2012 – 2013 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

QUEENSLAND
INDUSTRIAL RELATIONS
COMMISSION

Industrial Court of Queensland

October 2013

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

Dear Minister,

I have the honour to furnish to you for presentation to Parliament, as required by section 252 of the *Industrial Relations Act 199*9, 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 2013. Responsibility for the report relating to the Queensland Industrial Relations Commission and Queensland Industrial Registry rests with the Vice President and Industrial Registrar respectively.

D.R. Hall
President
Industrial Court of Queensland

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THE INDUSTRIAL COURT OF QUEENSLAND

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

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

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

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

Jurisdiction of the Court

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

- cases stated to it by the Commission (available under s. 282);

- offences against the Act, other than those for which jurisdiction is conferred on the Industrial Magistrates Court (s. 292 gives Industrial Magistrates jurisdiction over offences for which the maximum penalty is 40 penalty units* or less, except where the Act specifically provides for Industrial Magistrates' jurisdiction); and

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

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

Appellate Jurisdiction of the Court

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

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

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

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

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

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

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

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

- offences and wage claims under the *Industrial Relations Act 1999* (see s. 341(2));
- offences under the *Electrical Safety Act 2002* (see s. 186(2));
- offences and cancellation or suspension of certificate of competency under the *Coal Mining Safety and Health Act 1999* (see ss. 255 and 258);
- offences and cancellation or suspension of certificate of competency under the *Mining and Quarrying Safety and Health Act 1999* (see ss.234 and 237);
- offences under the *Child Employment Act 2006* (s. 30)
- appeals from non-reviewable decisions, on claims for compensation under the *Workers' Compensation and Rehabilitation Act 2003*: (see ss. 561 and 562);
- appeals under the *Building and Construction Industry (Portable Long Service Leave) Act 1991* (see. s. 89) and the *Private Employment Agents Act 2005* (see s. 47)

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

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

Offences under the *Industrial Relations Act 1999*

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

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

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

influence the tribunals or their officials or to bring any of those tribunals into disrepute. To do so is to commit an offence, for which the person may be imprisoned for up to 1 year, or fined 100 penalty units*. The Court also has all necessary powers to protect itself from contempt of its proceedings and may punish contempt of the Court.

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

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

***Offences and Penalty Units**

Section 5(1) of the *Penalties and Sentences Act 1992*, states the value of a penalty unit is $110. Section 5(1)(c) states the value of a penalty unit, for an offence under the under the *Electrical Safety Act 2002*, is $100. Under s. 181B(3) if a corporation is found guilty of the offence, the Court may impose a maximum fine of an amount equal to 5 times the maximum fine for an individual.

Stay of Decision appealed against

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

Industrial Organisations

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

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

Cases Stated

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

Costs Jurisdiction

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

- the party's application was vexatious or without grounds; or,

- ❖ in a reinstatement application, if the party caused another party to incur additional costs, by doing some unreasonable act or making an unreasonable omission during the course of the matter.

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

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

Decisions of the Industrial Court of Queensland can be found at www.qirc.qld.gov.au

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Overview

With the enactment of the *Public Service and Other Legislation Amendment Act 2012* (which amended the *Industrial Relations Act 1999*), I was given responsibility for the administration of the Queensland Industrial Relations Commission (Commission) as and from 30 August 2012. That legislation also provided for the Vice President of the Commission to report to the Attorney-General of Queensland on the workings of the Commission annually via the President's Annual Report.

The workload of Members of the Commission has, since 30 August 2012, increased substantially. There were, as at 30 August 2012, over 300 matters (predominately appeals filed under the *Workers' Compensation and Rehabilitation Act 2003* but also some unfair dismissal applications and wage recovery applications) which had not been either listed for hearing or conference. This meant that Members of the Commission have, during the reporting period, dealt not only with this backlog of work but also with the matters filed during the reporting period.

As at 30 June 2013, only 65 matters filed in the Industrial Registry remained to be listed for either hearing or conference and each of those had been listed by 31 July 2013. The Commission's calendar however is, at the end of the reporting period, totally occupied until March 2014. It is anticipated however that a number of those matters listed for hearing will either settle or discontinue sometime prior to the allocated hearing dates and this will enable Members to deal with industrial disputes, urgent applications and conferences which have often, during this reporting period, been dealt with by Members after, or before, scheduled full day hearings.

In order to assist in this heavy workload, the Queensland Government appointed three new Members to the Commission during the reporting period. Deputy President Dan O'Connor was sworn in as a Deputy President of the Commission on 13 November 2012. Deputy President O'Connor is a barrister-at-law and was, prior to appointment, the Chief Executive Officer of the Queensland Bar Association. Commissioner Gary Black and Commissioner Minna Knight were sworn in as Industrial Commissioners on 13 November 2012 and 11 December 2012 respectively. Prior to appointment, Commissioner Black was employed as Executive Director of the National Retail Association Limited and Commissioner Knight was employed as Executive Director, Australian Mines and Metals Association. Each of the three new Members bring a wealth of experience to the Commission and I welcome each of them to the Commission and hope that they find themselves fulfilled in the work undertaken in the Commission. Former Commissioner Brown resigned as a Member of the Commission effective 15 February 2013 having taken leave during the period 3 December 2012 until his resignation took effect.

I wish to thank Members of the Commission for their assistance throughout the year in having the sizeable backlog and the increased level of matters in 2012-2013 dealt with in such a timely manner. An outcome of the heavy workload is that some Commission decisions have not met the Commission's benchmark i.e. release within a three month period following the final hearing date. Some decisions have thus been extended beyond that date. It is anticipated that within the next twelve months the benchmark will be adhered to by all Members of the Commission. I must add that some Members have continued to comply with the benchmark even in such difficult times.

Whilst the Commission's workload in conciliating and arbitrating industrial disputes has also increased in the past twelve months, appeals under the *Workers' Compensation and Rehabilitation Act 2003* continue to be the most time consuming matters for Members of the Commission.

On 1 July 2012 existing Members of the Commission were appointed Appeals Officers under the *Public Service Act 2008* and, since that time, have dealt with appeals against disciplinary decisions, promotional decisions, transfer decisions etc within the Queensland public sector. The new Members

were appointed Appeals Officers in October and December 2012. Whilst the Public Service Commission retained responsibility for the administration of such appeals until 31 December 2012, the Commission and the Industrial Registry became responsible for this following that date. This has involved the Commission and the Industrial Registry in an increased workload since that time. Given the resources of both the Commission and the Industrial Registry throughout the first half of 2013, the administration of the Public Service Appeals has not been to the standard set by the Public Service Commission in previous years. Given that the Commission has now been provided with additional resources, it is anticipated that this will be rectified in the 2013-2014 period. Once again, some Appeals Officers have failed to release Public Service Appeal decisions within the timeframes established by the Public Service Commission, and adopted by the President of the Commission when Members were appointed as Appeals Officers. It is anticipated that some of the timeframes for releasing Public Service Appeal decisions will be adjusted in the near future and that decisions of Appeals Officers in the forthcoming reporting period will meet the established timeframes.

The actual physical conditions under which Members of the Commission worked throughout the period under review were less than adequate with very limited hearing rooms/conference rooms available. The working conditions for staff of the Industrial Registry during the reporting period were even less adequate and it proved difficult for such staff to perform their duties. Towards the end of 2012/early 2013 additional space within Central Plaza II was sought and obtained on Level 21 of the building. Funds for the expansion of the Commission and the Industrial Registry were provided by the Department of Justice and Attorney-General early in 2013 and construction work commenced in May/June 2013. With the commencement of the 2013-2014 year, construction work on level 21 had generally been completed however work on level 13 was still being undertaken. As a result the Commission now has seven hearing rooms (three on level 21 and four on level 13), four conference rooms (one on level 21 and three on level 13) and the Industrial Registry has an expanded work area on level 21 of Central Plaza II. I thank the Attorney-General and the Department for the provision of the necessary resources to undertake this expansion. I also thank all those associated with the renovations including Chris Chadwick, the Deputy Industrial Registrar, who has shouldered the internal responsibility for the renovations.

I also express my thanks to the Industrial Registrar and the staff of the Industrial Registry for the assistance provided to myself, my Associate and to all Members of the Commission and their Associates throughout the reporting period. Those in the Industrial Registry sometime appear to be the forgotten people in this organisation but, without them performing their functions appropriately, Members of the Commission can be hampered in the performance of their functions.

Finally, I would like to thank my Associate, Talisa Kemp, for her outstanding contribution to my office particularly during the period 31 August 2012 to 30 June 2013. She has worked tirelessly during that period in ensuring that my office has run relatively smoothly. Any achievements in the administration of the Commission could not have been achieved without the long hours that she worked during that period.

Dianne Linnane
Vice President
Queensland Industrial Relations Commission

6 September 2013

Whilst the *Industrial Relations Act 1999* was amended effective 1 July 2013 any reference to the *Industrial Relations Act 1999* in this section of the Annual Report refers to the *Industrial Relations Act 1999* as it existed on 30 June 2013 (Act).

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

Structure of the Commission

There are nine 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 three Deputy Presidents. There are four other Commissioners as at 30 June 2013.

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

Members of the Commission: Current Members of the Commission are:

Member	**Date sworn in**
President David Hall	2 August 1999
Vice President Dianne Linnane	2 August 1999
Deputy President Deidre Swan	3 February 2003 Appointed Commissioner on 2 August 1999
Deputy President Adrian Bloomfield	3 February 2003 Appointed Commissioner on 2 August 1999
Deputy Presidnet Daniel O'Connor	13 November 2012
Commissioner Glenys Fisher	2 August 1999
Commissioner John Thompson	28 September 2000
Commissioner Gary Black	13 November 2012
Commissioner Minna Knight	12 December 2012

Commissioner Donald Brown was appointed a Member of the Commission on 2 August 1999 and retired from the Commission on 15 February 2013.

Industry Panel System*:* In accordance with s. 264(6) of the Act, the Vice President established one Industry Panel on 30 August 2012 with all Members of the Commission on that Industry Panel. The Panel included the Queensland Government sector, the Brisbane City Council and Local Government. The Industry Panel was subsequently amended to include Queensland Rail and the Queensland All Codes Racing Industry Board.

Full Bench of the Commission: Full Benches of the Commission are constituted by the Vice President and must consist of at least three members: see s. 256(2)(b) of the Act. The constitution of the Full Bench will vary according to the nature of the proceedings being determined. Where a Full

Bench is established to deal with deregistration proceedings then the Full Bench must comprise the President: see s. 256(2)(a) of the Act.

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

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): see s. 342 of the Act. Leave to appeal is only granted where a Full Bench considers the matter is of such importance that it is in the public interest to grant such leave. A person dissatisfied with a decision of an Industrial Magistrate may also appeal to a Full Bench under s. 342(5) of the Act as can a person dissatisfied with certain decisions of the Registrar under s. 342(6) of the Act. Similarly, the Minister may appeal a decision of the Commission to the Full Bench under s. 342(4) of the Act.

Commission Hearings: The Commission, pursuant to s. 317 of the Act, may start proceedings on its own initiative and may exercise most of its powers on its own initiative: see s. 325 of the Act.

Jurisdiction, Powers and Functions of the Commission

Members of the Commission exercise powers and functions under various legislative enactments. The most significant area of the Commission's work now arises from appeals against review decisions of the Workers' Compensation Regulatory Authority (Q-COMP) under the *Workers' Compensation and Rehabilitation Act 2003*.

Examples of some of the powers and functions exercised by Members of the Commission include:

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 of the Act, its functions are outlined in s. 273 of the Act 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 of the Act.

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

Commission's Powers under the *Industrial Relations Act 1999*: The Commission's functions are outlined in Part 2 of Chapter 8 of the Act. In Division 4 of that Part, s. 274 of the Act 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 the Commission the specific powers listed below. Specific powers are also provided for throughout the Act e.g. Chapter 3 of the Act enables the Commission to order reinstatement or award compensation to workers who have been unfairly dismissed. Various provisions in Chapters 5 and 6 of the Act empower the Commission to do what is necessary to make, approve, interpret and enforce industrial instruments (Awards and Agreements). The powers necessary for conducting proceedings and exercising the Commission's jurisdiction are governed by Chapter 8, Part 6, Division 4 of the Act.

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, ss. 273 and 230 of the Act provide that the Commission must consider the public interest and act in a way that furthers the objects of the Act.

