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Parliament of New South Wales

1991-92

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REPORT  
 OF THE  
 PRESIDENT  
 OF THE  
 INDUSTRIAL  
 COMMISSION  
 FOR 1989

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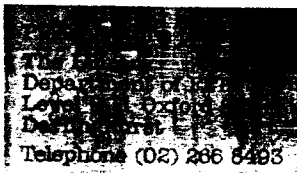
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*Ordered to be printed 13 June 1991*

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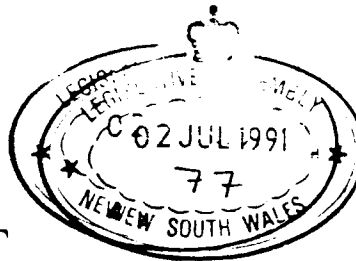


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 THE PARLIAMENT OF NEW SOUTH WALES - 1991

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ANNUAL REPORT  
OF THE  
PRESIDENT  
OF THE  
INDUSTRIAL COMMISSION  
OF NEW SOUTH WALES  
FOR  
1989

*I have the honour to furnish to the Minister for presentation to Parliament the Twenty-Third Annual Report of the President of the Industrial Commission of New South Wales made pursuant to s.14A of the Industrial Arbitration Act, 1940, as amended, relating to the year ended 31 December 1989.*

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## PART 1: FUNCTIONING OF THE INDUSTRIAL COMMISSION

### Membership:

Members of the Commission during the year were -

### President:

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

### Members:

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

The Honourable William Brendon Perrignon, appointed 5 June 1962. (Chairman of the Crown Employees Appeal Board since 1 March 1965, President of the Police Tribunal of New South Wales since 19 February 1979 and Senior Chairman of the Government and Related Employees Appeal Tribunal since 1 June 1980). Retired 4 June 1989.

The Honourable Frederick Vernon Watson, appointed 6 February 1973. Retired 31 October 1989.

The Honourable James Joseph Macken, appointed 2 June 1975. Retired 21 August 1989.

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

The Honourable Leone Carmel Glynn, appointed 14 April 1980.

The Honourable Michael John Sweeney, appointed 22 February 1982.

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

The Honourable John Varnum, A.M. appointed 19 February 1987 (non judicial member).

The Honourable Brian Eugene Hill appointed 1 August 1988.

The Honourable Gregory Ian Maidment appointed 1 August 1988.

The Honourable Barrie Clive Hungerford appointed 13 July 1989.

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PART 1 - SECTION 1 : FUNCTIONING OF THE COMMISSION  
IN COURT SESSION

Court Session Business

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

## PART 1 - SECTION 2

During the year many cases before the Industrial Commission and Conciliation Committees concerned restructuring and efficiency pursuant to the State Wage Case of August 1989. As in any programme essentially about reform of industrial procedures and conditions, consistency in decision making is an important factor in establishing the acceptability of change.

The cases are often complex and the interpretation and application of the State Wage Principles does give rise to problems.

At present, the Industrial Arbitration Act provides for separate benches of Members, Judicial and Non-Judicial on the one hand and, at a separate location, Conciliation Commissioners often acting as Chairman of Conciliation Committees. This separation does not assist consistency in decision making.

A small step towards increasing interaction between the two groups has been the development whereby Conciliation Commissioners have sat on the Commission in Court Session, including the State Wage Bench. The logistics of travel and the absence of adequate facilities for Conciliation Commissioners in the Industrial Commission have posed problems, but the advent of mixed benches itself has been a success.

I recommend that as opportunity presents itself, that Members and Conciliation Commissioners should be located in the same building where supporting services would be available to all, including the Registry and Library.

I further recommend that a panel system, broadly similar to that used in the Australian Industrial Relations Commission which associates Members and Conciliation Commissioners should be introduced. Because of the different balances between institutions I would expect the panels proposed would mostly consist of one Member and one Conciliation Commissioner working co-operatively upon a common allocation of industry and subject matters.

PART 1 - SECTION 3: FUNCTIONING OF THE COMMISSION -  
MEMBERS SITTING ALONE.

[1] Allocation and Delegation of Matters to Members

During the year the total of matters allocated or delegated to Members to sit alone was 1,197 (previous year 1,529). Particulars of such matters are shown in Tables B and C.

