Industrial Relations Commission of New South Wales

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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 2017

Continued performance in key areas while facing resource challenges

- 89.3% of unfair dismissal matters finalised within 6 months of commencement.
- 86.5% of Industrial dispute matters finalised within 6 months of commencement.
- The number of police disciplinary, police dismissal appeals and police hurt on duty applications, filed and determined by the Commission in 2017 increased to the highest level in 6 years.
- 89% of appeals to a Full Bench of the Commission determined within 6 months.

State Wage Case

- A Summons to show cause was issued by the Commission on its own initiative on 14 June 2017 in consequence of a decision of the Minimum Wage Panel of the Fair Work Commission issued 6 June 2017. A Full Bench of the Commission made general orders and continued the Wage Fixing Principles on 30 October 2017. State Wage Case 2017 [2017] NSWIRComm 1068.

Education and Engagement Programs

- The Commission had its conference at Watsons Bay.
- Recommencement of the user group forum occurred in July 2017.

Experienced Members of Staff

- 80% of our people have been employed at the Commission for 15 years or more.

FOREWORD

FOREWORD BY THE CHIEF COMMISSIONER OF THE INDUSTRIAL RELATIONS COMMISSION OF NSW

The year 2017 was the first full year for the Industrial Relations Commission under its revised structure. The year began with a dispute about a lack of consultation with employees of the Commission, and the union representing them, about a proposed move from 47 Bridge Street. As I noted in the Foreword to the 2016 Annual Report, the proposed move was abandoned shortly after. However, the year ended with speculation rampant that the Commission would be relocated to Parramatta.

In between these events, I was appointed as the first permanent Chief Commissioner on 3 April 2017. Commissioner Tabbaa's appointment as Acting Chief Commissioner ended on 30 March 2017, although her appointment as an Acting Commissioner continued until 20 April 2017. It is appropriate to reflect briefly on the Commissioner's time at the Commission.

Commissioner Inaam Tabbaa AM

Commissioner Tabbaa was appointed to the Commission on 25 February 1991. After what can only be described as an eclectic international education to HSC level the Commissioner migrated, with her parents and siblings, to Australia. She began her employment as a temporary secretary at the Master Builders Association of New South Wales. She quickly progressed through positions of trainee industrial officer and industrial officer to become an Executive Director of that organisation.

The strong background in negotiation, so important in the construction industry, made her an ideal appointee to the then office of Conciliation Commissioner. The Commissioner made a significant contribution to the Commission as an institution of this State, not only in the hearing and conference rooms, but also in extrajudicial roles. She chaired the Commission's Education Committee and was a long-time member of the Committee of the Industrial Relations Society of New South Wales. In both capacities she contributed over many years to the intellectual and professional development of members of the Commission and industrial relations practitioners generally. The respect in which she was held was reflected in the significant numbers of attendees, and the warm speeches made on behalf of all stakeholders, at a ceremony to mark her retirement from the Commission held on 1 May 2017.

On behalf of the Commission I thank the Commissioner for her service.

Commissioner Jane Seymour

On 15 May 2017 Commissioner Jane Seymour was welcomed as the newest member of the Commission. The swearing-in ceremony held to mark the occasion was also extremely well attended evidencing the widespread support for her appointment. The Commissioner came from a very successful practice at the New South Wales Bar specialising in workplace relations and discrimination law with a particular focus on workplace investigations. Her standing in that area was especially reflected in her teaching posts at the University of Sydney and Melbourne University.

The Commissioner's communication skills were not restricted to the hearing and conference rooms of the Commission. Commissioner Seymour readily took on the extrajudicial responsibility of oversighting the development of social media communication by the Commission. The Commissioner also immediately accepted the responsibility of chairing the Commission's Education Committee.

The Year in Review – Collective Applications

The work of the Commission continued apace. There was a continuation of the trend, established over the last few years, of increased filings in section 130 disputes. There is no sign of that trend abating. Indeed the contrary is more to be expected with the economic cycle more likely to trend towards increasing interest rates and inflation than the reverse. Such an eventuality will increase the sense of importance of maintaining employment and real wages if not real wage growth.

A significant number of disputes concern consultation. Most awards contain clauses requiring consultation with employees and their representatives before the employer implements a decision which is likely to impact upon the employees. The notifiers of the disputes allege no or, more frequently, no genuine, consultation has taken place. The Commission's obligation is to determine whether and if so what form or degree of consultation is necessary and to resolve the dispute by conciliation or, if necessary, arbitration. When arbitrating, the Commission is required to determine the proper meaning of the consultation clause. The Industrial Relations Act, through s 175, has long provided for the Commission to have the power to interpret industrial instruments. It is, however, at least doubtful whether those interpretations are properly regarded as binding or definitive. Prior to the abolition of the Industrial Court there existed jurisdiction (see the now repealed s 154) to make binding declarations of right.

There are other occasions when the proper construction of an industrial instrument is in issue. Examples include disagreements about classifications or entitlements to allowances or other conditions of employment. All of these disputes are really about enforcement of industrial instruments. The Commission's only real power of enforcement is now found in the small claims jurisdiction (s 380 of the Act). Parties are aware of the alternative of taking the matter to an industrial court or seeking declarations from the Supreme Court but are dissuaded by the cost and more rigid legal process of such jurisdictions. They also prefer, it seems, that the matters be decided by the specialist tribunal responsible for making or approving industrial instruments. I note as well that there are no specialist industrial magistrates in the Local Court and the office of Chief Industrial Magistrate has been vacant for some time.

These circumstances suggest that the reestablishment of the Commission's declaratory and enforcement jurisdictions in connection with industrial instruments ought to be reconsidered. That will provide the parties with access to a process more in keeping with what they seek and a definitive outcome when that process is chosen.

Individual Applications

There was also a significant increase in the number of unfair dismissal applications (240 filed in 2017 compared to 202 in 2016). Public sector disciplinary appeals, including police appeals, have also become a significant proportion of the Commission's caseload in recent years. These matters, unlike disputes, are all open to be commenced by individual applicants. A review of Table 2.1 will provide an indication of the growth in this work relative to other areas.

Declining union densities have had the by-product of increasing numbers of self-represented litigants appearing in the Commission. Although many such applicants are capable, they are not trained in presenting cases. They do not have experience of, or training as to, the appropriate principles and law at play. Nor are they familiar with concepts such as procedural fairness and the restrictions thus placed upon communication with members of the Commission. These features impose greater demands on members of the Commission and its staff.

Cases involving self-represented litigants, in general, are more demanding on the Commission's resources as it is necessary to explain, in some detail and with a degree of care, the obligations on the applicant in conducting his or her case while avoiding the appearance of partiality in favour of such applicants. Respondents are equally entitled to remain confident that their cases will be heard fairly.

I observe that the Commission is often assisted in the process of explanation by experienced industrial advocates and lawyers, who are appearing for respondents, taking time to outline processes and providing appropriate forms and advice on how to complete them in order to keep the matters moving toward resolution. The Commission very much appreciates that assistance.

Of course, there are circumstances where the degree of distrust is such that the self-represented person will not accept assistance from a respondent's advocate. In those circumstances it falls to the Commission to explain matters to the self-represented person. It is important when doing so to avoid inducing a sense of the Commission being there to advise the applicant. Such litigants also tend to provide volumes of material, which they regard as important, but which has little relevance to the jurisdiction the Commission is authorised and obliged to exercise. It is often difficult to explain why the material is not relevant and yet maintain the sense that the applicant is being fairly heard. It can be a time consuming exercise not only for the Commission but also for respondents who must be present through such explanations.

These comments are not made in order to criticise citizens who may be unable to afford legal or other representation. They are entitled to have their cases heard and decided fairly. Rather the comments are intended to highlight the increasing demand on the Commission's (decreased) resources. Readers of this report will note the difficulties the

Commission is having in meeting its time standards in various types of matters. There are many reasons for that. Increasing self-representation and the implications for the length of time required to deal with such matters, is but one. It does, however, provide an important aspect of the context in which the figures presented in this report are to be viewed.

Simple year on year statistical comparison can be misleading. Changes in the nature of cases can have a significant impact on performance measures such as time standards and pending matters. We have attempted to provide context at various points in the Report where the figures may appear to suggest declining applications or failure to meet our own time standards. I would encourage all readers to consider the statistics presented in the Report in the light of changing legislative, industrial and social circumstances.

Thanks

I conclude by thanking all Members and staff of the Commission for their contributions to the strong performance of the Industrial Relations Commission during the year. Notwithstanding the reduced number of Members and the increased filings in many categories, the total number of matters pending at year's end was substantially less than for the previous year.

Chief Commissioner Peter M Kite SC

1. 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

Until the commencement of the *Industrial Relations (Industrial Court) Amendment Act 2016* the Commission operated at two distinct levels. It had distinct legal characters according to its composition and functions. Those functions may be broadly defined as “arbitral” functions and “judicial” functions. The latter moved principally to the Supreme Court following the commencement of the Amendment Act.

