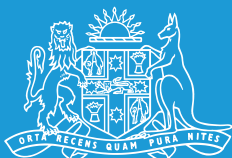


INDUSTRIAL RELATIONS COMMISSION OF NSW



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The principal place of business of the Industrial Relations Commission of New South Wales is 47 Bridge Street, Sydney. We acknowledge that this land is the traditional land of the Gadigal people of the Eora nation and we respect their spiritual relationship with their country.

The Commission also conducts proceedings in other locations across the State and we acknowledge the traditional custodians of those locations.

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HIGHLIGHTS 2015



Successful conciliation and pre arbitration disposals

- 90.5% of Unfair Dismissal Matters before the Commission were resolved or disposed of by conciliation before the hearing of matters by arbitration. This demonstrates the effective dispute resolution skills of the Judges and Commissioners.
- Those same skills were exhibited in the highly successful results of conciliations in industrial dispute proceedings, with nearly 94% of disputes being resolved without recourse to arbitral proceedings.

Continued performance in key areas while facing resource challenges

- 84% of unfair dismissal matters finalised within 6 months of commencement.
- 82.3% of Industrial dispute matters finalised within 6 months of commencement.
- The number of police disciplinary, and police dismissal appeals, filed and determined by the Commission in 2015 increased to the highest level in 5 years.
- 76% of reserved judgments delivered in accordance with 3 month time standard.
- 71% of appeals to a Full Bench of the Commission determined within 6 months.

Revision of listing practices and procedures to ensure responsive to needs

- In November 2015 an announcement was made regarding amended listing procedures for reviews pursuant to s 174 and s 181E Police Act 1990. These changes were implemented in order to promote the prompt and efficient case management of these types of cases.

Transition to Justice Link

- The Industrial Relations Commission commenced work on transitioning to the Justice Link case management system. The implementation of the Justice Link system for the Industrial Relations Commission is due to occur on 1 January 2016.

Review of Principles for Approval of Enterprise Agreements

- The Principles for Approval of Enterprise Agreements were reviewed by the Commission. This review is required by s 33(1) of the Industrial Relations Act 1996 and is the first time that such a review has occurred since 2002: *Review of the Principles for Approval of Enterprise Agreements 2015* [2015] NSWIRComm 24; (2015) 253 IR 143.

HIGHLIGHTS 2015 *cont.*

State Wage Case

- A Summons to show cause was issued by the Commission on its own initiative on 15 July 2015 in consequence of a decision of the Minimum Wage Panel of the Fair Work Commission issued 2 June 2015. A Full Bench of the Commission made general orders and continued the Wage Fixing Principles with minor adjustments (a review of the Principles is scheduled for 2016): *State Wage Case 2015* [2015] NSWIRComm 31; (2015) 255 IR 160.

Education Programs

- Holding the inaugural joint conference with the Queensland Industrial Relations Commission
- Encouraging innovation in employment relations through the 'President's Forum', an expert forum run in collaboration with Macquarie University (for the March 2015 Forum) and the Australian Institute for Business and Economics at the Faculty of Business, Economics and Law at the University of Queensland (for the August and November 2015 Forums).
- Improved advocacy standards through internal workshops.

Cooperative Employment Relations initiative

- In July, the Commission introduced the Cooperative employment relation's process, as a means of resolving and preventing industrial disputes. This new initiative builds upon, enhances and seeks to promote cooperative and collaborative workplace relations with a view to establishing positive and sustainable outcomes in the work place and to ensure the prevention of situations that could lead to industrial disputes.

The Cooperative Employment Relations process involves, various approaches including the early engagement by the Commission with stakeholders to introduce cooperative workplace measures, the facilitation of workplace partnerships for particular projects and interest based bargaining.

The Cooperative Employment Relations initiative focuses upon mutual and reciprocal cooperation or cooperative endeavor and/or mutual recognition in order to achieve a more harmonious workplace environment.

Experienced Members of Staff

- 55% of our people have been employed at the Commission for 15 years or more.

FOREWORD



FOREWORD BY THE PRESIDENT OF THE INDUSTRIAL RELATIONS COMMISSION OF NSW

The Honourable Justice Michael Walton

This is the twentieth Annual Report of the Industrial Relations Commission of New South Wales established under the *Industrial Relations Act 1996* ('the Act'). It is presented to the Minister for Industrial Relations pursuant to s 161 of that Act.

The year 2015 may be properly considered to be a year of consolidation for the Commission. The significant decline in the number of members which occurred each year from 2011 was largely arrested between 2014 and 2015 to about five members. A review of caseload statistics provides for the same conclusion. Whilst the number of filings increased in the year, this may be largely accounted for by the Commission conducting the triennial award review process. When an adjustment is made for this event, the overall filings in the Commission only marginally decreased between 2014 and 2015. A significant part of that decline resulted from a reduction in the filing of notifications of industrial disputes; a factor which may be substantially attributed to the work done by the Commission in promoting cooperative employment relations and proactively managing industrial dispute matters.

In terms of the performance of the Commission, the year represents a singular success. Despite a slight fall in the number of members and a steady number of filings, clearance rates increased over 2014 levels and matched those of 2012 and 2013. The Commission demonstrated high performance in relation to unfair dismissal and industrial dispute matters. Moreover, the members willingly and actively cooperated in major reform agendas: the driving of the cooperative employment relations strategy and the implementation of innovative education programmes. In the latter respect, the members of the Commission undertook very successful advocacy programmes throughout New South Wales and gave active support to the President's Forum. Regional sittings were maintained at a high level. For the first time in the Commission's history, it undertook a joint conference with the Queensland Industrial Relations Commission.

As was observed in the 2014 report, despite being largely confined to the public sector and local government, the Commission maintains a very significant presence in the field of industrial relations in Australia and represents an exemplar of how modern dispute resolution models may achieve significant workplace gains including improvements in organisational performance, workplace relations and employee well-being. It continues to play an important role, in this respect, in regional areas of New South Wales. In short, the Industrial Relations Commission is a vital component of the economic and social well-being of this State.



FOREWORD *cont.*

Whilst the importance of the Industrial Court may not be underestimated, it is not possible to be as sanguine as to the vitality of the Court. Whilst there was a slight increase in filings in 2015, overall the number of filings in the Industrial Court is at a record low. A further and very significant complication is that, with the end of Acting Justice Kite's term, there only remained a single judge of the Court, namely the President. Even with the generous assistance of the Chief Justice of New South Wales in nominating various members of his Court to sit on Industrial Court matters pursuant to s 151B of the Act, there remained real difficulties in a single judge dealing in a timely way with matters filed in the Court's jurisdiction, particularly when other parts of the Commission's business drew heavily upon that Judge's attention. To that may added the administrative difficulties associated with s 151B allocations themselves and difficulties associated with a single judge court per se, which are many but do not bear elaboration in this report. It must be said that the maintenance of a single judge jurisdiction cannot have a long term future.

1. OVERVIEW



President's Forum

Following on from the highly popular and successful inaugural President's Forum held in November 2014, three Forums were held during 2015.

The Forums are run by the New South Wales Industrial Relations Commission in collaboration with Macquarie University for the March 2015 Forum and the Australian Institute for Business and Economics at the Faculty of Business, Economics and Law at the University of Queensland for the August and November 2015 Forums.

The Forums provide an occasion for lawyers, industrial practitioners, business leaders, academics and stakeholders such as public sector and local government employers and unions to engage in interactive discussions with panel members about industrial and employment law topics and broader ideas of work.

Attendance at the Forums is by invitation only.



26 March 2015 Forum

The first Forum for 2015 was held on 26 March at the Macquarie University Graduate School of Management CBD Executive Conference Centre at Circular Quay.

The format for the evening was a panel discussion on the question: "Do twenty-first century Western employers provide decent work?"

The panellists were Stephen Cartwright, CEO of the NSW Business Chamber, Professor Joellen Riley, Dean and Professor of Labour Law at Sydney Law School, and Professor John Kelly, Professor of Industrial Relations in the Department of Management at Birkbeck College, University of London.

20 August 2015 Forum

The second Forum for 2015 was held on 20 August at The Mint in Sydney. It was held in collaboration with the Australian Institute for Business and Economics at the University of Queensland.

The format for the evening was an interactive panel debate on the question: "Exploring disability disadvantage: how can the workplace be made more inclusive for people with disability?"

The panellists were Professor Kim Hoque, Professor of Human Resource Management at Warwick Business School, Suzanne Colbert AM, founding Chief Executive of the Australian Network on Disability, and Dr Paul Harper, Senior Lecturer, TC Beirne School of Law at the University of Queensland.



1. OVERVIEW *cont.*

17 November 2015 Forum

The third and final forum for 2015 was held on the 17 November at The Mint in Sydney.

The format for the evening was an interactive panel debate on the question: "What is the future role of law in the Australian workplace?"

The panellists were the Hon. Justice Margaret Beazley AO, President of the NSW Court of Appeal, Arthur Moses SC and Professor Jacqueline Coyle-Shapiro, Professor in Organisational Behaviour in the Department of Management at the London School of Economics and Political Science.

Advocacy Programmes

In 2015, the Commission continued the advocacy education programme that was introduced in 2014. The programme consists of a short, two part practical course designed to equip budding lay advocates with the fundamental skills and knowledge needed to appear effectively before the Commission, including management of evidence, cross-examination skills and preparation of witnesses.

Five courses were conducted in 2015, with Commissioner Newall presenting a course in Sydney on 18 and 25 March and Commissioner Stanton holding a course in Newcastle on 9 and 10 September. Harrison DP conducted a course at Ballina on 21 October and Commissioner Tabbaa conducted two courses, the first on 11 and 18 May in Wollongong and the second on 12 August in Wagga Wagga. The courses are held in an informal setting and involve interactive discussions designed to assist and improve the advocacy skills of the parties who appear before the commission. The attendees at the 2015 courses were from unions, local government and other employer organisations.

Feedback from the attendees was extremely positive and it is planned that further courses will occur in 2016.

Cooperative Employment Relations

In the 2014 annual report, the Commission reported that it had introduced an addition to its traditional role in proactively resolving industrial disputes. That system was described as cooperative employment relations and combined the principles of cooperative employment relations and interest based bargaining to move parties beyond representing their own respective interests to a more collaborative outcome that focussed upon mutual interests and, out of these, alternative options for the resolution of industrial disputes.

There were five cooperative relations projects undertaken by the Commission during 2015. These all involved areas of significant importance to the public interest. Three of those involved the local government area and two involved substantial projects involving the NSW Ambulance Service. In each case the intervention of the Commission, using this model, proved successful.

Appointment of Acting Judicial Members of the Industrial Court

Section 151B(2) of the Act provides that an eligible judge (pursuant to sub-section (1)) may act as a judicial member of the Court for a particular period or in relation to a particular proceedings of the Court if the Chief Justice, at the request of the President, nominates an eligible judge to so act.

In 2015, the following judges of the Supreme Court of NSW acted as acting judicial members of the Industrial Court of NSW in the following matters pursuant to that provision.

1. The Hon. Justices Monika Schmidt and Peter Garling RFD became acting judicial members on 29 May 2015 for the period 1 June 2015 to 30 June 2016 in relation to sentencing proceedings in Matter No IRC 315 of 2011 – Jennifer Ann Nash v Glennies Creek Coal Management Pty Limited and Matter No IRC 316 of 2011 – Jennifer Ann Nash v Integra Coal Operations Pty Limited.
2. The Hon. Justice Monika Schmidt became an acting judicial member on 26 August 2015 in relation to the proceedings in Matter No IRC 467 of 2015 – Malcolm Lorne Bigg v SAS Trustee Corporation.
3. The Hon. Justices Stephen Rothman AM and Ian Harrison became, on 3 November 2015, acting judicial members in relation to appeal proceedings in Matter Nos IRC 1111 and 1126 of 2012 – Hunter Quarries Pty Ltd and Morrison.

Ceremonial Sitting of Full Bench to Mark the Retirement of Deputy President Harrison

On the 1 December 2015 a Ceremonial Sitting of the Full Bench of the Commission occurred at the Newcastle premises of the Commission. This was the third time that the Full bench of the Commission has sat in Newcastle.

The sitting occurred to mark the retirement of Deputy President Rodney Harrison.

Deputy President Harrison was first appointed as a Commissioner in August 1987 and has been a Deputy President since September 1996. The Deputy President's contribution to dispute prevention and settlement by means of what has become known as the 'Hunter model' is well known and respected and is now the subject of academic research. Many industries are still enjoying the benefits of this important work. Furthermore the Hunter model formed part of the basis for the cooperative employment relations process that is currently being utilised by many parties involved in industrial disputes.

1. OVERVIEW *cont.*



Ceremonial Sitting at the Industrial Relations Commission Newcastle marking the retirement of Deputy President Harrison. (L-R Acting Justice Peter Kite; Deputy President Rodney Harrison; President Justice Michael Walton; Commissioner Inaam Tabbac; Commissioner John Stanton; Commissioner Peter Newall).

In his tribute to Deputy President Harrison at the ceremonial sitting the President, Justice Walton, noted;

"The Deputy President is possessed of and has exhibited the attributes, skills and knowledge necessary in the modern era to effectively discharge the important work of a specialist tribunal such as this one with excellence. In addition to the formal skills required of an arbitrator and the quite different skill set required for conciliation, an industrial tribunal requires members to have a sound knowledge both practically and theoretically of industrial and employment relations and desirably the field of commercial, business or economics.

Two particular features might be mentioned. First, there is a world of difference between the skill exercised in the resolution of disputes about existing rights and entitlements and those exercised in the creation of fresh rights or entitlements. Secondly, and perhaps more significantly, it is important that the member is also able to discharge functions outside dispute resolution *per se* in which the focus is upon the maintenance or restitution of the employment relationship or collaborative relationships and, in that respect, to the enduring partnerships and collaborations at work."

