The Industrial Relations Commission

of

New South Wales

Annual Report

Year Ended 31 December 2010

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Year Ended 31 December 2010

The President

Industrial Relations Commission of New South Wales

47 Bridge Street, Sydney

The Honourable Mr Gregory Pearce MLC
Minister for Finance and Services, and
Minister for Illawarra
Level 36, Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

23 August 2011

Dear Minister,

I have the honour of furnishing to you for presentation to Parliament the Fifteenth Annual Report of the Industrial Relations Commission of New South Wales made pursuant to section 161 of the *Industrial Relations Act* 1996 in respect of the year ended 31 December 2010.

Yours sincerely,

R Boland

The Honourable Justice R P Boland
President

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Cover: *Abundance, Maid of New South Wales* (statue by Giovanni Fontana, 1883)
At the public entrance foyer in Bridge Street, the allegorical figure of New South Wales welcomes visitors to the building. Crowned with a wreath of waratahs, the insignia of New South Wales emblazoned on her sleeve and with nature's bounty at her feet, she interprets Sir Henry Parkes' image of New South Wales as "the mother of the Australian colonies" [Extracted from *Chief Secretary's Building - A Poem of Stone*, Department of Public Works, 2007, p.14]

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

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INTRODUCTION

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

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

It is with sadness that I report on the passing of the former President of the Commission, the Honourable William Kenneth (Bill) Fisher, AO, QC on 10 March 2010 at age 83 years. Bill Fisher was appointed President of the Industrial Relations Commission of NSW on 18 November 1981 and was the second longest serving President, retiring after 16 and a half years.

John Shields noted in his introduction to the chapter on Bill Fisher's term as President in the publication, *Laying the Foundations of Industrial Justice*:

> Fisher steered the commission through some of the most dramatic changes in its history: the wages explosion of 1981-82, the economic slump of 1981-83, the wage freeze of 1982, the advent of the Accord system, the advent of productivity bargaining and award restructuring in 1987-88, the return of the recession in 1990-92, and the controversial move to enterprise bargaining in the first half of the 1990s. That the NSW Commission survived these immense challenges at all was a remarkable achievement, that it emerged a stronger and more effective judicial body was Bill Fisher's singular triumph.

A commemorative sitting of a Full Bench was held on the 22 March 2010 in memory of and as a tribute of respect to him. Tributes were given by the Honourable Neville Wran, AC, QC on behalf of the Bar Association; Bert Evans, AO on behalf of Employers; Adrian Morris, on behalf of the NSW Law Society; and Mark Lennon, Secretary, Unions NSW for Unions and their members. A copy of the transcript can be found on the Commission's website.

I would also note, with appreciation, the work of former Commissioner Ian Cambridge. Commissioner Cambridge, who was appointed to this Commission on 20 November 1996, elected to take a principal appointment with the federal industrial tribunal, *Fair Work Australia*, and resigned his commission with effect from 16 June 2010. In the almost 14 years of his appointment with this Commission, the Commissioner exercised his considerable skills and expertise to successfully resolve industrial disputes across New South Wales. On behalf of the Members and staff of this Commission, I wish him all the best for the future.

During the year I continued discussions with the Attorney General and Minister for Industrial Relations (when the portfolio was jointly held by the Attorney) and later individually with both Ministers (when the portfolios were split) about the future of the institution. It seemed to me, given the bi-partisan support for the transfer of the residue of the private sector to the federal system from 1 January 2010, statements on both sides of the House as to the beneficial nature of this Commission and the commitment to retain it into the future, that the time was ideal to transfer suitable work to the Commission and consolidate operations. Detailed proposals in this regard were put to the responsible Ministers.

However, this continued to be a difficult exercise and, both surprisingly and disappointingly, other than for the initial co-location of the *Government and Related Appeals Tribunal* and the *Transport Appeals Board* to the Commission's premises shortly after the commencement of the new Law Term and the ultimate transfer of those jurisdictions to the Commission from 1 July 2010, the opportunity to consolidate the role of the Commission and Court into the future was not taken up by the Government.

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

I would also take this opportunity to thank Ms Lisa Gava, my Principal Associate together with Ms Monique Brady and Ms Lydia D'Souza, who job share the position of second Associate, for the skill and professionalism with which they dealt with matters passing

through my Chambers. I also commend the work of my Tipstaff, Mr John Maloney, who provides invaluable assistance.

I also express my thanks to my Research Associate, Ms Anne-Marie Fensom who assumed the role following the departure of Ms Zoe Paleologos early in the year, for her thoroughness and consistency of approach.

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

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

WHAT WE DO[1]

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

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

Broadly, the Commission (other than when sitting as the Industrial Court) exercises its jurisdiction in relation to:

- establishing and maintaining a system of enforceable awards which provide for fair minimum wages and conditions of employment;
- approving enterprise agreements;
- preventing and settling industrial disputes, initially by conciliation, but if necessary by arbitration;
- inquiring into, and reporting on, any industrial or other matter referred to it by the Minister;
- determining unfair dismissal claims, by conciliation and, if necessary, by arbitration to determine if a termination is harsh, unreasonable or unjust;
- claims for reinstatement of injured workers;
- proceedings for relief from victimisation;

[1] For a brief history of the Commission see Appendix 9

- dealing with matters relating to the registration, recognition and regulation of industrial organisations;
- dealing with major industrial proceedings, such as State Wage Cases;
- applications under the *Child Protection (Prohibited Employment) Act* 1998;
- various proceedings relating to disciplinary and similar actions under the *Police Act* 1990.

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

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

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

- proceedings for an offence which may be taken before the Court (including proceedings for contempt). The major area of jurisdiction exercised in this area relates to breaches of the *Occupational Health and Safety Act* 2000;
- proceedings for declarations of right under s 154;
- proceedings for unfair contract (Part 9 of Chapter 2);
- proceedings under s 139 for contravention of dispute orders;
- proceedings under Parts 3, 4 and 5 of Chapter 5 – Registration and regulation of industrial organisations;
- proceedings for breach of an industrial instrument;

- proceedings for the recovery of money payable under an industrial instrument other than small claims under s 380 (which are dealt with by the Chief Industrial Magistrate or an Industrial Magistrate);
- superannuation appeals under s 40 or s 88 of the *Superannuation Administration Act* 1996;
- proceedings on appeal from a Member of the Commission exercising the functions of the Industrial Court; and
- proceedings on appeal from an Industrial Magistrate or any other court.

MEMBERSHIP OF THE COMMISSION

JUDGES AND PRESIDENTIAL MEMBERS

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

President

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

Vice-President

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

Presidential Members

The Honourable Justice Francis Marks, appointed 15 February 1993;

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

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

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

Deputy President John Patrick Grayson, appointed 29 March 2000;

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

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

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

COMMISSIONERS

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

Commissioner Peter John Connor, appointed 15 May 1987;

Commissioner Inaam Tabbaa, appointed 25 February 1991;

Commissioner Donna Sarah McKenna, appointed 16 April 1992;

Commissioner Ian Walter Cambridge, appointed 20 November 1996; resigned 16 June 2010;

Commissioner Elizabeth Ann Rosemary Bishop, appointed 9 April 1997;

Commissioner Alastair William Macdonald, appointed 4 February 2002;

Commissioner David Wallace Ritchie, appointed 6 September 2002;

Commissioner John David Stanton, appointed 23 May 2005.

Acting Commissioner Patricia Ann Lynch, appointed 1 July 2010

Acting Commissioner Mark Francis Oakman, appointed 1 July 2010

INDUSTRIAL REGISTRAR

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

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

DUAL APPOINTMENTS

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

Deputy President Rodney William Harrison;

Deputy President Peter John Andrew Sams, AM;

Commissioner Peter John Connor;

Commissioner Donna Sarah McKenna;

Commissioner Alastair William Macdonald; and

Commissioner John David Stanton[2].

ANCILLARY APPOINTMENTS

The Honourable Justice Wayne Roger Haylen has held an appointment as Deputy President of the Administrative Decisions Tribunal and as Divisional Head of the Legal Services Division of that Tribunal since 9 June 2008. His Honour has also held an appointment to the Racing Appeals Tribunal since 2003 and has been Head of that Tribunal since 2008.

[2] Sams DP and McKenna C work full-time at *Fair Work Australia* premises at 80 William Street SYDNEY.

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

The Honourable Justice Conrad Gerard Staff and the Honourable Justice Anna Frances Backman have held appointments as Deputy Chairpersons of the Medical Tribunal of New South Wales since 24 September 2008.

How the Commission Operates

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

Industry Panels

Industry panels were reconstituted during 1998 to deal with applications relating to particular industries and awards and have been reviewed regularly since that time to ensure that panels reflect and are able to respond to the ongoing needs of the community. Consequent upon the transfer of the jurisdiction of the former *Government and Related Employees Appeals Tribunal* and an alteration to the manner in which *Transport Appeal Boards* are constituted, two new panels were created with effect from 1 July 2010. Six panels are now in operation, each comprising a number of Presidential Members and Commissioners. Each panel is chaired by a Presidential Member of the Commission who allocates or oversees the allocation of matters to the members of the panel. The panels deal with applications for awards or variations to awards, applications for the approval of enterprise agreements and dispute notifications arising in relevant industries together with disciplinary and promotional appeals brought by public sector employees (both general public sector and transport public sector employees)

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

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

REGIONAL AND COUNTRY SITTINGS

The Commission has its own dedicated court premises located in Newcastle and Wollongong. The Registry has been staffed on a full-time basis at Newcastle for many years. During 2002 that situation was extended to Wollongong to assist the clients of the Commission and the sittings of the Commission that occur there.

In July 2004 the Commission entered into 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. This was initially commenced as a pilot for three months designed, principally, to meet the needs of industrial organisations located in Western Sydney. In short, this initiative allows for any application that may be filed at the Sydney Registry to be filed at Parramatta with the exception of industrial disputes under s 130 of the Act. The Commission acknowledges the contribution of Ms Lin Schipp, a senior officer of the registry, who initially conducted the pilot and continues to maintain the service at Parramatta.

The general policy of the Commission in relation to unfair dismissal applications (s 84) and rural and regional industries has been to sit in the country centre at or near where the events have occurred. Allocation of those matters is carried out by the Heads of the regional panels mentioned earlier. This requires substantial travel but the Commission's assessment is that it has a beneficial and moderating effect on parties to the industrial disputation and other proceedings who can often attend the proceedings and then better understand decisions or recommendations made.

There were a total of 349 (463)[3] sitting days in a wide range of country courts and other country locations during 2010. There are two regional Members based permanently in Newcastle - Deputy President Harrison and Commissioner Stanton. The Commission sat in Newcastle for 208 (216) sitting days during 2010 and dealt with a wide range of industrial matters in Newcastle and the Hunter district.

The regional Member for the Illawarra - South Coast region, the Honourable Justice Walton, Vice-President, together with Deputy President Grayson, deal with most Port

[3] Numbers in brackets are figures from 2009

Kembla steel matters and other Members also sit regularly in Wollongong and environs. There were a total of 138 (134) sitting days in Wollongong during 2010.

