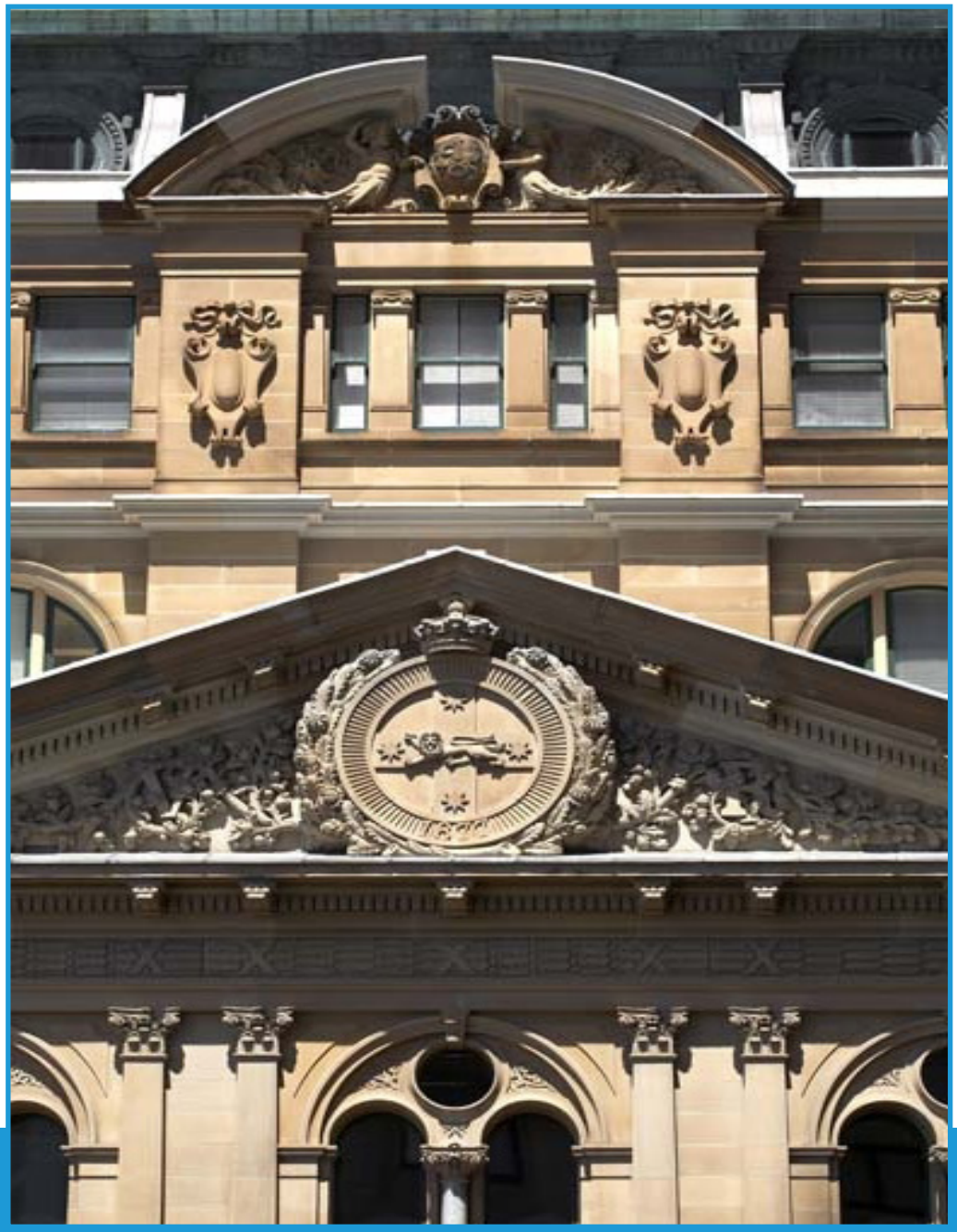
INDUSTRIAL RELATIONS COMMISSION ANNUAL REPORT '14



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Email:	nswirc@agd.nsw.gov.au
Street Address:	47 Bridge Street, Sydney NSW 2000
Registry Hours:	9.00am – 4.00pm Mon – Fri
Document Exchange:	DX 874 Sydney
Postal Address:	GPO Box 3670 Sydney NSW 2001
Contact details:	Telephone: 02 9258 0866
	Facsimile: 02 9258 0058

The principal place of business of the Industrial Relations Commission of New South Wales is 47 Bridge Street, Sydney. We acknowledge that this land is the traditional land of the Gadigal people of the Eora nation and we respect their spiritual relationship with their country. The Commission also conducts proceedings in other locations across the State and we acknowledge the traditional custodians of those locations.

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HIGHLIGHTS 2014

Successful conciliation and pre arbitration disposals

- 90.9% of Unfair Dismissal Matters before the Commission were resolved or disposed of by conciliation before the hearing of matters by arbitration. This demonstrates the effective dispute resolution skills of the Judges and Commissioners.
- Those same skills were exhibited in the highly successful results of conciliations in industrial dispute proceedings, with nearly 93% of disputes being resolved without recourse to arbitral proceedings.

Continued performance in key areas while facing resource challenges

- 86% of unfair dismissal matters finalised within 6 months of commencement.
- 84% of Industrial dispute matters finalised within 6 months of commencement.
- 29% increase in the number of Awards filed and finalised by the Commission compared to 2013.
- The number of Enterprise Agreements filed and determined by the Commission in 2014 increased to the highest level in 3 years.
- 79% of reserved judgments delivered in accordance with 3 month time standard.
- 75% of appeals to a Full Bench of the Commission determined within 6 months.

Revision of listing practices and procedures to ensure responsive to needs

- Dedicated industrial disputes list day each week for Commissioner Members to improve compliance with Commission's listing standard in those matters.
- Release of new Practice Notes PN28 re Entertainment Industry matters; PN29 re Contract Determinations; PN30 re Filing of documents in computer readable format (a review and rewrite of former PN16); and PN31 Production of and access to summonsed material.

Redesign of website and Transition to Justice Link

- Overhaul and redesign of website to align with other courts and tribunals.
- Engagement with stakeholders and commencement of content review to ensure meeting needs of stakeholders and clients .
- Review of all content to ensure meets Web Content Accessibility Guidelines version 2 (WCAG 2.00) Level AA standards.
- Commenced business analysis in relation to transitioning the Commission from the CITIS file management system to Justice Link.
- Case management – adoption of separate medium neutral citation for Industrial Court decisions.

HIGHLIGHTS 2014

Expansion of Interest Based Bargaining

- The Commission has enhanced its industrial dispute prevention role and embarked on strategies to improve employment relations by greater application of interest based bargaining and cooperative workplace partnership arrangements in addition to innovative arbitration procedures such as the 'Bluescope arbitrations'. The application of these procedures resulted in profoundly successful outcomes across public and private sector employment.

Experienced Members of Staff

- 55% of our people have been employed at the Commission for 15 years or more.

Education Programs

- Encouraging innovation in employment relations through an expert forum in collaboration with Macquarie University.
- Improved advocacy standards through internal workshops.

FOREWORD

FOREWORD BY THE PRESIDENT OF THE INDUSTRIAL RELATIONS COMMISSION OF NSW

The Honourable Justice Michael Walton

This is the nineteenth Annual Report of the Industrial Relations Commission of New South Wales established under the *Industrial Relations Act 1996* ('the Act'). It is presented to the Minister for Industrial Relations pursuant to s 161 of that Act.

The year 2014 had features of significant change and challenge in one respect and stabilisation and growth in another. In the first respect, the institution experienced the retirements of the President, the Honourable Justice Roger Boland, and two senior judicial Members, the Honourable Justices Conrad Staff and Frances Backman and, in the result, the loss of distinguished and experienced Members of the Commission.

In the second respect, the sharp decline in filings in the Commission's non-judicial cases in the 2005-2007 period was arrested to a substantial degree by 2013-2014 and the tribunal embarked upon an enhancement of its role as a preeminent institution in its sphere of industrial relations.

FOREWORD

Before elaborating upon those matters, some observations should be made as to the service to this State provided by the retiring judicial officers and the Industrial Registrar, Mr Grimson.

Upon his retirement, Justice Boland had spent nearly 14 years as a highly respected Judge of the Industrial Court of NSW and over 5 years of outstanding service as the eleventh President of the Commission.

Justice Boland's Presidency of the Commission will be particularly remembered for his skillful and compassionate management of the enormous changes in the Commission's jurisdiction arising from the concentration of industrial laws in the Federal system after the confirmation of the validity of the *Workplace Relations Amendment (Work Choices) Act 2005* in *New South Wales v Commonwealth* (2006) 229 CLR 1 and the subsequent referral by the State of New South Wales of the remainder of private sector employers to the Federal system in the late 2000s by the *Industrial Relations (Commonwealth Powers) Act 2009*.

His Honour's time as a Judge was marked by his prodigious capacity to publish in a timely way judgments of a high order and the application of his profound insights into industrial law and relations.

FOREWORD

Justice Staff was a Presidential Member and judicial Member of the Commission for 10 years at the time of his retirement. His Honour's legacy as a Judge resembles that of his mentor, former Vice-President, Justice John Cahill, in that he brought a practical, realistic and fair approach to workplace disputes.

At a private function which was held at the Commission on 12 March 2014 to mark the retirement of his Honour, the following was said by the President:

> "My reflection of this decade old judge of the Industrial Relations Commission is that he imbued the traditions of this place – a robust adherence to the notion of an independent judiciary and the adoption of the mores of the general court system, tinged with the practicality, robustness and sense of fairness necessary to discharge his statutory functions in an often volatile and complex industrial relations environment. To that may be added his own special character of being a humanist; someone very capable of finding empathy with ordinary working people."

On her retirement, Justice Backman had served 10 years as a Judge and Deputy President of the Commission. At her swearing-in ceremony, the then Attorney General, the Honourable Bob Debus, said, after canvassing her Honour's extensive legal career:

> "I am sure that your career with the Commission will be as successful and fulfilling as your career at the Bar and at the Commonwealth Director of Public Prosecution's office."

These words proved to be most prophetic. In an announcement by the President at the time of her retirement, it was observed:

> "Her Honour developed into an outstanding jurist, forming an excellent reputation for her ability to apply her considerable skills to the variety of situations that arise within the Commission. Her Honour's real strength though lay in the area of criminal law, reflected in her many erudite judgments in relation to prosecutions brought before the Court under occupational health and safety laws. Her Honour made a significant contribution to the jurisprudence of the Court in this area."

Mr G M (Mick) Grimson retired in December 2014 after 11 years of service as the head of the Industrial Registry and 38 years service with the Department of Justice and its predecessors. He brought to the role of Industrial Registrar extensive administrative experience in the court system together with a common sense, down-to-earth manner and a laconic good humour, all of which proved enormously helpful in both the work of the Industrial Court and the industrial work of the Commission. His counsel and practical skills will be much missed.

The loss of these senior judicial Members was to some extent ameliorated by the commissioning of the former President as an Acting Judge in 2014 and statutory arrangements which permitted Justice Staff to sit in relation to part heard matters for a significant period of the year (although his Honour retired from service in late 2014).

However, judicial officers have long played a significant role in the disposition of the non-judicial industrial work of the Commission, particularly in the disposition of more serious matters. Their loss has predictably impacted upon the capacity of the Commission to maintain performance at historical levels and in accordance with standards set by the Commission for itself.

Thus, by the second half of this reporting year there were clear indications that the loss of these judicial officers would present challenges for the discharge of the Commission's functions.

FOREWORD

This is reflected, in part, in this Report's discussion of clearance rates, pending matters and the meeting of time standards for 2014. Given that the significant percentage decrease in the commencement of non-judicial cases experienced in the Commission in the mid 2000s is unlikely to be repeated and the declines in filings (of a smaller magnitude) after 2011 appear to be dwindling (with award reviews in 2015 estimated to produce a year to year total increase in filings), it might be expected that declining completion rates are the portent of more serious difficulties for 2015 where the full impact of the decline in Members of the Commission between 2013 and 2014 will be felt in a context in which declining filings in the Commission may be reaching a plateau.

Different issues arise with respect to the Industrial Court. The Court experienced a further significant decline in filings in 2014 and it may be expected that trend will continue in 2015. Thus, there has been a continuous decline in Court filings since 2006, save for a respite in 2012-2013. The Court has been reduced to one Judge, the President, assisted in the reporting year by two Acting Judges.

A further feature of the 2014 reporting year was the enhancement of the Commission's role in dispute resolution and the building of collaborative employment relationships.

The Commission has served long and well the community of New South Wales in providing for an orderly and just system of industrial relations by means of industrial dispute resolution and employment regulation and has, throughout that period, developed many innovations in the field of employment relations. Likewise, the Commission has been a forerunner in the development of sophisticated methodologies in conciliation and arbitration (the former also being a feature of its judicial work).

Despite being now largely confined to the public sector and local government, the Commission maintains a very significant presence in the field of industrial relations in Australia and represents an exemplar of how modern dispute resolution models may achieve significant workplace gains including improvements in organisational performance, workplace relationships and employee well-being. It continues to play an important role, in this respect, in regional areas of New South Wales.

In more recent years, the Commission has pioneered the introduction of processes to achieve collaborative employment relations including industrial based bargaining. These have received national and international recognition.

These initiatives again have strongly featured in the Commission's activities for 2014 but with improvements to the techniques and their application and the gradual spread of the system throughout the Commission's jurisdictions.

These developments were complimented by the creation of an expert forum known as the President's Forum which aims to promote new ideas in the field of employment relations.

FOREWORD

Retiring Judicial Officers

Justice Roger Boland

Justice Conrad Staff

Justice Frances Backman

1. OVERVIEW

President's Forum

On the 25 November 2014, the Industrial Relations Commission held the inaugural President's Forum. The Forum was hosted by the President in collaboration with Macquarie University. The Forum is an opportunity for lawyers, industrial practitioners, business leaders, academics and stakeholders, such as public sector and local government managers and unions, to attend an interactive panel debate on core employment law topics. Attendance was by invitation only.

The Forum allows for the expression and sharing of innovative and cutting edge ideas with an employment relations and labour law focus.

The key note speakers at the inaugural Forum were:

- Professor Mark Bray (Professor, Newcastle Business School, Newcastle University)
- Anne-Marie Leslie (Senior Vice President of Human Resources, Cochlear)
- Nigel Ward (CEO and Director, Australian Business Lawyers and Advisors)
- Sue Bussell (Executive Manager Industrial Relations, Qantas)
- Chris Walton (CEO, Professionals Australia).

The Chair for this session was Professor Paul Gollan, then Professor of Management and Associate Dean (Research) of the Faculty of Business and Economics at Macquarie University. The assistance provided by the Professor in the design and implementation of the Forum is greatly appreciated by the Commission.

The topic of the forum was "What makes for a productive workplace?".

Those who attended acknowledged that the Forum had been a highly informative and stimulating evening. They also commented that forums of this nature were essential in ensuring ongoing professional development exploring and developing new ideas and ways of thinking in the specialised area of employment law.
There was an overwhelming positive response from those in attendance and a huge demand for further Presidential Forums. The next President's Forum is scheduled for March 2015 with an expectation that 3 Forums will be held annually.

OVERVIEW

Advocacy Programmes

In 2014, the Commission introduced an advocacy education programme. The programme began with a short, two part practical course designed to equip budding lay advocates with the fundamental skills and knowledge needed to appear effectively before the Commission, including management of evidence, cross-examination skills and preparation of witnesses.

The course was conducted by Commissioner Newall in an informal setting. The attendees at the first round of the course, held in November 2014, were drawn from unions and employers.

The initial course was oversubscribed. Feedback from those attendees was overwhelmingly positive and it is planned that the course will be continued and potentially enlarged in 2015 including a roll out into regional areas.

1. OVERVIEW

Cooperative Employment Relations and Interest Based Bargaining under the New South Wales Industrial Relations Commission

During 2014, the Commission continued to act proactively in the exercise of its dispute prevention and avoidance responsibilities by further applying and refining the role taken by the Commission in promoting workplace cooperation or partnership and managing enterprise bargains by means of interest based bargaining.

