



New South Wales

Industrial Relations Amendment (Industrial Court) Act 2013 No 85

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Industrial Relations Amendment (Industrial Court) Act 2013 No 85

Act No 85, 2013

An Act to amend the *Industrial Relations Act 1996* and certain other Acts to abolish Full Benches of the Industrial Court and transfer their functions and to provide for the exchange of judicial officers between the Supreme Court and Industrial Court. [Assented to 31 October 2013]

The Legislature of New South Wales enacts:

1 Name of Act

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

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Industrial Relations Act 1996 No 17

[1] Section 151 Judicial members to constitute Commission in Court Session

Omit “a judicial member or members” from section 151 (1).

Insert instead “one of the judicial members”.

[2] Section 151B

Insert after section 151A:

151B Supreme Court Judges may act as judicial members of the Commission in Court Session

- (1) This section applies to each of the Judges of the Supreme Court (an *eligible Judge*) other than the following:
 - (a) the Chief Justice,
 - (b) the President of the Court of Appeal,
 - (c) the other Judges of Appeal,
 - (d) the Chief Judge at Common Law,
 - (e) the Chief Judge in Equity,
 - (f) an acting Judge.
- (2) An eligible Judge may act as a judicial member of the Commission in Court Session for a particular period or in relation to particular proceedings of the Commission in Court Session if:
 - (a) the Chief Justice of the Supreme Court has, at the request of the President, nominated the eligible Judge to act as a judicial member for the period or in relation to the proceedings, and
 - (b) the eligible Judge consents to acting as a judicial member for the period or in relation to the proceedings.
- (3) The following provisions apply to and in respect of an eligible Judge who acts as a judicial member of the Commission in Court Session pursuant to this section:
 - (a) the eligible Judge has, while acting as a judicial member, all the powers, authorities, privileges and immunities of a judicial member,
 - (b) the eligible Judge may attend the sittings of the Commission in Court Session for the purpose of giving judgment in, or otherwise completing, any proceedings which have been heard by the Commission in Court Session while the eligible Judge was acting as a judicial member in the proceedings even if the eligible Judge is no longer acting as a judicial member,
 - (c) the eligible Judge is not, while receiving remuneration as a Judge of the Supreme Court, entitled to remuneration for acting as a judicial member,
 - (d) any service of the eligible Judge while acting as a judicial member is taken for all purposes (including for the purposes of the *Supreme Court Act 1970* and the *Judges' Pensions Act 1953*) to be service as a Judge of the Supreme Court,
 - (e) nothing in this Act or any other law requires the eligible Judge to devote the whole of his or her time to the duties of acting as a judicial member.

- [3] **Section 153 Jurisdiction of Commission in Court Session**
Insert “Division 2 of Part 3 (Cancellation of registration) and” after “other than” in section 153 (1) (e).
- [4] **Section 153 (1) (h)**
Omit “40 or”.
- [5] **Section 153 (1) (i)**
Omit the paragraph.
- [6] **Section 153 (2)–(4)**
Omit the subsections.
- [7] **Section 155 Constitution of Commission for exercise of functions**
Omit section 155 (b). Insert instead:
(b) except in the case of the Commission in Court Session, a Full Bench of the Commission.
- [8] **Section 155 (2)**
Insert at the end of the section:
(2) However, the functions of the Commission relating to proceedings for the cancellation of the registration of industrial organisations are to be exercised by a Full Bench of the Commission constituted by 1 Presidential Member who is a judicial member and 2 other members who are Australian lawyers.
- [9] **Section 156 Full Bench of Commission**
Omit “A” from section 156 (1). Insert instead “Subject to section 155 (2), a”.
- [10] **Section 156 (1), note**
Insert at the end of the subsection:
Note. The Commission in Court Session cannot be constituted as a Full Bench, but only by one judicial member. See sections 151 and 155 (1).
- [11] **Section 156 (2)**
Omit “(other than the Commission in Court Session)”.
- [12] **Section 156 (3)**
Omit the subsection.
- [13] **Section 159 Arrangement of business**
Omit “(including constituting a Full Bench of the Commission in Court Session)” from section 159 (2).
- [14] **Section 164 Powers of Commission as to the production of evidence, perjury and contempt**
Omit section 164 (3) (including the note at the end of the subsection).
- [15] **Section 168 Criminal procedure**
Omit the note at the end of the section.

[16] Section 176 Reconstitution of Commission during hearing

Omit “or members” from section 176 (3) (a).

[17] Section 179 Finality of decisions

Omit section 179 (4). Insert instead:

- (4) This section extends to proceedings brought in a court or tribunal in respect of a purported decision of the Commission on an issue of the jurisdiction of the Commission, but does not extend to any such purported decision of the Commission in Court Session.

