

**Industrial Relations Commission
of New South Wales**

ANNUAL REPORT 2019

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

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



Letter of transmittal to the Premier

The Hon Gladys Berejiklian MP
Premier
Parliament House Sydney NSW 2000

Dear Premier

I am pleased to submit the Annual Report of the operations of the Industrial Relations Commission for the year ended 31 December 2019 for presentation to each House of Parliament in accordance with s 161 of the *Industrial Relations Act 1996*.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nichola Constant'.

Nichola Constant
Chief Commissioner

19 June 2020

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FOREWORD



FOREWORD BY THE CHIEF COMMISSIONER

The year of 2019 was book-ended by change for the Industrial Relations Commission; beginning at new premises in Smith Street, Parramatta, and ending with the retirement of Chief Commissioner Peter Kite SC.

On 5 February 2019, the Commission formally opened its new premises at a ceremonial sitting of all six members of the Commission. We were welcomed to country by Mr Graham Davis King, an Aboriginal Elder from Deerubbin Local Aboriginal Land Council, who reminded us through song of the importance of community. The Commission was then privileged to be addressed by: the Attorney General of NSW, The Hon. Mark Speakman SC MP; Ms Elizabeth Espinosa, President, Law Society of NSW; Ms Kylie Nomchong SC of the NSW Bar Association; Mr Adam Dansie of Local Government NSW; Mr Mark Morey of Unions NSW and Mr Stephen Cartwright of the NSW Business Chamber. The Treasurer and Minister for Industrial Relations, The Hon. Dominic Perrottet, was represented by Ms Vicki Telfer PSM. The Commission was also privileged to have in attendance: the Leader of the Opposition in the Legislative Council, Shadow Attorney General and Shadow Minister for Industrial Relations, The Hon. Adam Searle MLC; The Hon. Justice Lea Armstrong, President of the NSW Civil & Administrative Tribunal; and former members of the Commission, including The Hon. Lance Wright QC, former President of the Commission.

The Attorney reminded us of the long and proud history of the Commission, and of its importance to the smooth running of the business and economy of NSW. The Attorney made note of the modern technology at the new premises, giving greater access to the Commission. The Commission thanks each of the speakers for their extensively researched, informative and entertaining addresses, acknowledging the history and importance of the Commission.

Throughout the year, the Commission continued to operate efficiently and effectively for the people of NSW in discharging its wide-ranging jurisdiction. There was an 8% increase in all matters filed at the Commission in 2019. The Commission dealt with a significant proportion of matters through compulsory conferences and conciliations. Those matters which required arbitration were, in the main, the more complex matters, or those with more wide-ranging significance. The number of arbitrations increased from 27 in 2014 and 55 in 2018, to 68 in 2019. This represented a 24% increase in 2019 year on year. It is also noteworthy that the number of matters appealed to a Full Bench of the Commission increased by 25% from 2018 to 2019. The average hearing length for arbitrations in 2018 was 1.67 days whereas in 2019 the average length of arbitrations was 2.24 days.

The Commission's clearance rate remained high at 94% for the year despite: a greater proportion of matters requiring arbitration; a reduced number of available member hearing days; and lengthier arbitrations.

FOREWORD *cont.*

The outcome in the *crown Employees (School Administrative and Support Staff) Award [2019]* NSWIRComm 1082 highlights the important role of conciliation in the Commission. As the Full Bench observed in that case, the parties engaged responsibly, diligently, co-operatively, and constructively in conciliation facilitated by the Commission. By reaching agreement, the parties avoided the need to call over 40 witnesses and the Full Bench was able to finalise the matter in less than a day, vacating the remaining 19 hearing days for which the matter was listed. The efficiencies gained through the successful conciliation of the matter are significant, not only for the Commission, but also for the parties.

The Commission has set itself ambitious time standards. Experience in 2019 has confirmed the need for the Commission to review whether these time standards reflect stakeholders' needs and expectations, as the parties often request delayed listings and or/extended timetables for the preparation for hearings. These requests have a material impact on the Commission's ability to meet the time standards.

On 20 November 2019, all members of the Commission again sat as a Full Bench to farewell the first appointed Chief Commissioner of the Commission, Peter Kite SC, before Peter proceeded on an Antarctic journey prior to his official retirement from the Commission on 22 December 2019. Due to the generosity of the Chief Justice of the Supreme Court of NSW, The Hon. Tom Bathurst AC, this ceremonial sitting took place at the Supreme Court at Queen's Square. The sitting was attended by: the President of the Court of Appeal, The Hon. Justice Andrew Bell; The Hon. Justice Monika Schmidt AC; The Hon. Justice Stephen Rothman AM representing the Chief Justice; The Hon. Lance Wright QC; The Hon. Wayne Haylen QC; The Hon. Conrad Staff; His Honour Judge Graeme Henson AM, Chief Magistrate; Vice President Adam Hatcher SC; and The Hon. Deputy President Peter Sams AM as well as many other esteemed members of the legal and industrial relations community.

The Commission heard from Ms Kate Foy representing The Hon. Don Harwin MLC, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts; Ms Nomchong SC; Ms Espinosa; Mr Ross Nassif of Local Government NSW; Mr Morey; and Mr Nigel Ward of the NSW Business Chamber. Each of the speakers acknowledged: the outstanding leadership shown by Peter; and Peter's significant contribution to the field of industrial relations, as an Acting Judge of the Commission from 25 November 2014 to 7 December 2016, as Chief Commissioner from 3 April 2017, and at the industrial bar for over 31 years. I wholeheartedly endorse the views expressed by each of the speakers and I thank Peter for his mentorship, support and generosity of spirit.

I also thank all those who have made this important year for the Commission as smooth as it has been. I thank the Industrial Registrar, and the Registry and Commissioner Support staff for the efficient manner in which the relocation to Parramatta was organised and executed, and for the dedication of the team throughout the year. I thank the Commissioners for their forbearance during the move and their commitment to the Commission and its work at all times. Given the move to new premises and the increased workload, the Commission members, the Registrar and the staff should take pride in the outcomes set out in this Annual Report.

HIGHLIGHTS 2019



Performance in key areas:

- Total number of filings increased by 8% from 875 in 2018 to 946 in 2019 and were at the highest level since 2015 (before the commencement of the *Industrial Relations (Industrial court) Amendment Act 2016*).
- The number of arbitrated hearings increased by 8% from 55 in 2018 to 68 in 2019.
- Over 90% of unfair dismissal matters were finalised within 6 months of commencement, up from 77% in 2018.
- 89% of industrial dispute matters were finalised within 6 months of commencement, up from 76% in 2018.
- Over 90% of appeals to a Full Bench of the Commission were determined within 6 months of filing.

State Wage Case

- A Summons to Show Cause was issued by the Commission on its own initiative on 31 May 2019 in consequence of a decision of the Minimum Wage Panel of the Fair Work Commission issued 31 May 2019. A Full Bench of the Commission made general orders and continued the Wage Fixing Principles on 2 September 2019: *State Wage case 2019* [2019] NSWIRComm 1065.

Education and Engagement Programs

- Commissioner Sloan spoke on behalf of the Chief Commissioner at the Annual Conference of the Industrial Relations Society in May 2019.
- The user group forum continued in 2019.
- Chief Commissioner Kite and Commissioners Sloan and Webster provided introductory advocacy courses to employee and employer groups at the Commission's premises throughout the year.
- Chief Commissioner Kite and Commissioners Constant, Sloan and Webster assisted with Moot adjudication for the University of Technology's "Advocacy in the Tribunals" course.

1. COMMISSION PROFILE



The Industrial Relations Commission is established under the *Industrial Relations Act 1996 (NSW)* (the Act) with conciliation and arbitral functions.

The Commission's principal role is to resolve industrial disputes, unfair dismissal claims, fix wages rates and set terms and conditions of employment by making industrial awards and approving enterprise agreements. The Commission seeks to ensure that industrial disputes arising between public sector employers, including Local Governments, and their employees in New South Wales are resolved quickly, in a fair manner and with the minimum of legal technicality.

The Commission also has jurisdiction to hear proceedings arising under various other industrial and related statutes including the *Workers compensation Act 1987*, the *Entertainment Industry Act 2013*, the *Work Health and Safety Act 2011*, the *Police Act 1990*, the *Essential Service Act 1988*, and the *Industrial Relations (child Employment) Act 2006*.

As a result of amendments to the Act, the Industrial Relations Commission as of 8 December 2016 has a Chief Commissioner as head of jurisdiction.

A brief history of the Commission is set out in Appendix [8].

Purpose of the Commission

Section 3 of the 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.

Broadly, the Commission discharges the following functions:

- setting remuneration and other conditions of employment;
- resolving industrial disputes; and
- hearing and determining other industrial matters.

