

# queensland workplace prosecutions

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Queensland Workplace  
Health and Safety and the  
Division of Industrial Relations



**Queensland  
Government**

Department of  
**Industrial Relations**

## Prosecutions to the year ended December 2001 - Workplace Health & Safety

### Workplace Health and Safety QUEENSLAND ENFORCEMENT FRAMEWORK IN ACTION

The Queensland Government's improved Workplace Health and Safety Enforcement Framework continues to deliver more robust enforcement of workplace health and safety standards, promoting safer working conditions for Queensland workers.

Workplace Health and Safety inspectors last financial year visited more than 11,300 workplaces, and issued more than 8,600 safety notices.

The number of workplace health and safety prosecutions doubled last financial year to 142.

And in the six months covered by this newsletter (to December 2001), the Division of Workplace Health and Safety has maintained this rate with 66 prosecutions recorded compared to 67 in the same period the previous year.

In the six months to December 2001, \$738,248 in fines and costs was imposed in the Industrial Magistrates Court compared to an average of \$600,000 in the first six months of the previous financial year.

Companies may face fines of up to \$300,000 and Chief Executive Officers fines of up to \$60,000 and imprisonment terms of up to two years for breaches of the *Workplace Health and Safety Act 1995* resulting in death or grievous bodily harm.

The Electrical Safety Office, which promotes electrical safety at workplaces and in homes, now forms part of the Department of Industrial Relations.

A major review of both the Division of Workplace Health and Safety and the Electrical Safety Office has been carried out to improve the department's investigation of serious electrical and workplace accidents. Specialist investigators have

been placed in this regard, located at regional offices across Queensland.

To improve electrical safety in Queensland an additional 12 Workplace Health and Safety inspectors with electrical expertise have also been employed.

Additional inspectors, more visits to workplaces, more compliance with safety standards all lead to improved safety for Queensland workers.

Workplace Health and Safety – lives depend on it.

### Record fine for single workplace fatality

#### Pittsworth Shire Council

The Pittsworth Shire Council was fined \$50,000 in July 2001 for a breach of the *Workplace Health and Safety Act 1995* which resulted in the death of an apprentice worker.

The fine is the largest imposed by the court involving a single fatality.

The Pittsworth Industrial Magistrates Court found the council failed to provide and maintain a safe system of work breaching Section 28(1) of the *Workplace Health and Safety Act 1995*.

A 17-year-old male apprentice was killed in a workshop when a tip truck he was working on quickly descended. The court was told that a control flow device could have been fitted to the vehicle to control the speed of descent.

The council had pleaded not guilty to the charge. In addition to the \$50,000 fine, costs of \$16,000 were also awarded against the council.

The Magistrate found the systems for workplace health and safety at the depot had been 'lax and haphazard'. He found the apprentice had inadequate training, minimum instruction and the council had failed to follow any of the available safety advisory standards.

Workplace Health and Safety said that since the incident the council had implemented risk assessments for all jobs in the workshop, disposed of the tip truck, upgraded machinery in their fleet and implemented training programs for all staff.

### Concrete manufacturer fined \$30,000 for crush death

#### Enco Precast Pty Ltd

A Brisbane concrete manufacturing company has been fined \$30,000 in the Brisbane Industrial Magistrates Court following a fatal workplace accident near Oxley in September 2000.

Enco Precast Pty Ltd pleaded guilty to breaching Section 28(1) of the *Workplace Health and Safety Act 1995*.

The 59-year-old worker was killed when concrete bridge pylons fell and crushed him.

The court was told at the time of the incident he was using an overhead gantry crane to move the concrete pylons into position.

The incident occurred on September 5, 2000 at Seventeen Mile Rocks Road, near Oxley at a bridge construction site.

The company was also ordered to pay costs of more than \$2,600.

In imposing the fine on November 13, 2001 the Magistrate said the

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## Details of recent cases

company had failed to provide a safe system of work.

It was the company's first prosecution and no conviction was recorded.

### **\$6,300 for finger tip**

#### **E.K. Williams Pty Ltd**

E.K. Williams Pty Ltd has been fined \$5,000 after a worker lost the top of a finger in an industrial incident in August 2000.

E.K. Williams pleaded guilty in the Brisbane Central Industrial Magistrates Court on September 13 to breaching the *Workplace Health and Safety Act 1995* and was ordered to pay more than \$1,300 in costs.

The court was told the worker lost the top of his finger when he inadvertently placed his hand under the head of an unguarded steel wire stitching machine.

The employer had removed the original guard at some time prior to the incident and had not replaced it.

The Magistrate found the company had breached Section 28(1) of the *Workplace Health and Safety Act 1995* by not providing adequate control measures in terms of guarding to protect workers using the machine.

He said relying on instruction and demonstration to control the risk while the machine remained unguarded was inadequate.

No conviction was recorded.

### **Concept Transport fined \$25,000 for multiple injuries**

#### **Concept Transport Pty Ltd**

Concept Transport Pty Ltd was fined \$25,000 after a worker received serious multiple injuries during the construction of the rail project between Toombul and Brisbane airport in March 2001.

The company pleaded guilty to breaching the *Workplace Health and Safety Act 1995* in the Brisbane Industrial Court on November 2 and was also ordered to pay more than \$2,900 in costs.

The court was told the worker was using a jinker to move concrete beams

into position and was pinned by the vehicle during its operation.

Several co-workers were needed to free the worker using a crane and two excavators to lift the jinker.

He was taken to hospital with severe multiple injuries.

The Magistrate found the company had seriously breached Section 28(1) of the *Workplace Health and Safety Act 1995* by failing to provide safe plant or a safe system of work.

A conviction was not recorded.

### **CMC Cairns appeal dismissed and fine increased**

#### **CMC Cairns Pty Ltd**

A fine for a Workplace Health and Safety breach against a Cairns construction company has been increased from \$7,500 to \$22,500.

The original fine was imposed following an incident where a contracted plasterer suffered serious crush injuries and a permanent disability after falling 4.3 metres from scaffolding. The company appealed against the conviction, and Workplace Health and Safety appealed the level of the fine.

The President of the Queensland Industrial Court, David Hall, dismissed the company's appeal and increased the fine on October 8, 2001.

CMC Cairns Pty Ltd was found guilty of breaching 28(1) of the *Workplace Health and Safety Act 1995* for failing to ensure the health and safety of workers coming into the workplace by failing to provide a safe system of work for working at heights.

During the appeal the President was told the company failed in its contract to provide adequate scaffolding, shifting the duty to the workers who were without supervision.

The *Workplace Health and Safety Act 1995* states that scaffolding above four metres must be completed by certified scaffolders.

As a result of the incident CMC Cairns has changed its workplace health and

safety procedures for working from heights to prevent the incident from reoccurring.

No conviction was recorded.

