2012

WESTERN AUSTRALIA

# Report of the Chief Commissioner of the Western Australian Industrial Relations Commission On the operation of the *Industrial Relations Act 1979*

1 July 2011 to 30 June 2012

Minister Responsible for the Administration of the Act

The Hon. S. O'Brien, MLC

In his capacity as Minister for Commerce

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# Membership and Principal Officers

## Western Australian Industrial Relations Commission

During the year to 30 June 2013, the Western Australian Industrial Relations Commission (WAIRC) was constituted by the following members:

| | |
|---|---|
| **President** | The Honourable J H Smith (*Acting*) |
| **Chief Commissioner** | A R Beech |
| **Senior Commissioner** | P E Scott (*Acting*) |
| **Commissioners** | S J Kenner<br>J L Harrison<br>S M Mayman |

During the period under review, members of the Commission held the following appointments:

## Public Service Arbitrators

Acting Senior Commissioner P E Scott continued her appointment as a Public Service Arbitrator throughout the period. This appointment is due to expire on 21 June 2013.

Commissioner S J Kenner continued his appointment as an additional Public Service Arbitrator throughout the period. This appointment is due to expire on 25 June 2013.

Commissioner J L Harrison continued her appointment as an additional Public Service Arbitrator throughout the period. This appointment is due to expire on 1 May 2013.

Commissioner S M Mayman continued her appointment as an additional Public Service Arbitrator. This appointment is due to expire on 9 November 2012.

## Railways Classification Board

Commissioner S J Kenner was appointed as Chairman on 8 February 2011 for a period of two years. This appointment is due to expire on 10 February 2013.

## Occupational Safety and Health Tribunal

Commissioner S M Mayman continued as Chairperson of the Occupational Safety and Health Tribunal. This appointment operates for the purposes of s 51H of the *Occupational Safety and Health Act 1984* and s 16(2D) of the *Industrial Relations Act 1979* ("the Act").

## Registry

During the reporting period the Principal Officers of the Registry were:

| | | |
|---|---|---|
| Mr J Spurling | **Registrar** | (until 24 November 2011) |
| Ms S Bastian | **Registrar Designate** | (until 24 November 2011) |
| | **Registrar** | (from 25 November 2011) |
| Ms S Hutchinson | **Deputy Registrar** | (until 24 November 2011) |
| | **Registrar Designate** | (from 25 November 2011) |

## The Western Australian Industrial Appeal Court

The Western Australian Industrial Appeal Court was constituted by the following members:

| | |
|---|---|
| The Honourable Justice C J L Pullin | **Presiding Judge** |
| The Honourable Justice R L Le Miere | **Ordinary Member** |
| The Honourable Justice K J Martin | **Ordinary Member** |

## Industrial Magistrates Court

During the reporting period the following Magistrates exercised jurisdiction as Industrial Magistrates:

Mr G Cicchini
Ms C Crawford

# Matters Before the Commission

## 1. Full Bench Matters

The Full Bench has been constituted on each occasion by an Acting President and by two Commissioners.

The number of matters the Acting President presided over the Full Bench is as follows:

The Honourable J H Smith (Acting President) ..... 17

The number of matters each Commissioner has been a member of the Full Bench is as follows:

Chief Commissioner A R Beech ..... 7
Acting Senior Commissioner P E Scott ..... 10
Commissioner S J Kenner ..... 5
Commissioner J L Harrison ..... 8
Commissioner S M Mayman ..... 4

The following summarises Full Bench matters:

### Appeals

Heard and determined from decisions of the:

Commission – s 49 ..... 5
Industrial Magistrate – s 4 ..... 2
Coal Industry Tribunal ..... 0
Public Service Arbitrator ..... 1
Railways Classification Board ..... 0
Occupational Safety and Health Tribunal ..... 0

### Organisations – Applications by or Pertaining to

Applications to register an organisation pursuant to s 53(1) ..... 0
Applications to amend the rules of a registered organisation pursuant to s 62 ..... 4
Applications relating to State branches of federal organisations pursuant to s 71 ..... 2
Applications to adopt rules of federal organisations pursuant to s 71A ..... 0
Applications for registration of a new organisation pursuant to s 72 ..... 1
Applications seeking coverage of employee organisations pursuant to s 72A ..... 2
Applications for cancellation/suspension of registration of organisations pursuant to s 73 ..... 1

## Other

Proceedings for enforcement pursuant to s 84A brought by the Minister; the Registrar or a deputy registrar; an industrial inspector; or any organisation, association or employer ..... 0
Questions of law referred to the Full Bench ..... 0
Matters remitted by the Industrial Appeal Court ..... 0
Number of Full Bench matters heard but not determined in 2011/2012 ..... 0

## Orders

Orders issued by the Full Bench ..... 29

# 2. Acting President

Matters before the Acting Presidents sitting alone

Applications for an order that the operation of a decision appealed against be stayed pursuant to s 49(11) ..... 1
Applications for an order, declaration or direction pursuant to s 66 ..... 6

Summary of s.66 Applications

Applications finalised in 2011/2012 ..... 0
Directions hearings ..... 14
Applications part heard ..... 1
Applications withdrawn by order ..... 0
Applications discontinued by order ..... 0

## Orders issued by the Acting President

Orders issued by the Acting President from 1 July 2011 to 30 June 2012 inclusive:

Order pursuant to s 49 (11) ..... 1
Order pursuant to s 66 ..... 21
Reference of rules by Full Bench under s 72A(6) ..... 1
Application pursuant to s 92 ..... 0
Remitted from the Industrial Appeal Court ..... 0

## Consultations

Consultations with the Registrar pursuant to s 62 of the Act ..... 9

## 3. Commission in Court Session

The Commission in Court Session is constituted each time by three Commissioners with the exception of the 2012 State Wage order which was constituted by five Commissioners. The extent to which each Commissioner has been a member of the Commission in Court Session is indicated by the following figures:

Chief Commissioner A R Beech ..... 3
Acting Senior Commissioner P E Scott ..... 3
Commissioner S J Kenner ..... 4
Commissioner J L Harrison ..... 3
Commissioner S M Mayman ..... 1

These Commission in Court Session matters comprised of the following:

State Wage Order Case – s 50A Determine rates of pay for purposes of *Minimum Conditions of Employment Act 1993* and Awards ..... 1
General Order – s 50 ..... 2
New Award ..... 0
New Agreement ..... 0
Variation of an Award – s 40B ..... 0
Cancellation of an Award – s 47 ..... 0
Conference pursuant to s 44 ..... 0
Joinder to an Award ..... 0

## 4. Federal Matters

Federal matters dealt with by WAIRC Commissioners ..... 0

(This is a reference to matters in the jurisdiction of the Commonwealth industrial relations system dealt with by WAIRC Commissioners who hold dual appointments in the Commonwealth tribunal. There are no dual appointments in the period of this Report).

## 5. Rule Variations by Registrar

Variation of Organisation Rules by the Deputy Registrar ..... 9

## 6. Boards of Reference

Long Service Leave - Standard Provisions ..... 2
Long Service Leave - *Construction Industry Portable Paid Long Service Leave Act 1985* ..... 1

## 7. Industrial Agents Registered by Registrar

Number of new agents registered during the period ..... 3
Total number of agents registered as corporate body ..... 26
Total number of agents registered as Individuals ..... 20
Total number of agents registered as at 30 June 2012 ..... 46

## Awards and Agreements in Force under the Industrial Relations Act 1979

| Year | Number at 30 June |
|---|---|
| 2008 | 2810 |
| 2009 | 2791 |
| 2010 | 2666 |
| 2011 | 2613 |
| **2012** | **2587** |

## Industrial Organisations Registered as at 30 June 2012

| | **Employee Organisations** | **Employer Organisations** |
|---|---|---|
| No. of organisations | 46 | 17 |
| **Aggregate membership** | **186,251** | **4,867** |

## Summary of Main Statistics

### Western Australian Industrial Relations Commission

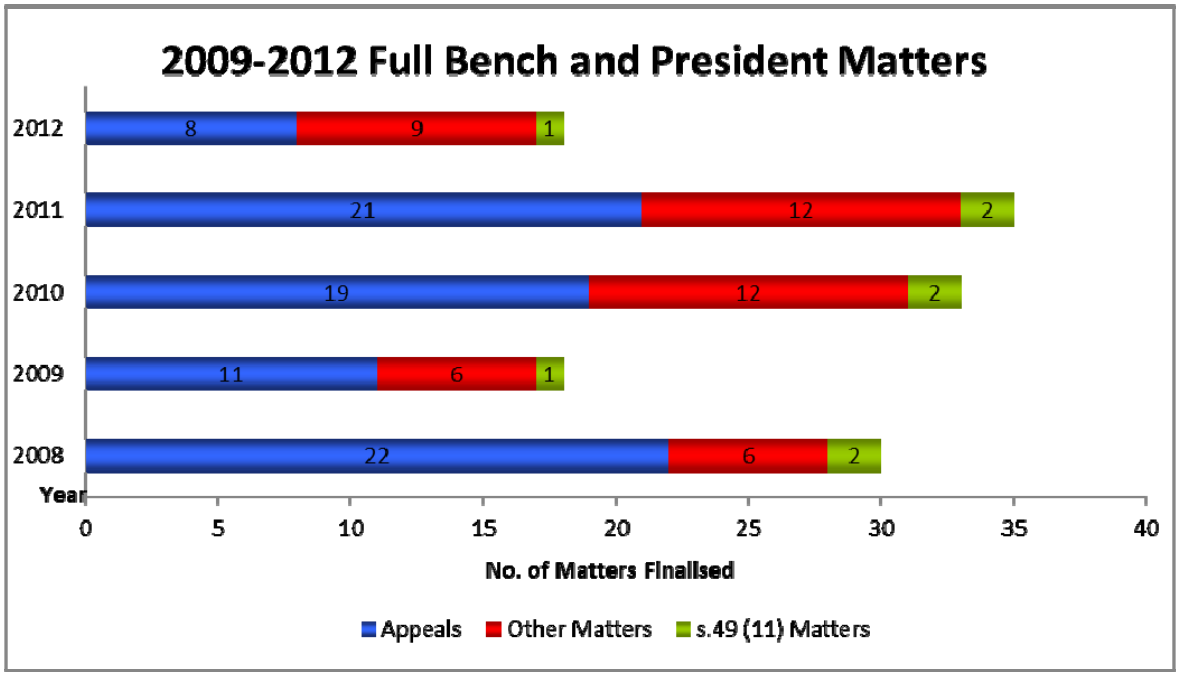
| | MATTERS DEALT WITH | | | |
|---|---|---|---|---|
| | **2008-2009** | **2009-2010** | **2010-2011** | **2011-2012** |
| **Full Bench:** | | | | |
| Appeals | 11 | 7 | 22 | 8 |
| Other Matters | 6 | 7 | 15 | 9 |
| **Acting President sitting alone:** | | | | |
| S 66 Matters (finalised) | 0 | 0 | 0 | 0 |
| S 66 Orders issued | 8 | 7 | 4 | 21 |
| S 49(11) Matters | 1 | 1 | 4 | 1 |
| Other Matters | 0 | 0 | 0 | 0 |
| S 72A(6) | 0 | 0 | 0 | 1 |
| Consultations under s 62 | 8 | 10 | 8 | 9 |
| **Commission in Court Session:** | | | | |
| General Orders | 2 | 1 | 1 | 1 |
| Other Matters | 1 | 7 | 4 | 6 |
| **Public Service Appeal Board:** | | | | |
| Appeals to Public Service Appeal Board | 19 | 16 | 26 | 40 |
| **Commissioners sitting alone:** | | | | |
| Conferences[1] | 105 | 93 | 96 | 87 |
| New Agreements | 44 | 77 | 59 | 58 |
| New Awards | 0 | 0 | 5 | 0 |
| Variation of Agreements | 0 | 0 | 1 | 0 |
| Variation of Awards | 139 | 59 | 78 | 42 |
| Other Matters[2] | 64 | 192 | 213 | 58 |
| Federal Matters | 0 | 0 | 0 | 0 |
| Boards Of Reference - Other Awards (Chaired by a Commissioner) | 0 | 0 | 0 | 0 |
| Boards of Reference – Long Service Leave | 3 | 0 | 1 | 0 |
| **Unfair Dismissal Matters Concluded:** | | | | |
| Unfair Dismissal claims | 163 | 180 | 135 | 188 |
| Contractual Benefits claims | 72 | 55 | 81 | 97 |
| Unfair Dismissal & Contractual Benefits claims together | 2 | 4 | 0 | 0 |
| **Public Service Arbitrator (PSA):** | | | | |
| Award/Agreement Variations | 35 | 23 | 39 | 19 |
| New Agreements | 19 | 11 | 18 | 13 |
| Orders Pursuant to s 80E | 1 | 0 | 0 | 0 |
| Reclassification Appeals | 60 | 49 | 69 | 47 |
| **TOTALS:** | **785** | **832** | **884** | **705** |

