Annual Report 06 07

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

Annual Report of the Industrial Court of Queensland

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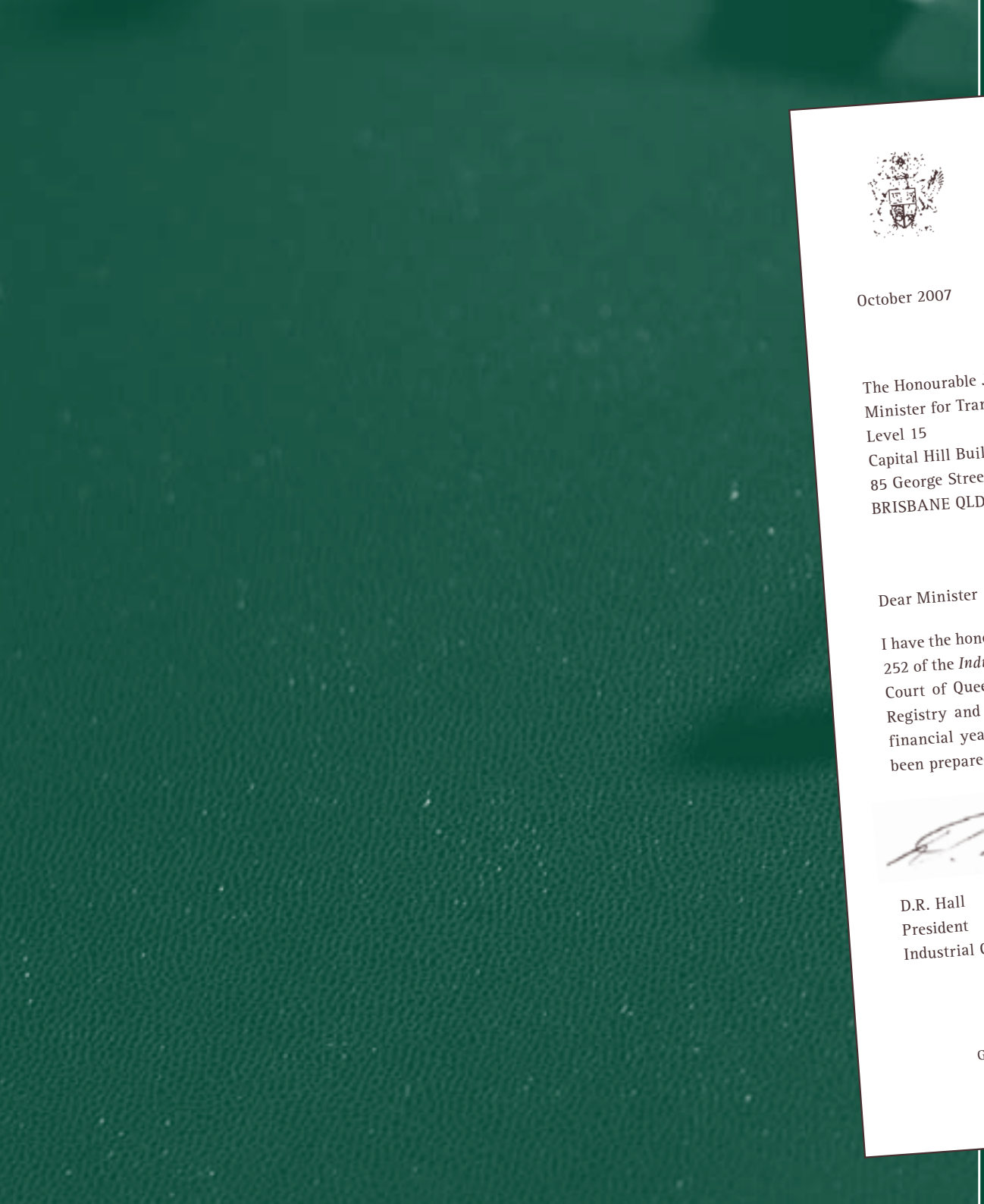

Industrial Court of Queensland

October 2007

The Honourable John Mickel, MP
Minister for Transport, Trade, Employment and Industrial Relations
Level 15
Capital Hill Building
85 George 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 2007. 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

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Overview

The Industrial Court of Queensland, the Queensland Industrial Relations Commission and the Industrial Registrar remain independent of government and other interests.

Three changes during the reporting period have significantly impacted upon the Tribunals, (and in particular the Commission) and the Industrial Registry.

(1) The federal *Workplace Relations Amendment* (*Work Choices*) *Act 2005* which commenced on 27 March 2006, gave federal law primacy in industrial matters touching trading financial or trading corporations.

(2) There has been an increase in appeals under s. 550 of the *Workers' Compensation and Rehabilitation Act 2003* by an employee or employer aggrieved by a QCOMP Review decision. These matters tend to be rather complex. Hearings often involve expert witnesses. Parties are usually legally represented. The average length of such hearings is approximately 6 days. During the year there were 109 appeals relating to QCOMP Review decisions.

(3) Commissioner Bechly resigned and two Commissioners disclosed an intention to resign early in the next reporting period.

Whilst the retirements at (3) above and a reduction of staffing levels in the Registry rebalance workload and resources, the nature of the Commission work has changed in that there has been a fall off in short matters, e.g. consent orders and conciliation about dismissal, and an expansion of lengthier matters.

The Commission continues to play a major role in contributing to the social and economic well-being of Queenslanders through furthering the objects of the *Industrial Relations Act 1999* with the principal object of the *Industrial Relations Act 1999* being to provide a framework for industrial relations that supports economic prosperity and social justice.

The QIRC has continued to provide an independent conciliation, arbitration and agreement approval service for industrial matters including awards, agreements, prevention and settlement of industrial disputes and related matters, unfair dismissals, unfair contracts and wage recovery matters for Queenslanders covered by State legislation. Queensland Commissioners, in their dual capacity as federal Commissioners, provide dispute resolution for parties in the federal system.

During the year, there were several significant issues dealt with by the QIRC, including understandably, a number of jurisdictional issues relating to the coverage of Work Choices as some Queensland employers, and their employees, are uncertain about whether or not they are subject to the *Workplace Relations Act 1996*, until the issue of what is a "constitutional corporation" is resolved.

In one such case, the Court ruled that the Commission had no power to hear and determine an unfair dismissal claim by a teacher employed by Educang Pty Ltd, a non-profit corporation owned jointly by the Anglican and Uniting churches that runs five schools in the State. The Court found that it was a trading corporation, and that the Queensland industrial laws were now excluded from applying to constitutional corporations.

The commencement of the federal government's *Workplace Relations Amendment (Work Choices) Act 2005*, led to an inquiry to examine the impact of that Act on Queensland workplaces, employees and employers. The inquiry, set up on 13 June 2006 under s. 265(3)(b) of the *Industrial Relations Act 1999* was at the direction of the former Minister for Employment, Training and Industrial Relations and Minister for Sport.

The Inquiry received a total of 42 written submissions and heard witness evidence in Brisbane and regional centres throughout the state.

On 29 January 2007 the Inquiry released its report. The Inquiry made 16 recommendations about the establishment by the Government of a separate statutory body similar to that of the Victorian Workplace Rights Advocate.

On 28 May 2007 the Government acted upon the recommendations of the QIRC Inquiry and established Queensland's first Workplace Rights Ombudsman's Office to provide information and advice to Queensland workers and employers about their workplace rights and obligations, and to promote fair and equitable practices in Queensland workplaces.

The temporary secondment of a Commissioner to fill the position immediately after the reporting period adds a further element of uncertainty to future forecasts about workload.

On 8 March 2007, International Women's Day, the Minister announced an Inquiry to be conducted by the QIRC to examine the impact of the federal government's Work Choices amendments to the *Workplace Relations Act 1996* on pay equity in Queensland.

On 30 April 2007, the Inquiry released a Discussion Paper. The Discussion Paper provided background information about pay equity and the progress that has been made since the last Inquiry presented its Report.

The Report of the Inquiry is to be presented to the Minister on 28 September 2007.

On 27 July 2006 a Full Bench of the Commission declared by General Ruling a wage adjustment increase 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 with a proportionate amount for junior, part-time and casual employees. Work related allowances were also increased.

As in previous years, the subsequent printing of award amendments was a major task for the Registry involving the preparation of 4 special Gazettes and 4 sets of Extracts requiring nearly 1,000 pages to be formatted, proofread and printed with limited timeframes. These amendments were then prepared further for posting to the QIRC Website. The timely publication of these gazettes, reflecting the new Queensland award rates operative from 1 September 2006 meant employers across the State had easy access to the new wages rates immediately, providing the best possible service to employers and employees alike.

In response to the changed industrial relations environment, the Queensland Government has legislated a number of changes to help protect Queensland workers. In addition to continuing to offer its existing services, Commissioners will have a role in new jurisdictional matters, including:

- ensuring young workers in the federal jurisdiction are employed on terms and conditions commensurate with employees in the State jurisdiction and are protected from unfair dismissal;
- providing an additional independent, transparent and efficient dispute resolution process through the QIRC for resolving issues arising out of a union right of entry under Part 7A of the *Workplace Health and Safety Act 1995*;
- low-cost common law jurisdiction avenues (for example improved access to the Magistrate's Court, faster conciliation processes) for employees for whom Work Choices has removed access to the QIRC. Commissioners will perform the functions of a conciliator prior to the matter being required to be heard by magistrates.

Ceremonial sittings of the Industrial Court of Queensland and the Queensland Industrial Relations Commission were held on Thursday 28 June 2007 to farewell Commissioner Robin Bechly.

Commissioner Bechly retired on Friday 29 June 2007 at the age of 66 years after over forty-nine years involvement in the Queensland and Australian Industrial Relations Commissions, firstly as an advocate and from 1990, as a Commissioner.

Mr Bechly commenced a career in industrial relations in 1959 on completion of a secondary education in Brisbane. He commenced as a trainee with Metal Trades Employers Association (now Australian Industry Group) and remained with that organisation until 1977 when he was appointed as Personnel Manager of Castlemaine Perkins Ltd. He remained in that role for thirteen years. During this time he maintained involvement in the broader industrial area as a member of the Board of the Queensland Chamber of Commerce and Industry.

He was appointed as a Member of the Queensland Industrial Relations Commission on 10 September 1990. In 1992 he was also appointed as a Commissioner of the Australian Industrial Relations Commission. That dual appointment expired in August 2005 when Commissioner Bechly turned sixty five.

The Court, Commission and Registry thank Commissioner Bechly for the dedication which he applied to his responsibilities as a Commissioner and wish him a long, happy and well deserved retirement.

Industrial Registry

Staff of the Registry carry out a range of functions, namely: Judicial Services, Publication and Information Services (incorporating Publication, Web, Library), Industrial Organisation Services, Corporate Services and Projects.

Whilst the reduction in staffing levels has put increased pressure on the service delivery across these Registry functions, performance indicators for timeliness of processing dispute notifications and other applications continued to be achieved at 99% efficiency.

I wish to thank the Registry staff for their continued high-quality support to the Court and Commission, especially given the uncertainty of the current environment they are working in.

Obituary

Commissioner Henry (Ray) Dempsey

Ray Dempsey

Ray Dempsey was appointed as a member of the Commission on 10 September 1990 for a term of seven years. Controversially he was not reappointed for a further term in 1997 as was the convention and as were other Commissioners who had also been appointed on 10 September 1990.

Mr Dempsey migrated to Australia from Scotland and completed an electrical apprenticeship with a Brisbane engineering firm.

While employed there he became a shop steward and later became a full-time organiser for the Electrical Trades Union of Australia Queensland Branch. He was appointed as Assistant Secretary of the Queensland Trades and Labour Council in 1981 and Secretary in 1984. It was from this position that he was appointed to the Commission.

During his term as a Commissioner Mr Dempsey was involved in a wide range of significant matters, notably the implementation of a new award and salary structures for the Queensland Police Service in the post Fitzgerald Inquiry era and the implementation of structural change to the Railway Award - State.

Mr Dempsey passed away on 11 April 2007. The Court, Commission and Registry extend their sincere condolences to Mr Dempsey's family.

The Industrial Court of Queensland

The Industrial Court Of Queensland

The Industrial Court of Queensland is a superior court of record. It was first established as the Industrial Court by the *Industrial Peace Act of 1912*. The Act commenced operation in 1913. The jurisdiction of that court was limited, but it was broadened and strengthened by the *Industrial Arbitration Act 1916*, which was proclaimed in January 1917. The Court, as established and continued, is now 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. 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 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 Magistrates' jurisdiction); and
- appeals from decisions of Industrial Magistrates relating to offences under the Act or recovery of damages or sums of money under the Act.

The section also allows the Court to issue prerogative orders, or other process, to ensure that the Commission and 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). Appeal to the Court against decisions of the Commission under the *Industrial Relations Act 1999* is 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.)

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.)

Decisions of the Commission on an apprentice or trainee appeal under the *Vocational Educational, Training and Employment Act 2000* may be appealed to the Court. Such appeals are available on a question of law only: *Vocational Educational, Training and Employment Act* s. 244.

The Court's role under the *Workplace Health and Safety Act 1995* extends to being the avenue of appeal for persons dissatisfied with a decision, on internal review, by the Director, Workplace Health and Safety. Appeals from review decisions of the Director are by way of a hearing *de novo*, that is, unaffected by the decision appealed from. (See *WH & S Act* Part 11, Div. 2.) Comparable appeals are available under the *Electrical Safety Act 2002* and the *Coal Mining Safety and Health Act 1999*.

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

The Court's role also includes enforcing compliance for undertakings under the *Workplace Health and Safety Act 1995* upon application by the Chief Executive Workplace Health and Safety Division. Similar provisions now exist in the *Electrical Safety Act 2002* also.

The Court now also hears appeals relating to the right of entry of authorised representatives under Part 7A of the W*orkplace Health and Safety Act 1995* under the following sections:

- decision of Industrial Commission under s. 90Q, s. 90R, s. 90U; and
- decision of the full bench of the Industrial Commission under s. 90x.

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));
- prosecutions under the *Workplace Health and Safety Act 1995* (see s. 164(3) *WH & S Act*);
- offences and cancellation or suspension of certificate of competency under the *Coal Mining Safety and Health Act 1999* (see s. 255 and 258);
- appeals from review decisions, and non-reviewable decisions, on claims for compensation under the *Workers' Compensation and Rehabilitation Act 2003*: see ss. 561 and 562.

The Court is the final appeal court for prosecutions under the *Workplace Health and Safety Act 1995*, the *Electrical Safety Act 2002* and the *Industrial Relations Act 1999*, and for compensation claims under the *Workers' Compensation and Rehabilitation Act 2003.*

Offences under *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. This could be by ordering imprisonment of the offender: see s. 251.

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.

[Under s. 181B(3) of the *Penalties and Sentences Act 1992*, if a body corporate 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.

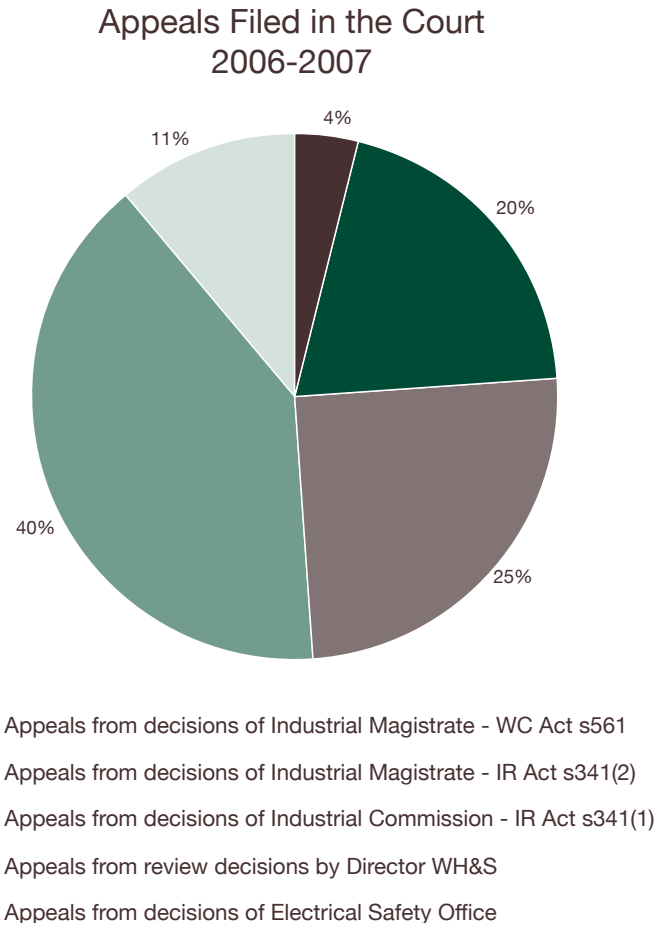
Costs Jurisdiction

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*, 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.



The Queensland Industrial Relations Commission

The Queensland Industrial Relations Commission

The Queensland Industrial Relations Commission was established as a court of record by the *Industrial Conciliation and Arbitration Act 1961*. At that time it was called the Industrial Conciliation and Arbitration Commission. As a tribunal, independent of government and other interests, it has remained essential to the industrial conciliation and arbitration system in Queensland. Under current legislation, it derives its powers and functions from Chapter 8, Part 2 of the *Industrial Relations Act 1999*.

The Commission plays a major role in contributing to the social and economic well-being of Queenslanders through furthering the objects of the *Industrial Relations Act 1999* (Act) which are principally to provide a framework for industrial relations that supports economic prosperity and social justice.

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 six other Commissioners as at 30 June 2007.

The Vice 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. The Act requires Deputy Presidents to provide assistance to the Vice President in administration of the Commission and the Registry, and in determining the Member who is to constitute the Commission for each matter. By s. 264, powers of the Vice President can be delegated to the Deputy Presidents to enable them to carry out their functions.

Current members of the Commission are listed below.

Member	Role and date sworn in
Mr DR Hall	President 2.8.1999
Ms DM Linnane	Vice-President 2.8.1999
Ms DA Swan	Deputy President 2.8.1999 - appointed DP 3.2.2003
Mr AL Bloomfield	Deputy President 2.8.1999 - appointed DP 3.2.2003
Mr KL Edwards	Commissioner 2.8.1999
Ms GK Fisher	Commissioner 2.8.1999
Mr RE Bechly	Commissioner 2.8.1999 - retired 29/6/07
Mr BJ Blades	Commissioner 2.8.1999
Mr DK Brown	Commissioner 2.8.1999
Ms IC Asbury	Commissioner 28.9.2000
Mr JM Thompson	Commissioner 28.9.2000

Industry Panel System

Under s. 264(6) of the Act, the Vice 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-panel system, with industries divided between the panels. Each panel is headed by a Deputy President. The panels have been in operation since 6 February 2006 and are listed below:

- **Deputy President Swan**
- Commissioner Edwards
- Commissioner Bechly
- Commissioner Thompson

- Agriculture
- Agriculture Associated Bulk Handling
- Banking and Insurance
- Catering (excl. Construction Catering)
- Cemeteries and Funerals
- Childcare
- Clerical
- Disability Services
- Dry Cleaning & Laundry
- Education
- Fast Food
- Fire Services
- Food Manufacturing
- General Manufacturing
- General Transport (excl. Sugar)
- Hotels and Motels
- Hospitality
- Local Authorities (excl. Brisbane City Council)
- Maritime Transport
- Meat and Poultry
- Miscellaneous
- Pharmaceuticals
- Port Authorities
- Prisons
- Professional Services
- Rail
- Retail
- Sales and Wholesale Warehouses (incl. Stores & Distribution Stores)
- Security
- Shearing
- Statutory Authorities (not otherwise allocated)

- **Deputy President Bloomfield**
- Commissioner Fisher
- Commissioner Brown
- Commissioner Asbury

- Aged Care
- Ambulance
- Arts and Entertainment
- Beauty and Hairdressing
- Building and Constructing
- Cement
- Chemicals
- Concrete
- Construction Catering
- Electrical Contractors
- Electricity
- Forestry Products (incl. Timber, Sawmilling)
- Gas and Oil
- Health
- Hospitals
- Metal Industry
- Mining (incl. Associated Bulk Handling)
- Nursing
- Police
- Printing and Publishing
- Professional Engineering & Technical Drafting
- Public Sector (not otherwise allocated)
- Quarries
- Racing
- Residential Accommodation
- Sports
- Sugar (including Bulk Sugar, Sugar Transport)
- Tree Lopping
- Aged & Infirm Permits

The Full Bench of the Commission

Under s. 256(2) of the Act, the Full Bench is comprised of three Members and must always include a Presidential Member.

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

Appeals to the Full Bench

With the leave of the Bench, the Full Bench hears 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 the Full Bench from decisions of the Commission and from most decisions of the Registrar. For the purpose of hearing appeals, the Full Bench must include the President: s. 256(2). Leave to appeal is only given where the Full Bench considers that it is in the public interest that the appeal be heard on grounds other than error of law.

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). The Full Bench can also make representation orders to settle demarcation disputes (see s. 279).

The 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).

See *Decisions of the Full Bench* for important decisions released by the Full Bench during 2006 - 2007.

Commission Inquiry into an Industrial Matter

Inquiry to examine the impact of the federal government's *Workplace Relations Amendment (Work Choices) Act 2005* on Queensland workplaces, employees and employers

The commencement of the federal government's *Workplace Relations Amendment (Work Choices) Act 2005*, led to an inquiry to examine the impact of that Act on Queensland workplaces, employees and employers. The inquiry, set up on 13 June 2006 under s. 265(3)(b) of the *Industrial Relations Act 1999* at the direction of the former Minister for Employment, Training and Industrial Relations and Minister for Sport, was conducted by the Inquiry Panel consisting of Swan DP and Commissioners Asbury and Thompson. In particular, the Panel was asked to consider mechanisms for employees to report incidents of unfair treatment as a result of Work Choices.

Subsequently, the Minister directed the terms of reference for the Inquiry be extended to require the Panel to take into account the outcomes of the High Court decision on the constitutional challenge to Work Choices, and its implications for Queensland workplaces, employees, and employers.

The Inquiry received a total of 42 written submissions and heard witness evidence in Brisbane and regional centres throughout the state.

On 29 January 2007 the Inquiry released its report. The Inquiry found that the economic and social impact of Work Choices was far reaching. The Work Choices legislation had been in operation since March 2006 and there was evidence and submission before the Inquiry suggesting a very strong trend that employees, and especially those in less skilled employment, will fare badly as a consequence of Work Choices. The material put before the Inquiry in the form of Australian Workplace Agreements shows a real lowering of wages and conditions of employment for employees. There was no evidence to show that any of the altered conditions provide greater productivity or efficiency for the employer. The only outcome appeared to be lower wages and conditions for employees.

The Inquiry made 16 recommendations about the establishment by the Government of a separate statutory body similar to that of the Victorian Workplace Rights Advocate with the role of the statutory body to, amongst other roles:

- provide advice and information to the public regarding the promotion of fair industrial relations practices;
- raise and contribute to public awareness of fair, reasonable and appropriate workplace practices;
- provide a "one stop shop" for the gathering, recording, referral and dissemination of information concerning unfair, unreasonable and inappropriate work practices.

As a consequence, on 28 May 2007, the Queensland Government introduced legislation to establish a Queensland Workplace Rights Ombudsman and to create a Queensland Workplace Rights Office to commence on 1 July 2007.

Inquiry to examine the impact of the federal government's Work Choices amendments to the *Workplace Relations Act 1996* on pay equity in Queensland.

On 8 March 2007, International Women's Day, the Minister announced an Inquiry to be conducted by the QIRC to examine the impact of the federal government's Work Choices amendments to the *Workplace Relations Act 1996* on pay equity in Queensland. The Commission (constituted by Commissioner Fisher) is to:

- examine the effectiveness of the outcomes of the previous pay equity inquiry conducted by the Commission in 2000-01 in advancing pay equity;
- assess the impact of the federal government's Work Choices amendments to the *Workplace Relations Act 1996* on the legislative measures addressing pay equity under the State system;
- examine the current and possible future impact of the federal government's Work Choices amendments to the *Workplace Relations Act 1996* on pay equity, including its impact on industries and occupations as well as individuals;
- consider alternative models and specific policy and legislative options used in other Australian states and other countries in the pursuit of pay equity; and
- recommend possible policy and legislative options for the Queensland Government to consider implementing in further progressing pay equity.

