitor of not less than 7 years' standing; or
- (e) a barrister or a solicitor of less than 5 years' or 7 years' standing respectively, where at all times during a continuous period of not less than 7 years he was on the

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roll of solicitors when he was not on the roll of barristers  
or on the roll of barristers when he was not on the roll  
of solicitors,

and has not attained the age of 70 years.

Tenure,  
etc.

**9.** (1) Subject to subsection (3), the commission of each Judge shall be, continue and remain in force during his good behaviour.

(2) Each Judge shall have the same rank, title, status and precedence and 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), and shall be removable from office in the same manner only as a Judge of the Supreme Court is by law liable to be removed from his office.

(3) Each Judge shall retire on the day on which he attains the age of 70 years, unless he is granted retiring leave, in which case he shall retire on the expiration of that leave.

Acting  
Chief  
Judge.

**10.** (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 his duties.

(2) While holding office, the Acting Chief Judge shall have and may exercise the functions of the Chief Judge.

Acting  
Judges.

**11.** (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 6 months to be specified in the commission.

(2) In subsection (1), "qualified person" means a person qualified for appointment as a Judge.

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(3) The person so appointed shall, for the time and subject to the conditions or limitations specified in his 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.

**DIVISION 3.—Assessors.**

**12.** (1) The Governor may appoint any qualified person to be a conciliation and technical assessor of the Court. Appointment of assessors.

(2) A person is qualified to be appointed as an assessor if he 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; or
- (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.

(3) One of the assessors may, by the instrument of his appointment or by a subsequent instrument, be appointed to be senior assessor.

(4) Schedule 1 has effect in respect of the assessors.

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**Acting  
assessors.**

**13.** (1) The Governor may appoint any qualified person to act as a conciliation and technical assessor of the Court for a time not exceeding 12 months to be specified in the instrument of his appointment.

(2) In subsection (1), "qualified person" means a person qualified for appointment as an assessor.

(3) The person so appointed shall, for the time and subject to the conditions or limitations specified in the instrument of his appointment, have and may exercise the functions of an assessor and shall, for the purposes of this or any other Act, be deemed to be an assessor.

(4) An acting assessor is entitled to receive such remuneration and allowances as the Governor may determine.

(5) The provisions of the Public Service Act, 1979, do not apply to or in respect of the appointment of an acting assessor, and an acting assessor is not, in his capacity as such, subject to those provisions during his term of office.

**Disqualifi-  
cation of  
assessors.**

**14.** (1) Where an assessor—

- (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 he is exercising any functions conferred or imposed on him by or under this Act or the rules, then—

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

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

DIVISION 4.—*Other officers of the Court.*

15. (1) A registrar, an assistant registrar and such other officers of the Court as may be necessary for the proper administration of this Act and the rules may be appointed and employed under and subject to the Public Service Act, 1979. Appointment of other officers.

(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.

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PART III.

JURISDICTION OF THE COURT.

DIVISION 1.—*General.*

16. (1) The Court shall have the jurisdiction vested in it by or under this or any other Act. Jurisdiction of the Court generally.

(2) For the purposes of this Act, the jurisdiction of the Court is divided into 5 classes, as provided in this Division.

17. The Court has jurisdiction (referred to in this Act as "Class 1" of its jurisdiction) to hear and dispose of— Class 1—environmental planning and protection appeals.

(a) appeals under section 26 of the Clean Air Act, 1961;

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- (b) objections and appeals under sections 13 and 25 of the Clean Waters Act, 1970;
- (c) appeals under sections 68 and 69 of the Noise Control Act, 1975;
- (d) appeals, objections and applications under sections 97, 98, 99, 102 and 103 (4) of the Environmental Planning and Assessment Act, 1979; and
- (e) 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.

Class 2—  
local  
government  
and mis-  
cellaneous  
appeals.

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

- (a) appeals, objections or references under sections 270JB, 288C (5), 289 (m), 317A, 317B (5), 317F, 317L, 317M (2), 341, 495A (2), 510 (3) and 510A (4) of the Local Government Act, 1919;
- (b) appeals under section 3 (1) (a) of the Local Government (Regulation of Flats) Act, 1955;
- (c) appeals under section 40 (4) of the Strata Titles Act, 1973;
- (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); and
- (e) appeals under section 120 of the Heritage Act, 1977.

Class 3  
—land  
tenure,  
valuation,  
rating  
and com-  
pensation  
matters.

