

Case law update for prosecuting agencies

Justices Act complaints and particulars

*Drawing a valid complaint, and
amending a defective one*

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There have been a number of recent decisions concerning the validity of complaints issued under the Justices Act 1886 (Qld), and the ability to amend defective complaints. The cases reflect that complaints require the inclusion of matters that go well beyond the requirements of the Justices Act itself, but there is significant scope for amendment if required.

The legislative requirements

Division 1 of the *Justices Act* contains a number of provisions with respect to complaints, specifically:

- Section 42 – proceedings under the Act shall be commenced by a written complaint;
- Section 43 – every complaint shall be for one matter (charge) only;
- Sections 46 and 47 – outline the requirements for a sufficient description of an offence charged in the complaint, and
- Section 52 – a complaint for a summary offence must be made within one year from the time when the matter of complaint arose.

Those provisions are relatively brief and provide limited practical guidance to practitioners in drawing complaints.

The common law requirements

Whilst the legislative requirements outlined above assist to some extent, the decided cases make clear that for a complaint to be valid, there are requirements beyond those found in the *Justices Act*.

*Kirk v Industrial Court of New South Wales*¹, a 2010 High Court decision, is regarded as the leading authority in this area, and serves as a good starting point for practitioners. Since *Kirk*, a number of Queensland cases² have also considered the common law requirements for a valid complaint. The combined effect of those cases provides a list of factors for practitioners to consider when drawing (or considering the validity of) a summary complaint. That list includes the following:

- (a) An offence that is punishable in law must be disclosed;³
- (b) A defendant is entitled to be told not only of the legal nature of the offence which is charged, but also of the particular act, matter or thing alleged as the foundation of the charge;⁴
- (c) The complaint must inform the court of the identity of the offence with which it is required to deal, and provide the accused with the substance of the charge which he or she is called upon to meet;⁵
- (d) Such a charge “*must at least condescend to identifying the essential factual ingredients of the actual offence*”;⁶
- (e) A complaint must specify “*the time, place and manner of the defendant's acts or omissions*”.⁷

Other requirements may arise depending on the legislation under which a charge is preferred. The existence of particular elements of a charge, and the associated defences within the subject legislation may, for example, require further particularisation of the prosecution case.⁸

Amendment of complaints

Section 48 of the *Justices Act* permits amendment of a complaint at the ‘hearing of the complaint’, in circumstances where there is a defect in the complaint (in substance or form), or a variance between the complaint and the evidence adduced at hearing. The section has generated much debate over time, particularly as to when a complaint is so defective as to be irreparable and therefore invalid. That issue was recently considered by the Court of Appeal in *Harrison v President of the Industrial Court of Queensland & Ors*.⁹

¹ *Kirk v Industrial Court of New South Wales* (2010) 239 CLR 531.

² See for example *Coggins v Steelcon Cava Pty Ltd* [2014] ICQ 022, *Karimbla Construction Services Pty Ltd v President of the Industrial Court of Queensland* [2014] QSC 56, and *Harrison v President of the Industrial Court of Queensland & Ors* [2016] QCA 89.

³ *Harrison v President of the Industrial Court of Queensland & Ors* [2016] QCA 89 at [144] citing *Doja v The Queen* (2009) 198 A Crim R 349, 352 [3].

⁴ *Kirk v Industrial Court of New South Wales* (2010) 239 CLR 531 at [26] on page 557 citing *Johnson v Miller* (1937) 59 CLR 467 at 489 per Dixon J.

⁵ *Ibid*,

⁶ *Kirk v Industrial Court of New South Wales* (2010) 239 CLR 531 at 557, citing *John L Pty Ltd v Attorney General of New South Wales* (1987) 163 CLR 508 at 520.

⁷ *Bell v Hendry & Ors* [2014] ICQ 018 at [37] citing *Kirk v Industrial Court of New South Wales* (2010) 239 CLR 531 at [26] on page 557 (citing *Johnson v Miller* (1937) 59 CLR 467 at 486 per Dixon J).

⁸ See for example *Coggins v Steelcon Cava Pty Ltd* [2014] ICQ 022 at [6].

⁹ *Harrison v President of the Industrial Court of Queensland & Ors* [2016] QCA 89.

Upon a judicial review of the Industrial Court's decision¹⁰ (which had found that the complaints were nullities and accordingly there was no power to amend them¹¹), the Court of Appeal held that:

- The Industrial Court erred in finding that each of the complaints was a nullity, and that error was jurisdictional error.¹² **A complaint which is defective because it does not comply with s43 is not a nullity.**¹³ Having decided that the complaints did not comply with s43, the Magistrate should have asked the prosecution to elect the offences it wished to proceed on, rather than dismissing the complaints for non-compliance.
- The Industrial Court erred in finding that each of the complaints was beyond the reach of the power to amend under s48 of the *Justices Act*.¹⁴ **Despite the limitation period having had expired, the complaints were capable of amendment** in a way that would comply with the requirements for a properly pleaded charge.¹⁵ **Even a failure to allege a necessary element of an offence may be amended**¹⁶ pursuant to s48.¹⁷

As for the amendment of particulars (rather than the complaint itself), the *Justices Act* is unhelpfully silent. That issue has recently been considered in *Parhusip v Bell; Bell v Parhusip*¹⁸ however. The Industrial Court concluded that, unless there is an element of unfairness involved, amendments to particulars will ordinarily be able to be made by the complainant and used at the hearing of the complaint.¹⁹

These cases suggest the power to amend complaints under the *Justices Act* is a wide one, to be given due effect, in preference to any narrow or technical approach to the validity of complaints.

What this means for prosecuting agencies

When drafting *Justices Act* complaints, prosecuting agencies must have regard to more than just the provisions of the Act itself; the common law requirements summarised above must also be considered and applied. Failure to do so may lead to a defence application to strike out a complaint as invalid. Recent cases though suggest significant scope is available for prosecutors to amend complaints (and particulars) where defects are shown.

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

¹⁰ *Bell v Hendry & Ors* [2014] ICQ 18.

¹¹ *Bell v Hendry & Ors* [2014] ICQ 18 at [68].

¹² *Harrison v President of the Industrial Court of Queensland & Ors* [2016] QCA 89 at [11].

¹³ *Harrison v President of the Industrial Court of Queensland & Ors* [2016] QCA 89 at [114].

¹⁴ *Harrison v President of the Industrial Court of Queensland & Ors* [2016] QCA 89 at [12].

¹⁵ *Harrison v President of the Industrial Court of Queensland & Ors* [2016] QCA 89 at [168].

¹⁶ Subject to the decision maker being informed by the three principles as listed in *Harrison v President of the Industrial Court of Queensland & Ors* [2016] QCA 89 at [144].

¹⁷ *Harrison v President of the Industrial Court of Queensland & Ors* [2016] QCA 89 at [114].

¹⁸ *Parhusip v Bell; Bell v Parhusip*¹⁸ [2015] ICQ 025.

¹⁹ *Ibid* at [47].