



**ENVIRONMENT, RESOURCES  
& DEVELOPMENT COURT**

**SESSIONAL COMMISSIONERS**

**INFORMATION BOOKLET**

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## 1. Introduction

This document contains information specific to the role of a sessional commissioner appointed by the Governor of South Australia as a commissioner of the Environment, Resources & Development Court.

The booklet contains information about the role, remuneration, leave entitlements, allowances and general information about the Court itself.

## 2. About the Court

The Environment, Resources and Development Court (“ERD Court”) was established by the *Environment, Resources and Development Court Act 1993*, in late 1993. It commenced operation on 15 January 1994.

It is a specialist integrated Court with jurisdiction to hear and determine matters, including appeals under legislation addressing development, environmental management and the conservation and management of natural resources. It also has criminal jurisdiction and civil enforcement powers to deal with breaches of legislation affecting the conservation and management of the environment.

A significant part of the work of the Court is the convening of conciliation conferences between parties to a dispute, to assist them to resolve the issues, in the public interest.

The Court has published the *ERD Court Rules 2003* and the *ERD Court Practice Directions*. These documents along with the *ERD Court Act 1993* govern how matters are progressed through the Court.

To learn more about the Court or to view copies of the ERD Court Act, Rules and Practice Directions you may logon the Courts website [www.courts.sa.gov.au/courts/environment/index.html](http://www.courts.sa.gov.au/courts/environment/index.html) or contact the Court directly.

## 3. Employment Status

A person appointed to the role of a Sessional Commissioner is not an employee of the Courts Administration Authority but has been appointed by the Governor of South Australia to the public office of Commissioner of the Court pursuant to *Section 10 of the ERD Court Act 1993*.

Section 10 of the ERD Court Act 1993 states:

### **10—Commissioners**

- (1) *The Governor may appoint any suitable person to be a commissioner of the Court.*
- (2) *A commissioner (other than a native title commissioner) must be a person with practical knowledge of, and experience in—*
  - (a) *local government; or*
  - (b) *urban or regional planning; or*
  - (c) *architecture, civil engineering, building, building safety or building regulation; or*
  - (d) *administration, commerce or industry; or*
  - (e) *environmental protection or conservation; or*

- (f) *agricultural development; or*
- (g) *land care or management, housing or welfare services; or*
- (h) *heritage; or*
- (i) *resource exploration, recovery or production; or*
- (j) *any other field which is relevant to a jurisdiction conferred on the Court by a relevant Act.*

The term 'Sessional Commissioner' is not a term used in the ERD Court Act, but is used by the Court, to differentiate part-time commissioners appointment to be utilised by the Court on a casual or sessional basis, from commissioners appointed on a permanent part-time basis.

The duties of the office are set out below in 'Section 4 Job Description' of this document.

## **4. Job Description**

Sessional commissioners are called upon to convene conferences between parties to a dispute, preside over court hearings, and to use their expertise to make decisions in the form of orders and judgments.

The Court calls upon sessional commissioners to preside when it is preferable to do so for the special expertise of the commissioners, or when it is unable to use a full-time commissioner.

Work for sessional commissioners is sporadic and is determined by the types of matters lodged with the Court, not by the Court itself. Conferences and hearings are not scheduled at regular intervals and it can often be months between court appearances. Accordingly income generated by this work is sporadic.

All conference and hearings are scheduled during normal working hours. These appointments are scheduled well in advance and always after consulting with the sessional commissioner in question. However it is not uncommon for court appointments to be vacated at short notice by request of the parties. This can be a source of frustration for commissioners who are also employed elsewhere and have cleared their work schedule only to have the court appointment vacated. Whilst this is regrettable it is largely beyond the control of the Court.

The majority of actions lodged with the Court proceed through one or more of three main stages, being the preliminary conference stage, conciliation conference stage and the hearing stage. Commissioners can preside over all stages of an action. Whilst presiding Sessional Commissioners are accompanied by an administrative assistant who will assist in the courtroom and also provide any follow up administrative support relating to the individual matter.

