

Employment & Industrial Alert

July 2007

Queensland Response to Work Choices

On 23 May 2007 the Queensland Parliament passed the *Industrial Relations Act* and *Other Legislation Amendment Act*. The legislation is designed to alleviate, what in the Queensland Government's view, is problems for employees under the *Federal Workplace Relations Act - Work Choices* legislation. The Queensland amendments received assent on 28 May 2007.

The major changes under the new Act include:

- strengthening the protection of young workers;
- facilitating access to the Magistrate Court for employees on low incomes;
- facilitating access to the Queensland Industrial Relations Commission (QIRC) for persons who wish to have their dispute resolved by the QIRC without having to deal with the Commonwealth or State jurisdictional arguments;
- establishing a Queensland Workplace Rights Ombudsman which is proposed to facilitate and promote fair and equitable industrial relations and workplace practices in Queensland.

Additional Functions of QIRC

Section 273A is designed to allow the Queensland Industrial Relations Commission (QIRC) to perform dispute resolution functions where they are conferred by the agreement of the parties on the QIRC.

This allows for the parties to an agreement to take the matter before the Queensland Industrial Relations Commission rather than the Australian Industrial Relations Commission, as is provided for under the Work Choices legislation.

The section will apply where there is an industrial dispute between an employee organisation and one or more employers or employer organisations and the parties have agreed in writing that the dispute can be referred to the Commission. The decision made by the Commission in performing the dispute resolution functions will not bind the parties unless the referral agreement allows for the decision to bind the parties.

Queensland Workplace Rights Office & Workplace Rights Ombudsman

The new legislation introduces two new bodies in Queensland - the Queensland Workplace Rights Office (QWRO) and the Workplace Rights Ombudsman.

Section 339D provides for the functions of the Workplace Rights Ombudsman. These functions include facilitating and encouraging fair industrial relations and work practices in Queensland, including by developing codes of practice, to investigate and publicise unlawful, unfair or inappropriate industrial relations and other work related matters in Queensland. The Ombudsman can also refer instances of possible unlawful industrial relations and other work related matter to appropriate authorities or services.

The Queensland Workplace Rights Office will consist of the Ombudsman and officers of the QWRO. It is the function of the QWRO to assist the Ombudsman in performing the Ombudsman's functions. Section 339W provides that an officer of the QWRO is not subject to direction by any other person, other than from within the QWRO, about the way the person performs their duties or any priority given to investigations.

There is a provision for an offence of subjecting a person to a detriment for making a complaint to the Ombudsman about an industrial work related matter. Subjecting a person to a detriment could include any of the following:

1. Terminating the contract under which the person performs the work;
2. Injuring the person in relation to the terms or conditions on which the person performs work;
3. Altering the position of the person to his or her detriment;
4. Refusing to employ or engage the person to perform work; and
5. Discriminating against the person in the terms or conditions on which the person is to be employed or engaged or to perform work.

Amendments to Child Employment Act 2006

The industrial relations amending legislation also provides for amendments to the *Child Employment Act 2006*, in particular an insertion of Part 2A for the minimum employment conditions of children. The intention of the Queensland Government is to protect children employed by corporations.

The particular provisions have been specifically noted as applying to agreements under the *Workplace Relations Act 1996* (Cth) or another arrangement entered into after 26 March 2006 (a common law agreement), as well as any preserved collective State agreements. The Part will only apply, however, to the employment of a child by a constitutional corporation if:

- (a) a state award or order is in force that covers employees who perform similar work to that performed by the child but are not employed by a constitutional corporation, or
- (b) entitlements or protections under the *Industrial Relations Act 1992* cover employees who perform similar work that is performed by the child, but who are not employed by a constitutional corporation: s15A.

It is the purpose of this Part to ensure a child is not disadvantaged in relation to employment conditions.

Upon the application of an inspector, or in a proceeding before the Industrial Commission, including an appeal, the Commission may decide whether an agreement or arrangement reduces the child's employment entitlements or protections. The way the Industrial Commission is required to decide whether an agreement reduces the employment entitlements is similar to the no disadvantage test currently under that Act.

If there has been a breach by the employer, they can be served with a compliance notice, which may include directions about the employment of the child.

There is also an additional requirement for employers to ensure they comply with the record keeping requirements of the *Industrial Relations Act* in relation to those child employees, with a \$3000 penalty for non-compliance. These requirements are not dissimilar to those found under Work Choices, so an employer who is currently complying with Work Choices will not be required to record any new information.

*See our previous paper on the *Queensland Child Employment Act 2006*.

Amendment of Magistrates Court Act

The major amendment in this legislation is to provide for a low cost proceeding in the Magistrates Court for employees on low incomes to take action against breaches of contract of employment. The claim may be started if the employee earns \$98,200.00 or less, or if there is an amount set by the Regulation. This is the same jurisdictional limit as the *Workplace Relations Act*. It will only be an employment claim, however, if the cause of action is outside the jurisdiction of the QIRC. If there has been an employment claim filed in the Magistrates Court for the breach of an employment contract, the Registrar will appoint a conciliator

for a dispute and organise a conciliation between the parties. A party may be represented by an organisation (such as a Union), however, if the person wishes to be represented by somebody other than a relevant organisation (for example a lawyer), the other party must agree to the representation and the conciliator must be satisfied that that party should be permitted to be represented by that person. This appointment must be in writing.

After the conciliation process is finished, the conciliator must file with the Registrar a certificate about the process, and this step is required before the Magistrates Court is able to hear and determine the matter. Interestingly, a party may apply to a Magistrates Court for an order giving effect to an agreement reached between the parties in the conciliation process. This will assist employees to ensure that the agreement reached is enforced.

Benefit to Employees?

The intention of the legislation is to provide an opportunity for employees currently locked out of dispute resolution processes under Federal legislation, to be able to have their complaints heard and resolved. It will be interesting to see how the new Ombudsman and the Magistrates Court processes will assist the parties in practical terms.

Benefit to Employers?

The legislation is clearly designed to assist employees *disadvantaged* through the changes to the Federal workplace relations legislation. There may however be an advantage to employers being able to be party to a more informal low cost scheme through the Magistrates Court and also through the ability to refer matters to the Queensland Industrial Relations Commission.

We will continue to monitor these changes and their practical and consequential effects. For information about the new processes or all employment and industrial relations matters, please do not hesitate to contact our Employment and Industrial Team.

Christopher Campbell
ccampbell@qmtlaw.com.au
07 3223 6403

Rebecca Nichols
rnichols@qmtlaw.com.au
07 3223 6415