



2020 - 2021 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

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

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

Dear Minister,

I have the honour to furnish to you for presentation to Parliament, as required by section 594 of the *Industrial Relations Act 2016*, the Annual Report on the work of the Industrial Court of Queensland, the Queensland Industrial Relations Commission, the Queensland Industrial Registry and generally on the operation of the *Industrial Relations Act 2016* for the financial year ended 30 June 2021.

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

A handwritten signature in blue ink, consisting of stylized initials and a long horizontal stroke.

The Hon. Justice Davis
President
Industrial Court of Queensland

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President's Report

Justice Davis

I am very pleased to provide the foreword to the 2021 Annual Report, my first as President. As always, the Annual Report provides a summary of the Court and Commission's profile and make up, its operations, case management, community engagement and other aspects of the Court and Commission's work.

In reading the pages that follow, the reader will find this information to be a useful insight into the operations of the Court and Commission and the ways in which we are seeking to continually streamline and improve those operations. However, it is important to remember that the Annual Report presents only a brief snapshot of the Court and Commission's performance; it is by no means a comprehensive analysis of the Court and Commission's achievements or success in the discharge of its functions; nor can it capture the professionalism and commitment of its members or the breadth, depth or complexity of the matters dealt with by them.

This report covers an extraordinary time in the Court and Commission's history. Since the declaration of the coronavirus (COVID-19) pandemic in March 2020, the Court and Commission has had to adopt a rapid transformation in the way that it operates. It is pleasing to note that we have been able to continue to deliver justice for the community, while balancing the health and safety of Court and Commission users, our members, and staff. The easing of restrictions in the later part of 2020 allowed all "trial ready" matters to be listed and allocated to Members for hearing. It is a credit to all involved that these significant administrative and logistical changes have been able to be seamlessly implemented without any diminution in the service offered. In responding to the changed circumstances, we have, as a matter of necessity, brought forward several internal changes to the registry processes to better focus on the needs of our Court and Commission users.

Within the jurisdiction of the Court and Commission, a total of 3,000 matters were filed in the Industrial Registry in 2020–21. This represents an increase of approximately 11.25% from the previous financial year where 2,697 applications were filed. Pleasingly, the clearance rate of the pending caseload was 96%. Of note is the significant increase in the number of Public Service Appeals filed in the QIRC. The number of conversion appeals lodged in the 2020–21 reporting year has increased by 274% compared to the 2019–20 reporting year. This is a direct result of the legislative amendments to the *Public Service Act 2008*, in particular, conversions relating to higher duties. It goes without saying that this significant increase has placed an added burden on members of the Commission.

The Commission continued its long standing commitment to serve regional Queensland by conducting hearings in: Ayr, Bundaberg, Burdekin, Cairns, Caloundra, Gladstone, Goondiwindi, Gympie, Hervey Bay, Mackay, Mt Isa, Maroochydore, Rockhampton, Toowoomba, and Townsville.

Projects completed during the year under review include an extensive review of the *Industrial Relations (Tribunal) Rules 2011*. The review of the rules (including the forms) will ensure that they reflect modern practice; the expanded jurisdiction; and facilitate the changes to the digital case management system (CMS) electronic lodgement of documents. The Court and Commission has continued, in association with the Supreme Court Library, a three-stage process to publish in electronic form the QIRC historical judgments. It is hoped that the final stage will commence during the coming year and involve the extraction and digitisation of the Qld Industrial Gazette back to 1916.

On 12 February 2021 we farewelled Industrial Commissioner Thompson. Industrial Commissioner Thompson was appointed to the Commission on 28 September 2000. Prior to his appointment, Industrial Commissioner Thompson had a long and distinguished career representing the interests of employees variously through the Plumbers and Gasfitters Employees Union (PGEU), as Assistant Secretary of the Trades and Labour Council of Queensland and as General Secretary of the Queensland Council of Unions. On his appointment to the Commission, he brought this wealth of experience to bear in the discharge of his functions; he acted as a mentor to newly appointed members of the Commission; and was always willing to give freely of his time to assist and offer advice to his colleagues, Associates, and registry staff. Courtesy and patience on the bench were his hallmark. He will be much missed, and his former colleagues wish him well in his retirement.

It would be remiss of me not to acknowledge and thank The Honourable Justice Martin for his dedicated service to the Court and Commission. His Presidency brought about a period of stability and, importantly, renewal - his tenure has left a significant mark on the Court and Commission and for that, we are most grateful.

On the occasion of my formal welcome to the Court and Commission on 10 December 2020 I observed that:

The jurisdiction of the Queensland Industrial Commission and the Queensland Industrial Court has changed dramatically since the High Court decided the WorkChoices case in 2006. Jurisdiction in various areas was lost to the Commonwealth, but successive governments have supported the notion of an independent Commission and Court to deal with many aspects of industrial relations. I am very proud to stand with my colleagues on the Queensland Industrial Commission and the Queensland Industrial Court in exercising the very important jurisdiction that has been bestowed upon us.

I look forward with enthusiasm to my term as President to ensure the maintenance of a strong and independent Court and Commission, one which discharges its functions in a timely, efficient, and professional manner and in doing so maintains the trust and confidence of all Queenslanders.

I acknowledge and thank the Minister for Industrial Relations, The Honourable Grace Grace, MP, the Deputy Director-General, Mr Craig Allen, and Mr Tony James, the Executive Director within the Office of Industrial Relations, for their assistance in ensuring the Court and Commission continues to discharge its functions as an independent Tribunal in an effective and efficient way.

Finally, I express my sincere thanks and gratitude for the support and hard work of my colleagues and the staff of the Court and Commission during the year under review. This Annual Report is testament to their dedication to delivering the highest levels of service to the people of Queensland.

Industrial Court of Queensland

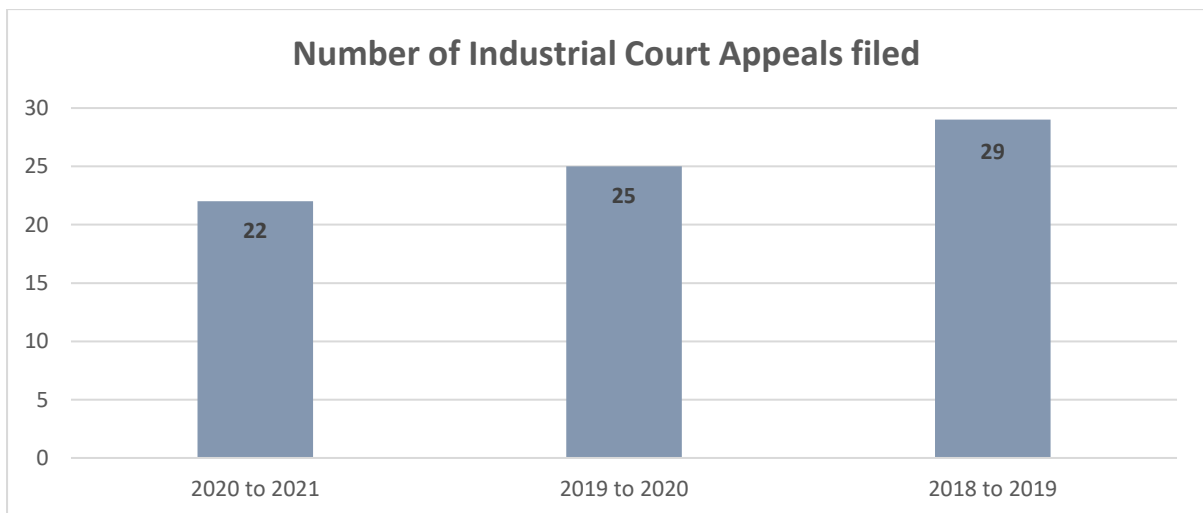
The Industrial Court of Queensland (Court) is a superior court of record in Queensland. It was first established as the Industrial Court by the *Industrial Peace Act of 1912*. The Court is governed largely by Chapter 11, Part 1 of the *Industrial Relations Act 2016* (the IR Act).

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

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

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

The number of appeals filed during the year in review remained consistent in comparison to preceding years.



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

The expanded jurisdiction of the Queensland Industrial Relations Commission (the Commission) in the areas of workplace discrimination and work health and safety, coupled with the consistent increase in the workload of the Commission in its other areas of jurisdiction, may have an effect on the Industrial Court's workload in the foreseeable future. Further to this, since the legislative amendments introduced in September 2020 which moved the line of appeal in Public Service Appeal matters from a judicial review by the Court of Appeal, to an appeal to the Industrial Court, may also have an impact on the number of matters dealt with by the Industrial Court into the future.

