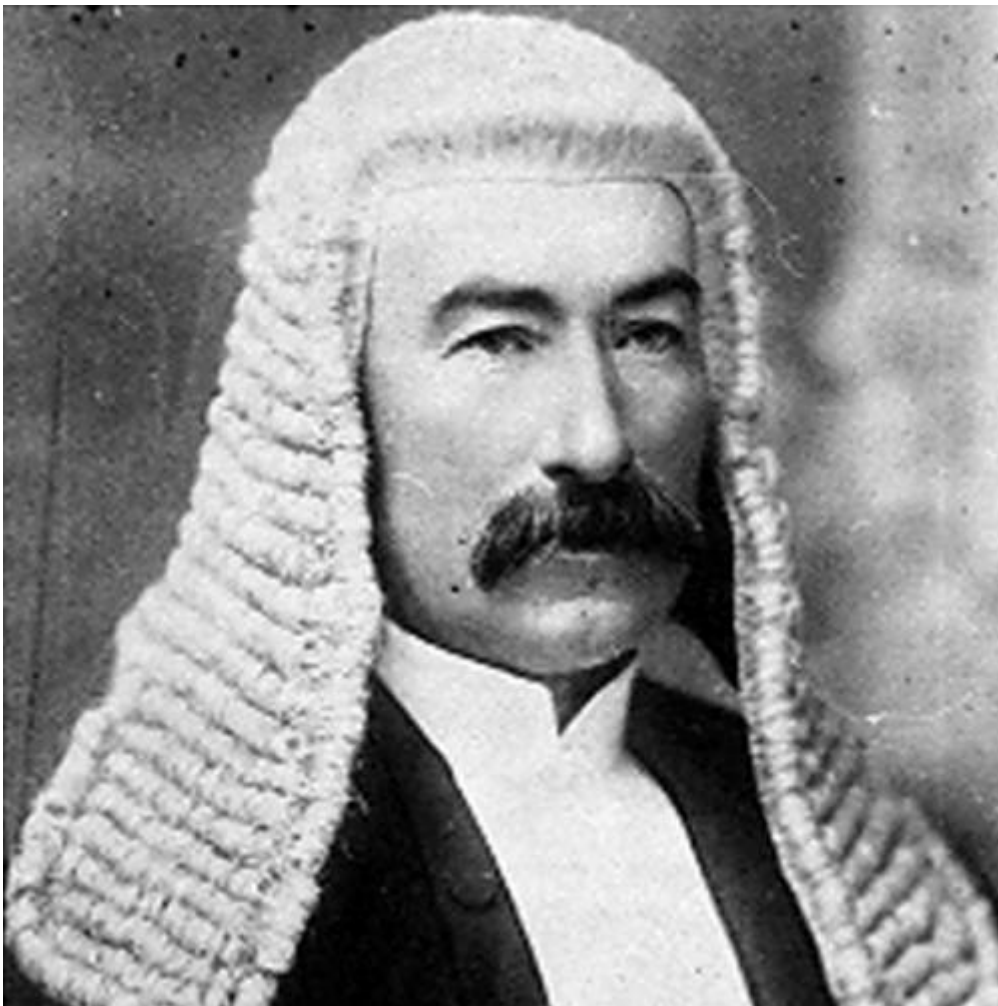


The Industrial Relations Commission

of

New South Wales

Annual Report



Year Ended 31 December 2012

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Cover: *The Honourable Justice Henry Bournes Higgins (1851-1929)*

President of the Commonwealth Court of Conciliation and Arbitration 1907 to 1921. He handed down the *Harvester Decision*, which established 7 shillings a day for an unskilled labourer as a fair and reasonable wage. It became the basis of the Australian minimum wage.

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



Industrial Relations Commission of New South Wales

50 Phillip Street Sydney

CONFIDENTIAL

The Honourable Mr Mike Baird, MP
Minister for Industrial Relations
Level 36, Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

8 July 2013

Dear Minister,

I have the honour of furnishing to you for presentation to Parliament the Seventeenth Annual Report of the Industrial Relations Commission of New South Wales made pursuant to section 161 of the *Industrial Relations Act 1996* in respect of the year ended 31 December 2012.

Yours sincerely,

(The Honourable Justice) R P Boland
President



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of

New South Wales

Annual Report

Year Ended 31 December 2012

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INTRODUCTION



The Seventeenth Annual Report of the Industrial Relations Commission of New South Wales is presented to the Minister pursuant to section 161 of the *Industrial Relations Act* 1996.

The Commission operates at two distinct levels. As an industrial tribunal the Commission seeks to ensure that industrial disputes arising between parties in this State are resolved quickly, in a fair manner and with the minimum of legal technicality. As a superior Court within the New South Wales justice system, the Industrial Court interprets and applies the law with regard to matters, both criminal and civil, filed and the rules of evidence and other formal procedures apply.

I wish to note, with appreciation, the work of five former members of the Commission, their Honours Justices Frank Marks and Tricia Kavanagh, Deputy President Peter Sams and Commissioners Donna McKenna and David Ritchie.

Justice Frank Marks, who was appointed to this Commission on 15 February 1993, retired with effect on 30 June 2012. A formal farewell ceremony was held for him on 6 July 2012 and I noted:

"The Commission has lost a fine industrial practitioner and judge of superior court rank who has applied his considerable judicial, arbitral and conciliation skills across the wide variety of matters that have come before him over the past 19 years.

Before his elevation to the Bench, Frank Marks was a highly regarded solicitor specialising in the fields of industrial relations, workers compensation, insurance law and occupational health and safety, an author and university lecturer and one of those rare solicitors who was also an advocate, making good use of that rich, bass voice honed through years of singing in barber shop quartets. Perhaps in his retirement Frank and the Attorney could stage a gig together.

Frank had a somewhat eclectic practice and his clients included unions, employers and governments. Frank appeared in dramatically different forums, ranging from the High Court to the Australian Industrial Relations Commission in national wage cases. His contemporaries included the Honourable Michael Kirby, both of them having served together as articled clerks with M A Simon and Co.

Frank Marks was appointed as a Deputy President of the Industrial Relations Commission and a judge of the Industrial Court on 15 February 1993. That was quite a different era. The Commission operated under the 1991 *Industrial Relations Act*, an Act of the Greiner Government, Bill Fisher was the President and there were 23 members of the Commission - 11 judges and 12 Commissioners. Except for the fact Justice Monika Schmidt transferred

to the Supreme Court in 2009, Frank Marks is the last of the judges of that era but not the last of the members.

...

In 1996, the Carr Government introduced the *Industrial Relations Act* of that year. Frank Marks continued under that legislative regime as a Presidential Member and judge until his retirement last Friday. In that time Frank has served with two other Presidents, the Honourable Lance Wright and since 2008, with myself.

In addition to his work on the Commission and the Industrial Court, Frank was an integral part of the management of the business of the Commission through his roles as a Panel Head and, importantly, through his case management of the once busy unfair contracts list for many years. More recently, in addition to his work with the Commission, Frank also chaired proceedings before the Medical Tribunal.

Frank has conciliated and arbitrated countless disputes in his time at the Commission. Notably, in the highly charged area of correctional services, he used his expertise and vast knowledge of the prison system to ensure that disputes were resolved quickly and fairly with the minimum of disruption. He had also been heavily involved in the transport area for many years; his work and decision in connection with the Cash-in-Transit industry was a most significant contribution.

As a judicial member, Frank Marks dealt, many times over, with the full gamut of matters that come before the Court and has been a valued member of numerous Full Benches. He has had to deal with complex jurisdictional questions that arose, particularly in the unfair contract and occupational health and safety areas of the Court's work. Frank developed, in his time with the Court, a first-rate reputation as a judicial officer: learned, fair, courteous, forthright and fiercely independent. The high principle "without fear or favour" is entirely apt where Frank Marks is concerned.

An area where his Honour particularly excelled and where his skills proved so valuable was in conciliation. As Michael Kirby once described Frank, he is a patient and diligent man, attributes so important to a conciliator. Frank had an uncanny ability to identify the real issues in dispute and to communicate with disputants and litigants at all levels so that they understood clearly the pros and cons of their respective positions and the choices they had in settling their differences or proceeding to litigation. More often than not matters settled.

...

I wish to thank the Honourable Frank Marks for his support and loyalty during my term as President and for his good humour and willingness to undertake any and all work that was allocated to him and more.

Frank Marks has made a significant contribution to the work of the Court and the Commission and he will be missed. On behalf of my colleagues I thank him for his dedicated service and friendship and sincerely wish he and his lovely wife Rose all that is good, interesting and rewarding in the years ahead."¹

Justice Tricia Kavanagh, who was appointed to the Commission on 26 June 1998, retired with effect on 28 June 2012, after 14 years as a Deputy President and judicial member of the Commission. In my tribute to her Honour at an informal function to mark her retirement I noted:

¹ A copy of the various speeches can be found on the Commission's [website](#)

"...the Commission is losing a person of independent mind and strong opinion but also a person of great personal courage and fortitude, of good humour, of a kind and generous heart and someone I have found dependable to a fault."

I went on to say:

"Her Honour's appointment to the Bench was the culmination of a string of achievements throughout her working life. First as a teacher, then as an industrial advocate for the Australian Workers Union, Childcare Commissioner under the Whitlam Labor Government, first law graduate from UTS graduating with honours and a doctorate, the Bar, an arbitrator on a number of national and international sports dispute tribunals, a governor of Notre Dame University and, on top of all that her Honour found time to raise two sons of whom she is rightly proud."

Deputy President Peter Sams was appointed to the Commission on 14 August 1998. On 1 January 2010 the Deputy President took up a dual appointment with Fair Work Australia and commenced working full time for that organisation from that date. On 29 March 2012 the Deputy President resigned his NSW Commission and took up a principal appointment with Fair Work Australia. I acknowledge the dedication of the Deputy President in the discharge of his role with this Commission in the nearly 12 years he served. The Deputy President exercised his skills and expertise to successfully resolve industrial disputes across New South Wales, particularly in the Broken Hill area where he will be remembered with a certain amount of fondness. The Deputy President was a regional panel head for many years and had major responsibility in the important transport areas of buses and ferries.

