

Commission of Inquiry into the CFMEU

and Misconduct in the Construction Industry

Cross River Rail Case Study

BUNDLE 5

AUSTRALIAN BUILDERS' LABOURERS' FEDERATED UNION
OF WORKERS — WESTERN AUSTRALIAN BRANCH v J-CORP
PTY LIMITED

General Division: Lockhart, Spender and Gummow JJ

Western Australia District Registry

16, 17 March, 3 June 1993

Trade Practices — Secondary boycott — Picket line — Whether supply of goods or services "hindered or prevented" — Whether conduct engaged in by appellant for the purpose of causing substantial loss or damage to the business of the respondent — Trade Practices Act 1974 (Cth), s 45D.

Practice and Procedure — Appeals — Interlocutory appeal — Leave necessary — Federal Court of Australia Act 1976 (Cth), s 24(1A).

Words and Phrases — Picket — Picket line.

So far as was relevant, s 45D(1) of the *Trade Practices Act 1974* (Cth) provided:

"Subject to this section, a person shall not, in concert with a second person, engage in conduct that hinders or prevents the supply of goods or services by a third person to a fourth person (not being an employer of the first-mentioned person) ... where —

- (a) ...
- (b) the fourth person is a corporation and the conduct is engaged in for the purpose, and would have or be likely to have the effect, of causing —
 - (i) substantial loss or damage to the business of the fourth person ... or
 - (ii) ..."

Section 45D(2) provided that a person shall be deemed to engage in conduct for a purpose mentioned in subs (1) "if he engages in that conduct for purposes that include that purpose".

Held: (1) In determining under s 45D the threshold question of the engagement in conduct of a certain description, being conduct which hindered or prevented the supply of goods or services, great weight must be given to the reasonable reactions of those "third persons" who otherwise would have proceeded with the orderly supply of goods or services to the fourth person.

(2) The activities of the "official" picket by the appellant affected to an appreciable extent the ease of the usual way of supply of goods and services to the respondent. Therefore, within the meaning of s 45D(1), the appellant had engaged in conduct, the necessary consequence of which had been the hindering of the supply of goods or services to the respondent.

Devenish v Jewel Food Stores Pty Ltd (1991) 172 CLR 32, considered.

(3) The primary judge fell into error of law by holding that the necessary purpose had not been established. It did not follow that the purpose of the appellant was to cause substantial loss or damage from the finding that the appellant was aware and accepted that this was a probable consequence of its conduct.

Per Lockhart and Gummow JJ: The dictionary meaning of terms such as "picket" and "picket line", their use in other legislation and what has been said of them in litigation arising other than under s 45D, cannot be of immediate assistance in litigation arising under s 45D.

(4) The primary judge had granted declaratory relief but had directed a further hearing on any claim for damages. Leave to appeal from the declaration and accompanying costs order was required and should have been sought before a notice of appeal was filed.

Per Spender J: It is wrong to commence with the premise that in an industrial context, a picket line involves a *prima facie* contravention of s 45D, and such a contravention can be avoided if there is a sufficient disclaimer that access is not prevented or hindered.

APPEAL

R L Le Miere, for the appellant.

M C Hotchkin, for the respondent.

Cur adv vult

3 June 1993

LOCKHART AND GUMMOW JJ.

Introduction

On 9 December 1992, the learned primary judge (French J) made a declaration that the appellant:

"... did on and from 27 July 1992 until 5 August 1992 engage in conduct in concert with its members and others which hindered and prevented the supply of goods and services by third parties to [J-Corp] at Rivervale in the State of Western Australia and that such conduct was engaged in for the purpose and was likely to have the effect of causing substantial loss or damage to the business of [J-Corp] and that the conduct of [the BLF] was in contravention of Section 45D(1)(b) of the *Trade Practices Act 1974*."

So far as is relevant, the provisions of s 45D(1) of the *Trade Practices Act 1974* (Cth) (the Act) are as follows:

"Subject to this section, a person shall not, in concert with a second person, engage in conduct that hinders or prevents the supply of goods or services by a third person to a fourth person (not being an employer of the first-mentioned person) ... where —

(a) ...

(b) the fourth person is a corporation and the conduct is engaged in for the purpose, and would have or be likely to have the effect, of causing —

(i) substantial loss or damage to the business of the fourth person ... or

(ii) ..."

The effect of the above declaration made by the primary judge was that the appellant, (a) in concert with its members and others (the second person), (b) engaged in conduct which hindered and prevented the supply of goods and services by third persons to the respondent (the fourth person) and that (c) such conduct was engaged in for the purpose and was likely to have the effect of causing substantial loss or damage to the business of the

respondent. As will become apparent, on the hearing of the appeal there was some difficulty in disentangling the findings which were made, adversely to the appellant, on issues (b) and (c), namely hindering supply and "purpose".

Before us, counsel for J-Corp appeared to accept that it was on stronger ground in supporting the declaration as it applied to hindering than with "prevention" of supply. Attention was paid in address primarily to what was involved in "hindering" within the statutory sense.

On 19 February 1993, his Honour ordered that the BLF pay half of J-Corp's costs of the action. On 9 December 1992, directions had been given to prepare for hearing the question of further relief, including any claim for damages. It followed that the declaration and costs order to which we have referred were interlocutory in character, and that leave to appeal from them would be necessary: see *Fisher & Paykel Healthcare Pty Ltd v Avion Engineering Pty Ltd* (1991) 103 ALR 239 at 242.

Nevertheless, without first obtaining such leave, a notice of appeal was filed.

Upon the matter coming before us on 16 March 1993, the court drew attention to the need for leave. After hearing submissions from counsel, the court granted leave to appeal from the declaration and costs orders against the BLF, made 9 December 1992 and 19 February 1993 respectively. The court ordered that the document appearing at pages 1043-1046 of the appeal papers stand in the appeal as the Amended Notice of Appeal.

The above recitation of events underlines the importance of observance by the legal profession of adherence to the rules as to the necessity for leave in interlocutory matters.

The orders in respect of which leave to appeal has been given were pronounced by the primary judge after delivery of reasons for judgment which are reported, *J-Corp Pty Ltd v Australian Builders' Labourers' Federated Union of Workers* (1992) 111 ALR 502.

The parties

J-Corp is a trading corporation which is registered as a builder under the provisions of the *Builders' Registration Act 1939* (WA). In recent years, J-Corp has engaged in large scale residential construction work for the Western Australian State Government Housing Commission. This body is also known as "Homeswest". J-Corp has a policy of engaging independent contractors, rather than using employees, to provide the materials and services required for the performance of its construction work. This policy has led to conflict between J-Corp and unions involved in the building industry. One such union is the BLF. It and four other unions are members of the Building Trades Association of Workers (the BTA), which is registered under the provisions of the *Industrial Relations Act 1979* (WA). The BLF believed that Homeswest had given an undertaking as to the use of non-union labour.

The BLF and the BTA had in common as secretary, Mr Kevin Reynolds. Mr J L Fox and Mr G Pallott were employed by the BLF as temporary organisers. Mr M Keogh had been employed by the BLF as an industrial officer since April 1986. Mr Kim Young was employed by the BLF as a safety co-ordinator.

French J held that effectively Mr Reynolds was the Chief Executive of the BLF. He had been secretary since 1974. There was a convention within the

BLF that no industrial action, especially action involving interruption of supplies, could be undertaken without his prior approval.

Whilst in some passages of his judgment dealing with the “purpose” of the BLF, his Honour referred to the mental processes and attitudes of both Mr Keogh and Mr Reynolds, we accept the submission for the BLF that the relevant actor in such an important matter was Mr Reynolds.

The establishment of the picket line

On 13 July 1992, J-Corp commenced work on the construction of a housing development for Homeswest on a site at the corner of Minora Place and Great Eastern Highway at Rivervale (the Rivervale site). The agreed term for practical completion of the work by J-Corp was 36 weeks from possession of the Rivervale site.

On the morning of Friday 24 July 1992, Messrs Fox and Young together went to the Rivervale site. The site was bounded by a high wire fence. Entrance gates were locked. Messrs Fox and Young carried certificates as accredited union representatives pursuant to cl 40 of the Building Trades (Construction) Award 1987 (the Award). Clause 40 authorised such accredited representatives to enter any place where employees were employed at any time during normal working hours or when overtime is being worked “for the purpose of interviewing employees, checking on wage rates, award breaches or safety conditions or regulations ...”. The right of entry conferred by cl 40 was subject to a proviso that representatives present themselves with their authority to representatives of site management. It seems to have been the view of Messrs Fox and Young that under cl 40 they had an unrestricted right of entry to the Rivervale site. The right of entry under cl 40 does not require the prior permission of site management to enter, but accredited representatives are required to “present themselves with their authority to a representative of site management prior to pursuing their Union activities on site”. The position of J-Corp’s construction manager, Mr G McEwan, was that J-Corp was a non-union employer, that the people on the site were sub-contractors, and that the visitors were there to stir up trouble. Mr McEwan asked Mr Fox to leave the site and he had the gate to the site locked with Mr Young on the outside.

The events of 24 July are fully described in his Honour’s reasons (at 504-507). His Honour decided that on that day there was no contravention by the BLF of s 45D of the Act. What the primary judge described as a “de facto picket line” of about 10 men was established outside the entrance to the Rivervale site and manned by members of the BLF and other unions. However this took place without “official union sanction”.

Shortly before midday on 24 July, the police arrested four men at the Rivervale site, including Mr Fox and Mr Pallott. They were taken to the East Perth Lockup. Mr Reynolds, accompanied by Mr Keogh, arrived there earlier in the afternoon. Mr Reynolds was on leave and preparing to go overseas. Also present was Mr A Drake-Brockman, a member of the firm of solicitors acting for the BLF. The four men who had been arrested were released at about 4 pm.

On Friday afternoon, J-Corp arranged for floodlighting to be erected at the Rivervale site and for the employment of 24-hour security guards.

His Honour held that an “official picket line” was established from the following Monday, 27 July 1992, and that a number of suppliers to J-Corp

declined to enter the Rivervale site whilst the picket was in place. Initially, the official picket line had been manned by members of the BLF in greater numbers, but from 28 July the number was reduced to five. The picket operated only on weekdays and only until 4 pm.

The issues

The BLF relied upon various grounds, but as the argument on the appeal developed it became apparent that it had two principal complaints. First, it was submitted that there had been no conduct engaged in by the BLF which hindered or prevented the supply of goods or services to J-Corp by other persons. Secondly, it was submitted that, in any event, the conduct was not engaged in for the purpose of causing substantial loss or damage to the business of J-Corp. (The BLF also contended that the declaration was too widely framed in speaking of contraventions until 5 August; this was because there was, on any basis, no evidence against the BLF of actual hindrance by it at the site after 29 July. It will be unnecessary to resolve that issue, but the point does appear to be of substance.)

As to the second point, it was submitted that there was no evidence, or no sufficient evidence, that Mr Reynolds, the relevant actor, had such a purpose. It was open to the primary judge to deal with the issue of purpose by inferences drawn from the evidence as a whole. This was done, for example, in *Barneys Blu-Crete Pty Ltd v Australian Workers' Union* (1979) 43 FLR 463 at 473. But the BLF submits that the primary judge, having accepted Mr Reynolds, reached a conclusion adverse to it on this issue by an implicit error of law as to the construction of s 45D.

We will deal first with the question of picketing, and then with the issue of "purpose".

Picketing

In part, the submissions for the BLF appeared to proceed as if the term "picket" was included in the text of s 45D, whereas, of course, like the term "secondary boycott", it is not. The issue is whether what was done was conduct engaged in by the BLF which hindered or prevented the supply of goods or services by third persons to J-Corp.

Counsel for the BLF rightly stressed that it had acted after the receipt of legal advice as to the impact of s 45D upon the activities proposed for the Rivervale site. The BLF appears to have acted on the footing that the installation and operation of a picket line would not amount to engaging in conduct which hindered the supply of goods or services in the necessary sense, if the picket line had particular characteristics. Thus, as was stressed on the appeal, it was J-Corp which had excluded the union representatives from the site and had kept it locked, comparatively small numbers of unionists manned the line, it was not maintained around the clock, and the BLF intended that those wishing to enter would be persuaded by rational means not to do so: cf the facts found in *Williams v Hursey* (1959) 103 CLR 30 at 76-77. Reference was made in the evidence to the view within the BLF that a picket line of this character would approximate to the type of activity which was accepted in the United States.

The intentions of those organising the picket line as to the methods of its operation may well be of significance in determining the issue under s 45D as to purpose. But where, as here, what is being considered is the threshold

question of the engagement in conduct of a certain description, being conduct which hindered or prevented the supply of goods or services, great weight must be given to the reasonable reactions of those representing the "third persons" who otherwise would have proceeded with the orderly supply of goods or services to J-Corp.

In that setting, the dictionary meaning of terms such as "picket" and "picket line", their use in other legislation and what has been said of them in litigation arising other than under s 45D, cannot be of immediate assistance.

However, in view of the detailed submissions that were made, we should say something on the point.

The primary judge (at 526) referred to dictionary definitions which defined a "picket" as persons who, during a strike, are stationed by a trade union before a place of work to watch persons going to work and to endeavour to dissuade or deter or prevent them from doing so. Here, as counsel for the BLF emphasised, there was no strike at the Rivervale site; rather the industrial dispute was precipitated by the action taken under cl 40 of the Award.

The court was taken to passages in the judgments of the English Court of Appeal in *Hubbard v Pitt* [1976] QB 142. There, for example at 172-173, the term "picket" was used to describe an orderly and peaceful collection of persons outside particular premises in circumstances where there was no obstruction, molestation or intimidation of persons entering and leaving the premises, the object of the picket being the communication of information. The result was that there was no unreasonable obstruction amounting to public or private nuisance, or any other tort.

Earlier, in *Sid Ross Agency Pty Ltd v Actors & Announcers Equity Association of Australia* [1971] 1 NSWLR 760 (a case decided on a demurrer) Mason JA said (at 767):

"At common law, picketing is not necessarily a nuisance and unlawful as such, but it becomes so if it involves obstruction and besetting: see *J Lyons & Sons v Wilkins* [1899] 1 Ch 255; *Ward, Lock & Co Ltd v Operative Printers' Assistants' Society* (1906) 22 TLR 327. Here the pleading makes it abundantly clear that the form of picketing threatened involved obstruction of the thoroughfares and besetting of those who wished to enter the clubs, thereby constituting a nuisance and an interference with their rights."

The English decisions cited by Mason JA were also discussed in *Hubbard v Pitt*. "Besetting" includes the occupation of a roadway or passageway through which persons wish to travel, so as to cause those persons to hesitate through fear to proceed, or, if they do proceed, to do so only with fear for their own safety or the safety of their property: *Dollar Sweets Pty Ltd v Federated Confectioners Association of Australia* [1986] VR 383 at 388-389. See, generally, Davidson, "A New Tort for Mass Picketing: The Thomas Case and Its Implications for Australia" (1988) 18 UWAL Rev 138.

In *Broome v Director of Public Prosecutions* [1974] AC 587, the House of Lords considered s 134 of the *Industrial Relations Act 1971* (UK). This, in terms, used the expression "pickets". Section 134 read:

"(1) The provisions of this section shall have effect where one or more persons (in this section referred to as 'pickets'), in contemplation or furtherance of an industrial dispute, attend at or near —

(a) a place where a person works or carries on business, or

- (b) any other place where a person happens to be, not being a place where he resides,

and do so only for the purpose of peacefully obtaining information from him or peacefully communicating information to him or peacefully persuading him to work or not to work.

(2) In the circumstances specified in the preceding subsection, the attendance of the pickets at that place for that purpose —

- (a) shall not of itself constitute an offence under section 7 of the Conspiracy and Protection of Property Act 1875 (penalty for intimidation or annoyance by violence or otherwise) or under any other enactment or rule of law, and
- (b) shall not of itself constitute a tort.”

In that case, the defendant, a strike picket during an industrial dispute, stood holding a placard in front of a vehicle on a highway, urging the driver not to work at a site nearby and preventing him from proceeding along the highway as the driver wished. The House of Lords held that s 134 made lawful the attendance of pickets only for the purposes specified therein. It did not require the person whom it was sought to persuade, to submit to any constraint or restriction on his right to personal freedom, so that although the defendant had a statutory right to invite the driver to stop and listen to him, so long as that was done in a reasonable way, the defendant had not been entitled to compel him to do so.

In *Williams v Aristocratic Restaurants (1947) Ltd* [1951] 3 DLR 769, the Supreme Court of Canada considered whether the picketing of a restaurant was unlawful, in the sense of being a civil wrong, where two men walked back and forth on the footpath in front of the restaurant each bearing a placard to the effect that the proprietor did not have a labour agreement with a named union. The Supreme Court held that there was no civil or criminal wrong involved. Among the legislation they considered was s 501 of the Canadian *Criminal Code*. This provided for penalties against intimidation, but excepted from the wrongful conduct attendance “at or near or approaching the house or place in question in order merely to obtain or communicate information”. Rand J said (at 789):

“[T]here is a difference between watching and besetting for the purpose of coercing either workmen or employer by presence, demeanour, argumentative and rancorous badgering or importunity, and unexpressed, sinister suggestiveness, felt rather than perceived in a vague or ill-defined fear or apprehension, on the one side; and attending to communicate information for the purpose of persuasion by the force of a rational appeal, on the other.”

In the United States, there are a number of cases in which the Supreme Court has construed favourably to the States the limits imposed by the 14th Amendment on the power of State legislatures to authorise their courts to enjoin peaceful picketing, even when arising in the course of a labour controversy, where the picketing was counter to a “valid State policy in a domain open to State regulation”. The authorities are discussed in *International Brotherhood of Teamsters v Vogt Inc* 354 US 284 (1957). They are of no particular assistance in the present case, which is concerned with the terms used in s 45D of the Act. To these we now turn.

“Hindering” and s 45D

The primary judge (at 535) referred to what was said by Deane J, in this Court, in *Australian Broadcasting Commission v Parish* (1980) 43 FLR 129 at 153, as to the concepts of “hindering” and “preventing” in s 45D(1). That passage included the following:

“The actual cessation of supply or acquisition of goods or services is commonly the object and can represent the culmination of conduct in breach of s 45D of the Act. The conduct hindering or preventing supply or acquisition to which the section refers can be engaged in by threat and verbal intimidation as well as by physical interference with the actual activities.”

Also of importance is what was said by Mason CJ in *Devenish v Jewel Food Stores Pty Ltd* (1991) 172 CLR 32 at 45-46:

“Further, it cannot be, and indeed was not, suggested in argument that the notion ‘direct’ is inherent in either of the words ‘hinder’ or ‘prevent’. ‘Hinder’ has been construed in England ‘in the general sense of *in any way* affecting to an appreciable extent the ease of the usual way of supplying the article’ (emphasis added): *Tennants (Lancashire) Ltd v C S Wilson & Co Ltd* [1917] AC 495 at 513-514 per Lord Dunedin; *Peter Dixon & Sons Ltd v Henderson, Craig & Co Ltd* [1919] 2 KB 778 at 786. What was there said in relation to hindrance of supply would apply with equal force to hindrance of acquisition. The comments of Gibbs J relating to the words ‘prevent or hinder’ in *R v Bell; Ex parte Lees* (1980) 146 CLR 141 at 147-148, must be seen in the context of that case. As his Honour observed, a broad construction would have effected a very drastic interference with ordinary civil rights. There is no similar reason for rejecting a broad interpretation of those words in this case. As has been said, such an interpretation is entirely consonant with the purpose of the section.”

Whilst Mason CJ (together with Deane J) dissented with *Devenish*, this passage drew no direct disagreement from the majority. Further, Mason CJ (at 42-43), Deane J (at 51-52) and Toohey J (at 58) all eschewed any construction of s 45D(1) which sought to fit it within some pre-conceived notion of what constituted a paradigm case of a “secondary boycott”. At best, that was a loose expression, not found in the legislation, and one lacking in any generally accepted definition or content. Earlier, in *Actors and Announcers Equity Association of Australia v Fontana Films Pty Ltd* (1982) 150 CLR 169 at 200-201, Mason J indicated that the true character of the provision was to be ascertained from an analysis of its legal operation according to its terms and without importation of any external notion or understanding of its subject matter.

That is of importance in the present case, given the emphasis to the term “picketing” and cognate expressions. The true issue on the first branch of the case is whether his Honour was correct in treating his findings as falling within the meaning of “hindering” in s 45D(1). In that issue, there is, of course, involved a consideration of what follows from the characterisation of the events at the Rivervale site as the establishment and maintenance of a picket line.

It will be apparent from the quotation of the judgment of Mason CJ in *Devenish* that his Honour confined his adoption of *Tennants (Lancashire)* (supra) to the speech of Lord Dunedin. This case and *Peter Dixon* (supra)

were concerned with the operation, during World War I, of “suspensory clauses” in supply contracts. In the case before the House of Lords, the defendants had contracted to sell to the plaintiffs their requirements of magnesium chloride over the year 1914; the contract entitled them to suspend delivery in the event of war “preventing or hindering” the manufacture or delivery of the magnesium chloride. A greater part of the supplies came from Germany and it was held that the defendants were entitled to suspend delivery.

