

2011–2012  
**ANNUAL  
REPORT**

**Industrial Registry**

13th floor, Central Plaza 2  
66 Eagle Street, Brisbane  
(Corner Elizabeth and Creek Streets)

**Postal address**

GPO Box 373  
BRISBANE QLD 4001

**General enquiries**

Telephone: (07) 3227 8060  
Facsimile: (07) 3221 6074

[www.qirc.qld.gov.au](http://www.qirc.qld.gov.au)

of the President of the  
**Industrial Court of Queensland**

in respect of the Industrial Court of Queensland, Queensland Industrial  
Relations Commission and Queensland Industrial Registry





# Industrial Court of Queensland

September 2012

The Honourable Jarrod Bleijie MP  
Attorney-General and Minister for Justice  
Level 18  
State Law Building  
50 Ann Street  
BRISBANE QLD 4000.

Dear Minister

I have the honour to furnish to you for presentation to Parliament, as required by section 252 of the *Industrial Relations Act 1999*, the Annual Report on the work of the Industrial Court of Queensland, the Queensland Industrial Relations Commission, the Industrial Registry and generally on the operation of the *Industrial Relations Act 1999* for the financial year ended 30 June 2012. The report relating to the Industrial Registry has been prepared by the Industrial Registrar whose assistance is acknowledged.

D.R. Hall  
President  
Industrial Court of Queensland

Industrial Registry, 13th Floor, Central Plaza 2,  
66 Eagle Street, (Corner Elizabeth and Creek Streets), BRISBANE QLD 4000  
Postal Address: GPO Box 373, BRISBANE QLD 4001  
General Enquiries: (07) 3227 8060 Facsimile: (07) 3221 6074 [www.qirc.qld.gov.au](http://www.qirc.qld.gov.au)

2011-12 Annual Report of the President of the Industrial Court of Queensland

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## OVERVIEW

The Industrial Court of Queensland (Court) is constituted by the President sitting alone. The President of the Court is also President of the Queensland Industrial Relations Commission (QIRC). There were seven other Members of the QIRC, but the number was reduced to six during the reporting year.

Commissioner Asbury resigned her Commission on 30 March 2012. Commissioner Asbury was first appointed as a Commissioner of the QIRC on 28 September 2000. In terms of the *Workplace Relations Act 1996* she was also appointed to the Australian Industrial Relations Commission (AIRC) up to 31 December 2009, at which time the appointment ceased due to the AIRC ceasing to exist and being replaced by Fair Work Australia (FWA). However CMR Asbury was then also appointed as a Member of FWA as from 1 January 2010. CMR Asbury worked in that role full-time (whilst still retaining her Commission with the QIRC) until her full-time appointment as a Member of FWA on 31 March 2012.

Commissioner Brown has been the Queensland Workplace Rights Ombudsman since 1 July 2007 at which time he was appointed permanently. On 1 January 2011 the appointment changed to part-time as the Ombudsman and part-time as a Commissioner. On 30 June 2012, Commissioner Brown's role of Queensland Workplace Rights Ombudsman ceased which saw him return to the QIRC full-time.

The QIRC has responsibility for all employment and industrial relations matters affecting Queensland's public sector, local government and many statutory authorities' employees.

The QIRC also has significant jurisdiction covering work health and safety, workers compensation, vocational education and training, trading hours, child employment and private employment agencies, allowable trading hours matters and the low-cost common law jurisdiction avenues for employees.

The responsibilities of the QIRC outside the industrial relations system altered during 2011-2012 with several legislative changes being introduced.

The *Work Health and Safety Act 2011* (WH&S Act) was assented to on 6 June 2011 and for parts relevant to the QIRC, commenced on 1 January 2012.

Appeals from decisions of Industrial Magistrates regarding prosecutions under the WH&S Act and *Electrical Safety Act 2002* are no longer heard in the Court. The QIRC however reviews decisions of an industrial nature (e.g. training of health and safety representatives).

Upon application, the Industrial Registrar is required to issue a Work Health and Safety entry permit to a person who is an official of the union, who is also required to hold an entry permit under the *Fair Work Act 2009* or authorised to enter a workplace under the *Industrial Relations Act 1999* (the Act) prior to entering the workplace.

The Industrial Registrar must publish an up-to-date register of Work Health and Safety entry permit holders on the QIRC website.

On 6 June 2012 amendments were made to both the Act and the *Public Service Act 2008*

The QIRC is now required to give consideration to the financial position of the state, whereby the Queensland government can brief the QIRC on the State's financial position, fiscal strategy and related matters at any time.

The amendments also altered the requirements for the taking of protected industrial action in connection with a proposed certified agreement.

Amendments provided that Members of the QIRC are Appeals Officers for the purposes of hearing appeals under that Act as from 1 July 2012. Members of the QIRC and Registry staff have been liaising with Public Service Commission staff to ensure matters could be appropriately dealt with commencing on 1 July 2012.

During the year there were 2,239 matters filed pursuant to the various Acts within the QIRC's jurisdiction in the Industrial Registry.

In terms of the *C'wth Fair Work Act 2009*, one Queensland Deputy President and one Commissioner, whilst retaining their commission with the QIRC, were also appointed as Members of FWA as from 1 January 2010. Four hundred and seventy-eight matters were dealt with between 1 July 2011 and 30 June 2012.

2011-2012 was the first full 12 months that the QIRC had sole jurisdiction to hear certain appeals from decisions of Q-COMP. Four hundred and ninety-two matters were filed during the reporting year. Whilst not all of those matters went to a hearing, the preparation of documents and preliminary procedural steps undertaken for each matter filed, impact the workload of the Registry and as cases reach fruition the QIRC's workload has increased significantly.

A number of Industrial Organisations were de-registered due to being defunct, deemed to be a 'small organisation' or as a result of members moving to their Federal Counterpart Body.

A review of the *Industrial Relations (Tribunals) Rules 2000* rules was undertaken to ensure they are up to date and meet current and emerging business processes particularly Q-COMP and WH&S matters. The new Rules (and Forms) took effect on 1 January 2012. A further more detailed review commenced on 6 June 2012.

#### Industrial Registry

The Registry has implemented video conferencing facilities to allow remote access to services from Court houses throughout Queensland.

During the year, the Industrial Registry staff numbers have been impacted on by the previous Government's Voluntary Separation Program and the current Government's Establishment Management Program resulting in an adverse affect on service delivery.

It is hoped that further budgetary restraints do not undermine the Registry's administrative ability to support the Court and QIRC and do not impinge on the QIRC's timely disposition of matters being dealt with.

I wish to thank the Registry staff for their dedicated support to the Court and QIRC, particularly given the difficulties faced in their current working environment.

## THE INDUSTRIAL COURT OF QUEENSLAND

The Court is governed largely by Chapter 8 Part 1 of the *Industrial Relations Act 1999* (Act). The Court's jurisdiction and powers are provided for chiefly by Division 3 of Chapter 8 Part 1. Appeals to the Court and general provisions about appeals are dealt with in Chapter 9, Divisions 2 and 5.

By s. 247 of the Act, the Industrial Court is constituted by the President sitting alone. Section 243(1) of the Act requires the President to have been either a Supreme Court judge, or a lawyer of at least 5 years standing. The current President is Mr David Hall, who was sworn-in in August 1999.

By virtue of s. 257, the President of the Court is also President of the Commission. The President may preside on a Full Bench of the Commission and, for certain matters under the Act, the Full Bench *must* include the President (see s. 256(2)).

More information about the Full Bench appears later in this report under the Queensland Industrial Relations Commission.

### Jurisdiction of the Court

Section 248 of the Act outlines the Court's jurisdiction generally and states that it may exercise all powers prescribed under the *Industrial Relations Act 1999* or another Act. (The Court's jurisdiction under other Acts is largely appellate jurisdiction and will be outlined briefly below.) The original jurisdiction includes hearing and deciding:

- ❖ cases stated to it by the Commission (available under s. 282);
- ❖ offences against the Act, other than those for which jurisdiction is conferred on the Industrial Magistrates Court (s. 292 gives Industrial Magistrates jurisdiction over offences for which the maximum penalty is 40 penalty units\* or less, except where the Act specifically provides for Industrial Magistrates' jurisdiction); and

the section also allows the Court to issue prerogative orders, or other process, to ensure that the Commission and Industrial Magistrates exercise their jurisdictions according to law and do not exceed their jurisdiction.

The Court also has the power, under s. 671, to issue an injunction to restrain a person, found guilty of wilfully contravening an industrial instrument, a permit or the Act, from continuing to do so, or from committing further contraventions.

### Appellate Jurisdiction of the Court

Matters filed in the Court are predominantly appeals (see Table 1). Appeals to the Court against decisions of the Commission under the *Industrial Relations Act 1999* are available only on the grounds of error of law, or of excess, or want, of jurisdiction: s. 341. Appeals are by way of re-hearing on the record although fresh evidence may be adduced if the Court considers it appropriate: s. 348.

Appeal decisions are final and conclusive, under s. 349. (Judicial review has been found by the Supreme Court, to be available, but only for decisions that involve jurisdictional error: see *Carey v President of the Industrial Court of Queensland* [2004] 2 Qd. R. 359 at [366] citing *Squires v President of Industrial Court Queensland* [2002] QSC 272. See also *Parker v The President of the Industrial Court of Queensland and Q-COMP* [2010] 1 Qd. R. 255)

The Court hears and determines appeals from decisions of a single Member of the Commission, of a Full Bench and of the Industrial Registrar. However, Full Bench decisions may only be appealed to

the Court if the President was not a Member of the Bench. Any decision of a Full Bench which included the President may only be appealed to the Queensland Court of Appeal.

A determination by the Commission under s. 149 of the Act is not appealable to the Court. (Section 149 allows the Commission to arbitrate, where a protracted or damaging dispute over negotiations for a Certified Agreement cannot be resolved by conciliation.)

Appeals also lie to the Court from decisions of the Commission regarding:

- ❖ appeals from review decisions on claims for compensation under the *Workers' Compensation and Rehabilitation Act 2003*: (see ss. 561 and 562);
- ❖ *Trading (Allowable Hours) Act 1990* (s. 43)
- ❖ *Public Interest Disclosure Act 2010* (s. 48(4))
- ❖ *Contract Cleaning Industry (Portable Long Service Leave) Act 2005* (s. 100)
- ❖ appeals relating to the right of entry of authorised representatives under Part 7 of the *Work Health and Safety Act 2011* (s. 142(6))
- ❖ appeals for persons dissatisfied with a decision, on internal review, by the Regulator under the *Work Health and Safety Act 2011* (s. 229F)
- ❖ appeals relating to decisions of Skills Queensland about apprentice or trainees under the *Vocational Educational, Training and Employment Act 2000*.
- ❖ *Child Employment Act 2006*.

Appeals also lie to the Court from decisions of the Industrial Magistrates Court regarding:

- ❖ offences and wage claims under the *Industrial Relations Act 1999* (see s. 341(2));
- ❖ offences and cancellation or suspension of certificate of competency under the *Coal Mining Safety and Health Act 1999* (see ss. 255 and 258);
- ❖ offences and cancellation or suspension of certificate of competency under the *Mining and Quarrying Safety and Health Act 1999* (see ss.234 and 237);
- ❖ offences under the *Child Employment Act 2006* (s. 30)
- ❖ appeals from non-reviewable decisions, on claims for compensation under the *Workers' Compensation and Rehabilitation Act 2003*: (see ss. 561 and 562);
- ❖ appeals under the *Building and Construction Industry (Portable Long Service Leave) Act 1991* (see. s. 89) and the *Private Employment Agents Act 2005* (see s. 47)

Appeals are also available under the *Coal Mining Safety and Health Act 1999* (s. 244), the *Petroleum and Gas (Production and Safety) Act 2004* (s. 825) and the *Mining and Quarrying Safety and Health Act 1999* (s. 224) for persons dissatisfied with decisions on internal review.

Table 2 shows the number of appeals. Table 3 indicates the types of appeal cases filed during the year.

### **Offences under the *Industrial Relations Act 1999***

Under s. 683, proceedings for an offence against the Act must be heard and decided by the Court or a Magistrate according to their respective jurisdictions. The original jurisdiction of the Court includes the power to try offences for which the penalty prescribed is greater than 40 penalty units (other offences are brought before an Industrial Magistrate).

