

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

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- 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.

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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.
