

2000  
WESTERN AUSTRALIA



THIRTY SEVENTH ANNUAL REPORT  
OF  
THE CHIEF COMMISSIONER  
OF THE  
WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION  
FOR THE PERIOD  
1 JULY 1999 TO 30 JUNE 2000

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

2000  
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 1999 to 30 June 2000

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

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## MEMBERSHIP OF TRIBUNALS AND PRINCIPAL OFFICERS

### WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

During the year to 30<sup>th</sup> June 2000, the Commission had the following members:

<b>President</b>	The Honourable P J Sharkey
<b>Chief Commissioner</b>	W S Coleman
<b>Senior Commissioner</b>	G L Fielding
<b>Commissioners</b>	J F Gregor
	S A Cawley
	A R Beech
	C B Parks
	P E Scott
	S J Kenner
	J H Smith
	S Wood

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

- Commissioner Dr S A Cawley retired with effect from 6 August 1999.
- Commissioner C B Parks retired with effect from 31 January 2000 and pursuant to section 18 of the Industrial Relations Act 1979 his appointment was extended from 28 February 2000 to and including 7 March 2000.
- Commissioner J H Smith was appointed with effect from 10 January 2000
- Commissioner S Wood was appointed with effect from 31 January 2000

The Commission welcomes the appointments of two new Commissioners in this reporting period. Commissioner Jennifer Smith was a barrister and solicitor with the Crown for many years and brings a wealth of knowledge and experience to the Commission. Commissioner Stephen Wood joins the Commission after a distinguished career in the Western Australian and Commonwealth Public Services.

The Commission records its appreciation of the loyal and dedicated service provided by Commissioners Dr Sally Cawley and Colin Parks who retired during the year.

During the period under review members of the Commission held the following appointments

#### **Public Service Arbitrators**

Commissioner J F Gregor was the Public Service Arbitrator until 30 May 2000

Senior Commissioner G L Fielding was appointed as Public Service Arbitrator on 31 May 2000 for a period of 2 years. The Senior Commissioner was an additional arbitrator up until 30<sup>th</sup> May 2000.

Commissioner A R Beech was appointed as an additional arbitrator for one year from 27 March 2000

Commissioner P E Scott was appointed as an additional arbitrator for 6 months from 29 January 2000

Commissioner S J Kenner was appointed as an additional arbitrator for one year from 31 May 2000

#### **Railways Classification Board**

Commissioner A R Beech was the Chairman from 6 July 1999 until 1 June 2000

Commissioner J H Smith was appointed as Chairman for 2 years from 2 June 2000

Commissioner S J Cawley was Deputy Chairman until 5 July 1999.

Commissioner S J Kenner was appointed as Deputy Chairman on 6 July 1999 for one year

## **Registry**

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

## **THE WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT**

During the year to 30<sup>th</sup> June 2000, The Western Australian Industrial Appeal Court had the following members:

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

During the reporting period, the Honourable Justice McKechnie was appointed as an Acting Ordinary Member for 2 periods, (1 August to 31 August 1999 and 1 December to 31 December 1999) and the Honourable Justice Wheeler was appointed an Acting Ordinary Member for the period 1 May to 31 May 2000.

## **INDUSTRIAL MAGISTRATES**

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

## MATTERS BEFORE THE COMMISSION

### 1. FULL BENCH MATTERS

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

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

Chief Commissioner Coleman	43
Senior Commissioner Fielding	25
Commissioner Gregor	10
Commissioner Cawley	0
Commissioner Beech	13
Commissioner Parks	7
Commissioner Scott	14
Commissioner Kenner	16
Commissioner Smith	1
Commissioner Wood	1

#### 1.1 Matters dealt with by the Full Bench: -

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

Commission	42
Industrial Magistrate	5
Government School Teachers Tribunal	0
Coal Industry Tribunal	0
Public Service Arbitrator	6
Railways Classification Board	1

##### 1.1.2 Organisations: - Full Bench matters to do with Organisations

Applications to amend rules of a registered organisation pursuant to s.62	2
Applications pursuant to s.71	2
Applications pursuant to s.72	1
Applications pursuant to s.72A	4
Applications pursuant to s 73	0

