

FIRST PRINT

JUDICIAL OFFICERS (AMENDMENT) BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

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

The objects of this Bill are to amend the Judicial Officers Act 1986 so as—

- (a) to enable the Judicial Commission to appoint its own staff and consultants;
- (b) to constitute the Judicial Commission as a corporation; and
- (c) to increase to 72 years the maximum age of appointed members of the Judicial Commission,

and to make minor or consequential amendments.

Clause 1 specifies the short title of the proposed Act.

Clause 2 is a formal provision that gives effect to the Schedule of amendments.

Clause 3 amends the Public Finance and Audit Act 1983, so as to make the Judicial Commission a statutory body to which certain provisions of that Act apply (including provisions relating to accounts, records, financial statements and audit).

Clause 4 is a transitional provision, relating to the proposed creation of the Judicial Commission as a corporation. The clause treats anything already done by the Commission as having been done by it in its corporate capacity.

Schedule 1 (1) amends section 3 (Interpretation) of the Principal Act. Section 3 (3), which at present provides that a reference to an office holder includes a person appointed to act in the office, is to be extended to cover cases where a person acts in the office without a formal appointment (e.g. the office of President of the Industrial Commission).

Judicial Officers (Amendment) 1987

Schedule 1 (2) constitutes the Judicial Commission as a corporation, so as to facilitate the exercise of its various functions, including its role as employer of its staff.

Schedule 1 (3) replaces the existing section 6 of the Principal Act. The new section will enable the Judicial Commission to employ its own staff (instead of their being appointed under the Public Service Act 1979), to arrange for the use of the staff or facilities of departments or authorities with the approval of the Minister responsible for the relevant department or authority, and to engage consultants. The Public Service Board is to have a role in the determination of remuneration, terms and conditions.

Schedule 1 (4) increases to 72 years the maximum age of appointed members of the Judicial Commission.

Schedule 1 (5) inserts a new Schedule 5 into the Principal Act. The new Schedule will preserve superannuation and other rights of staff of the Judicial Commission who were previously employed in the Public Service or in a similar service, and will enable their return to that service on ceasing to be members of the staff of the Commission.

JUDICIAL OFFICERS (AMENDMENT) BILL 1987

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Amendment of Act No. 100, 1986
3. Amendment of Act No. 152, 1983
4. Transitional provision

SCHEDULE 1—AMENDMENTS TO THE JUDICIAL OFFICERS ACT 1986



JUDICIAL OFFICERS (AMENDMENT) BILL 1987

NEW SOUTH WALES



No. , 1987

A BILL FOR

An Act to amend the Judicial Officers Act 1986 with respect to the constitution and staff of the Judicial Commission; to amend the Public Finance and Audit Act 1983; and for other purposes.

Judicial Officers (Amendment) 1987

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:

5 Short title

1. This Act may be cited as the "Judicial Officers (Amendment) Act 1987".

Amendment of Act No. 100, 1986

2. The Judicial Officers Act 1986 is amended in the manner set forth in
10 Schedule 1.

Amendment of Act No. 152, 1983

3. The Public Finance and Audit Act 1983 is amended by inserting in Schedule 2, in appropriate alphabetical order, the words "Judicial Commission of New South Wales."

15 Transitional provision

4. Anything done or omitted by the Judicial Commission before the commencement of this Act shall, after that commencement, be deemed to have been done or omitted by it in its capacity as a corporation, as if it had always been a corporation.

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SCHEDULE 1

(Sec. 2)

AMENDMENTS TO THE JUDICIAL OFFICERS ACT 1986**(1) Section 3 (Interpretation)—**

Section 3 (3)—

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After "duly", insert "exercising the functions of or".

*Judicial Officers (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE JUDICIAL OFFICERS ACT 1986—*continued*(2) Section 5 (**The Commission**)—

Section 5 (1A)—

After section 5 (1), insert:

5 (1A) The Commission is, by virtue of this subsection, a corporation.

(3) Section 6—

Omit the section, insert instead:

Staff etc. of the Commission

10 6. (1) The Commission may employ a Chief Executive and such other staff as may be necessary to enable the Commission to exercise its functions.

15 (2) The Commission may, with the concurrence of the Public Service Board, fix the salaries, wages, allowances and conditions of employment of any such staff in so far as they are not fixed by or under another Act or law.

