

1999
WESTERN AUSTRALIA



THIRTY SIXTH ANNUAL REPORT
OF
THE CHIEF COMMISSIONER
OF THE
WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION
FOR THE PERIOD
1 JULY 1998 TO 30 JUNE 1999

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

1999
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 1998 to 30 June 1999

Minister Responsible For The Administration of the Act
The Hon. C. L. Edwardes, B. Juris, LL.M, B.A, MLA
in her capacity as Minister for Labour Relations

CONTENTS

	PAGE
MEMBERSHIP OF TRIBUNALS AND PRINCIPAL OFFICERS	
Western Australian Industrial Relations Commission	1
The Western Australian Industrial Appeal Court	1
Industrial Magistrates	1
Registry	2
MATTERS BEFORE THE COMMISSION	
Full Bench	2
President	3
Commission in Court Session	3
Commission constituted by Commissioner sitting or acting alone	4
THE WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT	4
BOARDS OF REFERENCE	4
INDUSTRIAL MAGISTRATES COURT	5
AWARDS/AGREEMENTS IN FORCE AS AT 30TH JUNE 1999	5
INDUSTRIAL ORGANISATIONS REGISTERED AT 30TH JUNE 1999	5
FEDERAL MATTERS REFERRED TO THE COMMISSION	5
STATE MATTERS DEALT WITH BY FEDERAL COMMISSION	5
SUMMARY OF MAIN STATISTICS	6
MATTERS LODGED	7
COMMENTARY	8

MEMBERSHIP OF TRIBUNALS AND PRINCIPAL OFFICERS

Western Australian Industrial Relations Commission

During the year to 30th June 1999, the Commission had the following members:

President	The Hon P J Sharkey
Chief Commissioner	W S Coleman
Senior Commissioner	G L Fielding
Commissioners	J F Gregor
	S A Cawley
	A R Beech
	C B Parks
	P E Scott
	S J Kenner

During the period applicable to this year's report the composition of the Commission changed in the following manner:

Public Service Arbitrators

Senior Commissioner G L Fielding appointed 14th July 1998 for a period of one year.
Commissioner J.F. Gregor, appointed from 29th January 1999 for a period of two years
Commissioner S.A. Cawley appointed on 18th June 1999 until her retirement on 6th August 1999.
Commissioner A.R. Beech appointed from 25th March 1999 for a period of one year.
Commissioner C.B. Parks appointed from 25th March 1999 for a period of one year.
Commissioner P.E. Scott appointed from 29th January 1999 for a period of one year.

Railways Classification Board

Commissioner Scott's appointment as Chairperson ceased on 5th March 1999.
Commissioner Cawley's appointment as Deputy Chairperson ceased on 3rd July 1999.
Commissioner Beech was appointed Chairperson on 6th July 1999 for a period of one year.
Commissioner Kenner was appointed Deputy Chairperson on 6th July 1999 for a period of one year.

The Western Australian Industrial Appeal Court

The Members of the WA Industrial Appeal Court as at the 30 June 1999 were as follows

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

Industrial Magistrates

The following Stipendiary Magistrates have exercised jurisdiction as Industrial Magistrates at Perth during the period under review:

Mr G Cicchini
Mr W G Tarr
Mr P G Cockram
Mr M D Wheeler
Mr P G Thobaven
Mr R B Lawrence
Mr K Moore
Mr G N Calder

Registry

During the period in review the Principal Officers of the Registry were:

Registrar	Mr J Spurling
Deputy Registrars	Mr R C Lovegrove
	Mr D Buttel
	Mr K McCann

MATTERS BEFORE THE COMMISSION

FULL BENCH

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	27
Commissioner Fielding	13
Commissioner -Gregor	6
Commissioner -Cawley	8
Commissioner -Beech	10
Commissioner -Parks	6
Commissioner -Scott	10
Commissioner -Kenner	10

The following summarises Full Bench matters: -

Appeals - Heard and determined from decisions of the: -

Commission	19
Industrial Magistrate	7
Government School Teachers Tribunal	0
Coal Industry Tribunal	1
Public Service Arbitrator	2

