"Be proud of Yourself"

ICA Submission to the Western Australia Work Health and Safety Bill 2014

Independent Contractors Australia

www.independentcontractors.net.au

January 2015

Incorporated Victoria No A0050004U
ABN: 54 403 453 626
www.independentcontractors.net.au
PO Box 13103 Law Courts 8010 Vic

Submission to the Western Australia Work Health and Safety Bill 2014

29 January 2015

1. Overview

In principle, ICA supports the idea of harmonized OHS laws. It makes sense to have a level of consistency across Australia. However, the more important question must be: harmonization to what? ICA submits that the federal harmonized OHS model laws are inferior to the OHS laws that had been in place across the Australian states, except for New South Wales (see below) and are inferior to the existing Western Australia OHS Act.

This submission focuses on the 'high end' principles of the Western Australian OHS Bill 2014—principally the 'duties of care'—and proposes that:

- If implemented in its current form, the Bill would be a backward step for Western Australia when compared with the current WA OHS Act.
- If the Bill is to proceed, it should be amended to insert the term 'control' in appropriate clauses throughout the Bill, but most importantly under the 'duties of care'.

Further amendments are recommended to:

- Restore the right to silence.
- Make compliance with Codes deemed to be compliance with the Act
- Remove 'nationally consistent' from the objects of the Bill
- Remove reference to unions and employer associations from the Bill
- Remove 'independent contractors' from the definition of 'union.'

2. The international principles of OHS law (Robens 1960s & ILO)

ICA's recommendations are made in the light of the following reasoning.

OHS law is a division of criminal law. The big differences between OHS law and normal criminal law is that, under OHS law, a breach of the law can occur even if no harm was done to any party or if intent did not exist. For example, if scaffolding on a building collapses, but no one is injured, a breach of OHS law may have, nonetheless, still occurred.

Because of this, OHS law internationally has been formulated to ensure balance and fairness. The key to this formulation is that parties are held responsible for what is reasonable and practicable for them to control.

This overarching principle was first established in the UK in the 1960s following an inquiry into the deaths of more than 200 schoolchildren and their teachers when slurry from a coal mine slid down a hill, engulfing the children's school. The 'Robens' inquiry recommended reasonable and practicable control as the basis of OHS law. This principle has been adopted in the OHS Convention of the International Labour Organisation to which Australia is a signatory.

Since the 1970s an enormous body of legal precedents has been established internationally and in Australia over the meaning, intent and application of OHS law under the Robens principles. This is established law that provides great certainty.

The current Western Australia OHS Act is structured on the 'Robens' principles.

The Federal 'harmonized' OHS model fails to apply this principle in full—notably omitting 'control' as a factor in the 'duties of care'.

The WA OHS Bill 2014 picks up on the Federal OHS harmonized model, but makes important changes, including the insertion of 'control'—but not as fully as should be the case. ICA strongly recommends the insertion of 'control' in all the 'duties of care' to ensure that the Bill, at minimum, reflects the quality and standard of the existing WA OHS Act and retains the legal and practical certainty currently operating in WA.

3. Understanding why the Federal OHS model excludes 'control'

The exclusion of 'control' has come about because of a compromise with opponents of the Robens principles.

There is a body of argument from some OHS academics, some OHS lawyers in Australia and the union movement for an alternative OHS paradigm to Robens. They argue that:

- 'Employers' will always have unsafe practices in order to save money.
- OHS law should be 'oppressive' towards employers to scare them into compliance.
- Presumption of guilt should apply. That is, anyone defined as an 'employer' should be guilty by virtue of something untoward happening. The 'employer' must 'un-prove' guilt in an environment where the right to silence is removed.
- Unions should be prosecutors.
- Regulations should be highly prescriptive to ensure proper employer behaviour.

This view has in part found its way into the Federal harmonized OHS model. The Federal model is a compromise between the application of Robens and this alternative view.

The way this compromise unfolded is as follows:

- Around the 1980s all Australian states bought in OHS laws based on the Robens principles.

