

Industrial Relations Amendment (Industrial Court) Act 2016 No 48

[2016-48]



New South Wales

Status Information

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Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Note**

Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

Authorisation

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Industrial Relations Amendment (Industrial Court) Act 2016 No 48



New South Wales

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Industrial Relations Amendment (Industrial Court) Act 2016 No 48



New South Wales

An Act to amend the *Industrial Relations Act 1996* and certain other legislation to abolish the Industrial Court and transfer its functions and reconstitute the Industrial Relations Commission; to repeal and amend certain legislation consequentially; and for other purposes.

1 Name of Act

This Act is the *Industrial Relations Amendment (Industrial Court) Act 2016*.

2 Commencement

(1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).

(2) Schedule 1 [115]-[117] commence on the date of assent to this Act.

Schedule 1 Amendment of *Industrial Relations Act 1996 No 17*

[1] Section 15 Commencement of award

Omit “a Presidential Member” from the note at the end of the section.

Insert instead “the Chief Commissioner”.

[2] Section 91 Interpretation

Omit “President of the Commission” from the definition of **approved form** in section 91 (1).

Insert instead “Chief Commissioner”.

[3] Chapter 2, Part 9 Unfair contracts

Omit “Commission” wherever occurring (except sections 105 and 109).

Insert instead “Supreme Court”.

[4] Section 105 Definitions

Omit the note at the end of the section.

[5] Section 109

Omit the section. Insert instead:

109 Supreme Court may refer applications to Commission for conciliation

- (1) If the Supreme Court considers it appropriate to do so, it is to refer an application to the Commission for conciliation within the period (if any) that it may order.
- (2) The Chief Commissioner must, if satisfied that all reasonable attempts have been made to settle the matter but have been unsuccessful, issue a certificate to that effect to the parties to the application and the Principal Registrar of the Supreme Court.
- (3) If a certificate has been issued under subsection (2), the Supreme Court is to determine the application in accordance with this Act.
- (4) However, if the application is settled by conciliation, the Supreme Court may:
 - (a) dismiss the application, or
 - (b) make an order on the agreed terms of the settlement.

[6] Section 135 Arbitration after attempted conciliation

Omit “President of the Commission” and “constituted by the President” from section 135 (3).

Insert instead “Chief Commissioner” and “constituted by the Chief Commissioner”, respectively.

[7] Section 139 Contravention of dispute order

Omit “Commission” wherever occurring (except the note). Insert instead “Supreme Court”.

[8] Section 139

Omit the note at the end of the section.

[9] Section 146 General functions of Commission

Omit the second sentence of section 146 (2).

[10] Section 146C Commission to give effect to certain aspects of government policy on

public sector employment

Omit section 146C (5).

[11] Section 146D Commission has no jurisdiction in respect of death and disability payments for police officers

Omit section 146D (6).

[12] Section 147

Omit the section. Insert instead:

147 Constitution of Commission

The Commission consists of the following members:

- (a) a Chief Commissioner,
- (b) Commissioners.

[13] Section 148 Appointment of members of the Commission

Insert at the end of the section:

- (2) A person is not eligible to be appointed as the Chief Commissioner unless the person is:
 - (a) a person who holds or has held a judicial office of this State or of the Commonwealth, another State or a Territory, or
 - (b) an Australian lawyer.

[14] Section 149 Judicial members

Omit the section.

[15] Section 150 Provisions relating to members of Commission

Omit “(including judicial members)” and the note to the section.

[16] Chapter 4, Part 3 The Commission in Court Session

Omit the Part.

[17] Section 155 Constitution of Commission for exercise of functions

Omit “except in the case of the Commission in Court Session,” from section 155 (1) (b).

[18] Section 155 (2)

Omit the subsection.

[19] Section 156 Full Bench of Commission

Omit "Subject to section 155 (2), a" and "President" from section 156 (1).

Insert instead "A" and "Chief Commissioner", respectively.

[20] Section 156 (1), note

Omit the note.

[21] Section 156 (2)

Omit the subsection.

[22] Section 157 Regional matters

Omit "President of the Commission" wherever occurring in section 157 (1) and (2).

Insert instead "Chief Commissioner".

[23] Section 157 (2)

Omit "that the President". Insert instead "that the Chief Commissioner".

[24] Section 157 (3)

Omit ", and a regional office of the Industrial Registry must be established in,".

[25] Section 158 Matters relating to general award review or discrimination in workplace

Omit "President of the Commission", "Deputy Presidents" and "Deputy President" wherever occurring.

Insert instead "Chief Commissioner", "Commissioners" and "Commissioner", respectively.

[26] Section 159 Arrangement of business

Omit "President of the Commission" from section 159 (1).

Insert instead "Chief Commissioner".

[27] Section 159 (2)

Omit the subsection.

[28] Section 160

Omit the section. Insert instead:

160 Delegation by Chief Commissioner

The Chief Commissioner may delegate to a Commissioner any of the functions of the Chief Commissioner, other than this power of delegation.

[29] Section 161 Annual report

Omit “President of the Commission”. Insert instead “Chief Commissioner”.

[30] Section 162 Procedure generally

Omit “(except when it is in Court Session)” from section 162 (2) (i).

[31] Section 162A Transfer of certain proceedings to Industrial Magistrates

Omit section 162A (2) and (3). Insert instead:

- (2) If any proceedings to which this section applies have been instituted in or before the Supreme Court, but the hearing of the matter has not been commenced, the Chief Justice or another Judge of the Supreme Court may order the transfer of the proceedings to the Local Court to be dealt with by the Local Court.
- (3) The Chief Justice or Judge of the Supreme Court is not to make an order under this section unless:
 - (a) the Chief Justice or Judge is satisfied that the proceedings concerned should have been instituted in the Local Court because of the nature of the proceedings, or
 - (b) the Local Court has jurisdiction to deal with the proceedings.

[32] Section 162B Exercise of Commission’s functions by Industrial Registrar and Registry officers

Omit “President” from section 162B (1). Insert instead “Chief Commissioner”.

[33] Section 163 Rules of evidence and legal formality

Omit section 163 (2).

[34] Section 164 Powers of Commission as to the production of evidence and perjury

Omit section 164 (2). Insert at the end of the section:

Note—

See also sections 180 (Contempt of Commission—offence) and 355D (Proceedings for contempt of Commission).

[35] Section 164A Powers of Commission as to the disclosure of matters before the

Commission

Omit section 164A (2) and (5).

[36] Section 164A (3)

Omit “(other than in Court Session)”.

[37] Section 168 Criminal procedure

Omit the section.

[38] Section 169 Anti-discrimination matters

Omit section 169 (5).

[39] Section 172 Power to order secret ballot

Omit section 172 (8).

[40] Section 176 Reconstitution of Commission during hearing

Omit “President of the Commission” from section 176 (1).

Insert instead “Chief Commissioner”.

[41] Section 176 (1)

Omit the second sentence.

[42] Section 176 (3) and (4)

Omit the subsections.

[43] Section 178 Commission divided in opinion

Omit section 178 (2). Insert instead:

(2) If the members are equally divided in their opinion, the opinion that prevails is:

- (a) the opinion of the Chief Commissioner if the Chief Commissioner is sitting, or
- (b) if the Chief Commissioner is not sitting—the opinion of the senior member of the Commission sitting.

[44] Sections 178A and 178B

Insert after section 178:

178A Reference of questions of law to Supreme Court

- (1) The Commission may, of its own motion or at the request of a party, refer a question of law arising in the proceedings to the Supreme Court for the opinion of the Court.
- (2) The Commission may refer a question of law under this section only if the Chief Commissioner has consented in writing to the question being referred.
- (3) The Supreme Court has jurisdiction to hear and determine any question of law referred to it under this section, but may decline to exercise that jurisdiction if it considers it appropriate to do so.
- (4) If a question of law arising in proceedings has been referred to the Supreme Court under this section, the Commission is not:
 - (a) to give a decision in the proceedings to which the question is relevant while the reference is pending, or
 - (b) to proceed in a manner, or make a decision, that is inconsistent with the opinion of the Supreme Court on the question.
- (5) Subsection (4) extends to a Full Bench of the Commission that is determining an appeal from a decision of the Commission in proceedings before which a question of law has been referred by the Commission at first instance to the Supreme Court under this section.