##### 1.1.3 Other Full Bench Matters

Proceedings for enforcement pursuant to section 84A brought by an Industrial Inspector	0
Questions of Law referred to Full Bench	2
Matters remitted by Industrial Appeal Court	0
Extension of Time to File Notice of Appeal	0

#### 1.2. Orders: -

Orders issued by the Full Bench	89
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### 2. PRESIDENT

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

Applications for an order that the operation of a decision appealed against be stayed pursuant to section 49(11)	12
Applications for an order, declaration or direction pursuant to section 66 of the Act**	7
Applications pursuant to s.92	1

Matters referred to President by:

Full Bench pursuant to s.72A(6)	0
Applications pursuant to s.97Q	0
Matters remitted from the Industrial Appeal Court	0

**Section 66** – summary of applications: -

Application finalised	3
Directions hearings**	4
Applications part heard**	2
Applications withdrawn	1

**Orders** issued by the President in matters heard from 1 July 1999 to 30 June 2000 inclusive: -

Section 66**	10
Section 49(11)	15
Section 97Q	0
Section 72A(6)	0
Section 92	2

**Consultations**

Consultations with the Registrar pursuant to section 62 of the Act	6
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\*\*These statistics include matters heard or part heard this year but not yet finally determined.

### 3. COMMISSION IN COURT SESSION

During the period under review the Commission in Court session has been constituted 19 times, each time by three Commissioners and the extent to which each Commissioner has been a member of the Commission in Court Session is indicated by the following figures:

Chief Commissioner Coleman	7
Senior Commissioner Fielding	3
Commissioner Gregor	6
Commissioner Cawley	1
Commissioner Beech	11
Commissioner Parks	4
Commissioner Scott	8
Commissioner Kenner	7
Commissioner Smith	6
Commissioner Wood	4

The 19 matters dealt with by the Commission in Court Session were as follows;

State Wage Case	1
General Order	1
Minimum Wage	1
Variation of Awards	9
Referred by Commissioners re Wage Fixing Principles	6
Joinder to Award	1

<b>4. FEDERAL MATTERS</b>		
Federal matters dealt with by (WAIRC) Commissioners		30
<b>4.1 State Matters Completed By A Federal (AIRC) Commissioner</b>		
Enterprise agreements with joint State/Federal coverage		1
<b>5. RULE VARIATION</b>		
Variation of Organisation Rules by the Deputy Registrar (Designate)		5
<b>6. BOARDS OF REFERENCE CHAIRED BY REGISTRAR</b>		
Applications concerning Long Service Leave – General Order of Commission		1
Applications concerning Long Service Leave – Long Service Leave Act		2
Applications concerning Long Service Leave – Construction Industry		3
<b>7. INDUSTRIAL AGENTS REGISTERED BY REGISTRAR</b>		
Number of Agents registered in this period		15
Total number of agents registered as corporate body	29	
Total number of agents registered as individuals	49	
Total number registered as at 30 June 2000		<u>78</u>

## AWARDS / AGREEMENTS

Awards and Agreements in force under the Industrial Relations Act 1979

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

## INDUSTRIAL ORGANISATIONS REGISTERED AT 30 JUNE, 2000

	Employee Organisations	Employer organisations
Number of organisations	55	17
Aggregate membership	159,448	3120



## SUMMARY OF MAIN STATISTICS

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

## Notes

<sup>1</sup> CONFERENCES	97-98	98-99	99-2000
Conferences (S 44)	324	423	337
Conferences Referred For Arbitration	58	66	74
PSA conferences	81	96	50
PSA conferences referred	8	8	11
Conferences divided	0	0	2
Conferences referred and divided	0	0	2
PSA conference divided	0	9	1
Railways Classification Board	0	1	0
	—	—	—
<b>Totals</b>	<b>471</b>	<b>603</b>	<b>477</b>