### **Bungee jump costs adventure camp \$12,000 fine**

#### **Emu Gully Adventure Education Group Inc.**

A children's adventure camp was fined \$12,000 in August 2001 in Toowoomba Industrial Magistrates Court when it pleaded guilty to breaches of the *Workplace Health and Safety Act 1995* following an incident where a 13-year-old girl suffered badly broken legs when a slingshot bungee ride failed.

Emu Gully Adventure Education Group Inc. appeared before the Industrial Magistrates Court for breaching Section 28(2) of the act dealing with the safe use of plant and two regulations, the first for not registering high risk plant and the second for not registering the plant's design.

The Magistrate said the equipment used at the camp on May 10, 2000 was sub-standard and was located in a position that made it impossible to regularly inspect.

The court was told the bungee ride had been in use for six hours giving rides to students at the camp.

The ride consisted of a bungee rope running through a sheave bolted to a tree limb, 19 metres above the ground, with a steel rope connecting the bungee rope to a four wheel-bike on the ground.

A child was connected to the bungee rope and held as the vehicle drove away. When the rope was taut the child was released and bounced.

In the incident the sheave block broke throwing the child to the ground from 12 to 16 metres.

The Magistrate said it was a 'high risk act' and the injuries the young female student suffered were serious.

A total \$5,044 investigation and legal costs were imposed on the company.

## Details of recent cases

### **Australian Meat Holdings fined for injured trainee**

#### **Australian Meat Holdings Pty Ltd**

Australian Meat Holdings Pty Ltd has been fined \$6,000 after a 15-year-old trainee suffered a fracture and other injuries to his left arm in an industrial incident in October 2000.

The company pleaded guilty to breaching Section 28(1) of the *Workplace Health and Safety Act 1995* in the Ipswich Industrial Magistrates Court on August 14, 2001.

In addition to the \$6,000 fine, the company was also ordered to pay over \$3,300 in costs.

The Division of Workplace Health and Safety instigated the prosecution after the worker had his arm pulled under the end roller of a moving conveyor belt while cleaning the boner room.

At the time of the incident the worker had crawled beneath the moving conveyors to pick up fat and bones. The court was told the conveyor belts were unguarded and crawling beneath them was common practice.

Prior to the incident the worker had not received any training on floor cleaning procedures.

The Magistrate found the company had failed to control the risk of injury to workers from entanglement and entrapment in the belts and end rollers of moving conveyors.

The Magistrate said the company had since implemented controls to prevent the incident from reoccurring.

It was the company's first prosecution and no conviction was recorded.

### **Pizza maker fined \$10,000 for amputation**

#### **Aldo's Fine Foods Pty Ltd**

A pizza base manufacturer was fined \$10,000 in the Brisbane Industrial Magistrates Court on November 13, 2001 following an accident in its Geebung factory in September 2000.

Aldo's Fine Foods Pty Ltd pleaded guilty to breaching Section 28(1) of the *Workplace Health and Safety Act 1995*.

The company was also ordered to pay costs of almost \$2,300.

The Department of Industrial Relations' Division of Workplace Health and Safety instigated the prosecution after a 21-year-old worker had to have parts of three injured fingers surgically amputated.

The court was told the worker was pushing dough down the throat of a dough divider machine with his right hand when three of his fingers came into contact with the moving knife.

The Magistrate found the company had failed to provide safe machinery, a safe system of work or adequate instruction, training and supervision.

The company has since implemented control measures to prevent the incident from reoccurring.

It was the company's first prosecution and no conviction was recorded.

### **Oil spill leads to fine for local coffee shop**

#### **Domra Pty Ltd**

A Brisbane café was fined \$4,000 in the Brisbane Industrial Magistrate's Court on November 13, 2001 after an incident where an 18-year-old apprentice chef suffered severe burns.

Domra Pty Ltd, trading as Primaevera Caffe Ltd, of Oxley Rd Corinda, pleaded guilty to a breach of Section 28(1) of the *Workplace Health and Safety Act 1995* for not providing a safe system of work for handling hot oil.

The court was told the apprentice chef was emptying hot oil in the restaurant. Due to limited space in the kitchen the chef transferred scalding oil from one container to another on the floor, resting containers on a stool.

The youth slipped on the slippery floor, fell into the scalding oil and suffering severe burns to a hand, wrist and calf.

The Magistrate imposed a fine of \$4,000 fine and \$1,250 in costs to serve as a warning for small cafés.

No conviction was recorded.

### **Farm fined for injury to peanut worker**

#### **Cliffdale**

A peanut farmer at Theodore was fined \$6,000 in the Biloela Industrial Magistrates Court on December 11, 2001 following an incident that caused the partial amputation of a worker's leg.

Cliffdale, a cattle and peanut farm, pleaded guilty to a breach of Section 28(1) of the *Workplace Health and Safety Act 1995*.

The farm had employed two workers to harvest a peanut crop on April 11, 2001. One worker was operating a peanut bush digger attached to the rear of a tractor when it became tangled with bushes and required clearing.

The worker's sock was caught in the rotating digger and his lower right leg was amputated.

The court was told the Division of Workplace Health and Safety investigation led the farmer to install a guard on the digger as recommended in the Plant Advisory Standard.

The Magistrate imposed a fine of \$6,000 and costs of \$4,222. No conviction was recorded.

### **Building firm fined for worker fall**

#### **Neil Jones Pty Ltd**

Rockhampton plumbing company, Neil Jones Pty Ltd, was fined \$15,000 in the Gladstone Industrial Magistrates Court on December 14, 2001 after an apprentice suffered serious injuries (fractured lumbar vertebrae) after falling 7.8 metres from a roof.

The company pleaded guilty to breaching Section 28(1) of the *Workplace Health and Safety Act 1995*.

The Magistrate also ordered the company to pay \$3,057 in costs.

The apprentice plumber was working at the site on February 2, 2001 and was asked to assist in the installation of a roof.

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The court was told that the worker had asked for a safety harness but was informed none were available at the site on that day.

He fell when he stepped on an unsupported section of roofing sheet.

The Magistrate said the company had made some efforts to address health and safety issues both prior to and since the incident, had co-operated with investigators and made an early guilty plea. No conviction was recorded.

### **Copper refinery fined for injured worker**

#### **Copper Refineries Pty Ltd**

Townsville company, Copper Refineries Pty Ltd, has been fined \$18,000 in Brisbane Industrial Magistrates Court following an incident where a worker suffered third degree burns to his right foot while using a high pressure hose.

The company pleaded guilty to breaching Section 28(1) of the *Workplace Health and Safety Act 1995*, following the incident on September 19, 2000 at its plant at Hunter Street, Stuart, Townsville.

The worker was using a high pressure hose to clean a 20 litre plastic bucket when it passed over his right foot inflicting third degree burns. He required skin grafts and was hospitalised.