- In 2000, NSW removed the Robens principles and created an OHS Act that applied the alternative (union) model as described above. In other words, employer-presumed guilt. Over several years prosecutions occurred in NSW that created great controversy and injustice, as individuals who had clearly done nothing wrong were convicted.
- In 2004, the ACT introduced 'industrial manslaughter' OHS laws that reflected aspects of the NSW laws.
- In 2005, the Victorian Labor government sought to introduce 'industrial manslaughter laws which reflected the NSW laws. However, after a wide-ranging review, the "Maxwell Report" recommended a full application of Robens. The subsequent (and current) Victorian OHS Act is probably one of the most advanced and balanced applications of the Robens OHS principles operating globally.
- In 2010, under appeal of a high profile NSW OHS conviction, the High Court effectively (arguably) declared the NSW laws unconstitutional and quashed the conviction. (See attached legal briefing note Attachment A.) The effect was to make the NSW laws inoperative.

It was in this environment, particularly in light of the High Court rejection of the NSW laws, that the Rudd/Gillard government attempted to move forward with OHS harmonization. In fact there was a 'battle' by those opposing Robens and promoting the alternative NSW model to incorporate as much as possible of their agenda (employer guilt) into the federal harmonized model. The outcome of that process is that the Federal 'harmonized' OHS law is a hybrid of Robens combined with aspects of the alternative NSW model. Specifically:

- 'Control' is excluded from the 'duties of care'.
- 'Reasonable and practicably' is included.
- Because 'control' is excluded, the Federal Act 'invented' a new term to identify persons being responsible, this being a *'person conducting a business or undertaking'*. (PCBU). This (PCBU) is a legally unknown and untested concept.

ICA submits that the PCBU terminology is something that creates confusion, is entirely untested at law and, as such, is an unknown quantity. ICA anticipates that it will be many years and several court cases before the courts determine what PCBU actually means. It is instructive that, under the federal model Act, the definition of a PCBU is 'circular'. That is, a PCBU is defined as a PCBU. This is reflected in the Western Australia Bill.

4. The state of play with the harmonized OHS laws

The implementation of the federal harmonized OHS model has been controversial because of the part-exclusion of Robens. The outcome is that the model laws are not in operation across all of Australia.

The federal OHS model has been

- Implemented federally in the ACT, Queensland, NSW and Tasmania.
- Victoria firmly opposed the federal model and has retained its existing (Robens) OHS law.

- Western Australia has (so far) retained its existing (Robens) laws.
- South Australia introduced a considerably altered version of the federal model laws. For example, it introduced ‘control’, albeit in a limited way.

Specific recommendations

If the Western Australian Bill is to proceed, ICA recommends amendments to the Bill along the following lines.

5. The 'control' issue

To insert into appropriate sections under the 'duties of care' the term 'control' as underlined below.

Insert 'who has control of a workplace'

> **17. Management of risks**
> (1) A duty imposed on a person to ensure health and safety requires the person who has control of a workplace:
> (a) to eliminate risks to health and safety, so far as is reasonably practicable; and …
>
> **19. Primary duty of care**
> (1) A person conducting a business or undertaking who has control of a workplace must ensure, so far as is reasonably practicable, the health and safety of: …
>
> (2) A person conducting a business or undertaking who has control of a workplace must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.
>
> (3) Without limiting subsections (1) and (2), a person conducting a business or undertaking who has control of a workplace must ensure, so far as is reasonably practicable: …
>
> **27. Duty of officers**
> (1) If a person conducting a business or undertaking who has control of a workplace has a duty or obligation under this Act, an officer of the person conducting the business or undertaking must exercise due diligence to ensure that the person conducting the business or undertaking complies with that duty or obligation.

Further, the definition of a 'person conducting a business or undertaking' should be amended to include 'if they have control of a workplace'.

> **5. Meaning of person conducting a business or undertaking**
> (1) For the purposes of this Act, a person conducts a business or undertaking if they have control of a workplace:
> (a) whether the person conducts the business or undertaking alone or with others; and
> (b) whether or not the business or undertaking is conducted for profit or gain.

6. Right to silence:

Prosecutions under OHS law are criminal prosecutions. Basic rights under criminal law protect accused people from abuse of power by authorities. One of these basic rights is the right to refuse to answer questions on the grounds of self-incrimination. These rights are central to the integrity of the criminal justice system and people's confidence in the justice system. The federal OHS model laws remove the right to silence. This is reflected in the WA OHS Bill as follows:

> **172. Abrogation of privilege against self-incrimination**
>
> (1) A person is not excused from answering a question or providing information or a document under this Part on the ground that the answer to the question, or the information or document, may tend to incriminate the person or expose the person to a penalty.
>
> (2) However, the answer to a question or information or a document provided by an individual is not admissible as evidence against that individual in civil or criminal proceedings other than proceedings arising out of the false or misleading nature of the answer, information or document.

