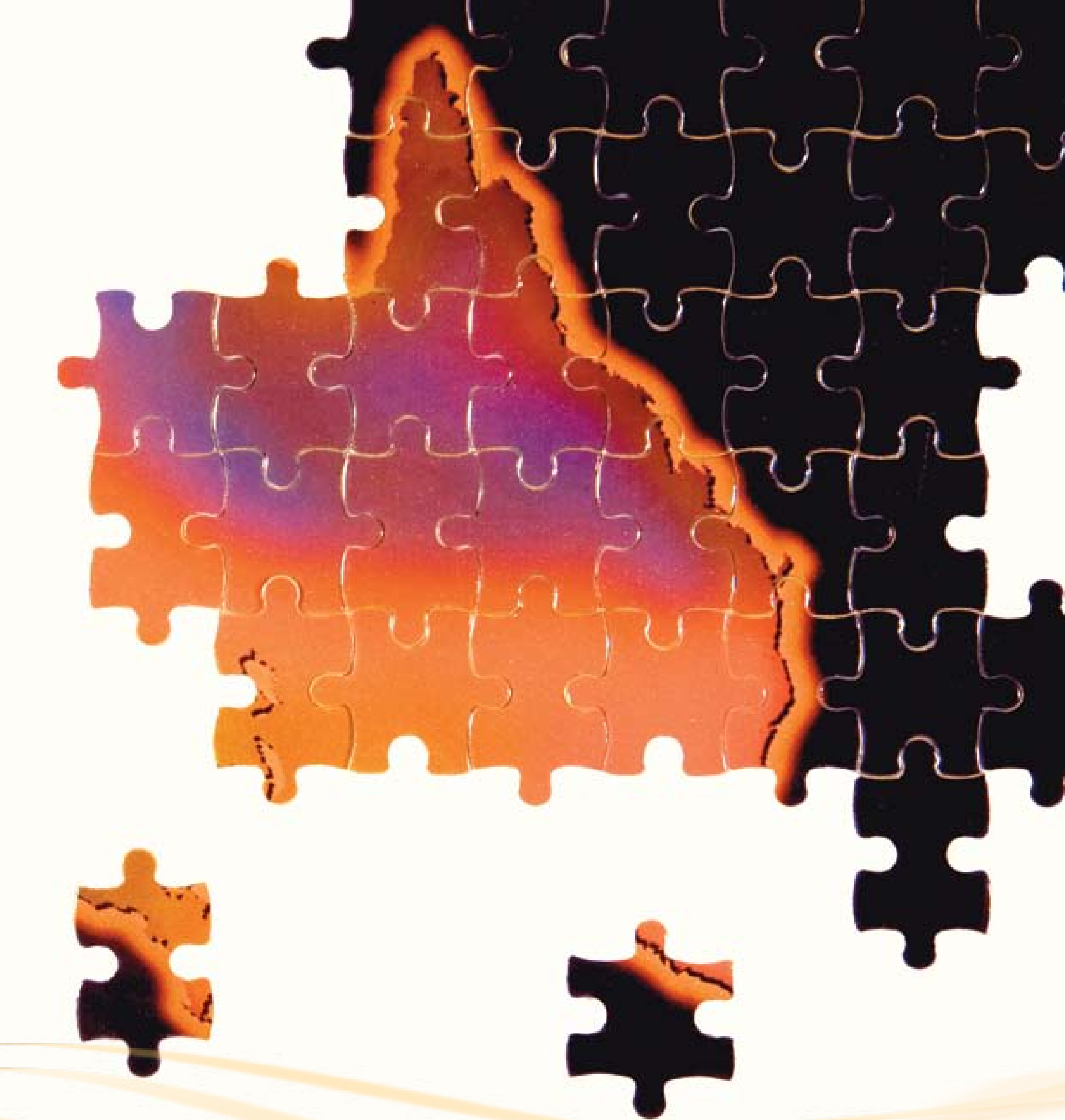

07/08 Annual Report

of the President of the Industrial Court of Queensland

in respect of the Industrial Court of Queensland, Queensland Industrial Relations Commission and Queensland Industrial Registry

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of the President of the Industrial Court of Queensland

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Where does Queensland fit in the jigsaw of Industrial Relations within Australia?

Industrial Court of Queensland

October 2008

The Honourable John Mickel, MP
Minister for Transport, Trade, Employment and Industrial Relations
Level 6B
Neville Bonner Building
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 2008. The report relating to the Industrial Registry has been prepared by the Industrial Registrar whose assistance is acknowledged.

D.R. Hall
President
Industrial Court of Queensland

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66 Eagle Street, (Corner Elizabeth and Creek Streets), BRISBANE QLD 4000
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Overview

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

Notwithstanding that the Federal *Workplace Relations Amendment (Work Choices) Act 2005,* which commenced on 27 March 2006, continues to significantly impact upon the workloads of Tribunals, (and in particular the Commission) and the Industrial Registry, the Commission continues to play a major role in contributing to the social and economic well-being of Queenslanders through furthering the objects of the *Industrial Relations Act 1999* which provides a framework for industrial relations that supports economic prosperity and social justice.

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

The establishment of a Queensland Civil and Administrative Tribunal [QCAT] was announced by the Premier, the Hon Anna Bligh MP, on 12 March 2008. The new tribunal will amalgamate a number of existing bodies and tribunals.

The independent review panel's first report into the scope and initial implementation arrangements of the QCAT was released in June 2008. Of particular interest is recommendation 19 of the review panel which states:

> "The jurisdiction of the industrial tribunals to resolve industrial disputes and other industrial and employment-related matters under the Industrial Relations Act 1999 that are appropriately dealt with by a specialist industrial tribunal should be excluded from the jurisdiction of QCAT. The remainder of the jurisdiction of the industrial tribunals should be re-considered after the new federal/state industrial relations arrangements are settled."

In this environment, the QIRC continues to provide an independent conciliation, arbitration and agreement approval service for industrial matters for Queenslanders covered by State legislation. In particular the Commission retains an important role in industrial matters which are not affected by Work Choices including the recovery of unpaid wages on behalf of employees now covered by Work Choices, where the wages were due prior to 27 March 2006. QIRC has a continuing role to play in matters such as trading hours, workers compensation and child employment.

2007 State Wage Case

The decision in the 2007 State Wage Case (SWC) was released by the Queensland Industrial Relations Commission (the Commission) on Friday 24 August 2007. The Commission awarded a $24.60 per week increase to the Queensland Minimum Wage (QMW) and all award rates, operative from 1 September 2007. By the same General Ruling the minimum wage for all full-time employees in Queensland was increased with a proportionate amount for junior, part-time and casual employees. Work related allowances were also increased by 4.1 per cent. This was the greatest increase ever awarded in a Queensland SWC.

The full bench accepted submissions advanced by parties that its legislative charter required it to take into consideration a number of competing factors, including:

- The interests of employees;
- The interests of employers;
- Economic factors (such as strong economic growth, high employment etc);
- Improving living standards;
- Ensuring wages provide fair standards in relation to living standards prevailing in the community; and
- Ensuring equal remuneration for men and women employees for work of equal of comparable value.

In making it the decision the full bench took into account the following:

- The strong economy could sustain the increase;
- It was a fair increase and ensures that workers with little or no bargaining power were not unduly disadvantaged;
- The increase represented an increase in real terms to the low paid;
- Female employees outnumber male employees in the group of employees who would receive the increase and therefore the increase may assist to redress the gender pay gap;
- The estimated cost to the economy was reasonable and affordable;
- The economic prosperity Queensland was enjoying should be shared in by the low paid; and
- The increase could be awarded without an adverse impact on employment.

Trading Hours

Trading hours for non-exempt (or large) retail shops in Queensland are regulated by way of the *Trading (Allowable Hours) Act 1990* and various trading hours orders made by the Commission that apply to specific areas or types of shop. The Commission has the role of deciding trading hours for non-exempt shops outside the minimum allowable hours based on the merit of applications and submissions placed before it. The Commission must take account of a number of issues including the public interest and the business interest (whether small, medium or large) when determining trading hour applications.

The Commission has also continued to receive applications pushing for Sunday trading in areas adjacent to or in close proximity to the current South East Queensland Area.

Over the past 12 months decisions made by the Commission to extend allowable hours of trading for non-exempt retail shops included the following cases:

- application to extend the allowable opening hours to 8am (from 9am) on Easter Saturday (a public holiday) in the South East Queensland Area.
- applications to allow Sunday trading throughout the whole of Townsville and Thuringowa, and in the Yeppoon Tourist Area.

Appeals relating to Q-COMP Review decisions

Matters under section 550 of the *Workers' Compensation and Rehabilitation Act 2003* continue to be a large part of the Commission's workload. In these matters, if an employee or employer is aggrieved by a Q-COMP Review decision, either party can appeal to the QIRC. During the year there were 103 appeals relating to Q-COMP Review decisions

Pay Equity Inquiry

In accordance with the Minister's direction, the Commission was required to conduct an Inquiry to examine the impact of the federal Government's Work Choices amendments to the *Workplace Relations Act 1996* on pay equity in Queensland pursuant to section 265(4) of the *Industrial Relations Act 1999*. Hearings for the Inquiry commenced on 26 March 2007 and concluded on 19 July 2007.

The Inquiry's final report, entitled "*Pay Equity: Time to Act*", and recommendations were provided to the Minister on 28th September 2007. The report commended the Queensland Government for continuing to take the lead. The report also found that the Federal Government's Work Choices amendments would adversely impact on the pursuit of gender pay equity.

Local Government jurisdiction

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

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

Low cost procedure in the Magistrates Court

In addition to continuing to offer its existing services, Commissioners have a new role under the amended *Magistrates Courts Act 1921* (Part 6), as from 1 January 2008. The amendments improves access to justice for employees on low incomes by establishing a low cost procedure in the Magistrates Court for claims by employees relating to breach of the contract of employment. These claims are available to employees earning up to $101,300 per year, consistent with the income threshold relating to unfair dismissal claims under the *Industrial Relations Act 1999*. The amendments provide for Members of the QIRC to be appointed to perform the functions of a conciliator prior to the matter being heard by a magistrate.

Commissioners resignations

Prior to 1 July 2007 one Commissioner had resigned his Commission viz. Robin Bechly. During the reporting period, each of two Commissioners, viz. Kevin L. Edwards and Brian J. Blades, resigned his Commission. (A further Commissioner has been seconded as the Queensland Workplace Rights Ombudsman). No Commissioner was appointed in the reporting period.

Commissioner Edwards was appointed as a Queensland Industrial Relations Commissioner in 1988. At the time of his appointment he was the Registrar of the then Conciliation and Arbitration Commission. He had previously worked in the Department of Industrial Relations from the commencement of his working life in 1965. Mr Edwards earned a reputation as a first response Commissioner particularly in the sugar industry. He commenced the first Award Review process (in 2002), which involved consideration of some 337 State Awards. His interest in history was keen and he established the Queensland Industrial Relations Commission Honour Board and organised the "August Prove Historical Display". Additionally, Mr Edwards was responsible for organising the first history of the Queensland Industrial Relations Commission, viz. "They'll always be back" and organising the funding (approved 17 May 2007) for a second history to cover the period 1961-2007.

Commissioner Blades was appointed as a Queensland Industrial Relations Commissioner in 1998. At the time of his appointment he was serving as a Magistrate at Caboolture. He served as a Stipendiary Magistrate and later as a Magistrate since 1982. His service included service in rural and regional Queensland, and either as a Magistrate or as a Commissioner he visited all of the indigenous communities on the Cape. He brought to his work at the Commission a commitment to the expeditious disposition of litigation and an appreciation of non-metropolitan issues and values.

The Court, Commission and Registry thank Commissioners Edwards and Blades for the dedication which they applied to their responsibilities as Commissioners and wish them a long, happy and well deserved retirement.

Industrial Registry

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

Whilst during the reporting period there has been a further reduction in staffing levels, performance indicators for timeliness of processing dispute notifications were achieved at 100% efficiency and other applications at 98% efficiency.

Overall satisfaction with service delivery is very high, with 93% of clients indicating they are satisfied with Registry staff. This high level of satisfaction is also reflected in most individual aspects of service delivery.

Of particular note is that during the reporting period, following a benchmarking exercise with other similar jurisdictions, the Registry reviewed and enhanced the QIRC's website. This resulted in increasing the number of documents available from 2,800 to 5,900 resulting in a 53 percent increase in the number of visits in 2007-08 compared to 2006-07.

I wish to thank the Registry staff for their continued high-quality support to the Court and Commission throughout the year and for their ability to meet deadlines in the current industrial relations environment.

The Industrial Court of Queensland

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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 dealt with in Chapter 9, Divisions 2 and 5.

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

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

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

Jurisdiction of the Court

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

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

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.

The Court's role under the *Workplace Health and Safety Act 1995* extends to being the avenue of appeal for persons dissatisfied with a decision, on internal review, by the Director, Workplace Health and Safety. Appeals from review decisions of the Director are by way of a hearing *de novo*, that is, unaffected by the decision appealed from. (See *WH & S Act* Part 11, Div. 2.) Comparable appeals are available under the *Electrical Safety Act 2002,* the *Coal Mining Safety and Health Act 1999,* the *Petroleum and Gas (Production and Safety) Act 2004,* the *Mining and Quarrying Safety and Health Act 1999* and the *Dangerous Goods Safety Management Act 2001*.

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

The Court's role also includes enforcing compliance for undertakings under the *Workplace Health and Safety Act 1995* upon application by the Chief Executive Workplace Health and Safety Division. Similar provisions now exist in the *Electrical Safety Act 2002* also.

The Court now also hears appeals relating to the right of entry of authorised representatives under Part 7A of the W*orkplace Health and Safety Act 1995* under the following sections:

- decision of Industrial Commission under s. 90Q, s. 90R, s. 90U; and
- decision of the full bench of the Industrial Commission under s. 90X.

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

- offences and wage claims under the *Industrial Relations Act 1999* (see s. 341(2));
- prosecutions under the *Workplace Health and Safety Act 1995* (see s. 164(3) *WH & S Act*);
- offences and cancellation or suspension of certificate of competency under the *Coal Mining Safety and Health Act 1999* (see s. 255 and 258);
- offences and cancellation or suspension of certificate of competency under the *Mining and Quarrying Safety and Health Act 1999* (see s.234 and 237);
- appeals from review decisions, and non-reviewable decisions, on claims for compensation under the *Workers' Compensation and Rehabilitation Act 2003*: see ss. 561 and 562.

The Court is the final appeal court for prosecutions under the *Workplace Health and Safety Act 1995*, the *Electrical Safety Act 2002* and the *Industrial Relations Act 1999*, and for compensation claims under the *Workers' Compensation and Rehabilitation Act 2003.*

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.

Industrial Organisations

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

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

Cases Stated

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

Costs Jurisdiction

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

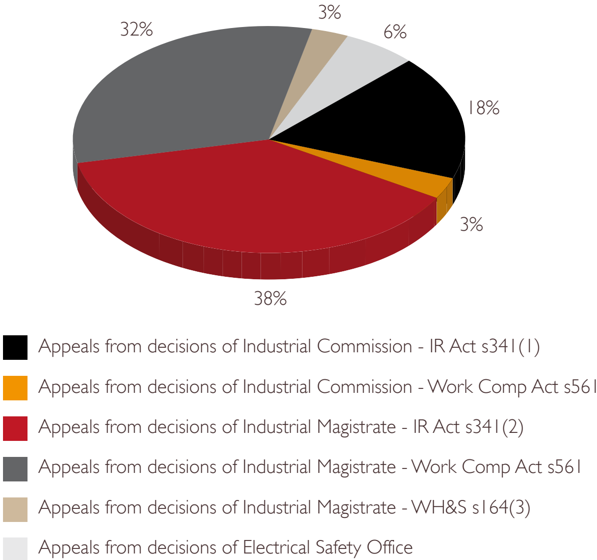
- the party's application was vexatious or without grounds; or,
- in a reinstatement application, if the party caused another party to incur additional costs, by doing some unreasonable act or making an unreasonable omission during the course of the matter.

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

appeal that has failed, in circumstances where the appeal application is found to have been made vexatiously or without reasonable cause.

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

Appeals filed in the court 2007–2008



The Queensland Industrial Relations Commission

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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 were three other Commissioners as at 30 June 2008.

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.

* Commissioner Brown is currently performing in the role of Queensland Workplace Rights Ombudsman and has been since 1 July 2007.

In this role he remains an ongoing member of the Commission. However legislatively he is prevented from performing the functions of a member of the Commission whilst performing as Ombudsman.

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

The legislation enables Commissioner Brown to resign from the position of Ombudsman and resume performance of the functions of a member of the Commission at a time of his choosing.

Alternatively, in the event that the office of Queensland Workplace Rights Ombudsman is abolished he reverts automatically to the performance of the functions of the Commission.

Industry Panel System

Under s. 264(6) of the Act, the Vice President must establish industry panels. The scheme is designed to ensure that, where possible, members with experience and expertise in the relevant industries are assigned to deal with disputes and the Commission is thereby able to deal with disputes more quickly and effectively. The current arrangement is a three-panel system, with industries divided between the panels. Each panel is headed by the Vice President or a Deputy President. The current panels have been in operation since 25 March 2008 and are listed on the following page:

Current members of the Commission are listed below.

