



## **Industrial Relations Commission New South Wales**

### **UNION LAWYERS AND INDUSTRIAL OFFICERS NSW CONFERENCE 2026**

**25 February 2026, Sydney Trades Hall**

### ***THE MODERN IRC AND THE ROLE OF INDUSTRIAL ORGANISATIONS***

**Justice David Chin, Vice President of the Industrial Relations  
Commission of NSW**

#### **Introduction**

- 1 Good morning and thank you for the invitation to speak with you today. I acknowledge that we are meeting on the lands of the Gadigal people of the Eora Nation, and I pay my respects to Elders past, present and emerging.
- 2 I thank the Executive of the Union Lawyers and Industrial Officers of New South Wales for the invitation to speak today.
- 3 I am particularly delighted to be speaking on the same stage on which I first stood as a young legal officer at the Labor Council of NSW (as it was then known) on a Thursday night in 1996 at the weekly assembly of “the workers’ parliament”.
- 4 The theme of the 2026 ULIO Conference is “The Importance of Unions in the Modern World.”
- 5 The question of the role of unions in the modern world is an important one. The answer to that question, at least in this state, is embedded in the very architecture of the New South Wales industrial relations system.
- 6 From its inception, this state’s industrial system has depended on the participation of representative bodies of employees and employers to resolve

industrial disputes through a structured process of conciliation and, where necessary, arbitration. That premise is reflected in the *Industrial Relations Act 1996* (NSW): s 3(d). One of the Act's objects is "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". That object is not a recent innovation. It was embedded from the inception of the IRC in section 2 of the *Industrial Arbitration Act 1901* (NSW).

- 7 The Industrial Court and the Industrial Relations Commission of NSW together occupy a unique place in Australia's legal and industrial history. The Commission is the oldest continuous tribunal of compulsory conciliation and arbitration in the world. The Court, formally known as the NSW Court of Industrial Arbitration, held its first sitting on 16 May 1902.
- 8 The Commission will be celebrating its quasiquicentennial (125<sup>th</sup> anniversary) in 2027.
- 9 The statutory scheme in 1901 conferred powers to register and incorporate industrial organisations,<sup>1</sup> make and enforce agreements,<sup>2</sup> determine industrial disputes,<sup>3</sup> and enforce awards.<sup>4</sup> Even the definition of an "industrial dispute" was framed in representative terms as "matters arising between an employer or industrial union of employers on one part, and the industrial union of employees or trade-union and includes any dispute arising out of an industrial agreement".<sup>5</sup>
- 10 Although the legislative framework has changed through subsequent reform, the underlying statutory purpose has remained constant. Industrial matters and disputes are to be ventilated primarily by representative bodies before the

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<sup>1</sup> See *Industrial Arbitration Act 1901* (NSW) ss 4 and 5.

<sup>2</sup> *Ibid* ss 13,14 and 15.

<sup>3</sup> *Ibid* s 26.

<sup>4</sup> *Ibid* ss 28 and 37.

<sup>5</sup> *Ibid* s 2.

Commission, and resolved through conciliation and, where necessary, arbitration in accordance with the *Industrial Relations Act*.

- 11 Since the reconstitution of the IRC and the re-establishment of the Industrial Court in July 2024, recent decisions of the Commission and the Court reflect the continuing centrality of those processes in the resolution of industrial matters involving unions and employers.
- 12 I want to highlight for you the modern industrial architecture that the reconstituted IRC has been building and continues to shape; and emphasise the importance of the role of industrial organisations within that evolving structure.
- 13 Following the commencement of the *Industrial Relations Amendment Act 2023* (NSW) in July 2024, the Industrial Court of New South Wales was re-established as a superior court of record after its abolition in 2016. The Court thereby regained jurisdiction to enforce awards, address contraventions of dispute orders, make declarations of right and hear prosecutions for offences under the *Work Health and Safety Act 2011* (NSW).
- 14 This address will be in two parts. Firstly, I will cover the recent notable decisions of the reconstituted Commission, including major arbitrated cases for pay increases, the setting of award making and award review principles, as well as decisions dealing with industrial action and our WHS criminal jurisdiction.
- 15 Secondly, I will address the institutional achievements of the Commission as well as the considerable challenges posed by the recent expansion in its jurisdiction and workload.

## **Part 1: Major Decisions of the Industrial Relations Commission**

### ***Wage fixing and major arbitrated pay cases***

#### *State Wages Cases*

- 16 I will set out some brief context to the 2024 and 2025 State Wage Cases in order to appreciate their significance.
- 17 In 2011, the New South Wales Government imposed a public sector wages cap through the enactment of section 146C of the *Industrial Relations Act* and the *Industrial Relations (Public Sector Conditions of Employment) Regulation 2011*. That regime constrained the Commission's capacity to increase public sector wages beyond 2.5% per annum, unless satisfied that the increase was funded by employee-related cost savings or productivity improvements.
- 18 During the operation of the wages cap between 2011 and 2023, the Wage Fixing Principles had limited practical application in the public sector, save for the Equal Remuneration Principle, which prevailed over the wages cap.<sup>6</sup> Subsequently, wage outcomes in the public sector were only infrequently the subject of substantial negotiation or arbitration. In many cases, the maximum permissible increase was offered by the Government and accepted by unions by consent, with little occasion for the Commission to exercise its arbitral function. A notable exception to this was the arbitration run by the Public Service Association under the Equal Remuneration Principle which resulted in substantial increases in rates of pay for school administrative and support staff across New South Wales which rectified gender based undervaluation.<sup>7</sup>
- 19 The repeal of section 146C by the 2023 amendments restored the Commission's broad arbitral discretion in relation to public sector wages. That restoration has given renewed importance to the wage-setting principles and

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<sup>6</sup> Clause 5(b) of the former Industrial Relations (Public Sector Conditions of Employment) Regulation 2014.