Commissioner Donna McKenna was appointed to the Commission on 16 April 1992. On 1 January 2010 the Commissioner took up a dual appointment with Fair Work Australia and commenced working full time for that organisation from that date. On 29 March 2012 the Commissioner resigned her NSW Commission and took up a principal appointment with Fair Work Australia. Like the Honourable Frank Marks, the Commissioner too was appointed in a different era and worked tirelessly in the discharge of her duties which took her across the State for nearly 20 years. Commissioner McKenna is renowned for her strict adherence to the principles of fairness and served well the citizens of New South Wales.

Commissioner David Ritchie was appointed to the Commission on 6 September 2002 and retired on 5 October 2012 having reached the statutory retirement age. At an informal function held by the Commission to farewell David, I said:

David came from the background of a senior position with the Retail Traders Association of NSW, an employer organisation in the retail industry that unfortunately no longer exists because it was quite an influential and moderating force in industrial relations in the retail sector in the 30 odd years I was with the MTIA. David's easy going, companionable nature saw him immediately fit in with the Commission and its Members.

David, of course, knew his way around the Commission because of his close involvement in retail sector awards and he often appeared before those who were to become his colleagues on the Bench. Nevertheless, like myself, I think it came as something of a challenge to find himself on the other side of the Bar Table with the heavy responsibility to do what was right and fair between the parties regardless of who they might be. But, his long experience in industrial relations and the people skills he accumulated in that role served him very well indeed for the job of conciliator and arbitrator.

Commissioner Ritchie, in my estimation, did an outstanding job in his decade with the Commission. He had to deal with the full spectrum of advocates, from very experienced senior counsel to self-represented litigants who would not take no - or even yes - for an answer. He was often confronted with difficult legal and factual issues requiring arbitration, but more often that not he was able to settle matters using his formidable conciliation skills, which of course is the Commission's bread and butter. He did it all with good grace, efficiently and fairly.

I am certainly pleased and grateful to have had David as a colleague and I am sure the other members of the Commission feel the same way

On behalf of the Members and staff of this Commission, I wish all of them the very best for the future.



The Hon Justice Frank Marks



The Hon Justice Tricia Kavanagh



Deputy President Sams AM



Commissioner Donna McKenna



Commissioner David Ritchie

I also acknowledge the departure of a significant number of registry staff at the end of 2012. Combined, these eleven staff had over 220 years of corporate knowledge, the majority gained at the Commission. Lin Schipp, Antoinette Sakr, Greg Kirkby, Jenny Smith, Mark Heaton, Audrey Blackstock, Yvette Roychoudry, Arthur Torossian, Cathey Mounce-Stephens, Sarah Plaskitt and Lisa Parkee accepted voluntary redundancy and left on 20 December 2012. It seems an inevitable result of downsizing the public sector that those with the most experience and the greatest capacity to improve efficiency are amongst the first to depart. On behalf of the Commission, I wish them all the very best for the future.

During the year, the workload of the Industrial Court commenced to decline as a direct result of the Government's decision to transfer criminal prosecutions to other Courts. As I have noted previously, I readily accept that policy is a matter for the government of the day, however, the ramifications of any policy change is also a matter for which the government of the day must take responsibility.

As a consequence of this change best estimates indicate that the pending workload of the Court will halve by the middle of 2013 and continue to decline to negligible levels by the end of 2013 or the first quarter of 2014. That will result in judges at superior court level being seriously under-utilised.

Notwithstanding this, there were no proposals forthcoming from the government as to how it intended to ensure the judges of the Court were fully utilised. Consequently, throughout the course of the year I met with the Attorney General, who has portfolio responsibility for the Industrial Court and, since September 2012, with the Treasurer and Minister for Industrial Relations, who has responsibility for the remainder of the *Industrial Relations Act*. Those discussions, as in previous years, related to proposals by me for the transfer of suitable work to the institution and the consolidation of various functions under the Commission's umbrella to the benefit of the citizens of the State. None of those discussions proved fruitful. I refer to these matters further in the conclusion to this Report.

I note with appreciation the work of the staff in the Registry who have greatly assisted the Members of the Commission in meeting the demands made during the year. Their dedication is greatly appreciated by the Commission.

I would also take this opportunity to thank Ms Lisa Thomas, my Principal Associate together with Ms Monique Brady and Ms Lydia D'Souza, who job-share the position of second Associate, for the skill and professionalism with which they dealt with matters passing through my Chambers. I also commend the work of my Tipstaff, Mr John Maloney, who provides invaluable assistance.

I also express my thanks to Louise de Plater who carried out research duties for myself and the Vice President during the year and note the thoroughness and consistency of her approach in the discharge of the duties of the position.

During the year every effort was made to ensure that the Commission remained focussed and continued to meet the objectives of the *Industrial Relations Act*, particularly in making sure that the Commission's processes are timely and effective. Specific reference is made to those matters elsewhere in this report.

I acknowledge the dedication and commitment of the Members of the Commission in their approach to the duties and responsibilities under the Act.

WHAT WE DO²

The Industrial Relations Commission of New South Wales is the industrial tribunal and Industrial Court for the State of New South Wales. The Industrial Relations Commission is constituted as a superior court of record as the Industrial Court. It has jurisdiction to hear proceedings arising under various industrial and related legislation.

The Commission is established by and operates under the *Industrial Relations Act 1996*. 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.

Broadly, the Commission (other than when sitting as the Industrial Court) 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;

² For a brief history of the Commission see Appendix 9

- 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 *Child Protection (Prohibited Employment) Act 1998*;
- various proceedings relating to disciplinary and similar actions under the *Police Act 1990*
- various proceedings relating to promotional and disciplinary actions under the *Industrial Relations Act 1996* (Chapter 2, Part 7) and the *Transport Appeal Boards Act 1980*.

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

The Full Bench of the Commission has appellate jurisdiction in relation to decisions of single members of the Commission and the Industrial Registrar. The Full Bench of the Industrial Court has jurisdiction in relation to decisions of single judges of the Court, industrial magistrates and certain other bodies. The Full Bench of the Industrial Court is constituted by at least three judicial members.

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

- proceedings for an offence which may be taken before the Court (including proceedings for contempt). The major area of jurisdiction exercised in this area relates to residual breaches of the *Occupational Health and Safety Act 2000* commenced in the Court prior to 1 January 2012;
- proceedings for declarations of right under s 154;
- proceedings for unfair contract (Part 9 of Chapter 2);

- proceedings under s 139 for contravention of dispute orders;
- proceedings under Parts 3, 4 and 5 of Chapter 5 – Registration and regulation of industrial organisations;
- proceedings for breach of an industrial instrument;
- proceedings for the recovery of money payable under an industrial instrument other than small claims under s 380 (which are dealt with by the Chief Industrial Magistrate or an Industrial Magistrate);
- superannuation appeals under s 40 or s 88 of the *Superannuation Administration Act 1996*;
- proceedings on appeal from a Member of the Commission exercising the functions of the Industrial Court; and
- proceedings on appeal from an Industrial Magistrate or any other court
- proceedings on appeal from a decision of a Member of the Commission exercising functions under Chapter 2, Part 7 of the *Industrial Relations Act 1996* or from a Board Member exercising functions under the *Transport Appeal Boards Act 1980*, restricted to a point or points of law.

MEMBERSHIP OF THE COMMISSION

JUDGES AND PRESIDENTIAL MEMBERS

The Judicial and Presidential Members of the Commission during the year were:

President

The Honourable Justice Roger Patrick Boland, appointed President 9 April 2008; and as judicial member and Deputy President, 22 March 2000.

Vice-President

The Honourable Justice Michael John Walton, appointed 18 December 1998.

Presidential Members

The Honourable Justice Francis Marks, appointed 15 February 1993; retired 30 June 2012;

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

The Honourable Justice Tricia Marie Kavanagh, appointed 26 June 1998; retired 28 June 2012;

Deputy President Peter John Andrew Sams AM, appointed 14 August 1998; resigned 29 March 2012;

The Honourable Justice Wayne Roger Haylen, appointed 27 July 2001;

The Honourable Justice Conrad Gerard Staff, appointed 3 February 2004;

The Honourable Justice Anna Frances Backman, appointed 19 August 2004.

COMMISSIONERS

The Commissioners holding office pursuant to the *Industrial Relations Act 1996* during the year were:

Commissioner Inaam Tabbaa AM, appointed 25 February 1991;

Commissioner Donna Sarah McKenna, appointed 16 April 1992; resigned 29 March 2012;

Commissioner Elizabeth Ann Rosemary Bishop, appointed 9 April 1997;

Commissioner Alastair William Macdonald, appointed 4 February 2002;

Commissioner David Wallace Ritchie, appointed 6 September 2002; retired 5 October 2012;

Commissioner John David Stanton, appointed 23 May 2005.

INDUSTRIAL REGISTRAR

The Industrial Registrar is responsible to the President of the Commission in relation to the work of the Industrial Registry and, in relation to functions under the *Public Sector Employment and Management Act 2002*, to the Director General of the Department of Attorney General and Justice.

Mr George Michael Grimson held office as Industrial Registrar and Principal Courts Administrator of the Industrial Relations Commission from 26 August 2002 to 12 December 2008. He was reappointed as Industrial Registrar from 2 February 2009.

DUAL APPOINTMENTS

The following Members of the Commission also held dual appointments as members of the federal tribunal - *Fair Work Australia*:

Deputy President Rodney William Harrison;

Deputy President Peter John Andrew Sams AM (until 29 March 2012);

Commissioner Donna Sarah McKenna (until 29 March 2012);

Commissioner Alastair William Macdonald; and

Commissioner John David Stanton³.

ANCILLARY APPOINTMENTS

The Honourable Justice Wayne Roger Haylen has held an appointment as Deputy President of the Administrative Decisions Tribunal and as Divisional Head of the Legal Services Division of that Tribunal since 9 June 2008.

The Honourable Justice Conrad Gerard Staff has constituted the Parliamentary Remuneration Tribunal since 28 August 2008.