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

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

Membership of the Commission

Chief Commissioner

Chief Commissioner Peter Michael Kite SC, appointed 3 April 2017, retired 20 December 2019

Commissioners

Commissioner John David Stanton, appointed 23 May 2005

Commissioner John Vincent Murphy, appointed 4 December 2015

Commissioner Nichola Constant, appointed 23 July 2018, appointed Acting Chief Commissioner on 22 November 2019

Commissioner Damian Sloan, appointed 30 July 2018

Commissioner Janine Webster, appointed 3 December 2018

1. COMMISSION PROFILE*cont.*

Regional Sitzings of the Commission

The Commission has premises located at 237 Wharf Road Newcastle. Commissioner Stanton based in Newcastle and his current appointment is on a part-time basis (two days per week). The Commission sat in Newcastle for 84 sitting days during 2019 (up from 82 in 2018).

The Commission endeavours to sit in other regional locations, particularly for Unfair Dismissal matters. This is only possible when Local Court facilities or other suitable premises are available. During 2019, in addition to Newcastle listings, there were a total of 93 sitting days (up from 92 in 2018) in a wide range of regional courts and regional locations. These regional locations included: Foster, Armidale; Tweed Heads; Katoomba; Murwillumbah; Coffs Harbour; Grafton; Broken Hill; and Orange.

The Commission uses audio-visual and teleconference facilities where appropriate. However, Commission members consider there is a beneficial and moderating effect on parties to industrial disputes and other proceedings if parties attend proceedings in person.

Industry Panels

Industry panels were reconstituted during 1998 to deal with applications relating to particular industries and awards. Since 2015 one Panel deals with metropolitan (or Sydney-based) matters (down from four in 2007); two Panels specifically deal with applications from regional areas (down from three).

The Panel dealing with applications in the north of the State (including the Hunter Region) was chaired by Commissioner Stanton. The Panel dealing with applications from the southern areas of the State (including applications from the Illawarra-South Coast region) is chaired by Commissioner Murphy. The membership of the Panels as at 31 December 2019 is as set out in Appendix 1.

The Industrial Relations Registry

The Industrial Registrar has administrative responsibility for the operation of the Commission. The Registrar reports to the Executive Director of the Supreme Court in relation to reporting, staff and budgetary responsibilities. The Registrar works with the Chief Commissioner to manage the day to day operational procedures.

The Industrial Registrar has statutory duties under the Act and other legislation. Some of these functions include:

- approving deferral of annual leave;
- determining applications, and issuing certificates, for conscientious objection to union membership, and approving and revoking right of entry permits;
- publishing the orders and awards and other instruments made by the Commission in the Industrial Gazette so that these orders and instruments have legal effect;
- administering the registration, amalgamation and consent to alteration of the rules of industrial organisations; and
- overseeing the election of officers of industrial organisations.

The Registry provides administrative support to the members of the Commission, supports the Industrial Registrar carry out her statutory functions, and focuses on providing high level services to its internal and external clients. The major sections of the Registry are:

Client Services

The Registry's Client Services is situated at the Commission's premises in Smith Street Parramatta. Client Service staff are usually the initial point of contact for the Commission's users.

The team provides assistance to users of the Commission seeking information about the work of, or appearing before, the Commission, and is responsible for receiving applications and evidence.

This team completes tasks related to preparation of industrial awards, enterprise agreements and other orders made by members of the Commission, for publication in the New South Wales Industrial Gazette. This team is also responsible for the maintenance of records relating to parties to awards and Industrial Committees and their members.

The Client Service team administers the 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 and processes applications for determination by the Industrial Registrar.

Commissioner Support Team

The Commissioner Support team provides administrative support to the Chief Commissioner and Commissioners in Sydney, Newcastle or sitting at other regional locations. The team is responsible for listing matters to be heard by members and providing formal orders and decisions made by the Commission.

2. PERFORMANCE



INDUSTRIAL RELATIONS COMMISSION

Overall Caseload

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

Table 2.1 [Caseload Statistics]

	2015	2016	2017	2018	2019
Appeals					
Filed	7	21	18	12	16
Finalised	8	23	11	15	12
Pending	5	2	9	6	8
Awards					
Filed	334	109	122	173	162
Finalised	382	160	112	147	181
Pending	83	32	42	67	16
Collaborative Employment Relations					
Filed	5	4	1	4	0
Finalised	0	4	4	5	1
Pending	5	5	2	1	0
Disputes					
Filed	292	343	354	300	372
Finalised	314	269	361	373	340
Pending	87	161	152	80	108
Enterprise Agreements					
Filed	12	11	6	7	6
Finalised	14	4	12	7	8
Pending	1	8	2	2	0
Unfair Dismissals					
Filed	208	202	241	218	248
Finalised	201	154	277	250	205
Pending	70	118	81	49	91
Public Sector Disciplinary Appeals					
Filed	24	24	29	47	55
Finalised	23	22	29	41	50
Pending	6	8	8	14	18

Table 2.1 [Caseload Statistics (continued)]

	2015	2016	2017	2018	2019
Police Dismissals and Disciplinary Appeals					
Filed	43	40	37	43	38
Finalised	39	26	54	38	40
Pending	21	35	18	23	21
Hurt on Duty Appeals					
Filed	9	18	3	1	2
Finalised	21	2	17	8	7
Pending	15	31	17	10	5
Other					
Filed	100	115	72	70	53
Finalised	86	103	60	109	45
Pending	38	50	53	20	26
TOTALS					
Total Filed for the Year	991	847	883	875	946
Total Finalised for the Year	1049	741	937	993	889
Total Pending at end of Year	310	415	366	267	324

Table 2.1 above shows the following trends

- Total filings (946) have increased 8% from 2018 against otherwise stable filings for the period 2016 - 2018.
- The number of disputes for 2019 has increased to approximately 39% of total filings (34% of total filings in 2018).
- Unfair dismissals were significantly higher again compared with prior years, now making up 26% of our total case load.
- These total filings do not include applications relating to industrial organisations including rule changes, right of entry permits, WHS permits and special wage permits.

2. PERFORMANCE *cont.*

Table 2.2 below shows the number of members and the respective positions

Table 2.2 [Commission Members]

	2015 ¹	2016 ²	2017 ³	2018 ⁴	2019 ⁵
Judicial and Presidential Members					
President	1	1	NA	NA	NA
Vice - President	N/A	NA	NA	NA	NA
Deputy President	1	1	NA	NA	NA
Presidential Members (Judges or Acting Judges)	0.5	0.5	NA	NA	NA
Total Judicial Members	2.5	2.5	NA	NA	NA
Non-Judicial Members					
Commissioners	2.7	4	6	8	5.4
Total Members of the Commission					
	5.2	7.5	6	8	5.4

¹ 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.

² Deputy President Harrison to 3 January; Acting Justice Kite to 7 December.

³ 2017 saw the retirement and appointment of Commissioners, whilst there were 6 over the span of 2017 there were a maximum of 5 Commissioners at any particular time.

⁴ 2018 saw 2 resignations and the appointment of 3 new Commissioners seeing a maximum of 6 Commissioners at any particular time.

⁵ Chief Commissioner Kite SC retired on 20 December 2019. As at 31 December 2019 the number of members of the Commission was 4.4.

Clearance Rates

The comparative clearance rate statistics for Commission between 2015 and 2019 are summarised in Table 2.3.

Table 2.3 [Clearance Rates Statistics]

	2015	2016	2017	2018	2019
Commission Clearance Rate	105.8%	87.4%	106%	113.4%	94%

The clearance rate dropped between 2018 and 2019. This was due to various reasons including: significantly higher number of filings; less available sitting days due to the retirement of Chief Commissioner Kite SC, leave (personal and annual) of members, and the reduction of Commissioner Stanton's appointment from 5 days per week to 2 days per week; the increased number of matters proceeding to an arbitrated hearing and the increase in the length of hearings.

By way of example, in 2014 there were a total of 27 hearings and the average hearing length was 1.67 days. In 2019 there were 68 hearings and the average length was 2.24. In 2014 there were only 2 Commission hearings of 5 days or more. In 2019 there were 9 hearings of 5 days or more and a hearing of 13 days in length. The hearings of 5 days or more are, in the main appeals from decisions of the Commissioner of Police pursuant to the *Police Act*.



Clearance rates are impacted by the increased number of filings and the reduction in Commissioners.

Figure 2.4 Number of cases compared with number of Commissioners.

2. PERFORMANCE *cont.*

Industrial Disputes

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

This form of robust alternative dispute resolution usually involves a Commissioner meeting with the parties both separately and together in an attempt to resolve their differences. In the event that a dispute cannot be resolved by way of conciliation, the Commission will then arbitrate the dispute under s 135 and s 136 and make orders that are binding on all parties. Industrial dispute matters represented 39.15% (up from 34.2% in 2018) of the total filings for the Commission during 2019.

