

2019

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Courts (Fair Work and Work Safety) Legislation Amendment Bill 2019

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Courts (Fair Work and Work Safety) Legislation Amendment Bill 2019

A Bill for

An Act to amend legislation about courts, and for other purposes

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Courts (Fair Work and Work Safety) Legislation*
4 *Amendment Act 2019*.

5 **2 Commencement**

6 (1) The following provisions commence on the day after this Act's
7 notification day:

- 8 • section 3
- 9 • parts 3 and 4
- 10 • section 14
- 11 • part 6.

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

14 (2) The remaining provisions commence on a day fixed by the Minister
15 by written notice.

16 *Note* A single day or time may be fixed, or different days or times may be
17 fixed, for the commencement of different provisions (see [Legislation Act](#),
18 s 77 (1)).

19 (3) If the remaining provisions have not commenced within 12 months
20 beginning on this Act's notification day they automatically
21 commence on the first day after that period.

22 (4) The [Legislation Act](#), section 79 (Automatic commencement of
23 postponed law) does not apply to this Act.

3 Legislation amended

2 This Act amends the following legislation:

- 3 • *ACT Civil and Administrative Tribunal Act 2008*
- 4 • *Confiscation of Criminal Assets Act 2003*
- 5 • *Crimes Act 1900*
- 6 • *Magistrates Court Act 1930*
- 7 • *Work Health and Safety Act 2011.*

1 **Part 2** **ACT Civil and Administrative**
2 **Tribunal Act 2008**

3 **4** **Meaning of civil dispute and civil dispute application—**
4 **Act**
5 **New section 16 (2)**

6 *insert*

- 7 (2) To remove any doubt, a civil dispute application does not include a
8 fair work claim.

9 *Note 1* A fair work claim may be started in the Magistrates Court (see
10 [Magistrates Court Act 1930](#), pt 4.2A).

11 *Note 2* Orders may be sought for the contravention of a civil remedy provision
12 in the Federal Court and Federal Circuit Court (see [Fair Work Act 2009](#)
13 (Cwlth), s 539).

14 **5** **New division 8.1A**

15 *insert*

16 **Division 8.1A** **Removal of combined fair work matter**

17 **82A** **Removal from tribunal to Magistrates Court—combined**
18 **fair work matter**

- 19 (1) This section applies if, in the course of dealing with a civil dispute
20 application, the tribunal becomes aware that a matter arising in
21 relation to the application amounts to a fair work claim.

22 **Example—matter arising in relation to application**

23 a counter claim to the application

- 24 (2) The tribunal must order that the application and the matter (the
25 ***combined fair work matter***) be removed to the Magistrates Court.

1 (3) The tribunal may make the order on its own initiative or on
2 application by a party to the matter.

3 (4) On removal of the matter to the Magistrates Court, the civil dispute
4 application is taken to be finalised in the tribunal.

5 *Note 1* A fair work claim may be started in the Magistrates Court (see
6 [Magistrates Court Act 1930](#), pt 4.2A).

7 *Note 2* Orders may be sought for the contravention of a civil remedy provision
8 in the Federal Court and Federal Circuit Court (see [Fair Work Act 2009](#)
9 (Cwlth), s 539).

10 **6 Dictionary, new definition of *fair work claim***

11 *insert*

12 *fair work claim*—see the [Magistrates Court Act 1930](#), s 266E.

1 **Part 3** **Confiscation of Criminal Assets**
2 **Act 2003**

3 **7** **Meaning of *offence* and of particular kinds of offences**
4 **Section 13 (2), definition of *relevant offence*,**
5 **paragraph (a)**

6 *substitute*

7 (a) means either—

8 (i) an offence punishable by imprisonment for longer than
9 12 months; or

10 (ii) an offence against the *Work Health and Safety Act 2011*,
11 section 31 (1); and

12 **8** **Section 13 (2), definition of *serious offence*,**
13 **new paragraph (aa)**

14 *insert*

15 (aa) an offence against the *Work Health and Safety Act 2011*,
16 section 31 (1); or

1 **Part 4** **Crimes Act 1900**

2 **9** **Summary disposal of certain cases at prosecutor's**
3 **election**
4 **Section 374 (1)**

5 *substitute*

6 (1) This section applies if a person (the *defendant*) is before the
7 Magistrates Court charged with—

8 (a) an offence punishable by imprisonment for longer than 2 years
9 but not longer than 5 years; or

10 (b) an offence against the *Work Health and Safety Act 2011*,
11 section 31 (1).

12 **10** **Summary disposal of certain cases**
13 **New section 375 (1) (ba)**

14 *insert*

15 (ba) if the person is a body corporate—an offence against the *Work*
16 *Health and Safety Act 2011*, section 31 (1); or

Part 5 Magistrates Court Act 1930

11 Personal actions at law—amount or value Section 257 (4), new example

insert

Example—s (4)

jurisdiction under the *Fair Work Act 2009* (Cwlth), ch 4, pt 4-1 (Civil remedies) to award an amount of more than \$250 000 in compensation for loss

12 Civil disputes under ACT Civil and Administrative Tribunal Act Section 266A (2), except note

substitute

(2) To remove any doubt, this section does not apply—

- (a) in relation to the enforcement of an order made by the ACAT;
or
- (b) to a combined fair work matter removed by the ACAT to the Magistrates Court under the *ACT Civil and Administrative Tribunal Act 2008*, s 82A.

13 New part 4.2A

insert

Part 4.2A Fair work claims

Note 1 Jurisdiction is conferred on the Magistrates Court (as an eligible State and Territory court) in relation to the contravention of a civil remedy provision and related matters under the *Fair Work Act 2009* (Cwlth), s 539 and the *Fair Work Regulations 2009* (Cwlth), reg 4.01A.

