

Passed by both Houses



New South Wales

Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Bill 2009

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2009*



New South Wales

Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Bill 2009

Act No , 2009

An Act to amend the *Industrial Relations Act 1996* and other legislation to make further provision with respect to the jurisdiction of the Industrial Relations Commission and with respect to Industrial Magistrates; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Act 2009*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Industrial Relations Act 1996 No 17

[1] Section 153 Jurisdiction of Commission in Court Session

Omit “an Industrial Magistrate or any other” from section 153 (1) (j).

Insert instead “any”.

[2] Section 162A Transfer of certain proceedings to Local Court sitting at designated place

Omit section 162A (1). Insert instead:

- (1) This section applies to proceedings for the recovery of money under Part 2 of Chapter 7.

[3] Section 162A (5), definition of “Local Court”

Omit “constituted by an Industrial Magistrate sitting alone”.

Insert instead “sitting at a designated place as referred to in section 405A”.

[4] Section 197 Appeals from Local Court sitting at designated place

Omit section 197 (1) and (2). Insert instead:

- (1) An appeal lies to a Full Bench of the Commission in Court Session against:
 - (a) any order made under this Act by a Local Court sitting at a designated place as referred to in section 405A for the payment of money, or
 - (b) the dismissal by a Local Court sitting at any such designated place of an application for an order under this Act for the payment of money (including a dismissal on the ground that it does not have jurisdiction to deal with the application).

[5] Section 197A Appeals against acquittals in proceedings for offences against occupational health and safety legislation

Omit “or of a Local Court constituted by an Industrial or other Magistrate” from section 197A (1).

[6] Section 356 Definition

Omit the section.

[7] Section 357 Civil penalty for breach of industrial instruments

Omit “an industrial court” from section 357 (1).

Insert instead “the Commission in Court Session”.

[8] Sections 357 (6) and 362

Omit “the industrial court” wherever occurring.

Insert instead “the Commission in Court Session”.

[9] Section 358 Related proceedings for recovery of remuneration and other money

Omit section 358 (1). Insert instead:

- (1) In dealing with proceedings for a civil penalty under this Part that relate to the failure of the defendant to pay any money that may be recovered under Part 2, the Commission in Court Session may, in the same proceedings, also make under that Part any order for the payment of money that it is authorised to make in proceedings under that Part.

[10] Section 359 Injunction to restrain further contraventions of industrial instruments

Omit “by it or another industrial court” from section 359 (1).

[11] Section 364 Definitions

Omit “constituted specially for the purposes of this Part by an Industrial Magistrate sitting alone” from paragraph (c) of the definition of *industrial court* in section 364 (1).

Insert instead “sitting at a designated place as referred to in section 405A”.

[12] Section 371 Conciliation to be attempted before order made

Insert after section 371 (2):

- (3) The Commission in Court Session is taken to have discharged its obligations under subsection (1) in relation to the proceedings concerned if an attempt to bring the parties to a settlement has been made by a Commissioner or a Deputy President acting on behalf of the court. In that case, the Commissioner or Deputy President concerned may make the order referred to in subsection (2).
- (4) If a settlement is not reached in relation to an application for an order under this Part and the proceedings concerned are, in accordance with section 162A, transferred to a Local Court sitting at a designated place as referred to in section 405A, the

Local Court dealing with those proceedings is not required to comply with subsection (1) in relation to those proceedings.

[13] Section 375 Recovery of amounts ordered to be paid

Omit “constituted by an Industrial Magistrate”.

[14] Section 380 Small claims during other Commission hearings

Omit section 380 (5). Insert instead:

(5) The Commission may, instead of dealing with the matter:

- (a) remit the matter, if the Commission is not constituted as the Commission in Court Session, to the Commission in Court Session for determination, or
- (b) refer the matter to a Local Court sitting at a designated place as referred to in section 405A.

(5A) If the matter is referred to a Local Court, the court may deal with the matter as if the application for an order under this Part and for the application to be dealt with under section 379 had been made to the court.