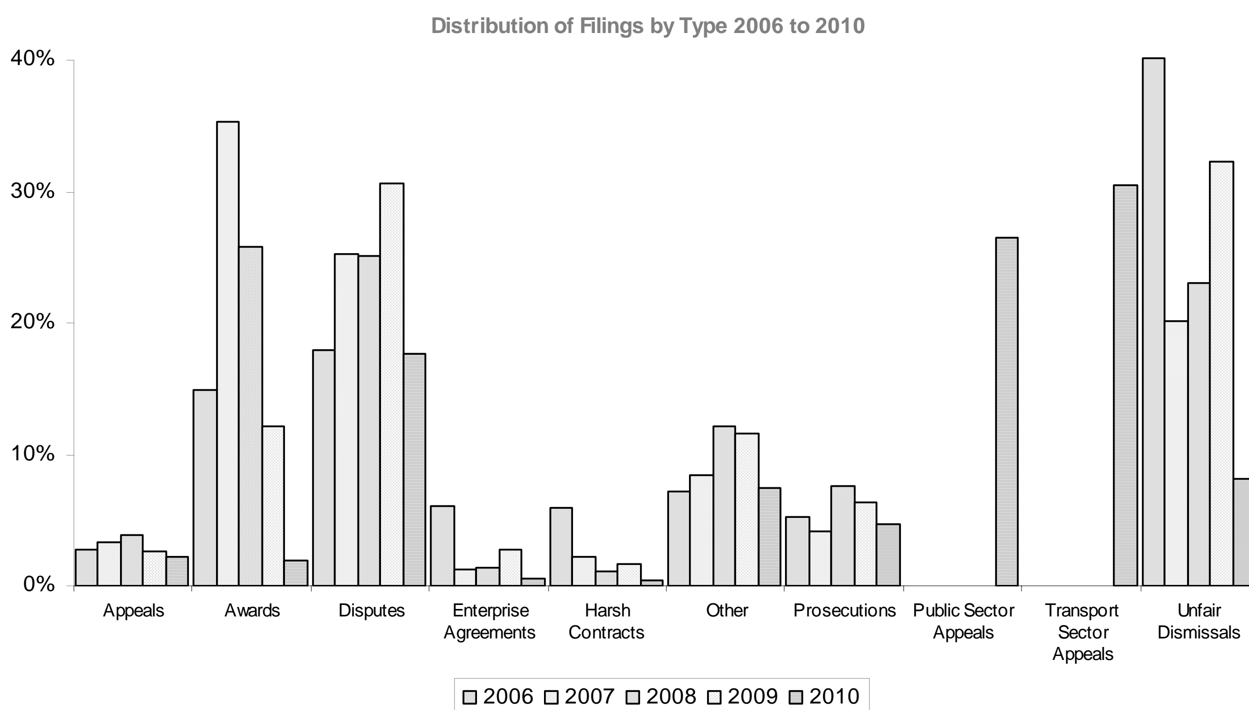
The Commission convened in over 23 other regional locations in 2010 including Armidale, Ballina, Bathurst, Coffs Harbour, Dubbo, Grafton, Griffith, Lismore, Murwillumbah, Tamworth, Taree, and Tweed Heads.

MAJOR JURISDICTIONAL AREAS OF THE COURT AND THE COMMISSION

THE CHANGING NATURE OF OUR WORK

With the introduction of the *Work Choices* legislation[4] in March 2006 the nature of the work undertaken by the Commission and the Court commenced to change. As will be seen from the graph below, there was a significant decrease in what had been until then the Commission's largest jurisdictional area, unfair dismissals, together with a marked fall in the unfair contract areas. Unfair dismissal work steadily increased from a low in 2007. However, this work has again fallen away since the transfer to the federal jurisdiction of the balance of the private sector from 1 January 2010. A significant area of the Commission's work now arises from appeals brought against disciplinary and promotional decisions by public sector employees.

FIGURE A



[4] *Workplace Relations Amendment (Work Choices) Act* 2005 (Cth)

UNFAIR DISMISSALS

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

The graphs following show matters filed and disposed of in the past five years (Figure B); the method of disposal in 2009 (Figure C); and median listing times (Figure D).

FIGURE B

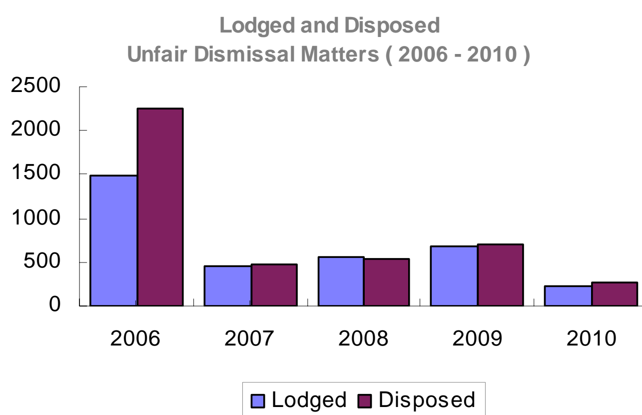


FIGURE C

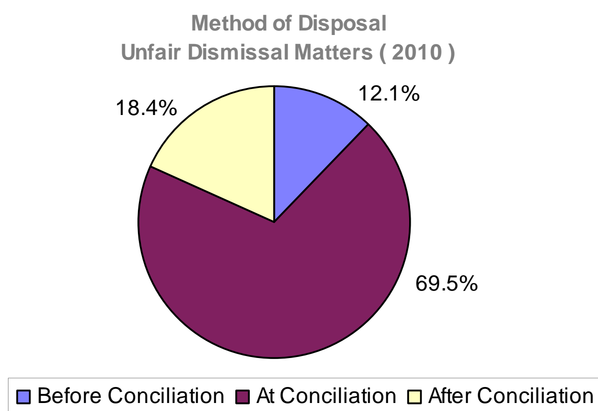
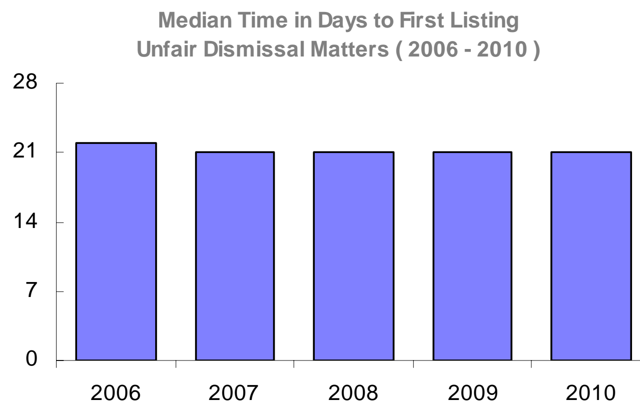
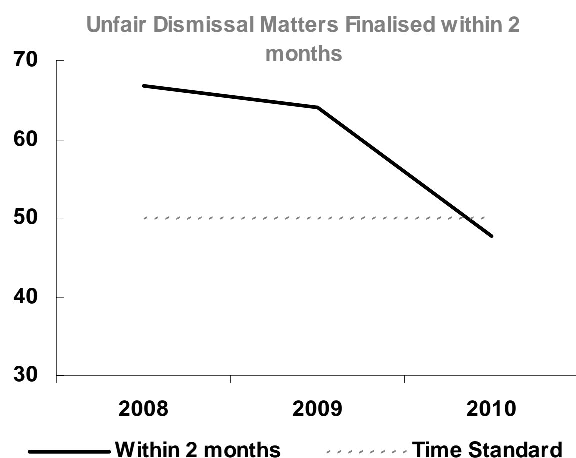


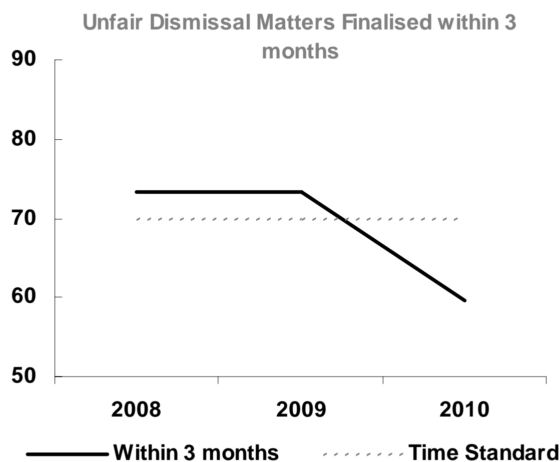
FIGURE D



The time to final disposal of these types of matters initially slowed in 2006. Anecdotally, this would appear to have been as a result of the decrease in filings, which freed up Members to devote more time to individual matters in an attempt to bring the parties to a resolution prior to the matter going to hearing. Figures returned to pre-*Work Choices* clearance rates during 2009, however, have again slowed (see graphs in Figure E). While further analysis is required to be undertaken it would appear that while the numbers of matters have fallen, the matters that are filed have significantly lower prospects of settlement and, when matters proceed to a hearing, are quite protracted.

FIGURE E





INDUSTRIAL DISPUTES

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

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

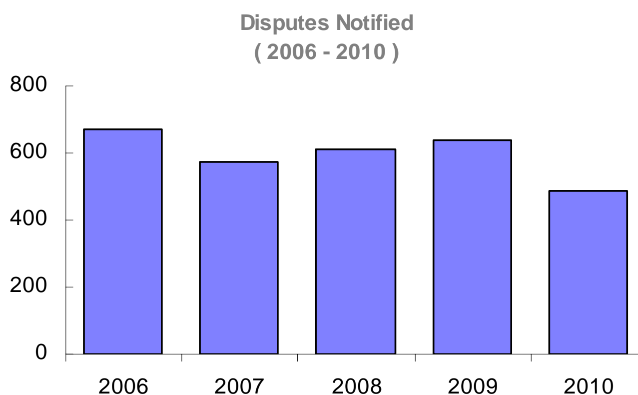
The *Industrial Relations Act* was amended in 2009 to repeal s 146A, which provided that the Commission may assist parties who wished to refer disputes to the Commission where there is an agreement between the parties for this to occur. This was consequent upon the transfer of the balance of the private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

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

Members of the Commission have extensive experience in the wide range of alternative dispute resolution practices. Over many years the members have developed the skills necessary to help employers and employees resolve their differences drawing, as they do, on both their industrial and legal knowledge. Widely recognised as an 'independent umpire' that can achieve a fair and reasonable result, the Commission has always indicated a preparedness to move quickly to determine any application brought under this or any other provision of the Act. The Commission issued *Practice Note No. 26* to facilitate the resolution of these types of matters.

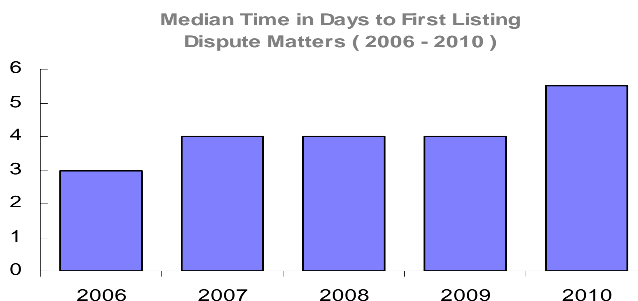
The graph below shows disputes filed in the last five years:

FIGURE F



The Commission responds in a timely way when an industrial dispute is lodged. The time frame is highlighted by Figure G[5] below, which shows the median times from lodgement to first listing.

FIGURE G



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

DETERMINATION OF AWARDS AND APPROVAL OF ENTERPRISE AGREEMENTS

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

The Commission is given power to:

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

AWARD REVIEW

The last triennial Award Review process was effectively completed during 2008. As part of the process leading to the next Award Review in 2011 and having regard to the *Industrial Relations Amendment (Non-operative Awards) Act* 2010 the Commission took submissions from various parties involved in the *State Wage Case* 2010 and determined that the procedure and process to be followed should be subject to further determination in early 2011.

