



New South Wales

# Compensation Court Repeal Act 2002 No 23

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New South Wales

# Compensation Court Repeal Act 2002 No 23

Act No 23, 2002

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An Act to repeal the *Compensation Court Act 1984* and abolish the Compensation Court, and to transfer the Compensation Court's jurisdiction to the Workers Compensation Commission or the District Court; and for other purposes. [Assented to 21 June 2002]

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**The Legislature of New South Wales enacts:****1 Name of Act**

This Act is the *Compensation Court Repeal Act 2002*.

**2 Commencement**

- (1) This Act commences on the date of assent, except as provided by subsection (2).
- (2) An amendment set out in Schedule 1 commences:
  - (a) on 1 January 2004 unless the amendment is the subject of a proclamation under paragraph (b), or
  - (b) on a day appointed by proclamation of the Governor published in the Gazette before 1 January 2004.
- (3) Different days may be appointed under subsection (2) (b) for the commencement of different amendments.

**3 Definitions**

In this Act:

***Compensation Court*** means the Compensation Court of New South Wales constituted under the Compensation Court Act.

***Compensation Court Act*** means the *Compensation Court Act 1984*.

***District Court*** means the District Court of New South Wales established by the *District Court Act 1973*.

**4 Repeal of Compensation Court Act**

- (1) The Compensation Court Act is repealed on 1 January 2004.
- (2) The Compensation Court is abolished on the repeal of the Compensation Court Act.

**5 Compensation Court judges**

- (1) On the repeal of the Compensation Court Act:
  - (a) a person holding office as a Judge (other than the Chief Judge) of the Compensation Court immediately before that repeal is by this section appointed as a Judge of the District Court, and

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- (b) a person holding office as an Acting Judge of the Compensation Court immediately before that repeal is by this section appointed as an Acting Judge of the District Court for the time that is the remainder of the time for which he or she was appointed an Acting Judge of the Compensation Court, as at that repeal.
- (2) The Governor may issue an appropriate commission under the public seal of the State to a person who is appointed as a Judge of the District Court by subsection (1). The appointment is effective whether or not such a commission is issued.
- (3) Nothing in this section prevents a person who holds office as a Judge of the Compensation Court from being appointed as a Judge of any other Court.
- (4) Nothing in this section affects any entitlement of the Chief Judge of the Compensation Court arising under section 56 (Abolition of judicial office) of the *Constitution Act 1902*.

## **6 Appointment of Acting Chief Judge**

- (1) If there is a vacancy in the office of Chief Judge of the Compensation Court after the commencement of this section, the Governor may by commission under the public seal of the State appoint as Acting Chief Judge, for a term that expires not later than the repeal of the Compensation Court Act, a person who is qualified for appointment as a Judge of the Compensation Court.
- (2) If such a vacancy occurs as a result of the retirement of the person holding office on the commencement of this section as Chief Judge of the Compensation Court, that person is entitled to be appointed as Acting Chief Judge and, if the person accepts appointment, is appointed by this section as Acting Chief Judge for a term that expires on the repeal of the Compensation Court Act.
- (3) A person appointed as Acting Chief Judge by or under this section has and may exercise for the term of that appointment the functions and authorities of Chief Judge of the Compensation Court and is, for the purposes of the Compensation Court Act and any other Act, taken to be Chief Judge.

- (4) An appointment of Acting Chief Judge by or under this section may be made even though the person appointed has reached the age of 72 years before the appointment is made (or will have reached that age before the appointment expires).
- (5) The Governor may issue an appropriate commission under the public seal of the State to a person who is appointed as Acting Chief Judge of the Compensation Court by this section. The appointment is effective whether or not such a commission is issued.
- (6) This section does not affect the provision of sections 11 and 11A of the Compensation Court Act with respect to the appointment of an Acting Chief Judge.

## **7 Proceedings pending before the Compensation Court**

- (1) Proceedings instituted in the Compensation Court and pending in that Court immediately before the repeal of the Compensation Court Act are transferred:
  - (a) to the District Court, except proceedings to which paragraph (b) applies, or
  - (b) to the Workers Compensation Commission (*the WCC*), in the case of proceedings concerning any matter arising under the Workers Compensation Acts (other than proceedings in respect of a coal miner matter within the meaning of those Acts).
- (2) Regulations under section 11 may contain provisions:
  - (a) exempting a class or classes of proceedings from transfer to the WCC by this section (with the result that proceedings so exempted are instead transferred to the District Court on the repeal of the Compensation Court Act), or
  - (b) of a savings or transitional nature consequent on the transfer of proceedings by this section.
- (3) The following provisions have effect when proceedings are transferred to the District Court or the WCC by this section:
  - (a) the Compensation Court ceases to have jurisdiction in respect of the proceedings,
  - (b) the proceedings are taken to be proceedings instituted in the District Court or the WCC (as appropriate) and are to be heard and determined accordingly,