[15] Chapter 7, Part 3 Industrial Magistrates

Omit the Part.

[16] Section 397

Omit the section. Insert instead:

397 Proceedings for offences

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before the Commission in Court Session.

[17] Section 398 Time for instituting proceedings

Omit the note.

[18] Section 405A

Insert after section 405:

405A Industrial relations civil jurisdiction of Local Court sitting at designated places

- (1) The regulations may declare any city, town or other place to be a *designated place* for the purposes of this Act.

- (2) Until such time as regulations are made under subsection (1), the following cities or towns are taken to be designated places:

Albury, Armidale, Batemans Bay, Bathurst, Bega, Bourke, Broken Hill, Casino, Cessnock, Cobar, Coffs Harbour, Condobolin, Cooma, Coonamble, Cootamundra, Corowa, Cowra, Deniliquin, Dubbo, East Maitland, Forbes, Glen Innes, Gosford, Goulburn, Grafton, Griffith, Gundagai, Gunnedah, Hay, Inverell, Kempsey, Leeton, Lismore, Lithgow, Maitland, Moree, Moruya, Moss Vale, Mudgee, Murwillumbah, Muswellbrook, Narrabri, Narrandera, Newcastle, Nowra, Nyngan, Orange, Parkes, Port Macquarie, Queanbeyan, Quirindi, Scone, Singleton, Tamworth, Taree, Tumut, Wagga Wagga, Walgett, Wellington, Wentworth, Wollongong, Wyalong, Yass, Young.

[19] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Act 2009

[20] Schedule 4

Insert at the end of the Schedule with appropriate Part and clause numbers:

Part Provisions consequent on enactment of Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Act 2009

Definition

In this Part:

amending Act means the *Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Act 2009*.

Consequences of abolition of office of Industrial Magistrate—section 56 of Constitution Act 1902

- (1) A person who, immediately before the repeal of Part 3 of Chapter 7 of this Act by the amending Act, held office as an Industrial Magistrate under that Part is entitled (without loss of remuneration) to hold office as a Magistrate for the remainder of the term for which the person was appointed as an Industrial Magistrate.

- (2) A reference in this clause to an Industrial Magistrate includes a reference to the Chief Industrial Magistrate.

Application of amendments to pending proceedings

- (1) Except to the extent provided by subclause (2), an amendment made by the amending Act to this or any other Act does not apply to or in respect of any proceedings commenced (but not finally determined) before the commencement of the amendment.
- (2) If, before the repeal of Part 3 of Chapter 7 by the amending Act, proceedings in relation to any matter under this or any other Act were commenced in a Local Court constituted by an Industrial Magistrate but the matter had not been determined before that repeal, the matter may continue to be dealt with and determined by a Local Court.
- (3) This clause is subject to the regulations.

Schedule 2 Amendment of other legislation

2.1 Annual Holidays Act 1944 No 31

[1] Section 12 Proceedings for recovery of penalties

Omit “before a Local Court or” from section 12 (1).

[2] Section 12 (2) and (3)

Omit “Local Court or” wherever occurring.

[3] Sections 13 (1) and 14 (d)

Insert “sitting at a designated place as referred to in section 405A of the *Industrial Relations Act 1996*” after “a Local Court” wherever occurring.

2.2 Apprenticeship and Traineeship Act 2001 No 80

[1] Section 73 Proceedings for offences

Omit “a Local Court constituted by a Magistrate sitting alone” from section 73 (1).

Insert instead “the Industrial Relations Commission in Court Session”.

[2] Section 73, note

Omit the note.

2.3 Bail Act 1978 No 161

Section 4 Definitions

Omit “, a licensing magistrate under the *Liquor Act 1982*, a Children’s Magistrate or an industrial magistrate under the *Industrial Relations Act 1996*” from the definition of *magistrate* in section 4 (1).

Insert instead “or a Children’s Magistrate”.

2.4 Building and Construction Industry Long Service Payments Act 1986 No 19

[1] Section 64 Proceedings for offences

Omit “a Local Court” from section 64 (1).