The court was told that the company had modified the hose 20 years ago so the operator had no control over the flow of the high pressure water jet unless the worker returned to the main control unit. As a result of the incident the plant was repaired and a flow trigger installed.

The court imposed the \$18,000 fine and more than \$3,400 in costs noting that although the company had risk assessment procedures in place it had not identified the risk in using the plant since modifying it some 20 years before.

No conviction was recorded.

### **Eagle Farm business fined \$15,000**

#### **ABB Service Pty Ltd**

An Eagle Farm armature manufacturer was fined \$15,000 in Brisbane Industrial Magistrates Court following an incident where a worker lost the tops of two fingers from his right hand when oiling an industrial saw.

ABB Service Pty Ltd pleaded guilty to breaching Section 28(1) of the *Workplace Health and Safety Act 1995* on December 11, 2001, was fined \$15,000 and more than \$2,400 in costs.

The court was told the worker, an apprentice, was stripping armatures using a cutting machine. After each cut the worker was required to lubricate the blade of the saw with a wax stick while the blade was rotating.

The workers fingers were drawn to the blade losing the tops of his middle and index fingers to the first knuckle.

Workplace Health and Safety told the court it was notified of the workers injury, not by ABB but by the apprentice's contractor, six days after the incident. When the investigation began inspectors found the plant had been dismantled.

The court was told the company had now instituted safer procedures and a guard for the saw.

No conviction was recorded.

### **AAPC Properties fined \$30,000 over fatal fall**

#### **AAPC Properties (Qld) Pty Ltd**

AAPC Properties (Qld) Pty Ltd has been fined \$30,000 in the Brisbane Industrial Magistrates Court following an incident where a guest fell to his death on stairs at the Fortland Leichhardt Hotel in Bolsover St, Rockhampton.

AAPC (formerly Fortland Management Services Pty Ltd), pleaded guilty to breaching Section 28(2) of the *Workplace Health and Safety Act 1995* on December 18, 2001 following an incident where a

guest at the hotel was found lying seriously injured on the landing of a flight of stairs on March 17, 2000.

Friends of the guest and staff called an ambulance and the man was taken to Rockhampton Base Hospital where he subsequently died on March 18.

The court was told the workplace health and safety investigation led to safety notices being issued to stop the use of a door leading to the stairs as well as the stairs themselves.

The company fully co-operated with the workplace health and safety investigation and has taken substantial remedial action including signage, door opening onto a landing and automatic locking facility. No conviction was recorded.

The company was also ordered to pay more than \$2,400 in costs.

### **Construction company's appeal dismissed**

#### **Mewbrough Pty Ltd**

A Cairns construction company failed in its appeal against the size of a fine of \$9,300 for a workplace incident.

The original fine was imposed after a worker suffered serious injuries from falling 2.7 metres from an unguarded edge in January 2000.

The worker knocked himself unconscious in the fall, sustaining a large cut to his head and severe bruising.

Mewbrough Pty Ltd was found guilty of breaching 28(1) of the *Workplace Health and Safety Act 1995* for failing to ensure the health and safety of one of its workers by failing to provide a safe system for working at heights.

The Industrial Magistrates Court upheld the fine on October 9, 2001, finding the breach of the Act serious enough to warrant the fine of \$9,300.

It found submissions by the employer overstated difficulties in protecting the worker and the company's mitigating circumstances were not enough to warrant a reduction.

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### **Gas leak leads to fine**

#### **Whitsunday Shire Council**

Whitsunday Shire Council was fined \$3,000 in the Mackay Industrial Magistrates Court after a worker was overcome by dangerous gas in September 2000.

The council pleaded guilty to breaching Section 28(1) of the *Workplace Health and Safety Act 1995*.

The council was also ordered to pay costs of almost \$2,200.

The prosecution was instigated after a worker was overcome with chlorine gas.

The court was told the worker mixed incorrect ingredients because drums containing two different chemicals were unlabelled and identical.

The Magistrate found the council had failed to provide adequate instruction, training and supervision or specific risk assessments in regard to the handling and the use of hazardous substances.

The council has since implemented control measures to prevent the incident from reoccurring including labelling, formal training, written procedures and proper risk assessment.

It was the council's first prosecution and no conviction was recorded.

### **Cardboard box manufacturer fined \$6,500**

#### **Visy Board Pty Ltd**

A cardboard box manufacturer was fined \$6,500 in the Ipswich Industrial Magistrates Court after a worker suffered a permanent disability following an industrial incident in April 2000.

Visy Board Pty Ltd pleaded guilty to breaching Section 28(1) of the *Workplace Health and Safety Act 1995*.

The company was also ordered to pay costs of almost \$3,000.

The prosecution was instigated after a worker dislocated and broke bones in his left foot in the company's factory in Carole Park.

The court was told the worker was performing maintenance on a machine that prints and cuts cardboard when the main drive activated, dragging his feet into the machine.

Both workers involved in maintenance were unaware that the machine was still in operational mode at the time of the incident and inadequate lockout procedures were in place.

The Magistrate found the company had failed to provide a safe system of work for using the machinery, or adequate instruction, training and supervision.

The company has since implemented control measures to prevent the incident from reoccurring and ensure future safety for workers.

It was the company's first prosecution and no conviction was recorded.

### **Cleaning company fined \$5,500 for injury**

#### **Transpacific Industries Pty Ltd**

An industrial cleaning company was fined \$5,500 after a worker lost 30 per cent use of his leg in an industrial incident in May 2000.

Transpacific Industries Pty Ltd (trading as Zappaway Industrial Cleaning) pleaded guilty to breaching Section 28(1) of the *Workplace Health and Safety Act 1995* in the Brisbane Industrial Magistrates Court on August 14, 2001.

In addition to the \$5,500 fine, the company was also ordered to pay over \$1,800 in costs.

The court was told while operating the gun, the 'plate' the worker was standing on suddenly moved, causing him to lose balance and fall backwards. As he fell, the worker's left leg came into contact with the high-pressure water stream from the gun, resulting in severe lacerations and soft tissue damage.

The Magistrate found the company had failed to provide adequate control measures to prevent injury from hazards associated with high pressure cleaning.



It was the company's first prosecution and no conviction was recorded.

### **\$7,000 for hand entrapment**

#### **RX Plastics Pty Ltd**

RX Plastics Pty Ltd has been fined \$7,000 after a worker's hand was caught in unguarded rollers in an industrial incident in May 2000.

The company, which pleaded guilty to a breach of 28(1) of the *Workplace Health and Safety Act 1995*, was fined \$7,000 and ordered to pay costs of over \$3,000 in the Brisbane Industrial Magistrates Court on July 10, 2001.

The court was told the worker's hand became entrapped between the in-running rollers during the process of guiding plastic hose through the pinch roller machine.

The worker was admitted to hospital where he received medical treatment to restore mobility to his left hand.