On 30 April 2007, the Inquiry released a Discussion Paper. The Discussion Paper provided background information about pay equity and the progress that has been made since the last Inquiry presented its Report.

The Report of the Inquiry is to be presented to the Minister on 28 September 2007.

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.

Review of the status of Industrial Agreements providing for occupational superannuation and Enterprise Flexibility Agreements (EFAs)

As part of its statutory obligations to ensure the currency of industrial instruments the Commission undertook a review of the status of Industrial Agreements providing for occupational superannuation and Enterprise Flexibility Agreements (EFAs).

A search of the Commission's records showed that approximately 135 Superannuation Industrial Agreements and 30 EFAs remained current.

Pursuant to s. 699 of the *Industrial Relations Act 1999* on 1 March 2007, the Industrial Registrar gave notice of his intention to declare obsolete all Industrial Agreements providing for superannuation and Enterprise Flexibility Agreements on 21 May 2007. Any person wishing to object to an Industrial Agreement or Enterprise Flexibility Agreement being declared obsolete was required to file an objection notice in the Industrial Registry by 30 April 2007. The objection notice was required to state the reasons the agreement should not be declared obsolete.

Although two organisations filed objection notices, ultimately only one organisation proceeded with its objection. Accordingly, on 19 June 2007, all Superannuation Industrial Agreements and EFAs, with the exception of the one for which the objection was received, have been declared obsolete. A list of the Superannuation Industrial Agreements which were declared obsolete appears at 185 QGIG 115 and a list of the obsolete EFAs appears at 185 QGIG 124.

Award Review Mark II

The second round of the Award Review process, a requirement under s. 130 of the *Industrial Relations Act 1999*, was completed in 2006. This process commenced in 2004-05 to ensure provisions remain current and relevant.

See *Decisions of the Commission* for important decisions released by the Commission during 2006 - 2007.

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 27 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 and the power to enforce its 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);
- approve a Queensland Workplace Agreement (QWA) for which a filing receipt has been issued if satisfied the QWA passes the no-disadvantage test; the QWA meets the additional approval requirements; and the QWA is not contrary to the public interest;
- 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 orders for payment of severance allowance or separation benefits, and order penalties against employers who contravene such orders: s. 87;
- declare a class of persons to be employees rather than independent contractors, and declare a person to be their employer: s. 275;
- amend or declare void a contract for services, or a contract of service not covered by an industrial instrument, where the contract is found to be unfair: s. 276;
- 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);
- issue permits to "aged or infirm persons" allowing them to work for less than the minimum wage under the applicable industrial instrument: s. 696;

- 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 the 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 the Full Bench perform its functions in a way that furthers the objects of the Act. Section 320 of the Act requires the 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, the 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.

Under s. 288 the 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.

On 27 July 2006 a Full Bench of the Commission declared by General Ruling a wage adjustment of $19.40 per week increase 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 $503.80 per week with a proportionate amount for junior, part-time and casual employees. Work related allowances were increased by 4%. The effective date for the increased rates was set at 1 September 2006.

General Rulings and Statements of Policy are available on the Commission's website at: www.qirc.qld.gov.au.

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 reinstatement or 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.

An idea of the volume of conference work in the Commission can be gauged from the fact that unless withdrawn before the first conference, there will be at least one conciliation conference for each dispute notification filed, one for each reinstatement application filed, and one for each unpaid wages application filed. 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. Section 230 has not been used in this way since the Act was introduced in 1999.

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*. All such applications 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. And 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. This is reflected in the figures in Table 7. 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, 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.

Table 7 shows general outcomes of reinstatement applications during the year.

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; Certified Agreements (CAs); and Queensland Workplace Agreements (QWAs). 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. QWAs apply to individual employees. 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 325 Awards currently in force in Queensland.

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. Such agreements can also be made to cover "multi-employers", for example associated companies or companies engaged in a joint venture. 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

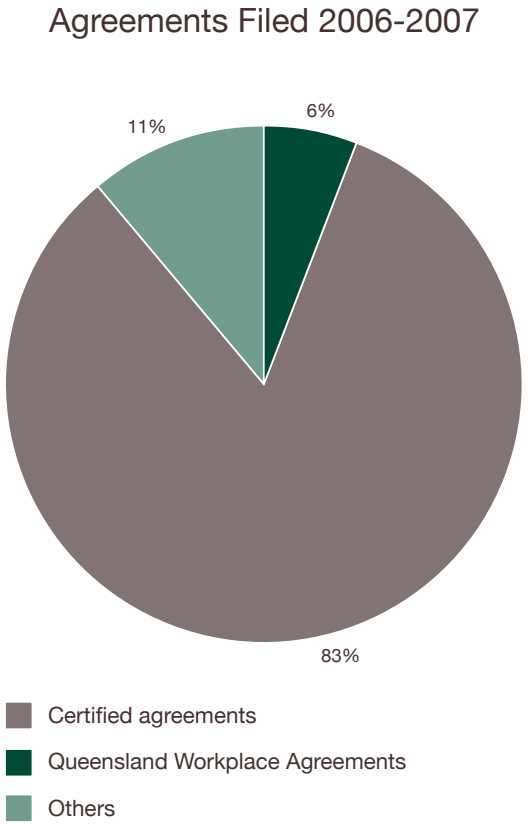
that it passes the “no-disadvantage test”. That is, it must not place the affected employees under terms and conditions of employment that are less beneficial, on balance, than terms and conditions in an Award that is relevant to the calling (a “designated Award”).

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 (unusually) conciliation cannot resolve the impasse, the Commission has the power to arbitrate, as it would do for an industrial dispute.

During the year there were 84 applications to approve a Certified Agreement. Of these, 51 were new Agreements. The number of CAs currently in force is indicated in Table 6.

Queensland Workplace Agreements

QWAs are governed by Chapter 6 Part 2. They can be negotiated collectively by one employer with a group of employees, but they are individual agreements. That is, ultimately each QWA governs the relationship between an employer and an individual employee. To have effect, a QWA must be filed. It must then be approved by the Commission. Unless there is a public interest reason for not approving it, or it does not pass the “no disadvantage” test as outlined in s. 209 (determined by comparing it with a designated Award), the QWA will usually be approved. A copy of the approved agreement must be given by the employer to the employee.



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 contravening 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 application can not be made to the commission if the total amount being claimed is more than $50,000.00. 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 of the amount, 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.

Declaring persons to be employees

Under s. 275, a Full Bench may declare a class of persons to be employees rather than contractors; and the principal of their "contracts" to be their employer. This situation is different from that of a single worker who may be an employee or may be an independent contractor. The power under s. 275 relates to a whole class of employees. An application may relate to workers employed in a particular industry under contracts for services (that is, as "independent contractors").

Vary or Void Contracts

Under s. 276 of the Act, the Commission has the power to amend or declare void a contract of service (such as an employment contract) or a contract for services, if the evidence shows the contract was unfair when made, or it has become unfair. This could happen because the original contract has been amended or because of the way it has operated. In light of the increasing use of fixed term or temporary contracts of employment, and independent contracting arrangements, this is an important avenue for workers and contractors to seek a remedy, if they find themselves tied to an unfair contract.

A contract may be deemed unfair if it is harsh, unjust or unconscionable, if it is against the public interest, or if it provides remuneration that is less than the person would have received under a relevant industrial instrument such as an Award or Certified Agreement. A contract will also be found to be unfair if it seems to have been designed to avoid or circumvent the provisions of a relevant industrial instrument.

As with the applications for reinstatement, there is a level of remuneration at which the provision ceases to be available. That is, a person cannot file an application under s. 276 if he or she earned above the prescribed amount (set out in s. 4 of the *Industrial Relations Regulation 2000*). During the year, the stipulated cut-off was $98,200.

Industrial Organisations

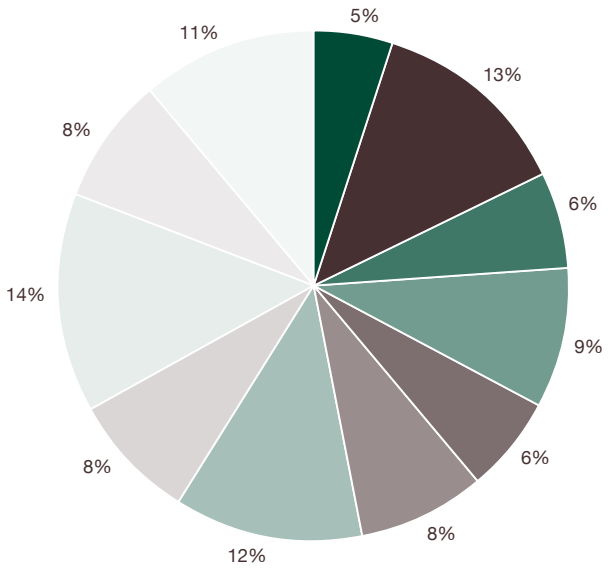
The Commission has the power to: grant the registration of an Industrial Organisation (s. 413); approve of change of name (s. 473); change to eligibility rules (s. 474); and to make orders about an invalidity (s. 613). Table 10 shows the number of applications dealt with.

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).

Applications Filed and Matters Heard
2006-2007



Powers and other 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 *Whistleblowers Protection Act 1994;* the *Workplace Health and Safety Act 1995;* and *Child Employment Act 2006.*

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 the Training Recognition Council. 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.

After three previous trials, a Full Bench of the Commission determined on 16 October 2006, that the 32 hour continuous trading event over 23/24 December each year at the Westfield Chermside Shopping Complex should be made permanent.

On 7 December 2006, a Full Bench of the Commission amended the Trading Hours Order covering South East Queensland to include Beerwah and Nambour which in effect permitted these localities to have seven day trading for the first time.

See *Decisions of the Full Bench* for summary of decisions relating to trading hours released by the Full Bench during 2006 – 2007.

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. As of Monday 22 August 2006, under s. 550 of the *Workers' Compensation and Rehabilitation Act 2003,* if an employer or employee is aggrieved by the Q-Comp Review decision, either party can appeal to the Queensland Industrial Relations Commission.

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. There has been an increase in appeals under s. 550. During the year there were 109 appeals relating to Q-Comp Review decisions.

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 *Whistleblowers Protection Act 1994*

Section 47 of the *Whistleblowers Protection Act 1994* provides that 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 *Workplace Health and Safety Act 1995*

Under s. 90U, if a dispute exists between an authorised representative for an employee organisation and the occupier of a place about the exercise or purported exercise of a power under the *Workplace Health and Safety Act 1995* and the dispute remains unresolved after the parties have genuinely attempted to settle the dispute and a notice of the dispute is given to the industrial registrar, the Industrial Commission may take the steps it considers appropriate for the prompt settlement or resolution of the dispute, by conciliation in the first instance; and if the Commission considers conciliation has failed and the parties are unlikely to resolve the dispute -arbitration.

Under s. 151 of the *Workplace Health and Safety Act 1995* a person whose interests are affected by an original decision may appeal against the decision to the Queensland Industrial Relations Commission. In deciding an appeal, the Commission may confirm the decision appealed, vary the decision appealed against, set aside the decision appealed against and make a decision in substitution for the decision set aside or set aside the decision appealed against and return the issue to the decision maker with directions the Industrial Commission considers appropriate.

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.*

Professional activities

During the year 2006-07, the Members attended the following conferences, seminars and meetings:

Member	Conference	Location	Date/s
LINNANE, D.M.	Industrial Relations Society of Western Australia 2006 Convention	Perth	15/9/06 to 17/9/06
SWAN, D.A.	East West Legal Conference	Russia	6/7/06 to 12/7/06
	IIRA 14th World Congress	Peru	11/9/06 to 14/9/06
	Europe Pacific Medical and Legal Conference	Italy	8/1/07 to 15/1/07
BLOOMFIELD, A.L.	Mediation Workshop, Harvard Law School	Boston, USA	23/10/06 to 27/10/06
	Leadership Program for Senior Executives	Massachusetts, USA	30/10/06 to 31/10/06
FISHER, G.K.	East West Legal Conference	Russia	6/7/06 to 12/7/06
BECHLY, R.E.	LawAsia 2007 Conference	Hong Kong	5/6/07 to 8/6/07
BLADES, B.J.	East West Legal Conference	Russia	6/7/06 to 12/7/06
BROWN, D.K.	Industrial Relations Society of Western Australia 2006 Convention	Perth	15/9/06 to 17/9/06
ASBURY, I.C.	Industrial Relations Society of Queensland 2006 Convention	Sunshine Coast	1/9/06 to 2/9/06
	Australian Labour Law Association 3rd Biennial Conference	Brisbane	22/9/06 to 23/9/06
	Industrial Relations Society of Australia 2007 National Conference	Canberra	29/3/07 to 31/3/07
THOMPSON, J.M.	15th Annual Labour Law Conference	Sydney	10/8/06
	Mediation Practitioners Certificate Programme, UK Mediation	London	6/3/07 to 9/3/07

The Queensland Government's theme for this year's International Women's Day was titled "Women at work: Know your rights, it's your future"

Commissioner Fisher was invited to deliver a speech on International Women's Day at the Department of Justice on 8 March 2007 which is reflected as follows:

Commissioner Fisher pointed to the many changes that had been introduced in to the public sector over 25 years of her working life that had benefited women. These included:

- the introduction of a sexual harassment policy;
- pay equity for social workers, dieticians and therapists with scientists;
- the introduction of and subsequent increase to paid maternity leave;
- the ability to take carers leave; and
- in more recent times flexibilities which have benefited women such as telecommuting and the allocation of dedicated parent's rooms where parents can bring sick children for the day and stay with them.

Commissioner Fisher paid tribute to the pioneering women in the trade union movement who were prepared to take a stand on women's industrial issues such as maternity leave and child care which have become accepted features of our society.

Queensland Industrial Registry

Queensland Industrial Registry

The Queensland Industrial Registry is the Registry for the Court and 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 1996*.

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 Employment and Industrial Relations, 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.

The Queensland Industrial Registry is located on:
Level 18, Central Plaza 2,
66 Eagle Street, (Corner Elizabeth and Creek Streets),
Brisbane, Queensland, 4000.

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

General enquiries: (07) 3227 8060
Facsimile: (07) 3221 6074
Web address: www.qirc.qld.gov.au

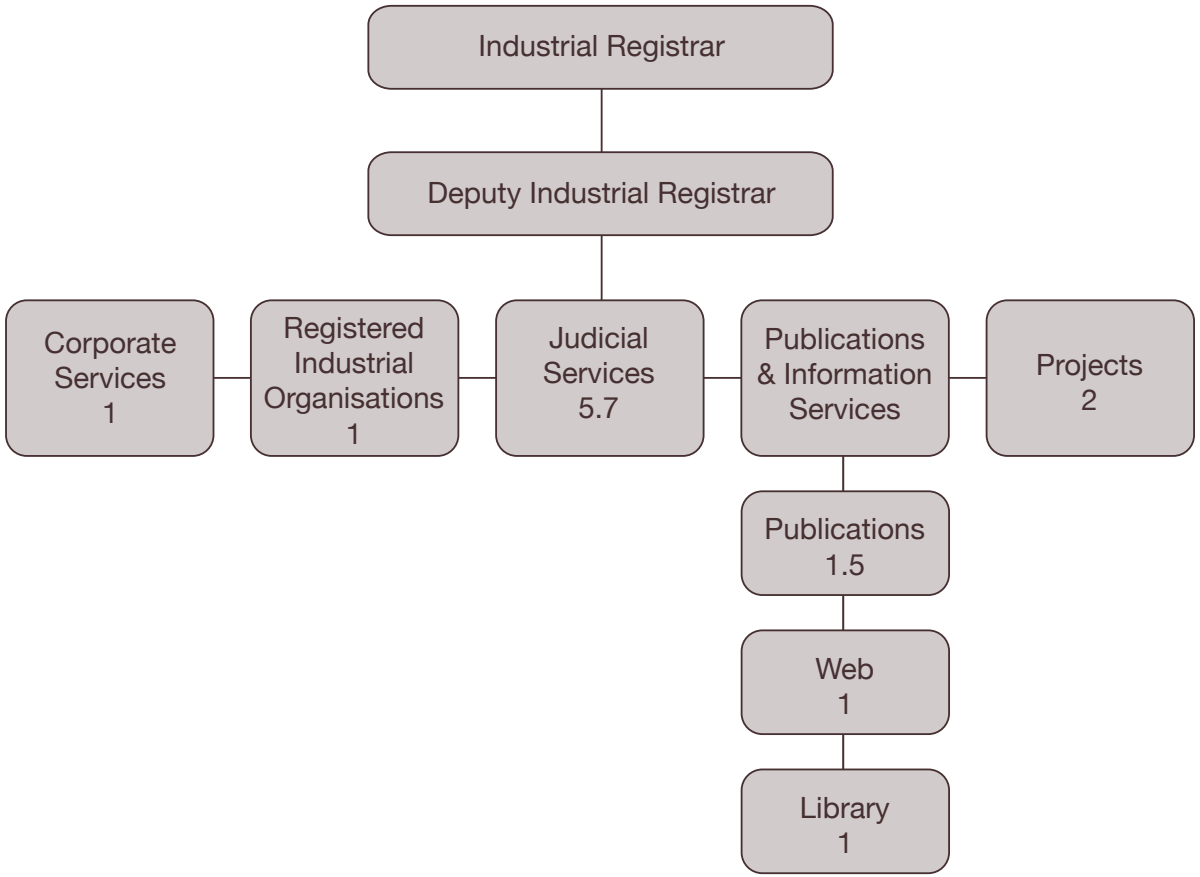
Registry Services

The Federal Government's *Workplace Relations Amendment (Work Choices) Act 2005,* which commenced on 27 March 2006 has caused significant change to Queensland's industrial relations system. Since the introduction of Work Choices the number of matters filed indicates that the workload has reduced by approximately 60%.

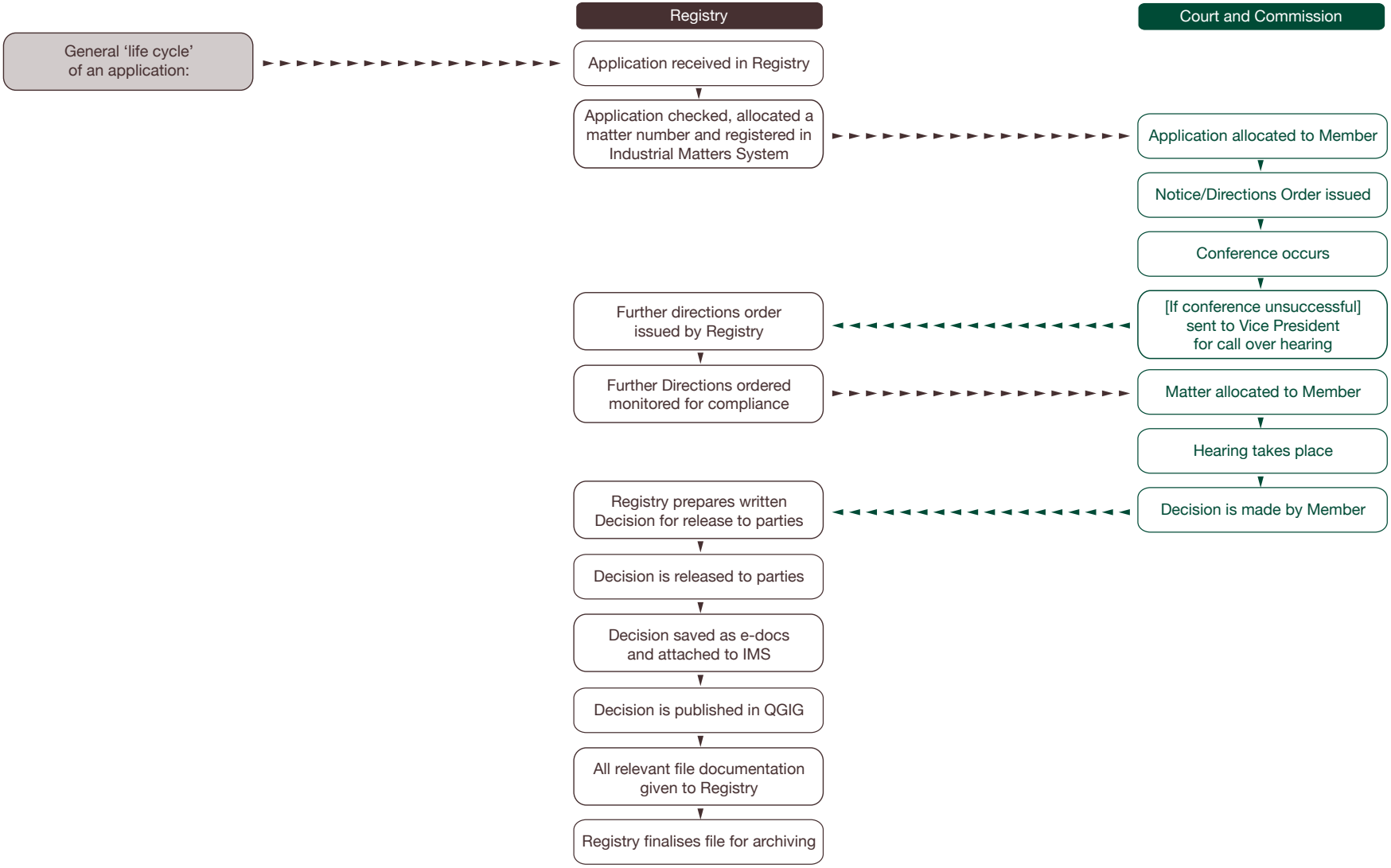
The Registry has been monitoring the impact of Work Choices on both the Registry workload and staffing requirements. During 2005/06, the Registry had a staffing establishment of 20.6 full-time equivalents (FTEs) engaged on normal day to day operations and in project work. During 2006-07 the number of FTEs has been reduced to as low as 13.6 through holding vacancies created by natural attrition and staff secondments to positions within the Department of Employment and Industrial Relations.

Staff of the Registry carries out a range of functions, namely: Judicial Services, Publication and Information Services (incorporating Publication, Web, Library), Corporate Services, Registered Industrial Organisations and Projects. The reduction in staffing levels has put increased pressure on the service delivery of these Registry services.

The following outlines the organisational structure including staff numbers throughout the Registry:



The following flow chart represents the interaction between the Registry and the QIRC in managing an application from the initial filing of a matter through to finalisation. This demonstrates, as stated earlier, how the Registry provides administrative support to the Court and Commission.



In addition, staff resources had to be allocated to a range of internal matters and projects:

- assisting the Commission in new industrial matters including the QIRC Inquiry into the impact of Work Choices, new wage dispute processes, and new appointments under the *Workplace Health and Safety Act 1995*;
- progressing electronic service delivery initiatives and the related manuals documenting the new more efficient business processes;
- minor works associated with improvements to the computerised database system that supports the administration of industrial matters within the QIRC.
- work associated with the publishing of all amendments associated with the 2006/07 State Wage Cases;
- implementing a program of work associated with assisting Industrial Organisations to comply with Chapter 12 of the IR Act;
- reviewing the *Industrial Relations (Tribunals) Rules 2000* to provide for new rules and new forms relating to recent initiatives legislated to be within the Commission's jurisdiction, and to allow for electronic notification and lodgement of documents;
- further enhancements to the QIRC's external and internal websites;
- developing and publishing the President's Annual Report;
- reviewing the lapsing of all old files, files where parties have not taken any action within 6 months for reinstatement applications and 12 months for all other files;
- restructuring the Registry's group directories and filing systems to be ready for the Whole of Government introduction of eDRMS.

In March/April 2007 Colmar Brunton conducted a client satisfaction survey of the Industrial Registry Office based on a random sample of clients. This is the third year that the survey has been conducted.

The overall goal of the survey was to evaluate the level of client satisfaction with service delivery and information services in a consistent and reputable manner. Survey results provide the Industrial Registry with valuable information to assist in performance management and quality improvements. More specifically, the objectives of the survey were:

- to understand the current level of client satisfaction with the Registry's service delivery and information services offerings;
- to identify which service delivery aspects are most important to clients;
- to evaluate how the Industrial Registry performs against each of these aspects;
- to evaluate and measure how clients perceive specific components of service delivery and information services;
- to identify and highlight any areas for improvement; and
- to identify any variation from previous studies conducted in 2005 and 2006.

