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Annual Report 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

2008–09 Annual Report of the President of the Industrial Court of Queensland

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Industrial Court of Queensland

October 2009

The Honourable Cameron Dick, MP
Attorney-General and Minister for Industrial Relations

Level 18, State Law Building
50 Ann Street BRISBANE Qld 4000

Dear Minister

I have the honour to furnish to you for presentation to Parliament, as required by section 252 of the *Industrial Relations Act 1999*, the Annual Report on the work of the Industrial Court of Queensland, the Queensland Industrial Relations Commission, the Industrial Registry and generally on the operation of the *Industrial Relations Act 1999* for the financial year ended 30 June 2009. 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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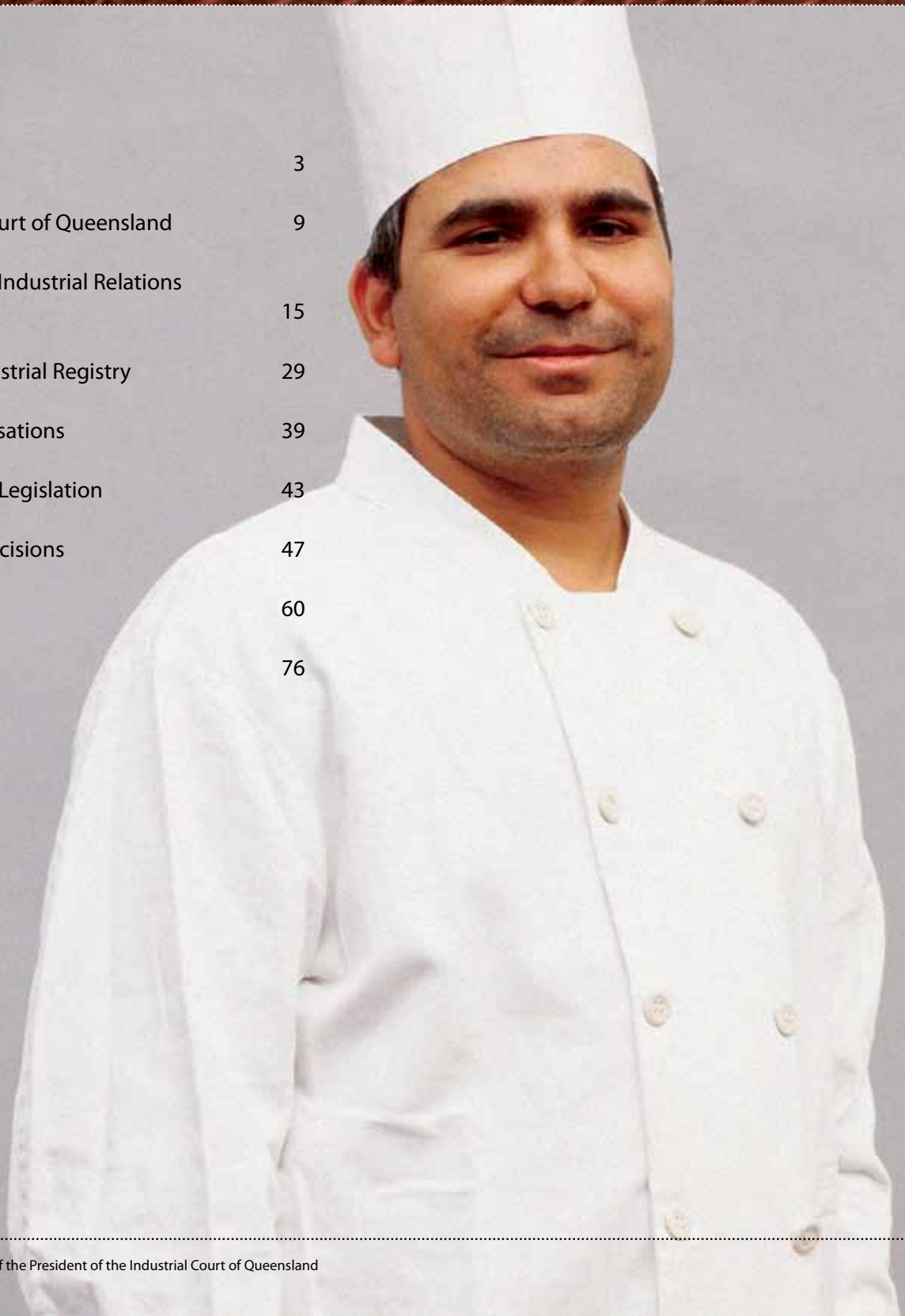


Overview

Following the 2009 State election, machinery of Government changes saw the industrial relations portfolio from the former Department of Employment and Industrial Relations come together with the Department of Justice and Attorney-General.

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

The Queensland Industrial Relations Commission has served this State well.

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* which provides a framework for industrial relations that supports economic prosperity and social justice.

It provides a low-cost independent forum that assists parties to resolve industrial disputes, set benchmark wages and conditions, and provides a forum to test the validity of dismissal decisions.

The Commission also retains an important role in industrial matters which are not affected by the Fair Work legislation, including the recovery of unpaid wages and has a continuing role to play in matters such as trading hours, workers compensation and child employment.

Since the 2007 Australian Government election, the Queensland Government has been working with the Australian Government and other Sates with a view to developing a national industrial relations system. The Queensland Government is committed to moving ahead quickly on this issue and supports the timeframes proposed by the Australian Government that will see the new national system operational from 1 January 2010.

At the Workplace Relations Ministerial Council on 11 June 2009, the Minister indicated the Queensland Government's in-principle support for joining the national industrial relations system. Queensland's support for a referral of powers was subject to the resolution of several issues. Whilst the Australian Government has agreed to further discussions on the matter, at the time of writing this report, those issues had not been resolved.

Of note should an agreement be reached, it is proposed that workplace relations powers in respect of the private sector be referred to the Australian Government with the public sector remaining in the Queensland system and with the local government sector falling within the State jurisdiction.

With the events of the last few years with the Australian Government's introduction of Fair Work legislation to achieve a national industrial relation system, and Queensland's Q150 celebrations, it is opportune to reflect on the history of the industrial relations system in Queensland.

1908 to 30 June 2009

Arbitration of industrial relation issues developed as a system to protect the public interest by preserving industrial peace, following the great strikes of the 1890s, and as a mechanism to provide fair and just outcomes for both workers and employers by moderating their clashes of interest.

The Queensland arbitration system, introduced in 1908, was originally built on a wages board system that regulated wages and conditions of employment for various industries. Subsequently, a compulsory arbitration system was introduced through the Queensland Conciliation an Arbitration Act 1916. The key features of this arbitral system

remained largely unchanged until the 1990s legislation. A major review of Queensland industrial relations legislation, the Hanger Report 1988, resulted in changes that strengthened the arbitration system.

The Industrial Relations Act 1990 instigated the implementation of the Queensland Industrial Relations Commission as a replacement for the previous Industrial Conciliation and Arbitration Commission.

Greater emphasis on the workplace in Commission decisions led to new Queensland legislation at that time that encouraged enterprise bargaining where employers and unions could negotiate agreements tailored to individual workplaces by varying award conditions. The *Industrial Relations Act 1990* was amended in 1994 to mirror the new bargaining features of the then Federal industrial relations legislation.

The *Workplace Relations Act 1997* replaced The *Industrial Relations Act 1990*. The emphasis of the 1997 legislation was on bargains and agreements between the employer and individual employee or groups of employees or unions, rather than on negotiation and arbitration involving unions, employers and the Commission, which lead to awards. This bargaining system effectively displaced the arbitration system that developed in Australia from the beginning of the twentieth century.

The *Industrial Relations Act 1999*, which came into effect on 1 July 1999, strengthened the role of the Commission by providing greater powers in conciliation and arbitration of major disputes which had important social or economic effect. The expanded functions and powers of the Commission focussed on industrial harmony, conciliation and negotiation, rather than confrontation, as well as delivering and maintaining fair and equitable wage and employment outcomes.

Expanded powers included the power of the Commission to make and review awards, settle enterprise bargaining disputes by conciliation and arbitration, make orders for wages recovery, amend or void unfair contracts, deal with dismissals and declare a class of contractors to be employees. Because of the emphasis placed on conciliated and negotiated outcomes in disputes, a large proportion of the Commission's work on any matter is concentrated at the conference stage.

On 12 June 2009 the *Industrial Relations Act 2009* was amended to ensure that the President has direct responsibility for the Court, Commission and Registry performing in a manner that is efficient and serves the needs of employers and employees. It aligned the administrative structure of the QIRC with that of most other jurisdictions. The amendment to the Act also ensured that the head of the State tribunal has the authority to deal with matters of inter-jurisdictional co-operation and make arrangements about the utilisation of State tribunals with the head of the Australian Industrial Relations Commission.

All members of the Queensland Industrial Relations Commission currently hold dual appointments to the Australian Industrial Relations Commission. Under this system, Queensland Industrial Relations Commission Members are eligible to hear matters on behalf of the Australian Industrial Relations Commission. Queensland is the only State where all industrial relations tribunal Members hold dual appointments.

The *Fair Work Act 2009 (Cwlth)* received royal assent on 7 April 2009. The Act dissolved the AIRC and replaced it with Fair Work Australia. Schedule 18 of the *Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009* (the Transitional Bill) transfers membership in the Australian Industrial Relations Commission to Fair Work Australia. However, Australian Industrial Relations

Commission Members who were appointed as a Member of a prescribed State tribunal, and continue to hold that membership, are excluded from this transfer of membership. Queensland Commissioners, continue to have dual capacity as Federal Commissioners of the Australian Industrial Relations Commission until 31 December 2009. Queensland Commissioners do not hold dual membership as Commissioners of Fair Work Australia which commenced on 1 July 2009.

During the reporting period, in addition to their State appointed roles, Queensland Commissioners, in their capacity as Members of the Australian Industrial Relations Commission heard 108 matters, mainly relating to Federal unfair dismissal applications.

Significant issues dealt with by the Commission include:

- **2008 State Wage Case.** The Full Bench of the Commission declared by general ruling, a wage adjustment of $23.60 per week increase in award rates of pay, an increase in work-related allowances by 3.8%, and an increase in the minimum wage for all full-time employees to $552.00 per week. The effective date was 1 September 2008.
- **Family leave.** On 19 February 2009, a Full Bench of the Commission began a review of sections of the *Industrial Relations Act 1999* relating to the period of maternity/parental leave and enabling employees who are taking such leave to apply to return to work part-time. A discussion paper was released on 22 May 2009 requesting written submissions by 31 July 2009. Hearings will commence the week beginning 31 August 2009.
- **Trading hours.** Full Benches of the Commission continue to hear various applications under the *Trading (Allowable Hours) Act 1990* for extended trading hours in several regions throughout Queensland. These hearings are usually lengthy with detailed submissions from concerned parties and onsite inspections.
- **Arbitration of Certified Agreement.** A Full Bench of the Commission of its own motion pursuant to s. 149 of the Act, acted to arbitrate a certified agreement for the Queensland Ambulance Service. Of note is that this a lengthy matter with Registry records revealing 173 individual events being recorded [including 38 listings involving programming, conferences, hearings and inspections and over 90 documents being filed or issued].

In addition to the *Industrial Relations Act 1999*, the Commission also exercises powers and functions under a number of other Acts. Since 2006, appeals under the *Workers' Compensation and Rehabilitation Act 2003* have increased. During the year there were 109 appeals relating to Q-COMP Review decisions.

Employment claims under the *Magistrates Courts Act 1921* have also increased. Commissioners perform the functions of conciliator prior to the matter being required to be heard by Magistrates. Commissioners conducted 101 such conferences regarding 94 matters filed.

The Government amended the *Local Government Act 1993* and the *Industrial Relations Act 1999* in March to change the corporate status of local governments other than Brisbane City Council. This made local governments, except the BCC, subject to the State system of industrial relations.

The amendments also recognised Federal industrial instruments and State industrial instruments to ensure that future employees are employed on the same terms and conditions and give the QIRC powers with respect to those instruments.

Since local governments, except the BCC, were made subject to the State system of industrial relations, Commissioners have been hearing applications to certify agreements for each newly amalgamated council, each time effectively replacing several agreements that covered the previous councils.

On 17 June 2009, State Parliament passed a bill to establish the Queensland Civil and Administrative Tribunal [QCAT]. The new tribunal is expected to be up and running by 1 December 2009 and will amalgamate a number of existing bodies and tribunals. QCAT functions will involve a range of matters including reviewing decisions of government agencies and statutory bodies. At time of writing this report, matters dealt with by the QIRC which could fall within QCAT's jurisdiction have to date been excluded pending settlement of proposed Federal/State industrial relations arrangements.

Industrial Registry

The Industrial Registry performed very well in providing administrative support to the Court and Commission with the percentage of matters lodged that were processed and available to Members within one working day achieving 97%, exceeding the benchmark set at 90%. In addition 100% of decisions were released to the parties within one working day of the decision being finalised by Members.

Records of the Registry reveal that over 2,000 listings [e.g. conferences and hearings] were requested by Members to be set down.

The Registry has been progressing a number of improvement initiatives, particularly relating to web services, aimed at improving electronic service delivery for all users of the Court and Commission system.

On behalf of all Members, I thank Registry staff for their assistance in ensuring that matters that need to come before the Tribunals are dealt with efficiently and in a timely manner, ensuring costs of such matters are kept to a minimum.

"The Government's view on industrial relations is to bring about jobs growth and enhanced economic performance. To do this, it is necessary to work constructively with both workers and employers in delivering these outcomes.

At the centrepiece of these industrial relations reforms is the establishment of a strong and independent umpire —the Queensland Industrial Relations Commission. The appointment, for the first time in 80 years, of a full-time president of the Industrial Relations Commission highlights this Government's commitment to raising the status and standing of the Commission within the Queensland community."

{Extracts from Hansard - Introduction of the *Industrial Relations Act 1999* to Parliament}

"The Queensland Industrial Relations Commission has served the State of Queensland extremely well and continues to do so for the 40% of organisations in Queensland who remain under the state jurisdiction . . . the Queensland Government was committed to ensuring that, as far as possible, that expertise is not lost in the movement to a national industrial relations system."

{Statements given by Mr Gary Fenlon, the Parliamentary Secretary to the then Industrial Relations Minister, at WRMC on 22 August 2008}

"At the end of the day, we want to deliver the best possible system for Queensland–one that ensures the protection of Queensland jobs and promotes economic growth."

{a statement from the Attorney-General and Minister for Industrial Relations, The Honourable Cameron Dick on 11 June 2009}.

The Industrial Court of Queensland

The Industrial Court of Queensland

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

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

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

More information about the Full Bench appears later in this report under 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

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

Appeal decisions are final and conclusive, under s. 349. (Judicial review has been found by the Supreme Court, to be available, but only for decisions that involve jurisdictional error: see *Carey v President of the Industrial Court of Queensland* [2004] 2 Qd.R. 359 at [366] citing *Squires v President of Industrial Court Queensland* [2002] QSC 272.) See also *Parker v The President of the Industrial Court of Queensland and Q-COMP* [2009] QCA 120.)

The Court hears and determines appeals from decisions of a single Member of the Commission, of a Full Bench and of the Industrial Registrar. However, Full Bench decisions may only be appealed to the Court if the President was not a Member of the Bench. Any decision of a Full Bench

which included the President may only be appealed to the Queensland Court of Appeal.

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

Appeals also lie to the Court from decisions of the 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);
- offences and cancellation or suspension of certificate of competency under the *Mining and Quarrying Safety and Health Act 1999* (see s.234 and 237);
- 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;
- appeals under the *Building and Construction Industry (Portable Long Service Leave) Act 1991* and the *Private Employment Agents Act 2005*.

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*.

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 2000* 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*, the *Coal Mining Safety and Health Act 1999*, the *Petroleum and Gas (Production and Safety) Act 2004*, the *Mining and Quarrying Safety and Health Act 1999* and the *Dangerous Goods Safety Management Act 2001*.

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 exist in the *Electrical Safety Act 2002*.

Additionally, the Court hears appeals relating to the right of entry of authorised representatives under Part 7A of the *Workplace 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.

Offences under the *Industrial Relations Act 1999*

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

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

There are other offences which must be tried before the Court. For example, s. 660 states that a person must not disrupt or disturb proceedings in the Commission, in the

Industrial Magistrates Court, or before the Registrar; a person must not insult officials of those tribunals, attempt to improperly influence the tribunals or their officials or to bring any of those tribunals into disrepute. To do so is to commit an offence, for which the person may be imprisoned for up to 1 year, or fined 100 penalty units. The Court also has all necessary powers to protect itself from contempt of its proceedings and may punish contempt of the court.