The Honourable Justices Francis Marks, Tricia Marie Kavanagh, Conrad Gerard Staff and Anna Frances Backman hold appointments as Deputy Chairpersons of the Medical

Sams DP and McKenna C worked full-time at *Fair Work Australia* premises at 80 William Street SYDNEY.

Tribunal of New South Wales. Their Honours, Staff and Backman JJ since 24 September 2008. Their Honours, Marks and Kavanagh JJ since 7 March 2011 up to their retirements in June 2012.

HOW THE COMMISSION OPERATES

The President is responsible for the arrangement of the business of the Commission (section 159) and there are a number of delegations in place that assist in the allocation of work to Members and are designed to ensure the speedy and effective resolution of issues brought before the Commission:

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. Consequent upon the transfer of the jurisdiction of the former *Government and Related Employees Appeals Tribunal* and an alteration to the manner in which *Transport Appeal Boards* are constituted, two new panels were created with effect from 1 July 2010. With the resignations and retirements during 2012 a further rationalisation was undertaken. Five panels are now in operation, each comprising a mix of Presidential Members and Commissioners. Each panel is chaired by a Presidential Member of the Commission who allocates or oversees the allocation of matters to the members of the panel. The panels deal with applications for awards or variations to awards, applications for the approval of enterprise agreements and dispute notifications arising in relevant industries together with disciplinary and promotional appeals brought by public sector employees (both general public sector and transport public sector employees).

One panel now deals with metropolitan (or Sydney-based) matters (down from four in 2007), two panels specifically deal with applications from regional areas (down from three) and two panels deal specifically with promotional and disciplinary appeals. The panel dealing with applications in the north of the State (including the Hunter region) is chaired by Deputy President Harrison. The panel dealing with applications from the southern areas of the State (including applications from the Illawarra-South Coast region) is chaired by the Vice-President.

The membership of the Panels at the end of the year is set out at Appendix 1.

REGIONAL AND COUNTRY SITTINGS

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

The policy of the Commission in relation to unfair dismissal applications (s 84) and rural and regional industries is to sit in the country centre at or near where the events have occurred. The Commission's assessment is that it has a beneficial and moderating effect on parties to the industrial disputation and other proceedings who can often attend the proceedings and then better understand decisions or recommendations made.

There were a total of 232 (373)⁴ sitting days in a wide range of country courts and other country locations during 2012. There are two regional Members based permanently in Newcastle - Deputy President Harrison and Commissioner Stanton. The Commission sat in Newcastle for 147 (155) sitting days during 2012 and dealt with a wide range of industrial matters in Newcastle and the Hunter district.

The regional Member for the Illawarra - South Coast region, the Honourable Justice Walton, Vice-President and other Members sit regularly in Wollongong and environs. There were a total of 46 (158) sitting days in Wollongong during 2012.

The Commission convened in over 16 other regional locations in 2012 including Albury, Bathurst, Broken Hill, Dubbo, Lismore and Tamworth.

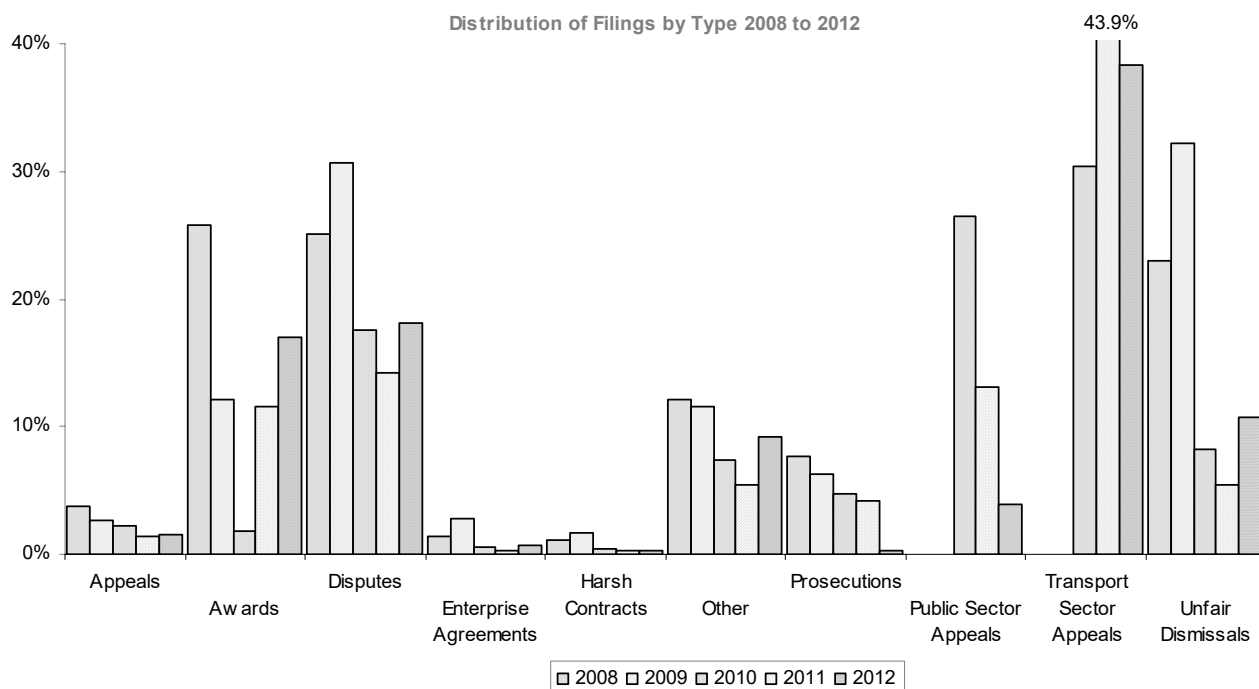
⁴ Numbers in brackets are figures from 2011

MAJOR JURISDICTIONAL AREAS OF THE COURT AND THE COMMISSION

THE CHANGING NATURE OF OUR WORK

With the introduction of the *Work Choices* legislation⁵ in March 2006 the nature of the work undertaken by the Commission and the Court commenced to change. As will be seen from previous *Annual Reports*, there was a significant decrease in what had been until then the Commission's largest jurisdictional area, unfair dismissals, together with a marked fall in the unfair contract areas, in the period 2005-2006. Unfair dismissal work steadily increased from a low in 2007. However, this work fell away as a consequence of the transfer to the federal jurisdiction of the balance of the private sector from 1 January 2010. A significant area of the Commission's work now arises from appeals brought against disciplinary and promotional decisions by public sector (including transport public sector) employees.

FIGURE A



⁵ *Workplace Relations Amendment (Work Choices) Act 2005 (Cth)*

UNFAIR DISMISSALS

The Act provides that each matter is initially dealt with by listing for conciliation conference (s 86) with a view to reaching an early settlement between the parties. Where the conciliation is unsuccessful, the matter proceeds to an arbitrated hearing.

The graphs following show matters filed and disposed of in the past five years (Figure B); the method of disposal in this reporting period (Figure C); and median listing times (Figure D).

FIGURE B

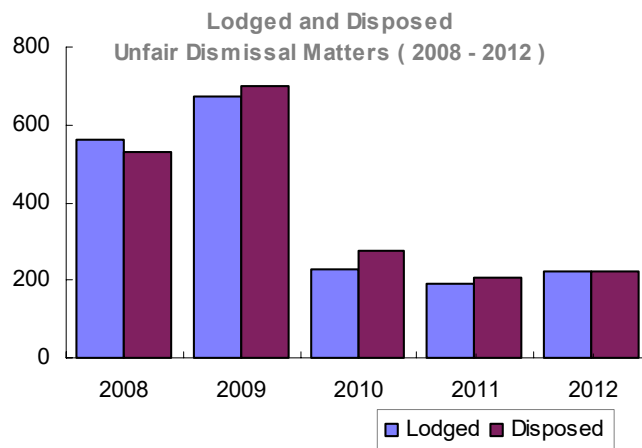


FIGURE C

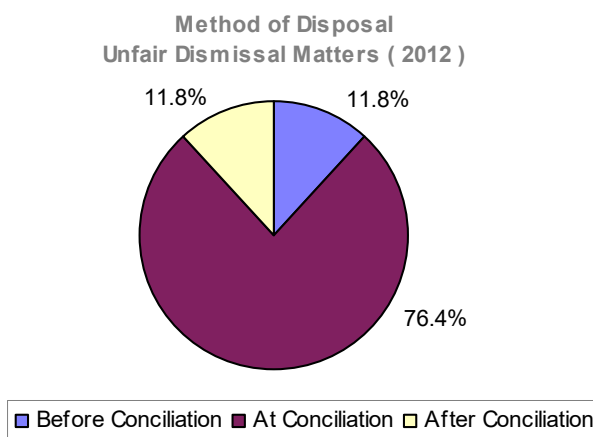
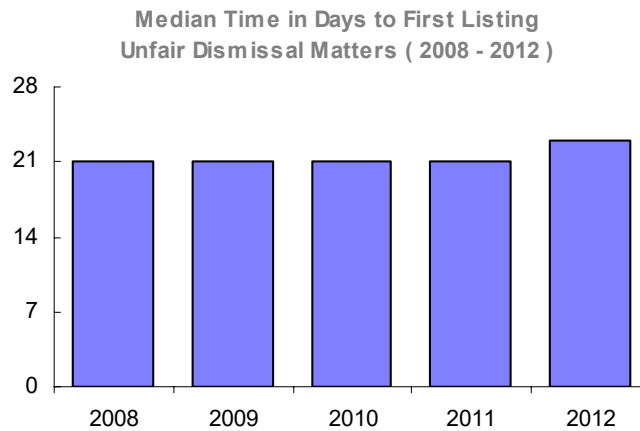
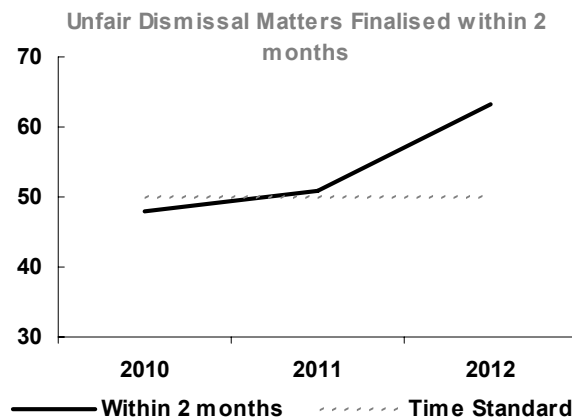


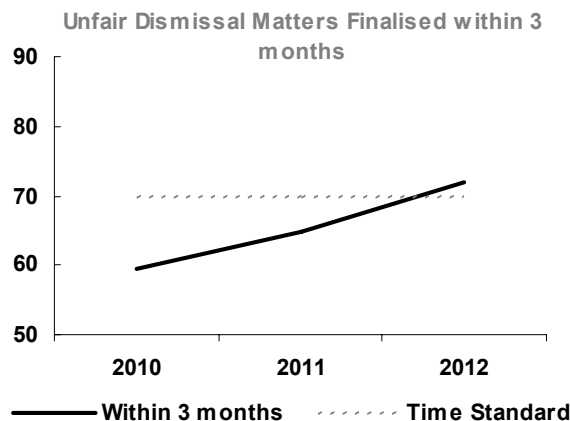
FIGURE D



The time to final disposal of these types of matters reduced in 2010. In that year, the time was impacted due to a number of factors including, the decrease in available members and statistically by the proportion of the previous year's pending matters disposed over the reduced filings since 2010. In 2011 and again this year the time has shown significant improvement, and is now meeting both the two and three month clearance standards (see graphs in Figure E).