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

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

FIGURE H

Awards and Enterprise Agreements	2006	2007	2008	2009	2010
Awards					
Application to make award	62	22	64	34	13
Application to vary award	479	201	252	216	37
Enterprise Agreements					
Application enterprise agreement	224	28	35	57	16
Terminated enterprise agreement	147	19	12	30	4
Review of Awards					
Notice of Review issued	0	572	308	0	0
Awards reviewed	5	431	374	47	5
Awards rescinded	0	5	12	3	0
Awards determined to have effect as enterprise agreements	n/a	173	169	3	0

STATE WAGE CASE 2010 [2010] NSWIRComm 183; (2010) 201 IR 155

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

Pursuant to the provisions of Part 3 of the *Industrial Relations Act*, on 18 June 2010, the Commission issued a Summons to Show Cause why it should not act on the *Annual Wage Review* decision[6] of the federal tribunal, *Fair Work Australia*, to increase all modern award minimum wages by $26.00 per week with a National Minimum Wage of $569.90 per week.

Submissions were heard from Unions NSW, the Director of Public Employment, the Minister for Industrial Relations, the Local Government and Shires Association ("LGSA"), the Australian Federation of Employers and Industry ("AFEI"), and the Australian Hotels Association. There was general support from parties that the state minimum wage should be set at equal to the National Minimum Wage as recently decided by Fair Work Australia.

The Full Bench of the Commission found there was no good reason not to do so, as underlying ss 48 and 50 of the *Industrial Relations Act* is the principle that National and State minimum wages be aligned.

Parties generally, apart from the AFEI, supported a percentage increase to award minimum rates of pay rather than a dollar increase, in order to retain pay relativities. The

[6] *Annual Wage Review 2009-10*: [2010] FWAFB 4000; (2010) 193 IR 380

Full Bench increased minimum award rates by 4.25 per cent from the date of the decision and made a General Order to that effect pursuant to s 52 of the Act.

The Full Bench amended the current wage fixing principles to reflect the State Wage Case adjustments, allowances, Award Review Classification Rate and Minimum Wage changes.

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

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

UNFAIR CONTRACTS

Under s 106 of the *Industrial Relations Act* 1996 the Court is granted power to declare contracts, whereby a person performs work in any industry, either wholly or partly void, or to vary any such contract, if satisfied that the contract is unfair.

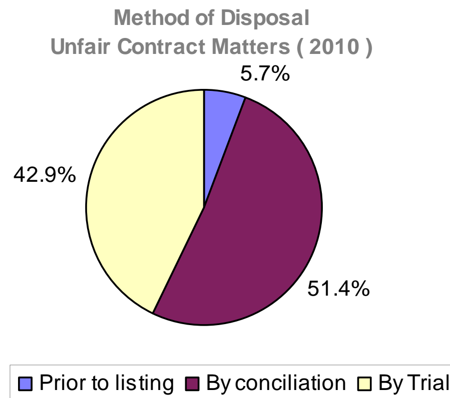
As with the unfair dismissal jurisdiction, the introduction of the *Work Choices* legislation in 2006 significantly impacted on filings with the Commission in this area. Figure I shows the relevant trends:

FIGURE I

Unfair Contracts	2006	2007	2008	2009	2010
Filings	218	51	27	35	13

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

FIGURE J



OCCUPATIONAL HEALTH AND SAFETY PROCEEDINGS

The *Occupational Health and Safety Act* 2000 and the *Occupational Health and Safety Regulation* 2001 have as their primary focus workplace safety. Prosecutions for breach of the relevant provisions may be brought before the Industrial Court for determination.

The majority of prosecutions brought before the Industrial Court are initiated by WorkCover Authority of New South Wales. However, s 106 of the *Occupational Health and Safety Act* 2000 also provides that a secretary of an industrial organisation of employees may initiate proceedings. It is understood that, as a matter of policy, WorkCover prosecutions relating to workplace fatalities and incidents involving serious injury are instituted in the Industrial Court rather than in the Chief Industrial Magistrate's court.

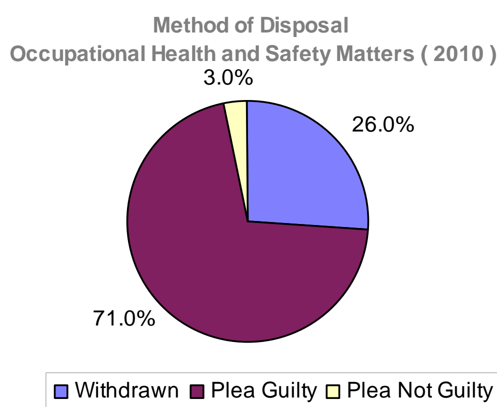
The significant penalties under this legislation are directed to the vindication of safety in the workplace and are no doubt designed to have the effect of discouraging dangerous practices and encouraging a more thoughtful and professional approach to occupational health and safety. This remains a significant area of the Commission's workload given the complexity and seriousness of the matters that fall for determination.

FIGURE K

Occupational Health and Safety Prosecutions	2006	2007	2008	2009	2010
Filings	193	93	185	131	131

The graph below shows the breakdown of how matters finalised during 2010 were determined:

FIGURE L



PUBLIC SECTOR AND TRANSPORT SECTOR APPEALS

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

As noted earlier in this Report, two Panels were established to deal with the new jurisdictions - the *Public Sector Appeals Panel* (PSA) and the *Transport Appeal Boards Panel* (TAB) and two Presidential Members were appointed as head of each Panel with a number of Commissioner Members appointed to each panel. The Senior Chairperson and a Chairperson from *GREAT* were given acting Commissioner appointments for a period of twelve months to ensure a smooth transition of the jurisdictions and also to provide an

[7] s 5 *Transport Appeal Boards Act* 1980

educative resource for those Members of the Commission assigned to the respective panels.

Prior to the transfer, the President established a *Working Party* to ensure that procedures within the Commission would accommodate the increased workload and to guarantee that:

- impact on current or new stakeholders and clients was minimised,
- matters were disposed of in a timely manner (that equated to the current standards under which matters are finalised before these tribunals to avoid criticism),
- there was no adverse impact on the existing work of the Court or Commission.

The *Working Party* was chaired by the Vice-President of the Commission, included the two Panels Heads and the Industrial Registrar and involved consultation with the members of the existing (soon to be former) tribunals. Arising out of that process a number of recommendations were made that were accepted. Essentially, it was resolved that existing procedures before the two tribunals would be maintained as far as possible, however, those procedures would be brought in line with procedures within the Commission with the aim of achieving a consistent approach to determination of matters both before the Commission and the Board.

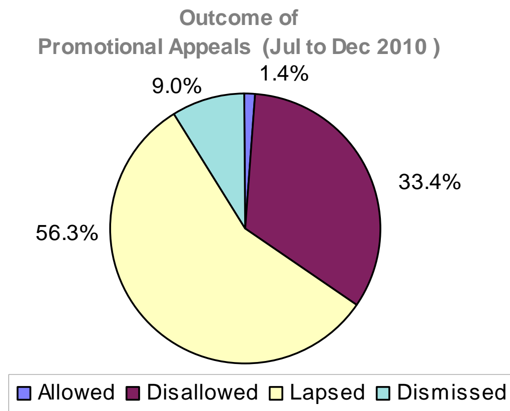
As the procedures were developed they were released to major stakeholders for review and comment (employer and employee organisations). Meetings were also held by the Panel Heads with the major union parties representing public sector and transport sector employees. Two *Practice Notes*[8] were issued which clearly set out the procedures in relation to both promotional and disciplinary appeals.

Approximately three months after the transfer of the jurisdictions, the Vice-President of the IRC convened a *Users Forum* inviting all major stakeholders. There was significant positive feedback at that forum that the procedures and protocols implemented by the IRC had been and were highly effective.

The charts below show how the matters filed in the second half of 2010 were disposed of by the Commission and the Board:

[8] Practice Note 22 and Practice Note 23 dealing with TAB and PSA matters respectively

FIGURE M Promotional Appeals



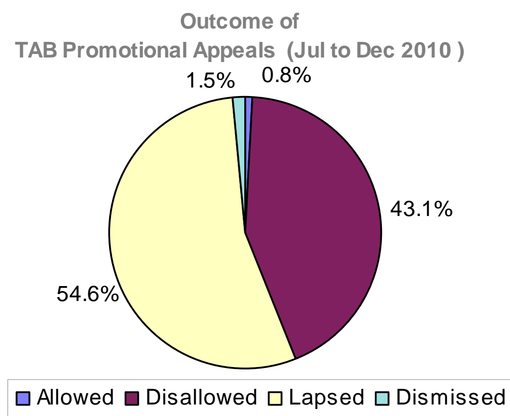
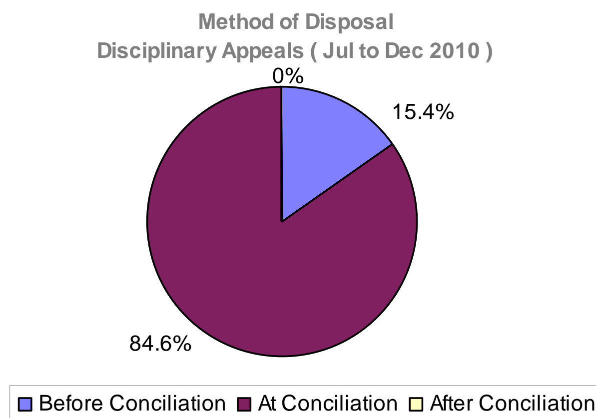
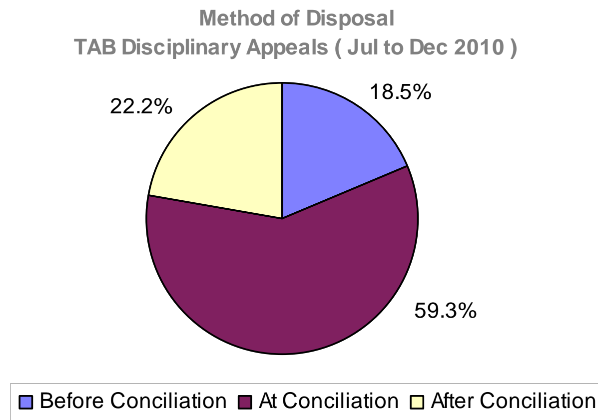


FIGURE N Disciplinary Appeals





FULL BENCH

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

During 2010 Full Benches finalised in excess of 60 matters the majority of which involved appeals. A "snapshot" of the significant decisions is provided hereunder. Other significant decisions may be found in Appendix 2.

Flanagan v Commissioner of Police [2010] NSWIRComm 7; (2010) 192 IR 88

This matter involved an appeal from a police officer against the dismissal of his application for review of an order removing him from the Police Force under s 181D of the *Police Act* 1990. The officer was removed from service on the grounds that he was found to have committed two counts of common assault while off duty, and made 14 unauthorised accesses to the Computerised Operational Policing System.

The judge at first instance had found that the termination was not unduly harsh, as the appellant's actions in initiating the assault and regularly accessing the COPS database for personal reasons demonstrated a lack of regard for police procedures.

The appellant relied on several grounds of appeal, predominantly based on the failure to take into account the appellant's explanations of each incident and wrongly drawn conclusions on the basis of accepting some evidence and inferring wrongdoing.

The Full Bench found five errors at first instance, including failure to take into account the provocation in the assaults as significant in determining harshness, by wrongly finding that the officer's access to COPS continued after being made aware of his wrongdoing and by assuming that rehabilitation was unlikely and the officer would offend again if reinstated.

The Full Bench upheld the appeal, holding the appellant was an officer with a perfect record who committed an off-duty assault under the influence of alcohol and in response to provocation. With respect to the COPS access, it was a serious issue, but not sufficient to warrant dismissal and it was important to note that his access had stopped once informed of his wrongdoing. The appellant was reinstated at the same rank and salary.

Commissioner of Police v Skelly [2010] NSWIRComm 18; (2010) 192 IR 195

These proceedings involved an appeal by the Commissioner of Police against a decision at first instance dismissing a notice of motion from the Commissioner of Police against an application of the Police Association made under s 174 of the *Police Act* 1990 for want of jurisdiction on behalf of an officer.