Overall satisfaction with service delivery is very high, with 92% of clients indicating they are satisfied with Registry staff. This high level of overall satisfaction has increased since the previous survey in 2006. This high level of satisfaction is also reflected in the individual aspects of service delivery. Satisfaction with most aspects of service delivery has increased and now more than eight out of ten clients are satisfied with each of the individual aspects of service delivery.

Judicial Services

Judicial 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;
- examining, evaluating and processing all applications and other documentation received from applicants and respondents and other parties.

Judicial 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;
- receiving and filing applications and related documentation.

During 2006-07, a total of 1,465 applications and notifications were filed in the Registry (see Tables 1 & 4).

In addition to registering these applications, the Judicial staff processed and tracked tens of thousands of related documentation, such as directions orders, statements, submissions and general correspondence.

The Registry has set itself benchmarks for timeliness in initial processing of applications and notifications. Table 8 indicates how successful it has been in meeting those targets during the year to 30 June 2007.

Hearings before the Court and Commission are recorded and a transcript is typed by the **State Reporting Bureau** which is part of the Department of Justice and Attorney-General.

One of the functions of the Judicial area is liaising with the State Court Reporting Bureau for recording of transcripts.

Since 2005, the State Court Reporting Bureau commenced providing electronic transcripts to the Registry for internal use of Members only. The *Recording of Evidence Regulation 1992* was amended on 2 March 2007 to allow the Registry to provide a free electronic copy [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].

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. Users of transcripts, including government agencies, benefit from this more timely, efficient and less expensive means of obtaining them.

In addition, in May 2007, the State Court Reporting Bureau implemented digital electronic voice recording in the Queensland Industrial Court and Queensland Industrial Relations Commission matters [removing the previous tape recording processes]. This new system does not necessitate the physical presence within a conference room or a court room of State Reporting Bureau personnel as the recording is monitored remotely from the State Reporting Bureau in Brisbane.

Publication and Information Services

Publication Services

The Publication Services Unit (PSU) provides a diverse range of high quality publication and administrative support that contributes to the effective functioning of the Industrial Court of Queensland, Queensland Industrial Relations Commission and the Industrial Registry and dissemination of decisions to the industrial relations practitioners and the general Queensland public.

Each week the PSU produces the Queensland Government Industrial Gazette which is comprised of all Court and Commission documents released that week. The production of the Gazette is currently quite labour intensive with strict deadlines to be met, in order to publish and distribute the Gazette to subscribers on time each week. The procedure also involves constant liaising with staff from Go Print to ensure the timeframes and requirements are all met.

PSU also supplies the weekly gazettes, and gazette extracts of these documents to the Industrial Relations Information Service (IRIS) of the Department of Employment and Industrial Relations which provides an extensive research database that enables full text searching on documents of the Queensland Industrial Relations Commission including all current and repealed documents, as well as their associated history. The documents are prepared accordingly by the PSU for direct uploading by the PSIR Systems Unit of the Department of Employment and Industrial Relations.

Additionally, 82 Certified Agreements, 3 amendments to Certified Agreements and 4 terminations of Certified Agreements were prepared, converted to PDF format and directly uploaded by the PSU to the IRIS database.

Since 1 July 1999 decisions of the QIRC have been posted on the AustLII data base (which is a free public access legal data base). QIRC decisions are reformatted and converted to rich text format to assist AustLII in posting to their website. The QIRC and its clients are frequent users of the AustLII service and as such the QIRC contributes financially to assist with AustLII's operational costs.

The annual State Wage Case amendments prepared by the PSU, were published on 1 and 8 September 2006. The printing of these amendments was a major task involving the preparation of 4 special Gazettes and 4 sets of Extracts requiring nearly 1,000 pages to be formatted, proofread and printed with limited timeframes involving the whole of the unit. The timely publication of these gazettes, reflecting the new Queensland award rates operative from 1 September 2006 meant employers across the State had easy access to the new wages rates immediately, providing the best possible service to employers and employees alike.

These amendments were then prepared further for posting to the QIRC Website.

The PSU manages 4,746 Industrial Instruments (see table 6) ensuring accuracy and standardisation for distribution and use throughout Queensland.

The PSU also assisted the Work Choices Inquiry Panel by organising and co-ordinating the timely publishing and delivery of the Interim and Final Reports, liaising with Corporate Solutions Queensland on the Panel's behalf.

There were tight deadlines for delivery of the Reports as stipulated in the Terms of Reference set by the two separate Ministers. The PSU ensured the reports were kept on track and in alignment with the timeframes and other agreed requirements.

Electronic Service Delivery

In keeping with the current electronic service delivery ideology adopted by the QIRC and Registry, the QIRC Library is undertaking a commitment to develop a more efficient and timely approach to distributing current relevant information to the Court and Commission.

This on-going project has involved moving the delivery of resource material in the form of Journals, Bulletins, and Reports etc. to a more user-friendly and time-saving format, utilising subscriptions to electronic research materials via various publishers; linking to other government websites; the Department of Employment and Industrial Relations [DEIR] Library and various search engines.

At present, many of the daily and weekly electronic subscriptions are delivered via e-mail, but it is envisaged that the transition from email delivery to Intranet posting will be integrated as smoothly and timely as possible.

Media Reports

The PSU monitors articles of interest regarding Industrial Relations matters from newspapers daily, via a password e-mail distribution list set up by the Strategic Communication Unit within DEIR. The PSU selects the articles and builds its own report then emails the report onto Members of the Commission, helping to eliminate time-consuming hard copy searching, enabling the Members to easily stay informed of current IR news throughout Australia (including AIRC and other States Tribunals' rulings on current matters).

Legislation Upkeep

The Library holds current loose-leaf copies of major legislation used by QIRC Members.

The PSU 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 storing Bills, Explanatory Notes and Second Reading Speeches are also kept and maintained by the PSU to provide easy access to such documents by the Court and Commission.

The PSU provides this service to the Director, Executive Services DEIR providing user-friendly information for further distribution, to a wide range of officers of the Department with up-to-date relevant legislative changes.

The PSU also maintains links to current legislation, including subordinate legislation which is updated directly from the OQPC making such Acts easily available to the Court, Commission, Registry staff and clients via the QIRC Web services.

Web Services

The Industrial Registry is continually expanding and developing the QIRC internet site to meet the changing needs of our clients. Through client feedback responses we have improved and added significant information to our website including:

- current gazetted decisions with the three months preceding available for download;
- detailed information regarding Transcript dissemination and ordering;
- review of the Superannuation Industrial Agreements and Enterprise Flexibility Agreements; and
- functions of the Queensland Industrial Relations Commission under the *Workplace Health and Safety Act 1995*.

During the Inquiry into the Impact of Work Choices on Queensland workplaces, employees and employers, the Registry published all the relevant information on the website as soon as it became available or was released by the Commission. This included submissions, transcripts, findings and recommendations, as well as the Interim and Final Reports. There was a statistical increase in visits to the website, as this Inquiry showed vast public interest.

Similarly, with the Inquiry being conducted by the QIRC to examine the impact of the federal government's Work Choices amendments to the *Workplace Relations Act 1996* on pay equity in Queensland, the Registry is publishing all the relevant information on the website as soon as it becomes available.

The efficiency of the publication and web team is evidenced by the fact that the 2006 State Wage Case Amendments were published to our website within the first week of September, to coincide with the operative date of the General Ruling, to ensure all Queenslanders received timely information on the new wage rates and allowances.

The use of the Commission's web site at www.qirc.qld.gov.au has increased markedly and is now integral to the conduct of the Commission's business. It provides 2,800 files of relevant information for the general public and approximately 139,000 visits were recorded annually, which is over 30% increase on the previous year.

Greater emphasis has been placed on the production of electronic information guides and facts sheets specially directed at supporting self-representing parties, industrial organisations, dispute resolution and the unfair dismissal jurisdiction.

The intranet website for the Commission and Registry has undergone a major redevelopment. It has improved business outcomes through providing a single source of quality information; created a central environment for knowledge sharing and management; reduced business risk; and improved internal communication and organisational culture.

The intranet has become a powerful business tool for the Commission and Registry by providing access to a multitude of documents to carry out day-to-day tasks and to keep regularly informed of practices, procedures and industrial relations issues, as they occur. All documentation including, manuals, checklists, forms and research are now directly accessible from the users' desktop. It also provides a central point to access and login to the Industrial Matters Systems and corporate information. These additions and site improvements have increased the quality of information emanating for the Commission and Registry which has improved the timeliness of advice to our clients.

Library Services

The Registry also provides information and research services for the Court and Commission through the library. The library provides some limited public access. It is a non-lending library which provides information services (but not research services) to the public. 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.

Corporate Services

By virtue of s. 17 of the *Public Service Act 1996*, the Industrial Registry is an office of the public service, an independent agency. Section 19 of that 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 agencies' public service employees.

Under the provisions of the *Financial Administration and Audit Act 1977*, the Chief Executive [Director General] of the Department of Employment and Industrial Relations 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, Ministerial Portfolio Statements budget documentation, Estimates Hearings documentation etc.) and budget managing to ensure effective financial performance and the achievement of organisational objectives and outcomes.

Organisational capability

The Commission and Registry Business plan continues to underpin the longer-term management of the Commission/Registry. The Business Plan includes how to best access the benefits of information technology that meets the needs of the Commission, Registry and the Queensland public.

The Business plan does not impinge on powers and functions of the Commission. Rather, the Business plan establishes a reference point for all management and administrative activity for the Commission to efficiently and effectively undertake its powers and functions.

The key priorities of the Business plan are listed below:

Priority One:

Contribute to the social and economic well-being of Queenslanders.

Objective:
To provide all Queenslanders with independent conciliation, arbitration and agreement approval services, in respect of industrial matters including awards, agreements, prevention and settlement of industrial disputes, unlawful dismissals, unfair contracts and wage recovery matters.

Priority Two:

Business operations that meet the current and future needs of the Commission/Registry and the Queensland public.

Objective:
Align the Registry operations to best support the Commission and best assist the general industrial relations community.

Priority Three:

Best practice service delivery for users.

Objective:
Adopt service delivery innovation and improvement initiatives that will be effective and efficient, and are accessible and delivered equitably across the State.

Priority Four:

A highly skilled, motivated and adaptable workforce.

Objective:
Create a positive and productive work environment that promotes leadership and innovation and ensures that staff capabilities (the right people with the right mix of knowledge, skills and experiences) contribute to efficient and effective work practices.

New developments

Partly in response to the impact of Work Choices, the Registry is conducting an internal review to assess how best a smaller staffed Registry can continue to provide the wide range of services required to support the Court and Commission and to meet the expectation of clients. The review commenced with workshops involving full staff participation examining the current environment of the Registry. The Registry is currently reviewing staff roles and business procedures and processes with a view of further improvement to our operations. This includes providing staff with various relieving and training opportunities to enhance knowledge, skills and abilities across the range of functions carried out within the Registry.

The Registry, through various projects, continues to progress a number of business improvement activities aligned to the Commission/Registry Business plan designed to provide significant benefits to the Commission, Registry and Queensland Public.

An Information Systems plan detailing information and communication technology strategies supports the key priority areas of the Business plan, including accessing "e-court" information systems.

The Commission/Registry Information Systems plan is incorporated into the Department of Employment and Industrial Relations Information, Communication and Technology (ICT) Resources Strategic Plan. The inclusion is important because of the information intensive environment in which the Commission and Registry functions. Importantly, the DIR ICT Resources Strategic Plan recognises the independence of the Commission and Registry.

Electronic Service Delivery is a key focus of the Queensland Government to enable users to access information, conduct business, or otherwise interact, with government agencies online. A program to modernise the information and business systems of the Commission and Registry including adoption of electronic service delivery has been underway for some time.

During the year, the Registry completed a project for the Industrial Registry to assume the responsibility of producing and maintaining source QIRC documents in electronic form and develop processes and procedures to enable the delivery to DEIR of the production of all official documentation published in the QGIG arising out of the QIRC (controlled documents) in the Industrial Registry. [Previously these source documents were maintained by DEIR] This project was successfully implemented and adopted by the Registry in a timely manner. There have been a number of other projects which have also improved the overall e-services offered by the QIRC, including the redevelopment of the QIRC internet site, the development, implementation and enhancement of the Industrial Matters System and creating a tailored and user friendly intranet for all QIRC staff, as well as other e-services. This has highlighted the Commission/ Registry's ability to manage and progress with change and improve our e-services for internal and external clients.

Following this, the Publication and Information Services Unit is currently preparing a business case aimed essentially to enhance a number of internal practices and procedures with a view to publishing of all QIRC Decisions including Awards, Decisions, Certified Agreements, Amendments, Notices and Orders on the QIRC website.

Adoption of electronic service delivery including the direct publishing of Court and Commission documents (E-publishing) will improve the availability, accessibility, consistency, efficiency and effectiveness of QIRC services.

The project to review the Registry records of Registered Industrial Organisations in relation to provisions of Chapter 12 of the *Industrial Relations Act 1999* continued into 2006-07. The aim is to develop and implement strategies to assist parties to comply with legislative provisions, and improve Industrial Organisations' access to Registry information and services.

In compliance with Information Standard 40 – Recordkeeping issued under the *Public Records Act 2002* agencies are required to retain full and accurate records for as long as they are required for business, legislative, accountability and cultural purposes. Agencies are required to be compliant with IS40 by 31 December 2007. The Commission's current Retention Schedules were approved by State Archives in 1994. A project has commenced in the Registry to review these schedules and to consolidate into one schedule for approval by State Archives by 31 December 2007.

In compliance with *Financial Management Standard 1997* agencies must have in place systems for risk management to protect the agency from unacceptable costs or losses associated with its operations. The Department of Employment and Industrial Relations' Risk Management Policy requires its program outputs to have in place a Business Continuity Plan to identify the strategies the program needs to apply to resume normal operations in the event of disruptions caused by emergencies, natural or technical disasters or sabotage. The Registry will shortly commence a project to develop a Business Continuity Plan for the continued delivery of its critical services in the event of a disruption to those services.

Industrial Registrar's Powers

Jurisdiction under the *Industrial Relations Act 1999*

The Registrar makes certain preliminary decisions about applications and other documents lodged to ensure that they comply with the Act and the *Industrial Relations (Tribunals) Rules 2000*.

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)).

Under s. 72 of the Act, only 6 of the 188 reinstatement applications lodged were rejected by the Registrar (see Table 7).

The Registrar's powers include the power to decide applications for student work permits under s. 695. These permits allow students undertaking tertiary studies to work in a particular calling for a set period, when their studies require it.

The Registrar's powers also includes the granting of an exemption from membership of an organisation because of the person's conscientious beliefs (s. 113) and the issuing of an authority to an officer or employee of an organisation to exercise the powers of an authorised industrial officer under the Act (s. 364).

Jurisdiction under the *Workplace Health and Safety Act 1995*

The Workplace Health and Safety and Other Acts Amendment Act 2006 gave State and Federal union officials the right to enter workplaces on health and safety grounds. Under the amendments the Industrial Registrar can issue permits that authorise a representative of a registered industrial organisation to enter a workplace where there is a reasonable suspicion that a contravention of the Act involving workplace 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.

Registrar's Role regarding Industrial Organisations

The Registrar also 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.

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).

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.

Industrial Organisations

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.

Applications for registration of organisations

Applications for registration of organisations, or 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 2000*, 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).

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. 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). Any industrial organisation with a counterpart federal organisation may apply to the Registrar, under s. 582, for exemption from the requirement to keep registers of officers or members.

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. If a member of an organisation believes there has been 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.

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 2000* 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 *Workplace Relations Act 1996*.

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).

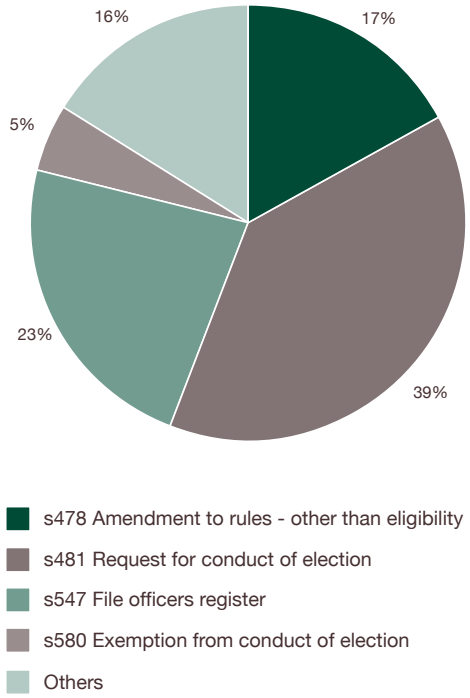
Any industrial organisation with a counterpart federal organisation may apply to the Registrar for exemption from accounting and audit provisions, under s. 586. If the application is approved, the organisation must file with the Registrar a certified copy of the documents filed under the federal *Workplace Relations Act 1996*. (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 Invalidity

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 10 lists industrial organisation matters filed in Registry.

Industrial Organisation Matters Filed
2006-2007



Membership of Industrial Organisations

Eligibility for and admission to membership of industrial organisations are governed by Part 10 of Chapter 12. At 30 June 2007, there were 43 employee organisations registered in Queensland; with a total membership of 373,472 compared to 377,979 at 30 June 2006. The employee organisations are listed according to membership numbers in Table 11. Equivalent figures for employer organisations are: 38 organisations registered at 30 June 2007, with a total membership of 43,635 compared to 42,455 at 30 June 2006. Table 12 lists the employer organisations according to membership.

The Court decides questions or resolves disputes about membership of an industrial organisation (see ss. 535, 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

Amendments to Legislation

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

The *Industrial Relations and Other Legislation Amendment Act 2007,* which was assented to on 28 May 2007, is directed to ensuring that Queensland maintained a fair industrial relations system for Queensland employers and employees in light of the introduction of the *Workplace Relations Amendment (Work Choices) Act 2005* (Work Choices). The initiatives included establishing an Ombudsman to promote fair work practices strengthening the protection of young workers, facilitating access to the Magistrates Court for employees on low incomes and facilitating access to the Queensland Industrial Relations Commission (QIRC) for parties who wish to have their dispute resolved by the QIRC without the distraction of Commonwealth/State jurisdictional arguments.

The *Statutory Bodies Legislation Amendment Act 2007* was assented to on 28 May 2007. The Act initiated a statutory scheme whereby the employees of statutory bodies affected by Work Choices are able to continue to perform work for that body but be employed by a "noncorporate" government entity which will have State rather than Federal industrial coverage.

Industrial Relations Act 1999

The *Industrial Relations and Other Legislation Amendment Act 2007* provided (in Part 2) for specific amendments of the *Industrial Relations Act 1999* which included:

- promoting collective bargaining and establishing the primacy of collective agreements over individual agreements;
- permitting QIRC to perform dispute resolution functions conferred by agreement of parties to disputes;
- enabling the Commission, on application, to make a declaration about an industrial matter whether or not consequential relief is or could be claimed which will be binding in any proceeding under the Act in relation to the issue determined by the declaration;
- providing greater flexibilities in the structure of the QIRC to respond to changing workloads as a result of the introduction of Work Choices.

Child Employment Act 2006

The *Industrial Relations and Other Legislation Amendment Act 2007* also significantly amended the *Child Employment Act 2006* (Part 3) to include, amongst other changes, inserting the following:

- employers to ensure children are not disadvantaged in relation to employment conditions meaning the entitlements or protections that cover an employee performing similar work to that performed by the child under a State award or order or chapter 2 of the *Industrial Relations Act 1999* including those entitlements or protections as determined by a general ruling of the full bench;
- Industrial Commission may decide whether an agreement or arrangement reduces a child's employment entitlements or protections (as above). The way the Commission decides whether an agreement or arrangement reduces a child's employment entitlements or protections must be as nearly as possible the way it would decide the same question under the *Industrial Relations Act 1999*, chapter 6, part 1, division 3 in a proceeding before the Industrial Commission under that Act;
- Protecting against dismissal if the dismissal is of a kind that could be the subject of an application under the *Industrial Relations Act 1999*, chapter 3 (the dismissal provisions) if the employer of the child were not a constitutional corporation.

Workplace Health and Safety Act 1995

The *Industrial Relations and Other Legislation Amendment Act 2007* amended the *Workplace Health and Safety Act 1995* (Part 10) to essentially provide for Authorised Representatives (as per s. 90D of that Act) to file a dispute notification, relating to exercising their right of entry, with the QIRC.

Changes included inserting a new Division 6 in Part 7A (examples of which follow):

- inserting a definition of "full bench" (of the Industrial Relations Commission);
- the giving of a notice of dispute to the Industrial Registrar;
- the action on notice of a dispute which may be taken by the Industrial Commission for the prompt settlement or resolution of the dispute including the Commission convening a compulsory conference in order to resolve the dispute;
- the Commission may direct an order or decision to settle or resolve a dispute;
- remedies on show cause notice; and
- penalties to be paid by a person if an order of the Commission is disobeyed.

The Amendment Act also amends sections 147A (Definitions for part 11), 152 (Who may appeal), 155 (Hearing procedures), 157 (Powers of court on appeal) and schedule 3 (Dictionary); and inserts a new Part 11, Division 3A (Appeals to Full Bench).

Magistrates Courts Act 1921

The *Industrial Relations and Other Legislation Amendment Act 2007* amended the *Magistrates Courts Act 1921* (Part 6), as from 1 January 2008. The amendments improves access to justice for employees on low incomes by establishing a low cost procedure in the Magistrates Court for claims by employees relating to breach of the contract of employment. These claims are available to employees earning up to $98,200 per year, consistent with the income threshold relating to unfair dismissal claims under the *Industrial Relations Act 1999*.

The amendments provide for Members of the QIRC to be appointed to perform the functions of a conciliator prior to the matter being heard by a magistrate.

Statutory Bodies Legislation Amendment Act 2007

Under the *Statutory Bodies Legislation Amendment Act 2007* s. 73 (Non-application of *Industrial Relations Act 1999,* s.167*)* was introduced under the transitional provisions of that Amendment Act to ensure that a person taking up employment with a public service department or office will be covered by the most recent certified agreement that is applicable to other employees of that department or office but which may not otherwise apply.

The table of statutory bodies that have been returned to the State industrial system appears below:

Primary legislation	Statutory Body
Agricultural College Act 2005	Australian Agricultural College Corporation
Queensland Building Services Authority Act 1991	Building Services Authority
Queensland Museum Act 1970	Board of the Queensland Museum
Libraries Act 1988	Library Board of Queensland
Major Sports Facilities Act 2001	Major Sports Facilities Authority
Queensland Art Gallery Act 1987	Queensland Art Gallery Board of Trustees
Residential Tenancies Act 1994	Residential Tenancies Authority
South Bank Corporation Act 1989	South Bank Corporation
Tourism Queensland Act 1979	Tourism Queensland
Workers' Compensation and Rehabilitation Act 2003	WorkCover Queensland
Water Act 2000 & Water Regulation 2002	Category 1 – water boards (Gladstone Area Water Board & Mount Isa Water Board), and Category 2 – water boards established under regulation, subject to advice they are constitutional corporations.

Vocational Education, Training and Employment and Other Acts Amendment Act 2007

The *Vocational Education, Training and Employment and Other Acts Amendment Act 2007* which was assented to on 16 February 2007 provides for specific amendments of the *Vocational Education, Training and Employment Act 2000*.

Amongst other things, clause 11 of the Amendment Act amended s. 230 of the *Industrial Relations Act 1999* by including an appeal to the Queensland Industrial Relations Commission (QIRC) against a Council order under s. 65(4) or s. 65(5). The clause also provides an appeal to the QIRC against a Council authorisation made under s. 73A.

Amendments to Regulations and Tribunal Rules

Industrial Relations Amendment Regulation (No.1) 2006

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 $94,900 to $98,200 per annum. The amendment took effect from 11 August 2006.

Industrial Relations (Tribunals) Amendment Rule (No.1) 2006

This Amendment Rule 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 March quarter. The increase took effect from 1 July 2006. A similar increase for 2006-07 was gazetted on 22 June 2007 to take effect for the year commencing 1 July 2007.

