Industrial Relations Commission
New South Wales

IRSNSW 2025 ANNUAL CONFERENCE

SPEECH FOR 3 MAY 2025 AT NOVOTEL HOTEL WOLLONGONG

JUSTICE INGMAR TAYLOR, PRESIDENT OF THE INDUSTRIAL RELATIONS COMMISSION OF NSW

1 We meet today on the lands of the Dharawal, the traditional owners of Woolyungah and the surrounding lands. I pay my respects to their elders, past, present and emerging.

2 I want to thank Fiona Corbett, Crista Lenard and the whole IRS committee for organising this great conference. I was on the committee myself for a number of years, and I know how much work goes into organising this conference.

3 I attended the conference last year, along with David Chin SC, which was held shortly after the announcement that we were to be appointed President and Vice-President of the Industrial Relations Commission. The Conference title was: *A New Hope: The Next Golden Era of Industrial Relations*. Talk about ramping up the pressure. Although perhaps there was a question mark at the end of that title.

4 I am grateful for the opportunity to talk today about the first two years of the reconstituted Commission. I say the first ***two*** years, even though it hasn't quite been a year since Justices Chin, Paingakulam and I were sworn in, because I want to speak about both what has been done since 1 July 2024, and what we will be doing.

5 Our focus has been to enhance the efficiency and capacity of the Commission to assist parties to resolve disputes. It started on our first day when the Rules Committee met and formally resolved to amend our rules to allow electronic

filing, and since then we have been continually focussed on the various ways the Commission can improve the processes involved in award making and our capacity to assist the parties. A significant and ongoing part of that is guiding the transition from the 12-year period of the public sector wages cap.

6 Today I want to talk about three things: first, proceedings that the Commission has commenced on its own initiative; second, steps we are taking to keep parties informed on what is happening at the Commission and to assist them to resolve disputes effectively; and finally, some of the things that the Commission has been doing internally to improve the way we resolve disputes.

Recent and Upcoming State Decisions

7 From 2011 to 2023, the period of the public sector wages cap, public sector parties fell out of practice at industrial negotiation and arbitration, and they had little incentive to review awards and consider how they ought to be modernised or consolidated. That is not meant as a slight. It was simply industrial reality that in most years, the Government offered the maximum available 2.5% increase on a rollover basis, and unions, unable to bargain for more unless they could identify offsets or demonstrate productivity improvements, consented to the awards being remade with those higher rates. During this period, the Commission's principles relating to the making of awards and award review, overall, had little work to do.

8 The repeal of the wages cap reinstated the Commission's broad and unfettered power to arbitrate where a dispute cannot be resolved by conciliation. That it is a broad power carries with it a need for guidelines so as to create the level of certainty that assists parties to resolve matters consensually. Empowered by section 51 of the *Industrial Relations Act*, the reconstituted Commission has so far commenced, on its own initiative, three proceedings for State decisions which have set or will set principles and provisions for the purposes of awards. Soon we will begin proceedings for this year's State Wage Case.

9 The first of these proceedings is last year's State Wage Case, in which the Full Bench of the Commission substantially reworked the Wage Fixing Principles,

now renamed as the Award Making Principles. The Principles are the framework which guide the Commission to set award wages and employment conditions.

10 Perhaps surprisingly, given its importance, the pervious Wage Fixing Principles did not contain a principle addressing increases to maintain the real value of award rates of pay, having regard to inflation and changes in the cost of living. The Full Bench concluded that they should. We held that an appropriate way of doing so would be to set each year, as part of the State Wage Case, a paid rates award adjustment for public sector awards. It would not apply automatically but would be available upon application if the award is outside of its nominal term, has not had an increase for 12 months, and where bargaining has been attempted but not successful. We do not want to discourage parties from bargaining for wage increases but identified the need to ensure that cost of living increases are not unnecessarily delayed. Setting a paid raid rates adjustment as part of a State Wage Case will allow the Commission to efficiently determine, in a single proceeding, what ought to be a standard cost of living increase for that year having regard to our mandatory considerations, including the fiscal position of the Government, and increase the likelihood of a consistent approach being taken in similar proceedings. We see guidance of this nature as assisting parties to be able to reach consensus in negotiations, avoiding unnecessary arbitration.

11 Now, because the parties to last year's State Wage Case did not have the opportunity to make submissions on this approach, we determined to delay its implementation and invite parties to do just that in this year's State Wage Case.

12 The second set of proceedings the Commission has initiated is the upcoming 2025 Award Review Principles Case. Section 19 of the Act requires the Commission to review each award every three years, to modernise awards, consolidate awards relating to the same industry, and rescind obsolete awards.

13 The current principles for award review were made in the 1998 State Wage Case. We have initiated proceedings to review those principles, to determine if they remain fit for purpose.

14 Parties have been asked to make submissions on whether awards should have an obligation for plain English drafting, whether award clauses should have a consistent order and format, whether there should be a presumption in favour of consolidating awards and/or standardising conditions that apply to employees employed by the same section or part of the public sector, the need for the principles to reflect the introduction of mutual gains bargaining in the *Industrial Relations Act*, the procedure by which award review proceedings should be conciliated, whether awards should be reviewed in batches focusing on groups of awards that affect related employees, and whether and how any productivity improvements arising from award reviews and modernisation should be recognised.

