Land and Environment Court

New South Wales

Medium Neutral Citation:	**Al Amanah College Inc v Minister for Education and Training (No 2) [2011] NSWLEC 254**
Hearing dates:	19-20/12/2011
Decision date:	23 December 2011
Jurisdiction:	Class 3
Before:	Biscoe J
Decision:	Referee's report adopted. Compensation for compulsory acquisition of land determined at $12,189,000.
Catchwords:	COMPULSORY ACQUISITION:- market value of acquired land earlier determined by Court - claim for disturbance loss under ss 55(d) and 59 Land Acquisition (Just Terms Compensation) Act 1991 or alternatively special value under s 57 referred to referee under Uniform Civil Procedure Rules 2005 Pt 20 r 14 in exceptional circumstances - whether report of referee should be adopted - legal principles in proceedings on a referee's report - whether referee erred in law - whether under s 59(a) certain legal costs recoverable - whether referee erroneously reversed onus of proof in respect of two items - whether referee erred by not applying requirements of s 59(f) concerning "actual use", "costs reasonably incurred" and causation - whether referee failed to consider a submission of respondent - whether costs incurred arising from contractual obligations entered into before announcement of acquisition are compensable under s 59(f) - whether referee made a factual finding for which there was no evidence.
Legislation Cited:	Land Acquisition (Just Terms Compensation) Act 1991 ss 55(d), 57, 59, 69, 70, 71 Public Works Act 1912 Supreme Court Rules 1970 Pt 72 r 13 Uniform Civil Procedure Rule 2005 rr 20.14, 20.24

Cases Cited:

Al Amanah College Incorporated v Minister for Education & Training [2011] NSWLEC 189
Bellevarde Constructions Pty Ltd v CPC Energy Pty Ltd [2008] NSWCA 228
Blacktown Council v Fitzpatrick Investments Pty Ltd [2001] NSWCA 259
Bligh v Minister Administering the Environmental Planning and Assessment Act 1979 [2011] NSWLEC 220
Boland v Yates Property Corp Pty Ltd [1999] HCA 64, ALR 575 167
Canada (Federal District Commission) v Dagenais [1935] Ex CR 25
Caruana v Port Macquarie-Hastings Council [2007] NSWLEC 109
Chocolate Factory Apartments v Westpoint Finance [2005] NSWSC 784
Council of the city of Parramatta v Brickworks Ltd [1972] 128 CLR 1
Director of Buildings and Lands v Shun Fung Ironworks Ltd [1995] 2 AC 111
Durette v New Brunswick (Minister of Transportation) (1980) 21 LCR 124
Goldsworthy Mining Ltd v Commissioner of Taxation (1975) 132 CLR 463
Kirela Pty Ltd v Minister Administering the Environmental Planning & Assessment Act 1979 (No 2) [2004] NSWLEC 68, 132 LGERA 90
Liebovitch v City of Vanier (1975) 8 LCR 109
McDonald v Roads and Traffic Authority of NSW [2009] NSWLEC 105, 169 LGERA 352
McEwen v R (1978) 15 LCR 1
Minister of State for the Army v Parbury Henty & Company Pty Ltd [1945] HCA 52, 20 CLR 459
Peter Croke Holdings Pty Ltd v Roads and Traffic Authority of NSW (1998) 101 LGERA 30
Ridgeport Developments v Metropolitan Toronto Region Conservation Authority (1976) 11 LCR 143
Roads and Traffic Authority (NSW) v McDonald [2010] NSWCA 236, 175 LGERA 276
Scottish Halls Ltd v The Minister (1915) 15 SR (NSW) 81
Service Design Pty Ltd v Commissioner of Highways (1986) 59 LGRA 176
Starkman v City of Brampton (1974) 7 LCR 329
Sydney Water v Caruso [2009] NSWCA 391, 170 LGERA 298

	Walker Corporation Pty Ltd v Sydney Harbour Foreshore Authority [2008] HCA 5, 233 CLR 259 Yates Property Corporation Pty Ltd (In Liq) v Darling Harbour Authority (1991) 24 NSWLR 156
Category:	Principal judgment
Parties:	Al Amanah College Incorporated (Applicant) Minister for Education and Training (Respondent)
Representation:	COUNSEL: Mr T Robertson SC and Mr C Ireland (Applicant) Mr T S Hale SC and Mr M Hall (Respondent) SOLICITORS: HWL Ebsworth (Applicant) Crown Solicitor's Office (Respondent)
File Number(s):	30838 of 2010

JUDGMENT

1 On 15 July 2009 the respondent Minister notified to the applicant, Al Amanah College Incorporated, an intention to acquire the applicant's land, Lot 2 DP 505662 at 98 Johnston Road, Bass Hill. On 21 May 2010 the respondent compulsorily acquired the land for public education purposes.

2 Prior to 15 July 2009 the applicant had intended to construct and operate an Islamic school on the land from the beginning of 2010. The applicant had secured development consent and incurred substantial expenditure towards that end, which was rendered futile by the acquisition.

3 On 25 November 2011 I determined compensation for market value of the land under the *Land Acquisition (Just Terms Compensation) Act* 1991 (**Just Terms Act**) in the sum of $10,885,000: *Al Amanah College Incorporated v Minister for Education & Training* [2011] NSWLEC 189.

4 At the end of the hearing on 3 November 2011, pursuant to Pt 20 r 14 of the Uniform Civil Procedure Rule 2005 (**UCPR**), I made a consent order for reference to a referee appointed by the Court for inquiry and report on the following questions arising in the proceedings:

(a) Which, if any, of the applicant's claims for disturbance under ss 55(d) and 59 of the Just Terms Act are compensable and in what amount; and

(b) Alternatively whether any of the claimed items are instead compensable as special value claims under s 57.

5 This Court would only refer such matters to a referee in exceptional circumstances because the Court itself has the expertise to decide them, as it

regularly does. In this case, the exceptional circumstances in which they were referred, by consent, to a referee were that the parties had substantially underestimated the time required for the hearing and, due to the fullness of the Court's list, they could not otherwise be heard until next year. The applicant has said that delay is causing it prejudice in that it is incurring interest costs on the finance for the purchase of a replacement property at a rate which substantially exceeds the statutory interest rate.

6 The referee is a retired judge of the Court, the Hon R N (Angus) Talbot. The referee heard the disturbance and special value claims over three days. They totalled $1,426,036.54. The referee provided a report dated 13 December 2011 in which he allowed disturbance loss totalling $1,225,503.74 and indicated that further disturbance legal costs were allowable but required apportionment, which the parties subsequently agreed in the sum of $78,459.58.