Most of these offences are contained in Chapter 12, Part 7 and Part 8. Part 7 governs the conduct of industrial organisations' elections (the offences are in Div. 4: i.e. ss. 491-497). Part 8 relates to Commission inquiries into organisations' elections (see ss. 510 and 511).

There are other offences which must be tried before the Court. For example, s. 660 states that a person must not disrupt or disturb proceedings in the Commission, in the Industrial Magistrates Court, or before the Registrar; a person must not insult officials of those tribunals, attempt to improperly influence the tribunals or their officials or to bring any of those tribunals into disrepute. To do so is to

commit an offence, for which the person may be imprisoned for up to 1 year, or fined 100 penalty units\*. The Court also has all necessary powers to protect itself from contempt of its proceedings and may punish contempt of the Court.

Non-payment of an employee's wages under an industrial instrument or permit is also a serious offence, the maximum penalty for which is 200 penalty units\*: see s. 666. Complaints relating to this offence are brought before an Industrial Magistrate; and may subsequently come to the Court on appeal.

Under s. 671, the Court may issue an injunction to restrain a person from contravening, or continuing to contravene, an industrial instrument or the Act. If the person disobeys the injunction, a penalty up to 200 penalty units\* can be imposed.

\* [Section 5(1)(c) of the *Penalties and Sentences Act 1992* states a penalty unit for an individual is \$100. Under s. 181B(3) of the *Penalties and Sentences Act 1992*, if a corporation is found guilty of the offence, the Court may impose a maximum fine of an amount equal to 5 times the maximum fine for an individual.]

### **Stay of Decision appealed against**

An application can be made under s. 347 of the Act for a Stay of Decision appealed against. The Court may order that the decision being appealed be wholly or partly stayed pending the determination of the appeal or a further order of the industrial tribunal.

### **Industrial Organisations**

The Court has original jurisdiction over certain other matters concerning industrial organisations. For example, an industrial organisation's rules must comply with restrictions on their content which are set out in s. 435 of the Act. On application by a member of the organisation or by a prescribed person, the Court may decide on, and issue a declaration about, the rules' compliance: s. 459. If the Court declares that any provision contravenes s. 435, the Registrar may omit or amend the provision under s. 467. Under s. 459, the Court may also order a person who is obliged to perform or abide by rules of an industrial organisation, to do so.

Membership disputes are also decided by the Court, by virtue of ss. 535 and 536. An organisation, or a person who wishes to become a member, may apply to the Court under s. 535, to decide questions, including: a person's eligibility for, and qualifications for membership; and the reasonableness of a membership subscription or other requirements of membership.

### **Cases Stated**

Under s. 282 of the Act, the Commission may refer a question of law, relevant to proceedings before it, to the Court for the Court's opinion. The Court may determine the matter raised by the case stated and remit it to the Commission. The Commission must then give effect to the Court's opinion.

### **Costs Jurisdiction**

The Court may order costs against a party to an application. Under s. 335 of the *Industrial Relations Act 1999* costs may only be ordered against a party if the Court is satisfied that:

- ❖ the party's application was vexatious or without grounds; or,
- ❖ in a reinstatement application, if the party caused another party to incur additional costs, by doing some unreasonable act or making an unreasonable omission during the course of the matter.

There is a power to award costs of an appeal against a party under s. 563 of the *Workers' Compensation and Rehabilitation Act 2003*, if the Court is satisfied that the party made the application vexatiously or without reasonable cause. However, because of the wording of s. 563, this power has been found not to allow an award of costs to a successful appellant. It will only permit costs to be awarded to a respondent, to an appeal that has failed, in circumstances where the appeal application is found to have been made vexatiously or without reasonable cause.

The question of costs is invariably decided on submissions after a decision is delivered in a matter, rather than on a separate application. These decisions are recorded either as a second decision based on written submissions after the appeal has been determined, or at the end of the substantive decision, based on argument during the appeal hearing.

Decisions of the Industrial Court of Queensland can be found at [www.qirc.qld.gov.au](http://www.qirc.qld.gov.au)

## THE QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

The Queensland Industrial Relations Commission derives its powers and functions from Chapter 8, Part 2 of the *Industrial Relations Act 1999* (Act).

The Commission plays a major role in contributing to the social and economic well-being of Queenslanders through furthering the objects of the Act which are principally to provide a framework for industrial relations that supports economic prosperity and social justice.

There are eight Members of the Commission. The Commission is headed by the President who is also President of the Industrial Court. Other presidential Members are the Vice President and two Deputy Presidents. There were four other Commissioners as at 30 June 2012.

The President is responsible for administration of the Commission and Registry, including allocation of matters, establishing industry panels for disputes, approving references to a Full Bench, and general conduct of Commission business. Provision is made for the President to be assisted by the Vice President and one or more Deputy Presidents.

In terms of the federal *Fair Work Act 2009*, one Queensland Deputy President and one Commissioner, whilst retaining their commission with the State Commission, were also appointed as Members of Fair Work Australia. Four hundred and seventy-eight matters were dealt with between 1 July 2011 and 30 June 2012.

### Members of the Commission

Current Members of the Commission are listed below.

| <b>Member</b>      | <b>Role and date sworn in</b>                                 |
|--------------------|---|
| Mr DR Hall         | President 2.8.1999  |
| Ms DM Linnane      | Vice President 2.8.1999                                       |
| Ms DA Swan *       | } Commissioner 2.8.1999 - appointed Deputy President 3.2.2003 |
| }                  |   |
| }                  |   |
| Mr AL Bloomfield } | } Commissioner 2.8.1999                                       |
| Ms GK Fisher }     |   |
| Mr DK Brown**}     |   |
| Ms IC Asbury *** } | } Commissioner 28.9.2000                                      |
| Mr JM Thompson }   |   |

\*Since 1 January 2010, Deputy President Swan was appointed to Fair Work Australia but retained her commission with the State Commission.

\*\*Commissioner Brown has also been the Queensland Workplace Rights Ombudsman working part-time as the Ombudsman and part-time as a Commissioner. Commissioner Brown's appointment as Queensland Workplace Rights Ombudsman ceased on 30 June 2012.

\*\*\*Since 1 January 2010, Commissioner Asbury was appointed to Fair Work Australia but retained her commission with the State Commission. Commissioner Asbury resigned her State Commission on 29 March 2012 to take up a permanent appointment with Fair Work Australia on 30 March 2012.

## **Industry Panel System**

Under s. 264(6) of the Act, the President must establish industry panels. The scheme is designed to ensure that, where possible, Members with experience and expertise in the relevant industries are assigned to deal with disputes and the Commission is thereby able to deal with disputes more quickly and effectively. The current arrangement is a two, three or four person panel system, with industries divided between the panels. Each panel is headed by the Vice President or a Deputy President.

The current panels, operative since 27 January 2011, are listed in Appendix 1.

## **Full Bench of the Commission**

Under s. 256(2) of the Act, a Full Bench is comprised of three Members.

For certain matters, a Full Bench *must* include the President. These are:

- ❖ hearings on a "show cause" notice issued by the Registrar in regard to an industrial dispute: this may occur when an organisation has failed to comply with an order of the Commission under s. 233;
- ❖ applications to de-register industrial organisations under Chapter 12 Part 16; and
- ❖ applications for leave to appeal under s. 342.

Where a matter before a Member is of substantial industrial importance, s. 281 allows the Member hearing the matter to refer it to a Full Bench, with approval of the President. In certain circumstances, a party to a case may apply to have the matter referred.

## **Appeals to the Full Bench**

A Full Bench may (by leave) hear appeals on grounds other than an error of law, or an excess, or want, of jurisdiction (for which an appeal lies to the Court): s. 342. On these grounds, a person may appeal to a Full Bench from decisions of the Commission and from most decisions of the Registrar. For the purpose of hearing appeals, a Full Bench must include the President: s. 256(2). Leave to appeal is only given where a Full Bench considers the matter is of such importance that it is in the public interest to grant leave.

## **Full Bench Hearings about Industrial Organisations**

If an organisation involved in an industrial dispute does not comply with orders of the Commission, a Full Bench, which must include the President, may make further orders against the organisation, including penalties up to 1,000 penalty units (see s. 234). A Full Bench can also make representation orders to settle demarcation disputes (see s. 279).

A Full Bench of the Commission may order the de-registration of an industrial organisation under Chapter 12 Part 16. For this purpose, the Bench must include the President: s 256(2). In certain circumstances, the Commission may review an organisation to determine whether it should be de-registered (see ss. 645 and 646).

The following organisations were deregistered during the 2011-2012 period.

The National Union of Workers Industrial Union of Employees Queensland - de-registered on 25/7/11;

The Hairdressing Federation of Queensland - Union of Employers - de-registered on 11/11/11;

Griffith University Faculty Staff Association (Union of Employees) - de-registered on 4/4/12;

James Cook University Staff Association (Union of Employees) - de-registered on 4/4/12;

Queensland Association of Academic Staff in Colleges of Advanced Education (Union of Employees) - de-registered on 4/4/12;  
University of Queensland Academic Staff Association (Union of Employees) - de-registered on 4/4/12; and  
Federated Ironworkers Association of Australia (Queensland Branch) Union of Employees - de-registered on 15/6/12.

### **Commission Hearings**

The Commission may exercise most of its powers on its own initiative: see s. 325. Importantly, it may start proceedings on its own initiative: s. 317.

## **Jurisdiction, Powers and Functions of the Commission**

### **Jurisdiction under the *Industrial Relations Act 1999***

Under s. 256 of the Act, the Commission is ordinarily constituted by a single Commissioner sitting alone. The Commission's jurisdiction is set down in s. 265; its functions are outlined in s. 273; and it is given powers to make orders and do other things necessary to enable it to carry out its functions by ss. 274-288.

The jurisdiction under the Act includes regulation of callings, dealing with industrial disputes and resolving questions and issues relating to industrial matters. "Industrial matter" is defined broadly in s. 7, and includes matters affecting or relating to work to be done; privileges, rights or functions of employees and employers; matters which, in the opinion of the Commission, contribute to an industrial dispute or industrial action. Schedule 1 of the Act lists 28 matters which are considered to be industrial matters, for example: wages or remuneration; hours of work; pay equity; occupational superannuation; termination of employment; demarcation disputes; interpretation and enforcement of industrial instruments; what is fair and just in matters concerning relations between employers and employees.

### **Commission's Powers**

The Commission's functions are outlined in Part 2 of Chapter 8 of the Act. In Div. 4 of that Part, s. 274 gives the Commission general powers to do "all things necessary or convenient" in order to carry out its functions. Other sections in that Division give more specific powers, which are listed below. Specific powers are also distributed throughout the Act. For example, provisions in Chapter 3 enable it to order reinstatement or award compensation to workers who have been unfairly dismissed. Various provisions in Chapters 5 and 6 empower the Commission to do what is necessary to make, approve, interpret and enforce industrial instruments (Awards and Agreements). The Commission's exercise of its powers, and the powers necessary for conducting proceedings and exercising its jurisdiction are governed by Chapter 8, Part 6, Div 4.

The Act also states in s. 266 that, in exercising any of its powers, the Commission must not allow any discrimination in employment. In exercising its powers and performing its functions, the Commission must consider the public interest and act in a way that furthers the objects of the Act: see for example ss. 273 and 320.