In *Peter Dixon*, the contract, made in 1911, provided for the delivery of wood pulp over a 6-year period with an entitlement in the seller to suspend delivery if this was prevented or hindered by events including the outbreak of war. The war brought about a complete dislocation of the pulp-carrying trade to Britain from Norway. It was held that although the sellers were not prevented, they were hindered in carrying out the contract, within the meaning of the provision in question. Bankes LJ (at 786) summarised what had been said in the earlier decision as follows:

“How far does the case of *Tennants Ltd v Wilson & Co* lay down any rules of law which it is necessary to observe in coming to a conclusion on the question that is submitted to us? I think two rules were certainly laid down in that case. One was that a rise in price would not in itself constitute a hindrance to delivery within the meaning of such a contract as this; and I think the second rule may be gathered from the language of Lord Dunedin, where, in speaking of the judgment of Neville J, he says that the learned judge read the word ‘hinder’ ‘in the general sense of in any way affecting to an appreciable extent the ease of the usual way of supplying the article ...’. I think also you find in the speeches, both of Lord Atkinson and Lord Loreburn, a definition of what constitutes a difficulty within the meaning of this contract. Lord Loreburn says this [[1917] AC at 510]: ‘By “hindering” delivery is meant interposing obstacles which it would be really difficult to overcome.’ Lord Atkinson says [at 518]: “Preventing” delivery means, in my view, rendering delivery impossible; and “hindering” delivery means something less than this, namely, rendering delivery more or less difficult, but not impossible.”

It will be apparent from this that Lord Loreburn and Lord Atkinson advocated a more stringent requirement than Lord Dunedin. Lord Wrenbury (at 526) took the view that delivery of supplies to one customer was hindered if the supplier could not satisfy all the contractual demands upon it, saying that a merchant has a short supply notwithstanding he is able to satisfy one customer when he is not able to satisfy all of them.

We have dealt with these English authorities at some length because the range of views in the judgments as to the meanings which might properly be given to the phrase “hinder or prevent” emphasises the significance of the choice by Mason CJ in *Devenish*, after reference to those authorities, of a broad construction of “hinder”, for s 45D, as in any way affecting to an appreciable extent the ease of the usual way of supply of goods or services. Of course, this broad construction on the first branch of s 45D(1), makes it all the more important closely to consider what is involved in “purpose”.

The findings of fact as to picketing

Against that background, one turns to the findings made by the primary judge on this first branch of s 45D(1).

French J found (at 515):

“What is clear is that from 27 July 1992 the BLF by its secretary Reynolds, had authorised the establishment of an assembly of its members outside the entrance to the Rivervale site which was designated and accepted by those involved as a picket line. It was intended by those concerned with its organisation including Keogh, Fox, Young and Pallott, that it would be seen and accepted as a picket line by suppliers for J-Corp approaching the site. When and precisely where signs announcing the existence of the picket were erected is, in my opinion, of little moment. That they were erected in the week commencing 27 July is beyond doubt. If a finding be necessary, it is probable, I think, that some form of sign announcing the existence of the picket was erected on 27 July which was the first day of its official union sanctioned existence.”

There was evidence that the term “picket line” was used by Mr Fox to describe the situation at the entrance to the Rivervale site as established on and from 27 July, when he spoke with the drivers of vehicles who had approached the entry to the site, for the delivery of supplies. There was evidence also that even without the use to them of express words to that effect, those approaching the site took what they saw there as being what, to them, was “a picket line”.

The primary judge, in our view, correctly emphasised (at 526), that in considering the usage of a term such as “picket line” in the particular situation of this litigation, regard should be paid to surrounding circumstances to determine what the word would reasonably have conveyed to those who heard it used.

His Honour considered in detail (at 507-521) the reaction of those approaching the Rivervale site with goods for delivery on their trucks, as well as, in some instances, the reactions of the employers of those persons when told of the situation there. Counsel for the BLF took us to the evidence in some detail and pointed out that some of the incidents occurred during the “unofficial” picket of 24 July and thus concerned events for which the BLF had been held not responsible. Further, as to some of the events on and after 27 July, whilst the “official” picket was in operation, counsel pointed out that his Honour had treated with reserve or rejected evidence of threatening words or gestures by those at the site to drivers with supplies, and that, in any event, this was, in the main, not conduct which had been authorised by the BLF.

These may be sound submissions so far as they go to the issue of the “purpose” of the BLF. But nevertheless it was open to the court to have regard to the totality of the evidence of what transpired at the Rivervale site as throwing light upon the usage of the terms “picket” and “picket line”, this, in turn, having a significant bearing upon the issue of hindering by the BLF from 27 July.

The evidence showed that to a number of those who had approached the site but had turned away because, or partly because, of what they recognised or were told was a picket line there, that expression meant, at the least, that

there would be, in colloquial language, "a hassle" in getting through to deliver their supplies, and that it was best not to persevere.

The effect of the evidence is well put by the primary judge by the following passage (at 525):

"There was a reasonably uniform reaction from suppliers confronted with what they understood to be, or what they were told, was a picket. Gregory, of DSS Fencing, in cross-examination said that he thought it easier to pull out and leave in the face of a picket line. As I found, he retreated from the Rivervale site to the Sandringham Hotel because he was fearful of the consequences if he were to cross what he considered to be a picket line. Similarly, McWilliam of Stateside Hire, was influenced not to enter the site by the advice he received that a picket line had been established. Alvan Jacques of Aaron Lee Pest Control, who arrived at the site on 27 July, adopted the attitude that as a member of the BLF he could not cross the picket line and would be considered a scab and black banned from other union sites if he did. Ricci of Advance Formwork, also a BLF member, took a similar view. He believed that if he crossed the line he might as well tear up his union ticket. Susan McGuire of Jiffy Foods did not hear any reference to the term 'picket line' but said in cross-examination that her boss had told her 'don't go through a picket line'. If she had heard that expression used at the site it would have given her pause. Gericevich would not enter the site without an express clearance from a BLF official and, as I have found, one of the factors which influenced his attitude in that respect was the existence of the picket line. The picket line was also a factor which influenced Owen of Maddington Concrete to decline to enter the site."

His Honour continued (at 526), in an important passage:

"In my opinion, there can be little doubt in this case that to the drivers of vehicles bringing goods and services to J-Corp at Rivervale the existence of a picket line involved at least a request, and probably a direction, that they should not enter. In the absence of any express disclaimer or advice that the line could be crossed, it was so understood by those participating and those drivers who approached the site. That finding is consistent with my acceptance of Reynolds' testimony and that of Keogh that instructions were to be given that no-one was to be stopped from crossing the line. I take that to mean that those participating in the picket were to be told that they should not physically stop anyone from crossing nor explicitly direct or request anyone not to cross the line." [Emphasis supplied.]

This passage was much criticised by counsel for the BLF, but, in our view, was well based upon the evidence, save for the words we have emphasised. Those words should not be treated as laying any satisfactory ground for the adverse finding on the issue of the BLF's "purpose". Otherwise the passage properly and significantly points to the finding which was made as to the "hindering" of supply.

The primary judge held (at 534):

"Neither Reynolds or Keogh authorised any physical obstruction to vehicles bringing supplies to the site. Nor did they authorise the making of any threats or requests to drivers of supply trucks directed to preventing them from entering. They were conscious of the legal

implications of such conduct and had received advice in relation to it from the BLF's solicitors."

His Honour also found (at 535):

"Having regard to the conclusions I have reached [at 526, in a passage set out above] about the common understanding of the function of a picket line *both by those participating in it and* those supplying goods and services to J-Corp, the establishment and maintenance of the line involved an implied direction that it should not be crossed and an implied threat of unspecified sanctions in the event that it were crossed. In my opinion, in a real and practical sense and consistently with the observations of Deane J [in *Australian Broadcasting Commission v Parish* at 153], the establishment and maintenance of the picket line by the BLF was conduct which at least hindered and in some cases prevented the supply of goods or services to J-Corp. To the extent that there is evidence of explicit directions attributable to the BLF that suppliers should not enter, those directions also constitute conduct hindering supply."

The phrases which we have emphasised are open to criticism in so far as they would found any finding against the BLF on the issue of "purpose". But the passage nevertheless contains findings as to hindrance which were open to his Honour on the evidence. The first of the primary issues on the appeal should be decided adversely to the BLF. The activities of the "official" picket affected to an appreciable extent the ease of the usual way of the supply of goods and services to J-Corp at the Rivervale site, and, therefore, within the meaning of s 45D(1) hindered that supply.

In the light of the conclusion we have reached on the second branch of the appeal, it is unnecessary to determine whether the declaration made by the primary judge was well founded, in so far as it extended beyond "hindering" to "prevention" of supply.

Purpose

Section 4F of the Act provides:

"For the purposes of this Act —

- (a) ...
- (b) a person shall be deemed to have engaged or to engage in conduct for a particular purpose or a particular reason if —
 - (i) the person engaged or engages in the conduct for purposes that included or include that purpose or for reasons that included or include that reason, as the case may be; and
 - (ii) that purpose or reason was or is a substantial purpose or reason."

Section 4F(b) does not apply in relation to s 45D(1); but a person shall be deemed to engage in conduct for a purpose mentioned in s 45D(1) "if he engages in that conduct for purposes that include that purpose". Section 45D(2) so provides.

In the present case, no reliance is placed upon the defence provided by s 45D(3); this provides yet another variation upon the concept of purpose by specifying that "the dominant purpose" for the conduct in question is "substantially related to" inter alia, the remuneration, conditions of employment or working conditions of the person otherwise contravening

s 45D, or of another person employed by the employer of that person: see s 45D(3)(b)(iii). The phrase “dominant purpose” perhaps harks back to the notion of “predominant purpose”, with which the tort of conspiracy is concerned: see *Crofter Hand Woven Harris Tweed Co Ltd v Veitch* [1942] AC 435 at 445.

The findings of the primary judge on the issue of “purpose” appear principally in the following important passage (at 537):

“The ultimate purpose of the picket line in this case was to obtain, by placing pressure on Homeswest, assurances that organisers would have the right to enter the Rivervale site to inspect conditions and amenities there and ensure compliance with the relevant requirements of the award. I accept that it was not part of that ultimate purpose as contemplated by Keogh and possibly Reynolds, to either embarrass or place economic pressure on J-Corp. *I do not accept that that purpose would have been absent from the contemplation of Fox, Pallott and Young and others participating in the picket line. It was, however, highly likely and in the contemplation of all concerned in the hierarchy of [the BLF] and on the picket line that the existence of the picket would cause suppliers to turn away from the site.* While Reynolds and Keogh expressly eschewed conduct which would amount to ‘stopping’ suppliers they did so, I think, in the belief that the avoidance of physical obstruction or explicit threats or directions would take the case out of the reach of s 45D. It is not possible, however, to avoid the conclusion that *they would have known and accepted that in the absence of any express disclaimer the picket would in all probability have the effect of deterring entry by suppliers onto the site. I consider that Reynolds and Keogh accepted that probability* although I allow the possibility that they may well have regarded it as a consequence explicable at law as the exercise of the free choice of the supplier rather than as a consequence of the picket. *In my opinion, however, it was a likely consequence of the picket line. It was accepted as a likely effect and in my opinion formed part of the purpose of the conduct.*

The question then arises whether the purpose so established so embraced a purpose of causing substantial loss or damage to the business of J-Corp. The word ‘substantial’ requires loss or damage which is more than trivial or minimal.

...” [Emphasis supplied.]

Counsel for the BLF, with reference to the first of the sentences we have emphasised, submitted that the attitudes of Messrs Fox, Pallott and Young were not probative of the purpose of the BLF itself. We accept that submission and the corresponding submission as to the reliance placed later in this passage upon the mental processes of Keogh.

After referring to passages in *Tillmanns Butcheries Pty Ltd v Australasian Meat Industry Employees’ Union* (1979) 42 FLR 331 at 338, 348, and *Building Workers’ Industrial Union of Australia v Odco Pty Ltd* (1991) 29 FCR 104 at 140, the primary judge (at 538) concluded:

“Interference with the provision of materials and services to a major building contractor of the kind undertaken in this case will necessarily cause delay and expense to the builder. And in the circumstances of this case, the continuation of this picket line for any period of time would in all probability have inflicted loss or damage on the business of J-Corp

that could not be said to be ephemeral or trivial. The concept of substantiality does not require a consideration of the full range of building contract undertaken by J-Corp or its gross annual revenue or profitability. It is sufficient to say that the likelihood of non-trivial loss or damage in the context of this major building contract *was a necessary consequence of the commonly contemplated effect of the establishment and maintenance of the picket line*. It was, in that way, embraced in the relevant purpose and it was, in my opinion, a likely effect of the continuation of the conduct.” [Emphasis supplied.]

Accordingly, his Honour concluded that J-Corp had succeeded in showing that the BLF, by establishing and maintaining the picket line at the Rivervale site from 27 July 1992, had contravened s 45D of the Act.

We understand the primary judge to have reasoned that

- (i) on the facts as he had found them the BLF had engaged in conduct, the necessary consequence of which, given the significance on the evidence of the use of the term “picket line”, had been the hindering of the supply of goods or services to J-Corp;
- (ii) the occurrence of this state of affairs had been highly likely in the absence of an organisation of the picket in such a way as to ensure the bringing home at the site to those third party suppliers an express disclaimer by the BLF of any intention or wish to prevent their entry to the site;
- (iii) the BLF should be taken as having accepted this highly likely consequence of its conduct because Mr Reynolds “would have known and accepted” this probability, and
- (iv) the necessary purpose had been established.

Step (i) certainly may be accepted, and the same may be true of step (ii). But, in our view, the chain breaks at step (iii). We accept the submission of counsel for the BLF that the primary judge fell into error of law by, in effect, applying to Mr Reynolds and thus to the BLF what, in another setting, Dixon CJ described as the “seldom helpful and always dangerous” precept that a man is “presumed to intend the reasonable consequences of his act”: see *Stapleton v The Queen* (1952) 86 CLR 358 at 365; *Parker v The Queen* (1963) 111 CLR 610 at 632.

It is true that, in terms, the primary judge had set out extracts from the following passage in the judgment of Deane J in this Court in *Tilman's* (supra) at 349. But in the result, his Honour appears to have overlooked the caution in that portion of the passage which we shall emphasise:

“It suffices, for present purposes, to say that, in my view, the question to be answered in determining whether conduct was engaged in for a ‘purpose’ mentioned in s 45D(1) of the Act is, to adopt the words of Viscount Simon LC in *Crofter Hand Woven Harris Tweed Co Ltd v Veitch* [1942] AC 435 at 444-445, to be answered *not by reference to whether it was appreciated that the relevant conduct might have the specified effect* but by reference to the real reason or reasons for, or the real purpose or purposes of, the conduct and to what was in truth the object in the minds of the relevant persons when they engaged in the conduct in concert. In so far as the union was concerned, its purpose must, of course, be determined by reference to the purpose of those through whom it acted.”

The question on this branch of the appeal then becomes whether, upon

the evidence, it would have been properly open to find that the real reasons for the conduct of the BLF, determined by reference to those of Mr Reynolds, were such as to bring it within s 45D(1). The further or alternative submission of counsel for the BLF was that if they were to be construed as findings as to the "real" reasons and purposes of the BLF, the conclusions of the primary judge were quite contrary to the evidence.

In re-examination, Mr Reynolds was asked whether, in deciding that picket should take place, any part of his purpose involved a campaign that was to be waged against the Buckeridge group, of which J-Corp was a member. He replied "No". He was asked what was his purpose in holding such a picket. He responded:

"All we wanted to do was to put a protest, a picket as everyone is referring to it, to put a protest or a picket, whichever fits, down there to highlight the role of the government in giving a five and a half million dollar contract to a company like this who were refusing right of entry, failing to recognise employees' rights etc. We don't — we really were angry that Homeswest had gone against an under-taking given to us that whoever won the contract, it would certainly be in accordance with their contract which requires that proper facilities such as amenities, workers compensation cover and the recognition of employees' rights, the recognition of unions' right of entry, all would be abided by. And then we found out that that was not happening. And we certainly wanted to get people on to the site so as we could prove — as we have now proven in another court — that there is employees on the site and we should be able to obtain right of entry. And by discussions that I had with the Minister for Labour when [I was] in Canada, we were able to get an agreement with the government that forced J-Corp to allow us right of entry on to the site."

Earlier, in cross-examination, he had said that the "main thrust" of the protest at the Rivervale site "was to embarrass the Government and Homeswest because we saw them and still see that it is the Government who is at fault here".

Whilst Mr Reynolds, Mr Keogh and Mr Drake-Brockman had been at the East Perth lockup on 24 July 1992, important conversations had taken place. Mr Drake-Brockman had told them that the formation of a picket line at the Rivervale site could lead to legal action and that they ought to be very careful; nobody should be stopped or hindered by such a picket line from gaining access to the site. In his reasons for judgment, the primary judge after retailing this advice continued (at 507):

"Reynolds said in evidence that he instructed Keogh accordingly. The picket line was to be established simply to protest and inform people about J-Corp's refusal of right of entry to union representatives. If there were to be a picket line then, he said, it was to be conducted lawfully and in accordance with advice from their lawyers with nobody to be stopped from crossing the line. Keogh said that he himself used the term 'American style picket line' to describe what he had in mind. He maintained in any event that it was essential that there be people allowed onto the site who could be characterised as employees because he regarded their presence as a precondition of the right of entry under the award.

Reynolds said he made it clear to Keogh that if there were to be a

picket line set up on the Monday it would have to be well disciplined and that people were not to be 'running riot'. The main thrust of any protest was to embarrass Homeswest and the State Government. Reynolds and his colleagues were angry about what they regarded as a breach of an undertaking which had been given by Homeswest ... Reynolds accepted in cross-examination that Graham Pallott as the relevant area organiser would be responsible for organising and conducting the picket line with Kim Young. They were, he said, responsible for looking after the dispute. Reynolds' evidence in this regard was not effectively challenged in cross-examination and in my opinion was probably a true account of the substance of the discussion and instructions that passed between himself, Keogh, Young and Drake-Brockman at the East Perth Lockup on the afternoon of 24 July 1992. *My findings in this respect, however, are to be read in the light of the significance of the use of the term 'picket line' which is discussed later in these reasons.*" [Emphasis supplied.]

Where purpose or other state of mind of an individual in relation to a given transaction is in issue, the statements of that person in the witness box, in a sense provide, the "best evidence". But the court may well take the view that these statements should be tested closely. *ASX Operations Pty Ltd v Pont Data Australia Pty Ltd (No 1)* (1990) 27 FCR 460 at 481-483, provides a striking example. Here, the evidence of Mr Reynolds as to the purpose of the BLF was scarcely tested at all in cross-examination.

This is not a case where the court has rejected the evidence of a witness and done so in the absence of cross-examination; as to which see Byrne and Heydon, (eds), *Cross on Evidence* (4th Aust ed, 1991), §17455. The evidence of Mr Reynolds was accepted. But nevertheless, for the reasons given principally in the passages at 526 and 537, which we have set out above, the primary judge went on to find against the BLF on the issue of purpose.

Conclusions

In the result, our view is that the appeal should be allowed, with costs. The declaration made 9 December 1992 and order 1 of the costs orders made 19 February 1993 should be set aside. In place of order 1, it should be ordered that the respondent pay the appellant's costs of the action up to 19 February 1993. Orders to that effect made by this Court will exhaust the subject matter of the appeal. It will remain for the parties to have the proceeding relisted before a judge of the court for the final disposition of the balance of the proceeding, in a manner which reflects the conclusions as to liability reached by the Full Court.

SPENDER J. I have had the advantage of reading in draft form the reasons for judgment of Lockhart and Gummow JJ. I agree that the appeal should be allowed, because for the reasons which their Honours give, on the evidence before and the findings of the learned primary judge, the purpose of the Australian Builders' Labourers' Federated Union of Workers — Western Australian Branch (BLF) was not any of the purposes required to be established for a contravention of s 45D(1) of the *Trade Practices Act 1974* (Cth). I agree also with the orders proposed by Lockhart and Gummow JJ.

I wish only to make observations on two matters. The first is the question of "conduct" in s 45D. The section requires conduct that hinders or prevents

the supply or acquisition of goods or services. It is necessary to identify with precision what is in truth the conduct of the alleged contravener. That conduct has to be assessed in the context of all the circumstances, but the conduct of the alleged contravener is not necessarily to be equated with somebody's understanding of what that conduct might be. I am here referring, for example, to what might be a person's reaction to simply seeing a person outside a building site wearing a BLF T-shirt.

In an attempt to clarify the point I am trying to make, take the example of a lone protester outside a furniture shop bearing a placard which says "This shop makes furniture out of Amazonian rainforest timber. Please shop elsewhere." A prospective customer might, on reading the placard, be persuaded to shop elsewhere. Another prospective customer, on seeing the protester carrying a placard, might go away because he or she did not want to become involved, or feared that he or she might be "hassled", to use Lockhart and Gummow JJ's colloquialism. In neither case, in my opinion, would the conduct of the protester constitute "conduct which hindered or prevented" the prospective customer from entering the shop.

The second matter is related to the first. The reasons for judgment of the learned primary judge are based in large measure on what he described as "the common understanding" of a picket line. Particular reference was made to the *Oxford Dictionary* definition of "picket" which incorporates the function "to dissuade or deter" persons going to work during a strike, and to the *Macquarie Dictionary* definition, which speaks of persons aiming to "dissuade or prevent" workers from entering a building during a strike.

"Deterrence" is not the same as "prevention", nor is either the same as "dissuasion". In the same way, a "request" is not the same as a "direction".

Given that a "picket" can have many and different meanings, ranging from the military connotation of somebody on guard duty to the lone protester, it is, in my respectful view, wrong to commence with the premise that in an industrial context, a picket line involves a *prima facie* contravention of s 45D, and such a contravention can be avoided if there is a sufficient disclaimer that access is not prevented or hindered.

