

# 2021 - 2022 Annual Report

of the President of the Industrial Court of Queensland

In respect to the Industrial Court of Queensland,  
Queensland Industrial Relations Commission, and  
Queensland Industrial Registry



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**INDUSTRIAL COURT OF QUEENSLAND  
QUEENSLAND INDUSTRIAL RELATIONS COMMISSION**

The Honourable Grace Grace MP  
Minister for Education  
Minister for Industrial Relations  
Minister for Racing  
GPO Box 611  
BRISBANE QLD 4000

Dear Minister,

I have the honour to furnish to you for presentation to Parliament, as required by section 594 of the *Industrial Relations Act 2016*, the Annual Report on the work of the Industrial Court of Queensland, the Queensland Industrial Relations Commission, the Queensland Industrial Registry and generally on the operation of the *Industrial Relations Act 2016* for the financial year ended 30 June 2022.

Responsibility for the report relating to the Queensland Industrial Relations Commission and Queensland Industrial Registry rests with the President and Industrial Registrar respectively.

The Hon. Justice Peter Davis  
President  
Industrial Court of Queensland

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## President's Report

Justice Davis

Consistent with the objects of the *Industrial Relations Act 2016* as expressed in section 3, the Industrial Court ('the Court') and Queensland Industrial Relations Commission ('the Commission') has the goal of resolving disputes in a timely and fair manner through dispute resolution. Should a conciliated outcome not be reached, the matter will be formally heard and determined. Of course, the ability to deal with matters in a timely way depends upon the complexity of the case and the pressure of other business upon the Court and the Commission.

Since the passing of the *Industrial Relations Act 2016* (the IR Act) and the widening of the Court and Commission's jurisdiction, it cannot be said that this Court or Commission is a purely 'Industrial' tribunal. Today, Members of the Commission exercise powers and functions under many pieces of legislation including the *Industrial Relations Act 2016*, the *Workers' Compensation and Rehabilitation Act 2003*, the *Public Service Act 2008*, the *Anti-Discrimination Act 1991*, the *Further Education and Training Act 2014*, the *Magistrates Courts Act 1921*, *Work Health and Safety Act 2011*, the *Human Rights Act 2019* and the *Trading (Allowable Hours) Act 1990*. The expanded jurisdiction reflects more than public sector, local government and other bodies with State responsibilities – it now includes a jurisdiction over constitutional corporations, mainly under the *Anti-Discrimination Act 1991* and the *Work Health and Safety Act 2011*.

The number of matters filed in the Industrial Registry continues to grow. Those matters which ultimately are unable to be conciliated and proceed to hearing are often complex and challenging both factually and legally. The industrial jurisdiction, that is, jurisdiction coming directly from the IR Act is just one element of what is now a multi-jurisdictional court and Commission. The underlying thread in the Commission's jurisdiction is the connection with employment.

The number of matters filed in the Commission during the year under review was 3,302, a 11% increase on the 2012/21 figure of 2,978. Indeed, this is the fifth consecutive year that there has been an increase in the number of matters filed in the Industrial Registry.

During 2021–22, the Court and Commission handed down 486 judgments in respect of 521 files (some files involve more than one judgment being delivered – e.g. interlocutory decisions). This is an increase from last year of almost 26%. The current figures for the ensuing year suggest that the 2021 – 22 figures will be further eclipsed.

Disposal rates for the year under review were 1,915 matters. The figures are impressive when measured against the disruptions caused by the Covid-19 pandemic, the significant increase in matters filed in the Industrial Registry, and that fact that the Commission is not at its full complement of members.

Since my appointment as President, I have sought to constitute Full Benches to deal with matters that would benefit from an authoritative determination of issues, and which have some universal application. The advantage of this is that when I sit on a Full Bench, any appeal lies directly to the Court of Appeal. In the right matter, it is desirable to have the issues decided authoritatively by the Full Bench until appeal to the Court of Appeal, rather than a hearing before a Commissioner followed by an appeal to the Court, with then another appeal to the Court of Appeal.

The original and appellate jurisdiction conferred on the Commission under s 450 of the IR Act or another Act is exclusive of the jurisdiction of the Supreme Court or another court or tribunal, unless otherwise prescribed under the IR Act or another Act.

The Court and Commission are in a unique position as a specialist court and tribunal to deal with an industrial matter in an effective and expeditious manner. The Commission's ability to respond in a timely and effective manner is illustrated by the recent case of *Brasell-Dellow & Ors v State of Queensland (Queensland Police Service)* [2021] QIRC 363. In that case, employees of the Commissioner of Queensland Police Service (QPS) challenged a direction issued by the QPS to receive a first dose of an approved Covid-19 vaccine by 4 October 2021 (vaccination direction). The matter was heard before a Full Bench constituted by all three Presidential members on 14 October 2021. A decision was released on 22 October 2021. The decision by the Full Bench mandating Covid-19 vaccination is the first of its kind in Queensland. The decision is important for both employers and employees as it resolves the uncertainty that arose out of vaccination directives and reinforced the well-established principles of industrial law which recognise an employer's right to direct employees within proper legal constraints.

The proliferation of public service appeals, in particular those dealing with a promotion decision; a transfer decision; a conversion decision or fair treatment have significant implications on the Commission's ability to focus on industrial matters requiring a hearing and determination. It impacts in a significant way the ability of the Commission to deal with the more time critical and complex matters expeditiously and raises a broader and more serious question concerning access to justice.

As a matter of general application, the Commission should only hear public service appeals against:

- (a) disciplinary penalty decisions made under s 188 of the *Public Service Act 2008* ('the PS Act') or disciplinary declaration decisions under s 188A of the PS Act;
- (b) decisions under s 175 of the PS Act to direct public service employees to attend an independent medical examination; and
- (c) decisions under s 137 to suspend public service employees without remuneration; and
- (d) the equivalent of these matters for the prescribed agencies under the *Public Service Regulation 2008*.

In our view, these are core 'industrial matters' which fit naturally within our industrial arbitration jurisdiction.

Whilst it is a matter for the Executive Government, all other current appeals to the Commission, including, for example, conversions appeals and promotion appeals, should be determined by a government agency, like the Public Service Commission. Public Service appeals involving a disciplinary outcome should still come to the Commission for determination.

If an employee has an entitlement to long service leave, and they are experiencing financial hardship, or require extra funds due to some unforeseen personal, family, or other circumstances; they may be entitled to have their long service leave paid out in part, or in a lump sum.

Our experience over a long period of time suggests that in respect of these types of applications, the current arrangements place an unnecessary burden on the employer, an employee, and the Commission. The current legislative requirements unnecessarily delay payments to employees in situations where they are in financial hardship or have some unforeseen personal and family circumstance necessitating long service leave be paid out in part, or in a lump sum.

Sections 110(3) and (4) of the IR Act should be amended to provide that if no industrial instrument or federal industrial instrument provides for an employee to be paid for all or part of an entitlement to long service leave (instead of taking the leave), then an employee with an entitlement to long service leave should be able to make application to his or her employer to be paid for the long service leave instead of taking the leave; and that if there is a dispute, the dispute can be conciliated and, if necessary arbitrated by the Commission.

It goes without saying that a strong, effective, and appropriate working relationship is necessary between the Minister and the President. In my dealings with the Minister for Industrial Relations she has adopted a consultative and cooperative approach, not just in respect of appointments to the Commission, but also more generally, with the administration of the Court and the Commission.

I want to thank the members of the Court and Commission for their extraordinary hard work throughout the year. They have all shouldered a high and, in many cases, an unrelenting workload. This report and the statistics contained in it are a testament to their professionalism and commitment to delivering the highest levels of service to the people of Queensland.

Finally, I also wish to commend Ms Madonna Shelley, the Industrial Registrar and Ms Bianca Paris, the Deputy Industrial Registrar, and the dedicated registry staff who constantly seek to enhance service delivery without compromising access to justice.

## Industrial Court of Queensland

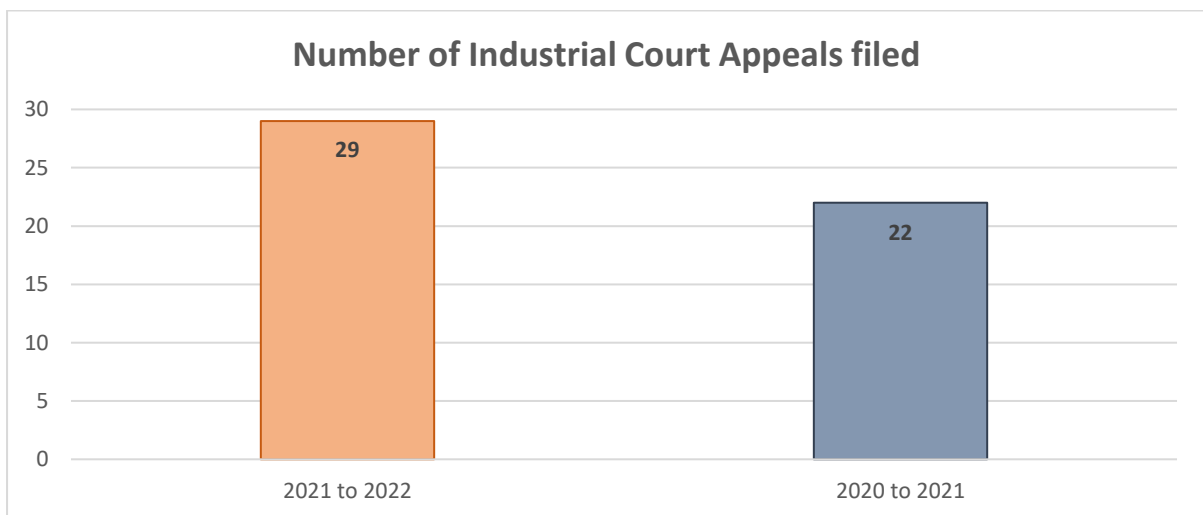
The Industrial Court of Queensland ('the Court') is a superior court of record in Queensland. It was first established as the Industrial Court by the *Industrial Peace Act of 1912*. The Court is governed largely by Chapter 11, Part 1 of the *Industrial Relations Act 2016* (the IR Act).

The Court is constituted by the President, Vice President or the Deputy President, sitting alone. The Members of the Court are the Honourable Justice Peter Davis (President), Vice President Daniel L. O'Connor OAM and Deputy President John W. Merrell.

The functions of the President include the management and administration of the Court and the Commission.

Matters filed in the Court are predominantly appeals (see Table 1). The Court hears appeals on errors of law or lack or excess of jurisdiction against decisions of the Commission, the Industrial Registrar, or an Industrial Magistrate.

The number of appeals filed during the year in review increased in comparison to the preceding year.



For a further breakdown of these matters, refer to Table 1 at the end of this report.



The expanded jurisdiction of the Queensland Industrial Relations Commission ('the Commission') in the areas of workplace discrimination and work health and safety, coupled with the consistent increase in the workload of the Commission in its other areas of jurisdiction, has had an effect on the Industrial Court's workload and will continue to do so in the foreseeable future. Legislative amendments introduced in September 2020 moved the line of appeal in Public Service Appeal matters from a judicial review by the Court of Appeal to an appeal to the Industrial Court. This, coupled with the dramatic increase in the number of Public Service Appeals filed over the reporting period, has had an impact on the number of matters dealt with by the Industrial Court.

Further, a number of matters are now being dealt with by way of a Full Bench, which includes Justice Davis as a Member of the Full Bench. This allows for an expeditious appeal process as these matters may then be appealed to the Court of Appeal.

