



ANNUAL REPORT
OF THE
PRESIDENT
OF THE
INDUSTRIAL COMMISSION
OF NEW SOUTH WALES
FOR
1991



I have the honour to furnish to the Minister for presentation to Parliament the Twenty-Fifth Report of the President of the Industrial Commission of New South Wales made pursuant to s.14A of the Industrial Arbitration Act, 1940, as amended, relating to the year ended 31 December, 1991.

ARRANGEMENT

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PART I: FUNCTIONING OF THE INDUSTRIAL COMMISSION

Membership:

Members of the Commission during the year were:

President:

The Honourable William Kenneth Fisher, A.O., appointed 18 November, 1981.

Members:

The Honourable John Joseph Cahill, appointed 25 March, 1971.
Appointed Vice President 19 February, 1987.

The Honourable Harold William Henry Bauer, appointed 14 April, 1980.

The Honourable Leone Carmel Glynn, appointed 14 April, 1980.

The Honourable Michael John Sweeney, appointed 22 February, 1982.

The Honourable Peter McMahon, A.M., appointed 22 February, 1982
(non-judicial member).

The Honourable Brian Eugene Hill, appointed 1 August, 1988.

The Honourable Gregory Ian Maidment, appointed 1 August, 1988.

The Honourable Barry Clive Hungerford, appointed 13 July 1989.

The Honourable Mervyn George Mills, appointed 5 December, 1990
(non-judicial member).

..... The Honourable Charles Cullen, appointed 4 February, 1991

Section 1: Functioning of the Commission in Court Session

Court Session Business

Particulars of the business during the year of the Commission in Court Session are given in Table A annexed hereto.

During the year a total of 125 matters were filed or referred to the Commission in Court Session (previous year 95).

Section 2: Recommendations

During 1991, the Commission's administration increasingly emphasised the need for micro economic reform of the terms of awards and agreements in the interests of productivity and efficiency.

The major vehicle for this encouragingly successful effort was the **State Wage Case - May 1991**. Assisted by a significant degree of consensus between employer and union parties, the Commission was able to make available enterprise arrangements to all 500 active awards held by the Commission in terms which, where necessary and agreed to, overrode inconsistent provisions of existing awards.

This jurisdiction became the first in Australia to introduce an Enterprise Arrangements principle into the State Wage Principle, said to be "an initiative of historical dimensions" in New South Wales.

The terms of the Enterprise Arrangements principle were adapted to provide for consistency of standards between it and the new *Industrial Relations (Enterprise Agreements) Amendment Act 1990*.

Somewhere between 60-70% of employees in New South Wales come within the jurisdiction of the Commission's awards, but do not include the building industry or waterfront industries. There were no examples of serious intractable industrial disputation within jurisdiction in 1991.

Disputation based on a day by day industrial frictional basis was low, little above in practical terms what could be described as an unavoidable minimum.

The economic and social value of much reduced industrial disputation, especially when compared to other areas of the national economy, affords a significant competitive advantage to this State which should not be overlooked.

Section 3: Functioning of the Commission - Members sitting Alone

1. Allocation and Delegation of Matters to Members

During the year the total of matters allocated or delegated to Members to sit alone was 1,090 (previous year 1,300). Particulars of such matters are shown in annexures Tables B and C.

These tables show that at 31 December 1991 there were 907 matters in the list of members of the Commission sitting alone which have not been completed. The previous year 853 matters in the list had not been completed. These figures do not include matters which have been stood over generally at the request of an applicant or by consent for a period of one year, or compulsory conference matters in which some action had been taken and where no further action has been needed within a period of one year.

As outlined in the 1990 Annual Report, the Commission does not operate upon a "back log" of cases. Every case filed is physically conveyed to a Member within six days of filing and is usually mentioned in Court shortly after, with a view to fixing dates for hearing if required. Every case is heard as a special fixture. When the number of cases exceeds available resources, as is usually the case, the effect is to build forward a "front log", ie. in order to arrive at days that are available for hearing, dates have to be set further and further into the future. On some occasions during 1991, this period ahead amounted to several months and therefore these matters are statistically noted as having not been completed.

