

The Industrial Relations Commission

of

New South Wales

Annual Report

Year Ended 31 December 1998

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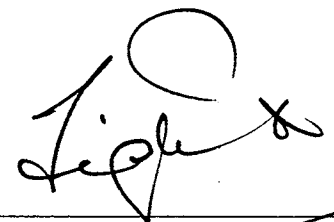
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New South Wales

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*I have the honour to furnish to the Minister for presentation to Parliament
the third Annual Report of the Industrial Relations Commission of New
South Wales made pursuant to section 161 of the Industrial Relations Act
1996 for the year ended 31 December 1998.*



PRESIDENT

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INTRODUCTION

The third 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 is constituted by the President, Vice-President, Judicial Members, Deputy Presidents and Commissioners. The Commission has nine Judges, two Deputy Presidents and 14 Commissioners.

The year 1998 has been a time of great change for the Commission, with several of the most senior Members retiring and consequent new appointments. After a distinguished term as President of this Commission, the Hon. Mr. Justice W.K. Fisher AO, retired in April 1998. His Honour's retirement marked the end of almost two decades as a member of the Judiciary and of outstanding service to the Commission, the administration of justice and the people of New South Wales.

Other retirements were those of the Hon. Mr. Justice J.J. Cahill, Vice-President (the longest serving Judge in Australia at the time of his retirement) on 10 December 1998; the Hon. Mr. Justice H.W.H. Bauer on 31 March 1998; the Hon. Mr. Justice B.E. Hill on 14 August 1998; and Commissioner B.W. French on 29 March 1998.

New appointments this year have been as follows: The Hon. Mr. Justice F.L. Wright as President, the Hon. Justice M.J. Walton as Vice-President, the Hon. Justice T.M. Kavanagh, Deputy President P.J. Sams, Commissioner J.R. Elder and Commissioner J.M. McLeay.

I note with thanks the work of the staff of the Registry who have greatly assisted the Members of the Commission and the Chief Industrial Magistrate (for whom they also perform a greatly expanding registry function) in meeting the demands made in 1998. The dedication of the Industrial Registrar, the Deputy Industrial Registrar and the staff of the Registry is greatly appreciated by the Commission. The significant burden carried by them is not assisted by the difficult conditions under which they work. It is hoped that some alleviation of this situation will occur in the near future.

I also commend the work of my Principal Associate, Ms Dorothy Martin, and Associate, Ms Philippa Ryan, who have assumed the major responsibility of the significant administrative burden of matters passing through the President's Chambers. We have been ably assisted by my Tipstaff, initially Mr P. Kacskovics, now succeeded by Mr J.P. Bignell.

The Commission continues to be ably assisted by its librarian, Ms Jenny Stonehouse, and her staff. The services that they provide to the Commission and practitioners are remarkable considering the severe resource restraints in place. Thanks are also due to the staff of other court and departmental libraries for the cooperation they provide to the librarian.

The work of the Commission has increased significantly over the recent years resulting in Members of the Commission dealing with extended lists. The increase in the applications filed in the Commission is revealed by a comparison of applications made in the years 1990 and 1998. In 1990, the Commission was comprised of eight Judges and two Deputy Presidents (one appointed late in the year) compared to nine Judges and two Deputy Presidents as at the end of 1998.

The following table compares the years 1990 and 1998:

MATTERS FILED

	1990	1998
TOTAL	1,495	6,940
Dispute notifications	438	949
Unfair Dismissals	2 *(s.95)	4,048
Award/EA applications	506	991
Unfair Contract applications	165	465
OHS prosecutions	13	222
Appeals	83	93

* *plus an estimated 50 -100 cases involving reinstatement issues but notified as disputes.*

The dramatic increase in applications filed in the Commission experienced during 1996 and 1997 have generally levelled off in 1998. However, comparison of the number of applications received in 1990 and 1998 reveals the historical increase in the workload of the Commission.

The following table displays a comparison of the number of applications filed from January to July 1998 as compared to the same period for 1997:

NEW MATTERS FILED

6 Months: 15 January 1997 - 15 July 1998

FILED	Jan - July 1997	Jan - July 1998	Percentage change
Unfair contracts	132	235	↑ 78%
OH&S Prosecutions	144	156	↑ 8%
Appeals	73	45	↓ 38%
Awards/Agreements	359	575	↑ 60%
SUB TOTALS	708	1,011	↑ 43%

FILED	Jan - July 1997	Jan - July 1998	Percentage change
Unfair dismissals	2,315	2,106	↓ 9%
Disputes	592	495	↓ 16%
All others	91	98	↑ 7%
SUB TOTALS	2,998	2,699	↓ 11%

TOTALS	3, 706	3, 710	0 %
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ORGANISATION OF THE COMMISSION

Judges and Presidential Members

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

President

The Honourable Mr. Justice William Kenneth Fisher AO, appointed 18 November 1981, retired 11 April 1998;

The Honourable Mr. Justice Frederick Lance Wright, appointed 22 April 1998.

