

Private Sector Industrial Relations

Enforcement Framework

The Queensland Government is committed to supporting fairer work environments that contribute to the social and economic well-being of Queenslanders. In this regard, the Division of Private Sector Industrial Relations administers the *Industrial Relations Act 1999* with an inspectorate located throughout the state.

This enforcement framework outlines the enforcement policy employed by the Division which involves wage resolution procedures including the referral of matters for conference in the Queensland Industrial Relations Commission (QIRC); the conduct of investigations and legal proceedings; and the targeted auditing of workplaces. The appropriate use of a comprehensive range of enforcement strategies will encourage greater compliance with industrial relations laws and enhanced awareness of the rights and obligations of employees and employers.

Enforcement Policy

The Division of Private Sector Industrial Relations has a responsibility for improving compliance with Queensland's industrial relations laws and for efficiently applying its resources to achieve the greatest impact on the Queensland workforce.

The Division's contemporary enforcement policy incorporates the following strategies:

- **wage resolution** procedures for complaints regarding unpaid wages or other industrial relations entitlements (known as "wage complaints");
- **conference hearings** whereby wage complaints are referred to the QIRC for resolution;
- **investigation** of wage complaints including inspections and infringement notice and/or legal proceedings; and
- **auditing** of workplaces including educative strategies.

A self resolution process is also available in appropriate cases. A specially developed Self Recovery Kit may be issued to an employee to enable them to take self resolution action before the Minor Debts Court.

Wage Resolution

The Division of Private Sector Industrial Relations initially attempts to resolve all wage complaints which, on the face of information provided appear to have some substance and need resolution, by way of wage resolution procedures.

Wage resolution gives the parties every opportunity to resolve the matter without the necessity for formal conference, inspection or litigation action. Examples of wage resolution procedures utilised by the Division include:

- writing to the parties to inform them of their rights and obligations and encourage them to resolve the issues subject to complaint;
- telephoning the parties to provide information and clarify relevant issues to encourage them to resolve the issues subject to complaint;

- performing a desk based audit of time and wages records sent in by an employer to assess the merits and quantum of a complaint; and
- arranging a meeting of the parties to facilitate resolution of the issues subject to complaint.

Complaints that remain unresolved following wage resolution procedures are referred to the QIRC or an inspector for further investigation.

Conference Hearings

Wage complaints that remain unresolved following the wage resolution procedures may be referred to a Member of the QIRC for a conference hearing, with a view to resolution of the matter. An officer of the Division will provide assistance to the Commission as necessary.

Consideration is given in the first instance to referring complaints to the QIRC however, some cases may be deemed inappropriate for referral and will be subject to formal investigation and/or legal proceedings.

Investigation (including inspection, infringement notice and legal proceedings)

The Division of Private Sector Industrial Relations undertakes investigations into wage complaints that remain unresolved following the Division's wage resolution procedures or following a conference hearing in the QIRC. The purpose of investigation is to:

- investigate disputed facts;
- consult and discuss the reasons for any differing opinions in interpreting industrial laws;
- establish employee entitlements;
- recover wages and other entitlements on behalf of employees;
- institute infringement notice action and/or legal proceedings under the *Industrial Relations Act 1999* where appropriate; and
- ascertain an employer's intention regarding future compliance with industrial laws.

Inspection

Industrial Inspectors of the Division are empowered to interview employers and employees regarding any matter relating to compliance with the *Industrial Relations Act 1999*.

An inspector may also inspect the time and wages records of all employees of an employer to ensure compliance with the Act.

An inspector may:

- make a formal claim on an employer for the payment of arrears of wages that may be due to an employee;
- issue an infringement notice in relation to a breach of the Act; or
- recommend that legal proceedings be taken against an employer and/or an executive officer of a corporation.

Generally, the Division aims to complete comprehensive investigations within 6 months. Less serious or complicated complaints will be dealt with more quickly.

Infringement Notice and Legal Proceedings

The issuing of infringement notices and legal proceedings assists prevention by deterring others from not complying with industrial relations legislation.

Infringement Notices

An infringement notice (sometimes called an “on-the-spot fine”) may be issued for certain offences against the *Industrial Relations Act 1999*.

When an Inspector issues an infringement notice, it has an immediate punitive effect. Infringement notices are appropriate for use when the impact of the offence on employees is high, or the offence adversely affects the inspector’s ability to recover wages to which an employee may be entitled. More serious offences involving wilful or repetitive behaviour, involving large sums of money or committed over a prolonged period of employment may also warrant the issuing of an infringement notice.

A person issued with an infringement notice may elect to have the matter heard in the Industrial Magistrates Court.