7 Pursuant to UCPR Pt 20 r 24 the applicant moves for adoption of the referee's report except that it moves for rejection of the finding that most of the claimed legal costs are not recoverable. It contends that they should be allowed. The respondent moves for rejection of the report with the exception of the following, which it accepts should be adopted:

(a) The finding that goods and services tax is not recoverable (the applicant is entitled to a remittance of the tax): report at [97];

(b) Undisputed items for remediation costs, planning advice and valuation fees totalling $28,760.47: report at [5];

(c) Legal costs allowed in the agreed sum of $78,459.58, other than the relatively minor component of 5 per cent thereof ($3,922.98) representing the applicant's solicitors' administrative charge for out of pocket expenses: report at [16] - [34]; and

(d) A bank mortgage break fee in the sum of $185,458: report at [45].

LEGAL PRINCIPLES IN PROCEEDINGS ON A REFEREE'S REPORT

8 UCPR Pt 20 r 24 empowers the Court to adopt, vary or reject a referee's report in whole or in part, and to decide any question for itself, either on the evidence taken before the referee or on that and additional evidence. It reads:

> **20.24 Proceedings on the report**
>
> (1) If a report is made under rule 20.23, the court may on a matter of fact or law, or both, do any of the following:

(a) it may adopt, vary or reject the report in whole or in part,

(b) it may require an explanation by way of report from the referee,

(c) it may, on any ground, remit for further consideration by the referee the whole or any part of the matter referred for a further report,

(d) it may decide any matter on the evidence taken before the referee, with or without additional evidence,

and must, in any event, give such judgment or make such order as the court thinks fit.

(2) Evidence additional to the evidence taken before the referee may not be adduced before the court except by leave of the court.

9 The Court's powers under UCPR Pt 20 r 24 closely match those formerly provided by Pt 72 r 13 of the Supreme Court Rules 1970. The legal principles in proceedings under Pt 20 r 24 are settled. They were distilled from authorities under the Supreme Court Rules in the judgment of McDougall J in *Chocolate Factory Apartments v Westpoint Finance* [2005] NSWSC 784, which was described as helpful by the Court of Appeal in *Bellevarde Constructions Pty Ltd v CPC Energy Pty Ltd* [2008] NSWCA 228 at [46]. They can be stated as follows, with appropriate revision to reflect replacement of the Supreme Court rules with the UCPR:

(1) An application under UCPR Pt 20 r 24 is not an appeal either by way of hearing de novo or by way of rehearing.

(2) The discretion to adopt, vary or reject the report is to be exercised in a manner consistent with both the objects and purpose of the rules and the wider setting in which they take place. Subject to this, and to what is said in the next two subparagraphs, it is undesirable to attempt closely to confine the manner in which the discretion is to be exercised.

(3) The purpose of Pt 20 is to provide, where the interests of justice so require, a form of partial resolution of disputes alternative to orthodox litigation. That purpose would be frustrated if the reference were to be treated as some kind of warm up for the real contest.

(4) Insofar as the subject matter of dissatisfaction with a report is a question of law, or the application of legal standards to established facts, a proper exercise of discretion requires the Court to consider and determine that matter afresh.

(5) Where a report shows a thorough, analytical and scientific approach to the assessment of the subject matter of the reference, the Court would have a disposition towards acceptance of the report, for to do otherwise would be to negate both the purpose and the facility of referring complex technical issues to independent experts for enquiry and report.

(6) If the referee's report reveals some error of principle, absence or excess of jurisdiction, patent misapprehension of the evidence or perversity or manifest unreasonableness in fact finding, that would ordinarily be a reason for rejection. In this context, patent misapprehension of the

evidence refers to a lack of understanding of the evidence as distinct from according particular aspects of the evidence different weight. Perversity or manifest unreasonableness mean a conclusion that no reasonable tribunal of fact could have reached. The test denoted by these phrases is more stringent than "unsafe and unsatisfactory".

(7) Generally, the referee's findings of fact should not be re - agitated in the Court. The Court will not reconsider disputed questions of fact where there is factual material sufficient to entitle the referee to reach the conclusions he or she did, particularly where the disputed questions are in a technical area in which the referee enjoys an appropriate expertise. Thus, the Court will not ordinarily interfere with findings of fact by a referee where the referee has based his or her findings upon a choice between conflicting evidence.

(8) The purpose of Pt 20 would be frustrated if the Court were required to reconsider disputed questions of fact in circumstances where it is conceded that there was material on which the conclusions could be based.

(9) The Court is entitled to consider the futility and cost of re - litigating an issue determined by the referee where the parties have had an ample opportunity to place before the referee such evidence and submissions as they desire.

(10) Even if it were shown that the Court might have reached a different conclusion in some respect from that of the referee, it would not be (in the absence of any of the matters referred to in (6) above) a proper exercise of the discretion conferred by Pt 20 r 24 to allow matters agitated before the referee to be re - explored so as to lead to qualification or rejection of the report.

(11) Referees should give reasons for their opinions so as to enable the parties, the Court and the disinterested observer to know that the conclusion is not arbitrary or influenced by improper considerations; but that it is the result of a process of logic and the application of a considered mind to the factual circumstances proved. The reasoning process must be sufficiently disclosed so that the Court can be satisfied that the conclusions are based upon such an intellectual exercise.

(12) The right to be heard does not involve the right to be heard twice.

(13) A question as to whether there was evidence on which the referee, without manifest unreasonableness, could have come to the decision to which he or she did come is far more limited than the question of whether an appeal court would correct a similar error if made by a trial judge. The real question is: is it seriously and reasonably contended that the referee has reached a decision which no reasonable tribunal of fact could have reached; that is, a decision that any reasonable referee would have known was against the evidence and weight of evidence?

(14) Where, although the referee's reasons on their face appear adequate, the party challenging the report contends that they are not adequate because there was very significant evidence against the referee's findings with which the referee did not at all deal, examination of the evidence may be undertaken to show that the reasons were in fact inadequate because they omitted any reference to significant evidence.

(15) Where the court decides that the reasons are flawed, either on their face or because they have been shown not to deal with important matters, the court has a choice. It may decline to adopt the report. Or it may itself look at the detail of the evidence to decide whether or not the expense of further proceedings before the referee (which would be the consequence of non - adoption) is justified.

