



Industrial Relations Act 1979

ANNUAL REPORT 2024-2025

The Western Australian Industrial Relations Commission

Letter to the Minister

To the Honourable Simone McGurk MLA,
Minister for Industrial Relations

Dear Minister

I am pleased to provide to you the following report relating to the operation of the *Industrial Relations Act 1979* for the year ended 30 June 2025.



Stephen Kenner

Chief Commissioner

The Western Australian Industrial Relations Commission

ABOUT THIS REPORT

This report is prepared as a requirement under provisions of the *Industrial Relations Act 1979*. It is prepared primarily as a report to the Minister for Industrial Relations on The Western Australian Industrial Relations Commission's activities. This report also provides information for users of the Commission and others with an interest in the Commission.

ENQUIRIES AND FEEDBACK

For enquiries on the report or feedback, please email:

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FROM THE CHIEF COMMISSIONER

The 2024-25 year has been an eventful one for the Commission and the work it does. Major legislative reforms were introduced on 31 January 2025, including the abolition of the Public Service Arbitrator and the Public Service Appeal Board, and folding those jurisdictions into the general jurisdiction of the Commission. Further the defunct Railways Classification Board and Boards of Reference were also abolished. These structural changes have significantly streamlined the Commission's jurisdiction.

Additionally, the legislative reforms introduced key changes that increase the ability of the Commission to prevent or resolve employment disputes between employers and employees. These changes include: a new prohibition on sexual harassment in connection to work; a new enforceable minimum condition enabling employees to request a flexible working arrangement in certain circumstances; and a fit and proper person test for a union official to obtain a State right of entry permit.

The Commission continues to embrace the modernisation opportunities presented by legislative reform, whilst moving forward with important ongoing work in areas such as award modernisation, union engagement, self-represented litigant support and local government transition processes.

Finally, I wish to recognise the excellent efforts of my Commissioner colleagues and all staff of the Commission over the year.



Stephen Kenner
Chief Commissioner



THE COMMISSION AND TRIBUNALS

Structure of the State Industrial Relations System

The *Industrial Relations Legislation Amendment Act 2024* (IRLA Act 2024) abolished the Public Service Arbitrator, Public Service Appeal Board, the Railways Classification Board and Boards of Reference, effective 31 January 2025. Since that time, under the *Industrial Relations Act 1979* (WA) (IR Act), the following tribunals and courts are established:

- The Western Australian Industrial Relations Commission constituted by:
 - A Commissioner Sitting Alone
 - The Chief Commissioner
 - The Commission in Court Session
 - The Full Bench
- The Industrial Magistrates Court
- The Western Australian Industrial Appeal Court

Additionally, a Commissioner constitutes Tribunals established under other legislation, including:

- The Work Health and Safety Tribunal
- The Road Freight Transport Industry Tribunal
- The Police Compensation Tribunal

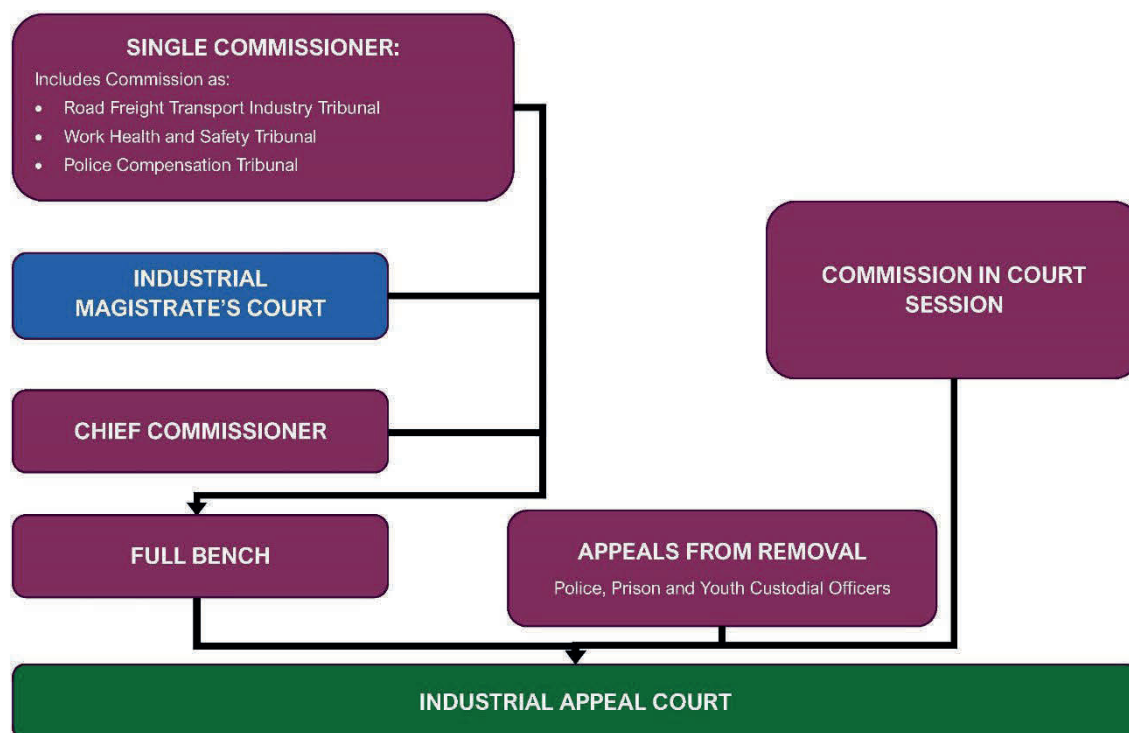


Figure 1. Structure of the State Industrial Relations System

Membership and Principal Officers

The Commission

Over the reporting year, the Commission was constituted by the following members:

Chief Commissioner	S J Kenner
Senior Commissioner	R Cosentino
Commissioners	T Emmanuel
	T B Walkington
	C Tsang
	T Kucera

The Registry

During the reporting year, the principal officers of the Registry were:

Registrar	S Bastian
Deputy Registrar	S Kemp

Industrial Appeal Court

The Industrial Appeal Court is made up of a Presiding Judge, a Deputy Presiding Judge and two other Judges of the Supreme Court appointed by the Chief Justice.

For the period 1 July 2024 to 4 June 2025, the Industrial Appeal Court was constituted by the following members:

Presiding Judge	The Honourable Justice M J Buss
Deputy Presiding Judge	The Honourable Justice R Mitchell
Members	The Honourable Justice Jennifer Smith
	The Honourable Justice F Seaward

On 4 June 2025, the Honourable Justice Michael Buss retired from office after over 19 years of judicial service. For the period 5 June 2025 to 30 June 2025, the Industrial Appeal Court was constituted by the following members:

Presiding Judge	[Vacant]
Deputy Presiding Judge	The Honourable Justice R Mitchell
Members	The Honourable Justice Jennifer Smith
	The Honourable Justice F Seaward

Industrial Magistrates

During the reporting year, the Industrial Magistrates Court (IMC) was constituted by the following Magistrates:

- Industrial Magistrate D Scaddan
- Industrial Magistrate R Cosentino
- Industrial Magistrate C Tsang
- Industrial Magistrate T Kucera

Chief Commissioner Kenner also holds a dual appointment as an Industrial Magistrate.

NEW DEVELOPMENTS

Legislative reform

The State industrial relations system has undergone significant legislative reform since 2021-22, particularly in response to a broad suite of recommendations made in the 2018 Ministerial Review of the State Industrial Relations System (conducted by former acting President of the Commission, Mark Ritter SC, and Stephen Price MLA) and the 2019 Inquiry into Wage Theft in Western Australia (conducted by Tony Beech, former Chief Commissioner of the Commission).

The *Industrial Relations Legislation Amendment Act 2021* introduced the first stage of significant legislative reform in 2022. Key changes included, but were not limited to:

- The introduction of a stop bullying and sexual harassment jurisdiction for the Commission.
- Transitioning local governments from the national industrial relations system to the State system.
- New employee protections provisions to prohibit sham contracting, cash back arrangements, and employers taking 'damaging action' against employees who make an employment-related inquiry.
- The introduction of an equal remuneration jurisdiction to the Commission.
- Giving the Commission capacity on its own motion to vary the scope of private sector awards to provide broader award coverage.
- Increased penalties for contravening an industrial instrument.
- Enabling Commissioners of the Commission to hold dual appointments as an Industrial Magistrate.

During this reporting period, the second stage of legislative reform was implemented by the IRLA Act 2024, with the majority of changes coming into effect on 31 January 2025. Key changes included:

- Abolishing the Commission's constituent authorities of the Public Service Arbitrator (PSA) and the Public Service Appeal Board (PSAB), and transferring the jurisdiction of the PSA and PSAB to the general jurisdiction of the Commission.
- A new prohibition on sexual harassment in connection with work.
- An increase to the State statutory minimum casual loading from 20% to 25% and a new test to determine if a person is an employee and whether an employee's employment is casual employment.
- A new enforceable minimum condition enabling employees to request a flexible working arrangement in certain circumstances.
- A fit and proper person test for a union official to obtain a State right of entry permit.
- Increased civil penalties for contravening State employment laws.
- A prohibition on misconduct before the Commission including insulting, obstructing or hindering a Commissioner in the performance of their functions.

It is noted that some changes introduced by the IRLA Act 2024 have a commencement post this reporting period, particularly public sector employees having access to the Commission for alleged breaches of specified public sector standards (which commenced on 1 July 2025) and improved regulation of registered industrial agents (to be proclaimed). Whilst overall numbers of matters lodged in the Commission vary from year to year, it is expected that these various changes will lead to an increase over time.

These reforms have significantly modernised the Commission's jurisdiction and operations. An overall clearance rate of 108% for all matters before the Commission and its various tribunals is also a pleasing feature of the Commission's performance over the reporting year.

