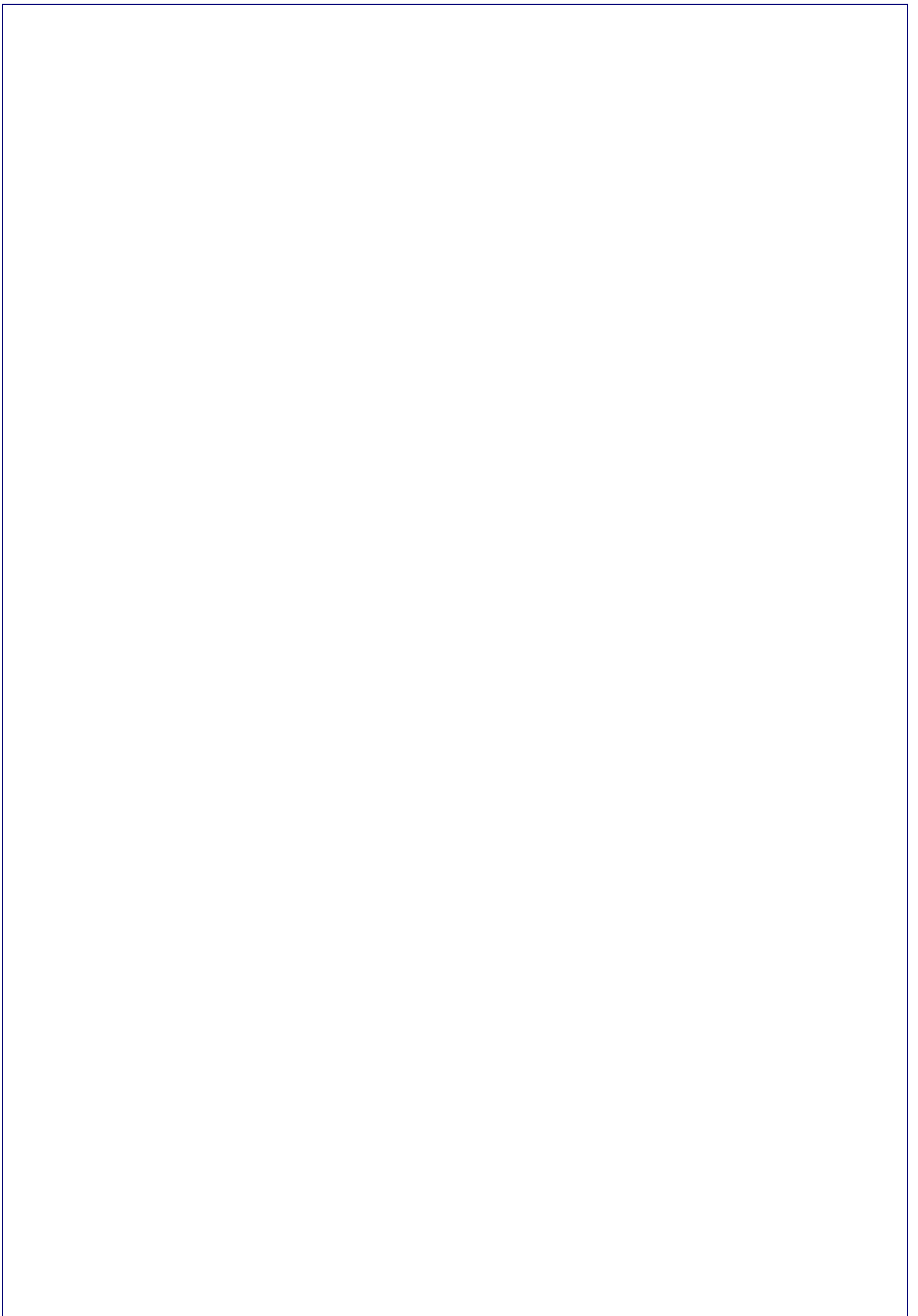


WESTERN AUSTRALIA



FORTY FIRST ANNUAL REPORT
OF
THE CHIEF COMMISSIONER
OF THE
WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION
FOR THE PERIOD
1 JULY 2003 TO 30 JUNE 2004

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



2004

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 2003 to 30 June 2004

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 30th June 2004, the Commission was constituted by the following members:

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

Public Service Arbitrators

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

Commissioner J L Harrison was appointed as an additional Public Service Arbitrator for one year on 19 April 2004.

Senior Commissioner A R Beech was appointed as an additional Public Service Arbitrator for one year on 21 May 2004.

Commissioner S J Kenner was appointed as an additional Public Service Arbitrator for one year on 21 May 2004.

Coal Industry Tribunal of Western Australia

Commissioner S J Kenner continued as Chairperson of the Coal Industry Tribunal following the appointment on 24 December 2002.

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.

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, Mr K McCann, Mr D McLane, 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 of the following members from 1 July 2003 to 30 November 2003:

The Honourable Justice Anderson	Presiding Judge
The Honourable Justice Scott	Deputy Presiding Judge
The Honourable Justice Parker	Ordinary Member
The Honourable Justice Hasluck	Ordinary Member

Acting Ordinary Members:

The Honourable Justice McKechnie	1 – 31 July
The Honourable Justice EM Heenan	1 – 31 July, 1 – 30 November

The Western Australian Industrial Appeal Court was constituted of the following members from 1 December 2003 to 30 June 2004:

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

Acting Presiding Judge:

The Honourable Justice Pullin	1 – 30 June
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Acting Ordinary Members:

The Honourable Justice McKechnie	1 – 31 December
The Honourable Justice Le Miere	1 – 30 June

INDUSTRIAL MAGISTRATES

During the reporting period, Industrial Magistrates Mr G Cicchini SM, Mr WG Tarr SM and Mr RH 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	21
Senior Commissioner A R Beech	20
Commissioner J F Gregor	14
Commissioner P E Scott	8
Commissioner S J Kenner	5
Commissioner J H Smith	13
Commissioner S Wood	10
Commissioner J L Harrison	7

The following summarises Full Bench matters:-

APPEALS

Heard and determined from decisions of the:-

Commission	33
Industrial Magistrate	5
Coal Industry Tribunal	1
Public Service Arbitrator	2
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	5
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	0
Applications for cancellation/suspension of registration of organisations pursuant to s 73	1

OTHER

Proceedings for enforcement pursuant to s 84A brought by the Minister, or another person or organisation	0
Questions of law referred to the Full Bench	1
Matters remitted by the Industrial Appeal Court	0
Applications for extension of time to file Notice of Appeal	5

ORDERS

Orders issued by the Full Bench	51
---------------------------------	----

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)	10
--	----

Applications for an order, declaration or direction pursuant to s 66	4
--	---

The following summarises s 66 applications:-

Applications finalised in 2003/2004	6
Directions hearings	4
Applications part-heard	0
Applications withdrawn by order	0
Applications discontinued by order	1

ORDERS

Orders issued by the President from 1 July 2003 to 30 June 2004 inclusive:-

S 49(11)	11
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	6
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3. COMMISSION IN COURT SESSION

During the period under review the Commission in Court Session has been constituted 14 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 W S Coleman	11
Senior Commissioner A R Beech	10
Commissioner J F Gregor	2
Commissioner P E Scott	4
Commissioner S J Kenner	2
Commissioner J H Smith	5
Commissioner S Wood	5
Commissioner J Harrison	3

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

State Wage Case – s 51	1
General Order – s 50	3
New Award	0
New Agreement	0
Variation of an Award	6
Conference pursuant to s 44	1
Production of Documents	2
Section 97YI Review	1

4. FEDERAL MATTERS

Federal matters dealt with by a State (WAIRC) Commissioner	1
State matters dealt with by a Federal (AIRC) Commissioner	0

5. RULE VARIATIONS BY REGISTRAR

Variation of Organisation Rules by the Deputy Registrar (Designate)	5
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6. BOARDS OF REFERENCE

Construction Industry Portable Paid Long Service Leave Act 1985	5
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7. INDUSTRIAL AGENTS REGISTERED BY REGISTRAR

