2009 - 10

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

Industrial Court of Queensland

October 2010

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 2010. 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

Over the last four years, changes to the national industrial relations landscape have significantly affected the role and workload of the Queensland Industrial Relations Commission (QIRC).

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

Subsequently significant issues were dealt with by the QIRC about the coverage of some Queensland employers, and their employees, due to uncertainty about whether or not they were subject to the *Workplace Relations Act 1996*.

In response to the reduced workload the Government reduced the number of Commissioners from 10 to 7 by the end of August 2007. A further Commissioner, who retains a Commission, was appointed as the Workplace Rights Ombudsman and does not presently perform Commission work. No new appointments have been made.

Following the 2007 Australian Government election, the Queensland Government agreed to work with the Australian Government and other States with a view to developing a national industrial relations system.

The outcome was that on 1 January 2010, the Queensland Government referred industrial relations coverage, [subject to some excluded industrial matters] of all employees and employers in the private sector, that were previously covered by Queensland's industrial relations legislation [Qld *Industrial Relations Act 1999*] to the Federal industrial relations jurisdiction [C'wth *Fair Work Act 2009*].

Whilst these changes have caused the QIRC's workload regarding matters in the private sector to be reduced, the QIRC continues to provide solutions to employees and others who have suffered wrongs in employment and industrial matters.

In addition to the existing responsibility for employment and industrial relations matters affecting Queensland's public sector, the QIRC was given extended responsibility for all Local Governments and many statutory authorities.

Further, the responsibilities of the QIRC outside the industrial relations system have increased. The QIRC has a significant jurisdiction over workplace health and safety matters, workers' compensation, vocational education and training, trading hours, child employment and private employment agents.

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

Under the *Industrial Relations Act 1999*, the Industrial Court's predominate purpose is to hear and determine appeals from decisions of the QIRC and Industrial Magistrates. The QIRC provides an independent conciliation and arbitration service for awards, agreements, prevention and settlement of industrial disputes and related matters, unfair dismissals and wage recovery matters.

It is worth noting that in addition to the *Industrial Relations Act 1999* the industrial tribunals have retained powers and functions under a number of other Acts:

- *Building and Construction Industry (Portable Long Service Leave) Act 1991;*
- *Child Employment Act 2006;*
- *Coal Mining Safety and Health Act 1999;*
- *Contract Cleaning Industry (Portable Long Service Leave) Act 2005;*

- *Dangerous Goods Safety Management Act 2001;*
- *Electrical Safety Act 2002;*
- *Local Government Act 1993;*
- *Magistrates Courts Act 1921;*
- *Mining and Quarrying Safety and Health Act 1999;*
- *Petroleum and Gas (Production and Safety) Act 2004;*
- *Private Employment Agents Act 2005;*
- *Trading (Allowable Hours) Act 1990;*
- *Vocational Education, Training and Employment Act 2000;*
- *Whistleblowers Protection Act 1994;*
- *Workers' Compensation and Rehabilitation Act 2003; and*
- *Workplace Health and Safety Act 1995.*

During the year there were 1,776 matters filed pursuant to the various Acts within the QIRC 's jurisdiction in the Industrial Registry.

In terms of the C'wth *Workplace Relations Act 1996* all Members of the QIRC were previously also appointed to the Australian Industrial Relations Commission [AIRC]. Queensland Commissioners heard seventy-two matters in their capacity as Federal Commissioners up to 31 December 2009, at which time the appointments ceased due to the AIRC ceasing to exist and being replaced by Fair Work Australia.

In terms of the C'wth *Fair Work Act 2009*, one Queensland Deputy President and one Commissioner, whilst retaining their commission with the State Commission, were also appointed as Members of Fair Work Australia as from 1 January 2010. Six hundred and twenty-three matters were dealt with between 1 January and 30 June 2010.

Significant issues dealt with by the QIRC include:

2009 State Wage Case - On 21 August 2009 a Full Bench of the QIRC declared by General Ruling a wage adjustment of $16.20 per week increase in award rates of pay. By the same General Ruling as required under s. 287 of the *Industrial Relations Act 1999*, the minimum wage for all full-time employees in Queensland was increased to $568.20 per week with a proportionate amount for junior, part-time and casual employees. Work -related allowances were increased by 2.5%. The effective date for the increased rates was set at 1 September 2009.

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. On 22 May 2009, the Full Bench released a discussion paper requesting submissions leading to hearings beginning on 31 August 2009. The Review has been completed with the Full Bench submitting the Report to the Minister in May 2010.

Trading hours - Full Benches of the QIRC continue to hear numerous applications under the *Trading (Allowable Hours) Act 1990* for extended trading hours in many regions throughout Queensland. These hearings are usually lengthy with detailed submissions from concerned parties and onsite inspections.

During 2009-10, the QIRC dealt with applications for extended trading for numerous areas throughout Queensland - Rockhampton; City of Toowoomba; City of Mackay; Moranbah; Cooroy; Cooloola Cove and Gympie; Cairns tourist area; Mt Isa; Bargara and Mission Beach; and Woodford.

Award Review - A Full Bench of the QIRC decided to review awards of the QIRC, pursuant to s. 130 of the *Industrial Relations Act 1999*.

Arbitration of Certified Agreement - A Full Bench of the QIRC, pursuant to s. 148 of the Act, arbitrated a certified agreement for Queensland Government Teachers. Of note is that Registry records reveal that 123 individual events were recorded [including 23 listings involving programming, conferences, hearings and inspections and over 80 documents being filed or issued].

Under s. 550 of the *Workers' Compensation and Rehabilitation Act 2003* an employee or employer can appeal to the QIRC if either party is aggrieved by a Q-COMP Review decision. These appeals are often complex and have increased from 59 in 2006 to 129 in 2010. A Bill before the Queensland Parliament, when passed, will see approximately a further 200 such matters move from the Industrial Magistrates jurisdiction to the Commission.

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

Of historical significance, the last *Queensland Government Industrial Gazette* was published on 23 October 2009. This was as a result of Parliament passing legislation abolishing the *QGIG* and making the QIRC the official publisher of decisions and other documents of the Court, the Commission and the Industrial Registrar. These decisions are now generally available to the public within 24 hours following release to the parties.

The Industrial Registry - The 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 2,200 listings [e.g. conferences and hearings] were requested by Members to be set down.

The Industrial Registry benchmarks its business processes and service delivery with other State Industrial Tribunals regularly; at least twice yearly.

Improved business processes introduced in the reporting period which compare favourably include officially publishing decisions on the QIRC website, the 2010 Review of Awards process and engagement with Employer and Employee organisations.

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 dedication to improving client service delivery and their assistance to Associates and Members.

THE INDUSTRIAL COURT OF QUEENSLAND

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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 Industrial Magistrates' jurisdiction); and

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

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

Appellate Jurisdiction of the Court

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

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

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

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

Appeals also lie to the Court from decisions of the 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* 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*, a penalty unit for an individual is $100. If a corporation is found guilty of the offence, the Court may impose a maximum fine of an amount equal to 5 times the maximum fine for an individual.]

Stay of Decision appealed against

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

Industrial Organisations

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

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

Cases Stated

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

Costs Jurisdiction

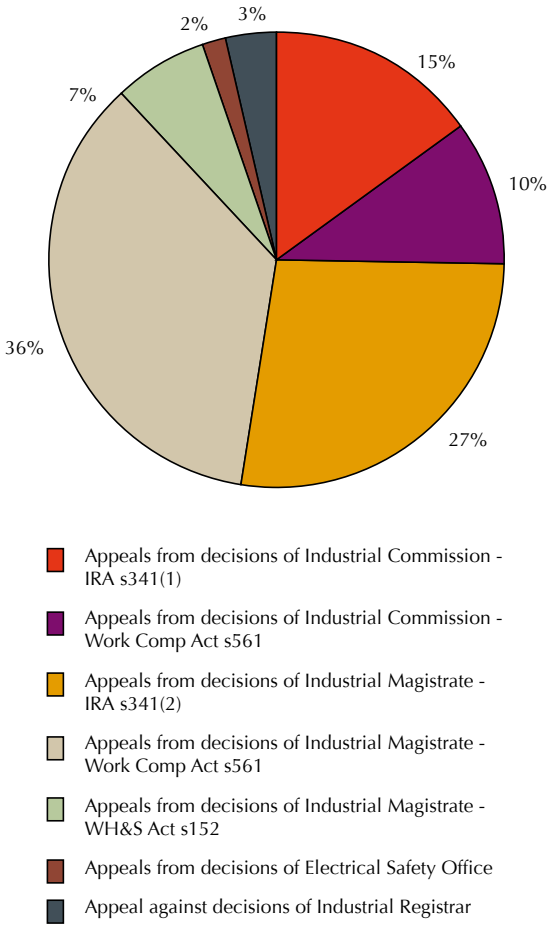
The Court may order costs against a party to an application. Under s. 335 of the *Industrial Relations Act 1999* costs may only be ordered against a party if the Court is satisfied that:

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

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

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

Appeals Filed in the Court 2009-2010



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.

There are eight members of the Commission. The Commission is headed by the President who is also President of the Industrial Court. Other presidential members are the Vice President and two Deputy Presidents. There were four other Commissioners as at 30 June 2010.

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

All Members of the Commission were also appointed to the Australian Industrial Relations Commission [AIRC]. These "dual commissions" were provided for by s. 305, and facilitated the co-operative arrangement between Australian and State Commissions. In terms of the *Federal Workplace Relations Act 1996*, Queensland Commissioners heard 72 matters in their capacity as Federal Commissioners up to 31 December 2009, at which time the appointments ceased due to the AIRC ceasing to exist and being replaced by Fair Work Australia.

In terms of the federal Fair Work Act, one Queensland Deputy President and one Commissioner, whilst retaining their commission with the State Commission, were also appointed as Members of Fair Work Australia as from 1 January 2010. Six hundred and twenty-three matters were dealt with between 1 January and 30 June 2010.

On 1 January 2010, the Queensland Government referred industrial relations coverage, [subject to some excluded industrial matters] of all employees and employers in the private sector (i.e. other than State public sector, Local Government sector and some commercial elements of the public sector), that were previously covered by Queensland's industrial relations legislation [Qld *Industrial Relations Act 1999*] to the Federal industrial relations jurisdiction [C'wth *Fair Work Act 2009*].

Whilst these changes have caused the Commission's workload regarding matters in the private sector to be reduced, the Commission continues to provide solutions to employees and others who have suffered wrongs in employment and industrial matters.

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	Commissioner 2.8.1999 - appointed Deputy President 3.2.2003
Ms GK Fisher Mr DK Brown#	Commissioner 2.8.1999
Ms IC Asbury * Mr JM Thompson	Commissioner 28.9.2000

*Commencing on 1 January 2010, Deputy President Swan and Commissioner Asbury were appointed to Fair Work Australia but have retained their commission with the State Commission.

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 or three 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 1 January 2010, are listed in Appendix 1.

The Full Bench of the Commission

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

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

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

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

Appeals to the Full Bench

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

Full Bench Hearings about Industrial Organisations

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

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

See Decisions of the *Full Bench* for important decisions released by the Full Bench during 2009 - 2010.