[18] Section 179 (6)

Omit the subsection. Insert instead:

- (6) This section is subject to the exercise of:
- (a) a right of appeal to the Full Bench of the Commission conferred by this or any other Act or law, or
 - (b) a right of appeal to the Supreme Court or the Court of Criminal Appeal conferred by this or any other Act.

[19] Section 187 Appeal to Full Bench from decision of Commission

Insert at the end of the section:

- (2) However, an appeal does not lie to a Full Bench of the Commission from a decision of the Commission in Court Session.
Note. Chapter 7A makes provision for appeals to the Supreme Court against such decisions.

[20] Section 190A Interlocutory and other matters in proceedings on appeal

Omit section 190A (2).

[21] Section 193 References by members to Full Bench

Insert after section 193 (4):

- (5) This section does not apply to a reference from a judicial member sitting as the Commission in Court Session.

[22] Section 196 Appeals from and references by members of Commission in criminal proceedings

Omit the section.

[23] Section 197 Appeals from Local Court

Omit “a Full Bench of” from section 197 (1).

[24] Section 197 (4)

Omit “Full Bench of the”.

[25] Section 197B Appeals on questions of law in relation to public sector promotional and disciplinary matters

Omit “Full Bench of the” wherever occurring.

[26] Section 197B (2) (a)

Omit “Full Bench”. Insert instead “Commission in Court Session”.

[27] Section 204 Referral of matter by State President to Federal Commission

Omit “or the Commission in Court Session” from section 204 (3).

[28] Chapter 5, Part 3 Registration of organisations

Omit the second note from the Notes at the beginning of the Part.

[29] Chapter 7A

Insert after Chapter 7:

Chapter 7A Appeals to Supreme Court

403A Appeals from decisions of Commission in Court Session

- (1) Each of the following may, subject to this Chapter, appeal to the Supreme Court against a decision of the Commission in Court Session:
 - (a) a party to the proceedings in which the decision was made,
 - (b) an industrial organisation, or an association registered under Chapter 6, affected by the decision,
 - (c) the Minister if the Minister considers that the public interest is, or is likely to be, affected by the decision,
 - (d) the President of the Anti-Discrimination Board if that President considers that the decision is inconsistent with the principles contained in the *Anti-Discrimination Act 1977*.

Note. An appeal under this Chapter is to be by way of a rehearing. See section 75A of the *Supreme Court Act 1970*.

- (2) However, an appeal does not lie to the Supreme Court under this Chapter in respect of a conviction for an offence by the Commission in Court Session.

Note. Section 5ABA of the *Criminal Appeal Act 1912* provides for appeals to the Court of Criminal Appeal in respect of convictions of persons for offences by the Commission in Court Session.

403B Appeals to Supreme Court by leave only

- (1) An appeal to the Supreme Court under this Chapter may be made only with the leave of the Supreme Court.
- (2) The Supreme Court is to grant leave to appeal if, in its opinion, the matter is of such importance that, in the public interest, leave should be granted.
- (3) The Supreme Court may deal with an application for leave to appeal separately and without conducting a hearing into the merits of the appeal.
- (4) This section does not apply to an appeal made by the Minister.

403C Time and procedure for making appeals

- (1) An appeal to the Supreme Court under this Chapter must be made within 21 days after the date of the decision appealed against or within such further time as the Supreme Court allows.
- (2) Further time may be allowed, either before or after the end of that 21-day period.

403D Stay of decision appealed against

If an appeal is made under this Chapter to the Supreme Court, the Supreme Court may, on such terms as it considers appropriate, order that the decision concerned be wholly or partly stayed pending determination of the appeal or until further order of the Supreme Court.

403E Powers on appeal

- (1) On an appeal under this Chapter, the Supreme Court may:
 - (a) confirm, quash or vary the decision of the Commission in Court Session concerned, or
 - (b) direct the Commission in Court Session to take further action under this Act to carry its decision on the appeal into effect, or
 - (c) refer the matter back to the Commission in Court Session, with such directions or recommendations as the Supreme Court considers appropriate.
- (2) The Supreme Court may determine a part of the matter and refer the remainder back to the Commission in Court Session.
- (3) The Supreme Court may direct that its decision on an appeal under this Chapter take effect as from any specified date after the lodging of the original application relating to the decision.

