# 2006 Annual Report

of the President of the Industrial Court of Queensland

*in respect of the*

**Industrial Court of Queensland, Queensland Industrial Relations Commission and Queensland Industrial Registry**

# Industrial Court of Queensland

October 2006

The Honourable John Mickel, MP
Minister for State Development, Employment and Industrial Relations
Level 6
75 William Street
BRISBANE QLD 4000.

Dear Minister

I have the honour to furnish to you for presentation to Parliament, as required by section 252 of the *Industrial Relations Act 1999*, the Annual Report on the work of the Industrial Court of Queensland, the Queensland Industrial Relations Commission, the Industrial Registry and generally on the operation of the *Industrial Relations Act 1999* for the financial year ended 30 June 2006. The report relating to the Industrial Registry has been prepared by the Industrial Registrar whose assistance is acknowledged.

D.R. Hall
President
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# The Industrial Court of Queensland

# The Industrial Court of Queensland

The Industrial Court of Queensland is a superior court of record. It was first established as the Industrial Court by the Industrial Peace Act of 1912. The Act commenced operation in 1913. The jurisdiction of that court was limited, but it was broadened and strengthened by the Industrial Arbitration Act 1916, which was proclaimed in January 1917. The Court, as established and continued, is now governed largely by Chapter 8 Part 1 of the *Industrial Relations Act 1999* (Act). The Court's jurisdiction and powers are provided for chiefly by Division 3 of Chapter 8 Part 1. Appeals to the Court and general provisions about appeals are contained in Chapter 9, Divisions 2 and 5.

By s. 247 of the Act, the Industrial Court is constituted by the President sitting alone. The Act requires the President to have been either a Supreme or District Court judge, or a lawyer of at least 5 years standing with skills and experience in the area of industrial relations. The current President is Mr David Hall, who was sworn in in August 1999.

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

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

## Jurisdiction of the Court

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

- cases stated to it by the Commission (available under s. 282);
- offences against the Act, other than those for which jurisdiction is conferred on the Industrial Magistrates Court (s. 292 gives Industrial Magistrates jurisdiction over offences for which the maximum penalty is 40 penalty units or less, except where the Act specifically provides for Magistrates' jurisdiction); and
- appeals from decisions of Industrial Magistrates relating to offences under the Act or recovery of damages or sums of money under the Act (appellate jurisdiction will be dealt with briefly below).

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

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

## Appellate Jurisdiction of the Court

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

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

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

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

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

Appeals also lie to the Court from decisions of the Industrial Magistrates Court. These are Industrial Magistrates' decisions on:

- offences and wage claims under the *Industrial Relations Act 1999* (see s. 341(2));
- prosecutions under the *Workplace Health and Safety Act 1995* (see s. 164(3) WH & S Act); and
- appeals from review decisions, and non-reviewable decisions, on claims for compensation under the *Workers' Compensation and Rehabilitation Act 2003*: see ss. 561 and 562.

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

The Court's role under the *Workplace Health and Safety Act* extends to being the avenue of appeal for persons dissatisfied with a decision, on internal review, by the Director, Workplace Health and Safety. Appeals from review decisions of the Director are by way of a hearing *de novo*, that is, unaffected by the decision appealed from. (See *WH & S Act* Part 11, Div. 2.) There have been 5 appeals filed under this provision during the year. Comparable appeals are available under the *Electrical Safety Act.* One only was filed in 2005/06.

Table 2 shows a marginal increase in the number of appeals over last year's figure. Table 3 also indicates the types of appeal cases filed during the year.

## Workplace Health and Safety undertakings

The *Workplace Health and Safety Act 1995* enforces workplace health and safety undertakings. Breach of an undertaking may result in an application to the Court, by the chief executive Workplace Health and Safety Division, to enforce compliance. Similar provisions now exist in the *Electrical Safety Act 2002* also.

## Offences under *Industrial Relations Act 1999*

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

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

There are other offences which must be tried before the Court. For example, s. 660 states that a person must not disrupt or disturb proceedings in the Commission, in the Industrial Magistrates Court, or before the Registrar; a person must not insult officials of those tribunals, attempt to improperly influence the tribunals or their officials or to bring any of those tribunals into disrepute. To do so is to commit an offence, for which the person may be imprisoned for up to 1 year, or fined 100 penalty units. The Court also has all necessary powers to protect itself from contempt of its proceedings and may punish contempt of the court. This could be by ordering imprisonment of the offender: see s. 251.

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

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

[Under s. 181B(3) of the *Penalties and Sentences Act 1992*, if a body corporate is found guilty of the offence, the Court may impose a maximum fine of an amount equal to 5 times the maximum fine for an individual.]

## Stay of Decision appealed against

An application can be made under s. 347 of the Act for a Stay of Decision appealed against. The Court may order that the decision being appealed be wholly or partly stayed pending the determination of the appeal or a further order of the industrial tribunal. There were 8 stay proceedings brought under s. 347 during the year.

## 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. There was one application to the Court during the year under these industrial organisations provisions (s. 459).

## Cases stated

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

## Costs jurisdiction

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

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

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

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

Table 1: Matters filed in the Court 2004-05 and 2005-06

| Type of Matter | 2004/05 | 2005/06 |
|---|---|---|
| Appeals to the Court | 75 | 81 |
| — Magistrate's decision | 35 | 29 |
| — Commission's decision | 35 | 44 |
| — Registrar's decision | 0 | 2 |
| — Director, WH&S decisions | 2 | 5 |
| — Electrical Safety | 3 | 1 |
| Extension of Time | 0 | 2 |
| Prerogative order | | 1 |
| Stay order | 13 | 13 |
| Direction to observe/perform Industrial Org rules | 0 | 1 |
| Case stated by Commission | 2 | 1 |
| Application for orders - other | 2 | 1 |
| **TOTAL** | **92** | **100** |
| **Number of Court Decisions (including Orders) Gazetted** | **60** | **75** |

Table 2: Number of matters filed in the Court 1994-95 - 2005-06

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

Table 3: Appeals filed in the Court 2004-05 and 2005-06

| **Appeals Filed** | **2004/05** | **2005/06** |
|---|---|---|
| **Appeals from decisions of Industrial Commission** | | |
| IRA s 341(1) | 35 | 44 |
| **Appeals from decisions of Industrial Magistrate** | | |
| IRA s 341(2) | 6 | 2 |
| Work Comp Act s 561 | 14 | 22 |
| VETE Act 2000 | 1 | 0 |
| WH & S Act s 164(3) | 14 | 5 |
| **Appeals from decisions of Industrial Registrar** | | |
| IRA s 341 | 0 | 2 |
| **Appeals from review decisions by Director WH&S** | 2 | 5 |
| Appeals from decisions of Electrical Safety Office | 3 | 1 |
| **TOTAL** | **75** | **81** |

# The Queensland Industrial Relations Commission

# The Queensland Industrial Relations Commission

The Queensland Industrial Relations Commission was established as a court of record by the Industrial Conciliation and Arbitration Act 1961. At that time it was called the Industrial Conciliation and Arbitration Commission. As a tribunal, independent of government and other interests, it has remained essential to the industrial conciliation and arbitration system in Queensland. Under current legislation, it derives its powers and functions from Chapter 8, Part 2 of the *Industrial Relations Act 1999*. The Commission plays a major role in contributing to the social and economic well-being of Queenslanders through furthering the objects of the *Industrial Relations Act 1999* (Act) which are principally to provide a framework for industrial relations that supports economic prosperity and social justice.

The Commission is headed by the President who is also President of the Industrial Court. Other presidential members are the Vice President and two Deputy Presidents. There are seven other Commissioners.

The Vice President is responsible for administration of the Commission and Registry, including allocation of matters, establishing industry panels for disputes, approving references to a Full Bench, and general conduct of Commission business. The Act requires Deputy Presidents to provide assistance to the Vice President in administration of the Commission and the Registry, and in determining the Member who is to constitute the Commission for each matter. By s. 264, powers of the Vice President can be delegated to the Deputy Presidents to enable them to carry out their functions.

Current members of the Commission are listed in Table 4.

Table 4: Current Members of the Commission

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

# Industry Panel System

Under s. 264(6) of the Act, the Vice President must establish industry panels. This ensures that, where possible, members with experience and expertise in the relevant industries are assigned to deal with disputes. The Commission is thereby able to deal with disputes more quickly and effectively. The current arrangement is a two-panel system, with industries divided between the panels. Each panel is headed by a Deputy President, who is responsible for allocating disputes for conciliation, and hearings for certified agreements, within the panel. Table 5 sets out the panels in operation since 6 February 2006.

Table 5: Industry Panels 2006

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

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

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

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

## The Full Bench of the Commission

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

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

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

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

## Appeals to the Full Bench

With the leave of the Bench, the Full Bench hears appeals on grounds other than an error of law, or an excess, or want, of jurisdiction (for which an appeal lies to the Court): s. 342. On these grounds, a person may appeal to the Full Bench from decisions of the Commission and from most decisions of the Registrar. For the purpose of hearing appeals, the Full Bench must include the President: s. 256(2). Leave to appeal is only given where the Full Bench considers that it is in the public interest that the appeal be heard. During the year, there was one application for leave to appeal to a Full Bench from a decision of the Commission.

## Full Bench Hearings about Industrial Organisations

The Full Bench hears and determines applications for de-registration of an industrial organisation. It can also make representation orders to settle demarcation disputes. If an organisation involved in an industrial dispute does not comply with orders of the Commission, a Full Bench may make further orders against the organisation, including penalties (up to 1,000 penalty units) against the organisation. Refer to Table 12 for the number of industrial organisation matters dealt with during the year.

In addition, a Full Bench of the Commission may order the de-registration of an industrial organisation under Chapter 12 Part 16. For this purpose, the Bench must include the President: s 256(2). In certain circumstances, the Commission may review an organisation to determine whether it should be de-registered (see ss. 645 and 646). There were no applications for de-registration during 2005-06.

## Other Full Bench hearings

On 7 September, a Full Bench granted dental assistants an 11% pay increase plus an ongoing annual 1.25% equal remuneration component. The decision was Australia's first arbitrated pay equity decision. The 11% increase is to be phased in via five instalments of $12.75 or $12.70 per week to be paid every six months until December 2007. The increase accommodated for the differential between enterprise bargaining outcomes able to be secured by the predominantly male occupations in question from 1997 to 2004 and the increases available under State Wage Cases for the same period. The annual 1.25% equal remuneration component is to supplement award increases from State Wage Cases recognising the almost complete absence of formalised enterprise bargaining for dental assistants. (Reasons for the Decision were released on 7 September 2005 and appeared in 180 QGIG 187).

In an order of 24 March 2006, a Full Bench of the Commission awarded wage increases to child care workers consistent with the January 2005 decisions of the AIRC in respect of the Victorian and ACT child care awards. The increases, based on current classification structures are to be paid in six instalments over 2.5 years commencing 10 April 2006. The Full Bench recognised the evidence that the work performed by child care workers has been historically undervalued based on their gender. (Reasons for the Decision were released on 27 June 2006 and appeared in 182 QGIG 318. There is an appeal against the order.)

See Decisions of the Full Bench for other important decisions released by the Full Bench during 2005 - 2006.

## Commission Inquiry into an Industrial Matter

The commencement of the federal government's *Workplace Relations Amendment (Work Choices) Act 2005*, led to an inquiry to examine the impact of that Act on Queensland workplaces, employees and employers. The inquiry, set up under s. 265(3)(b) the *Industrial Relations Act 1999* was at the direction of the Minister for Employment, Training and Industrial Relations and Minister for Sport, Mr Tom Barton. In particular, the Commission will be considering mechanisms for employees to report incidents of unfair treatment as a result of the new Work Choices Act. The Commission will hear evidence about (any) incidents of unlawful, unfair or otherwise inappropriate industrial relations practices including the reduction in wages and conditions through AWA's or other collective agreements; discrimination, harassment or the denial of workplace rights; and unfair dismissals or other forms of unfair or unlawful treatment of employees. The Commission will also compare other similar inquiries in other states and territories in terms of their relevance to Queensland.

# Jurisdiction, Powers and Functions of the Commission

## Jurisdiction under the *Industrial Relations Act 1999*

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

The jurisdiction under the Act includes regulation of callings, dealing with industrial disputes and resolving questions and issues relating to industrial matters. "Industrial matter" is defined broadly in s. 7, and includes matters affecting or relating to work to be done; privileges, rights or functions of employees and employers; matters which, in the opinion of the Commission, contribute to an industrial dispute or industrial action. Schedule 1 of the Act lists 27 matters which are considered to be industrial matters, for example: wages or remuneration; hours of work; pay equity; occupational superannuation; termination of employment; demarcation disputes; interpretation and enforcement of industrial instruments; what is fair and just in matters concerning relations between employers and employees.

## Commission's Powers

The Commission's functions are outlined in Part 2 of Chapter 8 of the Act. In Div. 4 of that Part, s. 274 gives the Commission general powers to do "all things necessary or convenient" in order to carry out its functions. Other sections in that Division give more specific powers, which are listed below. Specific powers are also distributed throughout the Act. For example various provisions in Chapters 5 and 6 empower the Commission

to do what is necessary to make, approve, interpret and enforce industrial instruments (Awards and Agreements). Provisions in Chapter 3 enable it to order reinstatement or award compensation to workers who have been unfairly dismissed. The Commission's exercise of its powers, and the powers necessary for conducting proceedings and exercising its jurisdiction are governed by Chapter 8, Part 6, Div 4.

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

The powers given by the Act include the power to:

- make general rulings about industrial matters, employment conditions, and a Queensland minimum wage: s. 287; and statements of policy about industrial matters: s. 288;
- resolve industrial disputes by conciliation and, if necessary, by arbitration: s. 230. The Commission's powers in such disputes includes the power to make orders and the power to enforce its orders;
- hear and determine applications for reinstatement following termination of employment, including awarding compensation if reinstatement is impracticable, and imposing a penalty on the employer if the dismissal was for an invalid reason: ss. 76 and 78-81;
- certify or refuse certification of agreements, and amend or terminate certified agreements, according to the requirements of the Act: ss. 156, 157, 169-173 or assist parties to negotiate certified agreements (ss. 148 and 149) by conciliation and, if necessary, by arbitration. The Commission's powers includes the power to make orders necessary to ensure negotiations proceed effectively and are conducted in good faith;
- make, amend or repeal Awards, on its own initiative or on application: s. 125. The Commission may also review Awards under s. 130. (The first prog¬ram of Award review was commenced by the Commission on its own initiative in 1999);
- approve a Queensland Workplace Agreement (QWA) for which a filing receipt has been issued if satisfied the QWA passes the no-disadvantage test; the QWA meets the additional approval requirements; and the QWA is not contrary to the public interest;
- determine claims for, and order payment of unpaid wages, superannuation contributions, apprentices' tool allowances, and certain other remuneration, where the claim is less than $50,000 (claims above that sum must be heard before an Industrial Magistrate): s. 278;
- make orders fixing minimum wages and conditions, and tool allowance for apprentices and trainees: ss. 137 and 138; and orders fixing wages and conditions for employees on labour market programs, and for students in vocational placement schemes: ss. 140 and 140A;
- make orders for payment of severance allowance or separation benefits, and order penalties against employers who contravene such orders: s. 87;
- declare a class of persons to be employees rather than independent contractors, and declare a person to be their employer: s. 275;
- amend or declare void a contract for services, or a contract of service not covered by an industrial instrument, where the contract is found to be unfair: s. 276;
- grant an injunction to compel compliance with an industrial instrument or permit, or with the Act, or to prevent contraventions of an industrial instrument, permit or the Act: s. 277;
- interpret an industrial instrument: s. 284;

- order repayment of fees, charged in contravention of the Act by a private employment agent, where the total fee paid was not more than $20,000: s. 408F (claims above that sum must be decided by an Industrial Magistrate);
- issue permits to "aged or infirm persons" allowing them to work for less than the minimum wage under the applicable industrial instrument: s. 696;
- make orders to resolve demarcation disputes (that is, disputes about what employee organisation has the right to represent particular employees): s. 279. In addition, if an organisation breaches an undertaking it has made about a demarcation dispute, the Commission has the power to amend its eligibility rules to remove any overlap with another organisation's eligibility rules: s. 466;
- order a secret ballot about industrial action, and direct how the secret ballot is to be conducted: ss. 176 and 285;
- the power to determine applications to amend the name, list of callings, or eligibility rules of an industrial organisation: Chapter 12 Part 6;
- the power to conduct an inquiry, under Chapter 12 Part 8, into any alleged irregularity in the election of office-bearers in an industrial organisation. Applications for such inquiries are made by financial members of the organisation to the Registrar. The Registrar may then refer the application to the Commission if there appear to be grounds for conducting an inquiry and the circumstances justify it: s. 502;
- the power to approve amalgamations of organisations: s. 618; and withdrawals from amalgamations: s. 623.

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

Acting on its own motion under s. 317 of the Act, the Commission deleted reference to the Trade Union Training Authority (TUTA) where it appeared in clauses of Awards dealing with trade union training leave. The decision was released on 16 January 2006 and published in the QGIG on 27 January 2006, see 181 QGIG 119. In essence, the Commission ordered that amendments to awards be made deleting reference to TUTA and inserting the words "the Union" or "trade Union training" in their place.

## General Rulings and Statements of Policy

An important tool for regulation of industrial matters and employment conditions by the Full Bench is the jurisdiction to issue general rulings and statements of policy.

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

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

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

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

On 15 August 2005 a Full Bench of the Commission declared by General Ruling a wage adjustment of $17 per week increase in award rates of pay. By the same General Ruling as required under s. 287 of the IR Act, the minimum wage for all full-time employees in Queensland was increased to $484.40 per week with a proportionate amount for junior, part-time and casual employees. The effective date for the increased rates was set at 1 September 2005.

On 14 September 2005 a full bench of the QIRC released a decision and issued a General Ruling effective on and from 15 September 2005 providing entitlements to make up pay for permanent full-time and part-time employees summoned to attend for **jury service**.

The Full Bench of the Commission, on 20 February 2006, dismissed an application by the federal Minister for Employment and Workplace Relations to have the 2006 State Wage Case adjourned until after the Australian Fair Pay Commission had made its first minimum wage determination under the *Workplace Relations Amendment (Work Choices) Act 2005*. The Full Bench stated there was a specific obligation under the *Industrial Relations Act 1999* that the Commission ensure that a general ruling about a minimum wage was made each calendar year.

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

## Disputes and the Conferencing role

For disputes notified to the Commission - whether it concerns the terms of a certified agreement being negotiated between a union representing workers and their employer, or a grievance between an individual worker and employer - the first step in resolving the matter is always a conciliation conference. Because of the emphasis placed on conciliated and negotiated outcomes in disputes, a large proportion of the Commission's work is directed at this conference stage. For that reason also, the parties to an application for reinstatement or for payment of unpaid wages have traditionally been directed to attend a conference with a member of the Commission. Where an entity alleging prohibited conduct (in relation to freedom of association under Chapter 4) has applied for a remedy, the Commission must direct the parties involved to a conciliation conference before a hearing.

An idea of the volume of conference work in the Commission can be gauged from the fact that unless withdrawn before the first conference, there will be at least one conciliation conference for each dispute notification filed, one for each reinstatement application filed, and one for each unpaid wages application filed. Certified agreement negotiations may require mediation or conciliation conferences in order to avoid a dispute. Some complex disputes require lengthy and intensive conciliation in order to reach satisfactory outcomes. If a dispute has the potential to have a serious impact, the Commission has the power to intervene in the public interest under s. 230 of the Act, even without the dispute being notified. The Commission must then take steps to settle the matter by conciliation or if necessary by arbitration. Section 230 has not been used in this way since the Act was introduced in 1999.

In many cases, a settlement can be agreed upon during the conference, or the parties may be able to resolve their conflict following conciliation. If not, the Commission may order the matter to be arbitrated in a hearing. Parties to an industrial dispute that cannot be resolved by negotiation can also request that the Commission arbitrate the dispute under s. 230. Table 6 shows that the number of arbitrations is low in comparison to the number of dispute notifications filed.

Parties who request assistance to negotiate a certified agreement, under s. 148, may require several conferences to work through their differences satisfactorily. There was a slight decrease in the number of these requests during the year.

## Unfair dismissals

Table 6 shows that over 34% of matters filed in the Registry during the year were applications for reinstatement or "unfair dismissals". Applications for reinstatement are allocated to Commission Members by the Vice President.