Commission Hearings

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

Jurisdiction, Powers and Functions of the Commission

Jurisdiction under the *Industrial Relations Act 1999*

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

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

Commission's Powers

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

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

The powers given by the Act include the power to:

- make general rulings about industrial matters, employment conditions, and a Queensland minimum wage: s. 287; and statements of policy about industrial matters: s. 288;
- resolve industrial disputes by conciliation and, if necessary, by arbitration: s. 230. The Commission's powers in such disputes includes the power to make orders;
- hear and determine applications for reinstatement following termination of employment, including awarding compensation if reinstatement is impracticable, and imposing a penalty on the employer if the dismissal was for an invalid reason: ss. 76 and 78-81;
- certify or refuse certification of agreements, and amend or terminate certified agreements, according to the requirements of the Act: ss. 156, 157, 169-173 or assist parties to negotiate certified agreements (ss. 148 and 149) by conciliation and, if necessary, by arbitration. The Commission's powers includes the power to make orders necessary to ensure negotiations proceed effectively and are conducted in good faith;
- make, amend or repeal Awards, on its own initiative or on application: s. 125. The Commission may also review Awards under s. 130. (The first program of Award review was commenced by the Commission on its own initiative in 1999);
- determine claims for, and order payment of unpaid wages, superannuation contributions, apprentices' tool allowances, and certain other remuneration, where the claim is less than $50,000 (claims above that sum must be heard before an Industrial Magistrate): s. 278;
- make orders fixing minimum wages and conditions, and tool allowance for apprentices and trainees: ss. 137 and 138; and orders fixing wages and conditions for employees on labour market programs, and for students in vocational placement schemes: ss. 140 and 140A;
- make 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: s. 274A
- grant an injunction to compel compliance with an industrial instrument or permit, or with the Act, or to prevent contraventions of an industrial instrument, permit or the Act: s. 277;
- interpret an industrial instrument: s. 284;
- order repayment of fees, charged in contravention of the Act by a private employment agent, where the total fee paid was not more than $20,000: s. 408F (claims above that sum must be decided by an Industrial Magistrate);
- 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 a Full Bench is the jurisdiction to issue *general rulings* and *statements of policy*.

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

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

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

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

On 21 August 2009 a Full Bench of the Commission declared by General Ruling a wage adjustment of $16.20 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 $568.20 per week with a proportionate amount for junior, part-time and casual employees. Work-related allowances were increased by 2.5%. The effective date for the increased rates was set at 1 September 2009.

On 23 June 2010 and 25 June 2010 respectively, the Queensland Council of Unions (application B/2010/20) and The Australian Workers' Union of Employees, Queensland (application B/2010/21) 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 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.

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. 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 198 applications to approve a Certified Agreement. Of these, 135 were new Agreements. The number of Certified Agreements currently in force is indicated in Table 6.

Unpaid Wages

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

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

Industrial Organisations

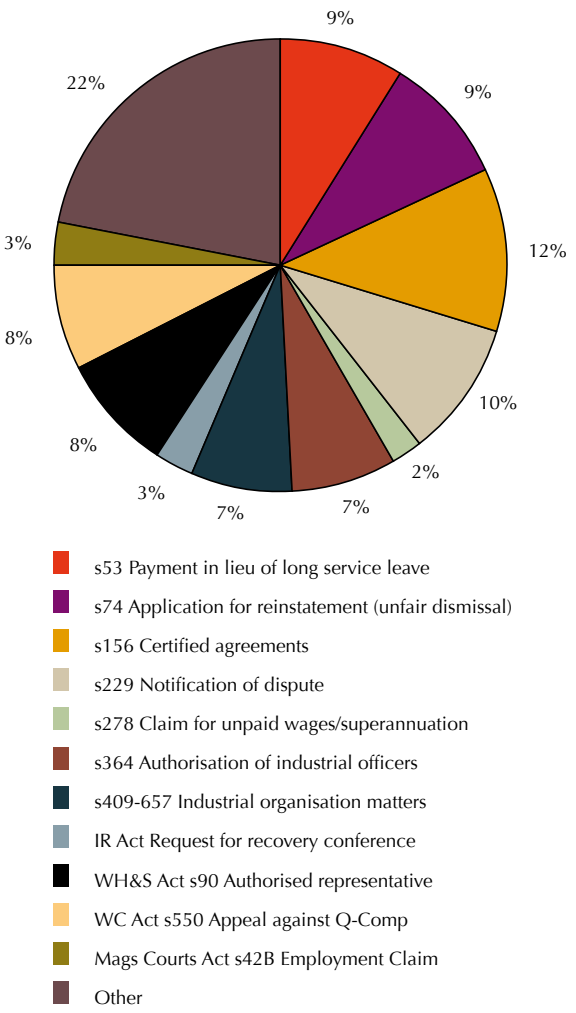
The Commission has the power to: grant the registration of an Industrial Organisation (s. 413); approve of change of name (s. 473); change to eligibility rules (s. 474); and to make orders about an invalidity (s. 613). Table 10 shows the number of applications dealt with.

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 2009-2010



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*. Members of the Commission also perform functions under the *Magistrates Courts Act 1921*.

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

The Commission has jurisdiction under Chapter 8 Part 2 of the *Vocational Education, Training and Employment Act 2000* to hear and determine appeals from decisions of 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.

During the year the Commission dealt with applications for extended trading for the following:

- extended trading hours in the city of Rockhampton area
- extended trading hours in the city of Toowoomba area
- extended trading hours in the city of Mackay area
- Sunday trading in the Moranbah area
- expansion of the definition of South-East Queensland area to include Cooroy, Cooloola Cove and Gympie
- amendment to the current definition of the Cairns tourist area and others
- Sunday trading and trade on certain public holidays in the Mt Isa area
- Sunday trading in the Bargara and Mission Beach areas
- definition of the South-East Queensland Area boundaries to include the town of Woodford

During the reporting period, trading hours' matters before the commission include applications for the following:

- to extend trading hours for supermarkets in the Gold Coast coastal tourist area
- to amend the *Trading Hours - Non-Exempt Shops Trading by Retail - State* re: the Warwick Area
- to amend the *Trading Hours - Non-Exempt Shops Trading by Retail - State* re: the Dalby Area
- to amend the definition of South-East Queensland Area to include Fernvale, Plainland and Gatton
- to amend the *Trading Hours - Non-Exempt Shops Trading by Retail - State* re: the Gladstone Area
- to amend the *Trading Hours - Non-Exempt Shops Trading by Retail - State* re: Christmas 2010 trading in regional Queensland
- to amend the *Trading Hours - Non-Exempt Shops Trading by Retail - State* re: the Emerald Area
- to amend the *Trading Hours - Non-Exempt Shops Trading by Retail - State* re: the Innisfail Area
- closure of all non-exempt shops on Boxing Day 2010 and New Year's Day 2011
- to amend the *Trading Hours - Non-Exempt Shops Trading by Retail - State* re: extension of weekend trading in Cairns CBD
- to amend the *Trading Hours - Non-Exempt Shops Trading by Retail - State* re: the Tablelands area
- to amend the *Trading Hours - Non-Exempt Shops Trading by Retail - State* re: the Kingaroy 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 129 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 *Magistrates Courts Act 1921* (Part 6) provides access to employees on low incomes to a low cost procedure in the Magistrates Court for claims relating to breach of the contract of employment. These claims are available to employees earning up to $106,400 per year, consistent with the income threshold relating to unfair dismissal claims under the *Industrial Relations Act 1999*.

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

During the year there were 69 conferences held.

Professional activities

During the year 2009/10, the Members attended the following conferences, seminars and meetings:

Member	Conference	Location	Date/s
Linnane, D.M.	15th IIRA World Congress	Sydney, Australia	24/8/2009-27/8/2009
Swan, D.A.	IIRA European Congress 2010	Copenhagen, Denmark	28/6/2010-1/7/2010
Thompson, J.M.	IIRA European Congress 2010	Copenhagen, Denmark	28/6/2010-1/7/2010
Fisher, G.K.	7th Greek Conference – Facing Change in Law, Medicine & Science History of Labour Relations in Qld Conference	Corfu, Greece Brisbane, Australia	26/9/2009-2/10/2009 11/12/2009
Asbury, I.C.	15th IIRA World Congress	Sydney, Australia	24/8/2009-27/8/2009

Local Government Remuneration and Discipline 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.

In its December 2009 Determination the Tribunal increased the remuneration levels for Mayors, Deputy Mayors and Councillors by 3.1%, in line with increases decided by the (Federal) Remuneration Tribunal for Holders of Public Office in October 2009.

In June 2010, to coincide with the introduction of a new Local Government Act from 1 July 2010, the former Local Government Remuneration Tribunal was reconstituted as the Local Government Remuneration and Discipline Tribunal. Deputy President Bloomfield was appointed to be the Chairperson of the new Tribunal, together with two new Members.

The new Tribunal will continue to exercise its previous responsibilities concerning categories of Council and remuneration levels as well as considering serious complaints alleging misconduct and/or conflicts of interests by elected local government representatives. The new Tribunal will be able to make recommendations to the Minister for Local Government concerning action the Minister might take in relation to findings of fact made by the Tribunal, which include dismissal of an individual Councillor or an entire Council.

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 s. 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:

- on 22 May 2009, the Full Bench released a discussion paper requesting submissions leading to hearings beginning on 31 August 2009;
- the Review has been completed with the Full Bench submitting the Report to the Minister in May 2010.

QUEENSLAND INDUSTRIAL REGISTRY

QUEENSLAND INDUSTRIAL REGISTRY

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

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

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

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

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

(1) Following the Machinery of Government Changes in March 2009 which saw the industrial relations portfolio from the former Department of Employment and Industrial Relations come together with DJAG, the Industrial Registry has been transitioning its Corporate and Information Technology services support to the services used by DJAG.

(2) On 1 January 2010, the Queensland Government referred industrial relations coverage, (subject to some excluded industrial matters) of all employees and employers in the private sector (i.e. other than State public sector, Local Government sector and some commercial elements of the public sector), that were previously covered by Queensland's industrial relations legislation [Qld *Industrial Relations Act 1999*] to the Federal industrial relations jurisdiction [C'wth *Fair Work Act 2009*].

(3) Due to the leases for the QIRC and the Industrial Registry expiring in March 2010, the Registrar, together with Accommodation Officers, [DJAG] and also with Officers from Queensland Government Accommodation Office, Department of Public Works, have been working together to negotiate alternative leasing options. Following the Queensland Government retaining coverage for all employment and industrial relations matters affecting Queensland's public sector, all local governments and many statutory authorities, it was decided to renew the QIRC's lease on level 13. It was also decided to relocate the Industrial Registry from level 18 to level 13. [This relocation was planned for 30 July 2010].

(4) In January 2009 the Registry submitted a proposal to the then Department of Employment and Industrial Relations to publish 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*. The aim of publishing these documents on the QIRC website was to speed up their availability to the public while reducing staff administrative procedures and costs to all users.

On 17 September, 2009, Parliament passed Legislation to amend the *Industrial Relations Act 1999* [the Act] (via the Electrical Safety and Other Legislation Amendment Act 2009), abolishing the *Queensland*

Government Industrial Gazette and making the QIRC the official publisher of decisions, awards, agreements, amendments, notices, orders and other documents of the Court, the QIRC and the Industrial Registrar.