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- (c) an order or award of the Compensation Court in the proceedings is taken to be an order or award of the District Court or the WCC (as appropriate).
- (4) When proceedings are transferred to the District Court constituted by the Judge who, as a Judge of the Compensation Court, was hearing the proceedings before their transfer, the proceedings are to continue and be heard, determined and finalised by that Judge in the District Court as if any hearing, finding or decision in the proceedings in the Compensation Court had been a hearing, finding or decision in the proceedings in the District Court.
- (5) For the purposes of the hearing and determination of proceedings by the District Court pursuant to this section, the District Court has the same jurisdiction as the Compensation Court had immediately before the repeal of the Compensation Court Act to examine, hear and determine matters.
- (6) The jurisdiction of the District Court under this section is subject to the same limitations and restrictions as the jurisdiction of the Compensation Court was subject to immediately before the repeal of the Compensation Court Act.
- (7) In this section:  
*Workers Compensation Acts* means the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*.

## **8 Service and seniority of Judges**

- (1) If the Chief Judge of the Compensation Court is appointed as a judge of the Supreme Court, the judge is to have seniority, rank and precedence as a judge of the Supreme Court as if the date of his or her commission as a judge of the Supreme Court were:
- (a) the date of his or her commission as Chief Judge of the Compensation Court, unless paragraph (b) applies, or
- (b) the date of his or her original commission as a judge of the Supreme Court if the judge was a judge of the Supreme Court immediately before being appointed as Chief Judge of the Compensation Court.

- (2) If a Judge of the Compensation Court is appointed as a judge of the District Court, the judge is to have seniority, rank and precedence as a judge of the District Court as if the date of his or her commission as a judge of the District Court were the date of his or her commission as a judge of the Compensation Court.
- (3) If the Chief Judge of the Compensation Court is appointed as a judge of the Supreme Court, the Chief Judge's service as a Judge of the Compensation Court is to be reckoned for all purposes as service as a Judge of the Supreme Court.
- (4) Service as a Judge of the Compensation Court is to be reckoned for all purposes as service as a Judge of the District Court in the case of a Judge who is appointed as a Judge of the District Court.

#### **9 Commissioners and acting commissioners of the Compensation Court**

- (1) A person who held office as a commissioner or acting commissioner of the Compensation Court immediately before the repeal of the Compensation Court Act ceases to hold that office on that repeal.
- (2) A person who ceases to hold office as a commissioner or acting commissioner pursuant to this section is not entitled to any remuneration or compensation because of the loss of that office, except compensation for loss of remuneration as provided by this section.
- (3) Compensation for loss of remuneration is to be as determined by the Statutory and Other Offices Remuneration Tribunal. The maximum compensation payable to a person is an amount equal to the person's gross remuneration for the period of 38 weeks at the rate at which it was payable immediately before the person ceased to hold office.
- (4) No compensation for loss of remuneration is payable to a person under this section if, before the repeal of the Compensation Court Act, the person has accepted an offer of employment in the public sector or engagement in the public sector (within the meaning of Part 8 of the *Public Sector Management Act 1988*).

#### **10 Medical referees**

On the repeal of the Compensation Court Act, a person holding office as a medical referee under that Act ceases to hold that office on that repeal.

**11 Savings and transitional regulations**

- (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.
- (3) To the extent to which any such provision takes effect from 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.

**12 Consequential amendment of Acts**

The Acts specified in Schedule 1 are amended as set out in that Schedule.



## Schedule 1 Consequential amendment of Acts

(Section 12)

### 1.1 Dust Diseases Tribunal Act 1989 No 63

#### [1] Section 3 Definitions

Omit the definition of *Compensation Court* from section 3 (1).

Insert instead:

*District Court* means the District Court of New South Wales established by the *District Court Act 1973*.

#### [2] Section 7 Members of the Tribunal

Omit section 7 (2). Insert instead:

(2) A person is qualified to be a member of the Tribunal if the person is a Judge of the District Court.

#### [3] Schedule 2 Provisions applicable to a member of the Tribunal

Omit “Compensation Court” wherever occurring.

Insert instead “District Court”.

### 1.2 Evidence on Commission Act 1995 No 26

#### [1] Section 4 Definitions

Omit paragraph (d) of the definition of *superior court*.

#### [2] Section 18 Definitions

Omit paragraph (d) of the definition of *superior court*.