The freedoms of speech and assembly, including the right to protest, are important democratic freedoms. Also important, I accept, is the entitlement of persons not to be victims of conduct in contravention of s 45D of the *Trade Practices Act*.

The learned primary judge said:

"This decision is not to be taken as advancing a general proposition that the establishment and maintenance of an official picket line by a union is always and in all circumstances unlawful. Each case must depend on its own facts. Contemporary usage of the term 'picket' does carry implications of direction and threat of sanction to those who seek to enter a site or premises the subject of a picket. While the threat of sanction remains, albeit unspoken, the possibility of characterising the use of the picket as a hindering or prevention of supply is also present. The implication may be defeated and the possibility averted by a combination of steps. These might include some explanation that the assembly is a demonstration to draw attention to an industrial issue and some explicit clearance to suppliers to enter which would negate any threat of sanction. The provisions of s 45D do not and should not affect rights of assembly and free expression. They do prohibit the concerted

use of threats to suppliers whether express or implied with the purpose and likely effect of causing damage to the business of another.”

In my opinion, this passage in his Honour’s reasons is predicated on a false premise, namely that there is a common understanding of what a “picket” is, and that because of that common understanding, the maintenance of what is described as a picket or a picket line is *prima facie* a contravention of s 45D.

It is not to be presumed that the maintenance of a picket is a contravention of the section unless steps such as those suggested are taken. Whether a contravention is made out depends on the evidence and the terms of the section.

The Court orders that:

1. *The appeal be allowed.*
2. *The declaration, being order 1 of the orders made 9 December 1992, and order 1 of the orders made 19 February 1993, be set aside.*
3. *The respondent pay the costs of the appellant of the appeal and of the proceeding below up to and including 19 February 1993.*
4. *The proceeding be re-listed before a judge of the court, for directions as to the disposition of the balance of the proceeding, conformably with the reasons for judgment delivered today.*

Solicitors for the appellant: *Dwyer Durack.*

Solicitors for the respondent: *Hotchkin Hanly.*

MICHAEL CHRISTIE

REGINA v COMMISSIONER OF POLICE, *ex p* NORTH
BROKEN HILL LTD

[M131/1992]

1992 Supreme Court: Wright J

May 29, June 1 — 3, 1992

*Criminal Law - Particular Offences - Against the person -
Assault - Breach of the peace - Police Offences Act 1935,
ss13(1) and 15C(f)* - Criminal Code, s182(1)† **.*

Highways - Rights of user - Restriction by picketing.

*Highways - Interference with rights of user and access - Public
right of user - Obstruction by picketing.*

*Highways - Offences in connection with - Obstruction - Loitering
- Rights in relation thereto - Traffic (Miscellaneous)
Regulations 1968, reg97(2)‡ ***.*

**Police Offences Act 1935, s13 — (1)* A person shall not, in a public place:

- (a) behave in a violent, riotous, offensive or indecent manner;
- (b) disturb the public peace;
- (c) engage in disorderly conduct;
- (c)) jostle, insult or annoy any person; [or]
- (e) commit any nuisance.

s15C — (1) A person shall not —

- ... (f) in any manner wilfully obstruct the use or enjoyment of a highway.

† *Criminal Code, s182 — (1)* An assault is the act of intentionally applying force to the person of another, directly or indirectly, or attempting or threatening by any gesture to apply such force to the person of another if the person making the attempt or threat has, or causes the other to believe on reasonable grounds that he has, present ability to effect his purpose; or the act of depriving another of his liberty.

‡ *Traffic (Miscellaneous) Regulations 1968, reg97 — (2)* No person on a public street:

- (a) shall stand or loiter —
 - (i) in such manner as to obstruct, or be likely to obstruct, the free passage of pedestrians or vehicles; or
 - (ii) to the inconvenience of other persons;
- (b) shall, having been found loitering on the public street and having been requested or directed by a police officer to move on —
 - (i) fail to comply with that request or direction; or
 - (ii) having complied therewith, be found within one hour loitering on the public street in the same vicinity; or
- (c) shall in any manner obstruct, hinder or prevent the free passage of a person or vehicle on a public street, except insofar as the obstruction, hindrance, or prevention, is the necessary consequence of the lawful use by that person of the street.

Industrial Law - Tasmania - Awards and related matters - Strikes - Picket line - Lawful and unlawful conduct..

Nuisance - What constitutes - Public nuisance.

Prerogative Writs - Mandamus -For what purposes - To compel performance of duties by officials - To whom and in what circumstances - Commissioner of Police - Discretion - Future events.

Police -Rights, powers and duties - Prevention of breach of the peace, etc - Misconception of powers - Discretion not to act - Police Offences Act 1935, s55(1), (2) and (3) - Criminal Code, s27(6) and (9).

Vehicles and Traffic - Offences - Relating to obstruction of streets - Picketing.

[Aust Dig, Criminal Law (3rd edn), [329], [332], [335], [389], [414], Highways (3rd edn) [8], [57], [63], Industrial Law [23], [425], Nuisance (2nd edn) [1], Police (2nd edn) [6], [11], Prerogative Writs (2nd edn), [29], Vehicles and Traffic (2nd edn) [104]].

In the course of an industrial dispute, picket lines were established outside a paper mill. Employees and others had been prevented from entering or leaving the mill by the presence of the picket line.

Though present on at least some occasions, police officers, acting on orders based on legal advice not to break the picket line, failed to render any assistance to those persons wishing to pass through the line.

Upon the application by the mill owner for mandamus ordering the Commissioner to exercise certain statutory powers to remove the picketers:

Held, that —

(a) a landowner has a right of ingress and egress at any point on his boundary to or from a public street or highway:

Folland v Stevens, [1915] SALR 25, followed;

(b) by deliberately obstructing others from entering or leaving private premises a person either commits an offence himself or is likely to provoke a breach of the peace:

Williams v Hursey (1959), 103 CLR 30, followed;

(c) in such circumstances a police officer has a right and a duty to take action under the *Police Offences Act* 1935, the *Traffic Act* 1925 and the *Criminal Code*:

Innes v Weate, 1984 Tas R 14, distinguished; and

(d) given —

- (i) the difficulty of predicting future events;
- (ii) that the failure to act on the part of the Commissioner of Police resulted from a misconception of his duties; and
- (iii) that those duties had now been outlined by the court; the order *absolute* should be refused and the order *nisi* discharged.

Cuming Campbell Investments Pty Ltd v Collector of Imposts (1938), 60 CLR 741 and *Reg v Chief Constable of Devon and Cornwall*, [1982] 1 QB 458, referred to.

APPLICATION FOR MANDAMUS

An industrial dispute had arisen at a mill operated by North Broken Hill Limited in Burnie. The majority of the workers at that mill had gone on strike and had commenced picketing all the entrances to the mill. Those picketers had prevented access to and departure from the mill ground by other non-striking employees of the mill owner.

Police were present and were aware of the fact that the picketers were preventing access to the mill grounds but had rendered no assistance to the persons who had been obstructed to assist them in passing through the picket lines.

It was apparent that the failure on the part of the police to assist was a policy decision made by senior police officers on the basis of advice as to the obligations of police officers in such situations.

The mill owner had successfully applied for an order *nisi* calling on the Commissioner of Police to show cause why a writ of *mandamus* should not issue requiring him to exercise certain statutory powers to remove the picketers.

Dr C Jessup QC and *R C MacKay* for the prosecutor referred to *Churchill Fisheries Export Pty Ltd v Director General of Conservation*¹, *Reg v Commissioner of Police, ex p Blackburn*²,

¹ [1990] VR 968

² [1968] 1 All ER 763

*Reg v McAulay*¹; *Reg v Chief Constable of Devon and Cornwall*² and argued that the actions of the picketers amounted to assaults, offences against the *Police Offences Act* 1935, breaches of the *Traffic Act* 1925 and the regulations made thereunder, breaches of the peace and to a public nuisance. In those circumstances the police had a duty to exercise such powers as were available to them to restore order.

D J Bugg and *M Lovett* for the Commissioner of Police referred to *Innes v Weate*³ and *Richter v Risby*⁴, and argued that the actions of the police had been a proper exercise of the discretion vested in them and further that the actions of the picketers did not constitute a public nuisance.

Cur adv vult.

JUNE 3

WRIGHT J briefly recounted and facts and continued:

It is plain from the evidence that, from time to time during the present dispute, police have been in attendance near the entrances to the APPM Mill when employees and others have been prevented from entering or leaving the Mill premises by the presence of picketers.

On no occasion have the police rendered assistance to the person or persons who have been obstructed to enable them to pass the picket line. It is a fair inference from the evidence that this lack of action has resulted from advice received by the Commissioner and his subordinates as to police responsibilities in situations such as the present and his consequent policy decision not to break the picket lines.

Unfortunately, that advice has been incomplete in several important respects in my opinion, and the resultant policy decision was incorrect. It is clear that unless prevented from

¹ (1979) 41 FLR 267
² [1982] 1 QB 458
³ 1984 Tas R 14
⁴ 1987 Tas R 36

doing so, the picketers are likely to continue exercising control over which persons and vehicles they will allow through their lines.

The legitimate role of a picket line is to inform passers-by and visitors to an industrial site of the existence of a dispute. If those persons are prepared to read placards or signs which are displayed, or to listen to the picketers' spoken word, they may understand the reasons for their grievances. The picketers may also seek to persuade visitors to the site, by reasonable argument or admonition, that they should not cross the picket line and thus demonstrate their sympathy or solidarity with the picketers. If a picket line keeps moving and does not hinder pedestrian or vehicular traffic, it is unlikely that its individual members will be charged with loitering or obstruction of the highway, but even so, they run the risk of committing a public nuisance as illustrated by *Tynan v Balmer*¹. Within these parameters the picketers are free to act. But when they form an impenetrable physical barrier against pedestrians or vehicles wishing to enter or leave the site, they clearly overstep the mark. The key issue in these present proceedings is whether, in taking such action, the picketers at the APPM Mill are simply exposing themselves to civil action at the suit of the company or whether they are committing an act of public disorder calling for police intervention to put an end to it.

Every member of the community has a common law right to use a public street or highway in the pursuit of his lawful business. His right is, to use the classic formulation "to pass and repass". He has no right to treat the highway as his own private property, and he has no right to control its lawful use by others, unless, being a police officer, he is exercising specific statutory powers to do so. These simple, yet fundamental, concepts are expressed as follows in Pratt and MacKenzie's *Law of Highways*, 21st edn, 1-2:

¹ [1967] 1 QB 91

"The term 'highway', in its widest sense, comprises all portions of land over which every subject of the Crown may lawfully pass ... The right of the public in a highway is an easement of passage only - a right of passing and repassing ... a party can only justify *passing along*, and not *being in* a highway."

The same proposition of law is both recognized and reaffirmed by much of the legislation which has been referred to in the course of these proceedings. In the judgment of Gibson J in *Lowdens v Keaveney*¹, (approved in *Reg v Clark (No2)*² it was said:)

"A public highway is primarily for the free passage of the public for all reasonable purposes of business or pleasure; but persons using such highway may stop on lawful occasions, as for example for the purpose of taking up or discharging persons or goods at adjoining houses, provided that in doing so they do not unreasonably interfere with corresponding rights of others. Where the use of the highway is unreasonable and excessive, that is a nuisance, irrespective of any guilty or wrongful intent."

A landowner has a right of ingress and egress at any point on his boundary to or from a public street or highway (*Folland v Stevens*³).

Whether a person is on private land preventing others on lawful business from entering, or is on public land or in a public thoroughfare adjacent to private land physically preventing or intimidating other persons who wish to enter lawfully upon those premises, the obstructor is, in my opinion, acting unlawfully. Even if he acts in a non-violent manner, the law is clear that by deliberately obstructing others from entering or leaving private premises he either commits an offence himself or, at the least, is likely to provoke a breach of the peace. That is, if he so conducts himself as to be likely to cause a person seeking entry or egress to initiate violent

¹ [1903] 1 IR 82 at 89

² [1964] 2 QB 315 at 321

³ [1915] SALR 25

measures himself, it may fairly be said that a breach of the peace ought to be anticipated.

Obviously if an individual on foot or in a vehicle seeks to pass through a gateway and his way is barred by a line of picketers, he is likely to attempt to push through and, if on doing so, he meets with further resistance, not only has he been assaulted, but he himself is likely to retaliate with increased force.

In such circumstances a police officer has both a right and a duty to take action under the explicit provisions of the *Police Offences Act* 1935, the *Traffic Act* 1925 and the *Criminal Code*.

The *Police Offences Act* 1935, s13(1), provides. [His Honour then set forth the *Police Offences Act* 1935, s13(1), and continued:]

All of these are arrestable offences, ie, offences in respect of which a police officer has power of arrest pursuant to the Act, s55(1). Furthermore, any such officer also has a duty to exercise that power, ie, he must arrest any offender whom he finds committing such an offence unless he has reasonable grounds for proceeding by way of summons only, (s55(2)). This power, in respect of a breach of the peace, is reinforced and extended by the *Criminal Code*, s27(6), which provides:

"It is lawful for any person to arrest without warrant any person whom he sees committing a breach of the peace or whom he believes on reasonable grounds to be about to commit or renew a breach of the peace."

Section 27(9) further provides that in the case of a police officer being in a position to exercise the power conferred by s27(6), he has a duty to exercise that power.

Under the *Police Offences Act*, 1935, s15C(f), a person commits an offence if he wilfully obstructs the use or enjoyment of a highway. This is not an arrestable offence unless substantial injury to a person or property has been caused or is a likely result of the obstruction, (s55(3)). Complementary provisions are to be found in regulations made under the *Traffic Act* 1925.

[His Honour then set out *Traffic (Miscellaneous) Regulations* 1968, reg97(2), and continued:]

I think Inspector Fox misconceived the substance of an offence under reg97 in that he tended to suggest that if a person was given a direction to move along by a police officer, he only committed an offence if he was found an hour later in the same place. This of course is incorrect as the offence is complete if an individual stands or loiters so as to obstruct or inconvenience others, whether or not he is moved along by a police officer. He commits a different offence if he fails to move along when so directed by a police officer and he commits yet a further offence if, having initially moved along as directed, he is found loitering once more in the same area less than an hour later.

The evidence establishes that each area in which a confrontation has occurred between picketers and people seeking to enter or leave the Mill may properly be regarded as both a public place and also a highway for the purposes of the *Police Offences Act* 1935 and as a public street for the purposes of the *Traffic (Miscellaneous) Regulations* 1968.

These provisions are obviously designed to guarantee the right of citizens going about their lawful occasions to use public areas and thoroughfares for that purpose without undue hindrance from other people.

My attention was also directed to the provisions of both the *Police Offences Act* 1935 and the *Criminal Code* dealing with assault. An assault can be treated as either a simple offence or as a crime. It is an arrestable offence under both statutes, (see s55 and s27 respectively). An assault consists of the voluntary application of force by one person to another. Threats accompanied by physical proximity may be sufficient to constitute an assault. An attempt to apply force may also be an assault.

[His Honour set forth the *Criminal Code*, s182(1), and continued:]

An assault is unlawful unless justified by law. It is plain from the High Court decision in *Williams v Hursey*¹ that picketers who, by their presence and threats, seek to intimidate those wishing to pass through their lines are guilty of an assault. A similar inference is equally inescapable in the circumstances referred to in the evidence of this case.

The evidence satisfies me that, from time to time since 12 May 1992, picketers at Burnie have offended against all the sections constituting various offences to which I have referred but I consider it unnecessary to be more specific than this for present purposes. It is sufficient to say that there has been much abuse and indecent language, disorderly conduct, jostling, assaulting and the like. There have been frequent breaches of the peace.

It was also argued that the picket line constituted a public nuisance.

In light of the decision in *Richter v Risby*², it is arguable that a public nuisance has not been committed but that was a very different case and in my opinion lacks the importance accorded to it by the learned Director of Public Prosecutions in his submissions. Having regard to the issues upon which *Richter v Risby*³ was argued, its outcome may be understood, but if different issues had been raised, the result may well have been different.

The cases referred to by learned counsel for the prosecutor, Dr Jessup QC, support the view that a group of individuals picketing an industrial site may well commit a public nuisance by doing so, but whether or not this is established in any given case largely depends upon the nature and number of persons

¹ (1959) 103 CLR 30 at 76,77

² 1987 Tas R 36

³ 1987 Tas R 36

affected adversely by the picketers' behaviour. I feel unable to make a finding at the present time that a public nuisance has been committed in the circumstances described in the evidence. It was suggested by the learned Director of Public Prosecutions that community attitudes may have some bearing upon the appropriateness or otherwise of police action. Although he did not refer to *Innes v Weate*¹ in this context, he did rely heavily on that case in a general way and therefore I think it desirable to say something about some comments by Cosgrove J which may be seen as bearing upon this question.

In my view, when his Honour, Cosgrove J, in *Innes v Weate*² spoke of a constable being a "representative of the community at large", and having a "duty to the community" he was plainly not intending to say that by some intuitive process a police officer should be aware of the predominant attitudes and desires of the local community and that he should act in accordance with his perceptions of community wishes. He meant, I am sure, that the policeman's duty is the duty declared by the law of the State.

In any event, *Innes v Weate*³ is clearly distinguishable from the present case. In that case Cosgrove J decided that it was no part of a constable's duty to prevent a trespass to a barge in circumstances where the trespass itself was not an offence. He held that, accordingly, a person disobeying a constable's order to leave the barge was not obstructing him in the execution of his duty. As I have pointed out, a person who loiters and obstructs or inconveniences other people in a public street is committing an offence. A police officer who finds him doing so has the duty to move him along. If the offender refuses he commits a further offence under the Regulations, and he also obstructs the police officer in the execution of his duty. This conclusion is inescapable whether or not he also renders himself liable to prosecution for a separate offence under the *Police Offences Act* 1935, s34B.

¹ 1984 Tas R 14

² *Ibid*

³ *Ibid*

If the police had been asserting and exercising their undoubted authority to move the picketers away from the Mill gates from the commencement of this dispute, the present entrenched positions so obviously taken up by the protagonists in the dispute may not have occurred. Inspector Fox claimed that such a process would have been futile but I am far from persuaded of this. As the Inspector himself says, the only resistance shown by picketers to police authority up to the present time has been their refusal of the somewhat perfunctory request, or more accurately, enquiry, as to whether they will allow an individual through the line.

The short point which must be made very clearly is that persons picketing in furtherance of an industrial dispute have no special rights in the eyes of the law. Similarly, police officers, whilst undoubtedly possessing a discretion as to how they will deal with any particular situation, are not entitled to choose sides for personal or political reasons however much they may have an inclination to do so. I hasten to add there is no such evidence in the present case.

Individual picketers who, separately or in concert with others, seek to make a protest against a perceived injustice or a violation of their rights, are perfectly entitled to do so in a peaceful and orderly manner. Once their conduct ceases to have that character, police intervention is called for and should be expected.

As was said in *Reg v Chief Constable of Devon and Cornwall*¹, measures of self-help by the persons impeded by picketers who are acting unlawfully, should be discouraged. This is because of the likelihood of any such measures escalating rapidly into a serious breach of the peace, a riot or

¹ [1982] 1 QB 458 at 473

worse and the further likelihood that allegations will be made that excessive force was employed by those utilizing the self-help process.

This is where the peacekeeping powers of the police are of supreme importance and must be exercised with both impartiality and firm resolve. This does not mean that they must always arrest and formally charge an individual picketer whose conduct amounts to a breach of the peace or is likely to do so. As Marks J said in *Nicholson v Avon*¹, "Arrest ... is one thing; prevention of a breach or threatened breach of the peace is another." This is consistent with what was said by the House of Lords in *Albert v Lavin*² where Lord Diplock stated:

"... every citizen in whose presence a breach of the peace is being, or reasonably appears to be about to be, committed has the right to take reasonable steps to make the person who is breaking, or is threatening to break the peace refrain from doing so; and those reasonable steps in appropriate cases will include detaining him against his will. At common law this is not only the right of every citizen, it is also his duty ..."

It is clear therefore that temporary detention of the kind mentioned is not necessarily to be equated with arrest as for an offence or a crime. It is a transitory preventive measure akin to self-help in abating a nuisance.

Lord Denning in *Reg v Chief Constable of Devon and Cornwall*³, suggested that obstruction *per se* amounted to a breach of the peace, but he recognized that this may be open to question. Cosgrove J in *Innes v Weate*⁴ thought that Lord Denning went too far and I am inclined to agree with him as to this. There is no doubt, however, that the consistent view expressed in most of the cases is that, at the very least,

¹ [1991] 1 VR 212 at 223

² [1982] AC 546 at 565

³ [1982] 1 QB 458 at 471

⁴ 1984 Tas R 14

obstruction involving face to face confrontation should give rise to a reasonable apprehension of a breach of the peace on the part of reasonable men and women and that in such circumstances a police officer should intervene to assist in the removal of the obstructor. In doing so, he would be acting both lawfully and in accordance with his duty as a constable.

As Lawton LJ said in *Reg v Chief Constable of Devon and Cornwall*¹:

"Police constables are no one's lackeys; but they do have a duty to preserve the peace no matter how unpopular that may make them with some sections of the community."

Whilst not subject to the direction or control of any outside organization, the police cannot avoid their unpleasant duties by absenting themselves from potential trouble spots. If they are notified of forthcoming action which may lead to a breach of the peace or the commission of some other offence, it is part of their function to act in accordance with their best impartial assessment to ensure that a breach of the law does not occur.