<sup>7</sup> *Crown Employees (School Administrative and Support Staff) Award* [2019] NSWIRComm 1082.

required their reconsideration to ensure their relevance in a post-wage cap environment.

- 20 The 2024 State Wage Case was the first state wage case to be determined after the repeal of the wages cap and after the reconstitution of the IRC. The parties in the 2024 State Wage Case all submitted that there should be changes to the principles.
- 21 Pursuant to section 51 of the *Industrial Relations Act*, in *State Wage Case 2024 (No 3)* [2024] NSWIRComm 19, the Full Bench reworked the Wage Fixing Principles and renamed them the Award Making Principles which operate to make and vary awards.
- 22 There were significant changes made to the Award Making Principles. I highlight two of them.
- 23 Firstly, the Full Bench clarified the nature of the Commission's task when making or varying awards. The Commission's latitude in the making or variation of awards, although considerable, is confined by the touchstone statutory requirement to set "fair and reasonable conditions of employment": s 10 of the *Industrial Relations Act*. Applicants seeking to make or vary an award bear an onus to justify a departure from the status quo.
- 24 The Full Bench recognised that this onus is apt to be misunderstood if expressed as a universally applicable rebuttable presumption that existing awards are fair and reasonable. Are the wage rates set by an award to be presumed to be fair and reasonable at a time when inflation is high and their real value has fallen substantially since they were last set by the Commission? Is a condition in an award which has been changed by subsequent legislative development necessarily to be presumed to still be fair and reasonable even if it no longer operates in a way originally intended by the Commission or the parties?

- 25 The Full Bench ended what had become a hard and fast practice of applying this presumption, and clarified that the proper approach is to ask whether the applicant has discharged the underlying persuasive onus of establishing that the touchstone standard in section 10 is met.
- 26 Secondly, the Full Bench also addressed the absence of any express mechanism in the former Wage Fixing Principles to maintain the real value of award rates of pay by reference to changes in the cost of living and inflation. We held that the Principles should be amended to include such a mechanism, and that the appropriate means was by setting an annual adjustment for public sector awards.
- 27 We concluded that a paid rates adjustment would be available, on application, where an award's nominal term has expired, no wage increase has been received for at least 12 months, each union party provides a no extra claims undertaking, and bargaining has occurred without producing a wage outcome.
- 28 The purpose of the mechanism is to avoid undue delay in maintaining real wages by reference to movements in the cost of living. Any adjustment remains subject to the mandatory considerations in section 146(2) of the *Industrial Relations Act*, including the state of the economy and the Government's fiscal position and outlook.
- 29 Although this approach was first reflected in the Wage Fixing Principles in the 2024 State Wage Case, we determined that the mechanism should not take immediate effect. Its implementation was deferred to the 2025 State Wage Case so that the parties could be heard on whether the mechanism should operate.
- 30 In *State Wage Case 2025 (No 2)* [2025] NSWIRComm 33, the Full Bench considered the parties' submissions on whether, and in what form, the Award Making Principles should be amended. We resolved to make a number of substantive, though confined, amendments to the Principles. I highlight two of the significant changes.

- 31 Firstly, the Full Bench confirmed that the paid rates adjustment mechanism to maintain the real value of award rates of pay by reference to changes in the cost of living and inflation should be retained. The purpose of the mechanism is to provide an efficient, structured and non-automatic means by which award rates may be maintained in real terms over time. The Commission is to determine, once each year, a single paid rates adjustment for eligible public sector awards.
- 32 The Full Bench also addressed the restrictive nature of the long-established tests in the Principles, specifically the Work Value Principle. We amended the “strict test” concerning whether changes in work value will be recognised and expanded its text to address how changes in work value ought to be recognised for work that is not done by all employees in a classification or not done all the time by all employees in a classification. Specifically, we replaced the requirement to establish a change sufficient to warrant the creation of a new classification or an upgrade to a higher classification with a requirement to provide a sufficiently compelling reason to increase remuneration to reflect the changed value of the work.

### *The FBEU Case*

- 33 The next case that I will turn to is the first arbitrated case determined by the Commission in the post-wages cap era: *Fire Brigade Employees’ Union v Industrial Relations Secretary (on behalf of Fire and Rescue NSW)* [2025] NSWIRComm 1063.
- 34 The proceedings were commenced by an application from the Fire Brigade Employees’ Union for the making of three new awards covering approximately 3,500 permanent and 3,200 retained firefighters. The FBEU pressed for wage and allowance increases totalling 20% over three years comprising of a 17% uplift said to reflect past and projected changes in the cost of living, and a further 3% said to recognise the increased work value associated with Road Crash Rescue work performed by firefighters.