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

- (a) appeals, references or other matters that may be heard and disposed of by the Court under the Crown Lands Consolidation Act, 1913, the Closer Settlement Acts, the Western Lands Act, 1901, or the Public Roads Act 1902;

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- (b) objections to valuations referred to the Court under the Valuation of Land Act, 1916;
- (c) objections to valuations under Schedule 3 to the Local Government Act, 1919, except where the unimproved capital value of the land or ratable property does not exceed \$40,000;
- (d) appeals under section 133 of the Local Government Act, 1919, except where the unimproved capital value of the land or ratable property does not exceed \$10,000;
- (e) claims for compensation by reason of the acquisition of land, referred to in Division 2;
- (f) proceedings under section 10 of the Growth Centres (Land Acquisition) Act, 1974;
- (g) proceedings to recover compensation payable pursuant to section 103 (6) of the Environmental Planning and Assessment Act, 1979; and
- (h) any other appeals, references or other matters which an Act provides may be heard and disposed of by the Court, being appeals, references or other matters that are not referred to in any other section of this Part.

**20.** (1) The Court has jurisdiction (referred to in this Act as "Class 4" of its jurisdiction) to hear and dispose of--

- (a) proceedings under section 153 of the Heritage Act, 1977;
- (b) proceedings referred to in section 35 of the Environmental Planning and Assessment Act, 1979;
- (c) proceedings under section 123 of the Environmental Planning and Assessment Act, 1979; and
- (d) proceedings referred to in subsection (2).

Class 4—  
environmental  
planning  
and  
protection  
civil enforce-  
ment.

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(2) The Court has the same civil jurisdiction as the Supreme Court would, but for section 71, have to hear and dispose of proceedings—

- (a) to enforce any right, obligation or duty conferred or imposed by a planning or environmental law;
- (b) to review, or command, the exercise of a function conferred or imposed by a planning or environmental law; and
- (c) to make declarations of right in relation to any such right, obligation or duty or the exercise of any such function.

(3) For the purposes of subsection (2), a planning or environmental law is—

- (a) Part XI or XII of the Local Government Act, 1919, the Clean Air Act, 1961, the Clean Waters Act, 1970, the Waste Disposal Act, 1970, the Noise Control Act, 1975, the Heritage Act, 1977, or the Environmental Planning and Assessment Act, 1979; or
- (b) any statutory instrument made thereunder or for the purposes thereof.

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

Class 5—  
environ-  
mental  
planning  
and  
protection  
summary  
enforce-  
ment.

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

- (a) proceedings under section 33 of the Clean Air Act, 1961;
- (b) proceedings under section 33 of the Clean Waters Act, 1970;

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- (c) proceedings under section 55 of the Waste Disposal Act, 1970;
- (d) proceedings under section 82 of the Noise Control Act, 1975;
- (e) proceedings under section 158 of the Heritage Act, 1977;
- (f) proceedings under section 127 of the Environmental Planning and Assessment Act, 1979; and
- (g) any other proceedings which an Act provides may be taken before the Court in its summary jurisdiction.

**22.** 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 him 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.

Deter-  
mination  
of matter  
completely  
and  
finally.

**23.** 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.

Making of  
orders.

DIVISION 2.—*Claims for compensation.*

**24.** (1) Where—

- (a) a claim is made for compensation by reason of the acquisition of land for public purposes under—
  - (i) the Public Works Act, 1912; or
  - (ii) any other Act which makes provision for the resumption or compulsory acquisition of land (other than the Crown Lands Consolidation Act, 1913, or the Closer Settlement Acts); and

Claim for  
compensa-  
tion in  
resumption  
cases.

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(b) no agreement is reached between the claimant and the resuming or constructing authority,

the claim shall 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) Notwithstanding anything in the Public Works Act, 1912, the compensation claimed shall not in any case be settled by arbitrators, but in every case where land is taken or acquired, either by Gazette notification or by notice to the parties, any claim as to the amount of compensation shall be heard and disposed of by the Court and not otherwise.

Deter-  
mination  
of estate,  
interest  
and  
amount.

25. (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 he 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 he is entitled.

(3) The proviso to section 126 (1) of the Public Works Act, 1912, does not apply to or in respect of a person in respect of whom the Court has made an order under subsection (2).

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PART IV.

EXERCISE OF JURISDICTION.

DIVISION 1.—*Divisions of the Court.*

26. For the more convenient despatch of business, the Court shall be divided into—

Divisions  
of the  
Court.

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

DIVISION 2.—*Distribution of business among the Divisions of the Court.*

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

Arrange-  
ments for  
despatch  
of  
business.

28. (1) Proceedings in Class 1 of the Court's jurisdiction shall be assigned to the Environmental Planning and Protection Appeals Division.

Distribu-  
tion of  
business  
among the  
Divisions.

(2) Proceedings in Class 2 of the Court's jurisdiction shall be assigned to the Local Government and Miscellaneous Appeals Division.

