**2005**

**WESTERN AUSTRALIA**

# Forty Second Annual Report
# of
# The Chief Commissioner
# of the
# Western Australian Industrial Relations Commission
# for the period
# 1 July 2004 to 30 June 2005

**Pursuant to Section 16, subsection (2)(b) of the**

***Industrial Relations Act, 1979***

**2005**

**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 2004 to 30 June 2005**

**Minister Responsible for the Administration of the Act**

**The Hon. J Kobelke MLA**

**in his capacity as Minister for Consumer and Employment Protection**

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# MEMBERSHIP AND PRINCIPAL OFFICERS

## WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

During the year to 30 June 2005, the Western Australian Industrial Relations Commission (WAIRC) was constituted by the following members:

| | |
|---|---|
| **President** | The Honourable P J Sharkey |
| **Chief Commissioners** | W S Coleman<br>A R Beech |
| **Senior Commissioners** | A R Beech<br>J F Gregor |
| **Commissioners** | J F Gregor<br>P E Scott<br>S J Kenner<br>J H Smith<br>S Wood<br>J L Harrison<br>S M Mayman |

During the reporting period, the composition of the Commission changed in the following manner:

Chief Commissioner W S Coleman retired on and from 30 November 2004. The Commission records its appreciation of his loyal and dedicated service.

Senior Commissioner A R Beech was appointed Chief Commissioner on and from 1 December 2004.

Commissioner J F Gregor was appointed Senior Commissioner on and from 1 December 2004.

Commissioner S M Mayman was appointed to the Commission on 7 February 2005. The Commission welcomes the appointment of the new Commissioner in this reporting period. Commissioner Mayman brings a wealth of knowledge and experience to the Commission.

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

### Public Service Arbitrators

Commissioner P E Scott continued her appointment as the Public Service Arbitrator throughout the period.

Commissioner J L Harrison continued her appointment as an additional Public Service Arbitrator throughout the period.

Commissioner S J Kenner continued his appointment as an additional Public Service Arbitrator throughout the period.

Senior Commissioner A R Beech was appointed as an additional Public Service Arbitrator until 21 June 2005. This appointment ceased following his appointment as Chief Commissioner.

### Coal Industry Tribunal of Western Australia

Commissioner S J Kenner was reappointed as Chairperson of the Coal Industry Tribunal from 31 December 2004.

### Railways Classification Board

Commissioner J H Smith continued as Chairperson of the Railways Classification Board for the period.

Commissioner J L Harrison continued as Deputy Chairperson of the Railways Classification Board for the period.

### Occupational Safety and Health Tribunal

Commissioner S M Mayman is the Commissioner appointed for the purposes of s.51H of the *Occupational Safety and Health Act 1984* by notice published by command of the Governor on 29 March 2005.

### Registry

During the period the Principal Officers of the Registry were: Mr J Spurling (Registrar), Ms S Bastian (Registrar Designate), Deputy Registrars Ms D MacTiernan, Ms A Mullins, Mr J Rossi, Ms S Tuna, Mrs J Wickham and Mr A Wilson.

## THE WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT

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

**1 July 2004 to 31 December 2004:**

| | |
|---|---|
| The Honourable Justice Steytler | Presiding Judge |
| The Honourable Justice Hasluck | Deputy Presiding Judge |
| The Honourable Justice Pullin | Ordinary Member |
| The Honourable Justice Heenan | Ordinary Member |

Acting Ordinary Members:

| | |
|---|---|
| The Honourable Justice Simmonds | 1 – 30 November |
| The Honourable Justice Le Miere | 1 – 31 December |

**1 January 2005 to 30 June 2005:**

| | |
|---|---|
| The Honourable Justice Steytler | Presiding Judge |
| The Honourable Justice Wheeler | Deputy Presiding Judge |
| The Honourable Justice Pullin | Ordinary Member |
| The Honourable Justice Roberts-Smith | Ordinary Member |

## INDUSTRIAL MAGISTRATES COURT

During the reporting period, Magistrates Mr G Cicchini SM, Mr W G Tarr SM and Mr R H Burton SM exercised jurisdiction as Industrial Magistrates.

# MATTERS BEFORE THE COMMISSION

## 1. FULL BENCH MATTERS

The Full Bench has been constituted on each occasion by the President, the Honourable P J Sharkey, and by two Commissioners.

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

| | |
|---|---|
| Chief Commissioner W S Coleman (to 30 November 2004) | 13 |
| Chief Commissioner A R Beech (from 1 December 2004) | 11 |
| Senior Commissioner A R Beech (prior to 1 December 2004) | 16 |
| Senior Commissioner J F Gregor (from 1 December 2004) | 5 |
| Commissioner J F Gregor (prior to 1 December 2004) | 8 |
| Commissioner P E Scott | 12 |
| Commissioner S J Kenner | 20 |
| Commissioner J H Smith | 9 |
| Commissioner S Wood | 14 |
| Commissioner J L Harrison | 8 |
| Commissioner S M Mayman (commenced 7 February 2005) | 2 |

The following summarises Full Bench matters:

### APPEALS

Heard and determined from decisions of the:

| | |
|---|---|
| Commission | 36 |
| Industrial Magistrate | 10 |
| Coal Industry Tribunal | 0 |
| Public Service Arbitrator | 5 |
| Railways Classification Board | 0 |

### ORGANISATIONS – APPLICATIONS BY OR PERTAINING TO

| | |
|---|---|
| Applications to register an organisation pursuant to s.54 | 0 |
| Applications to amend the rules of a registered organisation pursuant to s.62 | 3 |
| Applications relating to state branches of federal organisations pursuant to s.71 | 0 |
| Applications to adopt the 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 | 0 |
| Applications for cancellation/suspension of registration of organisations pursuant to s.73 | 3 |

### OTHER

| | |
|---|---|
| Proceedings for enforcement pursuant to s.84A brought by the Minister, or another person or organisation | 1 |
| Questions of law referred to the Full Bench | 0 |
| Matters remitted by the Industrial Appeal Court | 1 |
| Applications for extension of time to file Notice of Appeal | 2 |
| Full Bench appeals heard but not determined in 2004/2005 | 3 |

### ORDERS

| | |
|---|---|
| Orders issued by the Full Bench | 63 |

## 2. PRESIDENT

Matters before the President sitting alone were as follows:

| | |
|---|---|
| Applications for an order that the operation of a decision appealed against be stayed pursuant to s.49(11) | 7 |
| Applications for an order, declaration or direction pursuant to s.66 | 3 |

The following summarises s.66 applications:

| | |
|---|---|
| Applications finalised in 2004/2005 | 3 |
| Directions hearings | 9 |
| Applications part-heard | 0 |
| Applications withdrawn by order | 0 |
| Applications discontinued by order | 1 |

### ORDERS

Orders issued by the President from 1 July 2004 to 30 June 2005 inclusive:

| | |
|---|---|
| S.49(11) | 9 |
| S.66 | 11 |
| S.72A(6) | 0 |
| S.92 | 0 |
| S.97Q | 0 |
| Remitted from the Industrial Appeal Court | 0 |

### CONSULTATIONS

| | |
|---|---|
| Consultations with the Registrar pursuant to s.62 of the Act | 0 |

## 3. COMMISSION IN COURT SESSION

During the period under review, the Commission in Court Session has been constituted nine times, each time by three 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 (from 1 December 2004) | 4 |
| Senior Commissioner A R Beech (prior to 1 December 2004) | 3 |
| Senior Commissioner J F Gregor (from 1 December 2004) | 3 |
| Commissioner J F Gregor (prior to 1 December 2004) | 1 |
| Commissioner P E Scott | 3 |
| Commissioner S J Kenner | 3 |
| Commissioner J H Smith | 3 |
| Commissioner S Wood | 2 |
| Commissioner J Harrison | 4 |
| Commissioner Mayman (commenced 7 February 2005) | 1 |

The matters allocated to the Commission in Court Session during the period comprised of the following:

| | |
|---|---|
| State Wage Case – s.51 and Review of Adult Minimum Weekly Rates of Pay | 1 |
| General Order – s.50 | 2 |
| New Award | 0 |
| New Agreement | 0 |
| Variation of an Award | 1 |
| Conference pursuant to s.44 | 0 |
| Joinder to an Award | 0 |
| Police Appeal – s.33P of *Police Act 1892* | 5 |

## 4. FEDERAL MATTERS

| | |
|---|---|
| Federal matters dealt with by (WAIRC) Commissioners | 5 |
| State Matters dealt with by a Federal (AIRC) Commissioner | 0 |

## 5. RULE VARIATIONS BY REGISTRAR

| | |
|---|---|
| Variation of Organisation Rules by the Deputy Registrar (Designate) | 1 |

## 6. BOARDS OF REFERENCE

| | |
|---|---|
| Long Service Leave – *Construction Industry Long Service Leave Portable Paid Long Service Leave Act 1985* | 1 |
| Long Service Leave – General Order | 2 |
| Long Service Leave - Awards | 0 |