Deputy President Harrison's retirement will take effect on 8 January 2016 and will be more fully addressed in the report for that year.

2. COMMISSION PROFILE



Purpose of the Commission

The Industrial Relations Commission is established under the Act with conciliation and arbitral functions. Section 3 of that Act sets out its functions as follows:

- To provide a framework for the conduct of industrial relations that is fair and just
- To promote efficiency and productivity in the economy of the State
- To promote participation in industrial relations by employees and employers at an enterprise or workplace level
- To encourage participation in industrial relations by representative bodies of employees and employers and to encourage the responsible management and democratic control of those bodies
- To facilitate appropriate regulation of employment through awards, enterprise agreement and other industrial instruments
- To prevent and eliminate discrimination in the workplace and in particular to ensure equal remuneration for men and women doing work of equal or comparable value
- To provide for the resolution of industrial disputes by conciliation and, if necessary, by arbitration in a prompt and fair manner and with a minimum of legal technicality, and
- To encourage and facilitate cooperative workplace reform and equitable, innovative and productive workplace relations.

Our Structure

The Commission operates at two distinct levels. It has distinct legal characters according to its composition and functions. Those functions may be broadly defined as “arbitral” functions and “judicial” functions.

As an industrial tribunal the Commission seeks to ensure that industrial disputes arising between parties in this State are resolved quickly, in a fair manner and with the minimum of legal technicality.

As a superior court of record within the New South Wales justice system, the Industrial Court interprets and applies the law with regard to matters, both criminal and civil, filed and the rules of evidence and other formal procedures apply.

2. COMMISSION PROFILE *cont.*

The Industrial Court of New South Wales

The Industrial Court is established under Ch 4 Pt 3 of the Act. Pursuant to s 152(1), the Industrial Court is a superior court of record and is a court of equivalent standing to the Supreme Court of New South Wales. The Court is a court for the purposes of s 71 of the Commonwealth Constitution and a court of the State of New South Wales for the purposes of s 77(iii).

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

Appeals lie to a single Member of the Court from the Local Court under s 197 and in public sector appeals under s 197B.

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

- proceedings for an offence which may be taken before the Court (including proceedings for contempt). The major area of jurisdiction exercised in this area relates to residual breaches of the *Occupational Health and Safety Act 2000*: ('the OHS Act') commenced in the Court prior to 1 January 2012;
- proceedings for declarations of right under s 154;
- proceedings for unfair contract (Pt 9 of Ch 2);
- proceedings under s 139 for contravention of dispute orders;
- proceedings under Pts 3, 4 and 5 of Ch 5 (other than Div 3 of Pt 3 and Div 3 of Pt 4) – registration and regulation of industrial organisations;
- proceedings for breach of an industrial instrument;
- proceedings for the recovery of money payable under an industrial instrument other than small claims under s 380 (which are dealt with by an Industrial Magistrate); and
- superannuation appeals under s 40 or s 88 of the *Superannuation Administration Act 1996*.

The Industrial Relations Commission of New South Wales

The Commission is established by and operates under the Act. The Court of Arbitration (subsequently renamed and re-established as the Industrial Commission of New South Wales) was first established in New South Wales in 1901 and commenced operation in 1902. The present Commission is the legal and practical successor of that Court, the Industrial Commission which existed between 1927 and 1992, and also of the Industrial Court and Industrial Relations Commission which existed between 1992 and 1996.

The Industrial Relations Commission of New South Wales is an industrial tribunal. It has jurisdiction to hear proceedings arising under various industrial and related legislation.

Broadly, the Commission discharges the following functions:

1. setting remuneration and other conditions of employment;
2. resolving industrial disputes; and
3. hearing and determining other industrial matters.

In particular, the Commission exercises its jurisdiction in relation to:

- establishing and maintaining a system of enforceable awards which provide for fair minimum wages and conditions of employment;
- approving enterprise agreements;
- preventing and settling industrial disputes, initially by conciliation, but, if necessary, by arbitration;
- inquiring into, and reporting on, any industrial or other matter referred to it by the Minister;
- determining unfair dismissal claims by conciliation and, if necessary, by arbitration to determine if a termination is harsh, unreasonable or unjust;
- claims for reinstatement of injured workers;
- proceedings for relief from victimisation;
- dealing with matters relating to the registration, recognition and regulation of industrial organisations;
- dealing with major industrial proceedings, such as State Wage Cases;
- applications under the *Commission for Children and Young People Act 1998*;
- various proceedings relating to disciplinary and similar actions under the Police Act;
- various proceedings relating to promotional and disciplinary actions under the Act (Ch 2, Pt 7); and
- proceedings for the enforcement of union rules and challenges to the validity of union rules.

2. COMMISSION PROFILE *cont.*

Membership of the Commission

Judges and Presidential Members

As a superior court of record, the Judges of the Commission have the same title and status as the Judges of the Supreme Court of New South Wales.

The Judicial and Presidential Members of the Commission during 2015 in order of seniority were:

President

The Honourable Justice Michael John Walton, appointed President 3 February 2014 and as a judicial Member and Vice-President 18 December 1998;

Acting judicial members (in order of seniority) pursuant to s 151B(2)

The Honourable Justice Stephen Rothman AM

The Honourable Justice Ian Harrison

The Honourable Justice Monika Schmidt

The Honourable Justice Peter Garling RFD

Deputy President

Rodney William Harrison, appointed Deputy President 2 September 1996 and as a Commissioner 4 August 1987. He also held a dual appointment as a member of the Federal Fair Work Commission until April 2013.

Acting Presidential Members

The Honourable Acting Justice Roger Patrick Boland appointed 3 February 2014. His term expired 3 February 2016.

The Honourable Acting Justice Peter Kite SC appointed 25 November 2014 for a period of 6 months. He continued after the expiry of his term to complete part heard matters. He was continuing in that role at the end of the reporting year.

Commissioners

The Commissioner Members of the Commission during 2015 in order of seniority were:

Commissioner Inaam Tabbaa AM, appointed 25 February 1991;

Commissioner John David Stanton, appointed 23 May 2005; He also held a dual appointment as a member of the Federal Fair Work Commission until October 2015.

Commissioner Peter Justin Newall, appointed 29 April 2013;

Commissioner John Vincent Murphy, appointed 4 December 2015.

Regional Sitzings of the Commission

The Commission has its own dedicated court premises located in Newcastle and Wollongong.

The Commission also has an arrangement with the Registrar of the Local Court at Parramatta to provide registry services for clients of the Commission at the Parramatta Court Complex, Cnr George and Marsden Streets, Parramatta.

The policy of the Commission in relation to unfair dismissal applications (s 84) and rural and regional industries is to sit in the country centre at or near where the events have occurred.

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

There were a total of 207(184 in 2014) sitting days in a wide range of country courts and other country locations during 2015.

There were two Members based permanently in Newcastle – Deputy President Harrison and Commissioner Stanton.

The Commission sat in Newcastle for 132 (136 in 2014) sitting days during 2015 and dealt with a wide range of industrial matters in Newcastle and the Hunter district.

The regional Member for the Illawarra-South Coast region is the President, the Honourable Justice Walton. However, the principle sittings in Wollongong and environs are undertaken by Commissioner Tabbaa. There were a total of 35 (48 in 2014) sitting days in Wollongong during 2015.

The Commission sat in other regional locations in 2015 including Ballina, Lismore, Murwillumbah, Tamworth, Tweed Heads and Wagga Wagga.

Industry Panels

Industry panels were reconstituted during 1998 to deal with applications relating to particular industries and awards and have been reviewed regularly since that time to ensure that panels reflect and are able to respond to the ongoing needs of the community.

With Members' retirements in 2013 and 2014, a further rationalisation was undertaken.

The panels deal with applications for awards or variations to awards, applications for the approval of enterprise agreements and dispute notifications arising in relevant industries together with promotional and disciplinary appeals brought by public sector employees (both general public sector and transport public sector).

One panel now deals with metropolitan (or Sydney-based) matters (down from four in 2007); two panels specifically deal with applications from regional areas (down from three) and one panel deals specifically with promotional and disciplinary appeals.

2. COMMISSION PROFILE *cont.*

The panel dealing with applications in the north of the State (including the Hunter region) is chaired by Deputy President Harrison. The panel dealing with applications from the southern areas of the State (including applications from the Illawarra-South Coast region) is chaired by the President, the Honourable Justice Walton. The membership of the panels at the end of the year is set out at Appendix 1.

The Industrial Relations Registry

The Industrial Registrar has overall administrative responsibility for the operation of the Commission. The Registrar reports to the President of the Commission in terms of the day to day operational procedures and as a Business Centre Manager.

The Registrar also reports to the Chief Executive Officer of the Supreme Court in relation to reporting and budgetary responsibilities.

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

Registry Client Services Team

The Registry Client Services team provides assistance to users of the Commission seeking information about the work of, or appearing before, the Commission.

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

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

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

Information Management, Electronic Services & Commissioner Support Team

The Information Management, Electronic Services and Commissioner Support Team is responsible for the preparation of industrial awards, enterprise agreements and other orders made by Members of the Commission, for publication in the New South Wales Industrial Gazette, which is available in electronic format. This process is required and driven by legislative requirements and enables the enforcement and implementation of awarded or approved employment conditions for employees. This team is also responsible for the maintenance of records relating to parties to awards and records relating to Industrial Committees and their members.

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

Importantly, this team also provides administrative support to Commissioner Members.

Industrial Organisations Team

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

- registration, amalgamation and consent to alteration of the rules of industrial organisations;
- election of officers of industrial organisations or for special arrangements in relation thereto;
- Authority to Enter Premises and Work Health and Safety Entry Permits for union officials;
- Certificates of Conscientious Objection to membership of industrial organisations;
- special rates of pay for employees who consider that they are unable to earn the relevant award rate because of the effects of impairment; and
- special arrangements in respect of the keeping of time and wage records and the provision of pay slips.

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

In addition, the team processes applications for registration of employers of out-workers for determination by the Clothing Trades (State) Industrial Committee.

Executive Team

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

3. PERFORMANCE



INDUSTRIAL RELATIONS COMMISSION

Overall Caseload

The comparative caseload statistics for the Industrial Relations Commission between 2012 and 2015 are summarised in Table 3.1

Table 3.1 [Caseload Statistics]

	2012	2013	2014	2015
Appeals				
Filed	16	16	10	7
Finalised	14	18	8	8
Pending	11	6	6	5
Awards				
Filed	351	146	188	334
Finalised	349	100	123	382
Pending	21	66	131	83
Collaborative Employment Relations				
Filed	N/A	N/A	N/A	5
Finalised				0
Pending				5
Disputes				
Filed	372	336	308	292
Finalised	447	385	275	314
Pending	146	82	112	87
Enterprise Agreements				
Filed	13	8	15	12
Finalised	13	5	15	14
Pending	0	3	3	1
Unfair Dismissals				
Filed	221	227	206	208
Finalised	220	250	186	201
Pending	68	45	64	70
Public Sector Promotion and Disciplinary Appeals				
Filed	63	87	10	24
Finalised	92	92	19	23
Pending	0	0	0	6

Table 3.1 [Caseload Statistics (continued)]

	2012	2013	2014	2015
Police Dismissals and Disciplinary Appeals				
Filed	16	28	23	43
Finalised	19	23	19	39
Pending	10	15	17	21
Hurt on Duty Appeals				
Filed	29	11	4	9
Finalised	38	24	14	21
Pending	20	12	4	15
Other				
Filed	110	133	118	100
Finalised	109	116	121	86
Pending	30	46	41	38
TOTALS				
Total Filed for the Year	1191	992	882	1029
Total Finalised for the Year	1301	1013	780	1088
Total Pending at end of Year	306	275	378	326

Table 3.1 above shows the following trends

- Total filings (1029) have increased to the highest level in three years. However, that increase is largely as a result of the triennial award review process. This statutory undertaking last occurred in 2012. There were 220 award reviews undertaken as part of the review. When adjustments are made for the award review process the underlining volume of matters filed in the Commission during 2015 showed a further small decline.
- There was an increase in the number of police dismissals and disciplinary appeals bringing them to their highest levels in the last five years.
- The decrease in total filings was principally associated with a decline in industrial disputes. However, that decline was only of a marginal nature.
- Unfair dismissals grew slightly from the filings in 2014.
- Total finalisations (1088) increased in 2015, to the highest level in the last three years.
- This increased level in the most part can be attributed to the 382 award matters that were finalised during 2015. The number of disputes and unfair dismissal matters finalised during 2015 also showed small increases.
- Total matters pending at the end of 2015 decreased by 13.7% to 326 pending matters.

3. PERFORMANCE *cont.*

Table 3.2 below shows the number of Members and the respective positions.

Table 3.2 [Commission Members]

	2012 ¹	2013 ²	2014 ³	2015 ⁴
Judicial and Presidential Members				
President	1	1	1	1
Vice - President	1	1	0.1	N/A
Deputy President	0.5	0.8	1	1
Presidential Members (Judges or Acting Judges)	4	2.8	1.5	0.5
Total Judicial Members	6.5	5.6	3.5	2.5
Non- Judicial Members				
Commissioners	3.3	2.3	2.5	2.7
Total Members of the Commission	9.8	7.9	5.6	5.2

¹ Justice Marks to 30 June; Justice Kavanagh to 30 June; Deputy President Sams to 29 March (Full-time at Fair Work Australia (FWA)); Commissioner McKenna to 29 March (Full-time at FWA); Commissioner Ritchie to 5 October.