## Queensland Industrial Relations Commission

The Commission derives its powers and functions from Chapter 11, Part 2 of the IR Act. The Commission plays a major role in contributing to the social and economic wellbeing of people throughout Queensland through furthering the objects of the legislation, which is principally to provide a framework for industrial relations that is fair and balanced and supports the delivery of high-quality services, economic prosperity and social justice for Queenslanders.

### Structure of the Commission

There are currently nine Members of the Commission. The Commission is headed by the President, Justice Peter Davis, who is a Judge of the Supreme Court of Queensland, as well as the President of the Industrial Court of Queensland. The Commission is additionally comprised of the Vice President, the Deputy President and six Industrial Commissioners.

The President is responsible for the administration of the Commission. This includes the allocation of all matters, references to Full Benches and the general conduct of Commission business.

### Current Members of the Commission

The current Members of the Commission include:

Position	Member Name	Date sworn in
<b>President</b>	The Honourable Justice Peter Davis	13 July 2020 <i>(as President of the Industrial Court)</i>
<b>Vice President</b>	Vice President Daniel L. O'Connor OAM	17 December 2018 <i>(Vice President)</i> 20 September 2014 <i>(Deputy President [Court])</i> 13 November 2012 <i>(Deputy President)</i>
<b>Deputy President</b>	Deputy President John W. Merrell	17 December 2018
<b>Commissioners</b>	Industrial Commissioner Minna L. Knight	12 December 2012
	Industrial Commissioner Samantha C. Pidgeon	17 December 2018
	Industrial Commissioner John C. Dwyer	9 July 2019
	Industrial Commissioner Catherine M. Hartigan	9 July 2019
	Industrial Commissioner Jacqueline M. Power	9 July 2019
	Industrial Commissioner Roslyn D.H. McLennan	9 July 2019

## Jurisdiction, Powers and Functions of the Commission

Members of the Commission mainly exercise jurisdiction, powers and functions under the Act, the *Workers' Compensation and Rehabilitation Act 2003*, the *Anti-Discrimination Act 1999*, and the *Public Service Act 2008*.

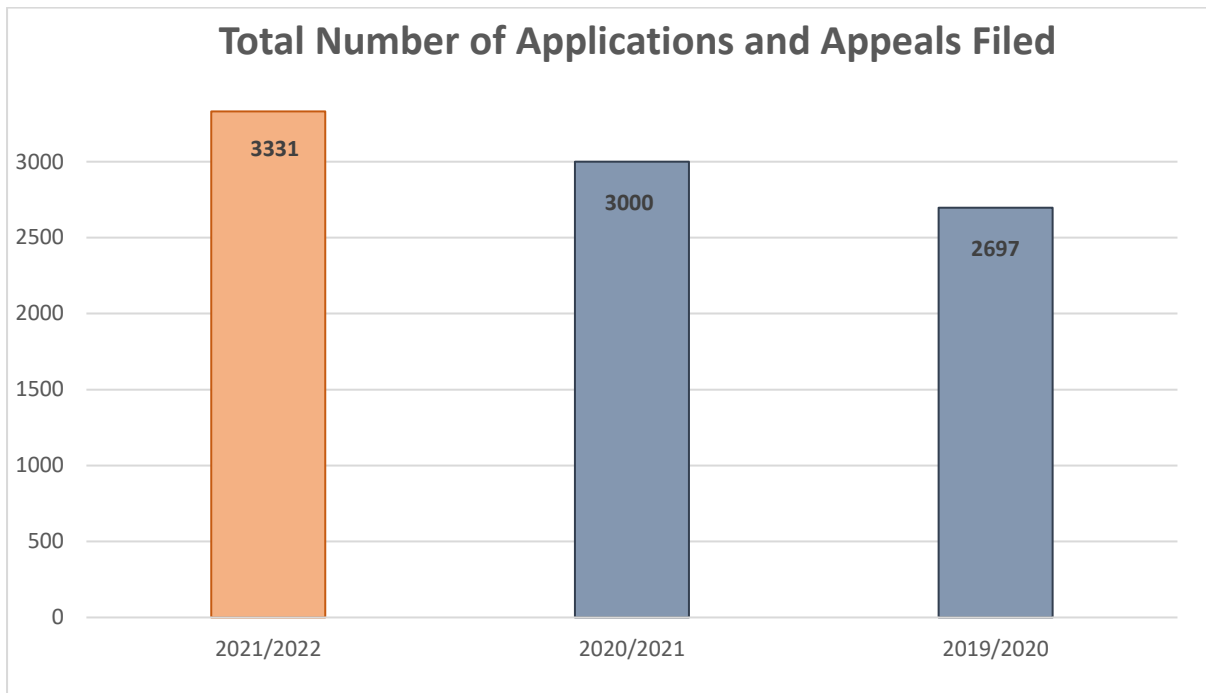
Further to this, the Commission also has powers and functions under the following enactments:

<i>Building and Construction Industry (Portable Long Service Leave) Act 1991</i>
<i>Child Employment Act 2006</i>
<i>Community Services Industry (Portable Long Service Leave) Act 2020</i>
<i>Contract Cleaning Industry (Portable Long Service Leave) Act 2005</i>
<i>Further Education and Training Act 2014</i>
<i>Human Rights Act 2019</i>
<i>Local Government Act 2009</i>
<i>Magistrates Courts Act 1921</i>
<i>Public Interest Disclosure Act 2010</i>
<i>Trading (Allowable Hours) Act 1990</i>
<i>Work Health and Safety Act 2011</i>

Through this legislation, the Commission has jurisdiction over the following areas:

- wage recovery;
- industrial disputes involving state and local government employees;
- unfair dismissals and reinstatement applications for state and local government employees;
- workers' compensation appeals;
- work-related anti-discrimination complaints;
- public service appeals;
- trading hours;
- work, health and safety reviews;
- long service leave payment applications; and
- other matters prescribed under various acts.

A total of 3,331 new applications and appeals were filed in the Industrial Registry during the reporting period, an increase of 331 (or approximately 11 per cent) applications and appeals in comparison to the previous reporting year.



The year has seen a significant increase in the number of Public Service Appeals filed in the Commission. There were 846 Public Service Appeals filed in the reporting year, compared with 543 filed the previous year, an increase of 36 per cent. Approximately 518 of these matters have been appeals in relation to the Covid-19 vaccine mandate.

Another significant area of the Commission's workload continues to be appeals against review decisions of the Workers' Compensation Regulator under the *Workers' Compensation and Rehabilitation Act 2003*. In the reporting year, 232 appeals were filed in comparison to 179 the previous reporting year, meaning an increase of almost 23 per cent.

Referrals of matters from the Queensland Human Rights Commission have remained steady during the year. These are complex matters dealt with by the Commission, not only in conciliation, but also arbitration and require an extensive amount of administrative attention in comparison to other matters dealt with by the Commission.

Overall, there were 1,937 listings for proceedings held throughout the reporting period, 474 of which were hearings.

Furthermore, there were 493 decisions of the Court and Commission released and published in the reporting period.

More specifically, the Commission dealt with the following broader areas.

## Anti-discrimination Referrals and Applications

The Commission deals with work-related matters including complaints that allege discrimination, sexual harassment, and other contraventions of the *Anti-Discrimination Act 1991*, including:

- discrimination at work;
- discrimination when applying for work;
- victimisation by an employer;
- requesting and encouraging discrimination at work;
- requesting unnecessary information at work or when applying for work;
- sexual harassment at work; and
- vilification that occurred at work or when applying for work.

Referrals, made in accordance with either s 155(4), s 164A, s 166 or s 167 of the *Anti-Discrimination Act 1991*, are sent to the Commission by the Queensland Human Rights Commission (QHRC). Further, at any time before a complaint is referred to the Commission, either the complainant or the Human Rights Commission may apply to the Commission for an order prohibiting a person from doing an act that might prejudice either the investigation or conciliation of the complaint, or an order that the Commission might make after a hearing.

There were 76 matters referred to the Commission by the QHRC and three applications for orders protecting complainants' interests.

The Commission is also responsible for granting an exemption to allow a person or business to do something that is otherwise unlawful under the *Anti-Discrimination Act 1991*, for example advertising for female employees only. Exemptions can also be granted from the operation of a specified provision of the *Anti-Discrimination Act 1991*. An exemption can be granted for a temporary period of up to five years and can be renewed for further periods of up to five years. During the reporting year, five applications of this type were filed, two of which were granted and three are still in progress.

## Awards

The Commission must ensure that modern awards provide for fair and just wages and employment conditions in the context of living standards generally prevailing in the community. In accordance with Chapter 3 of the IR Act, the Commission has the power to make, vary, review, or revoke modern awards.

Throughout the year, there were six applications to vary the following modern awards:

*Queensland Public Service Officers and Other Employees Award - State 2015*

*Teaching in State Education Award - State 2016*

*Building, Engineering, and Maintenance Services Employees (Queensland Government) Award - State 2016*

## Certified Agreements

Read in conjunction with awards, certified agreements are a written agreement about industrial matters relating to an employer, a group of employees of the employer, and the employee organisation/s covered by the agreement. Prior to certification, the Commission must be satisfied that the content of the proposed agreement is compliant with the Act. They are certified under Chapter 4, Part 5 of the Act and set out wage and salary rates, allowances, role classifications, leave entitlements, grievance procedures, workplace flexibility schemes, as well as other areas relevant to a particular category of employee and/or industry.

The following agreements were certified by the Commission, and one determination made:

### **Public Service Agreements**

*Queensland Corrective Services – Correctional Employees' Certified Agreement 2021*

### **Local Government Agreements**

*Balonne Shire Council Certified Agreement 2021*

*Banana Shire Council Certified Agreement 2021*

*Barcoo Shire Council Local Government Operational Employees' Certified Agreement 2021-2024*

*Blackall-Tambo Regional Council Enterprise Bargaining Agreement 2021 – 2024*

*Bulloo Shire Council Officers Certified Agreement 2021*

*Bulloo Shire Council Operational Employees Certified Agreement 2021*

*Bundaberg Regional Council Certified Agreement 2021*

*Burdekin Shire Council Certified Agreement 2021*

*Cairns Regional Council Certified Agreement 2021*

*Central Highlands Regional Council Certified Agreement 2021 – 2024*

*Charters Towers Regional Council Union Collective Certified Agreement 2021*

*Cook Shire Council – Indoor Certified Agreement 2021*

*Cook Shire Council – Outdoor Certified Agreement 2021*

*Fraser Coast Regional Council Certified Agreement 2021*

*Gladstone Regional Council Certified Agreement 2021*

*Hinchinbrook Shire Council Local Government Officers (Stream A) Certified Agreement 2021*

*Hinchinbrook Shire Council Operational Employees (Stream B and C) Certified Agreement 2021*

*Ipswich City Council Resource Recovery Drivers Certified Agreement 2021*

*Isaac Regional Council Certified Agreement 2021*

**Local Government Agreements continued**

*Livingstone Shire Council Officers Certified Agreement 2021*

*Livingstone Shire Council Operational Certified Agreement 2021*

*Lockyer Valley Regional Council Certified Agreement (Field) 2021*

*Lockyer Valley Regional Council Certified Agreement – Officers 2021*

*Logan City Council Certified Agreement 2022*

*Mackay Regional Council Determination 2022\**

*McKinlay Shire Council Certified Agreement 2022-2024*

*Noosa Council Certified Agreement 2021*

*Paroo Shire Council - Non-Operational Staff Certified Agreement 2021-2024*

*Paroo Shire Council - Operational Staff Certified Agreement 2021-2024*

*Quilpie Shire Council Certified Agreement 2021*

*Somerset Regional Council - Field Staff Certified Agreement 2020*

*Southern Downs Regional Council Certified Agreement 2021 - Operational Employees*

*Sunshine Coast Council Field-Based Employees Certified Agreement 2020 (No. 4)*

*Toowoomba Regional Council Field Based Staff Certified Agreement 2022 (No. 4)*

*Toowoomba Regional Council Office Based Staff Certified Agreement 2022 (No. 4)*

*Torres Strait Island Regional Council Certified Agreement 2021*

*Townsville City Council (Field and Other Employees) Certified Agreement 2022*

*Townsville City Council (Trades Employees) Certified Agreement 2022*

*Western Downs Regional Council Nurses Certified Agreement 2021*

*Western Downs Regional Council Personal Carers and Support Workers Certified Agreement 2021*

*\* Determination of an agreement*

There were no agreements declared obsolete by the Industrial Registrar during the reporting year.