FIGURE E





INDUSTRIAL DISPUTES

The procedure for dealing with industrial disputes is set out in Chapter 3 of the *Industrial Relations Act 1996*. The allocation of disputes is dealt with under the Industry Panel system referred to earlier in this report. The nature of this area of the Commission's jurisdiction often requires that the matters be listed at short notice and the Commission sits outside normal working hours where necessary. Wide powers are granted to the Commission in respect of dealing with industrial disputes, with the statutory and practical focus on resolving such matters by conciliation.

"Industrial dispute" is a broadly defined term linked, as it is, to the definition of "industrial matter" in s 6 of the *Industrial Relations Act* and this area of the Commission's jurisdiction remains significant.

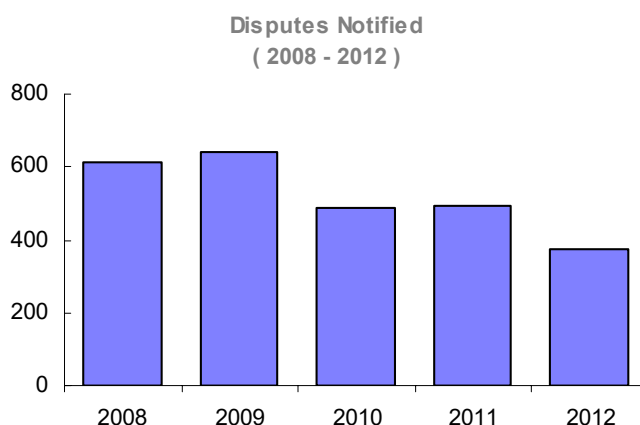
The *Industrial Relations Act* was amended in 2009 to repeal s 146A, which provided that the Commission may assist parties who wished to refer disputes to the Commission where there is an agreement between the parties for this to occur. This was consequent upon the transfer of the balance of the private sector from the State system to the federal system.

However, at the same time s 146B was amended to ensure that parties who had previously agreed could continue to nominate members of the Commission to perform dispute resolution services.

Members of the Commission have extensive experience in the wide range of alternative dispute resolution practices. Over many years the members have developed the skills

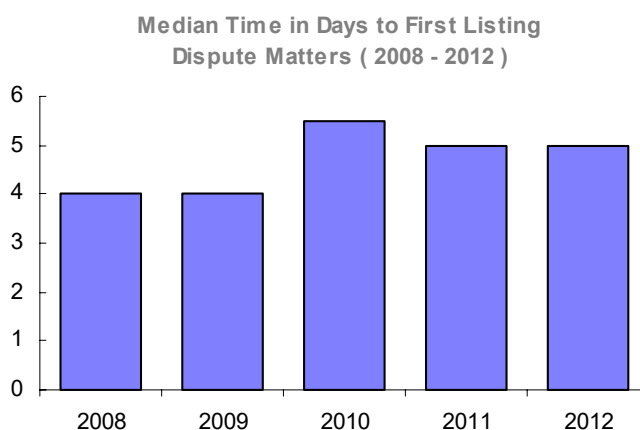
necessary to help employers and employees resolve their differences drawing, as they do, on both their industrial and legal knowledge. Widely recognised as an 'independent umpire' that can achieve a fair and reasonable result, the Commission has always indicated a preparedness to move quickly to determine any application brought under this or any other provision of the Act. The graph below shows disputes filed in the last five years:

FIGURE F



The Commission responds in a timely way when an industrial dispute is lodged. The time frame is highlighted by Figure G⁶ below, which shows the median times from lodgement to first listing.

FIGURE G



⁵ The listing of a dispute is often influenced by indications by the notifier of availability of parties to attend a compulsory conference.

DETERMINATION OF AWARDS AND APPROVAL OF ENTERPRISE AGREEMENTS

One of the important objects of the *Industrial Relations Act* 1996 is to facilitate the appropriate regulation of employment through awards, enterprise agreements and other industrial instruments.

The Commission is given power to:

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

AWARD REVIEW

The last triennial Award Review process was effectively completed during 2008. As part of the process leading to the next Award Review in 2011 and having regard to the *Industrial Relations Amendment (Non-operative Awards) Act* 2010 the Commission took submissions from various parties involved in the *State Wage Case* 2010 and conducted further hearings in 2011. Arising out of those processes the Commission made certain Orders and the Registry commenced action late in 2011 to list Awards falling for review for determination in the early part of 2012. That process was completed during 2012.

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

Figure H provides details of filings in the award and enterprise agreement areas in the last five years.

FIGURE H

Awards and Enterprise Agreements	2008	2009	2010	2011	2012
Awards					
<i>Application to make award</i>	64	34	13	31	56
<i>Application to vary award</i>	252	216	37	61	55
Enterprise Agreements					
<i>Application enterprise agreement</i>	35	57	16	10	13
<i>Terminated enterprise agreement</i>	12	30	4	4	9
Review of Awards					
<i>Notice of Review issued</i>	308	0	0	306	236
<i>Awards reviewed</i>	374	47	5	1	217
<i>Awards rescinded</i>	12	3	0	0	18
<i>Awards determined to have effect as enterprise agreements</i>	169	3	0	6	0
<i>Declaration of Non-operative awards</i>	n/a	n/a	n/a	299	0

STATE WAGE CASE

The 2010 State Wage Case decision was the first made following the referral of power to legislate over the industrial conditions of the private sector to the Commonwealth.

As part of their submissions Unions NSW proposed new Wage Fixing principles. These were considered necessary in light of recent national industrial legislative changes. The Minister, the Director of Public Employment, the Local Government and Shires Association, and the Australian Federation of Employers and Industry on the basis of historical significance/development, opposed such proposal.

The Full Bench stated that new principles were necessary in light of the contemporary industrial relations context. The Full Bench proposed new principles drawing on the submissions of each of the parties and stood the matter over to a date early in 2011 to hear parties' replies to each of the proposals.

On 25 March 2011 the Commission in *State Wage Case 2010 (No 2)* [2011] NSWIRComm 29; (2011) 206 IR 218 pursuant to section 51(1) of the *Industrial Relations Act 1996* fixed new principles noting:

These principles have been developed to accommodate the changing nature of the jurisdiction of the Industrial Relations Commission of New South Wales under the *Industrial Relations Act 1996* ("the Act") in light of the creation of a national system of private sector employment regulation, relevantly established by the *Industrial Relations (Commonwealth*

Powers) Act 2009, the Industrial Relations Amendment (Consequential Provisions) Act 2010, the Fair Work Act 2009 (Cth) and the Fair Work (State Referral and Consequential and Other Amendments) Act 2009 (Cth).

On 3 June 2011 the federal tribunal, *Fair Work Australia*, issued a decision with the effect of increasing all modern award minimum wages by \$19.40 per week with a National Minimum Wage of \$589.30 per week.

On 1 June 2012 the federal tribunal, *Fair Work Australia*, issued a decision with the effect of increasing all modern award minimum wages by 2.9% per week with a National Minimum Wage of \$606.40 per week.

On 7 December 2012 pursuant to the provisions of Part 3 of the *Industrial Relations Act* and Clause 4 of the Wage Fixing Principles mentioned above, the Commission caused to issue Summonses to Show Cause why it should not act on the *Annual Wage Review* decisions⁷ of the *Minimum Wage Panel*. Those matters will be determined in 2013.

UNFAIR CONTRACTS

Under s 106 of the *Industrial Relations Act* 1996 the Court is granted power to declare contracts, whereby a person performs work in any industry, either wholly or partly void, or to vary any such contract, if satisfied that the contract is unfair. As with the unfair dismissal jurisdiction, the introduction of the *Work Choices* legislation in 2006 significantly impacted on filings with the Commission in this area with filings falling by 75%. Figure I shows that trend continues with this area in 2012 providing negligible workload:

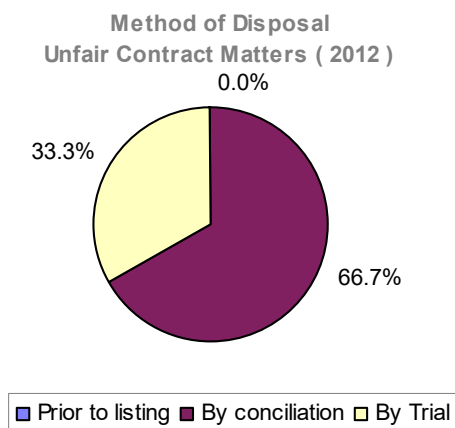
FIGURE I

Unfair Contracts	2008	2009	2010	2011	2012
Filings	27	35	13	12	6

The graph below shows the breakdown in the method of disposal.