Recording of Evidence Amendment Regulation (No. 1) 2007

The *Recording of Evidence Amendment Regulation (No. 1) 2007* which commenced on 2 March 2007 amended the *Recording of Evidence Regulation 1992* to allow the Registry to provide a free electronic copy to a party to a proceeding or their representative (subject to any restrictions of the release of the transcript by the Member presiding at the proceeding).

Summaries of Decisions

Summaries of Decisions

Decisions of the Industrial Court of Queensland

The decisions summarised below are significant decisions released and gazetted by the Industrial Court during the year:

EDUCANG Ltd AND Queensland Industrial Relations Commission and Queensland Independent Education Union of Employees (C/2006/35) 10 July 2006 182 QGIG 491

Industrial Relations Act 1999 - s. 248(1)(e) - application for declaratory relief and prerogative relief

Matter for decision

On or about 6 April 2006, the applicant terminated the employment of a member of the second respondent, an organisation of employees under the *Industrial Relations Act 1999*. On 23 April 2006, the second respondent filed an application for reinstatement on behalf of the member in the Queensland Industrial Registry seeking relief pursuant to s. 74 of the Act. Given the filing of this application in the Court on 15 May 2006, a decision was made by the presiding Commissioner to refrain from proceeding with the initial conference in the application for reinstatement, pending the decision of the Court.

By s. 16(1), the *Workplace Relations Act 1996 (Cwth)* expresses an intention to apply to the exclusion of, *inter alia*, a state industrial law that would otherwise apply in relation to an employee or employer. By s. 4(1), the *Industrial Relations Act 1999* is a state industrial law. It is the effect of the definition of "employee" at ss. 4(1) and 5, and of "employer" at ss. 4(1) and 6, that, if the applicant was a "constitutional corporation", the second respondent's member was an employee of the applicant. By s. 4(1) "constitutional corporation" means a corporation to which paragraph 51(xx) of the Constitution applies.

A critical and controversial issue on EDUCANG Ltd's application for declaratory relief and a prerogative order of prohibition was whether the applicant was a "trading corporation" within s. 51(xx). If the applicant was a "trading corporation", s. 643 deals with the matter of termination in such a way that in consequence of s. 16(1), Chapter 3, Part 2 of the *Industrial Relations Act 1999* is excluded.

The Court dealt with the matter as summarised below:

Background

EDUCANG Ltd is a Public Company limited by guarantee under the Corporations Law. EDUCANG Ltd's Australian Company Number is 060 936 576.

The members of EDUCANG Ltd are the Corporation of the Synod of the Diocese of Brisbane and The Uniting Church in Australia Property Trust (Q). EDUCANG Ltd is the vehicle by which the members seek to give effect to a Joint Venture Members' Agreement last reworked on 18 August 2005.

Importantly, the Joint Ventures Members' Agreement articulates the main purpose of EDUCANG Ltd to be the conduct of "Colleges" on the land specified in Schedule 1. The "Colleges" are defined to mean Forest Lake College, The Springfield College, Mary McConnell School, The Lakes College and "any other school established and owned by the Company from time to time", i.e. the agreement contemplates that additional Colleges may be established in the future. Whilst the Constitution of EDUCANG Ltd to which the Joint Venture Members' Agreement expressly refers, makes clear that EDUCANG Ltd is no mere "economic mechanism", it is plain from clause 5.1 of the Agreement that the joint venturers always envisaged that "school fees" would be a principal revenue source, and clear from clause 3.3 that participation by the Colleges in commercial activities was envisaged.

The purpose of EDUCANG Ltd may be summarised as the conduct of co-educational schools for the purposes of developing a community of faith based on a belief in God and a Christian way of life. Clause 7 is plainly susceptible of a construction which distinguishes between the immediate purpose of the Company and the ultimate purpose sought to be achieved. The immediate purpose is the conduct of "co-educational schools".

The Constitution deals with the basis upon which business may be transacted, the preparation of accounts, borrowing and investment, plainly contemplate participation by the Company in financial transactions. It provides that the Company may (subject to the passing of a unanimous resolution at a meeting of members beforehand):

> "...change the nature or scope of the Company's mission of the church in education or its business as carried on for the time being to a material extent (including cessation) or commence any new business not being ancillary or incidental to such business (for the avoidance of doubt a proposal to establish any commercial trading operation with any of the Colleges will require the prior approval in writing of the members).".

And, as in the case of the Joint Venture Members' Agreement, the Constitution makes clear that fees will be paid for the services provided.

EDUCANG Ltd is accredited as a non-state school under the *Education (Accreditation of Non-State Schools) Act 2000*. Such a school must be conducted on a "not for profit" basis and have no direct or indirect connection with a "for profit" entity that could reasonably be expected to compromise the independence of the school when making financial decisions. It is useful to record also that pursuant to reg. 6 of the *Education (Accreditation of Non-State Schools) Regulations 2001*, a non-state school must have a Statement of Philosophy and Aims adopted by its governing body that is used as a basis for the school's education programme and a guide for the school's educational and organisational practices. That requirement (perhaps) gives rather a different gloss to the Mission Statement. One must also note the *Education (General Provisions) Act 1999* which provides for compulsory schooling for children of school age at either a state educational institution or an accredited non-state school. The applicant carries the burden of attaching the epithet "trading corporation" to a not for profit organisation operating in a regulated (and perhaps distorted) market where, as shall be seen, pupils enjoy government subsidies.

The schools operated by EDUCANG Ltd are Forest Lake College, The Springfield College, The Lakes College, Mary McConnell School and Forest Lake College International Centre. In each case the school name is a registered business name of EDUCANG Ltd. Each of Forest Lake College and The Springfield College is accredited to deliver pre-school, primary and secondary education. The Lakes College is accredited to deliver pre-school and primary education. EDUCANG's intention is to progressively add years until the full compliment of classes through to year 12 are provided. The Mary McConnell School is accredited to provide special needs education. In addition to providing special needs education it also provides its students with access to the facilities at Forest Lake College and The Springfield College. The Forest Lake College International Centre provides English language intensive courses for overseas students approved by the State and Federal Government. Upon successful completion of the school preparation programme, the overseas students may enter either Forest Lake College or The Springfield College as full-fee paying international students. Approximately 90 such students are currently enrolled. The fees for full-fee paying international students, I should add, are more than double those of domestic students in the case of Forest Lake College and more than triple those of domestic students at The Springfield College. The fees for both domestic and overseas are in evidence. It is sufficient to say that for each student the fees are sizeable.

Each of EDUCANG Ltd's schools operates as a separate revenue and cost centre. Each of the Colleges utilise marketing and promotional material

developed by EDUCANG Ltd to advertise its activities (copies exhibited to the Affidavit) and that through the Forest Lake College EDUCANG Ltd owns and operates an FM radio station to promote the school in the local catchment area.

Analysis of the meaning of "trading corporation"

In deciding the matter, the Court examined relevant High Court cases.

Judicial analysis of the meaning of "trading corporation" at s. 51(xx) commenced with the decision in *Huddart Parker and Co Pty Ltd v Moorehead* (1909) 8 CLR 330 at 393.

The matter was revisited in *Reg v Trade Practices Tribunal and Others; Ex parte St George County Council* (1974) 130 CLR 533 where the issue before the High Court was whether St George County Council was a trading corporation within the meaning of s. 51(xx). The majority of the Court held that the St George County Council was not a trading corporation.

The meaning of the expression "trading corporation" was reconsidered a mere five years later in *Reg v The Judges of the Federal Court of Australia and Another; Ex parte the Western Australia Football League (Incorporated) and Another ('Adamsons Case')* (1979) 143 CLR 190. Only Gibbs J adhered to the view taken by the majority in *Reg v Trade Practices Tribunal; ex parte St George County Council* (1974) 130 CLR 533. Stephen J (with whom Aicken J concurred) joined Gibbs J in dissent because, whilst adhering to the minority view in *Reg v Trade Practices Tribunal; ex parte St George County Council* (1974) 130 CLR 533, His Honour considered that in the application of that test to the facts the prosecutors were not trading corporations. There were differences in the views expressed by the majority but all were prepared to take a more expansive view than the minority in *Reg v Trade Practices Tribunal; ex parte St George County Council* (1974) 130 CLR 533, which lead to the view that *Reg v Trade Practices Tribunal; ex parte St George Council* was wrongly decided and should be overruled and to give content to the extent of the commercial activity to which the language "substantial", "not insubstantial", and "a sufficiently significant proportion of its overall activities as to merit description as a trading corporation" were directed by the majority , one should look at the business returns of the various football clubs held to be trading corporations, including the case of the WA League, total gate receipts in 1976 were $1,102,150 and in 1977 $1,310,587. The distribution to member clubs was $594,722 in 1976 and $754,133 in 1977. The Court stated that in a case in which no evidence was led of changes in value of money of the past 30 years the figures cannot be applied as a litmus test, but it was very difficult to avoid the conclusion that the majority of the High Court would have classed EDUCANG Ltd as a "trading corporation".

The next significant case was *State Superannuation Board v Trade Practices Commission* (1982) 150 CLR 282. The critical issue was whether the State Superannuation Board (Vic) was a "financial corporation". However, in the course of the majority judgment the following (presently relevant) observation was made:

> "It is our view that the Court's approach to the ascertainment of what constitutes a 'financial corporation' should be the same as its approach to what constitutes a 'trading corporation', subject to making due allowance for the difference between 'trading' and 'financial'.
> …
> In this respect the decision in *Adamson* is of importance for two reasons. First, the majority of the Court (Barwick C.J., Mason, Jacobs and Murphy JJ.), rejecting the argument that the purpose for which a corporation is formed is the sole or principal criterion of its character as a trading corporation, concluded that the relevant character of the football leagues and the football club was to be ascertained by reference to their established activities. In adopting this view their Honours disapproved the approach taken by the majority in *St. George* which placed emphasis on the purpose for which the County Council was formed." (at 303 to 304).

The Court then dealt with the last of the High Court Cases upon s. 51(xx) of the Constitution *viz. The Commonwealth of Australia v The State of Tasmania and Others* (1983) 158 CLR 1, where the Court found that the Hydroelectric Commission constituted by the *Hydroelectric Commission Act 1948* (Tas) was a trading corporation for the purposes of s. 51(xx) of the Constitution.

The Court was also taken to the decision of Wilcox J in *E v Australian Red Cross Society and Others* (1991) 27 FCR 310, and to the decision of the Full Court of the Federal Court in *Quickenden v O'Connor and Others* (2001) 109 FCR 243.

The Court stated that the decision in *E v Australian Red Cross Society and Others*, *op cit*, for present purposes, the decision should be regarded as an authority upon which an argument may be based that the very large sums received by EDUCANG Ltd from government sources in the return for the provision of educational services to students which might have otherwise been an impost upon the government are to be disregarded in determining whether or not EDUCANG Ltd is a trading corporation.

The Court stated that the decision of the Full Court in *Quickenden v O'Connor and Others, op cit*, is (perhaps) of greater assistance. In that case the majority, Black CJ and French J, put aside the University's argument that the sums of money received pursuant to the *Higher Education Funding Act 1988* (Cwth) were to be taken into account in evaluating whether or not the University was a "trading corporation".

Conclusion

The Industrial Court of Queensland is a Superior Court of Record and is bound by the Constitution, see *Constitution Act 1900* (Cwth), s. 5; contra *Massey v Sphere Pty Ltd trading as Barron' s Char Grill,* T12672 of 2006, 4 July 2006, Commissioner McAlpine.

The Court stated it was concerned primarily with the levying of fees pursuant to powers within the Constitution of EDUCANG Ltd so as to provide EDUCANG Ltd with sources of revenue to enable it to discharge its immediate purpose of providing co-educational education services. So high is the percentage of operating revenue derived from trading activities, and so large are the sums involved, the Court concluded that EDUCANG Ltd is a trading corporation.

■ ■ ■

The Queensland Public Sector Union of Employees AND Department of Corrective Services (C/2006/39) 10 July 2006 182 QGIG 503

Industrial Relations Act 1999 - s. 346 - application for extension of time

The Court dealt with this matter on 10 July 2006 as quoted below:

> "On 14 March 2006, the Department of Corrective Services gave notice under s. 229 of the *Industrial Relations Act 1999* of an industrial dispute said to involve the Department and The Queensland Public Sector Union of Employees (QPSU) and certain of its members. On that very day, the Queensland Industrial Relations Commission made an Order about the dispute. Amongst other things, and pursuant to s. 233(3), the Commission ordered the Department of Corrective Services and QPSU to file an affidavit with the Industrial Registrar by 4:30 p.m. on Wednesday 14 March 2006 disclosing whether there had been compliance with the Order and, in default of compliance, what steps (if any) had been taken to comply with the Order. Such affidavits were filed. Pursuant to s. 233(6), the Industrial Registrar examined the affidavits to decide whether there had been substantial compliance with the Order. By decision of 21 March 2006, now reported 181 QGIG 502, the Industrial Registrar decided that there had not been substantial compliance with the Order. In consequence, on 3 April 2006, and acting pursuant to s. 233(7), the Registrar issued a Notice to

QPSU requiring the organisation to show cause to a Full Bench of the Commission why QPSU should not be dealt with pursuant to s. 234.

QPSU was perfectly entitled to appeal against the decision of the Commission to issue the Order. But QPSU had only 21 days within which to exercise the right to appeal, see s. 346. It did not do so. It was not until 2 June 2006, 79 days after the Order was made and 58 days after the time limit had expired, that QPSU sought to file an appeal. In consequence, QPSU has been compelled to bring the current application seeking an extension of time pursuant to s. 346.

This Court has consistently adhered to the view that the 21 day limitation period imposed by s. 346 should be seen as an assessment by the legislature that in the ordinary category of case justice will be best be served by adhering to a 21 day limitation period, though on occasion the limitation period may defeat a perfectly good case. In consequence, the Court has insisted that an applicant for an extension of time must discharge a positive burden of demonstrating that the justice of the case requires the indulgence of a further period: see *WorkCover Queensland v Zanoletti* (2001) 167 QGIG 669, *Schostakowski v Australia Meat Holdings Pty Ltd* (2002) 169 QGIG 284, and *Abu-Dabat v Jason Clifford Gibbons* (2004) QGIG 542. In normal circumstances the evaluation of whether the case advanced discharges that positive burden will be guided by the principles developed by Wilcox J in *Hunter Valley Developments Pty Ltd v Cohen* (1984) 3 FCR 344 at 348 to 349: compare *Chapman v State of Queensland* [2003] QCA 172 at [3]. This matter is not quite a normal case. QPSU has been called upon to show cause why the organisation should not be dealt with under s. 234. There was certainly a successful appeal against the Industrial Registrar's decision of 21 March 2006 and the Show Cause Notice issued on 3 April 2006, see 182 QGIG 99. But by a decision of 1 June 2006, now reported 182 QGIG 187, the question of whether there was a need to issue a Show Cause Notice has been remitted to the Industrial Registrar for further consideration. The Industrial Registrar (or the Industrial Registrar's delegate) may yet decide to issue a Show Cause Notice. Whilst failure by QPSU to show cause will not lead to conviction, failure to show cause will expose QPSU to significant pecuniary penalties ($75,000 maximum), and to other sanctions (e.g. suspension or cancellation of registration) of great gravity. And it is not immediately obvious that in determining whether to issue a Notice to Show Cause the Industrial Registrar has any authority whatsoever to question the validity of the Commission's Order of 14 March 2006. The *prima facie* effect of s. 349 would appear to be that the Order, which by Schedule 5 of the *Industrial Relations Act 1999* is a 'decision', is final and conclusive and insulated against attack, save to the extent that the *Industrial Relations Act 1999* or another Act provides for a right of appeal from the decision. *Prima facie*, the same difficultly would arise in the proceedings before the Full Bench. In some cases, by leave, a decision of a Commissioner sitting alone may be challenged by way of appeal to a Full Bench. But the proceedings under s. 234 are not by way of appeal. The consequence would seem to be that if the extension of time now sought is not granted, QPSU risks exposure to significant penal (not criminal) consequences in circumstances in which there is a 'real' issue about the validity (at least in part) of the Commission's Order.

This is not a case in which the appeal is hopeless, compare *Ford v La Forrest* [2002] 2 QdR 44 at 45. As a matter of first impression, the Commission's Order of 14 March 2006 has been based upon the same precedent as the Order held to be (in part) invalid by this Court in *Australian Rail, Tram and Bus Industry Union of Employees, Queensland Branch and Another v Queensland Rail* (2006) 181 QGIG 636. Senior Counsel for the respondent (properly) makes a claim that if an appeal is conducted the respondent will seek to revisit the decision in *Australian Rail, Tram and Bus Industry Union of Employees, Queensland Branch and Another v Queensland Rail, ibid*. The respondent is perfectly entitled to adopt such a course. However, even if the argument envisaged were to be successful, the applicant will be in a better position than it would

be if the Industrial Registrar (or the Industrial Registrar's delegate) dealt with the matter of whether a Show Cause Notice should be issued on the basis of the Order of 14 March 2006 in its present form. If successful, the respondent's proposed argument would involve the consequence that the obligation imposed upon QPSU to 'procure its members to carry out their normal duties' will be read as an obligation to 'take all reasonable steps to procure its members to carry out their normal duties etc'. In any event at the date of this decision one has to conclude that the applicant has reasonable prospects of (partial) success; and it is always appropriate to consider the merits of the substantive appeal, compare *Queensland Trustees Limited v Fawckner* [1964] QdR 153 at 163 to 164, and *Chapman v State of Queensland* [2003] QCA 172 at [3].

Senior Counsel for the respondent rightly submits that the decision in *Australian Rail, Tram and Bus Industry Union of Employees, Queensland Branch and Another v Queensland Rail, op cit.*, which was given on transcript on 20 March 2006, was reported in the Queensland Government Industrial Gazette for 13 April 2006. I accept Senior Counsel's submission that from that date the decision of the Court was 'knowable'. However, it seems to me to go too far to treat the case as analogous to *Moi v Fong* [1976] QdR 7. In that case, in dismissing an application to extend time, Dunn J took into account that, because an insurance company lives closer to the hazards of litigation then do most people in the community, an error was less easily excused. However, the error was about the provisions of the Rules of Court; not about a failure to identify a recent decision. I accept also that the affidavit materials relied upon by the applicant does not precisely identify when it was that the applicant became aware of the decision in *Australian Rail, Tram and Bus Industry Union of Employees, Queensland Branch and Another v Queensland Rail, op cit.,* nor adequately explain why it was that no step was taken until 2 June 2006. Whilst noting that there is authority for the proposition that the absence of an adequate explanation of delay is not in itself an insuperable obstacle to the extension of time for an appeal, compare *Queensland Trustees Limited v Fawckner* [1964] QdR 153 at 163, such an explanation is ordinarily to be expected, compare *McLaren v The Public Curator of Queensland and Another* [1965] QWN 18. I accept also that although the respondent has no interests to be prejudiced by grant of the application for extension of time, the way in which the proposed appeal has been managed has destroyed the opportunity to contain costs by dealing with the appeal contemporaneously with the appeal against the decision of the Industrial Registrar. In a jurisdiction in which the power to award costs is severely curtailed (see s. 335) that is a matter of some moment.

The matter is not clear cut. The question whether a potential appellant should be granted the indulgence of an extension of time is seldom clear cut. But having regard to the gravity of the consequences which may flow if the Industrial Registrar issues a Notice to Show Cause and QPSU fails to do so, it seems to me that one may see daylight between the case advanced by the applicant and that advanced by the respondent.

I extend time to appeal until 3 June 2006.

I reserve all questions as to costs.".

■ ■ ■

Robert Thompson AND Jason Livingstone (C/2006/28) 11 July 2006 182 QGIG 505

Industrial Relations Act 1999 - s. 459(1)(b) - application for order about performance and observance of rules

The Court dealt with this matter on 11 July 2006 as quoted below:

"On 10 April 2006 Robert Thompson filed an application under s. 459(1)(b) of the *Industrial Relations Act 1999* seeking an order for the performance and observance of rule 24 of the Constitution of The Association of Professional Engineers, Scientists and Managers, Australia, Queensland Branch, Union of Employees (the Association). The Association, I should add, is an organisation of employees under the *Industrial Relations Act 1999*. The person against whom the order was sought was Jason Livingstone. It was asserted that Mr Livingstone was the Secretary of the Association and was required by rule 24 (as modified by Chapter 12, Part 7 of the *Industrial Relations Act 1999*) to make arrangements for the Electoral Commission of Queensland to conduct an election for the Committee of Management of the Association. Although Mr Livingstone was served with the Application, Mr Livingstone chose not to appear.

On the first day of the hearing proper, Mr C. Murdoch of Counsel sought leave to be heard on behalf of the Association. Leave was granted. Leave was granted in the clear knowledge that, as sometimes happens in proceedings about alleged irregularities in the conduct of the affairs of an industrial organisation, those who had instructed Mr Murdoch to appear on behalf of the Association might well be shown to have had no authority to do so. I should add that in the event Mr Murdoch's submissions were of great assistance, as was the evidence given by the two witnesses called by Mr Murdoch, *viz.* Phillip Glen Bambrick and Bradley James Sutton. Both gentlemen have a memory of events which had taken place before the applicant became an active participant in the Association's affairs. For the avoidance of doubt I expressly record that Mr Murdoch did not appear on behalf on Mr Livingstone.

It appears that the Association has a counter-part federal body; *viz.* the Association of Professional Engineers, Scientists and Managers, Australia, Queensland Branch, hereafter referred to as Queensland Branch. [In truth, of course, the Queensland Branch is an inseverable part of the Association of Professional Engineers, Scientists and Managers, Australia; an organisation of employees under the *Workplace Relations Act 1996* (Cwth).] In 2001, each of the Association and the Queensland Branch conducted an election for its Committee of Management for 2002. Each Committee of Management consisted of 12 persons. It was the outcome of the elections that each of 11 persons were elected to both committees. Subsequently, a gentleman who had been elected to both Committees of Management passed away. The one member of the Committee of Management of the Association who was not a member of the Committee of Management of the Queensland Branch was appointed to fill the vacancy on the Queensland Branch Committee. The one member of the Queensland Branch Committee who had not been elected to the Committee of the Association was appointed to fill the vacancy on the Association's Committee. At that point, the 12 persons who constituted the Committee of Management of the Association were also the 12 persons who constituted the Committee of Management of the Queensland Branch. Shortly thereafter, the two Committees commenced to conduct what were described as 'joint meetings'.

The Queensland Branch has diligently arranged for the Australian Electoral Commission to conduct annual elections for the Committee of Management in every year since 2001. Appropriate arrangements have also been made for the appointment of senior officers, e.g. President, Vice-President, Secretary etc., by way of an electoral college system. There has not been an election for the Committee of Management of the Association since 2001. Elections should have been conducted annually. No proper arrangements have been made for the appointment of senior officers, e.g. President, Vice-President, Secretary etc., by way of an electoral college system. What has occurred is that those elected to the Committee of Management of the Queensland Branch have treated themselves as constituting also the Committee of Management of the Association. Those appointed as senior officers of the Queensland Branch have seized counterpart "vacancies" within the Association. [Predictably, where disputation has arisen, points about eligibility had

been taken.] And at the risk of unnecessary repetition it is important to stress that upon the election of the Committee of Management of the Queensland Branch and the appointment of the senior officers of the Queensland Branch, those purporting to constitute the Committee of Management of the Association and to be its senior officers have voluntarily surrendered their positions to those successful in the Queensland Branch elections. I stress that matter because rule 24(2) of the Association provides for members of the Association's Committee of Management to 'holdover' until their successors are elected. The contention which has been pressed by the applicant was that because no Committee of Management of the Association has been elected since the 2002 Committee of Management was elected at the end of 2001, and because no senior officers have been appointed since that time, Mr Livingstone who was then the Secretary of the Association continues to hold office and continues to be the person bound to take the necessary administrative steps to set in motion an election under rule 24. On the evidence, Mr Livingstone has not 'heldover'. Like many others, he was a member of the Committee of Management (and Secretary) in 2002 and continues to be a member of the Committee of Management (and Vice-President) in 2006. But, like his colleagues, Mr Livingstone has not 'heldover'. Mr Livingstone, like his colleagues, has abandoned and resumed office annually in accordance with the outcome of the Queensland Branch electoral processes.