² Justice Haylen to 24 October; Deputy President Harrison part time at FWA to 26 April; Commissioner Bishop to 23 January; Commissioner Macdonald to 8 November (Full-time at FWA from 2011); Commissioner Newall from 29 April.

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

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

Clearance Rates

The comparative clearance rate statistics for Commission between 2012 and 2015 are summarised in Table 3.3.

Table 3.3 [Clearance Rates Statistics]

	2012	2013	2014	2015
Commission Clearance Rate	109.2%	102.1%	88%	105.7%

The deteriorating clearance rates of the Commission are a direct result of the reduction in the number of judicial Members attached to the Commission from 2013 to 2014.

3. PERFORMANCE *cont.*

Industrial Disputes

The Commission is responsible for the timely and efficient resolution of industrial disputes in NSW pursuant to Ch 3 of the Act 1996. Under that chapter, the Commission must firstly attempt to conciliate the dispute between the parties pursuant to s 133 and s 134 of the Act.

This form of robust alternative dispute resolution usually involves a Commissioner who meets with the parties both separately and together in an attempt to resolve their differences. In the event that a dispute cannot be resolved by way of conciliation, the Commission will then arbitrate the dispute under s 135 and s 136 and make orders that are binding on all parties. Industrial dispute matters represented 28.4% of the total filings for the Commission during 2015.

Figure 3.4 [Filed and finalised dispute matters]

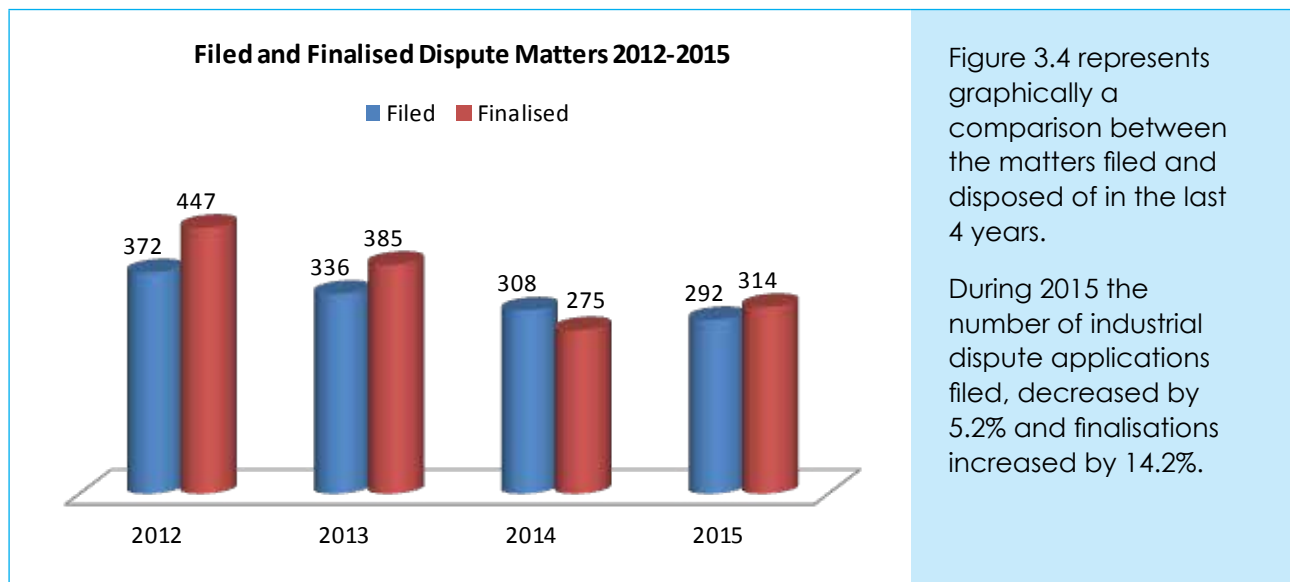
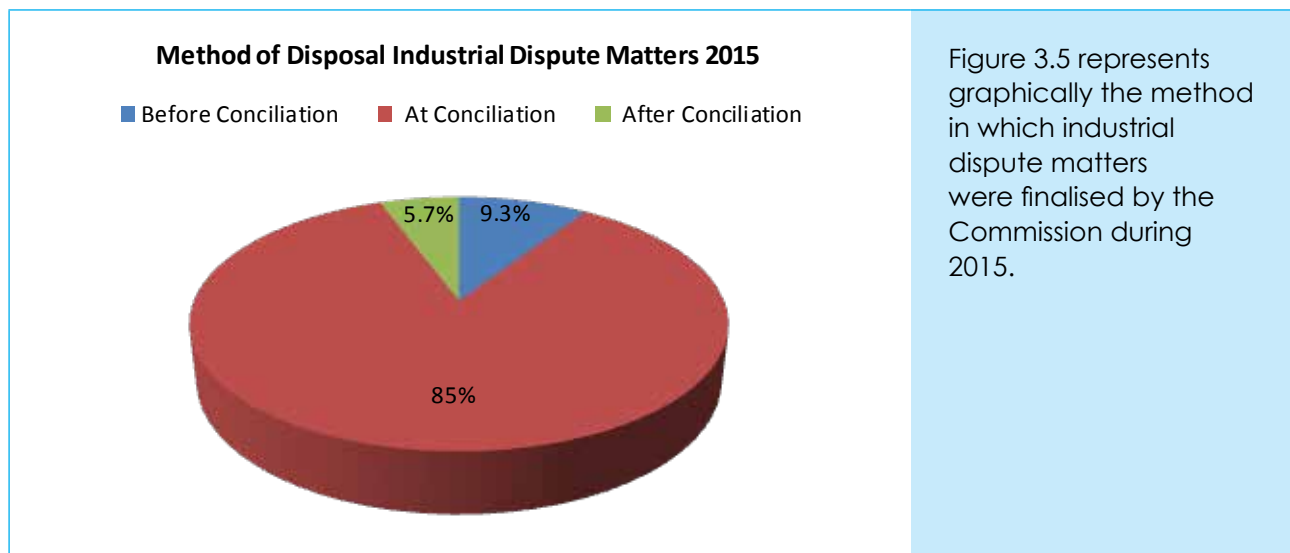


Figure 3.5 [Method of disposal]



Time Standards

It is of great importance for the successful discharge of the Commission's statutory and dispute resolution functions that industrial disputes are attended to in a timely manner. The Commission endeavours to have all dispute matters listed within 72 hours of a notification being filed so that the dispute can be adequately addressed.

Table 3.6 [Time taken for first listing of industrial dispute matter]

	Within 72 Hours (50% Target)	Within 5 Days (70% Target)	Within 10 Days (100% Target)	Median Time to First listing
2012	40.3%	55%	76.7%	5 Days
2013	42.3%	58.9%	80.7%	5 Days
2014	35.6%	46.5%	75.6%	6 Days
2015	31.5% ✘ ↓	42.3% ✘ ↓	62.4% ✘ ↓	7 Days ✘ ↓

As in recent annual reports it is noted that the median time to first listing has continued to rise. This is a consequence of the reduction in the number of Commissioner Members from 2013 which reduced the Commission's capacity to list dispute matters within the 72 hour to 10 day standard.

Table 3.7 [Time taken to finalise an industrial dispute matter]

Finalised within	2 Months (50% Target)	3 Months (70% Target)	6 Months (90% Target)	9 Months (100% Target)
2014	63.7%	73.1%	84.3%	93.9%
2015	54.2% ✔ ↓	65.4% ✘ ↓	82.3% ↓	89.3% ↓

As a result of the resources available to the Commission during 2015, the finalisation of matters within the prescribed time standards showed a small decline. Whilst continuing to meet the 2 month clearance standard, the further deterioration can be partially attributed to the cessation of Acting Justice Kite's temporary appointment in May of 2015.

3. PERFORMANCE *cont.*

Unfair Dismissals

Under Pt 6 of Ch 2 of the Act, the Commission is responsible for determining applications by Public Sector and Local Government employees who claim to have been unfairly dismissed from their employment role by their employer.

The Act provides that each unfair dismissal matter is initially dealt with by listing for conciliation conference (under s 86) with a view to reaching an early settlement between the parties. Where the conciliation is unsuccessful, the matter proceeds to an arbitrated hearing where the Commission must determine if the dismissal was harsh, unjust or unreasonable.

The Commission then has power to make orders either confirming the dismissal or ordering that the employee be reinstated, re-employed or compensation paid.

Unfair dismissal matters represented 20.2% of the total filings for the Commission during 2015.

Figure 3.8 represents graphically a comparison between the matters filed and disposed of in the last 4 years.

Figure 3.8 [Filed and finalised unfair dismissal matters]

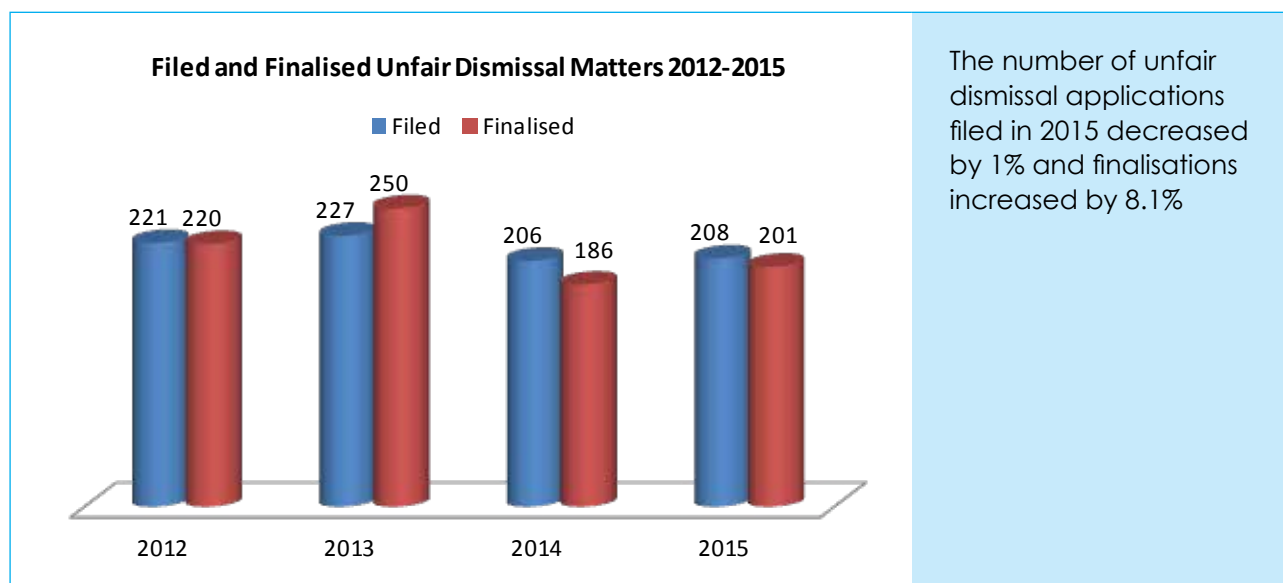


Figure 3.9 represents graphically the method in which unfair dismissal matters were finalised by the Commission during 2015.

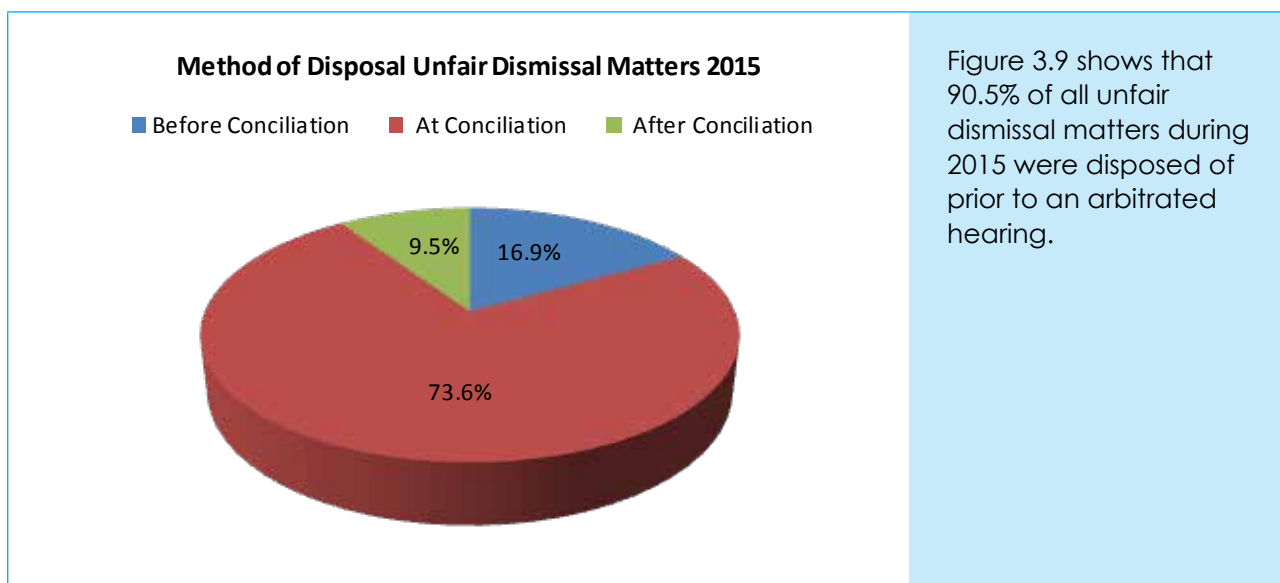


Table 3.10 shows the distribution as to who initiated an unfair dismissal action

	2012	2013	2014	2015
Unfair Dismissals				
Application (Individual)	56	44	52	67
Application (Legal Representative)	51	78	66	40
Application (Organisation Representative)	114	105	88	101
TOTAL	221	227	206	208

3. PERFORMANCE *cont.*

Time Standards

There are two published time standards relating to unfair dismissals:

- Any application for unfair dismissal should be listed for its first conciliation hearing within 21 days from the date of lodgement – in accordance with Practice Note 17 (cl 4).
- 50% of unfair dismissal applications should be finalised within 2 months; 70% within 3 months; 90% within 6 months and 100% within 9 months.