ICA submits that the WA Bill should reflect the protection against self-incrimination afforded under the Victorian OHS Act that states:

> **Victorian Act 154. Protection against self-incrimination**
>
> (1) A natural person may refuse or fail to give information or do any other thing that the person is required to do by or under this Act or the regulations if giving the information or doing the other thing would tend to incriminate the person.

The reasons for maintaining protection against self-incrimination were well explained by the Victorian Attorney-General, Robert Clark, on 5 May 2011 in a Second Reading Speech (on the Victorian Equal Opportunity Amendment Bill). The Attorney-General said:

> You will see that the previous Victorian government had passed amendments to the EO Act which would have given the EO&HRC Commissioner coercive powers remarkably similar to the coercive powers being proposed to be given to Inspectors under the Model OHS laws. The issue is the same as that under the Model harmonized OHS laws taking away the right to silence.
>
> … The potential for abuse of this power is real, and it is inappropriate for a public body such as the commission to be able to exercise such sweeping and unchecked powers. The bill therefore introduces a range of safeguards in relation to the commission's powers, including:…removing the power for the commission unilaterally to compel the production of information or documents and attendance as part of its investigation processes; and instead providing for the commission to apply to VCAT for the necessary order, with specific procedural protections for the parties against whom such an order is sought;

ICA submits that, in criminal justice systems, including OHS, the responsible authority in undertaking investigations for the purposes of potential prosecutions should be required to refer back to the judiciary for authority should it seek to compel answers to questions. Such a procedure is necessary to protect against potential abuse of authority.

7. Codes of Practice and certainty

ICA submits that Codes of Practice under the OHS Acts are a primary mechanism by which businesses, particularly small business people, can understand their OHS compliance requirements in a practical way. ICA recommends the approach in Victoria where the compliance with an OHS Code is deemed to be compliance with the Act. By comparison the WA OHS Bill reflects the treatment of Codes in the federal harmonized OHS model as only being evidence of compliance.

The Victorian Act states

> **152. Effect of compliance with regulations or compliance codes**
>
> If—
>
> (a) the regulations or a compliance code make provision for or with respect to a duty or obligation imposed by this Act or the regulations; and
>
> (b) a person complies with the regulations or compliance code to the extent that it makes that provision—
>
> the person is, for the purposes of this Act and the regulations, taken to have complied with this Act or the regulations in relation to that duty or obligation.

Under the current Victorian Act, Codes of practice are the practical rules that industries adopt that are sanctioned under the Act and which tell them what is a safe or unsafe practice. For example, the electrical code of practice will specifically instruct electricians about how and when power should be isolated. The codes are hugely important practical tools for ensuring safe work practices. Compliance with the codes literally saves lives and prevents injuries. Placing the importance on Codes as applies in Victoria creates the certainty that people need. They know what is required to be safe. It is like having clear speed limit signs on roads.

The federal harmonized OHS model, however, diminishes the importance of codes of practice. Under the federal model and the WA OHS Bill, compliance with a code of practice can only be used as part of the defence in a prosecution. It does not constitute compliance. This means that people at work cannot be sure that if they have complied with a code that they are acting safely. It's like having road speed limit signs that say '60km maybe'. As a result, people are not sure what is safe. They become confused and uncertain, reducing people's focus on safety.

The WA OHS Bill states

> **275. Use of codes of practice in proceedings**
>
> (1) This section applies in a proceeding for an offence against this Act.
>
> (2) An approved code of practice is admissible in the proceeding as evidence of whether or not a duty or obligation under this Act has been complied with.
>
> (3) The court may:
>
> (a) have regard to the code as evidence of what is known about a hazard or risk, risk assessment or risk control to which the code relates; and
>
> (b) rely on the code in determining what is reasonably practicable in the circumstances to which the code relates.
>
> (4) Nothing in this section prevents a person from introducing evidence of compliance with this Act in a manner that is different from the code but provides a standard of work health and safety that is equivalent to or higher than the standard required in the code.

- ICA recommends the adoption in WA of the Victorian approach to codes and amend s275 of the WA Bill to that of the text in s152 of the Victorian Act.