- 35 The Industrial Relations Secretary, on behalf of the Government, proposed pay increases of 9% over three years, in the form of 3% annual increases.
- 36 In August 2025, the Full Bench, comprising of President Taylor, Commissioner McDonald and myself, awarded an increase of 14% over three years. We reaffirmed that, in addressing changes in the value of money, the Commission sets increases broadly capable of absorbing changes in the cost of living over time, and that a one-off “reset” may be appropriate in extraordinary circumstances where real wages have materially declined, as occurred following the COVID-19 period. We also found that a special case had been made out in respect of Road Crash Rescue work, concluding that the existing awards did not adequately reflect the contemporary rescue competencies required of all firefighters.

#### *The Psychiatrists’ Case*

- 37 Another major case was the arbitration of an interim award for psychiatry staff specialists employed in the New South Wales public health system: *Health Secretary, Ministry of Health v Australian Salaried Medical Officers’ Federation (New South Wales) (No 2)* [2025] NSWIRComm 27.
- 38 The proceedings arose following an industrial dispute involving the mass resignations of 180 psychiatry staff specialists in furtherance of an industrial demand for a 25% salary increase. The Commission acted on its own initiative to arbitrate the dispute, with the cooperation of the Health Secretary and the Australian Salaried Medical Officers’ Federation (NSW).
- 39 ASMOF sought the making of a 12-month interim award, the principal claim being a temporary 25% attraction and retention allowance. The Health Secretary opposed the application in its entirety.

40 The Full Bench concluded that a Special Case had been established. The evidence demonstrated an acute shortage of psychiatry staff specialists, with serious consequences for the delivery of mental health services in the public health system and for the working conditions of psychiatrists. Comparative remuneration evidence also supported the conclusion that pay relativities were contributing to the shortage.

41 In those circumstances, we made an interim award providing a temporary 10% attraction and retention allowance for a period of 12 months. When combined with an existing 10% allowance, the interim measure resulted in a 20% uplift for psychiatrists in that period.

### *Upcoming Major Arbitrations*

#### **Nurses**

42 In mid-December last year, a Full Bench comprising President Taylor, Commissioner Webster and myself reserved our decision in relation to the arbitrated pay claims concerning three expired awards applying to nurses and midwives employed by the Secretary of the Ministry of Health.

43 The Nurses and Midwives Association NSW on behalf of its members advanced a number of claims, including, and most prominently, a 35% increase to salaries and salary-related allowances. The Secretary, by contrast, seeks an increase of 9% to salaries and salary-related allowances over a three-year period.

44 The matter is substantial in scale. The Full Bench received about 22,000 pages of documentary material, including evidence from 69 lay and expert witnesses, and has heard cross-examination of 45 witnesses.

#### **Doctors**

45 The Doctors arbitration is likely to surpass even the Nurses case in terms of the volume of documentary evidence, the number of witnesses and length of hearing. It is presently being heard before Acting Justice Kite, Senior Commissioner Constant and myself.

- 46 The matter involves approximately 91 claims relating to the relevant industrial instruments and affects approximately 17,000 employed medical practitioners within NSW Health.
- 47 The proceedings concern the proposed consolidation and replacement of six existing awards covering medical practitioners employed by NSW Health, including staff specialists, junior medical officers, career medical officers, and medical and clinical superintendents.
- 48 ASMOF seeks, among other things, consolidation of the existing awards into a single instrument, a 30% salary increase in the first year, conversion of staff specialists from a salaried to a wages-based model. By contrast, the Secretary proposes the making of two awards, one applying to staff specialists and the other to all other employed medical officers. The proposal includes increases in base wages and wages-based allowances totalling 9% over three years, together with a 1% increase in superannuation over two years.

#### **Visiting Medical Officers**

- 49 In April 2025, the Minister for Industrial Relations requested that the President nominate a judicial member of the Commission for appointment as arbitrator to determine the terms and conditions of work performed by Visiting Medical Officers (VMOs). The request followed an application by the Australian Medical Association (NSW) Limited (AMA) under s 89 of the *Health Services Act 1997* (NSW).
- 50 I was subsequently appointed as the arbitrator. The AMA and the Ministry of Health have engaged in extensive conciliation. The matter is now listed for arbitration before me commencing in April and has been allocated 41 hearing days. It will rival the Doctor's arbitration in scale.

## ***Industrial Action***

51 Over the past year, several decisions of the Commission and the Court have highlighted the bounds of permissible industrial action, the consequences of taking unlawful industrial action and the central role of conciliation and arbitration in the resolution of disputes under the *Industrial Relations Act*.

## ***Paramedics***

52 In *Health Services Union v Health Secretary (NSW Ambulance)* [2025] NSWIRComm 1014, the underlying proceedings arose from a longstanding dispute regarding staffing levels and roster practices within NSW Ambulance. The first application for leave to appeal concerned the exercise of the Commission's discretion to make dispute orders in response to proposed industrial action by members of the Health Services Union.<sup>8</sup> The second application for leave to appeal concerned ancillary directions made in aid of the dispute resolution process, including directions to correct misleading communications issued by the union.<sup>9</sup>

53 I will focus on the first leave to appeal application. The Full Bench rejected the contention advanced by the HSU that in making the dispute orders at first instance the Commission had proceeded on the erroneous principle that the *Industrial Relations Act* does not tolerate industrial action at all during conciliation.