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. These functions of the Commission continue after the amendments to the legislation.

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 statutes. As a result of amendments to the *Industrial Relations Act 1996* the Industrial Relations Commission as of 8 December 2016 has a Chief Commissioner as head of jurisdiction.

Broadly, the Commission discharges the following 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;
- proceedings relating to disciplinary decisions in the public sector under the Act (Ch 2, Pt 7); and
- applications under the *Entertainment Industry Act 2013*
- various proceedings relations to contracts of carriage and bailment (Ch 6).

Membership of the Commission

Chief Commissioner

With the legislative changes that occurred in December 2016, abolishing the Industrial Court and moving the then current Industrial Court cases to the Supreme Court, there was the establishment of the role of Chief Commissioner of the Industrial Relations Commission. On 3 April 2017 Chief Commissioner Peter Kite SC commenced in the role of Chief Commissioner.

Commissioners

The Commissioner Members during 2017 in order of seniority were:

Chief Commissioner Peter Michael Kite SC, appointed 3 April 2017;
Commissioner Inaam Tabbaa AM, appointed 25 February 1991, retired 20 April 2017;
Commissioner John David Stanton, appointed 23 May 2005;
Commissioner Peter Justin Newall, appointed 29 April 2013;
Commissioner John Vincent Murphy, appointed 4 December 2015;
Commissioner Jane Elizabeth Seymour, appointed 15 May 2017.

Regional Sittings of the Commission

The Commission has its own dedicated regional court premises located in Newcastle and uses the Local Court in Port Kembla for South Coast matters. The Commission sits in other regional locations from time to time utilising, for the most part, local courts.

The long-standing policy of the Commission in relation to unfair dismissal applications (s 84) and rural and regional industries has been to sit in the country centre at or near where the events have occurred. The reduction in the number of Commissioners and the workload of the Commission has rendered the implementation of that policy more difficult. Notwithstanding these considerations the Commission does sit in regional locations when possible.

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

There were a total of 131 (161 in 2016) sitting days in a wide range of country courts and other country locations during 2017.

There is 1 member, Commissioner Stanton, based permanently in Newcastle.

The Commission sat in Newcastle for 111 (128 in 2016) sitting days during 2017 and dealt with a wide range of industrial matters in Newcastle and the Hunter district.

The regional Member for the Illawarra-South Coast region was, until her retirement, Commissioner Tabbaa and thereafter Commissioner Murphy fulfilled the role. There were a total of 12 (33 in 2016) sitting days in Wollongong during 2017.

The Commission sat in other regional locations in 2017 including Armidale, Byron Bay, Griffith, Lismore, Murwillumbah, Tweed Heads and Wagga Wagga.

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.

Since 2015 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).

The panel dealing with applications in the north of the State (including the Hunter region) is chaired by Commissioner Stanton. The panel dealing with applications from the southern areas of the State (including applications from the Illawarra-South Coast region) was chaired by Commissioner Tabbaa and upon her retirement, Commissioner Murphy. The membership of the panels as at 8 December 2016 as set out in Appendix 1.

The Industrial Relations Registry

The Industrial Registrar has overall administrative responsibility for the operation of the Commission. The Registrar reports to the Chief Commissioner in terms of the day to day operational procedures. The Registry was substantially restructured in late December 2016. The description below is how the registry is post restructure.

The Registrar also 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:

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 at 47 Bridge Street, Sydney. 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.

This team also completes tasks related to 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.

The client service 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

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.

Commissioner Support Team

This team is the principal source of administrative support to the Chief Commissioner and Commissioners. This team supports Commissioners whether they are located in Sydney, Newcastle or sitting at other regional locations.

2. PERFORMANCE

Overall Caseload

The comparative caseload statistics for the Industrial Relations Commission between 2013 and 2017 are summarised in Table 3.1

Table 2.1 [Caseload Statistics]

	2013	2014	2015	2016	2017
Appeals					
Filed	16	10	7	21	18
Finalised	18	8	8	23	11
Pending	6	6	5	2	9
Awards					
Filed	146	188	334	109	122
Finalised	100	123	382	160	112
Pending	66	131	83	32	42
Collaborative Employment Relations					
Filed	N/A	N/A	5	4	1
Finalised	N/A	N/A	0	4	4
Pending	N/A	N/A	5	5	2
Disputes					
Filed	336	308	292	343	353
Finalised	385	275	314	269	361
Pending	82	112	87	161	152
Enterprise Agreements					
Filed	8	15	12	11	6
Finalised	5	15	14	4	12
Pending	3	3	1	8	2
Unfair Dismissals					
Filed	227	206	208	202	240
Finalised	250	186	201	154	277
Pending	45	64	70	118	81
Public Sector Disciplinary Appeals					
Filed	87	10	24	24	29
Finalised	92	19	23	22	29
Pending	0	0	6	8	8

Table 2.1 [Caseload Statistics (continued)]	2013	2014	2015	2016	2017
Police Dismissals and Disciplinary Appeals					
Filed	28	23	43	40	37
Finalised	23	19	39	26	54
Pending	15	17	21	35	18
Hurt on Duty Appeals					
Filed	11	4	9	18	3
Finalised	24	14	21	2	17
Pending	12	4	15	31	17
Other					
Filed	133	118	100	115	73
Finalised	116	121	86	103	60
Pending	46	41	38	50	53
TOTALS					
Total Filed for the Year	**992**	**882**	**1029**	**887**	**882**
Total Finalised for the Year	**1013**	**780**	**1088**	**767**	**944**
Total Pending at end of Year	**275**	**378**	**326**	**446**	**384**

Table 2.1 above shows the following trends

- Total filings (882) have remained stable compared to 2016 filings.
  When compared to other years without the award review process filings remain stable over 2014 and a slight decrease from 2013.
- The number of police dismissals and disciplinary appeals remain consistently high for 2017. There was also a large increase in the number of disputes filed in 2017 compared to 2015.
- Unfair dismissals were significantly higher compared to prior years with an increase of 18.8% over 2016.
- These total filings do not include applications relating to industrial organisations including rule changes, right of entry permits, WHS permits and special wage permits.
- Total matters pending at the end of 2017 decreased to 384 pending matters representing a significant decrease on 2016 numbers.

Table 2.2 below shows the number of Members and the respective positions

Table 2.2 [Commission Members]

	2013[1]	2014[2]	2015[3]	2016[4]	2017
Judicial and Presidential Members					
President	1	1	1	1	N/A
Vice - President	1	0.1	N/A	NA	N/A
Deputy President	0.8	1	1	1	N/A
Presidential Members (Judges or Acting Judges)	2.8	1.5	0.5	0.5	N/A
Total Judicial Members	**5.6**	**3.5**	**2.5**	**2.5**	**N/A**
Non- Judicial Members					
Commissioners	2.3	2.5	2.7	4	6
Total Members of the Commission	**7.9**	**5.6**	**5.2**	**7.5**	**6**

[1] Justice Haylen to 24 October; Deputy President Harrison part time at FWA to 26 April; Commissioner Bishop to 23 January; Commissioner Macdonald to 8 November (Full-time at FWA from 2011); Commissioner Newall from 29 April.

[2] Justice Boland, President to 31 January; Justice Walton, President from 3 February; Justice Walton, vice President to 2 February; Justice Staff to 12 March; Justice Backman to 19 August (commenced leave March); Acting Justice Boland from 3 February; Acting Justice Kite from 25 November.

[3] Acting Justice Boland to 3 February; Acting Justice Kite to 31 May; Commissioner Stanton part-time at FWA to October; Commissioner Murphy appointed 4 December.

[4] Deputy President Harrison to 3 January; Acting Justice Kite to 7 December.

[5] 2017 saw the retirement and appointment of Commissioners, whilst there were 6 over the span of 2017 there were a maximum of 5 Commissioners at any particular time.

Clearance Rates

The comparative clearance rate statistics for Commission between 2013 and 2017 are summarised in Table 2.3.

Table 2.3 [Clearance Rates Statistics]

	2013	2014	2015	2016	2017
Commission Clearance Rate	**102.1%**	**88%**	**105.7%**	**86.4%**	**107%**

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 dispute between the parties pursuant to s 133 and s 134 of the Act.

This form of robust alternative dispute resolution usually involves a Commissioner meeting 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 s135 and s136 and make orders that are binding on all parties. Industrial dispute matters represented 40.1% (up from 38.7% in 2016) of the total fillings for the Commission during 2017.

