

CONCURRENCE COPY

COMPENSATION COURT BILL, 1984

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill:—

Workers' Compensation (Amendment) Bill, 1984;

Workers' Compensation (Brucellosis) Amendment Bill, 1984;

Sporting Injuries Insurance (Workers' Compensation) Amendment Bill, 1984;

Miscellaneous Acts (Workers' Compensation) Amendment Bill, 1984.

The object of this Bill is to create a Court in which shall be vested the judicial functions of the Workers' Compensation Commission of New South Wales. It is proposed, by the proposed Workers' Compensation (Amendment) Act, 1984, to abolish the Workers' Compensation Commission of New South Wales. By the same Act, it is proposed to constitute a State Compensation Board in which shall be vested the administrative functions of the Workers' Compensation Commission of New South Wales.

The Bill contains the following provisions:—

PART I.—PRELIMINARY.

Clause 1. Short title.

Clause 2. Commencement.

Clause 3. Arrangement of the proposed Act.

Clause 4. Interpretation.

PART II.—CONSTITUTION.

Clause 5 creates the Compensation Court of New South Wales ("the Court").

Clause 6 provides that the functions of the Court shall be exercised by a single Judge of the Court.

Clauses 7–11 provide for the appointment of the Chief Judge and Judges of the Court. Generally, a District Court Judge, a barrister of 5 years' standing or a solicitor of 7 years' standing is qualified for appointment as a Judge of the Court.

The Judges of the Court are to have the same rank, status and precedence and the same remuneration and other rights as a District Court Judge and may only be removed from office in the same manner as a District Court Judge may be removed.

Clauses 12 and 13 provide for the appointment of commissioners of the Court. A barrister or solicitor of 5 years' standing is qualified for appointment as a commissioner.

Clause 14 provides for the appointment of a registrar, assistant registrars and other officers of the Court.

PART III.—JURISDICTION OF THE COURT.

Clause 15 confers on the Court its jurisdiction and gives the Court powers ancillary to its jurisdiction. The Court's principal jurisdiction arises under the Workers' Compensation Act, 1926, wherein it is proposed (by the proposed Workers' Compensation (Amendment) Act, 1984) to provide that the Court will have exclusive jurisdiction to examine into, hear and determine all matters and questions arising under that Act.

Clause 16 enables a Judge of the Court to refer matters to a commissioner.

Clauses 17–19 make provisions in relation to decisions of the Court and the ordering of payment of fees or costs and interest.

Clauses 20–25 relate to the procedure of the Court.

Clauses 26 and 27 contain provisions relating to the jurisdiction of, and procedure before, commissioners of the Court.

Clauses 28 and 29 relate to the jurisdiction of a registrar of the Court.

Clause 30 relates to the holding of pre-hearing conferences and the referring of matters for arbitration.

PART IV.—APPEALS, ETC.

Clauses 31–34 provide for appeals, and the stating of cases, to the Supreme Court on a question of law, or of the admission or rejection of evidence, arising in proceedings before the Compensation Court.

Clauses 35–37 provide for—

- (a) appeals against an award of a commissioner and review by the Court of decisions of registrars; and
- (b) references to the Court of matters or questions arising in proceedings before a commissioner or registrar.

Clause 38 allows the Court to order a stay of proceedings in respect of an award the subject of an appeal or stated case. Where an appeal is made to the Supreme Court against an award of a commissioner, any stay of proceedings ordered will not affect any liability to make weekly payments of compensation under the award appealed

against. If the effect of the decision in respect of the appeal is to terminate the liability to make weekly payments, the Uninsured Liability and Indemnity Scheme established under the Workers' Compensation Act, 1926, will bear such part of the liability as the Supreme Court orders.

PART V.—MISCELLANEOUS PROVISIONS.

Clause 39 provides for the furnishing to the State Compensation Board of annual estimates of the costs of operation of the Court.

Clause 40 allows the delegation of functions.

Clause 41 makes provision for liaison between the Court and the State Compensation Board.

Clause 42 establishes a Rule Committee of the Court and provides that the rules of the Court shall be made by that Committee.