### **4.1 Preliminary Conference**

Sessional Commissioners are rarely called upon to preside over preliminary conferences. These are convened by a part-time permanent commissioner. A preliminary conference is a short 10-minute conference where the merits of the case are not discussed but where directions as to how the matter will proceed by the Court are given.

### **4.2 Conciliation Conference**

Conciliation conferences comprise the bulk of the court work for a sessional commissioner. Generally the ERD Court schedules a conference between the parties soon after lodgement. The purpose of a conference is to enable the

member of the Court presiding at the conference to assist the parties to explore any possible resolution of the matters in dispute without resorting to a formal hearing. If a resolution of the dispute cannot be reached by the parties at the conference stage the matter is set down for hearing. A conference might occupy anywhere between 30 minutes to 3 hours. The conference is closed to the general public and discussions are confidential.

#### **4.3 Hearing**

When an appeal is listed for hearing before the Court, Commissioners may sit either alone, with another commissioner (Building Rules matters only) or as a member of a full bench of the Court (comprising a Judge and one or two Commissioners). It is rare for a sessional commissioner to sit alone for a hearing, but they often sit as part of a full bench where a judge will control proceedings. As a general rule the Commissioner who chaired the conference cannot preside over the hearing in the same matter.

The hearing of an appeal is open to the public. It is the usual practice with appeals under the Development Act, for the hearing to commence on the subject land with a view of the land and relevant locality immediately before the hearing commences in the courtroom. The view may involve walking some distance, including over irregular terrain.

Hearings may occupy half a day to several days. Hearings usually commence at 10:30am either at the subject land or in the courtroom and conclude at 4:30pm, with a lunch break between 1:00pm and 2:15pm.

During the hearing it is the role of the Commissioner or Judge to oversee the receiving of exhibits, hear argument and submissions from all parties, hear evidence from witnesses including, overseeing the examination and cross-examination of expert witnesses and ask their own questions of the expert witness. At the conclusion of the hearing the Commissioner may deliver a decision immediately or may reserve their judgment to be delivered at a later date in written form. Reasons must always be given and orders made.

Most of the work of the Court requires Commissioner who's expertise and experience is in Planning, but Commissioners with other qualifications are also called upon for the hearing of appeals under the Development Act. Commissioners are required for other jurisdictions, as generally the Court, in many cases, must include a Judge and a Sessional Commissioner. These matters form a small part of the work of the Court and thus Sessional Commissioners are called upon irregularly.

#### **4.4 Physical Requirements of the Role**

The role of a sessional commissioner places various demands on the commissioner. The different processes which the court utilises to determine matters can place the following physical stressors on the commissioner:

- Long periods of time sitting in court concentrating on information from various speakers with limited time for breaks. Most trials last for days and some for weeks.
- When the Court takes a view of the locality the subject of a dispute the commissioner will often be asked to walk considerable distances, sometimes over uneven surfaces. A view can sometimes also involve a significant amount of intrastate travel.
- Sessional commissioners are often called upon to read large amounts of materials in order to prepare for a conference or hearing. If a commissioner has other employment this is usually done out of normal working hours.

## 5. Out of Court Work

Not all of a commissioner's work is completed in the conference room or the courtroom. Sessional Commissioners are required to read material prior to a conference or hearing and also may be required to meet with other Members of Court and assist in judgment writing once a matter has been to hearing.

As explained in the next section the Court will pay commissioners for the time they spend reading and preparing up to a maximum of three hours per attendance day. The Court will still reimburse for reading time if a matter is adjourned or discontinued.

The Court endeavours to provide training and refresher sessions for all commissioners. A sessional commissioner is paid for the time they spend at these training sessions.

## 6. Remuneration

### 6.1 Development Act & Other Act Commissioners

Remuneration is pursuant to the schedule set by the Department of Premier and Cabinet for Government Boards and Committees. The hourly rate is \$128.00\*. A guide to remuneration is set out below.