178B Transfer of proceedings from Commission to Supreme Court

- (1) The Supreme Court may, on application or of its own motion, order that proceedings before the Commission be transferred to the Court if it is satisfied that the Court (and not the Commission) has jurisdiction to deal with the proceedings.
- (2) An application may be made under subsection (1) by a party to proceedings before the Commission or proceedings before the Supreme Court (including proceedings under section 178A).
- (3) The Supreme Court may make such other orders as it considers necessary to facilitate the transfer of the proceedings (including orders that continue or preserve the effect of matters already done in or for the proceedings in the Commission).

[45] Section 179 Finality of decisions

Omit “, but does not extend to any such purported decision of the Commission in Court Session” from section 179 (4).

[46] Section 180 Contempt of Commission—offence

Omit section 180 (3).

[47] Section 181 Costs

Omit “when it is not in Court Session” from section 181 (2).

[48] Section 181 (3)

Omit the subsection.

[49] Section 182 Recovery of amounts ordered to be paid

Omit “, but not including a criminal or civil penalty” from section 182 (1).

[50] Section 185 Rules of Commission

Omit section 185 (4).

[51] Section 185A Practice notes

Omit “President” from section 185A (1). Insert instead “Chief Commissioner”.

[52] Section 185A (1)

Omit the note.

[53] Section 186 Establishment and procedure of the Rule Committee of the Commission

Omit “President of the Commission” wherever occurring.

Insert instead “Chief Commissioner”.

[54] Section 186 (1) (b)

Omit the paragraph. Insert instead:

(b) 2 Commissioners appointed by the Chief Commissioner.

[55] Section 186 (4) (b)

Omit “President” wherever occurring. Insert instead “Chief Commissioner”.

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

Omit section 187 (2) (including the note).

[57] Section 189 Time and procedure for making appeals

Omit “a Presidential Member” from section 189 (1).

Insert instead “the Chief Commissioner (or a Commissioner nominated by the Chief Commissioner)”.

[58] Section 190 Stay of decision appealed against

Omit “a Presidential Member”.

Insert instead “the Chief Commissioner (or a Commissioner nominated by the Chief Commissioner)”.

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

Omit “President” wherever occurring in section 190A (1).

Insert instead “Chief Commissioner”.

[60] Section 193 References by members to Full Bench

Omit “President” wherever occurring in section 193 (1) and (2).

Insert instead “Chief Commissioner”.

[61] Section 193 (5)

Omit the subsection.

[62] Section 195 Reference by, or removal from, Industrial Registrar to Commission

Omit “President” wherever occurring. Insert instead “Chief Commissioner”.

[63] Section 197 Appeals from Local Court

Omit “Commission in Court Session” wherever occurring in section 197 (1) and (4).

Insert instead “Supreme Court”.

[64] Section 197 (5)

Omit the subsection. Insert instead:

- (5) Section 179 (Finality of decisions) applies to a decision or purported decision of the Local Court in proceedings to which this section applies in the same way as it applies to a decision or purported decision of the Commission.

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

Omit “Commission in Court Session” wherever occurring. Insert instead “Supreme Court”.

[66] Section 198 Establishment of Industrial Committees

Omit “a Presidential Member” from section 198 (1).

Insert instead “the Chief Commissioner”.

[67] Section 199 Functions of Industrial Committee

Omit “President of the Commission” from section 199 (2) (a).

Insert instead “Chief Commissioner”.

[68] Section 199 (5)

Omit the subsection.

[69] Section 200 Duration and dissolution of Industrial Committees

Omit “a Presidential Member” wherever occurring in section 200 (2) and (3).

Insert instead “the Chief Commissioner”.

[70] Section 202 Definitions

Omit “the President” from the definition of ***State President***.

Insert instead “the Chief Commissioner”.

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

Omit section 204 (5).

[72] Section 206 Dual Federal and State appointments of members

Omit the definition of ***member of the State Commission*** from section 206 (6).

[73] Chapter 5 Industrial organisations

Omit “Commission” wherever occurring in Parts 3, 4 (except Division 3) and 5 of Chapter 5.

Insert instead “Supreme Court”.

[74] Section 231A

Insert after section 231:

231A Notification of cancellation proceedings and decisions

The Principal Registrar of the Supreme Court must notify the Industrial Registrar about each of the following:

- (a) that an application for the cancellation of the registration of an industrial organisation has been filed with the Supreme Court,
- (b) that the Supreme Court has cancelled the registration of an industrial organisation.

[75] Section 233 Application of Part to State organisations

Omit the note to the section.

[76] Section 318 Commencement of determination

Omit “a Presidential Member” from the note at the end of the section.

Insert instead “the Chief Commissioner (or a Commissioner nominated by the Chief Commissioner)”.

[77] Section 334 Cancellation of registration

Omit “The Commission in Court Session” and “the Commission” wherever occurring.

Insert instead “A Full Bench of the Commission” and “the Full Bench”, respectively.

[78] Section 338 Withdrawal or cancellation of registration

Omit “The Commission in Court Session” and “the Commission” wherever occurring.

Insert instead “The Supreme Court” and “the Supreme Court”, respectively.

[79] Section 347 Contract of Carriage Tribunal

Omit section 347 (2) and (3). Insert instead:

- (2) Except as provided by subsection (3), the Tribunal is constituted by a member of the Commission sitting alone.
- (3) In the case of arbitration proceedings under this Part, the Tribunal is, for the purposes of the proceedings, constituted by a member of the Commission and 2 part-time members nominated by the member of the Commission, one from each of the arbitration panels.

[80] Section 347 (8) (b)

Omit “Presidential member”. Insert instead “member of the Commission”.

[81] Section 348 Compulsory conference with respect to claims

Omit “President of the Commission” wherever occurring in section 348 (4) and (5).

Insert instead “Chief Commissioner”.

[82] Section 348 (5)

Omit “Presidential Member”. Insert instead “member of the Commission”.

[83] Section 351 General procedure and powers of Tribunal

Omit “other than in Court Session” from section 351 (1).

[84] Section 352 Voting by members of Tribunal

Omit “Presidential Member” wherever occurring in section 352 (3).

Insert instead “member of the Commission”.

[85] Section 353 Costs

Omit “Presidential Member” from section 353 (2).

Insert instead “member of the Commission”.

[86] Chapter 6A

Insert after Chapter 6:

Chapter 6A Industrial proceedings before Supreme Court

355A Definitions

In this Chapter:

industrial legislation means any of the following:

- (a) this Act,
- (b) the *Annual Holidays Act 1944*,
- (c) the *Coal and Oil Shale Mine Workers (Superannuation) Act 1941*,
- (d) the *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010*,
- (e) the *Employment Protection Act 1982*,
- (f) the *Entertainment Industry Act 2013*,
- (g) the *Health Services Act 1997*,
- (h) the *Industrial Relations (Child Employment) Act 2006*,
- (i) the *Long Service Leave Act 1955*,
- (j) the *Long Service Leave (Metalliferous Mining Industry) Act 1963*,

- (k) the *Superannuation Administration Act 1996*,
- (l) a statutory rule under any of those Acts.

industrial proceedings means proceedings before the Supreme Court for the exercise of its functions under any industrial legislation.

355B Jurisdiction of Supreme Court

The Supreme Court has jurisdiction over the following proceedings:

- (a) proceedings for an offence against any industrial legislation (including proceedings for contempt of the Commission),
- (b) proceedings under Part 9 of Chapter 2 (Unfair contracts),
- (c) proceedings under section 139 (Contravention of dispute order),
- (d) proceedings under section 197B (Appeals on questions of law in relation to public sector promotional and disciplinary matters),
- (e) proceedings under Parts 3, 4 and 5 of Chapter 5 (which deal with the registration and regulation of industrial organisations), other than Division 3 of Part 4 (Election of officers),
- (f) proceedings for declarations of right under section 355C (Declaratory jurisdiction),
- (g) proceedings under Part 1 of Chapter 7 (Breach of industrial instruments),
- (h) proceedings for the recovery of money under Part 2 of Chapter 7 (other than small claims under section 380),
- (i) proceedings on a superannuation appeal under section 88 of the *Superannuation Administration Act 1996*,
- (j) proceedings on an appeal or case stated under any industrial legislation from an Industrial Magistrate or any other court,
- (k) any other industrial proceedings.