During 2015 the finalisation of matters within two and three months showed a slight decline, however the 2 month clearance standard was still achieved. The number of matters meeting the 6 and 9 month clearance standard also showed a deterioration.

Table 3.11 shows the time taken to first listing of an unfair dismissal matter

Within	7 Days	14 Days	21 Days (100% Target)	28 Days
2014	20.2%	29.2%	46.2%	64.3%
2015	15.9%	22.4%	34.8%	64.3%

As in recent annual reports, it is noted that the median time to first listing has continued to rise. This is a consequence of the reduction in the number of Commissioner Members reducing the Commission's capacity to list within the 21 day standard.

Table 3.12 shows the time taken to finalise an unfair dismissal matter

Finalised within	2 Months (50% Target)	3 Months (70% Target)	6 Months (90% Target)	9 Months (100% Target)
2012	62.9%	71.5%	87.3%	93.6%
2013	63.2%	72%	85.2%	91.6%
2014	68.3%	74.8%	86.1%	96.3%
2015	57.7% ✓ ↘	67.7% ✗ ↘	84.1% ↘	94.7% ↘

During 2015 the finalisation of matters within two and three months showed a slight decline, however the 2 month clearance standard was still achieved. The number of matters meeting the 6 and 9 month clearance standard also showed a deterioration.

Awards and Enterprise Agreements

Award Jurisdiction

Overall

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

The Commission is given power to:

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

Award Reviews

In accordance with s 19(1), the Commission undertook, in 2015, the triennial Award Review process. This last occurred in 2012. The principles of the Award Review process were defined by the Full Bench in Principles for Review of Awards - State Decision 1998 (1998) 85 IR 38.

The Full Bench of the Commission further considered the principles in Poultry Industry Preparation (State) Award and other Awards [2003] NSWIRComm 129; (2003) 125 IR 64.

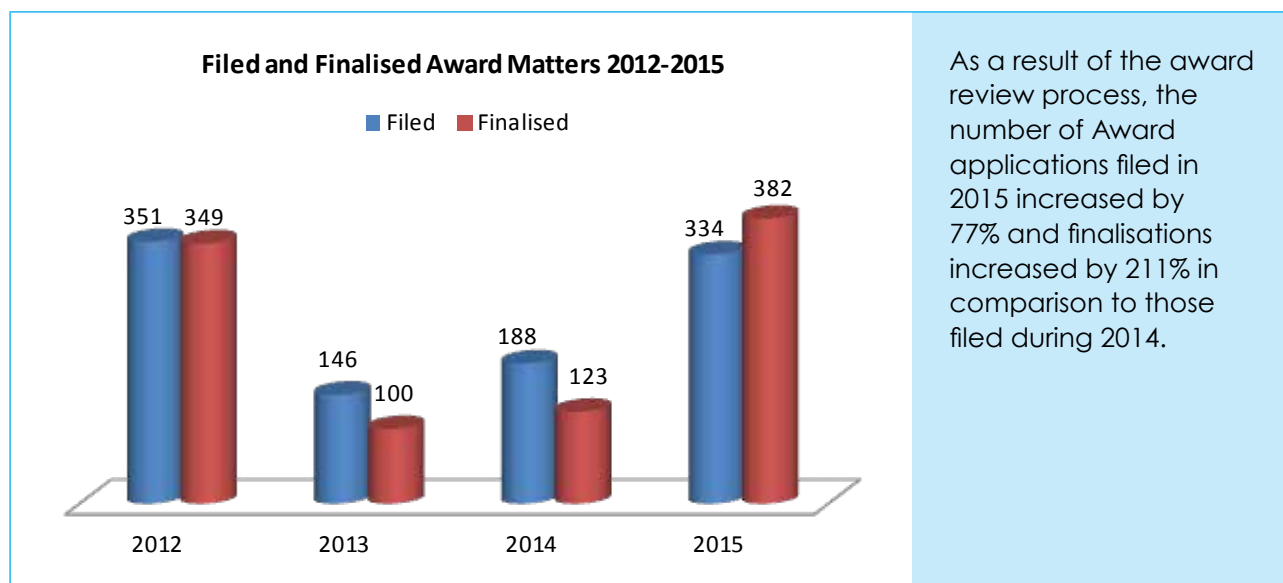
A total of 220 awards were reviewed as part of the triennial process in 2015.

Awards

Awards matters represented 32.5% of the total filings for the Commission during 2015.

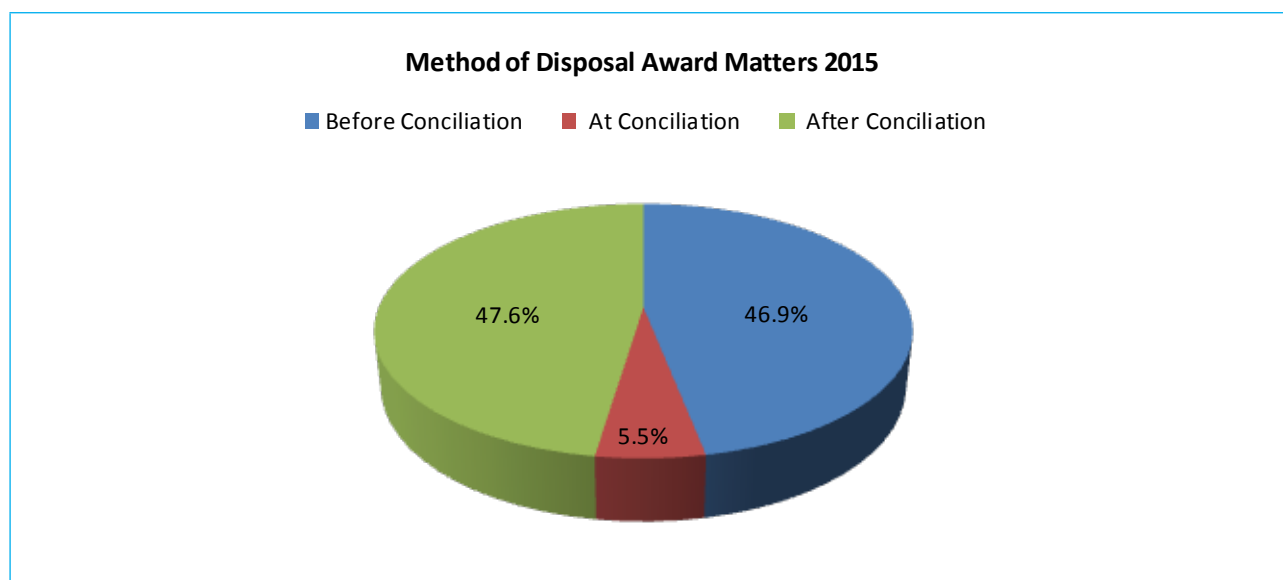
3. PERFORMANCE *cont.*

Figure 3.13 represents graphically a comparison between the matters filed and disposed of in the last 4 years.



It is expected that the number of filed award matters will decrease in 2016 consistent with regular 2013-2014 levels.

Figure 3.14 represents graphically the method in which award matters were finalised by the Commission during 2015.



Enterprise Agreements

Enterprise Agreements represented 1.7% of the total filings for the Commission during 2015.

Figure 3.15 graphically represents a comparison between the matters filed and disposed of in the last 4 years.

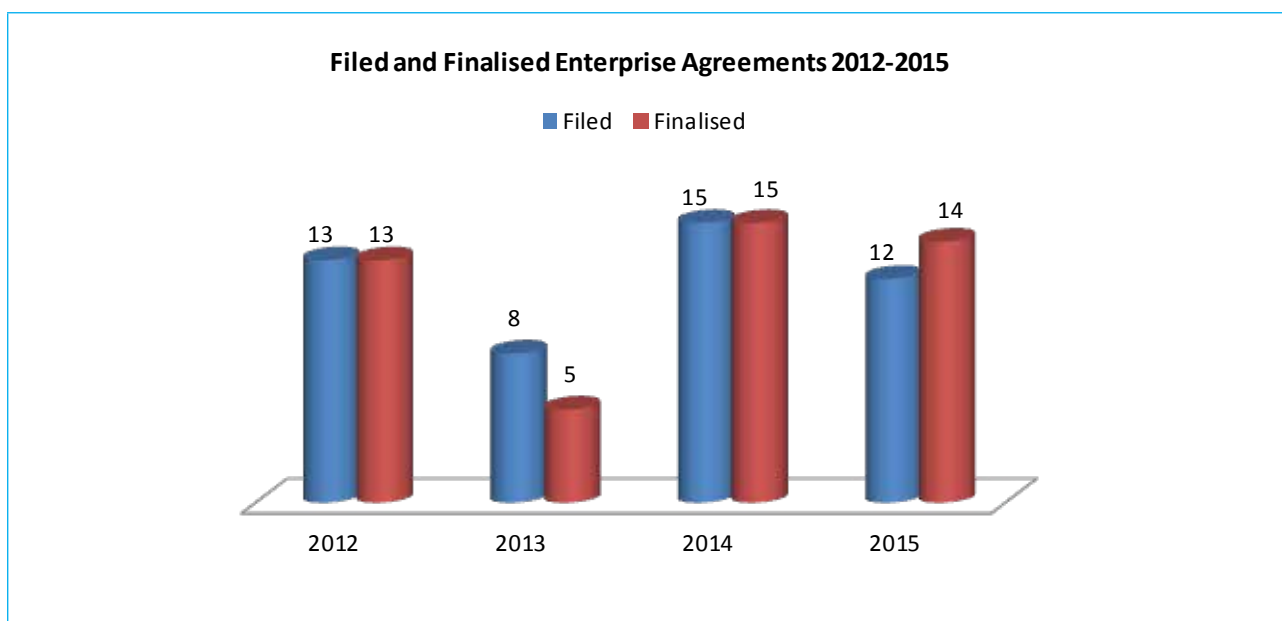


Table 3.16 provides details of filings in the award and enterprise agreement areas in the last five years.

	2012	2013	2014	2015
Awards				
Application to Make Award	56	46	35	68
Application to Vary Award	55	96	150	45
Enterprise Agreements				
Application for an Enterprise Agreement	13	8	15	12
Terminated Enterprise Agreement	9	12	11	1
Review of Awards				
Notice of Review Issued	236	0	0	220
Awards reviewed	217	2	0	152
Awards rescinded	17	0	0	13
Awards determined to have effect as enterprise agreements	0	0	0	0
Declaration of Non-Operative Awards	0	0	0	0

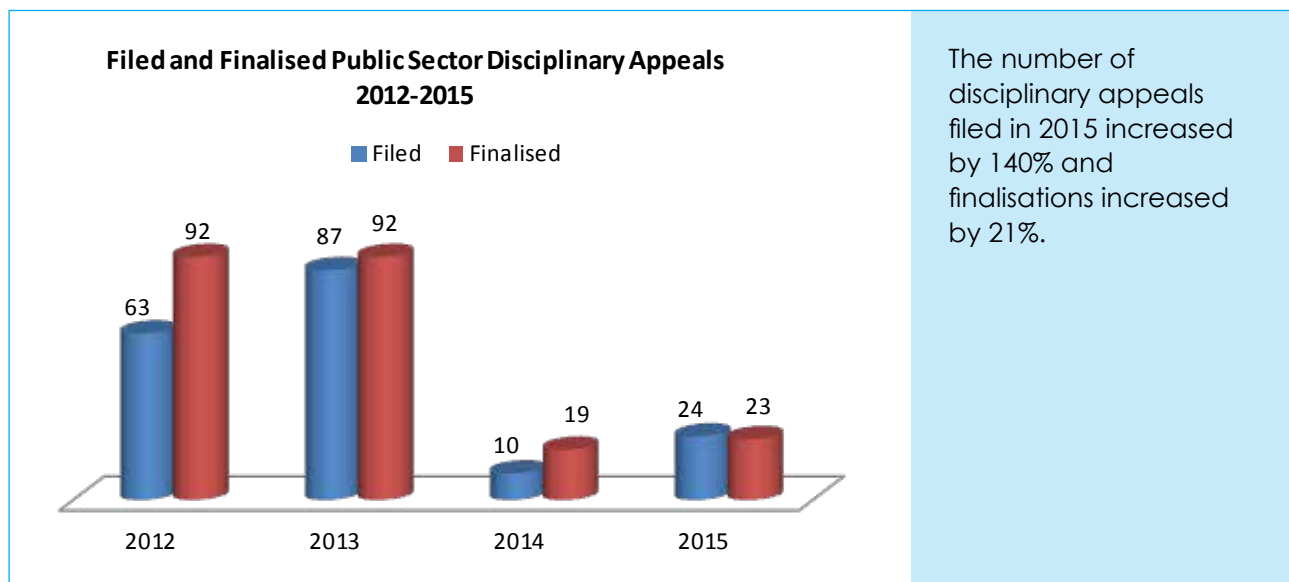
3. PERFORMANCE *cont.*

Public Sector Promotional and Disciplinary Appeals

On 1 July 2010, the Government and Related Employees Appeal Tribunal (GREAT) was abolished and the jurisdiction of that Tribunal was ceded to the Commission with the essential provisions incorporated in a new Pt 7 of Ch 2 of the Act.

Public sector disciplinary appeals represented 2.3% of the total filings for the Commission during 2015.

Figure 3.17 represents graphically a comparison between the matters filed and disposed of in the last 4 years.