THE JUST TERMS ACT

10 The objects of the Just Terms Act are stated in s 3(1) as follows:

> **3 Objects of Act**
>
> (1) The objects of this Act are:
>
> (a) to guarantee that, when land affected by a proposal for acquisition by an authority of the State is eventually acquired, the amount of compensation will be not less than the market value of the land (unaffected by the proposal) at the date of acquisition, and
>
> (b) to ensure compensation on just terms for the owners of land that is acquired by an authority of the State when the land is not available for public sale, and
>
> (c) to establish new procedures for the compulsory acquisition of land by authorities of the State to simplify and expedite the acquisition process, and
>
> (d) to require an authority of the State to acquire land designated for acquisition for a public purpose where hardship is demonstrated, and
>
> (e) to encourage the acquisition of land by agreement instead of compulsory process.
>
> (2) Nothing in this section gives rise to, or can be taken into account in, any civil cause of action.

11 Consistently with the object in s 3(1)(b), s 54(1) provides a just compensation override in the assessment of compensation as follows:

> **54 Entitlement to just compensation**
>
> (1) The amount of compensation to which a person is entitled under this Part is such amount as, having regard to all relevant matters under this Part, will justly compensate the person for the acquisition of the land.

12 The Just Terms Act provides for loss attributable to disturbance and special value as follows:

> **55 Relevant matters to be considered in determining amount of compensation**

In determining the amount of compensation to which a person is entitled, regard must be had to the following matters only (as assessed in accordance with this Division):

...

(b) any special value of the land to the person on the date of its acquisition,

...

(d) any loss attributable to disturbance,

...

57 Special value

In this Act:

special value of land means the financial value of any advantage, in addition to market value, to the person entitled to compensation which is incidental to the person's use of the land.

59 Loss attributable to disturbance

In this Act:

loss attributable to disturbance of land means any of the following:

(a) legal costs reasonably incurred by the persons entitled to compensation in connection with the compulsory acquisition of the land,

(b) valuation fees reasonably incurred by those persons in connection with the compulsory acquisition of the land,

(c) financial costs reasonably incurred in connection with the relocation of those persons (including legal costs but not including stamp duty or mortgage costs),

(d) stamp duty costs reasonably incurred (or that might reasonably be incurred) by those persons in connection with the purchase of land for relocation (but not exceeding the amount that would be incurred for the purchase of land of equivalent value to the land compulsorily acquired),

(e) financial costs reasonably incurred (or that might reasonably be incurred) by those persons in connection with the discharge of a mortgage and the execution of a new mortgage resulting from the relocation (but not exceeding the amount that would be incurred if the new mortgage secured the repayment of the balance owing in respect of the discharged mortgage),

(f) any other financial costs reasonably incurred (or that might reasonably be incurred), relating to the actual use of the land, as a direct and natural consequence of the acquisition.

BACKGROUND

13 The following undisputed events, noted by the referee, are relevant to the disturbance claim:

2006	The applicant purchased the land from the Minister.
19 December 2008	Senior Commissioner Roseth granted development consent for an Islamic school on the land.
14 January 2009	The Council lodged an appeal against the decision of Senior Commissioner Roseth
11 May 2009	Biscoe J dismissed the appeal.
13 June 2009	The applicant entered into a contract for building and lump sum construction.
15 July 2009	The Minister notified an intention to acquire the land by letter to the applicant.
20 July 2009	The applicant's contractor was scheduled to commence construction works on the land. The work would have commenced earlier but for a difficulty in obtaining site sheds. The stated intention was for the school to operate on the land from the beginning of 2010.
28 January 2010	The Minister issued a proposed acquisition notice.
Commencement of school term 2010	Projected opening of applicant's school on acquired land but for the acquisition
23 April 2010	Toveara Pty Ltd, an entity associated with one of the applicant's board members, contracted to purchase a property at Chester Hill with a view to establishing the applicant's Islamic school.
21 May 2010	The acquisition notice was published in the Gazette.

14 The referee at [9] of the report listed the outstanding disturbance claims as

follows:

(a) Design costs incurred in relation to proposed new buildings on the land;

(b) Construction costs incurred for alternative classrooms at other existing schools of the applicant to temporarily accommodate pupils who had enrolled at the projected school on the acquired land, which had been due to open at the beginning of 2010;

(c) A mortgage break fee or early repayment fee to be charged by the applicant's bank;

(d) Staff costs thrown away;

(e) Legal costs;

(f) Accounting costs for an accounting system for the new school; and

(g) Landscape and stormwater system design costs.

15 These costs and fees, with the exception of (b) and (e) (construction at other sites and legal costs), were for costs in regard to the establishment of the projected new school on the acquired land at Bass Hill, which were rendered futile as a result of the resumption. None of the costs claimed are reflected in the market value of the acquired land, which I have earlier determined.

16 The referee was satisfied that, at the very least, the purpose for which the land was being used at the date of acquisition was for the purpose of establishing an Islamic school on the site: at [15].

17 The applicant claimed the legal costs under s 59(a) and the other costs under s 59(f). The referee partly upheld the s 59(a) claim and upheld most of the s 59(f) claim. The referee found it unnecessary to consider the alternative relocation claim under s 59(c) for the cost of construction and design works and accounting, and an alternative special value claim under ss 55(b) and 57: report [95], [96].

LEGAL COSTS: S 59(A)

18 The applicant claimed legal costs as loss attributable to disturbance under ss 59(a), which it is convenient to repeat:

> legal costs reasonably incurred by the persons entitled to compensation in connection with the compulsory acquisition of the land.

19 The referee rejected most of the legal costs claimed by the applicant under s 59(a) and, as to the balance, said that he was not able to make an apportionment of what was allowable and what was not.

20 The parties have now agreed on that apportionment and agree that $78,459.58 is allowable consistently with the referee's decision, except that the respondent disputes 5 per cent of this amount ($3,922.98), which represents the applicant's solicitors' "administrative charge". The administrative charge is provided for in cl 2.2 of the fee agreement between the applicant and its solicitors as follows:

> (a) You are also required to pay an administrative charge equivalent to 5% of our fees (**Administrative Charge**) to cover such items as telephone, facsimiles, emails and internet charges, photocopying and government and bank charges on office and trust accounts.
>
> (b) If the Administrative Charge is more or less than the actual administration charges in your matter, each party agrees to waive its entitlement to demand either further payment or a refund from the other, as the case may be for such charges.