Filed and Finalised Dispute Matters 2015-2019

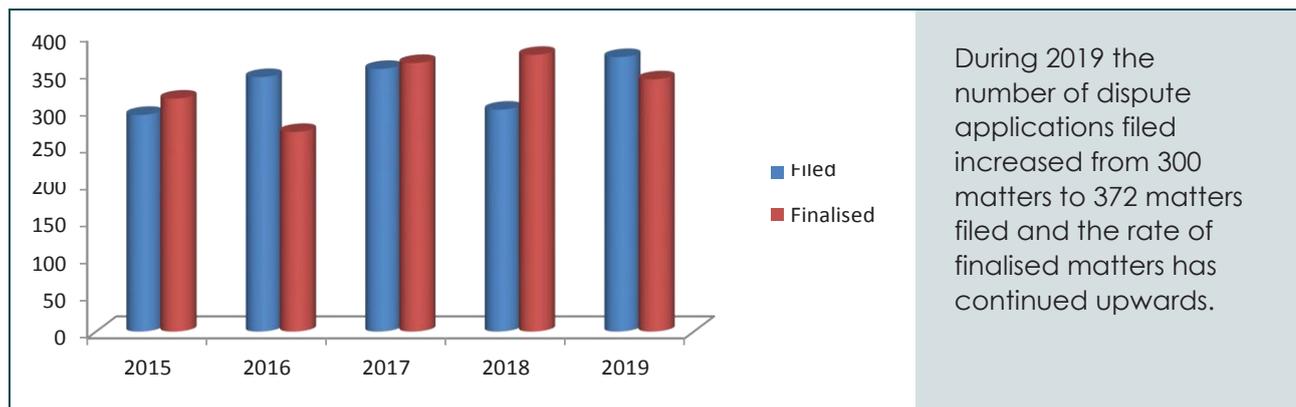


Figure 2.5 [Filed and finalised dispute matters]

Method of Disposal Industrial Dispute Matters 2019

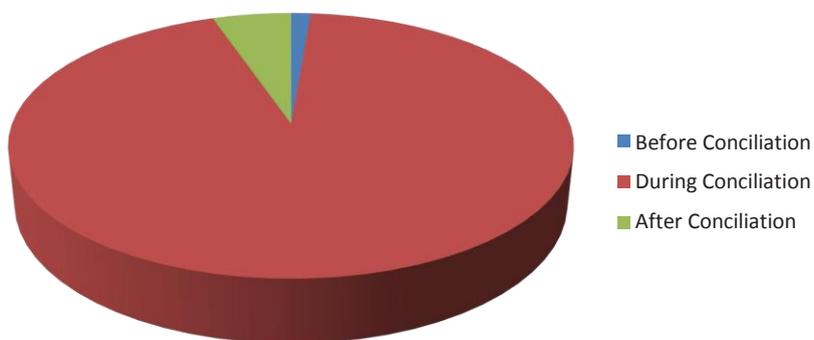


Figure 2.6 [Method of disposal]

Time Standards

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

Table 2.7 [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
2015	31.5%	42.3%	62.4%	7 Days
2016	26.4%	41.7%	70.3%	7 Days
2017	24.8% ✘	36.7% ✘	63.9% ✘	8 Days
2018	24.6% ✘	38.5% ✘	84.5% ✘	8 days
2019	25.04%	37.02%	61.15%	8 days

The median time to first listing has remained steady. This is mainly due to parties seeking a delayed listing of the dispute.

Table 2.8 [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)
2018	25.4%	36.2%	76.9%	99%
2019	44.21%	60.34% ✘ ↗	88.5%	99%

The finalisation of matters within the prescribed time standards showed a significant increase in 2019. Industrial disputes cover diverse subject matter and some require extended periods of progressive adjustment of formerly entrenched attitudes and positions. There will always be disputes which do not lend themselves to resolution within prescribed time standards.

2. PERFORMANCE *cont.*

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.

The Act provides that each unfair dismissal matter is initially dealt with by listing for conciliation conference (under s 86) with a view to assisting the parties to reach an early settlement. Where the conciliation is unsuccessful, the matter proceeds to an arbitrated hearing where the Commission must determine if the dismissal was harsh, unjust or unreasonable. The Commission then has power to make orders either confirming the dismissal or ordering that the employee be reinstated, re-employed or paid compensation.

The number of unfair dismissal matters filed in 2019 was 248; this is a 14% increase on lodgments during 2018. Figure 3.8 represents graphically a comparison between the unfair dismissal matters filed and disposed of in the last 5 years.

Filed and Finalised Unfair Dismissal Matters 2015-2019

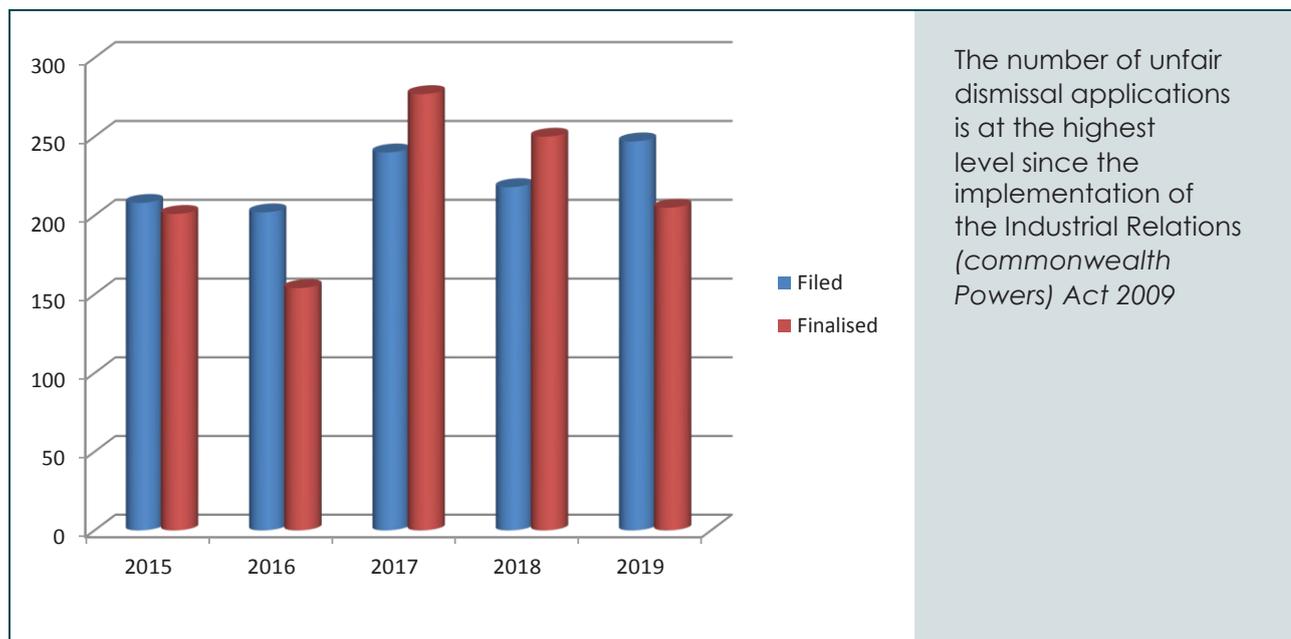


Figure 2.9 [Filed and finalised unfair dismissal matters]

Figure 2.10 represents graphically the method in which unfair dismissal matters were finalised by the Commission during 2019