Insert instead “the Industrial Relations Commission in Court Session”.

[2] Section 64 (2)

Omit the subsection.

2.5 Court Security Act 2005 No 1

Section 4 Definitions

Omit “(including a Local Court constituted by an Industrial Magistrate)” from paragraph (g) of the definition of *court* in section 4 (1).

2.6 Criminal Procedure Act 1986 No 209

[1] Section 3 Definitions

Omit the definition of *Industrial Magistrate* from section 3 (1).

[2] Section 28 Application of Part and definition

Omit “an Industrial Magistrate,” from the definition of *Judge* in section 28 (2).

[3] Section 170 Application

Omit section 170 (2) (c) and (2A) (d).

[4] Section 171 Definitions

Omit “and includes (where applicable) an Industrial Magistrate” from the definition of *court*.

[5] Section 171, definition of “Magistrate”

Omit “an Industrial Magistrate and any other”. Insert instead “any”.

[6] Section 171, definition of “registrar”

Omit paragraph (c).

[7] Section 275 Definitions

Omit “and an Industrial Magistrate” from the definition of *Judge*.

[8] Section 312 Persons arrested under bench warrants

Omit “and an Industrial Magistrate” from section 312 (3).

2.7 Dangerous Goods (Road and Rail Transport) Act 2008 No 95

Sections 35 (1) (b), 36 (1) (b) and 45 (1) (b)

Omit “constituted by an Industrial Magistrate sitting alone” wherever occurring.

Insert instead “sitting at a designated place as referred to in section 405A of the *Industrial Relations Act 1996* or the Industrial Relations Commission in Court Session”.

2.8 Employment Protection Act 1982 No 122

Section 19 Proceedings for offences

Omit section 19 (1) and (2). Insert instead:

- (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before the Industrial Relations Commission in Court Session.

2.9 Entertainment Industry Act 1989 No 230

Section 63 Proceedings for offences

Omit “an industrial magistrate or a Local Court” from section 63 (2).

Insert instead “the Industrial Relations Commission in Court Session”.

2.10 Essential Services Act 1988 No 41

Section 31 Proceedings for offences

Omit “a local court”.

Insert instead “the Industrial Relations Commission in Court Session”.

2.11 Industrial Relations (Child Employment) Act 2006 No 96

[1] Section 3 Definitions

Omit “constituted specially for the purposes of this Act by an Industrial Magistrate sitting alone” from paragraph (b) of the definition of *industrial court* in section 3 (1).

Insert instead “sitting at a designated place as referred to in section 405A of the *Industrial Relations Act 1996*”.

[2] Section 16 Applied provisions of Industrial Relations Act 1996

Omit “(Transfer of certain proceedings to Industrial Magistrates)” from section 16 (1) (a).

[3] Section 16 (7)

Omit “constituted by an Industrial Magistrate sitting alone”.

Insert instead “sitting at a designated place as referred to in section 405A of the *Industrial Relations Act 1996*”.

2.12 Industrial Relations (General) Regulation 2001

Clause 43 Industrial Magistrate—civil procedure

Omit the clause.

2.13 Judicial Officers Act 1986 No 100

Section 3 Definitions

Omit “and an industrial magistrate” from the definition of *Magistrate* in section 3 (1).

2.14 Long Service Leave Act 1955 No 38

[1] Section 11 Recovery of penalties

Omit “a Local Court constituted by a Magistrate sitting alone” from section 11 (1).

Insert instead “the Industrial Relations Commission in Court Session”.

[2] Section 11 (2)

Omit “Local Court”. Insert instead “Industrial Relations Commission”.

[3] Section 11 (3)

Omit “Local Court before whom such proceedings are taken”.

Insert instead “Industrial Relations Commission in Court Session”.

[4] Section 12 Recovery of long service leave pay

Omit “constituted by a Magistrate sitting alone” from section 12 (1).

