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**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**COURTS (FAIR WORK AND WORK SAFETY) LEGISLATION AMENDMENT  
BILL 2019**

**EXPLANATORY STATEMENT**

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**Outline**

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## **Background**

### **Fair work matters**

The *Fair Work Act 2009* (Cwlth) (FW Act) is federal legislation that covers workplace relations in Australia. The FW Act provides a safety net of minimum entitlements, enables flexible working arrangements and fairness at work, and provides protections from discrimination for employees. All employees and employers in the ACT enjoy the protection of the national system. A range of civil claims for breaches of workplace rights, including for non-payment of wages and entitlements, can be brought under the FW Act. The FW Act prescribes the courts in which applicants may apply for recovery when a civil remedy provision in the FW Act is contravened.

These claims may be initiated in the Federal Circuit Court (FCC) in its Fair Work Division (FW Act section 566). Employees and employers can also access a range of dispute resolution options for workplace disputes through the Fair Work Ombudsman (FWO) or the Fair Work Commission (FWC).

Section 539 of the FW Act also confers jurisdiction on the ACT Magistrates Court, as a prescribed eligible court under the Act, to hear applications in respect of some civil remedy contraventions. The Magistrates Court also has jurisdiction to hear applications in respect of contraventions of several civil remedy provisions outlined in the *Fair Work Regulations 2009*.

Despite the conferral of jurisdiction by the FW Act, the Magistrates Court is rarely used by parties to resolve fair work matters. Currently, the *Magistrates Court Act 1930* (MC Act) does not provide specific practices or procedures for hearing fair work matters.

The *Justice and Community Safety Legislation Amendment Act 2019*, which commenced in June 2019, inserted a note into the MC Act to confirm that the Court has jurisdiction with respect to certain fair work matters by virtue of the Commonwealth FW Act. This was intended to make it clear to the community that the Court is available as a dispute resolution option in certain employment matters.

The Territory is able (within the constraints imposed by the FW Act) to legislate with respect to the conduct of fair work matters in the Magistrates Court, which presents an opportunity to consider the practices and procedures that may be adopted to facilitate access to justice for parties.

The amendments in the Courts (Fair Work and Work Safety) Legislation Amendment Bill 2019 (the Bill) seek to facilitate the hearing of eligible fair work matters in the Magistrates Court

and to enhance its ability to deal with these matters efficiently, quickly and in a low-cost and accessible manner.

### ***Cummins v Multiplex Construction Pty Ltd***

The *Work Health and Safety Act 2011* (WHS Act) introduced model health and safety laws in the ACT. The penalties for offences in the WHS Act are constructed in a way which separates the penalties applicable to individuals from those applicable to body corporates. This penalty construction is different from the usual legislative drafting practice for penalties in the ACT. In *Cummins v Multiplex Construction Pty Ltd* (Cummins), the ACT Industrial Court highlighted that the construction of those penalties may preclude corporations charged with an offence under section 31 of the WHS Act from being committed to trial to the Supreme Court. This is because an indictable offence is defined by section 190 of the *Legislation Act 2001* as one which is punishable by 2 years or more imprisonment or is declared as an indictable offence. A corporation charged under section 31 of the WHS Act is subject to a financial penalty only as opposed to imprisonment and the offence is not declared to be indictable. The amendments in the Bill are intended to place a corporation in the same position as an individual defendant.

The amendments also clarify that a corporation charged under the WHS Act is subject to the provisions of the Confiscation of *Criminal Assets Act 2003* (COCA) in the same way as an individual. COCA defines ‘relevant offence’ and ‘serious offence’ by reference to terms of imprisonment and the separation of penalties in the WHS Act means that a corporation is not subject to a sentence of imprisonment.

### **Purpose of the Bill**

The policy objective of the Bill is to support the instigation and conduct of fair work proceedings in the Magistrates Court. The Bill also makes amendments to facilitate the trial of corporations for industrial manslaughter under the WHS Act.

The Bill makes amendments to the MC Act that:

- a) clarify that the Magistrates Court has jurisdiction to hear fair work matters under the FW Act regardless of the amount in dispute (confirming that the usual monetary limits whereby the Court only hears matters over \$25,000 and under \$250,000 do not apply);
- b) ensure that fair work matters will be heard in the Industrial Court within the Magistrates Court;
- c) provide for compulsory mediation for all fair work matters in the Magistrates Court;
- d) enable officials of industrial associations (whether the association represents employees, employers or independent contractors) to represent parties to fair work

“small claims” matters (as defined under the FW Act) with the leave of the Magistrates Court; and

- e) introduce an objects clause that provides for the timely, inexpensive and informal resolution of fair work claims in the Magistrates Court.