THE WORK OF THE COMMISSION

Statistics snapshot

Total matters

	2023-24	2024-25	Variance
Initiated	710	651	-59 (-8%)
Concluded	569	708	139 (24%)

Matters concluded – jurisdiction/area

	2023-24	2024-25	Variance
Mediation	7	14	7 (100%)
Commissioner sitting alone	305	400	95 (31%)
Public Service Arbitrator	44	24	-20 (-45%)
Public Service Appeal Board	30	29	-1 (-3%)
Appeals from Removal – Police, Prison and Youth Custodial Officers	1	5	4 (400%)
Police Compensation Tribunal	0	0	0
Road Freight Transport Industry Tribunal	1	1	0
Work Health and Safety Tribunal	10	12	2 (20%)
Railways Classification Board	0	0	0

Matters concluded – jurisdiction/area

	2023-24	2024-25	Variance
Boards of Reference	0	0	0
Chief Commissioner	7	8	1 (14%)
Commission in Court Session	3	12	9 (300%)
Full Bench	16	16	0
Industrial Appeal Court	1	2	1 (100%)
Industrial Magistrate	144	172	28 (19%)

Awards and agreements in force under the *Industrial Relations Act 1979*

	2024-25
Awards	229
Industrial Agreements	438
Total	667

Conciliation and case management

The resolution of disputes through conciliation is a core part of the Commission's work and is a principal object of the IR Act. Most disputes and industrial matters referred to the Commission, are resolved through conciliation rather than formal arbitration. There are two types of conciliation. The first is when an industrial matter is referred to the Commission by an individual for unfair dismissal, a denied contractual benefit or stop orders, for example. The second is an application by a union or an employer, for a compulsory conference. Depending on the urgency of the matter, these latter types of applications for a conference, can be listed by the Commission at very short notice, including only hours after the application is filed.

How long matters and disputes take to resolve by conciliation varies considerably. In the case of larger and more complex collective disputes under s 44 of the IR Act, this might entail multiple compulsory conferences over an extended period. For example, bargaining disputes for a new industrial agreement may take many weeks, even months, to bring to finality. This can also be the case with stop bullying and/or sexual harassment cases, which often involve multiple parties, and a range of complex issues. On the other hand, individual disputes, in relation to termination of employment for example, may be resolved more expeditiously in one or only a few conferences.

Conciliation – on time matter processing

	Concluded within 90 days	Concluded within 180 days
Unfair dismissal applications – s 32	58%	80%
Denial of contractual benefits applications – s 32	59%	77%
Compulsory conferences – s 44	65%	65%
Stop bullying and/or sexual harassment applications – s 51BM	33%	50%
Conference to assist bargaining – s 42E	53%	80%

Mediation

The *Employment Dispute Resolution Act 2008* (EDR Act) provides that the Commission may mediate or otherwise resolve any question, dispute or difficulty that arises out of or in the course of employment by way of a voluntary mediation process. The scope of this is wider than an 'industrial matter' as defined under the IR Act. The EDR Act has been utilised by parties to industrial disputes which are not within the jurisdiction of the Commission pursuant to the IR Act, including parties to Fair Work Commission agreements.

The mediation jurisdiction under the EDR Act provides a useful avenue to attempt to resolve such matters at an early stage. Positive results from mediation continue to be achieved. The significant increase in mediation matters is notable, not least as previously applications were often made in conjunction with appeals to the now abolished PSAB.

Mediation – total matters

	2023-24	2024-25	Variance
Matters lodged	7	13	6 (86%)
Matters concluded	7	14	7 (100%)

Commissioners Sitting Alone

A significant amount of the work of the Commission is undertaken by Commissioners sitting alone, dealing with industrial matters such as unfair dismissal, denied contractual benefits and stop orders. Other substantial areas of work include convening compulsory conferences under s 44 of the IR Act, in relation to industrial disputes between unions and employers. These matters are often dealt with on an urgent basis.

In this reporting year, there have been significant increases in unfair dismissal applications and the registration of new State instruments. Both these trends, and an increase in demarcation disputes, may be attributable to local government transitioning into the State industrial relations system, effective from 1 January 2023. This transition led to 139 local governments and about 28,000 employees now operating in the Commission's jurisdiction. Since this transition local government is now the leading sector for unfair dismissal applications and new State instruments, instruments carried over from the federal system being replaced by many new industrial agreements made under the IR Act. As with the total matters before the Commission above, there has been a pleasing clearance rate of 116%.

Commissioners Sitting Alone – total matters

	2023-24	2024-25	Variance
Matters lodged	398	350	-48 (-12%)
Matters concluded	305	407	102 (33%)

Commissioner Sitting Alone – matters concluded

	2023-24	2024-25	Variance
Unfair dismissal applications	103	121	18 (17%)
Denial of contractual benefits applications	41	39	-2 (-5%)
Stop bullying and/or sexual harassment applications	15	6	-9 (-60%)
Conference applications (s 44)	39	46	7 (18%)
Conferences referred for arbitration (s 44(9))	2	2	0
Apprenticeship appeals	0	0	0
Public Service applications	6	5	1 (-17%)
Review of decisions of the Construction Industry Long Service Leave Payments Board	0	4	4
Conferences to assist bargaining (s 42E)	4	0	-4 (-100%)
Enterprise Orders (s 42I)	0	0	0
Orders arising from s 27	1	0	-1 (-100%)
Exemptions (awards)	0	0	0
Order to suspend or revoke authority of rep s 49J(5)	0	0	0
Unspecified Grounds	1	1	0

Commissioner Sitting Alone – awards – matters concluded

	2023-24	2024-25	Variance
New Awards	0	0	0
Variation of Awards	10	26	16 (160%)
Joinders to Awards (s 38)	0	1	1
Interpretation of Awards	1	1	0
Cancellation of Award	0	7	7
Referral of dispute (s 48A)	0	0	0

Commissioner Sitting Alone – agreements – matters concluded

	2023-24	2024-25	Variance
New Agreements	45	62	17 (38%)
Variation of Agreements	0	0	0
Retirement from Industrial Agreement	2	6	4 (200%)
Interpretation of Agreement	6	1	-5 (-83%)
Orders as to terms of Agreement (s 42G)	1	4	3 (300%)
Cancellation Agreement	0	0	0
Order naming organisation or association as party to new State instrument	28	67	39 (139%)
Order to amend a new State instrument (s 80BC)	0	1	1

Applications by individuals

Applications alleging unfair dismissal, denial of contractual benefits, bullying and/or sexual harassment may be lodged in the Commission by employees, including ‘workers’ as defined in the IR Act, in the case of bullying and/or sexual harassment. Additionally, since the abolition of the constituent authorities of the PSA and the PSAB, and transferring the jurisdiction of the PSA and PSAB to the general jurisdiction of the Commission, certain government officers may make applications in relation decisions or findings about matters such as dismissal, substandard performance and discipline.

Unfair dismissal

	2023-24	2024-25	Variance
Matters lodged	116	136	20 (17%)
Matters concluded	103	121	18 (17%)

Denial of contractual benefits

	2023-24	2024-25	Variance
Matters lodged	47	41	-6 (-13%)
Matters concluded	41	39	-2 (-5%)

Stop orders – bullying and/or sexual harassment

	2023-24	2024-25	Variance
Matters lodged	11	17	6 (55%)
Matters concluded	15	6	-9 (-60%)

Public sector matters*

	2023-24	2024-25	Variance
Matters lodged	-	18	-
Matters concluded	-	8	-

*This table represents matters lodged post the abolition of the PSA and PSAB jurisdiction from 31 January 2025. For matters of this nature lodged prior to this date, please refer to the following section Public Sector Arbitrator and Appeal Board.

Public Service Arbitrator and Appeal Board

On 31 January 2025 the PSA and the PSAB were abolished, and the jurisdiction of the PSA and PSAB transferred to the general jurisdiction of the Commission. These constituent authorities of the Commission were in operation for over half of this reporting period, hearing and determining a range of disputes and matters referred to them in the public sector.

The Arbitrator's jurisdiction existed under s 80E of the IR Act and was exclusive, extending to dealing with all industrial matters relating to a government officer, a group of government officers or government officers generally.

The PSAB dealt with appeals against a range of decisions of public service employers including against: dismissals; disciplinary decisions; and matters involving the interpretation of public sector legislation affecting employees' terms and conditions of employment.

Matters of this nature lodged from 31 January 2025 on are represented in the section Commissioners sitting alone.

Commissioner Emmanuel, Commissioner Walkington, Commissioner Kucera and Commissioner Tsang hold appointments as PSAs until 1 July 2026 in order to complete current matters. The Chief Commissioner's and Senior Commissioner's appointments as PSAs expired on 1 July 2025 and were not renewed.

In addition to the members of the Commission who are appointed as PSAs and who chair PSABs, those people listed in [Appendix 1 – Members of the Public Service Appeal Board](#), have served as members of Appeal Boards on the nomination of a party under then s 80H of the IR Act during this reporting period.

Public Service Arbitrator – total matters

	2023-24	2024-25	Variance
Matters lodged	72	42	-30 (-42%)
Matters concluded	74	53	-21 (-28%)

Public Service Arbitrator – matters concluded

	2023-24	2024-25	Variance
Conference applications (s 44)	23	15	-8 (-35%)
Conferences referred for arbitration (s 44(9))	0	0	0
Appeals to the Public Service Appeal Board	30	29	-1 (-3%)
Reclassification appeals	2	2	0
Conferences to assist bargaining	0	0	0
Enterprise orders (s 42I)	0	0	0
Orders pursuant to s 80E	0	0	0
Unspecified grounds	0	0	0

Public Service Arbitrator – awards – matters concluded

	2023-24	2024-25	Variance
New Awards	0	0	0
Variation of Awards	0	1	1
Joinders to Awards (s 38)	0	0	0
Interpretation of Awards	0	0	0
Cancellation of Awards	0	0	0

Public Service Arbitrator – agreements – matters concluded

	2023-24	2024-25	Variance
New Agreements	14	4	-10 (-71%)
Variation of Agreements	1	0	-1 (-100%)
Retirement from Industrial Agreement	0	0	0
Interpretation of Agreement	3	2	-1 (-33%)
Orders as to terms of Agreement (s 42G)	0	0	0
Cancellation of Agreements	0	0	0

Work Health and Safety Tribunal

The Work Health and Safety Tribunal (WHS Tribunal) exercises jurisdiction under the *Work Health and Safety Act 2020*.

