

Industrial Relations Commission of New South Wales

ANNUAL REPORT '18

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The principal place of business of the Industrial Relations Commission of New South Wales is Level 10, 10 Smith Street Parramatta. We acknowledge that this land is the traditional land of the Darug people of the Eora nation and we respect their spiritual relationship with their country.

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

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HIGHLIGHTS 2018



Continued performance in key areas while facing resource challenges

- 90% of unfair dismissal matters finalised within 6 months of commencement.
- Almost 77% of Industrial dispute matters finalised within 6 months of commencement.
- The number of police disciplinary, police dismissal appeals and police hurt on duty applications, filed and determined by the Commission in 2018 increased to the highest level in 6 years.
- 87.5% of appeals to a Full Bench of the Commission determined within 6 months.

State Wage Case

- A Summons to show cause was issued by the Commission on its own initiative on 8 June 2018 in consequence of a decision of the Minimum Wage Panel of the Fair Work Commission issued 1 June 2018. A Full Bench of the Commission made general orders and continued the Wage Fixing Principles on 23 October 2018. State Wage Case 2018 [2018] NSWIRComm 1063.

Education and Engagement Programs

- The user group forum continued 2018.
- Industrial Judicial Officers Conference was held in Queensland in April 2018.
- Industrial Registrars Conference was held In Melbourne In June 2018.

Experienced Members of Staff

- 60% of our people have been employed at the Commission for 15 years or more.

FOREWORD



FOREWORD BY THE CHIEF COMMISSIONER OF THE INDUSTRIAL RELATIONS COMMISSION OF NSW

Chief Commissioner Peter M Kite SC

In the opening paragraph to the Forward to the 2017 Annual report I said:

"The year began with a dispute about a lack of consultation with employees of the Commission, and the union representing them, about a proposed move from 47 Bridge Street. As I noted in the Foreword to the 2016 Annual Report, the proposed move was abandoned shortly after. However, the year ended with speculation rampant that the Commission would be relocated to Parramatta."

The 2018 year began in strikingly similar fashion. Concerned by the continued speculation, the Public Service Association and Professional Officers Association Amalgamated Union of New South Wales (the PSA) sought assurances from the Department of Attorney General and Justice that there would be consultation in accordance with the Award before any decision to move the Commission was implemented. The PSA, of course, represents the industrial interests of staff employed in the Commission's Registry.

In its dispute notification the PSA drew attention to:

- i. the 2017 dispute;
- ii. the Award obligation to consult;
- iii. the absence of any such consultation; and
- iv. steps taken by the Department which appeared to indicate that a decision to relocate the Commission had been taken and was being implemented.

There were two developments in connection with the proceedings which warrant comment. The first concerns the issue of Award obligations to consult. I shall deal with that under the heading of Collective Applications below. The second concerns the independence of the Commission. To understand how that second matter arose, it is necessary to say something more about the progress of the particular dispute.

A compulsory conference was convened before me on the afternoon of 1 February 2018. It is noteworthy that Unions NSW and many individual unions sought and were granted leave to intervene. The PSA sought an undertaking from the respondent effectively preserving the status quo while the dispute was before the Commission. When no such undertaking was offered the PSA sought an interim order. I made an interim order and then granted an adjournment to allow the respondent to seek further instructions. On resumption, the respondent offered an undertaking consistent with the interim order, although limited in time until noon the following day. The Commission accepted the undertaking and revoked the interim order despite submissions to the contrary by the PSA.

The following day conciliation resumed. No resolution appeared likely as the time at which the undertaking was to expire approached. The respondent then made an application that I recuse myself for apprehended bias. Two things were made clear. First, there was no suggestion of actual bias. Second, that the circumstances advanced in support of the alleged apprehended bias, the

“particular interest of members in the location of the Commission”, was contended to apply to each member of the Commission. The application was refused.

A key reason for refusing the application was that, if it were upheld, it would mean that the Commission’s duties and functions in relation to the resolution of an industrial dispute could not be exercised.

On the same day articles appeared in the media suggesting that the PSA was acting on behalf of the members of the Commission and that, accordingly, the members of the Commission were sitting as “judges in their own cause”. It hardly needs saying that the premise was completely wrong. The PSA was not acting on behalf of the members of the Commission but on behalf of its members employed in the Commission’s Registry. The PSA made a public statement seeking to correct the position. Regrettably, no one on behalf of the Government sought to correct the misunderstanding apparent in the media articles.

The Commission, as an institution, has for more than a century been responsible for the just resolution of industrial disputes most often by conciliation but where necessary by adjudication. In order to be effective it is essential that it maintain the trust and confidence of litigants appearing before it. Articles such as those which appeared purporting to report the proceedings in this matter are damaging to the Commission’s reputation as an independent industrial umpire. Fundamentally incorrect representations of the Commission’s role in proceedings need to be corrected in a timely way to ensure any such damage is minimised. It is therefore very disappointing that there was no official statement correcting those misrepresentations.

The position is somewhat exacerbated by the contraction of the Commission’s jurisdiction so that it is principally concerned with the resolution of disputes involving public sector employees. Commission members are judicial officers and their independence from Government is recognised by the *Judicial Officers Act 1986*. Nevertheless, the perception, as much as the reality, of independence remains crucial to permit the Commission to fulfill its statutory role in the interests of the people of this State.

During 2018 there were a number of significant developments in relation to the members of the Commission. There were two resignations, three new appointments and Commissioners Murphy and Stanton were appointed for additional terms. It is appropriate to acknowledge the service of the Commissioners who have resigned and introduce the new members.

Commissioner Peter Newall

Commissioner Newall was appointed to the Commission in April 2013. He quickly established a reputation as a skillful conciliator and an able adjudicator. The Commissioner was particularly adept at delivering ex tempore decisions ensuring parties had the benefit of timely decision making. He was able to do that, at least in part, because he maintained an excellent up-to-date library of authorities relevant to the various areas of jurisdiction of the Commission. His colleagues, including those who have joined the Commission since his resignation, were and remain grateful for the library he left behind.

Apart from his work on the Bench, the Commissioner was a very willing contributor to the extra-judicial work of the Commission. He was an active member of the Rules Committee and conducted advocacy training courses for novice industrial advocates who wished to improve their skills in appearing before the Commission.

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The Commissioner was also renowned for his linguistic ability. He had at least a working knowledge of several languages which he put to good use in conversing with the members of the multicultural community which Australia has become. Finally, he was most famous for his love of music, particularly the Blues, and could sometimes be persuaded to give impromptu performances.

Commissioner Newall and his wife were notified in March that they had been successful in gaining places to study the Japanese language at a highly regarded school in Japan commencing in April. As the course ran for a year the Commissioner decided to resign rather than seek an extended period of leave. His last day of service was 6 April 2019. I thank the Commissioner for his service to the people of NSW and wish him well in whatever path he chooses to follow.

Commissioner Jane Seymour

Commissioner Seymour was appointed to the Commission in May 2017. She resigned with effect from 6 April 2018. In the relatively short time she was with the Commission she made a strong contribution to its work. I gave some indication of that in the last Annual Report. I will not repeat it here.

The Commissioner was particularly affected by the proposed move to Parramatta. The significant increase in commuting times for her made the prospect of continuing her role unattractive given her personal circumstances. Accordingly, she decided to resign with a view to returning to practice at the Bar. The Commission thanks her for her service and wishes her every success in her future career.

Commissioner Nichola Constant

Commissioner Constant was appointed on 23 July 2018 after a career spanning more than 25 years, first in banking and later in legal practice. In the 1990's the Commissioner worked and developed her expertise in the fields of human resources, industrial relations and strategic planning. She commenced professional practice in law in 1999 and became increasingly focused on industrial and employment law. In her practice she acted for both employees and employers. In the period immediately prior to her appointment the Commissioner was Assistant Crown Solicitor with responsibility for leading the employment law and industrial relations practice group.

Commissioner Constant clearly brings a degree of experience and range of skills which ably suit her to the role of Commissioner. The very well attended welcoming ceremony and the range of laudatory speeches made on that day add weight to that view and are testament to the widespread support for her appointment.

Commissioner Damian Sloan

Commissioner Sloan was appointed on 30 July 2018. He had an almost 30 year career in industrial and employment law prior to his appointment. After more than 20 years of professional practice in private law firms the Commissioner moved to become in-house counsel, with responsibility for workplace relations and safety, and later Group General Manager, Employee and Industrial Relations at Toll Holdings. In those roles he not only used and developed his negotiating techniques in general employment matters but also became regularly involved in this jurisdiction with respect to contracts of carriage matters.

At the time of his appointment Commissioner Sloan had been an Accredited Specialist in Employment and Industrial law with the Law Society of NSW. Like Commissioner Constant, he brings an array of skills and experience which enhances the ability of the Commission to perform its statutory functions. Commissioner Sloan was formally welcomed at the same ceremonial sitting as Commissioner Constant and his appointment was also widely acclaimed.

Commissioner Janine Webster

Commissioner Webster was appointed on 3 December 2018. Immediately prior to her appointment, and from 2010, she was Chief Counsel of the Fair Work Ombudsman. In that role she had responsibility for oversight of compliance with federal workplace relations laws and prosecuted, by negotiation and in the courts, cases to ensure compliance with those laws.

Leading up to her time at the FWO, she had a diverse career in public and private practice both as solicitor and barrister. Commissioner Webster obtained an insight into industrial tribunal operations as an associate to a Vice President of the then Australian Industrial Relations Commission and also into industrial organisations working as an advocate for Australian Business Lawyers. In total her 16 years of experience in the fields of industrial relations and employment law equips her to undertake the functions of a Commissioner most admirably.

The Commissioner's welcoming ceremony, which was also very well attended, was the last at the Commission's Bridge Street address. It therefore marked not only the beginning of her time as a Commissioner but the calling of time on the Commission's Sydney headquarters.

Commissioners Murphy and Stanton

Each of these Commissioners, who have provided sterling service to the Commission over many years, was appointed for an additional term of three years. In the case of Commissioner Stanton the appointment is on a part-time basis of two days per week. The Commissioner continues to be based in Newcastle and provide services to the Hunter and Northern regions of the State.

The Year in Review – Collective Applications

Breaking the trend of the last few years, the number of industrial disputes filed dropped by approximately 14 %. Counteracting that was a 40 % increase in Award filings although much of the increase may be attributed to the triennial s 19 reviews commenced in the second half of the year. There was also an increase in the Collaborative Employment Relations applications filed. Whether there is an intersection in these latter two increases and the fall in industrial disputes is difficult to say.

