

# INDUSTRIAL RELATIONS COMMISSION OF NSW

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The principal place of business of the Industrial Relations Commission of New South Wales is 47 Bridge Street, Sydney. We acknowledge that this land is the traditional land of the Gadigal 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 2016

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## Continued performance in key areas while facing resource challenges

- 87.9% of unfair dismissal matters finalised within 6 months of commencement.
- 91.8% of Industrial dispute matters finalised within 6 months of commencement.
- The number of police disciplinary, and police dismissal appeals, filed and determined by the Commission in 2016 increased to the highest level in 6 years.
- 76% of reserved judgments delivered in accordance with 3 month time standard.
- 71% of appeals to a Full Bench of the Commission determined within 6 months.

## Transition to Justice Link

- 2016 Saw the successful implementation of JusticeLink the Department of Justice integrated courts case management system.
- IRC was also included in the 'Search NSW Court Lists' app for Android and Apple, joining other Jurisdictions including Supreme Court and allowing users access to near real time updates to listings before individual jurisdictions.

## State Wage Case

- A Summons to show cause was issued by the Commission on its own initiative on 21 July 2016 in consequence of a decision of the Minimum Wage Panel of the Fair Work Commission issued 20 June 2016. A Full Bench of the Commission made general orders and continued the Wage Fixing Principles on 4 November 2016. State Wage Case 2016 [2016] NSWIRComm 12.

## Education Programs

- The Commission had its conference in the Hunter Valley
- Encouraging innovation in employment relations through the 'President's Forum' continued in 2016.
- Improved advocacy standards through internal workshops.

## Experienced Members of Staff

- 70% of our people have been employed at the Commission for 15 years or more.

## The abolition of the Industrial Court of NSW

- The Industrial Court was dissolved on 8 December 2016 following the passage of the Industrial Relations (Industrial Court) Amendment Act 2016. The remaining judicial work before the Industrial Court was transferred to the Supreme Court of NSW.

# FOREWORD

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

Chief Commissioner Peter Kite

If the year 2015 was regarded as a year of consolidation the year 2016 must be recognized as a year of significant change, indeed deconstruction. After more than a century of operation as both a judicial and arbitral body, 2016 saw the judicial jurisdiction of the Industrial Commission transferred to the Supreme Court following the passage of the *Industrial Relations (Industrial Court) Amendment Act 2016*. The amendments took effect from 8 December 2016.

The decision to abolish the Industrial Court followed several years of decline in the volume of judicial work as noted in the Foreword to the 2015 Annual Report by the last President of the Commission, the Honourable Justice Michael Walton. There is no need to comment further on those developments.

Justice Walton was the last permanent judicial officer of the Commission. His Honour was appointed on 18 December 1998 to the office of Vice-President of the Commission. He succeeded the Honourable Justice Roger Boland as President on 3 February 2014. The latter part of his Honour's tenure at the Commission was marked by significant change in both the judicial and arbitral jurisdictions. During his term as President in particular he strove to innovate, introducing the President's Forum and encouraging the development of dispute resolution techniques including Interest Based Bargaining and Cooperative Employment Relations. His Honour was sworn in as a Justice of the Supreme Court on 8 December 2016.

A concomitant of the abolition of the Industrial Court was the abolition of the offices of President, Vice-President and Deputy President. These offices were, according to the Explanatory Memorandum which accompanied the Bill, seen to be unnecessary in view of the absence of judicial members. From 8 December 2016 the Commission consisted of a Chief Commissioner and Commissioners.

Acting Commissioner Tabbaa was sworn in as Acting Chief Commissioner on 8 December 2016. The Commissioner had reached the prescribed retirement age earlier in the year but had accepted an acting commission which would see her continue as a member of the Commission into 2017. Acting Chief Commissioner Tabbaa thus became the first woman to lead the Commission in its more than 100 year history.

There had been no opportunity for a handover from the outgoing President to the incoming Head of Jurisdiction. It was necessary for her to familiarise herself as best she could with the demands of a Head of Jurisdiction. As the then longest serving member of the Commission she was no doubt assisted in that task by her many years of experience and the opportunity to observe no less than four Presidents. Nevertheless, it would have been a daunting task but she set about it with confidence and vigour.

The turbulence generated by the amending legislation was increased by a decision of the Department, announced late in the year, that the Commission would be relocated from its heritage home of the Chief Secretary's Building at 47 Bridge Street to a location in the southern end of the Sydney central business district. It was intended the relocation would be effective from the second week of 2017. The decision was suddenly reversed before years end but the question of the future location of the Industrial Commission remained an open question.

This period of transition also saw a restructure of the Commission's registry operations and staffing. A new Industrial Registrar, Melinda Morgan, was appointed and she and the new Acting Chief Commissioner were confronted with an industrial dispute notified by the Public Service Association and Professional Officers Association Amalgamated Union in which the union complained about a lack of consultation about the restructure and the relocation. That was in part abated by the decision not to relocate. The Acting Chief Commissioner's conciliation skills saw the balance of the dispute resolved without any industrial action.

The restructure was predicated upon perceived declining workloads mostly in the in the court related matters, but also in the expectation of relocation allowing efficiencies, and the transfer of responsibility for State Industrial Organisations to the Commonwealth. This last matter, like the relocation, did not eventuate. This report contains, for the first time, the section on the volume of work undertaken by the Commission and its staff related to State Industrial Organisations. It is considerable.

Several long serving members of staff left the Commission with the implementation of the restructure. I thank them for their years of service to the institution. I should also pay tribute to the work of the Acting Industrial Registrar James Wiseman, who, with commitment and diligence, led registry operations up until the appointment of Ms Morgan.

I must also offer my special thanks to the staff who continued with the Commission. They are striving to ensure that the people of New South Wales receive a quality service from the Commission's registry albeit with significantly reduced resources.



# 1. Overview

## President's Forum

Following on from the highly popular and successful inaugural President's Forum commencing in 2014, the President's Forum continued in 2016.

The Forums provide an occasion for lawyers, industrial practitioners, business leaders, academics and stakeholders such as public sector and local government employers and unions to engage in interactive discussions with panel members about industrial and employment law topics and broader ideas of work.

Attendance at the Forums is by invitation only.

### 20 July 2016 Forum

The forum for 2016 was held on 20 July at The Mint in Macquarie St Sydney.

The format for the evening was a panel discussion on the question: Ideas at Work for 2016 – 'What lies ahead for legal education in Australia?'

The panelists were Gary Ulman Partner, Minter Ellison and Professor Sarah Derrington, Head of School and Dean of Law, TC Beirne School of Law, The University of Queensland.



## Advocacy Programmes

In 2016, the Commission continued the advocacy education programme that was introduced in 2014. The programme consists of a short, two part practical course designed to equip budding lay advocates with the fundamental skills and knowledge needed to appear effectively before the Commission, including management of evidence, cross-examination skills and preparation of witnesses.

## Cooperative Employment Relations

In the 2015 annual report, the Commission reported that it had introduced an addition to its traditional role in proactively resolving industrial disputes. That system was described as cooperative employment relations and combined the principles of cooperative employment relations and interest based bargaining to move parties beyond representing their own respective interests to a more collaborative outcome that focused upon mutual interests and, out of these, alternative options for the resolution of industrial disputes.

There were four cooperative relations projects undertaken by the Commission during 2016. These all involved areas of significant importance to the public interest. Three of those involved the Corrective Services New South Wales. In each case the intervention of the Commission, using this model, proved successful.

# 2. Commission Profile

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## 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 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.

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. The functions of the Commission continue beyond the amendments to the legislation.

As a superior court of record within the New South Wales justice system, the Industrial Court interpreted and applied the law with regard to matters, both criminal and civil, filed and the rules of evidence and other formal procedures apply.

# The Industrial Court of New South Wales

The Industrial Court was established under Ch 4 Pt 3 of the Act. Pursuant to s 152(1), the Industrial Court was a superior court of record and a court of equivalent standing to the Supreme Court of New South Wales. The Court was a court for the purposes of s 71 of the Commonwealth Constitution and a court of the State of New South Wales for the purposes of s 77(iii).

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

Appeals to a single Member of the Court from the Local Court could be made under s197 and from single members of the Commission in public sector appeals under s 197B.

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

- proceedings for an offence which may be taken before the Court (including proceedings for contempt). The major area of jurisdiction exercised in this area related to residual breaches of the *Occupational Health and Safety Act 2000*: ('the OHS Act') commenced in the Court prior to 1 January 2012;
- proceedings for declarations of right under s 154;
- proceedings for unfair contract (Pt 9 of Ch 2);
- proceedings under s 139 for contravention of dispute orders;
- proceedings under Pts 3, 4 and 5 of Ch 5 (other than Div 3 of Pt 3 and Div 3 of Pt 4) – registration and regulation of industrial organisations;
- proceedings for breach of an industrial instrument;
- proceedings for the recovery of money payable under an industrial instrument other than small claims under s 380 (which are dealt with by an Industrial Magistrate or by the Commission in its non-judicial capacity); and
- superannuation appeals under s40 or s88 of the *Superannuation Administration Act 1996*.

However as noted changes to the *Industrial Relations Act 1996* saw the Industrial Court abolished and the powers and jurisdiction of the Industrial Court transferred to the Supreme Court of NSW on 8 December 2016.

# 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;
- applications under the *Commission for Children and Young People Act 1998*;
- 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*
- various proceedings relations to contracts of carriage and bailment (Ch 6).

# Membership of the Commission

## Judges and Presidential Members

As a superior court of record, the Judges of the Commission had the same title and status as the Judges of the Supreme Court of New South Wales.

The Judicial and Presidential Members of the Commission during 2016 in order of seniority were:

### President

The Honourable Justice Michael John Walton, appointed President 3 February 2014 – 8 December 2016 and as a judicial Member and vice-President 18 December 1998;

### Deputy President

Rodney William Harrison, appointed Deputy President 2 September 1996 – January 2016 and as a Commissioner on 4 August 1987. He also held a dual appointment as a member of the Federal Fair Work Commission until April 2013.