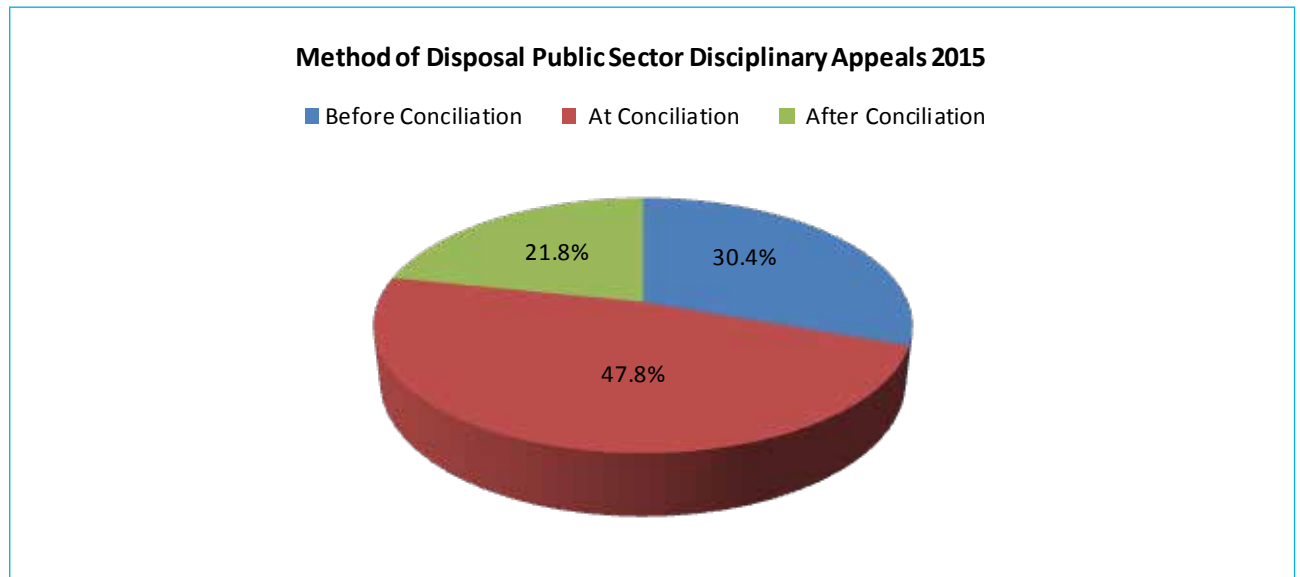
The downturn in appeals filed from the levels recorded in 2012 and 2013 can be wholly explained by the enactment of the *Government Sector Employment Act 2013*: ('the GSE Act') that abolished public sector promotional appeals – only 6 promotional appeals were filed in 2014 compared with 84 promotional appeals filed in 2013. There were no promotional appeals filed in 2015.

The Act provides that each public sector appeal is initially dealt with by listing for conciliation conference (s 100E) with a view to reaching an early settlement between the parties. Where the conciliation is unsuccessful, the matter proceeds to an arbitrated hearing.

Table 3.18 shows the distribution as to what types of public sector promotional and disciplinary appeals were dealt with during the last 4 years.

	2012	2013	2014	2015
Public Sector Promotional Appeals				
Filed	60	84	6	N/A
Finalised	88	87	8	N/A
Pending	5	2	0	N/A
Public Sector Disciplinary Appeals				
Filed	3	3	4	24
Finalised	4	5	11	23
Pending	9	7	0	0
TOTALS				
Total Filed for the Year	63	87	10	24
Total Finalised for the Year	92	92	19	23

Figure 3.19 represents graphically the method in which public sector disciplinary appeals were finalised by the Commission during 2015.



3. PERFORMANCE *cont.*

Time Standards

Table 3.20 shows the time taken to finalise public sector promotional and disciplinary appeals dealt with during the last 4 years.

	2012	2013	2014	2015
Public Sector Promotional Appeals				
Completed within 3 Months	84.1%	98.8%	100%	N/A
Completed within 6 Months	100%	100%	100%	N/A
Public Sector Disciplinary Appeals				
Completed within 3 Months	60.9%	83%	82.9%	79.1%
Completed within 6 Months	73.9%	89.4%	92.7%	88.4%

During 2015, the finalisation of public sector disciplinary matters, within the 3 and 6 month time standard, declined slightly on the 2014 clearance rates.



Police Dismissals and Disciplinary Appeals

Under the provisions of s 173 of the Police Act 1990, the Commissioner of Police may make reviewable and non-reviewable orders arising from a police officer's misconduct or unsatisfactory performance.

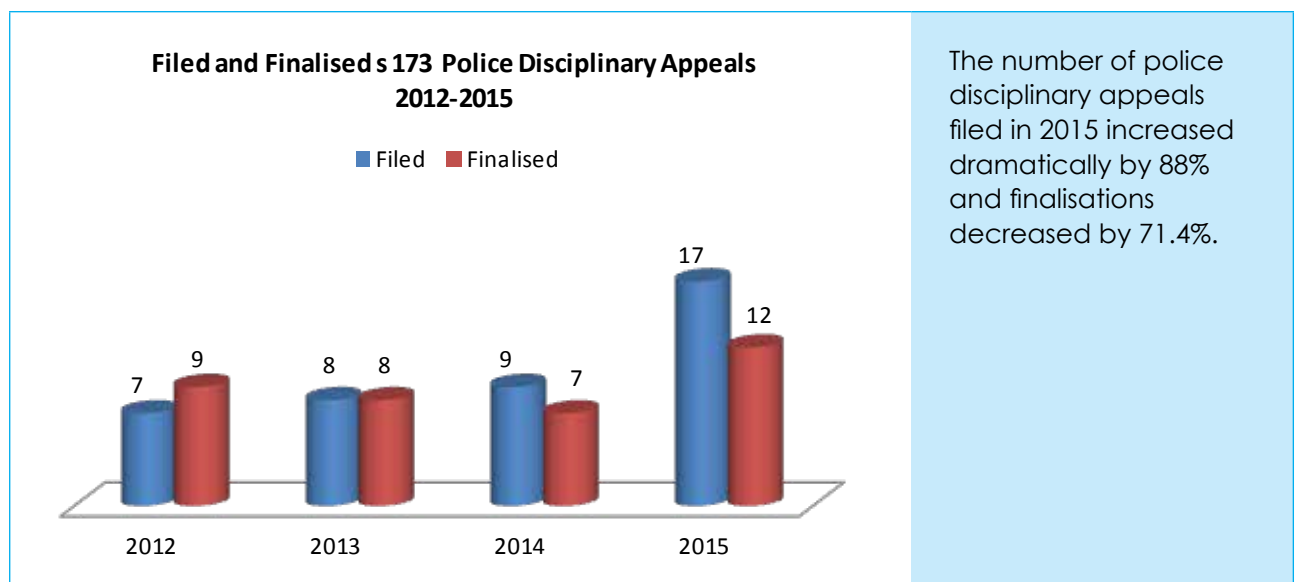
Under s 181D of that Act, the Commissioner has power to remove a NSW Police Officer for loss of confidence in the police officer's suitability to continue as an officer having regard to their competence, integrity, performance or conduct.

Each matter is initially dealt with by listing for a conciliation conference in which the Commission will attempt to conciliate an agreed settlement between the parties. In the event that the conciliation is unsuccessful, the matter proceeds to an arbitrated hearing where the affected officer must establish that the action taken by the Police Commissioner was harsh, unreasonable or unjust.

Section 173 Police Disciplinary Appeals

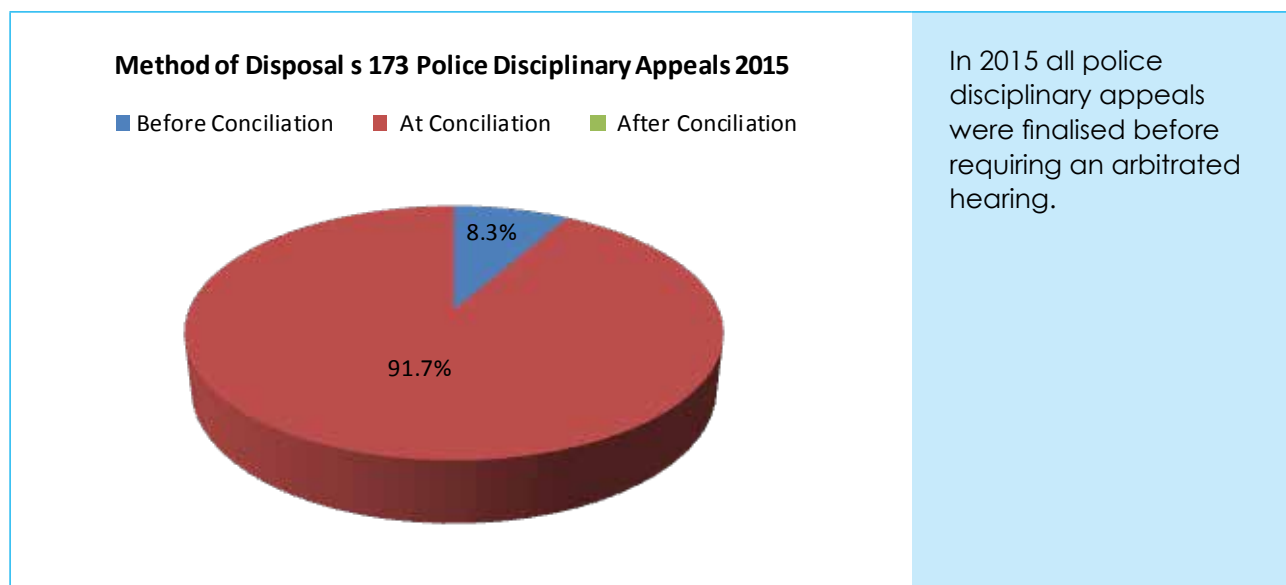
Police disciplinary appeals represented 1.7% of the total filings for the Commission during 2015.

Figure 3.21 represents graphically a comparison between the matters filed and disposed of in the last 4 years.



3. PERFORMANCE *cont.*

Figure 3.22 represents graphically the method in which police disciplinary appeals were finalised by the Commission during 2015.



Section 181D Police Dismissal Appeals

Police disciplinary appeals represented 2.5% of the total filings for the Commission during 2015, although those matters represented statistically a higher proportion of sitting days required to dispose of the matters.

Figure 3.23 represents graphically a comparison between the matters filed and disposed of in the last 4 years.

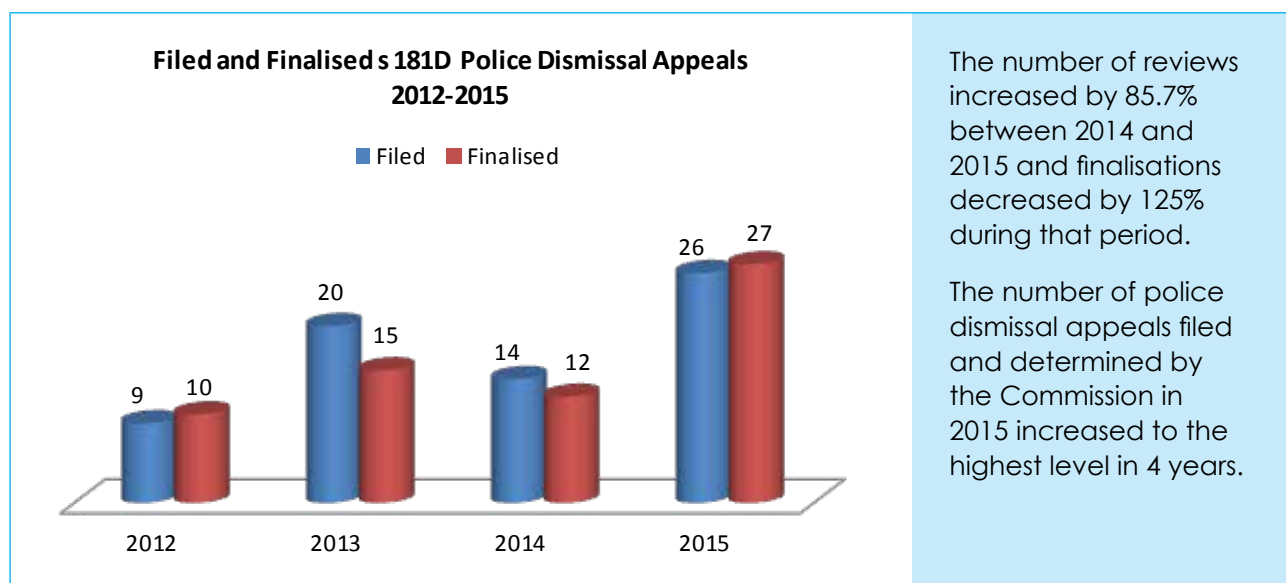
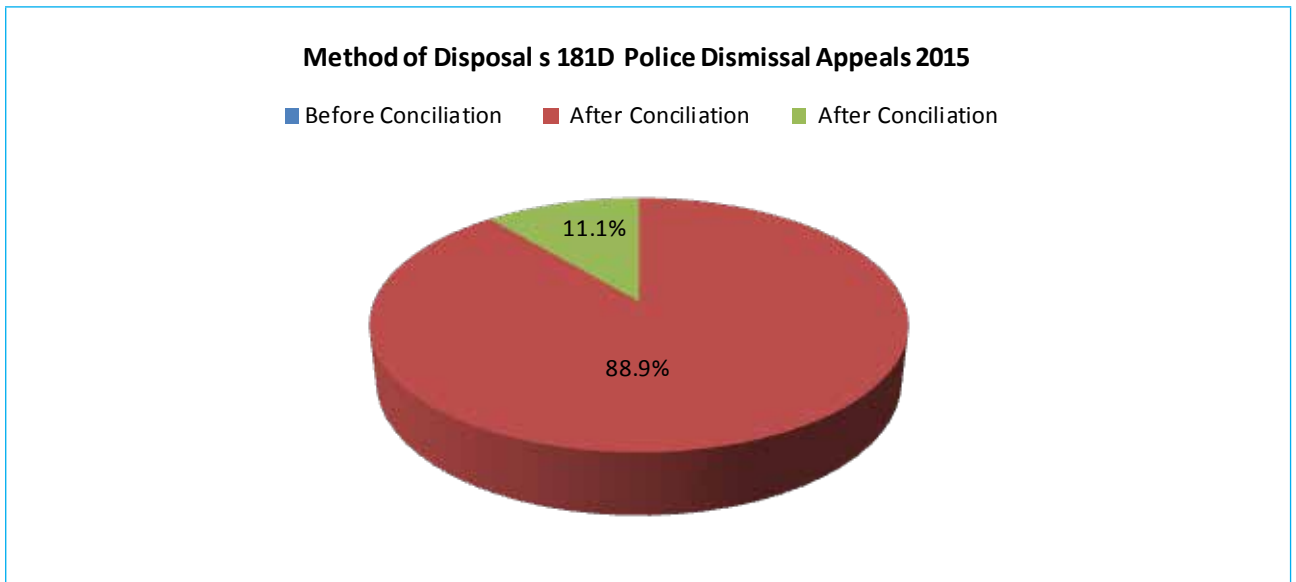


Figure 3.24 represents graphically the method in which police dismissal appeals were finalised by the Commission during 2015.