Organisations:-

Applications to amend rules of a registered organisation pursuant to s.62	3
Applications for registration of a new organisation	0
Applications pursuant to s.72A	4
Applications pursuant to s.71A	0
Applications pursuant to s.72	1
Applications pursuant to s.73	1

Other: -

Proceedings for enforcement pursuant to section 84A brought by an Industrial Inspector	0
Questions of Law referred to Full Bench	0
Matters remitted by Industrial Appeal Court	7
Extension of Time to File Notice of Appeal	0

Orders:-

Orders issued by the Full Bench	67
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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)	5
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Matters referred to President by:

Full Bench pursuant to s.72A(6)	2
Applications pursuant to s.97Q	0
Applications for an order, declaration or direction pursuant to section 66 of the Act**	7

The following summarises section 66 applications:-

Application finalised	5
Directions hearings**	4
Applications part heard**	2
Applications withdrawn	0

Orders issued by the President in matters heard from 1 July 1998 to 30 June 1999 inclusive: -

Section 66**	10
Section 49(11)	5
Section 97Q	0
Section 72A(6)	1

Consultations with the Registrar pursuant to section 62 of the Act	8
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**These statistics include matters heard or part heard this year but not yet finally determined.

COMMISSION IN COURT SESSION

During the period under review the Commission in Court session has been constituted by three Commissioners on all occasions. 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	58
Senior Commissioner Fielding	3
Commissioner Gregor	13
Commissioner Cawley	48
Commissioner Beech	50
Commissioner Parks	4
Commissioner Scott	6
Commissioner Kenner	4

62 matters were dealt with by the Commission in Court Session.
(38 matters were heard simultaneously on the one day)

State Wage Case	1
General Order	3
Minimum Wage	1
Variation of Awards	44
Variation of an Order	1
Conferences Referred	4
Conferences	5
Appeal against a Board of Reference	1
Order pursuant to S.80E	1
Referrals under S.80ZE	1
TOTAL	62

COMMISSION CONSTITUTED BY COMMISSIONER SITTING OR ACTING ALONE

<u>Matters finalised during the period :</u>		<u>% 's for main items</u>
	3329	
Appeal to Public Service Appeal Board	17	
Application pursuant to s.7F re Workplace Agreement	4	
Appeal by teacher pursuant to s.23B	2	
Board of Reference - other - Awards	2	
Cancel Award	1	
Conference pursuant to s.44, including conferences referred	520	15.6
Exemptions	1	
Further and better particulars	1	
Interpretation of Award - s.46	4	
Interpretation of Agreement - s.46	2	
Joinder to Award	1	
New Award	1	
New Agreement	368	11.1
Unfair dismissal - s.29(1) (b) (i)	896 }	
Contractual entitlement s.29(1) (b) (ii)	270 }	49.6
Unfair dismissal & contractual entitlement s.29(1)(b)(i) & (ii)	486 }	
Order pursuant to s.23	1	
Order pursuant to s.80E	6	
Order pursuant to s.27	1	
Order pursuant to s.23A	1	
Produce documents	1	
Replace order	1	
Reclassification Appeal	448	13.5
Retirement from Industrial Agreement	6	
Referral pursuant to s.95(3) of the PS Management Act	1	
Variation of an Award	279	8.4
Variation of an Agreement	6	
Variation of an Order	2	
TOTALS	3329	98.2

<u>Federal Matters dealt with by Commissioners</u>	<u>Matters</u>	<u>Full Benches</u>
Chief Commissioner Coleman	1 (5 conferences)	2
Senior Commissioner Fielding	3 (2 conferences, 2 hearings)	2
Commissioner Gregor	1 (1 conference)	2
Commissioner Scott	11 (1 hearing)	
Total	16	

Variation of Organisation Rules by the Deputy Industrial Registrar 12

THE WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT

Decisions issued by the Court during this period 43

BOARDS OF REFERENCE (chaired by the Registrar)

Construction industry portability of long service leave	1
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INDUSTRIAL MAGISTRATE'S COURT

Total *complaints for period under review-

		%
Lodged	8451	
Proved	267	
Dismissed	597	
Withdrawn by leave	1805	
Alleged breaches pending	5782	68

(* includes a number of matters under Federal awards, Workplace Agreements Act, Complaint & Summons - Small Claims, Minimum Conditions of Employment Act, enforcement of Orders from WAIRC, Long Service Leave Act, Workplace Relations Act 1996, Annual Leave General Order, State awards)

Number of complaints that resulted in

Fines being imposed	151
Fines	\$7,890.00
Complaints that resulted in the awarding of costs	292
Costs (To Complainants) (289)	\$ 916.70
Costs (To Defendants) (3)	\$1,550.00

Draft regulations are still under consideration for the Industrial Magistrate's Court.