The promotion and superintendence of workplace cooperation requires the Commission to encourage a practical and cultural change in the manner that parties engage in their employment relations so as to develop a partnership for mutual gain. The centrepieces of this strategy are cooperation and collaboration.

Interest Based Bargaining moves away from the traditional adversarial based model of dispute resolution, to one that is based on the identification of fundamental common or mutual interests and cooperation between the parties and the underlining important value of trust.

The Commission's powers are sufficiently wide to undertake this process. The definition of an industrial dispute contained in the dictionary to the Act which includes "a threatened or likely industrial dispute, or a situation that is likely to give rise to an industrial dispute, if preventative action is not taken". Further s 163(1)(b) provides that the Commission must inform itself of any matter in anyway it considers to be just.

However, the development of these systems will be substantially improved if the Act were amended so as to permit parties to invoke the Commission's assistance in collaborative employment relations projects without the requirement to file a notification of industrial dispute under s 130 of the Act (presently the only jurisdictional gateway for the Commission to engage in such matters).

The Commission will use the principles of Cooperative Employment Relations and Interest Based Bargaining to move the parties beyond representing their own respective interests to a more collaborative outcome that focuses on mutual interests and, out of those, alternative options for the resolution of the dispute.

The following cases in 2014 are examples of how these processes developed cooperative workplace relations or prevented industrial disputes:

- Crown Employees (Fire and Rescue NSW Retained Fire fighting Staff) Award 2014 [2014] NSWIRComm 33
- Request by Unions NSW and the Newcastle Trades Hall Council for the assistance of the Industrial Relations Commission of New South Wales re Ulan West Stage 2 Construction Project [2014] NSWIRComm 61
- Boggabri Coal Project (IRC 13/855) unreported
- Maules Creek Coal Project (IRC 14/224) unreported
- CBI Gas Facility Tomago (IRC 12/10/31) unreported.

Each of these examples demonstrate the significant positive outcomes that may flow from these processes in terms of productivity improvements, service delivery, cost outcomes and employee welfare. The application of the system, however, places considerable demands on the resources of the Commission.

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Significant Decisions of the Commission

Award Matters

City of Sydney Wages/Salary Award 2014 [2014] NSWIRComm 49 (Walton J, President, Stanton C, Newall C)
The parties sought that the Commission make an award to be named The City of Sydney Wages/ Salary Award 2014. Although essentially a consent award, the Commission was required to arbitrate one matter before making the award. The controversy concerned proposed clauses dealing with workplace change, redundancy, redeployment and salary maintenance. In particular, the City sought to insert a clause which reflected the provisions contained in the Local Government (State) Award 2010, whilst the USU contended that the award should contain the redeployment and redundancy provisions that had appeared in the City's Redundancy and Redeployment Policy since 1996.

The USU sought that terms and conditions be awarded which had not formerly been part of any award binding the parties and which were significantly more generous than those appearing in comparable awards made by the Commission. As such, its application needed to satisfy the Special Case Principle. The requirements of the Special Case Principle will be met where the applicant for a proposed award or particular provisions within it persuades the Commission that the application satisfies a dual test: that the provision or provisions of the award sought constitute fair and reasonable conditions of employment and that the matter in question has special attributes or is 'out of the ordinary' so as to take the matter outside the restrictions which otherwise apply under the principles. That test was not satisfied in this case, and the clause proposed by the City, which was held to represent fair and reasonable terms and conditions of employment, was inserted into the award.

However, with a view to keeping parties to their bargains, the Commission established a 'grandparenting' arrangement as, prior to 2009, the City's employees were permitted, if not encouraged, to believe that the entitlements in the policy would continue. Thus, the award comprised the entitlement sought by the USU for those employees who were found to have reasonably believed that they had those conditions for as long as they worked with the City and acted out of that belief (that is, the entitlement was preserved in perpetuity for employees who, before 5 November 2009, had the benefit of those provisions).

SIGNIFICANT DECISIONS OF THE COMMISSION

State Wage Case 2014 [2015] NSWIRComm 4 (Walton J, President, Kite AJ, Newall C)
The Full Bench of the Commission adopted, with modification, the provisions of the Annual Wage Review 2013-14 [2014] FWCFB 3500. The Commission ordered that the rates of pay and work related allowances prescribed in the relevant awards be increased by 3 per cent.
The Commission foreshadowed that a review of the Wage Fixing Principles should be undertaken in the next State Wage Case (anticipated to occur in the second half of 2015 after the handing down of the next Annual Wage Review decision of the Fair Work Commission).

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Local Government (State) Award 2014 [2014] NSWIRComm 37
The application for the Local Government (State) Award 2014 was preceded by notification of an industrial dispute under s 130 of the Act, which became the vehicle for conciliation processes concerning the making of the award. Ultimately, the parties agreed to alterations which improved the clarity of the provisions of the award, enhanced flexibility within the local government industry and improved rates of pay and conditions.

The Commission held that the resulting award struck an appropriate balance between the provision of fair conditions of employment and the maintenance of an industry which is economically sustainable and meeting its core objectives. It observed that the public interest was served by this approach as the significant contribution that the local government industry makes to the community of New South Wales would be enhanced by a harmonious industrial environment and the maintenance of a vibrant and stable local government sector, particularly as that sector employs over 50,000 workers across 150 local government areas.

Collaboration or Interest Based Bargaining Matters

Crown Employees (Fire and Rescue NSW Retained Firefighting Staff) Award 2014 [2014] NSWIRComm 33; (2014) 244 IR 268
On 9 May 2014, the Commission made a new award known as the Crown Employees (Fire and Rescue NSW Retained Firefighting Staff) Award 2014. It was observed by Fire & Rescue NSW that the award represented "the most significant set of changes to the conditions of Retained Firefighters in their history, being in excess of 100 years".

The central reform was the introduction of measures to substantially enhance the 'availability' of retained firefighters. The agreement reached in that respect was the product of an extensive conciliation process conducted over a twelve month period predicated upon interest based bargaining. The balance of claims pressed by the Fire Brigade Employees' Union of New South Wales were either settled by negotiation between the parties or resolved by the adoption of the 'Bluescope' dispute resolution procedure.

Notably, this represented the first occasion that an award has been made providing for increases in employee-related costs above 2.5 per cent per annum pursuant to the provisions of cl 6(1)(b) of the Industrial Relations (Public Sector Conditions of Employment) Regulation 2011.

Moreover, the Commission noted that these proceedings initiated a "transformation of a hitherto conflicted and argumentative relationship between the industrial parties which will hopefully continue over time".

Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2014 [2014] NSWIRComm 60
The Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2014 was a product of many months of detailed negotiations between the industrial parties under conciliation processes before the Commission and represented the continuation of the improvement of industrial relationships between the same. In the result, there were significant changes to the rank, pay and progression/promotion system in the award and the higher duties arrangements were revised so as to contribute to employee-related savings. As the Commission noted, "the outcome is a classic illustration of interest based bargaining". The new award was described as benefiting firefighters, supporting a culture of reward for individual effort and merit, modernising systems and processes, breaking down structural rigidities and ensuring a more flexible deployment of resources to the benefit of the community.

1. OVERVIEW

Request by Unions NSW and the Newcastle Trades Hall Council for the assistance of the Industrial Relations Commission of New South Wales re Ulan West Stage 2 Construction Project [2014] NSWIRComm 61
The parties sought the assistance of the Commission during the construction of a $60 million mining project (namely, a new longwall underground coal mine and associated surface infrastructure at Ulan, NSW). A site inspection and conference took place on 16 April 2014 and the final report occurred on 4 December 2014. In the interim period, the parties demonstrated diligent application of good practice in implementing their industrial agreement. This fostered cooperative site relations over the course of the project, and resulted in good safety and productivity outcomes and no lost time due to industrial disputes. In consequence, the project was completed on schedule and on budget. The Commission observed that the committed implementation of the agreement along with "the active application of the consultative provisions provided the foundation for a successful project".

Declaratory Proceedings

Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales v Secretary of the Treasury [2014] NSWIRComm 23; (2014) 87 NSWLR 41, [2015] ALMD 2243, [2015] ALMD 2244
The Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales sought a declaration under s 154 of the Act that the Secretary of the Treasury was bound by cl 65.1 of the Crown Employees (Public Service Conditions of Employment) Award 2009 to consult (with that organisation of employees) in accordance with the terms of a document known as the 'Consultative Arrangements, Policy and Guidelines'. The terms of that document represented consultation arrangements agreed upon by the parties prior to the making of that award. The application was brought in circumstances where new consultation arrangements which purported to have the effect of superseding the existing document had been promulgated by the employer. The essence of the dispute, therefore, was whether the award obliged compliance with the agreed consultative document such that the employer was precluded from promulgating the later arrangements.

The resolution of that issue necessitated an assessment of whether cl 65.1 of the Award required, as a matter of legal obligation or right, adherence to the terms of the 'Consultative Arrangements, Policy and Guidelines'. In undertaking that assessment, the Court reviewed and synthesised the principles applicable to the interpretation of awards and declarations as this case represented a relatively isolated instance of the interpretation of an award arising in declaratory proceedings. In accordance with the relevant principles, the Court declared that the respondent was bound by cl 65.1 of the Award to adhere to the terms of the consultative arrangements document.

HSU v NSW Ministry of Health [2014] NSWIRComm 58
The HSU filed an application for a declaration that the Health Employees Medical Radiation Scientists (State) Award proscribed that, within a Diagnostic Radiography Department within a hospital in which there are employed more than 24 full time equivalent MRS (Diagnostic Radiographers), there is to be, in addition to the position of Chief MRS (Diagnostic Radiographer), a position of Assistant Chief MRS (Diagnostic Radiographer). That legal dispute arose in the context of a proposal by the Illawarra Shoalhaven Local Health District to remove that position from the organisational structure of the Diagnostic Radiography department at Wollongong Hospital.

The Court found that, upon proper construction, that Award did not create a legal obligation, by necessary implication drawn from the terms of the Award, that there must be established or maintained a position of

1. OVERVIEW

Assistant Chief MRS (Diagnostic Radiographer) in hospitals with that number of radiographers or that a diagnostic radiographer must be appointed to the same. In consequence, the application for declaratory relief was dismissed.

Significant Appeals

The *Industrial Relations Amendment (Industrial Court) Act 2013*: ('the Amendment Act')was proclaimed on 20 December 2013. That Act made significant changes to the way appeals from decisions of the Industrial Court are dealt with: see Sparke v State Training Services [2014] NSWIRComm 3. As a consequence, from that date the Industrial Court could not be constituted as a Full Bench but only by one judicial Member, except for matters retained by the Court as a result of transitional provisions in Pt 16 of Sch 4 of the Act.

Final Unfair Contract Appeal before the Full Bench of the Industrial Court

Port Kembla Coal Terminal Limited v Construction, Forestry, Mining and Energy Union (New South Wales Branch) [2014] NSWIRComm 39
The decision and orders under appeal concerned a claim brought on behalf of approximately 78 members of the Construction, Forestry, Mining and Energy Union under the unfair contract provisions (Pt 9 of Ch 2) of the Act in relation to superannuation benefits. It was found at first instance that the contracts were unfair as, contrary to a representation made by the employer, they failed to provide superannuation benefits equivalent in value to the benefits that were available under the fund that previously covered those workers (the superannuation fund changed in consequence of the sale of the coal terminal to Port Kembla Coal Terminal following the Government's decision to privatise that facility). The amount payable under the primary Judge's orders was $3.4 million plus costs.

The appellant raised 29 grounds of appeal against that decision. The Court held that the primary Judge erred in, inter alia, finding that there was a representation by the employer that members of the new fund would not be worse off and that the fund did not provide benefits equivalent in value to those in the previous fund. The judgment and orders at first instance were quashed.

Appeals before a Single Member of the Industrial Court

Secretary, Department of Justice v Schoeman [2014] NSWIRComm 40; (2014) 86 NSWLR 749, [2015] ALMD 2247, [2015] ALMD 2248, [2015] ALMD 2294
The applicant was dismissed for misconduct after refusing her employer's direction to attend a medical assessment. In proceedings below, that direction was found to be invalid and her dismissal was set aside (since dismissal could not be appropriate as her refusal to follow an invalid direction did not represent misconduct).

On appeal, the Court held that the Commissioner erred in making a decision on a question of law in viewing the disciplinary scheme under which the applicant was dismissed, as well as his jurisdiction to review that dismissal, as punitive and consequently posing for himself the wrong question (namely, whether the misconduct was established on the evidence).

The jurisdiction to be exercised by the Commission was protective, not punitive. That required that any order made must be defined by the "reasonable needs for protection" and materially serve that purpose more than any other available course of disciplinary action. A finding of misconduct was not a prerequisite to the exercise of protective powers under Pt 7 of the Act. As such, the first instance decision was fundamentally flawed. The matter was remitted so as to permit the Commission to reassess the exercise of its discretion.

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In hearing the appeal, the Court doubted whether leave to appeal was required under s 197B of the Act in consequence of the changes made by the Amendment Act described above (since the requirements of s 188 of the Act which provided that an appeal to the Full Bench was only by leave were no longer applicable).

Elleray v Rail Corporation of New South Wales [2014] NSWIRComm 45; (2014) 86 NSWLR 326; [2015] ALMD 552
The appellant was a RailCorp Guard. He was dismissed for breaching the code of conduct and appealed that dismissal to the Transport Appeals Board. A succession of proceedings followed, whereby that appeal was ultimately dismissed by the Board. An appeal against that decision was brought under s 23A of the *Transport Appeal Boards Act 1980* which provided for a limited statutory right of appeal against any decision of the Board on a question of law.

Although the matter proceeded upon the premise of a requirement of leave to appeal, the Court again expressed some reservations as to whether, in law, leave to appeal was required. Section 23A(3) provides that Pt 7 of Ch 4 of the Act applies to an appeal under that section "in the same way as it applies to an appeal against a decision of the Commission under section 197B of that Act" which, as noted above, may no longer require leave to appeal due to the effect of the Amendment Act.

In any event, the appeal was dismissed as the challenge related to an alleged denial of procedural fairness by the Board which did not constitute a decision on a question of law for the purposes of s 23A. Although the appeal exceeded the limitations of the statutory appeal under that provision, the Court proceeded to observe that there was no merit to the claim that procedural fairness occurred below in any event.

Appeals before a Full Bench of the Commission

Secretary of the Treasury (Department of Justice - Corrective Services NSW) v Public Service Association and Professional Officers' Association Amalgamated Union of NSW on behalf of Richard Woelfl (No 5) [2014] NSWIRComm 51
Three employees of Grafton Correctional Centre were threatened with dismissal after disciplinary charges were laid against them for alleged misconduct. The allegations related to an incident in which an inmate died from injuries sustained in custody.

The decision represented the conclusion of an extensive history of litigation (six proceedings before courts and tribunals since June 2010), in which it was determined, inter alia, that one of those employees, Mr Woelfl, was guilty of misconduct. It was found that the misconduct was serious because Mr Woelfl failed to carry out fundamental aspects of his duty as senior correctional officer in charge in circumstances where the health and safety of an inmate was at risk and failed to prevent further investigation into potential criminal conduct from being seriously compromised.

As a result of his serious misconduct, the Commission held that dismissal would not be harsh (nor unjust or unreasonable). In those circumstances, no basis existed to order the employer not to dismiss him in accordance with their threat (under s 89(7) of the Act). It was left to the Department to decide whether it wished to proceed to implement its threat.

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Robinson v Commissioner of Police [2014] NSWIRComm 35 (Boland AJ, Tabbaa C, Stanton C)
A police officer who had been medically discharged in consequence of a psychiatric illness applied to his employer for reinstatement pursuant to s 241 of the *Workers Compensation Act 1987*: ('the WC Act') around eighteen months later. In the absence of a determination by the Commissioner of Police, the appellant filed a claim under s 242 of that Act.

