



Industrial Relations Commission New South Wales

NSW BAR ASSOCIATION – SYDNEY CPD CONFERENCE

NEW ERA OF INDUSTRIAL RELATIONS IN NSW

SPEECH GIVEN ON 29 MARCH 2025 AT HYATT REGENCY SYDNEY

JUSTICE DAVID CHIN, VICE PRESIDENT OF THE INDUSTRIAL RELATIONS COMMISSION OF NSW

Introduction (Slides 1 - 2)

- 1 The Industrial Relations Commission of NSW is the oldest continuous tribunal or Court of compulsory conciliation and arbitration of industrial disputes in the world. The NSW Court of Industrial Arbitration held its first sitting on 16 May 1902, shortly after Federation. Justice Henry Cohen, a Supreme Court judge, was appointed as its first President.
- 2 Justice Higgins' famous *Harvester* decision in the Commonwealth Conciliation and Arbitration Commission, which established a national minimum "living wage" in 1907, was preceded two years earlier in 1905 by a decision of the NSW Court of Industrial Arbitration – the first anywhere in Australia to adopt the concept of a living wage (for sawmillers).
- 3 Last July, the Industrial Relations Commission in Court Session – that is, the Industrial Court of New South Wales – was re-established as a superior court of record by the *Industrial Relations Amendment Act 2023* (NSW). The Amendment Act effectively restored to the Court the powers it had prior to its abolition in 2016. The Court regained the jurisdiction to enforce awards and make declarations of right which had been transferred to the Supreme Court in 2016, along with the jurisdiction to hear prosecutions for summary work health and safety offences, which had been transferred to the District Court in 2011.

- 4 We have even reoccupied the Industrial Court's historical premises, the Chief Secretary's Building in Bridge Street. Presently, the judicial members sit in the Chief Secretary's Building in the city; while the Commissioners continue to sit in premises in Smith Street Parramatta.
- 5 The Commission is currently constituted by three Presidential and Judicial Members – President Ingmar Taylor, myself as Vice President, and Deputy President Jane Paingakulam – and Senior Commissioner Constant and Commissioners O'Sullivan, McDonald, Muir and Webster.
- 6 Last December the President swore in three Acting Judges and Acting Deputy Presidents – Justice Robert Hulme (whose criminal law expertise greatly enhances our WHS jurisdiction), Justice Monika Schmidt AM (a former judge and Deputy President of the pre-2016 Commission) and Justice Peter Kite (a former Chief Commissioner of the Commission).
- 7 We expect that the Government will appoint two additional full-time Commissioners to commence soon.

Jurisdiction (Slide 3)

- 8 By way of a basic sketch or outline, the Commission's jurisdiction comprises the following main components:
 - (1) the Commission sitting as other than in Court Session:
 - (a) resolves industrial disputes and sets fair and reasonable terms and conditions of employment in the State and Local Government Sectors by the traditional process of compulsory conciliation and arbitration, and by a new stream of so called "mutual gains bargaining";
 - (b) determines public sector disciplinary appeals and unfair dismissals;

- (c) determines police disciplinary and removal matters under the *Police Act 1990*;
 - (d) resolves union demarcation disputes – over membership coverage;
 - (e) regulates remuneration under contracts of carriage in the transport industry in NSW;
 - (f) reviews SafeWork decisions under the WHS Act 2011; and
 - (g) arbitrates the remuneration of visiting medical officers under the *Health Services Act 1997* (by a judicial member of the Commission nominated by the President).
- (2) The Commission when sitting in Court Session and comprising its judicial members (known as the Industrial Court of NSW):
- (a) has jurisdiction over the enforcement of public sector industrial instruments, including by giving declaratory relief;
 - (b) determines contraventions and offences under the *Industrial Relations Act 1997* such as breaches of dispute orders (orders prohibiting the organising or taking of industrial action);
 - (c) has jurisdiction over the prosecution of summary offences under the *Work Health and Safety Act 2011* commenced since 1 July 2024;
 - (d) has power to vary and declare unfair contracts in public sector and non-corporate work contracts;
 - (e) has a federal underpayment jurisdiction as an “Eligible State or Territory Court” under the *Fair Work Act 2009* (Cth): see reg 1.05 (a) of the Fair Work Regulations 2009.

