

2001
WESTERN AUSTRALIA



THIRTY EIGHTH ANNUAL REPORT
OF
THE CHIEF COMMISSIONER
OF THE
WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION
FOR THE PERIOD
1 JULY 2000 TO 30 JUNE 2001

PURSUANT TO SECTION 16, SUBSECTION (2)(b) OF
THE INDUSTRIAL RELATIONS ACT, 1979

2001

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 2000 to 30 June 2001

Minister Responsible For The Administration of the Act
The Hon. J Kobelke MLA
in his capacity as Minister for Consumer and Employment Protection

CONTENTS

	PAGE
MEMBERSHIP OF TRIBUNALS AND PRINCIPAL OFFICERS	1
Western Australian Industrial Relations Commission	1
Public Service Arbitrators	1
Railways Classification Board	1
Registry	1
The Western Australian Industrial Appeal Court	1
Industrial Magistrates	1
MATTERS BEFORE THE COMMISSION	2
1. Full Bench Matters	2
2. President	2
3. Commission In Court Session	3
4. Federal Matters	4
5. Rule variation by Registrar	4
6. Boards of Reference Chaired By Registrar	4
7. Industrial Agents Registered by Registrar	4
AWARDS and AGREEMENTS	4
INDUSTRIAL ORGANISATIONS REGISTERED	4
SUMMARY OF MAIN STATISTICS	5
Industrial Appeal Court	7
Industrial Magistrate's Court	7
COMMENTARY	8
1. Legislation	8
2. State Wage Case	8
3. Publication of the Western Australian Industrial Gazette	9
4. Use of Courts and Conference Rooms	9
5. Country Circuits	9
6. Claims by Individuals - Section 29	9
Section 29 Applications Lodged	10
Section 29 Applications Finalised	10
Compared with All Other Matters Lodged	10
Section 29 Applications Compared with All Other Matters Finalised	10
Section 29(1)(b)(i), 29(1)(b)(ii) and 29(1)(b)(i)&(ii) Method of Settlement	11
Demographic Data for Section 29 Applications Collected at the time of lodgement	11
Employment Conditions	11
Representation	11
Age groups	12
Employment Period	12
Salary Range	12
Category of Employment	12
Reinstatement Sought	13
Reinstatement Sought by Age Group	13
7. Public Sector Issues	14
8. Videoconferencing	14
9. Internet Website & Other Initiatives	15
10. Directions & Practice Policy	15
11. Other Matters	16
The Centenary of Statutory Conciliation in Western Australia	17

MEMBERSHIP AND PRINCIPAL OFFICERS

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

During the year to 30th June 2001, the Commission was constituted by the following members:

President	The Honourable P J Sharkey
Chief Commissioner	W S Coleman
Senior Commissioner	G L Fielding
Commissioners	J F Gregor
	A R Beech
	P E Scott
	S J Kenner
	J H Smith
	S Wood

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

Senior Commissioner G F Fielding retired on 16th June 2001.

Public Service Arbitrators

Commissioner PE Scott was appointed as an additional Public Service Arbitrator for one year from the 30th July 2000.
 Commissioner SJ Kenner was appointed as an additional Public Service Arbitrator for one year from 18 June 2001.
 Commissioner A R Beech was appointed as an additional Public Service Arbitrator for one year from 18 June 2001.
 Commissioner PE Scott was appointed as a Public Service Arbitrator for two years from 18 June 2001.

Railways Classification Board

Commissioner SJ Kenner was appointed Deputy Chairperson for 2 years from the 29th November 2000.

Registry

During the period in review the Principal Officers of the Registry were Mr J Spurling (Registrar) and Deputy Registrars Mr R C Lovegrove, Mr D Buttel, Mr K McCann and Ms S Bastian.

THE WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT

During the year to 30th June 2001, The Western Australian Industrial Appeal Court was constituted by the following members:

The Honourable Justice Kennedy	Presiding Judge
The Honourable Justice Anderson	Deputy Presiding Judge
The Honourable Justice Scott	Ordinary Member
The Honourable Justice Parker	Ordinary Member
The Honourable Justice Hasluck	Acting Ordinary Member 1-31 August 2000

INDUSTRIAL MAGISTRATES

During the reporting period, Industrial Magistrates Mr G Cicchini SM, Mr R Lawrence SM and Mr W G Tarr SM exercised jurisdiction as Industrial Magistrates at Perth.

Ms J A Wager SM, Ms E F Vicker SM & Mr M S King SM were appointed Industrial Magistrates as from 1 May 2001.

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 two Commissioners.

The extent to which each Commissioner has been a member of the Full Bench is: -

Chief Commissioner Coleman	42
Senior Commissioner Fielding (retired as a member of the Commission 16.6.01)	25
Commissioner Gregor	8
Commissioner Beech	5
Commissioner Scott	14
Commissioner Kenner	9
Commissioner Smith	14
Commissioner Wood	9

1.1 Matters dealt with by the Full Bench: -

1.1.1 Appeals - Heard and determined from decisions of the: -

Commission	46
Industrial Magistrate	6
Government School Teachers Tribunal	0
Coal Industry Tribunal	0
Public Service Arbitrator	4
Railways Classification Board	0

1.1.2 Organisations: - Full Bench matters to do with Organisations

Applications to amend rules of a registered organisation pursuant to s.62	1
Applications relating to state branches of federal organisations pursuant to s.71	1
Applications to adopt the rules of federal organisations pursuant to s.71A	0
Applications for registration of a new organisation pursuant to s.72	0
Applications seeking coverage of employee organisations pursuant to s.72A	2
Applications for the cancellation/suspension of registration of organisations pursuant to s73	0

1.1.3 Other Full Bench Matters

Proceedings for enforcement pursuant to section 84A brought by the Minister, or another person or organisation	2
Questions of Law referred to Full Bench	1
Matters remitted by Industrial Appeal Court	0
Extension of Time to File Notice of Appeal	0