- 1 **266E Definitions—pt 4.2A**
- 2 In this part:
- 3 *civil remedy provision*—see the *Fair Work Act 2009* (Cwlth),
4 section 539 (1).
- 5 *eligible State or Territory court*—see the *Fair Work Act 2009*
6 (Cwlth), section 12.
- 7 *Note* The Magistrates Court is an eligible State or Territory Court (see *Fair*
8 *Work Act 2009* (Cwlth), s 12).
- 9 *fair work claim* means—
- 10 (a) a fair work general claim; or
- 11 (b) a fair work small claim.
- 12 *fair work general claim* means a claim—
- 13 (a) in relation to a civil remedy provision; and
- 14 (b) that may be heard by the Magistrates Court (as an eligible State
15 or Territory court); and
- 16 (c) that is not a fair work small claim.
- 17 *fair work small claim* means a claim—
- 18 (a) in relation to a civil remedy provision; and
- 19 (b) that may be heard by the Magistrates Court (as an eligible State
20 or Territory court); and
- 21 (c) that may be dealt with under the small claims procedure
22 mentioned in the *Fair Work Act 2009* (Cwlth), section 548.
- 23 *official*, of an industrial association—see the *Fair Work Act 2009*
24 (Cwlth), section 12.

1 **266F Fair work claim—compulsory mediation**

- 2 (1) After a person has started a proceeding for a fair work claim in the
3 Magistrates Court, and before the court hears the claim, the registrar
4 must direct the parties to the claim to attend mediation at a stated time
5 and place.
- 6 (2) The purpose of the mediation is to achieve a timely, cost-effective,
7 proportionate and agreed resolution of the claim if possible.
- 8 (3) The registrar may dispense with the mediation on the joint application
9 of the parties to the claim.
- 10 (4) The person who conducts the mediation may make a recommendation
11 or express an opinion during the mediation to assist the parties to the
12 proceeding achieve the purpose of the mediation.
- 13 (5) Failure to comply with subsection (1) does not affect the validity of
14 any orders made by the court in relation to the claim.

15 **266G Fair work small claim—representation by official of**
16 **industrial association**

17 A party to a fair work small claim may be represented in the
18 Magistrates Court by an official of an industrial association if the
19 court grants the party leave.

20 **266H Fair work small claim that is fair work general claim**

- 21 (1) This section applies to a proceeding started in the Magistrates Court
22 as a fair work small claim but which the court considers to be a fair
23 work general claim.
- 24 (2) The court must continue the proceeding as a proceeding for a fair
25 work general claim.

- 1 **266I** **Combined fair work matter—procedure if removed from**
2 **ACAT**
- 3 (1) If the ACAT makes an order under section 82A of the *ACT Civil and*
4 *Administrative Tribunal Act 2008* to remove a combined fair work
5 matter to the Magistrates Court, the ACAT must send the court any
6 document or thing that was before the ACAT in relation to the matter
7 (the *matter material*).
- 8 (2) A proceeding for a combined fair work matter is taken to have started
9 in the court on the day the matter material is received by the court.
- 10 **266J** **Fair work claim—deciding or adjourning proceedings**
- 11 (1) This section applies to a fair work claim started in the Magistrates
12 Court if—
- 13 (a) a party to the claim does not attend mediation as directed by the
14 registrar under section 266F; and
- 15 (b) the court is satisfied that the party has been made aware of the
16 time and place for the mediation.
- 17 (2) The Magistrates Court may—
- 18 (a) decide the claim; or
- 19 (b) adjourn the proceedings for the claim.

1 **14 Jurisdiction of Industrial Court**
2 **Section 291Q (2) (a) and (b)**

3 *substitute*

4 (a) any criminal proceeding in relation to an industrial or work
5 safety offence that is a summary offence against a person who
6 is—

7 (i) a corporation; or

8 (ii) an individual, but only if the individual was an adult at the
9 time of the alleged offence;

10 (b) any criminal proceeding in relation to an industrial or work
11 safety offence that is an indictable offence against a person who
12 is—

13 (i) a corporation; or

14 (ii) an individual, but only if the individual was an adult at the
15 time of the alleged offence;

16 **15 Section 291Q (5)**

17 *substitute*

18 (5) The Industrial Court may exercise the jurisdiction of the Magistrates
19 Court in relation to—

20 (a) an industrial or work safety matter; and

21 (b) a fair work claim; and

22 (c) a combined fair work matter.

- 1 **16 Dictionary, new definitions**
- 2 *insert*
- 3 *civil remedy provision*, for part 4.2A (Fair work claims)—see
4 section 266E.
- 5 *combined fair work matter*—see the *ACT Civil and Administrative*
6 *Tribunal Act 2008*, see section 82A (2).
- 7 *eligible State or Territory court*, for part 4.2A (Fair work claims)—
8 see section 266E.
- 9 *fair work claim*, for part 4.2A (Fair work claims)—see section 266E.
- 10 *fair work general claim*, for part 4.2A (Fair work claims)—see
11 section 266E.
- 12 *fair work small claim*, for part 4.2A (Fair work claims)—see
13 section 266E.
- 14 *official*, of an industrial association, for part 4.2A (Fair work
15 claims)—see section 266E.

1 **Part 6** **Work Health and Safety Act 2011**

2 **17 Reckless conduct—category 1**
3 **New section 31 (3)**

4 *insert*

5 (3) A category 1 offence is declared to be an indictable offence.

6 *Note* An indictable offence is an offence punishable by imprisonment for
7 longer than 2 years or an offence declared by an ACT law to be an
8 indictable offence (see [Legislation Act](#), s 190 (1)).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 22 August 2019.

2 Notification

Notified under the [Legislation Act](#) on 2019.

3 Republications of amended laws

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

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