## 7. INDUSTRIAL AGENTS REGISTERED BY REGISTRAR

| | |
|---|---|
| Number of Agents registered in this period | 10 |
| Total number of agents registered as corporate body | 34 |
| Total number of agents registered as individuals | 33 |
| Total number registered as at 30 June 2005 | 67 |

## AWARDS AND AGREEMENTS IN FORCE UNDER THE *INDUSTRIAL RELATIONS ACT 1979*

| Year | Number at 30 June 2005 |
|---|---|
| 1997 | 1661 |
| 1998 | 1899 |
| 1999 | 2071 |
| 2000 | 2166 |
| 2001 | 2316 |
| 2002 | 2359 |
| 2003 | 2499 |
| 2004 | 2506 |
| 2005 | 2759 |

## INDUSTRIAL ORGANISATIONS REGISTERED AS AT 30 JUNE 2005

| | Employee Organisations | Employer Organisations |
|---|---|---|
| Number of organisations | 50 | 15 |
| Aggregate membership | 157104 | 3267 |

# SUMMARY OF MAIN STATISTICS

## WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

| | MATTERS DEALT WITH | | | | |
|---|---|---|---|---|---|
| | **2000-2001** | **2001-2002** | **2002-2003** | **2003-2004** | **2004-2005** |
| **Full Bench:** | | | | | |
| Appeals | 56 | 53 | 52 | 41 | 51 |
| Other Matters | 7 | 7 | 6 | 13 | 11 |
| **President sitting alone:** | | | | | |
| S.66 Matters (finalised) | 4 | 19 | 17 | 6 | 3 |
| S.66 Orders issued | 4 | 24 | 32 | 11 | 11 |
| S.49 (11) Matters | 12 | 8 | 9 | 10 | 8 |
| Other Matters | 1 | 0 | 0 | 5 | 10 |
| S.97Q | 0 | 0 | 0 | 0 | 0 |
| S.72A(6) | 2 | 0 | 0 | 0 | 0 |
| Consultations under s.62 | 5 | 8 | 2 | 6 | 0 |
| **Commission in Court Session:** | | | | | |
| General Orders | 2 | 2 | 1 | 3 | 2 |
| Other Matters | 15 | 15 | 1 | 8 | 7 |
| **Public Service Appeal Board:** | | | | | |
| Appeals to Public Service Appeal Board | 29 | 10 | 15 | 17 | 17 |
| **Commissioners sitting alone:** | | | | | |
| Conferences [1] | 379 | 368 | 370 | 387 | 332 |
| New Agreements | 346 | 287 | 203 | 275 | 444 |
| New Awards | 7 | 4 | 5 | 14 | 9 |
| Variation of Agreements | 19 | 0 | 0 | 2 | 3 |
| Variation of Awards | 298 | 271 | 231 | 175 | 261 |
| Other Matters [2] | 35 | 53 | 71 | 76 | 109 |
| Federal Matters | 4 | 5 | 9 | 1 | 5 |
| Board Of Reference - Other Awards (Chaired by a Commissioner) | 7 | 4 | 0 | 2 | 1 |
| **Unfair Dismissal Matters Concluded:** | | | | | |
| Unfair Dismissal claims | 1064 | 1137 | 856 | 844 | 742 |
| Contractual Benefits claims | 322 | 297 | 233 | 192 | 261 |
| Unfair Dismissal & Contractual Benefits claims together | 605 | 534 | 539 | 507 | 436 |
| **Public Service Arbitrator (PSA):** | | | | | |
| Award/Agreement Variations | 33 | 20 | 32 | 21 | 40 |
| New Agreements | 37 | 44 | 56 | 15 | 26 |
| Orders Pursuant to s.80E | 21 | 28 | 30 | 0 | 0 |
| Reclassification Appeals | 18 | 19 | 85 | 105 | 88 |
| **Railways Classification Board:** | | | | | |
| Variation of Awards | 0 | 0 | 0 | 0 | 0 |
| Variation of Agreement | 0 | 0 | 0 | 0 | 0 |
| Appeals | 0 | 0 | 0 | 0 | 0 |
| **TOTALS:** | **3332** | **3217** | **2855** | **2736** | **2877** |

**Note**: The 2003/2004 Annual Report showed the statistics for Unfair Dismissal Matters Concluded in the 2003 – 2004 column based on Applications Lodged whereas all other figures reported in the table were based on Matters Finalised. This report now presents all figures in the table based upon Matters Finalised.

***Notes***

| [1] **CONFERENCES** include the following: | **2000-2001** | **2001-2002** | **2002-2003** | **2003-2004** | **2004-2005** |
|---|---|---|---|---|---|
| Conferences (s.44) | 298 | 274 | 263 | 249 | 228 |
| Conferences referred for arbitration (s.44(9)) | 58 | 58 | 39 | 55 | 54 |
| PSA conferences | 19 | 33 | 57 | 63 | 40 |
| PSA conferences referred | 4 | 2 | 11 | 18 | 10 |
| Conferences divided | 0 | 0 | 0 | 0 | 0 |
| Conferences referred and divided | 0 | 0 | 0 | 2 | 0 |
| PSA conference divided | 0 | 1 | 0 | 0 | 0 |
| Railways Classification Board | 0 | 0 | 0 | 0 | 0 |
| **TOTALS** | **379** | **368** | **370** | **387** | **332** |

| [2] **OTHER MATTERS** include the following: | **2000-2001** | **2001-2002** | **2002-2003** | **2003-2004** | **2004-2005** |
|---|---|---|---|---|---|
| Applications | 30 | 40 | 48 | 52 | 64 |
| Apprenticeship Appeals | 0 | 1 | 2 | 0 | 0 |
| Occupational Safety & Health Tribunal ## | - | - | - | - | 3 |
| Public Service Applications | 0 | 5 | 12 | 24 | 42 |
| Workplace Agreements | 5 | 7 | 9 | - | - |
| **TOTALS** | **35** | **53** | **71** | **76** | **109** |

## 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.

## THE WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT

| | |
|---|---|
| Decisions issued by the Industrial Appeal Court during this period | 5 |

## INDUSTRIAL MAGISTRATES COURT

The following summarises the Court for the period under review.

| | |
|---|---|
| Lodged Claims | 216 |
| Complaints Lodged | 1 |
| Resolved (lodged in the period under review) | 117 |
| Resolved but lodged in another financial period | 83 |
| Pending | 175 |
| Total number of penalties | 17 |
| Total value of penalties | $23,635.00 |
| Total number of claims/complaints resulting in disbursements | 17 |
| Total value of disbursements awarded (includes interest) | $15,923.74 |
| Claims/Complaints resulting in awarding wages | 25 |
| Total value of wages | $115,472.74 |
| Interest | $1373.56 |

The matters dealt with related to alleged breaches of federal awards and agreements, state awards and agreements and the *Minimum Conditions of Employment Act 1993*, together with claims pursuant to the *Long Service Leave Act 1958* and enforcement of orders of the Western Australian Industrial Relations Commission (WAIRC).

# COMMENTARY

## 1. LEGISLATION

### *INDUSTRIAL RELATIONS ACT 1979*

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

| Name of Act | No. of Act | Assent Date | Commencement date |
|---|---|---|---|
| **Reprint 9: The *Industrial Relations Act 1979* as at 18 Jun 2004** | | | |
| *Occupational Safety and Health Legislation Amendment and Repeal Act 2004* Pt. 6 Div. 2 | 51 of 2004 | 12 Nov 2004 | **4 Apr 2005** (see s.2 and *Gazette* 14 Dec 2004 p. 5999-6000) |
| *Courts Legislation Amendment and Repeal Act 2004* Pt. 14 | 59 of 2004 | 23 Nov 2004 | **1 May 2005** (see s.2 and *Gazette* 31 Dec 2004 p. 7128) |
| *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* s. 469 | 55 of 2004 | 24 Nov 2004 | **24 Jan 2005** (see s.2 and *Gazette* 31 Dec 2004 p. 7130) |
| *Mines Safety and Inspection Amendment Act 2004* Pt. 7 Div. 2 | 68 of 2004 | 8 Dec 2004 | **4 Apr 2005** (see s.2(3)(a) and *Gazette* 14 Dec 2004 p. 5999-6000) |
| *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* s. 78, 80 and 82 | 84 of 2004 | 16 Dec 2004 | **2 May 2005** (see s.2 and *Gazette* 31 Dec 2004 p. 7129 (correction in *Gazette* 7 Jan 2005 p. 53)) |

On 4 April 2005, the Act was amended by the *Occupational Safety and Health Legislation Amendment and Repeal Act 2004*. The amendments followed corresponding amendments to the *Occupational Safety and Health Act 1984* which established the Occupational Safety and Health Tribunal within, and as part of, the Commission. The Commission sitting as the Tribunal has jurisdiction to hear and determine certain matters referred to it under the *Occupational Safety and Health Act 1984* and the *Mines Safety and Inspection Act 1994*. The amendments prescribe that a matter referred to the Tribunal is not an industrial matter and also provide that for the purposes of s.51H of the *Occupational Safety and Health Act 1984*, one Commissioner appointed under subsection (2)(d) of s.8 of the Act is to be a person who in addition to the other attributes required for appointment has knowledge of or experience in the field of occupational safety and health and knowledge of that Act. The amendments also gave the Chief Commissioner the power to make Regulations regarding the referral, hearing, and determination of matters under the *Occupational Safety and Health Act 1984*.