### **The powers given by the Act include the power to:**

- ❖ make general rulings about industrial matters, employment conditions, and a Queensland minimum wage: s. 287; and statements of policy about industrial matters: s. 288;

- ❖ resolve industrial disputes by conciliation and, if necessary, by arbitration: s. 230. The Commission's powers in such disputes includes the power to make orders;
- ❖ hear and determine applications for reinstatement following termination of employment, including awarding compensation if reinstatement is impracticable, and imposing a penalty on the employer if the dismissal was for an invalid reason: ss. 76 and 78-81;
- ❖ certify or refuse certification of agreements, and amend or terminate certified agreements, according to the requirements of the Act: ss. 156, 157, 169-173 or assist parties to negotiate certified agreements (ss. 148 and 149) by conciliation and, if necessary, by arbitration. The Commission's powers includes the power to make orders necessary to ensure negotiations proceed effectively and are conducted in good faith;
- ❖ make, amend or repeal Awards, on its own initiative or on application: s. 125. The Commission may also review Awards under s. 130. (The first program of Award review was commenced by the Commission on its own initiative in 1999);
- ❖ determine claims for, and order payment of unpaid wages, superannuation contributions, apprentices' tool allowances, and certain other remuneration, where the claim is less than \$50,000 (claims above that sum must be heard before an Industrial Magistrate): s. 278;
- ❖ make orders fixing minimum wages and conditions, and tool allowance for apprentices and trainees: ss. 137 and 138; and orders fixing wages and conditions for employees on labour market programs, and for students in vocational placement schemes: ss. 140 and 140A;
- ❖ make a declaration about an industrial matter: s. 274A;
- ❖ grant an injunction to compel compliance with an industrial instrument or permit, or with the Act, or to prevent contraventions of an industrial instrument, permit or the Act: s. 277;
- ❖ interpret an industrial instrument: s. 284;
- ❖ order repayment of fees, charged in contravention of the Act by a private employment agent, where the total fee paid was not more than \$20,000: s. 408F (claims above that sum must be decided by an Industrial Magistrate);
- ❖ make orders to resolve demarcation disputes (that is, disputes about what employee organisation has the right to represent particular employees): s. 279. In addition, if an organisation breaches an undertaking it has made about a demarcation dispute, the Commission has the power to amend its eligibility rules to remove any overlap with another organisation's eligibility rules: s. 466;
- ❖ order a secret ballot about industrial action, and direct how the secret ballot is to be conducted: ss. 176 and 285;
- ❖ the power to determine applications to amend the name, list of callings, or eligibility rules of an industrial organisation: Chapter 12 Part 6;
- ❖ the power to conduct an inquiry, under Chapter 12 Part 8, into any alleged irregularity in the election of office-bearers in an industrial organisation. Applications for such inquiries are made by financial Members of the organisation to the Registrar. The Registrar may then refer the application to the Commission if there appear to be grounds for conducting an inquiry and the circumstances justify it: s. 502;
- ❖ the power to approve amalgamations of organisations: s. 618; and withdrawals from amalgamations: s. 623.

## General Rulings and Statements of Policy

An important tool for regulation of industrial matters and employment conditions by a Full Bench is the jurisdiction to issue *general rulings* and *statements of policy*.

In making any such determination s. 273(2) of the Act requires that a Full Bench perform its functions in a way that furthers the objects of the Act. Section 320 of the Act requires a Full Bench to consider the public interest. In so doing the Full Bench must consider the objects of the Act and the likely effects of any decision on the "community, local community, economy, industry generally and the particular industry concerned."

Under s. 287, a Full Bench may make General Rulings about industrial matters for employees bound by industrial instruments, and about general employment conditions. The **State Wage Case**, for employees covered by industrial instruments, has been commenced by an application for a general ruling in recent years. Section 287 also requires that a general ruling be made each year about a **Queensland Minimum Wage** for all employees covered by the Queensland State jurisdiction.

Under s. 288 a Full Bench may also issue a Statement of Policy about an industrial matter when it considers such a statement is necessary or appropriate to deal with an issue. The Statement may be made without the need for a related matter to be before the Commission, but can be issued following application.

A Statement of Policy differs from a General Ruling in that, to be given effect, it requires an application by a party to an award to have the stated policy inserted into the award. By contrast, a general ruling applies generally from the stated date, and can cover all employees, or all industrial instruments, or an employment condition generally. It is designed to avoid multiple inquiries into the same matter.

### State Wage Case

On 31 August 2011 a Full Bench of the Commission declared by General Ruling a wage adjustment of 3.4% or \$22.00 per week increase, whichever is the greater, in award rates of pay. By the same General Ruling as required under s. 287 of the IR Act, the minimum wage for all full-time employees in Queensland was increased to \$610.20 per week with a proportionate amount for junior, part-time and casual employees. Work-related allowances were increased by 3.4%. The effective date for the increased rates was set at 1 September 2011.

On 25 June 2012 and 26 June 2012 respectively, the Queensland Council of Unions (application B/2012/14) and The Australian Workers' Union of Employees, Queensland (B/2012/15) filed with the Industrial Registrar an application seeking -

- General Ruling pursuant to s. 287 of the *Industrial Relations Act 1999* in regard to wage and allowance adjustments for award employees;
- General Ruling in relation to the Queensland Minimum Wage as it applies to all employees;
- Statement of Policy pursuant to s. 288 of the *Industrial Relations Act 1999* in regard to a Statement of Principles that may be generated as a result of the aforementioned General Rulings.

At the time of this report a Full Bench of the Commission had not set dates for the hearing.

## **Disputes and the Conferencing role**

For disputes notified to the Commission - whether it concerns the terms of a certified agreement being negotiated between a union representing workers and their employer, or a grievance between an individual worker and employer - the first step in resolving the matter is always a conciliation conference. Because of the emphasis placed on conciliated and negotiated outcomes in disputes, a large proportion of the Commission's work is directed at this conference stage. For that reason also, the parties to an application for payment of unpaid wages have traditionally been directed to attend a conference with a Member of the Commission. Where an entity alleging prohibited conduct (in relation to freedom of association under Chapter 4) has applied for a remedy, the Commission must direct the parties involved to a conciliation conference before a hearing. Conciliation is also mandatory on an application for reinstatement.

Certified agreement negotiations may require mediation or conciliation conferences in order to avoid a dispute. Some complex disputes require lengthy and intensive conciliation in order to reach satisfactory outcomes. If a dispute has the potential to have a serious impact, the Commission has the power to intervene in the public interest under s. 230 of the Act, even without the dispute being notified. The Commission must then take steps to settle the matter by conciliation or if necessary by arbitration.

In many cases, a settlement can be agreed upon during the conference, or the parties may be able to resolve their conflict following conciliation. If not, the Commission may order the matter to be arbitrated in a hearing. Parties to an industrial dispute that cannot be resolved by negotiation can also request that the Commission arbitrate the dispute under s. 230.

Parties who request assistance to negotiate a certified agreement, under s. 148, may require several conferences to work through their differences satisfactorily.

## **Unfair dismissals**

While there is a common belief that people come to the Commission seeking compensation for what they see as unfair dismissal or dismissal for an invalid reason, the primary remedy which the Commission can award under the Act is reinstatement to an applicant's former job, or alternatively re-employment in another job with the same employer. This is indicated in s. 78 of the Act. It is only if the Commission determines, because of the circumstances, that reinstatement or re-employment is impracticable, that compensation *may* be awarded instead. The Commission will decide the amount of any compensation based on the applicant's wages before dismissal, the circumstances surrounding the dismissal, and any amount that has already been paid to the applicant by the former employer. The powers of the Commission in this regard are outlined in s. 79 of the Act.

The path to a remedy for dismissed employees begins by filing an *Application for Reinstatement*.

However, certain provisions of the Act exclude some employees from coverage of the dismissal provisions under the Act.

All applications for reinstatement are dealt with first by conciliation conferences. These are proceedings where a Member of the Commission assists the parties - that is, the former employee and employer - to negotiate an agreement.

This allows each party to tell her or his side of the story. At the same time, the Member can inform the parties of their rights and obligations under the legislation and under any award or agreement that applies to their employment relationship. No record is kept of these conferences, except for the outcome.

In many cases, an agreement can be reached, disputed claims are resolved, or the matter is not pursued further. Of the many applications filed, a limited number proceed to formal hearings.

If the parties cannot reach agreement in the conference, the Member doing the conciliation will issue a certificate to that effect, and will also inform the parties of the merits of the case and the possible consequences of continuing. If the applicant is a person who is excluded from the unfair dismissal provisions in s. 73(1), the Member must state that in the certificate. (Reasons for which an applicant may be excluded include: earning above the amount stipulated in the Regulation; being a short-term casual employee; or having been dismissed during a legitimate probation period.) The Member may also recommend to the parties that the matter be discontinued if it appears the claim has no basis.

The applicant must then decide whether to pursue the matter to a hearing. This is a more formal procedure where the Commission is constituted as a court of record, presided over by a different Member of the Commission.

Parties may be represented by advocates (employees who are union members and employers who are members of employer organisations may be represented by the union/organisation), or in some circumstances by lawyers.

### **Industrial instruments**

An essential part of the system of employment and industrial relations in Queensland is the use of industrial instruments - Awards and Agreements - to regulate the relationship between employees and employers. Awards and Agreements set out the terms and conditions of employment and have the force of law once made or certified or approved by the Commission.

The predominant types of instruments are: Awards and Certified Agreements (CAs). Awards and CAs are collective instruments, that is, they cover a range of employees and employers in a particular industry. They will usually be negotiated by employee organisations with employers and/or related employer organisations.

Table 6 indicates the types and number of industrial instruments in force within the Commission's jurisdiction.

### **Awards**

Section 265(2) gives the Commission jurisdiction to regulate a calling by an Award. Awards are regulated by Chapter 5 of the Act. The Commission's powers with regard to Awards are set out in Part 2 of Chapter 5. Awards can be limited to a geographic region or a particular employer. But they may cover all employers who are engaged in a particular calling, along with their employees and any industrial organisations (that is, employer or employee organisations) that are concerned with that calling. Table 6 shows that there are 328 Awards currently in force in Queensland.

### **Award Review**

The QIRC review of Awards, which commenced in 2010 pursuant to s. 130 of the Act, continued throughout the reporting period.

The Full Bench is currently reviewing those Awards identified as applying to public sector employment (referred to as State Government Awards) and Local Government sector employment, including those Awards that came into the Commission's jurisdiction pursuant to Chapter 20 Part 7 of the Act, (referred to as Local Government Awards).

It is anticipated that this stage of the Review will be completed by the end of August 2012.

## **Certified Agreements**

Certified Agreements are regulated by Chapter 6 Part 1 of the Act. A CA will usually cover one employer and, either all of its employees, or a particular category of its employees. It can be negotiated between an employer and a group of employees or between an employer and one or more employee organisations (unions) representing the employees. A CA may stand alone, replacing a relevant Award, or it may operate in conjunction with an Award. The affected employees must have access to the agreement before they approve it, and they must have its terms and its effect on their work and conditions explained to them. A majority of workers must approve it and the Commission must also be satisfied that it passes the "no-disadvantage test". That is, it must not place the affected employees under terms and conditions of employment that are less beneficial, on balance, than terms and conditions in an Award that is relevant to the calling (a "designated Award").

If the parties have difficulty in negotiating the terms and conditions of the agreement, they may apply to the Commission for assistance with conciliation: s. 148. If conciliation cannot resolve the impasse (which is quite unusual), the Commission has the power to arbitrate, as it would do for an industrial dispute.

During the year there were 50 applications to approve a Certified Agreement. Of these, 9 were new Agreements. The number of Certified Agreements currently in force is indicated in Table 6.

## **Unpaid Wages**

An application can be made pursuant to s. 278 (power to recover unpaid wages and superannuation contribution etc.) for an order for payment of an employee's unpaid wages, an apprentice's unpaid tool allowance, remuneration lost by an apprentice or trainee due to the employer not paying an employee the fixed rate, unpaid contributions of an eligible employee to an approved superannuation fund payable or unpaid remuneration due to a person under an order fixing remuneration and conditions which apply to the vocational placement of a student that is for more than 240 hours a year. An alternative remedy is available in the Industrial Magistrates Court (s. 399).

An application can not be made to the Commission if the total amount being claimed is more than \$50,000. Claims over \$50,000 may be made in the Industrial Magistrates Court. A person can not make an application under this section if an application has been made to a magistrate for an order for the same matter.

On hearing the application, the Commission must order the employer to pay the employee the amount the Commission finds to be payable and unpaid to the employee within 6 years before the date of the application and in the case of unpaid superannuation an amount considered appropriate, based on the return that would have accrued in relation to the contributions had it been properly paid to the approved superannuation fund.

Pursuant to s. 336 (recovery of amounts under orders) if the amount the Commission ordered is not paid, the Industrial Registrar has the power to issue a certificate, under the seal of the Commission, stating the amount payable, who is to pay the amount, to whom the amount is payable and any conditions about payment. This amount may be recovered in proceedings as for a debt. When the certificate is filed in a court of competent jurisdiction in an action for a debt, the order evidenced by the certificate is enforceable as an order made by the court where the certificate is filed.