The officer had been involved in an off-duty altercation that was investigated and, as a result, the Sergeant was transferred to a larger police station, which offered greater opportunity for supervision and mentoring by senior officers. The Police Association, on behalf of the officer, commenced an application for review of an order under s 173 of the Act.

The Commissioner of Police filed a notice of motion seeking the proceedings be struck out on the basis that the original order was a "non-disciplinary transfer" and thus not reviewable by the Commission under the *Police Act*, that is, the Commission lacked jurisdiction. The member at first instance dismissed this motion on the grounds that a transfer following a disciplinary process must logically be viewed as a disciplinary transfer, thereby permitting review of that decision by the Commission.

The Commissioner of Police appealed the decision on the ground the transfer of the officer was legitimate and part of a non-disciplinary process.

The Full Bench held that the correct approach to s 173(2) of the *Police Act* is that the Commissioner of Police is empowered to make orders with respect to both reviewable and non-reviewable actions. The Full Bench relied on the existence of a definition of "non-reviewable action" within the section that indicated legislative intent to have the provision apply to that category also. The Full Bench determined that it is possible for a disciplinary process to result in a non-punitive transfer in response to police misconduct.

While there were other factors in play, the Full Bench accepted the Commissioner of Police's case that the primary reason for transfer was the ability to provide greater supervision to the officer. This action was non-disciplinary in nature.

The appeal was upheld and the original decision and orders quashed.

Hessenberger v Commissioner of Police [2010] NSWIRComm 24; (2010) 191 IR 468

This matter involved an application for leave to appeal and appeal against a decision at first instance concerning an application for review of an order under s 181D of the *Police Act* 1990 removing the appellant from the NSW Police Force. In the decision, the first instance judge found that the removal of the appellant was not harsh, unreasonable or unjust, and dismissed the application.

The appellant was removed on seven grounds in relation to an incident leading to charges of Assault Occasioning Actual Bodily Harm brought against him. Although the Local Court had dismissed the charges against the appellant, the Commissioner of Police deemed his conduct inappropriate in consideration of the professional and ethical conduct demanded of Police.

The brief facts were that the appellant had, whilst off duty, been consuming alcohol at a function held on police grounds to farewell him. A bus driver approached the function seeking help to remove a passenger who refused to get off the bus. The appellant forcibly

removed the passenger, and it was alleged that in doing so he used improper and inappropriate physical forceand conducted himself in an inappropriate manner towards the passenger, including his use of language. The appellant returned to the function where he had been drinking and another off-duty officer threw the passenger's bag into a fire. The appellant did not report this conduct to senior officers, despite being the officer in charge at the time. The appellant contended that his behaviour was explicable by a later diagnosis of post traumatic stress disorder, which should be taken into account in mitigation.

The Full Bench found that the judge at first instance had thoroughly reviewed the evidence and weight given to each of these reasons. The Full Bench agreed with the first instance decision that each of the grounds relied upon by the Commissioner for removal of the appellant had been sufficiently made out.

Although the Full Bench found that the judge at first instance had not provided adequate reasons for his decision regarding the finding that the evidence of the appellant's medical condition need not be considered in determining the harshness of his dismissal, it held that the decision at first instance, that this factor was insufficient mitigation, was correct. This was due to the fact that the evidence of doctors did not establish any causal connection between the appellant's condition and his behaviour on the night in question.

Leave to appeal was refused and the appeal dismissed.

Inspector Hamilton v John Holland Pty Ltd [2010] NSWIRComm 72; (2010) 194 IR 189

This matter concerned references of questions of law to the Full Bench of the Industrial Court at the request of the Crown under s 5AE(1) of the *Criminal Appeal Act* 1912 and s 196 of the *Industrial Relations Act* 1996.

The questions of law raised for consideration the validity of charges laid against the defendant, John Holland Pty Ltd, under the *Occupational Health and Safety Act* 2000 ('OHS Act 2000').

The references were sought following a notice of motion filed by the defendant in the proceedings seeking, in effect, that the proceedings brought against it under s 8(1) and s 8(2) of the OHS Act 2000 be dismissed for want of jurisdiction. The principal basis upon

which the motion was advanced was the decision of the High Court in *Kirk v Industrial Relations Commission of New South Wales; Kirk Group Holdings Pty Ltd v WorkCover Authority of New South Wales (Inspector Childs)* [2010] HCA 1; (2010) 239 CLR 531; (2010) 262 ALR 569.

The questions of law referred relating to s 8(1) were in the following terms:

> a. Was the Application for Order filed on 26 October 2007 in proceedings No 1989 of 2007 (Application for Order) an application duly made in accordance with sections 170(3)(b) and 246(1) of the *Criminal Procedure Act* 1986 (NSW), section 168 of the *Industrial Relations Act* 1996 (NSW) and the Industrial Commission (sic) Rules 1996 (NSW)?
> b. Does the purported charge in the Order made on 26 October 2007 in proceedings No 1989 of 2007 (Order) contain the essential legal elements of a charge under section 8(1) of the Occupational Health and Safety Act 2000 (NSW) (*OHS Act*)?
> c. If the answer to Question b is in the negative, was the Order made within the jurisdiction of the Industrial Court of New South Wales?
> d. If the answer to Question c above is in the negative, must the Application for Order and Order be dismissed as invalid and/or void?
> e. Does the Order disclose the essential factual ingredients of the offence charged under section 8(1) of the *OHS Act*?
> f. If the answer to Question e is in the negative, can the matter proceed as presently pleaded?

The questions of law relating to the s 8(2) Application for Order were in relevantly similar terms to the s 8(1) Application.

The Full Bench held that the resolution of those questions depended on whether the charges were fundamentally defective such that each was a nullity and went on to state:

> "In the course of deciding that issue the question arises whether the prosecutor has charged an offence known to the law by pleading all of the *essential legal elements* of charges under ss 8(1) and 8(2), including, in particular, the acts or omissions said to constitute contravention of ss 8(1) and 8(2) or whether the acts or omissions are *essential factual ingredients* of the charges, as contended by the prosecutor. That this was an issue may be seen from the respective submissions."

The Full Bench held:

> "... the conclusion we have come to regarding the nature or character of the acts or omissions said to constitute the offences under ss 8(1) and 8(2) is that they are properly to be regarded as essential factual ingredients. But whether the acts or omissions are to be characterised as essential legal elements or essential factual ingredients, the charges are not fundamentally defective because although the relevant alleged acts or omissions are referred as 'particulars' they are, nevertheless, identified in the Applications and do not breach any procedural fairness requirement that the defendant be properly informed of the charge it has to meet or breach the requirement that the court is sufficiently appraised of the legal nature of the offence.
>
> We have also concluded, on the proper reading of the Applications and the accompanying affidavits, that the prosecutor has implicitly relied upon s 31 of the OHS Act 2000 in framing the Applications for Order. Section 31 provides that more than one contravention, that is multiple acts or omissions, which arise out of the same factual circumstances may be charged as a single offence."

The Full Bench answered the first set of questions of law posed as follows:

a. Yes.
b. Yes.
c. Does not arise.
d. Does not arise.
e. Yes.
f. Does not arise.

The Full Bench answered the second set of questions of law posed as follows:

a. Yes.
b. Yes.
c. Does not arise.
d. Does not arise.
e. Yes.
f. Does not arise.

This decision was taken on appeal to the Court of Appeal.

Casari v Sydney South West Area Health Service (No 2) [2010] NSWIRComm 95; (2010) 198 IR 138

In a decision given on 2 July 2009 (*Casari v Sydney South West Area Health Service* [2009] NSWIRComm 103; (2009) 185 IR 217), the Full Bench granted leave to appeal and upheld an appeal by Carlos Casari against a decision and orders of the Commission at first instance in which Mr Casari's application for relief from unfair dismissal was dismissed.

The Full Bench found, however, there had been a loss of trust and confidence in Mr Casari by his employer and that reinstatement for the purpose of future employment with the employer was impracticable. Nevertheless, the Full Bench found Mr Casari had suffered significant humiliation and distress caused by the summary dismissal that, in the circumstances, was not justified. The Full Bench determined that the appellant should be re-employed in his former position from the date of that decision with back payment to the date of his dismissal, but only for the purposes of the appellant affecting a resignation from employment. This was reflected in the orders made:

> (4) The appellant is re-employed in his former position effective from the date of this decision on the following terms and conditions:
>
> > (i) the appellant will not return to work and he shall resign in writing effective from the day immediately following the date of this decision;
> > (ii) for the period from 30 July 2007 to the day immediately following the date of this decision the respondent shall pay to the appellant within 14 days the wages he would have received if he had not been summarily dismissed, together with any benefits, such as annual leave, long service leave and superannuation, that would have accrued to the appellant from 30 July 2007 if he had not been summarily dismissed.

The respondent, the Sydney South West Area Health Service, invoked the supervisory jurisdiction of the Court of Appeal to overturn the orders of the Full Bench. In a decision given on 22 March 2010 (*Director General, New South Wales Dept of Health v Industrial Relations Commission of New South Wales* [2010] NSWCA 47; (2010) 193 IR 244) the Court of Appeal held the Commission had no power to make Order 4.

The Court of Appeal's reasons for doing so were that first, s 89(2) of the *Industrial Relations Act* 1996 did not authorise an order that a former employee be re-employed in their former position. Secondly, the Commission failed to make findings that were an essential precondition to the exercise of the statutory power. Thirdly, s 89(2) did not authorise an order that requires a person to resign and not to return to work. The Court of Appeal relied upon the reasoning in *Blackadder v Ramsey Butchering Services Pty Ltd* [2005] HCA 22; (2005) 221 CLR 539. The Court of Appeal also held that s 89(8) of the *Industrial Relations Act* was not a power 'enabling the Commission to do whatever it thinks is fair and/or reasonable'; conditions made under s 89(8) must be attached to something capable of constituting an order under s 89. The Court of Appeal quashed the Orders of the Full Bench and remitted the matter to be determined according to law.

The matter came back before the Full Bench of the Commission and in considering an appropriate remedy the Full Bench noted that Mr Casari had not been in employment since he was dismissed and that he was 65 years old. The only remedy left available to the appellant, inadequate as it might be, was compensation. The respondent had no active submission to make on the issue of the quantum of such compensation. The Full Bench determined that the respondent should pay to the appellant the maximum available under s 89(5) of the *Industrial Relations Act*, that is, an amount of compensation not exceeding the amount of remuneration of the appellant during the period of six months immediately before being dismissed.

Morrison v Chevalley [2010] NSWIRComm 116; (2010) 198 IR 30

On 3 February 2010, the High Court of Australia delivered judgment in *Kirk v Industrial Relations Commission of New South Wales; Kirk Group Holdings Pty Ltd v WorkCover Authority of New South Wales (Inspector Childs)* [2010] HCA 1; (2010) 239 CLR 531; (2010) 262 ALR 569 (“Kirk”). Messrs Grugeon and Chevalley, directors of a corporate defendant whose further hearing was scheduled for 15 February 2010, filed Notices of Motion seeking that the proceedings against them be dismissed or permanently stayed.

Once the defendants filed their Notices of Motion, the prosecutor proposed a form of questions of law to be referred to the Full Court. The defendants posed their own questions for consideration. On 8 March 2010, the trial judge referred six questions of law

to the Full Court of the Industrial Court. The specific questions, which were referred under s 5AE(1) of the *Criminal Appeal Act* 1912 and s 196 of the *Industrial Relations Act* 1996, were as follows:

> 1. Does the Court, in consequence of an application made during defended proceedings for offences charged pursuant to the *Occupational Health & Safety Act* 2000 (NSW), have jurisdiction to determine each of the following questions?