21 The respondent submits that the referee fell into error in relation to the administrative charge because the referee reversed the onus of proof at [33] of his report where he said:

> In submissions [counsel for the respondent] made reference to amounts claimed by the solicitors described as "administration charges" and that they were not itemised. There was no cross - examination of [the applicant's solicitor] on this issue, nor was there tenable evidence that the charges were not reasonable.

22 I do not accept the submission. In my view, the referee did not reverse the onus of proof. He had the fee agreement before him and evidence of the quantum of the solicitors' charges including the administrative charge component of 5 per cent. The reasonableness constraint in all the subsections of s 59 is related to the incurring of costs rather than the costs themselves, although exorbitant costs could not be said to be "reasonably incurred": *Roads and Traffic Authority (NSW) v McDonald* [2010] NSWCA 236, 175 LGERA 276 at [38]. There was no contest before the referee that it was reasonable for the applicant to obtain legal advice on the resumption. In the absence of countervailing matters, at that point it was open to the referee to conclude that the applicant was entitled to compensation for the administrative charge component of allowable legal costs. If there had been damaging cross - examination or tenable evidence that the administrative charge was not reasonable, a contrary conclusion might have been reached. The referee at [33] simply noted that there were neither. That did not constitute reversing the onus of proof.

23 Next, the applicant moves for rejection of the referee's disallowance of other legal costs, and for their acceptance by the Court. The rejected legal costs concerned investigation of a possible human rights claim (discrimination on the basis of the community being an Islamic community and the school being an Islamic school) and investigation of a potential judicial review of the Minister's decision to acquire the subject land (based on acquisition for an

improper purpose). In fact, the applicant did not commence proceedings for either claim.

24 The applicant submits that these rejected legal costs are recoverable under s 59(a) because, first, the use of the definite article in s 59(a) ("the" compulsory acquisition of the land) is indicative of the relationship required with the particular act of compulsory acquisition; secondly, while some acts of compulsory acquisition would not raise validity arising from human rights issues, the Minister's decision to acquire the subject land did; thirdly, the evidence before the referee (as I accept) was that the applicant or its solicitors negotiated with the respondent endeavouring to dissuade the respondent from proceeding with the acquisition; and, fourthly, the words "in connection with" in s 59(a) should be construed widely: *Caruana v Port Macquarie - Hastings Council* [2007] NSWLEC 109 at [89] - [91] (Biscoe J).

25 I do not accept the submission. A proposed acquisition notice must be given at least 90 days before land is compulsorily acquired: s 13. A compulsory acquisition is by notice published in the Gazette: s 19. This 90 day period gives the potential sufferer of the resumption the opportunity to attempt to change the mind of the resuming authority. If that occurs successfully, then Part 4 (ss 69 - 71) applies, as the referee recognised. Part 4 is entitled "Compensation for abandoned acquisition of land". Section 69 is entitled "Compensation for withdrawal of proposed acquisition notice". Section 70 is entitled "Compensation for rescission of an acquisition notice". Section 71 is entitled "Claims for compensation under this Part". In the present case, if the proposed acquisition notice had been withdrawn and contentions of violation of human rights or improper purpose were causative of the withdrawal, the legal costs reasonably incurred for obtaining advice on human rights and improper purpose may have been recoverable under s 69(1), which provides:

> If a proposed acquisition notice is withdrawn (or taken to be withdrawn) under this Act, an owner of the land concerned is entitled to be compensated by the authority of the State who gave the notice for any financial costs or any damage actually incurred or suffered by the owner as a direct consequence of the giving of the notice and its later withdrawal.

26 Significantly, however, there is no equivalent provision for compensation for such costs if, as in the present case, a proposed acquisition notice is not withdrawn. The applicant submits that provision for such compensation is to be read into s 59(a), but in my opinion this cannot be done.

27 Sections 55 and 59 appear in Division 4 entitled "Determination of amount of compensation", which is in Part 3 entitled "Compensation for acquisition of land". Part 3 is based on the acquisition proceeding, in contrast to Part 4. Legal costs recoverable under s 59(a) include (but are not necessarily limited to) costs of advising a land owner of procedures for acquiring land for assessing compensation under the Act, instructing a valuer and other experts

reasonably required to assist the valuer, and conducting negotiations with the Valuer - General over the quantum and basis of compensation. Such costs share the characteristic that they accept that the acquisition or proposed acquisition under the Act will proceed. In my opinion, s 59(a) cannot be stretched to include legal costs directed to preventing acquisition rather than seeking compensation for it. A party who contemplates such an independent legal claim, outside the acquisition and compensation process, must look to any costs order in those separate proceedings.

28 Even if I am incorrect and the contentious legal costs are compensable under s 59(a), in my view the evidence is insufficient to establish the necessary causal link that the negotiations to persuade the respondent not to proceed with the acquisition included contentions based on alleged human rights violations or improper purpose for which legal costs were reasonably incurred. The evidence does not disclose whether or not any such allegations (if they were made) would have had merit.

COSTS ALLOWED UNDER S 59(F)

29 The referee allowed the other contentious costs claimed as loss attributable to disturbance under s 59(f), which it is convenient to repeat:

> any other financial costs reasonably incurred (or that might reasonably be incurred), relating to the actual use of the land, as a direct and natural consequence of the acquisition.

30 The respondent submits that the referee erred in law and should have disallowed all the contentious costs allowed under s 59(f).

31 These contentious costs include the following accounting costs, staff costs and design and construction costs for the projected school intended to be opened on the acquired land at the beginning of 2010, which were incurred pursuant to contracts entered into before the respondent's announcement of July 2009 that the land was to be resumed . They were paid, or are to be paid, after that date. They comprise:

(a) Accounting fees of $38,300, being in respect of an accounting system for the projected school on the land, charged by the applicant's accountant: report [46] - [58];

(b) Staff costs of $224,538 in respect of work done by staff to develop systems for the proposed school on the land: report [69] - [82];

(c) Costs of $89,150 and $54,267.27 being progress payments made to Bauen Constructions pursuant to a contract of 13 June 2009 for building design and construction: report [83] - [89];

(d) Costs of structural plans and architectural design prepared by Premium Design and Engineering $97,200 (the report refers to $97,700 but that is an arithmetical error): [90] - [92];

(e) Costs for landscape design carried out by Michael Siu $14,000: report [93];

(f) Costs of a stormwater drainage concept plan carried out by Neville Brown and Associates $15,300: report [94].

