



New South Wales

Industrial Relations Amendment Act 2023 No 41

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New South Wales

Industrial Relations Amendment Act 2023 No 41

Act No 41, 2023

An Act to amend the *Industrial Relations Act 1996* to provide for mutual gains bargaining; to re-establish the Industrial Court; and for other purposes. [Assented to 5 December 2023]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Industrial Relations Amendment Act 2023*.

2 Commencement

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

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

1.1 Amendments about mutual gains bargaining

[1] Chapter 2A

Insert after Chapter 2—

Chapter 2A Mutual gains bargaining

129K Application of chapter

This chapter applies if the following parties have agreed to enter into mutual gains bargaining—

- (a) an industrial organisation of employees or employers,
- (b) an employer who is or is likely to be a party to the bargaining.

129L Principles of mutual gains bargaining

The principles of mutual gains bargaining are as follows—

- (a) mutual gains bargaining is a collaborative approach to bargaining,
- (b) parties to the bargaining are to identify and communicate their key needs to reach an agreement that maximises common interests and reconciles conflicting interests,
- (c) the negotiations that are part of the bargaining are to be consensus-seeking in nature and the parties are to work together to try to solve problems,
- (d) the parties will aim to reach an agreement that meets the core needs of the parties so that the parties are satisfied with the content of the agreement,
- (e) the bargaining is to be efficient in terms of time and resources expended,
- (f) the bargaining aims to create, maintain or strengthen good relationships between the parties,
- (g) the bargaining aims to ensure that each party is satisfied that their interests have been addressed.

129M Meaning of “good faith” in mutual gains bargaining

- (1) In this chapter, *good faith*, in relation to mutual gains bargaining, means the following—
 - (a) attending and participating in meetings requested at reasonable times,
 - (b) providing other parties, as soon as practicable, with relevant information necessary to enable the other parties to make informed contributions to negotiations,
 - (c) considering proposals made by other parties and responding to the proposals as soon as practicable with reasons for the responses,
 - (d) refraining from capricious or unfair conduct that undermines other parties or the bargaining.
- (2) However, to act in *good faith* does not require a party—
 - (a) to make concessions during bargaining, or

- (b) to reach an agreement.

129N Notification of intention to commence mutual gains bargaining

- (1) The following may give written notice to the Commission of an intention to commence mutual gains bargaining—
 - (a) an industrial organisation of employees or employers,
 - (b) an employer who is or is likely to be a party to the bargaining.
- (2) A recommendation by the Commission under section 134(2A) that parties undertake mutual gains bargaining is taken to be a notification under subsection (1).

129O Facilitator for mutual gains bargaining

- (1) The Commission must act as a facilitator to assist the parties to reach a resolution during mutual gains bargaining.
- (2) However, if the parties to mutual gains bargaining agree, the parties may—
 - (a) appoint a third party to act as a facilitator, or
 - (b) request the Commission to appoint a person to act as a facilitator.
- (3) A person must not be appointed as a facilitator unless the person has the skills, experience or qualifications prescribed by the regulations, if any.
- (4) To avoid doubt, the parties are not required to use the services of a facilitator during mutual gains bargaining.

129P Provisions applying if mutual gains bargaining unresolved

- (1) If the parties are unable to reach an agreement, the following may declare that the mutual gains bargaining is unresolved—
 - (a) the facilitator, or
 - (b) if the parties decided not to use the services of a facilitator during the mutual gains bargaining—one or both of the parties.
- (2) Unless the facilitator for the mutual gains bargaining is the Commission, the person referred to in subsection (1)(a) or (b) must consult the Commission before making the declaration.
- (3) The person making the declaration must give written notice of the declaration and a report specifying the following to the Commission—
 - (a) whether, in the opinion of the person making the declaration, the parties have bargained in good faith,
 - (b) which matters remain in dispute in the negotiations,
 - (c) whether, in the opinion of the person making the declaration, the parties have negotiated in accordance with the principles of mutual gains bargaining,
 - (d) other issues the person making the declaration considers relevant.
- (4) The regulations may prescribe the way the written notice and report must be given.
- (5) To avoid doubt, if the facilitator for the mutual gains bargaining is the Commission—
 - (a) the reference to the facilitator in subsection (1)(a) and the person making the declaration in subsection (3) is taken to be the individual exercising the functions of the Commission, and

- (b) the written notice and report referred to in subsection (3) must be given instead to the President of the Commission.

129Q Application of Chapter 3 after mutual gains bargaining

- (1) The giving of a written notice of a declaration under section 129P(3) is taken to be a notification of an industrial dispute under section 130.
- (2) Chapter 3 applies to an industrial dispute referred to in subsection (1) subject to the modifications set out in subsection (3).
- (3) In conducting an arbitration, the Commission must consider the following—
 - (a) whether the parties have established and meaningfully participated in an engagement council, being a forum where the parties work together to measure, pursue and monitor productivity growth,
 - (b) if the parties have agreed to enter into mutual gains bargaining—the conduct of the parties in negotiations and whether the parties have bargained in good faith and in accordance with the principles of mutual gains bargaining.

[2] Section 134 Conciliation of dispute

Insert after section 134(2)—

- (2A) Without limiting subsection (2), the Commission may make a recommendation to the parties to undertake mutual gains bargaining under Chapter 2A.

[3] Dictionary

Insert in alphabetical order—

good faith, in relation to mutual gains bargaining—see section 129M.

facilitator, for mutual gains bargaining, has the same meaning as in section 129O.

1.2 Amendments about re-establishment of Industrial Court

[1] Section 15 Commencement of award

Omit “the Chief Commissioner” from the note.

Insert instead “a Presidential Member”.

[2] Section 91 Interpretation

Omit “Chief Commissioner” from section 91(1), definition of *approved form*.

Insert instead “President of the Commission”.

[3] Chapter 2, Part 9

Omit “Supreme Court” wherever occurring, except section 109.

Insert instead “Commission”.

[4] Section 105 Definitions

Insert at the end of the section—

Note— The jurisdiction of the Commission under this part is exercisable only by the Commission in Court Session.

[5] Section 109

Omit the section. Insert instead—

109 Conciliation of applications to be attempted first

- (1) The Commission must endeavour, by all means the Commission considers proper and necessary, to settle a matter under this division by conciliation.
- (2) If, in the opinion of the Commission, all reasonable attempts to settle the matter by conciliation have been made but have been unsuccessful, the Commission must determine the matter in accordance with this Act.
- (3) Nothing in this section prevents further conciliation from being attempted at any time before the Commission makes an order determining the matter in accordance with this Act.
- (4) A member of the Commission, whether or not a judicial member, may undertake the conciliation of a matter under this division.

[6] Section 135 Arbitration after attempted conciliation

Omit “to the Chief Commissioner” from section 135(3).

Insert instead “to the President of the Commission”.

[7] Section 135(3)

Omit “constituted by the Chief Commissioner”.

Insert instead “constituted by the President”.

[8] Section 139 Contravention of dispute order

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

[9] Section 139, note

Insert at the end of the section—

Note— The jurisdiction of the Commission under this section is exercisable only by the Commission in Court Session.

[10] Section 146 General functions of Commission

Insert after section 146(2)—

- (3) Subsection (2) does not apply to proceedings before the Commission in Court Session that are criminal proceedings.

[11] Section 147

Omit the section. Insert instead—

147 Membership of Commission

- (1) The Commission consists of the following members as the Governor may from time to time appoint—
 - (a) a President,
 - (b) a Vice-President,
 - (c) Deputy Presidents,
 - (d) Commissioners.
- (2) The President, Vice-President and Deputy Presidents of the Commission are referred to in this Act as *Presidential Members*.