The Chief Stipendiary Magistrate has appointed two Magistrates to exercise jurisdiction in the court. Magistrate G. Cicchini on a full time basis and Magistrate W Tarr on a part time basis have been nominated.

Two major developments occurred during the financial year. Firstly the Full Bench of the WAIRC and The Federal Court of Australia confirmed that the Industrial Magistrates Court was a Court of Competent Jurisdiction and therefore has the jurisdiction to hear matters pertaining to Federal Awards, Agreements and Orders. Secondly on May 12th 1999 Magistrate G. Cicchini issued a practice direction effective from 1st June 1999 indicating that the Magistrates Court will now follow the practice and procedure applied under the Local Court Act, as provided in section 81CA of the Industrial Relations Act 1979 in relation to matters under the General Jurisdiction. In matters that pertain to the Prosecution Jurisdiction the practice and procedure of the Justices Act continues to be followed.

As a consequence as from 1st June 1999 the Clerk of the Industrial Magistrates Court has conducted Pre-Trial Conferences in relation to matters under the General Jurisdiction to facilitate the resolution of disputes without a hearing. The new process has enabled efficient use of Court time and has resulted in expeditious and cost effective resolution of disputes.

AWARDS / AGREEMENTS

Number in force as at 30th June, 1999 2071

INDUSTRIAL ORGANISATIONS REGISTERED AT 30TH JUNE, 1999

Number of organisations of employees	56
Aggregate membership	159,993
Number of organisations of employers	17
Aggregate membership	2995

FEDERAL MATTERS REFERRED TO THE COMMISSION

16

STATE MATTERS COMPLETED BY A FEDERAL COMMISSIONER (enterprise with joint State/Federal

coverage)

1

SUMMARY OF MAIN STATISTICS.

	<u>MATTERS DEALT WITH</u>		
	1996-97	1997-98	1998-99
Full Bench			
Appeals	41	35	29
Other matters	9	15	16
President sitting alone			
S.66 matters	63	14	7
S.66 Orders issued	106	46	10
S.49 (11) Matters	6	10	5
Other Matters	-	-	
S.97Q		-	2
S.72(A)(6)	-	2	1
President - Consultations under s.62	2	7	8
Commission in Court Session			
General Orders	1	1	3
Other Matters	18	21	59
Commissioners sitting alone			
Conferences	385	324	423
New Agreements	342	89	328
New Awards	4	3	1
Variation of Agreements	2	31	3
Variation of Awards	246	105	249
Other Matters	891	500	1664
Federal matters			16
Participation of dual appointees on Federal Full Bench matters			6
<u>Public Service Arbitrator:</u>			
Award/Agreement Variations	42	34	32
Conferences	81	81	96
New Agreements	52	106	60
Reclassification Appeals	1	14	447
<u>Railways Classification Board</u>			
Conferences	-	-	1
Variation of Awards	2	2	1
Variation of Agreement			1
Appeals			1
AWARDS/AGREEMENTS			
In force*	*1661	*1899	*2071
* includes Public Service Awards and Agreements and Awards applying to State School Teachers and Railway Officers.			
BOARDS OF REFERENCE			
Matters dealt with	3	2	1
INDUSTRIAL ORGANISATIONS OF EMPLOYEES			
Membership	60 177,844	57 170,578	56 159,993
INDUSTRIAL ORGANISATIONS OF EMPLOYERS			
Membership	18 3290	18 3180	17 2995