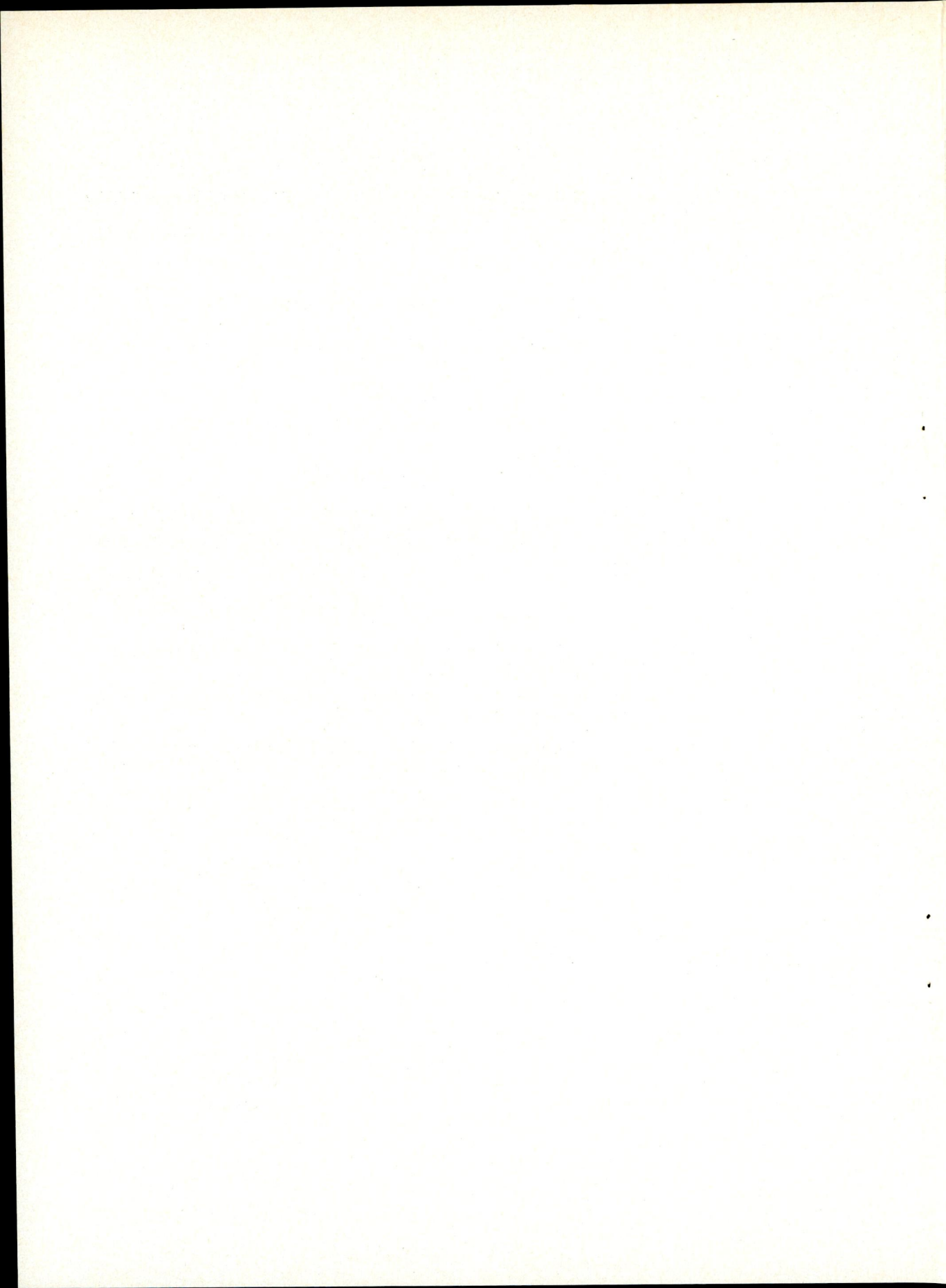
Clauses 43–47 specify matters in respect of which rules of the Court may be made and provide for the making of regulations by the Governor for the purposes of the proposed Act.

SCHEDULES.

Schedule 1 contains provisions relating to the preservation of rights of Judges of the Court if previously public servants.

Schedule 2 contains provisions relating to the office of commissioner of the Court and the rights of commissioners.

Schedules 3 and 4 set out the functions of the Court which may be exercised by a commissioner and registrar respectively.



COMPENSATION COURT BILL, 1984

No. , 1984.

A BILL FOR

An Act to constitute the Compensation Court of New South Wales and to make provision with respect to its jurisdiction.

[MR WALKER—23 *February*, 1984.]

See also Workers' Compensation (Amendment) Bill, 1984; Workers' Compensation (Brucellosis) Amendment Bill, 1984; Sporting Injuries Insurance (Workers' Compensation) Amendment Bill, 1984; Miscellaneous Acts (Workers' Compensation) Amendment Bill, 1984.

Compensation Court.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

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PART I.**PRELIMINARY.****Short title.**

1. This Act may be cited as the "Compensation Court Act, 1984".

Commencement.

- 10 2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Arrangement.

- 15 3. This Act is divided as follows:—

PART I.—PRELIMINARY—ss. 1–4.

PART II.—CONSTITUTION OF THE COURT—ss. 5–14.

DIVISION 1.—*Constitution*—ss. 5, 6.

DIVISION 2.—*Judges*—ss. 7–11.

20 DIVISION 3.—*Commissioners*—ss. 12, 13.

DIVISION 4.—*Other officers of the Court*—s. 14.

PART III.—JURISDICTION OF THE COURT—ss. 15–30.

DIVISION 1.—*General*—ss. 15–19.

DIVISION 2.—*Exercise of jurisdiction*—ss. 20–25.

25 DIVISION 3.—*Commissioner's jurisdiction*—ss. 26, 27.

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DIVISION 4.—*Registrar's jurisdiction*—ss. 28, 29.

DIVISION 5.—*Pre-hearing conferences and arbitration*—s. 30.

PART IV.—APPEALS, ETC.—ss. 31–38.

DIVISION 1.—*Appeals, etc., from Court*—ss. 31–34.

5 DIVISION 2.—*Appeals, etc., from commissioners or registrars*—
ss. 35–37.

DIVISION 3.—*Stay of proceedings*—s. 38.

PART V.—MISCELLANEOUS PROVISIONS—ss. 39–47.

SCHEDULE 1.—JUDGES.

10 SCHEDULE 2.—COMMISSIONERS.

SCHEDULE 3.—THE FUNCTIONS OF THE COURT WHICH MAY BE
EXERCISED BY A COMMISSIONER.

SCHEDULE 4.—THE FUNCTIONS OF THE COURT WHICH MAY BE
EXERCISED BY A REGISTRAR.

15 Interpretation.

4. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“a registrar” means the registrar or an assistant registrar;

“assistant registrar” means an assistant registrar of the Court;

20 “barrister” means a person who is on the roll of barristers in the Supreme
Court;

“Chief Judge” means the Chief Judge of the Court;

“commissioner” means a commissioner of the Court;

25 “Court” or “Compensation Court” means the Compensation Court of
New South Wales constituted under this Act;

“Judge” means a Judge of the Court;

“regulation” means a regulation under this Act;

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“rules” or “rules of Court” means the rules of the Court made under this Act;

“solicitor” means attorney, solicitor and proctor of the Supreme Court;

5 “State Compensation Board” means the State Compensation Board constituted under Part IV of the Workers’ Compensation Act, 1926;

“the registrar” means the registrar of the Court.

(2) A reference in this Act to—

10 (a) a function includes a reference to a power, authority and duty; and

(b) the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

PART II.

CONSTITUTION OF THE COURT.