(3) Proceedings in Class 3 of the Court's jurisdiction shall be assigned to the Land Tenure, Valuation, Rating and Compensation Division.

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(4) Proceedings in Class 4 of the Court's jurisdiction shall be assigned to the Environmental Planning and Protection Civil Enforcement Division.

(5) Proceedings in Class 5 of the Court's jurisdiction shall be assigned to the Environmental Planning and Protection Summary Enforcement Division.

DIVISION 3.—*Organisation generally.*

Sittings  
of the  
Court.

**29.** (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.

Arrange-  
ment of  
business  
of the  
Court.

**30.** (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, assessor or assessors who is or are to exercise the Court's jurisdiction in particular matters or classes of matters; and
- (b) the assessor or assessors who is or are to exercise any other function under this Act.

(2) In determining the assessor or assessors 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 assessors and to the nature of the matters involved in the proceedings.

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(3) Where the hearing of any proceedings has been commenced or completed by 2 or more assessors in accordance with section 36 but, before the proceedings have been disposed of, one of those assessors has ceased to be an assessor 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 assessor or assessors; 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 assessor or assessors rehearing the proceedings may, for the purposes of those proceedings, have regard to any record of the proceedings before the assessors referred to in that subsection, including a record of any evidence taken in the proceedings.

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

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

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

**33.** (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 assessors. Exercise of jurisdiction in the Divisions.

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

**B**

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DIVISION 4.—*Special provisions respecting Class 1, 2 or 3 proceedings.*

Preliminary conferences.

**34.** (1) Where proceedings are pending in Class 1 or 2 of the Court's jurisdiction, the registrar shall, unless otherwise directed by the Chief Judge, arrange a conference between the parties to the proceedings or their representatives, to be presided over by a single assessor.

(2) The registrar shall notify the parties or their representatives of the time and place fixed by him for the conference.

(3) Where—

(a) at or after a conference, agreement is reached between the parties or their representatives as to the terms of a decision in the proceedings that would be acceptable to the parties (being a decision that the Court could have made in the proper exercise of its functions)—the assessor shall dispose of the proceedings in accordance with the decision; or

(b) no such agreement is reached—

(i) unless the parties consent under subparagraph (ii)—the assessor shall make a written report to the Court setting out that fact and also setting out his views as to the issues in dispute between the parties to the proceedings; or

(ii) if the parties consent—the assessor may dispose of the proceedings, whether with or without further hearing.

(4) Subject to this Act and the rules, the assessor disposing of, or hearing and disposing of, proceedings pursuant to subsection (3) (a) or (3) (b) (ii) shall have and may exercise the functions of the Court.

(5) The decision of the assessor under subsection (3) (a) or (3) (b) (ii) shall be deemed to be the decision of the Court.

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(6) Where a report is made to the Court under subsection (3) (b) (i), the registrar shall, as soon as practicable, furnish a copy of the report to each of the parties.

(7) Evidence of anything said or admission made in the course of a conference shall not, unless the parties consent, be admissible at the hearing of the proceedings.

(8) An assessor who has presided over a conference under this section in relation to any proceedings is disqualified from further participation in those proceedings, unless the parties otherwise agree.

**35.** (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 assessor. <sup>Inquiries by assessors.</sup>

(2) The assessor making an inquiry pursuant to this section shall make a report to the Court.

(3) Where a report is made to the Court under subsection (2), the registrar shall, as soon as practicable, furnish a copy of the report to each of the parties.

(4) The Court may, with the consent of the parties, adopt any findings or observations set out in a report under subsection (2).

(5) An assessor, in making an inquiry pursuant to this section, shall have and may exercise the functions of the Court under section 57 (paragraphs (d) and (e) excepted).

(6) An assessor 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.

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Delegation  
to assessors.

**36.** (1) Where proceedings are pending in Class 1, 2 or 3 of the Court's jurisdiction, the Chief Judge may, of his own motion or on the request of a party, direct that the proceedings be heard and disposed of by one or more assessors.

(2) Subject to this Act and the rules, the assessor or assessors 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 assessor or assessors 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 assessors—

- (a) if the senior assessor is one of the assessors hearing and disposing of the proceedings—he shall preside at the hearing of the proceedings;
- (b) if the senior assessor is not one of those assessors—one of those assessors directed to do so by the Chief Judge shall preside at the hearing; and
- (c) if the assessors 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 assessor presiding.

(5) The assessor or assessors may, of his or their own motion or on the request of a party, refer a question of law (including the question whether a particular question is one of law) raised in the proceedings to the Chief Judge for determination by a Judge.