## Disputes

The Industrial Registrar may be given notice of a dispute if an issue remains unresolved after genuine attempts to settle the dispute between an employer and an employee, or an employer and an industrial organisation representing employees. The Commission may take the steps it considers appropriate for the prevention or prompt settlement of a dispute through conciliation. If the matter remains unresolved after conciliation, the matter may be referred to arbitration.

The Commission has received 154 notifications of dispute during the reporting period. Of those, three have proceeded to arbitration. This illustrates the strong conciliatory function undertaken by the Commission in these matters.

## General Rulings and Statement 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 these determinations, the Commission must perform its functions in a way that is consistent with the objects of the Act.

The Commission must ensure a general ruling about a Queensland minimum wage for all employees is made at least once a year.

Three applications for a general ruling regarding wage and allowance adjustments for employees covered by awards, as well as a ruling in relation to the Queensland minimum wage were filed. A decision was made, operative from 1 September 2021 which determined that wages and salaries for full-time employees in all awards be increased by 2.5 per cent, and that the minimum wage rate per week for full-time employees in Queensland be \$808.50.



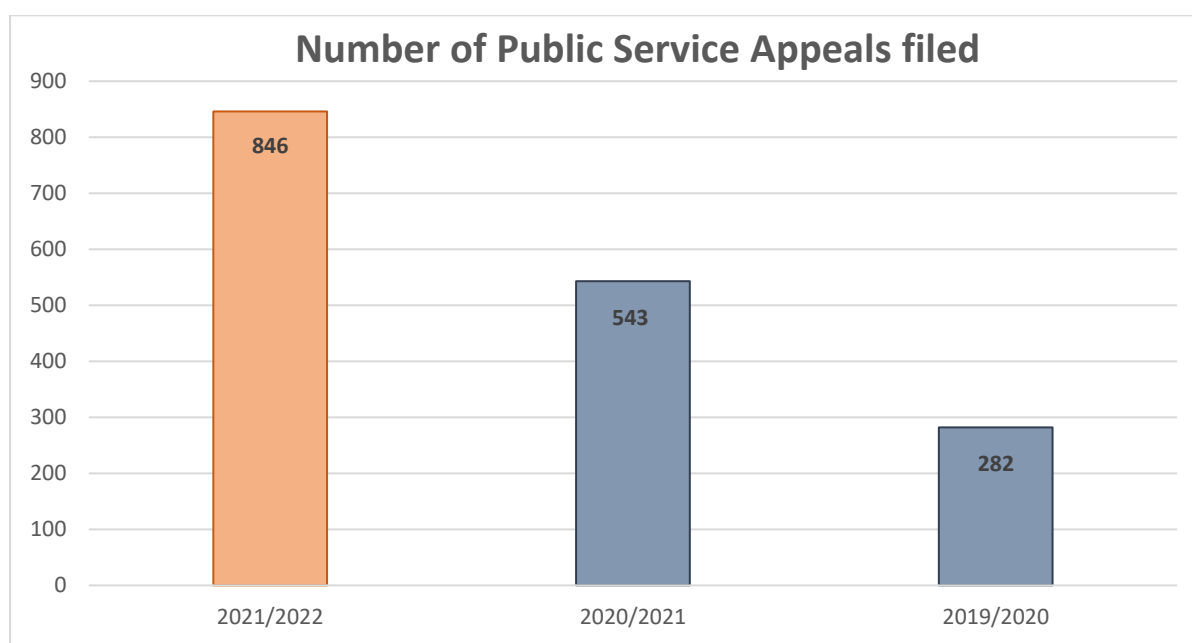
## Public Service Appeals

Chapter 7 of the *Public Service Act 2008* stipulates the right to appeal a decision, the types of decisions that may or may not be appealed, who may appeal a decision and the appeals procedures.

The types of decisions which may be appealed are:

- a decision to take, or not take, action under a directive;
- a decision under a disciplinary law to discipline;
- a decision of the Commission Chief Executive under s 88IA of the *Public Service Act 2008* to give a direction about rectifying a defect in the procedural aspects of the handling of a work performance matter;
- a decision to suspend a public service employee without entitlement to normal remuneration;
- a decision to promote a public service officer;
- a decision to transfer a public service officer;
- a decision regarding conversion of a public service officer's employment status (fixed term temporary, casual, higher classification/higher duties);
- a decision a public service employee believes is unfair and unreasonable; or
- a decision made under another Act which allows the person to appeal.

In the reporting period, there have been 846 public service appeals filed in accordance with s 194 of the *Public Service Act 2008*. This is an increase of approximately 36 per cent from the last reporting period, and an increase of approximately 67 per cent for the 2019/2020 reporting period.

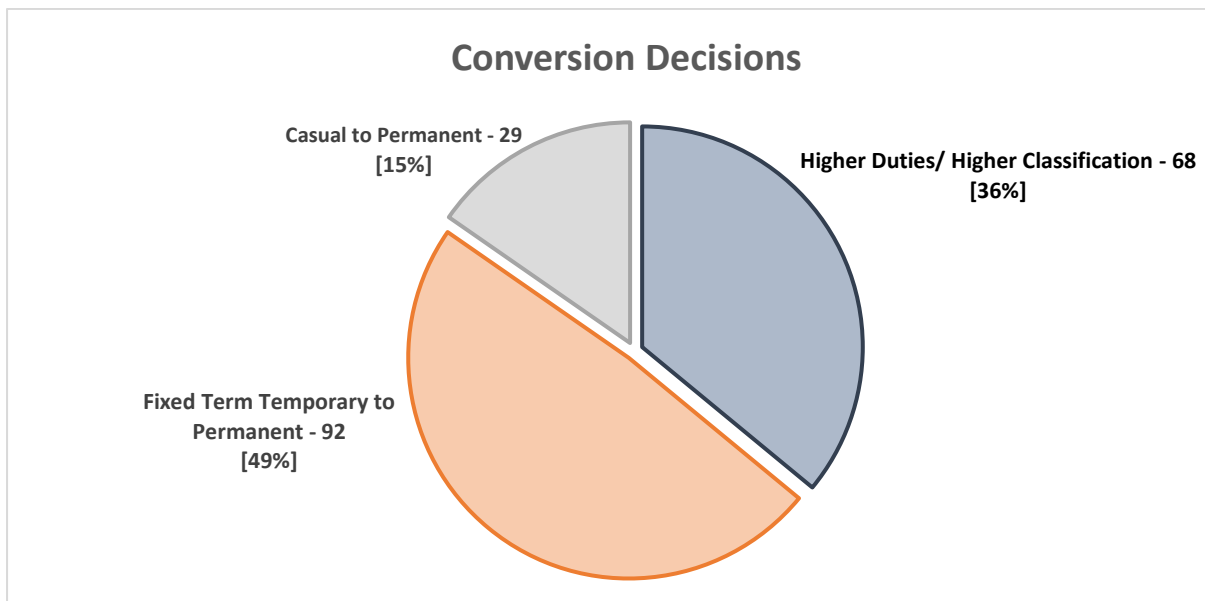


Of note, out of the 846 appeals filed, 518 were related to the Covid-19 vaccine mandate.

The following breakdown of appeal types demonstrates a marked increase in the number of appeals filed in relation to a decision made under a Directive, a discipline decision, a suspension without pay decision and a decision in relation to fair treatment.

Type of Appeal		Number filed 2020 to 2021	Number filed 2021 to 2022
s 194(1)(a)	Under a Directive	11	46
s 194(1)(b)	Discipline Decision	47	135
s 194(1)(ba)	Appeal against a decision under s 88IA	0	0
s 194(bb)	Suspension without pay	1	65
s 194(1)(c)	Promotion	18	20
s 194(1)(d)	Transfer	4	3
s 194(1)(e) <i>(prior to legislative amendments)</i>	Temporary Employment	63	N/A
s 194(1)(e)	Conversion Decision	343	189
s 194(1)(ea) <i>(prior to legislative amendments)</i>	Casual Employment Decision	3	N/A
s 194(1)(eb)	Fair Treatment	49	385
s 194(1)(f)	Under another Act	4	3
<b>TOTAL</b>		<b>543</b>	<b>846</b>

A further breakdown of the different types of conversion matters is illustrated below.



## Trading Hours

The allowable trading hours of shops throughout Queensland are regulated by the *Trading (Allowable Hours) Act 1990*. The five-year moratorium on the creation and amendment of trading hours within Queensland, originating in 2018, remains. However, shops operating within a specified area for an event declared to be a special event for a declared period of time by a Member of the Commission, are exempt shops and may trade for the entirety of the period.

During the year, nine applications for a declaration of a special event were filed, two applications were dismissed (Roma Show and Bowen Show) and seven applications were declared to be special events in accordance with s 5(1)(c)(ii) of *Trading (Allowable Hours) Act 1990*. Those special events were:

Weipa Fishing Classic (September 2021 and June 2022)	Mount Isa Mines Rodeo (August 2022)
Mount Isa Show (June 2022)	Charters Towers Show (July 2022)
Burdekin Show (June 2022)	Kingaroy BaconFest (August 2022)

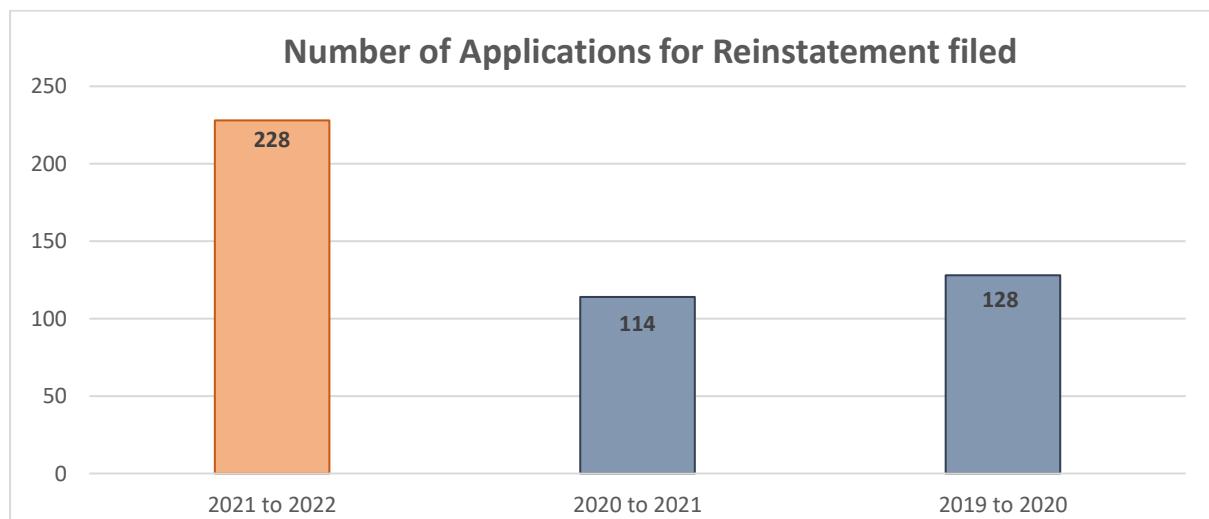
## Unfair Dismissals

Applications for reinstatement are made to the Commission in circumstances where the worker believes they have been unfairly dismissed by their employer.