#### [3] Section 37 Regulations

Omit “, the Compensation Court” from section 37 (2).

### **1.3 Industrial Relations Act 1996 No 17**

#### **Section 96**

Omit the section. Insert instead:

#### **96 Disputes as to fitness—medical assessment**

- (1) The Commission may refer to an approved medical specialist (appointed under Part 7 of Chapter 7 of the *Workplace Injury Management and Workers Compensation Act 1998*) any dispute as to the employee's condition and fitness for employment. For the purposes of that reference, the approved medical specialist has and may exercise all the functions of an approved medical specialist under that Act.
- (2) The approved medical specialist is to submit a report to the Commission in accordance with the terms of the reference.

### **1.4 Judicial Officers Act 1986 No 100**

#### **[1] Section 3 Definitions**

Omit paragraph (e) from the definition of *judicial officer* in section 3 (1).

#### **[2] Section 3 (4)**

Omit the subsection. Insert instead:

- (4) In this Act, a reference to the Industrial Commission is a reference to the Industrial Commission of New South Wales.

#### **[3] Section 5 The Commission**

Omit section 5 (4) (e).

#### **[4] Section 5 (4)**

Renumber paragraphs (b), (c) and (d) as paragraphs (c), (d) and (e), respectively.

**[5] Section 5 (4) (b)**

Insert as section 5 (4) (b):

- (b) the President of the Court of Appeal,

**1.5 Legal Profession Act 1987 No 109**

**[1] Section 61A Money received by solicitor for costs in workers compensation matters**

Omit “by the Compensation Court” from section 61A (1).

Insert instead “by a court or the Workers Compensation Commission”.

**[2] Section 61A (2)**

Omit the definition of *Compensation Court*.

**1.6 Police Regulation (Superannuation) Act 1906 No 28**

**[1] Section 21 Determination by District Court**

Omit “Compensation Court” from section 21 (1)–(9) wherever occurring.

Insert instead “District Court”.

**[2] Section 21 (11)**

Omit the subsection. Insert instead:

- (11) In this section:

*District Court* means the District Court of New South Wales established by the *District Court Act 1973*.

## **1.7 Police Service Act 1990 No 47**

### **[1] Section 216A Determination by District Court**

Omit “Compensation Court” from section 216A (1)–(7) wherever occurring.

Insert instead “District Court”.

### **[2] Section 216A (9)**

Omit the subsection. Insert instead:

(9) In this section:

*District Court* means the District Court of New South Wales established by the *District Court Act 1973*.

## **1.8 Sporting Injuries Insurance Act 1978 No 141**

### **[1] Section 4 Definitions**

Omit the definition of *Court* from section 4 (1). Insert instead:

*Court* means the District Court of New South Wales established under the *District Court Act 1973*.

### **[2] Section 6 Appointment of referees and medical panels**

Omit section 6 (1). Insert instead:

(1) An approved medical specialist under the *Workplace Injury Management and Workers Compensation Act 1998* is taken to be a referee for the purposes of this Act and for that purpose has and may exercise all the functions of an approved medical specialist under that Act.

**[3] Section 29 Determinations by Court**

Omit section 29 (6). Insert instead:

- (6) Subject to section 127 (Right of appeal to Supreme Court) of the *District Court Act 1973*, the Court has exclusive jurisdiction to examine, hear and determine applications under this section.

**1.9 Statutory and Other Offices Remuneration Act 1975 (1976 No 4)**

**[1] Schedule 2 Public offices**

Omit from Part 1:

Full-time commissioner under the *Compensation Court Act 1984*

Part-time commissioner under the *Compensation Court Act 1984*

Insert instead:

President of the Workers Compensation Commission

Deputy President of the Workers Compensation Commission

Registrar of the Workers Compensation Commission

**[2] Schedule 4 Excluded offices**

Omit:

Chief Judge of the Compensation Court of New South Wales

Judge of the Compensation Court of New South Wales, other than the Chief Judge

## 1.10 Supreme Court Act 1970 No 52

### Section 46A Certain appeals may be heard by 2 Judges of Appeal

Insert “or the District Court (in respect of a matter that would have been within the jurisdiction of the Compensation Court had the *Compensation Court Repeal Act 2002* not been enacted)” after “Compensation Court” in section 46A (1) (b).

## 1.11 Workers Compensation Act 1987 No 70

### [1] Schedule 6 Savings, transitional and other provisions

Insert after clause 5 (4) of Part 18C:

- (5) This clause extends to claims in respect of which proceedings are pending in the Compensation Court.