- 9 My aim this morning is to introduce to you the re-established Industrial Court. Whether this constitutes a “New Era” of industrial relations in NSW, I will leave to your judgment.
- 10 I will do so in two parts.
- 11 First, I identify some of the major cases and key principles handed down by the Commission and Court since last July and lightly touch on some of the institutional changes that the Commission has introduced since its reconstitution.
- 12 Secondly, I will speak about what parties can expect from the Commission over the coming months; and peer over the horizon of further legislative reforms.

Workload (Slide 4)

- 13 The number of the Commission’s decision-makers is growing to keep up with our increasing workload.
- 14 For the last six months of 2023 prior to the Court’s re-establishment, compared to the last six months of 2024 after the Court’s re-establishment, the number of civil proceedings lodged in the Industrial Commission increased from 389 to 475. That is a 22% increase. In our very first month, we received 48 applications to make new awards and 2 applications to vary existing awards.
- 15 If you count WHS proceedings, the number of matters filed increased from 389 to 610, which is a 57% increase. Our WHS jurisdiction is averaging about one filing per business day.

Major Commission Decisions

State Wage Case 2024 (no 3) [2024] NSWIRComm 19 (Slide 5)

- 16 The first major case I will talk about is the 2024 State Wage Case.

- 17 In annual State Wage Cases the Commission considers the extent to which increases in the national minimum wage set by the FWC each year should be reflected in NSW awards, and publishes its wage fixing principles.
- 18 The 2024 State Wage Case was significant because it was the first such case to be determined after the repeal of the so-called (and depending on your perspective, either notorious or celebrated) "wages cap".
- 19 The Amendment Act which revived the Industrial Court also repealed the wages cap which, for eleven years, had limited the Commission from increasing public sector wages by more than 2.5% per annum, unless the unions were able to demonstrate employee-related cost savings or productivity increases. The wages cap had the effect of depriving the Commission of its wage-setting function, because every year, other than in 2021, the Government offered unions the maximum available 2.5% increase, and unions had no choice but to consent to the award simply being remade with the higher rate.
- 20 The Court's re-establishment thus coincided with the restoration of the Commission's wage-setting function, ability to arbitrate significant industrial disputes, and capacity to maintain, over the long-term, the real value of wages. It has also coincided with the release of considerable industrial pressure from public sector workers and their unions that had been building throughout the wages cap era.
- 21 The State Wage Case in part concerned a review of the Wage Fixing Principles. The Wage Fixing Principles have been used by the Commission as a framework to set wages and employment conditions since 1983. The Commission's discretion to set wages is broad: what is "fair and reasonable"? The Principles have acted as a guide to or constraint upon the exercise of that broad discretion.
- 22 The Commission has revised the Principles many times since, but this was the first comprehensive review since the repeal of the wages cap.

23 We published the finalised Principles, which we renamed the Award Making Principles on 20 December 2024. The reasoning is set out in this decision on the slide. Among other changes:

(a) We recast the nature of the evidentiary or persuasive onus or burden on any party seeking to vary or make new awards. In particular, we abolished what had become regarded as a universally applicable requirement for applicants seeking to change the status quo to overcome a rigid and rebuttable presumption that existing awards set fair and reasonable terms and conditions of employment.

(b) The Full Bench also determined that the Principles ought to be varied to have regard to changes in the cost of living. The Principles, for industrially antiquated reasons, did not explicitly provide for award wage increases on the basis of inflation. The Full Bench accepted that wages ought to keep pace with inflation over time, and that over time wages should be expected to increase in real terms, in line with increases in productivity; and that it is now appropriate that the Principles be amended to create an express mechanism to address changes in the cost of living.

24 In this year's State Wage Case, we will invite parties to make submissions on whether such an adjustment should be implemented.

Industrial Secretary & Ors v Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales & Ors (No 2) [2024]
NSWIRComm 21 (Slide 6)

25 This is the second major wages case that the Commission has handed down - the Commission's first determination of NSW public sector salaries following the repeal of the wages cap.

26 The background to this case is that, just prior to the reconstitution of the Commission and Court in July last year, the Public Service Association notified

a number of disputes with the Industrial Relations Secretary, the Secretary of the Department of Education and the Secretary of Transport for NSW.

