The Industrial Relations Commission

of

New South Wales

Annual Report

Year Ended 31 December 2000

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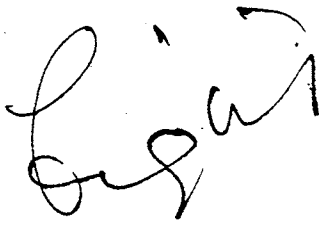
I have the honour to furnish to the Minister for presentation to Parliament the fifth Annual Report of the Industrial Relations Commission of New South Wales made pursuant to section 161 of the Industrial Relations Act 1996 for the year ended 31 December 2000.



PRESIDENT

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INTRODUCTION

The fifth 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. At the end of the year the Commission was comprised of ten Judges, three Deputy Presidents and 11 Commissioners.

During the year Commissioner Anthony Kevin Buckley and Commissioner John Richard Elder retired. Commissioner Paul Bennett Kelly, who had been appointed as Commissioner on 7 February 1991, died suddenly on 3 May 2000. Each of the Commissioners gave outstanding service to the Commission and to the people of New South Wales. New appointments this year have been as follows: the Honourable Justice Roger Patrick Boland and Deputy President John Patrick Grayson.

I note with appreciation the work of the Industrial Registrar and Principal Court Administrator, Mr T E McGrath, and the staff of the Registry who have greatly assisted the Members of the Commission in meeting the demands made in 2000. 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 further 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 (whose role was assumed during the year by Ms Julia Sweeney), 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 the President's Tipstaff, Mr John Bignell.

I wish also to express my appreciation to the Research Associates to the President for their valuable assistance throughout the year, often providing research assistance at very short notice. Mark Gibian, Jane Doolan and Michael Nightingale who held the positions early in the year were succeeded by Tom Chisholm and Sharlene Naismith.

The Commission continues to be ably assisted by its librarian and the library staff. The services that they provide to the Commission and practitioners are remarkable considering the severe resource constraints in place. Thanks are also due to the staff of other court and departmental libraries for the co-operation and assistance they provide to the librarian and to the Commission.

The work of the Commission has increased significantly over 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 2000. The following table compares those years:

MATTERS FILED

	1990		2000
TOTAL	1,495		6,356
Dispute notifications	438		925
Unfair Dismissals	2	*(s.95)	3,342
Award/EA applications	506		998
Unfair Contract applications	165		551
OHS prosecutions	13		271
Appeals	83		91

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

The dramatic increase in applications filed in the Commission in 1996 and 1997 has generally levelled off in 2000. However, the above comparison of the number of applications received in 1990 and 2000 reveals the historical increase in the workload of the Commission. Preliminary figures available for the first quarter of 2001 indicate that the apparent decrease in filings in some areas in 2000 is atypical and the year 2001 will likely see a return to the high levels of matters filed in 1997.

The following table displays a comparison of the number of applications filed from January to December 2000 as compared to the same period for 1999:

NEW MATTERS FILED

Calendar Years 1999 and 2000

FILED	Jan - Dec 1999	Jan - Dec 2000	Percentage change
Awards/Agreements	1,925	998	↓ 51 %
Unfair dismissals	3,243	3,342	↑ 3 %
Disputes	926	925	0 %
OH&S prosecutions	315	271	↓ 14 %
Unfair contracts	310	551	↑ 78 %
Appeals	112	91	↓ 19 %
All others	250	178	↓ 29 %
TOTALS	**7,081**	**6,356**	↓ **10 %**

ABOUT THE COMMISSION

The Industrial Relations Commission of New South Wales is the industrial tribunal for the State of New South Wales. The Industrial Relations

Commission is also constituted as a superior court of record as the Commission in Court Session. 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. An arbitration court (subsequently renamed and re-established as the Industrial Commission of New South Wales) was first established in New South Wales in 1901. The present Commission is the legal and functional successor of the Industrial Commission and also of the Industrial Court and Industrial Relations Commission which existed between 1992 and 1996.

The work of the Commission includes:

- establishing and maintaining a system of enforceable awards which provide for fair minimum wages and conditions of employment;
- approving enterprise agreements entered into between employers and their employees or one or more trade unions;
- 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;
- handling unfair dismissal claims, by conciliation and, if necessary, by arbitration to determine if a termination is harsh, unreasonable or unjust;
- dealing with matters including the registration, recognition and regulation of industrial organisations;
- dealing with major industrial proceedings, such as State Wage Cases.

When sitting in Court Session, the Commission 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 Commission in Court Session determines proceedings for avoidance and variation of unfair contracts and 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 rules and to the acts of officials of registered organisations.

Full Benches of the Commission have appellate jurisdiction in relation to decisions of single members of the Commission (both judicial and non-judicial), the Industrial Registrar, industrial magistrates and certain other bodies. When exercising appellate jurisdiction involving judicial matters the Full Bench of the Commission in Court Session is constituted by at least three judicial members.

MEMBERSHIP OF THE COMMISSION

Judges and Presidential Members

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

President

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

Vice-President

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

Presidential Members

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

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 Justice Francis Marks, appointed 15 February 1993;

The Honourable Justice Monika Schmidt, appointed 22 July 1993;

The Honourable 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;

Deputy President Peter John Andrew Sams, appointed 14 August 1998;

The Honourable Justice Roger Patrick Boland, appointed 22 March 2000;

Deputy President John Patrick Grayson, appointed 29 March 2000.

Commissioners

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

Commissioner Raymond John Patterson, appointed 12 May 1980;

Commissioner Peter John Connor, appointed 15 May 1987;

Commissioner Brian William O'Neill, appointed 12 November 1984;

Commissioner James Neil Redman, appointed 3 February 1986;

Commissioner Anthony Kevin Buckley, appointed 7 February 1991; retired 4 February 2000;

Commissioner Paul Bennett Kelly, appointed 7 February 1991; deceased 3 May 2000;

Commissioner Inaam Tabbaa, appointed 25 February 1991;

Commissioner Donna Sarah McKenna, appointed 16 April 1992;

Commissioner John Patrick Murphy, appointed 21 September 1993;

Commissioner Ian Reeve Neal, appointed 2 September 1996;

Commissioner Ian Walter Cambridge, appointed 20 November 1996;

Commissioner Elizabeth Anne Rosemary Bishop, appointed 9 April 1997;

Commissioner John Richard Elder, appointed 2 February 1998; retired 13 February 2000;

Commissioner Janice Margaret McLeay, appointed 2 February 1998.

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 Management Act* 1988, to the Director General of the Attorney General's Department.

Mr Timothy Edward McGrath was appointed as Industrial Registrar and Principal Court Administrator of the Industrial Relations Commission of New South Wales on 27 October 1999.

Dual Appointees

The following members of the Commission also hold dual appointments as Presidential Members of the Australian Industrial Relations Commission:

The Honourable Justice Frederick Lance Wright

The Honourable Mr Justice Russell John Peterson

The Honourable Justice Francis Marks

The Honourable Justice Monika Schmidt

The Honourable Deputy President Rodney William Harrison.

ACTIVITY OF THE COMMISSION

Figures relating to the period 1 January to 31 December 1999 appear in brackets after the 2000 figures.

