

2013

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Magistrates Court (Industrial Proceedings) Amendment Bill 2013

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Magistrates Court (Industrial Proceedings) Amendment Bill 2013

A Bill for

An Act to amend the *Magistrates Court Act 1930*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **1 Name of Act**

2 This Act is the *Magistrates Court (Industrial Proceedings)*
3 *Amendment Act 2013*.

4 **2 Commencement**

5 This Act commences on the day after its notification day.

6 *Note* The naming and commencement provisions automatically commence on
7 the notification day (see [Legislation Act](#), s 75 (1)).

8 **3 Legislation amended**

9 This Act amends the *Magistrates Court Act 1930*.

10 *Note* The Act also amends the following legislation (see sch 1):

- 11 • [Court Procedures Act 2004](#)
- 12 • [Evidence \(Miscellaneous Provisions\) Act 1991](#)
- 13 • [Legislation Act 2001](#).

14 **4 New chapter 4D**

15 *insert*

16 **Chapter 4D The Industrial Court**

17 **Part 4D.1 Preliminary**

18 **291O Definitions—ch 4D**

19 In this chapter:

20 *industrial or work safety matter*—see section 291Q (1).

21 *industrial or work safety offence* means an offence under an Act
22 mentioned in section 291Q (1) (a).

1 **Part 4D.2 The Industrial Court**

2 **291P Industrial Court**

- 3 (1) The Magistrates Court is known as the Industrial Court when it is
4 constituted by the Industrial Court Magistrate exercising the
5 jurisdiction given under section 291Q.
- 6 (2) The Magistrates Court is also known as the Industrial Court when it
7 is constituted by—
- 8 (a) a magistrate assigned under section 291W (Assignment of
9 other magistrates for Industrial Court matters) who is
10 exercising the jurisdiction given under section 291Q; or
- 11 (b) a magistrate acting under section 291X (2) (Industrial Court—
12 completion of part-heard matters).
- 13 (3) The Industrial Court may use the Magistrates Court seal.

14 **291Q Jurisdiction of Industrial Court**

- 15 (1) The Industrial Court has jurisdiction to hear and decide the
16 following (an *industrial or work safety matter*):
- 17 (a) a proceeding under the following Acts:
- 18 (i) the *Dangerous Substances Act 2004*;
- 19 (ii) the *Machinery Act 1949*;
- 20 (iii) the *Scaffolding and Lifts Act 1912*;
- 21 (iv) the *Workers Compensation Act 1951*;
- 22 (v) the *Work Health and Safety Act 2011*;
- 23 (b) a proceeding that an Act states must be heard and decided by
24 the Industrial Court;

- 1 (c) a personal action at law arising from substantially the same
2 facts that form the basis of a proceeding mentioned in
3 paragraph (a) or (b) before the court.
- 4 *Note* A reference to an Act includes a reference to the statutory instruments
5 made or in force under the Act, including any regulation (see
6 [Legislation Act](#), s 104).
- 7 (2) The Industrial Court may exercise the jurisdiction of the Magistrates
8 Court in relation to the following:
- 9 (a) any criminal proceeding in relation to an industrial or work
10 safety offence that is a summary offence against a person, if
11 the person was an adult at the time of the alleged offence;
- 12 (b) any criminal proceeding in relation to an industrial or work
13 safety offence that is an indictable offence against a person, if
14 the person was an adult at the time of the alleged offence;
- 15 (c) a proceeding in relation to bail for an adult charged with an
16 industrial or work safety offence;
- 17 (d) a proceeding in relation to a breach of a sentence imposed by
18 the Magistrates Court for an industrial or work safety offence.
- 19 (3) Subsection (2) (b) is subject to the [Crimes Act 1900](#), section 374
20 (Summary disposal of certain cases at prosecutor's election) and
21 section 375 (Summary disposal of certain cases).
- 22 (4) Subsection (2) (c) is subject to the [Bail Act 1992](#).
- 23 (5) The Industrial Court may exercise the jurisdiction of the Magistrates
24 Court in relation to any industrial or work safety matter.
- 25 (6) This section applies—
- 26 (a) for a civil proceeding—to an industrial or work safety matter
27 commenced after the commencement of the *Magistrates Court*
28 (*Industrial Proceedings*) *Amendment Act 2013*; and

1 (b) for a criminal proceeding—to a prosecution for an industrial or
2 work safety offence commenced after the commencement of
3 the *Magistrates Court (Industrial Proceedings) Amendment*
4 *Act 2013*.

5 (7) In this section:

6 *proceeding*, under an Act mentioned in subsection (1) (a)—

7 (a) includes arbitration; but

8 (b) does not include a matter that may be brought before the
9 ACAT under the Act.

10 **291R Chief Magistrate to arrange business of Industrial Court**

11 (1) The Chief Magistrate is responsible for allocating, and ensuring the
12 orderly and prompt discharge of, the business of the Industrial
13 Court.

14 (2) The Chief Magistrate may, subject to appropriate and practicable
15 consultation with the magistrates, make arrangements about—

16 (a) the magistrate who is to be the Industrial Court Magistrate; and

17 (b) the assignment of a magistrate under—

18 (i) section 291V (Acting Industrial Court Magistrate); or

19 (ii) section 291W (Assignment of other magistrates for
20 Industrial Court matters).

21 **291S Industrial Court Magistrate to hear all matters**

22 (1) The Industrial Court Magistrate is responsible for dealing with all
23 matters before the Industrial Court.