[12] Section 148 Appointment of members of the Commission

Omit section 148(2).

[13] Section 149

Insert after section 148—

149 Judicial members

- (1) The Governor may appoint a Presidential Member of the Commission as a member of the Commission in Court Session.
- (2) The appointment may be made by the commission appointing the person as a member of the Commission or by subsequent commission under the public seal of the State.
- (3) A person is not eligible to be appointed as a member of the Commission in Court Session unless the person is—
 - (a) a person who holds or has held a judicial office of the State, the Commonwealth or another State or Territory, or
 - (b) an Australian lawyer of at least 7 years standing.
- (4) A person appointed as a member of the Commission in Court Session is referred to in this Act as a *judicial member* of the Commission.

[14] Section 150

Omit the section. Insert instead—

150 Provisions relating to members of Commission

Schedule 2 has effect in relation to the members of the Commission, including judicial members.

Note— The *Constitution Act 1902*, Part 9 and the *Judicial Officers Act 1986*, Parts 7 and 8 deal with the suspension, removal or retirement from office of members.

[15] Chapter 4, Part 3

Insert after Part 2—

Part 3 Commission in Court Session

151 Judicial members to constitute Commission in Court Session

- (1) The Commission in Court Session is the Commission constituted by a judicial member or judicial members only for the purposes of exercising the functions conferred or imposed on the Commission in Court Session by or under this Act or another Act or law.
- (2) This section does not prevent the Commission from being constituted by judicial members when not exercising those functions.

151A Name of Commission in Court Session to be Industrial Court of New South Wales

- (1) The name of the Commission in Court Session is the Industrial Court of New South Wales.
- (2) A reference in this Act, or another Act, statutory instrument or document, to the Commission in Court Session, whether enacted or made before or after the

commencement of this section, is taken to include a reference to the Industrial Court of New South Wales.

152 Commission in Court Session is superior court of record

- (1) The Commission in Court Session is established by this Act as a superior court of record.
- (2) For the *Constitution Act 1902*, Part 9, the Commission in Court Session is a court of equivalent status to the Supreme Court and the Land and Environment Court, and is of higher status than the courts referred to in section 52(2)(b) and (c) of that Act.
- (3) To avoid doubt, for the *Constitution Act 1902*, section 7B(8), section 52(1), definition of *judicial office* extends to a member of the Commission in Court Session constituted by this part.

153 Jurisdiction of Commission in Court Session

- (1) The following functions of the Commission must be exercised only by the Commission in Court Session—
 - (a) proceedings for an offence taken before the Commission, including proceedings for contempt,
 - (b) proceedings for declarations of right under section 154,
 - (c) proceedings under Chapter 2, Part 9,
 - (d) proceedings under section 139,
 - (e) proceedings under Chapter 5, Parts 3, 4 and 5, other than Part 4, Division 3,
 - (f) proceedings under Chapter 7, Part 1,
 - (g) proceedings for the recovery of money under Chapter 7, Part 2, other than small claims under section 380,
 - (h) proceedings on a superannuation appeal under the *Superannuation Administration Act 1996*, section 88,
 - (i) proceedings on an appeal from a member of the Commission exercising the functions of the Commission in Court Session,
 - (j) proceedings on an appeal or case stated from an Industrial Magistrate or another court,
 - (k) proceedings under section 197B,
 - (l) other proceedings that are, by this Act or another Act, required to be taken before the Commission in Court Session.
- (2) The functions referred to in subsection (1)(i) and (j), and functions relating to proceedings for the cancellation of the registration of industrial organisations, may be exercised only by a Full Bench of the Commission in Court Session.
- (3) Subject to subsection (4), the functions of the Commission relating to proceedings for contempt of the Commission may be exercised only by a Full Bench of the Commission in Court Session.
- (4) The functions of the Commission relating to the commencement of proceedings for contempt of the Commission may also be exercised by a judicial member.

154 Declaratory jurisdiction

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

[16] Sections 156 and 157

Omit the sections. Insert instead—

156 Full Bench of Commission

- (1) A Full Bench of the Commission consists of the following number of members who are constituted as a Full Bench by the President for a proceeding—
 - (a) for a Full Bench of the Commission in Court Session—3 members,
 - (b) otherwise—at least 3 members.
- (2) A Full Bench of the Commission, other than the Commission in Court Session, must include at least 1 Presidential Member.
- (3) A Full Bench of the Commission in Court Session must include only judicial members.
- (4) A Full Bench of the Commission constituted to hear an appeal from a decision of the Commission must not include a member of the Commission who made the decision.
- (5) A Full Bench of the Commission may—
 - (a) refer a particular matter in relation to a proceeding before it to a member of the Commission for report to the Full Bench, or
 - (b) authorise a member of the Full Bench to make an order or give a direction in proceedings before it, other than an order or direction involving the determination of the proceeding or the grant of leave to appeal.

157 Regional matters

- (1) The President of the Commission may designate particular members as regional members for different regions in the State.
- (2) The President of the Commission may allocate a matter before the Commission that the President considers to be of significance for a particular region for hearing and determination by the appropriate regional member.
- (3) However, a regional member must be designated for, and a regional office of the Industrial Registry must be established in, a region of the State prescribed by the regulations.
- (4) This section does not limit the functions of a regional member or the functions of other members.

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

Omit “Chief Commissioner” wherever occurring in section 158(1) and (2).

Insert instead “President of the Commission”.

[18] Section 158(1)

Omit “Commissioners”. Insert instead “members of the Commission”.

[19] Section 158(2) and (3)

Omit “designated Commissioner” wherever occurring.

Insert instead “designated member of the Commission”.

[20] Section 159 Arrangement of business

Omit “Chief Commissioner” from section 159(1).

Insert instead “President of the Commission”.

[21] Section 159(2)

Insert after section 159(1A)—

- (2) Despite anything to the contrary in this Act, if the President of the Commission is not a judicial member, the function of allocating a matter for hearing and determination by a judicial member as the Commission in Court Session, including constituting a Full Bench of the Commission in Court Session, must be exercised by the most senior judicial member.

[22] Section 160

Omit the section. Insert instead—

160 Delegation by President

The President of the Commission may delegate to another Presidential Member a function of the President, other than this power of delegation.

Note— The Vice-President of the Commission may also exercise the functions of the President—see Schedule 2, clause 1.

[23] Section 161 Annual report

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

[24] Section 162 Procedure generally

Insert “, except when it is in Court Session” after “application” in section 162(2)(i).

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

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

- (2) If proceedings to which this section applies have been instituted in or before the Commission in Court Session but the hearing of the matter has not commenced, the President of the Commission, or a judicial member of the Commission authorised by the President for this section, may order the transfer of the proceedings to the Local Court to be dealt with by the Local Court.
- (3) The President or judicial member must not make an order under this section unless—
 - (a) the President or judicial member is satisfied the proceedings should have been instituted in the Local Court because of the nature of the proceedings, and
 - (b) the Local Court has jurisdiction to deal with the proceedings.

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

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

[27] Section 163 Rules of evidence and legal formality

Insert after section 163(1)—

- (2) However, the rules of evidence and other formal procedures of a superior court of record apply to the Commission in Court Session.

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

Omit the note. Insert instead—

- (2) The Commission in Court Session may exercise the functions of the Supreme Court in relation to the apprehension, detention and punishment of persons guilty of contempt of the Commission, including disobedience of an order made by or process issuing out of the Commission.
- (3) Without limiting subsection (2), a judicial member may exercise the functions of the Supreme Court in relation to the commencement of proceedings for contempt of the Commission.

Note— Section 153(4) provides that the functions of the Commission relating to the commencement of proceedings for contempt of the Commission may also be exercised by a judicial member.

