

**The Industrial Relations Commission**

*of*

**New South Wales**

**Annual Report**

*Year Ended 31 December 1994*

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*I have the honour to furnish to the Minister for presentation to Parliament the third Report of the Industrial Relations Commission of New South Wales made pursuant to section 344 of the Industrial Relations Act 1991 for the year ended 31 December 1994.*

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**PRESIDENT**

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## INTRODUCTION

The Industrial Relations Commission of New South Wales was established by the *Industrial Relations Act, 1991*. The Act also created the Industrial Court of New South Wales as a superior court of record.

In general the Industrial Relations Commission of New South Wales may be approached in 5 ways.

- ◆ By referral of a question, dispute or difficulty to the Commission or in the case of an individual a grievance pursuant to the terms of section 188 (1) and (2).
- ◆ By summons to a compulsory conference where there is a threatened, probable or contemplated industrial action or actual industrial action pursuant to the terms of section 204.
- ◆ By summons to compulsory conference where there is or may be a dispute as to a contract determination pursuant to section 698.
- ◆ By the filing of an application upon a Notice of Motion. In every case within 7 days of filing, these matters are assigned by the President to the appropriate Panel where the senior Member of the Panel refers the matter to an individual Member. The case would normally be listed for mention within a few days.
- ◆ Individuals or Unions on behalf of individuals may claim under section 246 of the *Industrial Relations Act*, the area of the Act relating to Unfair Dismissals. These matters are allocated by the President on a daily basis, usually the day after the claim is filed. The applicant will have been advised by Legal Officers at the time of filing the claim as to general procedure. The cases are listed for

preliminary hearing usually shortly after service of the application on the employer. Access by individuals under this section is a new avenue of approach to the Industrial Relations Commission, not possible under the former Industrial Arbitration Act 1940.

This area of litigation is substantial. About 70% of applicants appear in person, as do a number of employers. The shift to party and party litigation has imposed major professional burdens upon Conciliation Commissioners whose work had formerly been limited to representative and often familiar parties.

The Commission deals with such matters as:

- industrial disputes
- award applications
- applications for reductions in hours
- matters referred by the Minister
- industrial contract determinations
- reports and submissions by the Industrial Registrar
- matters relating to Conciliation Committees
- unfair dismissals
- appeals from Conciliation Commissioners and single Presidential Members

The operations of the Industrial Relations Commission Registry are funded by the Department of Industrial Relations, Education, Training and Further Education. The total operating expenses for the year 1993/1994 was \$7,063,038, (actual budget allocated for 1993/1994 was \$6,998,665) for the year 1994/1995 the same total for operating expenses was \$6,478,677, (actual budget allocation for

this period was \$6,463,906) a reduction of approximately \$584,361 in actual operating costs and a reduction of \$534,749 in actual budget allocation. The provisional budget figures for 1995/1996 have not as yet been allocated.

An examination of this report will show that the Commission is under substantial pressure from its lists. Resources allocated by government, and the associated economic management concerns do directly impact on the administration of any justice system.

On 1 August 1994 the *Industrial Relations (Contracts of Carriage) Amendment Act* 1994 was proclaimed, creating the Contract of Carriage Tribunal. Nominations for part-time members to the two arbitration panels serving the Contract of Carriage Tribunal were sought from various organisations by the Minister for Industrial Relations and Employment and Minister for the Status of Women, the Hon. Kerry Chikarovski MP, in late 1994. The persons nominated were advised by the Minister of their appointment to the arbitration panels for a period of 12 months effective from 21 December 1994.

Attempts have been made to improve procedures and Commission practices so that the Commission may be able to give better service, especially in the area of Unfair Dismissals. In response to difficulties being experienced by applicants, the Unfair Dismissal application forms were re-designed. Also an additional Legal Officer was employed on a temporary basis to assist with Unfair Dismissals and the production of the Arbitration Reports.

Case management and case flow techniques were further refined during 1994, especially in the area of Unfair Dismissal applications, resulting in the majority of these applications being called on within 2 weeks of being filed and concluded either by conciliation or by arbitration within 8 weeks of filing. The President's Second Associate maintains a computer data base and case tracking system which

enables ready review of the movement of case loads through both Commission and Court and permits forward case load examination so that the work of the Commission may be the more effectively distributed.

### **CO-LOCATION OF JUDGES AND CONCILIATION COMMISSIONERS**

For some years it has been apparent that the Industrial Court/Industrial Relations Commission has outgrown its available and convenient accommodation.

The President and Deputy Presidents and the Industrial Court Registry and Industrial Relations Commission Registry have been housed at 50 Phillip Street in premises that were last comprehensively reviewed about 30 years ago. Though there has been some improvements over the last 3-4 years, it has been on a piecemeal basis, leaving much more to be done.