Commissioner Emmanuel has constituted the WHS Tribunal, under Schedule 1 cl 27(1) of the *Work Health and Safety Act 2020* (WHS Act) and s 16(2A) of the IR Act. Her term continues until 31 March 2026.

The WHS Tribunal assists in the resolution of workplace health and safety issues under Western Australia's occupational safety and health laws.

Over the reporting period, the Tribunal dealt with 24 matters, predominantly involving requests for an external review under s 229 of the WHS Act. There were several applications for extensions of time to resolve issues under s 82A of the WHS Act. There has been a 31% increase in the matters referred to the WHS Tribunal over the year.

One matter is currently adjourned pending the outcome of a coronial inquest. Prior to adjourning, two conferences were convened in that matter under s 112 of the WHS Act. The applicant claimed to be subject to discriminatory behaviour after reporting concerns about his safety in his role in a youth detention centre.

The Tribunal issued five stays on the operation of improvement notices. The Tribunal jointly heard five applications relating to external reviews of improvement notices under the WHS Act. Those decisions are reserved and will issue shortly.

The conciliation power under the model legislation continues to be a very effective way to efficiently resolve (or at least narrow) many work health and safety disputes.

Work Health and Safety Tribunal – total matters

	2023-24	2024-25	Variance
Matters lodged	13	17	4 (31%)
Matters concluded	7	12	5 (71%)

Work Health and Safety Tribunal – matters concluded

	2023-24	2024-25	Variance
Disqualification of health and safety representatives – s 65(1)	1	0	-1 (-100%)
Extension of deadline for making decision resolving issue – s 82A	2	3	1 (50%)
Issue about continuity of engagement of worker – s 89A	1	1	0
Civil proceedings in relation to discriminatory or coercive conduct – s 112	0	3	3
Application for external review – s 229	3	5	2 (67%)

Police Compensation Tribunal

The Tribunal is established under the *Police Act 1892*, and is constituted by a Commissioner, to deal with disputes arising from the scheme, in relation to: degrees of permanent impairment; failure to qualify for compensation for permanent total incapacity; and the amount of compensation for permanent total incapacity for police officers and Aboriginal Police Liaison Officers who have been medically retired due to a work related injury.

No applications of this nature were made to the Tribunal during the reporting year.

Road Freight Transport Industry Tribunal

The Tribunal is established under the *Owner-Drivers (Contracts and Disputes) Act 2007*. It hears and determines disputes between hirers and owner-drivers in the road freight transport industry. Most disputes referred to the Tribunal involve claims for payment of monies owed under, or for damages for breaches of, owner-driver contracts. The Tribunal also deals with disputes in relation to negotiations for owner-driver contracts and other matters.

Commissioner Kucera and Commissioner Tsang have constituted the Tribunal over the reporting year.

As reported over the last three years in relation to a large matter involving 28 separate applications with claims totalling some \$4 million, the Tribunal has been continuing to facilitate negotiations between the parties through conferences and correspondence to assist them to reach a negotiated resolution. The matter is ongoing.

Road Freight Transport Industry Tribunal – total matters

	2023-24	2024-25	Variance
Matters lodged	2	6	4 (200%)
Matters concluded	1	1	0

Employer-employee agreements

Employer-employee agreements are confidential, individual employment agreements between an employer and an employee, which set out agreed employment terms and conditions relevant to them.

No employer-employee agreements were lodged in the reporting year. There have been no employer-employee agreements lodged since 2016.

Boards of Reference

Boards of Reference were abolished on 31 January 2025 by the IRLA Act 2024. Prior to being abolished, they were effectively defunct. A Board of Reference was last convened in 2012.

Railways Classification Board

The Railways Classification Board was abolished on 31 January 2025 by the IRLA Act 2024. Prior to being abolished, it was effectively defunct. There had been no applications made to it since 1998, and the union designated by then s 80M of the IR Act to nominate representatives ceased to exist in 2010.

Appeals from Removal – Police Officers, Prison Officers and Youth Custodial Officers

Appeals from Removal – total matters

	2023-24	2024-25	Variance
Matters lodged	1	8	7 (700%)
Matters concluded	1	5	4 (400%)

Police Act 1892

Appeals pursuant to s 33P of the *Police Act 1892* (Police Act) are filed by police officers who have been removed from the Western Australian Police Force under s 8 of that Act. These appeals are heard by three Commissioners, including either the Chief Commissioner or the Senior Commissioner. If the Commission finds the officer's removal to be harsh, oppressive or unfair, the Commission may order the removal to be of no effect. Alternatively, an order for compensation may be made.

Four appeals were referred to the Commission during the reporting year.

Prisons Act 1981

A prison officer who has been removed from office by the Chief Executive Officer, Department of Justice, may file an appeal against that decision under s 106 of the *Prisons Act 1981* (Prisons Act). The appeal provisions under the Prisons Act are very similar to those for police officers under the Police Act.

Three appeals were referred to the Commission during the reporting year.

Young Offenders Act 1994

A youth custodial officer who has been removed from office by the Chief Executive Officer, Department of Justice, may file an appeal against that decision under s 11CH of the *Young Offenders Act 1994*. The appeal provisions and the Commission's powers are the same as those under the Prisons Act.

One appeal was referred to the Commission during the reporting year.

The Chief Commissioner

As well as being able to exercise the jurisdiction of a Commissioner, preside on the Full Bench and the Commission in Court Session, the Chief Commissioner has jurisdiction to deal with matters relating to the observance of the rules of registered organisations. The Chief Commissioner is also responsible for the overall administration of the Commission and administrative matters concerning Commissioners.

There continues to be an upward trend in applications under s 66 of the IR Act, with ten applications lodged in the reporting year. These applications are only within the Chief Commissioner's jurisdiction. They involve applications by a member or a former member of a union, or the Registrar, about the observance or non-observance of the rules of a union or the manner of their observance. An enquiry may be sought in relation to an election for office bearers in a union. The Chief Commissioner has wide powers to disallow rules or require a union to alter a rule which occurred within this reporting period in *Raschilla & Ors v Australian Nursing Federation Industrial Union Workers Perth [2024] WAIRC 00980*, where the organisation was required to make changes to two of its rules as they were declared to be inconsistent with the democratic control of the organisation by its members.

Applications involving unions seeking orders to establish an interim management committee to manage the affairs of the union continue to be prevalent. These matters also generally involve applications to make alterations to a union’s rules to bring them into alignment with a counterpart federal organisation. This is often necessary because the union has a s 71 certificate which exempts them from conducting separate State elections for offices in the union. Where the rules of both the State and federal unions have not remained in alignment, there may be a need for a separate election in the State union for it to function or an interim management committee to bring the rules back into alignment. This practice was examined closely in this reporting period in *Registrar, Western Australian Industrial Relations Commission v The Construction, Forestry, Mining and Energy Union of Workers* [2025] WAIRC 00306; (2025) 105 WAIG 1115.

The Registrar has continued over the reporting year, a proactive compliance process to ensure unions meet their statutory obligations under the IR Act. A significant component of this is to educate and to assist unions in meeting their obligations.

Chief Commissioner – total matters

	2023-24	2024-25	Variance
Matters lodged	5	10	5 (100%)
Matters concluded	7	6	-1 (-14%)

Chief Commissioner – matters concluded

	2023-24	2024-25	Variance
Organisation rules – s 66	7	6	-1 (-14%)
Employee organisations, orders as to whom they represent – s 72A(6)	0	0	0
Registrar consultations – s 62*	6	9	3 (50%)

*The Registrar consults with the Chief Commissioner on union rule alteration applications under s 62 and, whilst these applications are not strictly speaking matters before the Chief Commissioner, this consultation process is an important function performed by the Chief Commissioner.

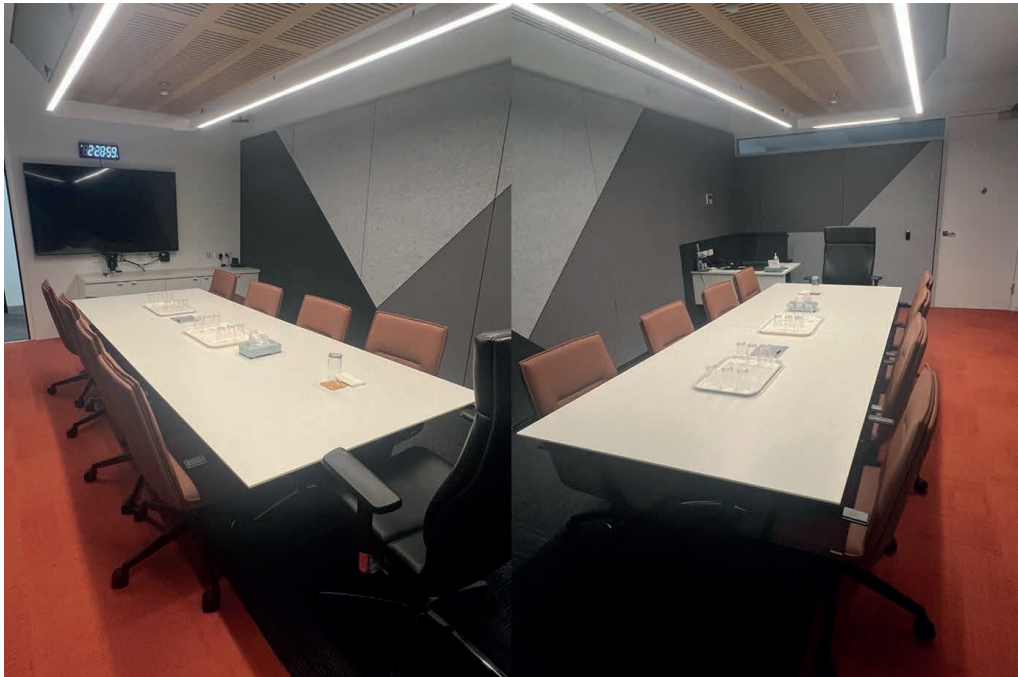


Figure 2. Photo of upgrades to Level 18 conference rooms

The Commission in Court Session

The Commission in Court Session hears and determines major industrial matters, including the annual State Wage Order case. Additionally, the Commission in Court Session deals with the registration and cancellation of registered organisations, and certain applications to amend the rules of an organisation.

