

New Land and Environment Court Class 3 Compensation Claims Practice Note

Date : May 27, 2019

On 15 March 2019, the Chief Judge of the Land and Environment Court of New South Wales issued a new Practice Note for Class 3 Compensation Claim proceedings relating to the acquisition of land. The purpose of this new practice note was to implement a significant change to the way in which compensation proceedings are managed. More specifically, the new practice note is better aimed at facilitating just, quick and cheap resolutions of what can often be very complex compensation cases.

Change 1 – Earlier Conciliation conferencing

The biggest change in the practice note is that conciliation conferencing will be one of the initial procedural steps undertaken prior to preparation of expert evidence. The old practice note provided that conciliation conferences were to take place approx. 16 weeks after the initial directions hearing, following preparation of all of the expert evidence and relevant pleadings. Under the new practice note, parties should now expect to attend a conciliation conference approx. 4 weeks after the initial directions hearing. This will follow the exchange of schedules of losses attributable to disturbance and other financial costs, points of claim, points of difference, position papers and any lay evidence.

The purpose of bringing forward conciliation conferencing is intended to provide a better opportunity for matters to be resolved more quickly and economically. While on principle this seems like a good outcome, it remains to be seen whether it will be appropriate in matters where the legal issues are more complex. The new practice note does address this issue though, as it allows for a second conciliation conference to be held after the second directions hearing if the parties are at a mutual belief that a result may be met.

Change 2 – Pleadings

There has also been amendments regarding the required contents of the pleadings, and now are required to include;

1. The amount of compensation that each party contends should be payable,
2. The components thereof by reference to each relevant matter is s55(a) to (f) of the *land Acquisition (Just Terms Compensation) Act 1991*
3. The basis of the valuation of the market value of special value of the land under s55(a) and (b), and s56 and s57 of the Act
4. Particulars of any comparable sales upon which the valuation is based
5. A schedule of hypothetical development calculations
6. The schedule of losses attributable to disturbance under s55(d) and s59(1)(a) to (e) of the Act
7. The schedule of other financial costs claimed under s59(1)(f) of the Act



8. In the point of defence, any matter which the respondent contends compensation is not payable under s61 or 62 of the Act, and any matter relied upon to offset the claim

Change 3 – Second Directions Hearing

When a second directions hearing is necessary, the list judge will consider the appropriateness of the matter proceeding on a paperless basis, fix the hearing dates, give a date for a pre-hearing mention and make other standard directions regarding expert evidence.

Change 4 – Paperless Hearings

The new practice note contains a new separate set of standard directions that will be made at a second directions hearing if the compensation claim is to be conducted on a paperless basis. Essentially, these directions provide for the arrangement and lodgment of the various documents for the hearing in prescribed formats via USBs.

Change 5 – Early site inspections

Another important change is the provision of the opportunity to parties to arrange an early site inspection by the hearing judge or commissioner, where:

- A party considers it might be appropriate
- The List Judge considers it potentially warranted and raises it with the Chief Judge, and
- The Chief Judge considers it appropriate