Vice-President

The Honourable Mr. Justice John Joseph Cahill, appointed 25 March 1971, appointed Vice-President 19 February 1987, retired 10 December 1998;

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

Presidential Members

The Honourable Mr. Justice Harold William Henry Bauer, appointed 14 April 1980, retired 31 March 1998;

The Honourable Justice Leone Carmel Glynn, appointed 14 April 1980;

The Honourable Mr. Justice Brian Eugene Hill, appointed 1 August 1988, retired 14 August 1998;

The Honourable Mr. Justice Gregory Ian Maidment, appointed 1 August 1988;

The Honourable Mr. Justice Barrie Clive Hungerford, appointed 13 July 1989;

The Honourable Mr. Justice Russell John Peterson, appointed 21 May 1992;
The Honourable Mr. Justice Francis Marks, appointed 15 February 1993;
The Honourable Justice Monika Schmidt, appointed 22 July 1993;
Mr 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; and
Mr Deputy President Peter John Andrew Sams, appointed 14 August 1998.

Commissioners

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

Mr Raymond John Patterson, appointed 12 May 1980;
Mr Peter John Connor, appointed 15 May 1987;
Mr Brian William O'Neill, appointed 12 November 1984;
Mr James Neil Redman, appointed 3 February 1986;
Mr Anthony Kevin Buckley, appointed 7 February 1991;
Mr Paul Bennett Kelly, appointed 7 February 1991;
Mr Barrie William French, appointed 18 February 1991, retired 29 March 1998;
Miss Inaam Tabbaa, appointed 25 February 1991;
Ms Donna Sarah McKenna, appointed 16 April 1992;
Mr John Patrick Murphy, appointed 21 September 1993;
Mr Ian Reeve Neal, appointed 2 September 1996;
Mr Ian Walter Cambridge, appointed 20 November 1996;
Ms Elizabeth Anne Rosemary Bishop, appointed 9 April 1997;
Mr John Richard Elder, appointed 2 February 1998; and
Ms Janice Margaret McLeay, appointed 2 February 1998.

Industrial Registrar

The Industrial Registrar, Mr Gregory Keith Robertson was appointed on 31 March 1992 as Industrial Registrar and Chief Executive Officer of the Industrial Relations Commission of New South Wales.

The Industrial Registrar is responsible to the President of Commission in relation to the work of the Industrial Registry and, in relation to functions under the *Public Sector Management Act* 1988, to the Director General of the Attorney-General's Department.

The duties of the Industrial Registrar include:

1. To act as Registrar and Chief Executive Officer of the Industrial Relations Commission of New South Wales, including statutory duties of, or related to, that role, and other duties as directed by the President of the Commission as head of jurisdiction.
2. To ensure that orders and awards of the Commission are correctly and promptly settled and promulgated, through publication in the Industrial Gazette and as may otherwise be appropriate.
3. To perform statutory duties required under the *Industrial Relations Act* 1996 in relation to industrial and other organisations, including duties in relation to:
 - registration and deregistration of organisations;
 - the rules of organisations;
 - union accounts;
 - ballots for positions of officer within organisations; and
 - right of entry permits for union officials.

Venues

The Commission has two regional centres - Newcastle and Wollongong, and sits regularly at country venues throughout New South Wales.

In order to expedite the resolution of unfair dismissal claims and to help reduce the burden of costs for applicants and respondents Commissioners frequently sit in country venues throughout the State, with certain Commissioners having the equivalent of informal "circuits". This system has been found to be very cost effective.

LEGISLATIVE AMENDMENTS

Industrial Relations Act 1996

The major legislative amendments enacted during 1998 affecting the operation and functions of the Commission include:

The Courts Legislation Amendment Act 1998, No.49, which commenced on 3 August 1998. This Act amended the provision of Schedule 2 of the *Industrial Relations Act 1996* to allow acting Deputy Presidents, acting Commissioners and acting Judicial Members of the Commission, despite the expiration of the period of the acting Member's appointment, to complete any matters relating to proceedings that have been heard, or partly heard, by the acting Member before the expiration of that period.

The Administrative Decisions - Legislation Amendment Act 1997, No.77, which commenced on 6 October 1998, the purpose of which is to replace provisions in the *Industrial Relations Act 1996* that presently referred to the Equal Opportunity Tribunal with provisions referring to the Administrative Decisions Tribunal.

The *Industrial Relations (Unfair Contracts) Act* 1998, No.106, which commenced on 1 December 1998. The Act inserted a new section 109A into the *Industrial Relations Act* 1996 which prevents an employee from alleging, in an application under section 106 of the Act, that their contract of employment is unfair for any reason for which an application has been or could have been made under Part 6 (unfair dismissals), or that such an application could have been made but for the jurisdictional limit in section 83 based on the applicant's remuneration.

The *Justices Legislation Amendment (Appeals) Act* 1998, No.137, which is yet to be fully proclaimed. The Act will amend section 197 of the *Industrial Relations Act* 1996 to remove reference to the procedure under the *Justices Act* 1902 for a party to apply for a Local Court to state a case for the opinion of the Full Bench of the Commission in Court Session. It will also affect the provisions of the Act which related to the hearing of appeals by the Commission from the Chief Industrial Magistrate and other magistrates.