2. Notifications under s.25A of the Industrial Arbitration Act, 1940

Section 25A of the Industrial Arbitration Act requires an industrial union or an employer which becomes aware of an actual or threatened industrial dispute or of a question which might lead to a strike or lockout to notify the Industrial Registrar thereof. During the year 2,221 notifications under this section were lodged with the Registrar, (previous year 2,431), a decrease of 210 on the notifications lodged in the previous year. Attached to this Report as Appendix A is an analysis prepared by the Registrar of the reasons given for the making of the notifications. This shows that in 141 cases a stoppage was involved, (previous year 347).

3. Heads of Tribunals Meeting

During the year the President attended several conferences of the Heads of Tribunals which met under the Chairmanship of Mr Justice Maddern, President of the Australian Industrial Relations Commission. These conferences were of considerable assistance in keeping myself and Members of the Commission abreast of current and likely developments, particularly in relation to centralised wage fixation and wage fixation principles.

4. Notifications under ss.7 & 8 of the Employment Protection Act

Some 164 Notices were lodged under the Employment Protection Act under s.7 of the Act, (previous year 164); a further 582 Notices under s.8 of the Act were also lodged during 1991, as compared to 838 lodged during 1990 under this section.

PART 2: WORKING OF THE INDUSTRIAL ARBITRATION ACT, 1940**1. Registration of Industrial Unions of Employers (s.6)**

There were two registrations in 1991.

2. Industrial Agreements (s.11)

During the year 171 (previous year 207) industrial agreements made pursuant to s.11 of the Act were filed at the office of the Industrial Registrar. Of these, 42 varied existing agreements and 129 were new agreements or replacements of former agreements. (Previous year figures are 56 and 151 respectively).

I note that many of these industrial agreements represent most successful industrial arrangements entered into freely between the parties. The form of administration adopted by the Commission has proved convenient to the signatories and has worked well.

3. Conciliation Commissioners (s.15)

The Conciliation Commissioners in office pursuant to s.15 of the Act during the year were:

Mr Raymond John Patterson, appointed 12 May, 1980. Appointed Acting Senior Conciliation Commissioner 20 December, 1990.

Mr Peter John Connor, appointed 15 May, 1987.

Mr Reginald George Mawbey, appointed 7 July, 1980

Mr James Leslie McMahon, appointed 22 April, 1983.

Mr Brian William O'Neill, appointed 12 November, 1984.

Mr Michael Francis Sheils, appointed 3 February, 1986.

Mr James Neil Redman, appointed 3 February, 1986.

Mr Rodney William Harrison, appointed 6 August, 1987.

Mr Anthony Kevin Buckley, appointed 7 February, 1991.

Mr Paul Bennett Kelly, appointed 7 February, 1991.

Mr Barry William French, appointed 18 February 1991.

Miss Inaam Tabbaa, appointed 25 February 1991.

The Conciliation Commissioners are the chairmen of the conciliation committees; the particulars of the business of the committees appear in Appendix B. In addition to their function and chairmen of conciliation committees, the Conciliation Commissioners engage in conciliation by the compulsory conference process and during the year they presided over 1,859 such conferences. This represented an increase of 120 on the previous year. In my opinion, the Conciliation Commissioners have continued to provide efficient and expeditious assistance towards the resolution of disputes.

Conferences between the Conciliation Commissioners and Members of the Commission was held on three occasions during the year.

4. Conciliation Committees (s.18)

As at 31 December, 1991, there were 439 extant conciliation committees, (previous year figure was 435). During the year the Commission established 10 new committees, dissolved 6 and made 3 alterations to assignments of industries and callings. (Previous year's figures were 6, 6 and 4 respectively.) Appendix B contains particulars of applications made to committees during the year.