### Acting Presidential Members

The Honourable Acting Justice Peter Kite SC appointed 25 November 2014 for a period of 6 months. He continued after the expiry of his term to complete part heard matters. He continued in that role until the commencement of the *Industrial Relations (Industrial Court) Amendment Act* on 8 December 2016.

### Chief Commissioner

With the legislative changes that occurred in December 2016, abolishing the Industrial Court and moving the President and current Industrial Court cases to the Supreme Court the amendments to the *Industrial Relations Act*, there was the development and implementation of the role of Chief Commissioner of the Industrial Relations Commission. Acting in the role was Acting Chief Commissioner Inaam Tabbaa appointed 8 December 2016.

### Commissioners

The Commissioner Members during 2016 in order of seniority were:

Commissioner Inaam Tabbaa AM, appointed 25 February 1991;

Commissioner John David Stanton, appointed 23 May 2005;

Commissioner Peter Justin Newall, appointed 29 April 2013;

Commissioner John Vincent Murphy, appointed 4 December 2015.

## 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 policy of the Commission in relation to unfair dismissal applications (s 84) and rural and regional industries is to sit in the country centre at or near where the events have occurred.

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 decisions or recommendations made.

There were a total of 161(207 in 2015) sitting days in a wide range of country courts and other country locations during 2016.

There is 1 member based permanently in Newcastle – Commissioner Stanton.

The Commission sat in Newcastle for 128 (132 in 2015) sitting days during 2016 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 Tabbaa. There were a total of 33 (35 in 2015) sitting days in Wollongong during 2016.

The Commission sat in other regional locations in 2016 including Ballina, Lismore, Murwillumbah, Tamworth, Tweed Heads and Wagga Wagga.

## Industry Panels

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

With Members' retirements in 2013 and 2014, a further rationalisation was undertaken.

The panels deal with applications for awards or variations to awards, applications for the approval of enterprise agreements and dispute notifications arising in relevant industries together with promotional and disciplinary appeals brought by public sector employees (both general public sector and transport public sector).

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) is chaired by Commissioner Stanton. The panel dealing with applications from the southern areas of the State (including applications from the Illawarra-South Coast region) is chaired by Commissioner Tabbaa. The membership of the panels as at 8 December 2016 as set out in Appendix 1.

With the significantly reduced number of members of the Commission the utility of the panel system will be reviewed in 2017.

# The Industrial Relations Registry

The Industrial Registrar has overall administrative responsibility for the operation of the Commission. The Registrar reports to the President of the Commission in terms of the day to day operational procedures. The Registry was substantially restructured in late December 2016. The description below relates to the period prior to the 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:

## Registry Client Services Team

The Registry Client Services team provides assistance to users of the Commission seeking information about the work of, or appearing before, the Commission.

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

Client Service staff are situated in four locations; 47 Bridge Street, Sydney (Principal Registry); 237 Wharf Road, Newcastle and 90 Crown Street, Wollongong (later Port Kembla Local Court).

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

## Information Management, Electronic Services & Commissioner Support Team

The Information Management, Electronic Services and Commissioner Support Team is responsible for the preparation of industrial awards, enterprise agreements and other orders made by Members of the Commission, for publication in the New South Wales Industrial Gazette, which is available in 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 records relating to Industrial Committees and their members.

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

Importantly, this team also provides administrative support to Commissioner Members.

## Industrial Organisations Team

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

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

With respect to industrial organisations, the team also administers provisions relating to the regulation and corporate governance of industrial organisations under Ch 5 of the Act and provides assistance in the research of historical records.

In addition, the team processes applications for registration of employers of out-workers for determination by the Clothing Trades (State) Industrial Committee.

# 3. PERFORMANCE



## INDUSTRIAL RELATIONS COMMISSION

### Overall Caseload

The comparative caseload statistics for the Industrial Relations Commission between 2012 and 2016 are summarised in Table 3.1

Table 3.1 [Caseload Statistics]

	2012	2013	2014	2015	2016
<b>Appeals</b>					
Filed	16	16	10	7	21
Finalised	14	18	8	8	23
Pending	11	6	6	5	2
<b>Awards</b>					
Filed	351	146	18	33	109
Finalised	349	100	12	38	160
Pending	21	66	13	83	32
<b>Collaborative Employment Relations</b>					
Filed	N/A	N/A	N/A	5	4
Finalised				0	4
Pending				5	5
<b>Disputes</b>					
Filed	372	33	308	29	343
Finalised	447	38	275	314	269
Pending	146	82	11	87	161
<b>Enterprise Agreements</b>					
Filed	13	8	15	12	11
Finalised	13	5	15	14	4
Pending	0	3	3	1	8
<b>Unfair Dismissals</b>					
Filed	221	22	20	20	202
Finalised	220	25	18	20	154
Pending	68	45	64	70	118
<b>Public Sector Promotion and Disciplinary Appeals</b>					
Filed	63	87	10	24	24
Finalised	92	92	19	23	22
Pending	0	0	0	6	8

Table 3.1 [Caseload Statistics (continued)]

	2012	2013	2014	2015	2016
<b>Police Dismissals and Disciplinary Appeals</b>					
Filed	16	28	23	43	40
Finalised	19	23	19	39	26
Pending	10	15	17	21	35
<b>Hurt on Duty Appeals</b>					
Filed	29	11	4	9	18
Finalised	38	24	14	21	2
Pending	20	12	4	15	31
<b>Other</b>					
Filed	110	133	118	10	11
Finalised	109	11	121	86	103
Pending	30	46	41	38	50
<b>TOTALS</b>					
Total Filed for the Year	<b>1191</b>	<b>992</b>	<b>882</b>	<b>1029</b>	<b>887</b>
Total Finalised for the Year	<b>1301</b>	<b>1013</b>	<b>780</b>	<b>1088</b>	<b>767</b>
Total Pending at end of Year	<b>306</b>	<b>275</b>	<b>378</b>	<b>326</b>	<b>446</b>

Table 3.1 above shows the following trends

- Total filings (885) have decreased, however decrease is largely as a result of the triennial award review process occurring in 2015. This statutory undertaking last occurred in 2012. When compared to other years without the award review process there is a minimal increase in filings over 2014 and a slight decrease from 2013
- The number of police dismissals and disciplinary appeals remain consistently high for 2016. There was also a large increase in the number of disputes filed in 2016 compared to 2015.
- Unfair dismissals remain stable compared to 2015
- 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 2016 increased to 446 pending matters which is a significant increase on 2015 numbers.

Table 3.2 below shows the number of Members and the respective positions.

Table 3.2 [Commission Members]

	2012 <sup>1</sup>	2013 <sup>2</sup>	2014 <sup>3</sup>	2015 <sup>4</sup>	2016 <sup>5</sup>
<b>Judicial and Presidential Members</b>					
President	1	1	1	1	1
vice - President	1	1	0.1	N/A	NA
Deputy President	0.5	0.8	1	1	1
Presidential Members (Judges or Acting Judges)	4	2.8	1.5	0.5	0.5
<b>Total Judicial Members</b>	<b>6.5</b>	<b>5.6</b>	<b>3.5</b>	<b>2.5</b>	<b>2.5</b>
<b>Non- Judicial Members</b>					
Commissioners	3.3	2.3	2.5	2.7	4
<b>Total Members of the Commission</b>	<b>9.8</b>	<b>7.9</b>	<b>5.6</b>	<b>5.2</b>	<b>7.5</b>

<sup>1</sup> Justice Marks to 30 June; Justice Kavanagh to 30 June; Deputy President Sams to 29 March (Full-time at Fair Work Australia (FWA)); Commissioner McKenna to 29 March (Full-time at FWA); Commissioner Ritchie to 5 October.

<sup>2</sup> Justice Haylen to 24 October; Deputy President Harrison part time at FWA to 26 April; Commissioner Bishop to 23 January; Commissioner Macdonald to 8 November (Full-time at FWA from 2011); Commissioner Newall from 29 April.

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> Deputy President Harrison to 3 January; Acting Justice Kite to 7 December.

# Clearance Rates

The comparative clearance rate statistics for Commission between 2012 and 2015 are summarised in Table 3.3.

Table 3.3 [Clearance Rates Statistics]

	2012	2013	2014	2015	2016
Commission Clearance Rate	109.2%	102.1%	88%	105.7%	86.4%

# 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 who meets 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 38.7% of the total filings for the Commission during 2016.

Filed and Finalised Dispute Matters 2012-2016

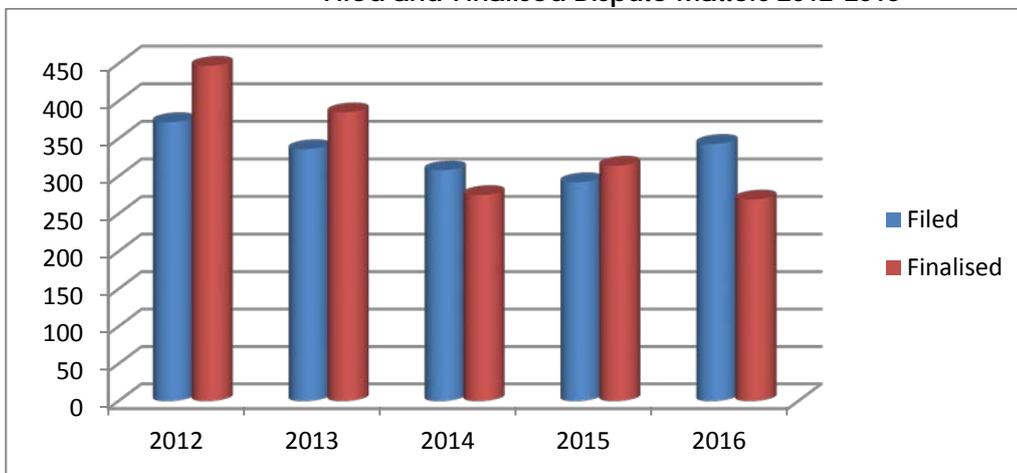


Figure 3.4 represents a graphical comparison between matters filed and disposed of in the last 5 years. During 2016 the number of dispute applications filed increased from 292 matters to 343 matters filed.