Some seven years ago it became necessary to develop two Courts with accommodation and staff in the Chief Secretary's (formerly the Colonial Secretary's) Building. This was done with proper regard to the heritage qualities of the building. Similarly some 40 persons employed in the two registries occupied other parts of the Chief Secretary's Building, then indeterminably held by parties who came and went.

While the arrangements at least provided shelter and accommodation it left one major problem unsolved. Apart from the President and eleven Deputy Presidents, the Industrial Relations Commission consists of 12 Conciliation Commissioners (including one Conciliation Commissioner at Newcastle).

The remaining eleven Conciliation Commissioners are housed in Xerox House at Railway Square as is the Chief Industrial Magistrate and a small sector of the Industrial Registry servicing their needs.

Some years ago amended legislation required that one Conciliation Commissioner at least was to sit on all Full Benches. Cases are frequently called on for Mention, directions hearing, adjournment application and judgments and Conciliation Commissioners are ordinarily required to travel from Railway Square to the Phillip and Bridge Street corner to sit in these cases. This has contributed both to inconvenience and a substantial waste of time. Additionally, the library is at 50 Phillip Street.

By the Industrial Relations Act 1991, Conciliation Commissioners became Members of the Commission, further emphasising the "one Commission" policy and the need to vindicate that policy by locating all Members under one roof.

Bearing in mind that the loosely held occupation of the Chief Secretary's Building was leaving behind abandoned space and that the Chief Secretary's Department itself was leaving, inquiries were put in train to see if the Industrial Relations



Commission could be adequately accommodated in the former Colonial Secretary's Building, now empty but for two courts and about half the personnel of the two registries. Such occupation would have to be consistent with heritage values. The building itself primarily dates from about 1880 and with at least two floors of classical Italianate style and quality not exceeded elsewhere within this City.

The Heritage view was that the use to which the building ought be put should be consistent with public service traditions going back to the 1820's. The Industrial Relations Commission's major need is for hearing rooms for the Conciliation Commissioners (not formal Courts) which could be accommodated on Level 5 substantially and part of Level 4, not classical areas but suitable for this use.

The Heritage Commission therefore considered a new heritage plan reflecting not only the major need to refurbish an absolutely irreplaceable heritage building (including the Governor-in-Councils Chamber and the untouched since 1880 Sir Henry Parkes room) but also to restore it to reflect the tradition of public service occupancy in this State.

This of course contrasts with the fate of the Colonial Treasury building on the opposite side of Bridge Street. The stone and mortar, the facade, has been retained and a masterly architectural marriage made between the old and the new. However, what has been saved is the monumental heritage only, but nothing relating to heritage values of the usage of the building.

The Heritage Commission in late 1994 produced a revised plan of use consistent with traditional values and acceptable, indeed welcomed by this Commission.

The architectural and heritage plans were initialled by the President in December 1994 and filed with the Sydney City Council.

In the meantime the Xerox House lease covering the occupancy of the Conciliation Commissioners expires in September 1996.

Much preparatory work by architects and designers has already been done.

What is now needed is the prompt letting of contracts to enable Conciliation Commissioners to move in coincidentally in time with the expiry of their present lease.

The Commission wishes to record its pleasure at the prospect of extending its association with the restoration of one of Sydney's great heritage buildings.

### TRAINING

Commencing in 1994 and continuing into 1995 all Members of the Commission have participated in the Judicial Commission's computer training programmes, with the programmes still continuing and being well attended. The programmes are hampered however, by the lack of funding for the purchase of computers for Commissioners and Judges of the Commission and by inconsistent technology between Courts Administration and the Department of Industrial Relations.

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# ORGANISATION OF THE COMMISSION

## THE JUDGES

Members of the Commission during the year were:

**President:**

The Honourable William Kenneth Fisher, A.O., appointed 18 November, 1981.

**Members:**

The Honourable John Joseph Cahill, appointed 25 March, 1971.  
Appointed Vice President 19 February, 1987.

The Honourable Harold William Henry Bauer, appointed 14 April, 1980.

The Honourable Leone Carmel Glynn, appointed 14 April, 1980.

The Honourable Brian Eugene Hill, appointed 1 August, 1988.

The Honourable Gregory Ian Maidment, appointed 1 August, 1988.

The Honourable Barry Clive Hungerford, appointed 13 July 1989.