The *Industrial Relations Amendment (Federal Award Employees) Act* 1998, No.164, to commence on 12 February 1999. The Act inserts new sections 90A and 90B into the *Industrial Relations Act* 1996. The new section 90A applies the provisions of Subdivision B of Division 3 of Part VIA of the *Workplace Relations Act* 1996 (Cth) (Termination of Employment) as a law of the State to Federal Award employees whose employment has been terminated, but who are not within the scope of section 170CB(1)(a)-(d) of the *Workplace Relations Act* 1996 (Cth) and enables the Australian Industrial Relations Commission to exercise functions with respect to the termination of employment of such employees. Consequential powers are conferred on the Federal Court of Australia.

The *Courts Legislation Further Amendment Act* 1998, No.172, to commence on 1 January 1999. The Act inserts a new section 190A in the *Industrial Relations Act* 1996 to enable a single Member of the Commission (either the President or a Member nominated by the President) to deal with interlocutory applications in relation to appeals to the Full Bench of the Commission. It also enables a single Member to make consent orders and to grant leave to withdraw or discontinue an appeal.

The operation of the Commission was also affected by the enactment of the *Traffic Legislation Amendment Act* 1997, No.115, which commenced on 29 June 1998; the *Statute Law (Miscellaneous Provisions) Act* 1998, No.54, which

commenced on 30 June 1998; the *Workers Compensation Legislation Amendment Act* 1998, No.85, which commenced on 1 August 1998; the *Statute Law (Miscellaneous Provisions) Act (No.2)* 1998, No.120, which commenced on 26 November 1998.

Occupational Health and Safety Act 1983

The legislative changes in 1998 affecting the *Occupational Health and Safety Act* 1983, were as follows:

The *Administrative Decisions Tribunal Legislation Amendment Act* 1998, No.48, which will commence on 1 January 1999. The Act will enable regulations made under the *Occupational Health and Safety Act* 1983 to provide for applications to be made to the Administrative Decisions Tribunal for reviews of certain kinds of decisions made under the regulations

The *Workers Compensation Legislation Amendment Act* 1998, No.85, which commenced on 1 August 1998, had the effect of inserting reference to the *Workplace Injury Management and Workers Compensation Act* 1998 in place of reference to the *WorkCover Administration Act* 1989.

The *Justices Legislation Amendment (Appeals) Act* 1998, No.137, which is yet to be fully proclaimed. The Act will remove reference in section 47(4) to the procedure for the stating of a case by a Local Court to the Industrial Relations Commission in Court Session in relation to offences under the *Occupational Health and Safety Act* 1983.

ACTIVITY OF THE COMMISSION

Figures relating to the period 1 January to 31 December 1997 appear in brackets after the 1998 figures.

Members Sitting Alone

Matters filed and concluded

For the period 1 January to 31 December 1998, 6,940 (7,313) matters were filed in the Industrial Relations Commission of New South Wales, 6,404 (5,489) matters were concluded and 4,198 (3,776) matters were continuing as at 31 December 1998 (see *Annexures A & B*).

For the period from 1 January to 31 December 1998, the Commission received 609 (536) applications for the making, variation or rescission of an award, 382 (256) applications for the approval of an Enterprise Agreement and 930 (1,100) notifications of an industrial dispute (*Annexure A*).

During the year 779 (711) matters were filed in the Commission in Court Session, 649 (275) were concluded and, as at 31 December 1998, 1,098 (928) were continuing. There were 465 applications filed to declare contracts void or varied pursuant to section 106 of the Act (*Annexure B*).

Applications pursuant to section 84 of the *Industrial Relations Act 1996*

A large and continuing volume of work lies in the area of unfair dismissal applications under section 84 of the *Industrial Relations Act 1996*. These matters are allocated to Commissioners on a daily basis. Most helpfully two legal officers were appointed in 1993, with an additional temporary position in 1995 to interview and assist in the many problems encountered by individual litigants in relation to such matters such as the filing of applications.

A total of 4,048 (4,567) applications under section 84 were filed during 1998, with 3,866 (3,578) being concluded (*Annexure A*). While the figures for 1998 represent a slight reduction from the high number of applications received in 1997, the general trend over the last few years discloses a steady increase in the number of unfair dismissal matters filed in the Commission. This increase has had a substantial impact on the work load of the Commission with a particular burden falling upon the Commissioners.

Full Benches of the Commission

For the period 1 January to 31 December 1998, 43 (38) appeals were lodged in the Commission (other than in Court Session). Of these, 32 (24) were appeals against a decision of a Commissioner; 10 (14) were against a decision of a Presidential Member; and 1 (0) was an appeal from a decision of the Vocational Training Board (*Annexure A*). During 1998, 57 (25) appeals were concluded and, as at 31 December 1998, 28 (39) appeals remained active.

A total of 48 (68) appeals were lodged in the Commission in Court Session for the period 1 January to 31 December 1998. These include 24 (28) appeals lodged against a decision of a Judicial Member of the Commission sitting alone; 13 (31) appeals lodged against a decision of the Chief Industrial Magistrate and other Magistrates; and 9 (8) appeals lodged against a decision of the State Authorities Superannuation Board (*Annexure B*). Appeals remaining active as at 31 December 1998 were 61 (93) (*Annexure B*).

Regional and Country Sittings

There is a substantial workload in Newcastle and Wollongong in the areas of steel and heavy industry, serviced by both Presidential Members and Commissioners, and a considerable workload in the area of unfair dismissals for Commissioners in country sittings.