355C Declaratory jurisdiction

- (1) The Supreme Court may make binding declarations of right in relation to a matter in which the Commission (however constituted) has jurisdiction. The Supreme Court may do so, whether or not any consequential relief is or could be claimed.
- (2) Proceedings before the Supreme Court are not open to objection on the ground

that a declaration of right only is sought.

- (3) This section does not limit any jurisdiction or power that the Supreme Court has apart from this section to make binding declarations of right.

Note—

See, for example, section 75 of the *Supreme Court Act 1970*.

355D Proceedings for contempt of Commission

- (1) If it is alleged, or appears to the Commission on its own view, that a person is guilty of contempt of the Commission, the Commission may refer the matter to the Supreme Court for determination.
- (2) For the purposes of subsection (1), conduct is contempt only if the same conduct in relation to the Supreme Court would be a contempt of the Supreme Court.
- (3) The Supreme Court is to dispose of any matter referred to it under this section in the manner it considers appropriate.
- (4) Conduct may be punished as a contempt of the Commission even though it could be punished as an offence against section 180.
- (5) However, a person is not liable to be punished twice if the person's conduct constitutes both an offence against section 180 and a contempt of the Commission.

355E Special provisions applicable to industrial proceedings

- (1) Each of the following provisions apply in relation to industrial proceedings as if references to the Commission were references to the Supreme Court:
- (a) section 167 (Intervention by Minister, ADB and State peak council),
 - (b) section 169 (1)–(3) (Anti-discrimination matters),
 - (c) section 181A (Obligation to disclose costs to clients and Commission).
- (2) Unless it determines that it is not appropriate to do so, the Supreme Court must take into account the public interest in the exercise of its functions in industrial proceedings and, for that purpose, must have regard to:
- (a) the objects of this Act, and
 - (b) the state of the economy of New South Wales and the likely effect of its decisions on that economy.
- (3) The Supreme Court may not award costs in proceedings for a contravention of a

dispute order or in proceedings under Division 2 of Part 4 of Chapter 5 (which deals with rules of industrial organisations).

- (4) The Supreme Court may, on the application of a party to industrial proceedings, grant leave for the party to be represented by an agent who is not an Australian legal practitioner if it considers it appropriate to do so.
- (5) This section applies despite anything to the contrary in the [Supreme Court Act 1970](#) or the [Civil Procedure Act 2005](#) (or the statutory rules under either of those Acts).
- (6) In this section:
industrial proceedings do not include:
 - (a) proceedings for an offence against any industrial legislation, or
 - (b) proceedings before the Court of Appeal for a judicial review of, or on an appeal against, a judgment, order, opinion, direction, determination or other decision of the Supreme Court in a Division in exercise (or purported exercise) of a function under any industrial legislation, or
 - (c) proceedings of a kind excluded by the regulations.

[87] Section 356 Definition

Omit “Commission in Court Session” from paragraph (a) of the definition of ***industrial court***.

Insert instead “Supreme Court”.

[88] Section 359 Injunction to restrain further contraventions of industrial instruments

Omit “Commission in Court Session”, “the Commission’s” and “the Commission”.

Insert instead “Supreme Court”, “the Supreme Court’s” and “the Supreme Court”, respectively.

[89] Section 364 Definitions

Omit “Commission in Court Session” from paragraph (a) of the definition of ***industrial court*** in section 364 (1).

Insert instead “Supreme Court”.

[90] Section 364 (1), definition of “industrial court”

Omit “, whether or not in Court Session” from paragraph (b).

[91] Section 371 Conciliation to be attempted before order made

Omit section 371 (1). Insert instead:

- (1) The industrial court is not to make an order under this Part until:
 - (a) for proceedings before the Supreme Court—the parties to the application for the order satisfy the Court that they unsuccessfully attempted to settle the matter by means of a conciliation conducted by the Commission, or
 - (b) for proceedings before another industrial court—the court has brought, or has used its best endeavours to bring, the parties to the application for the order to a settlement acceptable to those parties.

[92] Section 380 Small claims during other Commission hearings

Omit “even though it is not constituted as the Commission in Court Session” from section 380 (4).

[93] Section 397

Omit the section. Insert instead:

397 Nature of proceedings for offences

- (1) Proceedings for an offence against this Act or the regulations may be dealt with:
 - (a) summarily before the Local Court, or
 - (b) summarily before the Supreme Court in its summary jurisdiction.
- (2) However, proceedings for an offence against section 180 may only be dealt with by the Supreme Court.
- (3) If proceedings are brought in the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 100 penalty units, despite any higher maximum monetary penalty provided in respect of the offence.

[94] Section 399 Authority to prosecute

Omit section 399 (4).

[95] Section 402 Recovery of penalty by appointment of receiver

Omit “Commission in Court Session” and “the Commission” wherever occurring in section 402 (4) and (5) (a).

Insert instead “Supreme Court” and “the Supreme Court”, respectively.

[96] Chapter 7A Appeals to Supreme Court

Omit the Chapter.

[97] Schedule 2 Provisions relating to members of Commission

Omit clause 1. Insert instead:

1 Acting Chief Commissioner

- (1) The Minister may appoint a member of the Commission (including an Acting Commissioner) to be Acting Chief Commissioner during the absence from duty of the Chief Commissioner.
- (2) The next most senior Commissioner is the Acting Chief Commissioner during the absence from duty of the Chief Commissioner if:
 - (a) an Acting Chief Commissioner has not been appointed under subclause (1),
or
 - (b) a Commissioner appointed as Acting Chief Commissioner under subclause (1) is absent from duty.
- (3) An Acting Chief Commissioner has the functions of the Chief Commissioner and anything done by an Acting Chief Commissioner in the exercise of those functions has effect as if it had been done by the Chief Commissioner.
- (4) In this clause, absence from duty includes a vacancy in the office of Chief Commissioner (whether at the time the office is first created or subsequently).

[98] Schedule 2, clause 2

Omit the clause. Insert instead:

2 Acting Commissioners

- (1) The Governor may, by commission under the public seal of the State, appoint as an Acting Commissioner a person qualified for appointment as such if satisfied that the additional member is necessary to enable the Commission to exercise its functions effectively during the period of the appointment.
- (2) The person's appointment is for the period (not exceeding 12 months) specified in the person's commission.
- (3) A retired member of the Commission may be appointed as an Acting Commissioner even though the retired member has reached the age of 65 years (or will have reached that age before the appointment expires), but may not be

appointed for any period that extends beyond the day on which he or she reaches the age of 72 years.

- (4) An Acting Commissioner has the functions of, and is taken to be, a Commissioner, subject to any conditions or limitations as are specified in the Acting Commissioner's commission.
- (5) The person so appointed may, despite the expiration of the period of the person's appointment, complete or otherwise continue to deal with any matters relating to proceedings that have been heard, or partly heard, by the person before the expiration of that period.

[99] Schedule 2, clauses 3, 4 and 7

Omit the clauses.

[100] Schedule 2, clause 5 Age of members

Omit “, unless the person is or is to be appointed as a judicial member” from clause 5 (1).

[101] Schedule 2, clause 6

Omit “(including judicial members)”.

[102] Schedule 2, clause 8

Omit the clause. Insert instead:

8 Protection and immunities of members

A member of the Commission has the same protection and immunities as a Judge of the Supreme Court.

[103] Schedule 2, clause 9 Remuneration of members

Omit “(other than a member who is also a judicial member)” from clause 9 (1).

[104] Schedule 2, clause 9 (2)

Omit the subclause.

[105] Schedule 2, clause 10 (1)

Omit “(including a judicial member)”.