- 27 The principal dispute concerned a wage increase for 91,400 employees covered by the Crown Employees (Public Sector – Salaries 2022) Award, in addition to other awards covering Transport for NSW employees and school administrative and support staff. Prior to the hearing on interim relief in November 2024, the PSA and the NSW Government reached an agreement resolving the principal public sector salaries dispute and the Transport Awards dispute.
- 28 In this decision, the Full Bench, comprised of Justices Taylor, Paingakulam and myself, varied the remaining awards at issue to provide a 3.5% interim increase in pay and pay-related allowances. The proceedings for final relief remain on foot.

Industrial Court Decisions (Slide 7)

- 29 I also touch on some of the types of claims heard in the Commission in Court Session.
- 30 At the end of last month, Justice Paingakulam published *Hossack v State of New South Wales* [2025] NSWIC 1 relating to the operation of the remuneration cap in an unfair contract proceeding.
- 31 At the beginning of March, I published *Police Association of NSW v Commissioner of Police, NSW Police Force* [2025] NSWIC 2 in which I granted declaratory relief in proceedings relating to the interpretation of an award clause for incremental salary progression entitlements of probationary police officers.
- 32 We have also started to hear federal underpayment claims in respect of private sector employees. Most civil penalty proceedings under the *Fair Work Act 2009* (Cth), including underpayment claims, can be heard by an “Eligible State or Territory Court”, one of which is “the Industrial Court of New South Wales”.

- 33 Justice Taylor published the Court's first decision in respect of this jurisdiction on 12 March in *Australian Rail, Tram and Bus Industry Union v Pacific National Executive Services Pty Ltd* [2025] NSWIC 3.
- 34 In this decision, the President reconciled a number of conflicting Federal Court single judge decisions on whether s 323 of the FW Act – which requires an employer to pay an employee amounts payable to the employee in relation to the performance of work in full – only prohibits unauthorised deductions from an employee's pay (akin to the old "Truck Act" statutes) or whether it proscribes more generally any failure to make a payment required under a contract of employment in relation to the performance of work, such that it can be used to bring contractual underpayment claims.
- 35 The President determined in favour of the broader operation of s 323.

Work Health and Safety Jurisdiction (Slide 8)

- 36 The Industrial Court has jurisdiction to hear matters concerning the prosecution of offences under the *Work Health and Safety Act 2011* commenced since 1 July 2024. The Industrial Court's jurisdiction is in relation to summary offences only. It does not extend to offences dealt with on indictment, such as the new Industrial Manslaughter offence found in Section 34C of the WHS Act and Category 1 offences, where the defendant is an individual. Where the defendant is a corporation, such matters must be dealt with summarily unless the prosecutor elects to proceed on indictment.
- 37 Since our reestablishment on 1 July 2024, 160 WHS matters have been filed. As I mentioned at the outset, this represents approximately one new matter each and every working day. While the Court is yet to publish any decisions, pleas have now been entered in four matters. The first sentence hearing was heard on 28 February 2025. The first of four defended hearings has been set down for early June 2025. Four matters have been withdrawn. We therefore currently have 151 matters where a plea is yet to be entered, travelling in the WHS List. That list is heard on Monday mornings.

Industrial Court Criminal Practice Note 1 (Slide 9)

- 38 The Court issued a new practice note on 1 July 2024 with the aim of shortening the time between the issue of the summons by the Court on the application of the prosecutor and the entry of a plea by the defendant. That practice note was updated on 24 September 2024, following feedback from the Industrial Court user group.
- 39 I acknowledge the procedural innovations of the District Court in the area and, in particular, the work of Judge Scotting from which we have drawn and on which we have built.
- 40 A particular feature of the Industrial Court's practice note is to require defendants to enter a plea at the Second Mention, with the expectation that they will have had the brief for at least 3 months at that point. The practice note provides for a Third Mention in exceptional cases. Any further adjournments require a Notice of Motion and affidavit in support. To assist defendants to meet those timetable targets, Justice Paingakulam is prepared to make orders for the provision of and response to requests for particulars and/or defence representations when the matter first appears for mention. The aim is also to encourage the parties to have conversations to focus on the matters which are actually in issue, at an early stage.
- 41 The practice note provides for the Court to progress the matter on the basis of a plea of not guilty where no plea of guilty is entered within the stipulated timeframe. This has been applied.
- 42 This shortening of the path to the entry of pleas is a significant cultural change in the WHS practice area.
- 43 As an aside, the Court recognises that offences involving risks of a psychosocial nature are significantly more complex to consider and settle. Parties appearing in such matters have been told that they are not expected to adhere to the timeframes in the Practice Note. It is, however, expected that the parties will engage with each other productively to keep the matter moving