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(6) Where a question is referred to the Chief Judge under subsection (5)—

- (a) subject to paragraphs (c) and (d), the assessor or assessors may continue to hear the proceedings unless the Chief Judge otherwise directs;
- (b) a Judge shall determine the question and then remit his determination to the assessor or assessors;
- (c) the assessor or assessors shall not make an order or decision to which the question is relevant until a Judge has determined the question; and
- (d) the assessor or assessors shall not make an order or determination that is inconsistent with the determination of the question by a Judge.

(7) A decision of a Judge that a question referred under subsection (5) need not be determined because it is not relevant to the particular proceedings shall, for the purposes of subsection (6), be deemed to be his determination of the question.

**37.** (1) Where proceedings are pending in Class 1, 2 or 3 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 assessors. Assessors sitting with a Judge.

(2) An assessor 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.

**38.** (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. Procedure.

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(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 assessor or assessors directed under section 36 to hear and dispose of **proceedings**.

Powers of  
Court on  
appeals.

**39.** (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.

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(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 consent authority within the meaning of the Environmental Planning and Assessment Act, 1979, and that 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.

(7) The functions of the Court under this section are in addition to and not in derogation from any other functions of the Court.

**40.** (1) Where on any appeal under section 97 or 98 of the Environmental Planning and Assessment Act, 1979, or section 317L or 341 of the Local Government Act, 1919, the Court is satisfied that it is necessary, for the drainage of the land to which the appeal relates or the disposal of that drainage, that a drainage easement should be provided over other land, the Court may, by its decision, in addition to exercising any other of its functions

Additional powers of Court—provision of easements. cf. No. 41, 1919.s.

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require the applicant to pay to a council (within the meaning of the Local Government Act, 1919), or to give to such a council security to its satisfaction for, such sum as may be determined by the Court as being the cost of acquisition by the council of such an easement specified by the Court in its decision and the cost of any works, so specified, within the easement.

(2) Before making any decision under subsection (1), the Court shall notify the owner of any land over which it appears to the Court that it may be necessary for an easement to be provided, or on which it may be necessary for any works to be constructed, as referred to in subsection (1), and that owner may object to the provision of the easement and the construction of the works.

(3) Each such objector is entitled to appear before the Court in support of his objections and the Court shall consider all such objections.

**DIVISION 5.—*Special provisions respecting Class 5 proceedings (summary jurisdiction).***

Orders for appearance or apprehension of defendants. cf. No. 72, 1967, s. 4.

**41.** (1) Upon an application being made by any person (in this Division referred to as the “prosecutor”) in accordance with the rules, a Judge shall make an order—

- (a) ordering any person alleged in the application to have committed an offence punishable in the Court in its summary jurisdiction to appear at a time and place specified in the order to answer to the offence charged in the order; or
- (b) ordering the apprehension of any such person for the purpose of his being brought before a Judge to answer to the offence charged in the order.

(2) An order under subsection (1) may be made *ex parte*.

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(3) An order in respect of an offence alleged to have been committed by a person may be made under subsection (1) (b) whether or not an order in respect of that offence has been made under subsection (1) (a).

(4) An order under subsection (1) (b)—

- (a) shall be addressed to all members of the police force;
- (b) may be addressed to any other person specified in the order; and
- (c) may be executed by any member of the police force or by any person to whom it is addressed at any place at which, had the offence specified in the order been committed at that place, that offence would be triable in the Court.

**42.** (1) Where any person apprehended pursuant to an order made under section 41 (1) (b), or by reason of his failure to comply with the conditions of a recognizance previously entered into pursuant to paragraph (b), is brought before a Judge, the Judge shall—

Powers of Judge where defendant apprehended. cf. No. 72, 1967, s. 5.

- (a) by warrant commit him to prison and order him to be there detained until he is brought before a Judge at a time and place specified in the order to answer to the offence with which he is charged; or
- (b) order that he be discharged upon his entering into a recognizance, with or without sureties, as the Judge may direct, conditioned for the appearance of that person at such time and place as may be specified in the order to answer to the offence with which he is charged.

(2) The registrar shall, as soon as is practicable after the making of any order under subsection (1), cause notice of the order to be given to the prosecutor.

(3) Failure to comply with the conditions of a recognizance entered into pursuant to subsection (1) (b) is punishable as contempt of the Court.

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Defects and  
variances  
in process.  
cf. No. 72,  
1967, s. 6  
(1).

**43.** No objection shall be taken or allowed to any application referred to in, or to any order or warrant made or issued under, section 41 or 42 by reason of any alleged defect in it in substance or in form or by reason of any variance between it and the evidence adduced at the proceedings for the offence charged in the application or order.

Adjourn-  
ment  
consequent  
on variance.  
cf. No. 72,  
1967, s.  
6 (2).