## **Costs**

The Commission has discretion to order costs against a party to an application. However the discretion may only be exercised if the Commission is satisfied the "offending" party's application was vexatious or without reasonable cause, or in the case of a party to a reinstatement application, some

unreasonable act or omission during the course of the matter, caused another party to incur additional costs. Table 4 indicates how many of these costs matters were dealt with.

### **Industrial Organisations**

Under Chapter 12 of the Act, the Commission has the power to: grant the registration of an Industrial Organisation (s. 413); approve of change of name (s. 473); change to eligibility rules (s. 474); and to make orders about an invalidity (s. 613).

On 22 June 2011, the Commission finalised an application of a proposed amalgamation of the Queensland Public Sector Union of Employees and Australian Municipal, Administrative, Clerical and Services Union, Central and Southern Queensland Clerical and Administrative Branch, Union of Employees. The name of the amalgamated union was ordered to be Unite Queensland, Industrial Union of Employees. The amalgamation took effect on 1 July 2011, with the Queensland Public Sector Union of Employees deregistered from 1 July 2011. By the decision of President Hall dated 11 July 2011, the issue of the name of the amalgamated union was remitted back to the Commission. On 9 August 2011 the Commission granted that the name of the amalgamated union be "Together Queensland, Industrial Union of Employees".

Table 8 shows the total number of applications dealt with under Chapter 12 of the Act.

### **Industrial action**

Industrial action is protected if engaged in according to the terms of s. 174 of the Act. Under s. 177, industrial action is protected only if it is authorised by the industrial organisation's management committee, is permitted under the organisation's rules, and if the Registrar is notified of the authorisation.

If it appears to the Commission that industrial action may be avoided, or a dispute settled by ascertaining the relevant employees' attitudes to the issues, the Commission may order that a secret ballot be conducted of the employees. In that event, the action is not protected industrial action unless and until the ballot is conducted and a majority vote in favour of it (see s. 176).

### **Jurisdiction under other Acts**

The Commission has jurisdiction under other Acts *viz.*: the *Vocational Educational, Training and Employment Act 2000*; the *Trading (Allowable Hours) Act 1990*; the *Workers' Compensation and Rehabilitation Act 2003*; the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*; the *Public Interest Disclosure Act 2010*; the *Work Health and Safety Act 2011*; *Child Employment Act 2006*. Members of the Commission also perform functions under the *Magistrates Courts Act 1921*.

#### **Jurisdiction under *Vocational Education, Training and Employment Act 2000***

The Commission has jurisdiction under Chapter 8 Part 2 of the *Vocational Education, Training and Employment Act 2000* to hear and determine appeals from decisions of Skills Queensland. These include decisions about registration or cancellation of training contracts, cancellation of completion certificates or qualifications, decisions to stand down an apprentice or trainee, or declaration of a prohibited employer. In addition, a person who was a party to a training contract which has been cancelled by agreement may apply to the Commission, under s. 62, for the contract to be reinstated if the agreement to cancel was obtained by coercion.

The Commission may order the employer or the apprentice/trainee to resume training. It may also make orders about continuity of training and may order the employer to compensate the apprentice/trainee, or the apprentice/trainee to repay any amount paid on cancellation of the contract.

If resumption of training would be inappropriate, the Commission may order cancellation of the training contract and, if circumstances warrant it, may order the employer to pay compensation.

### **Jurisdiction under the *Trading (Allowable Hours) Act 1990***

The Full Bench determines applications by non-exempt shops to vary trading hours under Part 5 of the *Trading (Allowable Hours) Act 1990* (see s. 21). By s. 23 of that Act, the Commission may do so on its own initiative or on application by an organisation.

Full Benches of the Commission continue to hear various applications for extended trading hours in several regions throughout Queensland. These hearings usually involve lengthy hearings with detailed submissions from concerned parties and onsite inspections.

During the reporting period the Commission dealt with applications for extended trading for the following:

- amendment of trading hours in the Townsville Area
- expansion of seven day trading within Fraser Coast Regional Council Area to include Maryborough
- introduction of seven day trading in the Bundaberg Area
- trading hours for Christmas-Boxing Day period 2011 in regional Queensland
- extension of trading hours in Brisbane CBD
- extension of trading hours in Sunshine Coast Coastal Tourist Area
- extension of trading hours in the area of New Farm of Inner City of Brisbane
- introduction of seven day trading in the Gympie Area
- fixing of commencing and finishing times for the Burpengary Caravan, Marine and Camping Expo
- fixing of commencing and finishing times for the Coromal Sunshine Coast Caravan Exhibition
- fixing of commencing and finishing times for the Hyundai Dealer Demonstrator Vehicle Fair

Trading hours' matters before the Commission as at 30 June 2012 include applications for the following:

- introduction of seven day trading in the Ingham Area
- introduction of seven day trading in the Ayr Area
- extension of trading hours in the South-East Queensland Area
- amendment of the definition of South-East Queensland Area to include Woodford
- expansion of the definition of Inner City of Brisbane and extension to trading hours on Saturdays
- introduction of seven day trading in Biloela and the broader Banana Shire

### **Jurisdiction under the *Workers' Compensation and Rehabilitation Act 2003***

Workers and employers can apply to Q-COMP if they disagree with certain decisions made by their workers' compensation insurer. Q-COMP impartially reviews claims decisions. Under s. 550 of the *Workers' Compensation and Rehabilitation Act 2003*, if an employer or employee was aggrieved by the Q-COMP Review decision, either party could appeal to an Industrial Magistrate or to the Queensland Industrial Relations Commission.

During the year there were 492 appeals filed relating to Q-COMP Review decisions, reflecting the increase in workload since 1 November 2010 when the Industrial Magistrates' jurisdiction for these types of appeals was transferred to the Queensland Industrial Relations Commission which now has sole jurisdiction.

These matters tend to be rather complex. Hearings often involve expert witnesses. Parties are usually represented. The average length of such hearings is approximately 6 days.

### **Jurisdiction under the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005***

Section 97 of the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005* provides for an appeal to the Queensland Industrial Relations Commission against a decision of the authority regarding retrospective credits.

### **Jurisdiction under the *Public Interest Disclosure Act 2010***

Under the *Public Interest Disclosure Act 2010* Chapter 4 (Protection), Part 3 (Injunctions), s. 48 (Right to apply to Industrial Commission) an application for an injunction about a reprisal may be made to the Queensland Industrial Relations Commission if the reprisal has caused or may cause detriment to an employee.

### **Jurisdiction under the *Work Health and Safety Act 2011***

Section 142 provides that the Commission may deal with a dispute about the exercise or purported exercise by a WHS entry permit holder of a right of entry under this Act (including a dispute about whether a request under s. 128 is reasonable). The Commission may deal with the dispute in any way it thinks fit, including by means of mediation, conciliation or arbitration. If the Commission deals with the dispute by arbitration, it may make 1 or more of the following orders:

- (a) an order imposing conditions on a WHS entry permit;
- (b) an order suspending a WHS entry permit;
- (c) an order revoking a WHS entry permit;
- (d) an order about the future issue of WHS entry permits to 1 or more persons;
- (e) any other order it considers appropriate.

Section 229F provides for appeals for persons dissatisfied with a decision, on internal review, by the Regulator under the *Work Health and Safety Act 2011*. Appeals from review decisions of the Regulator are by way of a hearing *de novo*, that is, unaffected by the decision appealed from.

### **Jurisdiction under the *Child Employment Act 2006***

Under s. 15C of the *Child Employment Act 2006*, on the application of an inspector, or in a proceeding before the Industrial Commission under this part, including an appeal, the Industrial Commission may decide whether an agreement or arrangement reduces a child's employment entitlements or protections.

In addition, under s. 15P of the *Child Employment Act 2006*, a person who alleges that the dismissal of a child from employment is by a constitutional corporation, and the dismissal is of a kind that could be the subject of an application under the *Industrial Relations Act 1999*, chapter 3 if the employer of the child were not a constitutional corporation, may apply to the Industrial Commission for an order that may be made under the dismissal provisions of the *Industrial Relations Act 1999*.

Also, under s. 27 of the *Child Employment Act 2006* an affected person who is dissatisfied with a decision of the chief executive (under Part 2 of the Act) may appeal against the decision to the Industrial Commission.

### ***Magistrates Courts Act 1921***

The *Magistrates Courts Act 1921* (Part 6) provides access to employees on low incomes to a low cost procedure in the Magistrates Court for claims relating to breach of the contract of employment. These claims are available to employees earning up to \$101,300 per year.

Members of the QIRC are appointed to perform the functions of a conciliator prior to the matter being heard by a magistrate.

During the year there were 28 conferences held.

### **Local Government Remuneration and Discipline Tribunal**

Deputy President Bloomfield continued to act as the Chairperson of the Local Government Remuneration and Discipline Tribunal (LGRDT), having been appointed to that position, for a period of four years, from 1 July 2010. Prior to that, he was Chairperson, from 25 October 2007 of the Local Government Remuneration Tribunal.

The role of LGRDT is to establish remuneration levels for elected representatives for all local governments in Queensland (except Brisbane City Council) on an annual basis as well as to consider serious complaints of misconduct and/or conflicts of interest by elected local government representatives.

The LGRDT is empowered to determine an appropriate penalty for any proved complaints of misconduct and/or conflict of interest, including making recommendations to the Minister for Local Government to the effect that an individual Councillor, or Councillors, be dismissed.

In its 2011 Remuneration Report the LGRDT stepped away from its previous practice of setting remuneration ranges for Councils and, instead, set a single remuneration rate for each level of elected representative (i.e. Mayor, Deputy Mayor, Councillor) in each of the 10 categories of Council.

As a result of this decision those Councils which might wish to remunerate Councillors for taking on additional duties, such as chairing committees of Council, will need to apply to LGRDT to endorse the higher remuneration proposed. Previously, Councils were able to make this decision themselves by using the remuneration ranges set by the Tribunal.

### **Professional activities**

During the year 2011/12, three Members attended a conference, seminar or course:

| <b>Member</b> | <b>Activity</b>                       | <b>Location</b>  | <b>Date/s</b>        |
|---------------|---------------------------------------|------------------|----------------------|
| SWAN, D.A.    | East West Legal Conference            | Istanbul, Turkey | 09/07/11 to 17/07/11 |
| BROWN, D.K.   | International Labour Standards Course | Turin, Italy     | 27/08/11 to 09/09/11 |
| FISHER, G.K.  | Pan Europe Legal Conference           | Florence, Italy  | 13/09/11 to 18/09/11 |

Decisions of the Queensland Industrial Relations Commission can be found at [www.qirc.qld.gov.au](http://www.qirc.qld.gov.au)

## QUEENSLAND INDUSTRIAL REGISTRY

The Queensland Industrial Registry is the Registry for the Industrial Court of Queensland and Queensland Industrial Relations Commission. The Industrial Registry is an office of the public service. The Industrial Registrar is the head of the Industrial Registry, under the *Public Service Act 2008*.

The Industrial Registrar is appointed under s. 297 of the *Industrial Relations Act 1999* and apart from administering the Registry has the functions conferred under that Act and other Acts.

The Court, Commission and Registrar are independent of government and other interests. Funding for the Court, Commission and Registry is provided through the Department of Justice and Attorney-General (DJAG) with the Department being sensitive to the need to maintain this independence.

The Registry provides administrative support to the Court, Commission and the Registrar and also provides a facilitative service to the general industrial relations community.

Several changes during the reporting period have impacted on the Registry:

- (1) Registry lost 3 staff [and associated funding] in January 2012, following the previous Government's Voluntary Separation Program.
- (2) The current Government's Establishment Management Program further impacted on the Registry with staff losses as at 30 June 2012 [with more staff losses anticipated as at 24 August].
- (3) The reduction in Registry staff numbers, together with the increase in workload due to Q-COMP matters and new work involving Appeals to the Public Service Commission and applications for Protected Action Ballot Orders has resulted in a demand exceeding the capacity of the Registry to efficiently and effectively provide timely support to Members and also our clients.