The Bill also makes amendments to the *ACT Civil and Administrative Tribunal Act 2008* to allow the ACT Civil and Administrative Tribunal (ACAT) to remove matters involving fair work claims to the Magistrates Court (as the ACAT has no jurisdiction to deal with such claims).

Finally, the Bill amends the following Acts to resolve issues arising from the decision of the ACT Industrial Court in Cummins:

- a) WHS Act – amendments to ensure that an offence committed by a corporation under section 31 of the WHS Act can be tried on indictment;
- b) *Crimes Act 1900* – amendments to make corporations subject to the same procedures as individuals for offences punishable summarily;
- c) MC Act - amendments to clarify that the Industrial Court can exercise the jurisdiction of the Magistrates Court when hearing criminal proceedings involving corporations; and
- d) COCA – amendments to the definitions of ‘relevant offence’ and ‘serious’ offence to ensure that where a corporation is charged with an offence under section 31 of the WHS Act, the offence can be a ‘relevant offence’ or ‘serious offence’.

These amendments commence the day after notification and are procedural in nature. As such the amendments apply prospectively to facts which may have occurred prior to the amendments (*Rodway v The Queen* (1990) 169 CLR 515, *R v Zuber* [2010] ACTSC 107).

### **Human Rights Considerations**

The purpose of these amendments is to support litigants in fair work proceedings before the Magistrates Court by providing for the timely, inexpensive and informal resolution of their claims. In particular, compulsory mediation provisions encourage the resolution of fair work matters without costly litigation, which enhances access to justice for vulnerable Canberrans.

The amendments arising from the Cummins matter allow corporations to be indicted for certain offences and to be subject to confiscation of criminal assets proceedings. These amendments do not impact individuals, such as directors or board members of corporations - they are confined to proceedings involving corporate entities. As human rights are not available to corporations, these amendments do not engage any human rights.

Broadly, the Bill engages, and places limitations on, the following *Human Rights Act 2004* (HR Act) rights:

- Section 8 – Recognition and equality before the law
- Section 13 – Freedom of movement

The Bill also engages, and supports, the following HR Act rights:

- Section 8 – Recognition and equality before the law
- Section 11 – Protection of family and children
- Section 21 – Right to a fair trial

The preamble to the HR Act notes that few rights are absolute and that they may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society. Section 28 (2) of the HR Act contains the framework that is used to determine the acceptable limitations that may be placed on human rights.

The responsibility of governments to undertake measures to protect their citizens has been discussed in European human rights jurisprudence. This responsibility has been described as the ‘doctrine of positive obligations’ which encompasses the notion that governments not only have the responsibility to ensure that human rights be free from violation, but that governments are required to provide for the full enjoyment of rights.<sup>[1]</sup> This notion has been interpreted as requiring states to put in place legislative and administrative frameworks designed to deter conduct that infringes human rights and to undertake operational measures to protect an individual who is at risk of suffering treatment that would infringe their rights<sup>[2]</sup>.

Section 28 of the HR Act requires that any limitation on a human right must be authorised by a Territory law, be based on evidence, and be reasonable to achieve a legitimate aim. Whether a limitation is reasonable depends on whether it is proportionate. Proportionality can be understood and assessed as explained in *R v Oakes*<sup>[3]</sup>. A party must show that:

*[f]irst, the measures adopted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair or based on irrational considerations. In short, they must be rationally connected to the objective. Second, the means, even if rationally connected to the objective in this first sense, should impair “as little as possible” the right or freedom in question. Third, there must be a proportionality between the effects of the measures which are responsible for limiting the Charter*

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<sup>[1]</sup> Colvin, M & Cooper, J, 2009 *Human Rights in the Investigation and Prosecution of Crime* Oxford University Press, p. 424-425.

<sup>[2]</sup> *Ibid*, p.425.

<sup>[3]</sup> [1986] 1 S.C.R. 103.

*right or freedom, and the objective which has been identified as of “sufficient importance”<sup>[4]</sup>.*

The limitations on human rights in the Bill are proportionate and justified in the circumstances because they are the least restrictive means available to achieve the purpose of protecting those who seek to bring their fair work claim to the Magistrates Court.