The outcome of an application depends upon whether the Commission determines an employee was unfairly dismissed. If the dismissal was found to be unfair, the Commission may award remedies as outlined in the Act, being either reinstatement, re-employment or compensation.

A dismissal may be unfair if it was determined to be harsh, unjust or unreasonable.

The number of applications filed increased dramatically in comparison to previous years. Of the 228 applications filed (135 of which were related to the Covid-19 mandate), 160 matters proceeded to conciliation with 48 of those matters being resolved at conciliation. A number of matters remain in progress.



## Wage Recovery

Amendments made to legislation introduced on 1 March 2021 meant that the Industrial Registry became the Registry for the Industrial Magistrates Court regarding Fair Work Claims. These matters are conciliated by Industrial Commissioners who are appointed as conciliators, with the matters heard by the Queensland Industrial Magistrate's Court. The procedures were simplified, meaning that the court is not bound by any rules of evidence and procedure, proceedings are able to be conducted quickly and in an informal manner, and parties are self-represented (unless leave is granted otherwise). In addition to Fair Work Claims, the Industrial Magistrates Court also hears Unpaid Amount Claims and Employment Claims, which are conciliated by the Commission.

In addition to that, matters regarding unpaid wages, an apprentice's unpaid tool allowance, remuneration lost by an apprentice or trainee, or contributions to the approved superannuation fund payable for an employee that are unpaid, continue to be conciliated and arbitrated by the Commission.

Overall, throughout the year the following wage recovery claims have been made.

Type of Claim	Number filed 2021 to 2022
<b>Fair Work Claim</b> (Commission or Industrial Magistrates Court) (introduced 1 March 2021) <ul style="list-style-type: none"> <li>- A Fair Work Claim is a claim in relation to a civil remedy provision under the <i>Fair Work Act 2009</i> (Cwlth), s 539(1) and (3)</li> <li>- These matters are conciliated by the Commission and heard by the Industrial Magistrates Court</li> </ul>	<b>67</b>
<b>Unpaid Wages Claim</b> (Commission) <ul style="list-style-type: none"> <li>- Unpaid Wages Claims are made to the Commission (less than \$50,000) in relation to unpaid wages, an apprentice's unpaid tool allowance, remuneration lost by an apprentice or trainee, or contributions to the approved superannuation fund payable for an employee that are unpaid</li> <li>- These matters are conciliated and heard by the Commission</li> </ul>	<b>21</b>
<b>Unpaid Amount Claim</b> (Industrial Magistrates Court) <ul style="list-style-type: none"> <li>- Unpaid Amount Claims are filed in the Industrial Magistrates Court and are made pursuant to the <i>Industrial Relations Act 2016</i> in relation to ss 379, 386, 396 and s 402</li> <li>- These matters are conciliated by the Commission and heard by the Industrial Magistrates Court</li> </ul>	<b>5</b>
<b>Employment Claim</b> (Magistrates Court) <ul style="list-style-type: none"> <li>- Employment Claims are small claims made to the Magistrates Court in relation to an employment claim</li> <li>- These matters are conciliated by the Commission</li> </ul>	<b>14</b>
<b>Proportionate payment (<i>pro-rata</i>) of long service leave on termination of employment</b> (Commission) <ul style="list-style-type: none"> <li>- If eligible, an employee may be entitled to have their accrued long service leave paid out pro rata in a lump sum after termination</li> <li>- These matters are conciliated and heard by the Commission</li> </ul>	<b>45</b>
<b>TOTAL</b>	<b>152</b>

An application may also be made to the Commission in accordance with s 110 of the IR Act to have long service leave entitlements paid out (if eligible) in part, or in full, on compassionate grounds, and/or because of financial hardship. Registered workers covered by the *Community Services Industry (Portable Long Service Leave) Act 2020*, the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*, as well as the *Building and Construction Industry (Portable Long Service Leave) Act 1991* may also make an application to the Commission for a payout of long service leave entitlements. The total number of applications made in the reporting year is outlined below.

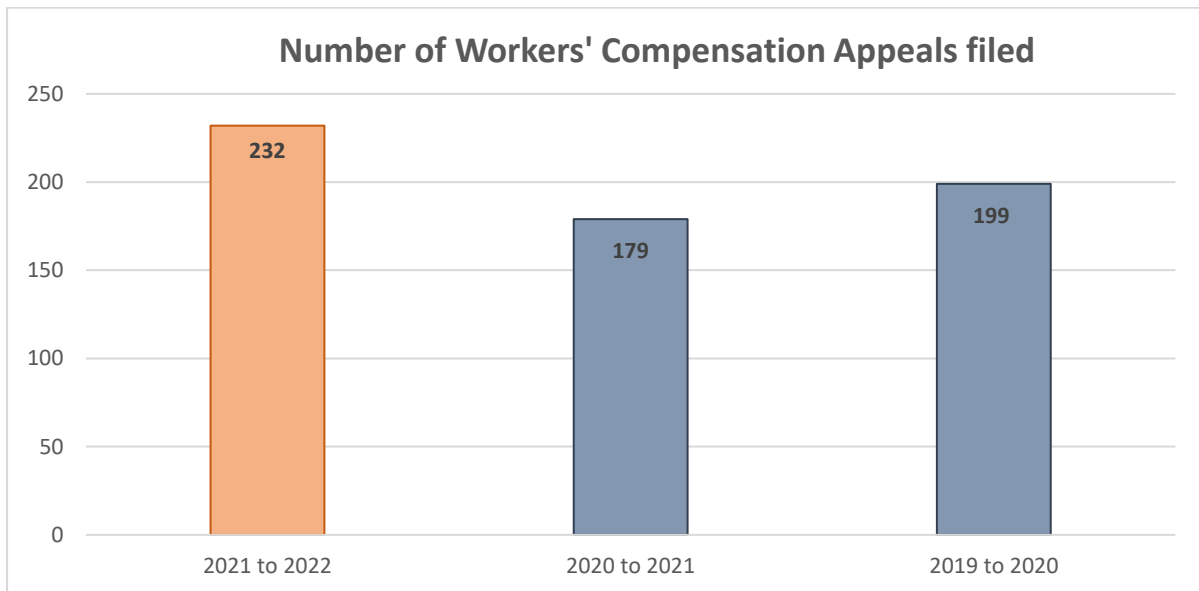
	Number filed 2021 to 2022
<b>Payment instead of taking long service leave (Commission)</b>	
- These matters are generally heard on the papers by the Commission	<b>720</b>

## Workers' Compensation Appeals

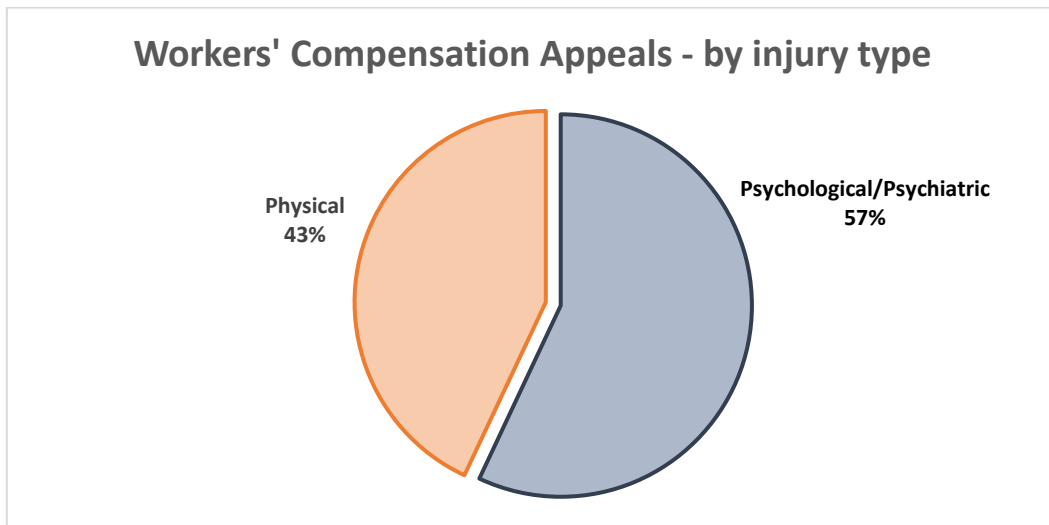
The Workers' Compensation Regulator (the Regulator) is the statutory body that reviews workers' compensation decisions made by WorkCover Queensland (WorkCover) and self-insurers.

Where workers or employers feel aggrieved by a decision of either WorkCover or a self-insurer, they may seek a review by the Regulator of that decision. The Commission has jurisdiction to hear appeals of those review decisions under s 550 of the *Workers' Compensation and Rehabilitation Act 2003*.

During the year, 232 appeals against decisions of the Regulator were filed.



Of those appeals filed, 99 related to physical injuries in comparison to 133 relating to psychological/psychiatric injuries.



## Regional Sittings

The Commission hears matters in locations throughout Queensland. Over the reporting period, proceedings were held in the following locations:



- Cairns
- Gladstone
- Gympie
- Hervey Bay
- Mackay
- Southport
- Townsville

## External Engagement

Members of the Commission were actively involved with the training and further education of members of the public and the profession throughout the year.

Meetings of the Industrial Relations Jurisdiction Users Group (IJUG) were convened by Justice Davis, Vice President O'Connor and Deputy President Merrell. These meetings covered numerous topics including the review undertaken of the IR Act, legal representation, proposed amendments to forms, guidance material for self-represented litigants, recording and transcription, Work Health and Safety entry permits, de-identification of names in decisions, hyperlinking in submissions, the increased workload of the Commission, as well as changes to processes in the Commission and any issues arising from the Commission's operation. IJUG meetings were held at the Commission on 16 August 2021 and 21 June 2022 and were well attended by various representatives working within the jurisdiction.



The Bar Association of Queensland's Employment and Industrial Relations Conference was held on the Gold Coast on 28 and 29 August 2021. The Court and Commission were well represented, with Justice Davis and Deputy President Merrell as keynote speakers, along with past President of the Court, Justice Martin. Deputy Present Merrell's presentation topic was titled *The Challenges of a Multi-Jurisdictional Tribunal*.

Vice President O'Connor attended conferences held by the Queensland Hotels Association on 17, 22 and 29 March 2022 in Brisbane, Southport and Cairns respectively. His topic of discussion was in relation to the anti-discrimination jurisdiction and the way in which those matters are handled by the Court and Commission.

Deputy President Merrell presented to a conference held by MAZARS on 20 July 2021 regarding public service appeals. He also delivered a presentation at a Public Service Appeals Seminar held by Aitken Legal on 9 November 2021.

The Court, Commission and Industrial Registry have also continued to work closely with the Office of Industrial Relations in relation to their Emerging Practitioners Program in both November 2021 and May 2022. This has included hosting tours of the Commission premises, conducting moots, as well as presentations on and off site with regard to the role of the Court, Commission and Industrial Registry. Deputy President Merrell presented a paper to attendees regarding the expectations of advocates appearing at the Court and Commission.