MATTERS LODGED

	1996/97	1997/98	1998/99	% 1998/99
Awards	8	2	1	
Agreements	301	353	303	8.7
Agreements - divided applications	2	6	-	
Applications	2157	2470	**2126	61
Applications - divided application files	58	13	-	
Boards of Reference	10	11	11	
Conferences	421	396	361	10.4
Conferences - divided matter	1	-	-	
Complaints	206	307	281	8.1
Conferences Referred	69	43	66	
Full Bench Appeal	*-	*-	7	
Federal Matter	9	9	16	
Industrial Agent	-	58	20	
Industrial Appeal Court	16	10	43	
Public Service Applications	39	67	32	
President Sitting Alone	*-	*-	2	
Public Service Reclassification Appeals	74	115	56	
Public Service Arbitrator Awards	1	2	1	
Public Service Arbitrator Agreements	30	120	43	
Public Service Appeal Board	9	24	11	
Public Service Arbitrator Conferences	79	77	75	
Part A - PSA Conference Divided Matter	-	1	3	
Part B - PSA Conference Divided Matter	-	-	3	
Part C - PSA Conference Divided Matter	-	-	1	
Part D - PSA Conference Divided Matter	-	-	1	
Part E - PSA Conference Divided Matter	-	-	1	
Public Service Arbitrator Conferences Referred	5	4	8	
Multi-Jurisdiction Agreement	9	11	6	
Railways Classification Board Applications	2	5	1	
Railway Classification Board Appeals	-	1	1	
Railway Classification Board Conferences	-	2	-	
Railway Classification Board Conferences Referred	-	2	-	
Workplace Agreements	1	6	7	
TOTALS	3507	4115	3487	88.2

** Of these 2126 applications, 1701 (ie 32.7 pw or 48.8% of total applications for the period) were applications relating to unfair dismissal and/or non-award entitlements.

* New code established 1/6/99.

COMMENTARY

The statutes regulating employment law in Western Australia have not been amended during the period covered by this Report. A change to Regulation 21(3) was published in the Western Australian Government Gazette on 24th July 1998 (Volume 148 page 3894). This amended the period for an answering statement from a respondent served with a claim for unfair dismissal or outstanding contractual benefits to be filed within 21 days (previously 7 days) of being served with the application.

On 29th April 1999, the Australian Industrial Relations Commission ('the AIRC') handed down its decision in the 'Safety Net Review Wages' (print R 1999). The decision included a Statement of Principles to operate until reviewed.

In summary the AIRC's decision was that:

“...

Australia's economic performance in the year since the last safety net decision has been good, as it has been since the early part of this decade. Economic and productivity growth is strong, investment has been at historically high levels and inflation has been low. The immediate economic outlook is for the most part positive.

In all of the circumstances we have decided that a safety net adjustment is warranted. To refuse or defer consideration of the Australian Council of Trade Unions' claim would run counter to our statutory obligations to have regard to the needs of the low paid and the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the Australian community. Equally, to grant the Australian Council of Trade Unions' claim in full would be inconsistent with our statutory obligation to have regard to economic factors, including levels of productivity and inflation, and the desirability of attaining a high level of employment.

Over the two years up to the end of December 1998 increases in award rates arising from safety net adjustments have not kept pace with the growth in earnings generally. Nor have they kept pace with increases resulting from enterprise agreements. The gap between income levels established as a result of bargaining and those determined by the award system has continued to widen.

We have decided on a safety net adjustment of the following amounts:

1. a \$12 per week increase in award rates up to and including \$510 per week; and
2. a \$10 per week increase in award rates above \$510 per week.

There are a number of factors which have led us to the conclusion that we should award smaller increases than were awarded in 1998. Those factors include:

- the predicted easing in economic growth;
- the predicted reduction in the level of new private investment;
- our desire not to jeopardise the emerging downward trend in the level of unemployment; and
- the amount of the increases awarded on the last occasion.

As a result of the adjustment, wages at the low levels of the award classification structure will increase broadly in line with the increase in earnings generally. The real value of wages at the higher classification levels will be maintained.

...

Consistent with our decision the federal minimum wage will be increased by \$12 to \$385.40.

...

The Commission's Statement of Principles has been modified in light of our decision. The Statement will operate until reviewed.”