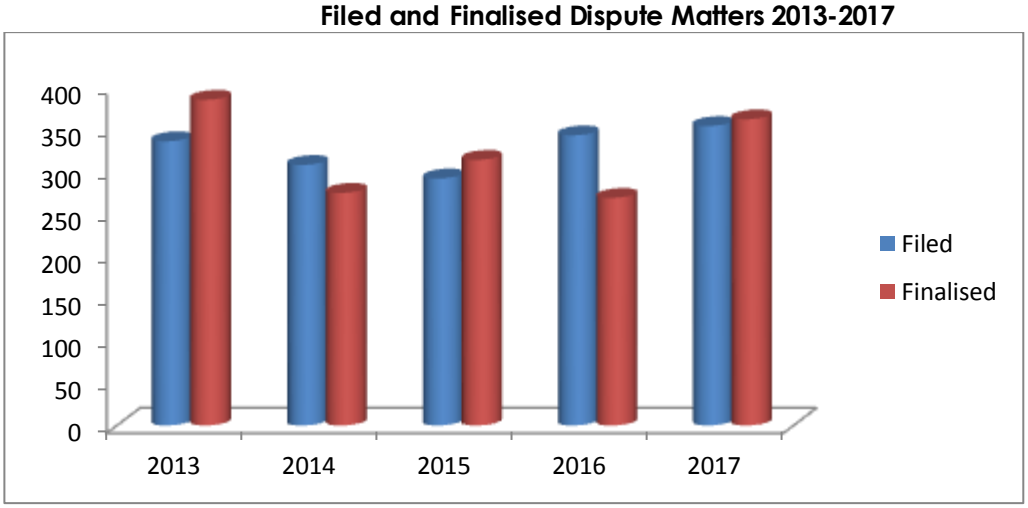
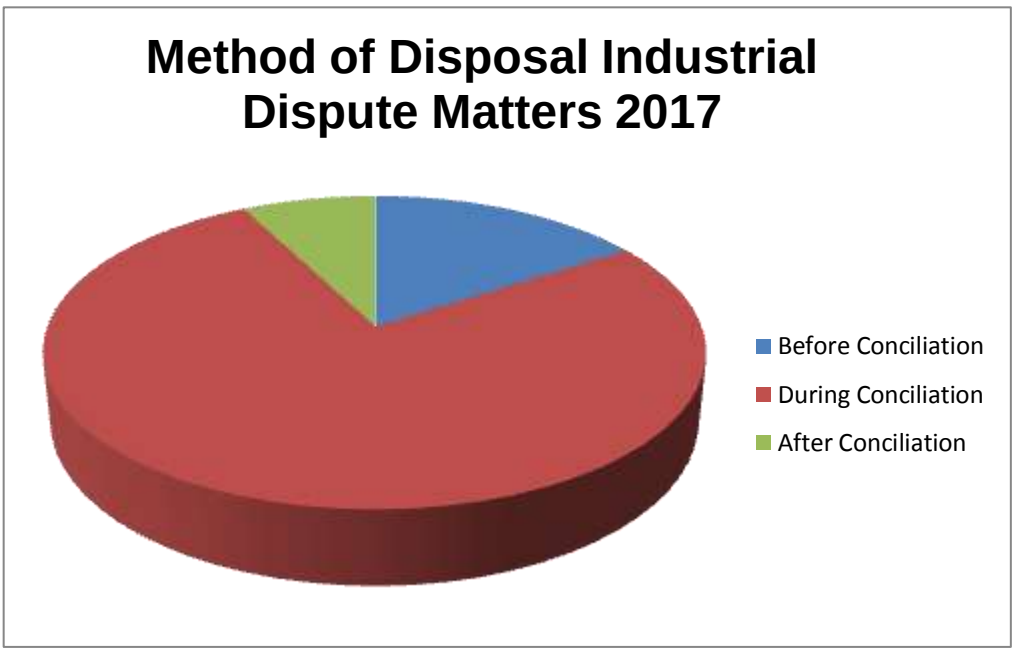


Figure 2.4 represents a graphical comparison between matters filed and disposed of in the last 5 years.

During 2017 the number of dispute applications filed increased from 343 matters to 354 matters filed. 2017 filings was an increase on the past 5 years.

Figure 2.4 [Filed and finalised dispute matters]



Over 92.1% of Industrial Disputes are finalised prior to hearing.

Figure 2.5 [Method of disposal]

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 adequately addressed.

Table 2.6 [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**
2013	42.3%	58.9%	80.7%	5 Days
2014	35.6%	46.5%	75.6%	6 Days
2015	31.5%	42.3%	62.4%	7 Days
2016	26.4%	41.7%	70.3%	7 Days
2017	24.8% ✘	36.7% ✘	63.9% ✘	8 Days

As in recent annual reports it is noted that the median time to first listing has continued to rise. This is mainly due to parties seeking a delayed listing of the dispute.

Table 2.7 [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)
2016	45.8%	60.9%	84.4%	99%
2017	45.7% ✘	59.9% ✘	86.8%	99 %

As a result of the resources available to the Commission during 2017, the finalisation of matters within the prescribed time standards showed a small decline. Whilst not quite meeting the required benchmarks, the matters are being finalized. It should be noted that industrial disputes can be quite diverse and some require extended periods of progressive adjustment of formerly entrenched attitudes and positions. Thus there will always be disputes which do not lend themselves to resolution within prescribed time standards.

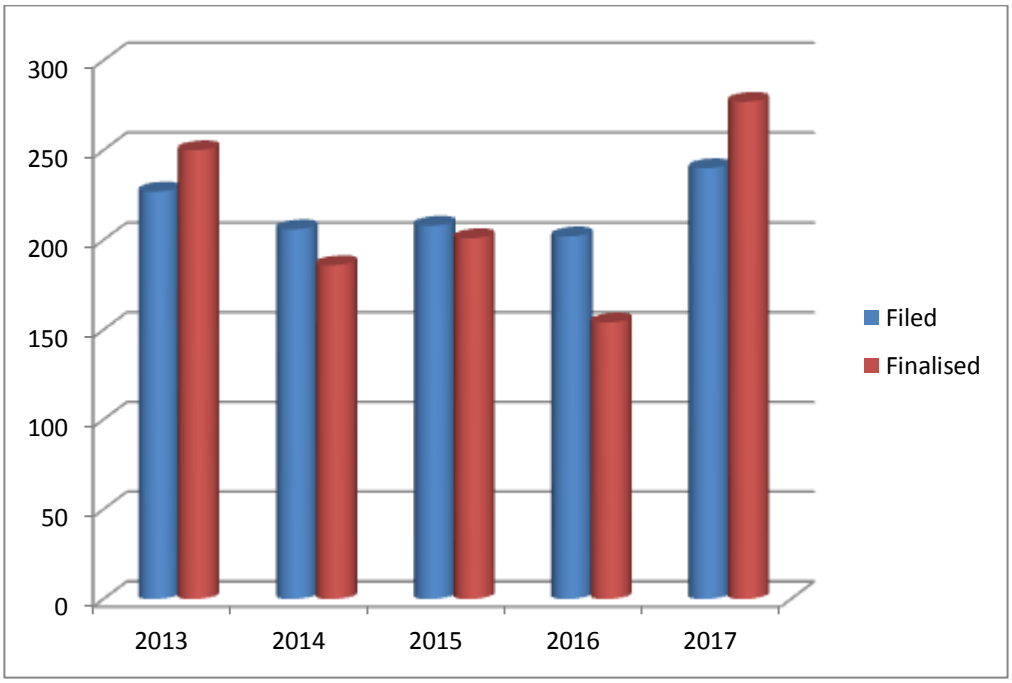
Unfair Dismissals

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 assisting the parties to reach an early settlement. 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 reinstated, re-employed or compensation paid. Unfair dismissal matters represented 27.2% of the total filings for the Commission during 2017. Figure 3.8 represents graphically a comparison between the unfair dismissal matters filed and disposed of in the last 5 years.

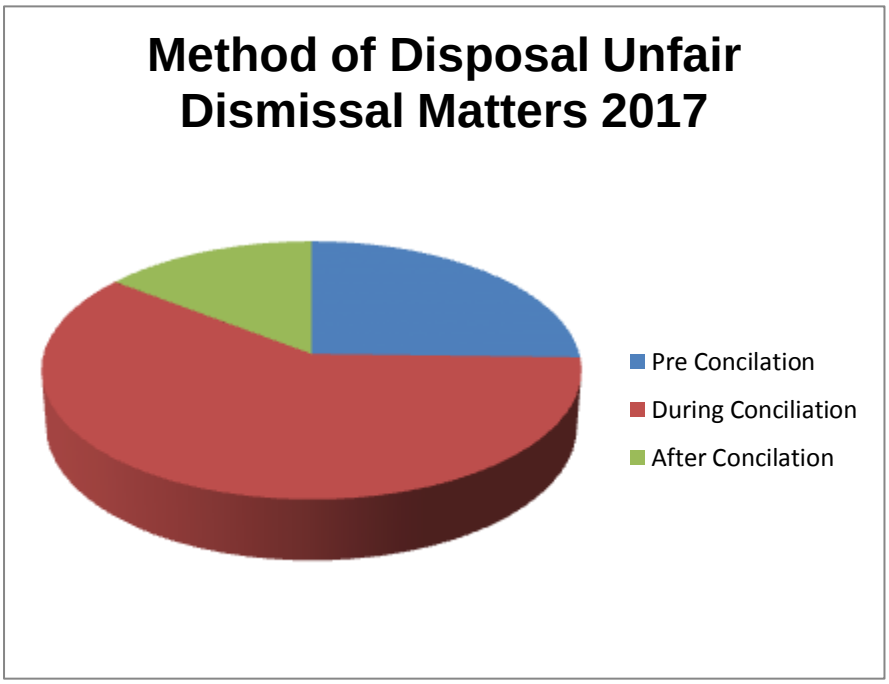
Filed and Finalised Unfair Dismissal Matters 2013-2017



The number of unfair dismissal applications filed over the last 5 years has increased but importantly the finalisation rate significantly increased on previous years.