Number of Agents registered in this period	10
Total number of agents registered as corporate body	36
Total number of agents registered as individuals	37
Total number registered as at 30 June 2003	73

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
2002	2359
2003	2499
2004	2506

INDUSTRIAL ORGANISATIONS REGISTERED AS AT 30 JUNE 2004

	Employee Organisations	Employer organisations
Number of organisations	51	17
Aggregate membership	150,039	3210

SUMMARY OF MAIN STATISTICS

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

	MATTERS DEALT WITH			
	2000-2001	2001-2002	2002-2003	2003-2004
Full Bench				
Appeals	56	53	52	41
Other matters	7	7	6	13
President sitting alone				
S 66 matters (finalised)	4	19	17	6
S 66 Orders issued	4	24	32	11
S 49(11) Matters	12	8	9	10
Other Matters	1	0	0	5
S 97Q	0	0	0	0
S 72(A)(6)	2	0	0	0
Consultations under s 62	5	8	2	6
Commission in Court Session				
General Orders	2	2	1	3
Other Matters	15	15	1	8
Public Service Appeal Board				
Appeals To Public Service Appeal Board	29	10	15	17
Commissioners sitting alone				
Conferences ¹	379	368	370	387
New Agreements	346	287	203	275
New Awards	7	4	5	14
Variation of Agreements	19	0	0	2
Variation of Awards	298	271	231	175
Other Matters ²	35	53	71	76
Federal matters	4	5	9	1
Board Of Reference - Other Awards (Chaired by a Commissioner)	7	4	0	2
Unfair Dismissal Matters Concluded				
Unfair Dismissal claims	1064	1137	856	761
Contractual Benefits	322	297	233	236
Unfair Dismissal & Contractual Benefits	605	534	539	470
Public Service Arbitrator:				
Award/Agreement Variations	33	20	32	21
New Agreements	37	44	56	15
Orders Pursuant to s 80E	21	28	30	0
Reclassification Appeals	18	19	85	105
Railways Classification Board				
Variation of Awards	0	0	0	0
Variation of Agreement	0	0	0	0
Appeals	0	0	0	0
TOTALS	3332	3217	2855	2660

Notes

¹ CONFERENCES	2000-2001	2001-2002	2002-2003	2003-2004
Conferences (s 44)	298	274	263	249
Conferences Referred For Arbitration	58	58	39	55
PSA conferences	19	33	57	63
PSA conferences referred	4	2	11	18
Conferences divided	0	0	0	0
Conferences referred and divided	0	0	0	2
PSA conference divided	0	1	0	0
Railways Classification Board	0	0	0	0
TOTALS	379	368	370	387

² OTHER MATTERS	2000-2001	2001-2002	2002-2003	2003-2004
Applications	30	40	48	52
Apprenticeship Appeals	0	1	2	0
Occupational Health Safety & Welfare	0	0	0	0
Public Service Applications	0	5	12	24
Teacher Applications	0	0	0	0
Workplace Agreements	5	7	9	0
TOTALS	35	53	71	76

WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT

Decisions issued during the period 10

INDUSTRIAL MAGISTRATE'S COURT

The following summarises the proceedings in the Court for the period under review.

Lodged Claims 03/04	234
Complaints Lodged 03/04	1
Resolved	201
Resolved but lodged in another financial period	99
Pending	122
Total number of penalties 03/04	14
Total value of penalties	\$21,100
Total number of claims/complaints resulting in disbursements	28
Total value of disbursements awarded	\$19,386.77
Claims/Complaints resulting in awarding wages	30
Total value of wages	\$331,151.63
Interest	\$663.37

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.

COMMENTARY

1. LEGISLATION

The final amendments to the *Industrial Relations Act 1979* (“the Act”) effected by the *Labour Relations Reform Act 2002* became operative on 15 September 2003 when s 113 of the *Labour Relations Reform Act 2002* came into operation. Section 113 repealed all references in the Act to the *Workplace Agreements Act 1993*. Section 113 also provides for transitional arrangements in respect of matters referred under s 7F prior to the repeal of Part 1A. Section 113 repealed the requirement in Schedule 1 of the Act to publish in the Industrial Gazette any decision or reasons for decision for complaints of offences.

On 25 July 2003 the *Police Amendment Act 2003* came into operation. This Act provides for appeals to the Commission where the Commissioner of Police has taken action to remove a Police Officer. On 27 August 2003 s 113 of the Act was amended on proclamation of s 10 *Police Amendment Act 2003*. The amendment enables the Commission to make regulations to regulate the practice and procedure to be followed in relation to appeals to the Commission under s 33P of the *Police Act 1892*.

The *Acts Amendment (Equality of Status) Act 2003* came into operation on 1 July 2003. The *Acts Amendment (Equality of Status) Act 2003* amended the Act and the *Minimum Conditions of Employment Act 1993* by deleting references to “defacto spouse” and other such references and substituting references to “defacto partner”. These amendments had the effect of creating equality in status for single sex couples in relation to heterosexual couples for a number of matters including rights to parental leave, bereavement and carer’s leave.

The *Legal Practice Act 2003* became operative on 1 January 2004. This Act repealed and replaced the *Legal Practitioners Act 1893*. Section 41 of the *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003* amended the references in the Act from *Legal Practitioners Act 1893* to the *Legal Practice Act 2003*. Section 123(2)(c) of the *Legal Practice Act 2003* authorises persons other than legal practitioners to appear before a court or to provide advice or services where that appearance or provision of advice or services is authorised by a written law. This provision re-enacts the repealed s 77A of the *Section Legal Practitioners Act 1893*. Under the Act registered organisations, the Chamber of Commerce and Industry, The Trades and Labour Council, the Mines and Metals Association and registered industrial agents are authorised to appear before the Commission and to provide advice and other services. Section 203 of the *Legal Practice Act 2003* however prohibits any legal practitioner who has been struck off the Roll of Practitioners or suspended from practice from engaging in legal practice including presenting any person in a statutory tribunal or a court until the legal practitioner has been re-admitted or the period of suspension has elapsed. After the *Legal Practice Act 2003* became operative the Commission in *Enright v Sleepzee Bedding Australia Pty Ltd & Others* (2004) 84 WAIG 305 held that where a person who is authorised to appear in the Commission under s112A of the Act if that person has been struck off the Role of Practitioners that person is not entitled to appear in the Commission under s.31 of the Act.

Section 68 of the *Statutes (Repeals and Minor Amendments) Act 2003* came into operation on 15 December 2003. Section 68 amended s 71(1) of the Act which relates to the rules of State branches of Federal organisations. The amendment deleted the reference to employees in the definition of “State organisation” in s 71, so that the definition provides that an organisation that is registered under Division 4 of Part II (of the Act). The amendment is to allow employer organisations as well as employee organisations to take advantage of the provisions that allow an organisation which has a federal counterpart to have one set of elections for the offices in both organisations. Section 68 of the *Statutes (Repeals and Minor Amendments) Act 2003* also amended s 65 of the Act which provides for audit information that must be provided to the Registrar each year by the secretary of each registered organisation. “Sources and applications of funds statements” are now referred to by the Australian Accounting Standards Board as “cash flow statements”. This amendment makes the reference in s 65 of the Act consistent with that terminology.

2. STATE WAGE CASE

On 5th May 2004 the Australian Industrial Relations Commission (the “AIRC”) handed down its decision in the Safety Net Review – Wages Case [*Print PR002004*].

The matter arose out of a claim by the Australian Council of Trade Unions (“the ACTU”) for an increase of \$26.60 per week in the Award Safety Net rates of pay and commensurate adjustments in wage-related allowances.

On the basis of their statutory requirements and consistent with the principal objects of the *Workplace Relations Act 1996*, the AIRC decided to award an increase of \$19 per week in all federal award rates.

The Commission received submissions from the Honourable Minister for Consumer and Employment Protection, the Australian Mines and Metals Association, the Trades and Labor Council of Western Australia and the Chamber of Commerce and Industry Western Australia. It also heard from the Western Australian Fruit Growers' Association and the Australian Hotels & Hospitality Association (Inc.) Union of Employers. A written submission was received from the Combined Small Business Alliance of Western Australia Inc.