If the answer to the first question is yes:

> 2. Are the charges stated in the Applications for an Order in Matter Numbers 956 and 957 of 2007 so lacking in identification of the essential elements of the offence that they do not attract the jurisdiction of the Court?
>
> 3. Are the charges stated in the Applications in Matter Numbers 956 and 957 of 2007 invalid, null or void because:
>
> > (a) the Prosecutor has failed to plead or specify the essential ingredients or elements of an offence against ss 8(1) and 26 of the *Occupational Health & Safety Act* 2000 (NSW)? and/or;
> > (b) the Prosecutor has failed to specify the essential factual particulars of an offence against ss 8(1) and 26 of the *Occupational Health & Safety Act* 2000 (NSW)?
>
> 4. If the answer to question 3(a) and/or (b) is yes, did the Court make valid Orders requiring the attendance of each of the Defendants in Matter Numbers 956 and 957 of 2007?
>
> 5. If the answer to questions 2 and/or 3(a) and/or (b) is yes and/or the answer to question 4 is no, does the Court have jurisdiction:
> > (a) to quash the Orders;
> > (b) to strike-out or dismiss the proceedings;
> > (c) in the circumstances of the present cases, to stay permanently the proceedings;
> > (d) to make a declaration that the Defendants have no further obligation to attend the Court?
>
> 6. Does the Court have jurisdiction to hear and determine any application by the Prosecutor to amend the charges to amend any defect.

On 30 March 2010, Mr Chevalley filed a further Notice of Motion requesting the Court to refer one further question of law. On 31 March 2010, the trial judge made an order referring the additional question to the Full Court. The question was in the following terms:

> 7. Is s 26 of the *Occupational Health and Safety Act* 2000 (NSW) invalid because it violates the principles that underlie Chapter III of the *Commonwealth Constitution*?

The Full Bench answered the questions of law referred to it in respect of both Applications for Order as follows:

Question 1:	Yes.
Question 2:	No.
Question 3(a):	No.
Question 3(b):	No.
Question 4:	Does not arise.
Question 5:	Does not arise.
Question 6:	Does not arise.
Question 7:	No

The matter has been taken on appeal to the Court of Appeal.

TIME STANDARDS

The Commission formally adopted time standards for the disposition of work in the major areas of the Commission's jurisdiction in 2004. In doing so, the Commission developed standards which reflect the unique range of jurisdiction which the Commission exercises. The standards, and how the Commission performed against those standards, are set out in Appendix 3 of this report.

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

> "The diverse nature of matters that come before the Commission for determination will often result in the decision of a presiding member or Full Bench being reserved. Until recently it was very rare for any decision to be delivered extempore. However, it has now become a common feature of the Commission's work - in appropriate cases – to deliver extempore judgments at the conclusion of a hearing.
>
> The Commission has set a target for the delivery of judgments of three months from the date a judgment is reserved to the date when it should be delivered. Industrial disputes will generally require decision (particularly interim decisions or recommendations), within a shorter time frame, if one is necessary. In respect of unfair dismissal matters the Commission has set a target of 80 per cent of reserved judgments being delivered within two months and 100 per cent within three months. This policy will take effect with respect to decisions or judgments reserved after 30 September 2004.
>
> The capacity for the Commission to achieve this target is dependent on the complexity of the matter for determination and other factors such as the availability of resources in relation to the workload of the Court, leave, timeliness in the replacement of appointments, etc. Because of their size and complexity major industrial cases fall outside the general target, however, every effort has been and is being made to deliver the judgment as soon as possible after the decision has been reserved consistent with the exigencies of the particular proceedings.
>
> The President is provided with information on reserved judgments and will consult with any Member where the judgment is undelivered within the relevant timeframe.

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

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

THE REGISTRY

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

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

REGISTRY CLIENT SERVICES

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

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

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

INFORMATION MANAGEMENT & ELECTRONIC SERVICES TEAM

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

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

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

INDUSTRIAL ORGANISATIONS TEAM

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

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

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

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

Applications / Renewals for Certificates of Conscientious Objections				
2006	***2007***	***2008***	***2009***	***2010***
179	189	189	152	53

Special Wage Matters - Year End Current Files					
	2006	***2007***	***2008***	***2009***	***2010***
Special Wage Permits	991	749	502	357	65
* SWS - P	219	214	161	105	9
** SWS - MC	189	243	276	318	0
TOTAL	**1399**	**1206**	**939**	**780**	**74**

Special Wage Matters - Matters Lodged				
2006	**2007**	**2008**	**2009**	**2010**
1433	1241	868	503	100***

*	Applications in cases where a State award covers the employment provisions of the applicant and the employer participates in the 'Supported Wage System' program conducted by the Federal Department of Employment and Workplace Relations.
**	Wage Agreements filed under the 'Supported Wage System' in respect of employment covered by a State award that includes a 'Supported Wage System' clause. NOTE: Permit not required to be issued as the 'Supported Wage System' clause provides for means by which a special rate of pay can be agreed between the employer and employee.
***	including matters referred to the federal tribunal - *Fair Work Australia*

EXECUTIVE AND LEGAL TEAM

The principal function of this team is to provide information, support and advice to the Industrial Registrar and other members of the Registry to ensure that services are maintained at a high level.

OTHER MATTERS

JUDICIAL EDUCATION

The Annual Conference of the Industrial Relations Commission was held from 20 to 22 October 2010. The first day covered a variety of topics with presentations by his Honour Justice Michael Walton, Vice-President (*Open Forum - Workload and Case Management Update*); Mr Matthew Gwynne, Director - Forensics, Vincent Chartered Accountants (*Financial Statements - Unravelling the Mysteries*); The Honourable Greg James, QC, President, Mental Health Review Tribunal and Professor Phillip Mitchell, AM, Scientia Professor and Head, School of Psychiatry, University of NSW (*Reliability of DSM-V Measurements and Protocols*); The Honourable David Lloyd, QC (*Delivering Ex Tempore Judgments*). On the second day of the conference sessions were given by their Honours Justice Boland, President and Justice Walton, Vice President (*The Panel System - Workloads, Emerging Trends and s 146B);* Professor Douglas Lind (*Critical Reasoning: An Introduction*); the Honourable Justice Cliff Hoeben, AM RFD, Supreme Court of NSW (*Expert Evidence*) and Professor Fred Watson, Astronomer in Charge, Australian Astronomical Observatory (*An Alien Like You*). The Annual Conference continues to provide an invaluable opportunity for Members of the Commission to discuss matters relevant to their work. The presentations and ensuing discussions were relevant and practical and appreciation is expressed to the eminent presenters, to all those who contributed as participants and the officers of the Judicial Commission whose assistance is invaluable. The development of the Annual Conference, substantially assisted by the Judicial Commission exercising its mandate to advance judicial education has, once again, proved a successful initiative. Thanks go to those members of the Commission's Education Committee who designed and delivered a conference that has added much to the professionalism with which the Commission seeks to advance in all its work.

TECHNOLOGY

Medium Neutral Citation

Since February 2000 the Commission has utilised an electronic judgments database and a system of court designated medium neutral citation. The system is similar to that in use in the Supreme and other NSW Courts and allows judgments to be delivered

electronically to a database maintained by the Department of Justice and Attorney General (*Caselaw*). The judgment database allocates a unique number to each judgment and provides for the inclusion of certain standard information on the judgment cover page.

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

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

All arbitrated decisions of Commissioner Members (decisions made after taking evidence from the parties) are published. The exception to this rule is decisions that are read onto the record - these will only be published where the matter involves a particular matter of interest, topicality or noteworthiness.

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

COMMITTEES

A list of the committees in operation within the Commission is set out at Appendix 4.

COMMISSION RULES

Pursuant to section 186 of the *Industrial Relations Act*, the Rules of the Commission are to be made by a Rules Committee comprising the President of the Commission and two

other Presidential Members appointed by the President. There is also scope for co-option of other Members.

As noted in last year's Report, the Commission determined, from the commencement of the 2010 Law Term to transition to the *Uniform Civil Procedure* regime that operates in the Supreme, Land and Environment, District and Local Courts and this occurred with effect from 1 February 2010. 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.

AMENDMENTS TO LEGISLATION ETC

The legislative amendments enacted during 2010, or which came into force that year affecting the operation and functions of the Commission, are reported at Appendix 5.

Amendments to Regulations affecting the Commission are reported at Appendix 6.

PRACTICE NOTES

With the transition to the new Rules regime all Practice Directions which remained relevant were reissued as *Practice Notes* on 1 February 2010. Two new *Practice Notes* were issued - *Practice Note 20* *Streaming, Standard Timetable and Directions - OHS Prosecutions* (replacing Practice Direction No. 12 and providing directions as to referral of matters for *Case Conferencing*[9]) and *Practice Note 21*- *Disclosure of Experts and Medical and Hospital Reports* to ensure that procedures relating to criminal matters were dealt with, as far as possible, consistently with rules relating to civil matters.

As well as the *Practice Notes* issued in relation to public sector and transport sector appeals, the following *Practice Notes* were also issued during 2010:

- *Practice Note 24* - *Procedures: Police Hurt on Duty Appeals*
- *Practice Note 25* - *Pre-judgment Interest Rates; and*

[9] The aim of case conferencing is to encourage early appropriate pleas of guilty by the submission of any representations, requests or proposals in relation to the charges, particulars and the Prosecutor's Statement of Facts at an early stage of the proceedings. See the Protocol

- *Practice Note 26 - Procedures: Disputes pursuant to s 146B IR Act*

CONCLUSION

In my last Annual Report I expressed real disappointment that no significant progress had been made in utilising the significant potential of the Commission by broadening the Commission's jurisdiction to encompass all areas of employment, industrial relations and disciplinary matters.

At the end of 2010 I was cautiously optimistic that 2011 would herald a new era for the Commission and the Court. This optimism was based on various public comments by both major parties that appeared to indicate strong continuing support for the Commission and the Court.

The optimism I felt is yet to find expression in any tangible enhancement of the Commission's role. However, I have pressed and intend to continue to press for the expansion of the role of the Commission in the industrial and employment affairs of this State. That is, I will continue to call on the government to broaden the jurisdiction as I have outlined previously to ensure that the capacity of this Commission is fully utilised and that the experience and expertise of the Members is employed to the maximum extent for the benefit of the people of New South Wales. Discussions with relevant Ministers are continuing in 2011.

My confidence in the members of this Commission, the staff of both members and the Registrar, together with the major stakeholders of the Commission to continue to be proactive in their interaction with one another to ensure that our reputation as a forum for the timely, fair and effective resolution of disputes is not only maintained but enhanced during the coming year, has not wavered. 2011 will be a year in which the Commission will face a significant number of challenges - the Commission has shown in the past that it has the capacity to adapt; it is my hope that we are given that opportunity for the future.

ANOTHER TIME:

The above photograph was taken on 24 October 2002 at Newcastle Court House in a ceremony to mark the Centenary of the first sitting of the *Court of Arbitration*, which occurred in that Court House. The first case to be heard by the Court was in May 1902 and involved a dispute between the Newcastle Wharf Labourers' Union and the Newcastle and Hunter River Steamship Company. The Court found the company guilty of an act "in the nature of a lockout".

The ceremony took place in the very courtroom where the original sitting occurred and the plaque has been fixed immediately outside the courtroom.

Left to Right: Deputy President Rodney Harrison, former President, the Honourable Lance Wright QC and former Commissioner, James Redman.