As a result, the operations of the Registry are again being reviewed to ascertain how to best manage and prioritise work whilst at the same time ensure staff wellbeing is maintained.

The Registry is structured into 4 units: Tribunal Services, Information Services, Registered Industrial Organisation Services and Corporate Services.

### Registry Services Units

#### Tribunal Services

Tribunal staff provide support to Members (and Associates) through:

- assisting in administrative activities of each application (e.g. tracking matters, notifications to applicants and respondents);
- organising conferences and hearings; and
- examining, evaluating and processing all applications and other documentation received from applicants, respondents and other parties.

Tribunal staff also assist all users of the Court and Commission through:

- responding to public enquiries through:
  - a telephone advisory service

- across the counter and
- written correspondence [post, fax and email];
- an advisory role to parties and practitioners who require information on practices and procedures; and
- receiving and filing applications and related documentation.

During 2011-12, a total of 2,239 applications and notifications were filed in the Registry (see Tables 1 & 4).

In addition to registering these applications, the tribunal staff processed and tracked thousands of related documents, such as directions orders, statements, submissions and general correspondence. Further, at the request of Members, staff set down over 3,400 listings [e.g. conferences and hearings].

Tribunal Services staff assist the Registrar in making certain preliminary decisions about applications and other documents lodged to ensure that they comply with the Act and the *Industrial Relations (Tribunals) Rules 2011*.

The Registrar may determine that a reinstatement application under s. 74 should be rejected because the applicant is excluded by s. 72 of the Act. The majority of applicants excluded are generally those found to be short-term casual employees as defined in s. 72(8) or employees still within the probationary period (unless the dismissals are claimed to be for an invalid reason, as stated in s. 73(2)).

The Industrial Registrar issues permits to an officer or employee of an organisation under s. 364 of the Act, to enter a workplace of which an employer carries on a calling of the officer's organisation to exercise a power under s. 373. Such authorised industrial officer can, for example, inspect time and wages records and discuss matters under the Act with an employer or a member employee.

The Industrial Registrar also issues permits under s. 134 of the *Work Health and Safety Act 2011* (WH&S Act) that authorise a representative of a registered industrial organisation to enter a workplace where there is reasonable suspicion that a contravention of the Act involving work health and safety has happened or is happening. Authorised representatives are required to undertake approved occupational health and safety training to be issued with a permit.

Section 151 of the WH&S Act provides that the Industrial Registrar must keep available for public access an up-to-date register of WHS entry permit holders as provided under a regulation. Regulation 31 of the *Work Health and Safety Regulation 2011* provides that the register must be published on the Commission's website.

The Registrar's powers also include the granting of an exemption from membership of an organisation because of the person's conscientious beliefs (s. 113 of the Act).

Hearings before the Court and Commission are recorded and a transcript is typed by the **State Reporting Bureau** which is part of DJAG.

One of the functions of the tribunal area is liaising with the State Court Reporting Bureau for recording of transcripts. There is a strong level of demand for transcripts among regular participants in the IR system, such as industrial organisations, industrial agents and legal firms. Registry provide a free electronic copy of transcripts (e.g. by email) to a party to a proceeding or their representative (subject to any restrictions of the release of the transcript by the Member for the proceeding).

### **Information Services**

The Information Services Unit (ISU) provides a diverse range of high quality publication and administrative support that contributes to the effective functioning of the Court, Commission and the

Industrial Registry and dissemination of decisions to the industrial relations practitioners and the general Queensland public.

The ISU manages 4,850 Industrial Instruments (see table 6).

During the reporting period the QIRC's web site ([www.qirc.qld.gov.au](http://www.qirc.qld.gov.au)) again proved invaluable with interest and usage increasing significantly. It provides thousands of files of relevant information for the general public with over 176,000 visits recorded annually.

In addition, the historical decisions database (IRIS) holds over 35,500 files of historical information and is accessed daily.

Important public matters such as the 2011 State Wage Case see the posting of all relevant documentation to the website as soon as it is lodged with the Registry, including original applications, directions of the Court, Commission and Registry, submissions and responses of all parties, transcripts of proceedings and decisions. This allows timely and cost effective information to be disseminated to all parties without the need of many parties appearing in the QIRC or serving documents on each other.

The internet website for the QIRC contains a range of information including:

- all decisions officially published on the website since October 2009;
- historical decisions in the IRIS database from 1990 up to October 2009;
- all volumes of the QGIG from 2000;
- all extracts of the QGIG back to 2005;
- all Industrial Instruments (Awards, Certified Agreements and Orders) of the Commission;
- all amendments to Awards of the Commission since the State Wage Case 2007;
- information about the Industrial Court of Queensland, Queensland Industrial Relations Commission and the Industrial Registry (including forms, practices and procedures, and links to legislation);
- register of WHS entry permit holders; and
- information in accordance with the *Right to Information Act 2009*.

The ISU continue to proofread and release all decisions of the various tribunals prior to publishing on the QIRC website.

ISU monitors the Office of the Queensland Parliamentary Counsel's website (OQPC), forwarding electronic copies of any new Acts, Amendment Acts and subordinate legislation with supporting documentation directly to the Members of the Commission. Electronic copies of the major Acts, Bills, Explanatory Notes and Second Reading Speeches are also kept and maintained by the ISU to provide easy access to such documents by the QIRC.

The Registry provides information and research services for the Court and Commission through the library. The library has a good collection of industrial law materials (texts, law reports, journals) as well as some more general law resources. It holds copies of State awards and their amendments, including rescinded awards and historical material.

The library continues to review all resource material in relation to hard copy versus availability of electronic copy as subscriptions become due, to ensure cost effectiveness and efficiency of services to the Court and Commission.

## **Registered Industrial Organisations**

The Registrar has important functions and powers with regard to industrial organisations (i.e. unions, or organisations, of employers or employees). These are outlined below:

### *Register of Organisations*

Under s. 426 of the *Industrial Relations Act 1999*, the Registrar is responsible for maintaining the register of industrial organisations, along with copies of each organisation's rules.

### *De-registration*

Part 16 of the Chapter provides for an organisation to be de-registered, on certain grounds, by a Full Bench of the Commission. The grounds for de-registration are set out in s. 638; and s. 639 states who may apply. The Registrar can apply to have an organisation de-registered on one of the grounds in s. 638, or on the ground that the organisation is defunct.

### *Rules*

The Industrial Registrar may amend an industrial organisation's rules under s. 467 for several reasons, including on the registrar's own initiative if the registrar considers the rules do not make a provision required by s. 435, and to correct a formal or clerical error.

If an organisation proposes to amend its rules, other than by amending its name or eligibility rules the registrar may approve a proposed amendment only if satisfied it does not contravene s. 435 or another law; and has been proposed under the organisation's rules.

Amendments to organisation's name or its eligibility rules must be approved by the Commission.

### *Elections*

Under s. 482, the Registrar must arrange for the Electoral Commission to conduct an election of officers for an industrial organisation, when its rules require one and the organisation has filed the prescribed information in the Registry.

Industrial organisations must also file in the Registry each year, copies of their registers of officers (s. 547).

### *Election Inquiries*

If a member of an organisation believes there has been an irregularity in the conduct of its election, the member can apply to the Industrial Registrar under Chapter 12 Part 8 to conduct an election inquiry. If the Registrar is satisfied there are reasonable grounds and the circumstances justify an inquiry, the application may be referred to the Commission.

### *Financial accountability*

Organisations must also file copies of their audit reports and financial accounts, along with records of certain loans, grants or donations (ss. 570, 578).

The Registrar also has an investigative role in relation to organisations' financial records when irregularities or other reasonable grounds for investigation are apparent (s. 571).

### *Exemptions*

Industrial organisations may apply to the Registrar for exemptions from holding elections, or from the requirement to file audit reports and financial accounts, or from certain other obligations under Chapter 12. Such exemptions may be granted, when appropriate, to organisations with counterpart federal bodies, and for organisations which are corporations.

The review of Registry records of Registered Industrial Organisations in relation to provisions of Chapter 12 of the *Industrial Relations Act 1999* continued into 2011/12. Many Industrial

Organisations have been assisted in their duty to comply with legislative provisions, and their access to Registry information and services has been improved. Many of the applications filed under Chapter 12 provisions are a direct result of the Registry's proactive involvement in this area.

### **Corporate Services**

By virtue of s. 21 of the *Public Service Act 2008*, the Industrial Registry is an office of the public service, an independent agency. Section 22 of the Act confers upon the Industrial Registrar, who is the head of the Agency, all the functions and powers of the Chief Executive of a department in relation to the agency's public service employees.

Under the provisions of the *Financial Accountability Act 2009*, the Chief Executive Officer (Director General) of the Department of Justice and Attorney-General is the accountable officer of the Industrial Registry. The Director General has delegated certain powers to the Industrial Registrar under that Act.

A comprehensive range of corporate services is provided to the Court, Commission and Registry employees. These services, principally provided through the Senior Executive Officer, include:

- human resource management;
- financial management;
- asset management, and
- administrative policies, practices and procedures.

These services also include a number of mandatory reporting requirements (e.g. Financial Statements, Service Delivery Statements, budget documentation, Estimates Hearings documentation etc.) and budget managing to ensure effective financial performance and the achievement of organisational objectives and outcomes.

### **Review of the *Industrial Relations (Tribunals) Rules 2011* (IR Rules 2011)**

The purpose of these rules is to provide for the just and expeditious disposition of the business of the Court, Commission, Registrar and Industrial Magistrate at a minimum expense.

On 22 March 2011, the President of the Industrial Court of Queensland initiated a Stage 1 review of the rules covering immediate business requirements including revised Forms, and was finalised in September 2011 so as to operate by 1 January 2012.

#### The revised IR Rules 2011

- contain the processes and procedures for all matters that have been referred to the ICQ and QIRC;
- align with amendments made to the IR Act and other relevant Acts since 2003;
- provide for matters that may be dealt with by the tribunals under the new *Work Health and Safety Act 2011*, which commenced on 1 January 2012, and
- provide for appeals to the QIRC and the ICQ under the *Workers Compensation and Rehabilitation Act 2003* and to make provision for approved forms for applications of this nature.

On 6 June 2012, the President initiated the stage 2 review of the Rules which is a larger review aimed at a total makeover of the Rules.

### **Industrial Registry contact details**

The Queensland Industrial Registry location:

Level 13,

Central Plaza 2,

66 Eagle Street, (Corner Elizabeth and Creek Streets), Brisbane, Queensland, 4000.

Postal address: GPO Box 373, Brisbane, QLD. 4001.

General enquiries: 1300 592 987 (for Queensland callers only)

(07) 3227 8060 (for mobile callers & other callers from outside Queensland)

Facsimile: (07) 3221 6074

Email address: [qirc.registry@justice.qld.gov.au](mailto:qirc.registry@justice.qld.gov.au)

Web address: [www.qirc.qld.gov.au](http://www.qirc.qld.gov.au)

## INDUSTRIAL ORGANISATIONS

Industrial organisations - that is, unions - are either employer organisations or employee organisations. The requirements for registration, rules on membership, structure and control, election of office-bearers, and financial accountability of industrial organisations are governed by Chapter 12 of the Act. The following is an overview of the common matters arising in the Registry.

### Registration of organisations

#### *Registration*

Applications for registration of organisations may only be made to the Commission under Chapter 12 Part 2. Under s. 419, the Commission may grant the application only if satisfied of certain conditions including: the applicant exists to further or protect its members' interests; the rules the applicant proposes to have as an organisation are not contrary to the Act and the applicant's name is not the same as an organisation's name or so similar to an organisation's name as to be likely to cause confusion.

#### *Amalgamations*

Applications for amalgamation of two or more organisations, may only be made to the Commission. Amalgamations (and withdrawals from amalgamations) are approved under Chapter 12 Part 15. Under s. 618, the Commission may approve an amalgamation only if the process has complied with the *Industrial Relations Regulations 2011*, and the rules of the amalgamated organisation will comply with the Act's requirements about rules (which are in Parts 3 and 4 of the Chapter).