I noted in last year's Annual Report the number of disputes about consultation in accordance with Award obligations. The trend continued in 2018. No doubt a significant contributing factor is the continued downsizing of the Public Sector. Employee organisations accept that the employer has the right to determine how best to organise its business but seek to consult about the impact of employer decisions on employees. Their ambition is to avoid or mitigate adverse impacts upon employees. [At times employer parties are unwilling to discuss decisions regarding such discussion] as interfering in the conduct of the business. That misunderstands that the decision remains that of the employer. Employees and their representatives make suggestions, even arguments that an alternative course is preferable but unless they can so persuade the employer, the employer's

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decision will prevail. The obligation on the employer is to bring an open mind to the consultation process. If not, it is probable that they are not fulfilling their award obligations. These principles apply no matter whether the employer is the State Government, a local government body, a statutory body or a private employer. Of course, the precise obligations are to be ascertained from the terms of the relevant award and these observations are no more than a broad outline.

It is understandable that parties see matters from their own perspective and those perspectives can differ. They come to the Commission for an independent assessment. For the most part the Commission is restricted to providing guidance. Beyond that it is a matter for the courts. It is however contrary to the concepts underpinning this State's industrial relations framework to force parties to curial rather than industrial remedies. For that reason I reiterate my comments made in the last Annual Report about clarifying the Commission's interpretation jurisdiction.

Individual Applications

The numbers are comparable with long term trends. Unfair dismissal applications, while fewer than 2017, were above the preceding 3 years. There was a significant increase in Public Sector Disciplinary appeals and an increase in applications for reviews under the Police Act [full citation?].

General Observations

It is pleasing to note that, although the number of Commissioners was reduced for several months in the 2018 year, the finalisation rates remain high - above 110% overall. However the Commission continues to struggle to meet the time standards it has set. That is in part due to member availability but to a significant degree; it is due to parties requesting delayed listings and/or, in individual matters, extended timetables for preparation for hearing. With self-represented litigants that is a difficult issue to address. They are generally unfamiliar with formal hearing processes and it is incumbent on the Commission to provide such assistance as is appropriate to ensure a fair hearing. That often involves delays while the individual seeks information or advice. It may be necessary in the not too distant future to review time standards to ensure they remain realistic.

Thanks

It would be remiss of me not to mention the retirement of one member of the Commission's staff well known to regular users of the Commission's services. Lydia D'Souza proceeded on pre-retirement leave in July 2018 after more than thirty years' service in the Registries of the Industrial Court and the Commission. In her last few years she worked as Associate to Acting Justice Boland and then as my Associate when an Acting Judge of the Court and finally as my Assistant in my role as Chief Commissioner. We wish Lydia and her husband all the very best for their retirement.

Finally, I again express my thanks to the members and staff of the Commission for their wholehearted commitment to ensuring the Commission performs its functions to the highest standard.

1. COMMISSION PROFILE



Purpose of the Commission

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

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

Our Structure

Until the commencement of the *Industrial Relations (Industrial Court) Amendment Act 2016* (the Amendment Act) the Commission operated at two distinct levels. It had distinct legal characters according to its composition and functions. Those functions may be broadly defined as “arbitral” functions and “judicial” functions. The latter moved principally to the Supreme Court following the commencement of the Amendment Act.

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. These functions of the Commission continue after the amendments to the legislation.

1. COMMISSION PROFILE CONT.

The Industrial Relations Commission of New South Wales

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

The Industrial Relations Commission of New South Wales is an industrial tribunal. It has jurisdiction to hear proceedings arising under various industrial and related statutes. As a result of amendments to the *Industrial Relations Act 1996*, the Industrial Relations Commission as of 8 December 2016 has a Chief Commissioner as head of jurisdiction.

Broadly, the Commission discharges the following functions:

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

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

- establishing and maintaining a system of enforceable awards which provide for fair minimum wages and conditions of employment;
- approving enterprise agreements;
- preventing and settling industrial disputes, initially by conciliation, but, if necessary, by arbitration;
- inquiring into, and reporting on, any industrial or other matter referred to it by the Minister;
- determining unfair dismissal claims by conciliation and, if necessary, by arbitration to determine if a termination is harsh, unreasonable or unjust;
- claims for reinstatement of injured workers;
- proceedings for relief from victimisation;
- dealing with matters relating to the registration, recognition and regulation of industrial organisations;
- dealing with major industrial proceedings, such as State Wage Cases;
- various proceedings relating to disciplinary and similar actions under the Police Act;
- proceedings relating to disciplinary decisions in the public sector under the Act (Ch 2, Pt 7); and
- applications under the *Entertainment Industry Act 2013*; and
- various proceedings relations to contracts of carriage and bailment (Ch 6).

Membership of the Commission

Chief Commissioner

With the legislative changes that occurred in December 2016, which abolished the Industrial Court and moved existing Industrial Court cases to the Supreme Court, the role of Chief Commissioner of the Industrial Relations Commission was established. On 3 April 2017 Chief Commissioner Peter Kite SC commenced in the role of Chief Commissioner.

Commissioners

The Commissioner Members during 2018 in order of seniority were:

Chief Commissioner Peter Michael Kite SC, appointed 3 April 2017;
Commissioner John David Stanton, appointed 23 May 2005;
Commissioner Peter Justin Newall, appointed 29 April 2013, resigned 29 March 2018;
Commissioner John Vincent Murphy, appointed 4 December 2015;
Commissioner Jane Elizabeth Seymour, appointed 15 May 2017, resigned 6 April 2018;
Commissioner Nichola Constant, appointed 23 July 2018;
Commissioner Damian Sloan, appointed 30 July 2018; and
Commissioner Janine Webster, appointed 3 December 2018.

Regional Sitzings of the Commission

The Commission has its own dedicated regional court premises located in Newcastle and uses the Local Court in Port Kembla for South Coast matters. The Commission sits in other regional locations from time to time utilising, for the most part, Local Court facilities.

The long standing policy of the Commission in relation to unfair dismissal applications (s 84) and rural and regional industries, has been to sit in the regional centre at or near where the events have occurred. The reduction in the number of Commissioners and the workload of the Commission has rendered the implementation of that policy more difficult. Notwithstanding these considerations, the Commission does sit in regional locations whenever possible.

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

There were a total of 92 (131 in 2017) sitting days in a wide range of regional courts and other regional locations during 2018.

There is one member, Commissioner Stanton, based permanently in Newcastle.

The Commission sat in Newcastle for 82 (111 in 2017) sitting days during 2018 and dealt with a wide range of industrial matters in Newcastle and the Hunter District.

The regional Member for the Illawarra-South Coast region is Commissioner Murphy. There was a total of 1 (12 in 2017) sitting days in Wollongong during 2018.

The Commission sat in other regional locations in 2018 including Armidale, Tweed Heads and Orange.

1. COMMISSION PROFILE CONT.

Industry Panels

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

Since 2015 one Panel now deals with metropolitan (or Sydney-based) matters (down from four in 2007); two Panels specifically deal with applications from regional areas (down from three).

The Panel dealing with applications in the north of the State (including the Hunter Region) was chaired by Commissioner Stanton. The Panel dealing with applications from the southern areas of the State (including applications from the Illawarra-South Coast region) was chaired by Commissioner Tabbaa, and upon her retirement, Commissioner Murphy. The membership of the Panels as at 8 December 2016 as set out in Appendix 1.

The Industrial Relations Registry

The Industrial Registrar has the overall administrative responsibility for the operation of the Commission. The Registrar reports to the Chief Commissioner in terms of the day to day operational procedures. The Registry was substantially restructured in late December 2016. The description below reflects the structure of the Registry post restructure.

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

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

Client Services Team

The Registry's 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. 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 at 47 Bridge St Sydney until late December 2018 and then Smith Street 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.

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

The Client Service team processes a diverse range of applications for determination by the Industrial Registrar, which include:

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

The Client Service team also administer the provisions relating to the regulation and corporate governance of industrial organisations under Ch 5 of the Act and provide assistance in the research of historical records.

Commissioner Support Team

This team is the principal source of administrative support to the Chief Commissioner and Commissioners. This team supports Commissioners whether they are located in Sydney, Newcastle or sitting at other regional locations.

2. PERFORMANCE



INDUSTRIAL RELATIONS COMMISSION

Overall Caseload

The comparative caseload statistics for the Industrial Relations Commission between 2014 and 2018 are summarised in Table 3.1

Table 2.1 [Caseload Statistics]

	2014	2015	2016	2017	2018
Appeals					
Filed	10	7	21	18	10
Finalised	8	8	23	11	15
Pending	6	5	2	9	4
Awards					
Filed	188	334	109	122	169
Finalised	123	382	160	112	147
Pending	131	83	32	42	37
Collaborative Employment Relations					
Filed	N/A	5	4	1	4
Finalised	N/A	0	4	4	5
Pending	N/A	5	5	2	1
Disputes					
Filed	308	292	343	353	299
Finalised	275	314	269	361	373
Pending	112	87	161	152	78
Enterprise Agreements					
Filed	15	12	11	6	7
Finalised	15	14	4	12	7
Pending	3	1	8	2	2
Unfair Dismissals					
Filed	206	208	202	240	218
Finalised	186	201	154	277	250
Pending	64	70	118	81	49
Public Sector Disciplinary Appeals					
Filed	10	24	24	29	47
Finalised	19	23	22	29	41
Pending	0	6	8	8	14

Table 2.1 [Caseload Statistics (continued)]

	2014	2015	2016	2017	2018
Police Dismissals and Disciplinary Appeals					
Filed	23	43	40	37	43
Finalised	19	39	26	54	38
Pending	17	21	35	18	23
Hurt on Duty Appeals					
Filed	4	9	18	3	1
Finalised	14	21	2	17	8
Pending	4	15	31	17	10
Other					
Filed	118	100	115	73	76
Finalised	121	86	103	60	109
Pending	41	38	50	53	20
TOTALS					
Total Filed for the Year	882	1029	887	882	874
Total Finalised for the Year	780	1088	767	944	1019
Total Pending at end of Year	378	326	446	384	239

Table 2.1 above shows the following trends

- Total filings (874) have remained stable compared to 2016 - 2017 filings.
- The number of police dismissals and disciplinary appeals remain consistently high for 2018.
- The number of disputes for 2018 has reduced to approximately 34% of total filings.
- Unfair dismissals were significantly higher again compared to prior years, now making up 19% of our total case load.
- These total filings do not include applications relating to industrial organisations including rule changes, right of entry permits, WHS permits and special wage permits.
- Total matters pending at the end of 2018 decreased to 239 pending matters representing a significant decrease on 2017 numbers.