⁷ *Annual Wage Review 2010-11* [2011] FWAFB 3400; *Annual Wage Review 2011-12* [2012] FWAFB 5000

FIGURE J



OCCUPATIONAL HEALTH AND SAFETY PROCEEDINGS

The *Occupational Health and Safety Act 2000* and the *Occupational Health and Safety Regulation 2001* had, as their primary focus, workplace safety. That legislation has been repealed and replaced with the *Work Health and Safety Act 2011* and the *Work Health and Safety Regulation 2011* with effect from 1 January 2012. While this legislation has the same focus, it significantly curtailed the Court's jurisdiction. The Court retained jurisdiction to deal with matters filed before the 31 December 2011 under the OHS legislation to finality.

The majority of proceedings that remain for determination before the Industrial Court have been initiated by the WorkCover Authority of New South Wales. As a matter of policy, WorkCover prosecutions relating to workplace fatalities and incidents involving serious injury are instituted in the Industrial Court rather than in the Chief Industrial Magistrate's Court.

In 2012 this remained a significant area of the Commission's workload given the complexity and seriousness of the matters that fall for determination.

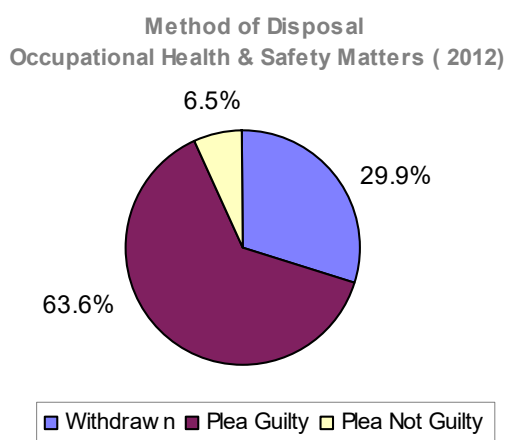
The figure below shows the impact of the legislative change on filings:

FIGURE K

Occupational Health and Safety Proceedings	2008	2009	2010	2011	2012
Filings	185	131	131	144	6 ⁸

The graph below shows the breakdown of how matters finalised during 2012 were determined:

FIGURE L



PUBLIC SECTOR AND TRANSPORT SECTOR APPEALS

On 1 July 2010 the *Government and Related Employees Appeal Tribunal (GREAT)* was abolished and the jurisdiction of that Tribunal was ceded to the Commission with the essential provisions incorporated in a new Part 7 of the *Industrial Relations Act 1996*. At the same time, the constitution of the *Transport Appeal Boards* was altered to provide that a Board was constituted by the President of the IRC or his delegate⁹.

Two Panels were established to deal with the new jurisdictions - the *Public Sector Appeals Panel (PSA)* and the *Transport Appeal Boards Panel (TAB)* and two Presidential Members were appointed as head of each Panel with a number of Commissioner Members appointed to each panel.

⁸ These matters were brought under the *Rail Safety Act 2008*

⁹ s 5 [Transport Appeal Boards Act 1980](#)

The charts below show how the matters filed in 2012 were disposed of by the Commission and the Board:

FIGURE M Promotional Appeals

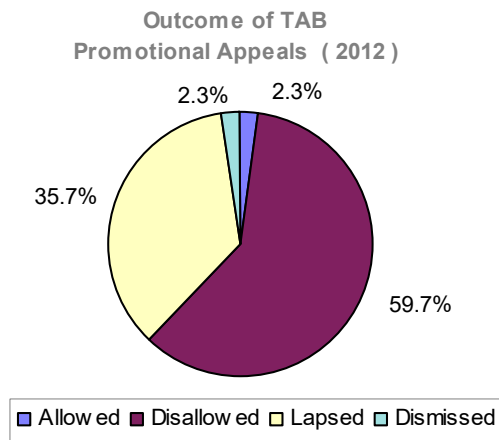
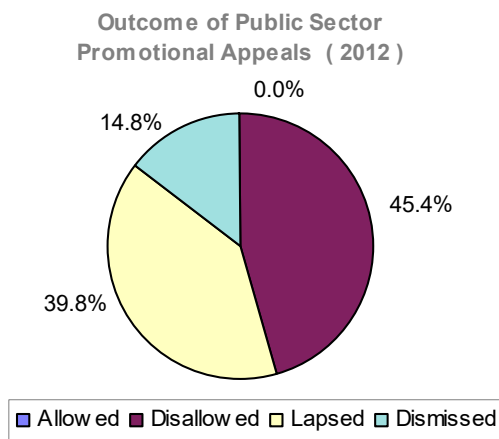
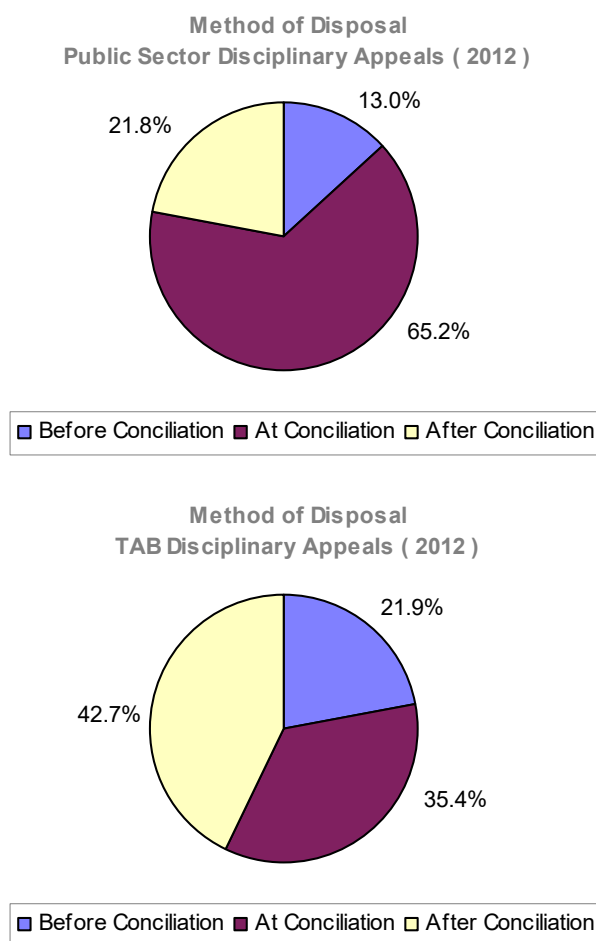


FIGURE N Disciplinary Appeals



It should be noted, with the enactment of the **Transport Administration (Staff) Regulation 2012**¹⁰, public sector transport workers were deprived of the opportunity to bring promotional or disciplinary proceedings before the Board. The Board retained jurisdiction to determine matters pending at the time of commencement. This will impact on the workload of the Commission into 2013.

SECTION 146B

As mentioned earlier, s 146B of the *Industrial Relations Act* operates to permit industrial parties in the federal system to nominate the Industrial Relations Commission of New South Wales as the dispute resolution provider.

¹⁰ commenced on 1 September 2012

Section 186(b) of the *Fair Work Act 2009* (Cth) requires an enterprise agreement to include a term that provides a procedure that requires or allows Fair Work Australia or another person who is independent of the employer, employees or employee organisation covered by the agreement, to resolve disputes.

In many cases the Commission will not be aware of such an arrangement between the parties in agreements approved by Fair Work Australia until a dispute arises and the assistance of the Commission is sought.

Many parties to s 146B agreements seek the assistance of the Commission to facilitate work practice change leading to improved efficiency and productivity. This is reflected in the significant use of s 146B in the Hunter Valley construction industry, the electricity industry and other industries. Many agreements have adopted or adapted the model s.146B settlement procedure found on the Commission's [website](#).

FULL BENCH

Full Benches of the Commission and of the Court are constituted by the President usually pursuant to s 156 or s 193 of the *Industrial Relations Act 1996* and must consist of at least three Members. The constitution of a Full Bench will vary according to the nature of proceedings being determined. The nature of proceedings range from appeals against decisions of single Members, Industrial Magistrates and the Industrial Registrar; matters referred by a Member (s 193) and major test case decisions (s 51).

During 2012 Full Benches finalised 38 matters the majority of which involved appeals. All decisions may be accessed from the Commission's *Case/law* [website](#).

TIME STANDARDS

The Commission formally adopted time standards for the disposition of work in the major areas of the Commission's jurisdiction in 2004. In doing so, the Commission developed standards that reflect the unique range of jurisdiction which the Commission exercises. The standards, and how the Commission performed against those standards, are set out in Appendix 2 of this report.

At the same time, the Commission released its policy on the delivery of decisions and judgments. That policy is set out below for the information of stakeholders and clients:

"The diverse nature of matters that come before the Commission for determination will often result in the decision of a presiding member or Full Bench being reserved. Until recently it was very rare for any decision to be delivered extempore. However, it has now become a common feature of the Commission's work - in appropriate cases – to deliver extempore judgments at the conclusion of a hearing.

The Commission has set a target for the delivery of judgments of three months from the date a judgment is reserved to the date when it should be delivered. Industrial disputes will generally require decision (particularly interim decisions or recommendations), within a shorter time frame, if one is necessary. In respect of unfair dismissal matters the Commission has set a target of 80 per cent of reserved judgments being delivered within two months and 100 per cent within three months. This policy will take effect with respect to decisions or judgments reserved after 30 September 2004.

The capacity for the Commission to achieve this target is dependent on the complexity of the matter for determination and other factors such as the availability of resources in relation to the workload of the Court, leave, timeliness in the replacement of appointments, etc. Because of their size and complexity major industrial cases fall outside the general target, however, every effort has been and is being made to deliver the judgment as soon as possible after the decision has been reserved consistent with the exigencies of the particular proceedings.

The President is provided with information on reserved judgments and will consult with any Member where the judgment is undelivered within the relevant timeframe.

If the legal representative or a party to proceedings in which there has been a reserved decision or judgment desires to complain about delays over delivery of the decision or judgment, the complaint should be made by letter and should be addressed to the President of the Commission or the Industrial Registrar.

The matter will then be taken up with the Member or Members involved in the reserved decision but this will be done without disclosing the identity of the party making the complaint. If the matter is not satisfactorily resolved, the President or the Registrar should again be informed."