#### *De-registration*

Part 16 of the Chapter provides for an organisation to be de-registered, on certain grounds, by a Full Bench of the Commission. For this purpose, the Bench must include the President (see s. 256(2)). The grounds for de-registration are set out in s. 638; and s. 639 states who may apply. In certain circumstances, the Full Bench can act of its own initiative to bring proceedings to de-register an organisation. The Registrar can also apply to have an organisation de-registered on one of the grounds in s. 638, or on the ground that the organisation is defunct. Under s. 645, the Commission may review an organisation to inquire whether the organisation is or may be a small organisation [i.e. for an employee organisation - less than 20 members who are employees; for an employer organisation - employer members who have, in total, employed a monthly average of less than 20 employees during any 6 month period].

#### *Registry records*

Under s. 426 of the Act, the Registrar must keep a register of industrial organisations, along with copies of their rules. Each organisation must also file a copy of its register of officers every year (s. 547). The rules and the register of officers are open for inspection on payment of the fee prescribed (see ss. 426 and 549).

## Rules

Industrial organisations must have rules on certain matters which are outlined in Parts 3 and 4 of Chapter 12. Part 3 covers general content of the rules, including restrictions on content (see ss. 435 and 436). Part 4 sets out requirements for rules governing election of officers in the organisation (this Part does not apply to organisations that are corporations). Elections are discussed briefly below. A copy of the rules of each organisation must be lodged along with registration details in the Registry (s. 426). These are open for inspection on payment of the fee indicated in the Schedule of the Tribunal Rules.

Under Part 5 of Chapter 12, a person who is a member of an organisation can make an application to the Industrial Court, if he or she believes the organisation's rules do not comply with restrictions set down in s. 435. A member can also apply to the Court for a direction that an office-bearer, or some person who is obliged to do certain things under the organisation's rules, perform those things, or observe the organisation's rules. If a person does not comply with the Court's direction to perform or observe the rules, he or she can be penalised up to 40 penalty units. If necessary, financial assistance can be made available for applications under Part 5. This is an important avenue for members to ensure that their organisations are accountable.

The rules of an organisation can be amended, on approval by the Commission or the Registrar. If the Court has declared, following an application under s. 459, that a rule does not comply with s. 435, the organisation must amend it within 3 months - if this is not done, the Commission or the Registrar may amend the rule to enforce compliance (s. 468). The Commission must determine an application to amend the eligibility rules (s. 474) and the list of callings represented by an organisation (s. 427). The Registrar can initiate the amendment of rules (see s. 467). Applications by organisations to amend rules may only be approved by the Registrar if they are proposed in accordance with the organisation's rules and will not contravene the restrictions set down in s. 435 (see s. 478).

If an organisation wishes to change its name, this may be done only if the amendment is proposed according to the organisation's rules and approved under the Act. Section 472 enables the Registrar to approve a simple change of the word "union" to the word "organisation". However more substantial name changes must be approved by the Commission (s. 473).

## Elections

The Act requires all industrial organisations to make rules governing elections to office (see Chapter 12 Part 4). Section 440 also states a general requirement of transparency: that is, rules should ensure that election processes are transparent and irregularities are avoided

The rules must provide for elections to be either by a direct voting system (Div 3 of Part 4) or by a collegiate electoral system (Div 4 of Part 4). A direct vote must be conducted by a secret postal ballot, or by some alternative form of secret ballot approved by the Registrar. Schedule 3 of the *Industrial Relations Regulation 2011* sets out "Model Election Rules" which must be taken to be an organisation's election rules if their election rules do not comply with Part 4 of Chapter 12 of the Act.

Industrial organisations' elections are conducted by the Electoral Commission of Queensland in accordance with each organisation's rules (Chapter 12, Part 7). This is arranged by the Registrar when the organisation notifies the Registry that it is seeking to hold an election. The Registrar must be satisfied that the election is required under the rules. The cost is borne by the State. An industrial organisation may apply to the Registrar for an exemption from having the Electoral Commission conduct an election on its behalf (see Part 13 Div 3).

Any industrial organisation with a counterpart federal organisation may apply to the Registrar for exemption from certain requirements of the Act, including the stipulations about holding elections on the ground that their federal counterparts held elections under the federal *Fair Work (Registered Organisations) Act 2009*.

### **Election Inquiries**

If a member of an organisation believes there has been an irregularity in the conduct of its election, the member can apply to the Industrial Registrar under Chapter 12 Part 8 to conduct an election inquiry. If the Registrar is satisfied there are reasonable grounds and the circumstances justify an inquiry, the application may be referred to the Commission. Under s. 499, the Commission may, on an application referred to it by the Registrar, conduct an election inquiry about a claimed irregularity in an election for an organisation or branch. Such applications can only be made by members of the organisation who are financial or were financial within 1 year preceding the application.

### **Financial Accountability**

The Industrial Registrar is responsible for monitoring the financial accountability of industrial organisations. Chapter 12 Part 12 of the Act sets out accounting and audit obligations of organisations. Copies of audit reports and accounts must be filed in the Registry in accordance with s. 570. Under Division 5 of Part 12, the Registrar must investigate any irregularity or accounting deficiency found by an organisation's auditor, and may engage another auditor to examine an organisation's accounting records. Other records to be filed include statements of any loans, grants or payments totalling more than \$1,000 to any one person during the financial year. These must be available for inspection to members of the organisation (ss. 578 and 579).

Any industrial organisation with a counterpart federal organisation may apply to the Registrar for exemption from accounting and audit provisions, under s. 586. If the application is approved, the organisation must file with the Registrar a certified copy of the documents filed under the federal *Fair Work (Registered Organisations) Act 2009*. (Similar provisions apply where an employer organisation is a corporation subject to other statutory requirements to file accounts and audit reports: see s. 590).

### **Orders for Invalidation**

The Act makes provision for the Commission to validate a matter or event about the management or administration of an organisation's affairs, the election or appointment of an officer of an organisation or the making, amending or repealing of a rule of an organisation. An application about an invalidity may be made by an organisation, a member of the organisation or another person the Commission considers has a sufficient interest in whether an invalidity has occurred. In deciding the application, the Commission may declare whether or not an invalidity has occurred. If, on the hearing of the application, the Commission declares an invalidity, the Commission may make an order it considers appropriate to remedy the invalidity or to cause it to be remedied, change or prevent the effects of the invalidity or validate an act, matter or thing made invalid by or because of the invalidity.

Table 8 lists industrial organisation matters filed in the Registry.

## **Membership of Industrial Organisations**

Eligibility for and admission to membership of industrial organisations are governed by Part 10 of Chapter 12. At 30 June 2012, there were 35 employee organisations registered in Queensland, with a total membership of 402,860 compared to 404,262 at 30 June 2011. The employee organisations are listed according to membership numbers in Table 9. Equivalent figures for employer organisations are: 35 organisations registered at 30 June 2012, with a total membership of 29,937 compared to 32,787 at 30 June 2011. Table 10 lists the employer organisations according to membership.

The Court decides questions or resolves disputes about membership of an industrial organisation (see ss. 535 and 536). Under s. 535, a person or organisation may ask the Court to decide a question or dispute about: a person's eligibility for membership; when a person became a member; whether a membership subscription, fine or levy, or some other requirement of the rules is reasonable; and the qualifications for membership of a membership applicant.

## AMENDMENTS TO LEGISLATION

The following outlines important legislative amendments made during the year which affect the work of the Tribunals.

### **Work Health and Safety Act 2011**

The *Work Health and Safety Act 2011* (WH&S Act) was assented to on 6 June 2011 and was initially addressed in the 2010/2011 Annual Report. The commencement date, for Parts relevant to the QIRC, was 1 January 2012.

One of the objectives of the WH&S Act was to ensure that Queensland's work health and safety legislation embraced the harmonisation of work health and safety laws as endorsed by the Council of Australian Governments, and ensured that Queensland legislation is in line with other jurisdiction's legislation.

Appeals from decisions of Industrial Magistrates regarding prosecutions under the WH&S Act are no longer heard in the Industrial Court.

All external reviews in the WH&S Act are heard by QCAT.

The QIRC reviews decisions of an industrial nature (e.g. training of health and safety representatives).

Work Health and Safety (WHS) entry permit holders are required to hold an entry permit under the *Fair Work Act 2009* or authorised to enter a workplace under the *Industrial Relations Act 1999* prior to entering the workplace.

The Industrial Registrar must keep available for public access an up-to-date register of WHS entry permit holders as provided under a regulation.

Regulation 31 of the *Work Health and Safety Regulation 2011* provides for section 151 of the WH&S Act that the Commission must publish on its website:

- (a) an up-to-date register of WHS entry permit holders; and
- (b) the date on which the register was last updated.

This Act affected several Acts under the jurisdiction of the Court and Commission:

### **Amendments to the *Electrical Safety Act 2002***

Appeals from decisions of Industrial Magistrates regarding prosecutions under the *Electrical Safety Act 2002* (ES Act) are no longer heard in the Industrial Court.

All external reviews in the ES Act are heard by QCAT.

### **Repealed *Dangerous Goods Safety Management Act 2001***

The *Dangerous Goods Safety Management Act 2001* was repealed, with the regulation of dangerous goods and major hazards facilities now under the WH&S Act.

### **Health and Hospitals Network Act 2011**

The **Health and Hospitals Network Bill 2011** was introduced into Parliament on 17 May 2012; was passed on 20 June 2012 and amended the *Health and Hospitals Network Act 2011* and the *Industrial Relations Act 1999*.

The *Health and Hospitals Network Act 2011* was renamed the *Hospital and Health Boards Act 2011*. The Act also renamed "governing councils" to "hospital and health boards" and "local health and hospital networks" to "hospital and health services".

Importantly, the *Hospital and Health Boards Act 2011* was amended to include the following:

#### "7 Establishment of Hospital and Health Services

- (1) Hospital and Health Services are statutory bodies and are the principal providers of public sector health services.
- (2) Each Hospital and Health Service is independently and locally controlled by a Hospital and Health Board.
- (3) Each Hospital and Health Board appoints a health service chief executive.
- (4) Each Hospital and Health Board exercises significant responsibilities at a local level, including controlling -
  - (a) the financial management of the Service; and
  - (b) the management of the Service's land and buildings; and
  - (c) for a prescribed Service, the management of the Service's staff."

Staff employed by hospital and health services are now subject to State-wide enterprise bargaining agreements and awards, and other standard State-wide employment terms and conditions as determined by the departmental chief executive.

This required amendments to the *Industrial Relations Act 1999* to modify the application of that Act to hospital and health services (as employers) and to their employees.

The *Industrial Relations Act 1999* was amended to provide that:

- The department chief executive is the party to awards instead of the prescribed Services, but with the award being binding on the Services. This includes the departmental chief executive being party to proceedings related to awards and for the making, amending and repealing of awards;
- The departmental chief executive is the party to certified agreements instead of the prescribed Services, but with the agreement being binding on the Services. This includes the departmental chief executive being party to proceedings related to agreements and for negotiating, making, amending and terminating agreements; and
- The departmental chief executive is the party to any industrial disputes instead of the prescribed Services unless the departmental chief executive considers the matter does not affect employment terms and conditions in more than one hospital and health service.

The Act commences on 1 July 2012.

### **Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Act 2012**

The **Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Bill 2012** was introduced into Parliament by the Attorney-General and Minister for Justice Mr J. Bleijie on

17 May 2012; was passed on 6 June 2012 and amended the *Industrial Relations Act 1999* and the *Public Service Act 2008*.

The Act requires the QIRC to give consideration to the financial position of the state, whereby the Queensland government can brief the Commission on the State's financial position, fiscal strategy and related matters at any time. The briefings are to be open or otherwise available to the public. The amendments altered the requirements for the taking of protected industrial action in connection with a proposed certified agreement. The changes also introduced a process for employers to request employees to approve a proposed certified agreement by voting for it.

The Act gave power to the Attorney-General to make a declaration terminating industrial action if the action is threatening the safety and welfare of the community or is threatening to damage the Queensland economy.

The Act also amended the *Public Service Act 2008* to provide for members of the QIRC to be approved as "Appeals Officers" to hear Public Service appeals.

Part 4 (Amendments to the *Public Service Act 2008*) and Part 5 (minor and consequential amendments) of the Act commence on 1 July 2012.

All other parts commenced on 12 June 2012.

