

## **Industrial Relations and Other Legislation Amendment Bill 2022**

**Submission No:** 31

**Submitted by:** Hon Justice Peter Davis, President, Industrial Court of Queensland  
and the Queensland Industrial Relations Commission

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INDUSTRIAL COURT OF QUEENSLAND  
QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

22 June 2022

The Honourable Grace Grace MP  
Minister for Education, Minister for Industrial Relations  
and Minister for Racing  
PO Box 15033  
CITY EAST QLD 4002

Dear Minister

I am receiving expressions of concern from Commissioners in relation to the operation of ss 529, 530 and 530A of the *Industrial Relations Act 2016* (the IR Act). These provisions concern the representation of parties before the Commission.<sup>1</sup>

Policy considerations have arisen in the past as to the extent that lawyers should have a right of appearance in the Commission. The present issues though relate to other issues.

Sections 529, 530 and 530A of the IR Act provide, as relevant here, as follows:

**“529 Representation of parties generally**

- (1) Subject to section 530A(4), in proceedings, a party to the proceedings, or a person ordered or permitted to appear or to be represented in the proceedings, may be represented by—
  - (a) an agent appointed in writing; or
  - (b) if the party or person is an organisation—an officer or member of the organisation.
- (2) In this section—

*proceedings—*

  - (a) means proceedings under this Act or another Act being conducted by the court, the commission, an Industrial Magistrates Court or the registrar; and
  - (b) includes conciliation being conducted under part 3, division 4 or part 5, division 5A by a conciliator.

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<sup>1</sup> And also the Court.

**530 Legal representation**

- (1A) This section applies in relation to proceedings other than a proceeding for a public service appeal.<sup>2</sup>
- (1) A party to proceedings, or person ordered or permitted to appear or to be represented in the proceedings, may be represented by a lawyer only if—
- (a) for proceedings in the court—
    - (i) all parties consent; or
    - (ii) the court gives leave; or
    - (iii) the proceedings are for the prosecution of an offence; or
  - (b) for proceedings before the full bench—the full bench gives leave; or
  - (c) for proceedings before the commission, other than the full bench, under the Anti-Discrimination Act 1991—the commission gives leave; or
  - (d) for other proceedings before the commission, other than the full bench—
    - (i) all parties consent; or
    - (ii) for a proceeding relating to a matter under a relevant provision<sup>3</sup>—the commission gives leave; or ...<sup>4</sup>
- (2) However, the person or party must not be represented by a lawyer—
- (a) if the party is a negotiating party to arbitration proceedings before the full bench under chapter 4, part 3, division 2;<sup>5</sup> or
  - (b) in proceedings before the commission under section 403<sup>6</sup> or 475;<sup>7</sup> or
  - (c) in proceedings remitted to the Industrial Magistrates Court under section 404(2)<sup>8</sup> or 475(2).<sup>9</sup>
- (3) Despite subsection (1), a party or person may be represented by a lawyer in making a written submission to the commission in relation to—
- (a) the making or variation of a modern award under chapter 3; and
  - (b) the making of a general ruling about the Queensland minimum wage under section 458.
- (4) An industrial tribunal may give leave under subsection (1) only if—

<sup>2</sup> As this is dealt with by s 530A.

<sup>3</sup> “Relevant provision” is defined in s 530(7) but it is not necessary to go to the definition.

<sup>4</sup> Subsections 530(1)(e), (f) and (g) concern proceedings before the Industrial Magistrates Court, the Registrar and a conciliator and are not relevant here.

<sup>5</sup> Arbitration of collective bargaining.

<sup>6</sup> Repayment of fees charged by private employment agents.

<sup>7</sup> Recovery of unpaid wages and superannuation contributions.

<sup>8</sup> Concerns private employment agent’s fees.

<sup>9</sup> Concerns unpaid wages.