THE REGISTRY

The Industrial Registrar has overall administrative responsibility for the operation of the Commission. The Registrar reports to the President of the Commission in terms of the day to day operational procedures and, as a Business Centre Manager within the Department of Attorney General and Justice with reporting and budgetary responsibilities, to the Assistant Director-General, Courts and Tribunal Services.

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

REGISTRY CLIENT SERVICES

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

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

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

INFORMATION MANAGEMENT & ELECTRONIC SERVICES TEAM

The Information Management and Electronic Services Team is responsible for the preparation of industrial awards, enterprise agreements and other orders made by Members of the Commission, for publication in the New South Wales *Industrial Gazette*,

which is available in electronic format. This process is required and driven by legislative requirements and enables the enforcement and implementation of awarded or approved employment conditions for employees. This team is also responsible for the maintenance of records relating to parties to awards and records relating to Industrial Committees and their members.

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

INDUSTRIAL ORGANISATIONS TEAM

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

- registration, amalgamation and consent to alteration of the rules of industrial organisations;
- election of officers of industrial organisations or for special arrangements in relation thereto;
- Authority to Enter Premises 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;
- special arrangements in respect of the keeping of time and wage records and the provision of pay slips; and
- postponement of the time for taking annual leave.

With respect to industrial organisations, the team also administers provisions relating to the regulation and corporate governance of industrial organisations under Chapter 5 of the *Industrial Relations Act 1996* and provides assistance in the research of historical records.

In addition, the team examines part-time work agreements, to determine their acceptability for filing, as well as, processing applications for registration of employers of outworkers for determination by the Clothing Trades (State) Industrial Committee.

EXECUTIVE TEAM

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

OTHER MATTERS

JUDICIAL EDUCATION

The Annual Conference of the Industrial Relations Commission was held from 17 - 19 October 2012. The first day covered a variety of topics with presentations by Professor Rosemary Lyster, Professor of Climate Change and Environmental Law, Sydney Law School, University of Sydney (*Catastrophic Climate Risk and Disaster Law*); Professor John Buchanan, Director Workplace Research Centre, University of Sydney (*Labor after the Great Complacency*); The Honourable Justice Stephen Rothman, AM, Supreme Court of NSW (*Good Faith & Mutual Trust in Employment*); Federal Magistrate Rolf Driver (*The Work of the Federal Magistrates under the Fair Work Act*); Nicholas Wilson, Fair Work Ombudsman (*The Fair Work Ombudsman explains his Litigation Policy*); Dr Robert Fisher, Head of Department of Psychiatry and Psychology Services, St Vincent's Private Clinic and Hospital (*Tackling Depression in the Legal Profession*); His Honour Judge Stephen Norrish, QC District Court of NSW (*The Work of the Ngara Yura Committee*); Mr Andrew Penfold, Chief Executive, Australian Indigenous Education Foundation (*The Work of the Australian Indigenous Education Foundation*). On the second day of the conference sessions were given by Mr Rick Wilkinson, Chief Operating Officer, Australian Petroleum Production and Exploration Association (APPEA) and Mr Duncan Fraser, Vice-President, National Farmers Federation (NFF) and Chair NFF Mining and Coal Seam Gas Taskforce (*Natural Gas from Coal*); the Honourable Justice Roger Boland, President, NSW Industrial Relations Commission (*Implications for the IRC arising from the Review of the NSW Industrial Relations system*); Mr Jeffrey Phillips, SC, Barrister (*Has Arbitration been lost or diminished as an Industrial Option?*); the Honourable Justice Michael Walton, Vice President (*Workload and Case Management Update & New Directions in Industrial/Employment Law*).

Professional Development is an important facet to ensure that Members stay abreast of changes and the Annual Conference continues to provide an invaluable opportunity for Members of the Commission to discuss matters relevant to their work. The presentations and ensuing discussions were relevant and practical and appreciation is, once again, expressed to the eminent presenters, to all those who contributed as participants and the officers of the Judicial Commission whose assistance is invaluable. The development of

the Annual Conference, substantially assisted by the Judicial Commission exercising its mandate to advance judicial education has, once again, proved a successful initiative. Thanks go to those members of the Commission's Education Committee who designed and delivered a conference that has added much to the professionalism with which the Commission seeks to advance in all its work.

TECHNOLOGY

Medium Neutral Citation

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

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

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

All arbitrated decisions of Commissioner Members and those of the Transport Appeal Boards (decisions made after taking evidence from the parties) are published. The exception to this rule is decisions that are read onto the record - these will only be

published where the matter involves a particular matter of interest, topicality or noteworthiness.

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

COMMITTEES

A list of the committees in operation within the Commission is set out at Appendix 3.

COMMISSION RULES

Pursuant to section 186 of the *Industrial Relations Act*, the Rules of the Commission are to be made by a Rules Committee comprising the President of the Commission and two other Presidential Members appointed by the President. There is also scope for co-option of other Members.

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

There were no changes to the *Industrial Relations Commission Rules* during 2012.

AMENDMENTS TO LEGISLATION ETC

The legislative amendments enacted during 2012, or which came into force that year affecting the operation and functions of the Commission, are reported at Appendix 4.

Amendments to Regulations affecting the Commission are reported at Appendix 5.

PRACTICE NOTES

On 11 May 2012 assent was given to the *Industrial Relations Amendment (Industrial Organisations) Act 2012* which amended the *Industrial Relations Act 1996* to provide for the appointment of administrators to state industrial organisations and the investigation and prosecution of misconduct offences and for other purposes.

The Commission issued *Practice Note 27* to facilitate applications being brought before the Commission.

CONCLUSION

In last year's *Annual Report* I made reference to the Government's announcement of the establishment of a Parliamentary Inquiry that charged the Committee to investigate and report in relation to opportunities to consolidate tribunal operations within New South Wales. I noted that particularly relevant for this Commission was the requirement in the Terms of Reference for the Committee to specifically look at:

- (a) opportunities to reform, consolidate, or transfer functions between tribunals which exercise decision-making, arbitral or similar functions in relation to employment, workplace, occupational, professional or other related disputes or matters, having regard to:
 - i. the current and forecast workload for the Industrial Relations Commission (including the Commission in Court Session) as a result of recent changes (such as National OHS legislation and the Commonwealth Fair Work Act);
 - ii. the current and forecast workload of other Tribunals (such as the Administrative Decisions Tribunal and health disciplinary Tribunals);
 - iii. opportunities to make tribunals quicker, cheaper and more effective

and, in terms of the Court:

- (b) options that would be available in relation to the Industrial Relations Commission in Court Session, should the Commissions arbitral functions be consolidated with or transferred to other bodies.

That Committee reported on 22 March 2012. To paraphrase the Committee, they recognised that there would be significant benefits to consolidating tribunals, however, believed that further information was required and recommended the establishment of an expert panel 'to pursue the consolidation, formulation and appropriate structure of a consolidated tribunal, and prepare a detailed plan for the implementation of consolidation, including which tribunals should be consolidated'.

The Government delivered its response in October 2012 and determined there should be established a NSW Civil and Administrative Tribunal and, further, that all existing tribunals,

with some exceptions, would be consolidated to form the new tribunal. In relation to the exceptions the government response stated:

Only a small number of bodies will not be considered at this time, although some of these bodies may be considered for consolidation in the future:

- Independent Liquor and Gaming Authority
- Industrial Relations Commission
- Mental Health Review Tribunal
- Motor Accidents Authority
- Racing Appeals Tribunal
- Remuneration Tribunals
- Workers Compensation Commission¹¹

The decision to exclude the Commission from the consolidation was consistent with submissions I had made to the Committee and I welcomed it because it was my expectation that it would provide an opportunity to bolster the work of the Commission. My expectation in that regard, however, was shortlived and it became apparent that much of the jurisdiction that I had sought be transferred to the Court and the Commission was to be granted to the new Tribunal.

As we reached the end of another year in which the future of the Court and the Commission has still not been determined despite my persistent entreaties, I was reminded of the words of the Honourable Michael Kirby in a speech¹² he gave in 2004, the centenary year of the federal tribunal, wherein he concluded with the words

It is by law and legal instruments that we created a land of general industrial justice. In the years ahead the challenges will be different and global. The workplace has changed forever. Technology alone revolutionises the modern workplace. But it is much too early to write the obituaries of industrial relations tribunals in Australia. Call off the funeral.

In respect of New South Wales, I fear Michael Kirby was wrong. I have a real sense that, the New South Wales industrial system is about to be dismantled and with it a unique institution, constituted by specialist judicial and non-judicial members, that has served the citizens of this State so well for 112 years.

¹¹ p2 NSW Government Response to the Standing Committee on Law and Justice Committee Inquiry into Opportunities to consolidate tribunals in NSW (19 October 2012)

¹² [Industrial Relations Law – Call off the Funeral](#)

It may be that some substitute arrangement will be implemented. If that is to be the case, the architects of that future would do well to remember the words of a past President of the Commission:

'I know we're looking at productivity in business, but at the end of the day the role of people is important. In the field of IR and industrial law, one knows the problems are not easy to solve. It's not always about the people, but we should never forget the people.'¹³

¹³ Wright, L Keynote Address *NSW Industrial Relations Society Annual Conference 2002*

ANOTHER ERA:



Frederick William KITCHING - Industrial Registrar 1918 - 1924¹⁴

Frederick William Kitching (1876 - 1947) was the fourth Industrial Registrar following after Edward John Payne, who moved to the Public Service Board.

The following is extracted from the *State Records website*¹⁵:

Born 30 June 1876. Entered the Public Sector as a Clerk at Glenfield Farm House on 28 September, 1893.

By 26 June 1899 he had become an assistant Clerk of Petty Sessions and Assistant Crown Lands Agent at Narrabri and continued to work in Courts of Petty Sessions including being a relieving Clerk of Petty Sessions in the Emergency Branch of the Department of Attorney General and Justice.

On 18 April 1912 he became Chief Clerk in the Industrial Registrar's Office and was appointed Industrial Registrar on 12 July 1918.

Kitching was promoted from that position to Undersecretary, Office of the Minister for Labour and Industry from 1 July 1924 where he continued until 1931 after which he appears to have left the service.