On 4 April 2005, the Act was also amended by the *Mines Safety and Inspection Amendment Act 2004* consequential upon the creation of the Occupational Safety and Health Tribunal.

On 1 May 2005, the Act was amended by the *Courts Legislation Amendment and Repeal Act 2004*. These amendments effected changes to the powers of the Clerk of the Industrial Magistrates Court, the insertion of provisions relating to access to Industrial Magistrates Court records and the enforcement of judgments of the Industrial Appeal Court.

The amendment to the Act relating to enforcement of judgments of the Industrial Appeal Court amended s.88 of the Act. This appears also to have a consequential effect upon the enforcement of orders, directions or decisions from the Industrial Magistrates Court. This has occurred because s.81CA(4) of the Act applies s.88 to and in relation to an Industrial

Magistrates Court exercising general jurisdiction. The amendment to s.88 regarding enforcement in the Supreme Court of an order, direction or decision of the Industrial Appeal Court therefore picks up an order, direction or decision of the Industrial Magistrates Court with the consequence that an order, direction or decision of the Industrial Magistrates Court is now to be enforced in the Supreme Court. Given the nature of Industrial Magistrates Court proceedings, and that many parties in that jurisdiction are unrepresented, I respectfully suggest that the issue of whether an order, direction or decision of the Industrial Magistrates Court should be enforced in the Supreme Court should now be considered.

On 1 May 2005, the Act was amended by the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004*. The amendments gave effect to the creation of the State Administrative Tribunal in place of the Guardianship and Administration Board; the Act was amended accordingly to change the name in the Act together with other consequential amendments.

On 16 December 2004, the Act was amended by the *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004*. The change amended s.96I of the Act in relation to the onus of proof in matters under s.96E of the Act.

### INDUSTRIAL RELATIONS REGULATIONS

List of amendments which COMMENCED during the year ending 30 June 2005.

***Industrial Relations Commission Regulations 1985***

| Citation | Gazettal | Commencement |
|---|---|---|
| *Industrial Relations Commission Amendment Regulations 2005* | 24 Mar 2005 p. 1002-6 | **4 Apr 2005** (see r.2) |

***Industrial Magistrates Courts (General Jurisdiction) Regulations 2005***

| Citation | Gazettal | Commencement |
|---|---|---|
| *Industrial Magistrates Courts (General Jurisdiction) Regulations 2005* | 15 Apr 2005 p. 1231-74 | **1 May 2005** (see r.2 and Gazette 31 Dec 2004 p. 7128) |

## 2. STATE WAGE CASE

On 27 June 2005, the Commission in Court Session delivered the State Wage Case Decision which followed the decision of the Australian Industrial Relations Commission (AIRC) on 7 June 2005 in the Safety Net Review-Wages case. By s.51(2) of the Act, the Commission is to consider the Safety Net Review-Wages case of its own motion and unless it is satisfied that there are good reasons not to do so, make a General Order to adjust rates of wages paid under awards by the amount of any change in the rate of wages under the Safety Net Review-Wages case; the Safety Net Review-Wages case granted a $17 per week increase which would then be available for inclusion in Federal awards.

The Commission heard from the Minister, Trades and Labor Council (TLC), Australian Mines and Metals Association (AMMA) and the Chamber of Commerce and Industry of Western Australia (CCIWA). No party sought to persuade the Commission that there was good reason not to apply the Safety Net Review-Wages case to the awards of this State. The Commission considered the evidence and material before it demonstrated that the Western Australian economy continues to be strong and to perform stronger than the rest of the country. The Commission adjusted State awards by way of General Order for the $17 per week wage increase. In doing so, the Commission cautioned that it cannot be assumed that the growth

of the WA economy will continue indefinitely and that further substantial and sustained oil price increases may pose a risk to the economy generally even if this State is performing well.

The Commission continued the existing State Wage Principles. A minor amendment was made to Principle 10 to ensure greater consistency with the corresponding Principle in the Safety Net Review-Wages case.

The Commission has developed a new computerised system for updating and maintaining awards in an 'open XML' format. This enables the tagging of specific information (mark up) within an award to enable rapid modifications and the creation of a record of changes. As such, the 'marking up' of all awards to enable the application of the Commission's General Order needed to be done afresh. A project team was formed which dealt with nearly 13,000 data items and recorded just 18 errors, an excellent 99.86% accuracy rate.

Draft schedules of the awards as amended by the General Order were provided on compact disc to the Minister, TLC, AMMA and CCIWA on 23rd June, and to the Western Australian Hotels and Hospitality Association, the Master Builders' Association of Western Australia, the Electrical Contractors Association of Western Australia (Union of Employers) and to the Australian Medical Association (WA) on 27th June.

After making a very small number of corrections, all awards were updated on the Commission's website www.wairc.wa.gov.au on the morning of 7th July, the day from which the Commission's General Order had effect.

It is noted that there are still 31 awards which express junior rates in dollars rather than as a percentage and that 9 of those awards do not specify a formula for the application of the State Wage Case General Order.

2005 State Wage Case Statistics

| Issue | No. |
|---|---|
| Number of individual wage rates marked up for automatic application of the 2005 State Wage Case increase | 11663 |
| Errors encountered from the automatic process | 5 |
| Success rate as a percentage (%) | 99.99% |
| | |
| Number of Minimum Adult Award Wage clauses marked up | 291 |
| Errors encountered from the automatic process | 0 |
| Success rate as a percentage (%) | 100% |
| | |
| Number of clauses marked up for publication in the Western Australian Industrial Gazette | 672 |
| Errors encountered from the automatic process | 0 |
| Success rate as a percentage (%) | 100% |
| | |
| Number of awards requiring wage rate increases to be manually calculated and adjusted | 67 |
| Errors encountered in the manual process | 11 |
| Success rate as a percentage (%) | 84% |
| Success rate as a percentage % (excluding minor rounding issues) | 94% |
| | |
| Number of Minimum Adult Award Wage clauses requiring manual insertion | 38 |
| Errors encountered in the manual process | 2 |
| Success rate as a percentage (%) | 95% |

2005 State Wage Case Statistics continued.

| Issue | No. |
|---|---|
| Total amendments | 12731 |
| Total errors for the entire State Wage Case process | 18 |
| Success rate as a percentage (%) | 99.86% |
| Number of awards where junior rates required manual calculation | 31 |
| Number of awards with no formula for the calculation | 9 |
| Percentage (%) of awards without formula | 29% |

## 3. STATUTORY MINIMUM WAGE

By s.51E(1) of the Act, each time the Commission considers a Safety Net Review-Wages case it is required to review the minimum weekly rates of pay under s.51D of the *Minimum Conditions of Employment Act 1993*. On this occasion, all persons who appeared in the proceedings supported applying the $17 National Wage Decision to the present statutory minimum wage. The Commission considered the position in the light of the economic information before it and also the submissions made by the parties. It also noted the limited coverage of the statutory minimum wage. The Commission applied the $17 increase to the statutory minimum wage resulting in a statutory minimum wage of $484.40 per week. The Commission noted that the increase was substantially below all of the trends and seasonally-adjusted measurements for wages growth in WA. Also, one of the principal objects of the Act is to promote equal remuneration for men and women for work of equal value; the Commission saw no good reason why the minimum wage should be different for an employee depending upon whether or not the employee is employed pursuant to an award.

## 4. MINIMUM RATE FOR AWARD APPRENTICES 21 YEARS AND OVER

The Commission again considered the provisions of s.51G(3) of the Act which states as follows:

> "In setting a minimum weekly rate of pay in relation to apprentices or trainees who have reached 21 years of age the Commission shall not set different minimum weekly rates of pay for those apprentices or trainees on the sole basis of age."

The current minimum award rate is $406.70 per week and this was phased in by a General Order under s.50(2) of the Act in October 2003 (83 WAIG 3555). When the Commission came to consider this rate in the proceedings arising from the Safety Net Review - Wages case, all persons appearing before it agreed that it did not deal with apprentices' rates of pay. Therefore, there is no warrant in proceedings brought under s.50(2) of the Act to apply the Safety Net Review - Wages case to apprentices who have reached 21 years of age unless it is by reason of their age. This however is expressly prohibited by s.51G(3) of the Act.

Thus, the minimum rate for award apprentices 21 years and over remains unchanged. It should not be thought that the Commission considers this a desirable situation. Nevertheless, in the absence of any legislative change which would allow the position to be examined by the Commission in the context of State Wage Case proceedings, the power of the Commission to change the rate will only arise if an application is brought to the Commission under s.50 of the Act to amend that rate. Such an application would need to be supported by relevant evidence to allow a proper assessment of an appropriate minimum rate for award apprentices 21 years and over for reasons other than age.