- (a) it would enable the proceedings to be dealt with more efficiently, having regard to the complexity of the matter; or
  - (b) it would be unfair not to allow the party or person to be represented because the party or person is unable to represent itself, himself or herself; or
  - (c) it would be unfair not to allow the party or person to be represented having regard to fairness between the party or person, and other parties or persons in the proceedings. ...<sup>10</sup>
- (5) For this section, a party or person is taken not to be represented by a lawyer if the lawyer is—
- (a) an employee or officer of the party or person; or
  - (b) an employee or officer of an entity representing the party or person, if the entity is—
    - (i) an organisation; or
    - (ii) an association of employers that is not registered under chapter 12; or
    - (iii) a State peak council. ...<sup>11</sup>

- (7) In this section—

***industrial tribunal*** means the Court of Appeal, court, full bench, commission or Industrial Magistrates Court.

***proceedings***—

- (a) means proceedings under this Act or another Act being conducted by the court, the commission, an Industrial Magistrates Court or the registrar; and
- (b) includes conciliation being conducted under part 3, division 4 or part 5, division 5A by a conciliator.

***relevant provision***, for a proceeding before the commission other than the full bench, means—

- (a) chapter 8; or
- (b) section 471; or
- (c) chapter 12, part 2 or 16.

### **530A Representation—public service appeals**

- (1) This section applies in relation to a proceeding for a public service appeal.
- (2) A party to the appeal may appear personally or by an agent.
- (3) However, a party may not be represented by a person if—
  - (a) the party has instructed the person to act as the party's lawyer; and

<sup>10</sup> Legislative note removed.

<sup>11</sup> Section 530(6) concerns prosecutions in the Industrial Magistrates Court.

- (b) in acting as the party's lawyer, the person would be subject to the Legal Profession Act 2007.
- (4) Also, a party to an appeal about a promotion decision may be represented by an agent only with the leave of the commission." (emphasis added)

Sections 529 and 530 concern representation in the Commission generally. Section 530A concerns public service appeals. I shall put s 530A to one side for a moment.

Sections 529 and 530 reflect clear policy and purpose. That is:

1. a party is entitled to be represented by an agent<sup>12</sup> or, if the party is an organisation by an officer or a member of the organisation;<sup>13</sup>
2. that "agent" may not be a lawyer unless the Court gives leave;<sup>14</sup>
3. the Commission may only give leave in limited circumstances,<sup>15</sup> but
4. no leave is required if the lawyer is an employee or officer of the party or is an employee or officer of an entity representing the party if the entity is, relevantly here, a union of employees or an association of employers.<sup>16</sup>

Some advocates employed by unions and employer groups have legal training and some do not. The difficulties being encountered do not concern industrial advocates from unions or from employer groups. They are well organised and represent their members well.

Unpaid agents also appear for parties. Citizens who litigate in the Commission or the Court often have a trusted friend or colleague who holds their respect and are enlisted to help. They may be a teacher, or a Justice of the Peace, or a long term government employee who brings general life skills to the aid of the party. The nature of the jurisdiction of the Commission and the Court lends itself to parties appearing through unpaid agents. There is no issue with these unpaid agents.

However, there are organisations who hold themselves out as firms of industrial advocates who are obviously charging citizens of Queensland fees to represent them. For example, there has been a case at the Commission where a party had engaged [REDACTED]. The party terminated their relationship with [REDACTED] who then claimed a lien over documents to secure fees owed to the firm.

In another case, [REDACTED] filed a Form 33 Notice of Appointment of Agent specifying a person [REDACTED] as "agent" of the party. When it was pointed out that [REDACTED] was a lawyer, the Commission was told that [REDACTED] name was included "erroneously through administrative error, as [REDACTED] had been the lay advocate working on the file".

<sup>12</sup> Section 529(1)(a).

<sup>13</sup> Section 529(1)(b).

<sup>14</sup> Section 530(1)(a) (the Court) and s 530(1)(d) (the Commission).

<sup>15</sup> Section 530(4).

