

COMPENSATION COURT (AMENDMENT) ACT 1989 No. 118

NEW SOUTH WALES



TABLE OF PROVISIONS

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SCHEDULE 1 - AMENDMENTS



COMPENSATION COURT (AMENDMENT) ACT 1989 No. 118

NEW SOUTH WALES



Act No. 118, 1989

An Act to amend the Compensation Court Act 1984 to make provision with respect to the appointment and functions of commissioners of the Compensation Court, and for other purposes. [Assented to 24 August 1989]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Compensation Court (Amendment) Act 1989.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Compensation Court Act 1984 No. 89

3. The Compensation Court Act 1984 is amended as set out in Schedule 1.

SCHEDULE 1 - AMENDMENTS

(Sec. 3)

(1) Section 3 (**Definitions**):

(a) Section 3 (1), definition of "commissioner":

Omit the definition, insert instead:

"commissioner" means a commissioner of the Court;

(b) Section 3 (1), definition of "Senior Commissioner":

Omit the definition.

(2) Part 2, Division 3:

After Division 2 of Part 2, insert:

Division 3 - Commissioners

Appointment of commissioners

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

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

SCHEDULE 1 - AMENDMENTS - *continued*

- (a) is a practising barrister or practising solicitor; or
- (b) has, in the opinion of the Minister, had sufficient experience in workers compensation or in other fields of compensation considered by the Minister to be relevant to the functions of a commissioner; or
- (c) has, in the opinion of the Minister, satisfactorily completed studies in the field of law or industrial relations or some other field of study considered by the Minister to have substantial relevance to the functions of a commissioner.

(3) Schedule 2 has effect.

Acting commissioners

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

(2) An acting commissioner has, for the period and subject to the conditions or limitations specified in the instrument of appointment, the functions of a commissioner and is, for the purposes of this or any other Act, to be taken to be a commissioner.

(3) Section 15 (**Jurisdiction of the Court**):

Omit section 15 (2) and (3), insert instead:

(2) The Court has the functions vested in the District Court in respect of the following matters:

- (a) compelling the attendance of witnesses and examining them on oath, affirmation or declaration;
- (b) compelling the production, discovery and inspection of books, records, documents and other papers;
- (c) compelling witnesses to answer questions which the Court considers to be relevant in any proceedings before it;

SCHEDULE 1 - AMENDMENTS - *continued*

- (d) the punishment of persons guilty of contempt, or of disobedience to any order made by the Court, or any process issuing out of the Court;
 - (e) directing witnesses to be prosecuted for perjury.
- (4) Section 16 (**References to commissioner**):
- Omit "the Senior Commissioner" from section 16 (1), insert instead "a commissioner".
- (5) Section 17 (**Decisions of the Court**):
- Section 17 (4):
- Omit "constituted by a Judge" and "so constituted".
- (6) Section 18:
- Omit the section, insert instead:
- Costs**
18. (1) In this section, a reference to costs is a reference to costs payable between party and party, including disbursements.
- (2) Subject to this Act and the rules and subject to any other Act:
- (a) costs in or in relation to any proceedings are in the discretion of the Court; and
 - (b) the Court has full power to determine by whom, to whom and to what extent costs are to be paid in or in relation to any proceedings; and
 - (c) the Court has full power to order costs in or in relation to any proceedings to be taxed or otherwise ascertained.
- (3) A taxation of costs may be reviewed by the Court in accordance with the rules of Court.
- (4) Subject to this section, the Court may not order the payment of costs by a person claiming compensation unless the Court is satisfied that the application for compensation

SCHEDULE 1 - AMENDMENTS - *continued*

was frivolous or vexatious, fraudulent or made without proper justification.

(5) If the Court is satisfied that a part only of any such application for compensation was frivolous or vexatious, fraudulent or made without proper justification, the Court may order the claimant to pay the costs relating to that part of the application.

(6) If a person claiming compensation applies under section 36 for a review of the decision of a commissioner, costs in or in relation to the review are to be paid by the unsuccessful party unless the Court in special circumstances otherwise orders.

(7) The Court may order the payment of costs by any party to the proceedings who has unreasonably failed to participate in a conciliation of the dispute under the Workers Compensation Act 1987 if it appears to the Court that the failure has resulted in unnecessary litigation or has adversely affected the rehabilitation of an injured worker.

(8) An order of the Court for payment of costs may include:

- (a) the costs actually incurred or to be incurred by a person claiming compensation; and
- (b) if liability for a claim for compensation is admitted without recourse to the Court - the reasonable expenses incurred by a person in pursuing the person's claim; and
- (c) costs incurred in relation to any proceedings under the Workers Compensation Act 1987 (including conciliation conferences as defined in section 100A of that Act).

(9) In this section:

"application for compensation" includes any proceedings in connection with an application for compensation;

SCHEDULE 1 - AMENDMENTS - *continued*

"compensation" means compensation under the Workers Compensation Act 1987;

"decision" includes award, order, determination, ruling and direction.

(7) Section 22:

Omit the section, insert instead:

Arrangement of business of the Court

22. (1) The Chief Judge is responsible for making arrangements as to whether the Court's functions are to be exercised by a Judge, commissioner or registrar, including arrangements as to the particular Judge, commissioner or registrar who is to exercise those functions.

(2) In making those arrangements, the Chief Judge should ensure that, as far as practicable:

- (a) matters specified in Schedule 3 are allocated to commissioners unless the particular matter is not appropriate for determination by a commissioner; and
- (b) other matters are allocated to commissioners if they are appropriate for determination by a commissioner.

(3) In deciding whether a matter is or is not appropriate for determination by a commissioner, the Chief Judge is to have regard to:

- (a) the complex, unusual or important nature of any legal or factual issue involved; and
- (b) multiplicity of parties; and
- (c) the amount of compensation claimed; and
- (d) any other special circumstances.

(4) The regulations may amend or substitute Schedule 3.

(8) Section 25 (**Examination de bene esse**):

Omit the section.

SCHEDULE 1 - AMENDMENTS - *continued*

(9) Section 25A:

At the end of Division 2 of Part 3, insert:

Applications to be heard together

25A (1) A person who has applied to the Court for a determination of a claim for compensation under the Workers Compensation Act 1987 against 2 or more persons alleged to have been the employers of the worker concerned (either at the same time or at different times) is entitled, if the person so requests, to have all or any of the applications heard together.

(2) If more than one employer or more than one insurer may be involved in an application for compensation under the Workers Compensation Act 1987 or any other matter under that Act, the rules of Court may provide for the nomination of:

- (a) one of those insurers or one of those employers; or
- (b) the Workers Compensation and Rehabilitation Authority or some other person,

to represent the employers or insurers in any proceedings relating to the application.