The Honourable Charles Cullen, appointed 4 February, 1991

The Honourable Russell John Peterson, appointed 21 May 1992

The Honourable Francis Marks, appointed 15 February 1993

The Honourable Monica Schmidt, appointed 16 June 1993

## CONCILIATION COMMISSIONERS

The Conciliation Commissioners in office pursuant to section 315 (2)(d) of the *Industrial Relations Act 1991*, during the year were:

Mr Raymond John Patterson, appointed 12 May, 1980.

Mr Peter John Connor, appointed 15 May, 1987.

Mr Brian William O'Neill, appointed 12 November, 1984.

Mr Michael Francis Sheils, appointed 3 February, 1986.

Mr James Neil Redman, appointed 3 February, 1986.

Mr Rodney William Harrison, appointed 6 August, 1987.

Mr Anthony Kevin Buckley, appointed 7 February, 1991.

Mr Paul Bennett Kelly, appointed 7 February, 1991.

Mr Barry William French, appointed 18 February 1991.

Miss Inaam Tabbaa, appointed 25 February 1991.

Ms Donna Sarah McKenna, appointed 16 April 1992

Mr John Patrick Murphy, appointed 21 September 1993

## INDUSTRIAL REGISTRAR

The Industrial Registrar, Mr Gregory Keith Robertson was appointed on 31 March 1992 as Industrial Registrar and Chief Executive Officer of the Industrial Relations Commission of New South Wales.

The Industrial Registrar is responsible to the President of the Industrial Relations Commission of New South Wales and in relation to functions under the *Public Sector Management Act 1988* is responsible to the Director General, Department of Industrial Relations, Employment, Training and Further Education.

The duties of the Industrial Registrar include:

1. To act as Registrar and Chief Executive Officer of the Industrial Relations Commission of New South Wales, including statutory duties of, or related to, that role, and other duties as directed by the President of the Commission as head of jurisdiction.
2. To ensure that orders and awards of the Commission are correctly and promptly settled and promulgated, through publication in the Industrial Gazette and as may otherwise be appropriate.
3. To perform statutory duties required under Chapter 5 of the Act in relation to industrial and other organisations, including duties in relation to:
  - registration and deregistration of organisations
  - the rules of organisations
  - union accounts
  - ballots for positions of officer within organisations
  - right of entry permits for union officials
4. To perform other statutory duties under the Act, including the registration of enterprise agreements.

5. To perform statutory obligations under other legislation, including Annual Holidays Act, Long Service Leave Act and Employment Protection Act.
6. To exercise overall responsibility for editing the Industrial Arbitration Reports.

The Commission Registry has a staff of 64 including 5 legally qualified staff, the Industrial Registrar, the Deputy Registrar, the Manager of Industrial Organisations and 2 legal officers.

### VENUES

The Commission has two regional centres - Newcastle and Wollongong, and sits regularly at country venues throughout New South Wales.

In order to expedite the resolution of Unfair Dismissal claims and to help reduce the burden of costs for the applicants Conciliation Commissioners frequently sit in country venues throughout the State, with certain Commissioners having the equivalent of informal "circuits". This system has been found to be very cost effective.

Total number of country sitting days for 1994 was 252, total number of regional sitting days were 326.

## VOLUME OF WORK

Pursuant to section 338 of the *Industrial Relations Act 1991*, in order to exercise its functions, the Commission may be constituted by a member sitting alone, or the Full Commission. The Full Commission consists of not fewer than 3 members of whom at least one must be a Presidential Member as defined in section 317 of the Act, and at least one member must be a Conciliation Commissioner. The Full Commission constituted to hear an appeal from a decision of the Commission is not to include a member of the Commission as constituted when it made the decision (section 338(3)).

By section 339 of the Act, the President is to assign industries, and where appropriate enterprises. Presently there are 5 panels of members of the Commission, each panel consisting of 2 Presidential members and 2 Conciliation Commissioners. There are 3 regional members, one for Wollongong and two for Newcastle.

Pursuant to section 342 of the Act, the President of the Commission directs the business of the Commission (subject to the Act and the rules of the Commission).

As outlined in the 1993 Annual Report, the Commission does not operate upon a "back log" of cases. Every case filed is physically conveyed to a Member within six days of filing and is usually mentioned in court shortly after, with a view to fixing dates for hearing if required. Every case is heard as a special fixture.

When the number of cases exceeds available resources, as is sometimes the case, the effect is to build forward a "front log", *i.e.* in order to arrive at days that are available for hearing, dates have to be set further and further into the future. On some occasions during 1994, this period ahead amounted to several months and therefore these matters are statistically noted as having not been completed (see Tables A & B).

## THE ACT

The *Industrial Relations Act* 1991 contains 752 sections.

