

[LEGAL NOTICE NO. 18]

ENVIRONMENT MANAGEMENT ACT 2005
(NO. 1 OF 2005)

Environment Management (Tribunal) Rules 2013

IN exercise of the powers conferred upon me by section 56 (6) of the Environment Management Act 2005, I hereby make these Rules—

TO REGULATE THE ENVIRONMENTAL TRIBUNAL

PART 1—PRELIMINARY

Short title and commencement

1. These Rules may be cited as the Environment Management (Tribunal) Rules 2013, and shall come into force on a date appointed by the Chief Justice by notice published in the *Gazette*.

Objectives

2. The objectives of these Rules are to—

- (a) ensure the just treatment of the parties;
- (b) promote the fair and efficient disposal of cases;
- (c) engender public confidence in the Tribunal; and
- (d) encourage the identification of issues between the parties at an early stage.

Interpretation

3. In these Rules, unless the context otherwise requires—

“Act” means the Environment Management Act 2005;

“appeal” means the decision, order, notice, declaration or action of a person, statutory office holder, company or any other authority that is appealed by an applicant, under the Act or any relevant law, to the Tribunal;

“applicant” means a person, company, association, body of persons, corporate or unincorporated who or which initiates an appeal to the Tribunal;

“Commissioner for Oaths” means a legal practitioner or person who has been appointed as a Commissioner for Oaths under section 144 of the Legal Practitioners Decree 2009;

- “company” has the same meaning given to it by the Companies Act (Cap. 247);
- “interlocutory application” means an application made to the Tribunal after the appeal has been initiated by the applicant;
- “notice of appeal” means the notice in rule 4 by which an appeal to the Tribunal is initiated;
- “parties” means both the applicant and the respondent in an appeal to the Tribunal;
- “party” means either the applicant or the respondent in an appeal to the Tribunal;
- “person” means a natural person;
- “Registrar” means the Registrar of the Tribunal;
- “Registry” means the Registry of the Tribunal;
- “relevant law” means any other law under which jurisdiction is given to the Tribunal to hear and determine an appeal;
- “respondent” means the person, statutory office holder, company or other authority against whose decision, order, notice, declaration or action an appeal is initiated against; and
- “Tribunal” means the Environmental Tribunal established under section 56 of the Act.

PART 2—APPEALS

Notice of appeal

- 4.—(1) Every appeal shall be brought by notice of appeal and three (3) copies of such notice shall be filed at the Registry within twenty one (21) days from the date of the decision, order, notice, declaration or action that is appealed against.
- (2) The notice of appeal in sub-rule (1) shall—
- (a) clearly and distinctively state the applicant and respondent’s full names and addresses in Fiji;
 - (b) clearly and concisely state the decision, order, notice, declaration or action against which the appeal is initiated;
 - (c) clearly outline the grounds of appeal;
 - (d) have annexed to it a copy of the decision, order, notice, declaration or a statement of an action of the respondent that is the subject of the appeal;
 - (e) be signed by the applicant and the applicant’s signature shall be witnessed by a Commissioner for Oaths; and
 - (f) be filed with the prescribed fee.
- (3) The Registry may refuse to accept a notice of appeal that does not comply with these Rules.
- (4) The applicant shall ensure that the notice of appeal is served on the respondent within fourteen (14) days from the date such notice was filed at the Registry.

Respondent to file response

5. Where a notice of appeal has been served, the respondent shall, within fourteen (14) days from the date of service, file at the Registry and serve on the applicant a notice—

- (a) clearly and distinctively stating the applicant and respondent's full names and addresses in Fiji;
- (b) clearly and concisely stating any decision, order, notice, declaration or action made by the respondent or by any person under the supervision of the respondent, having a bearing on the matter, the date on which that decision, order, notice, declaration or action was made, and the reasons thereof; and
- (c) that is accompanied by a copy of each of the documents before the respondent at the time the respondent made, or that resulted in the making of the decision, order, notice, declaration or action that is the subject of the appeal.

Notice of hearing

6. The Registrar shall provide written notice to the parties of the date, time and place for the hearing of the appeal at least twenty eight (28) days from the date the notice of appeal was filed at the Registry.

Interlocutory applications

7. An application may be made to the Tribunal by a party for the following orders—

- (a) the production of clearer or more elaborate grounds of appeal;
- (b) the production of particulars of the Authority's decision, order, notice, declaration or action that is the subject of the appeal;
- (c) the production of relevant books or documents;
- (d) the amendment of any filed document; or
- (e) the adjournment of the hearing of proceedings.

Withdrawal of appeal

8. An applicant may, at any time, withdraw an appeal that has been initiated by filing a notice of withdrawal at the Registry and serving the respondent with such notice.

Functions of the Tribunal

9.—(1) The Tribunal shall hear and determine appeals under the Act or any relevant law, and any interlocutory application relating to the appeal and filed at the Registry.

(2) The Tribunal shall have the power to—

- (a) require the applicant to provide clearer or more elaborate—
 - (i) grounds of appeal; and
 - (ii) particulars of the case intended to be presented;
- (b) require the respondent to provide particulars of a relevant decision, order, notice, declaration or action that is the subject of the appeal;
- (c) issue a summons to a witness following an application by either party;
- (d) require the production of books or documents;
- (e) examine witnesses on oath or affirmation;
- (f) admit any oral or written evidence, notwithstanding the admissibility of such evidence in civil or criminal proceedings;
- (g) exclude any person from the hearing, if and when it deems appropriate in order to ensure the proper conduct of the appeal or the preservation of order;

- (h) allow the applicant to amend the notice of appeal;
- (i) adjourn the hearing of the appeal from time to time, if and when it deems appropriate; and
- (j) make any other order as it deems appropriate for the proper hearing and determination of the appeal.