## **Detailed human rights discussion**

### **Rights engaged and limited**

The amendments in the Bill engage and limit the right to recognition and equality before the law because it limits the ability of those bringing fair work claims to be represented by an official of an industrial association only to small claims, and not general claims.

#### ***Section 8 – Recognition and equality before the law***

This right requires that no legislation should discriminate against an individual but formal equality may create unfair outcomes and so the **nature of the right** is not absolute. The right is engaged and limited by allowing non-legal practitioner officials of industrial associations to represent parties to fair work small claims, but not to fair work general claims.

The **purpose of the limitation** is driven by Commonwealth law as the effect of the FW Act and section 78 of the *Judiciary Act 1903* (Cwlth) is that the Territory cannot legislate to allow non-legal practitioners to appear before a Court exercising federal jurisdiction. Should the Territory legislate to allow non-practitioners to represent parties to general claims the law would conflict with federal law and as such be invalid. It is noted that under current legislative arrangements, a legal practitioner who is also an officer of an industrial association would be able to represent a member with a fair work general claim before the Court.

The **nature and extent of the limitation** is only in relation to fair work general claims – non-legal practitioners of industrial associations may represent parties in fair work small claims. The limitation is the **least restrictive possible** as it reflects the position of Commonwealth law and the principles of constitutionality. As the Territory cannot enact legislation that is inconsistent with Commonwealth law, the Territory cannot legislate to allow an officer of an industrial association to represent a party to a fair work general claim.

#### ***Section 13 – Freedom of movement***

Section 13 of the *Human Rights Act 2004* states that every individual has the right to move freely within the ACT and to enter and leave it, and the freedom to choose his or her residence in the ACT. Section 13 is modelled on Article 12 of the *International Covenant on Civil and*

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<sup>[4]</sup> *R v Oakes* [1986] 1 S.C.R. 103.

*Political Rights* (ICCPR). When commenting on the operation of Article 12 of the ICCPR,<sup>1</sup> the United Nations Human Rights Committee said that ‘all persons are entitled to move from one place to another...[t]he enjoyment of this right must not be made dependent on any particular purpose or reason for the person wanting to move or to stay in a place’.

The right to freedom of movement is limited by the power given to the registrar pursuant to section 266F(1). Under the provision, the registrar must direct parties to a fair work claim to attend a mediation at a stated time and place, if a fair work claim is instituted in the Magistrates Court.

The **purpose of the limitation** is important for the reason that an effective mediation will likely facilitate a timely and cost-effective resolution of a fair work claim, which makes seeking remedies accessible to more individual employees.

The **right is limited only** when a fair work claim is instituted, and only for a mediation to be conducted. A party to a fair work claim may choose not to attend a mediation as directed, however the Magistrates Court may nevertheless decide the claim under section 266J. The limitation is the **least restrictive possible** as it is the only means to encourage parties to a fair work claim to reach an agreement without resorting to the expensive, and often protracted process of full judicial hearings. Further, the provision does allow the registrar to dispense with mediation on the joint application of the parties to the matter.

### **Rights engaged and supported**

#### ***Section 8 – Recognition and equality before the law***

The Bill supports the *right to recognition and equality before the law* as the proposed amendments assist individuals with fair work claims to access processes which are cheaper and less time-consuming. The amendments will promote the use of the Magistrates Court as a forum to seek remedies provided under the FW Act, in addition to other existing forums, being the Federal Court and the Federal Circuit Court. This has the practical effect of facilitating individuals who are of lower income to seek lawful remedies, as the individuals will likely benefit from quick, efficient and informal processes to resolve matters.

#### ***Section 21 – Right to fair trial***

The scope of the right to a fair trial extends to all proceedings in a court or tribunal, and all stages of proceedings. It is concerned with procedural fairness, that is, the right of all parties in proceedings to be heard and respond to any allegations, and the requirement that the court be unbiased and independent. The Bill increases access to justice by facilitating the ability of applicants to seek a civil remedy under the FW Act in the ACT Magistrates Court. The Bill supports the *right to a fair trial* through several of the proposed amendments.

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<sup>1</sup> Human Rights Committee, *General Comment No 27: Freedom of movement (article 12)*, 67<sup>th</sup> sess, UN Doc CCPR/C/21/Rev 1/Add 9 (1 November 1999).



