



Appearing in the Commission: The Basics

The Honourable Justice David Chin, Vice President
Commissioner Janine Webster

26 March 2025



Introduction to the Commission

Who we are



Reestablished Industrial Relations Court



Removal of the wages cap



Mutual Gains Bargaining Framework



New objectives of the IR Act: Fiscal position and outlook of the Government; and strategies to attract and retain staff



Federal underpayment jurisdiction

Award making principles



State Wage Case 2024 (No 3)
[2024] NSWIRComm 19



State Wage Case 2024 (No 4)
[2024] NSWIRComm 25

What sets us apart?

Specialised expertise in industrial matters

Substantial merits not technicalities

User friendly: less formal - *but not informal*



Civil Procedure Act 2005: s 56(1) & (3):


The “overriding purpose” is to facilitate the **just, quick and cheap** resolution of the real issues in the proceedings.

“A party to civil proceedings is under a duty to assist the court to further the overriding purpose and, to that effect, to participate in the processes of the court and to comply with directions and orders of the court”.

Failing to follow directions



Industrial Relations Act 1996: s 179



A person in contempt of the Commission is guilty of an offence. \$5,500 fine (\$55,000 for a corporation) or 6 months imprisonment

Comply with orders

Ask the Commission

Seek variation of orders **before** breaching them and as soon as you become aware you cannot comply.

