

**WORKERS COMPENSATION (COMPENSATION COURT)
AMENDMENT ACT 1989 No. 119**

NEW SOUTH WALES



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**WORKERS COMPENSATION (COMPENSATION COURT)
AMENDMENT ACT 1989 No. 119**

NEW SOUTH WALES



Act No. 119, 1989

An Act to amend the Workers Compensation Act 1987 and certain other Acts consequentially on the transfer of workers compensation commissioners and their jurisdiction to the Compensation Court, in relation to conciliation and dispute resolution, and for other purposes. [Assented to 24 August 1989]

Workers Compensation (Compensation Court) Amendment 1989

The Legislature of New South Wales enacts:

Short title

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

Commencement

2. (1) Except as provided by subsection (2), this Act commences on a day or days to be appointed by proclamation.

(2) Schedule 1 (32) (h), and section 3 in its application to that provision, commence on the date of assent to this Act.

Amendment of Workers Compensation Act 1987 No. 70

3. The Workers Compensation Act 1987 is amended as set out in Schedule 1.

Amendment of other Acts

4. Each Act specified in Schedule 2 is amended as set out in that Schedule.

**SCHEDULE 1 - AMENDMENT OF WORKERS
COMPENSATION ACT 1987**

(Sec. 3)

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

(a) Section 3 (1):

Omit the definition of "commissioner".

(b) After the definition of "Compensation Court", insert:

"conciliation officer" means a person employed as a
conciliation officer under section 96;

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- (c) Section 3 (1):
Omit the definition of "review officer".
- (d) Section 3 (1):
Omit the definition of "Senior Commissioner", insert instead:
"Senior Conciliation Officer" means the Senior Conciliation Officer appointed under section 96;
- (2) Sections 15, 16, 17, 20, 22, 26, 29, 30, 31, 37, 38, 39, 51, 53, 55, 56, 58, 61, 62, 67, 68, 73, 76, 77, 83, 85, 112, 144, 145, 146, 147, 150, 162, 170, 175, Schedule 1 (clauses 3, 4, 5, 13, 16):
Omit "a commissioner" and "the commissioner" wherever occurring, insert instead "the Compensation Court".
- (3) Sections 30, 45, 46, 56, 63, 83, 85, 144, 145, 147, 162:
Omit "A commissioner:" wherever occurring, insert instead "The Compensation Court".
- (4) Sections 39, 58:
Omit "commissioner's" wherever occurring, insert instead "Compensation Court's".
- (5) Sections 38 (6), 39 (6):
Omit "review officer" wherever occurring, insert instead "conciliation officer".
- (6) Section 55 (**Review of weekly payments**):
Omit section 55 (5).
- (7) Section 55A:
After section 55, insert:
Award of compensation may be for fixed period
55A. The Compensation Court may, under an award for weekly payments of compensation, direct that the payments are to be made for a specified period even though the period of incapacity is indefinite.
- (8) Sections 56 (3), 57 (3), 58 (3):
Omit "review officer" wherever occurring, insert instead "conciliation officer".

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(9) Section 66A:

After section 66, insert:

Registration of agreements for compensation for occupational diseases

66A. (1) If:

- (a) a worker agrees to receive an amount of compensation under section 66 for a loss that is an occupational disease (within the meaning of section 71); and
 - (b) the agreement is registered by the Authority,
- the worker is not entitled to receive any additional compensation for that loss under an award of the Compensation Court.

(2) However, the Compensation Court may award additional compensation if it is established that the agreement was obtained by fraud or undue influence or that the agreed amount of compensation was manifestly inadequate.

(3) Any party to an agreement may apply to the Authority for the registration of the agreement.

(4) The Authority may refuse to register an agreement if it considers that the agreement is inaccurate or that the agreed amount of compensation is inadequate.

(5) The registration of an agreement may not be cancelled except within such period after the agreement is registered, and in such manner, as may be authorised by the regulations.

(6) This section has effect despite section 272 (No contracting out).

(7) This section does not limit an award of additional compensation in accordance with section 71 for a further loss suffered after the loss to which an agreement relates.