Figure 2.8 [Filed and finalised unfair dismissal matters]

Figure 2.9 represents graphically the method in which unfair dismissal matters were finalised by the Commission during 2017.



85% of unfair dismissal applications are finalised before and during conciliation.

Table 2.10 shows the distribution as to who initiated an unfair dismissal action

	2013	2014	2015	2016	2017
Unfair Dismissals					
Application (Individual)	44	52	67	65	63
Application (Legal Representative)	78	66	40	47	56
Application (Organisation Representative)	105	88	101	90	121
TOTAL	**227**	**206**	**208**	**202**	**240**

Time Standards

There are two 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 lodgment – in accordance with Practice Note 17A (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..

During 2017 the finalisation of matters within two and three months showed a slight decline, however the 2 month clearance standard was still achieved. The number of matters meeting the 6 and 9 month clearance standard also showed deterioration.

Table 2.11 shows the time taken to first listing of an unfair dismissal matter

Within	7 Days	14 Days	21 Days (100% Target)	28 Days
2016	6.1%	21.2%	37.8%	86.3%
2017	5.4%	19.2%	39.8%	87.9%

As in recent annual reports, it is noted that the median time to first listing has continues to vary. Parties requesting listings at the 21-28 day timeframe is one of the main reasons for the fluctuations. Other factors include parties being available and ready for the listing.

Table 2.12 shows the time taken to finalise an unfair dismissal matter

Finalised within	2 Months (50% Target)	3 Months (70% Target)	6 Months (90% Target)	9 Months (100% Target)
2014	68.3%	74.8%	86.1%	99.3%
2015	57.7%	67.7%	84.1%	94.7%
2016	57.2%	69.8%	88.2%	98.6%
2017	56% ✔	68.9%	88.9%	98.2%

During 2017 the finalisation of matters within two month clearance standard was still achieved, even though there was a slight decline. The other bench marks increased against 2015- 2016 results and are fractionally below the benchmarks set.

Awards and Enterprise Agreements

Award Jurisdiction

Overall

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);
- approve enterprise agreements and variation of enterprise agreements (s 35 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).

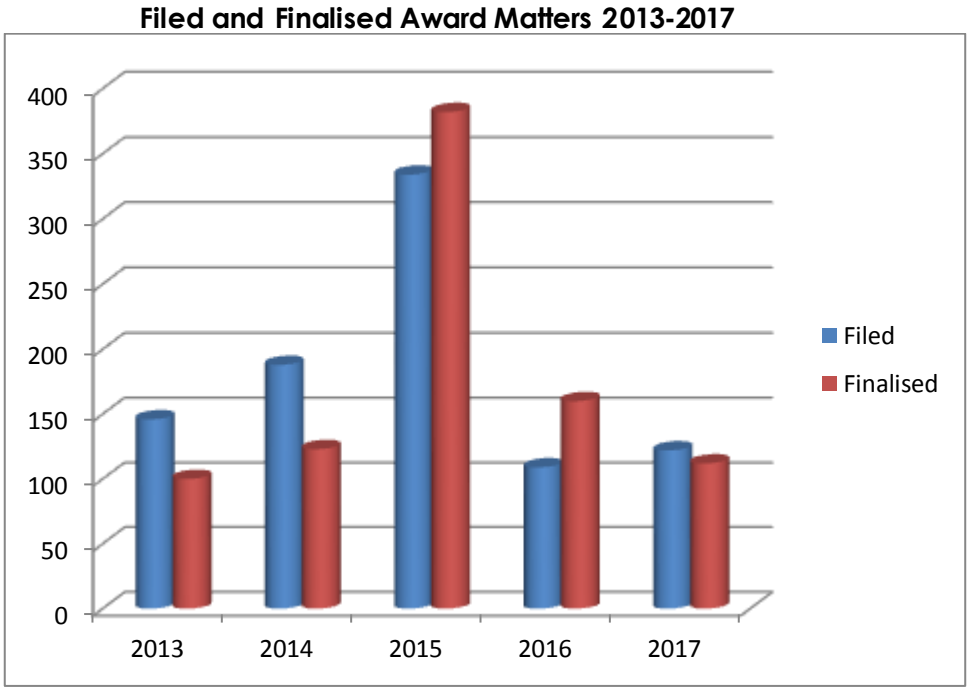
Award Reviews

n accordance with s 19(1), the Commission undertook, in 2015, the triennial Award Review process. As a result the number of award applications is significantly lower in 2016 and 2017.

Awards

Awards matters represented 14.5% of the total filings for the Commission during 2017.

Figure 2.13 represents graphically a comparison between the matters filed and disposed of in the last 5 years



The number of matters filed in 2016 and 2017 remained relatively stable.

Enterprise Agreements

Enterprise Agreements represented 0.7% of the total filings for the Commission during 2017.

Figure 2.15 graphically represents a comparison between the matters filed and disposed of in the last 4 years.

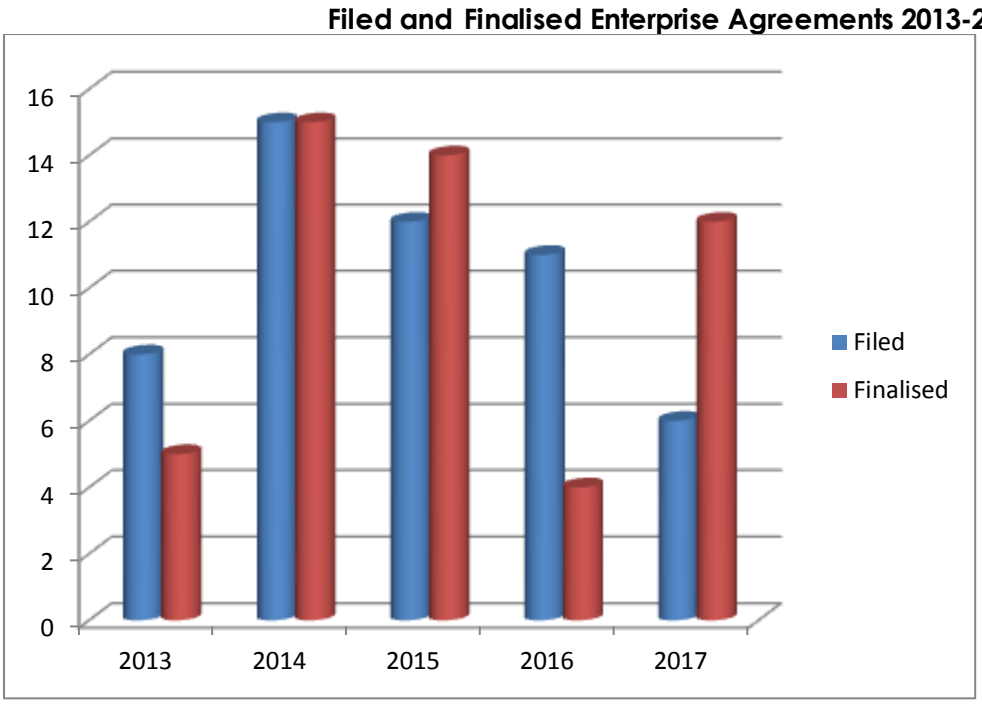


Table 2.16 provides details of filings in the award and enterprise agreement areas in the last four years.

