

**COURTS LEGISLATION (ACTING JUDGES)
AMENDMENT ACT 1988 No. 10**

NEW SOUTH WALES



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**COURTS LEGISLATION (ACTING JUDGES) AMENDMENT ACT
1988 No. 10**

NEW SOUTH WALES



Act No. 10, 1988

An Act to amend certain Acts with respect to the appointment of persons to act in certain judicial offices. [Assented to 21 June 1988]

Courts Legislation (Acting Judges) Amendment 1988

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Courts Legislation (Acting Judges) Amendment Act 1988.

Commencement

2. This Act commences on the date of assent.

Amendment of courts legislation

3. Each Act specified in Schedules 1-5 is amended as set out in those Schedules.

**SCHEDULE 1—AMENDMENT OF THE SUPREME COURT ACT
1970**

(Sec. 3)

(1) Section 37 (**Acting Judges**)—

(a) Section 37 (1)—

Omit “six months”, insert instead “12 months”.

(b) After section 37 (3), insert:

(4) A retired Judge of the Court or of another court in New South Wales (including a retired judicial member of the Industrial Commission) may be so appointed even though the retired Judge has reached the age of 70 years (or will have reached that age before the appointment expires), but may not be so appointed for any period that extends beyond the day on which he or she reaches the age of 72 years.

(5) The conditions or limitations specified in a commission under this section may exclude the whole or any part of the period of appointment from being regarded as a period served by the person in a prior judicial office within the meaning of section 8 (2) of the Judges' Pensions Act 1953.

(2) Section 111 (**Appointment**)—

After section 111 (5), insert:

(6) A retired master may be appointed under subsection (2) as an acting master even though the retired master has reached the age of 70 years (or will have reached that age before the appointment expires), but may not be so appointed for any period that extends beyond the day on which he or she reaches the age of 72 years.

Courts Legislation (Acting Judges) Amendment 1988

SCHEDULE 1—AMENDMENT OF THE SUPREME COURT ACT
1970—*continued*

(3) Section 115 (**Resignation, removal and tenure**)—

(a) Section 115 (3)—

Omit “(not extending beyond the day on which he attains the age of seventy years)”.

(b) After section 115 (3), insert:

(4) Except as provided by section 111 (6), the term for which an acting master holds office shall not extend beyond the day on which the master reaches the age of 70 years.

SCHEDULE 2—AMENDMENT OF THE INDUSTRIAL
ARBITRATION ACT 1940

(Sec. 3)

Section 14 (**Industrial commission**)—

After section 14 (4), insert:

(4A) A retired judicial member of the commission, or a retired Judge of another court in New South Wales, may be appointed as an acting Judge under subsection (3) or (4) even though the retired member or Judge has reached the age of 70 years (or will have reached that age before the appointment expires), but may not be so appointed for any period that extends beyond the day on which he or she reaches the age of 72 years.

(4B) An appointment under subsection (3) or (4) may, in the case of the appointment of a person to act as a judicial member of the commission, be made subject to a condition that excludes the whole or any part of the period of appointment from being regarded as a period served by the person in a prior judicial office within the meaning of section 8 (2) of the Judges' Pensions Act 1953.

SCHEDULE 3—AMENDMENT OF THE LAND AND
ENVIRONMENT COURT ACT 1979

(Sec. 3)

Section 11 (**Acting Judges**)—

(a) Section 11 (1)—

Omit “6 months”, insert instead “12 months”.

(b) After section 11 (3), insert:

Courts Legislation (Acting Judges) Amendment 1988

SCHEDULE 3—AMENDMENT OF THE LAND AND ENVIRONMENT COURT ACT 1979—*continued*

(4) A retired Judge of the Court or of another court in New South Wales (including a retired judicial member of the Industrial Commission) may be so appointed even though the retired Judge has reached the age of 70 years (or will have reached that age before the appointment expires), but may not be so appointed for any period that extends beyond the day on which he or she reaches the age of 72 years.

