



New South Wales

# Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Bill 2009

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Industrial Relations Act 1996* and certain other legislation to confer on the Industrial Relations Commission in Court Session (otherwise known as the Industrial Court of New South Wales) the criminal and civil jurisdiction that is currently exercised by Industrial Magistrates under that legislation.

The Bill also provides that:

- (a) certain civil jurisdiction exercised by Industrial Magistrates will be retained by Local Courts sitting at various places (referred to as *designated places*) outside of the Sydney metropolitan area, and
- (b) Local Courts will cease to exercise criminal jurisdiction in relation to offences under the *Industrial Relations Act 1996*, the *Occupational Health and Safety Act 2000* and certain other industrial legislation, and
- (c) existing Industrial Magistrates will continue in office as Local Court Magistrates.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

### **Schedule 1      Amendment of Industrial Relations Act 1996**

At present under Part 1 of Chapter 7 of the *Industrial Relations Act 1996 (the Act)*, both the Industrial Court and a Local Court constituted by an Industrial Magistrate have jurisdiction in relation to breaches of industrial instruments (including ordering a person to pay a civil penalty for such a breach and granting injunctions to restrain further contraventions of industrial instruments). **Schedule 1 [6]–[10]** remove the jurisdiction of Industrial Magistrates under Part 1 of Chapter 7 so that only the Industrial Court will have jurisdiction in relation to breaches of industrial instruments. **Schedule 1 [2] and [3]** are consequential amendments.

**Schedule 1 [11]** will provide that the civil jurisdiction of a Local Court under Part 2 of Chapter 7 of the Act (which relates to orders for the recovery of remuneration and other amounts payable by employers) will be exercised by a Local Court sitting at a designated place and not by an Industrial Magistrate. **Schedule 1 [4] and [13]** are consequential amendments. The amendment made by Schedule 1 [11] does not affect the jurisdiction of the Industrial Court under Part 2 of Chapter 7 of the Act.

**Schedule 1 [12]** makes it clear that a Commissioner of the Industrial Relations Commission or a Deputy President of the Commission may undertake conciliation on behalf of the Industrial Court in relation to proceedings under Part 2 of Chapter 7 of the Act and make orders to give effect to the terms of any settlement resulting from the conciliation.

**Schedule 1 [14]** is consequential on the amendment made by Schedule 1 [11] but will also enable the Industrial Commission to refer applications for orders for the recovery of money that are made during proceedings before the Commission to Local Courts sitting at designated places.

**Schedule 1 [15]** removes provisions relating to the appointment and jurisdiction of Industrial Magistrates (including the Chief Industrial Magistrate). **Schedule 1 [1]** is a consequential amendment.

**Schedule 1 [16]** removes the criminal jurisdiction of Local Courts (whether or not constituted by an Industrial Magistrate) under the Act so that only the Industrial Court will have jurisdiction to deal with offences under the Act. **Schedule 1 [5]** is a consequential amendment. The amendment made by Schedule 1 [4] also removes the provision for appeals to be made to the Industrial Court against a conviction or penalty imposed by a Local Court for an offence under the Act.

**Schedule 1 [17]** removes a note that incorrectly refers to the application of section 179 of the *Criminal Procedure Act 1986* in relation to criminal proceedings before the Industrial Court.

**Schedule 1 [18]** specifies the designated places where a Local Court will continue to have civil jurisdiction under the Act.

**Schedule 1 [19]** enables regulations of a savings or transitional nature to be made as a consequence of the proposed Act.

**Schedule 1 [20]** contains savings and transitional provisions, including a provision confirming that a person holding office as an Industrial Magistrate (including the Chief Industrial Magistrate) immediately before the abolition of that office is entitled to hold office, without any loss of remuneration, as a Magistrate for the remainder of his or her term of appointment as an Industrial Magistrate.