A preliminary question arose as to whether the appellant was "dismissed" for the purpose of s 241 of the WC Act. At first instance, the Commission determined that retirement on medical grounds under s 72A of the *Police Act 1990*: ('the Police Act')constituted a dismissal for the purposes of s 241 of the WC Act. That finding, upheld on appeal, was necessary for the Commission to have power to entertain the reinstatement application.

Although the Commission recognised that there may be some query as to a legislative scheme that enabled a permanently incapacitated officer to be medically discharged, receive a lump sum payment for loss of career and then, within a relatively short space of time, apply to be reinstated under s 241 of the WC Act (whilst resisting repayment of the lump sum), it was noted that s 72A(b) of the Police Act provides that the Commissioner of Police need only be satisfied the incapacity "appears likely to be of a permanent nature". The Commission observed that the legislation seemed, therefore, to countenance the possibility that the incapacity may not ultimately prove to be permanent, in which case "there is no reason why a police officer should be discriminated against by refusing access to the provisions of Pt 8 of the WC Act on the basis the officer was not "dismissed"".

In assessing the particular application in this case, however, the Commission found that it was open to the primary Judge to conclude that the appellant was not fit to return to work. The appeal was dismissed.

Custovic and State of New South Wales (Department of Family and Community Services - Housing NSW) [2014] NSWIRComm 48
At first instance, the Commissioner found that the appellant had been employed under a contract of employment for a specified period of time, being a period under six months. Hence, by virtue of the combined operation of s 83(2) of the Act and reg 6(1)(a) of the Industrial Relations (General) Regulation 2001 ('the Regulation'), the Commission was without jurisdiction to consider the appellant's application under s 84 of the Act claiming unfair dismissal.

On appeal, the Commission held that temporary employees were not excluded from the protections available to employees under the Act's unfair dismissal regime as "a contract that purports to be a contract for a specified period, which provides for it to be terminated by the employer without the employee's consent prior to the end date of the specified period on the basis of some future event or circumstance occurring, the timing of the happening of which is uncertain or unknown when the contract is made, is not a contract "for" a specified period of time". Termination of the employment contract by the employer without the consent of the employee falls within the meaning of "dismissal" in Pt 6 of Ch 2 of the Act. The first instance decision was quashed and the matter remitted.

1. OVERVIEW

Crown Employees (Correctional Officers, Department of Corrective Services) Award 2007 for Kempsey, Dillwynia and Wellington Correctional Centres [2014] NSWIRComm 44
The instant case sprang from an earlier industrial dispute (see, also, City of Sydney Wages/Salary Award 2014 [2014] NSWIRComm 49) in which a preliminary issue arose in an application to vary an award. A "threshold question" was referred to the President pursuant to s 193(1) of the Act for a determination in respect of s 193(2).

The issue concerned a Memorandum of Understanding between the parties reached three years before the PSA made an application for a new award. In the MOU the parties had agreed to delete 350 positions across the whole of the operations of Corrective Services NSW so as to "achieve employee-related cost savings" of not less than $33 million. The MOU was given effect at the Kempsey, Dillwynia and Wellington Centres by the deletion of eight custodial positions. The PSA sought to rely upon those savings from the deletion of those positions to satisfy the requirement in the Industrial Relations (Public Sector Conditions of Employment) Regulation 2011 for "employee-related cost savings" to fully offset the increased employee-related costs arising from the application. Corrective Services NSW contended that the savings obtained from the application of the MOU could not constitute savings "in addition to whole of Government savings measures" for the purposes of cl 9(1)(d) and could not have the effect sought by the PSA. Accordingly, it argued that the application was precluded by the terms of the Industrial Relations (Public Sector Conditions of Employment) Regulation 2011.

The Commission found that the savings fell outside the meaning of 'employee-related cost savings' in cl 9(1) of the Industrial Relations (Public Sector Conditions of Employment) Regulation 2014 due to the operation of sub-clause (d) of that clause because the savings were not "additional to whole of Government savings measures". Thus, the savings could not be called in aid to offset an increase in employee-related costs for the purposes of the application.

Injured Worker Jurisdiction

Gardner v Secretary of the Treasury (Department of Justice - Corrective Services NSW) [2014] NSWIRComm 52
The applicant claimed that his temporary employment was terminated because he was not fit for work as a result of a psychological injury he received at work (and in respect of which he was entitled to workers compensation). He made an application for reinstatement of an injured worker under s 242 of the WC Act.

The jurisdiction of the Commission under Pt 8 of the WC Act is only enlivened if a worker is dismissed because he or she is not fit for employment as a result of the injury received. In this case, the Commission found that the substantial and operative cause of the termination was not his injury, but rather the unavailability of any ongoing employment opportunity for him. As such, the applicant's employment terminated as his fixed term contract ended by effluxion of time. The Commission did not have jurisdiction to order reinstatement pursuant to s 242 in such circumstances.

1. OVERVIEW

Police Matters

Bailey v Commissioner of Police [2014] NSWIRComm 53
A preliminary interlocutory issue arose in proceedings to review the applicant's dismissal from the NSW Police Force. The Commission found that it did not have the jurisdiction to hear the review proceedings brought by the applicant because the application made under s 181E of the Act was made after the expiry of the statutory time limit prescribed by s 181G of the Police Act which modified the provision of s 85 of the Act. The Commission did not have the power to extend that period even if it considered there was a sufficient reason to do so as s 85(3) (which permitted the grant of such an extension) was expressly omitted by s 181G of the Police Act. The application was dismissed for want of jurisdiction.

Visiting Medical Officers

Minister for Health v Australian Medical Association (NSW) Limited [2014] NSWIRComm 59
This matter concerned a joint application for a determination under Pt 2 of Ch 8 of the *Health Services Act 1997* in relation to Visiting Medical Officers' ('VMOs') service contracts. Two determinations were ultimately sought by consent of the parties which purported to resolve the problem of VMOs not submitting their claims for payment in time. The determinations established that after 12 months a claim can be discounted by 50% and after 24 months no payment need be made (subject to 28 days' notice to the VMO).

The Commission noted that, although the agreement of the parties was not determinative, it bore upon the merits of the application as, by settlement, parties had the opportunity of tailoring outcomes which are closest to their respective needs (see s 91(2)). Moreover, the change in the system of making claims for payment brought about by the determinations did not alter the remuneration paid and simply had the effect of reducing costs by introducing more efficiency and predictability in the payments system. The Commission made the determinations accordingly.

2. COMMISSION PROFILE

Purpose of the Commission

The Industrial Relations Commission is established under the Act with conciliation and arbitral functions. Section 3 of that Act sets out its functions as follows:

- To provide a framework for the conduct of industrial relations that is fair and just
- To promote efficiency and productivity in the economy of the State
- To promote participation in industrial relations by employees and employers at an enterprise or workplace level
- To encourage participation in industrial relations by representative bodies of employees and employers and to encourage the responsible management and democratic control of those bodies
- To facilitate appropriate regulation of employment through awards, enterprise agreement and other industrial instruments
- To prevent and eliminate discrimination in the workplace and in particular to ensure equal remuneration for men and women doing work of equal or comparable value
- To provide for the resolution of industrial disputes by conciliation and, if necessary, by arbitration in a prompt and fair manner and with a minimum of legal technicality, and
- To encourage and facilitate cooperative workplace reform and equitable, innovative and productive workplace relations.

Our Structure

The Commission operates at two distinct levels. It has distinct legal characters according to its composition and functions. Those functions may be broadly defined as "arbitral" functions and "judicial" functions.

As an industrial tribunal the Commission seeks to ensure that industrial disputes arising between parties in this State are resolved quickly, in a fair manner and with the minimum of legal technicality.

As a superior court of record within the New South Wales justice system, the Industrial Court interprets and applies the law with regard to matters, both criminal and civil, filed and the rules of evidence and other formal procedures apply.

2. COMMISSION PROFILE

The Industrial Court of New South Wales

The Industrial Court is established under Ch 4 Pt 3 of the Act. Pursuant to s 152(1) the Industrial Court is a superior court of record and is a court of equivalent standing to the Supreme Court of New South Wales. The Court is a court for the purposes of s 71 of the Commonwealth Constitution and a court of the State of New South Wales for the purposes of s 77(iii).

The Industrial Court has jurisdiction to hear a range of civil matters arising under legislation as well as criminal proceedings. The Industrial Court determines proceedings for avoidance and variation of unfair contracts (and may make consequential orders for the payment of money); prosecutions for breaches of occupational health and safety laws; proceedings for the recovery of underpayments of statutory and award entitlements; superannuation appeals; proceedings for the enforcement of union rules and challenges to the validity of union rules.

Appeals lie to a single Member of the Court from the Local Court under s 197 and in public sector appeals under s 197B.

Specifically, the Industrial Court exercises jurisdiction in the following circumstances:

- proceedings for an offence which may be taken before the Court (including proceedings for contempt). The major area of jurisdiction exercised in this area relates to residual breaches of the *Occupational Health and Safety Act 2000*: ('the OHS Act')commenced in the Court prior to 1 January 2012;
- proceedings for declarations of right under s 154;
- proceedings for unfair contract (Pt 9 of Ch 2);
- proceedings under s 139 for contravention of dispute orders;
- proceedings under Pts 3, 4 and 5 of Ch 5 (other than Div 3 of Pt 3 and Div 3 of Pt 4) – registration and regulation of industrial organisations;
- proceedings for breach of an industrial instrument;
- proceedings for the recovery of money payable under an industrial instrument other than small claims under s 380 (which are dealt with by an Industrial Magistrate);
- superannuation appeals under s 40 or s 88 of the *Superannuation Administration Act 1996*.

2. COMMISSION PROFILE

The Industrial Relations Commission of New South Wales

The Commission is established by and operates under the Act. The Court of Arbitration (subsequently renamed and re-established as the Industrial Commission of New South Wales) was first established in New South Wales in 1901 and commenced operation in 1902. The present Commission is the legal and practical successor of that Court, the Industrial Commission which existed between 1927 and 1992, and also of the Industrial Court and Industrial Relations Commission which existed between 1992 and 1996.

The Industrial Relations Commission of New South Wales is an industrial tribunal. It has jurisdiction to hear proceedings arising under various industrial and related legislation.

Broadly, the Commission discharges the following broad functions:

1. setting remuneration and other conditions of employment;
2. resolving industrial disputes; and
3. hearing and determining other industrial matters.

In particular, the Commission exercises its jurisdiction in relation to:

- establishing and maintaining a system of enforceable awards which provide for fair minimum wages and conditions of employment;
- approving enterprise agreements;
- preventing and settling industrial disputes, initially by conciliation, but, if necessary, by arbitration;
- inquiring into, and reporting on, any industrial or other matter referred to it by the Minister;
- determining unfair dismissal claims by conciliation and, if necessary, by arbitration to determine if a termination is harsh, unreasonable or unjust;
- claims for reinstatement of injured workers;
- proceedings for relief from victimisation;
- dealing with matters relating to the registration, recognition and regulation of industrial organisations;
- dealing with major industrial proceedings, such as State Wage Cases;
- applications under the *Commission for Children and Young People Act 1998*;
- various proceedings relating to disciplinary and similar actions under the Police Act;
- various proceedings relating to promotional and disciplinary actions under the Act (Ch 2, Pt 7);
- proceedings for the enforcement of union rules and challenges to the validity of union rules.

2. COMMISSION PROFILE

Membership of the Commission

Judges and Presidential Members
As a superior court of record, the Judges of the Commission have the same title and status as the Judges of the Supreme Court of New South Wales.

The Judicial and Presidential Members of the Commission during 2014 in order of seniority were:

President
The Honourable Justice Michael John Walton, appointed President 3 February 2014 and as a judicial Member and Vice-President 18 December 1998;

The Honourable Justice Roger Patrick Boland, appointed President 9 April 2008 (serving in that position until 31 July 2014) and as judicial Member and Deputy President 22 March 2000; retired 31 January 2014;

Vice-President
The Honourable Justice Michael John Walton, Vice-President 1 January 2014 to 3rd February 2014;

Deputy President
Rodney William Harrison, appointed Deputy President 2 September 1996 and as a Commissioner 4 August 1987.

COMMISSION MEMBERS

Presidential Members

The Honourable Justice Conrad Gerard Staff, appointed 3 February 2004; retired 12 March 2014;
The Honourable Justice Anna Frances Backman, appointed 19 August 2004; retired 19 August, 2014.

Acting Presidential Members

The Honourable Acting Justice Roger Patrick Boland, appointed 3rd February 2014 for a period of 12 months
The Honourable Acting Justice Peter Kite SC appointed 25th November 2014.

Commissioners

The Commissioner Members of the Commission during 2014 in order of seniority were:

Commissioner Inaam Tabbaa AM, appointed 25 February 1991;
Commissioner John David Stanton, appointed 23 May 2005;
Commissioner Peter Justin Newall, appointed 29 April 2013.

2. COMMISSION PROFILE

Regional Sittings of the Commission

The Commission has its own dedicated court premises located in Newcastle and Wollongong. The Commission also has an arrangement with the Registrar of the Local Court at Parramatta to provide registry services for clients of the Commission at the Parramatta Court Complex, Cnr George and Marsden Streets, Parramatta.

The policy of the Commission in relation to unfair dismissal applications (s 84) and rural and regional industries is to sit in the country centre at or near where the events have occurred.

The Commission's assessment is that it has a beneficial and moderating effect on parties to the industrial disputation and other proceedings who can often personally attend the proceedings and then better understand decisions or recommendations made.

There were a total of 184 (231 in 2013) sitting days in a wide range of country courts and other country locations during 2014.

There are two Members based permanently in Newcastle - Deputy President Harrison and Commissioner Stanton.

The Commission sat in Newcastle for 136 (173 in 2013) sitting days during 2014 and dealt with a wide range of industrial matters in Newcastle and the Hunter district.

The regional Member for the Illawarra-South Coast region is the President, the Honourable Justice Walton. Other Members regularly sit in Wollongong and environs, principally Commissioner Tabbaa. There were a total of 48 (58 in 2013) sitting days in Wollongong during 2014.

The Commission sat in other regional locations in 2014 including Albury, Bathurst, Byron Bay, Kempsey, Murwillumbah and Tamworth.

Industry Panels

Industry panels were reconstituted during 1998 to deal with applications relating to particular industries and awards and have been reviewed regularly since that time to ensure that panels reflect and are able to respond to the ongoing needs of the community.

With Members' retirements in 2013 and 2014, a further rationalisation was undertaken.

The panels deal with applications for awards or variations to awards, applications for the approval of enterprise agreements and dispute notifications arising in relevant industries together with promotional and disciplinary appeals brought by public sector employees (both general public sector and transport public sector).

One panel now deals with metropolitan (or Sydney-based) matters (down from four in 2007); two panels specifically deal with applications from regional areas (down from three) and one panel deals specifically with promotional and disciplinary appeals.

The panel dealing with applications in the north of the State (including the Hunter region) is chaired by Deputy President Harrison. The panel dealing with applications from the southern areas of the State (including applications from the Illawarra-South Coast region) is chaired by the President, the Honourable Justice Walton. The membership of the panels at the end of the year is set out at Appendix 1.

2. COMMISSION PROFILE

The Industrial Relations Registry

The Industrial Registrar has overall administrative responsibility for the operation of the Commission. The Registrar reports to the President of the Commission in terms of the day to day operational procedures and as a Business Centre Manager.

Following the amalgamation of the Superior Court Registries in March 2014 the Registrar now reports to the Chief Executive Officer of the Supreme Court in relation to reporting and budgetary responsibilities.

The Registry provides administrative support to the Members of the Commission and focuses on providing high level services to both its internal and external clients. The major sections of the Registry are:

Registry Client Services Team

The Registry Client Services team provides assistance to users of the Commission seeking information about the work of, or appearing before, the Commission.

This team is responsible for receiving all applications and claims, guiding applicants and claimants through the management of their matter, listing matters to be heard by Members and providing formal orders made by the Commission or Industrial Court. In addition, the team provides support to Members and their staff by providing infrastructure for the requisition of stores, etc. It also has responsibilities under the *Public Finance and Audit Act 1983*.