(AIRC Statement Issued with the decision in the Safety Net Review 29th April 1999)

In proceedings under section 51 of the Industrial Relations Act, 1979 concluded on 4th June 1999, the Commission heard from the Minister for Labour Relations, the Trades and Labor Council of Western Australia, the Chamber of Commerce and Industry of Western Australia, the Australian Mines and Metals Association of Western Australia and the Master Builders Association of Western Australia. At that time the Commission also had before it that part of an application by the Trades and Labor Council under section 50 of the Act to abolish the Wage Fixing Principles. The Council argued that there were good reasons not to give effect to the AIRC's decision (a National Wage Case under the Industrial Relations Act, 1979). These went to the Commission's alleged lack of power to formulate principles consistent with the statutory framework of the Act given the limitations imposed by section 51(2). It was submitted that in the existing 'Statement of Principles' the Commission had erected an edifice based on the federal wage fixing system which went beyond power. It imported elements of the federal jurisdiction without the statutory protection set out in the federal statute. It was argued that the operation of the principles in this jurisdiction had promoted enterprise bargaining by effectively shutting down arbitration.

The other parties to proceedings supported the application of the AIRC's decision and the continuing operation of the Wage Fixing Principles in this jurisdiction. As far as the Chamber of Commerce and Industry was concerned, nothing had changed since the Commission's last decision in June 1998 to warrant a departure from that course. In the Chamber's view Section 51 of the Act has been shown to be flexible enough to accommodate the particular requirements of the statutory framework within which the Principles operate including the application of the enterprise bargaining principle.

The Minister for Labour Relations advocated that in giving effect to the National Wage Decision the Commission should retain the form and substance of the Statement of Principles that operated under the June 1998 decision (78 WAIG 2579 at 2584). The Minister noted that in applying the Principles established under section 51 of the Act, this Commission functions no differently from the wage fixing system under the Workplace Relations Act. There is no discretion vested in Commissioners of the AIRC not to apply the Principles. It is only a Full Bench of that Commission that can determine whether or not departure from a Principle formulated in a National Wage Decision is warranted in a particular case.

In the decision that followed these proceedings under sections 50 and 51 of the Act the Commission noted:

"The requirement on the Commission is to decide whether there are good reasons not give effect to the National Wage Decision. The point is well made by the TLC that it is the National Wage Decision to which effect is to be given and not to the Workplace Relations Act which is a legislative regime which is different to the Industrial Relations Act. The National Wage Decision includes the Principles which encourage enterprise outcomes and limits the extent to which labour costs can be increased or decreased beyond the level established by the award safety net except in accordance with those Principles. We have not viewed the submissions of the TLC as urging this Commission to totally abandon the current wage fixing system in this State. In any event we are not prepared to do so on this occasion. Rather, the TLC urges a view that s.51 is too restrictive upon the proper exercise of the Commission's discretion.

In our view, the power in section 51(2) to give effect to the National Wage Decision in such manner and subject to such conditions as the Commission considers appropriate is wide enough to formulate principles which are consistent with the statutory framework of the Act. We think that it is important to recognise that such principles should not prevent the exercise of the Commission's jurisdiction.

If there are not good reasons not to give effect to the National Wage Decision then the differences between the federal principles and the Commission's current Statement of Principles would require changes to the current Statement of Principles. The absence of a Preamble in the federal principles suggests that the Preamble in the current Statement of Principles should be deleted and we do so. References within the federal principles to the Workplace Relations Act and to the federal award simplification process have no place in the statutory framework of the Act. In giving effect

to the National Wage Decision we would not include such references in any principles to issue. We note that the National Wage Decision does not contain an Enterprise Bargaining Principle whilst there is such a principle in the Commission's current Statement of Principles. We consider that the evidence that that principle has not operated satisfactorily together with the statutory regime of the Act in relation to enterprise bargaining means that it is not appropriate for there to continue to be such a principle in this jurisdiction.