These tables show that at 31 December 1989 there were 673 matters (previous year 604) in the list of Members of the Commission sitting alone which have not been completed. A substantial number of the uncompleted matters were either not ready for hearing or had been stood over at the request of an applicant or by consent, and some 270 of them were compulsory conference matters in which some action had been taken but which remained in the list in case further action was needed.

In my opinion, the state of the lists were reasonably satisfactory and up-to-date.

However, the trend towards increased complexity in hearings with respect to structural change and efficiency and the increased number of cases reflecting enterprise focus hearings suggests that in the medium term, two additional Members may be required.



It would also assist the Commission when retirements occur if vacancies could be filled with a minimum of delay.

[2] Notifications under s.25A of the Industrial Arbitration Act

Section 25A of the Industrial Arbitration Act requires an industrial union or an employer which becomes aware of an actual or threatened industrial dispute or of a question which might lead to a strike or lockout to notify the Industrial Registrar thereof. During the year 3,328 notifications under this section were lodged with the Registrar, a decrease of 124 on the notifications lodged in the previous year. Attached to this Report as Appendix A is an analysis prepared by the Registrar of the reasons given for the making of the notifications. This shows that in 263 cases a stoppage was involved.

[3] Heads of Tribunals Meeting

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

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

Some 270 Notices were lodged under the Employment Protection Act under s.7 of the Act; a further 1,660 Notices under s.8 of the Act were also lodged during 1989.

PART 2: WORKING OF THE INDUSTRIAL ARBITRATION ACT

[1] Registration of Industrial Unions of Employers (s.6)

There were four registrations in 1989.

[2] Industrial Agreements (s.11)

During the year 171 (previous year 216) industrial agreements made pursuant to s.11 of the Act were filed at the office of the Industrial Registrar. Of these, 46 varied existing agreements and 125 were new agreements or replacements of formal agreements.

[3] Conciliation Commissioners (s.15)

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

Conciliation Commissioners -

Mr Mervyn George Mills was appointed as Principal Conciliation Commissioner on 20 May 1988.

Mr Raymond John Patterson, appointed 12 May 1980.

Mr Peter John Connor, appointed 15 May 1987.

Mr Reginald George Mawbey, appointed 7 July 1980.

Mr James Leslie McMahon, appointed 22 April 1983.

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

Mr Allan Cross, appointed 3 February 1986.

Mr Michael Francis Sheils, appointed 3 February 1986.

Mr James Neil Redman, appointed 3 February 1986.

Mr Rodney William Harrison, appointed 6 August 1987.

Conciliation Commissioner for Apprenticeships

Mr Raymond Douglas Wheeler, appointed 3 June 1981.  
- retired 2 June 1989.

The Conciliation Commissioners are the chairmen of the conciliation committees and particulars of the business of the committees appear in Appendix B. In addition to their function as chairmen of conciliation committees, the Conciliation Commissioners engage in conciliation by the compulsory conference process and during the year they presided over 1,746 such conferences. This represented a

decrease of 123 on the previous year. In my opinion, the Conciliation Commissioners have continued to provide efficient and expeditious assistance towards the resolution of disputes.

The conference between the Conciliation Commissioners and Members of the Commission which s.15(9) of the Act requires to be held not less frequently than once in every four months was held on three occasions during the year.

[4] Special Commissioners (s.17A)

Particulars of officers holding appointments as special commissioners and of the number of matters dealt with by them during the year are as follows -

Special Commissioners

Mr D.B. McPherson (South Coast Region, nil).

Mr T.F. Hart (Goulburn, nil).

Mr R.J. Young (Port Macquarie, nil).

Mr W.H. Nolte (Albury, nil).

Mr D. Reid (Wagga Wagga, nil).

Mr K. Maker (Orange, nil).

Mr R.W. Allen (Wagga Wagga, nil)

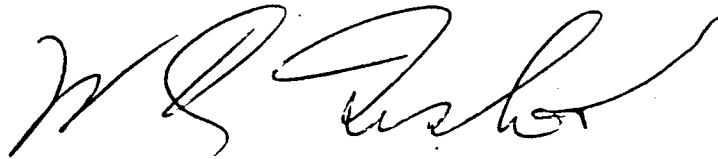
Mr B.J. Malone (Orange, nil)

Mr B.L. Butt (Gosford, nil).