(5) The conditions or limitations specified in a commission under this section may exclude the whole or any part of the period of appointment from being regarded as a period served by the person in a prior judicial office within the meaning of section 8 (2) of the Judges' Pensions Act 1953.

SCHEDULE 4—AMENDMENT OF THE DISTRICT COURT ACT 1973

(Sec. 3)

Section 18 (Acting Judges)—

Omit section 18 (4) and (5), insert instead:

(4) A retired Judge of the Court or of another court in New South Wales (including a retired judicial member of the Industrial Commission) may be so appointed even though the retired Judge has reached the age of 70 years (or will have reached that age before the appointment expires), but may not be so appointed for any period that extends beyond the day on which he or she reaches the age of 72 years.

(5) The conditions or limitations specified in a commission under this section may exclude the whole or any part of the period of appointment from being regarded as a period served by the person in a prior judicial office within the meaning of section 8 (2) of the Judges' Pensions Act 1953.

(6) A person appointed under this section may be appointed under the title of Acting Judge or Associate Judge.

SCHEDULE 5—AMENDMENT OF THE COMPENSATION COURT ACT 1984

(Sec. 3)

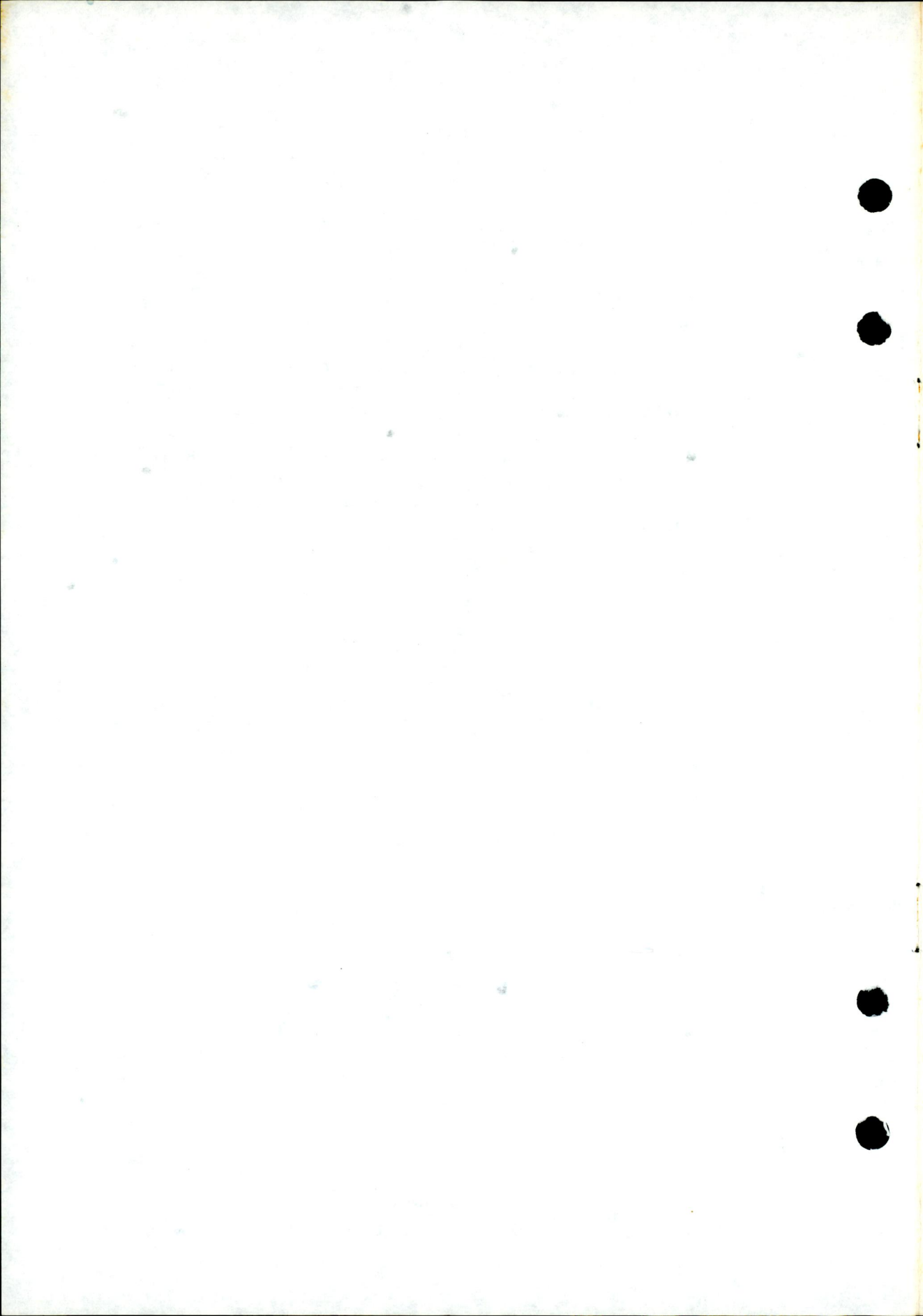
Section 11 (Acting Chief Judge and acting Judges)—