The substantial accretion of Statutory provisions has led to increases in litigation before the Commission and the Industrial Court for some years, as new provisions progressively came under consideration and doctrine was developed. The new Act is much more legalistic than the former Act.

Some 3729 matters were filed before the Commission and Court in 1994. This compares with a total of 3218 matters filed for the year ending 31 December 1993, 2685 matters for the year ended 31 December 1992 and 1715 for the year ending 31 December 1991.

During 1993 and 1994 the new provisions relating to appeals under the *Industrial Relations Act* gave rise to some difficulties. Under the former Act there was an intermediate appeal from a Conciliation Commissioner to a Presidential Member. Most appeals therefore ended at that point. All appeals must now go to a Full Bench. This is understandable as both Conciliation Commissioners and Presidential Members are Members of the Commission (s.315 (2)). An appeal from one Member to another Member would be inappropriate.

However, under the former Act, appeals were by leave of the Full Commission when the Full Commission was of the opinion that the matter raised on appeal was of such importance that an appeal should lie. This provision was not repeated in the *Industrial Relations Act* 1991. The net result is that the loss of two case load reduction measures, the intermediate appeal and the leave provision, has meant that all appeals lodged have to be heard by a Full Bench including those which are of lesser importance and occasionally even trivial.



During 1994 the level of industrial disputation involving stoppages of work within jurisdiction remained at a very low level. Intractable industrial disputation was not encountered.

This very satisfactory result was predominantly due to the reasonableness of industrial parties to which the Commission's well known prompt interception of burgeoning disputes also played a beneficial part.

### **LOCAL GOVERNMENT TRIBUNAL**

The Local Government Remuneration Tribunal was established pursuant to the *Local Government Act 1993* on 9 February 1994. The Tribunal is composed of Mr Justice C. L. Cullen, a Deputy President of the Industrial Relations Commission of New South Wales, assisted by two assessors, the Act requiring that one be the Director-General of the Department of Local Government and the other nominated by the Minister for Local Government. The Tribunal is required to make a report to the Minister by 1 May each year as to determinations of categories and the maximum and minimum amounts of fees to be paid during the following year to mayors, councillors, chairpersons and members of county councils (other than electricity authorities).

The Tribunal's first Report and Determinations were tabled in Parliament on 12 May 1994. Because of the limited time available to make the Report, the Tribunal stated that the Determinations were Interim Determinations pending a full

review after a detailed investigation. The Interim Determinations established three special categories and five other categories of councils.

The Tribunal then undertook an extensive programme of meetings and hearings throughout the State. Meetings were also held in California. The Tribunal heard from representatives of local government and other interested persons in regard to council's service and regulatory functions and the roles and functions of mayors and councillors in their performance of such activities.

The need for the investigation was brought about by the lack of information on a wide range of issues relating to the matters dealt with by councils and the manner in which councillors and mayors carried out their duties. This was particularly the case in relation to the new statutory roles and functions of councillors and mayors. The investigation involved an extensive consultation process with a wide range of elected and appointed local government representatives and other interested individuals and groups in addition to the formal hearings.

Sixteen locations were established, covering the metropolitan, north-west, far-west, north-east, west, south-west, central north and the central south districts. An invitation was issued to all councils to attend a hearing at the nominated centres and/or make written submissions. The particular matters which were addressed were the councillors' background and experience, community activities engaged in both before and after election to the council, the time spent

on meetings, including preparation time, the functions of the council, as well as the issues, problems and future direction, recommended remuneration levels for both councillors and mayors, the ration of the mayor's remuneration to councillors, items covered in council's expense policy and the appropriateness or otherwise of the council's categorisation under the Interim Determinations.

Where appropriate, matters particular to the individual councils were discussed.

In all, the Tribunal heard from 86 New South Wales councils, 5 Californian councils, 7 county councils, the County Mayors' Association, the Local Government and Shires Association, the League of Californian Cities and members of the public. A Report of the Determinations was forwarded for publication in accordance with s.245 of the Act to the Minister for Local Government on 1 May 1995. The basis for the categorisation of councils and the determinations of fees made in accordance thereto is set out in detail in the Report.

Following a direction by the Minister for Local Government on 24 May 1995, the Tribunal sought information concerning the response of councils in the exercise of the statutory discretion granted to them to set their fees in excess of the minima determined by the Tribunal. With the co-operation of the Local Government and Shires Association of New South Wales, information was supplied by all councils.

After analysis of this information, it was the view of the Tribunal that no variation of the Determinations made on 1 May 1995 was warranted at the

present time. However, the Tribunal indicated that it was proposed to take into account all the matters raised by councillors and public in regard to the resolutions of councils concerning fees for the purposes of reviewing categories and fees for the period 1996/1997. This review is programmed to commence on 1 October 1995.