1.2. Orders: -

Orders issued by the Full Bench	98
---------------------------------	----

2. PRESIDENT

Matters (other than Full Bench matters) dealt with by the President were as follows: -

Applications for an order that the operation of a decision appealed against be stayed pursuant to section 49(11)	12
Applications for an order, declaration or direction pursuant to section 66 of the Act**	4

Applications pursuant to s.92	0
Applications pursuant to s.97Q	0
Matters remitted from the Industrial Appeal Court	1
Matters referred to President by Full Bench pursuant to s.72A(6)	2

Section 66 – Summary of applications: -

Application finalised	2
Directions hearings**	4
Applications part heard**	2
Applications withdrawn	0

Orders issued by the President in matters heard from 1 July 2000 to 30 June 2001 inclusive: -

Section 49(11)	12
Section 66**	5
Section 72A(6)	2
Section 97	0
Section 97Q	0
Remitted from IAC	2

Consultations

Consultations with the Registrar pursuant to section 62 of the Act	5
--	---

**These statistics include matters heard or part heard this year but not yet finally determined.

3. COMMISSION IN COURT SESSION

During the period under review the Commission in Court Session has been constituted 17 times, each time by three Commissioners and the extent to which each Commissioner has been a member of the Commission in Court Session is indicated by the following figures:

Chief Commissioner Coleman	2
Senior Commissioner Fielding	3
Commissioner Gregor	4
Commissioner Beech	7
Commissioner Scott	7
Commissioner Kenner	8
Commissioner Smith	14
Commissioner Wood	6

The matters dealt with by the Commission in Court Session were as follows:

State Wage Case	1
General Order	2
New Award	1
Variation of Awards	8
Conferences referred under Section 44	4
Joinder to Award	1

4. FEDERAL MATTERS

Federal matters dealt with by (WAIRC) Commissioners	4
---	---

4.1 State Matters Completed By A Federal (AIRC) Commissioner

Enterprise agreements with joint State/Federal coverage	0
---	---

5. RULE VARIATION

Variation of Organisation Rules by the Deputy Registrar (Designate)	5
---	---

6. BOARDS OF REFERENCE

Boards of Reference chaired by the Registrar	0
--	---

7. INDUSTRIAL AGENTS REGISTERED BY REGISTRAR

Number of Agents registered in this period	11
--	----

Total number of agents registered as corporate body	33
---	----

Total number of agents registered as individuals	36
--	----

Total number registered as at 30 June 2001	69
--	----

AWARDS / AGREEMENTS

Awards and Agreements in force under the Industrial Relations Act 1979

Year	Number at 30 June
1997	1661
1998	1899
1999	2071
2000	2166
2001	2316

INDUSTRIAL ORGANISATIONS REGISTERED AS AT 30 JUNE, 2001

	Employee Organisations	Employer organisations
Number of organisations	55	17
Aggregate membership	151,259	3318