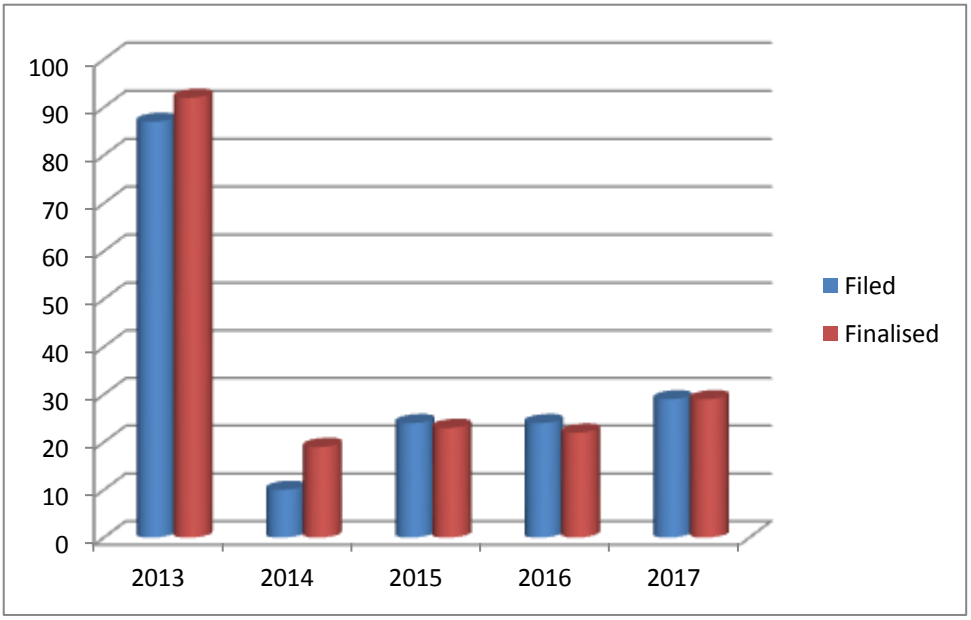
	2014	2015	2016	2017
Awards				
Application to Make Award	35	68	59	82
Application to vary Award	150	45	41	37
Enterprise Agreements				
Application for an Enterprise Agreement	15	12	11	6
Terminated Enterprise Agreement	11	1	0	0
Review of Awards				
Notice of Review Issued	0	220	0	0
Awards reviewed	0	152	3	0
Awards rescinded	0	13	1	3
Awards determined to have effect as enterprise agreements	0	0	0	0
Declaration of Non-Operative Awards	0	0	0	0

Public Sector Disciplinary and Promotional Appeals

Public sector disciplinary appeals represented 3.3% of the total filings for the Commission during 2017.

Figure 2.17 represents graphically a comparison between the matters filed and disposed of in the last 5 years.

Filed and Finalised Public Sector Disciplinary and Promotional Appeals 2013-2017



Numbers of applications filed in 2017 are slightly evaluated compared with matters filed the previous 4 years.

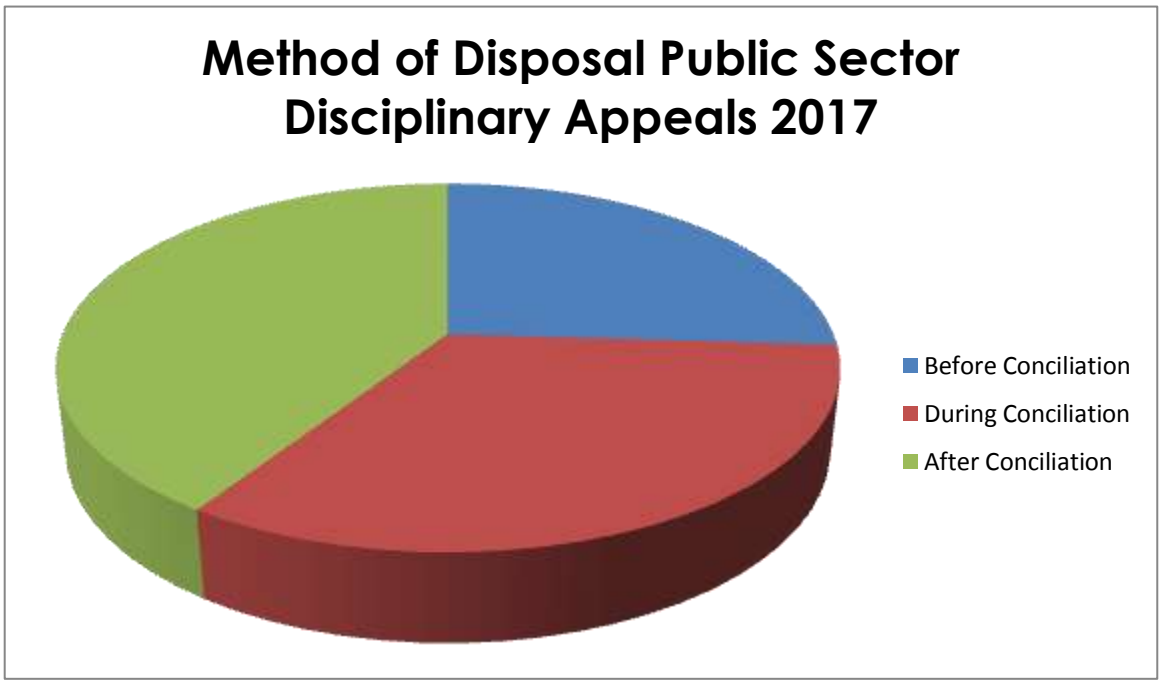
The downturn in appeals filed from the levels recorded in 2013 can be wholly explained by the enactment of the *Government Sector Employment Act 2013* ('the GSE Act') that abolished public sector promotional appeals. Accordingly, there were no promotional appeals filed in 2017.

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.

Table 2.18 shows the distribution as to what types of public sector promotional and disciplinary appeals were dealt with during the last 5 years.

	2013	2014	2015	2016	2017
Public Sector Promotional Appeals					
Filed	84	6	N/A	N/A	N/A
Finalised	87	8	N/A	N/A	N/A
Pending	2	0	N/A	N/A	N/A
Public Sector Disciplinary Appeals					
Filed	3	4	24	24	29
Finalised	5	11	23	22	25
Pending	7	0	0		7
TOTALS					
Total Filed for the Year	**87**	**10**	**24**	**24**	**29**
Total Finalised for the Year	**92**	**19**	**23**	**23**	**25**

Figure 2.19 represents graphically the method in which public sector disciplinary appeals were finalised by the Commission during 2017.



Time Standards

Table 2.20 shows the time taken to finalise public sector disciplinary appeals dealt with during the last 4 years.

	2014	2015	2016	2017
Public Sector Disciplinary Appeals				
Completed within 3 Months	82.9%	79.1%	66.7%	69.6%
Completed within 6 Months	92.7%	88.4%	88.9%	89.1%

During 2017 the finalisation of public sector disciplinary matters within the 3 month period declined when compared to the 2015 clearance rates but increased against the 2016 results. That may be seen, at least in part, as a product of the reduction in the number of Commission Members and an increase in the number of appeals.

Police Dismissals and Disciplinary Appeals

Under the provisions of s173 of the Police Act 1990, the Commissioner of Police may make reviewable and non-reviewable orders arising from a police officer's misconduct or unsatisfactory performance. Under s 174 of the Police Act an officer may apply to the Commission seeking a review of such orders (a "disciplinary appeal").

Under s181D of the Police Act, the Commissioner has power to remove a NSW police officer for loss of confidence in the police officer's suitability to continue as an officer having regard to the officer's competence, integrity, performance or conduct. Under s 181E of the Police Act an officer make seek a review of such removal (a "dismissal appeal").

Each matter is initially dealt with by listing for a conciliation conference in which the Commission will attempt to conciliate 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.

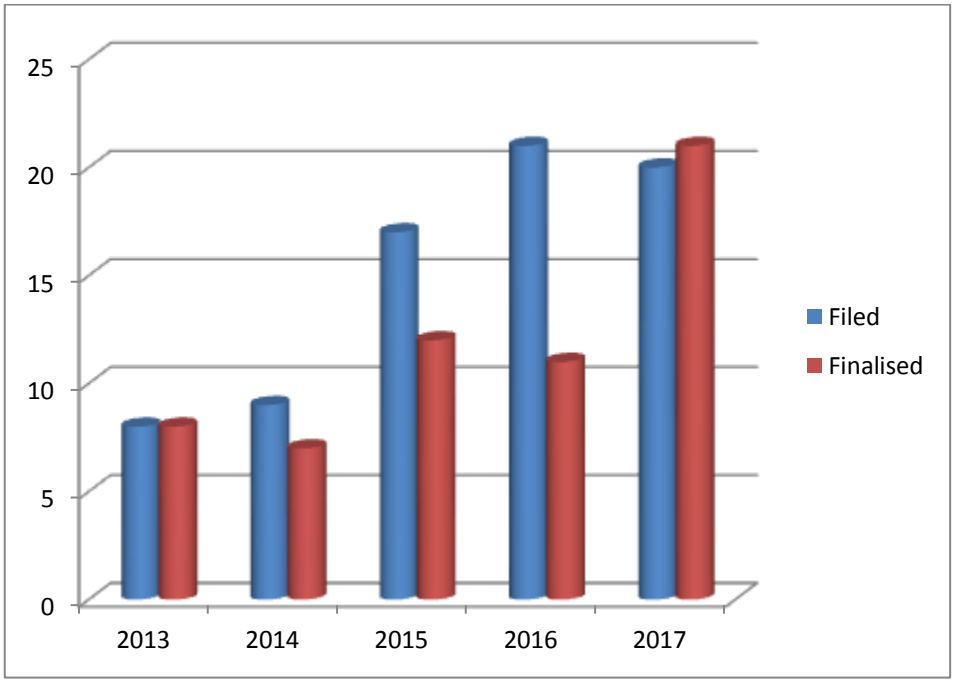
The Police Act (ss 179(2), 181 and 181K) requires (unless the Chief Commissioner otherwise directs in the case of disciplinary appeals) that each stage of the process is dealt with by a Member of the Commission who is an Australian lawyer. All Members of the Commission in 2017 were
Australian lawyers..