## 5. MINIMUM WEEKLY WAGE RATES FOR APPRENTICES AND TRAINEES UNDER THE *MINIMUM CONDITIONS OF EMPLOYMENT ACT 1993*

For the purposes of s.15 of the *Minimum Conditions of Employment Act 1993*, the Commission continued to provide for trainees to whom an award applies and for trainees to whom an award does not apply. The Commission had previously recognised that the changed trainee rates brought about by the amendments to the Act in 2002 require the exercise of caution on the part of the Commission lest increases ordered by the Commission have a deleterious effect on trainees, their employers and the level of traineeships generally. For that reason, the Commission did not apply to the minimum weekly wage rates for trainees the full amount of the State Wage increases which have applied. This has resulted in a minimum rate for trainees which was effectively continually one step behind the minimum rates for other classes of persons in the workforce.

The Commission considered the information before it in relation to this issue and concluded that such a situation could not continue indefinitely. The Commission considered it prudent therefore to increase the minimum wage for trainees not covered by an award by ordering the 2004 State Wage Case Decision of $19 per week apply from 7 July 2005 and for the present State Wage increase of $17 per week to take effect on 9 January 2006.

## 6. PUBLIC SERVICE ARBITRATOR

### Public Sector Enterprise Bargaining

Subsequent to the finalisation of the public sector pay claim in 2004, and to the enterprise bargaining agreements (EBA) applying generally to public service and government officers, negotiations have proceeded and agreements finalised and registered between the Civil Service Association of Western Australia (Inc) and a number of government agencies to take account of individual agencies' requirements. This, however, leaves intact the general approach of standardisation of rates of pay, conditions of employment and classification structures across the public sector with only those particular areas of special conditions being dealt with by EBAs.

### Inaccurate Records

A number of disputes have arisen over the accuracy of leave and pay records in some government agencies. Two particular disputes arose because employees took leave when according to their employers' records they had leave accrued. The leave was taken and paid. However, their employers' leave records were out of date and the employees did not in fact have the leave which the employers' records showed that they were due. The employers then sought to recover the amounts over-paid from the employees. The matter has been dealt with by the Full Bench which determined that there is no power in the Commission to order an employer to not proceed with seeking to recover the overpayment as it was not an industrial matter (*Director General of the Department of Justice v The Civil Service Association of Western Australia (Inc)* (2004) 85 WAIG 629). Notwithstanding this, the issue of the accuracy of leave and pay records is an industrial matter and the inaccuracies in them have caused disputation.

### Reclassification Appeals

Following the Public Service Arbitrator meeting with the parties who have significant involvement in reclassification appeals, a new Practice Direction has issued. This sets out the processing, the detail, and the Arbitrator's expectations of the parties, taking account of current practice.

A particular issue which constantly arises in reclassification appeals is the question of operative date. The provisions of s.39(3) of the *Industrial Relations Act 1979* prevent the Commission ordering retrospectivity beyond the date on which an application was made to

the Commission. In the case of a successful reclassification appeal, the Arbitrator is only able to order that the reclassification take effect from the date of the filing of the appeal. Given that employees may have been undertaking the higher level work justifying reclassification for some time, have made application to the employer for a reclassification, and the employer may take a considerable period to assess the employee's application, the delay can be very lengthy. On this basis, employees tend to file their appeals at the same time as they make a claim upon their employer for reclassification of their positions. This means that appeals are filed when there has been no consideration or rejection by the employer of the employee's claim. This often results in appeals having been filed unnecessarily where the employer subsequently proceeds to grant the reclassification without the employee needing to have recourse to the appeal; it also means that the Commission is required to receive, process, manage, and ultimately dismiss unnecessary appeals which were lodged.

I respectfully suggest that consideration might be given to providing some exemption in s.39 to enable retrospectivity to be ordered in respect of reclassification appeals to the date upon which the employee made the application to the employer in the first instance.

### Complexity of Legislation

The interaction of the *Public Sector Management Act 1994*, its regulations, and Public Sector Standards with the *Industrial Relations Act 1979* continues to add complexity and confusion to disputes between government officers and their employers. This is a matter which has been noted in previous reports and has been the subject of a number of enquiries including the recent enquiry by Mr Noel Whitehead. The problem remains one which causes disputation between employers and employees within the government sector, and continues to leave some employees without a remedy.

### Police Officers

The Public Service Arbitrator has continued to conciliate in a dispute which arose between the Commissioner of Police and the Police Union about the role of Aboriginal Police Liaison Officers. During this process, the parties have worked together in the development by the Commissioner of Police of processes for existing Aboriginal Police Liaison Officers to apply to become sworn officers and to take on the role of police officer and receive recognition for it. This issue has some connection with a dispute about staffing levels generally. The parties have continued negotiations under the auspices of the Arbitrator with good progress being made and goodwill exhibited.

### Tenure Issues

A number of disputes have arisen over the abolition or change to the structure of government organisations. The circumstances of the abolition of the Anti Corruption Commission created disputation with the Civil Service Association of Western Australia as to the redeployment of its staff.

Issues associated with the transfer of staff arose in respect of the abolition of the PathCentre which was handled by the State government in quite a different manner to that applying under the *Public Sector Management (Redeployment and Redundancy) Regulations 1994*, and did not involve the requirement for redeployment or redundancy of members of staff.

## 7. PUBLIC SERVICE APPEAL BOARD

### Complexity of Processes

Issues associated with the complexity of the disciplinary and substandard performance processes set out in the *Public Sector Management Act 1994* continue to create disputation. The multitude of disciplinary inquiries and investigations, and the time taken for such matters to be brought to finality, can often create unfairness to officers the subject of the disciplinary action whether they are ultimately found to have breached discipline or not. These issues

have been noted previously and were the subject of comment made to Mr Noel Whitehead who undertook a review of the legislation.

**Public Service Appeal Board Powers**

The *Industrial Relations Act 1979* makes no provision for the Public Service Appeal Board to conciliate and to issue interim orders pending the final hearing and determination of an appeal before the Board. The issue of whether the Public Service Arbitrator can issue interim orders in respect of matters which are before the Public Service Appeal Board has arisen. On a number of occasions the Civil Service Association of Western Australia has applied to the Public Service Arbitrator for interim orders to require an employer to continue to employ an employee pending the outcome of an appeal before the Public Service Appeal Board. The matter has been the subject of an appeal to the Full Bench of the Commission (*Civil Service Association of Western Australia v Dr Ruth Shean, Chief Executive Officer, Disability Services Commission* 2005 WAIRC 02043) however the issue has not been finally determined because of the particular circumstances of that appeal.

## 8. AWARD REVIEW PROCESS

In the previous Annual Report, reference was made to the review commenced before a Commission in Court Session in January 2004 in respect of four significant awards. That Commission in Court Session delivered a Statement on the manner in which s.40B is likely to be viewed by the Commission. It was intended by the Commission that this Statement would be used by parties to the awards themselves to assist them in modernising and updating the awards to which they are a party. This appears to have had only limited success. No further proceedings were taken in that Commission in Court Session following the retirement of Chief Commissioner W.S. Coleman who presided over that Commission in Court Session.

The award amendments necessary to take account of all of the subclauses of s.40B(1) of the Act to each award are not simple. Many award provisions are the product of agreement between award parties and may differ, even significantly, from provisions in other awards dealing with the same subject matter. The Commission has therefore actively sought to assist employers and organisations to amend the awards to which they are party. However it is increasingly apparent that the Commission is going to be obliged to undertake this task on its own motion in relation to the majority of the Commission's awards. This will need to be done without any extra resources being made available to it. The progress of this undertaking will be subject to other demands on Commissioners' time.

In the year to 30 June 2005, there were 224 award variation Orders issued by the Commission under s.40 of the Act. Of these there were 24 variations to the area and scope provisions of existing awards; however the majority of variations dealt with the updating of allowances contained in the awards, and adjustments in accordance with the Wage Fixing Principles.

A comprehensive update and modernisation of five awards was undertaken following applications by parties which sought to increase work related allowances and increase "additional" rates in line with State Wage Case increases. The applications also sought to incorporate test case standards and bring the awards into line with comparable federal awards.

Following recommendations from the Commission, the awards were further varied to incorporate s.40B matters. This included varying provisions that were in conflict with the *Minimum Conditions of Employment Act 1993, Industrial Relations Act 1979, Workplace Relations Act 1996* (Commonwealth), *Superannuation Guarantee (Administration) Act 1992* (Commonwealth), *Occupational Safety and Health Act 1984,* the *Equal Opportunity Act 1984* and the associated regulations to these Acts. It also included inserting gender neutral language, standardising award clauses and in four of the awards applying a new numbering style.

Presently there are around 50 other awards whose parties are negotiating variations which will modernise and update the awards' provisions. Conferences have been convened

between the parties, however no Orders have issued to date. In some instances the award or specific award provisions had not been varied by the parties for many years.