Time Standards

Table 3.25 shows the time taken to finalise police disciplinary and dismissal appeals.

	2012	2013	2014	2015
S173 Police Disciplinary Appeals				
Completed within 6 Months	77.8%	90.0%	85.7%	91.6% ✓ ⬆
Completed within 12 Months	100%	90%	85.7%	100% ✓ ⬆
S181D Police Dismissal Appeals				
Completed within 6 Months	60%	80%	50%	70.3% ✓ ⬆
Completed within 12 Months	90%	100%	83.3%	85.1% ✓ ⬆

During 2015, the finalisation of matters within 6 and 12 months showed marked improvement on the 2014 clearance rates.

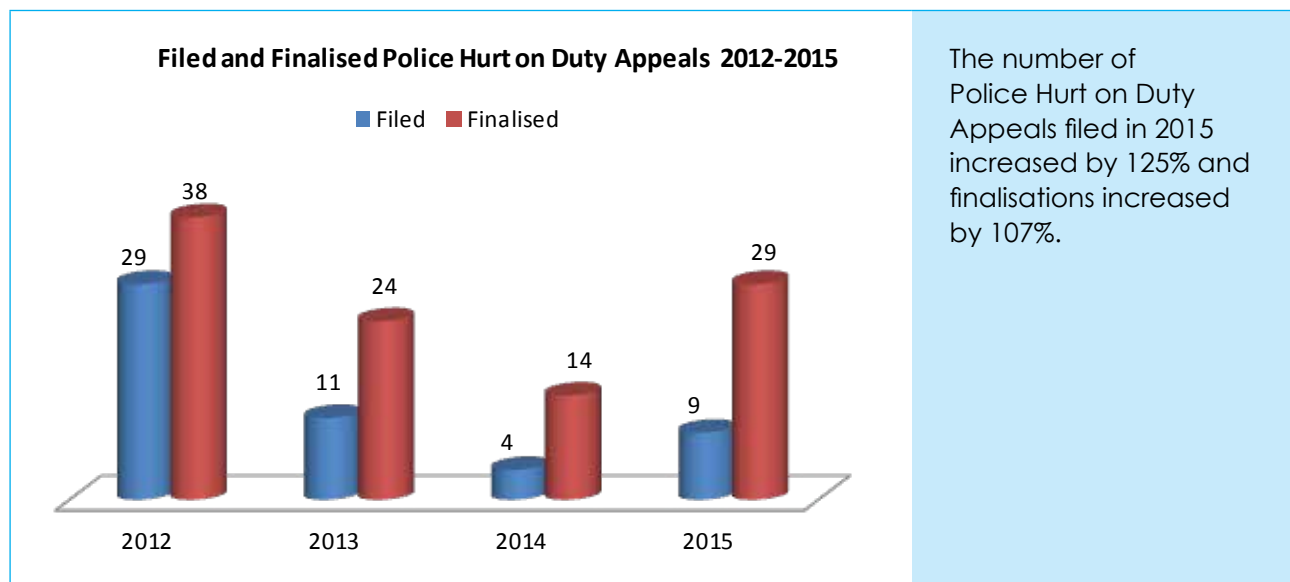
3. PERFORMANCE *cont.*

Police Hurt on Duty Appeals

Under the provisions of s 186 of the Police Act, the Commission is responsible for determining appeal applications made by police officers against a decision of the NSW Police Commissioner in relation to leave of absence by a police officer resulting from officers being hurt on duty.

Police Hurt on Duty Appeals represent less than 1% of the total filings for the Commission during 2015.

Figure 3.26 represents graphically a comparison between matters filed and disposed of in the last 4 years.

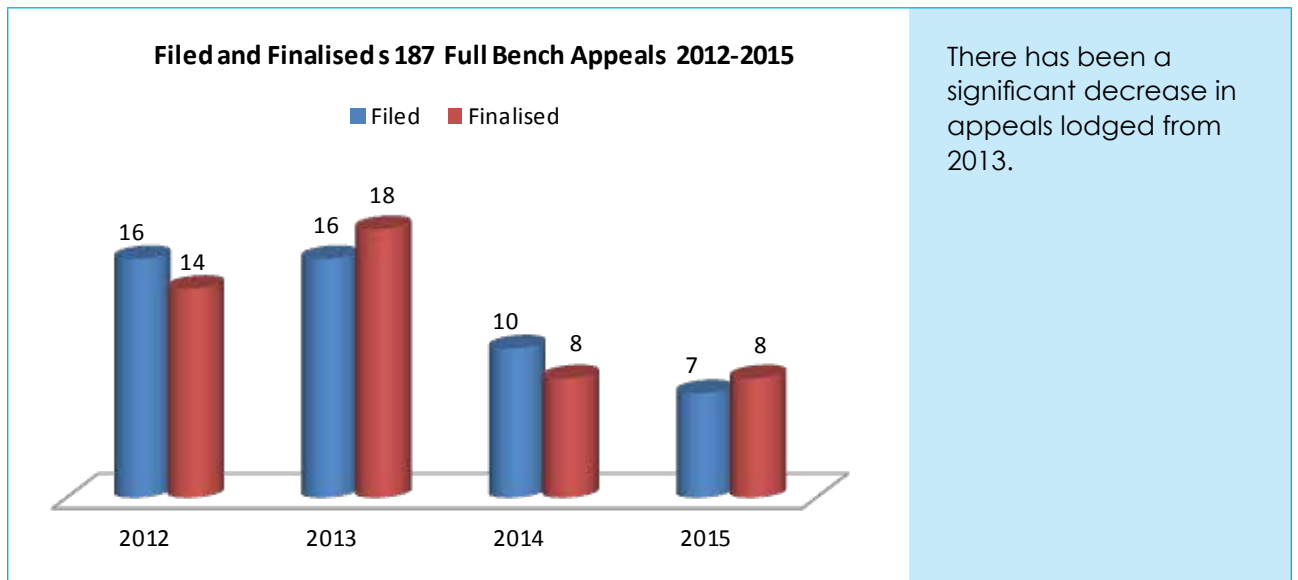


Appeals to a Full Bench

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

Appeals lodged during 2015 represented only 0.7% of the total filings for the Commission during 2015.

Figure 3.27 represents graphically a comparison between appeals filed and disposed of in the last 4 years.



4. PERFORMANCE



INDUSTRIAL COURT

Overall Caseload

Table 4.1 contains a summary of comparative caseload statistics for the Industrial Court between 2012 and 2015.

Table 4.1 [Caseload Statistics]

	2012	2013	2014	2015
Appeals				
Filed	16	25	9	10
Finalised	24	20	17	6
Pending	16	18	9	14
Contravention				
Filed	2	0	0	0
Finalised	4	1	0	0
Pending	1	0	0	0
Unfair Contracts				
Filed	6	5	3	6
Finalised	9	14	7	4
Pending	21	11	5	7
Prosecutions OH&S Act				
Filed	6	0	0	0
Finalised	107	70	16	3
Pending	103	20	5	2
Declaration Jurisdiction (S154)				
Filed	13	16	11	3
Finalised	6	13	14	3
Pending	10	13	8	8
Recovery of Remuneration and other Amounts				
Filed	19	15	18	5
Finalised	16	14	24	10
Pending	15	15	9	3
Other				
Filed	17	19	7	13
Finalised	14	16	13	5
Pending	6	9	3	11
TOTALS				
Total Filed for the Year	79	80	48	37
Total Finalised for the Year	180	148	91	31
Total Pending at end of Year	172	89	39	45

The foregoing table shows a significant fall in listings after the effective removal of the Court's occupational health and safety jurisdiction and the elimination of appeals to a Full Bench of the Court. Overall, there is a continuing downward trend in filings in the Court which may be expected to continue in 2016.

Unfair contracts and recovery actions now represent a significant proportion of the work of the Court. There are two remaining two significant occupational health and safety prosecutions in the Court's lists as a result of the transitional arrangements associated with the transfer of the Court's jurisdiction to the District Court. Both matters will occupy a great deal of the Court's time in 2016.

From the beginning of 2015, there has only been a single Judge of the Court, the President.

This situation represents significant challenges for the Court to dispose of matters in a timely way particularly given that the sole judge of the Court (the President) will also sit in the hearing of Commission matters and attend to administration. This situation is ameliorated to some degree by the capacity of the President to request the Chief Justice of the Supreme Court to nominate Judges of the Supreme Court to act as Industrial Court judicial members for a particular period (s 151B(2)).

The process must, however, have significant limitations represented ultimately in the capacity of the Supreme Court to provide judges in accordance with the provision, but also by the administrative difficulties associated with transitioning Industrial Court matters into Supreme Court lists.

5. OTHER MATTERS



Annual Conference

Between 16 and 18 September 2015, the 2015 Industrial Relations Commission Annual Conference was held at the Novotel Sydney Manly Pacific on Manly beach in Sydney.

This was the inaugural joint conference between the Industrial Relations Commission of New South Wales and the Queensland Industrial Commission.

The attendees at the conference were:

New South Wales

The Honourable Justice Michael Walton, President
The Honourable Acting Justice Peter Kite

Commissioner Inaam Tabbaa AM
Commissioner John Stanton
Industrial Registrar, James Wiseman

Queensland

The Honourable Justice Glenn Martin AM President

Vice President Dianne Linnane

Deputy President Dan O'Connor
Deputy President Adrian Bloomfield
Deputy President Les Kaufman
Commissioner John Thompson
Commissioner Gary Black
Commissioner Gaeme Neate AM

Day 1

The topics covered during day one of the conference included:

Justice Alan Wilson SC gave a talk on "Managing the Court Room" which covered tips and techniques to ensure that hearings run efficiently and managing difficult parties and representatives.

Justice Cliff Hoeben AM RFD discussed frequently occurring evidence issues with a focus on concurrent evidence.

Dr Stephen Allnutt, Consultant Forensic Psychiatrist University of NSW presented a session on "Wellness and resilience on the Bench". This topic covered approaches available to identify the signs of depression and anxiety and strategies to build resilience and manage the issues.

Justice Michael Walton, President, delivered a session entitled "Vox Populi - Is Voice a Godsend?" This session explored the concept of employee voice and focused on workplace partnerships, collaborative employment relations and the new NSW system of cooperative employment relations.

Acting Justice Peter Kite together with Arthur Moses SC and James Murdoch QC discussed developments and innovations in industrial relations practice and procedure.

Day 2

The topics covered during day two of the conference included:

Justice Robert Benjamin AM of the Family Court of Australia spoke about "Dealing with Unrepresented Litigants". This discussion dealt with a range of issues relating to litigants in person and provided insight and strategies to better manage hearings that involve unrepresented litigants.

Dr Celine van Golde, Associate Lecturer School of Psychology, University of Sydney presented a session on assessing the credibility of witnesses. Dr Golde summarised current psychological research on different indicators of deception and provided insights into the limitations of our abilities to assess the credibility of witnesses.

Vice President Adam Hatcher SC of the Fair Work Commission provided an overview and assessment of Fair Work Commission's new anti-bullying jurisdiction and the concepts underlying the legislation and recent cases with in the jurisdiction.

The attendees at the Annual Conference acknowledged that all of the sessions contributed to a beneficial learning experience and had enhanced their knowledge and capabilities. Many also indicated that they expected to make changes to the way they work as a result of things learnt during the conference.

It is expected a further biennial joint conference will be held in 2017.

5. OTHER MATTERS *cont.*

Technology – Justicelink

The Industrial Relations Commission commenced work on transitioning to the Justicelink case management system.

Justicelink is a sophisticated software system which links all New South Wales' courts onto the one centralised database. It allows for the electronic transmission of listing notices and court orders as well as providing the functionality to digitally store documents, transcripts, emails and other correspondence.

The Justicelink program also has the functionality to electronically transfer cases between differing jurisdictions and locations.

The management and storage of summonsed documents and other material will also be managed on the Justicelink system.

The system will also provide the Industrial Relations Commission with a intergrated financial and accounts management system that meets the requirements of the Public Sector Finance and Audit Act.

Following implementation court users and stakeholders will be able to search and have access to future listings before the Commission via the New South Wales online court registry web site.