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

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

[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:

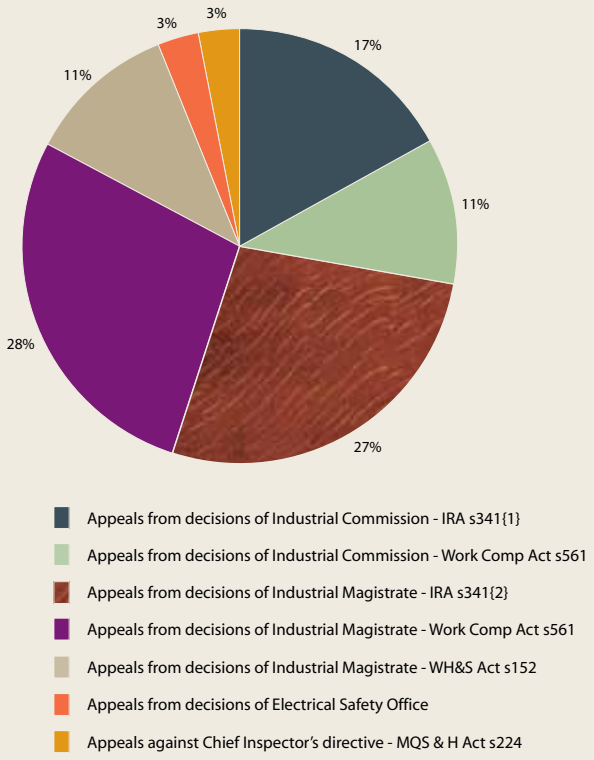
- the party's application was vexatious or without grounds; or,
- in a reinstatement application, if the party caused another party to incur additional costs, by doing some unreasonable act or making an unreasonable omission during the course of the matter.

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

The question of costs is invariably decided on submissions after a decision is delivered in a matter, rather than on a

separate application. These decisions are recorded either as a second decision based on written submissions after the appeal has been determined, or at the end of the substantive decision, based on argument during the appeal hearing.

Appeals Filed in the Court 2008–09



Industrial Relations Act 1999 . Industrial Relations Regulation 2000 . **Industrial Relations {Tribunals} Rules 2000** . ***Workers' Compensation and Rehabilitation Reulations 2003*** . Workplace Health and Safety Act 1995. Vocational Education, Training and Employment Act 2000 . Trading {Allowable Hours} Act 1990 . **Whistleblowers Protection Act 1994** . Contract Cleaning Industry {Portable Long Service Leave} Act 2005. Electrical Safety Act 2002 Child Employment Act 2006 . Child Employment Regulations 2003 . ***Acts Interpretation Act 1954*** . Private Employment Agents Act 2005 . **Workplace Relations Act 1996 {Federal}** . Public Service Act 1996 . Penalties and Sentences Act 1992 . Coal Mining Safety and Health Act 1999 . Local Government Act 1993 . **Petroleum and Gas {Production and Safety} Act 2004** . ***Mining and Quarrying Safety and Health Act 1999*** . Dangerous Goods Safety Management Act 2001 . Magistrates Court Act 1921 . **Building and Construction Industry {Portable Long Service Leave} Act 1991** .

The Queensland Industrial Relations Commission

The Queensland Industrial Relations Commission

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

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

The Commission is headed by the President who is also President of the Industrial Court. Other presidential Members are the Vice President and two Deputy Presidents. There were four* other Commissioners as at 30 June 2009.

As of 12 June 2009, the President is responsible for administration of the Commission and Registry, including allocation of matters, establishing industry panels for disputes, approving references to a Full Bench, and general conduct of Commission business. The President is to be assisted by the Vice President in performing responsibilities and may delegate power to the Vice President or if the Vice President is not available, to one or more Deputy Presidents.

All Members of the Commission are also appointed to the Australian Industrial Relations Commission. These "dual commissions" are provided for by s. 305, and facilitate the co-operative arrangement between Australian and State Commissions. In terms of the *Federal Workplace Relations Act 1996*, Queensland Commissioners heard 108 matters in their capacity as Federal Commissioners during the reporting period.

In terms of the *Federal Fair Work Act 2009*, Queensland Commissioners do not hold dual membership as Commissioners of Fair Work Australia which commenced on 1 July 2009.

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 Mr AL Bloomfield	Deputy President 2.8.1999—appointed DP 3.2.2003
Ms GK Fisher Mr DK Brown	Commissioner 2.8.1999
Ms IC Asbury Mr JM Thompson	Commissioner 28.9.2000

* Commissioner Brown is currently performing in the role of Queensland Workplace Rights Ombudsman and has been since 1 July 2007. In this role he remains an ongoing Member of the Commission. However legislatively he is prevented from performing the functions of a Member of the Commission whilst performing as Ombudsman.

The legislative provisions for this position can be found at Chapter 8A of the *Industrial Relations Act 1999*.

Industry Panel System

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

The current panels, operative since 17 June 2009, are listed in Appendix 1:

The Full Bench of the Commission

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

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

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

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

Appeals to the Full Bench

The Full Bench may (by leave) hear appeals on grounds other than an error of law, or an excess, or want, of jurisdiction (for which an appeal lies to the Court): s. 342. On these grounds, a person may appeal to 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 the matter is of such importance that it is in the public interest to grant leave.

Full Bench Hearings about Industrial Organisations

If an organisation involved in an industrial dispute does not comply with orders of the Commission, a Full Bench, which must include the President, may make further orders against the organisation, including penalties up to 1,000 penalty units (see s. 234). 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 2008 - 2009.

Commission Hearings

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

Jurisdiction, Powers and Functions of the Commission

Jurisdiction under the *Industrial Relations Act 1999*

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

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

Commission's Powers

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

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

The powers given by the Act include the power to:

- make general rulings about industrial matters, employment conditions, and a Queensland minimum wage: s. 287; and statements of policy about industrial matters: s. 288;
- resolve industrial disputes by conciliation and, if necessary, by arbitration: s. 230. The Commission's powers in such disputes includes the power to make orders;
- hear and determine applications for reinstatement following termination of employment, including awarding compensation if reinstatement is impracticable, and imposing a penalty on the employer if the dismissal was for an invalid reason: ss. 76 and 78-81;
- certify or refuse certification of agreements, and amend or terminate certified agreements, according to the requirements of the Act: ss. 156, 157, 169-173 or assist parties to negotiate certified agreements (ss. 148 and 149) by conciliation and, if necessary, by arbitration. The Commission's powers includes the power to make orders necessary to ensure negotiations proceed effectively and are conducted in good faith;
- make, amend or repeal awards, on its own initiative or on application: s. 125. The Commission may also review awards under s. 130. (The first program of award review was commenced by the Commission on its own initiative in 1999);
- 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;

- make a declaration about an industrial matter: s274A
- 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 7 August 2008 a Full Bench of the Commission declared by General Ruling a wage adjustment of $23.60 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 $552.00 per week with a proportionate amount for junior, part-time and casual employees. Work related allowances were increased by 3.8%. The effective date for the increased rates was set at 1 September 2008.

On 10 June 2009 and 16 June 2009 respectively, the Queensland Council of Unions (application B/2009/41) and The Australian Workers' Union of Employees, Queensland (application B/2009/42) filed with the Industrial Registrar applications seeking -

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

At the time of this report a Full Bench of the Queensland Industrial Relations Commission had set dates for proceedings.

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 payment of unpaid wages have traditionally been directed to attend a conference with a member of the Commission. Where an entity alleging prohibited conduct (in relation to freedom of association under Chapter 4) has applied for a remedy, the Commission must direct the parties involved to a conciliation conference before a hearing. Conciliation is also mandatory on an application for reinstatement.

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 was used in this way for the first time 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.

However, certain provisions of the *Industrial Relations Act 1999* exclude some employees from coverage of the dismissal provisions under the Act.

For example, where wages are a consideration, an excluded employee is one:

- who is not employed under an industrial instrument (e.g. award, certified agreement or Queensland workplace agreement), an industrial agreement or enterprise flexibility agreement, all of which are instruments of the Commission; and
- who is not a public service officer employed on tenure under the Public Service Act 2008; and
- whose annual wages immediately before the dismissal is more than an amount prescribed by Regulation ($106,400 as at 14 August 2008)

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

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

In many cases, an agreement can be reached, disputed claims are resolved, or the matter is not pursued further. 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 of record, presided over by a different Member of the Commission.

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

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 323 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 97 applications to approve a certified agreement. Of these, 50 were new agreements. The number of certified agreements 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 under an order fixing remuneration and conditions which apply to the vocational placement of a student that is for more than 240 hours a year. An alternative remedy is available in the Industrial Magistrates Court (s. 399).

An application can not be made to the commission if the total amount being claimed is more than $50,000.00. Claims over $50,000.00 may be made in the Industrial Magistrates Court. A person can not make an application under this section if an application has been made to a magistrate for an order for the same matter.

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

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

Costs

The Commission has discretion to order costs against a party to an application. However the discretion may only be exercised if the Commission is satisfied the "offending" party's application was vexatious or without reasonable cause, or in the case of a party to a reinstatement application, some unreasonable act or omission during the course of the matter, caused another party to incur additional costs. Table 4 indicates how many of these costs matters were dealt with.

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').

Amend 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 $106,400.

Industrial Organisations

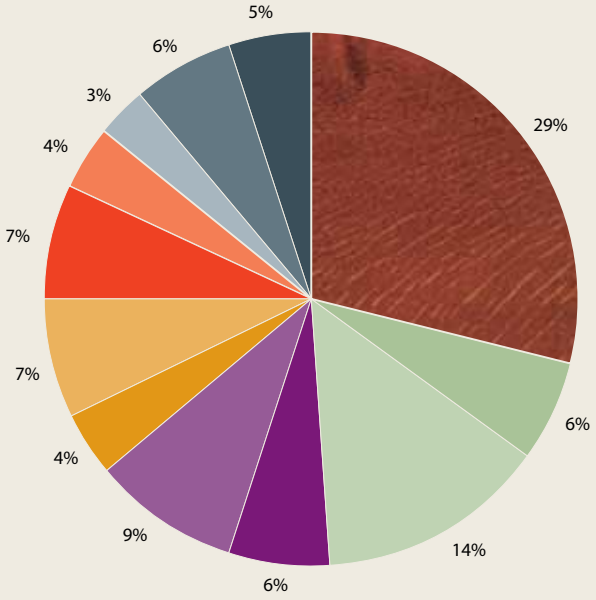
The Commission has the power to: grant the registration of an Industrial Organisation (s. 413); approve of change of name (s. 473); change to eligibility rules (s. 474); and to make orders about an invalidity (s. 613). Table 10 shows the number of applications dealt with.

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 2008–09



- s53 Payment in lieu of long service leave
- s74 Application for reinstatement {unfair dismissal}
- s156 Certified agreements
- s229 Notification of dispute
- s278 Claim for unpaid wages/superannuation
- s364 Authorisation of industrial officers
- s409–657 Industrial organisation matters
- IR Act Request for recovery conference
- WH&S Act s90 Authorised representative
- WC Act s550 Appeal against Q-Comp
- Mags Court Act s42B Employment Claim
- Other

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*; *Child Employment Act 2006*; and *Magistrates Courts Act 1921*.

Jurisdiction under the *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.

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

Current trading hours matters before the Commission include applications for the following:

- extended trading hours in city of Rockhampton area
- extended trading hours in city of Toowoomba area
- Sunday trading in Moranbah area
- expansion of definition of South-East Queensland Area to include Cooroy, Cooloola Cove and Gympie
- amendment to the current definition of Cairns Tourist area and others
- extended trading hours for supermarkets in the Gold Coast Coastal Tourist Area
- Sunday trading in Bargara and Mission Beach areas;
- Sunday trading and trading on certain public holidays in the Mt Isa area.

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

Workers and employers can apply to Q-Comp if they disagree with certain decisions made by their workers' compensation insurer. Q-Comp impartially reviews claims decisions. Under s. 550 of the *Workers' Compensation and Rehabilitation Act 2003*, if an employer or employee 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. During the year there were 107 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 section 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*.

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 $106,400 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.

During the year there were 101 conferences held. Only one applicant took further action to seek a hearing before a Magistrate.

Local Government Remuneration Tribunal

On 25 October 2007 the Queensland Government appointed a Member of the Commission, Deputy President Bloomfield, to Chair the Local Government Remuneration Tribunal. The Tribunal has a number of functions, the most notable of which are that it must,

- every 4 years review categories of councils for the 72 councils within its jurisdiction and assign each council to a category; and
- by 1 December annually decide the level of remuneration to be paid to mayors, deputy mayors and councillors within each category of council.

Deputy President Bloomfield's appointment as Chairperson of the Tribunal currently runs until October 2010, but this term is currently being reviewed to have it better relate to the 4 year term of Councils, which commenced on 15 March 2008.

In its 2008 determination the Tribunal increased the remuneration levels for mayors in Councils categorised at levels 3, 4, 5 and 6 by 5% and increased the remuneration levels for mayors and deputy mayors in the Special Category of councils in several respects. Except for these variations all other remuneration levels remained essentially unchanged.

All local government mayors, deputy mayors and councillors have been subjected to a "wages freeze" since prior to 1 July 2008, because their remuneration levels are tied (by percentage) to those of State Members of the Legislative Assembly.

Professional activities

During the year 2008/09, the Members attended the following conferences, seminars and meetings:

Member	Activity	Location	Date/s
LINNANE, D.M.	13th Annual Europe Pacific Legal Conference	Pocol, Italy	07/01/09 to 14/01/09
BLOOMFIELD, A.L.	2008 Annual Conference Industrial Relations Society of Queensland	Gold Coast	22/08/09 to 23/08/09
FISHER, G.K.	Professional Legal Practice Course College of Law	Brisbane	Commenced 21/07/08

Parental Leave

Section 38C of the *Industrial Relations Act 1999* requires a Full Bench of the Commission to review the operation of sections 29A, 29B, 29C and 29D of the Act either on its own initiative or on the Minister's direction. Section 38C(2) of the Act provides that, in the absence of a direction from the Minister, the Full Bench must start a Review on its own initiative within 3 years after the commencement of section 38C.

Section 38C (3) provides that in undertaking a Review, the Full Bench must consider, in particular:

- whether the sections are meeting the reasonable needs of employees; and
- the impact the operation of the sections is having on the ability of employers to conduct their business efficiently.

In those circumstances on 19 February 2009 a Full Bench held a hearing to commence the Review process. Following on from that hearing, conferences were held before the Commission on 25 February and 24 April 2009, for the purposes of ascertaining the views of industrial organisations on the process for the conduct of the Review.

The process of the Review includes:

- The establishment of a link on the website of the Queensland Industrial Relations Commission from which relevant information can be obtained: **www.qirc.qld.gov.au/inquiry/review/index.htm**
- The placing of an advertisement in the Courier Mail and regional newspapers advising that the Review is underway and where relevant details may be obtained
- The release of a discussion paper;
- Invitation to interested persons or organisations to make written or oral submissions;
- Public hearings; and
- Preparation of a Report and Recommendations by the Full Bench.

On 22 May 2009, the Full Bench released the discussion paper requesting submissions leading to hearings beginning on 31 August 2009.

Aged Care . Agriculture . **Agriculture Associated Bulk Handling** . ***Ambulance*** . Arts and Entertainment . Banking and Insurance . Beauty and Hairdressing . **Brewing and Beverages** . Building and Construction . Catering {excluding Construction Catering} . Cement . ***Cemeteries and Funerals*** . Chemicals . **Childcare** . Clerical . Concrete . Construction Catering . Disability Services . **Dry Cleaning and Laundry** . ***Education*** . Electrical Industry including Contractors . Fast Food . **Fire Services** . Food Manufacturing . Forestry Products {including Timber/Sawmilling} . ***Gas and Oil*** . General Manufacturing . General Transport {excluding Sugar} . **Hospitality** . Hospitals/Health . Hotels and Motels . Local Government Authorities . ***Maritime Transport*** . **Meat and Poultry** . Metal Industry . Mining {including Associated Bulk Handling} . **Miscellaneous** . Nursing . ***Pharmaceuticals*** . Police . Port Authorities . Printing and Publishing . Prisons . Professional Services . Professional Engineering and Technical . Drafting . **Public Sector** . Quarries . Racing . Residential Accommodation . **Retail** . Sales and Wholesale Warehouses {including Stores and Distribution Stores} . Security . Shearing . ***Sports*** . ***Tree Lopping***

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 2008*.