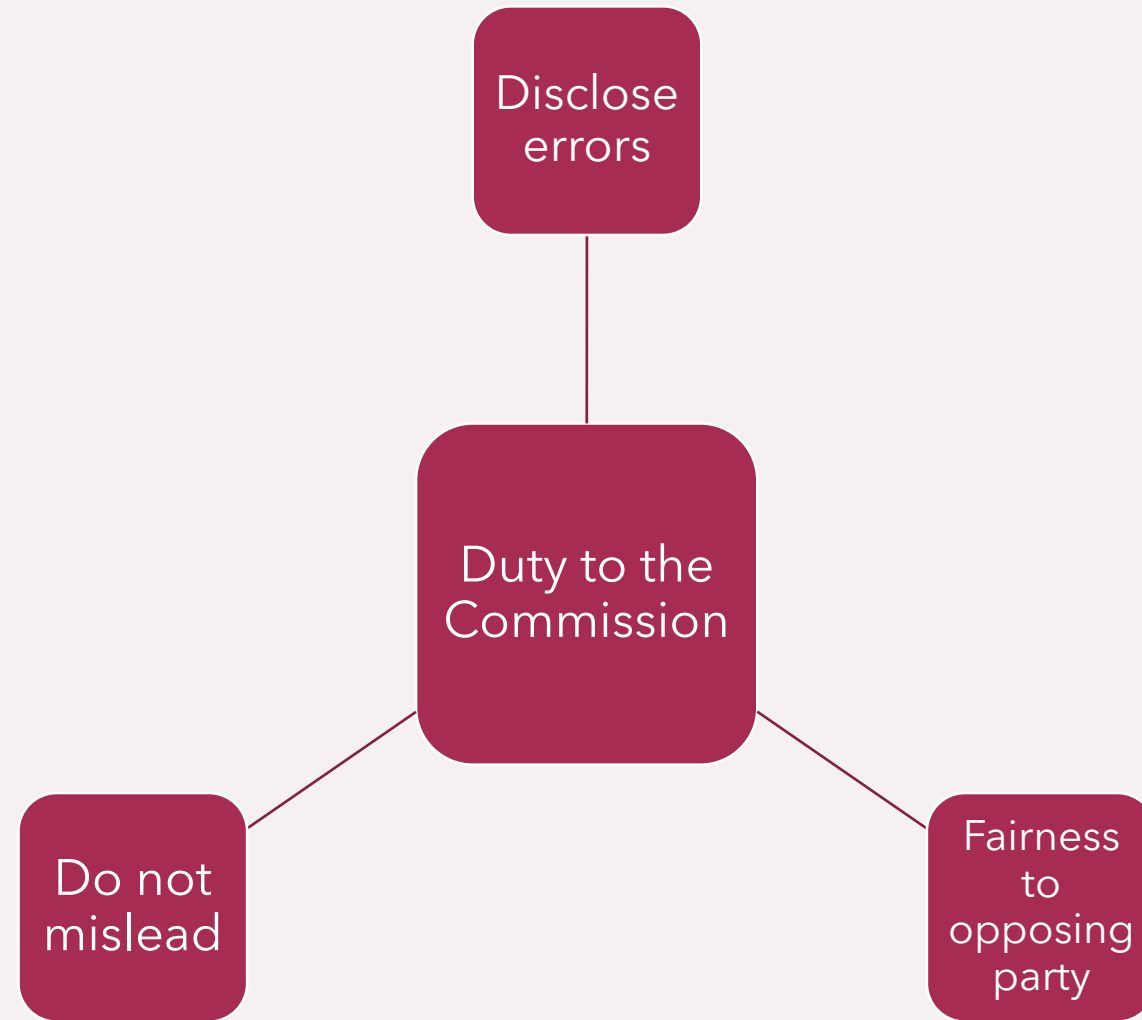
Seek Consent

Always seek the consent of the other side to any request to vary orders. Copy the other side into all correspondence with the Commission.

Attend the listing unless it is vacated

Attendance is required unless the Commission vacates the listing.

Duties





Be respectful to everyone in the process

- Call participants by their surnames.
- Don't argue with your opponent at the bar table – address the Judge or Commissioner
- Don't interrupt or raise your voice.
- No sledging at the bar table. You can always address the issues in reply.

The Four Horsemen

1. Criticism
2. Contempt
3. Defensiveness
4. Stonewalling





Conciliations



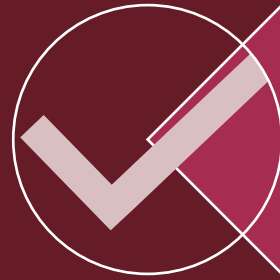
Opening statement



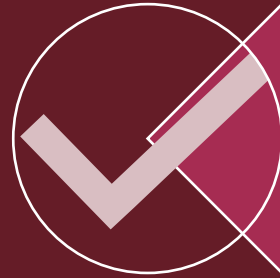
Negotiation



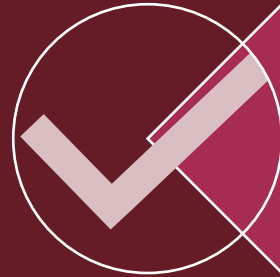
A good advocate



Is persuasive



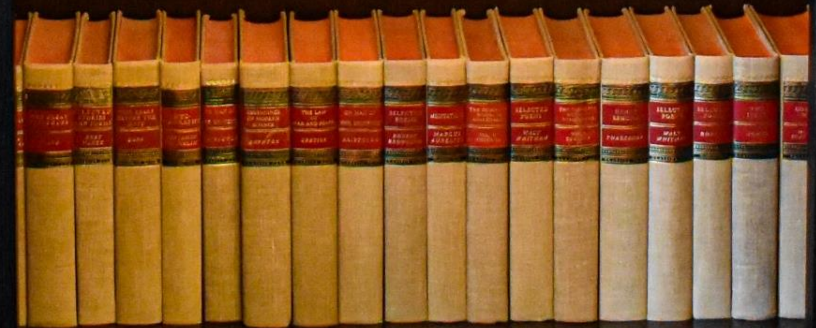
Helps their client
understand their case