## **Schedule 2      Amendment of other legislation**

**Schedule 2** contains amendments to the following Acts and regulation:

*Annual Holidays Act 1944*

*Apprenticeship and Traineeship Act 2001*

*Bail Act 1978*

*Building and Construction Industry Long Service Payments Act 1986*

*Court Security Act 2005*

*Criminal Procedure Act 1986*

*Dangerous Goods (Road and Rail Transport) Act 2008*

*Employment Protection Act 1982*

*Entertainment Industry Act 1989*

*Essential Services Act 1988*

*Industrial Relations (Child Employment) Act 2006*

*Industrial Relations (General) Regulation 2001*

*Judicial Officers Act 1986*

*Long Service Leave Act 1955*

*Occupational Health and Safety Act 2000*

*Rail Safety Act 2008*

*Shop Trading Act 2008*

*Statutory and Other Offices Remuneration Act 1975*

*Workers Compensation Act 1987*

*Workplace Injury Management and Workers Compensation Act 1998*

The amendments to these Acts and regulation generally provide for the following:

- (a) the transfer of the civil jurisdiction of Industrial Magistrates to either the Industrial Court or Local Courts sitting at designated places,
- (b) the removal of the criminal jurisdiction of Local Courts (whether or not constituted by an Industrial Magistrate) so that only the Industrial Court will have jurisdiction to deal with offences under these Acts,
- (c) amendments that are consequential on the removal of the civil and criminal jurisdiction of Industrial Magistrates and on the abolition of that office.

In particular, the amendments to the *Occupational Health and Safety Act 2000* will enable various appeals and applications for review in relation to notices and decisions of the WorkCover Authority to be made to the Industrial Court or a Local Court sitting at a designated place instead of to an Industrial Magistrate.

First print



New South Wales

# Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Bill 2009

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Industrial Relations Act 1996 No 17	3
Schedule 2 Amendment of other legislation	8





New South Wales

# Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Bill 2009

No. , 2009

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## A Bill for

An Act to amend the *Industrial Relations Act 1996* and other legislation to make further provision with respect to the jurisdiction of the Industrial Relations Commission and with respect to Industrial Magistrates; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Act 2009</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on a day or days to be appointed by proclamation.	6



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<b>Schedule 1</b>	<b>Amendment of Industrial Relations Act 1996 No 17</b>	1 2
<b>[1]</b>	<b>Section 153 Jurisdiction of Commission in Court Session</b>	3
	Omit “an Industrial Magistrate or any other” from section 153 (1) (j).	4
	Insert instead “any”.	5
<b>[2]</b>	<b>Section 162A Transfer of certain proceedings to Local Court sitting at designated place</b>	6 7
	Omit section 162A (1). Insert instead:	8
	(1) This section applies to proceedings for the recovery of money under Part 2 of Chapter 7.	9 10
<b>[3]</b>	<b>Section 162A (5), definition of “Local Court”</b>	11
	Omit “constituted by an Industrial Magistrate sitting alone”.	12
	Insert instead “sitting at a designated place as referred to in section 405A”.	13
<b>[4]</b>	<b>Section 197 Appeals from Local Court sitting at designated place</b>	14
	Omit section 197 (1) and (2). Insert instead:	15
	(1) An appeal lies to a Full Bench of the Commission in Court Session against:	16 17
	(a) any order made under this Act by a Local Court sitting at a designated place as referred to in section 405A for the payment of money, or	18 19 20
	(b) the dismissal by a Local Court sitting at any such designated place of an application for an order under this Act for the payment of money (including a dismissal on the ground that it does not have jurisdiction to deal with the application).	21 22 23 24 25
<b>[5]</b>	<b>Section 197A Appeals against acquittals in proceedings for offences against occupational health and safety legislation</b>	26 27
	Omit “or of a Local Court constituted by an Industrial or other Magistrate” from section 197A (1).	28 29
<b>[6]</b>	<b>Section 356 Definition</b>	30
	Omit the section.	31