54 The Full Bench observed, among other propositions, that it is uncontroversial that the *Industrial Relations Act* "does not make industrial action of itself unlawful, absent dispute orders", and that "there is no presumption that upon industrial action occurring, dispute orders will be made."<sup>10</sup>

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<sup>8</sup> The first leave to appeal application concerned *Health Secretary (NSW Ambulance) v Health Services Union NSW & Anor* [2024] NSWIRComm 12.

<sup>9</sup> The second leave to appeal application concerned *Health Secretary (NSW Ambulance) v Health Services Union NSW & Anor (No 2)* [2024] NSWIRComm 18.

<sup>10</sup> *Health Services Union v Health Secretary (NSW Ambulance)* [2025] NSWIRComm 1014 at [13].

- 55 In exercising the discretion to make dispute orders, the *Industrial Relations Act* encourages employers and unions to utilise the expertise of the Commission to resolve their differences through conciliation and, where necessary, arbitration. The Commission is the principal statutory organ for that purpose.<sup>11</sup>
- 56 The takeaway lesson is that the *Industrial Relations Act* accommodates industrial action in appropriate, though limited, circumstances. Where such action undermines conciliation, is contrary to the public interest, or entrenches rather than advances resolution of a dispute, those considerations will weigh in favour of the Commission exercising its discretion to make dispute orders.

### *Doctors*

- 57 In *Health Secretary, Ministry of Health v Australian Salaried Medical Officers' Federation (New South Wales)* [2025] NSWIRComm 5 the IRC had to remind parties of the consequences of trying to take direct action while at the same time availing themselves of the Commission's dispute resolution processes. This case was broadly interrelated with the psychiatrists' dispute to which I referred earlier (*Health Secretary, Ministry of Health v Australian Salaried Medical Officers' Federation (New South Wales) (No 2)*). The Commission, on its own initiative, commenced arbitrating a claim for an attraction and retention allowance, against the background of mass resignations by psychiatrist staff specialists in December 2024.
- 58 During the time of that arbitration hearing, on 1 April 2025, the Commission made dispute orders requiring ASMOF and its members to cease organising or taking industrial action for a period of three months in light of proposed strike action. The matter was urgently relisted shortly thereafter before Acting Justice Kite, Senior Commissioner Constant and myself to address compliance with those orders and the continuation of the arbitration.

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<sup>11</sup> *Health Secretary, Ministry of Health v NSW Nurses and Midwives' Association* [2024] NSWIRComm 3 at [16]-[21].

- 59 The Full Bench reaffirmed the applicable principles which make clear that the *Industrial Relations Act* establishes the Commission as the principal organ for the resolution of industrial disputes, with disputes to be addressed through conciliation and, where necessary, arbitration.<sup>12</sup>
- 60 We also referred to the longstanding principle and practice of the Commission that industrial parties will ordinarily be denied access to the Commission's arbitral powers while they are organising or taking industrial action. The Commission in its various iterations has regarded it to be inconsistent for a party to seek the benefit of arbitration whilst its members remain on strike.
- 61 ASMOF's non-compliance with the dispute orders disentitled it and its psychiatry staff members from continued access to the Commission's arbitral functions. The hearing dates for the psychiatrists' arbitration were vacated, and the hearing of that matter was delayed because of the union's failure to comply with the Commission's dispute orders.
- 62 The Full Bench thereby reaffirmed the principle that under the NSW system unions can have arbitration or, in some circumstances, direct action, but they cannot have both.

### *Nurses*

- 63 In November 2025, I delivered a judgment concerning the deliberate contravention of three sets of dispute orders made by the Commission, which required the NSW Nurses and Midwives Association to cease organising and refrain from industrial action: *Secretary, Ministry of Health v New South Wales Nurses and Midwives' Association* [2025] NSWIC 20. Notwithstanding those orders, industrial action continued over a sustained period. I imposed four separate penalties in the total sum of \$130,000 pursuant to section 139(3)(e) of the *Industrial Relations Act*.

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<sup>12</sup>See *Secretary, Ministry of Health v New South Wales Nurses and Midwives' Association* (2022) 320 IR 249 at [32] to [59] (per Walton J).

- 64 In determining the appropriate penalty, I considered the High Court’s decision in *Australian Building and Construction Commissioner v Pattinson* (2022) 274 CLR 450; [2022] HCA 13. In *Pattinson*, the High Court determined that the purpose of civil penalties imposed under the *Fair Work Act 2009* (Cth) was deterrence, and that the maximum penalty is not reserved for the most serious examples of contravening conduct and could be imposed on an objectively less serious contravention where the demands of deterrence required this.
- 65 In the *Nurses* case, while I accepted that civil penalties are imposed primarily for deterrence, I also observed that the application of *Pattinson* in this jurisdiction is qualified by the statutory context of section 139 of the *Industrial Relations Act*. Unlike section 546 of the *Fair Work Act 2009*, section 139 operates within a scheme designed not only to deter contraventions, but to assist the Commission in performing its functions of resolving industrial disputes through a process of conciliation and arbitration in accordance with the objects of the *Industrial Relations Act*.
- 66 I accepted that, in imposing penalties for contravention of dispute orders, the Court must consider not only deterrence, but also whether the underlying industrial dispute remains a “live issue” requiring intervention to restore industrial order and promote the resolution of the underlying industrial dispute such as by imposing civil penalties specifically to deter further industrial action.
- 67 In the post-wage cap era, I emphasised that there is no excuse (if ever there was one) for attempting to resolve disputes by taking industrial action in defiance of the Commission's dispute orders when parties now have access to an impartial, fully restored and adequately endowed arbitration system.
- 68 We are now in a new era. Industrial action cannot be justified on the basis that the Commission lacks the capacity to determine wage claims. The *Industrial Relations Act* intends for disputes to be resolved through the Commission’s processes, not in defiance of them.