[30] Schedule 2 Provisions relating to members of Commission

Insert after clause 10:

10A Former members may complete unfinished matters

- (1) This clause applies to a member of the Commission (a *former member*) who ceases to hold office as a member because:
 - (a) the term of appointment for the member has expired without the member being re-appointed, or
 - (b) the member has resigned or retired from office.
- (2) A former member may, despite ceasing to hold office as a member, complete or otherwise continue to deal with any matters relating to proceedings that have been heard, or partly heard, by the former member before that cessation.
- (3) While a former member completes or otherwise continues under subclause (2) to deal with any matters relating to proceedings that have been heard or partly heard by the member before ceasing to hold office, the former member has all the entitlements and functions of a member of the same kind as he or she was and, for the purpose of those proceedings, is taken to continue to be such a member.
- (4) This clause does not apply in relation to an acting judicial member who ceases to hold office.

Note. See clause 3 (6) in relation to former acting judicial members.

[31] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

Industrial Relations Amendment (Industrial Court) Act 2013

[32] **Schedule 4**

Insert at the end of the Schedule with appropriate Part and clause numbers:

Part Provisions consequent on enactment of Industrial Relations Amendment (Industrial Court) Act 2013

Application of amendments to pending proceedings

(1) **Meaning of “pending proceedings”**

This clause applies in relation to proceedings before a Full Bench of the Commission in Court Session (*pending proceedings*) that were commenced (but not completed) by the Full Bench before the abolition day.

(2) **Heard or partly heard proceedings**

Pending proceedings that were heard, or partly heard, by a Full Bench of the Commission in Court Session before the abolition day may continue to be dealt with and determined by a Full Bench of the Commission in Court Session.

(3) The provisions of this Act and any other legislation or law that would have applied to or in respect of proceedings referred to in subclause (2) had the amending Act not been enacted continue to apply to those proceedings.

(4) **Unheard proceedings**

The following provisions apply in respect of pending proceedings that had not commenced to be heard before the abolition day:

(a) if the function of determining proceedings of the kind concerned becomes the function of the Supreme Court or the Court of Criminal Appeal on that day because of amendments made by the amending Act—the proceedings are taken, on and from that day, to have been commenced in the Supreme Court or the Court of Criminal Appeal (as the case requires) and may be heard and determined accordingly,

(b) if the function of determining proceedings of the kind concerned becomes the function of the Commission other than in Court Session on that day because of amendments made by the amending Act—the proceedings are taken, on and from that day, to have been commenced in the Commission and may be heard and determined accordingly,

(c) if the function of determining proceedings of the kind concerned becomes the function of the Commission in Court Session (constituted by a single judicial member) on that day because of amendments made by the amending Act—the proceedings are taken, on and from that day, to have been commenced in the Commission in Court Session and may be heard and determined by a single judicial member accordingly.

(5) The provisions of this Act and any other legislation (as amended by the amending Act) apply to and in respect of proceedings referred to in subclause (4).

(6) **Definitions**

In this clause:

abolition day means the day on which Schedule 1 [6] to the amending Act commences.

amending Act means the *Industrial Relations Amendment (Industrial Court) Act 2013*.

Schedule 2 Amendment of other Acts

2.1 Criminal Appeal Act 1912 No 16

[1] Section 2 Definitions

Insert after section 2 (3):

- (4) In any provisions of this Act that apply in relation to appeals in respect of a conviction of a person for an offence by the Industrial Relations Commission in Court Session:
 - (a) a reference to the Attorney General is taken to include a reference to the Minister administering the *Industrial Relations Act 1996*, and
 - (b) a reference to the Director of Public Prosecutions is taken to include a reference to the prosecutor in the proceedings before the Industrial Relations Commission in Court Session.

[2] Section 5ABA

Insert after section 5AB:

5ABA Appeal in criminal cases dealt with by Industrial Relations Commission in Court Session in its summary jurisdiction

- (1) Section 5AA applies to and in respect of a person convicted of an offence by the Industrial Relations Commission in Court Session in its summary jurisdiction in the same way as it applies to a person referred to in section 5AA (1).
- (2) For the purposes of this section, a reference in section 5AA to the Supreme Court is to be construed as including a reference to the Industrial Relations Commission in Court Session.
- (3) This section does not apply in respect of a conviction for an offence to which section 5AG applies.

[3] Section 5AE Point of law stated during summary proceedings

Insert “the Industrial Relations Commission in Court Session in its summary jurisdiction,” after “the Land and Environment Court in its summary jurisdiction,” in section 5AE (1).

[4] Section 5AG Appeal in certain OHS criminal cases dealt with by Industrial Relations Commission in Court Session

Omit section 5AG (4).