Mr R.G. Randall (Port Macquarie, nil).  
Mr W.M. Dunnachie (Dubbo, nil).  
Mr R.J. Callaghan (Lismore, nil)  
Mr R. Ford (Tamworth, nil)

[5] Conciliation Committees (s.18)

As at 31 December 1989 there were 435 extant conciliation committees. During the year the Commission established 6 new committees, dissolved 3 and made nil alterations to assignments of industries and callings. Appendix B contains particulars of applications made to committees during the year.



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

APPENDIX A

REASONS GIVEN FOR NOTIFICATIONS MADE PURSUANT TO SECTION  
25A OF INDUSTRIAL ARBITRATION ACT IN YEAR ENDED  
31 DECEMBER 1989

|  |  |              |
|--|--|--------------|
| <u>(A) TERMS OF EMPLOYMENT</u>             |  |              |
| 1.   | <u>Wages</u>                                   |              |
|  | Claims for increase                            | 136          |
|  | Claims for allowances                          | 90           |
|  | Claim for award rate                           | 122          |
|  | Non-payment of wages                           | 151          |
|  | Other  | <u>368</u>   |
|  |  | 867          |
| 2.   | <u>Dismissal or termination</u>                |              |
|  | Unspecified                                    | 332          |
|  | Neglect of duties/misconduct                   | 16           |
|  | Absenteeism                                    | 3            |
|  | Seeking reinstatement                          | 57           |
|  | Retrenchment                                   | <u>31</u>    |
|  |  | 439          |
| 3.   | <u>Hours etc.</u>                              |              |
|  | Overtime                                       | 35           |
|  | Alteration to rosters                          | 22           |
|  | Hours of work                                  | 39           |
|  | Sick leave entitlement                         | <u>12</u>    |
|  |  | 108          |
| 4.   | <u>Physical working conditions</u>             |              |
|  | Safety   | 62           |
|  | Amenities                                      | <u>30</u>    |
|  |  | 92           |
| 5  | <u>Matters of management control</u>           |              |
|  | Suspension/standing down/<br>demotion          | 73           |
|  | Contract labour                                | 27           |
|  | Interpretation or breach of<br>award/agreement | 143          |
|  | Appointments                                   | 126          |
|  | Transfers                                      | 50           |
|  | Manning  | <u>44</u>    |
|  |  | 463          |
| <u>(B) UNION MATTERS</u>                   |  |              |
|  | Employment of non-unionists                    | 11           |
|  | Demarcation                                    | 31           |
|  | Sympathy with other unions                     | <u>1</u>     |
|  |  | 43           |
| <u>(C) MISCELLANEOUS</u>                   |  |              |
|  |  | 316          |
|  | <u>TOTAL:</u>                                  | <u>2,328</u> |
| <u>NOTIFICATIONS INDICATING STOPPAGES:</u> |  |              |
|  |  | 263          |

APPENDIX B

Application to Conciliation Committees  
Year Ended 31 December 1989

| Description of matter   | Total matters<br>1988 | Total matters<br>1989 |
|---|-----------------------|-----------------------|
| 1. Applications filed on behalf of -  |                       |                       |
| (a) employees for an order or award (s. 20(1))  | 27                    | 19                    |
| (b) employers for an order or award (s. 20(1))  | 5                     | 2                     |
| (c) employees for variations or interpretation of an award (s. 20(1))                 | 439                   | 335                   |
| (d) employers for variations or interpretation of an award (s. 20(1))                 | 30                    | 29                    |
| (e) employees for exemption or variation of an exemption from an award                | --                    | --                    |
| (f) employers for exemption or variation of an exemption from an award                | --                    | --                    |
| 2 Applications for approval of leasing of premises for hairdressing (s. 88B)          | --                    | --                    |
| 3 Applications to approve employment of probationary commercial traveller or salesman | --                    | --                    |
| 4 Application pursuant to the Clothing Trades (State) Award                           | 13                    | 37                    |
| 5 Apprenticeship  | --                    | --                    |
| (a) Application for Awards  | 77                    | --                    |
| (b) Applications for Variations   | --                    | --                    |
| (c) Applications for cancellation/suspension of indentures                            | --                    | --                    |
| 6 Miscellaneous   | 1                     | 1                     |
| TOTAL MATTERS   | <u>595</u>            | <u>418</u>            |