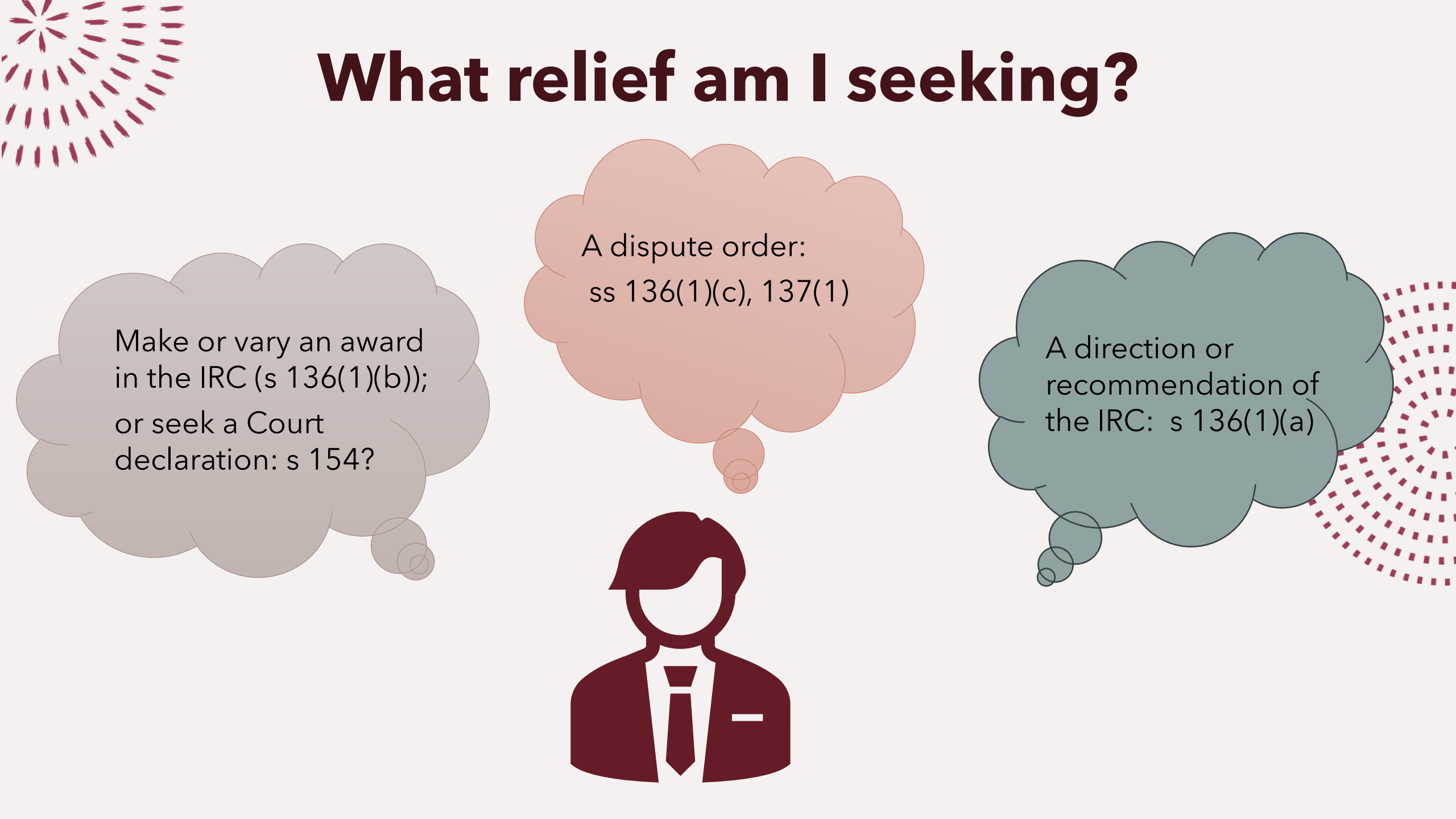
Helps their client
understand what is in
their interest



Journey towards arbitration



What relief am I seeking?



Make or vary an award
in the IRC (s 136(1)(b));
or seek a Court
declaration: s 154?

A dispute order:
ss 136(1)(c), 137(1)

A direction or
recommendation of
the IRC: s 136(1)(a)



Arbitration

1. Commission not bound by the rules of evidence
2. Preparing witnesses statements
3. Tender exhibits
4. Submissions

"In sum, insofar as a witness recalls actual words used then the witness should state those words in direct speech. Insofar as the witness recalls only the substance of what was said then they can give evidence accordingly. Such evidence can be in the form of direct speech – after explaining that it is recording only the substance, effect or gist of what was said – or in indirect speech.

The aim should be to capture the best recollection of the witness with a level of detail appropriate and relevant for the issue in the case, doing so in a way that is not misleading with respect to the level of detail that the witness remembers, and which meaningfully captures what the witness remembers in a way that the witness has expressed and can explain."

- *Wild v Meduri* [2024] NSWCA 230 at [356] (Kirk JA, Bell CJ agreeing at [254]).

Gen AI Practice Note No. 33

Commencement Date: The Practice Note will commence on 19 February 2025 and applies to all proceedings from that date.

Scope: It applies to all proceedings before the Commission, including the Commission in Court Session.

Generative AI: Described as AI capable of creating new content (text, images, sounds) based on patterns from training data.

Acceptable uses of Gen AI

Permitted

- Gen AI can assist with tasks such as drafting documents, summarising information, generating chronologies, indexes, witness lists, preparing briefs, and summarising documents and transcripts.

Risks and Limitations

- Hallucinations
- Data quality
- Confidentiality

Prohibited

- Gen AI must not be used to generate content for affidavits, witness statements, character references, or any material intended to reflect a witness's evidence or opinion.

Specific Prohibitions and Requirements

- Non-Publication Orders
- Verification
- Expert Reports

Ethical and Professional Obligations

Professional
Responsibility

Disclosure



**PAY IT
FORWARD**





Q&A