32 All these costs were rendered futile by the announcement of the intention to resume the land on 15 July 2009.

33 None of the these costs added value to the acquired land and are therefore not picked up in the market value of the land. The respondent submits that they are not compensable at all.

34 The contentious costs allowed by the referee under s 59(f) also includes a claim for $482,910 (net of GST), which the referee allowed in the sum of $478,530, in respect of the cost of the following three categories of classrooms which the applicant constructed around the end of 2009 at its existing Bankstown and Liverpool campuses to temporarily accommodate some 133 students who, but for the acquisition, would have attended the school proposed to be opened on the acquired land in early 2010 (report [59] - [68]):

> (a) Construction of demountable classrooms at Bankstown $159,000 (including GST);
>
> (b) Alterations to a caretakerâ€™s residence at Liverpool to accommodate classrooms $127,050 (including GST); and
>
> (c) Construction of two so-called â€œpermanentâ€ classrooms at Liverpool $245,150 (including GST);

35 The respondent submits that the referee fell into legal error in the following respects in allowing these costs (net of GST) under s 59(f):

(a) Error in the application of s 59(f). In particular -

(i) failing to apply the requirement that "actual use" is required to engage s 59(f). On this basis it is said that the referee should have disallowed all the contentious costs claimed under s 59(f); and

(ii) failing to recognise that costs "incurred...as a direct and natural consequence of the acquisition" within the meaning of s 59(f) must be after notification of the intention to acquire the land - in this case after 15 July 2009. On this basis, the respondent submits that the referee should have disallowed the accounting costs, staff costs and design and construction costs, the contractual liability for which arose prior to that date.

(b) Related to the onus point, the referee failed to consider the fact that the two "permanent" classrooms constructed on the applicant's Liverpool campus for some $245,000 (including GST) were to be retained on that campus and therefore the applicant would derive a benefit from them.

(c) There was no evidence to support the referee's finding that the demountable classrooms constructed on the applicant's Liverpool campus "will not be reusable": report [62]. Accordingly, he should have allowed for their continuing benefit to the applicant.

(d) The referee erroneously reversed the onus of proof in relation to establishing the depreciated value of modular classrooms at the applicant's Liverpool school: report [64].

"Actual use"

36 The respondent submitted to the referee, who rejected the submission, and the respondent repeats before me, that all the s 59(f) disturbance items that it now contests are not recoverable under s 59(f) because there was not at the acquisition date (or ever) any "actual" use of the land for the purpose of that school: that "actual" use would be in the future. The respondent submits that:

(a) "Actual" use in s 59(f) does not include future or potential use: *Blacktown Council v Fitzpatrick Investments Pty Ltd* [2001] NSWCA 259; *Kirela Pty Ltd v Minister Administering the Environmental Planning & Assessment Act 1979 (No 2)* [2004] NSWLEC 68, 132 LGERA 90 (Cowdroy J). The respondent points out that he referred to those cases but they were not cited in his report;

(b) The referee made no finding of actual use;

(c) At the time the contentious costs were incurred, the use of the subject land for the purpose of a school was a future use; and

(d) The referee therefore should have disallowed those costs.

37 I do not accept the submission. The Court of Appeal in *Blacktown* decided that "actual" use is an existing use and does not include future or potential use. The decision in *Kirela* was the same. The referee did not hold to the contrary. The Court of Appeal in *Blacktown* drew on cases decided in the entirely different contexts of rating, planning and taxation statutes, and in the context of a planning statute, which did not use the description "actual" use but rather "existing" use or equivalent. It might have been thought that those cases and statutes were therefore distinguishable. But that was not the view taken in *Blacktown* . Absent authority, it might be thought that an "actual" use within the meaning of s 59(f) could be either an existing actual use or future actual use. After all, s 59(f) does not use the word "existing". It could then readily be seen that costs incurred preparatory to a future actual use "related to" that use within the meaning of s 59(f).

38 However, the same result is reached in the circumstances of this case through application of the principle that physical use of land is not an essential ingredient of use: *Blacktown* citing *Council of the City of Newcastle v Royal Newcastle Hospital* (1957) 96 CLR 493; *Council of the City of Parramatta v Brickworks Ltd* (1972) 128 CLR 1 at 21; and *Goldsworthy Mining Ltd v Commissioner of Taxation* (1975) 132 CLR 463 at 470 - 471. There is a distinction between land simply held in reserve for some future activity and land in respect of which work is being done - which does not have to be physical work on the land - preparatory to an intended use. The latter is, but the former may not be, an actual use of the land: *Blacktown* at [21] citing *Vaughan - Taylor v David Mitchell - Melcann Pty Ltd* (1991) 25 NSWLR 580 at 590. The present case falls into the latter category. By the date of announcement of the acquisition on 20 July 2009, the applicant had caused work to be done preparatory to the intended use of the land as a school, for which it had incurred costs. The work included physical work on the land.

39 The referee was satisfied that the land was "actually" used "at the very least" for the purpose of establishing an Islamic school and that, but for the acquisition, the land would have been developed as a school: at [15]. The referee at [13] noted that the following evidence, which was not really in contention, supported his conclusion of actual use:

(a) Development consent for an Islamic school had been obtained;

(b) There was a person, Mr El Dana, who had been designated as headmaster;

(c) A syllabus had been prepared that had been submitted to the Board of Education for approval;

(d) A budget had been prepared;

(e) Design work for buildings had commenced; and

(f) Construction work was about to begin.

40 The referee said at [55] - [56] of the report:

> 55. At the date of acquisition the applicant had obtained a development consent to establish an Islamic school on the resumed land and an architect had designed buildings to that end. Moreover, a contract had been entered into with a builder and enrolments for 2010 had been accepted with a prospect that at least part of the school would be able to operate on the site from the beginning of that year.
>
> 56. This is not a case, as explained above, where the land remained vacant at the time of acquisition with no designation of a future purpose.

41 The referee reasoned as follows at [58] in relation to the accounting fees, and elsewhere took a corresponding approach to the other items the subject of the actual use challenge:

> In my view the work done by [the applicant's accountant] attracted a financial cost relating to the actual use of the land as a potential school site and that the benefit of that cost was effectively thrown away when the compulsory acquisition occurred. It is, therefore, reasonable that the applicant receive compensation for the fees payable to [the applicant's accountant] as a loss attributable to disturbance.