Commission in Court Session – total matters

	2023-24	2024-25	Variance
Matters lodged	6	13	7 (117%)
Matters concluded	3	12	9 (300%)

Notable Commission in Court Session matters in the reporting year comprised the following:

State Wage Order

Section 50A of the IR Act requires that, before 1 July in each year, the Commission is to make a General Order setting the minimum weekly rates of pay for adults, apprentices and trainees under the *Minimum Conditions of Employment Act 1993* and to adjust the rates of wages paid under awards. The State Wage General Order affected 215 awards.

The Commission in Court Session handed down its decision in the 2025 State Wage Case on 12 June 2025 ([2025] WAIRC 00348; (2025) 105 WAIG 1167). The Commission increased the State Minimum Wage by 3.75%, bringing the State Minimum Wage to \$953 per week from 1 July 2025. The Commission also increased award rates by 3.75% from that time.

The increases applied only to employees paid the minimum wage or award rates in the State industrial relations system. Approximately 27,000 employers and more than 300,000 employees were estimated to be affected by the decision.

In making its decision, the Commission was required to balance a broad range of economic and labour market forces, and social and equity considerations.

As in previous years, the cost of living was a major consideration when determining the State Minimum Award Wage and an increase in minimum award wages. Recent high inflation and price increases in food and housing in particular, have seen a reduction in spending power for minimum wage earners. The Commission also recognised the rising costs for small businesses. Other key factors, including the State and national economies, living standards, the needs of low paid employees and the capacity of employers to bear the cost of increased wages, were all taken into consideration by the Commission in Court Session.



Figures 3 & 4. Photos of the 2025 State Wage Case proceedings

Location Allowances General Order

The Location Allowances General Order prescribes allowances to compensate employees employed at specified locations for the prices, isolation and climate associated with those locations. State private sector awards generally provide for a location allowance.

In accordance with the Commission's usual practice, the Commission in Court Session initiated a review of the prices components and issued a General Order to adjust the prices component ([2025] WAIRC 00363; (2025) 105 WAIG 1194). They increased by 2.54% to reflect the increase in the Consumer Price Index for Perth (excluding housing) for the year to March 2025. The increase was effective from 1 July 2025.

The Location Allowances General Order affects 80 awards.

Casual Loading General Order

Amendments to the minimum rate of pay for casual employees in Western Australia under the *Minimum Conditions of Employment Act 1993* came into effect on 31 January 2025. This increased the minimum casual rate of pay from 20% to 25% of the statutory minimum. This change was made to address the anomaly where some awards under the IR Act contained casual rates of pay below the statutory minimum. In response to these changes, UnionsWA applied for a General Order to ensure all awards provide for a casual loading of at least 25%. The General Order was issued by the Commission in Court Session on 4 March 2025 and came into effect on 26 April 2025 ([2025] WAIRC 00136; (2025) 105 WAIG 419).

Organisations matters

The Commission in Court Session has dealt with several registered organisations matters over the reporting year, including issuing three s 71 certificates.

It was reported last year that the Western Australian Municipal, Administrative, Clerical and Services Union of Employees has sought orders under s 72A of the IR Act asserting its exclusive right to represent the industrial interests of employees in the outside workforce at the City of Rockingham and then, in a subsequent application, at 145 local government bodies Statewide. The Construction, Forestry, Mining and Energy Union of Workers, in response, filed an application seeking orders to represent employees as carpenters, painters and plant operators if it were determined that it lacked the right to represent them in the main applications. The Commission in Court Session, recognising the commonality of issues, ordered the consolidation of these matters,

with the Local Government, Racing and Cemeteries Employees Union and the Western Australian Local Government Association being granted leave to intervene. This is a very substantial case involving in excess of 50 witnesses and many thousands of pages of material having been filed. It was part heard during this reporting period and resulted in an interlocutory matter being appealed to the Industrial Appeal Court (IAC 2 of 2025). The continuation of the substantive hearing is scheduled to recommence in October 2025.

Section 73(12a) of the IR Act obliges the Registrar to apply to the Commission in Court Session for the cancellation of an organisation or association's registration under the IR Act in every case where it appears that there are sufficient grounds for doing so. In this reporting period, two registered organisations successfully applied to the Registrar to have their registration cancelled. As such, the Registrar applied to the Commission in Court Session in relation to the Community Employers WA and Western Australian Grain Handling Salaried Officers Association (Union of Workers) and both organisations had their registrations cancelled.

The Full Bench

The Full Bench is the appellate bench of the Commission. The Full Bench hears and determines appeals from decisions of the Commission, the Work Health and Safety Tribunal, the Road Freight Transport Industry Tribunal, the Police Compensation Tribunal and the Industrial Magistrates Court.

Over the reporting year, all appeals to the Full bench have been finalised within a 12-month period. This period includes the time from filing an appeal, procedural steps in filing appeal books, listing the appeal for hearing, the determination of any interlocutory applications, hearing the appeal and delivering the decision. There has also been a pleasing clearance rate of 123% for Full Bench matters over the reporting year.

Full Bench – total matters

	2023-24	2024-25	Variance
Matters lodged	21	13	-8 (-38%)
Matters concluded	11	16	5 (45%)

Full Bench – appeals concluded from decisions of the:

	2023-24	2024-25	Variance
Commission – s 49	6	9	3 (50%)
Industrial Magistrate – s 84	3	4	1 (33%)
Public Service Arbitrator – s 80G	1	2	1 (100%)
Road Freight Transport Industry Tribunal – s 43 <i>Owner-Drivers (Contracts and Disputes) Act 2007</i>	0	0	0
Occupational Safety and Health Tribunal – s 51I <i>Occupational Safety and Health Act 1984</i>	0	0	0
Work Health and Safety Tribunal – s 29 <i>Work Health and Safety Act 2020</i>	0	1	1
Police Compensation Tribunal – s 33ZZD <i>Police Act 1892</i>	0	0	0

Full Bench – other matters concluded:

	2023-24	2024-25	Variance
Order for enforcements – s 84A	0	0	0
Matter of law referred – s 27(1)(u)	1	0	-1 (-100%)

Full Bench – on-time matter processing of appeals

	2023-24	2024-25
Appeals finalised within 6 months	33%	25%
Appeals finalised within 12 months	54%	100%
Appeals finalised >12 months	0%	0%

Applications to stay the operation of a decision appealed against pending the determination of the appeal pursuant to s 49(11) of the IR Act

	2023-24	2024-25	Variance
Matters lodged	5	1	-4 (-80%)
Matters concluded	5	1	-4 (-80%)

Western Australian Industrial Appeal Court

The Industrial Appeal Court is constituted by three judges of the Supreme Court of Western Australia. The Court hears appeals from decisions of the Full Bench, the Commission in Court Session, and certain decisions of the Chief Commissioner or the Senior Commissioner.

Industrial Appeal Court – total appeals

	2023-24	2024-25	Variance
Appeals lodged	3	3	0
Appeals concluded	1	2	1 (100%)

Industrial Magistrates Court

The Industrial Magistrates Court enforces Acts, awards, industrial agreements, and orders in the State industrial relations system. The Industrial Magistrates Court is also an 'eligible State or Territory court' for the purposes of the *Fair Work Act 2009* (Cth). It enforces matters arising under that Act and industrial instruments made under that Act.

The Industrial Magistrates Court Registry received a total of 149 claims that fell within the court's general jurisdiction during the reporting year. The overall decrease in application numbers compared to the previous financial year is largely attributable to a 57% decline in matters filed under the *Construction Industry Portable Paid Long Service Leave Act 1985* (CIPPLSL Act). These matters are typically administrative in nature and require minimal court involvement and resources.

In contrast, small claims applications have increased significantly, with a 311% rise in applications made compared to the previous financial year. Unlike CIPPLSL Act matters, small claims proceedings demand substantial court time and support, reflecting a shift in workload complexity

despite the overall reduction in application volume. With a clearance rate of 115% for this reporting year, it is pleasing to see a continuation of the efficiency of the court's performance. The addition of dually appointed Commissioners as Industrial Magistrates has significantly improved the timeliness of the court's operation. Industrial Magistrates issued reasons for decision on average 53 days from the date of hearing, compared with 101.5 days in the previous financial year.