<sup>2</sup> OTHER MATTERS	97-98	98-99	99-2000
Interpretation of Award S46	3	4	6
Joinder to Award	0	1	4
Orders Pursuant to S 23	0	1	2
Orders Pursuant to S 27 (Powers of Commission)	1	1	3
Produce Documents	20	1	1
Replace Order	0	1	0
Retirement From Industrial Agreement	6	6	6
Referral Pursuant To S 95(3) Of The PS Management Act	0	1	1
Variation of An Order	0	2	2
Exemptions	1	1	1
Application Pursuant to S 7F Workplace Agreements DSP	0	4	12
Appeal By Teachers Pursuant to S 23B	0	2	7
Application Pursuant to S 49AB (Right of entry)	0	0	3
Cancel award	3	1	1
Orders Pursuant to S 23A	0	0	2
	—	—	—
<b>Totals</b>	<b>33</b>	<b>26</b>	<b>51</b>

## THE WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT

Decisions issued by the Court during this period

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## INDUSTRIAL MAGISTRATE'S COURT

During the period under review there were 311 complaints lodged in the Industrial Magistrates Court. Those 311 complaints related to 14,305 alleged breaches. Each of these breaches is treated as a separate part of each complaint.

The complaints related to alleged breaches of Federal awards, Workplace Agreements, Complaint & Summons - Small Claims, Minimum Conditions of Employment Act, and or enforcement of the Long Service Leave Act, Workplace Relations Act 1996, Annual Leave General Order and of Awards and Orders made by the Western Australian Industrial Relations Commission.

Lodged	14,305
Proved	776
Dismissed	168
Struck From List	9
Withdrawn by leave	167
Discontinued	4,292
Pending	8,893
Total Number of penalties imposed	8
Total Value of penalties imposed	\$3,200.00
Complaints that resulted in awarding of costs	772
Costs to Complainants (771)	\$5,988.05
Costs to Defendants (1)	\$44.20

New Industrial Magistrate's Regulations are expected in the next financial year.

## COMMENTARY

### **1. Legislation**

The Industrial Relations Act 1979 was not amended during the year under review. A reprint of the Act was published in March 2000. The School Education Act 1999, which repeals the Education Act 1928, will impact on the Industrial Relations Act 1979 by altering the jurisdiction in relation to teachers. Teachers will be placed in the same jurisdiction applying to “government officers”. The School Education Act 1999 was assented to on 2 November 1999 but was not proclaimed during the reporting period.

### **2. State Wage Case**

On 11<sup>th</sup> May 2000 the Commission in Court Session constituted under section 51 of the Act issued a statement noting that as presently informed it considered that there were no good reasons not to give effect to the decision of the Australian Industrial Relations Commission in the Safety Net Review – Wages Case (also referred to as the Living Wage Claim) [Print S5000]. By that decision award wage rates were increased by \$15.00 per week. In line with this adjustment the adult minimum wage was increased from \$385.40 to \$400.40 per week.

The Commission in Court Session invited submissions on the proposed increase under the State Wage Fixing Principles.

After hearing from parties identified under section 50(10) of the Act and after affording any other persons with an interest the opportunity to be heard, effect was given to the federal decision. The wage adjustments were implemented under a General Order. Consistent with the requirements for the availability of this increase being no sooner than 12 months from the preceding National Wage Case and that the increase be ‘fully absorbable against all above award payments’, the General Order came into effect from the first pay period commencing on or after 1<sup>st</sup> August 2000.

On this occasion the Commission issued schedules amending awards. This provided the opportunity to verify that previous State Wage Case adjustments had been applied correctly. In undertaking this task the Commission appreciates the cooperation received from officers of the Chamber of Commerce and Industry of Western Australia, the Trades and Labor Council and unions, the Australian Mines and Metals Association and the Department of Productivity and Labour Relations representing the Minister.

Computer programmes have now been developed to streamline this task.

### **3. Minimum Wage Recommendation**

In May 1999 in the course of formulating the recommendation to the Minister on the Adult Minimum Wage pursuant to section 14 of the Minimum Conditions of Employment Act, the Commission noted:

“We acknowledge the growing gap between the recommendation of the Commission which the statute requires to be made by 31<sup>st</sup> May and the eventual determination by the Minister. There is already a delay of at least seven months between this recommendation and the next determination. If the next determination is not made until mid January 2000 the Commission could present its recommendation for the year 2000 on or about 1<sup>st</sup> January. That recommendation would be more relevant to the Minister’s consideration of the rate to be determined.”