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

The Court, Commission and Registrar are independent of government and other interests. Funding for the Court, Commission and Registry is provided through the Department of Justice and Attorney-General 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 Qld 4000

Postal address: GPO Box 373 BRISBANE Qld 4001

General enquiries: (07) 3227 8060

Facsimile: (07) 3221 6074

Email address: qirc.registry@deir.qld.gov.au

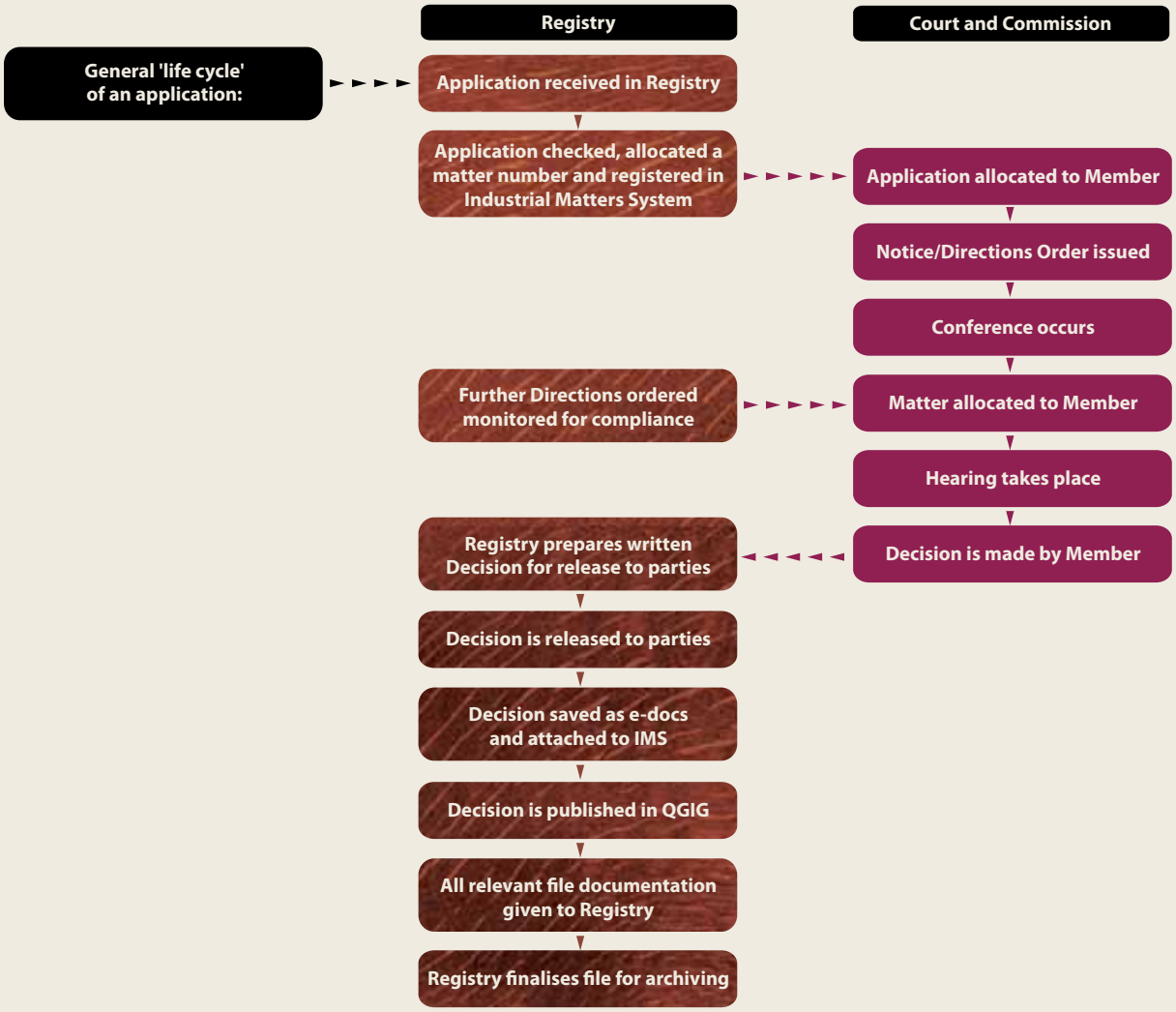
Web addres: www.qirc.qld.gov.au

Registry Services

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 following outlines the organisational structure of 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.



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 assists 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 2008-09, a total of 1,806 applications and notifications were filed in the Registry (see Tables 1 and 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. Further, at the request of Members, staff set down over 2,000 listings (e.g. conferences and hearings).

As an example of the work involved by Registry staff with some applications, in the matter of a Full Bench of the Commission arbitrating a certified agreement for the Queensland Ambulance Service, Registry records revealed 173 individual events being recorded (including 38 listings involving programming, conferences, hearings and inspections and over 90 documents being filed or issued).

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

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 quite labour intensive with strict deadlines to be met, in order to publish and distribute the Gazette to subscribers on time each week.

PSU also supplies the weekly gazettes, and gazette extracts of these documents to the Industrial Relations Information Service (IRIS) within the Office of Fair and Safe Work Queensland of the Department of Justice and Attorney-General 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.

Additionally, 97 certified agreements were prepared, converted to PDF format and directly uploaded by the PSU to the IRIS database.

QIRC decisions are also posted on the AustLII data base (which is a free public access legal data base). 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.

As in previous years, the printing of the annual State Wage Case amendments was again a major task in 2008 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 PSU manages 4,785 Industrial Instruments (see table 6) ensuring the accuracy and standardisation is met and available to distribute to relevant agencies for distribution and use State-wide.

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 Communications Services Branch within JAG. 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 Australia wide (including AIRC and other States Tribunals' rulings on current matters).

Legislation Upkeep

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

Web Services

The last twelve months proved the Commission's web site (www.qirc.qld.gov.au) invaluable with interest and usage increasing significantly. It provides 6,100 files of relevant information for the general public and approximately 570 visits were recorded daily.

Important public matters such as the 2008 State Wage Case, and the Commission's review of Family leave now involve the posting of all relevant documentation to the website as soon as it is lodged with the Registry, including original applications, directions of the Commission, submissions and responses of all parties, transcripts of proceedings and Commission decisions. This allows timely and cost effective information to be disseminated to all parties without the need of many parties appearing in the Commission or serving documents on each other.

The internet website for the Commission and Registry is frequently being enhanced to meet the changing needs of our clients. Through client feedback responses the website now contains significant information including:

- all released decisions are posted daily
- each Queensland Government Industrial Gazette [QGIG] is posted weekly
- all volumes of the QGIG as from 2000 have been posted to the website
- all extracts of the QGIG back to 2005 have been posted to the website
- all Awards of the Commission
- all amendments to Awards of the Commission since the State Wage Case 2007

Information on the QIRC website has been enhanced in accordance with the *Right to Information Act 2009*. In addition, a number of electronic service delivery proposals are underway. These are mentioned below under 'new initiatives' and 'future developments'.

Registered Industrial Organisations

The review of Registry records of Registered Industrial Organisations in relation to provisions of Chapter 12 of the *Industrial Relations Act 1999* continued into 2008/09. Many Industrial Organisations have been assisted in their duty to comply with legislative provisions, and their access to Registry information and services has been improved. Many of the applications filed under Chapter 12 provisions are a direct result of the Registry's proactive involvement in this area.

Library Services

The Registry 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.

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

Corporate Services

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

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

A comprehensive range of corporate services is provided to the Court, Commission and Registry employees.

These services, principally provided through the Senior Executive Officer, include:

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

These services also include a number of mandatory reporting requirements (e.g. Financial Statements, 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 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.

Performance

Key performance goals of the Registry are to support Members of the Court and Commission through:

- examining, evaluating and processing all applications and other documentation received from applicants, respondents and other parties;
- assisting in administrative activities of each application including tracking matters and notifications to applicants and respondents;
- organising conferences and hearings; and
- preparing, formalising and releasing decisions, amendments, orders, etc and publishing in the Queensland Government Industrial Gazette.

These key performance goals are measured by quantitative performance indicators and an annual client satisfaction survey is undertaken to assess the Registry's level of service from a client perspective. However, this year, with the abolition of the Department of Employment and Industrial Relations as a result of the Machinery of Government Changes in March 2009, a client satisfaction survey was not undertaken in 2008/09. The result of the survey undertaken in 2007/08 showed that 93% of clients were satisfied with the performance of the Registry staff.

The key performance goals measured quantitatively during 2008/09 in respect of the Registry's performance include the following:

- the percentage of matters lodged that are processed and available to Members within one working day was 97% exceeding the benchmark set at 90%.
- the percentage of decisions released to the parties within one working day was 100% exceeding the benchmark set at 95%.
- the percentage of decisions that are published and available to the community within 13 working days was 100% exceeding the benchmark set at 95%.

In addition to the Registry's key performance goals, quantitative performance indicators are in place to measure the percentage of matters completed by the Members of the Court and Commission within three months and the percentage of matters resolved at conference.

The percentages for these performance indicators are 87% and 80% respectively exceeding the benchmarks set at 75% for both of the performance goals.

These performance measures are also detailed in Table 8.

New Initiatives

Right to Information

On 19 May 2009, the Queensland Government introduced the *Right to Information Bill 2009* into Parliament. The primary objective of the Bill was to give the public a right of access to information held by government agencies unless, on balance, it is contrary to the public interest to provide the information. The Bill repeals the *Freedom of Information Act 1992*.

The Right to Information Act 2009 [RTI Act], which was assented to on 12 June 2009, aims to make more information available, provide equal access to information across all sectors of the community, and provide appropriate protection for individual's privacy.

Essentially, all agencies, including the Industrial Registry, were required to review all agency documentation and develop web pages to comply with the RTI Act. Registry undertook this task, within existing resources, meeting the deadline of 1 July 2009. The QIRC website now contains detailed information about the release of administrative and corporate information, as well as separate information regarding the release of Judicial records of the Court, Commission and Registrar.

Q150

As part of Queensland's 150th birthday celebrations, a one-day conference on the history of labour relations hosted by the Department of Justice and Attorney-General will be held on Friday 11 December 2009.

The conference will examine the people, institutions and events that have shaped Queensland's labour relations history over the last 150 years. Experts, historians, prominent speakers and practitioners will present on a range of topics, including the role of the Queensland Industrial Relations Commission, Unions and Employer associations.

In this regard, Registry staff participated in an extensive project to detail the history of the Court, Commission and Registered Industrial Organisations from 1912 to 2009.

Future developments

Several matters that arose during the reporting period have the potential to significantly impact on the Court and Commission and subsequently, the Industrial Registry.

The *Federal Fair Work Act 2009* (the FW Act) passed through Parliament on March 20 and then received Royal Assent on April 7 to take effect on 1 July 2009.

The passing of this Act confirmed that Federal law retained primacy in industrial matters touching trading financial or trading corporations. All employers who are covered by the corporations law have now effectively been removed from the State jurisdiction.

The Federal Government has introduced the *Federal Fair Work (State Referral and Consequential and Other Amendments) Bill 2009* (the bill) to amend the FW Act to enable States to refer matters to the Commonwealth for the purposes of paragraph 51 (xxxvii) of the Constitution with a view to establishing a national workplace relations system.

The Queensland Government has announced that (along with other States) it is looking at possible models for achieving a national industrial relations system through cooperative federalism, so that the new national system is operational from 1 January 2010.

At the Workplace Relations Ministerial Council on 11 June 2009, the Minister indicated the Queensland Government's in-principle support for joining the national industrial relations system. Queensland's support for a referral of powers was subject to the resolution of several issues. Whilst the Australian Government has agreed to further discussions on the matter, at the time of writing this report, those issues had not been resolved.

Of note should an agreement be reached, workplace relations powers in respect of the private sector will be referred to the Federal Government with the public sector remaining in the Queensland system with the local government sector falling within the State jurisdiction.

Both the Commission and Registry has been monitoring the impact of this on both the workload and staffing requirements. A number of initiatives have been put in place including holding employee positions vacant and internally reallocating staff resources to cover skills loss and only proceeding with new initiatives and projects within existing budget restraints.

As reported last year, the Premier, the Hon Anna Bligh MP announced that an independent review panel would examine the establishment of a **Queensland Civil and Administrative Tribunal** [QCAT]. On 17 June 2009, State Parliament passed a bill to establish QCAT. The new tribunal is expected to be up and running by 1 December 2009 and will amalgamate a number of existing bodies and tribunals. QCAT functions will involve a range of matters including reviewing decisions of government agencies and statutory bodies. At the time of writing this report, matters dealt with by the QIRC which could fall within QCAT's jurisdiction have to date been excluded pending settlement of proposed Federal/State industrial relations arrangements.

The lease arrangements for the Court and Commission [on level 13] and the Registry [on level 18] expire 31 March 2010. With the costs involved in renewing the lease, and other offers in the Central Business District, being significantly higher, together with the future unknown space requirements of the Court, Commission and Registry due to the unresolved Federal/State industrial relations arrangements, and the current economic climate, all create issues that need to be addressed.

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 on-line. Adoption of electronic service delivery will improve the availability, accessibility, consistency, efficiency and effectiveness of Registry services and all users of the Court and Commission.

Plans are underway to redevelop the current QIRC web presence. The new site will be a dynamic site, database driven using a content management system (CMS) and

provide the following benefits:

- make the updated website easier to use;
- allow for the development and use of interactive tools to meet client needs;
- provide ease of access to up to date statistics;
- provide content version control and record management practices to comply with legislative requirements.

In order to realise the full potential of this proposed technology, the Registry is also analysing the use of interactive tools to better manage enquiries via emails, faxes and letters, together with web and phone enquiries. Registry is developing templates to frequently asked questions, implementing a searchable record of all advice given to clients across all channels and creating reports on the types of enquiries received by the Industrial Registry, all aimed at better improving our client service delivery.

In January 2009 the Registry submitted a proposal to the Department of Employment and Industrial Relations regarding the publishing of decisions, awards, agreements, orders and other documents of the Court, Commission and Registrar on the QIRC website similar to other jurisdictions, in lieu of publishing in the Queensland Government Industrial Gazette. Should this proposal proceed it will be necessary to amend the *Industrial Relations Act 1999*, particularly to ensure that a document, decision, etc. published on the QIRC website is admissible as evidence of the document in Court proceedings.

The aim of publishing these documents on the QIRC website is to speed up their availability to the public while reducing staff administrative procedures and costs to all users.

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 8 of the 252 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 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).

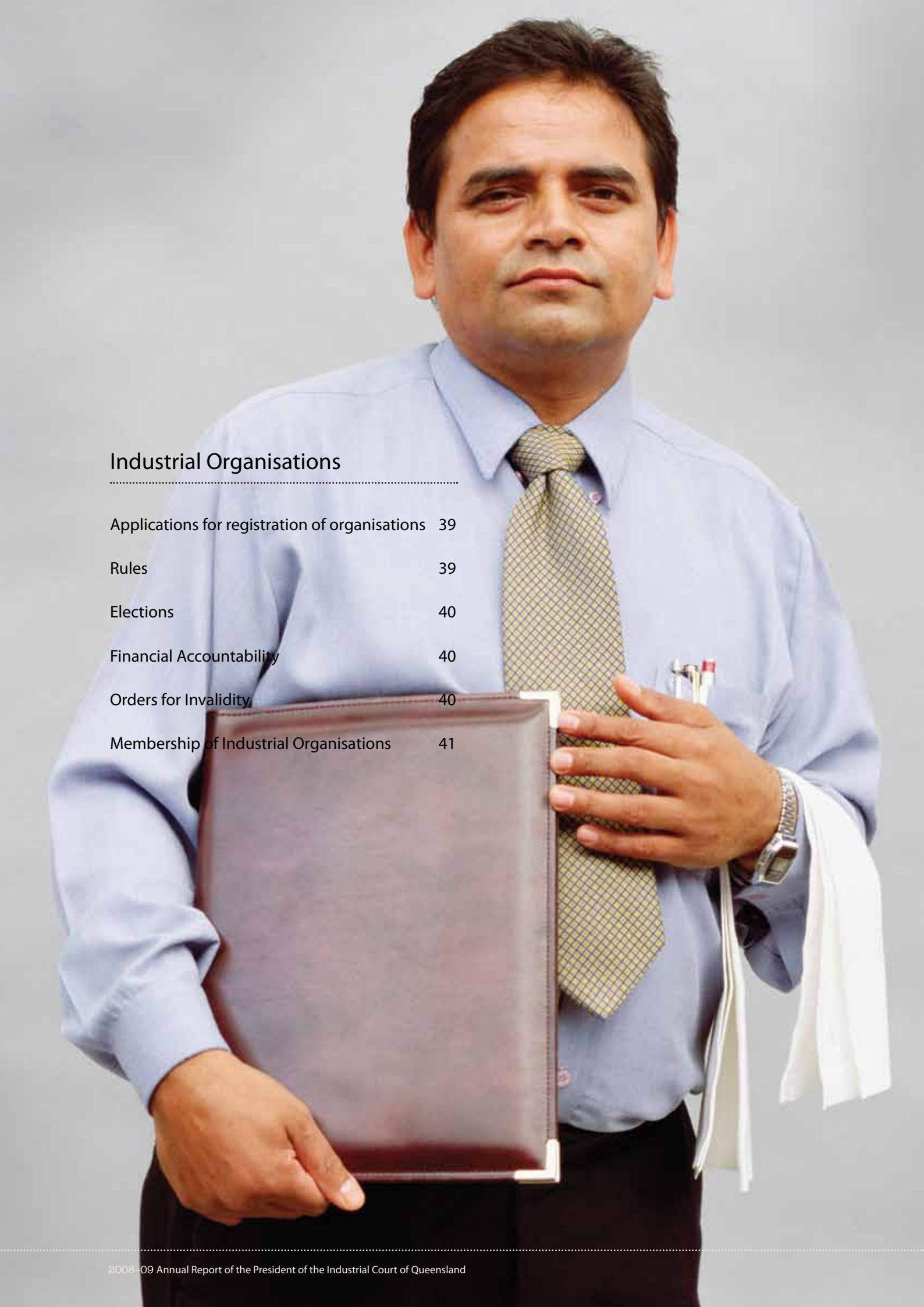
Financial accountability

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).