The Commission noted that the strength of the Australian economy is amplified in Western Australia's economic performance.

From information based on the Western Australian 2004-05 Budget released on 6th May 2004 the Department of Treasury and Finance reported:

“Economic activity in Western Australia is expected to grow at its strongest rate in almost a decade in 2004-05, underpinned by a record level of business investment and an associated flow on to private consumption expenditure. Overall, Gross State Product (GSP) is expected to grow by 6.7% in 2003-04, which would represent the largest annual increase since 1994-95.

Growth in GSP is forecast to remain robust at 4.5% in 2004-05. The anticipated moderation in growth from the high levels in 2003-04 is largely due to growth in domestic activity easing, as business investment consolidates at near record levels and the dwelling sector experiences a slight downturn. Net exports are forecast to be the main contributor to GSP growth in 2004-05, as increased production from the current wave of business investment drives a sizeable increase in exports.

In 2005-06, the economy is forecast to grow by 4.0%, which is about the long-term average. Growth in the domestic economy should strengthen slightly, while current expansions in production capacity should continue to provide a fillip to growth in net exports.”

MAJOR ECONOMIC AGGREGATES

Western Australia

	2002-03 Actual %	2003-04 Estimate %	2004-05 Budget Estimate %	2005-06 Forward Estimate %	2006-07 Forward Estimate %	2007-08 Forward Estimate %
Real Gross State Product Growth	3.9	6.75	4.5	4.0	4.0	4.0
State Final Demand Growth	7.1	7.5	2.25	2.5	3.75	3.75
Employment Growth	2.5	1.75	2.25	2.25	2.25	2.25
Unemployment Rate	6.0	6.0	5.75	5.75	5.75	5.75
Wages Growth ^(a)	3.7	3.75	3.25	3.25	3.25	3.25
Consumer Price Index Growth	2.7	2.25	2.0	2.5	2.5	2.5
Implicit Price Deflator Growth	1.5	1.75	2.25	2.25	2.25	2.25
(a) Wages growth refers to the wage cost index						

(Western Australian 2004-05 Budget Report page 2)

In supplementary information which updated the March 2004 publication by the Chamber of Commerce and Industry of WA (“the Chamber”) “Economic Compass Primary and Construction Industry Special” the following was noted:

“Wages in WA (as measured by the wage cost index) increased by 3.7 per cent in 2002-03 – the highest rate of annual growth since the series began in 1998-99. The increase in WA was higher

than the national average in 2002-03 (3.5 per cent) and reflects the State's tight labour market where in some sectors, skills shortages are becoming problematic".

(Economic Compass Primary & Construction Industry Special CCI Exhibit 1)

The Chamber also noted that in the year to March 2004 Perth recorded the second lowest rate of inflation (1.6%) of all Australian capital cities. Since late in 2002 annual inflation in Perth has been running well within the Reserve Bank of Australia's target band of two per cent to three per cent. There is little sign of any short term threat of rising prices. However, the Commission noted that if recent jumps in crude oil prices are maintained, this will affect the consumer price index.

The Commission noted that with the release of "Labour Force" (ABS 6202.0) by the Australian Bureau of Statistics on 13th May 2004, Western Australia registered an unemployment rate of five per cent. This figure was the lowest since the Australian Bureau of Statistics Labour Force surveys began in 1978. The five per cent unemployment rate in Western Australia is the lowest rate of all the States.

The Commission stated:

"Consistent with the dictates of sections 26(1)(c), (d)(i), (ii), (iii) and (iv) of the Act there is nothing which prompts us not to be satisfied to give effect to the National Wage Decision in this State. In doing so the Commission maintains the focus that the wage fixing system has on enterprise bargaining through the retention of the Statement of Principles in its present terms. With this focus and the requirement for absorption of the arbitrated safety net adjustment into above-award payments, the balance between promoting enterprise bargaining as a means of realising increases in productivity and addressing the fairness to employees in industries and enterprises unable to negotiate wage bargained outcomes is achieved. This approach also accommodates the requirement to address the statutory considerations set out in sections 26(1)(d)(v), (vi) and (vii) of the Act.

Nothing was put by the parties from whom the Commission is required to hear under section 50(10) of the Act that there was anything that should prevent the Commission from being satisfied not to give effect to the National Wage Decision. Furthermore, it was common ground that the Statement of Principles to issue should be unchanged save for provision to give effect to the arbitrated safety net adjustment.

There were, however, several matters particular to the application of the National Wage Decision in this jurisdiction to which the Commission's attention was drawn by the parties.

The Minister for Consumer and Employment Protection ("the Minister") and the Trades and Labor Council ("the TLC") foreshadowed support for the establishment of a pay equity principle. Although the issue is before the Commission in separate proceedings under section 40B of the Act, the Minister advises that a review of the gender pay gap in Western Australia has been initiated by the Government. The review is expected to be completed by September this year. The outcome of that review will dictate what course the Minister will propose.

The TLC also awaits the outcome of the gender pay review. However, the TLC believes that the Commission should undertake a review of the Wage Fixing Principles in the light of the operation of the Act as amended by the *Labour Relations Reform Act, 2002*. This would include the issue of pay equity.

From the viewpoint of the Chamber there is a fundamental weakness in the approach taken in the National Wage Case. It is based on a macro-economic perspective of the Australian economy; this ignores the position of small and medium business. The \$19.00 per week is an annual impost in excess of \$1,000 for each employee paid the minimum adult award wage. Small businesses cannot simply increase prices to off-set the arbitrated safety net adjustment. Furthermore, there is no requirement for the wage increase to be conditional upon or accompanied by efficiencies in State Awards.

The Chamber also notes that the "legislative imperative" to give effect to the wage increase under the National Wage Decision within 30 days of the date of the AIRC decision places employees in this State in an advantageous position compared with their federal counterparts. Under federal awards the arbitrated safety net adjustment is on the basis of "award by award" applications. While on this occasion it will have been twelve months since the last arbitrated safety net increase with a General Order operative on the thirtieth day after the National Wage Decision was handed down, that may not necessarily be the case next year. The aggregate effect of the increase in this

State is immediate. Under the federal system there is a “pipeline effect” of the impact of the arbitrated safety net adjustment.

Consistent with the time limit available under the Act for the application of the National Wage Decision, it was common ground between the parties that the Commission should give effect to the \$19.00 per week increase on and from 4th June 2004. The application of this adjustment establishes the Minimum Adult Award Wage at \$467.40 per week.”

In giving effect to the National Wage Decision with the application of the arbitrated safety net adjustment of \$19.00 per week to operate on and from the 4th June 2004, the Commission noted that:

- Arbitrated safety net adjustments are to be absorbed under the same terms as previous arbitrated safety net adjustments; and
- The Statement of Principles June 2003 is to be varied to give effect to the arbitrated safety net adjustment. No further variations are required.

3. STATUTORY MINIMUM WAGE

Under section 51E(1) of the Act each time the Commission considers a National Wage Decision it is required to review the minimum weekly rates of pay under the *Minimum Conditions of Employment Act 1993* as amended (“the MCE Act”).

By section 51D(a) of the Act the Commission is to review the minimum weekly rate of pay applicable under section 12 of the MCE Act to employees who have reached 21 years of age and who are not apprentices or trainees. The Order which issues under section 51F(1) of the Act has effect at the same time as the General Order that was made following the Commission’s consideration of the National Wage Decision.

The minimum weekly rate of pay for these employees under section 12 of the MCE Act of \$448.40 per week was established with effect on and from 5th June 2003 ((2003) 83 WAIG 1918). At that time parity was established with the Minimum Adult Award Wage which resulted from the 2003 arbitrated safety net adjustment under the 2003 State Wage Case.

The Western Australian Fruit Growers’ Association (“the WAFGA”) responded to the public notice inviting interested parties to be heard in the 2004 State Wage and Minimum Wage Case. A thoughtful submission on the plight of fruit growers and on the impact that increases in minimum adult wages has on the industry was presented to the Commission.