Insert instead “sitting at a designated place as referred to in section 405A of the *Industrial Relations Act 1996*”.

[5] Section 14 Provisions as to enforcement of orders, appeals etc

Insert “sitting at a designated place as referred to in section 405A of the *Industrial Relations Act 1996*” after “Local Court” in section 14 (c).

2.15 Occupational Health and Safety Act 2000 No 40

[1] Sections 97 (1) and 98 (1)

Omit “constituted by an Industrial Magistrate sitting alone” wherever occurring.

Insert instead “sitting at a designated place as referred to in section 405A of the *Industrial Relations Act 1996* or to the Industrial Relations Commission in Court Session”.

[2] Section 97 Appeal following review

Insert “or the Industrial Relations Commission in Court Session” after “Local Court” in section 97 (2).

[3] Section 97 (2)

Omit “the Court”. Insert instead “the Court concerned”.

[4] Section 97 (3)

Insert “or the Industrial Relations Commission in Court Session (as the case requires)” after “Local Court”.

[5] Section 98 Application for stay of investigation or prohibition notice

Omit “Local Court” from section 98 (2). Insert instead “Court concerned”.

[6] Section 98 (3)

Omit the subsection. Insert instead:

- (3) A stay may be granted on such conditions as the Local Court or the Industrial Relations Commission in Court Session (as the case requires) considers appropriate and may be revoked or amended by the Court concerned.

[7] Section 105

Omit the section. Insert instead:

105 Proceedings for offences

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before the Industrial Relations Commission in Court Session.

[8] Section 114 Orders regarding costs and expenses of investigation

Omit section 114 (2). Insert instead:

- (2) An order made by the Industrial Relations Commission under this section is enforceable under section 182 of the *Industrial Relations Act 1996*.

[9] Section 116 Orders to undertake OHS projects

Omit section 116 (3).

[10] Section 124 Definitions

Omit “a Local Court,” from the definition of *guideline judgment*.

2.16 Rail Safety Act 2008 No 97

[1] Sections 123 (1), 124 (1) and 141 (1)

Omit “constituted by an Industrial Magistrate” wherever occurring.

Insert instead “sitting at a designated place as referred to in section 405A of the *Industrial Relations Act 1996* or to the Industrial Relations Commission in Court Session”.

[2] Section 123 Appeal following review

Insert “or to the Industrial Relations Commission in Court Session” after “Local Court” in section 123 (2).

[3] Section 123 (2)

Omit “the Court”. Insert instead “the Court concerned”.

[4] Section 123 (3)

Insert “or the Industrial Relations Commission in Court Session (as the case requires)” after “Local Court”.

[5] Sections 124 (2) and 141 (2)

Omit “Local Court” wherever occurring. Insert instead “Court concerned”.

[6] Section 124 Application for stay of prohibition notice

Omit section 124 (3). Insert instead:

- (3) A stay may be granted on such conditions as the Local Court or the Industrial Relations Commission in Court Session (as the case requires) considers appropriate and may be revoked or amended by the Court concerned.

2.17 Shop Trading Act 2008 No 49

Section 16 Proceedings for offences

Insert “before the Industrial Relations Commission in Court Session” after “summarily”.

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

Schedule 1 Public Offices

Omit the matter relating to the office of Chief Industrial Magistrate.

2.19 Workers Compensation Act 1987 No 70

[1] Section 58 Refund of weekly payments paid after return to work etc

Omit section 58 (9).

[2] Section 156 Recovery of double premiums for contravention of insurance requirements

Omit section 156 (7).

[3] Section 175 Employers evading payment of correct premiums

Omit section 175 (7B).

2.20 Workplace Injury Management and Workers Compensation Act 1998 No 86

Section 245

Omit the section. Insert instead:

245 Proceedings for offences

- (1) Proceedings for an offence against this Act, the 1987 Act or the regulations under those Acts are to be dealt with summarily before the Industrial Relations Commission in Court Session.

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- (2) Any such proceedings may be instituted by (but not only by) the
Authority.