Industrial Magistrates Court – total matters

	2023-24	2024-25	Variance
Matters lodged	171	149	-22 (-13%)
Matters concluded	144	172	28 (19%)

Industrial Magistrates Court – applications concluded

	2023-24	2024-25	Variance
Breach of the <i>Industrial Relations Act 1979</i> and/or related Industrial Instruments	22	21	-1 (-5%)
Breach of the <i>Fair Work Act 2009</i> and/or related Industrial Instruments	45	52	7 (16%)
Breach of the <i>Construction Industry Portable Paid Long Service Leave Act 1985</i> – s 83E	45	46	1 (2%)
Breach of the <i>Long Service leave Act 1958</i> and/or related Industrial Instruments	4	8	4 (100%)
Breach of multiple Acts and/or Industrial Instruments	18	19	1 (6%)
Small Claims – s 548 <i>Fair Work Act 2009</i>	9	26	17 (189%)
Enforcement of Order – s 83	1	0	-1 (-100%)
Criminal Prosecutions – s 83E(9)	0	0	0

Industrial Magistrates Court – monies ordered to be paid

	2024-25
Wages	\$525,715.00
Penalties	\$135,597.00
Costs	\$6,831.97
Total	\$668,143.97

The total wages ordered to be paid of \$525,715 includes orders made by consent as a result of settlement discussions before a Clerk of the court at a pre-trial conference. This is an increase of \$174,161.68 from the previous reporting period, which can be substantially attributed to successful claims made by the (then named) regulatory body, Department of Energy, Mines, Industry Regulation and Safety.

During this reporting year, 88 claims proceeded to at least one pre-trial conference. In total, 98 pre-trial conferences were held. Thirty-four claims were settled at a pre-trial conference or prior to a trial. This reflects the significant value of pre-trial conferences, in not only enabling programming orders and directions to be made, but also in providing an invaluable opportunity for the resolution of claims at an early stage.

Additionally, 68 claims were discontinued before being listed for court hearings. This includes matters where a pre-trial conference was listed but subsequently vacated. Whilst no judicial

functions were performed in relation to these matters, many of them entailed significant involvement of Registry staff in liaising with parties.

REGISTRY AND COMMISSION SUPPORT SERVICES

Industrial agents

The IR Act provides for the registration of industrial agents. Industrial agents, sometimes referred to as paid agents, are people or companies that carry on a business of providing advice and representation in relation to industrial matters, and who are not legal practitioners or registered organisations. During the reporting year, two new industrial agents were registered.

The IRLA Act 2024 introduced new Part 6C – Industrial Agents into the IR Act. The changes include: the introduction of an eligibility criteria for registration; power for the Registrar to conduct a disciplinary inquiry into the conduct of a registered industrial agent; and the ability for the Full Bench to hear and determine whether grounds for disciplinary action exists against an industrial agent, and if such grounds exist, the ability to make certain orders including suspension or cancellation of registration. The provisions in Part 6C – Industrial Agents have not yet come into operation; however, the Registry is engaging with relevant stakeholders to advise of the anticipated legislative changes and will continue to do so in the coming financial year.

Industrial Agents – registrations

	2023-24	2024-25	Variance
Total number of agents registered as body corporate	22	20	-2 (-9%)
Total number of agents registered as individuals	15	13	-2 (-13%)
Total	37	33	-4 (-11%)

Registered organisations

Registered organisations – Registered as at 30 June 2025

	Employee organisations	Employer organisations
Number of organisations	32	8
Aggregate membership	192,153	3,182

Right of entry

Under Part II Division 2G of the IR Act, the Registrar can issue a right of entry permit to a representative of a registered organisation to, during working hours, enter a workplace of employees who are eligible for membership of the authorised representative's organisation for the following purposes:

- To hold discussions with employees who wish to participate in discussions; and
- To request the inspection and take copies of relevant documents, and inspect a worksite or equipment, for the purpose of investigating any suspected breach of:
 - the *Industrial Relations Act 1979*; or
 - the *Owner-Drivers (Contracts and Disputes) Act 2007*; or

- the *Long Service Leave Act 1958*; or
- the *Minimum Conditions of Employment Act 1993*; or
- the *Work Health and Safety Act 2020*; or
- the *Construction Industry Portable Paid Long Service Leave Act 1958*; or
- a local government long service leave provision; or
- an award, order, industrial agreement, or employer-employee agreement that applies to a relevant employee.

Changes to the IR Act, introduced by the IRLA Act 2024, introduced a new ‘fit and proper person’ test for union officials to obtain a right of entry permit. These changes commenced on 31 January 2025. Since the commencement of these new laws, there were 16 applications made for a right of entry permit during the reporting period. Of these 16 applications, 14 were granted, one was referred to the Commission for determination, and one was in the process of being determined.

Right of entry permits

	2023-24	2024-25	Variance
Permits issued	77	55	-22 (-29%)
Total number of permits as at 30 June	324	300	-24 (-7%)
Number of authorisation holders who have had their permit revoked or suspended by the Commission	0	0	0
Number of authorisation holders who have had their permit revoked by the Registrar	65	80	15 (23%)

Rule alterations by the Registrar

The Registrar may, after consulting with the Chief Commissioner, issue a certificate under the IR Act authorising certain alterations to the rules of a registered organisation.

During the reporting year, nine alterations to rules were lodged with the Registrar under s 62(3) of the IR Act. These involve general variations to rules that are not required to be dealt with by the Commission in Court Session. Separate to that figure, within the reporting period, three rule alteration applications required multiple consultation periods with the Chief Commissioner due to irregularities identified within the applications. As a result of that consultation, two of these organisations had to seek orders from the Chief Commissioner under section 66 of the IR Act in order for their rule alteration applications before the Registrar to be successful and the alterations registered. A fourth application was placed on hold prior to consultation to permit the Registrar to commence proceedings under s 66 of the IR Act to satisfy herself that the applicant had the authority under the rules of the organisation to make the application to the Registrar. That matter resolved and the Registrar was able to consult with the Chief Commissioner in May 2025 to conclude that application.

Award reviews

The review of awards in the private sector in accordance with s 40B of the IR Act commenced in 2020 and is ongoing. Section 40B authorises the Commission to review awards to ensure that the award:

1. does not contain wages that are less than the minimum award wage as ordered by the Commission under s 50A;
2. does not contain conditions of employment that are less favourable than those provided by the *Minimum Conditions of Employment Act 1993*;
3. does not contain provisions that discriminate against an employee on any ground on which discrimination in work is unlawful under the *Equal Opportunity Act 1984*;
4. does not contain provisions that are obsolete or need updating; and/or
5. is consistent with the facilitation of the efficient organisation and performance of work according to the needs of an industry and enterprises within it, balanced with fairness to the employees in the industry and enterprises.

Award reviews to modernise State awards have continued at pace. In addition to those reported last year, in this reporting year 40B reviews have been completed for:

- the Theatrical Employees (Perth Theatre Trust) Award No. 9 of 1983, now called the Arts and Culture Trust – Theatrical Employees Award
- the Performers Live Award (WA) 1993, now called the Live Performers Award (WA)
- the Catering Employees and Tea Attendants (Government) Award 1982, now called the Catering Employees and Tea Attendants (Government) Award
- the Plaster, Plasterglass and Cement Workers' Award No. A 29 of 1989, now called the Plaster, Plasterglass and Cement Workers' Award
- the Commercial Travellers and Sales Representatives' Award 1978, now called the Commercial Sales Representatives' Award.

Broadly, the reviews have resulted in the removal of wages that are less than statutory minimum wages, obsolete provisions, gendered and outdated language, and alignment with the *Minimum Conditions of Employment Act 1993* provisions.

Section 40B reviews progressed and near completion include:

- the State Research Stations, Agricultural Schools and College Workers Award 1971
- the Bakers' (Metropolitan) Award No. 13 of 1987
- the Metal Trades (General) Award

Section 40B reviews have been initiated for the following awards, and are in early stages of progress:

- the Children's Services (Private) Award 2006
- the Timber Workers Award No. 36 of 1950 and Timber Yard Workers Award No. 11 of 1951

Award scope variations

Significant progress has been made over the reporting year in relation to modernising awards through award scope reviews identified in last year's Annual Report. In this reporting year, orders were made varying the scope clauses of the following awards:

- the Clerks (Unions and Labor Movement) Award 2004
- the Shop and Warehouse (Wholesale and Retail Establishments) State Award
- the Hair and Beauty Industry (WA) Award
- the Transport Workers (General) Award No. 10 of 1961
- the Building Trades and Labourers (Construction) Award
- the Building Trades and Labourers (General) Award

These variations have simplified and standardised scope provisions, and filled anomalous gaps in award coverage. As a result of the broadening of award coverage, other awards have been able to be cancelled, such as the Transport Workers (Mobile Food Vendors) Award 1987, the Breadcarters' (Metropolitan) Award and the Breadcarters (Country) Award 1976.

During the year, the following award scope variation matters have significantly progressed:

- the Metal Trades (General) Award
- the Bakers' (Metropolitan) Award No. 13 of 1987

Once completed, these scope reviews will result in the consolidation of six awards into a single award and three awards into a single award, allowing for the cancellation of seven awards.

During the year a scope review was initiated for the Children's Services (Private) Award 2006. This is in early stages of progress. The aim is to explore whether five separate awards related to early childhood education and care can be consolidated into a single award.

The Department of Energy, Mines, Industry Regulation and Safety has continued to provide considerable assistance to the Commission in the award scope variation process, for which the Commission is grateful.

ACCESS TO JUSTICE

Given the nature of the Commission's private sector jurisdiction, the small business sector continues to be significantly represented in matters that come before the Commission. Employees of these small firms, who very frequently represent themselves, often find the procedures of the Commission unfamiliar and challenging. External support, through various initiatives, has assisted these parties to navigate their way through the Commission's jurisdiction.

The Commission's pro bono scheme

Several law firms continue to provide assistance and advice to particularly vulnerable employees and employers, to deal with matters before the Commission. The types of assistance provided range from advice on the merits of the claim and preparation of a written submission, to

representation at a conciliation conference. Those law firms providing pro bono assistance are referred to in [Appendix 2 – Pro Bono Providers](#).