The Industrial Relations Society of Queensland held their annual lunch on 1 April 2022. The Court and Commission were represented by Justice Davis, as well as Members of the Court and Commission and Industrial Registry staff.

On 31 August 2021, the Industrial Registry hosted a visit of students from Griffith University Business School who are currently studying industrial relations. The students were provided with information regarding the role of the Court and Commission, taken on a tour of the Commission, and observed a hearing.

## Professional Activities

The *Judicial Remuneration Act 2007* provides for the salaries and allowances for judicial officers, including Members of the Court and the Commission. The various allowances are only payable for expenses actually incurred for the purposes of the allowance. Expenditure of the Education and Conference Allowance for a conference or educational purpose is approved by the President. Drawings on allowances are administered by the Industrial Registry.

Some Members of the Commission utilised their Jurisprudential Allowance or Education Allowance to attend conferences, seminars or courses. Those attendances are listed in the table below.

Member Name	Activity and Location	Dates
Vice President O'Connor	Bar Association of Queensland - Employment and Industrial Relations Conference 2021 (Gold Coast)	28 and 29 August 2021
Industrial Commissioner Pidgeon	Bar Association of Queensland - Employment and Industrial Relations Conference 2021 (Gold Coast)	28 and 29 August 2021
Industrial Commissioner Power	Bar Association of Queensland - Employment and Industrial Relations Conference 2021 (Gold Coast)	28 and 29 August 2021
Industrial Commissioner McLennan	Bar Association of Queensland - Employment and Industrial Relations Conference 2021 (Gold Coast)	28 and 29 August 2021
	National Judicial College of Australia - Writing Better Judgements, Refresher course (Sydney)	16 and 17 June 2022



# Queensland Industrial Registry

## Registry Services

The Industrial Registry is the Registry for the Industrial Court of Queensland and Queensland Industrial Relations Commission. The Industrial Registry is also now the Registry for the Industrial Magistrates Court in relation to Fair Work Claims only. The Industrial Registry is a public service office. The Industrial Registrar is the head of the Industrial Registry, in accordance with the *Public Service Act 2008* and the IR Act.

The Industrial Registrar is appointed under s 514 of the IR Act and, as well as administering the Industrial Registry, has the functions conferred under that Act and other Acts. The Deputy Industrial Registrar provides support to the Industrial Registrar who is responsible for managing and administering the operations of the Industrial Registry. The Deputy Registrar and Industrial Registry Officers are appointed under the *Public Service Act 2008*.

Funding for the Court, Commission and Industrial Registry is provided through the Department of Education as part of the Office of Industrial Relations (OIR) appropriation with OIR being sensitive of the need to maintain the independence of the Court and the Commission.

The Industrial Registry provides high level administrative support to the Court and the Commission and the Industrial Registrar.

The Industrial Registry's vision is to provide quality and timely services to all Court and Commission users through innovation and a high performing, positive workplace culture. The Industrial Registry's key values and priorities are as follows:

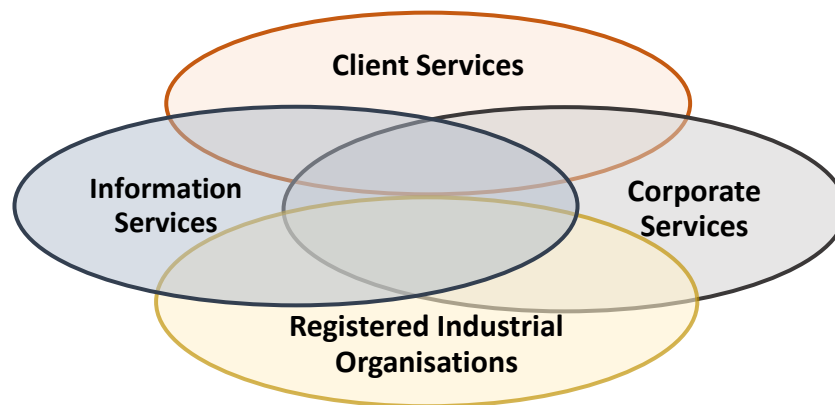
### Key Values

- responsiveness
- professionalism
- transparency
- integrity
- independence
- innovation

### Priorities

- to provide a safe environment for all court users;
- transparency and accessibility through good record keeping practices;
- a responsive and innovative service delivery; and
- a professional and engaged workforce.

The Industrial Registry establishment is made up of 15.8 FTE positions including the Industrial Registrar and is structured into four units.



## Client Services

Client Services is managed by the Client Service Manager and comprises four main units; including a Client Service Supervisor who oversees several Registry Services Officers, a Listings Manager, Caseflow Manager and Records Manager. The Client Service staff provide support to the Industrial Registrar, Court, Commission and Associates through:

- examining, evaluating and processing all filed material, correspondence and other documentation received from stakeholders;
- assisting in administrative activities for each application and tracking the progress of matters through Case HQ (the case management system);
- organising, listing, booking, and notifying of proceedings before the Court and Commission (in Brisbane and throughout the State); and
- managing the accurate and efficient record keeping functions of Court, Commission and Industrial Registry files, both current and historical.

The Client Service team have processed an average of 9,130 emails per quarter, which has amounted to approximately 36,520 in the reporting period. The team have also answered approximately 4,350 telephone enquires in that period. The Client Service team also service the public through the filing of applications and material, and face-to-face enquires over the counter.

As mentioned, a total of 3,331 new applications and appeals were filed and processed by the Client Service team. This was an increase of 331 applications and appeals in comparison to the previous reporting year.

The Client Service team were also responsible for the ordering, processing and distribution of transcripts to parties involved in proceedings before the Court and Commission. Pursuant to regulation 8 of the *Recording of Evidence Regulation 2018*, a party to a proceeding is entitled to one free copy of a transcription of a record if it has been issued to the Industrial Registry. A total of 529 transcript requests were processed, with a total of 558 transcripts distributed to parties.

In accordance with s 228 of the *Industrial Relations (Tribunals) Rules 2011*, a person may make a request to search or inspect documents in a proceeding and that request is subject to approval of the Industrial Registrar. The Industrial Registry also facilitate litigation searches. Over the reporting period, a total of 157 search and copy requests were received by the Industrial Registry with 150 of those requests being actioned and facilitated by the Client Services team, and seven requests formally refused by the Commission and Industrial Registrar.

## Information Services

Senior Registry staff within the Industrial Registry support the Industrial Registrar in the provision of a diverse range of high-quality publication material and administrative support including research, communication, and information and courtroom technology, that contribute to the effective functioning of the Court, Commission, and the Industrial Registry.

The digital services provided by the Industrial Registry are pivotal in the efficient exercise of the Court and Commission's functions.

Digital services provided by the Industrial Registry include:

- managing and maintaining the QIRC website (which has been accessed over 255,000 times over the reporting period) to ensure content is relevant and up to date (including forms, guides, information sheets etc);
- publication of all relevant documentation to the QIRC website, in accordance with legislative requirements;
- managing and maintaining an internal intranet site, including information and research tools required by the Court, Commission, Associates and Industrial Registry staff and the updating of processes and procedures;
- managing the Court and Commission case management system, including the provision of statistical reporting; and
- managing court and conference room technology.

## Corporate Services

A comprehensive suite of corporate services is provided to the Court and Commission and Industrial Registry staff. These services are principally managed by the Deputy Industrial Registrar and two support staff and include:

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

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

## Registered Industrial Organisations

The Industrial Registrar has important functions and powers in accordance with Chapter 12 of the IR Act in relation to registered industrial organisations, being those organisations registered in accordance with Part 2 of Chapter 12 of the IR Act. Supported by a Senior Registry Officer, the Industrial Registrar's functions include:

- approving amendments to the rules of an industrial organisation;
- making arrangements through the Electoral Commission to conduct elections of officers for industrial organisations;
- approving exemptions from elections, financial management training and accounting or audit obligations;
- monitoring compliance with financial and accountability requirements of organisations and their officers;
- maintaining an up-to-date register of officers;
- processing and issuing Work Health and Safety entry permit cards; and
- processing and issuing authorities for Authorised Industrial Officer entry cards.

Many registered industrial organisations have been assisted in their duty to comply with legislative provisions. Additional tools have been developed and updated to assist with the monitoring of compliance by registered industrial organisations in relation to the legislation.

A total of 221 registered industrial organisations matters were filed and processed during the reporting period. For more detail with regard to the types of matters dealt with by the Industrial Registrar, please see Table 4 for a breakdown. Membership numbers of registered industrial organisations can be found at Tables 5 and 6 of this report.

## The Year in Review

### Amendments to the *Industrial Relations Act 2016*

The Industrial Relations and Other Legislation Amendment Bill 2022 (the Bill), introduced on 23 June 2022, was in response to the reported recommendations of the *Five-year Review of Queensland's Industrial Relations Act 2016*. The review was conducted by John Thompson (a retired Member of the Queensland Industrial Relations Commission) and Linda Lavarch (former Attorney-General for Queensland), with the Commission participating in consultation throughout the review process.

The Explanatory Notes outline the purpose of these amendments as follows:

- strengthen protections against workplace sexual harassment, including the addition of key provisions to the main purpose of the IR Act, as well as amending the definition of 'industrial matter' to include sexual harassment and sex or gender-based harassment;
- ensure the primacy of registered employee and employer organisations by providing a scheme whereby only industrial organisations can seek and provide representation rights for employees and employers;
- ensure workers have access to prevailing employment standards;
- introduce minimum entitlements and conditions for independent courier drivers; and
- updates to the collective bargaining framework ensuring access to arbitration by a single Commissioner during bargaining negotiations, as well as enhancing equal remuneration in the collective bargaining provisions.

### Wage Recovery

The Industrial Registry has continued to work with the Magistrates Court with regard to the ongoing implementation of the processes and procedures around wage recovery, particularly in relation to Fair Work Claims and Unpaid Amount Claims which are heard in the Industrial Magistrates Court.

Following extensive consultation with the Rules Committee of the Court and Commission, the Chief Magistrate, and Magistrates Court representatives, several new forms have been drafted and implemented by the Industrial Registry to assist in the efficient progression of these matters.

### Recording and Transcription Project

Queensland Courts and Tribunals have commenced the transition to a new Recording and Transcription service model as a result of a review undertaken by the Department of Justice and Attorney-General.

Over the last reporting period, the Industrial Registry has been heavily involved in ensuring the Court, Commission and Industrial Registry were well equipped and prepared for the roll-out. This included extensive consultation with the Recording and Transcription Transition Team, drafting and posting of information and resources on both the Intranet and website, communication and the provision of information and training sessions for staff.

## Practice Directions

The following Practice Directions were amended or repealed throughout the reporting year:

Practice Direction	Date Amended/ Repealed
PD 2 of 2021 <b>Approval to Engage in Protected Industrial Action</b>	6 May 2022
PD 3 of 2021 <b>Electronic Filing and Hard Copies of Documents</b>	17 June 2022
PD 11 of 2021 <b>Covid-19</b>	22 December 2021 7 February 2022
PD 1 of 2022 <b>Repeal of Practice Direction 11 of 2021 Covid-19</b>	7 March 2022

## Queensland State Archives - Sentencing Project

A collaborative project has taken place between Queensland State Archives and the Industrial Registry, to make historical Court and Commission records discoverable and accessible for everyone. The project commenced in 2017-2018 with the drafting of a retention and disposal schedule, which was consequently authorised by the State Archivist on 21 March 2018.

Since then, a massive task was undertaken involving the listing of legacy records from 1913 to 1961, as well as sorting, sentencing, listing, and disposing of records from 1962 to 2010. Over the past two years, 3,400 boxes were opened and sorted with 58,162 items listed. A further 25 pallets, or 1,005 boxes, of temporary files were destroyed.