8. Object of the Bill

The following point is not major but worthwhile mentioning.

8(a) Nationally consistent remove: The objects stated in the WA OHS Bill include reference to a 'nationally consistent framework' and appear to position unions and employer associations in a primary position under the Bill. The clause in the Bill reads as follows;

> **3 Object**
> (1) The main object of this Act is to provide for a balanced *and nationally consistent* framework to secure the health and safety of workers and workplaces by...

ICA sees no reason what the WA Bill should state that an object of the Act is for nationally consistent OHS laws. Having this stated could suggest and invite legal argument to be raised, that the WA Bill/Act does not 'stand on its own its own two legs' but should be read and interpreted in the light of other OHS 'harmonized' statutes. This could risk an interpretation being put on the Bill/Act that is not intended by the WA Parliament.

- ICA recommends that the words *"and nationally consistent"* be removed from the Bill in 3(1).

This will remove any doubt that the WA Bill/Act should be read, interpreted and applied on its own text.

8 (b) Employer bodies and unions: 3(1)(c) of the WA OHS Bill gives unions and employer organizations a role under the objects of the Bill and reads as follows:

> **3. Object**
> (1)(c) encouraging unions and employer organisations to take a constructive role promoting improvements in work health and safety practices, and assisting person conducting businesses or undertakings and workers to achieve a healthier and safer working environment;…

It is good that unions and employer associations play a constructive role in promoting safe work. However, neither unions nor employer associations represent or have membership of the majority of workers or employers as they once arguably had. By having a reference to them in the objects of the Bill there is some suggestion that they have a higher importance in ensuring safety than do other organizations or individuals. Further, the inference becomes that OHS is in some way connected to industrial relations arrangements, which it is not at law, nor should it be.

- ICA recommends the removal from the Bill of 3(1)(c).

OHS is something that is larger than industrial relations and is something that should consistently send a message that it is everyone's equal responsibility in the workplace and that no specific organizations have a higher role than others.

9. Amend definition of union

The WA OHS Bill includes a definition of a union to include an association of independent contractors. The clause reads

> **2. Definitions**
> 'Union Means'
> (a) an employee organisation that is registered, or taken to be registered, under the Fair Work (Registered Organisations) Act 2009 of the Commonwealth; or
> (b) an association of *employees or independent contractors, or both,* that is registered or recognised as such an association (however described) under a State or Territory industrial law

ICA strongly objects to the definition of a union to include one of an association of independent contractors. Independent contractors are subject to commercial law not industrial relations law. To include independent contractors in the definition of 'union' is to create a circumstance in which a union could seek to have jurisdiction over matters to do with independent contractors under the OHS Bill/Act.

- ICA recommends the removal of the words "*employees or independent contractors, or both"*

The jurisdiction of unions under industrial relations laws is restricted to employees. It is not appropriate to formalize in OHS legislation an extension of union jurisdiction to independent contractors.

Attachment A:

M. Davis Summary of the Kirk decision, February 2010

herbertgeer

IMPLICATION OF THE HIGH COURT'S DECISION IN KIRK

GENERAL OVERVIEW:-

The High Court decision in the matter of *Kirk V Industrial Relations Commission of NSW & WorkCover NSW* [2010] HCA 1 (3 February 2010) ("**Kirk**") has forever changed the way in which OH&S prosecutions in NSW are instituted, heard and determined.

It is also likely that the issues determined in Kirk will have implications for other specialist State Courts including in particular the extent to which the Supreme Courts of the States and ultimately the High Court supervised those Specialist Courts to ensure that they do not exceed their jurisdiction or otherwise engage in jurisdictional error.

In its decision, one of the Court's most senior, eminent and conservative Justices felt compelled to make some very pointed observations about the "injustices" that Mr Kirk and the Kirk Company were made to endure under the NSW OH&S system.

The Court's observations are an indictment of WorkCover NSW and the processes by which it purports to exercise its OH&S prosecutorial functions and the NSW State Government's OH&S legislative scheme that has allocated a criminal jurisdiction to a specialist Industrial Court that has resulted in a body of "distorted positions" developing in that Court, inconsistent with main stream Australian Criminal law as determined and supervised by the High Court of Australia.