Queensland Industrial Relations Commission

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

Structure of the Commission

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



*Front Row: Thompson IC, O'Connor VP, Justice Davis, Merrell DP
Second Row: Power IC, Dwyer IC, Knight IC, Pidgeon IC, Hartigan IC, McLennan IC*

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

Current Members of the Commission

The current Members of the Commission are:

Position	Member Name	Date sworn in
President	The Honourable Justice Peter Davis	13 July 2020 <i>(as President of the Industrial Court)</i>
Vice President	Vice President Daniel L. O'Connor OAM	17 December 2018 <i>(Vice President)</i> 20 September 2014 <i>(Deputy President [Court])</i> 13 November 2012 <i>(Deputy President)</i>
Deputy President	Deputy President John W. Merrell	17 December 2018
Commissioners	Industrial Commissioner John M. Thompson	28 September 2000 <i>(retired 12 February 2021)</i>
	Industrial Commissioner Minna L. Knight	12 December 2012
	Industrial Commissioner Samantha C. Pidgeon	17 December 2018
	Industrial Commissioner John C. Dwyer	9 July 2019
	Industrial Commissioner Catherine M. Hartigan	9 July 2019
	Industrial Commissioner Jacqueline M. Power	9 July 2019
	Industrial Commissioner Roslyn D.H. McLennan	9 July 2019

The Honourable Justice Glenn C. Martin AM served as President of the Industrial Court of Queensland and the Commission from 2 December 2013 until his retirement from the role on 10 July 2020.

Industrial Commissioner John Thompson retired on 12 February 2021 after being a Member of the Commission since 28 September 2000.

Jurisdiction, Powers and Functions of the Commission

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

Further to this, the Commission also has powers and functions under various enactments, such as:

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

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

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

The year has seen a significant increase in the number of Public Service Appeals filed in the Commission. This is mainly due to the introduction of legislative amendments outlined further in this report. Another significant area of the Commission's workload continues to be appeals against review decisions of the Workers' Compensation Regulator under the *Workers' Compensation and Rehabilitation Act 2003*.

Referrals of matters from the Queensland Human Rights Commission have also increased during the year resulting in an increase of these complex matters being dealt with by the Commission, not only in conciliation, but also arbitration. These particular types of matters require an extensive amount of administrative attention in comparison to other matters dealt with by the Commission.

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

Anti-discrimination referrals and applications

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

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

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

The Commission is also responsible for granting an exemption to allow a person or business to do something that is otherwise unlawful under the *Anti-Discrimination Act 1991*, for example advertising for female employees only. Exemptions can also be granted from the operation of a specified provision of the *Anti-Discrimination Act 1991*. An exemption can be granted for a temporary period of up to five years and can be renewed for further periods of up to five years.

There were 78 matters referred to the Commission by the QHRC and five applications for orders protecting complainants' interests.

Awards

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

Throughout the year, there were 23 applications to vary modern awards which was a significant increase from the previous year.

Certified Agreements

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

As a result of the introduction of the Community Services Industry (Portable Long Service Leave) Bill 2020 on 22 June 2020, the IR Act was amended by inserting a new temporary Chapter 15A - Public sector response to COVID-19 emergency - maximising employment security. Various applications to certify new agreements were made on or before 31 August 2020 and certified by the Commission before 14 September 2020.

The State Government Entities Certified Agreement 2015 was varied by the Registrar with an operative date of 1 September 2020.

The following agreements were certified by the Commission, including those certified under Chapter 15A.

Public Service Agreements
<i>Aboriginal and Torres Strait Islander Health Workforce (Queensland Health) Certified Agreement (No. 1) 2019</i>
<i>Child Safety and Youth Justice Certified Agreement 2021</i>
<i>CITEC Certified Agreement 2019</i>
<i>Health Practitioners and Dental Officers (Queensland Health) Certified Agreement (No. 3) 2019</i>
<i>Office of the Queensland Ombudsman Certified Agreement 2019</i>
<i>Parliamentary Service Electorate Staff Certified Agreement 2020</i>
<i>QBuild Field Staff Certified Agreement 2019</i>
<i>QBuild Office Staff Certified Agreement 2019</i>
<i>Queensland Health Building, Engineering and Maintenance Services Certified Agreement (No. 7) 2019</i>
<i>Queensland Police Service Protective Services Officers Certified Agreement 2019</i>
<i>Queensland Public Health Sector Certified Agreement (No. 10) 2019</i>
<i>TAFE Queensland (TAFE Services Employees) Certified Agreement 2019</i>
<i>Transport and Main Roads Enterprise Bargaining Certified Agreement 2019</i>
<i>Transport and Main Roads Operational Employees' Certified Agreement 2019</i>
<i>Youth Detention Centre Certified Agreement 2019</i>

Local Government Agreements*Cloncurry Shire Council Certified Agreement 2019**Douglas Shire Council Certified Agreement 2019**Somerset Regional Council – Officers Certified Agreement 2020**South Burnett Regional Council Certified Agreement – Field Staff 2020**South Burnett Regional Council Certified Agreement – Officers 2020**Sunshine Coast Council Salaried Officers Certified Agreement 2020 (No. 4)**Western Downs Regional Council Operational Staff Certified Agreement - 2020**Whitsunday Regional Council Certified Agreement 2020*

The following agreements were declared obsolete by the Industrial Registrar during the year.

Certified Agreements declared obsolete*Q-Comp - Certified Agreement 2013**Goprint Certified Agreement 2012**Sales and Distribution Service Certified Agreement 2012**Queensland Agricultural Training Colleges Certified Agreement 2016**QBuild Cleaning Certified Agreement 2012**Maritime Safety Queensland Gladstone Pilot Transfer Crew Certified Agreement 2009-2012*

Disputes

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

The Commission has received 158 notifications of dispute, 13 more than last reporting period. Of those, three have proceeded to arbitration. This illustrates the strong conciliatory function undertaken by the Commission in these matters.

General Rulings and Statement of Policy

An important tool for regulation of industrial matters and employment conditions by a Full Bench is the jurisdiction to issue general rulings and statements of policy. In making these determinations, the Commission must perform its functions in a way that is consistent with the objects of the Act.

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

Three applications for a general ruling in regard to wage and allowance adjustments for employees covered by awards, as well as a ruling in relation to the Queensland minimum wage were filed. A decision was made, operative from 1 September 2020 which, in short, determined that wages and salaries for full-time employees in all awards be increased by 1.75 per cent, and that the minimum wage rate per week for full-time employees in Queensland be \$789.00.

Public Service Appeals

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

The types of decisions which may be appealed are :

- a decision to take, or not take, action under a directive;
- a decision under a disciplinary law to discipline;
- a decision of the Commission Chief Executive under s 881A of the *Public Service Act 2008* to give a direction about rectifying a defect in the procedural aspects of the handling of a work performance matter;
- a decision to suspend a public service employee without entitlement to normal remuneration;
- a decision to promote a public service officer;
- a decision to transfer a public service officer;

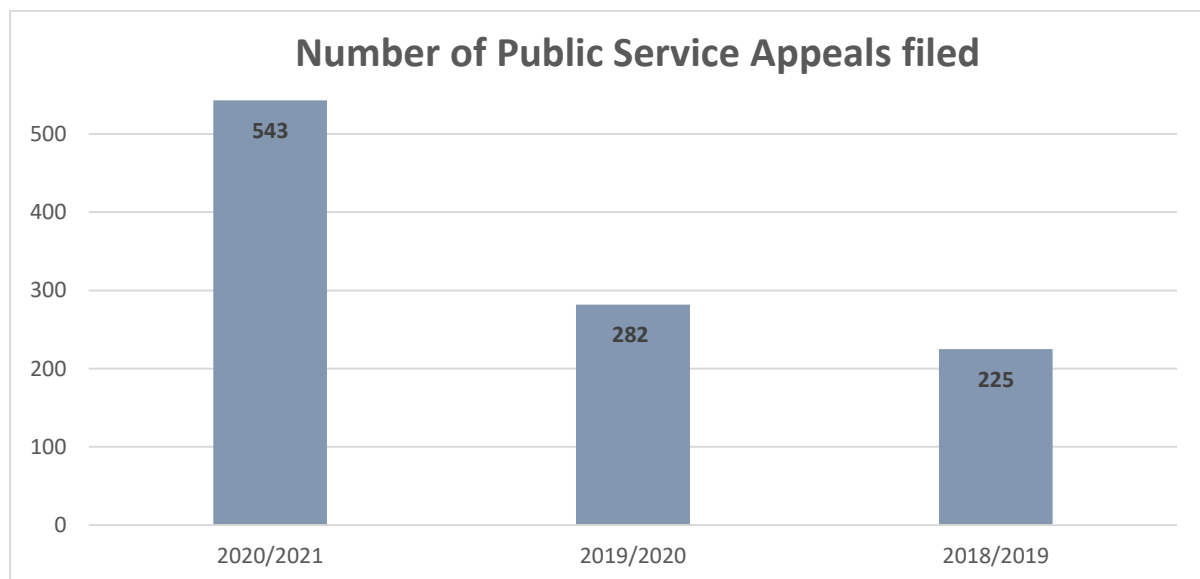
- a decision regarding conversion of a public service officer's employment status (fixed term temporary, casual, higher classification/higher duties);
- a decision a public service employee believes is unfair and unreasonable; or
- a decision made under another Act.