Figure 3.4 [Filed and finalised dispute matters]

Method of Disposal Industrial Dispute Matters 2016

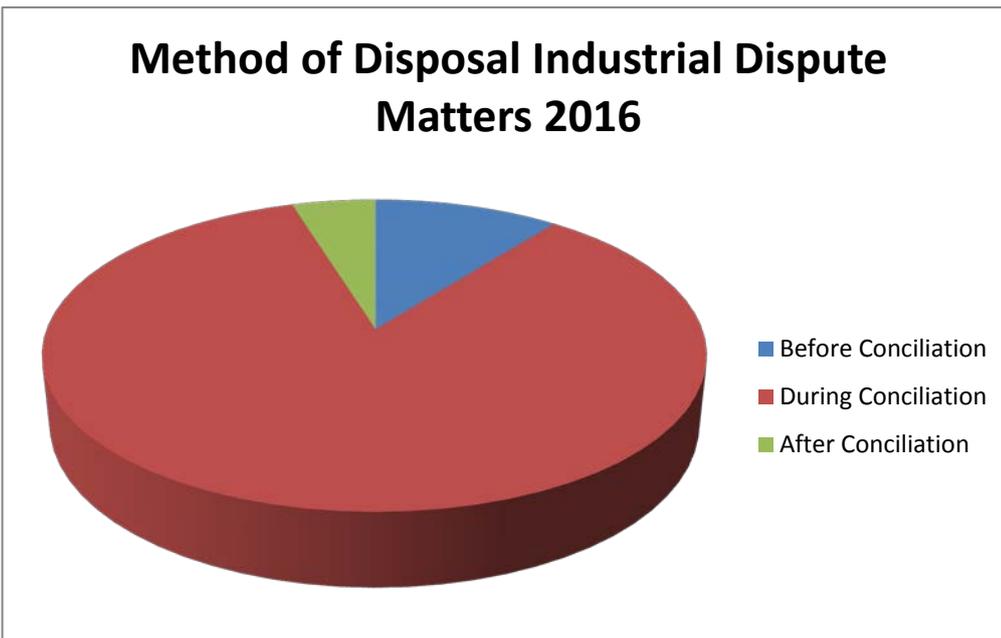


Figure 3.5 represents graphically the method in which the industrial dispute matters were finalized by the Commission during 2016.

Figure 3.5 [Method of disposal]

## 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 endeavours to have all dispute matters listed within 72 hours of a notification being filed so that the dispute can be adequately addressed.

Table 3.6 [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
2012	40.3	55%	76.7%	5 Days
2013	42.3	58.9%	80.7%	5 Days
2014	35.6%	46.5%	75.6%	6 Days
2015	31.5%	42.3%	62.4%	7 Days
2016	26.4 X ↓	41.7% ↓ X	70.3% X ↓	7 Days ↓

As in recent annual reports it is noted that the median time to first listing has continued to rise. This is a consequence of the reduction in the number of Commissioner Members from 2013 which reduced the Commission's capacity to list dispute matters within the 72 hour to 10 day standard as well as parties asking for a delayed listing.

Table 3.7 [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)
2015	54.2%	65.4%	82.3%	89.3%
2016	45.8% X ↓	60.9% X ↓	84.4%	99 %

As a result of the resources available to the Commission during 2016, the finalisation of matters within the prescribed time standards showed a small decline. Whilst not quite meeting the required benchmarks, the matters seem to be finalizing. 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.

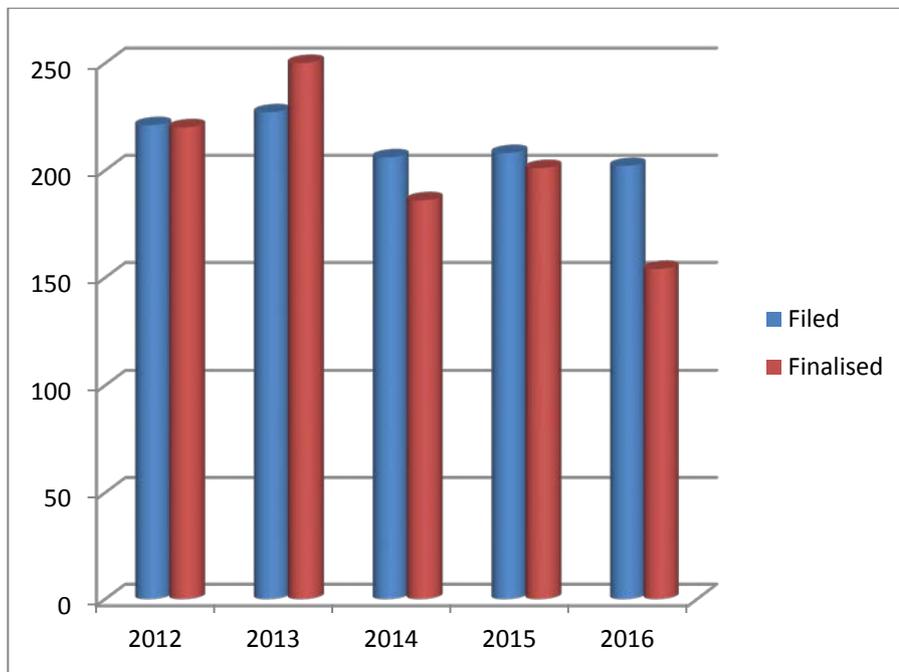
# Unfair Dismissals

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 reaching an early settlement between the parties. 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 22.8% of the total filings for the Commission during 2016. Figure 3.8 represents graphically a comparison between the matters filed and disposed of in the last 5 years.

**Filed and Finalised Unfair Dismissal Matters 2012-2016**



The number of unfair dismissal applications filed between 2015 and 2016 is stable, however the finalisation rate dropped considerably.

Figure 3.8 [Filed and finalised unfair dismissal matters]

Figure 3.9 represents graphically the method in which unfair dismissal matters were finalised by the Commission during 2016

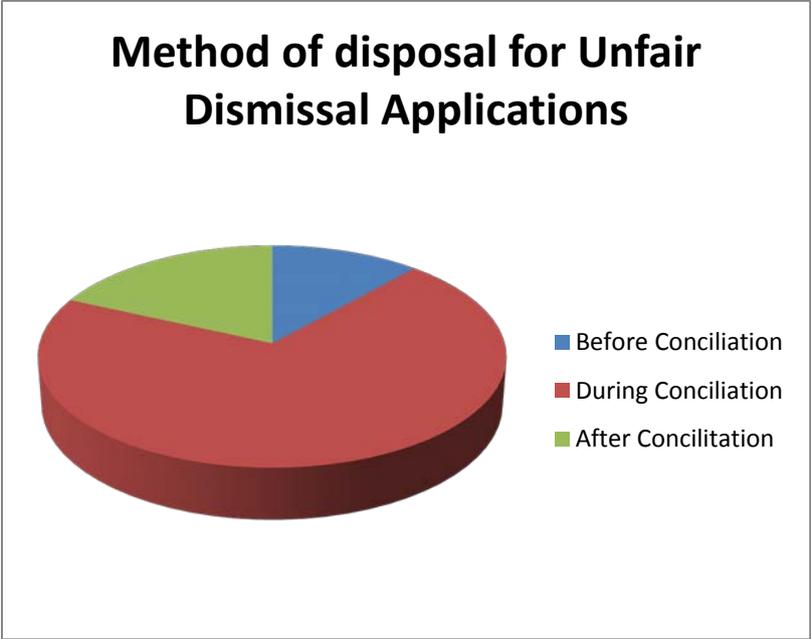


Figure 3.9 shows that almost 82% of all unfair dismissal matters during 2016 were disposed of prior to arbitration.

Table 3.10 shows the distribution as to who initiated an unfair dismissal action

	2012	2013	2014	2015	2016
<b>Unfair Dismissals</b>					
Application (Individual)	56	44	52	67	65
Application (Legal Representative)	51	78	66	40	47
Application (Organisation Representative)	114	105	88	101	90
<b>TOTAL</b>	<b>221</b>	<b>227</b>	<b>206</b>	<b>208</b>	<b>202</b>

## Time Standards

There are two time standards relating to unfair dismissals:

- Any 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 17 (cl 4).
- 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 2015 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 3.11 shows the time taken to first listing of an unfair dismissal matter

Within	7 Days	14 Days	21 Days (100% Target)	28 Days
2015	15.9%	22.4%	34.8%	64.3%
2016	6.1%	21.2%	37.8%	86.3%

As in recent annual reports, it is noted that the median time to first listing has continued to rise. This can be seen as a consequence of the reduction in the number of Commissioner Members reducing the Commission's capacity to list within the 21 day standard as well as parties requesting listings at the 21-28 day timeframe as well as other factors including parties being available and ready for the listing.

Table 3.12 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)
2013	63.2%	72%	85.2%	91.6%
2014	68.3%	74.8%	86.1%	96.3%
2015	57.7%	67.7%	84.1%	94.7%
2016	57.2% ✓ ↘	69.8%	88.2%	98.6% ↘

During 2016 the finalisation of matters within two month clearance standard was still achieved, even though there was a slight decline. The other bench marks increased against 2015 results and are fractionally below the benchmarks set.