**The Honourable Mr Justice W.K. Fisher, A.O.
President**

APPENDIX A

REASONS GIVEN FOR NOTIFICATIONS MADE PURSUANT TO SECTION 25A OF THE INDUSTRIAL ARBITRATION ACT IN YEAR ENDED 31 DECEMBER 1991

IE. ANNUALISED RATES

1.	<u>Terms of Employment:</u>	
	a) Wages	
	i) Claim for increase	17
	ii) Claim for allowances	58
	iii) Claim for award rate	27
	iv) Non payment of wages	74
	v) Other	188
	b) Dismissal	
	i) Unspecified	359
	ii) Neglect of duties/misconduct	44
	iii) Absenteeism	3
	iv) Retrenchment	32
	v) Seeking reinstatement	77
	c) Hours etc.	
	i) Overtime	40
	ii) Alteration to rosters	20
	iii) Hours of work	23
	iv) Sick leave entitlement	7
	d) Physical Working Conditions	
	i) Safety	24
	ii) Amenities	13
	e) Matters of Management Control	
	i) Suspension/Standing down/demotion	54
	ii) Contract labour	18
	iii) Interpretation or breach of award/agreement	304
	iv) Appointments	38
	v) Transfers	44
	vi) Manning	25
2.	<u>Union Matters</u>	
	i) Employment of non-unionists	1
	ii) Demarcation	3
	iii) Sympathy with other unions	-
3.	<u>Miscellaneous</u>	
	i) Other Matters	722
4.	<u>TOTAL</u>	2,221
5.	<u>Notifications indicating stoppages</u>	141

APPENDIX B

APPLICATION TO CONCILIATION COMMITTEES
YEAR ENDED 31 DECEMBER 1991

Description of Matter	Total Matters 1990	Total Matters 1991
1. Applications filed on behalf of:		
a) employees for an order or award (s.20(1))	12	24
b) employers for an order or award (s.20(1))	4	14
c) employees for variations or interpretation of an award (s.20(1))	372	310
d) employers for variations or interpretation of an award (s.20(1))	26	30
e) employees for exemption or variation of an exemption from an award	-	-
f) employers for exemption or variation of an exemption from an award	-	-
2. Applications to approve employment of probationary commercial traveller or salesman	-	-
3. Application pursuant to the Clothing Trades (State) Award.	12	13
4. Miscellaneous	2	2
TOTAL MATTERS	428	393