While there is a common belief that people come to the Commission seeking compensation for what they see as unfair dismissal or dismissal for an invalid reason, the primary remedy which the Commission can award under the Act is reinstatement to an applicant's former job, or alternatively re-employment in another job with the same employer. This is indicated in s. 78 of the Act. It is only if the Commission determines, because of the circumstances, that reinstatement or re-employment is impracticable, that compensation may be awarded instead. The Commission will decide the amount of any compensation based on the applicant's wages before dismissal, the circumstances surrounding the dismissal, and any amount that has already been paid to the applicant by the former employer. The powers of the Commission in this regard are outlined in s. 79 of the Act.

The path to a remedy for dismissed employees begins by filing an Application for Reinstatement. All such applications are dealt with first by conciliation conferences. These are proceedings where a member of the Commission assists the parties - that is, the former employee and employer - to negotiate an agreement.

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

In many cases, an agreement can be reached, disputed claims are resolved, or the matter is not pursued further. This is reflected in the figures in Table 9. Of the many applications filed, a limited number proceed to formal hearings. Decisions on reinstatement applications made up 39% of the 180 decisions released during the year.

If the parties cannot reach agreement in the conference, the Member doing the conciliation will issue a certificate to that effect, and will also inform the parties of the merits of the case and the possible consequences of continuing. If the applicant is a person who is excluded from the unfair dismissal provisions in s. 73(1), the Member must state that in the certificate. (Reasons for which an applicant may be excluded include: earning above the amount stipulated in the Regulation; being a short-term casual employee; or having been dismissed during a legitimate probation period.) The Member may also recommend to the parties that the matter be discontinued if it appears the claim has no basis.

The applicant must then decide whether to pursue the matter to a hearing. This is a more formal procedure where the Commission is constituted as a court, presided over by a different member of the Commission.

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

Table 9 shows general outcomes of reinstatement applications during the year.

## Industrial instruments

An essential part of the system of employment and industrial relations in Queensland is the use of industrial instruments - Awards and Agreements - to regulate the relationship between employees and employers. Awards and Agreements set out the terms and conditions of employment and have the force of law once made or certified or approved by the Commission.

The predominant types of instruments are: Awards; Certified Agreements (CAs); and Queensland Workplace Agreements (QWAs). Awards and CAs are collective instruments, that is, they cover a range of employees and employers in a particular industry. They will usually be negotiated by employee organisations with employers and/or related employer organisations. QWAs apply to individual employees. Table 8 indicates the types and number of industrial instruments in force within the Commission's jurisdiction.

## Certified Agreements

Certified Agreements are regulated by Chapter 6 Part 1 of the Act. A CA will usually cover one employer and, either all of its employees, or a particular category of its employees. It can be negotiated between an employer and a group of employees or between an employer and one or more employee organisations (unions) representing the employees. Such agreements can also be made to cover "multi-employers", for example associated companies or companies engaged in a joint venture. A CA may stand alone, replacing a relevant Award, or it may operate in conjunction with an Award. The affected employees must have access to the agreement before they approve it, and they must have its terms and its effect on their work and conditions explained to them. A majority of workers must approve it and the Commission must also be satisfied that it passes the "no-disadvantage test". That is, it must not place the affected employees under terms and conditions of employment that are less beneficial, on balance, than terms and conditions in an Award that is relevant to the calling (a "designated Award"). During the year there were 2 applications to the Commission to determine a designated Award.

If the parties have difficulty in negotiating the terms and conditions of the agreement, they may apply to the Commission for assistance with conciliation: s. 148. If (unusually) conciliation cannot resolve the impasse, the Commission has the power to arbitrate, as it would do for an industrial dispute.

During the year there were 487 applications to approve a Certified Agreement. Of these, 196 were new Agreements. The number of CAs currently in force is indicated in Table 8.

## Awards

Section 265(2) gives the Commission jurisdiction to regulate a calling by an Award. Awards are regulated by Chapter 5 of the Act. The Commission's powers with regard to Awards are set out in Part 2 of Chapter 5. Awards can be limited to a geographic region or a particular employer. But they may cover all employers who are engaged in a particular calling, along with their employees and any industrial organisations (that is, employer or employee organisations) that are concerned with that calling. Table 8 shows that there are 337 Awards currently in force in Queensland. Table 6 shows that during the year there were 3 new Awards made.

## Queensland Workplace Agreements

QWAs are governed by Chapter 6 Part 2. They can be negotiated collectively by one employer with a group of employees, but they are individual agreements. That is, ultimately each QWA governs the relationship between an employer and an individual employee. Referring to Table 7, the number of QWAs approved indicates the number of individual employees who agreed to QWAs with their employers during the year. To have effect, a QWA must be filed. It must then be approved by the Commission. Unless there is a public interest reason for not approving it, or it does not pass the "no disadvantage" test as outlined in s. 209 (determined by comparing it with a designated Award), the QWA will usually be approved. A copy of the approved agreement must be given by the employer to the employee.

## Unpaid wages

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

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

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

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

## Costs

The Commission has discretion to order costs against a party to an application. However the discretion may only be exercised if the Commission is satisfied the "offending" party's application was vexatious or without reasonable cause, or in the case of a party to a reinstatement application, some unreasonable act or omission during the course of the matter, caused another party to incur additional costs. Table 6 indicates how many of these costs matters were dealt with.

## Declaring persons to be employees

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

## Vary or Void Contracts

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

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

As with the applications for reinstatement, there is a level of remuneration at which the provision ceases to be available. That is, a person cannot file an application under s. 276 if he or she earned above the prescribed amount (set out in s. 4 of the Industrial Relations Regulation 2000). During the year, the stipulated cut-off was $94,900.

Table 6 shows that there has been a slight increase in the number of applications to amend or void a contract during the year.

## Industrial Organisations

The Commission has the power to: grant the registration of an Industrial Organisation (s. 413); approve of change of name (s. 473); change to eligibility rules (s. 474); and to make orders about an invalidity (s. 613). Table 12 shows the number of applications dealt with.

## Industrial action

Industrial action is protected if engaged in according to the terms of s. 174 of the Act. Under s. 176, industrial action can only be taken if it is authorised by the industrial organisation's management committee, is permitted under the organisation's rules, and if the Registrar is notified of the authorisation.

If it appears to the Commission that industrial action may be avoided, or a dispute settled by ascertaining the relevant employees' attitudes to the issues, the Commission may order that a secret ballot be conducted of the employees. In that event, the action is not protected industrial action unless and until the ballot is conducted and a majority vote in favour of it. During the year there have been no instances where the Commission has ordered a secret ballot for this purpose.

Table 6: Applications filed and Matters heard 2004-05 and 2005-06

| Section | Type of Application/Matter | 2004-05 | 2005-06 |
|---|---|---|---|
| s 53 | Long Service Leave - payment in lieu of | 71 | 85 |
| s 74 | Application for Reinstatement (Unfair dismissal) | 1,469 | 1,053 |
| s 87 | Severance allowance | 7 | 12 |
| | Exemption from requirement to pay severance or redundancy entitlements | 8 | 0 |
| s 117 | Prohibited conduct - breach | 10 | 8 |

| Section | Type of Application/Matter | 2004-05 | 2005-06 |
|---|---|---|---|
| s 125 | Awards: | | |
| | - New award | 16 | 3 |
| | - Repeal and new award | 31 | 3 |
| | - Repeal award | 2 | 2 |
| | - Amend award | 115 | 121 |
| s 130 | Review of Award | 0 | 8 |
| s 137 | Order - wages & conditions (trainees) | 7 | 9 |
| s 138 | Order - tools (trainees) | 0 | 1 |
| s 143 | Notice of intention to begin negotiations | 0 | 2 |
| s 148 | Assistance to negotiate a CA | 32 | 14 |
| s 152 | Certificate - request representation | 0 | 3 |
| s 156 | Certified Agreements: | | |
| | - Approval of new CA | 340 | 196 |
| | - Replacing existing CA | 293 | 291 |
| s 163 | Designated Award | 0 | 2 |
| s 168 | Extending a CA | 0 | 1 |
| s 169 | Amending a CA | 27 | 40 |
| s 172-173 | Terminate a CA | 15 | 31 |
| s 175 | Notice of industrial action | 192 | 110 |
| s 192 | Approve a QWA | 56 | 32 |
| s 229 | Notification of dispute | 534 | 399 |
| s 230 | Request for orders to settle/arbitrate dispute | | |
| | - Arbitration | 4 | 7 |
| | - Mediation | 0 | 4 |
| | - Other orders | 1 | 0 |
| s 265(3) | Inquiry about an industrial matter | 0 | 1 |
| s 274 | General Powers | 5 | 29 |
| s 276 | Amend/void a contract | 23 | 29 |
| s 277 | Injunction | 3 | 4 |
| s 278 | Claim for unpaid wages/superannuation | 255 | 212 |
| s 280 | Re-open a proceeding | 6 | 0 |
| s 281 | Reference to a Full Bench | 1 | 1 |
| s 284 | Interpretation of industrial instrument | 3 | 10 |
| s 287, 288 | General ruling/statement of policy | 2 | 3 |
| s 317 | Commission of own motion | 0 | 1 |
| s 319 | Representation of party/Legal representation | 0 | 2 |
| s 325 | Joinder of applications | 0 | 1 |
| s 326 | Interlocutory orders | 0 | 1 |
| s 331 | Dismiss/refrain from hearing | 14 | 6 |
| s 335 | Costs | 1 | 2 |

| Section | Type of Application/Matter | 2004-05 | 2005-06 |
|---|---|---|---|
| s 342 | Appeal to Full Bench | 2 | 1 |
| s 408F | Repayment of private employment agent's fee | 1 | 0 |
| s 409-657 | Industrial Organisation matters [Table 12] | 68 | 72 |
| s 695 | Student work permit | 5 | 27 |
| s 696 | Aged and/or infirm permit | 36 | 35 |
| s 713 | Agreement has effect as an award | 42 | 0 |
| Reg 27 | Objections | 0 | 4 |
| IR Act | Annual Return | 0 | 2 |
| IR Act | Private conference | 0 | 2 |
| IR Act | Request for recovery conference | 0 | 61 |
| W H&S Act s 90 | Authorised Representative | 0 | 18 |
| WC Act s 550 | Appeal against Q-Comp | 0 | 59 |
| T(AH) Act | Trading hours order | 13 | 5 |
| T&E Act s62 | Reinstatement of training contract | 4 | 3 |
| T&E Act s230 | Apprentice/trainee appeals | 3 | 5 |
| Whistleblower's Act s 47 | Injunction | 0 | 0 |
| **TOTAL APPLICATIONS/MATTERS** | | **3,728** | **3,033** |
| No. of Decisions published (excl. New Awards; Award amendments and reinstatements) | | 131 | 110 |
| No. of Reinstatement Decisions published | | 60 | 70 |

Table 7: Agreements filed 2004-05 and 2005-06

| Agreements & notifications filed | 2004-05 | 2005-06 |
|---|---|---|
| Certified agreements | 633 | 487 |
| Notice: initiation of bargaining period: s143(2) | 3 | 2 |
| Notice: authorisation to engage in industrial action: s177 | 189 | 110 |
| Application to amend a CA | 27 | 40 |
| Application to extend a CA | 0 | 1 |
| Application to terminate a CA | 15 | 31 |
| Queensland Workplace Agreements | 56 | 32 |
| Certificate - request representation | 0 | 3 |

Table 8: Industrial Instruments in force 30 June 2006

| Type of Instrument | Number |
|---|---|
| Awards | 337 |
| Industrial agreements | 6 |
| Certified agreements | 4,386 |
| Superannuation industrial agreements | 136 |
| **TOTAL** | **4,865** |

Table 9: Reinstatement Applications 2005-06 - Breakdown of outcomes

| **Total No. of Applications** | **1,053** |
|---|---|
| Rejected by Registrar* | 13 |
| No jurisdiction found by Commission | 0 |
| Application refused following hearing | 0 |
| Application dismissed following hearing | 4 |
| Application struck out at hearing | 1 |
| Application Granted following hearing | 14 |
| Application withdrawn** | 482 |
| Lapsed*** | 0 |
| Inactive**** | 1 |
| Completed | 4 |
| Still in progress | 527 |
| Adjourned to Registry | 7 |

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

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

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

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

## Powers and other jurisdiction under other Acts

The Commission has jurisdiction under other Acts viz.: the *Vocational Educational, Training and Employment Act 2000*; the *Trading (Allowable Hours) Act 1990*; the *Workers' Compensation and Rehabilitation Act 2003*; the C*ontract Cleaning Industry (Portable Long Service Leave) Act 2005*; and the *Whistleblowers Protection Act 1994*.

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

The Commission has jurisdiction under Chapter 8 Part 2 of the *Vocational Education, Training and Employment Act 2000* to hear and determine appeals from decisions of the Training Recognition Council. These include decisions about registration or cancellation of training contracts, cancellation of completion certificates or qualifications, decisions to stand down an apprentice or trainee, or declaration of a prohibited employer. In addition, a person who was a party to a training contract which has been cancelled by agreement may apply to the Commission, under s. 62, for the contract to be reinstated if the agreement to cancel was obtained by coercion.

The Commission may order the employer or the apprentice/trainee to resume training. It may also make orders about continuity of training and may order the employer to compensate the apprentice/trainee, or the apprentice/trainee to repay any amount paid on cancellation of the contract. If resumption of training would be inappropriate, the Commission may order cancellation of the training contract and, if circumstances warrant it, may order the employer to pay compensation.

During the year, there were five apprentice/trainee appeals.

## Jurisdiction under the *Trading (Allowable Hours) Act 1990*

The Full Bench determines applications by non-exempt shops to vary trading hours under Part 5 of the *Trading (Allowable Hours) Act 1990* (see s. 21). By s. 23 of that Act, the Commission may do so on its own initiative or on application by an organisation. During the year there were 5 applications relating to trading hours.

A Full Bench of the Commission heard an application to amend the trading hours of South-East Queensland that effectively sought for the major supermarkets and shopping centres in Regional Queensland (Southern and Eastern Area) to be able to trade on Sundays. Interstate inspections, and extensive inspections and hearings in regional Queensland were undertaken and on 15 September the Full Bench dismissed the application stating that there was no evidence that the long term economic well-being of the retail sector would suffer by the denial of Sunday trading in regional Queensland, but there was evidence that it may if Sunday trading was introduced in the area. (See Full Bench decisions). An appeal was dismissed.

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

Workers and employers can apply to Q-Comp if they disagree with certain decisions made by their workers' compensation insurer. Q-Comp impartially reviews claims decisions. As of Monday 22 August, under s. 550 of the *Workers' Compensation and Rehabilitation Act 2003*, if an employer or employee is aggrieved by the Q-Comp Review decision, either party can appeal to the Queensland Industrial Relations Commission. During the year there were 59 appeals relating to Q-Comp Review decisions.

## Jurisdiction under the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*

Clause 97 of the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005* provides for an appeal to the Queensland Industrial Relations Commission against a decision of the authority regarding retrospective credits.

## Jurisdiction under the *Whistleblowers Protection Act 1994*

Section 47 of the *Whistleblowers Protection Act 1994* provides that an application for an injunction about a reprisal may be made to the Queensland Industrial Relations Commission if the reprisal has caused or may cause detriment to an employee. No application was made in the reporting period.

## Jurisdiction under the *Workplace Health and Safety Act 1995*

Under s. 151 of the *Workplace Health and Safety Act 1995* a person whose interests are affected by an original decision may appeal against the decision to the Queensland Industrial Relations Commission. In deciding an

appeal, the Commission may confirm the decision appealed, vary the decision appealed against, set aside the decision appealed against and make a decision in substitution for the decision set aside or set aside the decision appealed against and return the issue to the decision maker with directions the Industrial Commission considers appropriate.

# Professional activities

During the year 2005-06, the Members attended the following conferences, seminars and meetings:

## Vice President

- International Association of Women Judges 8th Biennial Conference, Sydney - 3 to 7 May 2006

## Deputy President Swan

- Employment and Labour Law Seminar, University of Qld - 27 July 2005
- Pan Europe Asia Legal Conference, Rome - 15 to 21 September 2005
- Workers' Compensation Seminar, Brisbane - 31 May 2006

## Deputy President Bloomfield

- Industrial Relations Reform - Fair Go or Anything Goes Conference, Sydney - 13 July 2005
- Industrial Relations Society of Qld Convention, Gold Coast - 23 September 2005

## Commissioner Edwards

- 4th International Conference on Social Responsibility, London - 7 to 9 September 2005
- Commonwealth Law Conference, London - 11 to 15 September 2005
- Pan Europe Asia Legal Conference, Rome - 15 to 21 September 2005
- International Bar Association Conference, Prague - 25 to 30 September 2005
- 5th European Congress on Mental Health, Barcelona - 6 to 8 October 2005

## Commissioner Bechly

- Work Choices Seminar, Griffith University - 25 March 2006
- Employment and Industrial Relations Conference, Noosa - 26 to 27 May 2006
- Workers' Compensation Seminar, Brisbane - 31 May 2006
- Europe Asia Legal Conference, Italy - 25 June 2006 to 1 July 2006

## Commissioner Blades

- Bar Association Conference, Dublin - 29 June 2005 to 2 July 2005
- Europe Asia Legal Conference, Italy - 3 to 9 July 2005
- Britain Legal Pacific Conference, London - 14 to 20 July 2005
- 23rd Australian Institute of Judicial Administration Conference, NZ - 7 to 9 October 2005
- Pan Europe Pacific Legal Conference, Italy - 25 June 2006 to 1 July 2006

## Commissioner Brown

- Europe Asia Legal Conference, Italy - 25 June 2005 to 1 July 2005
- Pan Britain Pacific Legal conference, London - 14 to 20 July 2005

## Commissioner Asbury

- Industrial Relations Reform - Fair Go or Anything Goes Conference, Sydney - 13 July 2005
- Employment and Labour Law Seminar, University of Qld - 27 July 2005
- Industrial Relations Society of Qld Convention, Gold Coast - 23 September 2005
- Industrial Relations Society of Qld Conference, Brisbane - 9 November 2005

## Commissioner Thompson

- NRA Work Choices Conference, Sydney - 15 to 16 March 2006

In addition, President Hall chaired a seminar at the TC Bernie School of Law at The University of Queensland as part of the Professional Legal Education and Training Seminar Series 2005. The topic was "Employment and Labour Law: The Proposed Changes and Recent Developments - What You Need to Know" which dealt with the crucial issues in Labour and Employment Law in Queensland and Australia. President Hall presented the paper titled "The Restraint of History".

During 2005 and 2006, information sessions about the role and functions of the Industrial Court and Queensland Industrial Relations Commission were conducted.

In August 2005, Deputy President Bloomfield conducted an information session for over 60 members of the Australian Human Resource Institute, titled "Overview of a Dispute in an Industrial Tribunal". The session covered the practices and procedures of the Industrial Registry. A mock Commission dispute conference was also conducted.

In September 2005, the Commission hosted a group of QUT postgraduate students to a guided viewing of the First Person to be Reinstated in the Queensland Industrial Jurisdiction display. In April 2006, undergraduate students from Griffith University visited the Commission and attended information sessions about significant decisions and the workings of the Commission.

## In the MATTER of the First Person REINSTATEMENT: 1916 - Principles of Law

In August 2005, the Queensland Industrial Relations Commission launched a public exhibition about the case of the first person reinstated in the Queensland industrial jurisdiction, in 1916. The exhibition takes an historical look at the principles of law relating to reinstatement in 1916, the relevancy of those principles in the contemporary industrial relations environment and the important role that the Queensland Industrial Relations Commission plays in contributing to social justice and economic advancement of all Queenslanders in balancing the rights and responsibilities of employees and employers.

On 16 July 1916, Acting Judge Frederick W. Dickson of the Queensland Industrial Court found that sanitary vanman, August Prove, who worked for the Maryborough Municipal Council, was unjustly dismissed and ordered his reinstatement and reimbursement of wages. An industrial dispute had arisen between the Council and its sanitary employees over the dismissal of Prove for alleged neglect of work by "dumping", that is, leaving

half-emptied pans in closets. Prove swore that he had been ordered to "dump" by his sanitary inspector and had protested about the practice making specific complaints to the Council Health Committee. The Inspector, on the other hand, declared that "dumping" was by no means the principal reason for dismissing Prove, rather it was his impudence, and insubordinate conduct and general neglect of his duties, and denied telling him to "dump". Prove stated, further, that he had not been given the chance to respond to the Inspector's allegations. Significantly, Prove was a union delegate for the Australian Workers Union at the time.

The circumstances under which Prove had been dismissed had caused bitter resentment among his co-workers who unanimously agreed not to return to work unless the dismissal was submitted to an Industrial Court Judge for settlement. The Maryborough Municipal Council was potentially facing a serious public health problem and telegrams were sent to the Commissioner for Health and Honourable Home Secretary in Brisbane about the dispute.

