

**2013**

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**MAGISTRATES COURT (INDUSTRIAL PROCEEDINGS)  
AMENDMENT BILL 2013**

**EXPLANATORY STATEMENT**

**Presented by the  
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# MAGISTRATES COURT (INDUSTRIAL PROCEEDINGS) AMENDMENT BILL 2013

## Explanatory Statement

This explanatory statement relates to the Magistrates Court (Industrial Proceedings) Amendment Bill 2013 as introduced in the ACT Legislative Assembly.

## Overview of Bill

The Magistrates Court (Industrial Proceedings) Amendment Bill 2013 amends the *Magistrates Court Act 1930* to establish an Industrial Court jurisdiction when the Magistrates Court is constituted by the Industrial Court Magistrate and in other specific circumstances.

The Industrial Court will hear work safety matters and industrial civil claims up to \$250,000 coming before the Magistrates Court and workers' compensation matters, including arbitration matters, presently within the jurisdiction of the Magistrates Court.

The Industrial Court will have jurisdiction to hear and determine proceedings under legislation falling within the responsibility of the Minister for Workplace Safety and Industrial Relations with the exception of the Long Service Leave Acts, which do not directly relate to industrial worker compensation matters, the *Annual Leave Act 1973* and the *Truck Act 1900*, both of which are being repealed because they have been superseded by the *Fair Work Act 2009* (Cth), and the *Holidays Act 1958* and the *Standard Time and Summer Time Act 1972*, both of which do not contain any justiciable causes of action. There is provision also for other legislation to expressly confer jurisdiction on the Industrial Court.

The Industrial Court when it is sitting will also hear all industrial criminal matters currently heard in the Magistrates Court.

Industrial civil matters will be heard at first instance in the Industrial Court, and there is provision for the Court to refer matters to the Supreme Court in certain circumstances:

- where one party applies to have a matter removed to the Supreme Court, and the Industrial Court considers it appropriate to do so;
- where the parties jointly apply to have a matter removed to the Supreme Court; or
- on the own initiative of the Industrial Court, where it considers that the matter would be more appropriately dealt with in the Supreme Court.

The Chief Magistrate can declare a magistrate to be the Industrial Court Magistrate for a specified period of not more than four years and can assign a magistrate to act as Industrial Court Magistrate.

The Chief Magistrate can also assign other magistrates to exercise the jurisdiction if the Chief Magistrate is satisfied that a perception of bias may arise if the Industrial Court Magistrate were to deal with a matter or it is in the interests of justice to do so.

There is also provision for the Chief Magistrate to assign another magistrate to deal with an industrial or work safety matter if the presiding magistrate dies or becomes mentally or physically incapacitated, resigns or is otherwise unable to continue to deal with the matter.

The Chief Magistrate is responsible for allocating and ensuring the orderly and prompt discharge of the business of the Industrial Court.

There is also provision for part-heard matters to be finally decided by the same magistrate in circumstances where the Industrial Court Magistrate ceases to be the Industrial Court Magistrate.

The Bill does not disturb the jurisdiction of matters currently heard by the ACT Civil and Administrative Tribunal.

The Bill does not engage any human rights.

## *Magistrates Court (Industrial Proceedings) Amendment Bill 2013*

### **Outline of Provisions**

#### **Clause 1 - Name of Act**

This clause names the Act as the *Magistrates Court (Industrial Proceedings) Amendment Act 2013*.

#### **Clause 2 - Commencement**

This clause notes that the Act will commence on the day after it is notified in the ACT Legislation Register.

#### **Clause 3 - Legislation amended**

This clause sets out the legislation which the Act amends.

#### **Clause 4 - New chapter 4D**

This clause inserts a new chapter into the *Magistrates Court Act 1930* setting out how the Industrial Court will be constituted, its jurisdiction, including the types of matters which the Industrial Court will hear and decide, and how the Industrial Court will be managed.

New sections 291O to 291X set up the following scheme to implement the Industrial Court.

#### **Constitution of Industrial Court**

The Magistrates Court is known as the Industrial Court when it is constituted by the Industrial Court Magistrate exercising the jurisdiction to hear and decide an industrial or work safety matter under the Acts listed in section 291Q.

It will also be known as the Industrial Court when it is constituted by a magistrate assigned by the Chief Magistrate in circumstances where the Industrial Court Magistrate is unable to deal with the matter because a perception of bias may arise if the Industrial Court Magistrate were to deal with the matter. An example of when a perception of bias may arise would be in circumstances where the Industrial Court Magistrate has heard a prosecution for a breach of regulations and is subsequently asked to hear a worker's compensation case out of the same incident or set of facts, or because of the duty coroner arrangements.

The Chief Magistrate may also assign another magistrate to deal with an industrial or work safety matter if it is in the interests of justice to do so.

The Chief Magistrate may also assign another magistrate to deal with an industrial or work safety matter if a magistrate begins to deal with a matter and subsequently dies or becomes mentally or physically incapacitated, if the incapacity substantially affects the exercise of the magistrate's functions, resigns or is otherwise unable to continue to deal with the matter.

## **Jurisdiction of Industrial Court**

The Industrial Court has jurisdiction to hear and decide:

- an industrial or work safety matter under the Acts listed in section 291Q;
- a proceeding that an Act states must be heard and decided by the Industrial Court;
- a personal action at law arising from substantially the same facts that form the basis of a proceeding mentioned in the listed Acts in section 291Q (1) (a) or section 291Q (1) (b);
- any industrial or work safety offence against a person in relation to a summary offence, if the person was an adult at the time of the alleged offence;
- any industrial or work safety offence against a person in relation to an indictable offence, if the person was an adult at the time of the alleged offence;
- a proceeding in relation to bail for an adult charged with an industrial or work safety offence; and
- a proceeding in relation to a breach of a sentence imposed by the Magistrates Court for an industrial or work safety offence.

## **Management of Industrial Court**

It is the responsibility of the Chief Magistrate to allocate and manage the prompt discharge of the business of the Industrial Court, including declaring one magistrate to be the Industrial Court Magistrate for a period not longer than four years.

The Chief Magistrate may assign a magistrate to act as Industrial Court Magistrate if there is no Industrial Court Magistrate or the Industrial Court Magistrate is absent from duty or from the ACT, or is unable to exercise the functions.

There is also provision for part-heard matters to be finalised by a magistrate who ceases to be the Industrial Court Magistrate or hold an assignment.

The Industrial Court Magistrate is responsible for dealing with all matters before the Industrial Court.

Some industrial civil matters can be referred to the Supreme Court in the following circumstances:

- where one party applies to have a matter removed to the Supreme Court, and the Industrial Court considers it appropriate to do so;
- where the parties jointly apply to have a matter removed to the Supreme Court; or
- on the own initiative of the Industrial Court where it considers that the matter would be more appropriately dealt with in the Supreme Court.

## **Clause 5 - ACT and corresponding courts**

### **Schedule 2, item 1, column 2**

This clause inserts the Industrial Court into schedule 2 of the *Magistrates Court Act 1930* as an ACT and corresponding court whereby the ACT Attorney-General may enter into an arrangement with the Attorney-General of a participating

jurisdiction for the temporary transfer of judicial officers between ACT courts and corresponding courts.

**Clause 6 - Dictionary, new definitions of *industrial or work safety matter* and *industrial or work safety offence***

This clause inserts two new definitions in the dictionary.

**Schedule 1** sets out appropriate consequential amendments made to the *Court Procedures Act 2004*, *Evidence (Miscellaneous Provisions) Act 1991* and the *Legislation Act 2001*.