15 The proceedings which we have most recently initiated is the upcoming 2025 Superannuation Case. In last year's State Wage Case, the Full Bench resolved to delete the Superannuation Principle, which was no longer fit for purpose. However, we were mindful that many existing State awards do not have a provision for superannuation. That is out of step with Federal awards, which include a term stipulating that the employer must make contributions for the benefit of their employees to at least the level required to meet the superannuation guarantee legislation. There is a real question as to why state public sector employees should not be able to enforce an underpayment of their superannuation entitlement as a breach of their award. So, we have invited parties to make submissions on whether a Full Bench ought to establish one or more model superannuation clauses for public sector awards.

Assisting Parties

16 We are making various improvements to the way we operate to keep parties up to date on what is happening at the Commission and help them to efficiently resolve disputes.

17 We are in the process of a major update of our website, both in content and user experience. We plan to have information pages, providing guides as to our most common applications.

18 A key improvement that are we hoping to finalise this year is an overhaul of our 'Awards' page. We intend to start publishing awards directly on our website, rather than by providing links to the Industrial Gazette. We aim to have all awards in a searchable online up-to-date consolidated form.

19 Last year we commenced having a dedicated webpage for major cases, starting with the 2024 State Wage Case, containing all the materials filed, along with full transcripts and decisions.

20 We are improving efficiency by starting the move towards paperless hearings. Recent amendments to practice notes now encourage the use of electronic court books, and increasingly, orders are being made for materials in large matters to be filed in electronic format only.

21 We continue to expand the number of forms that can be filed via the online registry. Currently, we are running weekly virtual sessions for users who want assistance on how to use our new online filing services on Tuesdays at 1.00 pm. You can find all the details about these seminars and sessions on our website and social media.

22 We will soon be publishing a policy on live-streaming of hearings, which will allow parties to seek to have non-participants given access to view proceedings.

23 We hold several in-person and online seminars throughout the year addressing different aspects of our jurisdiction. Our Education Committee has run four seminars so far, which are targeted towards practitioners who regularly appear before us. Some of you may have attended our last seminar, which was run by Commissioner McDonald and Commissioner Muir, on consent applications for awards and making enterprise agreements. We are about to publish the pro

forma affidavit and guidance note that came out of that seminar, which will assist parties to effectively comply with the requirements of the Act, Rules, and Award Making Principles.

24 We have established three user groups as consultation committees. The Industrial Relations Commission User Group, which has representatives from and nominated by Unions NSW along with employer representatives nominated by the Premiers Department as well as Local Government NSW and the transport industry. The Industrial Court User Group, which has representatives from the Bar Association and Law Society and WHS regulators and a representative from community legal centres. The Local Government User Group which has representatives from Local Government NSW and each of the unions in that industry.

25 We are also keen to meet with unions and employer representatives from time to time as new legislative changes affecting certain industries commence. For example, I will soon be meeting with union and employer representatives from the transport sector to get a clearer understanding of the likely workload ramifications of the recent amendments to the *Industrial Relations Act* relating to transport sector gig workers.

Efficient Resolution of Disputes

26 The Commission has been doing a number of things internally to continue to improve how we can resolve applications efficiently.

27 We have published on our website a protocol regarding delivery and delay in decisions, which sets out the timeframe within which parties should expect decisions to be handed down. We aim to hand down all decisions within three months of the final hearing date or close of written submissions, although large or complex matters such as appeals may take up to six months. The number of decisions which exceed this timeframe will be reported in our Annual Report. The protocol permits parties to make confidential enquiries to the President's Associate or the Registrar regarding the status of a delayed decision.

28 We are already starting to see improvements in how efficiently we are handing down decisions. The Commission continues to have most of its decisions handed down within three weeks.

29 If we look at a comparison between the first six months of 2024 and the last six months of 2024, while the number of decisions handed down increased from 41 during the first six months of 2024 to 59 during the last six months of 2024, the percentage of decisions that took longer than 12 weeks to hand down reduced from 27% to 20%.

30 The increase in decisions corresponds with the increased number of proceedings lodged in the Industrial Relations Commission since the Court's re-establishment, which went up from 389 during the last six months of 2023 to 475 during the last six months of 2024. That is a 22% increase. Adding the 24 civil proceedings (which includes our Federal jurisdiction) and 143 criminal proceedings which were lodged in the Industrial Court, the total number of lodgements went up by 65%.

31 It is also worth mentioning our internal time standards for the period between filing and first listing a matter. We aim to list urgent industrial disputes within one day of their filing, and all matters, bar the approvals of enterprise agreements, to be listed for conciliation or directions within 14 days at the most. Following a failed conciliation, the arbitration for an unfair dismissal or victimisation case should commence within 12 weeks. In that regard, we need the parties' cooperation to assist us to meet these time standards.

32 If it will assist a matter to proceed with greater efficiency and productivity, we are always willing to travel from our usual premises in the CBD and Parramatta. Our old premises in Newcastle sadly closed last year, but following my meeting with stakeholders in the Hunter Region last year, we now sit in the Newcastle Local Court building every second Wednesday. I am informed by Commissioner O'Sullivan, who is conducting those hearings, that they are popular, and indeed on some fortnights he is having to add a second day.

33 Finally, we are in the process of setting up a virtual courtroom. It is not intended to be a substitute for in-person hearings, but I anticipate that it will be particularly useful for hearing urgent listings and once operational will be used in preference to telephone conferences.

Conclusion

34 Thank you again to the Industrial Relations Society of NSW for organising another great conference.

35 And thank you to the industrial parties who have appeared before us over the last year. It is an exciting time for industrial relations in NSW and we are grateful for your assistance.

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