In deciding wholly in favour of Prove, Acting Judge Dickson became the first judge in Queensland to order the reinstatement of an employee who had been unjustly dismissed. The Inspector's list of complaints from six householders was said to be "altogether a trumpery log of complaints" countered by an affidavit signed by fellow workers and 186 householders on Prove's run who confirmed his civility and attention to his duties. On the more serious complaint against Prove of "dumping", Dickson believed that this had been done at the instigation of the sanitary inspector.

In his decision, Acting Judge Dickson articulated principles of law which continue to be important in cases where the fairness of a dismissal is called into question.

(1) "Audi alteram partem" i.e. "Hear the other side".
(2) A servant cannot be dismissed except upon good cause.
(3) There is good ground for dismissal of a servant if he has been habitually neglectful in respect of his duties, for which he was engaged, but not if there is only an isolated instance of neglect unless attended by serious consequences. (Halsbury Laws of England, Vol. 20, page 101).
(4) A master, who in full knowledge of a servant's misconduct elects to continue him in his service, cannot subsequently dismiss him for the offence which he has condoned (Halsbury, Vol. 20 page 102).

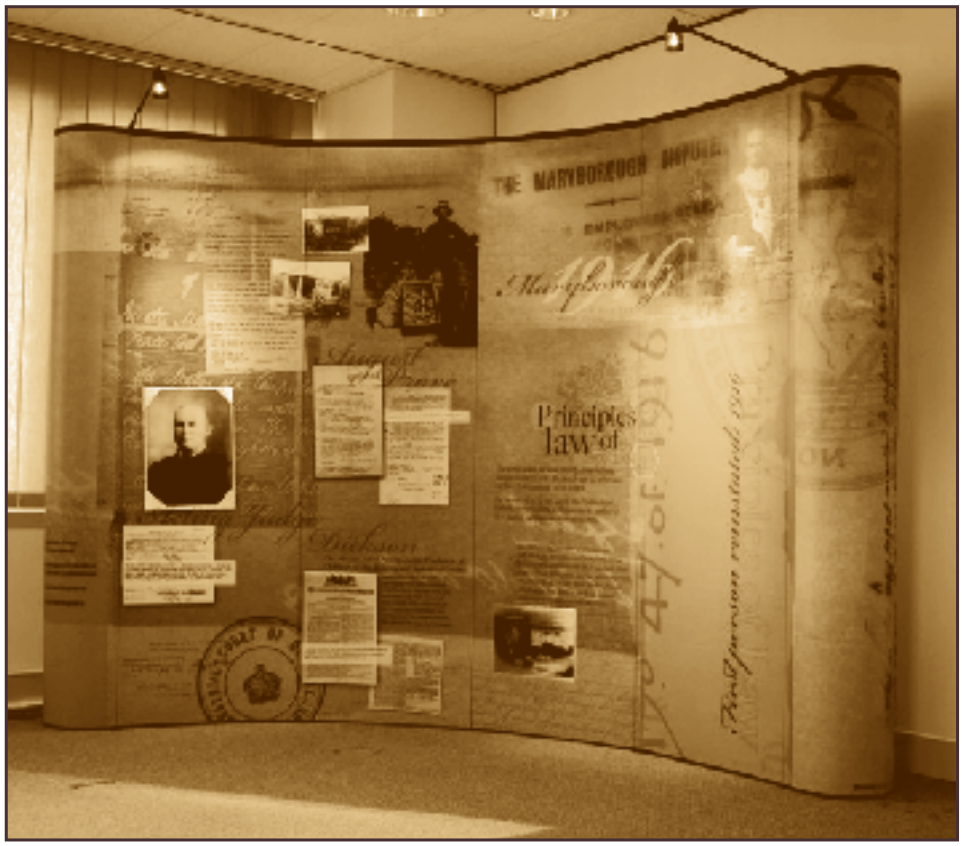
Representing the Minister for Employment, Training and Industrial Relations, Parliamentary Secretary Karen Struthers MP launched the public exhibition on the 9th August 2005 to scores of distinguished representatives of the industrial relations community. Ms Struthers acknowledged that the unfair dismissal case of August Prove in 1916 was a defining moment in unfair dismissal laws in Queensland, that an employee cannot be dismissed without just cause. This exhibition demonstrates that the guiding principles of natural justice and a "fair go all round" have been around for almost 100 years and remains pivotal to unfair dismissal law in balancing the rights and responsibilities of Queensland employees and employers.

Ms Struthers stated that the Industrial Court of Queensland and the Queensland Industrial Relations Commission, as tribunals independent of government and other interests, remain essential to the industrial conciliation and arbitration system in Queensland and decisions of the Commission are required to be based on equity, good conscience and the substantial merits of the case.

At the bequest of the Maryborough City Council, the exhibition was transported to Maryborough to coincide with the city's centenary celebrations on 28 October 2005 at the Maryborough City Hall. A Mayoral function commemorated the city's participation in Queensland industrial relations history and was attended by many. The exhibition gained positive media attention through local radio stations and newspapers across the south-east region.

The exhibition was also taken to the 2005 Industrial Relations Society of Queensland conference held at Legends Hotel, the Gold Coast on 23 and 24 September 2005 for viewing by both academics and public and private sector practitioners engaged in contemporary industrial relations policy debates. In addition, students from key Brisbane universities (Queensland University of Technology and Griffith University) participated in information evenings in September 2005 and April 2006 to augment their understanding of the role of the Industrial Court and Queensland Industrial Relations Commission.

The exhibition features a 3 metre long physical display depicting the history of the case through text and images and is supplemented by framed photographs, archived case documents and a manuscript. The exhibition is open for public viewing at Level 13, Central Plaza 2, 66 Eagle Street, Brisbane and can be downloadable at the URL www.qirc.qld.gov.au.




**Display about the case of the first person reinstated in the Queensland industrial jurisdiction, in 1916 - level 13, Central Plaza 2.**

# Queensland Industrial Registry

# Queensland Industrial Registry

The Queensland Industrial Registry is the Registry for the Court and Commission.

The Industrial Registry is an office of the public service. The Industrial Registrar is the head of the Industrial Registry, under the Public Service Act 1996.

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

The Court, Commission and Registrar are independent of government and other interests. Funding for the Court, Commission and Registry is provided through the Department of Industrial Relations, with the Department being sensitive to the need to maintain this independence.

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

## Commission and Registry Business Plan

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

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

The key priorities of the Business plan are listed below:

### *Priority One:*

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

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

### *Priority Two:*

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

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

### *Priority Three:*

Best practice service delivery for users.

Objective:

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

## *Priority Four:*

A highly skilled, motivated and adaptable workforce.

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

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

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

General enquiries:
(07) 3227 8060

Facsimile:
(07) 3221 6074

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

**Staff of the Registry** assists all users of the Court and Commission through:

- responding to public enquiries through:
  - a telephone advisory service
  - across the counter and
  - written correspondence;
- an advisory role to parties and practitioners who require information on practices and procedures;
- receiving and filing applications and related documentation;
- disseminating source documentation to the Department of Industrial Relations Wageline and IRIS websites and also to a range of industrial relations publications firms;
- manage and maintain the QIRC website.

Staff of the Registry also provides 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;
- liaising with the State Court Reporting Bureau for recording of transcripts;
- examining, evaluating and processing all applications and other documentation received from applicants and respondents and other parties;
- assisting the Commission in matters relating to industrial instruments including creating award amendments and new award drafts;
- preparing, formalising and releasing all decisions, amendments, orders, etc. and publishing in the Queensland Government Industrial Gazette;

- researching and analysing industrial relations legislation and industrial instruments and providing advice to the Commission on complex enquiries;
- undertaking library research services for Members;
- managing and maintaining intranet web services;
- delivering a comprehensive range of corporate services.

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

## Applications filed and processed by Registry

During 2005-06, a total of 3,133 applications and notifications were filed in the Registry (see Tables 1 & 6).

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

The Registry has set itself benchmarks for timeliness in initial processing of applications and notifications. The table below indicates how successful it has been in meeting those targets during the year to 30 June 2006.

Table 10: Registry Performance Indicators 2004-05 and 2005-06

| Criterion | Target | 2004-05 | 2005-06 |
|---|---|---|---|
| Notify parties to dispute conferences within 5 working hours | 99% | 99% | 99% |
| Process applications within 8 working hours | 95% | 95% | 95% |
| Initial processing of agreements within 3 working days | 90% | 95% | 95% |

## Publications (Gazette and Web)

### Publication Services

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

The Unit has undergone signification change over the past twelve months adding to the range of support already offered to the Court and Commission.

The Unit has developed electronic processes and procedures to better manage the production and maintenance of all official documentation published in the QGIG and enhanced dissemination to interested parties in a more timely and efficient manner. During the year the Unit published 51 weekly gazettes, requiring over 3,000 pages to be formatted and proofread.

The Unit has upgraded all the manual award files to electronic format. The Unit has developed an improved process for the filing and approval of Certified Agreements. This has enabled the Unit to provide up-to-date electronic copies of all publicly available source documents to the Department of Industrial Relations for updating their IRIS database. This has resulted in significant improvement in client service for both the Department and the Registry. Also, for the first time, the Registry has been able to schedule the majority of

State Wage Case Amendments to be published in the first week of September to coincide with the operative date of the General Ruling.

The QIRC web site now also contains the current and the three preceding gazettes and some 2,200 files of relevant information for the general public.

Award Review Mark II

The Full Bench decision cited earlier regarding Award Review Mark II (180.QGIG 101), which granted wage increases with phased-in operative dates commencing from 15 August 2006, necessitated preparing approximately 83 amendments. This involved Publications staff interpreting all State Awards to determine which Awards needed updating, carefully researching each Award to be amended, often manually calculating the wages and allowances to be adopted. The Unit was required to meet tight timeframes to align with the printing of the 1 September State Wage Case amendments.

State Wage Case

The outcome of the State Wage Case meant for the first time since 2002 over 320 Amendments) were firstly prepared for publication, then printed in the QGIG over a period of some 4 weeks from 30 September to 29 October 2005. The printing of these amendments was a major task involving the preparation of 4 special Gazettes and 4 sets of Extracts requiring over 940 pages to be formatted, proofread and printed, with limited timeframes involving the whole of the Publications stream of the Registry. These amendments were then prepared further for posting to the QIRC Website.

Trade Union Training Leave

The outcome of a decision of the Commission dated 16 January 2006 181 QGIG 119 which was to provide a greater consistency across all awards resulted in the Publication staff within the Registry having to research every State Award to establish which awards referred to the Trade Union Training Authority. Because there had been no model clause or standard wording for such reference, each award had to be treated individually and as a result over 90 separate award amendments were created. These amendments were then prepared for publication, proofread and gazetted in the same week of the decision being released.

Table 11: Documents gazetted under sections of the IR Act and other Acts 2005-06

| Matter Type of Document Gazetted | Section | 2005-06 |
|---|---|---|
| Amending a Certified Agreement | s 169 | 1 |
| Appeal against the cancellation of a training contract | s 230 (VETE Act) | 1 |
| Appeal against decision of Industrial Commission | s 341 | 31 |
| Appeal against decision of Industrial Magistrate | s 341<br>s 164(3)(WHS Act)<br>s 172 (EL.SAFE.Act) | 19 |
| Appeal against decision of Industrial Registrar | s 341(1) | 1 |
| Appeal to Commission | s 550 (WC Act) | 2 |
| Appeal from Industrial Magistrate to Industrial Court | s 561 (WC Act) | 16 |
| Appeal for arbitration | s 149, 230 | 3 |

| Matter Type of Document Gazetted | Section | 2005-06 |
|---|---|---|
| Application for costs | s 335<br>r 66 (IR RULES) | 12 |
| Application for declaratory relief | s 248 | 1 |
| Application for equal remuneration | s 60 | 7 |
| Application for general ruling | s 287 | 10 |
| Application for leave to appeal | s 342(2) | 1 |
| Application for orders | s 265, 230, 326 | 4 |
| Application for reinstatement | s 73, 74 | 70 |
| Application for statement of policy | s 288 | 2 |
| Application for unpaid wages | s 278 | 15 |
| Application to amend order | s 137 | 9 |
| Application to stay | s 347<br>s 562 (WORK COMP) | 7 |
| Application to strike out or dismiss proceedings | s 331 | 3 |
| Application of new award | s 125 | 1 |
| Application of other name amendment | s 473 | 4 |
| Arbitration of an industrial dispute | s 229, 230 | 10 |
| Award amendment | s 125 | 208 |
| Award Review | s 130 | 2 |
| Award Review (corrections of error) | s 130 | 3 |
| Basis of decision of the Commission and Magistrates | s 320 | 1 |
| Certification of an Agreement (decisions) | s 156 | 7 |
| Decisions generally | s 331 | 1 |
| Discretion to issue warrant | s 341(4) | 1 |
| Eligibility rule amendment | s 474 | 3 |
| Examination of affidavits for substantial compliance with order of the Commission | s 233(6) | 1 |
| Extension of time | s 346(2) | 1 |
| General Powers | s 274 | 8 |
| Interpretation of Industrial Instrument | s 284 | 5 |
| New Award (correction of error) | s 125 | 5 |

| Matter Type of Document Gazetted | Section | 2005-06 |
|---|---|---|
| Orders about invalidity | s 613 | 1 |
| Orders about severance allowance | s 87 | 1 |
| Orders on exhibitions etc. | s 22 (TRAD HOURS) | 2 |
| Power to amend or void contracts | s 276 | 4 |
| Power to grant injunction | s 277 | 1 |
| Powers incidental to exercise of jurisdiction | s 329 | 1 |
| Proceeding started by commission of own initiative | s 317 | 1 |
| Reference to a full bench | s 281 | 1 |
| Refuse to certify an agreement | s 157 | 3 |
| Repeal and new award | s125 | 53 |
| Representation of parties | s 319 | 1 |
| Stay of operation of decisions | s 154(1) WHS<br>s 174 (EL. SAFE. Act) | 5 |
| Strike out proceedings after at least 1 year's delay | r 201 (IR RULES) | 1 |
| Trading Hours Order amendments | s 21 (TRAD HOURS) | 6 |
| **TOTAL** | | **557** |

## Web Services

The QIRC website has undergone major redevelopment resulting in a design reflecting survey responses. The website contains updated full text decisions, hearing lists, procedures, forms, legislation and new initiatives. Greater emphasis has been placed on the production of electronic information guides and facts sheets specially directed at supporting self-representing parties, industrial organisations, dispute resolution and the unfair dismissal jurisdiction.

The use of the Commission's web site at www.qirc.qld.gov.au has increased markedly and is now integral to the conduct of the Commission's business. Approximately 106,000 visits are recorded annually.

The intranet web site for the Commission and Registry has also undergone major redevelopment resulting in it becoming the major internal access point for administrative information and legal research materials further improving the quality and timeliness of advice to clients.

## Corporate Services

By virtue of s. 17 of the *Public Service Act 1996*, the Industrial Registry is an office of the public service, an independent agency. Section 19 of that Act confers upon the Industrial Registrar, who is the head of the Agency, all the functions and powers of the Chief Executive of a department in relation to the agencies' public service employees.

Under the provisions of the *Financial Administration and Audit Act 1977*, the Chief Executive [Director General] of the Department of Industrial Relations is the accountable officer of the Industrial Registry. The Director General has delegated certain powers to the Industrial Registrar under that Act.

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

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

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

## Organisational capability of the Registry

The commencement of the federal government's *Workplace Relations Amendment (Work Choices) Act 2005* on 27 March 2006 will cause significant change to Queensland's industrial relations system. The full impact on the workload of the Commission and Registry will not be known until the High Court decides in relation to the Queensland Government's challenge to the new federal laws.

In the interim, the Registry continues to undertake a range of internal projects designed to further enhance service delivery in addition to achieving day to day requirements for client service delivery.

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

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

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

In particular, a program to modernise the information and business systems of the Commission and Registry including adoption of electronic service delivery has been underway for some time.

Phase 1, the development of a new Industrial Matters System [IMS] which underpins the Commission and Registry judicial and business operations and form the foundation for many future e-court initiatives became operational as of Monday 8 August 2005.

The system provides the Commission and Registry with a J2EE application that integrates current email and fax solutions and providing improved functionality including a process for redefining current work procedures and policies, including electronic lodgement of documents. The upgrade of the network to cater for the new system has already produced the benefits of remote access for Members and Associates. The move to a standard operating system, including new email and document management software, has facilitated the capacity to receive and store electronic transcripts so that it is readily available to Members.

Phase 2, the proposal to enhance the operation of IMS management system and bring the QIRC up to date and in line with the systems and processes now in place in similar jurisdictions throughout Australia and in other courts, is underway.

The proposal will ensure the use of technology to provide an opportunity for more efficient and effective means of communicating and managing information between the QIRC and external stakeholders, particular Government departments and the industrial relations community (employee and employer organisations, industrial agents, employers and employees).

The Registrar completed a reassessment of roles and responsibilities of all Registry staff and implemented a new organisational structure aligned to best support the Commission and the Queensland public. This was undertaken through examining and testing a range of workflows, and improving the skills of staff to meet identified business requirements in accordance with proposed functions.

The Registry is now staffed by a number of Registry Services Officers who are the face to the general public through counter and telephone enquiry services. In addition the day to day operations of the Judicial area is overseen by a Principal Registry Officer to ensure the best delivery of services.

The Registrar is now assisted by a Senior Registry Officer in developing and implementing a range of projects and client service related policies, including approved information technology strategies relating to the adoption of e-court initiatives, designed to improve the business processes of the Industrial Registry and its function in supporting the Industrial Court of Queensland and the Queensland Industrial Relations Commission.

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

The Registry Management Group (RMG) comprising of senior staff of work units from within the Registry continues to meet regularly to further develop an organisational culture, which values client service excellence, workplace improvement through shared leadership, devolved accountability and operational effectiveness.

The new organisational structure of the Registry together with business improvement initiatives provides for greater interaction with the industrial relations community, expedite timeframes for conferences and hearings and improve the efficiency and effectiveness of the QIRC system.

In May 2006 AC Nielsen conducted a client satisfaction survey of the Industrial Registry Office based on a random sample of clients. This is only the second year that the survey has been conducted. The overall goal of the survey was two-fold: firstly, to understand client needs and promote service delivery coverage, innovation and improvement in the Registry; secondly, to identify opportunities to enhance the delivery of information services and to assess the extent to which the mechanism for delivery of web services could be improved and integrated. The level of reported client satisfaction was 87% and 76% respectively.

# Industrial Registrar's Powers

## Jurisdiction under the *Industrial Relations Act 1999*

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

The Registrar may determine that a reinstatement application under s. 74 should be rejected because the applicant is excluded by s. 72 of the Act. The majority of applicants excluded are generally those found to

be short-term casual employees as defined in s. 72(8) or employees still within the probationary period (unless the dismissals are claimed to be for an invalid reason, as stated in s. 73(2)).

Under s. 72 of the Act, only 13 of the 1,053 reinstatement applications lodged were rejected by the Registrar (see Table 9).

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

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

## Jurisdiction under the *Workplace Health and Safety Act 1995*

The *Workplace Health and Safety and Other Acts Amendment Act 2006* gave State and Federal union officials the right to enter workplaces on health and safety grounds. Under the amendments the Industrial Registrar can issue permits that authorise a representative of a registered industrial organisation to enter a workplace where there is a reasonable suspicion that a contravention of the Act involving workplace health and safety has happened or is happening. Authorised representatives are required to undertake approved occupational health and safety training to be issued with a permit.

## Registrar's Role regarding Industrial Organisations

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

### Register and rules

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.

The Industrial Registrar may approve applications to amend an industrial organisation's rules under s. 467, other than by amending its name or its eligibility rules (which must be approved by the Commission).

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

### 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.

### Financial accountability

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

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

### Exemptions

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

# Industrial Organisations

# Industrial Organisations

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

## Applications for registration of organisations

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

Part 16 of the Chapter provides for an organisation to be de-registered, on certain grounds, by a Full Bench of the Commission. For this purpose, the Bench must include the President (see s. 256(2)). The grounds for de-registration are set out in s. 638; and s. 639 states who may apply. In certain circumstances, the Full Bench can act of its own initiative to bring proceedings to de-register an organisation. The Registrar can also apply to have an organisation de-registered on one of the grounds in s. 638, or on the ground that the organisation is defunct.