The Act provides for the registration of enterprise agreements without reference to wage fixing principles (section 41). Since the establishment of the Enterprise Bargaining Principle no parties have jointly come to the Commission to have an issue arbitrated to facilitate a wider agreement being reached. Noticeably no public sector employer has ever agreed to arbitration under the Enterprise Bargaining Principle. Only once have parties in the private sector had recourse to arbitration under this Principle. Indeed all of these matters have attracted consideration under the same terms as the Special Case Principle, the criteria for which replicates the terms of section 26 of the Act and in particular section 26(1)(d).

Section 44 of the Act facilitates the process of enterprise bargaining. The distinction between whether or not parties come before the Commission by agreement under the existing terms of the Enterprise Bargaining Principle is artificial. If the parties so wish section 44(12a) provides a facility for issues collateral to a wider agreement being determined when conciliation has failed to resolve the matter. The statutory framework within which enterprise bargaining takes place is already regulated by the requirements of dispute resolution procedures (section 49A). This ensures that issues are addressed in the first instance by the parties. Recourse to arbitration necessarily attracts consideration of matters identified under section 26 of the Act including the extent to which any change in productivity has occurred or is likely to occur.”

(79 WAIG 1847 at 1848)

In giving effect to the National Wage Decision the Commission noted that:

- the award safety net is the linchpin of the wage fixing system.
- with the abolition of the Enterprise Bargaining Principle and the operation of section 26 of the Act without the necessity for recourse to the Special Case Principle, it is considered that the objects of the Act will be realised together with the continuing commitment to the centralised wage fixing system which promotes enterprise bargaining and limits outcomes above and below the award safety net.
- there are difficulties being faced under enterprise bargaining in the public sector where employers are not permitted to have negotiated outcomes outside predetermined limits established by Government. Together with this is the problem of measuring productivity outcomes for services. The Commission gave notice that if the operation of the wage fixing system promoted under the Statement of Principles inhibits the realisation of the objects of the Act and thereby thwarts good industrial relations, then that will be sufficient reason not to give effect to the National Wage Decision on the next occasion.

Under the terms of the General Order that issued pursuant to section 51 of the Act following the hearing in June 1999, wages were to be varied for \$12 per week in award rates up to and including \$510 per week and \$10 per week in award rates above \$510 per week (from the first pay period commencing on or after 1st August 1999). These increases were subject to the same requirements with respect to absorption that applied under safety net adjustments determined in previous State Wage Cases.

The following tables illustrate the continuing impact of applications under section 29(1)(b) of the Act (claims for unfair dismissal section 29(1)(b)(i), claims for denied contractual benefits (section 29(1)(b)(ii) and section 29(1)(b)(i) and (ii) a combination of both.).

SECTION 29(1)(b)(i), 29(1)(b)(ii) AND 29(1)(b)(i)&(ii) MATTERS LODGED

	1996/97	1997/98	1998/99	%
s29(1)(b)(i)	1045	1203	899	52.9
s29(1)(b)(ii)	284	342	299	17.5
s29(1)(b)(i)&(ii)	361	578	503	29.6
TOTALS	1690	2123	1701	100.0

BY QUARTER	1996/97	1997/98	1998/99
1 st quarter	276	543	458
2 nd quarter	371	577	413
3 rd quarter	539	534	403
4 th quarter	504	469	427
TOTALS	1690	2123	1701

SECTION 29(1) MATTERS FINALISED DURING 1996-97, 1997-98 AND 1998-99 FINANCIAL YEARS

	1996-97	1997-98	1998-99	%
s29(1)(b)(i)	712	1097	954	54%
s29(1)(b)(ii)	231	269	300	16.9%
s29(1)(b)(i)&(ii)	221	460	519	29.1%
TOTALS	1164	1826	1769	100%

BY QUARTER	1996-97	1997-98	1998-99
1 st quarter	145	514	499
2 nd quarter	273	430	366
3 rd quarter	350	442	347
4 th quarter	396	440	557
TOTAL	1164	1826	1769

	Section 29(1)(b)(i) Unfair Dismissal	Section 29(1)(b)(ii) Contractual Benefits	Section 29(1)(b)(i) & (ii) combined applications	Totals
Arbitrated Claims in which orders issued	162	61	76	16.9%
Settled after proceedings before the Commission (investigated and conciliation)	566	137	319	57.8%
Matters withdrawn before proceedings commenced (allocated)	226	102	120	25.3%
TOTALS	954	300	515	100%

In 1997-98, 81.4% of claims were resolved without recourse to arbitration. This rate was marginally higher in 1998-99 at 83.1%.