The Magistrate found the company had breached Section 28(1) of the *Workplace Health and Safety Act 1995* by failing to provide plant that was safe and failing to provide a safe system of work for the operation of the machine.

In sentencing, the Magistrate said the company had guarded the hazard of

## Details of recent cases

exposed rollers six months prior to the incident. The company had a clear recognition of the danger but failed to continue with the guard when its financial position became difficult.

Within two weeks of the incident the company installed a new fixed guard to the machine preventing access to the moving rollers.

No conviction was recorded.

### **Red Rooster fined \$18,000 for burnt worker**

#### **Red Rooster, Gold Coast**

A fine for a Workplace Health and Safety breach against Gold Coast Red Rooster was increased from \$1,500 to \$18,000 on appeal to the Industrial Court.

The original fine was imposed following an incident where a worker suffered burns to his right arm from hot oil. The company had pleaded guilty to an offence under section 28(1) of the *Workplace Health and Safety Act 1995*.

Workplace Health and Safety appealed against the level of the original fine.

Releasing the decision in July 2001, the Industrial Court increased the fine to \$18,000.

Queensland Workplace Health and Safety told the court the worker had not been trained in Red Rooster's policies for disposing oil.

Red Rooster was also ordered to pay costs of \$2,058.

As a result of the incident Red Rooster had reinforced its workplace health and safety procedures to help prevent the incident from reoccurring.

### **Queensland Rail fined \$20,000**

#### **Queensland Rail**

Queensland Rail (QR) was convicted and fined \$20,000 after a worker received serious leg injuries in an industrial incident in July 1999.

QR was also ordered to pay more than \$27,500 in costs in the Townsville Industrial Magistrates Court on September 12, 2001 after

being found guilty of breaching the *Workplace Health and Safety Act 1995*.

The court was told a worker was involved in dragging rail line (100 metres long, 4.1 tonnes) with an end loader around a corner when the rail was forced into a bend.

When the worker used a bar in an attempt to prevent the rail riding further up, it sprang up, knocking him backwards, before being dragged over his legs by the end loader.

He sustained a fractured right ankle and leg ligament damage, requiring hospitalisation and surgery.

The Magistrate found QR had seriously breached Section 28(1) of the *Workplace Health and Safety Act 1995* by not providing adequate training in terms of the Code of Practice for Plant.

A conviction was recorded.

### **\$40,000 record fine for serious burns to workers**

#### **Queensland Cement Limited**

Queensland Cement Limited (QCL) was fined \$40,000 after two workers received burns in an industrial incident in December 1999.

QCL pleaded guilty and ordered to pay more than \$14,500 in costs in the Gladstone Industrial Magistrates Court on September 11, 2001 after being found guilty of breaching the *Workplace Health and Safety Act 1995*.

The court was told that two workers had entered a tunnel to investigate fire damage when they fell through a hard crust above hot slurry.

Both workers suffered burns to the feet and legs with one being admitted to hospital.

The Magistrate found the company had seriously breached Section 24 and 28(1) of the *Workplace Health and Safety Act 1995*. He found the company had not provided any positive means of preventing access, exposure and possible contact with extremely hot material.

The court found that QCL had sufficient time between the fire and the inspection by the workers to implement suitable control measures to ensure the health and safety of the workers.

The \$40,000 fine is a record amount for a prosecution resulting in a serious injury.

### **Bad fan guarding causes laundry fine**

#### **Princes Fabricare Services Pty Ltd**

Princes Fabricare Services Pty Ltd was fined \$4,000 with \$1,250 costs, in the Southport Industrial Magistrates Court following an incident where a worker suffered grievous bodily harm from a fan with a damaged guard.

The large industrial laundry employs more than 50 workers and uses large pedestal fans to relieve hot working conditions.

The court was told a female laundry hand was sorting clothes on December 26, 2000 when she adjusted a fan to better direct the air onto herself and a fellow worker.

Her hand was struck by the fan's blade and she suffered compound fractures to the right middle and ring fingers. The worker was operated on and spent two days in hospital.

The company told the court the fan had a damaged blade guard and had been withdrawn from service.

Workplace Health and Safety instigated the prosecution under Section 28(1) of the *Workplace Health and Safety Act 1995*.

The Magistrate said that fans were dangerous pieces of equipment due to electrical problems or faulty guards and there was always a potential for injury.

In fining the employer \$4,000 the Magistrate took into consideration the early plea of guilty, the company's co-operation and that the fan had not been authorised for use.

No conviction was recorded.

## The Workplace Health and Safety Act 1995

The legislation is based on common principles to address workplace health and safety issues. It aims to prevent death, injury or illness caused by a workplace or workplace activities.

Employers are encouraged to continuously assess the risk a workplace or workplace practice may present to its workforce and take appropriate precautions. Every person associated with a workplace must ensure his or her health and safety and the health and safety of others.

Common parts of the Act used as a basis for prosecution are described here:

### Section 28 (1) 1995 Act

An employer has an obligation to ensure the workplace health and safety of each of the employer's workers at work

### Section 28 (2) 1995 Act

An employer has an obligation to ensure his or her own workplace health and safety and the workplace health and safety of others is not affected by the way the employer conducts the employer's undertaking

### Section 29 1995 Act

A self-employed person has an obligation to ensure his or her own workplace health and safety and the workplace health and safety of others are not affected by the way the person conducts the person's undertaking.

### Section 31(3) 1995 Act

The principal contractor must—  
direct the employer or self-employed person to comply with the employer's or self-employed person's workplace health and safety obligation; and  
if the employer or self-employed

person fails to comply with the direction—direct the employer or self-employed person to stop work until the employer or self-employed person agrees to comply with the obligation.

### Section 117(4) 1995 Act

The person must comply with the improvement notice.

### Section 118(4) 1995 Act

The person must comply with the prohibition notice.

### Section 167(2) 1995 Act

The executive officers of a corporation must ensure that the corporation complies with the *Workplace Health and Safety Act 1995*

the person holds a certificate to work in the occupation issued by the chief executive or a recognised official; or  
the person is a trainee in the prescribed occupation.

## Prosecutions to the year ended December 2001 - Industrial Relations

### Industrial Relations

Investigating wage complaints is a major area of activity for the department's industrial inspectors who not only investigate the complaint but also recover monies on behalf of employees where they are due.

Industrial inspectors received 8,400 wage complaints on behalf of Queensland workers and conducted 600 general inspections of time and wages records last financial year.

During this period 342 legal actions were taken against employers to protect employees' rights. Inspectors helped to recover \$6.32m of unpaid wages to employees during the period.

In the six months to December 2001, Industrial Relations Services has maintained this rate with 240 legal

actions recorded, compared to 193 in the same period the previous year.

During this period \$3.5m in unpaid wages was awarded to employees in Queensland as a result of Industrial Relations Services activities compared to \$3m in the first six months of the previous financial year. Overall, during the six months to December 31, 2001, more than 3800 wage complaints were investigated and finalised.