In the circumstances described, the Rules of the Association do not impose upon Mr Livingstone a duty which may be enforced by an Order under s. 459(1)(b).

At trial, there was some discussion about whether an order under s. 459(1)(b) should be made against a person other than Mr Livingstone. The short answer is that no such person has been served with the application and no such person has been given the right to be heard. Certainly, Mr Sutton who has volunteered to take the necessary administrative steps pursuant to rule 24 if ordered to do so, has participated in the proceedings as a witness. On a broad view, that participation and Mr Sutton's consent may overcome the problems about natural justice and service. But the Court would be left in the position of making an order which treats Mr Sutton, who is the Queensland Branch Secretary, as the Secretary of the Association. All of the evidence which has been led compels a contrary conclusion.

The proceedings have been vigorous. Issues have been raised about how it has all come to pass. The riddles cannot be resolved without making findings which go to the probity of the conduct of individuals and the credibility of persons who have given evidence. I adhere to the traditional view that the Court should not express opinions about probity and credibility where it is unnecessary to do so, if for no other reason than that it may not be possible to correct inaccurate and hurtful findings.

Mr Murdoch has made no attempt to rely upon s. 606. There may be some argument about whether s. 606 is capable of applying to the situation revealed in evidence. In circumstances where the point has not been argued and which the Court can only speculate about whether all of the relevant evidence has been placed before the Court, the appropriate course is to express no opinion about s. 606.

Sections 613 to 615 vest the Queensland Industrial Relations Commission with remedial powers to deal with alleged invalidities. Those who have participated in these proceedings and those who purport to constitute the Committee of Management of the Association may well wish to consider whether the Commission's jurisdiction should be enlivened. The current irregular conduct of the affairs of the Association cannot be allowed to continue.

I dismiss the application.

I reserve all questions as to costs.".

■ ■ ■

The Queensland Public Sector Union of Employees AND Department of Corrective Services (C/2006/38) 7 September 2006 183 QGIG 619

Industrial Relations Act 1999 - s. 341(2) - appeal against decision of industrial commission

The Court dealt with this matter on 7 September 2006 as quoted below:

"This is an appeal against an Order of the Queensland Industrial Relations Commission issued pursuant to s. 230 of the *Industrial Relations Act 1999* on 14 March 2006. The Order was in the following terms (formal parts omitted, emphasis added):

'**1 Title**

This Order shall be known as the Lotus Glen Correctional Centre Order No 1 of 2006.

2 Parties bound by the order and duty to comply

2.1 This order is binding on Queensland Public Sector Union (QPSU)

2.2 This Order applies in relation to work that is:

(a) performed by employees of Department of Corrective Services, and

(b) that is regulated by the Department of Corrective Services Correctional Employees Award - State 2006 and whose names appear in Schedule "1" to this Order.*

2.3 The QPSU shall, itself and through its Secretary, officers, employees, agents, delegates and members comply with this order.

3 Industrial Action to Stop

3.1 Industrial action as defined in this order shall not occur, or where occurring shall stop, be discontinued, or cancelled and withdrawn.

3.2 The QPSU shall itself, and through its States President, Divisional Councillors, Secretary, officers, employees, agents or delegates (Union Representatives) immediately take all reasonable steps to ensure its members comply with this order and procure its members to carry out their normal duties in connection with the operation of the Lotus Glen Correctional Centre immediately and in accordance with their respective contracts of employment.

3.3 For the purposes of this order:

(a) in respect of the "industrial action" by employees, means any of the following actions taken in relation to industrial issues which relates to work performed by the employees:

(i) a ban, limitation or restriction on the performance of work, or any acceptance of or offering for work;

(ii) a failure or refusal by an employee to attend for work and/or to perform word as required by their contract of employment;

(iii) the performance of work by an employee in a manner different from that in which it is customarily performed or the adoption of a practice in relation to work, the result of which is a restriction or limitation on, or a delay in, the performance of work; and

(iv) a failure or refusal by an employee to attend for work and/or to perform work as required by their contract of employment in order to attend a stop work meeting; and

(b) in respect of employees "industrial action" also means a failure or refusal by an employee to attend for work and/or to perform work as required by their contract of employment in order to attend a stop work meeting, whether this action is taken in relation to industrial issues which relate to their work as required by their contract of employment or otherwise,

But shall not include:

(A) action by an employee that is protected action; or

(B) action by an employee that is authorised or agreed to by Department of Corrective Services; or

(C) action by an employee if:

(I) the action was based on a reasonable concern by an employee about an imminent risk to their health or safety; and

(II) the employee did not unreasonably fail to comply with a direction of the Company to perform other work whether at the same or other workplace, that was safe and appropriate for the employee to perform.

(c) in respect of the QPSU and its Union Representatives "industrial action" means to authorise, direct, organise, encourage or incite any of the members of the union to engage or participate in any conduct set out in sub-paragraph 3.3(a), (i), (ii), (iii) or (iv) or sub-paragraph 3.3(b) of this order.'.

[* Schedule 1 is not reproduced.]

The decision sought by the appellant is that the limb of paragraph 3.2, emphasised in the reproduction of the Order, be set aside.

It is common ground that in *Australian Rail, Tram and Bus Industry Union of Employees, Queensland Branch v Queensland Rail* and *Australian Federated Union of Locomotive Employees, Queensland Union of Employees v Queensland Rail* (2006) 181 QGIG 636, this Court considered the validity of a similar order made by the Queensland Industrial Relations Commission known as the Queensland Rail Order No 3 of 2006. That Order materially provided:

'3.2 The ARTBU and the AFULE shall itself, and through its States President, Divisional Councillors, Secretary, officers, employees, agents or delegated (Union Representatives) immediately take all reasonable steps to ensure its City Traincrew members comply with this order and procure its members to carry out their normal duties in connection with the operation of Queensland Rail immediately and in accordance with their respective contracts of employment.'.

By its decision, the Court declared invalid and set aside that part of paragraph 3.2 of the Queensland Rail Order which provides '...and procure its members to carry out their normal duties in connection with the operation of Queensland Rail immediately and in accordance with their respective contacts of employment.' It is common ground that if the Court follows that decision the appeal must succeed. It is the submission of the respondent that the decision should be reconsidered.

The respondent's core submission is that in paragraph 3.2, the words "immediately take all reasonable steps to" preface both:

' "ensure its members comply with this order" and "procure its members to carry out their normal duties in connection with the operation of the Lotus Glen Correctional Centre immediately and in accordance with their respective contracts of employment". '.

There are difficulties with the submission. To begin with, as Counsel for the appellant submits, paragraphs 2.2 and 3.3(a) and (b) of the Order utilise the drafting technique of words of general application followed by a colon by way of a preface to separate sub-paragraphs which refer to specific matters. On the respondent's construction of paragraph 3.2, one might have expected the paragraph to have been drawn in the same way. Further, on the respondent's construction, it is a little difficult to identify conduct falling within the impugned words which

is not already required by the obligation to 'take all reasonable steps to ensure its members comply with this order'. If, as was suggested in argument, the purpose of the impugned word is to require the taking of reasonable steps to procure members who have returned to work to remain at work, the departure from the drafting technique at paragraphs 2.2 and 3.3(a) and (b) becomes very difficult to ignore. In any event, orders by a court of record, breach of which may be attended by significant sanctions, should not be read beneficially and certainly should not be given a remedial construction. I continue to adhere to the view that 'procure' requires the appellant to ensure that its members:

> 'carry out their normal duties in connection with the operation of the Lotus Glen Correction Centre immediately and in accordance with their respective contracts of employment*.'.

[*i.e. Not merely any relevant industrial instrument, compare s. 277.]

Consistently with *Australian Rail, Tram and Bus Industry Union of Employees, Queensland Branch v Queensland Rail* and *Australian Federated Union of Locomotive Employees, Queensland Union of Employees v Queensland Rail* (2006) 181 QGIG 636, I consider the impugned words to go too far.

I declare to have always been invalid that part of paragraph 3.2 of the Lotus Glen Correctional Centre Order No 1 of 2006 which requires the appellant to 'procure its members to carry out their normal duties in connection with their operation of the Lotus Glen Correctional Centre immediately and in accordance with their respective contracts of employment.' ".

■ ■ ■

St Paul's Lutheran School AND Queensland Independent Education Union of Employees (C/2006/71) 26 February 2007 184 QGIG 113

Industrial Relations Act 1999 - s. 341(1) - appeal against decision of industrial commission

The Court dealt with this matter on 26 February 2007 as quoted below:

> "On 8 February 2006, the Queensland Independent Education Union of Employees (the Union) filed an application in the Queensland Industrial Relations Commission seeking an interpretation of the *School Officers' Award - Non-Governmental Schools 2003* (hereafter the Award). The statement of facts agreed between the Union and the employer, *viz.* St Paul's Lutheran School, was:
>
> '1. Mrs Robyn MacMillan is employed at St. Paul's Lutheran Primary School as a Term Time (part-time) School Officer on a continuing contract of employment.
>
> 2. The employee was employed as a school officer and covered by the School Officers Award - Non-governmental Schools 2003 and the Lutheran Church of Australia Queensland District, Schools Department Certified Agreement 2004.
>
> 3. She has been employed at the school as a School Officer since April 1998.
>
> 4. For the 2004 School year the employee was employed on Monday, Tuesday, Thursday and Friday. She was employed for six (6) hours on each of these days.
>
> 5. However, the employee worked some additional hours during the year. Her total number of hours worked for the year was 1050.50 hours.

6. The employee worked on 41 weeks during the 2004 year.

7. The final day of the scheduled academic year was 9 December 2004. The employee was paid up to, and including, this day.

8. At the conclusion of the 2004 School Year the employee was paid a sum of money for her pro-rata Annual Leave.

9. The employee was not paid for any of the public holidays for Christmas Day, Boxing Day or New Years Day.'.

The questions to which the commission was asked to provide answers were:

'(a) Is a "term-time" employee, who is employed on the basis described in schedule 1, entitled to payment for any Public Holiday(s) which fall on days on which the employee would have been rostered to work (had the employee not been on Annual Leave) during the period of Annual Leave to which the employee is entitled?

(b) What is the correct application of clause 7.1.1 of the Award and section 11(3) of the Act to a "term-time" employee, who is employed on the basis described in schedule 1?'.

[By way of completeness I should add that, as appears from a document entitled 'Projection of Annual Leave for Mrs R. MacMillan' handed up by the Union during the Commission hearing, Christmas Day fell on a Saturday, Boxing Day fell on a Sunday and New Year's Day fell on a Saturday. The gazetted substitute days under s. 3 of the *Holidays Act 1983* were Monday 27 December, Tuesday 28 December and Monday 3 January. All of the substituted days fell within the span of Mrs MacMillan's annual leave.]

By a decision of 12 October 2006, now reported at 183 QGIG 807, the Commission gave an affirmative answer to question (a), held that in those circumstances the issues arising out of the agreed facts had been resolved and declined to answer question (b). St Paul's Lutheran School now appeals.

Each of two clauses of the Award purport to confer on entitlement to payment for public holidays on which an employee does not work, *viz.* clause 4.4.3 which is concerned with term-time (and fixed period) employees and clause 7.6.1 which is contained within a clause headed 'Public Holidays'.

The clauses provide:

'4.4.3 Where a public holiday falls upon a day upon which an employee is normally employed, that employee shall be paid the appropriate rate for the number of hours normally worked on that day.

...

7.6.1 An employee (other than a casual employee) who would ordinarily be required to work on a day on which a public holiday falls is entitled to full pay for the time the employee would ordinarily have been required to perform work on that day.'.

At the core of the Appellant's submission in the proposition that if Mrs MacMillan had not taken her annual leave, she would not have been rostered to work on the three public holidays or at all because she was a term-time employee where services were not required during school vacations. In those circumstances, Mrs MacMillan could not be said to be 'normally employed' (clause 4.4.3) nor 'ordinarily required to work' (clause 7.6.1) on any of the days upon which the three public holidays fell.

The Appellant's analysis of the hypothetical situation in which Mrs MacMillan was not on annual leave seems to me to be entirely correct. But the Commission was not required to deal with the hypothetical situation in which Mrs MacMillan was not on annual leave. The Commission was required to deal with the case which had actually arisen i.e. the case in which Mrs MacMillan was on annual leave.

An employee's entitlement to four weeks' annual leave after completion of a year of employment with an employer is vested by s. 11(2) of the *Industrial Relations Act 1999*. It is an entitlement to be absent from work for four weeks, compare *Re Metropolitan Fire Brigades Board Award* (1964) 56 QGIG 766 at 788 per Commissioner Tait. One cannot assert that Mrs MacMillan was on annual leave without asserting that had she not been on annual leave she would have worked her normal roster. The contention advanced in the Appellant's written submissions, *viz.*:

> 'At the conclusion of the 2004 school year, that is on the last day that the employee was engaged to perform work during that calendar year, the employee was paid an amount of money calculated in accordance with the award, which represented her annual leave entitlements accrued during that year.',

is a contention which cannot be sustained. The Act does not provide for the payment of money in lieu of leave (save in the case of termination). The correct analysis is that in discharge of the duty at s. 13(1) the Appellant paid Mrs MacMillan in advance for the period of four weeks' absence from work upon which she was about to embark. Because of the intrusion of the public holidays her leave was extended by three days. The extension was required by s. 11(3) which provides that 'annual leave is exclusive of a public holiday that falls during the leave'. The period of the extension was covered by the payment in advance because the period of the extension was part of Mrs MacMillan's annual leave. No part of the advance payment may be attributed to the three public holidays. Annual leave is exclusive of such days. However, Mrs MacMillan is entitled to payment for the public holidays in the same way as anyone else who absents himself/herself from work on one of his/her ordinary working days because by happenchance the day is a public holiday, s. 15(1). And in any event each of clause 4.4.3 and clause 7.6.1 of the Award expressly so provide.

The Queensland Industrial Relations Commission was correct to rule that the answer to question (a) is 'yes', I dismiss the appeal.

I reserve all questions as to costs.".

■ ■ ■

Neophytos Foundadjis AND Collin Bailey (C/2007/8) 9 March 2007 184 QGIG 177

Industrial Relations Act 1999 - s. 346(2) - application for extension of time

The Court dealt with this matter on 9 March 2007 as quoted below:

> "On 24 March 2004, Neophytos Foundadjis filed an application seeking recovery of wages in the sum of $420 in the Industrial Magistrates Court at Brisbane. The claim was brought pursuant to s. 399 of the *Industrial Relations Act 1999*. The claim was brought against Collin Bailey. At all material times, though an application under s. 399 is essentially civil in nature, it was the effect of Rules 4 and 92 of the *Industrial Relations (Tribunals) Rules 2000*, that the application was to be dealt with procedurally as it was a complaint under the *Justices Act 1886.*
>
> The application was first mentioned at Brisbane, on 4 May 2004. The Applicant appeared by his then solicitor. The Respondent did not appear. The matter was adjourned until 13 July 2004. On 13 July 2004, the Respondent appeared by Counsel. The Applicant did not

appear. The matter was adjourned until 10 August 2004. Costs of the mention were reserved. On 10 August 2004, the Applicant appeared in person. The Respondent was represented by Counsel. By order of the Court the matter was transferred to the Industrial Magistrates Court at Mareeba. The first mention at Mareeba was set for 23 August 2004. The Applicant was given leave to appear by telephone. The costs of the mention were reserved.

On the first mention of the matter at Mareeba, the Respondent appeared in person. The Applicant did not appear. Legal Aid (Brisbane), who did not otherwise act for the Applicant, drafted and delivered a letter to the Industrial Magistrate seeking a hearing date after 20 December 2004, on the grounds of the Applicant's instructions that; (a) he needed time to gather evidence; and (b) he had an operation scheduled for 27 October 2004 and would require a significant period of convalescence.

The matter was adjourned for hearing on 9 December 2004. On 9 December 2004 the Respondent appeared by solicitor. The Applicant did not appear. On 2 December 2004, a solicitor acting for the Applicant had made written application on his behalf for an adjournment until late February/early March 2005, on the grounds that the Applicant was to have an operation on his back and would be incapacitated for some months. The matter was adjourned to 24 February 2005.

In fact, the matter was brought on early. On 18 February 2005, the Industrial Magistrate brought the matter on because the Court had received a letter from the applicant seeking a further adjournment of the matter because the Applicant's health did not permit him to travel to Mareeba. The Industrial Magistrate ordered that the matter be permanently stayed and that the stay would be lifted only on an application supported by written evidence that the matter would be prosecuted and that the applicant was 'in a condition medically to travel and prosecute the matter'. Nothing further happened until December 2005 when the Applicant made application to have the matter transferred back to the Industrial Magistrate at Brisbane. The application for a transfer was heard on 16 December 2005. The Applicant appeared by telephone. The Respondent appeared by solicitor. The application for a transfer of proceedings was dismissed. An order for costs in the sum of $400 was made against the Applicant. No further step was taken in the matter until 23 March 2006, when the Respondent's solicitor filed an application to strike out the application under s. 399 for want of prosecution. The application that Mr Foundadjis' wage claim be struck out was scheduled for hearing on 24 April 2006. Both Mr Foundadjis and Mr Bailey appeared. The matter was heard. By a reserved decision delivered 18 May 2006, the application under s. 399 was struck out. An order for costs in the sum of $5,076 was made against Mr Foundadjis.

On 6 November 2006, Mr Foundadjis filed an 'appeal' to this Court against the decision of 18 May 2006 in the Industrial Magistrates Court at Mareeba. The application to appeal reached the Industrial Registrar on 13 November 2006. On 13 December 2006, the staff of the Court telephoned Mr Foundadjis and informed him that the Appeal was out of time. He was informed also that he was entitled to make application for the enlargement of time. (The conversation was confirmed by a letter of 18 December 2006). About a month later (16 January 2007) the Applicant filed an application for an extension of time.

This Court has traditionally adhered to the view that s. 346 of the *Industrial Relations Act 1999* represents a legislative assessment that in the ordinary category of cases, justice will best be served by adhering to a 21 day limitation period, though on occasion the limitation may defeat a perfectly good case, and that the discretion to extend time should be exercised only where the applicant for an extension of time discharges a positive burden of demonstrating that the justice of the case requires the indulgence of a further period, compare *The Queensland Public Sector Union of Employees v Department of Corrective Services* (2006) 182 QGIG 503 and the cases there cited.

In ordinary circumstances the evaluation of whether a case advanced by an applicant for extension of time discharges that positive burden will be guided by the principles developed by Wilcox J in *Hunter Valley Development Pty Ltd v Cohen* (1984) 3 FCR 344 at 348 to 349; compare *Chapman v State of Queensland* [2003] QCA 172 at [3].

The period of delay is substantial. Against the background of a 21 day limitation period, a delay of almost 5 months cannot be otherwise characterised. Neither is there an adequate explanation.

The first explanation proffered by Mr Foundadjis (in the document which initiated the proceedings for an extension of time) was that he did not know of a limitation period and did not know where to go to appeal. That explanation was not persisted with. The case developed on the hearing of the application for the extension of time was that Mr Foundadjis was in truth within time. To understand the argument, it is necessary to know that on 29 May 2006, Mr Foundadjis filed an appeal against the decision of the Industrial Magistrate at Mareeba on 16 December 2005 refusing to transfer Mr Foundadjis' wage claim back to Brisbane. (At times Mr Foundadjis has asserted that the Appeal was filed much earlier but the documentation that he himself tendered shows the correct date to be 29 May 2006.)

Regrettably, the Appeal was filed in the District Court at Cairns. It was subsequently (and properly) rejected as an appeal beyond jurisdiction. Mr Foundadjis claims that during the period that the "Appeal" to the District Court was pending, Mr Foundadjis claims he spoke to an officer within the Registry about whether it was necessary to pay a further sum of money to appeal also against the Decision of 18 May 2005, which dismissed his claim for wages for want of prosecution. He says that he was told that that matter might be dealt with within his existing Appeal against the refusal to transfer the wage claim back to Brisbane. It may well be that Mr Foundadjis' recollection is faulty. It may well be that Mr Foundadjis and the staff member were at cross-purposes. But I find it inherently improbable that an officer of the Registry of the District Court at Cairns would accept an oral enlargement of an appeal to cover quite a different matter in a circumstance in which nothing would be given to the proposed Respondent to indicate the nature of the new case with which the Respondent would be confronted. And I consider it to be equally improbable that a filing fee would be waived in such circumstances. I reject Mr Foundadjis' evidence.

Mere lapse of time (of itself) is not generally regarded as imposing an insuperable obstacle to an extension of time; neither is the lack of satisfactory explanation for the delay; compare *Beil v Mansell* (No.1) [2006] 2 QdR 199. But, in this case, the prospects of success of the Appeal are not good. Mr Foundadjis faces the very significant difficulty of reversing the exercise of a discretionary power, compare s. 102G of the *Justices Act 1886*, which is vested not in this Court but in the Industrial Magistrates Court. It would be necessary to identify an error of law or of principle, and on the face of the Industrial Magistrates reasoning I can see no such error, or, alternatively, to show that the decision was so manifestly unjust that it must have been underpinned by an unidentified error of law. Given the history of inordinate delay, exacerbated by the sporadic fruitless listing of the matter, very real difficulties confront any advocate attempting to make out such a case. Additionally, success of the Appeal against the decision to strike out the proceedings under s. 399 would not lead to those proceedings being heard. Success on Appeal to this Court would merely restore the proceedings pursuant to s. 399 to their place within the list of proceedings in limbo. The stay order would still be in force. It would be necessary for Mr Foundadjis, whose health required him to adjourn the hearing of the application for leave to appeal, to demonstrate that his health would permit him to travel to Mareeba and prosecute the case. There is no indication of when, if at all, Mr Foundadjis might succeed in doing that.

The prejudice to Mr Foundadjis if the application for extension of time is not granted is clear. He will lose his claim for wages. However, without seeking to disparage persons in impecunious circumstances seeking to recover modest amounts of unpaid wages, one has to note that the sum asserted to be due is $420. Further, this is not a simple wage claim about the operation of an industrial instrument upon agreed facts. Mr Bailey, a farmer, claims that if Mr Foundadjis was employed at all, he was employed by a contractor on his (Mr Bailey's) farm. And the conduct and costs of the proceedings has prejudiced Mr Bailey. On the evidence before the Industrial Magistrate, Mr Bailey's costs had exceeded $6,000 before the application to strike out the s. 399 proceedings was heard. I note that there are orders for costs in the sum of $5,476 and that the issue of costs in some proceedings have been reserved. However, the orders for costs which have been made have not been discharged and I can understand that Mr Bailey would be apprehensive about his prospects of recovering same.

Weighing all of those factors, I am not persuaded that Mr Foundadjis should be allowed the indulgence of an application for extension of time.

I dismiss the application for extension of time. It follows that Mr Foundadjis does not have an appeal to this Court. The Respondent seeks costs in the sum of $1,000. As the application for extension of time had no objective prospect of success the power to award costs at s. 355 is triggered. The Respondent had incurred costs of $1,000 before the substantive hearing began. He is entitled to at least partial indemnity. I order that the Applicant forthwith pay costs in the sum of $1,000 to the Respondent.".

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Brian Marfleet AND Lindsay Meyers Pty Ltd (C/2006/42); Hall P; 18 August 2006; 183 QGIG 240

Workplace Health and Safety Act 1995 - s. 164(3) - appeal against decision of industrial magistrate

The Defendant, a corporation under the law, was charged with a breach of s. 24 of the *Workplace Health and Safety Act 1995*. The obligation said to have been breached was the obligation of s. 29A to ensure that a person performing work activity for the purposes of a business is not exposed to risk to health and safety. A circumstance of aggravation was alleged, *viz.* grievous bodily harm to Ian Allen Palmer. There was a plea of guilty. No conviction was recorded. No complaint was made about that on the appeal. The subject matter of the appeal was the quantum of the fine which was imposed by the Industrial Magistrate.