Member	Role and date sworn in
Mr DR Hall	President 2.8.1999
Ms DM Linnane	Vice-President 2.8.1999
Ms DA Swan	Deputy President 2.8.1999 - appointed DP 3.2.2003
Mr AL Bloomfield	Deputy President 2.8.1999 - appointed DP 3.2.2003
Mr KL Edwards	Commissioner 2.8.1999 - retired 10.8.2007
Ms GK Fisher	Commissioner 2.8.1999
Mr BJ Blades	Commissioner 2.8.1999 - retired 31.07.2007
Mr DK Brown*	Commissioner 2.8.1999
Ms IC Asbury	Commissioner 28.9.2000
Mr JM Thompson	Commissioner 28.9.2000

Panel 1:

Vice President Linnane (Head of Panel)
Deputy President Swan (Member)
Deputy President Bloomfield (Member)
Commissioner Fisher (Member)
Commissioner Asbury (Member)
Commissioner Thompson (Member)

Queensland Government Departments and Agencies (including Ambulance, Disability Services, Education, Fire Services, Health, Hospitals, Nursing, Police, Prisons and the Public Sector generally)

- **Local Government Authorities**

Panel 2:

Deputy President Swan (Head of Panel)
Commissioner Thompson (Member)

- Agriculture
- Agriculture Associated Bulk Handling
- Banking and Insurance
- Catering (excluding Construction Catering)
- Cemeteries and Funerals
- Childcare
- Clerical
- Disability Services (excluding Qld Govt)
- Dry Cleaning and Laundry
- Education (excluding Qld Govt)
- Fast Food
- Food Manufacturing
- General Manufacturing
- General Transport (excluding Sugar)
- Hotels and Motels
- Hospitality
- Maritime Transport
- Meat and Poultry
- Miscellaneous
- Pharmaceuticals
- Port Authorities
- Prisons (excluding Qld Govt)
- Professional Services
- Retail
- Sales and Wholesale Warehouses (including Stores and Distribution Stores)
- Security
- Shearing

Panel 3:

Deputy President Bloomfield (Head of Panel)
Commissioner Asbury (Member)

- Aged Care
- Arts and Entertainment
- Beauty and Hairdressing
- Brewing and Beverages
- Building and Construction (ex. Qld Govt)
- Cement
- Chemicals
- Concrete
- Construction Catering
- Electrical Industry including Contractors
- Forestry Products (including Timber/Sawmilling)
- Gas and Oil
- Health (excluding Qld Govt)
- Hospitals (excluding Qld Govt)
- Metal Industry
- Mining (including Associated Bulk Handling)
- Nursing (excluding Qld Govt)
- Printing and Publishing
- Professional Engineering and Technical Drafting
- Quarries
- Racing
- Residential Accommodation (excluding Qld Govt and Local Authorities)
- Sports
- Sugar (including Bulk Sugar and Sugar Transport)
- Tree Lopping
- Aged and Infirm Permits

The Full Bench of the Commission

Under s. 256(2) of the Act, the Full Bench is comprised 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 on grounds other than error of law.

Full Bench Hearings about Industrial Organisations

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

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

* To deregister an industrial organisation the Full Bench must be constituted by the President and 2 Commissioners. Regrettably, a Full Bench consisting of the Vice President, a Deputy President and a Commissioner purported to deregister an organisation. It was not possible to rectify the error within the reporting period.

See *Decisions of the Full Bench* for important decisions released by the Full Bench during 2007 - 2008.

Commission Hearings

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

Jurisdiction, Powers and Functions of the Commission

Jurisdiction under the *Industrial Relations Act 1999*

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

The jurisdiction under the Act includes regulation of callings, dealing with industrial disputes and resolving questions and issues relating to industrial matters. "Industrial matter" is defined broadly in s. 7, and

includes matters affecting or relating to work to be done; privileges, rights or functions of employees and employers; matters which, in the opinion of the Commission, contribute to an industrial dispute or industrial action. Schedule 1 of the Act lists 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, provisions in Chapter 3 enable it to order reinstatement or award compensation to workers who have been unfairly dismissed. Various provisions in Chapters 5 and 6 empower the Commission to do what is necessary to make, approve, interpret and enforce industrial instruments (Awards and Agreements). The Commission's exercise of its powers, and the powers necessary for conducting proceedings and exercising its jurisdiction are governed by Chapter 8, Part 6, Div 4.

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

The powers given by the Act include the power to:

- make general rulings about industrial matters, employment conditions, and a Queensland minimum wage: s. 287; and statements of policy about industrial matters: s. 288;
- resolve industrial disputes by conciliation and, if necessary, by arbitration: s. 230. The Commission's powers in such disputes includes the power to make orders 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 program of Award review was commenced by the Commission on its own initiative in 1999);
- approve a Queensland Workplace Agreement (QWA) for which a filing receipt has been issued if satisfied the QWA passes the no-disadvantage test; the QWA meets the additional approval requirements; and the QWA is not contrary to the public interest;
- determine claims for, and order payment of unpaid wages, superannuation contributions, apprentices' tool allowances, and certain other remuneration, where the claim is less than $50,000 (claims above that sum must be heard before an Industrial Magistrate): s. 278;

- make orders fixing minimum wages and conditions, and tool allowance for apprentices and trainees: ss. 137 and 138; and orders fixing wages and conditions for employees on labour market programs, and for students in vocational placement schemes: ss. 140 and 140A;
- make orders for payment of severance allowance or separation benefits, and order penalties against employers who contravene such orders: s. 87;
- make a declaration about an industrial matter: s274A
- declare a class of persons to be employees rather than independent contractors, and declare a person to be their employer: s. 275;
- amend or declare void a contract for services, or a contract of service not covered by an industrial instrument, where the contract is found to be unfair: s. 276;
- grant an injunction to compel compliance with an industrial instrument or permit, or with the Act, or to prevent contraventions of an industrial instrument, permit or the Act: s. 277;
- interpret an industrial instrument: s. 284;
- order repayment of fees, charged in contravention of the Act by a private employment agent, where the total fee paid was not more than $20,000: s. 408F (claims above that sum must be decided by an Industrial Magistrate);
- issue permits to "aged or infirm persons" allowing them to work for less than the minimum wage under the applicable industrial instrument: s. 696;
- make orders to resolve demarcation disputes (that is, disputes about what employee organisation has the right to represent particular employees): s. 279. In addition, if an organisation breaches an undertaking it has made about a demarcation dispute, the Commission has the power to amend its eligibility rules to remove any overlap with another organisation's eligibility rules: s. 466;
- order a secret ballot about industrial action, and direct how the secret ballot is to be conducted: ss. 176 and 285;
- the power to determine applications to amend the name, list of callings, or eligibility rules of an industrial organisation: Chapter 12 Part 6;
- the power to conduct an inquiry, under Chapter 12 Part 8, into any alleged irregularity in the election of office-bearers in an industrial organisation. Applications for such inquiries are made by financial members of the organisation to the Registrar. The Registrar may then refer the application to the Commission if there appear to be grounds for conducting an inquiry and the circumstances justify it: s. 502;
- the power to approve amalgamations of organisations: s. 618; and withdrawals from amalgamations: s. 623.

General Rulings and Statements of Policy

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

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

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

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

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

On 24 August 2007 a Full Bench of the Commission declared by General Ruling a wage adjustment of $24.60 per week increase in award rates of pay. By the same General Ruling as required under s. 287 of the IR Act, the minimum wage for all full-time employees in Queensland was increased to $528.40 per week with a proportionate amount for junior, part-time and casual employees. Work related allowances were increased by 4.1%. The effective date for the increased rates was set at 1 September 2007.

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 was used in this way for the first time since the Act was introduced in 1999.

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

Parties who request assistance to negotiate a certified agreement, under s. 148, may require several conferences to work through their differences satisfactorily.

Unfair dismissals

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

before dismissal, the circumstances surrounding the dismissal, and any amount that has already been paid to the applicant by the former employer. The powers of the Commission in this regard are outlined in s. 79 of the Act.

The path to a remedy for dismissed employees begins by filing an *Application for Reinstatement*. 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. At the same time, the member can inform the parties of their rights and obligations under the legislation and under any award or agreement that applies to their employment relationship. No record is kept of these conferences, except for the outcome.

In many cases, an agreement can be reached, disputed claims are resolved, or the matter is not pursued further. This is reflected in the figures in Table 7. Of the many applications filed, a limited number proceed to formal hearings.

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

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

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

Table 7 shows general outcomes of reinstatement applications during the year.

Industrial instruments

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

The predominant types of instruments are: Awards; Certified Agreements (CAs); and Queensland Workplace Agreements (QWAs). Awards and CAs are collective instruments, that is, they cover a range of employees and employers in a particular industry. They will usually be negotiated by employee organisations with employers and/or related employer organisations. QWAs apply to individual employees. Table 6 indicates the types and number of industrial instruments in force within the Commission's jurisdiction.

Awards

Section 265(2) gives the Commission jurisdiction to regulate a calling by an Award. Awards are regulated by Chapter 5 of the Act. The Commission's powers with regard to Awards are set out in Part 2 of Chapter 5. Awards can be limited to a geographic region or a particular employer. But they may cover all employers who are engaged in a particular calling, along with their employees and any industrial organisations (that is, employer or employee organisations) that are concerned with that calling. Table 6 shows that there are 324 Awards currently in force in Queensland.

Certified Agreements

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

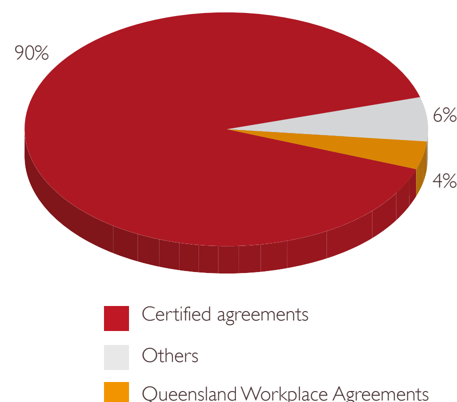
If the parties have difficulty in negotiating the terms and conditions of the agreement, they may apply to the Commission for assistance with conciliation: s. 148. If (unusually) conciliation cannot resolve the impasse, the Commission has the power to arbitrate, as it would do for an industrial dispute.

During the year there were 74 applications to approve a Certified Agreement. Of these, 58 were new Agreements. There were also 3 applications to amend a Certified Agreement and 2 applications to terminate a Certified Agreement. The number of Certified Agreements currently in force is indicated in Table 6.

Queensland Workplace Agreements

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

Agreements filed
2007–2008



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 alternative remedy is available in the Industrial Magistrates Court (s. 399).

An application can not be made to the Commission if the total amount being claimed is more than $50,000.00. Claims over $50,00.00 may be made in the Industrial Magistrates Court. A person can not make an application under this section if an application has been made to a magistrate for an order for the same matter.

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

Pursuant to s. 336 (recovery of amounts under orders) if the amount the Commission ordered is not paid, the Industrial Registrar has the power to issue a certificate, under the seal of the Commission, stating the amount payable, who is to pay the amount, to whom the amount is payable and any conditions about payment. This amount may be recovered in proceedings as for a debt. When the certificate is filed in a court of competent jurisdiction in an action for a debt 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 4 indicates how many of these costs matters were dealt with.

Declaring persons to be employees

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

Amend or Void Contracts

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

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

As with the applications for reinstatement, there is a level of remuneration at which the provision ceases to be available. That is, a person cannot file an application under s. 276 if he or she earned above the prescribed amount (set out in s. 4 of the *Industrial Relations Regulation 2000*). During the year, the stipulated cut-off was $101,300.

Industrial Organisations

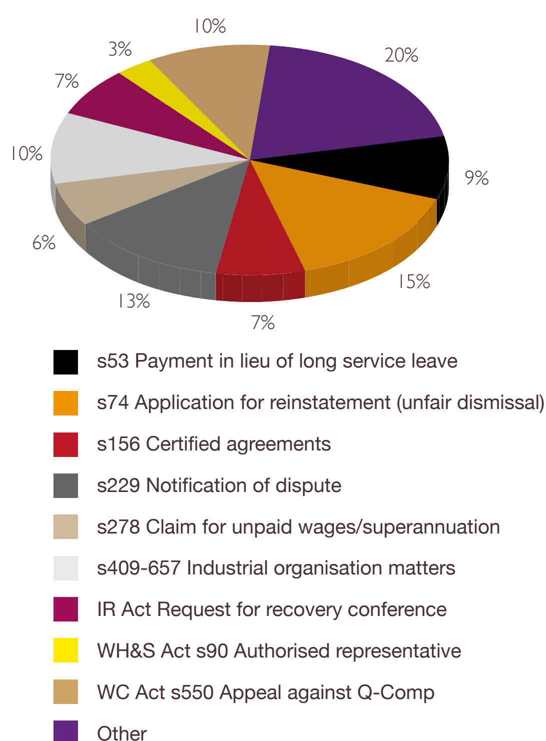
The Commission has the power to: grant the registration of an Industrial Organisation (s. 413); approve of change of name (s. 473); change to eligibility rules (s. 474); and to make orders about an invalidity (s. 613). Table 10 shows the number of applications dealt with.

Industrial action

Industrial action is protected if engaged in according to the terms of s. 174 of the Act. Under s. 177, industrial action is protected only if it is authorised by the industrial organisation's management committee, is permitted under the organisation's rules, and if the Registrar is notified of the authorisation.

If it appears to the Commission that industrial action may be avoided, or a dispute settled by ascertaining the relevant employees' attitudes to the issues, the Commission may order that a secret ballot be conducted of the employees. In that event, the action is not protected industrial action unless and until the ballot is conducted and a majority vote in favour of it (see s. 176).

Applications filed and matters heard 2007–2008



Powers and other jurisdiction under other Acts

The Commission has jurisdiction under other Acts viz.: the *Vocational Education, Training and Employment Act 2000*; the *Trading (Allowable Hours) Act 1990;* the *Workers' Compensation and Rehabilitation Act 2003*; the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*; the *Whistleblowers Protection Act 1994;* the *Workplace Health and Safety Act 1995;* the *Child Employment Act 2006; and* the *Magistrates Courts Act 1921.*

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

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

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

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

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

On 24 July 2007 a Full Bench of the Commission amended the Trading Hours order to allow for an extra hour of trade on Easter Saturday.

On 23 July 2007 a Full Bench of the Commission granted in part an application by the National Retail Association Limited, Union of Employers for extended Sunday trading hours in the Local Government areas of Townsville and Thuringowa.

An application by the National Retail Association Limited, Union of Employers to introduce Sunday trading in the Yeppoon area was granted by a Full Bench of the Commission with an operative date of 5 January 2008.

See *Decisions of the Full Bench* for summary of decisions relating to trading hours released by the Full Bench during 2007 – 2008.

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

Workers and employers can apply to Q-Comp if they disagree with certain decisions made by their workers' compensation insurer. Q-Comp impartially reviews claims decisions. Under s. 550 of the *Workers' Compensation and Rehabilitation Act 2003,* if an employer or employee is aggrieved by the Q-Comp Review decision, either party can appeal to the Queensland Industrial Relations Commission.

These matters tend to be rather complex. Hearings often involve expert witnesses. Parties are usually represented. The average length of such hearings is approximately 6 days. There has been a slight decrease in appeals under s. 550. During the year there were 103 appeals relating to Q-Comp Review decisions.

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

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

Jurisdiction under the *Whistleblowers Protection Act 1994*

Section 47 of the *Whistleblowers Protection Act 1994* provides that an application for an injunction about a reprisal may be made to the Queensland Industrial Relations Commission if the reprisal has caused or may cause detriment to an employee. One application was made in the reporting period.

Jurisdiction under the *Workplace Health and Safety Act 1995*

Under s. 90U, if a dispute exists between an authorised representative for an employee organisation and the occupier of a place about the exercise or purported exercise of a power under the *Workplace Health and Safety Act 1995* and the dispute remains unresolved after the parties have genuinely attempted to settle the dispute and a notice of the dispute is given to the Industrial Registrar, the Industrial Commission may take the steps it considers appropriate for the prompt settlement or resolution of the dispute, by conciliation in the first instance; and if the Commission considers conciliation has failed and the parties are unlikely to resolve the dispute - arbitration.

Under s. 151 of the *Workplace Health and Safety Act 1995* a person whose interests are affected by an original decision may appeal against the decision to the Queensland Industrial Relations Commission. In deciding an appeal, the Commission may confirm the decision appealed, vary the decision appealed against, set aside the decision appealed against and make a decision in substitution for the decision set aside or set aside the decision appealed against and return the issue to the decision maker with directions the Industrial Commission considers appropriate.

Jurisdiction under the *Child Employment Act 2006*

Under section 15C of the *Child Employment Act 2006,* on the application of an inspector, or in a proceeding before the industrial commission under this part, including an appeal, the industrial commission may decide whether an agreement or arrangement reduces a child's employment entitlements or protections.