Public comment on the level of the Adult Minimum Wage for the years 2000 – 2001 was invited by the Minister in December 1999. The notice stipulated that the “Criteria for determining the level of the minimum wage will be mainly economic. However, the needs, income and expenditure of employees will also be taken into account.” (The West Australian, Wednesday December 15, 1999).

On 15<sup>th</sup> February 2000 the Commission forwarded its recommendation to the Minister. In the course of that the Commission noted:

*“The determination of the Adult Minimum Wage under the Minimum Conditions of Employment Act, 1992 is a matter of judgment. The rate determined must satisfy perceptions of equity just as the (Trades and Labor) Council has stated. Although on all the evidence available, the incidence of the statutory minimum wage is low, employees being remunerated at or marginally above the rate of \$346.70 per week must identify with the rest of the community. In our view it is unacceptable to leave the Adult Minimum Wage at the level that was established in December 1998 and with the prospect of no further consideration until August 2001.”*

The Commission’s recommendation dated 15<sup>th</sup> February 2000 (80 WAIG 1748) was for an increase in adult minimum wage to \$368.00 per week. On 1<sup>st</sup> March 2000, the Minister determined that rate under the Minimum Conditions of Employment Act (Western Australian Government Gazette No 38, Special Gazette).

The objective identified by the Commission in May 1999 of making the recommendation more relevant having regard to the time gap between when it is formulated and when the determination is made has, at this time, been achieved.

It would seem appropriate for the Commission to provide the recommendation for 2001 early in the year so that there is an opportunity to make the next determination close to the anniversary date

#### **4. Register of Awards, Orders and Industrial Agreements**

Work continues on the examination of award responsiveness where it is brought to the Commission’s attention that particular respondents are no longer conducting business or have changed their name or address. In many instances this comes about when notices of hearing and correspondence are returned to the Commission unclaimed.

Procedures are in place to investigate and report on matters pursuant to section 47 of the Industrial Relations Act to ensure that Award responsiveness and lists of named parties are kept up to date.

In maintaining the register of awards, orders and agreements the Commission has embarked upon an exercise to delete documents that no longer have application by reason of either the operation of new industrial agreements, the completion of projects, or the resolution of disputes where orders issued out of section 44 proceedings under the Act.

With the registration of industrial agreements, enquiries are made by the Commission to ascertain whether the document replaces an expired agreement. If so the replaced agreement is cancelled.

The necessity to review the register has become apparent as a result of legislative changes over the years which required the Commission to examine every award, order and industrial agreement with respect to the operation of such matters as dispute settlement provisions, superannuation, inspection of records, etc.

Without monitoring the register to examine the currency of awards, orders and industrial agreements, any review which many require effect to be given to legislative changes necessitates an examination of many irrelevant documents. This exercise will assist in establishing the currency of instruments regulating industrial relationships under the Act.

#### **5. Publication of the Western Australian Industrial Gazette**

Officers of the Commission, in consultation with Chambers staff, have revised procedures for the publication of the Industrial Gazette. In addition, technology is increasingly being used to produce the information in a form more compatible with the State Law Publisher’s system. Consequently, in consultation and with the support of the State Law Publisher, the cost of publishing the Industrial Gazette has decreased significantly over the last few years as illustrated in the following table.

Further technology will be applied in the following year and it is anticipated the total cost of publication can be further reduced.

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

For the year 2000, the costs per page will range between \$14.90 and \$22.00 as the costs are now based on actual cost of production which fluctuates due to data presentation and the size of the Industrial Gazette.

Another matter to be considered in reducing costs is the requirement to publish the full text of industrial agreements registered under s41 of the Act. It is estimated that the thirteen sub-parts of the Industrial Gazette published in the year under review could be halved if this requirement was removed from the Act. In April 2000 two sub-parts of the Industrial Gazette consisted of industrial agreements. Each time the public hospital industry renews industrial agreements two sub-parts of the Industrial Gazette are devoted to publishing essentially identical documents.

The Commission will continue to explore avenues for further savings in the publication of the Industrial Gazette.

## 6. Use of Courts and Conference Rooms

During the period under review the Commission has monitored the extent to which conference rooms and courts on the 18<sup>th</sup> floor have been utilized. This has been done to maximise the use of these facilities and to minimize delays in progressing applications. Following the collection of information during the previous reporting period one small court was converted to a conference room this year. Two interview rooms were constructed on the 17<sup>th</sup> floor, during this reporting period.