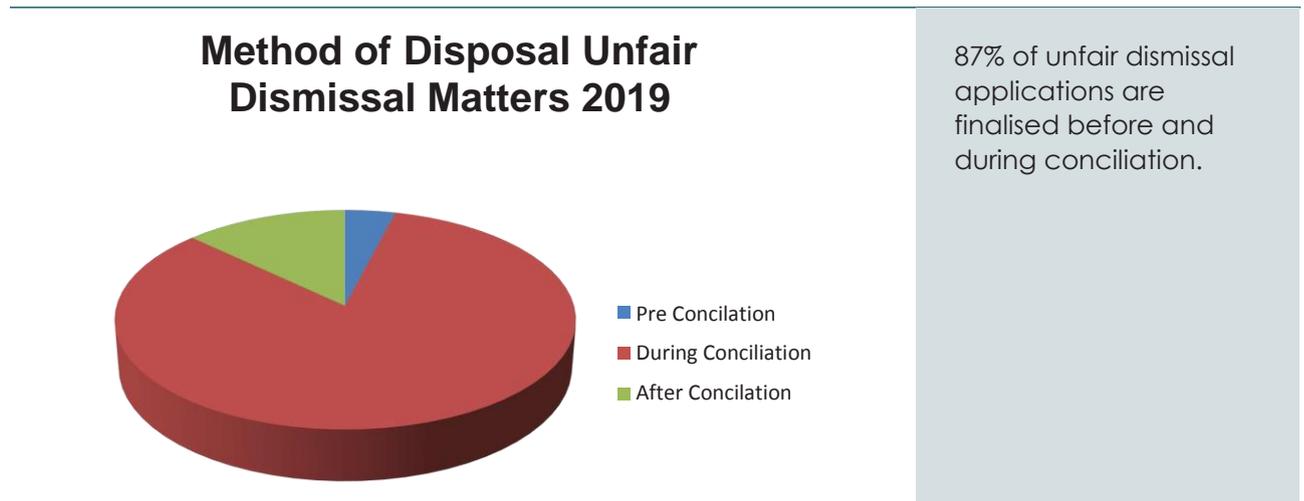


Table 2.11 shows the distribution as to who initiated an unfair dismissal action

	2015	2016	2017	2018	2019
Unfair Dismissals					
Application (Individual)	67	65	63	61	46
Application (Legal Representative)	40	47	56	53	32
Application (Organisation Representative)	101	90	121	104	169
TOTAL	208	202	240	218	247

2. PERFORMANCE *cont.*

Time Standards

There are two time standards relating to unfair dismissals:

1. an application for unfair dismissal should be listed for its first conciliation hearing within 21 days from lodgment; and
2. 50% of unfair dismissal applications should be finalised within 2 months; 70% within 3 months; 90% within 6 months and 100% within 9 months.

Table 2.12 shows the time taken to first listing of an unfair dismissal matter

Within	7 Days	14 Days	21 Days (100% Target)	28 Days
2018	7%	21.2%	68.4%	93.9%
2018	13%	36.3%	78.6%	96.5%

The median time to first listing has improved since 2018. Parties requesting the listing or relisting of their matter beyond 21 days from lodgment is the main reason for the failure to meet the listing benchmark.

Table 2.13 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)
2016	57.2%	69.8%	88.2%	98.6%
2017	56%	68.9%	88.9%	98.2%
2018	25.4%	36.6%	76.3%	99.2%
2019	43%	64.7%	90.7%	98.6% ↗

During 2019 the finalisation benchmarks improved for a variety of factors. In particular, the finalisation of matters within two and three months showed a significant increase, mainly as a result of a full complement of Commissioners for much of the year.

Awards and Enterprise Agreements

Award Jurisdiction

Overall

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

The Commission is given power to:

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

Award Reviews

In accordance with s 19(1), the Commission undertook the triennial award review process in 2018 and 2019. There were reviews of 50 awards commenced in 2019 (62 in 2018), 58 reviews were completed in the year 2019 (38 completed in 2018), and as at 31 December 2019, there were five award reviews to be completed.

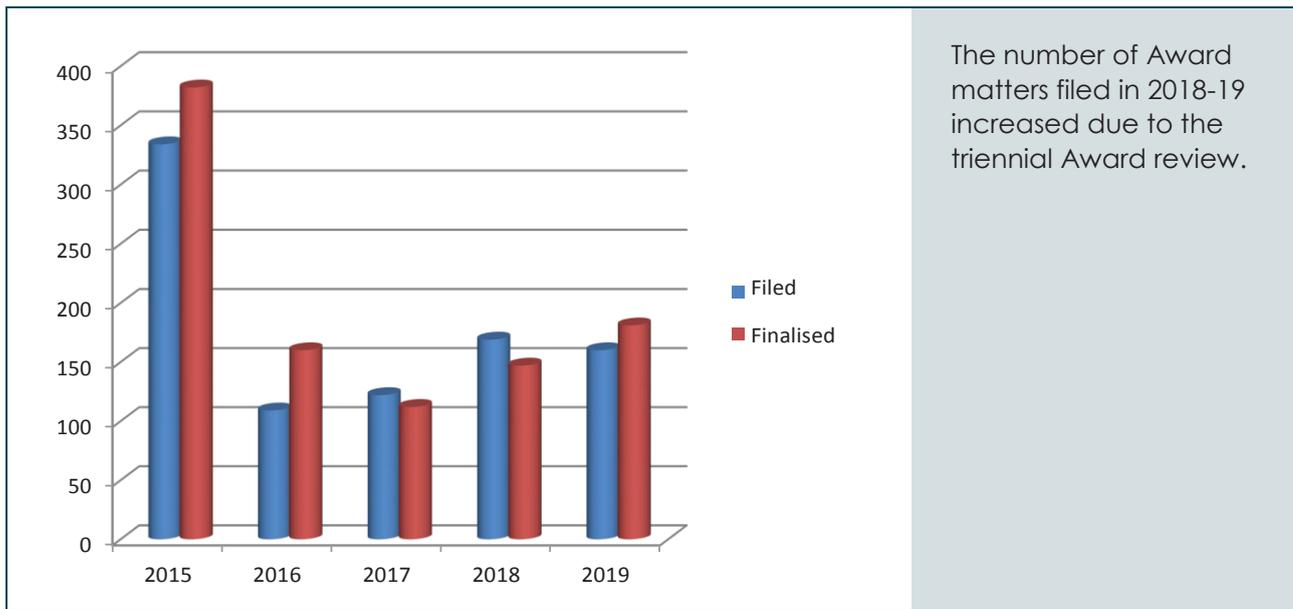
Awards

Awards matters remained steady at 19% of the total filings for the Commission during 2019.

2. PERFORMANCE *cont.*

Figure 2.14 represents graphically a comparison between the matters filed and completed in the last 5 years

Filed and Finalised Award Matters 2015-2019



The high number of cases in 2015 is due to the triennial award review being undertaken in one tranche in that year. The triennial award review which commenced in 2018 was undertaken in two tranches across 2018 and 2019.

Enterprise Agreements

Enterprise Agreements represented 0.7% of the total filings for the Commission during 2019.

Figure 2.15 graphically represents a comparison between the matters filed and disposed of in the last 5 years

Filed and Finalised Enterprise Agreements 2015-2019

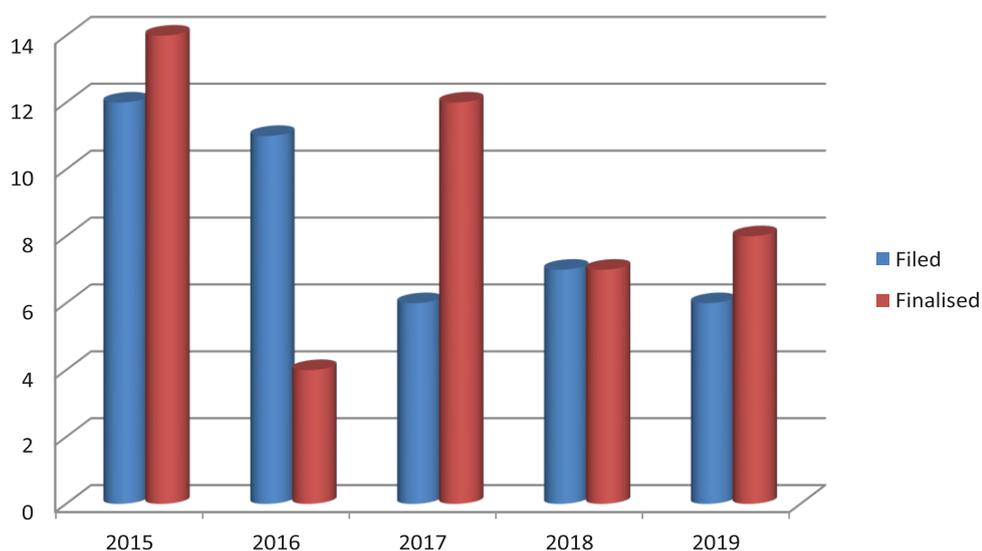


Table 2.16 provides details of filings of award and enterprise agreement applications in the period 2016 - 2019

	2016	2017	2018	2019
Awards				
Application to Make Award	59	82	78	82
Application to vary Award	41	37	21	26
Enterprise Agreements				
Application for an Enterprise Agreement	11	6	7	6
Terminated Enterprise Agreement	0	0	0	0
Review of Awards				
Notice of Review Issued	0	0	62	50
Awards reviewed	3	0	28	58
Awards rescinded	1	3	5	0
Awards determined to have effect as enterprise agreements	0	0	0	0
Declaration of Non-Operative Awards	0	0	0	0