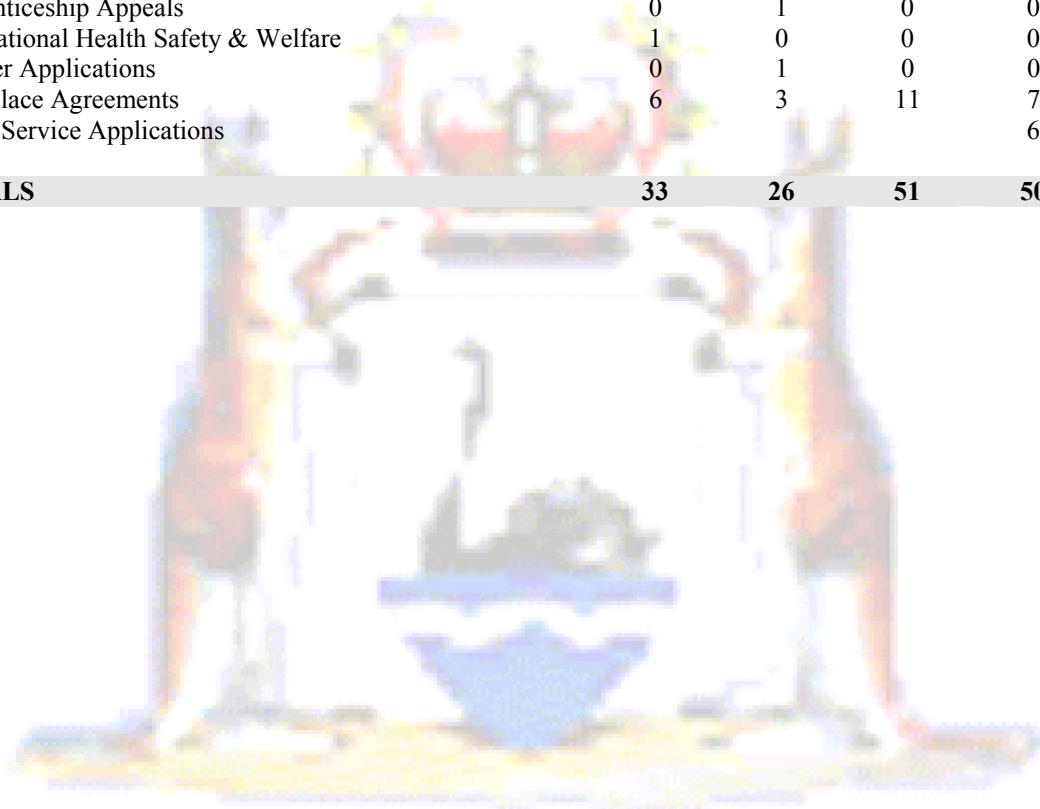
SUMMARY OF MAIN STATISTICS

	Matters dealt with			
	1997- 1998	1998- 1999	1999- 2000	2000- 2001
Full Bench				
Appeals	35	29	54	56
Other matters	15	16	11	7
President sitting alone				
S.66 matters	14	7	10	4
S.66 Orders issued	46	10	10	4
S.49 (11) Matters	10	5	15	12
Other Matters	0	0	2	1
S,97Q	0	2	0	0
S.72(A)(6)	2	1	0	2
Consultations under s.62	7	8	6	5
Commission in Court Session				
General Orders	1	3	2	2
Other Matters	21	59	17	15
Public Service Appeal Board				
Appeals To Public Service Appeal Board	9	17	7	29
Commissioners sitting alone				
Conferences ¹	471	603	477	436
New Agreements	280	328	418	346
New Awards	3	1	4	7
Variation of Agreements	31	3	0	19
Variation of Awards	105	249	219	298
Other Matters ²	33	26	51	50
Federal matters	0	16	10	0
Participation of dual appointees on Federal matters	0	6	30	4
Orders Pursuant to S 80E	3	6	11	21
Board Of Reference - Other Awards (Chaired by a Commissioner)	0	2	2	7
Unfair Dismissal Matters Concluded				
Unfair Dismissal claims	1301	1249	938	1064
Contractual Benefits	336	405	312	322
Unfair Dismissal & Contractual Benefits	517	564	499	605
Public Service Arbitrator:				
Award/Agreement Variations	32	32	28	33
New Agreements	106	60	73	37
Reclassification Appeals	14	447	137	18
Railways Classification Board				
Variation of Awards	2	1	0	0
Variation of Agreement	0	1	0	0
Appeals	0	1	0	0
TOTALS	3394	4157	3316	3403

Notes

¹ CONFERENCES	1997- 1998	1998- 1999	1999- 2000	2000- 2001
Conferences (S 44)	324	423	337	341
Conferences Referred For Arbitration	58	66	74	71
PSA conferences	81	96	50	20
PSA conferences referred	8	8	11	4
Conferences divided	0	0	2	0
Conferences referred and divided	0	0	2	0
PSA conference divided	0	9	1	0
Railways Classification Board	0	1	0	0
TOTALS	471	603	477	436

² OTHER MATTERS	1997- 1998	1998- 1999	1999- 2000	2000- 2001
Applications	64	75	45	37
Apprenticeship Appeals	0	1	0	0
Occupational Health Safety & Welfare	1	0	0	0
Teacher Applications	0	1	0	0
Workplace Agreements	6	3	11	7
Public Service Applications				6
TOTALS	33	26	51	50



THE WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT

Decisions issued by the Court during this period

10

INDUSTRIAL MAGISTRATE'S COURT

New regulations in the Industrial Magistrate's Court took effect on 18 January 2001. Under the new regulations claims are now made under the Industrial Magistrate's Court (General Jurisdiction) Regulations 2000 in lieu of complaints. Complaints are now made only under the prosecution jurisdiction of the Court. Pre-trial conferences are now conducted by the Clerk of the Court and the following summarises the Court for the period under review.

Lodged	378
Resolved	303
Lodged and resolved	192
Resolved but lodged in another financial period	111
Pending	186
Total number of penalties imposed	14
Total value of penalties imposed	\$28,775.00
Total number of claims/complaints resulting in awarding of disbursements	18
Total value of disbursements awarded	\$18,930.00
Total number of claims/complaints resulting in awarding of wages	19
Total value of wages awarded	\$118,810.00

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

COMMENTARY

1. Legislation

The Industrial Relations Act 1979 was amended by the Industrial Relations Amendment Act 2000, which ensures that police officers have access to the public sector arbitrator, and through their union have access to industrial regulation. The School Education Act 1999 was proclaimed in January 2001 and with it Section 23B of the Industrial Relations Act 1979 was repealed. Appeals by teachers previously coming under the Education Act 1928 regarding dismissal, punishment for alleged misconduct or reductions in position or remuneration were no longer within the jurisdiction of the Commission. However transitional provisions set out in Schedule 1 to the School Education Act 1999 enable any "matter" referred to in Section 23B(1)(a) of the Industrial Relations Act 1979 arising before the commencement of the School Education Act 1999 to be instituted heard and determined as the case requires as if Section 23B had not been repealed.

2. State Wage Case

In June 2000, the Commission constituted under section 51 of the Industrial Relations Act, 1979 concluded that there were no good reasons not to give effect to the National Wage Decision issued as the 'Safety Net Review – Wages May 2001' [Print PR 002001]. This position was reached after hearing from parties pursuant to section 50(10) of the Act and after offering any other persons with an interest the opportunity to be heard.

In summary, the Commission decided that:

- Awards, but not industrial agreements, would be varied to provide for arbitrated safety net adjustments on the following basis:
 - (a) a \$13.00 per week increase in award rates up to including \$490.00 per week;
 - (b) a \$15.00 per week increase in award rates above \$490.00 per week up to and including \$590.00 per week; and
 - (c) a \$17.00 per week increase in award rates above \$590.00 per week.
- The arbitrated safety net adjustments would operate from the beginning of the first pay period commencing on or after 1st August 2001.
- The adult minimum wage would be increased from \$400.40 per week to \$413.40 per week with effect from the beginning of the first pay period commencing on or after 1st August 2001.

Consistent with previous State Wage Decisions, arbitrated safety net adjustments may be offset against rates of pay regulated by industrial agreements.

As was the case in May 2000, the Commission issued a General Order to implement the arbitrated safety net adjustments. Schedules detailed adjustments for each classification in awards of the Commission. Although the experience obtained in 2000 when this format was first adopted provided some assistance, the task highlighted the need for records to be maintained on the basis upon which particular wage movements are to be calculated in certain circumstances, i.e. junior rates, casual rates and annualised salaries.

Again the Commission appreciates the cooperation and assistance received from officers of the Chamber of Commerce and Industry of Western Australia, the Trades and Labor Council and unions, the Australian Mines and Metals Association and the Department of Productivity and Labour Relations (as it then was) representing the Minister.