(10) Part 3, Division 3:

After Division 2 of Part 3, insert:

Division 3 - Commissioners' jurisdiction

Commissioners' jurisdiction

26. (1) A commissioner may exercise the functions of the Court in respect of any matter allocated to the commissioner under section 22.

(2) If a matter so allocated to a commissioner is specified in Schedule 3, the commissioner may hear and determine the matter without regard to any limitation as to the amount of any award or otherwise to which the matter is subject in that Schedule.

SCHEDULE 1 - AMENDMENTS - *continued*

(3) Subsection (2) does not affect the provisions of section 37 relating to the reference to the Court by a commissioner of a question or matter arising in proceedings before the commissioner.

(4) A commissioner is, in the exercise of any function of the Court conferred on the commissioner by or under this or any other Act, to be taken to be the Court.

Procedure before commissioners

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

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

(3) Proceedings before a commissioner are not required to be recorded unless the Chief Judge or the commissioner directs that the proceedings concerned be recorded.

(11) Section 30 (**Pre-hearing conferences and arbitration**):

Section 30 (1A):

After "Court", insert "or a commissioner" and after "the Judge", insert "or the commissioner".

(12) Section 32 (**Appeals from Court**):

(a) Omit section 32 (1), insert instead:

(1) A party aggrieved by an award of the Court constituted by a Judge may appeal to the Supreme Court.

(b) After section 32 (2), insert:

(3) If an appeal involves neither:

(a) a point of law or the admission or rejection of any evidence; nor

SCHEDULE 1 - AMENDMENTS - *continued*

- (b) compensation amounting to \$5,000 or more, the appeal lies by leave of the Supreme Court.
- (4) In any other case, the appeal lies as of right.
- (13) Section 33 (**Stated cases**):
- Section 33 (1):
- Omit "(other than proceedings before a registrar)", insert instead "constituted by a Judge".
- (14) Part 4, Division 2, heading:
- Before "registrars", insert "commissioners or".
- (15) Section 36 (**Review of decisions**):
- (a) Before "registrar", insert "commissioner or".
- (b) At the end of the section, insert:
- (2) Any such application for review must be made within the time and in the manner prescribed by rules of Court.
- (16) Section 37 (**References to the Court**):
- (a) Section 37 (1):
- Before "registrar may", insert "commissioner or a".
- (b) Section 37 (1) (a):
- Before "registrar's", insert "commissioner's or".
- (c) Section 37 (1), (2):
- Omit "the registrar" wherever occurring, insert instead "the commissioner or registrar".
- (17) Section 38:
- Omit the section, insert instead:
- Stay of proceedings**
38. (1) The Compensation Court may, subject to any order of the Supreme Court, order a stay of proceedings (on such terms as the Compensation Court thinks fit) in

SCHEDULE 1 - AMENDMENTS - *continued*

respect of any award the subject of an appeal, a review, 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, review, stated case or request for a stated case does not operate as a stay of proceedings.

(3) If a stay of proceedings is ordered by the Supreme Court or the Compensation Court in respect of an appeal against or review of an award of weekly payments of compensation, the stay of proceedings does not operate to affect the liability to make those payments under the award.

(4) If the decision of the Supreme Court or Compensation Court on any such appeal or review is to terminate liability to make the weekly payments of compensation, that Court may:

(a) order that the Uninsured Liability and Indemnity Scheme established under the Workers Compensation Act 1987 bear the whole or a specified part of the liability to make those payments; and

(b) give such directions as are necessary to give effect to the order.

(18) Section 39 (**Costs of operation of the Court**):

(a) Omit "July", insert instead "May".

(b) After "Judges," in section 39 (a), insert "commissioners,".

(c) Omit "and Judges' chambers".

(19) Section 41:

Omit the section, insert instead:

Liaison with Workers Compensation and Rehabilitation Authority

41. (1) The Chief Judge may refer to the Workers Compensation and Rehabilitation Authority for inquiry or report any matter relating to the functions of the Court.

SCHEDULE 1 - AMENDMENTS - *continued*

- (2) A Judge or commissioner may refer to the Workers Compensation and Rehabilitation Authority:
 - (a) a report on suspected fraud or contravention of the Workers Compensation Act 1987 or the regulations under that Act by any party to proceedings; and
 - (b) a report on any neglect in the provision of rehabilitation for an injured worker; and
 - (c) any other matter the Judge or commissioner considers appropriate to refer to the Authority.
- (20) Section 42 (**Rule Committee**):
 - (a) Section 42 (1) (b):
Omit "3", insert instead "4".
 - (b) Section 42 (1) (c):
After section 42 (1) (b), insert:
 - (c) an appointed commissioner;
 - (c) Section 42 (6):
Omit "4", insert instead "5".
- (21) Section 43 (**Rules**):
 - (a) Section 43 (2) (h):
Omit "a commissioner or".
 - (b) Section 43 (2) (h) (ii):
Omit "and".
 - (c) At the end of section 43 (2) (i), insert:
 - ;
 - (j) providing for default judgments and orders for summary judgment and the circumstances in which such judgments and orders may be given or made; and
 - (k) regulating the means by which particular facts may be proved, and the mode in which evidence may be given (including the administration of oaths to and

SCHEDULE 1 - AMENDMENTS - *continued*

the taking of evidence of witnesses in or out of New South Wales), in any proceedings or in any application in connection with, or at any stage of, any proceedings.

(22) Section 48:

After section 47, insert:

Savings and transitional provisions

48. Schedule 4 has effect.

(23) Schedule 1 (**Judges**):

Omit the Schedule.

(24) Schedules 2 - 4:

After Schedule 1, insert:

SCHEDULE 2 - COMMISSIONERS

(Sec. 12)

Age of commissioners

1. A person of or above the age of 65 years is not eligible to be appointed as a commissioner.

Term of office

2. (1) A commissioner holds office, (subject to this Schedule):

- (a) if the commissioner was appointed before reaching the age of 59 years - until the commissioner reaches the age of 60 years; or
- (b) in any other case - for a period (not exceeding 12 months) specified in the instrument of appointment.

(2) Subject to this Schedule, the Governor may, before the expiration of a commissioner's term of office, extend from time to time that term for a period or periods each not exceeding 12 months.

SCHEDULE 1 - AMENDMENTS - *continued*

Full-time position

3. A commissioner is required to devote the whole of his or her time to the duties of the office of commissioner.

Remuneration

4. A commissioner is entitled to be paid:

- (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the commissioner.

Application of Public Sector Management Act 1988

5. The Public Sector Management Act 1988 does not apply to or in respect of the appointment of a commissioner and a commissioner is not, as a commissioner, subject to that Act.