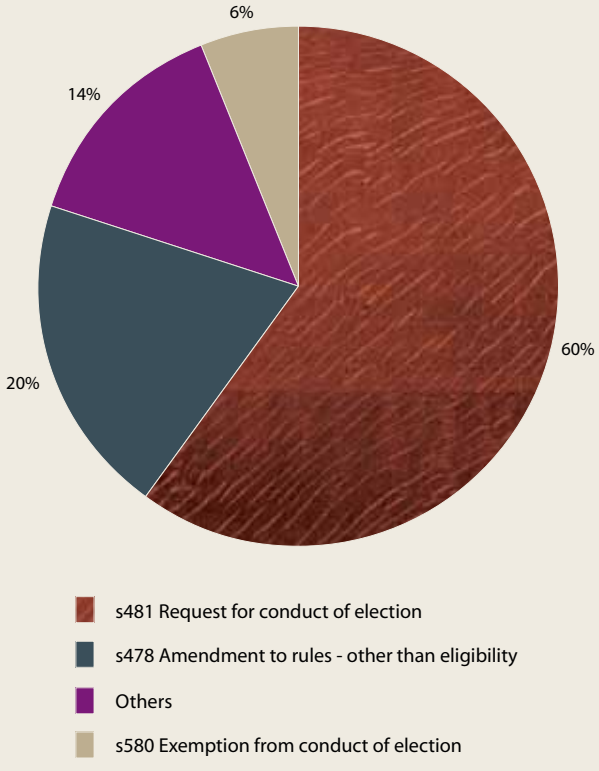
Orders for Invalidity

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.

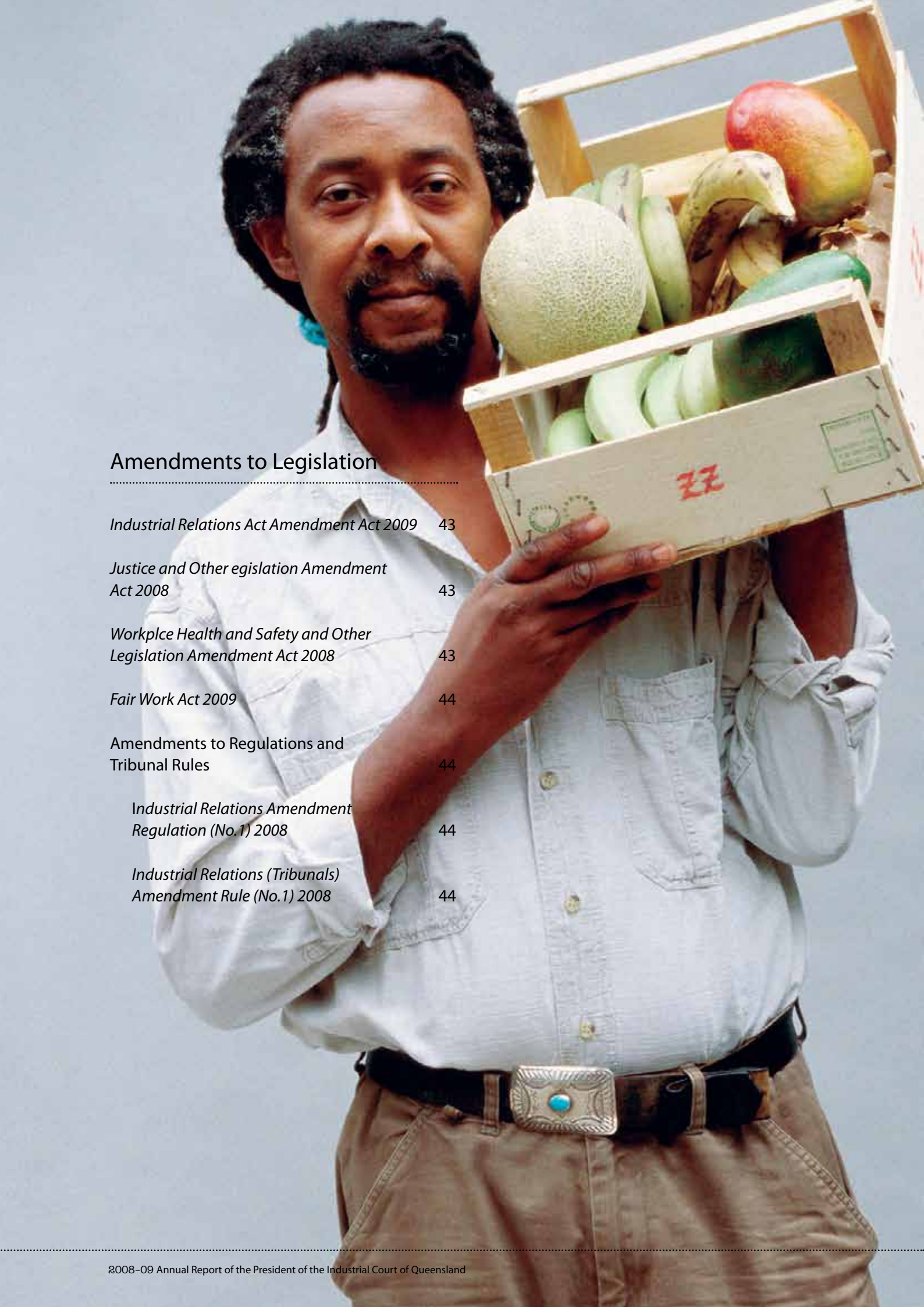
Industrial Organisation Matters Filed 2008–09



Membership of Industrial Organisations

Eligibility for and admission to membership of industrial organisations are governed by Part 10 of Chapter 12. At 30 June 2009, there were 43 employee organisations registered in Queensland; with a total membership of 398,266 compared to 373,030 at 30 June 2008. The employee organisations are listed according to membership numbers in Table 11. Equivalent figures for employer organisations are: 37 organisations registered at 30 June 2009, with a total membership of 39,979 compared to 42,876 at 30 June 2008. 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.

Industrial Relations Act Amendment Act 2009

The primary purpose of the *Industrial Relations Amendment Act 2009* was to clarify the roles of the President and the Vice President of the Queensland Industrial Relations Commission to remove ongoing confusion about their respective roles and responsibilities with regard to the administration of the Commission. The Act ensured that the President has direct responsibility for the court, commission and registry performing in a manner that is efficient and serves the needs of employers and employees. It will also align the administrative structure of the QIRC with that of most other jurisdictions but without interfering with the independence of the QIRC, or changing the nature of the QIRC's powers or fettering their use.

The Act also ensured that the head of the State tribunal has the authority to deal with matters of inter-jurisdictional co-operation and make arrangements about the utilisation of State tribunals with the head of the Australian Industrial Relations Commission.

The Act was assented to and the amendments took effect from 12 June 2009.

Justice and Other Legislation Amendment Act 2008

The *Justice and Other Legislation Amendment Act 2008* was assented to on 25 November 2008 and, amongst other things, amended the *Industrial Relations Act 1999*.

Of particular interest, this Act amended Schedule 2, Part 1, section 4(3) of the *Industrial Relations Act 1999* ensuring that long leave by the Queensland Workplace Rights Ombudsman is approved in the same manner as long leave by the President and Vice President of the Queensland Industrial Relations Commission whereby the Minister may grant leave, other than leave mentioned in the *Judges (Pensions and Long Leave) Act 1957*, to the President or Vice President on the terms the Minister considers appropriate.

Workplace Health and Safety and Other Legislation Amendment Act 2008

The *Workplace Health and Safety and Other Legislation Amendment Act 2008* was assented to on 25 November 2008 amending, amongst others, the *Workplace Health and Safety Act 1995*.

This Act introduced Provisional Improvement Notices (PINs) allowing qualified workplace health and safety representatives to issue notices where they believe that a person has contravened the Act and may continue to contravene the Act in the same way in the future. A person who has received a PIN must bring the notice to the attention of those affected by the notice which should be posted in a prominent place and workers in the workplace must comply with it.

The Act allows for a review of the issuing of PINs, including a request for an inspector to review the decision and the removal of a WH&S officer's ability to issue the notice in cases where such an officer has unreasonably given a PIN. The inspector may affirm, vary or deny the notice.

The chief executive or relevant person may apply to the Commission to suspend or cancel the representative's entitlement to give a PIN. The Commission may take action if it is satisfied that the representative has unreasonably given a PIN to a person suspending or cancelling their entitlement, giving written notice of their decision, reasons of the decision, and stating that the applicant or authorised representative may appeal against the decision to the Industrial Court.

Fair Work Act 2009

The *Federal Fair Work Act 2009* (FW Act) passed through Parliament on March 20 and then received Royal Assent on April 7 to take effect on 1 July 2009.

The passing of this Act confirmed that Federal law retained primacy in industrial matters touching trading financial or trading corporations. All employers who are covered by the corporations law have now effectively been removed from the State jurisdiction.

The Federal Government has introduced the *Federal Fair Work (State Referral and Consequential and Other Amendments) Bill 2009* (the Bill) to amend the FW Act to enable States to refer matters to the Commonwealth for the purposes of paragraph 51 (xxxvii) of the Constitution with a view to establishing a national workplace relations system.

State referrals

Schedule 1 to the Bill inserts a new Division 2A into Part 1-3 of the FW Act, which:

- enables a State to refer matters that would extend the application of the FW Act (so far as not otherwise within Commonwealth power) to the State by extending the meaning of terms defined in the FW Act (including national system employer, national system employee and outworker entity) and the provisions of Part 3-1 (General protections);
- enables a State to refer matters that would support Commonwealth amendments to the FW Act (so far as not otherwise within Commonwealth power) in relation to the subject matter of the FW Act as originally enacted, and arrangements for the transition to the national system; and
- envisages that State references of these matters may be subject to certain exclusions relating to public sector employment (including in relation to law enforcement officers).

On 11 June 2009 the Queensland Minister for Industrial Relations, the Hon Cameron Dick MP, indicated his Government's in-principle support for joining a national workplace relations system to refer their workplace relations powers in respect of the private sector, subject to a number of key issues being resolved. The in-principle agreement made will see the public sector remain in the Queensland system with the local government sector also falling within the State jurisdiction.

Amendments to Regulations and Tribunal Rules

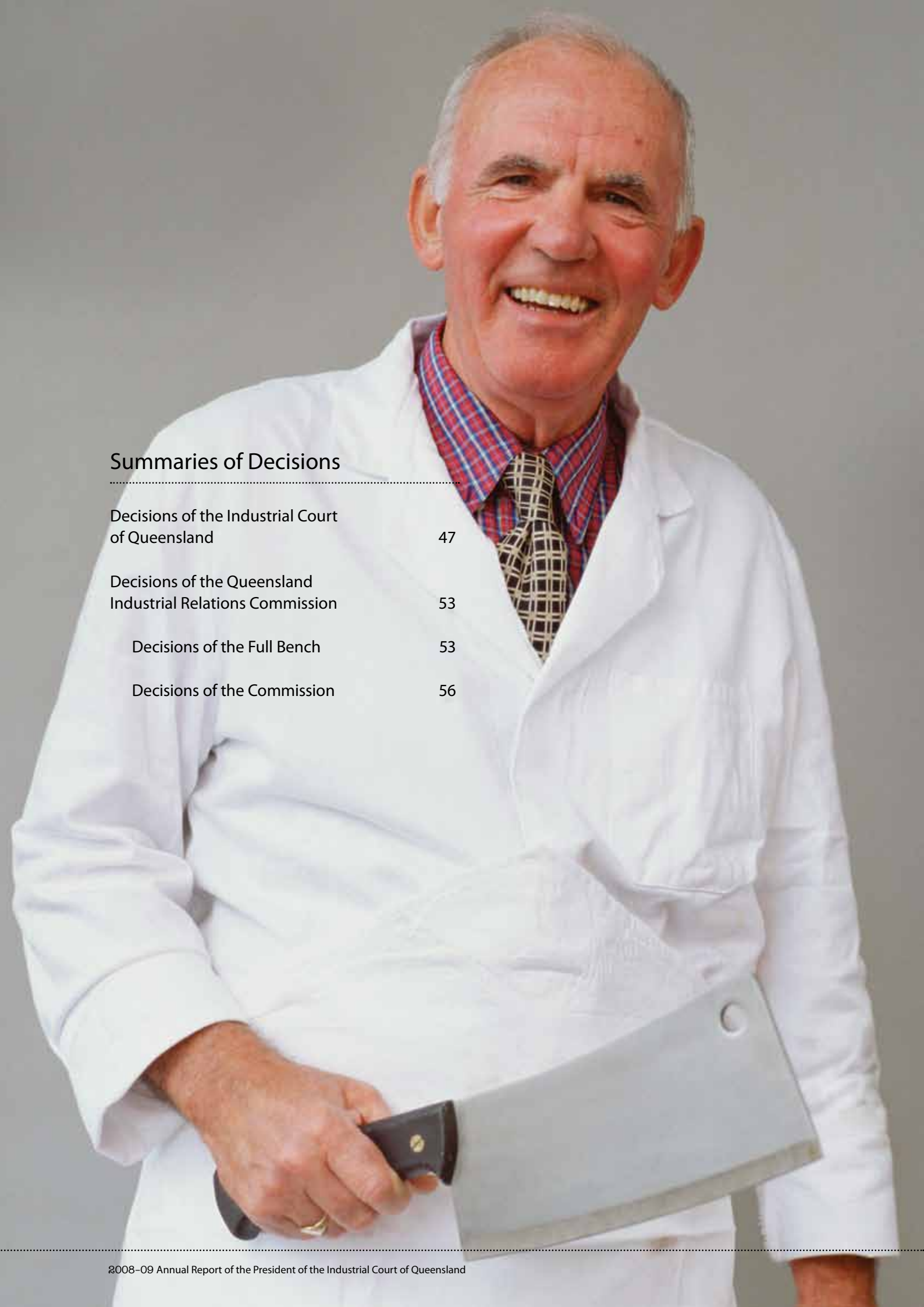
Industrial Relations Amendment Regulation (No.1) 2008

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 $101,300 to $106,400 per annum. The amendment took effect from 14 August 2008.

Industrial Relations (Tribunals) Amendment Rule (No.1) 2008

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 2008. A similar increase for 2008-09 was gazetted on 19 June 2009 to take effect for the year commencing 1 July 2009.



Summaries of Decisions

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Decisions of the Industrial Court of Queensland

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

Desmond Anthony Hansson AND Cameron Pope and Queensland Police Union of Employees (C/2008/37) 25 November 2008 189 QGIG 181

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

The Queensland Police Union of Employees (the QPUE) is an Employee Organisation under the Industrial Relations Act 1999 (the Act). The Applicant, viz., Mr Desmond Anthony Hansson, is a Member of the Executive of the QPUE. Mr Cameron Pope was the QPUE's President. By an Application filed on 15 September 2008, Mr Hansson sought orders pursuant to s. 459(1)(b) of the Act against each of Mr Pope and the QPUE. Section 459(1)(b) of the Act authorises the Industrial Court to direct a person obliged to perform or observe an organisation's rules to discharge that obligation. Amongst other relief Mr Hansson sought an order that certain directions be "ruled null and void" and an order that Mr Pope and QPUE obey the rules of QPUE.