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	Local Court dealing with those proceedings is not required to comply with subsection (1) in relation to those proceedings.	1 2
<b>[13]</b>	<b>Section 375 Recovery of amounts ordered to be paid</b>	3
	Omit “constituted by an Industrial Magistrate”.	4
<b>[14]</b>	<b>Section 380 Small claims during other Commission hearings</b>	5
	Omit section 380 (5). Insert instead:	6
	(5) The Commission may, instead of dealing with the matter:	7
	(a) remit the matter, if the Commission is not constituted as the Commission in Court Session, to the Commission in Court Session for determination, or	8 9 10
	(b) refer the matter to a Local Court sitting at a designated place as referred to in section 405A.	11 12
	(5A) If the matter is referred to a Local Court, the court may deal with the matter as if the application for an order under this Part and for the application to be dealt with under section 379 had been made to the court.	13 14 15 16
<b>[15]</b>	<b>Chapter 7, Part 3 Industrial Magistrates</b>	17
	Omit the Part.	18
<b>[16]</b>	<b>Section 397</b>	19
	Omit the section. Insert instead:	20
	<b>397 Proceedings for offences</b>	21
	Proceedings for an offence against this Act or the regulations are to be dealt with summarily before the Commission in Court Session.	22 23 24
<b>[17]</b>	<b>Section 398 Time for instituting proceedings</b>	25
	Omit the note.	26
<b>[18]</b>	<b>Section 405A</b>	27
	Insert after section 405:	28
	<b>405A Industrial relations civil jurisdiction of Local Court sitting at designated places</b>	29 30
	(1) The regulations may declare any city, town or other place to be a <i>designated place</i> for the purposes of this Act.	31 32

(2)	Until such time as regulations are made under subsection (1), the following cities or towns are taken to be designated places:	1 2
	Albury, Armidale, Batemans Bay, Bathurst, Bega, Bourke, Broken Hill, Casino, Cessnock, Cobar, Coffs Harbour, Condobolin, Cooma, Coonamble, Cootamundra, Corowa, Cowra, Deniliquin, Dubbo, East Maitland, Forbes, Glen Innes, Gosford, Goulburn, Grafton, Griffith, Gundagai, Gunnedah, Hay, Inverell, Kempsey, Leeton, Lismore, Lithgow, Maitland, Moree, Moruya, Moss Vale, Mudgee, Murwillumbah, Muswellbrook, Narrabri, Narrandera, Newcastle, Nowra, Nyngan, Orange, Parkes, Port Macquarie, Queanbeyan, Quirindi, Scone, Singleton, Tamworth, Taree, Tumut, Wagga Wagga, Walgett, Wellington, Wentworth, Wollongong, Wyalong, Yass, Young.	3 4 5 6 7 8 9 10 11 12 13 14
[19]	<b>Schedule 4 Savings, transitional and other provisions</b>	15
	Insert at the end of clause 2 (1):	16
	<i>Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Act 2009</i>	17 18
[20]	<b>Schedule 4</b>	19
	Insert at the end of the Schedule with appropriate Part and clause numbers:	20
<b>Part</b>	<b>Provisions consequent on enactment of Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Act 2009</b>	21 22 23 24
	<b>Definition</b>	25
	In this Part:	26
	<i>amending Act</i> means the <i>Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Act 2009</i> .	27 28
	<b>Consequences of abolition of office of Industrial Magistrate—section 56 of Constitution Act 1902</b>	29 30
(1)	A person who, immediately before the repeal of Part 3 of Chapter 7 of this Act by the amending Act, held office as an Industrial Magistrate under that Part is entitled (without loss of remuneration) to hold office as a Magistrate for the remainder of the term for which the person was appointed as an Industrial Magistrate.	31 32 33 34 35 36

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- (2) A reference in this clause to an Industrial Magistrate includes a reference to the Chief Industrial Magistrate. 1  
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- Application of amendments to pending proceedings** 3
- (1) Except to the extent provided by subclause (2), an amendment made by the amending Act to this or any other Act does not apply to or in respect of any proceedings commenced (but not finally determined) before the commencement of the amendment. 4  
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- (2) If, before the repeal of Part 3 of Chapter 7 by the amending Act, proceedings in relation to any matter under this or any other Act were commenced in a Local Court constituted by an Industrial Magistrate but the matter had not been determined before that repeal, the matter may continue to be dealt with and determined by a Local Court. 8  
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- (3) This clause is subject to the regulations. 14