The Minister and the TLC strongly supported the continuing alignment of the statutory adult minimum wage with the minimum adult award wage. On this basis the rate pursuant to section 12 of the MCE Act would increase from \$448.40 per week to \$467.40 per week in line with the arbitrated safety net increase of \$19.00 per week.

The Australian Mines & Metals Association (“the AMMA”) did not oppose the statutory minimum adult wage being increased by \$19.00 per week. The Chamber stated that it “recognises the Commission’s past approach and on that basis does not intend to seek to divert the Commission on this occasion.” However, the Chamber maintained the position it has previously stated that there is no requirement for the statutory minimum wage to be aligned with the award minimum wage.

The Commission noted that:

“Total employment in Western Australia stood at 993,400 as at April 2004. Employment growth is expected to strengthen in the second half of 2003-04 in line with strong economic growth. In this respect employment grew by 0.5% in March 2004. The Department of Treasury and Finance’s submission prepared and submitted on behalf of the Minister states:

“Over the year to March 2004, there has also been a change in the composition of the workforce. In annual terms, employment grew by 1.7% with a noticeable movement away from part time employment towards full time employment, consistent with a strengthening labour market. Full time employment increased by 3.4% over the year to March 2004. In comparison, part time employment fell by 2.1%.

Anecdotal evidence suggests labour shortages are still apparent. This appears to be a result of moderate population (and therefore lower labour force) growth and the already low unemployment rate. The Department of Employment and Workplace Relations’ skilled

vacancy index shows demand for skilled labour in Western Australia is significantly higher than at the national level.”

(Minister’s Exhibit 1, Tab 2, Department of Treasury & Finance Report – WA Economic Context and Impacts at page 10)”

The Commission determined:

“On what is before us on the state of the national economy and in Western Australia, including the labour market and the level of inflation, we consider that it is in the interests of the community as a whole that the statutory minimum adult wage be increased to \$467.40 per week, with effect on and from the 4th June 2004. In determining this rate we have at this time maintained the alignment with the minimum adult award wage.”

4. MINIMUM RATE FOR AWARD APPRENTICES 21 YEARS AND OVER

The current minimum award rate of \$406.70 per week for adult apprentices was “phased-in” by General Order under section 50(2) of the Act dated 28th October 2003 ((2003) 83 WAIG 3555).

The rate of \$406.70 per week was effective from the beginning of the first pay period commencing on or after 30th April 2004.

The “phasing-in” arrangement saw the minimum adult apprentice award wage move from \$406.70 per week established under State Wage Case General Order pursuant to section 51 of the Act from 5th June 2003 ((2003) 83 WAIG 1922) back to \$285.00 per week from the beginning of the first pay period commencing on or after 1st November 2003. The rate was subsequently increased to \$315.00 per week from the beginning of the first pay period commencing on or after 31st January 2004. As stated the rate of \$406.70 per week was re-established at the end of April 2004.

In the reasons for decision the Commission noted:

“The circumstances which gave rise to the determination of the minimum award rate for adult apprentices under the 2003 State Wage Case and it subsequently being revised by a General Order under section 50(2) of the Act are set out in the Commission’s reasons for decision dated 21st October 2003 in Matter No. 1197 of 2003 ((2003) 83 WAIG 3537). These were reiterated in the written submission presented by the Chamber in the present proceedings. It is sufficient to say that the prescription of the minimum rate under the General Order that issued from the 2003 State Wage Case for adult apprentices under awards, arose out of a misunderstanding. Indeed, as the Chamber points out there was nothing in the 2003 National Wage Case which established the basis upon which any change in the rate of wages for adult apprentices could be made. There was simply no reference to that classification of apprentice. This remains the case under the National Wage Decision of May 2004.

Notwithstanding how the rate was initially established by the General Order pursuant to section 51 of the Act and revised by the General Order under section 50(2) of the Act in October 2003, the Chamber submits that in line with the undertaking it gave to the Minister when the phasing-in arrangement was concluded, the rate of \$406.70 per week should not now be removed from awards, although it considers it is within the Commission’s power to do so. Nor should the rate be varied by reference to section 51F of the Act. The Chamber submits that the situation which should prevail is that which the Commission recognised in October 2003:

“The determination of a minimum wage for apprentices 21 years and over is not intended to derogate from parties to an award the ability to establish a wage regime for apprentices operating in their particular industry. Indeed, that opportunity has always been open to parties. It remains so.”

((2003) 83 WAIG 3537 at 3547, para 48)”

The Commission recognised that, in the absence of a provision for an adjustment to the wage for adult apprentices in the National Wage Decision, the minimum adult apprentice award wage rate cannot be adjusted under section 51 of the Act. The Commission must have recourse to section 51F through the review under section 51E and in accordance with section 51G of the Act.

The Commission determined that the minimum award wage for adult apprentices 21 years and over will remain at \$406.70 per week at this time.

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

By section 51D(b) and (c) of the Act the Commission is required to review the minimum weekly rate or rates of pay applicable under section 14 of the MCE Act to apprentices and the minimum rate or rates of pay applicable under section 15 of the MCE Act to trainees. In accordance with section 51E of the Act the review is to be undertaken when the National Wage Decision is considered under section 51(2) of the Act.

Of particular importance when considering matters under section 26 of the Act is the effect that wage increases will have on the level of employment of apprentices and trainees.

The Commission noted that:

“The Minister has, through information prepared by the Department of Education and Training, undertaken a comprehensive analysis of the numbers of participants in apprenticeship and traineeship schemes in this State prior to the Commission’s determination of the first General Order under section 51F of the Act and then after its implementation. This data was examined to see if increases in wage rates adversely impacted on the numbers of apprentices and trainees undertaking training schemes. The following tables summarise movements of apprentices and trainees entering and leaving the training schemes.

Apprenticeship Activity – Prior and Post 2003 SWC/Minimum Weekly Rates of Pay Order

Apprentices	Age	July 2002 – Feb 2003	July 2003 to Feb 2004
Commenced	Under 21 years	2991	3353
	Over 21 years	690	674
	Total	3681	4027
	% over 21 years	19%	17%
Suspended in Period	Under 21 years	458	449
	Over 21 years	166	171
	Total	624	620
	% over 21 years	27%	28%
In Training-As at February 2003 and February 2004	Under 21 years	8694	9399
	Over 21 years	3174	3447
	Total	11868	12846
	% over 21 years	27%	27%

Traineeship Activity – Prior and Post 2003 SWC/Minimum Weekly Rates of Pay Order

Trainees	Age	July 2002 – Feb 2003	July 2003 to Feb 2004
Commenced	Under 21 years	3006	3265
	Over 21 years	4136	4109
	Total	7142	7374
	% over 21 years	58%	56%
Suspended in Period ¹	Under 21 years	1	1
	Over 21 years	4	0
	Total	5	1
	% over 21 years	80%	0%
Cancelled and withdrawn Total	Under 21 years	1161	1320
	Over 21 years	1463	1345
	Total	2624	2665
	% over 21 years	56%	50%
In Training – As at February 2003 and February 2004	Under 21 years	3629	4192
	Over 21 years	7008	8094
	Total	10637	12286
	% over 21 years	66%	66%

¹ Note that the suspension of trainees is a rare event, and does not represent the same prescribed process under legislation as for apprenticeships.

(Minister’s Exhibit 1, Tab 9)

From these statistics the Minister concludes that there has been no drop in apprenticeship commencements with the advent of the new wage system. The percentage of those taking up adult apprenticeship has been relatively stable (19% in 2003, and 17% in 2004). Importantly there was no shift in the numbers of adult apprenticeships being suspended in the period following the determination by the Commission of a minimum adult apprentice wage.

With respect to trainees generally and those 21 years and over, the same stability is apparent. Suspensions or cancellations of traineeships did not increase. Participation by persons over 21 years and above remained at 66% under the new wage structure.”

In the reasons for decision the Commission noted the absence of industry organisations and operators of group training schemes from the proceedings. The invitation to be heard was the subject of public notices. Given the experience in 2003 when the adult apprentice award rate was determined, the Commission would have welcomed submissions from those directly involved in the training industry relative to apprentices and trainees, but that was not to be.