**44.** The Judge hearing the proceedings for any offence referred to in section 43 shall—

(a) where it appears to him that any variance between any such application or order and the evidence adduced in respect of the offence charged in the application or order is such that the defendant has been misled by the variance; and

(b) the defendant applies for an adjournment of the hearing, adjourn the hearing.

How  
defendant  
dealt  
with  
during  
adjourn-  
ment.  
cf. No. 72,  
1967, s. 7.

**45.** Where the hearing of the proceedings for an offence punishable in the summary jurisdiction of the Court is adjourned, whether under section 44 or otherwise, the Judge before whom the proceedings are taken may—

(a) by warrant commit the defendant to prison and order him to be there detained until he is brought before the Judge at a time and place specified in the order to answer further to the offence with which he is charged; or

(b) order that the defendant be discharged upon his entering into a recognizance, with or without sureties, as the Judge may direct, conditioned for the appearance of the defendant at such time and place as may be specified in the order to answer further to the offence with which he is charged.

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**46.** Subject to this Act and the rules, the practice and procedure of the Supreme Court in relation to the taking and receiving of evidence at the trial of accused persons on indictment apply to the taking and receiving of evidence in proceedings in the summary jurisdiction of the Court.

Practice and procedure for taking and receiving evidence.  
cf. No. 72, 1967, s. 8.

**47.** If, upon the day and at the time and place appointed by an order made in respect of a defendant under section 41 (1) (a), or under section 42 (1), the prosecutor does not appear in person or by his counsel or attorney, but the defendant attends in accordance with the order and, in the case of an order under section 42 (1), the prosecutor has received notice of the order, the Judge shall dismiss the charge unless for some reason he thinks it proper to adjourn the hearing.

Procedure where prosecutor does not but defendant does appear.  
cf. No. 72, 1967, s. 9.

**48.** If, upon the day and at the time and place appointed by an order made in respect of a defendant under section 41 (1) (a), the defendant does not appear, then upon proof of the due service, in accordance with the rules, of the order upon him at a reasonable time before the time appointed for his appearance the Judge may either—

Procedure where defendant does not obey order to appear.  
cf. No. 72, 1967, s. 10.

- (a) proceed to hear and determine the case and adjudicate thereon in the absence of the defendant; or
- (b) adjourn the hearing and make an order for the apprehension of the defendant as provided in section 41 (1) (b).

**49.** If, upon the day and at the time and place to which the hearing or further hearing of a charge has been adjourned, either or both of the parties does not, or do not, appear in person or by his or their counsel or attorneys, the Judge then and there present may proceed with the hearing as if that party or those parties were present, and in a case where it is the prosecutor who does not so appear may dismiss the charge with or without costs.

Procedure where either party does not appear at adjourned hearing.  
cf. No. 72, 1967, s. 11.

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Where both parties appear Judge to hear and determine the case.  
cf. No. 72, 1967, s. 12.

**50.** If, upon the day and at the time and place appointed for the hearing or to which the hearing or further hearing has been adjourned, both parties appear in person or by their respective counsel or attorneys, the Judge shall proceed to hear the case.

Provision for hearing cases together.  
cf. No. 72, 1967, s. 13.

**51.** (1) Where a defendant is charged with 2 or more offences punishable in the summary jurisdiction of the Court, whether of a like or different nature, the Judge shall have jurisdiction to hear and determine the charges together.

(2) Where 2 or more defendants are separately charged with any such offences, whether of a like or different nature, alleged to have been committed at the same time and place, the Judge shall have jurisdiction to hear and determine the charges together.

Judge may order payment of costs.  
cf. No. 72, 1967, s. 14.

**52.** (1) Where a Judge—

- (a) convicts any person of an offence punishable in the summary jurisdiction of the Court;
- (b) makes an order dismissing the charge for any such offence; or
- (c) makes an order under section 556A (1) of the Crimes Act, 1900, in respect of any such offence,

he may, in and by the conviction or order, order the defendant, in the case of a conviction or order referred to in paragraph (a) or (c), to pay to the prosecutor, or, in the case of an order referred to in paragraph (b), order the prosecutor to pay to the defendant, such costs as to the Judge seem just and reasonable.

(2) The amount so ordered to be paid for costs shall in all cases be specified in the conviction or order.

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**53.** (1) The payment of any moneys ordered by a Judge exercising summary jurisdiction under this Act to be paid as a penalty may be enforced, subject to any order in respect thereof made under section 54, as if the order for payment were an order of the Supreme Court, made under the Supreme Court Act, 1970, for payment of the moneys to Her Majesty.

Enforcement of fines and orders for payment of moneys.  
cf. No. 72, 1967, s. 15.