Legal Proceedings

Legal proceedings may be taken where an inspector has obtained sufficient evidence to establish a case to answer and where there is a reasonable prospect of a successful outcome.

Before initiating legal proceedings the matter will be reviewed by a senior officer to ensure there is sufficient evidence to support the case.

Legal Proceedings include the following options:

- proceedings in the Industrial Magistrates Court seeking a conviction and fine against an employer and /or an executive officer of a corporation for the offence of failing to pay correct wages or another offence under the *Industrial Relations Act 1999*;
- an application to the Queensland Industrial Relations Commission for an order for the recovery of wages ; and
- an application to the Industrial Magistrates Court for an order for the recovery of wages.

Where a wage complaint remains unresolved following the wage resolution processes and subsequent investigation, during which the parties have been given every opportunity to resolve the matter, consideration is given in the first instance to taking offence actions in the Industrial Magistrates Court to ensure compliance.

Other circumstances where offence action may be taken include:

- where an inspector alleges that a person has repeated the same offence;
- where an inspector alleges that a person has been advised of a requirement of the legislation but has failed to comply;
- where an inspector alleges that failure to keep and have records available has jeopardised an employee’s ability to recover entitlements; and
- alleged offences relating to inspectors’ powers, obstruction, and false or misleading documents and information.

Outcomes of successful prosecutions for offences may be published to draw attention to the consequence of industrial relations violations and the need for fairness in workplaces.

Applications for Wages Recovery Orders

Applications to the Industrial Magistrates Court or the Queensland Industrial Relations Commission for a wages recovery order may be used where non- payment of wages has arisen from differing opinions over the interpretation of an industrial law or where disputed facts are in question.

The merits of such applications are decided on the balance of probabilities by the relevant tribunals and result in no convictions or penalties imposed on the employer in question.

The use of applications is not appropriate where wilful or repetitive behaviour is involved in the offence or where the employer has a poor industrial relations compliance history.

Appeals

The purpose of appeals to a higher court is to ensure that legal proceedings are justly and correctly applied and that any penalty or order imposed is appropriate in the circumstances. The primary concern in a decision to appeal is whether the applicable law has been correctly stated and applied by the Industrial Magistrate or Commissioner. Where it appears that the Industrial Magistrate or Commissioner has erred at law or the penalty imposed appears to be inadequate in the circumstances, the Division will consider an appeal against the decision. This action will only be taken when:

- advice from a legal officer presents a basis for the appeal;
- there is a reasonable prospect that the appeal will be successful; or
- the issue under appeal may set a precedent.

Audit

The Division of Private Sector Industrial Relations conducts proactive audit activities. A number of audit strategies are used either individually or in combination to maximise impact of audit activities.

Strategic targeting

The principal objective of strategic targeting is to focus audit activities on those individuals, industries or issues that cause significant workloads for compliance staff or those groups of employees who appear to be exploited.

Targeted groups or issues include:

- employers with a poor performance regarding industrial obligations;
- industries with a high non-compliance record;
- specific legislative industrial obligations that create significant compliance workloads;
- classes of workers experiencing non-compliance;
- areas of new industrial relations coverage; and
- geographical areas.

Campaign methodologies

The methodologies for the conduct of audits encompass both educative and inspection strategies.

Educative Strategies

Educative strategies as a method of targeting compliance without the use of formal inspection processes are utilised where appropriate.

Educative strategies include:

- seminars that provide an opportunity to capture a large number of industry participants to impart a common understanding of the Division's expectations and standards in award and legislative compliance;
- media campaigns that notify the details of proposed audit programs and the outcomes of audit programs;
- information kits that contain relevant industrial information; and
- provision of information by way of telephone, email and web-based services.

Inspection Strategies

Although formal inspection processes are necessary in certain circumstances, inspection strategies may extend to a range of inspection methods.

Inspection strategies include:

- Category 1 (Self-Audit) - targeted employers are afforded the opportunity to conduct a self-audit of their time and wages records and pay advices with appropriate follow-up action as required;
- Category 2 (Desk Audit) - targeted employers are required to provide a sample of their time and wages records to a Regional Office of the Division for purposes of auditing;
- Category 3 (Random inspections of a percentage of targeted employers) – following written notification to targeted employers regarding industrial obligations, inspections are carried out of a percentage of targeted employers to ensure compliance; and
- Category 4 (Inspections of all targeted employers).

Infringement Notice and/or Legal Proceedings

Infringement notices may be issued and/or legal proceedings recommended as a result of audit activities. (refer to Infringement Notice and Legal Proceedings under Investigation in this document for further information).