T A B L E A

Business of the Commission in Court Session, Year Ended 31 December 1989

| Description of Matter  | New matters filed and matters removed from member in 1989 | Matters completed in 1989a) | Matters to be completed |
|--|---|-----------------------------|-------------------------|
| 1. Appeals from order, award, decision or ruling of a member of the commission (s.14(8)(b); s.30B(1)(a))   | 37  | 29                          | 40                      |
| 2. Questions of jurisdiction reserved from the consideration of, or directed to be argued before, the commission in court session by a member or referred to it pursuant to s.30C (s.30B(1)(b); s.30C) | 6   | 5                           | 1                       |
| 3. Matters involving the exercise of any power conferred on the commission by an act other than the industrial arbitration act or the apprentices act, 1969 (s.30B(1)(c))                              | 0   | 0                           | 2                       |
| 4. Appeals made pursuant to s.120 of the industrial arbitration act removed by a member to the commission in court session (s.30B(1)(d); s.120)  | 1   | 1                           | 3                       |
| 5. Proceedings instituted pursuant to Part X of the industrial arbitration act (s.30B(1)(e); Part X)   | 1   | 2                           | 0                       |
| 6. Questions as to the cancellation of the registration of an industrial union or association. (s.8; s.30B(1)(f); s.91B(4))  | 4   | 1                           | 4                       |
| 7. Appeals from the industrial registrar (s.30B(1)(g))   | 0   | 0                           | 0                       |
| 8. Industrial matters referred by the minister to the commission in court session (s.30B(1)(h))  | 2   | 2                           | 2                       |
| 9. Matters in any proceeding commenced or arising before a member which such member considers ought to be removed to the commission in court session (s.30B(1)(i)) -                                   | 9   | 5                           | 11                      |
| (a) Applications for an award or order (s.20, s.30)  | 38  | 42                          | 42                      |
| (b) Applications for variation of an award or order (s.20, s.30)   | 0   | 0                           | 0                       |
| (c) References by minister (s.35(1)(o))  | 8   | 7                           | 5                       |
| (d) Notifications of question, dispute or difficulty (s.25A)   | 0   | 0                           | 1                       |
| (e) Appeals from order, award or decision of a conciliation committee or a conciliation commissioner (s.24)  | 3   | 3                           | 0                       |
| (f) Applications for commission to exercise powers and functions of a conciliation committee (s.30)  | 4   | 7                           | 2                       |
| (g) References by conciliation commissioner or conciliation committee (s.25(4))  | 0   | 0                           | 0                       |
| (h) Summonses by commission on its own initiative (s.31(b))  | 0   | 0                           | 0                       |
| (ha) Applications for an order or award (s.88F)  | 0   | 0                           | 0                       |
| (hb) Applications to determine questions as to demarcation of industrial interests of trade unions or industrial unions (s.36)   | 0   | 0                           | 0                       |
| (i) Applications for inquiry into alleged irregularities in trade union election (s.111A - 111N)   | 0   | 0                           | 0                       |
| (j) Application for order directing that rules of a trade union be altered   | 0   | 0                           | 0                       |
| (k) Applications in commission's original apprenticeship jurisdiction (apprentices act s.21)   | 0   | 0                           | 0                       |
| (l) Appeals from award, order or decision of apprenticeship committee (apprentices act s.24(1))  | 0   | 0                           | 0                       |
| (m) Applications to enforce an agreement for the regulation of any business or industry (s.111)  | 0   | 0                           | 1                       |
| (n) Applications for removal of industrial union from registrar of industrial unions (s.8(9))  | 0   | 0                           | 0                       |
| (o) References by industrial registrar (s.58(6))   | 0   | 0                           | 0                       |
| (p) Application for anomalies conference in accordance with state wage principles  | 0   | 0                           | 0                       |
| 10. Summonses by commission on its own initiative (s.57(1))  | 1   | 0                           | 5                       |
| 11. Applications for prescription of ordinary hours other than as prescribed by s.63(1)(a) (s.63(1)(g))  | 14  | 8                           | 19                      |
| 12. References by industrial registrar under s.58(6) (s.58(6))   | 0   | 0                           | 0                       |
| 13. Appeals from decision of under secretary (s.76A(7))  | 0   | 0                           | 0                       |
| 14. Appeals from order, award, ruling or decision of Retail Trade Industrial Tribunal under s.38T(2) of the Industrial Arbitration Act, 1940. (s.38T(2))   | 0   | 0                           | 1                       |
|  | 128   | 112                         | 118                     |