Leave

6. (1) A commissioner is entitled to such leave:

- (a) as may be prescribed by the regulations; or
- (b) as may be specified in respect of the commissioner in the commissioner's instrument of appointment.

(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

7. 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.

Removal from office

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

SCHEDULE 1 - AMENDMENTS - *continued*

Vacation of office

9. A commissioner vacates office if the commissioner:
- (a) completes a term of office and is not re-appointed;
or
 - (b) dies; or
 - (c) resigns the office by instrument in writing addressed to the Minister; or
 - (d) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
 - (e) is removed from office by the Governor under clause 8; or
 - (f) reaches the age of 65 years.

**SCHEDULE 3 - FUNCTIONS OF THE
COURT THAT MAY BE EXERCISED
BY COMMISSIONERS**

(Sec. 22)

- (a) Claims for weekly payments of compensation in respect of closed periods of incapacity.
- (b) Claims for weekly payments of compensation in respect of partial incapacity where the worker is in receipt of earnings.
- (c) Claims for weekly payments of compensation to be treated as cases of total incapacity under section 39 of the Workers Compensation Act 1987 ("odd-lot" rule) where liability is not disputed.
- (d) Determinations of lump sum for commutation (under section 51 of the Workers Compensation Act 1987) or redemption (under Part 4 of Schedule 6 to that Act) of weekly payments of compensation

SCHEDULE 1 - AMENDMENTS - *continued*

if the lump sum claimed does not exceed \$40,000 or (if an amount is not specified) is not likely to exceed \$40,000.

- (e) Claims for cost of medical or related treatment, hospital treatment, ambulance service or occupational rehabilitation service (and related travel expenses).
- (f) Applications for direction that employer liable for greater amount than prescribed maximum amount for medical and related treatment, hospital treatment or occupational rehabilitation service.
- (g) Applications for compensation under Division 4 of Part 3 of the Workers Compensation Act 1987 (excluding compensation for pain and suffering under section 67 of that Act) if the amount claimed does not exceed \$40,000 or (if an amount is not specified) is not likely to exceed \$40,000.
- (h) Applications for formal award for compensation for non-economic loss under Division 4 of Part 3 of the Workers Compensation Act 1987 (including compensation for pain and suffering under section 67 of that Act) where parties agree on the amount of compensation.
- (i) Applications for compensation for a loss which (under Part 6 of Schedule 6 to the Workers Compensation Act 1987) is to be determined in accordance with section 16 of the Workers' Compensation Act 1926.
- (j) Claims for compensation for property damage under Division 5 of Part 3 of the Workers Compensation Act 1987.
- (k) Applications for orders under section 85 of the Workers Compensation Act 1987 for variation of investment or other dealing with compensation held

SCHEDULE 1 - AMENDMENTS - *continued*

- for the benefit of the persons entitled to the compensation.
- (l) Applications for determinations under section 53 of the Workers Compensation Act 1987 that incapacity for work is likely to be of a permanent nature for the purpose of the worker receiving payments outside Australia.
 - (m) Applications for authorisation of payment of compensation in a manner not specifically authorised by section 83 of the Workers Compensation Act 1987.
 - (n) Applications for an order under section 58 of the Workers Compensation Act 1987 for the refund by a worker of over-payments of weekly payments compensation.
 - (o) Pre-hearing conferences.
 - (p) Applications for revocation of directions made by a conciliation officer for the payment of weekly payments of compensation or for an order under section 98 (3) of the Workers Compensation Act 1987.
 - (q) Any matter referred to a commissioner by a Judge under section 16 (in accordance with the terms of reference).
 - (r) Any other matter ancillary to the above matters.

**SCHEDULE 4 - SAVINGS AND
TRANSITIONAL PROVISIONS**

(Sec. 48)

Part 1 - General

Savings and transitional regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

SCHEDULE 1 - AMENDMENTS - *continued*

Compensation Court (Amendment) Act 1989;
Workers Compensation (Compensation Court)
Amendment Act 1989.

(2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 - Compensation Court (Amendment) Act 1989

Pending proceedings before commissioners etc.

2. (1) In this clause:

"the repeal" means the repeal of Part 8 of the Workers Compensation Act 1987 by the Workers Compensation (Compensation Court) Amendment Act 1989.

(2) After the repeal the following provisions apply:

- (a) this Act, as amended by the Compensation Court (Amendment) Act 1989, applies to proceedings under the Workers Compensation Act 1987 whether the proceedings were commenced before or after the commencement of those amendments;
- (b) any proceedings transferred or deemed to have been transferred to the Compensation Court under section 109 of the Workers Compensation Act 1987

SCHEDULE 1 - AMENDMENTS - *continued*

- before the repeal are to be regarded as proceedings pending before the Compensation Court;
- (c) any proceedings pending before a workers compensation commissioner under the Workers Compensation Act 1987 immediately before the repeal are to be regarded as proceedings pending before the Compensation Court;
 - (d) any proceedings allocated to but not determined by a workers compensation commissioner under the Workers Compensation Act 1987 immediately before the repeal are to be regarded as proceedings allocated under this Act to that commissioner or, if the Chief Judge so directs, to a Judge or another commissioner nominated by the Chief Judge;
 - (e) an appeal or reference to the Compensation Court that is pending under the Workers Compensation Act 1987 immediately before the repeal is to be regarded as a review or reference to the Compensation Court under this Act;
 - (f) an award (including an interim award), order, decision, determination, ruling or direction made or given under the Workers Compensation Act 1987 by a workers compensation commissioner before the repeal is to be regarded as having been made or given by the Compensation Court constituted by a commissioner of that Court.

Commissioners to be continued in office under this Act

3. (1) A person who held office immediately before the repeal of Part 8 of the Workers Compensation Act 1987 as a workers compensation commissioner (including a person who was the Senior Commissioner) is, on the repeal of that Part, to be regarded as having been appointed as a commissioner under section 12 of this Act for a period expiring on the date the person reaches the age of 60 years (or if appointed after that age, for a period expiring on the anniversary of the appointment).

SCHEDULE 1 - AMENDMENTS - *continued*

(2) Subclause (1) applies to any such person even though the person is not qualified for appointment under section 12.

(3) Any such person is (if otherwise qualified) eligible for re-appointment under this Act.

(4) Clauses 8 and 9 of Schedule 2 to the Workers Compensation Act 1987 (preservation of rights and entitlement to re-appointment) continue to apply (despite their repeal) to any such person.

(5) Pending a further determination of remuneration in accordance with this Act, any such person is entitled to continue to receive the remuneration payable to the person immediately before the repeal of Part 8 of the Workers Compensation Act 1987.

(6) The person who was the Senior Commissioner may retain that title.

Liability of commissioners etc.