In addition, under s. 15P of the *Child Employment Act 2006*, a person who alleges that the dismissal of a child from employment is by a constitutional corporation, and the dismissal is of a kind that could be the subject of an application under the *Industrial Relations Act 1999*, chapter 3 if the employer of the child were not a constitutional corporation, may apply to the Industrial Commission for an order that may be made under the dismissal provisions of the *Industrial Relations Act 1999.*

Jurisdiction under the *Magistrates Courts Act 1921*

The *Industrial Relations and Other Legislation Amendment Act 2007* amended the *Magistrates Courts Act 1921* (Part 6), as from 1 January 2008. The amendments improves access to justice for employees on low incomes by establishing a low cost procedure in the Magistrates Court for claims by employees relating to breach of the contract of employment. These claims are available to employees earning up to $101,300 per year, consistent with the income threshold relating to unfair dismissal claims under the *Industrial Relations Act 1999*.

The amendments provide for Members of the QIRC to be appointed to perform the functions of a conciliator prior to the matter being heard by a magistrate.

Professional activities

During the year 2007-08, the Members attended the following conferences, seminars and meetings:

Member	Activity	Location	Date/s
LINNANE, D.M.	5th Annual Australian Institute of Judicial Administration Conference	Melbourne	12/10/07 to 14/10/07
	Remaking Industrial Relations Forum, University of Sydney	Sydney	16/06/08
SWAN, D.A.	Australian Bar Association Conference, and USA Pacific Legal Conference	Chicago and New York	1/7/07 to 4/7/07
BLOOMFIELD, A.L.	NSW Industrial Relations Society Convention	Ettalong NSW	16/05/08 to 18/05/08
	US Federal Mediation and Conciliation Service (FMCS) Biannual Conference	Washington, USA	9/06/08 to 11/06/08
	Remaking Industrial Relations Forum, University of Sydney	Sydney	16/06/08
THOMPSON, J.M.	West Australian Industrial Relations Commission Professional Development Mediation Workshop	Perth	29/10/07 to 31/10/07
	11th Europe-Asia Legal Conference	Positano, Italy	30/06/08 to 4/07/08

Local Government Remuneration Tribunal

On 25 October 2007 the Queensland Government appointed Deputy President Bloomfield to Chair the Local Government Remuneration Tribunal. The Tribunal has a number of functions, the most notable of which are that it must, by 31 December annually:

- establish categories of councils for the 72 councils within its jurisdiction;
- assign each council to a category; and
- decide the level of remuneration to be paid to mayors, deputy mayors and councillors within each category of council.

In order to meet the short time frame involved in the preparation of the Tribunal's first determination, Deputy President Bloomfield was released from his normal activities within the Commission and allowed to work, virtually full-time, in this new role during November 2007.

As part of undertaking their role, members of the Tribunal travelled to a number of provincial centres to hold meetings with delegations of mayors and councillors. Other meetings were held in Brisbane. Arrangements were also made to invite submissions from interest parties through a series of newspaper advertisements placed in State-wide, and regional, newspapers during early November 2007.

Ultimately, the Tribunal met representatives from 33 of the then existing Councils and received an additional 144 written submissions. In addition, a large amount of statistical data was requested by the Tribunal from Local Governments, the Local Government Association of Queensland and various Government Departments - including the Department of Local Government, Sport and Recreation and the Department of Infrastructure and Planning.

After considering all of the material before it the Tribunal decided to establish 10 categories of Council (including a special category covering the 17

Indigenous Councils and the Cook Shire Council) and assigned a category to each Council within its jurisdiction. The Tribunal also decided levels of remuneration for mayors, deputy mayors and councillors within each category and further determined to tie that remuneration to the remuneration paid to a member of the Legislative Assembly of Queensland.

As required by the *Local Government Act 1993*, the Tribunal made the above determinations before 1 December 2007 and presented its report to the Minister for Main Roads and Local Government, the Honourable Warren Pitt MLA, on Monday 3 December 2007.

The time commitment required of Deputy President Bloomfield, as Chairperson of the Tribunal, is significant. In addition to working virtually full-time for 4 weeks on the Tribunal's first determination, the Deputy President has also been expected to rapidly deal with, and respond to, various issues relating to the Tribunal's activities including: draft legislation; correspondence to the Tribunal from various Government Departments, Councils and members of the public; presentations to various meetings of local government representatives; visits to local governments in various parts of the State to discuss matters within the Tribunal's jurisdiction, and so on. It is estimated that this time commitment averages 3-4 days per month.

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

Queensland Industrial Registry

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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 Employment and 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.

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

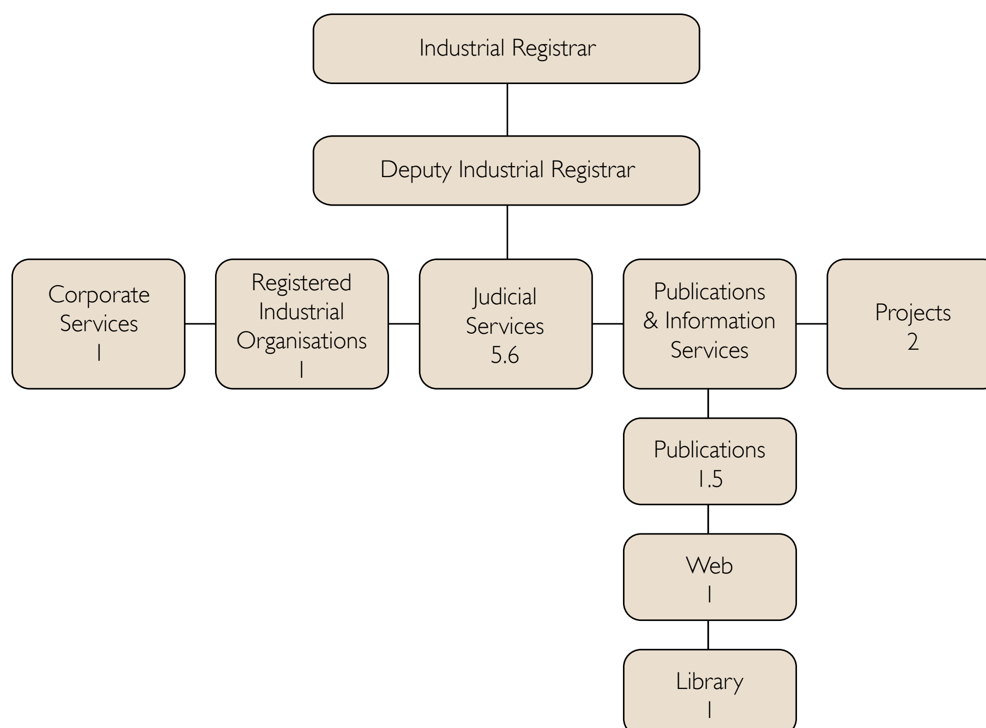
Email address: qirc.registry@deir.qld.gov.au

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

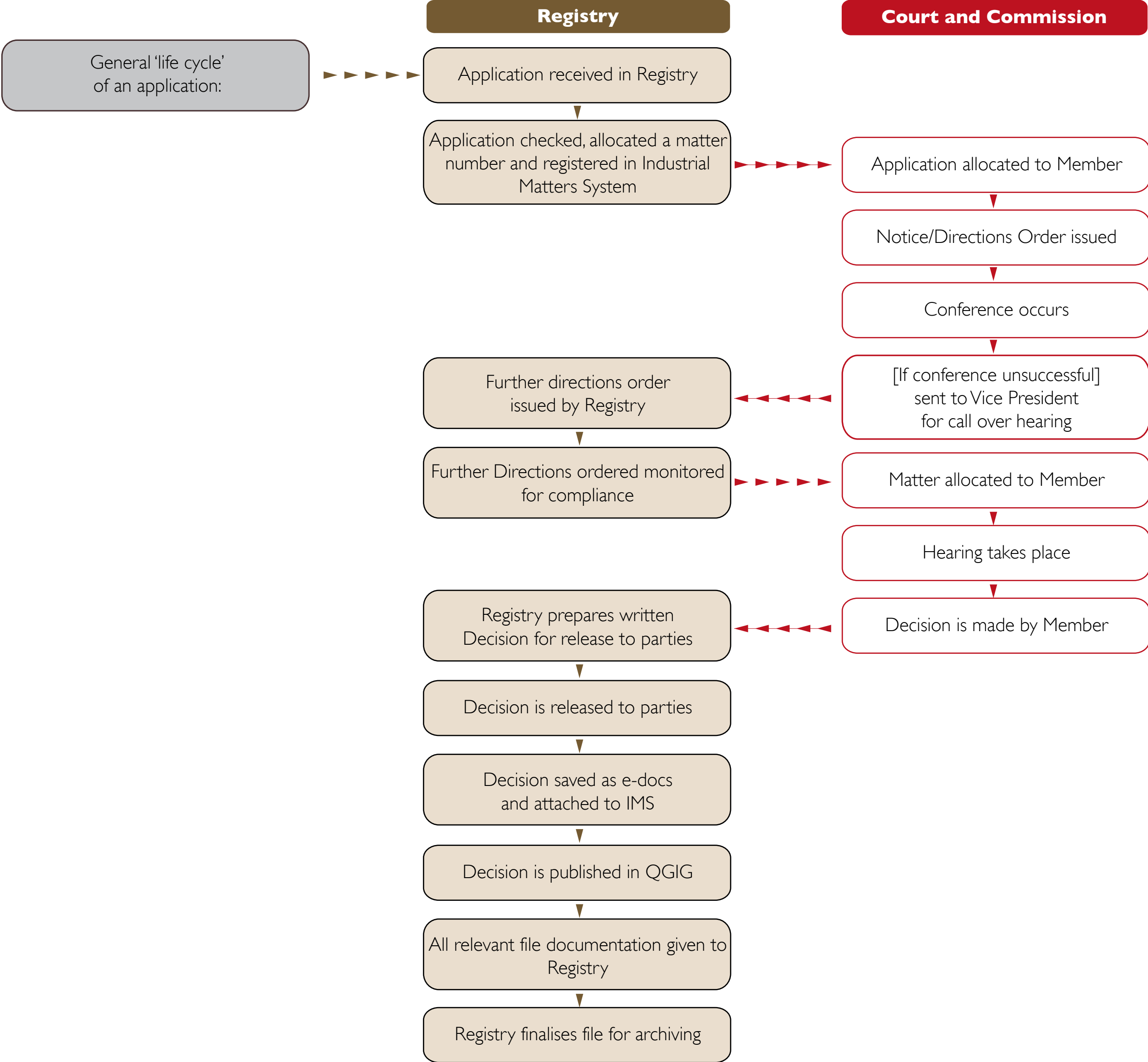
Registry Services

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

The following outlines the organisational structure of the Registry:



The following flow chart represents the interaction between the Registry and the QIRC in managing an application from the initial filing of a matter through to finalisation. This demonstrates, as stated earlier, how the Registry provides administrative support to the Court and Commission.



Judicial Services

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

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

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

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

Since the introduction of the previous Federal Government's *Workplace Relations Amendment (Work Choices) Act 2005,* which commenced on 27 March 2006 the number of matters filed has significantly reduced the workload of the Registry.

During 2007-08, a total of 1,135 applications and notifications were filed in the Registry (see Tables 1 & 4).

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

The Registry has set itself benchmarks for timeliness in initial processing of applications and notifications. Table 8 indicates how successful it has been in meeting those targets during the year to 30 June 2008.

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

One of the functions of the Judicial area is liaising with the State Court Reporting Bureau for recording of transcripts. There is a strong level of demand for transcripts among regular participants in the IR system, such as industrial organisations, industrial agents and legal firms. Registry provide a free electronic copy of transcripts [e.g. by email] to a party to a proceeding or their representative [subject to any restrictions of the release of the transcript by the Member for the proceeding].

Publication and Information Services

Publication Services

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

Each week the PSU produces the Queensland Government Industrial Gazette which is comprised of all Court and Commission documents released that week. The production of the Gazette is quite labour intensive with strict deadlines to be met, in order to publish and distribute the Gazette to subscribers on time each week.

PSU also supplies the weekly gazettes, and gazette extracts of these documents to the Industrial Relations Information Service (IRIS) of the Department of Employment and Industrial Relations which provides an extensive research database that enables full text searching on documents of the Queensland Industrial Relations Commission including all current and repealed documents, as well as their associated history.

Additionally, 74 Certified Agreements, 3 amendments to Certified Agreements and 2 terminations of Certified Agreements were prepared, converted to PDF format and directly uploaded by the PSU to the IRIS database.

QIRC decisions are also posted on the AustLII data base (which is a free public access legal data base). The QIRC and its clients are frequent users of the AustLII service and as such the QIRC contributes financially to assist with AustLII's operational costs.

The printing of the 2007 annual State Wage Case amendments was again a major task involving the preparation of 4 special Gazettes and 4 sets of Extracts requiring nearly 1,000 pages to be formatted, proofread and printed with limited timeframes involving the whole of the unit.

The PSU manages 4,779 Industrial Instruments (see table 6) ensuring the accuracy and standardisation is met and available to distribute to relevant agencies for distribution and use State-wide.

Media Reports

The PSU monitors articles of interest regarding Industrial Relations matters from newspapers daily, via a password e-mail distribution list set up by the Strategic Communication Unit within DEIR. The PSU selects the articles and builds its own report then emails the report onto Members of the Commission, helping to eliminate time-consuming hard copy searching, enabling the Members to easily stay informed of current IR news throughout the Country (including AIRC and other States Tribunals' rulings on current matters).

Legislation Upkeep

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

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

Web Services

The internet website for the Commission and Registry has undergone further redevelopment to meet the changing needs of our clients. Through client feedback responses we have added significant information to our website including:

- All released decisions are now posted daily
- Each Queensland Government Industrial Gazette [QGIG] is posted weekly
- All volumes of the QGIG as from 2000 have been posted to the website
- All extracts of the QGIG back to 2000 have been posted to the website
- All Awards of the Commission

The 2007 State Wage Case saw the Registry post all relevant documentation including original applications, directions of the Commission, submissions and responses of all parties, transcripts of proceedings and Commission decisions. This allowed timely and cost effective information to be disseminated to all parties without the need of many parties appearing in the Commission or serving documents on each other.

The use of the Commission's web site at www.qirc.qld.gov.au has increased markedly. It provides 5,900 files of relevant information for the general public and approximately 181,000 visits [approx. 500 daily] were recorded annually, which is a further 30% increase on the previous year.

Registered Industrial Organisations

The project to review the Registry records of Registered Industrial Organisations in relation to provisions of Chapter 12 of the *Industrial Relations Act 1999* continued into 2007-08. 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.

Library Services

The Registry also provides information and research services for the Court and Commission through the library. The library provides some limited public access. It is a non-lending library which provides information services (but not research services) to the public. The library has a good collection of industrial law materials (texts, law reports, journals) as well as some more general law resources. It holds copies of state awards and their amendments, including rescinded awards and historical material.

Throughout 2007-08, the library undertook a comprehensive review of all resource material in relation to hard copy versus availability and cost of electronic copy. Also outdated resources were replaced with those considered more appropriate and current. This project will continue into 2008-09 as subscriptions become due.

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 Employment and 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

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.

Client satisfaction

As in previous years a client satisfaction survey of the Industrial Registry Office based on a random sample of clients was conducted by an external provider.

The overall goal of the survey was to evaluate the level of client satisfaction with service delivery and information services in a consistent and reputable manner. Survey results provide the Industrial Registry with valuable information to assist in performance management and quality improvements.

Overall satisfaction with service delivery is very high, with 93% of clients indicating they are satisfied with Registry staff. This high level of overall satisfaction has increased since the previous survey in 2007. This high level of satisfaction is also reflected in the individual aspects of service delivery.

New Developments

The Federal Government's *Workplace Relations Amendment (Work Choices) Act 2005,* which commenced on 27 March 2006 has caused significant change to Queensland's industrial relations system. Since the introduction of Work Choices the number of matters filed in the Registry has reduced substantially.

Two matters have arisen during the reporting period that have the potential to significantly further impact on the Commission and consequently on the operations of the Industrial Registry.

The One National Industrial Relations System

The 75th meeting of the Workplace Relations Ministers' Council (WRMC) was convened in Melbourne on 1 February 2008.

Ministers were unanimous in their support for WRMC being a vehicle co-operatively to pursue practical national solutions on workplace relations, occupational health and safety and workers' compensation issues.

Ministers also noted the Federal Government's intention to introduce legislation to implement its substantial workplace relations reforms into Parliament in 2008 and welcomed the Government's commitment to engage actively with States and Territories in developing the legislation. A key feature of the legislation included the establishment of a new independent umpire, Fair Work Australia.

In this regard, the Queensland Government announced that it was looking closely at possible models for achieving a national industrial relations system through cooperative federalism.

The Queensland Government supported the timeframes proposed by the Federal Minister so that the new national system is operational from 1 January 2010.

Queensland Civil and Administrative Tribunal [QCAT]

The establishment of a Queensland Civil and Administrative Tribunal [QCAT] was announced by the Premier, the Hon Anna Bligh MP, on 12 March 2008. The new tribunal will amalgamate a number of existing bodies and tribunals. The proposed timetable for the amalgamation is the second half of 2009.