In 2004 for the purposes of setting minimum weekly rates pursuant to section 14 of the MCE Act the Commission decided to retain the same classes of apprentices as it determined in 2003 and continued the basis upon which rates were determined at that time. The statutory minimum wage for award free apprentices was adjusted in line with apprentices rates under the Metal Trades (General) Award 1966 updated in line with the arbitrated safety net adjustment determined in the 2004 State Wage Case.

The Commission noted:

“The General Order which issued under section 51F(1)(b) of the Act in July 2003 provided for the following classes of trainees for the purposes of section 15 of the MCE Act:

- “(a) in relation to that class of trainee to whom an award applies or a relevant award applies where an employer-employee agreement is in force ...” and
- (b) “in relation to that class of trainee to whom an award does not apply and to whom there is no relevant award to apply or an employer-employee agreement is in force or is subsequently entered into...”.

From an analysis of data compiled by the Department of Education and Training, the Minister has prepared an assessment of the basis upon which trainees participating in schemes coming within the meaning of the *Industrial Training Act 1975*, are paid. The Minister estimates that twelve per cent of trainees are paid under rates determined by reference to the MCE Act. Forty four per cent are paid under award provisions relating to employees generally. On this basis the statutory minimum adult award wage and the relevant junior rates would have application. Thirty six per cent of trainees are paid award trainee rates and eight per cent are in receipt of the National Training Wage. These estimates do not take into account trainees paid in accordance with industrial agreements or under federal instruments.

On the basis of this analysis the Minister submits that the general application of the National Training Award is achievable by bringing trainee rates to this benchmark level through awards or under the General Order pursuant to the MCE Act. However, while this objective remains the policy of the Government the Minister appreciates the short term implications of moving the statutory trainee rate ahead of existing award rates.

In light of this and without prejudice to the policy objective, the Minister proposes that for the class of trainee not covered by an award the statutory rate should be determined by reference to the trainee rate of pay as at 17th May 2004 under the Metal Trades (General) Award 1966 with a percentage increase in accordance with the 2003 arbitrated safety net adjustment.

The TLC considers that the National Training Wage is an appropriate statutory rate for the purposes of section 15 of the MCE Act. That rate has operated throughout Australia and offers an efficient means of setting and maintaining equitable rates for trainees. However, because of the distinction that presently exists between award trainee rates and the statutory minimum trainee rate and the confusion that would ensue if the latter moved ahead of award rates, the TLC accepts that at this time the National Training Wage cannot be adopted as the statutory rate.

The TLC submits that the schedule of rates adopted last year as the statutory minimum trainee rate should be increased to take into account the 2003 and 2004 arbitrated safety net adjustment. To facilitate the magnitude of this increase the TLC suggests a six month phasing-in with the 2003 increase operative until 3rd December and this year’s adjustment from 4th December 2004. The

TLC believes that the whole area of traineeship wage rates is in “a bit of a mess” at present. From the perspective of affiliated unions an award by award approach to updating has been frustrating. The TLC urges the Commission to consider a more comprehensive review of trainee provisions as a means of addressing the issues confronting this sector of the workforce.

The Chamber acknowledges that in some cases award rates for trainees are lower than rates in the federal National Training Wage Award. However, the Chamber does not support any general review of award rates to align them with the federal National Training Wage Award. The statutory rate for trainees should now be adjusted by the 2004 National Wage Decision amount in a manner consistent with the Commission decision in 2003.

Unless some initiative is taken to address the whole issue of traineeship wage rates the expressions of intent, policy and compromise that have been proposed on this occasion are likely to become annual recitals.

Although traineeships do not appear to have the same degree of control as indentured apprenticeships carry, the comprehensiveness of data prepared for the Minister by the Department of Education and Training for these proceedings would indicate that the interests of various industry sectors could be relatively easily identified. The needs of those sectors of industry with respect to recruitment and training could be ascertained. The relevance or otherwise of the National Training Wage could be considered.

As frustrating as it may have been for some unions to address the issue of award trainee wage rates, the experience of others in establishing classifications and wage structures relevant to industry needs, shows what can be achieved.”

For the purposes of the review in 2004 the Commission retained the classes of trainees designated in July 2003 and for the purposes of section 51F(1)(b) established the new minimum weekly rates of pay on the following basis:

“Minimum weekly wage rates for Apprentices and Trainees under the MCE Act

For the purposes of setting minimum weekly rates pursuant to sections 14 and 15 of the MCE Act, the Commission will retain the same classes of apprentices and trainees as determined in 2003.

The Commission will adjust the statutory minimum wage rates for award-free apprentices in line with the Metal Trades (General) Award updated in line with the current arbitrated safety net adjustment. The following rates will then apply:

	<i>Total Rate per Week</i>
<i>Four Year Term</i>	
First year	\$235.70
Second year	\$308.66
Three year	\$420.90
Fourth year	\$493.86
<i>Three and a Half Year Term</i>	
First six months	\$235.70
Next year	\$308.66
Next year	\$420.90
Final year	\$493.86
<i>Three Year Term</i>	
First year	\$308.66
Second year	\$420.90
Third year	\$493.86

The Commission will not prescribe a rate for award-free apprentices 21 years of age and over.

The Commission will retain the classes of trainees designated in July 2003 and for the purposes of section 51F(1)(b) of the Act establish the new minimum weekly rates of pay in line with the Minister’s proposals. The revised schedules of traineeships prepared by the Department of Education and Training will apply. In line with this determination rates for trainees will be increased to:

Industry/Skill Level A			
School Leaver	Year 10 \$	Year 11 \$	Year 12 \$
	153.00	183.00	225.00
Plus 1 year our of school	183.00	225.00	261.00
Plus 2 years	225.00	261.00	303.00
Plus 3 years	261.00	303.00	347.00
Plus 4 years	303.00	347.00	
Plus 5 years or more	347.00		
Industry/Skill Level B			
School Leaver	Year 10 \$	Year 11 \$	Year 12 \$
	153.00	183.00	215.00
Plus 1 year our of school	183.00	215.00	246.00
Plus 2 years	215.00	246.00	288.00
Plus 3 years	246.00	288.00	329.00
Plus 4 years	288.00	329.00	
Plus 5 years or more	329.00		
Industry/Skill Level C			
School Leaver	Year 10 \$	Year 11 \$	Year 12 \$
	153.00	183.00	200.00
Plus 1 year our of school	183.00	200.00	225.00
Plus 2 years	200.00	225.00	253.00
Plus 3 years	225.00	253.00	284.00
Plus 4 years	253.00	284.00	
Plus 5 years or more	284.00		

The statutory minimum wage for trainees who have reached 21 years of age will be determined by reference to the highest weekly wage rate for the skill level relevant to the traineeship set out hereunder:

Industry/Skill Level A	\$347.00 per week
Industry/Skill Level B	\$329.00 per week
Industry/Skill Level C	\$284.00 per week

In line with the statutory requirements of sections 51(3) and 51(H) of the Act the increases to wage rates as detailed above will have effect on and from the 4th June 2004.”

6. PUBLIC SERVICE ARBITRATOR

In the past year, the Public Service Arbitrator has dealt with a number of matters of particular significance within the public sector.

Police Officers

On 8 September 2003, the Arbitrator was informed that discussions between the WA Police Union and the Commissioner of Police, which had been progressing privately, had broken down. The Police Union's executive had directed its members that from 6.00pm that night, police stations were to be closed and there would be no general patrols or dealing with general enquiries. The Arbitrator, of her own motion, exercising the powers pursuant to the Industrial Relations Act 1979, convened an urgent compulsory conference at 4.30pm that day and formally issued orders requiring the union to lift the industrial action recently imposed. The orders also set in place a programme of conciliation conferences before the Arbitrator and recommended that no party make any public comments regarding the dispute as it appeared that public comment by one side had inflamed the situation which lead to industrial action. The order and recommendation were accepted and acted upon by the parties. Following the process of conciliation, the parties reached agreement and an enterprise bargaining agreement was registered by the Arbitrator on 7 November 2003.