forward. As the Court becomes more familiar with the rhythm of matters involving a psychosocial risk, I expect that we will issue a new Practice Note directed specifically to matters of that nature. To do so at this stage would be premature.

44 Another important matter of note is that at this stage the case management provisions for summary prosecutions found in s 247A-247Y of the *Criminal Procedure Act 1986* do not currently apply in the Industrial Court. We approached the government to effect changes to the legislation to enable us to have the benefit of those provisions.

45 The result is the *Industrial Relations Amendment Act 2025* which has been passed by Parliament, including amendments to the *Criminal Procedure Act* which give us those case management powers. We understand those amendments will be proclaimed and is likely to come into effect in early May.

46 Once they are in effect, we are particularly interested in implementing:

(1) preliminary disclosure in the form of the notice of prosecution case and notice of defence case (see s 247I) as specified in s 247E and s 247F respectively or with modifications; and

(2) s 247H - a preliminary conference to determine whether the defendant and the prosecutor are able to reach agreement regarding the evidence to be admitted at trial or sentence which occurs after the tender bundle has been filed.

Robing (Slide 10)

47 The final matter that I want to mention regarding WHS Act prosecutions is that parties appearing in WHS Act prosecution hearings in the Industrial Court should be aware that counsel are required to robe during hearings, sentencing hearings, interlocutory hearings and appeals. Wigs are not to be worn.

- 48 The introduction of the wearing of robes for criminal matters heard in the Industrial Court aligns the practice of our court with what occurs in the criminal jurisdiction in other courts (apart from the Local Court).
- 49 I hasten to add that this is the only context in which counsel are robed in the IRC, whether or not in Court Session.

Institutional Changes (Slide 11)

- 50 Since 1 July 2024, the Commission has introduced several institutional changes to ensure that our procedures are up-to-date and user-friendly.
- 51 We are about to approve our third tranche of amendments to the Industrial Relations Commission Rules 2022 since 1 July 2024.
- 52 We have issued six amended practice notes. The changes deal with an expansion of the range of forms and applications that can be filed using the online Registry, allowing all documents to be filed electronically, appearing in criminal proceedings in the Industrial Court, and the appropriate use of generative AI during proceedings (largely adopting the Supreme Court Practice Note). We have also issued updated usual directions and appeal directions.
- 53 We have established two user groups as consultation committees. The Industrial Relations Commission User Group is constituted by representatives of Unions NSW, Local Government NSW, the transport industry, the Crown, the Judges and Commissioners. The Industrial Court User Group is constituted by representatives of the Bar Association and Law Society, WHS regulators, and the Judges.

Current and Upcoming Major Cases – Award Review Principles (Slides 12-13)

Section 19 – Review of awards

- 54 Section 19 in the Industrial Relations Act requires the Commission to review every award at least once every 3 years. The purpose of these reviews is to modernise awards, consolidate awards relating in the same industry, and

rescind obsolete awards. They are vital in ensuring that our awards remain fit for purpose.

55 The Commission has Principles for the Review of Awards which were last set in 1998. At that time, this Commission still set awards for private sector employees who are now covered by the federal system, which means that our Principles are arguably no longer fit for purpose.

56 The Commission will be commencing proceedings of its own motion to review those Principles in advance of reviewing the awards themselves.

State Decisions on superannuation and use of sick leave to top up workers compensation

57 Consistent with the Commission's obligation to modernise awards and ensure fair terms and conditions, we intend to initiate State decision proceedings to determine further test case standards for public sector awards. Some conditions, such as the right to superannuation or the use of accrued but untaken sick leave to top-up statutory workers compensation payments, are absent from many State awards, or inconsistently applied.