The Bill includes amendments to allow a matter that has started in the Court as a fair work small claim to be dealt with as a fair work general claim where they have been incorrectly initiated, or it becomes clear during the proceeding that the claim should be dealt with as a general claim. Similarly, the Bill contains amendments that allows the ACAT to transfer proceedings from the Tribunal to the Industrial Court where the matter involves a fair work claim. Where a matter is transferred, parties are not required to pay additional fees or complete a new application. This supports the right to a fair trial by improving access to the appropriate Court with jurisdiction to resolve the fair work matter.

Further, the amendments to introduce compulsory mediation for all fair work matters is proposed to encourage the early resolution of fair work matters. Early resolution of matters will save costs for parties and prevent lengthy litigation. This further supports the right to a fair trial as inexpensive and efficient court processes improve the accessibility of the courts system.

### ***Section 11 – Protection of family and children***

Section 11(1) of the HR Act recognises that the family is the natural and basic group unit of society and is to be protected. Section 11(2) states that all children must be protected by virtue of being children.

Establishing accessible processes for individual employees to seek remedies for the contraventions of their rights under the FW Act, including remedies for underpayment of wages, will support the general well-being of families. Employers may be deterred from underpaying employees due to the increased risk of having legal proceedings instituted against them, as seeking remedies becomes easier and cheaper. This would in turn make sure that employees are paid the lawful amount of wages at the frequency stated by law. With a stable income, employees will be able to better support their families and children.

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

## Detail

### Part 1 – Preliminary

#### Clause 1 — Name of Act

This is a technical clause that names the short title of the Act. The name of the Act will be the *Courts (Fair Work and Work Safety) Legislation Amendment Act 2019* (the Act).

#### Clause 2 — Commencement

This clause provides information about when the Bill’s provisions commence. The following provisions will commence on the day after the Act is notified:

- parts 3 and 4;
- section 14; and
- part 6.

The remaining provisions will commence on a day fixed by the Minister by written notice. If a provision has not commenced within 12 months of the Act’s notification day, it automatically commences on the first day after that period.

This clause also provides that section 79 of the *Legislation Act 2001* (Automatic commencement of postponed law) does not apply to this Act.

#### Clause 3 — Legislation amended

This clause outlines the legislation that is amended by the Act. The Act amends the following:

- *ACT Civil and Administrative Tribunal Act 2008*;
- *Confiscation of Criminal Assets Act 2003*;
- *Crimes Act 1900*;
- *Magistrates Court Act 1930*; and
- *Work Health and Safety Act 2011*.

## **Part 2 – ACT Civil and Administrative Tribunal Act 2008**

### **Clause 4 – Meaning of civil dispute and civil dispute application – Act New section 16 (2)**

This provision clarifies that a civil dispute application in the ACAT does not include fair work claims as the ACAT is not an eligible Court with jurisdiction to hear fair work matters under the FW Act.

### **Clause 5 – New division 8.1A**

This clause inserts new Division 8.1A into the *ACT Civil and Administrative Tribunal Act 2008* (ACAT Act). Division 8.1A provides for the removal of matters from the ACAT to the Magistrates Court where a fair work claim has arisen in the context of a civil dispute application. New section 82A will require the ACAT to remove the civil dispute application and the matter (defined as the combined fair work matter) to the Magistrates Court, either on its own initiative or on application by a party to the matter. This situation may arise, for example, where a debt application is before the Tribunal and the respondent makes a counterclaim for underpayment of wages, being a claim within the remit of the FW Act. This provision allows the ACAT to remove the matter in full, even where part of the matter is a civil dispute with a claim under \$25,000. This will avoid duplication of proceedings and enable the fair and efficient resolution of all issues in dispute in a single forum. Subsection 82A(4) clarifies that on removal of the combined fair work matter, the civil dispute application is taken to be finalised in the ACAT.

The removal power under new section 82A is not available where the ACAT has come to the view that a civil dispute application is, in fact, a fair work matter. In such a case, the Tribunal must dismiss the application for lack of jurisdiction.

### **Clause 6 – Dictionary, new definition of *fair work claim***

This clause inserts a definition of ‘fair work claim’ in the ACAT Act. It refers to the definition in new section 266E of the MC Act (see clause 13 below).

## **Part 3 – Confiscation of Criminal Assets Act 2003**

### **Clause 7 – Meaning of *offence* and of particular kinds of offences Section 13 (2), definition of *relevant offence*, paragraph (a)**

This clause amends the definition of ‘relevant offence’ in the COCA Act to include an offence against section 31 (1) of the WHS Act. This will ensure that where a corporation is charged with an offence that is only punishable by a financial penalty it is subject to the COCA Act provisions.