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

Insert after section 164A(1)—

- (2) The Commission in Court Session may make a non-disclosure order if it is satisfied that it is desirable to do so because of the confidential nature of the evidence or matter or for another reason.

[30] Section 164A(3)

Insert “, other than in Court Session,” after “Commission”.

[31] Section 164A(5)

Insert after section 164A(4)—

- (5) Nothing in this section operates to limit a power of the Commission in Court Session apart from this section to make a non-disclosure order or another order prohibiting or restricting the disclosure or publication of matters before the Commission.

[32] Section 168

Insert after section 167—

168 Criminal procedure

- (1) Proceedings for an offence before the Commission in Court Session must be dealt with summarily.
- (2) The *Criminal Procedure Act 1986*, Chapter 4, Part 5 applies to proceedings for an offence taken before the Commission in Court Session.
- (3) Nothing in subsection (2) affects the operation of section 170.

- (4) The provisions applied by this section prevail over other provisions of this part for the purposes of proceedings for an offence.

Note— See section 196 in relation to the procedure on appeal to the Full Bench in criminal proceedings.

[33] Section 169 Anti-discrimination matters

Insert after section 169(4)—

- (5) This section does not apply to criminal proceedings before the Commission in Court Session.

[34] Section 172 Power to order secret ballot

Insert after section 172(7)—

- (8) This section does not apply to criminal proceedings.

[35] Section 176 Reconstitution of Commission during hearing

Omit “Chief Commissioner” from section 176(1).

Insert instead “President of the Commission”.

[36] Section 176(1A)–(4)

Omit section 176(2). Insert instead—

- (1A) Subsection (1) does not apply to proceedings before the Commission in Court Session unless the parties consent.
- (2) The Commission as reconstituted must have regard to the evidence and decisions given or made in relation to the matter before the Commission was reconstituted.
- (3) If a matter arises in proceedings before the Commission, otherwise than in Court Session, that is within the jurisdiction of the Commission in Court Session, the Commission may continue to deal with the matter as the Commission in Court Session if—
- (a) the Commission is duly constituted or reconstituted by a judicial member or judicial members, and
 - (b) a member who is not a judicial member does not take part in the proceedings on the matter, and
 - (c) only the evidence given in the existing proceedings before the Commission that is admissible in evidence in proceedings before the Commission in Court Session may be taken into account in determining the matter.
- (4) This section does not apply to criminal proceedings.

[37] 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) if the President is sitting—the opinion of the President, or
 - (b) if the President is not sitting but the Vice-President is sitting—the opinion of the Vice-President, or
 - (c) if the President and Vice-President are not sitting and only 1 Deputy President is sitting—the opinion of the Deputy President, or

- (d) if the President and Vice-President are not sitting and more than 1 Deputy President is sitting—the opinion of the senior Deputy President.

[38] Sections 178A and 178B

Omit the sections.

[39] Section 179(6)

Omit the subsection. Insert instead—

- (6) This section is subject to the exercise of a right of appeal to a Full Bench of the Commission conferred by this Act or another Act or law.

[40] Section 180 Contempt of Commission—offence

Insert after section 180(2)—

- (3) Proceedings for an offence against this section may only be taken before the Commission in Court Session.

[41] Section 181 Costs

Insert “, when it is not in Court Session,” before “may award costs only” in section 181(2).

[42] Section 181(3)

Insert after section 181(2)—

- (3) The Commission in Court Session may not award costs in proceedings for a contravention of a dispute order or proceedings under Chapter 5, Part 4, Division 2.

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

Insert “, but not including a criminal or civil penalty” after “including costs” in section 182(1).

[44] Section 185A Practice notes

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

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

Omit “Chief Commissioner” wherever occurring in section 186(1)(a), (2), (3) and (4)(a).

Insert instead “President of the Commission”.

[46] Section 186(1)(b)

Omit the paragraph. Insert instead—

- (b) 2 other Presidential Members appointed by the President.

[47] Section 186(4)(b)

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

[48] Section 189 Time and procedure for making appeals

Omit “the Chief Commissioner (or a Commissioner nominated by the Chief Commissioner)” from section 189(1).

Insert instead “a Presidential Member”.

[49] Section 190 Stay of decision appealed against

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

Insert instead “a Presidential Member”.

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

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

Insert instead “President”.

[51] Section 190A(2)

Insert after section 190A(1)—

- (2) If the appeal is made to a Full Bench of the Commission in Court Session—
 - (a) a non-judicial member must not constitute the Commission for this section, and
 - (b) this section applies despite section 153(2).

[52] Section 193 References by members to Full Bench

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

Insert instead “President”.

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

Omit “Chief Commissioner” wherever occurring in section 195(1), (2) and (4).

Insert instead “President”.

[54] Section 196

Insert after section 195—

196 Appeals from and references by members of Commission in criminal proceedings

- (1) This section applies, and the other provisions of this part do not apply, to appeals and references to the Full Bench of the Commission in Court Session in relation to criminal proceedings taken before a judicial member of the Commission.
- (2) The *Criminal Appeal Act 1912* applies to an appeal or reference referred to in subsection (1) in the same way as it applies to an appeal or reference to the Court of Criminal Appeal in relation to criminal proceedings taken before a Judge of the Supreme Court in its summary jurisdiction.
- (3) For subsection (2), a reference, however expressed, in the *Criminal Appeal Act 1912*—
 - (a) to the Court of Criminal Appeal is taken to be a reference to a Full Bench of the Commission in Court Session, and
 - (b) to the Supreme Court is taken to be a reference to the Commission in Court Session, and
 - (c) to rules is taken to be a reference to rules of the Commission, and
 - (d) to the Attorney General is taken to include a reference to the Minister, and

- (e) to the Director of Public Prosecutions is taken to include a reference to the prosecutor in the proceedings before the Commission in Court Session, and
 - (f) to the registrar is taken to be a reference to the Industrial Registrar.
- (4) Subsection (2) does not apply to a provision of the *Criminal Appeal Act 1912* relating to costs.

[55] Section 197 Appeals from Local Court

Omit “the Supreme Court” from section 197(1).

Insert instead “a Full Bench of the Commission in Court Session”.

[56] Section 197(4)

Omit “Supreme Court”.

Insert instead “Full Bench of the Commission in Court Session”.

[57] Section 197(5)

Omit the subsection. Insert instead—

- (5) Section 179—
 - (a) 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, and
 - (b) without limiting that section, applies to a decision or purported decision of the Commission in relation to proceedings to which this section applies.

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

Omit “Supreme Court” from section 197B(1).

Insert instead “Full Bench of the Commission in Court Session”.

[59] Section 197B(2)

Omit the subsection. Insert instead—

- (2) On an appeal under this section, the Full Bench of the Commission in Court Session may—
 - (a) remit the matter to the Commission for determination in accordance with the decision of the Full Bench, or
 - (b) make another order in relation to the appeal as seems fit.

[60] Section 198 Establishment of Industrial Committees

Omit “the Chief Commissioner” from section 198(1).

Insert instead “a Presidential Member”.

[61] Section 199 Functions of Industrial Committee

Omit “Chief Commissioner” from section 199(2)(a).

Insert instead “President of the Commission”.

[62] Section 199(5)

Insert after section 199(4)—

- (5) This section does not apply to a function that may be exercised only by the Commission in Court Session.

[63] Section 200 Duration and dissolution of Industrial Committees

Omit “the Chief Commissioner” wherever occurring in section 200(2) and (3).

Insert instead “a Presidential Member”.

[64] Section 202 Definitions

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

Insert instead “President”.

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

Insert “or the Commission in Court Session” after “Full Bench of the Commission” in section 204(3).