Client Service staff are situated in four locations; 47 Bridge Street, Sydney (Principal Registry); 237 Wharf Road, Newcastle; 90 Crown Street, Wollongong and Parramatta Local Court, Cnr George and Marsden Streets, Parramatta.

The role of Client Service staff is crucial as they are usually the initial point of contact for the Commission's users. The Commission is fortunate that the staff within this area approach their duties with dedication and efficiency.

Information Management, Electronic Services & Commissioner Support Team

The Information Management, Electronic Services and Commissioner Support Team is responsible for the preparation of industrial awards, enterprise agreements and other orders made by Members of the Commission, for publication in the New South Wales Industrial Gazette, which is available in electronic format. This process is required and driven by legislative requirements and enables the enforcement and implementation of awarded or approved employment conditions for employees. This team is also responsible for the maintenance of records relating to parties to awards and records relating to Industrial Committees and their members.

Additionally, this team provides information management, technology services and support to the Commission, the Industrial Registrar and Registry staff. The demand for the provision of online services and information has continued to grow and this team's main functions include: caseload reporting; maintenance and support of the Commission's case management system; CITIS (Combined Industrial Tribunals Information System) and other internal systems; updating the Commission's Intranet and Internet sites and the maintenance of the NSW Industrial Gazette website.

Importantly, this team also provides administrative support to Commissioner Members.

2. COMMISSION PROFILE

Industrial Organisations Team

This team processes a diverse range of applications that are determined by the Industrial Registrar, which include:

- registration, amalgamation and consent to alteration of the rules of industrial organisations;
- election of officers of industrial organisations or for special arrangements in relation thereto;
- Authority to Enter Premises and Work Health and Safety Entry Permits for union officials;
- Certificates of Conscientious Objection to membership of industrial organisations;
- special rates of pay for employees who consider that they are unable to earn the relevant award rate because of the effects of impairment; and
- special arrangements in respect of the keeping of time and wage records and the provision of pay slips.

With respect to industrial organisations, the team also administers provisions relating to the regulation and corporate governance of industrial organisations under Ch 5 of the Act and provides assistance in the research of historical records.

In addition, the team processes applications for registration of employers of outworkers for determination by the Clothing Trades (State) Industrial Committee.

Executive Team

The principal function of this team is to provide information, support and advice to the members of the Registry to ensure that services are maintained at a high level. This team is also responsible for high level planning and provision of various information and reports to the program group and the Department.

3. PERFORMANCE

INDUSTRIAL RELATIONS COMMISSION

Overall Caseload

The comparative caseload statistics for the Industrial Relations Commission between 2011 and 2014 are summarised in Table 3.1

Table 3.1 [Caseload Statistics]

	2011	2012	2013	2014
Appeals				
Filed	13	16	16	10
Finalised	14	14	18	8
Pending	9	11	6	6
Awards				
Filed	401	351	146	188
Finalised	391	349	100	123
Pending	25	21	66	131
Disputes				
Filed	488	372	336	308
Finalised	505	447	385	275
Pending	231	146	82	112
Enterprise Agreements				
Filed	10	13	8	15
Finalised	13	13	5	15
Pending	0	0	3	3
Unfair Dismissals				
Filed	190	221	227	206
Finalised	208	220	250	186
Pending	68	68	45	64
Public Sector Promotion and Disciplinary Appeals				
Filed	440	63	87	10
Finalised	436	92	92	19
Pending	33	0	0	0

CASELOAD STATISTICS

3. PERFORMANCE
INDUSTRIAL RELATIONS COMMISSION

Table 3.1 [Caseload Statistics (continued)]

	2011	2012	2013	2014
Public Sector Promotion and Disciplinary Appeals				
Filed	**440**	**63**	**87**	**10**
Finalised	**436**	**92**	**92**	**19**
Pending	**33**	**0**	**0**	**0**
Police Dismissals and Disciplinary Appeals				
Filed	**15**	**16**	**28**	**23**
Finalised	**25**	**19**	**23**	**19**
Pending	**13**	**10**	**15**	**17**
Hurt on Duty Appeals				
Filed	**51**	**29**	**11**	**4**
Finalised	**21**	**38**	**24**	**14**
Pending	**61**	**20**	**12**	**4**
Other				
Filed	**113**	**110**	**133**	**118**
Finalised	**158**	**109**	**116**	**121**
Pending	**32**	**30**	**46**	**41**
TOTALS				
Total Filed for the Year	**1721**	**1191**	**992**	**882**
Total Finalised for the Year	**1771**	**1301**	**1013**	**780**
Total Pending at end of 2014	**472**	**306**	**275**	**378**

The above Table shows the following trends

- Total filings (882) have decreased to the lowest level in four years. However, that decline requires closer analysis in order to properly understand trends in filings before the Commission. Following the Work Choices legislation, there were dramatic falls in cases commenced before the Commission (48 and 36 per cent respectively between 2005 and 2006, and, 2006 and 2007). When adjustments are made for award review processes, there were insignificant fluctuations in filings in the period 2007 - 2011. Further declines were experienced in the 2011 - 2012 period which were not of quite the same magnitude as the 2005 - 2007 period. That decline was arrested to some degree in 2012 – 2013. The year 2014 shows a further reduction in the rate of decline of filings (and is the lowest fall seen over the last two years). That pattern is expected to continue in 2015 during which period it is estimated there will be an increase in filings given the stabilisation of total non-judicial filings and the initiation of triennial award review processes.

3. PERFORMANCE

INDUSTRIAL RELATIONS COMMISSION

- There are further indicators of the stabilisation in Commission filings by 2014. There was an increase in award and enterprise agreement matters between 2013 and 2014. Ultimately, there was a decline in industrial disputes but it was only of a marginal nature. Unfair dismissals grew between 2012 and 2013 and fell back slightly in the 2013 to 2014 period.

- Total finalisations (780) decreased in 2014, again to the lowest level in the last five years. The decline in finalisations was across all areas of the Commission except for Award matters and Enterprise Agreements where finalisations increased from 2013. The decrease is indicative of the fact that there was a substantial reduction in the number of Commission Members in 2013 and 2014, whilst filings in key areas such as awards, industrial disputes and unfair dismissals have not experienced such a considerable decline (and, as noted, are trending towards a plateau of filing numbers, allowing for ordinary year by year variations).

- Total matters pending at the end of 2014 increased by 37% to 378 pending matters. This adverse increase has the same source as finalisations.

- There may be expected a worsening of this position in 2015 in the absence of the appointment of additional Commission Members.

Table 3.2 below shows the number of Members and the respective positions:

Table 3.2 [Commission Members]

	2011	2012	2013	2014
Judicial and Presidential Members				
President	**1**	**1**	**1**	**1**
Vice - President	**1**	**1**	**1**	**N/A**
Deputy President	**1**	**1**	**1**	**1**
Presidential Members (Judges or Acting Judges)	**4**	**4**	**3**	**1**
Total Judicial Members	**8**	**7**	**6**	**3**
Non- Judicial Members				
Commissioners	**6**	**3**	**2.5***	**2.5***
Total Members of the Commission	**14**	**10**	**8.5**	**5.5**

*Denotes dual appointee as a Commissioner with Fair Work Australia

3. PERFORMANCE
INDUSTRIAL RELATIONS COMMISSION

Clearance Rates

The comparative clearance rate statistics for Commission between 2011 and 2014 are summarised in Table 3.3.

Table 3.3 [Clearance Rates Statistics]

	2011	2012	2013	2014
Commission Clearance Rate	**102%**	**109.2%**	**102.1%**	**88%**

The deteriorating clearance rates of the Commission are a direct result of the reduction in the number of judicial Members attached to the Commission from 2013 to 2014.

3. PERFORMANCE
INDUSTRIAL RELATIONS COMMISSION

INDUSTRIAL DISPUTES

Industrial Disputes

The Commission is responsible for the timely and efficient resolution of industrial disputes in NSW pursuant to Ch 3 of the Act 1996. Under that chapter the Commission must firstly attempt to conciliate the matter between the parties pursuant to s 133 and s 134 of the Act.

This form of robust alternative dispute resolution usually involves a Commissioner who meets with the parties both separately and together in an attempt to resolve their differences. In the event that a dispute cannot be resolved by way of conciliation, the Commission will then arbitrate the dispute under s 135 and s 136 and make orders that are binding on all parties. Industrial dispute matters represented 35.3% of the total fillings for the Commission during 2014 (the highest proportion of total commission work since 2005).

Figure 3.4 [Filed and finalised dispute matters]

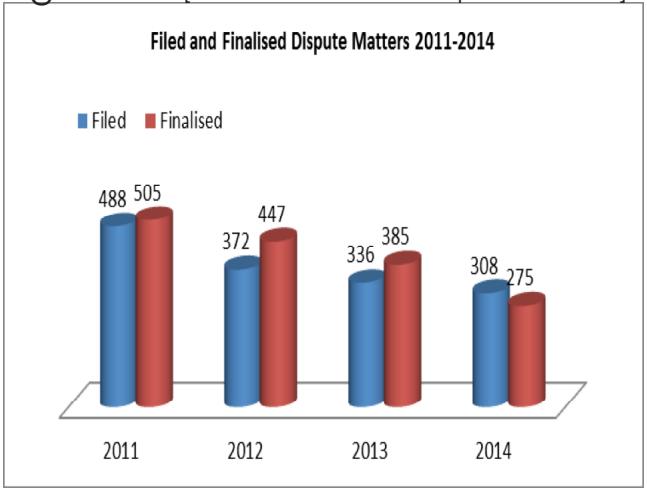


Figure 3.4 represents graphically a comparison between the matters filed and disposed of in the last 4 years.

During 2014 the number of industrial dispute applications filed, decreased by 8.3% and finalisations decreased by 28.5%.

Figure 3.5 [Method of disposal]

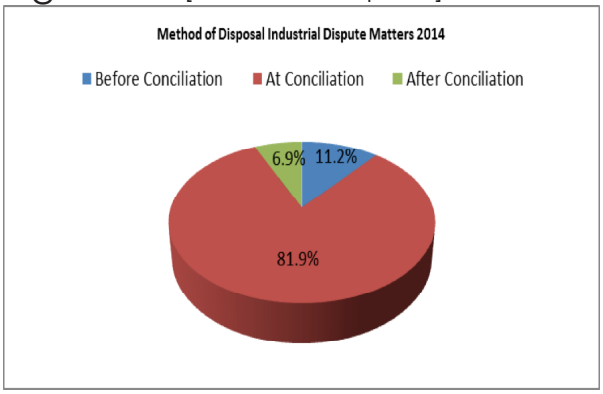


Figure 3.5 represents graphically the method in which industrial dispute matters were finalised by the Commission during 2014.

3. PERFORMANCE
INDUSTRIAL RELATIONS COMMISSION

Time Standards

It is of great importance for the successful discharge of the Commission's statutory and dispute resolution functions that industrial disputes are attended to in a timely manner. The Commission endeavours to have all dispute matters listed within 72 hours of a notification being filed so that the dispute can be addressed.

Table 3.6 [Time taken for first listing of industrial dispute matter]

	Within 72 Hours (50% Target)	Within 5 Days (70% Target)	Within 10 Days (100% Target)	Median Time to First listing
2011	42.6%	54.5%	78.9%	5 Days
2012	40.3%	55%	76.7%	5 Days
2013	42.3%	58.9%	80.7%	5 Days
2014	35.6% ✗ ⇩	46.5% ✗ ⇩	75.6% ✗ ⇩	6 Days ✗ ⇩

As in recent annual reports it is noted that the median time to first listing has continued to rise. This is a consequence of the reduction in the number of Commissioner Members which has reduced the Commission's capacity to list dispute matters within the 72 hour to 10 day standard.

Table 3.7 [Time taken to finalise an industrial dispute matter]

Finalised within	2 Months 50% Target	3 Months 70% Target	6 Months 90% Target	9 Months 100% Target
2013	55%	61.2%	77%	84.5%
2014	63.7% ✓ ⇧	73.1% ✓ ⇧	84.3% ⇧	93.9% ⇧

Despite the reduction in the Commission's resources during 2014 the finalisation of matters within two and three months showed improvement, meeting and exceeding the stated clearance standards. The number of matters meeting the 6 and 9 month clearance standard also improved.

This has occurred due to the decision of the President to refocus scarce member resources into the Commission's disputes list as it is viewed as a core function of the Commission and was suffering from declining Commission membership. This has involved the judicial Members of the Commission dealing with more dispute cases and by utilising the Deputy President and Commissioner situated in Newcastle for metropolitan industrial dispute work. This, of course, has had negative consequences for other areas of the Commission's work, and might best be seen as a short term remedy.

3. PERFORMANCE
INDUSTRIAL RELATIONS COMMISSION

Unfair Dismissals

Under Pt 6 of Ch 2 of the Act the Commission is responsible for determining applications by Public Sector and Local Government employees who claim to have been unfairly dismissed from their employment role by their employer.

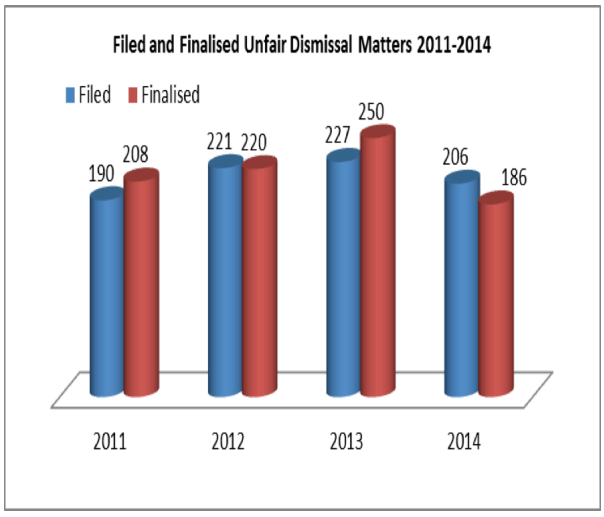
The Act provides that each unfair dismissal matter is initially dealt with by listing for conciliation conference (under s 86) with a view to reaching an early settlement between the parties. Where the conciliation is unsuccessful, the matter proceeds to an arbitrated hearing where the Commission must determine if the dismissal was harsh, unjust or unreasonable.

The Commission then has power to make orders either confirming the dismissal or ordering that the employee be re-instated, re-employed or compensation paid.

Unfair dismissal matters represented 23.6% of the total filings for the Commission during 2014.

Figure 3.8 represents graphically a comparison between the matters filed and disposed of in the last 4 years.

Figure 3.8 [Filed and finalised unfair dismissal matters]



The number of unfair dismissal applications filed in 2014 decreased by 9% and finalisations decreased by 25%

UNFAIR DISMISSALS

3. PERFORMANCE

INDUSTRIAL RELATIONS COMMISSION

Figure 3.9 represents graphically the method in which unfair dismissal matters were finalised by the Commission during 2014

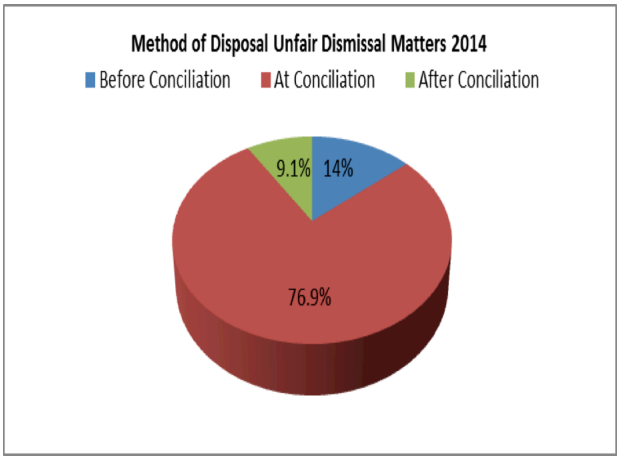


Figure 3.9 shows that 90.9% of all unfair dismissal matters during 2014 were disposed of prior to an arbitrated hearing.