Members Sitting Alone

Matters filed and concluded

For the period 1 January to 31 December 2000, 6,356 (7,081) matters were filed in the Industrial Relations Commission of New South Wales, 5,406 (6,251) matters were concluded and 5,384 (4,637) matters were continuing as at 31 December 2000 (see *Annexures A & B).*

For the period from 1 January to 31 December 2000, there were 510 (511) applications for the making variation or rescission of an award, 111 (1,084) award reviews, 377 (330) applications for the approval of an enterprise agreement, and 925 (926) notifications of an industrial dispute *(Annexure A).*

During the year, 932 (782) matters were filed in the Commission in Court Session, 534 (731) were concluded and, as at 31 December 2000, 1,437 (1,040) were continuing. There were 551 (310) 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.

A total of 3,342 (3,243) applications under section 84 were filed during 2000, with 2,984 (3,240) being concluded and 1,996 (1,812) matters were continuing at the end of 2000 *(Annexure A).* While the figures for 2000 represent a reduction from the particularly high number of applications received in 1997

and 1998, 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 workload of the Commission with a particular burden falling upon the Commissioners.

Appeals to the Commission

For the period 1 January to 31 December 2000, 25 (42) appeals were lodged in the Commission (other than in Court Session). Of these, 18 (32) were appeals against a decision of a Commissioner; 6 (9) were against a decision of a Presidential Member; one appeal was filed against a decision of the Deputy Industrial Registrar. During 2000, 33 (33) appeals were concluded and, as at 31 December 2000, 18 (26) appeals remained active (*Annexure A).*

A total of 66 (70) appeals were lodged in the Commission in Court Session for the period 1 January to 31 December 2000. These include 37 (45) appeals lodged against a decision of a Judicial Member of the Commission sitting alone; 18 (16) appeals lodged against a decision of the Chief Industrial Magistrate or other Magistrates; and 11 (9) appeals lodged against a decision of the State Authorities Superannuation Board. During 2000, 47 (64) appeals were concluded and, as at 31 December 2000, 70 (61) appeals remained active (*Annexure B).* The significant level of Full Bench activity in 2000 is reflected in the consideration of important Full Bench decisions commencing at page 11 of this report.

Regional and Country Sittings

There is a substantial workload in Newcastle and Wollongong in heavy industry, serviced by 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 unfair dismissal

applications (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 disputation who can often attend the proceedings and then better understand decisions or recommendations made.

There were a total of 759 (601) sitting days in a wide range of Country Courts and other country locations during 2000 with one regional Member sitting permanently in Newcastle (Deputy President Harrison). Commissioner Redman and Commissioner Cambridge now also sit regularly in Newcastle. The Commission sat there for 285 (292) days during 2000. Deputy President Harrison deals with a wide range of industrial matters mostly of a regional nature in Newcastle and the Hunter district. The significant pressure because of major extensions to the list has to an extent been alleviated by Commissioners Redman and Cambridge regularly sitting in this area.

The regional Member for the Illawarra - South Coast Region, the Honourable Justice Walton, Vice-President, deals with most Port Kembla steel matters. Commissioner Murphy and Commissioner Connor also sit regularly in Wollongong. There were a total of 150 (137) sitting days in Wollongong during 2000.

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 2000, was 271 (315). A total of 129 (170) 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; 34 (63) prosecutions under section 16 in relation to the safety of non-employees; and 85 (33) prosecutions were commenced against the directors or managers of corporations 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.

STATE WAGE CASE

State Wage Case 2000 [2000] NSWIRComm 83; (2000) 97 IR 93

The Commission instituted proceedings on its own motion to consider the Australian Industrial Relations Commission's decision in the *Safety Net Review - Wages, May 2000* decision (2000) 95 IR 63. The Commission delivered its decision on 30 May 2000 after the first sitting of a State Wage Case Full Bench in Wollongong. The decision to hear the matter in Wollongong reflects the significant contribution of the people and enterprises of Wollongong and the Illawarra area to the State and national economy and to the development of industrial relations in New South Wales and Australia and also the importance of the region in the work of the Commission.

The Commission decided to adopt the approach of the AIRC and to increase all award rates by $15 per week. The Full Bench was of the opinion that the increase was economically sustainable in the prevailing economic circumstances where the New South Wales economy compares favourably with the Australian economy. Having regard to the provisions of s50 of the *Industrial Relations Act* 1996 and the agreement of the parties as to the adoption of the National decision and their submissions based on comity in approach, the Full Bench adopted the National decision stating that it was satisfied that the safety net adjustment awarded was not inconsistent with the objects of the Act, the adoption of the National decision was economically sustainable and there was a need to make safety net adjustments in order to protect lower paid employees under State awards.

OTHER SIGNIFICANT FULL BENCH DECISIONS

A number of significant decisions of Full Benches of the Commission in 2000 are briefly referred to in this section.

Swift Placements Pty Limited v WorkCover Authority of New South Wales (Louise May) [2000] NSWIRComm 9; (2000) 96 IR 69

The appellant appealed from a judgment in which it was convicted of a breach of s15(1) of the *Occupational Health and Safety Act* 1983. The appellant was a labour hire company and the issues in the appeal related to whether an injured worker was an employee of the appellant. If that were not the situation, the appellant should not have been convicted of the particular charges. The Full Bench extensively reviewed the legal principles applicable to the issues in the appeal and observed that it was fundamental in resolving the issues to have in mind that the ultimate conclusion as to whether the worker was an employee of the appellant was a question of fact, although in reaching that conclusion questions of mixed law and fact may, and probably would, arise.

The relationship between the appellant was to be viewed, in light of contemporary employment practices by applying the established legal principles and tests but recognising the variety of different employment situations which have arisen in modern Australian society. As the trial judge had observed as to the use of the control test "this is not a traditional employment situation" but was "a contemporary situation now not uncommonly encountered within the business world" so that "new and evolving techniques require the law to continually evaluate its approach to the characterisation of relationships and rights and obligations which may flow from them". As had been observed in *Stevens v Brodribb Sawmilling* (1986) 160 CLR 16 while the existence of control was significant it was not the sole criterion by which to gauge the nature of an employment relationship but

merely one of a number of indicia to be considered in determining that question. The importance of placing the concept of control in its proper context in considering the nature of modern industrial relationships, so as to emphasise the proper enquiry as being the totality of the relationship between the parties concerned had led the Court of Appeal to comment "that, in modern circumstances, the actual exertion of control will be rarer and more subtly applied". Control by an employer over an employee is not to be viewed merely in the on-the-job situation in directing a person what to do and how to do it, but rather in the sense of the ultimate or legal control over the person to require him to properly and effectively exercise his skill in the performance of the work allocated in default of which disciplinary measures may be adopted, including the final step of dismissal.

The Full Bench was satisfied beyond a reasonable doubt that the injured worker was employed by the appellant under a contract of employment within the meaning of the common law principles. The appellant was thus the employer for the purposes of s15(1) of the *Occupational Health and Safety Act* at all relevant times including the date when the accident causing injury to the employee occurred. The appeal was accordingly dismissed.

Four Sons Pty Limited v Sakchai Limisiripothong [2000] NSWIRComm 38; (2000) 98 IR 1

The Full Bench in dismissing this appeal considered the test to determine whether a casual employee is excluded from unfair dismissal jurisdiction under Clause 5B(2)(d) of the *Industrial Relations (General) Regulation* 1996. The appellant argued that the test of "reasonable expectation of continuing employment" was objective. The Full Bench held that whether the test had been objectively satisfied may be determined having regard to the expectations that an employee may "reasonably have gathered" or inferred from the employer's conduct.