After section 11 (5), insert:

**SCHEDULE 5—AMENDMENT OF THE COMPENSATION COURT
ACT 1984—*continued***

(6) A retired Judge of the Court or of another court in New South Wales (including a retired judicial member of the Industrial Commission) may be appointed as an acting Judge under subsection (4) even though the retired Judge has reached the age of 70 years (or will have reached that age before the appointment expires), but may not be so appointed for any period that extends beyond the day on which he or she reaches the age of 72 years.

(7) The conditions or limitations specified in a commission under subsection (4) may exclude the whole or any part of the period of appointment from being regarded as a period served by the person in a prior judicial office within the meaning of section 8 (2) of the Judges' Pensions Act 1953.



**COURTS LEGISLATION (ACTING JUDGES)
AMENDMENT BILL 1988**

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to amend the Acts governing the major State courts so as—

- (a) to enable a retired Judge of any major State court to be appointed as an acting Judge of any of the other major State courts; and
- (b) to make consequential and other provisions in relation to the appointment of acting Judges.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the day on which it receives the Royal Assent.

Clause 3 is a formal provision that gives effect to the Schedules of amendments to the Supreme Court Act 1970, the Industrial Arbitration Act 1940, the Land and Environment Court Act 1979, the District Court Act 1973 and the Compensation Court Act 1984.

Schedules 1–5 effect the amendments described below.

Appointment of retired Judges as acting Judges

The major State courts are the Supreme Court, the Industrial Commission, the Land and Environment Court and the Compensation Court.

The amendments enabling the appointment of retired Judges as acting Judges of these courts are made on a similar basis to those made by the District Court (Judges) Amendment Act 1987 No. 236 with respect to acting Judges of the District Court.

It will not matter that any intended appointee may have reached the age of 70 (or will reach that age before the appointment expires), but the appointments are to be limited to terms that do not take the appointee beyond the age of 72.

Courts Legislation (Acting Judges) Amendment 1988

Uniformity of provisions governing appointments

The opportunity has also been taken to achieve a degree of uniformity between the various Courts Acts as to the maximum term for which acting Judges may be appointed and as to pension entitlements arising from acting appointments generally.

In the case of the Compensation Court and the District Court, existing legislation provides for a maximum 12-month term. The Acts governing the Land and Environment Court and the Supreme Court are amended by the proposed Act to provide for a similar maximum term (instead of the present maximum 6-month term).