(3) The Commission may—

(a) with the approval of the Minister responsible for the department, office or authority concerned; and

20 (b) on such terms and conditions as may be approved by the Public Service Board,

arrange for the use of the services of any staff or facilities of a government department, administrative office or public authority.

25 (4) The Commission may, on such terms and conditions as may be approved by the Public Service Board, engage any suitably qualified person to provide the Commission with services, information or advice.

(5) For the purposes of this Act, a person who is employed under subsection (1), or whose services are made use of under subsection (3), is an officer of the Commission.

30 (6) Schedule 5 has effect with respect to the rights of certain staff of the Commission.

*Judicial Officers (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE JUDICIAL OFFICERS ACT 1986—*continued*(4) Schedule 1 (**Provisions relating to the appointed members of the Commission**)—(a) Clause 2 (**Age of members**)—

Omit “70 years”, insert instead “72 years”.

5 (b) Clause 5 (**Casual vacancies**)—

From clause 5 (1) (g), omit “70 years”, insert instead “72 years”.

(5) Schedule 5—

After Schedule 4, insert:

SCHEDULE 5

10

(Sec. 6 (6))

PROVISIONS RELATING TO THE RIGHTS OF CERTAIN STAFF OF THE COMMISSION

Definitions

1. In this Schedule—

15

“member of staff” means an officer of the Commission employed under section 6 (1), other than a person employed on a temporary or casual basis;

“statutory body” means any body declared under clause 4 to be a statutory body for the purposes of this Schedule;

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“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 staff previously public servants etc.

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2. (1) If a member of staff was, immediately before being employed as a member of staff—

(a) an officer of the Public Service or a Teaching Service;

(b) a contributor to a superannuation scheme;

(c) an officer employed by a statutory body; or

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(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,

*Judicial Officers (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE JUDICIAL OFFICERS ACT 1986—*continued*

he or she—

(e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person;

5 (f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being employed as a member of staff; and

(g) is entitled to receive any deferred or extended leave and any payment, pension or gratuity,

10 as if he or she had continued to be such an officer, contributor or person during his or her service as a member of staff and—

(h) his or her service as a member of staff shall be deemed to be service as an officer or employee for the purposes 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

15 (i) he or she shall be deemed to be an officer or employee, and the Commission shall be deemed to be the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.

20 (2) If a member of staff would, but for this subclause, be entitled under subclause (1) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme—

(a) he or she shall not be so entitled on becoming (whether on being employed as a member of staff or at any later time while a member of staff) a contributor to any other superannuation scheme; and

25 (b) the provisions of subclause (1) (i) cease to apply to or in respect of him or her and the Commission in any case where he or she becomes a contributor to any such other superannuation scheme.

30 (3) Subclause (2) does not prevent the payment to a member of staff on 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 such an officer or employee for the purposes of the scheme.

(4) A member of staff is not, in respect of the same period of service, entitled to claim dual benefits of the same kind through the operation of this clause.

Staff entitled to re-appointment to former employment in certain cases

35 3. A person who—

(a) being a member of staff, ceases to be employed by the Commission (except through dismissal on the ground of misbehaviour);