In considering the standard of proof in unfair dismissal proceedings, the Full

Bench rejected the appellant's submission that a finding that a dismissal infringed the statutory criteria in s84(1) had to be proved on the basis of the approach in *Briginshaw v Briginshaw* (1936) 69 CLR 336. The Full Bench, however, held that approach may be apposite in cases where serious allegations of misconduct are made. The Full Bench also rejected a submission that the Commission did not have power to order that compensation be paid within seven days of the date of the decision at first instance. It was held that s89(8) of the *Industrial Relations Act* 1996 provided the relevant power to the Commission.

Transport Industry (State) Award - Application by Transport Workers' Union of Australia, New South Wales Branch for a new award; [2000] NSWIRComm 42; (2000) 95 IR 232

The Full Bench heard an application for a variation to the Transport Industry (State) Award as a Special Case under the State Wage Case principles. The Transport Workers Union, as a result of an agreement with the NSW Road Transport Association Inc., sought an increase in the award rates in line with the State Wage Decisions of 1997, 1998 and 1999, the award having being excluded from the operation of those decisions because of increases awarded in 1996. The agreement between the TWU and the RTA provided appropriate offsets to employers. In a counter claim, the Employers' Federation sought an additional offset in Saturday rates which was said to be necessary to supplement the TWU's concessions. The Full Bench held that a Special Case had been established. In the course of its decision the Full Bench considered issues concerning the standing of employer organisations and the importance of encouraging the making of balanced agreements between major industrial parties.

Capral Aluminium Limited v WorkCover Authority of New South Wales [2000] NSWIRComm 71; (2000) 49 NSWLR 610

These proceedings concerned the nature of additional penalties under s51A of the *Occupational Health and Safety Act* 1983 where the defendant had prior convictions. The appellant submitted that the use of s51A involved a two stage approach to sentencing, with the use of two separate discretions by the sentencing judge. The Full Bench rejected the appellant's contention and dismissed the appeal. The Full Bench in the course of its judgment dealt extensively with a number of issues as to sentencing of offenders under the *Occupational Health and Safety Act* including fact finding, principles of parity and consistency, general and specific deterrence, comparative sentences and appeal principles as to convictions in occupational health and safety matters.

Re Equal Remuneration Principle [2000] NSWIRComm 113; (2000) 97 IR 177

These proceedings concerned a claim brought by the Labor Council of New South Wales for the variation of the Wage Fixing Principles established in the *State Wage Case June 1999* (1999) 88 IR 363 by insertion of a new Equal Remuneration principle, together with consequential variations and the rescission of the existing Equal Pay principle established in the *State Equal Pay Case, 1973* [1973] AR (NSW) 425. The Full Bench concluded that it was appropriate to adopt an Equal Remuneration Principle for a number of reasons, including the significance both in policy terms and the requirements of the Act, such as ss 3(f) and 169 thereof reflecting as they do important human rights, that wage fixing principles in relation to the question of equal pay reflect the priority, importance and the failure hitherto of some awards to address appropriately the issue of equal pay for equal or comparable work. It was determined that, provided necessary safeguards were built into the principle, an Equal Remuneration and Other Conditions principle should be inserted into the Commission's Wage Fixing Principles. The principle adopted

was designed to ensure there are no artificial barriers created to a proper assessment of wages on a gender neutral basis, which would be achieved if the criterion for a revaluation of the work is that it be demonstrated the rate of payment hitherto fixed does not represent a proper valuation of the work and that any failure is related to factors associated with the sex of those performing the work. If a case of gender based undervaluation is demonstrated it would properly follow that the award in question did not fix "fair and reasonable conditions of employment" for the work to which it applied and that, in accordance with s10 of the *Industrial Relations Act* 1996, the Commission should act to rectify the problem so demonstrated. The new principle would allow relevant applications to be advanced and considered separate from the Special Case principle.

State of New South Wales (Department of Public Works and Services and Department of Education and Training) v WorkCover Authority of New South Wales (Inspector Page) [2000] NSWIRComm 124; (2000) 101 IR 131

The State of New South Wales (Department of Public Works and Services and Department of Education and Training) filed a notice of motion for a stay of proceedings and an application for leave to appeal and appeal pursuant to s47(4) of the *Occupational Health and Safety Act* 1983 and ss 188, 190 and 197 of the *Industrial Relations Act* 1996 from decisions and orders of a Local Court constituted by a magistrate. The matters before the magistrate concerned prosecutions against the State of New South Wales in its emanations as the Department of Public Works and Services and as the Department of Education and Training alleging breaches of s16 of the *Occupational Health and Safety Act*. In refusing the application the Full Bench determined on the basis of the criteria relevant to the grant of a stay and the failure of the applicant to establish that the appeal was arguably competent, that the balance of convenience required that the prosecution proceedings before the magistrate should not be delayed. The basis of the Full Bench's jurisdiction to decide the

appeal was submitted to be the interaction between s197(2) of the *Industrial Relations Act* 1996 and s104(1) of the *Justices Act* 1902, which had the effect of classifying the interlocutory decisions as "orders". The Full Bench observed that authority did not support the view that s197(2) conferred substantive appeal rights, rather, the section is procedural in nature. Further, there were serious doubts whether the decisions of the magistrate were "orders" rather than mere "rulings".

The Full Bench also observed that it may have been open to the appellant to obtain declaratory orders under s154 of the *Industrial Relations Act* "[w]hether such relief indeed be available in respect of a matter proceeding in a Local Court does not arise for determination here because it was not sought and, so, it need not be pursued. We mention it, however, because the *Industrial Relations Act* affords what is a most useful facility in the declaratory jurisdiction in the resolution of legal issues between parties and we would not wish to be seen as ignoring such mechanism for an appropriate case in the future".

Metrocall Inc. v Electronic Tracking Systems Pty Limited [2000] NSWIRComm 136; (2000) 101 IR 66

These proceedings concerned an appeal from a decision of a single judge to refuse an application for a stay of proceedings under s106 of the *Industrial Relations Act* 1996 in light of the *International Arbitration Act* 1974 (Cth) and the existence of a provision in the agreement between the parties requiring any relevant controversy or claim to be settled by arbitration in the State of Texas in the United States of America. The appellant argued that the Commission accordingly had no jurisdiction to hear the application as s106 was inconsistent with the *International Arbitration Act* by reason of s109 of the Constitution. The appellant submitted in the alternative that the Commission was required by s7(2) of the *International Arbitration Act* to stay the proceedings and refer the parties to arbitration.

The Full Bench in dismissing the appeal held as to the inconsistency issue that no inconsistency arises between the *International Arbitration Act* and s106 of the *Industrial Relations Act* so as to deprive the Commission in Court Session of jurisdiction to hear the application. Section 7 of the *International Arbitration Act* is to be construed as operating on the basis that the relevant court has jurisdiction as to the proceedings sought to be stayed. It does not purport to alter the jurisdiction of courts to entertain proceedings as to agreements to which it applies. It merely requires those courts to stay proceedings in the event that there is an arbitration agreement which applies to the matters raised in those proceedings.