2. PERFORMANCE CONT.

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

Table 2.2 [Commission Members]

	2014 ¹	2015 ²	2016 ³	2017 ⁴	2018 ⁵
Judicial and Presidential Members					
President	1	1	1	N/A	N/A
Vice - President	0.1	N/A	N/A	N/A	N/A
Deputy President	1	1	1	N/A	N/A
Presidential Members (Judges or Acting Judges)	1.5	0.5	0.5	N/A	N/A
Total Judicial Members	3.5	2.5	2.5	N/A	N/A
Non-Judicial Members					
Commissioners	2.5	2.7	4	6	8
Total Members of the Commission	5.6	5.2	7.5	6	8

¹ Justice Boland, President to 31 January; Justice Walton, President from 3 February; Justice Walton, vice President to 2 February; Justice Staff to 12 March; Justice Backman to 19 August (commenced leave March); Acting Justice Boland from 3 February; Acting Justice Kite from 25 November.

² Acting Justice Boland to 3 February; Acting Justice Kite to 31 May; Commissioner Stanton part-time at FWA to October; Commissioner Murphy appointed 4 December.

³ Deputy President Harrison to 3 January; Acting Justice Kite to 7 December.

⁴ 2017 saw the retirement and appointment of Commissioners, whilst there were 6 over the span of 2017 there were a maximum of 5 Commissioners at any particular time.

⁵ 2018 saw 2 resignations and the appointment of 3 new Commissioners seeing a maximum of 6 Commissioners at any particular time.

Clearance Rates

The comparative clearance rate statistics for Commission between 2014 and 2018 are summarised in Table 2.3.

Table 2.3 [Clearance Rates Statistics]

	2014	2015	2016	2017	2018
Commission Clearance Rate	88%	105.7%	86.4%	107%	116.6%

Industrial Disputes

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

This form of robust alternative dispute resolution usually involves a Commissioner meeting with the parties both separately and together in an attempt to resolve their differences. In the event that a dispute cannot be resolved by way of conciliation, the Commission will then arbitrate the dispute under s135 and s136 and make orders that are binding on all parties. Industrial dispute matters represented 34.2% (down from 40.1% in 2017) of the total filings for the Commission during 2018.

Filed and Finalised Dispute Matters 2014-2018

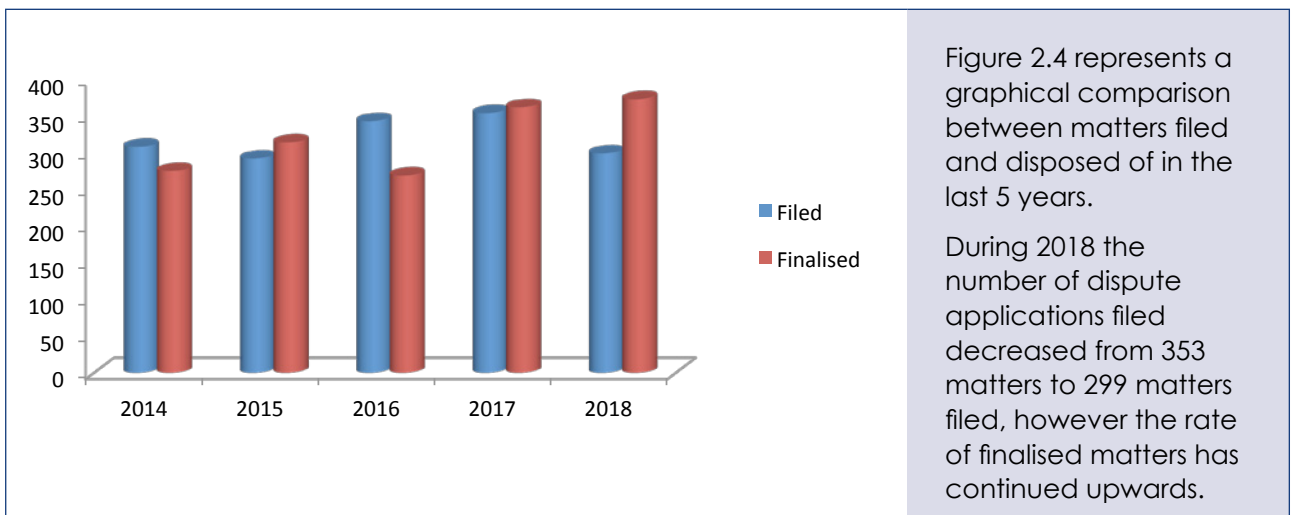


Figure 2.4 [Filed and finalised dispute matters]

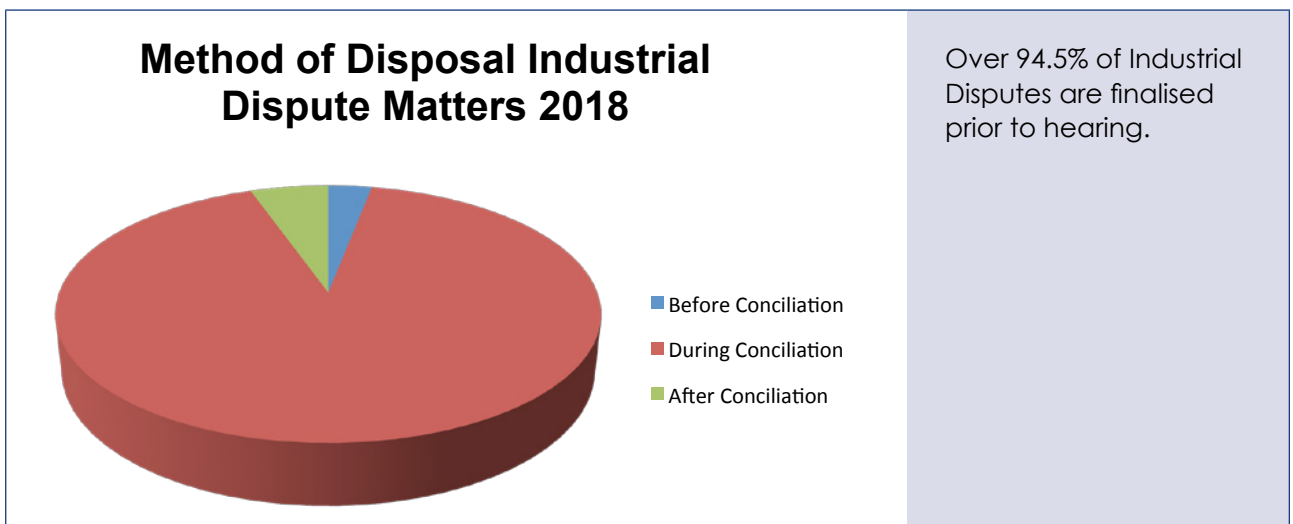


Figure 2.5 [Method of disposal]

2. PERFORMANCE CONT.

Time Standards

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

Table 2.6 [Time taken for first listing of industrial dispute matter]

	Within 72 Hours (50% Target)	Within 5 Days (70% Target)	Within 10 Days (100% Target)	Median Time to First listing
2014	35.6%	46.5%	75.6%	6 Days
2015	31.5%	42.3%	62.4%	7 Days
2016	26.4%	41.7%	70.3%	7 Days
2017	24.8% ✘	36.7% ✘	63.9% ✘	8 days
2018	24.6% ✘	38.5% ✘	84.5% ✘	8 days

As in recent annual reports it is noted that the median time to first listing has continued to rise. This is mainly due to parties seeking a delayed listing of the dispute.

Table 2.7 [Time taken to finalise an industrial dispute matter]

Finalised within	2 Months (50% Target)	3 Months (70% Target)	6 Months (90% Target)	9 Months (100% Target)
2017	45.7%	59.9%	86.8%	99%
2018	25.4% ✘ ↘	36.2% ✘ ↘	76.9%	99%

As a result of the resources available to the Commission during 2018, the finalisation of matters within the prescribed time standards showed a decline. Whilst not quite meeting the required benchmarks, the matters are being finalised. It should be noted that industrial disputes can be quite diverse and some require extended periods of progressive adjustment of formerly entrenched attitudes and positions. Thus there will always be disputes which do not lend themselves to resolution within prescribed time standards.

Unfair Dismissals

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

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

The Commission then has power to make orders either confirming the dismissal or ordering that the employee be reinstated, re-employed or compensation paid. Unfair dismissal matters represented 25% of the total filings for the Commission during 2018. Figure 3.8 represents graphically a comparison between the unfair dismissal matters filed and disposed of in the last 5 years.

Filed and Finalised Unfair Dismissal Matters 2014-2018

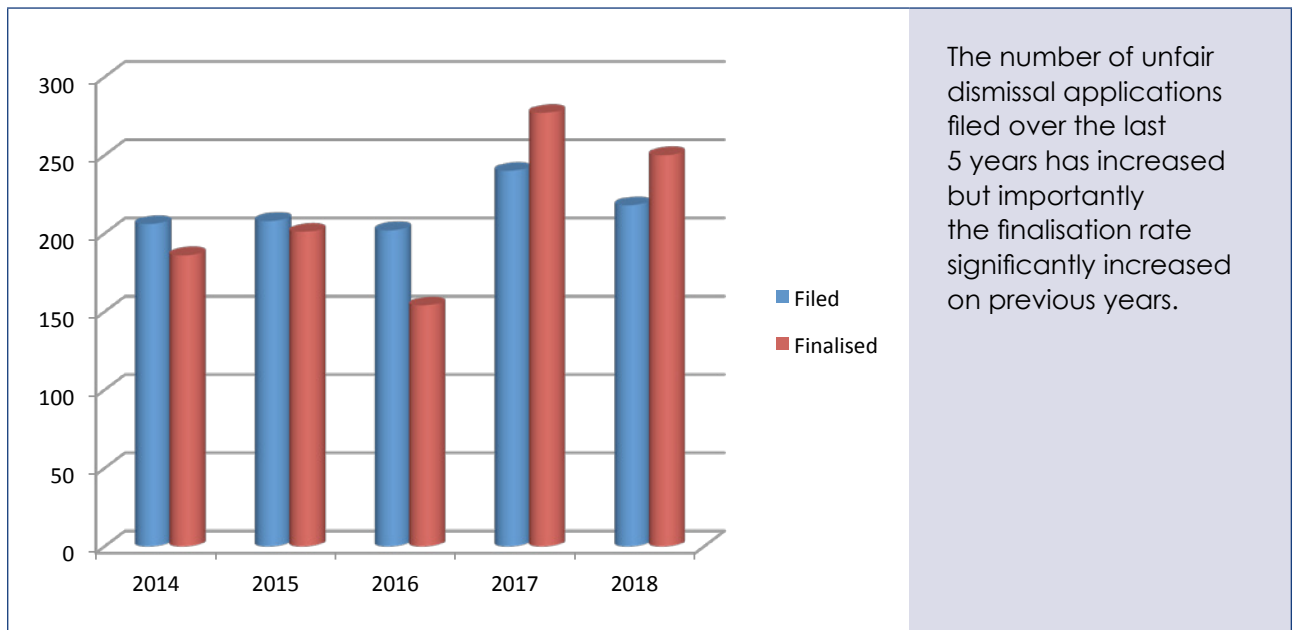


Figure 2.8 [Filed and finalised unfair dismissal matters]

2. PERFORMANCE CONT.

Figure 2.9 represents graphically the method in which unfair dismissal matters were finalised by the Commission during 2018.