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<b>Schedule 2</b>	<b>Amendment of other legislation</b>	1
<b>2.1</b>	<b>Annual Holidays Act 1944 No 31</b>	2
[1]	<b>Section 12 Proceedings for recovery of penalties</b>	3
	Omit “before a Local Court or” from section 12 (1).	4
[2]	<b>Section 12 (2) and (3)</b>	5
	Omit “Local Court or” wherever occurring.	6
[3]	<b>Sections 13 (1) and 14 (d)</b>	7
	Insert “sitting at a designated place as referred to in section 405A of the <i>Industrial Relations Act 1996</i> ” after “a Local Court” wherever occurring.	8 9
<b>2.2</b>	<b>Apprenticeship and Traineeship Act 2001 No 80</b>	10
[1]	<b>Section 73 Proceedings for offences</b>	11
	Omit “a Local Court constituted by a Magistrate sitting alone” from section 73 (1).	12 13
	Insert instead “the Industrial Relations Commission in Court Session”.	14
[2]	<b>Section 73, note</b>	15
	Omit the note.	16
<b>2.3</b>	<b>Bail Act 1978 No 161</b>	17
	<b>Section 4 Definitions</b>	18
	Omit “, a licensing magistrate under the <i>Liquor Act 1982</i> , a Children’s Magistrate or an industrial magistrate under the <i>Industrial Relations Act 1996</i> ” from the definition of <i>magistrate</i> in section 4 (1).	19 20 21
	Insert instead “or a Children’s Magistrate”.	22
<b>2.4</b>	<b>Building and Construction Industry Long Service Payments Act 1986 No 19</b>	23 24
[1]	<b>Section 64 Proceedings for offences</b>	25
	Omit “a Local Court” from section 64 (1).	26
	Insert instead “the Industrial Relations Commission in Court Session”.	27

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<b>[2] Section 64 (2)</b>	1
Omit the subsection.	2
<b>2.5 Court Security Act 2005 No 1</b>	3
<b>Section 4 Definitions</b>	4
Omit “(including a Local Court constituted by an Industrial Magistrate)” from paragraph (g) of the definition of <i>court</i> in section 4 (1).	5 6
<b>2.6 Criminal Procedure Act 1986 No 209</b>	7
<b>[1] Section 3 Definitions</b>	8
Omit the definition of <i>Industrial Magistrate</i> from section 3 (1).	9
<b>[2] Section 28 Application of Part and definition</b>	10
Omit “an Industrial Magistrate,” from the definition of <i>Judge</i> in section 28 (2).	11
<b>[3] Section 170 Application</b>	12
Omit section 170 (2) (c) and (2A) (d).	13
<b>[4] Section 171 Definitions</b>	14
Omit “and includes (where applicable) an Industrial Magistrate” from the definition of <i>court</i> .	15 16
<b>[5] Section 171, definition of “Magistrate”</b>	17
Omit “an Industrial Magistrate and any other”. Insert instead “any”.	18
<b>[6] Section 171, definition of “registrar”</b>	19
Omit paragraph (c).	20
<b>[7] Section 275 Definitions</b>	21
Omit “and an Industrial Magistrate” from the definition of <i>Judge</i> .	22
<b>[8] Section 312 Persons arrested under bench warrants</b>	23
Omit “and an Industrial Magistrate” from section 312 (3).	24