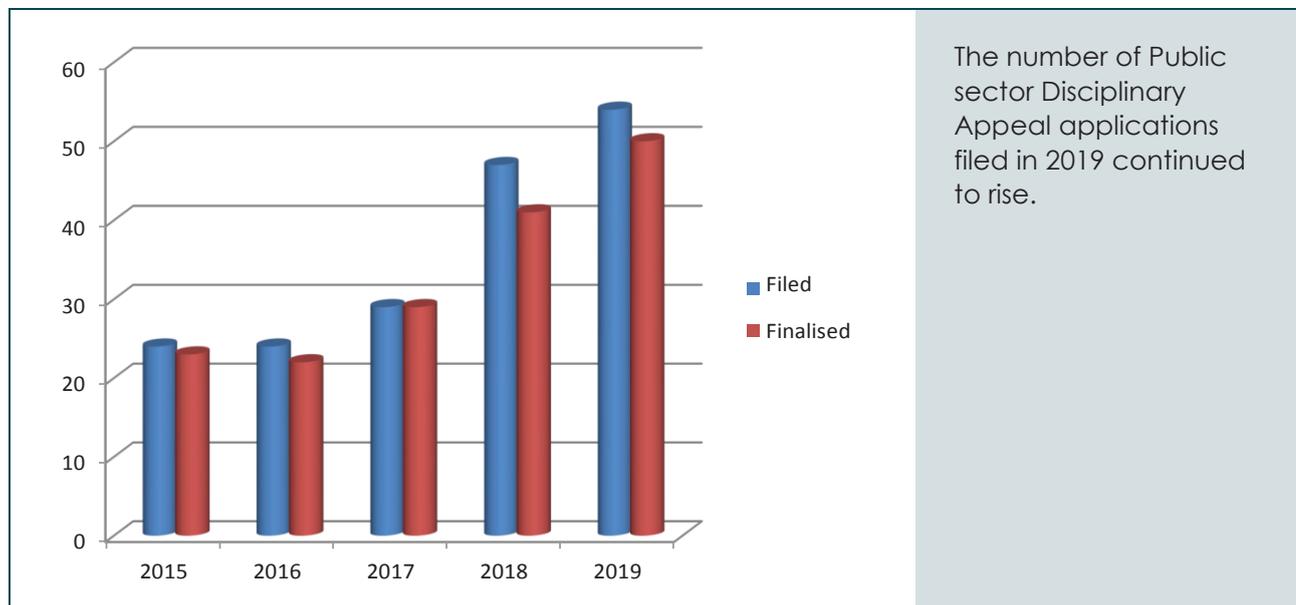
2. PERFORMANCE *cont.*

Public Sector Disciplinary and Promotional Appeals

Public sector disciplinary appeals increased to 6.4% of the total filings for the Commission during 2019.

Figure 2.17 represents graphically a comparison between the matters filed and disposed of in the last 5 years

Filed and Finalised Public Sector Disciplinary Appeals 2015-2019



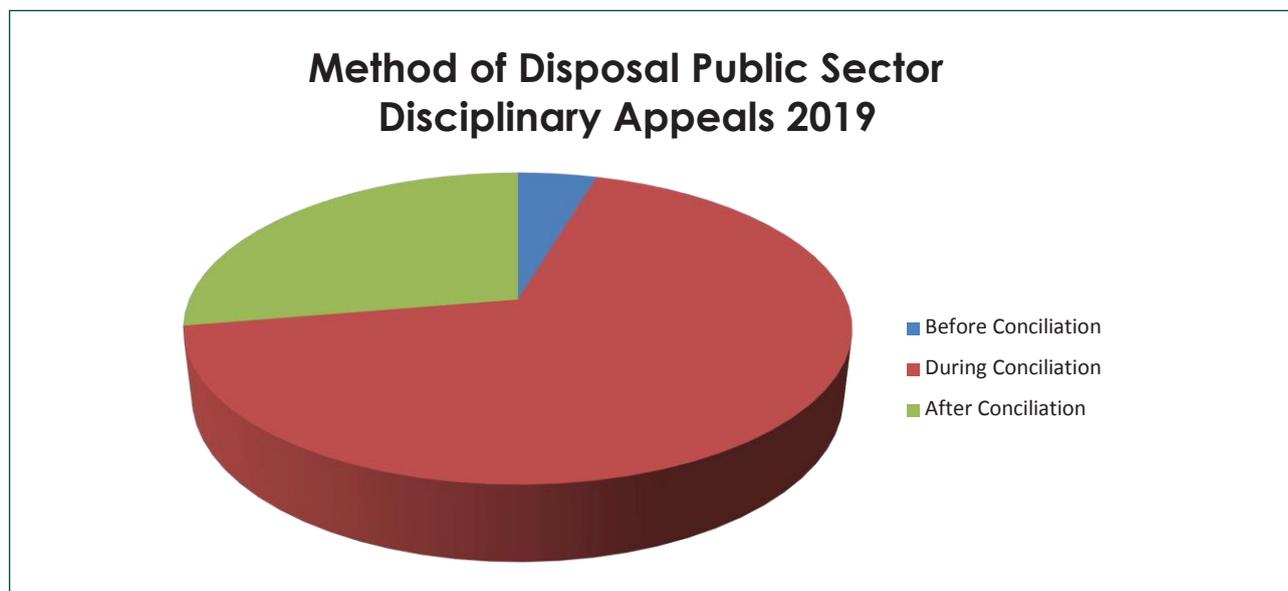
The downturn in appeals filed from the levels recorded in 2013 can be wholly explained by the enactment of the *Government Sector Employment Act 2013* ("the GSE Act") which abolished public sector promotional appeals. Accordingly, there were no promotional appeals filed in 2019.

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

Table 2.18 provides details of Public Sector Disciplinary Appeal filings from 2015 - 2019

	2015	2016	2017	2018	2019
Public Sector Disciplinary Appeals					
Filed	24	24	29	47	54
Finalised	23	22	25	41	50
Pending	1	3	8	14	18
TOTALS					
Total Filed for the Year	24	24	29	47	54
Total Finalised for the Year	23	22	25	41	50

Figure 2.19 represents graphically the method in which public sector disciplinary appeals were finalised by the Commission during 2019



2. PERFORMANCE *cont.*

Time Standards

Table 2.20 shows the time taken to finalise public sector disciplinary appeals dealt with during the last 4 years

	2016	2017	2018	2019
Public Sector Disciplinary Appeals				
Completed within 3 Months	66.7%	69.6%	70%	68.22%
Completed within 6 Months	88.9%	89.1%	88.6%	85%

There has been a slight decrease in the finalisation rate; this can be partly attributed to the increased number of applications in all categories including this application type.

Police Dismissals and Disciplinary Appeals

Under the provisions of s 173 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 s 174 of the *Police Act* an officer may apply to the Commission seeking a review of such orders (a "disciplinary appeal").

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

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

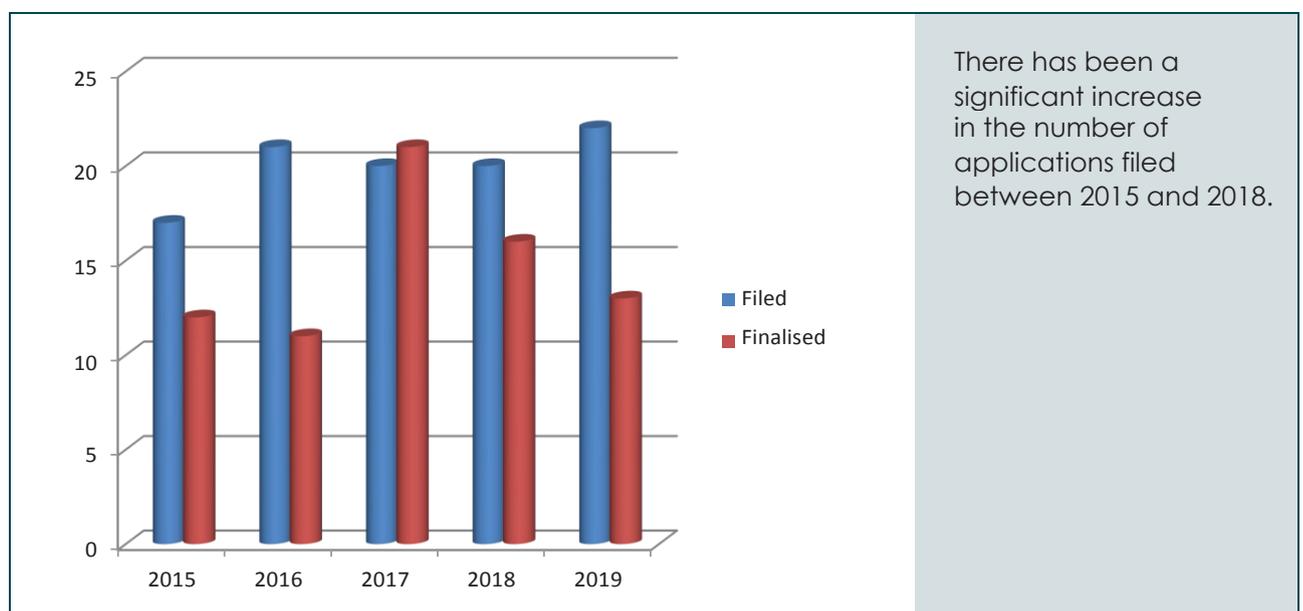
The *Police Act* (ss 179(2), 181 and 181K) requires (unless the Chief Commissioner otherwise directs in the case of disciplinary appeals) that each stage of the process is dealt with by a member of the Commission who is an Australian lawyer. All members of the Commission in 2019 were Australian lawyers.