Police staffing levels and deployment of police officers has been the subject of conciliation by the Arbitrator and the parties have proceeded to establish a trial of particular deployment arrangements.

Amendments to the Police Act in 2003 have given the Industrial Relations Commission a unique role and responsibility and a new protocol for reviewing decisions of the Commission of Police in respect of police officers in whom the Commissioner of Police has lost confidence and recommended that they be dismissed. In its first decision under the new regime, the Commission identified the appropriate issues to be considered and the process to be undertaken under the new legislative regime.

Public Sector Pay Claim

Following work stoppages and industrial action by members of the Civil Service Association of Western Australia over a number of months, the Civil Service Association and the State Government agreed that the Public Service Arbitrator should arbitrate to determine the appropriate level of pay rise for approximately 34,000 public servants for the next 2 years. The parties took almost 3 months to prepare their respective cases and presented a substantial amount of evidence including from experts in economic analysis, reports and reviews of public sector departments and agencies, and statistical information. The Arbitrator undertook a hearing lasting 6 days. This matter involved the first application of the powers set out in section 42G of the Industrial Relations Act 1979 which arose from the Labour Relations Reform Act No. 20 of 2002 (section 133). Importantly, this type of arbitration is not subject to appeal and the Arbitrator was, in effect invited by the parties to determine a number of the issues which were then to be included in their enterprise agreements.

Following the Arbitrator's decision, a new general agreement for public servants was issued, and substantial amendments were made to the Public Service Award. The outcome of the Arbitrator's decision was also to be taken account in the parties reaching agreement in respect of many other government officers.

Accuracy of Leave and Pay Records

A number of disputes referred to the Public Service Arbitrator related to departments and agencies having inaccurate records of employees' leave and pay. One department in particular had such a back-log of unprocessed leave records that employees were given wrong information about their leave accruals. This caused some employees to be advised that they had significantly more leave available to be taken than they actually had. They acted on this advice and took leave which was not actually available. When the employer undertook audits, a number of employees had substantial deficits of leave which their employer sought to recover.

Reclassification Appeals

The Public Service Arbitrator has met with those parties who have a significant involvement in reclassification appeals to discuss developing improved processes for dealing with requests for reclassification, and for appeals to the Arbitrator.

Public Sector Management Act

The complexity and duplication of the disciplinary processes set out in the Public Sector Management Act 1994 continue to cause disputation. They provide a multitude of opportunities for confusion and technical and substantive breaches of process.

Issues of government departments and agencies either releasing or withholding reports, and other information continues to create complexity and dispute.

7. PUBLIC SERVICE APPEAL BOARD

The Public Service Appeal Board has continued to deal with appeals against decisions of public sector agencies involving disciplinary and substandard performance issues. The last year has continued a trend of there being a slow but discernable increase in the number of matters that have come before the Board.

It is worthy of note that the sorts of issues which arise in the jurisdiction of the Public Service Arbitrator are only marginally different from, and in some cases are a prelude to, those which are referred to the Public Service Appeal Board. There seems to be an artificial delineation between the jurisdictions which may be appropriate for further consideration. The Commission in its general jurisdiction deals with the sorts of issues that are raised before the Public Service Appeal Board in its jurisdiction, such as claims of unfair dismissal by individuals made pursuant to s.29 of the Industrial Relations Act 1979. The management of the process of matters before the Public Service Appeal Board is less efficient than the process of matters before the Arbitrator or the Commission generally due to the need for a new Public Service Appeal Board to be established for each matter. It may take weeks for the process of the parties nominating persons to sit as members of the Board and for the actual process to set the matter down for hearing to be finalised. In one case, one of the parties did not advise of its nominee for almost 3 weeks after a request for the nomination was sent. This results in a delay in the matter being listed for hearing. Hearing dates need to take into account the availability of not only the Public Service Arbitrator chairing the Public Service Appeal Board but also of the two members of the Board nominated by the parties.

The Public Service Appeal Board has no power to conciliate between the parties whereas both the Public Service Arbitrator and the Commission in its general jurisdiction have an obligation to be satisfied that conciliation is exhausted before proceeding to arbitration. The Public Service Appeal Board is restricted to formally hearing and determining the appeal, and has no capacity to assist in resolving the matter by consent.

A question has arisen as to whether the Public Service Arbitrator is able to issue interim orders to, for example, reinstate an officer dismissed by an employer pending the hearing and determination by the Public Service Appeal Board of the appeal associated with that matter. The Commission in its general jurisdiction, and the Public Service Arbitrator, have such powers in relation to matters before them.

Another issue has arisen in the comparison between the possible outcomes for Government officers and other employees in that the Public Service Appeal Board is unable to award compensation where reinstatement would be impracticable whereas under the Commission's general jurisdiction this remedy is available.

The issues raised above have arisen during the course of the hearing and determination of the matters before the Public Service Appeal Board in the last year.

8. AWARD REVIEW PROCESS

During the period covered by this report the Commission continued its award updating process. This was achieved following an application by a party or parties to the respective award, for its variation under s 40 of the Act.

As part of its review in August 2002 the Registrar placed an advertisement in *The West Australian* in accordance with his obligations under r 94A of the *Industrial Relations Commission Regulations 1985*, inviting written submissions from interested persons in respect of the review of awards generally or in relation to a particular award or awards in general pursuant to s 40B of the Act.

The Commission issued Orders to vary 140 awards in the 12 months to 30 June 2004 under s 40 of the Act.

Significant improvements were made to awards regulating the employment of both blue-collar and white-collar industries during the period. Some awards were completely restructured, with the numbering of clauses standardised or formatted in a manner consistent with Federal awards or with a standard arrangement clause recommended by the Registrar.

Registry Staff continued to assist parties to awards in the updating of awards by providing advice on a variety of matters including s 40B matters. As part of the general tidying up of awards, the Commission pursuant to its powers under s 47 of the Act cancelled 16 obsolete awards during the period.

It is estimated that since the award updating process began two years ago, work has commenced to update or cancel approximately 150 awards. This represents activity in approximately 43% of the Commission's awards since the enactment of the *Labour Relations Reform Act 2002*.

Pursuant to s 40B of the Act the Commission, on its own motion, has the power to update its awards to ensure that they reflect statutory and other requirements. The Commission has commenced a review under s 40B of many of its awards. In particular, proceedings were convened before the Commission in Court Session in January 2004 in respect of four significant awards; Metal Trades (General) Award 1966, Children's Services (Private) Award, Cleaners and Caretakers Award 1969 and The Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977. In December 2003, following a direction from the Commission, the Registrar issued a copy of the discussion paper prepared by the Commission in Court Session to the parties and interested persons.

The discussion paper took into account comments in the submissions received by the Registrar in 2002 which appeared to be relevant to the four significant awards and to awards generally. The discussion paper invited submissions in respect of specific questions including what is the meaning and effect of s 40B(1)(a),(b),(c),(d) and (e) of the Act.

Subsequently directions hearings were convened where the Chamber argued that the Commission in Court Session was acting without power if it proceeded to conciliate and arbitrate in this matter. After hearing submissions, the Commission in Court Session issued a statement rejecting the Chamber's contentions.

The Commission in Court Session then convened a series of conferences between the parties. Out of that initiative, a consensus position was developed on a number of issues relevant to the way parties saw s 40B of the Act operating.

The Commission in Court Session reconvened hearing the matter on 14 and 15 April 2004 and considered extensive submissions from the following parties:

- The Minister for Consumer and Employment Protection
- The Trades and Labor Council of Western Australia
- The Australian Mines and Metals Association Inc.
- The Chamber of Commerce and Industry of Western Australia
- The Shop, Distributive and Allied Employees' Association of Western Australia
- The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers – Western Australian Branch
- The Australian Liquor, Hospitality and Miscellaneous Workers' Union, Western Australian Branch

(The Commission in Court Session delivered a further statement on 3 September 2004 (2004 WAIRC 12690 unreported) in which it stated its views on the submissions made by the parties.)