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

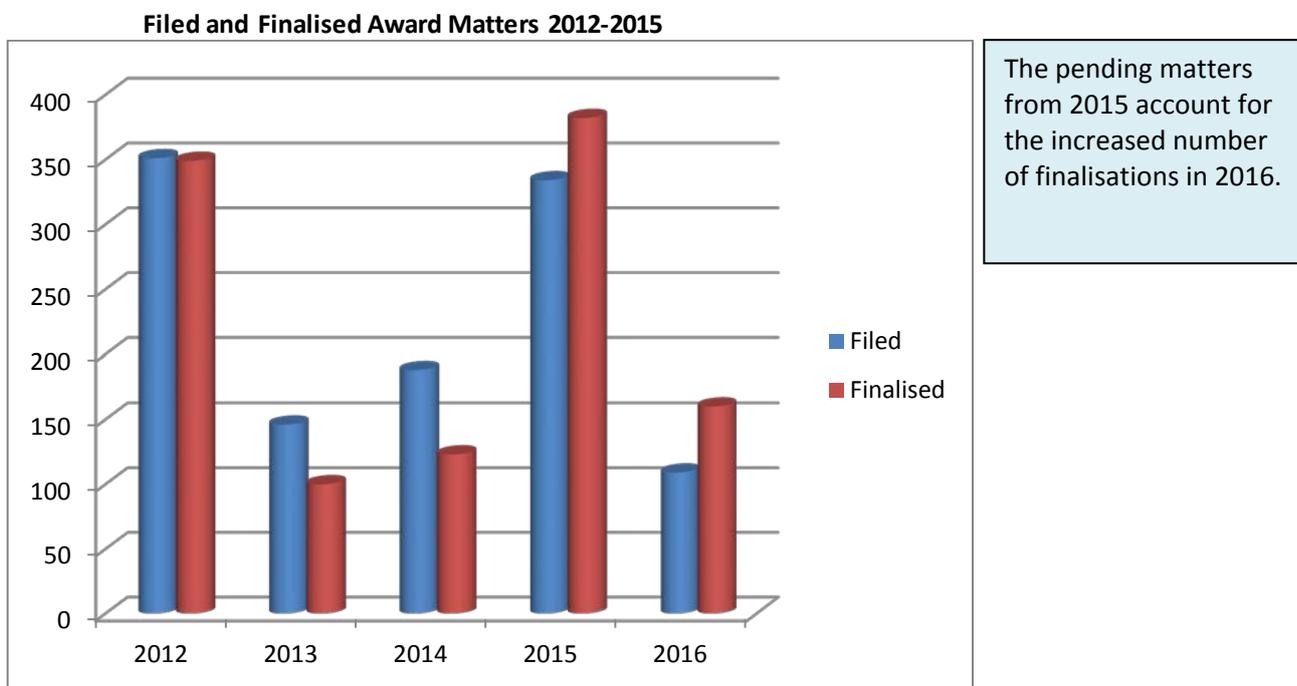
## Award Reviews

In accordance with s 19(1), the Commission undertook, in 2015, the triennial Award Review process. As a result of the annual review occurring the year before, the number of award applications is significantly lower in 2016. The number of finalised matters in this area for 2016 has increased as some of the awards from the 2015 award review were not finalised until this reporting period.

## Awards

Awards matters represented 13.6% of the total filings for the Commission during 2016.

Figure 3.13 represents graphically a comparison between the matters filed and disposed of in the last 5 years.



As expected the number of filed award matters decreased in 2016 consistent with regular 2013-2014 levels.

# Enterprise Agreements

Enterprise Agreements represented 1.2% of the total filings for the Commission during 2016.

Figure 3.15 graphically represents a comparison between the matters filed and disposed of in the last 5 years.

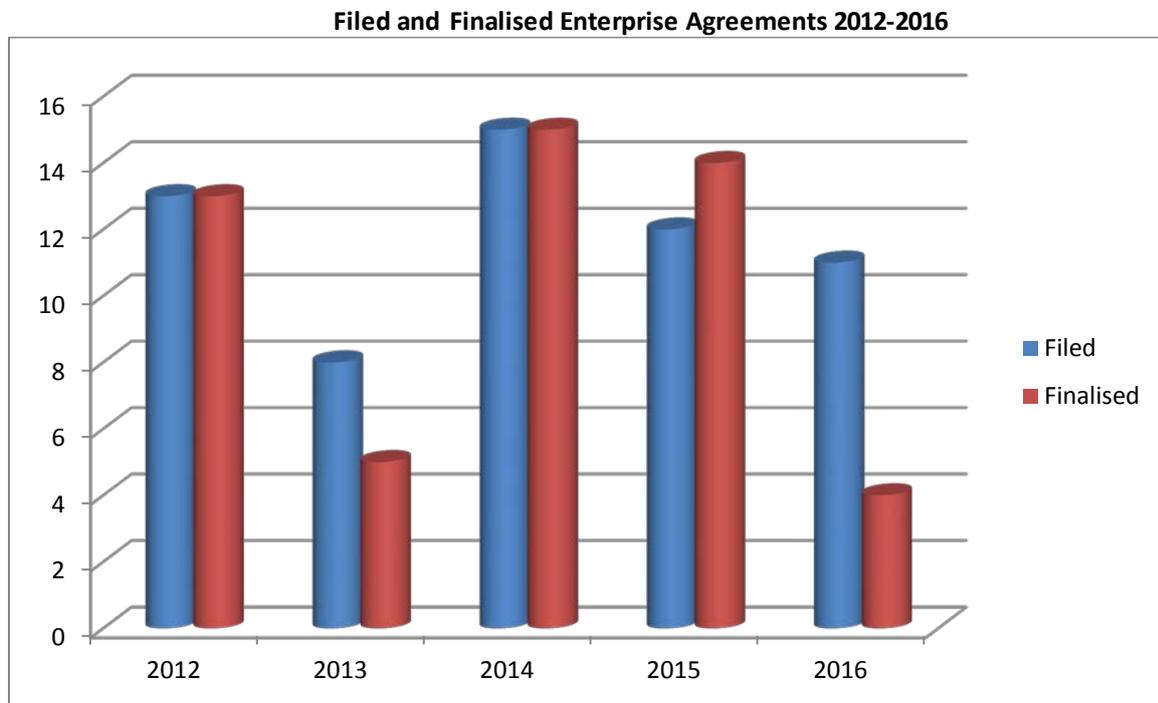


Table 3.16 provides details of filings in the award and enterprise agreement areas in the last five years.

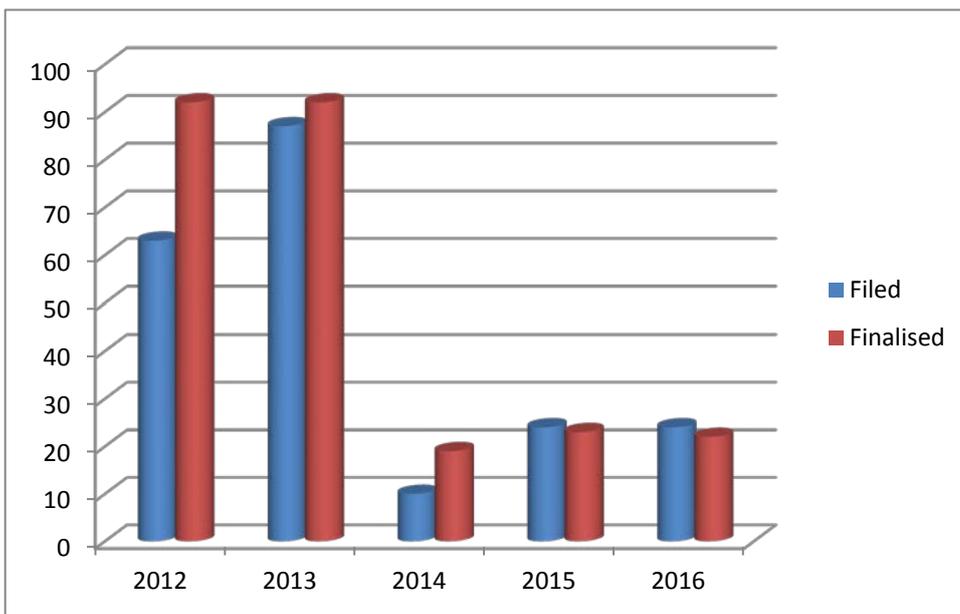
	2013	2014	2015	2016
<b>Awards</b>				
Application to Make Award	46	35	68	59
Application to vary Award	96	150	45	41
<b>Enterprise Agreements</b>				
Application for an Enterprise Agreement	8	15	12	11
Terminated Enterprise Agreement	12	11	1	0
<b>Review of Awards</b>				
Notice of Review Issued	0	0	220	0
Awards reviewed	2	0	152	3
Awards rescinded	0	0	13	1
Awards determined to have effect as enterprise agreements	0	0	0	0
Declaration of Non-Operative Awards	0	0	0	0

# Public Sector Disciplinary Appeals

Public sector disciplinary appeals represented 2.7% of the total filings for the Commission during 2016.

Figure 3.17 represents graphically a comparison between the matters filed and disposed of in the last 5 years.

**Filed and Finalised Public Sector Disciplinary Appeals 2012-2016**



Numbers of applications filed in 2016 are comparable to the matters filed the previous year.