Under s. 426 of the Act, the Registrar must keep a register of industrial organisations, along with copies of their rules. Each organisation must also file a copy of its register of officers every year (s. 547). The rules and the register of officers are open for inspection on payment of the fee prescribed (see ss. 426 and 549). Any industrial organisation with a counterpart federal organisation may apply to the Registrar, under s. 582, for exemption from the requirement to keep registers of officers or members.

## Rules

Industrial organisations must have rules on certain matters which are outlined in Parts 3 and 4 of Chapter 12. Part 3 covers general content of the rules, including restrictions on content (see ss. 435 and 436). Part 4 sets out requirements for rules governing election of officers in the organisation (this Part does not apply to organisations that are corporations). Elections are discussed briefly below. A copy of the rules of each organisation must be lodged along with registration details in the Registry (s. 426). These are open for inspection on payment of the fee indicated in the Schedule of the Tribunal Rules.

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

The rules of an organisation can be amended, on approval by the Commission or the Registrar. If the Court has declared, following an application under s. 459, that a rule does not comply with s. 435, the organisation must amend it within 3 months - if this is not done, the Commission or the Registrar may amend the rule to

enforce compliance (s. 468). The Commission must determine an application to amend the eligibility rules (s. 474) and the list of callings represented by an organisation (s. 427). All other applications to amend rules are determined by the Registrar under s. 467. Amendments to rules may only be approved if they are proposed in accordance with the organisation's rules and will not contravene the restrictions set down in s. 435 (see ss. 474, 478).

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

## Elections

The Act requires all industrial organisations to make rules governing elections to office (see Chapter 12 Part 4). Section 440 also states a general requirement of transparency: that is, rules should ensure that election processes are transparent and irregularities are avoided. If a member of an organisation believes there has been irregularity in the conduct of its election, the member can apply to the Industrial Registrar under Chapter 12 Part 8 to conduct an election inquiry. If the Registrar is satisfied there are reasonable grounds and the circumstances justify an inquiry, the application may be referred to the Commission.

The rules must provide for elections to be either by a direct voting system (Div 3 of Part 4) or by a collegiate electoral system (Div 4 of Part 4). A direct vote must be conducted by a secret postal ballot, or by some alternative form of secret ballot approved by the Registrar. Schedule 3 of the *Industrial Relations Regulation 2000* sets out "Model Election Rules" which must be taken to be an organisation's election rules if their election rules do not comply with 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 seek 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 of the Act's requirements, including the stipulations about holding elections on the ground that their federal counterparts held elections under the federal Workplace Relations Act.

## Financial Accountability

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

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

provisions apply where an employer organisation is a corporation subject to other statutory requirements to file accounts and audit reports: see s. 590).

## Orders for Invalidity

The Act makes provision for the Commission to validate a matter or event about the management or administration of an organisation's affairs, the election or appointment of an officer of an organisation or the making, amending or repealing of a rule of an organisation. An application about an invalidity may be made by an organisation, a member of the organisation or another person the Commission considers has a sufficient interest in whether an invalidity has occurred. In deciding the application, the Commission may declare whether or not an invalidity has occurred. If, on the hearing of the application, the Commission declares an invalidity, the Commission may make an order it considers appropriate to remedy the invalidity or to cause it to be remedied, change or prevent the effects of the invalidity or validate an act, matter or thing made invalid by or because of the invalidity.

Table 12 lists industrial organisation matters filed in Registry.

Table 12: Industrial organisation matters filed 2004-05 and 2005-06

| Industrial Organisation matters | | 2004-2005 | 2005-2006 |
|---|---|---|---|
| s 413 | Registration applications | 1 | 0 |
| s 422(3) | New rules | 1 | 0 |
| s 427 | Amendment - list of callings | 0 | 0 |
| s 473 | Amendment - Change of name | 2 | 3 |
| s 474 | Part amendment - eligibility rules | 2 | 4 |
| s 478 | Part amendment to rules | 15 | 16 |
| s 481 | Request for conduct of election | 39 | 36 |
| s 580 | Exemption from conduct of election | 8 | 6 |
| s 582 | Exemption - members' register | 0 | 0 |
| s 586 | Exemption - branch financial return | 0 | 0 |
| s 594 | Exemption from Electoral Commission conducting election | 0 | 1 |
| s 613 | Orders about Invalidity | 0 | 3 |
| Rule 27 | Notice of Objection to application | 0 | 4 |
| **TOTAL** | | **68** | **72** |

## Membership of Industrial Organisations

Eligibility for and admission to membership of industrial organisations are governed by Part 10 of Chapter 12. At 30 June 2006, there were 43 employee organisations registered in Queensland; at 31 December 2005

total membership was 380,081 (compared to 379,553 members at December 2004) and at 30 June 2006 total membership was 377,979. The employee organisations are listed according to membership numbers in Table 13. Equivalent figures for employer organisations are: 38 organisations registered at 30 June 2006, with a total membership of 42,274 at 31 December 2005 (compared to 40,447 members in December 2004) and at 30 June 2006 total membership was 42,455. Table 14 lists the employer organisations according to membership.

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

Table 13: Industrial Organisations of Employees Membership

| Industrial Organisation | Members As at 31/12/05 | Members As at 30/6/06 |
|---|---|---|
| The Australian Workers' Union of Employees, Queensland | 46,556 | 46,656 |
| Queensland Teachers Union of Employees | 40,186 | 40,412 |
| Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees. | 38,292 | 35,713 |
| Queensland Nurses' Union of Employees. | 31,464 | 32,234 |
| The Queensland Public Sector Union of Employees | 30,195 | 31,046 |
| Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees. | 29,997 | 28,931 |
| Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland | 17,645 | 17,543 |
| Transport Workers' Union of Australia, Union of Employees (Queensland Branch) | 15,053 | 15,150 |
| The Electrical Trades Union of Employees Queensland | 13,352 | 14,001 |
| Queensland Independent Education Union of Employees | 13,476 | 13,531 |
| Queensland Services, Industrial Union of Employees | 13,161 | 13,162 |
| The Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland | 10,539 | 9,940 |
| Queensland Police "Union of Employees" | 8,990 | 9,181 |
| Australian Municipal, Administrative, Clerical and Services Union, Central and Southern Queensland Clerical and Administrative Branch, Union of Employees | 9,000 | 9,000 |
| Australasian Meat Industry Union of Employees (Queensland Branch) | 6,925 | 7,320 |
| Australian Rail, Tram and Bus Industry Union of Employees, Queensland Branch | 7,148 | 7,220 |
| Queensland Colliery Employees Union of Employees | 5,863 | 6,037 |

| Industrial Organisation | Members As at 31/12/05 | Members As at 30/6/06 |
|---|---|---|
| Finance Sector Union of Australia, Queensland Branch, Industrial Union of Employees | 5,938 | 5,778 |
| Federated Ironworkers Association of Australia (Queensland Branch) Union of Employees | 5,011 | 5,087 |
| The National Union of Workers Industrial Union of Employees Queensland | 4,995 | 5,062 |
| Australian Building Construction Employees and Builders' Labourers' Federation (Queensland Branch) Union of Employees | 5,824 | 4,733 |
| The Plumbers and Gasfitters Employees Union of Australia, Queensland Branch, Union of Employees | 3,056 | 3,052 |
| United Firefighters' Union of Australia, Union of Employees, Queensland | 2,249 | 2,337 |
| The Association of Professional Engineers, Scientists and Managers, Australia, Queensland Branch, Union of Employees | 2,417 | 2,290 |
| Australian Salaried Medical Officers Federation Industrial Organisation of Employees, Queensland | 1,523 | 1,605 |
| Australian Federated Union of Locomotive Employees, Queensland Union of Employees | 1,342 | 1,365 |
| The Bacon Factories' Union of Employees, Queensland | 1,377 | 1,306 |
| Australian Journalists' Association (Queensland District) "Union of Employees" | 1,188 | 1,180 |
| Federated Engine Drivers' and Firemen's Association Queensland, Union of Employees | 1,157 | 1,123 |
| Federated Clerks' Union of Australia, North Queensland Branch, Union of Employees | 806 | 764 |
| Textile, Clothing and Footwear Union of Australia, Queensland, Union of Employees | 723 | 726 |
| Property Sales Association of Queensland, Union of Employees | 715 | 633 |
| The University of Queensland Academic Staff Association (Union of Employees) | 634 | 611 |
| The Seamen's Union of Australasia, Queensland Branch, Union of Employees | 507 | 523 |
| Queensland Association of Academic Staff in Colleges of Advanced Education (Union of Employees) | 528 | 503 |
| Australian Institute of Marine and Power Engineers' Union of Employees, Queensland District. | 463 | 487 |
| James Cook University Staff Association (Union of Employees) | 406 | 405 |
| The Queensland Police Commissioned Officers Union of Employees | 331 | 368 |
| Actors, Entertainers and Announcers Equity Association, Queensland, Union of Employees | 349 | 324 |
| Australian Maritime Officers Union Queensland Union of Employees | 240 | 230 |
| Musicians' Union of Australia (Brisbane Branch) Union of Employees | 180 | 180 |

| Industrial Organisation | Members As at 31/12/05 | Members As at 30/6/06 |
|---|---|---|
| Griffith University Faculty Staff Association (Union of Employees) | 167 | 155 |
| Queensland Fire Service Senior Officers' Association, Union of Employees | 70 | 75 |
| Number Employee Organisations | 380,081 | 377,979 |
| **Total Membership** | **43** | **43** |

Table 14: Industrial Organisations of Employers Membership

| Industrial Organisation | Members As at 31/12/05 | Members As at 30/6/06 |
|---|---|---|
| Queensland Master Builders Association, Industrial Organisation of Employers | 10,684 | 10,810 |
| Agforce Queensland Industrial Union of Employers | 7,551 | 7,011 |
| Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers | 3,548 | 3,581 |
| Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers) | 2,707 | 2,667 |
| Motor Trades Association of Queensland Industrial Organisation of Employers | 2,075 | 2,149 |
| Australian Dental Association (Queensland Branch) Union of Employers | 2,005 | 2,094 |
| Electrical and Communications Association Queensland, Industrial Organisation of Employers | 1,461 | 1,529 |
| Australian Industry Group, Industrial Organisation of Employers (Queensland) | 1,407 | 1,391 |
| The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers | 1,086 | 1,212 |
| Australian Community Services Employers Association Queensland Union of Employers | 993 | 959 |
| Queensland Fruit and Vegetable Growers, Union of Employers | 959 | 938 |
| Queensland Hotels Association, Union of Employers | 885 | 831 |
| Master Plumbers' Association of Queensland (Union of Employers) | 696 | 740 |
| National Retail Association Limited, Union of Employers | 450 | 695 |
| Master Painters, Decorators and Signwriters' Association of Queensland, Union of Employers | 631 | 657 |
| The Registered and Licensed Clubs Association of Queensland, Union of Employers | 538 | 553 |
| Queensland Motel Employers Association, Industrial Organisation of Employers | 563 | 551 |
| National Meat Association of Australia (Queensland Division) Industrial Organisation of Employers | 444 | 462 |

| Industrial Organisation | Members As at 31/12/05 | Members As at 30/6/06 |
|---|---|---|
| Queensland Real Estate Industrial Organisation of Employers | 415 | 451 |
| The Baking Industry Association of Queensland - Union of Employers. | 460 | 421 |
| Nursery and Garden Industry Queensland Industrial Union of Employers | 419 | 421 |
| Hardware Association of Queensland, Union of Employers | 407 | 401 |
| Queensland Private Childcare Centres Employers Organisation of Queensland Industrial Organisation of Employers | 295 | 343 |
| Building Service Contractors' Association of Australia - Queensland Division, Industrial Organisation of Employers | 255 | 264 |
| The Hairdressing Federation of Queensland - Union of Employers | 222 | 218 |
| The Queensland Road Transport Association Industrial Organisation of Employers | 205 | 210 |
| Association of Wall and Ceiling Industries Queensland - Union of Employers | 141 | 164 |
| Queensland Mechanical Cane Harvesters Association, Union of Employers | 151 | 154 |
| UNiTAB Agents' Association Union of Employers Queensland | 152 | 149 |
| Furnishing Industry Association of Australia (Queensland) Limited Union of Employers | 164 | 126 |
| Consulting Surveyors Queensland Industrial Organisation of Employers | 93 | 93 |
| Queensland Master Hairdressers' Industrial Union of Employers | 69 | 69 |
| The Queensland Chamber of Fruit and Vegetable Industries Co-operative (Union of Employers) Limited | 55 | 52 |
| Queensland Country Press Association - Union of Employers | 28 | 28 |
| Queensland Cane Growers' Association Union of Employers | 24 | 24 |
| Queensland Major Contractors Association, Industrial Organisation of Employers | 15 | 16 |
| Queensland Friendly Societies Pharmacies Association, Industrial Organisation of Employers | 11 | 11 |
| Australian Sugar Milling Association, Queensland, Union of Employers | 10 | 10 |
| Number of Employer Organisations | 38 | 38 |
| **Total Membership** | **42,274** | **42,455** |

# Amendments to Legislation

# Amendments To Legislation

As previously mentioned, the legislation that principally relates to the work of the Court, the Commission and Registrar is the *Industrial Relations Act 1999* and other Acts. Associated with the Act are the *Industrial Relations Regulation 2000* and *Industrial Relations (Tribunals) Rules 2000*. In addition, the Court has appellate jurisdiction under the *Workers' Compensation and Rehabilitation Act 2003* and the *Workplace Health and Safety Act 1995*. The following outlines important legislative amendments made during the year which affect the work of the Tribunals.

## *Industrial Relations Act 1999* (Qld)

The *Industrial Relations and Other Acts Amendment Act 2005*, which was assented to on 1 April 2005 and commenced on 1 September 2005, provides for specific amendments of the *Industrial Relations Act* 1999 including:

- Provides protection from dismissal for an invalid reason for short-term casual employees and employees engaged for a specific period or task.
- Clarifies the financial and administrative arrangements for the Industrial Court of Queensland, the Queensland Industrial Relations commission (QIRC), their members and associates.
- Increases the effectiveness of the unpaid wages jurisdiction of the QIRC.
- Restricts the QIRC's powers to amend or declare void contracts of employment due to the provisions or lack of provision for accident pay or other payment on account of a worker sustaining an injury under the *Workers' Compensation and Rehabilitation Act 2003*.
- Allows the QIRC to designate a relevant industrial instrument for the purpose of assessing aged or infirm persons' wages, where no industrial instrument exists in the relevant calling.

These and other amendments to the Act results in work and family provisions being considered by the Industrial Relations Commission in award and agreement negotiations. The Commission ensures awards took into account employees' family responsibilities and whenever possible include provisions to allow workers and employers to reach agreement on work and family responsibilities. Other changes clarify and extend some unpaid leave entitlements and invalid dismissal provisions for casuals.

## *Industrial Relations Act Amendment Act 2005*

The purpose of the Amendment Act is to ensure that Queensland employees continue to enjoy a fair and balanced industrial relations system regardless of developments at the federal level. This will be achieved by building on the industrial relations framework established under the *Industrial Relations Act 1999* (the Act). The Act which was assented to on 18 August 2005 and commenced on 1 September 2005 was amended to:

- Encourage the adoption of wage structures that encourage the development of employee's skills.
- Ensure that apprentices who complete their apprenticeships are paid at least the minimum trade rate relevant to their trade.
- Ensure that the overall pay and conditions for outworkers are fair and reasonable when compared with the pay and conditions of workers who perform the same work at the employer's premises under a relevant award;
- Provide particular categories of employees with the following additional minimum entitlements:

- Jury service make-up pay;
- 38 hour ordinary working week;
- paid overtime;
- unpaid meal breaks of at least 30 minutes after 5 hours' work;
- annual leave loading of 17.5 percent;
- casual loading of 23 percent;
- shift loadings of 12.5 percent for afternoon shift and 15 percent for night shift;
- overtime rates for working on public holidays;
- weekend penalty rates of 25 percent for Saturday work and 50 percent for Sunday work;
- redundancy payments; and
- require employees to give at least one week's notice of termination to their employer.

## Amendments to Regulations and Tribunal Rules

### *Industrial Relations Amendment Regulation (No.1) 2005*

The purpose of this Amendment Regulation was to increase the level of salary above which applicants for certain remedies are excluded from a remedy in the Commission. That is, under s. 72(1)(e) of the Act, workers who are not covered by an industrial instrument and who are not public service employees are excluded from the unfair dismissal provisions if they earn above the prescribed limit (set down in s.4 of the Regulations). Workers under a contract of service or a contract for services are excluded from the unfair contract jurisdiction in s. 276 on a similar basis. The prescribed wage limit was raised by this Amendment Regulation from $90,400 to $94,900 per annum. The amendment took effect from 29 July 2005.

### *Industrial Relations (Tribunals) Amendment Rule (No.1) 2005*

This Amendment Rule affected an increase to the fees charged by the Registry for filing, searching and photocopying documents. The fees are set out in Schedule 1 of the Rules. The *Financial Management Practice Manual* provides for annual increases in regulatory fees, in line with rises in the Consumer Price Index assessed on the basis of the Brisbane (All Groups) CPI movement for the March quarter. The increase took effect from 1 July 2005. A similar increase for 2005-06 was gazetted on 30 June 2006 to take effect for the year commencing 1 July 2006.

## Other Consequential Amendments

### *Workplace Health and Safety and Other Acts Amendment Act 2006*

This Amendment Act which was assented to on 17 May 2006, gave union officials the right to enter workplaces on health and safety grounds. Under the amendments the Registrar issues permits that authorise a representative of a registered industrial organisation to enter a workplace where there is a reasonable suspicion that a contravention of the Act involving workplace health and safety has happened or is happening. Authorised representatives are required to undertake approved occupational health and safety training.

The Amendment Act also amended the *Workers' Compensation and Rehabilitation Act 2003* to require an employer to keep open an injured worker's job for a period of 12 months. This requirement was previously contained in the *Industrial Relations Act 1999*.

# New Legislation

## *Child Employment Act 2006*

The *Child Employment Act 2006*, which, apart from Part 7 mentioned above affecting the *Industrial Relations Act 1999*, was assented to on 22 February 2006, to commence on 1 July 2006. The purpose of this Act which applies to all children is to safeguard children working in Queensland. This is to be achieved by ensuring that work does not interfere with children's schooling and preventing children performing work that may be harmful to their health or safety or physical, mental, moral or social development. The objective of the Part 7 amendments to the *Industrial Relations Act 1999* is to ensure that Queensland employees continue to enjoy a fair and balanced industrial relations system regardless of developments at the federal level by providing extended family provisions as minimum entitlements and to provide for some technical amendments.

## *Contract Cleaning Industry (Portable Long Service Leave) Regulation 2005*

The *Contract Cleaning Industry (Portable Long Service Leave) Act 2005* and commenced on 1 July 2005. The main purpose of this Act is to establish a scheme for portability of long service leave in the contract cleaning industry. As part of the scheme, there are registration provisions for employers and workers and ways for calculating long service leave entitlements. Although an employer is required to be registered, the obligations under this Act apply to an employer whether or not the employer is registered under this Act. Generally, an entitlement under this Act accrues to a worker who is registered under this Act.

# Summaries of Decisions

# Summaries of Decisions

## Decisions of the Industrial Court of Queensland

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

**Ergon Energy Corporation Limited and Ergon Energy Pty Ltd and Queensland Electricity Transmission Corporation Limited t/a Powerlink Queensland AND The Electrical Trades Union of Employees Queensland Branch**

(C/2006/13); Hall P; 24 March 2006; 181 QGIG 533

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

**Issues:** Application for injunctive relief was dismissed after a Full Bench found there was no contravention of 3 Certified Agreements - Case for an injunction had been made out.

**Background:** The Electrical Trades Union of Employees Queensland Branch sought to amend the Award to include an electrical licensing allowance. The response of Ergon Energy Corporation Limited, Ergon Energy Pty Ltd and Queensland Electricity Transmission Corporation Limited (Appellants) was to seek an injunction restraining the ETU from progressing the matter on the ground that in pressing the claim the ETU was in contravention of the *Ergon Energy Certified Agreement 2005*, the *Energex, SEPL and SPARQ Certified Agreement 2005* and the *Working at Powerlink 2005 Certified Agreement*. Those Agreements are binding upon the ETU.

ETU's reply was to amend the application to vary the said Award so that any amendment would not have force and effect whilst any particular certified agreement continued to operate. The Appellants were not satisfied with that change and pressed the application for an injunction. A Full Bench of the QIRC decided to reject the application for an injunction (2/3/06). There was an appeal against that decision.