### ENGINEERING STANDARDS

On 3 May 1994, the Minister for Industrial Relations, in accordance with section 345 of the *Industrial Relations Act 1991*, referred three questions to the Full Commission of the Industrial Relations Commission.

The three questions were:-

- What, if any, measures should be implemented to secure the health, safety and welfare of employees when introducing the materials handling system known as "engineered standards" in the warehouse operations and distribution industry;
- Whether the introduction or implementation of the manual handling system known as "engineered standards" in this industry complies with State and national occupational health, safety and welfare legislation (including associated regulations), and codes on manual handling established by relevant occupational, health and safety authorities; and

- Whether the introduction or implementation of the manual handling system known as "engineered standards" in this industry is consistent with the objects of the New South Wales *Industrial Relations Act* 1991.

A regime of weekly meetings was instituted, with 11 days of hearings and inspections to the end of 1994, and with a further 44 days of hearing during 1995. To assist employees giving evidence before the Commission, hearings have been held on site when appropriate.

### ANNUAL CONFERENCE

The Annual Conference of the Industrial Relations Commission was held from 24 - 26 August 1994 (Kirkton Park, Hunter Valley). The conference was well attended. A number of papers dealing with Industrial Relations and the work of the Commission were presented and extensively discussed.

The development of the Annual Conference, substantially assisted by the Judicial Commission of New South Wales exercising its mandate to advance judicial education, has proved to be a most successful initiative with the potential to add to the professionalism which the Commission seeks to advance in all its work.

### MEMBERS SITTING ALONE

*Figures relating to the period 1 January to 31 December 1993 appear in brackets after the 1994 figures.*

- For the period 1 January to 31 December 1994 3438 (3150) matters were filed in the Industrial Relations Commission of New South Wales, 3359 (2921)

matters were concluded and 1263 (1117) were continuing as at 31 December 1994 (*Table A*).

- There were 637 (386) award applications under the *Industrial Relations Act 1991 (Table A)*, 270 (176) notifications of disputes (s.188) in respect of awards and agreements, 498 (545) dispute notifications - applications for Compulsory Conferences under section 204 with 521 (480) being concluded (*Appendix A*).
- With respect to matters requiring Members sitting alone and the Full Commission it is to be noted that Presidential Members are concurrently Judges of the Industrial Court. The Act provides by s.344 that this *Annual Report* on the Industrial Relations Commission is to be furnished but there is no corresponding requirement that an *Annual Report* be compiled in relation to the Industrial Court.
- The work of the Court has relevance to the work of the Commission because the 11 Deputy Presidents are all legally qualified and have been drawn from other Courts, or drawn from the ranks of practising barristers and solicitors. During the year 291 (282) matters were filed in the Court (*Table B*), 236 (273) were concluded during the year and as at 31 December 1994 301 (232) were continuing (*Table B*).
- The Full Court is composed of three judges. Unlike the Industrial Relations Commission there is no power in the Court to delegate issues to a single member, a power which the Industrial Relations Commission uses from time to time and in suitable cases (s.346 (3)) to reduce the demands on appellate benches. The Court is also limited in that it cannot sit more than three judges on appellate benches.

- **Applications pursuant to s.246 of the *Industrial Relations Act, 1991***

A large and increasing volume of work lies in the area of Unfair Dismissals, applications under section 246 of the *Industrial Relations Act, 1991*. These matters are allocated to Conciliation Commissioners by the President on a daily basis. Most helpfully 2 legal officers were appointed in 1993, with an additional temporary position in 1994 to interview and assist in the many problems encountered by individual litigants (who comprise 76% of all applicants) in relation to the preparation of applications and the course that conciliation and arbitration may take. A total of 1823 (1768) such matters were filed during 1993, with 1824 (1650) being concluded (*Table A*). Measures were implemented to decrease delays in bringing the matters to hearing and resolution, and a case flow tracking system has been designed to assist the President in monitoring workloads and case management. The average length of time for conclusion of an Unfair Dismissal Claim from time of filing, by either conciliation or arbitration, dropped from 12 weeks in 1993 to 8 weeks in 1994.

- **Notifications under sections 188 (1), 188(2), 204 and 698 of the *Industrial Relations Act, 1991***

During the year 789 (738) notifications were lodged with the Registrar, 267 (176) under s.188(1), 498 (537) under s.204 and 22 (26) under s.698. Attached as *Appendix A* is an analysis of the reasons given.