4. (1) Section 247 of the Workers Compensation Act 1987 (protection from liability) continues to apply, despite its repeal, in respect of any matter or thing done by a workers compensation commissioner before its repeal.

(2) Section 17^{BB} of the Defamation Act 1974 (as in force immediately before the substitution of that section by the Workers Compensation (Compensation Court) Amendment Act 1989) continues to apply in respect of any matter or thing done by a workers compensation commissioner or review officer before the amendment of that section.

Appeals

5. (1) An appeal that does not involve a point of law or the admission or rejection of any evidence does not lie in respect of an award given in proceedings commenced before the commencement of the amendments made to

SCHEDULE 1 - AMENDMENTS - *continued*

section 32 by the Compensation Court (Amendment) Act 1989.

(2) The amendments made to section 32 by the Compensation Court (Amendment) Act 1989 do not affect any appeals commenced before the commencement of those amendments.

[*Minister's second reading speech made in -
Legislative Assembly on 1 August 1989
Legislative Council on 3 August 1989 a.m.*]





FIRST PRINT

COMPENSATION COURT (AMENDMENT) BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

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

The Workers Compensation (Compensation Court) Amendment Bill 1989 is cognate with this Bill.

Currently, commissioners appointed under the Workers Compensation Act 1987 have exclusive jurisdiction in workers compensation matters. The jurisdiction of the Compensation Court is to determine matters referred to it by commissioners and appeals from decisions of commissioners.

The proposed Workers Compensation (Compensation Court) Amendment Act 1989 provides that the Compensation Court has exclusive jurisdiction in workers compensation matters and repeals provisions for the appointment and functions of commissioners.

The object of this Bill is to amend the Compensation Court Act 1984 to provide for the appointment and functions of commissioners of the Compensation Court and to make other changes.

The amendments will:

- (a) make consequential changes necessary for the transfer of jurisdiction in workers compensation matters from commissioners appointed under the Workers Compensation Act 1987 to the Compensation Court;
- (b) provide for the appointment of commissioners under the Compensation Court Act 1984 so that the Court may in future be constituted by a judge or by a commissioner;
- (c) provide for the allocation of matters to commissioners and for the types of matters which should be heard by commissioners;
- (d) make provision concerning costs in workers compensation matters (presently dealt with in the Workers Compensation Act 1987) and change

Compensation Court (Amendment) 1989

- the general rule that workers are not liable for costs (but only in the case of costs on an application for review of a commissioner's decision);
- (e) empower the making of rules of Court providing for default judgments, orders for summary judgment, the giving of evidence and the proving of facts; and
 - (f) make other minor or consequential amendments.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act commences on a day or days to be appointed by proclamation.

Clause 3 gives effect to the Schedule of amendments to the Principal Act.

SCHEDULE 1 - AMENDMENTS

Commissioners

Schedule 1 (2) provides for the appointment of commissioners and acting commissioners. Appointments are to be restricted to persons who are legally qualified and the term of appointment is to be not less than 4 years and not more than 7 years. However, under the savings and transitional provisions in proposed Schedule 4, existing commissioners are continued in office for the balance of their term of office.

Schedule 1 (10) provides that commissioners are to exercise the functions of the Court in matters allocated to them by the Chief Judge and are to be considered to be the Court when exercising those functions. Proceedings before a commissioner are to be conducted with as little formality and technicality as the proper consideration of the matter permits.

Schedule 1 (7) provides for the allocation of matters to commissioners by the Chief Judge. As far as practicable, the matters specified in proposed Schedule 3 to the Act should be allocated to commissioners.

Schedule 1 (14) (b) provides that decisions of commissioners are reviewable by judges of the Court in the same way as decisions of registrars.

Schedule 1 (23) provides for the conditions of office of commissioners (proposed Schedule 2 to the Act).

Schedule 1 (1), (4), (5), (11) - (17) and (20) (a) make consequential amendments.

Costs

An exception is created to the general rule (currently in the Workers Compensation Act 1987 and to be re-enacted in the Compensation Court Act 1984) that a worker is not to be ordered to pay costs by providing that, if the worker applies for a review by a judge of a decision of a commissioner, costs are to be paid by the unsuccessful party unless there are special circumstances.

Compensation Court (Amendment) 1989

Under the proposed amendments, the Court is required, when making an order for costs, to take into consideration any unreasonable failure of a party to participate in conciliation under the Workers Compensation Act 1987.

Schedule 1 (6) makes it clear that the power of the Court to order payment of costs by a worker if proceedings are frivolous or vexatious, fraudulent or without proper justification applies even if only part of the proceedings are affected.

Other amendments

Schedule 1 (3) brings the Court's powers into line with those of the District Court in respect of compelling attendance of witnesses, answering of questions and production etc. of documents, punishment of contempt and perjury.

Schedule 1 (8) omits the provision authorising examinations de bene esse. Rules of Court will now be made in respect of that matter under the new general power to make rules (inserted by Schedule 1 (20) (c)) regulating the means by which facts are proved and the giving of evidence.

Schedule 1 (9) entitles a person who has applied for workers compensation against 2 or more persons to have the applications heard together (this re-enacts a provision currently in the Workers Compensation Act 1987).

Schedule 1 (14) (b) provides that an application for review of a commissioner's or registrar's decision by a judge must be made within the time and in the manner prescribed by rules of Court.