(2) The payment of any moneys ordered by a Judge exercising summary jurisdiction under this Act to be paid for costs may be enforced, subject to any order made in respect thereof under section 54, as if the order for payment were an order of the Supreme Court made under the Supreme Court Act, 1970, for the payment of the moneys to the person to whom the costs are ordered to be paid.

**54.** (1) The Judge by whose conviction or order any moneys are ordered to be paid may in and by such conviction or order do all or any of the following things, namely :—

Payment by instalments, or security taken for payment of money.  
cf. No. 72, 1967, s. 16.

- (a) allow time for the payment of the moneys;
- (b) direct payment to be made of the moneys by instalments;
- (c) direct that the person liable to pay the moneys may give to the satisfaction of the Judge security, with or without a surety or sureties, for the payment of the moneys or of any instalment thereof.

(2) A security referred to in subsection (1) (c) shall be in such form and may be enforced in such manner as may be prescribed by the rules.

(3) Where any such moneys are directed to be paid by instalments, and default is made in the payment of any one instalment, the same proceedings may be taken as if default has been made in payment of all the instalments then remaining unpaid.

(4) A Judge directing the payment of any such moneys or of an instalment of any such moneys, may direct the payment to be made at such time or times, and in such place or places,

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and to such person or persons, as may be specified by the Judge in the direction and every person to whom any such moneys or instalment are or is paid, if he is not the person entitled to enforce the payment, shall, as soon as is practicable, account for and pay the moneys or instalment to that person.

Aiding,  
abetting,  
counselling  
or procuring  
the commis-  
sion of  
offences  
cf. No. 72,  
1967, s. 17.

**55.** A person who aids, abets, counsels or procures the commission by another person of an offence punishable in the summary jurisdiction of the Court is guilty of the like offence and may be tried at the same time as or before or after the trial of the principal offender.

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PART V.

APPEALS FROM THE COURT.

DIVISION 1.—*General.*

Nature of  
decision  
of the  
Court.

**56.** Except as provided—

(a) by Division 2, in relation to proceedings in Class 1, 2, 3 or 4 of the Court's jurisdiction; or

(b) by the Criminal Appeal Act, 1912, in relation to proceedings in Class 5 of the Court's jurisdiction,

a decision of the Court shall be final and conclusive.

DIVISION 2.—*Class 1-4 proceedings.*

Class 1, 2  
and 3 pro-  
ceedings—  
appeals.

**57.** (1) A party to proceedings in Class 1, 2 or 3 of the Court's jurisdiction may appeal to the Supreme Court against an order or decision of the Court on a question of law.

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(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.

**58.** (1) Where a party to proceedings in Class 4 of the Court's jurisdiction is dissatisfied with an order or decision of the Court, the party may appeal to the Supreme Court against the order or decision. Class 4 proceedings—appeals.

(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.

**59.** 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. Suspension of operation of order, etc.

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**Termination of suspension.**      **60.** Where, under section 59, 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.

**Rules of Supreme Court.**      **61.** An appeal shall be made under this Division in such manner, and be subject to such conditions, as are prescribed by rules of court of the Supreme Court.

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**PART VI.**

**MISCELLANEOUS.**

**Proceedings in open court.**      **62.** All proceedings before the Court shall, unless the Court otherwise orders, be heard in open court.

**Right of appearance.**      **63.** A person entitled to appear before the Court may appear in person, or by a barrister or solicitor, or (except in proceedings in Class 5 of the Court's jurisdiction) by an agent authorised by the person in writing.

**Appearance by the Crown.**      **64.** (1) The Crown may appear before the Court in any case in which the public interest or any right or interest of the Crown may be affected or involved.

(2) Without affecting the generality of subsection (1), the Attorney General or the Minister for Planning and Environment, or both, may, at any stage of any proceedings before the Court, intervene by counsel, solicitor or agent, and may examine witnesses and address the Court with respect to matters relevant to the proceedings.

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**65.** All process issuing out of the Court shall be in the form prescribed by the rules and be signed by the officer issuing the process and marked with the Court office stamp.

Issue of process.

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

Judicial notice of certain signatures.

**67.** The Court shall have and may exercise the functions vested in the Supreme Court in respect of the following matters :—

Powers of the Court as to the production of evidence.

- (a) compelling the attendance of witnesses and examining them on oath, affirmation or declaration;
- (b) compelling the production, discovery and inspection of books, records, documents and other papers;
- (c) compelling witnesses to answer questions which the Court considers to be relevant in any proceeding before it;
- (d) the apprehension, detention and punishment of persons guilty of contempt, or of disobedience to any order made by the Court, or of any process issuing out of the Court; and
- (e) directing witnesses to be prosecuted for perjury.