- **Notifications under ss.7 & 8 of the *Employment Protection Act***

Some 321 (80) Notices were lodged under the *Employment Protection Act 1982* under s.7 of the Act (*Notice of intention to terminate employment to be given to Registrar*) (*Table A*) (230 being lodged in July 1994 from one large abattoir), a further 199 (766) Notices under s.8 of the Act (*Notice of reasons for termination of*

*employment to be given to Registrar in certain cases*) were also lodged during 1994. During 1993 there had been a consistent pattern of large numbers of notices under s.8 being filed on a monthly basis from several large companies. Under section 11 of the *Employment Protection Act 1975* (50) matters were filed in the Commission, 46 (55) were concluded and 20 (17) were continuing as at 31 December 1994.

- **Industrial Agreements**

The *Industrial Relations Act 1991* does not make provisions for industrial agreements similar to the former s.11 agreements but allows filing of enterprise agreements, which do not come before the Commission. However, s.147 of the 1991 Act allows for limited *variation* of former s.11 agreements, and *Appendix B* also sets out the number of such variations filed. There were no such variations filed in 1994, 7 were filed during the previous year (1993).

From 1 January 1994 to 31 December 1994 612 (613) Enterprise Agreements were filed and 527 (393) were Registered.

A noted development in 1994 was the increase in the filing of consent enterprise awards, which reflect the settlement of industrial differences by negotiation and agreement assisted by the Commission.

- **Conciliation Committees**

As at 31 December 1994 there were 238 (234) extant conciliation committees and 1 contract regulation committee. Under the provisions of the *Industrial Relations Act 1991* these committees are given a life of 12 months unless established by the



Commission. During the year the Commission established 5 (202) new committees, dissolved 1 (108).

*Appendix C* contains particulars of application made to committees during the year.

*Appendix D* contains particulars of the activities of the committees during 1994.

### FULL COMMISSION

For the period 1 January 1994 to 31 December 1994 51 (68) appeals were lodged under the *Industrial Relations Act* 1991 against a decision of a Member of the Commission, 46 (56) of which were appeals against a decision of a Conciliation Commissioner and 5 (11) were against a decision of a Presidential Member (*Table A*). During 1994 60 (46) appeals were concluded and as at 31 December 1994 40 (50) appeals remained active.

A total of 14 (33) appeals were lodged in the Industrial Court for the same period against a decision of the Commission, 13 (18) appeals were lodged against a decision of the Industrial Court, 30 (18) appeals were lodged against a decision of the Chief Industrial Magistrate to the Industrial Court. Appeals remaining active as at 31 December 1994 were respectively a total of 12 (8) against a decision of the Commission, 15 (12) against a decision of the Industrial Court and 13 (19) against a decision of the Chief Industrial Magistrate (*Table B*).

## REGIONAL AND COUNTRY SITTINGS

There is a substantial workload in Newcastle and Wollongong in the areas of steel and heavy industry, serviced by both Commissioners and Presidential Members, and a considerable workload in the area of Unfair Dismissals for Commissioners in country sittings.

The general policy of the Commission in relation to dismissals (section 246) and rural industries has been to sit in the county centre where the events have occurred. This does require substantial travel but the Commission's assessment is that it has a beneficial and moderating effect on parties to the industrial disputation who can often attend the proceedings and the better understand decisions or recommendations made.

An increase in matters filed for reinstatement under section 246 of the Act in country areas has been noted.

There were a total of 252 sitting days in a wide range of Country Courts and other country locations during 1994, the majority of which were s.246 matters, with 326 regional sittings in Newcastle and Wollongong for Unfair Dismissals and dispute matters, with one regional member sitting permanently in Newcastle (Conciliation Commissioner Harrison).

The Steel Industry (BHP) is centred in Newcastle and Wollongong. The regional Member for Wollongong, The Honourable Mr Justice Hungerford, handles all Port Kembla steel matters and sits on average 2 - 3 days *per* fortnight (79 sitting days in Wollongong from 1 July 1994 to 30 June 1995).

The regional Member for Newcastle, The Honourable Mr Justice Hill, sits on average one day *per* fortnight to attend to steel matters in Newcastle.

Mr Conciliation Commissioner Harrison deals with a wide range of industrial matters mostly of a regional nature in Newcastle and the Hunter district.

The present regional arrangements are working well.