The powers given to the Commission by the Act include the power to:

- make general rulings about industrial matters, employment conditions, and a Queensland minimum wage (s. 287 of the Act) and make statements of policy about industrial matters (s. 288 of the Act);

- resolve industrial disputes by conciliation and, if necessary, by arbitration (s. 230 of the Act). The Commission's powers in such disputes include the power to make orders;

- hear and determine applications for reinstatement by employees who believe they have been unfairly dismissed. This includes 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 of the Act);

- 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 of the Act);

- make orders fixing minimum wages and conditions, and tool allowance for apprentices and trainees (ss. 137 and 138 of the Act) and make orders fixing wages and conditions for employees on labour market programs, and for students in vocational placement schemes (ss. 140 and 140A of the Act);

- certify or refuse to certify agreements, and amend or terminate certified agreements, according to the requirements of the Act (ss. 156, 157, 169-173 of the Act) or assist parties to negotiate certified agreements by conciliation and, if necessary, by arbitration (ss. 148 and 149 of the Act). The Commission's powers include the power to make orders necessary to ensure negotiations proceed effectively and are conducted in good faith;

- make, amend or repeal Awards, either on its own initiative or on application (s. 125 of the Act. The Commission may also review Awards under s. 130 of the Act. This is done on a three yearly basis;

- interpret an industrial instrument such as Awards and Certified Agreements (s. 284 of the Act);

- make a declaration about an industrial matter (s. 274A of the Act);

- grant an injunction to compel compliance with the Act, an industrial instrument or permit or to prevent contraventions of the Act, an industrial instrument or a permit (s. 277 of the Act);

- make orders to resolve demarcation disputes i.e. disputes about what employee organisation has the right to represent particular employees (s. 279 of the Act). 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 of the Act);

- the power to determine applications to amend the name, list of callings, or eligibility rules of an industrial organisation (Chapter 12 Part 6 of the Act);

- order a secret ballot about industrial action, and direct how the secret ballot is to be conducted (ss. 176 and 285 of the Act);

- 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 an inquiry (s. 502 of the Act);

- the power to approve amalgamations of organisations under s. 618 of the Act and the power to approve the withdrawal from amalgamations (s. 623 of the Act).

Commission's Functions under the *Industrial Relations Act 1999*: Some of the Commission's functions under the Act include:

General Rulings and Statements of Policy: An important tool for the regulation of industrial matters and employment conditions by a Full Bench of the Commission is the jurisdiction to issue general rulings and statements of policy.

Under s. 287, a Full Bench may make general rulings about industrial matters for employees bound by industrial instruments, and about general employment conditions. A general ruling applies generally from a 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.

In each year a Full Bench of the Commission hears and determines what is known as the State Wage Case. The beneficiaries of any State Wage Case are those employees whose terms and conditions of employment are solely award-reliant. Section 287(2) of the Act also requires that a general ruling be made each year about the Queensland Minimum Wage.

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

State Wage Case 2012: On 16 August 2012 a Full Bench of the Commission declared by General Ruling a wage adjustment of 2.9% or $20.50 per week increase, whichever was the greater, in Award rates of pay in respect of an application by the Queensland Council of Unions and The Australian Workers Union of Employees, Queensland. By the same General Ruling as required under s. 287 of the Act, the minimum wage for all full-time employees within the Queensland jurisdiction was increased to $630.70 per week with a proportionate amount for junior, part-time and casual employees. Work-related allowances were also increased by 2.9%. The effective date for the increased rates was set at 1 September 2012.

Conferences: For industrial disputes notified to the Commission the first step in resolving the matter is always a conciliation conference. Members of the Commission have extensive experience in conducting conciliation conferences and they are sometimes able to draw upon their industrial experience to assist the parties to reach conciliated and negotiated outcomes. Similarly, parties to applications for payment of unpaid wages have traditionally sought and been granted an opportunity to attend a conference with a Member of the Commission prior to the arbitration of their application. Where an entity alleging prohibited conduct (in relation to freedom of association under Chapter 4 of the Act) has applied for a remedy, the Commission must direct the parties involved to a conference before the matter is heard and determined by the Commission. The holding of a conciliation conference is mandatory in any unfair dismissal application.

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 to the Industrial Registry. The Commission will then take steps to settle the matter by conciliation, or if necessary, by arbitration.

In many cases, a settlement can be agreed upon during the conference, or the parties may be able to resolve their conflict following conciliation. Parties to an industrial dispute that cannot be resolved by negotiation can, following unsuccessful conciliation, request that the dispute be arbitrated under s. 230 of the Act. In those circumstances a different Member of the Commission would conduct the arbitration.

Unfair Dismissals: While there is a common belief that people come to the Commission seeking compensation for what they believe is 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 position, or alternatively, re-employment in another position with the same employer: see s. 78 of the Act.

If, after hearing an application for reinstatement, the Commission makes a determination that reinstatement or re-employment is impracticable in the circumstances, compensation may be awarded instead. The limit on the Commission's power to award compensation is provided for in s. 79(2) of the Act. Factors taken into consideration in determining the amount of compensation will include matters such as the amount paid by the employer to the applicant on termination, the applicant's wage prior to dismissal, the circumstances surrounding the dismissal, the age of the applicant, the income received by the applicant between date of dismissal and the hearing of the unfair dismissal application.

Applicants seeking a remedy in the Commission in respect of an alleged unfair dismissal must complete an application for reinstatement. Under s. 72 of the Act certain persons are excluded from making an application for reinstatement e.g. those persons earning above the amount stipulated in the Regulation (currently $118,100), a short-term casual employee, a person dismissed during a legitimate probation period. If a person is excluded from making such an application then the Commission has no jurisdiction to deal with the matter: see s. 74 of the Act.

Upon filing an unfair dismissal application the parties will be directed to attend a conciliation conference. The Member conducting the conference will not be the Member hearing any application for reinstatement and thus parties are able to attempt to resolve the application without the need for arbitration. These conferences are not recorded. The Member conducting the conference is there to assist the parties wherever possible. In many such conferences parties are able to resolve the matter. Some other applicants decide not to further pursue their application at this stage.

Where no agreement is reached the Member conducting the conference will issue a Certificate under s. 75 of the Act. In that Certificate the Member may advise the parties of the merits of their case, the possible consequences of further proceeding, that the applicant is an excluded person and/or any recommendation to an application to discontinue their application where the Member forms the opinion that there is no basis for the claim. That Certificate then remains confidential unless and until the outcome of an arbitration of the claim where the contents of the Certificate may be used on the question of costs.

Following the issuing of the s. 75 Certificate, the applicant must then decide whether to pursue the matter to arbitration. If the applicant decides to further pursue the claim they must inform the Industrial Registry of this fact within six months of the receipt of the s. 75 Certificate. The matter

will then be referred to Callover where directions will be issued for the further conduct of the matter and dates of hearing will be provided.

Industrial Disputes: A substantial power given to the Commission under the Act is the power to resolve industrial disputes by conciliation and, if necessary, by arbitration under s. 230 of the Act. In the reporting period 296 disputes were notified to the Commission under s. 229 of the Act. The great majority of these disputes were resolved in conciliation conferences.

If an organisation involved in an industrial dispute does not comply with orders of the Commission, a Full Bench of the Commission may, under s. 234 of the Act, make further orders against the organisation, including penalties up to 1,000 penalty units.

Industrial instruments: An essential part of the system of employment and industrial relations in Queensland is the use of industrial instruments (Awards and Certified Agreements) to regulate the relationship between employees and employers. Awards and Certified Agreements establish the terms and conditions of employment and have the force of law once made, certified or approved by the Commission.

Awards and Certified Agreements 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) of the Act 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 256 Awards currently in force in Queensland.

Award Review: In 2010 a Full Bench of he Commission was established on 18 February 2010 (the 2010 Award Review Full Bench) to conduct a review of awards under s. 130 of the Act. On 20 February 2013 that Award Review Full Bench provided a Report as to what it had achieved during the previous three years.

Essentially, the 2010 Award Review Full Bench indentified the following actions that it had taken:

- identified Awards which appeared to apply to constitutional corporations and employers covered by the national industrial relations system. These awards were referred to as Corporation Awards and were published on the Commission's website on 13 May 2010. Parties were then given an opportunity to object to the proposed inclusion of such an Award within that category. Those Awards were then "parked" for future reference by that Full Bench;

- granted a request by the parties to have enterprise bargaining wage results incorporated into awards;

- granted a request by the parties to review and update the *Family Leave Award 2003* and the *Family Leave (Queensland Public Sector) Award - State 2004*;

- obtained submissions by the parties on a request for the Full Bench to determine whether the Commission had jurisdiction to consider incorporating directives issued by the Public

Service Commission Chief Executive and/or the Minister for Industrial Relations into awards. The Full Bench did not determine this issue; and

- conducted conciliation conferences between the parties to the local government awards with the aim of refining the differences between the parties. However, the Full Bench was unable to resolve the differences between the parties.

In March 2013 a newly constituted Full Bench was formed to undertake the review of awards required by s. 130 of the Act (the 2013 Award Review Full Bench). That Full Bench issued a Statement on 10 May 2013 and established both the manner in which the Full Bench would conduct its review and a program for dealing with the matters which remained outstanding from the 2010 Award Review. The programming of outstanding matters involved the following:

- listed the issues of those awards identified as awards applying to constitutional corporations and employers covered by the national industrial relations system to be dealt with on 31 May 2013. On this day, the 2013 Award Review Full Bench issued an Order declaring these awards obsolete;

- listed those common rule awards that fell into the categories of non corporation awards, non State Government awards and non Local Government awards to be dealt with on 19 July 2013;

- listed the issue of the public service directives for hearing on 19 July 2013; and

- asked a Member of the 2010 Award Review Full Bench to conduct further conferences on the local government awards with a deadline of 24 December 2013 to reach agreement. Where there is no agreement the Full Bench has indicated that it will arbitrate all outstanding matters in 2014.

Certified Agreements: Certified Agreements are regulated by Chapter 6 Part 1 of the Act. A Certified Agreement 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 representing the employees. A Certified Agreement may stand alone, replacing a relevant Award, or it may operate in conjunction with an Award. The affected employees must have access to the terms of an agreement and they must have those terms and their effect on their work and conditions explained to them before they approve the agreement. A majority of workers must approve it and the Commission must also be satisfied that it passes the "no-disadvantage test" i.e. the agreement must not place the affected employees under terms and conditions of employment that are less beneficial, on balance, than the terms and conditions of 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 under s. 148 of the Act. In the reporting period there were 24 applications under s. 148 of the Act. If conciliation cannot resolve the impasse, the Commission has the power to arbitrate, as it would do for an industrial dispute. In the reporting period five of the 24 applications made under s. 148 went to arbitration under s. 149 of the Act.

During the year there were 42 applications to approve a Certified Agreement. Of these, five were new Agreements. The number of Certified Agreements currently in force is indicated in Table 6.

As at the conclusion of the reporting period two of those agreements were the subject of arbitration before two separate Full Benches i.e. The Department of Community Safety - Queensland Fire and Rescue Service v Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union

of Employees, Queensland and others (matter CA/2012/56) and The Department of Community Safety, Queensland Ambulance Service v United Voice, Industrial Union of Employees, Queensland (matter CA/2012/544).

Payment instead of Long Service Leave: Section 53 of the Act gives the Commission power to pay an employee all, or part of, their entitlement to long service leave instead of taking the leave or part of the leave. The power is available to the Commission where no industrial instrument provides for the employee to be paid for all or part of their entitlement to long service leave instead of taking the leave. The Commission may only order the payment if satisfied that the payment should be made on compassionate grounds or on the ground of financial hardship. In the reporting period the Commission dealt with 205 applications under s. 53 of the Act.

Unpaid Wages: An application can be made pursuant to s. 278 of the Act 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 and for payment of 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. In the reporting period the Commission dealt with 31 applications under s. 278 of the Act. An alternative remedy is available in the Industrial Magistrates Court under s. 399 of the Act.

An application can not be made to the Commission if the total amount being claimed is more than $50,000. Claims over $50,000 may be made in the Industrial Magistrates Court. A person can not make an application under this section if an application has been made to an Industrial 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 six years prior to 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 of the Act 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 in the reporting period.

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

Under s. 618 of the Act the Commission may, by order, approve an amalgamation of industrial organisations. On 17 April 2013, the Commission finalised an application of a proposed amalgamation of the Federated Engine Drivers' and Firemens' Association of Queensland, Union

of Employees, Queensland Colliery Employees Union of Employees and the Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland. The name of the amalgamated union was ordered to be Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland. The amalgamation took effect on 1 May 2013, with the Federated Engine Drivers' and Firemens' Association of Queensland, Union of Employees and the Queensland Colliery Employees Union of Employees de-registered from 1 May 2013.

A Full Bench of the Commission may make representation orders to settle demarcation disputes involving industrial organisations: see s. 279 of the Act.

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

The following organisations were deregistered during the reporting period:

- Consulting Surveyors Queensland Industrial Organisation of Employers - deregistered on 3/9/12;
- Property Sales Association of Queensland, Union of Employees - deregistered on 3/9/12;
- The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers - deregistered on 5/12/12;
- Queensland Private Childcare Centres Employers Organisation of Queensland Industrial Organisation of Employers - deregistered on 5/12/12;
- Federated Engine Drivers' and Firemens' Association of Queensland, Union of Employees - deregistered on 1/5/13 upon amalgamation with the CFMEU on 1/5/13;
- Queensland Colliery Employees Union of Employees - deregistered on 1/5/13 upon amalgamation with the CFMEU on 1/5/13 ; and
- Queensland Mechanical Cane Harvesters Association, Union of Employers - deregistered on 22/5/13.

Table 8 shows the total number of applications filed in the Industrial Registry under Chapter 12 of the Act. Members of the Commission dealt with 13 of those applications.

Protected Industrial Action: For industrial action to be protected the requirements of Chapter 6, Division 6 of the Act need to be met. In addition the industrial action must also be authorised by the industrial organisation's management committee and the Industrial Registrar must be notified of the authorisation according to the terms of s. 174 of the Act.

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 of the Act).

Jurisdiction under Legislation other than the *Industrial Relations Act 1999*

The Commission has jurisdiction under other legislative enactments e.g.