(8) The Authority is required to provide the Compensation Court with a summary of the agreements registered under this section.

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- (9) This section applies to agreements made before or after the commencement of this section.
- (10) Section 72 (**Reference of matters to medical panel etc.**):
- (a) Section 72 (2), (4):
Omit "A commissioner or the Compensation Court" wherever occurring, insert instead "The Compensation Court".
- (b) Section 72 (5):
Omit "commissioner or the".
- (11) Part 4 (**Compensation - claims and proceedings**):
Omit Divisions 2 and 3 from Part 4, insert instead:
**Division 2 - Conciliation of disputes
by conciliation officers**

Definition of "dispute"

95. In this Division:

"dispute" means a dispute in connection with a claim for compensation between:

- (a) the person who makes the claim and the person on whom the claim is made (or the insurer to whom the claim has been forwarded under section 93); or
- (b) the person on whom the claim is made and that insurer.

Conciliation officers

96. (1) Officers of the Authority may be employed under Part 2 of the Public Sector Management Act 1988 as conciliation officers for the purposes of this Act.

(2) Of the officers employed as conciliation officers, one is to be appointed in writing by the Authority as the Senior Conciliation Officer.

(3) When a person is appointed as the Senior Conciliation Officer, any previous appointment of a person as the Senior Conciliation Officer ceases to have effect.

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Referral of disputes for conciliation

97. (1) Any party to a dispute may refer the dispute to the Senior Conciliation Officer for conciliation by a conciliation officer.

(2) The Senior Conciliation Officer is responsible for making arrangements as to the conciliation officer who is to conciliate in connection with a particular dispute or class of disputes.

Conciliation of disputes

98. (1) A conciliation officer is to make all reasonable efforts to conciliate in connection with a dispute referred to him or her and to bring the parties to agreement.

(2) The conciliation officer may do any one or more of the following things in connection with the dispute or any part of the dispute:

- (a) make such recommendations to the parties to the dispute as he or she considers appropriate;
- (b) in the case of a dispute to which Division 3 applies - give directions under that Division;
- (c) decline to make any recommendation or give any direction.

(3) A conciliation officer may conciliate with respect to a dispute (and make or give relevant recommendations or directions) even though the dispute is pending determination in the Compensation Court, unless the Court otherwise orders.

Control and direction of conciliation officers

99. (1) A conciliation officer is not subject to control and direction by the Authority, the appropriate Department Head or any other public servant with regard to proceedings on any dispute assigned to the conciliation officer and the Authority, appropriate Department Head or other public servant may not overrule or interfere with any decision of the conciliation officer in respect of any such dispute.

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(2) This section does not affect the exercise of the functions of the appropriate Department Head under the Public Sector Management Act 1988 with respect to conciliation officers.

Liability of conciliation officers

100. A matter or thing done or omitted to be done by a conciliation officer in the exercise of the conciliation officer's functions does not, if the matter or thing was done or omitted in good faith, subject the conciliation officer personally to any action, liability, claim or demand.

Proceedings before conciliation officers

100A. (1) In this section, "conciliation conference" means any conference or other proceeding held with or before a conciliation officer:

- (a) to resolve a dispute referred for conciliation; or
- (b) for the purpose of giving directions under Division 3 in connection with any such dispute.

(2) A person who is a party to any dispute is not entitled to be represented by a barrister or solicitor at any conciliation conference.

(3) The conciliation officer and all the parties to a dispute may agree to a party being represented by a barrister or solicitor at a conciliation conference.

(4) If the conciliation officer is satisfied that sufficient information has been supplied to him or her in connection with a dispute, the conciliation officer may exercise functions under this Division and Division 3:

- (a) without holding any conciliation conference or formal hearing; and
- (b) without requesting submissions from the parties to the dispute.

(5) A person who, in connection with a dispute referred for conciliation, makes a statement that the person knows to be false or misleading in a material particular is guilty of an offence.

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Maximum penalty: 50 penalty units.

(6) In proceedings before the Compensation Court, evidence of a statement made during any conciliation conference is not admissible unless the person who made the statement agrees to the evidence being admitted.