The problems encountered in regard to wage adjustments can be compounded when allowances are adjusted under the wage fixing system. This was appreciated by the parties participating in the State Wage hearing. The Commission will, in future record the basis upon which allowances are adjusted so that the potential for disagreement may be limited.

3. Publication of the Western Australian Industrial Gazette

Initiatives to reduce the cost of publishing the Western Australian Industrial Gazette which were reported on last year have seen the cost per page come down from \$31.00 in 1999 to \$18.77 for 2000.

Year	Cost per page (inc GST)	Annual cost	Subparts	Cost per subpart
1995	\$40.50	\$133,072 (not incl Jan edition)	11 (excluding Jan Edition)	\$12 097
1996	\$31.00	\$171,746	15	\$11 450
1997	\$31.00	\$123,381	15	\$8 225
1998	\$31.00	\$169,457	20	\$8 473
1999	\$31.00	\$123,354	13	\$9 489
2000	\$18.77	\$86,594	16	\$5 412

The requirement to publish the full text of industrial agreements registered under Section 41 of the Act continues to be a significant part of the cost of the publication. An amendment to Schedule 1 – Matters to be published in the ‘Western Australian Industrial Gazette’ is necessary for this cost saving to be implemented.

4. Use of Courts and Conference Rooms

The Commission has continued to monitor the use of courts and conference rooms.

At this time the pattern of usage has not shown the need to reconfigure conference rooms or courts to accommodate in general shift in demand.

Earlier notice of cancellations and notifications on the computer listing system have contributed to better usage of facilities.

5. Country Circuits

In the year under review the Commission has responded to increased demands from parties located in regional centres by instituting more frequent circuit visits to Bunbury, Kalgoorlie and Geraldton. Commissioners are listed for conferences and hearings in these centres on a three week rotation. Albany is visited monthly.

Attendances at these centres are supplemented by the use of telephone and video conferences.

The north of the state is serviced from Karratha by the Deputy Registrar under direction from the Commission. A significant increase in industrial activity in the north has meant that Commissioners regularly visit Port Hedland and Karratha. Hearings and conferences are programmed to ensure that matters can be dealt with to minimize travel.

6. Claims by Individuals – Section 29

As applications concerning unfair dismissal and denial of contractual benefit form such a significant part of the Commission’s activities it is useful to examine the nature of these applications. These applications are made under the following provisions of the Industrial Relations Act.

- ★ 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 purposes of brevity, the three types of application are referred to in the following tables as “Section 29” applications.

Section 29 Applications Lodged

Of the types of applications that can be lodged under Section 29, applications alleging unfair dismissal represent the most significant proportion.

Section 29 applications lodged	1997-1998	1998-1999	1999-2000	2000-2001
Unfair Dismissal	1205	901	926	1127
Denial of Contractual Benefits	343	299	277	352
Both in same application	578	502	515	627
TOTAL	2126	1702	1718	2106

Interpolating the total of “both in same application” from the foregoing table to the two principal claims of unfair dismissal and contractual benefits, shows the following;

Section 29 applications	1997-1998	%	1998-1999	%	1999-2000	%	2000-2001	%
Unfair Dismissal	1783	66%	1403	64%	1441	65%	1755	83%
Denial of Contractual Benefits	921	34%	801	36%	792	35%	351	17%

Section 29 Applications Finalised

	1997-1998	1998-1999	1999-2000	2000-2001
Unfair Dismissal	1301	1249	939	1069
Denial of Contractual Benefits	336	405	312	325
Both in same application	517	564	498	607
TOTAL	2154	2218	1749	2001

Interpolating the total of “both in same application” from the foregoing table to the two principal claims of unfair dismissal and contractual benefits, shows the following;

	1997-1998	%	1998-1999	%	1999-2000	%	2000-2001	%
Unfair Dismissal	1818	68%	1813	65%	1437	64%	1676	84%
Denial of Contractual Benefits	853	32%	969	35%	810	36%	325	16%

Compared with All Other Matters¹ Lodged

Section 29 Applications continue to represent over half of all the matters lodged in the Commission and this pattern has been evident over the last three reporting years.

Section 29 compared with all other matters lodged	1997-1998	1998-1999	1999-2000	2000-2001
All Matters Lodged	4115	3487	3312	3671
Section 29 Applications Lodged	2126	1702	1718	2106
Section 29 as Percentage (%) of All Matters Lodged	52%	49%	52%	57%

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

Section 29 Applications Compared with All Other Matters Finalised

A similar pattern emerges in that the Section 29 applications represent just over half of all the matters dealt with over the last three reporting years.

Section 29 compared with All other Matters	1997-1998	1998-1999	1999-2000	2000-2001
All Matters finalised	4042	4731	3524	3745
Section 29 Applications finalised	2154	2218	1749	2001
Section 29 as Percentage (%) of All Matters finalised	53%	47%	50%	53%

Section 29 matters – Method of Settlement

The following table shows the very high percentage of section 29 matters that were settled without recourse to formal arbitration.

Section 29 Matters Method of Settlement	Unfair Dismissal	Contractual Benefits	Both	Total	%
Arbitrated claims in which an Order issued	90	41	53	184	17%
Matters referred for investigation resulting in settlement	212	63	123	398	38%
Matters withdrawn before proceeding commenced before the Commission	234	88	144	466	44%
Matters withdrawn without proceedings	0	6	5	11	1%
Matters settled after proceedings before the Commission	529	124	280	933	47%
Total dealt with in the 1999/2000 period	1069	325	607	2001	100%

Demographic Data for Section 29 Applications Collected at the time of Lodgment

A demographic data collection system was implemented during the year and captured additional information on applications at the time of lodgment. The following tables serve to illustrate a variety of characteristics relating to applicants that have claimed redress under Section 29 of the Act. Whilst 2106 s29 matters were lodged, only 1718 applicants answered the demographic data survey.