[106] Schedule 2, clause 10 (1A)

Omit “who is not a judicial member”.

[107] Schedule 2, clause 10 (1A)

Omit “the removal from office of judicial members”.

Insert instead “removal from judicial office”.

[108] Schedule 2, clause 10 (2)

Omit the subclause.

[109] Schedule 2, clause 10A (3A)

Omit the subclause.

[110] Schedule 2, clause 10A (4)

Omit the subclause and the note.

[111] Schedule 2, clause 11 (1) (a)-(c)

Omit the paragraphs. Insert instead:

(a) the Chief Commissioner,

[112] Schedule 2, clause 12 (2)

Omit “President” wherever occurring. Insert instead “Chief Commissioner”.

[113] Schedule 2, clause 12 (3)

Omit the subclause.

[114] Schedule 3 Provisions relating to members and procedure of Industrial Committees

Omit “other than in Court Session” from clause 8 (1).

[115] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

any other Act that amends this Act

[116] Schedule 4, clause 2 (3)

Omit “in the Gazette”. Insert instead “on the NSW legislation website”.

[117] Schedule 4

Insert after Part 17:

Part 18 Provisions relating to Industrial Relations Amendment (Industrial Court) Act 2016

Division 1 Interpretation

60 Definitions

In this Part:

abolition day means the day on which Part 3 of Chapter 4 is repealed by the amending Act.

amending Act means the *Industrial Relations Amendment (Industrial Court) Act 2016*.

Deputy President of the Commission has the same meaning as it had immediately before the abolition day.

Industrial Court means the Industrial Court of New South Wales as referred to in section 151A immediately before the abolition day (also referred to in this Act as the Commission in Court Session).

judicial member has the same meaning as it had immediately before the abolition day.

President of the Commission has the same meaning as it had immediately before the abolition day.

Vice-President of the Commission has the same meaning as it had immediately before the abolition day.

Division 2 Industrial Court

61 Abolition of Industrial Court

- (1) The Industrial Court is abolished on the abolition day.
- (2) The abolition of the Industrial Court does not affect the continuation in existence of the Commission (except when constituted as the Industrial Court).

62 Judicial member to become Judge of Supreme Court on abolition day

- (1) On the abolition day, a person holding office as a judicial member immediately before that day ceases to hold that office and is, by this clause, appointed as a Judge of the Supreme Court (without the need for a commission to be issued).
- (2) Subclause (1) does not extend to a Judge of the Supreme Court who is acting as a judicial member under section 151B (Supreme Court Judges may act as judicial

members of the Commission in Court Session) immediately before the abolition day.

- (3) A judicial member appointed by this clause as a Judge of the Supreme Court:
 - (a) is to have seniority, rank and precedence as a Judge of the Supreme Court as if the date of the person's commission as a Judge of the Supreme Court were the date of the person's commission as a judicial member of the Commission, and
 - (b) if the judicial member was also the President of the Commission—is to continue to be entitled to the same remuneration as the person received as President immediately before the abolition day until such time as the remuneration of a puisne Judge of the Supreme Court exceeds that remuneration.
- (4) Service as a judicial member by a person appointed by this clause as a Judge of the Supreme Court is to be 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.
- (5) The Governor may, on the recommendation of the Attorney General, issue an appropriate commission under the public seal of the State to a person who is to be (or has been) appointed by this clause as a Judge of the Supreme Court.
- (6) The Attorney General is to make a recommendation under subclause (5) as soon as practicable after the publication of a proclamation under the amending Act that specifies the commencement date for the repeal of Part 3 of Chapter 4 of this Act.
- (7) A commission may be issued under this clause before the abolition day, but must state that the person's appointment takes effect on the day that is the abolition day.
- (8) This clause does not limit the application of section 8 of the *Oaths Act 1900* to a person appointed by this clause as a Judge of the Supreme Court.

Note—

Section 8 of the *Oaths Act 1900* requires a Judge of the Supreme Court to take the oath of allegiance and the judicial oath.

- (9) Nothing in this clause prevents a person being appointed as a judicial officer of a different court or to a different office in the Supreme Court.

Division 3 Reconstitution of Commission

63 Renaming and abolition of certain offices

- (1) On the abolition day:
 - (a) the office of President of the Commission is abolished and replaced with the office of Chief Commissioner, and
 - (b) the office of Vice-President of the Commission is abolished, and
 - (c) the office of Deputy President of the Commission is abolished, and
 - (d) the office of judicial member is abolished.
- (2) A person who, immediately before the abolition day, held office as an Acting Deputy President of the Commission is taken to have been appointed as an Acting Commissioner for the remainder of the person's term of appointment.
- (3) Anything done by the President of the Commission that, immediately before the abolition day, had effect under this Act continues to have effect as if it had been done by the Chief Commissioner.
- (4) A person who ceases to hold an office by operation of this clause is not entitled to any remuneration or compensation because of the loss of that office.
- (5) This clause does not limit the application of clause 62 to a person who is also a judicial member.

64 Relationship of Division with [Interpretation Act 1987](#)

This Division does not limit section 53 of the [Interpretation Act 1987](#) in its application to alterations made to legislation by the amending Act.

Division 4 Proceedings involving Industrial Court

Subdivision 1 Interpretation

65 Interpretation

- (1) In this Division:

part heard proceedings means pending proceedings where the court in which the proceedings were commenced had begun to hear (but had not determined) the proceedings before the abolition day.

pending proceedings are proceedings (including appeals) that:

 - (a) were commenced before the abolition day, and

- (b) have not been finally determined before that day by the court in which the proceedings were commenced.

Note—

See subclause (2) as to the meaning of finally determined proceedings.

successor court, in relation to a former function of the Industrial Court, means:

- (a) if an amendment made by the amending Act has resulted in the function being conferred or imposed on the Supreme Court—the Supreme Court, or
- (b) if an amendment made by the amending Act has resulted in the function being conferred or imposed on the District Court—the District Court.

Supreme Court includes, where appropriate, the Court of Criminal Appeal.

unexercised right means a right (including a right exercisable only with leave) that:

- (a) was available to be exercised immediately before the abolition day, and
- (b) had not yet been exercised before that day.

unheard proceedings means pending proceedings that had not been heard before the abolition day by the court in which the proceedings were commenced.

- (2) For the purposes of this Division, proceedings are not finally determined if:
 - (a) any period for bringing an appeal as of right in respect of the proceedings has not expired (ignoring any period that may be available by way of extension of time to appeal), or
 - (b) any appeal in respect of the proceedings is pending (whether or not it is an appeal brought as of right).
- (3) To avoid doubt, this Division extends to proceedings before the President or a judicial member in exercise of any functions conferred or imposed on them by the *Criminal Procedure Act 1986* in the same way as it applies to proceedings before the Industrial Court.

Subdivision 2 Determination of pending proceedings

66 Pending proceedings before Industrial Court

- (1) Unheard proceedings in the Industrial Court are taken, on and from the abolition day, to have been duly commenced in the successor court for the function concerned and may be heard and determined instead by that court.
- (2) In relation to part heard proceedings in the Industrial Court, the judicial member

(or person acting as a judicial member) constituting the Industrial Court for those proceedings:

- (a) is to continue, on and from the abolition day, to hear the matter, and to determine the matter, sitting as the Supreme Court, and
- (b) may have regard to any record of the proceedings before the Industrial Court, including a record of any evidence taken in the proceedings before the Industrial Court.

(3) For the purposes of subclauses (1) and (2):

- (a) the court determining the proceedings has and may exercise all the functions that the Industrial Court had immediately before its abolition, and
- (b) the provisions of any Act, statutory rule or other law that would have applied to or in respect of the proceedings had the amending Act not been enacted continue to apply.