Implicit in the attitude of the Commissioner, Inspector Fox and indeed the learned Director of Public Prosecutions, Mr Bugg, was the proposition that before police should break a picket line, an actual assault must occur, either by the picketers upon the person seeking entry or egress, or by that person upon a picketer. This view of the law is fallacious and is clearly contrary to the unanimous view of the Court of Appeal in *Reg v Chief Constable of Devon and Cornwall*². The words of Templeman LJ³ as to the error involved in calling deliberate obstruction merely "passive resistance" are instructive and helpful.

It cannot be right, as the Commissioner of Police suggested in the course of his evidence, that a group of individuals manifesting firm resolve to enter premises at all costs would be

¹ [1982] 1 QB 458 at 471

² *Ibid*

³ *Ibid*, at 478,480

aided by the police to make that entry, whereas an individual of less resolute intention would receive no police assistance at all. This attitude is to invite the very violence which the police say they wish to avoid. It is tantamount to requiring that a person who has been obstructed should engage in hostile or threatening conduct before police will clear a way for him. It is also anathema to common sense.

In my opinion, the likelihood of a breach of the peace is sufficiently manifested by the refusal of the picketers to make way when requested to do so. It should not be necessary for a person obstructed to raise his hands or his voice or to summon other private individuals to lend him physical assistance before the police intervene.

As I have already said, if police do intervene at such a point, they do not have to arrest. They may be able to persuade the picketer to move away or they may be able to physically remove him before an actual offence has been committed. They have power to do this and do not commit an unlawful assault themselves in doing so.

Whilst I accept that union officials have been able to control and organize the activities of the picketers, in my assessment, the absence of serious violence up to this time at the Mill may be attributed to the forbearance of people who have been physically prevented from entering the Mill site, rather than to the absence of police intervention against the picketers.

Inspector Fox's desire to avoid violence at the picket lines is highly commendable, but the police cannot allow mob rule to displace the rule of law. It is much to be preferred that the police, with the authority of their public office and numerical strength, should handle a potentially violent situation, than that there should be an affray between resolute picketers and equally resolute strike breakers. Yet this may be the final outcome if the present position continues unchecked.

This, however, is not sufficient to dispose of the present

application. The prosecutor asks me to make absolute the order *nisi* for *mandamus*. The Commissioner of Police says that the order *nisi* should be discharged.

I have had difficulty from the outset in understanding how an order could be made in effective terms to cope with future events which may or may not happen on an indefinite number of occasions.

I was not surprised to find that my initial doubts were reinforced by what had fallen from courts of high authority on a number of previous occasions. *Cuming Campbell Investments Pty Ltd v Collector of Imposts*¹ is a case in point. Similar views have been expressed in a number of English cases, including *Reg v Chief Constable of Devon and Cornwall*².

I take the view that where, as here, the lack of action by police has apparently resulted from a misconception of their powers and responsibilities, rather than from a deliberate decision to flout the law and ignore their duty, it is an additional and an important factor to be taken into account in deciding whether or not to make an order at this time.

It is also of some significance that many of the incidents referred to in the evidence did not occur in the presence of police officers. Nor were most of those incidents reported to the police. On the other hand, as the police had adopted a non-interventionist role, this is not altogether surprising and in any event I have little doubt that the senior police officers at Burnie were generally aware of the continuing confrontation at the picket lines.

I give no weight to the suggestion that some attempts to take vehicles through the picket line were for non-genuine reasons.

¹ (1938) 60 CLR 741
² [1982] 1 QB 458

In the first place I do not accept that such a description is accurate. Mill staff and those under their direction were entitled, in my opinion, to test the picket line from time to time. In the second place, it has not been suggested that the prosecutors are other than genuine in wishing to remove the picketers from the Mill entrances so as to gain unrestricted access to the premises.

There is little, if any, room in cases of the present nature for policy decisions by the Commissioner or his officers except as to the vigour and formal consequences of their intervention. The Commissioner's policy to refrain from breaking a picket line cannot be supported, in my opinion. Equally, I do not see the police as having much discretion about whether they will or will not intervene when a specific offence such as an assault, or a breach of the peace occurs. (See *Reg v Commissioner of Police, ex p Blackburn*¹ per Denning MR and per Salmon LJ²). Legitimate reasons for declining to take steps to prevent a threatened or anticipated breach of the peace must also be rare. Insofar as Inspector Fox suggested that police should not interfere in a situation which had its genesis in an industrial dispute, he was clearly wrong. Nonetheless, the actual response by police in any given situation must be left to the discretion of the officers present at the time. Mistakes in the exercise of such discretion will be made from time to time. The very nature of a policeman's duty in a volatile situation makes this practically unavoidable. Nevertheless, he must act with impartiality and he cannot allow a desire to avoid violence to deflect him from enforcing the law if it is being continuously flouted in his presence. His discretion is not unfettered. He cannot ignore the commission of an offence in his presence.

It has been argued on behalf of the respondent that the police do not have adequate numbers to control the picketers at Burnie. Thus, it is said, it is a reasonable exercise of their discretionary judgment to make no attempt to break the picket line to allow access by vehicles and pedestrians. This is a truly

¹ [1968] 2 QB 118, [1968] 1 All ER 763

² *Ibid*, at 138,139 (QB), 770,771 (All ER)

frightening proposition, particularly coming from senior officers of police and a senior law officer of the Crown. It implies that the State lacks sufficient resources to enforce the law. It implies that force or the threat of force can supplant the rule of law. It tends to endorse the law of the jungle. It leads to anarchy. It is plainly unacceptable.

In *Reid Vickers and Forbutt (No2) v The Queen*¹, Connor ACJ refers to an old Irish case in which the following passage appears:

"If danger arises from the exercise of lawful rights resulting in a breach of the peace, the remedy is the presence of sufficient force to prevent the result, not the legal condemnation of those who exercise those rights."

I hope that what I have said in the course of these brief reasons may sufficiently clarify the role to be played by police officers in future confrontations between picketers and others arising from industrial disputation.

They may have a difficult task ahead. I do not envy them but I have no reason to believe that the Commissioner or his officers will fail hereafter to apply the law in accordance with my brief exposition this morning.

Should they not do so, and in consequence create the need for a further application by the prosecutor, I may very well take a contrary view but, on this occasion, I decline to make the order absolute and the rule *nisi* will be discharged.

My discretion to refuse the *mandamus* order sought in no way depends upon the submission that other equally efficacious means of dispersing the picketers have not been tried. *Reg v Chief Constable of Devon and Cornwall*² is again relevant. To

¹ (1981) 2 A Crim R 28 at 37
² [1982] 1 QB 458

serve and obtain injunctions against hundreds of individuals would be cumbersome, costly and protracted and probably ineffective. It is not, in my view, a feasible method of gaining unobstructed entry to the Mill.

Nor should it be thought that I believe *mandamus* is a remedy which is not reasonably available. Whilst I have mentioned some of the problems, I by no means reject the proposition that in an appropriate case where there is a continuing neglect or disregard of public duty of the kind presently alleged, an order should be made. See *Reg v Commissioner of Police, ex p Blackburn*¹; *Reg v McAulay*² and *Reg v War Pensions Entitlement Appeal Tribunal*³.

Order absolute refused.
Order nisi discharged.

Solicitors for the prosecutor: *Dobson Mitchell & Allport*.

Solicitor for the respondent: *D J Bugg*, Director of Public Prosecutions.

N R R

¹ [1968] 2 QB 118, [1968] 1 All ER 763
² (1979) 41 FLR 267 at 271 and 273
³ (1933) 50 CLR 228

SUPREME COURT OF VICTORIA

5 **DOLLAR SWEETS PTY. LTD. v. FEDERATED CONFECTIONERS**
ASSOCIATION OF AUSTRALIA and Others

MURPHY J.

10 6, 9 12 December 1985

15 **Industrial law — Picketing — Whether unlawful — Picket line involving violence, threats of violence and intimidation — Plaintiff's business seriously disrupted — Resort by plaintiff to processes of conciliation and arbitration unavailing — Whether interlocutory injunction should be granted to restrain defendants from continuing with picket.**

20 **Injunction — Industrial dispute — Picketing — Picket line involving violence, threats of violence and intimidation — Plaintiff's business seriously disrupted — Resort by plaintiff to processes of conciliation and arbitration unavailing — Whether interlocutory injunction should be granted to restrain defendants from continuing with picket — Balance of convenience.**

25 In the course of an industrial dispute between the plaintiff and members of the Federated Confectioners Association ("the FCA") a number of members of the FCA formed a picket line outside the premises of the plaintiff. The picketers prevented deliveries of goods to the premises and the despatch of goods from the premises. At various times members of the picket line directed violence and threats of violence to persons attempting to deliver and carry away goods. Damage was done to vehicles. Attempts were made to intimidate the drivers of delivery vehicles. As a result of these activities the plaintiff's business was seriously disrupted. There was a loss of profits which, if continued, would have forced the plaintiff to cease trading. The plaintiff notified the dispute to the Australian Conciliation and Arbitration Commission. Following a hearing, the Commissioner recommended that the FCA lift the picket. The FCA refused to comply with the recommendation. The plaintiff then commenced proceedings against the FCA and some of its members who had taken part in the picket alleging that they had committed the torts of interference with contractual relations, intimidation, nuisance and conspiracy to injure the plaintiff. The plaintiff applied to the Court for interlocutory injunctions to restrain continuation of the picketing pending trial of the action.

40 *Held*, granting the application: (1) The picketing was a nuisance and unlawful because it involved obstruction and besetting.

Sid Ross Agency Pty. Ltd. v. Actors and Announcers Equity Association of Australia [1971] 1 N.S.W.L.R. 760, followed.

45 (2) The plaintiff had made out a case against the defendants and each of them, which, if untouched, would entitle it to relief on the grounds that each of the torts alleged by it had been committed by the defendants.

(3) The balance of convenience strongly favoured the plaintiff because the plaintiff was faced with closure of its business and the defendants would suffer no damage if restrained.

50 (4) Although the Court had, in the past, been loath at times to intervene in matters involving industrial relations especially if some avenue for settlement through the processes of conciliation and arbitration remained to be explored, those processes had been exhausted in the present case. It was relevant that the

defendants had refused to heed the Commissioner's recommendation to lift the picket.

Summons

The plaintiff applied for an interlocutory injunction to restrain the defendants from maintaining a picket line outside its premises. The facts are stated in the judgment.

A. H. Goldberg Q.C. and P. H. Costello, for the plaintiff.

M. J. Strong, for the defendants.

Cur. adv. vult.

Murphy J.: This is an application by the plaintiff company for an interlocutory injunction in action No. 4441 of 1985. The summons is dated 3 December 1985. The plaintiff is a corporation called Dollar Sweets Proprietary Limited and, as its name suggests, it manufactures and distributes confectionery. It was founded in 1947 by the father of its present managing director, Alfred Joseph Douglas Stauder, and is a family concern. It employed some 27 employees earlier this year at its premises situate at 1457-1465 Malvern Road, Glen Iris, which I shall refer to as "the said premises". All the business of the company is conducted from the said premises, and deliveries are made to and from the said premises via a laneway which runs at the rear, off Creswick Street. Much of its business involves the manufacture and packaging of nonpareils which are perhaps better known to all of us as hundreds and thousands. It also manufactures assorted cake toppings, panned and compressed tablets such as peppermints, musks and spearmints and carob, and coated nuts and fruits.

The defendants comprise a union known as the Federated Confectioners Association of Australia, which is a corporate entity capable of being sued in this Court, along with the other defendants, who are several of the officials of this Union and members thereof.

The plaintiff's employees are covered by the Confectioners Award of 1980 which prescribes a working week of 40 hours, but since 1983, by agreement, the hours required to be worked at the plaintiff's said premises by members of that union to earn the award wage were reduced to 38 hours. The national wage decision of 23 September 1983, I am told by counsel, led to what has come to be known as "the accord". One feature of "the accord" is, apparently, an automatic six-monthly adjustment to the award wages, made according to fluctuations in the consumer price index during the preceding six months. This automatic adjustment occurs only if a claim for reduction of working hours below 38 hours is not pursued.

The Confectioners Union refused to give its signature to a commitment to this condition and, accordingly, when the award wage which would have been payable to members of the union would have been increased by reason of the 4.3 per centum increase granted at the time, the union was not granted this increase.

However, the plaintiff company agreed to grant this increase in wages to its employees if they agreed not to make a claim for less than a 38-hour working week. On 25 November 1983 a Mr. Henshaw, a leading hand, and a Mrs. Garwood, a forelady, on behalf of the 27 employees employed by the plaintiff company signed such an agreement with the plaintiff.

Thereafter, everything appears to have continued on an even keel until approximately May 1985. At that time, officials acting with the authority of and on behalf of the union which is, as I said, the first-named defendant in this case, informed the Confectionery Manufacturers of Australia Limited, of which the plaintiff was a member, that they intended to seek a 36-hour week for their members who fell under the 1980 award.

Union officials commenced to conduct lunchtime meetings at the plaintiff's premises and, as a result of these meetings, it was decided to engage in a series of rolling strikes at the plaintiff's premises in support of the demand for a 36-hour week.

Such strikes were called on 8 July 1985, again on 10 July and yet again on 17 July. On each occasion serious disruption was caused to the plaintiff's business.

On 18 July 1985 the managing director of the plaintiff company, the said Stauder, spoke to each of the plaintiff's employees and handed to each employee two documents, one being a letter and the other being a notice. The first document, the letter, detailed the several problems caused by the rolling strikes, and the second document, the notice, asked the particular employee to indicate whether he or she, as the case may be, was prepared to abide by the terms of the award, and of his or her contract of employment; and went on to say that if he or she was not so prepared, then his or her employment would be terminated.

It happened that some 12 employees returned to work and stated that they did not wish to pursue the claim for a 36-hour week.

Before, however, the time for declaring their intention (a time which was mentioned in the letter and in the notice) had passed, and before anyone was dismissed, some 15 employees, assisted by officials from the defendant union, began to form and enforce a picket outside the plaintiff's factory. This picket line has been continuously maintained from that day to this. Each one of the defendants from the second-named to the ninth-named defendant has, at various times, been identified as taking part in the said "picket".

The second-named defendant is the federal secretary of the first-named defendant, the union. He is also secretary of the Victorian branch of the union. He has regularly been a member of the picket line. The third-named defendant was an employee of the plaintiff and he, together with the fourth and fifth-named defendants who were also employees of the plaintiff, was regularly a member of the picket line until late in August, at all events. The fourth and fifth-named defendants have continued to be part of the picket line.

The sixth-named defendant was not an employee of the plaintiff but is believed to be an organizer employed by the first-named defendant. She has regularly been a member of the picket line. The seventh-named defendant has also been a regular member of the picket. The eighth-named defendant, who is the assistant secretary of the Victorian branch of the first-named defendant and its industrial officer, has attended and formed part of the picket line regularly, as also has the ninth-named defendant, who is the vice president of the Victorian branch of the first-named defendant.

All of the defendants have been participants on numerous occasions in forming lines across the entrance to the laneway, obstructing the free passage of vehicles to the said premises.

On occasions the police have been called to the scene to remove the picket line and to enable a particular truck to proceed to the said premises.

On one occasion a truck driver, an electrical contractor, having been told by the picket line in the lane that he could not proceed to the said premises, then attempted to enter the premises from the front, but was again warned by the second defendant, Mr. Frizziero, that he could not enter because there was a picket line and that if he did attempt to do so, there would be trouble. Not wanting trouble, the electrical contractor departed without performing the repair work on a machine which he had come to repair for reward at the plaintiff's request.

It was submitted by Mr. Strong of counsel, who appeared for all the defendants, that the electrical contractor may have been in sympathy with the union cause. I however prefer the inference that he was intimidated by the veiled threats of Mr. Frizziero and the picket.

A serious incident occurred on 23 July 1985, shortly after the picket line commenced. The plaintiff company by contract with Rowntree Hoadley Company received at approximately weekly intervals regular deliveries of about two tonnes of materials which it used for making hundreds and thousands. These deliveries from Rowntree Hoadley were made by truck. On 23 July the truck driver from Rowntree Hoadley attempting delivery was deliberately turned back by the picket. The managing director of Rowntree Hoadley then informed Mr. Stauder that his company would make no further deliveries to the plaintiff as a result of the picket, that the deliveries had been declared black, and since then no further deliveries have been made. This deliberate act of turning back the driver was calculated to interfere with, and has interfered with, the plaintiff's business and contracts for supply quite seriously, and its inability to supply its regular customers with hundreds and thousands has contributed to a considerable loss of profit. Those customers include Woolworths, Coles, Safeway, Davids Holdings and Franklins of New South Wales. In the case of Franklins, the plaintiff's competitor in the supply of these hundreds and thousands is now enabled to step into the gap and the plaintiff, not unnaturally, fears that it may not be able to recover this account, unless it is quickly enabled to renew its supplies.

Supplies to the plaintiff company generally have been interfered with by the picket line, and the plaintiff company, because of this deliberate interference with its contractual relations with suppliers, has attempted to minimize its loss by collecting supplies itself and bringing them to its premises. This also has increased costs and lowered profits. Some suppliers of raw materials have terminated deliveries altogether because of fears engendered by the picket.

There is evidence which I accept that as a consequence of the picket a profit of some \$10,000 for the quarter ending 30 September 1984, has for the same quarter in 1985 turned into a trading loss of \$80,000. I accept that unless this trend is reversed, the company will find itself unable to continue trading. I accept that the turnabout in trading profit to reflect this large loss is in no small part due to the disruption to supplies and a consequent loss of sales due to the picket and its actions.

It seems from the evidence that the activities of the defendants on the picket line have not been confined to obstruction and besetting of customers and invitees of the plaintiff company. The picket has been indiscriminate, and the material before me satisfies me that the picket has

obstructed all persons who have wished to do business with other shops in the said lane, shops unconnected with the plaintiff. This form of what, I think, must be described as anarchy has of course also the effect of dissuading clients of the plaintiff from proceeding in the normal way to perform contracts with it, and I consider this particular action only in that light.

The apparent success of the picket line in disrupting deliveries to and sales from the plaintiff's premises would appear to be due to the fear which drivers and suppliers have of the consequences should they defy the picket. I infer this generally from all of the evidence. In particular it is exemplified and shown to be justified by the experience of a driver, Paul Lendon. Mr. Lendon is a truck owner/driver engaged full-time in the carriage of commercial goods. He receives orders from Erand Transport Pty. Ltd. One of these orders was to take deliveries to the plaintiff's premises, and Mr. Lendon deposes that at first he experienced no difficulty in carrying out those orders. However, late in July 1985, he noticed a number of people standing across the laneway and obstructing the entrance at the rear of the plaintiff's premises. This of course was the picket line. In particular the second defendant who was present shouted and gestured at him in an attempt to stop him entering the lane in order to effect deliveries.

On 1 August 1985, Mr. Lendon was followed for a considerable distance by another vehicle driven by the ninth-named defendant, the vice president of the Victorian branch of the first-named defendant union, that is to say Mr. Les Johnson. Mr. Lendon was fearful enough to seek assistance by radio from another taxi truck which came to his aid. However, although Mr. Lendon asked Mr. Johnson not to follow him any further, during the following week Mr. Lendon's vehicle was followed again by a blue Commodore driven by Mr. Frizziero, the second-named defendant. He deposed, and I accept, that after this had happened some ten times, Mr. Lendon contacted the police and soon after Mr. Frizziero ceased to follow him.

A fortnight after the first incident mentioned above, on 14 August 1985, as Mr. Lendon was delivering sugar to the plaintiff's premises, he was obliged to stop his vehicle because of the presence of another vehicle delivering goods to another shop in the lane. He deposes that about six persons then linked arms and stood across the laneway, blocking the entrance of his truck to the plaintiff's premises. When he called out, "Don't be bloody silly", the second defendant came to Mr. Lendon's truck and attempted to pull the side mirror off the truck. Mr. Lendon began to get out of his truck and while doing so the third-named defendant, Jacques Lahausse, punched him from behind with the consequence that he fell to the ground.

Then a number of women who were in the picket line punched and kicked Mr. Lendon. The fourth-named defendant, Irene Svalma, ripped a hairpiece from his head, which he said caused him to bleed. Mr. Lendon could not break free from his assailants until two other truck drivers came to his assistance. The police were called but the picketers by this time had dispersed, at least for the moment. The uncontradicted evidence is that Mr. Lendon has, as a result of the assault, been required to have an operation on the retina of his eye, and now wears glasses.

Furthermore, he has received a number of abusive phone calls during which threats were made to him. The obstructive tactics of the picket line

directed to him have continued since that day. A number of his fellow employees, drivers employed by Erand Transport Pty. Ltd., have perhaps not unnaturally, refused to take deliveries to the plaintiff's premises because of fear of physical violence should they venture to pass through the picket.

I infer that their fears are more than justified, and the knowledge of the assault on Mr. Lendon has lent strength to the intimidation caused by the obstructive and violent tactics of the picket. It can be clearly seen from this incident that the picket is not bluffing.

I infer, also, that the first-named defendant has deliberately organized the picket and the activities of those who participate in it, and that it has done so deliberately to interfere with the plaintiff's contractual business activities. Members of the picket and some of the defendants have been seen photographing various drivers from time to time, and their trucks, when they are making delivery to the plaintiff's premises. I infer that this activity is designed to frighten such drivers or their employers into believing that retribution of one sort or another may be wreaked on them if they deliver their goods to the plaintiff, or should they ever return to its premises in order to do so.