The Premier also announced the establishment of an independent panel of three experts to provide advice on how best to implement the amalgamated civil and administrative tribunal, including determining the scope of the jurisdiction of the new tribunal.

In June 2008, the panel delivered its first report to Government. The report includes 48 recommendations and identifies 23 tribunals and the functions of five other bodies for inclusion in the new tribunal. The report dealt with several matters that may impact on the Commission and Registry.

State and Local Government Employees

It was the Panel's view that QCAT was not a suitable tribunal to resolve government employment grievances about fair treatment and promotions. The panel stated that if the government considers that these employment issues should be resolved by an external independent body, then the Queensland Industrial Relations Commission would appear to be more suited, by reason of its experience and the qualifications of its members than QCAT to resolve such matters. This approach was consistent with the views expressed by the Queensland Public Sector Union during the Panel's face to face consultations.

The Panel recommended that the function of the Public Service Commissioner to determine appeals by state and local government employees from disciplinary decisions (other than dismissal) should be transferred into QCAT. However the determination of promotional and fair treatment appeals should not be included.

Jurisdiction of the industrial tribunals

The panel stated that the jurisdiction of the Industrial Magistrates Court, the Queensland Industrial Relations Commission and the Industrial Court of Queensland under the Industrial Relations Act 1999 is technically in scope for this exercise. The Panel was of the view that the specialised nature and economic importance of industrial matters warrants their retention by the industrial tribunals which have historically dealt with them. The industrial tribunals do exercise certain merits review jurisdictions under other Acts, including appeals from workers compensation review decisions of Q-Comp, which potentially could be included in the jurisdiction of the new tribunal.

The panel recommended that the jurisdictions of these tribunals be excluded until the new federal/state arrangements were determined, at which time consideration should be given by the Queensland Government as to whether any part of their jurisdiction should be transferred to the new tribunal.

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 2 of the 170 reinstatement applications lodged were rejected by the Registrar (see Table 7).

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

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

Jurisdiction under the *Workplace Health and Safety Act 1995*

The 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 of Organisations

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

Rules

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

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

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

Elections

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

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

Financial accountability

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

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

Exemptions

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

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Industrial Organisations

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

Applications for registration of organisations

Applications for registration of organisations, or amalgamation of two or more organisations, may only be made to the Commission. Amalgamations (and withdrawals from amalgamations) are approved under Chapter 12 Part 15. Under s. 618, the Commission may approve an amalgamation only if the process has complied with the *Industrial Relations Regulations 2000*, and the rules of the amalgamated organisation will comply with the Act's requirements about rules (which are in Parts 3 and 4 of the Chapter).

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

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

Rules

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

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

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

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

Elections

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

The rules must provide for elections to be either by a direct voting system (Div 3 of Part 4) or by a collegiate electoral system (Div 4 of Part 4). A direct vote must be conducted by a secret postal ballot, or by some alternative form of secret ballot approved by the Registrar. Schedule 3 of the *Industrial Relations Regulation 2000* sets out "Model Election Rules" which must be taken to be an organisation's election rules if their election rules do not comply with Part 4 of Chapter 12 of the Act.

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

Any industrial organisation with a counterpart federal organisation may apply to the Registrar for exemption from certain requirements of the Act, including the stipulations about holding elections on the ground that their federal counterparts held elections under the federal *Workplace Relations Act 1996*.

Financial Accountability

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

Any industrial organisation with a counterpart federal organisation may apply to the Registrar for exemption from accounting and audit provisions, under s. 586. If the application is approved, the organisation must file with the Registrar a certified copy of the documents filed under the federal *Workplace Relations Act 1996*. (Similar provisions apply where an employer organisation is a corporation subject to other statutory requirements to file accounts and audit reports: see s. 590).

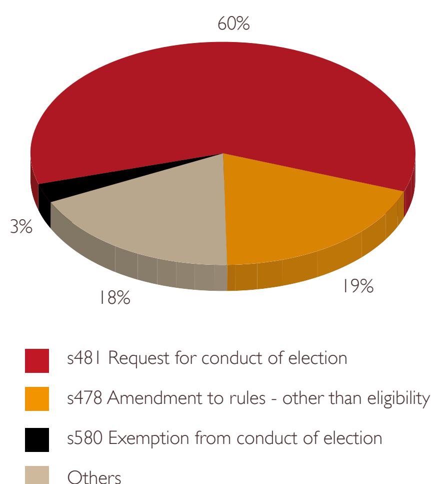
Orders for Invalidity

The Act makes provision for the Commission to validate a matter or event about the management or administration of an organisation's affairs, the election or appointment of an officer of an organisation or the making, amending or repealing of a rule of an organisation. An application about an invalidity may be made by an organisation, a member of the organisation or another person the Commission considers has a sufficient interest in whether an invalidity has occurred. In deciding the application,

the Commission may declare whether or not an invalidity has occurred. If, on the hearing of the application, the Commission declares an invalidity, the Commission may make an order it considers appropriate to remedy the invalidity or to cause it to be remedied, change or prevent the effects of the invalidity or validate an act, matter or thing made invalid by or because of the invalidity.

Table 10 lists industrial organisation matters filed in Registry.

Industrial Organisation Matters Filed 2007–2008



Membership of Industrial Organisations

Eligibility for and admission to membership of industrial organisations are governed by Part 10 of Chapter 12. At 30 June 2008, there were 43 employee organisations registered in Queensland; with a total membership of 373,030 compared to 373,472 at 30 June 2007. The employee organisations are listed according to membership numbers in Table 11. Equivalent figures for employer organisations are: 37 organisations registered at 30 June 2008, with a total membership of 42,876 compared to 43,635 at 30 June 2007. Table 12 lists the employer organisations according to membership.

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

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Amendments to Legislation

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

Local Government Act 1993

The *Local Government and Industrial Relations Amendment Act 2008* amended the *Local Government Act 2003* to essentially provide that Local Government employers, other than Brisbane City Council, and their employees are covered by the State Industrial Relations jurisdiction.

The changes include ensuring a local government in existence before the commencement of the Act remained in existence as a local government but not as a corporation.

Industrial Relations Act 1999

The *Local Government and Industrial Relations Amendment Act 2008* provided (in Part 2) for specific amendments of the *Industrial Relations Act 1999* which included:

- converting relevant Federal instruments to State industrial instruments;
- preserving the terms and conditions of employment of local government employees;
- retaining coverage of local government employees by industrial instruments;
- allowing the Industrial Commission to exercise its powers in relation to the industrial instruments applying to local government employees.

The *Workers' Compensation and Other Acts Amendment Act 2007* also amended the *Industrial Relations Act 1999* to clarify that employers must keep time and wages records for their existing and former non-industrial instrument employees.

Amendments to Regulations and Tribunal Rules

Industrial Relations Amendment Regulation (No.1) 2007

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 $98,200 to $101,300 per annum. The amendment took effect from 6 September 2007.

Industrial Relations (Tribunals) Amendment Rule (No.1) 2007

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 2007. A similar increase for 2007-08 was gazetted on 13 June 2008 to take effect for the year commencing 1 July 2008.

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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:

Palm Island Aboriginal Shire Council AND Queensland Industrial Relations Commission, The Australian Workers' Union of Employees, Queensland and the Minister for Transport, Trade, Employment and Industrial Relations for the State of Queensland (C/2007/28) 1 October 2007 186 QGIG 601

Industrial Relations Act 1999 - s. 329(b) - application to intervene or be heard

On 2 October 2006, The Australian Workers' Union of Employees, Queensland (AWU) filed an application for reinstatement (Matter No. TD/2006/444) on behalf of a member previously employed by the Palm Island Aboriginal Shire Council. The application sought relief under Chapter 3 of the *Industrial Relations Act 1999*. From the outset, Palm Island Aboriginal Shire Council took the position that it was, and at all material times had been a constitutional corporation for the purposes of the *Workplace Relations Act 1996* (C'wth) and in consequence, Chapter 3 of the *Industrial Relations Act 1999* had no application to the dismissal of the member. There were attempts in the Queensland Industrial Relations Commission to resolve the matter in a conference conducted on a without prejudice basis. The attempt failed. A Certificate under s. 75(3)(a) was issued. The AWU took steps to have the matter brought to a merit hearing. Over the objection of Palm Island Aboriginal Shire Council, the Queensland Industrial Relations Commission issued Directions for the purpose of bringing the matter to such a merit hearing. By an application filed 23 April 2007 (Matter No. C/2007/28), Palm Island Aboriginal Shire Council sought a declaration that the proceedings in Matter No. TD/2006/444, purportedly commenced by the AWU under Chapter 3 of the *Industrial Relations Act 1999* (the Act), are not proceedings within the jurisdiction of the Queensland Industrial Relations Commission, and sought a prerogative order prohibiting the Queensland Industrial Relations Commission from further dealing with Matter No. TD/2006/444 in excess of its jurisdiction. Subsequently, the Minister for Transport, Trade, Employment and Industrial Relations exercised his right under s. 322 of the Act to intervene in Matter No. C/2007/28. On 20 August 2007, the Local Government Association of Queensland (Incorporated) (LGA) and the Etheridge Shire Council sought leave to intervene or alternatively be heard in Matter No. C/2007/28. Each application was referred.

As to the application by the Etheridge Shire council, the Court said:

> "Because the application for leave was reduced to writing and filed, the Industrial Registrar gave it a matter number, *viz*. C/2007/46, to meet the needs of the filing system. It is apparent from the terms of the application that it was an application within Matter No. C/2007/28 as indeed, s. 329(b) required. Each of the LGA and the Etheridge Shire Council seek an order quashing Matter No. C/2007/46. There is no opposition to such an order. I do quash Matter No. C/2007/46.
>
> No order which might properly be made in Matter No. C/2007/28 will directly affect any legal or pecuniary interest of the Etheridge Shire Council. The concern of the Etheridge Shire Council is that in the course of Matter No. C/2007/28 this Court will be asked to rule upon a submission that a body such as Palm Island Aboriginal Shire Council is the law making third tier of government which falls outside the scope of the Commonwealth's constitutional power over corporations at s. 51(xx) of the Constitution. The Etheridge Shire Council's concern arises out of the circumstance that the Etheridge Shire Council is itself involved in proceedings in the Federal Court of Australia involving, *inter alia*, the AWU and the State of Queensland which raise that very question. In my view, such an 'interest' does not support the exercise of discretion

pursuant to s. 329(b)(v) to allow the Etheridge Shire Council to be heard. I do not presume to comment about the course which the proceedings in the Federal Court may take. However, the proceedings in this Court in Matter No. C/2007/28 may well not lead to a decision upon the issues of concern to the Etheridge Shire Council. Evidence is to be put on. The matter may well be disposed of on the basis that, assuming the potential application of s. 51(xx) of the Constitution, Palm Island Aboriginal Shire Council is neither a trading nor a financial corporation. Indeed, given the history of the Palm Island Aboriginal Shire Council, which commenced life as an aboriginal land council, the outcome in Matter No. C/2007/28 might well be quite idiosyncratic. The proceedings in Matter No. C/2007/28 are inherently unlikely to have any impact upon the proceedings in the Federal Court. The Federal Court proceedings are scheduled to commence in November of this year. The proceedings in Matter No. C/2007/28 are to commence in February 2008…".

The application by Local Government Association of Queensland (Incorporated) was rejected on the basis that it would be wrong to treat Local Government Association of Queensland (Incorporated) as a representative body when Local Government Association of Queensland (Incorporated) had not sought to register as an employer organisation under the Act.

State of Queensland (Department of Corrective Services) AND Mr C. (C/2007/19) 30 August 2007 186 QGIG 241

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

On or about 18 October 1998, Mr C commenced employment as a Corrective Services Officer (CSO) at the Rockhampton Correctional Centre. In January 2001, Mr C applied for and was granted a transfer to the Townsville Correctional Centre. On 9 June 2006, the State of Queensland (Department of Corrective Services) terminated Mr C's employment. The termination arose out of an incident of 14 November 2004, which had led to a complaint by a prisoner about Mr C. The complaint led to a criminal prosecution. In fairness to Mr C It should be recorded that the decision of a Magistrate in Townsville finding him guilty of a charge of common assault was overturned on appeal to the District Court. However, for present purposes, the important point is that in the course of the criminal investigation/trial, a Police Brief of Evidence was prepared and that Mr C had access to the brief.

On 21 June 2006, Mr C made application for reinstatement pursuant to s. 74 of the *Industrial Relations Act 1999* (the Act). He alleged that his dismissal was "harsh, unjust and unreasonable". By a decision of 27 February 2007, now reported at 184 QGIG 115, the Queensland Industrial Relations Commission granted Mr C's application and ordered his reinstatement. The Department of Corrective Services appealed to the Industrial Court.

The difficulty was that the Police Brief of Evidence was tendered without objection by Mr C's advocate. The brief contained statements by people who were not called as witnesses. The statements had been acted upon by the Department in deciding to dismiss Mr C. The Commission took the view that:

> "The Commission, having considered the aforementioned, was of the view that it would be less than safe and unwise for that matter to consider the application on the evidence from outside those that appeared in the Commission's proceedings.

...

> The flaw that has emerged in the Respondent's defence of the application in the overall scheme of things, was not the process but the decision to base both the show cause and eventual termination on the Magistrate's decision and the Police Brief of Evidence without then bringing a 'sizeable chunk' of that evidence directly before the Commission.".

On the appeal the Court emphasised that the correct approach was the approach described by President Williams in *Queensland Health v Gary Robinson and Brian Grimley* (1999) 160 QGIG 194 at 195:

> "Whether the tribunal be a court of law where the formal rules of evidence apply, or a tribunal such as the Commission, which is not bound by the strict rules of evidence, once material is formally admitted into evidence then it is evidence for all purposes. If a statement is tendered without the maker being required for cross-examination then the court or tribunal must have regard to the contents of the statement in arriving at its decision; the weight to be attached to it is something which must be assessed in the light of all the circumstances. Here the material was put in without challenge and without any of the persons responsible for preparing the documents being required for cross-examination. In the circumstances here that was tantamount to admission of the contents of those documents. It appears to me on a reading of the transcript that the representatives of the Respondent were effectively saying to the Commission that these documents showed steps taken by the employer subsequent to the incident and the reasons for dismissal. This did not challenge any of that material but submitted that in any event the dismissal was harsh, unjust and unreasonable.
>
> The decision of the Commission cannot stand in law. It clearly placed an onus on the Appellant which was contrary to law and he clearly failed to take into account relevant considerations (namely evidence before him) in arriving at his decision. The finding that the dismissals were harsh, unjust and unreasonable and the declaration that the reinstatement was appropriate must be set aside.".

The Commission was required to consider the statements in the Police Brief. If the evidence which was led from the witnesses who did appear or the cross-examination of those witnesses caused the Commission to lack confidence in the reliability of statements in the Police Brief, the proper course was to raise the issue with the parties.

David Francis Cox AND Photograve Pty Limited (C/2008/10) 17 March 2008 187 QGIG 127

Industrial Relations Act 1999 - s. 282 - case stated to court

David Francis Cox, an inspector duly appointed under the *Industrial Relations Act 1999*, was the Applicant in proceedings in the Queensland Industrial Relations Commission. The proceedings were instituted pursuant to s. 278(3)(c). Photograve Pty Limited, a corporation under the law was the Respondent in those proceedings. The Commission stated the following questions for determination to the Industrial Court:

> "Whether the Queensland Industrial Relations Commission has jurisdiction to hear and determine an application for a proportionate payment of long service leave pursuant to section 43(4)(c)(ii) of the *Industrial Relations Act 1999* (Qld), where the former employee:
>
> 1. was employed by a constitutional corporation; and
> 2. has not pursued an application for reinstatement on the basis of the termination of employment being unfair in either the Australian Industrial Relations Commission or the Queensland Industrial Relations Commission.".

The Industrial Court answered the question:

"By s. 265(1)(c) of the *Industrial Relations Act 1999*, the Queensland Industrial Relations Commission may hear and determine all matters committed to the Commission by the *Industrial Relations Act 1999* or another Act. By s. 278(1)(a) application may be made to the Commission for an order for payment of an employee's unpaid wages. By s. 278(8)(a)(i):

'(8) On hearing the application, the commission or magistrate -

(a) must order the employer to pay the employee -

(i) the amount the commission or magistrate finds to be payable and unpaid to the employee within the 6 years before the date of the application.'.

By Schedule (5) 'wages' is defined to mean the following:

'***Wages*** means -

(a) an amount payable to an employee for -

...

(iii) leave the employee is entitled to.'.

Section 43(4) is one of a number of provisions about long service leave. Section 43(4) provides:

'However, if the employee's service is terminated before the employee has completed 10 years continuous service, the employee is entitled to a proportionate payment only if -

(a) the employee's service is terminated because of the employee's death; or

(b) the employee terminates the service because of -

(i) the employee's illness or incapacity; or

(ii) a domestic or other pressing necessity; or

(c) the termination is because the employer -

(i) dismisses the employee for a reason other than the employee's conduct, capacity or performance; or

(ii) unfairly dismisses the employee.'.

