

EXPOSURE DRAFT

Attorney-General

(Prepared by Parliamentary Counsel's Office)

Magistrates Court (Industrial Proceedings) Amendment Bill 2013

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 Personal actions at law—amount or value Section 257 (4), new note	2
5 New chapter 4D	3
6 ACT and corresponding courts Schedule 2, item 1, column 2	10

J2012-760

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Contents

		Page
7	Dictionary, new definitions of <i>industrial or work safety matter</i> and <i>industrial or work safety offence</i>	10
Schedule 1	Consequential amendments	11
Part 1.1	Court Procedures Act 2004	11
Part 1.2	Evidence (Miscellaneous Provisions) Act 1991	12
Part 1.3	Legislation Act 2001	12

EXPOSURE DRAFT

EXPOSURE DRAFT

Attorney-General

(Prepared by Parliamentary Counsel's Office)

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 Name of Act

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

2 Commencement

This Act commences on the day after its notification day.

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

3 Legislation amended

This Act amends the *Magistrates Court Act 1930*.

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

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

**4 Personal actions at law—amount or value
Section 257 (4), new note**

insert

Note The Industrial Court has jurisdiction to hear and decide an industrial or work safety matter and any personal action at law related to that matter, for an amount in excess of \$250 000 (see s 291Q (6)).

5 New chapter 4D*insert***Chapter 4D The Industrial Court****Part 4D.1 Preliminary****291O Definitions—ch 4D**

In this chapter:

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

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

Part 4D.2 The Industrial Court**291P Industrial Court**

- (1) The Magistrates Court is known as the Industrial Court when it is constituted by the Industrial Court Magistrate exercising the jurisdiction given under section 291Q.
- (2) The Magistrates Court is also known as the Industrial Court when it is constituted by—
 - (a) a magistrate assigned under section 291W (Assignment of other magistrates for Industrial Court matters) who is exercising the jurisdiction given under section 291Q; or
 - (b) a magistrate acting under section 291X (2) (Industrial Court—completion of part-heard matters).

EXPOSURE DRAFT

- (3) The Industrial Court may use the Magistrates Court seal.

291Q Jurisdiction of Industrial Court

- (1) The Industrial Court has jurisdiction to hear and decide the following (an *industrial or work safety matter*):
- (a) a proceeding under the following Acts:
 - (i) the *Dangerous Substances Act 2004*;
 - (ii) the *Long Service Leave Act 1976*;
 - (iii) the *Long Service Leave (Portable Schemes) Act 2009*;
 - (iv) the *Machinery Act 1949*;
 - (v) the *Scaffolding and Lifts Act 1912*;
 - (vi) the *Workers Compensation Act 1951*;
 - (vii) the *Work Health and Safety Act 2011*;
 - (b) a proceeding that an Act states must be heard and decided by the Industrial Court;
 - (c) a personal action at law arising from substantially the same facts that form the basis of a proceeding mentioned in paragraph (a) or (b) before the court.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

- (2) The Industrial Court may exercise the jurisdiction of the Magistrates Court in relation to the following:
- (a) 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;

- (b) 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;
 - (c) a proceeding in relation to bail for an adult charged with an industrial or work safety offence;
 - (d) a proceeding in relation to a breach of a sentence imposed by the Magistrates Court for an industrial or work safety offence.
- (3) Subsection (2) (b) is subject to the *Crimes Act 1900*, section 374 (Summary disposal of certain cases at prosecutor's election) and section 375 (Summary disposal of certain cases).
 - (4) Subsection (2) (c) is subject to the *Bail Act 1992*.
 - (5) The Industrial Court may exercise the jurisdiction of the Magistrates Court in relation to any industrial or work safety matter.
 - (6) However, section 257 (Personal actions at law—amount or value) does not apply to the Industrial Court when exercising the jurisdiction of the Magistrates Court in relation to a personal action at law that is an industrial or work safety matter.

Note Section 257 limits the jurisdiction of the Magistrates Court in personal actions at law, with some exceptions, to \$250 000.

- (7) This section applies—
 - (a) for a civil proceeding—to an industrial or work safety matter commenced after the commencement of the *Magistrates Court (Industrial Proceedings) Amendment Act 2013*; and
 - (b) for a criminal proceeding—to a prosecution for an industrial or work safety offence commenced after the commencement of the *Magistrates Court (Industrial Proceedings) Amendment Act 2013*.

EXPOSURE DRAFT

(8) In this section:

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

- (a) includes arbitration; but
- (b) does not include a matter that may be brought before the ACAT under the Act.