Table 3.10 shows the distribution as to who initiated an unfair dismissal action

	2011	2012	2013	2014
Unfair Dismissals				
Application (Individual)	43	56	44	52
Application (Legal Representative)	56	51	78	66
Application (Organisation Representative)	91	114	105	88
TOTAL	190	221	227	206

3. PERFORMANCE
INDUSTRIAL RELATIONS COMMISSION

TIME STANDARDS

There are two published time standards relating to unfair dismissals

- Any application for unfair dismissal should be listed for its first conciliation hearing within 21 days from the date of lodgement – in accordance with Practice Note 17 (cl 4).
- 50% of unfair dismissal applications should be finalised within 2 months, 70% within 3 months, 90% within 6 months and 100% within 9 months.

Table 3.11 shows the time taken to first listing of an unfair dismissal matter

Within	7 Days	14 Days	21 days 100% Target	28 Days
2013	12.4%	22.4	46.3%	66.6%
2014	20.2%	29.2%	46.2%	64.3%

As in recent annual reports, it is noted that the median time to first listing has continued to rise. This is a consequence of the reduction in the number of Commissioner Members reducing the Commission's capacity to list within the 21 day standard.

Table 3.12 shows the time taken to finalise an unfair dismissal matter

Finalised within	2 Months 50% Target	3 Months 70% Target	6 Months 90% Target
2011	51%	64.9%	79.3%
2012	62.9%	71.5%	87.3%
2013	63.2%	72%	85.2%
2014	68.3% ✓ ⇧	74.8% ✓ ⇧	86.1% ⇧

Nevertheless, during 2014 the finalisation of matters within two and three months showed significant improvement, meeting and exceeding the stated clearance standards. The number of matters meeting the 6 and 9 month clearance standard also improved.

Again this has occurred due to the decision of the President to refocus scarce member resources into the Commission's unfair dismissals list as it is viewed as a core function of the Commission. This has involved the judicial Members of the Commission dealing with more unfair dismissal cases and by utilising the Deputy President and Commissioner situated in Newcastle to hear metropolitan matters. This of course has had negative consequences for other areas of the Commission's work and cannot be sustained in the long term.

3. PERFORMANCE
INDUSTRIAL RELATIONS COMMISSION

Awards and Enterprise Agreements

Awards

One of the important objects of the Act is to facilitate the appropriate regulation of employment through awards, enterprise agreements and other industrial instruments.

The Commission is given power to:

- make or vary awards (s 10 and s 17 respectively);
- make or vary enterprise agreements (s 28 and s 43);
- review awards triennially (s 19); and
- consider the adoption of National decisions for the purpose of Awards and other matters under the Act (s 50) (for example, the State Wage Case).

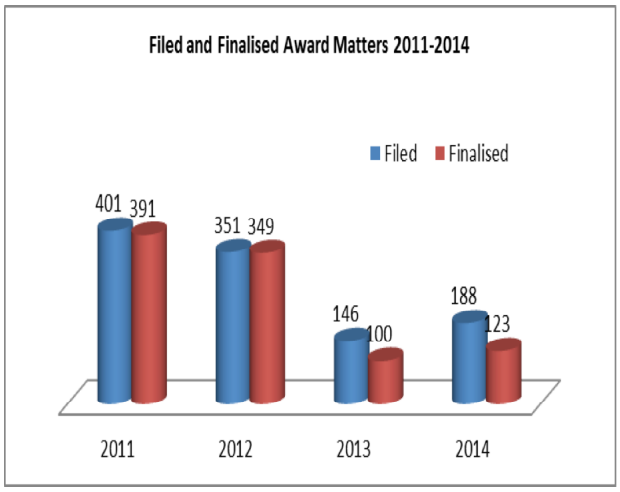
Award Reviews

The last triennial Award Review process was effectively completed during 2012. The principles of the Award Review process were defined by the Full Bench in Principles for Review of Awards - State Decision 1998 (1998) 85 IR 38.
The Full Bench of the Commission further considered the principles in Poultry Industry Preparation (State) Award and other Awards [2003] NSWIRComm 129; (2003) 125 IR 64.

Awards matters represented 15% of the total filings for the Commission during 2014.

AWARDS
ENTERPRISE
AGREEMENTS

Figure 3.13 represents graphically a comparison between the matters filed and disposed of in the last 4 years.



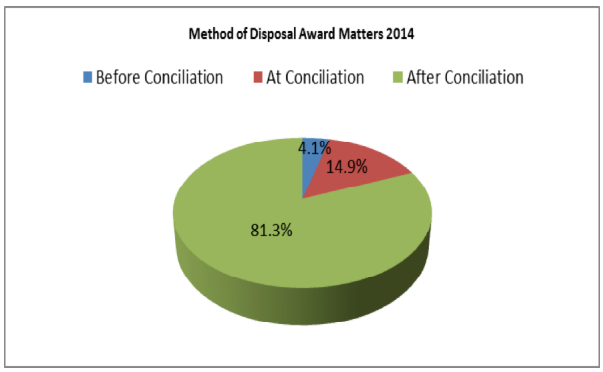
The number of Award applications filed in 2014 increased by 29.5% and finalisations increased by 23.5% in comparison to those filed during 2013.

3. PERFORMANCE
INDUSTRIAL RELATIONS COMMISSION

It is expected that the number of filed award matters will increase in 2015 consistently with that trend and as a reflection of the triennial award review required by s 19 of the Act.

It is projected that the 2015 award review numbers will reflect the numbers seen in 2012.

Figure 3.14 represents graphically the method in which Award matters were finalised by the Commission during 2014.



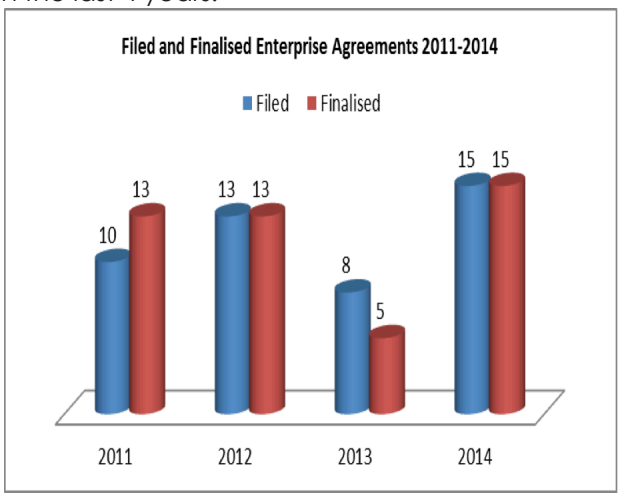
3. PERFORMANCE

INDUSTRIAL RELATIONS COMMISSION

Enterprise Agreements

Enterprise Agreements represented 1.7% of the total filings for the Commission during 2014.

Figure 3.15 graphically represents a comparison between the matters filed and disposed of in the last 4 years.



The number of Enterprise Agreements filed and determined by the Commission in 2014 increased to the highest level in 3 years.

Table 3.16 provides details of filings in the award and enterprise agreement areas in the last five years.

	2011	2012	2013	2014
Awards				
Application to Make Award	**31**	**56**	**46**	**35**
Application to Vary Award	**61**	**55**	**96**	**150**
Enterprise Agreements				
Application for an Enterprise Agreement	**10**	**13**	**8**	**15**
Terminated Enterprise Agreement	**4**	**9**	**12**	**11**
Review of Awards				
Notice of Review Issued	**306**	**236**	**0**	**0**
Awards reviewed	**1**	**217**	**2**	**0**
Awards rescinded	**0**	**17**	**0**	**0**
Awards determined to have effect as enterprise agreements	**6**	**0**	**0**	**0**
Declaration of Non-Operative Awards	**299**	**0**	**0**	**0**

3. PERFORMANCE

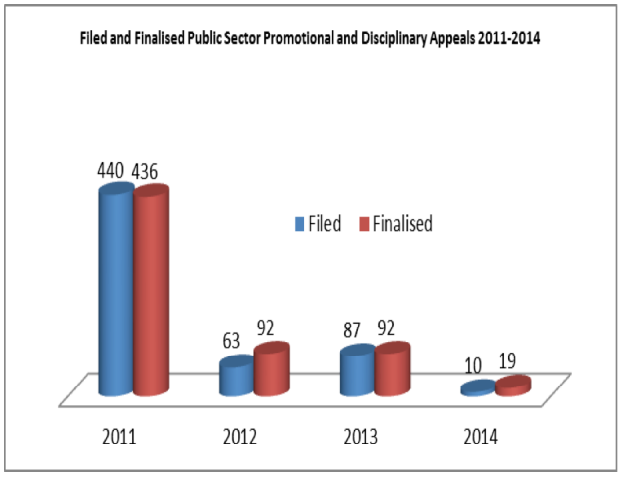
INDUSTRIAL RELATIONS COMMISSION

Public Sector Promotional and Disciplinary Appeals

On 1 July 2010 the Government and Related Employees Appeal Tribunal (GREAT) was abolished and the jurisdiction of that Tribunal was ceded to the Commission with the essential provisions incorporated in a new Pt 7 of Ch 2 of the Act.

Public sector promotional and disciplinary appeals represented 1% of the total filings for the Commission during 2014.

Figure 3.17 represents graphically a comparison between the matters filed and disposed of in the last 4 years.



PUBLIC SECTOR APPEALS

The number of promotional and disciplinary appeals filed in 2014 decreased by 88.6% and finalisations decreased by 79.3%

The downturn in appeals filed can be wholly explained by the enactment of the *Government Sector Employment Act 2013*: ('the GSE Act') that abolished public sector promotional appeals – only 6 promotional appeals were filed in 2014 compared with 84 promotional appeals that were filed in 2013.

The Act provides that each public sector appeal is initially dealt with by listing for conciliation conference (s 100E) with a view to reaching an early settlement between the parties. Where the conciliation is unsuccessful, the matter proceeds to an arbitrated hearing.

3. PERFORMANCE
INDUSTRIAL RELATIONS COMMISSION

Table 3.18 shows the distribution as to what types of public sector and police promotional and disciplinary appeals were dealt with during the last 4 years.

	2011	2012	2013	2014
Public Sector Promotional Appeals				
Filed	431	60	84	6
Finalised	435	88	87	8
Pending	37	5	2	0
Public Sector Disciplinary Appeals				
Filed	9	3	3	4
Finalised	1	4	5	11
Pending		9	7	0
TOTALS				
Total Filed for the Year	440	63	87	10
Total Finalised for the Year	436	92	92	19

The Act provides that each public sector appeal is initially dealt with by listing for conciliation conference (s 100E) with a view to reaching an early settlement between the parties. Where the conciliation is unsuccessful, the matter proceeds to an arbitrated hearing.

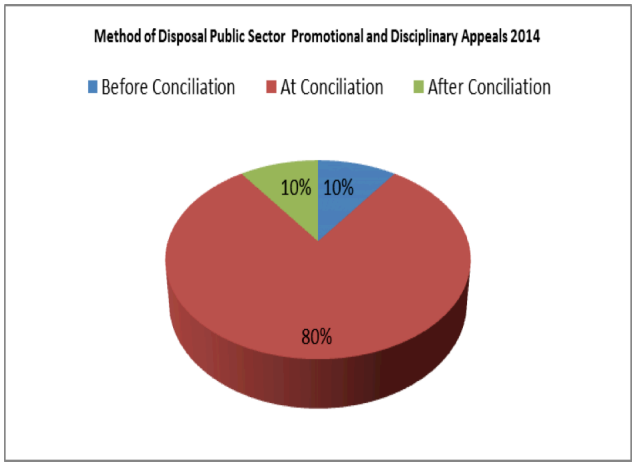


Figure 3.19 represents graphically the method in which public sector and disciplinary appeals were finalised by the Commission during 2014.

3. PERFORMANCE
INDUSTRIAL RELATIONS COMMISSION

Time Standards

Table 3.20 shows the time taken to finalise public sector promotional and disciplinary appeals were dealt with during the last 4 years.

	2011	2012	2013	2014
Public Sector Promotional Appeals				
Completed within 3 Months	97.5%	84.1%	98.8%	100%
Completed within 6 Months	99.8%	100%	100%	100%
Public Sector Disciplinary Appeals				
Completed within 3 Months	69.2%	60.9%	83%	82.9%
Completed within 6 Months	96.2%	73.9%	89.4%	92.7%

During 2014 the finalisation of public sector promotional and disciplinary matters, within the 3 and 6 month time standard, remained the same or slightly improved on the 2013 clearance rates.

3. PERFORMANCE

INDUSTRIAL RELATIONS COMMISSION

Police Dismissals and Disciplinary Appeals

Under the provisions of s 173 of the Police Act, the Commissioner of Police may make reviewable and non-reviewable orders arising from a police officer's misconduct or unsatisfactory performance.

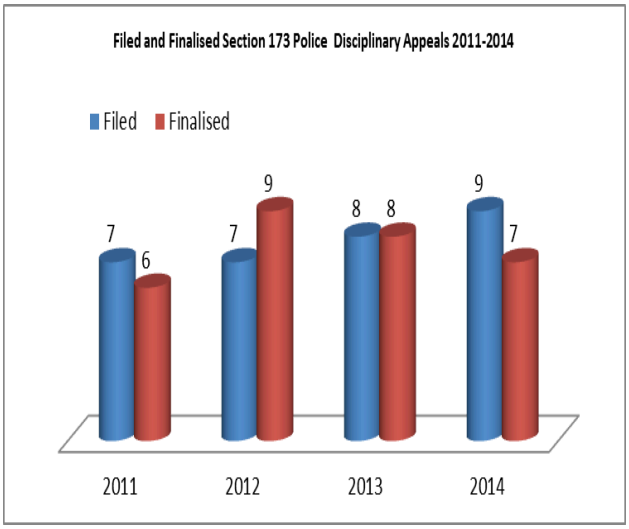
Under s 181D of that Act, the Commissioner is able to remove a NSW Police Officer for loss of confidence in the police officer's suitability to continue as an officer having regard to their integrity, incompetence, misconduct or unsatisfactory performance.

Each matter is initially dealt with by listing for a conciliation conference in which the Commission will attempt to mediate an agreed settlement between the parties. In the event that the conciliation is unsuccessful, the matter proceeds to an arbitrated hearing where the affected officer must establish that the action taken by the Police Commissioner was harsh, unreasonable or unjust.

Section 173 Police Disciplinary Appeals

Police disciplinary appeals represented 1% of the total filings for the Commission during 2014.

Figure 3.21 represents graphically a comparison between the matters filed and disposed of in the last 4 years.

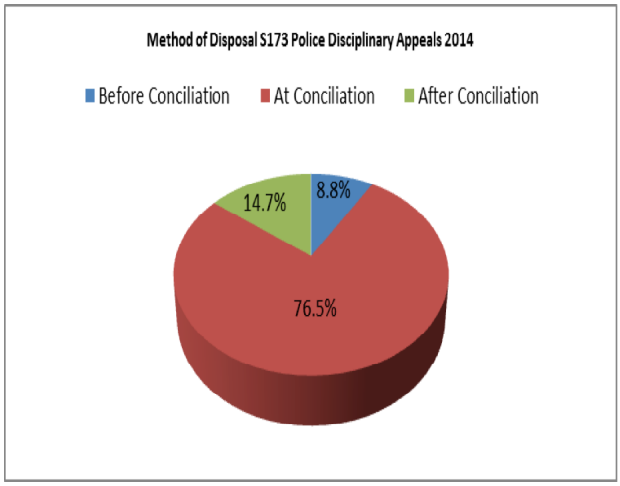


The number of police disciplinary appeals filed in 2014 increased slightly by 11% and finalisations decreased by 12.5%.