At present the Commission has 5 courts and 5 conference rooms on the 18<sup>th</sup> floor.

In maximising the use of these facilities, listings are available for proceedings to commence at 8.00 am with late listings set down to begin at 5.15 pm. Matters are listed having regard to the availability parties and Commissioners and the urgency with which applications need to be dealt with. Chambers staff liaise with officers of the Registry to use the Federal Commission's conference rooms when bookings on the 18<sup>th</sup> floor are full. Similarly federal matters are from time to time listed in this Commission.

There are constraints on maximising the use of courts and conference rooms.

- Matters taking a shorter or longer time to complete than anticipated. Facilities are booked on the basis of an estimate of the time required. Settlements or extended proceedings may result in significant differences in usage.
- In normal circumstances parties are given seven days notice of court listings. Conference proceedings may be convened on shorter notice. When matters fall out of the listing often there is insufficient time for other matters to be relisted.

To assist in maximising court and conference room usage Chambers staff have implemented steps to reassess time estimated for hearings closer to the listing dates. The computer booking system is available to all Chambers and staff cooperate in rescheduling courts and conference rooms to assist particular demands.

The latest survey of the use of courts and conference rooms shows that:

- All courts and conference rooms are used daily.

- The range of time frames involved in using courts is from 5 minutes to 8 ¾ hours and the average time of hearings (for the statistical collection period) is 2 hours 25 minutes
- Conferences have lasted between 10 minutes and 5 hours 7 minutes with an average duration (over the collection period) of 60 minutes.
- Start times in courts range from 0800 to 1715 hours and from 0800 to 1715 hours for conference rooms
- Finish times for courts range from 0850 to 1800 hours and for conference rooms from 0855 to 1800 hours.

In addition to Court 2 which can be converted into a conference room, courts are frequently used for conferences. From time to time the Commission also sits in the evenings and at weekends.

The Commission continues to monitor the use of these facilities in an effort to identify patterns that may assist in optimising usage.

## **7. Conferences under Section 44 of the Act**

For a period of 5 months during the year under review information was collected on the time taken by the Commission to respond to applications lodged under Section 44 of the Act. These matters generally involve notification of industrial action, a break down in enterprise bargaining, or redundancies or terminations often associated with business closures. Invariably applications are identified by the initiating party as being urgent. Often the Commission is notified of a dispute prior to the application being lodged. There are procedures in the Registry for fast tracking these matters so that applications are submitted for allocation within an hour of lodgement.

In 42% of cases Chambers staff made telephone contact with the parties on the day the application was lodged to programme conference listings. Contact was established in 84% of cases within three days of lodgement.

Listings were set down having regard to advice received on a range of factors including:

- The possibility of continuing industrial action and a further deterioration in industrial relations.
- The wish of the parties to continue their discussions before formal proceedings commence.
- The opportunity for representatives to be briefed on issues before attending the Commission.
- The availability of representatives and a member of the Commission who have dealt with the same issue or similar issues in the industry or enterprise.
- Advice from the parties that the matter is not urgent.

The Commission will continue to monitor practices and procedures to ensure that it responds promptly to these applications.

## **8. Claims by Individuals – Section 29**

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

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

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

### Section 29 Applications Lodged

Of the types of applications that can be lodged under Section 29, applications alleging unfair dismissal represent the most significant proportion, as can be seen from the following table, notwithstanding there is an increasing proportion of claims concerning denial of contractual benefits.