Section 173 Police Disciplinary Appeals

Police disciplinary appeals represented 2.27% of the total filings for the Commission during 2017.

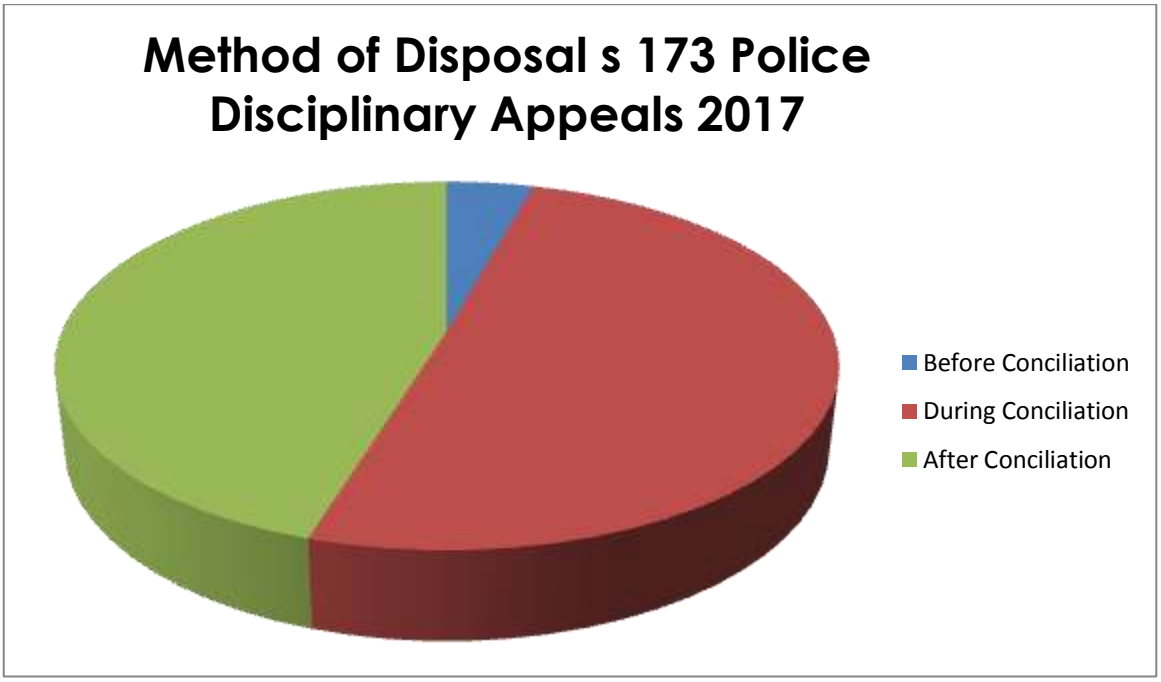
Figure 2.21 represents graphically a comparison between the matters filed and disposed of in the last 5 years.

Filed and Finalised s173 Police Disciplinary Appeals 2013-2017



There has been a significant increase in the number of applications filed between 2015 and 2017.

Figure 2.22 represents graphically the method in which police disciplinary appeals were finalised by the Commission during 2017.

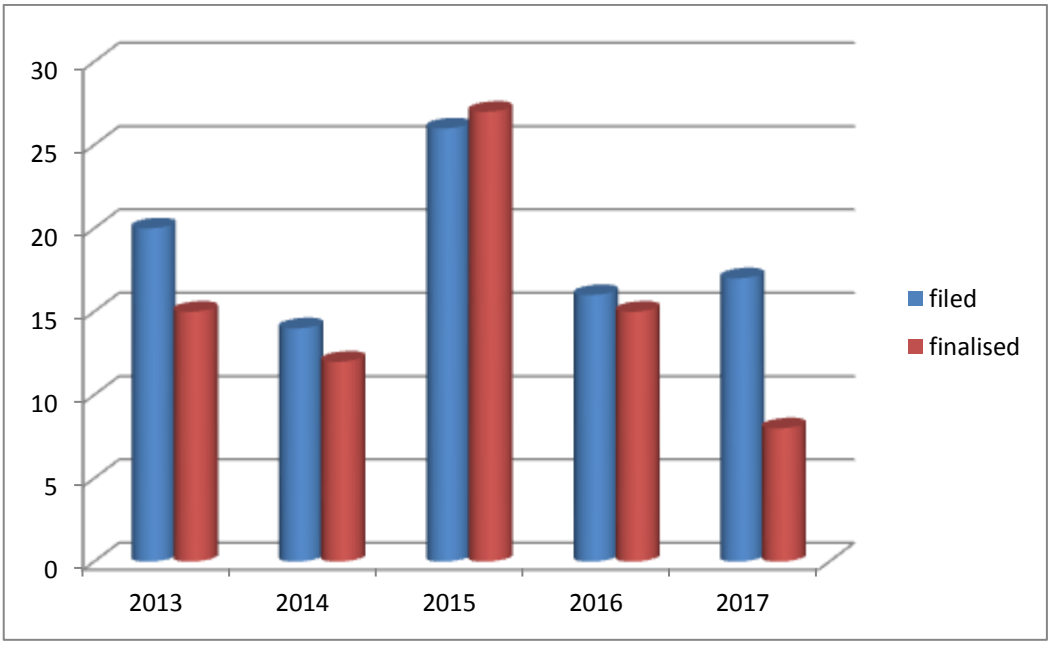


Section 181D Police Dismissal Appeals

Police disciplinary appeals represented 1.9% of the total filings for the Commission during 2017, although those matters represented statistically a higher proportion of sitting days required to dispose of the matters.

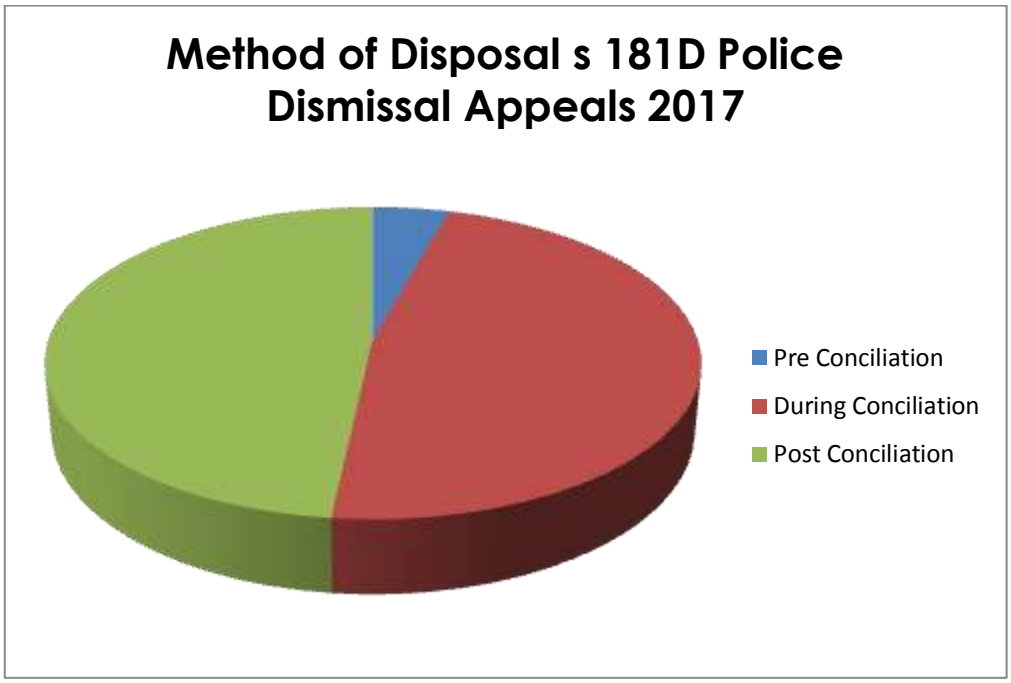
Figure 2.23 represents graphically a comparison between the matters filed and disposed of in the last 5 years.

Filed and Finalised s 181D Police Dismissal Appeals 2013-2017



The number of cases filed in 2017 remains stable with 2014 and 2016 numbers.