Employment Conditions

Employment Conditions	Female	% Female	Male	% Male	Total	% Total
Awards	225	35%	348	32%	573	33%
Contracts	4	1%	9	1%	13	1%
Enterprise Bargaining Agreements	291	47%	530	48%	821	48%
Industrial Agreements	2	0%	13	1%	19	1%
Other	80	13%	154	14%	234	14%
Work Place Agreements	16	3%	29	3%	45	3%
Total	624	100%	1094	100%	1718	100%

Representation

The table following was constructed from the survey of cases over the period and shows that the majority of applicants (60%) were prepared to conduct their own case in the Commission whilst 34% were represented in some form, as set out in the table.

Applicants	Female	% Female	Male	% Male	Total	% Total
Industrial Agent	79	13%	159	15%	238	14%
Other	42	7%	66	6%	108	6%
Personal	412	66%	622	57%	1034	60%
Legal representation	91	15%	247	23%	338	20%
Total	624	100%	1094	100%	1718	100%

Age Groups

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

Age Groups	Female	% Female	Male	% Male	Total	% Total
Under 16	7	1%	6	1%	13	1%
17-20	59	19%	32	3%	91	5%
21-25	92	15%	106	10%	91	5%
26-40	202	32%	384	35%	586	34%
41-50	129	21%	194	18%	323	19%
51-60	50	8%	124	11%	174	10%
Over 60	1	0%	19	2%	20	1%
Data Not Provided	84	13%	229	21%	313	18%
Grand Total	624	100%	1094	100%	1718	100%

Employment Period

It is significant to note that 25% of all applicants were employed for less than 3 months.

Period of employment	Female	% Female	Male	% Male	Total	% Total
Under 3 months	178	29%	258	24%	436	25%
4 to 6 months	84	13%	114	10%	198	12%
7 to 12 months	94	15%	163	15%	257	15%
1 to 2 years	85	14%	155	14%	240	14%
2 to 4 years	71	11%	132	12%	203	12%
4 to 6 years	27	4%	58	5%	85	5%
6 years or more	47	8%	119	11%	166	10%
Data not provided	38	6%	95	9%	133	8%
Total	624	100%	1094	100%	1718	100%

Salary Range

Salary Ranges	Female	% Female	Male	% Male	Total	% Total
Under \$200 Per Week	156	25%	251	23%	407	24%
\$201 to \$600 Per Week	308	49%	336	31%	644	37%
\$601 to \$1,000 Per Week	127	20%	310	28%	437	25%
\$ 1,001 to \$1,500 Per Week	22	4%	101	9%	123	7%
\$1,501 to 2,000 Per Week	1	0%	33	3%	34	2%
Over \$2,000 Per Week	10	2%	63	6%	73	4%
Total	624	100%	1094	100%	1718	100%

Category of Employment

69% of all applicants were Full Time, Permanent or Permanent Full Time employees at the time of their termination.

Employment Category	Female	% Female	Male	% Male	Total	Total %
Casual	97	16%	82	7%	179	10%
Casual Full Time	10	2%	10	1%	10	1%
Casual Part Time	9	1%	11	0%	10	1%
Fixed Term	11	2%	26	2%	37	2%
Full Time	122	20%	271	25%	393	23%
Part Time	52	8%	16	1%	68	4%
Permanent	53	8%	169	15%	222	13%
Permanent Full Time	169	27%	404	37%	573	33%
Permanent Part Time	46	7%	14	1%	60	3%
Probation	24	4%	26	25%	50	3%
Data Not Provided	31	5%	75	7%	106	6%
Total	624	100%	1094	100%	1718	100%

Reinstatement Sought

55% of applicants did not seek reinstatement when they lodged their application.

Reinstatement	Female	% Female	Male	% Male	Total	% Total
No	389	62%	550	50%	939	55%
Yes	185	30%	407	37%	592	34%
Data Not Provided	50	8%	137	13%	187	11%
Total	624	100%	1094	100%	1718	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 Group	No	% No	Yes	% Yes	No Data	% No data	Total	% Total
Under 16	9	1%	1	0%	3	25	13	1%
17 to 20	70	7%	16	3%	5	3%	91	5%
21 to 25	128	14%	48	8%	22	12%	198	12%
26 to 40	357	38%	187	32%	42	22%	586	34%
41 to 50	162	17%	124	21%	37	13%	323	19%
51 to 60	97	10%	53	9%	24	20%	174	10%
Over 60	12	1%	8	1%	0	0%	20	1%
Data Not Provided	104	11%	155	26%	54	29%	313	18%
Total	939	100%	592	100%	187	100%	1718	100%

Applications alleging unfair dismissal or denied contractual benefits continue to account for a substantial part of the Commission's work.

The incidence of applications associated with employment of three month duration or less accounts for one quarter of all matter lodged in 2001 claiming unfair dismissal or denied contractual benefits.

It is noteworthy that 11% of applicants are 25 years of age or younger. Within this group females comprise a significant percentage.

As noted in the last report, probationary employment is a feature of appointments particularly in areas of unskilled and semi-skilled recruitment. Programmes developed for high school children on employment relations would assist in preparing our young people for the workplace.

In the period under review the Full Bench of the Commission and the Industrial Appeal Court considered whether the Commission had jurisdiction to entertain applications by Federal Award employees pursuant to Section 29(1)(b) of the Industrial Relations Act, 1979 with respect to unfair dismissal (*Hull v City of Mandurah* (1999) 79 WAIG 1874 and *City of Mandurah v Hull* (2000) 80 WAIG 4319).

This issue attracted consideration of the meaning of an "employee" under Section 29(1)(b)(i) of the Act, whether there is inconsistency between the Federal Award in question and the Industrial Relations Act, 1979 and whether there is inconsistency between the Workplace Relations Act 1996 (Cth) and the Industrial Relations Act 1979.

The Commission's jurisdiction to deal with claims by Federal Award employees was confirmed with "employees" in Section 29 of the Industrial Relations Act 1979 being given its ordinary meaning which thereby includes employees covered by Federal Awards.