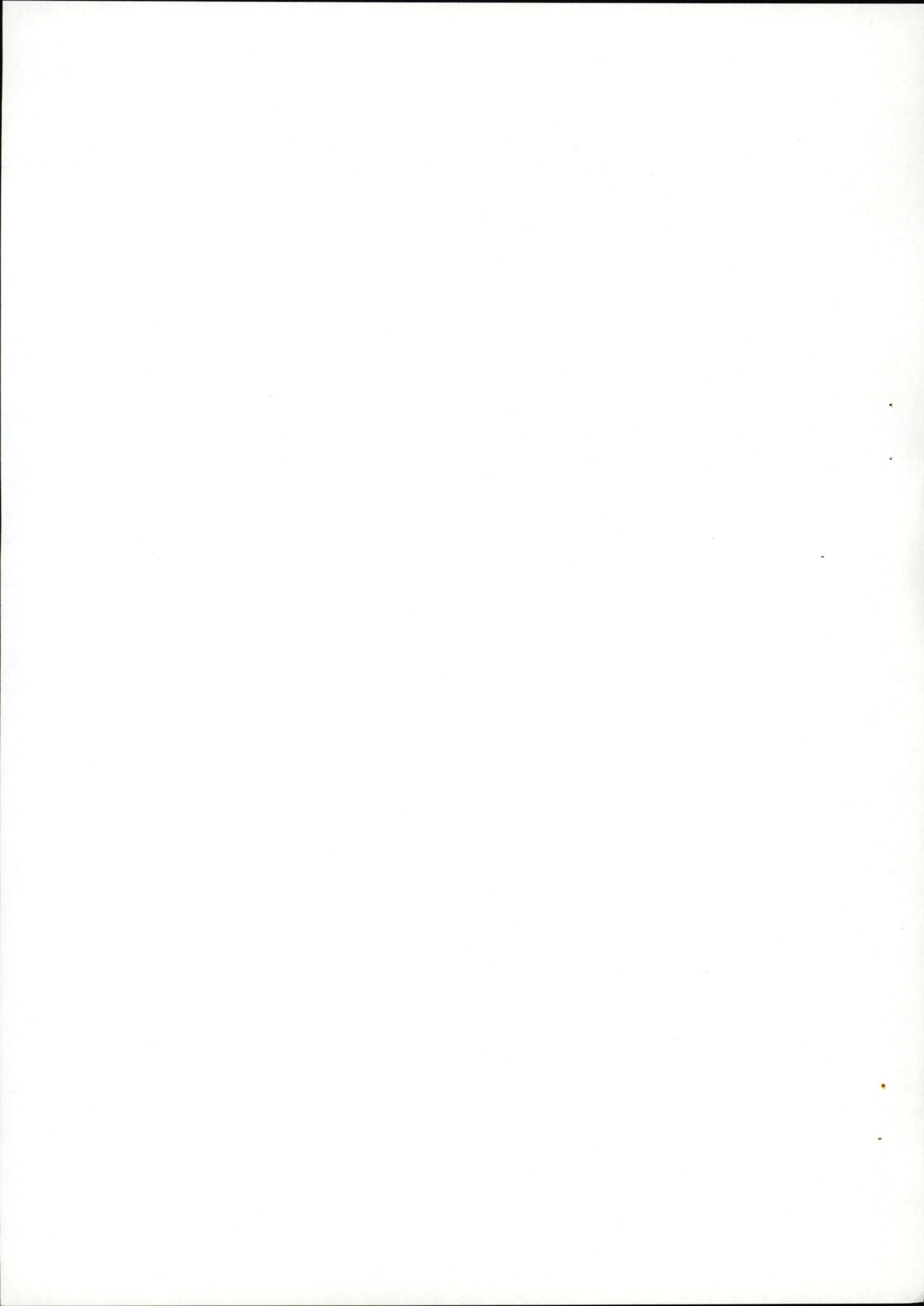
Schedule 1 (18) replaces the provision that required liaison between the Court, commissioners and others and the Workers Compensation and Rehabilitation Authority. The new provision enables certain matters to be referred to the Authority for inquiry and report.

Schedule 1 (19) increases the membership of the Rule Committee by 1 judge and 1 commissioner.

Schedule 1 (20) (c) enables Rules of Court to be made providing for default judgments and orders for summary judgments.

Schedule 1 (22) omits redundant provisions dealing with the conditions of office of judges.

Schedule 1 (21) and (23) (proposed Schedule 4 to the Act) make savings and transitional provisions.



FIRST PRINT

COMPENSATION COURT (AMENDMENT) BILL 1989

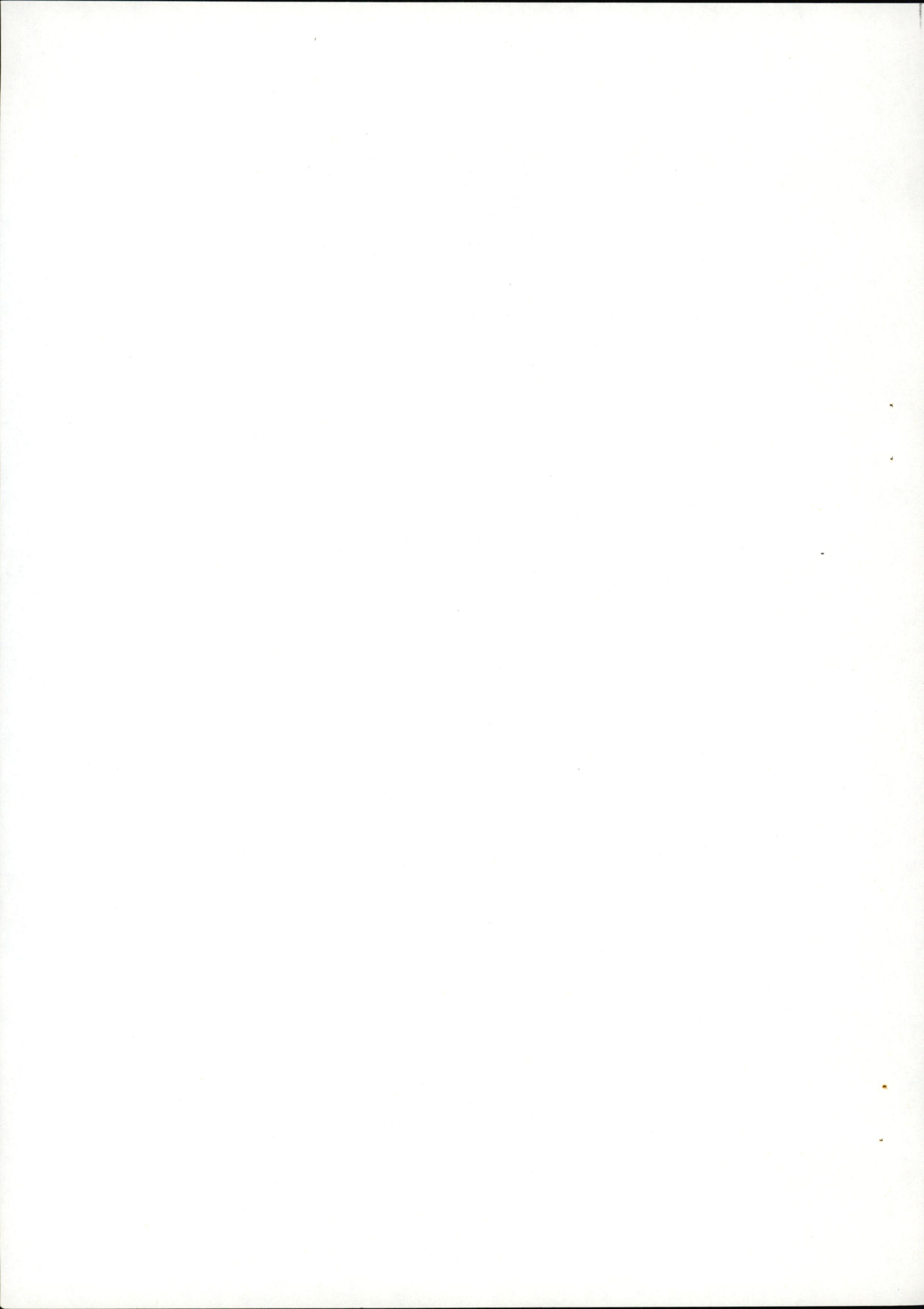
NEW SOUTH WALES



TABLE OF PROVISIONS

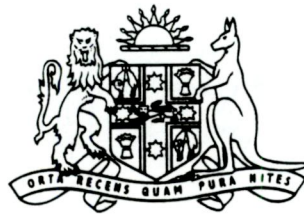
1. Short title
2. Commencement
3. Amendment of Compensation Court Act 1984 No. 89

SCHEDULE 1 - AMENDMENTS



COMPENSATION COURT (AMENDMENT) BILL 1989

NEW SOUTH WALES



No. , 1989

A BILL FOR

An Act to amend the Compensation Court Act 1984 to make provision with respect to the appointment and functions of commissioners of the Compensation Court, and for other purposes.