Companies may face fines of up to \$75,000 and individuals up to \$15,000 for breaches of the *Industrial Relations Act 1999* relating to failure to pay employees their correct wages under awards.

Inspectors are also involved in matters including trading hours, private employment agencies, and pastoral workers' accommodation

legislation. Where appropriate, parties who do not comply with their responsibilities can be prosecuted.

In the majority of wage complaint cases, the employer agreed to pay the monies owed without the need for a hearing.

In some cases where facts are in dispute, a settlement is negotiated to the satisfaction of the client employee.

Some recent cases highlight the range of issues dealt with by our inspectors.

## Details of recent cases

### **Mutual agreement a bit one-sided**

#### **Crystal Palace**

In June 2001, Peter John Connell trading as Crystal Palace was ordered to pay wages of \$5,036 and annual leave of \$460 and \$59 cost of court after entering a plea of guilty in the Toowoomba Magistrates Court over a wages claim.

He had engaged an employee to work as a kitchen hand and failed to pay the correct award entitlements, claiming that he had a mutual agreement with the employee regarding the wages to be paid. The employee was unaware of the agreement and requested action be taken by the Department of Industrial Relations.

### **Security firm ordered to pay wages**

#### **Kandle Security Services Pty Ltd**

In August 2001, Kandle Security Services P/L was ordered to pay \$11,908 wages and COC \$59 by a Toowoomba Magistrates Court for failing to pay an employee his award entitlements.

The employer had claimed the worker was a contractor and not subject to the award. The department claimed wages, overtime and allowances totaling \$11,908. The employer did not offer a defence in court.

### **Civil Contractor order to pay Universal Lines**

In November 2001, Robert John Dodds T/A Universal Lines was ordered to pay wages totaling \$8,653 and fined \$300 by the Industrial Magistrate in Toowoomba for failing to keep time and wages records, in default of payment four months imprisonment.

He had paid an employee a flat rate of pay for all hours and not paid any overtime under the award.

### **Engineering Firm**

#### **Pro-Flight Pty Ltd**

In August, Pro-Flight Pty Ltd, an engineering firm manufacturing farming equipment, was ordered to

pay \$4,335 to an employee by the Toowoomba Industrial Magistrate. The order followed failure to pay a claim for failing to pay award entitlements to an employee.

The company had offered to pay the claim off at \$10 per week which was refused by the inspector and court action was commenced to recover the wages in a more reasonable time period.

### **Florist not paid annual leave entitlements**

#### **Tellavari Pty Limited, Proserpine**

The Queensland Industrial Relations Commission at Mackay on June 20, 2001, ordered Tellavari Pty Limited to pay Natalie Anne Fazel of Sarina \$955 in unpaid wages. Ms Fazel was employed in the manufacture of floral bouquets, emblems and wreaths composed of real flowers in the terms of the Floral Bouquets, Novelties, Etc., Making Award – State.

The employee claimed that she was employed on a full time basis while the employer alleged she was a casual employee and was therefore not entitled to annual leave.

During her employment the employee was paid as a casual employee. The hours recorded in the time and wages records indicated that the employee worked a standard 38 hour week. Under the terms of the award, a casual employee is an employee who is engaged to work for less than 38 hours in any one week. Therefore, the actual hours worked did not reflect that the employee was engaged on a casual basis.

An assessment was performed on the basis that the employee was in fact a weekly employee. This assessment took into account annual leave entitlements. When compared with wages actually paid to the employee arrears of \$955 resulted.

These arrears related to annual leave entitlements that the employer refused to accept despite an industrial inspector explaining the reason.

An application was made under

Section 278 of the *Industrial Relations Act 1999* through the Queensland Industrial Relations Commission for recovery of these wages.

### **Skipper not paid correctly Flat Deck Pty Ltd, Whitsundays**

The Industrial Magistrates Court at Mackay on June 25, 2001, ordered Flat Deck Pty Ltd to pay Jason Lloyd Lane \$3,996 in arrears of wages.

The employer operated a yacht charter and dive business in the Whitsunday area and employed Lane as a skipper and a deckhand from February 15, 1998 to July 7, 1998. The company ceased business and Lane complained to an industrial inspector that he had not received correct entitlements during his employment.

Upon investigation it was revealed he was paid a daily rate which was less than his entitlements under the Masters, Mates and Engineers' Award, Motor Vessels 2500BHP/1866kWBP and under – State (excluding the Port of Brisbane).

A claim was made on the employer for arrears of wages amounting to \$3,996. However, a director of the company advised that it did not have any assets and could not pay the claim.

While the company had ceased operations it had not been placed in liquidation. Consequently, an application was made under Section 399 of the *Industrial Relations Act 1999* before an Industrial Magistrate to protect the employees' interests. When the matter went before the court, the company was ordered to pay the amount of \$3,996.85 within 28 days, in default levy and distress.

### **Cotton harvester not paid correctly**

#### **Mid West Haulage Pty Ltd, Emerald**

On June 18, 2001, the Industrial Magistrates Court at Emerald ordered Mid West Haulage Pty Ltd pay to Niall Rice of Ireland \$6,065 arrears of wages and overtime.

## Details of recent cases

The employer operated the business of cotton harvest contractor and employed Rice, who was in Australia on a working holiday, as a cotton harvester, tractor driver and module builder, at a flat rate of \$11 per hour.

Attempts to interview the employer were unsuccessful. Consequently, an assessment was performed based on evidence supplied by the employee. This assessment revealed that the employee had not been paid correctly as the flat rate did not cover overtime worked.

An application was made under Section 399 of the *Industrial Relations Act 1999* before an Industrial Magistrate to protect the employee's interests. When the matter went before the Court the company was ordered to pay \$6,065, in default levy and distress.

### **Employees to be paid termination entitlements in full**

#### **Lovell Springs Suspension Pty Ltd, Salisbury**

The Queensland Industrial Relations Commission ordered Lovell Springs Suspension Pty Ltd on August 23, 2001, to pay arrears of holiday pay and/or long service leave entitlements totalling \$67,503 on behalf of 17 former employees.

The action in the commission was commenced by the Department of Industrial Relations following the investigation of complaints from former employees of the company.

In June 2000, Lovell Springs Pty Ltd purchased an engineering business at Salisbury and continued to employ existing staff. As a consequence, the employees' entitlements to annual leave and long service leave were transferred to Lovell Springs in accordance with the *Industrial Relations Act 1999*.

As the parent company of Lovell Springs was subject to a Deed of Company Arrangement it was uncertain whether sufficient funds existed to pay the employee entitlements in accordance with the

orders made by the industrial commission.

However, the department recently received advice from Prentice Parbery Barilla, Deed Administrators for Lovell Springs Pty Ltd, that all outstanding employee entitlements would be paid in full.