42 The respondent's contention is in error if it is equating an actual or present use of land with its physical use. Even so, the facts do not support the contention. In addition to the evidence of actual use noted by the referee, the following uncontested evidence, including evidence of physical use, supports the conclusion of actual use:

(a) Actual work had commenced at the time of the resumption announcement as trees had been marked and fences removed;

(b) Geotechnical work and site measurements by leading hand carpenters were done on the site;

(c) At least 132 students had been enrolled in the school; and

(d) Teachers had been employed by the school and were being trained in 2009 by existing teachers at Liverpool and Bankstown, but their contracts of employment required them to devote their time to the new school.

43 The only "use" made of the land in *Blacktown* was as trading stock, ripe for redevelopment. Otherwise it was vacant, yet it was found to be in actual use "to conduct its business": at [28]. *Kirela* , in which it was held that there was no actual use of the land, is distinguishable. There was not even a development consent for a future use and the fees disallowed were for "general advice" or concerned another site: at [8], [9]. The land had not been put into production as part of the applicant's business assets, and was not used for any other purpose: at [12].

44 In my view, there is no legal error disclosed in the referee's analysis of actual use. The respondent's submission is misconceived insofar as it assumes that the referee was required to find that there was actually an operational school on the subject land. Of course there was not. But there was actual use,

present and physical, of the land for the purposes of a school as at the date of acquisition. That is enough to satisfy s 59(f).

Costs "incurred" and causation

45 The respondent submitted to the referee that the design and construction costs paid to Bauen Constructions were not allowable under s 59(f) (or at all) because they were "incurred" prior to the date of announcement of the intended acquisition in July 2009 and accordingly could not be said to be caused by the acquisition: report [87(b)]. The referee rejected the submission holding that they were clearly financial costs "for which the applicant was deprived of any benefit, a consequence specifically contemplated by s 59(f) which draws no distinction between costs incurred before or after the date of acquisition but only that they related to actual use of the land and are a cost suffered as a direct and natural consequence of the acquisition": report [89].

46 The respondent's written submission is that, first, it is a legal error to hold that a cost is "incurred" within the meaning of s 59(f) not at the point when the party spends the money or becomes liable to spend it, but at a later point when that party is "deprived of any benefit"; and, secondly, costs cannot be caused by the acquisition if they were incurred prior to announcement of the public purpose. When faced with the fact that the applicant had paid these costs after the date of the respondent's announcement of the proposed acquisition on 20 July 2009, the respondent orally modified its written submission by submitting that a cost is "incurred" at the earlier of the times when the legal obligation to pay arises or the time when the money is paid.

47 As I understand it, the respondent in oral submissions seeks to extend its costs "incurred" and causation submissions to all the applicant's wasted costs, on the basis that the contractual obligation to pay them arose prior to announcement of the resumption proposal on 15 July 2009. They were all paid, or are to be paid, after that date.

48 It is the terms of the Just Terms Act that are determinative: *Walker Corporation Pty Ltd v Sydney Harbour Foreshore Authority* [2008] HCA 5, 233 CLR 259 at [47]. However, it was said in the Court of Appeal in *Blacktown*, and the Court of Appeal proceeded on the basis, that while care must be taken in utilising the reasoning from decisions construing similar words in different legislative regimes, such decisions may be helpful in the task of construction of the disturbance provisions of the Just Terms Act: at [3].

49 Abortive or wasted expenditure which does not improve the value of land, and hence is not picked up in market value, has been recognised in cases decided under earlier resumption compensation legislation in New South Wales as well as under the Just Terms Act, and under resumption compensation legislation

in England and Canada. Such claims were recognised by the Court of Appeal in *Yates Property Corporation Pty Ltd (In Liq) v Darling Harbour Authority* (1991) 24 NSWLR 156 at 161G - 162B, 163E - G, 185F (decided under the *Public Works* Act 1912) and allowed by Cripps CJ on the rehearing, as noted in *Boland v Yates Property Corp Pty Ltd* [1999] HCA 64, 167 ALR 575 at [34], [35]. Those findings were not criticised in *Boland* : at [23], [34], [86], [87]. In *Peter Croke Holdings Pty Ltd v Roads and Traffic Authority of NSW* (1998) 101 LGERA 30 at 64 - 66 Bignold J rejected an argument that deductions from disturbance compensation should be made for enhancement or residual value. Legal costs of abortive negotiations to sell the subject land to the resuming authority in the shadow of a resumption were allowed in *Caruana v Port Macquarie - Hastings Council* [2007] NSWLEC 109 at [88] - [91] (Biscoe J) having regard to the fact that the Act envisaged sale to the resuming authority as an alternative to compulsion.

50 Other compensation cases which have recognised the value of abortive expenditure which does not improve the land and hence is not picked up as market value, include the following: *Scottish Halls Ltd v The Minister* (1915) 15 SR (NSW) 81 at 82, 90 - 91 (decided under the *Public Works Act* 1912); *George Wimpey & Co Ltd v Middlesex county Council* [1938] All ER 781 at 783D - E (expenditure thrown away, being the costs of road construction in developing a housing estate); *Service Design Pty Ltd v Commissioner of Highways* (1986) 59 LGRA 176 at 193.3 (abortive auctions); *McEwen v R* (1978) 15 LCR 1 at 5 - 7 (development costs of partial clearing, survey, fees for initial abortive redevelopment) (Federal Court); *Liebovitch v City of Vanier* (1975) 8 LCR 109 at 111 (building permit obtained for projected development) (Land Compensation Board, Ontario); *Durette v New Brunswick (Minister of Transportation)* (1980) 21 LCR 124 at 132 (architect's fees rendered nugatory) (Property Compensation Board New Brunswick); *Ridgeport Developments v Metropolitan Toronto Region Conservation Authority* (1976) 11 LCR 143 at 154, 156 - 7 (architect's plans and other costs of future development rendered abortive) (Land Compensation Board, Ontario); *Starkman v City of Brampton* (1974) 7 LCR 329 at 346 - 8 (legal principle, abortive development expenditure) (Land Compensation Board, Ontario).

51 In *Canada (Federal District Commission) v Dagenais* [1935] Ex CR 25, the President of the Exchequer Court of Canada allowed abortive expenditure, either as special value or disturbance, because the owner had lost the benefit of his expenditure on preparing building plans and other costs preliminary to starting building work: at [4]. It was the taking of the land which had caused the incurrence of the loss or damage: at [10] - [15]. The President followed the NSW case of *Scottish Halls* (above) finding that there was nothing in the Public Works Act of NSW under which that case was decided to distinguish it from the Canadian statute there under consideration.