See also Workers Compensation (Compensation Court) Amendment Bill 1989.

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Compensation Court (Amendment) Act 1989.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Compensation Court Act 1984 No. 89

3. The Compensation Court Act 1984 is amended as set out in Schedule 1.

SCHEDULE 1 - AMENDMENTS

(Sec. 3)

(1) Section 3 (**Definitions**):

(a) Section 3 (1), definition of "commissioner":

Omit the definition, insert instead:

"commissioner" means a commissioner of the Court;

(b) Section 3 (1), definition of "Senior Commissioner":

Omit the definition.

(2) Part 2, Division 3:

After Division 2 of Part 2, insert:

Division 3 - Commissioners

Appointment of commissioners

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

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

SCHEDULE 1 - AMENDMENTS - *continued*

- (a) is a practising barrister or practising solicitor; or
 - (b) has, in the opinion of the Minister, satisfactorily completed studies in the field of law and had sufficient experience in workers compensation or in other fields of compensation considered by the Minister to be relevant to the functions of a commissioner.
- (3) Schedule 2 has effect.

Acting commissioners

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

(2) An acting commissioner has, for the period and subject to the conditions or limitations specified in the instrument of appointment, the functions of a commissioner and is, for the purposes of this or any other Act, to be taken to be a commissioner.

(3) Section 15 (**Jurisdiction of the Court**):

Omit section 15 (2) and (3), insert instead:

(2) The Court has the functions vested in the District Court in respect of the following matters:

- (a) compelling the attendance of witnesses and examining them on oath, affirmation or declaration;
- (b) compelling the production, discovery and inspection of books, records, documents and other papers;
- (c) compelling witnesses to answer questions which the Court considers to be relevant in any proceedings before it;
- (d) the punishment of persons guilty of contempt, or of disobedience to any order made by the Court, or any process issuing out of the Court;

SCHEDULE 1 - AMENDMENTS - *continued*

- (e) directing witnesses to be prosecuted for perjury.
- (4) Section 16 (**References to commissioner**):
Omit "the Senior Commissioner" from section 16 (1), insert instead "a commissioner".
- (5) Section 17 (**Decisions of the Court**):
Section 17 (4):
Omit "constituted by a Judge" and "so constituted".
- (6) Section 18:
Omit the section, insert instead:
Costs
18. (1) In this section, a reference to costs is a reference to costs payable between party and party, including disbursements.
(2) Subject to this Act and the rules and subject to any other Act:
(a) costs in or in relation to any proceedings are in the discretion of the Court; and
(b) the Court has full power to determine by whom, to whom and to what extent costs are to be paid in or in relation to any proceedings; and
(c) the Court has full power to order costs in or in relation to any proceedings to be taxed or otherwise ascertained.
(3) A taxation of costs may be reviewed by the Court in accordance with the rules of Court.
(4) Subject to this section, the Court may not order the payment of costs by a person claiming compensation unless the Court is satisfied that the application for compensation was frivolous or vexatious, fraudulent or made without proper justification.

SCHEDULE 1 - AMENDMENTS - *continued*

(5) If the Court is satisfied that a part only of any such application for compensation was frivolous or vexatious, fraudulent or made without proper justification, the Court may order the claimant to pay the costs relating to that part of the application.

(6) If a person claiming compensation applies under section 36 for a review of the decision of a commissioner, costs in or in relation to the review are to be paid by the unsuccessful party unless the Court in special circumstances otherwise orders.

(7) The Court may order the payment of costs by any party to the proceedings who has unreasonably failed to participate in a conciliation of the dispute under the Workers Compensation Act 1987 if it appears to the Court that the failure has resulted in unnecessary litigation or has adversely affected the rehabilitation of an injured worker.

(8) An order of the Court for payment of costs may include:

- (a) the costs actually incurred or to be incurred by a person claiming compensation; and
- (b) if liability for a claim for compensation is admitted without recourse to the Court - the reasonable expenses incurred by a person in pursuing the person's claim; and
- (c) costs incurred in relation to any proceedings under the Workers Compensation Act 1987 (including conciliation conferences as defined in section 100A of that Act).

(9) In this section:

"application for compensation" includes any proceedings in connection with an application for compensation;

SCHEDULE 1 - AMENDMENTS - *continued*

"compensation" means compensation under the Workers Compensation Act 1987;

"decision" includes award, order, determination, ruling and direction.

(7) Section 22:

Omit the section, insert instead:

Arrangement of business of the Court

22. (1) The Chief Judge is responsible for making arrangements as to whether the Court's functions are to be exercised by a Judge, commissioner or registrar, including arrangements as to the particular Judge, commissioner or registrar who is to exercise those functions.

(2) In making those arrangements, the Chief Judge should ensure that, as far as practicable:

- (a) matters specified in Schedule 3 are allocated to commissioners unless the particular matter is not appropriate for determination by a commissioner; and
- (b) other matters are allocated to commissioners if they are appropriate for determination by a commissioner.

(3) In deciding whether a matter is or is not appropriate for determination by a commissioner, the Chief Judge is to have regard to:

- (a) the complex, unusual or important nature of any legal or factual issue involved; and
- (b) multiplicity of parties; and
- (c) the amount of compensation claimed; and
- (d) any other special circumstances.

(4) The regulations may amend or substitute Schedule 3.

(8) Section 25 (**Examination de bene esse**):

Omit the section.

SCHEDULE 1 - AMENDMENTS - *continued*

(9) Section 25A:

At the end of Division 2 of Part 3, insert:

Applications to be heard together

25A. (1) A person who has applied to the Court for a determination of a claim for compensation under the Workers Compensation Act 1987 against 2 or more persons alleged to have been the employers of the worker concerned (either at the same time or at different times) is entitled, if the person so requests, to have all or any of the applications heard together.