## 9. RIGHT OF ENTRY PERMITS

***Industrial Relations Act 1979***
**Part II, Division 2G, s.49J**

| Organisation | Permits Issued 2002/03 | Permits Issued 2003/04 | Permits Issued 2004/05 |
|---|---|---|---|
| Australian Collieries' Staff Association, Western Australian Branch | 1 | - | - |
| Australian Liquor, Hospitality & Miscellaneous Workers Union | 78 | 30 | 20 |
| Australasian Meat Industry Employees' Union, Industrial Union of Workers, Western Australian Branch | 3 | - | 1 |
| Australian Municipal, Administrative, Clerical and Services Union of Employees', WA Clerical and Administrative Branch | 8 | - | 10 |
| Australian Rail ,Tram & Bus Industry Union of Employees, Western Australian Branch | 2 | 1 | - |
| Australian Workers' Union, West Australian Branch, Industrial Union of Workers | 12 | 5 | 5 |
| Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union of Workers – Western Australian Branch and Others | 12 | 2 | 2 |
| Civil Service Association of Western Australia Incorporated | 30 | 23 | 18 |
| Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing, and Allied Workers Union of Australia, Engineering & Electrical Division | 8 | 1 | 7 |
| Construction, Forestry, Mining and Energy Union of Workers | 27 | 5 | 5 |
| Federated Brick, Tile and Pottery Industrial Union of Australia (Union of Workers) Western Australian Branch | 1 | - | - |
| Forest Products, Furnishing & Allied Industries Industrial Union of Workers, WA | 10 | 5 | 3 |
| Health Services Union of Western Australia (Union of Workers) | - | 9 | 2 |
| Hospital Salaried Officers Association | 9 | - | - |
| Independent Schools Salaried Officers' Association of WA Industrial Union of Workers | 5 | 4 | 2 |
| Media, Entertainment & Arts Alliance of western Australia (Union of Employees) | 2 | 1 | - |
| Plumbers & Gasfitters Employees' Union of Australia, West Australian Branch, Industrial Union of Workers | 2 | - | - |
| Sales Representatives' & Commercial Travellers' Guild of WA, Industrial Union of Workers | 6 | - | 1 |
| State School Teachers' Union of Western Australia (Incorporated) | 19 | - | 4 |
| Association of Professional Engineers, Australia (Western Australian Branch), Organisation of Employees | 1 | 2 | - |
| The Breweries & Bottleyards Employees' Industrial Union of Workers of Western Australia | - | - | 1 |
| The Food Preservers' Union of Western Australia, Union of Workers | 7 | 1 | 2 |
| Independent Education Union of Western Australia, Union of Employees | - | - | 2 |
| The Shop, Distributive and Allied Employees' Association of Western Australia | 19 | 3 | 9 |
| The West Australian Hairdressers' & Wigmakers' Employees' Union of Workers | 12 | - | 2 |
| Australian Medical Association (WA) Incorporated | - | - | 4 |
| The Western Australian Clothing and Allied Trades' Industrial Union of Workers, Perth | 5 | - | 5 |
| Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch | 7 | 1 | 1 |
| United Firefighters Union of Western Australia | 2 | - | - |
| Western Australian Grain Handling Salaried Officers' Association (Union of Workers) | - | 1 | - |
| Western Australian Prison Officers' Union of Workers | 5 | 7 | - |
| Western Australian Railway Officers' Union | 2 | - | - |
| The Western Australian Police Union of Workers | 1 | - | - |
| **Total** | **296** | **101** | **106** |

## 10. 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 *Industrial Relations Act 1979.*

- Section 29(1)(b)(i) - Claims alleging unfair dismissal
- Section 29(1)(b)(ii) - Claims alleging a denied contractual benefit
- A combination of both in the same application

For the purposes of this analysis, the three 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 Section 29 although the volume of these applications shows a decline.

| | 2000-2001 | 2001-2002 | 2002-2003 | 2003-2004 | 2004-2005 |
|---|---|---|---|---|---|
| Unfair Dismissal | 1127 | 1141 | 827 | 762 | 703 |
| Denial of Contractual Benefits | 352 | 289 | 198 | 238 | 245 |
| Both in same application | 627 | 593 | 537 | 468 | 345 |
| TOTAL | 2106 | 2023 | 1562 | 1468 | **1293** |

**Section 29 Applications Finalised**

| | 2000-2001 | 2001-2002 | 2002-2003 | 2003-2004 | 2004-2005 |
|---|---|---|---|---|---|
| Unfair Dismissal | 1069 | 1137 | 856 | 844 | 742 |
| Denial of Contractual Benefits | 325 | 297 | 233 | 192 | 261 |
| Both in same application | 607 | 534 | 539 | 507 | 436 |
| TOTAL | 2001 | 1968 | 1628 | 1543 | **1439** |

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

Section 29 Applications now represent less than half of all the matters lodged in the Commission.

| | 2000-2001 | 2001-2002 | 2002-2003 | 2003-2004 | 2004-2005 |
|---|---|---|---|---|---|
| All Matters Lodged | 3671 | 3627 | 3276 | 2953 | 2633 |
| Section 29 Applications Lodged | 2106 | 2023 | 1562 | 1468 | **1293** |
| Section 29 as Percentage (%) of All Matters Lodged | 57% | 56% | 48% | 50% | 49% |

[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**

A similar pattern emerges in that the Section 29 applications now represent just under half of all the matters dealt with.

| | 2000-2001 | 2001-2002 | 2002-2003 | 2003-2004 | 2004-2005 |
|---|---|---|---|---|---|
| All Matters finalised | 3745 | 3558 | 3127 | 2822 | 3012 |
| Section 29 Applications finalised | 2001 | 1968 | 1628 | 1543 | **1439** |
| Section 29 as Percentage (%) of All Matters finalised | 53% | 55% | 52% | 55% | 48% |

**Section 29 Matters – Method of Settlement**

The following table shows that 85% of Section 29 matters were settled without recourse to formal arbitration.

| | Unfair Dismissal | Contractual Benefits | Both | Total | % |
|---|---|---|---|---|---|
| Arbitrated claims in which order issued | 104 | 37 | 76 | 217 | 15.1% |
| Settled after proceedings before the Commission | 139 | 42 | 85 | 266 | 18.5% |
| Matters referred for investigation resulting in settlement | 378 | 112 | 190 | 680 | 47.3% |
| Matters discontinued/dismissed before proceedings commenced in the Commission | 119 | 70 | 78 | 266 | 18.5% |
| Matters withdrawn/discontinued in Registry | 2 | 0 | 7 | 10 | 0.6% |
| Total finalised in 2004-2005 reporting year | 742 | 261 | 436 | **1439** | 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 at the end of 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 | 87 | 58 | 2 | **147** | 14.0% | 12.8% | 0.9% | **11.4%** |
| Legal Representation | 68 | 49 | 0 | **117** | 10.9% | 10.8% | 0.0% | **9.0%** |
| Personal | 421 | 301 | 169 | **891** | 67.7% | 66.4% | 77.5% | **68.9%** |
| Other | 33 | 37 | 0 | **70** | 5.3% | 8.2% | 0.0% | **5.4%** |
| No Data Provided | 13 | 8 | 47 | **68** | 2.1% | 1.8% | 21.6% | **5.3%** |
| ***Total*** | **622** | **453** | **218** | **1293** | **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 | 6 | 9 | 0 | **15** | 1.0% | 2.0% | 0.0% | **1.2%** |
| 17 to 20 | 20 | 22 | 0 | **42** | 3.2% | 4.9% | 0.0% | **3.2%** |
| 21 to 25 | 42 | 66 | 0 | **108** | 6.8% | 14.6% | 0.0% | **8.4%** |
| 26 to 40 | 240 | 136 | 0 | **376** | 38.6% | 30.0% | 0.0% | **29.1%** |
| 41 to 50 | 144 | 127 | 0 | **271** | 23.2% | 28.0% | 0.0% | **21.0%** |
| 51 to 60 | 107 | 54 | 0 | **161** | 17.2% | 11.9% | 0.0% | **12.5%** |
| Over 60 | 21 | 10 | 0 | **31** | 3.4% | 2.2% | 0.0% | **2.4%** |
| No Data Provided | 42 | 29 | 218 | **289** | 6.8% | 6.4% | 100% | **22.4%** |
| ***Total*** | **622** | **453** | **218** | **1293** | **100%** | **100%** | **100%** | **100%** |

Employment Period

It is significant to note that 19.4% of all applicants were employed for less than 3 months.

| Period of Employment | Male | Female | No Data | Total | % Male | % Female | % No Data | % Total |
|---|---|---|---|---|---|---|---|---|
| Under 3 months | 133 | 117 | 1 | **251** | 21.4% | 25.8% | 0.5% | **19.4%** |
| 4 to 6 months | 89 | 61 | 0 | **150** | 14.3% | 13.5% | 0.0% | **11.6%** |
| 7 to 12 months | 95 | 69 | 1 | **165** | 15.3% | 15.2% | 0.5% | **12.8%** |
| 1 to 2 years | 97 | 74 | 1 | **172** | 15.6% | 16.3% | 0.5% | **13.3%** |
| 2 to 4 years | 76 | 51 | 0 | **127** | 12.2% | 11.3% | 0.0% | **9.8%** |
| 4 to 6 years | 34 | 19 | 0 | **53** | 5.5% | 4.2% | 0.0% | **4.1%** |
| Over 6 years | 55 | 32 | 0 | **87** | 8.8% | 7.1% | 0.0% | **6.7%** |
| No Data Provided | 43 | 30 | 215 | **288** | 6.9% | 6.6% | 98.6% | **22.3%** |
| ***Total*** | **622** | **453** | **218** | **1293** | **100%** | **100%** | **100%** | **100%** |