<b>2.7 Dangerous Goods (Road and Rail Transport) Act 2008 No 95</b>	1
<b>Sections 35 (1) (b), 36 (1) (b) and 45 (1) (b)</b>	2
Omit “constituted by an Industrial Magistrate sitting alone” wherever occurring.	3 4
Insert instead “sitting at a designated place as referred to in section 405A of the <i>Industrial Relations Act 1996</i> or the Industrial Relations Commission in Court Session”.	5 6 7
<b>2.8 Employment Protection Act 1982 No 122</b>	8
<b>Section 19 Proceedings for offences</b>	9
Omit section 19 (1) and (2). Insert instead:	10
(1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before the Industrial Relations Commission in Court Session.	11 12 13
<b>2.9 Entertainment Industry Act 1989 No 230</b>	14
<b>Section 63 Proceedings for offences</b>	15
Omit “an industrial magistrate or a Local Court” from section 63 (2).	16
Insert instead “the Industrial Relations Commission in Court Session”.	17
<b>2.10 Essential Services Act 1988 No 41</b>	18
<b>Section 31 Proceedings for offences</b>	19
Omit “a local court”.	20
Insert instead “the Industrial Relations Commission in Court Session”.	21
<b>2.11 Industrial Relations (Child Employment) Act 2006 No 96</b>	22
<b>[1] Section 3 Definitions</b>	23
Omit “constituted specially for the purposes of this Act by an Industrial Magistrate sitting alone” from paragraph (b) of the definition of <i>industrial court</i> in section 3 (1).	24 25 26
Insert instead “sitting at a designated place as referred to in section 405A of the <i>Industrial Relations Act 1996</i> ”.	27 28



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<b>[2] Section 16 Applied provisions of Industrial Relations Act 1996</b>	1
Omit “(Transfer of certain proceedings to Industrial Magistrates)” from section 16 (1) (a).	2 3
<b>[3] Section 16 (7)</b>	4
Omit “constituted by an Industrial Magistrate sitting alone”.	5
Insert instead “sitting at a designated place as referred to in section 405A of the <i>Industrial Relations Act 1996</i> ”.	6 7
<b>2.12 Industrial Relations (General) Regulation 2001</b>	8
<b>Clause 43 Industrial Magistrate—civil procedure</b>	9
Omit the clause.	10
<b>2.13 Judicial Officers Act 1986 No 100</b>	11
<b>Section 3 Definitions</b>	12
Omit “and an industrial magistrate” from the definition of <i>Magistrate</i> in section 3 (1).	13 14
<b>2.14 Long Service Leave Act 1955 No 38</b>	15
<b>[1] Section 11 Recovery of penalties</b>	16
Omit “a Local Court constituted by a Magistrate sitting alone” from section 11 (1).	17 18
Insert instead “the Industrial Relations Commission in Court Session”.	19
<b>[2] Section 11 (2)</b>	20
Omit “Local Court”. Insert instead “Industrial Relations Commission”.	21
<b>[3] Section 11 (3)</b>	22
Omit “Local Court before whom such proceedings are taken”.	23
Insert instead “Industrial Relations Commission in Court Session”.	24
<b>[4] Section 12 Recovery of long service leave pay</b>	25
Omit “constituted by a Magistrate sitting alone” from section 12 (1).	26
Insert instead “sitting at a designated place as referred to in section 405A of the <i>Industrial Relations Act 1996</i> ”.	27 28

<b>[5] Section 14 Provisions as to enforcement of orders, appeals etc</b>	1
Insert “sitting at a designated place as referred to in section 405A of the <i>Industrial Relations Act 1996</i> ” after “Local Court” in section 14 (c).	2 3
<b>2.15 Occupational Health and Safety Act 2000 No 40</b>	4
<b>[1] Sections 97 (1) and 98 (1)</b>	5
Omit “constituted by an Industrial Magistrate sitting alone” wherever occurring.	6 7
Insert instead “sitting at a designated place as referred to in section 405A of the <i>Industrial Relations Act 1996</i> or to the Industrial Relations Commission in Court Session”.	8 9 10
<b>[2] Section 97 Appeal following review</b>	11
Insert “or the Industrial Relations Commission in Court Session” after “Local Court” in section 97 (2).	12 13
<b>[3] Section 97 (2)</b>	14
Omit “the Court”. Insert instead “the Court concerned”.	15
<b>[4] Section 97 (3)</b>	16
Insert “or the Industrial Relations Commission in Court Session (as the case requires)” after “Local Court”.	17 18
<b>[5] Section 98 Application for stay of investigation or prohibition notice</b>	19
Omit “Local Court” from section 98 (2). Insert instead “Court concerned”.	20
<b>[6] Section 98 (3)</b>	21
Omit the subsection. Insert instead:	22
(3) A stay may be granted on such conditions as the Local Court or the Industrial Relations Commission in Court Session (as the case requires) considers appropriate and may be revoked or amended by the Court concerned.	23 24 25 26
<b>[7] Section 105</b>	27
Omit the section. Insert instead:	28
<b>105 Proceedings for offences</b>	29
Proceedings for an offence against this Act or the regulations are to be dealt with summarily before the Industrial Relations Commission in Court Session.	30 31 32