TABLE A
Business of the Commission in Court Session
Year ended 31 December 1991

Description of Matter	Matters filed in 1991 and allocated or delegated	Matters completed in 1991 (a)	Matters to be completed (b)
1. Appeals from order, award, decision or ruling of a member of the Commission (s.14(8)(b), s.30B(1)(a))	44	30	49
2. Questions of jurisdiction reserved for the consideration of, or directed to be argued before, the Commission in Court Session by a member or referred to it pursuant to s.30C (s.30B(1)(b), s.30C)	1	1	7
3. Matters involving the exercises of any power conferred on the Commission by an act other than the Industrial Arbitration Act or the Apprentices Act, 1969 (s.30B(1)(c))	-	-	-
4. Appeals made pursuant to s.120 of the Industrial Arbitration Act removed by a member to the Commission in Court Session (s.30B(1)(d), s.120)	-	-	2
5. Proceedings instituted pursuant to Part X of the Industrial Arbitration Act (s.30B(1)(e), Part X)	-	-	-
6. Questions as to the cancellation of the registration on an industrial union or association (s.8, s.30B(1)(f), s.91B(4))	-	2	-
7. Appeals from the Industrial Registrar (s.30B(1)(h))	-	-	-
8. Industrial matters referred by the Minister to the Commission in Court Session (s.30B(1)(h))	-	-	3
9. Matters in any proceeding commenced or arising before a member which such member considers ought to be removed to the Commission in Court Session (s.30B(1)(i)):-			
a) Applications for an award or order (s.20, s.30)	16	-	1
b) Applications for variation of an award or order (s.20, s.30)	39	14	19
c) References by Minister (s.35(1)(o))	-	34	29
d) Notifications of question, dispute or difficulty (s.25A)	4	-	-
e) Appeals from order, award or decision of a conciliation committee or a conciliation commissioner (s.24)	-	4	9
f) Applications for commission to exercise powers and functions of a conciliation committee (s.30)	-	1	3
g) References by conciliation commissioner or conciliation committee	5	1	-
h) Summonses by commission on its own initiative (s.31(b))	-	5	5
ha) Applications for an order or award (s.88F)	-	-	-
hb) Applications to determine questions as to demarcation of industrial interests of trade unions or industrial unions (s.36)	-	-	-
i) Applications for inquiry into alleged irregularities in trade union election (ss.111A-111H)	-	-	1
j) Application for order directing that rules of a trade union be altered	-	-	-
k) Applications in Commission's original apprenticeship jurisdiction (Apprentices Act, s.21)	-	-	-
l) Appeals from award, order or decision of apprenticeship committee (Apprentices Act s.24(1))	-	-	-
m) Applications to enforce an agreement for the regulation of any business or industry (s.111)	-	-	-
n) Applications for removal of industrial union from registrar of industrial unions (s.8(9))	-	-	-
o) References by Industrial Registrar (s.58(6))	-	-	-
p) Application for anomalies conference in accordance with State Wage principles	7	-	6
10. Summonses by the Commission on its own initiative (s.57(1))	1	-	2
11. Applications for prescription of ordinary hours other than as prescribed by s.63(1)(a) (s.63(1)(g))	5	12	11
12. References by Industrial Registrar under s.58(6) (s.58(6))	-	-	1
13. Appeals from decision of under secretary (s.76A(7))	-	-	-
14. Appeals from order, award, ruling or decision of Retail Trade Industrial Tribunal under s.38T(2) of the Industrial Arbitration Act, 1940 (s.38T(2))	-	1	-
15. Special Bench, Special Case: any matter or variations of such importance allocated directly to the Full Bench	3	9	7
TOTAL:	125	114	155

Notes: a) Matters completed include matters commenced in 1991 or earlier which during 1991 were: i) finally adjudicated upon; ii) withdrawn; iii) delegated to a single Judge; or iv) removed to the dormant list for non-prosecution.
b) Matters to be completed include matters filed before 1991

TABLE B

Business of the Commission in the Original Jurisdiction - Members Sitting Alone
Year ended 31 December 1991