Of interest, an excerpt from page 2,460 of the Second Reading Speech in the Record of Proceedings (Hansard) of 17 September (pages 2,458 to 2,467) outlined the importance of this initiative:

> "Amending the *Industrial Relations Act* will abolish the printed and wasteful Queensland Government Industrial Gazette and allow for all relevant information publications to be put on the Queensland Industrial Relations Commission's website. Available to the wider public at a smaller cost to the Government, this represents a way forward in transparent and accountable judgments by the QIRC. Electronic service delivery is consistent with the Bligh Government's Q2 promise of increasing efficiency, user-friendliness and accountability of departments and the Government.".

These provisions commenced on Monday 26 October 2009. The amendments to the Act ensured that a document, decision, etc. published on the QIRC website is admissible as evidence of the document in Court proceedings. [see s. 680 of the Act]

The *Queensland Government Industrial Gazette* was used by a number of agencies and organisations to publish important industrial notices. Consequential amendments have been made to several acts and regulations to ensure that publication of these notices will continue in the *Queensland Government Gazette*.

(5) IRIS (an Industrial Relations Information Service) - was a resource centre for the dissemination of industrial relations information, previously managed as a fee for service, in conjunction with the Wageline Website.

A process was put in place for the Wageline Website to close on 30 June 2010 and the IRIS database to be transferred to the QIRC website on 1 July 2010, providing free access to all.

This database provides full text searching on decisions of the QIRC from 1990 to October 2009.

These document types have been categorised as follows:

- Awards (including associated amendments and corrections of error);
- Agreements (i.e. Certified Agreements, Industrial Agreements and Enterprise Flexibility Agreements);
- Decisions (including General Rulings, Judgments, Statements of Policy and Interpretations);
- Orders; and
- Notices.

The history of each document is available in the form of gazetted documents such as amendments, repeals/rescissions and general rulings. For both current and repealed documents, the document history enables access to all the applicable amendments, corrections of error, decisions, notices, orders and repeals.

Throughout these changes staff of the Industrial Registry have been able to deal with these operational issues and at the same time achieve the key performance goals of the Registry in supporting Members of the Court and Commission.

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. The result of the survey undertaken in March 2010 showed that 95% of clients were satisfied with the performance of the Registry staff.

The key performance goals measured quantitatively during 2009/10 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%;
- the percentage of decisions released to the parties within one working day was 100% matching last year's statistics; and
- the percentage of decisions that are published and available to the community within 13 working days was also 100%.

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 80% and 74% respectively.

Performance measures are also detailed in Table 8.

REGISTRY SERVICES

The Queensland Industrial Registry is located on:

Level 13,
Central Plaza 2
66 Eagle Street, (Corner Elizabeth and Creek Streets),
Brisbane, Queensland, 4000.

Postal address:

GPO Box 373, Brisbane, QLD. 4001.

General enquiries:

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

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

Registry staff carry out a range of functions, namely: Judicial Services, Publication and Information Services (incorporating Publication, Web and Library), Registered Industrial Organisations and Corporate Services.

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

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

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

During 2009-10, a total of 1,776 applications and notifications were filed in the Registry (see Tables 1 & 4).

In addition to registering these applications, the judicial staff processed and tracked thousands of related documents, such as directions orders, statements, submissions and general correspondence. Further, at the request of Members, staff set down over 2,200 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 helping to make a certified agreement between the Department of Education and Training and the Queensland Teachers Union, Registry records revealed 123 individual events being recorded [including 23 listings involving programming, conferences, hearings and inspections and over 80 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 DJAG.

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

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

The PISU manages 4,906 Industrial Instruments (see table 6).

During the reporting period the QIRC's web site (www.qirc.qld.gov.au) again proved invaluable with interest and usage increasing significantly. It provides 9,400 files of relevant information for the general public with up to 1,000 visits recorded daily.

Important public matters such as the 2009 State Wage Case, Award Review 2010 and the Commission's review of Family leave see the posting of all relevant documentation to the website as soon as it is lodged with the Registry, including original applications, directions of the Court, Commission and Registry, submissions and responses of all parties, transcripts of proceedings and decisions. This allows timely and cost effective information to be disseminated to all parties without the need of many parties appearing in the QIRC or serving documents on each other.

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

- each *Queensland Government Industrial Gazette* [QGIG] was posted weekly up until it's final copy on 23 October 2009;
- all decisions are now officially published on the website 24 hours after being released to the parties;
- all volumes of the QGIG from 2000;
- all extracts of the QGIG back to 2005;
- all Industrial Instruments (Awards, Certified Agreements and Orders) of the Commission;
- all amendments to Awards of the Commission since the State Wage Case 2007;
- Information about the Industrial Court of Queensland, Queensland Industrial Relations Commission and the Industrial Registry; and
- Information in accordance with the *Right to Information Act 2009*.

During the year the QIRC web presence was enhanced to a dynamic site, database driven using a content management system and now 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.

Prior to 26 October 2009, each week the PISU produced the *Queensland Government Industrial Gazette* which comprised of all Court and Commission documents released that week. The production of the Gazette was labour intensive with strict deadlines and was published and distributed to subscribers on time each week.

PISU also supplied 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 DJAG until 30 June 2010.

Although the process of publishing QIRC documents changed from 26 October, PISU continue to proofread and release all decisions of the various tribunals prior to publishing on the QIRC website.

The new process of publishing QIRC documents directly on the QIRC website now includes:

- adding new Citations (in place of Extract details at the top of all published documents);
- new style of citing Decisions/official articles etc. when citing within a Decision i.e. Party v Party only (using Footnotes on each page for full citation details);

- paragraph numbering (within square brackets [1], [2] etc.); and
- linking citations within Decisions to electronic Decisions of the QIRC where possible for easy access for clients and Members (being phased in).

The preparation and publishing of the 2009 State Wage Case amendments involved PISU taking on a new process as the *Queensland Government Industrial Gazette* had been abolished. The amendment documents themselves were still created, formatted and proofread before being prepared for posting directly to the QIRC website, including converting to PDF, adding metadata and linking documents to newly created HTML pages – all done within the PISU.

The PISU 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 DJAG. The PISU selects the articles and builds its own report then emails the report onto Members of the QIRC, 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).

The PISU 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 PISU to provide easy access to such documents by the QIRC.

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

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

Registered Industrial Organisations

The review of Registry records of Registered Industrial Organisations in relation to provisions of Chapter 12 of the *Industrial Relations Act 1999* continued into 2009/10. Many Industrial Organisations have been assisted in their duty to comply with legislative provisions, and their access to Registry information and services has been improved. Many of the applications filed under Chapter 12 provisions are a direct result of the Registry's proactive involvement in this area.

Corporate Services

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

Under the provisions of the *Financial Accountability Act 2009*, the Chief Executive [Director General] of the DJAG 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.

New Initiatives

Award Review 2010

The QIRC has decided to review Awards of the Commission, pursuant to s. 130 of the *Industrial Relations Act 1999* (the Act).

The Industrial Registry is providing administrative support including web services to the Commission during this review.

The review is being undertaken in stages. The first stage involves the identification of Awards which appear to apply to constitutional corporations and employers now covered by the national system (referred to as Corporation Awards).

The second stage (being conducted concurrently with stage one) involves the identification of those Awards which apply to public sector employment (referred to as State Government Awards) and Local Government sector employment, including those Awards that came into the Commission's jurisdiction pursuant to Chapter 20 Part 7 of the Act, (referred to as Local Government Awards).

Following the identification of State Government Awards and Local Government Awards which are said to have continued relevance, the Commission will consider the contents of such Awards with a view to deleting any provisions which relate to constitutional corporations or other employers now covered by the national system (see for example Schedule 8 of the *Engineering Award - State 2002*, which only applies to Queensland Cement Limited and Central Queensland Cement Pty Ltd).

Other than identifying Corporation Awards and provisions relating to employers in the national system and State Government Awards and Local Government Awards, the Commission does not propose to review and/or alter any other provision in any Award which remains within its jurisdiction during this stage.

The third stage will involve the identification of other common rule Awards not identified as continuing to have relevance in stages one and two, with a view to considering the future treatment of such Awards.

Future developments

The *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Bill 2009* was introduced to Parliament on 13 April 2010 by the Minister. The Bill proposes to amend s. 548A (Meaning of appeal body) which defines an "appeal body" for the purposes of Division 1, Part 3 in Chapter 13 of the Act. This division deals with appeals from decisions of Q-Comp, the statutory regulator for workers' compensation in Queensland.

The amendment to s. 548A (which is proposed to operate from 1 November 2010) will remove the dual jurisdiction of industrial magistrates for most types of appeals and replace it with a sole right of appeal to the QIRC, increasing the number of Q-COMP Appeals of the QIRC significantly, many of which are in regional Queensland.

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.

In this regard, the Registry is developing interactive tools to better manage enquiries via emails, faxes and letters, together with web and phone enquiries. This web enhancement is proposed to be implemented in the next reporting year. It will include templates to frequently asked questions, a searchable record of all advice given to clients across all channels and reports on the types of enquiries received by the Industrial Registry.

In addition, in conjunction with Information Technology Services within DJAG, the Registry will be exploring online lodgement of forms and video conferencing, all aimed at better improving our client service delivery.

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 4 of the 159 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 include 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 *Fair Work (Registered Organisations) Act 2009*.

Financial Accountability

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

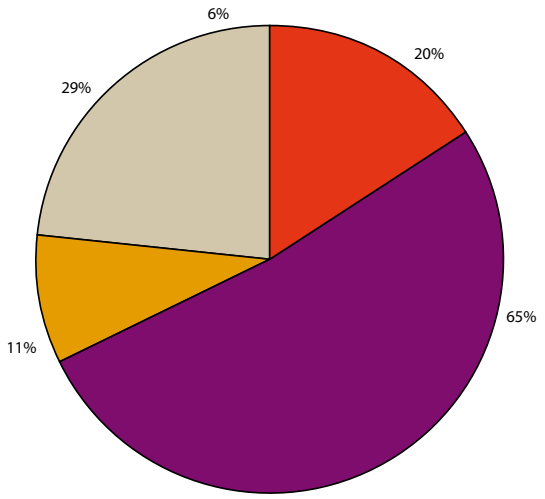
Any industrial organisation with a counterpart federal organisation may apply to the Registrar for exemption from accounting and audit provisions, under s. 586. If the application is approved, the organisation must file with the Registrar a certified copy of the documents filed under the federal *Fair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

Orders for 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 2009-2010



s478 Amendment to rules - other than eligibility	20
s481 Request for conduct of election	65
s580 Exemption from conduct of election	11
Others	29

Membership of Industrial Organisations

Eligibility for and admission to membership of industrial organisations are governed by Part 10 of Chapter 12. At 30 June 2010, there were 43 employee organisations registered in Queensland; with a total membership of 396,124 compared to 398,266 at 30 June 2009. The employee organisations are listed according to membership numbers in Table 11. Equivalent figures for employer organisations are: 37 organisations registered at 30 June 2010, with a total membership of 38,395 compared to 39,979 at 30 June 2009. 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.

Amendments to *Industrial Relations Act 1999*

Electrical Safety and Other Legislation Amendment Act 2009

The *Electrical Safety and Other Legislation Amendment Act 2009* was assented to on 22 September 2009, and amongst other things, amended the *Industrial Relations Act 1999*, enabling the Queensland Industrial Relations Commission website to become the official publisher of documents of the Industrial Court of Queensland, the Commission and the Industrial Registrar.