Section 29 applications lodged	1997/1998	1998/1999	1999/2000
Unfair Dismissal S 29(1)(b)(i)	1205	901	926
Denial of Contractual Benefits S 29(1)(b)(i)	343	299	277
Both in same application	578	502	515
TOTAL	2126	1702	1718

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

Section 29 applications	1997/1998		1998/1999		1999/2000	%
Unfair Dismissal	1783	66%	1403	64%	1441	65%
Denial of Contractual Benefits	921	34%	801	36%	792	35%

### Section 29 Applications dealt with

	1997/1998		1998/1999		1999/2000	
Unfair Dismissal S 29(1)(b)(i)	1301		1249		939	
Denial of Contractual Benefits S 29(1)(b)(i)	336		405		312	
Both in same application	517		564		498	
TOTAL	2154		2218		1749	

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

	1997/1998		1998/1999		1999/2000	%
Unfair Dismissal	1818	68%	1813	65%	1437	64%
Denial of Contractual Benefits	853	32%	969	35%	810	36%

### Compared with All Other Matters<sup>1</sup> Lodged

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

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

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



Section 29 Applications Compared with All Other Matters Dealt With

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

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

Section 29 matters - Method of Settlement

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

Section 29 Matters Method of Settlement	Unfair Dismissal	Contractual Benefits	Both	Total	%
Arbitrated claims in which an Order issued	118	45	60	223	13%
Settled after proceedings before the Commission	446	145	257	848	47%
Matters referred for investigation resulting in settlement	160	37	75	272	16%
Matters withdrawn before proceeding commenced before the Commission	200	82	96	378	22%
Matters withdrawn without proceedings	15	3	10	28	2%
Total dealt with in the 1999/2000 period	939	312	498	1749	100%

The foregoing table shows that 22% of section 29 applications were withdrawn before formal proceedings commenced and another 2% were withdrawn prior to any formal action being taken. This 24% should not be interpreted as the applicant declining to prosecute the matter. It is more likely that in many instances, these 24% were withdrawn after some discussion between the parties and some amicable arrangement agreed upon. Our records will only show that the application was withdrawn.

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

A demographic data collection system was implemented during the year and captured additional information on applications at the time of lodgment. The following tables serve to illustrate a variety of characteristics relating to applicants that have claimed redress under Section 29 of the Act.

The following table illustrates that 48% of all applicants did not appear to be aware of their employment conditions or failed to provide a response to the question on the application form. It is noted that of the remaining 52% of responses, 33% of applicants were employed under an award while a further 3% were employed under the conditions of a registered workplace agreement.

Employment Conditions	Female	% Female	Male	% Male	Total	% Total
Awards	224	36%	349	32%	573	33%
Contracts	4	1%	9	1%	13	1%
Enterprise Bargaining Agreements	6	1%	13	1%	19	1%
industrial Agreements	2	0%	11	1%	13	1%
Other	79	13%	153	14%	232	14%
Work Place Agreements	16	3%	29	3%	45	3%
Data Not Provided	292	47%	531	48%	823	48%
Total	623	100%	1095	100%	1718	100%

### Representation

The table following was constructed from a survey of cases over a period and shows that the majority of applicants (60%) were prepared to conduct their own case in the Commission whilst the remaining 40% were represented in some form, as set out in the table.

Applicants	Female	% Female	Male	% Male	Total	% Total
Industrial Agent	79	13%	159	15%	238	14%
Other	42	7%	66	6%	108	6%
Personal	411	66%	623	57%	1034	60%
Legal representation	91	15%	247	23%	338	20%
Total	623	100%	1095	100%	1718	100%

### Age Groups

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

Age Groups	Female	% Female	Male	% Male	Total	% Total
20 or <	66	11%	38	3%	104	6%
21 to 30	172	28%	255	23%	427	25%
31 to 40	122	20%	234	21%	356	21%
41 to 50	128	21%	195	18%	323	19%
51 to 60	50	8%	124	11%	174	10%
61 to 75	1	0%	19	2%	20	1%
Data Not Provided	84	13%	230	21%	314	18%
Grand Total	623	100%	1095	100%	1718	100%

### Employment Period

It is significant to note that 51% of all applicants were employed for a period of less than 12 months with 25% being employed for less than 3 months. A further 14% were employed between 1 to 2 years while another 12% we employed between 2 to 4 years.