[66] Section 204(5)

Insert after section 204(4)—

- (5) This section does not apply to a matter that may be dealt with only by the State Commission in Court Session.

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

Insert in alphabetical order in section 206(6)—

member of the State Commission includes a judicial member of the State Commission.

[68] Chapter 5 Industrial organisations

Omit “Supreme Court” wherever occurring in Parts 3–5.

Insert instead “Commission”.

[69] Chapter 5, Part 3

Insert after the first note at the beginning of the part—

2 The jurisdiction of the Commission under this part is exercisable only by the Commission in Court Session—see section 153(1)(e).

[70] Section 231A Notification of cancellation proceedings and decisions

Omit the section.

[71] Section 233 Application of Part to State organisations

Insert at the end of the section—

Note— The jurisdiction of the Commission under this part, except Division 3, may be exercised only by the Commission in Court Session.

[72] Section 318 Commencement of determination

Omit “the Chief Commissioner (or a Commissioner nominated by the Chief Commissioner)” from the note.

Insert instead “a Presidential Member”.

[73] Section 334 Cancellation of registration

Omit “A Full Bench of the Commission” from section 334(1).

Insert instead “The Commission in Court Session”.

[74] Section 334(1)(a)–(c) and (2)

Omit “the Full Bench” wherever occurring. Insert instead “the Commission”.

[75] Section 338 Withdrawal or cancellation of registration

Omit “The Supreme Court” from section 338(2).

Insert instead “The Commission in Court Session”.

[76] Section 338(2)(a) and (b), (4) and (5)

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

[77] 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 Presidential Member sitting alone.
- (3) For arbitration proceedings under this part, the Tribunal is, for the purposes of the proceedings, constituted by a Presidential Member and 2 part-time members nominated by the Presidential Member, one from each of the arbitration panels.

[78] Section 347(8)(b)

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

[79] Section 348 Compulsory conference with respect to claims

Omit “Chief Commissioner” wherever occurring in section 348(4) and (5).

Insert instead “President of the Commission”.

[80] Section 348(5)

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

[81] Section 351 General procedure and powers of Tribunal

Insert “, other than in Court Session” after “before the Commission” in section 351(1).

[82] Section 352 Voting by members of Tribunal

Omit “member of the Commission” wherever occurring in section 352(3).

Insert instead “Presidential Member”.

[83] Section 353 Costs

Omit “member of the Commission” from section 353(2).

Insert instead “Presidential Member”.

[84] Chapter 6A Industrial proceedings before Supreme Court

Omit the chapter.

[85] Section 356 Definition

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

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

Omit “The Supreme Court” from section 359(1).
Insert instead “The Commission in Court Session”.

[87] Section 359(2)

Omit “the Supreme Court’s”. Insert instead “the Commission’s”.

[88] Section 359(3)

Omit “the Supreme Court”. Insert instead “the Commission”.

[89] Section 364 Definitions

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

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

Insert “, whether or not in Court Session” after “the Commission”.

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

Omit section 371(1). Insert instead—

- (1) The industrial court must not make an order under this part until it has brought, or has used its best endeavours to bring, the parties to the application for the order to a settlement acceptable to the parties.

[92] Section 380 Small claims during other Commission hearings

Insert “even though it is not constituted as the Commission in Court Session” after “matter” in 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 summarily before—
 - (a) the Local Court, or
 - (b) the Commission in Court Session.
- (2) The maximum penalty that may be imposed in the proceedings by the Local Court is a monetary penalty of 100 penalty units or the maximum monetary penalty provided in relation to the offence, whichever is the lesser.
- (3) The maximum penalty that may be imposed in the proceedings by the Commission in Court Session is the maximum penalty provided for the offence.

[94] Section 399 Authority to prosecute

Insert after section 399(3)—

- (4) This section does not limit the functions that may be exercised by the Commission under section 164(2) in relation to a contempt of the Commission.

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

Omit “The Supreme Court” from section 402(4).

Insert instead “The Commission in Court Session”.

[96] Section 402(4) and (5)(a)

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

[97] Schedule 2 Provisions relating to members of Commission

Omit clauses 1 and 2. Insert instead—

1 Acting President

- (1) The Vice-President is the Acting President during the absence from duty of the President.
- (2) If the President and the Vice-President are or are to be both absent from duty, the Minister may appoint a Deputy President to be Acting President during the absence.
- (3) An Acting President has the functions of the President and anything done by an Acting President in the exercise of those functions has effect as if it had been done by the President.
- (4) In this clause, *absence from duty* includes a vacancy in the relevant office.

2 Acting Deputy Presidents and Acting Commissioners

- (1) The Governor may, by commission under the public seal of the State, appoint as an Acting Deputy President or Acting Commissioner a person qualified for appointment if satisfied 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) An Acting Deputy President or Acting Commissioner has the functions of, and is taken to be, a Deputy President or Commissioner, as the case requires, subject to the conditions or limitations specified in the person’s commission.
- (4) The person 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 the period.

3 Acting judicial members

- (1) The Governor may, by commission under the public seal of the State, appoint as an acting member of the Commission in Court Session (an *acting judicial member*) a person qualified for appointment as a judicial member, including an acting member of the Commission who is qualified.
- (2) A person who was formerly a judicial member or a Judge of another court may be appointed as an acting judicial member, and also appointed as an Acting Deputy President or Acting Commissioner under clause 2, even though the

person has reached 75 years of age, or will have reached that age before the appointment expires.

- (3) However, the person must not be appointed for any period that extends beyond the date the person reaches 78 years of age.
- (4) The person's appointment as an acting judicial member is for the period, not exceeding 5 years, specified in the person's commission.
- (5) Subject to any conditions or limitations specified in the person's commission, an acting judicial member—
 - (a) has the functions of a judicial member, and
 - (b) is taken to be a judicial member.
- (6) The conditions specified in the commission may exclude the whole or a part of the period of appointment as an acting judicial member from being regarded as a period of prior judicial service as referred to in the *Judges' Pensions Act 1953*, section 8(2).
- (7) The person 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 the period.

4 Age of judicial members

A person who has reached 75 years of age is not eligible to be appointed as a judicial member.

[98] Schedule 2, clause 5, heading

Insert “**other than judicial members**” after “**members**”.

[99] Schedule 2, clause 5(1)

Insert “, unless the person is or is to be appointed as a judicial member” after “the Commission”.

[100] Schedule 2, clause 6

Insert “, including judicial members” after “the Commission”.

[101] Schedule 2, clause 7

Insert after clause 6—

7 Status, remuneration etc of judicial members

- (1) Each judicial member has the same rank, title, status and precedence, and, subject to subclause (3), the same remuneration and other rights, as a Judge of the Supreme Court, other than the Chief Justice or the President or a Judge of the Court of Appeal.
- (2) In particular, a judicial member is entitled to be called a Judge and to use the title of “Justice”.
- (3) The remuneration of a judicial member who is the President, Vice-President or a Deputy President of the Commission must be determined under the *Statutory and Other Offices Remuneration Act 1975*.

[102] Schedule 2, clause 8

Omit the clause. Insert instead—

8 Protection and immunities of other members

A member of the Commission who is not a judicial member has the same protection and immunities as a judicial member.

[103] Schedule 2, clause 9, heading

Insert “other” before “members”.

[104] Schedule 2, clause 9(1)

Insert “, other than a member who is also a judicial member,” after “the Commission”.

[105] Schedule 2, clause 9(2)

Insert after clause 9(1)—

- (2) A member of the Commission who is also a judicial member is only entitled to be paid remuneration as a judicial member.