67 Pending proceedings before Supreme Court concerning Industrial Court

- (1) This clause applies to pending proceedings before the Supreme Court on an appeal against, or for the judicial review of, a decision of the Industrial Court.
- (2) The Supreme Court may, on and from the abolition day, continue to deal with the proceedings until they are concluded.
- (3) For this purpose:
 - (a) the Supreme Court continues to have and may exercise all the functions that the Court had in relation to the proceedings immediately before the abolition day, and
 - (b) the provisions of any Act, statutory rule or other law that would have applied to or in respect of the proceedings had the amending Act not been enacted continue to apply.
- (4) Without limiting subclause (3), if the original powers of the Supreme Court included the power to remit the proceedings to be heard and decided again by the Industrial Court, the Supreme Court may determine the proceedings instead of remitting them.

Subdivision 3 Exercise of certain unexercised rights

68 Certain unexercised rights to apply or appeal to Industrial Court may be exercised in successor body

- (1) This clause applies to each of the following unexercised rights (an *existing*

unexercised application or appeal right):

- (a) an unexercised right to apply to the Industrial Court for it to exercise a function,
 - (b) an unexercised right to appeal to the Industrial Court against a decision of another person or body.
- (2) A person who has an existing unexercised application or appeal right may apply or appeal to the successor body for the exercise of the same functions that could have been exercised by the Industrial Court to which the right relates had it not been abolished.

Note—

An application or appeal under this clause that would have required leave before the abolition day will still require such leave. Also, any time limits under existing law for making the application or appeal will continue to apply to applications or appeals under this clause. See subclause (3).

- (3) For the purposes of subclause (2):
- (a) the successor body has and may exercise all the functions that the Industrial Court would have had in relation to the application or appeal if it had been made before the abolition day (including any functions relating to the granting of leave to apply or appeal), and
 - (b) the provisions of any Act, statutory rule or other law (including provisions concerning the time within which to apply or appeal) that would have applied to or in respect of the application or appeal had the amending Act not been enacted continue to apply.

- (4) In this clause:

cancellation function means the cancellation of the registration of an association of employing contractors under section 334.

successor body means:

- (a) in relation to the exercise of a cancellation function—a Full Bench of the Commission, or
- (b) in relation to the exercise of any other function—the successor court for the function.

69 Certain unexercised rights to appeal against decisions of Industrial Court may continue to be exercised

- (1) This clause applies to an unexercised right to appeal against a decision of the Industrial Court to the Supreme Court (an ***existing unexercised appeal right***).

- (2) A person who has an existing unexercised appeal right may appeal against the decision of the Industrial Court to the Supreme Court.

Note—

An appeal under this clause that would have required leave before the abolition day will still require such leave. Also, any time limits under existing law for appealing will continue to apply to appeals under this clause. See subclause (3).

- (3) For the purposes of an appeal made to the Supreme Court under this clause:
- (a) the Supreme Court continues to have and may exercise all the functions that the Court would have had if the appeal had been made to it before the abolition day (including any functions relating to the granting of leave to appeal), and
 - (b) the provisions of any Act, statutory rule or other law (including provisions concerning the time within which to appeal) that would have applied to or in respect of such an appeal had the amending Act not been enacted continue to apply.
- (4) Without limiting subclause (3), if the original powers of the Supreme Court included the power to remit the proceedings to be heard and decided again by the Industrial Court, the Supreme Court may determine the proceedings instead of remitting them.

Division 5 Miscellaneous

70 Construction of superseded references

- (1) Subject to the regulations, a reference in any other Act, in an instrument made under any other Act or in any other document:
- (a) to the Industrial Court or the Industrial Relations Commission in Court Session—is to be read as a reference to the successor court for the function concerned, and
 - (b) to the President, the Vice-President or a Deputy President of the Commission—is to be read as a reference to the Chief Commissioner, and
 - (c) to a judicial member—is to be read as a reference to a Judge of the successor court for the function concerned.
- (2) Subclause (1) extends to a reference in a provision of the former *Industrial Relations Act 1991* (or the regulations under that Act) that continues to apply to a matter because of a provision of this Act or the regulations under this Act and, for that purpose, the successor court is taken to be the Supreme Court.
- (3) Subclauses (1) and (2) do not apply to the following references in the following

provisions:

- (a) a provision of the amending Act,
- (b) a provision of the *Constitution Act 1902* or the *Judges' Pensions Act 1953*,
- (c) a provision of any other Act or instrument made under another Act that contains a reference inserted or substituted by, or retained despite, an amendment made to the provision by the amending Act,
- (d) a spent savings or transitional provision of any other Act or an instrument made under any other Act,
- (e) a provision of an Act, instrument made under an Act or any other document (or a provision belonging to a class of provisions) prescribed by the regulations.

71 Functions of judicial members conferred or imposed in their personal capacities

- (1) This clause applies in relation to the exercise of functions that, immediately before the abolition day, were conferred or imposed on judicial members in a personal capacity rather than as members of the Commission (that is, as *persona designata*).
- (2) A judicial member (or acting judicial member) who was exercising a function to which this clause applies may complete the exercise of the function as if the amending Act had not been enacted.
- (3) An application for the exercise of a function to which this clause applies that has not yet been dealt with may be exercised by a person to whom the function has been transferred by the amending Act as if it had been made under the relevant amended legislative provision.

72 Arbitrators under *Health Services Act 1997*

- (1) A person appointed as an arbitrator for a determination under section 90 of the *Health Services Act 1997* before the abolition day ceases to hold that office on that day.
- (2) Accordingly, any arbitration that is uncompleted by the person immediately before the abolition day cannot be completed by the person.
- (3) Nothing in this clause prevents another person from being appointed as an arbitrator for the determination under section 90 of the *Health Services Act 1997* (as substituted by the amending Act).
- (4) No compensation is payable to any person (including a person who ceases to

hold office as an arbitrator) for any loss resulting from the operation of this clause.

[118] Dictionary

Omit the definitions of ***Commission in Court Session, judicial member*** and ***Presidential Member***.

Insert in alphabetical order:

Chief Commissioner means the Chief Commissioner of the Commission.

Commissioner means a Commissioner of the Commission.

Schedule 2 Consequential amendment of other legislation

2.1 Annual Holidays Act 1944 No 31

[1] Section 12 Proceedings for recovery of penalties

Omit “Industrial Relations Commission in Court Session” wherever occurring.

Insert instead “Supreme Court”.

[2] Section 13 Recovery of holiday pay

Omit “Industrial Relations Commission in Court Session” wherever occurring in section 13 (1).

Insert instead “Supreme Court”.

[3] Section 14 Provisions as to enforcement of orders, appeals etc

Omit “Industrial Relations Commission in Court Session” from section 14 (d).

Insert instead “Supreme Court”.

2.2 Anti-Discrimination Act 1977 No 48

Section 109 Order affecting industrial instrument

Omit “President”. Insert instead “Chief Commissioner”.

2.3 Bail Act 2013 No 26

[1] Section 4 Definitions

Omit “the Industrial Court,” from paragraph (a) of the definition of ***court*** in section 4 (1).

[2] Section 67 Powers specific to Court of Criminal Appeal

Omit “, the Industrial Court” from section 67 (1) (e).

[3] Section 69 Limited powers when decision made by Supreme Court or Court of Criminal Appeal

Omit “, the Land and Environment Court or the Industrial Court” from section 69 (1).

Insert instead “or the Land and Environment Court”.

[4] Section 80 Proceedings for fail to appear offence

Omit “, the Industrial Court” from section 80 (4).

[5] Section 94 Facilitation of proof of failure to appear

Omit “, the Industrial Court” from paragraph (a) of the definition of ***court officer*** in section 94 (5).

[6] Section 95 Exercise of functions of bail authority by appropriate officers

Omit “, the Industrial Court” from section 95 (2) (a).

2.4 Building and Construction Industry Long Service Payments Act 1986 No 19

Section 64 Proceedings for offences

Omit “Industrial Relations Commission in Court Session” from section 64 (2).

Insert instead “Supreme Court”.

2.5 Civil and Administrative Tribunal Act 2013 No 2

[1] Section 4 Definitions

Omit paragraph (c) of the definition of ***NSW judicial officer*** from section 4 (1).

[2] Section 15 NSW judicial officers acting as members of Tribunal

Omit paragraph (c) of the definition of ***relevant chief judicial officer*** from section 15 (5).