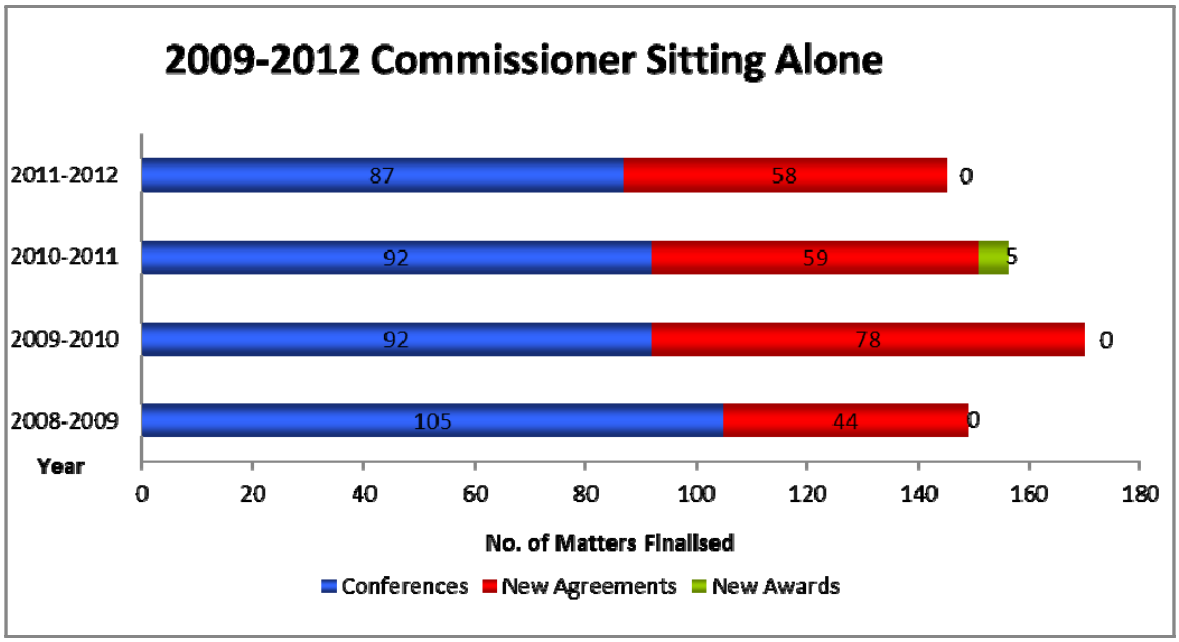
## Notes

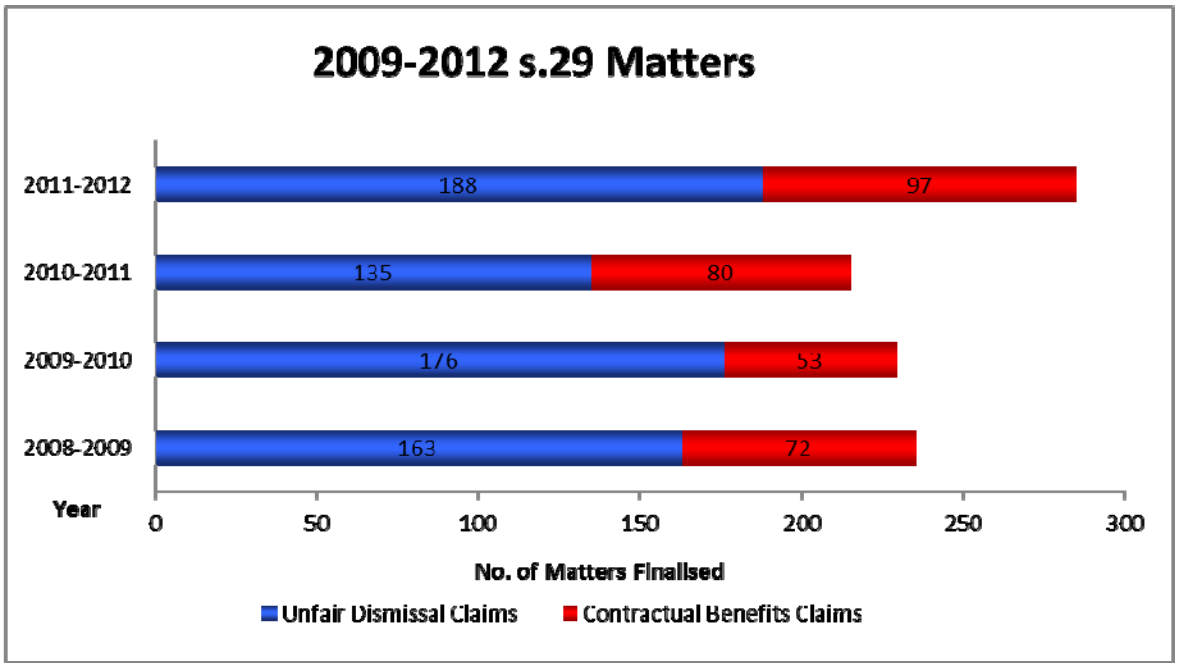
| [1] **CONFERENCES include the following:** | | | | |
|---|---|---|---|---|
| Conferences (s 44) | 51 | 45 | 58 | 58 |
| Conferences referred for arbitration (s 44(9)) | 8 | 8 | 8 | 5 |
| Conferences divided | 0 | 0 | 1 | 1 |
| Conferences referred and divided | 0 | 0 | 0 | 1 |
| PSA conferences | 39 | 39 | 27 | 18 |
| PSA conferences referred | 7 | 1 | 2 | 4 |
| PSA conferences divided | 0 | 0 | 0 | 0 |
| TOTALS | 105 | **92** | **95** | **87** |

| [2] **OTHER MATTERS include the following:** | | | | |
|---|---|---|---|---|
| Applications | 0 | 0 | 0 | 0 |
| Apprenticeship Appeals | 0 | 0 | 0 | 1 |
| Occupational Safety & Health Tribunal | 0 | 0 | 0 | 0 |
| Public Service Applications | 39 | 30 | 41 | 23 |
| TOTALS | 39 | **29** | **41** | **24** |

#*The Tribunal operates under the* Occupational Safety and Health Act 1984 *and thus its operation is outside the scope of this Report. This figure records the number of applications to the Tribunal which have been finalised. A further note on the operation of the Tribunal is at Part 14 of this Report.*


2009-2012 Full Bench and President Matters
2012
2011
2010
2009
2008
Year
8
9
1
21
12
2
19
12
2
11
6
1
22
6
2
0
5
10
15
20
25
30
35
40
No. of Matters Finalised
Appeals
Other Matters
s.49 (11) Matters


2009-2012 Commissioner Sitting Alone
2011-2012
2010-2011
2009-2010
2008-2009
Year
87
58
0
92
59
5
92
78
0
105
44
0
0
20
40
60
80
100
120
140
160
180
No. of Matters Finalised
Conferences
New Agreements
New Awards


2009-2012 s.29 Matters
2011-2012
2010-2011
2009-2010
2008-2009
188
97
135
80
176
53
163
72
Year
0
50
100
150
200
250
300
No. of Matters Finalised
Unfair Dismissal Claims
Contractual Benefits Claims

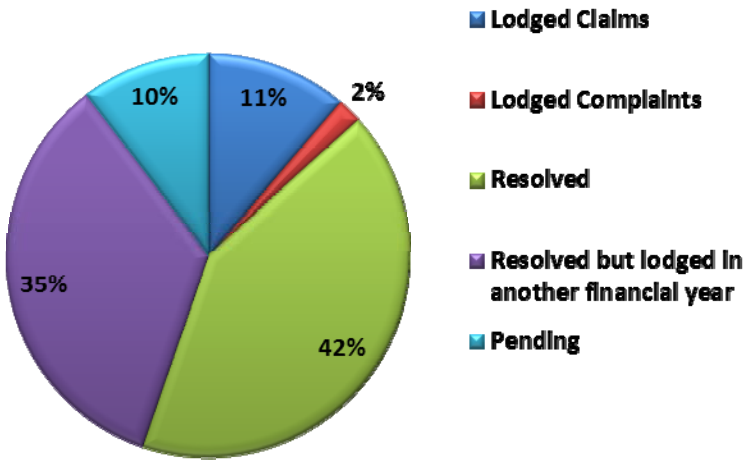
## The Western Australian Industrial Appeal Court

Decisions issued by the Industrial Appeal Court during this period ..... 1
Orders issued by the Industrial Appeal Court during this period ..... 3

## Industrial Magistrates Court

The following summarises the Court for the period under review:

Lodged Claims ..... 56
Lodged Complaints ..... 10
Resolved (total) ..... 207
Resolved (lodged in the period under review) ..... 37
Resolved but lodged in another financial period ..... 170
Pending ..... 51
Total number of resolved applications with penalties imposed ..... 8
Total value of penalties imposed ..... $9,900
Total number of claims/complaints resulting in disbursements ..... 1
Total value of disbursements awarded ..... $40
Claims/Complaints resulting in awarding wages ..... 1
Total value of wages of Magistrate matters resolved during the period ..... $11,131




In this reporting period, the Industrial Magistrates Court dealt with a number of claims alleging breaches of industrial instruments, namely Acts, registered awards and registered agreements. Those claims alleging breaches were heard and determined under the Court's general jurisdiction, and occurred within both the State and federal industrial relations systems.