As to the second issue it was necessary to determine whether the Commission in Court Session was required by s7 of the *International Arbitration Act* to stay the proceedings and refer the matter to arbitration. This question depends ultimately upon whether the proceedings involve a "matter that ... is capable of settlement by arbitration". The Full Bench held that the determination of the substance of a claim under s106 is not a matter which may be conferred on a private arbitrator by the parties to a contract or arrangement to which the section applies. This arose from the powers which may be exercised by the Court Session in s106 proceedings, the grounds on which the Commission may find that a contract or arrangement is unfair and the type of considerations which must be taken into account. The fact that s106 is aimed at contracts which are against the public interest or which undermine the system of industrial awards and agreements indicates that Parliament intended that the Commission exercise its functions not merely in the manner of ordinary inter partes litigation, but so as to assist in the achievement of industrial objectives set out in the Act.

It was important to emphasise also those other provisions of the *Industrial Relations Act* which dictate considerations which must generally be taken into account by the Commission in exercising its functions. In the exercise of its functions, the Commission is required to take into account the objects of the *Industrial Relations Act* and the state of the New South Wales economy. The

objects of that Act include to "provide a framework for the conduct of industrial relations that is fair and just" and to "promote efficiency and productivity in the economy of the State": see s3. The Commission is also required to take into account the principles contained in the *Anti-Discrimination Act*: s169(1). These are functions which are properly conferred on a specialist court or tribunal empowered to consider them. They are not matters which may be conferred on a private arbitrator by the parties to an agreement. The appellant has filed in the High Court of Australia an application for special leave to appeal against the Full Bench's judgment pursuant to s39(2)(c) of the *Judiciary Act* 1903 (Cth).

WorkCover Authority of New South Wales (Inspector Hopkins) v Profab Industries Pty Ltd [2000] NSWIRComm 142; (2000) 49 NSWLR 700

The Full Bench in this appeal considered the application of s556A of the *Crimes Act* 1900 (now replaced by s10 of the *Crimes (Sentencing Procedure) Act* 1999) to breaches of s15(1) of the *Occupational Health and Safety Act* 1983. In upholding the appeal against a decision of a judge of the Commission in Court Session to grant the benefit of s556A to a defendant who had pleaded guilty, the Full Bench determined that the offence was serious and required the sentencing judge to consider the objective seriousness of the offence, the strict nature of liability and the effect of the strict liability on culpability. The Full Bench also observed that in occupational health and safety offences before the Court Session the exercise of the discretion under s556A of the *Crimes Act* or s10 of the *Crimes (Sentencing Procedure) Act* 1999 must be considered as extraordinary and highly exceptional. When a defendant seeks its exercise cogent reasons must be provided by the defendant for such exercise and also by the judge acceding to that submission.

Reich v Client Server Professionals of Australia Pty Ltd (Administrator Appointed) [2000] NSWIRComm 143; (2000) 49 NSWLR 551

In this appeal the Full Bench undertook an extensive review of earlier authority as to s106 of the *Industrial Relations Act* 1996 and predecessor provisions to determine issues as to whether the conduct of a party to a contract may render the contract unfair and thus amenable to relief under the section. The appellant's claim had been dismissed at first instance when it was held that the respondent's conduct in unilaterally purporting to reduce the appellant's remuneration was, although unfair, a repudiation of the contract and therefore a matter for common law damages and not justiciable under s106. The majority of the Full Bench held that the determination of the appellant's claim under s106 at first instance had miscarried and there had been a constructive refusal to exercise jurisdiction under the section. Conduct by an employer which is unfair may render the contract amenable to relief under s106. Observations were also made by the majority as to the importance of the doctrine of precedent to the deliberations of industrial courts and tribunals.

Ridge Consolidated Pty Ltd v WorkCover Authority of New South Wales (Inspector Mauger) [2000] NSWIRComm 151; (2000) 100 IR 156

The Full Bench considered in this appeal the statutory and regulatory scheme relating to initiation of proceedings in prosecutions before the Commission in Court Session. The appellant submitted that the summons issued was invalid as it had not been accompanied by an affidavit verifying the summons as required by rule 219 of the *Industrial Relations Commission Rules* 1996. In dismissing the appeal the Full Bench held that once there was compliance with the relevant requirements under rule 219(1) the proceedings had been properly instituted and any subsequent non-compliance with the requirements

are, at most, irregularities which either may not be relevant or are capable of being cured. Further, there is a distinction between the initiation of proceedings and steps subsequent to initiation and defects in subsequent procedures do not invalidate the initiating process. Any subsequent irregularity in this matter was to be seen in light of the fact that both parties subsequently appeared before the Court. Section 12 of the *Supreme Court (Summary Jurisdiction) Act* 1967 provides that if both parties appear at the time and place appointed for hearing the judge shall proceed to hear the case. That provision results in the circumstance where both parties appear before the judge being sufficient to enable the proceedings validly to continue to a conclusion. The curing effect of s170 was also relevant to the issues raised. The appeal was dismissed.

New South Wales Teachers' Federation v New South Wales Department of Education and Training [2000] NSWIRComm 169; (2000) 100 IR 441

In this matter the Full Bench considered the circumstances in which leave to appeal may be granted where a direction has been made by the Commission under s134(2) of the *Industrial Relations Act* 1996 during the conciliation of an industrial dispute. The appellant sought leave to appeal and appealed against a direction requiring that the appellant take all available steps to cease industrial action and not to institute further action while related proceedings before the Full Bench continued. The Full Bench, in refusing leave to appeal, considered the nature of a direction given under s134(2), and the very limited consequences under the Act of non-compliance with a direction. A direction under s134(2) may be made in circumstances where the Commission's ability to make factual findings is limited. The Full Bench concluded that, in the light of these considerations, leave to appeal from a direction made under s134(2) would only be granted in rare and exceptional circumstances.

New South Wales Department of Community Services Community Living and Residential (Interim) (State) Award [2000] NSWIRComm 172; (2000) 100 IR 447

The Full Bench considered an application by the Department to vary the New South Wales Department of Community Services Community Living and Residential (Interim) (State) Award to include provisions relating to sleepovers. The term sleepover refers to the work performed by employees at group homes for persons with developmental disabilities, and occurs after the employee's ordinary shifts have been completed. The employees who sleep over are required to assist residents if needed although it is generally expected they will have a reasonable night's sleep. Provision was made for sleepovers in the enterprise agreement made between the Department and the union which formerly represented the employees. The union currently representing the employees opposed the proposed award variation.

The Full Bench, by majority, decided that the award should be varied to provide for sleepover work, subject to necessary safeguards. The Commission emphasised the occupational health and safety obligations on the Department which were not to be considered diminished in any way by the award provisions. To ensure that the award provided fair and reasonable conditions of employment for the employees, the wide range of material tendered was considered in the context of other relevant factors including the effects of fatigue on the employees, the appropriate levels of remuneration, and restrictions on the number of times sleepover work could be performed by an employee.