The general policy of the Commission in relation to dismissals (section 84) and rural industries has been to sit in the country centre at or near where the events have occurred. This does require substantial travel but the Commission's assessment is that it has a beneficial and moderating effect on parties to the industrial dispute who can often attend the proceedings and then better understand decisions or recommendations made.

There were a total of 455 (662) sitting days in a wide range of Country Courts and other country locations during 1998 with 350 (333) regional sittings in Newcastle and Wollongong for unfair dismissals and dispute matters, with one regional Member sitting permanently in Newcastle (Mr Deputy President Harrison).

The Steel Industry (BHP) is centred in Newcastle and Wollongong. The regional Member for Wollongong, The Honourable Mr Justice Hungerford, handles all Port Kembla steel matters and has sat on average two to three days per fortnight. Commissioner Murphy and Commissioner Connor now also sit regularly in Wollongong. There were a total of 93 (66) sitting days in Wollongong during 1998.

The regional Member for Newcastle, The Honourable Mr Justice Hill, retired on 14 August 1998, and Mr Deputy President Harrison is now the regional Member. Commissioner Redman and Commissioner Cambridge now also sit regularly in Newcastle. The Commission sat there for 203 (approx. 170) days during 1998.

Mr Deputy President Harrison deals with a wide range of industrial matters mostly of a regional nature in Newcastle and the Hunter district. The Deputy President has been under significant pressure during 1998 because of major extensions to his lists, but this has to an extent been alleviated by Commissioners Redman and Cambridge regularly sitting in this area this year.

Occupational Health and Safety

The number of prosecutions filed with the Commission in Court Session pursuant to the *Occupational Health & Safety Act 1983*, for the period from 1 January to 31 December 1998, was 222. A total of 154 prosecutions were commenced in relation to an offence under section 15 of that Act as to the failure to ensure the health, safety and welfare of employees at work. In addition, 26 prosecutions under section 16 in relation to the safety of non-employees and 24 prosecutions were commenced against the directors of a corporation under section 50.

The significant penalties under this legislation are directed to the vindication of safety in the work place and no doubt have the effect of discouraging dangerous practices and encouraging a more thoughtful and professional approach to occupational safety.

DECISIONS OF THE FULL BENCH

A number of significant decisions of Full Benches of the Commission in 1998 are briefly referred to in this section.

State Part-Time Work Case

On 20 November 1996, acting of its own motion under section 79(3) of the *Industrial Relations Act* 1996, the Commission summoned industrial parties to show cause why the Commission should not take action under section 51 of the Act to make a State decision relating to:

“part-time work by employees covered by industrial instruments and to set, by that decision, minimum conditions of employment to which part-time agreements under Part 5 of Chapter 2 of the Act are to be subject, including but not restricted to minimum hours of work and other relevant conditions of employment.”

The Commission delivered its decision on 26 March 1998. It is reported at (1998) 78 IR 172. The Commission laid down minimum conditions of employment under part-time work agreements, including the minimum hours to be worked per start, the maximum number of hours to be worked per week and the minimum pay to be received by the part-time worker in relation to normal and additional hours.

State Wage Case 1998

The Commission instituted proceedings of its own motion to give consideration to the *Safety Net Review - April 1998* decision (1998) 79 IR 37 of the Australian Industrial Relations Commission of 29 April 1998. The Commission was

satisfied that this decision is a "National decision" for the purposes of section 48 of the Act which the Commission is required to consider in accordance with the provisions of section 50.

The Commission delivered its decision on 3 June 1998. The Commission decided to award in New South Wales the same increases as the safety net adjustments determined by the Australian Commission in the National decision, to be available on this occasion upon application rather than by general order.

State Personal/Carer's Leave Case 1998

On 30 August 1996, the Full Commission of the Industrial Relations Commission of New South Wales established under the Industrial Relations Act 1991 gave judgment in the *State Personal/Carer's Leave Case - August 1996* (1996) 68 IR 308. In that decision, the Full Commission acceded to the request then made by the parties that final consideration of the bereavement leave aspect of the relevant Federal decision should be deferred. The decision in the 1998 proceedings considered the question of bereavement leave as well as conducting a review of the operation of the personal/carers' leave provisions established in the 1996 decision.

The Full Bench handed down its decision on 10 December 1998. The Commission determined that it should adopt a similar course in the proceedings, to that adopted in the *State Personal/Carer's Leave Case - August 1996* (1996) 68 IR 308, by giving effect to the agreement between the major industrial parties as to a standard form of minimum entitlement to bereavement leave for awards in this State. It was considered appropriate to provide for the exemptions which were also part of the agreement between the

parties. This approach represented the continued adoption of the Federal decision in the *Personal/Carer's Leave Test Case - Stage 2 - November 1995* (1995) 62 IR 48.

The Commission also acceded to the unanimous request of the parties to review the operation of the personal carer's and bereavement leave provision within two years from the date of the decision.

Section 19 Award Review Principles

On 13 July 1998, the Labor Council of New South Wales filed an application under section 51 of the *Industrial Relations Act 1996* for the making of a State decision. The application made was based on the requirement in the Act that the Commission review awards in accordance with section 19 of the Act every three years, and that to facilitate such reviews, it was desirable that principles be established by a State Decision to enable a consistent approach to such process as well as guidelines to assist parties to award reviews.