Some of the specific observations made by the High Court include:-

- "…[Kirk was] **treated very unjustly** and in a manner causing [him] much harm; [emphasis added]
- "…the prosecutions **should never have been instituted**; [emphasis added]
- **"It is absurd** to have prosecuted the owner of a farm and its principal on the ground that the principal had failed properly to ensure the health, safety and welfare of his manager, who was a man of optimum skill and experience – skill and experience much greater than his own – and a man whose conduct in driving straight down the side of a hill instead of on a formed and safe road was inexplicably reckless. The absurdity is the greater in view of the trial judge's acceptance of the propositions that Mr Kirk was "a 'scrupulous and dedicated professional'", that when "'Mr Kirk is operating something in a business mode we know he will be attending to it or causing others to attend to it with the full discretion that he can'", that for 20 years he

Level 12/77 King Street
Sydney NSW 2000
Australia
DX 95 Sydney

Telephone: +61 2 9239 4500
Facsimile: +61 2 9239 4555
www.herbertgeer.com.au
ABN 21 228 101 686

had "operated as a good industrial citizen", that he was extremely remorseful because of the death of a good friend, and that in various other respects he had "paid a high price"; [emphasis added]

- "...even if the proceedings were not misconceived from the outset, they were **conducted unsatisfactorily**: The form of the applications rendered them liable to be struck out, the actual hearing was not conducted within jurisdiction or according to law because the prosecution called Mr Kirk as its own witness, and the reasons for judgment of the trial judge proceeded on an **erroneous construction of the legislation**"; [emphasis added]
- "...the cumulative effect [of the manner in which the prosecutions were conducted and the delays involved] on the appellants is **oppressive.** It is time for the WorkCover Authority of New South Wales to **finish its sport** with Mr Kirk. The applications in the Industrial Court should be dismissed" [emphasis added];
- "...since **the proceedings have been so oppressive** that, for reasons given above, they should be dismissed, it is desirable for this Court to bring complete finality by dealing with the appellants' costs of them as well by ordering that the second respondent pay them" [emphasis added];
- "When **tactical decisions by [WorkCover NSW]**...of that kind enjoy several successes but eventually fail, as they did in this Court, it is just that the second respondent should pay the appellants' costs of the entire series of proceedings". [emphasis added];
- "The reasoning of the majority indicates that the orders made by the trial judge rest on **several injustices**"; [emphasis added].

KEY ISSUES THAT ARISE FROM THE KIRK DECISION:-

1. ***The Industrial Court of NSW has systemically misinterpreted and misapplied the provisions of sections 15, 16 and 53 of the OH&S Act resulting in a body of [distorted positions] developing in that Court.***

   It has been determined by the High Court that charges laid in relation to an alleged breach must contain particulars that identify "...what measures the employer could have taken but did not take" - there must be some identification of "...the act or omission which constituted a contravention" of the section alleged to have been breached.

   The identification of the risk which has not been addressed by appropriate measures by the employer must be undertaken by an inspector authorised to bring the prosecution under the OH&S Act. It is the measures so identified which assume importance to any charge brought. Sections 15 & 16 are contravened where there has been a failure, on the part of an employer, to take a "particular measure" to prevent an identifiable risk eventuating.

   The Criminal Procedures Act does not dispense with the common law requirement that a charge specifying the time, place and manner of the defendant's acts or omission.

   When an employer seeks to avail itself of the defence under section 53 in the context of proceedings under ss15 and 16, the employer is not required to negative the general provisions of ss15 and 16 by establishing that "every possible risk was obviated". Rather, the defence requires that regard be had to the breach of the provision which is alleged constituted the offence. A breach or contravention of s15 or s 16 is the measure to be taken, the particular act or omission of the employer referred to in the charge and it is that which the employer is required to establish on

"the balance of probabilities" it was not reasonably practicable for the employer to have undertaken.

The Industrial Court was wrong in approaching its interpretation of the OH&S Act by taking it as sufficient that it be alleged that "as a consequence of a series of unspecified failures on the part of an employer that there remained present general risks to the health and safety of employees and others". The Industrial Court's established proposition that a prosecutor was not "...required to demonstrate that particular measures should have been taken" is wrong. Further, since it was considered unnecessary by the Industrial Court for the prosecutor to identify any particular measures, the employer in its defence was required to establish that there were "no reasonably practicable measures of any kind" which could have been addressed to the type of risk. In short, the Industrial Court's approach was that if there was "....something that could be done, the causal connection with the risk would remain and the employer would be found guilty of the offence. The High Court has definitively determined that the provisions of the OH&S Act were not intended to operate in this way.