The argument that there was a direct or indirect inconsistency between the Industrial Relations Act 1979 and the Federal Award such that Section 109 of the Constitution would render the Act invalid to the extent of the inconsistency was rejected. Finally while it is possible for Federal law to cover the field notwithstanding an expression of legislative intent, it was found that the Workplace Relations Act 1996 (Cth) is not such an example. Here the Workplace Relations Act 1996 (Cth) Section 152(1A) expresses a

clear intention not to affect the Industrial Relations Act 1979 if Sections 23 and 29 can operate concurrently with the Federal Award. That was the case in the circumstances of this matter.

In *City of Geraldton v Cooling* (2000) 80 WAIG 5341 the Industrial Appeal Court considered where the Commission has ordered reinstatement of an employee pursuant to a finding of unfair dismissal, whether there is jurisdiction to also order that the employer pay the employee compensation for loss or injury caused by the dismissal. The Industrial Appeal Court found that Section 23A(1)(ba) of the Industrial Relations Act 1979 is a specific provision covering claims for compensation for loss or injury and is subject to the restrictions imposed by Section 23A of the Act. In this respect there is no power to award "lost wages" for the period from the unfair dismissal until the time of reinstatement or reemployment either as an entitlement or pursuant to any ancillary or incidental order where reinstatement or reemployment has been ordered.

7. Public Sector Issues

A number of matters have come before the Public Service Arbitrator and the Public Service Appeal Board which have required consideration of the jurisdiction of the Arbitrator or the Board pursuant to the Industrial Relations Act 1979.

The terms of the Public Sector Management Act 1994 and the various Regulations made pursuant to that Act have added considerable complexity to determining the limits of the Arbitrator's and the Board's jurisdiction. There have also been matters, which in addition to requiring consideration of the Industrial Relations Act 1979 and the Public Sector Management Act 1994 require consideration of the terms and effects of the Workplace Agreements Act 1993. The complexity and the lack of clarity involved in the interrelationships of these various pieces of legislation and regulations have made the resolution of a range of disputes in the Public Sector problematic. Where parties are represented by lay advocates, as are many of the parties who appear before the Commission, dealing with such complexity has caused confusion, frustration, delay and an inability on the part of those parties to come to terms with the limitations imposed on the Commission's jurisdiction by the Public Sector Management Act, its Regulations and the Workplace Agreements Act.

During the year, disputes have arisen regarding the varying rates of pay and conditions of employment applicable to Government Officers and Public Servants both within and across agencies. This has been due to the effect of enterprise bargaining and workplace agreements. The different timing of enterprise bargaining agreement registration and application between agencies has meant that where once there were standard rates of pay within and across agencies and common conditions of employment, this commonality no longer exists. The existence of workplace agreements has further altered the former approach of consistency across the sector. This has resulted in industrial disputes being brought before the Public Service Arbitrator.

A number of matters have been brought before the Public Service Arbitrator regarding the use of fixed term contracts for Public Servants and Government Officers. Over a period of years, a significant number of employees have been placed on consecutive fixed term contracts which has meant that they have been engaged in the same position by the same agency for a number of years, their employment arrangements having all of the hallmarks of ongoing employment, but not the security of an ongoing contract.

8. Videoconferencing

The Commission has for some years used teleconferencing to minimise the inconvenience to regionally based parties. Teleconferencing involves a telephone hook up between the Commissioner and one or all of the parties to a matter. This technology is a convenient means for remotely located parties to communicate but it does have limitations.

In more recent times the Commission has explored the options for video conferencing. After several successful trials, the Commission has implemented videoconference links for interstate and regionally based parties. The Commission provides "in house" videoconference facilities at both its Perth and Karratha offices with bandwidth of up to 384kbps.

Videoconferencing in most areas of the State is now possible through facilities in courts, colleges of advanced education, larger regional companies and the Government's Telecentre Network. The availability of this facility will be promoted for the convenience of parties.

9. Internet website (www.wairc.wa.gov.au) & Other Initiatives

The search engine (ISYSWEB) was added to the WAIRC website in February 2001 enabling awards to be searched. Enterprise Bargaining Agreements were included in March 2001.

This approach is in keeping with the Commission's objective of providing information electronically where possible. The Commission will shortly be able to publish decisions of particular public interest on our website immediately after they are issued.

Other changes and improvements to the information available to the public via the internet have included the development of "Notes for unrepresented parties appearing before a Full Bench or the Hon President", Frequently Asked Questions (FAQ's) to assist parties, and a 5-day Hearing List. New features also include information on lodging a claim in the Industrial Magistrate's jurisdiction and the ability to order Commission transcript online by email. A list of 'Contacts' has been provided to enable members of the public to ring and email the Registry.

10. Directions Practice & Policy

The Honourable President has notified to parties a policy that the Full Bench, and the President, exercising jurisdiction when sitting alone, will hand down decisions within four weeks of the conclusion of the hearing, except in cases where this is not possible.

Further, the Commission has issued a number of practice notes to improve practice and procedure in the Commission and there are as follows:-

- Practice Note 1 of 2000 28 June 2000
"Inspection and Search – Commission Records"
- Practice Note 2 of 2000 20 December 2000
"Appeals – Want of Prosecution"
- Practice Note 1 of 2001 23 May 2001
"Time Limits – Written and Oral Submissions"
- Practice Note 2 of 2001 23 May 2001
"Interlocutory Applications and Applications for Stays"

Commissioners advise the parties at the conclusion of the hearing as to the date of the decision issuing. Where this has to be varied the parties are informed of the amended date.

11. Other Matters

During the period under review members of the Commission and Chambers staff have continued training under the policy for prevention of sexual harassment in the workplace and in diversity awareness.

Facilities have been placed in the Registry to assist with child care for members of the public.

The security of courts, conference rooms and the Registry have been monitored and induction programmes are conducted for new members of staff appointed to the Commission.

The Commission proposes to provide information on security and safety to representatives of parties regularly attending the Commission.