Judicial Officers (Amendment) 1987

SCHEDULE 1—*continued*AMENDMENTS TO THE JUDICIAL OFFICERS ACT 1986—*continued*

(b) was, immediately before being employed as a member of staff—

(i) an officer of the Public Service or a Teaching Service; or

(ii) an officer or employee of a statutory body; and

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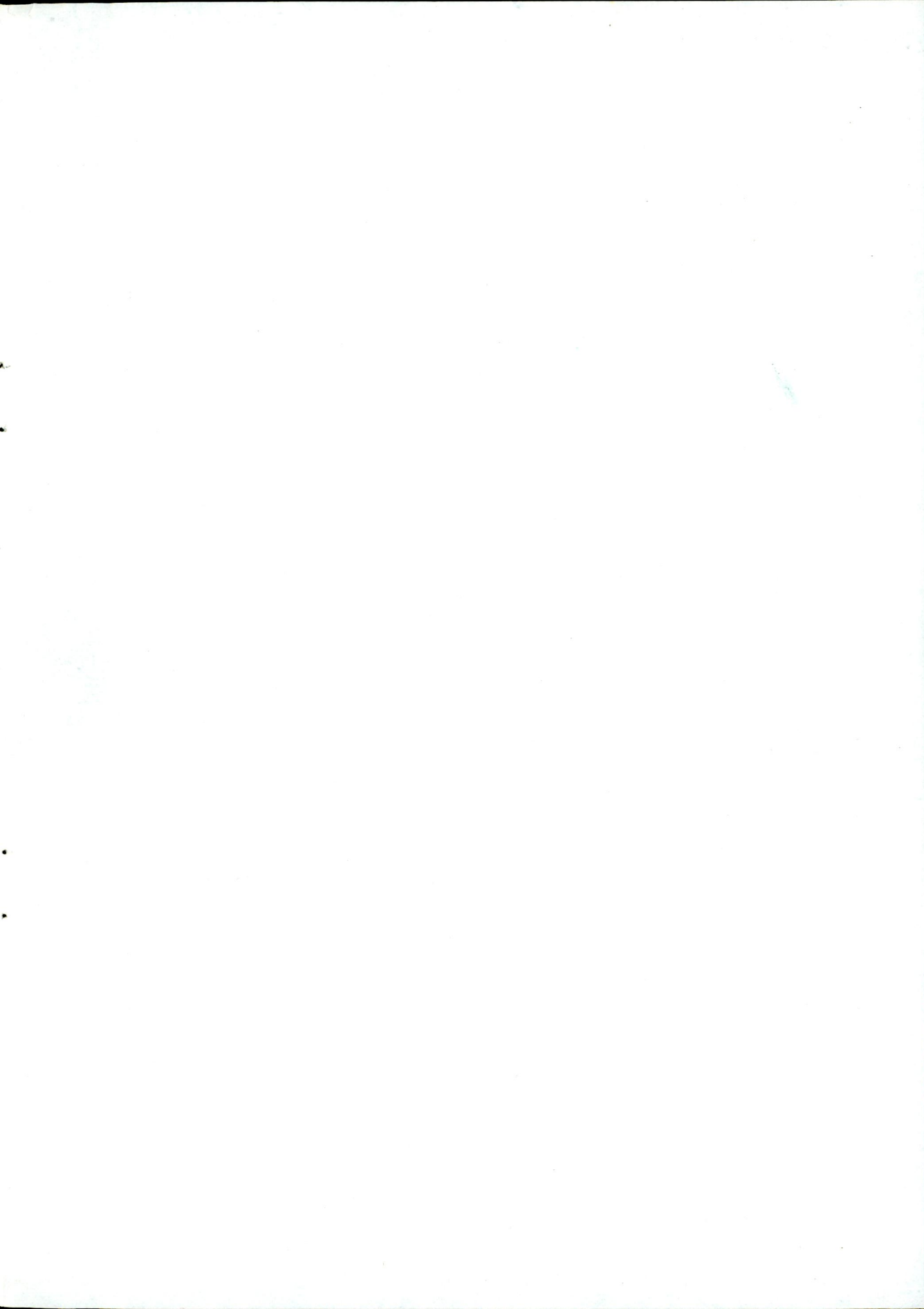
(c) has not reached the age at which the person would have been entitled to retire had the person continued to be such an officer or employee,

is entitled to be appointed to some position in the Public Service, the Teaching 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 employed as a member of staff.

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Declaration of statutory bodies

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.