## ***Award Review Principles***

- 69 Last year, the Commission also initiated the 2025 Award Review Principles Case pursuant to section 19(1) of the *Industrial Relations Act* which requires that the Commission review each award within its jurisdiction every three years: see *Award Review Principles Case 2025* [2025] NSWIRComm 1089. Section 19(2) stipulates that the purpose for the award review is to modernise awards, to consolidate awards relating to the same industry and to rescind obsolete awards.
- 70 The principles governing award reviews under section 19 had not been reviewed since they were made in 1998.
- 71 The Commission commenced proceedings to consider whether the Commission’s award review principles remain fit for purpose. The submissions of the parties demonstrated common ground that an update was required.
- 72 After inviting and considering submissions from the parties, the Full Bench concluded that the 1998 principles required updating in several respects, notably that:
- (1) Award reviews are Commission-led proceedings directed to modernisation and ensuring awards are not less beneficial than existing conditions of employment, including those extended by Pt 6-3 of the *Fair Work Act*.
  - (2) An award review is not a vehicle for parties to pursue substantive reductions in or improvements to wages or conditions, other than by consent or to reflect statutory or test-case minima. Where awards apply to “like employees”, the Commission is required to consider consolidation or standardisation to promote productivity and efficiency, but only where this can be achieved without contested substantive change.

- (3) If, during a review, the Commission considers that substantive changes are necessary but contested, those issues must be identified in the review decision and may be referred, by recommendation, for determination in subsequent arbitral proceedings.
- (4) The principles emphasise plain-language drafting and structural consistency, including the use of a standard award index.

73 I emphasise two points about the new award review principles.

74 Firstly, I highlight what they do *not* do. They do *not* permit any substantive reduction in conditions of employment.

75 Secondly, award reviews will be conducted by a process of *conciliation* not arbitration so conditions will not change without agreement. It is intended to be an exercise to improve the ability to understand and apply awards and, in the process, improve productivity that can give rise to a recommendation that the improvements should be recognised.

76 Among the issues raised in those proceedings was whether the Commission could, through the section 19 mechanism, implement the broader award modernisation contemplated by Recommendations 28 and 29 of the *Special Commission of Inquiry into Healthcare Funding*, convened by the Honourable Justice Richard Beasley and published in April 2025 (the Beasley Report).

77 Recommendation 28 proposed a comprehensive reform process for awards in the health sector directed by legislated objectives, including simplification and consolidation of instruments, updating awards to reflect current and anticipated service delivery and workforce needs, the setting of fair and reasonable terms and conditions of employment, completion within a reasonable but expeditious timeframe, and extension of the process to Visiting Medical Officers and associated determinations. Recommendation 29 of the report recognised that legislative amendment might be required to enable such a process to be undertaken by the Commission.

- 78 In the 2025 Award Review Principles Case, the Full Bench concluded that section 19 does *not* empower the Commission to undertake the process proposed in the Beasley Report. The review function is directed to modernisation and consolidation; it does not authorise the Commission to determine substantive matters such as the setting of fair and reasonable terms and conditions of employment or the evaluation of anticipated workforce and service delivery needs. Nor does the Act presently contain the legislated framework of objectives contemplated by Recommendation 28.
- 79 Accordingly, we determined that if the comprehensive reform model described in Recommendation 28 is to be implemented in the manner proposed, legislative amendment of the kind identified in Recommendation 29 would be required.
- 80 The Government has not taken up the recommendation to enact legislative amendments to facilitate the type of review urged in the Beasley Report.<sup>13</sup>
- 81 In the absence of legislative reform, the Commission does not propose to apply section 19 of the *Industrial Relations Act* to engage in systematic reviews of the substantive terms and conditions in awards across the public sector. The Commission member conducting the award review process will not determine any contested issues involving substantive changes to terms and conditions of employment. The Commission will instead simply identify in the decision at the end of the review any contested issues involving substantive award changes that the Commission considers need to be addressed for the award to be properly modernised and which were not addressed by the review. The determination of contested issues of this kind, if any, will be for subsequent arbitral proceedings.
- 82 The Full Bench finalised and made the Award Review Principles pursuant to section 51(1) of the *Industrial Relations Act*, together with Practice Note No 13

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<sup>13</sup> NSW Health, *NSW Government Response to the Special Commission of Inquiry into Healthcare Funding* (Report, 4 December 2025).

and standard index, which now supersede the principles from 1998: *Award Review Principles Case 2025 (No 2)* [2025] NSWIRComm 1101.