In June 2001 Senior Commissioner Gavin Fielding retired from the Commission

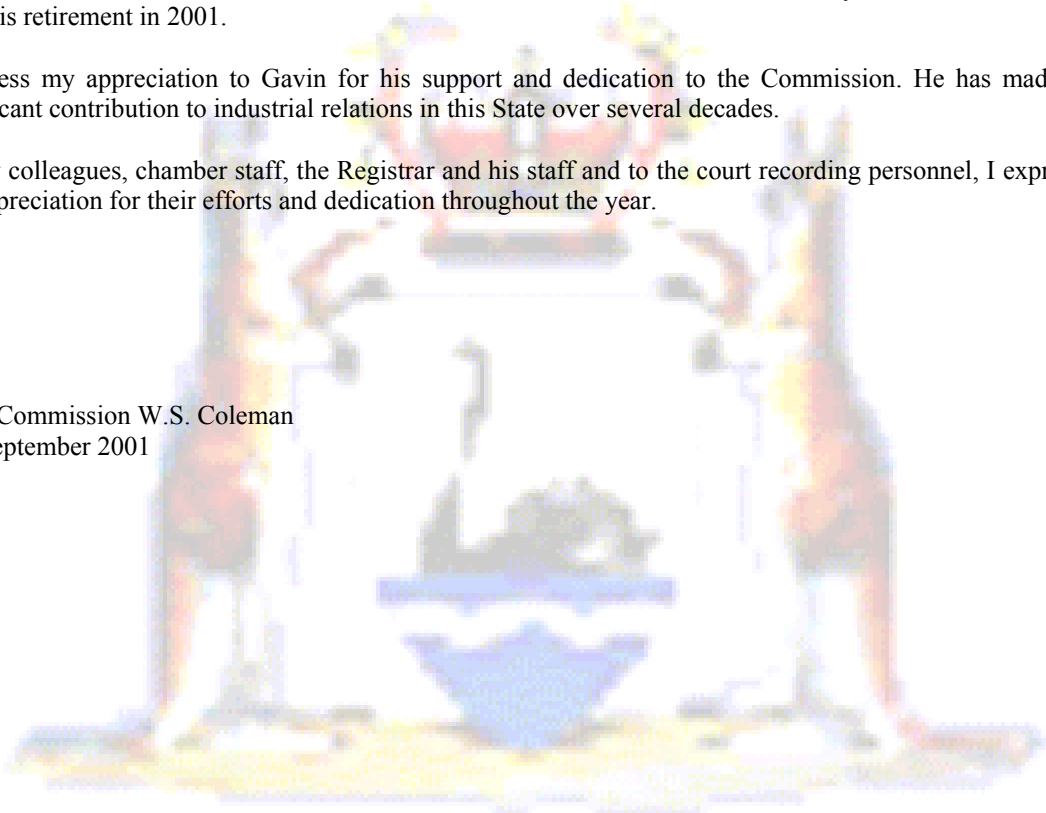
Senior Commissioner Fielding served as a member of the Commission for 20 years. He had been in private legal practice and prior to his appointment to the Commission held the office of Stipendiary Magistrate and was a member of the Western Australian Coal Industry Tribunal.

During the period of appointment to the Commission Senior Commissioner Fielding was Public Service Arbitrator and Chairman of the State School Teachers Tribunal, the Railway Classification Board and the Hospital Salaried Officers Reclassification Committee. In addition to the Public Sector, Senior Commissioner Fielding worked in the metal, construction, mining and service industries throughout the State. He also held the office of Chairman of the Western Australian Coal Industry Tribunal from 1980 until his retirement in 2001.

I express my appreciation to Gavin for his support and dedication to the Commission. He has made a significant contribution to industrial relations in this State over several decades.

To my colleagues, chamber staff, the Registrar and his staff and to the court recording personnel, I express my appreciation for their efforts and dedication throughout the year.

Chief Commissioner W.S. Coleman
24th September 2001



THE CENTENARY OF STATUTORY CONCILIATION IN WESTERN AUSTRALIA

This year marks the centenary of the predecessor to this Commission. The Industrial Conciliation and Arbitration Act 1900 established a Board of Conciliation for each “industrial district”¹ and one Board of Arbitration for the colony on 5 December 1900.

The Industrial Conciliation and Arbitration Act of 1900 was new legislation, often described during the Parliamentary debates as “experimental”, and the first Board of Conciliation did not sit until 11 July 1901². The Board of Arbitration did not sit at all until 2 April 1902³ by which time the original Act had been amended.⁴

There were two major strikes in 1899 and 1900⁵. It is significant that the fundamental issue in the Lumpers’ strike of 1899 concerned the freedom of shipowners to deal with their workforce directly and the right of the employees to bargain collectively through their union. It appears little has changed with the passage of time. The strikes disrupted a substantial part of the Colony and were probably a significant reason why the legislation was enacted when it was.

There had also been, for many years, a measured and orderly movement towards regulation and the State’s progress towards compulsory arbitration has been seen as unique for Australia in that the legislation emerged from prosperity, in contrast to the other colonies (as they then were) where they emerged from more stringent economic circumstances.⁶ The WA legislation was debated after the then existing New Zealand legislation had been operating for 6 years and after the South Australian Parliament considered an Act to regulate industrial disputes.

The legislation was passed against a background of a proposed motion of no confidence in the Forrest Government in August 1900, which was ultimately defeated, and the discovery of gold in Western Australia. Gold was discovered as early as 1885 in the Kimberley⁷ but it was the Irishman’s find at Hannans (later Kalgoorlie) which prompted a gold rush from the eastern states.⁸ This significantly increased the population in Western Australia, which after about 1896 gradually turned from prospecting to working for wages.