Section 173 Police Disciplinary Appeals

Police disciplinary appeals represented 2.6% of the total filings for the Commission during 2019; this is a slight increase on applications from 2018.

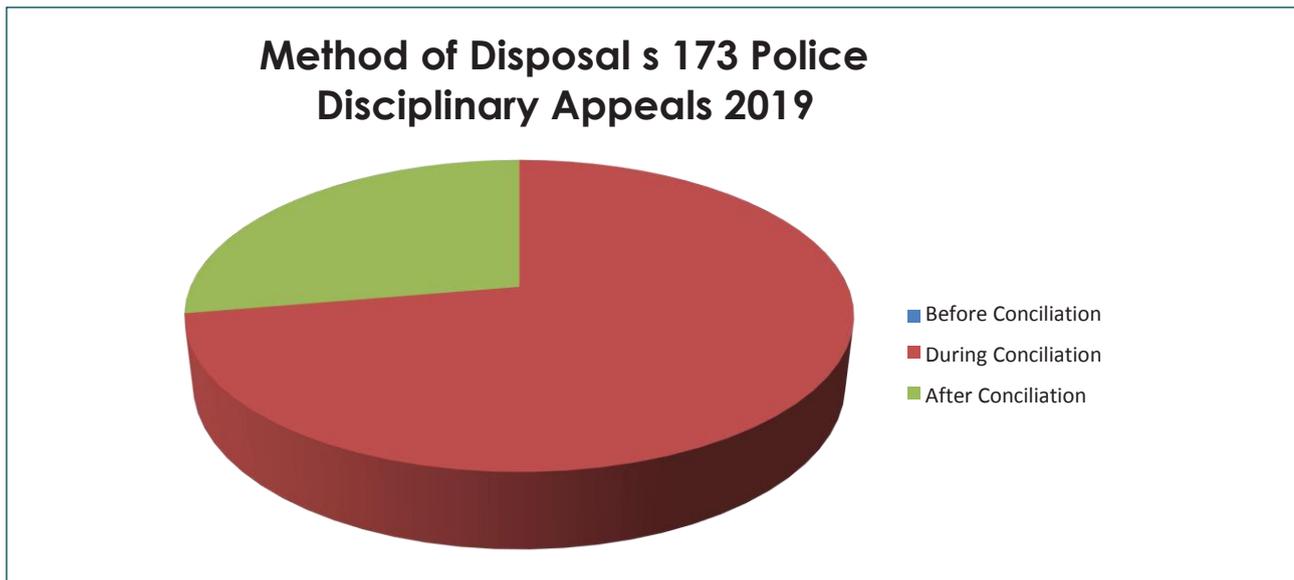
Figure 2.21 represents graphically a comparison between the matters filed and disposed of in the last 5 years

Filed and Finalised s173 Police Disciplinary Appeals 2015-2019



2. PERFORMANCE *cont.*

Figure 2.22 represents graphically the method in which police disciplinary appeals were finalised by the Commission during 2019



Section 181D Police Dismissal Appeals

Police disciplinary appeals represented 1.9% of the total filings for the Commission during 2019, although those matters represented statistically a higher proportion of sitting days required to dispose of the matters.

Figure 2.23 represents graphically a comparison between the matters filed and disposed of in the last 5 years

Filed and Finalised s 181D Police Dismissal Appeals 2015-2019

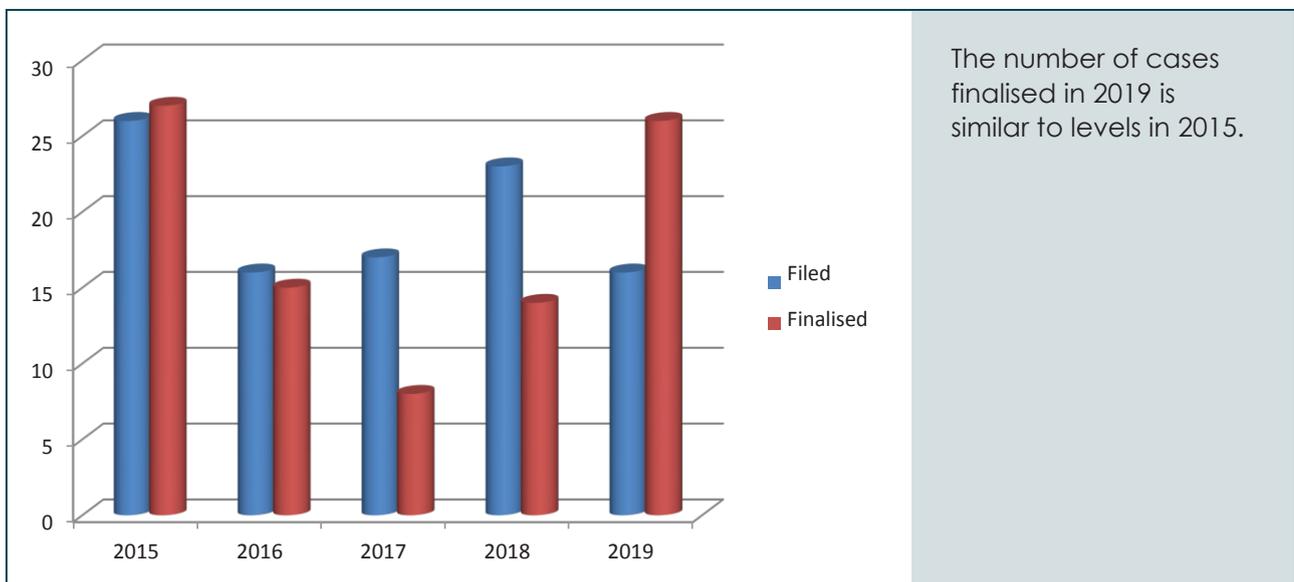
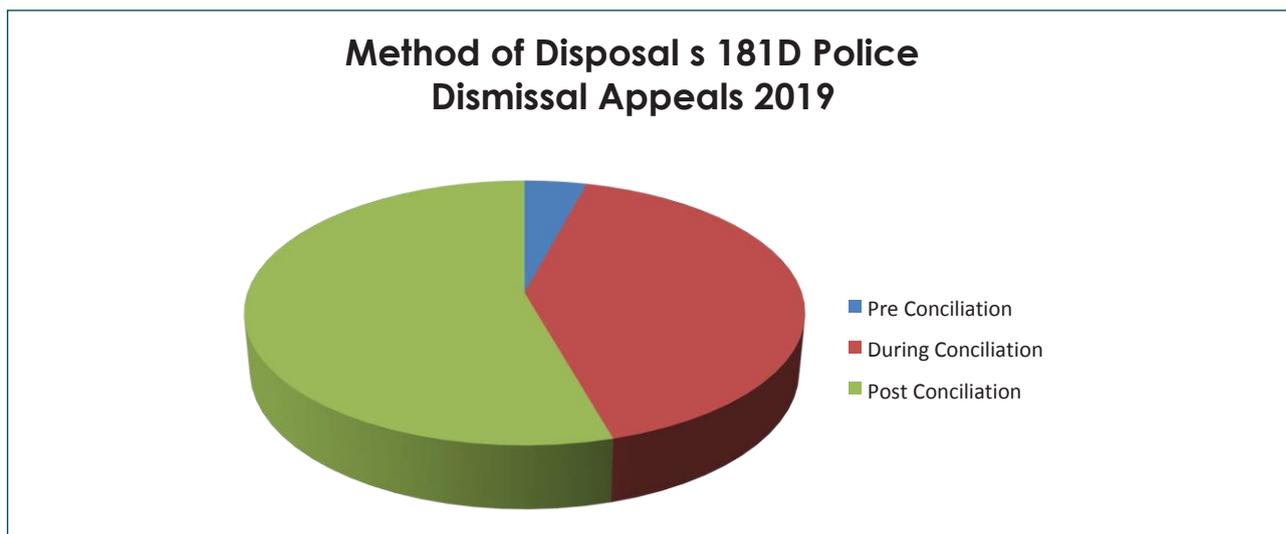


Figure 2.24 represents graphically the method in which police dismissal appeals were finalised by the Commission during 2019



Time Standards

Table 2.25 shows the time taken to finalise police disciplinary and dismissal appeals

	2015	2016	2017	2018	2019
s 173 Police Disciplinary Appeals					
Completed within 6 Months	91.6%	73.1%	82.2%	83.3%	83.0%
Completed within 12 Months	100%	88.4%	98.3%	99.3%	98.1%
s 181D Police Dismissal Appeals					
Completed within 6 Months	70.3%	87.5%	90.5%	90.6%	93.2%
Completed within 12 Months	85.1%	100%	100%	99.8%	98.8%

During 2019 the finalisation of s 181D matters within 6 and 12 months remained steady compared to other years.