Figure 2.24 represents graphically the method in which police dismissal appeals were finalised by the Commission during 2017



Time Standards

Table 2.25 shows the time taken to finalise police disciplinary and dismissal appeals.

	2013	2014	2015	2016	2017
S173 Police Disciplinary Appeals					
Completed within 6 Months	90.%	85.7%	91.6%	73.1%	82.2%
Completed within 12 Months	90%	85.7%	100%	88.4%	98.3%
S181D Police Dismissal Appeals					
Completed within 6 Months	80%	50%	70.3%	87.5%	90.5%
Completed within 12 Months	100%	83.3%	85.1%	100%	100%

During 2017 the finalisation of S181D matters within 6 and 12 months showed marked improvement on the 2015 - 2016 clearance rates.

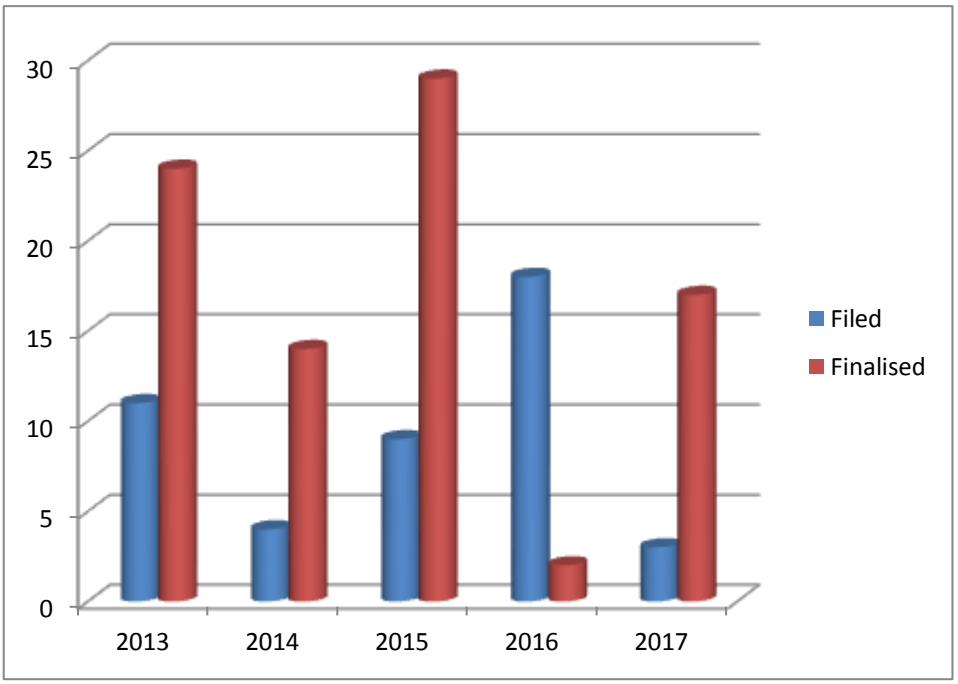
Police Hurt on Duty Appeals

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 resulting from officers being hurt on duty.

Police Hurt on Duty Appeals represent less than 0.34% of the total filings for the Commission during 2017.

Figure 2.26 represents graphically a comparison between matters filed and disposed of in the last 5 years.

Filed and Finalised Police Hurt on Duty Appeals 2013-2017



The low number of determined cases of this type is often as a result of matters being stood out of the list whilst there are proceedings being determined in other jurisdictions.

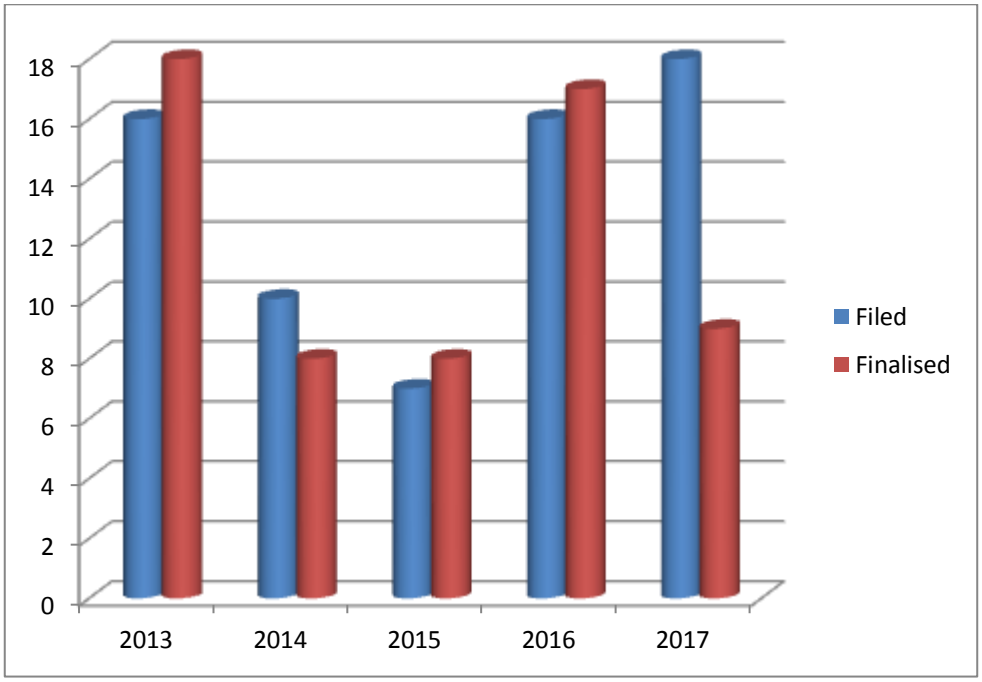
Appeals to a Full Bench

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

Appeals lodged during 2017 represented only 2.04% of the total filings for the Commission. While the number of filings may be regarded as relatively small the Industrial Relations Act s 156 requires a Full Bench to consist of at least 3 Members. The effective number of hearing days is therefore considerably greater than the number of filings would suggest.

Figure 2.27 represents graphically a comparison between appeals filed and disposed of in the last 5 years.

Filed and Finalised s 187 Full Bench Appeals 2013-2017



There has been a dramatic increase in the number of appeals to the full bench, back to similar levels experienced during 2012-2013.

Industrial Organisations.

Under the *Industrial Relations Act 1996* and its regulations as well as the *Work Health and Safety Act 2011* the Industrial Relations Commission has specific responsibilities relating to industrial organisations. These responsibilities include the provision of right of entry permits under part 7 of *Work Health and Safety Act 2011* and Chapter 5 of the *Industrial Relations Act 1996*. Other responsibilities include processing of applications regarding elections of office holders and approving rule changes for registered industrial organisations. These functions generally are carried out by registry staff under the direction of the Industrial Registrar. These application types are not counted in official filings unless they go before a Commissioner. They do however account for 28% of applications to the Industrial Relations Commission.

Table 2.28

	2015	2016	2017
Work Health and Safety Permits	185	298	162
Right of Entry Permits	77	175	108
Special Wage Permits	23	43	25
Conscientious Objection Certificates	8	7	1
Rule Changes to Registered Organisations	14	18	10
Election Requests for Registered Organisations	28	36	19
Others	4	3	5
Total Filed for the Year	**339**	**580**	**330**

3. OTHER MATTERS

Commission Rules

Pursuant to s186 of the Act, the Rules of the Commission are to be made by a Rules Committee comprising the Chief Commissioner and two other Members appointed by the Chief Commissioner. 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.

The Industrial Relations Commission Rules 2009 are in need of revision following the passage of the *Industrial Relations (Industrial Court) Amendment Act 2016*. Regrettably the limits on the Commission's resources have not permitted that revision to be completed. There were no changes to the Industrial Relations Commission Rules during 2017.

Amendments to Legislation and Regulations

There were no amendments to the *Industrial Relations Act 1996* during 2017. There was a minor amendment to the *Industrial Relations (General) Regulation 2015* by the *Industrial Relations (General) Amendment (Fees) Regulation 2017*.

Practice Notes

A review of practice notes commenced in 2017, Practice Note 2A 'List of Authorities and Legislation was released.

It was decided that Practice Notes 3, 4, 8A,13, 24, 26 and 29 did not require amendment and Practice Notes 20, 22, 27 and 28 were obsolete.

The review of practice notes will continue into 2018.

4. OUR PEOPLE

Industrial Registrar

In October 2016 Melinda Morgan commenced in the role of Industrial Registrar on an on-going basis.

Our Staff Profile

The Commission employed 10 people during 2017 in the Registry Office and Commissioner Support. 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 (90%) and more than 70% of the staff are from culturally and linguistically diverse backgrounds.

30% 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. 20% 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 80% of our staff having 10 or more years of service; 80% of staff have 15 years or more service and 20% have been with the Commission for more than 25 years. Whilst our retention rates are very high the Industrial Relations Commission also underwent a significant restructure at the end of 2016. More than 90% of staff have worked within the Department of Justice for more than 13 years.