(3) The Tribunal shall, when determining an appeal, have regard to those matters pertaining to the respondent or a person under the respondent's supervision when the decision, order, notice, declaration or action that is the subject of the appeal was made.

(4) The Tribunal may, on reasonable grounds, and upon conditions, if any, enlarge any period of time referred to in rule 4.

(5) The Tribunal may confirm or dismiss an appeal.

(6) Upon confirming an appeal, the Tribunal may by order—

- (a) reverse or vary the decision, order, notice, declaration or action appealed against; and
- (b) make such consequential orders as it deems appropriate to give effect to the reversal or variation of such decision, order, notice, declaration or action.

(7) The Tribunal shall provide written reasons for the determination of an appeal.

Proceedings of the Tribunal

10. The Tribunal may determine the manner in which its proceedings shall be conducted.

PART 3—SERVICE IN PROCESS

Service to be personal

11.—(1) Unless, in any case, the Tribunal deems it just and expedient otherwise to direct, service shall be personal and the notice or any other document to be served shall be served on the person to be served.

(2) The personal service of a notice or any other document may be made by any person.

(3) The service of a notice or any other document shall be completely effected by the delivery of a duplicate or attested copy of such document, without the exhibition of any original copies.

(4) Any person serving a notice or any other document shall, on the request of the party served, explain to such party the nature of such notice or document.

Service on partners

12. Where partners are respondents, the notice or any other document shall be served either upon any one or more of the partners or at the principal place of business of the partnership upon any person appearing to be over the age of 16 years and to have, at the time of service, the control or management of the partnership business.

Service on companies

13. The service of a notice or any other document on a company shall be made at the registered office of the company.

Service on a person in prison or asylum

14.—(1) Where the person on whom service is to be effected is in a prison, it shall be sufficient service to deliver the notice or any other document at the prison to the officer in charge of such prison, who shall cause the same to be served on such person.

(2) Where the person on whom service is to be effected is employed and dwells in any mental hospital or other public asylum, it shall be sufficient service to deliver the notice or any other document to the gatekeeper or lodge keeper of such hospital or asylum, who shall cause the same to be served on such person.

Where respondent resides out of Fiji but carries on business in Fiji

15. Where a respondent resides out of Fiji but carries on business in Fiji in his or her own name, or under the name of a firm, through an authorised agent, a notice or any other document may be served by giving it to such agent, and such service shall be equivalent to personal service on the respondent.

Service other than personal

16.—(1) Where it appears to the Tribunal, either after or without an attempt at personal service, that for any reason, personal service cannot be conveniently effected, the Tribunal may order that service be effected—

- (a) in the case of a person in prison who is to be served, by delivery of the notice or any other document to an adult at the usual or last known place of abode or business of the person to be served;
- (b) by delivery of the notice or any other document to a person, who may be an agent of the person to be served, if there is reasonable probability that the notice or document shall, through that person, come to the knowledge of the person to be served;
- (c) by advertisement in the *Gazette* or in a newspaper circulating within Fiji;
- (d) by notice put up at the Registry, any other place of public resort or at the usual or last known place of abode or of business of the person to be served; or
- (e) by sending the document by prepaid registered post addressed to the person to be served at his or her last known place of abode or business.

(2) An order for service may be varied by the Tribunal, from time to time, with respect to the mode of service directed by the order.

Dies non

17. The service of a notice or any other document shall not be made on a Sunday or a public holiday.

When service is refused or threatened

18. Where a person charged with the service of the notice or any other document on any person is prevented by the refusal of such person to receive such notice or document or by the violence or threats of such person, or any other person in concert with him or her, from personally serving the notice or any other document, it shall be sufficient to inform the person to be served of the nature of the notice or any other document and to leave the notice or any other document as near such person as it is practicable.

Acknowledgement of service

19. Any person who serves a notice or any other document shall acknowledge the service of such notice or document by way of an affidavit or a statutory declaration, provided however that the affidavit or statutory declaration outlines the date, place and to whom the service of the notice or any other document was effected, and that the signature of such person is witnessed by a Commissioner for Oaths.

PART 4—COSTS

Costs

20.—(1) Subject to sub-rules (2) and (3), each party shall bear its own costs of an appeal.

(2) Where the hearing of an appeal is adjourned, the Tribunal may award costs against the party upon whose application the adjournment is granted.

(3) Where an appeal is withdrawn after a notice of hearing has been served on the respondent, the Tribunal may award costs against the applicant.

(4) Where an appeal has been determined by the Tribunal, the Tribunal may award costs to the party in favour of the Tribunal's determination.

PART 5—MISCELLANEOUS

Practice directions

21. The Registrar may issue practice directions, not inconsistent with these Rules, with respect to the functions of the Tribunal for the information and guidance of the parties and their representatives.

Record of sittings

22. The Registrar shall keep and maintain a record of all sittings of the Tribunal.

Absence of any rule

23. In the absence of any rule in these Rules, the Magistrates Court Rules shall apply.

Dated this 18th day of February 2013.

A. H. C. T GATES
Chief Justice