Amendments to the *Public Service Act 2008* were assented to on 14 September 2020 by virtue of the Public Service & Other Legislation Amendment Bill 2020.

One of the amendments which has a direct impact on the Commission is that public service appeals are now to be heard by the Commission under the *Industrial Relations Act 2016*, instead of the *Public Service Act 2008*. This amendment means that appeal decisions are now published and made available to the public via the Supreme Court Library website, in line with all other decisions released by the Commission.

Further to this, the amendments also provide a new appeal provision for reviews of those employees acting in higher classification/higher duties made after a two-year period.

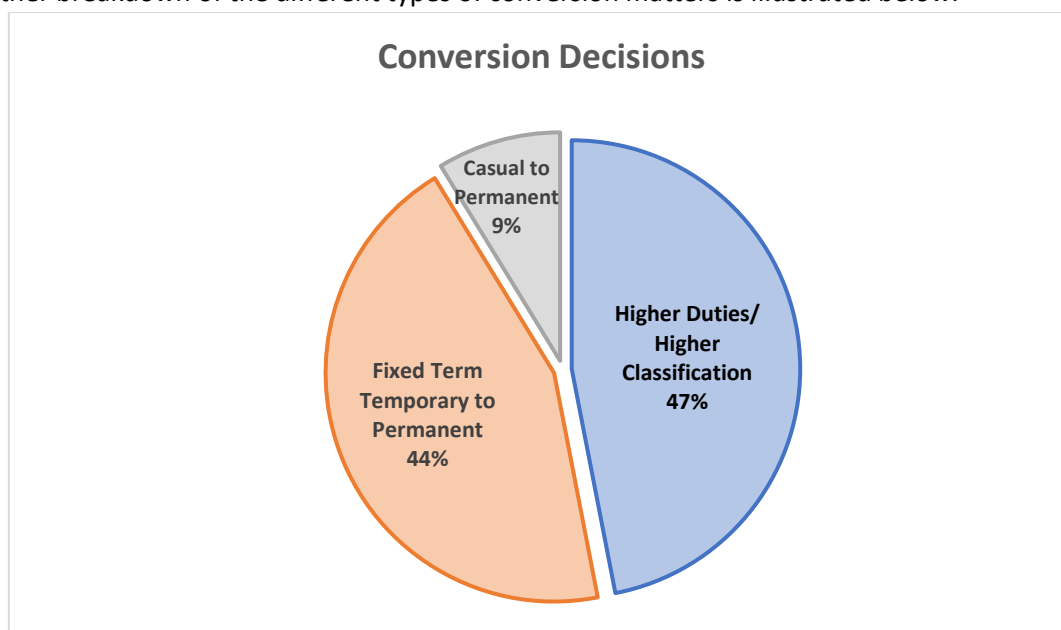
There have been 543 public service appeals filed in accordance with s 194 of the *Public Service Act 2008*, an increase of approximately 50 per cent. This has been an unprecedented increase in the number of filings in comparison to the preceding reporting years, mainly due to those legislative amendments mentioned above.



This increase may be further demonstrated through the types of appeals being filed, particularly conversion appeals. There was an increase of 276 per cent for appeals against a conversion decision (i.e. casual, temporary and higher duties) with 409 filed in the 2020/2021 reporting year compared to 148 filed in the 2019/2020 reporting period. The following types of appeal matters were filed:

Type of Appeal		Number filed
s 194(1)(a)	Under a Directive	11
s 194(1)(b)	Discipline Decision	47
s 194(1)(ba)	Appeal against a decision under s 88IA	0
s 194(bb)	Suspension without pay	1
s 194(1)(c)	Promotion	18
s 194(1)(d)	Transfer	4
s 194(1)(e) (prior to legislative amendments)	Temporary Employment	63
s 194(1)(e)	Conversion Decision	343
	Higher Duties/Higher Classification	161
	Fixed Term Temporary to Permanent	152
	Casual to Permanent	30
s 194(1)(ea) (prior to legislative amendments)	Casual Employment Decision	3
s 194(1)(eb)	Fair Treatment	49
s 194(1)(f)	Under another Act	4
TOTAL		543

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



Trading Hours

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

During the year, 13 applications for a declaration of a special event were filed, one application is ongoing (Mount Isa Mines Rodeo in August 2021), one application was dismissed (BrisAsia Festival) and 11 applications were declared to be special events in accordance with s 5(1)(c)(ii) of *Trading (Allowable Hours) Act 1990*. Those special events were:

Townsville 400 (August 2020)	Proserpine Show/ Show Whitsunday (June 2021)
Brisbane Festival (September 2020)	Mount Isa Show (June 2021)
Toowoomba Carnival of Flowers (September 2020)	Bowen Show (June 2021)
AFL Grand Final (October 2020)	Burdekin Show (June 2021)
RockyNats (April 2021)	Charters Towers Show (July 2021)
Chinchilla Show (May 2021)	

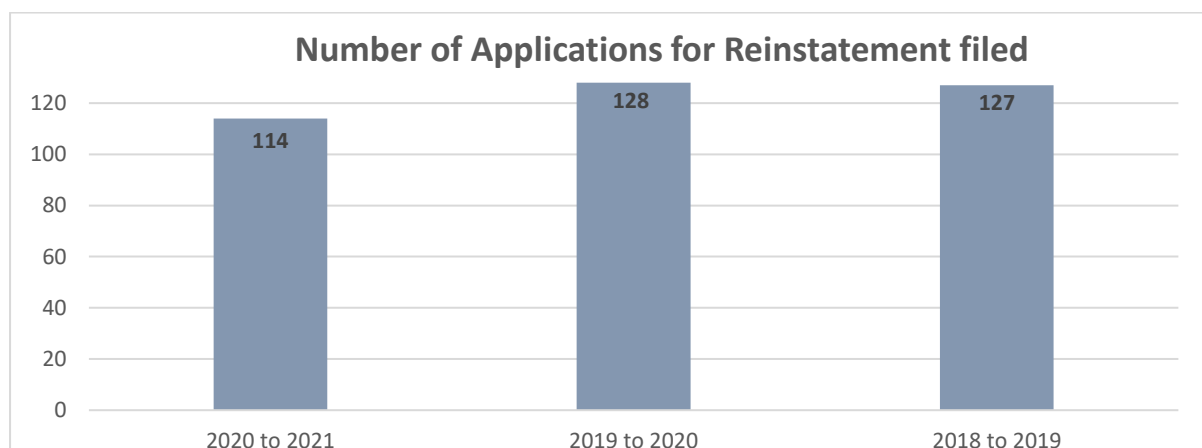
Unfair Dismissals

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

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

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

The number of applications filed remained steady in comparison to previous years. Of the 99 matters that proceeded to conference, 55 of those matters were resolved.



Wage Recovery

2020 saw the introduction of the Criminal Code and Other Legislation (Wage Theft) Amendment Bill 2020. This was as a result of an inquiry into wage theft in Queensland conducted by the Queensland Parliamentary Education, Employment and Small Business Committee titled *A fair day's pay for a fair day's work? Exposing the true cost of wage theft in Queensland*.

The changes to the legislation introduced on 1 March 2021 meant that the Industrial Registry became the Registry for the Industrial Magistrates Court with regard to Fair Work Claims. Industrial Commissioners are appointed as conciliators to deal with these matters in the first instance, with the matters heard by the Queensland Industrial Magistrate's Court.

The procedures were simplified meaning that the court is not bound by any rules of evidence and procedure, proceedings are able to be conducted quickly and in an informal manner, and parties are self-represented (unless leave is granted otherwise). The simplified process applies to small claims up to \$20,000 under the *Fair Work Act 2009* and \$50,000 for Queensland and local government employees.