**Held:** The Court found that:

> "The point is a short one. It will suffice to take one of the awards, *viz*. the Working at *Powerlink 2005 Certified Agreement*. Comparable clauses are contained in each of the other agreements. By clause 4:
>
> > 'Where there is any inconsistency between the terms contained in this agreement and any corresponding terms of the award the terms and conditions of this agreement will take precedence. Where this agreement is silent on an issue the provisions of the award shall apply.'.
>
> Consistently with the decision in *Byram v Chater* (1967) 65 QGIG 1013 and *Australian Sugar Milling Association, Queensland v Australian Workers' Union of Employees*, Queensland and Others (2002) 169 QGIG 113, it seems to me that the reference to 'the award' in clause 4 must be treated as a reference to the *Electricity Generation, Transmission and Supply Award - State 2002* in the form which it took when the Agreement was made. That construction is confirmed by clause 23.2.1 which in dealing with certain allowances provides:
>
> > '...has been absorbed in the Transmission Network Reliability Allowance and there will be no further claims.'.

It seems to me that had it been contemplated that the Award might have been varied whilst the Agreement was on foot and effect given to the variation, the clause would not have used the expression 'has been absorbed' but the expression 'has been and are to be absorbed'.

The method by which the Award is protected against variation is by clause 5 which provides:

> 'It is agreed that during the life of this agreement, no extra claims shall be made by either party in terms of employment conditions. Notwithstanding, the parties may wish to pursue other specific agreements in accordance with part 10 of this agreement.'.

There are obviously inadequacies in clause 5. The Award might very well be varied otherwise than on the application of the ETU. To protect themselves against the cost impact of such a decision it will be necessary for the appellants to persuade the Commission to deal with the matter of absorption. But to the extent that they lawfully may, it is clear that the parties have sought to protect the Award against variation by, amongst other things, providing that the ETU amongst others will make no extra claims in terms of employment conditions. It seems to me that in pursuing the application as amended the ETU has done that and that the case for an injunction had been made out.".

The Court later said:

> "Having heard Mr Herbert of Counsel for the appellants and Ms Butler for the respondent, I adhere to the view which I tentatively formed this morning that the Court should grant injunctive relief on the ground that the only basis on which the discretion could be exercised not to do so was to allow the proceedings in the Commission to continue in any event. It seems to me that one cannot properly exercise the discretion to grant injunctive relief for the express purpose of allowing the breach of the agreement to continue.".

**The Australian Workers' Union of Employees, Queensland AND Statewide Traffic Control Pty Ltd**
(C/2006/9 and C/200610) Hall P; 8 May 2006; 182 QGIG 51

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

**Issues:** Unpaid wages claim refused because of Award Coverage issue - "casual" employees found to be more important issue - *Civil Construction Award* would apply from time to time - remitted to Commission for determination according to law.

**Background:** Two applications to recover unpaid wages from Statewide Traffic Control Pty Ltd (a company primarily in the business of providing traffic control officers to various firms, Government departments and Local Government Authorities) were heard together before a Deputy President of the QIRC. The alleged underpayments were said to be calculated by reference to the Civil Construction, Operations and Maintenance General Award - State. The applications were dismissed after the Deputy President determined that the two officers were not performing work covered by that Award and that work performed by security industry employees was covered by the Security Industry (Contractors) Award - State. The AWU then appealed that decision on behalf of the 2 employees. The AWU submitted that it was necessary to establish no more than that the employees were engaged in "making roads" or in the alternative, that they were employees for whom provision was made in the Civil Construction Award, and were employees of one or other of the employers nominated in the Award Coverage clause of that Award.

**Held:** The Court found that the important point was not that the employees had been in a relationship of employer and employee with Statewide, but that they were "casual" employees. The critical matter will often not be the nature of the employer's business or undertaking, but the nature of the undertaking or business to which the employer is a contractor or subcontractor. It follows that what the Commission was required to do in order to determine the entitlements of the 2 employees was to test each of the casual engagements entered into by each of those gentlemen with Statewide, against the terms of clause 1.3.4. The applicability of the Civil Construction Award would vary from time to time. The Court found that the Commission did not analyse the employment of the gentlemen on an engagement by engagement basis, but held that the nature of the duties performed by the employees took them beyond the scope of the Civil Construction Award. As to that finding the Court said:

> "In those proceedings, the Deputy President was exposed to (very) detailed examination of the statutory obligations of 'traffic controllers' in the strict sense of the term. It is understandable that the Deputy President was distracted from the true task. But the submissions were a distraction. An employee of Statewide, and both Messrs Dale and Elbers were admitted to be employees, does not cease to an employee because required to obtain qualifications to perform his tasks, genuflect to statutory regimes and observe administrative protocols. The employer still has control to the extent that it is possible to exercise control. And the employer still has the obligation to pay notwithstanding the erosion of the employer's managerial prerogative.".

The case was remitted to the Commission to be heard and determined according to law.

### Craig Anthony Banditt AND Department of Corrective Services

(C/2005/37); Hall P; 26 August 2005; 180 QGIG 97

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

**Issues:** Prohibited drugs found - Termination - Flawed "inquiry" - Process defective - Appeal allowed - Remitted back to Commission

**Background:** The Appellant was charged with unlawful possession of prohibited drugs. The Appellant, whose employment was governed by the Public Service Act 1996, was suspended from his employment. The proceedings against the Appellant came before the Deputy Chief Magistrate who concluded that all elements of the offences had not been proven beyond reasonable doubt and found the Appellant not guilty of all three charges.

The suspension continued. Under the *Public Service Act 1996* an employing authority may discipline an officer if it is satisfied the officer is guilty of "misconduct" which is defined to mean "disgraceful or improper conduct in a private capacity that reflects seriously and adversely on the public service". The authority may terminate the officer's employment. After a purported "inquiry" into the Appellant's conduct, the Respondent dismissed the Appellant on the above definition.

The Appellant filed an application for reinstatement which was dismissed. The Appellant appealed on the ground that the Commission erred in law.

**Held:** The Court found that the "inquiry" was entirely flawed.

It is for the Commission to determine what weight it will give to procedural fairness and what weight it will give to substantive fairness in all the circumstances of a particular case. An employer need not prove on the balance of probabilities that an employee had actually perpetrated the conduct for which the employee was dismissed, but may avoid liability by proving no more than an honest and reasonable belief that the employee engaged in this conduct where the belief is formed after a proper and sufficient investigation. Any belief held by the employer here, was not formed after a proper and sufficient investigation. The process was so defective that there is much to be said to the view that the decision to dismiss must be condemned as arbitrary, irrational and unreasonable and for that reason "harsh, unjust or unreasonable".

The Court observed that to succeed, it was necessary for the employer, by skilful cross-examination or evidence in chief, to place before the Commission evidence about substantive matters which would justify the Commission in declining to form an affirmative satisfaction that the dismissal was harsh, unjust or unreasonable. The Respondent failed to do that. The Respondent succeeded in the Commission because the Commission misunderstood the facts.

The Court found the dismissal was "harsh, unjust or unreasonable", allowed the Appeal, and remitted the matter back to the Commissioner who dealt with the original case to determine the matter of remedy according to law.

**National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Others (C2005/63); and Thomas Alfred Barton, Minister for Employment, Training and Industrial Relations AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Others (C/2005/64)**
Hall P; 11 October 2005; 180 QGIG 738

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

**Issues:** Application to amend the **Trading Hours Order** - *Non-exempt Shops Trading by Retail - State* - Question of jurisdiction - QIRC found it did have jurisdiction and dismissed the application - Court found Commission not to have jurisdiction - Alleged "futile" appeals by NRA and Minister were allowed.

**Background:** An application was made by the QRTSA to insert a new provision in the Trading Hours Order - Non-exempt Shops Trading by Retail - State to have all the non-exempt shops within the south-east Queensland area closed on Boxing Day 2006. The purpose of the application was to permit a balance between work and family life for independent and exempt shops. Prior to the application being heard, a jurisdictional challenge had been mounted by the National Retail Association Limited, Union of Employers suggesting the Commission did not have the jurisdiction to hear the matter. The Commission determined that it did have jurisdiction and proceeded to hear the application. On the evidence, the applicant failed on the merits.

On 30 August and 1 September the NRA and the Minister for Employment, Training and Industrial Relations respectively filed appeals against that decision. QRTSA contended that the appeals were futile and should not be heard.

**Held:** On the argument of "futility" the Court found that it is not consistent with the statutory scheme at s. 341(1) of the *Industrial Relations Act 1999* that the Industrial Court of Queensland, which is a statutory tribunal, can assert a discretionary power to deprive a party of an appeal as of right. The Court found that

the decision was not a mere interlocutory decision with a life limited to the original matter, but was a decision which determined a matter of on-going interest, likely to arise again in litigation involving the same parties. The decision set a precedent of some persuasive value, there was an interested contradictor; there were fulsome written submissions and the arguments were fully prepared. It found that it would be wrong to deprive NRA and the Minister of a statutory right to appeal in such a case even if there was a discretion.

The appellants' contention was that s. 31B(6) of the *Trading (Allowable Hours) Act Amendment Act 2002* precludes the Commission from making the order sought by QRTSA. The proposed amendment defies s. 31B(6) by causing the said Trading Hours Order to cease to describe an opening time of 9 a.m. and a closing time of 6 p.m. in relation to south-east Queensland. If valid, the proposed order would require non-exempt shops in south-east Queensland to be closed before 9 a.m. and after 6 p.m. The Court stated:

> "The submission each of the QRTSA, the Shop, Distributive and Allied employees Association (Queensland Branch) Union of Employees and The Australian Workers' Union of Employees, Queensland is that s. 31B(6) controls the span of hours which the Commission may set where it decides to permit trading on a Sunday or a public holiday, but that s. 31B(6) does not seek to control the exercise of the Commission's jurisdiction to decide whether trading should be permitted at all on a Sunday or a public holiday. With respect, the point is that in the case of south-east Queensland the Commission's jurisdiction to determine whether trading should be permitted on a Sunday or a public holiday was taken from the Commission by the *Trading (Allowable Hours) Act Amendment Act 2002*. The power vested in substitution there is the power at s. 31B(6). The power requires that any order prescribes an opening time no later than 9 a.m. and a closing time no earlier than 6 p.m. . . . I unstintingly accept that s. 14A of the Acts Interpretation Act 1954 requires that a provision of an Act is to be given the interpretation which best achieves the purpose of the Act.".

The Court found that the Commission should have held that it had no power to make the amendment to the *Trading Hours Order - Non-exempt Shops Trading by Retail - State* sought by QRTSA to the extent that the amendment related to south-east Queensland. The appeals were allowed.

### Q-COMP AND Education Queensland
(C18 of 2005); Hall P; 8 July 2005; 179 QGIG 491

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

**Issues:** Whether a teacher's stress causing him to stop work after a misconduct investigation should be compensated.

**Background:** WorkCover rejected a claim for compensation from a teacher who took time off work after developing a psychological disorder, resulting from a female student alleging he had engaged in inappropriate physical conduct. A Q-COMP Review Officer reversed WorkCover's decision which resulted in an appeal by Education Queensland to the Industrial Magistrates Court. The appeal was successful, Q-COMP then appealed to the Industrial Court. The Industrial Magistrate dealt with the matter on the basis that the relevant statutory measure was the WorkCover Queensland Act 1996 (Reprint 5E). Given that the definition of "injury" is the same in s. 34 of the *WorkCover Queensland Act 1996* as in s. 32 of the *Workers' Compensation and Rehabilitation Act 2003*, it is convenient to follow the Industrial Magistrate and deal with the matter on the assumption that the *WorkCover Queensland Act 1996* is the relevant act.

The Industrial Magistrate had found that the management action referred to in subsection (5) of s. 34 of the WorkCover Queensland Act 1996 defining "injury" was "reasonable". The Magistrate found that the student's complaint was the major factor to the teacher's injury. The management action was but a subsidiary contributing factor.

**Held:** The Court found that the teacher's injury was excluded from compensation by s. 34(5), because it arose out of reasonable management action taken in a reasonable way. The Court held that s. 34(5) should not be read so as to maximise the remedial impact of s. 34(1) and (2).

The Court said:

> "The Respondent's argument does not depend upon the proposition that s. 34(5) is a free standing provision. Reading s. 34(1) and (5) together, the Appellant seeks to contend that where the causal or consequential relationship which would otherwise bring an injury within the phrase 'arising out of' at s. 34(1), or where the connection which would otherwise bring an injury within the phrase 'in the course of' at s. 34(1), is a causal or consequential factor or connection which is caught by the net of s. 34(5), it may not be relied upon to bring an alleged 'injury' within s. 34(1) and (thus) within the statutory definition of injury. With respect, such a reading denies the language of s. 34(5). It is not the concern of s. 34(5) to nominate stressors which may be taken into account in determining whether a particular psychiatric or psychological disorder falls within the rubric of s. 34(1). The concern of s. 34(5) is to remove certain psychiatric and psychological disorders from the statutory definition of 'injury'. Where a situation arises in which s. 34(1) 'ropes-in' a particular psychiatric or psychological disorder and s. 34(5) excludes the same psychiatric or psychological disorder, there is an inconsistency which because of the use of 'notwithstanding' must be resolved by allowing s. 34(5) to prevail.".

For those reasons, the Court found that the decision of the Industrial Magistrate was correct and dismissed the appeal.

### Reliable Couriers Pty Ltd AND Q-Comp (C/2005/23)

(C/2005/23); Hall P; 6 September 2005; 180 QGIG 130

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

**Issues:** Reliable Couriers was appealing against the decision of the Industrial Magistrate to uphold Q-COMP's decision that certain courier drivers were workers under the *Workers' Compensation and Rehabilitation Act 2003*. The matter was re-heard on the record, as the inadequacy of the reasons given by the Industrial Magistrate amounted to an appealable "error of law".

**Background:** In March 2004, WorkCover published an Amended Renewal Notice about the premiums payable under the *Workers' Compensation and Rehabilitation Act 2003* (the Act) by Reliable Couriers Pty Ltd. WorkCover had determined that some of the courier drivers employed by Reliable Couriers were in fact "workers" under the Act. Reliable Couriers then sought statutory review of WorkCover's decision. Q-COMP endorsed the original decision. Reliable Couriers then appealed to the Industrial Magistrates Court. The Industrial Magistrate concluded that each of the courier drivers was engaged under a contract for service. Reliable Couriers then appealed to the Court.

Section 11 of the Act, entitled "Who is a worker", was the appropriate starting point for those making decisions about the relevant status of the said courier drivers. Section 11 provides:

"(1) A *worker* is a person who works under a contract of service.

(2) Also, schedule 2, part 1 sets out who is a *worker* in particular circumstances.

(3) However, schedule 2, part 2 sets out who is not a *worker* in particular circumstances. ...".

Schedule 2, Part 1, s. 2(a) outlines a "results test" that may be applied to reach the conclusion that a person employed under a contract is not a worker. There are three elements to this test. In this case, WorkCover and Q-COMP were not satisfied that the drivers were paid to achieve a specified result or outcome within s. 2(a)(i). On appeal, Q-COMP further relied on s. 11(1) - that the drivers were individuals working under a contract of service - and Schedule 2, Part 1, s. (2)(a)(ii) - that the drivers did not supply all tools needed to perform the work. The Industrial Magistrate accepted all three points, finding that the courier drivers worked under a contract of service, they were not paid to achieve a specific result or outcome, and they did not have to supply the plant and equipment or tools of trade needed to perform the work.

**Held:** On appeal to the Court the decision at first instance was set aside because "the Industrial Magistrates' decision so inadequately disclosed the reasons for the decision as to amount to an error of law.". The matter was then reheard on the record.

The Industrial Magistrate had compared the situation arising in this case to those existing in the High Court's decision of Hollis v Vabu Pty Ltd (2001) HCA 44. However, the Court considered that there was failure to distinguish a number of features of this case that were significantly different, namely:

- The appellant's courier drivers were free to accept and reject work which was offered;
- The drivers were not required to commence work at any particular time, and indeed, on days in which they could not work, were only required to make a courtesy phone call to advise of such;
- The appellant's drivers were required to provide motor vehicles, a significantly more expensive item than the bicycles with which Vabu was concerned.

The Court also accepted the appellant's submission concerning the Industrial Magistrate's acceptance of "clear aspects of [the] contract" which led to the conclusion that the engagement was a contract of service. The Court considered the various clauses of the agreement between the drivers and the company, stating that "[w]hilst such clauses are not decisive they are a convenient starting point...". The Court considered that in the circumstances there was no reason to think that the agreement was a sham, and thus proper weight should be given to the agreement's terms. On this basis, the Court considered that it was not open to conclude that the contract envisaged a relationship of employer and employee. Therefore, the contract could not be said to be a contract of service.

However, the Court considered that the argument in relation to Schedule 2, Part 1, ss. (2)(a)(i) & (ii) was more difficult. The driver was not required to supply all equipment, as a device for communication was supplied by the company, despite the fact that the driver paid "rent" for use of the device.

As regards the contention over whether the workers could be said to be employed to achieve a specific result or outcome, the Court had particular regard to a number of provisions of the contract, read with a number of paragraphs of the agreed statement of facts. The Court accepted that the drivers' remuneration was task based. However, consideration was given to a number of rules of the statutory interpretation and also various extrinsic materials. In this case the "results or outcomes" to be achieved under the contract were not specified in the contract at the time of commencement of the contract, but rather as the contract was carried out. Therefore, it was held that the drivers did not meet the test posited in s. 2(a)(i) of Schedule 2, Part 1 of the

*Workers' Compensation and Rehabilitation Act 2003*, and that they were not excluded from the definition of worker under "results test".

The President dismissed the appeal.

**Merle Prizeman AND Q-Comp**
(C/2005/30); Hall P; 14 September 2005; 180 QGIG 481

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

**Issues:** The issue for the Court's consideration was whether certain "incidents" could be described as "reasonable management action taken in a reasonable way". The Court also gave consideration on how "global approach" to making such an assessment.

**Background:** Ms Prizeman was suffering from a psychiatric/psychological injury. It was alleged that a number of incidents that had occurred in her workplace caused/aggravated her condition. She sought compensation under the *WorkCover Queensland Act 1996* from the self-insurer/employer. Her initial application was rejected on the basis that the injury suffered was not within the definition of injury provided for in the Act. The decision of the self-insurer was confirmed by Q-COMP upon statutory review. Ms Prizeman's appeal to the Magistrates Court was also unsuccessful. She appealed to the Industrial Court of Queensland.

The main issue before the Court was whether her "injury" was within the definition contained in s. 34 of the *WorkCover Queensland Act 1996*. In particular, it had to be determined whether the alleged incidents amounted to reasonable management action taken reasonably, therefore excluding her injury from the operation of the Act by virtue of s. 34(5)(a).

**Held:** The psychiatric/psychological injury suffered was excluded under the *WorkCover Queensland Act 1996*, as it resulted from/was aggravated by reasonable management action taken in a reasonable way.

The case considered whether the correct approach was to examine each individual stressor and determine whether it was reasonable, or to consider the totality of management action and its reasonableness. The Court endorsed the approach of the Industrial Magistrate in examining each of the stressors seriatim, but then rolling together the dealings to make a global inquiry.

The Court also emphasised that an appeal to the Court from the decision of an Industrial Magistrate is one for the purpose of correction of error. Reasonable conclusions of fact should not be interfered with. The President also confirmed that an appeal by way of rehearing is to be determined on the basis of the law as it is understood at the time that the appeal is determined.

In assessing whether the conduct was reasonable, the Court noted that the reality of the manager's conduct should be considered as opposed to the employee's perception of it (confirming s. 34(5)(b)). For example, in this case, a meeting about the need to introduce spot balances was perceived by the employee to be an accusation of stealing. However, the Industrial Magistrate concluded that this in fact was not what occurred at this meeting despite this perception. On that basis, the Industrial Magistrate concluded that the worker, who bore the onus of proof, had failed to prove that the actions taken were anything but reasonable management action taken in a reasonably. The Court concluded that this finding was open on the evidence.

**Majella McKinnon-Domingo AND Q-Comp**
(C/2006/6); Hall P; 3 May 2006; 182 QGIG 28

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

**Issues:** The question for consideration before the Court was whether a letter sent by Q-COMP in declining to review an application amounted to a decision to confirm the decision of WorkCover. The decision also considers the finality of assessments made by various tribunals in relation to "medical matters".

**Background:** The appellant was suffering from a psychological injury and an aggravation of fibromyalgia. She alleged that this "injury" was the result of her employment with Education Queensland. The appellant had not sought compensation under the Act. She did, however, serve a Notice of Claim for Damages on WorkCover Queensland pursuant to s. 253(1)(d). Section 273A(1) attaches to such claims and provides:

"(1) The claimant may seek damages for the injury only if WorkCover -

(a) decides that the claimant -

(i) was a worker when the injury was sustained; and

(ii) has sustained an injury; and

(b) gives the claimant a notice of assessment for the injury.".