In 1998/99 information on 1701 applications finalised were reviewed to ascertain details of employment the following statistics were compiled:

Wage Rate	total	%
Less than \$200 p/w incl	55	3.2
More than \$200 p/w & up to & incl. \$300 p/w	107	6.3
More than \$300 p/w & up to & incl. \$400 p/w	154	9.1
More than \$400 p/w & up to & incl. \$500 p/w	235	13.8
More than \$500 p/w & up to & incl \$600 p/w	186	10.9
More than \$600 p/w & up to & incl \$700 p/w	151	8.9
More than \$700 p/w & up to & incl. \$800 p/w	103	6.1
More than \$800 p/w	392	23.0
Nil or indeterminate response	318	18.7
TOTAL	1701	100.00

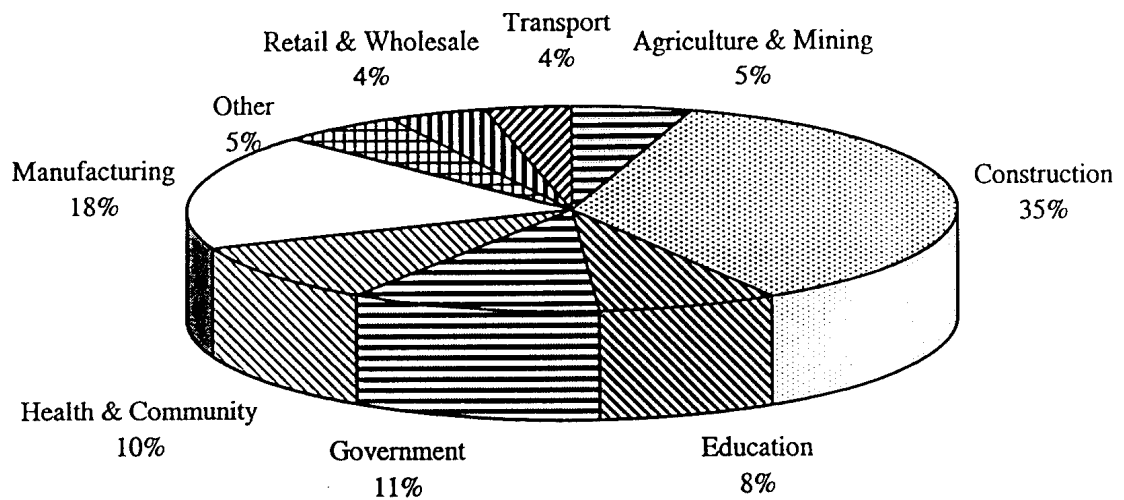
Period of employment	total	%
Less than 1 Month	3	0.16
1 Month	111	6.53
More than one month to 3 Months	198	11.64
More than 3 months to 6 Months	193	11.35
More than 6 Months and up 12 Months	224	13.17
More than 12 months and up to 24 months	237	13.93
More than 24 Months and less than 36 Months inclusive	118	6.94
More than 36 Months	334	19.64
Nil or indeterminate response	283	16.64
TOTAL	1701	100.00
Category of employment	total	%
permanent full time	741	43.56
permanent part time	28	1.65
casual full time	29	1.71
casual part time	11	0.65
casual	144	8.46
full time	448	26.33
part time	53	3.12
other	46	2.70
No response	201	11.82
TOTAL	1701	100.00
No of times Award Coverage identified		%
Response	507	29.8
Nil or indeterminate response	1194	70.2
TOTAL	1701	100.00

On 21st April 1999 the Commission held a public hearing to receive submissions from persons and organisations interested in expressing views on the recommendation to be made under section 14 of the Minimum Conditions of Employment Act 1993.