24 (2) Subsection (1) is subject to—

25 (a) section 291W (Assignment of other magistrates for Industrial
26 Court matters); and

1 (b) section 291X (Industrial Court—completion of part-heard
2 matters).

3 **291T Transfer of industrial or work safety matter to Supreme**
4 **Court**

- 5 (1) If a party to an industrial or work safety matter (a *matter*) applies to
6 have the matter transferred to the Supreme Court, the Industrial
7 Court may, if it considers it appropriate, order that the matter be
8 transferred to the Supreme Court.
- 9 (2) If the parties to a matter jointly apply to have the matter transferred
10 to the Supreme Court, the Industrial Court must order that the matter
11 be transferred to the Supreme Court.
- 12 (3) If the Industrial Court considers that a matter would be more
13 appropriately dealt with by the Supreme Court, the Industrial Court
14 may order that the matter be transferred to the Supreme Court.
- 15 (4) This section does not apply to a proceeding mentioned in
16 section 291Q (2).

17 **Part 4D.3 Industrial Court Magistrate**

18 **291U Industrial Court Magistrate**

- 19 (1) The Chief Magistrate must declare 1 magistrate to be the Industrial
20 Court Magistrate for a stated term of not longer than 4 years.
- 21 (2) The Chief Magistrate may declare himself or herself to be the
22 Industrial Court Magistrate.
- 23 (3) The Chief Magistrate must not declare a magistrate to be the
24 Industrial Court Magistrate unless satisfied the magistrate is suitably
25 qualified to be the Industrial Court Magistrate.
- 26 (4) The Chief Magistrate must revoke a declaration under this section if
27 asked by the Industrial Court Magistrate.

1 (5) A declaration, or revocation, under this section is a notifiable
2 instrument.

3 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

4 **291V Acting Industrial Court Magistrate**

5 (1) The Chief Magistrate may assign a magistrate to act as Industrial
6 Court Magistrate only if—

7 (a) there is no Industrial Court Magistrate; or

8 (b) the Industrial Court Magistrate—

9 (i) is absent from duty or from the ACT; or

10 (ii) cannot exercise the functions of the Industrial Court
11 Magistrate for another reason.

12 (2) A magistrate assigned to act as Industrial Court Magistrate is the
13 Industrial Court Magistrate for this Act and any other Act.

14 **291W Assignment of other magistrates for Industrial Court**
15 **matters**

16 (1) The Chief Magistrate may assign another magistrate to deal with an
17 industrial or work safety matter if—

18 (a) the Chief Magistrate is satisfied that—

19 (i) a perception of bias may arise if the Industrial Court
20 Magistrate were to deal with the matter; or

21 (ii) it is in the interests of justice to do so; or

22 (b) a magistrate begins to deal with the matter under this chapter
23 but before the matter is finally decided, the magistrate—

24 (i) dies; or

- 1 (ii) becomes mentally or physically incapacitated, if the
2 incapacity substantially affects the exercise of the
3 magistrate's functions; or
4 (iii) resigns; or
5 (iv) is otherwise unable to continue to deal with the matter.
6 (2) This section is in addition to, and does not limit,
7 section 291V (Acting Industrial Court Magistrate).

8 **291X Industrial Court—completion of part-heard matters**

- 9 (1) This section applies if—
10 (a) a magistrate begins to deal with an Industrial Court matter
11 under this chapter; and
12 (b) before the matter is finally decided, the magistrate ceases to—
13 (i) be the Industrial Court Magistrate; or
14 (ii) hold an assignment under section 291V or section 291W.
15 (2) The magistrate may continue to deal with the matter until it is
16 finally decided.

17 **5 ACT and corresponding courts**
18 **Schedule 2, item 1, column 2**

19 *insert*
20 Industrial Court

1 **6 Dictionary, new definitions of *industrial or work safety***
2 ***matter* and *industrial or work safety offence***

3 *insert*

4 *industrial or work safety matter*, for chapter 4D (The Industrial
5 Court)—see section 291Q (1).

6 *industrial or work safety offence*, for chapter 4D (The Industrial
7 Court)—see section 291O.

1 **Schedule 1 Consequential amendments**

2 (see s 3)

3 **Part 1.1 Court Procedures Act 2004**

4 **[1.1] New part 7B**

5 *insert*

6 **Part 7B Procedural provisions—**
7 **industrial or work safety matters**

8 **74N Industrial Court procedure**

9 (1) The *Magistrates Court Act 1930*, chapter 3 (Criminal proceedings),
10 and the rules applying to criminal proceedings in the Magistrates
11 Court, apply to the Industrial Court in relation to a criminal
12 proceeding.

13 (2) The rules applying to civil proceedings in the Magistrates Court
14 apply to the Industrial Court in relation to any other proceeding.

15 **Part 1.2 Evidence (Miscellaneous**
16 **Provisions) Act 1991**

17 **[1.2] Section 5, definition of *Magistrates Court***

18 *substitute*

19 *Magistrates Court* includes—

20 (a) the Childrens Court; and

21 (b) the Industrial Court.

1 **Part 1.3** **Legislation Act 2001**

2 **[1.3] Dictionary, part 1, new definition of *Industrial Court***

3 *insert*

4 *Industrial Court* means the Industrial Court under the *Magistrates*
5 *Court Act 1930*, section 291P.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 8 August 2013.

2 Notification

Notified under the [Legislation Act](#) on 2013.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.