The matter was heard by the Full Bench of the Commission, which handed down its decision on 18 December 1998. The Commission decided to establish principles to be applied in relation to modernising awards, consolidating awards in the same industry and rescinding obsolete awards, but declined to establish guidelines. The Commission emphasised the key role of the parties to awards in the award review process. It was accepted that an important purpose of the section 19 review process is to reduce the number of awards, particularly the number applying to one employment relationship, by the appropriate consolidation of parent, splinter and single issue awards.

The Commission indicated that it expects that applications for award review, when initiated by award parties, will ordinarily be made in conjunction with some other application, whether it be for variation of an award, the making of a new award or the consolidation of an award. The Commission encouraged parties to turn their attention to the imminent conduct of a section 19 review in the context of other applications which they might be considering or preparing. The Commission also specified a Form to be used by the Industrial Registrar to notify parties of an impending award review.

PAY EQUITY INQUIRY

On 10 November 1997, the Minister for Industrial Relations referred to the Commission, pursuant to section 146(1)(d) of the *Industrial Relations Act* 1996, an inquiry described as the "Pay Equity Inquiry". The Hon. Justice Glynn presided over the Inquiry for some 54 sitting days, which involved 2,963 pages of transcript.

Her Honour furnished the Minister with the final report on 14 December 1998. The report found that remedies designed to remove the undervaluation of work in female dominated industries and occupations should be established within the framework of the existing industrial relations system in New South Wales. The remedies should be derived from industrial legislation, the principles of equal remuneration developed by the Commission, the principles of wage fixation and the development over time of industrial jurisprudence in relation to equal remuneration.

The report also proposed legislative change to section 19 to specifically refer to any undervaluation. This amendment should ensure that in appropriate cases the Commission will be able to consider whether or not there is an

undervaluation of work in female dominated industries and occupations simpliciter without the need for comparisons with other industries, occupations or awards.

The report made detailed findings as to the economic evidence placed before the Commission and identified a number of positive impacts that may result from the introduction of appropriate pay equity principles. Her Honour accepted that the correct approach to address pay inequity issues was by examining female dominated occupations and industries on a case-by-case approach having regard to any pay equity or equal remuneration criteria or principles established by the Commission for such a review. The Commission should proceed to look at the merits of each case and in doing so weigh up or balance in a practical way pay equity considerations against the likely economic and employment impact of any application and its conformity with appropriate wage fixing and industrial principles (amended however to accommodate pay equity principles).

The report recommended that the Commission should also examine and deal with pay equity issues on an evolutionary basis by factoring into award-making and review, dispute-resolution and agreement-approving processes, active criteria designed to guard against pay inequity. In doing so, the Commission should be vigilant to ensure that the process is one which eliminates or minimises adverse economic impacts, particularly upon the employment of women, and thereby strikes a sensible balance between equity and economic considerations. It was considered that this approach was entirely consistent with both the objects and the scheme of the *Industrial Relations Act 1996*, and with the long-established wage fixing processes of the Commission.

OCCUPATIONAL HEALTH AND SAFETY DATA BASE

Developed in late 1996, the Occupational Health and Safety database continues to provide the Judges with a range of information relating to Occupational Health and Safety cases prosecuted in the Commission.

Approximately 350 judgments have now been coded and entered into the system, providing comprehensive information facilitating a variety of searches. The system can be reached via remote access through the Judicial Commission's Judicial Information Retrieval System (JIRS) and is internally hypertext linked enabling cross-references to be immediately accessed.

Sentencing statistics are also accessible, the relevance of which will increase as the number of judgments added to the system increases over time. In 1998, a direct data entry procedure was developed by the Judicial Commission, enabling the database to be updated on-line. This will enable an up to date version of the database to be viewed by the Judges virtually instantaneously.

ANNUAL CONFERENCE

The Annual Conference of the Industrial Relations Commission was held from 3 to 5 June 1998. The conference was well attended. The discussions and presentations at the conference were topical and practical, due at least in part to the efforts of participants and the staff of the Judicial Commission of NSW.

Presentations included *A Practical Approach to Receiving Evidentiary Material*: The Hon. H.W.H. Bauer (a former Judge of the Commission); *The Industrial Relations Commission - Thoughts for the Future*: The President; *Open Forum*: Chaired by Justice Glynn, with a paper by Commissioner Connor; *Judicial Ethics and Bias*: Mr K. Gee, QC, former District Court Judge; *Review of the New South Wales Act*: The Attorney General, The Hon. J.W. Shaw, QC MLC; *Judicial Independence*: The Hon. Kenneth Carruthers, QC (former Supreme Court Judge); *Economic Trends and Their Impact on the Practice of Industrial Relations*: Ms Heather Ridout, NSW Director, MTLA; *Dealing With Stress*: Professor Ray Cooksey, University of New England.

The development of the Annual Conference, substantially assisted by the Judicial Commission of New South Wales exercising its mandate to advance judicial education, has proved to be a most successful initiative with the potential to add to the professionalism which the Commission seeks to advance in all its work.

USERS' GROUP

On 24 November 1998, the first meeting of the Industrial Relations Commission Users' Group was held. The group is broad-based and representative of the industrial community, and was established due to a perceived need to have a mechanism to obtain feedback from those who are "users" of the Commission. It was particularly intended that the cross-section of the industrial community invited to attend should be as widely drawn as possible.