WorkCover sought the assistance of the General Medical Assessment Tribunal-Rheumatology on a "medical matter" under s. 437(c), as to whether the worker had "sustained an injury" under s. 273A(1)(a)(ii). The Tribunal did not accept that the Appellant's complaint of Fibromyalgia and Chronic Fatigue was caused or aggravated by her employment, as required by the definition of injury contained in s. 34 of the Act.

WorkCover wrote to the Appellant's solicitors informing them that, on the basis of the Tribunal's findings that the fibromyalgia was not due to work, they were rejecting the "injury".

The appellant's solicitors responded to this letter, seeking reasons for the decision under s. 273A(7) and notifying of their intention to seek statutory review. WorkCover's letter in response stated that it was their opinion that, in accordance with s. 456, the decision of the Tribunal to deny the claim was final and there was no right of review.

The appellant's solicitors then made application to Q-COMP, seeking to exercise a right of review. Q-COMP responded to this application, stating that "in the absence of an administrative decision to reject the injury, we can only assume that you wish to have the decision of the Medical Assessment Tribunal reviewed". Q-COMP advised that they were not empowered to review such decisions, and would not perform the requested review.

The appellant then appealed to the Industrial Magistrates Court. In the application to appeal, the following grounds were outlined:

"1. Q-Comp failed to perform its statutory obligation to review of the decision of WorkCover...;

2. WorkCover...failed, in its decision... to give ...independent consideration to whether the plaintiff had sustained an injury within the meaning of the ...Act;

3. Q-Comp and WorkCover...erred in concluding that, once the matter was referred to the Medical Assessment Tribunal for consideration, there was no longer any further requirement that WorkCover consider whether the plaintiff has sustained an injury within the meaning of the Act.".

The Industrial Magistrate held that Q-COMP had, in their letter to the appellant's solicitors, made a decision to confirm the decision of WorkCover.

The worker then appealed to the Industrial Court.

**Held:** His Honour accepted the first ground outlined in the application to appeal to the Industrial Court from the decision of the Industrial Magistrate must succeed. The first ground was:

> "The learned Industrial Magistrate erred in interpreting the Q-Comp letter of 11 May 2005 as amounting to a decision to confirm the decision of WorkCover as Q-Comp had expressly conceded that it had not conducted a review and the issue to be determined before the Industrial Magistrate was whether Q-Comp were obliged to conduct the review or not;".

The President, on this basis, went on to order that the decision of the Industrial Magistrate be set aside. In lieu it was ordered that Q-COMP review the decision of WorkCover and publish a decision confirming the decision of WorkCover. This is consistent with His Honour's acceptance of the Industrial Magistrate's conclusion "that WorkCover was correct to adopt the Tribunal's decision and ...neither Q-COMP nor the Industrial Magistrates Court might go behind the Tribunal's decision.".

The Court noted that the reasons given by WorkCover in denying the claim for damages, namely that the injury was not caused by work, were considered adequate, thereby complying with s. 273A.

In his decision, the President also gave consideration to the terminology employed in s. 456 regarding the finality of decisions relating to "medical matters" referred to the Tribunal. The Court noted that WorkCover appeared to have treated the findings of the Tribunal as conclusive. His Honour did not consider this surprising given the content of s. 456 "Finality of the tribunal's decision", which provides that the Tribunal's decision on a medical matter referred to it is final and cannot be questioned in a proceeding before a Tribunal or Court (except as provided in s. 454). However, the President noted:

> "I quite accept that s. 456 eschews the traditional phrase 'final and conclusive' and refrains from declaring the decision of the Tribunal to be binding on WorkCover. WorkCover's duty to make a decision remained, and on occasion the decision might differ from the decision of the Tribunal.".

Despite this, it was found that WorkCover was quite entitled (as it did) to accept the factual findings of the Tribunal that the fibromyalgia was not, from a medical perspective, work related. As a result there remained no factual or legal issues for WorkCover to consider.

**State of Queensland (acting through the Queensland Ambulance Service) AND Q-Comp**
(C/2006/11); Hall P; 8 May 2006; 182 QGIG 50

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

**Issues:** The Court was required to interpret s. 147 of the *Workers' Compensation and Rehabilitation Act 2003*. In particular, the Court was required to decide whether the section would exclude compensation for an employee who would have been suspended without pay due to criminal charges, had he not suffered from an "injury".

**Background:** The worker concerned was employed as a paramedic and officer in charge of a station with the Queensland Ambulance Service (QAS). The worker was arrested on 8 November 2004 and charged with drug and dishonesty offences. QAS, on 23 November 2004, suspended the worker on full pay which was altered on 15 January 2005 to suspension without pay. The worker then lodged an application for compensation with WorkCover Queensland, specifying injuries consisting of a major depressive disorder and drug dependence. The claim was accepted by WorkCover on 15 April 2005, which commenced to pay him benefits backdated to 11 December 2004.

QAS requested WorkCover to reverse the decision claiming that s. 147 of the *Workers' Compensation and Rehabilitation Act 2003* would operate to reduce the worker's weekly payments to nil. WorkCover rescinded its original decision to the extent that it related to the opiate addiction as an injury, but confirmed it to the extent of the depressive disorder. QAS then appealed to Q-COMP. Q-COMP confirmed the decision of WorkCover stating s. 147 did not operate to reduce the weekly payments to nil. QAS then appealed to an Industrial Magistrate who dismissed the appeal and was of the view that s. 147 did not apply.

Section 147 of the Act provides:

**"Section 147 Worker can not receive more than if injury had not been sustained**

(1) A worker must not receive an amount under this part that is more than the worker would have received from the worker's employment if the worker were at work and the injury had not been sustained.

(2) Subsection (1) has effect despite any other provision of this part.".

The Appellant submitted to the Court that if the worker was still employed and had presented for work, he would have been turned away without payment and therefore any amount paid to the worker would be more than if the worker were at work.

**Held:** The Court dismissed the appeal. The President stated that in determining the effect of this section, "It should be treated as part of a legislative attempt to achieve a careful and practical balance between competing interests and not moulded by a court to better achieve a remedial goal". In so doing the President drew attention to s. 14A of the *Acts Interpretation Act 1954* which provides the interpretation that will best achieve the purpose of the Act is the one to be preferred. The Court stated that express provisions suspending the payment of compensation exist in the Act [such as in the case of imprisonment, s. 137] and that there is no provision in the Act providing for suspension of payment in the worker's circumstances.

**Floor Level Australia Pty Ltd AND The Construction, Forestry, Mining & Energy Industrial Union of Employees, Queensland and Another**
(C/2005/60); Hall P; 12 September 2005; 180 QGIG

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

**Issues:** The Court had to consider the breadth of its jurisdiction to grant declaratory relief in relation to the validity of a certified agreement. Consideration was also given as to and whether the Court would be constrained by provisions of the Judicial Review Act 1991.

**Background:** The Appellant, Floor Level Australia Pty Ltd, applied to the Industrial Court of Queensland, seeking to exercise powers under s. 248(1)(e) of the *Industrial Relations Act 1999*. The *Floor Level Australia Pty Ltd - Certified Agreement 2003* was certified by the Queensland Industrial Relations Commission on 15 January 2004. This matter arose as a result of an application under s. 278 to recover unpaid wages under the certified agreement made by the Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland (CFMEU). [The claim was later amended to recover wages solely under the Building Construction Industry Award - State 2003.]

The information contained in the supporting affidavit outlined that there were no male, no female, and no apprentices/trainees that were to be covered by the Agreement. It was then noted in paragraph 18 of the affidavit that:

> "18. The steps taken to ensure compliance with section 144 were that employees proposed to be covered by the Agreement were provided with a copy of the proposed Agreement 14 days prior to voting to approve the Agreement. Before approval was given to the Agreement, a series of meetings were programmed to explain the terms of the Agreement.".

The submission by the Appellant in support of the Court granting the declaratory relief sought was that the requirements for what is to be done when an agreement is proposed are mandatory, and any failure to comply with the requirements under s. 144(2) would render the certified agreement invalid.

The Appellant, therefore, sought declaratory relief under s. 248(1)(e) of the Act, in the form of:

> "(a) a declaration that the certification is and was void and of no effect as and from 15 January 2004; or
>
> (b) a declaration that the Floor Level Australia Pty Ltd - Certified Agreement 2003 is and has been since 15 January 2004 invalid and of no effect; ...".

**Held:** The Court held that it had jurisdiction to grant the declaratory relief sought. The Court found that it was not subject to the limitation of time as expressed in the Judicial Review Act 1991. This was due to the fact that the wording in s. 248(1)(e) of the *Industrial Relations Act 1999* states that the Industrial Court may:

> "exercise the jurisdiction and powers of the Supreme Court to ensure, by prerogative order or other appropriate process - ...".

The Court noted that the Supreme Court's power to grant declaratory relief does not arise from the *Judicial Review Act 1991* but its inherent power, which is not the subject of a limitation of time. As a necessary corollary of that, the Industrial Court is not the subject of a limitation of time to deal with an application for declaratory relief.

The Court also found that the legislature did not intend that a certified agreement otherwise observed in good faith was to be invalid as a consequence of an omission that occurred prior to its creation. However, in exercising s. 156(1)(a) of the Act to certify an agreement, the Commission must have some probative material before it to satisfy that the things required by ss. 143, 144 and 145 have been met. Absent that satisfaction, the Commission does not have jurisdiction to certify the Agreement. Here, the affidavit was a nonsense.

**Bundaberg Health Service District, Queensland Health AND Gregory Trevor Brugman and Q-Comp**
(C/2005/80); Hall P; 8 February 2006; 181 QGIG 276

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

**Issues:** Whether an employer, who is not party to proceedings before the Industrial Magistrate, has a right of appeal to the Industrial Court. Consideration was also given to the relationship existing between the *Industrial Relations Act 1999* and the *Workers' Compensation and Rehabilitation Act 2003*.

**Background:** Gregory Brugman applied for compensation benefits under the *Workers' Compensation and Rehabilitation Act 2003*. The application was rejected by WorkCover. He applied for statutory review of that decision. Q-COMP confirmed the decision of WorkCover. Mr Brugman then successfully appealed to the Industrial Magistrates Court. Bundaberg Health Service District, Queensland Health, which was not a party to the proceedings, sought to appeal to the Industrial Court, not under s. 561 of the *Workers' Compensation and Rehabilitation Act 2003* but under s. 341(2) of the *Industrial Relations Act 1999*.

Section 341(2) of the *Industrial Relations Act 1999* provides:

> "A person may appeal to the court if dissatisfied with the decision of the magistrate in relation to a matter for which the magistrate has jurisdiction.".

It was submitted by the Appellant that the wording "person dissatisfied" contained in s. 341(2) was wider than that contained in s. 561 of the *Workers' Compensation and Rehabilitation Act 2003*, which limits the right to appeal against a final decision of an Industrial Magistrate to "a party aggrieved by the Industrial Magistrate's decision". It was put forward by the Appellant that the words "person dissatisfied" as defined by Schedule 5 of the *Industrial Relations Act 1999* extends the meaning to "person bound by a decision", and as the Bundaberg Health Service District, Queensland Health would be bound by the decision in determining the premiums payable under the *Workers' Compensation and Rehabilitation Act 2003*, they should be allowed to appeal under section 341(2).

**Held:** The Court held that the Bundaberg Health Service District, Queensland Health had no right to appeal the decision under s. 341(2). The Court noted the difficulty with the appeal lay in the relationship between the *Industrial Relations Act 1999* and the *Workers' Compensation and Rehabilitation Act 2003*. The objects of each of the statute are not the same. In particular, the Court noted that on an appeal under s. 561, the Court has no power to remit the matter to be heard and determined according to law, unlike s. 341(2). The Court also noted that on general principles, the jurisdiction conferred by other Acts that add to that created under the *Industrial Relations Act 1999* should be allowed to prevail.

# Decisions of the Queensland Industrial Relations Commission

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

## Decisions of the Full Bench

**The Australian Workers' Union of Employees, Queensland AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (B/2005/855) AND Queensland Council of Unions AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (B/2005/863) 15 August 2005 179 QGIG 879**

*Industrial Relations Act 1999* - s. 287 - application for declaration of General Ruling and s. 288 - application for declaration of Policy

**Issues:** Arbitrated Wage Adjustment and Queensland Minimum Wage.

**Background:** "On 7 June 2005, the Australian Industrial Relations Commission (AIRC) released its Decision on an application by The Australian Council of Trade Unions seeking a safety net adjustment of $26.00 per week in all award rates with a commencer of adjustment in wage related allowances. The AIRC granted an increase of $17.00 per week. Allowances were increased consistently with the Decision in *Furnishing and Glass Industries Allowances*, print M9675.

The purpose of the applications now before the Queensland Industrial Relations Commission (QIRC) is to flow the Decision of the AIRC into awards made under the *Industrial Relations Act 1999* and awards continued in existence by that Act. The applications also seek the comparable (3.0%) increases in allowances and service increment payments. Additionally, the applications seek an adjustment of $17.00 per week to the Queensland Minimum Wage fixed pursuant to s. 287(2). Provision is to be made for absorption into over-award payments. The method selected by the Applicants in order to flow the Australian Decision into State awards is the making of a General Ruling. That methodology, we should add, has not been opposed by any party.

Additionally, the applications seek modification of the Declaration of Policy of 2004 dealing with what might loosely be described as the Commission's Wage Fixing Principles (see 167 QGIG 698) to take account of changes and operative dates, the quantum of any wage adjustment granted in these proceedings and consequential amendments to take effect of the General Ruling (if made). Once again, those modifications were not opposed."

**Held:** "After the Declaration of Intent issued on 23 June 2005, (see 179 QGIG 411) the Queensland Council of Unions sought to amend its application to seek modification of the Declaration of Policy of 2004 to accommodate a Decision given by a Full Bench of this Commission in *Declaration of General Ruling - Wage and Allowances Increases - Wage Case Adjustments 1987 - 2004*, (see 179 QGIG 412). It is convenient to record at this point that this Full Bench has determined not to deal with that issue at this stage. We certainly do not reject the relief sought. However, the issues arising out of the Decision at 179 QGIG 412 may not yet be entirely resolved. It is not appropriate for each of two Full Benches of the Queensland Industrial Relations Commission to attempt to deal with the same matter at the same time. We propose to publish an Interim Statement of Policy updating the Declaration of Policy of 2004 to deal with any relief granted upon the applications for a Declaration of General Ruling in these proceedings. The parties are at liberty to re-list the

aspect of this matter relating to the case at 179 QGIG 412 when the Full Bench dealing with that matter has finished its work. A variation of any Declaration of General Ruling might also be necessary.

In our view the applications are impossible to resist. The AIRC took account of the national economy. The Queensland economy is but part of the national economy. We note in particular, that the AIRC took account of the effect of the drought upon rural industries in Queensland and in New South Wales. Plainly, there will be occasions on which the disparity between the performance of the National economy and the Queensland economy will require this Commission to opt for increases which do not mirror the increases granted by the Federal Commission. But there is no utility in adopting that course whether discrepancies are small; compare State Wage Case 2000 (see 164 QGIG 372). In any event, the economic indicia to which we have been taken (and which are not disputed) indicate that the Queensland economy has out-performed the National economy, is stronger than the national economy and offers a more secure foundation for optimistic forecasts for the ensuing twelve month period. In those circumstances, it would be wrong for this Commission to turn its back upon the decision of the AIRC where there is no suggestion that the decision, which has been followed in Western Australia, South Australia, Tasmania and New South Wales, is economically or conceptionally flawed.

We note also the force of the submission of the Queensland Government that whereas the AIRC is required to set award rates which operate as safety nets, the *Industrial Relations Act 1999* requires that consideration be given to social as well as economic factors. That submission we might add largely meets the submission of Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers (QCCI) that, because a series of decisions of the AIRC and this Commission upon National/State wage matters are replete with references to 'low paid workers', a definition of that target area should be provided. The other answer to QCCI's contention is, of course, that awards of the QIRC have a role to play in giving content to the 'no disadvantage test' in the negotiation of certified agreements.

Two particular matters should be mentioned. First, by its written submission the Queensland Motel Employers Association, Industrial Organization of Employers (QMEA) seeks to oppose the applications in toto or, alternatively, as to quantum on the basis of 'international competition'. The case before the AIRC was a test case. It involved a number of awards. *The Hospitality Industry - Accommodation, Hotels, Resorts and Gaming Award 1998* was one of those awards. There was ample opportunity for arguments about international competition to be provided on that occasion. To accept the submission of the QMEA in circumstances in which the national increase is to flow into National awards and awards in Western Australia, South Australia, Tasmania and New South Wales, would grant Queensland employers a substantial domestic competitive advantage. We are not satisfied that there is any utility in attempting to improve the competitive position of the Queensland Division of the industry by depressing the incomes of persons on moderate incomes and (often) insecure employment.

Second, the Queensland Cane Growers' Association, Union of Employers (QCGA) opposes the applications and, in the alternative, seeks to have a date of operation of 1 January 2006 instead of the traditional date of operation of 1 September 2005. A date of operation of 1 June 2006 would, of course, ensure that award rates in the field sector of the sugar industry do not increase (at all) in the 2005 season. It is not clear to the Bench whether QCGA seeks to deny the increase to all Queensland workers or to deny the increases only to those engaged in THE field sector of the sugar industry. If the former proposition be correct, we can see no justification for denying the very many because of the circumstances of the very few. And on such figures as QCGA was in a position to muster, the total work force (excluding family members) in the field sector of the sugar industry, it fell well short of 5,000. If the submission relates to the field sector of the sugar industry alone it should have been progressed, as it has on numerous other occasions, pursuant to s. 287(5). Here, it

is sufficient to observe that the evidence which QCGA has opened, is (on its face) less persuasive than evidence led on previous occasions in support of cases which failed.

We grant the application for a General Ruling. The date of operation will be 1 September 2005. We shall declare an Interim Statement of Policy dealing with consequential matters.".

Vice President Linnane - minority decision in relation to the need for 'Interim Statement of Policy'.

"I agree with the reasoning of the majority on the granting of the application for a General Ruling and the operative date. I do however dissent in respect of the majority's decision on the need for an Interim Statement of Policy and the comments contained in the following paragraph of the majority decision".

"In any event I do not accept that the application in B600 of 2005 deals with "the same matter" as that currently before this Full Bench. The principle sought in B600 of 2005 was a stand alone principle such as the Equal Remuneration Principle and the Principle for Incorporating Terms of Industrial Agreements into Awards. Such principles have no bearing on principles established by State Wage Case benches.

The amendment sought by the QCU on 8 August 2005 (and foreshadowed on 5 August 2005) referred to in the abovementioned paragraph of the majority decision is as follows:

(i) the insertion in Principle 3 of the Statement of Principles of a particular clause to be included in the 90 odd awards that were the subject of the decision in B600 of 2005; and

(ii) the deletion of Principle 4 from the Statement of Principles.

During the course of the hearing on 8 August 2005 no party raised any concern whatsoever regarding the amendment sought by the QCU. The QCCI not only consented to the QCU's application being amended but it also consented to the content of the amendments. Whilst the amendments sought reflected comments by the Full Bench in B600 of 2005, the Bench in that matter said that they "consider that this sentence should be contained in subsequent clauses issued as a result of State Wage Cases, however, the form of the clause emanating from a State Wage Case is a matter to be determined by that Bench". It was for this Full Bench to determine the matter.

There is no need whatsoever for an Interim Statement of Policy nor is there a need for the parties to have to re-list this application when the Full Bench dealing with B600 of 2005 has "finished its work". The Full Bench in B600 of 2005 has "finished its work" and further does not have before it any of the Principles that are before this Full Bench.".

**Queensland Council of Unions AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (B/2005/600) 26 August 2005 180 QGIG 101**

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

**Issues:** Vary wage rates and allowances not adjusted from previous state wage case decisions - Concerns that the application, if granted, will bypass Principle 4 of the current Wage Principles - Ability to query/check rate increases.

**Background:** QCU filed an application seeking a General Ruling in regard to wage and allowance adjustments for award employees; and a Statement of Policy in regard to a Principle pertaining to the

adjustments of wages and allowances from previous State Wage Case decisions from 1987 to 2004. The application arises from the review of awards required by s. 130 of the *Industrial Relations Act 1999* (the Act).