15 DIVISION 1.—*Constitution.*

Constitution of the Court.

5. (1) There is hereby constituted a court of record to be known as the “Compensation Court of New South Wales”.

20 (2) There shall be a seal of the Court, and any document required by or under this or any other Act or law to be sealed or stamped with the seal of the Court shall be so sealed or stamped.

Single Judge to constitute the Court.

6. (1) The functions of the Court shall, subject to the provisions of this or any other Act, be exercised by a single Judge, who shall constitute the 25 Court.

Compensation Court.

(2) Subsection (1) does not affect the provisions of this or any other Act or any rules concerning the hearing and disposal of proceedings and business before a commissioner or a registrar.

DIVISION 2.—*Judges.*

5 Composition of the Court.

7. The Court shall be composed of—

- (a) a Chief Judge appointed by the Governor; and
- (b) such other Judges as the Governor may from time to time appoint under section 8 (1).

10 Appointment and qualification of Judges.

8. (1) The Governor may, by commission under the public seal of the State, appoint any qualified person to be a Judge.

(2) A person is qualified to be appointed as a Judge if the person is—

- (a) a Judge of the District Court;
- 15 (b) a barrister of not less than 5 years' standing;
- (c) a solicitor of not less than 7 years' standing; or
- (d) a barrister or a solicitor of less than 5 years' or 7 years' standing respectively, where at all times during a continuous period of not less than 7 years the person was on the roll of solicitors when not
20 on the roll of barristers or on the roll of barristers when not on the roll of solicitors,

and has not attained the age of 70 years.

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(3) The Oaths Act, 1900, applies to and in respect of a Judge in the same way as it applies to and in respect of a Judge of the District Court.

Tenure, etc.

5 **9. (1)** Subject to subsection (3), each Judge shall remain in office during ability and good behaviour.

(2) Each Judge shall be removable from office in the same manner only as a Judge of the District Court is by law liable to be removed from office.

10 **(3)** Each Judge shall retire on the day on which the Judge attains the age of 70 years, unless granted retiring leave, in which case the Judge shall retire on the expiration of that leave.

(4) The Chief Judge shall have the same rank, status and precedence and the same remuneration and other rights as the Chief Judge of the District Court.

15 **(5)** Except as provided in subsection (4), each Judge shall have the same rank, status and precedence and the same remuneration and other rights as a Judge, other than the Chief Judge, of the District Court.

(6) The Chief Judge shall have a title equivalent to that of the Chief Judge of the District Court and a Judge shall have a title equivalent to that
20 of a Judge of that Court.

(7) Schedule 1 has effect.

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Seniority.

10. The Judges, other than the Chief Judge, shall have seniority according to the dates of their commissions or, when the commissions of 2 or more of them bear the same date, according to the precedence assigned to them by their commissions or, failing assignment, according to the order of their being sworn.

Acting Chief Judge and acting Judges.

11. (1) In the case of the absence of the Chief Judge or of the Chief Judge's inability to exercise the functions of the office of Chief Judge, those 10 functions shall, during the absence or inability, devolve upon the senior Judge.

- (2) In the case of the absence, or of an inability to exercise the functions of the office of Chief Judge, of a Judge upon whom the functions of the Chief Judge have devolved under subsection (1), the functions of the 15 Chief Judge shall, during the absence or inability, devolve upon the Judge who is next in seniority.

- (3) A Judge shall, while exercising the functions of the Chief Judge under subsection (1) or (2), have the same remuneration as the Chief Judge.

- (4) The Governor may, by commission under the public seal of the 20 State, appoint any person qualified for appointment as a Judge to act as a Judge for a time not exceeding 12 months to be specified in the commission.

- (5) Acting Judges shall, for the time and subject to the conditions or limitations specified in their commissions, have and may exercise the functions of Judges and shall, for the purposes of this or any other Act, be 25 deemed to be Judges.

Compensation Court.

DIVISION 3.—*Commissioners.*

Appointment of commissioners.

12. (1) The Governor may appoint any qualified person to be a commissioner.

5 (2) A person is qualified to be appointed as a commissioner if the person is—

(a) a barrister of not less than 5 years' standing;

(b) a solicitor of not less than 5 years' standing; or

10 (c) a barrister or a solicitor of less than 5 years' standing, where at all times during a continuous period of not less than 5 years the person was on the roll of solicitors when not on the roll of barristers or on the roll of barristers when not on the roll of solicitors,

and has not attained the age of 60 years.

(3) Schedule 2 has effect.

15 Acting commissioners.

13. (1) The Governor may appoint any person qualified for appointment as a commissioner to act as a commissioner for a time not exceeding 12 months to be specified in the instrument of appointment.

20 (2) Acting commissioners shall, for the time and subject to the conditions or limitations specified in the instruments of their appointments, have and may exercise the functions of commissioners and shall, for the purposes of this or any other Act, be deemed to be commissioners.

(3) Acting commissioners are entitled to receive such remuneration and allowances as the Governor may determine.

25 (4) The provisions of the Public Service Act, 1979, do not apply to or in respect of the appointment of acting commissioners, and acting commissioners are not, in their capacity as such, subject to those provisions during their terms of office.

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DIVISION 4.—*Other officers of the Court.***Appointment of other officers.**

14. (1) A registrar, assistant registrars and such other officers of the Court as may be necessary for the proper administration of this Act, the regulations and the rules may be appointed and employed under and subject to the Public Service Act, 1979.

(2) The registrar, assistant registrars and other officers of the Court shall have such functions as may be prescribed by this Act, the regulations and the rules.

10 (3) An assistant registrar shall have and may exercise the functions of the registrar, and all acts, matters and things done or omitted by an assistant registrar shall be as valid and effectual and shall have the same consequences as if the acts, matters and things had been done or omitted by the registrar.

15 (4) The Chief Judge may, with the approval of the Minister and of the Minister administering a government department or administrative office, arrange for the use of the services of any staff or facilities of the department or office.