The Industrial Registry is one of the only Queensland Government agencies with a complete and comprehensive electronic oversight of off-site collection of records. This project was completed on 21 July 2022 and has ensured that Queensland's industrial relations history has been preserved and has been made accessible for generations to come.

The Industrial Registrar would like to acknowledge the assistance and expertise generously provided by the Queensland State Archivist and staff over the last two years.

## Staff Training

The Industrial Registry encourages a 'professional and engaged workforce' and staff continue to be supported in participating in professional development and training. This year, Industrial Registry staff have taken up the opportunity to attend various training sessions, both online and in person.

## Overview of Amendments to Legislation

### *Industrial Relations Act 2016*

#### ***Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020***

Amendments were made to the IR Act through the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020*. These amendments related to references throughout the IR Act to parental leave to recognise the importance of the Ailan Kastom child rearing practice. These amendments came into effect on 1 July 2021.

#### ***Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Act 2021***

This was a very minor amendment to the IR Act, as of 9 September 2021, with regards to the definition of 'public holiday' to include the movement of the Brisbane Exhibition Show public holiday to 29 October 2021.

#### ***Superannuation (State Public Sector) (Scheme Administration) Amendment Act 2021***

Once again this was a very minor amendment to the references contained within s 589(2)(a) of the IR Act from 'board' to 'trustee'. This amendment came into effect on 28 February 2022.

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

#### ***Education and Other Legislation (Fee Unit Conversion) Amendment Regulation 2022***

An amendment was made to the *Industrial Relations (Tribunals) Rules 2011* which replaced Schedule 1 to refer to fee units rather than amounts within that fee schedule, in accordance with the *Acts Interpretation (Fee Unit) Regulation 2022* which would apply as of 1 July 2022.

## Notable Cases

### ***Kelsey v Logan City Council & Ors [2021] ICQ 011***

Member: Justice Davis

Delivered: 21 July 2021

Appeal

PROCEDURE - CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – GENERAL RULE: COST FOLLOW EVENT – INDEMNITY COSTS – PARTICULAR CASES - HOPELESS CASES – UNREASONABLE CONDUCT – OR DELINQUENCY RELATING TO PROCEEDINGS – where the appellant was unsuccessful in proceedings against the respondents brought in the Queensland Industrial Relations Commission – where the appellant filed an appeal without articulating grounds – where the appellant then abandoned the appeal against the second respondent – where the second respondent then applied for costs of the appeal – where the *Industrial Relations Act 2016* abrogates the general rule that costs follow the event – whether costs should be ordered in favour of the second respondent – whether costs should be awarded on an indemnity basis

INDUSTRIAL LAW – QUEENSLAND – APPEALS – APPEAL TO INDUSTRIAL COURT – where the appellant brought proceedings against the respondents in the Queensland Industrial Relations Commission – where those proceedings were dismissed – where the appellant appealed and then discontinued the appeal against the second respondent – where the second respondent seeks costs on an indemnity basis – where the *Industrial Relations Act 2016* abrogates the usual rule that costs follow the event – whether indemnity costs should be ordered – whether the principles established for awarding indemnity costs apply in the Industrial Court where costs do not follow the event

### ***Golding v Sippel and The Laundry Chute Pty Ltd [2021] ICQ 014***

Member: Justice Davis

Delivered: 6 August 2021

Appeal

INDUSTRIAL LAW – QUEENSLAND – OFFENCES – PENALTIES AND ORDERS – COSTS – DAMAGES – where the Appellant ('Ms Golding') was employed by the Second Respondent ('The Laundry Chute') for a period of 14 months – where The Laundry Chute was controlled by the First Respondent ('Mr Sippel') – where Mr Sippel sexually harassed and discriminated against Ms Golding during her employment at The Laundry Chute – where Ms Golding suffered psychological injuries resulting from the sexual harassment and discrimination to which she was subjected – where Ms Golding commenced compensation proceedings in the Queensland Industrial Relations Commission ('the QIRC') against Mr Sippel for contravention of the *Anti-Discrimination Act 1991* – where Ms Golding was awarded compensation by the QIRC – where Ms Golding sought costs in a fixed sum - where Ms Golding appealed the costs order and the quantum of compensation awarded to her by the QIRC – whether the award for economic loss and damage suffered by Ms Golding was manifestly inadequate - whether a fixed sum for costs should have been awarded



***Golding v Sippel and The Laundry Chute Pty Ltd (No 2) [2021] ICQ 018***

Member: Justice Davis

Delivered: 15 September 2021

Appeal

PROCEDURE - CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS - COSTS - INDEMNITY COSTS - POWER TO ORDER - RELEVANT CONSIDERATIONS GENERALLY - where judgment was given in favour of the appellant against the respondents in the Queensland Industrial Relations Commission (the QIRC) for compensation under the *Anti-Discrimination Act 1991* (the ADA) - where the appellant appealed to the Industrial Court of Queensland against the quantum of the award of compensation and against the failure of the QIRC to fix the costs - where the appellant was successful in having the compensation substantially increased on appeal - where the appellant was unsuccessful in disturbing the costs order - where the *Industrial Relations Act 2016* provides for considerations in costs orders under the ADA - where costs are awarded if it is in the interests of justice to do so - where the appellant seeks costs on an indemnity basis - where the appellant seeks to have the costs fixed - where the only evidence of quantum of costs is of costs calculated on an indemnity basis - whether it was unreasonable for the respondent to resist the appeal

***Enco Precast Pty Ltd v Construction, Forestry, Maritime, Mining and Energy Union & Ors [2021] ICQ 015***

Member: Justice Davis

Delivered: 20 August 2021

Appeal

INDUSTRIAL LAW - QUEENSLAND - APPEALS - APPEAL TO INDUSTRIAL COURT - where union officials holding entry permits under the *Work Health & Safety Act 2011* (the Safety Act) sought entry to the appellant's work site – where the appellant initially denied entry - where entry was allowed - where any right of entry without consent was dependent upon the permit holders having a reasonable suspicion of contravention of the Safety Act - where any right of entry was also dependent upon workers on site being eligible for membership of the union - where the appellant applied to the Queensland Industrial Relations Commission (QIRC) for relief concerning a “dispute” as to the right of entry - where the QIRC determined that there was no relevant dispute as to reasonable suspicion of contravention of the Safety Act - where alternatively the QIRC found there was reasonable suspicion held by the permit holders - where the QIRC held that the burden of proof lay upon the operator to prove the Union did not have coverage - where the QIRC held that a lack of union coverage had not been established - where the QIRC refused relief – where the appellant appealed - whether there was error of law or jurisdiction in the QIRC decision

INDUSTRIAL LAW - WORK HEALTH AND SAFETY - GENERALLY - where union officials who held entry permits under the Safety Act sought entry to a workplace operated by the appellant - where entry was dependent upon a reasonable suspicion of contravention of the Safety Act and workers on site being eligible for membership of the union - where entry was allowed by the appellant - where the operator applied for relief to the QIRC - where the jurisdiction to grant relief depended upon there being a “dispute” - whether, given entry had occurred, there was a relevant dispute about the union's coverage – whether, given that entry had been allowed, there was a relevant dispute about reasonable suspicion of contravention of the Safety Act

INDUSTRIAL LAW - QUEENSLAND - INDUSTRIAL DISPUTE - INDUSTRIAL ORGANISATIONS - MEMBERSHIP - ELIGIBILITY - where union officials holding entry permits under the Safety Act sought access to the appellant's site - where the right of access depended upon workers at the site being eligible for membership of the union - where the union claimed coverage based on the Federated Engine Drivers' and Firemen's (FEDFA) Rule and the Terrazzo Rule - whether the FEDFA Rule gave coverage to the union - whether the Terrazzo Rule gave coverage to the union

EVIDENCE - PROOF - BURDEN OF PROOF - GENERALLY - where union officials holding entry permits under the Safety Act sought entry to the appellant's premises - where there was dispute about the existence of preconditions to the right of entry - where entry was allowed - where the appellant sought relief in the QIRC claiming the preconditions for the right of entry did not exist - whether the burden of proving that the preconditions existed fell upon the union - whether the burden of proving that the preconditions didn't exist fell upon the appellant

***Brasell-Dellow & Ors v State of Queensland (Queensland Police Service) & Ors [2021] QIRC 356***

Members: Justice Davis  
Vice President O'Connor  
Deputy President Merrell

Delivered: 22 October 2021

Appeal

INDUSTRIAL LAW - QUEENSLAND - INDUSTRIAL DISPUTES - where dispute notification - where Commissioner of Police issued direction on 7 September 2021 mandating other staff, unless exempted, must receive the COVID-19 vaccine including a first dose by 4 October 2021 under Direction 12 of the *Police Service Administration Act 1990* (Qld) - where conciliation unsuccessful - where parties sought arbitration by Full Bench - where question to be determined - whether the direction was issued lawfully

INDUSTRIAL LAW - QUEENSLAND - where Queensland Industrial Relations Commission has jurisdiction to hear and decide questions arising out of an industrial matter - whether jurisdiction of Commission is exclusive of the jurisdiction of the Supreme Court or another court or tribunal - where dispute concerns the respective rights of the Commissioner of Police as the effective employer, police officers and other staff - where dispute is an industrial matter.

***Gilbert v Metro North Hospital and Health Service & Ors***  
**[2021] QIRC 255**

Member: Vice President O'Connor

Delivered: 20 August 2021

Application for declarations and orders

INDUSTRIAL LAW - QUEENSLAND - WORKPLACE RIGHTS AND RESPONSIBILITIES - GENERAL PROTECTIONS - application for declaratory relief and accessorial liability - where alleged adverse action taken by employer because applicant had exercised a workplace right - where alleged coercion, misrepresentation and discrimination - where applicant employed by the Prince Charles Hospital as a Duty Nurse Manager - where applicant Branch Secretary, Nurses' Professional Association of Queensland Inc - where article published in media which identified applicant making critical comments about nursing graduates and nursing profession generally - where applicant did not seek prior authority or permission to participate in the article in that capacity - where applicant contends memorandum issued misrepresented her rights to be represented by her chosen industrial association - where show cause issued and subsequently withdrawn - where definition of or meaning of 'industrial association' - where definition of or meaning of 'trade union activity' - determined show cause notice was authorised pursuant to s 282(6) of the *Industrial Relations Act 2016* - determined Nurses' Professional Association of Queensland Inc is not an industrial association and applicant cannot establish she engaged in industrial activity for or on behalf of one - determined applicant did not have the claimed workplace rights or protections

HUMAN RIGHTS - HUMAN RIGHTS AND DISCRIMINATION LEGISLATION - QUEENSLAND - where declarations sought by applicant - whether respondents acted unlawfully in accordance with s 58(1)(a) and (b) of the *Human Rights Act 2019* - whether compatible with applicant's human right to freedom of expression in accordance with s 21 of the *Human Rights Act 2019* - whether compatible with applicant's human right to freedom of association

in accordance with s 22(2) of the *Human Rights Act 2019* - whether a limit on a human right is reasonable and justifiable - where declarations sought have no practical relevance or utility - determined applicant's rights under ss 21 and 22 of the *Human Rights Act 2019* have not been breached - determined not to exercise discretion to issue declarations sought

