

Form 5 Version 1	Application to appeal Industrial Relations Act 1999, Chapter 9	R.8(3), & Part 5
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INDUSTRIAL COURT OF QUEENSLAND  
Industrial Relations Act 1999, section 341

INDUSTRIAL REGISTRAR  
21 AUG 2014  
QUEENSLAND

**UNITED FIREFIGHTERS' UNION OF AUSTRALIA, UNION OF EMPLOYEES, QUEENSLAND**

AND

**STATE OF QUEENSLAND (QUEENSLAND FIRE AND EMERGENCY SERVICES)**

(Matter No. C 120/141 39)

**APPLICATION TO APPEAL**

TO: The Industrial Registrar, Industrial Registry, Level 21, Central Plaza 2, 66 Eagle Street, (Corner Creek and Elizabeth Streets), Brisbane 4000, GPO Box 373, Brisbane Q 4001  
Phone: (07) 3227 8060 Fax: (07) 3221 6074

**TAKE NOTICE** that I, John Oliver of 286 Montague Road, West End, Queensland 4101, State Secretary, being authorised to represent the United Firefighters' Union of Australia, Union of Employees

APPEAL to the Court, from the whole of the decision of the Full Bench given on 1 August 2014 in Matter No. B/2014/7.

1. The grounds of the appeal are:

- (a) the Full Bench erred as a matter of law in deciding that there was power conferred in Chapter 5, Part 8 of the *Industrial Relations Act 1999 (the Act)* on the Commission to modernise the *Queensland Fire and Rescue Service Award 2012* by including Auxiliary firefighters;
- (b) the Full Bench erred as a matter of law in deciding that section 140CE(2)(b) of the Act modified the operation of section 140CE(4) of the Act;
- (c) the Full Bench erred as a matter of law in, having decided that section 140CE(2)(b) of the Act modified the operation of section 140CE(4) of the Act, that there was nothing in section 140CE of the Act which would preclude the Commission from including the Auxiliary firefighters in a coverage clause in a new award made by the Commission as a consequence of the modern award process;
- (d) the Full Bench erred as a matter of law in exercising its discretion pursuant to section 331(b)(ii) of the Act in refraining from hearing further proceedings in Matter No. A/2014/1, because the Full Bench took into account an irrelevant consideration, namely, that to proceed and determine the application for a modern award in respect of Auxiliary firefighters would pre-empt any view taken by Deputy President Bloomfield and the Award Modernisation team about the desirability or otherwise on one or more award for firefighters;
- (e) the Full Bench erred as a matter of law in exercising its discretion pursuant to section 331(b)(ii) of the Act in refraining from hearing further proceedings in Matter No. A/2014/1, because the Full Bench acted on a wrong principle, namely, that section 140G of the Act would operate to prevent the Commission, other than for the purposes of a periodic review, from varying or revoking any modern award the Commission might make;
- (f) the Full Bench erred as a matter of law in exercising its discretion pursuant to section 331(b)(ii) of the Act in refraining from hearing further proceedings in Matter No. A/2014/1, because the Full Bench acted on a wrong principle, namely, that to hear the Appellant's application under Chapter 5A of the Act for a modern award for Auxiliary firefighters would be contrary to the statutory intent of the Award Modernisation process;