58 The obvious issue concerning the right to superannuation is that a worker cannot bring a claim against their employer for the underpayment of their superannuation in the same way that they are currently able to recover remuneration for the breach of a term in their award. Federal modern awards contain superannuation clauses which require employers to make contributions to at least the level required to satisfy their obligations under superannuation guarantee legislation, as a matter of course. That should be the case for State awards, even if it is the case that public sector employers are likely to comply with federal superannuation obligations. Other standard conditions, for example long service leave, are commonly found in State awards but in terms that vary, even for employees working alongside each other.

59 Setting test case standards is a further means to ensure that conditions in awards are fair and reasonable and fit for purpose. The Commission is minded to commence such test cases later this year, subject to its capacity.

Major Industrial Disputes (Slide 14)

60 This year, we will be arbitrating several disputes which will affect thousands of public sector workers across NSW and concern vital services and essential workers.

61 With the removal of the wage cap, NSW has seen a significant amount of threatened and actual industrial action from public sector employees covered under both the federal and state systems in the last year.

62 The focus of the *Industrial Relations Act* on conciliation and, if necessary, compulsory arbitration offers a few key advantages in resolving industrial disputes.

63 The Commission can (and has recently in respect of Psychiatrists and Ambulance Officers) “act on its own initiative to resolve an industrial dispute” under s 130(2), requiring parties to appear, participate in conciliation assisted by the Commission, or even arbitration. The power to compel parties to arbitrate can place a timeline on lengthy disputes and prevent protracted industrial action.

Psychiatrist Staff Specialists

64 Last week I presided on a Full Bench of the Commission hearing evidence from the Australian Salaried Medical Officers’ Federation and the Health Secretary about an application for an Interim Award for psychiatrist staff specialists, who have recently submitted mass resignations from public sector.

65 The application includes a claim for a Psychiatry Attraction and Retention Allowance that is 25% of the sum of a psychiatrist’s salary.

Firefighters

66 This past week, we heard final submissions from the Fire Brigade Employees' Union about its applications for new Awards for Permanent and Retained firefighters, which feature significant alterations to wages and conditions, including a 20% wage increase over three years.

Nurses

67 And in October, we will be hearing evidence for the Nurses Award. These proceedings have understandably attracted a significant amount of public interest. An initial period of Industrial unrest last year has abated in favour of the IRC's arbitration process.

Visiting Medical Officers

68 The Minister for Industrial Relations asked the President to nominate a judicial member of the Commission for appointment as an arbitrator for the purposes of making a determination for Visiting Medical Officers under fee-for-service contracts and sessional contracts.

Contrast: Sydney Trains

69 One dispute we will not be dealing with is the one involving Sydney Trains – having been legislated out the State system. The parties to that dispute are in the federal system before the Fair Work Commission.

70 With a focus on bargaining and collective agreement making, instead of arbitration, the federal system provides for the taking of authorised industrial action in a way that the NSW system does not.

71 Sydney Trains and NSW Trains initiated bargaining for a new enterprise agreement to replace the 2022 agreement on 31 May 2024. The Combined Rail Unions, led by the RTBU presented a log of claims including a significant wage increase. Protected industrial action commenced in September 2024 and, apart

from some short intervals, has been undertaken continuously by members of the RTBU and the ETU since early October 2024.

- 72 The Full Bench of the Fair Work Commission recently suspended protected industrial action until 1 July 2025 to establish ‘a ‘cooling-off period’ to increase the likelihood of the parties reaching agreement – a decision that was recently upheld by the Full Federal Court this week.
- 73 However, it is not clear when or indeed if the parties will be able reach a resolution any time soon; with the Rail Union currently attempting to end the suspension period and resume industrial action.
- 74 The Commission’s power to act on its own initiative, to guide, assist, recommend, cajole and ultimately to compel parties into an arbitration and to cease industrial action, and the focus of the IR Act on conciliation and arbitration instead of bargaining with the prospect of authorised industrial action, can be effective in avoiding prolonged industrial action and bringing an end to protracted disputes.
- 75 The success of the NSW system depends on an independent and active Industrial Relations Commission intervening in resolving industrial disputes. It allows for disputes to progress inexorably towards an orderly and evidence-based resolution.
- 76 The primary means of resolving disputes, as then Attorney-General Jeff Shaw made clear in his second reading speech to the *Industrial Relations Act 1996*, is by the empowerment of the Commission to do everything it considers proper to assist the parties to resolve the dispute in conciliation; and to do so in the shadow of the Commission’s broad arbitral powers, including the power to fix fair and reasonable wages.
- 77 An essential pillar of this model is the role of an authoritative, fearless, independent and proactive Commission and Court – one that operates, I

hasten to add, not on a jurisprudential island, but instead merges coherently with the greater body of Australian statutory and common law.