¹⁴ by unknown photographer: courtesy of National Library of Australia ([Trove](#))

¹⁵ <http://search.records.nsw.gov.au/persons/223>

APPENDIX 1

INDUSTRY PANELS

Metropolitan, Industry Specific and Regional Panels

*to operate with effect from **Wednesday 6 June 2012***

Metropolitan

Divisional Head: **Walton J, Vice President**

Members

Haylen J
Staff J
Backman J
Tabbaa C
Bishop C

Corrections

Education

Emergency Services

(Emergency Services includes Dept of Police and Emergency Services, NSW Police, Fire Brigades, Rural Fire Service including Emergency Management NSW, State Emergency Service and NSW Crime Commission and Ambulance Service)

Health

(Includes Dept of Health, Area/Local Health Services/Networks, Cancer Institute and Health Care Complaints Commission)

Juvenile Justice

Government/Public Sector

(Any other Government sector that is not separately referred to in this document)

Public Transport

Local Government

Private

(Private includes any residual private matters remaining within the State system by virtue of new s.146B or similar provisions under Federal legislation)

Industry Specific

Transport Appeal Boards (TAB) Panel - Divisional Head - Staff J

Members

Tabbaa C
Bishop C
Stanton C >

Industries: The President has, pursuant to section 5(4) of the *Transport Appeal Boards Act* 1980, delegated to all the members of this Panel the power to Act as the Board in matters arising to be determined under this Act.

> Stanton C to be utilised as required

Public Sector Appeal (PSA) Panel - Divisional Head - Staff J *

Members

Tabbaa C
Bishop C
Stanton C >

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

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

Regional

Panel N - Divisional Head - Harrison DP

Members

Ritchie C
Stanton C

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

Panel S - Divisional Head - Walton J, Vice President

Members

Staff J
Tabbaa C
Bishop C

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

APPENDIX 2

TIME STANDARDS

Industrial Relations Commission

Time from commencement to finalisation	Standard for 2011/ Achieved in 2011		Standard for 2012/ Achieved in 2012	
Applications for leave to appeal and appeal				
<i>Within 6 months</i>	50%	64.7%	50%	73.4% ↑
<i>Within 12 months</i>	90%	94.2%	90%	93.4% ↑
<i>Within 18 months</i>	100%	100%	100%	93.4%
Award Applications [including Major Industrial Cases]				
<i>Within 2 months</i>	50%	95.9%	50%	85.6% ↑
<i>Within 3 months</i>	70%	97.7%	70%	87.9% ↑
<i>Within 6 months</i>	80%	98.5%	80%	97.1% ↑
<i>Within 12 months</i>	100%	99.3%	100%	99.4%
Enterprise Agreements				
<i>Within 1 months</i>	75%	92.3%	75%	100% ↑
<i>Within 2 months</i>	85%	92.3%	85%	100% ↑
<i>Within 3 months</i>	100%	92.3%	100%	100% ↑
Time to first listing				
Industrial Disputes				
<i>Within 72 Hours</i>	50%	42.6%	50%	40.3%
<i>Within 5 Days</i>	70%	54.5%	70%	55.1%
<i>Within 10 Days</i>	100%	78.9%	100%	77.0%
Time from commencement to finalisation				
Applications relating to Unfair Dismissal				
<i>Within 2 months</i>	50%	51.0%	50%	63.2% ↑
<i>Within 3 months</i>	70%	64.9%	70%	71.8% ↑
<i>Within 6 months</i>	90%	79.3%	90%	87.3%
<i>Within 9 months</i>	100%	86.5%	100%	93.7%
Public Sector Promotional Appeals				
<i>Within 1 months</i>	30%	20.2%	30%	43.2% ↑
<i>Within 2 months</i>	60%	30.1%	60%	71.6% ↑
<i>Within 3 months</i>	90%	97.5%	90%	84.1%
<i>Within 6 months</i>	100%	99.8%	100%	100% ↑
Public Sector Disciplinary Appeals				
<i>Within 1 months</i>	30%	42.3%	30%	26.1%
<i>Within 2 months</i>	60%	57.7%	60%	52.2%
<i>Within 3 months</i>	90%	69.2%	90%	60.9%
<i>Within 6 months</i>	100%	96.1%	100%	73.9%
Key: ↑ = areas where the Commission has equalled or exceeded time standard				

TIME STANDARDS

Industrial Court

Time from commencement to finalisation	Standard for 2011/ Achieved in 2011		Standard for 2012/ Achieved in 2012	
Applications for leave to appeal and appeal				
<i>Within 9 months</i>	50%	63.7%	50%	65.2% ↑
<i>Within 12 months</i>	90%	72.8%	90%	73.9%
<i>Within 18 months</i>	100%	84.9%	100%	91.3%
Prosecutions under OHS legislation				
<i>Within 9 months</i>	50%	23.7%	50%	16.8%
<i>Within 12 months</i>	75%	47.5%	75%	31.8%
<i>Within 18 months</i>	90%	63.1%	90%	58.0%
<i>Within 24 months</i>	100%	81.9%	100%	73.9%
Applications for relief from Harsh/Unjust Contracts				
<i>Within 6 months</i>	30%	30.0%	30%	11.1%
<i>Within 12 months</i>	60%	50.0%	60%	33.3%
<i>Within 18 months</i>	80%	55.0%	80%	33.3%
<i>Within 24 months</i>	100%	80.0%	100%	44.4%
Key: ↑ = areas where the Court has equalled or exceeded time standard				

TIME STANDARDS

Transport Appeal Boards

Time from commencement to finalisation	Standard for 2011/ Achieved in 2011		Standard for 2012/ Achieved in 2012	
Promotional Appeal				
<i>Within 1 months</i>	30%	10.2%	30%	9.5%
<i>Within 2 months</i>	60%	39.8%	60%	22.4%
<i>Within 3 months</i>	90%	65.7%	90%	66.9%
<i>Within 6 months</i>	100%	100%	100%	100% ↑
Disciplinary appeals				
<i>Within 1 months</i>	30%	29.6%	30%	32.1% ↑
<i>Within 2 months</i>	60%	42.0%	60%	40.7%
<i>Within 3 months</i>	90%	58.1%	90%	48.1%
<i>Within 6 months</i>	100%	87.7%	100%	86.4%
Key: ↑ = areas where the Court has equalled or exceeded time standard				

APPENDIX 3

COMMITTEES

Library Committee

The Hon. Justice Kavanagh (Chair)
The Hon. Justice Staff (Chair from 1 July 2012)
Commissioner Macdonald
Mick Grimson, Industrial Registrar
Linden Fairburn, Director, Library Services
Bhagya Puran, Librarian, IRC of NSW

Education Committee

The Hon. Justice Kavanagh (Chair)
The Hon. Justice Haylen (Chair from 1 July 2012)
The Hon. Justice Staff (from 1 July 2012)
Commissioner Tabbaa
Mick Grimson, Industrial Registrar
Ruth Windeler, Judicial Commission of NSW
Ruth Sheard, Judicial Commission of NSW

Rules Committee

The Hon. Justice Boland, President (Chair)
The Hon. Justice Walton, Vice-President
The Hon. Justice Marks
Mick Grimson, Industrial Registrar (Secretary)

APPENDIX 4

LEGISLATIVE AMENDMENTS

[Industrial Relations Amendment \(Industrial Organisations\) Act 2012 No 27](#)

This Act was assented to on 11 May 2012 and amended the *Industrial Relations Act* 1996 to (a) to enable the Minister to appoint an administrator for a State industrial organisation if there is an ongoing investigation into or evidence of gross misconduct by its officers and proper administrative arrangements need to be put in place, (b) to enable the Industrial Relations Commission (the **Commission**) to make orders approving schemes to enable a State industrial organisation to work more effectively, hold elections or to do other things if the organisation ceases to function effectively, its officers engage in gross misconduct or an office is vacant and cannot be filled, (c) to enable the Industrial Registrar to arrange for elections for a State industrial organisation where all of its offices are vacant due to action against an associated federal organisation, (d) to require the Industrial Registrar to notify the Director-General of the Department of Finance and Services of instances of misconduct by officers of State industrial organisations, (e) to confer on inspectors powers to investigate misconduct offences by officers of State industrial organisations, and (f) to extend to 5 years the limitation period for prosecutions for misconduct offences by officers of State industrial organisations.

[Child Protection \(Working with Children\) Act 2012 No 51](#)

This Act was assented to on 27 June 2012 but had not commenced as at 31 December 2012. The Act will introduce a new Working With Children Check aimed to provide greater protection for the children of New South Wales. When commenced it will remove the Commission's jurisdiction to review matters currently held concurrently with the Administrative Decisions Tribunal.

[Industrial Relations Amendment \(Industrial Representation\) Act 2012 No 68](#)

The Act was assented to on 24 September 2012 and commenced (on assent). It amends the *Industrial Relations Act* 1996 to enable industrial representation of the same classes or groups of employees or of bailees or contractors by one or more industrial organisations or associations of contractors, subject to safeguards relating to demarcation disputes.

[Rail Safety \(Adoption of National Law\) Act 2012 No 82](#)

The Act was assented to on 20 October 2012 but had not commenced as at 31 December 2012. The object of the Act is to confer jurisdiction on the Local Court, District Court and Industrial Court under this Law and, also, confer jurisdiction on the Administrative Decisions Tribunal and the Industrial Court in relation to the review of certain decisions made under the Law.

[Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2012 No 95](#)

An Act assented to on 21 November 2012 to commence on 4 January 2013. It amended the *Industrial Relations Act* 1996 to correct a reference to an official, updated a reference to staff and corrected a cross-reference.

APPENDIX 5

AMENDMENTS TO REGULATIONS AFFECTING THE COMMISSION

[Industrial Relations \(General\) Amendment \(Fees\) Regulation 2012](#)

This Regulation commenced on 1 July 2012 increasing certain fees charged by the Industrial Relations Commission.

APPENDIX 6

MATTERS FILED IN INDUSTRIAL RELATIONS COMMISSION
(OTHER THAN IN THE INDUSTRIAL COURT)

Matters filed during period 1 January 2012 to 31 December 2012 and matters completed and continuing as at 31 December 2012 which were filed under the *Industrial Relations Act 1996*.