- the *Workers' Compensation and Rehabilitation Act 2003;*
- the *Public Service Act 2008*;
- the *Trading (Allowable Hours) Act 1990*;
- the *Vocational Educational, Training and Employment Act 2000*;
- the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*;
- the *Public Interest Disclosure Act 2010;*
- the *Work Health and Safety Act 2011;* and
- the *Child Employment Act 2006.*

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

***Workers' Compensation and Rehabilitation Act 2003*:** The Commission has jurisdiction to hear appeals from decisions of Q-COMP under s. 550 of the *Workers' Compensation and Rehabilitation Act 2003*. Q-COMP is the statutory body that reviews workers' compensation decisions taken by WorkCover Queensland and other self-insurers (the insurers) where employees and/or employers feel aggrieved by the decisions of their insurers and have sought reviews. Once Q-COMP issues a review decision, an aggrieved employee or an aggrieved employer can appeal that decision to the Commission.

During the reporting period there were 419 matters filed in the Industrial Registry under the *Workers' Compensation and Rehabilitation Act 2003*. It is this jurisdiction that currently makes up a substantial portion of the Commission's workload as hearings regularly take a number of days to complete. Since being given the administration of the Commission on 31 August 2013, the Vice President has established a process for the handling of such appeals.

That process commences with the filing of the Notice of Appeal. Shortly thereafter the matter is referred to Callover. It is at this time that the parties are advised of the further directions for the conduct of the appeal and the dates of conference (if sought) and hearings.

Under s. 552A of the *Workers' Compensation and Rehabilitation Act 2003* the Commission may order the parties to attend a conference prior to the hearing of the appeal. Conferences are particularly useful where the appellant is unrepresented as it enables the Member to give guidance to the appellant on what is required for the hearing of such an appeal. The Member conducting the conference will not be the Member allocated the appeal for hearing.

Shortly prior to the hearing date, the Vice President conducts a review mention of the appeal to ensure that all directions have been complied with and the matter is ready for hearing. It is after this review mention and when all directions have been complied with that a matter is allocated to a Member for hearing.

***Jurisdiction under Public Service Act 2008*:** Under s. 88A of the *Public Service Act 2008* the following persons were appointed as Appeals Officers to hear and decide appeals under that Act as and from 1 July 2012:

- David Hall;
- Dianne Linnane;
- Deirdre Swan;
- Adrian Bloomfield;
- Glenys Fisher;
- Donald Brown; and
- John Thompson.

Further appointments under s. 88A of the *Public Service Act 2008* were made at a later time with Daniel O'Connor and Gary Black being appointed as Appeals Officers on 25 October 2012 and Minna Knight being appointed as an Appeals Officer on 11 December 2012**.**

As Appeals Officers these persons hear and determine appeals against certain decisions that affect employees in the Queensland Public Service. The hearing of these appeals was, prior to 1 July 2012, heard and determined by an Appeals Officer appointed under this Act and employed by the Public Service Commission. The administration of these appeals continued with the Public Service Commission until 31 December 2012 when it was transferred to the Commission and the Industrial Registry. The role and functions of Appeals Officers are outlined in Chapter 3 of the *Public Service Act 2008*.

During the reporting period 155 public service appeals were lodged pursuant to s. 194 of the *Public Service Act 2008*. Chapter 7 of the *Public Service Act 2008* stipulates the right to appeal a decision, the types of decisions that may or may not be appealed, who may appeal a decision and the appeals procedures. Appeals can be made against the following types of decisions:

- to take or fail to take action under a directive issued by the Public Service Commission Chief Executive or the Minister for Industrial Relations;
- discipline decisions;
- promotion decisions;
- transfer decisions; and
- a decision concerning an employee's temporary employment status.

When hearing and determining appeals, an Appeals Officer must perform their functions independently, impartially and fairly so as to ensure the principles of natural justice are applied in the decision making.

Jurisdiction under the *Trading (Allowable Hours) Act 1990*: A Full Bench of the Commission hears and determines applications by non-exempt shops to vary trading hours under Part 5 of the *Trading (Allowable Hours) Act 1990*: see s. 21 of that Act. 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. During the reporting period the Commission dealt with several applications for extended trading including the following:

- introduction of seven day trading in Biloela and the broader Banana Shire: see Decision published on 20 September 2012;
- amendment to the definition of South-East Queensland Area to include Woodford: see Decision published on 24 October 2012;
- introduction of seven day trading in the Ingham Area: see Decision published on 5 September 2012;
- introduction of seven day trading in the Ayr Area: see Decision published on 2 October 2012.

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

about registration or cancellation of training contracts, cancellation of completion certificates or qualifications, decisions to stand down an apprentice or trainee and the 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 of that Act, 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 *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 Commission against a decision of the authority regarding retrospective credits.

Jurisdiction under the *Public Interest Disclosure Act 2010*: Under Chapter 4, Part 3 of the *Public Interest Disclosure Act 2010* an application for an injunction about a reprisal may be made to the Commission if the reprisal has caused or may cause detriment to an employee: see s. 48 of that Act.

Jurisdiction under the *Work Health and Safety Act 2011*: Section 142 of the *Work Health and Safety Act 2011* provides that the Commission may deal with a dispute about the exercise, or purported exercise by a work health and safety entry permit holder of a right of entry under this Act. This includes a dispute about whether a request under s. 128 of that Act is reasonable. The Commission may deal with the dispute in any way it thinks fit, including by means of mediation, conciliation or arbitration. If the Commission deals with the dispute by arbitration, it may make one or more of the following orders:

- an order imposing conditions on a work health and safety entry permit;
- an order suspending a work health and safety entry permit;
- an order revoking a work health and safety entry permit;
- an order about the future issue of work health and safety entry permits to one or more persons; and
- any other order it considers appropriate.

Jurisdiction under the *Child Employment Act 2006*: Under s. 15C of the *Child Employment Act 2006*, on the application of an inspector, or in a proceeding before the Commission under Part 2A of that Act, the 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 Commission for orders similar to those that the Commission can grant under the unfair dismissal provisions of the *Industrial Relations Act 1999*.

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

Members of the Commission conduct conferences in these matters in an attempt to resolve the matters prior to them being heard by a Magistrate. During the reporting period the Commission conducted 12 such conferences.

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

The role of the Tribunal is to establish remuneration levels for elected representatives for all local governments in Queensland (except Brisbane City Council) on an annual basis as well as to consider serious complaints of misconduct and/or conflicts of interest by elected local government representatives. The Tribunal is empowered to determine an appropriate penalty for any proved complaints of misconduct and/or conflicts of interest, including making recommendations to the Minister for Local Government to the effect that an individual councillor, or councillors, be dismissed.

On average the Tribunal meets six times per annum to conduct discipline hearings and to consider submissions from individual Councils for alterations to the established remuneration levels of councillors who might, for example, take on additional duties or responsibilities, such as acting as a Mayor during an extended absence of the person elected to that role.

In addition to the above meetings, members of the Tribunal are also called upon to receive deputations and consider submissions from interested parties during the course of their determination of appropriate remuneration levels. This is particularly the case in the September to November period of each year.

In his capacity as Chairperson, Deputy President Bloomfield is required to be heavily involved in the preparation of all correspondence issued in the name of the Tribunal as well as the recording of outcomes of Tribunal's hearings and its other activities, especially the preparation of the Annual Remuneration Report to the Minister for Local Government. His overall involvement in the Tribunal's affairs equates to about twenty days per annum, spread across the year.

Professional activities: During the reporting period the following three Members utilised their Jurisprudential Allowance/Education and Conference Allowance to attend conferences, seminars or courses:

Member	**Activity**	**Location**	**Date/s**
Vice President Linnane	The 13th Annual Europe Asia Medical & Legal Conference	Lake Como, Italy	24.6.13 to 1.7.13
Deputy President Bloomfield	2012 Industrial Relations Society of Queensland	Gold Coast, Australia	9.8.12 to 10.8.12
Commissioner Fisher	2012 Industrial Relations Society of Queensland	Gold Coast, Australia	9.8.12 to 10.8.12
	6th Britain Pacific Legal Conference	London, UK	28.1.13 to 4.2.13

Together Queensland, Industrial Union of Employees v Queensland Health (D/2011/183) - 25 January 2013 - Deputy President Swan, Deputy President Bloomfield and Commissioner Brown

***Industrial Relations Act 1999* - s. 230 - action on industrial dispute**

This decision concerned a dispute between Together Queensland, Industrial Union of Employees (Together) and Queensland Health in relation to the interpretation of Clause 29.5 of the *Health Practitioners' (Queensland Health) Certified Agreement (No.2) 2011 (HPEB2).*

Clause 29.5 of HPEB2 stated "any annual State Wage Case increase which would provide a higher overall annual wage increase than those prescribed in Clause 29.1 will be applied from the operative date of the State Wage Case". Together argued that the construction of the clause supported its view that the wage increase of 3.0% prescribed in Clause 29.1(b) had to be compared with the State Wage Case increase of 3.4% or $22.00 per week, whichever is the greater, resulting in employees covered by HPEB2 being entitled to an additional 0.4% wage increase.

By contrast, Queensland Health submitted that the clause must be construed so as to require, firstly, the calculation of the actual overall annual wage increase which would result from the application of the percentage increase under the State Wage Case, and, secondly, the comparison of that amount with the actual wage increases resulting under the Agreement. In doing so, it was necessary to note that the determination of increases arising as a result of the State Wage Case decision had to be calculated by reference to Award rates, not those contained in HPEB2.

After considering the submissions of the parties the Full Bench decided that the determination of this dispute required:

- the ascertainment of actual increases to the Award rates by application of the 3.4%;
- a comparison between that amount and the alternative flat increase of $22 per week;
- a comparison between the higher of those two figures (annualised) with the increase derived from application of the 3.0% increase to the applicable rate of pay under the Agreement.

On the basis that such calculation had already been undertaken by Queensland Health, which established that all increases under HPEB2 were greater than those under the relevant Award, the Full Bench dismissed Together's claim.

Together Queensland, Industrial Union of Employees and Another v Department of Transport and Main Roads (CA/2011/28) - 3 October 2012 - Deputy President Swan, Deputy President Bloomfield and Commissioner Brown

***Industrial Relations Act 1999* - s. 149 - arbitration if conciliation unsuccessful**

In this matter the Full Bench was required to determine three (3) matters at issue between Together Queensland, Industrial Union of Employees (Together), the Association of Professional Engineers, Scientists and Managers of Australia, Queensland Branch, Union of Employees (APESMA), and the new Queensland Department of Transport and Main Roads (TMR) which the parties were unable to agree during the course of their negotiations for a proposed certified agreement, to be titled *TMR Enterprise Certified Agreement 2011*.

The matters at issue were:

- the level of wage increase - where Together and APESMA sought increases of 6.0% per annum for three years and TMR proposed increases of 2.5% per annum (with a lump sum payment of $750.00 for former employees of the Department of Main

Roads who were covered by an expired Agreement);
- increased allowances to reflect increases in wage rates (as above); and
- the implementation of a progression scheme for employees in the administrative stream.

One of the difficulties facing the respective parties and the Commission was the fact that the proposed Certified Agreement was to cover employees who had worked in the former Department of Transport as well as employees who had worked with the former Department of Main Roads in circumstances where those employees enjoyed differing rates of pay and working conditions. In this respect, the proposed $750 lump sum payment to non-operational employees previously engaged in the Department of Main Roads was designed to recognise the potential loss in wages and allowances as a result of the parties' inability to successfully conclude their negotiations for a new Agreement prior to the merger of the two Departments.

After considering the evidence and submissions presented by the respective parties the Full Bench said:

"[57] After giving detailed and serious consideration to all of the submissions presented, in light of the obligations placed on us pursuant to the provisions of s.149 of the Act, we have decided to accept TMR's submission that the increase we should award for the year commencing 1 July 2012 should be 2.5%, with a further increase of 2.5% on 1 July 2013 (to apply until 30 June 2014).

[58] Based upon our assessment of the evidence, such level of increase is likely to be sufficient to enable those employees to be covered by the proposed agreement to maintain their current standard of living in that the level of inflation over the period to 30 June 2014 is likely to remain below or relatively near to 2.5%. If there is an unexpected rise in inflation during the remaining twenty or so months of the Agreement, then that is a matter to be taken into account in negotiations for a replacement Agreement or, if there is no agreement, any future arbitration. Such level of wage increase is also, on Mr Molloy's evidence, unlikely to negatively impact workforce numbers within TMR because it will be a budget-funded increase (see s.149(5)(b) and (c)(ii)).

[59] In line with our decision in relation to the level of wage increases to apply from 1 July 2012 and 1 July 2013, respectively, we also determine that existing allowances and reimbursement of expenses be increased by 2.5% from the same dates.

[60] We have also decided to refuse the claim by Together to include additional classification levels in the proposed investigation of the organisational benefits of a progression scheme. Little has been advanced by the Union to support the inclusion of the additional classifications in the investigation. On the other hand, both Mr Rennie and Mr Casey gave evidence to the effect that inclusion of the additional classifications would have implications for the public sector more broadly and that it would, or at least could, lead to artificial expectations in the workforce.".

QANTAS Airways Limited v Q-COMP (WC/2011/467) - 7 June 2013 - Deputy President Swan

***Workers' Compensation and Rehabilitation Act 2003* - s. 550 - appeal to commission**

The Appellant, Mr Guy, had worked as a baggage handler for Qantas from 2001 through to 2010.