<sup>16</sup> Section 530(5); it is not necessary here to mention any "state peak council"



Presumably fees were being charged for the work done by [REDACTED] and by [REDACTED]

A similar situation arose in another case. [REDACTED] That was a Public Service appeal. [REDACTED] were involved. [REDACTED] had been appointed and when his status as a lawyer was pointed out, a further notice was filed nominating a lay advocate of an affiliated entity. [REDACTED]

[REDACTED] posted on the internet a YouTube video [REDACTED]

The video effectively seeks to drum up business [REDACTED]

[REDACTED] Therefore, a firm of industrial advocates (not lawyers) are advertising their services by the use of a video where a lawyer holding himself out as a lawyer is speaking and advising potential clients.

The video raises all number of issues:

1. Who is making the representations? [REDACTED]
2. Are [REDACTED] one and the same?
3. [REDACTED] refers to [REDACTED] as “the Union” but it is not a registered organisation under Chapter 12 of the IR Act.


[REDACTED] (also referred to in the video) are all not registered under Chapter 12 of the IR Act.

In a recent case in the Court, [REDACTED] acted for a party appealing from a decision of the Vice President given in the Commission to confirm the issue of an improvement notice under the *Work Health and Safety Act 2011*. The party’s interests were not being advanced by this gentleman who I assume was being paid. He simply did not have the skill to advocate for the applicant. He ultimately brought a baseless application seeking that I disqualify myself from hearing the matter. [REDACTED] When the prospect of [REDACTED] paying the Regulator’s costs himself of that application arose, [REDACTED] withdrew.

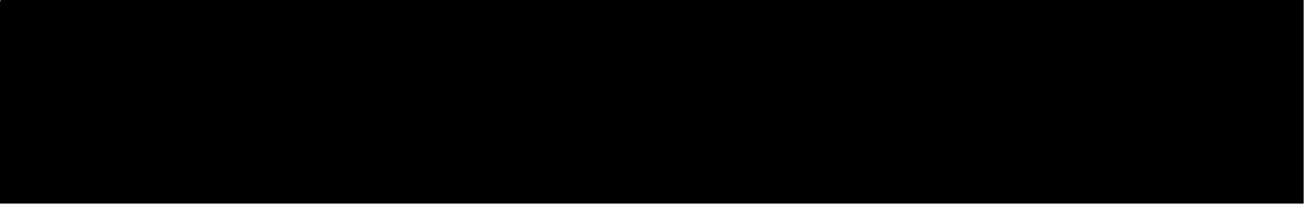
The central problem is that there is a group of professional advocates who are clearly providing services of a legal nature who are completely unregulated.

[REDACTED]

[REDACTED]



These issues are arising regularly and suggest an urgent need for some regulation of those who are charging fees to represent Queensland citizens in the Commission (and the Court) and who are not solicitors and/or barristers who have been given leave pursuant to s 530 of the IR Act.



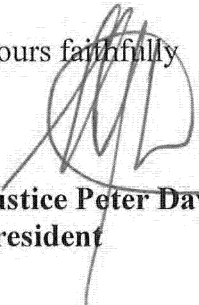
Section 530A throws up different issues. The section concerns representation in Public Service appeals.

Like s 530, s 530A provides that a party “may appear personally or by an agent”.<sup>24</sup> Subsection (3) then prohibits certain persons from acting as a party’s agent. However, that prohibition is framed by identifying the “agent” by reference to the nature of the instructions that have been given by the party to the appeal. The party to the appeal may not be represented by a person if “(a) the party has instructed the person to act as the party’s lawyer”.

Lawyers employed by these various firms are asserting that they have not been instructed “to act as the party’s lawyer”. They have been instructed “to act as the party’s agent”. Section 530A could easily be amended in order to overcome this nonsense, but, in my respectful opinion, a broader approach is required to regulate industrial advocates appearing in the Commission and the Court, as I have explained.

Could you please consider these issues.

Yours faithfully



**Justice Peter Davis**  
**President**

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<sup>23</sup> Through a national scheme of which Queensland is a part.

<sup>24</sup> Section 530A(2).