5. CONCLUSION

The Commission was able to achieve a significant reduction in the matters pending at the end of the reporting year. That was in no small way due to a stable and collegiate group of Members who were willing to take on substantial caseloads and yet continue to respond to urgent matters as and when required.

Anecdotally, there is a trend to longer periods between cases finishing and delivery of decisions. That is something which will need to be monitored closely in the coming year. It is at least one possible explanation for this observation that meeting the time standards for listing and hearing matters is being achieved at the cost of decision writing time.

Written reasons for decision are subject to review, either on appeal to a Full Bench of the Commission or by judicial review in the Supreme Court. While such reviews form an important part of the justice system, they involve costs in time and money to the parties and to the State. There is a public interest therefore in minimizing the number of such reviews. That imposes an obligation on decision makers to take care to limit the prospects of such review by ensuring the reasons given address all relevant issues and are expressed so that parties have a clear understanding of why the decision was reached.

I mentioned in the Foreword to this Report the impact on the Commission's workload of changes in the nature of cases on the Commission's capacity to meet time standards with its reduced resources. The issue of the length of time decisions are reserved is another aspect pointing to a need to consider the adequacy of its resources.

In the Foreword to the 2016 Annual report I commented upon a restructure of the Registry, including member support, staffing. As a result of the restructure, Members are now burdened with a range of additional administrative tasks. That is a further contributor to delays in delivering decisions. The appointment of additional Member support staff would significantly improve the operational efficiency of Members enabling them to focus fully on their statutory responsibilities.

6. APPENDICES

APPENDIX 1

INDUSTRY PANELS

Metropolitan and Regional Panels

Metropolitan

Divisional Head – Chief Commissioner Kite SC

Members

Tabbaa C (until 20 April 2017)

Newall C

Murphy C

Seymour C

Regional

Panel N – Divisional Head – Stanton C

Members

Stanton C

Industries: Relevant geographical areas north of Gosford (excluding Broken Hill)

Panel S – Divisional Head – Tabbaa C (until 20 April 2017) thereafter Murphy C

Members

Tabbaa C (until 20 April 2017) thereafter Murphy C

Industries: Relevant geographical areas south of Sydney plus Broken Hill

APPENDIX 2

TIME STANDARDS – Industrial Relations Commission

Time from commencement to finalisation	Time Standard	Achieved in 2016	Achieved in 2017
Applications for leave to appeal and appeal			
Within 6 months	50%	73.91%	75%
Within 12 months	90%	100%	100%
Within 18 months	100%	100%	100%
Award Applications [including Major Industrial Cases]			
Within 2 months	50%	75.8%	57%
Within 3 months	70%	81.7%	67%
Within 6 months	80%	98.3%	95%
Within 12 months	100%	100%	100%
Enterprise Agreements			
Within 1 months	75%	50%	55%
Within 2 months	85%	62.5%	60%
Within 3 months	100%	75%	70%
Applications relating to Unfair Dismissal			
Within 2 months	50%	55.6%	55.6%
Within 3 months	70%	66.7%	68.9%
Within 6 months	90%	94.5%	88.9%
Within 9 months	100%	100%	99%
Public Sector Disciplinary Appeals			
Within 1 months	30%	7.5%	9.8%
Within 2 months	60%	60%	63%
Within 3 months	90%	67.5%	69.6%
Within 6 months	100%	90%	89%

Time to first listing	Time Standard	Achieved in 2016	Achieved in 2017
Industrial Disputes			
Within 72 Hours	50%	26.4%	24.8%
Within 5 Days	70%	41.7%	37.7%
Within 10 Days	100%	70.3%	65.3%

APPENDIX 3

Matters Filed in Industrial Relations Commission

Matters filed (under the Industrial Relations Act 1996) during period 1 January to 31 December 2017 and completed and continuing matters as at 31 December 2017

Nature of Application	Filed 1.1.2017 – 31.12.2017	Completed 1.1.2017 – 31.12.2017	Continuing as at 31.12.2017
APPEALS	**12**	**8**	**4**
Appeal – Award	3	2	1
Appeal – Unfair dismissal	6	3	3
Appeal – Public Sector Disciplinary	3	3	0
AWARDS	**122**	**102**	**40**
Application to make an award	81	60	31
Application to vary an award	37	40	7
State Wage Case	1	1	0
Review of an award	0	0	0
Other – incl. rescission, interpretation	3	1	2
COLLABORATIVE EMPLOYMENT RELATIONS	**0**	**4**	**1**
Collaborative Employment Relations processes	**0**	**4**	**1**
DISPUTES	**343**	**284**	**121**
s130 of the Act	327	265	118
s332 of the Act	13	18	2
s146B of the Act	3	1	1
ENTERPRISE AGREEMENTS	**4**	11	**1**
Application for approval with employees	0	4	0
Application for approval with industrial organisation	4	7	1
Principles for approval of Enterprise Agreements s33(3) of the Act	0	0	0

Nature of Application	Filed 1.1.2017 – 31.12.2017	Completed 1.1.2017 – 31.12.2017	Continuing as at 31.12.2017
UNFAIR DISMISSALS	**240**	**180**	**76**
Application by the employee	119	93	41
Application by an industrial organisation on behalf of employee	121	87	35
PUBLIC SECTOR AND POLICE APPEALS	**82**	**50**	**65**
Public Sector disciplinary appeal	29	21	8
Application for review of order s181D Police Service Act	17	8	9
Application for review of order s173 Police Service Act	20	21	4
Appeal by Police Officer relating to leave when hurt on duty	3	2	3
Contracts of Carriage and Bailment			
Contract determinations	12	11	5
Compensation for termination of certain contracts of carriage	0	0	0
Other Applications	**61**	**39**	**30**
Application to extend duration of Industrial Committee	0	0	0
Registration pursuant to the Clothing Trades Award	32	19	17
Protection of injured workers from dismissal - Workers Compensation Act	3	3	2
Application for order enforcing principles of association s213 of the Act	13	7	6
Application for external review Work Health Safety Act	3	2	2
Appeal for an Assisted Appointment Review	1	0	1
Determination of demarcation questions	2	1	1
Disputes notified s20 Entertainment Industry Act	8	7	1

APPENDIX 4

The Chief Commissioner of the Industrial Relations Commission of New South Wales

The position of Chief Commissioner of the Industrial Relations Commission was created with the assent of the *Industrial Relations (Industrial Court) Amendment Act 2016* on 8 December 2016

Name	Held Office		Remarks
	From	To	
Tabbaa, Innam[1]	8 Dec 2016	30 Mar 2017	Retired on 20 April 2017
Kite SC, Peter	3 April 2017	Current	

1 Appointed as Acting Chief Commissioner (under the Act)

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	Retired
Boland, Roger Patrick	9 Apr 2008	31 Jan 2014	Retired and continued as Acting Judge until 31 Jan 2015
Walton, Michael John	3 Feb 2014	7 Dec 2016	Appointed Justice of the Supreme Court

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			

APPENDIX 7

Industrial Registrars of the Industrial Relations Commission of New South Wales

Name	Held Office		Remarks
	From	To	
Addison, George Campbell Chief	1 Apr 1902	1912	Returned to the Bar. Appt 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 Executive Assistant (Legal) Department of Labour and Industry; Later appt as Deputy Undersecretary, Department of Labour and Industry.
Fetherston, Kevin Roy	3 June 1968	1977	
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 Conservation and Irrigation Commission. Appt as Commissioner, Water Industrial Relatio

Name	Held Office		Remarks
	From	To	
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.
Hourigan, Lesley[5]	19 Dec 2014	13 Mar 2015	Returned to position of Deputy Registrar Industrial Court.
Wiseman, James[6]	16 Mar 2015	Oct 2016	Returned to Local Court
Morgan, Melinda	31 Oct 2016	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] 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

[3] Acting appointment as Registrar and CEO, Industrial Court (under 1991 Act) pending recruitment

[4] Appointed as Registrar and CEO, Industrial Court (under 1991 Act)

[5] 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).

[6] Appointed as Acting Registrar Industrial Court (under the Act)

APPENDIX 8

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 12 months 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.

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) Living Wage Act 1937* repealed the Commission's power of determining a wage and provided for the adoption of a 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. 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 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 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 s 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 (s 146C).

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 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.

On 8 December 2016 the *Industrial Relations (Industrial Court) Amendment Act 2016* commenced. The Act abolished the Industrial Court and the work of that Court was transferred to the Supreme Court. The Offices of President, Vice-President and Deputy President were also abolished. The office of Chief Commissioner was created and that office exercises all of the functions formerly exercised by the President (except for the functions relating to the former Industrial Court). The members of the Commission continue to be judicial officers for the purposes of the *Judicial Officers Act 1986* and the Chief Commissioner, as head of the jurisdiction, is an official member of the Judicial Commission.