His claim, which had been accepted by the Q-COMP Review Unit, related to a back injury which he said he suffered from his work with Qantas.

Qantas appealed that decision to the Commission. Its position was that Mr Guy had a degenerative back condition which had not been made worse by his work with Qantas.

The essence of the matter was whether the Appellant had a degenerative back condition and whether that condition was made worse by his work with Qantas.

The view of President Hall of the Queensland Industrial Court, in adopting the decision of Gyles J in *Australian Postal Corporation v Bessey* [2001] FCA 266] was that "if an underlying condition is aggravated, in the sense of being made worse, then any incapacity which results is compensable. On the other hand, if the aggravation is temporary, so that after a time it ceases to have any effect and leaves the underlying condition no worse, then there is no relevant continuing injury causing incapacity.".

The Appeal was dismissed. It was found that Mr Guy's degenerative back condition was made worse over a period of time whilst performing his work for Qantas and as such his claim was accepted.

Lufia Hunt v Q-COMP and Bandag Manufacturing Pty Ltd (WC/2011/12) - 16 May 2013 - Deputy President Swan

***Workers' Compensation and Rehabilitation Act 2003* - s. 550 - appeal to commission**

The Appellant, Mr Hunt appealed a decision of Q-COMP to reject his application for workers' compensation.

The Appellant's claim was for compensation for Toxic Fume Inhalation Syndrome or Reactive Airways Dysfunction Syndrome (RADS). It was claimed that this syndrome occurred from his employment as a CT press operator with Bandag and that the injury occurred over a period of time.

The questions posed by the Appellant for the Commission's consideration were:

- "Was the system of work likely to have caused Formaldehyde to be emitted? And if so,
- whether it is likely that the Appellant suffered a RADS type syndrome as a consequence of his exposure to Formaldehyde?".

Together with medical evidence there was also evidence from Occupational Hygiene Consultants.

After a consideration of the evidence, it was shown, generally at its highest, that formaldehyde may have been produced. Further evidence showed that at the time when the Appellant was working for Bandag, it was most unlikely that formaldehyde had been produced.

The Appeal was dismissed, with the Commission finding that "the Appellant had not proved that it is more probable than not that he has both suffered RADS and that he has done so because of exposure to formaldehyde in the workplace.".

Queensland Teachers Union of Employees v State of Queensland (Department of Education, Training and Employment) (CA/2012/47) - *11 July 2012 - Deputy President Bloomfield*

***Industrial Relations Act 1999* - s. 176 - requirements for other industrial action by an employee organisation or employees**

In this Decision, the first concerning applications pursuant to s. 176 and Schedule 4 of the *Industrial Relations Act 1999* (the Act), the State of Queensland (Department of Education, Training and Employment) (DETE) opposed an Application by the Queensland Teachers Union of Employees (QTU) in which it sought a Protected Action Ballot Order. The basis of DETE's opposition was that the question proposed to be put before members of QTU was not clear and ambiguous and framed in a way which enabled both employees who might be balloted and the Department to understand the nature of the industrial action which was proposed.

Relevantly, the question which QTU proposed be put to members was:

> "In support of reaching an enterprise agreement, do you endorse taking protected

action in the form of an unlimited number of State wide or Regional or Workplace stoppages of work of 1 to 24 hours in duration or bans or limitations on the manner in which work is undertaken*?"*.

In arriving at its decision not to approve QTU's application for a Protected Action Ballot Order the Commission said:

"[19] In arriving at my view that the proposed questions do not sufficiently describe the nature of the proposed industrial action, I remain conscious of the submissions of Ms Edmonds that the actual nature of the industrial action which is to be taken, if the ballot is successful, will be clearly set out in notices provided to DETE in accordance with the provisions of the Act. However, I am also conscious of her submission to the effect that, prior to issuing any such notice(s), QTU's Council will (separately) poll QTU members to ascertain their support for different types of action.

[20] To my mind, this highlights the deficiencies in the proposed questions. It might be that a member (or members) of QTU would be prepared to vote in support of a 24 hour stoppage of work whereas the same member (or members) might not be prepared to vote in support of a stoppage of two hours or four hours duration. The question, as proposed, does not allow the member (or members) to inform QTU, nor ECQ, of their preference through the protected action ballot order process. Rather, any decision about the duration of any stoppage will be left to QTU's Council. In that respect, it could never be ascertained whether the industrial action ultimately authorised by QTU's Council met the requirements of ss. 176(2) and (3) of the Act. The very dangers highlighted by the Full Bench in *John Holland v AMWU [2010] FWA 526* at [16] then come to the fore.

[21] I also note that for the purposes of Schedule 4 of the Act a ***protected action ballot order*** means an order of the commission requiring a protected action ballot to be conducted to determine whether employees wish to engage in particular industrial action in relation to a proposed agreement.

[22] While noting that any application to the Commission for a protected action ballot order must (only) state 'the question to be put to the employees who are to be balloted, including the nature of the proposed industrial action', rather than the particular industrial action, the risk remains that if the question posed to employees is ambiguous and lacking in clarity the industrial action ultimately taken (if the ballot is successful) may be found not to be protected industrial action.

[23] Given the above circumstances, and the lack of jurisprudence in this Tribunal in relation to the matter, I think that the wisest, and safest, decision for me to make is to determine that the proposed question to be put to the employees to be balloted does not include sufficient description to enable employees to identify 'the nature' of the proposed industrial action which they are being asked to vote upon…".

Queensland Teachers Union of Employees v State of Queensland (Department of Education, Training and Employment) (CA/2012/47) - 13 July 2012 - Deputy President Bloomfield

Industrial Relations Act 1999 **- s. 176 - requirements for other industrial action by an employee organisation or employees**

On the day following the release of the Commission's Decision in *Department of Education and Training Teachers' Certified Agreement 2010* (immediately above), Queensland Teachers Union of Employees (QTU) filed an application for a Protected Action Ballot Order which proposed the

following question be put to its members to be covered by the proposed new industrial agreement:

> "In support of reaching an enterprise agreement with the Department of Education, Training and Employment do you wish to organise and/or engage in separately, concurrently and/or consecutively, the following protected industrial action against the Department of Education, Training and Employment?
>
> 1. An unlimited number of State wide, Regional or Workplace bans?
>
> 2. An unlimited number of State wide, Regional or Workplace limitations?
>
> 3. An unlimited number of State wide, Regional or Workplace stoppages of work of 24 hours duration?".

QTU's fresh application was not opposed by representatives of the Department of Education, Training and Employment.

Accordingly, having satisfied itself that the question proposed to be put to members of QTU in the proposed ballot was framed with sufficient clarity to enable the employees to identify the nature of the proposed industrial action which they were being asked to vote upon, and having further satisfied itself that the matters required to be considered under Schedule 4 had been met, the Commission issued a Protected Action Ballot Order.

State of Queensland (The Department of Community Safety, Queensland Fire and Rescue Service) v United Fire Fighters' Union of Australia, Union of Employees, Queensland (B/2012/19) - *30 July 2012* - *Deputy President Bloomfield*

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

This decision concerned an application by the Department of Community Safety, Queensland Fire and Rescue Service (QFRS) which sought:

> "A declaration under s. 274A of the *Industrial Relations Act 1999* (the Act) declaring the proposed Notice of industrial action of the United Fire Fighters' Union of Australia, Union of Employees, Queensland (UFU), served on QFRS on 7 June 2012 invalid for failure to comply with the requirements set out in s. 175(3) of the Act.".

Relevantly, the Notice served on QRFS by UFU identified the following forms of industrial action:

> "…the implementation of a 'strike' as defined in Schedule 5 of the *Industrial Relations Act 1999*. The above stated action will be subject to our ensuring that all emergency and rescue responses and essential building inspections and approvals will be maintained.
>
> The above action will include the implementation of 'Fire Calls' only bans and limitations as per the attachment to this notice.
>
> The day the action will begin is Wednesday 1 August 2012.
>
> The extent to which this action continues depends on your response to the demands made by our organisation and our members and will be the subject of ongoing advice to you during the course of the negotiations.
>
> It is not our intention to engage in industrial action that will threaten or cause significant damage to the economy, the community or local community, or part of the economy, nor is it our intention to engage in industrial action that will threaten to endanger, or endanger the personal health, safety or welfare of the community or part of it.
>
> If at any stage you have any concerns about the effects of the industrial action, please contact us so we can discuss and resolve those concerns...".

In seeking the declaration sought, the representative of QFRS submitted that a Notice pursuant to s. 175 of Act serves a two-fold purpose. Firstly, it defines the industrial action

the subject of the protection afforded by s. 174(2). Secondly, it apprises the employer of the nature of the industrial action to which it is to be subjected, enabling the employer to make necessary preparations to operationally deal with the impact of the industrial action. In that respect, any Notice must set out the nature of the industrial action proposed to be taken with sufficient clarity to allow an employer to understand what industrial action is to occur.

In the course of UFU's submissions in opposition to the Declaration sought by QRFS the Union's representative stated:

- UFU's Notice was given some seven (7) weeks in advance of the date the industrial action was due to commence but QFRS had not raised any concern with the union about its alleged difficulty in comprehending the Notice, nor had it expressed any concerns about its capacity to institute contingency plans or defensive actions;
- nonetheless, in order to make UFU's intentions clear, the Union had subsequently written to QFRS in relation to the nature of the industrial action proposed, saying "…we confirm to you so that there can be no doubt the protective action which has been notified is that of a 'Fire Calls Only' ban. The Notice does not contemplate any other action.";
- it would be a perverse outcome if UFU's members were prevented from exercising their lawful right to take protected industrial action in circumstances where the Union had provided advice to QFRS, where such advice would further the objectives of the Act by allowing it to make better contingencies, but was prejudiced by that action, in respect of its preserved transitional rights (under s. 782 of the Act), by having done so.

After referring to the definition of "strike" in Schedule 5 of the Act the Commission stated:

> "[25] As will be apparent from the above, any conduct of two or more employees to, *inter alia*, impose a ban, restriction or limitation on the performance of work **or** perform their work in a way that is not customarily performed **or** adopt a practice or strategy resulting in a restriction, limitation or delay in the performance of their work **or** wilfully fail to perform any work at all, constitutes a 'strike' within the meaning of the Act.
>
> [26] In that respect, given that QFRS has over 3000 employees throughout the state of Queensland and has a business model that provides a 24/7 response to emergencies both intrastate and interstate, the significance of not having a clear understanding of the proposed industrial action for QFRS can be 'dire' (see QFRS's submission in reply to those of UFU - exhibit 5, paragraph 1).
>
> [27] The advice to QFRS that 'strike' action by members of UFU <u>will be subject to</u> ensuring that all emergency and rescue responses and essential building and inspection approvals are maintained **and** that the 'strike' <u>will include</u> the implementation of a 'Fire Calls only' bans and limitations (as per the attachments to UFU's Notice) does nothing to assist QFRS to understand the nature of the industrial action to be taken against it.
>
> …
>
> [31] Indeed, the inadequacy in the way UFU's Notice was framed is highlighted by:
>
> - the inclusion in the Notice of a paragraph which invites QFRS to contact the Union if it has any concerns about the effects of the industrial action 'so we can discuss and resolve those concerns.'. This suggests that rather than the Notice providing clear and definite advice of the nature of the industrial nature to be engaged in, it is to be subject to discussion and amendment;

- the resort by UFU to decisions concerning statutory interpretation in an endeavour to provide meaning to and/or clarify the wording in its Notice, such that the word 'includes' is to be read in an exhaustive sense rather than its ordinary meaning; and
- the fact that UFU saw fit to write to QFRS on 19 July 2012 to 'clarify' its Notice. Had the Notice been clear, this advice would not have been necessary…".

As a result of its consideration of the issues raised, the Commission issued the Declaration sought by QFRS.

Queensland Nurses' Union of Employees and Others v Queensland Health (Sunshine Coast Hospital and Health Service) (D/2012/237) - 22 October 2012 - Deputy President Bloomfield

***Industrial Relations Act 1999* - s. 230 - action on industrial dispute**

In this matter, the Queensland Nurses' Union of Employees (the QNU) supported by a number of other Unions with members employed in the Sunshine Coast Hospital and Health Service (the Service) requested the Commission's assistance to resolve a dispute in relation to the decision of the Service to announce, by Press Release and Internal Communiqué, that it had decided to adopt a comprehensive program of change which would see a number of redundancies and changes in work practices and other arrangements.

Of particular concern to QNU and other Unions was the fact that the announcement by the Board of the Service was to the effect that certain positions would be redesigned, which would lead to a reduction of thirteen (13) positions at Nambour and three (3) at Gympie, with a change in rostering practices.

The Unions said that the announcement had been made without any consultation or forewarning to relevant employees. While staff had been informed about the need for changes to occur, the Service's announcement that sixteen (16) positions were to go had left the 200 or so members in catering, cleaning and wardspersons staff within the Service worrying about their future and that of their families.

In the course of its decision, in which it issued an Order restraining the Service from implementing the proposed changes for twenty-one days, the Commission recorded that it had made significant attempts (as recently as a week previously) to brief representatives of all Health Services. These briefings were about the expectations of the Commission and the Unions (with members in the public health sector in Queensland), should Health Services propose to announce any structural changes and/or potential loss of positions.

In this respect, the Commission highlighted that as a result of its involvement in several disputes in the public health sector it was now well understood that any announcement about proposed restructuring/loss of positions should be made to staff members likely to be impacted, complemented by pre-prepared material showing the nature and extent of the proposed changes, prior to - or coinciding with - any general announcement.