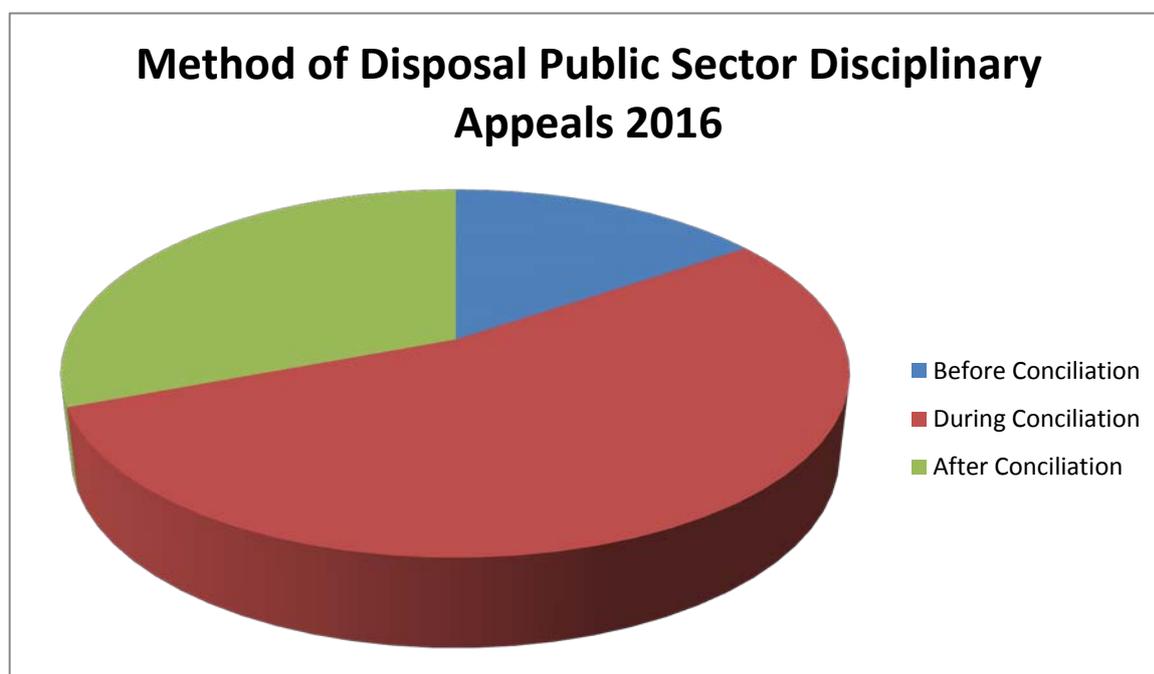
The downturn in appeals filed from the levels recorded in 2012 and 2013 can be wholly explained by the enactment of the *Government Sector Employment Act 2013*: ('the GSE Act') that abolished public sector promotional appeals, there were no promotional appeals filed in 2016.

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.

Table 3.18 shows the distribution as to what types of public sector promotional and disciplinary appeals were dealt with during the last 4 years.

	2012	2013	2014	2015	2016
<b>Public Sector Promotional Appeals</b>					
Filed	60	84	6	N/A	N/A
Finalised	88	87	8	N/A	N/A
Pending	5	2	0	N/A	N/A
<b>Public Sector Disciplinary Appeals</b>					
Filed	3	3	4	24	24
Finalised	4	5	11	23	22
Pending	9	7	0	0	
<b>TOTALS</b>					
Total Filed for the Year	<b>63</b>	<b>87</b>	<b>10</b>	<b>24</b>	<b>24</b>
Total Finalised for the Year	<b>92</b>	<b>92</b>	<b>19</b>	<b>23</b>	<b>23</b>

Figure 3.19 represents graphically the method in which public sector disciplinary appeals were finalised by the Commission during 2016.



## Time Standards

Table 3.20 shows the time taken to finalise public sector promotional and disciplinary appeals dealt with during the last 4 years.

	2013	2014	2015	2016
<b>Public Sector Promotional Appeals</b>				
Completed within 3 Months	98.8%	100%	N/A	N/A
Completed within 6 Months	100%	100%	N/A	N/A
<b>Public Sector Disciplinary Appeals</b>				
Completed within 3 Months	83%	82.9%	79.1%	66.7%
Completed within 6 Months	89.4%	92.7%	88.4%	88.9%

During 2016, the finalisation of public sector disciplinary matters, within the 3 declined when compared to the 2015 clearance rates. The clearance rates slightly increased when looking at the 3 month comparison.



## Police Dismissals and Disciplinary Appeals

Under the provisions of s173 of the Police Act 1990, the Commissioner of Police may make reviewable and non-reviewable orders arising from a police officer's misconduct or unsatisfactory performance.

Under s181D of that 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 their competence, integrity, performance or conduct.

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.

### Section 173 Police Disciplinary Appeals

Police disciplinary appeals represented 2.37% of the total filings for the Commission during 2016.

Figure 3.21 represents graphically a comparison between the matters filed and disposed of in the last 5 years.

**Filed and Finalised s 173 Police Disciplinary Appeals 2012-2016**

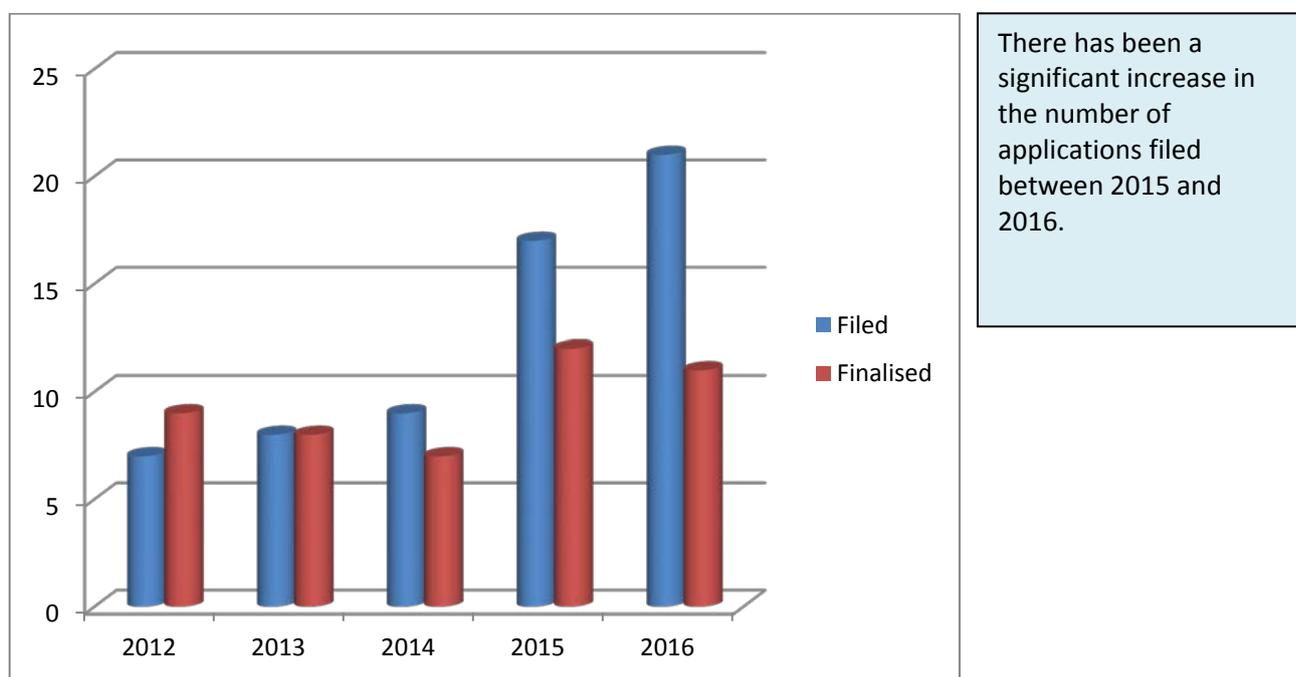
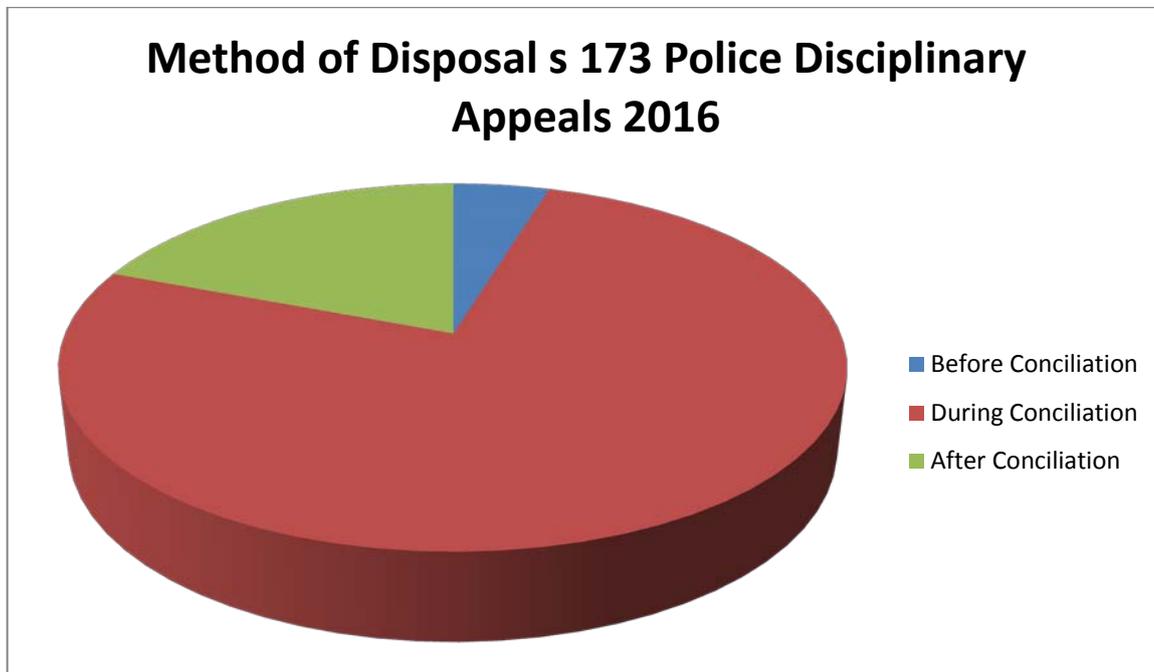


Figure 3.22 represents graphically the method in which police disciplinary appeals were finalised by the Commission during 2016.



## Section 181D Police Dismissal Appeals

Police disciplinary appeals represented 1.8% of the total filings for the Commission during 2016, although those matters represented statistically a higher proportion of sitting days required to dispose of the matters.

Figure 3.23 represents graphically a comparison between the matters filed and disposed of in the last 5 years.