The Industrial Court held that by its express terms s. 459(2)(a) of the Act denied the court power to invalidate an election. Jurisdiction over disputed elections is vested in the Queensland Industrial Relations Commission. The Industrial Court also held that s. 459(1)(b) of the Act authorised orders directed to performance and observance of particular rules and authorised neither general orders nor wide ranging enquiries into the management of an organisation. The question whether an organisation as distinct from its members and office bearers might be ordered to perform and observe its own rules was left for another day.

Robert James Cunningham, Michael John Douglas Meadows, David John Herbert Watt, Brian Walter Smith, Warren Grant Denny, Robyn Gay Lyons, Stephen John Tonge, Brian Francis Ward, James William Alley, Sharon Ann Winn, who are currently trading as, or who have traded as, Flower & Hart (A Firm) AND William Hamilton Hart (C/2008/20) 1 August 2008 188 QGIG 312

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

By an application filed in the Queensland Industrial Relations Commission on 21 December 2007 (amended 5 February 2008) Mr Hart sought a declaration that the remuneration paid to him by the Appellants: (a) should have been paid without deduction of superannuation contraventions; (b) should have included payment for periods of annual leave taken by Mr Hart; and (c) that his termination payment should have included an amount in respect of accrued but unused annual leave.

On 21 January 2008, Mr Hart filed proceedings in the Industrial Magistrate's Court at Brisbane claiming certain monies against the Appellants as unpaid wages. An examination of the application filed in the Industrial Magistrate's Court shows an assertion that the sum of $72,720.38 claimed in those proceedings represents the total money amount said to have been underpaid by the Appellants in respect of the three matters listed in the application for declarations filed in the Commission. By a letter dated 12 February 2008, Mr Hart's solicitors forwarded the Industrial Magistrate's Court application by way of service on the Appellants.

On 3 March 2008, the Appellants filed an application in the Commission seeking the dismissal of Mr Hart's amended application in the Commission, or, alternatively, an order that the Commission refrain until further order from hearing or deciding the matter. By a decision of 30 April 2008, now reported at 188 QGIG 10, the Commission dismissed the application. From that decision an appeal was brought to this Court.

It is frankly conceded by Mr Hart that the Declarations pursuant to s. 274A were sought in order that the Declarations (if granted) might be relied upon in the proceedings in the Industrial Magistrate's Court pursuant to s. 399, for the purpose of establishing the liability to Mr Hart. It was conceded also that Mr Hart might have ignored s. 274A and, as Mr Hart would have been required to do prior to the enactment of s. 274A, might have set about proving the matters which the Declarations would decide as between Mr Hart and the Appellants in the proceedings in the Industrial Magistrate's Court. Additionally, it was common ground that; (a) the Industrial Magistrate's Court would be required to quantify the liability established by the Declarations; and that (b) on a literal interpretation of s. 274A(4) Mr Hart was entitled to utilise the Declarations for the purpose and in the manner described. The contention of the Appellants was that if the Act is read as a whole, s. 274A does not carry its literal meaning and, in the alternative, if the Commission had jurisdiction to grant the Declarations, it should decline to exercise that jurisdiction because to exercise the jurisdiction would involve an abuse of process. It was recognised by each of Mr Hart and the Appellants that, because the Commission is a Court of Record rather than a Superior Court of Record (s. 255), the authorities bearing upon the circumstance in which a Superior Court will stay proceedings admittedly within its jurisdiction to prevent an abuse of process are not directly applicable. The Appellants further submitted that the same outcome may be reached by invoking s. 331(b) which provides:

"331 Decisions generally

The court or commission may, in an industrial cause -

(a) ...

(b) dismiss the cause, or refrain from hearing, further hearing, or deciding the cause, if the court or commission considers -

(i) the cause is trivial; or

(ii) further proceedings by the court or commission are not necessary or desirable in the public interest; or

(c) ...".

As Mr Hart did not dispute the availability of a remedy pursuant to s. 331(b), but adds the caveat that the authorities on an analogue of s. 331(b) in the *Conciliation and Arbitration Act 1904* (Cwth), esp. Re: Queensland Electricity Commission and Others; ex parte Electrical Trades Union of Australia (1987) 72 ALR 1, suggest that the balancing of interests required by s. 331(b) is so much a matter of fact and degree that it will seldom be possible to demonstrate an error in the exercise of the discretion of s. 331(b) which of the kind described in House v The King (1936) 55 CLR 499 at 504-505 per Dixon, Evatt and McTiernan JJ.

In accepting the submissions made on behalf of Mr Hart the Industrial Court said, amongst other things:

"When ss. 278 and 399 are read together, it is apparent that an employee seeking to recover "wages" (in the statutory sense) of less than $50,000 may either take proceedings under s. 278 in the Commission or take proceedings under s. 399 in the Industrial Magistrate's Court. The restrictions are that an employee who has instituted proceedings in the Industrial Magistrate's Court may not institute proceedings in the Commission, and that an employee who has instituted proceedings in the Commission may not institute proceedings in the Industrial Magistrate's Court. An employee seeking to recover "wages" (in the statutory sense) in excess of $50,000 has no choice. Such an employee may institute proceedings in the Industrial Magistrate's Court but may not institute proceedings in the Commission.

So significant are the differences between proceedings in the Commission and proceedings in the Industrial Magistrate's Court that where a s. 278 matter is remitted to an Industrial Magistrate, the Industrial Magistrate is expressly required to "hear and decide the application as if it had been brought before the Commission" (s. 278(7)). There are other important differences between proceedings in the Commission and in the Industrial Magistrate's Court going to legal representation (s. 319), recovery of costs (s. 335) and appeals (s. 341(1) and (2)).

It is the contention of the Appellants that the Act has established two quite distinct streams for the recovery of wages and that an intention should not be attributed to the Legislature to permit use of s. 274A to establish issues in a wage recovery proceeding which, because of its quantum, might be brought only in the Industrial Magistrate's Court. The point is taken that the very Act which introduced s. 274A also introduced provisions for conciliation in employment claims in the Industrial Magistrate's Court, (see Part 6 of the *Industrial Relations Act and Other Legislation Amendment Act 2007*), which maintained the proposition that a claim is not an employment claim if the course of action to which the claim relates is within the jurisdiction of the Commission. An impertinent rejoinder might be that the omission of a provision precluding the use of s. 274A declarations in s. 399 recovery proceedings, was contemporaneous with recognition of an Industrial Magistrate's Court stream and an Industrial Relations Commission stream and contemporaneous with a preparedness to legislate to avoid overlap in the case of Part 6. However, the real obstacle to the Appellants' argument lies not in speculation and/or advocacy but in the absence of any language in the *Industrial Relations Act and Other Legislation Amendment Act 2007** or the *Industrial Relations Act 1999* (post the Amendment) to anchor the submission that s. 274A declaration proceedings and s. 399 recovery proceedings are not to be intermingled. Section 274A weighs heavily against such a construction. Section 274A is a provision of the type which gives the Commission a new discretion to issue a declaration and, if the Commission exercises its discretion in favour of an applicant, gives a new right to the applicant; see generally the discussion in *Colley v Futurebrand FHA Pty Ltd* (2005) 63 NSWLR 291 at 295 to 296 per Handley JA with whom Giles JA agreed. Sections 320(1) to (3) and 274A read well together. There is no reason to suppose that the Legislature did not intend the protection against abuse to be found in the proper exercise of discretion. [*It is common ground that the Minister's Second Reading Speech (18 April 2007, 1294) does not assist. In my view, the Explanatory Note poses the same issues as the Act.]".

The Court accepted that whilst in an appropriate case s. 331 (and probably s. 274A itself) authorised the grant of a stay to prevent abuse of process, there was no abuse of process in utilising s. 274A for a purpose intended by the Legislature.

Robert James Cunningham, Michael John Douglas Meadows, David John Herbert Watt, Brian Walter Smith, Warren Grant Denny, Robyn Gay Lyons, Stephen John Tonge, Brian Francis Ward, James William Alley, Sharon Ann Winn, who are currently trading as, or who have traded as, Flower & Hart (A Firm) AND William Hamilton Hart (C/2008/45) 10 February 2009 190 QGIG 126

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

Amongst other issues this appeal dealt with the question whether a salaried solicitor is excluded from the statutory entitlement to paid annual leave created by the *Industrial Relations Act 1999*. The Court articulated and answered the question in the following passage:

"Both at first instance and on the Appeal it has been the contention of the Appellants that Mr Hart was not entitled to annual leave in accordance with s. 13 of the Act because, by s. 11 of the Act 'piece workers' are excluded from the benefits of s. 13. At page 768 the Commissioner concluded:

> 'The applicant, in the course of performing work, "charged out" his services at a standard billing rate system that operated within the firm.
>
> Other employees required to work on files in the custody of the applicant had their time billed under the standard billing rate system.
>
> The firm, on behalf of the applicant, would issue accounts to the clients and the applicant would be remunerated by the payment of one third of cash received.
>
> Evidence before the Commission was that discounting and bad debts meant, at times, the applicant received less than one third of the account total. Under this scenario it could hardly be argued that he was paid totally on the results of his labour.
>
> In terms of being paid for each unit or article produced, as might be the case in the shearing of sheep or slaughter of cattle, the work undertaken by the applicant is a far cry from such a comparison.
>
> The Commission accepts the submissions of Mr Watson that the Act does not go to payment by results but is linked to a 'piece'.

The "tag" piecework is not one that fits the applicant's work arrangement.'.

The Commissioner was quite correct to find that Mr Hart was not a piece worker because he was not paid to produce a 'piece'. The Commissioner might also have said, as in fact the Commissioner had found, that Mr Hart was not employed at a 'rate'. Mr Hart prepared bills for services rendered by himself and by staff under his supervision by going to the records and (initially) charging out on a time basis. Mr Hart was required to and in fact did exercise a discretion as to whether to discount for any particular reason. A client receiving such a bill was entitled to approach the firm for a full or partial waiver. It was quite impossible to identify a 'rate' for Mr Hart or his subordinates. Identification of a 'rate' was important because by Schedule 5 to the Act:

'Piece worker means a person employed in a calling at piece work rates.'.

Counsel for the Appellants relies upon a decision of this Court in *Trovas Holdings Pty Ltd v Gannon* (1999) 162 QGIG 337 at 338:

> 'It is true that in its primary sense "piecework" is directed to a system of work in which work is remunerated, at least in part, by reference to units of output or production, compare *Macquarie Concise Dictionary*, 2nd Ed and CCh *Macquarie Dictionary of Employment of Industrial Relations*. However, as the later publication makes plain, "piecework" is sometimes used as the equivalent of "payment by results". In the case of beneficial legislation, the overriding purpose of which is to ensure that all workers receive long service leave on full pay or payment in lieu on termination, I should have thought that 'piecework rates' might have been read broadly to cover a system of payment by results. In any event, it is plain that the current proceedings were instituted in the wrong form.'.

With respect, it seems to me that the reliance is misplaced. First, on the material facts the passage was not relevant to the decision. Second, although the Appeal was an appeal under the *Industrial Relations Act 1999* it concerned transactions which had taken place whilst the *Workplace Relations Act 1997* was operative. The substantive law to be applied was the law as stated by the *Workplace Relations Act 1997*. That Act did not provide a statutory definition of 'piece worker'. Arguments about the same word bearing the same meaning wherever used in a statute were irrelevant. The scheme at ss. 11 and 13 of the present Act did not appear. Third, the decision concerned a beneficial scheme to enable an employee, who could not reach agreement with its employer about long service leave payments, to seek assistance from the Commission. 'Piece worker' was given a broad meaning to enhance the inclusionary reach of the beneficial legislation. Here, 'piece worker' is used to exclude persons from the benefit of the annual leave provisions of the Act. Fourth, prior to the *Industrial Relations Act 1999*, statutory provisions about annual leave were provisions about annual leave pursuant to industrial instruments. Sections 11 and 13 of the Act cannot escape their history. 'Piece workers' were traditionally denied the benefit of the legislative provisions about annual leave in the context of an arbitral scheme in which 'piece work rates' were consciously set on the basis that the recipients would not have entitlements by way of annual leave, compare Re: *Sugar Industry Award - State* (1958) 43 QGIG 943 at 944. Fifth, the basis upon which Mr Hart's remuneration was calculated has been explained above. He was not paid by results.'.

Chief Kitchenware Pty Ltd AND Chief Executive of the Electrical Safety Board (Queensland) (C/2008/33) 9 December 2008 189 QGIG 819

Industrial Relations Act 1999 - s. 172 - appeal against issue of electrical safety notification

The declared aim of the *Electrical Safety Act 2002* (the Act), is elimination of the human cost to individuals, families and the community, of the death, injury and destruction which may be caused by electricity, see s. 4(1). In fulfilment of that aim, it is the purpose of the Act to establish a legislative framework for preventing people from being killed or injured by electricity and preventing property from being destroyed or damaged by electricity, see s. 4(2). The Act seeks to achieve that purpose, *inter alia*, by imposing obligations upon persons who may affect the electrical safety of either persons or their property, see s. 5(a). Included amongst those persons are the designers, manufacturers, importers and suppliers of electrical equipment, see ss. 31 to 34. Breach of an obligation imposed by the Act is a criminal offence attracting significant penalties (see s. 27), multiplied by 5 in the case of a corporation, see *Penalties and Sentences Act 1992*,

s. 181B. Additionally to the obligations imposed by ss. 31 to 34, designers, manufacturers, importers and suppliers may be burdened by obligations under an Electrical Safety Notification. Once an Electrical Safety Notification is issued, s. 35 operates to impose an obligation of compliance which, once again attracts the penal sanction at s. 27. This appeal against the issue of an electrical safety notification tested the power of the Chief Executive of the Electrical Safety Board to require a manufacturer to recall and replace certain electrical appliances which had reached the end user and had been physically incorporated within and had become part of the end users premises. The Court summarised the issues as follows:

> "I accept the Appellant's submission that 'reasonableness' of belief and of requirement is not the touchstone of validity. An Electrical Safety Notification must be directed at a person or persons described at s. 206(1)(a) and its requirements must be about the 'use or supply' of electrical equipment or a stated type of electrical equipment. Section 206 cannot be read as a delegation of the legislative powers of the Queensland Parliament over electrical safety to the Chief Executive, subject only to a requirement that the Chief Executive act on reasonable grounds and impose reasonable requirements.
>
> I accept also, that it follows from the operation of ss. 27 and 35, that s. 206 must be read as a penal provision. Because the Act imposes penalties for its breach, if two reasonable constructions are open, the more lenient one should be preferred; see *Schiliro v Peppercorn Child Care Centres Pty Ltd* (No. 2) [2001] 2QdR 538 at [75]. Particularly is that so where, as here, ss. 23 and 24 of the *Criminal Code Act 1899* are excluded, see s. 46(2) of the Act, and the Defendant is restricted to a defence based on proof that the commission of the offence was due to causes over which the Defendant had no control, see s. 46(1) of the Act.
>
> I have not been convinced by the submission that s. 206 should be read in light of the presumption against retrospectivity. The Appellant did not have an accrued right to the various installations of its heat lamps being left in place and unmolested. In fairness, the core of the proposition seems to have been: (a) that the heat lamps had not been released to the market in a legal void but had complied with a statutory safety regime which was in force at the time; and (b) that it would be exceptional for a complying manufacturer/ supplier to be expected to bear the burden of recall, repair or replacement at some future time. The difficulty of the more refined form of the submission is that s. 206 will operate (in any event) only in the exceptional case in which the belated requirement to recall, repair or replace originally compliant electrical equipment is reasonable and based on reasonable grounds. In those circumstances the submission does not justify a forced and limited reading of s. 206.
>
> Descending to the detail of s. 206, it is immediately apparent that there are deficiencies in the drafting. One may only speculate why it is that s. 206(1)(b) twice uses the expression 'use or supply' whilst s. 206(3) uses the expression 'supply or use'. However, that drafting seems to me to be an insufficient basis to assert that 'use or supply' is a composite expression or otherwise to treat the disjunctive 'or' as the conjunctive 'and'. Having said that, I hasten to add that in an appropriate case, the Chief Executive might well run the two concepts together. One may readily envisage an Electrical Safety Notification which restricts the supply of stated electrical equipment to persons proposing to use the equipment commercially. Conversely, in the case of equipment such as heat lamps, one might envisage an Electrical Safety Notification restricting the supply of the lamps to persons proposing to put the lamps to domestic use as distinct from persons proposing to use the heat lamps in aged care facilities. It seems clear also that a person who designs and manufactures a stated item of electrical equipment for his own use may be the target of an Electrical Safety Notification prohibiting that person from using the electrical equipment. It seems equally clear that an importer of stated electrical equipment may be the subject of an Electrical Safety Notification prohibiting any supply whatsoever of that equipment.
>
> The critical issue is whether paragraph 6 of the Electrical Safety Notification is about 'use' or alternatively about 'supply'".