At the same time, a series of incidents, unable to be laid at the door of any one of the defendants but too coincidental to be seen as unconnected with the industrial disruption, have occurred. These have taken the shape of a false bomb threat at the plaintiff's premises, the cutting of telephone cables leading into those premises, the jamming of the locks of those premises by the insertion of Superglue in them, and the setting fire to a building at the rear of the plaintiff's premises. I do not rely on any one of these matters in considering the issues raised on this summons for an interlocutory injunction against the nine named defendants.

I am prepared to infer from the evidence (other than the evidence of these last-mentioned incidents), that the picket line is organized by the first-named defendant and its officials, and is purposely designed to interfere and does interfere with the plaintiff's contractual business by obstructing and preventing, wherever possible, the performance of the normal contractual activities of the plaintiff and its suppliers and customers. It is also designed to intimidate those persons who have contracts with the plaintiff, and who would normally contract with the plaintiff and does, in fact, intimidate them, so that some refrain from performing their contracts or from exercising their legal right of contracting with the plaintiff under fear that if they do so they may be assaulted, or otherwise unlawfully penalised.

I am also satisfied that the acts of all the defendants which have now been repeatedly performed over many months cannot be considered to be a lawful form of picketing, but amount to a nuisance involving, as they do, obstruction, harassment and besetting. The form of picketing which the evidence discloses here is not peaceful but amounts clearly to an interference with the rights of a person wishing to enter or at least to proceed and make deliveries or take supplies to or from the plaintiff's premises. In fact, so often as they are able, the defendants physically prevent persons and vehicles from approaching and entering the plaintiff's premises. This, as I have said, is done by obstruction, threats and besetting, the latter meaning, in this context, to set about or surround with hostile intent. Besetting is appropriately a term applied to the occupation of a

roadway or passageway through which persons wish to travel, so as to cause those persons to hesitate through fear to proceed or, if they do proceed, to do so only with fear for their own safety or the safety of their property. This is exactly what has occurred in this case, and is continuing to occur as a consequence of the picket, and its operation.

That the defendants intend to continue with their activities appears to me also to be clear. This conclusion is also consistent with what the former union shop steward at the plaintiff's factory said a fortnight ago to some employees as they were approaching the premises to go to work, when he called out, "We're going to stay out here till we close the company down."

There is sufficient evidence to conclude at this stage that the defendants and each of them have agreed wilfully to set about injuring the plaintiff in its trade and have, in fact, succeeded in doing so.

The question then becomes whether this Court should intervene to order that the defendants and each of them cease to continue these unlawful activities.

It has been argued that in the field of industrial relations, this Court is loath to intervene, especially if there is some venue still to be explored in the conciliation and arbitration arena. I accept that at times in the past this principle has been accepted as a generalization only. But in this case, the plaintiff has gone to and apparently followed to its length, the diplomacy of conciliation. During October 1985, a Conciliation Commissioner, Commissioner Bain, following a hearing, and having made a view of the plaintiff's premises and interviewed employees, recommended that the picket should be lifted. It is apparent that the union and the defendants paid no heed to this recommendation. Instead they, as it was put, thumbed their noses at the Commission and continued with their picketing and illegal practices, apparently aware that the Commission is powerless to apply any sanction.

It has been put that this Court is not without power and, in my opinion, it should, in an appropriate case such as this, when requested, intervene in circumstances such as are to be found here. This view is, I believe, consistent with authority.

When sitting as a Justice of Appeal in the New South Wales Supreme Court, Mason J. said in *Sid Ross Agency Pty. Ltd. v. Actors and Announcers Equity Association of Australia* [1971] 1 N.S.W.L.R. 760, at p. 767: "At common law, picketing is not necessarily a nuisance and unlawful as such, but it becomes so if it involves obstruction and besetting: see *J. Lyons & Sons v. Wilkins* [1899] 1 Ch. 255; *Ward, Loch & Co. Ltd. v. Operative Printers' Assistants' Society* (1906) 22 T.L.R. 327." The other members of the Court, Jacobs J.A. and Holmes J.A., agreed with the judgment of Mason J.A. which is, if I may say so with respect, a judgment of vital significance, when considering the facts of this instant case and the law applicable to the facts as I see them to be.

I appreciate that this is an interlocutory matter, and that at this stage the plaintiff must make out a prima facie case, such that if the evidence stays as it is, there is a probability that the plaintiff at the trial of the action will succeed. The degree of probability that is required may vary according to the circumstances. In the present case I am not in doubt on this issue and my task is made easier because there is no conflict upon the evidence before me. The defendants have chosen not to file any affidavits contradicting or qualifying any of the materials filed on behalf of the plaintiff, although they

themselves would be especially fitted to do so were the facts, which the defendants deposed to, in any way incorrect. Nor has their counsel sought to cross-examine any of the deponents to the several affidavits that have been filed, although he was given the opportunity to do so.

Accordingly, I am satisfied that the plaintiff has made out a case against the defendants and each of them which if untouched would entitle it to relief on each of four grounds:—

1. That the defendants have committed and threaten to continue to commit torts of interference with contractual relations: see *Lumley v. Gye* (1853) 2 E. & B. 216; 118 E.R. 749; *Williams v. Hursey* (1959) 103 C.L.R. 30, at p. 77, per Fullagar J.; *Torquay Hotel Co. Ltd. v. Cousins* [1969] 2 Ch. 106, at p. 138; *South Wales Miners' Federation v. Glamorgan Coal Co.* [1905] A.C. 239, at pp. 252 and 254; *Stratford v. Linley* [1965] A.C. 269.

2. That the defendants and each of them have committed and threaten to continue to commit torts of intimidations: see *Rookes v. Bernard* [1964] A.C. 1129, at pp. 1209, 1220; *Stratford (J.T.) & Sons v. Linley* [1965] A.C. 269; *Morgan v. Fry* [1968] 2 Q.B. 710, at p. 724; *Sid Ross Agency Pty. Ltd. v. Actors and Announcers Equity Association of Australia* [1971] 1 N.S.W.L.R. 760, at pp. 766-7.

3. That the defendants and each of them have committed and threaten to continue to commit torts of nuisance: see *Sid Ross Agency Pty. Ltd. v. Actors and Announcers Equity Association of Australia* [1971] 1 N.S.W.L.R. 767; *Torquay Hotel Co. Ltd. v. Cousins* [1969] 2 Ch. 106, at p. 119; *Fennell v. Robson Excavations Pty. Ltd.* [1977] 2 N.S.W.L.R. 486, at p. 497, per Samuels J.A.

4. That the defendants and each of them have together conspired wilfully to injure the plaintiff in its trade: see *Sorrell v. Smith* [1925] A.C. 700, at pp. 711-14; *Amos Removals v. Small* [1981] 2 N.S.W.L.R. 525, at p. 531.

I have read each one of these above-mentioned cases, and in arriving at my conclusions have endeavoured to apply the principles expressed in them. I would also wish to refer to the unreported judgment of Harris J., delivered on 8 December 1976, in this Court in *G.J.K. Nominees Pty. Ltd. v. Printing & Kindred Industries Union*, which I have found to be of much assistance, containing as it does a discursive review of the authorities up to that date.

Each of these torts which the present evidence supports have by definition caused the plaintiff damage and on the facts of this case the damage has been established, and if, as threatened, they are allowed to continue, I find it is likely that they will cause the plaintiff irreparable harm.

The balance of convenience is in my opinion strongly in the plaintiff's favour. If the defendants continue with their picketing, in the form in which they have chosen to conduct it, they may well succeed in forcing the plaintiff family company out of business. This indeed would seem to be their object, although I find it extremely difficult to rationalize such apparently stupid and nihilistic acts.

On the other hand, the restraining of the defendants' activities can hardly be seen to cause them any damage. In so far as they seek to draw proper attention to what they see as the justice attaching to their claim for a 36-hour week, they have dramatically done so.

In my opinion this Court should in all the circumstances intervene at this stage and grant the interlocutory relief sought. The plaintiff by its counsel

has given the usual undertaking as to damages. An interlocutory judgment should go until the trial of this action or further order and, subject to what counsel may wish to say to me immediately after I have finished delivering this judgment, I would intend to order that an interlocutory injunction issue and that the defendants and each of them personally or by their servants or agents should be restrained or enjoined against:—

- 5 1. Doing any act by way of picketing which in any way obstructs or interferes with the passage of any person, whether on foot or in a vehicle, proceeding to or from the plaintiff's premises situate at 1457-1465 Malvern
- 10 Road, Glen Iris.
2. Taking photographs of any person or any truck as any person approaches the said premises, whether on foot or in a vehicle, and whether the photograph be of the person approaching or of his vehicle.
- 15 3. Following any vehicle driven by any person to or from the plaintiff's premises.
4. Threatening by words or gestures any person approaching or leaving the plaintiff's said premises.
5. Jostling, assaulting or threatening to jostle or assault any person approaching or leaving the plaintiff's said premises.
- 20 6. Standing in line on any roadway, lane or footpath in the path of vehicular or pedestrian traffic approaching or leaving the plaintiff's said premises.
7. Causing or attempting or threatening to cause any damage to any vehicle being driven or to the person driving any such vehicle in the vicinity
- 25 of the plaintiff's said premises.

Interlocutory injunction granted.

Solicitors for the plaintiffs: *Kroger & Kroger.*

Solicitors for the defendants: *Ryan, Carlisle, Needham & Thomas.*

R. R. S. TRACEY
BARRISTER-AT-LAW

Division 4 Offences connected with trade and breach of contract

Chapter 54 Other offences

533 Mixing uncertified with certified articles

When a mark has been attached to any article, or a certificate has been given with respect to any article, under the authority of any statute, for the purpose of denoting the quality of the article, or the fact that it has been examined or approved by or under the authority of some public body or public officer, any person who mixes with the article so marked or certified any other article which has not been so examined or approved, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

534 Intimidation of workers and employers

(1) Any person who—

- (a) by violence to the person or property of another, or by threats or intimidation of any kind, or by besetting the house or place of work of another, or by following another in a disorderly manner in a public highway, or by molesting or in any way obstructing, another by any physical act in the pursuit of the other person's lawful vocation—
 - (i) compels or attempts to compel any person employed in any manufacture, trade, business, or occupation, to depart from the other person's employment, or to return the other person's work before it is finished; or
 - (ii) prevents any person who is not employed from accepting employment from any other person; or
- (b) uses violence to the person or property of another, or uses threats or intimidation of any kind to another, or by any physical act molests or in any way obstructs another—

- (i) for the purpose of inducing any person to belong to any club or association, or to contribute to any common fund, or to pay any fine or penalty; or
- (ii) on account of any person not belonging to any particular club or association, or not having contributed or having refused to contribute to any common fund, or having refused to pay any fine or penalty; or
- (iii) on account of any person not having complied, or refusing to comply, with any rules, orders, resolutions, or regulations, made or pretended to be made by any person, or persons, or club, or association, in order to obtain an advance of wages or to reduce the rate of wages, or to lessen or alter the hours of working in, or to decrease or alter the quantity of work done in, or to regulate the mode of carrying on, any manufacture, trade, or business, or the management thereof; or
- (c) by violence to the person or property of another, or by threats or intimidation of any kind, or by molesting or in any way obstructing another, compels, or endeavours to compel, any person carrying on any manufacture, trade, or business, to make any alteration in the other person's mode of carrying it on, or to limit the number of the other person's apprentices, or the number or description of the other person's tradespersons, workers, or servants;

is guilty of an offence, and is liable on summary conviction to imprisonment for 3 months.

- (2) It is lawful for 1 or more person or persons acting in contemplation of or during the continuance of any industrial dispute to attend peaceably and in a reasonable manner at or near a house or place where a person resides or works or carries on business, or happens to be, if the person or persons so attend merely for the purpose of obtaining or communicating information, and such attending is not deemed a besetting within the meaning of this section.
- (3) Notification or warning of an intention to lock out or strike, or of an intention on the part of any worker or workers to refuse

to enter into or continue in the employment of any employer, is not deemed a threat or intimidation or molestation or obstruction within the meaning of this section.

- (4) For the purposes of this section—

industrial dispute has the same meaning as in the *Industrial Relations Act 1999*.

- (5) A justice who is also an employer in the particular manufacture, trade, or business, in or concerning which any of the offences defined in this section is charged to have been committed can not act as a justice upon a charge of such an offence.
- (6) A person can not refuse to give evidence upon a charge of any of the offences defined in this section on the ground that the person is liable to punishment under the provisions thereof, but every person who gives evidence on any such charge is indemnified against any prosecution against himself or herself for having offended in the matter with respect to which the person gives evidence.
- (7) The action of persons who merely agree together to fix the rate of wages or prices which they will pay or accept for any work or article, or to fix the hours during which they will work in, or carry on, any manufacture, trade, or business, in which they are engaged, or who merely meet together and consult for the purpose of making any such agreement, is not deemed to be a physical act for the purposes of this section.

Criminal Code and Other Acts Amendment Bill 2008

Explanatory Notes

Objectives of the Bill

The Bill seeks to:

1. Amend the Criminal Code (the Code) to:
 - streamline the Code and modernise the law relating to criminal offences;
 - ensure drafting consistency with regards the structure of offences;
 - rectify existing penalty anomalies;
 - insert a new section 364A which provides the offence of leaving a child under 12 years unattended for an unreasonable time without making reasonable provision for the supervision and care of the child; and
 - provide a special disclosure regime for an audio or video recorded statement admissible under section 93A of the *Evidence Act 1977*.
2. Amend the *Bail Act 1980* to:
 - clarify that legally represented defendants will only be excused from appearing at mentions; and
 - expand the circumstances when an application for the revocation or variation of bail can be made upon issue of a notice so as to include juveniles on watchhouse bail.
3. Amend the *Criminal Law Amendment Act 1945* to provide that, upon release on parole, a Queen's Pleasure detainee loses the ability to be released unconditionally by the Governor in Council.
4. Amend the *Criminal Law (Sexual Offences) Act 1978* to:
 - facilitate information sharing across agencies where appropriate;

- allow adult complainants to consent to the publication of their identifying particulars; and
 - improve the readability and accessibility of the Act generally.
5. Amend the *Penalties and Sentences Act 1992* to:
- provide that a sentencing court must have regard to whether a child under 16 years of age was a witness to the offence in question or was directly exposed to the offence;
 - provide that the principle that a sentence of imprisonment should only be imposed as a last resort, does not apply to offences under the *Classification of Computer Games and Images Act 1995* and other such Acts; nor does it apply to the child exploitation material offences in the Code;
 - clarify that a sentencing court may deal with an offender who re-offends during the extended operational period of a suspended sentence;
 - clarify that a sentencing court, in ordering a person to serve the unexpired portion of an intensive correction order, is empowered to order release on parole or set a parole eligibility date; and
 - amend the provisions relating to the Court Diversion Program for a Minor Drugs Offence to reflect the practice of notifying offenders of breach proceedings as opposed to issuing an arrest warrant.
6. Amend the *Summary Offences Act 2005* to insert a number of minor offences relocated from the Code.

Reasons for the Bill

Criminal Code

The Bill streamlines and modernises certain chapters of the Code, working from the following principles:

- amalgamating the numerous very narrow and specific provisions contained in the Code into more general offences where it is reasonable to do so;
- repealing provisions which proscribe conduct covered in other more general provisions or where the provisions are obsolete;

- redrafting archaic provisions into more modern language and concepts;
- relocating a number of minor offences into the *Summary Offences Act 2005*; and
- rationalising existing penalty anomalies.

Criminal Law (Sexual Offences) Act 1978

The Bill makes a number of amendments to the *Criminal Law (Sexual Offences) Act 1978*, some of which were identified by the Crime and Misconduct Commission in its report entitled *Seeking Justice: An Inquiry into how sexual offences are handled by the Queensland Criminal Justice System* (2003).

Penalties and Sentences Act 1992

Children are often present and witness serious offences which endanger their short term and long term health and well being, even though they are not the direct victim of the offence. While the court often takes these factors into account in sentencing, the amendment to section 9(2) of the *Penalties and Sentences Act 1992* recognises the particular vulnerability of children who are exposed to a criminal offence.

The *Penalties and Sentences Act 1992* is also amended to correct current anomalies in the Act by clarifying that a sentencing court:

- may deal with an offender who re-offends during the extended operational period of a suspended sentence, addressing issues identified by the Court of Appeal in *R v Muller* [2005] QCA 417; and
- is empowered to order release on parole or set a parole eligibility date when ordering a person to serve the unexpired portion of an intensive correction order.

Other legislation

The Bill also amends other criminal justice legislation to ensure the on-going effectiveness of the legislation.

Achievement of the Objectives

The Bill achieves the objectives by way of the proposed new offences and amendments to existing legislation described below.

Estimated Cost for Government Implementation

Any costs will be met within existing resources.

Consistency with Fundamental Legislative Principles

The amendment to the *Criminal Law Amendment Act 1945* raises a fundamental legislative principle issue in that the amendment is removing an existing right of a Queen's Pleasure detainee to seek unconditional release. However, the amendment is considered justified in the interests of community protection and is consistent with the Government's policy that serious sex offenders should only be released into the community under supervision.

During consultation on the Bill there was argument that the amendments to the disclosure regime raises fundamental issues about the ability to provide legal representation and the ability of a self-represented accused to make an adequate defence. New section 590AOA of the Code does not deny the accused access to the section 93A audio or video statement or its contents. Rather, the section's purpose is to prevent a copy of the audio or video statement being given to the accused, so as to prevent it being further copied and distributed for purposes unconnected with the court proceedings. There is no restriction on the ability of the accused to view the statement or on the provision of a transcript of the contents of the statement.

Consultation

A consultation draft of the Bill, containing amendments to the Code, *Criminal Law Amendment Act 1945*, some of the *Penalties and Sentences Act 1992* amendments and the amendments to the *Summary Offences Act 2005*, was sent to all Government departments and to the following: the Chief Justice of the Supreme Court; the Chief Judge of the District Court; the Chief Magistrate; the Director of Public Prosecutions; the Bar Association of Queensland; the Queensland Law Society; the Crime and Misconduct Commission; Legal Aid Queensland; and Queensland Council for Civil Liberties. Consultation on particular areas of interest was undertaken with the Integrity Commissioner and the Office of the Public Service Commissioner. The other amendments included in the Bill were provided to particular stakeholders.

Notes on Provisions

Part 1 Preliminary

Clause 1 provides that the Act's short title is the Criminal Code and Other Acts Amendment Act 2008.

Clause 2 provides that the Act commences on a day to be fixed by proclamation.

Part 2 Amendment of Criminal Code

Clause 3 provides that this part amends the Code.

Clause 4 amends section 1, the definition section in the Code.

Subclause (1) omits the definition of 'intellectually impaired person' which refers to the meaning given in section 229F and omits the definition of 'disclose' which refers to section 590AD.

Subclause (2) inserts definitions of : 'canal'; 'inland water'; and 'port' due to a recasting of the punishment in special cases for section 469, wilful damage. A definition of 'damage' in relation to a document, is transferred to section 1 from section 460 and expanded to include 'rendering irrecoverable'. A definition of 'detriment caused to a person' is inserted and is defined to include detriment caused to a person's property. The Code contains a mix of references to 'detriment' with some references also mentioning injury to person or property. The insertion of the definition ensures consistency through the Code that 'detriment' caused to a person includes detriment to the person and to the person's property. The definition of 'intellectually impaired person' is transferred from section 229F. Whilst the definition remains unchanged the phrase is omitted and replaced with 'person with an impairment of the mind', given that the definition includes disabilities other than 'intellectual' impairments.

Subclause (3) amends the definition of 'vehicle' to omit the reference to 'motor cycle'. The definition of 'vehicle' includes 'motor vehicle'. The

definition of 'motor vehicle' includes a 'motor cycle'. Therefore the reference to 'motor cycle' in the definition of 'vehicle' is superfluous.

Clause 5 amends section 31 (Justification and excuse – compulsion) to omit the reference to sections 81(2) and 82, as a consequence of the new offence of piracy provided in new section 79 and the penalty provided in section 80 (which does not retain the current circumstances of aggravation).

Clause 6 omits sections 47 to 49 on the basis that the proscribed conduct can be properly dealt with under the conspiracy offences in the Code (sections 309 and 541 to 543).

Clause 7 amends section 54 to omit the terms 'advisedly' and 'calculated' and to insert an element of 'intention' to interfere with the free exercise of the duties or authority of the office.

Clause 8 amends section 54A to omit the references to 'injury or'. This is consequential to the new definition of 'detriment' inserted into section 1 by the Bill.

Clause 9 amends section 55 to omit the term 'advisedly' and to insert an element of 'intentionally' interfering with the free exercise of the authority of the Legislative Assembly or with the free exercise of the duties and authority of its members.

Clause 10 amends the heading of chapter 9 to reflect the fact that the offence of unlawful assembly is relocated to the *Summary Offences Act 2005*.

Clause 11 omits sections 61 to 66 and replaces the provisions with new section 61 which provides the offence of riot. The offence applies where 12 or more persons, present together, use or threaten to use unlawful violence to person or property, for a common purpose, and the conduct of them taken together would cause a person in the vicinity to reasonably fear for the person's personal safety. The offence makes clear that for an accused to be guilty as a principal offender, he or she must use or threaten to use violence to person or property. The provision expressly states that it is immaterial whether there is or is likely to be a fearful person in the vicinity. This is to ensure the provision is interpreted in line with the other sections in chapter 9 which are concerned with the hypothetical bystander.