2. PERFORMANCE *cont.*

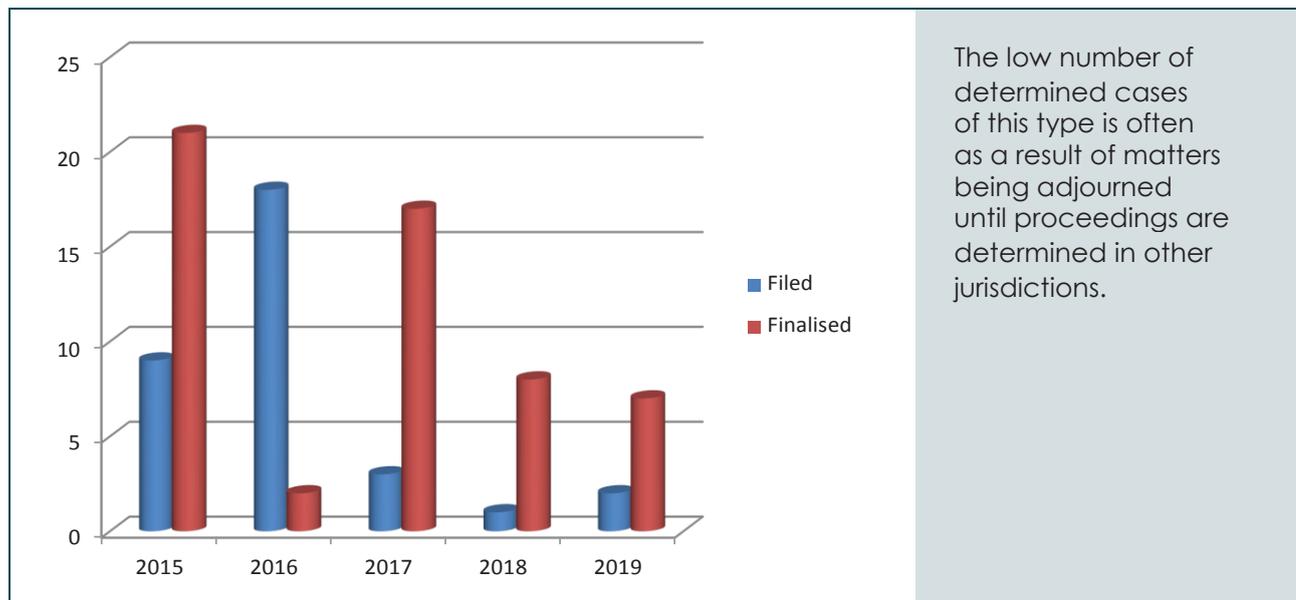
Police Hurt on Duty Appeals

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

Police Hurt on Duty Appeals represent less than 0.24% of the total filings for the Commission during 2019.

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

Filed and Finalised Police Hurt on Duty Appeals 2015-2019



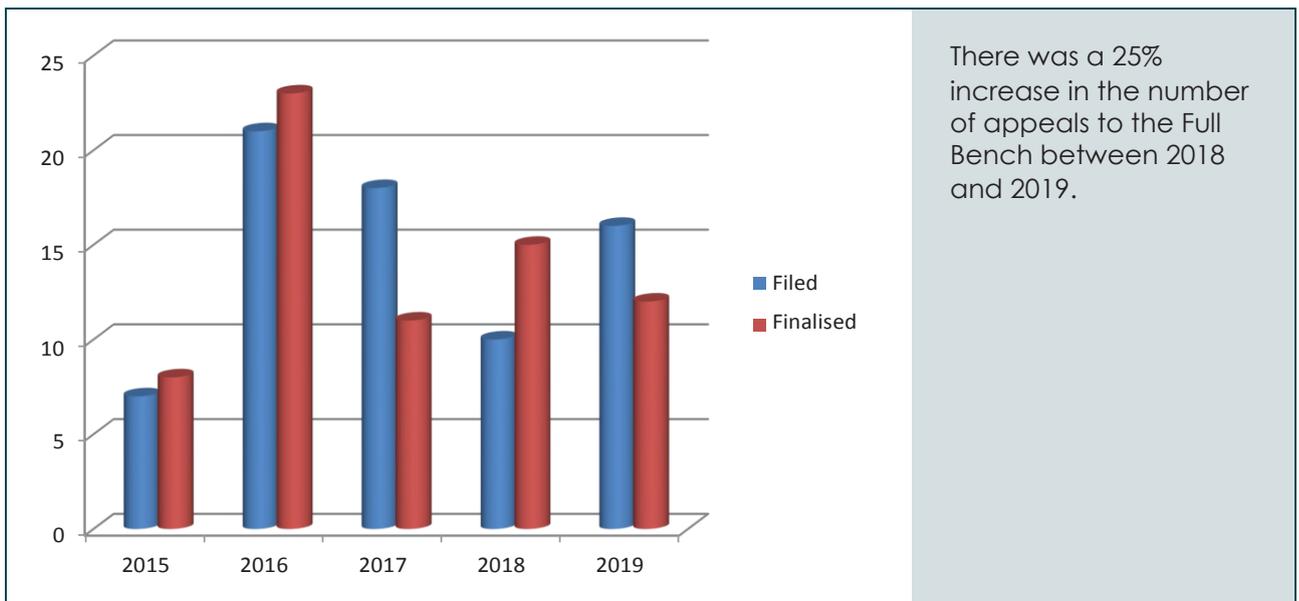
Appeals to a Full Bench

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.

The number of Appeals lodged during 2019 increased by 60% from the 2018 year. Section 156 of the Act requires a Full Bench to consist of at least 3 members of the Commission. The effective number of hearing days is therefore three times greater for Full Bench matters than for single member matters.

Figure 2.27 represents graphically a comparison between appeals filed and disposed of in the last 5 years

Filed and Finalised s 187 Full Bench Appeals 2015-2019



2. PERFORMANCE *cont.*

Industrial Organisations

Under the Act, its Regulations and the *Work Health and Safety Act 2011* ("the WHS Act"), the Commission has specific responsibilities relating to industrial organisations.

These responsibilities include the provision of Right of Entry Permits under Pt 7 of the WHS Act and Chap 5 of the Act. Other responsibilities include processing of applications regarding elections of office holders and approving rule changes for registered industrial organisations. These functions generally are carried out by registry staff under the direction of the Industrial Registrar. These application types are not counted in official filings unless they go before a Commissioner but account for 32.1% of applications to the Commission.

Table 2.28

	2016	2017	2018	2019
Work Health and Safety Permits	298	162	150	282
Right of Entry Permits	175	108	72	106
Special Wage Permits	43	25	25	34
Conscientious Objection Certificates	7	1	0	0
Rule Changes to Registered Organisations	18	10	10	9
Election Requests for Registered Organisations	36	19	10	14
Others	3	5	1	2
Total Filed for the Year	580	330	268	447

3. OTHER MATTERS



Commission Rules

Pursuant to s 186 of the Act, the Rules of the Commission are to be made by a Rules Committee comprising the Chief Commissioner and two other members appointed by the Chief Commissioner. There is also scope for co-option of other members.

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

The Industrial Relations Commission Rules 2009 require revision following the passage of the *Industrial Relations (Industrial court) Amendment Act 2016*. Regrettably the limits on the Commission's resources have not permitted that revision to be completed. There were no changes to the Industrial Relations Commission Rules during 2019.

Amendments to Legislation and Regulations

There were no amendments to the *Industrial Relations Act 1996* during 2019. There was a minor amendment to the *Industrial Relations (General) Regulation 2015* by the *Industrial Relations (General) Amendment (Fees) Regulation 2019*.

Practice Notes

A review of practice notes commenced in 2017, and this has continued through 2018 and 2019.

In 2019 practice note 23A was reissued, this development saw public sector disciplinary appeal application forms, employers reply and other supporting documents updated in a manner to assist the Commission to work effectively and efficiently.