APPENDIX 1

INDUSTRY PANELS

Metropolitan

PANEL A - Divisional Head: Boland J, President

Members	
Marks J Kavanagh J Backman J Connor C Tabbaa C Macdonald C Lynch AC	**Corrections,** **Juvenile Justice** **Education** (includes Dept of Education and Training, Institute of Teachers, Board of Studies and TAFE Commission) **Health** (includes Dept of Health, metropolitan Area Health Services, Ambulance Service, Cancer Institute and Health Care Complaints Commission) **Private Transport** Any private transport matters

PANEL B - Divisional Head: Walton J, Vice President

Members	
Grayson DP Haylen J Staff J Bishop C Ritchie C Oakman AC	**Emergency Services** (Emergency Services includes Dept of Police and Emergency Services, NSW Police, Fire Brigades, Rural Fire Service (metro) including Emergency Management NSW, State Emergency Service and NSW Crime Commission) but excludes Ambulance Service **Local Government** **Other Government/Public Sector** (Other Government is any other government sector that is not separately referred to in this document) **Public Transport** (includes Railcorp, Sydney Ferries, Sydney Buses) **Private** (Private includes any residual private matters remaining within the State system by virtue of new s.146B or similar provisions under federal legislation in the metropolitan area excluding transport)

Industry Specific

Transport Appeal Boards (TAB) Panel - Divisional Head - Grayson DP *

Members
Connor C
Bishop C
Stanton C
Oakman AC

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

Members
Tabbaa C
Ritchie C
Stanton C
Lynch AC

Regional

Panel N - Divisional Head - Harrison DP **

Members
Macdonald C
Ritchie C
Stanton C

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

Panel S - Divisional Head - Grayson DP **

Members
Connor C
Tabbaa C
Bishop C

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

APPENDIX 2

OTHER SIGNIFICANT FULL BENCH DECISIONS

Commissioner of Police v Reid-Frost [2010] NSWIRComm 2; (2010) 192 IR 363

This involved an appeal against a decision at first instance following a review under s 181E of the *Police Act* to reinstate a police officer. The majority found that the judge at first instance erred in not dealing with a significant merit issue that had arisen in relation to the proceedings, holding that the trial judge, whilst dealing with one particular issue, had failed to properly consider the balance of the merit issues arising in the proceedings. Leave to appeal was granted, the appeal upheld, the orders of the trial judge quashed and the matter remitted to another member of the Commission to be dealt with. In the dissenting judgment, no error was found and it was held that the findings were open to the trial judge on the evidence.

Australian Commercial Kitchens (NSW) Pty Ltd v Lu [2010] NSWIRComm 20

This was an appeal against the decision of the Chief Industrial Magistrate relating to a claim by a former employee of the appellant for recovery of money alleged to be owing by way of long service leave under the *Long Service Leave Act* 1955 and termination pay under the Metal, Engineering and Associated Industries (State) Award. His Honour determined that the appellant owed the money and made an order for the payment of a sum of money. After considering the submissions of the appellant the Full Bench made the following orders: *If leave to appeal is required, leave to appeal is refused and the appeal is dismissed. If leave is not required, the appeal is dismissed.*

The Full Bench, having noted that the Chief Industrial Magistrate possessed a small claims jurisdiction both under the *Workplace Relations Act* and under relevant New South Wales laws, also noted that the Chief Industrial Magistrate retains that dual jurisdiction under the *Fair Work Act* 2009. Under s 548 of the *Fair Work Act* a plaintiff may elect to have the small claims procedure under that Act apply to the proceedings. The limit on an award of a small claim is $20,000. The Full Bench went on to further note that the Industrial Court is also an eligible State court under the *Fair Work Act*: (see s 12) and has certain powers under that Act, including the power under s 545(3) to order an employer to pay an amount to, or on behalf of, an employee of the employer if the court is satisfied that: (a) the employer was required to pay the amount under this Act or a fair work instrument and (b) the employer has contravened a civil remedy provision by failing to pay the amount. However, the Industrial Court is not a magistrates court under the *Fair Work Act* (see definition of 'magistrates court' in s 12). Accordingly, if a plaintiff elects to have a claim dealt with under the small claims procedure, the Industrial Court will have no jurisdiction to deal with the matter. The Full Bench further noted that this aspect would seem to defeat the purpose of the legislation in allowing State courts to continue to deal with small claims, and would not seem consistent with the efficient administration of this aspect of the justice system.

Speirs v Springvale Coal Pty Ltd [2010] NSWIRComm 30; (2010) 200 IR 133

In this matter, the appellant sought leave to appeal and, if such leave was granted, to appeal against a decision of a Commissioner Member dismissing an application for reinstatement pursuant to s 242 of the *Workers Compensation* Act 1987 to the position of Longwall Production Superintendent at Springvale Colliery. The Full Bench of the Commission held that the Commission did not have jurisdiction to order that the appellant be reinstated.

The Full Bench held that the Commissioner had been in error, in that there was "unchallenged medical evidence inculpating [the respondent]". However, the definition of an injured worker for the purposes of ss 241 and 242 included that he or she be a worker "who receives an injury for which the worker is entitled to receive compensation under this Act", and the Full Bench had raised whether the conferral on the District Court of exclusive jurisdiction to determine coal miner matters by s 105 of the *Workplace Injury Management and Workers Compensation Act* 1998 meant that the Commission had no jurisdiction to determine whether the appellant was an injured worker. The Full Bench held that it did not have jurisdiction and the appeal was dismissed and the Commissioner's dismissal of the application was confirmed "for want of jurisdiction".

[This decision was taken on appeal to the Court of Appeal]

Interim Transport Industry - Courier and Taxi Truck Contract Determination [2010] NSWIRComm 51

The Transport Workers' Union of New South Wales ("TWU") sought leave to appeal and to appeal against a decision at first instance in respect of proceedings related to an application by the Courier and Taxi Truck Association ("the CTTA") to vary the Interim Transport Industry - Courier and Taxi Truck Contract Determination. During the course of the proceedings, an application was made pursuant to s 173 of the *Industrial Relations Act* 1996 ("the Act") by the TWU for the Member to disqualify himself. The Member determined that s 173 did not apply to an application brought pursuant to Pt 2 of Ch 6 of the Act. The parties acknowledged that the appeal raised two questions: (i) did the Member err in holding that s 173 had no application to proceedings before the Commission brought under Pt 2 of Ch 6 of the Act; and (ii) did the Member err in finding that arbitration about "the matter" had commenced?

In respect of the first question the Full Bench held that the Member's conclusion was incorrect as to the application of s 173 in Pt 2, Ch 6 proceedings. From this finding it followed that all parties, and in particular the appellant, were denied procedural fairness with respect to the conclusion reached by his Honour and that warranted a finding that the appeal should be upheld in this respect. In relation to the second question the Full Bench held that the hearing of the application pursuant to s 162(2)(h) in the case could not be regarded as the Commission commencing to exercise arbitral powers. The Member was hearing an interlocutory application prior to proceeding into arbitration.

Leave to appeal was granted, the appeal was upheld, the decision of the Member was quashed and the matter was remitted to another Member to be dealt with.

Toll Transport Pty Ltd v Transport Workers' Union of New South Wales [2010] NSWIRComm 58; (2010) 194 IR 144

This was an appeal arising out of a refusal of a successor company to allow the sale of truck with work - issues for the Full Bench to determined were (i) whether there was a promissory representation by successor company to owner/drivers that was intended to induce them to provide their services on the basis that the terms of their engagement would be no less favourable than those that applied to them under the previous owner of the business; (ii) whether contracts between owner/drivers and successor company contained terms that provided for the sale of truck with work; (iii) whether conduct of successor company in refusing to allow sale of truck with work caused contracts to be unfair; (iv) whether refusal was a breach of contract and not amenable to relief under unfair contract provisions of *Industrial Relations Act* 1996; (v) whether primary judge erred in finding that contracts between owner/drivers and successor company did not contain terms that provided for the sale of truck with work but nevertheless determined contracts were unfair; (vi) whether there was a sufficient basis upon which the Full Bench could determine whether or not the relevant contracts were unfair and to proceed to determine compensation and interest issues; (vii) whether the contracts were relevantly connected to work in the road transport industry;

The Full Bench held that proceedings did not involve breach of contract and, by majority, remitted the matter to a Member to determine in accordance with the decision whether contracts unfair.

Australian Co-operative Foods Limited v SW & JD Reilly & Sons Pty Limited [2010] NSWIRComm 110; (2010) 198 IR 195

These proceedings concerned leave to appeal and an appeal against the judgment and orders at first instance delivered on 29 October 2009: *SW & JD Reilly & Sons Pty Limited v Australian Co-operative Foods Limited* [2009] NSWIRComm 176. In the judgment the trial judge dismissed a notice of motion brought by the appellant (the respondent below). The principal argument on the motion was that the Court lacked jurisdiction to take any further steps in the proceedings on the basis that the impugned contract, the Supermarket Delivery Contract ("SDC"), between the parties was not a contract within the meaning of s 106 of the *Industrial Relations Act* 1996. In dismissing the motion, the trial judge determined that it was not the appropriate time to resolve that jurisdictional issue.

Three main questions were for consideration in the appeal. These were: (a) whether it was the appropriate time for the determination of the appellant's motion; (b) whether the SDC was a contract to which s 106 of the Act applied; and, (c) whether the trial judge should have decided that, on its proper construction, cl 1(a) of Schedule 1 of the Act was of no relevance to the question of whether the SDC was a contract within the meaning of s 106 of the Act.

In respect of the first issue the Full Bench held, given the trial judge had before him all of the evidence relied upon by the parties being relevant to the jurisdictional issue, and given that it was the parties' joint position that it was the "appropriate time" in which to decide the issue, it was incumbent upon the trial judge to consider, by reference to that evidence, whether the SDC was amenable to s 106. The possible existence of some other alternative contract or arrangement not squarely raised by either party was not a relevant line of enquiry. The Full Bench further held that such a conclusion must result in the appeal being upheld in this respect, however, it did not automatically follow that the matter should be remitted. The parties to the appeal had submitted the balance of the issues raised by the appellant on the appeal should be determined by the Full Bench and the hearing proceeded on that basis.

In respect of the second issue the Full Bench stated:

> The performance of work under the terms of the SDC also sits comfortably, in our view, with the requirement identified in *Fish*, *McDonald's* and *Caterpillar* that there be an "industrial element in the work performed". There is no meaningful comparison, in our view, between the respondent's business operation under the SDC and the businesses, or commercial enterprises, which were the subject of consideration in *Fish*, *McDonald's* and *Caterpillar*. The respondent's operation, in particular from the period commencing in 2002, may be best described as "modest". In real terms, Mr Reilly conducted the bulk of the delivery work to the supermarkets. Other Operators, of which there appear to be only a few, perhaps two or three, worked in the business in a part-time capacity.
>
> The SDC, therefore, falls within the ambit of s 106 as a contract according to which or "whereby" Mr Reilly and the other operators performed delivery work in the milk vending industry.

On the basis of those two findings the Full Bench held that it was not necessary to consider the third issue and declined to do so.

Leave to appeal was granted, the appeal was upheld to the extent of the "appropriate time" question, the jurisdictional question was resolved adversely to the appellant (respondent at first instance) and the appeal was otherwise dismissed.

Inspector James v Ryan (No 3) [2010] NSWIRComm 127; (2010) 199 IR 399

This involved an appeal from decisions at first instance dismissing two prosecutions under the *Occupational Health and Safety Act* 2000 (OHS Act) against Justin James Ryan.

At first instance the trial judge had found that Dekorform (a company) had contravened s 8(1) of the OHS Act by failing to ensure the health and safety at work of employees. Under s 26 of that Act a director or person concerned in the management of a corporation that has contravened the OHS Act is taken to have contravened the same provision as the corporation unless, pursuant to s 26(1)(a) and (b) the director or person satisfies the court that (a) he or she was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or (b) he or she, being in such a position, used all due diligence to prevent the contravention by the corporation.