A number of small claims were also heard and determined under the Court's general jurisdiction. The Court's power to deal with small claims is prescribed by the *Workplace Relations Act 1996* (Cth) and the *Fair Work Act 2009* (Cth).

# Commentary

## 1. Legislation

**INDUSTRIAL RELATIONS ACT 1979**

The following table conveniently summarises the names of the amending Acts.

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| **Reprint 13: The *Industrial Relations Act 1979* as at 1 Apr 2012** | | | |
| *Industrial Legislation Amendment Act 2011* Pt. 3 | 53 of 2011 | 11 Nov 2011 | 1 Apr 2012 (see s 2(b) and *Gazette* 16 Mar 2012 p. 1246) |

During the period under review, the following amendments were made to the *Industrial Relations Act 1979* on 1 April 2012 by the *Industrial Legislation Amendment Act 2011*:

Sections 81AA, 81CA and 83E were amended to include in the Industrial Magistrates Court's jurisdiction s 53 of the *Construction Industry Portable Paid Long Service Leave Act 1985*.

References to "the Australian Commission" were updated to "Fair Work Australia" in ss 7, 31, 71, 73, 80H, 80ZJ and 97VS and other occurrences.

Various definitions in s 7 were amended, deleted and inserted.

Section 29A relating to service of claims and applications was amended to allow the Chief Commissioner discretion in relation to publishing area and scope provisions of a new award or agreement.

Section 81AA relating to jurisdiction under other Acts was amended to delete reference to a section in the *Long Service Leave Act 1958* which had been deleted.

Section 85 relating to the constitution of the Western Australian Industrial Appeal Court was amended in relation to conditions on the clerk of the court.

Section 93 relating to the Registrar and other officers of the Commission was amended in relation to the chief executive officer, Registrar and associates.

Section 98 relating to industrial inspectors was amended in relation to appointment. Immediately after this section, ss 99A through 99D were inserted. These new sections relate to identity card, production of identification, staff and designation of officers generally.

Section 113 relating to regulations was amended to fix a typographical error.

**INDUSTRIAL RELATIONS COMMISSION REGULATIONS 2005**

| Citation | Gazettal | Commencement |
|---|---|---|
| | | |
| *Industrial Relations Commission Amendment Regulations 2012* | 16 Mar 2012 p. 1252-5 | r 1 and 2: 16 Mar 2012 (see r 2(a)); Regulations other than r. 1, 2, 6 and 7: 17 Mar 2012 (see r. 2(c)); r 6 and 7: 1 Apr 2012 (see r 2(b)); and *Gazette* 16 Mar 2012 p. 1246) |

**INDUSTRIAL RELATIONS (GENERAL) REGULATIONS 1997**

There were no amendments for these Regulations during the reporting period.

## 2. State Wage Order Case

On 11 June 2012 the Commission in Court Session delivered its decision in the 2012 State Wage order case pursuant to s 50A of the Act. Section 50A requires the Commission before 1 July in each year, to make a General Order setting the minimum weekly rate of pay applicable under the *Minimum Conditions of Employment Act 1993* ("MCE Act") to adults, apprentices and trainees, and to adjust rates of wages paid under awards.

The application for the 2012 State Wage order was created on the Commission's own motion. The Commission placed public advertisements of the proceedings and received submissions from the Hon Minister for Commerce ("the Minister"), UnionsWA, the Chamber of Commerce and Industry of Western Australia (Inc) ("CCIWA"), the Australian Hotels Association Western Australia and Western Australian Council of Social Services Inc. The Minister, UnionsWA and CCIWA appeared in the proceedings and also made oral submissions.

After hearing submissions and considering the evidence, the Commission issued a General Order that adjusted the current minimum wage and rates of wages paid under awards by an increase of 3.4% from the first pay period on or after 1 July 2012.

Apart from the necessary resulting changes to Principle 9 of the Statement of Principles, there were no other changes to the Principles.

Following the delivery of the 2012 State Wage Order, the new pay rates, where applicable, were amended accordingly and made available to the public as well as published on the Commission's website on the effective date of 1 July 2012.

The speed and accuracy of the publication of the pay rates continues to be invaluable to employers and employees to minimise underpayments which also assist in the prevention of industrial disputes. This standard is only able to be maintained while there are officers with detailed knowledge and expertise working closely with efficient information technology staff.

The computerised system used in previous years for amending awards following the State Wage Order was successfully utilised in 2011. The percentage increase awarded was the first percentage increase for many years and this required an adjustment to the computerised system. I am pleased to report that the automated process applied the wage increases from the 2012 State Wage order well in advance of the operative date on and from the commencement of the first pay period on or after 1 July 2011. Further enhancements to this system are being developed as the automated process can adjust all pay rates in only 82% of the 238 awards affected by the 2012 State Wage order.

## 3. Statutory Minimum Wage under the Minimum Conditions of Employment Act 1993

On 14 June 2012, the Commission in Court Session, on its own motion, issued a State Wage order pursuant to s 50A of the Act increasing the minimum weekly rate of pay prescribed for the purpose of the MCE Act to $627.70 on and from the commencement of the first pay period on or after 1 July 2012.

## 4. Minimum Rate for Award Apprentices 21 Years of Age and Over under the Minimum Conditions of Employment Act 1993

The State Wage order referred to above ordered that the minimum weekly rate of pay applicable under s 14 of the MCE Act to an apprentice who has reached 21 years of age shall be $543.50 per week on and from the commencement of the first pay period on or after 1 July 2012.

## 5. Minimum Weekly Wage Rates for Apprentices and Trainees under the Minimum Conditions of Employment Act 1993

Minimum weekly rates of pay for apprentices and trainees pursuant to s 14 of the MCE Act were also dealt with in the State Wage order referred to above.

Apprentices under the MCE Act refer to the class of apprentice to whom an award does not apply and to whom there is no relevant award to apply if an employer-employee agreement is in force or is subsequently entered into. For this class of apprentice, it was ordered that the minimum weekly rate of pay shall be the rate of pay determined by reference to apprentices' rates of pay in the *Metal Trades (General) Award*. The date of operation is the commencement of the first pay period on or after 1 July 2012.

Trainees under the MCE Act refer to the class of trainee to whom an award does not apply and to whom there is no relevant award to apply if an employer-employee agreement is in force or is subsequently entered into. The Commission ordered that for this class of trainee, the minimum weekly rate of pay at the relevant Industry/Skill level is based on the *Metal Trades (General) Award.* The date of operation is the commencement of the first pay period on or after 1 July 2012.

# 6. Public Service Arbitrator and Public Service Appeal Board

## Public Sector – General

### State School Teachers

After lengthy negotiations, in November 2011 the State School Teachers' Union and the Director General of Education reached a substantial level of agreement in finalising a new enterprise bargaining agreement. However, approximately eight significant issues appeared intractable. The parties sought the assistance of the Commission which convened approximately 12 conciliation conferences between 11 November and 8 December 2011. These conferences resulted in agreement on all issues. Following a ballot of the union's members after the commencement of the first term in 2012 which accepted the agreement, the Commission registered the School Education Act Employees' (Teachers and Administrators) General Agreement 2011 on 29 March 2012.

### Public Health Sector – Alleged Misuse of Salary Packaging

A total of 18 public health sector employees challenged their dismissals which were based on alleged misuse of the salary packaging scheme provided by their employer.

The claims were made to the Public Service Appeal Board and to the Commission under its general jurisdiction. It was alleged that these officers had made claims for reimbursement under the salary packaging scheme where they had not actually incurred the expenditure claimed. Most of the applications were dealt with by the Public Service Appeal Board as they related to government officers, and other applications were dealt with by the Commission in its general jurisdiction as they related to nurses. One of the latter applications was the subject of an appeal to the Full Bench of the Commission. All matters have now been concluded.

## Public Service Arbitrator

### Disputes Regarding a Lack of Consultation

The Public Service Arbitrator issued a number of orders during the year requiring employers to cease introducing changes where the employer had failed to consult the union and employees regarding changes in the workplace which have a significant effect on the jobs of the employees concerned. In one case, the Disability Services Commission had decided it that no longer wished to provide a particular service and the work was to be referred to other providers. The effect of this was to abolish the positions of a number of Community Social Trainers and their supervisors. The lack of consultation had a significant impact on issues of trust and confidence between the parties, and during the year the Arbitrator convened approximately 10 conferences, assisting the parties to reach an agreement on the way in which employees were to be either re-deployed or offered redundancy packages. These conferences are ongoing.

In another case, the Department of Training and Workforce Development removed home garaging of vehicles from 24 Apprenticeship Consultants, many of whom were said to use the vehicles for appointments with employers and apprentices prior to and after working hours. In that case there was little consultation with the employees and the union in accordance with the award, and the home garaging was reinstated for a period to enable discussions to be held.

In a more recent case, the Department of Agriculture and Food made a decision to reduce the number of Dog Handlers at Perth Airport without proper consultation as required by their award. The Arbitrator held a number of conferences to assist the parties to reach agreement on the manner in which changes are to be effected.

### Reclassification Appeals

A number of Guardians employed by the Public Advocate sought reclassification of their positions on the grounds that the nature of their work had become more complex since the establishment of the Office of the Public Advocate. The Public Service Arbitrator found that there had been a significant increase in the complexity of the work. However, this had subsequently been dealt with by a reorganisation of the work and the creation of higher level positions which took on the bulk of the more complex work. The Arbitrator found that a temporary special allowance ought to be paid for the period up to the creation of the higher level positions.