POLICE APPEALS

3. PERFORMANCE
INDUSTRIAL RELATIONS COMMISSION

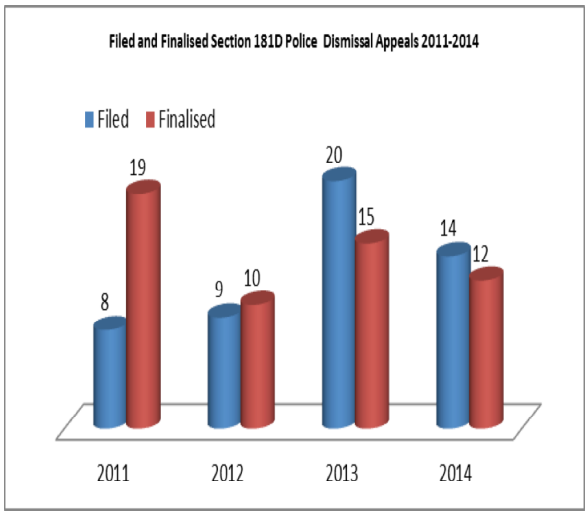
Figure 3.22 represents graphically the method in which police disciplinary appeals were finalised by the Commission during 2014.



Section 181D Police Dismissal Appeals

Police disciplinary appeals represented 1.5% of the total filings for the Commission during 2014, although those matters represented statistically a higher proportion of sitting days required to dispose of the matters.

Figure 3.23 represents graphically a comparison between the matters filed and disposed of in the last 4 years.

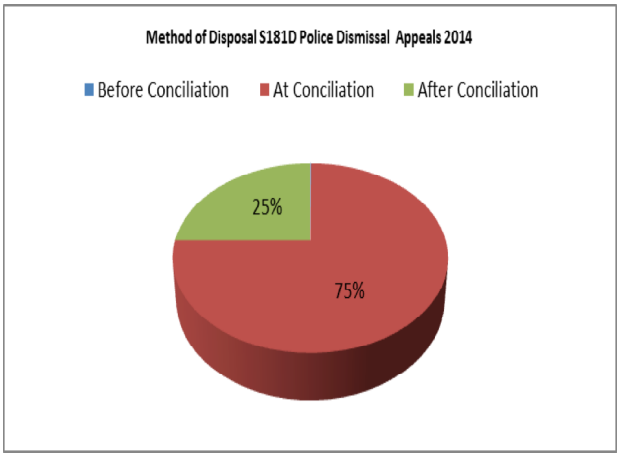


The number of reviews decreased by 30% between 2013 and 2014 and finalisations decreased by 22.2% during that period.

The filings for 2014 represent a reversal of the trend for such matters and may not be expected to continue in 2015.

3. PERFORMANCE
INDUSTRIAL RELATIONS COMMISSION

Figure 3.24 represents graphically the method in which police dismissal appeals were finalised by the Commission during 2014.



Time Standards

Table 3.25 shows the time taken to finalise police disciplinary and dismissal appeals

	2011	2012	2013	2014
S173 Police Disciplinary Appeals				
Completed within 6 Months	66.7%	77.8%	90.%	85.7% ✖ ⇩
Completed within 12 Months	100%	100%	90%	85.7% ✖ ⇩
S181D Police Dismissal Appeals				
Completed within 6 Months	57.9%	60%	80%	50% ✖ ⇩
Completed within 12 Months	73.7%	90%	100%	83.3% ✖ ⇩

During 2014, the finalisation of matters within 6 and 12 months showed a decrease on the 2013 clearance rates. The complex and adversarial nature of police appeals often results in drawn out and protracted hearings.

The time standards are further compromised by the reduced number of members who are able to be allocated to the hearing of this type of case, particularly where primacy in the distribution of available resources has been given to industrial disputes .

3. PERFORMANCE

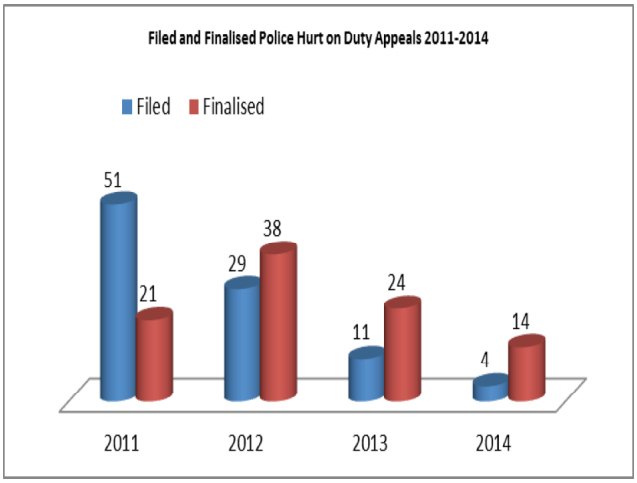
INDUSTRIAL RELATIONS COMMISSION

Police Hurt on Duty Appeals

Under the provisions of s 186 of the Police Act the Commission is responsible for determining appeal applications made by police officers against a decision of the NSW Police Commissioner in relation to leave of absence by a police officer during any period of absence caused by that officer being hurt on duty.

Police Hurt on Duty Appeals represent less than 1% of the total filings for the Commission during 2014.

Figure 3.26 represents graphically a comparison between the matters filed and disposed of in the last 4 years.



The number of Police Hurt on Duty Appeals filed in 2014 decreased by 63.6% and finalisations decreased by 41.6%.

Appeals

Pursuant to s 187 of the Act, appeals may be lodged against the decision of a single Commissioner to the Full Bench of the Commission.

Appeals lodged during 2014 represented only 1% of the total filings for the Commission during 2014.

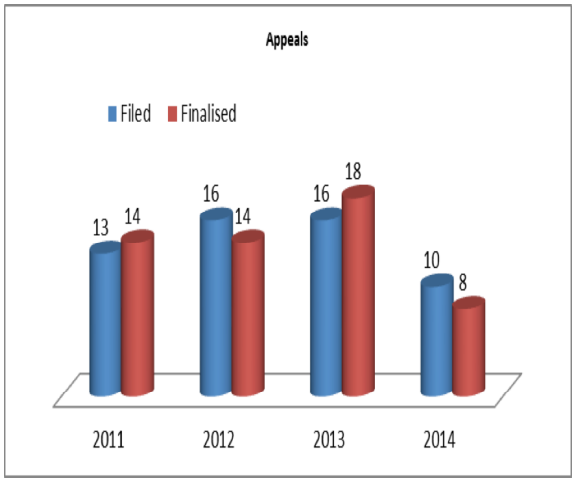


Figure 3.27 represents graphically a comparison between the appeals filed and disposed of in the last 4 years.

4. PERFORMANCE

INDUSTRIAL COURT

Overall Caseload

Summary of comparative caseload statistics for the Industrial Court between 2011 and 2014

Table 4.1 [Caseload Statistics]

	2011	2012	2013	2014
Appeals				
Filed	**34**	**16**	**25**	**9**
Finalised	**36**	**24**	**20**	**17**
Pending	**26**	**16**	**18**	**9**
Contravention				
Filed	**3**	**2**	**0**	**0**
Finalised	**1**	**4**	**1**	**0**
Pending	**3**	**1**	**0**	**0**
Harsh Contracts				
Filed	**12**	**6**	**5**	**3**
Finalised	**20**	**9**	**14**	**7**
Pending	**24**	**21**	**11**	**5**
Prosecutions OH&S Act				
Filed	**144**	**6**	**0**	**0**
Finalised	**160**	**107**	**70**	**16**
Pending	**220**	**103**	**20**	**5**
Declaration Jurisdiction (S154 and S248)				
Filed	**4**	**13**	**16**	**11**
Finalised	**6**	**6**	**13**	**14**
Pending	**4**	**10**	**13**	**8**
Recovery of Remuneration and other Amounts				
Filed	**13**	**19**	**15**	**18**
Finalised	**15**	**16**	**14**	**24**
Pending	**12**	**15**	**15**	**9**
Other				
Filed	**9**	**17**	**19**	**7**
Finalised	**6**	**14**	**16**	**13**
Pending	**3**	**6**	**9**	**3**
TOTALS				
Total Filed for the Year	**219**	**79**	**80**	**48**
Total Finalised for the Year	**224**	**180**	**148**	**91**
Total Pending at end of 2014	**292**	**172**	**89**	**39**

CASELOAD STATISTICS

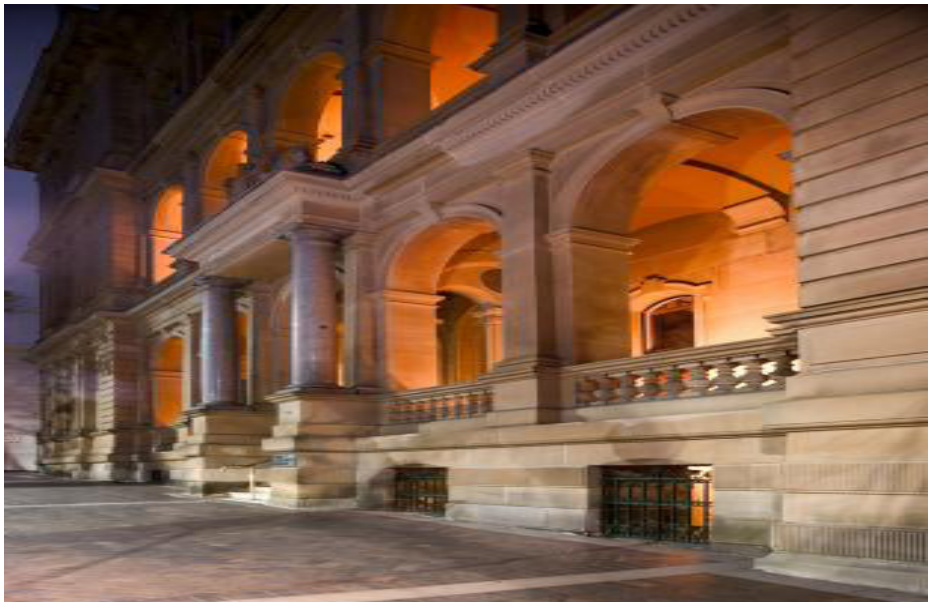
4. PERFORMANCE

INDUSTRIAL COURT

The above table shows the significant fall in listings after the effective removal of the Court's occupational health and safety jurisdiction and the elimination of appeals to a Full Bench of the Court. Overall, there is a continuing downward trend in filings in the Court which may be expected to continue in 2015.

Declarations and award recovery actions now represent a significant proportion of the work of the Court, although there remains a number of significant occupational health and safety prosecutions in the Court's lists as a result of the transitional arrangements associated with the transfer of the Court's jurisdiction to the District Court.

From the beginning of 2014, there has been a single Judge of the Court, the President, assisted by Acting Judges. That arrangement represents significant challenges for the operation of the Court, ameliorated to some degree but the capacity of the President to request the Chief Justice of the Supreme Court to nominate Judges of the Supreme Court to act as Industrial Court Judges for a particular period (s 151B(2)). No such request was made in 2014, but it may be expected that position will alter in the coming year.



5. OTHER MATTERS

Annual Conference

Between 23 and 24 October 2014, the 2014 Industrial Relations Commission Annual Conference was held at Lilianfels Resort and Spa in the Blue Mountains.

The attendees at the conference were:

The Honourable Justice Walton, President
The Honourable Deputy President Harrison
The Honourable Acting Justice Boland
The Honourable Justice Staff

The Honourable Justice Glenn Martin AM President, Industrial Court of Queensland

Commissioner I Tabbaa AM
Commissioner J Stanton
Commissioner P Newall
Industrial Registrar, Mick Grimson

Day 1

The topics covered during day one of the conference included:

The Honourable Keith Mason AC QC together with psychiatrist Dr Robert Fisher gave a talk on "Judicial Bullying" which examined the need for the court room to be a psychologically safe workplace and the phenomenon of bullying by and of judicial officers.

The Honourable Andrew Constance MP, Treasurer and Minister for Industrial Relations, gave an address in relation to the future role of the Industrial Relations Commission.

His Honour Judge Stephen Scarlett of the Federal Circuit Court presented a session on "Self-Represented litigants in the Federal Circuit Court" and the guidelines and ways that self-represented litigants are dealt with in the light of the High Court decision of *Neil v Nott* [1994] HCA23;(1994)121 ALR 148.

The Honourable Patricia Staunton AM together with Joanna Kowalski and Ms Janice McLeay conducted a panel discussion focused on "Conciliation Conferences" and how to successfully employ different styles and methods to produce winning outcomes.

ANNUAL CONFERENCE

5. OTHER MATTERS

Day 2

The topics covered during day two of the conference included:

The Honourable Justice Glenn Martin AM, President of the Industrial Court of Queensland, presented a speech entitled " Kindly Leave the Stage" a topic that explored when a judicial officer should decline to hear a matter and the principles to be applied when considering to recuse oneself.

Mr Graeme Head, Public Service Commissioner together with the Secretary of the NSW Police Association, Mr Peter Remfrey and barrister, Mr Mark Gibian, gave an assessment and overview of the GSE Act and how it was working eight months after its commencement.

Ms Lucy Cornell spoke on the topic "Is your Voice doing you Justice" which examined the speaking skills required to connect, engage and influence.

Professor Anthony Forsyth then gave a talk on "The Future role of Industrial Tribunals" and the necessity for such tribunals to change and re-invent themselves to survive and to ensure and maintain access to justice and contemporary relevancy.

The attendees at the Annual Conference acknowledged that all of the sessions contributed to a beneficial learning experience and had enhanced their knowledge and capabilities. Many also indicated that they expected to make changes to the way they work as a result of things learnt during the conference.

Reporting of Commission Decisions

From August 2014, the Industrial Reports became the authorised reports for the New South Wales Industrial Relations Commission. There was also a development in relation to the reporting of judgments of the Industrial Court. Historically, such judgments have been reported in the New South Wales Law Reports but that practice had fallen into effective disuse. From October 2014, new editorial arrangements and the introduction of an Industrial Court specific medium neutral citation will ensure that important decisions of the Court will be reported in the New South Wales Law Reports.

REPORTING DECISIONS

5. OTHER MATTERS

Technology - Medium Neutral Citation

Since February 2000, the Commission has utilised an electronic judgments database and a system of court designated medium neutral citation. The system is similar to that in use in the Supreme and other New South Wales courts and allows judgments to be delivered electronically to a database maintained by the Department of Attorney General and Justice (Caselaw). The judgment database allocates a unique number to each judgment and provides for the inclusion of certain standard information on the judgment cover page.

The adoption of the system for the electronic delivery of judgments has provided a number of advantages to the Commission, the legal profession, other users of the Commission and legal publishers. The system allows unreported judgments to be identified by means of the unique judgment number and paragraph numbers within the body of the judgment. The judgments are now available shortly after they are handed down through both the Department of Attorney General and Justice's website (http://www.caselaw.nsw.gov.au/indrel/index.html) and the Australian Legal Information Institute website (AustLII).

MEDIUM NEUTRAL CITATION

Decisions of Presidential Members made in relation to industrial disputes where the Commission might make a statement, recommendation(s) and/or directions with a view to resolving the dispute are not usually published on Caselaw.

All arbitrated decisions of Commissioner Members and those of the Transport Appeal Boards (decisions made after taking evidence from the parties) are published. The exception to this rule is decisions that are read onto the record - these will only be published where the matter involves a particular matter of interest, topicality or noteworthiness.

The Caselaw database was substantially upgraded towards the end of 2010 and the Commission has actively promoted the redevelopment of that system to ensure that decisions of the Commission are more readily available to the community.

Further enhancements were made to the Caselaw database in 2014, this involved the creation of a separate Medium Neutral Citation identifier – NSWIC for decisions of the Industrial Court. The new citation type (NSWIC) made for a clear distinction between the decisions of the Industrial Court and the decisions of the Industrial Relations Commission.

The more significant decisions of the Industrial Court were also reported in the New South Wales Law Reports whereas the decisions of the Industrial Relations Commission were reported in the Industrial Reports.

5. OTHER MATTERS

Commission Rules

Pursuant to s 186 of the Act, the Rules of the Commission are to be made by a Rules Committee comprising the President and two other Presidential Members appointed by the President. There is also scope for cooption of other Members.

From the commencement of the 2010 Law Term (1 February 2010) the Commission transitioned to the Uniform Civil Procedure regime that operates in the Supreme, Land and Environment, District and Local Courts. Essentially, this means that much of the procedure of the Commission is now determined under the *Civil Procedure Act 2005* and the Uniform Civil Procedure Rules 2005, however, there are 'local rules' that prevail. These local rules are known as the Industrial Relations Commission Rules 2009 and also took effect from 1 February 2010.