It had been alleged by the appellant that Mr Ryan was a director of Dekorform. The trial judge held that the appellant had failed to prove that allegation. The trial judge also held that Mr Ryan was not in a position to influence the conduct of Dekorform in relation to its contravention of s 8(1) and it was on that basis that the charges had been dismissed.

The Full Bench was satisfied that the appeal raised matters of such importance that, in the public interest, leave should be granted: s 188(2) of the *Industrial Relations Act*. In particular, the appeal raised the question of whether the meaning of 'director' in s 26(1) of the OHS Act is confined to a person who was duly appointed to that position in accordance with the constitution of a corporation. That question has not been previously determined at appellate level. The appeal also raised important issues regarding whether a person was appointed as a director and when a person may be regarded as a de facto director.

After a comprehensive consideration of the meaning of director in s 26(1) of the OHS Act the Full Bench held the word 'director' in s 26 of the OHS Act embraced the concept of a de facto director as that term is defined in the *Corporations Act* 2001 (Cth). Further, there was no reason to exclude shadow directors given the view the Full Bench took in relation to the purpose of the legislation. The Full Bench held that the trial judge erred in holding that the term 'director', where it appears in s 26(1) of the Act, does not include the extended

meaning of 'director' as it appears in s 9 of the *Corporations Act*. Ground 7 of the appeal was therefore made out.

The Full Bench then proceeded to determine whether the respondent (defendant in the first instance proceedings) had been appointed as a director of the company (held that there was no appointment as a director in accordance with the company's constitution) and to determine whether the respondent had been appointed as a de facto or shadow director (no). Given those findings the Full Bench found it unnecessary to consider whether the respondent was in a position to influence the contravention of the OHS Act by Dekorform.

Leave to appeal was granted, the appeal was dismissed except in relation to Ground 7 and, in that respect, the appeal was upheld. Further directions were made in relation to costs.

Sydney Water Corporation v The Association of Professional Engineers, Scientists and Managers, Australia (NSW Branch) [2010] NSWIRComm 158; (2010) 199 IR 222

This matter concerned an application by Sydney Water Corporation ('SWC' or 'the appellant') for leave to appeal and appeal against a decision of a Commissioner in *Association of Professional Engineers, Scientists and Managers, Australia (NSW Branch) and Sydney Water re payment of fares allowance* [2009] NSWIRComm 1098. The decision was made in settlement of a dispute brought before the Commissioner pursuant to s 146A of the *Industrial Relations Act* 1996, regarding the interpretation of cl 33 of the federal Sydney Water (Professional Engineers) Award 2004 (‘the 2004 Award’).

In the decision at first instance, the Commissioner was called upon to determine whether two members of The Association of Professional Engineers, Scientists and Managers, Australia (NSW Branch) ('APESMA' or 'the respondent'), Mr Bertapelle and Mr Davison, were entitled to payment of the fares allowance for certain periods between 2002 and 2006 whilst working as Project Delivery Officers ('PDO') for Sydney Water at the Wollongong Sewerage Treatment Plant ('WSTP'). The PDO's role involved 'auditing' and 'supervising' the work of private construction workers contracted by Sydney Water to upgrade the WSTP. The Commissioner found in favour of APESMA, concluding that the employees were entitled to the fares allowance for several reasons, in particular, that the nature of their work and temporary office accommodation made them members of the construction workforce.

Contended by the appellant on appeal that employees were working at a recognised office or depot and no entitlement arose in respect of fares.

After extensive consideration of the meaning of *temporary construction site accommodation* and *exclusive use of construction site* the Full Bench held that the Commissioner had not fallen into error and whilst leave to appeal was granted, the appeal was dismissed.

McGhee v Commissioner of Police (No 2) [2010] NSWIRComm 165; (2010) 200 IR 22

Robert Bruce McGhee, a former Inspector of Police, was removed from the Police Force in 2008 on the ground that the Commissioner of Police had lost confidence in him because of his conduct. The conduct related to a conviction for driving under the influence, a breach of the Police Force's secondary employment policy and a failure to comply with operational procedures in the conduct of a search warrant. Mr McGhee sought a review of the removal order, contending his dismissal was harsh, unreasonable or unjust. Mr McGhee's application was heard and at first instance dismissed, with the primary judge finding that the removal was not harsh, unreasonable or unjust. Mr McGhee sought leave to appeal and, if leave were granted, to appeal from that decision, however, an interlocutory issue arose, whereby the appellant sought leave to have reconsidered by a five-member Full Bench the correctness of the Full Bench majority’s decision in *Commissioner of Police v Reid-Frost* [2010] NSWIRComm 2; (2010) 192 IR 363 in respect of the majority's treatment of s 181D(3)(c) and s 181D(4) of the *Police Act* 1990. The Commissioner of Police opposed the interlocutory application and this decision dealt with the interlocutory issue.

After a consideration of the authorities as to the tests to be applied as to whether there should be a reconsideration of the earlier decision and a discussion of the cases raised by the appellant as to his contention for such reconsideration, leave to reconsider the majority decision was refused.

Commissioner of Police v Police Association of New South Wales [2010] NSWIRComm 188; (2010) 200 IR 93

This matter concerned an application by the Commissioner of Police for leave to appeal and, if leave were granted, to appeal from a decision at first instance concerning an application by the Police Association of New South Wales ('the Association') to make declarations of right under s 154 of the *Industrial Relations Act* 1996 in relation to whether a former police officer and member of the Association suffered on duty injuries which led to the cessation of employment and whether that officer was entitled to an on duty partial and permanent disability payment under the Crown Employees (Police Officers' Death and Disability) Award 2005 ('the Award') on the basis that the appellant was estopped from denying that was the case.

After consideration of the various issues relating to estoppel the Full Bench held there was not the requisite precise identity of issues. On the one hand, there was a determination under the *Workers Compensation Act* 1987 for a work related injury the nature of which is not known which gave foundation for a closed period claim for partial incapacity after the termination of employment and on the other hand, a broader issue was for determination, namely: a claim there was an on duty injury in the nature of post traumatic stress disorder causing partial and permanent incapacity, which led to termination such as to establish an award entitlement for a lump sum payment. The Full Bench found that the trial judge erred in finding that an issue estoppel had been established which could support the declaratory relief sought by the respondent.

Leave to appeal was granted, the appeal upheld and the orders (other than costs) made at first instance set aside.

APPENDIX 3

TIME STANDARDS

Industrial Relations Commission

Time from commencement to finalisation	Standard for 2009/	Achieved in 2009	Standard for 2010/	Achieved in 2010	
Applications for leave to appeal and appeal					
Within 6 months	50%	90.5%	50%	75.1%	⇧
Within 12 months	90%	100%	90%	100%	⇧
Within 18 months	100%	100%	100%	100%	⇧
Award Applications [including Major Industrial Cases]					
Within 2 months	50%	63.8%	50%	64.0%	⇧
Within 3 months	70%	70.7%	70%	70.0%	⇧
Within 6 months	80%	82.9%	80%	76.0%	
Within 12 months	100%	94.8%	100%	88.0%	
Enterprise Agreements					
Within 1 months	75%	91.2%	75%	62.5%	
Within 2 months	85%	94.7%	85%	87.5%	⇧
Within 3 months	100%	94.7%	100%	87.5%	
Time to first listing					
Industrial Disputes					
Within 72 Hours	50%	46.2%	50%	38.5%	
Within 5 Days	70%	62.0%	70%	55.9%	
Within 10 Days	100%	82.1%	100%	79.8%	
Time from commencement to finalisation					
Unfair Dismissals					
Within 2 months	50%	64.2%	50%	47.8%	
Within 3 months	70%	73.4%	70%	59.6%	
Within 6 months	90%	90.1%	90%	79.8%	
Within 9 months	100%	95.3%	100%	90.5%	

Key: ⇧ = areas where the Commission has equalled or exceeded time standard

TIME STANDARDS

Industrial Court

Time from commencement to finalisation	Standard for 2009/ Achieved in 2009		Standard for 2010/ Achieved in 2010		
Applications for leave to appeal and appeal					
Within 9 months	50%	53.2%	50%	60.0%	⇧
Within 12 months	90%	68.1%	90%	68.0%	
Within 18 months	100%	91.5%	100%	92.0%	
Prosecutions under OHS legislation *					
Within 9 months	50%	34.7%	50%	15.0%	
Within 12 months	75%	59.1%	75%	30.0%	
Within 18 months	90%	78.8%	90%	54.0%	
Within 24 months	100%	85.9%	100%	78.0%	
Applications for relief from Harsh/Unjust Contracts					
Within 6 months	30%	17.0%	30%	31.6%	⇧
Within 12 months	60%	32.3%	60%	45.9%	
Within 18 months	80%	34.0%	80%	54.5%	
Within 24 months	100%*	57.7%	100%*	63.1%	

Key: ⇧ = areas where the Court has equalled or exceeded time standard

* there was a significant deterioration in disposal times for OHS prosecutions from 2009 to 2010. This is directly attributable to the High Court decision in *Kirk v Industrial Court of NSW* [2010] HCA 1 and matters following from the delivery of that judgment in early 2010. Notably, matter such as *John Holland, Grugeon & Chevally,* and others that were the subject of Full Bench proceedings in this Court, appeals to the Court of Appeal (matters are still pending in the CoA), special leave applications in regards to the matter of *John Holland* (refused); all of which resulted in a significant number of matters being 'parked' while various challenges of an interlocutory nature were determined (see, for example, *State of New South Wales (Department of Education and Training and Department of Juvenile Justice) v Cahill (No. 2)* [2011] NSWIRComm 33 where the decision was deferred pending CoA decision in *Holland* and the parties were invited to provide additional submissions after the delivery of that decision in December 2010).

APPENDIX 4

COMMITTEES

Library Committee

The Hon. Justice Kavanagh (Chair)
The Hon. Justice Staff
Commissioner Macdonald
Mick Grimson, Industrial Registrar
Vanessa Blackmore, Acting Director, Library Services
Miranda Ebenezer, A/Librarian, IRC of NSW
Bhagya Paran, Librarian, IRC of NSW

Education Committee

The Hon. Justice Kavanagh (Chair)
The Hon. Justice Haylen
Commissioner Connor
Commissioner Tabbaa
Mick Grimson, Industrial Registrar
Ruth Windeler, Judicial Commission of NSW
Ruth Sheard, Judicial Commission of NSW

Rules Committee

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

Section 106 Committee

The Hon. Justice Walton, Vice-President (Chair)
The Hon. Justice Marks
The Hon. Justice Kavanagh
The Hon. Justice Haylen

Building Committee

The Hon. Justice Walton, Vice President (Chair)
The Hon. Justice Kavanagh
Mick Grimson, Industrial Registrar
[This committee co-opts other members as circumstances require]

APPENDIX 5

LEGISLATIVE AMENDMENTS

***Court Information Act* 2010**
This Act was assented to on 26 May 2010 and provides for consistency across all NSW courts in the manner for access to information held by the courts. This Act has not yet commenced.

***Industrial Relations Amendment (Consequential Provisions) Act* 2010**
This act was assented to and commenced on 15 June 2010. The Act amended the *Industrial Relations Act* 1996 as a consequence of the enactment of the *Industrial Relations (Commonwealth Powers) Act* 2009.

***Industrial Relations Amendment (Public Sector Appeals) Act* 2010**
The Act was assented to on 28 June 2010 and commenced on 1 July 2010. It amended the *Industrial Relations Act* 1996 and the *Transport Appeal Boards Act* 1980 as regards decisions concerning the promotion and discipline of public sector employees, and repealed the *Government and Related Employees Appeal Tribunal Act* 1980.