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**ANNEXURES**

*Table A is an abbreviated numerical breakdown of all matters filed in the Industrial Relations Commission under the Industrial Relations Act 1991, from 1 January 1994 to 31 December 1994.*

*Table B is an abbreviated numerical breakdown of all matters filed in the Industrial Court under the Industrial Relations Act 1991, from 1 January 1994 to 31 December 1994.*

*Appendix A contains breakdowns of dispute notifications filed during 1994.*

*Appendix B contains a breakdown for applications to vary Industrial Agreements during 1994.*

*Appendix C contains figures for Applications to Conciliation Committees for 1994.*

*Appendix D contains figures for the activity of Conciliation Committees during 1994.*

**TABLE A**

*Matters filed and completed during period 1 January 1994 to 31 December 1994  
and all matters continuing (including those filed in other years) as at 31  
December 1994 under the Industrial Relations Act 1991*

**INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES**

ABBREVIATION	USAGE	FILED 1 JAN - 31 DEC 1994	COMPLETED 1 JAN - 31 DEC 1994	CONTINUING AS AT 31 DEC 1994 (INCL. THOSE MATTER FILED IN PREVIOUS YEARS
AW	Application for an award variation/new award	637	580	289
BH	Disputes in Broken Hill	5	0	5
CC	Application re: establishing/dissolving/re-establishing/ removal of matters before conciliation committees	14	14	22
CD	Application re: variation/recission/new contract determination	16	19	8
EA	Application for registration of an enterprise agreement	0	0	2
EPA	Report under s.11 of the Employment Protection Act	49	46	20
IR	Appeal against decision of Industrial Registrar	1	1	0
Part 7	Application for an order of reinstatement of injured employee under Part 7.	11	8	7
REGN	Application for registration pursuant to clause 27A of the Clothing Trades (State) Award	14	13	1
VTBAP	Appeal against a decision of Vocational Training Board	0	1	0
s14	Commission to consider & give effect to national wage decisions	1	1	1
s188(1)	Reference of question, dispute or difficulty under s.188(1)	267	222	116
s188(2)	Application for reference of grievance by individual employee under section 188(2)	3	2	1
s204	Notification under s.204 (dispute)	498	521	232
s219(1)	Application for payment of wages under section 219(1)	5	5	0
s220 & s221	Application for an order of demarcation under ss.220 & 221	13	12	11
s246	Unfair dismissal	1823	1824	474
s345(4)	Reference by the Minister for Industrial Relations and Employment pursuant to section 345(4)	1	0	1
s385	Reference by Industrial Registrar to the Commission	1	1	1
s386	Application for order by President re: removal of matter before Industrial Registrar	2	1	1
s466	Application for permission for a Secret Ballot	1	1	0
s698	Notification under s.698 (dispute)	22	23	9
IRCAP1	Appeal against decision of Conciliation Commissioner	46	51	33
IRCAP2	Appeal against decision of Presidential Member	5	9	7
IRCAP3	Other Appeals	0	0	0
IAA 1940	Matters continuing under the Industrial Arbitration Act 1940	N/A	6	11
T	Application for compensation before the Contract of Carriage Tribunal	7		7
C	Matters referred from the Australian Industrial Relations Commission under s.174 of the Industrial Relations Act 1988 (Cth)	3	1	4
<b>TOTAL</b>		<b>3438</b>	<b>3359</b>	<b>1263</b>

**TABLE B**

*Matters filed and completed during period 1 January 1994 to 31 December 1994  
and all matters continuing (including those filed in other years) as at 31  
December 1994 under the Industrial Relations Act 1991*