In this instance, the Service had simply announced its intention to make structural and other changes to the press and the local community without informing its own workforce. In this respect, the Commission noted that notwithstanding recent amendments to the provisions of the *Industrial Relations Act 1999*, the Service still had a legal obligation to consult with affected employees and their Unions about the proposed changes and their likely effects on employees - including discussing ways to avoid or minimise the effects of the proposed changes.

Construction, Forestry, Mining and Energy, Industrial Union of Employees, Queensland and Others v QBuild, A Business Unit of the Department of Housing and Public Works (D/2012/243, 244 and 245) - 30 October 2012 - Deputy President Bloomfield

***Industrial Relations Act 1999* - s. 230 - action on industrial dispute**

In this matter, the Commission was required to deal with a number of disputes concerning the process adopted by QBuild, a Business Unit of the Department of Housing and Public Works (QBuild), to affect structural changes and redundancies in the organisation.

In their notifications of industrial dispute, each of the Unions informed the Commission that QBuild was selecting certain employees for redundancy based on a consideration of whether or not those employees had completed an Expression of Interest (EOI) signifying their desire to remain in employment with QBuild. Further, the Unions indicated that the selection process was also unfair in that QBuild failed to provide relevant information to employees at the time they were invited to lodge an EOI, which included, but was not limited to:

- the organisational structure to operate into the future, including locations where employees would be based and the number of employees (including classifications) to be based in each location;
- a clear warning that failure to lodge an EOI would automatically exclude the employee from being considered for placement within the restructured organisation.

In addition, when the matter came before the Commission for compulsory conference, the Unions also complained that following lodgement of their dispute notification to the Commission, and a Notice of listing being issued by the Commission, QBuild had conducted an urgent staff briefing, which was held prior to the commencement of the compulsory conference. This was 24 hours earlier than Unions and employees had previously been told, in circumstances where the purpose of the staff briefing was to inform staff about the filling of positions in the new structure and the announcement of redundant positions.

In a decision issued on 30 October 2012 the Commission said:

> "[9] After hearing from each of the parties (at length) I decided that I would issue an Order pursuant to s. 230(4) of the *Industrial Relations Act 1999* to restrain QBuild from acting to terminate any field staff employee for a period of 28 days from 5:00pm on 30 October 2012 on the basis that the process of (alleged) consultation it had engaged in was fundamentally flawed from the time it called on employees to lodge EOI's.
>
> [10] The minutes of the Staff Consultative Committee meeting of 15 October 2012 recorded that the representatives of the Unions questioned the QBuild representatives about whether an organisational structure would be available for staff to identify which jobs they would be applying for. The general response from a QBuild representative was that employees would be aware of 'what would be available to them' before being asked to make a decision.
>
> [11] The employer representatives also indicated to the Unions that employees would be provided with the opportunity to provide a resume as well as a two-page statement relating to the requirements associated with new position descriptions at the time they lodged their EOI's.
>
> [12] However, the actual material distributed to employees was significantly different. For example, staff were not provided with the new organisational structure and, thus, did not know how many positions, nor classifications, were to be retained in each location from which the workforce was to work in the future. Further, while the two-page EOI had a provision for an employee to identify their supervisor and a referee, employees were not informed about any advantage or detriment if they left this section of the form blank. Similarly, there was no information provided to employees about the methods the employer proposed to adopt to 'select' those employees who would be offered positions ahead of those who were to be retrenched.

[13] Indeed, the whole process was such that had I allowed it to continue virtually every employee who was not selected for retention in the new organisation (approximately 330 employees) would have had good grounds for disputing their termination on the basis that it was harsh, unjust or unreasonable, in that, *inter alia*, the processes adopted were unfair and the selection process not transparent.".

Application by John Hockings to re-open a matter concerning the Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) (QRTSA) (B/2013/18) - 30 May 2013 **-** Deputy President Bloomfield

***Industrial Relations Act 1999* - s. 280 - procedures for re-opening**

In this matter, Mr Hockings sought to re-open proceedings in matter number RIO/2012/155 in which the Commission issued an Order correcting certain invalidities in the conduct of the affairs of QRTSA and approved the appointment of an Interim Executive Committee.

In the course of his application Mr Hockings asserted that material put before the Commission at the time it issued the invalidities Order, and approved the appointment of an Interim Executive Committee, was false and misleading in that the resolutions said to have been taken by the members of the Interim Executive Committee could not have been taken because "the Organization" did not form any new executive committee.

In the course of its consideration of Mr Hockings' Application the Commission issued an Order directing those persons who were said to comprise the Interim Executive Committee to prepare affidavits outlining their involvement in the affairs of QRTSA, including details of any meetings they had attended.

The affidavits subsequently lodged in response to the Commission's Order disclosed that two of the alleged members of the Interim Executive Committee had never attended any meetings concerning the affairs of QRTSA and that they had not been appointed to the "Interim Executive Committee" as the Commission had earlier been informed. Further, another person indicated that while he had agreed to become a member of the Interim Executive Committee he, also, had never attended any meetings concerning the affairs of QRTSA.

Further investigations initiated by the Commission established that a series of minutes of meetings of the Committee of Management of QRTSA, which had allegedly been held during the previous two years, appeared to be a fabrication in that none of the alleged meetings had ever been held. Rather, Mr Scott Driscoll, former "President" of QRTSA, had reportedly used proxies allegedly granted to him by the three persons (above) to make decisions in relation to the ongoing affairs of QRTSA. An example of one such "decision" was to subcontract a company controlled by Mr Driscoll's wife, at a fee of $100,000, to represent QRTSA in a Trading Hours case before a Full Bench of the Commission.

After noting that the Registered Rules of QRTSA did not provide for the use of proxies and that the meeting allegedly held to form the Interim Executive Committee did not take place, the Commission re-opened the earlier proceedings in RIO/2012/155 of its own motion. In doing so, it reversed the Orders it made in December 2012 which granted an invalidities Order and approved the formation of the Interim Executive Committee.

In addition, the Commission decided to refer the results of its investigation into the affairs of QRTSA to the Queensland Police Service with a recommendation that both Mr and Mrs Driscoll be investigated in relation to potentially fraudulent activities in connection with their "administration" of the activities of QRTSA. The Commission also asked the Commissioner of Police to investigate whether Mrs Driscoll had sworn a false affidavit in the course of responding to the Commission's Order concerning meetings of the Management Committee of QRTSA.

Subsequently, the Commission approved the appointment of a new Interim Executive Committee, which members of QRTSA had tasked with the responsibility of identifying and

retrieving all assets and records of the Organization with a view to re-establishing it as a properly constituted, and managed, industrial organisation of employers.

Odeh Pty Ltd trading as Computer Shoppe v Skills Queensland (AT/2012/4) - 17 December 2012 - Commissioner Fisher

***Vocational Education, Training and Employment Act 2000* - s. 230 - appeal to industrial commission**

Odeh Pty Ltd trading as Computer Shoppe (Computer Shoppe) appealed against the decision of Skills Queensland made under s. 54 of the *Vocational Education, Training and Employment Act 2000* to refuse to register the training contracts of 13 school based employees. The Computer Shoppe was the employer party to all of those contracts. The Computer Shoppe had been engaging school based trainees to undertake a Certificate III in Information, Digital Media and Technology and the trainees were regularly completing the Certificate in 7 months. The nominal duration of a school based traineeship is 4 years and an employer is obligated to provide a minimum of 48 days of paid work in any 12 month period from the date of the commencement of the school based traineeship. As only 28 days work was being performed during the traineeship the Commission found that the training contracts entered into by the Computer Shoppe were non-compliant and further, the employer was not providing a genuine work based experience. The Commission also held that the Computer Shoppe was not complying with the required ratio of staff to students. For these reasons the Commission decided that Skills Queensland had acted in accordance with the Act to refuse to register the 13 training contracts and dismissed the appeal.

Alexander Jason Goodhart and Alexander Jason Goodhart, Director of Hervey Bay Health Care and Chiropractic Pty Ltd v Q-COMP (WC/2012/457) - 9 April 2013 - Commissioner Fisher

***Workers' Compensation and Rehabilitation Act 2003* - s. 550 - appeal to commission**

The Commission was required to determine 2 preliminary matters, *viz*., whether the Appellant had standing to lodge the appeal against the decision of the Review Unit, Q-COMP and whether the time for lodging the appeal should be waived. The Commission found that Hervey Bay Health Care and Chiropractic Pty Ltd (HBHC) was the employer of a worker who had successfully claimed workers' compensation during a period when HBHC had been deregistered from the ASIC register. HBHC had made an application to Q-COMP for review of the decision of WorkCover when it was deregistered but the appeal against that decision had been filed after HBHC was reinstated to the register. The Commission held that HBHC did not have standing to seek a review of the WorkCover decision because it was not a registered company at that time and as a result it most likely had not been notified according to law of the WorkCover decision. Although HBHC had standing to file the appeal, these previous omissions meant that the appeal had not been properly brought. The Commission further held that HBHC may seek to apply for a review of the WorkCover decision but that could only be done once it was lawfully notified of the decision. Considerations of an extension of time might be relevant were HBHC to proceed to seek a review.

Local Government WorkCare v Q-COMP and Robert Burgess (WC/2012/123) - 19 June 2013 - Commissioner Fisher

***Workers' Compensation and Rehabilitation Act 2003* - s. 550 - appeal to commission**

Local Government WorkCare (LGW) appealed the decision of the Review Unit, Q-COMP which set aside the decision of LGW to reject an application by Robert Burgess and substituted a decision that the application for compensation was valid and enforceable. This appeal was the first in the Commission to consider skin cancer as a latent onset injury under s. 36A of the *Workers' Compensation and Rehabilitation Act 2003*, although 2 other appeals had previously been determined by the Magistrates Court.

Mr Burgess had been employed for about 20 years with the Logan City Council and its predecessor as an Overseer. He was 79 at the time of the appeal. He had a history

commencing in 1990 of sustaining various skin cancers and had received treatment for many of these. However, it was not until 2011 that Mr Burgess was formally diagnosed with "solar induced skin disease that is malignant". The stated cause of the injury was "malignant solar induced skin disease due to the excessive exposure to the sun at work". The Commission held that "solar induced skin disease that is malignant" is a latent onset injury under s. 36A of the Act.

The Commission was required to consider the meaning of "diagnosis" in s. 36A(1) of the Act and, contrary to the submissions of Q-COMP and Mr Burgess, did not accept that a diagnosis encompassed both the identification of the disease and a finding of causation attributable to work. This was because a diagnosis of the disease first had to be made under s. 36A(1) before considering causation raised in s. 36A(2). The Commission considered that it was impractical to require a precise diagnosis of "solar induced skin disease that is malignant" to satisfy s. 36A(1). However, some identification is required of the underlying pathology that predisposes the skin to developing solar related skin malignancies, i.e., the disease, in order to enliven s. 36A. Applying this reasoning, the Commission further held that Mr Burgess was first diagnosed with this disease in 2007 when a doctor identified and treated or referred him for specialist treatment for several lesions on various parts of his body including malignant Basal Cell Carcinomas and Squamous Cell Carcinomas.

It should be noted that this decision has been appealed to the Industrial Court.

The Australian Workers' Union of Employees, Queensland v Longreach Regional Council (TD/2011/63) - 19 October 2012 - Commissioner Thompson

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

The Australian Workers' Union of Employees, Queensland (AWU) had filed an application for reinstatement on behalf of a member claiming that the termination of employment was extremely harsh, unjust and unreasonable. It had been alleged that their member was guilty of workplace assault with the provisions of the *Criminal Code Act 1899* being used to define assault, although no physical contact had occurred. The investigation of the incident was said to be procedurally flawed and the subsequent summary termination invalid.

The Longreach Regional Council (LRC) identified the reasons for termination as being the member's conduct toward a Supervisor which was improper and had placed the Supervisor and others witnessing the incident with a sense of apprehension of an assault about to happen to the Supervisor.

The finding of the Commission was that the investigation of the allegations relating to the member's behaviour was not procedurally unfair, nor was the termination of employment harsh, unjust or unreasonable. However whilst accepting the member's behaviour amounted to assault, albeit no actual physical contact occurred, there was some question over whether the termination should have been summary or one that attracts the payment of notice in accordance with s. 84(4)(a)(iii) of the *Industrial Relations Act 1999* (the Act). The Commission deemed it appropriate that the member be paid the notice provisions pursuant to the Act.

Blue Wren Holdings Pty Ltd t/a Civic Shower Screens v Q-COMP (WC/2012/425) - 24 May 2013 - Commissioner Thompson

***Workers' Compensation and Rehabilitation Act 2003* - s. 550 - appeal to commission**

Blue Wren Holdings Pty Ltd t/a Civic Shower Screens (Blue Wren) appealed against a decision of the Q-COMP Review Unit to accept an application for compensation from Zbigniew Rusek (Rusek) on the basis that Rusek was not a person who works under a contract of service pursuant to s. 11(1) of the *Workers' Compensation and Rehabilitation Act 2003* (the Act) nor was entitled to have his application accepted by reliance upon Schedule 2 which allowed for a person who works under a contract, or at piecework rates, or labour only or substantially for labour only.