- Where the session lasts for 2 hours or less, the hourly equivalent is to be paid for each completed hour or partially completed hour.
- Where the session lasts more than 2 hours but less than 4 hours a minimum of 4 hours fee is to be paid.
- Where the session exceeds 4 hours, the sessional fee is paid for the total number of hours or part hours.
- Payment for preparation reading is paid to a maximum of 3 hours per attendance day.

\* The hourly rate stated above is subject to review and could change from time to time. If you wish to confirm the current rate is you may contact the Court.

## 7. Leave Entitlements

Sessional Commissioners are not entitled to sick leave, recreation leave and long service leave.

### 7.1 Sick Leave

Sessional Commissioners are not entitled to take and accrue sick leave.

Schedule 2 to the *Public Sector Management Act* confers entitlements to recreation leave, sick leave and special leave upon public servants. However, clause 1(1)(l)(iii) of Schedule 1 to the *Public Sector Management Act* excludes from the public service officers or employees whose terms and conditions of appointment are, inter alia, determined under another Act by the Governor, a Minister or by any specified person or body. Commissioners are appointed by the Governor and thus, they are excluded from the public service and any entitlements to sick leave.

If a sessional commissioner is unable to attend to preside over a conference or hearing the matter will either be given to any other commissioner who is able to

assist or the matter will be adjourned until the commissioner in question can attend.

## 7.2 Recreation Leave

Sessional Commissioners are not entitled to take or accrue recreation leave.

Schedule 2 to the *Public Sector Management Act* confers entitlements to recreation leave, sick leave and special leave upon public servants. However, clause 1(1)(l)(iii) of Schedule 1 to the *Public Sector Management Act* excludes from the public service officers or employees whose terms and conditions of appointment are, inter alia, determined under another Act by the Governor, a Minister or by any specified person or body. Commissioners are appointed by the Governor and thus, they are excluded from the public service and any entitlements to recreation leave.

It is the practice of the Court to consult with all commissioners prior to listing matters before them so as to avoid times when commissioners unavailable to the Court.

## 7.3 Long Service Leave

There are three ways in which public sector employees are deemed to be eligible for long service leave. Sessional Commissioners do not qualify for long service leave in any of the three ways explained below.

### **Part 6 of Schedule 2 to the Public Sector Management Act 1995**

Part 6 of Schedule 2 to the *Public Sector Management Act* confers a right to long service leave upon employees who have sufficient qualifying service. The term "employee" is relevantly defined in section 3(1) to mean a public servant. Clause 1(1)(l)(iii) of Schedule 1 to the *Public Sector Management Act* excludes from the public service officers or employees whose terms and conditions of appointment are, inter alia, determined under another Act by the Governor, a Minister or by any specified person or body. Sessional Commissioners are appointed by the Governor or by a Minister and thus, they are excluded from the public service.

### **Section 71(2) of the Public Sector Management Act 1995**

Section 71(2) of the *Public Sector Management Act* extends the long service provisions of that Act to public sector employees outside the public service who are remunerated at hourly, daily, weekly or fortnightly rates of pay and assigned to duties that form part of the operations of an administrative unit and are subject to direction by the Chief Executive of that unit. In essence, that provision extends the public service long service leave regime to weekly paid employees. Sessional Commissioners are not assigned to duties that form part of the operations of an administrative unit and are not subject to direction by its Chief Executive, they are not entitled to long service leave under section 71(2).

### **Section 5 of the Long Service Leave Act 1985.**

The alternative means to qualify for long service leave is under the *Long Service Leave Act 1985*. Section 5 of that Act provides that a worker who has 10 or more years of service is entitled to long service leave. The term "worker" is defined in section 3(1) to mean a person employed under a contract of service. Sessional Commissioners are not workers within the meaning of the *Long Service Leave Act*.

## 7.4 Superannuation

Sessional Commissioners are entitled to superannuation as specified below.