**INDUSTRIAL COURT OF NEW SOUTH WALES**

ABBREVIATION	USAGE	FILED 1 JAN - 31 DEC 1994	COMPLETED 1 JAN - 31 DEC 1994	CONTINUING AS AT 31 DEC (INCL. THOSE MATTERS FILED IN PREVIOUS YEARS
AHA	Application for recovery of monies pursuant to the <i>Annual Holidays Act 1944</i>	4	1	3
CSA	Prosecution under the <i>Construction Safety Act 1912</i>	0	2	0
FSIA	Prosecution under the <i>Factories, Shops and Industries Act 1962</i>	2	0	2
LSLA	Application for recovery of monies pursuant to the <i>Long Service Leave Act 1955</i>	1	1	1
OHS s15	Prosecution of employer for failure to ensure health & safety of employees under s.15 of the <i>Occupational Health &amp; Safety Act 1983</i>	31	29	35
OHS s16	Prosecution of employer/self employed person for failure to ensure health & safety of persons other than employees	11	13	16
OHS s17	Prosecution of person in control of workplaces etc for failure to ensure health & safety of non employees	5	5	7
OHS s18	Prosecution of manufacturer/supplier for failure to ensure health & safety re: plant & substances for use at work	0	2	0
OHS s19	Prosecution of employee for failure to take care of others and cooperate with employer at work	4	9	5
OHS s50	Prosecution of directors/management of corporation for offences by the corporation	8	1	11
ss151,153&156	Application for recovery of monies under ss.151, 153 & 156	7	10	10
s166	Prosecution for breach of an award under s.166	28	2	28
s194	Application for injunction under s.194	12	5	6
s198	Referral of question re: interpretation of award/agreement	9	7	7
s202	Application for certification of "new matter" under s.202	3	4	1
s211	Summons to show cause re: contravention of dispute order	0	0	1
s262	Application for an injunction	1	0	1
s275	Application under s.275 (making a contract void)	76	57	106
s367	Prosecution for contempt/disturbance of the Commission	3	3	0
s384	Reference to Industrial Court by the Commission	1	0	2
ss481 & 482	Application re: victimisation	13	12	3
s488	Recovery of compensation from officer of organisation	1	0	1
s497	Application for order to vary rules of organisation considered oppressive	1	0	1
s686	Application for the recovery of monies under s.686	2	1	2
CTAP1	Appeal against decision of a Judge in an IRC matter	3	2	3
CTAP1a	Appeal against decision of a Judge in a CT matter	13	10	15
CTAP2	Appeal against decision of a Commissioner	8	7	4
CTAP3	Appeal against decision of Full Commission	3	1	5
CIM	Appeal against decision of Chief Industrial Magistrate	30	35	13
COSMWST	Appeal against decision of Coal & Oil Shale Mine Workers Superannuation Tribunal	2	5	1
LOCAL CT	Appeal against decision of Local Court Magistrate	4	3	2
SASB	Appeal against decision of State Authorities Superannuation Board	5	6	7
SSMIC	Appeal against a decision of State Superannuation Investment and Management Corporation	0	1	0
s88F	s88F of Industrial Arbitration Act 1940	N/A	2	2
<b>TOTAL</b>		<b>291</b>	<b>236</b>	<b>301</b>

## APPENDIX A

*Reasons given for notification made pursuant to sections 188(1), 188(2), 204 and 698 of the Industrial Relations Act, 1991 from 1 January 1994 to 31 December 1994*

NATURE	S.188(1)	S.188(2)	S.204	S.698
<b>CONDITIONS OF EMPLOYMENT</b>				
(i) Allowances	13	24	-	-
(ii) Wage rates/conditions of employment	75	-	131	13
(iii) Overtime	10	-	8	-
(iv) Hours of Work (eg. rosters, shiftwork)	23	1	21	2
(v) Leave entitlements	5	1	11	-
(vi) Superannuation	3	-	1	-
(vii) Restructuring	12	-	23	-
<b>PHYSICAL WORKING CONDITIONS</b>				
(i) Safety	2	-	12	-
(ii) Amenities	6	-	16	-
<b>DISMISSAL</b>				
(i) Neglect of duties/absenteeism	-	-	2	-
(ii) Rentrenchment	4	-	20	1
(iii) Unspecified	16	-	18	1
<b>MANAGEMENT CONTROL</b>				
(i) Suspension/demotion	9	-	17	-
(ii) Contract labour	12	-	15	-
(iii) Interpretation	1	-	1	-
(iv) Breach	-	-	-	-
(v) Appointments	10	1	44	-
(vi) Transfers	7	-	13	1
(vii) Manning	19	-	11	-
<b>UNION MATTERS</b>				
(i) Employment of non-unionists	-	-	2	-
(ii) Demarcation	-	-	2	-
(iii) Sympathy with other unions	-	-	2	-
<b>MISCELLANEOUS - OTHER</b>				
	30	-	70	-
<b>STOPPAGES</b>				
	46	-	159	7
<b>TOTAL</b>				
	265	3	499	22



## APPENDIX B

### *Variations lodged during 1994*

MONTH	VARIATION
January	-
February	-
March	-
April	-
May	-
June	-
July	-
August	-
September	-
October	-
November	-
December	-
<b>TOTAL</b>	<b>Nil</b>

## APPENDIX C

### *Application to Conciliation Committees*

Applications to Committee on behalf of	Conciliation	Contract Regulation
(a) employees for an order or award s.347(2)(c)(i)	24	-
(b) employers for an order or award s.347(2)(c)(ii)	7	-
(c) employees for variation or interpretation of awards s.347(2)(c)(i)	13	-
(d) employers for variation or interpretation of awards s.347(2)(c)(ii)	-	-
Miscellaneous	-	-
Application pursuant to Clothing Trades (State) Award	15	N/A
<b>TOTAL</b>	<b>59</b>	<b>Nil</b>

## APPENDIX D

### *Activity of Conciliation Committees during 1994*

ESTABLISHED	5
DISSOLVED	1
ALTERED	N/A
<b>TOTAL</b>	<b>6</b>