### Public Health Frontline Clerical Officers

In last year's report it was noted that the Public Service Arbitrator was to review approximately 320 positions in the public health sector, and hearings and inspections were then being scheduled. Due to changes to the personnel representing one of the parties, and due to the parties not being ready to proceed, the hearings and inspections had to be rescheduled a number of times. They are currently now listed for November and December 2012.

## Public Service Appeal Board

In recent years the number of matters referred to the Public Service Appeal Board has increased significantly. The number of appeals each year for the last 10 years has been:

| | |
|---|---|
| 2002 – 03 | 11 |
| 2003 – 04 | 17 |
| 2004 – 05 | 11 |
| 2005 – 06 | 11 |
| 2006 – 07 | 8 |
| 2007 – 08 | 13 |
| 2008 – 09 | 18 |
| 2009 – 10 | 42* |
| 2010 – 11 | 17 |
| 2011 – 12 | 19 |

* Includes a number of appeals by public health sector employees dismissed over the salary packaging issues.

As noted in previous years, each appeal requires the formation of a new Board. The formation of the Board involves the Civil Service Association of Western Australia Incorporated (or another union relevant to the appellant) and the employer each nominating a person to the Board. On average, unions advise of their nominations promptly, taking between two to three days. In contrast, the average time taken by employers has been two weeks, with some nominations being made on the same day and others resulting only after a number of reminders and many weeks of delay.

On one occasion a Board member did not attend for the scheduled hearing which had to be abandoned and was later rescheduled. The Board member failed to attend the next scheduled hearing. Proceedings were delayed for a number of weeks on each of the two occasions.

## 7. Award Review Process

The review of a number of public sector awards in accordance with s 40B of the Act continues. The process has been difficult as in many cases the parties to the awards have seen this as a low priority and on occasions have wished to defer the process to enable them to deal with what they saw as greater priorities, such as the preparation for, and negotiation of, new enterprise agreements. However, a number of awards have been finalised and the following awards were amended:

- Hospital Salaried Officers (Private Hospitals) Award, 1980
- Government Officers (Social Trainers) Award 1988
- Government Officers (State Government Insurance Commission) Award, 1987
- Metropolitan Teaching Hospitals – Salaries and Conditions of Service Award 1986 (Medical Officers)
- Western Australian State Public Hospitals, Medical Practitioners' Award 1987

Hearings are listed to finalise the following award reviews:

- Hospital Salaried Officers (Dental Therapists) Award, 1980
- Hospital Salaried Officers (Nursing Homes) Award 1976

It is anticipated that the following award reviews will be finalised before October 2012:

- The Aboriginal Police Aides Award
- The Police Award 1965
- Parliamentary Employees Award 1989

## 8. Right of Entry Permits Issued

| Organisation | 2008/09 | 2009/10 | 2010/11 | **2011/12** |
|---|---|---|---|---|
| Association of Professional Engineers, Australia (Western Australian Branch) Organisation of Employees, The | | 1 | 1 | **2** |
| Australian Institute of Marine and Power Engineers, Western Australian Union of Workers | | | 1 | **0** |
| Australian Nursing Federation, Industrial Union of Workers Perth, The | | 19 | 4 | **0** |
| Australian Rail, Tram and Bus Industry Union of Employees, Western Australian Branch, The | 0 | 0 | 0 | **2** |
| Australian Workers' Union, West Australian Branch, Industrial Union of Workers, The | 3 | 4 | 4 | **4** |
| Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union of Workers – Western Australian Branch, The | 1 | 6 | 5 | **5** |
| Civil Service Association of Western Australia Incorporated, The | 14 | 35 | 16 | **20** |
| Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering & Electrical Division, WA Branch | 0 | 3 | 0 | **3** |
| Construction, Forestry, Mining and Energy Union of Workers, The | 6 | 7 | 5 | **0** |
| Food Preservers' Union of Western Australia, Union of Workers, The | 0 | 0 | 0 | **0** |
| Forest Products, Furnishing & Allied Industries Industrial Union of Workers, WA, The | 0 | 0 | 1 | **4** |
| Health Services Union of Western Australia (Union of Workers) | 0 | 0 | 0 | **4** |
| Independent Education Union of Western Australia, Union of Employees, The | 1 | 2 | 1 | **2** |
| Media, Entertainment and Arts Alliance of Western Australia (Union of Employees) | 0 | 0 | 0 | **3** |
| Plumbers and Gasfitters Employees' Union of Australia, West Australian Branch, Industrial Union of Workers, The | 0 | 0 | 0 | **0** |
| Shop, Distributive and Allied Employees' Association of Western Australia, The | 6 | 3 | 5 | **0** |
| State School Teachers' Union of W.A. (Incorporated), The | 4 | 7 | 5 | **5** |
| Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch | 2 | 1 | 4 | **4** |
| United Firefighters Union of Australia, West Australian Branch | 1 | 0 | 0 | **2** |
| United Voice WA<br>(*formerly Liquor, Hospitality and Miscellaneous Union, Western Australian Branch*) | 38 | 31 | 60 | **93** |
| Western Australian Branch of the Australian Medical Association, The | 0 | 2 | 0 | **0** |
| Western Australian Municipal, Administrative, Clerical and Services Union of Employees<br>(*formerly the Australian Municipal, Administrative, Clerical and Services Union of Employees, WA Clerical and Administrative Branch* | 2 | 0 | 16 | **3** |
| Western Australian Prison Officers' Union of Workers | 9 | 0 | 0 | **9** |
| **TOTAL** | **89** | **121** | **128** | **165** |

Number of permits that have been issued since 8 July 2002 (gross total)…… ……..1321

Number of permits issued during the 2011/12 financial year ..... 175

Number of people who presently hold a permit ..... 513

Number of permits that are current ..... 608

Number and names of permit holders who have had their permit removed or suspended by the Commission in the current reporting period. ..... 0

## 9. Claims by Individuals – Section 29

This Report continues an analysis of applications concerning unfair dismissal and denial of contractual benefit. These applications are made under the following provisions of the Act.

- Section 29(1)(b)(i) - Claims alleging unfair dismissal
- Section 29(1)(b)(ii) - Claims alleging a denied contractual benefit

For the purposes of this analysis, the two types of application are referred to in the following tables as "Section 29" applications.

### Section 29 Applications Lodged

Applications alleging unfair dismissal continue to represent the most significant proportion of the types of applications that are lodged under s 29 of the Act.

| | 2008-2009 | 2009-2010 | 2010-2011 | 2011-2012 |
|---|---|---|---|---|
| Unfair Dismissal | 184 | 192 | 128 | 187 |
| Denial of Contractual Benefits | 64 | 86 | 82 | 85 |
| **TOTAL** | **248** | **279** | **208** | **272** |

### Section 29 Applications Finalised

| | 2008-2009 | 2009-2010 | 2010-2011 | 2011-2012 |
|---|---|---|---|---|
| Unfair Dismissal | 163 | 180 | 135 | 188 |
| Denial of Contractual Benefits | 72 | 55 | 81 | 97 |
| Both in same application | 2 | 4 | 0 | 0 |
| **TOTAL** | **237** | **239** | **216** | **285** |

### Section 29 Applications Lodged Compared with All Matters[1] Lodged

Section 29 applications represent 39% of all the matters lodged in the Commission.

| | 2008-2009 | 2009-2010 | 2010-2011 | 2011-2012 |
|---|---|---|---|---|
| All Matters Lodged | 839 | 1056 | 762 | 697 |
| Section 29 Applications Lodged | 248 | 279 | 208 | 272 |
| **Section 29 as (%) of All Matters Lodged** | **29.5%** | **26.4%** | **27.3%** | **39%** |

[1] *All Matters means the full range of matters that can be initiated under the Act for reference to the Commission*.

## Section 29 Applications Finalised Compared with All Matters Finalised

| | 2008-2009 | 2009-2010 | 2010-2011 | 2011-2012 |
|---|---|---|---|---|
| All Matters Finalised | 804 | 836 | 869 | 884 |
| Section 29 Applications Finalised | 237 | 233 | 215 | 285 |
| **Section 29 as Percentage (%) of All Matters Finalised** | **29.5%** | **27.9%** | **24.7%** | **32.2%** |

## Section 29 Matters – Method of Settlement

The following table shows that 88% of s 29 matters were settled without recourse to formal arbitration.

| | Unfair Dismissal | Contractual Benefits | Both | Total | % |
|---|---|---|---|---|---|
| Arbitrated claims in which order issued | 17 | 14 | 0 | 31 | 12.1 |
| Settled after proceedings before the Commission | 102 | 37 | 0 | 139 | 54.1 |
| Matters referred for investigation resulting in settlement | 2 | 2 | 0 | 4 | 1.6 |
| Matters discontinued/dismissed before proceedings commenced in the Commission | 30 | 27 | 0 | 57 | 22.2 |
| Matters withdrawn/discontinued in Registry | 17 | 9 | 0 | 26 | 10.1 |
| **Total Finalised in 2011/2012 Reporting Year** | **168** | **89** | **0** | **257** | **100** |

## Demographic Data for Section 29 Applications

The Commission began a demographic data collection system during the 2000/2001 reporting year to capture additional information on applications at the time of lodgement. Provision for supplying this information is located in the schedule of particulars attached to the Notice of Application. It is not compulsory for an applicant to provide this information and many applicants choose not to do so. The following information is provided on that basis.

The following tables serve to illustrate a variety of characteristics relating to applicants who have claimed redress under s 29 of the Act.