This Application was made following conferences in respect of Award Review Mark II which were held on 17 September 2004, 16 November 2004 and 18 March 2005. "During the course of these conferences, in principle agreement was reached on one issue to take forward, *viz*., that awards that had not been adjusted for previous wage and allowance increases available under State Wage Case decisions would have such adjustment applied. In the submissions of the QCU, this was to ensure that such awards did not contain provisions that were obsolete or needed updating (s. 126(c) of the Act) and thus establish current wage rates and allowances in awards."

**Held:** In this matter the commission "noted the QCCI's concerns that the application, if granted, will bypass Principle 4 of the current Wage Principles and further, that the increases being sought are available on application. Of course had award parties kept their awards current by accessing all wage and allowance adjustments when made available, no need would exist for this application. For various unexplained reasons, the applications for increases were not made at the time when they were first made available nor have they been made subsequently under Principle 4 and its predecessors. We think it timely and appropriate for the matters to now be dealt with. In effect, the application is seeking increases that were made available some nine to eighteen years ago.

We further accept that the requirements that were imposed by the Statement of Policy issued between 1987 and 1996 have now been incorporated, if not totally, then certainly, substantially into awards affected by this application as a result of Award Review Mark I and other legislative processes. In the circumstances we do not require awards to have any other clauses inserted into them as a result of this process, except that which identifies that increases have flowed as a result of this application. To this end we propose to adopt the Standard Clause included in the QCU Draft Application together with the following sentence at the end of the first paragraph as follows:

> 'The adjustment to wages made on 15 August 2005 (or such other date as the Commission may determine after dealing with a dispute) arises from the second round of Award Review undertaken pursuant to s. 130 of the *Industrial Relations Act 1999* in 2005.'.

In our view while not separately identifying each adjustment that had not been previously granted, the clause shows the source of the adjustment sufficiently.

At the hearing of the application, the major point of contention between the QCU and QCCI (and some of the other employer parties) was that the outcomes of the exercise were unknown. Since the parties had agreed in principle to the wage and allowance adjustment exercise being undertaken under the purview of s. 130 of the Act, the Commission was able to secure funding from DIR for the Registry to undertake the calculations. This has required a computer program to be written and the secondment of a dedicated officer to input the information. The project commenced in the Registry in April 2005. A substantial number of awards have been processed but the project has not been completed. Although we think that a review of the spreadsheets by employers would have shown the increases likely to flow from the process, we acknowledge that precise wage and allowance increases were not included in the QCU application and are not fully known at this time.

We consider that the proposal put forward by DIR, and accepted by the QCCI and the QCU, of a two week grace period, helps to overcome this problem and provides an opportunity for disputes to be notified. We consider however that releasing all results on 1 August 2005 as proposed by the QCU may inhibit proper consideration by employer parties in particular. In discussions with the Deputy Industrial Registrar, it appears that some

calculations will be completed prior to that date. At this stage it is proposed to release one section of the calculations on 18 July 2005 with any disputes in relation to those being required to be notified by 1 August 2005. A second and final round will be released on 1 August, with disputes to be notified by 15 August 2005. In both cases, subject to the application of the Economic Incapacity Principle, the increases will be operative from 15 August 2005.

As a dispute may result in a particular award being removed from the operation of the General Ruling until it is resolved, the party notifying the dispute bears the onus of establishing the grounds upon which the General Ruling should not operate or be deferred.".

**Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (A/2005/61) 24 March 2006 181 QGIG 564**

*Industrial Relations Act 1999* - s. 137 - order setting minimum wages and conditions

**Issues:** Wage progression not considered since 1973 - Higher education expectation - Higher average commencement age - Changes in ways training delivered - Significant technological changes - Lower completion rates - Greater participation by high school students - Group training schemes - Shortage of apprentices

**Background:** This consent amended application was made to the Commission by the Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland (the Union) seeking an order pursuant to s. 137 of the *Industrial Relations Act 1999* (the Act) to amend the *Order - Apprentices and Trainees' Wages and Conditions (Excluding Certain Queensland Entities) 2003* (the Order).

The Union seeks the amendment of the Order for the purpose of changing the percentages used for the calculation of wages for apprentices who have completed Years 11 and 12 of their schooling. The application was supported by The Australian Workers' Union of Employees, Queensland.

The respondents to this amended application are (the Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers; the Motor Trades Association of Queensland Industrial Organisation of Employers; the Australian Industry Group, Industrial Organisation of Employers (Queensland) and the Printing Industries Association of Australia.

**Held:** The Commission found:

"(m) The relief sought in this application is consistent with the objects of the Act. The relief sought:

(i) provides for economic advancement and social justice; and

(ii) provides for an effective and efficient economy;

(iii) ensures wages and employment conditions provide fair standards; and

(iv) meets the emerging labour markets and work patterns; and

(v) promotes and facilitates jobs growth, skills acquisition and vocational training.

(n) The relief sought is consistent with the requirements of the Commission found at section 126. The relief sought:

(i) provides for secure relevant and consistent wages and employment conditions; and

(ii) provides fair standards for employees in the context of living standards generally; and

(iii) is suited to the efficient performance of work in enterprises, industries and workplaces.

(o) The AIG, MTAQ and QCCI have no objection to the relief sought.".

A schedule outlining all amendments was issued with the Order and was effective from Friday 24 March 2006.

**The Australian Worker's Union of Employees, Queensland AND Queensland Chamber of Commerce and Industry limited, Industrial Organisation of Employers and Others (B/2003/785) 1 September 2005 180 QGIG 135**

*Industrial Relations Act 1999* - s. 287 - application for general ruling

**Issues:** Jury service entitlements - claim for "make-up" pay for persons summonsed to attend jury service - Partial consent - Objections to inclusion of casual employees - Objection to "make-up" pay calculation including shift or penalty payments - Special position of real estate industry - Decision *in principle* to issue General Ruling - Parties directed to confer about terms of General Ruling and exemptions. Application for Declaration of a General Ruling - Make-up pay for employees on jury service - Decision *in principle* released 1 September 2005 - Parties directed to confer - Declaration of General Ruling effective 15 September 2005.

**Background:** In a decision now published at 179 QGIG 493 the Commission determined it had jurisdiction to hear and decide an application by The Australian Workers' Union of Employees, Queensland (AWU) for a General Ruling creating an entitlement to "make-up" pay for employees required to attend for jury service during their ordinary working hours.

After the Commission determined it had jurisdiction to deal with the application, but not as a consequence of that decision, the Queensland Government introduced the *Industrial Relations Amendment Bill 2005* (the Bill) which amended the *Industrial Relations Act 1999* (the Act) with the effect that a number of minimum entitlements will apply to employees covered by awards and agreements (Federal or State) made or amended after 1 September 2005 unless the award or agreement provides otherwise. The Bill was subsequently passed on 12 August 2005 and received Royal Assent on 18 August 2005 to commence operation on 1 September 2005.

Relevantly, clause 9 of the Bill inserted a new Division 3A into Chapter 2, Part 1.

As will be apparent from a reading of the above provision it does not apply to existing awards of this Commission. Consequently, AWU sought to progress its application under s. 287 of the Act for a General Ruling to be made amending all Queensland awards to incorporate the following provision:

> "Employees required to attend for jury service during their ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of their attendance for such jury service and the amount of wage they would have received in respect of the ordinary time they would have worked had they not been on jury service.

Employees shall notify their employer as soon as practicable of the date upon which they are required to attend for jury service, and shall provide their employer with such proof of attendance, the duration of such attendance and the amount received in respect thereof.".

After considering the submissions and exhibits tendered to the Commission issued a "General Ruling providing entitlements for make-up pay for permanent full-time and part-time employees who have been summonsed to attend for jury service." The Commission rejected the AWU's claim to include casual employees and referred to the many Act and award provisions which whilst protecting job security for "long term casual employees" didn't extend payment of an entitlement.

The Commission further considered that for the purposes of calculation the employee's ordinary pay which is widely understood and which an employee would normally expect to receive for working normal hours. It would exclude overtime and penalty rates of all types.

The Commission also considered that alternative arrangements of payments such as those adopted by the Queensland Government should be available to employers.

The Parties were directed to confer on the definition of relevant rate, form of wording, and the list of excluded awards under the chairmanship of Commissioner Brown.

A further decision was issued on 14 September 2005 issuing the General Ruling.

**Held:** The Commission found: "In accordance with our directions, the parties met under the chairmanship of Commissioner D.K. Brown on Friday 9 September, 2005. At that time the parties reached agreement on all elements of the proposed General Ruling, other than the definition of the term "ordinary pay", which is to be used for the purposes of calculating the amount of makeup pay involved for any particular employee attending jury service.

We have considered the respective parties' submissions about the non-agreed definition, as well as those elements about which they do agree, and have determined to issue a General Ruling in terms of the Declaration attached to this decision. The General Ruling shall have effect on and from 15 September 2005 and shall be inserted into all awards of this Commission other than those awards identified in Schedule 1 of the Declaration. Those awards shall be exempt from the operation of this General Ruling."

**National Retail Association Limited, Union of Employers (B/2004/1489)**

**TRADING HOURS ORDER NON-EXEMPT SHOPS TRADING BY RETAIL STATE (Regional Queensland (Southern & Eastern Area) 15 September 2005 180 QGIG 484**

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

**Issues:** Application to extend trading hours in regional Queensland to allow trade on Sundays - Inspections undertaken interstate and intrastate - Extensive witness evidence - QRTSA and SDA given leave to appear and be heard - Application based on the fact that over 85% of Australians can now shop in non-exempt shops on Sundays - Legislative provisions considered public interest, consumer's interest and business interest considered - Views of local authorities considered - Effects on employment considered - Application dismissed *Trading (Allowable Hours) Act 199*0 s. 21, s. 26.

**Background:** "[1] A Full Bench of this Commission may decide trading hours for non-exempt shops which, generally speaking, are the larger retail shops in the State: see s. 21 of the *Trading (Allowable Hours) Act 1990* (Act). On the making of a decision, the Order of the Commission, entitled *Trading Hours Order - Non-exempt Shops Trading by Retail* - State may, from time to time, be amended to give effect to any decision of the Commission and is published in the Queensland Government Industrial Gazette.

[2] The current Order, published in (2004) 175 QGIG 247 provides that non-exempt shops shall be kept closed on Sundays and public holidays (as defined) except where specifically prescribed by the Order. The Order then goes on to make provision for Sunday trading (excluding Easter Sunday)

. . .

[4] The convoluted nature of the Order is the result of numerous piecemeal applications over the years which have gradually secured extended trading hours throughout Queensland. This is another such application.

[5] The National Retail Association Limited, Union of Employers (NRA), has applied to the Commission to amend the trading hours fixed by the Order by deleting the current definition of South-East Queensland and inserting the following in lieu thereof:

'South-East Queensland Area - The area comprising the following:

(a) The area within the following boundaries:

Commencing at Point Danger and bounded then by the southern boundary of the State westerly to 151 degrees of east longitude; then by that degree of longitude bearing true north to 24 degrees 30 minutes of south latitude; then by that parallel of latitude bearing true east to the sea-coast; and then by the sea-coast southerly to the point of commencement; and

(b) All islands in the coastal waters of the State east of the area mentioned in (a) herein.

Provided that for the purposes of trading on Saturdays this definition excludes the islands as defined in clause (5) of Schedule 1.'.

[6] If the NRA were to be successful in their application the new definition of South-East Queensland would allow Sunday trading in localities such as Texas, Inglewood, Millmerran, Dalby, Jandowae, Mundubbera, Eidsvold, Mulgildie and all places east, and Many Peaks, Lowmead, Bundaberg and all places south.

[7] The amended definition would include the following centres: Bundaberg, Maryborough, Gayndah, Monto, Murgon, Gympie, Wondai, Kingaroy, Nanango, Yarraman, Blackbutt, Kilcoy, Woodford, Caboolture, Nambour, Esk, Toogoolawah, Redcliffe, Toowoomba, Gatton, Ipswich, Warwick, and Stanthorpe. A number of other areas would also be impacted by any amended definition including Gin Gin, Pitsworth, Dalby, Allora etc.

[8] The following organisations identified an interest in the application and were given leave to appear and be heard:

- Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (SDA) on 26 October 2004;
- Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) (QRTSA) on 1 November 2004;
- Hardware Association of Queensland, Union of Employers (HAQ) on 2 November 2004; and

- National Meat Association of Australia (Queensland Division) Industrial Organisation of Employers (NMAA) on 17 November, 2004.

[9] The Australian Workers' Union of Employees, Queensland (AWU) also sought leave to appear and be heard and although the application was outside of time there was no objection to the AWU being heard on the application.

[10] At a preliminary hearing in the Commission on 3 February 2005, the Full Bench was advised that the NRA had reached an agreement with the SDA the result of which was an amendment to the claim being sought in this application. In that regard the Full Bench was advised that the NRA would only be pressing for the insertion of a new definition for Regional Queensland (Southern and Eastern Area) as follows:

' Regional Queensland (Southern and Eastern Area) - The area within the following boundaries:

Commencing at Point Danger and bounded then by the southern border of the State westerly to 151 degrees of east longitude; then by that degree of latitude bearing true north to 24 degrees 30 minutes of south latitude; then by that parallel of latitude bearing true east to the sea-coast; and then by the sea-coast southerly to the point of commencement; but excluding the areas defined in clauses (1) to (7) inclusive of Schedule 1.'.

[11] The Full Bench was also advised that the NRA, with the consent of the SDA, was now seeking the following new clause to be inserted in the Order:

'Regional Queensland (Southern and Eastern Area):

| | Opening Time | Closing Time |
|---|---|---|
| Monday to Friday | 8.00a.m. | 9.00p.m. |
| Saturday (including Easter Saturday) | 8.00a.m. | 5.00p.m. |
| Sunday (excluding Easter Sunday) | 10.00a.m. | 5.00p.m.'. |

[12] The effect of this agreed position between the NRA and the SDA is that the same localities are the subject of the application but that the permitted hours on Sundays in this proposed Regional Queensland (Southern and Eastern Area) are to be from 10.00 a.m. to 5.00 p.m. instead of what appears to be the generally accepted norm of 9.00 a.m. to 6.00 p.m. The Full Bench was subsequently advised that the AWU supported the agreed position of the NRA and SDA.

[13] The NRA application points to the fact that for 85% of Australians, seven day trading is now a fact of life. It is said that all of Tasmania, Victoria, Northern Territory and Australian Capital Territory enjoy Sunday trading, that the great majority of New South Wales, South-East Queensland (as currently defined) and tourist areas in Queensland, Adelaide and many parts of regional South Australia and Perth Central Business District, Western Australia tourist areas and some local government areas have Sunday trading. The NRA seeks the introduction of seven day trading to regional areas of Queensland for the following reasons:

(a) to prevent escape expenditure from regional towns and cities and the consequential transfer of job opportunities from regional centres to the capital city and adjoining areas in the south-east corner;

(b) to enable regional Queensland to compete on a level playing field for investment capital;

(c) to ensure for a more efficient utilisation of capital in the retail sector;

(d) to ensure for long term economic well being of the retail sector;

(e) to more effectively cater for the changing needs and shopping patterns of consumers;

(f) to stimulate economic growth and improve profitability through increased sales and increased employment; and

(g) to grow the tourism industry.

[14] The NRA also points out that many retailers currently trade over seven days. Hardware retailers, large and small, have been trading over seven days throughout Queensland since 2000, and many furniture, electrical and electronic goods stores, auto accessories stores, and homemaker centres currently trade on Sundays in regional towns and cities.

## Inspections

[15] At the request of the NRA the Commission undertook interstate inspections. Other parties opposed such inspections but they were undertaken on the basis that the practice of the Commission is to generally conduct inspections as requested by an applicant in proceedings, unless there are compelling reasons why this should not occur. None of the parties opposing the inspections placed compelling reasons before the Commission as to why they should not occur. During the inspections the Commission also inspected and viewed a number of establishments requested by the QRTSA. Inspections were conducted in the following interstate locations:

- Coffs Harbour, Armidale, Tamworth, Gunnedah, Singleton and Maitland in New South Wales;
- Hobart, Bridgewater, Ulverstone, Devonport, and Launceston in Tasmania;
- Bendigo, Ballarat and Warrnambool in Victoria; and
- Mount Gambier, Millicent, Robe, Kingston South-East, Victor Harbour, Strathalbyn, Mt Barker, Murray Bridge, Karoonda, Loxton, Sedan, Angaston and Nuriootpa in South Australia.

[16] Inspections were also conducted in regional Queensland at Beerwah, Nambour, Cooroy, Gympie, Kingaroy, Gin Gin, Maryborough, Bundaberg, Jimboomba, Beaudesert, Boonah, Stanthorpe, Warwick, Allora, Clifton, Toowoomba, Dalby, Chinchilla, Gatton and Laidley.

[17] There was much information provided to the Commission during these inspections but it is emphasised that such information was not evidence and cannot be regarded as evidence in these proceedings. It is the "view" which constitutes the evidence, not what the Commission was told on those inspections. Furthermore, there is much about this application that does not need to be given in evidence. Members of this Commission are also consumers and "shoppers" and a degree of knowledge must be imputed to them as ordinary human beings. In other words, Commission Members are entitled to take judicial notice of that which is a well known fact to them (e.g. that there is a bend in the road - *Kent v Scattini* (1961) WAR 74).".

**Held:** The Commission stated:

"[240] We have considered all matters required of us by the legislation and the whole of the evidence, the submissions and the exhibits.

[241] There is no doubt that the major retailers will continue to succeed economically whether there is Sunday trading or not whereas there is a real likelihood that the smaller retailers will suffer, some fatally.

[242] Something needs to be said about the agreement reached between the NRA and the SDA. The SDA, as it was quite entitled to do, obtained a compromise position by agreeing to the application in an amended form. The SDA told the Commission that it has carried out a survey of its members some years ago and they had supported Sunday trading. It should however, be noted that the survey was not before the Commission and it was a survey taken some three years ago. As such it can carry no weight in the determination of the application before us.

[243] Toowoomba needs special mention. Once again, the Toowoomba City Council has not bothered to inform the Commission of its position with respect to the application. The view of the Toowoomba Chamber of Commerce does not carry the same legislative weight as the views of the local authorities. On the other hand, Warwick City Council did take a position on the application. It strongly opposed the introduction of Sunday trading and the Mayor of Warwick City Council took the time and trouble to come to the Commission and given evidence of his Council's position on the application. Warwick City Council's position however is that if Toowoomba was able to trade on Sundays then Warwick must also be able to trade on Sundays. Similarly, if Toowoomba were to be able to trade on Sundays then so to would Stanthorpe, Dalby, Chinchilla etc. The application, as the NRA basically conceded, is an all or nothing application.

[244] Some mention needs also to be made of Nambour, Beerwah and Beaudesert. Each of the areas is within close proximity of areas allowed to trade on Sundays in the South-East Queensland Area. It was not this Commission that drew the boundary to the defined South-East Queensland Area in the legislation. It was the Queensland Government, no doubt in consultation with others, that determined the boundaries. We have no material before us as to the rationale for the existing boundary. We can only assume that the Government had good reason for establishing that boundary. It is however, always the case that where a boundary is established that there will be some who conveniently fall within the boundary and some that fall just outside the boundary.

[245] In summary, there is already a degree of escape expenditure in most localities which will not be curtailed by the introduction of Sunday trading. When the level playing field is spoken about, it is usually the complaint of the major retailers that the absence of Sunday trading causes the playing field to be uneven, but uneven it will be even if Sunday trading is introduced. There is no evidence that the long term economic well being of the retail sector will suffer by the denial of Sunday trading in regional Queensland but there is evidence that it may if Sunday trading is introduced in the area. The retail sector comprises small and medium business as well as large business. Capital would appear to be efficiently utilised at the present time with the ongoing major developments occurring within the locality the subject of this application. There is no evidence or insufficient evidence that there are changing needs and shopping patterns in the regional areas that need addressing and there is no real evidence of increased employment through Sunday trading.

[246] In all the circumstances we have not been persuaded by the NRA that the trading hours in the area the subject of this application i.e. Regional Queensland (Southern and Eastern), should be altered in the manner sought. We therefore dismiss the application.".

## Decisions of the Commission

**David Byrne AND Powertrans Pty Ltd and/or Gulfploy Pty Ltd (B/2005/624) 3 March 2006 181 QGIG 288**

*Industrial Relations Act 1999* - s. 278 - application to amend or avoid contracts

**Issues:** Application for amendment of contract under s. 276 "Power to amend or void contract" - Respondent submits Applicant precluded from relief under that section - Commission to consider whether application should be allowed

**Background:** The applicant sought relief under s. 276 of IR Act "Power to amend or void contract" seeking to amend the contract between himself and the Respondent. The Respondent claimed the applicant was precluded from application under that section because the applicant's wage exceeded the statutory limit of $90,400. The onus was on the respondent to establish that the applicant's annual wage exceeded the jurisdictional limit.