## **Clause 8 – Meaning of *offence* and of particular kinds of offences**

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

This clause inserts an offence against section 31 (1) of the WHS Act into the definition of ‘serious offence’ so that, as with clause 7, this offence will be subject to the COCA Act provisions.

## **Part 4 – Crimes Act 1900**

### **Clause 9 – Summary disposal of certain cases at prosecutor’s election**

#### **Section 374 (1)**

This clause amends section 374 (1) of the *Crimes Act 1900* (Crimes Act) to include an offence against section 31 (1) of the WHS Act. This amendment will ensure that corporations are subject to the same procedures as individuals and can be committed to the Supreme Court in certain circumstances.

### **Clause 10 – Summary disposal of certain cases**

#### **Section 375 (1), new paragraph (ba)**

As with clause 9, this clause amends section 375 (1) of the Crimes Act to include an offence against section 31 (1) of the WHS Act. This amendment will also ensure that corporations are subject to the same procedures as individuals and can be committed to the Supreme Court in certain circumstances.

## **Part 5 – Magistrates Court Act 1930**

### **Clause 11 – Personal actions at law—amount or value**

#### **Section 257 (4), new example**

This clause inserts an example into section 257 (4) of the MC Act to clarify that the Magistrates Court may order civil remedies in excess of \$250 000 for a contravention of a civil remedy provision under the *Fair Work Act 2009* (Cwlth) (FW Act).

### **Clause 12 – Civil disputes under ACT Civil and Administrative Tribunal Act**

#### **Section 266A (2), except note**

Section 266A (1) (b) provides that a civil dispute proceeding may not be started in the Magistrates Court where the amount claimed, or sought to be declared as a debt, is \$25,000 or under. New subsection (2) makes clear that the Court has jurisdiction to hear a combined fair work matter that has been removed from the ACAT to the Magistrates Court under section 82A of the ACAT Act, even where the amount in dispute is under the jurisdictional threshold.

## **Clause 13 – New part 4.2A**

This clause inserts a new part 4.2A into the MC Act to provide provisions relating to the exercise of the Court’s fair work jurisdiction. Part 4.2A includes a number of amendments that aim to clarify that the Magistrates Court has the jurisdiction conferred on it by the Commonwealth in relation to certain civil remedy provisions within the FW Act, and sets out the process for those claims to be heard in this Magistrates Court.

Five notes are included immediately under the heading for part 4.2A. The purpose of these notes is to clarify the jurisdiction conferred on the Magistrates Court (as an eligible State and Territory court) in relation to the contravention of civil penalty provisions and related matters under section 539 of the FW Act and regulation 4.01A of the *Fair Work Regulations 2009* (FW Regulation). The notes are also intended to bring parties attention to certain provisions of the FW Act relating to the small claim procedure, those who have standing to bring claims, the ability of industry officials to represent members, and the orders available to parties seeking remedy of a civil penalty.

### New Section 266C *Object of pt 4.2A*

This section outlines that the object of the new fair work provisions are to provide for the timely, inexpensive and informal resolution of fair work claims in the Magistrates Court. This aligns with the overall objective of the Bill, which is to ensure that these matters are brought before the Magistrates Court in an easy, quick, and cheap manner, insofar as is consistent with achieving justice.

### New Section 266D *Application of pt 4.2A*

This section provides that certain provisions in the MC Act do not apply for the purposes of fair work claims under part 4.2A. The provisions identified relate to the avenue available to parties wishing to appeal decisions of the Magistrates Court. Section 565 of the FW Act specifies that appeals on decisions made under the fair work jurisdiction lie with the Federal Court and as such the existing provisions of the MC Act which provide appeal rights to the Supreme Court have been disapplied.

### New Section 266E *Definitions—pt 4.2A*

This section provides definitions for the purposes of part 4.2A. It includes definitions of fair work general claim and fair work small claim to distinguish between the two procedures for bringing fair work claims before the Magistrates Court. This section also refers to the definitions of ‘civil remedy provision’ and ‘eligible State or Territory court’ in the FW Act.