Kagan v Primus Telecommunications (Aust) Pty Ltd (No 2) [2000] NSWIRComm 185

This appeal dealt with the question of whether the portion of an employee's salary package relating to the use of his or her private motor vehicle for

business purposes should be considered as part of the employee's "remuneration" for the purposes of s83(1) of the *Industrial Relations Act* 1996 which limits the right to bring unfair dismissal proceedings to those employees whose "annual remuneration" is less than the prescribed amount. At first instance it had been held that the appellant's annual remuneration exceeded the statutory limit as a deduction for the business use of the employee's privately owned motor vehicle should not be made. The appeal was upheld. The Full Bench held that although the word "remuneration" should be given a wide meaning and operation, it must involve the concept or notion of payment for services rendered or work done. It was accordingly concluded that the amount of the salary package referable to the business use of the employee's private motor vehicle was not part of the employee's remuneration.

WorkCover Authority of New South Wales (Inspector Lane) v Australian Winch & Haulage Co Pty Ltd [2000] NSWIRComm 214; (2000) 102 IR 40

These proceedings involved a reference to the Full Bench of several questions arising in proceedings for breaches of the *Occupational Health and Safety Act* 1983 relating to admissibility of certain admissions when proceedings are taken against a corporation and also a director of the corporation pursuant to s50 of the Act.

The first question, which was answered affirmatively, was whether a record of interview of the second defendant which is inadmissible against the second defendant on the basis that he was not given a proper warning as contemplated by ss 31M and 31N of the *Occupational Health and Safety Act*, is nonetheless admissible against the first defendant if the proceedings against the first defendant and second defendant were heard jointly; or alternatively separately. It was held that, while available to a natural person, the privilege against self incrimination is not available to a corporation. Hence, as a matter of general principle, a statement which is otherwise inadmissible against an

individual defendant may be admissible against a corporation. Accordingly, in so far as the question concerns separate trials, the question must be answered affirmatively, although the admissibility of such a statement would be determined according to ordinary rules of evidence. The provisions of s31M(3) make clear that, as a matter of general application, a statement otherwise inadmissible against an individual person will not be inadmissible against a corporate defendant in a joint trial.

The second and third questions related to where proceedings against the first defendant were held separate to those against the second defendant, whether a Certificate of Conviction of the first defendant obtained pursuant to s178 of the *Evidence Act* 1995, or a transcript of proceedings against the first defendant, obtained pursuant to s157 of the *Evidence Act* 1995 were admissible against the second defendant in a subsequent separate proceeding pursuant to s50(1) of the Act when the evidence against the first defendant included the record of interview of the second defendant. The second and third questions were answered in the negative. The Full Bench also observed that in proceedings under the *Occupational Health and Safety Act* as to offences alleged to have arisen from a particular accident or injury, whether the offences be brought under ss 15, 16, 50 or a combination of those provisions, the normal method of hearing the proceedings would be by a joint trial of the various defendants. The exercise of the trial judge's discretion as to an application for separate trials would depend upon the application of the authorities having regard to the particular nature of the offences under the *Occupational Health and Safety Act* and the fact that the trial would be heard by a judge sitting without a jury.

Re Review of the Principles for Approval of Enterprise Agreements 2000 [2000] NSWIRComm 250; (2000) 101 IR 332

The Commission issued a summons to industrial parties to appear to show cause why the Commission should not review the Principles for Approval of Enterprise Agreements made in 1996 pursuant to s33 of the *Industrial*

Relations Act 1996. At the hearing before the Full Bench substantial agreement was reached. In addition, two matters were determined by the Full Bench: the nature of review proceedings arising under s33(3) and the inclusion of criteria for approval which would require the Commission to have regard to whether the enterprise agreement contained the standard anti-discrimination clause. In relation to the first issue the Full Bench determined that a review of the principles for approval of enterprise agreements should involve the Commission considering whether a particular principle was sound having regard to the requirements of the *Industrial Relations Act* and all relevant circumstances. The Full Bench also concluded that it was appropriate to include the anti-discrimination clause as a criteria for approval since the benefits flowing from the inclusion of such a clause in awards as referred to in the *State Wage Case 1999* were similarly applicable to enterprise agreements.

Metrocall Inc v Electronic Tracking Systems Pty Limited (No. 2) [2000] NSWIRComm 260; (2000) 102 IR 309

These proceedings dealt with an appeal from an interlocutory decision to grant an application by the managing director of the applicant in unfair contract proceedings to be joined as an additional applicant in the proceedings. The appellant submitted that the managing director did not come within the limited categories of persons set out in s108 which defined the persons with standing to bring a s106 application as he was not a "party to the contract" in terms of s108. The Full Bench held that as the word "contract" in s108 was to be read with the extended meaning of the term given by s105; it was open to the trial judge to find that the managing director was a party to an arrangement between the applicant company and the respondent and thus met the criteria in the provision as to standing. The appeal was dismissed.

State Rail Authority of New South Wales v WorkCover Authority of New South Wales (Inspector Dubois) [2000] NSWIRComm 261; (2000) 102 IR 218

The Full Bench considered an appeal from a decision of a single judge imposing a penalty of $420,000 on the appellant. The appellant had pleaded guilty to a charge of breaching s15(1) of the *Occupational Health and Safety Act* arising out of an incident in which one employee was badly injured after being struck by a train, and another placed at risk of injury. As the appeal was by way of rehearing the Full Bench was required itself to decide the question of penalty. The Full Bench held in upholding the appeal that the trial judge was correct in determining, in the light of s51A of the Act, the maximum penalty was $750,000 because the appellant had earlier convictions under the statute. The Court found that the penalty imposed was manifestly excessive; that the nature and quality of the offence was around the mid-point of the available range in relation to an offence of the worst case; and the penalty should therefore be in the order of $375,000. The Court held that in light of deduction for relevant subjective considerations, particularly the appellant's early guilty plea and its co-operation with WorkCover, the appropriate fine should be $300,000.

Re Crown Employees' (Teachers in Schools and TAFE and Related Employees) Salaries and Conditions Award [2000] NSWIRComm 275; (2000) 102 IR 202

The Full Bench considered an application for a new award to cover government school teachers, TAFE teachers and related employees. The application was made by consent of all parties, reflecting an agreement between the Teachers' Federation and the Department of Education and Training, and ended what the Commission described as a "long and sometimes bitter dispute" between the parties. The Commission determined that the new

award should be made, in light of the consent of the parties, the proposed award had industrial merit, and complied with the wage fixing principles.

The Commission required an amendment to a provision of the proposed award which would have allowed certain of its provisions to be varied by the agreement of the parties. The Commission also considered the proposal to include a general "leave reserved" clause, which would allow the parties to the award leave to apply to the Commission to vary aspects of the award. The Commission held that the clause could be made because of s17(3)(a) of the *Industrial Relations Act* 1996, which provides that an award may be varied at any time with the consent of the parties to the award. The Commission also concluded that the requirement that a new award must comply with the Equal Remuneration Principle adopted by the Commission in *Re Equal Remuneration Principle* (2000) 97 IR 177, had been satisfied.