The implementation of the Justice Link system for the Industrial Relations Commission is on track and due to occur on 1 January 2016.

Commission Rules

Pursuant to s 186 of the Act, the Rules of the Commission are to be made by a Rules Committee comprising the President and two other Presidential Members appointed by the President. There is also scope for cooption of other Members.

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

There were no changes to the Industrial Relations Commission Rules during 2015.

Amendments to Legislation and Regulations

The legislative amendments enacted during 2015 or which came into force that year affecting the operation and functions of the Commission, are reported at Appendix 8.

There were no amendments to regulations affecting the Commission during 2015.

Practice Notes

In 2015 there were no new Practice Notes issued.

6. OUR PEOPLE



Our Staff Profile

The Commission employed 24 people during 2015 in the Registry Office, Commissioner Support and Judicial Officer Support roles. We exceeded NSW Government benchmarks to employ women, persons with a disability and people from a culturally and linguistically diverse background.

More than half of our staff are women (56%) and over 25% are from culturally and linguistically diverse backgrounds.

51% of the staff at the Industrial Relations Commission are over the age of 50.

The Commission also demonstrated its flexibility and ability to accommodate those staff working with a disability. 9% of staff employed at the Commission are staff who identify as working with a disability.

Retaining our Staff

Our retention rate is very high with 64% of our staff having 10 or more years of service; 55% of staff have 15 years or more service and 19% have been with the Commission for more than 25 years. This clearly shows that we are an employer of choice and that staff are satisfied and choose to remain with the Commission. The staff turnover rate for the last 12 months is 4%.

7. CONCLUSION



The total number of proceedings filed in the Commission for 2015 rose by 16.6%, to its highest level in the last 3 years. A large portion of this increase is attributable to the triennial award review process (which last occurred three years ago in 2012).

In order to do a more direct comparison with the 2014 volumes, one is required to examine the 2015 filing levels, excluding the 220 award review files. If such an exercise is undertaken it would show a further small decrease of 8.2% in overall filings when compared to 2014 levels.

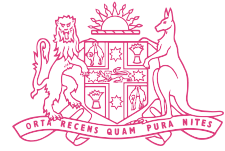
The Commission also undertook a review of the Principles for Approval of Enterprise Agreements pursuant to s 33(1) of the Act. This is the first time that such a review has occurred since 2002.

With the retirement of Commissioner Stanton from his dual appointment in the Fair Work Commission, the constituency of the Commission reached six by years' end with the appointment of Murphy C (noting that Kite AJ could not be allocated new matters after May 2015). That was a welcome development. However, that position will be quickly offset by the retirement of Deputy President Harrison in January 2016.

It is essential that efforts are made to maintain adequately a minimum constituency of five members in the Commission if the Commission is to discharge its statutory functions.

The past has shown the Commission's resilience and capacity to adapt to change, all the while maintaining its reputation as a forum for the timely, just and effective resolution of industrial proceedings. I look forward to overcoming these challenges with the members and staff of the Commission.

8. APPENDICES



APPENDIX 1 INDUSTRY PANELS

Metropolitan, Industry Specific and Regional Panels

Metropolitan

Divisional Head – Walton J, President

Members

Tabbaa C

Newall C

Murphy C (from 4 December 2015)

Corrections

Education

Emergency Services

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

Health

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

Juvenile Justice

Government/Public Sector

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

Public Transport

Local Government

Private

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

Public Sector Appeal (PSA) Panel – Divisional Head – Walton J, President

Members

Tabbaa C

Stanton C*

Newall C

Murphy C (from 4 December 2015)

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

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

Regional

Panel N – Divisional Head – Harrison DP

Members

Stanton C

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

Panel S – Divisional Head – Walton J, President

Members

Tabbaa C

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

8. APPENDICES *cont.*

APPENDIX 2

TIME STANDARDS – Industrial Relations Commission

Time from commencement to finalisation	Time Standard	Achieved in 2014	Achieved in 2015	
Applications for leave to appeal and appeal				
Within 6 months	50%	75.0%	50%	↕
Within 12 months	90%	100%	87.5%	↕
Within 18 months	100%	100%	100%	
Award Applications [including Major Industrial Cases]				
Within 2 months	50%	51.2%	52.6%	↕
Within 3 months	70%	70.7%	68.1%	↕
Within 6 months	80%	79.6%	70.2%	↕
Within 12 months	100%	87.8%	91.6%	↕
Enterprise Agreements				
Within 1 months	75%	93.9%	85.7%	↕
Within 2 months	85%	100%	92.8%	↕
Within 3 months	100%	100%	92.8%	↕
Applications relating to Unfair Dismissal				
Within 2 months	50%	68.3%	57.7%	↕
Within 3 months	70%	74.8%	67.7%	↕
Within 6 months	90%	86.1%	84.1%	↕
Within 9 months	100%	96.3%	93.6%	↕
Public Sector Disciplinary Appeals				
Within 1 months	30%	63.4%	60.5%	↕
Within 2 months	60%	80.5%	79.1%	↕
Within 3 months	90%	82.9%	79.1%	↕
Within 6 months	100%	92.7%	88.4%	↕

Time to first listing	Time Standard	Achieved in 2014	Achieved in 2015	
Industrial Disputes				
Within 72 Hours	50%	35.6%	31.5%	↘
Within 5 Days	70%	46.5%	42.3%	↘
Within 10 Days	100%	75.6%	62.4%	↘

Key: ↘ = indicates where the commission has equalled or exceeded time standard

8. APPENDICES *cont.*

APPENDIX 2

TIME STANDARDS – Industrial Court

Time from commencement to finalisation	Time Standard	Achieved in 2014	Achieved in 2015	
Applications for leave to appeal and appeal				
Within 9 months	50%	58.9%	50.1%	⇩
Within 12 months	90%	82.4%	66.8%	⇩
Within 18 months	100%	82.4%	66.8%	⇩
Prosecutions under OHS legislation				
Within 9 months	50%	0%	0%	
Within 12 months	75%	0%	0%	
Within 18 months	90%	0%	0%	
Within 24 months	100%	0%	0%	
Applications for relief from Harsh/Unjust Contracts				
Within 1 months	75%	93.9%	85.7%	⇩
Within 2 months	85%	100%	92.8%	⇩
Within 3 months	100%	100%	92.8%	⇩
Applications for relief from Harsh/Unjust Contracts				
Within 6 months	30%	0%	0%	⇩
Within 12 months	60%	14.3%	50%	⇩
Within 18 months	80%	42.9%	75%	⇩
Within 24 months	100%	57.2%	100%	⇩

Key: ⇩ = indicates where the commission has equalled or exceeded time standard

APPENDIX 3

Matters Filed in Industrial Relations Commission (other than in the Industrial Court)

Matters filed (under the *Industrial Relations Act 1996*) during period 1 January to 31 December 2015 and completed and continuing matters as at 31 December 2015.

Nature of Application	Filed 1.1.2015 – 31.12.2015	Completed 1.1.2015 – 31.12.2015	Continuing as at 31.12.2015
APPEALS	7	8	5
Appeal – Award	0	2	0
Appeal – Unfair dismissal	7	4	5
Appeal – Protection of injured workers from dismissal	0	2	0
AWARDS	334	382	83
Application to make an award	68	67	8
Application to vary an award	42	152	13
State Wage Case	1	2	0
Review of an award	220	158	62
Other – incl. rescission, interpretation	3	3	0
COLLABORATIVE EMPLOYMENT RELATIONS	5	0	5
Collaborative Employment Relations processes	5	0	5
DISPUTES	292	314	87
s130 of the Act	266	285	77
s332 of the Act	21	20	6
s146B of the Act	5	9	4
ENTERPRISE AGREEMENTS	12	14	1
Application for approval with employees	1	1	0
Application for approval with industrial organisation	10	12	1
Principles for approval of Enterprise Agreements s33(3) of the Act	1	1	0

8. APPENDICES *cont.*

Nature of Application	Filed 1.1.2015 – 31.12.2015	Completed 1.1.2015 – 31.12.2015	Continuing as at 31.12.2015
UNFAIR DISMISSALS	208	201	70
Application by the employee	67	63	20
Application by a represented employee	40	40	13
Application by an industrial organisation on behalf of employee	101	98	37
PUBLIC SECTOR AND POLICE APPEALS	76	83	42
Public Sector disciplinary appeal	24	23	6
Application for review of order s181D Police Service Act	26	27	13
Application for rescission of order s173 Police Service Act	17	12	8
Appeal by Police Officer relating to leave when hurt on duty	9	21	15
OTHER	95	86	29
Contract agreements	2	1	1
Contract determinations	12	12	6
Compensation for termination of certain contracts of carriage	0	1	0
Application to extend duration of Industrial Committee	4	2	2
Registration pursuant to the Clothing Trades Award	42	29	14
Protection of injured workers from dismissal - Workers Compensation Act	4	10	2
Application for order enforcing principles of association s213 of the Act	9	7	3
Application for external review Work Health Safety Act	2	2	1
Appeal for an Assisted Appointment Review	19	20	0
Determination of demarcation questions	0	1	0
Disputes notified s20 Entertainment Industry Act	0	0	0
Cancellation of registration of industrial organisation	1	1	0
INDUSTRIAL COMMISSION SUB-TOTAL	1029	1088	322

APPENDIX 4

Matters Filed in Industrial Court

Matters filed (under the *Industrial Relations Act 1996*) during period 1 January to 31 December 2015 and completed and continuing matters as at 31 December 2015.

Nature of Application	Filed 1.1.2015 – 31.12.2015	Completed 1.1.2015 – 31.12.2015	Continuing as at 31.12.2015
APPEALS	10	6	13
Appeal – Industrial Magistrate	3	3	2
Appeal – superannuation	6	3	7
Appeal – OHS prosecution	0	0	2
Appeal – Unfair contracts	0	0	0
Appeal – Police Officer relating to leave when hurt on duty	0	0	1
Appeal – Public Sector Discipline	1	0	1
CONTRAVENTION	0	0	0
Contravention of Dispute Order s139 of the Act	0	0	0
HARSH CONTRACTS	6	4	7
Application under s106 of the Act	6	4	7
PROSECUTIONS	0	3	2
Prosecution – s8(1) OHS Act 2000	0	1	0
Prosecution – s8(2) OHS Act 2000	0	2	1
Prosecution – s10(2) OHS Act 2000	0	0	1
OTHER	21	18	23
Declaratory jurisdiction (s154, s248)	3	3	8
Registration of organisations Pt3 Ch5	1	2	1
Civil Penalty for breach of industrial instrument	11	2	9
Recovery of remuneration and other amounts	5	10	4
Contempt of the Commission	0	1	0
Regulation of State industrial organisations Pt4 Ch5	1	0	1
INDUSTRIAL COURT SUB-TOTAL	37	31	45
TOTAL Industrial Relations Commission & Industrial Court for 2015	1066	1119	367

8. APPENDICES *cont.*

APPENDIX 5

The Presidents of the Industrial Relations Commission of New South Wales

Name	Held Office		Remarks
	From	To	
Cohen, Henry Emanuel	01 Apr 1902	03 Jul 1905	Died 5 Jan 1912.
Heydon, Charles Gilbert	04 July 1905	Dec 1918	Died 6 Mar 1932.
Edmunds, Walter	Aug 1920	06 Jan 1926	From February 1919 to August 1920 held appointment as Acting President and President of Board of Trade. Died 15 Aug 1932.
Beeby, George Stephenson	Aug 1920	July 1926	President, Board of Trade. Died 18 Jul 1942.
Piddington, Albert Bathurst	July 1926	19 May 1932	Died 5 Jun 1945.
Browne, Joseph Alexander	20 Jun 1932	30 Jun 1942	Died 12 Nov 1946.
Taylor, Stanley Cassin	28 Dec 1942	31 Aug 1966	Died 9 Aug 1982.
Beattie, Alexander Craig	1 Sep 1966	31 Oct 1981	Died 30 Sep 1999.
Fisher, William Kenneth	18 Nov 1981	11 Apr 1998	Died 10 Mar 2010.
Wright, Frederick Lance	22 Apr 1998	22 Feb 2008	Retired
Boland, Roger Patrick	9 Apr 2008	31 Jan 2014	Retired and continued as Acting Judge until 31 Jan 2015
Walton, Michael John	3 Feb 2014	Still in Office	

APPENDIX 6

The Vice-Presidents of the Industrial Relations Commission of New South Wales

The position of Vice-President of the Industrial Relations Commission was created with the assent of the *Industrial Arbitration (Industrial Tribunals) Amendment Act 1986* on 23 December 1986.

The position was created:

“to achieve a more cohesive single structure. In future, responsibility for assignment of conciliation commissioners to chair conciliation committees and the allocation of disputes to them will reside in a judicial member of the Industrial Commission who will be appointed as Vice-President of the Industrial Commission. This will assist in the achievement of a closer relationship between the separate structures of the Industrial Commission and conciliation commissioners and will allow a more uniform approach to industrial relations issues”

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

Name	Held Office		Remarks
	From	To	
Cahill, John Joseph	19 Feb 1987	10 Dec 1998	Died 21 Aug 2006.
Walton, Michael John	18 Dec 1998	31 Jan 2014	Appointed as President 3 Feb 2014.
Currently Vacant			

8. APPENDICES *cont.*

APPENDIX 7

Industrial Registrars of the Industrial Relations Commission of New South Wales

Name	Held Office		Remarks
	From	To	
Addison, George Campbell	1 Apr 1902	1912	Returned to the Bar. Appt Chief Industrial Magistrate 1917.
Holme, John Barton	1912	9 Feb 1914	Appt first Undersecretary, Department of Labour and Industry 10 Feb 1914.
Payne, Edward John	1914	1918	Retired from the public service in 1939 as Chairman, Public Service Board.
Kitching, Frederick William	12 Jul 1918	30 Jun 1924	Appt Undersecretary, Office of the Minister for Labour and Industry 1 Jul 1924.
Webb, Alan Mayo	1 Sep 1924	19 Jun 1932	Appt Judge of Industrial Commission 20 Jun 1932.
Wurth, Wallace Charles	1932	1936	Appt to Public Service Board; Appt Chairman, PSB in 1939.
Ebsworth, Samuel Wilfred	1936	1947	Retired.
Kelleher, John Albert	1947	13 May 1955	Appt Undersecretary and Industrial Registrar, Dept of Labour and Industry and Social Welfare 1949. Appt Judge of Industrial Commission 16 May 1955.
Kearney, Timothy Joseph	1955	1962	Appt Undersecretary, Department of Labour and Industry.
Whitfield, John Edward	1962	1968	Appt as Commissioner, Water Conservation and Irrigation Commission.