PART III.20 **JURISDICTION OF THE COURT.**DIVISION 1.—*General.***Jurisdiction of the Court generally.**

15. (1) The Court shall have the jurisdiction vested in it by or under this or any other Act.

25 (2) The Court, for the purpose of conducting any inquiry, investigation or hearing, shall have the same powers and authorities to summon witnesses and receive evidence as are conferred upon a commissioner

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appointed under Division 1 of Part II of the Royal Commissions Act, 1923, and that Act, section 13 and Division 2 of Part II excepted, shall apply to any witness or person summoned by or appearing before the Court in the same way as it applies to a witness or person summoned by or appearing
5 before such a commissioner.

(3) In addition to the powers conferred by subsection (2), the Court, for the purpose of conducting any inquiry, investigation or hearing, shall have such powers, rights and privileges as are vested in the District Court or any Judge thereof in or in relation to any action or trial, in respect of
10 the following matters:—

- (a) compelling the attendance of witnesses;
- (b) compelling witnesses to answer questions which the Court deems to be relevant to the inquiry, investigation or hearing;
- (c) compelling the production of books, documents and writings;
- 15 (d) punishing persons guilty of disobedience of any order or summons made or issued by the Court.

References to commissioners.

16. (1) A Judge may, before the commencement of any proceedings or at any stage in any proceedings, refer any matter to a commissioner—

- 20 (a) to be dealt with in the manner specified in the terms of reference; or
- (b) for the purpose of the taking by the commissioner of such action, in respect of the matter, as is specified in the terms of reference.

(2) A reference under subsection (1) shall require only the doing
25 of a thing that is within the jurisdiction of the Court.

Decisions of the Court.

17. (1) A decision of the Court in any matter shall be upon the real merits and justice of the case.

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(2) The Court shall not be bound to follow strict legal precedent.

(3) Subject to Part IV, a decision or proceeding of the Court shall not—

(a) be vitiated by reason of any informality or want of form; or

5 (b) be liable to be challenged, appealed against, reviewed, quashed or called in question by any court.

(4) Nothing in subsection (3) shall prevent the Court from reconsidering any matter which has been dealt with by it, or from rescinding, altering or amending any decision previously made or given, all of which the
10 Court shall, subject to subsection (5), have authority to do.

(5) In any proceedings in the Court involving the reconsideration of any matter decided by a commissioner, the following provisions shall apply:—

15 (a) a plea of issue estoppel shall not be available in respect of an issue decided by the commissioner;

(b) the Court shall not award compensation for a period of incapacity to which the proceedings before the commissioner related.

(6) Subject to Part IV—

20 (a) no proceedings, whether for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, shall lie in respect of any decision or proceeding of the Court relating to, or on the face of the proceedings appearing to relate to, any matter within its jurisdiction; and

25 (b) the validity of any decision or proceeding of the Court shall not be challenged in any manner.

(7) In this section, “decision” includes award, order, determination, ruling and direction.

Costs.

18. (1) Subject to this section, the Court may in any matter make such
30 order as to the payment of fees or costs as it thinks just and may assess the amount of those fees or costs.

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(2) Without affecting the generality of subsection (1), the Court may, in such circumstances as are specified in the rules, order the payment of fees or costs by a legal representative.

(3) Subject to section 24 (1) (b), the Court shall not order the
5 payment of fees or costs by—

(a) an applicant for compensation under the Workers' Compensation Act, 1926; or

(b) an appellant (not being an employer or an insurer) against an
10 award or order or a determination, ruling, direction or decision under that Act,

unless it is satisfied that the application or appeal was frivolous or vexatious or was made fraudulently or without proper justification.

(4) Fees and costs included in an order or assessment under subsection (1) or (2) shall not, where provision is made for the like fees and costs
15 in the scales applicable to proceedings in the Supreme Court in the Common Law Division, exceed the fees and costs provided for in the highest of those scales except with the approval of the Court or the officer taxing the fees and costs.

Interest.

20 19. (1) In any proceedings in the Court, the Court may order that there shall be included, in any sum to be paid, interest at such rate as it thinks fit on the whole or any part of the sum for the whole or any part of the period between the date when the cause of action arose and the date when the sum is payable.

25 (2) Where in any proceedings a sum is ordered to be paid, interest shall, unless the Court otherwise orders, be payable at the rate of 10 per cent per annum, or where a rate is prescribed for the purposes of this subsection, at the prescribed rate, from the date when the sum is payable on so much of the sum as is from time to time unpaid.

30 (3) This section does not—

(a) authorise the giving of interest upon interest; or

(b) apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise.

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DIVISION 2.—*Exercise of jurisdiction.*

Proceedings of the Court.

20. (1) The Court may—

- (a) conduct its proceedings in public or private as it may think fit;
- 5 (b) adjourn its proceedings to any time or place; and
- (c) submit to a medical referee or medical panel appointed under the Workers' Compensation Act, 1926, for report any matter which seems material to any question arising in a proceeding before it.

(2) A report obtained under subsection (1) (c) shall be admitted in
10 evidence in the proceedings to which it relates if the Court so directs.

Sittings of the Court.

21. (1) The Court shall sit at such places and times as the Chief Judge may direct.

(2) More than one sitting of the Court may be held at the same
15 time.

Arrangement of business of the Court.

22. The Chief Judge is responsible for making, and may make—

- (a) arrangements as to the Judge who is to exercise the Court's jurisdiction in particular matters or classes of matters; and
- 20 (b) where the Court's functions may be exercised by a commissioner or a registrar—arrangements as to the commissioner or registrar who is to exercise those functions.

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Enforcement of awards and orders.

23. (1) Where an award or order of the Court for the payment of money has been entered up or made in favour of any person and provision is not made in any other Act for the recovery of that money, the registrar—

- 5 (a) upon the application of the person or of the person's solicitor or agent, shall issue and deliver to the person, solicitor or agent a certificate in or to the effect of the prescribed form; and
- (b) shall make a minute or memorandum thereof against the entry of the award or order.