Five applicants were referred to the scheme, with two of the five ultimately choosing not to proceed with seeking assistance from the scheme. All five applicants were assessed as eligible to receive assistance. The Pro Bono Scheme Coordinator was unable to secure advice for one of these applicants due to participating law firms' lack of capacity or identified conflict. The Pro Bono Scheme Coordinator subsequently made a referral to Circle Green Community Legal (CGCL) for this applicant, resulting in the applicant receiving legal advice and support. Two referrals to the Scheme are in the process of receiving assistance. The Pro Bono Coordinator is in the final stages of securing several new law firms as members of the pro bono scheme panel. It is anticipated these new panel members will commence with the scheme by November 2025.

The pro bono scheme continues to be an important initiative in enabling access to justice. Thanks are given to those law firms and industrial agents who continue to participate in the scheme.

Circle Green Community Legal and John Curtin Law Clinic

During the reporting year, with the assistance of CGCL and the John Curtin Law Clinic (JCLC), the Commission has been able to provide vulnerable people with guidance.

Where CGCL can provide direct assistance to employees coming before the Commission, the JCLC has offered to help small business employers.

Information videos

As noted in the previous reporting period, the Commission has partnered with CGCL to enhance information resources for the public seeking support accessing the Commission and the IMC jurisdictions. This partnership resulted in the creation of information videos on the conciliation process and procedures for the Commission, and the pre-trial conference process and procedures for the IMC. These information videos are published on the Commission and IMC websites respectively, and provide a comprehensive overview of what to expect, how to prepare and the process and outcomes for a conciliation or pre-trial conference. For the 2025-26 year, the Commission is working with CGCL to extend its partnership through the creation of information videos on the hearing process and procedures for the Commission, and trial process for the IMC.

COMMUNITY ENGAGEMENT

Professional development

Commissioners also took part in various professional development programmes in the reporting year. These included:

- Senior Commissioner Cosentino attended the Resolution Institute – Online Conciliation Series – July 2024; the Industrial Relations Society of Western Australia Annual Conference – May 2025 and the Council of Australasian Tribunals National Conference – June 2025.
- Commissioner Walkington participated in the Institute of Public Administration WA Individual Mentoring Programme 2025.

- Commissioner Tsang attended the Resolution Institute 'Conciliation as a distinct model of DR' – July 2024; Resolution Institute 'ADR Trends for 2025' – December 2025; Council of Australasian Tribunals 'Control: Narcissistic and Coercive' – March 2025; Resolution Institute 'Determinative Decision Writing' – June 2025; the International Association of Women Judges and the Asian Australian Lawyers Association – various; and the Council of Australasian Tribunals National Conference – June 2025.

Events supported by the Commission

Commission members attended various functions and other forums, at the invitation of employee and employer organisations, and other organisations, throughout the reporting year including:

- Commissioner Emmanuel attended the Industrial Relations Society of Western Australia 'Women in IR Breakfast' – October 2024; the CPSU – CSA Sundowner and delegate awards – November 2024 and the 46th Annual Firefighters Retirement Dinner – March 2025
- Commissioner Kucera attended the Industrial Relations Society of Western Australia 'Women in IR Breakfast' – October 2024.

Members of the Commission also presented at seminars and conferences:

- The Chief Commissioner presented at the UnionsWA Industrial Officers and Lawyers Network Annual Conference – November 2024.
- Senior Commissioner Cosentino presented at the DMIRS/GSLR Welcome to the WAIRC – July 2024; was a coach for the Law Society Practical Advocacy Weekend – October 2024; presented at the Piddington Society Legal Training Intensive – January 2025 and the Piddington Society Mediation Training – February 2025; presented at the Curtin University Law School Mooting Competition – February 2025; presented at the Labour Movement Education Association Internship and was a panel member at the Australian HR Institute State Conference – May 2025.
- Commissioner Emmanuel presented at the Piddington Society 'The Rules of Evidence – When Don't They Apply?' – November 2024 and the Industrial Relations Society of Western Australia/Piddington Society 'Investigations Workshop – Ethics and Workplace Investigations' – February 2025.
- Commissioner Tsang presented at the Industrial Relations Society of Western Australia Annual Conference – May 2025.



Figure 5. Photo of the Chief Commissioner at the UnionsWA Industrial Officers and Lawyers Network Annual Conference

Figure 6. Photo of the Senior Commissioner at the Piddington Society Mediation Training

Work experience at the Commission

As reported last year, the Commission continues to provide opportunities for students to undertake familiarisation and work experience at the Commission. Under the supervision of a Commissioner, they attend hearings and conferences, undertake research and receive inductions through various parts of the Commission, the Registry and the Industrial Magistrates Court.

This arrangement assists in raising awareness among students of law and industrial relations about the role and jurisdiction of the Commission and the Industrial Magistrates Court and the issues that arise in employment relationships and how they may be resolved.

DISPUTES AND DECISIONS OF INTEREST

Decisions of interest

Industrial Appeal Court

Meaning of 'equity good conscience and the substantial merits of the case'

Fagan v Minister for Corrective Services [2024] WASCA 167; (2025) 105 WAIG 1

The appellant, who had been employed as a prison officer by the respondent, appealed the decision of the Full Bench to the Industrial Appeal Court, seeking reinstatement after her dismissal for failure to comply with a direction to be vaccinated against COVID-19 and provide evidence of her vaccination.

In her original claim before the Commission, the appellant contended that she had been unfairly dismissed by the respondent for failure to comply with the vaccination direction. Having found that another employee had been reprimanded but not dismissed for non-compliance with the direction to be vaccinated, Senior Commissioner Cosentino found that while there was valid reason for the appellant's dismissal, when compared to the other employee, the respondent's treatment of the appellant was unfair, and ordered that the appellant be reinstated to her position.

The respondent appealed this decision to the Full Bench of the Commission, contending that the matter of the other employee's reprimand was not a relevant comparator. Finding that the disciplinary outcome for the other employee occurred several months after the appellant's dismissal, and that each employee was employed in a materially different role requiring different

working circumstances and subject to different statutory frameworks, the Full Bench determined that the respondent's claim had been made out and overturned the decision of the Senior Commissioner.

The appellant's appeal to the Industrial Appeal Court was on the grounds that the Full Bench erred in law by finding that the other employee's disciplinary outcome was not a suitable comparator to her case, raising the issue of the proper construction of s 26(1)(a) and s 26(1)(b) of the *Industrial Relations Act 1979* (IR Act). The Court found that in this matter, the proper construction and application of s 26(1) of the IR Act was not in issue before the Full Bench. The Court reaffirmed the approach based on case law, that the words 'according to equity, good conscience, and the substantial merits of the case' in s 26(1)(a), do not enable the Commission to depart from the general law and to impose a remedy not existing at common law or under statute, because it considers it fair and reasonable to do so. The Court determined that the Full Bench applied the well-established legal test for ascertaining if an employee's dismissal was harsh, oppressive, or unfair, and applied well-established legal principle in determining the relevant facts in relation to the alleged disparity between the treatment of the appellant and other disciplined employee. Finding that the Full Bench had not erred in law, the Industrial Appeal Court dismissed the appeal and upheld the decision of the Full Bench.

Full Bench matters

Challenge to unsuccessful union election bid dismissed

***Fenn v The Australian Nursing Federation, Industrial Union of Workers Perth, The Returning Officer, Western Australian Electoral Commission, The Registrar, Western Australian Industrial Relations Commission - Intervenor 29B Party* [2024] WAIRC 00833; (2024) 104 WAIG**

The appellant, who was an unsuccessful candidate for election to the office of Secretary at the respondent union, applied to the Commission for an inquiry into the election alleging irregularities under s 66(2)(e) of the IR Act.

In her original application, the appellant claimed that the respondent did not comply with an order of the Chief Commissioner until after the election results were declared, that the postal ballot period had been reduced due to a public holiday, and that the Returning Officer was under an obligation to extend the ballot period but failed to do so. The Chief Commissioner rejected these arguments, finding that the order had no bearing on the election process, and that there was no established practice requiring the ballot period or for the period to be extended in the event of a public holiday.

The appellant appealed this decision on several grounds, including that the Chief Commissioner had erred in finding that the non-compliance order was immaterial to the election process and that there was no established practice for a 21-day ballot period or obligation for it to be extended. She also contended that the limited ballot period hindered the full and free recording of votes.

The Full Bench found that the respondent's delay in complying with the order and the Returning Officer's conduct did not constitute irregularities in connection with the election. Finding that the

Chief Commissioner had not erred in the original proceedings, the Full Bench upheld the Chief Commissioner's findings and dismissed the appeal.

Misconduct by a party attempting to influence a witness in proceedings before the Commission

***Palaloi v Director General, Department of Education* [2024] WAIRC 01009; (2024) 104 WAIG 2480**

The appellant, who was employed as a teacher, lodged an appeal against a decision of the Commission dismissing her claim that she was unfairly dismissed by the respondent. The respondent had informed the appellant that her probationary employment had not been successfully completed due to incidents that occurred in the course of her probationary period including allegations of inappropriate physical contact with students, failure to maintain appropriate boundaries, and misuse of social media in communications with students. The Commission in the first instance upheld the respondent's decision and dismissed the appellant's substantive claim.

The appellant's notice of appeal did not clearly articulate any grounds for appeal but contended that text messages between her and her student used as evidence in the proceedings were illegally obtained and that she did not realise she was communicating with the student until later in the conversation. The respondent argued that the Commissioner's findings were open on the evidence, which the appellant had not contested, and that the appellant's communications with the student were intimidatory and harassing.

As the appellant did not advance clear grounds of appeal, the Full Bench considered whether the appellant knew or believed she was communicating with her student, whether the student was a potential witness in the case at first instance, and whether the appellant attempted to influence the student. The Full Bench found that on balance it was clear the appellant knew or believed that she was engaging in conversation with the student, that the student was a potential witness in proceedings, and that the appellant had attempted to intimidate and influence the student. Accordingly, the Full Bench determined that the appellant had failed to establish any error in the Commissioner's findings at first instance and dismissed the appeal.