After considering comparable legislation, the extent of other powers accountable under the *Electrical Safety Act 2002*, the Second Reading Speech of the then Minister and the Explanatory Notes to the Bill, the court concluded that

recall orders requiring removal and replacement or repair were not authorised by s. 206.

[Note: The earlier s. 177 of the *Electricity Act 1994* had authorised "repair" orders and s. 217 of the *Food Act 2006* provides for the remedy of "recall".]

Stephen William Sutherland AND Q-COMP (C/2008/35) 5 November 2008 189 QGIG 771

Workers' Compensation and Rehabilitation Act 2003 - s. 561(1) - appeal against decision of industrial magistrate

By a written decision of 10 July 2008, an Acting Industrial Magistrate purported to dismiss an appeal pursuant to s. 549 of the *Workers' Compensation and Rehabilitation Act 2003*. On 30 July 2008, Mr Sutherland's Solicitors filed an Appeal against the "decision" of the Acting Industrial Magistrate to the Industrial Court. The problem which arose was although each of Mr Sutherland and Q-COMP was given a copy of the written decision, the decision had not been given "in a hearing in open court".

The Industrial Court referred to the observations of Griffith CJ in *Melville v Phillips* (1899) QLJ 114 at 115 to 116:

> "Now judgment has been given in this case only by its being read or mentioned by the Registrar in the absence of the judge. Rule 156 purports to empower judgment to be given in that way, and to provide that it shall have the same effect as if it were delivered at the trial. But pronouncing judgment upon a trial is a judicial proceeding - perhaps the most important part of the judicial proceeding - and I confess I do not see how a judge can pronounce judgment except in open court, unless under the authority of some statute. A statute was passed a year or two ago empowering absent members of the Full Court, in any case in which judgment is reserved, to send their judgment in writing, to be read by a brother judge in open court. In the absence of any statutory authority of that kind, I can see no authority for a judge to give judgment otherwise than in open court; and so it appears to have been decided in Victoria. If that is the correct view, judgment has not been pronounced in this case, and as the Full Court does not sit as an advisory court, to give opinions in cases in which judgments have not been pronounced, this appeal is premature, and we have no jurisdiction to entertain it. At the same time, I think it right to say that Rule 156 is a rule of great convenience; and although, strictly speaking, it is *ultra vires*, still, when judgment is so given and accepted by the parties, probably no objection could be taken afterwards. But it would be far better that statutory authority should be given to the Rule.'.

After noting that s. 559 of the *Workers' Compensation and Rehabilitation Act 2003* expressly confirmed the obligation to deliver a decision in open court, the Industrial Court ordered that the Acting Industrial Magistrate re-list the matter, notify the parties of the date and place of hearing and give His Honour's decision in open court.

[Note: Reserved decisions of the Queensland Industrial Relations Commission given under the *Industrial Relations Act 1999* may be provided to the parties in writing, s. 323.]

Leigh Sheridan AND Q-COMP (C/2008/48) 6 May 2009 191 QGIG 13

Workers' Compensation and Rehabilitation Act 2003 - s. 561(1) - appeal against decision of industrial magistrate

This appeal required consideration of the significance of flawed perception and of personality clash in the development of a psychological disorder for which benefits are claimed under the *Workers' Compensation and Rehabilitation Act 2003*. Materially, the Court said:

> "There is a further criticism to be made of the passage which the Industrial Magistrate plucked from the written submission of Counsel for Q-COMP and adopted as his own. The passage is:
>
> 'Any difficulties she had in the workplace were perceptions she held which were on the evidence, totally unfounded. Any problems the appellant had with Ms Crumpton are more accurately described as a clash of personality ….'

On its face, that passage is not consistent with authority and avoids a major issue raised by the Appellant. In respect to psychological injury, there is an 'egg-shell psyche' principle which is the equivalent of the 'egg-shell skull' principle, compare *State Transit Authority of New South Wales v Chelmer* [2007] NSWCA 249 at paragraph 40 per Spigelman CJ. So long as the events within the workplace are real rather than imaginary, it matters not that they impact upon the claimant's psyche because of a

flawed perception of events attributable to a disordered mind, compare *Federal Broome Co Pty Ltd v Semlitch* (1964) 110 CLR 626 at 643 per Windeyer J, *Westgate v Australian Telecommunications Commission* (1987) 17 FCR 235 and *Q-COMP v Foote* (2008) 189 QGIG 802 at 810. Further, to resort to a notion of 'clash of personalities', is not to deny the Appellant's claim. The inability of a worker to psychologically cope with an attitude or manner of another worker is analogous to a worker being unable to cope with any other feature, including a physical feature, or aspect of the work environment, *Flinders Power Operating Services Pty Ltd (formerly NRG Flinders Operating Services Pty Ltd) v Amato* [2007] SAWCT 33 at paragraph 125. There is of course a statutory deviation from the general rule where the psychological disorder arises out of or in the course of a claimant's expectation or perception of reasonable management action been taken against the worker, compare s. 32(5)(b) of the Act. However, on its face the passage adopted by the Industrial Magistrate does not appear to go to s. 32(5)(b). Indeed, it is not immediately apparent that any action was 'taken against' Ms Sheridan, unless one accepts that Ms Sheridan's complaint against Ms Crumpton in some way managed to transmogrify into action 'against' Ms Sheridan (and there is plainly room for debate about whether such a transformation might properly be characterised as 'reasonable'). In my view, the passage should be given its ordinary meaning and the case should be treated as one in which the Industrial Magistrate fell into error upon the significance of flawed perception.".

Decisions of the Queensland Industrial Relations Commission

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

The Queensland Chamber of Fruit and Vegetable Industries Co-operative (Union of Employers) Limited (Matter No. RIO/2008/9) 24 April 2009 191 QGIG 1

Industrial Relations Act 1999 - s. 638 - general deregistration grounds

This decision set right the purported deregistration of an industrial organisation by a Full Bench which did not include the President. The Full Bench said:

> "On 29 January 2008, The Queensland Chamber of Fruit and Vegetable Industries Cooperative (Union of Employers) Limited (the Chamber) filed an application under s. 639(1)(a) of the *Industrial Relations Act 1999* (the Act), seeking an order that the organisation be deregistered on the ground that a majority of its members had agreed to its deregistration. The application was heard on 18 March 2008. By a decision released on 27 March 2008 (now reported at 187 QGIG 174), a Full Bench of the Queensland Industrial Relations Commission purported to grant the Application as and from 18 March 2008. There was an irregularity in that the President did not sit (compare s. 256(2)(a) of the Act).
>
> By an application under s. 280(1)(a) of the Act filed on 2 March 2009, the Chamber seeks to reopen the proceedings which we have described above and seeks an order deregistering the Chamber, as an from 18 March 2008. Section 349(2) of the Act does not restrict the amplitude of the power vested by s. 280 of the Act. It is apparent from the materials filed in the earlier proceedings and in particular, the Affidavit of Mr Gary Lower filed on 29 January 2008 and 14 March 2008, that the Chamber is and was at all times entitled to a deregistration order operative as and from 18 March 2008.
>
> Accordingly, we reopen the proceedings and order that the Queensland Chamber of Fruit and Vegetable Industries Cooperative (Union of Employers) Limited, be deregistered as and from 18 March 2008.".

Queensland Council of Unions AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (B/2008/45) AND The Australian Workers' Union of Employees, Queensland AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (B/2008/50) 7 August 2008 188 QGIG 350

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 5 June 2008 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 about the principles of wage fixing. On 13 June 2008 filed an amended application which sought the following:

- a $29 increase in award wage rates;
- an increase in existing award allowances which relate to work or conditions which have not changed and service increments;
- an increase of $29 in the level of the Queensland Minimum Wage as it applies to all employees; and
- an operative date of 1 September 2008.

The Australian Workers' Union of Employees, Queensland (AWU) filed a similar application on 24 June 2008 and by consent of all the parties the matters were joined.

The QCU submitted, relying upon the "*Employee Earnings and Hours Survey by States and Australia – May 2004* that the Queensland Industrial Relations Commission (Commission) continues to maintain a relevant and sustaining role in determining wages and employment conductions for around 40% of Queensland Workers"

Further, the QCU contended that "s. 278(2) of the Act imposes an obligation on the Commission to ensure, at least once in each calendar year, a General Ruling about the Queensland Minimum Wage for all employees".

The QCU submitted in its amended application that the increases sought were consistent with maintaining the real value of wages and would ensure that parity created in the 2007 State Wage Case was retained between the Queensland and Western Australian minimum wage rates.

> "In arguing for the increases sought in the amended application, the QCU places reliance upon the cost of wages in comparison to prices and then applies that percentage figure to determine the average increase using the Engineering Award – State 2002. Adopting this rationale would, in the QCU's submission, meet the Commission's legislative responsibility found in s. 3(f) of the Act ensuring fair standards in relation to living standards prevailing in the Community."

The QCU also referred the Full Bench to a number of decisions in other jurisdictions as well as the economy, wage environment and other social and legislative factors.

The AWU supported and adopted the arguments advanced by the QCU in support of its claim.

The Queensland Government proposed a $23.00 per week increase to all state award rates of pay and the Queensland Minimum Wage and a 3.7% increase in work related allowances and service increments, with an operative date of 1 September 2008.

The Queensland Government stated that its support for a $23.00 week increase was less than it supported in the 2007 State Wage Case but was considered appropriate because the Queensland economy had slowed to some extent. The Queensland Government was also concerned about the inflationary risk of wage increases.

The Queensland Government supported the QCU position that economic growth in Queensland had outperformed that of Australia and was expected to expand over the next twelve months.

The Full Bench was also reminded that awards are the primary source of income for low income earners and that the increase in petrol and housing prices had impacted more heavily on low income earners in the last twelve months.

> "The Queensland Government also points to the fact that female employees outnumber male employees in unincorporated private sector businesses in Queensland and that they are far more reliant on award wages than males. Any reasonable wage increase will thus have a proportionate effect on women, helping in some way to close the gender gap.".

The Queensland Government also pointed out that that inflation was the major economic risk factor to the Queensland economy but a $23.00 week increase to the Queensland minimum wage would not contribute to an increase in inflation.

QCCI opposed both the QCU and AWU applications but supported a $15.00 per week increase to the Queensland Minimum Wage and awards and a 2.5% increase to work related allowances and service increments and an operative date of 1 September 2008.

"In support of its proposal, the QCCI submits that the Act requires the Commission to consider a number of factors when undertaking its functions including:

- ensuring economic advancement and social justice for all employers and employees: see s. 3(a) of the Act;
- strong economic growth, high employment, employment security, improved living standards, low inflation and national and international competitiveness: see s. 3(b) of the Act;
- promoting the effective and efficient operation of enterprises and industries: see s. 3(f) of the Act;
- ensuring wages and employment conditions provide fair standards in relation to living standards prevailing in the community; and

s. 320(3) of the Act requiring the Commission to be governed in its decision by equity, good conscience and the substantial merits of the case having retard to the interests of the persons immediately concerned and the community as a whole."

QCCI submitted that the result of the State Wage Case would not just flow on to the low income earners, but apply to all workers covered by industrial instruments.

"The QCCI strongly opposes the two applications on the basis that it would fuel inflation and inhibit economic growth. Instead, the QCCI proposes that incomes of the lower paid be increased by a combination of the July 2008 tax cuts and a moderate wage increase of only $15.00 per week for low pay workers. This, it is said, would be the best way to minimise the risk of small and medium businesses funding wage increases by rising prices while still delivering a real income boost to the lower paid.".

The QCCI also submitted that any increase in excess of $15.00 would cause "Queensland businesses to significantly decrease their employment, investment and training expenditure levels and profitability will be eroded.".

The Restaurant and Caterers Employers Association of Queensland, Industrial Organisation of Employers (RCEAQ) submitted that there should be no increase at all. The RCEAQ contended that due to the labour intensive nature of the restaurant and catering industry, the industry had no capacity to absorb any increases in wages. It also indicated that the profitability margins in the industry remained very small.

Queensland Cane Growers' Association Union of Employer (QCGA) supported the submissions of QCCI.

The Queensland Retail Traders and Shopkeepers Association (QRTSA) opposed the amount sought in the applications but supported an increase in line with the current rate of inflation of 4% which equated to an approximate increase of $21.14 per week.

The Queensland Council of Social Service Inc (QCOSS) made submissions on behalf of Queenslanders affected by poverty and inequality and supported the QCU claim in that it submitted that a modest increase would benefit lower income workers who struggle to make ends meet.

Both AWU and QCU made submissions in reply.

The Commission took into consideration submissions by parties on recent increases in other jurisdictions.

When making its decision the Commission took into account the economic situation of Queensland as well as the social and economic dimension.

In conclusion the Commission stated:

"We have already indicated that we intend to continue the practice of awarding flat dollar increases. In all of the circumstances we have decided to increase the Queensland Minimum Wage and award rates of pay by $23.60 per week i.e. an increase of 4.45% on the Queensland Minimum Wage and an increase of approximately 3.8% on the C10 rate. Based on the Queensland Government's estimation of its proposal on the private sector unincorporated businesses, we are of the view that the Queensland economy can afford an increase of $23.60 per week. The amount we have determined will assist in delivering fair wages to low paid, award reliant employees, in particular, to women employees who comprise the majority of award reliant workers and those on the Queensland Minimum Wage. Moreover, such an amount is not inconsistent with enterprise bargaining outcomes and accordingly, should help to prevent any widening of the gender pay gap.

. . .

We have decided to increase award allowances which relate to work or conditions which have not changed and service increments by 3.8%."

The operative date of the decision was 1 September 2008.

A declaration of general ruling was issued at the same time as the release of the decision, thereby reflecting the outcome of the decision.

* A Statement of Policy was issued at the same time as the Declaration of General Ruling.

Decisions of the Commission

Kym Phyllis Whittaker AND Q-(WC/2008/50) 16 October 2008 189 QGIG 671

Workers' Compensation and Rehabilitation Act 2003 - s. 550 - procedure for appeal

Q-Comp had rejected an application for compensation from the widow of a Queensland Rail employee, Mr Whittaker.

Mr Whittaker was a train driver who resided in Toowoomba. He had finished his shift for the day in Brisbane, and had gone to the Acacia Ridge accommodation provided for Queensland Rail drivers where he suffered a heart attack and died.

Q-Comp rejected the application for compensation on the grounds that Mr Whittaker was not "temporarily absent from the place of employment during an ordinary recess" (s. 34(1)(c) of the *Workers' Compensation and Rehabilitation Act 2003*.

The break period was of 8 hours duration.

Incorporated within the industrial instrument which governed the employment of the deceased, the "*Queensland Rail Traincrew Subsidiary Agreement Extension, Certified Agreement 1998*", were very detailed prescriptions of the type of accommodation which would be provided to employees whilst undertaking their mandatory 8 hour break.

"*The overriding emphasis is on the driver having the best environment within which to rest before driving another train*" stated the Deputy President. Under the particular Certified Agreement, an 8 hour break had been deemed the "necessary time period" by all parties to the agreement. The purpose of the break recognised it was necessary for drivers to rest to avoid driver fatigue between two periods of work. "It was an expectation that drivers rest before continuing their duties. The deceased was doing no more or less than what was expected of him when he 'suffered his injury'. "

The significance of the decision is that parties must take into account, when assessing claims of this nature, the relevant industrial instruments which govern the employment of the claimant and also accepted industry practices. "*The fact the rest (recess) was of a longer duration than most referred to in other cases put before the Commission was due solely to the nature of the industry and the type of job in question*".

Added to this was the fact that the deceased was away from his home in accommodation provided by Queensland Rail during the course of a normal day. He was domiciled for a "short time span" between shifts of duty. The "short time span" of 8 hours being what was accepted and usual within the industry.

Queensland Services, Industrial Union of Employees AND Queensland Chamber of Commerce and Industry Limited, Industrial Orgainsation of Employers and Others (A/2008/5) 6 May 2009 191 QGIG 19

Industrial Relations Act 1999 - s. 125 - application for new award

On 11 April 2008 the Queensland Services, Industrial Union of Employees applied for the making of a new award to be known as the Queensland Community Services and Crisis Assistance Award - State. The application was in two stages. The first stage sought the making of the award and imported the wage rates then provided in the Federal *Social and Community Services (Queensland) Award 2001* (the SACS Award) and the *Crisis Assistance Supported Housing (Queensland) Award 1999* (the CASH Award). A number of union and employer organisations appeared to ensure their interests were protected. The Award, known as the *Queensland Community Services and Crisis Assistance Award - State 2008*, (the Award) was made by consent, operative from 3 November 2008.