[106] Schedule 2, clause 10

Omit the clause. Insert instead—

10 Vacancy in office of member

- (1) The office of a member of the Commission, including a judicial member, becomes vacant if the member is removed or retired from office in accordance with the applicable provisions of the *Constitution Act 1902*, Part 9 and the *Judicial Officers Act 1986*, Parts 7 and 8.
- (2) A member of the Commission who is not a judicial member may be removed from office only in accordance with the provisions of the *Constitution Act 1902*, Part 9 relating to the removal from office of judicial members.
- (3) A member of the Commission who is also a judicial member ceases to hold both offices if removed or retired from either office.
- (4) The office of a member also becomes vacant if the member—
 - (a) dies, or
 - (b) is appointed for a limited period and the period expires without the member being re-appointed.

[107] Schedule 2, clause 10A(3A) and (4)

Insert after clause 10A(3)—

- (3A) To avoid doubt, a former member who held office as the President cannot exercise the functions of the President and is not taken to be the President.
- (4) This clause does not apply in relation to an acting judicial member who ceases to hold office.

Note— See clause 3(7) in relation to former acting judicial members.

[108] Schedule 2, clause 11(1)

Omit the subclause. Insert instead—

- (1) The members of the Commission have seniority according to the following order of precedence—
 - (a) the President,
 - (b) the Vice-President,

- (c) Deputy Presidents according to the days on which their commissions took effect or, if the commissions of 2 or more Deputy Presidents took effect on the same day, according to the precedence assigned to the Deputy Presidents by their commissions,
- (d) Commissioners according to the days on which their commissions took effect or, if the commissions of 2 or more Commissioners took effect on the same day, according to the precedence assigned to the Commissioners by their commissions.

[109] Schedule 2, clause 12(2)

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

[110] Schedule 2, clause 12(3)

Insert after clause 12(2)—

- (3) This clause is subject to clause 7.

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

Insert “, other than in Court Session” after “the Commission” in clause 8(1).

[112] Schedule 4 Savings, transitional and other provisions

Omit clause 2. Insert instead—

2 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the commencement of—
 - (a) a provision of this Act, or
 - (b) a provision amending this Act.
- (2) A savings or transitional provision consequent on the commencement of a provision must not be made more than 2 years after the commencement.
- (3) A savings or transitional provision made consequent on the commencement of a provision is repealed 2 years after the commencement.
- (4) A savings or transitional provision made consequent on the commencement of a provision may take effect before the commencement but not before—
 - (a) for a provision of this Act—the date of assent to this Act, or
 - (b) for a provision amending this Act—the date of assent to the amending Act.
- (5) A savings or transitional provision taking effect before its publication on the NSW legislation website does not—
 - (a) affect the rights of a person existing before the publication in a way prejudicial to the person, or
 - (b) impose liabilities on a person for anything done or omitted to be done before the publication.
- (6) In this clause—
person does not include the State or an authority of the State.

[113] Schedule 4, Part 19

Insert after Part 18—

Part 19 Provisions relating to Industrial Relations Amendment Act 2023

Division 1 Interpretation

73 Definitions

In this part—

amending Act means the *Industrial Relations Amendment Act 2023*.

Chief Commissioner has the same meaning as it had immediately before the commencement day.

commencement day means the day on which Chapter 4, Part 3 is inserted into this Act by the amending Act.

Division 2 Reconstitution of Commission

74 Renaming of office

- (1) On the commencement day, the office of Chief Commissioner is abolished and replaced with the office of President of the Commission.
- (2) A person who, immediately before the commencement day, held office as Chief Commissioner is taken to have been appointed as a Commissioner for the remainder of the person's term of appointment and is to be known as the Senior Commissioner.
- (3) The person appointed under subclause (2) continues to be entitled to the same remuneration as the person received as Chief Commissioner immediately before the commencement day until the time the remuneration of a Commissioner exceeds that remuneration.
- (4) Anything done by the Chief Commissioner that, immediately before the commencement day, had effect under this Act continues to have effect as if it had been done by the President of the Commission.
- (5) To avoid doubt, this clause has effect despite the following—
 - (a) this Act, Schedule 2, clause 10,
 - (b) the *Judicial Officers Act 1986*, Parts 7 and 8.

75 Relationship of division with Interpretation Act 1987

This division does not limit the *Interpretation Act 1987*, section 53 in its application to alterations made to legislation by the amending Act.

Division 3 Pending proceedings

76 Interpretation

- (1) In this division—

pending proceedings means proceedings, including appeals, that—

- (a) were commenced before the commencement day, and
- (b) have not before the commencement day been finally determined by the court in which the proceedings were commenced, and
- (c) would, after the commencement day, be required to be commenced in the Industrial Court.

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

- (2) For this division, proceedings are not finally determined if—
 - (a) a period for bringing an appeal as of right in relation to the proceedings has not expired, ignoring any period that may be available by way of extension of time to appeal, or
 - (b) an appeal in relation to the proceedings is pending, whether or not it is an appeal brought as of right.

77 Pending proceedings before courts

- (1) A court may, on and from the commencement day, continue to deal with pending proceedings until they are concluded.
- (2) For this purpose—
 - (a) the court continues to have and may exercise all the functions the court had in relation to the proceedings immediately before the commencement day, and
 - (b) the provisions of an Act, statutory rule or other law that would have applied to or in relation to the proceedings had the amending Act not been enacted continue to apply.

78 Construction of superseded references

- (1) Subject to the regulations, a reference in another Act, an instrument made under another Act or another document to the Chief Commissioner must be read as a reference to the President.
- (2) Subclause (1) does not apply to 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 another Act or an 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 another Act or an instrument made under another Act,
 - (e) a provision of an Act, an instrument made under an Act or another document, or a provision belonging to a class of provisions, prescribed by the regulations.

[114] Dictionary

Omit the definition of *Chief Commissioner*. Insert in alphabetical order—

Commission in Court Session means the Commission as constituted under section 151.

judicial member, of the Commission—see section 149(4).

Presidential Member, of the Commission—see section 147(2).

1.3 Miscellaneous amendments

[1] Section 3 Objects

Insert after section 3(h)—

- (i) to encourage strategies to attract and retain skilled staff where there are skill shortages so as to ensure effective and efficient delivery of services.

[2] Section 105 Definitions

Omit section 105(2).

[3] Section 146 General functions of Commission

Insert at the end of section 146(2)(b)—

, and

- (c) for the exercise of a function about public sector employees—the fiscal position and outlook of the Government and the likely effect of the exercise of the Commission’s function on the position and outlook.

[4] Section 146C Commission to give effect to certain aspects of government policy on public sector employment

Omit the section.

Schedule 2 Consequential amendment of other legislation

2.1 Annual Holidays Act 1944 No 31

[1] Section 12 Proceedings for recovery of penalties

Omit “Supreme Court” wherever occurring.

Insert instead “Industrial Relations Commission in Court Session”.

[2] Section 13 Recovery of holiday pay

Omit “Supreme Court” wherever occurring in section 13(1).

Insert instead “Industrial Relations Commission in Court Session”.

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

Omit “Supreme Court” from section 14(d).

Insert instead “Industrial Relations Commission in Court Session”.

2.2 Anti-Discrimination Act 1977 No 48

Section 109 Order affecting industrial instrument

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

2.3 Bail Act 2013 No 26

[1] Section 4 Definitions

Insert “the Industrial Court,” after “the Land and Environment Court,” in section 4(1), definition of *court*, paragraph (a).

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

Insert “, the Industrial Court” after “Land and Environment Court” in section 67(1)(e).

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

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

Insert instead “, the Land and Environment Court or the Industrial Court”.

[4] Section 80 Proceedings for fail to appear offence

Insert “, the Industrial Court” after “the Land and Environment Court” in section 80(4).