The major industrial parties were invited to nominate representatives. Representatives from unions and employee interests were nominated by the Labor Council of New South Wales; and representatives from employer organisations and employer interests were nominated by and from the following organisations: Australian Building Services Association; Australian Business Ltd; Australian Industry Group NSW; Catholic Commission for Employment Relations; Chamber of Manufactures of NSW Industrial; Employers Federation of NSW; Local Government and Shires Association; Master Builders Association of NSW; Motor Traders Association of NSW; NSW Farmers (Industrial) Association; NSW Road Transport Association; Newcastle Master Builders Association; Retail Traders Association of NSW; and State Chamber of Commerce and Industry.

Other organisations which were invited to nominate representatives for the Users' Group were: NSW Working Women's Centre; Department of Industrial Relations; WorkCover Authority; Public Employment Office; Redfern Legal Centre; Marrickville Legal Centre; NSW Community Legal Centres Secretariat; University Community Legal Centre (within the Newcastle University Law School); Ethnic Communities Council of NSW; Disabilities Advisory Officer, Attorney General's Department; Association of Major Charitable Organisations; Legal Aid Commission of NSW; President, Anti

Discrimination Board; Wollongong Regional Group of the Industrial Relations Society of NSW; Newcastle Branch of the Industrial Relations Society of NSW; NSW Young Lawyers; The NSW Bar Association; Women Lawyers Association of NSW; and The Law Society of NSW.

Matters discussed at the first meeting related to issues pertinent to procedural reform, which included matters relating to the areas of unfair dismissals; unfair contracts; occupational health and safety; appeals; and expert witnesses. Overall it appears that the establishment of the Users' Group was well received. Further meetings of the Users' Group are planned for March, July and November of 1999.

PRACTICE DIRECTIONS AND SECTION 190A

In view of the importance of the appeals process to the Commission's functions it was decided to formulate procedures to use the Commission's resources more effectively in this area.

The Commission is increasingly employing its powers under sections 189 and 190 of the Act to assign single Presidential Members of the Commission to hear applications for the extension of time to lodge an appeal and applications for the stay of a decision pending an appeal. It is now rare for a Full Bench to hear these matters.

The capacity of single Members of the Commission to hear interlocutory matters in relation to appeals will be further enhanced by the insertion of a new section 190A into the Act. The section provides:

Section 190A - Interlocutory and other matters in proceedings on appeal

- (1) *If an appeal is made under this Part to a Full Bench of the Commission, the Commission constituted by the President (or by another member of the Commission nominated by the President) may do any one or more of the following for the purposes of, or in relation to, the appeal:*
 - (a) *make any consent order in relation to the appeal,*
 - (b) *grant leave to withdraw or discontinue the appeal,*
 - (c) *give any directions in relation to the hearing of the appeal,*
 - (d) *deal with any interlocutory application in the appeal.*

- (2) *If the appeal is made to a Full Bench of the Commission in Court Session:*
 - (a) *a non-judicial member may not constitute the Commission for the purposes of this section, and*
 - (b) *this section applies despite section 153 (2).*

- (3) *A member of the Commission who made a decision the subject of an appeal may not constitute the Commission for the purposes of this section.*

- (4) *This section does not authorise:*
 - (a) *the Commission constituted in accordance with this section to grant leave to appeal, or*
 - (b) *the granting of a stay against the decision appealed against otherwise than under section 190.*

To enhance further the efficiency of the appeals process, a number of draft Practice Directions were compiled and provided to the Users' Group. The following practice directions have been made to facilitate the conduct of appeals to Full Benches of the Commission and the Commission in Court Session:

Practice Direction No.1 (Usual Appeal Directions)

The purpose of this Practice Direction is twofold:

- (a) to advise the public as to the requirements of the Commission in relation to appropriate procedures for appeals; and
- (b) to facilitate the making of directions as to appeals.

Practice Direction No.2 (Lists of Authorities and Legislation)

This Practice Direction is directed to the facilitation of the provision of lists of authorities and legislation so as to facilitate the hearing of all matters before the Commission, both at first instance and on appeal.

Practice Direction No.2 is also relevant to all proceedings in the Commission where authorities of any number are relied upon. Another Practice Direction of more general application is:

Practice Direction No.3 (Certification of Enterprise Agreements)

The purpose of this Practice Direction is to provide for certification of Enterprise Agreements and the provision on request of certified copies.

It appears that each of these procedures is progressing well, and further developments in this area will be dealt with in future reports.

RECONSTITUTION OF INDUSTRY PANELS

Under the power of the President to direct the business of the Commission pursuant to sections 159 and 160 of the Act, industry panels have been reconstituted to deal with applications relating to a particular industries and awards. The industry panels have operated informally for a number of years, but have now been more formalised with a wider range of functions being conferred on the Presidential Member in charge of each panel.

Seven industry panels have been created comprising a number of Presidential Members and Commissioners. The panels are chaired by a Presidential Member of the Commission who allocates matters to the Members of the panel. The panels deal with applications for awards, applications for the approval of enterprise agreements and dispute notifications.