### **Apprentice panel beater not paid**

#### **Silkwhoosh Pty Ltd, Bundaberg**

The Industrial Magistrates Court at Bundaberg ordered Silkwhoosh Pty Ltd to pay a former apprentice panel beater (engineering tradesperson – vehicle building) \$2,226 for arrears of annual leave and pro rata annual leave due in accordance with the Engineering Award - State.

The director of the company closed the panel beating business suddenly and advised the apprentice he was to collect his tools and any other belongings and leave the premises. The employer paid the apprentice wages up until his last day but failed to pay the annual leave and pro rata annual leave due. Numerous attempts were made to discuss the matter with the director but he refused to make himself available for interview or attend the district industrial inspector's office at Bundaberg. The director was eventually approached personally to attempt to resolve the matter but he refused to comment or discuss the entitlement.

An application was made under Section 399 of the *Industrial Relations Act 1999* for recovery of the apprentice's entitlement through the Industrial Magistrates Court. The employer failed to attend and was ordered by the court in May 2001 to pay the amounts due and costs of court immediately.

### **Husband and wife not paid**

#### **Favont Pty Ltd, Bundaberg**

The Industrial Magistrates Court at Bundaberg ordered Favont Pty Ltd to pay a former husband and wife joint management team of employees \$5,231 arrears of wages, annual leave and pro rata annual leave due

in accordance with the *Industrial Relations Act 1999* minimum conditions of employment.

The husband and wife managed a backpacker accommodation establishment in Bundaberg on behalf of the company. The work performed was not subject to any industrial instrument but there was an agreed rate of wages and minimum conditions of employment including annual leave provisions as prescribed by the *Industrial Relations Act 1999*. Due to some disputes between managers and owners the managers resigned from their positions. The managers were advised they would receive their wages and annual leave entitlements the week following their cessation of employment. In a meeting between the employees and a director of the company the following week, the employees were informed they would not be paid their entitlements. Despite numerous attempts to discuss this matter with directors of the company by industrial inspectors at Bundaberg and Brisbane, no director was available to discuss the matter and always refused to make payment of amounts due.

Applications were made under Section 399 of the *Industrial Relations Act 1999* for recovery of the agreed rate of wages and minimum annual leave entitlements due to the employees prescribed by the Act through the Industrial Magistrates Court. The employer failed to attend and was ordered by the court in June 2001 to pay the amounts due and costs of court within 28 days.

### **Baker ordered to pay dough**

#### **Martin's Bakeries Pty Ltd**

The Industrial Magistrates Court at Maroochydore ordered Martin's Bakeries Pty Ltd to pay a total of \$3,800 to three employees for arrears of wages, annual leave and pro rata annual leave due to the employees in accordance with the Baking Industry Award – Southern and Mackay Divisions and the *Industrial Relations Act 1999*.

## Details of recent cases

The employer operates a bakery and a number of retail outlets on the Sunshine Coast. After various discussions with the investigating industrial inspector, a director of the company conceded that arrears of wages, annual leave and pro rata annual leave were due to employees but requested time to make payment by instalments over a negotiated period. The employer failed to make instalment payments as agreed.

Applications were made under Section 399 of the *Industrial Relations Act 1999* for recovery of the wages and annual leave entitlements due to the employees through the Industrial Magistrates Court. In July 2001 the court ordered the employer to pay the amounts due to the employees and costs of court by monthly instalments over a period of 13 months.

### **Annual leave pay ordered** **Larry Dica, trading as Advanced Cleaning Systems, Bundaberg**

The Industrial Magistrates Court at Bundaberg ordered Larry Dica to pay \$1,426.09 to an employee for arrears of wages and pro rata annual leave in accordance with the Australian Building Services Association (Qld Division) – Certified Agreement.

The employer operated a contract cleaning business in the Bundaberg area and employed the employee on a part-time basis. Mr Dica failed to engage or pay the employee for the minimum hours required for a part-time employee. Mr Dica also failed to pay the correct pro rata annual leave entitlement due to the employee on termination of the employment. Mr Dica conceded that he had not complied with the industrial instrument and agreed with the assessment of the arrears of wages conducted by the industrial inspector. Despite this agreement and an arrangement to pay the amount on a certain date, Mr Dica failed to pay any of the arrears due.

An application was made in September 2001 under Section 399 of the *Industrial Relations Act 1999* for recovery of the wages and pro rata



annual leave due to the employee through the Industrial Magistrates Court. The court ordered Mr Dica to pay the amounts due to the employee and costs of court within 28 days of the order.

### **Family not paid casual wages** **Trevor Brian Warner**

The Queensland Industrial Relations Commission ordered Trevor Brian Warner of Noosa Valley to pay \$14,255 to three employees (a husband, wife and son) for arrears of casual wages in accordance with the Fruit and Vegetable Growing Industry Award – State.

The employer operated a macadamia nut growing property in the Noosa Valley. The employer alleged there was an arrangement with the husband and wife to work for a full year on a shared annual salary and further alleged their son was actually employed by his parents to assist them and was not an employee of Mr Warner. The employees performed work under the direction and control of Mr Warner and performed hours of work at his direction and as required to complete set tasks for which they were entitled to casual award wages in excess of the amounts paid. After investigation of the matter by an industrial inspector the employer made offers to resolve the matters over a period by instalment payments.

However, the employer defaulted on this arrangement after an initial payment.

Applications were made under Section 278 of the *Industrial Relations Act 1999* for recovery of the wages due to the employees through the Queensland Industrial Relations Commission. In October 2001, the commission ordered Mr Warner to pay the amounts due to the employee and costs of court within twenty-one (21) days of the order.

### **National firm breaches own certified agreement**

#### **Chubb Security Australia Pty Ltd, Brisbane**

Chubb Security Australia Pty Ltd, a major national employer in the security industry, on August 13, 2001, was convicted and fined \$600 in the Brisbane Industrial Magistrates Court for failing to comply with the provisions of its own certified agreement.

In addition to the fine, the company was ordered to pay arrears of annual leave loading totalling \$570 to a 50-year-old former security guard employed by the company, together with costs of court of \$59.

An industrial inspector had investigated the matter after the employee lodged a complaint with the Department of Industrial Relations.

## Details of recent cases

The investigation established that the employer was bound by the Chubb Protective Services Certified Agreement (Qld) 2000 and that the agreement provided an entitlement to loading on pro rata annual leave for employees.

The head office of Chubb in Sydney disputed the inspector's interpretation of the agreement and refused to pay the claim.

As the matter could not be resolved, proceedings for an offence under the *Industrial Relations Act 1999* were commenced in the Industrial Magistrates Court.

In handing down the orders, the Magistrate allowed the defendant company 28 days to pay the fine and wages arrears and made an order of levy and distress in default of such payments.