New section 61 carries a maximum penalty of three years imprisonment unless a circumstance of aggravation applies. If the offender is armed with a dangerous or offensive weapon, or with an explosive substance, or if the

rioters damage property, a penalty of seven years applies. Life imprisonment applies to an offender who causes grievous bodily harm to a person, causes an explosive substance to explode or destroys or starts to destroy a building, vehicle or machinery. The term 'starts to destroy' is used to reflect the wording in current section 65 which applies where a person destroys or 'begins' to destroy. For the purposes of the provision, 'building' is defined to include 'structure'. It is intended that the term 'structure' will be interpreted with some limitation given its association with 'building'.

Clause 12 amends section 70 to substitute the phrase 'breach of the peace' with the concept of violence to a person or property. The penalty is increased from one to two years imprisonment to recognise that the proscribed conduct is more than a mere trespass in terms of the manner of entering on the land and because an intention to take possession is required (see *Prideaux v Director of Public Prosecutions* (1987) 163 CLR 483).

Clause 13 amends section 71 to substitute the phrase 'breach of the peace' with the concept of violence to a person or property. The penalty is increased from one to two years to coincide with section 70.

Clause 14 amends section 72 (Affray) to replace the term 'highway' with 'place'.

Clause 15 omits section 73 (Challenge to fight a duel) as the provision is obsolete.

Clause 16 omits section 77 (Unlawful processions) as the provision is obsolete.

Clause 17 replaces chapter 11 which deals with the offence of piracy and inserts new sections 79 and 80. Pursuant to a cooperative scheme between the Commonwealth and the States, the criminal law of Queensland applies to 200 nautical miles out from the baseline for the State or the outer limit of the continental shelf, whichever is the greater distance.

New section 79 provides that a person does an act of piracy if the person, in relation to a ship travelling at sea, unlawfully boards a ship without the master's consent and commits robbery or boards with intent to commit robbery. The offence also applies if a person boards a ship without the master's consent and deals with the ship, her equipment or a passenger or crew member, in a way that would endanger or be likely to endanger the safe use of the ship; or boards with intent to commit such acts. Piracy is also committed if a person, in relation to a ship travelling at sea,

unlawfully: steals the ship or directly or indirectly takes control of the ship, in circumstances that constitute robbery; or confines the ship's master against his or her will. Pursuant to subsection (2), a person also does an act of piracy if the person knowingly (or when they ought reasonably to know) trades with a pirate or builds a ship with the intention that she will be used for an act of piracy.

The provision requires that the conduct occurs in relation to a ship travelling at sea. This will ensure that acts committed in relation to vessels anchored or moored at ports and marinas are not charged as piracy. However, it is intended that the provision will apply to a ship at sea, even if anchored at sea.

Clause 18 amends the heading to part 3 of the Code.

Clause 19 redrafts section 97 to extend the offence to apply to public officers and not merely public service employees.

Clause 20 amends section 98, the definition section for chapter 14, which provides the electoral offences. A definition of 'authorising Act', which is a phrase used in new sections 112 and 114, is inserted in section 98.

Clause 21 omits section 98B(3) on the basis that the provision is included in new section 566(1), to give it general application. Section 98B(3) provides that it is enough for a charge against a person for an offence of providing false or misleading information, to state that the information, without specifying which part of the information, was 'false or misleading'. The usual wording of this kind of provision is directed at the issue of having to prove whether information was false or whether it was misleading. This is reflected in new s 566(1).

Clause 22 omits sections 99 to 106 and inserts new sections 99 to 104.

New section 99 provides the offence of unlawful voting and covers conduct currently proscribed in sections 99, 100, 105(a) and (b), and 116 of the Code.

New section 100 provides the offence of hindering or interfering with voting conduct and covers conduct currently proscribed in section 102 of the Code.

New section 101 provides the offence of bribery and covers conduct currently proscribed in section 103 of the Code. For consistency, new section 101 is drafted in terms similar to section 98C.

New section 102 provides the offence of publishing false information about a candidate and covers conduct currently proscribed in section 105(c) and (d) of the Code.

New section 103 provides the offence of providing money for illegal payments and replaces section 106(a) of the Code.

New section 104 provides the offence of failing to include certain information in election notices and replaces section 106(b) of the Code.

Clause 23 amends section 107 as a consequence of the replacement of existing section 106.

Clause 24 replaces section 108 to remove the offence of intruding into a polling booth.

Clause 25 amends section 109 to ensure drafting consistency with regards the structure of offences.

Clause 26 omits sections 110 to 117 and inserts new sections 110, 111, 112, 113 and 114.

New section 110 provides the offence of stuffing ballot boxes and replaces section 111 of the Code.

New section 111 (Presiding officer helping an elector with a disability) replaces section 112.

New section 112 provides the offence of providing false or misleading information and replaces section 113. For consistency, new section 112 is drafted in terms similar to section 98B.

New section 113 (Interfering with secrecy at elections) replaces section 114 of the Code.

New section 114 (Breaking the seal of a parcel at elections) replaces section 115 of the Code.

Clause 27 redrafts section 129 with no substantive change apart from the penalty increase from three to seven years imprisonment. The penalty increase is appropriate given section 126 (Fabricating evidence) carries seven years.

Clause 28 amends section 130 (Preventing witnesses from attending) to increase the maximum penalty from one year to three years imprisonment. The penalty increase is appropriate given section 128 (Deceiving witnesses) carries three years.

Clause 29 amends section 133 (Compounding crimes) to apply to all indictable offences, on the basis that such conduct is a serious attack on the administration of justice. Subclause (4) inserts a provision which acknowledges contemporary justice mediation and dispute resolution.

Clause 30 omits section 134 (Compounding penal actions) as it is considered sufficient to retain the expanded compounding offence in section 133.

Clause 31 omits section 135 (Advertising a reward for the return of stolen property) as the offence is relocated to the *Summary Offences Act 2005*.

Clause 32 replaces section 136 to omit the conduct proscribed by section 136(a) (Justices acting oppressively), on the basis that if excessive bail is required the defendant may appeal.

Clause 33 amends section 137 (Delay to take person arrested before Magistrate) to provide that with regard to a police arrest, it is sufficient if the officer complies with section 393 of the *Police Powers and Responsibilities Act 2000*. In the case of a citizen's arrest, it is sufficient if the arrested person is immediately delivered into the custody of a police officer.

Clause 34 omits section 138 (Bringing fictitious action on penal statute) as the provision is obsolete. Depending on the circumstances, such proscribed conduct is an offence under section 131 (Conspiracy to bring false accusation), section 140 (Attempting to pervert justice) or section 408C (Fraud).

Clause 35 amends section 148 (Obstructing officers of courts of justice) to increase the maximum penalty from one year to two years imprisonment. The increase is appropriate given that section 199 (Resisting public officers) carries two years.

Clause 36 redrafts section 193 (False statements in statements required to be under oath or solemn declaration) with no substantive change.

Clause 37 omits sections 201 to 203.

Section 201 (Neglect of officers to suppress riot) is omitted. An officer's duty to suppress a riot is provided in current section 64(1), which is a duty to read the proclamation. That duty is omitted in new section 61 (Riot). The *Police Powers and Responsibilities Act 2000*, provides police officers with the power to suppress a riot, as opposed to a duty.

Section 202 (Neglect to aid in suppressing riot) is omitted as it is inappropriate to impose such a dangerous obligation on non-law enforcement officials.

Section 203 (Neglect to aid in arresting offenders) is omitted on the basis that a failure to perform such a potentially dangerous duty by a civilian should not be the subject of a criminal offence.

Clause 38 amends section 208 (Unlawful sodomy) to include 'attempts', for consistency with current sections 215 (Carnal knowledge with or of children under 16) and 216 (Abuse of intellectually impaired persons), which are framed to include an offender who 'has or attempts to have' unlawful carnal knowledge. The amendment results in an increase in the maximum penalty for attempted sodomy simpliciter from seven years to 14 years imprisonment. The section is also amended to recognise the more appropriate phrase of 'person with an impairment of the mind'.

Clause 39 omits section 209 as a consequence of the amendment to section 208.

Clause 40 is a consequential amendment to section 216 to reflect the new definition heading of 'a person with an impairment of the mind'.

Clause 41 is a consequential amendment to section 217 to reflect the new definition heading of 'a person with an impairment of the mind'.

Clause 42 amends section 228G (Forfeiture of child exploitation material etc) to include section 218A (Using internet etc to procure children under 16).

Clause 43 amends section 229B (Maintaining a sexual relationship with a child) as a consequence of the omission of section 209 and amendment of section 208.

Clause 44 is a consequential amendment to section 229E to reflect the new definition heading of 'a person with an impairment of the mind'.

Clause 45 is a consequential amendment to section 229F to reflect the new definition heading of 'a person with an impairment of the mind'.

Clause 46 is a consequential amendment to section 229G to reflect the new definition heading of 'a person with an impairment of the mind'.

Clause 47 is a consequential amendment to section 229H to reflect the new definition heading of 'a person with an impairment of the mind'.

Clause 48 is a consequential amendment to section 229I to reflect the new definition heading of 'a person with an impairment of the mind'.

Clause 49 is a consequential amendment to section 229K to reflect the new definition heading of 'a person with an impairment of the mind'.

Clause 50 is a consequential amendment to section 229L to reflect the new definition heading of 'a person with an impairment of the mind'.

Clause 51 omits chapter 25 on the basis that sections 242 (Frauds on land laws) and 243 (Dealing with land fraudulently acquired from the Crown), proscribe conduct covered by the general fraud offence provided in section 408C of the Code.

Clause 52 amends section 317A (Carrying or sending dangerous goods in a vehicle) to insert new subsection (1A). The amendment transfers to section 317A, conduct currently proscribed in section 333(b) and extends such conduct to all vehicles.

Clause 53 replaces sections 319 (Intentionally endangering safety of persons travelling by railway) and 319A (Endangering safety of persons travelling by aircraft) with a new section 319 which creates the offence of endangering the safety of a person in a vehicle with intent. The offence applies to a person who does anything (or omits to do a duty) that endangers, or is likely to endanger, the safe use of a vehicle, with intent to injure or endanger the safety of any person in the vehicle. Like the sections it replaces, new section 319 carries life imprisonment.

Clause 54 replaces sections 322 and 323 with new sections 322 (Administering poison with intent to harm) and 323 (Wounding). The conduct proscribed in current section 323(1)(b) covers the same conduct as section 322 but without the element of causing an adverse consequence. Therefore, the amendment transfers the conduct in section 323(1)(b) to new section 322 with such conduct forming the offence simpliciter carrying seven years and with the consequence of endangering life or doing grievous bodily harm, forming the circumstance of aggravation carrying 14 years.

Clause 55 amends section 326 (Endangering life of children by exposure) to increase the maximum penalty from three years to seven years imprisonment to reflect the seriousness of the conduct and for penalty consistency with section 364 (Cruelty to children under 16).

Clause 56 omits sections 331 (Endangering steamships by tampering with machinery) and 332 (The like by engineers) on the basis that the sections

are obsolete and the conduct proscribed is covered in new section 467 (Endangering the safe use of vehicles and related transport infrastructure).

Clause 57 amends section 333 (Evading laws as to equipment of ships and shipping dangerous goods) to omit section 333(b) as that proscribed conduct has been inserted in section 317A to apply to all vehicles.

Clause 58 amends section 334 (Landing explosives) to omit subsection (2) as it is obsolete.

Clause 59 omits section 338 (Assaults on persons protecting wrecks) as the conduct is covered by the general assault provisions.

Clause 60 amends section 338A (Assaults of member of crew on aircraft) to omit the term 'injury' as it superfluous.

Clause 61 amends section 340 (Serious assaults). Subclause (1) omits sections 340(1) (c), (d) and (e). New subparagraph (c) applies to an unlawful assault on a person performing a duty imposed by law. This extends omitted section 340(1)(e) which provided that such an assault had to be committed 'on account' of an act done by the person performing the duty.

Subclauses (2) and (3) insert the term 'unlawfully' into section 340(1)(g) and (h) and section 340(2), to remove any argument that the absence of the term precludes reliance by an accused on appropriate defences, for example, provocation and self defence.

Subclause (4) inserts a new subsection (2AA) to apply to assaults on public officers performing a function of their office or employment. The term 'public officer' is defined in section 1 of the Code. That definition includes a person, other than a judicial officer, discharging a duty of a public nature or executing any process of a court. Therefore, persons protected under current section 340(1)(c) and (d) will continue to fall under the provision. Subclause (5) inserts into section 340 an inclusive definition of 'public officer' to ensure assaults on emergency services personnel, health service employees and child safety officers (an authorised officer appointed under section 149 of the *Child Protection Act 1999* would not necessarily be a public service employee) are captured by the provision.

Clause 62 amends section 354A (Kidnapping for ransom) as a consequence of the definition of 'detriment' inserted into section 1 of the Code.

Clause 63 amends section 359 (Threats) to extend the provision to threats to harm a third person.

Clause 64 replaces section 364 (Cruelty to children under 16) with a new section 364. New section 364 requires proof that the child was ‘harmed’ which is defined to mean any detrimental effect of a significant nature on the child’s physical, psychological or emotional wellbeing, whether temporary or permanent. The element of ‘harm’ replaces the previous concept of ‘suffering’. The definition is based on the definition of ‘harm’ in the *Child Protection Act 1999*.

New section 364 requires proof that the carer knew or ought reasonably to have known, that their conduct would be likely to cause harm to the child. The amendment ensures that the section only applies to carers who are aware of the likely consequences of their conduct, or where a reasonable person in the position of the carer would be aware of the likely consequences of such conduct.

Clause 64 also inserts new section 364A which provides the offence of leaving a child under 12 unattended. The offence applies where a parent or carer leaves a child under 12 years for an unreasonable time without making reasonable provision for the supervision and care of the child. Whether an offence is committed is dependent on the arbiter of fact determining the issue of ‘reasonableness’ based on the circumstances of the case, including the age, physical condition and intellectual capacity of the child.

Clause 65 omits section 392(3) on the basis that it is outdated and there is no practical requirement for such a specific provision.

Clause 66 omits section 397 on the basis that it is no longer relevant given the 1997 repeal of section 35 (Liability of husband and wife for offences committed by either with respect to the other’s property).

Clause 67 amends section 398 (Punishment of stealing) to reduce the penalty for stealing a will to 14 years from life imprisonment. The offence of concealing wills with an intent to defraud, carries a maximum penalty of 14 years imprisonment as does the offence of wilfully damaging or destroying a will. The amendment to section 398 rectifies this existing penalty anomaly. Subclauses (1) and (3) transfer subsection (2) to the punishment in special cases division with no substantive change.

Clause 68 omits sections 399 to 401 and inserts a new section 399 which proscribes the fraudulent concealment of particular documents. A person is liable to 14 years imprisonment if the person, with intent to defraud, conceals the whole or part of a register or record kept by lawful authority or

a will. If such conduct relates to a document recording title to property, an offender is liable to three years imprisonment.

Clause 69 omits section 405 (Fraudulently dealing with minerals in mines) as the proscribed conduct falls under section 408C (Fraud) of the Code, either as a completed offence or an attempt, depending on the circumstances.

Clause 70 omits sections 407 (Fraudulent disposition of mortgaged goods) and 408 (Fraudulent appropriation of power) on the basis that the proscribed conduct falls under section 408C (Fraud) of the Code.

Clause 71 amends section 408C (Fraud) to raise the maximum penalty for aggravated fraud from 10 years to 12 years imprisonment. Subclause (2) amends section 408C(2)(d) to raise the monetary minimum from \$5000 to \$30000. The limit has not been increased since the insertion of the offence in 1997. The increase ensures that the circumstance of aggravation is not diminished because a majority of offenders fall within it. Further, the amendment takes into account the increase in the maximum penalty.

Clause 72 omits section 410 (Loaded arms) as the concept is obsolete given that the Code refers to 'dangerous or offensive weapons'.

Clause 73 omits sections 415 (Demanding property, benefit or performance of services with threats), 416 (Attempts at extortion by threats) and 417 (Procuring execution of deeds etc. by threats) and inserts a new section 415 which provides the offence of extortion. New section 415 applies where a person, without reasonable cause, makes a demand, with intent to gain a benefit for any person or cause a detriment to any person (other than the demander) and the demand is made with a threat to cause a detriment to any person (other than the demander). New section 415 omits the distinction between written and oral demands. The threat to cause a detriment to any person does not need to specify the detriment to be caused or the person to whom the detriment is to be caused and includes a threat to cause detriment to the public. Whilst the threat must be a threat to cause a detriment to someone other than the demander, where the demander threatens to cause a detriment to himself/herself and carrying out that threat gives rise to others being harmed, then the element is satisfied.

Clause 74 omits section 426 (Unlawful entry of vehicle) as the offence is relocated to the *Summary Offences Act 2005*.

Clause 75 omits sections 430 (Conspiracy to defraud) and 431 (Frauds on sale or mortgage of property). The conduct proscribed in section 430 is

covered by the general conspiracy provisions in the Code. The conduct proscribed in section 431 falls under section 408C (Fraud) either as a completed offence or an attempt, depending on the circumstances.

Clause 76 inserts a new section 432 which defines 'tainted property' to mean: a thing obtained by way of an act constituting an indictable offence (pursuant to section 36 of the *Acts Interpretation Act 1954* 'indictable offence' includes an act or omission committed outside Queensland that would be an indictable offence if it were committed in Queensland); if tainted property is converted into other property, the other property; and where tainted property is mortgaged, pledged or exchanged for other property, any proceeds of the mortgage pledge or exchange. Section 432(2) provides that a thing stops being tainted property after a person acquires a lawful title to it. New section 432 reflects existing section 434 (Receiving after change of ownership).

Clause 77 amends section 433 (Receiving stolen property) to give effect to the new definition of 'tainted property' but otherwise does not substantively change the section.

Clause 78 omits sections 434 (Receiving after change of ownership) and 435 (Taking reward for recovery of property obtained by means of indictable offences). Section 434 is omitted given new section 432. Section 435 is omitted and replaced with a new section 435 which redrafts the section without substantive change.

Clause 79 omits sections 436 (Trustees fraudulently disposing of trust property), 437 (Directors and officers of corporations or companies fraudulently appropriating property, or keeping fraudulent accounts, or falsifying books or accounts), 438 (False statements by officials of companies), 439 (Defence), and 440 (Misappropriation by members of local governments).

Section 436 is omitted on the basis that the conduct proscribed is covered by section 408C (Fraud) of the Code.

Section 437(1)(a) is omitted on the basis that the conduct proscribed is covered by section 408C (Fraud). Section 437(1)(b) is omitted on the basis that the conduct proscribed is covered by section 441 (Fraudulent falsification of records) and sections 1101F and 1307 of the *Corporations Act 2001* (Cth).

Section 438 is omitted given section 408C (Fraud) of the Code and sections 1308 and 1309 of the *Corporations Act 2001*.

Section 440 is omitted on the basis that the conduct proscribed is covered by the stealing and fraud provisions in the Code.

Clause 80 relocates section 441 (Fraudulent falsification of records) to chapter 40 and renumbers the provision as section 430.

Clause 81 relocates section 442 (False accounting by public officer) to chapter 40 and renumbers the provision as section 431.

Clause 82 omits chapter 44B (Other offences analogous to stealing punishable on summary conviction) on the basis that sections 451 and 452 proscribe conduct that is covered by section 16 of the *Summary Offences Act 2005* (Unlawful possession of suspected stolen property).

Clause 83 omits section 460 as the definition is transferred to section 1 of the Code.

Clause 84 amends section 461 to ensure the provision covers the arson of a train.

Clause 85 replaces section 462 to omit current section 462(a) on the basis that the subsection is obsolete given the new penalty regime for 'attempts' introduced by this Bill.

Clause 86 omits sections 464 (Attempting to set fire to crops etc.), 465 (Casting away ships) and 466 (Attempts to cast away ships). Section 464 is omitted given the new penalty regime for 'attempts' introduced by this Bill.

Sections 465 and 466 are omitted on the basis that the conduct proscribed is covered by section 469 (Wilful damage) of the Code and new sections 319 and 467.

Clause 87 omits sections 467 (Obstructing and injuring railways) and 467A (Endangering the safe use of an aircraft) and inserts a new section 467 which provides the offence of endangering the safe use of a vehicle and related transport infrastructure. The provision applies where a person, with intent to prejudice the safe use of a vehicle or related transport infrastructure, or to injure property in or on a vehicle or related transport infrastructure, does anything (or omits to do a duty) that endangers or is likely to endanger, the safe use of the vehicle or related transport infrastructure. The offence carries a maximum penalty of life imprisonment.

Clause 88 amends the punishment in special cases in section 469 (Wilful damage). Special case 1 is amended to extend the provision beyond a dwelling, vessel or aircraft to apply to a 'premises' which by definition

(refer to section 1 of the Code) includes all buildings and structures and vehicles.

Special case 2 is amended to omit subparagraphs (b) and (c) on the basis that such conduct is covered in new sections 319 and 467 and the existing offence of sabotage (section 469A).

Special case 7 is redrafted to exclude subparagraph (e) on the basis of new sections 319 and 467. Subparagraphs (h) to (k) are omitted given new section 471.

Clause 89 amends section 470A (Unlawful deposition of explosives) to include the term 'noxious substances' (which is included in section 321) and to insert the term 'unlawfully' in substitution for the phrase 'without reasonable cause or excuse', for consistency with section 470.