Q-COMP, in opposing the argument relied upon by Blue Wren, stated that there was no compelling evidence that the notional

allowance made for recompense of the supply of vehicle and running costs was anything other than a motor vehicle allowance or travelling allowance that would ordinarily be paid to a worker and that in all the circumstances Rusek was working for piecework rates or substantially labour only.

The Commission found that Blue Wren had, in the course of the proceedings, established that Rusek, through the provision of a fully maintained vehicle for the purposes of performing work offered by Blue Wren was not working for substantially labour only and therefore in accordance with Schedule 2 - Part 1(2)(a)(ii) of the Act was not a worker. The Commission indicated that the matter of *Dean Robinson v Q-COMP (C/2009/30) - Decision http://www.qirc.qld.gov.au* in which it was found that Robinson, having been paid for the utility used to transport materials to an intended destination, a conclusion he was working for substantially labour only was not open was the case law that supported the finding.

As a consequence of the findings resulting in Rusek not being a worker for the purposes of s. 11 and Schedule 2 of the Act, the Appeal was upheld and his application for compensation was not one for acceptance.

Teys Australia Food Solutions Pty Ltd v Q-COMP (First Respondent) and Tarralyn Polichronis (Second Respondent) (WC/2012/275) - 17 January 2013 - Commissioner Black

***Workers' Compensation and Rehabilitation Act 2003* - *s.* 550 - appeal to commission**

In this matter, the employer brought an appeal against a decision of the Q-COMP Review Unit to accept an application for compensation from an employee who was sexually assaulted on her way from the employee car park to the building where she worked. The appeal hinged on whether the employee sustained an injury at her "place of employment" or while still on her journey from home to work.

The employer's premises covered an extensive area of land and included a number of buildings. The Commission concluded that it was not appropriate to categorise the entire area under the employer's control as the "place of employment", nor was it appropriate to draw an "arbitrary line" somewhere between the car park and the entry to the building the employee worked in for the purpose of demarking the boundary of the place of work.

In the circumstances of this case, the Commission determined that the boundary of the "place of employment" should be defined as the perimeter of the building within which the employee carried out her work duties. This finding meant that at the point where the employee sustained the injury, the employee's journey to work had yet to end. As such, the employee's claim for compensation was one for acceptance as a journey claim.

Queensland Services, Industrial Union of Employees AND Rockhampton Regional Council (B/2012/49) - 3 June 2013 - Commissioner Black

***Industrial Relations Act 1999* - s. 278 - power to recover unpaid wages and superannuation contribution etc.**

This matter dealt with whether a contracted employee who had received pay in lieu of notice on redundancy was further entitled to a severance allowance under the relevant certified agreement. The determination of the Commission required findings of fact based on the evidence adduced and an interpretation of the terms of both the employee's contract, as well as the relevant industrial instruments that had application.

The employee received 6 months' pay in lieu of notice in accordance with his contract when made redundant. It was the Union's position (who made an application on behalf of the affected employee pursuant to section 278 of the *Industrial Relations Act 1999*) that the employee was also entitled to a further 8 weeks' severance payment in accordance with a severance allowance provision in the certified agreement.

The Commission found, after reviewing all the relevant provisions of the certified agreement, that the severance payment was, in fact, a payment made in lieu of the giving of notice in circumstances where the agreement created options for the early departure of redundant

employees. The Commission dismissed the application, finding that where the coverage or subject matter was similar, the terms of the contract prevailed over the terms of the certified agreement and, as a consequence, the employee was not entitled to access both the payments in lieu of notice prescribed under the contract as well as the payment in lieu of notice prescribed under the certified agreement.

Q-COMP AND Winsome Abbott (WC/2013/154) - 28 June 2013 - Commissioner Black

***Workers' Compensation and Rehabilitation Act 2003* - s. 558 - powers of appeal body**

This matter required resolution by the Commission of a jurisdictional issue agitated by Q-COMP on the basis that the application for compensation filed by a worker with WorkCover was not valid or enforceable because the application had not been lodged within the 6 month statutory time limit from the date that the worker's injury was first diagnosed. For the reasons advanced, Q-COMP submitted that the Commission should desist from further hearing and determining the appeal lodged by the worker against a decision of the Q-COMP review unit.

The respondent to the jurisdictional application argued that the Commission's jurisdiction was limited to answering the same question as that which was answered by the Q-COMP Review Unit when it decided to reject the workers' application for compensation. Given that the Q-COMP Review Unit did not consider whether the initial application for compensation was out of time, it was argued that the Commission did not have the power to entertain the application for dismissal. It was also argued that the Commission was not permitted to inquire into the validity of the initial WorkCover decision to consider the application for compensation, notwithstanding that it was lodged out of time. In this regard, it was submitted that there was no evidence establishing that WorkCover did not exercise its discretion under section 131(5) of the *Workers' Compensation and Rehabilitation Act 2003* to extend time for lodgement.

In deciding the matter, the Commission accepted Q-COMP's argument that, in a hearing *de novo*, it was entitled within particular limits to satisfy itself that the appeal before it is not a nullity, including a consideration of whether the application for compensation was validly made in the first instance. However, the Commission also concluded that the Commission did not have the jurisdiction to review WorkCover's decision-making processes and that the evidence before it could not support a finding that WorkCover had not exercised a discretion to extend time. In the circumstances, the Commission was not able to conclude that the workers' application for compensation was invalid or a nullity. The application for dismissal was, therefore, rejected.

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.

The 2012-13 reporting year was a very busy period for the Industrial Registry:

(1) Three (3) new Members and three (3) Associates were appointed in late 2012.

(2) Additional space was leased in the current premises on level 21. Planning and construction of additional accommodation commenced resulting in:

- new Industrial Registry [relocated from level 13 to level 21 on 28 June 2013]
- 3 new chambers
- 3 new hearing rooms and 1 conference room

(3) On 28 June 2013 renovations commenced immediately on level 13 to include:

- 2 new chambers
- 1 new hearing room
- 2 conference rooms

[Note: QIRC now has 7 hearing rooms and 4 conference rooms whereas previously there were only 3 hearing rooms and 2 conference rooms]

(4) As from 1 July 2012, QIRC members were appointed as appeals officers under the *Public Service Act 2008* for the purpose of hearing and deciding appeals against certain decisions which affect public service employees. As from 1 January 2013, all appeals previously filed in the Public Service Commission Registry are filed in the Industrial Registry.

(5) On 10 May 2013 a Full Bench was established to undertake the review of awards required by s. 130 of the *Industrial Relations Act 1999.*

(6) Protected action ballot orders (PABO) were introduced by legislation providing for new procedures and criteria in relation to applications for a PABO to be made to the QIRC.

(7) The Queensland Government outsourced its court recording and transcript production to Auscript Australasia Pty Ltd [previously undertaken by State Reporting Bureau]. The QIRC was one of the first courts to be implemented on 1 May 2013.

(8) On 3 May 2013, the Queensland Government passed legislation transferring Queensland Rail's employees and enterprise agreements to the Queensland Rail Transit Authority (QRTA). The legislation provides protections for employee entitlements and clarifies the application of certain provisions of the *Industrial Relations Act 1999* on the QRTA and its employees.

(9) Videoconferencing services were introduced into the QIRC. Through these facilities the QIRC is able to provide a direct video link between all capital cities as well as to many regional locations through the Justice court network and private and government providers throughout Queensland, Australia and internationally.

(10) The administrative functions of the Commission and Registry were transferred to the Vice President of the QIRC resulting in changed business processes being introduced.

The operations of the Registry are again being reviewed to ascertain how the Registry can best manage its workload and to ensure the high level of support to the Court and Commission is maintained.

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

Registry Services Units

Tribunal Services

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

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

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

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

During 2012-13, a total of 2,416 applications and notifications were filed in the Registry (see Tables 1 & 4).

In addition to registering these applications, the tribunal staff processed and tracked thousands of related documents, such as directions orders, statements, submissions and general correspondence. Further, at the request of Members, staff set down over 4,296 listings [e.g. conferences and hearings].

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

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

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

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

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

Hearings before the Court or Commission are recorded by Auscript Australasia Pty Ltd who provide recording and transcription services to the QIRC. A transcript may be issued by the Industrial Registry in electronic form, free of charge, to a party to the proceeding, or that party's representative. The Registry keeps a copy of the transcript on the relevant case file. By arrangement with the Registry, the transcript of a particular case may be read by practitioners or an interested party except where the Commission has ordered that the transcript is available only to the immediate parties.

Information Services

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

The ISU manages 4,782 Industrial Instruments (see table 6).

During the reporting period the QIRC's web site (www.qirc.qld.gov.au) again proved invaluable. It provides thousands of files of relevant information for the general public with over 172,000 visits recorded annually.

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

Important public matters such as the 2012 State Wage Case see the posting of all relevant documentation to the website as soon as it is lodged with the Registry, including original applications, directions of the Court, Commission and Registry, submissions and responses of all parties, transcripts of proceedings and decisions. This allows timely and cost effective information to be disseminated to all parties without the need of many parties appearing in the QIRC or serving documents on each other.

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

- all decisions officially published on the website since October 2009;
- historical decisions in the IRIS database from 1990 up to October 2009;

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

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

Registered Industrial Organisations

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

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

De-registration
Part 16 of Chapter 12 of the *Industrial Relations Act 1999* provides for an organisation to be de-registered, on certain grounds, by a Full Bench of the Commission. The grounds for de-registration are set out in s. 638; and s. 639 states who may apply. The Registrar can apply to have an organisation de-registered on one of the grounds in s. 638, or on the ground that the organisation is defunct.

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

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

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

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

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

Election Inquiries
If a member of an organisation believes there has been an irregularity in the conduct of its election, the member can apply to the Industrial Registrar under Chapter 12 Part 8 to conduct an election inquiry.

If the Registrar is satisfied there are reasonable grounds and the circumstances justify an inquiry, the application may be referred to the Commission.

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

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

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

The monitoring of compliance by Registered Industrial Organisations in relation to provisions of Chapter 12 continued into 2012/13. Many Industrial Organisations have been assisted in their duty to comply with legislative provisions, and their access to Registry information and services has been improved. Many of the applications filed under Chapter 12 provisions are a direct result of the Registry's proactive involvement in this area.

Corporate Services

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

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

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

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

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

Industrial Registry contact details

The Queensland Industrial Registry location:
Level 21,
Central Plaza 2,
66 Eagle Street, (Corner Elizabeth and Creek Streets), Brisbane, Queensland, 4000.

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

General enquiries: 1300 592 987 (for Queensland callers only)
(07) 3227 8060 (for mobile callers & other callers from outside Queensland)

Facsimile: (07) 3221 6074

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

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

INDUSTRIAL ORGANISATIONS

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

Registration of Organisations

Registration

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

Amalgamations

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

De-registration

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

Registry records

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

Rules

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

426). These are open for inspection on payment of the fee indicated in the Schedule of the Tribunal Rules.

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

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

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

Elections

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

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

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

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

Election Inquiries

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

application may be referred to the Commission. Under s. 499, the Commission may, on an application referred to it by the Registrar, conduct an election inquiry about a claimed irregularity in an election for an organisation or branch. Such applications can only be made by members of the organisation who are financial or were financial within 1 year preceding the application.

Financial Accountability

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

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

[Note: Part 2 of the *Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Act 2013* (the Amendment Act) amended the *Industrial Relations Act 1999* (Qld) as from 1 July 2013, which is outside the reporting year. The Explanatory Notes states that the objectives of the Amendment Act include to increase the transparency and accountability of industrial organisations by strengthening penalties, introducing new financial disclosure and reporting requirements and enhancing the complaints handling process].

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 8 lists industrial organisation matters filed in the Registry.

Membership of Industrial Organisations

Eligibility for and admission to membership of industrial organisations are governed by Part 10 of Chapter 12. At 30 June 2013, there were 32 employee organisations registered in Queensland, with a total membership of 375,656 compared to 35 employee organisations with a total membership 402,860 at 30 June 2012. The employee organisations are listed according to membership numbers in Table 9. Equivalent figures for employer organisations are: 31 organisations registered at 30 June 2013, with a total membership of 27,844 compared to 35 organisations with a total membership of 29,937 at 30 June 2012. Table 10 lists the employer organisations according to membership.

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

AMENDMENTS TO LEGISLATION

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

Penalties and Sentences and Other Legislation Amendment Act 2012

The *Penalties and Sentences and Other Legislation Amendment Act 2012* was introduced into Parliament by Mr Bleijie MP, Attorney-General and Minister for Justice on 11 July 2012. The Act was passed on 1 August and assented to on 14 August 2012.

Whilst one of the main purposes of the Act was to amend the *Penalties and Sentences Act 1992* to increase the penalty unit value from $100 to $110, it also amended numerous legislative instruments which come under the jurisdiction of the QIRC including the *Industrial Relations Act 1999*, the *Industrial Relations Regulation 2011* and the *Industrial Relations Tribunals Rules 2011*.

Prior to this legislation being passed, the *Industrial Relations Act 1999* did not directly permit deductions from wages, except in the case of overpayments due to absence from work. The amendment enabled a health employer to make deductions from amounts payable to health employees in relation to their employment to recover any future overpayment (i.e. an amount paid to a health employee to which they were not entitled).

The *Industrial Relations Regulation 2011* was amended to provide that the amount, below which a health employee's payments must not be reduced by a deduction to recover overpayments, is ¾ of the total amount payable on a single occasion.