Other functions of conciliation officers

100B. A conciliation officer may exercise any other function of the Authority that has been duly delegated to the officer.

Regulations

100C. The regulations may make provision for or with respect to the exercise of a conciliation officer's functions under this Division and Division 3 and, in particular, for or with respect to:

- (a) the general control and direction of conciliation officers in the exercise of those functions; and
- (b) the manner in which disputes are to be referred for conciliation; and
- (c) excluding disputes (other than disputes to which Division 3 applies) from this Division.

**Division 3 - Special provisions with
respect to weekly payments of
compensation**

Definitions

101. (1) In this Division:

"weekly payment", in relation to compensation, includes a payment of compensation under section 25 (1) (b) with respect to a dependent child of a deceased worker.

(2) In this Division, a reference to a person on whom a claim for a weekly payment of compensation is made includes a reference to an insurer to whom the claim has been forwarded under section 93.

(3) In this Division, a reference to a dispute as to liability to make or continue to make weekly payments includes a

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reference to a dispute as to whether a worker is or should be treated as totally incapacitated for work or as to any other matter which affects the amount of the weekly payments.

Claim for weekly payments - commencement of payments

102. (1) Weekly payments of compensation are to commence as soon as practicable (but not later than 21 days) after the claim for compensation is duly made.

(2) If the person on whom a claim is made:

(a) disputes liability to make the weekly payments; and

(b) refers the dispute for conciliation under Division 2 before the expiration of 21 days after the claim for compensation is duly made,

the obligation under this section to commence the weekly payments (or the balance of the weekly payments in dispute) is suspended pending a direction by a conciliation officer or a determination by the Compensation Court.

(3) Any such dispute may be referred for conciliation at any time and may be referred even though the person concerned has commenced to make weekly payments of compensation.

(4) A dispute is referred for conciliation by forwarding to the Senior Conciliation Officer:

(a) a copy of the claim and any relevant documentation relating to the claim in the person's possession or reasonably obtainable by the person; and

(b) a statement as to the matters in dispute.

(5) If a person has a reasonable excuse for failing to commence weekly payments of compensation (or the balance of the weekly payments in dispute) within 21 days after the claim for compensation is duly made:

(a) those payments are not required to commence until the person ceases to have a reasonable

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excuse for failing to commence those payments;
and

- (b) subsection (2) applies to authorise the suspension of those payments if the dispute is referred for conciliation before those payments are so required to commence.
- (6) An employer has such a reasonable excuse if:
 - (a) the employer has duly forwarded the claim for compensation to an insurer who the employer believes is liable to indemnify the employer in respect of the claim; and
 - (b) the employer has complied with all reasonable requests of the insurer with respect to the claim.
- (7) This section ceases to apply if the claim for compensation is withdrawn.

Offences - commencement of weekly payments

103. (1) A person on whom a claim for weekly payments of compensation is made is guilty of an offence if the person fails to commence those payments within the time required by section 102.

(2) A person on whom a claim for weekly payments of compensation is made is guilty of an offence if the person:

- (a) delays referring a dispute under section 102; or
- (b) refers a matter which the person knows is not a genuine dispute,

for the purpose of delaying, without good cause, the commencement of weekly payments of compensation.

Maximum penalty: 50 penalty units.

Direction by conciliation officer - commencement or continuation of weekly payments

104. (1) This section applies if a dispute relating to:

- (a) a claim for weekly payments of compensation; or
- (b) the continuation of weekly payments of compensation,

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has been referred for conciliation under Division 2, but a conciliation officer is unable to bring the parties to agreement by conciliation.

(2) If the conciliation officer is satisfied that there is no genuine dispute with respect to the liability to make or continue to make weekly payments, the conciliation officer may direct:

(a) the person on whom the claim for weekly payments was made; or

(b) the person who was making the weekly payments, to pay or continue to pay compensation in accordance with the direction.

(3) If the conciliation officer is satisfied that there is a genuine dispute with respect to the liability to make or continue to make weekly payments, the conciliation officer must notify the person who made the claim for weekly payments, or who was receiving weekly payments, of that fact and that an application may be made to the Compensation Court to determine the matter.