The Industrial Magistrate had the advantage of an agreed statement of facts. The essential elements of the agreed statement of facts were:

"a) The injured worker was using a 'Weining Unimat 23E' planer to plane cut and mould timber as a part of his ordinary work functions and duties on the day of the incident;

b) The plant had become jammed and was being cleaned after being made operational by the Defendant's head machinist;

c) The injured worker inadvertently placed his hand into the path of an unguarded rotating blade on the planer whilst he was trying to point out what he thought was a timber splinter under a roller wheel in the machine;

d) The rotating planer blade was an unguarded hazard when it caused the injury;

e) A control in the form of a guard for this part of the planer had been manufactured and supplied with the machine when purchased by the Defendant;

f) Guarding was not installed on the plant at the time of the incident and lay nearby on a table;

g) Prior to the incident, the Defendant had verbally instructed the injured worker:

   i. not to touch any part of the internal workings of the machine and if there were any problems with the machine to call over the head machinist, or one of the other machinists, as the machinists were trained and instructed to deal with those matters; and

   ii. not to be in the vicinity of the machine when the cover was up and the machinist was working on the machine.".

The Industrial Magistrate imposed a fine of $25,000. The maximum available fine was $375,000: see s. 24 of the *Workplace Health and Safety Act 1995* and s. 181B of the *Penalties and Sentences Act 1992*.

The Industrial Court held the fine to be manifestly inadequate. To the extent that hazards posed by moving blades can ever be made safe, the machine had been made safe. Subsequently, on the Defendant's watch a safe machine had been made unsafe. There were no administrative arrangements in force for periodic inspections to ensure that the guards were in place and that the injured worker was complying with his instructions. Whilst blameworthiness was a relevant factor, the concentration was on the blameworthiness of the Defendant not the blameworthiness of the worker. A purpose of the *Workplace Health and Safety Act 1995* is to protect workers against themselves.

There were significant mitigating factors. The Defendant was a first offender. There had been a timely plea of guilty and cooperation with the investigating agency and the prosecution. The Defendant has otherwise been a good corporate citizen. The fine was imposed against the background that the Defendant was also ordered to pay $64.20 costs of Court and $2,406.03 by way of investigation costs.

At first instance the Complainant nominated a "range" of $30,000 to $40,000 and suggested a fine of $35,000. Against that background a fine of $35,000 was imposed.

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All Souls St. Gabriel's School Inc. AND Leon Thomas (C/2006/47); Hall P; 5 October 2006; 183 QGIG 765

Workplace Health and Safety Act 1995 - s. 164(3) - appeal against decision of industrial magistrate

The Defendant conducted a secondary school which provided education in both academic and vocational subjects. The latter included agriculture and engineering subjects. On 6 May 2005 the Complainant, a public officer within the meaning of s. 142A of the *Justices Act 1886* and an inspector duly appointed under the provisions of the *Workplace Health and Safety Act 1995* (the Act), made a complaint that contrary to s. 24(1) of the Act, the appellant had failed to discharge the workplace health and safety obligation imposed upon it by s. 28(3) of the Act. Section 28(3), at all times material to the complaint, provided:

> "An employer has an obligation to ensure other persons are not exposed to risks to their health and safety arising out of the conduct of the employer's business or undertaking.".

The risk was particularised as the risk of death or injury (including death or injury to a named pupil). The source of the risk was identified as the "use of a plasma arc cutting torch in the cutting of metal drums". A circumstance of aggravation was alleged, *viz.* the death of the pupil.

The Defendant pleaded guilty. The Complainant did not seek the recording of a conviction and no conviction was recorded. A fine in the sum of $80,000 was imposed. The maximum penalty which the Acting Industrial Magistrate might have imposed was $375,000. The appeal was against the quantum of the fine imposed by the Acting Industrial Magistrate. It was common ground by way of mitigation before the Acting Industrial Magistrate and on the appeal to the Industrial Court that there was: (a) a prompt plea of guilty; (b) remorse; and (c) the absence of prior conviction. In summary form, the substantial case developed by the appellant was that: (a) the Acting Industrial Magistrate was under a misapprehension as to the facts; (b) the Acting Industrial Magistrate wrongly applied decisions of the Industrial Court about blameworthiness; and (c) the fine was manifestly excessive.

The challenge to the Acting Industrial Magistrate's understanding of the facts, which raised no issue of principle, was unsuccessful. The other challenges also failed. As to the matter of blameworthiness, the Industrial Court held that whilst blameworthiness is a relevant factor on sentence, compare s. 9(2)(b) of the *Penalties and Sentences Act 1992,* foreseeability is not the sole measure of blameworthiness. Granted that the teacher's activities were entirely unexpected, the additional factor was that the appellant as a school had a responsibility for the pupils within its care. The failure to recognise and discharge that obligation attracts consideration of deterrence, compare s. 9(1)(c) and denunciation, compare s. 9(1)(d). The penalties imposed under the *Workplace Health and Safety Act 1995* must underpin a system of absolute obligation established by that Act, not a system of fault-based liability. The fine of $80,000 which was less than a quarter of the available maximum was not viewed as excessive.

■ ■ ■

Adam John Low AND Swanny's Industries Pty Ltd C/2006/48; Hall P; 11 October 2006; 183 QGIG 783

Workplace Health and Safety Act 1995 - s. 164(3) - appeal against decision of industrial magistrate

The Defendant, a corporation under the law, was charged with a breach of s. 24 of the *Workplace Health and Safety Act 1995*. The obligation said to be breached was that imposed by s. 28(3). The risk particularised was the risk of death or injury, including the risk of fatal crush injuries to a named worker. The source of the risk was identified as the use of an overhead crane in lifting a fibreglass mould. A circumstance of aggravation was pleaded, *viz.* the death of the worker. There was a plea of guilty. The Complainant did not did not seek the recording of a conviction and no conviction was recorded. No criticism was made about the decision not to record a conviction. The appeal was confined to the quantum of the fine imposed.

The facts were singular and unlikely to occur again. They are not reproduced. The approach taken by the Industrial Court in reviewing the sentence does warrant reproduction. The Court said:

> "The fine imposed by the Industrial Magistrate was $30,000. It is contended that the fine is so manifestly inadequate that, within the principle enunciated in *House v The King* (1936) 55 CLR 499 at 504 to 505 per Dixon, Evatt and McTiernan JJ, one should infer that in an unexplained way the sentencing discretion of the Industrial Magistrate has miscarried. The submission must succeed. The objective of the *Workplace Health and Safety Act 1995* is to prevent a person's death, injury or illness being caused by a workplace, by work activities or by specified high risk plant, s. 7(1). The objective is sought to be achieved by preventing or minimising a person's exposure to the risk of death, injury or illness caused by a workplace, by work activities or by specified high risk plant, s. 7(2). The obligations imposed by Part 3 are directed

to establishing the framework for preventing or minimising exposure to risk, s. 7(3). Section 24 seeks to underpin the obligations by imposing quite significant penalties which, in the case of a corporation, are subject to a multiplier of five, s. 181B of the *Penalties and Sentences Act 1992*. Where there are aggravating circumstances, i.e. death or actual injury, the penalty is very much increased; not surprisingly because the occurrence of death, injury or illness, by definition, establishes that workplace health and safety has not been ensured, s. 22. In particular, when the circumstance of aggravation is death and the defendant is a corporation, the maximum penalty which is available to a sentencing Industrial Magistrate is inflated to $375,000. Against that background, a defendant who has breached an obligation and has thereby caused a workman to perish would be unduly optimistic to anticipate walking from a court room burdened with a $30,000 fine in all but exceptional circumstances. Whilst recognising the moderating force of the *Penalties and Sentences Act 1992,* it seems to me that the Industrial Magistrate was unduly lenient. It must be borne in mind that defendants are not penalised for killing or injuring workmen. Defendants are penalised in order that workmen will not be killed or injured; compare *Alcatel Australia Limited v WorkCover Authority of New South Wales* (1996) 70 IR 99 at 106.

Before the Industrial Magistrate, the appellant contended for a penalty within the range $60,000 to $70,000. I have some difficultly with the range, derived as it is from post-mitigation sentences imposed in quite dissimilar cases. However, I accept that the respondent, who presumably thought that the proceedings before the Industrial Magistrate had concluded the matter, would be entitled to feel aggrieved if not only is the decision of the Industrial Magistrate set aside but the sentencing process is conducted on a basis not previously contemplated. Consistently with the approach taken at first instance, I therefore accept the range of $60,000 to $70,000. There was an early plea. The respondent is a first offender. Post the death of the workman remedial steps were taken. Whilst the respondent declined to participate in an interview, there seems otherwise to have been cooperation with the authorities. I accept that the sentence should be at the lower end of the range. The materials put in by the respondent as to its financial circumstances do not establish that the imposition of the fine at the lower end of the range would be an act of oppression. Rather, the financial materials show that the respondent has the capacity over time to pay a modest fine.

I set aside the fine of $30,000 imposed by the Industrial Magistrate. I order the respondent to pay a fine in the sum of $60,000. I confirm the order of the Industrial Magistrate that the respondent pay professional costs in the sum of $750, costs of court in the sum of $63.10 and investigatory costs in the sum of $2,000. I order that the respondent have 18 months from the date of this decision to pay the foregoing amounts. In default, levy on distress will apply. There is no power to allow the appellant the costs of the appeal.".

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Paul Bradley Waltham AND Cairns Synergy Electrical Pty Ltd C/2006/52; Hall P; 1 June 2007; 185 QGIG 40

Workplace Health and Safety Act 1995 - s. 164(3) - appeal against decision of industrial magistrate

The worker injured by the breach of s. 28(1) suffered fracture injuries to his left elbow and left wrist which required surgical intervention. (A reference from the injured worker was tendered at first instance indicating that the Respondent provided him with great assistance on his return to work upon light duties.) The maximum available penalty was $375,000. The Industrial Magistrate, who declined to record a conviction, imposed a fine of $25,000 and ordered payment of costs (investigation and professional) in the sum of $1,500. No complaint was made about the costs orders. No complaint was made about the decision not to record a conviction.

The Appeal was about the quantum of the fine.

It was common ground that the determination of the appropriate money amount of a fine is a quintessential exercise of discretion. The discretion is vested in the sentencing Industrial Magistrate. The Industrial Court may interfere only where the exercise of discretion has "miscarried" as described in *House v The King* (1936) 55 CLR 499 at 504-505 per Dixon, Evatt and McTiernan JJ. Here, the Industrial Magistrate was found to have acted on quite a wrong principle.

The facts, in short form, were that:

> "On 9 June 2005 the injured worker named in the charge attended a residence at 189 Aumuller Street, Cairns in company with an apprentice in his charge. Their employer, the Respondent, had requested them to replace the main box and point of attachment for a power cable feeding the premises. The main box and point of attachment appeared to be accessible by ladder without the need to access the roof. After fixing the main box from the ladder the worker discovered it was difficult to attach a fresh point of attachment in the same location as before because of rot. He decided to shift the ladder to the rear of the premises to climb up on the roof and walk back over to the fixing point to explore a better means of fastening the power cable.
>
> A small section of the roof incorporated a section of light coloured sheeting which the worker noticed was different from the balance of the metal roof. In traversing the roof the worker stepped onto the light coloured alsonite sheeting and fell through it when it gave way. It is plain that when walking in the vicinity of the sheeting he had not walked on the clearly visible lines of roofing screws. Rather he stepped on the unsupported span between the lines.".

Additionally, it emerged that the admittedly experienced worker had been given no formal instruction or training by the Respondent about the performance of work at a height, had received no formal induction and was not provided with safety equipment additional to the ladder. The suggestions made at first instance that the provision of a scissor crane, a platform for working at heights and/or roof ladders, would have been of assistance were abandoned on the Appeal. The suggestion that planks would have been of assistance was maintained. And for completeness, it is appropriate to add that the fall was at approximately 5 metres.

The error of principle was found in the following passages from the Industrial Magistrate's decision of 21 August 2006:

> "I find it of particular relevance that the employee injured was an experienced electrician. Mr [indistinct] fell through the roof when he ventured to walk upon - walk other than along screw or nail lines. A generally informed and unbiased observer might have expected any person exercising rudimentary common sense would not chance an accident by walking on unsupported fragile material some distance above the ground.
> ...
>
> An employer in reposing in an employee confidence in his ability to do the job to the extent of assigning to him an apprentice, might consider him to be sufficiently astute not to put his personal safety at risk.
> ...
>
> The prosecutor argues that the sentencing range ought to be in the region of $33,000 to $38,000, and has tendered sentencing comparatives to assist the Court. I have taken those comparatives into consideration. I believe that the penalties and the comparatives can be distinguished by a fact of blameworthiness that can be attributed to the injured employee.
> ...

I am satisfied that a fine of $25,000 establishes a balance between the penalty that may be imposed in consideration of the objective gravity of the offence, mitigated by an assessment of relative blameworthiness and the financial circumstances of the defendant...".

The Industrial Court held that the obligation imposed upon the employer by s. 28(1) requires the employer to ensure that his employees are free from, *inter alia*, injury or the risk of injury arising out of the conduct of the employers business or undertaking. Workers are to be protected whether they are fit or fatigued, careful or careless, experienced or inexperienced, overconfident of their skills or simply foolish. The obligation is not discharged by engaging experienced staff and trusting them to care for themselves. Given that the purpose of sentencing is to underpin rather than to undermine the Act, an employer is not entitled to seize the great mitigating advantage of an early plea of guilty coupled with the cooperation with authority, and then to explain away the objective gravity of the failure to discharge the obligation by attributing blame to the hapless employee. Blameworthiness is always a factor. But the blameworthiness with which one is concerned is the blameworthiness of the (defendant) employer. Where the casual nexus is admitted and the grievous bodily harm to the worker is inextricably intertwined with the breach of obligation and the policy reasons for imposition of the obligation, a significant penalty was required.

The Industrial Court set aside the fine of $25,000 and imposed a fine of $38,000.

■ ■ ■

Uwe Arthur Willi Hetmanska AND Q-COMP (C/2006/68); 2 March 2007; (2007) 184 QGIG 151

Workers' Compensation and Rehabilitation Act 2003 - s. 561 - appeal against decision of industrial commission

Mr Hetmanska, claimed benefits under the *Workers' Compensation and Rehabilitation Act 2003,* in respect of a neck condition which had become painful over a period of time when (as a worker) he had been driving a vehicle with poor suspension in rough terrain. Initially, WorkCover Queensland accepted that the neck condition was an injury for the purposes of s. 32. However, the time came when WorkCover Queensland concluded that the work-related aggravation of an existing degenerative condition had come to an end, and that any continuing pain was attributable to the natural advance of the degenerative condition. As he was entitled to do, on 15 February 2006, Mr Hetmanska sought a statutory review of WorkCover Queensland's decision. By a letter dated 9 March 2006, The Workers' Compensation Regulatory Authority (commonly referred to by its trading name, Q-COMP) confirmed the decision of WorkCover Queensland. On 7 April 2006, Mr Hetmanska filed a notice of appeal pursuant to s. 550 of the *Workers' Compensation and Rehabilitation Act 2003,* by which he invited the Queensland Industrial Relations Commission to set aside the decision of Q-COMP.

When the matter was called in the Queensland Industrial Relations Commission on 11 July 2006 (in Rockhampton), and the presiding Commissioner was indicated the process which the Commission proposed to follow, Mr Hetmanska chose to remonstrate with the Commissioner. It is apparent from the transcript that Mr Hetmanska was not at that stage willing (or perhaps able) to call medical practitioners to support his case. Although there was some suggestion that Mr Hetmanska was himself prepared to give evidence, it is not immediately apparent that he was willing to participate in cross-examination, to expose medical witnesses (if ultimately located) to cross-examination or to cross-examine any witnesses called by Q-COMP. Mr Hetmanska preferred a process under

which the Commissioner would converse with Mr Hetmanska, would then converse with Q-COMP and would finally make a decision. That is not a process in which the Queensland Industrial Relations Commission, exercising jurisdiction under the *Workers' Compensation and Rehabilitation Act 2003,* has authority in which to engage. In the result, Mr Hetmanska walked out.

Q-COMP did not ask for the proceedings to be dismissed when Mr Hetmanska walked out. The Commissioner did nothing of his own motion to bring proceedings to an end. They were re-listed for a telephone hearing on 27 July 2006 in order that the matter might be further progressed. The transcript shows that Mr Hetmanska adhered to the position which he had taken up on 11 July 2006. On Q-COMP's application, the matter was dismissed.

Mr Hetmanska appealed to the Industrial Court. The Industrial Court took as a starting point the proposition that the Queensland Industrial Relations Commission is a court of record, see s. 255 of the *Industrial Relations Act 1999*. It has inherent jurisdiction to ensure that its processes are not abused, compare *Duncan v Lowenthal* [1969] VR 180 at 182 and *von Risefer and Others v Permanent Trustee Co Pty Ltd and Others* [2005] QCA 109 at [14] and [15] per Keane JA with whom McPherson JA agreed. That power extends to purging its lists of cases which have not been reasonably prosecuted, or are not being reasonably prosecuted; compare *Duncan v Lowenthal op. cit.* That was the relief which Q-COMP sought. The transcript suggests that the Commissioner was initially disposed to stay the proceeding and adjourn the matter to the Registry to a date to be fixed. The obvious difficulty with that course was that at some stage the proceedings might be revived, e.g. on the basis of evidence that Mr Hetmanska was willing and able to prosecute the Appeal in the ordinary way. Q-COMP would not be able to close its files. It is understandable that Q-COMP sought an order dismissing the Appeal. The discretion to make such an order is vested in the Queensland Industrial Relations Commission. The discretion is not vested in the Industrial Court. There was no suggestion that the Commissioner erred in law or in principle.

To succeed on the Appeal to the Court it was necessary for Mr Hetmanska to satisfy the Court that the decision of the Queensland Industrial Relations Commission was so unreasonable and plainly unjust that the Court might infer that there had in some way been an undiscoverable failure to properly exercise the jurisdiction, compare *House v King* (1936) 55 CLR 499 at 504 to 505 per Dixon, Evatt and McTiernan JJ. Mr Hetmanska had failed to do that. The stance which Mr Hetmanska took up in the Commission left the Commission with little alternative but to protect Q-COMP and to protect public confidence in the Commission's processes by making an order of the type which was made.

The appeal was dismissed.

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Darius Adair Carter AND Q-COMP (C/2006/75); 8 March 2007; (2007) 184 QGIG 155

Workers' Compensation and Rehabilitation Act 2003 - s. 561(2) - appeal against decision of industrial commission

For present purposes, it is sufficient to say that the Appeal raised issues about the capacity of the Industrial Court to require the Commission to hear again an appeal under the *Workers' Compensation and Rehabilitation Act 2003*. The Court concluded:

"In short form, the issues arise in this way. By s. 265(1) of the *Industrial Relations Act 1999*, the Commission has jurisdiction in all of the matters committed to the Commission by that Act or 'another Act'. Plainly, the *Workers' Compensation and Rehabilitation Act 2003,* is such 'another Act'. By s. 349(1)(e) and s. 349(2)(a) and (c) of the *Industrial Relations Act 1999*, decisions of the Commission are final and conclusive and cannot be appealed against, reviewed, quashed, or invalidated in any court. An exception to that firm rule is provided by s. 349(4) in the situation in which a right to appeal is conferred by the *Industrial Relations Act 1999* or by

'another Act'. The *Workers' Compensation and Rehabilitation Act 2003* is such 'another Act'. The right of appeal (to this Court) arises under s. 561 of that Act. It is s. 561 which is relied upon by Mr Carter in his Application to Appeal. The problem confronting Mr Carter is that the relief sought in the event of success, i.e. that the matter be remitted to the member of the Commission by whom it was heard at first instance, is not one of the forms of relief made available by s. 562 where a s. 561 appeal succeeds. (If relief be available on the grounds advanced, nomination of the incorrect section is not fatal). Potentially, though the matter has not been developed, a question arises about whether an appeal might be mounted against the decision of the Commission pursuant to s. 341(1) of the *Industrial Relations Act 1999,* on the ground of error of law or excess or want of jurisdiction. In ordinary circumstances, one would not expect a litigant to pursue such an appeal when an appeal by way of re-hearing, in the *Warren v Coombes* (1979) 142 CLR 561 sense, is available under s. 561 of the *Workers' Compensation and Rehabilitation Act 2003.* The unusual attraction here is that pursuant to s. 341(3) it is open to this Court to allow the Appeal, set aside the decision at first instance and remit the matter to be heard and determined according to law. As noted that issue has not directly arisen, but an issue has arisen about s. 248(1)(e) of the *Industrial Relations Act 1999*. Section 248(1)(e) provides that this court may:

> '(e) exercise the jurisdiction and powers of the Supreme Court to ensure, by prerogative order or other appropriate process -
>
> (i) the commission and magistrates exercise their jurisdictions according to law; and
> (ii) the commission and magistrates do not exceed their jurisdiction.'.

The great prerogative writs were *mandamus, prohibition*, *certiorari*, *habeas corpus* and *quo warranto*. Presumably, the three writs first mentioned are the writs aimed at by s. 248(1)(e). It is the writ of *mandamus* which is relevant here. The case made by the Appellant is that the proceedings in the Commission were so procedurally deficient that the Commission did not exercise its jurisdiction, i.e. the case developed is one of constructive failure to exercise jurisdiction, compare *Minister for Immigration v Bhardwaj* (2002) 209 CLR 597 at [51] per Gaudron and Gummow JJ and the cases there cited. Accepting that in some such cases *mandamus* and *certiorari* will overlap, this is not such a case. *Certiorari* is available for error on the face of the record. Assuming that it is a consequence of s. 559(b) of the *Workers' Compensation and Rehabilitation Act 2003,* that the record of the proceedings in the Commission is expanded to include the reasons for decision (a bold assumption in light of the decision of the Court of Appeal in *Kriticos v State of New South Wales* (1996) 40 NSWLR 297), the case developed by the Appellant requires reference to the transcript and to additional evidence as well as to the initiating application to appeal, to the order and to the reasons.

The writs of *mandamus*, *prohibition* and *certiorari* are no longer issued by the Supreme Court. The jurisdiction to grant the relief or remedy previously made available by such writs continues but simpler initiating procedures and more contemporary orders are now in place, re: *Judicial Review Act 1991*. In my view, this Court should emulate those procedures and orders. I am also prepared to accept that whether as a consequence of s. 12 of the *Judicial Review Act 1991,* or the proper exercise of jurisdiction, relief pursuant to s. 248(1)(e) should not be made available where an adequate appeal is available. The difficulty confronting the Respondent is that the Appeal provided by s. 561 of the *Workers' Compensation and Rehabilitation Act 2003*, whilst perfectly adequate where there is an error within jurisdiction or an excess of jurisdiction, is not adequate where there has been a constructive failure to exercise jurisdiction in that it does not allow for an order requiring the Commission to exercise jurisdiction. In my view, if the Commission fails to exercise jurisdiction, it may be ordered to hear and determine the matter according to law, compare the order made against an Industrial Magistrate in *Findling v Q-COMP* (2005) 179 QGIG 828.".

■ ■ ■

Decisions of the Industrial Commission of Queensland

The decisions summarised below are a sample of decisions released and gazetted by the Queensland Industrial Relations Commission during the year.

Decisions of the Full Bench

Queensland Council of Unions AND the Crown and Others (B/2005/1197) 182 QGIG 565 AND The Australian Workers' Union of Employees, Queensland AND The Crown and Others (B/2005/1198) 27 July 2006 182 QGIG 607

Industrial Relations Act 1999 - s. 287 - application for a declaration of general ruling
Industrial Relations Act 1999 - s. 288 - application for statement of policy

On 10 November 2005 the Queensland Council of Unions (QCU) filed an application seeking a general ruling pursuant to s. 287 of the *Industrial Relations Act 1999* (the Act) and a statement of policy pursuant to s. 288 of the Act in regard to the principles of wage fixing. In so doing the QCU was seeking a 4% increase to:

- award wage rates;
- existing award allowances which relate to work or conditions which have not changed and service increments; and
- the level of the Queensland Minimum Wage as it applies to all employees.

Whilst The Australian Workers' Union of Employees, Queensland (AWU) also filed a similar application on 10 November 2005 there was no joinder of the applications. The AWU application was dealt with in a separate decision.