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

Type of Claim	Number filed
Fair Work Claim (Commission or Industrial Magistrates Court) (introduced 1 March 2021) <ul style="list-style-type: none"> - A Fair Work Claim is a claim in relation to a civil remedy provision under the <i>Fair Work Act 2009</i> (Cwth), s 539(1) and (3) - These matters are conciliated by the Commission and heard by the Industrial Magistrates Court 	26
Unpaid Wages Claim (Commission) <ul style="list-style-type: none"> - Unpaid Wages Claims are made to the Commission (less than \$50,000) in relation to unpaid wages, an apprentice's unpaid tool allowance, remuneration lost by an apprentice or trainee, or contributions to the approved superannuation fund payable for an employee that are unpaid - These matters are conciliated and heard by the Commission 	13
Unpaid Amount Claim (Industrial Magistrates Court) <ul style="list-style-type: none"> - Unpaid Amount Claims are filed in the Industrial Magistrates Court and are made pursuant to the <i>Industrial Relations Act 2016</i> in relation to ss 379, 386, 396 and s 402 - These matters are conciliated by the Commission and heard by the Industrial Magistrates Court 	4
Employment Claim (Magistrates Court) <ul style="list-style-type: none"> - Employment Claims are small claims made to the Magistrates Court in relation to an employment claim - These matters are conciliated by the Commission 	74
Proportionate payment (<i>pro-rata</i>) of long service leave on termination of employment (Commission) <ul style="list-style-type: none"> - If eligible, an employee may be entitled to have their accrued long service leave paid out pro rata in a lump sum after termination - These matters are conciliated and heard by the Commission 	39
TOTAL	156

In addition to the above, an application may be made to the Commission in accordance with s 110 of the IR Act to have long service leave entitlements paid out (if eligible) in part, or in full, on compassionate grounds, and/or as a result of financial hardship. The number of those applications made in the report year is outlined below.

Payment instead of taking long service leave (Commission)	689
- These matters are generally heard on the papers by the Commission	

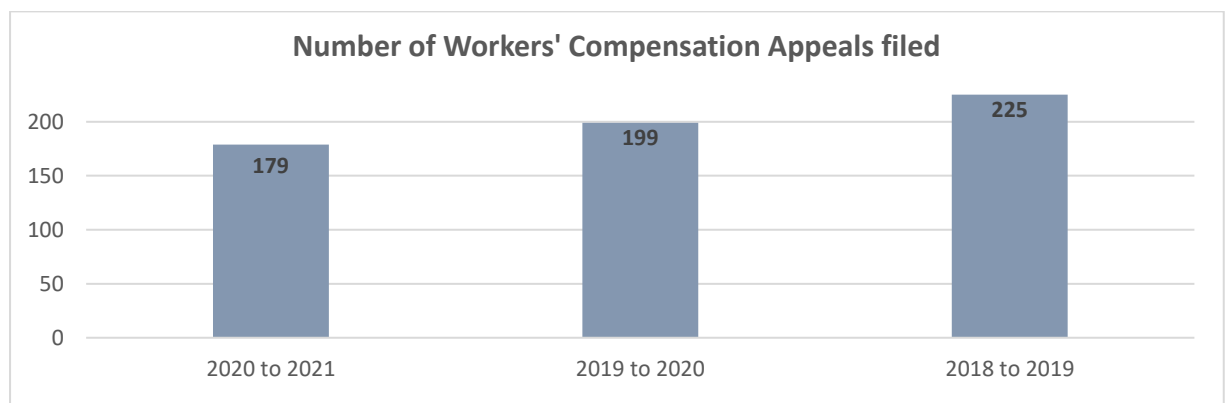
Legislative amendments made during the year meant that registered workers covered by the *Community Services Industry (Portable Long Service Leave) Act 2020* and the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005* may make an application to the Commission for a payout of long service leave entitlements, as outlined above, as is currently the case with registered workers covered by the *Building and Construction Industry (Portable Long Service Leave) Act 1991*.

Workers' Compensation Appeals

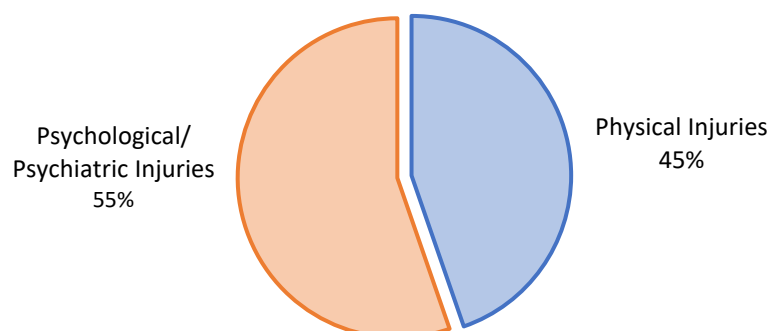
The Workers' Compensation Regulator (the Regulator) is the statutory body that reviews workers' compensation decisions made by WorkCover Queensland (WorkCover) and self-insurers.

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

During the year, 179 appeals against decisions of the Regulator were filed.



Of those appeals filed, 80 related to physical injuries in comparison to 99 relating to psychological/psychiatric injuries.



Regional Sitzings

The Commission hears matters in locations throughout Queensland. The Commission heard matters in the following locations:



Bundaberg
Hervey Bay
Cairns
Townsville
Gladstone
Yeppoon
Rockhampton
Mackay
Gympie
Dalby
Mount Isa

External Engagement

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



Justice Davis addressing the Annual IRSQ Breakfast

Meetings of the Industrial Relations Jurisdiction Users Group (IJUG) and the Workers' Compensation Users Group (WCUG) were convened by Justice Davis, Vice President O'Connor and Deputy President Merrell. These meetings covered numerous topics including legislative amendments, as well as changes to processes in the Commission and any issues arising from the Commission's operation. IJUG meetings were held at the Commission on 27 August 2020 and 12 April 2021. The WCUG meeting was held on 24 August 2020.

Justice Davis was the guest speaker at a breakfast presented by the Industrial Relations Society of Queensland (IRSQ) as part of the IRSQ Breakfast Series held on 15 February 2021 in Brisbane.

He spoke of his first six months as the President of the Industrial Court and how he intends to handle the role moving forward.

Vice President O'Connor was a keynote speaker at the Office of Industrial Relations Emerging Practitioners Program which was held in Brisbane on 4 March 2021. On the 9 March 2021 Vice President O'Connor was Chair of the LegalWise Employment Law Conference in Brisbane, and later that month on 19 March 2021 was involved in the Industrial Relations Society of Queensland (IRSQ) Moot which was held on site at the Commission.

Deputy President Merrell was a keynote speaker at the Annual Bar Association of Queensland Conference which was held in Brisbane on 12 March 2021. The topic of discussion was 'Ethics - Bullying and Sexual Harassment in the Workplace' and was co-presented with Her Honour Judge Geraldine Dann of the District Court of Queensland.

Industrial Commissioner McLennan delivered a presentation titled 'Advocacy in the Queensland Industrial Relations Commission' to the IRSQ on 14 March 2021.



Industrial Commissioner McLennan presenting to the IRSQ

Professional Activities

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

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

Member Name	Activity and Location	Dates
Industrial Commissioner Knight	National Judicial College of Australia - New Perspectives on Courtroom Leadership (Brisbane)	18 and 19 March 2021
Industrial Commissioner Pidgeon	Harvard Kennedy School - Leadership and Character in Uncertain Times (Online)	6 and 7 August 2020
	QUT eX Professional and Executive Education - The Psychology of Negotiation (Brisbane)	24 November 2020
	National Judicial College of Australia - New Perspectives on Courtroom Leadership (Brisbane)	18 and 19 March 2021
Industrial Commissioner Power	Harvard Kennedy School - Leadership and Character in Uncertain Times (Online)	6 and 7 August 2020

Queensland Industrial Registry

Registry Services

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

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

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

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

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

- responsiveness;
- professionalism;
- transparency;
- integrity;
- independence; and
- innovation.

The priorities for the Industrial Registry, include:

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

The Industrial Registry is structured into four units.

Client Services	Information Services
Corporate Services	Registered Industrial Organisations

The Industrial Registry establishment is made up of 15.8 FTE positions including the Industrial Registrar.

Client Services

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

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

The Client Service team have processed an average of 7,300 emails per quarter, which has amounted to approximately 30,000 emails this year. The team have also answered approximately 5,000 telephone enquires in that period. The Client Service team also service the public through the filing of applications and material, and face-to-face enquires over the counter.

A total of exactly 3,000 new applications and appeals were filed in the Industrial Registry, an increase of 303 applications and appeals in comparison to the previous reporting year.

The Client Service team are also responsible for the ordering, processing and distribution of transcripts to parties involved in proceedings before the Commission. Despite considerable delays experienced

in the receipt of transcripts from the transcript provider in the latter part of 2020 (due, in part, to the impact the pandemic had on their services), a total of 459 transcript requests were processed by the team with a total of 603 transcripts distributed to parties.