10 **(2)** A person to whom a certificate has been issued and delivered under subsection (1) may file, or cause to be filed, the certificate with the registrar under the District Court Act, 1973, at the proclaimed place under that Act which is nearest the debtor's place of residence or business.

15 **(3)** A registrar under the District Court Act, 1973, with whom a certificate has been filed by a person under subsection (2) shall enter judgment for the person for the amount of the certificate together with—

- (a) the fees paid for the certificate to the registrar of the Compensation Court; and
- (b) the fees paid for filing the certificate and entering judgment.

20 Informal proof and admissions.

24. (1) The Court may at any stage of any proceedings before it—

- 25 (a) dispense with the rules of evidence for proving any matter which is not bona fide in dispute, and with such rules as might cause expense and delay arising from any commission to take evidence or arising otherwise; and, without limiting the generality of this power, dispense with the proof of handwriting, documents, the identity of parties or parcels, or of authority; and
- 30 (b) require any party to the proceedings, not being a minor or person of unsound mind, to make admissions with respect to any document or to any question of fact; and in the case of refusal or

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neglect to make the admissions may, unless the Court is of the opinion that the refusal or neglect is reasonable, order that the costs of proof occasioned by the refusal or neglect shall be paid by that party.

- 5 (2) An admission made as required by the Court under subsection (1) (b)—
- (a) shall be for the purpose of the proceedings in which it is made and for no other purpose;
- (b) shall be subject to all just exceptions; and
- 10 (c) may, with the leave of the Court, be amended or withdrawn.
- (3) The Court may give leave for the purposes of subsection (2) (c) on terms.

Examination de bene esse.

25 25. (1) The Court may, on the application of a party to proceedings before it, authorise any barrister, attorney, commissioner for taking affidavits or justice of the peace, whether of New South Wales or elsewhere, or any British Consular Officer or Australian Consular Officer in any place out of New South Wales, to take at some convenient place, the examination of a witness de bene esse, if the witness is absent from New South Wales or is
20 expected to die or to be unable from sickness or infirmity to attend at the hearing of any proceeding.

(2) In subsection (1), "Australian Consular Officer" and "British Consular Officer" have the meanings respectively ascribed thereto in section 26 of the Oaths Act, 1900.

25 DIVISION 3.—*Commissioner's jurisdiction.*

Commissioner's jurisdiction.

26. (1) A commissioner may exercise the functions of the Court specified in Schedule 3.

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(2) A commissioner shall, in the exercise of any function of the Court conferred on the commissioner by or under this Act, be deemed to be the Court.

(3) The Governor may, by regulation, amend Schedule 3 by—

- 5 (a) adding any matter thereto;
(b) altering any matter therein; or
(c) omitting any matter therefrom,

or may, by regulation, omit the Schedule and insert instead a new Schedule.

Procedure before commissioners.

10 27. (1) Proceedings in any matter before a commissioner shall be conducted with as little formality and technicality as the proper consideration of the matter permits.

(2) In proceedings in any matter before a commissioner, the Court is not bound by the rules of evidence but may inform itself on any matter
15 in such manner as it thinks appropriate and as the proper consideration of the matter before the commissioner permits.

(3) A party to any proceeding before a commissioner may be represented by a barrister or solicitor.

DIVISION 4.—*Registrar's jurisdiction.*

20 **Registrar to be deemed to be the Court in certain circumstances.**

28. A registrar shall, in the exercise of any function of the Court conferred on a registrar by or under this or any other Act, be deemed to be the Court.

Registrar's jurisdiction.

25 29. (1) A registrar may exercise the functions of the Court specified in Schedule 4 and such functions as are conferred on a registrar by the rules.

Compensation Court.

- (2) The Governor may, by regulation, amend Schedule 4 by—
- (a) adding any matter thereto;
 - (b) altering any matter therein; or
 - (c) omitting any matter therefrom,
- 5 or may, by regulation, omit the Schedule and insert instead a new Schedule.
- (3) A registrar may exercise the functions of any other registrar.

DIVISION 5.—*Pre-hearing conferences and arbitration.*

Pre-hearing conferences and arbitration.

30. (1) Rules of Court shall be made for or with respect to arranging
10 and conducting pre-hearing conferences.
- (2) Where proceedings are pending in the Court's jurisdiction, the Court may refer the proceedings, or any matter arising from the proceedings, for arbitration by an arbitrator.
- (3) The procedure for appointing arbitrators for the purpose of
15 subsection (2), and for arranging or conducting arbitration proceedings, shall be in accordance with the rules.

PART IV.

APPEALS, ETC.

DIVISION 1.—*Appeals, etc., from Court.*

20 **Interpretation.**

31. (1) In this Part, "award" includes order, decision, determination, ruling and direction.

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(2) A reference in this Part to the making of an award includes, where the award is a ruling or direction, a reference to the giving of the ruling or direction.

Appeals from Court.

5 **32. (1)** If a party to any proceedings before the Court (other than proceedings before a commissioner or registrar) is aggrieved by an award of the Court in point of law or in relation to the admission or rejection of any evidence, that party may appeal to the Supreme Court.

(2) The Supreme Court may, on the hearing of any appeal made to
10 it under subsection (1)—

- (a) remit the matter to the Court for determination by the Court in accordance with any decision of the Supreme Court; and
- (b) make such other order in relation to the appeal as the Supreme Court sees fit.

15 Stated cases.

20 **33. (1)** When any question of law or of the admission or rejection of any evidence arises in any proceedings before the Court (other than proceedings before a commissioner or registrar), the Court may of its own motion, and shall, if in the manner and within the time prescribed by the rules a party to the proceedings so requests, state a case for the decision of the Supreme Court on that question.

(2) A case may be stated under this section notwithstanding that an award has been made by the Court.

Decision on appeal or stated case.