LEGISLATIVE AMENDMENTS

Industrial Relations Act 1996

The legislative amendments enacted during 2000 affecting the operations and functions of the Commission include:

Industrial Relations Amendment Act 2000

Amendments under this Act came into force on 9 October 2000 and provided for several changes to the principal Act. Thirty-six amendments were made including (references to sections are to those of the principal Act):

- enabling parties to a project award or an award relating to one or more associated employers to agree to the award commencing retrospectively from a date earlier than the date of the commencement of proceedings (s15(4));

- to clarify the application of the "no net detriment" test in relation to the approval of enterprise agreements that apply to employees who are covered by a Federal award or no award (s35(1));
- to give casual employees who work on a regular basis the entitlement to 12 months unpaid maternity, paternity or adoption leave (ss 53(1) and (2), 57(3), 66(1)(b), 66(5));
- to enable some employees covered under a Federal award to bring unfair dismissal claims before the Commission under Part 6 of Chapter 2 (s83(1A));
- to extend the period during which an injured worker may not be terminated because he or she is unfit for work, from 6 months to any longer period of accident pay to which the employee is entitled under an industrial instrument (ss 99(1)(b), and 99(1A));
- to reduce the notice required to be given by an authorised officer of an industrial organisation who wishes to investigate breaches of industrial law from 48 to 24 hours (s298(3));
- to provide that a non judicial member of the Commission may only be removed from office in the same way as a judicial member, that is, by the Governor on the address of both Houses of Parliament.

Industrial Relations Amendment (Council Swimming Centres) Act 2000

This amendment commenced on 20 November 2000 and deems council swimming centre managers and supervisors at a swimming centre, under the care and control of a local council pursuant to a contract with the council, to be employees. There is an exception, however, where the person is a bona fide contractor within the meaning of clause 2(1A)(a) of Schedule 1 of the *Industrial Relations Act.*

Statute Law (Miscellaneous Provisions) Act (No 2) 2000

This amendment commenced on 8 December 2000. It amended s289 of the *Industrial Relations Act* by the insertion of the word "industrial" after "authorised" in s289(3). The subsection now provides for an "authorised industrial officer" having the right to investigate breaches of industrial legislation, rather than an "authorised officer."

Industrial Relations Leave Legislation Amendment (Bonuses) Act 2000

This Act amended the *Annual Holidays Act* 1944, the *Long Service Leave* Act 1955 and the *Long Service Leave (Metalliferous Mining Industry)* Act 1963 to prevent bonuses from being taken into account in calculating ordinary pay, if the amount of ordinary annual pay (excluding bonuses) exceeds amounts prescribed in the regulations of each Act amended. The Act came into force when assented to on 5 July 2000.

Courts Legislation Amendment Act 2000

This Act began on 25 September 2000 and, inter alia, amended the *Industrial Relations Act* to provide for the transfer of certain proceedings to Industrial Magistrates. A new s162A of the *Industrial Relations Act* 1996 makes provision for the President of the Commission or a Judicial Member to transfer enforcement proceedings under Parts 1 and 2 of Chapter 7 of the *Industrial Relations Act* to a Local Court where the Local Court has jurisdiction and the President or Judicial Member is satisfied that the proceedings should have been commenced there. The Act also amended s5AA of the *Criminal Appeal Act* 1912 to provide that appeals to a Full Bench from the Commission in Court Session's summary criminal jurisdiction are not required to be by way of rehearing on the evidence given in the summary proceedings (s5AA of the *Criminal Appeal Act* is applied to the Commission's jurisdiction by s196 of the *Industrial Relations Act*).

Legislative amendments which were enacted in previous years but commenced during 2000 included:

Crimes Legislation Amendment (Sentencing) Act 1999

This legislation commenced on 1 January 2000 and was implemented as a part of a package of reforms intended to give effect to recommendations made by the New South Wales Law Reform Commission in relation to criminal process and sentencing. The object of the Bill was to amend the *Criminal Procedure* Act 1986, the *Crimes* Act 1900 and certain other Acts, including the *Industrial Relations* Act 1996 so as "to rationalise provisions relating to criminal procedure, to abolish the penalty of penal servitude and the distinction between felonies and misdemeanours, and to make consequential amendments in connection with the enactment of the proposed *Crimes (Sentencing Procedure)* Act 1999 and the proposed *Crimes (Administration of Sentences)* Act 1999." (Hansard, Legislative Assembly, 30/11/99, p 3809). Section 272 of the *Industrial Relations Act* was amended to abolish the term "penal servitude" from subsection 272(1)(a).

Occupational Health and Safety Act 1983

The legislative changes in 2000 affecting the *Occupational Health and Safety Act* 1983, were as follows:

The *Occupational Health and Safety Act* 2000 was given Royal Assent on 26 June 2000. The new Act, which repeals and replaces the *Occupational Health and Safety Act* 1983, is expected to commence in 2001. Schedule 2.6 of the Act will implement amendments to the *Industrial Relations Act* to reflect the changes to the occupational health and safety legislation and also to provide for the purposes of s210 of the *Industrial Relations Act* (which deals with protection from victimisation) the making of a complaint about unsafe work matters.

PRACTICE DIRECTIONS

A number of new Practice Directions were issued by the President during the year pursuant to Rule 89 of the *Industrial Relations Commission Rules* 1996.

Practice Direction No 5 published in the Industrial Gazette of 14 July 2000 was made in order to provide an appropriate procedure for an application for an order under section 9 of the *Child Protection (Prohibited Employment) Act* 1998, the main purpose of such an order being to exempt the applicant from the prohibitions in employment provided under the Act. The Practice Direction requires an applicant to provide the grounds for relief and the relief sought in the form of an affidavit accompanying the primary application.

Practice Direction No 6 published in the Industrial Gazette of 28 July 2000 was made for the purpose of providing an appropriate procedure for the making of consent awards in light of s23 of the *Industrial Relations Act* and the Full Bench decision in *Re Equal Remuneration Principle* [2000] NSWIRComm 113. Parties to a consent award must now file an affidavit which states the basis upon which it is claimed that the consent award provides equal remuneration and other conditions of employment for men and women doing work of equal or comparable value. This affidavit is to form the evidentiary basis upon which the Commission will consider the award in light of s23 of the Act.

Practice Direction No 7 published in the Industrial Gazette of 11 August 2000 was made for the purpose of providing for special arrangements to apply to the Commission during the Olympic Games held in Sydney in September. The Practice Direction provided that the main Registry of the Commission at 50 Phillip Street was to remain open for filing process and for urgent matters, while a number of Members were rostered during the period to deal with any urgent disputes or applications arising during the Olympic period. Matters the

Commission usually deals with such as awards, unfair dismissals, unfair contracts and occupational health and safety prosecutions were not to be listed unless exceptional circumstances were present.

AMENDMENTS TO THE COMMISSION'S RULES

Pursuant to section 186 of the Act, the rules of the Commission are to be made by a Rule Committee comprising the President of the Commission and two other Presidential Members appointed by the President.

Amendments to the Industrial Relations Commission Rules 1996 during 2000

The *Industrial Relations Commission Rules (Amendment No 1)* 1999 (Gazette 144 of 24 December 1999) commenced on 31 January 2000 and provided for a new procedure for unfair contract claims under s106. The substance of the amendment was to provide a time frame for the filing of documents in s106 applications so that early conciliation may occur and to require the filing of documents specifically designed to facilitate conciliation and to minimise the incurring of costs as to the initiation and conciliation of proceedings.

The *Industrial Relations Commission Rules (Amendment No 2)* 2000 (Gazette 68 of 9 June 2000) took effect on 19 April 2000 and provided a new Rule 7 (1A) requiring all proceedings before the Chief Industrial Magistrate or other Industrial Magistrates to be commenced in the Office of the Clerk of the Local Court at the Downing Centre in Sydney.