The QCU submitted that the 4% it was seeking was a moderate increase which would partially maintain the relative value of the wages of Queensland's award-reliant workers. The QCU contended that the 4% claim was below the current market rates as reflected in the Wage Price Index (WPI), at 4.3%, and less than the average level of increase in rates in Queensland certified agreements in the quarter ending December 2005, at greater than 4.5%.

The QCU further submitted that the Queensland economy had performed effectively and efficiently on all major indicators since the introduction of the Act in 1999, that the Queensland economy is forecast to grow by 4.25% in 2005-06. The continued strength in the labour market, rising real incomes and solid population growth were all expected to underpin a robust growth in consumption expenditure. The QCU also pointed to the fact that jobs growth in Queensland in 2005-06 is forecast to grow by 2.75% with the unemployment rate forecast to remain unchanged at 5%.

The QCU was seeking an operative date of 1 September 2006.

The application by the AWU was similar to that of the Queensland Council of Unions.

In its application the AWU relied upon the material and the submissions of the QCU. Those parties appearing in B/2005/1197, other than the QCU, provided the same material and submissions in respect of both B/2005/1197 and B/2005/1198.

The Queensland Government position essentially supported a $20.00 per week increase to all state award rates of pay and the Queensland Minimum Wage, with an operative date of 1 September 2006. The Queensland Government also supported a 3.5% increase in work related allowances and service increments.

QCCI supported a $15.00 per week increase in award rates of pay and in the Queensland Minimum Wage respectively as well as a 2.6% increase to work related allowances and service increments with an operative date of 1 September 2006.

QRTSA opposed both the QCU claim and the Queensland Government's response to it. QRTSA supported a $15.00 per week increase in wage rates and a 2.6% increase in work related allowances with an operative date of 1 September 2006.

QHA opposed the QCU claim and supported a $15.00 per week increase in award wages and did not oppose an increase in work related allowances directly proportional to a flat rate increase of $15.00 on the C10 classification in the *Engineering Award - State 2002*.

QFVG supported the position of QCCI in pressing for a $15.00 per week increase to award wage rates contending that such an amount represented a reasonable and appropriate wage increase.

BIAQ appeared to support the position adopted by QCCI although, in its written submission, the BIAQ made no reference to supporting a $15.00 per week increase.

QCGA supported an increase of $15.00 per week in award rates of pay and the Queensland Minimum Wage, respectively, as well as an increase of 2.6% in existing allowances and an operative date of 31 December 2006.

AIG opposed both applications and supported the position of the Commonwealth Minister in that the hearing of the claim should be adjourned to await a decision of the AFPC (see quote below).

NRA opposed the QCU application on behalf of the NRA membership in the Queensland retail sector and in the aged care industry in Queensland arguing that the proposed 4% increase could not be sustained. NRA did not propose any alternative relief, simply relying on the position adopted by the Commonwealth Minister.

RCEA opposed the QCU claim with its position being that it does not support any wage increase whatsoever.

The Commission also noted in its decision:

> "Early this year the Commonwealth Minister made application to have both the QCU and AWU applications adjourned until after the AFPC had made its first minimum wage determination and the Australian Industrial Relations Commission (AIRC) had made a similar determination in relation to persons described as 'transitional employees' under the *Workplace Relations Act 1996* (WRA). The Full Bench determined that it had a 'legislative obligation to hear this application and determine them on the material presented by those who appear in support or in opposition to the applications' and that the 'matters raised by various organisations during the course of the hearing are matters that, no doubt, will be argued before the Full Bench when dealing with the substantive application': see *Minister for Employment and Workplace Relations v Queensland Council of Unions and Anor* (2006) 181 QGIG 292. The Commonwealth Minister was given a limited right to be heard in the substantive application, appearing and making submissions in this matter.".

After having heard submissions from parties regarding the Commonwealth Minister's application to have the QCU and AWU applications adjourned until after the AFPC decision was made the Commission said:

> "To delay any decision on the applications before us would simply mean that those employees who rely upon awards to determine their wages and conditions would be disadvantaged by the delay. There is still no pronouncement by the AFPC of when it will release any

decision. Traditionally, the Queensland state wage case outcomes have been available to employees on 1 September in any given year, with advance notice being given to employers of that operative date. We have not been convinced that we should depart from that tradition and we will proceed to determine this application.".

The Commission heard submissions and evidence from the parties on a number of issues, which included, Legislative Parameters, International Economy, Australian Economy, Queensland Economy, general wage movements, social factors and costing.

The Commission in its decision said:

"[280] At the outset we make a few general comments. Firstly, we are somewhat surprised that the QCU has sought, in this application, a percentage increase in wages. The history of Queensland state wage cases reveals that in the past thirteen years a flat dollar increase has been granted. The last time a percentage increase was awarded in Queensland was in 1992: see *Queensland Trades and Labour Council v The Crown and Others* 139 QGIG 369.

[281] Secondly, we are mindful that the QCCI, in particular, and the other organisations supporting the QCCI position, have adopted a reasonable position in respect of this claim. This is in contrast to the positions adopted by the respective organisations in past safety net reviews of the AIRC. The position of supporting a $15.00 per week increase is one that does at least provide employees with a real level of increase in wages albeit a very small increase in real wages.

[282] Thirdly, we intend to continue the practice of award flat dollar increases as this has the benefit of targeting lower paid workers with a proportionately higher increase.

[283] Fourthly, we note that the economic data on unincorporated businesses in Queensland was limited. Whilst the collection of economic data on such unincorporated businesses may not have been important in previous state wage cases it now assumes considerable relevance. It is to be hoped that by the 2007 state wage case, more economic data on such businesses may be available to that Full Bench.

[284] **Queensland Minimum Wage:** There are four positions on the claim to increase the Queensland Minimum Wage currently before this Full Bench:

- the QCU's claim is for a 4% increase to the Queensland Minimum Wage which would take the minimum wage from $484.40 to $503.80 i.e. an increase of $19.40 per week. The claim also seeks a 4% increase on all award rates of pay. The calculation of that increase ranges from $19.40 per week at the level of the Queensland Minimum Wage to $32.00 per week;

- the Queensland Government's position is that the Queensland Minimum Wage should be increased by $20.00 per week;

- QCCI, QRTSA, QHA, QFVG, BIAQ and QCGA support a $15.00 per week increase i.e. an increase of 3.1%; and

- RCEA's position is that no increase should be awarded.

[285] The claim before us is for a $19.40 per week increase in the Queensland Minimum Wage. Our Declaration of Intent issued on 20 February 2006 and published shortly thereafter announced the QCU claim of a 4% increase to the Queensland Minimum Wage. It would be inappropriate for this Full Bench to

grant something in excess of the claim. Whilst the Queensland Government supports a $20.00 increase in the Queensland Minimum Wage, it is not the applicant in this proceeding. In all the circumstances we award a $19.40 per week increase to the Queensland Minimum Wage.

[286] **Award Rates of Pay:** Similarly, there are four positions on the claim to increase award rates of pay:

- the QCU's claim is for a 4% increase to all award rates of pay. At the adult level that claim would result in increases of $19.40 per week to something in the vicinity of $32.00 per week;
- the Queensland Government's position is that all award rates of pay should be increased by $20.00 per week;
- QCCI, QRTSA, QHA, QFVG; BIAQ and QCGA support a $15.00 per week increase in all award rates of pay; and
- RCEA submits that no increase to award rates of pay should be awarded.

[287] We have already indicated that we intend to continue the practice of awarding flat dollar increases. Having decided to grant the claim sought by the QCU in respect of the Queensland Minimum Wage, we have decided to increase award rates of pay by a flat amount of $19.40 per week.

[288] **Allowances:** Once again there are four positions on the claim to increase award allowances which relate to work or conditions which have not changed and service increments:

- the QCU's claim is for a 4% increase to existing award allowances and service increments;
- the Queensland Government supports a 3.5% increase to such allowances and service increments;
- QCCI, QRTSA, QHA. QFVG, BIAQ and QCGA support a 2.6% increase to such allowances and service increments; and
- RCEA's position is that no increase to allowances and service increments should be awarded.

[289] As we have granted the 4% increase on the Queensland Minimum Wage we have decided to increase award allowances which relate to work or conditions which have not changed and service increments by 4%.

[290] **Operative Date:** Generally, the parties appearing in this application have supported an operative date of 1 September 2006. We intend to continue the practice of awarding any increases arising from state wage case decisions as and from 1 September 2006.

[291] **Wage Fixing Principles:** The parties were in agreement that the current statement of principles, through a statement of policy, should remain with the necessary amendments to reflect the changes to the operative date, the quantum of wage and allowance adjustments awarded in this decision and any other consequent amendments to be made. We will issue a new statement of policy with respect to the wage fixing principles with this decision.

[292] Also released at the same time as this decision is a declaration of general ruling to reflect the outcome of this decision.".

National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Others (TH/2006/3) 16 October 2006; 183 QGIG 812

Trading (Allowable Hours) Act 1990 - s. 21 - trading hours orders on non-exempt shops

An application was made by the National Retail Association Limited, Union of Employers (NRA) to amend the Order - *Trading Hours - Non-Exempt Shops Trading by Retail - State* (the Trading Hours Order) pursuant to s. 21 of the *Trading (Allowable Hours) Act 1990* (the Trading Hours Act).

The application sought to allow 32 hour continuous trade over 23/24 December at Westfield Chermside Shopping Complex to be made permanent.

An earlier application was lodged in 2003 which sought to allow 32 hours of uninterrupted trading at Westfield Chermside between the hours of 8:00 a.m. on December 23, 2003, to 9:00 p.m. on December 24, 2003. The application required an extension of hours from 12:00 midnight on December 23 until 8:00 a.m. on December 24 to enable the continuous period of trade to take place. The application was granted on a trial basis. The trial continued for 3 years.

In this application the NRA sought the Commission to grant a permanent order in the same or similar terms to the orders issued arising from earlier decisions. It is submitted that a three year trial has provided an adequate test of the sustainability of the 32 hour event at Westfield Chermside and a permanent order is now warranted.

The application was opposed by the Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) (QRTSA) and the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (SDA). The Australian Workers' Union of Employees, Queensland (AWU) forwarded correspondence to the Commission advising that it supported the submissions of SDA.

Evidence was given by a number of witnesses.

The matter before the Commission was a relatively rare proceeding in that it is not often that applications are subject to extensions of an initial trial. It was the expectation of the applicant that those who opposed the current application would have had the opportunity to gather evidence that would draw to the Commission's attention any supposed hardship or disadvantage suffered by retailers or employees. There was no such material before the Commission. There was no evidence from SDA that any employer breached the Commission's conditions about the voluntary participation of their employees. Further, evidence led by QRTSA did not raise any material which should cause the Commission to have any concern about making the continuous trading event permanent.

The Commission considered all of the material advanced during the evidence and submissions in detail.

In concluding the Commission said:

"Upon our consideration of the evidence, the applicant has demonstrated that:

- participation by retailers in the event is on a voluntary basis;
- participation by employees in the event is on a voluntary basis;
- initial concerns about staffing levels, as revealed in the 2003 trial, have been resolved;

- adequate arrangements appear to have been made by Westfield and/or the major stores to provide security escorts for staff to their vehicles during the extended trading hours;
- the extended trading hours event has not seen any unusual security issues arise - at least from the perspective of Westfield and the Queensland Police Service;
- there is no evidence of any unusual parking congestion issues or local traffic flow issues. If anything, any such concerns will be greatly alleviated by the commissioning of a further 2,300 parking spaces and several new entry points to the Westfield Chermside Shopping Complex on its northern and western sides later this month; and
- the number of persons attending the centre during the extended trading hours continues to be strong which demonstrates, to us, that the event is meeting a particular consumer need.

Accordingly, given all of the above, in light of the earlier Full Bench decisions, we believe that the applicant has clearly established that this application deserves to be granted and that the 32 hour continuous trading event at the Westfield Chermside Shopping Complex should be made permanent.".

■ ■ ■

National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Others (TH/2006/4) 7 December 2006 183 QGIG 950

Trading (Allowable Hours) Act 1990 - s. 21 - trading hours orders on non-exempt shops

This was an application by National Retail Association Limited, Union of Employers (NRA) to amend the Order titled *Trading Hours - Non-Exempt Shops Trading by Retail - State* (the Trading Hours Order) to allow 7 day trading for non-exempt shops located in Nambour and Beerwah, respectively.

Opposition to the application was entered by the Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) (QRTSA) and the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (SDA). Correspondence was also received from The Australian Workers' Union of Employees, Queensland (AWU) which supported the submissions of the SDA.

Inspections were conducted in Beerwah and Nambour with the hearing commencing in Maroochydore immediately after the inspections.

At the commencement of the hearing an appearance was entered for the Minister for State Development, Employment and Industrial Relations. The stated purpose of the appearance was not to support or oppose the application but, rather, to clarify the intent of the Queensland Government in relation to certain provisions of the *Trading (Allowable Hours) Act 1990* (the Trading Hours Act) that may relate to the present application, and others like it.

The NRA called a number of witnesses and also raised a number of issues in their submissions in support of their application.

Although the SDA initially opposed the application, by the time final submissions were presented the SDA informed the Commission that developments in the area of shop trading hours had recently caused SDA to take stock of its position on trading hours and to survey its members to establish their attitude. The SDA informed the Commission that 83% of those who completed SDA's survey favoured the SDA attempting to negotiate the best possible Sunday trading outcomes for members - primarily the principle of work on Sundays being a matter of choice for individual employees.

The NRA and SDA entered into negotiations and came to an agreement that where employees are invited to work on a Sunday or extended hours, then the participation be voluntary. Therefore the SDA no longer opposed the application for Sunday trading in Beerwah and Nambour.

QRTSA presented some submissions in opposition to the application.

At the conclusion of the proceedings in Maroochydore the Commission informed the parties that, having considered the whole of the evidence and the submissions in this particular case, they were of the view that the arguments in support of granting the application were overwhelming.

The Commission issued an amendment which allowed 7 day trading in Beerwah and Nambour as from Saturday 9 December 2006.

National Retail Association Limited, Union of Employers AND Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees and Another (TH/2006/5) 10 April 2007 184 QGIG 218

Trading (Allowable Hours) Act 1990 - s. 21 - trading hours orders on non-exempt shops

This application filed by the National Retail Association Limited, Union of Employers (NRA) seeks to amend the Order - *Trading Hours - Non-Exempt Shops Trading by Retail - State* (Trading Hours Order), by extending the hours of trade for supermarkets in the Area of City Heart of Inner City of Brisbane:

The Full Bench conducted inspections at each of the supermarkets within the stated area. These being Coles Supermarket - Myer Centre, Coles Central - Queens Plaza; and Woolworths Supermarket - Macarthur Central.

During the inspections, the Full Bench observed both the layout of the stores and trading pursuits between the hours of 8.30 a.m. to 9.30 a.m.

The application was opposed by the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (SDA), and the Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) (QRTSA).

Submissions for the NRA examined previous applications relating to extending hours for like stores in the CBD and emphasised certain aspects of the evidence in support of those applications. Attention was drawn to the previous findings of the Commission and, in particular, concerns that had been held at the relevant times in respect of a number of issues. Other matters touched on included:

- differences between the three supermarkets located in the CBD and supermarkets in suburbia;
- population growth in the CBD;
- visitors from both overseas and interstate; and
- public and consumer interest.

The SDA opposed the application before the Commission. The SDA had previously not opposed similar applications in the past and had consented to some of the changes that had occurred. However, the SDA in this case, after consulting its members had decided to oppose the application. This was due to the overwhelming response of members to opposition to the proposed change of hours. The SDA said its members indicated that significant safety and transport problems may be faced by some or many employees and that the issue of the availability of public transport was of concern to employees.

The QRTSA opposed the application because, in the city heart itself 20-odd Night Owl and 7-Eleven stores operated on unrestricted hours servicing the population. The QRTSA said some stores opened on the

basis of 24 hour trading and there was significant investment involved in establishing these businesses and the granting of the application would have a massive impact upon the owners.

The Brisbane City Council advised of its support for the application.

The Commission after considering all of the evidence before it decided to grant the application in part. Not all of the extended trading hours applied for by the NRA in its application were granted. The Commission granted extended opening hours for supermarkets in the CBD as follows:

Monday to Friday	7:00 a.m. to 9:00 p.m.
Saturday	8:00 a.m. to 7:00 p.m.
Sundays and Public Holidays	9:00 a.m. to 6:00 p.m.

The changes took effect from 4 June 2007.

Decisions of the Commission

Clarita Plep AND RWP Industries Pty Ltd (TD/2005/529) 5 May 2006 182 QGIG 2

Industrial Relations Act 1999 - s. 74 - application for reinstatement

The application before the Commission was of a somewhat unusual nature in that the relationship between the applicant and a co-owner of the respondent business was that of wife-husband (estranged).

The applicant, having performed a range of administrative duties, including bookkeeping, for a period of almost two years, gave evidence of being served with an eviction notice to vacate the then family home on or around 28 October 2005 and shortly thereafter being told that her husband (estranged) wanted her "out of the office".

According to the applicant, she was subjected to a range of harassment and intimidation within the workplace, including exclusion from the staff Christmas party.

Upon her arrival at work on 15 December 2005, she found an envelope in front of her computer which contained a letter of termination effectively ending the employment arrangement from 29 December 2005 for reasons of "restructure".

The applicant's work performance or conduct had never previously been subject to question.

The respondent relied upon evidence from the co-directors (including the estranged husband) whose affidavits were exact replicas of each others.

The reasons advanced for the termination of the applicant went to cash flow problems within the business plus the need to replace the applicant with a person with sales skills.

The respondent acknowledged that the advertisement for the applicant's replacement contained references to basic bookkeeping skills being a position requirement.

In determining the application, the Commission found that the "matrimonial circumstances" appeared to have been in play from the outset of the employment arrangement in various forms, including wage splitting for the purposes of minimising taxation.

The method of termination was found to have "lacked what one might properly conclude as basic decency".

The marital situation that existed at the time, on the face of the evidence, was the real reason for the employment being ceased.

Reinstatement was not, in the circumstances, appropriate, which resulted in an award of compensation being made as remedy.

The compensation included considerations for income lost; an element of discrimination; and significant humiliation and distress suffered.

■ ■ ■

Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees AND Quest Security Services Pty Ltd (B/2006/187) 8 September 2006 183 QGIG 632

Industrial Relations Act 1999 - s. 277 - power to grant injunctions

The Union sought injunctive relief under s. 277 of the *Industrial Relations Act 1999* against an employer Quest Security Services Pty Ltd to force the employer to pay alleged outstanding wages to 22 employees.

The employer failed to appear at the hearing. The Union relied upon an affidavit of service which the Commission thought was probably defective in that the affidavit did not depose to a particular method of service and was too generalised.

The application was dealt with and refused but not for any defect in service. The Commission gave as reasons for refusing the application:

1. An application for an injunction must be under seal as required by s. 277 and the application lodged in the Commission was not under seal.

2. The power to grant an injunction, which is an exceptional and extraordinary remedy, does not arise until it is demonstrated that the party against whom the relief is sought is not complying with an industrial instrument, a permit or the Act. In a claim for recovery of wages, it is necessary to prove a *prima facie* case by admissible evidence. Statements by an Industrial Officer relaying statements by 22 claimants was hearsay and inadmissible to prove the facts in issue.

3. The Commission referred to a judgment of the High Court where it was stated that a (remedy in the nature of an injunction) is not as a rule granted if there be another remedy equally convenient, beneficial and effective. The Court said that mere money claims can be easily and effectively recovered in other and simple proceedings not involving the harsh sanctions of fine and imprisonment.

For these and other reasons, the Commission held that an application should be made under s. 278 or s. 666 for the recovery of wages and dismissed the application for an injunction.

■ ■ ■

Stephen Kevin Saville and Department of Corrective Services (B/2006/133) 5 October 2006 183 QGIG 787

Industrial Relations Act 1999 - s. 83 - application for payment of monies

Mr Saville sought the payment of 4 weeks' and 4 days' wages upon his dismissal from the Department of Corrective Services, alleging that the respondent had provided him with only one day's notice. He had been employed for over 20 years until his involuntary retirement on the grounds of ill-health.

It was initially argued by the respondent that there was no dismissal but more truly a "frustration of contract". The Commission held that the question was whether an ill-health retirement under the *Public Service Act 1996* was a dismissal under the *Industrial Relations Act 1999* and held that a forced retirement was not with the consent of the employee. To be a dismissal, there must be a termination at the initiative of the employer and without the genuine consent of the employee.

The Commission then referred to s. 85 of the *Industrial Relations Act 1999* which provides for the payment of minimum compensation. The compensation is to be at least equal to the total of the amounts the employer would have been liable to pay the employee if the employee's employment had continued until the end of the required notice period.

The applicant was on sick leave without pay. The Commission said that if the employment had continued for another 5 weeks, the employer would have been required to pay nothing.

The application was dismissed.

■ ■ ■

Award Review – Second Round (B/2004/955) 1 December 2006 183 QGIG 960

Industrial Relations Act 1999 - s. 130 - award review

The Commission dealt with this matter on 1 December 2006 as quoted below:

> "**Background**
>
> In mid-2003 the Vice President advised that she would be allocating to me the conduct of the second round of Award Review as required by s. 130 of the *Industrial Relations Act 1999* (the Act). The Vice President advised that the second round would formally commence on 1 July 2004 as by that time the first round would be all but completed.
> To assist in the preparation for the second round I asked a number of the major participants in the first round of Award Review: the Queensland Council of Unions (QCU), The Australian Workers' Union of Employees, Queensland (AWU), Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers (QCCI) and the Department of Industrial Relations (DIR), to meet with me separately and informally to discuss the issues that were likely to be raised and whether any particular approach was preferred. These individual meetings were followed later in 2003 by more formal combined meetings of those bodies plus other major industrial organisations to try to flesh out the issues that would form the agenda for discussions for the second round and the method of review. At that stage it appeared unlikely that funding from DIR would be provided as had been the case with the first round.
>
> As a result of those discussions the parties arrived at a list of issues for consideration. These are listed below followed by the organisation that proposed the item in brackets:
>
> - Awards without a 38 hour week (AWU);
> - Awards without all increases granted by policy statement (QCU);
> - Public holiday clause (AWU);
> - Annual leave clause (AWU);
> - Superannuation (QCU); and
> - Work and family clause (QCCI).
>
> **Conduct of Award Review Mark II**
>
> The Commission as constituted convened the first formal conference on 2 July 2004. The Review was given the Matter No. B/2004/95. As transcripts are available for all of the formal conferences it is unnecessary to record the participants or their specific views.
>
> At the first conference the Commission advised the parties of the background to the Review and that an agenda had been developed by the participants which had played a major part in the first round. Further, the Commission said it was aware of the limited resources of the organisations and without funding, only a minimalist

approach was being considered. Parties were encouraged to reach agreement on matters where possible. The Commission would convene conferences of the parties so that discussions could occur on the issues, however, if agreement could not be reached then the proposer of the issue would have to consider their options.

The Commission distributed a folder of information to the parties which was designed to assist the parties' understanding of the issue involved and/or the awards that were affected by the proposal. The Commission also advised the parties that at the request of the proposers of the issues neither the superannuation clause nor the work and family clause was being proceeded with.

The Commission, the QCU and AWU explained the background to and purpose of each of the agenda items. This is outlined more fully below. Some initial discussion of the matters occurred with the focus being on the means to process the issues.

It was agreed that in order to ascertain the position of employers a formal response to each of the issues was required to be filed by 3 September 2004. The conference on 17 September 2004 considered the responses that had been filed and discussed the way forward.

Further conferences were held on 16 November 2004 and 18 March 2005.

The agenda items and the position reached with respect to each of them is outlined below.

The agenda and outcomes

Awards not reviewed in Mark I

To the above list of six issues the Commission added a further item, *viz.* awards that had not been reviewed as part of Award Review Mark I. A number of awards had been made during the currency of Award Review Mark I and had not formally undergone the process of review in regards to format, content, model clauses, etc. Twelve awards fell into that category and are listed in Schedule 1. The Vice President directed that those awards be reviewed as part of Award Review Mark II, with the principles that had been developed in the Award Review Mark I process being applied to them.

During the course of Award Review Mark II both the *Dental Assistants (Private Practice) Award - State* and the *Surveying (Private Practice) Award - State* were the subject of comprehensive applications for amendment. The review of these Awards was left until those applications had concluded.