52 In the present case, all the wasted costs were paid after the announcement of the resumption. Some have not yet been but will be paid (eg architect's fees). What was paid to the applicant's contractors was, in effect, frustration damages for work of no value to the applicant: in truth, a cost to the applicant. It would be different if the work resulted in an improvement to a capital asset (the land) in which case its value would have sounded in market value. However, there was no physical manifestation of the work which was of any value: it was simply lost, as a direct consequence of the resumption.

53 Section 59(f) is a wide, catch - all provision, and the words "any financial costs" should not be read down: *McDonald v Roads and Traffic Authority of NSW* [2009] NSWLEC 105, 169 LGERA 352 at [110]. They include a financial loss: *Sydney Water v Caruso* [2009] NSWCA 391, 170 LGERA 298 at [186]. Compensation for disturbance compensates for loss: ss 55(d), 59; *Bligh v Minister Administering the Environmental Planning and Assessment Act 1979* [2011] NSWLEC 220 at [67] - [78] (Biscoe J). The loss to a dispossessed owner includes financial costs thrown away because of the resumption. The ordinary meaning of "cost" includes not only the price paid to acquire property or services but also "a sacrifice, loss or penalty": Macquarie Dictionary.

54 If a compulsory acquisition converts amounts payable or paid under earlier contractual obligations into wasted or aborted expenditure for no value, at that moment costs are incurred as a direct and natural consequence of the acquisition. Whilst the contractual obligation to pay was incurred before the acquisition, the "costs", within the meaning of s 59(f), were incurred once the applicant was deprived of the benefit of the obligations by the acquisition. In this sense they are costs which are compensable pursuant to s 59(f).

55 In my opinion, the referee was correct in allowing the contentious costs claimed by the applicant under s 59(f).

COST OF LIVERPOOL CLASSROOMS: FAILURE TO DEAL WITH A SUBMISSION?

56 In relation to the classrooms constructed at the applicant's existing Liverpool and Bankstown campuses for the temporary accommodation of pupils enrolled at the intended school on the acquired land from the beginning of 2010, referred to at [34] above, the respondent submitted to the referee that:

(a) Mr El Dana gave evidence that he intended to remove the demountable classrooms and reconvert the caretaker unit at Liverpool, but did not give evidence that he intended to remove the other two classrooms at Liverpool.

(b) Even if there had been no acquisition, the cost would have been incurred in order to accommodate additional students and therefore the cost was incurred to acquire a permanent asset.

(c) Therefore the applicant has acquired a permanent accretion to the income producing assets of its business at Liverpool from that expenditure. This is not a compensable cost under s 59.

57 The respondent submits that the referee erred in failing to deal with this submission. The referee in fact noted the respondent's submission: at [60] - [61]. The respondent did not make out part (b) above of its submission and it was not pressed before me. In reaching his conclusion that the claim for the classrooms should be allowed, the referee said at [65]:

> I am satisfied that the classrooms the subject of this part of the claim were developed for a specific purpose, namely to accommodate students enrolled for a school at Bass Hill from January 2010. If the Bass Hill site had still been available to the applicant, on the balance of probabilities there would have been an opportunity to provide accommodation for those students, or at least a body of them on the acquired land.

58 Although the referee did not directly engage with the respondent's submission apart from noting it, in my opinion he was correct in concluding that the cost of these classrooms at Liverpool came within s 59(f). That provision is concerned with costs "reasonably" incurred. Costs incurred unreasonably cannot sensibly be said to be a direct and natural consequence of the acquisition. A question under s 59(f) is whether a reasonable person in the position of the applicant would have incurred the cost of the classrooms. As Lord Nicholls said in *Director of Buildings and Lands v Shun Fung Ironworks Ltd* [1995] 2 AC 111 at 126:

> Fairness requires that claims for compensation should satisfy a further, third condition in all cases. The law expects those who claim recompense to behave reasonably. If a reasonable person in the position of the claimant would have taken steps to eliminate or reduce the loss, and the claimant failed to do so, he cannot fairly expect to be compensated for the loss or the unreasonable part of it. Likewise if a reasonable person in the position of the claimant would not have incurred, or would not incur, the expenditure being claimed, fairness does not require that the authority should be responsible for such expenditure. Expressed in other words, losses or expenditure incurred unreasonably cannot sensibly be said to be caused by, or be the consequence of, or be due to the resumption.

59 Section 59(f) is not concerned with whether a cost falling within its terms happens to give the dispossessed owner a collateral benefit such as by adding value to other land of the owner. Section 59(f) requires the applicant to prove that the cost incurred is a "direct and natural consequence of the acquisition". Once an applicant passes through the s 59(f) gateway, in my opinion the onus

shifts to the respondent to establish that the applicant would be overcompensated by awarding it disturbance loss for that cost under s 59(f), that the cost therefore should be adjusted in order to satisfy the just compensation override in s 54, and what the amount of that adjustment should be. Authority for such an approach is found in *Minister of State for the Army v Parbury Henty & Company Pty Ltd* [1945] HCA 52, 20 CLR 459 at 507 - 508 where Dixon J held:

> In the present case, the company dispossessed is not shown to have acquired for the lower rent premises which for all its purposes were of equal value with the old. I think that the burden of showing this must be upon the Minister. There is no presumption that, because the rental of the new premises was lower, the company really gained an advantage. The old premises were those which it chose as suitable for its business and the new were obtained as a substitute only because of the necessity of finding another place of business. The natural inference is that in each case it paid what the premises were worth and that the additional advantages of the old premises from a business point of view were worth paying for

60 In my opinion, the respondent did not discharge his onus. There was no evidence that the applicant needed, or planned to have, or had any use for the classrooms other than temporarily to accommodate the students that had been enrolled at the intended Bass Hill school. It was driven to construct them by the acquisition. Further, there was no evidence that the classrooms would add to the capital value of the Liverpool land. The respondent submits that an addition to capital value should be inferred. This sits uncomfortably with Dixon J's judgment that there is no presumption of advantage. In any case, it was open to the referee not to draw, and I decline to draw, such a factual inference given the state of the evidence. There is also difficulty in seeing a safe basis in the evidence for assessing the quantum of an inferred addition to capital value. Cost does not necessarily translate to value.