25 **34.** The decision of the Supreme Court upon the hearing of an appeal or stated case under this Part shall be binding upon the Compensation Court and upon all the parties to the proceedings in respect of which the appeal was made or the case stated.

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DIVISION 2.—*Appeals, etc., from commissioners or registrars.***Appeals from commissioners.**

5 **35. (1)** If a party to any proceedings before a commissioner is aggrieved by an award of the commissioner in point of law, that party may appeal to the Supreme Court.

(2) The Supreme Court may, on the hearing of any appeal made to it under subsection (1)—

- 10 (a) remit the matter to the Court for determination by the Court in accordance with any decision of the Supreme Court; and
- (b) make such other order in relation to the appeal as the Supreme Court sees fit.

(3) If a party to the hearing of any interlocutory application before a commissioner is aggrieved by a decision of the commissioner, that party may (except where an appeal lies under subsection (1)) appeal to the Court.

15 **(4)** The Court may, on the hearing of any appeal made to it under subsection (3), make any finding or assessment, or any award or order, which in the Court's opinion ought to have been made or which the nature of the case requires.

Review of registrar's decisions, etc.

20 **36.** Where a registrar makes a decision or does any other act in any proceedings, the Court may, on application by any party, review the decision or act, and may make such order by way of confirmation, variation or discharge or otherwise as the Court thinks fit.

References to the Court by a commissioner or a registrar.

25 **37. (1)** A commissioner or a registrar may—

- (a) of the commissioner's or registrar's own motion; or
- (b) on application by the parties, or any one of them,

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refer to the Court any question or matter arising in proceedings before the commissioner or registrar where the commissioner or registrar is of the opinion that the question or matter is of such importance as to warrant consideration by the Court.

5 (2) Upon the reference to it of any question or matter under subsection (1), the Court may—

(a) hear and determine the question or matter; or

10 (b) hear and determine the question or matter and remit the proceedings to the commissioner or registrar with such directions as the Court thinks fit.

DIVISION 3.—*Stay of proceedings.*

Stay of proceedings.

15 38. (1) Subject to any order of the Supreme Court, the Compensation Court may order a stay of proceedings, on such terms as the Compensation Court may think fit, in respect of any award the subject of an appeal, a stated case or a request for a stated case under this Part.

(2) In the absence of a stay of proceedings ordered by the Supreme Court or by the Compensation Court, a notice of appeal, stated case or request for a stated case shall not operate as a stay of proceedings.

20 (3) Where—

(a) there is a liability to make weekly payments of compensation under an award of a commissioner;

(b) an appeal is made to the Supreme Court against the award; and

(c) a stay of proceedings is ordered in respect of the appeal,

25 the stay of proceedings shall not affect the liability to make the weekly payments of compensation under the award appealed against.

(4) Where—

(a) there is a liability to make weekly payments of compensation under an award of a commissioner;

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- (b) an appeal is made to the Supreme Court against the award; and
- (c) the effect of the decision in respect of the appeal is to terminate the liability to make the weekly payments of compensation,
- the Supreme Court may—
- 5 (d) order that the Uninsured Liability and Indemnity Scheme established under the Workers' Compensation Act, 1926, bear the whole or a specified part of the liability to make the weekly payments of compensation; and
- 10 (e) give such directions (which shall have effect according to their tenor) as are necessary to give effect to the order.

PART V.**MISCELLANEOUS PROVISIONS.****Costs of operation of the Court.**

39. The Minister shall, in the month of July in each year, prepare
15 and forward to the State Compensation Board an estimate of the amount required for the remuneration, fees and allowances payable to—

- (a) the Judges, commissioners and other officers and staff of the Court; and
- (b) arbitrators appointed under this Act,
- 20 and any other costs of operation of the Court (including the provision of court accommodation and Judges' chambers) for the next following year.

Delegation.

40. (1) The Chief Judge may, by instrument in writing, delegate to a
25 Judge the exercise of such of the functions of the Court or of the Chief Judge as are specified in the instrument.

Compensation Court.

(2) The registrar may, by instrument in writing, delegate to an officer of the Court the exercise of such of the registrar's functions as are specified in the instrument.

(3) The Chief Judge or the registrar shall not, under this section, 5 delegate the function of hearing any matter before the Court.

(4) A function the exercise of which has been delegated under this section may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation by the delegate.

(5) A delegation under this section may be made subject to such 10 conditions or limitations as to the exercise of any function the subject thereof, or as to time or circumstances, as may be specified in the instrument of delegation.

(6) Notwithstanding any delegation under this section, the Chief Judge, the Court or the registrar, as the case may be, may continue to exer- 15 cise any function delegated.

(7) Any act or thing done or suffered by a delegate acting in the exercise of a delegation under this section has the same force and effect as it would have if it had been done or suffered by the Chief Judge, the Court or the registrar, as the case may be, and shall be deemed to have been 20 done or suffered by the Chief Judge, the Court or the registrar, as the case may be.

(8) The Chief Judge or the registrar may, by instrument in writing, revoke wholly or in part any delegation made by the Chief Judge or the registrar, respectively, under this section.

(9) An instrument purporting to have been signed by a person in 25 the capacity of a delegate of the Chief Judge or the registrar shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument duly executed by the Chief Judge or the registrar, as the case may be, and shall, until the contrary is proved, be deemed to 30 be an instrument signed by a delegate of the Chief Judge or the registrar, as the case may be.

Compensation Court.

(10) Any instrument necessary to be executed and any notice, order, summons or other like document requiring authentication for the purpose of the exercise of any function delegated to any person under this section shall be sufficiently executed or authenticated, as the case may be, if signed
5 by the delegate in such a way as to show that the delegate does so under and in pursuance of the delegation.

(11) Except as provided in subsection (2), nothing in this section authorises the delegation of the powers of delegation conferred by this section.

10 Liaison with State Compensation Board.

41. (1) The Chief Judge and the Chairman and members of the State Compensation Board shall meet at least once in every 6 months for the purpose of discussing matters relative to the respective functions of the Court and the Board.