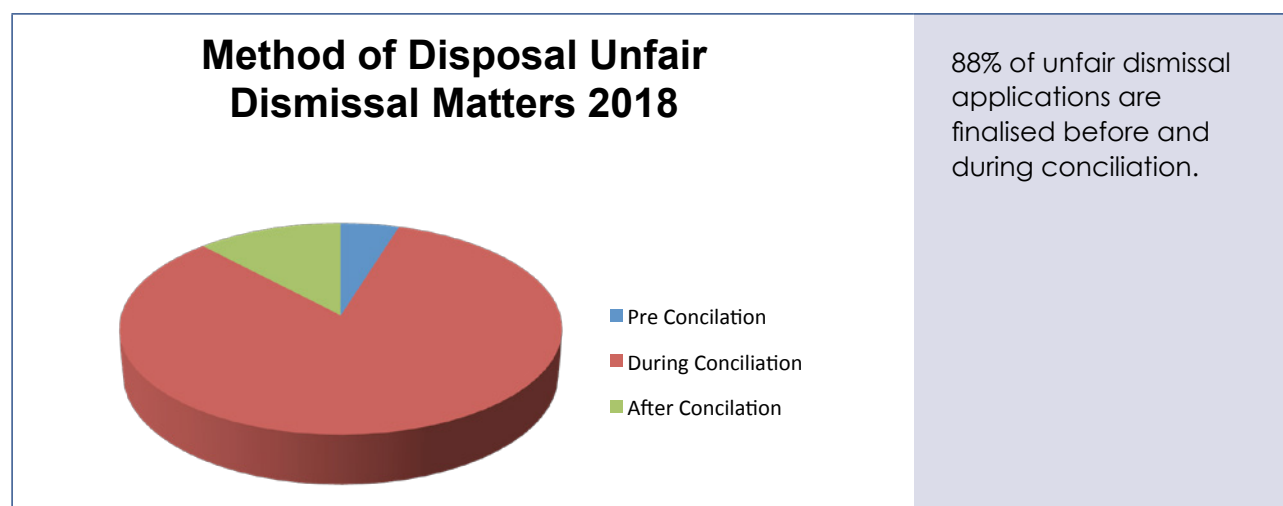


Table 2.10 shows the distribution as to who initiated an unfair dismissal action

	2014	2015	2016	2017	2018
Unfair Dismissals					
Application (Individual)	52	67	65	63	61
Application (Legal Representative)	66	40	47	56	53
Application (Organisation Representative)	88	101	90	121	104
TOTAL	206	208	202	240	218

Time Standards

There are two time standards relating to unfair dismissals:

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

During 2017 the finalisation of matters within two and three months showed a slight decline, however the 2 month clearance standard was still achieved. The number of matters meeting the 6 and 9 month clearance standard also showed deterioration.

Table 2.11 shows the time taken to first listing of an unfair dismissal matter

Within	7 Days	14 Days	21 Days (100% Target)	28 Days
2017	5.4%	19.2%	39.8%	87.9%
2018	7%	21.2%	68.4%	93.9%

As in recent annual reports, it is noted that the median time to first listing has continued to vary. Parties requesting listings at the 21-28 day timeframe is one of the main reasons for the fluctuations. Other factors include parties being available and ready for the listing.

Table 2.12 shows the time taken to finalise an unfair dismissal matter

Finalised within	2 Months (50% Target)	3 Months (70% Target)	6 Months (90% Target)	9 Months (100% Target)
2015	57.7%	67.7%	84.1%	94.7%
2016	57.2%	69.8%	88.2%	98.6%
2017	56%	68.9%	88.9%	98.2%
2018	25.4% ✓ ↘	36.6%	76.3%	99.2% ↘

During 2018 the finalisation benchmarks varied significantly for a variety of factors including Commissioner availability, complexity of the cases, parties being available to list a case and other available resources.

2. PERFORMANCE CONT.

Awards and Enterprise Agreements

Award Jurisdiction

Overall

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

The Commission is given power to:

- make or vary awards (s 10 and s 17 respectively);
- approve enterprise agreements and variation of enterprise agreements (s 35 and s 43);
- review awards triennially (s 19); and
- consider the adoption of National decisions for the purpose of awards and other matters under the Act (s 50) (for example, the State Wage Case).

Award Reviews

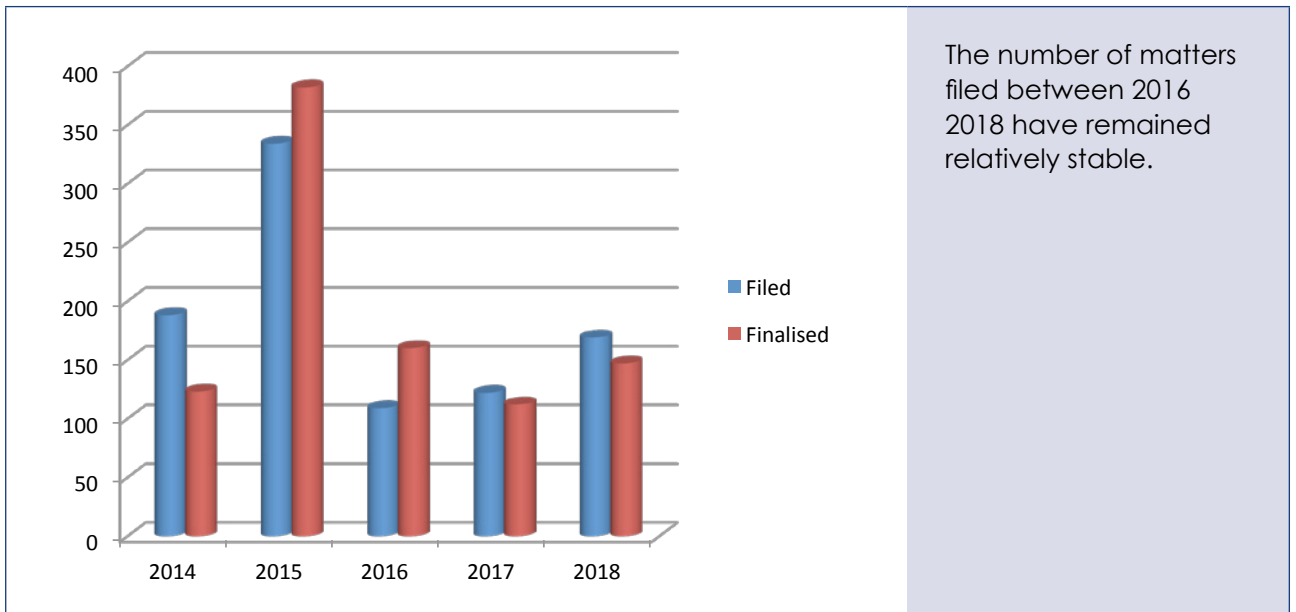
In accordance with s 19(1), the Commission undertook the triennial Award Review process in 2018. As a result the number of award applications has significantly increased compared to 2016 and 2017.

Awards

Awards matters represented 19.3% of the total filings for the Commission during 2018.

Figure 2.13 represents graphically a comparison between the matters filed and disposed of in the last 5 years.

Filed and Finalised Award Matters 2014-2018



2. PERFORMANCE CONT.

Enterprise Agreements

Enterprise Agreements represented 0.8% of the total filings for the Commission during 2018.

Figure 2.14 graphically represents a comparison between the matters filed and disposed of in the last 5 years.

Filed and Finalised Enterprise Agreements 2014-2018

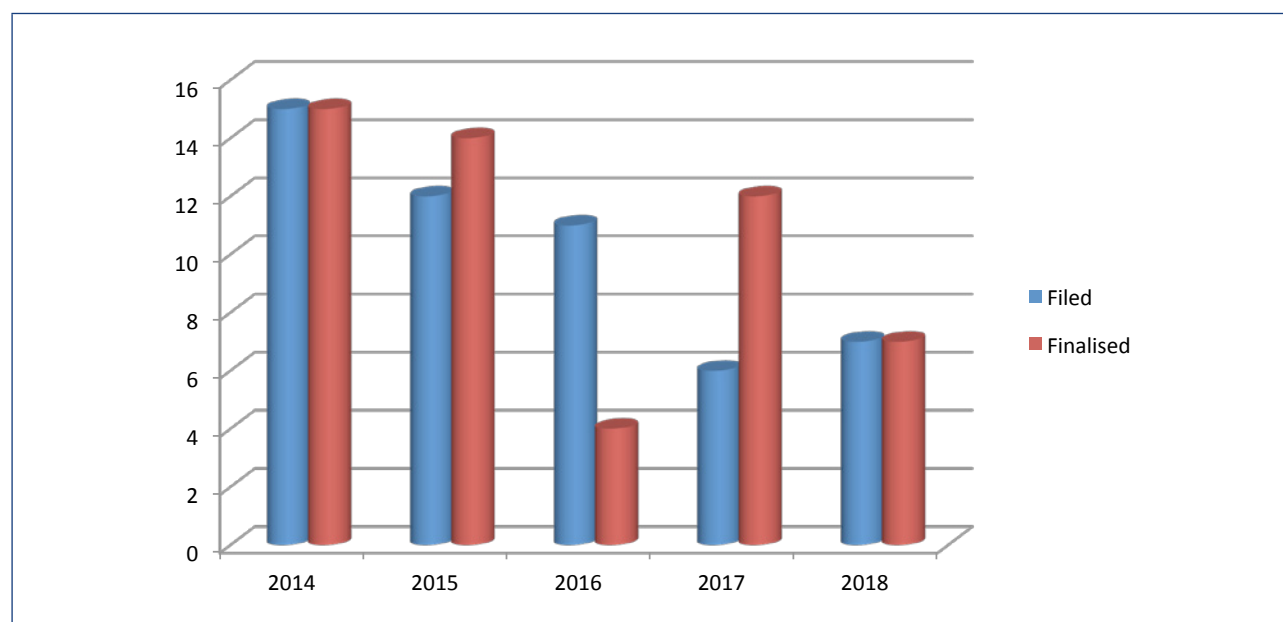


Table 2.15 provides details of filings in the award and enterprise agreement areas in the last five years.