## Representation

The table following was constructed from the survey of cases over the period and shows that the majority of applicants were prepared to conduct their own case in the Commission whilst the remainder were represented in some form as set out in the table.

| | Male | Female | No Data | Total | % Male | % Female | %No Data | %Total |
|---|---|---|---|---|---|---|---|---|
| Industrial Agent | 6 | 5 | 0 | **11** | 4.5 | 4 | 0 | **4** |
| Legal Representation | 11 | 11 | 0 | **22** | 8.2 | 8.9 | 0 | **8.1** |
| Personal | 108 | 95 | 0 | **203** | 80.6 | 76.6 | 0 | **74.6** |
| Other | 4 | 8 | 0 | **12** | 3 | 6.5 | 0 | **4.4** |
| No Data Provided | 5 | 5 | 14 | **24** | 3.7 | 4 | 100 | **8.8** |
| **TOTAL** | **134** | **124** | **14** | **208** | **100** | **100** | **100** | **100** |

## Age Groups

The following table provides a view of the age ranges and gender distribution of applicants.

| Age Group | Male | Female | No Data | Total | %Male | %Female | %No Data | %Total |
|---|---|---|---|---|---|---|---|---|
| Under 16 | 2 | 1 | 0 | **3** | 1.5 | 0.8 | 0 | 1.1 |
| 17 to 20 | 3 | 11 | 0 | **14** | 2.2 | 8.9 | 0 | 5.1 |
| 21 to 25 | 3 | 17 | 0 | **20** | 2.2 | 13.7 | 0 | 7.4 |
| 26 to 40 | 40 | 29 | 0 | **69** | 29.9 | 23.4 | 0 | 25.4 |
| 41 to 50 | 32 | 33 | 0 | **65** | 23.9 | 26.6 | 0 | 23.9 |
| 51 to 60 | 39 | 24 | 0 | **63** | 29.1 | 19.4 | 0 | 23.2 |
| Over 60 | 15 | 8 | 0 | **23** | 11.2 | 6.5 | 0 | 8.5 |
| No Data Provided | 0 | 1 | 14 | **15** | 0 | 0.8 | 100 | 5.5 |
| **TOTAL** | **134** | **124** | **14** | **272** | **100** | **100** | **100** | **100** |

## Employment Period

| Period of Employment | Male | Female | No Data | Total | %Male | % Female | %No Data | %Total |
|---|---|---|---|---|---|---|---|---|
| Under 3 months | 28 | 23 | 0 | **51** | 20.9 | 18.5 | 0 | **18.8** |
| 4 to 6 months | 7 | 20 | 0 | **27** | 5.2 | 16.1 | 0 | **9.9** |
| 7 to 12 months | 20 | 19 | 1 | **39** | 14.9 | 15.3 | 0 | **14.3** |
| 1 to 2 years | 27 | 26 | 0 | **53** | 20.1 | 21 | 0 | **19.5** |
| 2 to 4 years | 23 | 20 | 0 | **43** | 17.2 | 16.1 | 0 | **15.8** |
| 4 to 6 years | 10 | 2 | 0 | **12** | 7.5 | 1.6 | 0 | **4.4** |
| Over 6 years | 14 | 11 | 0 | **25** | 10.4 | 8.9 | 14 | **9.2** |
| No Data Provided | 5 | 3 | 14 | **22** | 3.7 | 2.4 | 14 | **8.1** |
| **TOTAL** | **134** | **124** | **14** | **272** | **100** | **100** | **100** | **100** |

## Salary Range

| | Male | Female | No Data | Total | %Male | %Female | %No Data | %Total |
|---|---|---|---|---|---|---|---|---|
| Under $200 P/W | 17 | 16 | 0 | **33** | 12.7 | 12.9 | 0 | **12.1** |
| $201 to $600 P/W | 6 | 26 | 0 | **32** | 4.5 | 21 | 0 | **11.8** |
| $601 to $1000 P/W | 34 | 38 | 0 | **72** | 25.4 | 30.6 | 0 | **26.5** |
| $1001 to $1500 P/W | 36 | 22 | 0 | **58** | 26.9 | 17.7 | 0 | **21.3** |
| $1501 to $2000 P/W | 21 | 15 | 0 | **36** | 15.7 | 12.1 | 0 | **13.2** |
| Over $2001 P/W | 20 | 7 | 0 | **27** | 14.9 | 5.6 | 0 | **9.9** |
| No Data Provided | 0 | 0 | 14 | **14** | 0 | 0 | 100 | **5.1** |
| **TOTAL** | **134** | **124** | **14** | **272** | **100** | **100** | **100** | **100** |

## Category of Employment

Over half of all applicants stated that they were Full Time, Permanent or Permanent Full Time employees at the time of their termination.

| Period of Employment | Male | Female | No Data | Total | %Male | % Female | %No Data | %Total |
|---|---|---|---|---|---|---|---|---|
| Casual | 11 | 6 | 0 | **17** | 8.2 | 4.8 | 0 | **6.2** |
| Casual F/Time | 4 | 10 | 0 | **14** | 3 | 8.1 | 0 | **5.1** |
| Casual P/Time | 2 | 6 | 0 | **8** | 1.5 | 4.8 | 0 | **2.9** |
| Fixed Term | 3 | 3 | 0 | **6** | 2.2 | 2.4 | 0 | **2.2** |
| Full Time | 25 | 19 | 1 | **44** | 18.7 | 15.3 | 0 | **16.2** |
| Permanent | 8 | 7 | 0 | **15** | 6 | 5.6 | 0 | **5.5** |
| Permanent F/Time | 62 | 42 | 2 | **104** | 46.3 | 33.9 | 0 | **38.2** |
| Permanent P/Time | 10 | 19 | 1 | **29** | 7.5 | 15.3 | 0 | **10.7** |
| Probation | 2 | 2 | 0 | **4** | 1.5 | 1.6 | 0 | **1.5** |
| Part Time | 5 | 9 | 0 | **14** | 3.7 | 7.3 | 0 | **5.1** |
| No Data Provided | 2 | 1 | 14 | **17** | 1.5 | 0.8 | 100 | **6.2** |
| **TOTAL** | **134** | **124** | **14** | **272** | **100** | **100** | **100** | **100** |

## Reinstatement Sought

This table shows whether applicants sought reinstatement as presented by gender. Almost half of the respondents did not seek reinstatement.

| Reinstatement Sought | Male | Female | No Data | Total | %Male | % Female | %No Data | %Total |
|---|---|---|---|---|---|---|---|---|
| Yes | 44 | 24 | 0 | **68** | 32.8 | 19.4 | 0 | **25** |
| No | 56 | 78 | 0 | **134** | 41.8 | 62.9 | 0 | **49.3** |
| No Data Provided | 34 | 22 | 14 | **70** | 25.4 | 17.7 | 100 | **25.7** |
| **TOTAL** | **134** | **124** | **14** | **272** | **100** | **100** | **100** | **100** |

## Reinstatement Sought by Age Group

This table illustrates a further view of the answer to the question of reinstatement as presented by age group.

| Age Groups | Yes | No | No Data | Total | %Yes | %No | %No Data | %Total |
|---|---|---|---|---|---|---|---|---|
| Under 16 | 0 | 3 | 0 | **3** | 0 | 2.2 | 0 | **1.1** |
| 17 to 20 | 3 | 10 | 1 | **14** | 4.4 | 7.5 | 1.4 | **5.1** |
| 21 to 25 | 3 | 15 | 2 | **20** | 4.4 | 11.2 | 2.9 | **7.4** |
| 26 to 40 | 15 | 42 | 12 | **69** | 22.1 | 31.3 | 17.1 | **25.4** |
| 41 to 50 | 16 | 33 | 16 | **65** | 23.5 | 24.6 | 22.9 | **23.9** |
| 51 to 60 | 24 | 20 | 19 | **63** | 35.3 | 14.9 | 27.1 | **23.2** |
| Over 60 | 6 | 11 | 6 | **23** | 8.8 | 8.2 | 8.6 | **8.5** |
| No Data Provided | 1 | 0 | 14 | **15** | 1.5 | 0 | 20 | **5.5** |
| **TOTAL** | **68** | **134** | **70** | **272** | **100** | **100** | **100** | **100** |

## 10. Employer-Employee Agreements (EEAs)

Employer Employee Agreements (EEAs) were introduced in 2002. EEAs allow an employer and employee to negotiate their own employment arrangements subject to a number of checks, including a requirement that the EEA passes a 'No Disadvantage Test'. The No Disadvantage Test is intended to ensure that the employee is not on balance, disadvantaged in relation to the terms and conditions of employment when compared to the relevant award. Agreements that meet these checks are registered by the Registrar.

The following table sets out statistics in relation to these agreements.

**INDUSTRIAL RELATIONS ACT 1979 PART VID**

### Applications to Lodge EEAs for Registration

| Number of EEAs Lodged | 2008-09 | 2009-10 | 2010-11 | 2011-12 |
|---|---|---|---|---|
| Meeting Lodgement Requirements | 9 | 6 | 2 | 5 |
| Not Meeting Lodgement Requirements | 0 | 0 | 0 | 1 |
| **Total** | **9** | **6** | **2** | **6** |

### EEAs Lodged for Registration and Finalised

| Outcome | 2008-09 | % | 2009-10 | % | 2010-11 | % | 2011-12 | % |
|---|---|---|---|---|---|---|---|---|
| Refused | 2 | 17% | 1 | 20% | 0 | 0% | 1 | 20% |
| Registered | 10 | 83% | 4 | 80% | 1 | 50% | 3 | 60% |
| Withdrawn | 0 | 0% | 0 | 0% | 1 | 50% | 1 | 20% |
| **Total** | **12** | **100** | **5** | **100** | **2** | **100** | **5** | **100** |

The total number of EEAs received in this reporting period includes one EEA which was lodged but is yet to be finalised.

## 11. Appeals Pursuant to Section 33P of the Police Act 1892

These are appeals pursuant to s 33P of the *Police Act 1892* and are filed by police officers who have been removed from the WA Police under s 8 of that Act. They are heard by three Commissioners, one of whom must be either the Chief or the Senior Commissioner.

During the reporting period, one appeal was filed, heard and dismissed. A pending appeal from the last reporting period was dismissed in this reporting period, and two appeals against the decisions of the Commission that were earlier filed in the Industrial Appeal Court were both dismissed in this reporting period.

## 12. Mediation Applications pursuant to the Employment Dispute Resolution Act 2008

The *Employment Dispute Resolution Act 2008* ("EDR Act") was proclaimed on 1 December 2008. It provides that the Commission can be asked to mediate any question, dispute or difficulty that arises out of or in the course of employment. This is wider than an "industrial matter" under the Act.

During the reporting period, five requests for mediation were lodged and dealt with. Three were finalised and two remain pending.

Of the pending requests for mediation from previous reporting periods, eight were dealt with in this reporting period, with all but one finalised.

## 13. Referral of Disputes pursuant to the Owner-Drivers (Contracts and Disputes) Act 2007

In this reporting period there have been a total of 11 applications to the Road Freight Transport Industry (the Tribunal). This is substantially less than the number of applications for previous reporting period.

As with that period, applications to the Tribunal this period mainly involved claims for the recovery of money sums as debts due and for damages for breach of contract.

A matter of note during the reporting year was the passage through the Commonwealth Parliament of the *Road Safety Remuneration Act 2012 (Cth)* and the establishment of the Road Safety Remuneration Tribunal from 1 July 2012. Some consideration will need to be given to an examination of the Commonwealth legislation and its impact, if any, on the Tribunal in Western Australia. On the face of it, by s 10 of the Commonwealth Act, it is not intended to exclude or limit the operation of State legislation capable of operating concurrently with it.