Description of Matter	Matters filed in 1991 and allocated or delegated	Matters completed in 1991 (a)	Matters to be completed (b)
1. Applications for an award or order (s.20(1), s.30)	52	78	59
a) Application for registration of an Enterprise Agreement or new Contract Determination	7	3	2
2. Application for variation, interpretation or rescission of or exemption from an award (s.20(1), s.30, s.87)	353	431	265
3. Applications for variation or interpretation of an industrial agreement	45	54	21
4. Summonses by Commission on its own initiative to vary or rescind an award (s.31(b))	-	1	-
a) Summonses by Commission on its own initiative (s.57(1))	1	1	-
b) Conference under s.31(a) (s.31(a))	-	-	-
5. References by Minister (s.35(1)(o))	-	-	-
a) Reference by Minister (s.35B(1)(h))	2	4	-
6. Notifications of question, dispute or difficulty (s.25A)	310	396	301
7. Applications to determine questions as to demarcation of industrial interests of trade unions or industrial unions (s.36)	1	10	3
8. Applications to demark callings (s.37)	-	1	-
9. Applications for order or award declaring contract or arrangement void (s.88F)	72	89	125
a) Regulations of Certain Contracts under s.88FA (s.88FA)	-	-	-
10. Matters relating to establishment and membership of conciliation committees or alteration of industries and callings assigned thereto (s.18)	6	10	9
a) Matters relating to establishment and membership of contract regulation tribunals (s. 91)	1	2	-
b) Applications for contract determination re class of contracts of carriage (s.91L)	9	11	1
11. Reports and submissions by Industrial Registrar	108	92	26
a) References by Industrial Registrar (s.11)	-	-	-
12. Applications re entitlement to membership of trade union (s.115)	3	3	1
13. Applications for inquiry into alleged irregularities in trade union election (ss.111A-111H)	-	2	-
14. Applications for leave to prosecute, unlawful dismissal (s.95)	3	5	1
15. Applications for order directing trade union to alter rules (s.115)	2	3	1
16. Summonses to enforce trade union rules (s.111)	1	3	1
a) Application to enforce an agreement for the regulation of any business or industry (s.111)	-	-	-
17. Applications for Commission to exercise powers and functions of conciliation committee, industrial registrar or industrial magistrate.	19	10	14
18. Notices of intention to strike (s.99A)	-	-	-
19. Applications for revocation of exemption (Long Service Leave Act s.5)	-	-	-
20. Applications relating to apprenticeship committees (Apprentices Act s.17)	-	-	-
21. Submission of question by apprenticeship committee (Apprentices Act s.18)	-	-	-
a) Applications in Commission's original apprenticeship jurisdiction (Apprentices Act s.21)	-	-	-
22. References of provision of award or question of law by director of apprenticeship (Apprentices Act s.53)	-	-	-
23. Applications for order for payment of wages (s.92)	-	-	-
24. Applications for removal of industrial unions from the register of industrial unions (s.8(9))	-	-	-
25. Submissions by Industrial Registrar (reg.16)	-	3	2
26. Report of the industrial Registrar pursuant to s.11 of the Employment Protection Act, 1982	32	47	11
27. Applications for an anomalies conference. Principle 6 of the State Wage Case (October, 1983)	-	-	1
28. Prosecution under sections of the Occupational Health and Safety Act, 1983	62	32	62
29. Claims relating to unfair dismissal (s.912c)	1	1	1
TOTAL:	1090	1292	907

Notes: a) Matters completed include matters commenced in 1991 or earlier which during 1991 were: i) finally adjudicated upon; ii) withdrawn; iii) removed to the Commission in Court Session; or iv) referred to a conciliation commissioner under s.26, or v) removed to the dormant list for non-prosecution.
b) Matters to be completed include matters filed before 1991

TABLE C

Business of the Commission in the Appellate or Supervisory Jurisdiction - Members Sitting Alone
Year ended 31 December 1991

Description of Matter	Matters filed in 1991 and allocated or delegated	Matters completed in 1991 (a)	Matters to be completed (b)
1. Appeals from order, award or decision of a Conciliation Committee or a Conciliation Commissioner (s.24(8))	25	27	15
2. References of matter or question by Chairman of a Conciliation Committee (s.77E(d))	18	30	16
3. References of question, dispute or difficulty by a Conciliation Commissioner or a Conciliation Committee (s.25(4))	36	31	24
4. Appeals from a decision of a special commissioner (s.17A(4))	-	-	-
5. Appeals from order, award or determination of an apprenticeship committee (Apprentices Act, 1969, s.24)	-	-	-
6. Appeals from order of an industrial or other magistrate:	12	10	5
i) Annual Holidays Act			
ii) Bread Industry Act			
iii) Consumer Protection Act			
iv) Factories, Shops and Industries Act			
v) Industrial Arbitration Act			
vi) Long Service Leave Act			
vii) Motor Dealers Act			
viii) Construction Safety Act			
ix) Occupational Health and Safety Act			
7. Appeals from district court (s.92(3))	-	2	-
8. Appeals from Industrial Registrar (s.129B(2)(e))	-	-	-
9. Submissions by Apprenticeship Committee (s.18(10) Apprentices Act, 1969)	-	-	-
10. Appeals from decision of Under Secretary (s.76A(7) Factories, Ships and Industries Act, 1962)	15	25	15
11. Appeals from Superannuation decision (Part III Division 8)	1	1	-
12. Appeal against a decision of a Member of the Commission for settlement or withdrawal			
TOTAL:	107	126	75