Salary Range

| | Male | Female | No Data | Total | % Male | % Female | % No Data | % Total |
|---|---|---|---|---|---|---|---|---|
| Under $200 P/W | 91 | 76 | 169 | **336** | 14.6% | 16.8% | 77.5% | **26.0%** |
| $201 to $600 P/W | 114 | 184 | 0 | **298** | 18.3% | 40.6% | 0.0% | **23.0%** |
| $601 to $1000 | 212 | 145 | 1 | **358** | 34.1% | 32.0% | 0.5% | **27.7%** |
| $1001 to $1500 | 121 | 24 | 1 | **146** | 19.5% | 5.3% | 0.5% | **11.3%** |
| $1501 to $2000 | 41 | 8 | 0 | **49** | 6.6% | 1.8% | 0.0% | **3.8%** |
| Over $2001 P/W | 28 | 4 | 0 | **32** | 4.5% | 0.9% | 0.0% | **2.5%** |
| No Data Provided | 15 | 12 | 47 | **74** | 2.4% | 2.6% | 21.6% | **5.7%** |
| ***Total*** | **622** | **453** | **218** | **1293** | **100%** | **100%** | **100%** | **100%** |

Category of Employment

58% 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 | 52 | 46 | 0 | **98** | 8.4% | 10.2% | 0.0% | **7.6%** |
| Casual Full Time | 4 | 3 | 0 | **7** | 0.6% | 0.7% | 0.0% | **0.5%** |
| Casual Part Time | 0 | 2 | 0 | **2** | 0.0% | 0.4% | 0.0% | **0.2%** |
| Fixed Term | 12 | 12 | 0 | **24** | 1.9% | 2.6% | 0.0% | **1.9%** |
| Full Time | 154 | 90 | 0 | **244** | 24.8% | 19.9% | 0.0% | **18.9%** |
| Permanent | 93 | 58 | 0 | **151** | 15.0% | 12.8% | 0.0% | **11.7%** |
| Permanent Full Time | 228 | 125 | 3 | **356** | 36.7% | 27.6% | 1.4% | **27.5%** |
| Permanent Part Time | 16 | 47 | 0 | **63** | 2.6% | 10.4% | 0.0% | **4.9%** |
| Probation | 14 | 14 | 0 | **28** | 2.3% | 3.1% | 0.0% | **2.2%** |
| Part Time | 10 | 34 | 0 | **44** | 1.6% | 7.5% | 0.0% | **3.4%** |
| No Data Provided | 39 | 22 | 215 | **276** | 6.3% | 4.9% | 98.6% | **21.3%** |
| ***Total*** | **622** | **453** | **218** | **1293** | **100%** | **100%** | **100%** | **100%** |

Reinstatement Sought

48% of applicants did not seek reinstatement when they lodged their application.

| Reinstatement Sought | Male | Female | No Data | Total | % Male | % Female | % No Data | % Total |
|---|---|---|---|---|---|---|---|---|
| Yes | 186 | 117 | 1 | **304** | 29.9% | 25.8% | 0.5% | **23.5%** |
| No | 353 | 261 | 1 | **615** | 56.8% | 57.6% | 0.5% | **47.6%** |
| No Data Provided | 83 | 75 | 216 | **374** | 13.3% | 16.6% | 99.1% | **28.9%** |
| ***Total*** | **622** | **453** | **218** | **1293** | **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 | 2 | 13 | 0 | **15** | 0.7% | 2.1% | 0.0% | **1.2%** |
| 17 to 20 | 12 | 24 | 6 | **42** | 3.9% | 3.9% | 1.6% | **3.2%** |
| 21 to 25 | 21 | 71 | 16 | **108** | 6.9% | 11.5% | 4.3% | **8.4%** |
| 26 to 40 | 92 | 242 | 42 | **376** | 30.3% | 39.3% | 11.2% | **29.1%** |
| 41 to 50 | 82 | 142 | 47 | **271** | 27.0% | 23.1% | 12.6% | **21.0%** |
| 51 to 60 | 54 | 86 | 21 | **161** | 17.8% | 14.0% | 5.6% | **12.5%** |
| Over 60 | 10 | 15 | 6 | **31** | 3.3% | 2.4% | 1.6% | **2.4%** |
| No Data Provided | 31 | 22 | 236 | **289** | 10.2% | 3.6% | 63.1% | **22.4%** |
| ***Total*** | **304** | **615** | **374** | **1293** | **100%** | **100%** | **100%** | **100%** |

## 11. EMPLOYER-EMPLOYEE AGREEMENTS (EEAs)

***INDUSTRIAL RELATIONS ACT 1979* PART VID**

Applications to Lodge EEAs for Registration

| **Number of EEAs Lodged** | **2003-2004** | **2004-2005** |
|---|---|---|
| Meeting Lodgement Requirements | 277 | 164 |
| Not Meeting Lodgement Requirements | 33 | 11 |
| **Total** | **310** | **175** |

EEAs Lodged for Registration and Finalised

| **Outcome** | **2003-2004** | **%** | **2004-2005** | **%** |
|---|---|---|---|---|
| Refused | 74 | 22% | 22 | 14% |
| Registered | 210 | 63% | 135 | 83% |
| Withdrawn | 48 | 14% | 5 | 3% |
| **Total** | **332** | **100%** | **162** | **100%** |

Note – This table does not include applications not meeting lodgement requirements.

Guidelines and Principles for No Disadvantage Test

There were no changes to the Guidelines and Principles for the No Disadvantage Test. During the year, no applications were made under s.97VZ to the Commission by the Minister or a peak industrial body to have the test amended or replaced.

Demographic Data for Registered EEAs

| **Registered EEAs by Gender** | **2003-2004** | **%** | **2004-2005** | **%** |
|---|---|---|---|---|
| Female | 59 | 28% | 23 | 17% |
| Male | 151 | 72% | 112 | 83% |
| **Total** | **210** | **100%** | **135** | **100%** |

| Registered EEAs by Age Category | 2003-2004 | % | 2004-2005 | % |
|---|---|---|---|---|
| Employees 18 years of age or over | 208 | 99% | 133 | 99% |
| Employees under 18 years of age | 2 | 1% | 2 | 1% |
| **Total** | **210** | **100%** | **135** | **100%** |

Reduced Wages Payable for People with Disabilities (s.97VW)

| | 2003-2004 | 2004-2005 |
|---|---|---|
| Number of Registered EEAs where the employee had a disability | 36 | 20 |

EEAs Registered by Term of Agreement

| Term of EEA | 2003-2004 | % | 2004-2005 | % |
|---|---|---|---|---|
| <1 year | 5 | 2% | 7 | 5% |
| 1 to 2 years | 25 | 12% | 10 | 7% |
| 2 to 3 years | 180 | 86% | 118 | 87% |
| **Total** | **210** | **100%** | **135** | **100%** |

## 12. APPEALS PURSUANT TO SECTION 33P OF THE *POLICE ACT 1892*

During this reporting period, two appeals were lodged. One was discontinued subsequent to a conference being convened by the Commission. The other has been adjourned pursuant to s.33T of the *Police Act 1892* for 12 months. In relation to the latter, the *Police Act 1892* obliges the Commission to grant the adjournment for that period if it is sought by the appellant.

Four appeals were lodged but not finalised during the last reporting period. During this period, one of the four was dismissed; one was part heard and then adjourned to allow the appellant an opportunity to produce new evidence and was re-listed within this reporting period, but has not been finalised within this reporting period. A third has been heard and dismissed. A fourth was discontinued.

## 13. INTERNET WEBSITE (www.wairc.wa.gov.au)

### Internet

The 2004/2005 reporting period witnessed an effort to build the infrastructure to permit the lodgement of online applications for the Industrial Magistrates Court. This system went live in June 2005 thus enabling parties to make applications via the website for all Industrial Magistrate matters. The resulting applications are processed electronically and directly integrated into the core Digital Registry Electronic Application Management System (DREAMS) for tracking and management. Furthermore, the extensive usage of PDF technology has enabled the workflow process to seamlessly transfer documents between the Commission and parties vie email and Web pages.

The Industrial Magistrates online application system is also being adapted to allow for a more general type of online application for the majority of Commission applications. A number of regulation changes are required before this facility can be officially launched. (These changes took effect on 1 September 2005.)

### Development

A new development for the DREAMS framework was the module "Diamond" which aids in streamlining data entry and management of application cues. It provides an open framework capable of integration into web services and the direct processing of application

data via the web, as well as the direct publishing of status and application data to the internet.

A further key feature of the DREAMS framework receiving significant work in the 2004/05 year was the Medium Neutral system. This is the system which primarily generates the template for the production of the Commission's decisions and orders. This has been adapted to streamline the generation of prepopulated templates containing relevant metadata to assist in the processing of indexing of documents as they progress through the system.