4. APPENDICES



APPENDIX 1

INDUSTRY PANELS

Metropolitan and Regional Panels

Metropolitan

Divisional Head – Chief Commissioner Kite SC

Members

Murphy C
Constant C
Sloan C
Webster C

**Acting Chief Commissioner Constant became the Acting Divisional Head on 22 November 2019.

Regional

Panel N – Divisional Head – Stanton C

Members

Stanton C

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

Panel S – Divisional Head – Murphy C

Members

Murphy C

Industries: Relevant geographical areas south of Sydney plus Broken Hill

APPENDIX 2

TIME STANDARDS – Industrial Relations Commission

Time from commencement to finalisation	Time Standard	Achieved in 2018	Achieved in 2019
Applications for leave to appeal and appeal			
Within 6 months	50%	89.9%	90.3%
Within 12 months	90%	97%	96.8%
Within 18 months	100%	100%	100%
Award Applications [including Major Industrial Cases]			
Within 2 months	50%	48%	52.6%
Within 3 months	70%	72.5%	71.8%
Within 6 months	80%	88%	91.2%
Within 12 months	100%	100%	99%
Enterprise Agreements			
Within 1 month	75%	57%	57%
Within 2 months	85%	68.8%	63.7%
Within 3 months	100%	74%	72.7%
Applications relating to Unfair Dismissal			
Within 2 months	50%	46.3%	43.7%
Within 3 months	70%	64.9%	64.5%
Within 6 months	90%	89.9%	90.4%
Within 9 months	100%	99%	99%
Public Sector Disciplinary Appeals			
Within 1 month	30%	10.3%	43%
Within 2 months	60%	62.9%	55.1%
Within 3 months	90%	70%	66.1%
Within 6 months	100%	88.6%	85.6%

4. APPENDICES *cont.*

Time to first listing	Time Standard	Achieved in 2017	Achieved in 2018
Industrial Disputes			
Within 72 Hours	50%	23.6%	25.7%
Within 5 Days	70%	35.5%	41.7%
Within 10 Days	100%	63.7%	69.7%

APPENDIX 3

Matters Filed in Industrial Relations Commission

Matters filed during period 1 January to 31 December 2019 and completed and continuing matters as at 31 December 2019.

Nature of Application	Filed 1.1.2019 – 31.12.2019	Completed 1.1.2019 – 31.12.2019	Continuing as at 31.12.2019
APPEALS	6	10	6
Appeal – Award	2	1	1
Appeal – Unfair dismissal	4	4	2
Appeal – Public Sector Disciplinary	1	1	0
AWARDS	168	164	12
Application to make an award	82	71	6
Application to vary an award	26	25	0
State Wage Case	1	1	0
Review of an award	50	58	6
Other – incl. rescission, interpretation	3	3	0
COLLABORATIVE EMPLOYMENT RELATIONS	0	1	0
Collaborative Employment Relations processes	0	1	0
DISPUTES	372	333	90
s 130 of the Act	348	312	83
s 332 of the Act	18	14	6
s 146B of the Act	1	1	0
s 20 of the <i>Entertainment Act</i>	3	3	0
ENTERPRISE AGREEMENTS	6	6	0
Application for approval with employees	2	2	0
Application for approval with industrial organisation	4	4	0
Principles for approval of Enterprise Agreements s 33(3) of the Act	0	0	0

4. APPENDICES *cont.*

Nature of Application	Filed 1.1.2019 – 31.12.2019	Completed 1.1.2019 – 31.12.2019	Continuing as at 31.12.2019
UNFAIR DISMISSALS	247	198	74
Application by the employee	78	69	28
Application by an industrial organisation on behalf of employee	169	129	46
PUBLIC SECTOR AND POLICE APPEALS	95	86	37
Public Sector disciplinary appeal	55	44	19
Application for review of order s 181D of the <i>Police Act</i>	16	26	6
Application for review of order s 173 of the <i>Police Act</i>	22	13	11
Appeal by Police Officer relating to leave when hurt on duty	2	3	2
Contracts of Carriage and Bailment	10	10	4
Contract determinations	3	10	4
Compensation for termination of certain contracts of carriage	0	0	0
Other Applications	31	32	11
Application to extend duration of Industrial Committee	1	1	0
Registration pursuant to the Clothing Trades Award	3	3	1
Protection of injured workers from dismissal - Workers Compensation Act	4	6	2
Application for order enforcing principles of association s 213 of the Act	0	0	0
Application for external review Work Health & Safety Act	7	9	3
Appeal for an Assisted Appointment Review	0	0	0
Determination of demarcation questions	0	0	0
Application for relief from victimisation	16	14	5

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

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

Name	Held Office		Remarks
	From	To	
Tabbaa, Innam ¹	8 December 2016	30 March 2017	Retired on 20 April 2017
Kite SC, Peter	3 April 2017	4 December 2019	Retired 20 December 2019
Constant, Nichola ²	22 November 2019	Current	

¹ Appointed as Acting Chief Commissioner under the Act

² Appointed as Acting Chief Commissioner under the Act

4. APPENDICES *cont.*

APPENDIX 5

The Presidents of the Industrial Relations Commission of New South Wales

Name	Held Office		Remarks
	From	To	
Cohen, Henry Emanuel	1 April 1902	3 July 1905	Died 5 January 1912
Heydon, Charles Gilbert	4 July 1905	December 1918	Died 6 March 1932
Edmunds, Walter	August 1920	6 January 1926	From February 1919 to August 1920 held appointment as Acting President and President of Board of Trade. Died 15 Aug 1932.
Beeby, George Stephenson	August 1920	July 1926	President, Board of Trades Died 18 July 1942
Piddington, Albert Bathurst	July 1926	19 May 1932	Died 5 June 1945
Browne, Joseph Alexander	20 June 1932	30 June 1942	Died 12 November 1946
Taylor, Stanley Cassin	28 December 1942	31 August 1966	Died 9 August 1982
Beattie, Alexander Craig	1 September 1966	31 October 1981	Died 30 September 1999
Fisher, William Kenneth	18 November 1981	11 April 1998	Died 10 March 2010
Wright, Frederick Lance	22 April 1998	22 February 2008	Retired
Boland, Roger Patrick	9 April 2008	31 January 2014	Retired and continued as Acting Judge until January 2015
Walton, Michael John	3 February 2014	7 December 2016	Appointed Justice of the Supreme Court of NSW.

APPENDIX 6

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

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

The position was created:

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

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

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

4. APPENDICES *cont.*

APPENDIX 7

Industrial Registrars of the Industrial Relations Commission of New South Wales

Name	Held Office		Remarks
	From	To	
Addison, George Campbell	1 April 1902	1912	Returned to the Bar. Appointed Chief Industrial Magistrate 1917.
Holme, John Barton	1912	9 February 1914	Appointed first Undersecretary, Department of Labour and Industry 10 Feb 1914.
Payne, Edward John	1914	1918	Retired from the public service in 1939 as Chairman, Public Service Board.
Kitching, Frederick William	12 July 1918	30 June 1924	Appointed Undersecretary, Office of the Minister for Labour and Industry 1 July 1924.
Webb, Alan Mayo	1 September 1924	19 June 1932	Appointed Judge of the Industrial Commission 20 June 1932.
Wurth, Wallace Charles	1932	1936	Appointment to Public Service Board; Appointed Chairman of the Public Service Board in 1939.
Ebsworth, Samuel Wilfred	1936	1947	Retired.
Kelleher, John Albert	1947	13 May 1955	Appointed Undersecretary and Industrial Registrar, Department of Labour and Industry and Social Welfare 1949. Appointed Judge of Industrial Commission 16 May 1955.
Kearney, Timothy Joseph	1955	1962	Appointed Undersecretary, Department of Labour and Industry.
Whitfield, John Edward	1962	1968	Appointed Executive Assistant (legal) Department of Labour and Industry; Later appointed as Deputy Undersecretary Department of Labour and Industry.
Fetherston, Kevin Roy	3 June 1968	1977	
Coleman, Maurice Charles Edwin	29 April 1977	1984	Retired.

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

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

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

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

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

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

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

4. APPENDICES *cont.*

APPENDIX 8

Brief History of the Industrial Relations Commission of New South Wales

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

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

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

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

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

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

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 *Industrial Arbitration Act* provided for the establishment of an Industrial Commission, Conciliation Committees, Conciliation Commissioners, Special Commissioners, Industrial Magistrates Courts and the Industrial Registrar.

4. APPENDICES *cont.*

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 *Industrial Arbitration 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 Industrial Commission consisted of not more than 12 members, including the President and the vice-President. The *Industrial Arbitration 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 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.

4. APPENDICES *cont.*

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

