GILSHENAN & LUTON
LEGAL PRACTICE

Legislation update for prosecuting agencies

The Industrial Relations Act 2016 and its impact on appeals from the Industrial Magistrates Court

March 2017

On 1 March 2017 the new Industrial Relations Act 2016 came into full effect. While much of the original 1999 Act has been preserved, the new Act contains a number of key developments, particularly for government lawyers who conduct proceedings in the Industrial Magistrates Court.

Appeals

In line with the 1999 Act, Industrial Magistrates Court decisions are still appealed to the Industrial Court of Queensland ('ICQ') (and must be filed within 21 days after the decision is given).[1] Upon a successful appeal, the ICQ continues to have the same powers it had previously.[2]

As for appeals from the ICQ, previously, the only possible recourse for a person dissatisfied with a decision of the ICQ was to apply for a judicial review of the decision.

Now though, a person aggrieved by a decision of the ICQ can appeal the decision to the Court of Appeal on the ground of:

a) Error of law; or
b) Excess, or want, of jurisdiction.[3]

Costs

Under the 1999 Act, costs could only be awarded by the ICQ against an applicant, and even then, only if the application had been made vexatiously or without reasonable cause.[4]

The new Act changes that position somewhat, in that upon application, the ICQ may order either party to the proceeding to pay costs incurred by another party, if the Court is satisfied:

i. the party made the application or responded to the application vexatiously or without reasonable cause; or

[1] Pursuant to s556.
[2] Pursuant to s558.
[3] Section 554(1).
[4] Section 335 *Industrial Relations Act* 1999.

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ii. it would have been reasonably apparent to the party that the application or response to the application had no reasonable prospect of success.[5]

Additionally, a representative of a party may be ordered to pay costs incurred by another party to the proceeding, if the Court is satisfied that the representative caused the costs to be incurred:

i. because the representative encouraged the represented party to start, continue, or respond to the proceeding, and it should have been reasonably apparent to the representative that the person had no reasonable prospect of success; or

ii. because of an unreasonable act or omission of the representative in connection with the conduct or continuation of the proceeding.[6]

Transitional provisions

Practitioners also need to be aware of the new Act's transitional provisions, especially for appeals filed after the commencement of the new Act, but where the appealed decision occurred prior to the Act's commencement.[7]

In such instances, s1024 of the new Act preserves the right of appeal previously provided for in s341(2) of the 1999 Act. As such, in those matters the appeal would be determined under the 1999 Act, not the new Act.

For further inquiries or assistance, please contact Glen Cranny, Principal, Gilshenan & Luton Legal Practice on 3361 0240 or gcranny@gnl.com.au

[5] Section 545(2)(a).
[6] Section 545(2)(b).
[7] As it may be that your originating appeal documents need to refer to certain sections within the new Act.

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