[5] Section 5BB

Insert after section 5BA:

5BB Case stated from Industrial Relations Commission in Court Session

- (1) A judicial member of the Industrial Relations Commission may submit any question of law arising on any appeal to the Industrial Relations Commission in Court Session in respect of a conviction for an offence by the Local Court coming before the judicial member to the Court of Criminal Appeal for determination, and the Court of Criminal Appeal may make any such order or give any such direction to the Industrial Relations Commission in Court Session as it thinks fit.

- (2) At the request of a person who was the appellant in an appeal referred to in subsection (1), a question of law may be submitted under that subsection to the Court of Criminal Appeal for determination even though the appeal proceedings during which the question arose have been disposed of. The question of law must be submitted not later than 28 days after the end of the appeal proceedings, or within such longer period as the Court of Criminal Appeal may allow.
- (3) The Court of Criminal Appeal may, in connection with the determination of a question of law in the circumstances referred to in subsection (2), quash any acquittal, conviction or sentence of the Industrial Relations Commission in Court Session on the appeal to the Industrial Relations Commission in Court Session.

2.2 Police Act 1990 No 47

[1] Section 178 Rules of evidence and legal formality

Omit section 178 (2).

[2] Section 179 Application of Industrial Relations Act 1996

Omit section 179 (2). Insert instead:

- (2) Proceedings under this Division are to be dealt with by a member of the Commission who is an Australian lawyer unless the President of the Commission otherwise directs under section 159 of the *Industrial Relations Act 1996*.

[3] Section 181G Application of Industrial Relations Act 1996 to reviews

Omit “judicial” from section 181G (1) (c).

[4] Section 181K

Omit the section. Insert instead:

181K Constitution of Commission for the purposes of Division 1C

- (1) A review under Division 1C is to be conducted before the Industrial Relations Commission (referred to in this Division as the *Commission*) constituted by a single member who is an Australian lawyer.
- (2) An appeal from the decision of the Commission on a review under Division 1C is to be conducted before a Full Bench of the Commission constituted by 1 Presidential Member who is a judicial member and 2 other members who are Australian lawyers.
- (3) Proceedings on a review under Division 1C, or on an appeal from the decision of the Commission on a review under Division 1C, are taken not to be proceedings of the Commission in Court Session.

2.3 Supreme Court Act 1970 No 52

[1] Section 37C

Insert after section 37B:

37C Judicial members of Industrial Relations Commission may act as Supreme Court Judges

- (1) This section applies to a judicial member of the Industrial Relations Commission (an *eligible judicial officer*), but not to an acting judicial member of that Commission.
- (2) An eligible judicial officer may act as a Judge for a particular period or in relation to particular proceedings in the Court if:
 - (a) the President of the Industrial Relations Commission has, at the request of the Chief Justice, nominated the eligible judicial officer to act as a Judge for the period or in relation to the proceedings, and
 - (b) the eligible judicial officer consents to acting as a Judge for the period or in relation to the proceedings.
- (3) The following provisions apply to and in respect of an eligible judicial officer who acts as a Judge pursuant to this section:
 - (a) the eligible judicial officer has, while acting as a Judge, all the powers, authorities, privileges and immunities of a Judge of the Supreme Court,
 - (b) the eligible judicial officer may attend the sittings of the Court for the purpose of giving judgment in, or otherwise completing, any proceedings which have been heard by the Court while the eligible judicial officer was acting as a Judge in the proceedings even if the eligible judicial officer is no longer acting as a Judge,
 - (c) the eligible judicial officer is not, while receiving remuneration as a judicial member of the Industrial Relations Commission, entitled to remuneration for acting as a Judge of the Supreme Court,
 - (d) any service of the eligible judicial officer while acting as a Judge is taken for all purposes (including for the purposes of the *Industrial Relations Act 1996* and the *Judges' Pensions Act 1953*) to be service as a judicial member of the Industrial Relations Commission,
 - (e) nothing in this Act or any other law requires the eligible judicial officer to devote the whole of his or her time to the duties of acting as a Judge of the Supreme Court.
- (4) If the eligible judicial officer holds office as the President of the Industrial Relations Commission, a reference in subsection (3) to remuneration or service as a judicial member of the Industrial Relations Commission is to be read as a reference to remuneration or service in that office.

[2] Section 48 Assignment to the Court of Appeal

Omit section 48 (1) (a) (ii). Insert instead:

- (ii) the Industrial Relations Commission in Court Session or a judicial member of the Commission,

2.4 Transport Appeal Boards Act 1980 No 104

[1] Section 23A Appeals on questions of law

Omit “the Full Bench of” wherever occurring in section 23A (1) and (2).

[2] Section 23A (2) (a)

Omit “Full Bench”. Insert instead “Commission”.

[Second reading speech made in—
Legislative Assembly on 16 October 2013
Legislative Council on 30 October 2013]