It has to follow that an employee asserting an entitlement to payment in respect of proportionate long service leave in reliance on s.43 (4)(c) may launch proceedings in the commission under s. 278(1)(a) to press the claim. I am unable to identify any language in the *Industrial Relations Act 1999*, to suggest that an employee relying on s. 278(1)(a) must first or contemporaneously test the fairness of the termination under Chapter 3, Part 2. Because of s. 278(3)(c), that which may be done by an employee may be done by an inspector on his/her behalf.

The *Workplace Relations Amendment (Work Choices) Act 2005* (Work Choices) does not apply to the exclusion of the *Industrial Relations Act 1999* so far as the *Industrial Relations Act 1999* deals with long service (see. Work Choices s. 16(1)(a) and (3)(f)).

The question stated for the determination of the Court is answered 'YES'.".

Blackheath and Thornburgh College AND Jonathon Worsfold (C/2007/64) 18 February 2008 187 QGIG 97

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

The Respondent (Jonathon Nigel Worsfold) was formerly employed by the Appellant (Blackheath and Thornburgh College). Differences arose between the Respondent and the Appellant about the duration of the Respondent's employment and whether his termination enlivened an entitlement to severance payments (and the extent of any such payments). There is also an issue about entitlement to payment in lieu of notice. By an "Application for a Claim before an Industrial Magistrate" dated 20 November 2006, the Respondent initiated proceedings in the Industrial Magistrate's Court at Townsville to enforce his claim. The entitlement to payment was said to arise under a certified agreement entitled *Blackheath and Thornburgh College - Certified Agreement 2004*. It is the effect of ss. 292(1)(b)(ii) and 399 of the *Industrial Relations Act 1999* that claims for severance pay and payment in lieu of notice pursuant to a certified agreement are within the scope of an Industrial Magistrate's jurisdiction. However, had he so wished, the Respondent might have brought his proceedings in the District Court. By s. 68(1)(a)(iv) of the *District Court of Queensland Act 1967* the District Court has jurisdiction to hear and determine all personal actions including any debt arising under any Act, where the amount sought to be recovered does not exceed the monetary limit of $250,000. Here, the *Industrial Relations Act 1999*, operated upon the *Blackheath and Thornburgh College - Certified Agreement 2004* to create an obligation on the part of the Appellant to pay the Respondent the amounts contemplated in the Agreement when it was in operation, see ss. 164 and 391(1). In the absence of any provision in the *Industrial Relations Act 1999* denying employees access to the remedies provided by the *District Court of Queensland Act 1967* the Respondent had a right to pursue his claim in that Court: compare *Mollinson v Scottish Australian Investment Co Limited* (1920) 25 CLR 66 at 72 to 74.

In fact, as outlined, the Respondent chose to pursue his remedy in the Industrial Magistrate's Court at Townsville. In the course of somewhat protracted preliminary proceedings, the Appellant took the point that the Respondent was not entitled to be represented by his solicitor. The Acting Industrial Magistrate into whose hands the matter had fallen rejected that submission. The Industrial Court held that the Acting Industrial Magistrate was right to do so. Section 319(2)(c) of the *Industrial Relations Act 1999* does not impose an absolute barrier to legal representation in the Industrial Magistrate's Court. In particular, where proceedings were brought personally by an employee and relate to a matter that could have been brought before a court of competent jurisdiction other than an Industrial Magistrates Court, there was no bar to legal representation.

Park Avenue Motor-Hotel Pty Ltd, Godwin's Hotels Pty Ltd, Godwin's Holding Company Pty Ltd, George Darby Godwin and Skeeta Pty Ltd AND Juergen Willi Beck (C/2007/58) 19 December 2007 187 QGIG 2

Industrial Relations Act 1999 - s. 335 - application for costs

In dealing with an application for indemnity costs arising out of an unsuccessful application for the stay of orders made by an industrial magistrate, the Industrial Court said:

> "This Court has, on other occasions, held that the discretion which arises under s. 335 of the *Industrial Relations Act 1999* extends to the award of indemnity costs. Both Counsel for Mr Beck and (importantly) Counsel for the Defendants embrace that line of authority. Plainly, there is no agreement that an order for payment of indemnity costs should be made. That is entirely understandable. Exercising the discretion to award indemnity costs is always a matter of difficulty. The authorities generally relied upon in Courts which do not have the limited power over costs which is available under s. 335 are not always helpful. To take as

an example, in *Rosniak v Government Insurance Office* (1997) 41 NSWLR 608 at 616 Mason, P said, 'Nevertheless the Court requires some evidence of unreasonable conduct, or be it that it need not rise as high as vexation.'. On that approach, indemnity costs would be awarded in all cases in which the power to award costs at s. 335 is triggered. The statutory discretion would be swallowed up. One has also to guard against the temptation to award costs on an indemnity basis because party and party costs are thought to be inadequate. However, in this case I am satisfied that the award of costs on an indemnity basis is entirely justified. The critical factor is that within approximately two days of the filing of the Application for a Stay, Mr Beck's solicitors wrote to the Defendants' solicitors addressing the issue of supposed prejudice by making an open offer to hold the amount of the judgement debt in trust on behalf of the parties until an outcome (or further order) in the Appeal. The offer was ultimately accepted during the course of the hearing of the Appeal. As Counsel for Mr Beck submits, the costs associated with the Application for a Stay might have been avoided if the offer had been accepted earlier. The offer was accompanied by an indication that if the Application for a Stay was pressed, costs on an indemnity basis would be sought.".

BM Alliance Coal Operations Pty Ltd and Byron Hamilton Zietsman AND Brian Lyne (C/2007/31) BM Alliance Coal Operations Pty Ltd and Byron Hamilton Zietsman AND James Gordon and Brian Lyne (C/2007/43) 24 August 2007 185 QGIG 417

Coal Mining Safety and Health Act 1999 - s. 255(3) - appeal against decision of industrial magistrate

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

In July 2005 the Chief Inspector appointed under the *Coal Mining Safety and Health Act 1999* (the Act), made a complaint before a Justice of the Peace alleging a breach of the Act by BM Alliance Coal Operations Pty Ltd. The subsequent proceedings in the Industrial Court raised amongst other things, a novel argument that, because only an industrial magistrate might hear such a complaint, the complaint should have been made to an industrial magistrate. The Industrial Court said:

"The submission that the complaint should have been made to, and received by an Industrial Magistrate rather than a Justice of the Peace, rests upon the proposition that a complaint should be received by, and any necessary summons issued by, a judicial officer with authority to hear the complaint. It is accepted that the old system pursuant to which two Justices would take a complaint and issue a summons requiring appearance before the Justices consisting a Court of Petty Sessions, has been much modified. It is accepted that a single Justice may now receive a complaint and issue a summons (*Justices Act 1886*, ss. 24 and 53), that two Justices sitting to hear a complaint constitute a Magistrates Court and do not institute a Court of Petty Sessions (*Justices Act 1886*, s. 27), that a Magistrates Court may also be constituted by a Magistrate sitting alone (*Justices Act 1886*, s. 30(1)), and that where available a Magistrate sitting alone is to constitute a Magistrates Court in preference to Justices (*Justices Act 1886*, s. 30(3)). However, it is contended that, even in its greatly modified form, the *Justices Act 1886* preserves the principle that a complaint is made to and is received by a judicial officer at least potentially capable of hearing the complaint. It is then submitted that the reference to 'summary proceedings' in s. 255(1) of the *Coal Mining Safety and Health Act 1999* and the 'complaint' at s. 255(5) cannot be read so as to adapt the scheme about the making and receipt of complaints under the *Justices Act 1886* in a literal way and that it is implicit that the function of receiving a complaint is to be discharged only by judicial officers potentially capable of constituting an Industrial Magistrates Court, *viz.* Magistrates and Industrial Magistrates.

I accept that historians may question a legislative scheme authorising a judicial officer to receive a complaint and issue a summons where the complaint initiates proceedings which the officer might not (in any circumstances) hear. However, I can understand why the Legislature would choose to adapt the existing procedural regime under the *Justices Act 1886* rather than re-invent the wheel when developing a procedural regime for the Industrial Magistrates Court. Additionally, there is another historical trail. Originally the Queensland industrial system was based upon commencement of matters in the Court and remitter to Industrial Magistrates, see *Industrial Arbitration Act 1916*, s. 77 and *Industrial Conciliation and Arbitration Act 1932*, s. 63. There was no issue about commencement of proceedings in the Industrial Magistrates Court. The issue was about the instituting of proceedings in the forerunners to this Court. The Rules of Court under each of the *Industrial Arbitration Act 1916*, see Rules 5, 7 and 8, and the *Industrial Conciliation and Arbitration Act 1932*, Rules 3, 5 and 7, provided that proceedings for the enforcement of penalties were to be commenced by complaint before a Justice of the Peace and that the Justice was to issue the summons. The Justice of the Peace was plainly unable to hear a complaint under either Act. [It was not until 1952 that all Stipendiary Magistrates were Industrial Magistrates, see *The Industrial Conciliation and Arbitration Acts Amendment Act* of 1952.] In my view each of s. 255 of the *Coal Mining Safety and Health Act 1999* and ss. 677 and 693(2) of the *Industrial Relations Act 1999*, follow a well worn, if inelegant path and authorise the making of a complaint to a Justice of the Peace and the receipt of the complaint by that justice. It follows that the complaint was properly made.".

Peter Charles Stratton AND I & C Handley Pty Ltd (C/2007/27) 19 July 2007 185 QGIG 276

Electrical Safety Act 2002 - s. 186(2) - appeal against decision of industrial magistrate

A breach of s. 56(1) of the *Electrical Safety Act 2002*, carries a maximum fine of $30,000 in the case of a natural person and, in consequence of s. 181B of the *Penalties and Sentences Act 1992*, $150,000 in the case of a corporation. I & C Handley Pty Ltd is a corporation.

There was a plea of guilty. The Acting Industrial Magistrate directed that no conviction be recorded. There was no criticism of that. Neither was there any criticism of an order that the Defendant pay $66.50 costs of court and $1,500 investigation costs. The Appeal was about the quantum of the fine, *viz.* $5,000, imposed by the Acting Industrial Magistrate. The fine having been set aside, the Industrial court addressed the matters of principle as follows:

"Fixing an appropriate fine is another and a more difficult matter. The Legislature would not have provided for a maximum fine of $150,000 had not the Legislature viewed the offence as a serious one. Further, although the offence is a licensing offence, the licensing regime is not merely about the provision of data to bureaucrats. The licensing regime is the mechanism to ensure that contractors have made appropriate financial and insurance requirements. Given the magnitude of the insurance cover required ($5,000,000 see s. 43 of the *Electrical Safety Regulation 2002*) it is understandable that a fine of $150,000 may be held over the head of corporations with a poor claims history, lest the premium prove too much. However, that is not this case. Further, it cannot be assumed that the whole of the range will actually be used. Here, on the matter of objective gravity, having read the record of interview which was tendered by consent on the Appeal, I am satisfied that the Defendant's problem was Mr Handley's flawed understanding of the corporations obligations under the Act. A person relying, not on knowledge, but on experience in the building construction industry may well have concluded that the principal electrical contractor's licence was an umbrella for all participants. The Defendant has no previous convictions. There was prompt plea of guilty and cooperation with the investigating authorities. There seems to me to have been genuine

remorse. I accept that s. 48 of the *Penalties and Sentences Act 1992*, modifies s. 181B and requires consideration of the financial circumstances of the Defendant and the nature of the burden that payment of the fine will cause. I am further prepared to accept that the Defendant's undertaking is a small one. I am not, however, persuaded that fines at the level nominated by the Appellant, *viz.* $10,000 to $15,000, would be oppressive. The Respondent has tendered affidavit evidence of its assets and its profits after payment of wages to Mr and Mrs Handley, but has not put in evidence of the magnitude of those wages. On a prosecution for an offence over a particular period of time, *viz.* 30 September 2006 to 3 February 2007, I do not assume that limited profits of $13,120.90 were entirely profits earned in breach of the Act. I recognise that to impose a fine which eliminates the whole of those profits would be a significant imposition. However, the burden of the imposition may be modified by allowing time to pay. On balance, I am satisfied that a fine of $7,500 is appropriate. The indication at first instance was that the Defendant was capable of paying at the rate of $1,000 per month. In those circumstances, I shall allow 10 months to pay, but grant the Respondent liberty to apply should expansion of that period be necessary.

I order that the Respondent pay a fine of $7,500. I order that the Respondent pay a sum of $66.50 by way of costs of court and a further sum of $1,500 investigation costs. I allow the Respondent 10 months to pay. I grant the Respondent liberty to apply on the matter of time to pay. I doubt that there is power to award costs but, as a matter of prudence, I reserve all questions as to costs.".

Stephen Horace MacDonald AND Q-COMP (C/2007/50) 7 March 2008 187 QGIG 118

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

This matter involved a consideration by the Industrial Court of the circumstances in which an appellant under the *Workers' Compensation and Rehabilitation Act 2003*, might adduce "additional evidence" under s. 561(3) to supplement the evidence before the Industrial Magistrate. Materially, the Court said:

"The documents upon which Mr MacDonald proposes to rely consists of a report of a Doctor Tony Clarke dated 2 November 2006, a Certificate of a Doctor Lee relating to a consultation of 29 October 2001, a Functional Capacity Evaluation Report dated 2 August 2004 from a physiotherapist furnished in connection with a claim by Mr MacDonald for certain Commonwealth assistance, and a report of a Doctor Thomas Sheehan dated 1 March 2005. It is convenient to put to one side the report of Doctor Sheehan and deal with the other documents. Unlike the report of Doctor Sheehan, Mr MacDonald had attempted to tender each of the other documents in the proceedings in the Industrial Magistrate's Court. In the absence of the signatories as witnesses or of consent by Q-COMP, it was inevitable that the attempts to tender the documents would fail. Q-COMP took objection and the documents were properly ruled inadmissible. Mr MacDonald, who was informed by the Industrial Magistrate that the absence of the witnesses was a fatal flaw, did not seek an adjournment to call the signatories as witnesses. In my view the discretion to permit 'additional evidence' at s. 561 is sufficiently broad to permit an order that the witnesses be permitted to give evidence on the Appeal. The proper exercise of the discretion is another matter. I adhere to the view expressed in *Chalk v WorkCover Queensland* (2002) 171 QGIG 327 and *Webb v Q-COMP* (2004) 177 QGIG 771, that whilst the authorities upon the reception of 'fresh evidence' under the general law do not control the discretion at s. 561(3), those decisions constitute an invaluable source of assistance. Under the general law fresh evidence will normally be allowed only if the suggested 'fresh evidence' is such that it is 'almost certain' or 'reasonably clear' that if the tribunal at first instance had had the advantage of the evidence, a different result would have flowed; see *Carter v Rosedale Sawmill and Another* [1995] QCA 441 per Pincus JA and Thomas J. Here, the proposed evidence goes to whether Mr MacDonald suffers from a previously

asymptomatic back which has become symptomatic in the sense that it is painful (at least in many circumstances). As I understand it, Q-COMP does not dispute that Mr MacDonald does indeed suffer from a back which is now painful (in many circumstances) whereas previously it was not. The issue has always been whether Mr MacDonald's employment was a 'significant contributing factor'. The proposed evidence sheds no light on that matter whatsoever. In those circumstances, I am not prepared to allow Mr MacDonald the indulgence of calling his witnesses Doctor Clarke, Doctor Lee and the physiotherapist. The opinion of Doctor Sheehan is another matter. Doctor Sheehan's report goes directly to the nexus between the state of Mr MacDonald's back and his previous employment. In particular Doctor Sheehan volunteers the opinion:

> 'Clearly it should be apparent that the past nature and conditions of Mr MacDonald's employment have aggravated his pre-existing degenerative back disease and rendered it symptomatic for the first time.'.

I accept that under the general law Doctor Sheehan would not be permitted to give evidence because the report was available to Mr MacDonald at the time of the hearing before the Industrial Magistrate and Mr MacDonald had the opportunity to call Doctor Sheehan. However, it seems to me to be consistent with the scheme outlined at s. 5 to permit a self-represented litigant the opportunity to call on an appeal a witness who might have been called at first instance had the unrepresented litigant had a better understanding of the conduct of an appeal by way of a hearing *de novo*.".

Australia Meat Holdings Pty Limited AND Q-COMP (C/2007/30) 13 September 2007 186 QGIG 527

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

The Appellant, Australia Meat Holdings Pty Limited, is a self insurer under the *Workers' Compensation and Rehabilitation Act 2003* (the Act). On 6 February 2006, Mr R, a boner employed by the Appellant at its Dinmore Meat Works, suffered an injury at work. He sustained a cut to the ulnar nerve in his left hand. His hand was cut when it came into contact with a knife which Mr R was carrying in the pocket of his trousers with the handle pointing downwards towards the floor and with the blade (wrapped in a paper towel) protruding. Mr R had carried the knife in his pocket from the chain to the locker room where he had used a lansky concealed* within his locker to sharpen the knife. [*The hygiene regime established by the relevant regulatory authority did not permit a lansky to be kept within a locker.] It was in returning from his locker to the chain that, as he passed through the water in the boot wash area swinging his left arm, he cut himself. His conduct in carrying the knife in his pocket, rather than in a pouch or a scabbard, was contrary to the Appellant's system of work. The system of work had been drawn to Mr R's attention and, on a number of occasions, he had executed documents indicating that he had read the policy and was aware that he was required to observe it. (There was evidence from Mr R at first instance that, instead of reading the documents provided to him, he had thrown each of the documents into a bin at the first available opportunity.) The Appellant accepted that Mr R had suffered an "injury" within the meaning of s. 32 but declined to accept his claim for compensation. The Appellant relied on s. 130 which provides as follows:

"130 Injuries caused by misconduct

(1) Compensation is payable for an injury sustained by a worker that is caused by the worker's serious and wilful misconduct only if -

(a) the injury results in death; or

(b) the insurer considers that the injury could result in a WRI of 50% or more.