In September 2020, the Industrial Registry introduced BPOINT and a Direct Deposit facility as a means for persons to pay for search and copy requests. Further to that, amendments made to the *Industrial Relations (Tribunals) Rules 2011* (which commenced in March 2021) saw the establishment of a more formal search and copy process, including litigation searches. A total of 97 search and copy requests were received by the Industrial Registry with 93 of those requests being actioned and facilitated by the Client Services team, and four requests formally refused by the Commission.

Information Services

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

The importance of the Industrial Registry's digital services is underscored by the 260,000+ users to the website during the course of the year. The digital services provided by the Industrial Registry include:

- posting of all relevant documentation to the QIRC website (www.qirc.qld.gov.au);
- managing the QIRC website to ensure content is relevant and up to date (including forms, guides, information sheets etc);
- managing the internal intranet site in updating processes and procedures, information and research tools required by the Court, Commission, Associates and Industrial Registry staff;
- managing the Court and Commission case management system including statistical reporting; and
- managing courtroom technology.

Corporate Services

A comprehensive suite of corporate services is provided to the Court, Commission and Industrial Registry employees. These services are principally provided through the Deputy Industrial Registrar and include:

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

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

Registered Industrial Organisations

The Industrial Registrar has important functions and powers with regard to registered industrial organisations (employer and employee) in accordance with Chapter 12 of the *Industrial Relations Act* 2016. The Industrial Registrar is principally supported by the Senior Registry Officer (Registered Industrial Organisations) and functions include:

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

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

A total of 249 registered industrial organisations matters were filed and processed during the reporting period. See Table 4 for a breakdown of those matters. Membership numbers with regard to registered industrial organisations, both employee and employer organisations, can be found at Tables 5 and 6 of this report.

The Year in Review

Amendments to the *Industrial Relations (Tribunals) Rules 2011*

The Industrial Registry worked in conjunction with the Rules Committee to provide advice and assistance in the consultation, liaison, co-ordination and drafting of the amended *Industrial Relations (Tribunals) Rules 2011*. Despite tight timeframes, the hard work and dedication of the Industrial Registry meant that the draft rules were able to be forwarded to the Governor in Council for approval and published in time for the 1 March 2021 commencement.

Wage Recovery

Some of the amendments to the *Industrial Relations (Tribunals) Rules 2011* came about as a result of the Criminal Code and Other Legislation (Wage Theft) Amendment Bill 2020. This meant that the Industrial Registry became the Registry for Industrial Magistrates Courts across Queensland in relation to Fair Work Claims.

Prior to the introduction of the amendments to the Rules, the Industrial Registrar, Madonna Shelley, along with Senior Registry Officers, Janelle Thompson and Hayley Button, worked closely with Brisbane Magistrates Court Registry representatives on the formulation of procedures and processes with regard to wage recovery for Queensland employees. This involved the drafting of new forms and the development of procedural road maps for the different types of applications to assist both Registry staff and stakeholders. The Industrial Registry continues to collaborate with Magistrates Court Registry representatives to address any questions and concerns as they arise.

Recording and Transcription Project

The Department of Justice and Attorney-General have undertaken a review of the current recording and transcription services being provided to Courts, Commissions and Tribunals across the State. The project is still underway with the aim of improving recording and transcription services for a wide range of stakeholders. It will result in the introduction of new service providers for both the recording and transcription components and significantly improving information security.

The installation of upgraded recording equipment into each court/conference room has been completed. Senior Registry staff have been involved in the extensive consultation and testing phase of the project, and will play a crucial role throughout the implementation of the new service delivery model to ensure a smooth transition and uninterrupted service to Court and Commission Members, as well as all key stakeholders.

Practice Directions

This year saw the drafting and publication of a new series of Practice Directions in line with amendments made to the *Industrial Relations (Tribunals) Rules 2011*. The following Practice Directions were commenced on or after 24 March 2021.

Practice Direction	
PD 1 of 2021	Repeal of Practice Notes
PD 2 of 2021	Approval to Engage in Protected Industrial Action
PD 3 of 2021	Electronic Filing and Hard Copies of Documents
PD 4 of 2021	General Protections
PD 5 of 2021	Electronic Devices in Courtrooms
PD 6 of 2021	Citation of Authority
PD 7 of 2021	Industrial Court of Queensland Robing
PD 8 of 2021	Taking Evidence by Telephone or Video Link
PD 9 of 2021	Questions Referred by the Court or Commission pursuant to the <i>Human Rights Act 2019</i>
PD 10 of 2021	Interpreters

User Guides

The Industrial Registry has also undertaken the development, updating and publishing of a range of guides for use by parties, particularly self-represented litigants, in the different types of matters before the Commission.

Guide
Anti-Discrimination Guide
Payment instead of taking long service leave application guide
Public service appeal guide
Unfair dismissal and reinstatement application guide
Workers' compensation appeal guide

Queensland State Archives - Sentencing Project

A collaborative project has taken place between Queensland State Archives and the Industrial Registry, to make historical Court and Commission records discoverable and accessible for everyone.

Phase one of the project was completed in December 2020 which covered the sentencing and listing of approximately 25,500 files into 1,020 boxes.

Phase two of the project involves the sentencing and listing of approximately 1,200 boxes containing the files of the Commission dating from 1962 to 1988. Some of these files will be declared permanent and will also be able to be accessed by the public. The metadata gathered through this project will be imported into the Queensland State Archive's catalogue providing accessibility to members of the public for many years to come.

Staff Training

The Industrial Registry encourages a 'professional and engaged workforce' and staff are supported in participating in personal development and training. This year, staff have undertaken training, both online and in person.

Overview of Amendments to Legislation

Industrial Relations Act 2016

Amendments to the IR Act through enactment of the *Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020* (Wage Theft Act) commenced on 1 March 2021. Amendments were also made to the *Industrial Relations (Tribunals) Rules 2011* (IR Rules) to support the Wage Theft Act amendments; these amendments also commenced on 1 March 2021.

The Wage Theft Act included amendments to the Queensland Criminal Code to ensure wage theft could be prosecuted as a criminal offence. Amendments to the IR Act were also introduced to facilitate simple, quick, and low-cost recovery of unpaid wages in the Commission and in the Industrial Magistrates Court (IMC). The amendments utilise the IMCs' existing jurisdiction in relation to wage recovery claims made under the IR Act (unpaid wages claims) and, where permitted, under the *Fair Work Act 2009* (Cth) (Fair Work claims).

The amendments aim to improve the accessibility of the IMCs' wage recovery jurisdiction for workers through the utilisation of conciliation conferences, simplified procedures and informal proceedings, no filing fees for wage recovery matters, and for legal representation only with leave of the Court.

A key feature of the Wage Theft Act amendments relevant to the functions of the Commission and the Industrial Registrar are the conciliation provisions that apply to Fair Work claims and unpaid wages claims.

Under these provisions, the Industrial Registrar may refer these wage recovery claims made in the IMC or the Commission to conciliation by an Industrial Commissioner in the first instance, with the intention to provide parties with an avenue to resolve the matter or narrow the issues in dispute prior to hearing. A party may notify the Industrial Registrar that they do not wish to participate in a conciliation process, with the matter being referred to the IMC to be progressed. On conclusion of the conciliation process the conciliator must file a certificate about the process with the Industrial Registrar.

A party may seek an order from the IMC to give effect to agreements reached during the conciliation process, and the tribunal may make an order to give effect to the agreement reached in the conciliation process.

In addition to the conciliation provisions included in the IR Act, the Rules were amended to include new provisions to allow the IMC or the Commission to hold settlement conferences for wage recovery matters not referred to conciliation or not resolved at conciliation. The IMC may also direct that a registrar of a Magistrates Court hold a settlement conference.

The IR Rules have also been amended to permit parties to agree to the use of simplified procedures that may be adopted for certain proceedings conducted in the Commission or the IMC, for instance, under the Rules the Commission or IMC need not be bound by rules of evidence during a proceeding.

Public Service Act 2008

Part 2 of the *Public Service and Other Legislation Amendment Act 2020* amended the IR Act to provide for public service appeals to be heard under the IR Act. The changes allow for the decisions of a public service appeal to be published and made public on the Supreme Court Library website. The amendments commenced upon the date of assent, 14 September 2020.

Public service appeals were originally transferred to the jurisdiction of the Commission in 2012 but had previously been heard under the *Public Service Act 2008*. The new sections transfer provisions previously included in the *Public Service Act 2008* into a new statutory context in the IR Act. It is anticipated that this will help ensure transparency and increase consistency in appeal decisions.