Employee not entitled to overtime for public holiday

***Minister for Corrective Services v Western Australian Prison Officers' Union of Workers* [2024] WAIRC 01034; (2024) 105 WAIG 17**

The appellant employer appealed the decision of an Industrial Magistrate, who found that the employer was required to pay overtime payments to the respondent Union's member for work performed on a public holiday. In his decision, Industrial Magistrate Kucera ordered the employer to pay the overtime pay owed to the employee as well as a \$15,000 fine.

The appeal grounds related broadly to the Industrial Magistrate's interpretation of the Industrial Agreement. The employer argued that the Agreement was unambiguous on the matter of public holiday pay being included in the annualised salary and the employee's rostered hours including the public holiday. Other grounds challenged the penalty imposed, including by alleging the Industrial Magistrate incorrectly applied the maximum penalty for a body corporate to the employer, when the employer was an individual (the Minister).

The Union cross appealed the penalty decision, contending that the penalty was inadequate and that costs should have been awarded to the Union.

The Full Bench, by a majority comprising Commissioner Emmanuel and Commissioner Tsang, upheld the first and second grounds of the appeal, finding that Industrial Magistrate Kucera erred in finding that the construction of the Industrial Agreement was ambiguous on the matter of overtime and public holidays, and in finding that the employee was entitled to a paid day off on the public holiday. The majority relied on the terms of a clause in the Industrial Agreement which provided that the Annualised Salary compensates officers for working on public holidays, except where specifically provided for in the Agreement. The majority considered this meant that there must be express provision made in the Industrial Agreement itself. There being no such express provision, the Industrial Agreement did not entitle the employee to overtime pay for hours worked on a public holiday or a paid day off.

As a result of upholding the first two grounds of the appeal, it was not necessary for the majority to consider grounds three to eight.

The Senior Commissioner dissented in relation to the construction of the Industrial Agreement. She agreed with the Industrial Magistrate's construction. She also considered the Industrial Magistrate was correct to have assessed the penalty for contravention on the basis that the employer (being the State) was a body corporate.

The Full Bench unanimously dismissed the Union's cross-appeal for reasons including the fact that the Union had not claimed costs in the proceedings at first instance and so could not raise that matter on appeal.

Commission in Court Session

Commission in Court Session dismisses application for production of documents

Western Australian Municipal, Administrative, Clerical and Services Union of Employees & Anor v (Not Applicable) & Ors [2025] WAIRC 00188; (2025) 105 WAIG 592

In a large and complex ongoing matter regarding union coverage of local government employees, the Commission in Court Session addressed an oral application by the respondent union during proceedings, which sought broad-ranging orders for the production of documents from the applicant unions and intervenor. The application was based on allegations of collusion between the applicants and intervenors in the substantive matter, which were said to be relevant to the credibility of witnesses and the ability of the applicant union to represent local government employees effectively.

The Commission in Court Session was not persuaded to make the orders as sought and found no basis for an order for the production of documents, considering the request from the applicant to be too broad. However, the Commission did make limited orders for production of documents related to the evidence in the proceedings, as these were relevant to the issues identified by the respondent.

The Commission considered the respondent's allegations, and the evidence presented. The Commission noted that there was no direct evidence of collusion or improper conduct by the applicants or their representatives, and emphasised the need to avoid further delays and additional costs in the proceedings. The Commission found that the respondent had not established any material change in circumstances to warrant revisiting its earlier decision. The Commission concluded that the orders sought by the respondent were oppressive, speculative, and contrary to the public interest.

The Commission granted the applications by the applicant unions to dismiss the respondent's application for production of documents. The proceedings were re-listed for further directions to deal with the claim for privilege arising from the orders previously made.

Single Commissioner matters

Interim orders made to remove union Secretary pending final hearing

Raschilla v Mark Olson, Australian Nursing Federation Industrial Union of Workers Perth, Registrar, Western Australian Industrial Relations Commission [2024] WAIRC 00887; (2024) 104 WAIG 2379

The applicant, a Vice President and Council member of the second respondent union, applied to the Commission seeking an order under s 66 of the IR Act challenging the appointment of the first respondent to the casual vacancy as Secretary of the second respondent. The applicant sought interim orders to remove the first respondent from his position and allow the Council to appoint an eligible member to the position until further order.

The first respondent, who previously served as Secretary of the union before leaving the role in 2022, was reappointed to the position on 30 August 2024, upon the resignation of the former Secretary, taking effect the same day. The applicant contended that the first respondent was ineligible for this appointment, citing the Union's rules. The applicant also raised several allegations against the first respondent, including claims of bullying and harassment, and contentions concerning transparency in his dealings with the Council, nepotism, and potential tax liabilities.

The Registrar, an intervenor in this matter, supported the applicant's submissions and filed evidence in support of the contention that under the Union's rules, the first respondent was ineligible for appointment to the vacant Secretary position.

The first and second respondents opposed these contentions, asserting that the first respondent was eligible for the appointment under the Union rules as a financial member of the union, since first joining while in the nursing profession. They contended that the allegations pertaining to the first respondent's conduct were unfounded, and that the removal of the first respondent from the position of Secretary would compromise upcoming enterprise bargaining negotiations.

Chief Commissioner Kenner considered the two requirements for the granting of interim orders, namely whether there were serious questions to be determined and where the balance of convenience lay. The Chief Commissioner determined the matter weighed in favour of the applicant and the Registrar and made orders accordingly.

Commission determines matters parties unable to agree upon

City of Swan, Local Government, Racing and Cemeteries Employees Union (WA), Western Australian Municipal, Administrative, Clerical and Services Union of Employees v (Not Applicable) [2024] WAIRC 00989; (2024) 104 WAIG 2599

The City of Swan, the Local Government, Racing and Cemeteries Employees Union (WA) (LGRCEU) and the Western Australian Municipal, Administrative, Clerical and Services Union of Employees (WASU) reached an agreement on all but three provisions of a proposed industrial agreement to apply to its workforce engaged in the City's construction and maintenance business unit.

Three disputed matters were not agreed and the parties jointly applied to the Commission under s 42G of the IR Act for the Commission to register a new industrial agreement in the terms the parties themselves agreed, together with any other provisions as ordered by the Commission about the three matters that the parties have not agreed.

The disputed matters were:

1. the annual percentage increase to the annual salary to be paid to PEF employees;
2. the conditions attached to payment following the annual performance development review process; and
3. the introduction into the Agreement of express reference to summer and winter rosters or the introduction into the Agreement of a single year-round 6.30 AM start time.

On the issue of percentage wage increases, the focus of the Unions' evidence was the need for wage increases to meet the increasing costs of living faced by a relatively low paid workforce. The focus of the City's evidence was the comparability of the City's proposal with rates paid in the local government sector together with the budgeting constraints faced by the City which impacted on its ability to fund increases to employee costs.

Senior Commissioner Cosentino had regard to the evidence about cost of living pressures, market rates of pay in local government, the City's budgetary constraints, the City's capacity to pay, and the state of the Western Australian economy to arrive at a pay increase of 13.5% over the three year life of the agreement.

As to the performance pay provisions, the Senior Commissioner considered that the City's proposal had greater merit, as it did not undermine the salary bands/pay increments within the Agreement and maintained, to some extent, meaningful incentives for career progression.

The Senior Commissioner also agreed with the City that workplace health and safety considerations were a good justification for having a summer and winter roster, and that the employees' preference for a single year-round start time was outweighed by these safety factors.

Unfair dismissal claim stayed pending judicial review application

***Teede v Shire of Menzies* [2025] WAIRC 00210; (2025) 105 WAIG 749**

The applicant commenced a referral of an unfair dismissal application in the Commission, seeking reinstatement to her position as Chief Executive Officer with the respondent. The applicant had concurrently initiated judicial review proceedings in the Supreme Court of Western Australia, challenging the respondent's decision to terminate her employment. The applicant alleges the decision of the respondent was legally invalid due to a breach of natural justice, lack of evidence in justifying the decision, an absence of power to make the decision under the *Local Government Act 1995* (WA), and a failure to follow legal procedures.

The applicant subsequently requested that the Commission adjourn, postpone or stay the existing unfair dismissal application until the judicial review proceedings were determined.

In responding to the applicant's stay application, the respondent argued the Commission lacked jurisdiction to hear the matter due to the absence of a valid dismissal, and that the applicant's conduct in maintaining both the unfair dismissal application and judicial review proceedings would amount to an abuse of process.

Senior Commissioner Cosentino considered whether there was power to stay the proceedings pursuant to s 27 of the IR Act, and whether to exercise discretion to grant the stay application. Factors considered included whether the applicant's conduct amounted to an abuse of process, the effect of the judicial review proceedings on the unfair dismissal application and avoiding multiple proceedings on similar issues.

Senior Commissioner Cosentino concluded that the applicant's alternative claims did not constitute an abuse of process, as the actions in each sought different remedies. Further, the Senior Commissioner concluded that the judicial proceedings could resolve the matter in the first instance, and therefore staying the unfair dismissal proceedings would be appropriate. Accordingly, the stay was granted.

Application to register industrial agreement dismissed

***The Independent Education Union of Western Australia, Union of Employees v The Moerlina School Inc.* [2025] WAIRC 00150; (2025) 105 WAIG 470**

The Union applied for the Commission to register the Moerlina School (Enterprise Bargaining) Agreement 2024. As the respondent was a corporation, the Commission could only register the Agreement if the respondent was not a constitutional corporation that was covered by the federal industrial relations system.

The parties provided financial reports, the respondent's Constitution, Notices of Determination from previous years identifying the funding received from the federal government, and an explanation of the respondent's operations.

The Union submitted that the respondent's primary purpose was to operate a school, which was supported by its Constitution, the objects of which do not indicate any trading activity.