(2) However, compensation is not payable if the injury could result in a WRI of 50% or more arising from -

(a) a psychiatric or psychological injury; or

(b) combining a psychiatric or psychological injury and another injury.

(3) If the insurer and the worker can not agree that the worker's injury could result in a WRI of 50% or more -

(a) the degree of impairment that could be sustained by the worker may be decided only by a medical assessment tribunal; and

(b) the insurer must refer the question of the degree of impairment to a tribunal for decision.

(4) In this section -

'serious and wilful misconduct' of a worker does not include conduct engaged in at the express or implied direction of the worker's employer.".

In the course of upholding the Appellant's argument, the Court said:

> "The expression 'serious and wilful misconduct' and the rival expression 'serious or wilful misconduct' have been much considered in employment-related litigation and in particular in connection with disentitlement to workers' compensation benefits for over a hundred years, see e.g. *Johnson v Marshall, Sons and Co Ltd* [1906] AC 409. Each of the words 'serious', 'wilful' and 'misconduct' is capable of bearing different shades of meaning, *Australasian Meat Industry Employees Union v Australian Meat Holdings Pty Ltd* [1999] FCA 96 at paragraph 87 per Dowsett J. In the present context, notwithstanding that the adjective 'serious' is used to describe the misconduct and is not used with reference to consequences of the misconduct, it seems to be settled that the seriousness of the misconduct is to be evaluated having regard to whether the conduct would be attended by the risk of non-trivial injury, see *Johnson v Marshall, Sons and Co Ltd, ibid*, at 416. I do not, however, accept the proposition contended for by the Industrial Magistrate in reliance upon the decision of Green CJ in *Hills v Brambles Holdings Ltd* (1987) 4 ANZ Insurance Cases 60-785, that for conduct to amount to serious and wilful misconduct, it must 'be such as to give rise to immediate risk of serious injury.'. I respectfully adopt the view of Finn J in *Comcare v Calipari* [2001] FCA 1534 at paragraph 4, where His Honour said of the quoted passage:
>
> > 'This usage is unexceptional if it is understood as signifying no more than the converse of trivial injury. It was intended to signify more than that and apostolate a positive requirement, it can find no justification in the terms of the statute itself, nor in the general run of authoritive expositions of the formula.'.
>
> Neither do I accept that a claimant worker is disentitled to workers' compensation benefits only where the evidence shows that the worker had 'knowledge of the risk of injury and, in the light of that knowledge, proceeded without regard to the risk', see *Sawle v Macadamia Processing Co Pty Ltd* (1999) 18 NSWCCR 109 at paragraph 24 per O'Meally J. The requirement that the misconduct must be 'wilful' adequately protects injured workers who might otherwise lose everything because of a momentary lapse into carelessness. It is a statutory gloss to go beyond weighing wilful risk taking in the balance and to confine s. 130 to such cases. For the same reason, I also reject the proposition of Green CJ in *Hills v Brambles Holding Ltd* (1987) 4 ANZ Insurances Cases 60-785, that the defence is available only where the misconduct is 'accompanied by an appreciation of the risk which is involved in it.'. The preferable approach is that of Derrington J in *Boral Resources (QLD) Pty Ltd v Pyke* [1992] QdR 25 at 43, that the 'necessary knowledge and appreciation need not descend to particularity' and that an 'appreciation of possible danger or of factors which might enlarge it' may be sufficient to justify characterisation of the 'wilful misconduct' as 'serious'. Beyond those observations, it seems to me that the relatively simple language of s. 130 should not be overlayed with gloss and the question whether 'misconduct' is to be characterised as 'serious' should be dealt with as a jury question, compare *Boral Resources (QLD) Pty Ltd v Pyke* [1992] 2QdR 25 at 33 per Thomas J.

For completeness, it is not suggested that because the issue of 'seriousness' is to be treated as a jury question, it follows that the decision of an Industrial Magistrate upon that question is to be treated as the decision of a jury. The Appeal at s. 561(3) of the *Workers' Compensation and Rehabilitation Act 2003*, is described as an appeal 'by way of rehearing on the evidence and proceedings before the Industrial Magistrate.'. Such an appeal has been traditionally treated as an appeal by way of rehearing in the *Warren v Coombes* (1979) 142 CLR 531 sense. Characterisation of the essential question as a 'jury question' does not reinvigorate *Da Costa v Cockburne Salvage and Trading Pty Ltd* (1970) 124 CLR 192 and *Edwards v Noble* (1971) 125 CLR 296.".

Darlene Ann McLean AND Q-COMP (C/2007/35) 9 August 2007 185 QGIG 337

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

Darlene Ann McLean was dissatisfied with an assessment of WorkCover pursuant to s. 179(1) of the *Workers' Compensation and Rehabilitation Act 2003*. The assessment led to the publication of a Notice of an Assessment determining that her work-related impairment to her left elbow and right elbow, is nil. A Review by Q-COMP having confirmed WorkCover's assessment, Ms McLean appealed to the Industrial Magistrate at Caboolture. On 15 March 2007, her appeal was "struck out". Ms McLean appealed to the Industrial Court. The Court dealt with the matter as follows:

"Ms McLean's trial of woe commenced on 8 March 2007. On that day the Industrial Magistrate at Caboolture received a facsimile from Ms McLean's solicitors on the record informing the Industrial Magistrate that the solicitors no longer acted for Ms McLean and would not be appearing on 20 March 2007 at the hearing of the appeal. By a notice dated 9 March 2007, the Clerk of the Court caused a notice to be posted to Ms McLean's last known address informing her that her appeal was to be mentioned at 9.00 a.m. on 15 March 2007, to determine whether the matter could still proceed on the previously set date, *viz.* 20 March 2007. A copy of the notice was also posted to Q-COMP. On receipt of the notice Q-COMP wrote to Ms McLean at her last known address, canvassing options which might be pursued on 15 March 2007.

When the matter was called, at or about 9.00 a.m. on 15 March 2007, Q-COMP appeared by a solicitor as agent. Ms McLean did not appear. Q-COMP's solicitor sought to have the matter adjourned to the next Call Over. The solicitor indicated that at that Call Over, Q-COMP would seek to have the matter listed or 'struck out'. The Industrial Magistrate indicated a disposition to order that the matter be 'struck out' that very morning. Q-COMP's solicitor acquiesced in that approach. As a matter of prudence the matter was stood down for a brief period, recalled and 'struck out'.

There can be no doubt that an Industrial Magistrate has power to dismiss an appeal under the *Workers' Compensation and Rehabilitation Act 2003*, where an appellant fails to attend after having received notice of the time, date and place for a hearing. The power arises pursuant to s. 553 of the *Workers' Compensation and Rehabilitation Act 2003* and R96A of the *Industrial Relations (Tribunals) Rules 2000*. However, the power involves the exercise of a discretion. It seems to me that consistently, with a decision of the Full Court in *James v Williams; ex parte James* [1967] QdR 496 at 501 to 502, the decision of the Court of Appeal in *Shield v Topliner Pty Ltd* [2005] 1 QdR 551 at para [8] to [11] and the decision of this Court in *Waltham v Wadda Farms Pty Ltd* (2007) 184 QGIG 153, the discretion should not be exercised against an absent appellant when the matter might be adjourned with an order for costs at no discernable prejudice to the respondent. The omission to take that course in the present case is exacerbated by the circumstance that, because the hearing of 15 March 2007 was an initiative of the Industrial Magistrate, the service of the notice of 9 March 2007 was not formally proved. If it had been formally proved, see R27 of the *Industrial Relations (Tribunals)*

Rules 2000, it may well have been noticed that Ms McLean's address last known to the Clerk of the Court and the address last known to Q-COMP were different. For completeness, I record that Ms McLean received the Notice intended for her (by redirection) on the afternoon of 15 March 2007.".

The Appeal was allowed.

Leah Evelyn McDonald AND Q-COMP (C/2007/42) 4 September 2007 186 QGIG 511

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

This Appeal raised very much the same issues as *McLean v Q-COMP* (2007) 185 QGIG 337. There was one additional issue; *viz.*, whether the Industrial Court had power to remit the matter to the Industrial Magistrate. The Court said:

> "The Appeal must be allowed and Q-COMP accepts that the Appeal should be allowed. There is an issue about whether s. 562 of the *Workers' Compensation and Rehabilitation Act 2003*, authorises this Court to remit a matter to the Industrial Magistrates Court even where there has not been a merit hearing at first instance. It is accepted by Q-COMP that in any event, s. 248(1)(e) of the *Industrial Relations Act 1999*, authorises this Court to grant prerogative relief in a case such as this and to order that the matter be returned to the Industrial Magistrate to be heard and determined according to law. I have been invited to make such an order without formal application and I propose to take that course.".

Darius Adair Carter AND Q-COMP (C/2006/75) 5 July 2007 185 QGIG 245

Workers' Compensation and Rehabilitation Act 2003 - s. 561(2) - appeal against decision of industrial commission

This Appeal raised a novel issue about the Commission's power to order a litigant to undergo a medical examination.

> "It is contended for the Appellant that, having regard to the information contained in the materials provided pursuant to s. 552(2) and (3) of the *Workers' Compensation and Rehabilitation Act 2003*, the Commission should have exercised the power at s. 556 to require the Appellant to submit to a personal examination to establish his capacity to conduct the Appeal. In the alternative, it is contended that such an order might be made pursuant to s. 320(2)(b) of the *Industrial Relations Act 1999*. As a matter of first impression, I should have thought that the power vested by s. 556 was a power to obtain more information about an alleged 'injury'. In any event, the power at s. 556 is discretionary. The suggestion that struggling self-represented litigants should be subjected to the humiliation of psychiatric examination by the order of a court of record with limited statutory jurisdiction to which they have turned for redress, is quite Orwellian. The same comment might be made about s. 320(2)(b) of the *Industrial Relations Act 1999*. (Since the matter has not been argued, I express no view about whether, in such a case as the present, the power at s. 320(2)(b) may be relied upon to supplement the powers at Chapter 13, Part 3 of the *Workers' Compensation and Rehabilitation Act 2003)*. In any event, the matter currently before the Court is whether the Commission failed to exercise the Commission's jurisdiction: not about an erroneous failure to exercise a discretion in the course of exercising jurisdiction.".

Decisions of the Industrial Commission of Queensland

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

Queensland Council of Unions AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (B/2007/45) AND The Australian Workers' Union of Employees, Queensland AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (B/2007/46) 31 August 2007 185 QGIG 422

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

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

On 27 June 2007 the Queensland Council of Unions (QCU) filed an application seeking a general ruling pursuant to s. 287 of the *Industrial Relations Act 1999* (the Act) and a statement of policy* pursuant to s. 288 of the Act about the principles of wage fixing. In so doing the QCU was seeking:

- A $28 increase in award wage rates;
- An increase in existing award allowances which relate to work or conditions which have not changed and service increments;
- An increase of $28 in the level of the Queensland Minimum Wage as it applies to all employees; and
- An operative date of 1 September 2007.

The Australian Workers' Union of Employees, Queensland (AWU) filed a similar application on 2 July 2007 and by consent of all the parties the matters were joined.

The QCU in its submissions referred to parts of the Queensland State Budget papers of 2007-2008 which provided a snapshot of the Queensland economy as it related to growth and investment.

QCU submitted that "growth in household consumption is forecast to strengthen to 4.75% in 2007-08, underpinned by strong growth in incomes, wealth and employment, as well as some stabilisation in interest rates and petrol prices."

QCU provided statistics and data about the National economy, the wage environment, fair wages, and fair standards. "QCU said that the outcome sought from this application is the maintenance of fair wages. It is about ensuring, consistent with legislative requirements that secure, relevant and consistent award rates are set". "The application before the Commission ensures fairness by maintaining the real and the relative value of award wages".

QCU maintained that if the current application was granted there would still be an ever widening gap between award wages and bargained wages.

"The AWU said that it had had the opportunity to read the submission filed by QCU in relation to matter B/2007/45 and indicated its support for those submissions as well as the desire to adopt them in relation to its own application B/2007/46".

Queensland Council of Social Services (QCOSS) is a peak body for a number of community and welfare organisations in Queensland. In its submissions QCOSS indicated that it considered "wage levels that keep pace

with the increasing cost of living play an important part in any plan to end poverty". "QCOSS took the position that minimum wages should be based on benchmarks for an adequate living standard well above poverty".

QCOSS submissions supported the applications by QCU and AWU.

The Queensland Government proposed a $24.60 per week increase to all state award rates of pay and the Queensland Minimum Wage and a 4.1% increase in work related allowances and service increments, with an operative date of 1 September 2007.

The Queensland Government stated that its support for a $24.60 week increase was based on a number of factors including:

- relevance of other wage fixing decision in 2007;
- current state of the economy;
- importance of fair wages for those that are reliant on awards of the Queensland Minimum Wage (QMW) for their rate of pay;
- the impact of wage adjustments of this kind;
- the effect of increases to the QMW and award rates on the gender pay gap; and
- the provisions of the Act

The Queensland Government submissions also included statistics and data on the number of employees affected, characteristics of employees affected, history of wage adjustments since 1999, strong economic performance, state of the economy, statutory requirements, poverty, gender pay equity, and strong employment growth in award-reliant sectors.

The Queensland Government said that there was a strong argument for a greater than usual increase in the QMW and award rates and that it was appropriate for the Commission to continue to issue a flat rate increase.

QCCI opposed both the QCU and AWU applications but supported a:

- $15.00 per week increase for those earning $597.60 or less;
- $12.00 per week increase for those earning more than $597.60; and
- $18.32 increase per week to the QMW.

QCCI submitted that both the QCU application and the AWU application failed to take into consideration the recent tax relief introduced by the Federal Government. QCCI also submitted that the tax relief granted to low paid workers must be taken into consideration by the Commission.

"QCCI submitted that whilst the Queensland economy was performing solidly, and the labour market had also performed strongly, the QCU/AWU claim for a wage increase of $28 per week could not be justified simply on economic grounds.".

Queensland Cane Growers' Association Union of Employers (QCGA) supported the submissions of QCCI but also sought a deferral of any increases granted, to those cane grower employers currently in receipt of exceptional circumstances subsidies or payments, for a period of 12 months or until the employer is no longer in receipt of the payment (whichever occurs first).

The Queensland Fruit and Vegetable Growers, Union of Employers (Growcom) supported the QCCI position. Growcom sought to reserve its right to lodge an application for an exemption in respect of members in receipt of exceptional circumstances subsidies or payments.

The Restaurant and Caterers Employers Association of Queensland, Industrial Organisation of Employers (RCEA) opposed both the QCU and AWU applications and proposed a $10.26 per week increase. RCEA proposed an operative date of 1 October 2007.

The National Retail Association Limited, Union of Employers (NRA) opposed both the QCU application and the AWU application. NRA submitted that the retail industry was the largest employing industry within Queensland and that labour costs were a very significant operating cost for retailers.

NRA also made a submission on behalf of Aged Care Queensland in that labour costs in the aged care industry made up 80% of operating costs and as a consequence there was a considerable sensitivity to wage outcomes.

Both AWU and QCU made submissions in reply.

The Commission, when taking into consideration the Queensland Government submission on relevant legislation, noted in its decision:

"In economic terms, there is a need to ensure wage outcomes are consistent with strong economic performance. In social terms, there is a need to ensure that people are covered by fair and reasonable wages that allow them to participate in society and that those who do not benefit from bargaining are not left behind. These economic and social objectives are encapsulated in the Principal Object of the Act which is to provide a framework for industrial relations that supports economic prosperity and social justice".

The Commission also took note of the series of wage decisions that have been before other State Industrial Tribunals and the AFPC in 2007. A summary of those decision appeared in the decision.

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

In conclusion the Commission stated:

"As has been the case in the majority of State Wage Case decisions since 1998 we have decided to continue the practice of awarding a common level of increase to all classifications, including the QMW. In this way the greatest benefit will be felt at the lower classification levels.

We are conscious that an increase of $24.60 in both the QMW and in award rates is the highest increase ever awarded by the Commission. However, such increase has to be considered in the context that other State Industrial Tribunals have also seen fit, this year, to award their highest ever increases based upon the healthy state of their respective State economies as well as the National economy.

In addition, whilst the *nominal* level of increase we have determined is the highest awarded at the QMW level since 1998, in real terms it is less than the increases awarded in 1999 and 2004 and only 0.1% in excess of the increase awarded in 2002.