(2) If more than one employer or more than one insurer may be involved in an application for compensation under the Workers Compensation Act 1987 or any other matter under that Act, the rules of Court may provide for the nomination of:

- (a) one of those insurers or one of those employers; or
- (b) the Workers Compensation and Rehabilitation Authority or some other person,

to represent the employers or insurers in any proceedings relating to the application.

(10) Part 3, Division 3:

After Division 2 of Part 3, insert:

Division 3 - Commissioners' jurisdiction

Commissioners' jurisdiction

26. (1) A commissioner may exercise the functions of the Court in respect of any matter allocated to the commissioner under section 22.

(2) If a matter so allocated to a commissioner is specified in Schedule 3, the commissioner may hear and determine the matter without regard to any limitation as to the amount of any award or otherwise to which the matter is subject in that Schedule.

SCHEDULE 1 - AMENDMENTS - *continued*

(3) Subsection (2) does not affect the provisions of section 37 relating to the reference to the Court by a commissioner of a question or matter arising in proceedings before the commissioner.

(4) A commissioner is, in the exercise of any function of the Court conferred on the commissioner by or under this or any other Act, to be taken to be the Court.

Procedure before commissioners

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

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

(3) Proceedings before a commissioner are not required to be recorded unless the Chief Judge or the commissioner directs that the proceedings concerned be recorded.

(11) Section 30 (**Pre-hearing conferences and arbitration**):

Section 30 (1A):

After "Court", insert "or a commissioner" and after "the Judge", insert "or the commissioner".

(12) Sections 32 (**Appeals from Court**), 33 (**Stated cases**):

Sections 32 (1), 33 (1):

Omit "(other than proceedings before a registrar)" wherever occurring, insert instead "constituted by a Judge".

(13) Part 4, Division 2, heading:

Before "registrars", insert "commissioners or".

(14) Section 36 (**Review of decisions**):

(a) Before "registrar", insert "commissioner or".

(b) At the end of the section, insert:

(2) Any such application for review must be made within the time and in the manner prescribed by rules of Court.

SCHEDULE 1 - AMENDMENTS - *continued*

- (15) Section 37 (**References to the Court**):
- (a) Section 37 (1):
Before "registrar may", insert "commissioner or a".
 - (b) Section 37 (1) (a):
Before "registrar's", insert "commissioner's or".
 - (c) Section 37 (1), (2):
Omit "the registrar" wherever occurring, insert instead "the commissioner or registrar".
- (16) Section 38:
Omit the section, insert instead:
- Stay of proceedings**
38. (1) The Compensation Court may, subject to any order of the Supreme Court, order a stay of proceedings (on such terms as the Compensation Court thinks fit) in respect of any award the subject of an appeal, a review, 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, review, stated case or request for a stated case does not operate as a stay of proceedings.
- (3) If a stay of proceedings is ordered by the Supreme Court or the Compensation Court in respect of an appeal against or review of an award of weekly payments of compensation, the stay of proceedings does not operate to affect the liability to make those payments under the award.
- (4) If the decision of the Supreme Court or Compensation Court on any such appeal or review is to terminate liability to make the weekly payments of compensation, that Court may:
- (a) order that the Uninsured Liability and Indemnity Scheme established under the Workers

SCHEDULE 1 - AMENDMENTS - *continued*

- Compensation Act 1987 bear the whole or a specified part of the liability to make those payments; and
- (b) give such directions as are necessary to give effect to the order.
- (17) Section 39 (**Costs of operation of the Court**):
- (a) Omit "July", insert instead "May".
- (b) After "Judges," in section 39 (a), insert "commissioners,".
- (c) Omit "and Judges' chambers".
- (18) Section 41:
- Omit the section, insert instead:
- Liaison with Workers Compensation and Rehabilitation Authority**
41. (1) The Chief Judge may refer to the Workers Compensation and Rehabilitation Authority for inquiry or report any matter relating to the functions of the Court.
- (2) A Judge or commissioner may refer to the Workers Compensation and Rehabilitation Authority:
- (a) a report on suspected fraud or contravention of the Workers Compensation Act 1987 or the regulations under that Act by any party to proceedings; and
- (b) a report on any neglect in the provision of rehabilitation for an injured worker; and
- (c) any other matter the Judge or commissioner considers appropriate to refer to the Authority.
- (19) Section 42 (**Rule Committee**):
- (a) Section 42 (1) (b):
- Omit "3", insert instead "4".
- (b) Section 42 (1) (c):
- After section 42 (1) (b), insert:
- (c) an appointed commissioner;

SCHEDULE 1 - AMENDMENTS - *continued*

- (c) Section 42 (6):
Omit "4", insert instead "5".
- (20) Section 43 (**Rules**):
 - (a) Section 43 (2) (h):
Omit "a commissioner or".
 - (b) Section 43 (2) (h) (ii):
Omit "and".
 - (c) At the end of section 43 (2) (i), insert:
 - ;
 - (j) providing for default judgments and orders for summary judgment and the circumstances in which such judgments and orders may be given or made; and
 - (k) regulating the means by which particular facts may be proved, and the mode in which evidence may be given (including the administration of oaths to and the taking of evidence of witnesses in or out of New South Wales), in any proceedings or in any application in connection with, or at any stage of, any proceedings.
- (21) Section 48:
After section 47, insert:
Savings and transitional provisions
48. Schedule 4 has effect.
- (22) Schedule 1 (**Judges**):
Omit the Schedule.
- (23) Schedules 2 - 4:
After Schedule 1, insert:

SCHEDULE 1 - AMENDMENTS - *continued*

SCHEDULE 2 - COMMISSIONERS

(Sec. 12)

Age of commissioners

1. A person of or above the age of 65 years is not eligible to be appointed as a commissioner.

Term of office

2. A commissioner holds office, subject to this Schedule, for such period (not less than 4 years and not more than 7 years) as is specified in the commissioner's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Full-time position

3. A commissioner is required to devote the whole of his or her time to the duties of the office of commissioner.

Remuneration

4. A commissioner is entitled to be paid:

- (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the commissioner.

Application of Public Sector Management Act 1988

5. The Public Sector Management Act 1988 does not apply to or in respect of the appointment of a commissioner and a commissioner is not, as a commissioner, subject to that Act.

Leave

6. (1) A commissioner is entitled to such leave:

- (a) as may be prescribed by the regulations; or
- (b) as may be specified in respect of the commissioner in the commissioner's instrument of appointment.

SCHEDULE 1 - AMENDMENTS - *continued*

(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

7. 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.

Removal from office

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

Vacation of office

9. A commissioner vacates office if the commissioner:
- (a) completes a term of office and is not re-appointed; or
 - (b) dies; or
 - (c) resigns the office by instrument in writing addressed to the Minister; or
 - (d) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
 - (e) is removed from office by the Governor under clause 8; or
 - (f) reaches the age of 65 years.