### ***The Work Health and Safety Jurisdiction***

- 83 As I noted earlier, following the re-establishment of the Industrial Court on 1 July 2024, the Court assumed jurisdiction over from the District Court prosecutions for summary offences under the *Work Health and Safety Act*. Indictable offences, including industrial manslaughter under section 34C, remain within the jurisdiction of the District Court. The summary criminal jurisdiction now exercised by this Court constitutes a significant component of its workload.
- 84 The Court's work health and safety jurisdiction continues to expand. That growth must be considered in the context of the finite judicial resources presently available to hear and determine summary offences under the WHS Act.
- 85 As of 11 February 2026, 328 WHS prosecutions have been commenced, of which 288 remain on foot. 36 matters have been finalised and four are presently reserved. In addition, 84 pleas have been entered, comprising 49 guilty pleas and 35 not guilty pleas. The practical consequence is that the Court is managing a substantial and growing criminal caseload. I will return to this matter.
- 86 Justice Paingakulam has assumed primary responsibility for a significant proportion of this jurisdiction, drawing upon her Honour's extensive experience in criminal law. Since the Court's recommencement, her Honour has delivered 15 sentencing judgments in WHS matters and, where appropriate, imposed substantial penalties.

## *Sentencing Decisions*

87 I will briefly refer to a few of her Honour's notable decisions, in which some of the highest penalties imposed by this Court have been ordered.

- (1) In *New South Wales Resources Regulator v Endeavour Coal Pty Limited* [2025] NSWIC 16, Justice Paingakulam convicted Endeavour Coal of a category 2 offence under section 32 of the *Work Health and Safety Act* following a guilty plea. The offence arose when a mining train entered a drift while workers were undertaking roof-bolting work, resulting in one worker sustaining serious injury. Her Honour assessed the objective seriousness of the breach as mid-range. A fine of \$640,000 was imposed, reflecting a 20% discount for the guilty plea.
- (2) In *SafeWork NSW v Kellogg (Aust.) Pty Ltd* [2025] NSWIC 12, Justice Paingakulam convicted Kellogg of a category 2 offence under section 32 following a guilty plea. Two workers fell approximately four metres from an elevated work platform after it was struck by a reversing truck, sustaining serious injuries. The breach was assessed as mid-range in objective seriousness, and a fine of \$510,000 was imposed after a 25% discount for the early guilty plea.
- (3) In *SafeWork NSW v SFS Management (Aust) Pty Ltd* [2025] NSWIC 18, Justice Paingakulam sentenced SFS Management following guilty pleas to a category 2 offence under s 32 and an offence under s 42 for failing to consult and coordinate with another PCBU. A cool room roof collapsed as workers attempted to move a 200kg compressor, causing several workers to fall approximately 3.6 metres and suffer serious injuries. Her Honour assessed the offences as upper mid-range in objective seriousness and imposed fines of \$480,000 and \$20,000 respectively, after allowing a 25% discount for the early guilty pleas and an adjustment for totality.

## **Part 2: Achievements and Challenges for the Commission and the Court**

88 A key objective of the Commission and the Court has been to strengthen institutional capacity and efficiency so that disputes are resolved promptly and decisions delivered within a reasonable time. This objective is fundamental to maintaining confidence in the industrial justice system.

### ***More matters, more decisions and more assistance to industrial organisations***

#### *Matters*

89 The achievement of that objective is reflected in the finalisation of Commission and Court matters for 2024 and 2025. In 2024, the Commission finalised 680 matters, the Court finalised 5 civil matters and 2 criminal matters, resulting in a total of 687 matters. In 2025, those figures increased to 848 Commission matters, 38 civil matters in the Court, and 45 criminal matters, bringing the total to 936 matters. This represents a 36.24% increase in the number of matters finalised across the Commission and the Court.

#### *Decisions*

90 With our existing resources we are not only dealing with more matters; we are also handing down more decisions than ever before. Decisions handed down have increased from 107 to 177, a 65% increase.

#### *Assistance*

91 We have also implemented a number of initiatives since the reconstitution of the Commission to assist parties and to promote the timely and efficient resolution of disputes.

92 We have progressed toward paperless hearings, supported by amendments to our practice notes encouraging electronic court books and, in appropriate cases, electronic filing of materials. Major arbitrations, including the Nurses' and Doctors' matters, have been conducted paperless and have been livestreamed to enhance public access. The daily links are available on the Commission's website.

- 93 Throughout 2025 the Commission has conducted a series of in-person and online seminars addressing developments within our jurisdiction. These seminars, coordinated through the Education Committee, are directed to practitioners and industrial officers who regularly appear before the Commission. The next seminar will be presented by Justice Paingakulam, Commissioner O'Sullivan and Commissioner McDonald on Thursday, 12 March 2026 at 5:00 pm in Courtroom 4.1 of the Industrial Court. The seminar will address the recent changes to the Commission's workplace safety jurisdiction arising from the *Industrial Relations and Other Legislation Amendment (Workplace Protections) Act 2025*. I am told that the session will also be livestreamed via the Industrial Relations Commission's YouTube Channel and attendance details are available on the IRC website.
- 94 Since the Court's reconstitution, we have established three formal consultation user groups. The Industrial Relations Group brings together representatives of Unions NSW, employer organisations and Local Government NSW. The Industrial Court User Group includes representatives of the Bar Association, the Law Society, WHS regulators and community legal centres. The Local Government User Group comprises representatives of Local Government NSW and the relevant unions in that sector.
- 95 We remain keen to engage with union and employer representatives regarding recent legislative changes and potential improvements to our practice notes. Most recently, the Commission sought stakeholder feedback on a draft policy concerning exemptions under section 281 of the *Industrial Relations Act*, which sets out the framework by which the Industrial Registrar will assess such applications.
- 96 We have revised and issued a number of practice notes and procedural protocols to strengthen case management and clarify expectations of parties. These include updated directions for defended hearings, protocols concerning WHS permits and right of entry, and guidance on the use of audio-visual links. A presumption remains that hearings will ordinarily proceed in person, but structured provisions exist to facilitate remote participation where appropriate.