I note below a decision of the Tribunal of interest.

### Application RFT 23 of 2011 – [2012] WAIRC 00235; (2012) 92 WAIG 709

This matter involved a claim by a contractor that the respondent committed various breaches of contract. The contractor commenced work in about July 2007 and continued until August 2011. The contractor was unable to work for a period as a result of illness. The respondent is engaged in the scrap metal business.

The Tribunal was required to determine a number of issues which included:

(a) Was there an owner-driver contract in existence between the contractor and the respondent?;
(b) If there was an owner-driver contract:

  (i) was reasonable notice required to terminate the contract and what, in the circumstances of the present case, would be a reasonable period of notice?;
  (ii) Was the respondent liable for losses incurred by the contractor for the period of the contractor's illness when the contractor could not provide services to the respondent?;
  (iii) How should any damages be assessed if the contractor makes out any claims?

After considering the evidence and the applicable legal principles, the Tribunal concluded that an owner-driver contract came into existence from about July 2007, based upon the conduct of the parties which, considered objectively, evinced an intention that they intended to be contractually bound: *Integrated Computer Services Pty Ltd v Digital Equipment Corp (Australia) Pty Ltd* (1988) 5 BPR 11110; *Gibson v Manchester City Council* [1978] 1 WLR 520; [1979] 1 WLR 294. The Tribunal also held that an agreement may be inferred from the conduct of the parties in cases where an offer and acceptance cannot be immediately identified: *Impirnall Holdings Pty Ltd v Machon Paull Partners Pty Ltd* (1988) 14 NSWLR 523; *Vroon BV v Fosters Brewing Group Ltd* [1994] 2 VR 32.

Next, the Tribunal considered whether it was a term of the owner-driver contract that the contractor be compensated for commercial losses as a result of being unable to drive during a period of illness. Applying the established principles of implication of terms into contracts, as determined in *BP Refinery (Westernport) Pty Ltd v Shire of Hastings* (1977) 180 CLR 266, the Tribunal was not prepared to imply a term to this effect.

Finally, the Tribunal was required to, in the absence of any specified term consider what would be reasonable notice to terminate the owner-driver contract in the present circumstances. Applying the principle that commercial agreements contain an implied term that the agreement may be terminated on notice and having regard to the evidence, including capital investment in excess of $200,000 expended by the contractor for the provision of a new truck, the Tribunal considered that a reasonable period of notice would be two months: *Crawford Fitting Co v Sydney Valve and Fittings Pty Ltd* (1988) 14 NSWLR 438.

Accordingly, having regard to the contractor's obligation to mitigate his loss, the Tribunal ordered the respondent to pay the contractor damages in the sum of $10,400 plus interest.

## 14. Occupational Safety and Health Tribunal

There were no new applications lodged during this reporting year.

## 15. Other Matters

Some examples of the matters dealt with in the various industries are:

### Health

Nursing
The Commission arbitrated a dispute about the termination of an employee by the Quadriplegic Centre.

Health Support Staff
The following disputes were conciliated:

- A dispute with respect to the introduction of the use of swipe cards for employees in Patient Support Services at Royal Perth Hospital to sign on and sign off for timekeeping purposes. The parties continue to have ongoing discussions.
- A dispute concerning the transfer of mental health patients to general wards at Rockingham Hospital. The Commission issued a Recommendation with respect to this application.
- A dispute concerning workloads of enrolled nurses at Bentley Health Service.

### Local Government

A number of applications involving local government authorities were dealt with in the reporting period. These applications were filed by individuals under s 29(1)(b) of the Act or registered organisations under s 44 of the Act.

In 12 of these applications the respondents formally submitted that the Commission was unable to deal with the matter as the respondent was a constitutional corporation and thus covered by the *Fair Work Act 2009* (Cth).

In nine of the matters the respondent agreed to participate in conciliation proceedings and as a result six of the matters were settled by agreement. With respect to the remaining matters the parties agreed in one matter to have the application dealt with by a board of reference. In another matter the respondent advised it would not pursue the issue of jurisdiction and the application was heard and determined. The remaining matter is listed for hearing and determination.

In three of these applications the respondents claimed that they were a constitutional corporation and did not agree to the matters being conciliated. In one of these applications the parties agreed to have further discussions about how the matter was to proceed and in another matter the Commission heard and determined the issue of jurisdiction and found that the Commission had jurisdiction to deal with this application. In the third matter, after the Commission contacted the parties about listing the issue of jurisdiction, the respondent then asked for the matter to proceed to conciliation in the first instance.

### Fire and Emergency Services

The Commission arbitrated the issue of a classification for instructors who train recruits and existing employees. The Commission assisted the parties to reach agreement on implementing and applying the new classification structure.

### Professional Engineers, Scientists and Managers

The Commission conciliated and then arbitrated a dispute about the issuance of foreshadowed disciplinary action against an APESMA member.

## 16. Decisions of Interest

### Western Australian Police Union of Workers v The Civil Service Association of Western Australia Incorporated [2011] WAIRC 00786; (2011) 91 WAIG 1851

The Western Australian Police Union of Workers (Police Union) sought to vary its rules to extend their eligibility to enrol:

(a) persons appointed under the Police Act 1892 (WA) (Police Act) and employed by the Commissioner of Police;
(b) police recruits; and
(c) persons engaged by the Commissioner of Police in some capacity (other than persons appointed under the Police Act or police recruits) undertaking work currently or traditionally performed by a member of the Police Force appointed under the Police Act.

The effect of the variation in (a) was to extend coverage to police auxiliary officers (who are not sworn police officers). The variation sought in (c) was to extend coverage to some public service officers employed by the Commissioner of Police. As the variations sought could result in overlapping coverage with The Civil Service Association of Western Australia Incorporated (CSA), the CSA objected to the application. The Full Bench found that the CSA only had constitutional coverage of some auxiliary officers, but not all. It also found that when all the circumstances were examined, it would not be practical to discourage overlapping coverage of police auxiliary officers, as not to allow the amendment would have the effect that some police auxiliary officers would be left without any constitutional coverage by either union. For this reason, the variation to the rules of the Police Union sought in (a) was authorised by the Full Bench. The Full Bench, however, did not authorise the variation sought in (c) to the rules of the Police Union as it was not satisfied there was good reason to permit overlapping coverage of public service officers.

### Minister for Education v. Liquor, Hospitality and Miscellaneous Union, Western Australian Branch [2011] WAIRC 00818; (2011) 91 WAIG 1839

The Industrial Magistrate held that the Minister for Education had failed to comply with the Cleaners and Caretakers (Government) Award 1975 by requiring a school cleaner to start work each day half an hour earlier than the general spread of hours provided for in the Award. When the appeal was heard, the appellant sought to raise an argument in one of the grounds of appeal that had not been

pleaded in defence at first instance or put to the Industrial Magistrate. After considering observations made by members of the High Court in *Water Board v Moustakas* (1988) 180 CLR 491, 497 – 498 and *H v Minister for Immigration and Multicultural Affairs* [2000] FCA 1348 [7] – [8], the Full Bench found the following principles guide when a finding could be made that it is expedient and in the interests of justice to entertain a point:

(a) The point must be one of construction or of law and not be met by calling evidence.
(b) In deciding whether or not a point was raised at trial no narrow or technical view should be taken. Ordinarily the pleadings will be of assistance.
(c) In very exceptional cases an omission to put a case formulated on appeal may not be conclusive. The opportunity to assert the new case should be granted only where the interests of justice require it and such a course can be taken without prejudice to the defendant.
(d) Consideration of the interests of justice should extend to a consideration of relevant matters beyond the interests of the parties to the interests of other litigants and efficient case management.
(e) When assessing the interests of justice, the merit of the new point sought to be raised is a relevant consideration.

After considering the evidence and arguments put on behalf of the parties, the Full Bench found the point sought to be put was one of construction of the Award, but found the point had no merit.

## The Australian Workers' Union, West Australian Branch, Industrial Union of Workers and The Construction, Forestry, Mining and Energy Union of Workers [2012] WAIRC 00032; (2012) 92 WAIG 102, [2012] WAIRC 00095; (2012) 92 WAIG 227, [2012] WAIRC 00115; (2012) 92 WAIG 232

The Australian Workers' Union, West Australian Branch, Industrial Union of Workers (AWUWA) and The Construction, Forestry, Mining and Energy Union of Workers (CFMEUW) both made applications under s 72A of the Act seeking exclusive representation orders to enrol persons engaged in brickmaking at particular enterprises. The reason why the applications were made was that since 2008 The Federated Brick, Tile and Pottery Industrial Union of Australia (Union of Workers) Western Australian Branch has been effectively defunct.

With the exception of one named enterprise sought to be covered by the AWUWA and an unspecified category of enterprises, all other named enterprises in each application were and are constitutional corporations, and thus national system employers. When considering the applications, the Full Bench had regard to the fact that both the AWUWA and the CFMEUW are not only registered as organisations under the Act, but are recognised under sch 1 of the *Fair Work (Registered Organisations) Act 2009* (Cth) as transitionally recognised associations. The Full Bench found that the rights of State organisations to represent employees of a national system employer were:

(a) The regulation of employee associations and the members;
(b) Denial of contractual benefit claims; and
(c) The right of entry under s 49I of the Act for authorised representatives to investigate suspected breaches of the *Occupational Safety and Health Act 1984* (WA).

The Full Bench also found that the effect of cl 3(1) of sch 1 of the *Fair Work (Registered Organisations) Act* is that a transitionally recognised association has full representative rights in the federal system as if it were a federally registered organisation.

The Full Bench then had regard to the following material matters:

(a) The CFMEU Branch had constitutional coverage of all employees in the brick, tile and pottery industry and the CFMEUW did not;
(b) The AWU and the AWUWA had partial coverage of brickmaking in that they had coverage of employees employed in the making of cement bricks, including masonry bricks, but not clay bricks;
(c) The type of bricks manufactured by the enterprises in question;
(d) The extent of enterprise bargaining agreements the AWU was a party to and the evidence that the CFMEU Branch was not a party to any collective agreements covering employees engaged in brickmaking;
(e) Whether in respect of each enterprise the AWUWA's right of entry in respect of employees engaged in the making of masonry bricks conferred by s 49I of the Act and s 494 of the *Fair Work Act 2009* (Cth) would be lost if the CFMEUW's application was granted.
(f) The AWUWA sought coverage of employees engaged in the making of clay bricks at Narrogin Brick which is not a federal system employer, whereas the CFMEUW application did not seek any order in respect of this enterprise.