- (g) the Full Bench erred as a matter of law in exercising its discretion pursuant to section 331(b)(ii) of the Act in refraining from hearing further proceedings in Matter No. A/2014/1, because the Full Bench acted on a wrong principle, namely, that to hear the Appellant's application for a modern award pursuant to Chapter 5A of the Act would deprive the Full Bench of the benefit of a fully informed debate;
- (h) the Full Bench erred as a matter of law in exercising its discretion pursuant to section 331(b)(ii) of the Act in refraining from hearing further proceedings in Matter No. A/2014/1, because the Full Bench acted on a wrong principle, and/or took into account an irrelevant consideration, namely, that the exercise of the Commission's power under section 331 of the Act would not deprive the Appellant of a hearing on the merits as another, more appropriate process was available to the Appellant through the award modernisation process;
- (i) the Full Bench erred as a matter of law in exercising its discretion pursuant to section 331(b)(ii) of the Act in refraining from further hearing proceedings in Matter No. A/2014/1, because the Full Bench acted on a wrong principle, namely, that the Commission would be conducting a parallel process in relation to Auxiliary firefighters through the award modernisation process for firefighters generally being conducted by the Commission in accordance with the Attorney-General's Award Modernisation Request under section 140C(1) of the Act;
- (j) the Full Bench erred as a matter of law in exercising its discretion pursuant to section 331(b)(ii) of the Act in refraining from hearing further proceedings in Matter No. A/2014/1, because the Full Bench acted on a wrong principle, namely, that Auxiliary firefighters will achieve coverage through the award modernisation process pursuant to Chapter 5, Part 8 of the Act;
- (k) the Full Bench erred as a matter of law in exercising its discretion pursuant to section 331(b)(ii) of the Act in refraining from hearing further proceedings in Matter No. A/2014/1, because the Full Bench took into account an irrelevant consideration, namely, the undertaking given by the Respondent, pending the award modernisation process pursuant to Chapter 5, Part 8 of the Act, not to reduce the terms and conditions of an Auxiliary firefighter whose conditions are currently set within administrative arrangements made under the *Fire and Rescue Service Act 1990*;
- (l) the Full Bench erred as a matter of law in exercising its discretion pursuant to section 331(b)(ii) of the Act in refraining from hearing further proceedings in Matter No. A/2014/1, because the Full Bench acted on a wrong principle and/or took into account irrelevant considerations, namely, that the award modernisation objectives included seeking to consolidating modern awards, avoiding duplication of coverage and ensuring consistency of content, and the Attorney-General's Award Modernisation request; and, or in the alternative
- (m) the Full Bench erred as a matter of law in exercising its discretion pursuant to section 274(4)(a)(ii) of the Act to refer Matter No. A/2014/1 to Deputy President Bloomfield as the head of the Award Modernisation Team with a view to including Auxiliary firefighters in a modern award, because the Full Bench acted on a wrong principle, because the Full Bench should hear and determine, pursuant to Chapter 5A of the Act, Matter A/2014/1 and not Deputy President Bloomfield as the head of the Award Modernisation Team.

2. The decision sought is:

- (a) that the appeal be allowed;
- (b) that the operation of the decision is suspended; and
- (c) that the industrial cause in application A/2014/1 be remitted to the Commission to act according to law.

3. Was the President a member of the full bench? No

Signed:

  
JOHN OLIVER

Description: State Secretary

Dated: 21August 2014

**TO RESPONDENT:**

**TAKE NOTICE** that if you wish to oppose this application or to argue that any different decision should be made, you must attend before the court in person or, if appropriate, by your lawyer or agent at the time on the date and at the place fixed by the registrar and you will be heard. If you do not attend as required a decision may be given against you in terms of the decision sought and costs, where appropriate, without further reference to you.

**Form 5,R. 8(3) & Part 5.**

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PARTICULARS OF THE APPELLANT

Name: John Oliver

Position or title: State Secretary

Organisation, corporation, association, department etc: United Firefighters' Union of Australia, Union of Employees, Queensland

Residential or business address: 286 Montague Road, West End, Queensland 4101

**Appellant's address for service: 286 Montague Road, West End, Queensland 4101**

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Appellant's e-mail address:

IF APPELLANT HAS A LAWYER

Appellant's lawyer's name: John Merrell

and firm name:

Lawyer's business address: Level 18, 239 George Street, Brisbane, Queensland 4000

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PARTICULARS OF THE RESPONDENT

Name: Mark Roche

Position or title: Acting Deputy Commissioner

Organisation, corporation, association, department etc: Queensland Fire and Emergency Services

Residential or business address: Cnr Park Road and Kedron Park Road, Kedron, Queensland 4031

**Respondent's address for service: Cnr Park Road and Kedron Park Road, Kedron, Queensland 4031**

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