(4) A direction of the conciliation officer may be given subject to such conditions as are specified in the direction.

Maximum period of weekly payments under directions of conciliation officer

105. (1) A direction (or further direction) of a conciliation officer under this Division may require a person to pay or continue to pay weekly payments for such period (not exceeding 12 weeks) as is specified in the direction.

(2) Nothing in this section prevents a conciliation officer from giving a further direction (or further directions) for payment of compensation after the expiry of an earlier direction (except where the earlier direction is revoked by the Compensation Court).

(3) A conciliation officer may direct payment of weekly payments during a period that is before the direction is given, but that period must not exceed 10 weeks.

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Revocation of directions of conciliation officer

106. (1) A direction given by a conciliation officer under this Division may be revoked by the conciliation officer or by any other conciliation officer.

(2) The Compensation Court may, on the application of a person who is liable to make weekly payments in accordance with a direction of a conciliation officer under this Division, revoke the direction.

(3) If a direction is revoked, the obligation to make weekly payments under the direction ceases.

(4) If the Compensation Court subsequently determines that a person is not liable under this Act to make the weekly payments of compensation that have been paid in accordance with a direction of a conciliation officer, the following provisions apply:

- (a) the worker or other person who received those payments is not required to refund those payments unless the Court otherwise orders under paragraph (b);
- (b) if the Court is satisfied that the claim for compensation was wholly or partly fraudulent or made without proper justification, it may order the worker or other person concerned to refund the whole or a specified part of those payments;
- (c) the Court may order that the Uninsured Liability and Indemnity Scheme bear the liability for the refund of the whole or a specified part of those payments (unless it makes an order under paragraph (b) for a refund);
- (d) the Court may (instead of making an order for a refund) order any other person whom it determines was liable for the whole or any part of those payments to reimburse the person who made those payments.

(5) This section does not affect the recovery of weekly payments under section 58.

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Offence - failure to comply with directions

106A. A person who fails to comply with a direction of a conciliation officer under this Division is guilty of an offence.

Maximum penalty: 50 penalty units.

Payment under direction etc. not admission of liability

106B. (1) The fact that a person:

- (a) pays or continues to pay compensation in accordance with a direction of a conciliation officer under this Division; or
- (b) does not apply for a revocation of any such direction,

is not an admission of liability by the person.

(2) The grant or refusal by the Compensation Court of an application for revocation of a direction is not a finding as to liability in respect of the matter in dispute.

- (12) Part 4, Division 4, heading:

Omit the heading, insert instead:

**Division 4 - Proceedings before
the Compensation Court**

- (13) Section 107:

Omit the section, insert instead:

Jurisdiction of Court

107. Subject to this Act and the Compensation Court Act 1984, the Compensation Court has exclusive jurisdiction to examine, hear and determine all matters arising under this Act (except Part 5).

- (14) Sections 108 - 111, 113 - 121, 123, 126:

Omit the sections.

- (15) Section 112 (**Interim awards**):

Omit section 112 (3), insert instead:

(3) If the Compensation Court subsequently determines that a person is not liable under this Act to make the

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SCHEDULE 1 - AMENDMENT OF WORKERS COMPENSATION
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payments of compensation that have been paid in accordance with an interim award, the worker or other person who received those payments is not required to refund those payments unless the Court:

- (a) is satisfied that the claim for compensation was wholly or partly fraudulent or made without proper justification; and
- (b) orders the worker or other person to refund those payments or a specified part of those payments.

(4) This section does not affect the recovery of weekly payments under section 58.

(16) Section 122:

Omit the section, insert instead:

Solicitor/client costs in compensation proceedings

122. (1) The solicitor or agent of a person claiming compensation under this Act is not entitled:

- (a) to recover from the person any costs in respect of any proceedings under this Act (including a conciliation conference as defined in section 100A); or
- (b) to claim a lien in respect of those costs on, or deduct those costs from, the sum awarded, ordered or agreed as compensation,

unless those costs are awarded by the Compensation Court.

(2) Any such award may be made on the application either of the person claiming compensation or the person's solicitor or agent.

(3) Any sum so awarded is subject to taxation in accordance with the rules of the Compensation Court.