Two of the panels specifically deal with applications from regional areas. The panel dealing with applications from the Hunter region was chaired by the Hon. Mr Justice Hill until his retirement and thereafter by Mr Deputy President Harrison. The panel dealing with applications from the Illawarra-South Coast region is chaired by the Hon. Mr Justice Hungerford.

CO-LOCATION OF JUDGES AND COMMISSIONERS

I regret to report that little discernible progress was made with respect to this subject matter and the problems dealt with in the 1995/1996 and 1997 Annual Reports remain unabated. However, I am pleased to note that refurbishment of the Building at 50 Phillip Street has been steadily progressing since November 1998, with, I might add, great efforts having been made by all staff

involved to ensure that minimal inconvenience was experienced by Judges, Deputy Presidents, Commissioners, staff and parties attending the Commission. The significant efforts of staff members of the Industrial Registry and the Attorney-General's Department in this project are much appreciated.

I am pleased with the manner in which the refurbishment is being undertaken. I look forward to reporting further on these matters in subsequent reports.

TRAINING AND COMPUTER EQUIPMENT

In the 1997 Annual Report, the then President, the Hon. Mr. Justice W.K. Fisher AO, recommended that a programme be designed to equip the Commissioners with lap-top computers and compatible hardware. I am pleased to report that a programme of this type is currently under way and appears to be proceeding satisfactorily.

In particular, it is notable that it is proposed that such equipment also provide to each Member access to the Internet, the Attorney-General Department's Intranet, and access to the Judicial Commission's Judicial Information Retrieval System. With the increasing volume of materials being provided in electronic form it is anticipated that Members will greatly benefit from this initiative.

ANNEXURES

Annexure A refers to matters filed, concluded and continuing under the Industrial Relations Act 1996 in the Industrial Relations Commission (other than in Court Session).

Annexure B refers to matters filed, concluded and continuing under the Industrial Relations Act 1996 in the Commission in Court Session.

Annexure C contains an analysis of dispute notifications filed during 1998 under the Industrial Relations Act 1996.

ANNEXURE A

Matters filed during period 1 January 1998 to 31 December 1998 and matters completed and continuing as at 31 December 1998 which were filed under the Industrial Relations Act 1996.

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES
(other than in Court Session)

(1940 or 1991 Acts) and 1996 Act ABBREVIATIONS	USAGE	FILED 1.1.98 - 31.12.98	COMPLETED 1.1.98 - 31.12.98	CONTINUING AS AT 31.12.98 (inc prev. years)
AW	Application re new award/ variation/rescission of award	609	542	242
CA	Application for approval of a Contract Agreement	15	8	7
CC	Application re Industrial Committees	0	4	2
CD	Application re Contract Determination	18	18	17
CTA C27A	Application pursuant to Cl 27A of Clothing Trades Award	15	17	2
EA	Applications re Enterprise Agreement (s.35), (s.43), (s.44)	382	326	97
EPA	Report under s.11 of the Employment Protection Act	3	2	3
IC	Application to establish Industrial Committee	30	28	10
PSA s181D	Application for review under s181D of Police Service Act	1	1	1
(S14)	Notice to show cause pursuant to section 14 of IR Act 1991	0	1	0
S18	Application for exemption from whole or any part of award	1	1	0
S19	Notice of award review	5	1	4
S33	Commission to set principles for approval of Eas.	0	0	0
S50	Adoption of National decision	0	0	0
S51	Commission to make State decision	2	1	2
S52	Variation of awards/orders on adoption of National decisions	0	0	0
S79	Commission to make State decision - Pt 3 re part-time work	0	0	0
(S246) S84	Application re unfair dismissal	4048	3866	1843
S93	Application for reinstatement of injured employee	8	13	6
S126	Application for Stand down orders	0	0	0
(S188) S130	Notification of industrial dispute to Commission	925	771	725
S132	Commission may convene compulsory conf re s.130 dispute	0	2	0
S143	Application for payment of Strike pay/remuneration	0	0	0
S146	Ministerial Inquiry pursuant to s146(1)(d) of IR Act 1996	0	1	1
S193	Reference of a matter by Member to Full Bench	0	1	0
S203	Referral of matter by Federal President to State Commission	0	0	0
S204	Referral of matter by State President to Fed. Commission	0	44	17
S205	Joint proceedings State/Federal Commissions	0	0	0
S213	Application for relief from victimisation pursuant to s. 213	4	5	4
S217	Application for registration of industrial organisation	0	0	0
S225 & S227	Application for cancellation of regstrtn of indstrl organisatn	0	0	2
S236	Reinstatement of injured employee	0	0	1
S247	Orders re rules of State organisation	0	1	2
(S220) S294. 295	Demarcation orders	3	5	8
S311	Contract determinations/contracts of carriage	0	0	0
S314	Reinstatement of contract of carriage	4	2	4
S332	Comp conference re contract of carriage/determination	24	20	16
(S697) S346. 348	Comp conference re claims - contract of carriage	8	12	48
(S698)	Compulsory conf re alleged breach of contracts of carriage.	0	5	1
C	Referred from Australian IRC under s.174. IR Act 1988 (Cth)	1	0	7
IRCAP1	Appeal against decision of Commissioner	32	36	16
IRCAP2	Appeal against Presidential Member	10	18	11
IRCAP3	Other Commission Appeals	0	2	0
VTBAP	Other Commission Appeals	1	1	1
	<i>Other IRC matters (nei)</i>	<i>12</i>	<i>0</i>	<i>0</i>
Sub Total		6161	5755	3100

ANNEXURE B

Matters filed during period 1 January 1998 to 31 December 1998 and matters completed and continuing as at 31 December 1998 which were filed under the Industrial Relations Act 1996.