Notes: a) Matters completed include matters commenced in 1991 or earlier which during 1991 were: i) finally adjudicated upon; ii) withdrawn; iii) removed to the Commission in Court Session; or iv) referred to a conciliation commissioner under s.26, or v) removed to the dormant list for non-prosecution.
b) Matters to be completed include matters filed before 1991

TABLE A

Business of the Commission in Court Session
Year Ended 31 December 1991

<i>Description of matter</i>	<i>New matters filed</i>	<i>Matters completed</i>	<i>Matters to be completed</i>
A1	44	30	49
A2	1	1	7
A3	-	-	-
A4	-	-	2
A5	-	-	-
A6	-	2	-
A7	-	-	-
A8	-	-	3
A9	-	-	1
A9A	16	14	19
A9B	39	34	29
A9C	-	-	-
A9D	4	4	9
A9E	-	1	3
A9F	-	1	-
A9G	5	5	5
A9H	-	-	-
A9HA	-	-	-
A9HB	-	-	1
A9I	-	-	-
A9J	-	-	-
A9K	-	-	-
A9L	-	-	-
A9M	-	-	-
A9N	-	-	-

<i>A9O</i>	-	-	-
<i>A9P</i>	7	-	6
<i>A10</i>	1	-	2
<i>A11</i>	5	12	11
<i>A12</i>	-	-	1
<i>A13</i>	-	-	-
<i>A14</i>	-	1	-
<i>A15</i>	3	9	7
<i>TOTAL</i>	125	114	155
<i>1990 Total</i>	95	106	92

TABLE B

Business of the Commission in the Original Jurisdiction - Members Sitting Alone
Year Ended 31 December 1991

<i>Description of matter</i>	<i>New matters filed</i>	<i>Matters completed</i>	<i>Matters to be completed</i>
B1	52	78	59
B1A	7	3	2
B2	353	431	301
B3	45	54	21
B4	-	1	-
B4A	1	1	-
B4B	-	-	-
B5	-	-	-
B5A	2	4	-
B6	310	396	301
B7	1	10	3
B8	-	1	-
B9	72	89	125
B9A	-	-	-
B10	6	10	9
B10A	1	2	-
B10B	9	11	1
B11	108	92	26
B11A	-	-	-
B12	3	3	1
B13	-	2	-
B14	3	5	1
B15	2	3	1
B16	1	3	1
B16A	-	-	-

B17	19	10	14
B18	-	-	-
B19	-	-	-
B20	-	-	-
B21	-	-	-
B21A	-	-	-
B22	-	-	-
B23	-	-	-
B24	-	-	-
B25	-	3	2
B26	32	47	11
B27	-	-	1
B28	62	32	62
B29	1	1	1
TOTAL	1090	1292	907
1990 Total	1300	977	853

TABLE C

*Business of the Commission in the Appellate or Supervisory Jurisdiction - Members Sitting Alone
Year Ended 31 December 1991*

<i>Description of matter</i>	<i>New matters filed</i>	<i>Matters completed</i>	<i>Matters to be completed</i>
C1	25	27	15
C2	18	30	16
C3	36	31	24
C4	-	-	-
C5	-	-	-
C6	12	10	5
C7	-	-	-
C8	-	2	-
C9	-	-	-
C10	-	-	-
C11	15	25	15
C12	1	1	-
TOTAL	107	126	75
1990 Total	101	97	83