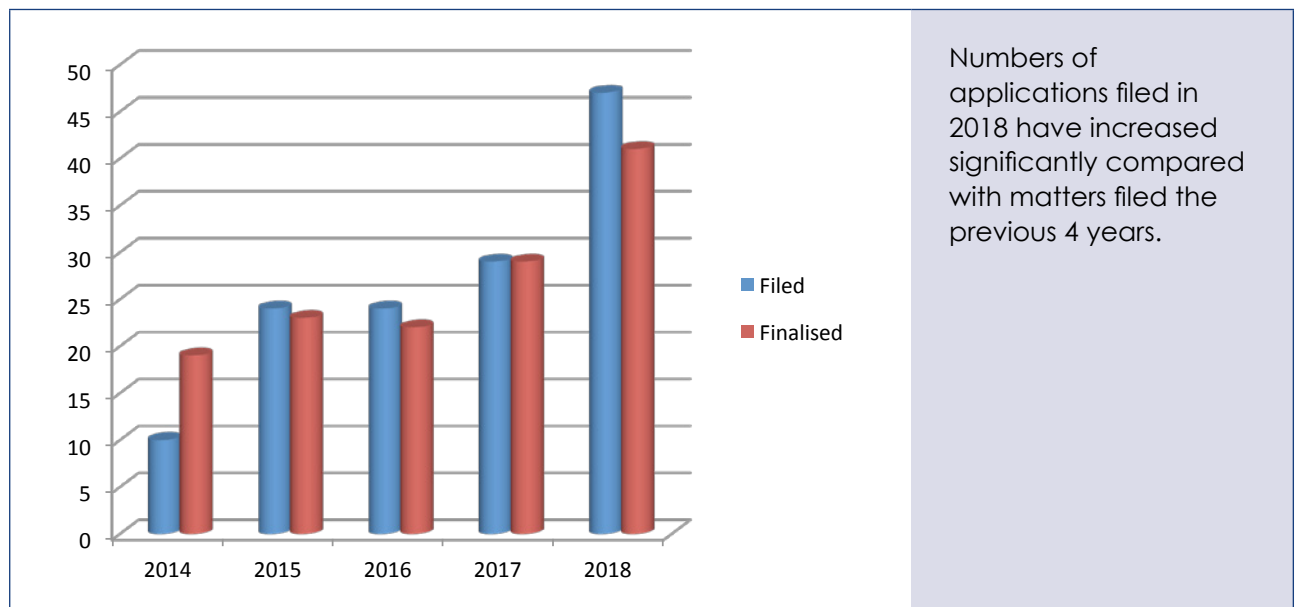
	2015	2016	2017	2018
Awards				
Application to Make Award	68	59	82	78
Application to vary Award	45	41	37	21
Enterprise Agreements				
Application for an Enterprise Agreement	12	11	6	7
Terminated Enterprise Agreement	1	0	0	0
Review of Awards				
Notice of Review Issued	220	0	0	62
Awards reviewed	152	3	0	28
Awards rescinded	13	1	3	5
Awards determined to have effect as enterprise agreements	0	0	0	0
Declaration of Non-Operative Awards	0	0	0	0

Public Sector Disciplinary and Promotional Appeals

Public sector disciplinary appeals represented 5.4% of the total filings for the Commission during 2018.

Figure 2.16 represents graphically a comparison between the matters filed and disposed of in the last 5 years.

Filed and Finalised Public Sector Disciplinary and Promotional Appeals 2014-2018



The downturn in appeals filed from the levels recorded in 2013 can be wholly explained by the enactment of the *Government Sector Employment Act 2013* ('the GSE Act') that abolished public sector promotional appeals. Accordingly, there were no promotional appeals filed in 2018.

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

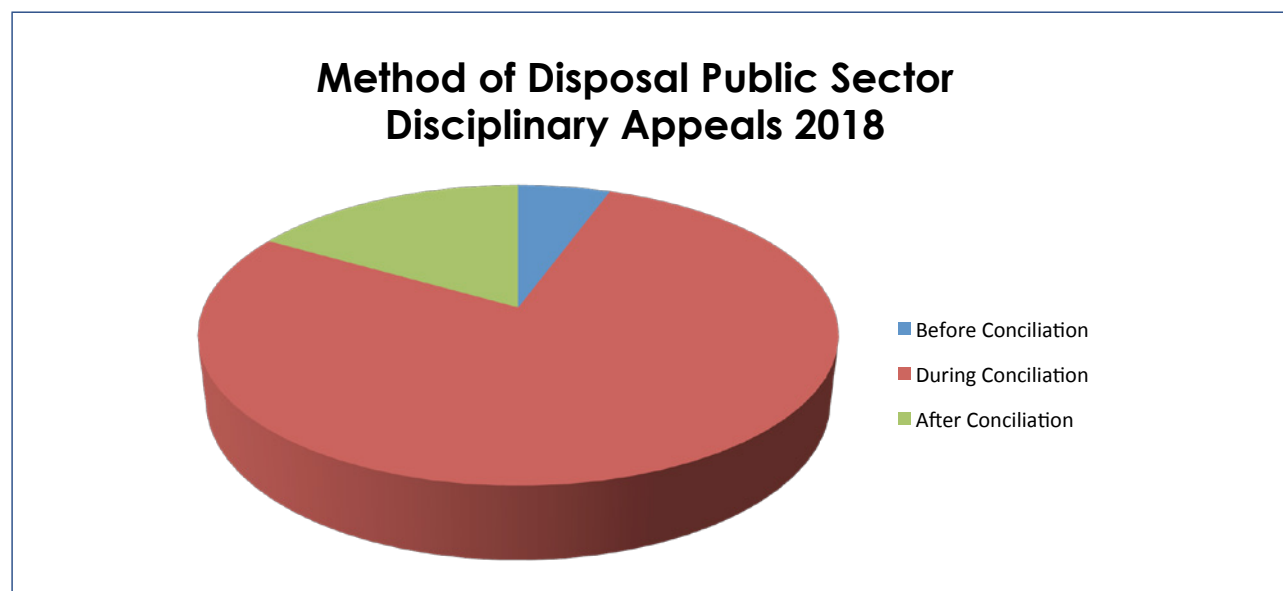
The increased numbers of disciplinary appeals may be due to managers using mechanisms under the GSE Act.

2. PERFORMANCE CONT.

Table 2.17 shows the distribution as to what types of public sector promotional and disciplinary appeals were dealt with during the last 5 years.

	2014	2015	2016	2017	2018
Public Sector Promotional Appeals					
Filed	6	N/A	N/A	N/A	N/A
Finalised	8	N/A	N/A	N/A	N/A
Pending	0	N/A	N/A	N/A	N/A
Public Sector Disciplinary Appeals					
Filed	4	24	24	29	47
Finalised	11	23	22	25	41
Pending	0	1	3	8	14
TOTALS					
Total Filed for the Year	10	24	24	29	47
Total Finalised for the Year	19	23	22	25	41

Figure 2.18 represents graphically the method in which public sector disciplinary appeals were finalised by the Commission during 2018.



Time Standards

Table 2.19 shows the time taken to finalise public sector disciplinary appeals dealt with during the last 4 years.

	2015	2016	2017	2018
Public Sector Disciplinary Appeals				
Completed within 3 Months	79.1%	66.7%	69.6%	70%
Completed within 6 Months	88.4%	88.9%	89.1%	88.6%

During 2018 the finalisation of public sector disciplinary matters within the 3 month period improved when compared to the 2016 - 2017 clearance rates but increased against the 2016 results. That may be seen, at least in part, as a product of the increased number of applications filed.



2. PERFORMANCE CONT.

Police Dismissals and Disciplinary Appeals

Under the provisions of s173 of the *Police Act 1990* (the "Police Act"), the Commissioner of Police may make reviewable and non-reviewable orders arising from a police officer's misconduct or unsatisfactory performance. Under s 174 of the Police Act an officer may apply to the Commission seeking a review of such orders (a "disciplinary appeal").

Under s181D of the Police Act, the Commissioner has power to remove a NSW police officer for loss of confidence in the police officer's suitability to continue as an officer having regard to the officer's competence, integrity, performance or conduct. Under s 181E of the Police Act an officer may seek a review of such removal (a "dismissal appeal").

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

The Police Act (ss 179(2), 181 and 181K) requires (unless the Chief Commissioner otherwise directs in the case of disciplinary appeals) that each stage of the process is dealt with by a Member of the Commission who is an Australian lawyer. All Members of the Commission in 2017 were Australian lawyers.

Section 173 Police Disciplinary Appeals

Police disciplinary appeals represented 2.29% of the total filings for the Commission during 2018.

Figure 2.20 represents graphically a comparison between the matters filed and disposed of in the last 5 years.