Notable Cases

***Queensland Teachers Union of Employees v State of Queensland (Department of Education)* (No. 2) [2021] ICQ 003**

Member: Justice Davis

Delivered: 23 February 2021

Appeal

INDUSTRIAL LAW - QUEENSLAND - INDUSTRIAL DISPUTES - OTHER MATTERS - STRIKE - where the appellant union (the QTU) is an employee organisation of school teachers - where the appellant issued a "newsflash" to all QTU members directing members to cease all activities associated with the National Assessment Program - Literacy and Numeracy (NAPLAN) - where the respondent regarded the directive contained in the "newsflash" as "not protected industrial action" - whether the directive contained in the newsflash constitutes a "ban" and consequently, a strike - whether the strike constitutes unprotected industrial action

INDUSTRIAL LAW - QUEENSLAND - INDUSTRIAL DISPUTES - ACTION FOR SETTLING INDUSTRIAL DISPUTE - APPROPRIATE REMEDIES FOR STRIKE - APPLICATION FOR INTERIM INJUNCTION - ATTEMPT TO RESTRAIN UNION ENCOURAGING STRIKE ACTION - where the respondent applied to the Queensland Industrial Relations Commission seeking an order for the immediate cessation of all action engaged in by the appellant which has the effect of a ban, restriction or limitation on the administration and implementation of NAPLAN for the remainder of the 2020 and 2021 school year - where the respondent also sought injunctions - where the appellant submitted that the application ought to be dealt with on an interlocutory rather than final basis - where the Industrial Commissioner ordered, on an interlocutory basis, the immediate cessation of the ban imposed by the appellant on engaging in NAPLAN - where the Industrial Commissioner refused to issue injunctions - where the appellant appealed the decision of the Industrial Commissioner - whether an order could or should be made against the appellant - where, on appeal, the appellant submits that the Industrial Commissioner failed to properly consider the relevant principles upon consideration of the granting of interlocutory relief - whether the orders made by the Industrial Commissioner were an appropriate response to the strike

PROCEDURE - CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS - OVERRIDING PURPOSE OF AND OBLIGATIONS UNDER RULES OR ACTS REGULATING CIVIL PROCEEDINGS - OBLIGATION TO GIVE REASONS - ADEQUACY OF REASONS GIVEN - where, on appeal, the appellant submits that the Industrial Commissioner failed to give adequate reasons in relation to some issues - whether the Industrial Commissioner failed to refer to the alleged breach of the joint statement by the Department of Education as a discretionary ground in making various findings - whether the Industrial Commissioner was required to refer to the alleged breach as a discretionary ground - whether the Industrial Commissioner gave adequate reasons for the making of orders

PROCEDURE - STATE AND TERRITORY COURTS: JURISDICTION, POWERS AND GENERALLY - STATUTES - ACTS OF PARLIAMENT - INTERPRETATION - USE OF HEADINGS IN APPROACH TO INTERPRETATION - where the respondent relied on s 940 of the *Industrial Relations Act 2016* (IR Act) to justify the orders made by the Industrial Commissioner - where the heading of Chapter 14, in which s 940 appears, is entitled "General Offences" - where the appellant submits that s 940 applies only to criminal conduct and therefore is not relevant to the making of orders against the appellant - whether the heading to the part of the IR Act limits the operation of the section

Kelsey v Logan City Council & Ors (No. 8) [2021] QIRC 114

Member: Vice President O'Connor

Delivered: 1 April 2021

Application for an Injunction about a reprisal

PUBLIC INTEREST DISCLOSURE - APPLICATION FOR INJUNCTION ABOUT A REPRISAL - where applicant made a public interest disclosure - whether public interest disclosure is an industrial law

INDUSTRIAL LAW - WORKPLACE RIGHT - whether applicant has exercised a workplace right - whether conduct breach of adverse action provisions - where applicant seeking declarations that the councillors had taken adverse action against her by voting to terminate her employment - where applicant seeking damages and penalties

INDUSTRIAL LAW - APPLICATION FOR REINSTATEMENT - where applicant seeking injunctive relief - where applicant must establish accessorial liability in respect of the vote to terminate her employment - where applicant must establish actual knowledge on behalf of the alleged accessory of each of the essential elements of the offence - where applicant must show that the third to ninth respondents knew of the proscribed intention in not only their own votes but in the votes of others - whether contravention of civil penalty provision

Ball v State of Queensland (Queensland Corrective Services) [2021] QIRC 116

Member: Vice President O'Connor

Delivered: 1 April 2021

Application for Reinstatement

INDUSTRIAL LAW - APPLICATION FOR REINSTATEMENT - where application determined by Commission and refused - where appeal to Industrial Court allowed - where application remitted to the Commission to be determined according to law - where applicant required to show cause - where applicant's conduct constituted breaches of procedures, policies and statutory obligations - where applicant's employment was terminated - whether the disciplinary process undertaken was compliant with legislative and policy procedures - whether applicant was afforded procedural fairness and natural justice - where applicant bears the onus of establishing, on the balance of probabilities, that his dismissal was unfair - whether respondent's decision to terminate was harsh, unjust or unreasonable

Welsh v Logan City Council [2021] QIRC 141

Member: Deputy President Merrell

Delivered: 29 April 2021

Application for an order to stop bullying

INDUSTRIAL LAW - application for an order to stop bullying - consideration of the elements for Commission to be satisfied an employee has been bullied in the workplace within the meaning of s 272 of the *Industrial Relations Act 2016* - consideration of the elements of s 275(1) of the *Industrial Relations Act 2016* for Commission to have power to make an order to stop bullying - whether preliminary investigation, investigation and disciplinary procedure undertaken by certain employees of the respondent, in respect of the applicant, meant the applicant was bullied in the workplace - whether the conduct of those employees created a risk to the health and safety of the applicant - applicant not bullied in the workplace - application dismissed

**Scott v State of Queensland (Department of Communities, Housing and Digital Economy)
[2021] QIRC 126**

Member: Deputy President Merrell

Delivered: 14 April 2021

Public Service Appeal - Conversion to higher classification level

PUBLIC SERVICE - Appointment under Public Service and Similar Acts - public service appeal - appellant requested respondent's chief executive to appoint appellant to higher classified position pursuant to s 149C(3) of the *Public Service Act 2008* - appellant not appointed because another person was appointed to the position following the appellant's request - whether, having regard to the timing of the appellant's request, the appointment of the other person was permitted under the *Public Service Act 2008* - whether decision not to appoint appellant to position, in those circumstances, was fair and reasonable - decision not fair and reasonable - decision set aside

STATUTES - interpretation - interpretation of the *Public Service Act 2008* having regard to the conflict between the general power of the chief executive to appoint public service officers on tenure pursuant to s 119 and s 121 and the specific power under s 149C(4) of the *Public Service Act 2008* to appoint an eligible public service employee who requests to be appointed to a position at the higher classification level - specific power prevails

Bentzen v Hinchinbrook Shire Council [2021] QIRC 158

Member: Deputy President Merrell

Delivered: 13 May 2021

Application for reinstatement and application in existing proceedings

INDUSTRIAL LAW - QUEENSLAND - APPLICABILITY OF INDUSTRIAL LEGISLATION AND GENERALLY - application for reinstatement - application in existing proceedings for declaratory relief - applicant employed by Hinchinbrook Shire Council in the position of Executive Manager of Development Planning and Environmental Services - applicant dismissed for misconduct - whether dismissal was invalid due to non-compliance with the requirements of s 283(1) of the *Local Government Regulation 2012* - whether other relief claimed should be granted - whether dismissal was harsh, unjust or unreasonable - dismissal did not comply with the mandatory requirements of s 283(1) of the *Local Government Regulation 2012* - declaration that dismissal was invalid

STATUTES - SUBORDINATE LEGISLATION - VALIDITY - whether s 283(1) of the *Local Government Regulation 2012* valid - whether s 283(1) of the *Local Government Regulation 2012* was necessary or convenient to be prescribed for carrying out or giving effect to s 197(1) of the *Local Government Act 2009* - determination that s 283(1) of the *Local Government Regulation 2012* is valid

Ipswich City Council v Wendt & Ors [2020] QIRC 164

Member: Industrial Commissioner Knight

Delivered: 11 September 2020

Application for Costs

INDUSTRIAL LAW – APPLICATION FOR COSTS – where applications for reinstatement dismissed for want of jurisdiction – where Applicant seeks costs – where general rule that person ordinarily bears their own costs for proceedings before the Commission – whether applications for reinstatement made without reasonable cause and/or whether reasonably apparent to the Respondents that applications for reinstatement had no reasonable prospects of success – whether an exception to the general rule exists – whether Commission should exercise discretion to award costs – whether costs assessed on standard or indemnity basis

Brew v State of Queensland (Office of the Public Guardian) [2021] QIRC 188

Member: Industrial Commissioner Knight

Delivered: 1 June 2021

Public Service Appeal - Appointment to Higher Duties

INDUSTRIAL LAW – PUBLIC SERVICE APPEAL – where the appellant requested to be appointed to higher duties – whether there were genuine operational requirements which precluded appointment – whether a review is a genuine operational requirement – whether the decision was fair and reasonable

Re: variation of the Ambulance Service Employees Award - State 2016 [2020] QIRC 137

Member: Industrial Commissioner Knight

Delivered: 2 September 2020

Application - variation of a modern award

INDUSTRIAL LAW – VARIATION OF A MODERN AWARD – application to vary a modern award.