JUDICIAL OFFICERS (AMENDMENT) ACT 1987 No. 22

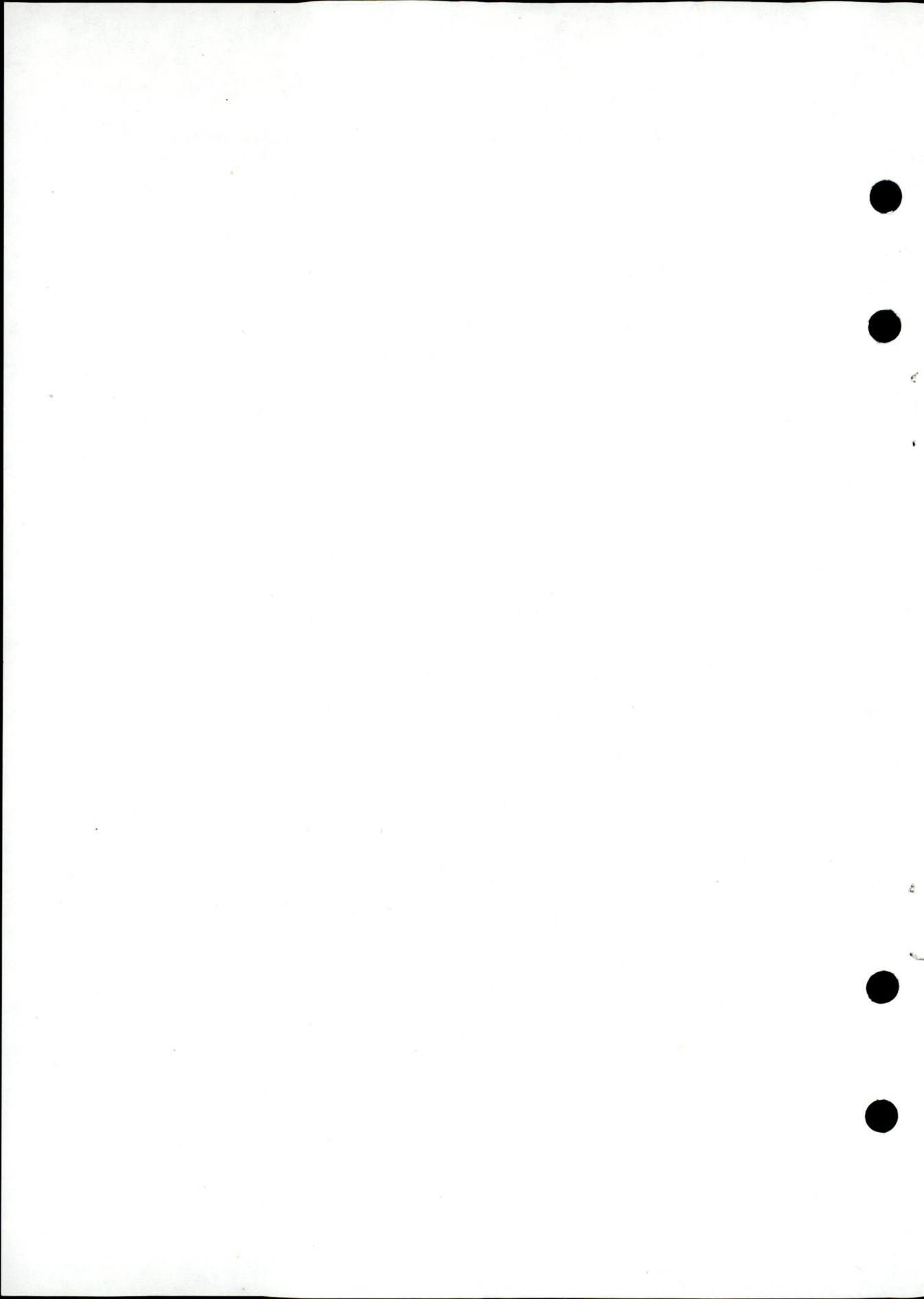
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Amendment of Act No. 100, 1986
3. Amendment of Act No. 152, 1983
4. Transitional provision

SCHEDULE 1—AMENDMENTS TO THE JUDICIAL OFFICERS ACT 1986



JUDICIAL OFFICERS (AMENDMENT) ACT 1987 No. 22

NEW SOUTH WALES



Act No. 22, 1987

An Act to amend the Judicial Officers Act 1986 with respect to the constitution and staff of the Judicial Commission; to amend the Public Finance and Audit Act 1983; and for other purposes. [Assented to 1 May 1987]

Judicial Officers (Amendment) 1987

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:

Short title

1. This Act may be cited as the "Judicial Officers (Amendment) Act 1987".

Amendment of Act No. 100, 1986

2. The Judicial Officers Act 1986 is amended in the manner set forth in Schedule 1.

Amendment of Act No. 152, 1983

3. The Public Finance and Audit Act 1983 is amended by inserting in Schedule 2, in appropriate alphabetical order, the words "Judicial Commission of New South Wales."

Transitional provision

4. Anything done or omitted by the Judicial Commission before the commencement of this Act shall, after that commencement, be deemed to have been done or omitted by it in its capacity as a corporation, as if it had always been a corporation.