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES
IN COURT SESSION

(1940 or 1991 Acts) and 1996 Act ABBREVIATIONS	USAGE	FILED 1.1.98 - 31.12.98	COMPLETED 1.1.98 - 31.12.98	CONTINUING AS AT 31.12.98 (inc prev. years)
AHA	Application recovery of moneys <i>Annual Holidays Act</i> 1944	0	3	1
DGA S9	Prosecution under s.9(1)(a) <i>Dangerous Goods Act</i> 1975.	0	0	1
LSLA	Application -12 <i>Long Service Leave Act</i> 1955	1	4	3
OHS S15	Prosecution: s.15 <i>Occupational Health & Safety Act</i> 1983	154	222	246
OHS S16	Prosecution: s.16 <i>Occupational Health & Safety Act</i> 1983	26	50	36
OHS S17	Prosecution: s.17 <i>Occupational Health & Safety Act</i> 1983	15	17	13
OHS S18	Prosecution: s.18 <i>Occupational Health & Safety Act</i> 1983	1	4	1
OHS S19	Prosecution: s.19 <i>Occupational Health & Safety Act</i> 1983	2	3	3
OHS S27	Prosecution: s.27 <i>Occupational Health & Safety Act</i> 1983	0	0	3
OHS S50	Prosecution: s.50 <i>Occupational Health & Safety Act</i> 1983	24	36	30
(S88F, S275) S106	Application to Commission to declare contracts void/ varied	465	194	639
S129	Prosecution under s129(1)	0	1	0
S139	Application re contravention of a dispute order	1	2	0
S154	Declaratory jurisdiction	3	4	3
S180	Proceedings for Contempt of Commission	0	0	0
(S191, 194, 195)	Applications under s191, 194 and s195 of 1991 Act	0	2	3
S197	Application to State a Case	2	0	2
(S198)	Reference under s194 of 1991 Act	0	1	1
S266	Application for order enforcing provisions of s266 IR Act	1	0	2
S288	Application for Validation Orders under s.288 IR Act 1996	2	1	1
S301	Prosecution under s 301(3)	0	2	0
S343-4, 365,367	Order for recovery of money under ss343, 344, 365 & 367	15	13	27
S357	Civil penalty for breach of industrial instruments	1	3	1
S368	Order for recovery of unpaid Superannuation	0	0	1
S369	Application for order for payment of moneys	0	1	3
S379	Application under s379 of the IR Act 1996	6	0	6
(various)	Applications under ss440, 441, 465 & 497 of IR Act 1991	0	4	2
CTAP1	CICS Appeal ats a decision of Member in CICS matter	24	35	33
CTAP2	CICS Appeal ats a decision of the F/Bench	2	0	1
CTAP3	Other CICS Appeals	0	0	1
CIM	Appeal against a decision of Chief Industrial Magistrate	11	26	13
LOCAL CT	Appeal against a decision of Local Court Magistrate	2	0	2
SASB	Appeal re decision of State Authorities Superannuation Board	9	9	11
SSIMC	Appeal re decn of State Super Investment & Mangment Corp	0	0	0
	<i>Other CICS Matters</i>	12	12	9
Sub Total		779	649	1098

Total IRC and CICS Matters:

6,940

6,404

4,198

ANNEXURE C

Reasons given for notification made pursuant to sections 130, 130 & 380, 332 of the Industrial Relations Act 1996 from 1 January 1998 to 31 December 1998

NATURE	S.130	S.130, 380	S.332
CONDITIONS OF EMPLOYMENT:			
(i) Allowances	42	10	9
(ii) Wages Rates/Conditions of Employment	89	24	11
(iii) Overtime	34	5	-
(iv) Hours of work (incl. rosters, shiftwork)	59	6	1
(v) Leave Entitlements	37	9	-
(vi) Superannuation	16	5	-
(vii) Restructuring	54	-	-
(viii) Enterprise Agreements	42	4	-
(ix) Claim for wage increase	94	-	-
PHYSICAL WORKING CONDITIONS:			
(i) Safety	11	-	1
(ii) Amenities	3	-	-
DISMISSAL:			
(i) Neglect of duties/Absenteeism	4	-	-
(ii) Retrenchment	32	-	-
(iii) Unspecified	27	-	-
MANAGEMENT CONTROL:			
(i) Suspension/demotion	56	-	-
(ii) Contract labour	20	-	-
(iii) Interpretation	12	-	-
(iv) Disciplinary action	22	-	-
(v) Appointments	29	-	2
(vi) Transfers	47	-	-
(vii) Staffing	29	-	-
UNION MATTERS:			
(i) Victimisation	11	-	-
(ii) Demarcation	16	-	-
(iii) Sympathy with other unions	2	-	-
MISCELLANEOUS:	74	-	-
STOPPAGES:	176	-	3
TOTAL	862	63	24