Stage two of the application, which was later set out more fully in a Further Amended Application filed on 14 November 2008, sought substantially increased rates of pay for those employees covered by the Award and a 1.25%

Equal Remuneration Component (ERC). The increases sought in stage two of the application were designed to correct historical undervaluation, to establish rates which reflect the current value of the work and an ERC to ensure that the value of the rates set as a result of the application maintain currency into the future given that enterprise bargaining is not a feature of this sector.

Inspections were undertaken in Townsville, Cairns, Atherton and Brisbane. Extensive witness evidence was taken from workers and employers within, and the peak body for, the sector as well as from academics who have expertise in the field. Although an employer organisation respondent filed a counter claim, on behalf of the other respondents, the employers generally supported significant increases in wage rates and the introduction of an ERC. To reflect the level of agreement reached the parties prepared an Agreed Statement of Facts which addressed the reasons pay inequity exists in this sector.

The Commission was satisfied that undervaluation of work on a gender basis had been established. Factors contributing to the undervaluation of work included that the sector had its origins in work performed by women; the nature of care work is considered to be an extension of women's domestic work in the home; care work is predominantly performed by women; notions of a vocation remain in career choice and the commitment to service users over and above the industrial needs of the workers themselves. These factors stem from the gendered nature of the workforce and when taken collectively the pattern emerges that gender is at the core of the present work value of the community services sector.

In addition the Commission was satisfied that the value of the work performed in this sector had increased. The work value change which had occurred included increased knowledge and skill and greater complexity of service users and client need.

In considering appropriate levels of wages the Commission had regard to a number of comparators, especially the enterprise bargaining rates which apply in the Queensland Public Service and to a lesser extent in various local governments. In recognition of the historical undervaluation of work and the current work value the Commission awarded substantial pay increases from the graduate entry level and particularly at the experienced practitioner and managerial levels. The increases are to be phased in over a four year period in six monthly instalments commencing 13 July 2009.

A 1% ERC was also awarded to compensate for the ongoing lack of opportunity to enterprise bargain. The barriers to bargaining included the gender composition of the workforce and government funding models. The last ERC is to apply from July 2015. The Commission considered this period of time gave the parties in the sector time in which to have discussions with government about appropriate funding models.

William Hamilton Hart AND Robert James Cunningham, Michael John Douglas Meadows, David John Herbert Watt, Bruce Walter Smith, Warren Grant Denny, Robyn Gay Lyons, Stephen John Tange, Brian Francis Ward, James William Alley and Sharon Ann Winn (B/2009/79) 28 October 2008 189 QGIG 753

Industrial Relations Act 1999 - s. 274A - power to make declarations

The essence of the application was to have the Commission make declarations in relation to three (3) matters utilising a relatively new section of the Act.

The declarations sought were:

"(a) A declaration under section 274A of the Act that the remuneration paid to me as an employee of ROBERT JAMES CUNNINGHAM, MICHAEL JOHN DOUGLAS MEADOWS, DAVID JOHN HERBERT WATT, BRIAN WALTER SMITH, WARREN GRANT DENNY, ROBYN GAY LYONS, STEPHEN JOHN TONGE, BRIAN FRANCIS WARD, JAMES WILLIAM ALLEY, SHARON ANN WINN who are currently trading as, or who have traded as, Flower & Hart (a firm) of Level 16, Central Plaza Two, 66 Eagle Street, Brisbane, Queensland (the respondents) should have been paid without deduction of superannuation contributions;

(b) A declaration under section 274A of the Act that remuneration should have been paid to me by the respondents for periods of annual leave taken during my employment at the rate specified in the Act; and

(c) A declaration under section 274A of the Act that remuneration should have been paid to me by respondents for periods of accrued but unused annual leave as at the termination of my employment at the rate specified in the Act.".

The applicant had been a partner in the (Law) firm from 1 January 1969 until selling his interest in the partnership in December 2001.

On retiring from the partnership, he was given the opportunity to continue to work as either a consultant or a non-equity partner, with the terms being set out in a "basic" nine (9) point document drafted by the respondents.

The role of consultant continued until the termination of the applicant on 30 June 2006.

In the first year of the arrangement, the applicant was paid a fortnightly, minimum guaranteed payment less superannuation payments which were deducted without his authority. Periods of sick and annual leave were taken at this time for which he received payment.

In or around March 2003 the respondents sought to alter the arrangements, however the applicant's refusal to accept the changes meant that the (then) current arrangement continued, unchanged.

Sometime later the applicant was informed that he had no rights regarding annual leave as he was considered by the respondents to be a Pieceworker.

The applicant relied upon a definition of Pieceworker from the Law Book Company's *Industrial Information Digest* at page 511:

> "Piecework is a system of payment under which an employee is paid a stipulated amount for each unit or article produced by him. In some instances this piecework rate remains constant irrespective of the quantity produced, but in others the rate increases with greater output.".

The concept of piecework was said not to be applicable to services such as legal services because the results of services can vary and fees which are rendered are more likely to be rendered on the basis of hours employed in the service provided rather than a particular product being produced.

On the contractual arrangement, the Commission was taken to the matter of *Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd* (2004) 219 CLR 165 at 179 before the High Court of Australia, the proper approach to the construction of a contract was said to be:

> "The meaning of the terms of a contractual document is to be determined by what a reasonable person would have understood them to mean. That, normally, requires consideration not only of the text, but also of the surrounding circumstances known to the parties, and the purpose and object of the transaction.".

The respondent did not dispute that the relationship was one of employer and employee and not of contract or independent consultant.

The contractual arrangement was seen in a different light by the respondent relying upon the decision of *Pacific Carriers Ltd v BNP Paribas* (2004) 218 CLR 451 at page 461 in referencing the meaning of a document:

> "The case provides a good example of the reason why the meaning of commercial documents is determined objectively: it was only the documents that spoke to Pacific. The construction of the letters of indemnity is to be determined by what a reasonable person in the position of Pacific would have understood them to mean. That requires consideration, not only of the text of the documents, but also the surrounding circumstances known to Pacific and BNP, and the purpose and object of the transaction.".

The reference was said to not only go to the relevance of the document but also to what it did not say.

The arrangement was said to be silent on issues including sick leave, hours of work, overtime, taxation, travelling expenses and superannuation.

The applicant had accepted the superannuation arrangement for twenty-eight (28) months which was said to lead a reasonable person to accept the respondent's interpretation of the agreement.

The piecework definition relied upon by the respondent arose from the matter of *Trovas Holdings Pty Ltd v Gannon* (1999) 162 QGIG 337 Hall, P where the definition to payment by results was:

"Payment-by-results - piecework

Payment-by-results worker - an employee paid under piecework arrangements, output bonus schemes, or any payment schemes which vary according to the output of individuals, groups or departments.".

It was said that an employee either works piecework or time worked and in this case it could not be time worked as the applicant was not paid for the time he spent at work.

The Commission found that, for the purposes of the *Superannuation Guarantee (Administration) Act 1992* (SGAA) the nature of the applicant's employment fell within the definition prescribed at s. 12(3) of the SGAA, therefore providing an entitlement to have superannuation contributions made on his behalf.

In terms of the employment status, the Commission found that for all intents and purposes the applicant was an employee and that the "tag" pieceworker was not one that fitted the applicant's work arrangement.

The finding of the Commission was that the applicant had made a case in respect of the three (3) declarations and, as such, granted the declarations.

The Australian Workers' Union of Employees, Queensland and Others AND Queensland Health (D/2008/118) 29 August 2008 189 QGIG 250

Industrial Relations Act 1999 - s. 230(4)(c) - interim injunction

On 29 August 2008, the Commission issued Orders restraining Queensland Health from taking any steps to close the Aramac Hospital and/or convert that facility to a primary health care centre. He also restrained Queensland Health from taking any steps to terminate or alter current conditions of employment to the detriment of its existing employees at the Hospital.

The Commission further Ordered Queensland Health to consult its employees, and their Unions, about the proposed closure of the Hospital as required by the terms of the *Queensland Public Health Sector Certified Agreement (No. 6) 2005* (EBA 6).

The facts were that the District Manager of Queensland Health held various meetings with external bodies, such as the Local Council, to inform them of the likely closure of the Hospital prior to informing, and consulting with, the affected employees and their Unions. This action was said to contravene the provisions of EBA 6 and, given rumours circulating in the local community, created great uncertainty within the minds of the relevant employees.

Subsequent negotiations between the parties, as directed by the Commission, resulted in a decision being taken to keep the Hospital open in the foreseeable future.

Kenneth James McLoughlin AND Toowoomba Regional Council (TD/2009/31) 18 June 2009 191 QGIG 219

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

Mr McLoughlin lodged an application seeking reinstatement to his former position with the Respondent. The application was opposed on the basis Mr McLoughlin was not entitled to bring an unfair dismissal application because he was excluded by s. 72(1)(e) of the *Industrial Relations Act 1999* in that he was not employed under an "*industrial instrument*" as that term is defined within the Act.

In a decision issued on 18 June 2009 the Commission held that because Mr McLoughlin was covered by the *Queensland Local Government Officers' Award 1998* and/or the *Toowoomba City Council No. 5 (Federal) Certified Agreement* he was not covered by an industrial instrument as that term was defined in the Act.

However, the Commission also held that the issue of whether the respective Federal Award and Certified Agreement became an industrial instrument, because of the effect the provisions of Part 7 of the Act (covering de-corporatisation of local government in Queensland and the transfer of local government back into the State industrial system), was a matter which required further consideration. The Commission listed the matter for further submissions on this point.

In a separate application, Mr McLoughlin sought a declaration, pursuant to s. 274A of the Act, that his termination by the Council was in breach of the *Local Government Workforce Transition Code of Practice*. Consideration of this application has been held over pending determination of Mr McLoughlin's ability to bring an unfair dismissal application.

Tables

Table 1: Matters filed in the Court 2007/08 and 2008/09

Type of Matter	**2007/08**	**2008/09**
Appeals to the Court	**34**	**36**
— Magistrate's decision	25	24
— Commission's decision	7	10
— Registrar's decision	0	0
— Director, WH&S decisions	0	0
— Chief Inspector (MQS & H Act)	0	1
— Electrical Safety	2	1
Extension of Time	4	0
Prerogative order	4	3
Stay order	8	6
Direction to observe/perform Industrial Org rules	0	1
Case stated by Commission	3	1
Application for orders - other	0	0
TOTAL	**53**	**47**

Table 2: Number of matters filed in the Court 1994/95–2008/09

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

Table 3: Appeals filed in the Court 2007/08 and 2008/09

Appeals Files	2007/08	2008/09
Appeals from decisions of Industrial Commission		
IRA s 341(1)	3	6
Work Comp Act s 561	4	4
Appeals from decisions of Industrial Magistrate		
IRA s 341(2)	13	10
Work Comp Act s 561	11	10
VETE Act 2000	0	0
WH & S Act s 152	0	4
WH & S Act s 164(3)	1	0
Appeals against Chief Inspector's directive		
MQS & H Act s 224	0	1
Appeals from decisions of Industrial Registrar		
IRA s 341	0	0
IRA s 342(6)	0	0
Appeals from review decisions by Director WH&S	0	0
Appeals from decisions of Electrical Safety Office	2	1
TOTAL	**34**	**36**

Table 4: Applications filed and Matters heard 2007/08 and 2008/09

Section Appeals Files	Type of Application/Matter	2007/08	2008/09
S 38C	Review of ss 29A–29D	0	1
s 53	Long Service Leave — payment in lieu of	99	111
s 74	Application for Reinstatement (Unfair dismissal)	170	252
s 87	Severance allowance	2	1
	Exemption from requirement to pay severance or redundancy entitlements	0	0
s 117	Prohibited conduct — breach	1	2
s 125	Awards:		
	- New award	1	0
	- Repeal and new award	0	0
	- Repeal award	0	0
	- Amend award	18	7
s 130	Review of Award	0	0
s 137	Order — wages & conditions (trainees)	0	1
s 138	Order — tools (trainees)	0	0
s 143	Notice of intention to begin negotiations	0	0
s 148	Assistance to negotiate a CA	2	7
s 149	Arbitration of CA	0	3
s 152	Certificate — request representation	0	1
s 156	Certified Agreements:		
	- Approval of new CA	58	50
	- Replacing existing CA	16	47
s 163	Designated Award	0	0
s 168	Extending a CA	0	0
s 169	Amending a CA	3	0
s 172, s173	Terminate a CA	2	4
s 175, s177	Notice of industrial action	0	236
s 192	Approve a QWA	3	14

Section Appeals Files	Type of Application/Matter	2007/08	2008/09
s 229	Notification of dispute	138	152
s 230	- Arbitration of dispute	3	3
s 231	- Mediation of dispute	1	2
	- Other orders	0	0
s 248	Prerogative orders	0	0
s265(3)	Inquiry about an industrial matter	0	0
s 273A	Dispute resolution functions	1	2
s 274	General powers	13	0
s 274A	Power to make declarations	0	2
S 274DA	Dismissal of Application	0	7
s 276	Amend/void a contract	0	1
s 277	Injunction	1	1
s 278	Claim for unpaid wages/superannuation	61	79
s 279	Representation right of employee organisations	0	1
s 280	Re-open a proceeding	4	3
s 281	Reference to a Full Bench	0	0
s 284	Interpretation of industrial instrument	1	1
s 287, 288	General ruling/statement of policy	3	2
s 317	Commission of own motion	0	0
s 319	Representation of party/Legal representation	0	0
s 325	Joinder of applications	0	0
s 326	Interlocutory orders	0	0
s 331	Dismiss/refrain from hearing	0	0
s 335, r117	Costs	0	1
s 338	Review of Tribunal Rules	0	0
s 342	Appeal to Full Bench	0	6
s 364	Authorisation of industrial officers	0	120
s 408F	Repayment of private employment agent's fee	0	1
s 409–657	Industrial Organisation matters [Table 10]	105	127

Section Appeals Files	Type of Application/Matter	2007/08	2008/09
s 695	Student work permit	29	36
s 696	Aged and/or infirm permit	17	29
s 699	Obsolete industrial instruments		
	- Review of superannuation agreements	0	0
	- Review of EFAs	0	0
s 713	Agreement has effect as an award	0	0
Reg 27	Objections	0	0
r 190	Request for statistical information [Table 10]	81	80
IR Act	Annual Return	0	0
IR Act	Private conference	3	5
IR Act	Request for recovery conference	76	69
Clothing Trades Award c 4.6	Clothing trades registration	6	10
W H&S Act s 90	Authorised representative	30	61
W H&S Act s 90O	Application to suspend/cancel appointment	0	0
W H&S Act s 90T	Notice of dispute	2	1
WC Act s 232E	Reinstatement of injured worker	1	2
WC Act s 550	Appeal against Q-Comp	103	107
WC Act s 556	Order for medical examination	2	2
T(AH) Act	Trading hours order	5	9
T(AH) Act s 22, 23	Special exhibits	1	0
T&E Act s 62	Reinstatement of training contract	0	2
T&E Act s230	Apprentice/trainee appeals	5	3
T&E Act s231	Stay of decision	1	0
Mags Courts Act s 42B	Employment claim	11	94
Contract Cleaning (PLSL) s 97	Appeal to industrial commission	0	1
Whistleblower's Act s 47	Injunction	1	0
TOTAL APPLICATIONS/MATTERS		**1,082**	**1,759**

Table 5: Agreements filed 2007/08 and 2008/09

Agreements	2007/08	2008/09
• Certified agreements	74	97
• Application to amend a CA	3	0
• Application to extend a CA	0	0
• Application to terminate a CA	2	4
• Queensland Workplace Agreements	3	14

Table 6: Industrial Instruments in force 30 June 2009

Type of Instrument	
• Awards	323
• Application to amend a CA	6
• Application to extend a CA	4,461
• Application to terminate a CA	1
TOTAL	**4,785**

Table 7: Reinstatement Applications 2008/09 — Breakdown of outcomes

Total No. of Applications	**252**
• Rejected by Registrar*	8
• No jurisdiction found by Commission	2
• Application refused following hearing	0
• Application dismissed following hearing	0
• Application struck out at hearing	0
• Application granted following hearing	1
• Application withdrawn**	116
• Lapsed***	12
• Inactive****	63
• Completed	7
• Still in progress	39
• Adjourned to Registry	4

*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 2007/08 and 2008/09

Criterion	Target	2007/08	2008/09
% of matters completed within three months	>75%	79%	87%
% of matters lodged that are processed and available to members within one working day	>90%	New measure for 2008/2009	97%
% of decisions released to the parties within one working day	>95%	New measure for 2008/2009	100%
% of decisions are published and available to the community within 13 working days	>95%	New measure for 2008/2009	100%

