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# Update Summary

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## **ENVIRONMENTAL RESPONSIBILITIES LAW NEW SOUTH WALES**

**Jeff Kildea, Olia Koudrina  
Russell Schmidt, Zaina Shahnawaz and  
Hon. Justice Brian Preston**

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## Environmental Responsibilities Law NSW

### Update Summary

Annotations in the following chapters have been reviewed and updated by **Guy Dwyer**.

#### Criminal Procedure Act 1986

In *Secretary, Department of Planning and Environment v Harris* [2024] NSWCCA 88, the prosecutor appealed on a question of laws to the NSW Court of Criminal Appeal following refusal by the primary judge (Pain J) to the grant of leave to rely on updated expert reports. The NSW Court of Criminal Appeal (Sweeney J, with whom N Adams J and R A Hulme AJ agreed) found that the primary judge erred in the order made. See [CPA.247E.10].

In *Water NSW v Kiangatha Holdings Pty Ltd* [2023] NSWLEC 142, the defendant was charged with two offences by summonses filed in 2018. In 2023, the defendants filed two motions seeking orders under s 247G that the Court hear and determine separate questions of law in each proceeding. The prosecutor submitted that the Court should decline to order the hearing of the separate questions. Justice Pritchard accepted that submission. See [CPA.247G.10].

#### Protection of the Environment Operations Act 1997

In *Maules Creek Community Council Inc v Environment Protection Authority* [2024] NSWLEC 71, the applicant contended that the EPA had failed to conduct a review of the EPL for the Maules Creek Coal Mine in accordance with the requirements of the POEO Act for review of licences. See [POEOA.78.05].

Updated commentary regarding whether s 169 applies to and in respect of a corporation with reference to *Environment Protection Authority v McMurray* [2024] NSWCCA 160. See [POEOA.169.05].

Annotations in the following chapters have been reviewed and updated by **Olia Koudrina**.

#### New Developments

NSW is undertaking a statewide review of whether regulatory changes should be made to allow individual property owners to take small volumes of water from local rivers and bores to prepare for and fight bushfires. See [ND.005].

The NSW Government is proposing a Landholder Negotiation Scheme (LNS) Regulation and a set of negotiation guidelines setting out the approach to negotiating voluntary agreements with landholders affected by water for the environment flows

being delivered at higher levels, or under different regimes, than current operating practice. See [ND.004].

On 20 September 2024 the *Water Management (General) Regulation 2018* was amended to prescribe new amounts of penalty notices for offences set out in Schedule 7 of the Regulation. See [ND.003].

On 20 September 2024 the *Water Management (General) Regulation 2018* was amended to prescribe a new method for valuing water taken in contravention of certain provisions of the *Water Management Act 2000*. See [ND.002].

Annotations in the following chapters have been reviewed and updated by **Jeff Kildea**.

### **Land and Environment Court Act 1979**

Updated commentary on Class 4—Environmental planning and protection and development contract civil enforcement (s 20), with reference to cases *Cameron v Woollahra MC* [2024] NSWCA 216 and *Whites Beach Investments Pty Ltd v Byron SC* [2024] NSWLEC 75. See [LECA.PT3.DIV1.10].

Updated commentary in relation to Division 3 – Orders of conditional validity for certain development consents, with reference to *Bingman Catchment Landcare Group Inc v Bowdens Silver Pty Ltd* [2024] NSWCA 205 and *Nicholas Tang Holdings Pty Ltd v Berbic and Wingecarribee SC* [2024] NSWLEC 95. See [LECA.PT3.DIV3.10].

### **Uniform Civil Procedure Rules 2005**

Updated commentary on:

Rule 36.16 – Further power to set aside or vary judgment or order and Rule 36.17 – Correction of judgment or order (“slip rule”), with reference to *Warwick Farm Central Pty Ltd v Valuer General (No 2)* [2024] NSWLEC 67. See [UCPR.PT36.DIV4.10].

Rule 42.1 – General rule that costs follow the event, adding *Woollahra MC v Cameron (No 2)* [2024] NSWLEC 66 to examples of cases where a party has variable success on multiple issues and costs are apportioned, and where the respondent files a submitting appearance. See [UCPR.PT42.DIV1.10].

Part 59 – Judicial Review Proceedings concerning the relevant considerations in the exercise of the discretion to extend time, with reference to *Cameron v Woollahra MC* [2024] NSWCA 216. See [UCPR.PT59.10].