In any event, we have reached the conclusions that the economic environment is such that, on this occasion, we can take the step of providing real wage increases to most award-reliant wage earners…………… The increase we have granted should also impact positively on the gender pay gap."

The Commission in its summary said:

"In all of the circumstances, and for all of the reasons outlined above, we announce the following decision:

- a $24.60 per week increase in award wage rates;
- a $24.60 increase in the level of the QMW, as it applies to all employees, bringing it to $528.40;

- an increase in existing award allowances which relate to work or conditions which have not changed, and service increments, by 4.1%; and
- an operative date for the respective increases of 1 September 2007.

A formal Declaration of General Ruling will issue at the same time as the release of these reasons for decision, thereby giving effect to this decision.".

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

National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Others (TH/2007/1) 3 August 2007 185 QGIG 285

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

This was an application by National Retail Association Limited, Union of Employers (NRA) to amend the Order titled *Trading Hours - Non-Exempt Shops Trading by Retail - State* (the Trading Hours Order) regarding opening and closing times on Easter Saturday.

Essentially the application sought to have trading hours commence 1 hour earlier on Easter Saturday.

The Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) (QRTSA) and the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (SDA) were given leave to appear in the matter.

The Australian Workers' Union of Employees, Queensland (AWU) advised the Commission that they supported the submissions of the SDA and took no further part in the hearing.

In it's submissions the SDA stated that they had reached an agreement with Coles and Woolworths whereby work performed on Easter Saturday would continue to be on a voluntary basis and whereby no employee who commenced at 8:00am would be required to work until 6:00pm.

From 1996 until 2003 the trading hours for Easter Saturday were 8:00am until 5:00pm.

In 2003 the Queensland Government legislated different hours of 9:00am until 6:00pm via the *Trading (Allowable Hours) Amendment Act 2002.*

Concern was raised by the Full Bench that the NRA application sought to overturn a decision of the Queensland Government.

At the conclusion of evidence the matter was adjourned to allow for the NRA to approach the Queensland Government for the Government's position to be conveyed to the Full Bench.

After hearing a submission by the Department of Employment and Industrial Relations as to the Government's position, the Full Bench granted the application to allow for the extra hour of trading on Easter Saturday.

National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Others (TH/2007/2) 7 September 2007 186 QGIG 243

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

This was an application by National Retail Association Limited, Union of Employers (NRA) to amend the Order titled *Trading Hours - Non-Exempt Shops Trading by Retail - State* (the Trading Hours Order) to allow Sunday trading in Townsville and Thuringowa areas.

Opposition to the application was entered by the Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) (QRTSA) and to some extent the Townsville City Council (TCC).

The Australian Workers' Union of Employees, Queensland (AWU) supported the application subject to some cross examination of witnesses.

Inspections were conducted over a 2 day period of a number of shopping centres in the Townsville and Thuringowa area.

The NRA called a number of witnesses and also raised a number of issues in their submissions in support of their application.

QRTSA and TCC called witnesses in opposition to the application.

Prior to the taking of final submissions the Full Bench raised some issues for consideration of the parties. The first issue related to the IGA stores that were inspected and whether there would be any challenge mounted as to the legitimacy of the stores being classified as exempt stores. In response the NRA said they would not challenge the legitimacy claimed.

The second issue related to the effect the removal of the definition of "Townsville Tourist Area" would have as it had been in existence for a long period of time. The issue was dealt with in final submissions.

In it's decision the Full Bench decided to retain the tourist area of "Townsville Tourist Area" and the hours of that zone and grant the remaining Local Government areas of Townsville and Thuringowa the trading hours of 11:00am to 6:00pm on a Sunday.

The decision was effective from 17 September 2007.

National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Others (TH/2007/5) 21 December 2007 186 QGIG 705

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

This was an application by National Retail Association Limited, Union of Employers (NRA) to amend the Order titled *Trading Hours - Non-Exempt Shops Trading by Retail - State* (the Trading Hours Order) to allow for Sunday trading in the Yeppoon Tourist Area.

In 2003 a similar application was made by Retailers' Association of Queensland Limited, Union of Employers (RAQ) (as it was then) to amend the Trading Hours order to allow Sunday trading in a number of areas. At the time the Commission rejected the application as it related to the Yeppoon area.

This application again sought to introduce Sunday trading to the Yeppoon area.

The NRA sought to identify significant changes that had taken place within Yeppoon and surrounding areas since the last application was heard.

Inspections of those areas took place prior to the hearing of evidence from the parties.

The NRA called a number of witnesses in support of their application.

Most of the evidence given in the hearing made reference for the need to appropriately service the needs of the tourist industry and the reliance of the economy on tourism.

It was also pointed out that there has been considerable tourist growth and consequentially development within the area over the past few years.

No evidence was put before the Full Bench as to what effect the granting of the application would have on business interests, small, medium or large.

There was no opposition to the application from either Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) (QRTSA) or The Australian Workers' Union of Employees, Queensland (AWU).

After considering all of the requirements of s. 26 of the Trading Hours Act, the Full Bench granted the application.

The decision was effective from 5 January 2008.

Commission Inquiry into an Industrial Matter

Pay Equity Inquiry

The Inquiry's final report and recommendations were provided to the Minister on 28th September 2007.

Hearings for the Inquiry commenced on 26 March 2007 and concluded on 19 July 2007.

The Report of the Inquiry made 17 recommendations as follows:

Recommendation 1

That the Queensland Government, in collaboration with the other States, actively pursue means of supplementing current data sources with more detailed longitudinal survey data which would enable researchers to assess movements in and effects on gender pay equity.

Recommendation 2

That s 9 of the *Industrial Relations Regulation 2000* be amended to require the affidavit to provide information about the reasons for and purpose of any provisions of the proposed agreement which provide for or result in differential treatment of different groups of employees.

Recommendation 3

That the program of funding provided by the Queensland Government be continued for industrial organisations that are engaged in equal remuneration cases.

Recommendation 4

That the Queensland Government investigate the feasibility of advisory classification and remuneration benchmarks to provide advice to employees and employers and for Queensland Government procurement and funding purposes.

Recommendation 5

That the Queensland Government amend the *Anti-Discrimination Act 1991* (Qld) to provide employees with carer responsibilities the right to make a reasonable request for flexible work practices including part-time work, altered start and finish times, and telecommuting. Carer responsibilities should not be limited to care of children but should include care of other family members. The amendments should also provide:

- appropriate notice procedures;
- an employer obligation for reasonable decision-making;
- matters which must be considered by the employer;
- a requirement that the employer provide written reason for a refusal; and
- the capacity to have the Anti-Discrimination Commission Queensland or the Anti-Discrimination Tribunal determine complaints and consider whether the employer's response is reasonable or not.

Recommendation 6

That the Queensland Government actively investigate and support measures to establish pay equity benchmarks as the basis for funding the not-for-profit community sector and for purchasing outsourced services. Such measures could include providing funding and technical support for the making of a new common rule award for the community sector that contains a classification and remuneration system which is properly valued in accordance with the Equal Remuneration Principle and which takes into account the inability of employees in the community sector to access enterprise bargaining.

Recommendation 7

That the *Anti-Discrimination Act 1991* (Qld) be amended to provide that the Queensland Industrial Relations Commission be granted jurisdiction under that Act to hear and determine complaints made in the area of work to the Anti-Discrimination Commission. This jurisdiction is to be shared with the Anti-Discrimination Tribunal.

Recommendation 8

That the Queensland Government enact a Pay Equity Act which has as its principal object the achievement of pay equity by the promotion of equal opportunity and the prevention of discrimination.

Recommendation 9

That the Pay Equity Act apply to employers employing 15 or more employees, except in the community services sector where it shall not apply to organisations employing fewer than 30 employees.

Recommendation 10

That the Pay Equity Act contain the following provisions:

- That pay equity plans be developed but this requirement is subject to the number of employees employed by an organisation.
- That pay equity committees be established in organisations employing more than 100 employees and that smaller organisations have the option of establishing such committees but should do so where it is reasonable and practicable or where the majority of female employees request its establishment.
- That unions be permitted to be represented on pay equity committees.
- That members of pay equity committees receive training.

Recommendation 11

That the first 12 months after the date of assent of the Pay Equity Act be devoted to the establishment of the body charged with the administration of the Act, education of major stakeholders about the Act and the development of resources.

That the date of implementation of the provisions relating to the development of pay equity plans and other matters impacting on organisations be deferred for 12 months after the date of assent of the Pay Equity Act.

Recommendation 12

That the Pay Equity Act provide that organisations be required to report on compliance with the Act. In particular, annual reporting will be required on progress towards the development of a pay equity plan.

That organisations be required to report annually during the period that adjustments are being made and thereafter three yearly on the status of pay equity within the organisation.

Recommendation 13

That a Pay Equity Commission be established as a public service office attached to the Department of Employment and Industrial Relations.

Recommendation 14

That the head of the Pay Equity Office be the Pay Equity Commissioner with remuneration established at the level of the Senior Executive Service.

Recommendation 15

That the Pay Equity Commissioner be given the power under the Pay Equity Act to resolve disputes over the application of the Act.

Recommendation 16

That a Pay Equity Tribunal be established under the Pay Equity Act with its powers and functions specified in the Act.

Recommendation 17

That the State Purchasing Policy tender documents be amended to allow organisations seeking to be awarded a State Government contract the ability to indicate that they have complied with, or are exempt from, the Pay Equity Act.

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Tables

Table 1: Matters filed in the Court 2006-07 and 2007-08

Type of Matter	2006/07	2007/08
Appeals to the Court	55	34
— Magistrate's decision	32	25
— Commission's decision	15	7
— Registrar's decision	0	0
— Director, WH&S decisions	6	0
— Electrical Safety	2	2
Extension of Time	6	4
Prerogative order	2	4
Stay order	8	8
Direction to observe/perform Industrial Org rules	0	0
Case stated by Commission	1	3
Application for orders - other	0	0
TOTAL	**72**	**53**

Table 2: Number of matters filed in the Court 1994-95 - 2007-08

1994/95	60	2000/01	74	2006/07	72
1995/96	89	2001/02	102	2007/08	53
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 2006-07 and 2007-08

Appeals Filed	2006/07	2007/08
Appeals from decisions of Industrial Commission		
IRA s 341(1)	11	3
Work Comp Act s 561	0	4
Appeals from decisions of Industrial Magistrate		
IRA s 341(2)	14	13
Work Comp Act s 561	22	11
VETE Act 2000	0	0
WH & S Act s 164(3)	0	1
Appeals from decisions of Industrial Registrar		
IRA s 341	0	0
Appeals from review decisions by Director WH&S	6	0
Appeals from decisions of Electrical Safety Office	2	2
TOTAL	**55**	**34**

Table 4: Applications filed and Matters heard 2006-07 and 2007-08

Section	Type of Application/Matter	2006-07	2007-08
s 53	Long Service Leave - payment in lieu of	69	99
s 74	Application for Reinstatement (Unfair dismissal)	188	170
s 87	Severance allowance	2	2
	Exemption from requirement to pay severance or redundancy entitlements	0	0
s 117	Prohibited conduct - breach	5	1
s 125	Awards:		
	- New award	2	1
	- Repeal and new award	0	0
	- Repeal award	0	0
	- Amend award	11	18
s 130	Review of Award	0	0
s 137	Order - wages & conditions (trainees)	2	0
s 138	Order - tools (trainees)	0	0
s 143	Notice of intention to begin negotiations	0	0
s 148	Assistance to negotiate a CA	7	2
s 149	Arbitration of CA	1	0
s 152	Certificate - request representation	0	0
s 156	Certified Agreements:		
	- Approval of new CA	51	58
	- Replacing existing CA	33	16
s 163	Designated Award	1	0
s 168	Extending a CA	0	0
s 169	Amending a CA	3	3
s 172-173	Terminate a CA	8	2
s 175	Notice of industrial action	5	0
s 192	Approve a QWA	6	3
s 229	Notification of dispute	121	138
	Request for orders to settle/arbitrate dispute		
s 230	- Arbitration	4	3
s 231	- Mediation	2	1
	- Other orders	0	0
s 265(3)	Inquiry about an industrial matter	1	0
S 273A	Dispute resolution functions	0	1
s 274	General powers	20	13
s 276	Amend/void a contract	7	0
s 277	Injunction	1	1
s 278	Claim for unpaid wages/superannuation	80	61
s 280	Re-open a proceeding	1	4
s 281	Reference to a Full Bench	0	0
s 284	Interpretation of industrial instrument	0	1
s 287, 288	General ruling/statement of policy	1	3
s 317	Commission of own motion	0	0

Section	Type of Application/Matter	2006-07	2007-08
s 319	Representation of party/Legal representation	1	0
s 325	Joinder of applications	0	0
s 326	Interlocutory orders	0	0
s 331	Dismiss/refrain from hearing	0	0
s 338	Review of Tribunal Rules	1	0
s 342	Appeal to Full Bench	5	0
s 408F	Repayment of private employment agent's fee	2	0
s 409-657	Industrial Organisation matters [Table 12]	111	105
s 695	Student work permit	0	29
s 696	Aged and/or infirm permit	26	17
s 699	Obsolete industrial instruments		
	- Review of superannuation agreements	137	0
	- Review of EFAs	29	0
s 713	Agreement has effect as an award	0	0
Reg 27	Objections	0	0
r 190	Request for statistical information	0	81
IR Act	Annual Return	0	0
IR Act	Private conference	4	3
IR Act	Request for recovery conference	115	76
Clothing Trades Award c 4.6	Clothing trades registration	0	6
W H&S Act s 90	Authorised representative	199	30
W H&S Act s 90O	Application to suspend/cancel appointment	1	0
W H&S Act s 90T	Notice of dispute	0	2
WC Act s 232E	Reinstatement of injured worker	5	1
WC Act s 550	Appeal against Q-Comp	109	103
WC Act s 556	Order for medical examination	0	2
T(AH) Act	Trading hours order	5	5
T(AH) Act s 22, 23	Special exhibits	1	1
T&E Act s 62	Reinstatement of training contract	4	0
T&E Act s230	Apprentice/trainee appeals	3	5
T&E Act s231	Stay of decision	0	1
Mags Courts Acts 42B	Employment claim	0	11
Whistleblower's Acts 47	Injunction	1	1
TOTAL APPLICATIONS/MATTERS		**1,393**	**1,082**

Table 5: Agreements filed 2006-07 and 2007-08

Agreements	2006-07	2007-08
Certified agreements	84	74
Application to amend a CA	3	3
Application to extend a CA	0	0
Application to terminate a CA	8	2
Queensland Workplace Agreements	6	3

Table 6: Industrial Instruments in force 30 June 2008

Type of Instrument	Number
Awards	324
Industrial agreements	6
Certified agreements	4448
Superannuation industrial agreements	1
TOTAL	**4779**

Table 7: Reinstatement Applications 2007-08 - Breakdown of outcomes

Total No. of Applications	170
Rejected by Registrar*	2
No jurisdiction found by Commission	11
Application refused following hearing	0
Application dismissed following hearing	1
Application struck out at hearing	0
Application granted following hearing	0
Application withdrawn**	80
Lapsed***	10
Inactive****	41
Completed	6
Still in progress	19
Adjourned to Registry	0

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

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

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

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

Table 8: Registry Performance Indicators 2006-07 and 2007-08

Criterion	Target	2006-07	2007-08
Notify parties to dispute conferences within 5 working hours	99%	99%	100%
Process applications within 8 working hours	95%	97%	98.3%
Initial processing of agreements within 3 working days	90%	100%	100%

Table 9: Documents gazetted under sections of the IR Act and other Acts 2007-08

Matter Type of Document Gazetted	Section	2007-08
Alteration of list of callings	s 427	0
Amending a Certified Agreement	s 169	0
Appeal against the cancellation of a training contract	s 230 (VETE Act)	2
Appeal against decision of Industrial Commission	s 341 s 561, 186 (WC Act)	12
Appeal against decision of Industrial Magistrate	s 341 s 164(3)(WH&S Act) s 172 (E.Safety.Act)	11
Appeal against decision of Industrial Registrar	s 341(1)	0
Appeal to Commission	s 550 (WC Act)	32
Appeal from Industrial Magistrate to Industrial Court	s 561 (WC Act)	15
Appeal for arbitration	s 149, 230	0
Application for costs	s 335 r 66 (IR Rules) s 563 (WC Act)	6
Application for declaratory relief	s 248	1
Application for equal remuneration	s 60	0
Application for general ruling	s 287	3
Application for help to make a certified agreement	s 148	0
Application for leave to appeal	s 342(2)	2
Application for orders	s 265, 230, 326	0
Application for reinstatement	s 73, 74	4
Application for statement of policy	s 288	1
Application for unpaid wages	s 278	8
Application to amend order	s 137	0
Application to stay	s 347 s 562 (WC Act) s 151 (WH&S Act) s 231 (VETE Act)	7
Application to strike out or dismiss proceedings	s 331	2
Application of new award	s 125	0
Application of other name amendment	s 473	3
Arbitration of an industrial dispute	s 229, 230	0
Application for payment instead of long service leave	s 53	0
Application for payment of monies	s 83	0
Award amendment	s 125	16
Award amendment (corrections of error)	s 125	6
Award Review	s 130	0
Award Review (corrections of error)	s 130	0
Basis of decision of the Commission and Magistrates	s 320	0
Case stated to Court	s 282	2
Certification of an Agreement (decisions)	s 156	0
Commission's functions	s 273	1
Decisions generally	s 331	0
Discretion to issue warrant	s 341(4)	0