Notes: (a) Matters completed include matters commenced in or earlier which during were (i) finally adjudicated upon, or (ii) withdrawn, or (iii) delegated to a member to sit alone, or (iv) removed to the dormant list for non-prosecution.  
 (b) Matters to be completed include matters filed or removed from member before

TABLE B  
Business of the Commission in the Original Jurisdiction - Members Sitting Alone  
Year Ended 31 December 1989

| Description of Matter  | Matters filed in 1989 and allocated or delegated | Matters Completed in 1989(a) | Matters to be completed (b) |
|--|--|------------------------------|-----------------------------|
| 1. Applications for an award or order (s.20(1), s.30)  | 87   | 94                           | 86                          |
| 2. Applications for variation, interpretation or rescission of or exemption from an award (s.20(1), s.30, s.87)                                  | 653  | 437                          | 438                         |
| 3. Applications for variation or interpretation of an industrial agreement   | 68   | 29                           | 40                          |
| 4. Summonses by commission on own initiative to vary or rescind an award (s.31(b))   | 2  | 1                            | 2                           |
| 4A. Summonses by commission on its own initiative (s.57(1))  | 0  | 0                            | 0                           |
| 4B. Conference under s.31(a) (s.31(a))   | 0  | 0                            | 0                           |
| 5. References by Minister (s.35(1)(o))   | 2  | 2                            | 2                           |
| 5A. References by Minister (s.35B(1)(h))   | 2  | 2                            | 2                           |
| 6. Notifications of question, dispute or difficulty (s.25A)  | 548  | 391                          | 409                         |
| 7. Applications to determine questions as to demarcation of industrial interests of trade unions or industrial unions (s.36)                     | 11   | 82                           | 13                          |
| 8. Applications to demark callings (s.37)  | 1  | 0                            | 1                           |
| 9. Applications for order or award declaring contract or arrangement void (s.88F)  | 77   | 72                           | 107                         |
| 9A. Regulations of Certain Contracts under s.88FA. (s.88FA)  | 2  | 0                            | 2                           |
| 10. Matters relating to establishment and membership of conciliation committees or alteration of industries and callings assigned thereto (s.18) | 8  | 9                            | 0                           |
| 10A. Matters relating to establishment and membership of contract regulation tribunals (s.91J)   | 1  | 1                            | 0                           |
| 10B. Applications for contract determination re class of contracts of carriage (s.91L)   | 12   | 13                           | 7                           |
| 11. Reports and submissions by Industrial Registrar  | 52   | 78                           | 20                          |
| 11A. References by Industrial Registrar (s.11)   | 1  | 2                            | 1                           |
| 12. Applications re entitlement to membership of trade union (s.115)   | 0  | 0                            | 1                           |
| 13. Applications for inquiry into alleged irregularities in trade union election (ss111A - 111E)   | 17   | 12                           | 1                           |
| 14. Applications for leave to prosecute, unlawful dismissal (s.95)   | 1  | 2                            | 1                           |
| 15. Applications for order directing trade union to alter rules (s.115)  | 0  | 2                            | 1                           |
| 16. Summonses to enforce trade union rules (s.111)   | 1  | 1                            | 1                           |
| 16A. Applications to enforce an agreement for the regulation of any business or industry (s.111)   | 0  | 0                            | 0                           |
| 17. Applications for commission to exercise powers and functions of conciliation committee, industrial registrar or industrial magistrate (s.30) | 4  | 3                            | 3                           |
| 18. Notices of intention to strike (s.99A)   | 0  | 0                            | 0                           |
| 19. Applications for revocation of exemption (long service leave act s.5)  | 0  | 0                            | 0                           |
| 20. Applications relating to apprenticeship committees (apprentices act s.17)  | 2  | 2                            | 2                           |
| 21. Submission of question by apprenticeship committee (apprentices act s.18)  | 0  | 0                            | 0                           |
| 21A. Applications in commission's original apprenticeship jurisdiction (apprentices act s.21)  | 0  | 0                            | 0                           |
| 22. References of provision of award or question of law by director of apprenticeship (apprentices act s.53)                                     | 0  | 0                            | 0                           |
| 23. Applications for order for payment of wages (s.92)   | 0  | 1                            | 1                           |
| 24. Applications for removal of industrial unions from the register of industrial unions (s.8(9))  | 0  | 0                            | 0                           |
| 25. Submissions by industrial registrar (reg.16)   | 7  | 6                            | 6                           |
| 26. Report of the industrial registrar pursuant to s.11 of the employment protection act, 1982.  | 33   | 31                           | 31                          |
| 27. Applications for an anomalies conference. Principle 6 of the state wage case (october, 1983) principle.                                      | 2  | 2                            | 2                           |
| 28. Prosecution under section 16(1) of the Occupational Health & Safety Act, 1983  | 23   | 12                           | 12                          |
| TOTAL  | 1615   | 1284                         | 1284                        |