Furthermore, the Union argued that the income received by the respondent from fees was tuition fees levied to meet the costs of educating students which was not met by government grants or other income.

When considering the other income received, the Union conceded that the majority of the income received by the respondent was from trading activities, including tutoring and rental agreements. However, the Union argued that such income was of a negligible amount compared to other categories of income.

Commissioner Tsang agreed that the objects in the respondent's Constitution did not indicate trading activity, however, the Commissioner found that it was equally true that the objects did not forbid the respondent from engaging in trading activity.

The Commissioner found the Constitution gave the respondent powers which explicitly permitted it engaging in activities which are commonly understood as trading. Furthermore, the Constitution explicitly provided for the respondent to set tuition and other fees. The Commissioner noted that the respondent's motive for setting the fees was irrelevant to determining whether it was a trading corporation. It was also not necessary for the trading activities to be profitable, or intended to be profitable, for it to be considered a trading corporation.

The Commissioner found that the respondent's fee revenue (approximately 46% of the total operating income) and 'other income' (approximately 11% of the total operating income) constituted revenue from its trading activities. As these were 'a substantial and not merely peripheral activity', the Commissioner found the respondent to be a trading corporation.

Accordingly, the Commissioner dismissed the application to register the Agreement for want of jurisdiction.

Public Service Appeal Board

Acting arrangement did not constitute a dismissal

Lawson v Director General, Department of Justice [2024] WAIRC 00967; (2024) 104 WAIG 2459

Ms Lawson worked for the Director General, Department of Justice, as Assistant Superintendent Offender Services (being a level 6 role). On 9 October 2023, Ms Lawson began an acting arrangement that meant she would work in a level 7 role, Manager Executive Support, until 7 October 2024 (Acting Arrangement). However, in February 2024, the Department informed Ms Lawson that the Acting Arrangement would end on 22 March 2024.

The PSAB had to decide whether the Department dismissed Ms Lawson by ending the Acting Arrangement and, if so, whether the Board should adjust that decision.

The PSAB found that ending the acting arrangement did not amount to dismissal. The acting arrangement did not create a new employment contract that amounted to an appointment, and the fact that the acting opportunity had an expiry date did not elevate it to be a fixed-term appointment under the *Public Sector Management Act 1994*. As Ms Lawson was not appointed to the Manager Executive Support position, she could not be and was not dismissed from it.

Work Health and Safety Tribunal

No discriminatory action taken by employer in dismissal of employee

Simmonds v Electricity Networks Corporation t/a Western Power [2024] WAIRC 00782; (2024) 104 WAIG 1968

The Tribunal dismissed an application made by a Safety Operations Business Partner relating to his dismissal, under s 112 of the WHS Act.

The applicant, who was dismissed by the respondent in April 2023, applied to the Work Health and Safety Tribunal, believing he was the subject of discriminatory conduct for a prohibited reason. He maintained that after he raised a work health and safety issue within the business, the respondent took discriminatory action against him by placing him on a performance plan and later dismissing him.

The respondent applied to have the application dismissed. The respondent alleged that the applicant was facing the disciplinary proceedings due to his breach of its Code of Conduct (Code). The respondent accepted that dismissing the applicant amounted to discriminatory conduct under the WHS Act but disagreed about whether the performance plan amounted to discriminatory conduct. It maintained, however, that the performance plan and subsequent dismissal was not for a prohibited reason, but rather, because of the applicant's preceding misconduct.

The Tribunal found that the respondent did take discriminatory action against the applicant when it dismissed him. However, it held that the respondent did so because the applicant breached the Code. This was, therefore, for a reason other than a prohibited reason. In relation to the performance plan, the Tribunal determined that the plan did not alter the applicant's employment position to his detriment, rather, it sought to support and guide his performance. As such, the Tribunal declined to make an order in the applicant's favour and dismissed the application.

Industrial Magistrates Court

Failure to keep time and wages records and significant underpayments

Jilian Dixon, Department of Mines Industry Regulation and Safety v Kahraman Karakuyu and Done Karakuyu [2025] WAIRC 00039; (2025) 105 WAIG 315

Jilian Dixon, an industrial inspector from the Department of Mines Industry Regulation and Safety (claimant) brought enforcement proceedings under s 83 of the IR Act against the respondents, who operated a takeaway and dine in Kebab Shop in East Perth.

In the enforcement proceedings, it was alleged the respondents:

1. failed to keep time and wages and other employment records as required under s 49D of the IR Act (records contraventions) and
2. in the period 27 April 2016 – 31 December 2018, had significantly under paid one of its employees, Zahin Zeyrek, in breach of the Restaurant, Tearoom and Catering Workers Award 1979 (award breaches).

Although the respondents admitted the records contraventions, they denied that they had committed the award breaches as alleged.

The decision from Industrial Magistrate Kucera dealt with several issues including the following:

- whether the *Restaurant, Tearoom and Catering Workers Award 1979* (award) applied to the respondents;
- whether because of the records contraventions, the reverse onus of proof under s 83EB of the IR Act applied to the proceedings;
- whether the respondents had provided a 'reasonable excuse' as contemplated by s 83EB(2) of the IR Act, for their failure to keep employment records;
- whether the respondents in their failure to produce employment records had engaged in or appeared to have engaged in, conduct of the type contemplated by s 83A(2)(b) and s 102 of the IR Act;
- whether the Court should extend the period in which the claimant could recover underpayments beyond the usual six-year limitation period that applies under s 82A of the IR Act.

Industrial Magistrate Kucera concluded the award applied because the respondent's business fell within the definition of a 'restaurant or tearoom' that appeared in Clause 6.

His Honour held the reverse onus provision in s 83EB, that was introduced under the *Industrial Relations Legislation Amendment Act 2021*, applied with retrospective effect to the alleged award breaches. The respondents provided two reasons for the records contraventions. The first of these was that the respondents had lost their employment records during renovations to their store (lost records reason). The second was that they had delegated responsibility for keeping employment records to their son Hasan Karakuyu, who was placed in charge as a manager of the business in or around 2012 or 2013 (delegation reason).

Industrial Magistrate Kucera did not accept that the two reasons the respondents provided were reasonable. His Honour rejected the delegation reason on the grounds the evidence did not establish the respondents had taken reasonable steps to discharge their responsibilities and obligations as business partners, to keep and maintain employment records. After considering the evidence from the respondent's witnesses and the state of the records the respondents did provide, Industrial Magistrate Kucera also rejected the lost records reason. Having made these findings, His Honour held s 83EB(1) of the IR Act was engaged and the reverse onus applied to the case.

Upon his consideration of all the evidence, Industrial Magistrate Kucera found that the award breaches were proved. In reaching this finding, His Honour found the respondents had committed 523 breaches of the award. His Honour noted that by admitting the records contraventions, the respondents had accepted they had contravened s 49D of the IR Act on 738 occasions. For the claim period 27 April 2016 – 31 December 2018, His Honour concluded Mr Zyerek was underpaid a total sum of \$102,483.74 (underpayment amount). After issuing his reasons, Industrial Magistrate Kucera made an order requiring the respondents to pay the underpayment amount to

the claimant. His Honour also referred the question of the penalties to be imposed, for the records contraventions and for the awards breaches, to a penalty hearing.

Penalties imposed for failure to comply with compliance notice

Aplin v ARC Holdings (WA) Pty Ltd & Mr Thomas John Griffiths [2025] WAIRC 00229; (2025) 105 WAIG 690

The claimant, an industrial inspector, applied for civil penalties against ARC Holdings (WA) Pty Ltd and its sole director, Mr Griffiths, for contravening s 84T(1) of the IR Act by failing to comply with a compliance notice issued on 8 May 2023.

The compliance notice required ARC Holdings to pay \$9,345.21 in long service leave to a former employee, Mr McCormick, and provide evidence of payment by 6 June 2023.

The respondents contended that they had a reasonable excuse under s 84T(3) for non-compliance, as they pursued a review and appeal of the notice, and delayed payment to confirm bank details. The respondents argued the contravention was not deliberate, caused minimal loss, and that no penalty should be imposed as payment was eventually made.

The claimant submitted that no reasonable excuse existed, as the legal challenges did not stay the notice, and the delay undermined the compliance regime. The claimant argued the contravention was serious, warranting upper-range penalties for deterrence.

Industrial Magistrate Tsang found that the respondents did not have a reasonable excuse, and that Mr Griffiths was involved in the contravention under s 83E(1A).

Considering factors such as the contravention's nature, duration, deliberateness, loss to Mr McCormick, senior management involvement, lack of contrition, and need for deterrence, the Industrial Magistrate assessed the contravention as mid-range serious.

Accordingly, penalties of \$15,000 were imposed on ARC Holdings and \$3,000 on Mr Griffiths, with costs of \$123.75.

APPENDICES

Appendix 1 – Members of the Public Service Appeal Board

Ms B Anderson	Mr P Heslewood
Mr M Aulfrey	Mr D Hill
Mr J Batchelor	Ms Z Johnston
Ms L Brick	Mr B Kirwan
Mr G Brown	Mr G Lee
Mr N Cinquina	Mr P McCarney
Mr M Coe	Ms H Moir
Ms B Conway	Mr M Norton
Mr T Daly	Ms N Pyne
Mr S Dane	Mr J Raja
Mr M Edwards	Mr M Salamon
Mr M Finnegan	Mr A Salter
Mr F Furey	Ms S Shah
Mr M Golesworthy	Ms R Sinton
Ms E Hamilton	Ms B Skalko
Mr B Hawkins	Ms J Symons
Mr M Hayman	Mr G Thompson

Appendix 2 – Pro Bono Providers

Ashurst Australia
Clayton Utz
DLA Piper
Jackson McDonald
John Curtin Law Clinic
Mare Lawyers / Workwise Advisory Services
MDC Legal
MinterEllison