Filed and Finalised s173 Police Disciplinary Appeals 2014-2018

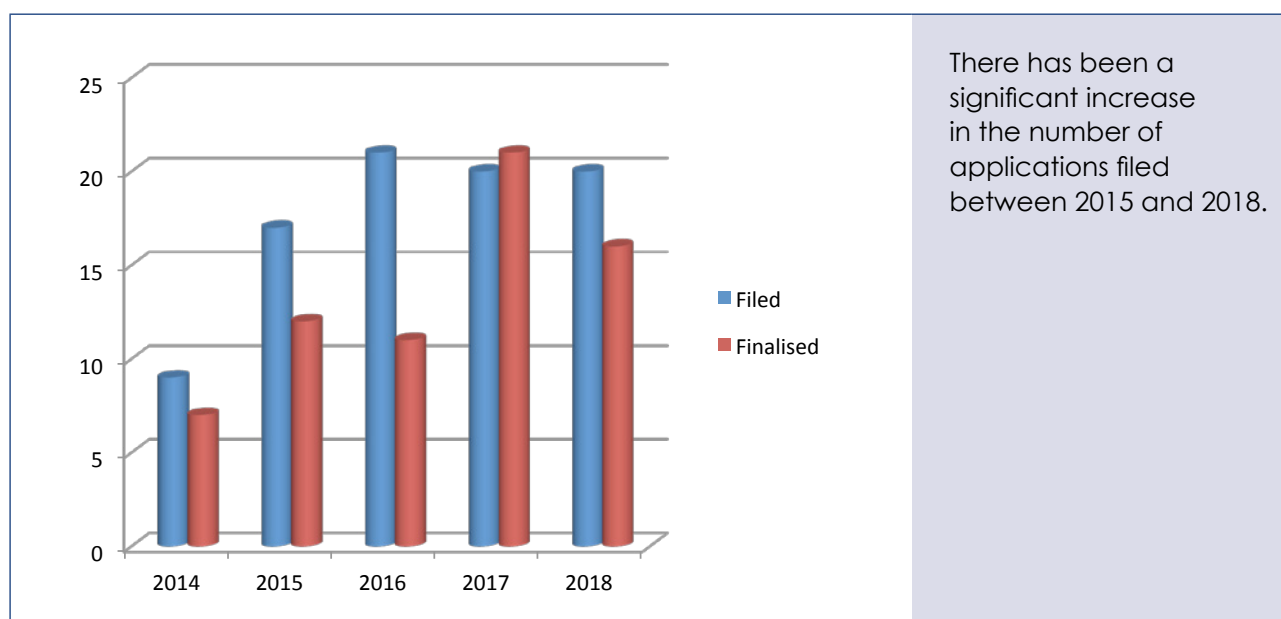
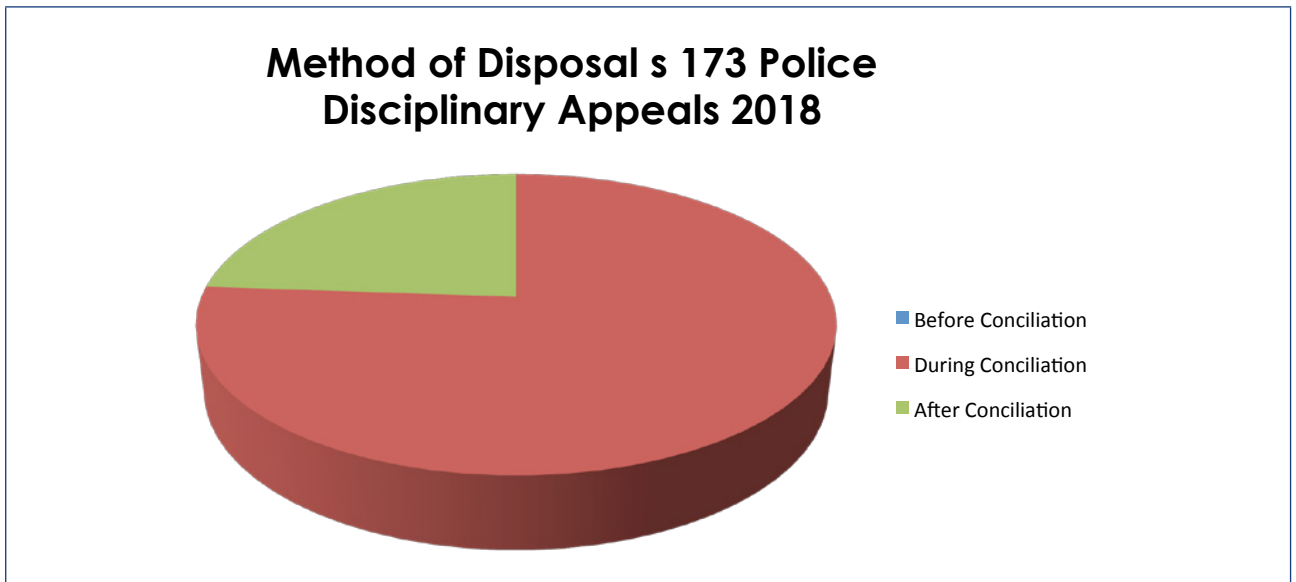


Figure 2.21 represents graphically the method in which police disciplinary appeals were finalised by the Commission during 2018.

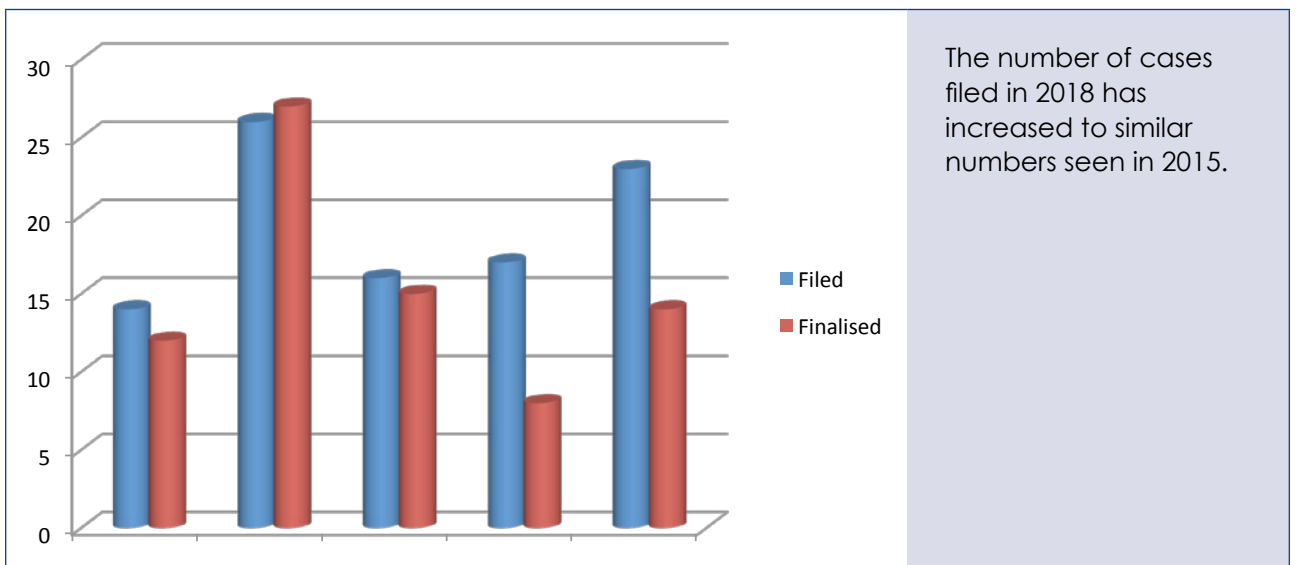


Section 181D Police Dismissal Appeals

Police disciplinary appeals represented 2.63% of the total filings for the Commission during 2018, although those matters represented statistically a higher proportion of sitting days required to dispose of the matters.

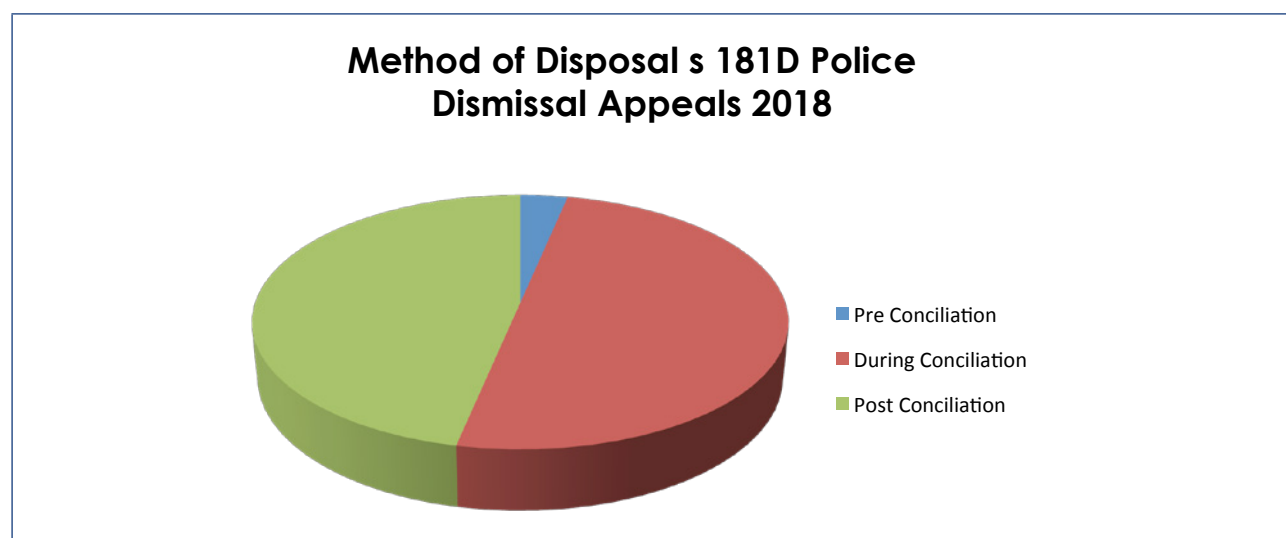
Figure 2.22 represents graphically a comparison between the matters filed and disposed of in the last 5 years.

Filed and Finalised s 181D Police Dismissal Appeals 2014-2018



2. PERFORMANCE CONT.

Figure 2.23 represents graphically the method in which police dismissal appeals were finalised by the Commission during 2018.



Time Standards

Table 2.24 shows the time taken to finalise police disciplinary and dismissal appeals.