Note: This particular matter was one of a number of applications to vary modern awards which resulted in thousands of part-time employees (predominantly women) being able to move up pay increments where there had previously been a bar unless a minimum number of hours had been worked.

Enco Precast Pty Ltd v Construction, Forestry, Maritime, Mining and Energy Union & Ors [2020] QIRC 188

Member: Industrial Commissioner Hartigan

Delivered: 30 October 2020

Application to deal with a dispute about right of entry

WORKPLACE HEALTH AND SAFETY – Dispute about right of entry – Whether permit holder held a "reasonable suspicion" – Whether "relevant worker" – Whether workers eligible to be members of union

Note: This decision is in relation to a Workplace Health and Safety right of entry and an eligibility dispute arising out the interpretation of the relevant union rules.

Re: Leidos Australia Pty Ltd [2021] QIRC 229

Member: Industrial Commissioner Hartigan

Delivered: 28 June 2021

Application - exemption under *Anti-Discrimination Act 1991*

INDUSTRIAL LAW – DISCRIMINATION – exemptions – application to grant exemption under s 113 of the *Anti-Discrimination Act 1991* (Qld) – exemption in relation to discrimination on the grounds of race so the applicant can comply with US export control laws – exercise of discretion

Golding v Sippel and The Laundry Chute Pty Ltd [2021] QIRC 074

Member: Industrial Commissioner McLennan

Delivered: 9 March 2021

Referral of Complaint

ANTI-DISCRIMINATION – REFERRAL OF COMPLAINT – sexual harassment – direct discrimination on the basis of sex – victimisation – whether less favourable treatment occurred – where damages are awarded – where costs are awarded

Note: This matter was the first award of damages for an anti-discrimination matter in the Commission.

State of Queensland (Department of Education) v Queensland Teachers Union of Employees [2020] QIRC 212

Member: Industrial Commissioner McLennan

Delivered: 8 December 2020

Industrial Dispute

INDUSTRIAL LAW – Notice of Industrial Dispute – whether industrial action has occurred – whether industrial action is protected – whether interim orders are appropriate

Note: This decision was in relation to the issue of whether the NAPLAN ban was unprotected industrial action. See also *Queensland Teachers Union of Employees v State of Queensland (Department of Education)* (No. 2) [2021] ICQ 003 noted above.

Benson v State of Queensland (Department of Education) [2021] QIRC 152

Member: Industrial Commissioner McLennan

Delivered: 11 May 2021

Public Service Appeal - Temporary Employment

INDUSTRIAL LAW – PUBLIC SERVICE APPEAL – temporary employment – where appellant was reviewed under s 149B of the *Public Service Act 2008* (Qld) – where the outcome of the review was that the appellant was not permanently appointed – whether Appeal Notice filed out of time – consideration of whether conversion is possible under s 149B once permanency is granted in a separate engagement – whether a deemed decision is inherently unfair and unreasonable – consideration of mandatory criteria – consideration of changed circumstances – where the decision is set aside and another decision is substituted

Note: This decision was a consideration of whether conversion is possible under s 149B of the *Public Service Act 2008* once permanency is granted in a separate engagement.

Purvis v State of Queensland (Department of Housing and Public Works) [2021] QIRC 040

Member: Industrial Commissioner McLennan

Delivered: 4 February 2021

Public Service Appeal - Appointment to higher classification level

INDUSTRIAL LAW – PUBLIC SERVICE APPEAL – where the appellant was reviewed under s 149C of the *Public Service Act 2008* – where the outcome of the review was that the appellant was not permanently appointed – consideration of 'particular project' – consideration of 'unexpected short-term increase in workload' - consideration of the scope of a review under s 149C – consideration of 'genuine operational requirement'

Tables

Table 1: Matters (by type) filed in the Industrial Court 2019/2020 and 2020/2021

Type of Appeal to Industrial Court	2019/2020	2020 /2021
Appeal against a decision of an Industrial Magistrate (s 556 of the <i>Industrial Relations Act 2016</i>)	3	0
Appeal against a decision of the Commission (s 557 of the <i>Industrial Relations Act 2016</i>) [includes Appeals against a decision of the Commission in relation to a Public Service Appeal - 2]	15	16
Appeal against a decision of the Commission (s 561 of the <i>Workers' Compensation and Rehabilitation Act 2003</i>)	6	3
Appeal against a stand-down (s 562(1) of the <i>Workers' Compensation and Rehabilitation Act 2003</i>)	1	0
Stay of operation of a directive (s 178 of the <i>Coal Mining Safety and Health Act 1999</i>)	0	2
Appeal against Chief Inspector's directives and review decisions (s 243 of the <i>Coal Mining Safety and Health Act 1999</i>)	0	1
Appeal against a decision of the Industrial Registrar (s 560(1) of the <i>Industrial Relations Act 2016</i>)	0	0
Total	25	22

Table/Graph 2: Number of Matters filed in the Industrial Court 2011 to 2021

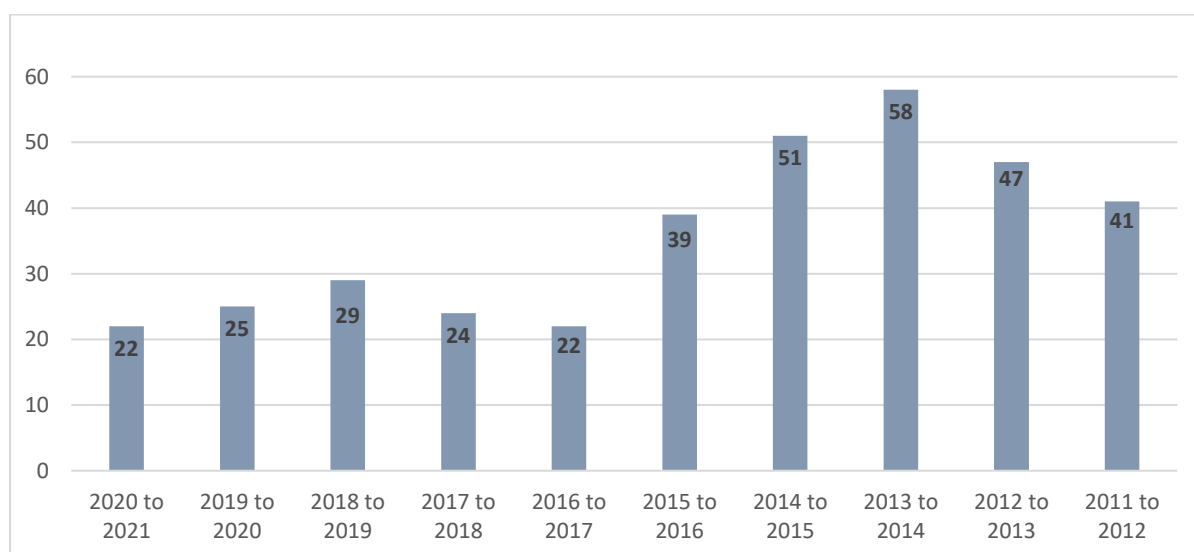


Table 3: Breakdown of matters filed by type 2019/2020 and 2020/2021

Type of matter filed		2019/2020	2020/2021
<i>under the Industrial Relations Act 2016</i>			
s 110	Long Service Leave – payment in lieu of	745	689
s 147(1)(b)	Application to vary a modern award	4	23
s149(1)	Variation correction of minor errors	1	1
s 169(2)(b)	Notice of intention to bargain	0	0
s 175(1b)	Request for help in negotiations for bargaining	6	4
s 178(1)	Consent application for arbitration	0	2
s 184(1)	Application for scope order	0	0
s 189(1)	Application for certification of agreement	35	22
s 213	Decision about designated award	2	0
s 225(1)	Application to amend a bargaining instrument	0	1
s 227(1)	Application for termination on/before expiry date	0	1
s 228(1)	Application for termination after expiry date	31	17
s 235(1)	Application for approval to engage in industrial action	36	20
s 241(1)	Suspension of industrial action (life, property, health or welfare)	0	0
s 242	Certificate as to requested representation	0	1
s 261	Notice of industrial dispute	145	158
s 273	Application for a commission order to stop bullying	15	11
s 309(2)	Application to deal with a dispute	28	29
s 317(1)	Application for reinstatement (unfair dismissal)	128	114
s 337	Authorisation of industrial officers	121	238
s 379	Recovery of unpaid wages (UAC)	0	3
s 386	Unpaid superannuation contribution	0	0
s 389	Outworker unpaid wages (UAC)	0	0
s 402	Repayment of fee payable to private employment agent (UAC)	0	0
s 451	General powers of the commission	3	0
s 458/462	General ruling and statement of policy	3	3
s 463(1)	Application for declaration	5	9
s 467(1)	Application for interpretation	1	0
s 469	Facilitation request	0	0
s 470(2)	Dispute resolution functions under referral agreement	0	0
s 471(1)	Application to amend or void a contract	0	2