The availability of these important documents to wider public access at a smaller cost to the Government, represents a way forward in transparent and accountable judgments by the QIRC increasing efficiency, user-friendliness and accountability of departments and the government.

Whilst the Act included amendments that abolished the *Queensland Government Industrial Gazette*, consequential amendments were made to several other acts and regulations to ensure that publications and notices of agencies and organisations continued in the *Queensland Government Gazette*.

Fair Work (Commonwealth Powers) and Other Provisions Act 2009

The *Fair Work (Commonwealth Powers) and other Provisions Act 2009* amended many Acts including the *Industrial Relations Act 1999* and the *Industrial Relations Regulation 2000*. The Act which was assented to on 19 November 2009 provided a text-based referral bringing the State's private sector employees within the national IR system.

The Act adopted a three-step referral that

- extended the *Fair Work Act 2009* (C'wth) to the Queensland private sector through a text-based referral (the initial reference);
- gave the federal parliament the power to amend the legislation on certain referred subjects (the amendment reference); and
- implemented transitional arrangements for transferring employers and employees (the transition reference).

If a Commonwealth proposal or amendment to the *Fair Work Act 2009* (C'wth) is considered by one or more of the referring States or the Territories to undermine the fundamental workplace relations principles, that proposal or amendment will not proceed unless it is endorsed by a two-thirds majority of referring States, the Territories and the Commonwealth securing an additional safeguard through the inter-governmental agreement.

The Act inserted a new chapter 16 into the *Industrial Relations Act 1999* to provide for declarations to be made that particular employers are not 'national system employers' for the purposes of the *Fair Work Act 2009* (C'wth). By section 14(2) of the Commonwealth Act, the effect of such a declaration is that the declared employer will not be included in the federal industrial relations regime.

The Act also inserted a new Schedule 7A into the *Industrial Relations Regulation 2000* declaring certain employers not to be national system employers for the purposes of section 14(2) of the *Fair Work Act 2009* (C'wth).

Essentially, State and local government employees and law enforcement officers are excluded from the referral, but the Act extends coverage to some commercial elements of the public sector including government-owned corporations.

The Act also protects certain entitlements of employees transferring to the national system and preserves award wage rates for community and disability sector workings flowing from QIRC decisions.

Amendment to the *Fair Work Act 2009* (C'wth)

***Fair Work Amendment (State Referrals and Other Measures) Act 2009* (C'wth)**

The *Fair Work Amendment (State Referrals and Other Measures) Act 2009* (C'wth) was passed in both the House of Representatives and Senate and assented to on 9 December 2009.

The Act amended the *Fair Work Act 2009* (C'wth) to give effect to state references of workplace relations matters to the Commonwealth taking effect from 1 July 2009, enabling states to declare employers not to be national system employers; and enabling state ministers to intervene in court proceedings and make submissions in relation to matters before Fair Work Australia.

Of particular interest, the *Fair Work Act 2009* (C'wth) was amended, incorporating a new section 14(2) reflecting a new Schedule 7A inserted into the *Industrial Relations Regulation 2000*.

Amendment to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (C'wth)

***Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (C'wth)**

The *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (C'wth) was amended from 1 January 2010 by inserting a new Schedule 3A (Treatment of State awards and State employment agreements of Division 2B referring States) providing provisions to transition employers and employees to the National workplace system. For example, it covers how matters filed in the QIRC prior to 1 January 2010 can be dealt with after that date.

Amendment to the *Vocational Education, Training and Employment Act 2009*

Education and Training Legislation Amendment Act 2009

The *Education and Training Legislation Amendment Act 2009* amended the *Vocational Education, Training and Employment Act 2000* and was assented to on 15 October 2009.

Amendments to sections 230 and 244 of the VETE Act enabled a party aggrieved by a decision of the Training and Employment Recognition Council to appeal to the QIRC. A party to the appeal can now appeal against the QIRC's decision to the Industrial Court on a question of law only.

Proposed amendment to the *Workers' Compensation and Rehabilitation Act 2003*

Civil and Criminal Jurisdiction Reform and Modernisation Amendment Bill 2009

The *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Bill 2009* was introduced by Mr Cameron Dick, Minister for Justice and Attorney-General, on 13 April 2010, to be debated in Parliament outside of this reporting period.

The proposed changes to the *Workers' Compensation and Rehabilitation Act 2003* would have a significant impact on the workload of the QIRC and Registry if the Act is passed. One of the purposes of the Bill is to amend s. 546 of the *Workers' Compensation and Rehabilitation Act 2003* by deleting the reference to an industrial magistrate.

Section 548A of the Act which defines an "appeal body" for the purposes of Division 1, Part 3 in Chapter 13 of the Act is proposed to be amended. That division deals with appeals from decisions of Q-Comp, the statutory regulator for workers' compensation in Queensland. Since 2005, the QIRC has had dual jurisdiction with industrial magistrates to hear certain appeals. The amendment to s. 548A proposes to

remove the dual jurisdiction of industrial magistrates for most types of appeals and proposes to replace it with a sole right of appeal to the QIRC.

This proposed amendment however, will not affect the exclusive jurisdiction of Industrial Magistrates for prescribed review decisions [under s. 107E and a matter mentioned in s. 540(1)(a)(i) to (vi)] and non-reviewable decisions.

Amendment to Tribunal Rules

Industrial Relations (Tribunals) Amendment Rule (No.1) 2009

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 2009. A similar increase for 2009/10 was published on 4 June 2010 to take effect for the year commencing 1 July 2010.

SUMMARIES OF DECISIONS

SUMMARIES OF DECISIONS

Decisions of the Industrial Court of Queensland

The decisions summarised below are significant decisions released and published by the Industrial Court during the year.

Rodney James Whitson AND Shane Randall Golinski (C/2009/25) 24 July 2009 - 191 QGIG 370

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

This Appeal concerned a prosecution for breach of the *Industrial Relations Act 1999* (the Act) by way of failing to make contributions for an eligible employee to an approved superannuation fund. As to the recovery orders which may be made under s. 409 of the Act the Court said:

> "The orders made about the outstanding superannuation contributions pose somewhat difficult problems. I accept the submission that the *State Penalties Enforcement Act 1999* does not provide for the recovery of sums ordered to be paid pursuant to s. 406 of the *Industrial Relations Act 1999* (the Act). The *State Penalties Enforcement Act 1999* is limited to the collection and enforcement of court ordered fines, infringement notice penalties and fees, compensation and restitution, and amounts forfeited under undertakings and recognisances. Like unpaid wages (see *Palk v Kneeves* (2007) 186 QGIG 700) unpaid superannuation contributions do not answer that description. Whether the Industrial Magistrate had power to order the payment of the outstanding superannuation contributions to Mr Cross is a more perplexing problem. As a matter of first impression, such an order is lawful. Section 406(5) of the Act authorises an Industrial Magistrate who finds an employer guilty of an offence in failing to make superannuation contributions at the appropriate level to make any order which an Industrial Magistrate might make if civil proceedings were instituted for the recovery of such superannuation contributions. By s. 408(4) of the Act, in such a civil proceeding, the Industrial Magistrate "must order the employer to pay to the employee" any amount of superannuation contributions found not to have been paid. On its face, the language is intractable. The difficulty is that s. 408(6) of the Act restricts an Industrial Magistrate's power to make an order about the payment of the unpaid amount to orders that the Queensland Industrial Relations Commission might have made if the civil proceedings had been instituted under s. 278(9) or (10). A limited and irrelevant exception apart, s. 278(9) and (10) requires the Commission to order that the amount be paid to the appropriate superannuation fund (here Sunsuper). I do not think that the conu ndrum is to be resolved by asserting where there is internal inconsistency in a statute the latter provision prevails. It seems to me to be tolerably clear that s. 408 contemplates that the way in which outstanding superannuation contributions will be paid to an employee will be by paying the money to the appropriate superannuation fund. It is an extraordinary leap to conclude that the consequence of the underpayment of superannuation contributions is that the contributions transmogrify into wages to be paid immediately to the employee and taxed as ordinary earnings.".

Gerard Kavney AND Sunshine Coast Regional Council (C/2009/48) 6 November 2009 - *<www.qirc.qld.gov.au>*

Industrial Relations Act 1999 - s. 341(1) - appeal against decision of industrial commission - s. 346 - application for extension of time

This matter has its genesis in the amalgamation of the Caloundra City Council, the Maroochy Shire Council and the Noosa Shire Council to form the Sunshine Coast Regional Council (the SCRC). An outcome of the amalgamation was that three existing employees became potential candidates for appointment to the position of Manager, Waste and Resource Management for the SCRC. In the event, Mr Wayne Schafer, who had been the Manager, Environment Health, for the Noosa Shire Council, was the successful candidate. An unsuccessful candidate, Mr Gerard Kavney, who had held the position of Manager, Maroochy Waste Management, Maroochy Shire Council for 19 years, took issue with SCRC's decision. There was an internal appeal. Mr Kavney's appeal failed. The matter found its way to the Queensland Industrial Relations Commission (the Commission). The decision of the Commission was adverse to Mr Kavney who then appealed to the Industrial Court. Materially the Court said:

> "In the event, the Commission's decision, adverse to the QSU and Mr Kavney, was released on 18 September 2009. It was released to the QSU and the SCRC. On 22 September 2009 the QSU notified Mr Kavney of the decision. The QSU also notified Mr Kavney that there was a right of appeal which was subject to a 21 day limitation period. In fact, the Appeal was not filed until 13 October 2009. Since the 21 days runs from the date of release of the decision and not from the date that which the decision comes to the notice of the person initiating the appeal, Mr Kavney was 4 days out of time. Some attempt has been made to argue that the Appeal was but 2 days out of time. The argument, which is based upon s. 38(1)(a) of the *Acts Interpretation Act 1954*, fails to recognise that s. 38(1)(a) is about the reckoning of time where the phrase used is "clear days". It follows, that Mr Kavney does not have an appeal and must seek an extension of time pursuant to s. 346(2) of the Act. In fact (albeit irregularly) Mr Kavney has done that by the Application to Appeal itself. The SCRC has taken no point about that, and I have dealt with the Application for an Extension of Time upon the merits. I have also given Mr Kavney the benefit of an assumption that he may be "a person dissatisfied with a decision of the Commission" for the purposes of s. 341(1) though not a party to the proceedings in the Commission.
>
> It is plain that the power to grant an extension of time at s. 346(2) of the Act is discretionary in nature. However, s. 346(1) of the Act expresses a judgement by the legislature that the interests of employers and employees in this State will best be served if a 21 day limitation period is insisted upon, notwithstanding that in some cases the limitation period will operate to defeat meritorious claims. Section 346(2) of the Act is a recognition that the general proposition may sometimes be overridden by the facts of a particular case. However, an applicant seeking an extension of time bears the burden of showing that the justice of the case requires the grant of that indulgence.".

Having regard to the circumstance that Mr Kavney knew of the time limit, knew that he might be represented other than by QSU, knew that the QSU was not in a position to consider the provision of further assistance until the very end of the 21 day period yet took no action, the Court declined to grant the indulgence of an extension of time.