**68.** (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.

Amendments and irregularities. cf. No. 10, 1921, s. 16.

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cf. No. 52,  
1970, s.  
81 (1).

(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.

cf. No. 52,  
1970, s.  
81 (3).

(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.

Costs.

**69.** (1) In this section, “costs” includes—

- (a) costs of or incidental to proceedings in the Court;
- (b) in the case of an appeal to the Court, the costs of or incidental to the proceedings giving rise to the appeal, as well as the costs of or incidental to the appeal; and
- (c) in the case of proceedings transferred or remitted to the Court, the costs of or incidental to the whole proceedings, both before and after the transfer or remittal.

(2) Subject to the rules and subject to any other Act—

- (a) costs are in the discretion of the Court;

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- (b) the Court may determine by whom and to what extent costs are to be paid; and
- (c) the Court may order costs to be taxed or otherwise ascertained on a party and party basis or on any other basis.

(3) The Court may order a party instituting proceedings in the Court to give security for the payment of costs that may be awarded against him.

(4) The security referred to in subsection (3) shall be of such amount, and given at such time and in such manner and form, as the Court directs.

(5) The Court may reduce or increase the amount of security ordered under subsection (3) to be given and may vary the time at which, or the manner or form in which, the security is to be given.

(6) If security, or further security, is not given in accordance with an order under this section, the Court may order that the proceedings be dismissed.

(7) The provisions of this section relating to security do not affect the operation of any provision made by or under any other Act or by the rules for or in relation to the furnishing of security.

(8) An assessor or assessors may not make an order under this section except with the concurrence of the Chief Judge.

(9) This section does not apply to proceedings in the summary jurisdiction of the Court.

70. (1) Where any person (in this subsection called the vexatious litigant) habitually and persistently and without any reasonable ground institutes vexatious legal proceedings in the Court, whether against the same person or against different persons, the Court may, on application by the Attorney General, order that

Vexatious  
litigant.  
cf. No. 52,  
1970, s.  
84.

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the vexatious litigant shall not, without the leave of the Court, institute any legal proceedings in the Court and that any legal proceedings instituted by the vexatious litigant in the Court before the making of the order shall not be continued by him without the leave of the Court.

(2) Where any person (in this subsection called the vexatious litigant) habitually and persistently and without any reasonable ground institutes vexatious legal proceedings against any person (in this subsection called the person aggrieved) in the Court, the Court may, on application by the person aggrieved, order that the vexatious litigant shall not, without the leave of the Court, institute any legal proceedings against the person aggrieved in the Court and that any legal proceedings instituted by the vexatious litigant against the person aggrieved in the Court before the making of the order shall not be continued by him without the leave of the Court.

(3) The Court may, from time to time, rescind or vary any order made by it under subsection (1) or (2).

(4) Where the Court has made an order under subsection (1) or (2) against any person, the Court shall not give him leave to institute or continue any legal proceedings unless the Court is satisfied that the proceedings are not an abuse of process and that there is prima facie ground for the proceedings.

**Proceedings  
in Supreme  
Court.**

**71.** Subject to section 58, proceedings of the kind referred to in section 20 (1) (d) may not be commenced or entertained in the Supreme Court.

**Transfer of  
proceedings  
from  
Supreme  
Court.**

**72.** 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.

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73. Where the Supreme Court makes an order under section 72 for the transfer of any proceedings to the Court— **Procedure on transfer.**

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

74. (1) The Chief Judge and any 2 other Judges may make **Rules.** 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;

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- (b) the joinder of causes of action, the consolidation of proceedings, and the joinder, misjoinder and non-joinder of parties;
- (c) the means for, and the practice and procedure to be followed in, the enforcement and execution of decisions, judgments and orders of the Court;
- (d) the furnishing of security;
- (e) the costs of proceedings in the Court; and
- (f) all matters that by this Act are required or permitted to be prescribed by rules or that are necessary or convenient to be prescribed by rules for carrying out or giving effect to this Act.

(2) Without affecting the generality of subsection (1), rules may be made, in relation to matters within the jurisdiction of the Court, for or with respect to matters for or with respect to which rules may be made under the Supreme Court Act, 1970, including rules that may be so made by virtue of the Supreme Court (Summary Jurisdiction) Act, 1967, or any other Act.

(3) The rules may, with any adaptations specified therein, adopt by reference any rules made under the Supreme Court Act, 1970.

(4) Rules may be made so as to apply differently according to such factors as may be specified in the rules.

(5) While there are no Judges other than the Chief Judge, the reference in subsection (1) to other Judges shall be deemed to be omitted, and while there is only one such Judge, that reference shall be construed as a reference to him.