Matter Type of Document Gazetted	Section	2007-08
Eligibility rule amendment	s 474	7
Examination of affidavits for substantial compliance with order of the Commission	s 233(6)	0
Extension of time	s 346(2)	0
General powers	s 274	1
General deregistration grounds	s 638	1
General ruling (amendments)	s 287	309
Interpretation of Industrial Instrument	s 284	0
New Award (corrections of error)	s 125	0
Obsolete Industrial Instrument	s 699	1
Orders about invalidity	s 613	4
Orders about severance allowance	s 87	0
Orders on exhibitions etc.	s 22 (T(AH) Act)	1
Power to amend or void contracts	s 276	2
Power to grant injunction	s 277	0
Powers incidental to exercise of jurisdiction	s 329	1
Powers of Court	s 459	0
Procedures for reopening	s 280	2
Proceeding started by commission of own initiative	s 317	0
Reference to a full bench	s 281	0
Refuse to certify an agreement	s 157	0
Remedies	s 120	1
Repeal of award	s 125	0
Repeal and new award	s125	0
Representation of parties	s 319	0
Stay of operation of decisions	s 347 s 154(1) (WH&S Act) s 174 (E.Safety Act)	1
Strike out proceedings after at least 1 year's delay	r 201 (IR Rules)	0
Terminating agreement after nominal expiry date (decisions)	s 173	1
Trading Hours Order (decisions)	s 21 (T(AH) Act)	7
Trading Hours Order (amendments)	s 21 (T(AH) Act)	6
TOTAL		**479**

Table 10: Industrial organisation matters filed 2006-07 and 2007-08

Industrial Organisation matters		2006-2007	2007-2008
s 413	Registration applications	1	0
s 422(3)	New rules	0	0
s 427	Amendment - list of callings	2	0
s 467	Registrar amendment of rules	2	4
s 473	Amendment - Change of name	5	1
s 474	Part Amendment - eligibility rule	3	4
s 478	Amendment to rules - other than eligibility	19	20
s 481	Request for conduct of election	44	63
s 500	Election Inquiry	0	1
s 547	File officers register	25	0
s 580	Exemption from conduct of election	5	3
s 582	Exemption - members' register	0	0
s 586	Exemption - branch financial return	1	1
s 590	Exemption accounting & audit employer organisations - corporations	1	0
s 594	Exemption from Electoral Commission conducting election	0	0
s 599	File notice of returning officer	0	3
s 613	Orders about Invalidity	3	4
s 638	Order – deregistration	0	1
Rule 27	Notice of Objection to application	0	0
Rule 190	Request for statistical information	0	81
TOTAL		**111**	**186**

Table 11: Industrial Organisations of Employees Membership

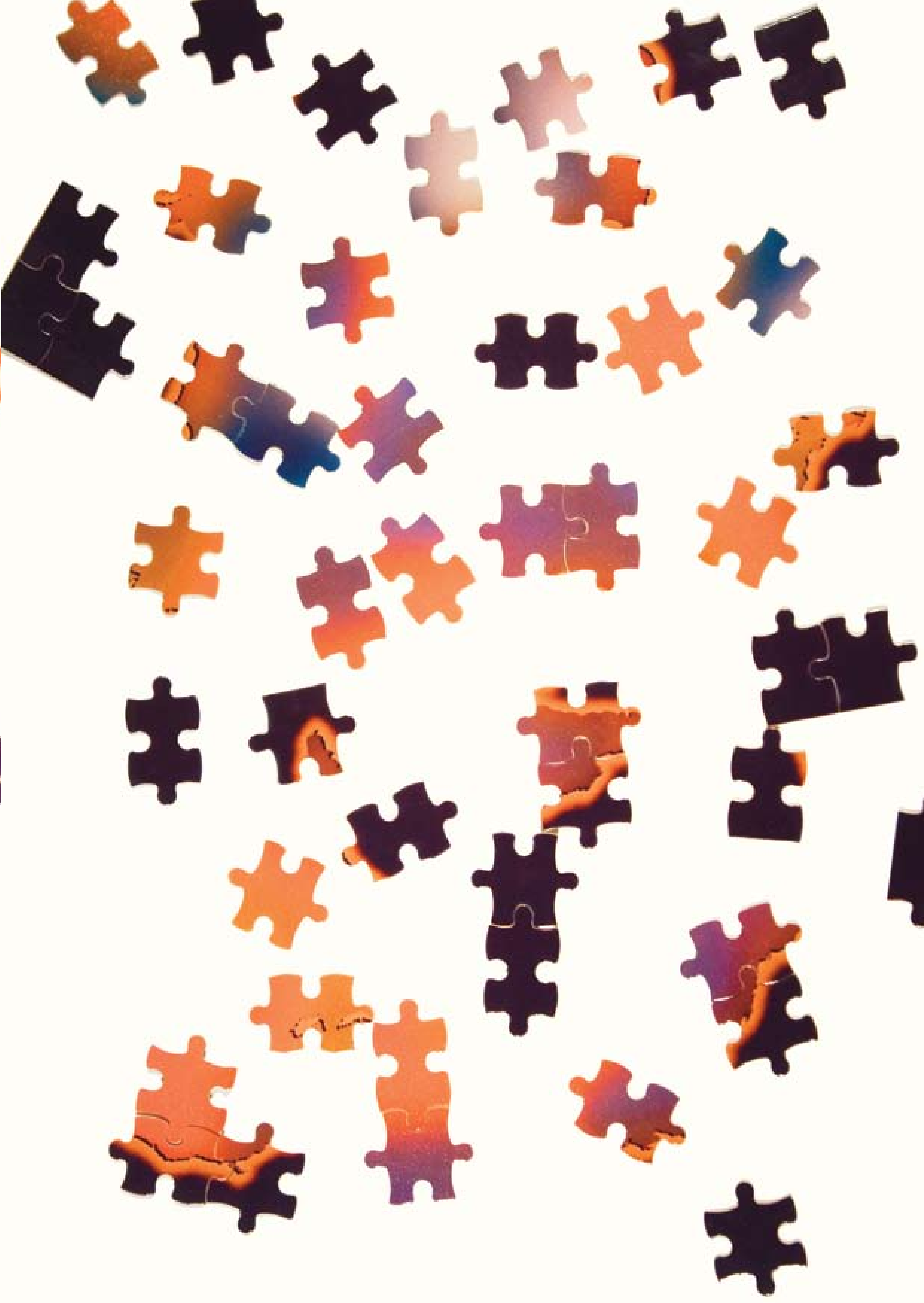
Industrial Organisation	**Members** As at 30/06/07	**Members** As at 30/06/08
The Australian Workers' Union of Employees, Queensland	36,749	43,011
Queensland Teachers Union of Employees	41,396	41,986
Queensland Nurses' Union of Employees	33,616	35,911
Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees	36,916	35,687
The Queensland Public Sector Union of Employees	30,262	28,398
Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees	27,601	27,200
Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland	16,977	17,314
Transport Workers' Union of Australia, Union of Employees (Queensland Branch)	14,537	15,155
Queensland Independent Education Union of Employees	13,916	13,808
The Electrical Trades Union of Employees Queensland	13,178	13,441
Queensland Services, Industrial Union of Employees	13,147	13,288
Queensland Police Union of Employees	9,554	9,830
Australian Municipal, Administrative, Clerical and Services Union, Central and Southern Queensland Clerical and Administrative Branch, Union of Employees	8,800	8,500

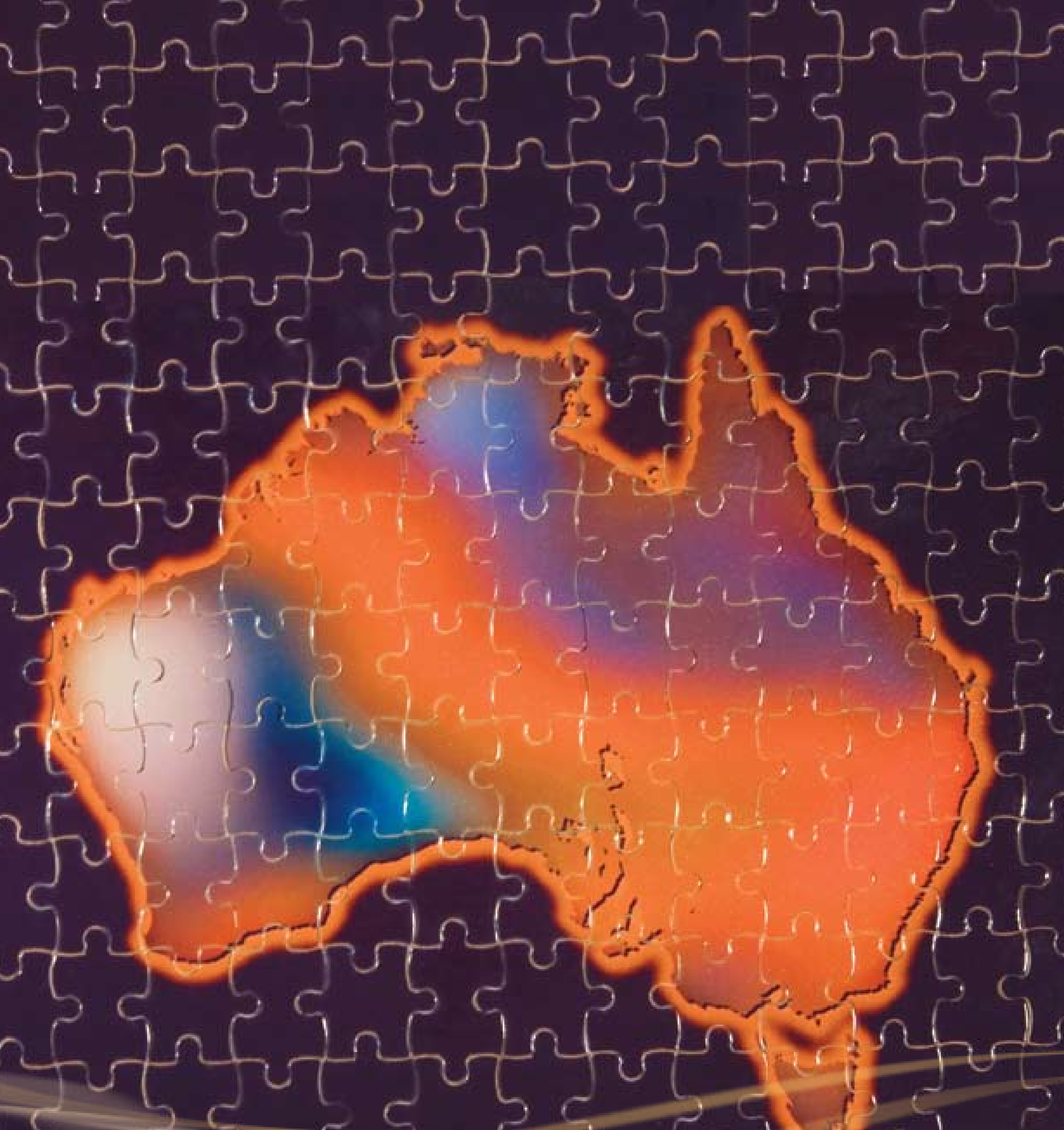
Industrial Organisation	**Members** As at 30/06/07	**Members** As at 30/06/08
Federated Ironworkers Association of Australia (Queensland Branch) Union of Employees	9,109	8,307
Australian Rail, Tram and Bus Industry Union of Employees, Queensland Branch	7,566	7,725
The Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland	7,826	7,217
Finance Sector Union of Australia, Queensland Branch, Industrial Union of Employees	7,236	6,879
Australasian Meat Industry Union of Employees (Queensland Branch)	7,065	6,586
Queensland Colliery Employees Union of Employees	6,210	5,578
The National Union of Workers Industrial Union of Employees Queensland	5,337	5,306
The Plumbers and Gasfitters Employees Union of Australia, Queensland Branch, Union of Employees	3,532	2,868
Australian Building Construction Employees and Builders' Labourers' Federation (Queensland Branch) Union of Employees	3,252	2,760
United Firefighters' Union of Australia, Union of Employees, Queensland	2,429	2,391
The Association of Professional Engineers, Scientists and Managers, Australia, Queensland Branch, Union of Employees	2,091	1,934
Salaried Doctors Queensland Industrial Organisation of Employees,	1,758	1,909
Australian Federated Union of Locomotive Employees, Queensland Union of Employees	1,460	1,610
Australian Journalists' Association (Queensland District) "Union of Employees"	1,186	1,143
Federated Engine Drivers' and Firemen's Association Queensland, Union of Employees	4,024	948
The Bacon Factories' Union of Employees, Queensland	939	831
Federated Clerks' Union of Australia, North Queensland Branch, Union of Employees	684	630
Textile, Clothing and Footwear Union of Australia, Queensland, Union of Employees	700	609
Actors, Entertainers and Announcers Equity Association, Queensland, Union of Employees	661	593
The University of Queensland Academic Staff Association (Union of Employees)	561	558
Australian Institute of Marine and Power Engineers' Union of Employees, Queensland District.	501	531
The Seamen's Union of Australasia, Queensland Branch, Union of Employees	497	525
Queensland Association of Academic Staff in Colleges of Advanced Education (Union of Employees)	482	455
The Queensland Police Commissioned Officers Union of Employees	368	346
Property Sales Association of Queensland, Union of Employees	396	340
James Cook University Staff Association (Union of Employees)	348	327
Australian Maritime Officers Union Queensland Union of Employees	223	234
Griffith University Faculty Staff Association (Union of Employees)	150	145
Musicians' Union of Australia (Brisbane Branch) Union of Employees	138	122
Queensland Fire Service Senior Officers' Association, Union of Employees	94	94
Total Membership	**373,472**	**373,030**
Number Employee Organisations	**43**	**43**

Table 12: Industrial Organisations of Employers Membership

Industrial Organisation	Members As at 30/06/07	Members As at 30/06/08
Queensland Master Builders Association, Industrial Organisation of Employers	10,860	10,964
Agforce Queensland Industrial Union of Employers	7,051	6,693
Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers	3,700	3,700
Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers)	2,589	2,376
Motor Trades Association of Queensland Industrial Organisation of Employers	2,209	1,979
Australian Dental Association (Queensland Branch) Union of Employers	2,248	1,956
Queensland Fruit and Vegetable Growers, Union of Employers	902	1,795
Electrical and Communications Association Queensland, Industrial Organisation of Employers	1,611	1,732
National Retail Association Limited, Union of Employers	1,850	1,430
Australian Industry Group, Industrial Organisation of Employers (Queensland)	1,347	1,303
The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers	1,165	1,121
Australian Community Services Employers Association Queensland Union of Employers	860	878
Queensland Hotels Association, Union of Employers	740	851
Master Plumbers' Association of Queensland (Union of Employers)	769	791
Master Painters, Decorators and Signwriters' Association of Queensland, Union of Employers	653	627
The Registered and Licensed Clubs Association of Queensland, Union of Employers	568	566
National Meat Association of Australia (Queensland Division) Industrial Organisation of Employers	468	488
Queensland Motel Employers Association, Industrial Organisation of Employers	498	487
Queensland Real Estate Industrial Organisation of Employers	425	425
Nursery and Garden Industry Queensland Industrial Union of Employers	392	350
Queensland Private Childcare Centres Employers Organisation of Queensland Industrial Organisation of Employers	306	344
The Queensland Road Transport Association Industrial Organisation of Employers	340	325
The Baking Industry Association of Queensland - Union of Employers.	421	323
Hardware Association of Queensland, Union of Employers	360	300
Building Service Contractors' Association of Australia - Queensland Division, Industrial Organisation of Employers	246	237
The Hairdressing Federation of Queensland - Union of Employers	211	208
Association of Wall and Ceiling Industries Queensland - Union of Employers	176	196
Consulting Surveyors Queensland Industrial Organisation of Employers	99	109
UNiTAB Agents' Association Union of Employers Queensland	151	106
Furnishing Industry Association of Australia (Queensland) Limited Union of Employers	87	81
Queensland Master Hairdressers' Industrial Union of Employers	66	62
Queensland Country Press Association - Union of Employers	27	28
Queensland Cane Growers' Association Union of Employers	22	23
Queensland Friendly Societies Pharmacies Association, Industrial Organisation of Employers	12	12

Industrial Organisation	Members As at 30/06/07	Members As at 30/06/08
Australian Sugar Milling Association, Queensland, Union of Employers	10	10
The Queensland Chamber of Fruit and Vegetable Industries Co-operative (Union of Employers) Limited	53	N/A
Queensland Mechanical Cane Harvesters Association, Union of Employers	125	Not Available
Queensland Major Contractors Association, Industrial Organisation of Employers	18	Not Available
Total Membership	**43,635**	**42,876**
Number of Employer Organisations	**38**	**37**





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