Minister for Industrial Relations AND Perry Keith Langley (C/2009/46) 4 December 2009
<www.qirc.qld.gov.au>

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

On or about 6 August 2001, a Mr Langley was employed as a Senior Information Officer (Records) Administration Branch, Administration Division, Queensland Police Service. The position to which he was appointed was classified as an AO5 position for the purposes of the *Public Service Act 1996* (the PS Act 1996). It had been so classified by the Chief Executive of the Department pursuant to s. 66 of the PS Act 1996. Mr Langley was appointed to the AO5 position pursuant to s. 67 of the PS Act 1996. Over time Mr Langley formed the view that his position was not correctly classified. He sought to remedy the situation. He was successful. On 30 May 2008, the Chief Executive exercised the power at s. 66 of the PS Act 1996 and reclassified the position as an AO6 position. On or about 20 August 2008, pursuant to the provisions of clause 7.12 of Directive 04/06 Recruitment and Selection, Mr Langley was directly appointed to the position. From that point

Mr Langley held an AO6 position for the purposes of the *Public Service Act 2008* which had repealed and replaced the PS Act 1996 on 1 July 2008. Mr Langley subsequently sought payment of the additional salary which would have been paid to him if his position had been reclassified on 1 July 2002 and if he had been appointed to the reclassified position. When his request was denied Mr Langley instituted proceedings in the Queensland Industrial Relations Commission (the Commission) pursuant to s. 278 of the *Industrial Relations Act 1999* to recover the outstanding salary as unpaid wages. The Commission allowed the claim for the period 1 July 2006 to 30 May 2008.

The Minister for Industrial Relations appealed. In allowing the Appeal the Court said:

"[5] In my view the Commission erred in law. The application clause of the *Public Service Award - State 2003* (the Award) provided:

'This award applies to Employees engaged in the Public Service of the State of Queensland whose salaries or rates of pay are fixed by this Award and who are for the purposes of this Award:

(a) appointed pursuant to section 67 of the *Public Service Act 1996*; or

(b) appointed pursuant to section 113 of the *Public Service Act 1996*; and

for [sic] those other persons who were Employees of the Public Service at the date of the commencement of the *Public Service Act 1996*.' [Emphasis added].

[6] There was no evidence at all at first instance to suggest that Mr Langley had been appointed pursuant to s. 113 of the PS Act 1996 which dealt with the appointment of temporary employees. On the contrary there was clear evidence (recited above) that he had been appointed to a position classified as an AO5 position. Mr Langley was the 'incumbent' of that 'office' and of no other office. The relevance of that proposition appears at clauses 5.1 and 5.2 of the Award which prescribed the applicable salary in a given case, by attaching a salary to the 'incumbent' of an 'office': not to the performance of the duties of an office.

[7] Clauses 5.1 and 5.2 of the Award state:

'5.1 Salaries

5.1.1 *Definitions*

(a) "Classification level" - comprises a number of paypoints in a particular stream through which Employees will be eligible to progress.

(b) "Generic level statement" - means a broad, concise statement of the duties, skills and responsibilities indicative of a given classification level.

(c) "Increment" - means for all Employees an increase in salary from one paypoint to the next highest paypoint.

(d) "Paypoint" - means the specific rate of remuneration payable to Employees within a classification level.

5.1.2 Salaries shall be paid fortnightly and may at the discretion of the Chief Executive be paid by electronic funds transfer.

5.1.3 The salaries payable to the undermentioned groups of Employees are prescribed in Schedule 1 of this Award. The salaries payable to nursing staff shall be as prescribed in Scheduled 4 of this Award.

5.2 Administrative stream

The administrative stream comprises those offices, the duties of which apply to the functional areas identified herein, the incumbents of which are required to possess a range of skills appropriate to the stream. Such functional areas include agency administration, human resource management, finance, customer service development and implementation of policy, information and advisory services.' [Emphasis added].

[8] It is not the scheme of the Award to attach a salary to a particular set of duties, nor to attach a salary to a public service employees' principal function. Even clause 5.13 headed 'Performance of higher duties' is, in truth, about an employee temporarily filling a position carrying a higher classification than the position

of which he is the incumbent. Section 24(8) of the PS Act 1996 is aspirational. It is not a grant of authority to the Commission to retrospectively arbitrate a 'fair' or 'reasonable' wage for a particular public service employee in an action to recover outstanding wages. [For completeness, I note (a) that the Schedule to the Award attaches wage rates to classification levels; and (b) that each of the *State Government Departments Certified Agreement 2003* and the *State Government Department Certified Agreement 2006*, attach wage rates to persons employed in 'positions' in 'salary schedules' based on the *Public Service Award State 2003 - Administrative Stream*.]

[9] It follows that there is no award and no certified agreement which conferred upon Mr Langley an entitlement to be paid a salary applicable to an AO6 position. It is unnecessary to investigate whether Mr Langley had a 'contractual' right to be paid the salary appropriate to the duties which he performed because any such 'contract' would be overborne by the PS Act 1996 and the Award and the Certified Agreements made under the *Industrial Relations Act 1999*. Indeed, though it is not strictly necessary to decide the point, I apprehend that payment in accordance with such a 'contract' may be unlawful, compare *Attorney-General v Gray* per Hutley J.A.".

Melanie Lee Saxby AND Raymond Wood (C/2009/51) and Melanie Lee Saxby AND Focus Lounges Pty Ltd (C/2009/52) - 22 February 2010
<www.qirc.qld.gov.au>

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

This matter concerned two prosecutions for breach of s. 666 of the *Industrial Relations Act 1999*. The prosecutions were successful. Amongst other things the Defendants were ordered to make payments in respect of unpaid wages and pro-rata long service leave. The Appeal was about the Industrial Magistrate's omission to make orders about what was to happen in the event of default in payment. The Court said:

"Section 683(2) of the Act provides that proceedings for an offence under the Act are to be heard and determined summarily under the Justices Act 1886. Section 161 of the Justices Act 1886 provides:

> 'When any decision adjudges or requires the payment of a penalty or compensation or sum of money or costs and when the Act by virtue of which such decision is made does not expressly provide -
>
> (a) that the amount of such penalty or compensation or sum of money or costs is to be levied by distress and sale of the goods and chattels of the person liable to make such payment, or by execution; or
>
> (b) that such person in default of payment of such penalty or compensation or sum of money or costs either immediately or within a time to be fixed by the adjudicating justices is to be imprisoned for any period not exceeding the period state in such Act;
>
> then the adjudicating justices shall in their discretion either direct that the amount of such penalty or compensation or sum of money or costs shall be recoverable by execution against the goods and chattels of the person liable to make such payment or in the alternative direct that in default of payment of such penalty or compensation or sum of money or costs either immediately or within a time to be fixed by them such person shall be imprisoned for any period not exceeding the period prescribed by the *Penalties and Sentences Act 1992*.'
> [Emphasis added].

The scheme established by s. 683(2) of the Act and s. 161 of the *Justices Act 1886* is comparable to that established by s. 17.21 of the *Industrial Relations Act 1990* and s. 161 of the *Justices Act 1886*.
It was settled by the decision of this Court in *Hoey v Cameron*, that in the situation which confronted the Industrial Magistrate, the Industrial Magistrate should have exercised the discretion at s. 161 of the *Justices Act 1886* and should have made one of the orders permitted by that section.".

Robert Fitzsimmons AND Sunshine Coast Regional Council (C/2009/55) 15 March 2010 - *<www.qirc.qld.gov.au>*

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

Section 181B of the *Penalties and Sentences Act 1992* provides:

"181B Corporation fines under penalty provision

(1) This section applies to a provision prescribing a maximum fine for an offence only if the provision does not expressly prescribe a maximum fine for a body corporate different form the maximum fine for an individual.

(2) The maximum fine is taken only to be the maximum fine for an individual.

(3) 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.".

In its original form s. 35 of the Local Government Act provided:

"35 Local governments are bodies corporate etc.

A local government -

(a) is a body corporate with perpetual succession; and

(b) has a common seal; and

(c) may sue and be sued in its nature.".

Since the commencement of the *Local Government and Industrial Relations Amendment Act 2008* on 13 March 2008, the *Local Government Act 1993* provides:

"34 Constitution

(1) A local government is constituted by the councillors for the time being of the local government.

(2) However, subject to section 178(3), if at any time there are no councillors of a local government, the local government is constituted by the local government's chief executive officer.

Note-
If dissolved, a local government is constituted by an administrator appointed under section 178.

(3) A local government is not a corporation.

35 Proceedings

(1) A proceeding by a local government must be started in the name of the local government.

(2) A proceeding against a local government must be started against the local government in its name.".

The short question raised on the Appeal was whether s. 181B of the *Penalties and Sentences Act 1992* applied to an offence committed by a local government after 13 March 2008. After consideration of the statutory language, ss. 14A and 14B of the *Acts Interpretation Act 1954*, the Minister's Second Reading Speech and the Explanatory Note, the Court answered the question in the negative.

Decisions of the Queensland Industrial Relations Commission

The decisions summarised below are significant decisions released and published by the Queensland Industrial Relations Commission during the year:

Decisions of the Full Bench

Queensland Council of Unions AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (B/2009/41) AND The Australian Workers' Union of Employees, Queensland AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (B/2009/42) 192 QGIG 2

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

Industrial Relations Act 1999 - s. 288 - application for statement of policy

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 which sought the following:

- $27.80 wage adjustment for award employees;
- 4.3% allowance adjustment for award employees;
- $27.80 adjustment to the Queensland Minimum Wage (QMW) as it applies to all employees; and
- Statement of Policy in regard to a statement of principles that may be generated as a result of the aforementioned General Ruling.

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

The application was opposed by the Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers (QCCI), the Local Government Association of Queensland Inc. (LGA), the Queensland Cane Growers' Association, Union of Employers (QCGA), the Queensland Motels Employers Association, Industrial Organisation of Employers (QMEA), The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers (RCEAQ) and the Queensland Hotels Association, Union of Employers (QHA). Those organisations opposed to the applications, endorsed and adopted the submissions made by QCCI.

The Queensland Government submitted that the Queensland economy could support a wage increase of 2.5% to the QMW up to the C10 level and $16.15 per week beyond that level. It estimated that the number of employees directly affected by this case was between 108,000 and 172,000.

The Full Bench found that the QCU and AWU detailed what they viewed as the Sources of Stability and Growth within the Australian economy. These included the Federal Government stimulus packages impacting upon pensioners, low income families and first home buyers together with a significant boost to job training. The Federal Government had also committed $6.2 billion towards Australia's automotive industry from 2010 onwards. A further $300 million was injected into local infrastructure programs through regional and local community infrastructure. Another phase to be implemented by the Federal Government relates to an agreement reached at the Council of Australian Governments where funding to the states and territories had increased by $15.1 billion to help create up to 133,000 jobs.

The QCU also referred the Full Bench to a number of Commonwealth Treasury forecasts and Reserve Bank of Australia predictions that the economy will begin to grow from late 2009 [QCU Submissions, p. 23], 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 $16.15 per week increase to all State award rates of pay and 2.5% to the Queensland Minimum Wage and to work-related allowances and service increments, with an operative date of 1 September 2009.

The Queensland Government stated that "The Federal Government budget forecast is for the CPI to increase by 1.75% for 2009/2010 thus resulting in a real wage decline for minimum wage workers of 1.75%.".

Reference was also made to other jurisdictions including the Australian Fair Pay Commission decision where no wage increases were awarded and to the Western Australian State Wage Case whose legislative framework is similar to Queensland's. Western Australia awarded a 2.2% increase with a 3 month delay in operation.