**Filed and Finalised s 181D Police Dismissal Appeals 2012-2016**

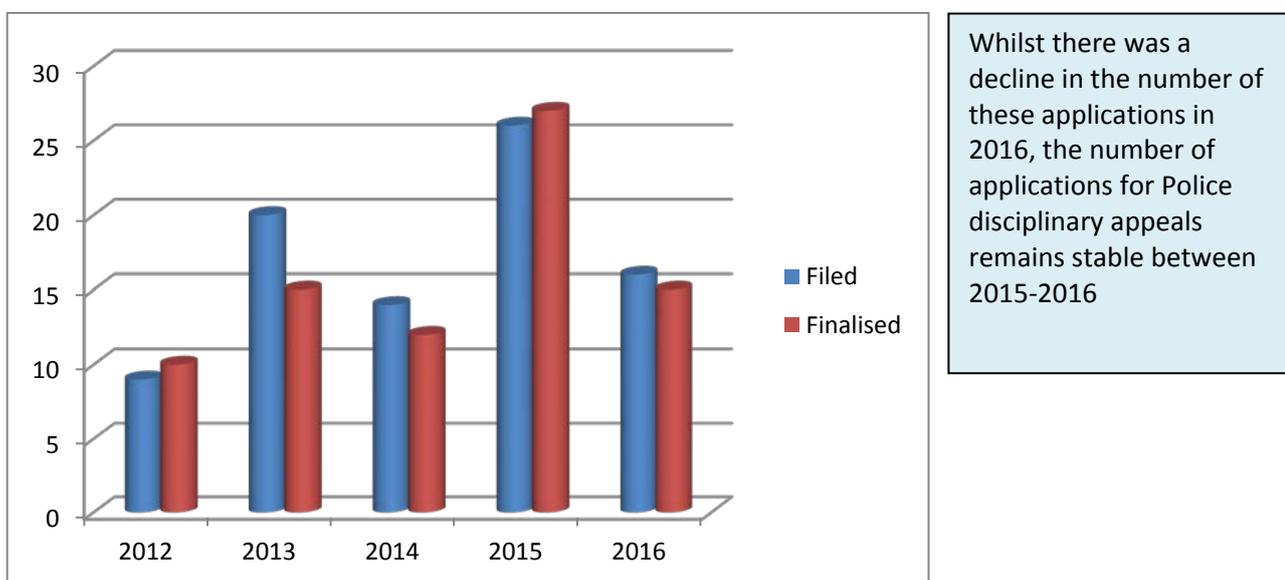
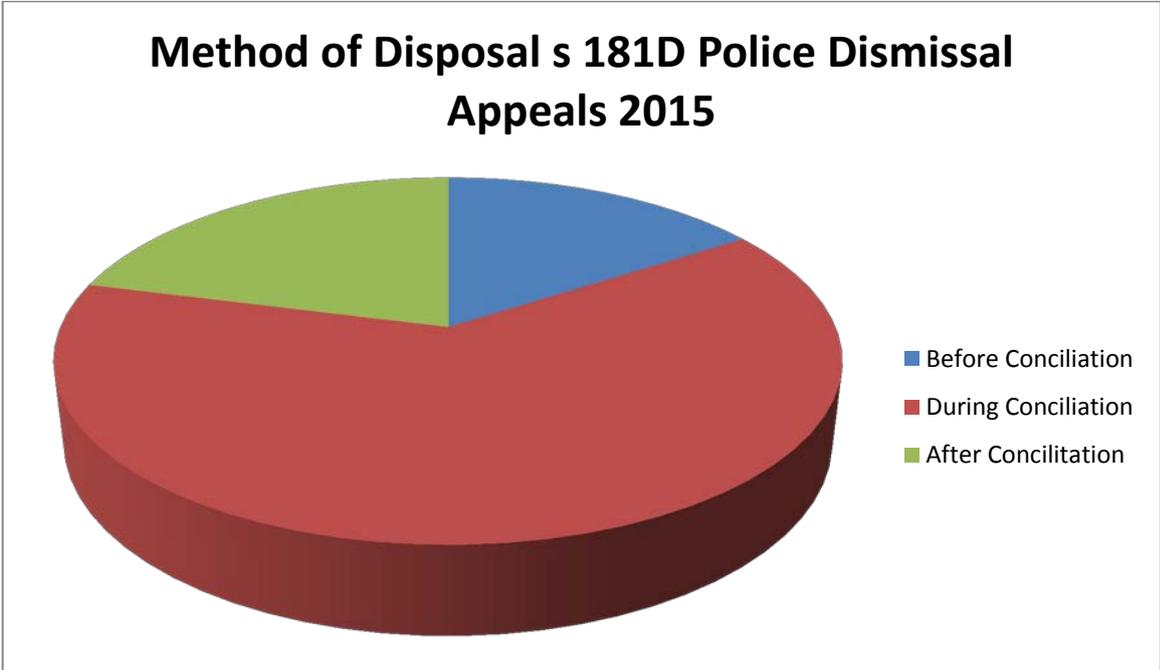


Figure 3.24 represents graphically the method in which police dismissal appeals were finalised by the Commission during 2016.



Time Standards

Table 3.25 shows the time taken to finalise police disciplinary and dismissal appeals.

	2012	2013	2014	2015	2016
<b>S173 Police Disciplinary Appeals</b>					
Completed within 6 Months	77.8%	90.0%	85.7%	91.6%	73.1%
Completed within 12 Months	100%	90%	85.7%	100%	88.4%
<b>S181D Police Dismissal Appeals</b>					
Completed within 6 Months	60%	80%	50%	70.3%	87.5%
Completed within 12 Months	90%	100%	83.3%	85.1%	100%

During 2016, the finalisation of S181d matters within 6 and 12 months showed marked improvement on the 2015 clearance rates.

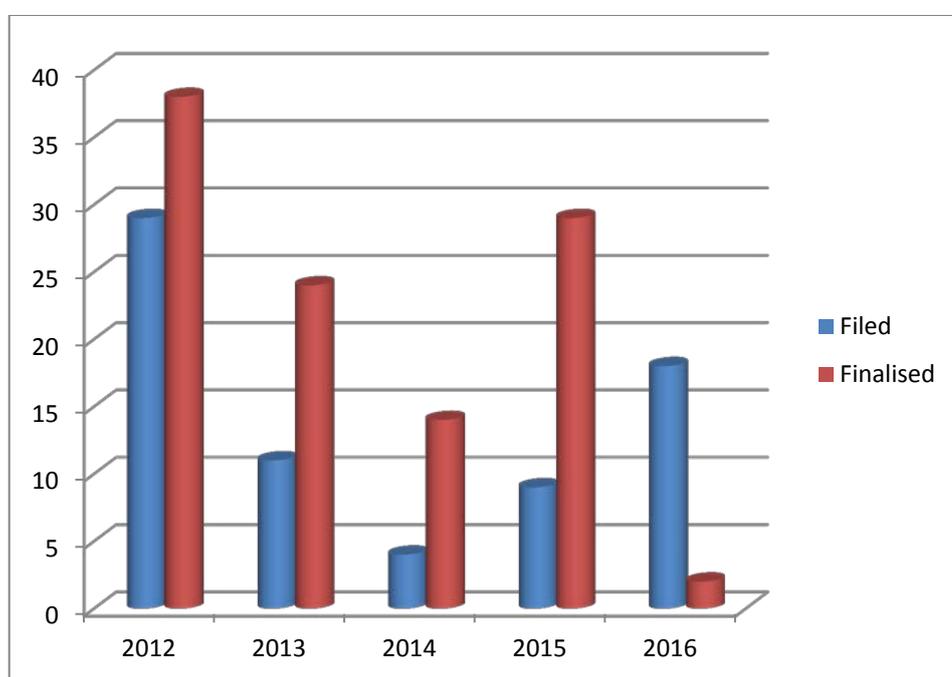
## Police Hurt on Duty Appeals

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 2.1% of the total filings for the Commission during 2016.

Figure 3.26 represents graphically a comparison between matters filed and disposed of in the last 4 years.

**Filed and Finalised Police Hurt on Duty Appeals 2012-2016**



The low number of determined cases of this type is often as a result of our matters stood out of the list whilst there are other proceedings occurring in different jurisdictions.

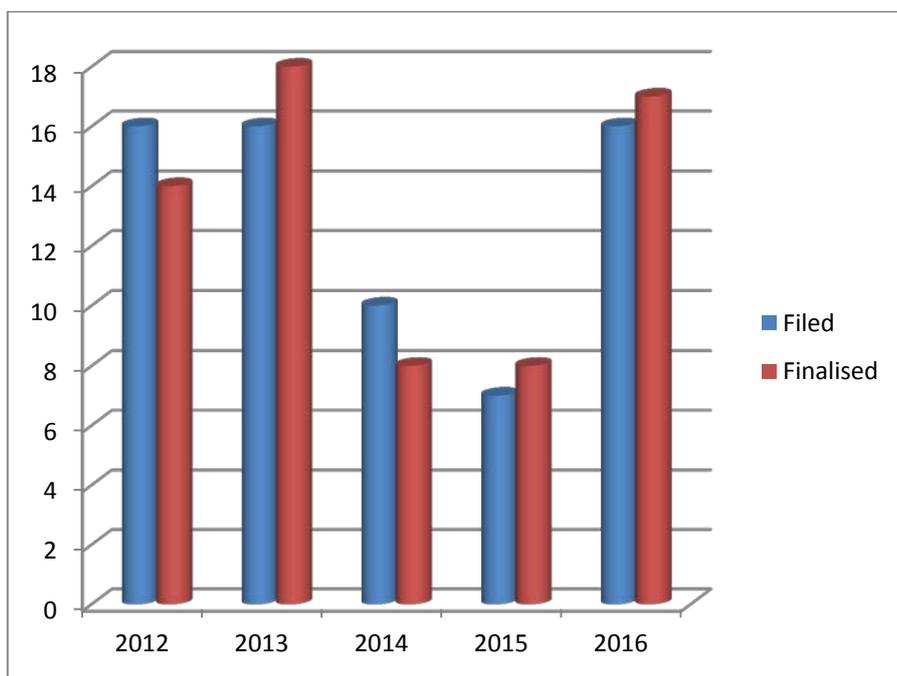
## Appeals to a Full Bench

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 2016 represented only 1.8% of the total filings for the Commission.