The *Industrial Relations Tribunals Rules 2011* were amended with minor or technical amendments to correct and update references to the Rules in various other legislation.

Parts 6 and 7 and the Schedule to the Act amending the *Industrial Relations Act 1999*, the *Industrial Relations Regulation 2011* and the *Industrial Relations Tribunals Rules 2011* commenced on 14 August 2012.

Public Service and Other Legislation Amendment Act 2012

The *Public Service and Other Legislation Amendment Bill 2012* was introduced into Parliament by the Honourable Campbell Newman (Premier) on 31 July 2012. The Act was passed on 23 August 2012 and assented to on 29 August 2012.

One of the Act's objectives included the improvement of the operation of existing key public service legislation and to facilitate the Government's reform agenda through greater alignment and efficiencies in discharging its public sector integrity functions.

Another objective was to make changes to the administration of the Queensland Industrial Relations Commission (QIRC) to support the orderly and expeditious exercise of the QIRC's jurisdiction. In this regard, the Act amended the *Industrial Relations Act 1999* to transfer responsibility for the administration of the QIRC from the President to the Vice President and to allow parties greater access to legal representation in proceedings before the QIRC.

Minor amendments were made to the *Industrial Relations (Tribunals) Rules 2011* reflecting the above amendment.

The Act amended the *Public Service Act 2008* to complete the second and final stage of the transfer of the Public Service Commission Chief Executive's public service appeals function to the QIRC. The first stage, introduced through the *Industrial Relations (Fair Work Act Harmonisation) and Other*

Legislation Amendment Act 2012, in place since 1 July 2012, provided for QIRC members to be appointed as Appeals Officers under the *Public Service Act 2008* for the purpose of hearing and deciding appeals against certain decisions which affect public service employees.

The *Public Service Act 2008* was also amended (repealing section 88E - staff members to help appeals officer), ensuring Public Service Commission staff members would no longer be required to help Appeals Officers perform their functions under the *Public Service Act 2008*, but instead would be performed by QIRC Registry staff.

The commencement date for Part 5 and the Schedule, which updated the *Industrial Relations Act 1999* and the *Industrial Relations (Tribunals) Rules 2011* was 29 August 2012.

Holidays and Other Legislation Amendment Act 2012

The *Holidays and Other Legislation Amendment Bill 2012* was introduced into Parliament by Mr Jarrod Bleijie MP, Attorney-General and Minister for Justice on 21 August 2012. The Act was passed on 30 October 2012 and assented to on 8 November 2012.

The Act amended the *Holidays Act 1983* and made consequential amendments to the *Industrial Relations Act 1999*.

The objective of the Act was to relocate the Labour Day public holiday from May to the first Monday in October and return the Queen's Birthday to its original date on the second Monday in June to take effect from 2013.

The Act also included amendments to ensure that the list of public holidays provided for in the *Industrial Relations Act 1999* and industrial instruments (awards and agreements) made under that act, which continue to apply to Queensland public sector and local government employees, will reflect the new dates of observance of the Queen's Birthday and Labour Day public holidays.

The Act commenced on 8 November 2012.

Queensland Rail Transit Authority Act 2012

The *Queensland Rail Transit Authority Act 2012* (the Act) was introduced into Parliament by Mr Emerson MP, Minister for Transport and Main Roads on 16 April 2013. The Act was passed on 30 April 2013 and assented to on 3 May 2013.

The Act established a new unincorporated statutory authority called the "Queensland Rail Transit Authority" (QRTA) transferring Queensland Rail's employees to the QRTA, providing protections for employee entitlements and clarifying the application of certain provisions of the *Industrial Relations Act 1999* (IR Act) on the QRTA and its employees.

The Act states that the QRTA is an employer for the IR Act; employees of QRTA are employees for the IR Act; and that the QRTA is taken to be a government entity under the IR Act.

The Act clarifies that employees of Queensland Rail Limited become employees of QRTA and cease to be employees of Queensland Rail Limited, preserving certain rights of employees who are transferred from Queensland Rail to QRTA, including remuneration, superannuation, leave, continuity of service etc.

The Act provides that the *Queensland Rail Award - State 2003* made under the IR Act be repealed and that the *Rail Industry Award 2010* (Modern Award) made under the FW Act be taken to be an award made under the IR Act and any reference in a dispute resolution clause to the Fair Work Commission is taken to be a reference to the QIRC.

It states how certain enterprise agreements made under the *Fair Work Act 2009* (FW Act) become certified agreements made under the IR Act and that certified agreements made under the IR Act which applied to Queensland Rail before 3 May 2013, which may not have been terminated or replaced under the IR Act, ceased to operate from 3 May 2013.

On 3 June 2013, "Queensland Rail Transit Authority" changed its name to "Queensland Rail" for practical reasons without affecting its legal identity. In order to allow sufficient time for the transfer of shares to the new Authority, a 30 day period from the commencement date of the Act lapsed before changing the name. Any reference in an Act or document to Queensland Rail Transit Authority will be taken as a reference to Queensland Rail.

The Act commenced on 3 May 2013.

Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Act 2013

The *Industrial Relations (Transparency & Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013* was introduced into Parliament by Mr Jarrod Bleijie MP, Attorney-General and Minister for Justice on 30 April 2013. The Amendment Act was passed on 5 June 2013 and assented to on 20 June 2013. Commencement dates of Parts of the Act (amending various industrial instruments under the jurisdiction of the QIRC) varied - some according to the date of assent and others by proclamation of the Governor.

The Explanatory notes state that the objectives of the Amendment Act included:

- improving the financial accountability and transparency of industrial organisations and their office holders and provide a proper deterrent for officers abusing their position;
- supporting the employee's choice whether or not to join an industrial organisation;
- re-establishing managerial prerogative regarding departmental policies;
- clarifying the definition of a contracting provision in section 691C of the *Industrial Relations Act 1999* to remove ambiguity
- improving procedural arrangements for union right of entry into an employer's premises;
- further facilitating the efficient recovery of public monies overpaid to employees of the Department of Health and of Hospital and Health Services (health employers);
- designating a senior appeals officer with the responsibility for developing practice directions for the management of appeals dealt with under the *Public Service Act 2008*; and
- clarifying the definition of a worker under the *Workers' Compensation and Rehabilitation Act 2003*.

Further, the Explanatory notes of the amendments moved during consideration in detail state the objectives were:

- give effect to the Government's response to the recommendations of the Legal Affairs and Community Safety Committee following its examination of the Bill and to other issues raised by stakeholders. These amendments relate to the disclosure of personal interests, remuneration and procurement expenditure; and the requirements for political expenditure ballots;
- in addition to the requirements for financial management policies for the issuance and use of credit cards by organisations, the proposed amendments will require employee organisations (unions) to:

  make publicly available online the credit card statements of all organisation-issued cards for each reporting period the statements are issued;

  introduce a requirement that any personal credit card usage for an official purpose of the organisation, by an officer or an employee of the organisation, be made publicly available;

introduce a requirement that the statements for any cab charge cards or vouchers or similar credit or charge payment facilities expended by the organisation be made publicly available online, and

the requirement to publish online will apply to statements issued for the period commencing 1 July 2012;

- clarifies that political party affiliation fees are to be publicly disclosed as part of the annual financial disclosure statement.
- clarifies the definition of an "organisational change" provision at s. 691C to make clear that it includes any requirements for consultation and joint decision making which occurs prior to the organisational change;
- address workload pressures in the Queensland Industrial Relations Commission (QIRC) and the Queensland Industrial Court by allowing for the appointment of the Vice President and Deputy Presidents to the Industrial Court of Queensland (subject to a Deputy President holding an appropriate legal qualification and having 5 years standing) and to appoint the President as a Commissioner. Through these amendments, the workload of the Queensland Industrial Court and the Queensland Industrial Relations Commission can be spread across presidential members, thereby improving the efficiency of both tribunals; and
- create a rule-making committee to clarify and enhance the responsibility for, and the consideration of, the rules of Queensland's industrial relations tribunals.

Part 2 of the Amendment Act (amending the *Industrial Relations Act 1999*), Part 3 (amending the *Public Service Act 2008*) and Part 4 (amending the *Workers' Compensation and Rehabilitation Act 2003)* will commence on 1 July 2013.

Amendments to Tribunal Rules and Regulations (subordinate legislation)

Industrial Relations (Tribunals) Amendment Rule (No.1) 2012

This Amendment Rule amended the *Industrial Relations (Tribunals) Rules 2011*. It affected an increase to the fees charged by the Registry for filing, searching and photocopying documents. The fees are set out in Schedule 1 of the Rules. The *Financial Management Practice Manual* provided for annual increases in regulatory fees, in line with rises in the Consumer Price Index assessed on the basis of the Brisbane (All Groups) CPI movement for the December quarter. The increase took effect from 1 July 2012. A similar increase for 2012/13 based on the Government indexation rate for fees and charges in accordance with the Queensland Treasury Guidelines was published in the Government *Gazette* on 31 May 2013 to take effect for the year commencing 1 July 2013.

Industrial Relations (Tribunals) Amendment Rule (No.2) 2012

Under the *Industrial Relations Act 1999*, the rules of court for the Industrial Court of Queensland are made by the Governor in Council, with the consent of the President of that Court.

The objective of the amendment Rule was to amend the *Industrial Relations (Tribunals) Rules 2011* to allow for the operation of trans-Tasman proceedings arrangements under the *Trans-Tasman Proceedings Act 2010* (Cth) and the *Trans-Tasman Proceedings (Transitional and Consequential Provisions) Act 2010* (Cth).

The Industrial Court of Queensland is prescribed under the *Trans-Tasman Proceedings Regulation 2012* (Cth) as a court which may issue subpoenas to be served on a person in New Zealand with leave of the court; and as a court which may allow the giving of evidence, the examination of a person giving evidence or the making of submissions relating to the giving of evidence from New Zealand by remote appearance.

The amendment Rule, made on 20 June 2013, amended the *Industrial Relations (Tribunals) Rules 2011* to accommodate these matters and the registration and enforcement of New Zealand judgments.

Industrial Relations (Transitional) Regulation (No.1) 2012

The *Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Act 2012* (FW Harmonisation Act), which was reported in the 2011-2012 Annual Report of the President of the Industrial Court of Queensland, amended the *Industrial Relations Act 1999* (IR Act) to modernise the law to reflect certain key aspects of the Commonwealth industrial relations regime, and required the QIRC to give consideration to the prevailing economic conditions when determining wages and employment conditions. It also amended the *Public Service Act 2008* to allow members of the QIRC to hear public service appeals.

The IR Act, as amended, established a transitional regulation making power in connection with prescribed matters under the FW Harmonisation Act. It was introduced to manage the risk of issues arising after commencement. A prescribed matter for this purpose includes the making of agreements and the certifications of such agreements under the IR Act.

This regulation will ensure for interpretation purposes, that where a step taken and complied with by the employer or the relevant employee organisation to meet a requirement under the IR Act, the employer will be taken as to have complied with that requirement - as it applies to an agreement made between an employer and employee directly.

This provision also allows either the employer or relevant employee organisation to give notice of its intention to begin negotiations for a proposed agreement.

Also this provision only becomes relevant where the parties have actually commenced negotiations, that is, through their actions the parties have participated in a bargaining process.

The regulation was made by the Governor in Council on 19 July 2012, but for clarity and consistency with the IR Act, it will be taken to have commenced on 12 June 2012 and will expire automatically on 12 June 2014.

Industrial Relations Amendment Regulation (No.1) 2012

Section 692(3) of the *Industrial Relations Act 1999* provides that a regulation may declare an employer not to be a national system employer for the purpose of the *Fair Work Act 2009* (FW Act).

This Regulation made on 7 December 2012, supports the government's policy to restore councils' corporate status without affecting councils' current industrial relations arrangements as employers in the state industrial system.

If local government councils are not also excluded from the national workplace relations system pursuant to the mechanism in the FW Act, restoring their corporate status will again create uncertainty about which industrial relations jurisdiction they are regulated by. Section 14(2) of the FW Act prescribes a mechanism to exclude particular employers from the meaning of "national system employer" and consequently from the reach of the national workplace system as it applies to national system employers and their employees.

The policy objective was achieved by amending the *Industrial Relations Regulation 2011* to declare each local government not to be a national system employer for the purposes of the FW Act and the Minister for that Act endorsing, by legislative instrument, Queensland's declarations and the endorsements being in force.

Industrial Relations Amendment Regulation (No.1) 2013

The objective of the *Industrial Relations Amendment Regulation (No. 1) 2013* made on 28 June 2013 was to prescribe further detail on the nature of particulars of sections of the *Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Act 2013* (the Amendment Act).

The Amendment Act anticipated accompanying Regulation to provide detail and context to provisions in the Act relating to the transparency and accountability of industrial organisations.