The QCCI opposed both the QCU and AWU applications and believed that there should be no wage increase granted in the 2009 State Wage Case.

It cited the following indicia as reasons why there should be no increase in wage rates through this decision:

- inflation pressures declining;
- wage pressures are slowing as more employees are losing their employment;
- WPI is expected to reduce as a result of a weaker labour environment; and
- interest rates have reduced as a result of the RBA taking action to try to stimulate the economy.

The QCCI's view was that the State Wage Case hearing was taking place when Queensland was facing its worst economic downturn in many decades. Since February, some 29,300 jobs have been lost within Queensland. The ramifications of this are most seriously felt by small business.

The QCCI observed that prior wage outcomes granted by the Commission aligned closely with the percentage growth in the Queensland economy. The Queensland economy was forecast to decline by 0.25% throughout 2009/2010 and any increase in the minimum wage rate would seriously erode employment prospects.

The QCCI also submitted that since the last State Wage Case, a number of factors had arisen which should impact upon any consideration the Commission might give to the application. These included:

- a falling CPI;
- tax cuts operative from 1 July 2009;
- 2 Federal Government stimulus packages; and
- lower interest rates.

The RCEAQ submitted that there should be no increase at all and that the Commission should strongly align itself to the mandates of the AFPC.

The LGAQ, the QCGA and the QMEA supported the submissions of QCCI. The QCGA also submitted that the Commission shouldn't increase wages for 12 months: in affect, a wages freeze.

The QHA believed that there should be no increase in the State Wage Case and asked the Commission to consider its position within the context of the following:

"• Corporate travel has reduced. This has the effect of decreasing accommodation and food and beverage demand.
- Corporate function and event bookings have fallen.
- Personal travel has reduced as a consequence of less discretionary spending within the community.
- Hours of work for employees generally has fallen. This has resulted in a move from full-time positions to part-time positions.
- Recruitment has slowed to a minimum level.
- Overall, the industry profitability and investment have declined.
- The Commission should take into account the fact that employees have received a reduction in interest rates; that taxation rates have benefited the low paid and the Federal Government's economic stimulus packages.".

Both AWU and QCU made submissions in reply.

The Commission took into consideration submissions by parties on recent increases in other jurisdictions. In particular, reference was made to the AFPC decision and made the following comments:

"• Wages are set by the AFPC under entirely different guidelines from those imposed upon the Commission.
- There is no requirement on the AFPC to conduct its proceedings in a public and transparent manner.
- Within the Commission parties make oral submissions in open Court and submit themselves to enquiries from the Full Bench.
- An example of the difference between the Queensland legislation and the AFPC legislative requirements is that there is a requirement for 'fair standards' to apply to wage outcomes within the Queensland jurisdiction. There is no comparable reference to that requirement within the AFPC guidelines.

- The AFPC has a requirement to provide a safety net for the low paid however, most of its commentary in its recent decision centred upon the issue of unemployment. It said that its 'chief concern is that an increase in minimum wages may exacerbate the forecast increase in unemployment.'. [AFPC 2009 Wage Review Decision, p. 12]

- At the introduction of the Act, it is relevant to note the second reading speech of the then Queensland Minister for Employment, Training and Industrial Relations, the Hon. Paul Braddy MP where he stated that awards would no longer be a mere safety net of wages and conditions. The Minister said:

  > 'Section 273(1)(a) of the Act provides that the Commission must perform its functions in a way that furthers the objects of the Act and s. 320(5) of the Act provides for the Commission to consider the objects of the Act as well as the likely effects of the Commission's decision on the community, local community, economy, industry generally, and the particular industry concerned.'. [Hansard, 25 May 1999, p. 1831]

- The Commission is also required to award minimum wages for those employees who are award-free and consequently the minimum wage increases are to apply to all employees rather than to award only employees.

- Other State Tribunals, as well as this Full Bench, question the AFPC's view that even small increases to the minimum wage have a negative effect on employment. Our view, together with that of the other State Tribunals, is that there has been no clear evidence to show that is the case.

- Within that context, State Tribunals have a lengthy and significant history in setting minimum wage rates for award reliant employees as opposed to the short period of time during which the AFPC has operated. The advantage which the State Tribunals have is that there has been an ability to monitor, for extensive periods of time, the actual outcomes achieved from moderate wage increases under a wide range of prevailing economic circumstances.

- Further analysis of the AFPC decision shows that it has placed significant reliance upon evidence from previous recessions. This Full Bench believes that previous recessions show a significantly different set of conditions to the present downturn.

- To highlight that point, a wage freeze occurred in Queensland in 1983. At that time, the unemployment rate was 10.4% and the CPI for Brisbane was 11%. These statistics are significantly greater than current unemployment and CPI statistics. Further, the WPI in 1982/83 was 17%, whereas the WPI for 2008/09 was approximately 4.25%. These statistics are also dramatically different from those now encountered by the Queensland economy.

- It is the view of the Full Bench that the AFPC decision is one which must be considered within its own legislative framework and constraints.".

When making its decision the Commission took into account the economic situation of Queensland as well as the social and economic dimension including the Queensland Government's views that "Queensland is better placed than other States to withstand the more negative aspects of this downturn.".

In conclusion, the Commission determined the following:

- a $16.20 wage increase for award employees;

- a 2.5% allowance increase for award employees;

- a $16.20 increase to the QMW as it applies to all employees;

- a Statement of Policy in regard to a Statement of Principles that may be generated as a result of the aforementioned General Ruling; and

- that the operative date for this Decision be 1 September 2009.

The effect of this Decision would be:

(a) the adoption of a $16.20 increase to award rates;

(b) the increase of existing award allowances which relate to work or conditions which have not changed and service increments by the equivalent percentage increase to that which the $16.20 wage adjustment bears to the C10 wage rate as it appears in the Engineering Award - State 2002;

(c) an increase to the level of the QMW as it applies to all employees by $16.20; and

(d) the determination of (a), (b) and (c) above with an operative date of 1 September 2009.".

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.

National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Another (TH/2009/4) *CITATION: TRADING HOURS - NON-EXEMPT SHOPS TRADING BY RETAIL – STATE (TH/2009/4) - Decision <http://www.qirc.qld.gov.au>*

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

This was an application by the National Retail Association Limited, Union of Employers (NRA) to amend the *Trading Hours Order - Non-Exempt Shops Trading by Retail* - State (the Order) in the city of Toowoomba to include Sunday Trading.

The Full Bench considered all matters relevant to a s. 21 Order as outlined in s. 26 of the *Trading (Allowable Hours) Act 1990*:

"(a) the locality, or part thereof, in which the non-exempt shop or class of non-exempt shop is situated;

(b) the needs of the tourist industry or other industry in such locality or part;

(c) the needs of an expanding tourist industry;

(d) the needs of an expanding population;

(e) the public interest, consumers' interest, and business interest (whether small, medium or large);

(f) the alleviation of traffic congestion;

(g) the likely impact of the order on employment;

(h) the view of any local government in whose area the order is likely to have an impact;

(i) such other matters as the industrial commission considers relevant.".

The application was supported by the Shop, Distributive and Allied Employees Association (Queensland Branch) (SDA) and opposed by the Queensland Retail Traders and Shopkeepers Association (QRTSA).

Inspections were conducted by the Full Bench by either a drive past or walk through at 23 locations.

Other issues of relevance to the conduct of the proceedings were:

"**Note 1**: In response to questions posed by SDA, all retailing businesses which would be affected by the granting of this application stated that work on a Sunday for employees would be on a voluntary basis.

…

Note 3: When final submissions were made by the parties on 13 November 2009, QRTSA advised that it wished to utilise the services of a firm of solicitors. No objection was raised by either the NRA or SDA and, pursuant to s. 319 of the *Industrial Relations Act 1999*, leave was granted by the Full Bench.

Note 4: Requests had been made by parties for leave to adduce evidence via telephone. From the requests made, it was seen that a reasonable number of witnesses sought to give telephone evidence. We note from witness statements that those witnesses were located in New South Wales, Victoria, South Australia

and Western Australia.

Correspondence was sent to the parties by the Registrar of the Commission, prior to the hearing. *Inter alia*, that correspondence contained the following:

> 'Practice Note No. 1 of 2000 [Taking Evidence by Telephone] issued by the President of the Queensland Industrial Relations Commission states:
>
> "1. Telephone evidence will be taken from expert witnesses and on formal and uncontroversial matters. Telephone evidence will not be taken where credibility is an issue.
>
> 2. Where consent is forthcoming for the hearing of evidence by telephone the Commissioner hearing the matter should be informed of that circumstance at the earliest opportunity. It is consistent with this note for the Commissioner hearing the matter to organise a directions hearing to further consider the question whether evidence should be taken by telephone.".
>
> For the purpose of the hearing to be held in Toowoomba 1, 2, 3 and 4 September 2009, point 1 of the Practice Note will be adhered to by the Full Bench. However, if special circumstances exist such that a witness is unable to attend the hearing in Toowoomba then consideration will be given to hearing those witnesses in Brisbane at a time and date to be determined. Further, these issues must be addressed at the outset of proceedings on 1 September 2009.'.

The Full Bench determined that had this practice of hearing so many witnesses on the telephone been allowed to continue (and in the absence of special circumstances), a large part of the hearing (and perhaps other hearings) would be conducted via telephone.

The Full Bench accepted that there are occasions upon which telephone evidence might be appropriate, but each case turns on its own facts and each Full Bench will make its decision as and when required on that point.

In opposing the application the QRTSA pointed "to evidence that shows that Toowoomba is a unique town offering a unique lifestyle. The evidence from the local member of Parliament, the Hon. M. Horan highlights this point …

… QRTSA stated that because of Toowoomba's uniqueness, the attraction for tourists to the region was the parks, the environment and the relaxed lifestyle which could be threatened by the 7 day trading sought in this application.".

The Full Bench made other references to the National Competition Policy, benefits of extended trading and consumer preferences.

In conclusion the Full Bench found the following:

> "[121] The Commission is required to consider all the factors detailed in s. 26 of the Trading Act.
>
> [122] When considering the locality in which the non-exempt shop or class of non-exempt shops are situated, it is clear from the inspections and evidence that there are a range of retail stores within this locality.
>
> [123] These stores include small 'exempt' traders whose businesses primarily sell food products. These stores rely upon their location and convenience for attracting consumers generally. Many of the medium sized 'exempt' stores are contained within Homemaker Centres, for example. These stores include Harvey Norman, The Good Guys, Rugs a Million, Freedom, Curtain Wonderland, Carpet Call, Bunnings and A Mart Furniture. These stores can trade on Sundays. There was no evidence from any proprietors of these stores.
>
> [124] Of the enclosed shopping centres within the location under consideration, these centres contain both exempt and non-exempt stores. The non-exempt stores are usually the anchor tenants for the centre and when they trade, so do the smaller exempt stores. It is fair to state that if the application was successful, many of these exempt stores would trade on Sunday as well.

[125] Considering the location under consideration, it is clear that there a number of stores at which consumers can purchase many products over 7 days per week.

[126] When considering the needs of the tourist industry or that of an expanding tourist industry, it is noted that Toowoomba, like most other centres which usually attract tourists, has suffered as a consequence of the global financial crisis. The consideration of the tourist industry and the needs of an expanded tourist industry require, to some degree, consideration within this context. What was not refuted was the number of day visitors to Toowoomba, which has grown each year.