After finding any orders made should not disturb the status quo of the AWUWA's right of entry at each relevant named federal system employer, the Full Bench ordered that the CFMEUW should have a right to represent the industrial interests of employees engaged in the manufacture of:

(1) Bricks who are employed by:

    (a) Boral Bricks Western Australia Pty Ltd (trading as Midland Brick);
    (b) BGC (Australia) Pty Ltd (trading as Brickmaker);
    (c) Austral Bricks (WA) Pty Ltd (trading as Austral Bricks);
    (d) Geraldton Brickworks Pty Ltd (trading as Geraldton Brick Co).

(2) Cement roof tiles at Austral Bricks (WA) Pty Ltd (trading as Bristile Roofing) and Monier Prime Pty Ltd (trading as Monier Prime Roofing).

The Full Bench also made an order that the AWUWA should have the right to represent the industrial interests of employees engaged in the manufacture of bricks at Narrogin Brick. After the orders were made by the Full Bench, the applications were referred to the President under s 72A(7) of the Act to make alterations to the rules of the AWUWA and the CFMEUW. After hearing from the parties, instruments in writing were made by the President on 29 February 2012 to alter the rules of the AWUWA and the CFMEUW to reflect the orders made by the Full Bench.

## Onus on Employer in Misconduct Dismissal and Procedural Fairness in Investigation [2012] WAIRC 00150; (2012) 92 WAIG 203

This matter was an appeal against a decision of a single Commissioner who had found that a mental health nurse employed by the Minister for Health, was unfairly dismissed and made an order of reinstatement. The nurse had participated in a salary sacrifice arrangement which allowed meal and entertainment expenses to be claimed pre-tax. Following an investigation, the nurse was summarily dismissed from employment as the nurse was found to have claimed pre-tax seven receipts from restaurants used by other employees when the nurse had not incurred the expenses in question.

When the appeal was argued, the Full Bench was called upon to consider the onus of proof on an employer who summarily dismisses an employee for misconduct and to consider whether the criteria in *Bi-Lo Pty Ltd v Hooper* (1992) 53 IR 224, 229 – 230 was inconsistent with observations of O'Dea P in *Newmont Australia Ltd v The Australian Workers' Union, West Australian Branch, Industrial Union of Workers* (1988) 68 WAIG 677. In both *Bi-Lo* and in *Newmont* observations were made that the Commission is to make an objective assessment of the circumstances of the

conduct which is said to be the basis of a dismissal to determine whether the employer has acted reasonably in making a decision to dismiss. However, in *Newmont* an evidentiary onus is said to be on an employer to show on balance that misconduct has in fact occurred, whereas in *Bi-Lo* it is not necessary for an employer to prove misconduct, only to prove that the employer honestly and genuinely believed, and had reasonable grounds for believing on the information available at the time the decision was made, that the employee was guilty of the alleged misconduct. After analysing the material facts in *Bi-Lo* and in *Newmont*, the Full Bench held the test in *Bi-Lo* was an appropriate test to be applied where the facts of the matter relied upon to prove misconduct raise an issue going to dishonesty, personal safety or some other issue of public interest which places a duty on an employer to ensure human safety. It also found:

(a) Even where *Bi-Lo* is applied, it may still be appropriate in some matters for the Commission to draw a conclusion as to whether or not misconduct had occurred.
(b) It is well established that where misconduct is alleged or relied upon there is a burden on the employer to demonstrate the alleged incident did occur and also to evaluate mitigating circumstances: *Garbett v Midland Brick* [2003] WASCA 36 [72]; (2003) 83 WAIG 893, 901.

This appeal was dismissed.

## United Voice WA v. The Minister for Health [2012] WAIRC 00319; (2012) 92 WAIG 585

This was an appeal against a decision by the Industrial Magistrate dismissing three claims. United Voice WA had filed three claims claiming the Minister for Health had breached a contracting out and privatisation clause in cl 11.13 of the WA Health – LHMU – Support Workers Industrial Agreement 2007 (2007 industrial agreement). The claims arose out of the proposed transfer of services from Royal Perth Hospital and Fremantle Hospital and Health Service to Fiona Stanley Hospital and the proposed transfer of services from Swan District Hospital to the Midland Health Campus.

This was the second appeal to come before the Full Bench which concerned a breach of the 2007 industrial agreement by a proposal to transfer services from the Metropolitan Health Service Board to Fiona Stanley Hospital.

In her decision, the Acting President, with whom one Bench member agreed, applied the principle discussed by Steytler P in *Talbot & Oliver* (a firm) *v Witcombe* [2006] WASCA 87; (2006) 32 WAR 179 that when determining a summary dismissal application a claim should not be dismissed other than when it is clear there is no real question of fact or law to be tried but that a court at first instance should be astute not to risk stifling the development of the law by summarily disposing of actions in respect of which there is a reasonable possibility that will be found in the development of the law.

After considering the arguments put by counsel for United Voice WA, the Acting President found that the appellant's arguments did not contain a real question of law or fact to be tried, nor raise any basis of a cause of action that may be developed in the law.

All members of the Full Bench dismissed the appeal. They found that there was no evidence before the Industrial Magistrate in the pleadings, or averred to in argument, upon which a proper inference could be drawn that the Minister for Health has, or is intending to, contract out or privatise services within the meaning of cl 11.13 of the 2007 industrial agreement, at or for, any of the hospitals which form the three boards named in cl 5.2(b) of the 2007 industrial agreement.

## Application to Restrain Union's Solicitor from Representation on Grounds of Conflict of Interest [2012] WAIRC 00291; (2012) 92 WAIG 507

A substantive application was filed under s 66 of the Act for orders on grounds that the Construction Forestry Mining and Energy Union of Workers (CFMEUW) had not observed its rules. An interlocutory application was also made seeking orders to prohibit the CFMEUW's solicitors from acting for the CFMEUW on grounds of conflict of interest. The application for interlocutory orders was dismissed by the Acting President on three grounds:

(a) There is no jurisdiction conferred on the President under s 66 of the Act to make any orders against a third party.
(b) The Supreme Court of Western Australia is the only State court that can exercise a supervisory jurisdiction over legal practitioners.
(c) In any event, no conflict of interest could be said to arise at the time of hearing the application.

## The Australian Rail, Tram and Bus Industry Union of Employees v Public Transport Authority [2012] WAIRC 00300; (2012) 92 WAIG 894

This matter involved an application for an interpretation of the Public Transport Authority (Transperth Train Operations Rail Car Drivers) Enterprise Order 2011 in relation to the posting of Guide Rosters. The issue of the regulation of rostering for railcar drivers at the Authority was included, for the first time, in the Enterprise Order. The contentious issue was the time period a guide roster should be posted, to enable consultation regarding final changes to it, before it comes into operation. The union contended that on its proper construction, the Guide Roster is required to be posted for a full period of six weeks to enable consultation. On the expiry of the six weeks, the Operational Roster will be posted and after three weeks it will start being "worked". On the other hand, the Authority contended that on its proper construction the relevant provisions of the agreement provide that it be posted six weeks prior to it becoming operational, that being three weeks for consultation, three weeks during which the Operational Roster is posted and then the roster will start being "worked".

Applying the established principles as to the interpretation of industrial instruments as in *Norwest Beef Industries Limited and Anor v AMIEUW (WA Branch)* (1985) 12 IR 314; *AMCOR Ltd v Construction, Forestry, Mining and Energy Union and Others* (2005) 222 CLR 241, the Commission considered that the contention advanced by the Authority was to be preferred.

## Jurisdiction of Public Service Appeal Board to Overturn Finding of Inquirer [2012] WAIRC 00289; (2012) 92 WAIG 691

This matter involved an appeal to the Public Service Appeal Board. The appellant appealed against a decision made by the respondent to impose a fine of five days' salary as a result of a finding of a breach of discipline, involving the alleged unauthorised access to the respondent's TRELIS database.

The appellant not only appealed against the penalty imposed by the respondent, but also challenged the finding of the Inquirer appointed under the then disciplinary provisions contained in the PSM Act. The jurisdiction of the Appeal Board to overturn the findings of an Inquirer was put in issue. Having considered the relevant provisions of the legislation, in particular s 78 of the PSM Act dealing with rights of appeal and reference, when read with s 86 of the PSM Act, the Appeal Board considered there was jurisdiction and power to overturn a finding of an Inquirer. In relation

to the merits, the Appeal Board concluded that the findings of the Inquirer were not reasonably open to be drawn on all of the evidence and was therefore quashed, as necessarily, was the penalty imposed based upon it.

Section 78 of the PSM Act has now been amended to enable a person aggrieved by a finding to appeal the finding to the Appeal Board.

## Variation of Contract of Employment and Contractual Benefits Claim (2011) 92 WAIG 462; (2012) 92 WAIG 468

This matter involved a claim a former Field Officer employed by a Union for contractual benefits allegedly denied on termination of contract in January 2011. The proceedings were dealt with in two parts. The first part determined whether as alleged, the applicant was entitled to a renewal of the first four-year fixed term contract of employment which expired in January 2011. A key issue in that respect was the status of an "agreed process" document, negotiated and agreed between the industrial officers and the union, in relation to renewal of fixed term contracts. The applicant contended that the effect of the agreed process document was that industrial officers were entitled to one renewal of their fixed term contracts, given the history of the dispute about fixed term contracts, and the plain terms of the agreement reached.

It was held by the Commission that the agreed process document had contractual effect, it being negotiated consistent with the custom and practice for variations to industrial officers' contracts of employment: *BP Refinery (Westernport) Pty Ltd v Shire of Hastings* (1977) 16 ALR 363; *Codelfa Construction Pty Ltd v State Rail Authority of New South Wales* (1982) 149 CLR 337.

The Commission next held, that on its proper construction, the contractually binding agreed process document, clearly intended that an industrial officer would be entitled to one further fixed term contract, after their initial term, unless their position was not to be renewed on the grounds of redundancy, or unsatisfactory performance. This was based upon established principles of construction of industrial instruments as set out in *Knucks v CSR Ltd* (1996) 66 IR 182; *Construction, Forestry, Mining and Energy Union v BHP Coal Pty Ltd* [2011] FCA 1294.

Having considered the threshold point in favour of the applicant, the Commission then heard and determined the claim for compensation in the nature of damages for the union's breach of contract of employment. The applicant contended losses to be in the region of $287,444. The Commission, having considered the evidence, concluded that from its terms, the agreed process document incorporated into the contract of employment would have entitled the applicant, on balance, to a further four year fixed term contract. By terminating the employment in January 2011, the applicant was denied the benefit of a further term.