INDUSTRIAL LAW - QUEENSLAND – ANTI DISCRIMINATION LEGISLATION - where applicant seeking declarations in accordance with s 463 of the *Industrial Relations Act 2016* that respondents discriminated against her for engaging in trade union activity - where applicant alleges delivering show cause notice was discrimination in contravention of s 295 of the *Industrial Relations Act 2016* - where alleged adverse action taken because of a prohibited reason - where definition of or meaning of 'discriminates' - where applicant has not established there was comparatively less favourable treatment - determined that issuing show cause notice was not adverse action because it was issued exercising the power in s 187 of the *Public Service Act 2008* and therefore authorised pursuant to s 282(6) of the *Industrial Relations Act 2016* - determined no unlawful discrimination because the activity was not trade union activity and not the subject of the protected attribute

***Mr A v Viva Energy Australia Pty Ltd [2021] QIRC 309***

Member: Deputy President Merrell

Delivered: 7 September 2021

Application for order protecting complainant's interests

HUMAN RIGHTS - DISCRIMINATION LEGISLATION - GENERALLY - applicant is an employee of respondent - respondent commenced disciplinary action against applicant - respondent indicated that termination of employment a possible outcome of disciplinary action - applicant invited by respondent to provide information for respondent to take into account in making a decision concerning applicant's ongoing employment - applicant lodged complaint with the Queensland Human Rights Commission - complaint that subjecting him to disciplinary action was direct and indirect discrimination contrary to the *Anti-Discrimination Act 1991* on the basis of his attributes of sex and, or in the alternative, sexuality - complaint of victimisation - complaint accepted by the Queensland Human Rights Commission - application by applicant pursuant to s 144 of the *Anti-Discrimination Act 1991* for an order halting the progression of the disciplinary action - matters to be considered by the Queensland Industrial Relations Commission in exercising discretion as to whether or not to make an order pursuant to s 144 of the *Anti-Discrimination Act 1991* - application refused

***Colebourne v State of Queensland (Queensland Police Service ) (No. 2) [2022] QIRC 016***

Member: Deputy President Merrell

Delivered: 28 January 2022

Public Service Appeal - Fair treatment decision

PUBLIC SERVICE - EMPLOYEES AND SERVANTS OF THE CROWN GENERALLY - PUBLIC SERVICE APPEAL - appellant employed by the State of Queensland in the Queensland Police Service in the position of Administration Officer at the Queensland Police Academy - appellant seconded to the higher classification position of Injury Management Advisor - Commissioner of the Queensland Police Service issued direction on 7 September 2021 mandating that certain employees, unless exempted, must receive a COVID-19 vaccine - appellant applied for an exemption from complying with requirement to be vaccinated - decision not granting the exemption - appellant, pursuant to ch 7, pt 1 of the *Public Service Act 2008*, appealed against the decision not to grant the exemption - whether decision not to grant the exemption was fair and reasonable - decision appealed against fair and reasonable - decision appealed against confirmed

**Flori v Carroll and Anor [2022] QIRC 034**

Member: Deputy President Merrell

Delivered: 11 February 2022

Application in existing proceedings

COMMUNICATIONS LAW - WHISTLEBLOWER PROTECTION AND PUBLIC INTEREST DISCLOSURE LEGISLATION - Complainant a former police officer who resigned from the Queensland Police Service - Complainant commenced civil proceedings alleging reprisal for a public interest disclosure purportedly made by him within the meaning of the *Public Interest Disclosure Act 2010* prior to Complainant's resignation - following Complainant's resignation, Complainant emailed the First Respondent to obtain certain service honours and awards - First Respondent deferred making a decision to issue the honours and awards sought by Complainant because of findings of fact that may be made in the civil proceedings that may affect assessment of Complainant's eligibility - Complainant made complaint to the Queensland Human Rights Commission alleging contravention by the Respondents of the *Public Interest Disclosure Act 2010*, contending that the decision to defer the issuing of honours and awards was a reprisal within the meaning of s 40(1)(b) of the *Public Interest Disclosure Act 2010* - complaint accepted by the Queensland Human Rights Commission - Queensland Human Rights Commission referred the complaint to the Queensland Industrial Relations Commission pursuant to s 166(1)(a) of the *Anti-Discrimination Act 1991* - Complainant seeks various orders and other relief under the *Anti-Discrimination Act 1991* to remedy alleged reprisal - interlocutory application by Respondents that the Queensland Industrial Relations Commission, pursuant to s 193A of the *Anti-Discrimination Act 1991*, transfer matter to the Queensland Civil and Administrative Tribunal because the complaint is not a work-related matter - Complainant's complaint is a work related matter - Respondents' application in existing proceedings dismissed - orders made for hearing of Complainant's claim for various orders and other relief under the *Anti-Discrimination Act 1991*

STATUTES - ACTS OF PARLIAMENT - construction of s 166(1)(a) of the *Anti-Discrimination Act 1991* - meaning of the phrase 'work-related matter' as defined in Schedule 1 to the *Anti-Discrimination Act 1991* - whether event must have occurred while worker was at work for the matter, the subject of a complaint, to be a 'work related matter' - application of principles of the construction of a provision of a statute

**Australian Rail, Tram and Bus Industry Union of Employees, Queensland Branch v Brisbane City Council [2022] QIRC 249**

Member: Deputy President Merrell

Delivered: 27 June 2022

Arbitration of industrial dispute

INDUSTRIAL LAW - QUEENSLAND - INDUSTRIAL DISPUTE - ARBITRATION OF INDUSTRIAL DISPUTE - since 1994 the Australian Rail, Tram and Bus Industry Union of Employees, Queensland Branch and the Brisbane City Council have arranged that Union delegates employed as bus drivers at bus depots could work, on a permanent basis, a specific roster to allow them the flexibility to attend to Union delegate duties - agreement colloquially known as the 'Union run' - such an agreement has been in place at the Council's Carina bus depot since at least 1994 - in May 2021, the Council gave notice that it intended to cease to give effect to the Union run at the Carina bus depot - industrial dispute notified by the Union - arbitration of industrial dispute - question for arbitration being whether the Council was required, under its existing industrial instruments, to maintain a dedicated roster line for the Union delegate at the Carina bus depot - whether notice to cease to give effect to the Union run at the Carina bus depot was inconsistent with cl 7 of the *Brisbane City Council Certified Agreement 2018 (EBA9)* which recognised the role Union delegates play in consultative processes and in resolving grievances and disputes - whether notice to cease to give effect to the Union run at the Carina bus depot was a reasonable exercise of managerial prerogative - whether notice to cease to give effect to the Union run at the Carina bus depot was an extra claim prohibited by the no extra claims clause in the *Brisbane City Council Certified Agreement 2018 (EBA9)* - answer to question for arbitration is 'Yes'

CONTRACTS - CONSTRUCTION AND INTERPRETATION OF CONTRACTS - IMPLIED TERMS - CUSTOM AND USAGE - whether notice to cease to give effect to the Union run at the Carina bus depot was in breach of contract of employment - whether a term was implied by custom and usage, into the contract of employment between the Union delegate at the Carina bus depot and the Council providing for the Union run - no evidence of industry custom and usage - term not implied

**Re: Application to include provisions, based on a certified agreement, in the Nurses and Midwives (Queensland Health) Award - State 2015 [2022] QIRC 010**

Member: Deputy President Merrell

Delivered: 21 January 2022

Application to include provisions based on a certified agreement in an award

INDUSTRIAL LAW - QUEENSLAND - AWARDS - APPLICATION TO INCLUDE IN AWARD PROVISIONS BASED ON A CERTIFIED AGREEMENT - applicant applied, pursuant to s 145(2) of the *Industrial Relations Act 2016*, to include in the *Nurses and Midwives (Queensland Health) Award - State 2015* certain wage and non-wage provisions contained in the *Nurses and Midwives (Queensland Health and Department of Education and Training) Agreement (EB9) 2016* - application to amend original application - application to further amend application to reduce the scope of provisions in the *Nurses and Midwives (Queensland Health and Department of Education and Training) Agreement (EB9) 2016* to be included in the *Nurses and Midwives (Queensland Health) Award - State 2015* - consideration of the power of the Queensland Industrial Relations Commission to include in a modern award provisions that are based on a certified agreement - consideration of whether further amended application must be granted to include in the *Nurses and Midwives (Queensland Health) Award - State 2015* provisions based on the *Nurses and Midwives (Queensland Health and Department of Education and Training) Agreement (EB9) 2016* - further amended application granted

**Richards v State of Queensland (Queensland Ambulance Service) [2022] QIRC 159**

Member: Industrial Commissioner McLennan

Delivered: 11 May 2022

Public Service Appeal

PUBLIC SERVICE - EMPLOYEES AND SERVANTS OF THE CROWN GENERALLY - PUBLIC SERVICE APPEAL - where appellant applied for an exemption to receiving the COVID-19 vaccination - where respondent refused appellant's exemption application - where appellant applied for internal review of refusal to grant exemption - where upon review the respondent upheld the original refusal - where appellant filed a public service appeal against the decision - where appellant filed a Form 33 Notice of appointment of agent - where contact listed on the Form 33 is a lawyer - whether s 530A of the *Industrial Relations Act 2016* permits the Appellant to appoint a lawyer as an agent - whether in acting as the appellant's lawyer the person would be subject to the *Legal Profession Act 2007* - consideration of whether appellant instructed the person to act as her lawyer - where an officer of an industrial association, who also happens to be a lawyer, may act as an agent for a party to an appeal in their industrial capacity - where the lawyer in this matter is not an officer of an industrial association

**Mackenzie v State of Queensland (Queensland Health) [2022] QIRC 205**

Member: Industrial Commissioner McLennan

Delivered: 10 June 2022

Application for Reinstatement - Referral to Full Bench on Commissioner's own initiative

INDUSTRIAL LAW – APPLICATION FOR REINSTATEMENT – unfair dismissal – where Commissioner proposed referral of the matter to the Full Bench on her own initiative – where neither party objected to referral to the Full Bench - whether application should be referred to the Full Bench

## Tables

Table 1: Matters (by type) filed in the Industrial Court 2020/2021 and 2021/2022

Type of Appeal to Industrial Court	2020/2021	2021/2022
<b>Appeal against a decision of an Industrial Magistrate</b> (s 556 of the <i>Industrial Relations Act 2016</i> )	0	0
<b>Appeal against a decision of the Commission</b> (s 557 of the <i>Industrial Relations Act 2016</i> ) [includes Appeals against a decision of the Commission in relation to a Public Service Appeal - 2]	16	18
<b>Appeal against a decision of the Commission</b> (s 561 of the <i>Workers' Compensation and Rehabilitation Act 2003</i> )	3	7
<b>Appeal against a stand-down</b> (s 562(1) of the <i>Workers' Compensation and Rehabilitation Act 2003</i> )	0	0
<b>Stay of operation of a directive</b> (s 178 of the <i>Coal Mining Safety and Health Act 1999</i> )	2	0
<b>Appeal against Chief Inspector's directives and review decisions</b> (s 243 of the <i>Coal Mining Safety and Health Act 1999</i> )	0	2
<b>Appeal against Chief Inspector's directives and review decisions</b> (s 243 of the <i>Coal Mining Safety and Health Act 1999</i> )	1	2
<b>Appeal against a decision of the Industrial Registrar</b> (s 560(1) of the <i>Industrial Relations Act 2016</i> )	0	0
<b>Total</b>	<b>22</b>	<b>29</b>