The *Industrial Relations Commission Rules (Amendment No 3)* 2000 (Gazette 127 of 29 September 2000) provided new procedures relating to the institution of criminal proceedings before the Commission in Court Session. The new rules, which took effect on 6 October 2000, provide

that any person seeking to institute criminal proceedings in the Commission in Court Session is to apply for an order from a judge under section 4 of the *Supreme Court (Summary Jurisdiction) Act* 1967, which applies to the Commission in Court Session under s168 of the *Industrial Relations Act.* The Commission in Court Session may require the person alleged to have committed the offence to appear at a time and place specified in the order.

The *Industrial Relations Commission Rules (Amendment No 4)* (Gazette 143 of 3 November 2000) commenced in part on 3 November 2000 and replaced forms prescribed for applications for relief from unfair dismissal with a single application form. Further amendments relating to forms were to have effect from 1 February 2001.

The *Industrial Relations Commission Rules (Amendment No 5)* 2000 commenced on 10 November 2000. It omitted Rule 134(3).

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 were reconstituted during 1998 to deal with applications relating to particular industries and awards. Adjustments have been made to the assignments to the panels as required since 1998. Seven panels are now in operation, each comprising a number of Presidential Members and Commissioners. Each panel is chaired by a Presidential Member of the Commission who allocates 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.

Two of the panels specifically deal with applications from regional areas. The panel dealing with applications from the Illawarra-South Coast region is

chaired by the Honourable Justice Walton, Vice-President. The panel dealing with applications from the Hunter region is chaired by the Honourable Deputy President Harrison.

ANNUAL CONFERENCE

The Annual Conference of the Industrial Relations Commission was held from 10 May to 12 May 2000. Presentations covered a range of topics. The first day focussed significantly on consideration of changes in employment practices and issues relevant to Aboriginal and Torres Strait Islander people and the judicial system. A paper was given by Mr John Buchanan (Deputy Director, Australian Centre for Industrial Relations, Research and Training (ACIRRT)) on *Changes in Employment Practices*; and Ms Joanne Selfe (former Director, Indigenous Services Unit, Department of Corrective Services) and Ms Kelly Ramsden, (Dtarawarra Aboriginal Youth Project) presented sessions on issues relevant to Aboriginal and Torres Strait Islander people and the judicial system.

Papers given on the second day also provided perspectives on issues relevant to the Commission's functions. Professor Harry Glasbeek (Centre for Employment and Labour Relations, Law School, University of Melbourne) gave a paper concerning *Australian Labour Relations from a North American Perspective*; the Honourable Jeff Shaw QC MLC (Attorney General and Minister for Industrial Relations) a paper entitled *Recent Developments* and Professors Philip Bohle and Michael Quinlan (School of Industrial Relations and Organisational Behaviour, University of New South Wales) a paper entitled *Implications of Changing Employment Practices for Occupational Health and Safety*. Papers entitled *Assessing the Credibility of Witnesses* and *Developments in Industrial Relations and Employment Issues from the Employer's Perspective* were respectively presented by Dr John Ellard AM RFD (Consultant Psychiatrist) and Mr Dick Grozier (Australian Business Industrial).

The after dinner guest speaker was the Honourable Hal Wootton AC QC whose address (entitled *Some reflections of a one-time industrial barrister*) provided unique insights into the practice of industrial law in the 1950's, 1960's and 1970's, and developments in attitudes to Aboriginal advancement.

The conference was well attended and provided an invaluable opportunity for members of the Commission to discuss matters relevant to their work. The presentations, forums and discussions proved relevant and practical and appreciation should be expressed to the eminent presenters and to all those who contributed as participants.

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.

TECHNOLOGY

Medium Neutral Citation

In February 2000 the Commission implemented the use of an electronic judgments database and a system of court designated medium neutral citation. The system is similar to that in use in the Supreme Court and the Land and Environment Court and allows judgments to be delivered electronically to a database maintained by the Attorney General's Department. 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 Attorney General's Department web site (Lawlink) and the Australian Legal Information Institute site (AustLII).

The introduction of the system was possible with the co-operation of members of the Commission and their staff and with the assistance of the Executive and Strategic Services Division of the Attorney General's Department. Invaluable training and ongoing support was also provided by staff of the Judicial Commission of New South Wales.

CHILD PROTECTION (PROHIBITED EMPLOYMENT) LEGISLATION

The *Child Protection (Prohibited Employment) Act* 1998 and associated legislation came into force in July 2000. Its provisions included the imposition of prohibitions on persons convicted of serious sexual offences from being employed in child related employment unless an order was obtained from the Industrial Relations Commission or the Administrative Decisions Tribunal declaring that the Act was not to apply to a person in respect of a specified offence.

This important area of jurisdiction may require monitoring to ensure that the Commission's procedures are appropriate for the nature of the jurisdiction exercised. The applications received in 2000 usually required the urgent hearing of applications for stays of the prohibitions imposed by the legislation.

SYDNEY OLYMPICS 2000

The staging of the Olympic Games in Sydney in the year 2000 placed a number of demands on the Commission and Commission members. In the lead up to the Games the Commission made a number of Games specific awards. The first award, the *Sydney Olympic and Paralympic Games 2000 (State) Award*, was made by the President of the Commission in January 1999. Award making continued from that time until the commencement of the Games in September 2000. Although most awards were by consent, assistance (often at short notice) was frequently sought from the Commission to conciliate outstanding issues or to ensure the appropriateness of the award sought in terms of its relationship with other awards. The Commission also exercised its dispute resolution powers in areas related to the Games prior to and during the period of the Games.

Unlike other courts and tribunals in New South Wales which sat on only a very limited basis during the period of the Olympic Games, roster arrangements were introduced to ensure the availability during the Olympic period of 30 to 40 per cent of Commission members to deal with industrial disputes or other urgent matters. It was considered that the nature of the events occurring at the time and the involvement of emergency, transport and public services, the majority of which were within the Commission's jurisdiction, required availability at this level. The rostering of Members and their staff on this basis required their co-operation in rearranging their usual leave requirements and that co-operation is greatly appreciated. Some of the specific arrangements made for the period of the Olympic Games are set out in *Practice Direction No 7* which is referred to earlier in this report.

USERS' GROUP

The Industrial Relations Commission Users' Group was established in late 1998 to provide a forum for the major industrial parties and others who regularly appear before the Commission to provide feedback to the Commission and allow input into the Commission's practice and procedure. The first meeting was held in November 1998 and meetings were held during 1999 and 2000.

A feature of the Users' Group has been the establishment of sub-committees for the purpose of investigating particular issues affecting "users" of the Commission. During 2000, sub-committees were convened to consider issues including changes to procedures for occupational health and safety prosecutions, issues as to pro-bono assistance and procedures relating to the processing of unfair dismissal claims.

Major contributions of the Users' Group during the year have included the gazetting of the various Practice Directions and substantial changes to the Commission Rules relating to applications brought under section 84 of the Act relating to unfair dismissals, the effect of the Sydney 2000 Olympics on the operations of the Commission and new administrative procedures introduced in the Registry for dealing with subpoenaed documents. Other issues considered by the Users' Group included procedures for applications under the *Child Protection (Prohibited Employment) Act* 1998, the introduction of the medium neutral citation system for Commission decisions and judgments, a possible new Rule re pro-bono assistance and the convening of the Full Bench of the Commission in Wollongong for the purpose of hearing the State Wage Case.