The District Court Act currently contains a provision that allows an acting Judge's commission, in an appropriate case, to be made subject to the condition that the whole or part of the acting term may be discounted as service in a "prior judicial office" when calculating service for assessment of a Judge's pension entitlements. (This has application only to persons who are at some time afterwards appointed to a judicial office.) The several other Courts Acts are amended so as to adopt this provision.

Masters of the Supreme Court

In relation to the Supreme Court, amendments are also made to Division 1 of Part 8 of the Supreme Court Act to allow a retired master to be appointed as an acting master of the Court.

Judicial members of the Industrial Commission

In the Industrial Arbitration Act, members of the Industrial Commission having the same rank and status as Supreme Court Judges are styled "judicial members" (rather than "Judges") of the Commission. The various Acts concerned, in so far as they provide for the appointment of acting Judges, are amended so as to remove any doubt that the reference to a "retired Judge" includes a reference to a person who has retired from office as a judicial member of the Commission.

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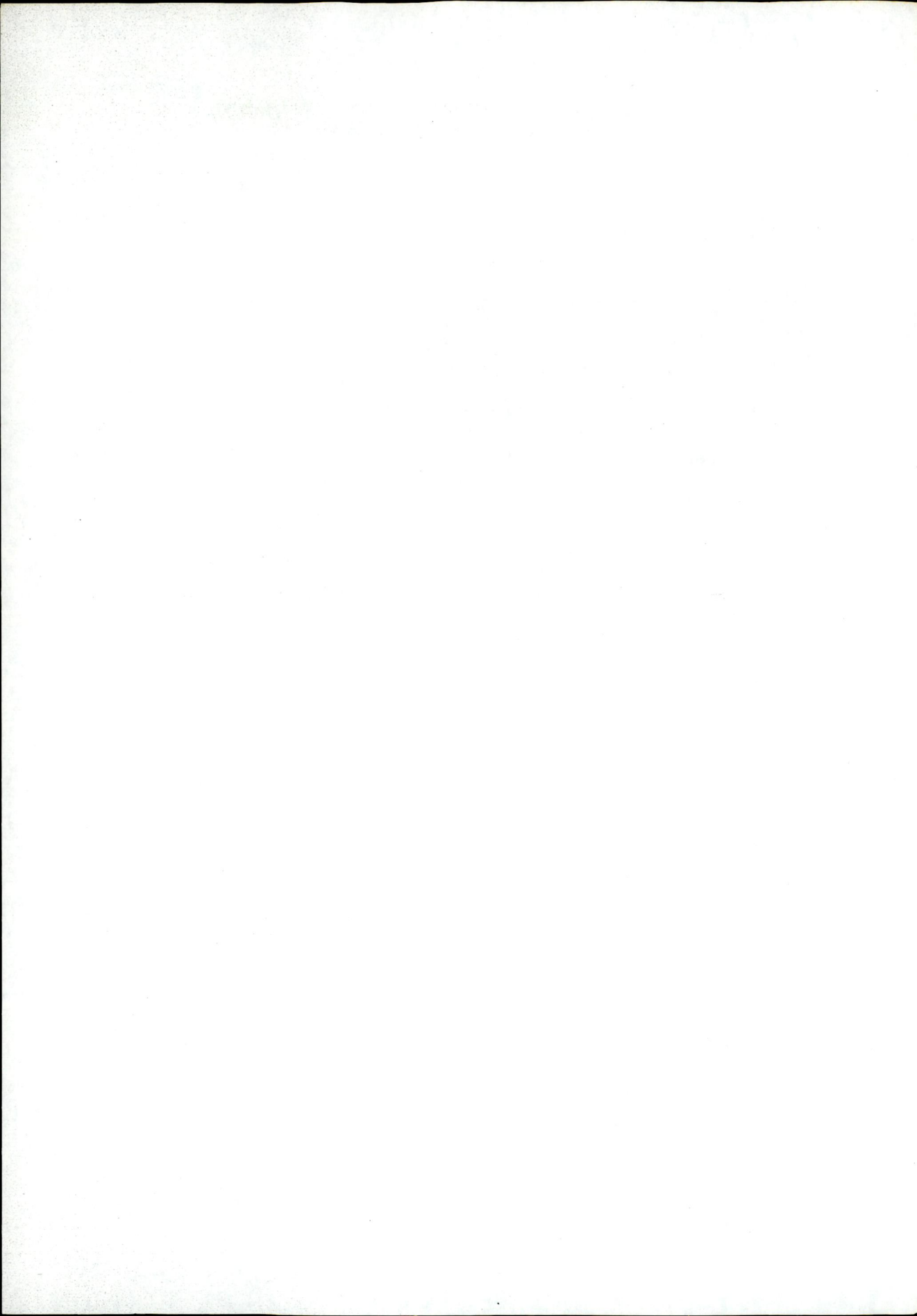
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**COURTS LEGISLATION (ACTING JUDGES)
AMENDMENT BILL 1988**