There were no changes to the Industrial Relations Commission Rules during 2014.

RULES - LEGISLATION - PRACTICE NOTES

Amendments to Legislation and Regulations

The legislative amendments enacted during 2014, or which came into force that year affecting the operation and functions of the Commission, are reported at Appendix 8.

There were no amendments to Regulations affecting the Commission during 2014.

Practice Notes

In 2014 there were 4 new Practice Notes issued:

- Practice Note 28 – Proceedings Pursuant to s 43 *Entertainment Industry Act 2013*: ('the EI Act').
This practice note outlined the process to be followed for applications for recovery of a Civil Penalty for any breach proceedings under the EI Act;

- Practice Note 29 – Procedures – Contract Determinations.
The purpose of this practice note was to facilitate the resolution of contract determination matters in a more expeditious and structured manner;

- Practice Note 30 – Filing of Documents in Computer Readable Format.
The purpose of this practice note was to facilitate the processing of matters before the Commission by encouraging and or requiring certain classes of documents to be filed in a computer-readable format; and

- Practice Note 31 - Production of an Access to Summons Material.
The purpose of this practice note was to inform the parties of their ability to nominate an early return date, the need to properly endorse proposed access orders and to inform the summons recipients of the Commission's practice in relation to the return or destruction of summoned material.

6. OUR PEOPLE

Our Staff Profile

The Commission employed 24 people during 2014 in the Registry Office, Commissioner Support and Judicial Officer Support roles. We exceeded NSW Government benchmarks to employ women, persons with a disability and people from a culturally and linguistically diverse background.

More than half of our staff are women (57%) and over 25% are from culturally and linguistically diverse backgrounds.

51% of the staff at the Industrial Relations Commission are over the age of 50.

The Commission also demonstrated its flexibility and ability to accommodate those staff working with a disability. 9% of staff employed at the Commission are staff who identify as working with a disability.

Retaining our Staff

Our retention rate is very high with 64% of our staff having 10 or more years of service, 55% of staff have 15 years or more service and 19% have been with the Commission for more than 25 years. This clearly shows that we are an employer of choice and that staff are satisfied and choose to remain with the Commission. The staff turnover rate for the last 12 months is 8%.

STAFF PROFILE

7. CONCLUSION

The retirements of judicial officers in late 2013 and the first half of 2014 resulted in real challenges for the maintenance of historical performance levels in 2014, particularly as non-judicial filings had not fallen commensurately with declines in Commission resources (and have maintained a level of consistency from 2012).

Nonetheless, the Commission was able, to a significant degree, to maintain performance levels by a variety of measures. Those measures included: improved listing systems, the utilisation of Acting Judges (and a former Judge completing carry-over work), adjustments to listing arrangements to give priority to key areas and by judicial Members, consistently with the trend since 2011, undertaking a higher proportion of industrial work.

Uppermost in the attainment of those outcomes, however, was the dedication of Commission Members who contributed considerably to the maintenance of performance standards, notwithstanding resource pressures. In like manner, recognition should be given to the excellent service of Commission staff and the great assistance provided by the Industrial Registry.

Nonetheless, the pressures arising from a reduction in Commission Members was reflected in a 30 per cent increase in the number of pending cases before the Commission and falling clearance rates (from 102 per cent in 2013 to 88 per cent in 2014). More significantly, the aforementioned measures, which were utilised to substantially maintain performance levels in 2014, must be seen as essentially short-term solutions. It follows that, in the absence of the appointment of additional Commission Members, there will be significant pressures on the Commission meeting the requirements of its statutory charter in 2015.

CONCLUSION

It is important to observe in this context that there would appear to be a virtually universal acceptance of the excellence of the Commission's role in dispute resolution including its success in innovations in that respect.

The Commission resolves industrial disputes or workplace difficulties in a practical and efficient manner, leading to lasting outcomes and improved prospects for harmony in the workplace. The refinement and expansion of its innovations in the Hunter, including in collaborative employment relations schemes, will continue to place the Commission at the forefront in the facilitation of efficient and modern workplaces and drive improvements in employment relations. In particular, the Commission has contributed in a significant way to the fulfilment of the objects in s 3(h) of the Act, namely, "to encourage and facilitate co-operative workplace reform and equitable, innovative and productive workplace relations".

The position of the Industrial Court requires separate and particular attention. After the transfer of occupational health and safety prosecutions to the District Court effective 1 January 2012, the Court experienced a substantial decline in cases commenced in its jurisdiction. That trend continued through to 2014. In the result, cases commenced in the Court fell by about 78 per cent between 2011 and 2014. The judicial work of the Commission is, therefore, in significant decline although a residue of very large occupational health and safety cases (not transferred in 2012) will mean that sittings in that area will remain substantial well into and perhaps beyond the year 2015.

I look forward to working with the Members, Government, major stakeholders, relevant departments and the wider community as we strive to meet these challenges and ensure that this well established and successful model of industrial relations is maintained over time.

8. APPENDICES

APPENDIX 1

INDUSTRY PANELS

Metropolitan, Industry Specific and Regional Panels

Metropolitan

Divisional Head - Walton J, President

Members	**Corrections**
Tabbaa C	**Education**
Newall C	**Emergency Services**
	(Emergency Services includes Dept of Police and Emergency Services, NSW Police, Fire Brigades, Rural Fire Service including Emergency Management NSW, State Emergency Service and NSW Crime Commission and Ambulance Service)
	Health
	(Includes Dept of Health, Area/Local Health Services/Networks, Cancer Institute and Health Care Complaints Commission)
	Juvenile Justice
	Government/Public Sector
	(Any other Government sector that is not separately referred to in this document)
	Public Transport
	Local Government
	Private
	(Private includes any residual private matters remaining within the State system by virtue of new s 146B or similar provisions under Federal legislation)

Public Sector Appeal (PSA) Panel - Divisional Head - Walton J, President

Members
Members
Tabbaa C
Stanton C*
Newall C

Industries: While all Members of the Commission have jurisdiction to determine matters under Part 7 of Chapter 2 of the *Industrial Relations Act* 1996, the President has determined that these matters are most appropriately dealt with at the Commissioner level.

*Stanton C to be utilised as required for matters arising in Panel N areas

8. APPENDICES

APPENDIX 1

INDUSTRY PANELS

Metropolitan, Industry Specific and Regional Panels

Regional

Panel N - Divisional Head - Harrison DP

Members

Stanton C

Industries: Relevant geographical areas north of Gosford (excluding Broken Hill) all Power Industry including County Councils such as they remain within the State system

Panel S - Divisional Head - Walton J, President

Members

Staff J

Tabbaa C

Industries: Relevant geographical areas south of Gosford plus Broken Hill and all Steel Manufacturing and Allied Industries such as they remain within the State system

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APPENDIX 2

TIME STANDARDS - Industrial Relations Commission

Time from commencement to finalisation	Standard for 2013	Achieved in 2013	Standard for 2014	Achieved in 2014	
Applications for leave to appeal and appeal					
Within 6 months	50%	72.3%	50%	75.0%	⇧
Within 12 months	90%	100%	90%	100%	⇧
Within 18 months	100%	100%	100%	100%	⇧
Award Applications [including Major Industrial Cases]					
Within 2 months	50%	53.0%	50%	51.2%	⇧
Within 3 months	70%	58.0%	70%	70.7%	⇧
Within 6 months	80%	87.0%	80%	79.6%	
Within 12 months	100%	91.0%	100%	87.8%	
Enterprise Agreements					
Within 1 months	75%	80.0%	75%	93.9%	⇧
Within 2 months	85%	80.0%	85%	100%	⇧
Within 3 months	100%	100%	100%	100%	⇧
Applications relating to Unfair Dismissal					
Within 2 months	50%	63.2%	50%	68.3%	⇧
Within 3 months	70%	72.0%	70%	74.8%	⇧
Within 6 months	90%	85.2%	90%	86.1%	
Within 9 months	100%	91.6%	100%	96.3%	
Public Sector Promotional Appeals					
Within 1 months	30%	57.5%	30%	37.5%	⇧
Within 2 months	60%	81.6%	60%	62.5%	⇧
Within 3 months	90%	98.8%	90%	100%	⇧
Within 6 months	100%	100%	100%	100%	⇧

Key: ⇧ = indicates where the Commission has equalled or exceeded time standard

8. APPENDICES

APPENDIX 2

TIME STANDARDS - Industrial Relations Commission (continued)

Time from commencement to finalisation	Standard for 2013	Achieved in 2013	Standard for 2014	Achieved in 2014	
Public Sector Disciplinary Appeals					
Within 1 months	30%	76.1%	30%	63.4%	⇧
Within 2 months	60%	82.6%	60%	80.5%	⇧
Within 3 months	90%	82.6%	90%	82.9%	
Within 6 months	100%	88.8%	100%	92.7%	
Time to first listing					
Industrial Disputes					
Within 72 Hours	50%	42.3%	50%	35.6%	
Within 5 Days	70%	58.9%	70%	46.5%	
Within 10 Days	100%	80.7%	100%	75.6%	

Key: ⇧ = indicates where the Commission has equalled or exceeded time standard

8. APPENDICES

APPENDIX 2

TIME STANDARDS - Industrial Court

Time from commencement to finalisation	Standard for 2013	Achieved in 2013	Standard for 2014	Achieved in 2014	
Applications for leave to appeal and appeal					
Within 9 months	50%	90.0%	50%	58.9%	⇧
Within 12 months	90%	95.0%	90%	82.4%	
Within 18 months	100%	100%	100%	82.4%	
Prosecutions under OHS legislation					
Within 9 months	50%	1.5%	50%	0%	
Within 12 months	75%	9.9%	75%	0%	
Within 18 months	90%	21.2%	90%	0%	
Within 24 months	100%	46.6%	100%	0%	
Applications for relief from Harsh/Unjust Contracts					
Within 6 months	30%	14.3%	30%	0%	
Within 12 months	60%	35.7%	60%	14.3%	
Within 18 months	80%	36.0%	80%	42.9%	
Within 24 months	100%	42.8%	100%	57.2%	

Key: ⇧ = indicates where the Commission has equalled or exceeded time standard

8. APPENDICES

APPENDIX 3

Matters Filed in Industrial Relations Commission
(other than in the Industrial Court)

Matters filed (under the *Industrial Relations Act* 1996) during period 1 January to 31 December 2014 and completed and continuing matters as at 31 December 2014

Nature of Application	Filed 1.1.2014 – 31.12.2014	Completed 1.1.2014 – 31.12.2014	Continuing as at 31.12.2014
APPEALS	**10**	**8**	**6**
Appeal - Award	1	0	2
Appeal - Dispute	1	3	0
Appeal - Unfair dismissal	5	4	2
Appeal - Protection of injured workers from dismissal	3	1	2
AWARDS	**188**	**123**	**131**
Application to make an award	36	41	7
Application to vary an award	150	80	123
State Wage Case	1	1	1
Review of an award	0	0	0
Other - incl. rescission, interpretation	1	1	0
DISPUTES	**308**	**275**	**112**
s130 of the Act	277	249	97
s332 of the Act	23	22	6
s146B of the Act	8	4	9
ENTERPRISE AGREEMENTS	**15**	**15**	**3**
Application for approval with employees	1	1	0
Application for approval with industrial organisation	14	14	3
UNFAIR DISMISSALS	**206**	**186**	**64**
Application by the employee	52	44	17
Application by a represented employee	66	72	13
Application by an industrial organisation on behalf of employee	88	70	34

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APPENDIX 3

Matters Filed in Industrial Relations Commission (other than in the Industrial Court) (continued)

PUBLIC SECTOR AND POLICE APPEALS	37	52	21
Public Sector promotional appeal	6	8	0
Public Sector disciplinary appeal	4	11	0
Police Dismissals S181D	14	12	14
Police Disciplinary S173	9	7	3
Appeal by Police Officer relating to leave when hurt on duty	4	14	4

OTHER	118	121	41
Contract agreements	3	5	0
Contract determinations	23	19	10
Compensation for termination of certain contracts of carriage	1	5	1
Application to extend duration of Industrial Committee	4	4	0
Registration pursuant to the Clothing Trades Award	29	32	1
Protection of injured workers from dismissal - Workers Compensation Act	15	16	8
Application for review of order s181D Police Service Act	14	12	14
Application for rescission of order s173 Police Service Act	9	7	3
Application for order enforcing principles of association s213 of the Act	4	8	1
Application for external review Work Health Safety Act	2	1	1
Appeal for an Assisted Appointment Review	12	11	1
Determination of demarcation questions	1	0	1
Disputes notified s20 Entertainment Industry Act	1	1	0

SUB-TOTAL	**882**	**780**	**378**

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APPENDIX 4

Matters Filed in Industrial Court

Matters filed (under the *Industrial Relations Act* 1996) during period 1 January to 31 December 2014 and completed and continuing matters as at 31 December 2014

Nature of Application	Filed 1.1.2014 – 31.12.2014	Completed 1.1.2014 – 31.12.2014	Continuing as at 31.12.2014
APPEALS	**9**	**17**	**9**
Appeal – Industrial Magistrate	3	1	2
Appeal – superannuation	4	8	4
Appeal – OHS prosecution	0	1	2
Appeal – Unfair contracts	0	1	0
Appeal – Police Officer relating to leave when hurt on duty	1	0	1
Appeal – Transport Appeal Board	1	2	0
Appeal – Vocational Training Appeal Panel	*0*	*2*	*0*
Appeal – Public Sector Discipline	*0*	*2*	*0*
CONTRAVENTION	**0**	**0**	**0**
Contravention of Dispute Order s139 of the Act	0	0	0
HARSH CONTRACTS	**3**	**7**	**5**
Application under s106 of the Act	3	7	5
PROSECUTIONS	**0**	**16**	**5**
Prosecution – s8(1) OHS Act 2000	0	10	1
Prosecution – s8(2) OHS Act 2000	0	5	3
Prosecution – s9 OHS Act 2000	0	1	0
Prosecution – s10(2) OHS Act 2000	0	0	1
OTHER	**36**	**51**	**20**
Declaratory jurisdiction (s154, s248)	11	14	8
Registration of organisations Pt3 Ch5	5	4	2
Civil Penalty for breach of industrial instrument	1	9	0
Recovery of remuneration and other amounts	18	24	9
Contempt of the Commission	1	0	1
SUB-TOTAL	**48**	**91**	**39**
TOTAL Industrial Relations Commission & Industrial Court for 2014	**930**	**871**	**417**

8. APPENDICES

APPENDIX 5

The Presidents of the Industrial Relations Commission of New South Wales

Name	**Held Office**		**Remarks**
	From	To	
Cohen, Henry Emanuel	01 Apr 1902	03 Jul 1905	Died 5 Jan 1912.
Heydon, Charles Gilbert	04 July 1905	Dec 1918	Died 6 Mar 1932.
Edmunds, Walter	Aug 1920	06 Jan 1926	From February 1919 to August 1920 held appointment as Acting President and President of Board of Trade. Died 15 Aug 1932.
Beeby, George Stephenson	Aug 1920	July 1926	President, Board of Trade. Died 18 Jul 1942.
Piddington, Albert Bathurst	July 1926	19 May 1932	Died 5 Jun 1945.
Browne, Joseph Alexander	20 Jun 1932	30 Jun 1942	Died 12 Nov 1946.
Taylor, Stanley Cassin	28 Dec 1942	31 Aug 1966	Died 9 Aug 1982.
Beattie, Alexander Craig	1 Sep 1966	31 Oct 1981	Died 30 Sep 1999.
Fisher, William Kenneth	18 Nov 1981	11 Apr 1998	Died 10 Mar 2010.
Wright, Frederick Lance	22 Apr 1998	22 Feb 2008	
Boland, Roger Patrick	9 Apr 2008	31 Jan 2014	
Walton, Michael John	3 Feb 2014	Still in Office	

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APPENDIX 6

The Vice-Presidents of the Industrial Relations Commission of New South Wales

The position of Vice-President of the Industrial Relations Commission was created with the assent of the *Industrial Arbitration (Industrial Tribunals) Amendment Act 1986* on 23 December 1986. The position was created:

> "to achieve a more cohesive single structure. In future, responsibility for assignment of conciliation commissioners to chair conciliation committees and the allocation of disputes to them will reside in a judicial member of the Industrial Commission who will be appointed as Vice-President of the Industrial Commission. This will assist in the achievement of a closer relationship between the separate structures of the Industrial Commission and conciliation commissioners and will allow a more uniform approach to industrial relations issues"

Hansard, Second Reading Speech, Legislative Council, 21 Nov 1986 per The Hon. J R Hallam at p7104

Name	**Held Office**		**Remarks**
	From	To	
Cahill, John Joseph	19 Feb 1987	10 Dec 1998	Died 21 Aug 2006.
Walton, Michael John	18 Dec 1998	31 Jan 2014	Appointed as President 3 Feb 2014.
Currently Vacant			

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APPENDIX 7

Industrial Registrars of the Industrial Relations Commission of New South Wales

Name	Held Office		Remarks
	From	To	
Addison, George Campbell	1 Apr 1902	1912	Returned to the Bar. Appt Chief Industrial Magistrate 1917.
Holme, John Barton	1912	9 Feb 1914	Appt first Undersecretary, Department of Labour and Industry 10 Feb 1914.
Payne, Edward John	1914	1918	Retired from the public service in 1939 as Chairman, Public Service Board.
Kitching, Frederick William	12 Jul 1918	30 Jun 1924	Appt Undersecretary, Office of the Minister for Labour and Industry 1 Jul 1924.
Webb, Alan Mayo	1 Sep 1924	19 Jun 1932	Appt Judge of Industrial Commission 20 Jun 1932.
Wurth, Wallace Charles	1932	1936	Appt to Public Service Board; Appt Chairman, PSB in 1939.
Ebsworth, Samuel Wilfred	1936	1947	Retired.
Kelleher, John Albert	1947	13 May 1955	Appt Undersecretary and Industrial Registrar, Dept of Labour and Industry and Social Welfare 1949. Appt Judge of Industrial Commission 16 May 1955.
Kearney, Timothy Joseph	1955	1962	Appt Undersecretary, Department of Labour and Industry.
Whitfield, John Edward	1962	1968	Appt as Commissioner, Water Conservation and Irrigation Commission.