Table/Graph 2: Number of Matters filed in the Industrial Court 2012 to 2022

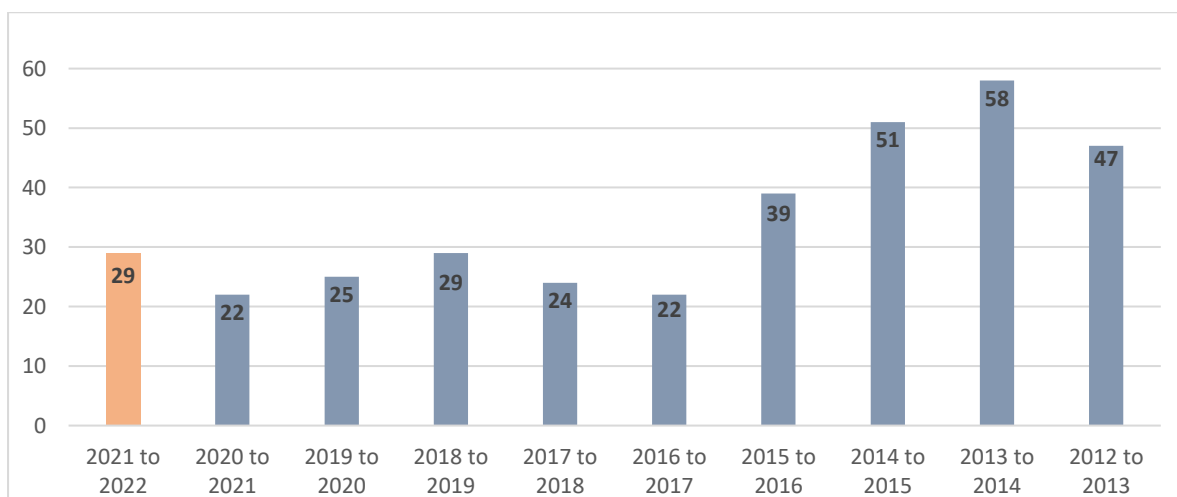


Table 3: Breakdown of matters filed by type 2020/2021 and 2021/2022

Type of matter filed		2020/2021	2021/2022
<b>Industrial Relations Act 2016</b>			
s 110	Long Service Leave – payment in lieu of	689	720
s 147(1)(b)	Application to vary a modern award	23	6
s149(1)	Variation correction of minor errors	1	0
s 169(2)(b)	Notice of intention to bargain	0	0
s 175(1b)	Request for help in negotiations for bargaining	4	2
s 178(1)	Consent application for arbitration	2	0
s 184(1)	Application for scope order	0	0
s 189(1)	Application for certification of agreement	22	40
s 213	Decision about designated award	0	0
s 225(1)	Application to amend a bargaining instrument	1	0
s 227(1)	Application for termination on/before expiry date	1	4
s 228(1)	Application for termination after expiry date	17	38
s 235(1)	Application for approval to engage in industrial action	20	20
s 241(1)	Suspension of industrial action (life, property, health or welfare)	0	0
s 242	Certificate as to requested representation	1	1
s 261	Notice of industrial dispute	158	154
s 263	Mediation by commission	0	1
s 273	Application for a commission order to stop bullying	11	15
s 309(2)	Application to deal with a dispute	29	29
s 317(1)	Application for reinstatement (unfair dismissal)	114	228
s 326(1)	Application for severance allowance	0	1
s 337	Authorisation of industrial officers	238	159
s 379	Recovery of unpaid wages (UAC)	3	5
s 386	Unpaid superannuation contribution	0	0
s 389	Outworker unpaid wages (UAC)	0	0
s 402	Repayment of fee payable to private employment agent (UAC)	0	0
s 451	General powers of the commission	0	0
s 458/462	General ruling and statement of policy	3	2
s 463(1)	Application for declaration	9	7
s 467(1)	Application for interpretation	0	1

Type of matter filed		2020/2021	2021/2022
s 469	Facilitation request	0	0
s 470(2)	Dispute resolution functions under referral agreement	0	0
s 471(1)	Application to amend or void a contract	2	0
s 473(1)	Application for injunction	2	7
s 475(1)	Recovery of pro rata long service leave	39	45
s 475(1)(a)	Recovery of unpaid wages	13	20
s 475(1)(d)	Recovery of superannuation contributions	0	1
s 479	Application for rights to represent	0	0
s 484(1)	Application to re-open proceedings	4	2
s 506(1)(b)(ii)	Damages claim (UAC)	1	0
s 572	Order - contravention of civil penalty provisions	8	1
s 655-879	Industrial Organisation matters (see Table 4)	249	221
s 952	Variation of agreement under Chapter 15A	19	0
s 981	Obsolete industrial instrument	6	0
	Request for recovery conference	7	7
<b>Further Education and Training Act 2014</b>			
s 168(1)(a)	Appeal to Industrial Relations Commission	0	0
<b>Magistrates Court Act 1921</b>			
s 42B	Employment claim	74	14
<b>Public Interest Disclosure Act 2010</b>			
s 48	Application for an injunction about a reprisal	2	1
<b>Public Service Act 2008</b>			
s 194(1)(a)	Appeal against a decision under a directive	11	46
s 194(1)(b)	Appeal against a disciplinary decision	47	135
s 194(ba)	Appeal against a decision under s 881A	0	0
s 194(bb)	Appeal against a suspension without pay decision	1	65
s 194(1)(c)	Appeal against a promotion decision	18	20
s 194(1)(d)	Appeal against a transfer decision	4	3
s 194(1)(e)	Appeal against a temporary employment decision *	63	N/A
s 194(1)(e)	Appeal against a conversion decision	343	189
s 194(ea)	Appeal against a casual employment decision*	3	N/A
s 194(eb)	Appeal against a fair treatment decision	49	385
s 194(1)(f)	Appeal against a decision under another Act	4	3



<b>Trading (Allowable Hours) Act 1990</b>			
s 5(2)	Application for declaration about trading hours	13	9
<b>Workers' Compensation and Rehabilitation Act 2003 and Workers' Compensation and Rehabilitation Regulation 2014</b>			
s 232E	Reinstatement of injured worker	1	1
s 549	Application to be a party to appeal	0	0
s 550(4)	Appeal against decision of Workers' Compensation Regulator	179	232
reg 113	Costs	0	0
<b>Work Health and Safety Act 2011</b>			
s 102B	Notice of WHS dispute	6	8
s 131	WHS entry permit	222	188
s 142	Dispute about right of entry	0	01
s 229B	Application for review	45	36
<b>Anti-Discrimination Act 1991</b>			
s 113	Application for exemption from certain provisions	4	5
s 155(4)	Referral of matter for offences against the Act	0	0
s 144(1)	Application for orders protecting complainant's interests	3	3
s 164	Anti-Discrimination conciliation agreement	89	79
s 164A(2)	Referral of complaint not resolved	33	6
s 166(1)	Referral of complaint unconciliated	45	69
s 167(1)(a)	Referral of complaint after six months	0	1
<b>Queensland Civil and Administrative Tribunal Act 2009</b>			
s 52	Transfer of QCAT file	0	1
<b>Fair Work Act 2009 (Cwlth)</b>			
s 539	Fair Work Claim	26	67
<b>Industrial Relations Act 1999</b>			
s 117	Civil remedies - prohibited conduct	0	1
<b>TOTAL</b>		<b>2,978</b>	<b>3,302</b>

Table 4: Registered Industrial Organisations matters filed

Type of matter filed		2020/2021	2021/2022
<b>Industrial Relations Act 2016 and Industrial Relations (Tribunals) Rules 2011</b>			
s 600(1)	Exemption from stated obligation	1	0
s 655	Registrar amendment of rules	2	1
s 661	Application for name amendment	0	1
s 662	Rule amendment - eligibility	1	1
s 666	Amendment to rules - other than eligibility	14	8
s 669	Prescribed election information	58	40
s 669(3)	Applicant to file prescribed information before a later date	0	1
s 735	Annual obligation to file officers register	39	37
s 736	Obligation to file officers register on change of office	73	70
s 741(4)	Exemption financial management training	4	6
s 784	General purpose financial reporting	38	32
s 786	Exemption from Chapter 12, Part 11 of particular reporting units	8	10
s 802	Election exemption – counterpart federal body	9	14
s 804	Exemption – member or officers register	0	0
s 808	Exemption accounting or audit obligations	0	0
s 835	Orders about effects of invalidity	1	1
s 879	Application for deregistration	1	0
r 88	Registrar's powers	0	0
<b>TOTAL</b>		<b>279</b>	<b>221</b>

Table 5: Registered Industrial Organisations of Employees Membership

Registered Industrial Organisation of Employees	2020/2021	2021/2022
Australasian Meat Industry Union of Employees (Queensland Branch)	5,496	5,399
Australian Institute of Marine and Power Engineers' Union of Employees, Queensland District	443	405
Australian Maritime Officers Union Queensland Union of Employees	668	689
Australian Rail, Tram and Bus Industry Union of Employees, Queensland Branch	5,496	6,611
Australian Salaried Medical Officers' Federation Queensland, Industrial Organisation of Employees	2,556	2,588
Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland	11,493	10,909
Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland	20,717	20,876
Finance Sector Union of Australia, Queensland Branch, Industrial Union of Employees	3,465	3,172
Plumbers & Gasfitters Employees' Union Queensland, Union of Employees	3,006	3,098
Queensland Fire and Rescue – Senior Officers Union of Employees	119	119
Queensland Independent Education Union of Employees	16,874	16,708
Queensland Nurses and Midwives' Union of Employees	67,030	67,352
Queensland Police Union of Employees	12,133	12,204
Queensland Services, Industrial Union of Employees	13,439	13,501
Queensland Teachers Union of Employees	47,821	47,194
Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees	34,475	33,479
The Association of Professional Engineers, Scientists and Managers, Australia, Queensland Branch, Union of Employees	2,782	2,740
The Australian Workers' Union of Employees, Queensland	22,735	21,959
The Bacon Factories' Union of Employees, Queensland	324	294
The Electrical Trades Union of Employees Queensland	14,875	15,078
The Queensland Police Commissioned Officers' Union of Employees	305	306
The Seamen's Union of Australasia, Queensland Branch, Union of Employees	829	717
Together Queensland, Industrial Union of Employees	29,219	28,761
Transport Workers' Union of Australia, Union of Employees (Queensland Branch)	8,143	6,872
United Firefighters' Union of Australia, Union of Employees, Queensland	2,672	2,692
United Voice, Industrial Union of Employees, Queensland	28,499	36,181
<b>Total Membership</b>	<b>355,614</b>	<b>359,904</b>
<b>Total Number of Registered Industrial Organisations of Employees</b>	<b>26</b>	<b>26</b>

Table 6: Registered Industrial Organisations of Employers Membership

Registered Industrial Organisation of Employers	2020/2021	2021/2022
Australian Dental Association (Queensland Branch) Union of Employers	762	867
Local Government Association of Queensland Ltd	77	77
Master Electricians Association, Queensland Industrial Organisation of Employers	2,167	2,298
Master Painters, Decorators and Signwriters' Association of Queensland, Union of Employers	168	174
Master Plumbers' Association of Queensland (Union of Employers)	1,206	1,228
National Retail Association Limited, Union of Employers	5,485	6,686
Queensland Chamber of Commerce and Industry Limited ACN 009 662 060	2,670	2,111
Queensland Hotels Association, Union of Employers	922	953
Queensland Master Builders Association, Industrial Organisation of Employers	9,292	9,770
The Baking Industry Association of Queensland - Union of Employers	65	59
The Registered and Licensed Clubs Association of Queensland, Union of Employers	426	435
UNiTAB Agents Association, Union of Employers Queensland	35	22
<b>Total Membership</b>	<b>23,275</b>	<b>24,680</b>
<b>Total Number of Registered Industrial Organisations of Employees</b>	<b>12</b>	<b>12</b>

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