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

Insert “the Industrial Court,” after “the Land and Environment Court,” in section 94(5), definition of *court officer*, paragraph (a).

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

Insert “, the Industrial Court” after “the Land and Environment Court” in section 95(2)(a).

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

Section 64 Proceedings for offences

Omit “Supreme Court” from section 64(2).

Insert instead “Industrial Relations Commission in Court Session”.

2.5 Civil and Administrative Tribunal Act 2013 No 2

[1] Section 4 Definitions

Insert after section 4(1), definition of *NSW judicial officer*, paragraph (b)—

- (c) a judicial member of the Industrial Relations Commission,

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

Insert after section 15(5), definition of *relevant chief judicial officer*, paragraph (b)—

- (c) in relation to the appointment of a judicial member of the Industrial Relations Commission to act as a member—the President of the Commission, or

[3] Section 82 Interpretation

Insert after section 82(5), definition of *senior judicial officer*, paragraph (a)—

- (b) a judicial member of the Industrial Relations Commission,

2.6 Civil Procedure Act 2005 No 28

[1] Section 8 Uniform Rules Committee

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

[2] Section 8(1)(c2)

Insert after section 8(1)(c1)—

- (c2) one is to be the President of the Industrial Relations Commission or a judicial member of the Commission, within the meaning of the *Industrial Relations Act 1996*, nominated for the time being by the President, and

[3] Section 140 Transfer of proceedings to higher court

Insert “or 3” after “Division 2” in section 140(5).

[4] Part 9, Division 3

Insert after Part 9, Division 2A—

Division 3 Transfer of proceedings between Supreme Court and Industrial Court

150 Definitions

- (1) In this division—

transfer order means an order referred to in section 151(1) or (2).

transferee court means the court to which proceedings are transferred under a transfer order.

transferor court means the court from which proceedings are transferred under a transfer order.

- (2) For this division, proceedings are *related* if the matters with which they deal are so closely associated as to form part of the same controversy.

151 Transfer of proceedings between Supreme Court and Industrial Court

- (1) If either the Supreme Court or the Industrial Court is satisfied, in relation to proceedings before it, that it is more appropriate for the proceedings to be heard in the other court, it may, on application by a party to the proceedings or of its own motion, order that the proceedings be transferred to the other court.
- (2) The Supreme Court or the Industrial Court may, on application by a party to proceedings before it or of its own motion, order that the proceedings be transferred to the other court and heard together with related proceedings if the court is satisfied, in relation to the proceedings before it, that—
- (a) there are related proceedings pending in the other court, and
 - (b) it is more appropriate for the proceedings to be heard, together with the related proceedings, in the other court.
- (3) No appeal lies against a decision of the transferor court to make, or not to make, an order under this section.

152 Transfer orders

- (1) A transfer order takes effect when the order is made.
- (2) A transfer order does not invalidate an order made or another thing done in the proceedings before the order was made.
- (3) An order made by the transferor court, other than the transfer order, may be varied or revoked by an order of the transferee court.

153 Proceedings after transfer

- (1) Subject to the rules of court applicable in the transferee court—
- (a) proceedings in relation to which a transfer order takes effect continue in the transferee court as if—
 - (i) the proceedings had been duly commenced in the transferee court on the date on which the proceedings were commenced in the transferor court, and
 - (ii) a cross-claim in the proceedings had been duly made in the transferee court on the date on which the cross-claim was made in the transferor court, and
 - (b) proceedings in relation to which a transfer order under section 151(2) takes effect must be heard together with, and are taken to form part of, the related proceedings in the transferee court.
- (2) For proceedings continued in the transferee court—
- (a) an admission duly made in the transferor court must be treated as if the admission had been made in the transferee court, and
 - (b) for proceedings affected by a transfer order under section 151(2)—any process or other documentation before the transferee court may be amended to reflect the merger of the proceedings.
- (3) Subject to the rules of court applicable in the transferee court, the power of the transferee court to make orders about costs includes a power to make orders about the costs of—

- (a) the application for, and the making of, the transfer order, and
- (b) a step taken in the proceedings before the transfer order was made.

154 Jurisdiction of transferee court

The transferee court has, and may exercise, all of the jurisdiction of the transferor court in relation to proceedings to which a transfer order relates, including jurisdiction to determine a question arising in the proceedings.

[5] Schedule 1 Application of Act

Insert “, including the Commission in Court Session (the Industrial Court)” after “Industrial Relations Commission” in Column 1.

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

Insert “the President of the Industrial Relations Commission,” after “the Land and Environment Court,” in clause 1, definition of *ex-officio member*.

[7] Schedule 2, clause 3A(3), definition of “ex-officio member”

Insert “the President of the Industrial Relations Commission,” after “the Land and Environment Court,”.

2.7 Civil Procedure Regulation 2017

Clause 4 Fees payable in relation to court proceedings

Omit clause 4(7), including the note.

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

Sections 23 and 29(1)(b)

Omit “Supreme Court” wherever occurring.

Insert instead “Industrial Relations Commission in Court Session”.

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

Section 103 Nature of proceedings for offences

Omit “Supreme Court” from section 103(2).

Insert instead “Industrial Relations Commission in Court Session”.

2.10 Court Information Act 2010 No 24

Section 4 Definitions

Insert “Industrial Court,” after “Land and Environment Court,” in section 4(1), definition of *court*.

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

Section 3 Definitions

Insert “Industrial Court,” after “Land and Environment Court,” in the definition of *court*, paragraph (a).

2.12 Criminal Appeal Act 1912 No 16

Section 5AG

Insert after section 5AF—

5AG Appeal in criminal cases dealt with by Industrial Relations Commission in Court Session

- (1) A person convicted of an offence by the Industrial Relations Commission in Court Session may appeal under this Act to the Court of Criminal Appeal against—
 - (a) the person’s conviction, and
 - (b) if a sentence to a term of imprisonment was imposed—the sentence passed on the person’s conviction.
- (2) A person may not appeal under this section to the Court of Criminal Appeal unless the person has first exercised any right the person has to appeal to the Full Bench of the Industrial Relations Commission in Court Session under the *Industrial Relations Act 1996*.
- (3) The Court of Criminal Appeal, in proceedings before it on an appeal under this section, may—
 - (a) confirm the determination made by the Full Bench of the Industrial Relations Commission in Court Session, or
 - (b) order that the determination made by the Full Bench of the Industrial Relations Commission in Court Session be vacated and make a determination that the Full Bench of the Industrial Relations Commission in Court Session could have made.
- (4) This section has effect despite the *Industrial Relations Act 1996*, section 179.

2.13 Criminal Procedure Act 1986 No 209

[1] Section 3 Definitions

Insert “the Industrial Relations Commission,” after “the Land and Environment Court,” in section 3(1), definition of *court*, paragraph (a).

[2] Section 28 Application of Part and definition

Insert “, the President or a judicial member of the Industrial Relations Commission” after “an Industrial Magistrate” in section 28(2), definition of *Judge*.

[3] Section 170 Application

Insert after section 170(3)(a)—

- (b) proceedings before the Industrial Relations Commission in Court Session,

[4] Section 171 Definitions

Insert “and the President or a judicial member of the Industrial Relations Commission” after “Court of Coal Mines Regulation” in the definition of *Judge*.

[5] Section 275 Definition

Insert “, the President or a judicial member of the Industrial Relations Commission” after “a Children’s Court Magistrate” in the definition of *Judge*.

[6] Section 312 Persons arrested under bench warrants

Insert “, the President or a judicial member of the Industrial Relations Commission” after “a Children’s Court Magistrate” in section 312(3), definition of *Judge*.