[127] When considering the needs of tourists and the tourism industry generally, any application for an extension of trading hours would have to consider the affect and aftermath of the global financial crisis and any impact that might have had on the tourism industry. In the circumstances of this case, the Full Bench accepts the evidence from Mr Gschwind where he stated that tourism had held its own without any significant growth.

[128] Of significance was Mr Gschwind's evidence which highlighted the tourism accounted for more than 50% of employment in accommodation, cafes and restaurants, 21% of the retail industry, 19% of the cultural and recreational industry and 13% of the transport and storage industry. The 'multiplier effect' of the expanded tourist dollar has been considered a significant factor in our consideration. The Full Bench acknowledges the nexus between tourism and retail shopping.

[129] We have previously stated that the only available evidence gauging consumer support for the application showed that consumers were, at the margin, not supportive of the application. In our view, for reasons previously outlined, it would be unwise to draw any firm conclusion from the various surveys conducted.

[130] We believe the more meritorious submissions around the interests of small and large business have been provided by the NRA through its witness evidence, for reasons previously stated.

[131] The impact upon employment would be positive if the application was granted.

[132] Having weighed all the considerations referred to in s. 26 of the Act, we propose to grant the application.

[133] The operative date for the amendment to the Order is 16 May, 2010.".

National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Another (TH/2009/5) *CITATION: TRADING HOURS - NON-EXEMPT SHOPS TRADING BY RETAIL - STATE (TH/2009/5) - Decision http://www.qirc.qld.gov.au*

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

This was an application by the National Retail Association Limited, Union of Employers (NRA) to amend the *Trading Hours Order - Non-Exempt Shops Trading by Retail - State* (the Order) in the Mount Isa area to include Sunday trading.

The application was supported by the Shop, Distributive and Allied Employees Association (Queensland Branch) (SDA) and opposed by the Queensland Retail Traders and Shopkeepers Association (QRTSA). Evidence was also given by the local Federal Member of Parliament for Kennedy, the Honourable Robert Katter who opposed the application.

In evidence the application was also opposed by the Mt. Isa Chamber of Commence and the Mt Isa Council after consideration of consumer and business interests.

The application was also supported by The Australian Workers' Union of Employees, Queensland (AWU)

after consultation with its membership.

Inspections were conducted by the Full Bench by either a drive past or walk through at 7 locations.

In making its decision the Full Bench considered all matters relevant to a s. 21 Order as outlined in s. 26 of the *Trading (Allowable Hours) Act 1990* and in conclusion found the following:

"[70] The Full Bench has determined to dismiss the application in toto. For reasons outlined more fully under the various sub-headings of s. 26, the application fails primarily because:

- 26(a) - The location of Mt Isa makes it an isolated city. There is no public transport system within the town. This creates a greater dependability upon small suburban stores for a number of consumers. There are many shopping outlets for consumers already available within the boundaries of the application.
- 26(b) - The Full Bench has accepted that many tourists are drawn to the city because of its outdoor type activities with less reliance upon leisure shopping. The nexus between retail shopping and tourism is not evident in this application. The Full Bench accepts that tourists coming to Mt Isa are adequately catered for with the array of shops already in existence.
- 26(c) - There was little evidence of significance around this point.
- 26(d) - There was little evidence of significance around this point.
- 26(e) - The Full Bench has determined that the evidence produced by those in opposition to the application outweighed that adduced by witnesses for the applicant.
- 26(f) - The Full Bench accepts that there may be some alleviation of congestion at the registers of the non-exempt stores on a Saturday if Sunday trading was introduced.
- 26(g) - The Full Bench accepts that there would be more employment opportunities obtained by the granting of the application, but in saying so, does not discount that there may be disadvantages suffered by small traders and their employees if businesses suffered as a result of granting the application.
- 26(h) - The view of the Local Council is clear. The Council was unanimous in its opposition to the application.".

National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Others (TH/2007/7) *CITATION: TRADING HOURS - NON-EXEMPT SHOPS TRADING BY RETAIL – STATE (TH/2007/7) - Decision http://www.qirc.qld.gov.au*

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

This was an application by the National Retail Association Limited, Union of Employers (NRA) to amend the Trading Hours Order - Non-Exempt Shops Trading by Retail - State (the Order) in the area of Mackay to include Sunday and public holiday trading.

The application was also supported by The Australian Workers' Union of Employees, Queensland (AWU) after consultation with its membership.

The application was opposed by the Queensland Retail Traders and Shopkeepers Association (QRTSA).

The application as sought was heard and determined by a Full Bench of the Queensland Industrial Relations Commission (QIRC/Commission). On 18 September 2008 the Commission dismissed the application. On 9 October 2008 the NRA filed an appeal to the Industrial Court of Queensland. On 23 January 2009 the President of the Industrial Court of Queensland allowed the appeal and ordered:

"(a) that the Decision of the Queensland Industrial Relations Commission be set aside and that the matter be remitted to the Commission to be heard and determined according to law; and

(b) that the Full Bench rehearing the matter be constituted and selected by members other than Vice President Linnane and Commissioners

Asbury and Thompson.".

The reconstituted Full Bench conducted all but one Inspection by way of a drive past. The exception was the Mt Pleasant Shopping Centre where the Full Bench conducted a walk-through inspection.

Evidence given in these proceedings was largely summarised from the original evidence by agreement and adopted by the Full Bench. Witnesses gave evidence either as new witnesses or updated evidence.

In making its decision the Full Bench considered all matters relevant to a s. 21 Order as outlined in s. 26 of the *Trading (Allowable Hours) Act 1990* with equal weight.

In evidence, the application was also opposed by the Mackay Council after consideration of consumer and the negative impact of deregulation of trading hours on family, leisure and social time. The Full Bench recognised the Councils "spirit of reflecting community attitudes and concerns about the social and economic fabric of the Mackay region. As foreshadowed, our assessment of these matters has led us to a different conclusion to that reached by the Mackay Regional Council. However, when reaching our decision on the application as a whole the decision will be taken into account along with all of the other criteria".

Each criteria of s.26 was addressed in detail however, the Full Bench granted the application due to weigh in favour of:

- the locality;
- the needs of the tourist industry;
- the needs of an expanding population;
- business and consumer interest; and
- the likely impact of the order on employment.

A neutral factor was the alleviation of traffic congestion. The Full Bench also considered that the needs of an expanding tourist industry was also neutral given the recent economic climate, however, the Full Bench accepted that tourism seemed to be on the rise once again.

Weighing against the application was the view of the Mackay Regional Council. It was an important consideration given the Council represented community attitudes. However, the Full Bench did not consider that the view of the local government should weigh so heavily that considerations under the other criteria were disregarded or given lesser weight. In this case these other considerations, particularly when taken in combination, lead to the conclusion that the weight of evidence, for the reasons explained, was in favour of the application being granted.

The Full Bench noted that no evidence had been given opposing the introduction of Sunday and public holiday trading into Walkerston and Sarina. Although the evidence from the NRA for these areas was not especially fulsome the Full Bench were not minded to exclude these areas. Accordingly, the application as made was granted.

In attempting to accommodate the concerns expressed by the small business witnesses called by the QRTSA as well as those of Mr Cassady, and bearing in mind the number of public holidays about to arise on which trading is not permitted, the Full Bench decided to have a longer than usual lead time for the commencement of Sunday and public holiday trading in Mackay. The operative date for the amendment to the Trading Hours Order was 16 May 2010.

TABLES

APPENDIX 1

TABLES

Table 1: Matters filed in the Court 2008/09 and 2009/10

Type of Matter	2008/09	2009/10
Appeals to the Court	36	59
— Magistrate's decision	24	37
— Commission's decision	10	15
— Registrar's decision	0	2
— Director, WH&S decisions	0	4
— Chief Inspector (MQS & H Act)	1	0
— Electrical Safety	1	1
Extension of Time	0	5
Prerogative order	3	0
Stay order	6	0
Direction to observe/perform Industrial Org rules	1	3
Case stated by Commission	1	3
Application for orders - other	0	1
TOTAL	47	71

Table 2: Number of matters filed in the Court 1994/95 - 2009/10

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

Table 3: Appeals filed in the Court 2008/09 and 2009/10

Appeals Filed	2008/09	2009/10
Appeals from decisions of Industrial Commission		
IRA s 341(1)	6	9
Work Comp Act s 561	4	6
Appeals from decisions of Industrial Magistrate		
IRA s 341(2)	10	16

Appeals Filed	2008/09	2009/10
Work Comp Act s 561	10	21
Appeals against Chief Inspector's directive		
MQS & H Act s 224	1	0
Appeals from decisions of Industrial Registrar		
IRA s 341	0	2
Appeals from review decisions by Director WH&S	4	4
Appeals from decisions of Electrical Safety Office	1	1
TOTAL	36	59

Table 4: Applications filed and Matters heard 2008/09 and 2009/10

Section	Type of Application/Matter	2008/09	2009/10
s 38C	Review of ss 29A – 29D	1	0
s 53	Long Service Leave - payment in lieu of	111	153
s 74	Application for Reinstatement (Unfair dismissal)	252	159
s 87	Severance allowance	1	1
s 117	Prohibited conduct - breach	2	1
s 125	Awards:		
	- New award	0	1
	- Repeal and new award	0	1
	- Amend award	7	3
s 130	Review of Award	0	164
s 137	Order - wages & conditions (trainees)	1	0
s 148	Assistance to negotiate a CA	7	5
s 149	Arbitration of CA	3	2
s 152	Certificate - request representation	1	0
s 156	Certified Agreements:		
	- Approval of new CA	50	135
	- Replacing existing CA	47	63
s 169	Amending a CA	0	2
s 172, s173	Terminate a CA	4	2
s 175, s177	Notice of industrial action	236	12

Section	Type of Application/Matter	2008/09	2009/10
s 192	Approve a QWA	14	1
s 229	Notification of dispute	152	163
s 230	- Arbitration of dispute	3	0
s 231	- Mediation of dispute	2	0
s 248	Prerogative orders	0	1
s 273A	Dispute resolution functions	2	0
s 274	General powers	0	1
s 274A	Power to make declarations	2	3
s 274DA	Dismissal of Application	7	7
s 276	Amend/void a contract	1	0
s 277	Injunction	1	0
s 278	Claim for unpaid wages/superannuation	79	39
s 279	Representation right of employee organisations	1	0
s 280	Re-open a proceeding	3	1
s 281	Reference to a Full Bench	0	1
s 284	Interpretation of industrial instrument	1	3
s 287, 288	General ruling/statement of policy	2	2
s 326	Interlocutory orders	0	1
s 335, r117	Costs	1	3
s 342	Appeal to Full Bench	6	1
s 364	Authorisation of industrial officers	120	127
s 408F	Repayment of private employment agent's fee	1	1
s 409-657	Industrial Organisation matters [Table 10]	127	125
s 695	Student work permit	36	26
s 696	Aged and/or infirm permit	29	11
r 190	Request for statistical information [Table 10]	80	80
IR Act	Private conference	5	6
IR Act	Request for recovery conference	69	48
Clothing Trades Award c 4.6	Clothing trades registration	10	8
W H&S Act s 90	Authorised representative	61	139