The current Minimum Weekly Rates of Pay Order 1998 was gazetted on 7th December 1998 (Western Australian Government Gazette No. 239). The current rate of pay for an employee who is 21 or more years of age is \$346.70 per week under that Order. The Minimum Conditions of Employment Act 1993 provides that the Minister shall not publish a Minimum Weekly Rates of Pay Order any sooner than twelve months from the date of the previous determination. The significant delay between the statutory requirement for the Commission's recommendation to be forwarded to the Minister by the 31st May and the determination that can be made under the Pay Order no sooner than December 1999 renders the Commission's position irrelevant.

As things stand, following the Commission's decision to give effect to the April 1999 National Wage Decision, the adult minimum award wage is \$385.40 per week; the wage rate pursuant to the current Minimum Conditions of Employment Act 1993 is \$346.70 per week. The issue of the timing of the determination pursuant to the Minimum Conditions of Employment Act has been pointed out to the Minister with a view to establishing arrangements for the Commission's recommendation to be presented just prior to the Pay Order being considered.

In the review period 368 agreements were registered. Information made available to the Commission by the Minister in the course of the State Wage Case hearing shows the proportion of Section 41 agreements per industry in this State (based on registrations from January 1994 to March 1999).



(Reference: 1999 State Wage Case (No 812 of 1998(B) and 609 of 1999) – Minister for Labor Relations Exhibit 3 Figure 7H).

The increase in the number of conferences under section 44 of the Act during 1998/99 (up to 423 from 324 last year), reflects the Commission's involvement in conciliating issues associated with enterprise bargaining. This is particularly the case in the public sector where the second and third round of enterprise agreement negotiations have become more complex. Under Government Wages Policy and Workplace Bargaining Guidelines agencies "are required to demonstrate an improvement in the ratio between the quantity of inputs and the quantity of outputs in bargaining". Productivity measurements being utilised in the public sector include the 'Milestone approach' ie the use of separate productivity measures to determine the performance of the organisation. A task milestone is the achievement of a number of key tasks or organisational changes which lead to productivity increases.

Other productivity measurement approaches are the 'balanced score card' (here 4 or 5 key operational outputs or outcomes reflect the overall performance of the organisations); the 'matrix model' (a number of key performance/output measures are weighted and combined in a manner to produce a single productivity index); and the 'econometric model' such as Total Factor productivity (a measure of all inputs and measurable outputs of an organisation combined to produce a single productivity improvement matrix) (Reference: Exhibit Book C State Wage Case 1999 – Minister for Labour).

At times the acceptance of these productivity measurement models for the purpose of an enterprise agreement has been difficult. The experience of parties in the Ministry of Justice attests to this. There a matrix approach to measure productivity outcomes has been implemented by management. It was not accepted by the Civil Service Association and the enterprise outcome is to be determined by arbitration.

Economic growth of Western Australia continued to ease in the first half of 1999 with a pick up expected later this year. In line with this level of overall activity employment growth has eased from a peak of 3.2% in the year to March 1999 to 2.5% in the year to June 1999. Notwithstanding this, there was sufficient growth to bring unemployment down from 7.2% in June 1998 to 6.4% in June 1999. (Western Australian Economy Summary – June Quarter 1999).

In the State Wage Case and in other hearings the Commission has been alerted to concern about the level of investment in this State. Although it is acknowledged that quarterly investment figures are notoriously volatile, the drop in the number of resource projects being commenced and the increase in those being deferred has given rise to a cautious outlook. Against this has been the better than expected recovery in the East Asian export markets.

Within this economic environment enterprise bargaining has continued to be the focus for wage fixing. Enterprise outcomes have generally remained within the Reserve Bank Wage targets (3.5% -4.5%).

The Statement of Principles under which the wage fixing system operates in this State is now less prescriptive. The test will be whether the same discipline that has characterised the wage fixing system for the past decade is capable of being maintained.

To ensure that the resources at its disposal are being used efficiently and to maximise cost effectiveness without compromising its independence, the Commission has surveyed the use of Court Rooms and Conference facilities. Existing accommodation is being modified to convert a small Court Room into a large conference room.

I express my sincere appreciation to my colleagues, Mr John Spurling, Registrar of the Commission and to his staff and members of the court reporting service for their efforts over the year.

Chief Commission W.S. Coleman
28th September 1999