2.14 Electronic Transactions (ECM Courts) Order 2005

[1] Schedule 1 Authority to use JusticeLink

Insert “, including the Industrial Court” after “Industrial Relations Commission” in Column 1.

[2] Schedule 5 Authority to use Online Registry

Insert “, including the Industrial Court” after “Industrial Relations Commission” in Column 1.

[3] Schedule 8 Authority to use DCFA

Insert “, including the Industrial Court” after “Industrial Relations Commission” in Column 1.

2.15 Employment Protection Act 1982 No 122

[1] Section 4 Definitions

Omit the definitions of *Chief Commissioner*, *Commission* and *member*.

Insert in alphabetical order—

Commission means the Industrial Relations Commission.

member means a judicial member of the Commission or a non-judicial member of the Commission.

President means the President of the Commission.

[2] Section 11

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

[3] Section 12 Report to be considered by Commission

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

Insert instead “President”.

[4] Section 15 Appeals

Omit “the Commission constituted by a Full Bench” from section 15(1).

Insert instead “the Commission in Court Session”.

[5] Section 15(3)

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

2.16 Essential Services Act 1988 No 41

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

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

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

Omit “Supreme Court” wherever occurring in section 19(1) and (2).

Insert instead “Industrial Relations Commission in Court Session”.

[3] Sections 22(1)–(3), 23(1)–(4), 24 and 26(4), (5) and (6)(a)

Omit “Supreme Court” wherever occurring.

Insert instead “Full Bench of the Industrial Relations Commission in Court Session”.

2.17 Evidence on Commission Act 1995 No 26

[1] Section 4 Definitions

Insert after the definition of *superior court*, paragraph (b)—

(c) the Industrial Relations Commission in Court Session, and

[2] Section 18 Definitions

Insert after the definition of *superior court*, paragraph (b)—

(c) the Industrial Relations Commission in Court Session, and

[3] Section 37 Regulations

Insert “, the Industrial Relations Commission” after “the Land and Environment Court” in section 37(2).

2.18 Explosives Act 2003 No 39

Section 32 Proceedings for offences

Omit “District Court” from section 32(1)(b).

Insert instead “Industrial Relations Commission in Court Session”.

2.19 Health Services Act 1997 No 154

Section 97

Omit the section. Insert instead—

97 Interpretation of determination

- (1) The Minister or the Association may apply to the Industrial Relations Commission in Court Session for a declaration of right under the *Industrial Relations Act 1996*, section 154 in relation to the interpretation, application or operation of a determination made under this part.
- (2) Subject to subsection (1), the *Industrial Relations Act 1996* applies to the application in the same way as it applies to an application for a declaration of right in relation to another matter in which the Industrial Relations Commission, however constituted, has jurisdiction.

2.20 Industrial Relations (Child Employment) Act 2006 No 96

[1] Section 3 Definitions

Omit “Supreme Court” from section 3(1), definition of *industrial court*, paragraph (a).

Insert instead “Industrial Court of New South Wales”.

[2] Section 12, heading

Omit “Supreme Court”.

Insert instead “**Industrial Court**”.

[3] Section 12(1)

Omit “Supreme Court”.

Insert instead “Industrial Court of New South Wales”.

[4] Section 12(2)–(4)

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

[5] Section 16 Applied provisions of Industrial Relations Act 1996

Omit “Supreme Court” from section 16(7).

Insert instead “Industrial Court of New South Wales”.

2.21 Industrial Relations (General) Regulation 2020

[1] Clauses 15 and 15A

Omit clause 15. Insert instead—

15 Acting President

- (1) This clause applies whenever the President and Vice-President of the Commission are both absent from duty and an Acting President has not been appointed under the Act, Schedule 2, clause 1(2) or, if an Acting President has been appointed, the Acting President is absent from duty.
- (2) The next most senior judicial member, including an acting judicial member, of the Commission who is not absent from duty is the Acting President of the Commission.
- (3) An Acting President has the functions of the President and anything done by an Acting President in the exercise of the functions has effect as if it had been done by the President.
- (4) In this clause, *absence from duty* includes a vacancy in the relevant office.

15A Oaths to be taken by members of Commission

A member of the Commission must, on appointment, take the oath of allegiance and—

- (a) for a judicial member—the judicial oath, or
- (b) otherwise—the official oath.

[2] Clause 42A

Insert after clause 42—

42A Industrial Magistrate—civil procedure

- (1) For the Act, section 383, the provisions of the Act, the regulations and the rules of the Commission about the practice and procedure of the Industrial Court, except in criminal proceedings, apply, with all necessary modifications, to proceedings before the Chief Industrial Magistrate or other Industrial Magistrate.
- (2) Without limiting subclause (1), the Chief Industrial Magistrate or other Industrial Magistrate may hear evidence orally or by affidavit and may hear evidence whether or not notice to call the evidence has been given.

- (3) However, if the interests of justice so require, a witness must be called to give oral evidence instead of evidence by affidavit.
- (4) This clause does not apply to proceedings for an offence or to proceedings under the Act, section 357 for a civil penalty for a contravention of an industrial instrument.

[3] Schedule 3 Conduct of elections for office

Omit “Supreme Court” wherever occurring in clause 5(1) and (2).

Insert instead “Industrial Court”.

2.22 Interpretation Act 1987 No 15

Schedule 4 Dictionary

Insert in alphabetical order—

Industrial Court or *Industrial Relations Commission in Court Session*
means the Industrial Relations Commission as constituted under the *Industrial Relations Act 1996*, section 151.

2.23 Judicial Officers Act 1986 No 100

[1] Section 3 Definitions

Insert “, including a judicial member,” after “a member” in section 3(1), definition of *judicial officer*, paragraph (b).

[2] Section 3(5)(b)

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

[3] Section 5 The Commission

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

[4] Section 44 Retirement of judicial officers

Insert “non-judicial” before “member of the Industrial Relations Commission” in section 44(2).

[5] Schedule 4A NSW and corresponding courts

Insert “Industrial Court;” after “Supreme Court;” in Column 1.

2.24 Long Service Leave Act 1955 No 38

Sections 12(1) and 14(c)

Omit “Supreme Court” wherever occurring.

Insert instead “Industrial Relations Commission in Court Session”.

2.25 Long Service Leave (Metalliferous Mining Industry) Act 1963 No 48

[1] Section 12 Recovery of long service leave pay

Omit “Supreme Court” wherever occurring in section 12(1).

Insert instead “Industrial Relations Commission in Court Session”.

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

Omit “Supreme Court” from section 14(c).

Insert instead “Industrial Relations Commission in Court Session”.

2.26 Parliamentary Remuneration Act 1989 No 160

[1] Section 3 Definitions

Omit section 3(1), definition of *Chief Commissioner*. Insert in alphabetical order—
President means the President of the Industrial Relations Commission.

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

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

[3] Schedule 2 Parliamentary Remuneration Tribunal

Omit clause 1(1) and (1A). Insert instead—

- (1) The Tribunal consists of a judicial member or retired judicial member of the Industrial Relations Commission appointed by the President on a part-time basis.

[4] Schedule 2, clause 3(1)

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

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

Insert “on the recommendation of the President” after “Governor”.

[6] Schedule 2, clause 4(2)

Insert “, on the recommendation of the President,” after “Governor may”.

[7] Schedule 2, clause 4(3)

Omit the subclause.

2.27 Personal Injury Commission Act 2020 No 18

Schedule 2 Provisions relating to members of Commission

Insert at the end of clause 1, definition of *judicial office*, paragraph (d)—

, or

- (e) judicial member of the Industrial Relations Commission.

2.28 Police Act 1990 No 47

[1] Section 178 Rules of evidence and legal formality

Insert after section 178(1)—

- (2) However, the rules of evidence and other formal procedures of a superior court of record apply to and in relation to the Commission in Court Session.

