

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the Industrial Relations Act 1996 and certain other legislation to confer on the Industrial Relations Commission in Court Session (otherwise known as the Industrial Court of New South Wales) the criminal and civil jurisdiction that is currently exercised by Industrial Magistrates under that legislation.

The Bill also provides that:

(a) certain civil jurisdiction exercised by Industrial Magistrates will be retained by Local Courts sitting at various places (referred to as designated places) outside of the Sydney metropolitan area, and

(b) Local Courts will cease to exercise criminal jurisdiction in relation to offences under the Industrial Relations Act 1996, the Occupational Health and Safety Act 2000 and certain other industrial legislation, and

(c) existing Industrial Magistrates will continue in office as Local Court Magistrates.

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Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Industrial Relations Act 1996

At present under Part 1 of Chapter 7 of the Industrial Relations Act 1996 (the Act), both the Industrial Court and a Local Court constituted by an Industrial Magistrate have jurisdiction in relation to breaches of industrial instruments (including ordering a person to pay a civil penalty for such a breach and granting injunctions to restrain further contraventions of industrial instruments). Schedule 1 [6]–[10] remove the jurisdiction of Industrial Magistrates under Part 1 of Chapter 7 so that only the Industrial Court will have jurisdiction in relation to breaches of industrial instruments. Schedule 1 [2] and [3] are consequential amendments.

Schedule 1 [11] will provide that the civil jurisdiction of a Local Court under Part 2 of Chapter 7 of the Act (which relates to orders for the recovery of remuneration and other amounts payable by employers) will be exercised by a Local Court sitting at a designated place and not by an Industrial Magistrate. Schedule 1 [4] and [13] are consequential amendments. The amendment made by Schedule 1 [11] does not affect the jurisdiction of the Industrial Court under Part 2 of Chapter 7 of the Act.

Schedule 1 [12] makes it clear that a Commissioner of the Industrial Relations Commission or a Deputy President of the Commission may undertake conciliation on behalf of the Industrial Court in relation to proceedings under Part 2 of Chapter 7 of the Act and make orders to give effect to the terms of any settlement resulting from the conciliation.

Schedule 1 [14] is consequential on the amendment made by Schedule 1 [11] but will also enable the Industrial Commission to refer applications for orders for the recovery of money that are made during proceedings before the Commission to Local Courts sitting at designated places.

Schedule 1 [15] removes provisions relating to the appointment and jurisdiction of Industrial Magistrates (including the Chief Industrial Magistrate). Schedule 1 [1] is a consequential amendment.

Schedule 1 [16] removes the criminal jurisdiction of Local Courts (whether or not constituted by an Industrial Magistrate) under the Act so that only the Industrial

Court will have jurisdiction to deal with offences under the Act. Schedule 1 [5] is a consequential amendment. The amendment made by Schedule 1 [4] also removes the provision for appeals to be made to the Industrial Court against a conviction or penalty imposed by a Local Court for an offence under the Act.

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Schedule 1 [17] removes a note that incorrectly refers to the application of section 179 of the Criminal Procedure Act 1986 in relation to criminal proceedings before the Industrial Court.

Schedule 1 [18] specifies the designated places where a Local Court will continue to have civil jurisdiction under the Act.

Schedule 1 [19] enables regulations of a savings or transitional nature to be made as a consequence of the proposed Act.

Schedule 1 [20] contains savings and transitional provisions, including a provision confirming that a person holding office as an Industrial Magistrate (including the Chief Industrial Magistrate) immediately before the abolition of that office is entitled to hold office, without any loss of remuneration, as a Magistrate for the remainder of his or her term of appointment as an Industrial Magistrate.

Schedule 2 Amendment of other legislation

Schedule 2 contains amendments to the following Acts and regulation:

Annual Holidays Act 1944

Apprenticeship and Traineeship Act 2001

Bail Act 1978

Building and Construction Industry Long Service Payments Act 1986

Court Security Act 2005

Criminal Procedure Act 1986

Dangerous Goods (Road and Rail Transport) Act 2008

Employment Protection Act 1982

Entertainment Industry Act 1989

Essential Services Act 1988

Industrial Relations (Child Employment) Act 2006

Industrial Relations (General) Regulation 2001

Judicial Officers Act 1986

Long Service Leave Act 1955

Occupational Health and Safety Act 2000

Rail Safety Act 2008

Shop Trading Act 2008

Statutory and Other Offices Remuneration Act 1975

Workers Compensation Act 1987

Workplace Injury Management and Workers Compensation Act 1998

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The amendments to these Acts and regulation generally provide for the following:

(a) the transfer of the civil jurisdiction of Industrial Magistrates to either the Industrial Court or Local Courts sitting at designated places,

(b) the removal of the criminal jurisdiction of Local Courts (whether or not constituted by an Industrial Magistrate) so that only the Industrial Court will have jurisdiction to deal with offences under these Acts,

(c) amendments that are consequential on the removal of the civil and criminal jurisdiction of Industrial Magistrates and on the abolition of that office.

In particular, the amendments to the Occupational Health and Safety Act 2000 will enable various appeals and applications for review in relation to notices and

decisions of the WorkCover Authority to be made to the Industrial Court or a Local Court sitting at a designated place instead of to an Industrial Magistrate.