

**LAND AND ENVIRONMENT COURT (AMENDMENT) BILL,
1985**

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Suitors' Fund (Land and Environment Court) Amendment Bill, 1985, is cognate with this Bill.

The object of this Bill is to amend the Land and Environment Court Act, 1979 ("the Act"), so as—

- (a) to provide that the Chief Judge of the Land and Environment Court ("the Court") is to have the same remuneration as the President of the Industrial Commission of New South Wales (Schedule 1 (2));
- (b) to assign to the appropriate Division of the Court the jurisdiction of the Court to hear and dispose of certain proceedings under section 57 of the proposed Environmentally Hazardous Chemicals Act, 1985, and under sections 32 (5) and 50 of the New Darling Harbour Authority Act, 1984 (Schedule 1 (3) (a));
- (c) to extend the civil enforcement jurisdiction of the Court (which is exclusive and not exercisable by the Supreme Court) to include rights, obligations or duties, or the exercise of functions, under statutory provisions which confer rights of appeal to the Court or which are similar to the other statutory provisions in that jurisdiction, namely:—
 - Aboriginal Land Rights Act, 1983;
 - Bush Fires Act, 1949;
 - Coastal Protection Act, 1979;
 - Environmentally Hazardous Chemicals Act, 1985;
 - Part VII of the Local Government Act, 1919;
 - National Parks and Wildlife Act, 1974;
 - New Darling Harbour Authority Act, 1984;
 - State Pollution Control Commission Act, 1970;
- (d) to provide that an appeal against a decision of a conciliation and technical assessor of the Court shall be made to the Court instead of the Supreme Court (Schedule 1 (4) and (5));
- (e) to provide that an appeal from a decision of the Court on an appeal against a decision of a conciliation and technical assessor of the Court may be made to the Supreme Court only with the leave of the Supreme Court (Schedule 1 (5));

- (f) to empower the Minister to approve of a departure from the requirement that a conciliation and technical assessor of the Court devote the whole of his or her time to the duties of an assessor's office (Schedule 1 (10) (a));
- (g) to provide for the granting of leave to a conciliation and technical assessor of the Court (Schedule 1 (9) and (10) (b)); and
- (h) to make other provisions of a minor, consequential or ancillary nature.

The Bill also—

- (a) amends the Land and Environment Court (State Pollution Control Commission) Amendment Act, 1983, so as to delete from that Act an amendment to the Land and Environment Court Act, 1979, now proposed to be effected by Schedule 1 (3) (b) to this Bill (clause 4); and
 - (b) enacts savings and transitional provisions (clause 5).
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**LAND AND ENVIRONMENT COURT (AMENDMENT) BILL,
1985**

No. , 1985.

A BILL FOR

An Act to amend the Land and Environment Court Act, 1979, in relation to the jurisdiction of the Land and Environment Court and appeals from decisions of that Court; and for other purposes.

See also Suitors' Fund (Land and Environment Court) Amendment Bill, 1985.

Land and Environment Court (Amendment) 1985

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:—

5 Short title.

1. This Act may be cited as the "Land and Environment Court (Amendment) Act, 1985".

Commencement.

2. (1) Except as provided by subsection (2), this Act shall commence on
10 the date of assent to this Act.

(2) Schedule 1 (3) (b) and (4)–(8), and section 3 in its application to those provisions, shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

15 Amendment of Act No. 204, 1979.

3. The Land and Environment Court Act, 1979, is amended in the manner set forth in Schedule 1.

Amendment of Act No. 93, 1983.

4. The Land and Environment Court (State Pollution Control
20 Commission) Amendment Act, 1983, is amended by omitting Schedule 1 (2).

Savings and transitional provisions.

5. (1) The amendments made by Schedule 1 (3) (b) and (4)–(8) apply in
25 relation to acts and omissions occurring, causes of action arising, and orders or decisions made, before the day appointed and notified under section 2 (2) as well as on or after that day.

(2) Notwithstanding subsection (1), nothing in this Act affects any
30 proceedings commenced in the Supreme Court before the day appointed and notified under section 2 (2), nor does it have the effect of extending the operation of section 71 of the Land and Environment Court Act, 1979, in such a way as to affect any such proceedings so commenced.

Land and Environment Court (Amendment) 1985

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE LAND AND ENVIRONMENT COURT ACT, 1979.

(1) Section 3—

5 Omit the section.

(2) (a) Section 9 (2)—

Before “the same remuneration”, insert “, except as provided by subsection (2A),”.

(b) Section 9 (2A)—

10 After section 9 (2), insert:—

(2A) The Chief Judge shall have the same remuneration as the President of the Industrial Commission of New South Wales.