Clause 90 redrafts section 471 without substantive change.

Clause 91 omits section 476 (Removing boundary marks) on the basis that the conduct proscribed is covered by section 408C (Fraud) either as a complete offence or an attempt.

Clause 92 omits the punishment in special cases for section 488 (Forgery) and inserts a simplified set of circumstances of aggravation. The offence will carry seven years imprisonment if the document is a power of attorney, contract or document kept or issued by lawful authority. If the document is a valuable security, insurance policy, a will, a document kept or issued by the Registrar of Births, Deaths and Marriages, or a document which is evidence of an interest in land, then the offence carries 14 years.

Clause 93 omits sections 492 (Procuring execution of documents by false pretences), 493 (Obliterating crossings on cheques), 494 (Making documents without authority), 495 (Demanding property upon forged testamentary instruments), 496 (Purchasing forged bank notes) and 497 (False certificate of message received by telegraph).

The conduct proscribed in section 492 is covered in section 408C(1)(f). Sections 493 and 494 proscribe conduct covered in section 488 (Forgery and uttering). The offence of fraud (section 408C) covers the conduct proscribed in section 495. Section 496 proscribes conduct covered by offences in the *Crimes (Currency) Act 1981*. The conduct covered in section 497 is covered in section 488 (Forgery and uttering) and section 408C (Fraud).

Clause 94 amends the heading of section 502 (Attempts to procure unauthorised status) to omit the reference to 'attempts'.

Clause 95 omits sections 503 (Counterfeiting trademarks) and 504 (Circulating false copies of rules or lists of members of societies or companies). The conduct proscribed in section 503 is covered in section 488 (Forgery and uttering) and section 408C (Fraud) either as a completed offence or an attempt according to how far the scheme proceeds. The conduct proscribed in section 504 is covered by section 408C (Fraud) or an attempt to commit fraud.

Clause 96 omits chapter 50 (Forgery and like offences punishable on summary conviction).

Section 506 (Forgery of sailors' tickets or documents relating to regulation of factories and shops) proscribes conduct covered by section 488 (Forgery and uttering), section 408C (Fraud) and section 514 (Personation in general).

Sections 507 (Fraudulent use of adhesive stamps) and 508 (False warranties or labels relating to the sale of food) proscribe conduct covered by sections 488 and 408C.

Clause 97 omits sections 516 (Personation of a person named in a certificate) and 517 (Lending certificates for personation) on the basis that where there was evidence of an intent to defraud, the conduct is covered in section 514 (Personation in general). Also the conduct is covered by section 502 (Attempts to procure unauthorised status) and sections 408C and 408D. In relation to section 517, if in fact the certificate was used, the lender would be a party to an offence of personation or fraud.

Clause 98 omits section 534 (Intimidation of workers and employers) on the basis that the conduct proscribed is covered in a range of offences in the Code such as assault, wilful damage, threats and stalking.

Clause 99 omits sections 535 to 537 which provide the penalty regime for attempts to commit indictable offences. New section 535 provides that a person who attempts to commit a crime, commits a crime and a person who attempts to commit a misdemeanour, commits a misdemeanour. New section 536 provides that a person who attempts to commit an indictable offence punishable by: mandatory life imprisonment is liable to a maximum penalty of life imprisonment; a maximum penalty of life imprisonment is liable to a maximum penalty of 14 years imprisonment; and in other cases, is liable to punishment equal to one-half of the greatest punishment to which an offender convicted of the offence is liable.

Clause 100 amends section 538 (Reduction of punishment) to increase the penalty provided in subsection (2) from seven to 14 years imprisonment. The amendment is consequential to the increase in the penalties for 'attempts'. Therefore, if a person desists in attempting to commit the offence of murder, the person will be liable to a maximum penalty of 14 years. If a person desists in attempting to commit the offence of rape, the person will be liable to seven years imprisonment.

Clause 101 redrafts section 540 (Preparation to commit crimes with explosives etc) without substantive change.

Clause 102 amends section 543A (Industrial disputes) as a consequence of the omission of section 543.

Clause 103 omits sections 544 and 545 which provide the penalty regime for 'accessories after the fact' to offences. New section 545 provides that an accessory after the fact to an indictable offence punishable by: mandatory life imprisonment is liable to a maximum penalty of life imprisonment; a maximum penalty of life imprisonment is liable to a maximum penalty of 14 years imprisonment; and in other cases, is liable to punishment equal to one-half of the greatest punishment to which an offender convicted of the offence is liable.

Clause 104 amends section 552 (Duty of person arresting) to allow a person who arrests another to deliver the arrested person into the custody of a police officer.

Clause 105 amends section 566 (Particular indictments) to insert a new subsection (1) which provides that in an indictment for an offence relating to giving information or a document that is false or misleading, the indictment need not specify whether in fact the information was false or whether in fact it was misleading.

Clause 106 amends section 568 (Cases in which several charges may be joined) as a consequence of the omission of section 436.

Clause 107 amends section 578 (Charge of offence of a sexual nature) as a consequence of the omission of section 209 and amendment of section 208.

Clause 108 amends section 590AD (Definitions for ch div 3) to: include a reference to the definition of 'Evidence Act section 93A device statements' (defined in new section 590AFA); to define 'view' to include 'listen to'. and to delete the definition of 'disclose'.

Clause 109 inserts a new section 590AFA (Meaning of *Evidence Act section 93A device statement*). Section 93A of the *Evidence Act 1977* deals

with the admissibility of statements made by children and persons with an impairment of the mind. An *Evidence Act section 93A device statement* is a statement recorded in an audio or an audiovisual format (such as a video tape or DVD) that is: made to a person investigating an alleged offence; given in anticipation of criminal proceedings about the alleged offence; and potentially admissible under section 93A of the *Evidence Act 1977*.

Clause 110 amends section 590AI (When mandatory disclosure must be made) to include a reference to disclosure under new section 590AOA.

Clause 111 amends section 590AK (When requested disclosure must be made) to include a reference to disclosure under new section 590AOA.

Clause 112 amends section 590AO (Limit on disclosure of sensitive evidence) to provide that section 590AO does not apply to an *Evidence Act section 93A device statement*. This is because the obligations and limitations with respect to disclosure of these statements are now contained in new section 590AOA.

Subsections (2) and (4) are also amended to ensure that access to original sensitive evidence for the purposes of examination of it, will only be for a legitimate purpose connected with the relevant proceeding.

Clause 113 inserts new section 590AOA dealing with the disclosure of *Evidence Act section 93A device statements*, to ensure that audio and audiovisual recordings of vulnerable witnesses are only disclosed under rules designed to minimise the potential for unauthorised copying and distribution.

For these statements, the prosecution satisfies its obligation to disclose by providing a copy of the statement to a lawyer acting for the accused, subject to the conditions set out in subsection (3). Under those conditions, the lawyer cannot make a further copy of the statement, and can only give the copy of the statement to another lawyer acting for the accused; a lawyer (for example, a barrister) from whom the lawyer is seeking advice; to an expert (for example, for the purpose of adducing expert evidence in the proceedings); and to persons (such as paralegals) employed by the lawyer in the ordinary practice of the law in relation to the particular proceedings. The statement may only be given to those other persons if it is for a legitimate purpose connected with the relevant proceedings.

The lawyer and anyone else given the copy of the statement must return the copy to the prosecution within 14 days after the lawyer or other person is no longer authorised to have a copy (for example, if the lawyer is no longer

acting for the accused), or within 14 days of the end of proceedings. While this ensures accountability for all copies of the statements, it also ensures that a lawyer who is given a copy of the statement in anticipation of a committal hearing or a trial is entitled to retain the copy while the lawyer continues to act for the accused, and until all proceedings are finally concluded.

Where the accused is not legally represented, subsection (6) provides that the prosecution is not obliged to give the accused a copy of the statement. Instead, the prosecution must allow the accused, a lawyer appointed to conduct the cross-examination of a protected witness under section 21O of the *Evidence Act 1977*, or another person the prosecution considers appropriate (such as an interpreter or an expert witness) to view the statement.

If the prosecution refuses to allow an appropriate person to view the statement on behalf of an unrepresented accused, subsection (7) provides the court may direct that an appropriate person be permitted to view the statement. Under subsection (8), the court may make such a direction only if it is satisfied that there is a legitimate purpose to be achieved and that the terms of the direction can ensure that there is no unauthorised reproduction or circulation of the statement.

Subsection (9) provides that a person who deals with a statement in contravention of section 590AOA commits an offence under section 93AA of the *Evidence Act 1977* (Unauthorised possession of, or dealing in, s 93A criminal statements).

Subsection (10) provides that making a transcript of the contents of the statements is not a copy for the purposes of this section.

Subsection (11) defines a number of the terms used in section 590AOA, including 'appropriate person', 'associate', 'copy', 'end of proceedings', 'relevant charge', 'sound device' and 'visual image device'.

Clause 114 replaces section 590AR (Viewing evidence that is not original evidence) to include a reference to new section 590AOA.

Clause 115 amends section 590AS (Viewing particular evidence) to include a reference to new section 590AOA and to change the heading of the section.

Clause 116 amends section 590AV (Disclosure directions) to include a reference to new section 590AOA.

Clause 117 amends section 636 (Evidence of blood relationship) as a consequence of the amendment to section 208 and omission of section 209.

Clause 118 amends section 641 (Evidence on certain charges of stealing money) as a consequence of the omission of section 436.

Clause 119 amends section 644A (Witness giving incriminating answers) to omit the reference to section 103 and insert references to sections 98C and 101.

Clause 120 inserts a new chapter 82 into the Code which provides the transitional provisions for the *Criminal Code and Other Acts Amendment Act 2008*.

Part 3 Amendment of *Bail Act 1980*

Clause 121 provides that this part amends the *Bail Act 1980*.

Clause 122 amends section 11A (Release of intellectually impaired person) to recognise the preferred phrase ‘person with an impairment of the mind’.

Clause 123 inserts a new subsection 20(3AA) into section 20 (Undertaking as to bail). This section is amended to provide that defendants are not excused from personally appearing or surrendering into custody, despite being represented by a lawyer, where a charge is being heard or determined, an examination of witnesses is being conducted or a penalty is being imposed. The wording of a similar provision in section 84(2) of the *Justices Act 1886* has been adopted. The ability for the court to direct the defendant to appear has been retained.

Clause 124 amends section 30 (Apprehension on variation or revocation of bail). Subclause 1 amends section 30(1) with respect to who can make an application for the variation or revocation of bail under this section. The subsection currently refers to an ‘application of the Crown or as the case may be, the complainant’. The clause amends the wording of this subsection to refer to an ‘application of the complainant, prosecutor or person appearing on behalf of the Crown’ to ensure consistency with other such references in the Act and the terminology used in subclause (2).

Subclause (2) inserts a new subsection (1A) into section 30. Section 30 currently allows for an application to vary or revoke bail to be made to the court that granted bail; the court before which an indictment has been

Court intervenes as workers clash during CFMEU strike



David Marin-Guzman
Workplace correspondent

May 1, 2024 - 4.08pm

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CPB Contractors has been granted urgent court orders to stop the CFMEU's allegedly unlawful behaviour on Queensland's largest infrastructure site after allegations of locked gates, blockades and worker intimidation.

The principal contractor on the \$7 billion Cross River Rail project was in the Federal Court on Wednesday afternoon for an injunction after footage emerged of brawls and punch-ups between construction workers at picket lines that blocked workers from entering the site during a CFMEU strike.



CFMEU national president Jade Ingham said on Tuesday that workers would talk to other workers at pickets. Dan Pelad

The contractor is understood to have alleged that the CFMEU has unlawfully put locks on gates, used picketers to block non-aligned workers and put the faces of non-aligned workers on placards

The CFMEU in turn alleged that "hired muscle" from a labour hire firm had sought to intimidate protestors in a strike-breaking tactic.

Justice Darryl Rangiah handed down an interim injunction against the union that is understood to apply from 9pm on Wednesday.

Builder CPB warned it would not tolerate "any acts of intimidation" towards its workers.

"We stand firm against any unlawful tactics used to intimidate workers and delivery partners supporting this essential infrastructure project for Queensland communities," it said in a statement.

"Today, CPB Contractors applied to the Federal Court for an urgent injunction against the CFMEU in response to intimidation tactics towards people working on the Cross River Rail project."

Video shows men punching

About 130 CFMEU members directly employed by CPB have been taking protected action at Cross River Rail since Tuesday over the builder's refusal to budge on conditions such as heat policy, where work can be scaled down due to temperature, and extending site conditions to subcontractors.

The protected strike does not cover subcontractors or Australian Workers' Union members among the 60 remaining direct employees.

The AWU, the primary union for civil projects, negotiated the last agreement with the CPB in 2019 to the exclusion of its rival the CFMEU, and the CFMEU says CPB has refused to talk to it for the past six weeks.

The Australian Financial Review has viewed phone footage at the site of workers in high-visibility vests punching men in plain clothes and dragging each other across a road as others yell out, some with their shirts off.

Separate footage of an expletive-laden scuffle on Wednesday, obtained by *The Courier Mail*, showed workers pushing up against plain clothed picketers, some wearing masks, as the picketers called out "hold the line lads" and individuals broke off into their own fights.

One worker could be heard later saying, "you f---ing dog" when a man already on site opened up a gap in the fence to let the workers in.

CFMEU national secretary Zach Smith said "hired muscle" from labour hire firm Matrix Unlimited had approached protestors on Wednesday in a strike-breaking tactic.

"CPB are nothing more than disgraceful corporate thugs trying to intimidate workers through strike-breaking tactics that belong to a bygone era," he said.

"Workers have a democratic right to take industrial action when companies flat-out refuse to constructively negotiate on fair pay and safer working conditions."

Centenary Bridge action

Queensland Police said they were called to part of the site in Annerley after reports of a physical altercation between two groups, which had dispersed by the time officers had arrived.

A spokesman said "no physical injuries were reported and inquiries into the incident are ongoing".

The latest brawl occurred just two days after alleged CFMEU representatives were [filmed on CCTV](#) jumping fences into another state government project, the \$300 million Centenary Bridge upgrade, while a line of security guards blocked their entrance to the site in a right of entry dispute.

CPB also took the CFMEU to court two weeks ago for alleged intimidation at the Cross River Rail site but discontinued the application because it was not willing to identify the workers making the allegations.

Asked about allegations of blockades on Tuesday, CFMEU national president Jade Ingham said "workers will talk to workers on the project about what they're doing and ask for their support. That's what a picket line is."

He said the CFMEU was "prepared to do whatever it takes and this will be ongoing until we see some movement from CPB".

Builders this week raised concerns that CFMEU unlawful conduct is going unchecked after it was revealed the Fair Work Ombudsman has not taken any new action against the union since it took charge of construction in 2022 and has dropped claims in [30 per cent of the cases](#) inherited from the Australian Building and Construction Commission.



Name:	Jarred Malcombe STAHL
Role:	Delegate, Taringa Steel Pty Ltd
Site:	Queens Wharf (Brookfield Multiplex)



Name:	Jamie Michael LABRAM
Role:	Delegate, John Holland Queensland Pty Ltd
Site:	John Holland Logan Hospital Expansion



Name:	Dean Lesley RIELLY
Role:	Organiser
Area:	Brisbane CBD Labour Hire (civil), Traffic Control (civil)



	Name:	Dylan Patrick HOWARD
	Role:	Organiser
	Area:	Civil Co-Ordinator

Name:	Anthony Thomas PERRETT
Role:	Delegate, Lindores Personnel No.1 Pty Ltd
Site:	Charlton House (Mirvac)





Name:	Michael Steven HAWKINS
Role:	Delegate, Met Tile Commercial Pty Ltd
Site:	Met Tile Commercial Pty Ltd, Tarragindi



Name:	Damien Howard ROBERTS
Role:	Delegate, Multiplex Australasia Pty Ltd
Site:	Redcliffe Hospital Expansion Project

Name:	Matthew Patrick BUCKLE
Role:	Delegate, Lindores Personnel No.1 Pty Ltd
Site:	John Holland Southern QLD Correctional Centre




Note: above image not dated 1 May 2024, displayed for identification purposes only



Name:	Desmond Taivairange SAVAGE
Role:	Delegate, J Hutchison Pty Ltd
Site:	Parliamentary Annexe Refurbishment



Name:	Cameron Shawn ROBERTS
Role:	Delegate, J Hutchinson Pty. Ltd
Site:	Yves Mermaid Beach



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Name:	Damon Chandler CLARKE
Role:	Delegate, J Hutchinson Pty. Ltd
Site:	30 Herschel Street



Name:	Raymond Douglas EASTON
Role:	Delegate, Fitzgerald Constructions Pty Ltd
Site:	Fitzgerald Constructions Yard



	<table> <tr> <td data-bbox="515 1258 783 2027">Name:</td><td data-bbox="515 221 783 1258">Andrew Robert BLAKELEY</td></tr> <tr> <td data-bbox="783 1258 1051 2027">Role:</td><td data-bbox="783 221 1051 1258">Organiser</td></tr> <tr> <td data-bbox="1051 1258 1321 2027">Areas:</td><td data-bbox="1051 221 1321 1258">Valley and Spring Hill Windows/Glazing/Facade, Balustrades, Labour Hire, Traffic Control, Cleaning</td></tr> </table>	Name:	Andrew Robert BLAKELEY	Role:	Organiser	Areas:	Valley and Spring Hill Windows/Glazing/Facade, Balustrades, Labour Hire, Traffic Control, Cleaning
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Role:	Organiser						
Areas:	Valley and Spring Hill Windows/Glazing/Facade, Balustrades, Labour Hire, Traffic Control, Cleaning						

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Name:	Peter BRANSDON
Role:	Delegate, Lendlease Construction Pty Ltd
Site:	Queensland Performing Arts Centre



Name:	Cody Graham BUDGEON
Role:	Organiser
Areas:	Bayside, Logan and Ipswich Rigging, Gentries, Carpentry, Joinery Installation, Steel Fabrication



Name:

Justin John CARLILE

Role:

Delegate, J Hutchinson Pty Ltd

Site:

Ripley Hospital

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dated 1 May 2024,
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identification purposes
only



Name:

Mario Emil LOGA

Role:

Delegate, Multiplex Australasia Pty Ltd

Site:

Queens Wharf (Brookfield Multiplex)



Name:	Timothy James MAGUIRE
Role:	Delegate, CPB Contractors Pty Ltd
Site:	Cross River Rail – Unity



Name:	Dennis Peter MITCHELL
Role:	Organiser
Areas:	South Brisbane and West End Walls and Ceilings, Painting/Signage, Linemarking, Rendering, Cladding, Joint Ceiling

Name:	Stephen Mitchell O'DONOHUE
Role:	Delegate, GVK (QLD) Pty Ltd
Site:	GVK (QLD) Pty Ltd

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Name:	Elliot Jacob STANDFIELD
Role:	Delegate, KPI Services (QLD) Pty Ltd
Site:	Centenary Bridge Upgrade Project



	<table> <tr> <td data-bbox="515 1258 783 2024">Name:</td><td data-bbox="515 215 783 1258">Corey Steven TAYLOR</td></tr> <tr> <td data-bbox="783 1258 1051 2024">Role:</td><td data-bbox="783 215 1051 1258">Delegate, CPB Contractors Pty Ltd, later promoted to Organiser for the Sunshine Coast region and Form/Reo/Pour (civil)</td></tr> <tr> <td data-bbox="1051 1258 1319 2024">Site:</td><td data-bbox="1051 215 1319 1258">Cross River Rail – Boggo Road</td></tr> </table>	Name:	Corey Steven TAYLOR	Role:	Delegate, CPB Contractors Pty Ltd, later promoted to Organiser for the Sunshine Coast region and Form/Reo/Pour (civil)	Site:	Cross River Rail – Boggo Road
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Role:	Delegate, CPB Contractors Pty Ltd, later promoted to Organiser for the Sunshine Coast region and Form/Reo/Pour (civil)						
Site:	Cross River Rail – Boggo Road						

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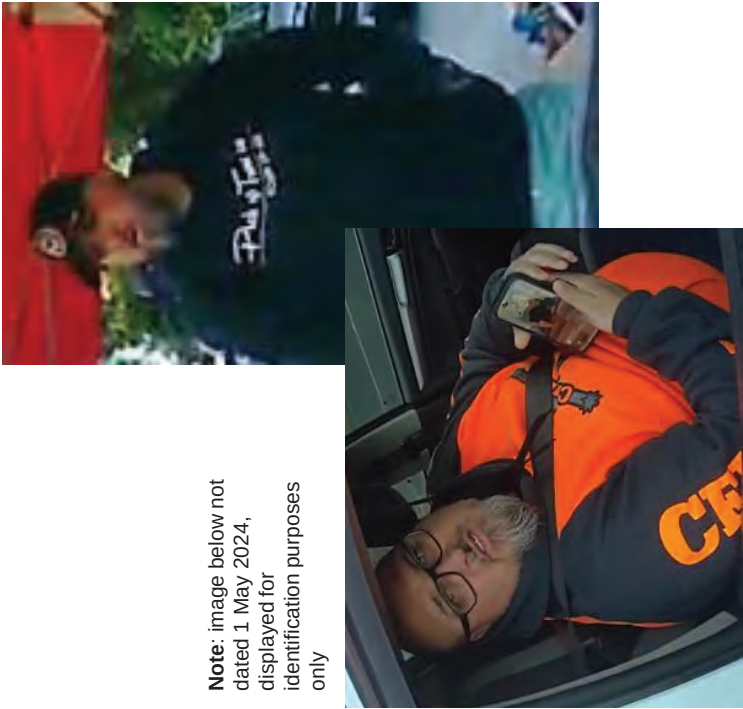


Name:	Hayden Tainui TURNER-DAVEY
Role:	Organiser
Areas:	Brisbane North Structural Steel (civil) and Marine (civil)



Name:	Matthew John VONHOFF
Role:	Organiser
Areas:	Brisbane CBD Formwork, Concreting, Pre-cast, Concrete Pumps

Note: image below not dated 1 May 2024, displayed for identification purposes only



Name:	Jon Anthony PAUL
Role:	Delegate, DT Infrastructure Pty Ltd
Site:	Ormeau Rail Facility (QTMP)



Police Powers and Responsibilities Act 2000

Current as at 1 July 2026

Amendments not yet in force

There are amendments for this title that have been enacted but have not yet commenced. The following amendments that have not commenced are not incorporated in this reprint but are annotated on the website for information—2017 Act No. 13, 2026 Act No. 7.