The issues for the Commission to consider were whether the supply of a motor vehicle; payments in respect of accommodation; and the distribution by the Trust, constituted wages in this case.

**Held: The Motor Vehicle:** The question to be answered was, did the applicant have an exercisable right, immediately prior to his termination of employment, to be paid the value of the vehicle rather than be provided with the vehicle. On the facts the cost of the vehicle did not constitute "wages".

**Payments in respect of accommodation:** The Respondent stated that the payments being made directly to the applicant's landlord for the applicant's accommodation constituted wages. The applicant's living arrangements changed, leasing a property in Brisbane. His salary was then reduced to $79,000 but as at the time of termination of employment he received a non-taxable "living away from home" allowance of $1200 per fortnight. There was no documentation suggesting that the allowance was a component of the applicant's wages. What was documented was that if a house were to be purchased by the applicant, then the allowance would cease. This did not occur and the Commission concluded that this accommodation allowance did not constitute wages.

**Trust Distribution:** The applicant was employed by Powertrans but was also a director and shareholder of a new company called Powerbuilt (Aust) Pty Ltd. The applicant said that because of his excessive workload, the respondent accepted that his work at Powerbuilt was to be remunerated by way of a shareholding ($40,000 per annum) and also by way of remuneration relating to his work with Powertrans ($90,000). The respondent says that the extra remuneration ($40,000) related solely to the applicant's work for Powertrans. The Commission found that clearly the rationale for the payment of the discretionary trust which may have been initially to minimise the applicant's taxation obligations became a convenient way to compensate him for the work he performed for Powerbuilt. The Commission agreed with the applicant's submission that the discretionary trust was "something in the nature of a profit share" and would not fit within the ordinary definition of wages within schedule 5 of the Act. Also, the Commission found that whilst acknowledging that the superannuation question was problematical, the respondent failed to prove its claim, and accepted the applicant's claim in this discrete area.

The Commission formed the view that the application could proceed before the Commission and that the challenge mounted on the question of "wages" had failed.

## Qantas Airways Limited AND Q-Comp (WC/2005/13) 22 February 2006 181 QGIG 301

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

**Issues:** Workers' Compensation - Psychiatric/psychological injury - Anxiety symptoms - no diagnosable disorder - whether an injury - Reasonable management action taken in a reasonable way - Workers' expectation or perception of reasonable management action.

**Background:** Appeal by Qantas a self-insurer against a determination of Q-Comp allowing an appeal by a worker Butland against Qantas decision to disallow Mr Butland's claim for Compensation. Mr Butland's claim for compensation detailed the nature of the injury as "severe work related stress and depression and anxiety disorder". It was Qantas' decision that the "injury" suffered by Mr Butland fell within the exclusion to the definition of injury contained in s. 32(5) of the Act and arose out of reasonable management action taken in a reasonable way by Qantas. There was evidence from a Psychiatrist that Mr Butland had suffered an emotional upset and associated symptoms which fell within the normal range of expected human emotions and which were caused by a proposed meeting with management about certain workplace incidents. He opined that Mr Butland's symptoms were not severe enough to warrant the diagnosis of Panic Disorder or Generalised Anxiety Disorder or Adjustment Disorder. One medical opinion was that Mr Butland needed 7 weeks' off work, the Psychiatrist thought that Mr Butland might well have returned to work earlier.

**Held:** It was held by the Commission, following the earlier decision of *Groos v WorkCover Queensland* (200) 165 QGIG 106 that the existence of the injury may be inferred from the existence of the impairment and in this case, it was clear that both Doctors referred to an impairment although they differed on the extent of that impairment. It was held that the symptoms amounted to an "injury".

The Commission then found that it was reasonable management action to attempt to hold a meeting with Mr Butland to discuss various issues arising out of an incident at work and that this meeting was the precipitating cause of the injury. It was found that Mr Butland withdrew from that meeting out of concern of what might happen. It was found that the injury arose out of reasonable management action taken in a reasonable way by the employer in connection with the worker's employment.

The Commission ruled that the Q-Comp decision was wrong. Q-Comp had concluded that while the management action taken by Qantas in organising a meeting to discuss work issues was reasonable, but in not providing Mr Butland with the details of the meeting and the process that was to be undertaken, the reasonable management action was not implemented in a reasonable way.

The Commission rejected this view, holding that the "reasonable management action taken in a reasonable way" was past tense and did not mean "to be taken in a reasonable way". It was held that there must be some connection between the injury and the management action taken. It was held that what management must do is to be reasonable, not perfect and if it be that before a meeting can be held with a worker, he has to be told specifically what it is about, is placing too high a duty upon management. To ask a worker what happened in an incident is not a breach of the principles of natural justice. What is "reasonable" is "reasonable in all the circumstances of the case".

The Commission allowed Qantas' appeal and set aside the decision of Q-Comp.

**Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees (for Jeanette James) AND Cal-Mac Pty Ltd t/a Calamvale Hotel (B/2005/1084) 27 January 2006 181 QGIG 95**

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

**Issues:** Application for reinstatement - Witness evidence - Termination warranted - Process flawed - Minimal compensation awarded.

**Background:** Application for reinstatement was filed by the LHMU on behalf of the applicant. It was alleged that the applicant, a retail attendant, was dismissed for reasons relating to breaches of staff rules and the undercharging of a customer.

Background material relied on by the applicant included the understanding that the dismissal was for the alleged theft of promotional material and the undercharging of a customer. The applicant had been free of warnings for performance related issues, enjoyed her work, had no conflict with fellow staff, but at times, been unfairly scrutinised. The allegation relating to the taking of the goods was acknowledged as the main reason relied upon by the respondent. The respondent's reliance upon their policy on promotional items was overridden by custom and practice in the workplace. She wasn't notified in advance of a meeting to enable her to engage an advocate and that a consequence of the meeting was that her employment may have been terminated. At the point of termination, clear reasons were not given as to why the employment arrangement had ended. The applicant therefore found the dismissal to be harsh, unjust and unreasonable.

Background material relied on by the respondent included that the undercharging of a customer was not relied upon as a reason for the dismissal. The applicant had been clearly advised that the taking of promotional stock was considered theft and would result in instant dismissal and that the termination was reasonable and justifiable to a blatant breach of policy. The applicant had admitted receiving documentation from the employer clearly advising that the taking of promotional material was considered theft and would result in termination. In accordance with s. 77 of the *Industrial Relations Act 1999* the applicant was clearly notified of the reason for her termination and was given opportunity to respond to the allegations regarding her misconduct. The respondent had no intention of terminating the applicant going into the meeting but was left with no alternative when the applicant made no offer to return the goods and said words to the effect "do what you like, sack me". The respondent submitted that the application was without merit and should be dismissed.

**Held:** The Commission found that the applicant was aware of the respondent's "hard line" approach to the issue of removing promotional goods and had blatantly chosen to ignore the directive. Whether the directive was fair or not, there was no question that the respondent had the right to exercise its management prerogative in this matter and, once deciding on a course, took appropriate steps to inform all employees of the decision. The manner in which the applicant removed the goods was less than open, which beggars one to conclude that she knew her actions, if put under scrutiny, may cause her some problems. To remove the goods, and to be found out, left no doubt in the Commission's mind as to what one might expect as a penalty. The failure to advise the applicant of the seriousness of the allegations to be levelled against her would have been the most logical reason for her attending the meeting without an advocate. An advocate would have advised her against making the comment "do what you like, sack me", an invitation which was subsequently taken up by the respondent. In the Commission's view, the failure of the respondent to follow an acceptable process ensuring natural justice was an unreasonable act. Although the Commission has found in other instances that termination was justified on the merits of the decision where the process has been flawed, it traditionally has placed significant emphasis on process. The Commission found in this case, that the termination was warranted with the applicant being fully appraised in a proper manner of what outcome would befall employees removing promotional and other stock which belonged to the respondent.

Whilst accepting the position of the respondent on the dismissal, the Commission found that the applicant was not given a reasonable opportunity to respond to the allegations prior to the dismissal and awarded a minimal compensation of $520.50.

**Queensland Nurses' Union of Employees (for Kirstienne Davina Judd) AND Comal Management Pty Ltd t/a Upper Coomera Medical Centre (W/2005/78) 22 March 2006 181 QGIG 495**

*Industrial Relations Act 1999* - s. 278 - unpaid wages

**Issues:** Whether employee full-time weekly employee or casual to determine entitlement to notice, annual leave and loading - Whether employee resigned or dismissed - Whether there should be an offset for any overpayment allegedly made and whether an overpayment was made at all. Unpaid Superannuation claim was not pressed after it was established that the outstanding contributions had been transferred into the employee's superannuation account by the ATO.

**Background:** Employee commenced employment in November 2000 as a Registered Nurse/Practice Manager on a full-time permanent basis and believed that her employment status remained unchanged for the duration of her employment. After tendering her resignation which was not accepted by a Director of the Respondent company, the employee received a letter offering an expanded management role and appropriate financial package which made no mention of the employee becoming a casual employee. During the entire period of employment the employee had received pay slips showing a balance of accrued annual leave and that in a week when the employee was absent due to illness, she was paid 38 hours' pay. The employee had also taken paid annual leave, sick leave and bereavement leave and had taken time off in lieu of overtime owed to reduce the amount.

After resigning again in January 2005, giving 6 weeks' notice, explaining in a letter that she would be unable to stay later than 18 February due to a course she was intending to undertake, and that she would be on pre-approved annual leave from 20 - 30 January, but willing to stay to train her replacement between 31 January and 18 February, the Director this time agreed. Because of work commitments including accreditation and training of new staff, the employee was unable to attend the funeral of her grandmother in the U.K. only to find out that no new staff were to be employed and that accreditation had been delayed. After being advised by the Director to try and catch the flight to the UK to be with her family, the employee missed the flight and advised the Director via a text message that she wished to finish up regardless "on the up-coming Friday". The Director then responded also by text message that she was expected to stay until 28 February texting "your reference is in your hands". What transpired then was a series of text messages and phone calls involving the employee, the Director and the employee's husband, including a phone call in which the Director, on 9 February, advised the employee's husband that the employee could "finish up" that night. The employee's claim is that she was due payment for the period 7 to 9 February and payment in lieu of notice upon her employment being terminated by the Director and that she was entitled to 3 weeks' wages in respect of notice not given or in respect of her accrued annual leave. The Director maintained that the employee had resigned and negated any agreement that may have been in place for the employee to remain in employment until 28 February 2005.

**Held:** The Commission found that the employee was employed on a weekly basis as opposed to an hourly basis and that remuneration was by way of a weekly salary or that the employee was at any time employed on a casual basis. That conclusion was also supported by the letter sent to the employee offering her an expanded management role, with no mention of any change from weekly to casual employment. The Commission also found that the Director's text messages made it clear that he believed the employee had resigned and accepts that in line with the employee's own evidence, she ceased employment of her own volition on 9 February 2005, and is subsequently not entitled to payment for any period of notice past that date.

The Commission was of the view that the respondent was not entitled to make any deduction from the employee's wages for notice not given. The period of notice given by the employee exceeded the two weeks

she was required to give by virtue of clause 4.2.3 of the *Nurses Award - State*, whereby the respondent was not entitled to insist on any longer period therefore was not entitled to withhold any payments due because of failure to give appropriate notice. The Commission acknowledged that the employee had intended to cease employment on 11 February, ceasing 2 days earlier, and because she was on approved leave between 7 and 9 February, was entitled to the amount claimed for that period.

The Commission was unable to accept the respondent's submission that any offset should be allowed on the basis of overpayment because it was not satisfied that the employee was overpaid. The terms of the agreement were clear and the respondent should not be relieved of its obligations under the agreement because in hindsight it is not happy with the agreement's terms. The Commission ordered that the respondent pay an amount of $4,537.17 being $3,787.28 for accrued annual leave and loading and $749.89 for wages for the period 7 to 9 February 2005, less taxation according to law.

### Albert Smith & Sons Pty Ltd AND David Fellows (B/2005/603) 29 August 2005 (2005) 180 QGIG 115

*Industrial Relations Act 1999* - s. 278 - application for orders

**Issues:** Discontinuance of application - Objection to discontinue - Application by respondent for order for costs - Whether applicant's application made "without reasonable cause" - Application for costs refused - Applicant allowed to discontinue.

**Background:** The Commission recommended a conciliation conference be held to sort out jurisdictional issues with the applicant in relation to orders sought involving the New Zealand Employment Relations Authority where the respondent had filed proceedings. When the respondent was not agreeable to that recommendation the Commission suggested another attempt at a conference in the QIRC in Brisbane be held and suggested the issue of jurisdiction be determined separately by written submissions. By arrangement between the parties, it was decided that the issue of jurisdiction would not be argued. The applicant then filed a "request to Discontinue" the proceedings which the respondent objected to and sought orders for costs on the grounds that the initial application was made "without reasonable cause". The applicant endeavoured to file a previous application purporting to seek a declaration under s. 275(1)(b) of the IR Act involving Mr Fellows. The Registrar rejected that application on the basis that an application under s. 275(1)(b) of the IR Act can only be made by an organisation, a State peak council or the Minister.

**Held:** The Commission stated: "The application filed by the applicant has as its base, disputed questions of fact about whether there was a contract of employment with Mr Fellows entered into in Queensland or New Zealand and there are numerous other disputes of fact. . . . None of the questions raised by the pleadings has been determined and it is inappropriate to force the applicant to a trial of those issues if the applicant does not wish to proceed. The Registrar did not advise the applicant that it was inappropriate to file any claim in this Commission. The Registrar rejected the previous application for the reasons indicated. . . . The jurisdictional issues surrounding this application were raised by the Commission, not by the parties, as a discrete issue because of the Commission's doubts about the relief sought and primarily because any trial of the substantive issues would have required the costly exercise of the respondent returning from New Zealand to attend the trial, whereas jurisdiction could have been determined upon written submissions. . . . No adjudication has been made on the jurisdictional questions raised by the Commission in this case, nor has it been argued, and the respondent himself has never claimed a lack of jurisdiction, at least until the objection

to the discontinuance was lodged. . . . This is an industrial matter where the normal rule, set out in the Act, is that costs are not awarded. The phrase 'without reasonable cause' suggests conduct verging on an abuse of process.".

The Commission found no circumstances which arose that could be said to have fallen into the category of "without reasonable cause" and that the applicant should be allowed to discontinue.

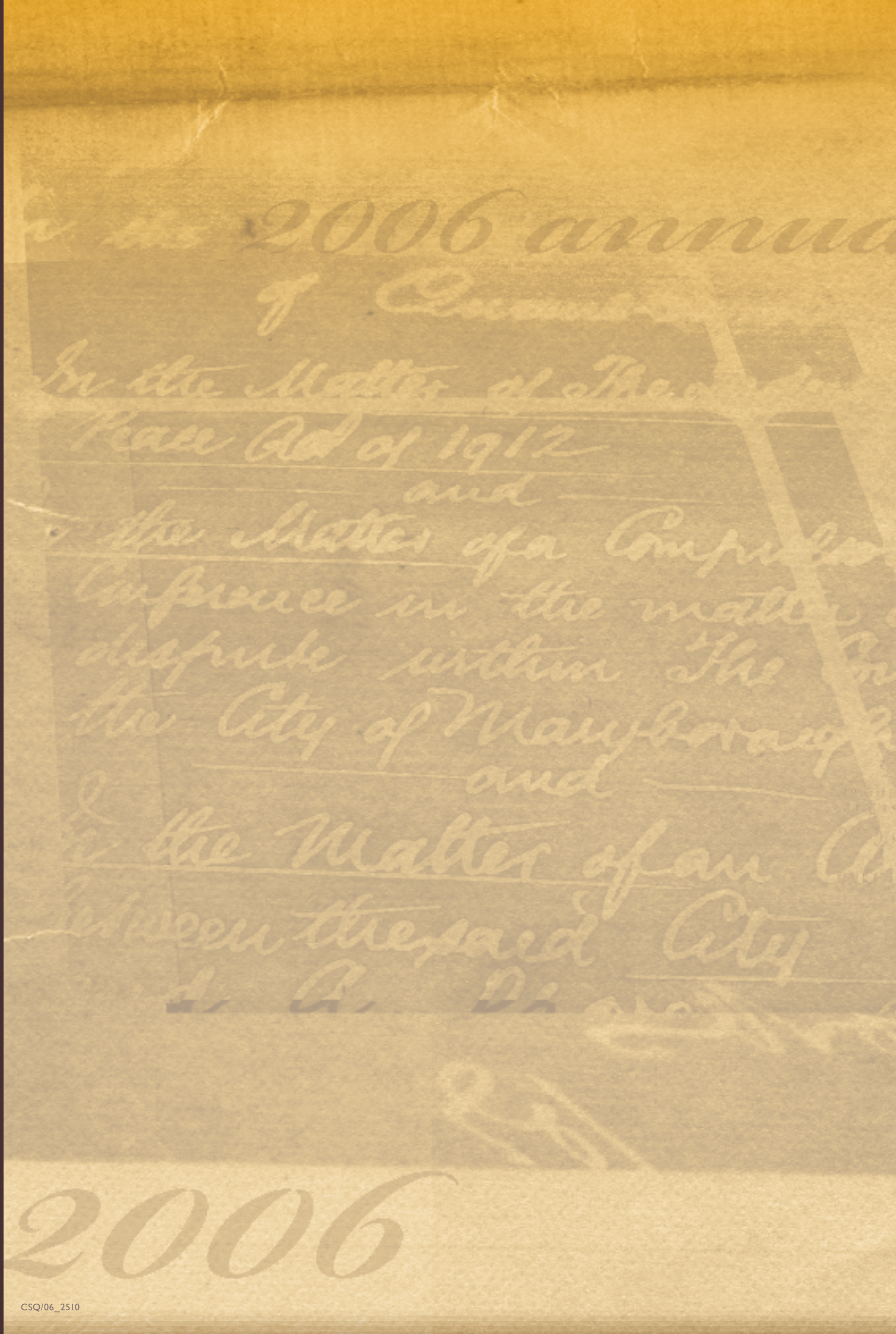
**Terrence Tilley AND Uniting Church in Australia Property Trust (Queensland) (B/2005/1123) 13 September 2005 (2005) 180 QGIG 515**

*Industrial Relations Act 1999* - s. 331 - application to dismiss

**Issues:** Unfair dismissal application - Application to dismiss - Counter application to dismiss the respondent's dismissal application - Whether reinstatement appropriate to be determined on the merits - Application to dismiss the dismissal application granted - Costs reserved.

**Background:** The applicant applied for reinstatement to previous employment with the respondent on the grounds of unfair dismissal. The respondent filed an application seeking that that application be dismissed on the grounds that the cause was trivial and/or that further proceedings by the Commission were not necessary or desirable in the public interest. The role previously filled by the applicant had ceased to exist and there were no alternative positions available at that time. An offer of 26 weeks' wages had been made to the applicant but was rejected. The respondent said that irrespective of any finding of the Commission, there remained substantial and irreparable damage to the confidence and trust the employer once placed in the applicant. The applicant then filed an application seeking that the dismissal application be dismissed on the same grounds. The factual basis for any claimed redundancy is contested as is the factual basis for the alleged misconduct.

**Held:** The Commission found that the applicant was correct in that there can be no assessment whether there has since been a genuine redundancy without a hearing on the merits. Even if the applicant's position has since disappeared, reinstatement can still be made so that the applicant is placed in the position he was at the time of his unfair dismissal. If his job has disappeared, he can be immediately made redundant at the time the reinstatement takes effect upon payment of the appropriate benefits. Whether reinstatement is appropriate is a fact in issue in the application for reinstatement. The applicant denied that his actions constituted misconduct and the Commission accepted the submission that he would be required to run his entire case if the matters identified in the respondent's dismissal application and subsequent affidavit are to be determined. The question of lack of trust and confidence could not arise if the applicant is exonerated and that question would have to be considered in the light of the whole of the evidence and the relationship existing between the applicant and the respondent. The Commission said an award of reinstatement is a restoration of the status quo and its sole purpose is to require the parties to start again from the point where an injustice occurred and if the parties were to start again from the point of the dismissal, a subsequent genuine dismissal would entitle the dismissed employee to certain redundancy benefits. In any event, the applicant contested the authenticity of the claimed redundancy. The Commission ultimately found that in accordance with s. 331(b)(ii) of the *Industrial Relations Act 1999* the original unfair dismissal application needs to be heard, not the respondent's dismissal application. The applicant sought indemnity costs, but the Commission reserved the question of costs until after the substantive application is finalised.

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