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APPENDIX 7

Industrial Registrars of the Industrial Relations Commission of New South Wales (continued)

Fetherston, Kevin Roy	3 June 1968	1977	Appt Executive Assistant (Legal) Department of Labour and Industry; later appt as Deputy Undersecretary, Department of Labour and Industry.
Coleman, Maurice Charles Edwin	29 April 1977	1984	Retired.
Buckley, Anthony Kevin	23 Jan 1984	30 Mar 1992	Appt as Commissioner, Industrial Relations Commission 31 Mar 1992.
Walsh, Barry[1]	19 Feb 1992	15 Jul 1994	Appt as Registrar, Australian Industrial Relations Court.
Szczygielski, Cathy[2]	18 Jul 1994	4 Nov 1994	Returned to position of Deputy Registrar, Industrial Court.
Williams, Louise[3]	7 Nov 1994	16 Aug 1996	Appt as Registrar, Land & Environment Court.
Robertson, Gregory Keith[4]	31 Mar 1992	26 Oct 1999	To private practice.
McGrath, Timothy Edward	27 Oct 1999	9 Aug 2002	Appt Assistant Director-General, Court and Tribunal Services, Attorney General's Department 12 Aug 2002.
Grimson, George Michael	22 Aug 2002	18 Dec 2014	Retired.
Lesley Hourigan[5]	19 Dec 2014	Still in Office	

1. Appointed as Acting Registrar and CEO, Industrial Court (under the *Industrial Relations Act 1991* ('the 1991 Act')) 19 Feb 1992,
substantively appointed to that position 6 May 1993.
2. Acting appointment as Registrar and CEO, Industrial Court (under 1991 Act) pending recruitment
3.Appointed as Registrar and CEO, Industrial Court (under 1991 Act)
4.Held the position of Registrar, Industrial Relations Commission under 1991 Act - under the Act became Registrar and Principal Courts Administrator, Industrial Relations Commission and Commission in Court Session (2 September 1996).
5. Appointed as Acting Registrar Industrial Court (under the Act)

8. APPENDICES

APPENDIX 8
Legislative Amendments

Courts and other Legislation Amendment Act 2014 No 14

This Act was assented to on 20 May 2014 and commenced from 1 July 2013. The Act clarified the situation regarding former members who held office as President of the Commission, stating that a former President cannot exercise the functions of the President.

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APPENDIX 9
Brief History of the Industrial Relations Commission of New South Wales

The Court of Arbitration, established by the *Industrial Arbitration Act 1901*, was a court of record constituted by a President (a Supreme Court judge) and two members representing employers and employees respectively. The Court came about as a result of the failure of employers and unions to use a system of voluntary arbitration. The Court had jurisdiction to hear and determine any industrial dispute or matter referred to it by an industrial union or the Registrar, prescribe a minimum wage and make orders or awards pursuant to such hearing or determination. This Court and its registry, the Industrial Arbitration Office, came under the administration of the Department of Attorney-General and of Justice from 12 December 1901.

The Industrial Court, established by the *Industrial Disputes Act 1908*, was constituted by a Supreme Court or District Court Judge appointed for a period of seven years. The Court did not require the existence of a dispute to ground its jurisdiction and had power to arbitrate on conditions of employment and could hear prosecutions. Together with its registry, known during 1911 as the Industrial Registrar's Office, the Court remained under the administration of the Department of Attorney-General and of Justice. The Act also established a system of Industrial Boards that consisted of representatives of employers and employees sitting under a Chairman. The Industrial Court heard appeals from the Industrial Boards.

The Court of Industrial Arbitration was established by the *Industrial Arbitration Act 1912*. It was constituted by judges, not exceeding three, with the status of judges of the District Court. The Court was vested with all the powers conferred on all industrial tribunals and the chairman thereof. The Act empowered the Minister to establish Conciliation Committees with powers of conciliation but not arbitration. Conciliation Committees fell into disuse after about 12months and a Special Commissioner (later known as the Industrial Commissioner) was appointed on 1 July 1912. This Court and its registry were placed under the jurisdiction of the Department of Labour and Industry, which administered the Act from 17 April 1912.

A Royal Commission on Industrial Arbitration in 1913 led to some major changes under the *Industrial Arbitration (Amendment) Act 1916*, which resulted in an increase in the membership of the Court and the transfer of powers of the Industrial Boards to the Court.

The **Board of Trade** was established by the *Industrial Arbitration (Amendment) Act 1918*. It functioned concurrently with the Court of Industrial Arbitration and was constituted by a President (a Judge of the Court), a Vice-President and representatives of employers and employees. The Board's functions were to conduct a public inquiry into the cost of living and declare an adult male and female living wage each year for industry generally and for employees engaged in rural occupations. In addition, it was to investigate and report on conditions in industry and the welfare of workers. The Board was, in practice, particularly concerned with matters relating to apprenticeships.

The *Industrial Arbitration (Amendment) Act 1926* abolished the Court of Industrial Arbitration and the Board of Trade and set up an Industrial Commission constituted by a Commissioner and a Deputy Commissioner. The Commissioner or Deputy Commissioner sat with employer and employee representatives selected from a panel.

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Brief History of the Industrial Relations Commission of New South Wales

On any reference or application to it the Commission could make awards fixing rates of pay and working conditions, determine the standard hours to be worked in industries within its jurisdiction and had power to determine any "industrial matter".

The Commission had authority to adjudicate in cases of illegal strikes, lockouts or unlawful dismissals, and could summon persons to a compulsory conference and hear appeals from determinations of the subsidiary industrial tribunals. The former Boards, which had not exercised jurisdiction since 1918, continued in existence but as Conciliation Committees with exclusive new jurisdiction in arbitration proceedings.

A number of controversial decisions by the Industrial Commission led to the proclamation of the *Industrial Arbitration (Amendment) Act 1927*, which altered the position of Industrial Commissioner (but not Deputy Industrial Commissioner) and the constitution of the Commission to that of three members with the status of Supreme Court Judges. The Committees were still the tribunals of first instance and their decisions were to be the majority of members other than the chairman, whose decision could be accepted by agreement if the members were equally divided. Otherwise the chairman had no vote and no part in the decision. Where a matter remained unresolved in committee it passed to the Commission for determination.

The *Industrial Arbitration (Amendment) Act 1932* placed , the emphasis on conciliation. The offices of Deputy Industrial Commissioner and Chairman of Conciliation Committees were abolished and a Conciliation Commissioner was appointed to fill the latter position. This Act also provided for the appointment of an Apprenticeship Commissioner and for the establishment of Apprenticeship Councils. The Conciliation Commissioner could call compulsory conferences in industrial disputes to effect an agreement between the parties when sitting alone or between the members of the committee when sitting as Chairman. Any such agreement, when reduced to writing, took effect as an award but was subject to appeal to the Industrial Commission. In addition, the Conciliation Commissioner or a Conciliation Committee could not call witnesses or take evidence except as directed by the Industrial Commission. Unresolved matters were referred to the Commission.

The membership of the Commission was increased to four by the *Industrial Arbitration Act 1936,* and certain provisions regarding appeals were altered under this Act.

The *Industrial Arbitration (Amendment) Act 1937* repealed the Commission's power of determining a standard of living and living wages and provided for the adoption of the needs basic wage and fixed loadings determined by the Commonwealth Court of Conciliation and Arbitration.

In 1938 the number of members of the Commission was increased to no less than five and no more than six and the Act, the *Industrial Arbitration and Workers Compensation (Amendment) Act 1938*, introduced provisions regarding investigation of rents and certain price fixing. The Act was again amended in 1939 mainly to address the fixing of maximum prices.

The *Industrial Arbitration Act 1940* consolidated all previous Acts and refined and rationalised the procedures and operation of the Industrial Commission.

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Brief History of the Industrial Relations Commission of New South Wales

The Act provided for the establishment of an Industrial Commission, Conciliation Committees, Conciliation Commissioners, Special Commissioners, Industrial Magistrates Courts and the Industrial Registrar.

The *Industrial Arbitration (Amendment) Act 1943* empowered the Chairman, with the agreement of the members or by special authorisation of the Industrial Commission, to decide matters where there was division. The number of Commissioners who might be appointed was also increased to five. The *Industrial Arbitration (Amendment) Act 1948* allowed the Commissioners to decide matters upon which the members were equally divided as well as make an award where the disputing parties had been called into a compulsory conference.

In 1955, the maximum number of members of the Industrial Commission was increased to 12 and the next raft of significant changes came with the *Industrial Arbitration (Amendment) Act 1959*. These changes included defining the wage fixing powers of Industrial Committees and appeal provisions were also reformed.

In 1979, the Act was again amended to make provision for the establishment of Contract Regulation Tribunals. Generally, this gave the Commission jurisdiction over contracts for the bailment of taxi cabs and private hire cars and over contracts for the transportation by motor lorry of loads other than passengers.

In 1981, and again in 1989, the Commission's powers in relation to dealing with apprentices were clarified. In 1989, the *Industrial and Commercial Training Act* was passed and apprentices were treated as other employees for all industrial purposes.

By 1989, the Act provided that the Industrial Commission consisted of not more than 12 members, one of whom was the President and one of whom was the Vice-President. The Act also provided for the appointment of "non judicial" members who did not have to be legally qualified as well as "judicial" members. There were certain jurisdictional limitations for "non judicial" appointees.

In 1988, the then Coalition Government commissioned a comprehensive review of the State's industrial laws and procedures. The subsequent report, the Niland Report, had far reaching recommendations and became the basis for the *Industrial Relations Act 1991*. The former Commission was abolished and replaced by the Industrial Relations Commission and a separate Industrial Court. Two of the key features of the report were the introduction of enterprise bargaining outside the formal industrial relations system with agreements specifically tailored to individual workplaces or businesses and the provisions relating to unfair dismissal. Individuals could access the Commission if they believed they had been unfairly dismissed. Their remedy was reinstatement and/or compensation.

On 2 September 1996, the *Industrial Relations Act 1996* came into force. It repealed and replaced the 1991 Act and is an example of plain English statute law. Chapter 4 of the Act established a new Industrial Relations Commission. Unlike the federal approach, the States have not separated

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Brief History of the Industrial Relations Commission of New South Wales

judicial and administrative functions in relation to the Commission's powers. The 1991 Act, for the first time, sought to adopt the federal approach and established the Industrial Relations Commission and the Industrial Relations Court (although the judges remained members of the Commission at all times). The 1996 Act restored the traditional arrangement by merging these two bodies. When the Commission was dealing with judicial matters it was called the Industrial Relations Commission of New South Wales in Court Session and was a superior court of record of equivalent status to the Supreme Court.

On 9 December 2005 the *Industrial Relations Amendment Act 2005* was proclaimed to commence. This Act enabled the Industrial Relations Commission of New South Wales in Court Session to be called the Industrial Court of New South Wales.

On 1 January 2010 the *Industrial Relations (Commonwealth Powers) Act 2009* was proclaimed to commence. This Act referred certain matters relating to industrial relations to the Commonwealth for the purpose of section 51 (37) of the Australian Constitution and to amend the *Industrial Relations Act 1996*. The primary role of the Act was to refer to the Commonwealth sufficient power to enable the creation of a national industrial relations system for the private sector. Essentially, this Act transferred the residue of the private sector to the national industrial relations system and made clear that the Industrial Relations Commission retained jurisdiction in relation to State public sector employees and Local Government employees. Additionally, s 146 of the *Industrial Relations Act 1996* was amended to make clear Members of the Industrial Relations Commission of New South Wales could continue to be nominated as dispute resolution providers in federal enterprise agreements. This was designed to ensure that the many companies who continue to use the expertise of the Industrial Relations Commission would be able to continue those arrangements.

On 17 June 2011, the *Industrial Relations Amendment (Public Sector Conditions of Employment) Act 2011* commenced. This Act required the Industrial Relations Commission to give effect to aspects of government policy declared by the regulations relating to public sector conditions of employment (section146C).

On 1 January 2012, the *Work Health and Safety Act 2011* commenced. This Act removed the jurisdiction of the Industrial Court to deal with work, health and safety prosecutions involving death or serious injury occurring in workplaces across the State. This jurisdiction was transferred to the District Court. The Industrial Court retained jurisdiction to deal with matters filed prior to 31 December 2011 under the Occupational Health and Safety legislation prior to its repeal. The Court also retained jurisdiction in relation to minor breaches of the work, health and safety legislation.

On 20 December 2013 the *Industrial Relations Amendment (Industrial Court) Act 2013* commenced and substantially amended the *Industrial Relations Act 1996*. The major changes were that the Industrial Court may only be constituted by a single judicial member (judge) and not by a Full Bench of judicial members (judges); a judge of the Supreme Court may act as a judge of the Industrial Court; the jurisdiction of a Full Bench of the Industrial Court to deal with

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cancellation of industrial organisations was transferred to the Industrial Relations Commission and provided that a Full Bench of the Commission for that purpose is to be constituted by a judge of the Industrial Court and two members who are Australian Lawyers; the jurisdiction of a Full Bench of the Industrial Court to deal with contempt was transferred to a single judge of the Court; the jurisdiction of a Full Bench of the Industrial Court to hear appeals from the Local Court or appeals on a question of law in relation to a public sector promotional or disciplinary appeal was transferred to a single judge of the Court; the jurisdiction of a Full Bench of the Industrial Court to hear appeals from a judge of the Industrial Court was transferred to the Supreme Court. The amendments also allowed former members of the Commission and Court to complete matters that were unfinished by them when they ceased to be members. Amendments to other Acts provided for appeals from the Industrial Court to the Court of Criminal Appeal; for certain matters under the *Police Act 1990* to be dealt with by Commission members who are Australian Lawyers; and for a judicial member of the Commission to act as a judge of the Supreme Court.