Figure 3.27 represents graphically a comparison between appeals filed and disposed of in the last 5 years.

Filed and Finalised s 187 Full Bench Appeals 2012-2016



There has been a dramatic increase in the number of appeals to the full bench, back to similar levels experienced during 2012-2013.

## Industrial Organisations.

Under the *Industrial Relations Act 1996* and its regulations as well *Work Health and Safety Act 2011* the Industrial Relations Commission has specific responsibilities. These responsibilities include the provision of Work Health and Safety permits under part 7 of *Work Health and Safety Act 2011* and Chapter 5 of *Industrial Relations Act 1996*. Our responsibilities include processing of applications regarding elections of office holders, rule changes for registered industrial organisations as well as right of entry permits are carried out under the direction of the Industrial Registrar. These application types generally are not counted in official filings unless they go before a Commissioner, they do however account for almost 40 % of work before the Industrial Relations Commission.

	2015	2016
Work Health and Safety Permits	185	298
Right of Entry Permits	77	175
Special Wage Permits	23	43
Conscientious Objection Certificates	8	7
Rule Changes to Registered Organisations	14	18
Election Requests for Registered Organisations	28	36
Others	4	3
<b>Total Filed for the Year</b>	<b>339</b>	<b>580</b>

# 4. PERFORMANCE



## INDUSTRIAL COURT

### Overall Caseload

Table 4.1 contains a summary of comparative caseload statistics for the Industrial Court between 2012 and 2015.

Table 4.1 [Caseload Statistics]

	2012	2013	2014	2015	2016
<b>Appeals</b>					
Filed	16	25	9	10	6
Finalised	24	20	1	6	5
Pending	16	18	9	14	11
<b>Contravention</b>					
Filed	2	0	0	0	0
Finalised	4	1	0	0	0
Pending	1	0	0	0	0
<b>Unfair Contracts</b>					
Filed	6	5	3	6	4
Finalised	9	14	7	4	3
Pending	21	11	5	7	8
<b>Prosecutions OH&amp;S Act</b>					
Filed	6	0	0	0	0
Finalised	107	70	16	3	2
Pending	103	20	5	2	0
<b>Declaration Jurisdiction (\$154)</b>					
Filed	13	16	11	3	9
Finalised	6	13	14	3	3
Pending	10	13	8	8	8
<b>Recovery of Remuneration and other Amounts</b>					
Filed	19	15	18	5	5
Finalised	16	14	24	10	4
Pending	15	15	9	3	4
<b>Other</b>					
Filed	17	19	7	13	13
Finalised	14	16	13	5	8
Pending	6	9	3	11	16
<b>TOTALS</b>					
Total Filed for the Year	79	80	48	37	37
Total Finalised for the Year	180	148	91	31	25
Total Pending at end of Year	172	89	39	45	47

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The foregoing table shows a significant fall in listings after the effective removal of the Court's occupational health and safety jurisdiction and the elimination of appeals to a Full Bench of the Court.

Unfair contracts and recovery actions now represent a significant proportion of the work of the Court. From the beginning of 2016, there has only been a single Judge of the Court, the President.

This situation represents significant challenges for the Court to dispose of matters in a timely way particularly given that the sole judge of the Court (the President) will also sit in the hearing of Commission matters and attend to administration. This situation is ameliorated to some degree by the capacity of the President to request the Chief Justice of the Supreme Court to nominate Judges of the Supreme Court to act as Industrial Court judicial members for a particular period (s 151B(2)).

On 8 December 2016 amendments to the *Industrial Relations Act* abolished the Industrial Court and transferred all the current matters to the Industrial Law list of the Supreme Court.



# 5. OTHER MATTERS

## Technology – Justicelink

The Industrial Relations Commission commenced using the Justicelink case management system in January 2016.

Justicelink is a sophisticated software system which links all New South Wales' courts onto the one centralised database. It allows for the electronic transmission of listing notices and court orders as well as providing the functionality to digitally store documents, transcripts, emails and other correspondence.

The Justicelink program also has the functionality to electronically transfer cases between differing jurisdictions and locations.

The management and storage of summonsed documents and other material also be managed on the Justicelink system.

The system also provides the Industrial Relations Commission with an integrated financial and accounts management system that meets the requirements of the Public Sector Finance and Audit Act.

Following implementation court users and stakeholders are able to search and have access to future listings before the Commission via the New South Wales online court registry web site.

## Commission Rules

Pursuant to s186 of the Act, the Rules of the Commission are to be made by a Rules Committee comprising the President and two other Presidential Members appointed by the President. There is also scope for cooption 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.

There were no changes to the Industrial Relations Commission Rules during 2016.

## Amendments to Legislation and Regulations

As previously mentioned there were amendments to the Industrial Relations Act, that abolished the Industrial Court and transferred the jurisdiction to the Industrial Law list at the Supreme Court.

## Practice Notes

In 2016 there were no new Practice Notes issued.

# 6. OUR PEOPLE



## Industrial Registrar

James Wiseman continued in the role of Industrial Registrar for the majority of 2016. In October following recruitment Melinda Morgan commenced in the Industrial Registrar role on an on-going basis.

Registrar Wiseman led the Industrial Relations Commission through a period of significant change and development most notably the development and implementation of JusticeLink.

## Our Staff Profile

The Commission employed 22 people during 2016 in the Registry Office, Commissioner Support and Judicial Officer Support roles. 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 (59%) and over 31% are from culturally and linguistically diverse backgrounds.

45% 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. 9.1% 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 72% of our staff having 10 or more years of service; 59% of staff have 15 years or more service and 27% have been with the Commission for more than 25 years. Whilst our retention rates are very high the Industrial Relations Commission also underwent a significant restructure at the end of 2016. In December we farewelled 12 staff.

# 7. CONCLUSION

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The 2016 year was in some ways unique in the Commission's history. In other ways it represents a demonstration of the value of an institution such as this. Although there were signs of increasing pressure for improvements in conditions of employment, as the economy moved further from the global financial crisis and the transition from a resources based economy, the Commission was able to resolve workplace disputes, overwhelmingly by conciliation, and without industrial disruption.

Such pressures are likely to continue in 2017 and beyond. The public interest is well served by a body such as the Industrial Relations Commission.

# 8. APPENDICES

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## APPENDIX 1

### INDUSTRY PANELS

Metropolitan and Regional Panels

#### Metropolitan

##### Divisional Head – Walton J, President

###### Members

Tabbaa C

Newall C

Murphy C

#### Regional

##### Panel N – Divisional Head – Stanton C

###### Members

Stanton C

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

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##### Panel S – Divisional Head – Tabbaa C

###### Members

Tabbaa C

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

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## APPENDIX 2

### TIME STANDARDS – Industrial Relations Commission

Time from commencement to finalisation	Time Standard	Achieved in 2015	Achieved in 2016	
<b>Applications for leave to appeal and appeal</b>				
Within 6 months	50%	50.0%	73.91%	↕
Within 12 months	90%	87.5%	100%	↕
Within 18 months	100%	100%	100%	
<b>Award Applications [including Major Industrial Cases]</b>				
Within 2 months	50%	52.6%	75.8%	↕
Within 3 months	70%	68.1%	81.7%	↕
Within 6 months	80%	70.2%	98.3%	↕
Within 12 months	100%	91.6%	100%	↕
<b>Enterprise Agreements</b>				
Within 1 months	75%	85.7%	50%	↕
Within 2 months	85%	92.8%	62.5%	↕
Within 3 months	100%	92.8%	75%	↕
<b>Applications relating to Unfair Dismissal</b>				
Within 2 months	50%	57.7%	55.6%	↕
Within 3 months	70%	67.7%	66.7%	↕
Within 6 months	90%	84.1%	94.5%	↕
Within 9 months	100%	93.6%	100%	↕
<b>Public Sector Disciplinary Appeals</b>				
Within 1 months	30%	60.5%	7.5%	↕
Within 2 months	60%	79.1%	60%	↕
Within 3 months	90%	79.1%	67.5%	↕
Within 6 months	100%	88.4%	90%	↕

Time to first listing	Time Standard	Achieved in 2015	Achieved in 2016	
<b>Industrial Disputes</b>				
Within 72 Hours	50%	31.5%	26.4%	↘
Within 5 Days	70%	42.3%	41.7%	↕
Within 10 Days	100%	62.4%	70.3%	↕

Key: ↕ = indicates where the commission has equaled or exceeded time standard

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## APPENDIX 2

### TIME STANDARDS – Industrial Court

Time from commencement to finalisation	Time Standard	Achieved in 2015	Achieved in 2016	
<b>Applications for leave to appeal and appeal</b>				
Within 9 months	50%	50.1%	49.8%	↕
Within 12 months	90%	66.8%	54.2%	↕
Within 18 months	100%	66.8%	N/A%	↕
<b>Applications for relief from Harsh/Unjust Contracts</b>				
Within 1 months	75%	85.7%	20%	↕
Within 2 months	85%	92.8%	50%	↕
Within 3 months	100%	92.8%	50%	↕

Key: ↕ = indicates where the commission has equalled or exceeded time standard

## APPENDIX 3

### Matters Filed in Industrial Relations Commission (other than in the Industrial Court)

Matters filed (under the Industrial Relations Act 1996) during period 1 January to 31 December 2016 and completed and continuing matters as at 31 December 2016.