#### **Amendment to Tribunal Rules and Regulations (subordinate legislation)**

##### ***Industrial Relations (Tribunals) Amendment Rule (No.1) 2011***

This Amendment Rule amended the *Industrial Relations (Tribunals) Rules 2000*. It affected an increase to the fees charged by the Registry for filing, searching and photocopying documents. The fees are set out in Schedule 1 of the Rules. The *Financial Management Practice Manual* provides for annual increases in regulatory fees, in line with rises in the Consumer Price Index assessed on the basis of the Brisbane (All Groups) CPI movement for the December quarter. The increase took effect from 1 July 2011. A similar increase for 2011/12 was published in the *Government Gazette* on 25 May 2012 to take effect for the year commencing 1 July 2012.

##### ***Industrial Relations (Tribunals) Rules 2011***

Section 338 of the IR Act provides that the Governor in Council may make rules under the *Industrial Relations Act 1999* (IR Act) to provide for the just and expeditious disposition of the business of the Industrial Court of Queensland (ICQ), Queensland Industrial Relations Commission (QIRC), Industrial Magistrates Court and Industrial Registrar. The Rules can only be made with the consent of the President of the Industrial Court.

The *Industrial Relations (Tribunals) Rules 2011* (IR Rules 2011) commenced on 1 January 2012. The IR Rules 2011 replaced the *Industrial Relations (Tribunals) Rules 2000*.

The revised IR Rules 2011

- contain the processes and procedures for all matters that have been referred to the ICQ and QIRC;
- align with amendments made to the IR Act and other relevant Acts since 2003;
- provide for matters that may be dealt with by the tribunals under the new *Work Health and Safety Act 2011*, which commenced on 1 January 2012, and
- provide for appeals to the QIRC and the ICQ under the *Workers Compensation and Rehabilitation Act 2003* and to make provision for approved forms for applications of this nature.

### ***Industrial Relations Amendment Regulation (No.1) 2011***

The purpose of this Amendment Regulation was to increase the level of salary above which applicants for certain remedies are excluded from a remedy in the Commission. That is, under s. 72(1)(e) of the Act, workers who are not covered by an industrial instrument and who are not public service employees are excluded from the unfair dismissal provisions if they earn above the prescribed limit (set down in s. 4 of the Regulations). Workers under a contract of service or a contract for services are excluded from the unfair contract jurisdiction in s. 276 on a similar basis. The prescribed wage limit was raised by this Amendment Regulation from \$113,800 to \$118,100 per annum. The amendment took effect from 15 September 2011.

## TABLES

**Table 1: Matters filed in the Court 2010/11 and 2011/2012**

| Type of Matter                                    | 2010/11   | 2011/12   |
|---|-----------|-----------|
| Appeals to the Court                              | <b>42</b> | <b>32</b> |
| — Magistrate's decisions                          | 22        | 14        |
| — Commission's decisions                          | 19        | 17        |
| — Director, WH&S decisions                        | 0         | 1         |
| — Electrical Safety Office decisions              | 1         | 0         |
| Extension of Time                                 | 3         | 1         |
| Prerogative order                                 | 3         | 0         |
| Stay order  | 12        | 3         |
| Validity and compliance with Industrial Org rules | 0         | 2         |
| Case stated by Commission                         | 2         | 0         |
| Application for orders - other                    | 1         | 3         |
| <b>TOTAL</b>                                      | <b>63</b> | <b>41</b> |

**Table 2: Number of matters filed in the Court 1994/95 - 2011/12**

|         |    |         |     |         |    |
|---------|----|---------|-----|---------|----|
| 1994/95 | 60 | 2000/01 | 74  | 2006/07 | 72 |
| 1995/96 | 89 | 2001/02 | 102 | 2007/08 | 53 |
| 1996/97 | 81 | 2002/03 | 100 | 2008/09 | 47 |
| 1997/98 | 90 | 2003/04 | 104 | 2009/10 | 71 |
| 1998/99 | 95 | 2004/05 | 92  | 2010/11 | 63 |
| 1999/00 | 61 | 2005/06 | 100 | 2011/12 | 41 |

**Table 3: Appeals filed in the Court 2010/11 and 2011/2012**

| Appeals Filed   | 2010/11   | 2011/12   |
|---|-----------|-----------|
| <b>Appeals from decisions of Industrial Commission</b>    |           |           |
| IRA s 341(1)  | 11        | 6         |
| Work Comp Act s 561                                       | 8         | 11        |
| <b>Appeals from decisions of Industrial Magistrate</b>    |           |           |
| IRA s 341(2)  | 3         | 6         |
| WH&S Act s 164  | 4         | 1         |
| ES Act s 172  | 1         | 0         |
| Work Comp Act s 561                                       | 14        | 5         |
| CM Act s255   | 0         | 2         |
| <b>Appeals from review decisions by Director WH&amp;S</b> | 0         | 1         |
| <b>Appeals from decisions of Electrical Safety Office</b> | 1         | 0         |
| <b>TOTAL</b>  | <b>42</b> | <b>32</b> |

**Table 4: Matters filed (other than in the Court) 2010/11 and 2011/2012**

| Section | Type of Application/Matter                       | 2010/11 | 2012/12 |
|---------|--|---------|---------|
| s 52    | Long Service Leave – other seasonal employees    | 0       | 1       |
| s 53    | Long Service Leave - payment in lieu of          | 166     | 177     |
| s 74    | Application for Reinstatement (Unfair dismissal) | 83      | 85      |
| s 117   | Prohibited conduct - breach                      | 0       | 5       |
| s 125   | Awards:  |         |         |
|         | - New award                                      | 0       | 2       |
|         | - Repeal and new award                           | 2       | 2       |
|         | - Amend award                                    | 34      | 21      |
| s 130   | Review of Award                                  | 0       | 4       |

| Section             | Type of Application/Matter   | 2010/11 | 2012/12 |
|---------------------|--|---------|---------|
| s 148               | Assistance to negotiate a CA   | 7       | 20      |
| s 149               | Arbitration of CA  | 0       | 0       |
| s 156               | Certified Agreements:<br>- Approval of new CA<br>- Replacing existing CA | 2<br>6  | 9<br>41 |
| S163                | Determination of a CA  | 0       | 5       |
| s168                | Extending a CA   | 1       | 1       |
| s 169               | Amending a CA  | 1       | 2       |
| s 172, s173         | Terminate a CA   | 0       | 1       |
| s 175, s177         | Notice of industrial action  | 17      | 305     |
| s 229               | Notification of dispute  | 149     | 258     |
| s 231               | Mediation by Commission  | 0       | 1       |
| s 273A              | Dispute resolution functions   | 0       | 1       |
| s 274               | General powers   | 3       | 6       |
| s 274A              | Power to make declarations   | 2       | 1       |
| s 274DA             | Dismissal of Application   | 2       | 6       |
| s 276               | Power to amend or void contracts   | 0       | 4       |
| s 277               | Power to grant injunctions   | 0       | 1       |
| s 278               | Claim for unpaid wages/superannuation                                    | 24      | 19      |
| s 280               | Re-open a proceeding   | 4       | 1       |
| s 287, 288          | General ruling/statement of policy                                       | 4       | 2       |
| s 317               | Commission of it's own initiative  | 0       | 1       |
| s320                | Application to be heard or to intervene                                  | 32      | 39      |
| s 325               | Application to be joined   | 0       | 3       |
| s 326               | Interlocutory orders   | 0       | 1       |
| s 335, r117         | Costs  | 3       | 0       |
| s 338               | Review of Tribunal Rules   | 0       | 1       |
| s 364               | Authorisation of industrial officers                                     | 117     | 254     |
| s 409-657           | Industrial Organisation matters (Table 8)                                | 132     | 105     |
| r 41                | Application for directions order   | 5       | 1       |
| r 61                | Setting aside of attendance notice                                       | 2       | 0       |
| r 220               | Request for statistical information (Table 8)                            | 81      | 79      |
| IR Act              | Private conference   | 1       | 2       |
| IR Act              | Request for recovery conference  | 9       | 21      |
| W H&S Act s 90      | Authorised representative  | 53      | 45      |
| WH&S Act s 131      | WHS entry permit   | 0       | 116     |
| WC Act s 232E       | Reinstatement of injured worker  | 1       | 0       |
| WC Act s 549        | Application to be a party to appeal                                      | 6       | 7       |
| WC Act s 550        | Appeal against Q-Comp  | 315     | 492     |
| WC Act s 556        | Order for medical examination  | 1       | 2       |
| T(AH) Act           | Trading hours order  | 14      | 11      |
| T&E Act s 62        | Reinstatement of training contract                                       | 1       | 4       |
| T&E Act s230, s 231 | Apprentice/trainee appeals   | 12      | 5       |

| Section                           | Type of Application/Matter | 2010/11      | 2012/12      |
|-----------------------------------|----------------------------|--------------|--------------|
| Mags Courts Act<br>s 42B          | Employment claim           | 42           | 28           |
| <b>TOTAL APPLICATIONS/MATTERS</b> |                            | <b>1,705</b> | <b>2,198</b> |

**Table 5: Agreements filed 2010/11 and 2011/2012**

| Agreements                    | 2010/11 | 2011/12 |
|-------------------------------|---------|---------|
| Certified agreements          | 8       | 50      |
| Application to amend a CA     | 1       | 2       |
| Application to terminate a CA | 0       | 1       |
| Application to extend a CA    | 0       | 1       |

**Table 6: Industrial Instruments in force 30 June 2012**

| Type of Instrument                   |              |
|--------------------------------------|--------------|
| Awards                               | 328          |
| Industrial agreements                | 6            |
| Certified agreements                 | 4,515        |
| Superannuation industrial agreements | 1            |
| <b>TOTAL</b>                         | <b>4,850</b> |

**Table 7: Types of documents published under sections of the IR Act and other Acts 2011/12**

| Matter Type of Document published                      | Section   | 2011/12 |
|--|---|---------|
| Appeal against the cancellation of a training contract | s 230 (VETE Act)  | 1       |
| Appeal against decision of Industrial Commission       | s 341 s 550 s 561   | 12      |
| Appeal against decision of Industrial Magistrate       | s 341 s 186 (WC Act),<br>s 164(WH&S Act), s 172 (Elec. Act) | 7       |
| Appeal against additional medical evidence             | s 556(WC Act)   | 2       |
| Appeal against decision of Chief Inspector of Mines    | s 224 (MQS&H Act)   | 1       |
| Appeal against decision of Chief Executive             | s 152 (WH&S Act)  | 1       |
| Appeal to Commission                                   | s 550 (WC Act)  | 38      |
| Appeal from Industrial Magistrate to Industrial Court  | s 561 (WC Act)  | 3       |
| Appeal for arbitration                                 | s 149   | 2       |
| Application for costs                                  | s 335   | 1       |
| Application for orders                                 | s 248   | 2       |
| Application for general ruling                         | s 287   | 2       |
| Application for new award                              | s 125   | 1       |
| Application for reinstatement                          | s 74  | 9       |
| Application for statement of policy                    | s 288   | 1       |
| Application for unpaid wages                           | s 278   | 3       |
| Application to stay of decision                        | s 231 (VETE Act)  | 2       |
| Application to strike out or dismiss proceedings       | s 331   | 2       |
| Application of other name amendment                    | s 473   | 1       |
| Arbitration of an industrial dispute                   | s 229   | 5       |
| Application for payment instead of long service leave  | s 53  | 1       |
| Award amendment  | s 125   | 38      |
| Basis of decision of the Commission and Magistrates    | s 320   | 1       |
| CA notices   | r 87 (IR Rules)   | 9       |
| Community of interest declaration for amalgamation     | s 56  | 1       |

| <b>Matter Type of Document published</b> | <b>Section</b>        | <b>2011/12</b> |
|--|-----------------------|----------------|
| Decisions generally                      | s 331                 | 1              |
| Deregistration application by Registrar  | s 639                 | 3              |
| Election enquiry                         | s 500                 | 3              |
| Freedom of association                   | Chapter 4, Part 4     | 1              |
| General deregistration grounds           | s 638                 | 1              |
| General powers                           | s. 274                | 1              |
| Joining matters                          | r. 81, s 325          | 2              |
| Orders about invalidity                  | s 613                 | 3              |
| Orders generally from Court              | s 347                 | 1              |
| Power to grant injunctions               | s 277                 | 1              |
| Power to make declarations               | s 274                 | 1              |
| Powers of appeal body                    | s 558                 | 1              |
| Procedures for reopening                 | s 280                 | 1              |
| Repeal and new award                     | s 130                 | 16             |
| Reprinted awards                         | s 698                 | 139            |
| RIO notices                              | s 138, s 618, s 639   | 4              |
| Suppression order                        | s 679                 | 1              |
| Trading hours order on exhibitions       | s 22 (T(AH) Act)      | 3              |
| Trading hours order (decisions)          | s 21 (T(AH) Act)      | 8              |
| Trading hours order (amendments)         | s 21 s 22 (T(AH) Act) | 7              |