The increase in people working for wages in turn led to an increasing concern to receive fair employment conditions. The pressure from the Goldfields undoubtedly was a significant factor in producing industrial and political pressure for the enactment of industrial dispute settling legislation.⁹ The last decade of the 19th century was also a period of time which produced a raft of social legislation which flowed to the Eastern colonies of Australia and eventually to Western Australia.¹⁰

¹ Section 31. Initially there were 4 industrial districts. See Dufty page 17 in Chapter 6 of “A History Of Commerce And Industry In Western Australia, The Development of Industrial Relations in Western Australia, The Early Years” Firkins (ed) UWA Press 1977.

² Vol 1 WA Arbitration Reports page 1.

³ Vol 1, WA Arbitration Reports, page 12

⁴ “In February 1902 it was repealed and replaced by the present Act”, page (iii) of Preface to Vol 1, WA Arbitration Reports

⁵ Lumpers Strike March – April 1899 (WA Newspaper March through April 1899); Railway Strike January 1900 (WA Newspaper 11 January 1900)

⁶ Gerry Treuren, University of SA. 'Economic transformation, social reform and the establishment of arbitration. The case of Western Australia, 1890 1900' – P. Bertola and J. Bailey (eds.), Proceedings of the 5th Conference of the Australian Society for the Study of Labour History, Perth, 1997.

⁷ Golden Destiny – The centenary history of Kalgoorlie Boulder and the Eastern Goldfields of WA by Martyn and Audrey Webb published by the Kalgoorlie Boulder Councils as a contribution to the Centenary celebrations 1993 (at page 15).

⁸ Patrick Hannan registered his claim at Coolgardie on 17 June 1893. Golden Destiny – The centenary history of Kalgoorlie Boulder and the Eastern Goldfields of WA by Martyn and Audrey Webb published by the Kalgoorlie Boulder Councils as a contribution to the Centenary celebrations 1993 (at page 91).

⁹ Hansard 9 October 1900 at page 893.

¹⁰ In 1894 the Act 58 Victoria No. 3 extended and regulated the liability of employers to make compensation for personal injuries suffered by workmen in their service.

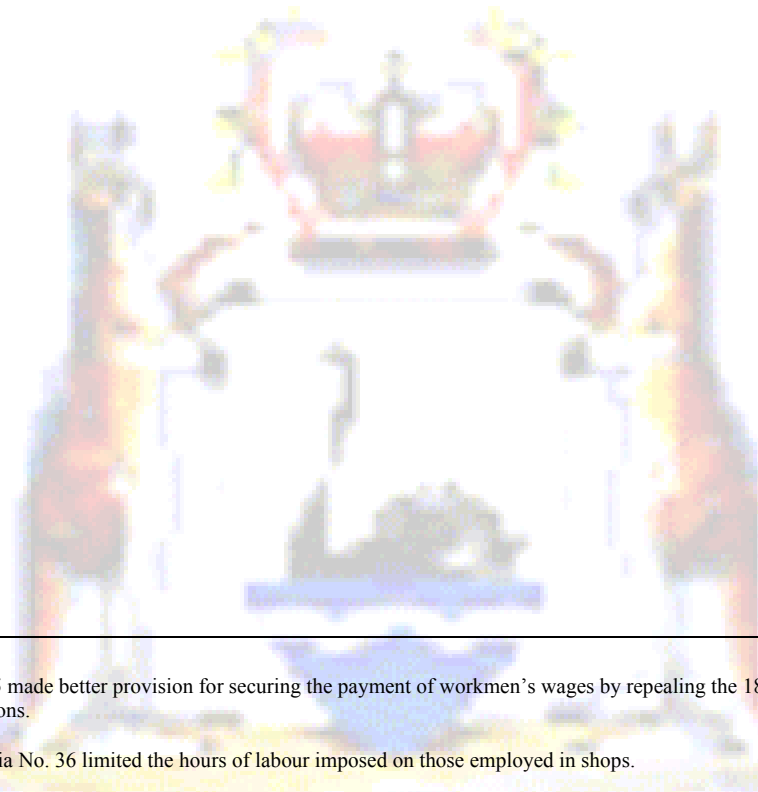
The Act 59 Victoria No. 37 (1895) provided for the regulation and inspection of mines and collieries.

In 1897 the Workmen’s Lien Act (61 Victoria No. 20) was intended to give greater security to workmen in obtaining payment of their wages and particularly to those employed by contractors.

Act for the Regulation of Employment Brokers (61 Victoria No. 24)

The Industrial Conciliation and Arbitration Act 1900 excluded employees of the State other than railway employees. While there was considerable support to have the legislation apply to State employees¹¹ there were concerns that an Arbitration Board might award wages to State employees that the State could not afford. The motion to include state employees was defeated by one vote.¹²

The industrial relations legislation in the State has since been amended many times. Comprehensive legislation was passed with the *Industrial Arbitration Act* of 1912 and the *Industrial Relations Act* of 1979. This Annual Report marks 100 years of operation of the Western Australian Industrial Relations Commission and its predecessors in providing the means for the orderly and fair regulation of employment and working conditions in this State.



In 1898 the Act 62 Victoria No. 35 made better provision for securing the payment of workmen's wages by repealing the 1897 Workmen's Lien Act and substituting mere effectual provisions.

In the same year the Act 62 Victoria No. 36 limited the hours of labour imposed on those employed in shops.

The Truck Act of 1899 (63 Victoria No. 15) prohibited the payment of wages in goods otherwise than in money.

In 1899 the Act 63 Victoria No. 35 prevented the unnecessary employment of labour in mines on Sundays except with the approval of an Inspector of Mines and the Act.

63 Victoria No. 52 directed that a certain number of seats be provided for the use of female assistants in shops.

In 1900 the Act 64 Victoria No. 9 amended the Truck Act of the previous year in certain minor respects by preventing employers from deducting amounts for medicine and medical expenses.

Source: Dr F. K. Crowley, 'Master and Servant in Western Australia. 1851-1901', WA Historical Society Journal No. 4, (1954), at page 30.

¹¹ Eg; Hansard 20 September 1900 page 560 onwards, and 25 September 1900 at page 615

¹² Hansard 25 September page 628