[3] Section 82 Interpretation

Omit paragraph (b) of the definition of ***senior judicial officer*** from section 82 (5).

2.6 Civil Procedure Act 2005 No 28

[1] Section 8 Uniform Rules Committee

Omit “12” from section 8 (1). Insert instead “11”.

[2] Section 8 (1) (c2)

Omit the paragraph.

[3] Section 140 Transfer of proceedings to higher court

Omit “or 3” from section 140 (5).

[4] Part 9, Division 3 Transfer of proceedings between Supreme Court and Industrial Court

Omit the Division.

[5] Schedule 1 Application of Act

Omit “(including the Commission in Court Session (the Industrial Court))” from Column 1.

[6] Schedule 2 Constitution and procedure of Uniform Rules Committee

Omit “the President of the Industrial Relations Commission,” from the definition of **ex-officio member** in clause 1.

2.7 Civil Procedure Regulation 2012

Clause 4 Fees payable in relation to court proceedings

Insert after clause 4 (6):

(7) Despite subclause (2), no fee is payable by any of the following in relation to industrial proceedings (as defined in Chapter 6A of the *Industrial Relations Act 1996*) unless Schedule 1 expressly says so:

- (a) any industrial organisation within the meaning of that Act, or
- (b) any association registered under Chapter 6 of that Act.

Note—

Industrial proceedings are proceedings before the Supreme Court under certain industrial legislation such as the *Industrial Relations Act 1996*.

2.8 Coal and Oil Shale Mine Workers (Superannuation) Act 1941 No 45

[1] Section 23 Questions may be referred to Supreme Court

Omit “Industrial Relations Commission in Court Session” wherever occurring.

Insert instead “Supreme Court”.

[2] Section 29 Offences relating to benefit payments

Omit “Industrial Relations Commission in Court Session” from section 29 (1) (b).

Insert instead “Supreme Court”.

**2.9 Contract Cleaning Industry (Portable Long Service Leave Scheme)
Act 2010 No 122**

Section 103 Nature of proceedings for offences

Omit “Industrial Relations Commission in Court Session” from section 103 (2).

Insert instead “Supreme Court”.

2.10 Court Information Act 2010 No 24

Section 4 Definitions

Omit “Industrial Court,” from the definition of **court** in section 4 (1).

2.11 Court Suppression and Non-publication Orders Act 2010 No 106

Section 3 Definitions

Omit “Industrial Court,” from paragraph (a) of the definition of **court**.

2.12 Criminal Appeal Act 1912 No 16

[1] Section 2 Definitions

Omit section 2 (4).

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

Omit the section.

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

Omit “the Industrial Relations Commission in Court Session in its summary jurisdiction,” from section 5AE (1).

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

Omit the section.

[5] Section 5BB Case stated from Industrial Relations Commission in Court Session

Omit the section.

2.13 Criminal Procedure Act 1986 No 209

[1] Section 3 Definitions

Omit “the Industrial Relations Commission,” from paragraph (a) of the definition of ***court*** in section 3 (1).

[2] Section 3 (1), definition of “Industrial Relations Commission in Court Session”

Omit the definition.

[3] Section 28 Application of Part and definition

Omit “, the President or a judicial member of the Industrial Relations Commission” from the definition of ***Judge*** in section 28 (2).

[4] Section 170 Application

Omit section 170 (3) (b).

[5] Section 171 Definitions

Omit “and the President or a judicial member of the Industrial Relations Commission” from the definition of ***Judge***.

[6] Section 275 Definition

Omit “, the President or a judicial member of the Industrial Relations Commission” from the definition of ***Judge***.

[7] Section 312 Persons arrested under bench warrants

Omit “, the President or a judicial member of the Industrial Relations Commission” from the definition of ***Judge*** in section 312 (3).

2.14 Dangerous Goods (Road and Rail Transport) Act 2008 No 95

[1] Section 47 Proceedings for an offence

Omit “Industrial Court of New South Wales” wherever occurring in section 47 (2) (b) and (3).

Insert instead “District Court”.

[2] Section 47 (4)

Omit the subsection.

2.15 Electronic Transactions (ECM Courts) Order 2005

[1] Schedule 1 Authority to use JusticeLink

Omit “(including the Industrial Court)” from Column 1 of the matter relating to the Industrial Relations Commission.

[2] Schedule 5 Authority to use Online Registry

Omit “(including the Industrial Court)” from Column 1 of the matter relating to the Industrial Relations Commission.

2.16 Employment Protection Act 1982 No 122

[1] Section 4 Definitions

Omit the definitions of **Commission**, **member** and **President**. Insert in alphabetical order:

Chief Commissioner means the Chief Commissioner of the Commission.

Commission means the Industrial Relations Commission.

member means a member of the Commission.

[2] Section 11 Chief Commissioner to be notified by Registrar

Omit “President” wherever occurring. Insert instead “Chief Commissioner”.

[3] Section 12 Report to be considered by Commission

Omit “President” wherever occurring in section 12 (1) and (2).

Insert instead “Chief Commissioner”.

[4] Section 15 Appeals

Omit “the Commission in court session” from section 15 (1).

Insert instead “the Commission constituted by a Full Bench”.

[5] Section 15 (3)

Omit “Commission in court session” wherever occurring. Insert instead “Commission”.

2.17 Essential Services Act 1988 No 41

[1] Section 17 Suspension and cancellation of registration of industrial organisation

Omit “President” from section 17 (2) (a). Insert instead “Chief Commissioner”.

[2] Section 19 Amendment of rules following cancellation of registration

Omit “Industrial Relations Commission in Court Session” wherever occurring in section 19 (1) and (2).

Insert instead “Supreme Court”.

[3] Section 22 Appeals against cancellation of registration

Omit “Full Industrial Relations Commission in Court Session” wherever occurring in section 22 (1)–(3).

Insert instead “Supreme Court”.

[4] Section 23 Appeals against amendment of rules

Omit “Full Industrial Relations Commission in Court Session” wherever occurring.

Insert instead “Supreme Court”.

[5] Section 24 Provisions relating to appeals

Omit “Full Industrial Relations Commission in Court Session”.

Insert instead “Supreme Court”.

[6] Section 26 Recovery of penalty by appointment of receiver

Omit “Industrial Relations Commission in Court Session” wherever occurring in section 26 (4)–(6).

Insert instead “Supreme Court”.

2.18 Evidence on Commission Act 1995 No 26

[1] Section 4 Definitions

Omit paragraph (c) of the definition of *superior court*.

[2] Section 18 Definitions

Omit paragraph (c) of the definition of *superior court*.

[3] Section 37 Regulations

Omit “, the Industrial Relations Commission” from section 37 (2).

2.19 Explosives Act 2003 No 39

Section 32 Proceedings for offences

Omit “Industrial Relations Commission in Court Session” from section 32 (1) (b).

Insert instead “District Court”.

2.20 Health Services Act 1997 No 154

[1] Section 90

Omit the section. Insert instead:

90 Appointment of arbitrator by relevant Minister

- (1) On receipt of an application under section 89, the relevant Minister must appoint a person in accordance with the regulations to be the arbitrator for the purposes of making a determination under this Part.
- (2) The regulations may make provision for or with respect to the appointment of persons as arbitrators (including the qualifications for appointment).

[2] Section 97

Omit the section. Insert instead:

97 Interpretation of a determination

- (1) The Minister or the Association may apply to the Supreme Court for a declaration of right under section 355C of the *Industrial Relations Act 1996* in respect of the interpretation, application or operation of a determination made under this Part.
- (2) Subject to subsection (1), the *Industrial Relations Act 1996* applies to any such application in the same way as it applies to an application for a declaration of right in relation to any other matter in which the Industrial Relations Commission has jurisdiction.

2.21 Industrial Relations (Child Employment) Act 2006 No 96

[1] Section 3 Definitions

Omit “Industrial Court of New South Wales” from paragraph (a) of the definition of ***industrial court*** in section 3 (1).

Insert instead “Supreme Court”.

[2] Section 12 Appeal to Supreme Court

Omit “Industrial Court of New South Wales” from section 12 (1).