78 In this respect we have begun as we mean to go on.

The Legislative Horizon (Slide 15)

Gig workers

79 The Industrial Relations Amendment (Transport Sector Gig Workers and Others) Bill 2025 was passed by both houses of Parliament yesterday. Awaiting assent.

80 This Bill extends the Commission's jurisdiction over contracts of carriage in the transport industry to transport sector gig workers: contracts for the transportation of persons or goods by a motor vehicle or bicycle arranged through digital labour platform:

(1) Determine remuneration and other conditions "in the contractual chain" (s 313); and

(2) Reinstate terminated contracts (s 314).

81 How it interacts with the FWC's new jurisdiction to set employee-like worker minimum standards under the Fair Work Act remains to be seen.

82 The Bill provides for the Commission to dismiss or adjourn applications where there is a reasonable likelihood of a pending application under s 536JZ of the FW Act applying to the same group of carriers.

Bullying and Harassment

83 On 18 March 2025 the NSW Treasurer announced in Parliament that the Government will look to expand the NSW Industrial Relations Commission by establishing a bullying and harassment jurisdiction modelled on Federal law and requiring a bullying and harassment claim to be heard in the Commission

first before a claim for psychological injury can be made through the workers compensation system.

- 84 If the Commission is to be the gateway for every workers compensation claim for psychological injury (which has doubled in number in the last 6 years), this will necessitate a very considerable expansion in the Commission.

Conclusion (Slide 16)

- 85 Time will tell if we are on the cusp of a new era in the regulation of industrial relations in New South Wales. Certainly, the legislative landscape is changing and the re-establishment of the Industrial Court brings a renewed focus on industrial relations in a State jurisdiction that has historically led the way in this field of law. The Commission and Court as presently constituted aim to make this a new era of industrial fairness, efficiency and productivity in New South Wales.

New Era of Industrial Relations in NSW

The Honourable Justice David Chin, Vice President of the
Industrial Relations Commission of New South Wales and
judge of the Industrial Court of New South Wales



Introduction to the Commission

Current Jurisdiction

Industrial Relations Commission (other than in Court Session)

- Industrial disputes in the State and Local Government Sectors
- Public sector disciplinary appeals
- Unfair dismissals
- Police disciplinary and removal matters
- Union demarcation disputes
- Regulation of contracts of carriage in transport industry
- Review of SafeWork decisions
- Visiting medical officers under the *Health Services Act 1997*

Industrial Court of NSW (Commission in Court Session)

- Enforcement of public sector industrial instruments
- Contraventions and offences under the IR Act
- Summary offences under the *Work Health and Safety Act 2011*
- Unfair contracts (public sector and non-corporate work contracts)
- Federal underpayment jurisdiction

Civil proceedings lodged in the Industrial Relations Commission

Type of Proceedings	Number of civil proceedings lodged from July to December 2023	Number of civil proceedings lodged from July to December 2024
	389	475
Appeals	11	7
Awards	101	131
Contract Carrier Matters	1	0
Disputes	113	141
Enterprise Agreements	2	4
Hurt on Duty	1	0
Mutual Gains Bargaining	0	2
Other	27	41
Police Dismissals and Disciplinary Appeals	15	9
Public Sector Disciplinary Appeals	12	13
Unfair Dismissals	97	109
Victimisation	9	18



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

*Industrial Secretary & Ors v Public
Service Association and Professional
Officers' Association Amalgamated
Union of New South Wales & Ors (No 2)*
[2024] NSWIRComm 21

*Industrial Court
decisions*

Hossack v State of New South Wales
[2025] NSWIC 1

*Police Association of NSW v
Commissioner of Police, NSW Police
Force* [2025] NSWIC 2