(3) (a) Section 20 (1) (ca)—(cc)—

15 After section 20 (1) (c), insert:—

(ca) proceedings under section 57 of the Environmentally Hazardous Chemicals Act, 1985;

(cb) proceedings referred to in section 32 (5) of the New Darling Harbour Authority Act, 1984;

20 (cc) proceedings under section 50 of the New Darling Harbour Authority Act, 1984;

(b) Section 20 (3) (a)—

Omit the paragraph, insert instead:—

(a) any of the following Acts or provisions:—

25

Aboriginal Land Rights Act, 1983;
 Bush Fires Act, 1949;
 Clean Air Act, 1961;
 Clean Waters Act, 1970;
 Coastal Protection Act, 1979;

*Land and Environment Court (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE LAND AND ENVIRONMENT COURT ACT, 1979—
continued.

5 Environmental Planning and Assessment Act, 1979;
 Environmentally Hazardous Chemicals Act, 1985;
 Heritage Act, 1977;
 Part VII, XI, XII, XIIA or XII B of the Local
 Government Act, 1919;
 10 Schedule 3 to the Miscellaneous Acts (Planning)
 Repeal and Amendment Act, 1979;
 National Parks and Wildlife Act, 1974;
 New Darling Harbour Authority Act, 1984;
 Noise Control Act, 1975;
 15 State Pollution Control Commission Act, 1970;
 Waste Disposal Act, 1970; or

(4) Section 56A—

Before section 57, insert:—

Class 1, 2 and 3 proceedings—appeals to the Court against decisions of assessors.

20 56A. (1) A party to proceedings in Class 1, 2 or 3 of the Court's jurisdiction may appeal to the Court against an order or a decision of the Court on a question of law, being an order or a decision made by an assessor or assessors.

25 (2) On the hearing of an appeal under subsection (1), the Court shall—

- (a) remit the matter to the assessor or assessors for determination by the assessor or assessors in accordance with the decision of the Court; or
- (b) make such other order in relation to the appeal as seems fit.

30 (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.

(5) Section 57 (3)—

After section 57 (2), insert:—

Land and Environment Court (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LAND AND ENVIRONMENT COURT ACT, 1979—
continued.

- 5 (3) Notwithstanding subsection (1), an appeal shall not lie to the Supreme Court under that subsection—
- (a) against an order or decision of the Court that was made by an assessor or assessors (other than an appeal in respect of a question of law referred to in paragraph (c));
- 10 (b) except by leave of the Supreme Court, against an order or decision of the Court that was made on an appeal under section 56A; or
- (c) except by leave of the Supreme Court, in respect of a question of law that has been referred to, and determined by, a Judge pursuant to section 36.
- 15 (6) Section 59 (2)—
- At the end of section 59, insert:—
- (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.
- 20 (7) (a) Section 60—
- Omit “59”, insert instead “59 (1)”.
- (b) Section 60 (2)—
- At the end of section 60, insert:—
- 25 (2) Where, under section 59 (2), the Court has suspended the operation of an order or a decision, the Court may terminate the suspension.
- (8) Section 61—
- Omit the section, insert instead:—

Land and Environment Court (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LAND AND ENVIRONMENT COURT ACT, 1979—
continued.

Rules.

- 5 61. (1) An appeal to the Supreme Court under this Division shall be made in such manner, and be subject to such conditions, as are prescribed by rules of court of the Supreme Court.
- (2) An appeal to the Court under this Division shall be made in such manner, and be subject to such conditions, as are prescribed
- 10 by the rules.
- (9) Section 78 (aa)—
 After section 78 (a), insert:—
 (aa) the leave which may be granted to assessors;
- (10) (a) Schedule 1, clause 1 (2)—
- 15 After “shall”, insert “, except as the Minister may otherwise approve.”.
- (b) Schedule 1, clause 2A—
 After clause 2, insert:—
- Leave entitlements.**
- 20 2A. Subject to this Act and the regulations, the leave which may be granted to assessors shall be as determined by the Minister from time to time.

**LAND AND ENVIRONMENT COURT (AMENDMENT) ACT,
1985, No. 63**

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

* * * * *

Act No. 63, 1985.

An Act to amend the Land and Environment Court Act, 1979, in relation to the jurisdiction of the Land and Environment Court and appeals from decisions of that Court; and for other purposes. [Assented to, 15th May, 1985.]

See also Sutors' Fund (Land and Environment Court) Amendment Act, 1985.

Land and Environment Court (Amendment) 1985

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:—

Short title.

1. This Act may be cited as the "Land and Environment Court (Amendment) Act, 1985".

Commencement.

2. (1) Except as provided by subsection (2), this Act shall commence on the date of assent to this Act.

(2) Schedule 1 (3) (b) and (4)–(8), and section 3 in its application to those provisions, shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Amendment of Act No. 204, 1979.