Nature of Application	Filed 1.1.2016 – 31.12.2016	Completed 1.1.2016 – 31.12.2016	Continuing as at 31.12.2016
<b>APPEALS</b>	<b>8</b>	<b>8</b>	<b>0</b>
Appeal – Award	0	0	0
Appeal – Unfair dismissal	8	12	1
Appeal – Protection of injured workers from dismissal	0	0	0
<b>AWARDS</b>	<b>109</b>	<b>157</b>	<b>23</b>
Application to make an award	59	62	10
Application to vary an award	41	31	8
State Wage Case	1	1	0
Review of an award	3	60	3
Other – incl. rescission, interpretation	5	3	2
<b>COLLABORATIVE EMPLOYMENT RELATIONS</b>	<b>4</b>	<b>5</b>	<b>5</b>
Collaborative Employment Relations processes	4	4	5
<b>DISPUTES</b>	<b>343</b>	<b>269</b>	<b>155</b>
s130 of the Act	316	248	144
s332 of the Act	21	17	9
s146B of the Act	2	4	2
<b>ENTERPRISE AGREEMENTS</b>	<b>9</b>	<b>3</b>	<b>5</b>
Application for approval with employees	8	1	4
Application for approval with industrial organisation	1	1	1
Principles for approval of Enterprise Agreements s33(3) of the Act	0	0	0

Nature of Application	Filed 1.1.2016 – 31.12.2016	Completed 1.1.2016 – 31.12.2016	Continuing as at 31.12.2016
<b>UNFAIR DISMISSALS</b>	<b>201</b>	<b>153</b>	<b>120</b>
Application by the employee	108	82	9
Application by an industrial organisation on behalf of employee	93	71	47
<b>PUBLIC SECTOR AND POLICE APPEALS</b>	<b>82</b>	<b>50</b>	<b>65</b>
Public Sector disciplinary appeal	24	22	10
Application for review of order s181D Police Service Act	16	15	14
Application for rescission of order s173 Police Service Act	21	11	19
Appeal by Police Officer relating to leave when hurt on duty	21	2	22
Contract agreements	2	1	2
Contract determinations	6	5	4
Compensation for termination of certain contracts of carriage	0	0	0
Application to extend duration of Industrial Committee	0	0	0
Registration pursuant to the Clothing Trades Award	26	15	9
Protection of injured workers from dismissal - Workers Compensation Act	6	3	4
Application for order enforcing principles of association s213 of the Act	9	7	3
Application for external review Work Health Safety Act	9	3	7
Appeal for an Assisted Appointment Review	1	0	1
Determination of demarcation questions	0	0	0
Disputes notified s20 Entertainment Industry Act	0	0	0
Cancellation of registration of industrial organisation	4	3	1

## APPENDIX 4

### Matters Filed in Industrial Court

Matters filed (under the *Industrial Relations Act 1996*) during period 1 January to 31 December 2016 and completed and continuing matters as at 31 December 2016.

Nature of Application	Filed 1.1.2016 – 31.12.2016	Completed 1.1.2016 – 31.12.2016	Continuing as at 31.12.2016
<b>APPEALS</b>	<b>10</b>	<b>13</b>	<b>13</b>
Appeal – Industrial Magistrate		9	6
Appeal – superannuation	5	4	8
Appeal – OHS prosecution	0	0	0
Appeal – Unfair contracts	0	0	0
Appeal – Police Officer relating to leave when hurt on duty	0	0	0
Appeal – Public Sector Discipline	0	0	0
<b>HARSH CONTRACTS</b>	<b>5</b>	<b>3</b>	<b>4</b>
Application under s106 of the Act	5	3	4
<b>PROSECUTIONS</b>	<b>0</b>	<b>0</b>	<b>0</b>
Prosecution – s8(1) OHS Act 2000	0	0	0
Prosecution – s8(2) OHS Act 2000	0	0	0
Prosecution – s10(2) OHS Act 2000	0	0	0
<b>OTHER</b>	<b>14</b>	<b>8</b>	<b>21</b>
Declaratory jurisdiction (s154, s248)	8	3	8
Registration of organisations Pt3 Ch5	0	1	0
Civil Penalty for breach of industrial instrument	1	0	10
Recovery of remuneration and other amounts	5	4	3
Contempt of the Commission	0	0	0
Regulation of State industrial organisations Pt4 Ch5	0	0	0
<b>INDUSTRIAL COURT SUB-TOTAL</b>	<b>29</b>	<b>24</b>	<b>38</b>
<b>TOTAL</b>			
<b>Industrial Relations Commission &amp; Industrial Court for 2016</b>	<b>922</b>	<b>788</b>	<b>482</b>

\* Due to a change in case management systems have affected the totals including recapture of older matters. See page 1 for information regarding JusticeLink.

## APPENDIX 5

### The Presidents of the Industrial Relations Commission of New South Wales

Name	Held Office		Remarks
	From	To	
Cohen, Henry Emanuel	01 Apr 1902	03 Jul 1905	Died 5 Jan 1912.
Heydon, Charles Gilbert	04 July 1905	Dec 1918	Died 6 Mar 1932.
Edmunds, Walter	Aug 1920	06 Jan 1926	From February 1919 to August 1920 held appointment as Acting President and President of Board of Trade. Died 15 Aug 1932.
Beeby, George Stephenson	Aug 1920	July 1926	President, Board of Trade. Died 18 Jul 1942.
Piddington, Albert Bathurst	July 1926	19 May 1932	Died 5 Jun 1945.
Browne, Joseph Alexander	20 Jun 1932	30 Jun 1942	Died 12 Nov 1946.
Taylor, Stanley Cassin	28 Dec 1942	31 Aug 1966	Died 9 Aug 1982.
Beattie, Alexander Craig	1 Sep 1966	31 Oct 1981	Died 30 Sep 1999.
Fisher, William Kenneth	18 Nov 1981	11 Apr 1998	Died 10 Mar 2010.
Wright, Frederick Lance	22 Apr 1998	22 Feb 2008	Retired
Boland, Roger Patrick	9 Apr 2008	31 Jan 2014	Retired and continued as Acting Judge until 31 Jan 2015
Walton, Michael John	3 Feb 2014	7 Dec 2016	Appointed Justice of the Supreme Court

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## 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 Feb 1987	10 Dec 1998	Died 21 Aug 2006.
Walton, Michael John	18 Dec 1998	31 Jan 2014	Appointed as President 3 Feb 2014.

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## APPENDIX 7

### 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 <sup>1</sup>	8 Dec 2016	Current	

<sup>1</sup> <sup>1</sup> Appointed as Acting Chief Commissioner (under the Act)

## APPENDIX 8

### Industrial Registrars of the Industrial Relations Commission of New South Wales

Name	Held Office		Remarks
	From	To	
Addison, George Campbell Industrial Magistrate 1917.	1 Apr 1902	1912	Returned to the Bar. Appt Chief
Holme, John Barton	1912	9 Feb 1914	Appt first Undersecretary, Department of Labour and Industry 10 Feb 1914.
Payne, Edward John	1914	1918	Retired from the public service in 1939 as Chairman, Public Service Board.
Kitching, Frederick William	12 Jul 1918	30 Jun 1924	Appt Undersecretary, Office of the Minister for Labour and Industry 1 Jul 1924.
Webb, Alan Mayo Commission 20 Jun 1932.	1 Sep 1924	19 Jun 1932	Appt Judge of Industrial
Wurth, Wallace Charles Appt Chairman, PSB in 1939.	1932	1936	Appt to Public Service Board;
Ebsworth, Samuel Wilfred	1936	1947	Retired.
Kelleher, John Albert	1947	13 May 1955	Appt Undersecretary and Industrial Registrar, Dept of Labour and Industry and Social Welfare 1949. Appt Judge of Industrial Commission 16 May 1955.
Kearney, Timothy Joseph	1955	1962	Appt Undersecretary, Department of Labour and Industry.
Whitfield, John Edward	1962	1968	Appt Executive Assistant (Legal) Department of Labour and Industry; later appt as Deputy Undersecretary, Department of Labour and Industry.
Fetherston, Kevin Roy	3 June 1968	1977	
Coleman, Maurice Charles Edwin	29 April 1977	1984	Retired.
Buckley, Anthony Kevin	23 Jan 1984	30 Mar 1992	Appt as Commissioner, Industrial Relations Commission 31 Mar 1992.
Walsh, Barry <sup>1</sup>	19 Feb 1992	15 Jul 1994	Appt as Registrar, Australian Industrial Relations Commission. Appt as Commissioner, Water Conservation and Irrigation Commission.

Name	Held Office		Remarks
	From	To	
Szczygielski, Cathy <sup>2</sup>	18 Jul 1994	4 Nov 1994	Returned to position of Deputy Registrar, Industrial Court.
Williams, Louise <sup>3</sup>	7 Nov 1994	16 Aug 1996	Appt as Registrar, Land & Environment Court.
Robertson, Gregory Keith <sup>4</sup>	31 Mar 1992	26 Oct 1999	To private practice.
McGrath, Timothy Edward	27 Oct 1999	9 Aug 2002	Appt Assistant Director-General, Court and Tribunal Services, Attorney General's Department 12 Aug 2002.
Grimson, George Michael	22 Aug 2002	18 Dec 2014	Retired.
Hourigan, Lesley <sup>5</sup>	19 Dec 2014	13 Mar 2015	Returned to position of Deputy Registrar Industrial Court.
Wiseman, James <sup>6</sup>	16 Mar 2015	Oct 2016	Returned to Local Court
Morgan, Melinda	31 Oct 2016	Still in office	

<sup>1</sup> 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.

<sup>2</sup> 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.

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

<sup>4</sup> Appointed as Registrar and CEO, Industrial Court (under 1991 Act)

<sup>5</sup> 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).

<sup>6</sup> Appointed as Acting Registrar Industrial Court (under the Act)

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## APPENDIX 9

### Legislative Amendments

#### Industrial Relations (Industrial Court) Amendment Act 2016

This Act was assented to and commenced on 8 December 2016. The Act dissolved the Industrial Court and transferred the powers to the Industrial Law list at the Supreme Court of NSW.

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## APPENDIX 10

### 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.

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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.

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 and abolished the Industrial Court and the work of the Industrial Court was transferred to the Supreme Court. The Offices of the 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 relations to the former Industrial Court). The members of the Commission continue to be judicial officers for the purposes of the Judicial Officers Act and the Chief Commissioner, as head of the jurisdiction, is an official member of the Judicial Commission.