NEW SOUTH WALES



No. , 1988

A BILL FOR

An Act to amend certain Acts with respect to the appointment of persons to act in certain judicial offices.

Courts Legislation (Acting Judges) Amendment 1988

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Short title

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(Sec. 3)

(1) Section 37 (**Acting Judges**)—

(a) Section 37 (1)—

15 Omit “six months”, insert instead “12 months”.

(b) After section 37 (3), insert:

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25 (5) The conditions or limitations specified in a commission under this section may exclude the whole or any part of the period of appointment from being regarded as a period served by the person in a prior judicial office within the meaning of section 8 (2) of the Judges' Pensions Act 1953.

(2) Section 111 (**Appointment**)—

30 After section 111 (5), insert:

35 (6) A retired master may be appointed under subsection (2) as an acting master even though the retired master has reached the age of 70 years (or will have reached that age before the appointment expires), but may not be so appointed for any period that extends beyond the day on which he or she reaches the age of 72 years.

Courts Legislation (Acting Judges) Amendment 1988

**SCHEDULE 1—AMENDMENT OF THE SUPREME COURT ACT
1970—continued**
(3) Section 115 (Resignation, removal and tenure)—**(a) Section 115 (3)—**

Omit “(not extending beyond the day on which he attains the age of seventy years)”.

5 (b) After section 115 (3), insert:

(4) Except as provided by section 111 (6), the term for which an acting master holds office shall not extend beyond the day on which the master reaches the age of 70 years.

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(4B) An appointment under subsection (3) or (4) may, in the case of the appointment of a person to act as a judicial member of the commission, be made subject to a condition that excludes the whole or any part of the period of appointment from being regarded as a period served by the person in a prior judicial office within the meaning of section 8 (2) of the Judges' Pensions Act 1953.

**SCHEDULE 3—AMENDMENT OF THE LAND AND
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Section 11 (Acting Judges)—**(a) Section 11 (1)—**

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(b) After section 11 (3), insert:

Courts Legislation (Acting Judges) Amendment 1988

SCHEDULE 3—AMENDMENT OF THE LAND AND ENVIRONMENT COURT ACT 1979—*continued*

5 (4) A retired Judge of the Court or of another court in New South Wales (including a retired judicial member of the Industrial Commission) may be so appointed even though the retired Judge has reached the age of 70 years (or will have reached that age before the appointment expires), but may not be so appointed for any period that extends beyond the day on which he or she reaches the age of 72 years.

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15 (Sec. 3)

Section 18 (Acting Judges)—

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30 (6) A person appointed under this section may be appointed under the title of Acting Judge or Associate Judge.

SCHEDULE 5—AMENDMENT OF THE COMPENSATION COURT ACT 1984

(Sec. 3)

35 **Section 11 (Acting Chief Judge and acting Judges)—**

After section 11 (5), insert:

**SCHEDULE 5—AMENDMENT OF THE COMPENSATION COURT
ACT 1984—*continued***

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