**Gazettal  
and Parlia-  
mentary  
review of  
rules.**

**75.** (1) A rule shall—

- (a) be published in the Gazette;
- (b) take effect on and from the date of publication or a later date specified in the rule; and

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(c) be laid before each House of Parliament within 14 sitting days of that House after the date of publication.

(2) If either House of Parliament passes a resolution, of which notice has been given within 15 sitting days of that House after a rule has been laid before it, disallowing the rule or any part thereof, the rule or part thereupon ceases to have effect.

(3) For the purposes of subsections (1) and (2), sitting days shall be counted, whether or not they occur during the same session.

**76.** Judicial notice shall be taken—

(a) of a rule made or purporting to have been made under this Act and published in the Gazette; and

(b) of the date of its publication.

Judicial  
notice of  
rules.

**77.** It shall be presumed, in the absence of evidence to the contrary, that all conditions and steps precedent to the making of a rule under this Act have been complied with and performed.

Presump-  
tion as to  
making  
of rules.

**78.** The Governor may make regulations, not inconsistent with this Act, for or with respect to—

Regula-  
tions.

(a) fixing or otherwise relating to fees and percentages to be taken in respect of the business of the Court;

(b) the appointment of persons to panels from which persons may be appointed as acting assessors; 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.

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Sec. 12.

## SCHEDULE 1.

## THE ASSESSORS.

- Term of office.** 1. (1) An assessor 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) An assessor shall devote the whole of his time to the duties of his office.
- Remuneration.** 2. An assessor 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 him.
- Application of Public Service Act, 1979.** 3. The provisions of the Public Service Act, 1979, do not apply to or in respect of the appointment of an assessor, and an assessor shall not, in his capacity as such, be subject to those provisions during his term of office.
- Ineligibility by reason of age.** 4. A person who is of or above the age of 65 years is not eligible for appointment as an assessor.
- Assessor attaining 65 years of age.** 5. An assessor shall cease to hold office on the day on which he attains the age of 65 years.
- Removal from office.** 6. The Governor may remove an assessor from office for misbehaviour or incompetence.
- Vacation of office.** 7. An assessor shall be deemed to have vacated his office if he—
- (a) dies;
- (b) resigns his office by writing under his hand addressed to the Minister;
- (c) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act; or
- (d) is removed from office by the Governor under clause 6.

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SCHEDULE 1—*continued.*

THE ASSESSORS—*continued.*

8. (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.

Preservation of rights of assessor if previously public servant, etc.

(2) Subject to subclause (3) of this clause and to the terms of his appointment, where an assessor was, immediately before his appointment as assessor—

(a) an officer of the Public Service;

(b) a contributor to a superannuation scheme;

(c) an officer employed by any statutory body; or

(d) a person in respect of whom provision was made by an Act that he retain any rights accrued or accruing to him as an officer or employee,

he—

(e) shall retain any rights accrued or accruing to him as such an officer, contributor or person;

(f) may continue to contribute to any superannuation scheme to which he was a contributor immediately before his appointment as assessor; and

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

as if he had continued to be such an officer, contributor or person during his service as assessor, and—

(h) his service as assessor shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he continues to contribute or by which that entitlement is conferred; and

(i) he shall be deemed to be an officer or employee, and the Government of New South Wales shall be deemed to be his employer, for the purpose of the superannuation scheme to which he is entitled to contribute under this subclause.

*Land and Environment Court.*SCHEDULE 1—*continued.*THE ASSESSORS—*continued.*

(3) Where an assessor 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, he shall not be so entitled upon his becoming (whether upon his appointment as assessor or at any later time while he holds office as assessor) 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 him and the Government of New South Wales in any case where he becomes a contributor to such another superannuation scheme.

(4) Subclause (3) of this clause does not prevent the payment to an assessor upon his ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him if he had ceased, by reason of resignation, to be an officer or employee for the purposes of that scheme.

(5) An assessor shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

Assessor  
entitled  
to re-  
appointment  
in former  
employment  
in certain  
cases.

9. (1) In this clause—

“retiring age” means—

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

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

(2) Where a person ceases to be an assessor, otherwise than pursuant to clause 7 (paragraph (b) excepted), he shall, if he has not attained the retiring age, be entitled to be appointed, where, immediately before his appointment as assessor, he was—

- (a) an officer of the Public Service—to some position in the Public Service; or

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*Land and Environment Court.*

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SCHEDULE 1—*continued.*

THE ASSESSORS—*continued.*

(b) an officer or employee of a statutory body, except as provided in paragraph (a)—to some office in the service of that body, not lower in classification and salary than that which he held immediately before his appointment as assessor.

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

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