Name	Held Office		Remarks
	From	To	
Fetherston, Kevin Roy	3 June 1968	1977	Appt Executive Assistant (Legal) Department of Labour and Industry; later appt as Deputy Undersecretary, Department of Labour and Industry.
Coleman, Maurice Charles Edwin	29 April 1977	1984	Retired.
Buckley, Anthony Kevin	23 Jan 1984	30 Mar 1992	Appt as Commissioner, Industrial Relations Commission 31 Mar 1992.
Walsh, Barry ¹	19 Feb 1992	15 Jul 1994	Appt as Registrar, Australian Industrial Relations Court.
Szczygielski, Cathy ²	18 Jul 1994	4 Nov 1994	Returned to position of Deputy Registrar, Industrial Court.
Williams, Louise ³	7 Nov 1994	16 Aug 1996	Appt as Registrar, Land & Environment Court.
Robertson, Gregory Keith ⁴	31 Mar 1992	26 Oct 1999	To private practice.
McGrath, Timothy Edward	27 Oct 1999	9 Aug 2002	Appt Assistant Director-General, Court and Tribunal Services, Attorney General's Department 12 Aug 2002.
Grimson, George Michael	22 Aug 2002	18 Dec 2014	Retired.
Hourigan, Lesley ⁵	19 Dec 2014	13 Mar 2015	Returned to position of Deputy Registrar Industrial Court.
Wiseman, James ⁶	16 Mar 2015	Still in Office	

¹ Appointed as Acting Registrar and CEO, Industrial Court (under the Industrial Relations Act 1991 ('the 1991 Act')) 19 Feb 1992, substantively appointed to that position 6 May 1993.

² Acting appointment as Registrar and CEO, Industrial Court (under 1991 Act) pending recruitment

³ Appointed as Registrar and CEO, Industrial Court (under 1991 Act)

⁴ Held the position of Registrar, Industrial Relations Commission under 1991 Act - under the Act became Registrar and Principal Courts Administrator, Industrial Relations Commission and Commission in Court Session (2 September 1996).

⁵ Appointed as Acting Registrar Industrial Court (under the Act)

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

8. APPENDICES *cont.*

APPENDIX 8

Legislative Amendments

Courts and Crimes Legislation Amendment Act 2015 No 2

This Act was assented to and commenced on 15 May 2015. The Act now enables an acting member of the Industrial Court to be appointed up to the age of 77 years (previously acting members were only appointed up to the age of 75 years). The amendment also enables acting members to be appointed for a period of up to five years (previously acting members could only be appointed for a period of up to 12 months).

Legal Profession Uniform Law Application Legislation Amendment Act 2015 No 7

This Act was assented to on 9 June 2015 and commenced from 1 July 2015. The amendment removed the provisions of the Legal Profession Act 2004 in s 181(1)(d) and replaced it with the Legal Profession Uniform Law Application Act 2014.

Statute Law (Miscellaneous Provisions) Act 2015 No 15

This Act was assented to on 29 June 2015 and commence on 8 July 2015. The act updates cross-references in s 197(2) to the Crimes (Appeal and Review) Act 2001, and s 382(1) to the Retail Trading Act 2008.

Statute Law (Miscellaneous Provisions) (No 2) Act 2015 No 58

This Act was assented to on 24 November 2015 and sch 3 of the act is due to commence from 8 January 2016. The schedule contains amendments that update terminology and references relating to Public Service agencies, heads of agencies and Public Service employees as a consequence of the Government Sector Employment Act 2013.

APPENDIX 9

Brief History of the Industrial Relations Commission of New South Wales

The Court of Arbitration, established by the *Industrial Arbitration Act 1901*, was a court of record constituted by a President (a Supreme Court judge) and two members representing employers and employees respectively. The Court came about as a result of the failure of employers and unions to use a system of voluntary arbitration. The Court had jurisdiction to hear and determine any industrial dispute or matter referred to it by an industrial union or the Registrar, prescribe a minimum wage and make orders or awards pursuant to such hearing or determination. This Court and its registry, the Industrial Arbitration Office, came under the administration of the Department of Attorney General and of Justice from 12 December 1901.

The Industrial Court, established by the *Industrial Disputes Act 1908*, was constituted by a Supreme Court or District Court judge appointed for a period of seven years. The Court did not require the existence of a dispute to ground its jurisdiction and had power to arbitrate on conditions of employment and could hear prosecutions. Together with its Registry, known during 1911 as the Industrial Registrar's Office, the Court remained under the administration of the Department of Attorney General and of Justice. The Act also established a system of Industrial Boards that consisted of representatives of employers and employees sitting under a Chairman. The Industrial Court heard appeals from the Industrial Boards.

The Court of Industrial Arbitration was established by the *Industrial Arbitration Act 1912*. It was constituted by judges, not exceeding three, with the status of judges of the District Court. The Court was vested with all the powers conferred on all industrial tribunals and the chairman thereof. The Act empowered the Minister to establish Conciliation Committees with powers of conciliation but not arbitration. Conciliation Committees fell into disuse after about 12 months and a Special Commissioner (later known as the Industrial Commissioner) was appointed on 1 July 1912. This Court and its Registry were placed under the jurisdiction of the Department of Labour and Industry, which administered the Act from 17 April 1912.

A Royal Commission on Industrial Arbitration in 1913 led to some major changes under the *Industrial Arbitration (Amendment) Act 1916*, which resulted in an increase in the membership of the Court and the transfer of powers of the Industrial Boards to the Court.

The **Board of Trade** was established by the *Industrial Arbitration (Amendment) Act 1918*. It functioned concurrently with the Court of Industrial Arbitration and was constituted by a President (a judge of the Court), a Vice-President and representatives of employers and employees. The Board's functions were to conduct a public inquiry into the cost of living and declare an adult male and female living wage each year for industry generally and for employees engaged in rural occupations. In addition, it was to investigate and report on conditions in industry and the welfare of workers. The Board was, in practice, particularly concerned with matters relating to apprenticeships.

The *Industrial Arbitration (Amendment) Act 1926* abolished the Court of Industrial Arbitration and the Board of Trade and set up an Industrial Commission constituted by a Commissioner and a Deputy Commissioner. The Commissioner or Deputy Commissioner sat with employer and employee representatives selected from a panel.

8. APPENDICES *cont.*

On any reference or application to it the Commission could make awards fixing rates of pay and working conditions, determine the standard hours to be worked in industries within its jurisdiction and had power to determine any “industrial matter”.

The Commission had authority to adjudicate in cases of illegal strikes, lockouts or unlawful dismissals and could summon persons to a compulsory conference and hear appeals from determinations of the subsidiary industrial tribunals. The former Boards, which had not exercised jurisdiction since 1918, continued in existence but as Conciliation Committees with exclusive new jurisdiction in arbitration proceedings.

A number of controversial decisions by the Industrial Commission led to the proclamation of the *Industrial Arbitration (Amendment) Act 1927*, which altered the position of Industrial Commissioner (but not Deputy Industrial Commissioner) and the constitution of the Commission to that of three members with the status of Supreme Court judges. The Committees were still the tribunals of first instance and their decisions were to be the majority of members other than the chairman, whose decision could be accepted by agreement if the members were equally divided. Otherwise the chairman had no vote and no part in the decision. Where a matter remained unresolved in committee it passed to the Commission for determination.

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

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

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

In 1938 the number of members of the Commission was increased to no less than five and no more than six and the Act, the *Industrial Arbitration and Workers Compensation (Amendment) Act 1938*, introduced provisions regarding investigation of rents and certain price fixing. The Act was again amended in 1939 mainly to address the fixing of maximum prices.

The *Industrial Arbitration Act 1940* consolidated all previous Acts and refined and rationalised the procedures and operation of the Industrial Commission.

The Act provided for the establishment of an Industrial Commission, Conciliation Committees, Conciliation Commissioners, Special Commissioners, Industrial Magistrates Courts and the Industrial Registrar.

The *Industrial Arbitration (Amendment) Act 1943* empowered the Chairman, with the agreement of the members or by special authorisation of the Industrial Commission, to decide matters where there was division. The number of Commissioners who might be appointed was also increased to five. The *Industrial Arbitration (Amendment) Act 1948* allowed the Commissioners to decide matters upon which the members were equally divided as well as make an award where the disputing parties had been called into a compulsory conference.

In 1955, the maximum number of members of the Industrial Commission was increased to 12 and the next raft of significant changes came with the *Industrial Arbitration (Amendment) Act 1959*. These changes included defining the wage fixing powers of Industrial Committees and appeal provisions were also reformed.

In 1979, the Act was again amended to make provision for the establishment of Contract Regulation Tribunals. Generally, this gave the Commission jurisdiction over contracts for the bailment of taxi cabs and private hire cars and over contracts for the transportation by motor lorry of loads other than passengers.

In 1981, and again in 1989, the Commission's powers in relation to dealing with apprentices were clarified. In 1989, the *Industrial and Commercial Training Act* was passed and apprentices were treated as other employees for all industrial purposes.

By 1989, the Act provided that the Industrial Commission consisted of not more than 12 members, one of whom was the President and another the Vice-President. The Act also provided for the appointment of "non judicial" members who did not have to be legally qualified as well as "judicial" members. There were certain jurisdictional limitations for "non judicial" appointees.

In 1988, the then Coalition Government commissioned a comprehensive review of the State's industrial laws and procedures. The subsequent report, the Niland Report, had far reaching recommendations and became the basis for the *Industrial Relations Act 1991*. The former Commission was abolished and replaced by the Industrial Relations Commission and a separate Industrial Court. Two of the key features of the report were the introduction of enterprise bargaining outside the formal industrial relations system with agreements specifically tailored to individual workplaces or businesses and the provisions relating to unfair dismissal. Individuals could access the Commission if they believed they had been unfairly dismissed. Their remedy was reinstatement and/or compensation.

On 2 September 1996, the *Industrial Relations Act 1996* came into force. It repealed and replaced the 1991 Act and is an example of plain English statute law. Chapter 4 of the Act established a new Industrial Relations Commission. Unlike the federal approach, the States have not separated judicial and administrative functions in relation to the Commission's powers. The 1991 Act, for the first time, sought to adopt the federal approach and established the Industrial Relations Commission and the Industrial Relations Court (although the Judges remained Members of the Commission at all times). The 1996 Act restored the traditional arrangement by merging these two bodies. When the Commission was dealing with judicial matters it was called the Industrial Relations Commission of New South Wales in Court Session and was a superior court of record of equivalent status to the Supreme Court.

On 9 December 2005 the *Industrial Relations Amendment Act 2005* was proclaimed to commence. This Act enabled the Industrial Relations Commission of New South Wales in Court Session to be called the Industrial Court of New South Wales.

8. APPENDICES *cont.*

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

On 17 June 2011, the *Industrial Relations Amendment (Public Sector Conditions of Employment) Act 2011* commenced. This Act required the Industrial Relations Commission to give effect to aspects of government policy declared by the regulations relating to public sector conditions of employment (s 146C).

On 1 January 2012, the *Work Health and Safety Act 2011* commenced. This Act removed the jurisdiction of the Industrial Court to deal with work, health and safety prosecutions involving death or serious injury occurring in workplaces across the State. This jurisdiction was transferred to the District Court. The Industrial Court retained jurisdiction to deal with matters filed prior to 31 December 2011 under the Occupational Health and Safety legislation prior to its repeal. The Court also retained jurisdiction in relation to minor breaches of the work, health and safety legislation.

On 20 December 2013, the *Industrial Relations Amendment (Industrial Court) Act 2013* commenced and substantially amended the *Industrial Relations Act 1996*. The major changes were that the Industrial Court may only be constituted by a single judicial member (judge) and not by a Full Bench of judicial members (judges); a judge of the Supreme Court may act as a judge of the Industrial Court; the jurisdiction of a Full Bench of the Industrial Court to deal with cancellation of industrial organisations was transferred to the Industrial Relations Commission and provided that a Full Bench of the Commission for that purpose is to be constituted by a judge of the Industrial Court and two members who are Australian Lawyers; the jurisdiction of a Full Bench of the Industrial Court to deal with contempt was transferred to a single judge of the Court; the jurisdiction of a Full Bench of the Industrial Court to hear appeals from the Local Court or appeals on a question of law in relation to a public sector promotional or disciplinary appeal was transferred to a single judge of the Court; the jurisdiction of a Full Bench of the Industrial Court to hear appeals from a judge of the Industrial Court was transferred to the Supreme Court. The amendments also allowed former members of the Commission and Court to complete matters that were unfinished by them when they ceased to be members. Amendments to other Acts provided for appeals from the Industrial Court to the Court of Criminal Appeal; for certain matters under the *Police Act 1990* to be dealt with by Commission members who are Australian Lawyers; and for a judicial member of the Commission to act as a judge of the Supreme Court.