These annotations were incorporated on 1 July 2026. See the List of legislation in the Legislative history for uncommenced amendments enacted after this date.

- (2) The police officer may require the person to state the person's correct date of birth, whether or not when requiring the person to state the person's correct name and address.
- (3) Also, the police officer may require the person to give evidence of the correctness of the stated date of birth if, in the circumstances, it would be reasonable to expect the person to be in possession of evidence of the correctness of the stated date of birth or to otherwise be able to give the evidence.
- (4) A person does not commit an offence against section 791 if—
 - (a) the person was required to do something under subsection (2) or (3); and
 - (b) the court is not satisfied that the police officer, at the time of making the requirement, had the power under subsection (1) to make the requirement.

Part 5 Directions to move on

44 Application of pt 5

This part applies in relation to the following places (*regulated places*)—

- (a) public places, including a public place in a safe night precinct or designated business and community precinct;
- (b) prescribed places that are not also public places.

45 Part does not apply to authorised public assemblies

This part does not apply to an authorised public assembly under the *Peaceful Assembly Act 1992*.

46 When power applies to behaviour

- (1) A police officer may exercise a power under section 48 in relation to a person at or near a regulated place if a police

officer reasonably suspects the person's behaviour is or has been—

- (a) causing anxiety to a person entering, at or leaving the place, reasonably arising in all the circumstances; or
 - (b) interfering with trade or business at the place by unnecessarily obstructing, hindering or impeding someone entering, at or leaving the place; or
 - (c) disorderly, indecent, offensive, or threatening to someone entering, at or leaving the place; or
 - (d) disrupting the peaceable and orderly conduct of any event, entertainment or gathering at the place.
- (2) If the regulated place is a public place, subsection (1) applies in relation to a person at or near the public place only if the person's behaviour has or had the effect mentioned in subsection (1)(a), (b), (c) or (d) in—
- (a) for a public place in a safe night precinct or designated business and community precinct—any public place located in the precinct; or
 - (b) for any other public place—that part of the public place at or near where the person then is.
- (3) Subsection (1)(b) applies to premises used for trade or business only if the occupier of the premises complains about the person's behaviour.
- (4) However, subsections (1)(b) and (3) do not limit subsection (1)(a), (c) and (d).
- (6) For this part, the person's behaviour is a *relevant act*.

47 When power applies to a person's presence

- (1) A police officer may exercise a power under section 48 in relation to a person at or near a regulated place if a police officer reasonably suspects the person's presence is or has been—

- (a) causing anxiety to a person entering, at, or leaving the place, reasonably arising in all the circumstances; or
 - (b) interfering with trade or business at the place by unnecessarily obstructing, hindering or impeding someone entering, at or leaving the place; or
 - (c) disrupting the peaceable and orderly conduct of any event, entertainment or gathering at the place.
- (2) If the regulated place is a public place, subsection (1) applies in relation to a person at or near the public place only if the person's presence has or had the effect mentioned in subsection (1)(a), (b) or (c) in—
- (a) for a public place in a safe night precinct or designated business and community precinct—any public place located in the precinct; or
 - (b) for any other public place—that part of the public place at or near where the person then is.
- (3) Subsection (1)(b) applies to premises used for trade or business only if the occupier of the premises complains about the person's presence.
- (4) However, subsections (1)(b) and (3) do not limit subsection (1)(a) and (c).
- (5) For this part, the person's presence is a ***relevant act***.

48 Direction may be given to person

- (1) A police officer may give to a person or group of persons doing a relevant act any direction that is reasonable in the circumstances.

Examples for subsection (1)—

- 1 If a person sitting in the entrance to a shop is stopping people entering or leaving the shop when it is open for business and the occupier complains, a police officer may give to the person a direction to move away from the entrance.
- 2 If a group of people have been fighting in a nightclub car park, a police officer may give the people involved in the fight a direction

to leave the premises in opposite directions to separate the aggressors.

- 3 If a person has approached a primary school child near a school in circumstances that would cause anxiety to a reasonable parent, a police officer may give the person a direction to leave the area near the school.

- (2) Without limiting subsection (1), a police officer may give to a person or group of persons doing a relevant act in a regulated place that is a designated business and community precinct a direction to leave and not return or be within the precinct for a stated period of not more than 24 hours.
- (3) However, a police officer must not give a direction under subsection (1) or (2) that interferes with a person's right of peaceful assembly unless it is reasonably necessary in the interests of—
- (a) public safety; or
 - (b) public order; or
 - (c) the protection of the rights and freedoms of other persons.

Examples of rights and freedoms for subsection (3)(c)—

- 1 the rights and freedoms of the public to enjoy the place
- 2 the rights of persons to carry on lawful business in or in association with the place

- (4) Without limiting subsection (1), a direction may require a person to do 1 of the following—
- (a) leave the regulated place and not return or be within the regulated place within a stated reasonable time of not more than 24 hours;
 - (b) leave a stated part of the regulated place and not return or be within the stated part of the regulated place within a stated reasonable time of not more than 24 hours;
 - (c) move from a particular location at or near the regulated place for a stated reasonable distance, in a stated direction, and not return or be within the stated distance from the place within a stated reasonable time of not more than 24 hours.

- (5) The police officer must tell the person or group of persons the reasons for giving the direction.

Part 6 Breaches of the peace, riots and prevention of offences

50 Dealing with breach of the peace

- (1) This section applies if a police officer reasonably suspects—
- (a) a breach of the peace is happening or has happened; or
 - (b) there is an imminent likelihood of a breach of the peace; or
 - (c) there is a threatened breach of the peace.
- (2) It is lawful for a police officer to take the steps the police officer considers reasonably necessary to prevent the breach of the peace happening or continuing, or the conduct that is the breach of the peace again happening, even though the conduct prevented might otherwise be lawful.

Examples for subsection (2)—

- 1 The police officer may detain a person until the need for the detention no longer exists.
 - 2 A person who pushes in to the front of a queue may be directed to go to the end of the queue.
 - 3 Property that may be used in or for breaching the peace may be seized to prevent the breach.
- (3) It is lawful for a police officer—
- (a) to receive into custody from a person the police officer reasonably believes has witnessed a breach of the peace, a person who has been lawfully detained under the Criminal Code, section 260; and
 - (b) to detain the person in custody for a reasonable time.

assault has the meaning given by the Criminal Code, section 245.

obstruct includes hinder, resist and attempt to obstruct.

791 Offence to contravene direction or requirement of police officer

- (1) This section applies if a person is given a requirement or direction under this Act and no other penalty is expressly provided for a contravention of the requirement or direction.
- (2) A person must not contravene a requirement or direction given by a police officer, including a requirement or direction contained in a notice given by a police officer, under this Act, unless the person has a reasonable excuse.

Maximum penalty—

- (a) for contravening a direction given under section 48—
 - (i) within licensed premises, or in a regulated place located in the vicinity of licensed premises; or
 - (ii) in a public place located in a safe night precinct—60 penalty units; or
 - (b) for contravening another requirement or direction relating to a relevant law for which the penalty for a contravention of a similar requirement or direction made by a public official under the relevant law is more than 40 penalty units—the maximum penalty under the relevant law for the offence; or
 - (c) otherwise—40 penalty units.
- (3) However, for a contravention of a requirement made by a police officer under section 17 or 18, the person may be prosecuted for a contravention of the relevant authorising law or subsection (2), but not both.
 - (4) Unless otherwise expressly provided, it is a reasonable excuse for a person not to comply with a requirement or direction to give information if giving the information would tend to incriminate the person.

- (5) It is not a reasonable excuse for a person not to comply with a requirement or direction given by a police officer under chapter 17 that complying with the requirement or direction would tend to incriminate the person.

Division 2 Protective services officers

791A Offence to assault or obstruct protective services officer

- (1) A person must not—
- (a) assault a protective services officer in the performance of the officer's duties at, or in connection with, a state building; or
 - (b) obstruct a protective services officer in the performance of the officer's duties at, or in connection with, a state building.

Maximum penalty—40 penalty units or 6 months imprisonment.

- (2) In this section—

assault has the meaning given by the Criminal Code, section 245.

obstruct includes hinder, resist and attempt to obstruct.

791B Offence to contravene direction or requirement of protective services officer

- (1) This section applies if a person is given a requirement or direction under chapter 19, part 1 by a protective services officer and no other penalty is expressly provided for a contravention of the requirement or direction.
- (2) A person must not contravene a requirement or direction given by a protective services officer, including a requirement or direction contained in a notice given by a protective services officer, under this Act, unless the person has a reasonable excuse.



Queensland

Transport Operations (Road Use Management) Act 1995

Transport Operations (Road Use Management—Road Rules) Regulation 2009

Current as at 31 August 2026

would be a danger of a collision with the train or tram if the driver entered the crossing; or

- (e) the driver can not drive through the crossing because the crossing, or a road beyond the crossing, is blocked.

Maximum penalty—20 penalty units.

Example for paragraph (e)—

The crossing, or a road beyond the crossing, may be blocked by congested traffic, a disabled vehicle, a collision between vehicles or between a vehicle and a pedestrian, or by stock on the road.

124 Leaving a level crossing

A driver who enters a level crossing must leave the level crossing as soon as the driver can do so safely.

Maximum penalty—20 penalty units.

Part 11 Keeping left, overtaking and other driving rules

Division 1 General

125 Unreasonably obstructing drivers or pedestrians

- (1) A driver must not unreasonably obstruct the path of another driver or a pedestrian.

Maximum penalty—20 penalty units.

- (2) For this section, a driver does not unreasonably obstruct the path of another driver or a pedestrian only because—

- (a) the driver is stopped in traffic; or
- (b) the driver is driving more slowly than other vehicles (unless the driver is driving abnormally slowly in the circumstances).

Example of a driver driving abnormally slowly—

a driver driving at a speed of 20km/h on a length of road to which a speed limit of 80km/h applies when there is no reason for the driver to drive at that speed on the length of road

126 Keeping a safe distance behind vehicles

A driver must drive a sufficient distance behind a vehicle travelling in front of the driver so the driver can, if necessary, stop safely to avoid a collision with the vehicle.

Maximum penalty—20 penalty units.

127 Keeping a minimum distance between long vehicles

- (1) The driver of a long vehicle must drive at least the required minimum distance behind another long vehicle travelling in front of the driver, unless the driver is—

- (a) driving on—
 - (i) a multi-lane road; or
 - (ii) a length of road in a built-up area; or
- (b) overtaking.

Maximum penalty—20 penalty units.

- (2) In this section—

long vehicle means a vehicle that, together with any load or projection, is 7.5m long, or longer.

required minimum distance means—

- (a) for a road train—200m; or
- (b) otherwise—60m.

128 Entering blocked intersections

A driver must not enter an intersection if the driver can not drive through the intersection because the intersection, or a road beyond the intersection, is blocked.

Maximum penalty—20 penalty units.

- (2) For this section, the distance is measured in the direction in which the driver is driving.
- (3) In this section—
road does not include a road-related area, but includes any shoulder of the road.

197 Stopping on a path, dividing strip, nature strip, painted island or traffic island

- (1) A driver must not stop on a bicycle path, footpath, shared path or dividing strip, or a nature strip adjacent to a length of road in a built-up area, unless the driver—
 - (a) stops at a place on a length of road, or in an area, to which a parking control sign applies; and
 - (b) is permitted to stop at that place under this regulation.

Maximum penalty—20 penalty units.

- (1A) A driver must not stop on a painted island.

Maximum penalty—20 penalty units.

- (1B) A driver must not stop on a traffic island.

Maximum penalty—20 penalty units.

- (2) Subsections (1) and (1B) do not apply to the rider of a bicycle, a personal mobility device or an animal.

198 Obstructing access to and from a footpath, driveway etc.

- (1) A driver must not stop on a road in a position that obstructs access by vehicles or pedestrians to or from a footpath ramp or a similar way of access to a footpath, or a bicycle path or passageway unless—
 - (a) the driver is driving a bus that is dropping off, or picking up, passengers; or
 - (b) the driver—

- (i) stops in a parking bay; and
- (ii) is permitted to stop in the parking bay under this regulation.

Maximum penalty—20 penalty units.

- (2) A driver must not stop on or across a driveway or other way of access for vehicles travelling to or from adjacent land unless—

- (a) the driver—

- (i) is dropping off or picking up passengers; and
- (ii) does not leave the vehicle unattended; and
- (iii) completes the dropping off or picking up of the passengers, and drives on, as soon as practicable and, in any case, within 2 minutes after stopping; or

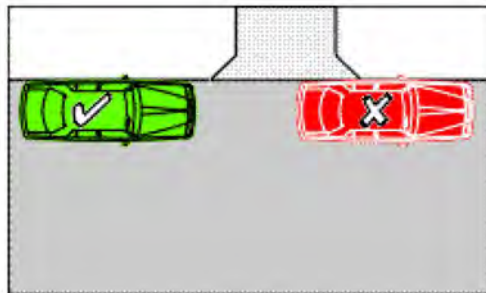
- (b) the driver—

- (i) stops in a parking bay; and
- (ii) is permitted to stop in the parking bay under this regulation.

Maximum penalty—20 penalty units.

- (3) For subsection (2)(a)(ii), a driver leaves a vehicle unattended if the driver is more than 3m from the closest part of the vehicle.

Example—



Blocking a driveway

In the example, the vehicle marked with an 'X' is stopped in contravention of subsection (2).

199 Stopping near a postbox

A driver must not stop on a road within 3m of a public postbox unless—

- (a) the driver is dropping off, or picking up, passengers or mail; or
- (b) the driver—
 - (i) stops at a place on a length of road, or in an area, to which a parking control sign applies; and
 - (ii) is permitted to stop at that place under this regulation.

Maximum penalty—20 penalty units.

200 Stopping on roads—heavy and long vehicles

- (1) The driver of a heavy vehicle, or long vehicle, must not stop on a length of road that is not in a built-up area, except on the shoulder of the road.

Maximum penalty—20 penalty units.

- (2) Subject to subsections (2A) and (2B), the driver of a heavy vehicle, or long vehicle, must not stop on a length of road in a

- (3) If a red pedestrian light at a pedestrian level crossing appears after a pedestrian has started to cross the crossing, the pedestrian must finish crossing the crossing without delay.

Maximum penalty—20 penalty units.

Example—



Red pedestrian light showing red pedestrian symbol

236 Pedestrians not to cause a traffic hazard or obstruction

- (1) A pedestrian must not cause a traffic hazard by moving into the path of a driver.

Maximum penalty—20 penalty units.

- (2) A pedestrian must not unreasonably obstruct the path of any driver or another pedestrian.

Maximum penalty—20 penalty units.

- (3) For subsection (2), a pedestrian does not unreasonably obstruct the path of another pedestrian only by travelling more slowly than other pedestrians.

- (4) A pedestrian must not stand on, or move onto, a road—

- (a) to solicit contributions, employment or business from an occupant of a vehicle; or
- (b) to hitchhike; or
- (c) to display an advertisement; or
- (d) to sell things or offer things for sale; or

- (e) to wash or clean, or offer to wash or clean, a vehicle's windscreen.

Maximum penalty—20 penalty units.

- (5) A driver, or a passenger, in or on a vehicle must not buy, or offer to buy, an article or service from a person standing on the road.

Maximum penalty—20 penalty units.

- (6) Subsections (4)(a), (c) and (d) and (5) do not apply to a pedestrian who is engaged in roadside vending under a permit or other authority given to the person under a local law.

- (7) In this section—

road includes a shoulder of a road, a median strip, a painted island or a traffic island, but does not include another road-related area.

237 Getting on or into a moving vehicle

- (1) A person must not get on, or into, a moving vehicle unless—

- (a) the person is—

- (i) engaged in the door-to-door delivery or collection of goods, or in the collection of waste or garbage; and
- (ii) required to get in or out of the vehicle, or on or off the vehicle, at frequent intervals; and

- (b) the vehicle is not travelling at a speed over 5km/h.

Maximum penalty—20 penalty units.

- (2) This section does not apply to a person who is getting on or off a bicycle, a personal mobility device or an animal.



Summary Offences Act 2005

Current as at 1 July 2026

- (3) It is a circumstance of aggravation for this section for a person to wilfully expose the person's genitals so as to offend or embarrass another person.

Division 1A Unlawful assembly offences

10A Unlawful assembly

- (1) If—
- (a) 3 or more persons are present together for a common purpose; and
 - (b) the conduct of them taken together—
 - (i) would cause a person in the vicinity to reasonably fear that unlawful violence will be used to a person or property; or
 - (ii) if the conduct unlawfully happens on, or unlawfully affects, land mentioned in section 13(1)—
 - (A) poses a risk to the health or safety of a person; or
 - (B) poses a risk to the welfare of an animal; or
 - (C) poses a biosecurity risk as defined under the *Biosecurity Act 2014*; or
 - (D) is likely to directly disrupt the operation of a business carried out on the land; or
- Example of conduct for sub-subparagraph (D)—*
- conduct that stops, or interferes with, the operation of equipment or machinery that is necessary for a business's production of a product
 - (E) poses a risk to the safety of food produced for human or animal consumption;

each of the persons commits an offence.

Maximum penalty—

- (a) if—
 - (i) the offender continues to participate in the unlawful assembly after anyone in the assembly has used unlawful violence to a person or property; and
 - (ii) the offender knows of, or ought reasonably to know of, the violence—2 years imprisonment; or
- (b) otherwise—1 year's imprisonment.
- (2) The following are immaterial—
 - (a) whether the original assembling was lawful or unlawful;
 - (b) what the common purpose is and whether it is lawful or unlawful;
 - (c) whether there is or is likely to be a person in the vicinity who holds the fear mentioned in subsection (1)(b)(i).
- (2A) Subsection (1)(b)(ii) applies subject to the *Industrial Relations Act 2016*.
- (3) In this section—
unlawful assembly means an assembly of persons who commit the offence under subsection (1).

Division 1B Offence about wearing or carrying particular clothing, jewellery or accessories in public places

10B Objects of division

The objects of this division are, as far as practicable—

- (a) to ensure members of the public may lawfully use and pass through public places without experiencing fear or intimidation because others are visibly wearing or carrying prohibited items; and
- (b) to reduce the likelihood of public disorder or acts of violence in public places.

10E Forfeiture of prohibited item to which offence relates

On a person being convicted of an offence against section 10C, a prohibited item to which the offence relates that is lawfully in the possession of the Queensland Police Service is forfeited to the State.

Note—

Under the *Police Powers and Responsibilities Act 2000*, a police officer has the power to seize all or part of a thing that may provide evidence of the commission of an offence in particular circumstances. See, for example, sections 29(2) and 31(5) of that Act.

Division 2 Offences involving presence on property

11 Trespass

- (1) A person must not unlawfully enter, or remain in, a dwelling or the yard for a dwelling.

Maximum penalty—

- (a) if the offence involves circumstances of aggravation—40 penalty units or 1 year's imprisonment;
or
- (b) otherwise—20 penalty units or 1 year's imprisonment.
- (2) A person must not unlawfully enter, or remain in, a place used as a yard for, or a place used for, a business purpose.

Maximum penalty—

- (a) if the offence involves circumstances of aggravation—40 penalty units or 1 year's imprisonment;
or
- (b) otherwise—20 penalty units or 1 year's imprisonment.

Note—

See the *Police Powers and Responsibilities Act 2000*, section 634 for safeguards applying to starting proceedings for particular offences in this division.

- (3) This section does not prevent an authorised industrial officer entering, or remaining in, a workplace in accordance with the terms of the person's appointment as an authorised industrial officer.
- (4) It is a circumstance of aggravation for this section for a person to commit the offence in the circumstance of aggravation stated in the Criminal Code, section 52B, as if this section were a prescribed offence mentioned in that section.

11A Unlawful driving of motorbike on public land

- (1) A person must not drive a motorbike on public land in contravention of a regulation under this Act or a local law that regulates access by motorbikes to public land, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

- (2) If a regulation under this Act or a local law requires a person to possess a stated type of authority while driving a motorbike on public land, a person who drives a motorbike on public land must be in possession of the stated authority while driving the motorbike, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

- (3) A person found by a police officer driving a motorbike on land mentioned in subsection (1) must produce the stated authority to the police officer on request.

Maximum penalty—20 penalty units.

- (4) In this section—

motorbike has the meaning given by the *Transport Operations (Road Use Management) Act 1995*, and includes a 4-wheeled motorbike that is ridden in the same way as a motorbike.

public land, for a regulation or local law, means public land as defined under the regulation or local law, but does not include a road.