291R Chief Magistrate to arrange business of Industrial Court

- (1) The Chief Magistrate is responsible for allocating, and ensuring the orderly and prompt discharge of, the business of the Industrial Court.
- (2) The Chief Magistrate may, subject to appropriate and practicable consultation with the magistrates, make arrangements about—
 - (a) the magistrate who is to be the Industrial Court Magistrate; and
 - (b) the assignment of a magistrate under—
 - (i) section 291V (Acting Industrial Court Magistrate); or
 - (ii) section 291W (Assignment of other magistrates for Industrial Court matters).

291S Industrial Court Magistrate to hear all matters

- (1) The Industrial Court Magistrate is responsible for dealing with all matters before the Industrial Court.
- (2) Subsection (1) is subject to—
 - (a) section 291W (Assignment of other magistrates for Industrial Court matters); and
 - (b) section 291X (Industrial Court—completion of part-heard matters).

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

- (1) If a party to an industrial or work safety matter (a *matter*) applies to have the matter transferred to the Supreme Court, the Industrial Court may, if it considers it appropriate, order that the matter be transferred to the Supreme Court.
- (2) If the parties to a matter jointly apply to have the matter transferred to the Supreme Court, the Industrial Court must order that the matter be transferred to the Supreme Court.
- (3) If the Industrial Court considers that a matter would be more appropriately dealt with by the Supreme Court, the Industrial Court may order that the matter be transferred to the Supreme Court.

Part 4D.3 Industrial Court Magistrate

291U Industrial Court Magistrate

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

EXPOSURE DRAFT

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

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

291V Acting Industrial Court Magistrate

- (1) The Chief Magistrate may assign a magistrate to act as Industrial Court Magistrate only if—
- (a) there is no Industrial Court Magistrate; or
 - (b) the Industrial Court Magistrate—
 - (i) is absent from duty or from the ACT; or
 - (ii) cannot exercise the functions of the Industrial Court Magistrate for another reason.
- (2) A magistrate assigned to act as Industrial Court Magistrate is the Industrial Court Magistrate for this Act and any other Act.

291W Assignment of other magistrates for Industrial Court matters

- (1) The Chief Magistrate may assign another magistrate to deal with a matter if the Industrial Court Magistrate is unable to deal with the matter—
- (a) without delay that is likely to prejudice the wellbeing of a person; or
 - (b) because of a conflict of interest, or a perceived conflict of interest.

- (2) A magistrate may be assigned under subsection (1) (a) only if the Chief Magistrate is satisfied the assignment is necessary having regard to—
 - (a) how the delay is likely to prejudice the person’s wellbeing; and
 - (b) the degree of urgency of the matter to be dealt with by the assigned magistrate; and
 - (c) the views and wishes (if any) of the Industrial Court Magistrate on the proposed assignment.
- (3) This section does not create a right in relation to the assignment of a matter under this section.
- (4) Without limiting subsection (3), the decision to assign or not to assign a matter under this section—
 - (a) must not be challenged or called into question in any court; and
 - (b) is not subject to prohibition, mandamus or injunction in any court.
- (5) This section is in addition to, and does not limit, section 291V (Acting Industrial Court Magistrate).

291X Industrial Court—completion of part-heard matters

- (1) This section applies if—
 - (a) a magistrate begins to deal with an Industrial Court matter under this chapter; and
 - (b) before the matter is finally decided, the magistrate ceases to—
 - (i) be the Industrial Court Magistrate; or
 - (ii) hold an assignment under section 291V or section 291W.

EXPOSURE DRAFT

- (2) The magistrate may continue to deal with the matter until it is finally decided.

**6 ACT and corresponding courts
Schedule 2, item 1, column 2**

insert

Industrial Court

7 Dictionary, new definitions of *industrial or work safety matter* and *industrial or work safety offence*

insert

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

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

Schedule 1 Consequential amendments

(see s 3)

Part 1.1 Court Procedures Act 2004

[1.1] New part 7B

insert

Part 7B Procedural provisions— industrial or work safety matters

74N Industrial Court procedure

- (1) The *Magistrates Court Act 1930*, chapter 3 (Criminal proceedings), and the rules applying to criminal proceedings in the Magistrates Court, apply to the Industrial Court in relation to a criminal proceeding.
- (2) The rules applying to civil proceedings in the Magistrates Court apply to the Industrial Court in relation to any other proceeding.

EXPOSURE DRAFT

Part 1.2 Evidence (Miscellaneous Provisions) Act 1991

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

substitute

Magistrates Court includes—

- (a) the Childrens Court; and
- (b) the Industrial Court.

Part 1.3 Legislation Act 2001

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

insert

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

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 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.

EXPOSURE DRAFT