SCHEDULE 1 - AMENDMENT OF WORKERS COMPENSATION
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- (17) Section 124 (**Admissibility of statements by injured workers**):
- (a) Section 124 (1):
Omit "or a commissioner".
 - (b) Section 124 (1A):
After section 124 (1), insert:
(1A) In proceedings for revocation of a direction given by a conciliation officer, the Compensation Court may dispense with the requirement that a copy of the statement be furnished at least 14 days before the hearing or may shorten that period.
- (18) Section 130 (**Medical examination of worker at direction of Court etc.**):
Omit ", a commissioner, a review officer", insert instead ", a conciliation officer".
- (19) Section 132 (**Submission by Court etc. of matters to medical referee or panel for report**):
- (a) Section 132 (1):
Omit ", a commissioner or a review officer", insert instead "or a conciliation officer".
 - (b) Section 132 (1):
Omit "that Court, commissioner or review officer", insert instead "the Compensation Court or the conciliation officer".
 - (c) Section 132 (3):
Omit ", the commissioner, the review officer", insert instead "or the conciliation officer".
- (20) Section 133 (**Reimbursement of worker for loss of wages and expenses associated with medical examination**):
- Section 133 (2) (b):
Omit "or a commissioner".

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SCHEDULE 1 - AMENDMENT OF WORKERS COMPENSATION
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- (21) Section 135 (**Admissibility of medical reports**):
- (a) Section 135 (1), (4):
Omit "or a commissioner" wherever occurring.
 - (b) Section 135 (4):
Omit "that Court or commissioner", insert instead "the Compensation Court".
- (22) Section 136 (**Admissibility of certificates and reports of medical referees and medical panels**):
- Section 136 (1):
Omit "or a commissioner".
- (23) Section 137 (**Rules of Court and regulations with respect to medical evidence**):
- (a) Section 137 (b):
After "medical reports", insert "(including X-rays and the results of other tests)".
 - (b) At the end of section 137 (c), insert:
; and
(d) the manner of referring matters to a medical referee or medical panel for report.
- (24) Section 143 (**Determination of claim by Authority**):
- Omit "review officer" wherever occurring, insert instead "conciliation officer".
- (25) Section 145 (**Employer or insurer to reimburse Authority**):
- Omit section 145 (6), insert instead:
(6) The Authority may recover an amount specified in a notice served under subsection (1) (being a notice in respect of which an application has not been made under subsection (3)) from the person to whom the notice was given as a debt in a court of competent jurisdiction.
- (26) Section 154 (**Rehabilitation counsellors**):
- Section 154 (3):
Omit "or a commissioner".

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- (27) Sections 170 (8) and (9), 175 (6) and (7):
Omit the subsections.
- (28) Part 8 (**Workers compensation commissioners**):
Omit the Part.
- (29) Section 254 (**Functions**):
 - (a) Section 254 (2):
Omit ", the commissioners" wherever occurring.
 - (b) Section 254 (2) (h), (8) (b):
Omit "review officers" wherever occurring, insert instead "conciliation officers".
 - (c) Section 254 (4):
Omit "or the registry office of the commissioners" wherever occurring.
 - (d) Section 254 (5):
Omit "or a commissioner".
 - (e) Section 254 (5):
Omit "or the commissioners" wherever occurring.
 - (f) Section 254 (8) (b):
Omit ", the commissioners".
- (30) Section 259 (**Establishment of Workers Compensation and Rehabilitation Authority Fund**):
 - (a) Section 259 (3) (b):
Omit "the commissioners and review officers" wherever occurring, insert instead "conciliation officers".
 - (b) Section 259 (3) (c) (i):
After "Judges", insert ", commissioners".
 - (c) Section 259 (3) (e):
Omit "or the commissioners".