The definition of fair work small claim refers to section 548 of the FW Act and FW Regulation 4.01 which make provision for certain proceedings to be dealt with as small claims proceedings. The small claims procedure has distinct features, including that the claim be under \$20,000, be for an amount described in section 548(1A), and not be seeking pecuniary penalty orders. The Court is also not bound by the rules of evidence, may act in an

informal manner and without regard to legal forms or technicalities, and may amend the papers commencing the proceedings at any stage if sufficient notice is given to any party adversely affected by the amendment. Parties may only be represented by lawyers with the leave of the Court, and the procedure also allows for representation by officers of industrial associations, with leave of the Court. Under the FW Act, an applicant who wishes to have their application heard under the small claim procedure must elect to do so, the procedure does not apply automatically.

#### New Section 266F *Fair work claim—compulsory mediation*

This section provides that mediation is compulsory for all applications made in the Magistrates Court under the FW Act.

Section 266F (1) provides that as soon as possible after a person has started a proceeding in relation to a fair work claim, and before it is heard by the court, the registrar must direct the parties to attend mediation at a stated time and place.

Section 266F (2) provides that the purpose of compulsory mediation is to achieve a timely, cost effective, proportionate and agreed resolution of the fair work claim.

Section 266F (3) provides that the registrar may decide to dispense with the requirement to undertake mediation prior to hearing on the joint application of the parties to the proceeding.

Section 266F (4) clarifies that the person conducting the mediation may make a recommendation or express an opinion during the mediation to assist the parties to achieve the purpose of the mediation.

Section 266F (5) makes clear that a failure of the registrar to direct, and the parties to attend, mediation as required under subsection (1), does not affect the validity of any order subsequently made by the court in relation to the fair work claim.

#### New Section 266G *Fair work small claim—representation by official of industrial association*

New section 266G provides that an official of an industrial association may appear in the Magistrates Court for a party to a fair work small claim, with the leave of the court. This amendment reflects FW Regulation 4.01(4)(a) which allows representation by officials of industrial associations with leave. This change will ensure that applicants in fair work small claims proceedings in the Territory are on an equal footing with applicants in other jurisdictions that allow representation by registered employer and employee organisations.

#### New Section 266H *Fair work small claim that is a fair work general claim*

New section 266H addresses circumstances in which a matter starts in the Magistrates Court as a fair work small claim, but during the proceedings the court comes to the view that it is a fair work general claim (e.g. the cumulative total of the remedy being sought is over \$20,000). The section provides that the Magistrates Court must continue the proceeding as one that is a fair work general claim. The purpose of this amendment is to allow a matter to

be continued in the Magistrates Court without requiring parties to undertake an additional application process.

New Section 266I *Combined fair work matter—procedure if removed from ACAT*

Section 266I outlines the procedure that must be followed where the ACAT has made an order under section 82A of the ACAT Act to remove a combined fair work matter to the Magistrates Court.

The section provides that the ACAT must send the court any document or thing (defined as matter material) that was before the ACAT in relation to the application. This section also clarifies that when the matter material is received by the court, the proceeding for the combined fair work matter is taken to have started on the day the matter material was received by the court.

New Section 266J *Fair Work claim—deciding or adjourning proceedings*

Section 266J provides that if a party to a fair work claim in the Magistrates Court does not attend compulsory mediation as directed by the registrar under section 266F and the court is satisfied that they have been made aware of the time and place for the mediation, the court may decide the claim, or adjourn the proceedings.

**Clause 14 – Jurisdiction of Industrial Court**

**Section 291Q (2) (a) and (b)**

This clause provides that the jurisdiction of the Industrial Court extends to criminal proceedings against corporations in relation to industrial or work safety offences. It ensures that corporations are included to address the issues raised in Cummins.

**Clause 15 – Jurisdiction of Industrial Court**

**Section 291Q (5)**

This clause provides that the Industrial Court may exercise the jurisdiction of the Magistrates Court in relation to fair work claims and to combined fair work matters referred by the ACAT under section 82A of the ACAT Act.

**Clause 16 – Dictionary, new definitions**

This clause inserts a number of new definitions in the Dictionary of the MC Act. These definitions reflect the definitions outlined in new section 266E and new section 82A of the ACAT Act.

## **Part 6 – Work Health and Safety Act 2011**

### **Clause 17 – Reckless conduct—category 1**

#### **New subsection 31 (3)**

This clause provides that an offence committed under section 31 of the WHS Act can be tried on indictment.

This ensures that corporations charged under section 31 of the WHS Act may be tried in the Supreme Court where appropriate.