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<b>[8] Section 114 Orders regarding costs and expenses of investigation</b>	1
Omit section 114 (2). Insert instead:	2
(2) An order made by the Industrial Relations Commission under this section is enforceable under section 182 of the <i>Industrial Relations Act 1996</i> .	3 4 5
<b>[9] Section 116 Orders to undertake OHS projects</b>	6
Omit section 116 (3).	7
<b>[10] Section 124 Definitions</b>	8
Omit “a Local Court,” from the definition of <i>guideline judgment</i> .	9
<b>2.16 Rail Safety Act 2008 No 97</b>	10
<b>[1] Sections 123 (1), 124 (1) and 141 (1)</b>	11
Omit “constituted by an Industrial Magistrate” wherever occurring.	12
Insert instead “sitting at a designated place as referred to in section 405A of the <i>Industrial Relations Act 1996</i> or to the Industrial Relations Commission in Court Session”.	13 14 15
<b>[2] Section 123 Appeal following review</b>	16
Insert “or to the Industrial Relations Commission in Court Session” after “Local Court” in section 123 (2).	17 18
<b>[3] Section 123 (2)</b>	19
Omit “the Court”. Insert instead “the Court concerned”.	20
<b>[4] Section 123 (3)</b>	21
Insert “or the Industrial Relations Commission in Court Session (as the case requires)” after “Local Court”.	22 23
<b>[5] Sections 124 (2) and 141 (2)</b>	24
Omit “Local Court” wherever occurring. Insert instead “Court concerned”.	25
<b>[6] Section 124 Application for stay of prohibition notice</b>	26
Omit section 124 (3). Insert instead:	27
(3) A stay may be granted on such conditions as the Local Court or the Industrial Relations Commission in Court Session (as the case requires) considers appropriate and may be revoked or amended by the Court concerned.	28 29 30 31

<b>2.17 Shop Trading Act 2008 No 49</b>	1
<b>Section 16 Proceedings for offences</b>	2
Insert “before the Industrial Relations Commission in Court Session” after “summarily”.	3 4
<b>2.18 Statutory and Other Offices Remuneration Act 1975 (1976 No 4)</b>	5 6
<b>Schedule 1 Public Offices</b>	7
Omit the matter relating to the office of Chief Industrial Magistrate.	8
<b>2.19 Workers Compensation Act 1987 No 70</b>	9
<b>[1] Section 58 Refund of weekly payments paid after return to work etc</b>	10
Omit section 58 (9).	11
<b>[2] Section 156 Recovery of double premiums for contravention of insurance requirements</b>	12 13
Omit section 156 (7).	14
<b>[3] Section 175 Employers evading payment of correct premiums</b>	15
Omit section 175 (7B).	16
<b>2.20 Workplace Injury Management and Workers Compensation Act 1998 No 86</b>	17 18
<b>Section 245</b>	19
Omit the section. Insert instead:	20
<b>245 Proceedings for offences</b>	21
(1) Proceedings for an offence against this Act, the 1987 Act or the regulations under those Acts are to be dealt with summarily before the Industrial Relations Commission in Court Session.	22 23 24

Industrial Relations Amendment (Jurisdiction of Industrial Relations  
Commission) Bill 2009

Amendment of other legislation

Schedule 2

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- (2) Any such proceedings may be instituted by (but not only by) the  
Authority.

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