Awards without a 38 hour week

At the first conference the parties were provided with a list of those Awards that did not contain a 38 hour week. The list had been prepared by the Registry in consultation with DIR. It included those Awards that prescribed more than 38 hours, less than 38 hours or no working hours. The AWU, supported by the QCU, were seeking the support of the employers to have a General Ruling granted by consent to amend awards that prescribed more than 38 hours to provide for a 38 hour working week. Forty-seven awards would be affected by such an application. The AWU believed that those cost minimisation measures that had become the "standard" when introducing the 38 hour week should be those which were considered as part of this process. The AWU did not see Award Review as the mechanism to consider other conditions.

At the conference, employers were generally of the view that only those awards to which agreement could be reached should be processed as part of Award Review Mark II.

In their responses of 3 September 2004 some employers indicated they were seeking cost minimisation measures which were additional to the "standard" items on the basis that some or all of those had already been incorporated into awards as a result of other processes. Amendments that addressed such issues as casual loadings in excess of the Commission's standard were raised as being relevant for consideration.

At the conference of 16 November 2004 it was agreed that the list of awards that were to be the subject of discussions be reviewed by the AWU and a revised list circulated to relevant parties and the Registry. Once this had been circulated employers were to advise by 1 March 2005 their position with respect to the AWU's proposed or other cost minimisation measures.

Employers concerned with this issue provided written advice generally opposing the AWU's proposed list of cost minimisation measures. The employers were opposed to a General Ruling and sought separate discussions with the relevant unions to ensure cost minimisation measures were available. At the conference of 18 March 2005, the position of the AWU was sought in light of that advice, however, the AWU was not able to immediately inform the Commission and the parties of it and its advocate was given the opportunity to seek instructions.

As no agreement could be reached, the AWU filed an application for a General Ruling, Matter No. B/2005/1235. The decision of the Full Bench in respect of that application is reported at (2006) 181 QGIG 535.

Awards without all increases granted by policy statement

At the conference on 2 July 2004 the parties were also provided with a list of awards that did not include all of the wage and allowance increases that had been available under policy statements issued by the Commission during the period 1987-1996. This document had been updated by the QCU from a spreadsheet prepared by DIR for the purposes of Award Review Mark I.

The QCU proposed that those awards that had not been adjusted for any or all of the available increases be updated by the means of a General Ruling granted by consent. The QCU advised that it did not seek to pursue minimum rates adjustments.

At the conference of 17 September 2004 the QCU circulated a document outlining the process it proposed be adopted concerning the method of calculation to adjust award rates and allowances. The process envisaged was to take the rates that existed on 1 January 1987 and to apply all increases that had been available by Statement of Policy or General Ruling since that time. This would ensure appropriate rounding off occurred. Allowances would go through a similar exercise, with the need to ensure that only those allowances that could be adjusted under the relevant wage principles were adjusted. Employers were requested to provide responses to that proposal by 15 October 2004.

The Commission also indicated that in conjunction with the Registry it would have discussions with DIR about resourcing the project. At the conference of 18 March 2005 the Commission was able to advise the parties that the Registry had been successful in having resources allocated. The project involved ensuring that the rates and allowances for the awards affected by this process were accurate and the calculations as proposed by the QCU were made in accordance with the process document. The parties were

advised this information would be available on request and parties were encouraged to contact the Registry with any queries. The project commenced on or about 4 April 2005.

At this conference the QCU advised that it had held discussions with DIR over some concerns in relation to the process document. Those concerns related to absorption, phasing-in and the application of the Incapacity to Pay Principle. As a result of those discussions agreement had been reached. In light of this and the other responses received from employers the QCU believed a consent position had been reached and the matter could go forward as a consent General Ruling.

As the conference unfolded this optimistic position could not be sustained. The view of several employers was that the adjustments should be considered on an award by award basis. Despite agreement not being able to be reached between the parties that awards should be amended by General Ruling, there was no opposition to the method of calculation proposed by the QCU.

In order to finalise the issue the QCU filed an application (Matter No. B/2005/600) seeking a General Ruling to adjust wages and relevant allowances for those increases that were available in the stated period. The decision of the Full Bench, granting the application, is reported at (2005) 179 QGIG 413**.**

Public holiday clause

The issue raised by the AWU was that under the public holidays clause found in many awards the only day for which employees are entitled to receive payment and a day off is Labour Day. In relation to other public holidays found in the standard clause, provision is made for payment at the rate of double time and a-half if work is performed on the day but it does not provide for payment if no work is required to be performed. The AWU wanted to correct what it perceived as an anomaly and provide that payment be made if no work is performed on a public holiday.

In several of the responses filed by the employers on 3 September 2004 it was noted that s. 15 of the Act and the Commision's policy addressed the concern identified by the AWU. On that basis employers did not consider it necessary for awards to be amended in the manner sought by the AWU. The AWU noted that unfortunately the Commission's policy was not reflected in every award clause. However, in consideration of the responses and in order to reduce the workload of the Award Review process the AWU was prepared to remove the issue from the agenda.

Annual leave clause

The issue raised by the AWU concerned the wage rate upon which the annual leave loading of 171/2% is calculated. The AWU noted that awards provide for annual leave to be paid at the ordinary rate or at a rate in excess of the ordinary rate, whichever is received immediately prior to proceeding on annual leave. The problem identified by the AWU was that a number of awards provide that the annual leave loading is to be paid at the ordinary rate prescribed by the award or in a specified award clause. In an era where the ordinary rate for many employees is prescribed by certified agreement the AWU had encountered difficulties with certain employers in having the leave loading calculated at that ordinary rate (or at a rate in excess of the ordinary rate, whichever is received immediately prior to proceeding on annual leave) given the wording of the award clause. The AWU proposed an alteration to the offending award clauses to rectify that difficulty and circulated a draft to that effect.

Although some employers initially supported the AWU's proposition, ultimately a number of employers in the private sector opposed it. DIR also said that the Industrial Inspectorate advised that the method of calculation was to be done on the award rate. Given this attitude of opposition the AWU ultimately decided not to press the issue as part of the Award Review Mark II process.

Appreciation

I would like to express my appreciation to the parties which participated in the Review for their time and consideration of the issues. I would also like to thank the Registry staff for their considerable work in this Review.

SCHEDULE ONE

Arthur Gorrie Correctional Centre (Custodial Correctional Officers) Award - State 2002
Car Park Attendants Award - South Eastern Division
Dental Assistants (Private Practice) Award - State
Department of Corrective Services Correctional Employees' Interim Award - State
Indigenous Australian Community Housing Award - State
Meter Reading Employees' Award - State 2002
Nurses' Aged Care Award - State 2003
Nurses' Award - State
Property Sales Award Queensland - State
Property Management Award Queensland - State
SEPR Australia Pty Ltd - Award 2001
Surveying (Private Practice) Award - State".

■ ■ ■

Tables

Tables

Table 1: Matters filed in the Court 2005-06 and 2006-07

Type of Matter	2005/06	2006/07
Appeals to the Court	**81**	**55**
— Magistrate's decision	29	32
— Commission's decision	44	15
— Registrar's decision	2	0
— Director, WH&S decisions	5	6
— Electrical Safety	1	2
Extension of Time	2	6
Prerogative order	1	2
Stay order	13	8
Direction to observe/perform Industrial Org rules	1	0
Case stated by Commission	1	1
Application for orders - other	1	0
TOTAL	**100**	**72**

Table 2: Number of matters filed in the Court 1994-95 - 2006-07

1994/95	60	2000/01	74	2006/07	72
1995/96	89	2001/02	102		
1996/97	81	2002/03	100		
1997/98	90	2003/04	104		
1998/99	95	2004/05	92		
1999/00	61	2005/06	100		

Table 3: Appeals filed in the Court 2005-06 and 2006-07

Appeals Filed	2005/06	2006/07
Appeals from decisions of Industrial Commission		
IRA s 341(1)	44	11
Appeals from decisions of Industrial Magistrate		
IRA s 341(2)	2	14
Work Comp Act s 561	22	22
VETE Act 2000	0	0
WH & S Act s 164(3)	5	0
Appeals from decisions of Industrial Registrar		
IRA s 341	2	0
Appeals from review decisions by Director WH&S	5	6
Appeals from decisions of Electrical Safety Office	1	2
TOTAL	**81**	**55**

Table 4: Applications filed and Matters heard 2005-06 and 2006-07

Section	Type of Application/Matter	2005-06	2006-07
s 53	Long Service Leave - payment in lieu of	85	69
s 74	Application for Reinstatement (Unfair dismissal)	1,053	188
s 87	Severance allowance	12	2
	Exemption from requirement to pay severance or redundancy entitlements	0	0
s 117	Prohibited conduct - breach	8	5
s 125	Awards:		
	- New award	3	2
	- Repeal and new award	3	0
	- Repeal award	2	0
	- Amend award	121	11
s 130	Review of Award	8	0
s 137	Order - wages & conditions (trainees)	9	2
s 138	Order - tools (trainees)	1	0

Section	Type of Application/Matter	2005-06	2006-07
s 143	Notice of intention to begin negotiations	2	0
s 148	Assistance to negotiate a CA	14	7
s 149	Arbitration of CA	N/A	1
s 152	Certificate - request representation	3	0
s 156	Certified Agreements:		
	- Approval of new CA	196	51
	- Replacing existing CA	291	33
s 163	Designated Award	2	1
s 168	Extending a CA	1	0
s 169	Amending a CA	40	3
s 172-173	Terminate a CA	31	8
s 175	Notice of industrial action	110	5
s 192	Approve a QWA	32	6
s 229	Notification of dispute	399	121
	Request for orders to settle/ arbitrate dispute		
s 230	- Arbitration	7	4
s 231	- Mediation	4	2
	- Other orders	0	0
s 265(3)	Inquiry about an industrial matter	1	1
s 274	General powers	29	20
s 276	Amend/void a contract	29	7
s 277	Injunction	4	1
s 278	Claim for unpaid wages/ superannuation	212	80
s 280	Re-open a proceeding	0	1
s 281	Reference to a Full Bench	1	0
s 284	Interpretation of industrial instrument	10	0
s 287, 288	General ruling/statement of policy	3	1
s 317	Commission of own motion	1	0
s 319	Representation of party/Legal representation	2	1
s 325	Joinder of applications	1	0
s 326	Interlocutory orders	1	0
s 331	Dismiss/refrain from hearing	6	0
s 335	Costs	2	2

Section	Type of Application/Matter	2005-06	2006-07
s 338	Review of Tribunal Rules	N/A	1
s 342	Appeal to Full Bench	1	5
s 408F	Repayment of private employment agent's fee	0	2
s 409-657	Industrial Organisation matters [Table 12]	72	111
s 695	Student work permit	27	0
s 696	Aged and/or infirm permit	35	26
s 699	Obsolete industrial instruments		
	- Review of superannuation agreements	N/A	137
	- Review of EFAs	N/A	29
s 713	Agreement has effect as an award	0	0
Reg 27	Objections	4	0
IR Act	Annual Return	2	0
IR Act	Private conference	2	4
IR Act	Request for recovery conference	61	115
W H&S Act s 90	Authorised Representative	18	199
W H&S Act s 90O	Application to suspend/cancel appointment	N/A	1
WC Act s 232E	Reinstatement of injured worker	N/A	5
WC Act s 550	Appeal against Q-Comp	59	109
T(AH) Act	Trading hours order	5	5
T(AH) Act s 22, 23	Special exhibits	0	1
T&E Act s62	Reinstatement of training contract	3	4
T&E Act s230	Apprentice/trainee appeals	5	3
Whistleblower's Act s 47	Injunction	0	1
TOTAL APPLICATIONS/MATTERS		**3,033**	**1,393**

Table 5: Agreements filed 2005-06 and 2006-07

Agreements	2005-06	2006-07
Certified agreements	487	84
Application to amend a CA	40	3
Application to extend a CA	1	0
Application to terminate a CA	31	8
Queensland Workplace Agreements	32	6

Table 6: Industrial Instruments in force 30 June 2007

Type of Instrument	Number
Awards	325
Industrial agreements	6
Certified agreements	4,414
Superannuation industrial agreements	1
TOTAL	**4,746**

Table 7: Reinstatement Applications 2006-07 - Breakdown of outcomes

Total No. of Applications	188
Rejected by Registrar*	6
No jurisdiction found by Commission	0
Application refused following hearing	0
Application dismissed following hearing	0
Application struck out at hearing	0
Application granted following hearing	0
Application withdrawn**	77
Lapsed***	26
Inactive****	41
Completed	0
Still in progress	38
Adjourned to Registry	0

*The Registrar may, under s. 72(1) of the Act, reject a reinstatement application on the grounds of exclusion from coverage of the dismissal provisions.

**A large number of applications are withdrawn due to settlement between the parties following a conference but prior to a hearing.

***Under s. 75(4) the application for reinstatement will lapse if the applicant hasn't taken any action after 6 months from the initial conciliation conference. For all other matters the application lapses after 12 months.

****An application is recorded as inactive during the period after a Conciliation Conference has been held but is pending further action by the applicant prior to the matter lapsing.

Table 8: Registry Performance Indicators 2005-06 and 2006-07

Criterion	Target	2005-06	2006-07
Notify parties to dispute conferences within 5 working hours	99%	99%	99%
Process applications within 8 working hours	95%	95%	97%
Initial processing of agreements within 3 working days	90%	95%	100%

Table 9: Documents gazetted under sections of the IR Act and other Acts 2006-07

Matter Type of Document Gazetted	Section	2006-07
Alteration of list of callings	s 427	3
Amending a Certified Agreement	s 169	0
Appeal against the cancellation of a training contract	s 230 (VETE Act)	1
Appeal against decision of Industrial Commission	s 341	8

Matter Type of Document Gazetted	Section	2006-07
Appeal against decision of Industrial Magistrate	s 341 s 164(3)(WHS Act) s 172 (EL.SAFE. Act)	19
Appeal against decision of Industrial Registrar	s 341(1)	0
Appeal to Commission	s 550 (WC Act)	18
Appeal from Industrial Magistrate to Industrial Court	s 561 (WC Act)	10
Appeal for arbitration	s 149, 230	1
Application for costs	s 335 r 66 (IR RULES) s 563 (WC Act)	10
Application for declaratory relief	s 248	2
Application for equal remuneration	s 60	1
Application for general ruling	s 287	3
Application for help to make a certified agreement	s 148	1
Application for leave to appeal	s 342(2)	0
Application for orders	s 265, 230, 326	1
Application for reinstatement	s 73, 74	32
Application for statement of policy	s 288	1
Application for unpaid wages	s 278	12
Application to amend order	s 137	3
Application to stay	s 347 s 562 (WORK COMP)	6
Application to strike out or dismiss proceedings	s 331	0
Application of new award	s 125	1
Application of other name amendment	s 473	5
Arbitration of an industrial dispute	s 229, 230	7

Matter Type of Document Gazetted	Section	2006-07
Application for payment instead of long service leave	s 53	1
Application for payment of monies	s 83	1
Award amendment	s 125	32
Award Review	s 130	4
Award Review (corrections of error)	s 130	4
Basis of decision of the Commission and Magistrates	s 320	0
Case stated to Court	s 282	2
Certification of an Agreement (decisions)	s 156	5
Decisions generally	s 331	2
Discretion to issue warrant	s 341(4)	0
Eligibility rule amendment	s 474	6
Examination of affidavits for substantial compliance with order of the Commission	s 233(6)	0
Extension of time	s 346(2)	4
General powers	s 274	1
Interpretation of Industrial Instrument	s 284	1
New Award (correction of error)	s 125	0
Obsolete Industrial Instrument	s 699	3
Orders about invalidity	s 613	5
Orders about severance allowance	s 87	1
Orders on exhibitions etc.	s 22 (TRAD HOURS)	0
Power to amend or void contracts	s 276	6
Power to grant injunction	s 277	1
Powers incidental to exercise of jurisdiction	s 329	1
Powers of Court	s 459	1
Procedures for reopening	s 280	1
Proceeding started by commission of own initiative	s 317	0

Matter Type of Document Gazetted	Section	2006-07
Reference to a full bench	s 281	0
Refuse to certify an agreement	s 157	0
Repeal of award	s 125	1
Repeal and new award	s125	1
Representation of parties	s 319	1
Stay of operation of decisions	s 154(1) WHS s 174 (EL. SAFE. Act)	0
Strike out proceedings after at least 1 year's delay	r 201 (IR RULES)	0
Terminating agreement after nominal expiry date	s 173	1
Trading Hours Order amendments	s 21 (TRAD HOURS)	7
TOTAL		**238**

Table 10: Industrial organisation matters filed 2005-06 and 2006-07

Industrial Organisation matters		2005-2006	2006-2007
s 413	Registration applications	0	1
s 422(3)	New rules	0	0
s 427	Amendment - list of callings	0	2
s 467	Registrar amendment of rules	N/A	2
s 473	Amendment - Change of name	3	5
s 474	Part Amendment - eligibility rule	4	3
s 478	Amendment to rules - other than eligibility	16	19
s 481	Request for conduct of election	36	44
s 547	File officers register	N/A	25
s 580	Exemption from conduct of election	6	5
s 582	Exemption - members' register	0	0
s 586	Exemption - branch financial return	0	1
s 590	Exemption accounting & audit employer organisations - corporations	N/A	1
s 594	Exemption from Electoral Commission conducting election	1	0
s 613	Orders about Invalidity	3	3
Rule 27	Notice of Objection to application	4	0
TOTAL		**72**	**111**

Table 11: Industrial Organisations of Employees Membership

Industrial Organisation	Members as at 30/06/06	Members as at 30/06/07
Queensland Teachers Union of Employees	40,412	41,396
Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees	35,713	36,916
The Australian Workers' Union of Employees, Queensland	46,656	36,749
Queensland Nurses' Union of Employees	32,234	33,616
The Queensland Public Sector Union of Employees	31,046	30,262
Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees	28,931	27,601
Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland	17,543	16,977
Transport Workers' Union of Australia, Union of Employees (Queensland Branch)	15,150	14,537
Queensland Independent Education Union of Employees	13,531	13,916
The Electrical Trades Union of Employees Queensland	14,001	13,178

Industrial Organisation	Members as at 30/06/06	Members as at 30/06/07
Queensland Services, Industrial Union of Employees	13,162	13,147
Queensland Police "Union of Employees"	9,181	9,554
Federated Ironworkers Association of Australia (Queensland Branch) Union of Employees	5,087	9,109
Australian Municipal, Administrative, Clerical and Services Union, Central and Southern Queensland Clerical and Administrative Branch, Union of Employees	9,000	8,800
The Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland	9,940	7,826
Australian Rail, Tram and Bus Industry Union of Employees, Queensland Branch	7,220	7,566
Finance Sector Union of Australia, Queensland Branch, Industrial Union of Employees	5,778	7,236
Australasian Meat Industry Union of Employees (Queensland Branch)	7,320	7,065
Queensland Colliery Employees Union of Employees	6,037	6,210
The National Union of Workers Industrial Union of Employees Queensland	5,062	5,337
Federated Engine Drivers' and Firemen's Association Queensland, Union of Employees	1,123	4,024
The Plumbers and Gasfitters Employees Union of Australia, Queenslanld Branch, Union of Employees	3,052	3,532
Australian Building Construction Employees and Builders' Labourers' Federation (Queensland Branch) Union of Employees	4,733	3,252
United Firefighters' Union of Australia, Union of Employees, Queensland	2,337	2,429

Industrial Organisation	Members as at 30/06/06	Members as at 30/06/07
The Association of Professional Engineers, Scientists and Managers, Australia, Queensland Branch, Union of Employees	2,290	2,091
Australian Salaried Medical Officers Federation Industrial Organisation of Employees, Queensland	1,605	1,758
Australian Federated Union of Locomotive Employees, Queensland Union of Employees	1,365	1,460
Australian Journalists' Association (Queensland District) "Union of Employees"	1,180	1,186
The Bacon Factories' Union of Employees, Queensland	1,306	939
Textile, Clothing and Footwear Union of Australia, Queensland, Union of Employees	726	700
Federated Clerks' Union of Australia, North Queensland Branch, Union of Employees	764	684
Actors, Entertainers and Announcers Equity Association, Queensland, Union of Employees	324	661
The University of Queensland Academic Staff Association (Union of Employees)	611	561
Australian Institute of Marine and Power Engineers' Union of Employees, Queensland District.	487	501
The Seamen's Union of Australasia, Queensland Branch, Union of Employees	523	497
Queensland Association of Academic Staff in Colleges of Advanced Education (Union of Employees)	503	482
Property Sales Association of Queensland, Union of Employees	633	396
The Queensland Police Commissioned Officers Union of Employees	368	368

Industrial Organisation	Members as at 30/06/06	Members as at 30/06/07
James Cook University Staff Association (Union of Employees)	405	348
Australian Maritime Officers Union Queensland Union of Employees	230	223
Griffith University Faculty Staff Association (Union of Employees)	155	150
Musicians' Union of Australia (Brisbane Branch) Union of Employees	180	138
Queensland Fire Service Senior Officers' Association, Union of Employees	75	94
Total Membership	**377,979**	**373,472**
Number Employee Organisations	**43**	**43**

Table 12: Industrial Organisations of Employers Membership

Industrial Organisation	Members As at 30/06/06	Members As at 30/06/07
Queensland Master Builders Association, Industrial Organisation of Employers	10,810	10,860
Agforce Queensland Industrial Union of Employers	7,011	7,051
Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers	3,581	3,700
Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers)	2,667	2,589
Australian Dental Association (Queensland Branch) Union of Employers	2,094	2,248
Motor Trades Association of Queensland Industrial Organisation of Employers	2,149	2,209
National Retail Association Limited, Union of Employers	695	1,850
Electrical and Communications Association Queensland, Industrial Organisation of Employers	1,529	1,611
Australian Industry Group, Industrial Organisation of Employers (Queensland)	1,391	1,347
The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers	1,212	1,165
Queensland Fruit and Vegetable Growers, Union of Employers	938	902
Australian Community Services Employers Association Queensland Union of Employers	959	860
Master Plumbers' Association of Queensland (Union of Employers)	740	769
Queensland Hotels Association, Union of Employers	831	740
Master Painters, Decorators and Signwriters' Association of Queensland, Union of Employers	657	653
The Registered and Licensed Clubs Association of Queensland, Union of Employers	553	568
Queensland Motel Employers Association, Industrial Organisation of Employers	551	498
National Meat Association of Australia (Queensland Division) Industrial Organisation of Employers	462	468
Queensland Real Estate Industrial Organisation of Employers	451	425
The Baking Industry Association of Queensland - Union of Employers.	421	421

Industrial Organisation	Members As at 30/06/06	Members As at 30/06/07
Nursery and Garden Industry Queensland Industrial Union of Employers	421	392
Hardware Association of Queensland, Union of Employers	401	360
The Queensland Road Transport Association Industrial Organisation of Employers	210	340
Queensland Private Childcare Centres Employers Organisation of Queensland Industrial Organisation of Employers	343	306
Building Service Contractors' Association of Australia - Queensland Division, Industrial Organisation of Employers	264	246
The Hairdressing Federation of Queensland - Union of Employers	218	211
Association of Wall and Ceiling Industries Queensland - Union of Employers	164	176
UNiTAB Agents' Association Union of Employers Queensland	149	151
Consulting Surveyors Queensland Industrial Organisation of Employers	93	99
Furnishing Industry Association of Australia (Queensland) Limited Union of Employers	126	87
Queensland Master Hairdressers' Industrial Union of Employers	69	66
The Queensland Chamber of Fruit and Vegetable Industries Co-operative (Union of Employers) Limited	52	53
Queensland Country Press Association - Union of Employers	28	27
Queensland Cane Growers' Association Union of Employers	24	22
Queensland Friendly Societies Pharmacies Association, Industrial Organisation of Employers	11	12
Australian Sugar Milling Association, Queensland, Union of Employers	10	10
Queensland Mechanical Cane Harvesters Association, Union of Employers	154	125
Queensland Major Contractors Association, Industrial Organisation of Employers	16	18
Total Membership	**42,455**	**43,635**
Number of Employer Organisations	**38**	**38**

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