**Note.** This clause does not apply to coal miner claims. See clause 3 of Part 18.

### [2] Schedule 6 Part 18C

Insert after clause 6:

#### 6A Transfer of claims pending in Compensation Court

- (1) If proceedings on a claim for compensation are proceedings in the Compensation Court and the claim becomes a new claim pursuant to regulations under clause 5, the following provisions have effect when the claim becomes a new claim:
  - (a) the Compensation Court ceases to have jurisdiction in respect of the claim,
  - (b) proceedings on the claim in the Compensation Court are transferred to the Commission and become proceedings instituted on the claim in the Commission.
- (2) The regulations may make provisions of a savings and transitional nature consequent on the operation of this clause.

- (3) The power to make regulations under subclause (2) extends to authorise the making of regulations whereby provisions of the Workers Compensation Acts are taken to be amended in the manner set forth in the regulations.

**Note.** This clause does not apply to coal miner claims as those claims are not subject to the transfer provisions of clause 5.

**[3] Schedule 6 Part 18C**

Omit clause 12 (Seniority of Compensation Court judges appointed to District Court or Supreme Court).

**[4] Schedule 6 Part 18D**

Insert after Part 18C:

**Part 18D Provisions consequent on enactment of Compensation Court Repeal Act 2002**

**1 Definitions**

In this Part:

*coal miner matter* is defined in the 1998 Act.

*District Court conciliator* means a person appointed and employed under the *Public Sector Management Act 1988* as a conciliator in the District Court for the purposes of the conciliation of claims concerning coal miner matters.

**2 Conciliation in coal miner matters**

- (1) A District Court conciliator has and may exercise all the powers, authorities, duties and functions conferred on a District Court conciliator as a result of the operation of this Part.
- (2) The Chief Judge of the District Court may issue guidelines for or with respect to the referral of disputes for conciliation and the conduct of conciliations by District Court conciliators.

- (3) On and from the repeal of the *Compensation Court Act 1984*, Divisions 3 and 4 of Part 2 of Chapter 4 of the 1998 Act apply to and in respect of coal miner matters subject to the following modifications:
- (a) a reference in those provisions to a conciliator is to be read as a reference to a District Court conciliator,
  - (b) a reference in those provisions to the Principal Conciliator is to be read as a reference to the Chief Judge of the District Court,
  - (c) sections 77 and 78 (1) do not apply,
  - (d) section 78 (2) is to be read as requiring the District Court to refer a dispute in respect of which proceedings have been commenced in the Court to a District Court conciliator for conciliation,
  - (e) sections 79A and 81A do not apply,
  - (f) section 84 (2) is to be read as requiring a District Court conciliator to issue a conciliation certificate at the conclusion of the conciliation (including conclusion by way of cessation pursuant to section 90 as modified by paragraph (j)),
  - (g) section 84 (5) is to be read as if the words “A conciliation certificate is a certificate as to such of the following matters as the Principal Conciliator directs” were omitted and the words “A conciliation certificate is a certificate as to the following matters” were inserted instead,
  - (h) section 87 (1) and (5) do not apply and section 87 (4) is to be read as providing that District Court conciliators are subject to Rules of the District Court as well as to guidelines issued by the Chief Judge,
  - (i) section 88 does not apply,
  - (j) section 90 is to be read as providing (in addition to the matters provided for in that section) that:
    - (i) conciliation must cease 35 days after the District Court conciliator notifies the parties that the dispute has been referred to conciliation if, before the expiry of that period, the conciliator has not issued a certificate certifying that the



conciliation was successful, unless the parties to the conciliation agree to continue the conciliation for a specified period of time (which period may be extended by further agreement), and

- (ii) the District Court may not proceed to hear or determine a dispute that has been referred to conciliation until conciliation of the dispute has concluded (whether or not by way of cessation pursuant to section 90, as modified by this paragraph).

### **3 Medical referees and panels—coal miner and existing claim matters**

- (1) The Registrar of the District Court may appoint approved medical specialists to be medical referees for the purposes of coal miner matters and existing claim matters.
- (2) A medical panel is to be constituted for the purposes of a coal miner matter or existing claim matter by 2 or more medical referees nominated by (or in accordance with arrangements made by) the Registrar.
- (3) If an approved medical specialist has been employed as a medical practitioner in connection with any case by or on behalf of an employer or worker, or by an insurer interested in that case, the approved medical specialist is not qualified to act as a medical referee or on a medical panel in that case.