Insert instead “Supreme Court”.

[3] Section 12 (2)-(4)

Omit “Industrial Court” wherever occurring. Insert instead “Supreme Court”.

[4] Section 16 Applied provisions of [Industrial Relations Act 1996](#)

Omit “Industrial Court of New South Wales” from section 16 (7).

Insert instead “Supreme Court”.

2.22 Industrial Relations (General) Regulation 2015

[1] Clause 3 Definitions

Omit the definition of ***Industrial Court*** from clause 3 (1).

[2] Clause 15 Acting President

Omit the clause.

[3] Clause 16

Omit the clause. Insert instead:

16 Oaths to be taken by members of Commission

A member of the Commission appointed after the commencement of the Act is to take, on appointment, the oath of allegiance and the official oath.

[4] Clause 46 Industrial Magistrate—civil procedure

Omit the clause.

[5] Schedule 1 Commission fees

Omit the matter relating to **Fees for proceedings before Commission sitting as Industrial Court**.

[6] Schedule 1

Omit “(otherwise than sitting as Industrial Court)”.

2.23 Judges’ Pensions Act 1953 No 41

[1] Section 2 Definitions

Insert after section 2 (2):

(3) Notes included in this Act do not form part of this Act.

[2] Section 2D

Insert after section 2C:

2D Continuity of office—Industrial Relations Commission and Industrial Court

- (1) On and from the abolition of the offices of President of the Industrial Relations Commission (***IRC President***), Vice-President of the Commission (***IRC Vice-President***), Deputy President of the Commission (***IRC Deputy President***) and judicial member of the Commission (***IRC judicial member***):
 - (a) for a retired or deceased IRC President—the office of Chief Judge of the Land and Environment Court (or, if that office is abolished, a comparable judicial office) is to be treated as the judicial office of equivalent status to the office of IRC President in determining the notional judicial salary under this Act for the former IRC President, and
 - (b) for a retired or deceased IRC Vice-President, IRC Deputy President or IRC judicial member (except if the person was also the IRC President)—the office of puisne Judge of the Supreme Court is to be treated as the judicial office of equivalent status to any of those abolished offices in determining the notional judicial salary under this Act for a former holder of any of the abolished offices.

Note—

Part 18 of Schedule 4 to the *Industrial Relations Act 1996* (as inserted by the *Industrial Relations Amendment (Industrial Court) Act 2016*) abolished the Industrial Court and the offices of IRC President, IRC Vice-President, IRC Deputy President and IRC judicial member. It appointed the incumbent IRC President (who was also an IRC judicial member) as a Judge of the Supreme Court and preserved the person's final remuneration as IRC President until the remuneration of a puisne Judge of the Supreme Court exceeded that remuneration. It also provided that the IRC President's service as an IRC judicial member was to count towards his service as a Judge of the Supreme Court for all purposes (including this Act).

- (2) Subsection (1) extends to a retired or deceased former IRC President who was appointed as a Judge of the Supreme Court by Part 18 of Schedule 4 to the *Industrial Relations Act 1996* if that person is entitled at the time of retirement or death to receive remuneration by reference to the person's former office as IRC President instead of as a Judge of the Supreme Court.
- (3) To avoid doubt, any notional judicial salary for a retired or deceased IRC President who was also an IRC judicial member that was determined before the abolition of those offices is taken to have been validly determined for the purposes of this Act if it was determined by reference to the salary payable to a current IRC President rather than to a current IRC judicial member.

2.24 Judicial Officers Act 1986 No 100

[1] Section 3 Definitions

Omit “(including a judicial member)” from paragraph (b) of the definition of **judicial officer** in section 3 (1).

[2] Section 3 (4)

Omit the subsection.

[3] Section 3 (5) (b)

Omit “President”. Insert instead “Chief Commissioner”.

[4] Section 5 The Commission

Omit “President” from section 5 (4) (c). Insert instead “Chief Commissioner”.

[5] Section 44 Retirement of judicial officers

Omit “non-judicial” from section 44 (2).

[6] Schedule 4A NSW and corresponding courts

Omit “Industrial Court;” from Column 1.

2.25 Land and Environment Court Act 1979 No 204

Section 9 Remuneration etc

Omit “Industrial Relations Commission of New South Wales” from section 9 (2A).

Insert instead “Court of Appeal”.

2.26 Long Service Leave Act 1955 No 38

[1] Section 12 Recovery of long service leave pay

Omit “Industrial Relations Commission in Court Session” wherever occurring in section 12 (1).

Insert instead “Supreme Court”.

[2] Section 14 Provisions as to enforcement of orders, appeals etc

Omit “Industrial Relations Commission in Court Session” from section 14 (c).

Insert instead “Supreme Court”.

2.27 Long Service Leave (Metalliferous Mining Industry) Act 1963 No

48

[1] Section 12 Recovery of long service leave pay

Omit “Industrial Relations Commission in Court Session” wherever occurring in section 12 (1).

Insert instead “Supreme Court”.

[2] Section 14 Provisions as to enforcement of orders, appeals etc

Omit “Industrial Relations Commission in Court Session” from section 14 (c).

Insert instead “Supreme Court”.

2.28 Parliamentary Remuneration Act 1989 No 160

[1] Section 3 Definitions

Omit the definition of **President** from section 3 (1). Insert in alphabetical order:

Chief Commissioner means the Chief Commissioner of the Industrial Relations Commission.

[2] Sections 11 (1) and (2) and 14H (1) and (2)

Omit “President” wherever occurring. Insert instead “Chief Commissioner”.

[3] Schedule 2 Parliamentary Remuneration Tribunal

Omit clause 1 (1). Insert instead:

(1) The Tribunal is to consist of a person, appointed by the Governor on a part-time basis, who holds or has held a judicial office of this State.

(1A) The Minister is not to recommend to the Governor the appointment of a person as the Tribunal unless the Minister certifies that the Chief Justice of the Supreme Court has nominated the person for the appointment.

[4] Schedule 2, clause 1 (3)

Insert after clause 1 (2):

(3) A person holding office as the Tribunal immediately before the substitution of subclause (1) by the *Industrial Relations Amendment (Industrial Court) Act 2016* continues in office despite that substitution until the person’s term ends, unless the person sooner vacates that office.

[5] Schedule 2, clause 3 (1)

Omit "President". Insert instead "Chief Justice".

[6] Schedule 2, clause 4 (1) (g)

Omit "on the recommendation of the President".

[7] Schedule 2, clause 4 (2)

Omit ", on the recommendation of the President,".

[8] Schedule 2, clause 4 (3)

Insert after clause 4 (2):

- (3) The Minister is not to recommend to the Governor the removal of a person from office under subclause (1) (g) or (2) unless the Minister certifies that the Chief Justice of the Supreme Court has advised the Minister that the person should be removed from office.

2.29 Passenger Transport Act 1990 No 39

Section 52 Applications to Civil and Administrative Tribunal

Omit section 52 (2).

2.30 Police Act 1990 No 47

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

Omit section 181K (2) and (3). Insert instead:

- (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 3 members who are each Australian lawyers.
- (3) A Magistrate (including an Industrial Magistrate) may act as member of the Commission for the purposes of an appeal if:
 - (a) the Chief Magistrate of the Local Court has, at the request of the Chief Commissioner of the Commission, nominated the Magistrate to act as a member of the Commission in relation to the appeal, and
 - (b) the Magistrate consents to acting as a member of the Commission in relation to the appeal.
- (4) The following provisions apply to and in respect of a Magistrate who acts as a

member of the Commission pursuant to this section:

- (a) the Magistrate has, while acting as a member, all the powers, authorities, privileges and immunities of a member,
- (b) the Magistrate may attend the sittings of the Commission for the purpose of giving judgment in, or otherwise completing, any proceedings which have been heard by the Commission while the Magistrate was acting as a member in the proceedings even if the Magistrate is no longer acting as a member,
- (c) the Magistrate is not, while receiving remuneration as a Magistrate, entitled to remuneration for acting as a member,
- (d) any service of the Magistrate while acting as a member is taken for all purposes (including for the purposes of the *Local Court Act 2007*) to be service as a Magistrate,
- (e) nothing in this Act or any other law requires the Magistrate to devote the whole of his or her time to the duties of acting as a member.