***Courts Legislation Amendment Act* 2010**
The Act was assented to and commenced on 28 June 2010. It amends the *Industrial Relations Act* 1996, s 162B in relation to the powers exercised by the Industrial Registrar

***Industrial Relations Advisory Council Act* 2010**
This Act was assented to and commenced on 25 October 2010. The Act establishes the Industrial Relations Advisory Council for the conduct of regular and organised meetings on statewide issues of industrial concern between the minister, and representatives of government, employees and employers.

***Industrial Relations Amendment (Non-operative Awards) Act* 2010**
An Act assented to and commenced on 29 November 2010 to protect non-operative awards.

***Shop Trading Amendment Act* 2010**
This Act was assented to and commenced on 29 November 2010. It amends the *Shop Trading Act* 2008 with regards to restricted trading days, bank trading days and exemptions.

***Public Sector Employment and Management Amendment Act* 2010**
The Act was assented to and commenced on 7 December 2010 and amended the *Public Sector Employment and Management Act* 2002 in relation to appointments to positions in the public service

***Courts and Crimes Legislation Further Amendment Act* 2010**
The Act was assented to on 7 December 2010. It amends the *Industrial Relations Act* 1996 in relation to the exercise of certain functions under the federal legislation (*Fair Work Act* 2009) by Commissioners. These provisions have not yet commenced.

APPENDIX 6

AMENDMENTS TO REGULATIONS AFFECTING THE COMMISSION

Industrial Relations (General) Amendment (Fees) Regulation 2010
This regulation commenced on 1 July 2010 increasing certain fees charged by the Industrial Relations Commission.

Industrial Relations (General) Amendment (Transitional) Regulation 2010
This Regulation is taken to have commenced on 1 July 2010 and preserves the leave, superannuation and other entitlements of former Chairpersons of the Government and Related Employees Appeal Tribunal before the repeal of the *Government and Related Employees Appeal Tribunal Act* 1980.

Occupational Health and Safety Amendment (Certificates of Competency) Regulation 2010
This regulation commenced on 1 July 2010. It removes the requirement for certificates of competency for concrete formwork and the operation and use of explosive-powered tools and provides for the refund of fees to persons no longer required to hold such a certificate.

Occupational Health and Safety Amendment (Penalty Notice Offences) Regulation 2010
This Regulation commenced on 17 September 2010. The object of this Regulation was to amend the *Occupational Health and Safety Regulation* 2001 to prescribe additional offences relating to certain high-risk work as offences for which penalty notices may be served.

Occupational Health and Safety Amendment (Major Hazard Facilities) Regulation 2010
The regulation commenced on 8 October 2010. It removes the requirement for the submission annual approved forms to Workcover by major hazard facilities, and instead requires that WorkCover be notified only of any material change in the facility.

Police Amendment (Recognised Law Enforcement Officers) Regulation 2010
The regulation commenced on 1 November 2010 amending the *Police Regulation* 2008 regarding the oaths or affirmations taken by police officers, and the requirements on police officers in identifying themselves.

Police Amendment (Initial Screening) Regulation 2010
This regulation commenced on 3 December 2010 and makes provision regarding initial drug screening tests for police officers under the *Police Act* 1990.

APPENDIX 7

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

Matters filed during period 1 January 2010 to 31 December 2010 and matters completed and continuing as at 31 December 2010 which were filed under the *Industrial Relations Act* 1996.

Nature of Application	Filed 1.1.2010 – 31.12.2010	Completed 1.1.2010 – 31.12.2010	Continuing as at 31.12.10 (including previous years)
APPEALS	**27**	**23**	**13**
Appeal - from Industrial Registrar	3	4	1
Appeal - from a dispute matter	9	6	3
Appeal - from an unfair dismissal matter	13	11	6
Appeal - other	2	2	3
AWARDS	**52**	**50**	**20**
Application create new Award	14	13	8
Application vary an Award	37	32	10
Application – State Wage Case	1	1	1
Review of Award	0	4	1
DISPUTES	**486**	**447**	**255**
s130 of the Act	377	362	206
s130, s380 of the Act	1	3	1
s332 contract determination	43	39	11
s146A of the Act	3	6	2
s146B of the Act	59	33	30
Dispute - other	3	4	5
ENTERPRISE AGREEMENTS	**16**	**16**	**3**
Approval (Employees)	0	2	0
Approval (Union)	16	14	3
UNFAIR DISMISSALS	**227**	**272**	**87**
Application (by individual only)	64	81	17
Application (representative)	65	85	30
Application (organisation representative)	97	104	40
Application (organisation – multiple)	1	2	0
PUBLIC SECTOR AND POLICE APPEALS	**755**	**646**	**109**
Public Sector Promotional Appeal	636	592	44
Public Sector Disciplinary Appeal	38	26	12
Appeal by Police Officer relating to leave when hurt on duty	81	28	53
OTHER	**166**	**145**	**79**
Contract Agreements	4	3	1
Contract Determinations	8	8	3
Contract of Carriage (claim for compensation)	2	2	6
Registration pursuant to Clothing Trades Award	67	53	16
Application extend duration of Industrial Committee	4	3	1
Application for reinstatement injured employee (by individual)	4	2	3
Application for reinstatement injured employee (by organisation)	10	9	9
Protection of injured workers from dismissal - Workers Compensation Act 1987	2	1	1
Application for Review of Order s181D Police Service Act	35	33	20
Application for Rescission of Order s173 Police Service Act	13	15	4
Application for Relief from Victimisation s213 of the Act	4	5	5
Miscellaneous (not categorised)	13	11	10
SUB-TOTAL	**1729**	**1599**	**566**

APPENDIX 8

MATTERS FILED IN INDUSTRIAL COURT

Matters filed during period 1 January 2010 to 31 December 2010 and matters completed and continuing as at 31 December 2010 which were filed under the *Industrial Relations Act* 1996.

Nature of Application	Filed 1.1.2010 – 31.12.2010	Completed 1.1.2010 – 31.12.2010	Continuing as at 31.12.10 (including previous years)
APPEALS	**33**	**34**	**32**
Appeal from Local Court (Industrial Magistrate)	2	3	3
Appeal – superannuation	5	7	7
Appeal – OHS prosecution	11	4	14
Appeal – s106 matter	3	10	1
Appeal – other	12	10	7
CONTRAVENTION	**3**	**3**	**1**
Contravention of Dispute Order s139 of the Act	3	3	1
HARSH CONTRACTS	**13**	**35**	**33**
Application under s106 of the Act	13	35	33
PROSECUTIONS	**131**	**100**	**242**
Prosecution – s8(1) OHS Act 2000	69	54	119
Prosecution – s8(2) OHS Act 2000	45	36	77
Prosecution – s9 OHS Act 2000	3	2	3
Prosecution – s10(1) OHS Act 2000	7	3	21
Prosecution – s10(2) OHS Act 2000	1	0	1
Prosecution – s11 OHS Act 2000	1	1	7
Prosecution – s20(1) OHS Act 2000	0	1	1
Prosecution – s26(1) OHS Act 2000	4	1	9
Prosecution – s136 OHS Act 2000	0	0	1
Prosecution – other OHS Act 2000	0	1	2
Prosecution – OHS Act 1983	1	1	1
OTHER	**21**	**41**	**21**
Declaratory jurisdiction (s154, s248)	7	7	6
Cancellation of registration industrial organisation	0	3	0
Recovery of remuneration and other amounts	11	21	14
Unlawful Dismissal - s23 OHS Act 2000	1	5	0
Miscellaneous (not otherwise categorised)	2	5	1
SUB-TOTAL	**201**	**213**	**329**

APPENDIX 9

MATTERS FILED TO THE TRANSPORT APPEAL BOARD

Matters filed during period 1 July 2010 to 31 December 2010 and matters completed and continuing as at 31 December 2010 which were filed under the *Transport Appeal Boards Act* 1980.

Nature of Application	Filed 1.7.2010 – 31.12.2010	Completed 1.7.2010 – 31.12.2010	Continuing as at 31.12.10 (including previous years)
APPEALS	**845**	**769**	**76**
Promotional Appeal	802	742	60
Disciplinary Appeal	43	27	16
SUB-TOTAL	**845**	**769**	**76**
TOTAL	**2775**	**2581**	**971**
IRC, IC & TAB Matters			

APPENDIX 10

A BRIEF HISTORY OF THE INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

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

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

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

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

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

The *Industrial Arbitration (Amendment) Act* 1926 abolished the Court of Industrial Arbitration and the Board of Trade and set up an **Industrial Commission** constituted by a Commissioner and a Deputy Commissioner. The Commissioner or Deputy Commissioner sat with employer and employee representatives selected from a panel. On any reference or application to it the Commission could make awards fixing rates of pay and working conditions and determine the standard hours to be worked in industries within its jurisdiction and had power to determine any "industrial matter". The Commission had authority to adjudicate in cases of illegal strikes, lockouts or unlawful dismissals, and could summon persons to a compulsory conference and hear appeals from determinations of the subsidiary industrial tribunals. The former boards, which had not exercised jurisdiction since 1918, continued in existence but as Conciliation Committees with exclusive new jurisdiction in arbitration proceedings.

A number of controversial decisions by the Industrial Commission led to the proclamation of the *Industrial Arbitration (Amendment) Act* 1927, which abolished the position of Industrial Commissioner (but not Deputy Industrial Commissioner) and the constitution of the Commission was altered to that of three members with the status of Supreme Court Judge. The Committees were still the tribunals of first instance and their decisions were to be the majority of members other than the chairman, whose decision could be accepted by

agreement if the members were equally divided. Otherwise the chairman had no vote and no part in the decision. Where a matter remained unresolved in committee it passed to the Commission for determination.

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

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

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

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

The *Industrial Arbitration Act* 1940 consolidated all previous Acts and an attempt was made to refine and rationalise the procedures and operation of the **Industrial Commission.** The Act provided for the establishment of an Industrial Commission, Conciliation Committees, Conciliation Commissioners, Special Commissioners, Industrial Magistrates Courts and the Industrial Registrar.

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

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

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

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

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

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

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

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

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

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

APPENDIX 11

THE PRESIDENTS OF THE INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

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

APPENDIX 12

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"[10]

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

Name	**Held Office**		**Remarks**
	From	To	
Cahill, John Joseph	19 Feb 1987	10 Dec 1998	Died 21 Aug 2006.
Walton, Michael John	18 Dec 1998	Still in Office	

[10] Hansard, Second Reading Speech, *Legislative Council*, 21 Nov 1986 per The Hon. JR Hallam at p7104

APPENDIX 13

INDUSTRIAL REGISTRARS OF THE INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

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

Walsh, Barry[11]	19 Feb 1992	15 Jul 1994	Appt as Registrar, Australian Industrial Relations Court
Szczygielski, Cathy[12]	18 Jul 1994	4 Nov 1994	returned to position of Deputy Registrar, Industrial Court.
Williams, Louise[13]	7 Nov 1994	16 Aug 1996	Appt as Registrar, Land & Environment Court.
Robertson, Gregory Keith[14]	31 Mar 1992	26 Oct 1999	To private practice.
McGrath, Timothy Edward	27 Oct 1999	9 Aug 2002	Appt Assistant Director-General, Court and Tribunal Services, Attorney General's Department 12 Aug 2002.
Grimson, George Michael	22 Aug 2002	Still in Office	

[11] Appointed as Acting Registrar and CEO, Industrial Court (under *1991 Act*) 19 Feb 1992, substantively appointed to that position 6 May 1993
[12] Acting appointment as Registrar and CEO, Industrial Court (under *1991 Act*) pending recruitment
[13] Appointed as Registrar and CEO, Industrial Court (under *1991 Act*)
[14] Held the position of Registrar, Industrial Relations Commission under *1991 Act* - under *1996 Act* became Registrar and Principal Courts Administrator, Industrial Relations Commission and Commission in Court Session (2 September 1996).