Table 9: Documents gazetted under the IR Act and other Acts 2008/09

Matter Type of Document Gazetted	Section	2008/09
Alteration of list of callings	s 427	1
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, s 561, 186 (WC Act)	17
Appeal against decision of Industrial Magistrate	s 341, s 164(3)(WH&S Act), s 172 (E.Safety.Act)	6
Appeal against decision of Industrial Registrar	s 341(1)	1
Appeal to Commission	s 550 (WC Act)	30
Appeal from Industrial Magistrate to Industrial Court	s 561 (WC Act)	9
Appeal for arbitration	s 149, 230	1
Application for costs	s 335, r 66 (IR Rules), s 563 (WC Act)	2
Application for declaratory relief	s 248	2
Application for election enquiry	s 500	1
Application for equal remuneration	s 60	0
Application for general ruling	s 287	2
Application for help to make a certified agreement	s 148	0

Matter Type of Document Gazetted	Section	2008/09
Application for leave to appeal	s 342(2)	1
Application for orders	s 265, 230, 326	3
Application for reinstatement	s 73, 74	7
Application for statement of policy	s 288	1
Application for unpaid wages	s 278	7
Application to amend order	s 137	1
Application to stay	s 347, s 562 (WC Act), s 151 (WH&S Act), s 231 (VETE Act)	1
Application to strike out or dismiss proceedings	s 331	1
Application of new award	s 125	2
Application of other name amendment	s 473	0
Arbitration of an industrial dispute	s 229, 230	1
Application for payment instead of long service leave	s 53	0
Application for payment of monies	s 83	0
Award amendment	s 125	4
Award amendment (corrections of error)	s 125	2
Award Review	s 130	0
Award Review (corrections of error)	s 130	6
Basis of decision of the Commission and Magistrates	s 320	1
Callings Alteration	s 427	1
Case stated to Court	s 282	1
Certification of an Agreement (decisions)	s 156	1
Commission's functions	s 273	0
Decisions generally	s 331	0
Discretion to issue warrant	s 341(4)	0
Eligibility rule amendment	s 474	9
Examination of affidavits for substantial compliance with order of the Commission	s 233(6)	0
Extension of time	s 346(2)	0
General powers	s 274	0
General deregistration grounds	s 638	1
General ruling (amendments)	s 287	308

Matter Type of Document Gazetted	Section	2008/09
Interpretation of Industrial Instrument	s 284	1
Lapse of proceeding after at least 1 year's delay	r 200A (IR Rules)	1
Name Amendment s	473	3
New Award (corrections of error)	s 125	2
Obsolete Industrial Instrument	s 699	0
Orders about invalidity	s 613	3
Orders about severance allowance	s 87	1
Orders on exhibitions etc.	s 22 (T(AH) Act)	0
Power to amend or void contracts	s 276	0
Power to grant injunction	s 277	0
Power to make declarations	s 274A	2
Powers incidental to exercise of jurisdiction	s 329	0
Powers of Court	s 459	1
Procedures for reopening	s 280	2
Proceeding started by commission of own initiative	s 317	0
Reference to a full bench	s 281	0
Refuse to certify an agreement	s 157	0
Remedies	s 120	0
Repeal of award	s 125	0
Repeal and new award	s125	0
Representation of parties	s 319	0
Stay of operation of decisions	ss 347, 154(1) (WH&S Act), s 174 (E.Safety Act), Danger Goods Act	6
Strike out proceedings after at least 1 year's delay	r 201 (IR Rules)	0
Terminating agreement after nominal expiry date (decisions)	s 173	1
Trading Hours Order (decisions)	s 21 (T(AH) Act)	1
Trading Hours Order (amendments)	s 21 (T(AH) Act)	0
TOTAL		**456**

Table 10: Industrial organisation matters filed 2007/08 and 2008/09

Industrial Organisation matters		2007/08	2008/09
s 413	Registration applications	0	0
s 422(3)	New rules	0	0
s 427	Amendment - list of callings	0	1
s 459	Validity and compliance with rules	0	0
s 467	Registrar amendment of rules	4	2
s 473	Amendment - Change of name	1	1
s 474	Part Amendment - eligibility rule	4	4
s 478	Amendment to rules - other than eligibility	20	26
s 481	Request for conduct of election	63	75
s 500	Election Inquiry	1	0
s 547	File officers register	0	0
s 547	File officers register	0	0
s 580	Exemption from conduct of election	3	8
s 582	Exemption - members' register	0	2
s 582	Exemption – officers' register	0	1
s 586	Exemption - branch financial return	1	1
s 590	Exemption accounting & audit employer organisations - corporations	0	0
s 594	Exemption from Electoral Commission conducting election	0	0
s 599	File notice of returning officer	3	0
s 602	Cancellation of exemption		1
s 613	Orders about Invalidity	4	3
s 638	Order – deregistration	1	0
s 654	Hearing to be given before making decision	0	2
Rule 27	Notice of Objection to application	0	0
Rule 190	Request for statistical information	81	80
TOTAL		**186**	**207**

Table 11: Industrial Organisations of Employees Membership

Industrial Organisation	Members as at 30/06/08	Members as at 30/06/09
The Australian Workers' Union of Employees, Queensland	43,011	53,597
Queensland Teachers Union of Employees	41,986	44,186
Queensland Nurses' Union of Employees	35,911	36,381
Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees	35,687	36,277
The Queensland Public Sector Union of Employees	28,398	31,701
Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees	27,200	28,772
Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland	17,314	17,526
Transport Workers' Union of Australia, Union of Employees (Queensland Branch)	15,155	15,310
Queensland Independent Education Union of Employees	13,808	15,171
The Electrical Trades Union of Employees Queensland	13,441	13,886
Queensland Services, Industrial Union of Employees	13,288	13,418
Federated Ironworkers Association of Australia (Queensland Branch) Union of Employees	8,307	10,939
Queensland Police "Union of Employees"	9,830	10,340
Australian Municipal, Administrative, Clerical and Services Union, Central and Southern Queensland Clerical and Administrative Branch, Union of Employees	8,500	8,636
Australian Rail, Tram and Bus Industry Union of Employees, Queensland Branch	7,725	7,809
The Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland	7,217	7,126

Industrial Organisation	Members as at 30/06/08	Members as at 30/06/09
Finance Sector Union of Australia, Queensland Branch, Industrial Union of Employees	6,879	6,879
Australasian Meat Industry Union of Employees (Queensland Branch)	6,586	6,791
Queensland Colliery Employees Union of Employees	5,578	6,498
The National Union of Workers Industrial Union of Employees Queensland	5,306	5,380
Federated Engine Drivers' and Firemen's Association Queensland, Union of Employees	948	4,287
The Plumbers and Gasfitters Employees Union of Australia, Queensland Branch, Union of Employees	2,868	2,405
United Firefighters' Union of Australia, Union of Employees, Queensland	2,391	2,396
Australian Building Construction Employees and Builders' Labourers' Federation (Queensland Branch) Union of Employees	2,760	2,350
The Association of Professional Engineers, Scientists and Managers, Australia, Queensland Branch, Union of Employees	1,934	2,070
Australian Federated Union of Locomotive Employees, Queensland Union of Employees	1,610	1,610
Australian Journalists' Association (Queensland District) "Union of Employees"	1,143	1,183
The Bacon Factories' Union of Employees, Queensland	831	882
The Seamen's Union of Australasia, Queensland Branch, Union of Employees	525	637
Actors, Entertainers and Announcers Equity Association, Queensland, Union of Employees	593	600

Industrial Organisation	Members as at 30/06/08	Members as at 30/06/09
Australian Institute of Marine and Power Engineers' Union of Employees, Queensland District.	531	546
The University of Queensland Academic Staff Association (Union of Employees)	558	529
Queensland Association of Academic Staff in Colleges of Advanced Education (Union of Employees)	455	403
The Queensland Police Commissioned Officers Union of Employees	346	386
Property Sales Association of Queensland, Union of Employees	340	319
Salaried Doctors Queensland Industrial Organisation of Employees	1,909	240
Australian Maritime Officers Union Queensland Union of Employees	234	230
James Cook University Staff Association (Union of Employees)	327	197
Griffith University Faculty Staff Association (Union of Employees)	145	140
Musicians' Union of Australia (Brisbane Branch) Union of Employees	122	118
Queensland Fire and Rescue – Senior Officers Union of Employees	94	115
Federated Clerks' Union of Australia, North Queensland Branch, Union of Employees	630	Not Available
Textile, Clothing and Footwear Union of Australia, Queensland, Union of Employees	609	Not Available
TOTAL MEMBERSHIP	**373,030**	**398,266**
NUMBER EMPLOYEE ORGANISATIONS	**43**	**43**

Table 12: Industrial Organisations of Employers Membership

Industrial Organisation	Members as at 30/06/08	Members as at 30/06/09
Queensland Master Builders Association, Industrial Organisation of Employers	10,964	11,500
Agforce Queensland Industrial Union of Employers	6,693	6,435
Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers	3,700	3,621
Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers)	2,376	2,231
Electrical and Communications Association Queensland, Industrial Organisation of Employers	1,732	2,087
Motor Trades Association of Queensland Industrial Organisation of Employers	1,979	1,664
National Retail Association Limited, Union of Employers	1,430	1,637
Australian Industry Group, Industrial Organisation of Employers (Queensland)	1,303	1,193
The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers	1,121	937
Australian Community Services Employers Association Queensland Union of Employers	878	878
Master Plumbers' Association of Queensland (Union of Employers)	791	826
Queensland Hotels Association, Union of Employers	851	799
Australian Dental Association (Queensland Branch) Union of Employers	1,956	795
Queensland Fruit and Vegetable Growers, Union of Employers	1,795	659
The Registered and Licensed Clubs Association of Queensland, Union of Employers	566	570
Master Painters, Decorators and Signwriters' Association of Queensland, Union of Employers	627	500
National Meat Association of Australia (Queensland Division) Industrial Organisation of Employers	488	477
Queensland Motel Employers Association, Industrial Organisation of Employers	487	439

Industrial Organisation	Members as at 30/06/08	Members as at 30/06/09
Queensland Private Childcare Centres Employers Organisation of Queensland Industrial Organisation of Employers	344	412
Queensland Real Estate Industrial Organisation of Employers	425	381
Nursery and Garden Industry Queensland Industrial Union of Employers	350	349
The Queensland Road Transport Association Industrial Organisation of Employers	325	320
The Baking Industry Association of Queensland - Union of Employers.	323	298
Association of Wall and Ceiling Industries Queensland - Union of Employers	196	222
Building Service Contractors' Association of Australia - Queensland Division, Industrial Organisation of Employers	237	198
The Hairdressing Federation of Queensland - Union of Employers	208	189
UNiTAB Agents' Association Union of Employers Queensland	106	102
Consulting Surveyors Queensland Industrial Organisation of Employers	109	92
Queensland Master Hairdressers' Industrial Union of Employers	62	59
Furnishing Industry Association of Australia (Queensland) Limited Union of Employers	81	56
Queensland Country Press Association - Union of Employers	28	25
Queensland Major Contractors Association, Industrial Organisation of Employers	Not Available	18
Australian Sugar Milling Association, Queensland, Union of Employers	10	10
Hardware Association of Queensland, Union of Employers	300	Not Available
Queensland Cane Growers' Association Union of Employers	23	Not Available
Queensland Friendly Societies Pharmacies Association, Industrial Organisation of Employers	12	Not Available
Queensland Mechanical Cane Harvesters Association, Union of Employers	Not Available	Not Available
TOTAL MEMBERSHIP	**42,876**	**39,979**
NUMBER OF EMPLOYER ORGANISATIONS	**37**	**37**

Appendix

Appendix 1: Current Industry Panels operative 17 June 2009

Industry	Panel	
Aged Care	Deputy President D.A. Swan	Commissioner G.K. Fisher
Agriculture	Deputy President D.A. Swan	Commissioner I.C. Asbury
Agriculture Associated Bulk Handling	Deputy President D.A. Swan	Commissioner G.K. Fisher
Ambulance	Deputy President A.L. Bloomfield	Commissioner G.K. Fisher
Arts and Entertainment	Deputy President A.L. Bloomfield	Commissioner I.C. Asbury
Banking and Insurance	Vice President D.M. Linnane	Commissioner G.K. Fisher
Beauty and Hairdressing	Deputy President A.L. Bloomfield	Commissioner I.C. Asbury
Brewing and Beverages	Deputy President A.L. Bloomfield	Commissioner G.K. Fisher
Building and Construction	Deputy President D.A. Swan	Commissioner J.M. Thompson
Catering (excluding Construction Catering)	Deputy President A.L. Bloomfield	Commissioner J.M. Thompson
Cement	Deputy President A.L. Bloomfield	Commissioner G.K. Fisher
Cemeteries and Funerals	Vice President D.M. Linnane	Commissioner I.C. Asbury
Chemicals	Vice President D.M. Linnane	Commissioner J.M. Thompson
Childcare	Vice President D.M. Linnane	Commissioner I.C. Asbury
Clerical	Vice President D.M. Linnane	Commissioner G.K. Fisher
Concrete	Vice President D.M. Linnane	Commissioner G.K. Fisher
Construction Catering	Vice President D.M. Linnane	Commissioner G.K. Fisher
Disability Services	Deputy President D.A. Swan	Commissioner I.C. Asbury
Dry Cleaning and Laundry	Deputy President A.L. Bloomfield	Commissioner J.M. Thompson
Education	Deputy President A.L. Bloomfield	Commissioner I.C. Asbury
Electrical Industry including Contractors	Deputy President D.A. Swan	Commissioner J.M. Thompson
Fast Food	Vice President D.M. Linnane	Commissioner G.K. Fisher
Fire Services	Deputy President A.L. Bloomfield	Commissioner G.K. Fisher
Food Manufacturing	Vice President D.M. Linnane	Commissioner G.K. Fisher
Forestry Products (including Timber/Sawmilling)	Vice President D.M. Linnane	Commissioner J.M. Thompson
Gas and Oil	Vice President D.M. Linnane	Commissioner G.K. Fisher
General Manufacturing	Vice President D.M. Linnane	Commissioner J.M. Thompson
General Transport (excluding Sugar)	Deputy President A.L. Bloomfield	Commissioner I.C. Asbury

Industry	Panel	
Hospitality	Deputy President A.L. Bloomfield	Commissioner G.K. Fisher
Hospitals/Health	Deputy President D.A. Swan	Commissioner J.M. Thompson
Hotels and Motels	Deputy President A.L. Bloomfield	Commissioner G.K. Fisher
Local Government Authorities	Deputy President D.A. Swan	Commissioner J.M. Thompson
Maritime Transport	Vice President D.M. Linnane	Commissioner I.C. Asbury
Meat and Poultry	Vice President D.M. Linnane	Commissioner I.C. Asbury
Metal Industry	Deputy President A.L. Bloomfield	Commissioner I.C. Asbury
Mining (including Associated Bulk Handling)	Deputy President A.L. Bloomfield	Commissioner G.K. Fisher
Miscellaneous	Vice President D.M. Linnane	Commissioner I.C. Asbury
Nursing	Vice President D.M. Linnane	Commissioner I.C. Asbury
Pharmaceuticals	Vice President D.M. Linnane	Commissioner I.C. Asbury
Police	Deputy President D.A. Swan	Commissioner G.K. Fisher
Port Authorities	Deputy President A.L. Bloomfield	Commissioner G.K. Fisher
Printing and Publishing	Deputy President A.L. Bloomfield	Commissioner I.C Asbury
Prisons	Vice President D.M. Linnane	Commissioner J.M. Thompson
Professional Services	Deputy President A.L. Bloomfield	Commissioner I.C Asbury
Professional Engineering and Technical Drafting	Deputy President A.L. Bloomfield	Commissioner G.K. Fisher
Public Sector	Deputy President D.A. Swan	Commissioner J.M. Thompson
Quarries	Vice President D.M. Linnane	Commissioner J.M. Thompson
Racing	Deputy President A.L. Bloomfield	Commissioner I.C. Asbury
Residential Accommodation	Deputy President A.L. Bloomfield	Commissioner I.C. Asbury
Retail	Vice President D.M. Linnane	Commissioner I.C. Asbury
Sales and Wholesale Warehouses (including Stores and Distribution Stores)	Deputy President Bloomfield	Commissioner G.K. Fisher
Security	Deputy President D.A. Swan	Commissioner G.K. Fisher
Shearing	Deputy President A.L. Bloomfield	Commissioner J.M. Thompson
Sports	Vice President D.M. Linnane	Commissioner J.M. Thompson
Sugar (including Bulk Sugar and Sugar Transport)	Deputy President A.L. Bloomfield	Commissioner I.C. Asbury
Tree Lopping	Vice President D.M. Linnane	Commissioner I.C. Asbury

Notes

QIRC

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2008–09 Annual Report of the President of the Industrial Court of Queensland

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