Nature of Application	Filed 1.1.2012 – 31.12.2012	Completed 1.1.2012 – 31.12.2012	Continuing as at 31.12.2012
APPEALS	16	14	11
<i>Appeal - from a dispute matter</i>	4	4	2
<i>Appeal - from an unfair dismissal matter</i>	10	6	9
<i>Appeal - other</i>	2	4	0
AWARDS	351	349	21
<i>Application create new Award</i>	56	55	7
<i>Application vary an Award</i>	55	60	8
<i>Application – State Wage Case</i>	4	0	4
<i>Review of Award - incl. Declaration of Non-operative awards</i>	236	234	2
<i>Award - other</i>	0	0	0
DISPUTES	372	447	146
<i>s130 of the Act</i>	320	371	129
<i>s130, s380 of the Act</i>	2	3	0
<i>s332 contract determination</i>	21	28	6
<i>s146A of the Act</i>	2	3	0
<i>s146B of the Act</i>	27	40	11
<i>Dispute - other</i>	0	2	0
ENTERPRISE AGREEMENTS	13	13	0
<i>Approval (Employees)</i>	1	1	0
<i>Approval (Union)</i>	12	12	0
UNFAIR DISMISSALS	221	220	68
<i>Application (by individual only)</i>	56	52	18
<i>Application (representative)</i>	51	59	19
<i>Application (organisation representative)</i>	114	108	31
<i>Application (organisation – multiple)</i>	0	1	0
PUBLIC SECTOR AND POLICE APPEALS	108	149	30
<i>Public Sector Promotional Appeal</i>	60	88	5
<i>Public Sector Disciplinary Appeal</i>	19	23	5
<i>Appeal by Police Officer relating to leave when hurt on duty</i>	29	38	20
OTHER	110	109	30
<i>Contract Agreements</i>	1	1	0
<i>Contract Determinations</i>	18	18	7
<i>Contract of Carriage (claim for compensation)</i>	0	2	0
<i>Registration pursuant to Clothing Trades Award</i>	51	50	4
<i>Application extend duration of Industrial Committee</i>	2	2	0
<i>Protection of injured workers from dismissal-Workers Compensation Act 1987</i>	14	11	5
<i>Application for Review of Order s181D Police Service Act</i>	9	10	7
<i>Application for Rescission of Order s173 Police Service Act</i>	7	9	3
<i>Application for Relief from Victimisation s213 of the Act</i>	4	2	4
<i>Application for Demarcation Order</i>	1	1	0
<i>Application for external review - Work Health Safety Act 2011</i>	3	3	0
SUB-TOTAL	1191	1301	306

APPENDIX 7

MATTERS FILED IN INDUSTRIAL COURT

Matters filed during period 1 January 2012 to 31 December 2012 and matters completed and continuing as at 31 December 2012 which were filed under the *Industrial Relations Act 1996*.

Nature of Application	Filed 1.1.2012 – 31.12.2012	Completed 1.1.2012 – 31.12.2012	Continuing as at 31.12.2012
APPEALS	16	24	16
<i>Appeal from Local Court (Industrial Magistrate)</i>	0	5	1
<i>Appeal – superannuation</i>	5	9	6
<i>Appeal – OHS prosecution</i>	3	2	3
<i>Appeal – s106 matter</i>	1	2	2
<i>Appeal – other</i>	7	6	4
CONTRAVENTION	2	4	1
<i>Contravention of Dispute Order s139 of the Act</i>	2	4	1
HARSH CONTRACTS	6	9	21
<i>Application under s106 of the Act</i>	6	9	21
PROSECUTIONS	6	107	103
<i>Prosecution – s8(1) OHS Act 2000</i>	0	52	48
<i>Prosecution – s8(2) OHS Act 2000</i>	0	31	25
<i>Prosecution – s9 OHS Act 2000</i>	0	4	2
<i>Prosecution – s10(1) OHS Act 2000</i>	0	8	12
<i>Prosecution – s10(2) OHS Act 2000</i>	0	1	3
<i>Prosecution – s11 OHS Act 2000</i>	0	0	4
<i>Prosecution – s20(1) OHS Act 2000</i>	0	4	0
<i>Prosecution – s26(1) OHS Act 2000</i>	0	3	3
<i>Prosecution – s136 OHS Act 2000</i>	0	1	0
<i>Prosecution – other OHS Act 2000</i>	0	3	0
<i>Prosecution – RAct 2008</i>	6	0	6
OTHER	49	36	31
<i>Declaratory jurisdiction (s154, s248)</i>	13	6	10
<i>Registration of industrial organisations</i>	14	10	5
<i>Recovery of remuneration and other amounts</i>	19	16	15
<i>Unlawful Dismissal - s23 OHS Act 2000</i>	2	2	0
<i>Miscellaneous (not otherwise categorised)</i>	1	2	1
SUB-TOTAL	79	180	172

APPENDIX 8

MATTERS FILED TO THE TRANSPORT APPEAL BOARD

Matters filed during period 1 January 2012 to 31 December 2012 and matters completed and continuing as at 31 December 2012 which were filed under the *Transport Appeal Boards Act 1980*.

Nature of Application	Filed 1.1.2012 – 31.12.2012	Completed 1.1.2012 – 31.12.2012	Continuing as at 31.12.2012
APPEALS	788	784	255
<i>Promotional Appeal</i>	723	703	246
<i>Disciplinary Appeal</i>	65	81	9
SUB-TOTAL	788	784	255
TOTAL	2058	2265	733
<i>IRC, IC & TAB Matters</i>			

APPENDIX 9

A 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. They fell into disuse after about twelve 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 and 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 abolished the position of Industrial Commissioner (but not Deputy Industrial Commissioner) and the constitution of the Commission was altered to that of three members with the status of Supreme Court Judge. 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.

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

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

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

In 1938 the number of members of the Commission was increased to no less than five and no more than six and the Act, the *Industrial Arbitration and Workers Compensation (Amendment) Act*, made 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 an attempt was made to refine and rationalise 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 one of whom was the Vice-President. The Act also provided for the appointment of "non judicial" members who did not have to be legally qualified as well as "judicial" members. There were certain jurisdictional limitations for "non judicial" appointees.

In 1988 the then coalition government commissioned a comprehensive review of the State's industrial laws and procedures. The subsequent report, the Niland Report, had far reaching recommendations and became the basis for the *Industrial Relations Act 1991*. The former Commission was abolished and replaced by the **Industrial Relations Commission** and a separate **Industrial Court**. Two of the key features of the report were the introduction of enterprise bargaining outside the formal industrial relations system with agreements specifically tailored to individual workplaces or businesses and the provisions relating to unfair dismissal.

Individuals could access the Commission if they believed they had been unfairly dismissed. Their remedy was reinstatement and/or compensation.

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

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

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

APPENDIX 10

THE PRESIDENTS OF THE INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

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

APPENDIX 11

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"¹⁶

The role of the Vice-President continues to be one which contributes significantly in regard to the formulation of policy and the co-ordination of resources across the Commission.

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	Still in Office	

¹⁶ Hansard, Second Reading Speech, *Legislative Council*, 21 Nov 1986 per The Hon. J R Hallam at p7104

APPENDIX 12

INDUSTRIAL REGISTRARS OF THE INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Name	Held Office		Remarks
	From	To	
Addison, George Campbell	1 Apr 1902	1912	Returned to the Bar. Appt Chief Industrial Magistrate 1917.
Holme, John Barton	1912	9 Feb 1914	Appt first Undersecretary, Department of Labour and Industry 10 Feb 1914.
Payne, Edward John	1914	1918	Retired from the public service in 1939 as Chairman, Public Service Board.
Kitching, Frederick William	12 Jul 1918	30 Jun 1924	Appt Undersecretary, Office of the Minister for Labour and Industry 1 Jul 1924.
Webb, Alan Mayo	1 Sep 1924	19 Jun 1932	Appt Judge of Industrial Commission 20 Jun 1932.
Wurth, Wallace Charles	1932	1936	Appt to Public Service Board; Appt Chairman, PSB in 1939.
Ebsworth, Samuel Wilfred	1936	1947	Retired.
Kelleher, John Albert	1947	13 May 1955	Appt Undersecretary and Industrial Registrar, Dept of Labour and Industry and Social Welfare 1949. Appt Judge of Industrial Commission 16 May 1955.
Kearney, Timothy Joseph	1955	1962	Appt Undersecretary, Department of Labour and Industry.
Whitfield, John Edward	1962	1968	Appt as Commissioner, Water Conservation and Irrigation Commission.
Fetherston, Kevin Roy	3 June 1968	1977	Appt Executive Assistant (Legal) Department of Labour and Industry; later appt as Deputy Undersecretary, Department of Labour and Industry.
Coleman, Maurice Charles Edwin	29 April 1977	1984	Retired.
Buckley, Anthony Kevin	23 Jan 1984	30 Mar 1992	Appt as Commissioner, Industrial Relations Commission 31 Mar 1992.

Walsh, Barry ¹⁷	19 Feb 1992	15 Jul 1994	Appt as Registrar, Australian Industrial Relations Court
Szczygielski, Cathy ¹⁸	18 Jul 1994	4 Nov 1994	Returned to position of Deputy Registrar, Industrial Court.
Williams, Louise ¹⁹	7 Nov 1994	16 Aug 1996	Appt as Registrar, Land & Environment Court.
Robertson, Gregory Keith ²⁰	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	Still in Office	

¹⁷ Appointed as Acting Registrar and CEO, Industrial Court (under *1991 Act*) 19 Feb 1992, substantively appointed to that position 6 May 1993.

¹⁸ Acting appointment as Registrar and CEO, Industrial Court (under *1991 Act*) pending recruitment

¹⁹ Appointed as Registrar and CEO, Industrial Court (under *1991 Act*)

²⁰ Held the position of Registrar, Industrial Relations Commission under *1991 Act* - under *1996 Act* became Registrar and Principal Courts Administrator, Industrial Relations Commission and Commission in Court Session (2 September 1996).