Standard Arrangement Structure

Pursuant to r 94A of the *Industrial Relations Commission Regulations 1985* the Registrar submitted a report to the Commission recommending a Standard Arrangement Structure for awards in November 2003.

Prior to compiling the report, the Registrar at the direction of the Commission consulted with relevant people and employer and employee organisations. This involved the issuing of a discussion paper on a recommended standard arrangement structure to registered organisations.

The Registrar made a series of recommendations including that clauses be classified into categories under broad standard headings.

Following receipt of the Registrar's report, two new awards were registered by the Commission, reflecting the recommended standard numbering method.

In the Commission in Court Session's award review statement it concluded that the Registrar's Standard Arrangement clause should be applied to all awards of this Commission. In particular it found that Clauses 1 to 7 of the Registrar's Standard Arrangement clause should be the same in each award, that is, Award Structure, Arrangement, Contract of Employment, Hours of Work, Rates of Pay, Allowances and Facilities, Leave and Dispute Resolution Procedure. Whilst clauses such as 4.1 Minimum Adult Award Wage, should usually be the same number in all awards, there will not be the same number of sub-clauses in each clause. For example, Clause 4 – Rates of Pay in one award may contain sub-clauses 4.1 and 4.2, whereas in another award Clause 4 – Rates of Pay may contain a number of rates of pay such as sub-clauses 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8 etc. Once the award parties agree to the format of an arrangement clause and the process in s 40B(2) has been complied with, the Commission through its Registry staff will carry out the task of re-arranging the award in accordance with an agreed arrangement clause. Where there is a dispute as to the contents and form of the standard arrangement clause the Commission will, if conciliation fails, arbitrate.

Analysis of award variation orders

During the period 140 award variation Orders were issued by the Commission under ss 40 and 40B of the Act.

A comprehensive update and modernisation of seven awards was undertaken. These variations included the insertion into the awards of statutory provisions in respect of *Minimum Conditions of Employment Act 1993*, the Act and other requirements. In some instances the award or specific award provisions had not been varied by the parties for many years, and the Commission convened a conference or several conferences prior to issuing the Orders.

Many of the variations included the updating of various allowances contained in the award, and adjustments in accordance with Wage Fixing Principles.

While some organisations have made significant progress with the updating of their awards it appears that other organisations do not seem to have sufficient resources to undertake this considerable and labour intensive task.

Other than the awards which were comprehensively updated, the instances of award variation by subject were:-

Allowances	109
Wages	23
Parties	21
Area and Scope	8
Arrangement	7
Respondents	5
Shift Work	4
Definitions	2
Dispute Settlement Procedure	2
Right of Entry	2
Salary Packaging	2
Title	2
Annual Leave	1
Contract of Service	1
Hours	1
Memorandum of Agreement	1
Parental Leave	1
Parties	1
Sick Leave	1
Training	1
Transfers	1
	196*

*Some applications were concerned with more than one topic. The seven awards which were comprehensively updated during the period are not included in the above statistics. Correction orders issued during the period are also excluded from the statistics.

9. REVIEW OF REGISTRATION REQUIREMENTS OF EMPLOYER-EMPLOYEE AGREEMENTS

Pursuant to s 97YI of the Act, the Commission in Court Session was required to:

- (a) carry out a review of the operation and effectiveness of Divisions 5, 6 and 7, including Schedules 4 and 5 of the Act; and
- (b) submit a report based on the review to the Minister for Consumer and Employment Protection with any recommendations it thinks fit to make.

Pursuant to the Act the review was required to be carried out as soon as practicable after the expiry of 12 months beginning with the day on which s 4 of the *Labour Relations Reform Act 2002* came into operation. That Act came into operation on 15 September 2002. The report was provided to the Minister on 12 March 2004.

The key legislative features of an employer-employee agreement are as follows:

- (a) The agreement must be registered by the Registrar of the Western Australian Industrial Relations Commission.
- (b) The agreement replaces the provisions of any relevant award unless the parties want those provisions to apply.
- (c) Employers must provide specific information to employees as part of the employer-employee agreement process, including a copy of the relevant award (or Registrar approved summary) and provide time for employees to consider the employer-employee agreement.
- (d) Employees cannot be offered an employer-employee agreement as a condition of employment. New employees must be given the choice between commencing employment under an employer-employee agreement, under an applicable award or under a common law contract if no award applies.
- (f) Employers cannot offer a promotion or transfer to existing employees conditional on signing an employer-employee agreement.
- (g) The employer-employee agreement must pass a no disadvantage test that ensures that the employee is not overall disadvantaged when compared to their entitlements under an award.
- (h) A dispute settlement procedure must be included in all employer-employee agreements to deal with any question, dispute or difficulty that arises out of or in the course of employment under an employer-employee agreement.
- (i) Both employers and employees may appoint bargaining agents.
- (j) An employer-employee agreement must contain an expiry date and can run for a maximum of three years.
- (k) The signatures of employees under 18 years old must be countersigned by a parent or guardian.
- (l) Special provisions have been included in the employer-employee agreement system to support the employment of people with disabilities.

The Commission in Court Session in its report to the Minister made a number of recommendations.

10. RIGHT OF ENTRY

RIGHT OF ENTRY PERMITS Industrial Relations Act 1979 Part II, Division 2G Section 49J Financial Year 2003 – 2004	
Organisation	Permits issued
Australian Liquor, Hospitality & Miscellaneous Workers Union	30
Australian Rail Tram & Bus Industry Union of Employees WA Branch	1
Australian Workers Union West Australian Branch Industrial Union of Workers	5
Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union	2
Civil Service Association of Western Australia Inc	23
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing & Allied Workers Union of Australia, Engineering & Electrical Division	1
Construction, Forestry, Mining and Energy Union of Workers	5
Forest Products, Furnishing & Allied Industries Industrial Union of Workers, WA	5
Health Services Union of WA (Union of Workers)	9
Independent Schools Salaried Officers' Association of WA Industrial Union of Workers	4
Media Entertainment & Arts Alliance	1
The Association of Professional Engineers, Australia	2
The Food Preservers Union of Western Australia Union of Workers	1
The Shop, Distributive and Allied Employees Association of Western Australia	3
Transport Workers Union of Australia, Industrial Union of Workers, Western Australian Branch	1
Western Australian Grain Handling Salaried Officers' Association	1
Western Australian Prison Officers Union of Workers	7
Total	101

11. 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.

- ★ 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.

	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004
Unfair Dismissal	926	1127	1141	827	762
Denial of Contractual Benefits	277	352	289	198	238
Both in same application	515	627	593	537	468
TOTAL	1718	2106	2023	1562	1468
% of all matters lodged	52%	57%	56%	48%	50%

Section 29 Applications Finalised

	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004
Unfair Dismissal	939	1069	1137	856	844
Denial of Contractual Benefits	312	325	297	233	192
Both in same application	498	607	534	539	507
TOTAL	1749	2001	1968	1628	1543
% of all matters finalised	50%	53%	55%	52%	55%

Method of Settlement

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

	Unfair Dismissal	Contractual Benefits	Both	Total	%
Arbitrated claims in which order issued	131	33	81	245	16%
Settled after proceedings before the Commission	142	22	106	270	17%
Matters referred for investigation resulting in settlement	392	89	225	706	46%
Matters withdrawn before proceedings commenced in the Commission	179	48	95	322	21%
Matters withdrawn without proceedings	0	0	0	0	0%
Total Finalised in 2003-2004 financial year	844	192	507	1543	100%

Demographic Data for Section 29 Applications collected at the time of Lodgement

The Commission began a demographic data collection system during the 2000/2001 financial year to capture additional information on applications at the time of lodgement. The following tables serve to illustrate a variety of characteristics relating to applicants that have claimed redress under section 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.