## **Challenges**

### *Monthly filings for WHS Prosecutions*

- 97 The volume and complexity of our work have expanded at a rate that will challenge the Commission's capacity to fulfil its core industrial dispute resolution function without the addition of substantial resources.
- 98 The work health and safety jurisdiction provides a clear illustration of the pressures to which I have referred.
- 99 The volume of WHS prosecutions in its first 6 months were filed a rate of nearly 2.5 times that historically dealt with by the District Court's specialist list. Since then, they have stabilised to be on average 16 a month, 90% higher than the District Court's last year.

### *Estimated backlog of the Commission*

- 100 As at the end of January 2026 there were 288 matters pending determination. Based on established data not guilty pleas are running at over 50%, but we expect that to decrease. We have done some calculations assuming conservatively that only 40% of those matters will proceed to defended hearings. In our experience defended prosecutions occupy, on average, 10 hearing days, and require at least six days on average for the preparation of judgment of the judge-alone trial. Guilty pleas lead to sentence proceedings which generally require one hearing day and one day for judgment. The existing backlog represents constitutes 1,459 judicial days (292 weeks or 6.6 judges working full-time for one year).
- 101 The Court has taken steps to respond.
- 102 The Court issued (and revised after stakeholder feedback) Industrial Court Criminal Practice Note No 1, with the objective of reducing delay between the issue of a summons by the Court on the application of the prosecutor and the entry of a plea by the defendant. The Practice Note provides that, where a plea of guilty is not entered within the prescribed timeframe, the matter will proceed

based on a plea of not guilty. That represented a significant procedural shift and was directed to improving the Court's efficiency and reducing listing delay.

- 103 The appointment of Acting Justice Bellew in October 2025 has materially assisted in managing the criminal list, drawing upon his Honour's experience in the Supreme Court's Common Law Division. However, presently, the President and I are also substantially engaged in the broader civil, industrial and appellate work of the Commission (noting that there are many Commission powers that can only be exercised by a Presidential member, and there are currently only 3 of us). The criminal jurisdiction is therefore presently managed by Justice Paingakulam and Acting Justice Bellew, plus about 20% of the time of the President and I, amounting to about 1.6 full time judges.
- 104 In contrast, the District Court previously had 3 judges largely devoted to dealing with *half* the number of WHS prosecutions that are currently before the Industrial Court.
- 105 We have done some work to calculate the extent to which that backlog is expected to grow, absent additional judicial resources.
- 106 There were 125 WHS prosecutions commenced between July and December 2024, and 189 prosecutions filed between January and December 2025. Those figures reflect a sustained and significant demand upon the Court's summary criminal jurisdiction. The figure of 16 per month appears to be a stable ongoing average.

#### *Projected workload of WHS prosecutions*

- 107 At 16 WHS matters per month, and on the same assumptions of 40% of those proceed to defended hearings, the resulting workload amounts to 1,003 judicial days each year. That is equivalent to 201 weeks, or 4.6 judicial years of work. Unless the President and I divert more time from our other work, such as hearing major industrial cases, until further resources are provided the backlog will continue to increase in the order 3 judicial years per year.

- 108 We are currently listing defended hearings in April and May 2027.
- 109 And the volume of WHS prosecutions is likely to increase. From 1 March 2026, trade unions will be empowered to commence WHS prosecutions.<sup>14</sup>
- 110 In addition, on 12 February 2026 Parliament passed the *Work Health and Safety Amendment (Digital Work Systems) Act 2026 (NSW)*. Relevantly, the Act inserts a new section 21A into the *Work Health and Safety Act*, introducing an express duty to ensure that the health and safety of workers is not put at risk from the use of digital work systems. The provision has not yet commenced, as no proclamation has been made.

#### *Lodgement in the Commission and Court*

- 111 The growth in filings is not confined to the criminal jurisdiction. Across the Commission's and the Court's broader civil jurisdiction, filings increased from 835 in 2024 to 933 in 2025. More broadly, total lodgements across the Commission's and the Court's civil and criminal jurisdictions in the first 10 months of 2024 were 980, increasing to 1,130 over the same period in 2025 (an increase in 15.3%). That increase comes after a 36% increase over the previous year for a combined increase in lodgements of over 50% since 2023.

#### *New Legislative Reforms to expand the Commission's and Court's jurisdiction*

- 112 The capacity of the Commission and the Court to deal with the backlog of WHS prosecutions as well as continue to exercise its industrial dispute resolution functions in a timely and efficient manner is also necessarily affected by the breadth of recent legislative reform.
- 113 Parliament has over the last 12 months conferred substantial new jurisdictions upon the Commission.
- 114 The *Industrial Relations Amendment (Transport Sector Gig Workers and Others) Act 2025* expands Chapter 6 of the *Industrial Relations Act* to extend

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<sup>14</sup> See *Work Health Safety Act 2011 (NSW)* ss102A, 102B and 102C.

the Commission's powers to certain gig workers. Further, it enhanced the Commission's powers to make contract determinations that extend into the contract chain and to address the termination of contract agreements along with expanded civil penalty powers. We are presently awaiting confirmation of the commencement date of these amendments.