3. The Land and Environment Court Act, 1979, is amended in the manner set forth in Schedule 1.

Amendment of Act No. 93, 1983.

4. The Land and Environment Court (State Pollution Control Commission) Amendment Act, 1983, is amended by omitting Schedule 1 (2).

Savings and transitional provisions.

5. (1) The amendments made by Schedule 1 (3) (b) and (4)–(8) apply in relation to acts and omissions occurring, causes of action arising, and orders or decisions made, before the day appointed and notified under section 2 (2) as well as on or after that day.

(2) Notwithstanding subsection (1), nothing in this Act affects any proceedings commenced in the Supreme Court before the day appointed and notified under section 2 (2), nor does it have the effect of extending the operation of section 71 of the Land and Environment Court Act, 1979, in such a way as to affect any such proceedings so commenced.

Land and Environment Court (Amendment) 1985

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE LAND AND ENVIRONMENT COURT ACT, 1979.

(1) Section 3—

Omit the section.

(2) (a) Section 9 (2)—

Before “the same remuneration”, insert “, except as provided by subsection (2A),”.

(b) Section 9 (2A)—

After section 9 (2), insert:—

(2A) The Chief Judge shall have the same remuneration as the President of the Industrial Commission of New South Wales.

(3) (a) Section 20 (1) (ca)—(cc)—

After section 20 (1) (c), insert:—

- (ca) proceedings under section 57 of the Environmentally Hazardous Chemicals Act, 1985;
- (cb) proceedings referred to in section 32 (5) of the New Darling Harbour Authority Act, 1984;
- (cc) proceedings under section 50 of the New Darling Harbour Authority Act, 1984;

(b) Section 20 (3) (a)—

Omit the paragraph, insert instead:—

(a) any of the following Acts or provisions:—

- Aboriginal Land Rights Act, 1983;
- Bush Fires Act, 1949;
- Clean Air Act, 1961;
- Clean Waters Act, 1970;
- Coastal Protection Act, 1979;

Land and Environment Court (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LAND AND ENVIRONMENT COURT ACT, 1979—
continued.

Environmental Planning and Assessment Act, 1979;
Environmentally Hazardous Chemicals Act, 1985;
Heritage Act, 1977;
Part VII, XI, XII, XIIA or XIIB of the Local
Government Act, 1919;
Schedule 3 to the Miscellaneous Acts (Planning)
Repeal and Amendment Act, 1979;
National Parks and Wildlife Act, 1974;
New Darling Harbour Authority Act, 1984;
Noise Control Act, 1975;
State Pollution Control Commission Act, 1970;
Waste Disposal Act, 1970; or

(4) Section 56A—

Before section 57, insert:—

Class 1, 2 and 3 proceedings—appeals to the Court against decisions of assessors.

56A. (1) A party to proceedings in Class 1, 2 or 3 of the Court's jurisdiction may appeal to the Court against an order or a decision of the Court on a question of law, being an order or a decision made by an assessor or assessors.

(2) On the hearing of an appeal under subsection (1), the Court shall—

- (a) remit the matter to the assessor or assessors for determination by the assessor or assessors 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.

(5) Section 57 (3)—

After section 57 (2), insert:—

Land and Environment Court (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LAND AND ENVIRONMENT COURT ACT, 1979—
continued.

(3) Notwithstanding subsection (1), an appeal shall not lie to the Supreme Court under that subsection—

- (a) against an order or decision of the Court that was made by an assessor or assessors (other than an appeal in respect of a question of law referred to in paragraph (c));
- (b) except by leave of the Supreme Court, against an order or decision of the Court that was made on an appeal under section 56A; or
- (c) except by leave of the Supreme Court, in respect of a question of law that has been referred to, and determined by, a Judge pursuant to section 36.

(6) Section 59 (2)—

At the end of section 59, insert:—

(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.

(7) (a) Section 60—

Omit “59”, insert instead “59 (1)”.

(b) Section 60 (2)—

At the end of section 60, insert:—

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

(8) Section 61—

Omit the section, insert instead:—

Land and Environment Court (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LAND AND ENVIRONMENT COURT ACT, 1979—
continued.

Rules.

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

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

(9) Section 78 (aa)—

After section 78 (a), insert:—

(aa) the leave which may be granted to assessors;

(10) (a) Schedule 1, clause 1 (2)—

After “shall”, insert “, except as the Minister may otherwise approve,”.

(b) Schedule 1, clause 2A—

After clause 2, insert:—

Leave entitlements.

2A. Subject to this Act and the regulations, the leave which may be granted to assessors shall be as determined by the Minister from time to time.

In the name and on behalf of Her Majesty I assent to this Act.

J. A. ROWLAND,
Governor.

*Government House,
Sydney, 15th May, 1985.*