### **Bonus not to be offset against annual leave** **Tick Tock Australia Pty Ltd**

The Queensland Industrial Relations Commission has ruled that in a situation where an employer is unable to state the purpose for which a bonus is paid, such bonus cannot be offset against a statutory entitlement to annual leave.

On June 20, 2001, the commission ordered Tick Tock Australia Pty Ltd, a Perth based watch repair and sales company located in several states, to pay a former employee the amount of \$1,120 pro rata annual leave.

The employee worked for the company from February 1998 to July 2000 starting as a shop assistant and ending up as Queensland State Manager. The 33-year-old male employee performed sales work from various shopping centre kiosks in south east Queensland and administrative work at the state head office in Chermside.

The employee claimed arrears of annual leave following his termination of employment in July 2000. An industrial inspector of the Department of Industrial Relations wrote to Mark Reid, director of

the employer company, and subsequently had several telephone conversations with him.

Mr Reid argued that the employee owed money for Fringe Benefits Tax and a mobile telephone account. The matter could not be resolved and an application for an order was commenced in the commission.

At the preliminary hearing, the respondent admitted that pro rata annual leave was owing but argued that a large bonus paid to the employee should be offset against it.

The commission ruled in favour of the applicant and ordered the company to pay the amount to the employee. In its decision, the commission referred to the case of Haggarty Group Pty Ltd v Justin Wallace and said the only way in which an amount can be offset is where it was paid for exactly the same purpose as the claim.

### **Clerical employee wins \$7,000 claim**

**The Professionals, Woody Point**  
The Queensland Industrial Relations Commission ordered Tyrone Auburn Misso trading as The Professionals Woody Point on March 27, 2001, to pay a former employee the amount of \$7,192 being unpaid wages in respect of her employment from June 1994 to August 1995.

The commission decision followed a long running dispute as to whether

the employee was a clerical employee covered by the Clerical Employees Award – State or a property salesperson for whom no award applied prior to 1997.

The 59-year-old female employee was initially engaged by the Woody Point real estate firm as a property salesperson in the early 1990s but in 1994 she was put on as casual and performed clerical work such as typing, record keeping, correspondence, and keeping the books and accounts.

In the beginning, the employee was paid set rates for particular duties plus a commission for sales administration but this eventually was replaced with a \$12.50 per hour flat rate.

Although the employee made a few property sales after 1994 for which she was paid commission, these were only on behalf of friends and family members.

The employee contacted the department and queried her entitlement in late 1999 and an industrial inspector interviewed Mr Misso soon after. Mr Misso insisted the employee was a property salesperson who was called in when needed to do bookkeeping and sales managerial work.

The inspector's efforts were hampered by the difficulty in obtaining records back to 1994 and it took the



## Details of recent cases

employer and employee several months to locate and produce enough records to assess a claim for arrears of wages. However, the matter could not be resolved and the employee provided a statement of facts.

An application for an order to pay unpaid wages was filed in the Queensland Industrial Relations Commission and the matter was set down for June 2000. However, there were a number of adjournments in which the respondent produced more records but these only served to amend the quantum of the claim.

The matter was eventually heard on February 16, 2001, with the investigating inspector and the employee giving evidence. The commission held that although the employee was a registered salesperson, the evidence clearly showed that the bulk, if not all, of her work was of a clerical/administrative nature.

Mr Misso was ordered to pay the amount of \$7,192 within 22 days of the release date of March 28, 2001.

### **Housekeeper wins wages case**

#### **Commercial Employment Services Pty Ltd, Brisbane**

A 38-year-old housekeeper was successful in recovering her wages, annual leave and wages in lieu of notice in the Queensland Industrial Relations Commission following difficulties she experienced with her former employer.

On October 2001, Commercial Employment Services Pty Ltd, a service provider to an inner city hotel, was ordered by the commission to pay the employee an amount of \$5,103.

The employee was employed as executive housekeeper at the Astor Hotel/Motel for five months in 2000. She worked from 8.00/8.30 am to 7.00/7.30 pm Monday to Friday with some additional weekend work on occasions. She was paid at the flat rate of \$572 per week.

The employee raised the matter of overtime for the long hours she worked but the issue was not resolved and her services were terminated.

An industrial inspector interviewed Mr Philip Churven, a director of the employer company. Mr Churven denied that the employee worked more than 38 hours per week and claimed that she left without giving notice.

The matter was heard in the commission on October 17, 2001 and the employee, the inspector, and another former employee gave evidence to support the applicant's claim for wages.

The employer called three witnesses and much of the argument centred on the duties performed and the hours worked. The employee had kept a record of her starting and ceasing times but the employer failed to record her working hours.

The commission preferred the evidence of the employee and found in favour of the applicant, ruling that the employee was entitled to arrears of wages, overtime, holiday pay and notice as a Grade 5 Hospitality Services Employee under the Accommodation Industry (other than Hotels) Award – South Eastern Division.

The company was ordered to pay the amount of \$5,103 within 22 days.

### **Evasive employer prosecuted**

**Kevin Patrick Murray, Redcliffe**  
Mr Kevin Patrick Murray, owner of the business known as Café 292 in Margate, was found guilty and fined \$700 in the Redcliffe Industrial Magistrates Court on October 17, 2001 and ordered to pay \$2,118 in wages to a trainee.

The trainee was employed from August 2000 to April 2001 and was underpaid for the period of her employment. For several weeks she was paid no wages at all.

The matter was investigated by an inspector who visited the cafe but

found it locked. Mr Murray was inside but ignored the door knocking of the inspector who went around to the back of the premises.

Mr Murray was unco-operative and only spoke to the inspector through a closed screen door. The inspector eventually assessed an amount of arrears of wages but the claim was refused by the employer.

In view of the employer's refusal, the matter was taken to the Redcliffe Industrial Magistrates Court. In addition to the fine and the order for wages, Mr Murray was ordered to pay \$59 costs of court. He was given 28 days to pay in default levy and distress in default 14 days imprisonment.

### **\$20,000 long service leave recovery**

#### **Assessco Pty Ltd, Brisbane**

The Department of Industrial Relations was successful in recovering an amount of \$20,186 long service leave on behalf of a long serving elderly employee.

In the Brisbane Industrial Magistrates Court, on June 26, 2001, Assessco Pty Ltd, trading as Gordon Capper and Co, was ordered to pay the money to the employee in default levy and distress.

The 62-year-old employee had been employed as a loss assessor by the insurance loss-adjusting firm from 1971 to 2000.

The employee's claim was investigated by an industrial inspector who interviewed Gordon and Margot Capper, directors of the employer company. The Cappers claimed that from 1997 the employee wished to work a four-day week and entered into an arrangement whereby he took one day a week off his long service leave.

The employer referred to advice from the Queensland Chamber of Commerce and Industry and calculations by that organisation.

It was the inspector's contention that even if such arrangement existed (which was denied by the employee)

## Details of recent cases

there was ample case law to support the argument that long service leave could not be taken in such manner.