The Users' Group has proved an extremely useful mechanism to discuss issues affecting those who frequently appear before the Commission and to canvas possible improvements to the Commission's practice and procedure. I look forward to working with the industrial parties, members of the legal

profession, representatives of government and others who have so constructively contributed to the forum thus far.

COMMISSION PREMISES

I have earlier reported that little discernible progress had been made with respect to the co-location of Judges and Commissioners in the premises at 50 Phillip Street. This remains an important goal of the Commission and would greatly enhance the efficiency and co-ordination of its activities. However, during the year with the assistance of the Director General and senior officers of the Attorney General's Department some positive developments have occurred in this area. I am hopeful of being able to report in the next Annual Report of tangible progress having occurred.

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 A

Matters filed during period 1 January 2000 to 31 December 2000 and matters completed and continuing as at 31 December 2000 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 1.1.2000 - 31.12.2000	COMPLETED 1.1.2000 - 31.12.2000	CONTINUING AS AT 31.12.2000 (inc prev. years)
AW	Application re new award/ variation/rescission of award	510	412	294
CA	Application for approval of a Contract Agreement	8	9	2
CC	Application re Industrial Committees	0	1	1
CD	Application re Contract Determination	20	13	17
CPA	Applic re Child Protection (Prohibited Employment) Act 1998	11	2	9
CTA C27A	Application pursuant to Cl 27A of Clothing Trades Award	16	14	4
EA	Applications re Enterprise Agreement (s.35), (s.43), (s.44)	377	300	141
EPA	Report under s.11 of the Employment Protection Act	1	1	1
IC	Application to establish Industrial Committee	6	5	5
PSA s181D	Application for review under s181D of Police Service Act	12	7	17
S18	Application for exemption from whole or any part of award	0	0	0
S19	Notice of award review	111	323	554
S33	Commission to set principles for approval of Eas.	1	1	0
S50	Adoption of National decision	0	0	0
S51	Commission to make State decision	1	2	0
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	3,342	2,984	1,996
S93	Application for reinstatement of injured employee	13	9	8
S126	Application for Stand down orders	0	0	0
S130 & S332	Notification of industrial dispute to Commission	925	727	817
S132	Commission may convene compulsory conf re s.130 dispute	2	0	2
S143	Application for payment of Strike pay/remuneration	1	1	0
S146	Ministerial Inquiry pursuant to s146(1)(d) of IR Act 1996	0	0	1
S175	Interpretation pursuant to section 175 of IR Act 1996	0	0	0
S193	Reference of a matter by Member to Full Bench	0	0	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	1	0
S205	Joint proceedings State/Federal Commissions	0	0	0
S213	Application for relief from victimisation pursuant to s. 213	5	6	7
S217	Application for registration of industrial organisation	0	0	0
S236	Reinstatement of injured employee	0	1	0
(S220) S294, 295	Demarcation orders	3	1	8
S311	Contract determinations/contracts of carriage	0	0	0
S314	Reinstatement of contract of carriage	8	3	8
(S697) S346, 348	Comp conference re claims – contract of carriage	1	1	14
(S698)	Compulsory conf re alleged breach of contracts of carriage.	0	0	0
C	Referred from Australian IRC under s.174, IR Act 1988 (Cth)	25	15	23
IRCAP1	Appeal against decision of Commissioner	18	20	17
IRCAP2	Appeal against Presidential Member	6	12	1
IRCAP3	Other Commission Appeals	1	1	0
VTBAP	Other Commission Appeals	0	0	0
Sub Total		**5,424**	**4,872**	**3,947**

ANNEXURE B

Matters filed during period 1 January 2000 to 31 December 2000 and matters completed and continuing as at 31 December 2000 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 1.1.2000 - 31.12.2000	COMPLETED 1.1.2000 - 31.12.2000	CONTINUING AS AT 31.12.2000 (inc prev. years)
AHA	Application recovery of moneys *Annual Holidays Act* 1944	2	0	4
DGA S9	Prosecution under s.9(1)(a) Dangerous Goods Act 1975.	0	0	0
FSIA	Appeal pursuant to Factories Shops and Industries Act 1962	0	0	0
LSLA	Application under section of 12 Long Service Leave Act 1955	4	2	2
OHS S15	Prosecution: s.15 Occupational Health & Safety Act 1983	129	103	234
OHS S16	Prosecution: s.16 Occupational Health & Safety Act 1983	34	18	99
OHS S17	Prosecution: s.17 Occupational Health & Safety Act 1983	19	11	45
OHS S18	Prosecution: s.18 Occupational Health & Safety Act 1983	0	7	8
OHS S19	Prosecution: s.19 Occupational Health & Safety Act 1983	2	1	12
OHS S27	Prosecution: s.27 Occupational Health & Safety Act 1983	2	0	2
OHS S31R	Prosecution: s.31R Occupational Health & Safety Act 1983	0	0	1
OHS S50	Prosecution: s.50 Occupational Health & Safety Act 1983	85	9	124
WCA S27(1)	Prosecution: s.27(1) Workers Compensation Act 1987	0	0	0
S106	Application to Commission to declare contracts void/ varied	551	308	785
S129	Prosecution under s129(1)	0	0	2
S137 & S139	Application re contravention of a dispute order	4	3	1
S154	Declaratory jurisdiction	12	7	13
S180	Proceedings for Contempt of Commission	1	1	0
S195	Application under s195 of the Industrial Relations Act 1996	1	1	0
S196	Reference pursuant to s196 IR Act 1996 to the Full Bench	1	1	1
S197	Application to State a Case	0	0	0
(S198)	Reference under s194 of 1991 Act	0	0	0
S225 & S227	Application for cancellation of regstrtn of indstrl organisatn	2	0	2
S247	Orders re rules of State organisation	0	1	0
S248	Application for declarations and orders under s248 of IR Act	1	0	1
S266	Application for order enforcing provisions of s266 IR Act	0	0	0
S288	Application for Validation Orders under s.288 IR Act 1996	1	2	1
S301	Prosecution under s 301(3)	1	1	2
S343-4, 365,367	Order for recovery of money under ss343, 344, 365 & 367	14	10	27
S357	Civil penalty for breach of industrial instruments	0	0	0
S368	Order for recovery of unpaid Superannuation	0	0	0
S369	Application for order for payment of moneys	0	0	0
S379	Application under s379 of the IR Act 1996	0	0	0
S399	Prosecution under s399 of the Industrial Relations Act 1996	0	1	1
(various)	Applications under ss440, 441, 465 & 497 of IR Act 1991	0	0	0
CTAP1	CICS Appeal against a decision of Member in CICS matter	37	23	42
CTAP2	CICS Appeal against a decision of the F/Bench	0	1	0
CTAP3	Other CICS Appeals	0	0	0
CIM & LOCAL CT	Appeal against a decision of Chief Industrial Magistrate	18	15	13
SASB	Appeal re decision of State Authorities Superannuation Board	11	8	15
Sub Total		**932**	**534**	**1,437**

Total IRC and CICS Matters:	**6,356**	**5,406**	**5,384**