Period of employment	Female	% Female	Male	% Male	Total	% Total
3 months or less	178	29%	258	24%	436	25%
4 to 6 mouths	83	13%	114	10%	197	11%
7 to 12 months	94	15%	164	15%	258	15%
1 to 2 years	85	14%	155	14%	240	14%
2 to 4 years	71	11%	132	12%	203	12%
4 to 6 years	27	4%	58	5%	85	5%
6 years or more	47	8%	119	11%	166	10%
Data not provided	38	6%	95	9%	133	8%
Total	623	100%	1095	100%	1718	100%

### Salary Range

Salary Ranges	Female	% Female	Male	% Male	Total	% Total
\$ 200 Per Week or Less	156	25%	252	23%	408	24%
\$201 to \$600 Per Week	309	50%	336	31%	645	38%
\$600 to \$1,000 Per Week	125	20%	310	28%	435	25%
\$ 1,000 to \$2,000 Per Week	23	4%	134	12%	157	9%
\$2,000 or More Per Week	10	2%	63	6%	73	4%
Total	623	100%	1095	100%	1718	100%

Category of Employment

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

Employment Category	Female	% Female	Male	% Male	% Total	Total
Casual	96	15%	82	7%	178	10%
Casual Full Time	10	2%	10	1%	20	1%
Casual Part Time	9	1%	1	0%	10	1%
Fixed Term	11	2%	26	2%	37	2%
Full Time	122	20%	270	25%	392	23%
Permanent	53	9%	169	15%	222	13%
Permanent Full Time	168	27%	404	37%	572	33%
Permanent Part Time	46	7%	14	1 %	60	3%
Probation	25	4%	27	2%	52	3%
Part Time	52	8%	16	1 %	68	4%
Data Not Provided	31	5%	76	7%	107	6%
Total	623	100%	1095	100%	1718	100%

Reinstatement Sought

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

Reinstatement	Female	Female%	Total	% Male	Total	% Total
No	389	62%	549	50%	938	55%
Yes	184	30%	408	37%	592	34%
Data Not Provided	50	8%	138	13%	188	11%
Total	623	100%	1095	100%	1718	100%

Reinstatement Sought by Age Group

This table illustrates a further view of the answer to the question of reinstatement as presented by age group.

Age Group	No	% No	Yes	% Yes	No Data	% no data	Total	% Total
20 or <	79	8%	17	3%	8	4%	104	6%
21 to 30	273	29%	117	20%	37	20%	427	25%
31 to 40	212	23%	117	20%	27	14%	356	21%
41 to 50	161	17%	125	21%	37	20%	323	19%
51 to 60	97	10%	53	9%	24	13%	174	10%
61 to 75	12	1%	8	1%	0	0%	20	1%
Data Not Provided	104	11%	155	26%	55	29%	314	18%
Total	938	100%	592	100%	188	100%	1718	100%

**9. Community Awareness**

Applications alleging unfair dismissal or denied contractual benefits account for a substantial part of the Commission's work. The inadequacy with which parties entering into contracts of employment have addressed matters going to their respective rights and obligations continues to be evident. While the experience an employer and an employee may gain through their involvement in proceedings before the Commission may alert them to the need to address these matters when entering into future employment relationships, there is need for a wider community education programme.

In a matter so fundamental to an individual's ability to secure opportunities which will to a significant extent dictate that person's lifestyle, the ability to secure a house and provide for a family, it is vital to have knowledge of contractual obligations entered into in an employment relationship.

Probationary employment is becoming a feature of appointments particularly in areas of unskilled and semi skilled recruitment. From time to time members of the Commission are invited to address schools, community groups and business associations. The feedback makes it clear that there is a paucity of knowledge about the rights, entitlements, obligations and statutory regulations relevant to employment relationships. Programmes educating the community about safety in the workplace appear to be successful. A programme developed for high school children on employment relations would serve the community and assist in preparing our young people for the workplace.

## **10. Public Sector Enterprise Bargaining**

During the review period the Commission in Court Session embarked upon the determination of a salary outcome arising from a commitment under an industrial agreement between the Civil Service Association of Western Australia Inc and the Attorney General and the Director General of the Ministry of Justice [2000] 80 WAIG 193.

Consistent with the Government's requirements for the determination of wage increases to be based on the measurement of "*both quality and quantity of inputs (which) relates them back directly to the inputs used to produce the outputs*", the Ministry developed a Performance Management Model to take into account programme performance indicators, standards for significant processes, service costs and levels of customer satisfaction with justice services. The performance indices applied under this model together with a percentage of recurrent savings were used to determine the magnitude of salary increases available to staff within the various divisions and units of the Ministry.