- 115 The *Industrial Relations and Other Legislation Amendment (Workplace Protections) Act 2025*, which commenced on 13 October 2025, introduced a new anti-bullying and sexual harassment jurisdiction, amended the victimisation provisions in sections 209 and 210 of the *Industrial Relations Act*, and broadened the Commission's capacity to deal with work health and safety disputes.
- 116 The Commission may now make stop bullying orders in respect of workers in NSW non-national system workplaces. Applications may be brought by a worker or a union. Where satisfied that a worker has been bullied at work and there is a risk of continued bullying, the Commission may make any order it considers appropriate, including the award of damages up to \$100,000.
- 117 Similarly, the Commission may determine sexual harassment claims brought by workers who are non-national system employees. If conciliation is unsuccessful, the matter may proceed to arbitration, with power to make appropriate remedial orders, including damages of up to \$100,000.
- 118 Further, our existing victimisation jurisdiction was substantially expanded. Now a person can claim relief if they can establish that they suffered a detriment because they have a characteristic protected by the Anti-Discrimination Act (such as their race or gender), or because they made a complaint or enquiry about their employment.
- 119 In addition, Division 7A of the *Work Health and Safety Act* empowers the Commission to hear and determine disputes concerning WHS matters. Those disputes must be dealt with promptly by conciliation and, where necessary, arbitration, with powers to make orders for their resolution.

- 120 To support these reforms, the Commission issued Practice Notes 34 and 35 setting out the procedures for commencement, conciliation and arbitration under the bullying and sexual harassment jurisdictions.
- 121 As with any new jurisdiction, it takes time for applicants to become familiar with it. While there has not yet been a flood of applications, we expect in time these new powers will make up more than 20% of our work. In particular, the new WHS dispute jurisdiction, which is not limited to disputes involving NSW public sector or local government workers will grow once unions acting for workers in the federal system become familiar with its substantially enhanced attributes compared with the alternative of going to the FWC – including that we aim to list such disputes within 1-3 days and can move quickly to arbitration and the making of binding orders.
- 122 The *Workers Compensation Legislation Amendment (Reform and Modernisation) Bill 2025* revises and consolidates changes proposed in the earlier *Workers Compensation Legislation Amendment Bill 2025*. On 4 February 2026, Parliament passed a further amended iteration of that Bill, which was introduced as the *Workers Compensation Legislation Amendment (Reform and Modernisation) Bill 2026*. The Commission will have exclusive jurisdiction to determine certain types of workers compensation disputes, namely (subject to some exclusions) disputed psychological injury claims where the insurer disputes that there were certain types of alleged workplace conduct. The Commission will determine whether conduct alleged to have caused injury constituted bullying, excessive work demands, racial harassment or sexual harassment as defined, and whether the claim is met by the reasonable management action defence. The changes conferring jurisdiction on the Commission commence on 1 July 2026.
- 123 The reforms also expand the range of work capacity and return-to-work disputes referable to the Commission.

- 124 As a result of the Commission's role acting as the gateway to all workers compensation claims for psychological injuries in NSW, we have been told to expect in the order of 700 applications each year, with the first applications expected in late August 2026. We anticipate only a small percentage of those applications will resolve in conciliation and that most will be actively opposed, requiring evidence to be heard and a decision written in about 500 matters. If so, that would mean a more-than-fourfold increase in the number of decisions we hand down each year. Analysis has been conducted to determine how much additional work that will involve: more than 11 additional decision-makers working full time.
- 125 It is important that the Commission is adequately resourced to do this new work from the outset to avoid a backlog developing that would give rise to delays. Until such time as a disputed claim is determined a worker's workers compensation payments are stopped.

## **Conclusion**

- 126 The Commission will continue to prioritise and recognise the importance of the active involvement of registered industrial organisations in exercising its core dispute resolution functions.
- 127 In relation to the Commission's new jurisdictions, however, we anticipate applications from industrial parties who have not regularly appeared before this Commission in recent years. The new provisions permit notification of WHS disputes by a broad range of applicants. Workers in public sector workplaces, including contractors and volunteers, may seek stop bullying orders, and workers who are not national system employees may bring sexual harassment claims.
- 128 These new jurisdictions are likely to very substantially increase the Commission's workload and are not expected to be balanced by any reduction elsewhere. We anticipate further growth as parties become familiar with these mechanisms. We will continue to engage with stakeholders through our user groups to monitor their operation and refine processes where necessary.

- 129 The WHS backlog combined with the recent substantial expansion in the Commission's jurisdiction are structural developments that give rise to a substantial challenge for the institution. This should be of critical interest to the industrial organisations that regularly use it.
- 130 The Commission seeks to continue to efficiently exercise its core industrial dispute resolution functions, including the timely conduct of very large arbitrated cases for wage increases. However, it must now redress the current backlog of WHS prosecutions, continue to deal with the historically high rate of WHS prosecution filings, and manage its expanded jurisdictions including its impending role as the gatekeeper for workers compensation claims for psychological injuries in NSW.
- 131 The confidence of the government in the Commission is reflected in the conferral of fresh powers that will see us extending our responsibilities for administering industrial justice in this state. While we are working efficiently, including a large increase in the number of decisions delivered, the various additions to our workload have a flow on effect to resourcing that needs to be addressed.
- 132 Thank you again to ULIO for organising today's training. I look forward to the continued engagement of industrial unions in the Commission and Court.

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