### **4 Matters pending before medical referees and medical panels**

- (1) If a medical dispute or matter referred to a medical referee or medical panel is pending immediately before the repeal of the *Compensation Court Act 1984*, the medical referee continues in office and the medical panel continues to be constituted (as if that Act had not been repealed) for the purposes of enabling the medical referee or medical panel to give a certificate or report on the medical dispute or matter concerned.
- (2) A function can be exercised under section 129 (Power to correct mistakes in medical reports or certificates) of the 1998 Act by a medical referee or medical panel after the repeal of the *Compensation Court Act 1984* as if that Act had not been

repealed and the medical referee or medical panel still held office or were still constituted under that Act.

- (3) This clause applies despite section 10 of the *Compensation Court Repeal Act 2002* (which provides for medical referees to cease to hold office on the repeal of the *Compensation Court Act 1984*).

### **1.12 Workers' Compensation (Brucellosis) Act 1979 No 116**

#### **Section 4 Interpretation**

Omit the definition of *Court* from section 4 (1).

### **1.13 Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 No 83**

#### **[1] Section 16 Hearing of claims**

Omit "Compensation Court" from section 16 (4) and (6) wherever occurring.

Insert instead "District Court".

#### **[2] Section 30 Hearing of claims**

Omit "Compensation Court" from section 30 (4) and (6) wherever occurring.

Insert instead "District Court".

### **1.14 Workers' Compensation (Dust Diseases) Act 1942 No 14**

#### **Section 8I Appeals**

Omit "Compensation Court" from section 8I (1) wherever occurring.

Insert instead "District Court".

**1.15 Workplace Injury Management and Workers Compensation Act 1998 No 86**

**[1] Section 4 Definitions**

Insert in alphabetical order in section 4 (1):

*coal miner matter* means any matter arising under the Workers Compensation Acts concerning a claim in respect of a worker employed in or about a coal mine to which the *Coal Mines Regulation Act 1982* applies.

**[2] Section 35 Payments into and from Fund**

Omit section 35 (2) (f). Insert instead:

(f) payments required to be made under section 35A (Residual and ongoing costs of Compensation Court jurisdiction),

**[3] Section 35A**

Insert after section 35:

**35A Residual and ongoing costs of Compensation Court jurisdiction**

- (1) The following costs are payable from the WorkCover Authority Fund:
- (a) the costs of operation of the Compensation Court (until the repeal of the *Compensation Court Act 1984*),
  - (b) such of the costs of operation of the District Court relating to matters that would have been matters within the jurisdiction of the Compensation Court (had the repeal Act not been enacted) as the Ministers agree are to be paid from the Fund, and
  - (c) such of the ongoing costs of operation of the Compensation Court (those costs determined as if the repeal Act had not been enacted) as the Ministers agree are to be paid from the Fund, and
  - (d) such other costs resulting from the operation of the repeal Act as the Ministers agree are to be paid from the Fund.

- (2) The costs of operation of a court include:
- (a) the remuneration (including allowances) of Judges of the court and of officers and employees of the public service employed in connection with the exercise of functions of the court, and
  - (b) costs associated with the employment and remuneration of those Judges and officers and employees and of retired Judges of the court (such as contributions for and payments of pensions and superannuation benefits), and
  - (c) court accommodation.
- (3) In this section:
- repeal Act* means the *Compensation Court Repeal Act 2002*.
- the Ministers* means the Minister administering the *District Court Act 1973* and the Minister administering this Act.

**[4] Section 105 Jurisdiction of Commission and Compensation Court**

Insert “or (after the repeal of the *Compensation Court Act 1984*) the District Court” after “Compensation Court” in section 105 (3).

**[5] Section 105 (4A)**

Insert after section 105 (4):

- (4A) After the repeal of the *Compensation Court Act 1984*, the District Court has exclusive jurisdiction to examine, hear and determine all coal miner matters (except matters arising under Part 5 of the 1987 Act).

**[6] Section 105 (6)**

Omit the subsection. Insert instead:

- (6) For the purposes of giving effect to subsections (4) and (4A), references in this Act to the Commission are to be read as references:
- (a) to the Compensation Court, to the extent that the reference relates to a matter that the Compensation Court has jurisdiction to examine, hear and determine, or

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- (b) to the District Court, to the extent that the reference relates to a matter that the District Court has jurisdiction to examine, hear and determine.

**[7] Schedule 5 Provisions relating to members of Commission**

Insert “other than a Presidential Member” after “Commission” in clause 4.

**[8] Schedule 5, clause 4**

Insert at the end of clause 4:

- (2) A Presidential member and the Registrar are entitled to be paid remuneration (including travelling and subsistence allowances) in accordance with the *Statutory and Other Offices Remuneration Act 1975*.

[Second reading speech made in—  
Legislative Assembly on 28 May 2002  
Legislative Council on 11 June 2002]

BY AUTHORITY