15 (2) Such other Judges and such commissioners and registrars as the Chief Judge shall nominate may attend a meeting referred to in subsection (1).

(3) A member of the State Compensation Board, other than the Chairman, need not attend a meeting referred to in subsection (1) if the
20 Chairman so approves.

(4) In addition to the meetings referred to in subsection (1) the Chief Judge and the Chairman of the State Compensation Board shall establish and maintain such continuing liaison as is necessary for the proper functioning of any scheme for payment of compensation in respect of injuries
25 within the Court's jurisdiction or the Board's administration.

(5) The Chief Judge may refer to the State Compensation Board for inquiry and report or recommendation to the Chief Judge any matter relating to the functions of the Court or the Board.

Compensation Court.

(6) A Judge or a commissioner may refer to the State Compensation Board—

- (a) a report on the conduct of any party to proceedings; and
- (b) any other matter the Judge or commissioner feels it is appropriate to refer to the Board,

for investigation or any other action the Board thinks fit.

Rule Committee.

42. (1) Where, in this or any other Act, it is provided that rules of Court may or shall be made, those rules shall be made by a Rule Committee consisting of—

- (a) the Chief Judge;
- (b) 3 other appointed Judges;
- (c) an appointed commissioner;
- (d) an appointed practising barrister; and
- (e) an appointed practising solicitor.

(2) In this section, “appointed” means appointed to the Rule Committee by the Chief Judge by an instrument in writing.

(3) A person appointed shall hold office for the time specified in the instrument of the person’s appointment but may resign by an instrument in writing addressed to the Chief Judge.

(4) At a meeting of the Rule Committee the chairman shall be—

- (a) the Chief Judge, if present; or
- (b) in the absence of the Chief Judge, a Judge who is present and chosen by the meeting.

(5) In the case of an equality of votes at a meeting of the Rule Committee, the chairman shall have a casting as well as a deliberative vote.

(6) Any 4 members of the Rule Committee shall constitute a quorum.

Compensation Court.

(7) The registrar or, in the absence of the registrar, a person approved by the Chief Judge shall be secretary of the Rule Committee.

(8) Subject to this section, the Rule Committee may regulate its own procedure.

5 Rules.

43. (1) Rules of Court may be made for or with respect to—

- 10 (a) all matters of procedure and practice, including the prescription of forms to be used, scales of fees and costs to be paid to barristers and solicitors and expenses to be paid to witnesses in any proceedings before the Court; and
- (b) any matters that by or under the provisions of this or any other Act are required or permitted to be prescribed by rules of Court or that are necessary or convenient to be prescribed by rules of Court for carrying out or giving effect to those provisions.

15 (2) Without affecting the generality of subsection (1), rules of Court may be made, in relation to matters within the Court's jurisdiction, for or with respect to—

- (a) the conduct of call-overs of matters for hearing by the Court;
- (b) the issue and return of subpoenas;
- 20 (c) the listing of matters and the removal of matters from lists;
- (d) the commencement of proceedings;
- (e) pre-hearing conferences and arbitration;
- (f) the charging of fees for interpreting services;
- (g) the enforcement of awards, orders, determinations, rulings, directions or decisions of the Court; and
- 25 (h) authorising a commissioner or a registrar to—
- (i) exercise any function of the Court (not being the function of making rules or a function the exercise of which is vested in a commissioner or a registrar, as the case may be, under any other provision of this Act); or
- 30

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(ii) exercise any function that, under the rules, is necessary to be exercised.

(3) Rules of Court may be made so as to apply differently according to such factors as may be specified in the rules.

5 Gazettal and Parliamentary review of rules.

44. (1) A rule shall—

- (a) be published in the Gazette;
- (b) take effect on and from the date of publication or a later date specified in the rule; and
- 10 (c) be laid before each House of Parliament within 14 sitting days of that House after the date of publication.

(2) If either House of Parliament passes a resolution, of which notice has been given within 15 sitting days of that House after a rule has been laid before it, disallowing the rule or any part thereof, the rule or part thereupon 15 ceases to have effect.

(3) For the purposes of subsections (1) and (2), sitting days shall be counted, whether or not they occur during the same session.

Judicial notice of rules.

45. Judicial notice shall be taken —

- 20 (a) of a rule made or purporting to have been made under this Act and published in the Gazette; and
- (b) of the date of its publication.

Presumption as to making of rules.

46. It shall be presumed, in the absence of evidence to the contrary, 25 that all conditions and steps precedent to the making of a rule have been complied with and performed.

Compensation Court.

Regulations.

47. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to—

- 5 (a) fixing or otherwise relating to fees to be taken in respect of the business of the Court; and
- (b) all matters that by this Act are required or permitted to be prescribed by regulations or that are necessary or convenient to be prescribed by regulations for carrying out or giving effect to this Act.

10 (2) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- 15 (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,
- or may do any combination of those things.

 SCHEDULE 1.

(Sec. 9 (7).)

20

JUDGES.

Interpretation.

1. In this Schedule—

- “statutory body” means any body declared under clause 4 to be a statutory body for the purposes of this Schedule;
- 25 “superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

Preservation of rights of Judge if previously public servant, etc.

2. (1) Subject to subclause (2) and to the terms of appointment, where a Judge 30 was, immediately before being appointed as a Judge—

- (a) an officer of the Public Service;

Compensation Court.