**SCHEDULE 3 - FUNCTIONS OF THE
COURT THAT MAY BE EXERCISED
BY COMMISSIONERS**

(Sec. 22)

- (a) Claims for weekly payments of compensation in respect of closed periods of incapacity.

SCHEDULE 1 - AMENDMENTS - *continued*

- (b) Claims for weekly payments of compensation in respect of partial incapacity where the worker is in receipt of earnings.
- (c) Claims for weekly payments of compensation to be treated as cases of total incapacity under section 39 of the Workers Compensation Act 1987 ("odd-lot" rule) where liability is not disputed.
- (d) Determinations of lump sum for commutation (under section 51 of the Workers Compensation Act 1987) or redemption (under Part 4 of Schedule 6 to that Act) of weekly payments of compensation if the lump sum claimed does not exceed \$40,000 or (if an amount is not specified) is not likely to exceed \$40,000.
- (e) Claims for cost of medical or related treatment, hospital treatment, ambulance service or occupational rehabilitation service (and related travel expenses).
- (f) Applications for direction that employer liable for greater amount than prescribed maximum amount for medical and related treatment, hospital treatment or occupational rehabilitation service.
- (g) Applications for compensation under Division 4 of Part 3 of the Workers Compensation Act 1987 (excluding compensation for pain and suffering under section 67 of that Act) if the amount claimed does not exceed \$40,000 or (if an amount is not specified) is not likely to exceed \$40,000.
- (h) Applications for formal award for compensation for non-economic loss under Division 4 of Part 3 of the Workers Compensation Act 1987 (including compensation for pain and suffering under section 67 of that Act) where parties agree on the amount of compensation.

SCHEDULE 1 - AMENDMENTS - *continued*

- (i) Applications for compensation for a loss which (under Part 6 of Schedule 6 to the Workers Compensation Act 1987) is to be determined in accordance with section 16 of the Workers' Compensation Act 1926.
- (j) Claims for compensation for property damage under Division 5 of Part 3 of the Workers Compensation Act 1987.
- (k) Applications for orders under section 85 of the Workers Compensation Act 1987 for variation of investment or other dealing with compensation held for the benefit of the persons entitled to the compensation.
- (l) Applications for determinations under section 53 of the Workers Compensation Act 1987 that incapacity for work is likely to be of a permanent nature for the purpose of the worker receiving payments outside Australia.
- (m) Applications for authorisation of payment of compensation in a manner not specifically authorised by section 83 of the Workers Compensation Act 1987.
- (n) Applications for an order under section 58 of the Workers Compensation Act 1987 for the refund by a worker of over-payments of weekly payments compensation.
- (o) Pre-hearing conferences.
- (p) Applications for revocation of directions made by a conciliation officer for the payment of weekly payments of compensation or for an order under section 98 (3) of the Workers Compensation Act 1987.
- (q) Any matter referred to a commissioner by a Judge under section 16 (in accordance with the terms of reference).

SCHEDULE 1 - AMENDMENTS - *continued*

- (r) Any other matter ancillary to the above matters.

**SCHEDULE 4 - SAVINGS AND
TRANSITIONAL PROVISIONS**

(Sec. 48)

Part 1 - General

Savings and transitional regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Compensation Court (Amendment) Act 1989;

Workers Compensation (Compensation Court)
Amendment Act 1989.

(2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

SCHEDULE 1 - AMENDMENTS - *continued*

Part 2 - Compensation Court (Amendment) Act 1989

Pending proceedings before commissioners etc.

2. (1) In this clause:

"the repeal" means the repeal of Part 8 of the Workers Compensation Act 1987 by the Workers Compensation (Compensation Court) Amendment Act 1989.

(2) After the repeal the following provisions apply:

- (a) this Act, as amended by the Compensation Court (Amendment) Act 1989, applies to proceedings under the Workers Compensation Act 1987 whether the proceedings were commenced before or after the commencement of those amendments;
- (b) any proceedings transferred or deemed to have been transferred to the Compensation Court under section 109 of the Workers Compensation Act 1987 before the repeal are to be regarded as proceedings pending before the Compensation Court;
- (c) any proceedings pending before a workers compensation commissioner under the Workers Compensation Act 1987 immediately before the repeal are to be regarded as proceedings pending before the Compensation Court;
- (d) any proceedings allocated to but not determined by a workers compensation commissioner under the Workers Compensation Act 1987 immediately before the repeal are to be regarded as proceedings allocated under this Act to that commissioner or, if the Chief Judge so directs, to a Judge or another commissioner nominated by the Chief Judge;
- (e) an appeal or reference to the Compensation Court that is pending under the Workers Compensation Act 1987 immediately before the repeal is to be

SCHEDULE 1 - AMENDMENTS - *continued*

regarded as a review or reference to the Compensation Court under this Act;

- (f) an award (including an interim award), order, decision, determination, ruling or direction made or given under the Workers Compensation Act 1987 by a workers compensation commissioner before the repeal is to be regarded as having been made or given by the Compensation Court constituted by a commissioner of that Court.

Commissioners to be continued in office under this Act

3. (1) A person who held office immediately before the repeal of Part 8 of the Workers Compensation Act 1987 as a workers compensation commissioner (including a person who was the Senior Commissioner) is, on the repeal of that Part, to be regarded as having been appointed as a commissioner under section 12 of this Act for a period expiring on the date the person reaches the age of 60 years (or if appointed after that age, for a period expiring on the anniversary of the appointment).

(2) Subclause (1) applies to any such person even though the person is not qualified for appointment under section 12.

(3) Any such person is (if otherwise qualified) eligible for re-appointment under this Act.

(4) Clauses 8 and 9 of Schedule 2 to the Workers Compensation Act 1987 (preservation of rights and entitlement to re-appointment) continue to apply (despite their repeal) to any such person.

(5) Pending a further determination of remuneration in accordance with this Act, any such person is entitled to continue to receive the remuneration payable to the person immediately before the repeal of Part 8 of the Workers Compensation Act 1987.

(6) The person who was the Senior Commissioner may retain that title.

SCHEDULE 1 - AMENDMENTS - *continued*

Liability of commissioners etc.

4. (1) Section 247 of the Workers Compensation Act 1987 (protection from liability) continues to apply, despite its repeal, in respect of any matter or thing done by a workers compensation commissioner before its repeal.

(2) Section 17^{BB} of the Defamation Act 1974 (as in force immediately before the substitution of that section by the Workers Compensation (Compensation Court) Amendment Act 1989) continues to apply in respect of any matter or thing done by a workers compensation commissioner or review officer before the amendment of that section.