In particular, the High Court has determined that the approach adopted by the Industrial Court failed to distinguish between the content of the employer's duty, which is generally stated, and the fact of a contravention in a particular case. The High Court observed that:

> "...it is that fact, the act or omission of the employer, which constitutes the offence. Of course it is necessary for an employer to identify risks present in the workplace and to address them, in order to fulfil the obligations imposed by ss 15 and 16. It is also necessary for the prosecutor to identify the measures that should have been taken. If a risk was or is present, the question is **- what action on the part of the employer was or is required to address it?** The answer to that question in the matter properly the subject matter of the charge.

The charges in the Kirk prosecutions were general in nature (as is common in many OH&S prosecutions initiated by WorkCover NSW) and relevantly they did not contain particulars that identified the act/s or omission/s which constituted the contravention. As a consequence, absent the identification of the measures the Kirk company should have taken, or failed to take, the Kirk company was denied the opportunity to properly put its defence under s 53(a). Instead, the Kirk company was required to show why it is not reasonably practicable to eliminate all possible risk. In the circumstances, the Industrial Court misunderstood the obligation imposed by the Act and consequently made orders beyond its jurisdiction.

2. ***The Industrial Court of NSW is an inferior Court to the Supreme Court of NSW in the Australian Hierarchy of Courts and is subject to the supervision of the Supreme Court of NSW when it comes to allegations of jurisdictional error and acting in excess of jurisdiction***.

The High Court has reaffirmed, in no uncertain terms, that notwithstanding that the State legislation that established the Industrial Court of NSW expressly provides that the Industrial Court of NSW is a Court with equivalent status to the Supreme Court of NSW, the Australian Constitution creates a Hierarchy of Courts in Australia which preserves the supremacy of the State Supreme Courts.

In particular, the Australian Constitution preserves the State Supreme Courts' powers to supervise the jurisdictions of specialist State Courts. The High Court has

reaffirmed that State legislation cannot remove or diminish a State Supreme Court's powers to supervise specialist State Courts to ensure that they do not engage in jurisdictional error or otherwise act beyond their jurisdiction. In short, if a State specialist Court, like the Industrial Court of NSW, makes orders beyond its powers, the Supreme Court of NSW has the power to issue an order in the nature of certiorari to quash the orders of the Industrial Court of NSW.

In this regard the High Court found that the privative provisions of Section 179 of the *Industrial Relations Act 1996* (NSW), correctly interpreted, could not prevent the Supreme Court of NSW from making an order in the nature of certiorari in the face of jurisdictional error or the exercise of jurisdiction where the Industrial Court had no power.

3. ***The High Court has sought to clarify the differences between jurisdictional and non-jurisdictional error by reflecting upon their decision in Craig V. South Australia (Craig) and making it clear that Craig should not be taken as marking the boundaries of the field.***

The High Court has again acknowledged the difficulty of distinguishing between 'jurisdictional" and "non-jurisdictional" error and indeed the difficulties that can arise in applying the principles in *Craig* to State specialist Courts. The High Court has made it clear that an "authoritative decision" (final decision) of an inferior State specialist Court is not free from review if it is based on jurisdictional error.

The High Court determined that it was important to recognise that the reasoning in *Craig* was not seen as providing a rigid classification of jurisdictional error. In short, the examples in *Craig* are not to be taken as marking the boundaries of the relevant field.

In relation to the Kirk matter the High Court held that the Industrial Court's error in the construction of Section 15 of the OH&S Act was "jurisdictional error" of the third kind identified in *Craig* (ie. that the Industrial Court misapprehended the limits of its functions and powers). By misconstruing s.15 of the OH&S Act the Industrial Court convicted Kirk and the Kirk Company of offences when what was alleged and what was established did not identify offending conduct. The High Court also found that such an error was not only beyond the limits of the Industrial Courts functions and powers, it was an error that led to the making of orders convicting Kirk and the Kirk company where the Industrial Court had no power to do so. It follows that the Industrial Court made orders beyond its power to make. Both of these errors entitled Kirk and the Kirk Company to an order in certiorari quashing the orders of the Industrial Court.

Malcolm Davis
Partner
mdavis@herbertgeer.com.au
(02) 9239 4525