TABLES

Table 1: Matters filed in the Court 2011/12 and 2012/2013

Type of Matter	2011/12	2012/13
Appeals to the Court	**32**	**39**
— Magistrate's decisions	14	11
— Commission's decisions	17	25
— Director, WH&S decisions	1	0
— Chief Inspector CMH&S directives and review decisions	0	2
— Electrical Safety Office decisions	0	1
Extension of Time	1	2
Prerogative order	0	2
Stay order	3	3
Validity and compliance with Industrial Org rules	2	1
Application for orders - other	3	0
TOTAL	**41**	**47**

Table 2: Number of matters filed in the Court 1995/96 - 2012/13

1995/96	89	2001/02	102	2007/08	53
1996/97	81	2002/03	100	2008/09	47
1997/98	90	2003/04	104	2009/10	71
1998/99	95	2004/05	92	2010/11	63
1999/00	61	2005/06	100	2011/12	41
2000/01	74	2006/07	72	2012/13	**47**

Table 3: Appeals filed in the Court 2011/12 and 2012/2013

Appeals Filed	2011/12	2012/13
Appeals from decisions of Industrial Commission		
IRA s 341(1)	6	13
Work Comp Act s 561	11	12
Appeals from decisions of Industrial Magistrate		
IRA s 341(2)	6	6
WH&S Act s 164	1	3
ES Act s 172	0	1
Work Comp Act s 561	5	1
Appeals from Directives and Review Decisions of Chief Inspector		
CM Act s 243	0	2
Appeals from review decisions WH&S	1	0
Appeals from decisions of Electrical Safety Office	0	1
TOTAL	**32**	**39**

Table 4: Matters filed (other than in the Court) 2011/12 and 2012/2013

Section	Type of Application/Matter	2011/12	2012/13
s 52	Long Service Leave – other seasonal employees	1	1
s 53	Long Service Leave - payment in lieu of	177	205
s 74	Application for Reinstatement (Unfair dismissal)	85	115
s 117	Prohibited conduct - breach	5	1
s 125	Awards:		
	- New award	2	1
	- Repeal and new award	2	0
	- Amend award	21	9
s 130	Review of Award	4	10
s 148	Assistance to negotiate a CA	20	24
s 149	Arbitration of CA	0	5
s 156	Certified Agreements:		
	- Approval of new CA	9	5
	- Replacing existing CA	41	42
s 163	Determination of a CA	5	0
s. 167	Successor employers bound	0	1
s 168	Extending a CA	1	0
s 169	Amending a CA	2	0
s 172, s 177	Terminate a CA	1	0
s 175, s177	Notice of industrial action	305	2
s 229	Notification of dispute	258	296
s 230	Arbitration of industrial dispute	0	1
s 231	Mediation by Commission	1	1
s 273A	Dispute resolution functions	1	0
s 274G	General powers	6	10
s 274A	Power to make declarations	1	2
s 274DA	Dismissal of Application	6	3
s 276	Power to amend or void contracts	4	2
s 277	Power to grant injunctions	1	5
s 278	Claim for unpaid wages/superannuation	19	31
s 280	Re-open a proceeding	1	4
s 284	Interpretation	0	1
s 287, 288	General ruling/statement of policy	2	2
s 317	Commission of it's own initiative	1	2
s 320	Application to be heard or to intervene	39	42
s 325	Application to be joined	3	0
s 326	Interlocutory orders	1	1
s 331	Application to dismiss application	0	8
s 335, r117	Costs	0	5
s 338	Review of Tribunals Rules	1	0

Section	Type of Application/Matter	2011/12	2012/13
s 339AA	Government briefing about State's financial position	0	1
s 364	Authorisation of industrial officers	254	168
s 409-657	Industrial Organisation matters (Table 8)	105	121
r 41	Application for directions order	1	3
r 61	Setting aside of attendance notice	0	6
r 220	Request for statistical information (Table 8)	79	70
r 230	Lapse of proceeding after at least 1 year's delay	0	3
IR Act, SCH 4, PT 2	Protected action ballot orders	0	494
IR Act	Private conference	2	0
IR Act	Request for recovery conference	21	25
Mags Courts Act s 42B	Employment claim	28	12
PID Act s 48	Application for an injunction about a reprisal	0	3
PS Act s 194(1A)	Appeal against a decision under a directive	0	19
PS Act s 194(1B)	Appeal against a disciplinary decision	0	22
PS Act s 194 (1C)	Appeal against a promotion decision	0	10
PS Act s 194 (1D)	Appeal against a transfer decision	0	3
PS Act s 194 (1E)	Appeal against decision under another Act	0	2
T(AH) Act	Trading hours order	11	22
VETE Act s 62	Reinstatement of training contract	4	0
VETE Act s230	Apprentice/trainee appeals	5	2
WC Act s 549	Application to be a party to appeal	7	8
WC Act s 550	Appeal against Q-Comp	492	409
WC Act s 556	Order for medical examination	2	2
WH&S Act s 65	Disqualification of health and safety representative	0	1
WH&S Act s 131	WHS entry permit	161	125
WH&S Act s 138	Application to revoke WHS entry permit	0	1
TOTAL APPLICATIONS/MATTERS		**2,198**	**2,369**

Table 5: Agreements filed 2011/12 and 2012/2013

Agreements	2011/12	2012/13
Certified agreements	50	19
Application to amend a CA	2	0
Application to terminate a CA	1	0
Application to extend a CA	1	0

Table 6: Industrial Instruments in force 30 June 2013

Type of Instrument	2012/13
Awards	256
Industrial agreements	6
Certified agreements	4,519
Superannuation industrial agreements	1
TOTAL	**4,782**

Table 7: Types of documents published under sections of the IR Act and other Acts 2012/13

Section	Type of Application/Matter published	2012/13
s 74	Application for Reinstatement (Unfair dismissal)	5
s 125	Award Amendment	10
s 125	Repeal and New Award	10
s 130	Review of Award	1
s 149	Arbitration of CA	5
s 156	Approval of new Certified Agreement	1
s 163	Determination of a CA	1
s 176	Protected Action Ballot Order	721
s 229	Notification of dispute	2
s 230	Arbitration	7
s 248	Application for declarations	2
s 274A	Power to make declarations	1
s 274DA	Dismissal of Application	2
s 276	Power to amend or void contracts	1
s 278	Claim for unpaid wages/superannuation	3
s 280	Re-open a proceeding	2
s 287, 288	General ruling/statement of policy	3
s 320	Application to be heard or to intervene	2
s 331	Decisions generally	5
s 335, r117	Costs	6
s 341	Appeal against decision of Magistrate and Commission	8
s 346	Extension of Time	1
s 347	Stay order	2
s 349	Application for declarations about rules	1
s 474	Eligibility rule	2
s 500	Election inquiry	1
s 613	Orders about Invalidity	2
s 618, 619	Commission to approve amalgamation	3
s 638, s 639	Order - deregistration	9
s 698	Reprint of Award	85
r 230	Application for order to proceed after delay	1
WH&S Act s 164	Appeal against Magistrate decision	3
WC Act s 550	Appeal against Q-Comp	78
WC Act s 556	Order for medical examination	2
WC Act s 558	Powers of Appeal Body	3
WC Act s 561	Appeals against decision of Magistrate and Commission	10
T(AH) Act s 21, 22	Trading hours order	37
VETE Act s 230, s 231	Apprentice/trainee appeals	1

Table 8: Industrial Organisation matters filed 2012/13

Industrial Organisation matters		2012/2013
s 467	Registrar amendment of rules	5
s 474	Part Amendment - eligibility rule	1
s 478	Amendment to rules - other than eligibility	17
s 481	Request for conduct of election	68
s 500	Election inquiry	1
s 580	Exemption from conduct of election	16
s 590	Exemption acc & audit employer organisations - corporations	1
s 613	Orders about Invalidity	4
s 618	Amalgamation	1
s 638	Order - deregistration	2
s 639	Order - deregistration (Registrar's application)	3
r 54	Community of interest declaration	1
r 65	Ballot exemption federal ballot	1
TOTAL		**121**

Table 9: Industrial Organisations of Employees Membership

Industrial Organisation	Members As at 30/06/12	Members As at 30/06/13
Queensland Nurses' Union of Employees	49,751	51,255
The Australian Workers' Union of Employees, Queensland	62,935	46,615
Queensland Teachers Union of Employees	43,336	43,148
Together Queensland, Industrial Union of Employees	40,312	36,041
Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees	35,143	34,691
United Voice, Industrial Union of Employees, Queensland	28,194	30,755
Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland	17,201	17,491
Queensland Independent Education Union of Employees	15,927	16,030
Queensland Services, Industrial Union of Employees	14,705	14,197
The Electrical Trades Union of Employees Queensland	12,851	12,888
The Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland Queensland Colliery Employees Union of Employees Federated Engine Drivers' and Firemen's Association Queensland, Union of Employees *The above two unions were amalgamated with the CFMEU. The total number of members is shown for each organisation prior to the amalgamation, as was reported for the period 2011/12. The total for 2012/13, is the total number of members for the currently constituted organisation (post-amalgamation), under the name of the CFMEU.	8,458 9,047 2,709	12,384
Transport Workers' Union of Australia, Union of Employees (Queensland Branch)	10,852	11,612
Queensland Police Union of Employees	10,674	11,194
Australian Rail, Tram and Bus Industry Union of Employees, Queensland Branch	8,296	7,851
Australasian Meat Industry Union of Employees (Queensland Branch)	7,165	6,490
Finance Sector Union of Australia, Queensland Branch, Industrial Union of	5,691	5,230

Industrial Organisation	Members As at 30/06/12	Members As at 30/06/13
Employees		
Australian Building Construction Employees and Builders' Labourers' Federation (Queensland Branch) Union of Employees	2,544	3,530
The Plumbers and Gasfitters Employees Union of Australia, Queensland Branch, Union of Employees	3,051	2,938
United Firefighters' Union of Australia, Union of Employees, Queensland	2,567	2,563
Australian Salaried Medical Officers' Federation Queensland, Industrial Organisation of Employees	1,704	1,928
The Association of Professional Engineers, Scientists and Managers, Australia, Queensland Branch, Union of Employees	2,498	1,844
Australian Federated Union of Locomotive Employees, Queensland Union of Employees	1,637	1,389
The Seamen's Union of Australasia, Queensland Branch, Union of Employees	1,074	1,194
Australian Institute of Marine and Power Engineers' Union of Employees, Queensland District	642	671
The Bacon Factories' Union of Employees, Queensland	742	629
Australian Maritime Officers Union Queensland Union of Employees	704	579
The Queensland Police Commissioned Officers Union of Employees	410	296
Queensland Fire and Rescue – Senior Officers Union of Employees	128	129
Musicians' Union of Australia (Brisbane Branch) Union of Employees	102	94
Property Sales Association of Queensland, Union of Employees	267	Deregistered
Australian Journalists' Association (Queensland District) "Union of Employees"	990	Not provided
Actors, Entertainers and Announcers Equity Association, Queensland, Union of Employees	553	Not provided
Textile, Clothing and Footwear Union of Australia, Queensland, Union of Employees	Not Provided	Not provided
Total Membership	**402,860**	**375,656**
Number Employee Organisations	**35**	**32**

Table 10: Industrial Organisations of Employers Membership

Industrial Organisation	Members As at 30/06/12	Members As at 30/06/13
Queensland Master Builders Association, Industrial Organisation of Employers	8,124	8,470
Agforce Queensland Industrial Union of Employers	5,307	4,955
Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers	2,567	2,869
Electrical and Communications Association Queensland, Industrial Organisation of Employers	1,976	1,797
Motor Trades Association of Queensland Industrial Organisation of Employers	1,670	1,636
Master Plumbers' Association of Queensland (Union of Employers)	1,124	1,050
Australian Dental Association (Queensland Branch) Union of Employers	911	909
National Retail Association Limited, Union of Employers	782	842
Queensland Hotels Association, Union of Employers	809	810
Australian Community Services Employers Association Queensland Union of Employers	712	792
The Registered and Licensed Clubs Association of Queensland, Union of Employers	553	525
Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers)	835	500
Queensland Fruit and Vegetable Growers, Union of Employers	659	476
Master Painters, Decorators and Signwriters' Association of Queensland, Union of Employers	390	362
Queensland Real Estate Industrial Organisation of Employers	385	357
The Baking Industry Association of Queensland - Union of Employers	290	316
Nursery and Garden Industry Queensland Industrial Union of Employers	301	287
Association of Wall and Ceiling Industries Queensland - Union of Employers	263	234

Industrial Organisation	Members As at 30/06/12	Members As at 30/06/13
Hardware Association of Queensland, Union of Employers	244	205
Building Service Contractors' Association of Australia - Queensland Division, Industrial Organisation of Employers	161	162
UNiTAB Agents' Association Union of Employers Queensland	90	86
Local Government Association of Queensland (Incorporated)	72	73
Furnishing Industry Association of Australia (Queensland) Limited Union of Employers	61	48
Queensland Country Press Association - Union of Employers	27	28
Queensland Cane Growers' Association Union of Employers	21	21
Queensland Major Contractors Association, Industrial Organisation of Employers	19	17
Queensland Master Hairdressers' Industrial Union of Employers	53	17
Australian Sugar Milling Association, Queensland, Union of Employers	7	Not provided
Australian Industry Group, Industrial Organisation of Employers (Queensland)	1,121	Not provided
The Queensland Road Transport Association Industrial Organisation of Employers	305	Not provided
Queensland Motel Employers Association, Industrial Organisation of Employers	Not Provided	Not provided
Consulting Surveyors Queensland Industrial Organisation of Employers	94	Deregistered
Queensland Mechanical Cane Harvesters Association, Union of Employers	Not Provided	Deregistered
Queensland Private Childcare Centres Employers Organisation of Queensland Industrial Organisation of Employers	Not provided	Deregistered
The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers	4	Deregistered
Number of Employer Organisations	**35**	**31**

NOTES:

NOTES:

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