Having regard to the evidence, and taking into account established principles concerning measures of damages, contingencies and mitigation, the Commission awarded compensation in the sum of $136,622 for denied contractual benefits.

## Appeal Against Decision to Terminate Employment of Prison Officer Lodged Out of Time and Whether Prison Officer is a Government Officer [2012] WAIRC 00054; (2012) 92 WAIG 190

This matter involved an appeal by a Vocational Support Officer (VSO) at Casuarina Prison, to the Public Service Appeal Board, from an alleged unfair termination of a fixed term contract in May 2011. As the appeal was out of time, the Appeal Board needed to consider whether the time within

which the appeal could be brought should be extended applying the principles as set out in the decision of an Appeal Board in *Michael Christian Nicholas v Department of Education and Training* (2008) 89 WAIG 817.

Part of the Appeal Board's consideration of whether the appeal should be accepted out of time was whether the appeal was within jurisdiction. This required the appellant to have been a "Government Officer" for the purposes of 80C (1) of the Act, which relevantly, required the appellant to be "employed on the salaried staff of a public authority". As a VSO, the appellant under his successive fixed term contracts was paid a "salary" under the terms of the Prison Officers Award and the Department of Corrective Services Prison Officers Enterprise Agreement 2010.

Given that the issue arising had significance for the status of prison officers generally throughout the State, the Appeal Board afforded the Western Australian Prison Officers Union the opportunity to make a submission in relation to this issue which it did.

The Appeal Board considered the history of the payment of wages and "salaries" under the former Gaol Officers Award 1968 and the Gaol Officers Industrial Agreement AG 64 of 1994. Having done so, the Appeal Board came to the conclusion that whilst the current industrial instruments refer to an "annualised salary", they also still retained significant reference to "wages". The Appeal Board concluded that the payment of annualised salaries to prison officers was as a result of administrative changes, and that a VSO, on the proper construction of s 80C of the Act, was not a person employed on the "salaried staff" of a public authority. The Appeal Board concluded that persons fitting that description are generally those in the administrative, technical and professional ranks of the public sector.

Accordingly, given the Appeal Board had no jurisdiction to entertain this claim, the extension of time was refused and the appeal dismissed.

## The Civil Service Association of Western Australia Incorporated v Western Australian College of Teaching [2011] WAIRC 01002; (2011) 91 WAIG 2391

This matter involved a claim by a former employee of the respondent that a period of absence from work as a result of injury be counted as service for the purposes of the relevant public sector award. Whilst the applicant was no longer employed by the respondent, such recognition would enable them to obtain a salary increment and have service recognised for the purposes of leave accrual.

The applicant was employed between May 2007 and September 2010. The applicant sustained an injury at work in October 2008 and as a result of which, was not able to be continuously present in the workplace to undertake all duties from that time to the termination of employment. A number of issues were required to be determined by the Arbitrator. These included whether, as the applicant was no longer an employee, the claim was an industrial matter; whether the claim was for a contractual benefit, being a benefit arising under the relevant award, to which the parties were not, at the material time, bound but which had been applied by custom and practice; if so, whether in fact having regard to the relevant provisions of the award, as incorporated contractually, the applicant's absence on workers' compensation should be taken into account for the purposes of determining "continuous service' for benefit purposes.

The Arbitrator, having considered the history of amendments to s 7 of the Act, following a line of decisions of the Industrial Appeal Court commencing with *RRIA v ADSTE* (1988) 68 WAIG 11, and extending to "any matter of an industrial nature the subject of an industrial dispute", meant that the claim fell within jurisdiction

Having regard to the evidence, and the written contract of employment, the Arbitrator also concluded that the relevant award was incorporated expressly into the contract of employment and was enforceable accordingly: *Soliman v University of Technology, Sydney* (2008) 176 IR 183. Having done so, the Arbitrator concluded that the claim for recognition of service whilst on workers' compensation, for benefit purposes, was a contractual benefit: *Balfour v Travelstrength Ltd* (1980) 60 WAIG 1015.

Having found that the applicant did have a contractual benefit, the final issue to be determined was whether the absence on workers' compensation should be held to be continuous service for benefit purposes. Having regard to various provisions of the award, incorporated expressly into the contract of employment, the Arbitrator concluded that an absence on workers' compensation should be regarded as an authorised absence and accordingly, declarations and orders were made in the applicant's favour.

## Commission Refused to Issue Right of Entry Authority [2011] WAIRC 01045; (2011) 91 WAIG 2345

An application was made by the Secretary of a Union for an order from the Commission in Court Session for the Registrar to issue a right of entry authority to its Assistant Secretary. The Assistant Secretary had been issued a right of entry authority in 2002, however in 2006 the Commission revoked it. This was the first occasion such an application had been made.

Notice of the application was published. Written submissions were made by the Minister for Commerce, the Chamber of Commerce and Industry of WA (Inc), the Master Builders' Association of Western Australia (Union of Employers) Perth and the Australian Building and Construction Commissioner (ABCC) for leave to intervene. The Commission granted leave to intervene to all except the ABCC to which it granted an opportunity to be heard.

The applicant submitted, amongst other things, that the right of entry authority ought be issued to assist the Union in achieving its objects in line with Division 2G of the Act, which provides a strong theme of promoting the interests for organisations of employees; that a considerable amount of time had elapsed since the revocation; that the Assistant Secretary had received training and counselling in relation to appropriate behaviour; and that the Commission in Court Session should not place weight on the Assistant Secretary's conduct prior to 2006.

The interveners and the ABCC each made a number of submissions including noting previous misbehaviour by the Assistant Secretary such as past convictions for committing criminal trespass, and noting the Assistant Secretary's long history of unlawful and improper conduct and abusive and aggressive behaviour; referring to Australian Industrial Relations Commission decisions revoking and refusing a national right of entry permit to the Assistant Secretary; that the 2006 revocation by this Commission was intended to be a permanent revocation; and that 28 other persons currently hold a right of entry authority for the Union and it has been able to conduct its affairs since 2006 even with the revocation.

The Commission in Court Session gave consideration to the following:

1. the conduct of the person which gave rise to the revocation;
2. the reasons why the Commission revoked the authority;
3. the length of time since the revocation and any undertakings regarding future behaviour given by the person;
4. any conduct which indicates a likelihood the person will, or will not, act in an improper manner if he/she is issued with another authority;

5. the interests of the applicant and also the interests of employees and employers of the workplaces; and
6. the public interest, such as the promotion of goodwill in industry, and recognising the principles of freedom of association and the right to organise.

The conclusion reached by the Commission in Court Session was that if another right of entry authority was issued, it was likely the Assistant Secretary would again act in an improper manner, or intentionally and unduly hinder an employer or employee during their working time. The application was dismissed.

## 17. Conclusion

In many important respects, the Act continues to operate well. I refer in this regard to the procedures in Division 2B for the making and registering of industrial agreements and to the access to conciliation provided by s 44 of the Act. Section 44 in particular has been shown to be valuable when potential, or actual, industrial disputes have occurred. The power of the Commission to call a conference is well understood, and the power of the Commission to call a conference on its own motion whenever industrial action has occurred or, in the opinion of the Commission, is likely to occur, allows the Commission itself to contact parties if it considers a matter might lead to industrial action.

In addition, the amendment to s 29A(2A) effected by the *Industrial Legislation Amendment Act 2011* which now gives a discretion not to publish the area and scope provision of a proposed new industrial agreement if the circumstances warrant, has already permitted a faster registration process where the changes to the area and scope provisions from an existing industrial agreement are only of an administrative nature. For example, where the names of government department parties have been changed or departments amalgamated; or where unions have been added to reflect actual coverage, publication of the area and scope provision causes a delay in the Commission dealing with the matter; now that publication may be waived, that delay is eliminated.

The procedure in s 37 for the amendment of an award also operates well although there are now relatively few applications to amend awards: in the year under review there were 42 applications to vary awards, compared to 157 in the 2005-2006 period immediately prior to the March 2006 Commonwealth "Work Choices" legislation. This reduced number of applications suggests that many of the awards are no longer seen by organisations and employers as relevant to particular workplaces; almost all of the private-sector awards do not recognise the overriding effect of modern awards which have been made under the Commonwealth Fair Work Act.

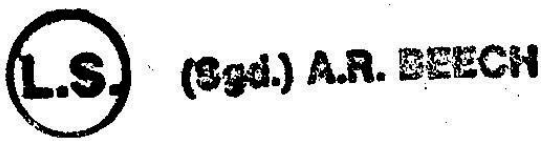
In this regard, it is useful to draw a distinction between an award, and the contents of an award. In private sector awards, many, if not most, named parties and listed respondents are no longer in existence, or have changed names, or changed addresses or changed businesses. Nevertheless the named parties are obliged to be served with any proposed variations to the award. This is inefficient and would result in much returned mail or contact with companies which now have no interest or practical involvement with the award.

The present powers in s 40B and s 47 for the Commission to vary awards on its own motion are problematic for that reason. Also, those two sections are not directed to "modernising" awards even if they provide a limited power to "modernise" the contents of an award. The Act does not permit the Commission to make an award on its own motion to replace one or more of the existing awards, yet it is the award itself, as distinct from its contents, which needs updating to reflect the post-March 2006 changes. I drew this to your attention in 2011 and in my respectful view, the need for the Act to be amended to provide the Commission with the power to make modern State awards to replace all existing awards is now critical.

The Commission has been conscious of the need to reduce its operating costs. In this context, there is a significant potential for future efficiencies and cost savings in the Commission having a close working relationship with Fair Work Australia: both tribunals deal with similar parties and similar industrial disputes in this State and are located in the same building. However, as I have previously reported, since the Australian Industrial Relations Commission ceased operations on 31 December 2009 no members of the Commission have been dually appointed as is enabled by s 14A of the Act. An amendment to the Act to permit members of this Commission and members of Fair Work Australia to be dually appointed to FWA and this Commission respectively, together with a sharing of some administrative functions, has much to commend it.

I thank the members of the Commission and the staff of the Department of the Registrar for their work over the reporting period. In particular, I record here my thanks to John Spurling who retired on 24 November 2011 after 14 years as Registrar of the Commission and CEO of the Department

of the Registrar, and a total of 47 years in the WA Public Service, principally in government industrial relations. His knowledge of industrial relations and the persons in it made him an excellent registrar. He has an understanding of the role and function of the Commission and its members, and a keen interest in industrial relations history, its origins and State-Commonwealth relations which made it a pleasure to work with him. I shall miss his wise counsel and wish him well in the future.




A.R. Beech
Chief Commissioner
10 September 2012