The Commission has also developed a system for updating and maintaining Awards in an open XML format. This system (which has been given the name "Apophyllite") enables the tagging of specific information within an award to enable rapid modifications, tracking of the modifications and repurposing of the document. The successful implementation of Apophyllite should lead to enhanced public access to the awards through subscription services in 2006.

### Infrastructure & Security

Due to increased storage requirements associated with digital court recording and the general growth of digital assets held by the Commission, a decision was taken to procure additional storage in the form of a Storage Attached Network (SAN). The procurement process was lengthy due to the need to properly consider multiple vendors. A selection was made in June 2005 and the system should be in place by August 2005. The SAN should meet the Commission's storage requirements for the foreseeable future and will be expandable should the need arise.

RSA-token authentication was deployed in 2005 to secure all IT systems. This has had a two-fold impact of improving overall password security and reducing the password burden on users.

A secure Virtual Private Network (VPN) was deployed in 2004 to enable Commissioners to access the internal network through the open internet. The VPN is integrated into the RSA platform to ensure the security of each login and as a result has greatly assisted Commissioners and staff to carry out their functions remotely from the office.

### Digital Recording

Digital recording services with video facilities are now deployed throughout all but one of the Commission's courtrooms. The introduction of digital recording into courts enables Commission members to directly access an audiovisual recording of proceedings and select any portion or all of the proceeding for transcription through the normal processes. Should the Commission deem it appropriate, parties could be supplied with discs containing several days of recorded proceedings. The appropriate software to view the media is available for no charge.

## 14. OTHER MATTERS

### Building & Metals Industry

Activities in the building construction industry continued at a high level. Although most of the major building companies are covered by agreements registered in the Australian Industrial Relations Commission (AIRC) which set the principal working conditions on-site, many building workers are employed by subcontractors and their on-site terms and conditions continue to be regulated by agreements registered in the State jurisdiction.

By virtue of s.41(2) of the Act, the Commission is required to register enterprise bargaining agreements (EBA) subject only to the formal requirements of s.41A and s.49N. The Commission, when it considers necessary or desirable, may require the parties to vary an EBA to give clear expression to the parties' true intention, but the Commission cannot refuse

to register an EBA because it may disagree with what the parties agree should be included. The Commission can refuse to register only if the EBA does not comply with a statutory requirement, for example, relating to right of entry or to superannuation. For this reason many EBAs, which are made in most part between the Construction, Forestry, Mining and Energy Union of Workers and the various employers, have been registered in the Commission during the year which contain provisions which are not found in the Commission's awards. Award clauses generally follow standards established through test cases and application of the State Wage Principles.

The Full Bench was obliged to determine whether the Commission could register EBAs that included clauses relating to bargaining agents' fees and engaging sub-contractors. The Full Bench found that those clauses could not be included (*CFMEU v Sanwell Pty Ltd* (2004) 84 WAIG 727); therefore the Commission has ensured that any such clauses are excised from EBAs it has registered since that decision.

There was a major dispute in the roof tiling sector of the building industry which resulted in the roof tiling fixers withdrawing their labour. This caused the housing industry to come to a halt. Most of the roof tile fixers purported to be in subcontract relationships with companies that provide fixing services to the tile manufacturing industry. After unsuccessful interventions by the industry to resolve the dispute, the Commission became involved by calling a conference on its own motion under s.44 of the Act to which it invited the roof tile manufacturers, the roof tiling fixing companies and various subcontractors. The Commission was able to assist the parties by way of conducting mediations between roof tile manufacturers and the roof tile fixing companies. There was a considerable number of these mediations, the end result of which was that the dispute was resolved between the parties culminating in the registration of a number of EBAs.

The resolution of the dispute, which was in the hands of the parties, considerably reformed the way payments are made in the industry and appeared to produce a satisfactory result for everyone involved.

The Commission continued an active role in the resolution of disputes involving employees and employers in the metals industries both in fabrication and manufacturing, and in construction. The Amalgamated Metal Workers and Shipwrights Union and employers make use of the Commission in its dispute solving role. There are also many EBAs registered covering employees involved in the metal fabrication and construction sectors of the industry.

The Commission has been dealing with a new award to cover employees of Aerospace Engineering Pty Ltd, a company which provides maintenance services to the Republic of Singapore Air Force at Pearce. This has required the Commission to take part in detailed inspections of highly technical operations and there have been a number of conferences with an aim of assisting the parties to resolve the matter between them. This activity is ongoing.

**General Order: Termination, Change and Redundancy**

On 27 April 2005, the Commission in Court Session decided to issue a General Order to apply to all employees throughout Western Australia, subject to some exclusions, providing for conditions relating to the termination of employment, the introduction of changes in production, programme, organisation structure or technology that are likely to have significant effects on employees and when an employee is made redundant.

The decision resulted from a claim which was brought to the Commission by the TLC and followed the decision in March 2004 of the AIRC in what became known as the Redundancy case (PR 032004). Provisions relating to termination, change and redundancy (TCR) have been commonly found in awards following the introduction into corresponding federal awards of the 1984 Termination, Change and Redundancy cases. However, there has not been a decision of this Commission having general application to employees in WA; rather, amendments to awards in WA have proceeded on a case-by-case basis. The claim before the Commission was therefore novel in seeking to apply a General Order to all employees throughout the State.

The Commission heard from the TLC, the Minister, the CCIWA and AMMA in accordance with the Act; the Commission also determined that the Commonwealth Minister for Employment

and Workplace Relations should be permitted to intervene in the proceedings. The WA Farmers' Federation, the WA Retailers Association (Inc), WA Small Business Association, WA Hotels & Hospitality Association (Inc) Union of Employers, Motor Trades Association of Western Australia (Inc), Housing Industry Association, Combined Small Business Alliance of Western Australia (Inc) and The Western Australian Small Business and Enterprise Association Inc were found to have had sufficient interest to be heard on the matter and the Commission also heard from them.

It is not inaccurate to observe that those who appeared in the proceedings recognised to a greater, or lesser, extent the application of TCR provisions generally in employment relations in this country. Nevertheless, opposition to the order sought by the TLC was firmly put particularly in relation to the introduction of any requirement on employers employing less than 15 employees to pay redundancy payments to employees made redundant. While the Minister supported parts of the TLC claim, the Minister, too, did not agree with that part of the claim.

That, also, was the position of the Commonwealth Minister who argued in addition that the definition of small business was more appropriately set at businesses employing less than 20 employees rather than the more common figure of 15 employees.

The decision of the Commission depended very much on the evidence before it. The Commission concluded in principle that a General Order should issue to prescribe minimum entitlements upon the termination of employment, change in employment and upon redundancy in employment in the manner claimed. On the evidence before the Commission, there was no basis to introduce a requirement on employers employing less than 15 employees to pay redundancy payments to employees made redundant. The General Order took effect on 1 August 2005. The decision can be found at (2005) 85 WAIG 1667.

**Dealing with Urgent Matters**

The Commission continues to respond promptly when requested to list proceedings urgently. For example, of the 20 conferences the Commission convened in the rail industry, five were convened urgently. Some other examples follow.

In October 2004, the Commission was notified of proposed industrial action in one of the Rottnest ferry services. The industrial action was in support of enterprise bargaining for an industrial agreement. The Commission convened an urgent conference the same day the notification was received. A verbal Recommendation, confirmed in writing the next day, averted the industrial action and provided a framework for enterprise negotiations to occur without industrial action being taken.

In June 2005, the Commission was notified by a major dairy production company in the metropolitan area that its transport employees had met that morning and had taken industrial action until the following morning. The Commission convened a conference urgently on the same day of notification and ensured there was a return to work on the next working day.

In the building industry in January 2005, an urgent application was made against the main construction union. The application was lodged in the Registry of the Commission at 2:00pm on a Friday and the Commission listed the conference urgently at 4:00pm on that day. The Commission then received a call at 3:20pm from the applicant company stating that the matter had been resolved and that the Commission proceedings were no longer necessary.

## 15. DECISIONS OF INTEREST

**Joint Employment**

The increased use of labour sourced from labour hire companies has frequently raised the issue of whether a person is an employee under the Act or whether a person who is an employee is an employee of the labour hire company and/or the client of that labour hire

company. This issue came before a Commission constituted by a single Commissioner in a decision on 13 September 2004 (84 WAIG 3400) and then before the Full Bench of the Commission in a decision dated 10 June 2005 (85 WAIG 1924).

The circumstances involved an iron ore mining company engaging a labour hire agency to provide locomotive engine drivers. A locomotive engine driver was supplied and engaged by the mining company. The arrangement between the engine driver and the labour hire company was set out in a written contract which identified them respectively as employer and employee. Correspondingly, the arrangements between the labour hire company and the mining company were set out in a written agreement which stated there was no employment relationship between the employee of the labour hire company and the mining company. During the course of his engagement, the locomotive engine driver applied for a vacant position of locomotive engineman advertised by the mining company. He was unsuccessful in his application and his union brought two claims to the Commission that he was unfairly refused employment by the mining company and, alternatively, that the circumstances were such that in law he was jointly employed by the mining company and the labour hire company.