Notes: (a) Matters completed include matters commenced in 1989 or earlier which during 1989 were adjudicated upon, or (ii) withdrawn, or (iii) removed to the commission in court session, or (iv) referred to a conciliation commissioner under s.26, or (v) removed to the dormant list for non-prosecution.

(b) Matters to be completed include matters filed before 1989.

T A B L E C

Business of the Commission in the Appellate or Supervisory Jurisdiction - Members Sitting Alone  
Year Ended 31 December 1989

| Description of Matter   | Matters filed in 1989 and allocated or delegated | Matters completed in 1989a) | Matters to be completed (b) |
|---|--|-----------------------------|-----------------------------|
| 1. Appeals from order, award or decision of a conciliation committee or a conciliation commissioner (s.24(8))         | 24   | 27                          | 25                          |
| 2. References of matter or question by chairman of a conciliation committee (s.77E(d))                                | 29   | 35                          | 15                          |
| 3. References of question, dispute or difficulty by a conciliation commissioner or a conciliation committee (s.25(4)) | 45   | 40                          | 33                          |
| 4. Appeals from a decision of a special commissioner (s.17A(4))   | 0  | 0                           | 0                           |
| 5. Appeals from order, award or determination of an apprenticeship committee (Apprentices Act, 1969, s.24)            | 1  | 1                           | 1                           |
| 6. Appeals from order of an industrial or other magistrate -  | 7  | 12                          | 6                           |
| (i) Annual Holidays Act   |  |                             |                             |
| (ii) Bread Industry Act   |  |                             |                             |
| (iii) Consumer Protection Act   |  |                             |                             |
| (iv) Factories, Shops and Industries Act  |  |                             |                             |
| (v) Industrial Arbitration Act  |  |                             |                             |
| (vi) Long Service Leave Act   |  |                             |                             |
| (vii) Motor Dealers Act   |  |                             |                             |
| (viii) Construction Safety Act  |  |                             |                             |
| (ix) Occupational Health and Safety Act   |  |                             |                             |
| 7. Appeals from district court (s.92(3))  | 0  | 0                           | 0                           |
| 8. Appeals from industrial registrar (s.129B(2)(e))   | 0  | 1                           | 0                           |
| 9. Submissions by apprenticeship committee (s.18(10) apprentices act, 1969)   |  | 0                           | 0                           |
| 10. Appeals from decision of under secretary (s.76A(7) factories, shops and industries act, 1962)                     | 0  | 0                           | 0                           |
| 11. Appeals from superannuation decision (Part III Division 8)  | 19   | 13                          | 26                          |
| TOTAL   | 135  | 129                         | 106                         |

Notes: (a) Matters completed include matters commenced in \_\_\_\_\_ or earlier which during \_\_\_\_\_ were (i) finally adjudicated upon, or (ii) withdrawn, or (iii) removed to Commission in Court Session, or (iv) referred to a Conciliation Commissioner under s.26, or (v) removed to the secretariat for non-prosecution.

(b) Matters to be completed includes matters filed before \_\_\_\_\_