2.31 Rail Safety (Adoption of National Law) Act 2012 No 82

Schedule 1 New South Wales changes and additions to Rail Safety National Law

Omit “Industrial Court” wherever occurring in section 218A (2) (b) and (5) in Schedule 1 [12].

Insert instead “Supreme Court”.

2.32 Statutory and Other Offices Remuneration Act 1975 (1976 No 4)

[1] Schedule 1 Public offices

Omit the matters relating to the President and Vice-President of the Industrial Relations Commission.

[2] Schedule 2 Public offices

Omit the matter relating to a Deputy President of the Industrial Relations Commission from Part 1.

Insert instead:

Chief Commissioner of the Industrial Relations Commission

[3] Schedule 4 Excluded offices

Omit the matter relating to a Deputy President of the Industrial Relations Commission.

2.33 Superannuation Administration Act 1996 No 39

[1] Section 88 Appeals

Omit “Industrial Relations Commission in Court Session (the **Commission**)” from section 88 (1).

Insert instead “Supreme Court”.

[2] Section 88 (2)-(6)

Omit “Commission” wherever occurring. Insert instead “Supreme Court”.

2.34 Supreme Court Act 1970 No 52

[1] Section 37C Judicial members of Industrial Relations Commission may act as Supreme Court Judges

Omit the section.

[2] Section 48 Assignment to the Court of Appeal

Omit subparagraph (ii) from the definition of **specified tribunal** in section 48 (1) (a).

[3] Section 101 Appeal in proceedings before the Court

Insert after section 101 (3):

(3A) In relation to industrial proceedings within the meaning of Chapter 6A of the *Industrial Relations Act 1996* (except criminal proceedings), each of the following persons is entitled to appeal to the Court of Appeal as provided by this section against a judgment, order, opinion, direction, determination or other decision in the proceedings of the Court in a Division:

- (a) a party to the proceedings,
- (b) an industrial organisation within the meaning of the *Industrial Relations Act 1996*, or an association registered under Chapter 6 of that Act, affected by the decision,
- (c) the Minister administering the *Industrial Relations Act 1996* 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*.

2.35 Vexatious Proceedings Act 2008 No 80

[1] Section 3 Definitions

Omit paragraphs (b) and (c) of the definition of **appropriate registrar** in section 3 (1).

Insert instead:

(b) in relation to the Land and Environment Court—the Registrar of that Court.

[2] Section 3 (1), definition of “authorised court”

Omit paragraph (c) of the definition.

[3] Section 3 (2A)

Insert after section 3 (2):

(2A) On and from the abolition of the Industrial Court:

- (a) the Supreme Court is taken to be the authorised court in connection with vexatious proceedings orders made by the Industrial Court before its abolition, and
- (b) the appropriate registrar for such an order is taken to be the Prothonotary of the Supreme Court.

[4] Section 8 Making of vexatious proceedings order

Omit section 8 (9).

[5] Section 12 Appropriate authorised courts for granting leave

Omit section 12 (c). Insert instead:

(c) in the case of a vexatious proceedings order made by the Supreme Court that operates to prohibit proceedings being instituted in the Industrial Relations Commission—the Supreme Court.

[6] Section 12 (2)

Insert at the end of the section:

(2) On and from the abolition of the Industrial Court, the **appropriate authorised court** in relation to the granting of leave to institute proceedings prohibited by a vexatious proceedings order of the Industrial Court is the Supreme Court.

2.36 Victims Rights and Support Act 2013 No 37

Section 105 Application of Part

Omit section 105 (1) (f).

2.37 Work Health and Safety Act 2011 No 10

[1] Section 4 Definitions

Omit the definition of *Industrial Court*.

[2] Section 229B Procedure for offences

Omit section 229B (2) and (6) (including the note).

[3] Section 255 Proceedings for contravention of WHS civil penalty provision

Omit "Industrial Court". Insert instead "District Court".

2.38 Workplace Injury Management and Workers Compensation Act 1998 No 86

[1] Section 245 Proceedings for offences

Omit "Industrial Relations Commission in Court Session" wherever occurring in section 245 (1) (b) and (3).

Insert instead "District Court".

[2] Section 245 (4)

Omit the subsection.

[3] Schedule 5 Provisions relating to members of Commission

Omit clause 1 (c).

2.39 Workplace Surveillance Act 2005 No 47

[1] Section 41

Omit the section. Insert instead:

41 Application to eligible Supreme Court Judge

- (1) An applicant for a covert surveillance authority who is aggrieved by a decision of a Magistrate to refuse to issue or to vary or cancel a covert surveillance authority may make an application to an eligible Supreme Court Judge to issue,

vary or cancel the authority.

- (2) An employee affected by a covert surveillance authority who is aggrieved by a decision of a Magistrate to refuse to vary or cancel a covert surveillance authority may make an application to an eligible Supreme Court Judge to vary or cancel the authority.
- (3) The application must be made within 30 days after the decision is given or within such further period as the eligible Supreme Court Judge allows.
- (4) Part 4 applies to or in respect of the issue, variation or cancellation of a covert surveillance authority by an eligible Supreme Court Judge to whom an application is made under this section in the same way as it applies to the issue, variation or cancellation of such an authority by a Magistrate.

Note—

For example, section 33 (as applied by this subsection) requires an eligible Supreme Court Judge to record relevant particulars of the issue, variation or cancellation of a covert surveillance authority.

- (5) An application to a Magistrate for the issue or for a variation or cancellation of an authority is taken (for the purposes only of an application under this section) to have been refused if it is not decided within the period of 30 days after the making of the application to the Magistrate.
- (6) The imposition of a function on an eligible Supreme Court Judge under this section is not a conferral of jurisdiction on the Supreme Court.
- (7) An eligible Supreme Court Judge has the same protection and immunity when exercising functions under this section as the Judge has when exercising functions under the *Surveillance Devices Act 2007*.
- (8) In this section:

eligible Supreme Court Judge means a Judge of the Supreme Court who is an eligible Judge for the purposes of the *Surveillance Devices Act 2007*.

[2] Section 45 Summary procedure for offences

Omit “Industrial Relations Commission in Court Session” from section 45 (2).

Insert instead “Supreme Court”.

2.40 Workplace Surveillance Regulation 2012

[1] Clause 4 Forms

Omit clause 4 (6)–(8). Insert instead:

- (6) **Form of application to eligible Supreme Court Judge for authority** An application made under section 41 of the Act to an eligible Supreme Court Judge to issue a covert surveillance authority is to be in Form 6.
- (7) **Form of application to eligible Supreme Court Judge for variation of authority** An application made under section 41 of the Act to an eligible Supreme Court Judge to vary a covert surveillance authority is to be in Form 7.
- (8) **Form of application to eligible Supreme Court Judge for cancellation of authority** An application made under section 41 of the Act to an eligible Supreme Court Judge to cancel a covert surveillance authority is to be in Form 8.

[2] Schedule 1 Forms

Omit “judicial member of the Industrial Relations Commission” wherever occurring in Form 2.

Insert instead “eligible Supreme Court Judge”.

[3] Schedule 1, Form 6

Omit “a judicial member of the Industrial Relations Commission” from the note.

Insert instead “an eligible Supreme Court Judge”.

[4] Schedule 1, Forms 7 and 8

Omit “*a judicial member of the Industrial Relations Commission*” wherever occurring.

Insert instead “*an eligible Supreme Court Judge*”.

Schedule 3 Repeals

Each of the following Acts is repealed:

- (a) the *Courts and Crimes Legislation Amendment Act 2009 No 77*,
- (b) the *Courts and Crimes Legislation Further Amendment Act 2010 No 135*,
- (c) the *Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Act 2009 No 32*,
- (d) the *Industrial Relations Further Amendment (Jurisdiction of Industrial Relations Commission) Act 2009 No 87*,
- (e) the *Transport Appeal Boards Act 1980 No 104*.