At first instance, the Commission dismissed both claims. On appeal, by majority, the Full Bench of the Commission held that the locomotive engine driver was not jointly employed by the mining company and the labour hire company. The Full Bench went on to hold unanimously that there had been an unfair refusal to employ the locomotive engine driver by the mining company.

In the course of the decision both at first instance and on appeal, the concept of joint employment, a matter squarely raised during the proceedings, was considered by the Commission. The existence in Australian employment law of the concept of joint employment has not been the subject of any binding previous determination. An appeal against the decision of the Full Bench has been lodged in the Industrial Appeal Court and has yet to be heard.

**Employee or Independent Contractor**

On 22 December 2004, the Industrial Appeal Court again considered the issue whether persons engaged through a labour hire agency were employees or independent contractors (*Personnel Contracting Pty Ltd t/a Tricord Personnel v. CFMEU* (2004) 85 WAIG 5). This decision confirmed that this often vexed issue is only able to be determined by applying the common law test for finding an employment relationship. In the application of the common law test, documents executed between the parties and describing their relationship as either one or the other is only one factor to be taken into account.

While the principles to be applied in order to determine an employment relationship are not in doubt, this case is a further illustration of the uncertainty of the application of those principles to a particular set of facts. In this case, the contractual documents were seen as being determinative but only on the basis that the application of the principles to the facts of this particular case were inconclusive. By majority, the Industrial Appeal Court held that the specific inclusion of "labour hire agency" in the definition of s.7(1) of "employer" in the Act does not change the common law, or the application of the common law principles, in matters of this nature.

There seems to be little room for any optimism that the means of determining whether a person engaged pursuant to a labour hire arrangement is an employee for the purposes of the Act will become simpler in the near future.

**"Reasonable Notice" is a "Benefit" under s.29(1)(b)(ii)**

The Industrial Appeal Court has confirmed that a reasonable period of notice upon termination of employment can plainly be a "benefit" for the purposes of s.29(b)(ii) of the Act (*Matthews v. Cool or Cosy Pty Ltd and Another* (2004) 84 WAIG 2152). The Industrial Appeal Court considered that on a claim for a denied contractual benefit, the Commission is empowered to make a monetary order for compensation in an appropriate case as long as its purpose is to do no more than is necessary to redress the matter by resolving the conflict in

relation to the industrial matter and as long as its effect is so limited. In doing so the Commission utilises the broad power given to it under s.23(1) of the Act, read if necessary with s.26(2). The decision thus recognises that in the case of a claim under s.29(1)(b)(ii) there is nothing in the Act other than s.23(1) which says what the Commission may do; the only direction given to the Commission is to "deal with" such claim.

The decision illustrates that an application under s.29(1)(b)(ii) gives effect to common law entitlements which may exist. These include:

(i) a claim in debt for a liquidated sum for past wages or other entitlements earned by the applicant employee for work or services performed under the contract prior to the dismissal;

(ii) a claim determined on a *quantum meruit* for the value of work or services actually performed under the contract of employment but not payable at the time of the dismissal;

(iii) a claim for unliquidated damages in breach of the contract of employment determined by taking into account the amount which would have been earned by the employee had he been permitted to continue to perform the services for which he was employed, less any amounts which may be attributable to the effect of, or the need for mitigation for those damages, or of other intervening effects which might have prevented the applicant from receiving those earnings or which might have diminished those earnings had the employment relationship continued until it had been lawfully determined.

**Claims of Unfair Dismissal Out of Time**

A majority decision of the Industrial Appeal Court has also made it clear that the Commission only has jurisdiction to deal with a claim of unfair dismissal that is made outside the 28 day time limit in s.29(2) if the Commission decides that it would be unfair not to accept the claim (*Aurion Gold v. Bilos* (2004) 84 WAIG 3759). That is, the Commission does not have jurisdiction to deal otherwise with the claim by, for example, waiving the time limit.

This decision is confirmation that the wording in s.29(2) and (3) of the Act means, procedurally, that where an employee refers a claim of unfair dismissal which is out of time to the Commission, the Commission must determine whether it would be unfair not to accept the claim before, for example, calling a conference of parties in order to see whether there can be any agreement in the matter. That is, the Commission is obliged to formally determine whether it would be unfair not to accept the claim; this will inevitably require formal proceedings, usually a hearing.

Given the frequency with which parties to such matters are unrepresented, the scheduling by the Commission of a hearing once the application is lodged, and indeed even before the time by which the respondent to that application is obliged to file a Notice of Answer, may be unexpected to both an applicant and the respondent. The emphasis on the powers of the Commission generally is on the Commission's powers of conciliation: s.32(1). I respectfully suggest that it may be appropriate for consideration to be given to amending the Act to allow conciliation to occur on a claim of unfair dismissal that has been referred out of time before there is a requirement for the Commission to formally decide whether or not it would be unfair not to accept the claim.

**What Constitutes a Redundancy?**

The Full Bench has stated clearly that a dismissal for redundancy is one that occurs because an employer no longer intends to have a particular employee's job performed by anyone, rather than because of a personal act by the employee who is dismissed. An employee will become redundant if, after an organisational restructure, they have no duties left to discharge. A job is not made redundant if it is added to or subtracted from, without materially altering its nature or the responsibilities involved.

This decision, in *Webforge Australia Pty Ltd v. Peter Richards* [2005] WAIRC 01264; (2005) 85 WAIG 1445, will be of assistance in helping employers, employees and organisations appreciate that it is a position that is made redundant; an employee's employment will be terminated by reason of that redundancy if, following the position becoming redundant, there is no other employment available for the employee.

**Registration of an Organisation**

On 8 December 2004, the Full Bench of the Commission registered the Restaurant and Catering Industry Association of Employers of WA as a registered organisation. An objection was received from the WA Hotels and Hospitality Association Incorporated (Union of Employers); however the Full Bench found that the area of membership of the WAHHA and of the applicant organisation did not overlap to an extent that its registration was not able to be approved under the Act. It has been some time since the Commission was asked to register an organisation of employers as a registered organisation under the Act.

**Enterprise Orders and Section 42I**

The Full Bench dealt with the validity of Enterprise Orders made under s.42I of the Act when employees are employed under an Australian Workplace Agreement (AWA). The Full Bench found that the language of s.170VQ of the *Workplace Relations Act 1996* (Commonwealth) does not purport to invalidate a State award or agreement and, in this case, a s.42I Order (which is a State award as defined). It includes a s.42I Order that might otherwise have applied to the employment of an employee who is a party to the AWA. The Full Bench held that the effect of the Federal legislation is to prevent the operation of a s.42I Order, but not the making of such an Order. Thus, an Order under s.42I of the Act can be made even while an AWA is in operation. The s.42I Order remains valid but inoperative. The question of whether an Order under s.42I should be issued in these circumstances is a matter of merit or for the proper exercise of the Commission's discretion (*CFMEU v. Hanssen Pty Ltd* (2005) 85 WAIG 1264).

**Insurance of Employer's Vehicle Driven by Employee**

The Full Bench dealt with a claim by an employee that he was driving a motor vehicle provided to him by his employer in the course of his employment and that it was a vehicle which he had been assured by the employer was comprehensively insured. He was involved in an accident causing damage to another vehicle and that vehicle's insurance company pursued him; the employee paid its claim of $3,156. The employee asked the employer to pay him that money but the employer refused. As a result, the employee claimed the monies as payable to him pursuant to an entitlement under his contract of employment.

The Full Bench unanimously held that as a matter of law, arising out of the relationship of an employer and employee, a term is to be implied in every contract of employment under which a person is required to drive his employer's motor vehicle to the effect that the employer would maintain in force an insurance policy in standard form covering both the employer's and the employee's liability for damages for loss or damage to property caused by the negligent driving of the insured motor vehicle by the employee in the course of his employment and any damage so occasioned to the employer's own property, and to the further effect that the employer would exhaust its rights under the policy before seeking any recovery from the employee.

## 16. CONCLUSION

In conclusion, I wish to pay tribute to Bill Coleman whose retirement brought to an end eighteen years as a member of this Commission. Seventeen of those years were as Chief Commissioner. Bill has a most comprehensive and detailed knowledge of industrial relations from which this State has benefited during that time. This was recognised in 2002 when Bill

was awarded the Order of Australia for his services to industrial relations as well to his work in diabetes research. Bill's skills in conciliation and his insightful feel for the essence of any industrial issue which came before him will be sorely missed by the members of the Commission. In accordance with his express wish, an informal, though well-attended, function was held in the Commission on the day he retired.

Bill also retired as a Deputy President of the AIRC, a position he held as a dual appointment under s.14A of the Act. I draw to your attention that there is now only one member of the Commission, that being Jack Gregor, who holds a dual appointment with the AIRC.

I thank my colleagues in the Commission for their assistance and support to me. I wish to place on record my appreciation for the work of the Registrar John Spurling and the registry staff for the support given to the Commission. May I also record my appreciation for the helpful staff of Verbatim Reporters who provide the court reporting service.

A.R. Beech

Chief Commissioner

13th September 2005