*Australian Rail, Tram and Bus Industry
Union v Pacific National Executive
Services Pty Ltd* [2025] NSWIC 3

WHS Jurisdiction

Category	Number of cases
Number of matters lodged since 1 July 2024	160
Pleas	4
Guilty pleas	3
Not guilty pleas	1
Matters withdrawn	4
Matters active in the WHS List	151



INDUSTRIAL COURT CRIMINAL PRACTICE NOTE NO. 1

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Issued pursuant to Section 185A of the *Industrial Relations Act 1996*

WORK HEALTH AND SAFETY ACT PROSECUTIONS

COMMENCEMENT

1. This Practice Note commenced on 1 July 2024 and was amended effective 24 September 2024.

APPLICATION

2. This Practice Note applies to all criminal proceedings commenced in the Court pursuant to s229B(1)(b) the *Work Health and Safety Act 2011* (the **WHS Act**) (**WHS prosecutions**).

INTRODUCTION

3. The purpose of this Practice Note is to explain the administrative and case management procedures followed in the Court for WHS prosecutions.

COMMENCEMENT OF SUMMARY PROCEEDINGS

4. Summary Proceedings are to be commenced pursuant to s246 *Criminal Procedure Act 1986* (**CPA**) and Rule 7C of the Industrial Relations Commission Rules.
5. The Summons will be made returnable on the Monday following 8 weeks from the date of issue.
6. The Summons and a copy of this practice note is to be served on the defendant within 7 days of the issue of the summons in accordance with Rule 7C.2(4) of the Industrial Relations Commission Rules.
7. The defendant or the defendant's legal representative is to file with the Court and serve on the prosecutor a Notice of Appearance (in the approved form) within 7 days of the service of the Summons.

Industrial Court Criminal Practice Note 1

Robing of Counsel

1. Wigs are not worn on any occasion.
2. Robes are not worn:
 - a) for ceremonial occasions;
 - b) before Commissioners or Judges when sitting as the Industrial Relations Commission;
 - c) before Judges when sitting as the Industrial Court of NSW in its civil jurisdiction;
 - d) before a Registrar; or
 - e) when appearing before a Judge in a criminal matter for mention or directions (including the Monday morning WHS List).
3. Barristers are to robe (no wigs) when appearing before the Industrial Court exercising its criminal jurisdiction for trials, sentencing hearings, interlocutory hearings, and appeals.

Robing in WHS Matters

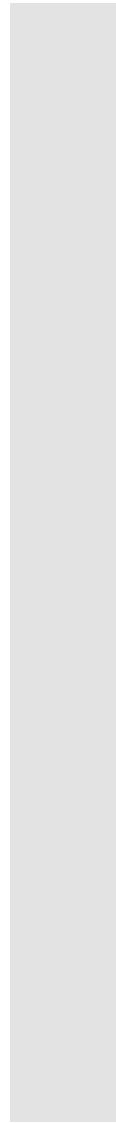

Institutional changes

3 tranches of amendments to the Industrial Relations Commission Rules 2022

Industrial Court and Commission User Groups

Practice Notes

- Industrial Court Criminal Practice Note
- Production of and Access to Summoned Material
- Usual Directions
- Use of Generative Artificial Intelligence
- Usual Appeal Directions
- Filing, Length, Presentation and Formatting of Documents and Courtbooks



2025 and beyond:
*Current and
upcoming cases*

Test cases

Section 19 review of awards

- Modernising award review principles

State Decisions

- Superannuation
- Use of sick leave to top up workers compensation

Arbitrating disputes



Industrial Relations Commission to intervene before mass NSW public hospital psychiatrist walkout

By JESSICA WANG

Sydney trains strike fears after court ruling gives rail union green light for industrial action

By Victoria Pengilly | By Joshua Boscaini | Trains

Thu 19 Dec



Rail, Train and Bus Union secretary Toby Warnes said industrial action will recommence 'immediately'. (ABC News: Neana Naughton)

The legislative horizon



INDUSTRIAL RELATIONS AMENDMENT
(TRANSPORT SECTOR GIG WORKERS
AND OTHERS) BILL 2025



BULLYING AND HARASSMENT
JURISDICTION



Conclusion