61 It is unnecessary to go further, but I would add that I do not necessarily accept that there should be any adjustment even if it were proved that these classrooms added value to the Liverpool land, given that they were forced upon the applicant by the acquisition and the absence of evidence that the applicant needed or had any ongoing use for them. The respondent's submission may have significant implications. If the respondent is correct, it might follow that generally in cases of relocation of business premises forced by compulsory acquisition of land, the relocation costs should be discounted because the applicant would have the benefit of new premises replacing the old premises. Once relocation costs are discounted for that reason, relocation becomes difficult, if not hazardous, because the resumed party will receive less compensation than the cost of relocation. There would be an issue whether such a discount would offend the just compensation override in s 54.

COST OF CLASSROOMS: REVERSAL OF ONUS

OF PROOF?

62 I have earlier rejected the respondent's reversal of onus of proof submission in relation to legal administrative expenses: [21] - [22] above.

63 The respondent makes a similar submission in relation to the construction costs of classrooms at the applicant's Liverpool and Bankstown campuses arising from what the referee said at [64]:

> [Counsel for the respondent] submits that any cost will be the depreciated value of the classrooms at an unknown future date, not their construction cost. There is no valuation or other evidence to support this contention, nor has there been any quantification of the suggested allowance.

64 The respondent submits that the referee thereby reversed the onus of proof. The respondent submits that the referee should have found that the applicant had failed to discharge its onus of proving the depreciated value of the demountable classrooms at Bankstown and therefore should have rejected the applicant's entire claim for the cost of the demountables. The respondent ultimately does not press a corresponding submission in relation to the classrooms in the converted caretaker's residence given the evidence that it will be reconverted.

65 I do not accept the submission. The evidence of Mr El Dana established that the applicant had no use for the demountable classrooms other than for temporary accommodation of students who had enrolled at the projected Bass Hill school. Assuming that depreciated value is relevant or significant in the circumstances of this case (which is contentious), the evidence established that the demountables had no ongoing value to the applicant. There was no evidence that they had any market value. In this state of the evidence, I consider that it was open to the referee to accept their cost as the measure of compensation under s 59(f). In my view, the referee at [64] did not reverse the onus of proof, rather he simply noted the state of the evidence.

66 It is unnecessary to go further, but there is more. The referee made the following finding of fact at [62] in relation to the demountable classrooms:

> The evidence is that the irregular configuration of the space necessitated re - shaping the demountables by cutting them **so that they will not be reusable** .
>
> (emphasis added)

67 This finding, if it stands, is of itself fatal to the respondent's argument. The respondent toward the end of the hearing before me submitted that it cannot stand because there was no evidence before the referee to support it. I do not accept that this has been established. The builder contracted to build demountable classrooms at the applicant's Bankstown campus over the 2009/2010 Christmas holiday period. The builder fabricated the modules and

joined them together on site to suit the site restrictions. According to plans in evidence, each demountable classroom was about 7.5 metres x 8.0 metres and consisted of three modules. The following cross - examination of the builder, Mr M Awad, occurred before the referee:

> Q. A demountable classroom means one that can be moved doesn't it?
>
> A. That can be moved, yes. But this wasn't standard size.
>
> Q. It wasn't standard size but it was demountable, which means that it could be moved?
>
> A. Yes, of course can be moved. But this is not the standard size to pick up from one place to put it on another school or something.
>
> Q. I think you have said that more than once. Nonetheless, it is something that because it is demountable means, as you have said, it can be moved?
>
> A. Mmm - hmm.
>
> Q. The way you would move it would be by moving it on a low loader?
>
> A. Not really, no. It's not a standard size. You can - -
>
> Q. so are you saying it's not - -
>
> MR ROBERTSON: Please let him finish his answer.
>
> THE WITNESS: The one we built to take I think couple of extra students or something, it's over the size. If you want to pick up from one place to another, it doesn't take on the road oversized load.
>
> MR HALE: Q. I see. So you would have to cut part of it off when you were to move it?
>
> A. You have to make it maybe half, but I have to come back to the paper to check what size we make.
>
> Q. All right. When you say it's demountable, it must mean it was designed so that it could be moved; isn't that right?
>
> A. Can be moved. It can be moved, yes.

68 The referee's reference to "cutting" quoted above at [66] seems to come from this cross - examination. It seems to have been the basis of an oral submission by the applicant to the referee that the builder had said they were not of standard size and could not be carried or had to be cut up if they were to be carried at all. The respondent suggests that the words "cut part of it off" used by the cross - examiner should not be understood as literally referring to cutting but as meaning "dividing", in the sense of dividing the component modules. I think that the ordinary meaning of the words quoted from the cross - examination mean cutting (not dividing the component modules) and that it was open to the referee, who heard the evidence, to understand them in that way. Taken together with the whole of the relevant evidence, I consider that it was open to the referee to make the finding at [62] of his report. The classrooms were clearly of no use to the applicant on an ongoing basis. Their only conceivable value was the market value to others, for which there was no evidence.

CONCLUSION AND ORDERS

69 For these reasons, I adopt the referee's report. Accordingly, I determine that the amount for which the applicant is entitled to compensation is as follows:

	$
Market value of the acquired land as earlier determined	10,885,000.00
s 59(f) disturbance costs allowed by the referee and enumerated in annexure A to report	1,225,503.74
s 59(a) disturbance legal costs allowed by the referee as agreed by the parties: [20] above	78,459.58
	12,188,963.32
Say	12,189,000.00

70 The applicant seeks an order that the respondent pay the determined compensation (to the extent that it has not already been paid) within seven days in order, I understand, to mitigate the interest hardship which the applicant says it is suffering: see [5] above. The respondent replies that that may be contentious for bureaucratic reasons. Yesterday my Associate received a message from the respondent's solicitor indicating that the parties may wish to argue this point further after I deliver judgment. I propose to hear any such argument forthwith after I deliver this judgment.

71 The orders of the Court are as follows:

(1) The referee's report dated 13 December 2011 is adopted.

(2) Determination that the amount of compensation to which the applicant is entitled for the compulsory acquisition by the respondent of the applicant's land Lot 2 DP 505662 at 98 Johnston Road, Bass Hill is $12,189,000.

(3) Reserve for immediate argument the question whether the respondent should be ordered to pay the applicant the compensation to which it is entitled (to the extent to which it has not already been paid) within a specified time.

(4) The respondent is to pay the applicant's costs.

(5) The exhibits before the Court and the referee may be returned.

Amendments

13 January 2012 - typographical corrections
Amended paragraphs: 6, 7(c), 18, 31(d), 48 and 59

Decision last updated: 13 January 2012