	2014	2015	2016	2017	2018
S173 Police Disciplinary Appeals					
Completed within 6 Months	85.7%	91.6%	73.1%	82.2%	83.3%
Completed within 12 Months	85.7%	100%	88.4%	98.3%	99.3%
S181D Police Dismissal Appeals					
Completed within 6 Months	50%	70.3%	87.5%	90.5%	90.6%
Completed within 12 Months	83.3%	85.1%	100%	100%	99.8%

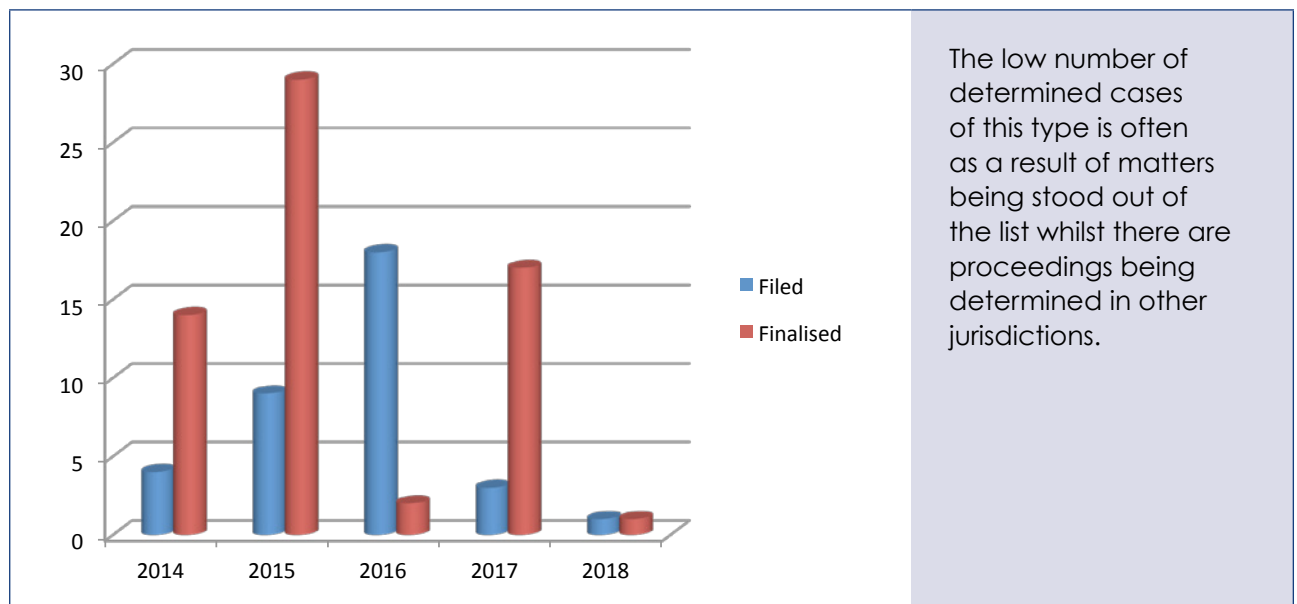
Police Hurt on Duty Appeals

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

Police Hurt on Duty Appeals represent less than 0.11% of the total filings for the Commission during 2018.

Figure 2.25 represents graphically a comparison between matters filed and disposed of in the last 5 years.

Filed and Finalised Police Hurt on Duty Appeals 2014-2018



2. PERFORMANCE CONT.

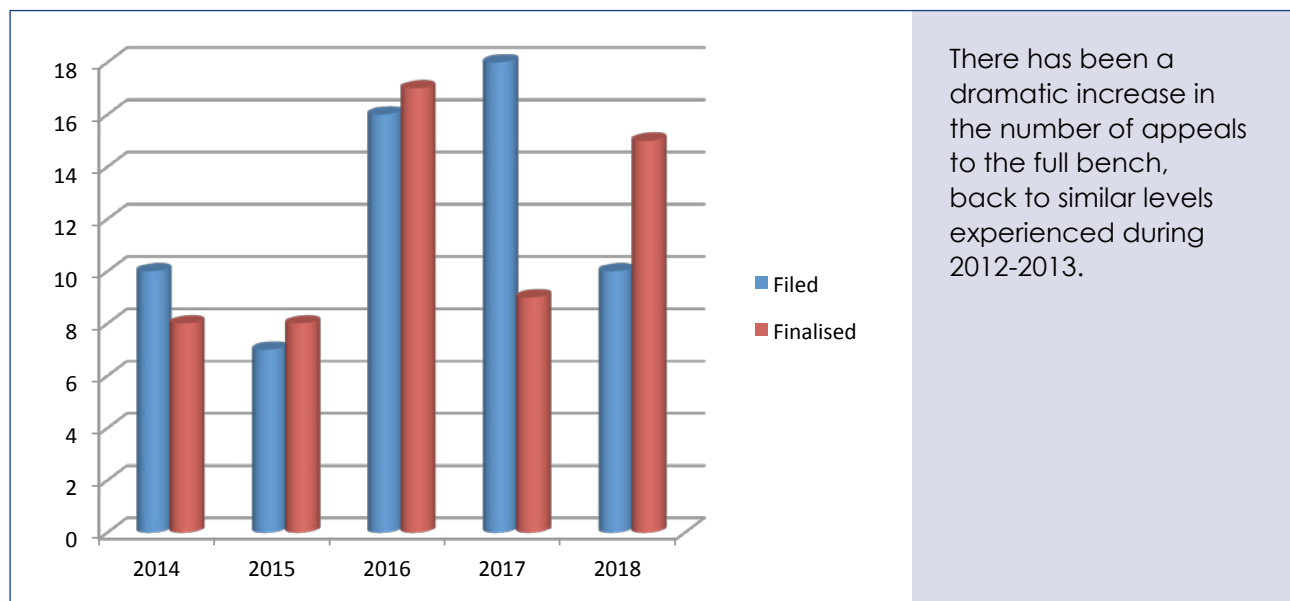
Appeals to a Full Bench

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

Appeals lodged during 2018 represented only 1.14% (down from 2.04% in 2017) of the total filings for the Commission. While the number of filings may be regarded as relatively small the Industrial Relations Act s 156 requires a Full Bench to consist of at least 3 Members. The effective number of hearing days is therefore considerably greater than the number of filings would suggest.

Figure 2.26 represents graphically a comparison between appeals filed and disposed of in the last 5 years.

Filed and Finalised s 187 Full Bench Appeals 2014-2018



Industrial Organisations

Under the *Industrial Relations Act 1996* and its Regulations as well as the *Work Health and Safety Act 2011*, the Industrial Relations Commission has specific responsibilities relating to industrial organisations. These responsibilities include the provision of Right of Entry Permits under part 7 of *Work Health and Safety Act 2011* and Chapter 5 of the *Industrial Relations Act 1996*. Other responsibilities include processing of applications regarding elections of office holders and approving rule changes for registered industrial organisations. These functions generally are carried out by registry staff under the direction of the Industrial Registrar. These application types are not counted in official filings unless they go before a Commissioner. They do however account for 23.5% of applications to the Industrial Relations Commission.

Table 2.27

	2015	2016	2017	2018
Work Health and Safety Permits	185	298	162	150
Right of Entry Permits	77	175	108	72
Special Wage Permits	23	43	25	25
Conscientious Objection Certificates	8	7	1	0
Rule Changes to Registered Organisations	14	18	10	10
Election Requests for Registered Organisations	28	36	19	10
Others	4	3	5	1
Total Filed for the Year	339	580	330	268

3. OTHER MATTERS



Commission Rules

Pursuant to s186 of the Act, the Rules of the Commission are to be made by a Rules Committee comprising the Chief Commissioner and two other Members appointed by the Chief Commissioner. There is also scope for co-option of other Members.

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

The Industrial Relations Commission Rules 2009 require revision following the passage of the *Industrial Relations (Industrial Court) Amendment Act 2016*. Regrettably the limits on the Commission's resources have not permitted that revision to be completed. There were no changes to the Industrial Relations Commission Rules during 2017.

Amendments to Legislation and Regulations

There was one amendment to the *Industrial Relations Act 1996* during 2018, being s161 regarding the provision of the annual report to the Minister. There was a minor amendment to the *Industrial Relations (General) Regulation 2015* by the *Industrial Relations (General) Amendment (Fees) Regulation 2018*.

Practice Notes

A review of practice notes commenced in 2017, Practice Note 2A 'List of Authorities and Legislation' was released.

It was decided that Practice Notes 3, 4, 8A, 13, 24, 26 and 29 did not require amendment and Practice Notes 20, 22, 27 and 28 were obsolete.

2018 saw the review and release of the following Practice Notes; 1A, 14A, 21A, 23A, 25A, 30A and 31A.

The review of practice notes will continue into 2019.

4. OUR PEOPLE



Industrial Registrar

In October 2016 Melinda Morgan commenced in the role of Industrial Registrar on an on-going basis.

Our Staff Profile

The Commission employed 10 people during 2018 in the Registry Office and Commissioner Support. We exceeded NSW Government benchmarks to employ women, persons with a disability and people from a culturally and linguistically diverse background.

More than half of our staff are women (90%) and more than 70% of the staff are from culturally and linguistically diverse backgrounds.

40% of the staff at the Industrial Relations Commission are over the age of 50.

The Commission also demonstrated its flexibility and ability to accommodate those staff working with a disability. 20% of staff employed at the Commission are staff who identify as working with a disability.

Retaining our Staff

Our retention rate is very high with 70% of our staff having 10 or more years of service; 60% of staff have 15 years or more service and 10% have been with the Commission for more than 25 years.

5. CONCLUSION



There was a further significant reduction in the number of matters pending at year end over 2017. Again that was achieved despite reduced member numbers during the year. It should be acknowledged that Commissioner Stanton was appointed for an additional term for 2 days per week from October 2018 and thus, with the appointment of Commissioner Webster in December 2018, the number of members was increased to 6. There has been, however, no increase in member support resources. I reiterate the observations I made in the Conclusion to the last Annual Report.

The current role description for Commission Support Officers includes the following among the Key Accountabilities of the position:

“Provides a high level of clerical and administrative support to the court and registry, including organising travel and accommodation arrangements for country hearings, typing judgements and decisions on behalf of the Commissioner and undertaking research and analysis on industrial matters” (emphasis added)

The emphasised passage is precisely the sort of assistance the Commissioners need. However there are several difficulties preventing the employees from being able to undertake these tasks. First, there are only 3 Commission Support Officers to provide support to 6 Commissioners. One needs to remember that this is but one of their Key Accountabilities, albeit a crucial one from the members' point of view. How the employees would be expected to keep pace with the volume of work is not readily apparent. Second, the role description does not require any qualifications to allow the employees to undertake the kind of research required.

Fundamentally there are insufficient Commission Support Officers to undertake the tasks which may be asked of them. The result is members are undertaking these administrative tasks themselves. It is plain that is not an efficient use of resources.