Section	Type of Application/Matter	2008/09	2009/10
W H&S Act s 90T	Notice of dispute	1	0
WC Act s 232E	Reinstatement of injured worker	2	0
WC Act s 550	Appeal against Q-Comp	107	129
WC Act s 556	Order for medical examination	2	0
T(AH) Act	Trading hours order	9	12
T&E Act s 62	Reinstatement of training contract	2	4
T&E Act s230	Apprentice/trainee appeals	3	3
Mags Courts Act s 42B	Employment claim	94	55
Contract Cleaning (PLSL) s 97	Appeal to industrial commission	1	0
TOTAL APPLICATIONS/MATTERS		**1,759**	**1,705**

Table 5: Agreements filed 2008/09 and 2009/10

Agreements	2008/09	2009/10
Certified agreements	97	198
Application to amend a CA	0	2
Application to terminate a CA	4	2
Queensland Workplace Agreements	14	1

Table 6: Industrial Instruments in force 30 June 2010

Type of Instrument	
Awards	323
Industrial agreements	6
Certified agreements	4,576
Superannuation industrial agreements	1
TOTAL	4,906

Table 7: Reinstatement Applications 2009/10 - Breakdown of outcomes

Total No. of Applications	159
Rejected by Registrar*	4
No jurisdiction found by Commission	1
Application refused following hearing	1
Application dismissed following hearing	2
Application withdrawn**	80
Lapsed***	18
Inactive****	28
Completed	1
Still in progress	22
Adjourned to Registry	2

* 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 2008/09 and 2009/10

Criterion	Target	2008/09	2009/10
% of matters completed within three months	>75%	87%	80%
% of matters lodged that are processed and available to members within one working day	>90%	97%	97%
% of decisions released to the parties within one working day	>95%	100%	100%
% of decisions are published and available to the community within 13 working days	>95%	100%	100%

Table 9: Documents published under sections of the IR Act and other Acts 2009/10

Matter Type of Document published	Section	2009/10
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)	13
Appeal against decision of Industrial Magistrate	s 341 s 164(3) (WH&S Act) s 172 (E.Safety Act)	20
Appeal against review decision	s 223 (Mining, Quarry Act)	1
Appeal to Commission	s 550 (WC Act)	18
Appeal from Industrial Magistrate to Industrial Court	s 561 (WC Act)	11
Appeal against decision of Chief Inspector of Mines	s 244 (Mining, Quarry Act)	2
Appeal against decision of chief executive	s 152 (WH&S Act)	1
Appeal for arbitration	s 149, 230	3
Application for costs	s 335 r 66 (IR Rules) s 563 (WC Act)	6
Application for declaratory relief	s 248	1
Application for general ruling	s 287	3
Application for help to make a certified agreement	s 148	3
Application for orders	s 265, 230, 326	2
Application for reinstatement	s 73, 74	11
Application for unpaid wages	s 278	13

Matter Type of Document published	Section	2009/10
Application to stay	s 347 s 562 (WC Act) s 151 (WH&S Act) s 231 (VETE Act)	3
Application to strike out or dismiss proceedings	s 331	1
Application of new award	s 125	1
Arbitration of an industrial dispute	s 229, 230	2
Application for payment instead of long service leave	s 53	1
Award amendment	s 125	9
Award amendment (corrections of error)	s 125	4
Basis of decision of the Commission and Magistrates	s 320	1
Case stated to Court	s 282	3
Certification of an Agreement (decisions)	s 156	2
CA Notices	r 87 (IR Rules)	22
Decisions generally	s 331	1
Eligibility rule amendment	s 474	6
Examination of affidavits for substantial compliance with order of the Commission	s 233(6)	1
General powers	s 274	2
General ruling (amendments)	s 287	299
Interpretation of Industrial Instrument	s 284	1
New Award (corrections of error)	s 125	1
Orders about invalidity	s 613	4
Registration of organisation	s 414	1
Reprinted Awards	s 698	323
Terminating agreement after nominal expiry date (decisions)	s 173	2
Trading Hours Order (decisions)	s 21 (T(AH) Act)	11

Matter Type of Document published	Section	2009/10
Trading Hours Order (amendments)	s 21 (T(AH) Act)	5
TOTAL		814

Table 10: Industrial organisation matters filed 2009/10

Industrial Organisation matters		2009/2010
s 413	Registration applications	1
s 467	Registrar amendment of rules	7
s 474	Part Amendment - eligibility rule	5
s 478	Amendment to rules - other than eligibility	20
s 481	Request for conduct of election	65
s 580	Exemption from conduct of election	11
s 582	Exemption - members' register	3
s 582	Exemption - officers' register	3
s 586	Exemption - branch financial return	4
s 613	Orders about Invalidity	5
s 638	Order - deregistration	1
Rule 190	Request for statistical information	80
TOTAL		205

Table 11: Industrial Organisations of Employees Membership

Industrial Organisation	Members As at 30/06/09	Members As at 30/06/10
The Australian Workers' Union of Employees, Queensland	53,597	59,430
Queensland Teachers Union of Employees	44,186	43,594
Queensland Nurses' Union of Employees	36,381	41,539
Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees	36,277	34,843
The Queensland Public Sector Union of Employees	31,701	32,043
Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees	28,772	29,439

Industrial Organisation	Members As at 30/06/09	Members As at 30/06/10
Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland	17,526	16,668
Transport Workers' Union of Australia, Union of Employees (Queensland Branch)	15,310	15,720
Queensland Independent Education Union of Employees	15,171	15,476
Queensland Services, Industrial Union of Employees	13,418	14,028
The Electrical Trades Union of Employees Queensland	13,886	13,606
Queensland Police Union of Employees	10,340	10,390
Australian Municipal, Administrative, Clerical and Services Union, Central and Southern Queensland Clerical and Administrative Branch, Union of Employees	8,636	8,409
Australian Rail, Tram and Bus Industry Union of Employees, Queensland Branch	7,809	8,073
Federated Ironworkers Association of Australia (Queensland Branch) Union of Employees	10,939	7,960
Queensland Colliery Employees Union of Employees	6,498	7,467
The Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland	7,126	6,900
Australasian Meat Industry Union of Employees (Queensland Branch)	6,791	6,785
Finance Sector Union of Australia, Queensland Branch, Industrial Union of Employees	6,879	6,293
Federated Engine Drivers' and Firemen's Association Queensland, Union of Employees	4,287	557
The Plumbers and Gasfitters Employees Union of Australia, Queensland Branch, Union of Employees	2,405	2,686
Australian Building Construction Employees and Builders' Labourers' Federation (Queensland Branch) Union of Employees	2,350	2,431
United Firefighters' Union of Australia, Union of Employees, Queensland	2,396	2,424
The Association of Professional Engineers, Scientists and Managers, Australia, Queensland Branch, Union of Employees	2,070	2,036
Australian Federated Union of Locomotive Employees, Queensland Union of Employees	1,610	1,616
The National Union of Workers Industrial Union of Employees Queensland	5,380	1,280
The Bacon Factories' Union of Employees, Queensland	882	773
The Seamen's Union of Australasia, Queensland Branch, Union of Employees	637	656
Australian Institute of Marine and Power Engineers' Union of Employees, Queensland District.	546	570

Industrial Organisation	Members As at 30/06/09	Members As at 30/06/10
Textile, Clothing and Footwear Union of Australia, Queensland, Union of Employees	Not Provided	487
Queensland Association of Academic Staff in Colleges of Advanced Education (Union of Employees)	403	395
The Queensland Police Commissioned Officers Union of Employees	386	374
James Cook University Staff Association (Union of Employees)	197	333
Property Sales Association of Queensland, Union of Employees	319	290
Australian Maritime Officers Union Queensland Union of Employees	230	238
Queensland Fire and Rescue – Senior Officers Union of Employees	115	129
Musicians' Union of Australia (Brisbane Branch) Union of Employees	118	111
Griffith University Faculty Staff Association (Union of Employees)	140	75
Australian Journalists' Association (Queensland District) "Union of Employees"	1,183	Not Provided
Actors, Entertainers and Announcers Equity Association, Queensland, Union of Employees	600	Not Provided
The University of Queensland Academic Staff Association (Union of Employees)	529	Not Provided
Salaried Doctors Queensland Industrial Organisation of Employees,	240	Not Provided
Federated Clerks' Union of Australia, North Queensland Branch, Union of Employees	Not Provided	Not Provided
Total Membership	398,266	396,124
Number Employee Organisations	43	43

Table 12: Industrial Organisations of Employers Membership

Industrial Organisation	Members As at 30/06/09	Members As at 30/06/10
Queensland Master Builders Association, Industrial Organisation of Employers	11,500	10,368
Agforce Queensland Industrial Union of Employers	6,435	6,118
Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers	3,621	3,318
Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers)	2,231	2,180
Electrical and Communications Association Queensland, Industrial Organisation of Employers	2,087	2,005
National Retail Association Limited, Union of Employers	1,637	1,737
Motor Trades Association of Queensland Industrial Organisation of Employers	1,664	1,664
Australian Industry Group, Industrial Organisation of Employers (Queensland)	1,193	1,187
Master Plumbers' Association of Queensland (Union of Employers)	826	969
The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers	937	921
Australian Community Services Employers Association Queensland Union of Employers	878	902
Australian Dental Association (Queensland Branch) Union of Employers	795	881
Queensland Hotels Association, Union of Employers	799	713
Queensland Fruit and Vegetable Growers, Union of Employers	659	712
Queensland Private Childcare Centres Employers Organisation of Queensland Industrial Organisation of Employers	412	517
Master Painters, Decorators and Signwriters' Association of Queensland, Union of Employers	500	489
National Meat Association of Australia (Queensland Division) Industrial Organisation of Employers	477	489
Queensland Real Estate Industrial Organisation of Employers	381	460
Queensland Motel Employers Association, Industrial Organisation of Employers	439	395
Nursery and Garden Industry Queensland Industrial Union of Employers	349	331
The Queensland Road Transport Association Industrial Organisation of Employers	320	326

Industrial Organisation	Members As at 30/06/09	Members As at 30/06/10
Hardware Association of Queensland, Union of Employers	Not Provided	302
The Baking Industry Association of Queensland - Union of Employers.	298	265
Association of Wall and Ceiling Industries Queensland - Union of Employers	222	257
The Hairdressing Federation of Queensland - Union of Employers	189	226
Building Service Contractors' Association of Australia - Queensland Division, Industrial Organisation of Employers	198	196
UNiTAB Agents' Association Union of Employers Queensland	102	91
Consulting Surveyors Queensland Industrial Organisation of Employers	92	90
Furnishing Industry Association of Australia (Queensland) Limited Union of Employers	56	72
Local Government Association of Queensland (Incorporated)		71
Queensland Master Hairdressers' Industrial Union of Employers	59	60
Queensland Country Press Association - Union of Employers	25	25
Queensland Cane Growers' Association Union of Employers	Not Provided	21
Queensland Major Contractors Association, Industrial Organisation of Employers	18	17
Australian Sugar Milling Association, Queensland, Union of Employers	10	10
Queensland Friendly Societies Pharmacies Association, Industrial Organisation of Employers	Not Provided	10
The Registered and Licensed Clubs Association of Queensland, Union of Employers	570	Not Provided
Queensland Mechanical Cane Harvesters Association, Union of Employers	Not Provided	Not Provided
Total Membership	39,979	38,395
Number of Employer Organisations	37	38

APPENDIX 1

Appendix 1: Current Industry Panels operative 1 January 2010

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

Notes