SCHEDULE 1

(Sec. 2)

AMENDMENTS TO THE JUDICIAL OFFICERS ACT 1986

(1) Section 3 (**Interpretation**)—

Section 3 (3)—

After "duly", insert "exercising the functions of or".

*Judicial Officers (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE JUDICIAL OFFICERS ACT 1986—*continued*(2) Section 5 (**The Commission**)—

Section 5 (1A)—

After section 5 (1), insert:

(1A) The Commission is, by virtue of this subsection, a corporation.

(3) Section 6—

Omit the section, insert instead:

Staff etc. of the Commission

6. (1) The Commission may employ a Chief Executive and such other staff as may be necessary to enable the Commission to exercise its functions.

(2) The Commission may, with the concurrence of the Public Service Board, fix the salaries, wages, allowances and conditions of employment of any such staff in so far as they are not fixed by or under another Act or law.

(3) The Commission may—

(a) with the approval of the Minister responsible for the department, office or authority concerned; and

(b) on such terms and conditions as may be approved by the Public Service Board,

arrange for the use of the services of any staff or facilities of a government department, administrative office or public authority.

(4) The Commission may, on such terms and conditions as may be approved by the Public Service Board, engage any suitably qualified person to provide the Commission with services, information or advice.

(5) For the purposes of this Act, a person who is employed under subsection (1), or whose services are made use of under subsection (3), is an officer of the Commission.

(6) Schedule 5 has effect with respect to the rights of certain staff of the Commission.

*Judicial Officers (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE JUDICIAL OFFICERS ACT 1986—*continued*

- (4) Schedule 1 (**Provisions relating to the appointed members of the Commission**)—
- (a) Clause 2 (**Age of members**)—
Omit “70 years”, insert instead “72 years”.
- (b) Clause 5 (**Casual vacancies**)—
From clause 5 (1) (g), omit “70 years”, insert instead “72 years”.
- (5) Schedule 5—
After Schedule 4, insert:

SCHEDULE 5

(Sec. 6 (6))

PROVISIONS RELATING TO THE RIGHTS OF CERTAIN STAFF OF THE COMMISSION

Definitions

1. In this Schedule—

“member of staff” means an officer of the Commission employed under section 6 (1), other than a person employed on a temporary or casual basis;

“statutory body” means any body declared under clause 4 to be a statutory body for the purposes of this Schedule;

“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 staff previously public servants etc.

2. (1) If a member of staff was, immediately before being employed as a member of staff—

(a) an officer of the Public Service or a Teaching Service;

(b) a contributor to a superannuation scheme;

(c) an officer employed by a statutory body; or

(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,

*Judicial Officers (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE JUDICIAL OFFICERS ACT 1986—*continued*

he or she—

- (e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person;
- (f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being employed as a member of staff; and
- (g) is 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 her service as a member of staff and—

- (h) his or her service as a member of staff shall be deemed to be service as an officer or employee for the purposes 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
- (i) he or she shall be deemed to be an officer or employee, and the Commission shall be deemed to be the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.

(2) If a member of staff would, but for this subclause, be entitled under subclause (1) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme—

- (a) he or she shall not be so entitled on becoming (whether on being employed as a member of staff or at any later time while a member of staff) a contributor to any other superannuation scheme; and
- (b) the provisions of subclause (1) (i) cease to apply to or in respect of him or her and the Commission 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 member of staff on 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 such an officer or employee for the purposes of the scheme.

(4) A member of staff is not, in respect of the same period of service, entitled to claim dual benefits of the same kind through the operation of this clause.

Staff entitled to re-appointment to former employment in certain cases

3. A person who—

- (a) being a member of staff, ceases to be employed by the Commission (except through dismissal on the ground of misbehaviour);

Judicial Officers (Amendment) 1987

SCHEDULE 1—*continued*AMENDMENTS TO THE JUDICIAL OFFICERS ACT 1986—*continued*

- (b) was, immediately before being employed as a member of staff—
 - (i) an officer of the Public Service or a Teaching Service; or
 - (ii) an officer or employee of a statutory body; and
- (c) has not reached the age at which the person would have been entitled to retire had the person continued to be such an officer or employee,

is entitled to be appointed to some position in the Public Service, the Teaching 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 employed as a member of staff.

Declaration of statutory bodies

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.