SCHEDULE 1—*continued.*JUDGES—*continued.*

- (b) a contributor to a superannuation scheme;
- (c) an officer employed by a statutory body; or
- 5 (d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee, he or she—
- (e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person;
- 10 (f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as a Judge; and
- (g) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,
- as if he or she had continued to be such an officer, contributor or person during his or
- 15 her service as a Judge, and—
- (h) his or her service as a Judge shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred; and
- 20 (i) he or she shall be deemed to be an officer or employee, and the Government of New South Wales shall be deemed to be the employer, for the purpose of the superannuation scheme to which he or she is entitled to contribute under this clause.
- (2) If a Judge would, but for this subclause, be entitled under subclause
- 25 (1) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under that scheme, he or she shall not be so entitled upon becoming (whether upon appointment as a Judge or at any later time while holding office as a Judge) a contributor to any other superannuation scheme, and the provisions of subclause
- (1) (i) cease to apply to or in respect of him or her and the Government of New
- 30 South Wales in any case where he or she becomes a contributor to any such other superannuation scheme.
- (3) Subclause (2) does not prevent the payment to a Judge upon his or her ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be an
- 35 officer or employee for the purposes of the scheme.
- (4) A Judge shall not, in respect of the same period of service, be entitled to claim or receive a benefit under this Act and another Act.

Compensation Court.

SCHEDULE 1—*continued.*

JUDGES—*continued.*

Judge entitled to re-appointment in former employment in certain cases.

- 3. A person who—
 - 5 (a) ceases to be a Judge otherwise than pursuant to section 9 (2);
 - (b) was, immediately before being appointed as a Judge —
 - (i) an officer of the Public Service; or
 - (ii) an officer or employee of a statutory body; and
 - 10 (c) has not attained the age at which the person would have been entitled to retire had the person continued to be such an officer or employee,
- shall be entitled to be appointed to some position in the Public Service or the service of that statutory body, as the case may be, not lower in classification and salary than that which the person held immediately before being appointed as a Judge.

Declaration of statutory bodies.

- 15 4. The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.

SCHEDULE 2.

(Sec. 12 (3).)

COMMISSIONERS.

20 **Term of office.**

- 1. (1) A commissioner shall, subject to this Schedule, hold office until the commissioner attains the age of 60 years.
- (2) Subject to subclause (3), the Governor may, before the expiration of a
- 25 commissioner's term of office, extend that term for a period not exceeding 12 months.
- (3) A commissioner shall not hold office after attaining the age of 65 years.

Compensation Court.

SCHEDULE 2—*continued.*

COMMISSIONERS—*continued.*

(4) A commissioner shall devote the whole of his or her time to the duties of the office of commissioner.

5 Remuneration.

2. A commissioner is entitled to be paid—

(a) remuneration in accordance with the Statutory and Other Offices Remuneration Act, 1975; and

10 (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the commissioner.

Application of Public Service Act, 1979.

3. The provisions of the Public Service Act, 1979, do not apply to or in respect of the appointment of a commissioner and, subject to this Schedule, a commissioner is not, as a commissioner, subject to those provisions.

15 Leave.

4. (1) A commissioner is entitled to such leave as may be—

(a) prescribed; or

(b) specified in respect of the commissioner in the commissioner's instrument of appointment.

20 (2) Leave may be prescribed or specified as referred to in subclause (1) by reference to the leave entitlement of the holder of any other office or class of office.

Oath of office.

5. The Oaths Act, 1900, applies to and in respect of a commissioner in the same way as it applies to and in respect of a magistrate.

25 Removal from office.

6. The Governor may remove a commissioner from office for misbehaviour or incompetence.

Compensation Court.

SCHEDULE 2—*continued.*COMMISSIONERS—*continued.***Vacation of office.**

7. A commissioner shall be deemed to have vacated office if the commissioner—
- 5 (a) dies;
- (b) resigns the office by instrument in writing addressed to the Minister;
- (c) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act; or
- 10 (d) is removed from office by the Governor under clause 6.

Rights of commissioner if previously public servant, etc.

8. (1) Schedule 1 applies to a commissioner in the same way as it applies to a Judge.
- (2) For the purposes of subclause (1), clause 3 of Schedule 1 shall be read
- 15 as if the reference therein to section 9 (2) were a reference to clause 7 (paragraph (b) excepted) of this Schedule.

SCHEDULE 3.

(Sec. 26.)

THE FUNCTIONS OF THE COURT WHICH MAY BE EXERCISED BY A COMMISSIONER.

- 20 1. The functions of the Court (other than any function involving the making of rules) conferred or imposed by, or arising under, the following provisions of the Workers' Compensation Act, 1926, where no issue other than an issue arising under those provisions is involved:—
- (a) section 6 (3) (h) and (i);
- 25 (b) section 7 (4B) (e), (g) and (h) and (5A);
- (c) section 10 (3) (a), (3) (c), (4) (b) and (5);
- (d) section 10A (1);

Compensation Court.

SCHEDULE 3—*continued.*

THE FUNCTIONS OF THE COURT WHICH MAY BE EXERCISED BY A
COMMISSIONER—*continued.*

- (e) section 10B (1);
 - 5 (f) section 16;
 - (g) section 17;
 - (h) section 51 (12);
 - (i) section 54.
2. The Court's jurisdiction in the following matters:—
- 10 (a) the hearing and determining of appeals against decisions of taxing officers;
 - (b) the making of summary awards of compensation under the Workers' Compensation Act, 1926, where no answer has been filed;
 - (c) the hearing of interlocutory applications;
 - 15 (d) the hearing of any matter in which the total amount of compensation (other than compensation under section 10 of the Workers' Compensation Act, 1926) involved does not, as at the date of the filing of the applicant's certificate of readiness, exceed \$5,000;
 - 20 (e) the hearing of any other matter (other than a matter arising under section 15 of the Workers' Compensation Act, 1926), by leave of a commissioner, and with the consent of all parties.
3. In accordance with the terms of reference, any matter referred to a commissioner by a Judge.
-

Compensation Court.

SCHEDULE 4.

(Sec. 29.)

THE FUNCTIONS OF THE COURT WHICH MAY BE EXERCISED BY A REGISTRAR.

The functions of the Court (other than any function involving the making of
5 rules) conferred or imposed by, or arising under, the following provisions of the
Workers' Compensation Act, 1926:—

Section 16 (1B) (b) and (d).

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