The matter could not be resolved and an application was lodged in the Industrial Magistrates Court seeking an order for the payment of the long service leave.

The Magistrate rejected the employer's submission and ruled in favour of the applicant. The employer was given three months to pay the \$20,186 and in addition was ordered to pay \$59 costs of court.

### **Notice still required on leave Larbound Pty Ltd, Brisbane**

The Queensland Industrial Relations Commission ruled that a clerical employee was entitled to five weeks wages in lieu of notice of her termination whilst she was on extended leave in September 2000.

On September 27, 2001 Larbound Pty Ltd, a service company providing accounting, payroll, secretarial, and administrative services for the patent/trademark attorney firm Ahern Fox, was ordered to pay the employee \$3,871 wages in lieu of notice by the commission.

The employee was over the age of 45 years and had been employed for more than five years and was entitled to five weeks wages in lieu of notice. The employee had been engaged as a secretary/administrator performing accounting, payroll, and trademark research work.

An industrial inspector of the Department of Industrial Relations who spoke to Thomas Ahern and Daniel Fox, directors of the employer company, had investigated the matter. Both men claimed they had never agreed for the employee to take leave of absence and it was their understanding that she was leaving the firm to go overseas and she was to take her chances of re-employment when she returned.

The matter was heard in the commission on September 11, 2001 and the employee produced a letter

signed by Thomas Ahern which confirmed "our verbal advices" that her request for leave from March 31, 2000, to October 2, 2000, had been approved.

Witnesses for the respondent suggested the letter had been obtained by false pretences but the commission rejected this evidence and was satisfied that the employee did not terminate her employment before going overseas and that she was first advised that there was no further position for her on September 28, 2000.

### **Pieman loses appeal King Pie (Brisbane Central) Pty Ltd, Brisbane**

On November 23, 2001, the Industrial Court of Queensland dismissed an appeal by King Pie (Brisbane Central) Pty Ltd against an earlier decision of the Queensland Industrial Relations Commission in which the company had been ordered to pay a former employee arrears of wages.

The matter originated in November 2000 when the 18-year-old employee lodged a complaint with the Department of Industrial Relations in respect of her employment with the company between February and August 2000.

The employee alleged that Matthew Ganter, a director of the company, had engaged her on a trainee wage but no traineeship was ever offered or eventuated.

The employee had worked in the King Pie take away pie outlets at Strathpine and the Queen Street Food Court selling pies and drinks and performing other general duties associated with the business.

An industrial inspector attempted to investigate the matter but Mr Ganter failed to make himself or the time and wages records available despite a number of verbal requests and two formal notices.

In February 2001, legal proceedings were commenced in the Brisbane Industrial Magistrates Court for the

offence of failing to provide time and wages records and the company was convicted and fined \$800 in default.

The inspector obtained a statement of facts from the employee. The primary issue in dispute was whether or not the employee was a trainee. If the employee was not a trainee she was entitled to the wages of a Food and Beverage Attendant Grade 1 under the Retail Take-away Food Award – South Eastern Division.

Between March and June 2001, there were several communications between Mr Ganter and the inspector but the matter could not be resolved. Mr Ganter insisted the employee was offered a traineeship and that he had endeavoured to have the traineeship registered.

In July 2001 an application was lodged in the commission seeking an order for the payment of award wages, holiday pay and wages in lieu of notice on behalf of the employee.

The matter was eventually heard in the commission in September 2001, following several adjournments at the request of Mr Ganter. The commission found in favour of the applicant and ordered that King Pie (Brisbane Central) Pty Ltd pay the employee an amount of \$1,386 within 22 days.

Mr Ganter subsequently lodged an appeal on behalf of the company which was dismissed on November 23, 2001. Despite the fact that it is unusual for the commission or court to award costs against a lay person seeking to act for her/himself, in this instance the President ordered the appellant to pay the costs of the respondent of and incidental to the appeal.

## The Industrial Relations Act 1999



The principal objects of the Act include providing rights and responsibilities that ensure economic advancement and social justice for employees and employers in Queensland.

They also include ensuring wages and employment conditions provide fair standards in relation to living standards prevailing in the community and regulation of employment by awards and agreements.

Industrial inspectors have a role under the legislation to ensure compliance with awards, agreements and other employment laws and to provide an advisory service to employees and employers in Queensland in relation to their industrial relations rights and responsibilities under the Act.

One of the most critical requirements of Queensland employers under the Act is for the keeping of a proper time and wages record for each employee. These records are often essential to resolve wages disputes between employers and employees. A brochure fully outlining the requirements of the Act, can be obtained by telephoning Wageline on 1300 369 945 or visiting the Departments website at [www.detir.qld.gov.au/wageline/wageline.htm](http://www.detir.qld.gov.au/wageline/wageline.htm)

Inspectors resolve many disputes by securing voluntary compliance by the parties, but in some circumstances

must prosecute for breaches or make applications under the following sections of the Act to ensure compliance is observed in the community:

### **Section 278**

An Industrial Inspector may make an application to the Queensland Industrial Relations Commission for an order for payment by an employer to an employee in relation to an employee's unpaid wages (including monies due for leave, termination, allowances and superannuation).

### **Section 366**

An employer has an obligation to keep and have available a time and wages record for an employee covered by a state award or agreement.

### **Section 367**

An employer has an obligation to keep and have available a time and wages record (though not as detailed as under section 366) for an employee not covered by a state award or agreement.

### **Section 370**

An employer has an obligation to provide a payslip for all employees each time they are paid.

### **Section 371**

An employer has an obligation to allow an Industrial Inspector to inspect a time and wages record required to be kept under section 366 and 367.

### **Section 391**

An employer has an obligation to pay wages due without deduction except as provided for under the Act (e.g. Tax) or with the written consent of the employee. An employer may not pay an employee in kind without written consent for such a deduction from wages specifically in relation to the goods in question.

### **Section 399**

An industrial inspector may make an application to an Industrial Magistrate for an order for payment by an employer to an employee in relation to an employee's unpaid wages,

including monies due for leave, termination, allowances and superannuation.

### **Section 406**

It is an offence under the Act for an employer to fail to pay superannuation contributions as prescribed by an award or agreement.

### **Section 664**

It is an offence under the Act for an employer to obstruct an industrial inspector in the performance of their duty.

### **Section 666**

It is an offence under the Act for an employer to fail to pay wages (including monies due for leave, termination and allowances) as prescribed by an award or agreement.

### **Section 673**

An executive officer of a corporation commits an offence under the Act if that corporation commits an offence under section 406 (non payment of superannuation) or 666 (non-payment of wages).

That officer is liable to pay the prescribed penalty and any other order made by a Magistrate unless they can prove they were not in a position to influence the conduct of the corporation in this regard or exercised due diligence in this regard.