Against this the Civil Service Association argued for the application of a General Performance Model which draws on statutory reporting requirements found in the agency's annual report for performance indicators. These indicators were to form the basis for a negotiated salary outcome.

While it was unnecessary for the Commission in Court Session to decide between the two models being advocated by the respective parties, the salary outcome determined took into account performance and productivity that had come about from initiatives agreed to by the parties under successive industrial agreements and pursued through an output-based management strategy pursued by the Ministry over several years.

The expert evidence presented in this case on "measuring productivity within the economic concept of employment, that is productivity and its relation to reward (pay)", makes it clear that within the context of public sector employment, it is more appropriate to refer to performance outcomes rather than productivity.

As the Commission in Court Session noted whether it be a total productivity model, a matrix model, ie, the performance management model, or a balanced score card (or milestone) model, as with the general performance model, there is nothing which directly translates performance to wage increases. Ultimately it is for the parties to negotiate the outcome. Indeed the experience in the Ministry of Justice tends to indicate that concern over the particular model to be deployed can be a distraction in negotiating an enterprise agreement.

In public sector employment, meaningful enterprise bargaining is prejudiced by the imposition of wage outcomes. The opportunity for parties to secure an enterprise bargaining agreement may be better served by operation of a framework agreement negotiated between the Civil Service Association and other public sector organisations and the Government. The limits of wage increases under a performance based assessment would then be established. The situation at present is made more difficult by encouragement being given to finalizing workplace agreements over enterprise bargains and the approval process for the registration of industrial agreements. Inconsistent application of the policy for operative dates of enterprise agreements has contributed to a deterioration in relations in the public sector in some instances.

## **11. Wage fixing Principles - Enterprise Bargaining**

Enterprise Bargaining continues to be the focus of industrial relations in this State. Pattern bargaining or coordinated expiry dates for enterprise agreements, has not been evident at this time. The State Wage Fixing Principles continue to provide the framework for regulating wages and conditions of employment within the award system. However with the emphasis on enterprise bargaining and the registration of industrial agreements, awards in some industries have not been kept up to date. Work practices established under successive enterprise agreements will now be standard arrangements. However retirement from an expired industrial agreement will require reversion to the award, the provisions of which may no longer be particularly relevant to the operations or business. Wages rates that have been varied only for arbitrated safety net adjustments for a number of years may not adequately reflect the rates of pay or classifications established under enterprise agreements. There is the potential for dislocation to operations and a deterioration in industrial relations if the achievements realized under enterprise bargaining are not secured for both parties by appropriate award amendments.

## **12. Drug and Alcohol Testing**

In recent years an increasing number of employers have introduced workplace drug and alcohol policies. In June 1998, for the first time, the Commission was required to make a determination regarding the efficacy of a workplace drug and alcohol policy. That matter concerned the policy to be applied at the workplaces of BHP Iron Ore Pty Ltd in the Pilbara [78 WAIG 2593]. Again this year the Commission has before it a similar matter in respect of the drug and alcohol policy sought to be introduced by Argyle Diamond Mines Pty Ltd for its Argyle workplace. The matter has been the subject of a number of conciliation conferences before the Commission over the past year. Although some progress was made towards agreement on the matter, some issues remain undealt with and the matter is currently before the Commission in Court Session for arbitration.

There are 8 industrial agreements or awards which make provision for drug and alcohol policies to apply in single enterprises.

## **13. WA Special Librarian of the Year 1999**

It is pleasing to report that the Commission's Librarian, Deanne Barrett, was honoured by her peers in being nominated as the WA Special Librarian of the Year. Deanne is a member of Australian Law Librarians Group.

## **14. Training**

During the period under review members of the Commission and Chambers staff have participated in training under a review of the policy on the prevention of sexual harassment in the workplace. Members of the Commission have also completed a programme on diversity awareness.

In a general review of security associated with the operation of courts and conference rooms and access to the Registry, the Commission has adopted procedures and modified fittings to provide for the safety of those who work in the Commission and members of the public

To my colleagues, Chambers staff, the Registrar and his staff and to the many court recording personnel, I express my appreciation for the hard work and dedication throughout the year.

Chief Commission W.S. Coleman  
29<sup>th</sup> September 2000