6. APPENDICES



APPENDIX 1

INDUSTRY PANELS

Metropolitan and Regional Panels

Metropolitan

Divisional Head – Chief Commissioner Kite SC

Members

Newall C (until 29 March 2018)

Murphy C

Seymour C (until 6 April 2018)

Constant C

Sloan C

Wester C

Regional

Panel N – Divisional Head – Stanton C

Members

Stanton C

Industries: Relevant geographical areas north of Gosford (excluding Broken Hill)

Panel S – Divisional Head – Murphy C

Members

Murphy C

Industries: Relevant geographical areas south of Sydney plus Broken Hill

6. APPENDICES CONT.

APPENDIX 2

TIME STANDARDS – Industrial Relations Commission

Time from commencement to finalisation	Time Standard	Achieved in 2017	Achieved in 2018
Applications for leave to appeal and appeal			
Within 6 months	50%	75%	89.9%
Within 12 months	90%	100%	97%
Within 18 months	100%	100%	100%
Award Applications [including Major Industrial Cases]			
Within 2 months	50%	57%	48%
Within 3 months	70%	67%	72.5%
Within 6 months	80%	95%	88%
Within 12 months	100%	100%	100%
Enterprise Agreements			
Within 1 month	75%	55%	57%
Within 2 months	85%	60%	68.8%
Within 3 months	100%	70%	74%
Applications relating to Unfair Dismissal			
Within 2 months	50%	55.6%	46.3%
Within 3 months	70%	68.9%	64.9%
Within 6 months	90%	88.9%	89.9%
Within 9 months	100%	99%	99%
Public Sector Disciplinary Appeals			
Within 1 month	30%	9.8%	10.3%
Within 2 months	60%	63%	62.9%
Within 3 months	90%	69.6%	70%
Within 6 months	100%	89%	88.6%

Time to first listing	Time Standard	Achieved in 2017	Achieved in 2018
Industrial Disputes			
Within 72 Hours	50%	24.8%	23.6%
Within 5 Days	70%	37.7%	35.5%
Within 10 Days	100%	65.3%	63.7%

6. APPENDICES CONT.

APPENDIX 3

Matters Filed in Industrial Relations Commission

Matters filed (under the Industrial Relations Act 1996) during period 1 January to 31 December 2018 and completed and continuing matters as at 31 December 2018.

Nature of Application	Filed 1.1.2018 – 31.12.2018	Completed 1.1.2018 – 31.12.2018	Continuing as at 31.12.2018
APPEALS	10	11	4
Appeal – Award	0	1	0
Appeal – Unfair dismissal	7	3	3
Appeal – Public Sector Disciplinary	3	3	0
AWARDS	169	169	38
Application to make an award	78	108	2
Application to vary an award	21	25	4
State Wage Case	1	1	0
Review of an award	64	28	32
Other – incl. rescission, interpretation	5	7	0
COLLABORATIVE EMPLOYMENT RELATIONS	4	5	0
Collaborative Employment Relations processes	4	5	0
DISPUTES	299	307	104
s130 of the Act	286	291	99
s332 of the Act	10	11	2
s146B of the Act	2	3	0
s20 of the <i>Entertainment Act</i>	1	2	0
ENTERPRISE AGREEMENTS	7	7	0
Application for approval with employees	4	3	0
Application for approval with industrial organisation	2	3	0
Principles for approval of Enterprise Agreements s33(3) of the Act	1	1	0

Nature of Application	Filed 1.1.2018 – 31.12.2018	Completed 1.1.2018 – 31.12.2018	Continuing as at 31.12.2018
UNFAIR DISMISSALS	218	196	45
Application by the employee	114	105	22
Application by an industrial organisation on behalf of employee	104	91	23
PUBLIC SECTOR AND POLICE APPEALS	91	63	34
Public Sector disciplinary appeal	47	32	15
Application for review of order s181D Police Service Act	23	14	13
Application for review of order s173 Police Service Act	20	16	5
Appeal by Police Officer relating to leave when hurt on duty	1	1	1
Contracts of Carriage and Bailment	13	20	5
Contract determinations	13	20	5
Compensation for termination of certain contracts of carriage	0	0	0
Other Applications	54	52	14
Application to extend duration of Industrial Committee	0	0	0
Registration pursuant to the Clothing Trades Award	10	23	0
Protection of injured workers from dismissal - Workers Compensation Act	23	19	5
Application for order enforcing principles of association s213 of the Act	0	0	0
Application for external review Work Health Safety Act	14	6	6
Appeal for an Assisted Appointment Review	0	0	0
Determination of demarcation questions	0	0	0
Application for relief from victimisation	7	4	3

6. APPENDICES CONT.

APPENDIX 4

The Chief Commissioner of the Industrial Relations Commission of New South Wales

The position of Chief Commissioner of the Industrial Relations Commission was created with the assent of the *Industrial Relations (Industrial Court) Amendment Act 2016* on 8 December 2016.

Name	Held Office		Remarks
	From	To	
Tabbaa, Innam ¹	8 December 2016	30 March 2017	Retired on 20 April 2017
Kite SC, Peter	3 April 2017	Current	

¹ Appointed as Acting Chief Commissioner (under the Act)

APPENDIX 5

The Presidents of the Industrial Relations Commission of New South Wales

Name	Held Office		Remarks
	From	To	
Cohen, Henry Emanuel	1 April 1902	3 July 1905	Died 5 January 1912
Heydon, Charles Gilbert	4 July 1905	December 1918	Died 6 March 1932
Edmunds, Walter	August 1920	6 January 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	August 1920	July 1926	President, Board of Trades Died 18 July 1942
Piddington, Albert Bathurst	July 1926	19 May 1932	Died 5 June 1945
Browne, Joseph Alexander	20 June 1932	30 June 1942	Died 12 November 1946
Taylor, Stanley Cassin	28 December 1942	31 August 1966	Died 9 August 1982
Beattie, Alexander Craig	1 September 1966	31 October 1981	Died 30 September 1999
Fisher, William Kenneth	18 November 1981	11 April 1998	Died 10 March 2010
Wright, Frederick Lance	22 April 1998	22 February 2008	Retired
Boland, Roger Patrick	9 April 2008	31 January 2014	Retired and continued as Acting Judge until January 2015
Walton, Michael John	3 February 2014	7 December 2016	Appointed Justice of the Supreme Court of NSW.

6. APPENDICES CONT.

APPENDIX 6

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

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

The position was created:

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

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

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

APPENDIX 7

Industrial Registrars of the Industrial Relations Commission of New South Wales

Name	Held Office		Remarks
	From	To	
Addison, George Campbell	1 April 1902	1912	Returned to the Bar. Appointed Chief Industrial Magistrate 1917.
Holme, John Barton	1912	9 February 1914	Appointed 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 July 1918	30 June 1924	Appointed Undersecretary, Office of the Minister for Labour and Industry 1 July 1924.
Webb, Alan Mayo	1 September 1924	19 June 1932	Appointed Judge of the Industrial Commission 20 June 1932.
Wurth, Wallace Charles	1932	1936	Appointment to Public Service Board; Appointed Chairman of the Public Service Board in 1939.
Ebsworth, Samuel Wilfred	1936	1947	Retired.
Kelleher, John Albert	1947	13 May 1955	Appointed Undersecretary and Industrial Registrar, Department of Labour and Industry and Social Welfare 1949. Appointed Judge of Industrial Commission 16 May 1955.
Kearney, Timothy Joseph	1955	1962	Appointed Undersecretary, Department of Labour and Industry.
Whitfield, John Edward	1962	1968	Appointed Executive Assistant (legal) Department of Labour and Industry; Later appointed as Deputy Undersecretary Department of Labour and Industry.
Fetherston, Kevin Roy	3 June 1968	1977	
Coleman, Maurice Charles Edwin	29 April 1977	1984	Retired.

6. APPENDICES CONT.

Name	Held Office		Remarks
Buckley, Anthony Kevin	23 January 1984	30 March 1992	Appointed as Commissioner, Industrial Relations Commission 31 March 1992.
Walsh, Barry ¹	19 February 1992	15 July 1994	Appointed as Commissioner, Water Conservation and Irrigation Commission.
Szczygielski, Cathy ²	18 July 1994	4 November 1994	Returned to position of Deputy Registrar, Industrial Court.
Williams, Louise ³	7 November 1994	16 August 1996	Returned to position of Deputy Registrar, Land & Environment Court.
Robertson, Gregory Keith ⁴	31 March 1992	26 October 1999	To private practice.
McGrath, Timothy Edward	27 October 1999	9 August 2002	Appointed Assistant Director General, Court and Tribunal Services, Attorney General's Department 12 August 2002.
Grimson, George Michael	22 August 2002	18 December 2014	Retired.
Hourigan, Lesley ⁵	19 December 2014	13 March 2015	Returned to position of Deputy Registrar Industrial Court.
Wiseman, James ⁶	16 March 2015	October 2016	Returned to Local Court.
Morgan, Melinda	31 October 2016	Still in office	

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

² Appointed as Acting Registrar and CEO, Industrial Court (under the Industrial Relations Act 1991 ('the 1991 Act')) 19 Feb 1992, substantively appointed to that position 6 May 1993.

³ Acting appointment as Registrar and CEO, Industrial Court (under 1991 Act) pending recruitment

⁴ Appointed as Registrar and CEO, Industrial Court (under 1991 Act)

⁵ Held the position of Registrar, Industrial Relations Commission under 1991 Act – under the Act became Registrar and Principal Courts Administrator, Industrial Relations Commission and Commission in Court Session (2 September 1996).

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

APPENDIX 8

Brief History of the Industrial Relations Commission of New South Wales

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

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

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

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

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

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

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On any reference or application to it the Commission could make awards fixing rates of pay and working conditions, determine the standard hours to be worked in industries within its jurisdiction and had power to determine any "industrial matter". The Commission had authority to adjudicate in cases of illegal strikes, lockouts or unlawful dismissals and could summon persons to a compulsory conference and hear appeals from determinations of the subsidiary industrial tribunals. The former Boards, which had not exercised jurisdiction since 1918, continued in existence but as Conciliation Committees with exclusive new jurisdiction in arbitration proceedings.

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

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

The membership of the Commission was increased to four by the *Industrial Arbitration Act 1936*, and certain provisions regarding appeals were altered under this Act. The *Industrial Arbitration (Amendment) Living Wage Act 1937* repealed the Commission's power of determining a wage and provided for the adoption of a basic wage and fixed loadings determined by the Commonwealth Court of Conciliation and Arbitration.

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

The *Industrial Arbitration Act 1940* consolidated all previous Acts and refined and rationalised the procedures and operation of the Industrial Commission. The Act provided for the establishment of an Industrial Commission, Conciliation Committees, Conciliation Commissioners, Special Commissioners, Industrial Magistrates Courts and the Industrial Registrar.

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

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

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

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

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

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

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

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

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

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

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

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

On 8 December 2016 the *Industrial Relations (Industrial Court) Amendment Act 2016* commenced. The Act abolished the Industrial Court and the work of that Court was transferred to the Supreme Court. The Offices of President, Vice-President and Deputy President were also abolished. The office of Chief Commissioner was created and that office exercises all of the functions formerly exercised by the President (except for the functions relating to the former Industrial Court). The members of the Commission continue to be judicial officers for the purposes of the Judicial Officers Act 1986 and the Chief Commissioner, as head of the jurisdiction, is an official member of the Judicial Commission.