Pursuant to section 12(9) of the *Superannuation Guarantee (Administration) Act 1992 (Cth)* the CAA will pay super contributions on behalf of its eligible employees. Superannuation contributions will be made at the minimum rate of 9%.

Generally a compulsory payment will be paid by the CAA only when you:

- are paid \$450 (before tax) or more in a calendar month, and
- are aged between 18 and 70.

## 8. Travel & Accommodation Allowance

Whilst it is rare that a sessional commissioner will travel with the Court it does happen from time to time.

It is important to note that the Court does not reimburse commissioners for their travel expenses to and from work. Commissioners who live in the country or in other states of Australia would be responsible for the costs of attending the Court. The Court also does not reimbursement for parking costs whilst attending the Court.

The Remuneration Tribunal is empowered by the *Remuneration Act 1990* to determine the remuneration of commissioners of the ERD Court. The term “remuneration” is defined in section 3 to include not only salary, but also allowances, expenses, fees and any other benefit of a pecuniary nature.

Clause 1(3) of the Schedule to the *Environment, Resources and Development Court Act* provides that both full time and permanent part-time commissioners of the ERD Court are entitled to the remuneration determined by the Tribunal.

The authority to pay a travel allowance lies with the Registrar of the Court. The Registrar may seek direction from the Senior Judge of the Court in order to assist in exercising his or her discretion.

### 8.1 Travel to Metropolitan Matters

The Court does not pay for commissioners to travel to and from the Court in the Sir Samuel Way Building or a metropolitan location for the purposes of chairing a conference or sitting to hear and determine a matter before the Court.

The Remuneration Tribunal does not allow the Court to reimburse incidental expenses such as car parking or meal expenses incurred during the course of a normal working day.

If a court action requires a view which is at a location within the metropolitan area the Court will arrange for a car collectable at the CAA Carpark to be used. The Court suggests that commissioners travel to the Sir Samuel Way Building in the usual way and court staff will assist them with travel from there. Commissioners will be given prior warning when travel is required.

If a commissioner is called upon to sit as a member of the full bench, travel to view the land and locality will usually be undertaken with other members of the bench travelling in the same vehicle.

### 8.2 Travel to Country Matters

If a commissioner is required to travel to the country for a conference, hearing or view between the hours of 7:00am and 6:30pm the Court will arrange and pay transportation costs.

The Remuneration Tribunal does not allow the Court to reimburse incidental expenses such as car parking or meal expenses incurred during the course of a normal working day.

If a court action requires a view which is at a location outside the metropolitan area the Court will arrange for a car collectable at the CAA Carpark to be used. The Court suggests that commissioners travel to the Sir Samuel Way Building in the usual way and court staff will assist them with travel from there. Commissioners will be given prior warning when travel is required.

If a commissioner is called upon to sit as a member of the full bench, travel to view the land and locality will usually be undertaken with other members of the bench travelling in the same vehicle.

### 8.3 Overnight Travel

The Court will pay travel expenses when a commissioner is required to travel for official purposes, e.g. to a hearing at a country location or to conduct a view. For sessional commissions this would happen rarely.

In most cases all travel arrangements are made in advance of any trip by Court staff. These arrangements include accommodation, the booking of flights, car hire and the payment of any travel allowance available.

Travel allowances are governed by the *Report and Determination of the Remuneration Tribunal (No. 2 of 2013) – Travelling and Accommodation Allowances – Judges, Court Officers and Statutory Officers* which came into operation on 15 June 2013.

The above report allows for a person who actually incurs expenditure when travelling on official business and which necessitates absence from home overnight to be paid an allowance as follows:

Outside metropolitan area	\$260.00*
Within metropolitan area	\$294.00*

- When an additional period of less than 24 hours absence occurs without overnight accommodation, then a further payment calculated at the rate of one half of the allowance shall be paid with respect to the excess hours.
- Reimbursement is not to be made for luncheon for single day absences within South Australia.

\* The above amounts were current as at 15 June 2013 and are subject to change by the Remuneration Tribunal.