**Table 8: Industrial organisation matters filed 2011/12**

| <b>Industrial Organisation matters</b> |  | <b>2011/2012</b> |
|--|--|------------------|
| s 414                                  | Registration application                         | 1                |
| s 467                                  | Registrar amendment of rules                     | 4                |
| s 473                                  | Name amendment                                   | 1                |
| s 474                                  | Part Amendment - eligibility rule                | 1                |
| s 478                                  | Amendment to rules - other than eligibility      | 18               |
| s 481                                  | Request for conduct of election                  | 55               |
| s 500                                  | Election inquiry                                 | 2                |
| s 580                                  | Exemption from conduct of election               | 8                |
| s 582                                  | Exemption - members' register                    | 1                |
| s 582                                  | Exemption - officers' register                   | 1                |
| s 586                                  | Exemption - branch financial return              | 2                |
| s 602                                  | Cancellation of exemption                        | 2                |
| s 613                                  | Orders about Invalidity                          | 2                |
| s 639                                  | Order - deregistration (Registrar's application) | 5                |
| s 645                                  | Review of small organisation                     | 1                |
| r 26                                   | Objection to extension of time                   | 1                |
| <b>TOTAL</b>                           |  | <b>105</b>       |

**Table 9: Industrial Organisations of Employees Membership**

| <b>Industrial Organisation</b>   | <b>Members<br/>As at<br/>30/06/11</b> | <b>Members<br/>As at<br/>30/06/12</b> |
|--|---------------------------------------|---------------------------------------|
| The Australian Workers' Union of Employees, Queensland   | 58,689                                | 62,935                                |
| Queensland Nurses' Union of Employees  | 44,543                                | 49,751                                |
| Queensland Teachers Union of Employees   | 43,771                                | 43,336                                |
| The Queensland Public Sector Union of Employees;<br>Australian Municipal, Administrative, Clerical and Services Union, Central and<br>Southern Queensland Clerical and Administrative Branch, Union of Employees | 32,609<br><br>8,753                   |                                       |
| [Note: The above 2 Organisations were amalgamated under the name of the<br>following Organisation]   |                                       |                                       |
| Together Queensland, Industrial Union of Employees   |                                       | 40,312                                |
| Shop, Distributive and Allied Employees Association (Queensland Branch)<br>Union of Employees  | 35,043                                | 35,143                                |
| United Voice, Industrial Union of Employees, Queensland  | 28,464                                | 28,194                                |
| Automotive, Metals, Engineering, Printing and Kindred Industries Industrial<br>Union of Employees, Queensland  | 17,124                                | 17,201                                |
| Queensland Independent Education Union of Employees  | 15,712                                | 15,927                                |
| Queensland Services, Industrial Union of Employees   | 15,070                                | 14,705                                |
| The Electrical Trades Union of Employees Queensland  | 14,067                                | 12,851                                |
| Transport Workers' Union of Australia, Union of Employees (Queensland<br>Branch)   | 15,818                                | 10,852                                |
| Queensland Police Union of Employees   | 10,552                                | 10,674                                |
| Queensland Colliery Employees Union of Employees   | 8,318                                 | 9,047                                 |
| The Construction, Forestry, Mining & Energy, Industrial Union of Employees,<br>Queensland  | 7,095                                 | 8,458                                 |
| Australian Rail, Tram and Bus Industry Union of Employees, Queensland<br>Branch  | 8,147                                 | 8,296                                 |
| Australasian Meat Industry Union of Employees (Queensland Branch)  | 6,536                                 | 7,165                                 |
| Finance Sector Union of Australia, Queensland Branch, Industrial Union of<br>Employees   | 6,098                                 | 5,691                                 |
| The Plumbers and Gasfitters Employees Union of Australia, Queensland<br>Branch, Union of Employees   | 2,689                                 | 3,051                                 |
| Federated Engine Drivers' and Firemen's Association Queensland, Union of<br>Employees  | 639                                   | 2,709                                 |
| United Firefighters' Union of Australia, Union of Employees, Queensland  | 2,558                                 | 2,567                                 |
| Australian Building Construction Employees and Builders' Labourers'<br>Federation (Queensland Branch) Union of Employees   | 5,819                                 | 2,544                                 |
| The Association of Professional Engineers, Scientists and Managers, Australia,<br>Queensland Branch, Union of Employees  | Not Provided                          | 2,498                                 |
| Australian Salaried Medical Officers' Federation Queensland, Industrial<br>Organisation of Employees   | 394                                   | 1,704                                 |
| Australian Federated Union of Locomotive Employees, Queensland Union of<br>Employees   | 1,598                                 | 1,637                                 |
| The Seamen's Union of Australasia, Queensland Branch, Union of Employees   | 901                                   | 1,074                                 |
| Australian Journalists' Association (Queensland District) "Union of<br>Employees"  | Not Provided                          | 990                                   |
| The Bacon Factories' Union of Employees, Queensland  | 776                                   | 742                                   |
| Australian Maritime Officers Union Queensland Union of Employees   | 229                                   | 704                                   |
| Australian Institute of Marine and Power Engineers' Union of Employees,<br>Queensland District   | 595                                   | 642                                   |
| Actors, Entertainers and Announcers Equity Association, Queensland, Union<br>of Employees  | Not Provided                          | 553                                   |
| The Queensland Police Commissioned Officers Union of Employees   | 366                                   | 410                                   |
| Property Sales Association of Queensland, Union of Employees   | 270                                   | 267                                   |
| Queensland Fire and Rescue – Senior Officers Union of Employees  | 130                                   | 128                                   |
| Musicians' Union of Australia (Brisbane Branch) Union of Employees   | 107                                   | 102                                   |
| Textile, Clothing and Footwear Union of Australia, Queensland, Union of<br>Employees   | 373                                   | Not Provided                          |
| Total Membership   | 404,656                               | 402,860                               |
| Number Employee Organisations  | 43                                    | 35                                    |

**Table 10: Industrial Organisations of Employers Membership**

| <b>Industrial Organisation</b>   | <b>Members<br/>As at<br/>30/06/11</b> | <b>Members<br/>As at<br/>30/06/12</b> |
|--|---------------------------------------|---------------------------------------|
| Queensland Master Builders Association, Industrial Organisation of Employers                                       | 9,743                                 | 8,124                                 |
| Agforce Queensland Industrial Union of Employers   | 5,702                                 | 5,307                                 |
| Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers                          | 2,941                                 | 2,567                                 |
| Electrical and Communications Association Queensland, Industrial Organisation of Employers                         | 1,962                                 | 1,976                                 |
| Motor Trades Association of Queensland Industrial Organisation of Employers  | 1,676                                 | 1,670                                 |
| Master Plumbers' Association of Queensland (Union of Employers)  | 1,142                                 | 1,124                                 |
| Australian Industry Group, Industrial Organisation of Employers (Queensland)                                       | 1,138                                 | 1,121                                 |
| Australian Dental Association (Queensland Branch) Union of Employers   | 893                                   | 911                                   |
| Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers)                       | 989                                   | 835                                   |
| Queensland Hotels Association, Union of Employers  | 790                                   | 809                                   |
| National Retail Association Limited, Union of Employers  | 772                                   | 782                                   |
| Australian Community Services Employers Association Queensland Union of Employers                                  | 876                                   | 712                                   |
| Queensland Fruit and Vegetable Growers, Union of Employers   | 524                                   | 659                                   |
| The Registered and Licensed Clubs Association of Queensland, Union of Employers                                    | 549                                   | 553                                   |
| Master Painters, Decorators and Signwriters' Association of Queensland, Union of Employers                         | 448                                   | 390                                   |
| Queensland Real Estate Industrial Organisation of Employers  | 441                                   | 385                                   |
| The Queensland Road Transport Association Industrial Organisation of Employers                                     | 315                                   | 305                                   |
| Nursery and Garden Industry Queensland Industrial Union of Employers   | 313                                   | 301                                   |
| The Baking Industry Association of Queensland - Union of Employers   | 323                                   | 290                                   |
| Association of Wall and Ceiling Industries Queensland - Union of Employers   | 174                                   | 263                                   |
| Hardware Association of Queensland, Union of Employers   | 238                                   | 244                                   |
| Building Service Contractors' Association of Australia - Queensland Division, Industrial Organisation of Employers | 202                                   | 161                                   |
| Consulting Surveyors Queensland Industrial Organisation of Employers   | 80                                    | 94                                    |
| UNiTAB Agents' Association Union of Employers Queensland   | 90                                    | 90                                    |
| Local Government Association of Queensland (Incorporated)  | 72                                    | 72                                    |
| Furnishing Industry Association of Australia (Queensland) Limited Union of Employers                               | 65                                    | 61                                    |
| Queensland Master Hairdressers' Industrial Union of Employers  | 52                                    | 53                                    |
| Queensland Country Press Association - Union of Employers  | 27                                    | 27                                    |
| Queensland Cane Growers' Association Union of Employers  | Not Provided                          | 21                                    |
| Queensland Major Contractors Association, Industrial Organisation of Employers                                     | 19                                    | 19                                    |
| Australian Sugar Milling Association, Queensland, Union of Employers   | 10                                    | 7                                     |
| The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers               | Not Provided                          | 4                                     |
| Queensland Private Childcare Centres Employers Organisation of Queensland Industrial Organisation of Employers     | 221                                   | Not provided                          |
| Queensland Motel Employers Association, Industrial Organisation of Employers                                       | Not Provided                          | Not provided                          |
| Queensland Mechanical Cane Harvesters Association, Union of Employers  | Not Provided                          | Not provided                          |
| Total Membership   | 32,787                                | 29,937                                |
| Number of Employer Organisations   | 36                                    | 35                                    |

## APPENDIX 1

### Appendix 1: Current Industry Panels operative 27 January 2011

| INDUSTRY  | MEMBER        | MEMBER     | MEMBER     | MEMBER     |
|---|---------------|------------|------------|------------|
| Aged Care                                       | VP Linnane    | C Fisher   |            |            |
| Ambulance                                       | DP Bloomfield | C Fisher   |            |            |
| Arts and Entertainment                          | VP Linnane    | C Thompson |            |            |
| Cemeteries and Funerals                         | VP Linnane    | C Fisher   |            |            |
| Child Care                                      | VP Linnane    | C Thompson |            |            |
| Disability Services                             | DP Swan       | C Fisher   |            |            |
| Education                                       | DP Bloomfield | C Brown    | C Thompson |            |
| Fire Services                                   | DP Bloomfield | C Fisher   |            |            |
| Forestry Products                               | VP Linnane    | C Fisher   |            |            |
| Transport / Main Roads                          | DP Bloomfield | C Brown    | C Thompson |            |
| Hospitals / Health                              | DP Swan       | C Fisher   | C Brown    | C Thompson |
| Local Government Authorities<br>(Excluding BCC) | DP Swan       | C Brown    | C Thompson |            |
| Brisbane City Council                           | DP Swan       | C Brown    | C Thompson |            |
| Maritime  | VP Linnane    | C Thompson |            |            |
| Nursing   | VP Linnane    | C Fisher   |            |            |
| Police  | DP Bloomfield | C Fisher   |            |            |
| Prisons   | VP Linnane    | C Fisher   | C Brown    | C Thompson |
| Public Sector                                   | DP Swan       | C Fisher   | C Thompson |            |
| Racing  | DP Bloomfield | C Thompson |            |            |
| Miscellaneous                                   | DP Bloomfield | C Fisher   |            |            |