	Female	% Female	Male	% Male	Total	% Total
Industrial Agent	80	13%	112	12%	192	12%
Legal	67	11%	138	15%	205	13%
Other	81	13%	105	11%	186	12%
Personal	381	63%	579	62%	960	62%
<i>Total</i>	609	100%	934	100%	1543	100%

Age Groups

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

	Female	% Female	Male	% Male	Total	% Total
1. Under 16	5	1%	11	1%	16	1%
2. 17 to 20	45	8%	27	3%	72	5%
3. 21 to 25	80	15%	78	10%	158	12%
4. 26 to 40	165	31%	284	35%	449	33%
5. 41 to 50	137	26%	180	22%	317	24%
6. 51 to 60	72	13%	137	17%	209	16%
7. Over 60	11	2%	23	3%	34	3%
8. Data Not Provided	20	4%	69	9%	89	7%
<i>Total</i>	535	100%	809	100%	1344	100%

Employment Period

	Female	% Female	Male	%Male	Total	% Total
1. Under 3 months	87	14%	119	13%	206	13%
2. 4 to 6 months	66	11%	107	11%	173	11%
3. 7 to 12 months	114	19%	136	15%	250	16%
4. 1 to 2 years	101	17%	152	16%	253	16%
5. 2 to 4 years	81	13%	124	13%	205	13%
6. 4 to 6 years	40	7%	74	8%	114	7%
7. Over 6 years	43	7%	122	13%	165	11%
8. Data Not Provided	77	13%	100	11%	177	11%
<i>Total</i>	609	100%	934	100%	1543	100%

Salary Range

	Female	%Female	Male	% Male	Total	% Total
1. Under \$200 pw	30	5%	30	3%	60	4%
2. \$201 to \$600 pw	269	44%	230	25%	499	32%
3. \$601 to \$1000 pw	163	27%	332	36%	495	32%
4. \$1001 to \$1500 pw	36	6%	153	16%	189	12%
5. \$1501 to \$2000 pw	9	1%	58	6%	67	4%
6. Over \$2001 pw	6	1%	22	2%	28	2%
7. Data Not Provided	96	16%	109	12%	205	13%
<i>Total</i>	609	100%	934	100%	1543	100%

Category of Employment

	Female	% Female	Male	% Male	Total	% Total
Casual	62	10%	40	4%	102	7%
Casual Full Time	2	0%	5	1%	7	0%
Casual Part Time	2	0%	1	0%	3	0%
Fixed Term	14	2%	20	2%	34	2%
Full Time	117	19%	14	1%	131	8%
Permanent	39	6%	12	1%	51	3%
Permanent Full Time	18	3%	26	3%	44	3%
Permanent Part Time	63	10%	361	39%	424	27%
Probation	166	27%	163	17%	329	21%
Part Time	74	12%	213	23%	287	19%
Data Not Provided	52	9%	79	8%	131	8%
<i>Total</i>	609	100%	934	100%	1543	100%

Reinstatement Sought

57% of applicants did not seek reinstatement when they lodged their application.

	Female	% Female	Male	% Male	Total	% Total
No	376	62%	502	54%	878	57%
Yes	167	27%	318	34%	485	31%
Data Not Provided	66	11%	114	12%	180	12%
<i>Total</i>	609	100%	934	100%	1543	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.

	Yes	% Yes	No	% No	No Data	% No Data	Total	% Total
1. Under 16	5	1%	10	1%	0	0%	15	1%
2. 17 to 20	22	5%	59	7%	4	2%	85	6%
3. 21 to 25	37	8%	103	12%	12	7%	152	10%
4. 26 to 40	163	34%	312	35%	55	31%	530	34%
5. 41 to 50	117	24%	202	23%	29	16%	348	23%
6. 51 to 60	84	17%	136	15%	29	16%	249	16%
7. Over 60	9	2%	20	2%	8	4%	37	2%
8. Data Not Provided	48	10%	37	4%	42	23%	127	8%
<i>Total</i>	485	100%	879	100%	179	100%	1543	100%

12. EMPLOYER-EMPLOYEE AGREEMENTS

INDUSTRIAL RELATIONS ACT PART VID FINANCIAL YEAR 2003-2004

Applications to Lodge EEA's for Registration

Number of EEA's Lodged	2002-2003	2003-2004
Meeting Lodgement Requirements	398	277
Not Meeting Lodgement Requirements	103	33
Total	501	310

EEA's Lodged for Registration and Finalised

Outcome	2002-2003	%	2003-2004	%
Refused	205	60%	74	22%
Registered	37	11%	210	63%
Withdrawn	97	29%	48	14%
Total	339	100%	332	100%

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

Guidelines and Principles for the No Disadvantage Test.

There were no changes to the Guideline 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 instrument amended or replaced.

Demographic Data for Registered EEA's

Registered EEA's by Gender	2002-2003	%	2003-2004	%
Female	6	16%	59	28%
Male	31	84%	151	72%
Total	37	100%	210	100%

Registered EEA's by Age Category	2002-2003	%	2003-2004	%
Employees 18 years of age or over	36	97%	208	99%
Employees under 18 years of age	1	3%	2	1%
Total	37	100%	210	100%

Reduced Wages Payable For People With Disabilities (s 97VW)

	2002-2003	2003-2004
Number of EEA's where employee has a disability	17	36

Registered EEA's by Term of Agreement

Term of EEA	2002-2003	%	2003-2004	%
<1 year	4	11%	5	2%
1 to 2 years	4	11%	25	12%
2 to 3 years	29	78%	180	86%
Total	37	100%	210	100%

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

On the 25th July 2003 the *Police Amendment Act 2003* came into operation. This Act provides for appeals to the Western Australian Industrial Relations Commission where the Commissioner of Police has taken action to remove a Police Officer from the Western Australian Police Force. This legislation formalised a previous administrative arrangement whereby similar matters were referred to the Commission by the Minister of Labour Relations following a referral from the Minister of Police under section 80ZE of the *Industrial Relations Act 1979*.

This new legislation provides the capacity for conciliation proceedings to be convened before a single Commissioner prior to the appeal being listed for hearing. This has allowed matters to be dealt with expediently and for the parties to explore avenues to resolution previously not open to them.

Matters progress to hearing before the Commission constituted by three Commissioners, one of whom must be the Chief Commissioner or the Senior Commissioner. The Commissioner responsible for conducting conciliation proceedings is not able to be a part of the bench that finally determines the matter.

During the period, eight Appeals pursuant to section 33P of the *Police Act 1892* were lodged. Two were resolved at conciliation and consequently withdrawn. One progressed to hearing before the Commission and finalised. Four have progressed before the Commission and will be finalised in the next reporting period. One was adjourned in accordance with the provisions of the *Police Amendment Act 2003* and will be finalised in the future.

14. INTERNET WEBSITE (www.wairc.wa.gov.au)

Internet

Following the approval of the Commission for the development of online facilities, the Commission website has undergone a significant facelift over the past year. The website presents material in a manner designed to improve the ease of use of the information presented on the Commission website, and includes enhanced search capabilities.

The website now includes a facility known as Garnet Online which enables parties to applications to track the progress of particular matters proceeding before the Commission. The system allows parties to access information specific to their application and is password protected to ensure confidentiality.

Further developments are progressing in relation to the online lodgement of applications, with amendments to the regulations being examined to allow this facility to be implemented.

Garnet

As a result of the successful implementation of the Digital Registry Electronic Application Management System (DREAMS) over the past year, the Chambers have experienced the benefits of utilising Garnet – the system designed to effectively track and maintain a record of all matters allocated within the Commission. Garnet also helps streamline the flow of information from Chambers, by allowing material to be published directly to the Commission web site and to the Western Australian Industrial Gazette. Refinements to Garnet are continuing in consultation with Chambers staff.

Security

The past year has seen an unprecedented increase in the number of threats to the integrity of the Commission's online systems. The excellent response of the IT department has ensured that the reliability of the Commission's systems have remained entirely intact at all times. Steps have also been taken to ensure that information disseminated by the Commission is impervious to alteration, but without limiting its usefulness or availability.

Digital Transcript

After a successful trial of a digital transcription facility, plans have evolved to implement a digital transcription service throughout the Commission court rooms. The introduction of this service to the courts will enable Commission members to access audio recordings of proceedings in a much more timely fashion. The digital format will also allow for more effective searching capabilities thereby making information easier to obtain.

15. OTHER MATTERS

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

Chief Commissioner WS Coleman

16 September 2004