s 473(1)	Application for injunction	2	2
s 475(1)	Recovery of pro rata long service leave	26	39
s 475(1)(a)	Recovery of unpaid wages	19	13
s 475(1)(d)	Recovery of superannuation contributions	1	0
s 479	Application for rights to represent	0	0
s 484(1)	Application to re-open proceedings	1	4
s 506(1)(b)(ii)	Damages claim (UAC)	0	1
s 572	Order - contravention of civil penalty provisions	1	8
s 655-879	Industrial Organisation matters (see Table 4)	231	249
s 952	Variation of agreement under Chapter 15A	0	19
s 981	Obsolete industrial instrument	0	6
	Request for recovery conference	12	7
<i>under the Further Education and Training Act 2014</i>			
s 168(1)(a)	Appeal to Industrial Relations Commission	1	0
<i>under the Magistrates Court Act 1921</i>			
s 42B	Employment claim	99	74
<i>under the Public Interest Disclosure Act</i>			
s 48	Application for an injunction about a reprisal	0	2
<i>under the Public Service Act 2008</i>			
s 194(1)(a)	Appeal against a decision under a directive	10	11
s 194(1)(b)	Appeal against a disciplinary decision	44	47
s 194(ba)	Appeal against a decision under s 88IA	N/A	0
s 194(bb)	Appeal against a suspension without pay decision	N/A	1
s 194(1)(c)	Appeal against a promotion decision	13	18
s 194(1)(d)	Appeal against a transfer decision	4	4
s 194(1)(e)	Appeal against a temporary employment decision *	120	63
s 194(1)(e)	Appeal against a conversion decision	N/A	343
s 194(ea)	Appeal against a casual employment decision*	28	3
s 194(eb)	Appeal against a fair treatment decision	61	49
s 194(1)(f)	Appeal against a decision under another Act	2	4
s 5(2)	Application for declaration about trading hours	5	13

<i>under the Workers' Compensation and Rehabilitation Act 2003 and Workers' Compensation and Rehabilitation Regulation 2014</i>			
s 232E	Reinstatement of injured worker	1	0
s 549	Application to be a party to appeal	0	0
s 550(4)	Appeal against decision of Workers' Compensation Regulator	199	179
reg 113	Costs	0	0
<i>under the Work Health and Safety Act 2011</i>			
s 102B	Notice of WHS dispute	5	6
s 131	WHS entry permit	154	222
s 142	Dispute about right of entry	1	0
s 229B	Application for review	30	45
<i>under the Anti-Discrimination Act 1991</i>			
s 113	Application for exemption from certain provisions	4	0
s 155(4)	Referral of matter for offences against the Act	0	0
s 144(1)	Application for orders protecting complainant's interests	6	5
s 164	Anti-Discrimination conciliation agreement	166	89
s 164A(2)	Referral of complaint not resolved	34	33
s 166(1)	Referral of complaint unconciliated	80	45
s 167(1)(a)	Referral of complaint after six months	1	0
<i>under the Queensland Civil and Administrative Tribunal Act 2009</i>			
s 52	Transfer of QCAT file	2	0
<i>under the Fair Work Act 2009 (Cwlth)</i>			
s 539	Fair Work Claim	N/A	26
TOTAL		2,672	2,978

Table 4: Registered Industrial Organisations matters filed 2019/2020 and 2020/2021

Type of matter filed		2019/2020	2020/2021
<i>under the Industrial Relations Act 2016 and Industrial Relations (Tribunals) Rules 2011</i>			
s 600(1)	Exemption from stated obligation	0	1
s 655	Registrar amendment of rules	4	2
s 662	Rule amendment - eligibility	9	1
s 666	Amendment to rules - other than eligibility	10	14
s 669	Prescribed election information	28	58
s 669(3)	Applicant to file prescribed information before a later date	1	0
s 735	Annual obligation to file officers register	32	39
s 736	Obligation to file officers register on change of office	52	73
s 741(4)	Exemption financial management training	37	4
s 784	General purpose financial reporting	31	38
s 786	Exemption from Chapter 12, Part 11 of particular reporting units	10	8
s 802	Election exemption – counterpart federal body	12	9
s 804	Exemption – member or officers register	2	0
s 808	Exemption accounting or audit obligations	0	0
s 835	Orders about effects of invalidity	0	1
s 879	Application for deregistration	1	1
r 88	Registrar's powers	2	0
TOTAL		231	249

Table 5: Registered Industrial Organisations of Employees Membership

Registered Industrial Organisation of Employees	2019/2020	2020/2021
Australasian Meat Industry Union of Employees (Queensland Branch)	6,651	5,496
Australian Institute of Marine and Power Engineers' Union of Employees, Queensland District	420	443
Australian Maritime Officers Union Queensland Union of Employees	660	668
Australian Rail, Tram and Bus Industry Union of Employees, Queensland Branch	6,645	5,496
Australian Salaried Medical Officers' Federation Queensland, Industrial Organisation of Employees	2,800	2,556
Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland	12,040	11,493
Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland	20,290	20,717
Finance Sector Union of Australia, Queensland Branch, Industrial Union of Employees	3,810	3,465
Plumbers & Gasfitters Employees' Union Queensland, Union of Employees	2,994	3,006
Queensland Fire and Rescue – Senior Officers Union of Employees	115	119
Queensland Independent Education Union of Employees	16,590	16,874
Queensland Nurses and Midwives' Union of Employees	64,420	67,030
Queensland Police Union of Employees	11,983	12,133
Queensland Services, Industrial Union of Employees	12,853	13,439
Queensland Teachers Union of Employees	47,986	47,821
Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees	32,225	34,475
The Association of Professional Engineers, Scientists and Managers, Australia, Queensland Branch, Union of Employees	2,159	2,782
The Australian Workers' Union of Employees, Queensland	23,141	22,735
The Bacon Factories' Union of Employees, Queensland	430	324
The Electrical Trades Union of Employees Queensland	14,981	14,875
The Queensland Police Commissioned Officers' Union of Employees	313	305
The Seamen's Union of Australasia, Queensland Branch, Union of Employees	757	829
Together Queensland, Industrial Union of Employees	29,504	29,219
Transport Workers' Union of Australia, Union of Employees (Queensland Branch)	8,706	8,143
United Firefighters' Union of Australia, Union of Employees, Queensland	2,643	2,672
United Voice, Industrial Union of Employees, Queensland	28,668	28,499
Total Membership	353,784	355,614
Total Number of Registered Industrial Organisations of Employees	26	26

Table 6: Registered Industrial Organisations of Employers Membership

Registered Industrial Organisation of Employers	2019/2020	2020/2021
Agforce Queensland Industrial Union of Employers	Deregistered	N/A
Australian Dental Association (Queensland Branch) Union of Employers	706	762
Local Government Association of Queensland Ltd	77	77
Master Electricians Association, Queensland Industrial Organisation of Employers	1,952	2,167
Master Painters, Decorators and Signwriters' Association of Queensland, Union of Employers	190	168
Master Plumbers' Association of Queensland (Union of Employers)	1,133	1,206
National Retail Association Limited, Union of Employers	5,592	5,485
Queensland Cane Growers' Association Union of Employers	14	Deregistered
Queensland Chamber of Commerce and Industry Limited ACN 009 662 060	5,717	2,670
Queensland Hotels Association, Union of Employers	843	922
Queensland Master Builders Association, Industrial Organisation of Employers	8,785	9,292
The Baking Industry Association of Queensland - Union of Employers	7	65
The Registered and Licensed Clubs Association of Queensland, Union of Employers	410	426
UNITAB Agents Association, Union of Employers Queensland	41	35
Total Membership	25,467	23,275
Total Number of Registered Industrial Organisations of Employees	13	12

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www.qirc.qld.gov.au/library/annual-reports

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