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- (31) Schedule 2 (**Commissioners**):
Omit the Schedule.
- (32) Schedule 6 (**Savings, transitional and other provisions**):
- (a) Part 4, clause 4 (1) (d):
Omit "(except that a reference to the Court shall be construed as a reference to a commissioner)".
 - (b) Part 4, clause 6 (2):
Omit the subclause.
 - (c) Part 10, clause 1:
Omit "review officer", insert instead "conciliation officer".
 - (d) Part 10, clause 2:
Omit "106", insert instead "106B".
 - (e) Part 10, clause 4:
After clause 3, insert:
**Workers Compensation (Compensation Court)
Amendment Act 1989**
4. After the commencement of Schedule 1 (11) to the
Workers Compensation (Compensation Court)
Amendment Act 1989 the following provisions apply:
 - (a) a reference of a dispute to a review officer
pending on that commencement is to be taken as
a reference to a conciliation officer;
 - (b) a direction given by a review officer before that
commencement is to be taken to be a direction
given by a conciliation officer.
 - (f) Part 11:
Omit the Part.
 - (g) Part 16:
Omit the Part.

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(h) Part 19, clause 4:

After clause 3, insert:

**Transitional arrangements for allocation of work between
Judges and commissioners**

4. Until the repeal of section 109 of the Workers
Compensation Act 1987:

(a) the Chief Judge of the Compensation Court may
exercise any of the powers of the Senior Workers
Compensation Commissioner under that section
to transfer any matter or proceedings to the
Compensation Court; and

(b) the Senior Workers Compensation
Commissioner may only exercise those powers in
accordance with the directions of the Chief
Judge.

(i) Part 19, clause 5:

At the end of Part 19, insert:

**Repeal of Regulations relating to commissioners and
review officers**

5. The following Regulations are repealed:

Workers Compensation (Fees and Costs) Regulation
1988;

Workers Compensation (Review Officers)
Regulation 1987.

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SCHEDULE 2 - AMENDMENT OF OTHER ACTS

(Sec. 4)

Defamation Act 1974 No. 18

(1) Section 17BB:

Omit the section, insert instead:

Conciliation officers under Workers Compensation Act 1987

17BB. There is a defence of absolute privilege:

- (a) for a publication to or by a conciliation officer for the purpose of any proceedings under the Workers Compensation Act 1987; and
- (b) for the publication by any such conciliation officer of a report of a decision or determination in respect of any such proceedings and of the reasons for that decision or determination.

(2) Schedule 2 (**Proceedings of public concern and official and public documents and records**):

(a) Omit clause 2 (17), insert instead:

(17) without limiting the operation of any other subclause, proceedings of a conciliation officer under the Workers Compensation Act 1987;

(b) Omit clause 3 (6), insert instead:

(6) a document that consists of a report made by a conciliation officer of his or her decision or determination in respect of any proceedings under the Workers Compensation Act 1987.

Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 No. 83

(1) Section 16 (**Hearing of claims**):

(a) Section 16 (3):

Omit "review officer" wherever occurring, insert instead "conciliation officer".

SCHEDULE 2 - AMENDMENT OF OTHER ACTS - *continued*

- (b) Omit section 16 (4) and (5), insert instead:
 - (4) A claimant dissatisfied with a decision of the Authority may apply to the Compensation Court for a determination of the claim and the Authority must give effect to the determination of the Court.
- (c) Section 16 (6):
 - Omit "a commissioner or" and "the commissioner or" where firstly occurring.
- (2) Section 30 (**Hearing of claims**):
 - (a) Section 30 (3):
 - Omit "review officer" wherever occurring, insert instead "conciliation officer".
 - (b) Omit section 30 (4) and (5), insert instead:
 - (4) A claimant dissatisfied with a decision of the Authority may apply to the Compensation Court for a determination of the claim and the Authority must give effect to the determination of the Court.
 - (c) Section 30 (6):
 - Omit "a commissioner or" and "the commissioner or" where firstly occurring.

Workers' Compensation (Dust Diseases) Act 1942 No. 14

Section 8I (**Appeals**):

- (a) Omit "a workers compensation commissioner" wherever occurring, insert instead "the Compensation Court".
- (b) Omit "the regulations under the Principal Act", insert instead "rules of Court".
- (c) After section 8I (1), insert:
 - (1A) An appeal under subsection (1) must be made within 6 months after notice of the decision appealed against has been given to the appellant.
- (d) Omit section 8I (2).

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