[2] Section 179 Application of Industrial Relations Act 1996

Omit section 179(2). Insert instead—

- (2) Proceedings under this division must be dealt with by a judicial member of the Commission unless the President of the Commission otherwise directs under the *Industrial Relations Act 1996*, section 159.

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

Insert “judicial” before “member” in section 181G(1)(c).

[4] Section 181K

Omit the section. Insert instead—

181K Constitution of Commission for purposes of Division 1C

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

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

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

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

Insert instead “Industrial Court”.

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

[1] Schedule 1 Public offices

Insert the following after the matter relating to a Judge of the Supreme Court, other than the Chief Justice and President of the Court of Appeal—

President of the Industrial Relations Commission
Vice-President of the Industrial Relations Commission

[2] Schedule 2 Public offices

Omit the matter relating to Chief Commissioner of the Industrial Relations Commission in Part 1.

Insert instead—

Deputy President of the Industrial Relations Commission, not being a judicial member

[3] Schedule 4 Excluded offices

Insert at the end of the schedule—

Deputy President of the Industrial Relations Commission, being a judicial member

2.31 Superannuation Administration Act 1996 No 39

[1] Section 88 Appeals

Omit “Supreme Court” from section 88(1).

Insert instead “Industrial Relations Commission in Court Session (the *Commission*)”.

[2] Section 88(2)–(6)

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

2.32 Supreme Court Act 1970 No 52

[1] Section 48 Assignment to the Court of Appeal

Insert after section 48(1)(a), definition of *specified tribunal*, subparagraph (i)—

(ii) the Industrial Relations Commission or a member of the Commission,

[2] Section 101 Appeal in proceedings before the Court

Omit section 101(3A).

2.33 Vexatious Proceedings Act 2008 No 80

[1] Section 3 Definitions

Insert at the end of section 3(1), definition of *appropriate registrar*, paragraph (b)—

, or

(c) in relation to the Industrial Court—the Industrial Registrar within the meaning of the *Industrial Relations Act 1996*.

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

Insert after paragraph (b)—

(c) the Industrial Court.

[3] Section 3(2A)

Omit the subsection.

[4] Section 8 Making of vexatious proceedings order

Insert after section 8(8)—

(8A) Orders that may be made by Industrial Court

The Industrial Court may make one or more of the following vexatious proceedings orders in relation to a person—

- (a) an order staying all or part of any proceedings in the Industrial Relations Commission, whether in Court Session or otherwise,
- (b) an order prohibiting the person from instituting proceedings in the Industrial Relations Commission, whether in Court Session or otherwise,
- (c) another order the Court considers appropriate in relation to proceedings by the person in the Industrial Relations Commission, whether in Court Session or otherwise.

[5] Section 12 Appropriate authorised courts for granting leave

Omit section 12(1)(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, whether in Court Session or otherwise—the Industrial Court.

[6] Section 12(2)

Omit the subsection.

2.34 Victims Rights and Support Act 2013 No 37

Section 105 Application of Part

Insert after section 105(1)(e)—

- (f) the Industrial Relations Commission in Court Session, or

2.35 Work Health and Safety Act 2011 No 10

[1] Section 215 Injunctions for noncompliance with notices

Omit “District Court” from section 215(1). Insert instead “Industrial Court”.

[2] Section 220 Contravention of WHS undertaking

Omit “District Court” from section 220(1). Insert instead “Industrial Court”.

[3] Section 229B Procedure for offences

Omit section 229B(1) and (3). Insert instead—

- (1) Except as provided by this section, proceedings for an offence against this Act or the regulations must be dealt with summarily before—
 - (a) the Local Court, or
 - (b) the Industrial Court.
- (2) Proceedings for a Category 1 offence committed by an individual must be taken on indictment before the District Court.
- (3) For proceedings to which subsection (2) applies, the reference in the *Criminal Procedure Act 1986*, section 168(3) to the Local Court is taken to be a reference to the Industrial Court.

[4] Section 229B(5)

Insert after section 229B(4)—

- (5) The provisions of the *Industrial Relations Act 1996*, and of the regulations under that Act, relating to appeals from the Local Court to the Industrial Court in connection with offences against that Act apply to proceedings before the Local Court for offences against this Act or the regulations.

Note— The *Industrial Relations Act 1996*, section 197 deals with appeals against convictions or penalties in connection with offences against that Act.

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

Omit “District Court”. Insert instead “Industrial Court”.

2.36 Workplace Injury Management and Workers Compensation Act 1998 No 86

[1] Section 245 Proceedings for offences

Omit “District Court” wherever occurring in section 245(1)(b) and (3).

Insert instead “Industrial Relations Commission in Court Session”.

[2] Section 245(4)

Insert after section 245(3)—

- (4) The provisions of the *Industrial Relations Act 1996*, section 197, and of the regulations under that Act, relating to appeals from, and the stating of a case by, the Local Court to the Industrial Relations Commission in Court Session apply to proceedings before the Local Court for offences against this Act, the 1987 Act or the regulations under those Acts.

2.37 Workplace Surveillance Act 2005 No 47

[1] Section 41

Omit the section. Insert instead—

41 Application to judicial member of Industrial Relations Commission

- (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 apply to a judicial member of the Industrial Relations Commission (a *judicial member*) 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 apply to a judicial member to vary or cancel the authority.
- (3) The application must be made within 30 days after the decision is given or within a further period as the judicial member allows.
- (4) Part 4 applies to or in relation to the issue, variation or cancellation of a covert surveillance authority by a judicial member to whom an application is made under this section in the same way as it applies to the issue, variation or cancellation of an authority by a Magistrate.
- (5) An application to a Magistrate for the issue, variation or cancellation of an authority is taken, for the purposes only of an application under this section, to have been refused if the application 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 a judicial member under this section is not a conferral of jurisdiction on the Industrial Relations Commission.

[2] Section 45 Summary procedure for offences

Omit “Supreme Court” from section 45(2).

Insert instead “Industrial Relations Commission in Court Session”.

2.38 Workplace Surveillance Regulation 2022

[1] Section 4 Forms

Omit section 4(6)–(8). Insert instead—

- (6) For the Act, section 41, an application to a judicial member of the Industrial Relations Commission to issue a covert surveillance authority must be in Form 6.
- (7) For the Act, section 41, an application to a judicial member of the Industrial Relations Commission to vary a covert surveillance authority must be in Form 7.
- (8) For the Act, section 41, an application to a judicial member of the Industrial Relations Commission to cancel a covert surveillance authority must be in Form 8.

[2] Section 5 Records relating to covert surveillance authority—the Act, s 33

Omit “eligible Supreme Court Judge” wherever occurring in section 5(1) and the note.
Insert instead “judicial member of the Industrial Relations Commission”.

[3] Schedule 1 Forms

Omit “eligible Supreme Court Judge” wherever occurring in Form 2.
Insert instead “judicial member of the Industrial Relations Commission”.

[4] Schedule 1, Form 6

Omit “*eligible Supreme Court Judge that each person designated by the Judge*” wherever occurring.

Insert instead “*judicial member of the Industrial Relations Commission that each person designated by the judicial member*”.

[5] Schedule 1, Form 6, note

Omit “an eligible Supreme Court Judge”.
Insert instead “a judicial member of the Industrial Relations Commission”.

[6] Schedule 1, Forms 7 and 8

Omit “*an eligible Supreme Court Judge*” wherever occurring.
Insert instead “*a judicial member of the Industrial Relations Commission*”.

[Second reading speech made in—
Legislative Assembly on 23 November 2023
Legislative Council on 30 November 2023]